REGIONALISM AND THE ENFORCEMENT OF HUMAN RIGHTS IN NIGERIA

BY

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DECLARATION

This proposal is my original work and has not been presented for a master degree in any other University or any other award.

Signature: ..... Date 1/11/2017

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DEDICATION

This work is dedicated to Honourable Micah Y. Jibah, the Immediate past Executive Chairman of the Abuja Municipal Area Council, Abuja Nigeria. You single handedly took up the responsibility of my master's program. You endured my constant demands with a matured heart. Your kind of person is very rare in this present generation. Only God has the monopoly of how he decides to bless you and he will definitely reward you for your kindness.

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LISTS OF ABBREVIATIONS

A.U	African Union
AfCHPR	African Charter on Human and Peoples' Rights
ASEAN	Association of South East Asian Nations
CAICOM	Caribbean Community
ECCJ	ECOWAS Community Court of Justice
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
EEC	European Community
EFCC	Economic and Financial Crimes Commission
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
LAFTA	Latin American Free Trade Area
MERCOSUR	Mercado Commun del Sur
NAFTA	North American Free Trade Agreement
NSA	National Security Adviser
O.A.U.	Organization of African Unity
OAS	Organization of American States
SADC	Southern African Development Community
SSS	State Security Service
U.N.	United Nations
UDHR	United Nations Declaration on Human Rights

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ABSTRACTS

Human rights as we have them today can be traced to the famous United Nations' document, the Universal Declaration of human rights (UDHR) of 1948. All other human rights instruments and Bills of Rights are derived from this document including the two binding instruments, the International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Cultural Economic and Social Rights (ICESR). There are regional systems of international human rights law that complement national and international human rights law by protecting and promoting human rights in specific areas of the world. There are three key regional human rights instruments: the European Convention on Human Rights; the Inter-American Convention on Human Rights; and the African Charter on Human and People's Rights. While the American and the European regimes have attained a substantial level of maturity, the African regime is still struggling to overcome the tyrannical tendencies of the various state regimes. The West African Sub-region have been an epicenter of violent armed conflicts with high degree of human rights abuses meted out on armless and defenseless civilian populations as well as cruel and tyrannical military regimes with no regard to human rights. Nigeria particularly have been under the military regimes for over three decades. Beside the military regimes, there has been a continued perpetuation of human rights violations even under the democratic era particularly by the police and other security personnel. The Economic Community of West African States ECOWAS under its Treaty stipulates that respect and promotion of human rights is one of its fundamental principles. Even though, Nigeria being a member of the international community and ECOWAS has an elaborate human rights enforcement mechanism and the ECOWAS also has a sub-regional or community court, incidences of human rights violations have not abated. This research has concluded that state sovereignty is one of the major obstacle to the ECOWAS' effort in achieving effective human rights enforcement within the sub region and Nigeria in particular. Other challenges bedeviling the ECOWAS' efforts are lack of enforcement mechanism, poverty and illiteracy among the citizens among others.

CHAPTER ONE

INTRODUCTION

1.0 Introduction

Regional and sub-regional organizations have emerged as important actors in different spheres of the international arena. These organizations are created often by states to serve as an arena for handling issues of common concerns which states cannot on their own individually handle. Human rights promotion and enforcement is one of such issues of common concern in which these organizations have devoted significant attention. The Economic Community of West African States (ECOWAS) as one of the sub-regional organizations is the focus of this study. The study is aimed to examine the capability or otherwise of ECOWAS in ensuring and compelling Nigeria, a regional hegemon to comply with its legal obligations under the sub-regional arrangement particularly in the area of human rights enforcement. This chapter is structured to include: the background of the study, statement of the problem, objectives and research questions, scope, and significance of the research.

1.1Background of the Study

This section provides the setting of the study under four perspectives; historical, theoretical conceptual and contextual perspectives.

1.1.1 Historical Perspective

After the Second World War, the United Nations (UN) brought Human Rights firmly into the sphere of international law in its own constituent documents, the UN Charter in 1945. The purpose of the UN provided for under Art. 3 among other things include the promotion and encouragement of human rights and fundamental freedoms. Since 1945, the UN has been instrumental in the process of standard-setting that is, creating treaties and other documents that set out universally recognized human rights. Most famously of course, it adopted the Universal Declaration on Human Rights (UDHR) in 1948 (Joseph & Kyriakakis, 2010).The UN has also created various internal institutions to monitor and supervise the implementation of human

Rights. There are political bodies established under the rubric of the UN Charter, such as the Human Rights Council and its predecessor, the Commission on Human Rights. There are also treaty bodies established under the core UN human rights treaties, which monitor the enforcement of human rights (Joseph & Kyriakakis, 2010).

The modesty with which human rights were addressed within the UN encouraged regional organizations to set-up their own system for the protection of human rights. Both the Council of Europe and the Organization of American States moved swiftly in this direction. The Organization of African Unity (now renamed the African Union) also established its own mechanism.The Charter founding the Organization of African Unity signed in Addis-Ababa on 25 May 1963 stated that one of the objectives of the new organization was to promote international cooperation, having due regard to the Charter of United Nations and the Universal Declaration of Human Rights, Art. 2(1) (e). The African Charter on Human and People's Rights (AfCHPR) was adopted on 27 June 1981 in Banjul, Gambia and it entered into force on 21 October 1986. Initially, the African Charter was monitored exclusively by the African Commission on Human and People's Rights. The system was further strengthened by the entry into force in 2004 of the 1998 Protocol to the Charter on the Establishment of an African Court on Human and People's Rights (Schutter, 2010).

As the African Charter on Human and People's Rights progressively established its credibility through the 1990's, the OAU mutated into the African Union. Art. 4 of the African Union Constitutive Act adopted in Lome on 11 July 2002 enumerates the principles on which the AU is founded. These include the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely; war crimes, genocide and crimes against humanity, promotion of gender equality, and respect for democratic principles; human rights, the rule of law and good governance, Paras. (h) (l) and (m) respectively.

The Economic Community of West African States (ECOWAS) was created in 1975 primarily as an economic international organization of fifteen states in West Africa. With the exception of

Gambia, Cape Verde and GuineaBissau, political independence had been obtained by most states between 1956 and 1961 (Hartman, 2013). The first decade of independence, political and

economic developments in the region witnessed strong rivalry between the former French and former British colonies (Hartman, 2013). The necessity of creating sub-regional cooperation and integration organizations in West Africa was re-informed by the experiences both in developed countries and in developing countries. (Adepoju 2005) Among such organizations are the European Economic Community; the Latin American Free Trade Association (LAFTA); the Caribbean Community (CAICOM) the Association of South East Asian Nations (ASEAN) etc.

Nigeria played a key role in the intensive three year diplomatic activities culminating in the formation of ECOWAS (Bamfo, 2013). Promoting and protecting human rights - prerequisite to good governance – were in chronic short supply at the signing of the original ECOWAS Treaty. Governments that signed the Treaty epitomized autocratic rule. And others were under autocratic military rule (Bamfo 2013).

The aim of the ECOWAS as provided in Art. 3 (1) of the ECOWAS Treaty is to promote cooperation and integration. This was with the objective of raising the standard of living of its people and at the same time enhance economic stability, foster relations among member states and contribute to the progress and development of the African continent (Donli, 2006).In furtherance of the aims, the ECOWAS under Art. 4 (g) of the Treaty guarantees its people "the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter of Human and People's Rights."(Donli, 2006).

In Nigeria, successive constitutions since independence in 1960 have always included provisions on human rights protection. The first bill of rights in Nigeria may be traced to the independence constitution of 1960 (Sanni, 2011). Today, the bill of rights is provided under chapter four of the 1999 constitution of the Federal Republic of Nigeria (as amended, 2011).

1.1.2 Theoretical Perspective

This study was guided by the two main theories in international relations, realism and liberalism.

Realism

Realism is a term that refers to both classical and neorealism. Thucydides (471-400BC) is usually credited as the father of the realist perspective and with being the first writer in international relations discipline. For the realist, states are the principal or most important actors on the international political stage. National security typically dominate the hierarchy of the international agenda (Kauppi & Viotti, 2012).According to realism, the logic of self-help in an anarchic systems means human rights are a luxury that states cannot afford. Claims to universal values mask the play of national interest. With little or no regards to institutions, human rights are left to the will of the states. State leaders pay leap service to human right standards, to the realists, human right can be a useful tool if they enhance the relative power of your state; the moment they work against the state's vital security interests, they must be abandoned. This is in consonance with Thomas Hobbes' (1588-1679) assertion that rules are regularly broken in anarchic system, and agreements last only as long as they benefit the contracting parties. (Dunne & Hanson 2008).

Realism as a theory was employed in this study to examine what prominence states assign to the issue of human rights in the face of national security. And the theory will be used to examine the significance of a sub-regional organization (ECOWAS) in ensuring human rights enforcement in member states particularly Nigeria, being a sub-regional hegemon

Liberalism

Liberalism and neoliberal institutionalism present a pluralist view of the world composed not just of states and their institutions, but also of multiple non-state actors to include international and non-governmental organizations, individuals and groups. The major proponent of the realist ideology is Immanuel Kant (1724-1804) (Kauppi & Viotti, 2012).

According to liberalism, human rights are an extension of natural and inalienable rights. States have a duty to protect rights. If they fail to do this, their sovereign status is in question. Human right regimes and institutions are vital for monitoring compliance. If institutions are weak, states will cheat. That is why the EU makes it obligatory to member states to promote and enforce human rights as one of the precondition for becoming a member. The promotion of human rights

is inextricably linked to the promotion of democracy and good governance. Unless human rights values are embedded in state-based institutions, they will not be durable. Kant'spamphlet 'Perpetual Peace' (Kant, 1991) builds a theory of international liberalism in which all individuals have equal moral worth, and in which an abuse of rights in one part of the world is 'felt everywhere'(Dunne & Hanson, 2008).

The liberalist believe in human rights ideology and the importance of cooperation under international organizations is vital to this study.

1.1.3 Conceptual Perspective

Regionalism and human rights enforcement are the key study concepts.

Regionalism

The concept of regionalism has attracted immense attention of the academia as well as researchers in contemporary international relations. This is due to the fact that the enduring pursuit of regionalism has an underpinning thrust on peace, security and development through exploration, identification and gradual intensification of trade, economic and cultural ties among geographically contiguous areas (Gochhayat, 2010). Regionalism is usually understood to involve policy coordination through formal institutions (Mansfield & Solingen, 2010).

Mansfield & Solingen, (2010) observed that regions are frequently defined as groups of countries located in the same geographic space. They defined a region based on geographic proximity, social and cultural homogeneity, shared political attitudes and political institutions, and economic interdependence.

Human Rights Enforcement

The concept of human right according to Osiatynski(2013) consist of at least six fundamental ideas: one, that the power of a ruler (a monarch or a state) is not unlimited; second, that the subjects have a sphere of autonomy that no power can invade and some rights and freedoms that need to be protected by a ruler; third, that there exist procedural mechanisms to limit the arbitrariness of a ruler and protect the rights and freedoms of the ruled who can make valid

claims upon the state for such protection; fourth, that the ruled have rights that enable them to participate in decision-making; fifth, that the authority has not only powers but also obligations, which may be claimed by the citizens; and sixth, that all these rights and freedoms are granted equally to all persons.

According to Bantekas and Papastavridis(2013), human rights have three qualities; the quality of indivisibility which is based on the idea that there exists no hierarchy among rights and that none is more important than another; the quality of independence which follows from indivisibility and underlines the fact that no right is realizable in isolation of others. For example, the right to self-determination requires freedom to elect, non-intimidation and torture, freedom of expression and others; and the quality of universality which entails that human rights apply equally to all people and are enjoyed by all under the same terms. This is in contrast to the antithetical notion of cultural relativism, which posits that rights can only be violated by a particular society's cultural, religious, or other values. An example of relativism is the denial of the right to convert in Islam and the harsh penalties imposed in several Muslim nations upon converts. Universalists argue that freedom to change one's religion applies to all people irrespective of their religion. Other examples include the practice of female genital mutilation as practiced in many parts of rural Africa.

1.1.4 Contextual Perspective

Human rights that are enforceable in law are those which are recognized by law as fundamental rights, as distinguished from mere aspirations or individual's ideas of rights. These fundamental rights are embodied in Chapter Four of the 1999 Constitution of the Federal Republic of Nigeria (as amended, 2011)and the African Charter on Human and People's Rights which was ratified and re-enacted as a municipal law by the National Assembly in 1982 (Nwafor, 2009).

The procedure for the enforcement of these rights is comprehensively provided in the municipal laws. Section 46 (1) of the 1999 Nigerian Constitution confers jurisdiction on the High Court to entertain suits from persons who allege that any provision of chapter four of the constitution "has been, is being, or likely to be contravened in any state in relation to him". The procedural rules for the commencement of such action are provided for by the Fundamental Rights (Enforcement

Procedure) Rules of 2009 made by the Honorable Chief Justice of the Federation.Beside the courts, the security services are by law charged with the responsibility among other things to secure lives and properties of citizens. That is, they play an important role in the safeguard and enforcement of human rights of the citizens.

Common reasoning will have it that with the elaborate mechanism for the promotion and enforcement of human rights provided under the municipal laws, the promotion and enforcement of the rights of the citizens is effectively achieved. However, incidences of human rights abuses abound in Nigeria especially by the security service. By way of demonstration, Odi massacre and Herders-Farmers violence are important instances in point. The massacre of unarmed civilians in Odi a village in Bayelsa state by the Nigerian military on 20th November, 1999 over agitations of the indigenous people on rights to oil resources and environmental protection. Human rights watch reported that over 2,500 lives were lost. This was a clear violation of the right to life the Nigerians involved. Frequent violence between farmers and cattle owners in the North central remained unresolved in 2015 and 2016. There have been few investigations or prosecutions against those responsible for the violence. The lack of justice for victims helped fuel reprisals attacks, leading to continuous cycle of violence. (Kenneth Roth, 2016. World Report 2016: Nigeria Human Rights Watch,).

The fight against Boko Haram is another case where there are allegations of use of excessive force, and inadequate civilian protection measures including for Boko Haram hostages by the military in the ongoing operation. Authorities have rarely prosecuted members of the police and the military implicated in the abuses. While some soldiers have been prosecuted for offences such as cowardice and mutiny in military tribunals, the pervasive culture of impunity means almost no one has been held accountable for human right crimes (Kenneth Roth, 2016.WorldReport 2016: Nigeria Human Rights Watch). Other cases include the Shiites massacre in Kaduna state and Col. Sambo Dasuki's case. Between 12 and 14 December 2015, the Nigerian military carried out a massacre against the Islamic Movement of Nigeria in Zaria, Kaduna State where up to 340 Shiites were killed and the leader of the movement was taken into custody by the army. This was a violation of the right to life of the victims. And the continuous detention of the leader of the movement by the armed forces without charges is also a violation of his right to freedom of movement and right to dignity of human person (2015 Zaria

Massacre,n.d.).Col. Sambo Dasuki, the National Security Adviser to the former President Dr. Goodluck Jonathan has been standing trial before three Courts in Nigeria for alleged embezzlement of funds meant for the procurement of military hardware. Dasuki along with five other accused were granted bail by the three separate courts in accordance with the constitution of Nigeria. However, the State Security Service (SSS) has ignored the court order directing it and the Economic and Financial Crimes Commission (EFCC) to release Dasuki on bail (Premium Times Dec. 30 2015, Again SSS disobeys court order, detains NSA Dasuki despite bail order.).

On Tuesday, 4thOctober 2016, the ECOWAS Community Court of Justice ordered the release of Mr. Dasuki describing his arrest and continued detention as unlawful and arbitrary. The Court said the manner of arrest and detention of Mr. Dasuki was contrary to Art. 6 of AfCHR and Art. 9 (1) of the International Convention on Civil and Political Rights. The Nigerian authorities have still refused to release Mr. Dasuki (Evelyn, Okakwu, n.d. Why Nigerian government has not released Dasuki despite ECOWAS court ruling.).

1.2 Statement of the Problem

In Nigeria, there is an elaborate legal mechanism for the promotion and enforcement of human rights under domestic legal regime. The ECOWAS Charter predicated on the ideology of the African Charter on Human and People's Rights also have mechanisms for the promotion of human rights within member states.

However, incidences of human rights violations still exist in Nigeria with just a few being reported. And these elaborate domestic legal mechanisms as well as the ECOWAS as a sub-regional organization's mechanisms have failed to provide adequate solutions for instance the Shiites case, the military operation against the Boko Haram and the Dasuki case(Kenneth Roth, 2016. World Report 2016: Nigeria Human Rights Watch; 2015 Zaria Massacre; Evelyn, Okakwu, n.d. Why Nigerian government has not released Dasuki despite ECOWAS court ruling.).

Another problem is the ability or otherwise of the ECOWAS to enforce or compel Nigeria, a sub-regional hegemon to comply with its legal obligations under the sub-regional arrangements. This is exemplified by the continued refusal of the Nigerian government to release Col. Dasuki

despite the ruling of the ECOWAS Community Court of Justice (Evelyn, Okakwu, n.d. Why Nigerian government has not released Dasuki despite ECOWAS court ruling.).

These and numerous incidences of human rights problems are prevalent in Nigeria. And the enforcement mechanisms as stated above failed to guarantee a successful safeguard to the fundamental human rights of the citizens. Hence, it is the task of this researcher to examine the ECOWAS to find out the effectiveness or otherwise of the mechanisms available to guarantee effective protection and enforcement of human rights in Nigeria and make recommendations on the above mentioned problems.

1.3 Objectives

1.3.1 General Objectives

The overall objective of this research is to investigate the contribution or role of ECOWAS in the protection and enforcement of human rights in Nigeria.

1.3.2 Specific Objectives

1. To analyze the different rules that enhance the protection of human rights in Nigeria.
2. To examine the different rules and legal framework that enhance enforcement of human rights under the ECOWAS.
3. To examine the challenges ECOWAS is facing in the protection and enforcement of human rights.

1.4 Research Questions

1. What are the rules that enhance the protection of human rights in Nigeria?
2. What are the rules and legal framework that enhance the enforcement of human rights under the ECOWAS?
3. What are the challenges ECOWAS is facing in achieving the effective protection and enforcement of human rights in Nigeria?

1.5 Scope of the Study

This section highlights the scope of the study which include geographical, content and theoretical scopes

1.5.1 Geographical Scope

This study was conducted in Abuja, the capital city of Nigeria. The three main organs of the ECOWAS i.e. the ECOWAS Secretariat, the ECOWAS Parliament and the ECOWAS Community Court of Justice (ECCJ) are also based in the city of Abuja.

1.5.2 Content Scope

The study investigated the role of ECOWAS in the enhancement, protection and enforcement of human rights in Nigeria.

1.5.3 Theoretical Scope

This study was guided by the realist ideas propounded by Thomas Hobbes (1588-1679) in which national security and national interest takes precedent over any other interest including human rights and the liberalist ideas propounded by Immanuel Kant (1991) which believes that protection of human rights is the duty of the state.

1.6 Significance of the Study

This study shall have its own significance among which shall include;

- To contribute in the search for a solution to the vexed question of enforcement of international human rights law particularly under the ECOWAS
- It is hoped to contribute as a material for further study in the area of ECOWAS and human rights within the West African sub-region in general and the protection and enforcement of human rights in Nigeria through the ECOWAS Community Court of Justice in particular.

- The study shall be of significance to policy makers, students and other academia in the study of the relationship between regional organizations and a regional hegemon.
- To suggest or recommend the possible solutions that the judicial body of the ECOWAS should follow to enhance its protection and enforcement of human rights in the sub-region in line with the African Charter on Human and People's Rights (AfCHPR).

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

This chapter reviews literature on the topic. For this purpose, the chapter is structured to include; a review of the theories used in the study, conceptual framework and a review of related literature in relation to the protection and enforcement of human rights under the auspices of the regional and sub-regional bodies, particularly in Africa. The purpose of the review is to clarify problem and identify the gaps in the existing literatures in relation to the study topic.

2.1 Theoretical Review

Two theories are reviewed in this section, realism and liberalism.

Realism

Realists believe that states would never cede to supranational institutions the strong enforcement capacities necessary to overcome international anarchy. Consequently, international organizations (global, regional or sub-regional) and similar institutions are of little interest; they merely reflect national interests and power and do not constrain powerful states (Abbott & Snidal, 1998) yet realists underestimate the utility of international organizations, even to the powerful states. The United States at the peak of its hegemony, sponsored numerous International Organizations; these organizations have provided continuity utility as instruments of regime and rule creation. Even though powerful states structure these organizations to further their own interests, they must however do so in a way that induces weaker states to participate (Abbott & Snidal, 1998). This interplay is embedded in international organizations' structure and operations.

One of the major assumptions of the realists is their pessimistic view of the human nature. This assumption has particularly influenced the work of Thomas Hobbes as well as other classical realists like Machiavelli, Thucydides, Hans Morgenthau and structural realists like Kenneth Waltz. In his analyses of his hypothetical state of nature, Thomas Hobbes imagined what the world will be like without governmental authority or any social structure. Thus he showed that

people could escape from this anarchic state – a state of war of everyone against everyone else – by agreeing to place all powers in the hands of a sovereign or supreme ruler. According to him, there must be some coercive power to compel men equally to the performance of their covenants by the terror of some punishment (Viotti & Kauppi, 2012).

The condition of international anarchy and the pursuit of national interest are the two significant reasons why realists are skeptical about human rights. A third reason is an ethical objection to the assumption of a universal morality that is in many ways the bedrock of the existence of human rights regime (Dunne & Hanson, 2008). One of the main focus of Machiavelli was national security. To him, that should be the primary interest of a ruler, survival of the state was paramount. This security of state is so important that it justify certain acts by the ruler that may be deemed immoral by ordinary citizens. This include where necessary, violation of human rights. In fact, the ends justifies the means necessary to achieve the end (Viotti & Kauppi, 2012).

The realist world is one where rules are regularly broken and agreements last only as long as they benefit the contracting parties. As Hobbes put it more clearly, treaties that are not imposed by force 'are but mere words'. Today's realists continue to believe that for the most part, the diplomacy of human rights is just talk. They understand that human rights are part of the vocabulary of modern international society (Dunne & Hanson, 2008).

In the final analyses, unless the promotion of human rights is in the national interest, why would it be rational for states to pursue such goals?

Liberalism

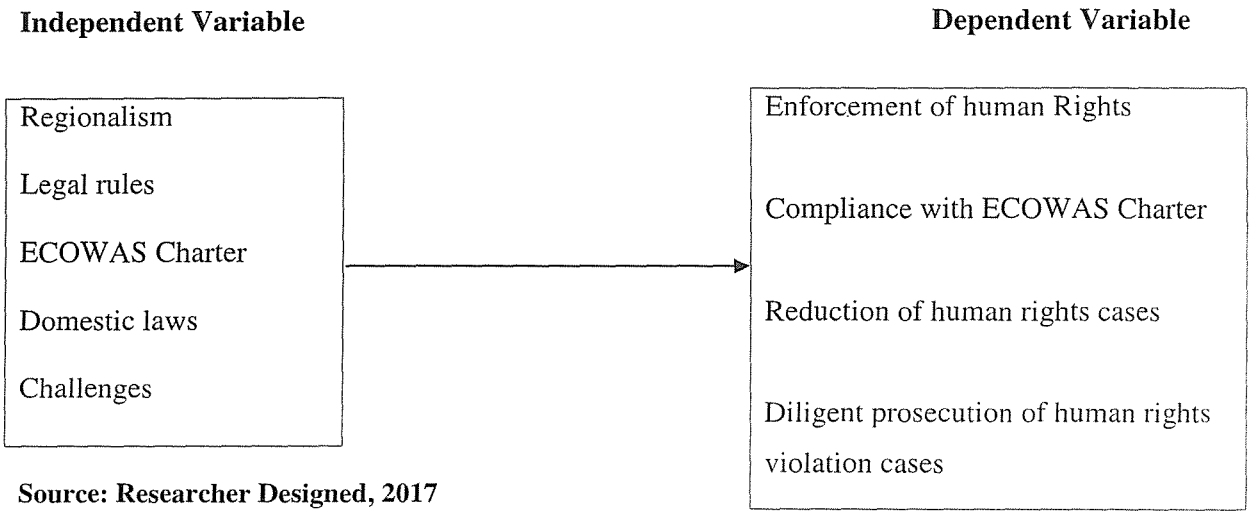
Liberals have been amongst the most committed supporters of international organizations. This is reflected in the ideas of liberal institutionalism. From the institutional perspective, states cooperate because it is in their interest to do so. This does not imply that state interests are always harmoniously in agreement, but only that there are important, and growing areas of mutual interest (Heywood, 2011) such as human rights issues where cooperation amongst states is rational and sensible. International organizations are therefore a reflection of the extent of interdependence in the global system, an acknowledgment by states that they can often achieve more by working together than by working separately.

Liberalist thought does not consider human rights as a marginal issue, but considers it as a new mechanism in international relations. They believe current criteria of human rights influence the change and kind of governing regime. Liberalists consider defending human rights as defending natural claims of human beings (Garaee & Moradi, 2016).

Dunne and Hanson (2008), argue that the central idea of liberalist thought is that individual persons have basic rights to free speech, fair treatment in terms of judicial process and political equality enshrined in political constitutions. While Hobbes and Machiavelli are invoked by realists to justify the promotion of national self-interest, liberals look to Locke and Kant as their leaders. Kant's 'perpetual peace' (Kant, 1991) builds a theory of international liberalism in which all individuals have equal moral worth, and in which an abuse of rights in one part of the world is felt everywhere.

According to Garaee and Moradi (2016), liberalists consider liberal global order in the framework of international rights, respect to human rights, respect to minority and religious rights and economic development. They further stated that theory of liberal international relations emphasizes the priority of internal resources of state. The trend reveals differences between institutional neoliberals and new realism based on state-focused attitude in international system. International neoliberals believe that states have interests for entering international institutional orders that prevent inappropriate actions and unwanted consequences. Therefore, we can consider cooperation in the area of human rights from institutional neoliberal perspective.

2.2 Conceptual Framework



Source: Researcher Designed, 2017

2.3 Conceptual Review

Key concepts; regionalism, regionalism in global context, regional hegemony, human rights, enforcement of human rights, regional organization and enforcement of human rights

2.3.1 Concept of Regionalism

The concept of regionalism has attracted immense attention of the academia as well as researchers in contemporary international relations. This is due to the fact that the enduring pursuit of regionalism has an underpinning thrust on peace, security and development through exploration identification and gradual intensification of trade, economic and cultural ties among geographically contiguous areas (Gochhayat, 2010). Regionalism is usually understood to involve policy coordination through formal institutions (Mansfield & Solingen, 2010).

Mansfield and Solingen (2010) observed that regions are frequently defined as groups of countries located in the same geographic space. They defined a region based on geographic proximity, social and cultural homogeneity, shared political attitudes and political institutions, and economic interdependence...

According to Gochhayat (2014) regionalism at the international level refers to transnational cooperation to achieve a common goal or resolve a shared problem, or it refers to a group of countries , such as Western Europe, the Western Balkans or South Asia, that are linked by geography, history or economic features.

Regionalism, broadly is a process through which geographical regions become significant political and/or economic units, serving as the basis for cooperation and, possibly, identity. Regionalism has two faces. In the first face, it is a sub-national phenomenon, a process of decentralization that takes place within countries. The second face of regionalism is transnational rather than sub-national. In this sense, regionalism refers to a process of cooperation or integration between countries in the same region of the region of the world. Heywood (2011) further defined regionalism as the theory or practice of coordinating economics or political activities within a geographic region comprising a number of states. On an institutional level, regionalism involves the growth of norms, rules, and formal structures through which coordination is brought about. On effective level, it implies a realignment of political identities and loyalties from the states to that region.

2.3.2 Regionalism in Global Context

As regionalism is a global phenomenon, examples of regional organizations may be found in Europe, the Americas, Africa, Asia and the Pacific. In Europe, the European Coal and Steel Community, established in 1953 between France, West Germany, Italy and the Beneux Countries initiated the process of European integration and led to the signing of the Treaty of Rome in 1958 which established the European Community (EEC). By 1992, the Maastricht Treaty on European Monetary and Political Union was adopted and by 1993, the community was formally known as the European Union to signify the level of integration that it had achieved (Gochhayat, 2010).

In the Americas, including MERCOSUR (the Mercado Comun del sur or the southern common market) the countries of Argentina, Brazil, Paraguay, Uruguay and Venezuela. And the North American Free Trade Agreement (NAFTA), Canada, Mexico and the United States are among such organizations (Gochhayat, 2010).

On the constituent of Africa; the Southern African Development Community (SADC) consisting of the countries in its southern cone was re-launched in 1992 to promote economic and social development objectives. And in the western sub region, Economic Community of West African States (ECOWAS) consisting of the countries in the wet under the ECOWAS Charter of 1975 and the revised Charter of 1993 (Gochhayat, 2010).

2.3.3 Regional Hegemony

Hegemony (from the Greek, hegemon ia, meaning leader) is in its simplest sense, the leadership or dominion of one element of a system over others(Heywood, 2011). The term has also been referred to as the ideological leadership of the bourgeoisie over subordinate classes. In global or international politics, a hegemon is the leading state within a collection of states. Hegemonic status is based on the possession of structural power, particularly the control of economic and military resources, enabling the hegemon to shape the preferences and actions of other states (Heywood, 2011). In terms of the West African Sub-region, Nigeria possesses this power structure and has been the leading force in terms of economic and military resources within the sub-region.

Thus, the term regional hegemony implies regional or sub-regional leadership in part through ideational or ideological means.

2.3.4 Concept of Human Right

There are many definitions for human rights. Abass (2014) opined that it is impossible to find a single acceptable definition of human rights as it is to locate their exact origin. Some regard human rights as inherent in human beings. It is said that human beings are born with human beings, so that in a sense, they are simply the rights of humanity in general. While according to Garaee and Moradi (2016), human rights means general advantages that every person possess. It can be said that human rights are radical and basic rights that every human being has received from God, regardless of race, language, nationality, geography, social variable conditions and the extent of personal competence and capability.

The concept of human right according to Osiatynski (2013) consist of at least six fundamental ideas: one, that the power of a ruler (a monarch or a state) is not unlimited; second, that the subjects have a sphere of autonomy that no power can invade and some rights and freedoms that need to be protected by a ruler; third, that there exist procedural mechanisms to limit the arbitrariness of a ruler and protect the rights and freedoms of the ruled who can make valid claims upon the state for such protection; fourth, that the ruled have rights that enable them to participate in decision-making; fifth, that the authority has not only powers but also obligations, which may be claimed by the citizens; and sixth, that all these rights and freedoms are granted equally to all persons.

The ideas on this list have been emerging, disappearing, re-emerging and evolving throughout history, reflecting changing social conditions and serving various needs. Before the concept of human rights can be formulated, and adopted, a number of specific customs, legal provisions, institutions and ideas had to emerge. Eventually, it found its quasi-legal incorporation in the Universal Declaration on Human Rights (UDHR) adopted by the UN General Assembly on 10 December, 1948 (Osiatynski, 2013).

2.3.5 Enforcement of Human Rights

The enforcement of human rights is first and foremost the responsibility of each state, which is bound to comply in good faith (*pacta sunt savanda*) with the norms of customary international law and with the treaties in force to which the state is party. If a state fails, by an act or omission attributable to it to comply with any international obligation, the law of state responsibility requires such breach to cease and generates a new legal duty to afford reparation for harm caused by the violation (Shelton, 2013).

The law of state responsibility was developed in the context of reciprocal inter-state obligations, the breach of which generally entitles a state or states to complain of the violation. Such a legal framework is not fully satisfactory when applied to human rights law however, because another state rarely suffers direct injury due to a state's failure to observe human rights (Abass, 2014; Shelton, 2013). This lack of reciprocity has led to the description of human rights obligation as unilateral in nature.

The deficiencies of traditional framework of state responsibility have necessitated creation of international procedures and mechanisms to monitor and promote compliance with human rights obligations, enhance enforcement and provide remedies to individuals and groups whose rights have been violated. According to Shelton (2013), global and regional agreements have thus mandated the formation of independent monitoring bodies and increasingly granted them investigatory functions and jurisdictions to hear complaints brought by non-state actors.

But the question now is, how effective are these global, regional or sub-regional framework in achieving compliance especially against a sub-regional hegemon like Nigeria in the West African sub-region under ECOWAS?

2.3.6Regional Organizations and Enforcement of Human Rights

Since the emergence of the modern international society of states with the Treaty of Westphalia, (1648), the international relations have been based on the principle of sovereignty. Mutual recognition of the sovereign equality of states requires each state to refrain from intervention in the sovereign rights of the others. Yet, contemporary world of complex relationships, not only the scope and content of sovereign rights of states but also non-intervention as a guiding principle of international relations have become debatable (Dagi, 2001). The emergence of human rights as an international issue has played a significant role in bringing the conventional norms and principle of inter-state relations into debate.

International concern over human rights aim at influencing the government that engages in human rights violations to change its attitude towards its own citizens. This concern ranges from friendly influences to political and economic pressures, and in some cases involves direct military intervention to pressure the government to take human rights seriously.

There are regional systems of international human rights law that complement national and international human rights law by protecting and promoting human rights in specific areas of the world. There are three key regional human rights instruments: the European Convention on Human Rights; the Inter-American Convention on Human Rights; and the African Charter on Human and People's Rights.

The European System of the Protection of Human Rights

In its original version as adopted on 4 November 1950, within the framework of the newly established Council of Europe, the European Convention on Human Rights (ECHR) established both the European Commission and the European Commission of Human Rights. The Commission's competence was to receive applications submitted either by alleged victims of violations of the Convention or, more rarely by states, and to examine their admissibility including whether they were manifestly ill-founded. Individuals were initially not allowed to file a direct application with the Court (that was the sole prerogative of the European Commission who played a role similar to that of an advocate general before the court) (Schutter, 2010).

With the entrance into force of the Protocol No. 9 restructuring the control machinery of the European Convention on Human Rights in 1994, individuals were authorized to refer cases directly to the European Court on Human Rights. In cases where the court arrives at the conclusion that the Convention has been violated, the supervision of the execution of the judgments is left to the Council of Europe Committee of Ministers. The Committee has the responsibility to examine whether the state had paid the amount awarded to the victim or whether the victim has been replaced in the situation he would have found himself in absence of the violation. In addition, it examines whether the state has taken general measures so that new, similar violations of the Convention will not reoccur in the future (Schutter, 2010).

The Inter-American System of Human Rights Protection

The work of the Inter-American human rights system extends for over 50 years. The Inter-American system emerged with the adoption of the American Declaration on the Rights and duties of Man in April 1948. However, the Inter-American system started in practice, with the creation of the Inter-American Commission on Human Rights in 1959. The Commission has the powers to promote and protect human rights through mechanisms such as negotiations and international pressure on member states to improve human rights conditions. The Commission also periodically used its political authority to publish general reports on human rights situations in various countries, thereby applying pressure on state authorities with poor human rights records. The Commission has demonstrated the flexibility and adaptability of its mandate as well

as their extensive responsive capacity when challenged with the most difficult encroachments of human rights. Moreover, the coordinated use of political and adjudicatory powers are ascertainable mechanisms that have effectively denounced the documented human rights violations. The commission continues to play a vital role in the Inter-American system. Complemented by the judicial role of the Inter-American Court (Rodriguez-Pinzon and Martin, 2010).

The Inter-American Court has two specific types of jurisdiction: advisory and contentious; the advisory jurisdiction of the court is governed by Art. 64 of the American Convention and is the broadest of all existing international tribunals. Member states of the OAS including the Commission may submit request for advisory opinions. States may request advisory opinion on the interpretation of the American Convention and other treaties concerning the protection of human rights in the American states as well as on the compatibility of any domestic laws with the above mentioned international instrument; the contentious jurisdiction on the other hand refers to its powers to decide cases. The cases are principally based on alleged violations of the American convention's provisions. However, the court may also find violations of other Inter-American human rights treaties, granting the tribunal the jurisdiction to supervise compliance with the obligations contained therein (Rodriguez-Pinzon & Martin, 2010).

Compliance with the court's judgment is mandated under Art. 67 and 68 of the American Convention. Art. 67 provides that judgments of the Inter-American Court are final and not subject to appeal. Art. 68 obligates states parties to comply with the court's judgments when the American Convention is breached. Additionally, the court holds that judgment compliance is based on pacta sunt servanda principle whereby states must undertake their international obligations in good faith.

The African System of Protection of Human and People's Rights

The African Charter on Human and People's Rights adopted in 1981, entered into force on 21 October, 1986, and the African Commission on Human and People's Rights began functioning in 1987. In 1998, the system was further strengthened by the adoption of the Protocol of the African

Charter on the Establishment of an African Court on Human and People's Rights. The Protocol entered into force on 25 January 2004 (Schutter, 2010).

The African Commission on Human and People's Rights have functions which may be described as falling under three categories: promoting human and people's rights as described under Art. 45 (1). The Commission has been inventive in fulfilling these promotional duties, for instance, it has appointed Thematic Special Rapporteurs, following the practice of the UN Commission on Human Rights on issues such as prisons and conditions of detention centers in Africa among others; providing an authoritative interpretation of the Charter, derived under Art. 45 (3) of the Charter to provide an interpretation of the Charter at the request of a state party, an institution of the AU or any organization recognized by the AU; and protecting human rights. The Commission may also ensure the protection of human and people's rights (2) of the Charter (Schutter, 2010).

The African Court on Human and People's Rights have a wide-ranging jurisdiction extending to all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instruments ratified by the states concerned (Art. 3 of the Protocol to the African Charter on Human and people's Rights on the Establishment of the African Court on Human and People's Rights). The court has the competence to deliver advisory opinions at the request of any member state, the AU or any of its organs (Art. 4). The court may receive complaints either from the Commission, from the state party which had lodged a complaint with the Commission or from the state party against which the complaints had been lodged at the Commission (Art. 5). Individuals or non-governmental organizations have direct access to the court only exceptionally when the defending state has made specific declaration to that effect as provided in Art. 34 (6) (Schutter, 2010).

The provisions of the Protocol on enforcement of judgments represents a clear step forward in comparison to the existing situation as regards the decisions of the African Commission: the AU's Executive Council, composed of the foreign affairs ministers of the AU member states or their delegates shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly (Art.29 (2)). This will significantly raise the political cost for a state refusing to comply with the judgment delivered in a case to which it is a party.

The ECOWAS System of Human Rights Protection

Human rights' protection has been deemed as a major rationale for advancing the entrenchment of Regional Integration in ECOWAS. This underscores the extended Human rights' violation jurisdiction role assigned to the Community Court of Justice by the 2005 Supplementary Protocol in ensuring a human rights approach to economic integration of the region. By virtue of Decision A/DEC.10/5/90 of the Authority of Heads of States and Government of 30 May, 1990, the Committee of Eminent Persons convened by ECOWAS initiated the review of the 1975 Treaty and they stated that the effective protection of human rights in West Africa was the major reason behind regional economic integration among member states in the ECOWAS sub-region (Babatunde, et al, n.d.). Human rights was recognized as fundamental principles of the community including rights in factor mobility, substantive State Obligations; and as obligations enforceable by the ECOWAS Court of Justice in the 1993 Revised Treaty and its subsequent Protocols.

The ECOWAS Community Court of Justice plays a pivotal role in ensuring a human rights approach to sustainable economic integration of the region. It has jurisdiction over human rights infringement occasioned by post-economic integration matters. Since the adoption of the Supplementary Protocol granting it its human rights jurisdiction in January 2005, the court has assumed a vantage position as a regional and an international human rights court accessible to the citizens of member states. By the provisions of Articles 9 (4) and 10(d) of the 2005 Supplementary Protocol, the Court obtained the Jurisdiction to adjudicate over cases of human rights infringement in any member state and granted individuals access to the Court, on applications for relief for violation of their human rights on the conditions that the application shall not be anonymous nor be made during the pendency of a subsisting action on the same subject matter in another international Court(Babatunde, et al, n.d.).

2.3 Review of Related Literature

In this section, related literatures are reviewed with respect to fundamental rights enforcement procedure rules in Nigeria and the legal framework for enforcement of human rights under the ECOWAS

2.4.1 Fundamental Rights Enforcement Procedure Rules in Nigeria

According to Nwafor (2009), human rights that are enforceable in law are those which are recognized as fundamental rights as distinguished from mere aspirations or individual ideas. He further stated that in Nigeria, the process of protection and enforcement of human rights may be classified as conventional and unconventional, or orthodox and unorthodox. The orthodox means he said refers to the procedures provided by law which are regularly adopted in seeking reliefs against alleged infringement of rights. These include the invocation of judicial powers and recourse to police enforcement. While mediation can be classified as an unorthodox means.

Nwauche (2010), while reviewing the 2009 fundamental rights (enforcement) procedure rules, demonstrated that the 2009 rules may be regarded as a suitable response if the Nigerian judiciary recognizes that utmost flexibility must be the fundamental ordering principle of human rights enforcements.

Fundamental rights provisions have continued to feature very prominently in successive constitutions of the Federal Republic of Nigeria, and there has been a rise in the activities of rights groups in Nigeria (Nwafor, 2009; Gamzhi, 2010). Gamzhi (2010) in his study revealed that human rights are not exactly the same as constitutional rights or fundamental rights. Fundamental rights he argued are those aspects of human rights which are statutorily protected. Such protection have practical relevance when individuals can conveniently seek relief in a court for an infringement. And also that there are many challenges that are hindering the enforcement of fundamental human rights in Nigeria. These he suggested include illiteracy, poverty, rise in the actions of militants groups, kidnappers and religious fanatics, non-justifiability of chapter of two of the 1999 constitution of Nigeria and disrespect of court orders by the government and its agents.

2.4.2 Legal Framework for Enforcement of Human Rights under the ECOWAS

The ECOWAS Community Court of Justice (ECCJ) is the judicial arm of the ECOWAS. Established under Art. 15 of the ECOWAS Revised Treaty, 1993 and Art. 2 of the Protocol A/P1/7/91 of the ECCJ has the responsibility of resolving disputes relating to the Community's Treaty, Protocols and Conventions (Babatunde, Abegunde & Ayo,(n.d.)).

The ECCJ is one of the institutions of ECOWAS working together for the realization of the overall objectives. Its mandates are defined by Art. 76 (2) of the Treaty by the Protocol on the ECCJ (Donli, 2006). Donli (2006) highlighted the jurisdictions of the ECCJ which inter alia include human rights jurisdiction. He stated that actions for violations of human rights by individuals are within the competence of the court except where the action fails to specify the name of the applicant. Action for breach of the principle of hearing may fall within the ambit of the court.

According to Babatunde, et al, (n.d.), the mandate of the ECCJ is to ensure the observance of law and the principles of equity and human rights within the Economic Community. Apart from its statutory role as the principal judicial organ of the ECOWAS, the court's jurisdiction include provision of advisory opinions on meaning and interpretation of ECOWAS Laws, Texts, and Treaties; adjudication over failure or refusal by a member state to comply with Community Laws; settlement of disputes between community institutions and their and their officials; community liability; human rights violations and legality of community laws, ordinances and policies.

They further stated that the court did not have jurisdiction over human rights violations that occur in member states from inception, that it only acquired this additional jurisdiction in the year 2005 under Supplementary Protocol A/SP/05 which followed the community adoption of Protocol A/SP/12/01 on Democracy and Good Governance as an after-clap of increasing human rights abuse in member states. It therefore empowered the court to hear, inter alia cases relating to human rights violations.

2.5 Research Gaps

A careful review of the above literatures brought to the fore pertinent issues and gaps which require further consideration and commentary by future researchers. Each of the literatures focused only on either one of the variables or the other, thus failing to bring out the effect of the one over the other. And again, I realized that none of the reviewed literatures based their studies on any theoretical framework which is very important to give us a deeper understanding of the concepts and variables under consideration. Most of the literatures were quite recent, they made

commentaries only on the variables without making a critical analyses on the intricacies and consequences of the relationship or otherwise of the variables under considerations in this study. Therefore, the task of this study shall be to take the research some steps further with the objective of bridging the identified gaps, which incidentally, is the motivating factor towards the conduct of this study.

CHAPTER THREE
METHODOLOGY

3.0 Introduction

This chapter explains the methodology used to conduct the study. It is organized to include research design, research instruments, validity and reliability of research instruments, data gathering procedure, data analysis, ethical consideration and limitation of the study.

3.1 Research Design

This study employs the descriptive design. Descriptive designis concerned with describing the characteristics of an event, community or region, providing data about population or items being studied by only describing the who, what, how, when and where of a situation at a given time (Amin, 2005;What is Research Design? n.d.). According to Dullock (1993)descriptive research design can be used to provide an accurate portrayal of or account of characteristics of a particular individual, situation or group; these studies are means of discovering new meaning, describing what exists, determining the frequency with which something occurs and/or categorizing information.Descriptive design was used in this research to provide accurate portrayal of the human right situation in the study area, by describing what exist in term of human rights enforcement through the ECOWAS sub-regional organization.

3.2. Data Collection Method

This study employed document analysis method in collecting the data of this research. This involved thorough revision and summary of the government and international organizations documents that were available in the field (place), this also included the speeches of the prominent scholars, senior politicians and the head of organizations(Wesley, 2010; Monageng, 2006). According to Babbie (2010), document analysis is the study of recorded human communications, such as books, websites, painitings and laws. Document analysis is a method of data collection which involves analysis of content from written documents in order to make certain deductions based on study parameters. The method is mainly used in descriptive research(Mashall and Rossman, 1995). In a descriptive research design such as this, data

collection include observations, and examination of records, reports, photographs and documents (Lambert, and Lambert, 2012).

3.3 Data Collection Instrument

The study made use of official documents, records and reports obtained from relevant government departments and organizations such the ECOWAS ,journals, periodicals, newspapers, text books and other documents related to the topic based on the researcher's experience and observation and information obtained from the official websites relevant departments and organizations.

3.4 Validity and Reliability of the instrument

The research instrument was tested for validity to ensure that the content validity is relevant to the study's conceptualization. The instrument was subjected to the judgment of experts (who estimated the validity on the basis of their experiences) such as panel of senior lecturers from Kampala International University, External supervisors, who assessed the validity content in conjunction with the research supervisor. On reliability, the documents used were official documents derived from recognized departments and organs of the ECOWAS and government offices. By virtue of the sources, the instruments are deemed authentic as the authenticity of the contents is not in doubt.

3.5 Data Analysis

Thematic analysis method was used in analyzing the data for this research. Thematic analysis is a method of identifying, analyzing, and reporting themes within data (Braun and Clarke, 2006). It is often used to interpret various aspects of the research topic (Boyatzis, 1998). In this research, the central themes are human rights and enforcement of human rights. It was within these central themes that data was analyzed.

3.6 Data Gathering Procedure

Relevant documents needed for further study were listed and determined where to obtain each of the documents. Majority of the documents were obtained from relevant departments of the Nigerian government such as the Registries and libraries of the Supreme Court and Court of

Appeal of Nigeria, the library of Nigerian institute for Legislative studies; and ECOWAS institutions such as the ECOWAS Secretariat and the Registry and library of the ECOWAS Community Court of Justice. Other sources of materials were websites of relevant agencies such as www.courtecowas.org; www.ecowasparliament.org; www.irhda.org/court-of-justice-of-the-west-african-statesand the internet generally. After collection, the data was categorized according to the study themes and analyzed.

3.7 Limitation of the Study

The major limitation to this study was that most materials and documents relevant to this study are government and official documents access to which are restricted as officials were mostly unwilling to release same due to confidentiality. However, with persuasion and firm explanation of the objective of the research, I was able to make headway in some instances. Therefore, I depended on other available materials such as journals, periodical newspapers and internet as the source of information to complement the few gotten officially.

Another limitation encountered during this research was methodological limitation due to incomplete data records in most official documents.

CHAPTER FOUR

PRESENTATION, INTERPRETATION AND ANALYSIS OF FINDINGS

4.0 Introduction

This chapter contains the presentation, interpretation and analysis of the findings of this research obtained mainly from in-depth study and critical analysis of relevant documents. This section is guided by the objectives of this study which for the purpose of convenience are reproduced below:

1. To analyze the different rules that enhance the protection of human rights in Nigeria.
2. To examine the different rules and legal framework that enhance enforcement of human rights under the ECOWAS.
3. To examine the challenges ECOWAS is facing in the protection and enforcement of human rights.

4.1 Characteristics of documents and Information

The documents analyzed in this study comprised mainly official documents, international instruments, domestic statutes, rules of procedure, judgment of competent courts of justice including ECOWAS Community Court of Justice, Articles and commentaries of experts, etc. these instruments are of great significance as sources of data for this study. The domain of human rights and human rights enforcement is mainly regulated by legal instruments which are given life by the courts or tribunals through judicial pronouncements. Therefore, the aforementioned instruments are the most appropriate to examine the effectiveness or otherwise of efforts in ensuring the enforcement of human rights.

4.2 Objective One: The Rules that Enhance the Enforcement of Human Rights in Nigeria

Under this section, the main instruments to be considered are the 1999 Constitution of the Federal Republic of Nigeria, the Fundamental Rights Enforcement Procedure Rules, 2009, vis-à-vis the efforts of the Nigerian Courts through selected judgments in applying these rules.

The 1999 Constitution, Being the grundnorm of Nigeria set out the fundamental rights under Chapter four. These rights are sacrosanct by virtue of being part of the constitution which is the supreme law of the land. The supremacy of the constitution is provided for under section 1(2) of the constitution. Section 46 of the constitution gives to the High Court of the State jurisdiction to hear and determine cases of human rights violations. The section went further to give power to the Chief Justice of the Nigeria to make rules with respect of to the practice and procedure of the High Courts for the purpose of conduct of human rights proceedings in the High Courts.

Pursuant to the aforementioned power, the then Chief Justice of Nigeria made the Fundamental Rights Enforcement Procedure rules of 2009. These rules provide for the rules of procedure for the conduct of human rights proceedings in the High Courts. In general, it may be said that the fundamental procedural change brought about by the 2009 Rules is the move away from the emphasis on procedural requirements in the enforcement of human rights. The general rule is based on Order 9 Rule 1 of the 2009 Rules which provides:

> Where at any stage in the course of or in connection with any proceedings there has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to -
> *(i)* Mode of commencement of the application;
> *(ii)* The subject matter is not within Chapter IV of the Constitution orthe African Charter on Human and People's Rights (Ratification and Enforcement) Act

Nwauche (2011) stated that the objective of achieving a speedier disposal of complaints of human rights infractions is based on a number of procedures. First, Order II Rule 2 provides that

> An application for the enforcement of the Fundamental Right may be made by any originating process accepted by the Court which shall subject to the provisions of these Rules, lie without leave of Court.

That is, there is no longer a requirement for leave to from the court to institute an action. However, the jurisdiction of the court may be challenged by way of preliminary objection as provided for by Order VIII which require the court to determine the question of jurisdiction which was the aim of the requirement for leave in the old rules (1979 rules). Secondly, human rights actions may be initiated in a specific way. Thus, Order II Rule 2 allows an application for the enforcement of a fundamental rights to be commenced by any originating process accepted by the court. Every application must be accompanied by a written address which must be a succinct argument in support of the grounds of the application. It is hoped as argued above that the cost of Order II is interpreted to mean that a human right action may be commenced by any procedure. In this regard, Order XV Rule 4 of the 2009 Rules provides that:

> Where in the course of any human rights proceedings, a situation arises for which there is or appears to be no adequate provisions in the Rules, the civil procedure rules of the court shall apply.

It is therefore interesting to note that failure to comply with the rules regarding the initiation of an action is not regarded by Order IX of the 2009 Rules as irregularities. This will suggest that failure to comply with the requirements of Order II is fatal to the action.

Thirdly, Order IV regulates the general conduct of proceedings after the action is filed in a manner intended to facilitate a quick resolution of the application must fixed for hearing within seven days from the day the application was filed. Where the court is satisfied that exceptional hardship may be caused to an applicant before the service of the application, especially when the life or liberty of the applicant is involved, it may hear the application ex parte upon such interim reliefs as the application may demand. Fourthly, in order to facilitate a speedier hearing of the application, Order XII provides thus;

1. Hearing of the application shall be on the parties' written addresses.

2. Oral argument of not more than twenty minutes shall be allowed from each party by the Court on matters not contained in their written addresses provided such matters came to the knowledge of the party after he had filed his written address.

3. When all the parties' written addresses have been filed and come up for adoption and either of the parties is absent, the Court shall either on its own motion or upon oral application by the counsel for the party present, order that the addresses be deemed adopted if the court is satisfied that all the parties had notice of the date for adoption and a party shall be deemed to have notice of the date for adoption if on the previous date last given, the party or counsel was present in court.

4. The written address shall contain–

(a) The application on which the address is based;

(b) A brief statement of facts with reference to exhibits (if any) attached to the application;

(c) Issue arising for determination; and

(d) A succinct statement of argument on each issue incorporating the purport of the authorities referred to, together with full citation of each such authority

5.All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all the authorities referred to shall be submitted with the addresses. Where any unreported judgment is relied upon the certified true copy shall be submitted along with the written address.

Rule 1 of Order XII requires that the hearing must be conducted on parties' written addresses. Rule 2 of the same Order provides that oral argument of not more than 20 minutes must be allowed from each party by the court on matters not contained in their written addresses, provided that such matters came to the knowledge of the party after he had filed his written addresses. In order to ensure that non-attendance of counsel does not delay proceedings, Rule 3 provides that where all parties' written addresses have been filed and come up for adoption and either on its own motion or upon oral application by the counsel for the party present, order that the addresses be deemed adopted if the court is satisfied that all the parties had notice of the date of adoption. A party shall be deemed to have notice of the date for adoption if on the previous date last given, the party or his counsel was present in court (Nwauche, 2011).

Another aspect of the 2009 Rules is the expansive preamble. Sanni (2011) highlights the principal or overriding objectives of the 2009 Rules as outlined in the preamble. They relate mainly to the obligations of the court in the hearing, interpretation and adjudication of cases bright under the rules. The court and parties shall constantly and conscientiously give effect to overriding objectives of the rules or other law wherever it applies or interpret any rule. In sum, the courts are enjoined in paragraph 3 of the preamble to observe the following objectives:

a) To expansively and purposely interpret and apply the constitution, especially chapter four as well as the African Charter with a view to advancing and affording the protection intended by them;
b) To respect municipal, regional and international bills of rights cited to it or brought to its attention or of which it's aware, including the African Charter on Human and Peoples, Rights and the Universal Declaration of Human Rights;
c) To make a consequential order as may be just and expedient;
d) To pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterates and the unrepresented;
e) To encourage and welcome public interest litigation in the human rights field. In particular, human rights activists and

advocates, or groups and nongovernmental organizations may institute human rights actions on behalf of any potential applicant. No human rights case may be dismissed or struck out for want of locus stand;

f) To pursue the speedy and efficient enforcement of and realization of human rights; and
g) To give utmost priority to human rights cases especially those involving liberty.

It is important to point out that the court is called upon to observe the foregoing wherever it exercises any power given to it by these rules or any other law and whenever it applies or interprets any rule.

Order I Rule 2 of the 2009 Rules defines a fundamental right to mean not only any of the rights provided for in Chapter IV of the Constitution but also, any of the rights stipulated in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. By the same token, Order II Rule 1 of the Rules stipulates to the effect that any person who alleges any of the fundamental rights provided for in the constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled has been, is been, or is likely to be infringed may apply to the court in the state where the infringement occurs or is likely to occur for redress (Duru, 2012).

Thus, by specifically including breach of fundamental rights provided in the African Charter as basis for instituting a human rights suit, the 2009 Rules, has expanded an applicant's rights and freedoms. Not only that, the foregoing provisions has also brought the rules in tune with the decision of the Supreme Court in the case of *Ogugu vs. State (1994) 9 NWLR (pt. 366) 1*, where the Supreme Court held that

> the provisions of the African Charter on Human and Peoples' Rights is enforceable in the same manner as those of Chapter IV of the 1999 Constitution by application made under section 42 of the 1999 constitution.

Therefore, an applicant's rights is not limited to those provided for in Chapter IV of the Constitution, but extends to the socio-economic rights in the African Charter which he is entitled to.

For the purpose of realizing the objectives of the Fundamental Rights Enforcement Procedure Rules, 2009 specifically encourages and welcomes public interest litigation in the field of human rights. This is provided for in clause 3(e) of the Preamble to the Rules. Also by virtue of the same provision in the same Rules, no human rights case may be dismissed or struck out for want of locus standi as previously stated. The abolition of objections to human rights applications on ground of locus standi is welcomed and would help to make public interest litigation a mechanism for popular participation and remediation. The implication of this will be enhanced accessibility to justice for all classes of litigants (Duru, 2012).

Lastly, under Order III Rule 1 of the rules, "an application for the enforcement of fundamental rights shall not be affected by any limitation statue whatsoever". This provision has added to the plethora of provisions in the 2009 rules which enhances access to justice. In fact, the 2009 rules' emphasis on expeditious trial generally, is with a view to enhancing accessibility to justice.

Now we turn to how the Nigerian Courts have fared in the treatment of cases relating to protection of fundamental rights. The extent of the guarantee or protection of human rights in a country is measured not by the width of the relevant constitutional provisions, but the nature and manner in which such provisions are interpreted and implemented. Citizens look increasingly up to the judiciary to see to executive accountability and the protection of their basic rights. Elaborate provisions in the constitution on the rights of the citizens are not in themselves enough to guarantee their implementation or enforcement. It requires judicial enforcement to give effect and life to those provisions. Similarly, a constitutional guarantee of a right may be inadequate, but in expounding the provisions through judicial review or enforcement, the courts may inject life into them (Udofa, 2015). On how the Nigerian Courts have fared on this regard, a few cases will be analyzed below

The Nigerian Courts have shown great courage in the protection of the fundamental rights of citizens even during military rule when these were greatly curtailed and frequently abused. In the

case of *Attorney General of the Federation vs. Abule (2005) 11 NWLR (pt. 936) 369*, the Court of Appeal emphasized that;

> The constitution being the organic law of the country declares in formal, emphatic and binding principles, the rights, liberties, responsibilities among others of the people including the government. It is therefore the duty of the authorities, which include the judiciary to ensure its observance.

The court in Nigeria therefore play a significant role in safeguarding the fundamental rights of persons through effective intervention in cases where it is shown that such rights have been or are being threatened.

The Court of Appeal in the case of *Skye Bank vs. Njoku and Ors, Suit No. CA/OW/163/2013* in addressing the issue of the need to avoid technologies in human rights cases stated thus;

> I think the appellant greatly misconstrued the suit, a process originated under the fundamental rights (Enforcement Procedure) Rules, 2007. We have stated several times that an action founded on fundamental rights (Enforcement Procedure) Rules is sui generis, and except where expressly adopted to fill a lacuna in fundamental rights (Enforcement Procedure) Rules, 2009.

In the case of *Amechi Akudo vs. Guiness Nigeria Plc (2012) 11 WRN p.129 at p. 132,* where the respondent as the plaintiff at the High Court of Edo State, Benin sued the appellant as defendant for diversion of its products at the lower. The plaintiff/respondent claimed damages for conversion of his products. After hearing, the learned trial Judge ordered that the two vehicles in custody of the plaintiff/respondent be released to the defendant/appellant, their detention being unlawful. On whether the defendant need to be compensated in an action for breach of fundamental rights, the Court of Appeal held that; "Where there is a breach of interest of fundamental nature, the plaintiff who suffered as a result therefore, deserve to go home full compensated".

On the right of every person resident in Nigeria to go about his lawful business unmolested, the Court of Appeal in the same case held that;

> It cannot be over-emphasized to both high and low that every person resident in this country has a right to go about his or her lawful business unmolested or unhampered by anyone else, be it a government functionary or a private individual. The courts will frown upon any manifestation of arbitrary powers assumed by anyone over the life or property of another even if that other is suspected of having breached some law or regulation. People must never take the law into their own hands by attempting to enforce what they consider to be their right or entitlement. It is therefore wrong for a group of persons to go to the workshop of another in Bode, effect a forcible entry into it, beat up his employee and remove the [mornings takings], all in the purported misguided exercise of power on behalf, ostensibly, of a local branch trade union. It is even more wrong for such persons to claim immunity for their action on the pretense that it was a police that they had employed to remove the pepper mill. The law of Nigeria is that those who set a ministerial rather than a judicial officer in motion in this way are as liable as if they had done it themselves. Police officers must, therefore be weary of wriggled into a situation in which they find themselves becoming partisan agents of wrongdoers in the pursuit of a private vendetta. This kind of a show of power which is becoming too frequent in our society today must be discouraged by all those who set any store by civilized values

By this decision, the Court of Appeal emphasized that every citizen is entitled to certain inalienable rights, that no, person or authority should take the law into his hands. The court frowned against any manifestation of arbitrariness especially when it will result in a violation of the fundamental rights of another person.

On the right to bail which is one of the fundamental rights recognized by the 1999 constitution, the famous Dasuki's case is handy here. Section 35 (4) provides thus;

> (4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -
>
> (a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or
>
> (b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

According to Thisday (2017) an Abuja High Court reaffirmed the bail granted former National Security Adviser (NSA), Colonel Sambo Dasuki (rtd), and five others in the arms deal trial involving 2.1 billion US dollars. Justice Baba Yusuf reaffirmed the bail on Dasuki on the ground that he (Dasuki) was entitled to it and having been admitted to same since 2015 when the Federal Government brought charges against him. Three different High Courts have granted Dasuki bail but the bail orders were never obeyed. The Judge in his brief ruling said that it was an undisputable fact that Dasuki being the 2nd defendant in the charge was admitted to bail in 2015 and that it would be in the interest of justice to re-affirm the same bail irrespective of the action of another arm of the security agencies.

From the foregoing cases, the Nigerian courts are in the fore front in the efforts for the enforcement of fundamental rights in Nigeria. The Courts have always attached significance to fundamental rights cases brought before them which is in consonance with the provisions of the Fundamental Rights (Enforcement Procedure) Rules, 2009 which provides for speedy trial of fundamental rights cases and prohibit technicalities in the prosecution of such cases. What remains is the executive will to obey the court orders as most of the human rights violations are perpetrated by the executives who are charged with giving effects to court orders and same are

mostly made against them. This point shall be discussed in another section of this research. We shall now turn to the second objective of this research.

4.3 Objective Two: The different rules and legal framework that enhance enforcement of human rights under the ECOWAS.

The ECOWAS Court of Justice is the judicial arm of the Economic Community of West African States (ECOWAS) and it has the responsibility of resolving disputes relating to the community's Treaty, Protocols and conventions (IJRC, n.d.). Article 2 of Protocol A/P1/7/91 of the Community Court of Justice provides for the establishment of the court. It provides that

> The Community Court of Justice established under Article 2 of the Treaty shall be the principal judicial organ of the community, duly constituted and executing its function in accordance with the provisions of this protocol

It was established pursuant to the provisions of Articles 6 and 15 of the revised ECOWAS Treaty of 1975, now 1993 for the purpose of promoting economic integration across the West African sub-region. The headquarters is situate at Daar Es Salaam Crescent, off Aminu Kano Crescent, Wuse II, Abuja Nigeria. Even though the ECOWAS court had been established since its creation, it did not begin sitting until 2001 with less than a total of 120 cases decided to date (Babatunde, I.O. et al, n.d.). The court comprises seven (7) independent judges of impeccable character and high moral standing knowledgeable in International Law whose appointments are made by the Head of government of the member states. They are appointed for a fixed tenure of four (4) years which is non- renewable.

The core mandate of the Community Court of West Africa is to ensure the observance of law and the principles of equity and human rights within the ECOWAS community. Apart from its statutory role as the principal judicial organ of ECOWAS (Article 9, ECOWAS Protocol (A/P1/7/91) of the Community Court of Justice, Abuja, 2002), by Article 10, ECOWAS Protocol A/P1/7/91 of the Community Court of Justice, 2002, the ECOWAS Court's jurisdiction includes the provision of advisory opinions on the meaning and interpretation of Economic Community law); 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.

Instructively, the ECOWAS Community Court did not have jurisdiction over human rights' violations that occur in member states from inception, it only acquired this additional jurisdiction in the year 2005 (Supplementary Protocol A/SP.1/01/05). This Supplementary Protocol A/SP.1/01/05 followed the communal adoption of Protocol A/SP1/12/01 on Democracy and Good governance as an after-clap of increasing human rights abuse in member states. It therefore empowered the court "to hear, inter alia, cases relating to human rights violation..."

By virtue of the Supplementary Protocol, corporations and individuals in the ECOWAS community or other stakeholders in the member states of international character can rightfully maintain an action in the ECOWAS Court by making a complaint alleging their human rights' violation. Part of the binding international treaties the ECOWAS Court interprets relating to human rights of its members is the African Charter on Human and People's Rights (Article 1 (h), ECOWAS Protocol A/SP1/12/01). This Protocol provides that "the constitutional principles shared by all the member states shall be deemed to be legally binding on the ECOWAS member states".

The ECOWAS Court is one of the nine (9) ECOWAS Institutions. The other ones include the Authority of Heads of State and Government; the Council of Ministers; the Community Parliament; the Economic and Social Council; the Executive Secretariat; the Fund for Cooperation, Compensation and Development; and the Specialized Technical Commissions and any other institution that the authority may establish from time to time (Article 6 of the ECOWAS revised Treaty).

By Article 7 of the Revised Treaty of the ECOWAS, the Authority of Heads of State and Government is ECOWAS' most supreme institution responsible for the general direction and control of the community and also oversees the follow up of implementation of the community objectives. This therefore inadvertently raises the question of appropriate checks and balances and the propensity of the Community Court to be undermined by the institutional superiority of

the Heads of government which it most times gives judgment over and which sometimes refuse to obey its rulings (Babatunde, I.O. et al, n.d.). In spite of this institutional hierarchy over the court, the Authority of Heads of State and Government also refer where it deems necessary any matter to the Community Court of Justice when it confirms that a member state or institution of the community has failed or refused to honor any of its obligations or an institution of the community has acted ultra vires, beyond the capacity of its given authority or has abused the powers conferred on it by the provisions of the Treaty, by a decision of the Authority or a regulation of the council.

The ECOWAS court's operation is guided by its Rules of Procedure (Rules of the Court of Justice of the Economic Community of West African States, 2002). It equally applies the body of laws contained in Article 38 of the Statutes of the International Court of Justice and the ECOWAS Treaty. One of the institutional objectives of the ECOWAS treaty is the promotion of the cooperation and integration leading to the creation of an Economic Union for West African States to elevate the member states' living standards and improving their economic conditions. The judgment is given along with its reasons subject to the provisions on review as contained in the protocol; such decisions are final and supposed to be subject to immediate enforcement. The finality of such judgments without the option of appeal therefore leaves room for arbitrariness, a sealed fate of defendant(s) without reprieve even in the face of systemic errors unknown to the defendant(s) and judicial high-handedness not subject to review (Babatunde, I.O. et al, n.d.).

In a similar vein, there is a lingering question regarding the enforceability of such ECOWAS judgments in member states, largely because of the absence of well-structured regional law enforcement agencies like the ECOWAS police, etc. for the ECOWAS Court in member states. This absence of enforcement mechanism is the greatest bane of the Court. Irrespective of the finality of the decision of the ECOWAS Court, its decision can be overturned by itself upon an application to the court to revisit and/or revise its decisions only on the condition of a discovery of new facts which at the time the decision to be reviewed was given were not known to the court and which knowledge would have led to a different decision by the court (Karen, J. et al, 2015). There is a five- year maximum time frame after the decision of such application for review to be tendered after which it would be impossible (Ladan M.T, 2015). This short time frame is condemnable as justice should not be hampered by efflux ion of time. However, the

court will not review its earlier decision on the ground of discovered facts if such ignorance of the facts was due to the contributory negligence of the party applying for the review.

Apart from the role of the ECOWAS Commission in the vigorous harmonization of business and investment laws, common market and fiscal policies in the best interest of the Community, her citizens and other stakeholders, the ECOWAS Court as an institution of ECOWAS has assisted in the promotion of the West African sub-region's economic community laws. This is particularly so as the progressive actualization of the identified aims and objectives of the regional economic integration (Articles 3-5, The 1993 ECOWAS Revised Treaty) agenda for West Africa compels the Community Court to, among other things adjudicate on any dispute relating to the interpretation, application and legality of the ECOWAS Community Law, preside over dispute arising from economic agreements and to assume jurisdiction over matters bordering on the failure by member states to honor their obligations (Article 9 (i) (d) 2005 Supplementary Protocol on the Community Court of Justice). This role which seems as its primary objective is however minimal and narrow as the ECOWAS Court seems to be more saddled with human right violation matters than matters of interpreting, applying and testing the validity of economic community laws.

The foregoing explains why the first case in the court was a matter of a violation of the economic community law against Nigeria close to the border of Benin Republic. In this landmark matter, *Olajide Afolabi V Federal Republic of Nigeria*, the plaintiff, a businessman filed the action against the government of Nigeria for violating the economic community law regarding movement of persons and goods across borders. The court ruled that under its existing Protocol, it lacked the jurisdiction over cases involving natural persons and that only member states could institute matters before it. This decision however led to the discussions that further later led to the adoption of the additional Supplementary Protocol of 2005 that enable natural persons to possess the locus standi to maintain actions against member states.

Thus, even though the role of the ECOWAS court in promoting economic community laws in the West African sub-region seems to be intertwined with its new found role as an international Human rights court, the latter seems to have taken over the former. Its human right jurisdiction appears to be more prominent in light of the nature of the cases it has handled. The spread of

cases amongst the member states is also not even as majority of the cases brought before the court are from Nigeria rather than from all the other member states (ECOWAS Report, n.d.). This seeming reduction of its role to a human rights' court rather than an economic community law court is capable of undermining the court as a veritable future engine for driving economic integration across the West African states.

Human rights' protection for instance has been deemed as a major rationale for advancing the entrenchment of Regional Integration in ECOWAS (ECOWAS Report, n.d.). This underscores the extended Human rights' violation jurisdiction role assigned to the Community Court of Justice by the 2005 Supplementary Protocol in ensuring a human rights approach to economic integration of the region. By virtue of Decision A/DEC.10/5/90 of the Authority of Heads of States and Government of 30 May, 1990, the Committee of Eminent Persons (ECOWAS, 1992) convened by ECOWAS initiated the review of the 1975 Treaty and they stated that the effective protection of human rights in West Africa was the major reason behind regional economic integration among member states in the ECOWAS sub-region. Human rights was recognized as fundamental principles of the community including rights in factor mobility, substantive State Obligations; and as obligations enforceable by the ECOWAS Court of Justice in the 1993 Revised Treaty and its subsequent Protocols (Babatunde, I.O. et al, n.d.).

The ECOWAS Community Court of Justice plays a pivotal role in ensuring a human rights approach to sustainable economic integration of the region. It has jurisdiction over human rights infringement occasioned by post-economic integration matters and otherwise. Since the adoption of the Supplementary Protocol granting it its human rights jurisdiction in January 2005, the court has assumed a vantage position as a regional and an international human rights court accessible to the citizens of member states. By the provisions of Articles 9 (4) and 10(d) of the 2005 Supplementary Protocol, the Court obtained the Jurisdiction to adjudicate over cases of human rights infringement in any member state and granted individuals access to the Court, on applications for relief for violation of their human rights on the conditions that the application shall not be anonymous nor be made during the pendency of a subsisting action on the same subject matter in another international Court.

Equally, by Article 3 of the Revised Treaty of 1993, Member States declared their commitment to the eleven, (11) fundamental principles under Article 4(g) which affirms among other things, "the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and People's Rights". Part of the fundamental principles of the following ECOWAS Protocols and Supplementary Act is the avowed commitment to the African Charter on Human and Peoples' Rights and the protection of both fundamental human rights and international humanitarian laws to which Nigeria as a member state is subject. These Protocols and Supplementary Acts include:

Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention. Article 1(h) declaring one of the thirteen constitutional principles shared by ECOWAS member states provides:

> The Rights set out in the African Charter on Human and People's Rights and other international instruments shall be guaranteed in each of the ECOWAS Member States; each individual or organization shall be free to have recourse to the common or civil law courts, a Court of special Jurisdiction or any other national institution established within the framework of an international instrument on Human Rights, to ensure the protection of his or her rights.

Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security. By Article 2,

> Member States collectively reaffirm their avowed commitment to the preservation of the principles contained in the United Nations' Charter, the 1948 Universal Declaration of Human Rights and the African Charter on Human and People's Rights.

Articles 2(b) and (d) are instructive in this regard:

> (b) Promotion and reinforcement of the free movement of persons, the right of residence and establishment which contribute to the enforcement of good neighborliness;

(d) Protection of fundamental human rights and freedoms and the rules of international humanitarian laws.

Supplementary Act Adopting Community Rules on Investment and the Modalities for their implementation within ECOWAS. This Supplementary Act which sets out the communal rules on regional investment and the guidelines for its implementation recognizes the need for the protection of the human rights of its principal actors and stakeholders amongst and within the member states.

Article 21 (2) provides that:-

> Each Member state shall ensure that its laws and regulations provide for high levels of labor and human rights protection appropriate to existing regional and international treaties that it enters into, and shall strive to continue to improve these laws and regulations.

This provision further explains the rationale behind the extended access of individuals to the Court on human rights violation and the justification for the human rights jurisdiction accorded the ECOWAS Court. It also makes it an obligation for member states to ensure their laws, policies and actions are consistent with the international human rights agreements to which they are a party and at a minimum, with the list of human rights obligations and agreements already adopted (Babatunde, I.O. et al, n.d.).

Article 4(g) Revised ECOWAS Treaty 1993 contains the member states' commitment to the protection of human rights of their citizens within the economic community. Whether they have abided by this commitment is another question in light of the prevalent human rights abuse cases in both national and international courts including the ECOWAS community court in the member states, most especially Nigeria. This further raises the question of enforcing the international treaties member states freely entered into and the chances of successful application in the composite member states without some measure of supra-nationality. Member states for instance agreed to protect the citizen's human rights under Articles 56, 63 and 66, this then means that the ECOWAS Treaty is deemed a supra-national instrument directly applicable within its member States, domestic application of the African Charter on Human and Peoples'

Rights through the Fundamental Principles of ECOWAS is therefore direct and compulsory in light of the final Report on the Review of the 1975 ECOWAS Treaty (1992).

In *Hon. Dr. Jerry Ugokwe V Federal Republic of Nigeria*, the Community Court of Justice examined the legal effect of a member state's commitment to the African Charter on Human and People's rights and held that

> The reference to the African Charter on Human and Peoples' Rights as a fundamental principle of the Community in Article 4 (g) of the Revised Treaty allows the Court to permit the application of those rights contained in the African Charter.

The Court therefore claimed Jurisdiction to enforce human rights provisions that are equally contained in the Charter, which is a domestic law in Nigeria.

By Section VII of the ECOWAS Protocol on Democracy and Good Governance, particularly Articles 33-35, member states recognized Rule of law, the protection of Human Rights and Good Governance as valid essentials for preserving social Justice, preventing conflict, ensuring better living standards, guaranteeing political stability and peace and for strengthening their respective democracies whilst particular emphasis was made for the protection of women's rights, youth and children's rights in section VIII of the same Protocol. Despite their respective undertaking to eliminate all forms of discrimination and harmful and degrading practices against women and children (Articles 40-43, Protocol on Democracy and Good Governance), incidences of domestic abuse against women, female genital mutilation, child labor and human trafficking, gender disparity and inequality, insufficient women participation and involvement in politics, governance, employment and appointment, the non-domestication of the Child-rights law by some states in Nigeria and other incidences remain prominent features in the member states including Nigeria.

In other to checkmate arbitrary litigation and frivolous complaints by nameless bodies, apart from individual actions, only duly recognized NGOs can institute actions before the ECOWAS Community Court of Justice for human rights violations, especially public interest litigations involving the collective rights of a group (SERAC v. Nigeria (2001) AHRLR). The conflict that

could therefore arise by the coordinate jurisdiction of the ECOWAS Community Court of Justice with national courts on same subject matter is minimized by the fact that the Community Court does not have appellate Jurisdiction over the decisions of national courts and vice versa, the move to add an appellate division to the ECOWAS Court in January 2007 was not successful, it has no jurisdiction over matters between two individuals for lacking in international character in a bid to maintain and remain in its limit of jurisdiction as an international court even in cases of human rights violation and it would not assume jurisdiction over human rights violations involving corporate bodies like limited liability companies which exclusive jurisdiction lies with the Federal high court in Nigeria and in its equivalent domestic court in other member states (Babatunde, I.O. et al, n.d.).

It can therefore be safely submitted that the human rights jurisdiction of the Court is limited in scope to Member States, pertinent stakeholders and Institutions of the Community since national courts do not have jurisdiction over the community's institutions and agencies. Having said these, we may now turn to look at specific cases decided by the ECCJ as they relate to enforcement of human rights in Nigeria.

Siriku Alade v. The Federal Republic of Nigeria

11 June 2012, ECOWAS, Suit No. ECW/CCJ/APP/05/11, Judgment No. ECW/CCJ/JUD/10/12

Detention for nine years on holding charge: violation of right to be free from arbitrary detention (Article 6 of African Charter)

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 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. 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.

Socio-Economic Rights Accountability Project v. Federal Republic of Nigeria 14 December 2012, ECOWAS, General List No. ECW/CCJ/APP/09, Judgment No: ECW/CCJ/JUD/18/12

Failure to prevent environmental degradation from oil production: violation of state responsibility (Article 1 of African Charter) and Peoples' right to satisfactory environment for development (Article 24 of African Charter)

The applicant, a non-governmental organization registered in Nigeria, claimed that the Government was responsible for violations flowing from the degradation of the environment in the Niger Delta. The applicant 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. 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 applicant also claimed that the failure of the respondents to adequately remediate and address the environmental damage, their failure to monitor the human impact and continued denial of information to the community amounted to violations of the ICESCR, ICCPR and the African Charter. With respect to remedies, applicants sought pecuniary damages of one billion dollars and an order directing the state to hold the oil companies responsible for their complicity in their human rights violations. Nigeria argued that the Court could not consider claims under the ICESCR and the ICCPR, and that the claim was barred by the three year statute of limitations in Article 9(3) of the Court Protocol.

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. The application of the three year statute of limitation depends on whether the case was based on isolated acts or on persistent and continuous omissions. Here, the failure of the state to prevent the damage and hold anyone accountable was a continuous one, and the Court found the application not to be time barred. The Court also held while there were laws regulating the oil industry and safeguarding the environment, these laws were not accompanied by concrete measures aimed at preventing damage, ensuring accountability or repairing the environmental harm that had occurred. Thus, Nigeria had violated Articles 1 (state responsibility) and 24 (Peoples' right to environment favorable for development) of the African Charter. However, the Court noted that the applicant had failed to identify a victim who should benefit from the compensation they claimed, and that granting compensation to individual victims would cause a serious problem in terms of justice, morality and equity within a large population. It therefore dismissed the applicant's claim for pecuniary compensation. It ordered Nigeria to take all effective measures within the shortest time possible to ensure restoration of the environment, prevent

occurrence of further damage, and hold perpetrators of environmental damage accountable.

Femi Falana and Waidi Moustapha v. Republic of Benin, the Federal Republic of Nigeria and Republic of Togo

24 July 2012, ECOWAS, Suit No. ECW/CCJ/APP/10/07, Judgment No. ECW/CCJ/JUD/02/12

Denial of entry into Togo until election completed: no violation of right to freedom of movement (Article 12 of African Charter)

While travelling along a road linking Benin and Nigeria, the two applicants encountered several road blocks and check points. They identified themselves as lawyers travelling on business and were allowed to pass through, but observed other passengers and travelers being 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. Their application 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 and prohibit reestablishing the road blocks and checkpoints.

The Court found *prima facie* evidence of human rights violations by the states of Benin, Nigeria and Togo in the case, and thus ruled the case admissible. Under Article 12 of the African Charter, the right to move freely is guaranteed in a particular state and does not apply to movement between community states, thus the Court found no violation under Article 12 of the Charter. The only restraint on the applicants' movement was at the Togolese border, and 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. Consequently, the Court found no violation.

4.4 Objective Three: The challenges ECOWAS is facing in the protection and enforcement of human rights.

The involvement of the ECOWAS Court in the protection of human rights unquestionably contributes towards the promotion and protection of human rights. However, in respect of the enforcement of human rights within the ECOWAS Court, there are some problems that can be considered as hurdles in respect of developing the jurisprudence of the sub-region. Thus, some critical issues with regard to the enforcement of human rights within the Court and the emergence of challenges to this Court need to be discussed here. These issues refer to forum shopping, the human rights competence and vast responsibility of the judges, potential to varying interpretations of the African Charter and other issues that are specifically obstacles for the realization of human rights in the Community. Many African states are members to various Regional Economic Communities (Baye, 2010).

Hence, due to the multiplicity of courts, the ECCJ will have concurrent jurisdiction on the same matter. Odinkalu states;

> There is considerable overlap and resulting competition between the subject matter, personal and geographical jurisdictions of these respective courts. National courts as well as a multiplicity of regional courts and tribunals... have jurisdiction to consider the case (Odinkalu, 2003).

By this, Odinkalu is portraying that conflicts may arise due to concurrence of jurisdiction on the same subject-matter (human rights) by multiplicity of courts. This can only be taken care of by creating a hierarchical structure between especially the sub-regional courts and the domestic courts

Further, a person who alleges the violation of his/her rights may choose among the possibilities to submit his/her complaints. To curb this possibility, the ECCJ applies the principle of res judicata. For instance, the Protocol of ECOWAS Court Treaty provide for the finality of judgments (articles 19(2) and 22(1) of the ECOWAS Court Protocol). This approach excludes the other Regional Courts to entertain the case that have been decided by the ECCJ. Viljoen argues that the principle of res judicata applied to Regional Courts should not be followed with

respect to the African Court of Human Rights. In principle, further recourse from Regional Economic Communities' (REC) Courts should be allowed to the African Court (Viljoen, 2007). This implies a need for institutional coordination between Regional Courts and the African Court. Odin kalu (2003) concurs that

> The African Court on Human and Peoples' Rights, the African Commission and the Regional Economic Courts and Tribunals will need to share information on their pending and completed cases. This should place these institutions in a position to anticipate and respond to cases to unwarranted forum shopping.

However, in respect of the ECOWAS Court this will not be the case as the Court's protocol provides for the finality of judgments by the respective Regional Court and Tribunal. Regional Courts are combined courts of justice and human rights. This means that they are mandated with a two-pronged objective to provide for justice and human rights under one root (Baye, 2010). Setting disputes in economic matters and human rights is a vast responsibility to the Regional Courts for two different reasons. The number of judges in ECCJ is very few in number. The ECOWAS Community Court of Justice comprised of the President of the Court, Chief registrar and seven judges. Thus, it is difficult to manage complaints received from member states, the respective Community institutions as well as issues coming from natural and legal persons. The other problem is related to the human rights competence of judges. In respect to the appointment of the judges to the Regional Court, though actually qualified and possessing the necessary experience for appointment to an international position, the nominees are not required to possess the qualifications and experience in human rights as is set out for selection as a judge to the African Court of Justice and Human Rights (Article 4 of the protocol on the Statute of the African Court of Justice and Human Rights). ECCJ determine disputes through interpreting the Charter and applying the human rights rules. The interpretation of the Charter by different courts and tribunals may bring contradictory interpretations. These differences undermine the movement towards African Unity and legal integration. The problem of divergent interpretations of one normative source by Regional Courts and Tribunals develops varying jurisprudence. This eventuality could be curbed if Regional Courts follow the interpretations of the African Court, if any or working out a system of referral to the African Court, for interpretive guidance in other

cases (Baye, 2010). Odinkalu (2003) stipulates that by sharing jurisprudence in completed cases, these bodies will also be able to minimize the opportunities for contradictory jurisprudence on the African Charter. He further stated that

> Cooperative arrangements may need to be evolved so that the African Court on Human and Peoples' Rights may receive referrals on questions of Charter interpretation since as the Court who personnel have utmost expertise on human rights issues.

The AfCHPR recently organized and hosted a colloquium for continental and regional human rights judicial and quasi-judicial bodies responsible for the promotion and protection of human rights in Africa so as to initiate judicial dialogue among these institutions, with a view to exploring ways and means of ensuring cooperation and coordination (Baye, 2010). The participants of the Colloquium agreed that the co-existence of the regional courts and the continental institutions is prerequisite for co-ordination and hence, they stressed the need to put in place systems for the proper exchange of information, to facilitate a coherent human rights jurisprudence and approach and to avoid the same matter being adjudicated upon in two or more international jurisdictions at the same time (Baye, 2010).

The participants agreed that, with a view to enhancing cooperation and networking, the bureaus of the participating institutions should meet at least once a year. The participants requested the African Court 'to serve as a temporary secretariat'. This secretariat will 'explore the possibility of hosting a data base, communication portal and website to share information and prepare for the next Colloquium. (Baye, 2010).

The problems related to the Court of ECOWAS are conflicting interests with the jurisdiction of the national courts and the human rights competence respectively. The Court of ECOWAS is in conflict with the jurisdiction of the national courts of the Community due to the silence of the Protocol on the requirement of exhaustion of all available local remedies. Exhaustion of domestic remedies provides a 'compromise between state sovereignty and international supervisory mechanisms' since it recognizes the competence of national judicial system (Ebobrah, 2009). The requirement to exhaust local remedies prevents the flooding of human

rights complaints to the Regional Courts and gives the first opportunity to national legal systems to address the complaints raised. The absence of this requirement hesitates to the ECOWAS Court to review decisions rendered by the national courts. In Keita case, the Court declared that it was not a Court of appeal for decisions of national courts as in the case of the European Court of Human Rights. In effect, the absence of such a requirement may affect the effectiveness of enforcement of its decisions (Baye, 2010).

4.5 Summary of Key Findings of the Study According to Objectives

4.5.1 Objective One: The Rules that Enhance the Enforcement of Human Rights in Nigeria

This study took a deep search of the Nigerian legal framework for the enforcement of human rights in Nigeria and it was discovered the first guarantees of human rights are contained in the very grundnorm of the country (the Constitution of the Federal Republic of Nigeria, 1999 as amended, 2011). Beside constitutional guarantees, international human rights instruments, such as the African Charter on Human and Peoples Rights; the International Convention on Civil and Political Rights; The international Convention on economic Social and Cultural Rights and the United Nations Declaration on Human Rights also form part of the legal frameworks or rules for the enforcement and protection of Human rights in Nigeria. The Constitution enjoys supremacy over all other laws, thus, the chapter 4 of the constitution which contains the rights guaranteed therein are basic and fundamental. The Fundamental Rights Enforcement (Procedure) Rules, 2009 made pursuant to Section 46 of the 1999 Constitution provides the rules of procedure to be adopted by the High Courts in conducting Fundamental Rights proceedings before the courts. And the Courts also forms part of the framework for the protection and enforcement of human rights in Nigeria. They don't hesitate to make pronouncements with respect to human rights violations by agents and institutions of government

4.5.2 Objective Two: The different rules and legal framework that enhance enforcement of human rights under the ECOWAS.

The ECOWAS framework for the enforcement of human rights are anchored on the ECOWAS Community Court of Justice (ECCJ) established under the ECOWAS Treaty of 1975 and Revised in 1993. It was established pursuant to the provisions of Articles 6 and 15 of the revised

ECOWAS Treaty of 1975, now 1993 for the purpose of promoting economic integration across the West African sub-region. Instructively, the ECOWAS Community Court did not have jurisdiction over human rights' violations that occur in member states from inception, it only acquired this additional jurisdiction in the year 2005 (Supplementary Protocol A/SP.1/01/05). This Supplementary Protocol A/SP.1/01/05 followed the communal adoption of Protocol A/SP1/12/01 on Democracy and Good governance as an after-clap of increasing human rights abuse in member states. It therefore empowered the court to hear, inter alia, cases relating to human rights violation.

That is to say the year 2005 (Supplementary Protocol A/SP.1/01/05) forms one of the legal framework for the enforcement of human rights in ECOWAS Sub region. Other instruments include Article 3 of the Revised Treaty of 1993, where Member States declared their commitment to eleven, (11) fundamental principles under Article 4(g) which affirms among other things, 'the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and People's Rights; Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention. Article 1(h) declaring respect to rights set out in the African Charter on Human and Peoples Rights and other International instruments as one of the thirteen constitutional principles shared by ECOWAS member states; Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security. By Article 2, member States collectively reaffirm their avowed commitment to the preservation of the principles contained in the United Nations' Charter, the 1948 Universal Declaration of Human Rights and the African Charter on Human and People's Rights. Articles 2(b) and (d) are instructive in this regard; Supplementary Act Adopting Community Rules on Investment and the Modalities for their implementation within ECOWAS which recognizes the need for the protection of the human rights of its principal actors and stakeholders amongst and within the member states.

4.5.3 Objective Three: The challenges ECOWAS is facing in the protection and enforcement of human rights.

The involvement of the ECOWAS Court in the protection of human rights unquestionably contributes towards the promotion and protection of human rights, however, it is been faced with numerous challenges ranging from forum shopping, the human rights competence and vast responsibility of the judges, potential to varying interpretations of the African Charter and other issues that are specifically obstacles for the realization of human rights in the Community. Other challenges facing the ECCJ are the problems relating to conflicting interests with the jurisdiction of the national courts and the human rights competence respectively. The Court of ECOWAS is in conflict with the jurisdiction of the national courts of the Community due to the silence of the Protocol on the requirement of exhaustion of all available local remedies. The absence of this requirement hesitates to the ECOWAS Court to review decisions rendered by the national courts. In Keita case, the Court declared that it was not a Court of appeal for decisions of national courts as in the case of the European Court of Human Rights. In effect, the absence of such a requirement may affect the effectiveness of enforcement of its decisions (Baye, 2010).

CHAPTER FIVE

DISCUSSION OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

This chapter discusses the study findings, draw conclusion and makes recommendations. This is done following the objectives of the study which are set out below.

5.1 Discussion of Findings

This study set out to achieve the following objectives;

1. To analyze the different rules that enhance the protection of human rights in Nigeria.
2. To examine the different rules and legal framework that enhance enforcement of human rights under the ECOWAS.
3. To examine the challenges ECOWAS is facing in the protection and enforcement of human rights.

5.1.1 Objective One: The Rules that Enhance the Enforcement of Human Rights in Nigeria

Under this objective, the main focus was on the 1999 Constitution of the Federal Republic of Nigeria (As Amended, 2011), the Fundamental Rights (Enforcement Procedure) Rules, 2009 and selected judgments of court.

The 1999 Constitution of Nigeria being the country's grundnorm expectedly is the primary source of fundamental rights of all citizens living within the territory of the Federal Republic of Nigeria and a majority of the fundamental rights suits in Nigeria are often brought under chapter 4 of the constitution. It is the same constitution under section 46 that empowers the high courts to adjudicate on matters of human rights violations and enforcement of human rights of citizens, further, section 46 (4) provides that

The National Assembly -

(a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provisions-

(i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and

(ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real

This means that the constitution allows the National Assembly to make laws to confer more powers on the high courts for the purpose of enabling the courts to effectively exercise jurisdiction conferred upon it by the section. In making such law, provision shall be made for rendering financial assistance to any indigent citizen of Nigeria where his rights under the constitution has been infringed.

These constitutional provisions shows the importance attached to human rights under the Nigerian legal system.

However, the constitution have made certain human rights non-justiciable. These are some economic, social and political rights enshrined under chapter 2 of the constitution. No citizen is allowed under the constitution to approach the courts in a bid to enforce any right under this chapter. This is in violation of the universality nature of human rights where all human rights are considered equally important and which does not allow for prioritization of certain group of rights over others.

Under the same section 46 of the constitution, the Chief Justice of Nigeria is empowered to make rules of practice procedures for the enforcement of fundamental rights. It is pursuant to this that

the Fundamental Rights (Enforcement Procedure) Rules, 2009 was made by the then Chief Justice of Nigeria. The crux of the rules is to make fundamental rights enforcement proceedings easier and quicker. The rules have removed legal technicalities in the procedure for the enforcement of human rights in Nigeria. For instance, paragraph (d) of the preamble to the rules encourages public interest litigation in the field of human rights where no human rights case may be dismissed for want of locus standi. And again, Order II rule 2 of the rules make it acceptable to commence human rights cases by any originating process accepted by the court.

Thus, litigants no longer stand the risk of having their cases struck out for using a wrong form of originating process. And Order III of the rules is to the effect that application for the enforcement of fundamental rights shall not be affected by any statute of limitation whatsoever. Therefore, victims of human rights violation at their moments of helplessness can still bring an action for redress anytime without the risk of being out of time by virtue of any statute of limitation. This is a good and commendable innovation in the rules.

Though the Fundamental Rights (Enforcement Procedure) Rules 2009 is a good instrument which have improved the human right enforcement procedure in Nigeria (Nwauche, 2011), in reality, the rules can only be utilized by educated and rich citizens. The rules are not within the reach of the poor and uneducated members of the society. The same thing goes for the fundamental rights provisions under the constitution. More so that the constitution vested jurisdiction on the high court. This is because despite the simplification of the practice procedure by the 2009 rules, procedures at the high court are in general technical and requires the expertise of a qualified lawyer which is beyond the reach of indigent citizens.

The next is the court's role in adjudication of fundamental rights cases. The cases cited in the previous chapter go to show that the courts have given primacy to human rights cases brought before them. The courts have also tried to be in keeping with the spirit and letters of the human rights provisions of the constitution and the 2009 rules by way of granting speedy trials of such cases.

The challenge with the courts role in enforcement of human rights is that they lack the machinery to ensure the enforcement of their pronouncements. They rely on the executive arm of

government, particularly the police and other security agencies to carry out enforcement of the judgments. Unfortunately, most fundamental rights cases are often brought against these same agencies. Thus it becomes practically difficult and near impossible for citizens who have succeeded in obtaining favorable judgment to enforce same against the agencies who are supposed to ensure compliance with the said judgment.

5.1.2 Objective Two: The different rules and legal framework that enhance enforcement of human rights under the ECOWAS.

Under this objective, it was discovered that under the ECOWAS Revised Treaty 1993, one of the fundamental principles borders on the recognition and promotion of human rights in accordance with the African Charter on Human and Peoples' rights and that the ECOWAS Court established under Article 15 of the Revised Treaty is the main legal framework for the enforcement of human rights within the sub-region. This goes to say that even though the ECOWAS does not have an human rights instrument, the Treaty stated under the fundamental principles of the organization "the recognition, promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights" as one of the principles of the organization. Though the court did not have human rights jurisdiction from inception, supplementary Protocol A/SP.1/01/05 of 2005 empowered the court to hear inter alia, cases relating to human rights violations (Babatunde, et al n.d.). This new human rights jurisdiction now appear to be more prominent than the court's original role of promoting economic community laws in the light of the cases it has handled.

The ECOWAS Community Court of Justice plays a pivotal role in ensuring a human rights approach to sustainable economic integration of the sub-region. By the adoption of the supplementary protocol, the court has assumed a vantage position as a sub-regional human rights court accessible to the citizens of member states. As an international court of justice, the ECOWAS Court's procedures are unique in some respects. For instance, individuals other than states and recognized organizations are allowed direct access to the court. And the usual requirement of the exhaustion of local or domestic remedies usually imposed by other international courts is not required by the ECOWAS Court. This has made it easier for citizens to approach the court directly without having to wait until local remedies are exhausted which may

take a long time to attain. In some sense, this is a commendable innovation that have aided in achieving the goal of effective human rights within the sub-region through the court.

Right from the time of its assumption of human rights jurisdiction, the court have recorded a proliferation of human rights cases brought before it by citizens against member states with the bulk of the cases emanating from Nigeria. The court have played its role creditably well. This can be gleaned from the cases cited in the previous chapter. From these cases, one can see how the court have variously made pronouncements on alleged human rights violations and ordered states particularly Nigeria to make reparation and pay compensation to the victims where necessary.

However, what remains is the issue of compliance with the court's judgments by member states. This has been difficult because ECOWAS as a sub-regional organization does not have an established mechanism for the enforcement of the court's pronouncements.

5.1.3 Objective Three: The challenges ECOWAS is facing in the protection and enforcement of human rights.

Under this objective, the challenges facing the ECOWAS in its effort to enhance enforcement of fundamental rights was analyzed. The involvement of the ECOWAS Court in the protection of human rights unquestionably contributes towards the promotion of human rights within the sub-region. As stated earlier, the ECOWAS as a sub-regional organization does not have its own human right instrument, rather, the ECOWAS Treaty enshrined in itself the human right principles in accordance with the African Charter on Human and Peoples' Rights. This means that human rights claims brought before the ECOWAS Court will basically be under the African Charter. The challenge with this is the danger of deferring and inconsistent interpretation of the Charter by other sub-regional courts as well as the African Court on Human and Peoples' Rights. This is certainly a hurdle in respect of developing jurisprudence of the sub-region. The interpretation of the charter by different courts and tribunals may bring contradictory interpretations. More so as the ECOWAS Court does not allow appeal against its decisions.

Another challenge of similar dimension is the conflict between the ECOWAS Court and the National Courts. The ECOWAS Court is in conflict with the jurisdiction of the National Courts

of Member States due to the silence of the Protocol on the requirement of exhaustion of all available local remedies. This would have provided a compromise between state sovereignty and international supervisory requirement to exhaust local remedies. The absence of this requirement robs the ECOWAS Court of the right of review over decisions rendered by the national courts.

Other challenges facing the ECOWAS mechanism for the enforcement of human rights include high illiteracy and poverty among the citizens of the sub-region. Many citizens of the ECOWAS sub-region are not even aware of the existence of the court. Due this lack of awareness coupled with the fact that most citizens don't even know when their rights have been infringed, the majority of human rights incidence go unnoticed and unaddressed. In the same vain, poverty is another factor affecting the effective pursuit of human rights cases within the sub-region. Many citizens who are aware of their rights do not have the financial capability to approach the ECOWAS court to seek redress because they cannot afford to hire the services of qualified lawyers to prosecute the case for them.

Finally, the Court has been well received among the community's citizens particularly Nigerians. The facts demonstrated by the increasing and overwhelming number of human rights cases brought before it especially from Nigeria. This enthusiasm by the ECOWAS citizens is dampened by the lack of enforcement mechanism. The court only rely on the willingness of member states to comply with its decisions which is a very serious problem especially when it has to do with a sub-regional giant as Nigeria. A case for reference is case of the former National Security Adviser (NSA) Col. Sambo Dasuki. Dasuki has been under detention since 2015 despite the ECOWAS Court's judgment in October, 2016 ordering the government of Nigeria to release him from detention and pay him compensation. The said Dasuki is still under detention nearly one year after the court's decision and no sanction or any pressure have been asserted on Nigeria to ensure compliance.

5.2 Conclusions

Arising from the discussions above, the following conclusions were reached

From objective one, the various rules and legal framework under which enforcement of human rights is enhanced in Nigeria consist of the 1999 Constitution of the Federal Republic of Nigeria; the African Charter on Human and Peoples' Rights; the Fundamental Rights (Enforcement Procedure) Rules, 2009 as well as the judiciary i.e. the Courts who are vested with the jurisdiction to entertain human right cases. It was concluded under this objective that these body of rules and legal framework are perfect structure for the enforcement of fundamental rights in Nigeria. However, the continued proliferation of incidence of human rights violations that are going without redress are as a result of the lapses we identified such as the technicality involved in proceedings before the high courts which ordinary citizen cannot ordinarily handle, the non-justiciability of certain rights contained in chapter 2 of the constitution and the helplessness on the part of the courts when it pertains the enforceability of its judgments as same is the responsibility of the security agencies against whom most human rights judgments are made.

From objective two, we concluded that the ECOWAS does not have a human right instrument of its own in which the ECOWAS Court adjudicate upon but rather it adopts the African Charter on human and peoples' rights. The court came to be vested with human rights jurisdiction by virtue of the Supplementary Protocol of 2005. It was discovered that from the time the court assumed human rights jurisdiction, it has recorded a proliferation of human rights cases brought before it by citizens against member states with the bulk of the cases emanating from Nigeria. What remains is to get an enforcement mechanism to ensure compliance with the court's judgments, otherwise it all be an exercise in futility.

Finally on objective three, it was concluded that the ECOWAS suffers from a number of challenges militating against its efforts to enhancing the enforcement of human rights within the sub-region. These challenges include conflicting interpretation of the African Charter on Human and Peoples' Rights which is the main instrument before the court as well as other regional courts; conflict between the court and national courts due to the silence of the Court's protocol

on the requirement of exhaustion of local remedies; high level of illiteracy and poverty and lack of enforcement mechanisms.

5.3 Recommendations

Based on the findings made above, the following recommendations were made in accordance with the study objectives;

1. On objective one, the chapter two of the 1999 Constitution of Nigeria should be made justiciable such that citizens can seek redress for a violation under the said chapter. And it will bring it in conformity with the universality and indivisibility nature of human rights. Section 46 of the Constitution should grant human right jurisdiction to lower courts such as the Magistrates Courts and the Area courts whose practice proceedings are far less technical compared to the High Courts' procedures that require the expertise of qualified lawyers. And the laws establishing the national courts should establish a Special Marshall who shall be vested with the responsibility of enforcing decisions of the Courts on any party especially on human rights proceedings.
2. On objective two, the ECOWAS should establish a special Human Rights Court vested solely with the jurisdiction to hear and determine human rights cases just like the case of the African Court on Human and Peoples' Rights. To go with it, the organization should make provision for its own Human Rights Instrument which will carter for the peculiar circumstances of the sub-region
3. Finally, on objective three, the ECOWAS Commission should open a window that will enable the Courtprovide an annual report of the status of implementation of its decisions to the Council of Ministers, which comprises ministers responsible for providing strategic direction to the Community as a peer review mechanism. The Court should engage in massive sensitization of judicial authorities of Member States on the mandate of the court and their role in the implementation of its decisions, as Justice without enforcement is impotent and the use of force without justice is tyrannical. Justice and enforcement must, therefore, go together and thus, ensure that whatever is just is made to become powerful and whatever is powerful is just. Member states of the organization should evolve an effective mutual cooperation to enhance a global standard of the promotion and

protection of human rights in the sub-region and establish a strong enforcement mechanisms of the judgments of the court, as judgment without power of enforcement is as good as bad. And the court should explore the possibility of adopting measures to improve on compliance with its decisions, including the establishment of a properly equipped unit in the Court's Registry responsible for compliance and implementation of judgments; the Court should consider the possibility of invoking sanctions as instruments for guaranteeing compliance as provided for in relevant community texts.

5.4Area for Further Research

The following areas are thought by the researcher as ones that merit looking into through further research.

1. The need for a pure human rights court for the West African Sub-region with its own human rights instrument
2. Poverty and illiteracy as obstacles to realization of human rights objectives of the ECOWAS
3. Member states' commitments to the promotion and enforcement of human of human rights within the sub-region.

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