

ECOWAS COMMUNITY COURT OF JUSTICE: FEATURES AND CHALLENGES OF ITS HUMAN RIGHTS MANDATE

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ABSTRACT

The protection and promotion of human rights have remained a top priority of the international community for several decades. The violation of the fundamental rights of States and individuals have given rise to a plethora of conflicts both at the international and national level, thus, requiring effective laws and judicial institutions to accord protection of these rights to persons living within specified national territory. The ECOWAS Community Court of Justice since 2005 acquired jurisdiction over human rights matters, giving bold judgements in condemnation of breach of human rights by member parties of the ECOWAS Community. This paper aims at examining the unique human rights features of the ECOWAS Court of justice as well as the inherent challenges facing the court. The paper finds that despite the huge progress made by the court in receiving and deciding on human rights complaints from individuals and NGOs, the decisions of the court are hardly obeyed by member States and the court has no recognized institution to monitor and implement its decisions. The paper relies on primary and secondary sources of information such as International Conventions and Treaties, Books, Journal articles, Judicial Precedents and Internet materials. The paper concludes that the leadership of ECOWAS Community and the regional court must make concerted efforts in addressing the current challenges confronting the court, including monitoring and implementing the decisions of the ECOWAS Court.

Keywords: ECOWAS, *Human Rights*, Court, Features, Challenges, Justice

INTRODUCTION

It was the end of the Second World War that greatly inspired the need for the promotion and protection of human rights within the international community. The atrocities committed, and the gross human rights violation which took place during that War triggered off the need for the protection of human rights in international law. The enactment of human rights law

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within the international arena came with a plethora of consequences which include the establishment of the United Nations in 1945 which subsequently led to the adoption of the Universal Declaration of Human Rights in 1948.² The trust of this declaration was that human rights are universal and to be enjoyed by all people no matter who they are and where they lived.³ The Universal Declaration of Human Rights was then followed by a collection of rights which becomes binding on the member States that ratify them.⁴ These include the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁵ and the International Covenant on Civil and Political Rights (ICCPR),⁶ however several other important instruments have emerged for the operation of the United Nations for the protection of human rights and fundamental freedoms, and towards the overall protection of the sanctity of the human person, both in times of peace and war.⁷ These includes the Convention on the Elimination of all forms of Racial discrimination (CERD),⁸ the Convention on the elimination of all forms of Discrimination Against Women (CEDAW),⁹ the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (CAT),¹⁰ and the Covenant on the Rights of the Child (CRC).¹¹ Thus, from 1950 and other regional institutions and courts were subsequently established with the aim of ensuring the protection of human rights within the regions with the aim of recognizing and enforcing the rights entrenched in the Universal Declaration of Human Rights and ensuring direct actions by individuals.¹² In this regard, the Council of Europe was the first to lead the way when it adopted the Convention for the Protection of Human Rights and Fundamental Freedom.¹³

² A Declaration of the General Assembly of the United Nations Resolution of 10th of December 1948

³ Amos Enabulele & Bright Bazuaye, "Basic Topics in Public International Law" (Malthouse Press Limited, Lagos Nigeria 2019), p. 402

⁴ *ibid*

⁵ Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of December 16, 1966, entered into force on January 3, 1976

⁶ Adopted and opened for signature, ratification and accession by the General Assembly Resolution 2200A (XXI) of December 16, 1966, entered into force on March 23, 1976

⁷ Amos Enabulele & Bright Bazuaye *supra* at 403

⁸ Adopted and opened for signature, ratification and accession by General Assembly Resolution 2106 (XX) of December 21, 1965, entered into force on January 4, 1969

⁹ Adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979, entered into force 3 September 1981

¹⁰ Adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of December 10, 1984, entered into force on June 26, 1987

¹¹ Adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of November 20, 1989, entered into force on September 2, 1990

¹² Amos Enabulele & Bright Bazuaye, *supra* at 406

¹³ Signed on 4th of November 1950, entered into force on 3rd of September 1953

Followed by the American Convention on Human Rights.¹⁴ And latter, the Organization of Africa Unity (OAU) now referred to as Africa Union (AU) which adopted the African Charter on Human and Peoples' Rights.¹⁵ The charter provides that a person's right can be infringed, not only as an individual, but as a member of a group, thus, the charter is concerned with 'human and peoples' rights'.¹⁶ It was this quest for better protection of human rights within the African region that paved way for the establishment of the ECOWAS Community Court of Justice.

The Economic Community of West African States (ECOWAS) was established in 1975 to clearly ensure the integration of states within the region economically.¹⁷ The Lagos treaty was adopted by 15 national leaders of West African States.¹⁸ The 1975 ECOWAS Treaty infused the need for the region to have a Community Court of Justice to resolve disputes relating to the interpretation and application of the treaty, Convention and Protocols of the ECOWAS Community¹⁹. The ECOWAS Community Court of Justice was established by the Revised Treaty of the Economic Community of West African States of 1993. At the early stage of the court's establishment, it was constituted as a State- Centric court, meaning that only States could have access to the court, however, in 2005 it translated into a human rights court as well as having jurisdiction and competence on other important subject areas.²⁰

Before the emergence of the ECOWAS Court, cases involving human rights violations which were reported within the States were strictly attended to by the national courts of ECOWAS member States as long as such violated right is contained in the laws of the

¹⁴ This was adopted at Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, 22 November 1969, and subsequently entered into force on July 18,

¹⁵ This is also called "Banjul Charter" and was adopted in Nairobi, Kenya on June 27, 1981, it thereafter entered into force October 21 1986.

¹⁶ Amos Enabulele & Bright Bazuaye supra at 407

¹⁷ The Treaty creating the ECOWAS adopted in Lagos on the 28th of May 1975 Available at: http://www.internationaldemocracywatch.org/attchments/351_ecowas%20treaty&20of%201975.pdf. Accessed May 27, 2022

¹⁸ The founding members of the Economic Community for West African States include Burkina Faso, Benin Republic, cote d'Ivoire, the Gambia, Ghana, Guinea, Guinea- Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo and Cape Verde

¹⁹ Amos Enabulele and Bright Bazuaye, *Basic Topics in Public International Law* (Malthouse Press Limited, Lagos Nigeria 2019), P. 432

²⁰ Nwoke Chijioke, *Alternative Platforms for Protection and Enforcement of Human Rights: The Court of Justice of the Economic Community of West African States (ECOWAS) in Perspective*, lecture presented at the 17th Justice Idigbe memorial Lecture held on the 18th of June 2019

States.²¹ Or ought to be contained through the legal process of domestication. As a result of the amendment to the protocol of the court, the Community Court of Justice now has the competence to hear human rights violation cases which took place in the territory of any member State and accordingly hold member parties liable. This is however irrespective of the fact that such member state has not domesticated such human rights instrument.²²

For effective elucidation of the topic under study, the paper is divided into six parts including the introduction. Part two of the examines the historical perspective of the ECOWAS Community Court of Justice, while Part three reviews the jurisdiction of the court to determine the entities which can access the court. Part four on the other hand, X-rays the human rights mandate of the ECOWAS Court. Part five examines the inherent challenges confronting the Community Court of justice. And lastly, Part six is the later part of the paper with the recommendations and conclusion.

HISTORICAL PERSPECTIVE OF THE ECOWAS COMMUNITY COURT OF JUSTICE

The Community Court of Justice was established as an important judicial institution of the Economic Community of West African States in the ECOWAS Treaty of 1975. The protocol of 1991 which established the court was signed by member States in July 1991 in Nigeria and subsequently entered into force in November 1996. Article 11 established the Tribunal which was given the responsibility to ensure the “observance of law and justice in the interpretation of the ECOWAS Treaty and as well undertake the settling of such disputes as they occur between ECOWAS member States.”²³

However, the ECOWAS Community Court of Justice was rightly constituted by the provisions of Article 6 of the Revised ECOWAS treaty of 1993 as the sole judicial arm of the ECOWAS with the main aim of settling disputes amongst member States in respect to the interpretation and application of the Treaty, Protocols and Conventions.²⁴ At the early development of the court, it was first conceived as a state-centric court. Under this arrangement, the court was unable to function maximally this was so because individuals and NGOs were not given direct access to approach the court to seek redress on the

²¹ *ibid*

²² *ibid*

²³ Edafe Ojomo, “Competing Competence in Adjudication: Reviewing the Relationship between the ECOWAS Court and National Courts, *African Journal of Legal Studies*, (2014), P. 95

²⁴ *ibid*

violation of their fundamental human rights. Thus, Article 9 (3) of the 1991 revised protocol buttresses this, providing that:

Member States may no behalf of nationals institute proceedings against another Member State or institution of ECOWAS in respect to the application of the provisions of the Treaty at the failure to amicably settle such disputes.

The Composition of the court as a State-Centric court however, gave rise to some major challenges which worked against the effective functionality of the court. Firstly, by its State-centric composition, only State parties and recognized organs of ECOWAS Community had access to the court. It must be noted that within this period of its State-centric mandate no member party or institution of ECOWAS approached the court on any matter either for its self as a State or for its nationals. Secondly, private individuals and NGOs in the same light did not have access to the ECOWAS Court. Within the period of 2001 to 2005 respectively, only two individuals approached the court for justice, ***Olajide Afolabi v. Federal Republic of Nigeria***²⁵ and ***Frank Ukor v. Richard Laleye***. Unfortunately, the two cases were thrown out of the court for lack of jurisdiction.

Consequently, this resulted in a situation where the court was rendered comatose all through the period it operated as an inter-State Court.²⁶ Within this time, the court could at best be described as being jobless mounted and having nothing to do. It was however, the consistent efforts of NGOs and active Civil Society Groups which vigorously pressured the leadership of ECOWAS to open up the door of access to permit individuals to approach the court.²⁷ It was this pressure that gave rise to the adoption of the 2005 Supplementary Protocol (A/SP.1/01/05) and on the strength of this protocol, individuals and corporate bodies were given the right of action and hence moved the court away from the rigid Status of a State-centric court to a flexible human rights court. The author argues that the conversion of the court into a human rights court is a right step in the right direction owing the incessant violation of human rights of individuals within the African region by national governments with impunity.

²⁵ Suit No. ECW/CCJ/APP/01/03

²⁶ Nwoke Chijioke, "Alternative Platform for the Protection of Human Rights in the West African Sub-Region: ECOWAS Court in Perspective" Lecture presented at the 17th Justice Idigbe Memorial Lecture held on the 18th of June 2019

²⁷ Ibid

By Article 9 of the 2005 Supplementary Protocol the jurisdiction of the court has now been expanded to give its human rights its mandate a wider coverage. According to Nwoke, the extended mandate of the court now includes:

- 1) Its mandate as a Community Court
- 2) Its mandate as an Arbitral Tribunal
- 3) Its mandate as the ECOWAS Civil Service Court
- 4) Its mandate as a human rights court²⁸

The ECOWAS Community Court of justice has since ceased to exist as a State-Centric court and the continuous existence of the court has been attributed to its human rights mandate and the opening up of access to individuals and corporate bodies. Thus, by virtue of Article 3 of the Supplementary Protocol the jurisdiction of the court is extended to determine cases of violation of human rights which are perpetrated in any Member State.

ACCESS TO THE ECOWAS COMMUNITY COURT OF JUSTICE

By the amendment of the 2005 Supplementary protocol via A/SP.1/01/05 far-reaching expansion was made to increase the category of entities which can have direct access to the court. By Article 10 of the Supplementary Protocol, access to the court is open to individuals on application for relief for violation of their human rights. The application by an individual must not be anonymous, and must include the name of the applicant, his or her address as well as the nature of the human rights violated. Again, such application must not be made while the same human right matter is brought or pending before another international court for adjudication.²⁹

On the strength of Article 10 of the 2005 Supplementary Protocol the following entities has direct access to the court for private actions in the following circumstances:

- a) Individuals and corporate bodies can bring matters to the court, and consequently file a matter before the court over an issue involving the determination of an act or inaction of a community staff who violates the right of individuals or a corporate body.
- b) Private individuals can also approach the court to seek redress for the breach of their human rights ³⁰

²⁸ *ibid*

²⁹ Amos Enabulele & Bright Bazuaye, *supra*, note 2 at 433

³⁰ Article 4 (d) of the Supplementary Protocol

- c) In the same light, Staff of any Community institution in the event that such a Staff has sufficiently exhausted all available appeal processes in line with the ECOWAS Staff Rules and Regulations.

It is instructive to note that the appropriate plaintiff in human rights action before the court is only an individual, whose application to the court must not be anonymous and should not be brought while the same matter is instituted before another international court or tribunal for adjudication.³¹ For an individual to have a right of access to the court the human rights abuse must have been suffered by him directly.³²

Non-governmental Organizations can also bring an action before the court on behalf of their individual member who is a victim, a good example of this, is the case of *SERAP v Federal Republic of Nigeria*³³ Corporate bodies also can institute action before the ECOWAS court for the violation of certain rights guaranteed by human rights instruments.³⁴ Especially where the property rights of such a corporate body have been abused by a member state without following appropriate due process.³⁵

On the other hand, the appropriate defendant before the court in respect to human rights violation cases is the States. Only States which are members of the ECOWAS as subjects of international law can be held liable for the breach of their treaty responsibilities, also, institutions of ECOWAS Community can also be brought before the court.³⁶

HUMAN RIGHTS FEATURES OF THE ECOWAS COMMUNITY COURT OF JUSTICE

A number of important features distinguish the ECOWAS Court as an international human rights court and judicial institution within the West African Sub-region. Some of these features are discussed below;

a) Judicial Independence

The integrity of any judicial institution is to a large extent dependent on the independence of such institution. Independence in this context simply means the ability to carry out given

³¹ Enabulele and Bazuaye supra, at 437

³² *Adewale v. Council of Ministers and 2 Ors* ECOWAS/CCJ/JUD/07/12 Judgment given on May 16, 2012, at para 48, the court held that individuals do not have the capacity to challenge acts ECOWAS institution that have not caused any direct injury to the individual.

³³ Judgment ECW/CCJ/JUD/18/12

³⁴ Article 1(h) of the ECOWAS Democracy and Good Governance adopted by the Heads of States and Government in December 2001.

³⁵ *ibid*

³⁶ Article 9 (3) of the ECOWAS Protocol 1991

functions without any form of interference from an individual, State or institution. Thus, the integrity and effectiveness of the ECOWAS Court of Justice are being manifested in its operation of independence. The Independence of the court is clearly provided for in the ECOWAS Revised Treaty. It provides that the court shall carry out the assignment given to it independent of member states and institutions of ECOWAS Community.³⁷ Furthermore, the 1991 Protocol on the Community Court of Justice states that the court shall be composed of independent judges selected and appointed by the authority from nationals of Member States.³⁸ The independence of the ECOWAS Court of justice was at the same time buttressed by the Protocol on Democracy and Good Governance, stressing that other important values common among member states is that the judges of the court shall be independent in the dispensation of justice.³⁹ Thus, in *Essien v Republic of Gambia*,⁴⁰ the court alluded to the fact that it was totally independent in its operation of member states and institutions of ECOWAS. To further guarantee the independence of the court, in 2016, the authority of heads of states and government set up a Judicial Council whose assignment was to hire and discipline the judges of the court.⁴¹ The author compares this excellent feature of the ECOWAS Court to the usual judicial interference which takes place in many African countries. A situation where the appointors of judicial officers (usually the executive arm of government) one way or the other tries to influence the process of justice delivery. Judges within the African region particularly in Nigeria must be given the freedom to exercise their judicial powers without fear, favour, and interference from litigants and the state.⁴²

b) No Specific list of Human Rights Laws applicable In the Court

Another important characteristic feature of the ECOWAS Court of Justice is that the court has no specific list of human rights laws known to States which is applicable before the court.

³⁷ Article 15 (3) of the ECOWAS Revised Treaty 1993

³⁸ Article 3(1)

³⁹ A/S P1/12/01

⁴⁰ Suit No. ECW/CCJ/10/07

⁴¹ Nwoke Chijioke, "Alternative Platform for the Protection of Human Rights in the West African Sub-Region: ECOWAS Court in Perspective" Lecture Presented at 17th Justice Idibe Memorial Lecture, June 18, 2019.

⁴² Wale Igbintade, "Lagos CJ: Judiciary Must Remain Independent, Devoid of Executive Interference" This Day 27th September 2022, available at <https://www.thisdaylive.com/index.php/2022/09/27/lagos-cj-judiciary-remain-independence-deviod-of-executive-interference>, Accessed 17 November 2022

Article 9 (4) of the Supplementary Protocol lists the parties which shall have access to the court but did not go further to specify the type or nature of international human rights laws or instrument which the court should apply.⁴³ However, a deep look at Article 20 of the Supplementary Protocol reveals that the court has jurisdiction to apply the African Charter on Human and Peoples Rights together with any other international human rights instruments adopted by the respondent state.⁴⁴ By article 19, the court is allowed to apply in its trials the sources of international law as listed in Article 38 of the Statute of the ICJ.⁴⁵ Such sources of international law enlisted in article 38 include international Conventions containing rules recognized by disputing states, Customs as evidence of a general practice accepted as law, general principles recognized by civilized nations, and judicial decisions and teachings of most highly qualified publicists.⁴⁶ The author however argues that the non-domestication of an international treaty by a State will not constitute a hinderance to the ECOWAS Court in applying such a treaty against the State, this is so because under international law, where a State has ratified a treaty, it therefore has an obligation to bring its domestic laws in compliance with such a treaty. Article 9(4) therefore creates an open cheque for applicants before the court not indicating the class of laws applicable and types human rights that may be brought before the court.

In *Jerry Ugokwe v. Federal republic of Nigeria*,⁴⁷ the court acknowledged the gap created by the lack of clear list of human rights violation. The court stated in the above case that although Articles 9 of the Supplementary Protocol did not specify the list of human rights which individuals within the ECOWAS Sub- region may enforce, that the subsequent acknowledgement of the African Charter in Article 4(9) of the ECOWAS treaty mandates the court to apply and enforce the rights listed in the African Charter on human and peoples' rights. Again, in *Alade v. Federal Republic of Nigeria*⁴⁸ the court stated that it does not only apply all the provisions on human rights in the African Charter, but it also applies other important Conventions of the United Nations on human rights signed and ratified by

⁴³ Article 4 of the ECOWAS Supplementary Protocol

⁴⁴Amos Enabulele and Bright Bazuaye, "Basic Topics in Public International Law, (Malthouse Press, Lagos,2019) p.433

⁴⁵ ibid

⁴⁶ Ibid, at P.26

⁴⁷ Suit No; ECW/CCJ/APP/05/11,

⁴⁸ Suit No.ECW/CCJ/OUJ/10/12

members of ECOWAS. What is importantly critical to the court is that such Member State is a signatory to such international human rights treaty.⁴⁹

Furthermore, in holding State Members accountable for breach of their international responsibility as contained in a treaty, the ECOWAS Court is not in any way limited or constrained by the domestic laws of member states which runs contrary to their treaty responsibility. It is also not tenable that such international instrument does not agree with the domestic law of a state. In *Aminu v. Government of Jigawa State*⁵⁰ in this case, the Jigawa State Government (a State in Nigeria) raised an objection challenging the jurisdiction of the ECOWAS Court to decide on the human rights violation matter filled at the court by Aminu on the ground that the said human right violated was not domesticated in Nigeria in accordance with Section 12 of the Nigerian Constitution. The court out rightly rejected the objection raised by the State. The same was the attitude of the court in the celebrated case of *SERAP v. Federal Republic of Nigeria*⁵¹. Where the Nigerian government challenged the jurisdiction of the court stating that Chapter 2 of the Nigerian Constitution with the heading "Directive Principles of State Policy" the contention of the Nigerian Government in this case was that the provisions of the above Chapter were not justiciable before the Nigerian court (the issue before the court was one bordering on the right of citizens to education) the ECOWAS Court refused the objection, and held that the fact that the Nigerian government have signed and ratified the African Charter on Human and Peoples' Rights which in its Article 17 acknowledges the right to education as a human right gives the court the jurisdiction to hear the case.

The author therefore contends that absence of no clear list of human rights laws applicable in the court has positively created the opportunity for the court to widen the horizons of its human rights mandate.⁵² this in addition has given the court the opportunity to import and apply other relevant international conventions and laws in deciding human rights cases, thus making the court attractive for prospective litigants within the African region to approach the court without restraints.

⁴⁹ Nwoke Chijioke, "Alternative Platform for the Protection of Human Rights in West African Sub-Region: ECOWAS Court in Perspective, lecture presented at the 17th Justice Idigbe Memorial Lecture, on 18th June 2019"

⁵⁰ Suit No: ECW/CCJ/APP/12/07

⁵¹ Judgment No: ECW/CCJ/JUD/18/12

⁵² T. Anene-Maidoh, "The Mandate of a Regional Court: Experiences from ECOWAS Court of justice", Paper Presented at the Regional Colloquium on the SADC Tribunal, Held 12-13 March, 2013, in Johannesburg South Africa.

c) The Non-Exhaustion of Local Remedies

One Major innovation of the ECOWAS Community Court of Justice is that it does not insist on the requirement of exhaustion of local remedies on its human rights mandate before cases are brought before the court. It must be noted that the rule of exhaustion of local remedies is a prevailing customary international law rule that all domestic remedies under the law of the respondent state must of necessity be exhausted by an individual before the individual can seek redress elsewhere. Some of the reasons for the development of this principle include the following:

- a) To afford the domestic law of the state where the wrong was committed a quick opportunity of resolving the dispute and to give redress to the victim.
 - b) To prevent unhealthy competition between international and domestic laws.⁵³
- The aim of this principle of international customary law is to see that international courts greatly complements the domestic courts. And that further remedies should only be pressed for when there is a delay in accessing the remedy or that such remedies are not available or inadequate within the domestic judicial institutions.⁵⁴

Article 10 (d) of the ECOWAS Supplementary Protocol makes provision for entities that have access to the court and is silent of on the issues of exhaustion of local remedies. In *Sikiru Alade v. Republic of Nigeria*⁵⁵ the ECOWAS Court held that the wordings of Article 10 (d) is not unambiguous that the requirement of exhaustion of local remedies is not a criterion for accessing the court. Again, in the case of *Musa saidu v. Republic of Gambia*, the court stressed that those who drafted the Supplementary protocol deliberately decided not to make the exhaustion of local remedies a condition to accessing the court on issues bordering on human rights. And that such customary international law norms can be made flexible or even legislated away. This obvious silence or omission has been applauded by writers and individuals in the West-African Region.

According to Nwoke, the ECOWAS Court serves as an alternative platform for judicial protection of human rights in the sub- region.⁵⁶ As result of this development of non-exhaustion of domestic remedies, litigants can now decide whether or not to institute human

⁵³ Amos Enabulele, "Sailing Against the Tide: Exhaustion of Domestic Remedies and the ECOWAS Community Court of Justice, (2012) 56, (1) Journal of African Law. P.269

⁵⁴ *ibid*

⁵⁵ *Alade v. Federal Republic of Nigeria* , (2012) CCJELR, 10

⁵⁶ Chijioke Nwoke, "Alternative Platform for the Protection of Human Rights in the West African Sub-Region.", Lecture presented at the 17th Justice Idigbe Memorial Lecture held on the 18th of June 2019.

rights actions in their national court or move straight to the ECOWAS Community Court of Justice.⁵⁷ The non- requirement of exhaustion of local remedies has in no small way aided the growth and popularity of the court in the aspect of human rights protection. The author further contends that community court of justice has greatly given a lot of hope to litigants within the West-African region who have been denied justice in the various domestic courts as a result of undue delay in the judicial system of many African countries. Most times, a matter can linger in court for a period between 20 to 40 years. In Nigeria as well as other African countries, victims of human rights violations often suffer untold judicial hardship which sometimes could include the death of victims before seeking help from an international court. Thus, the ECOWAS Court bridges this gap in helping potential litigants to save time and financial resources that could have been otherwise wasted at their national courts pursuing justice over a case for longer period of time. Arguably, this kind of accelerated decision given in favor of individuals against national governments has projected the court in a positive light as an attractive alternative platform for the protection of human rights as against the weak, slow and over controlled domestic courts. Although the attitude of the court in not following the customary international rule of exhaustion of local remedies has been frowned upon by international law Scholars who foresee potential crisis between the national courts and the ECOWAS Court.⁵⁸ On this, Ladan in his submission has said that the non- exhaustion of local remedies by the court is tantamount to a “design flaw” which requires an urgent attention by way of an amendment.⁵⁹ Enabulele has also criticized the court for sailing against the tide, and violating important international customary law principle.⁶⁰ However, the ECOWAS Court in the case of *Hadijatou Mani v. Niger* has said that the non-requirement of exhaustion of local remedies in the protocol was not an accidental occurrence which need to be addressed as it does not create any gap which need to be covered by legislative intervention.⁶¹

⁵⁷ECOWAS Court Bulletin, (2008) Vol 1. No.1, p.24

⁵⁸ Amos Enabulele, “Sailing Against the Tide: Exhaustion of Domestic Remedies and the ECOWAS Community Court of Justice, (2012) 56 *Journal of African Law*, p. 269

⁵⁹ M. Ladan, “Access to Justice as a Human Right under the ECOWAS Community Law” lecture delivered at the Commonwealth Regional Conference held at Abuja between the 8th -11th of April 2008

⁶⁰ Enabulele supra, at p. 270

⁶¹ *Hadijatou Mani Kouraou v. Niger Republic*, available at <http://www.chr.up.ac.za/index.php/browse-by-subject/379-niger-koraou-v-niger-2008-ahr/r-ecowascourt-2008.html>

By this innovative development, litigants within ECOWAS member states are now free to either institute their human rights matters at their home domestic court or choose the ECOWAS Community court of justice to seek redress for such human rights violation.

d) There is no time limit barring human rights complaints

Another important feature of the ECOWAS Court is that there is no time limit for instituting or filling complaints with respect to human rights violations.⁶² The court stressed this point in the case of **Federation of African journalists and Others v. The Republic of the Gambian**.⁶³ The plaintiffs brought this suit before the ECOWAS Court against the government of Gambia being a member of ECOWAS States on the grounds that they have been unlawfully detained, arrested and generally violating the rights of journalists across the entire Gambia for a number of years. The major issue for determination before the court was whether the plaintiff's claim was statute barred. The court held that there was no time line in instituting human rights case before the court. Similarly, in **Dorothy Njemanze & Ors v. Federal Republic of Nigeria**⁶⁴ the court held that in an action involving the enforcement of fundamental human rights against member states, the Statute of limitation does not apply. Stressing that it accepts the doctrine of continuing human rights violations.

However, earlier, it was unclear whether or not the jurisdiction of the ECOWAS Court was restricted with time limit in the human right case of **Femi Falana & other v. The Republic of Benin**.⁶⁵ Here, the issue for consideration was whether the application brought before the ECOWAS Court in 2007 of a human rights violation which occurred in 2004 could be admissible under the jurisdiction of the court. The defendants relied on article 9 (3) of the ECOWAS Revised Treaty which provides that any action by or against a community member or institution shall be statute barred after three years from the date when the right of action arose. But, Article 9 (4) of the Supplementary Protocol on the other hand which spells out the court's jurisdiction on human rights issues merely provides that the court shall have the jurisdiction to determine cases of human rights violation which occur in any

⁶² Inter Law Girls, "ECOWAS Court Clarifies its human rights jurisdiction: no time limits barring human rights Complaints and Continuing violations are recognized, February 17, 2018, Available at <http://www.courtecowas.org>, Accessed March 3, 2022

⁶³ ECW/CCJ/JUD/04/18, available at <https://www.mediadefence.org/news/ecowas-court-delivers-landmark-decision-one-our-strategic-cases-challenging-laws>, Accessed June 3, 2022

⁶⁴ ECW/CCJ/JUD/08/17, available at <https://www.africanwomeninlaw.com>, accessed June 3, 2022

⁶⁵ ECW/CCJ/JUD/02/12, available at [http://www.courtecowas.org/site2012/pdf/file/decisions/judgements/2012/FEMI%20FALANA & ANOR V REPUBLIC OF BENIN & 2 ORS.pdf](http://www.courtecowas.org/site2012/pdf/file/decisions/judgements/2012/FEMI%20FALANA%20&ANOR%20V%20REPUBLIC%20OF%20BENIN%20&2%20ORS.pdf), Accessed June 3, 2022

Member State. A closer look at the Supplementary Protocol would reveal that it did not make any specific indication with respect to the time limit in human rights cases. The court as result of the silence of the time limitation in the supplementary Protocol held that applications seeking the enforcement of human rights brought against member states cannot be stopped by any period of limitation of time. Thus in **Dorothy Njemanze's case**, the court stated that all earlier decisions of the court which runs contrary to this present decision were automatically overruled.⁶⁶

Also, the ECOWAS Court relying on the decision of the UN Human rights Committee in **Randolph v. Togo**⁶⁷ had the opportunity of deciding on the issue of continuing violations in **Deyda Hydara & Ors v. The Gambia**⁶⁸ in which it recognized the principle of "continuing harm" in situations where the applicants filled a claim regarding their expulsion into exile from the republic of Gambia. The court held that forced exile qualifies as human rights violation of a continuing character.

Arguably, the ECOWAS Court stands out attractive to litigants within the ECOWAS Sub-Region as a result of the no time limitation barring the bringing of applications. Again, the court is in many ways different from other regional institutions particularly in respect to its human rights mandate. For instance, the East African Court of Justice do not have an elaborate human rights jurisdiction like the ECOWAS Court. The East-African Court is very strict on the issue of time limit in bringing application for human rights violation. An applicant has a period of two months after the violation of his human right to press for reparation.⁶⁹ The court has overruled the principle of continuing human rights violations.⁷⁰ For the African Court on Human and People's Rights, although it does not fix a time limit to file human rights action, it provides that such application should be brought within a reasonable time after available local remedies have been exhausted.⁷¹ A look at the Inter-American Commission of Human Rights would reveal that it is strict with time limit for filling human rights cases. The Commission stipulates a time limit of six months after such violation of

⁶⁶ ECW/CCJ/JUD/08/07, available at <https://www.africanwomeninlaw.com>, accessed March 4, 2022

⁶⁷ U.N. DOC. A/59/40/, Vol. 11 at 79 (HRC 2003), available at http://www.worldcourts.com/hrc/eng/decision/2003.10.27_Randolph_v._Togo.htm, accessed March 4, 2022

⁶⁸ ECW/CCJ/APP/30/11, available at <https://globalfreedomfexpress.columbia.edu/cases/hydara-v-gambia/>, accessed June 4, 2022

⁶⁹ See Article 32 of the Treaty Establishing the East African Community, available at http://www.eac.int/treaty/index.php?option=com_content&view=article&itemid=215

⁷⁰ *Mjawasi & Others v. The Attorney General of Kenya*

⁷¹ Rule 40 of the Court's Rules of Procedure

human rights occurred.⁷² By Article 35(2) of the European Court of Human Rights, the time frame for filling application for human rights abuse is similarly fixed for six months after the applicant has effectively exhausted all available local remedies.⁷³

These distinctive features of the ECOWAS Community Court of Justice discussed above can as well be regarded as positive merits of the court which has made it attractive as an alternative platform for redress for potential victim of human rights violation within the ECOWAS region.

e) Challenges of the ECOWAS Court of Justice

Although the court has made substantial progress in its twenty years of existence especially as a human rights court. From the time it became operational in 2001, the court has successfully ruled on not less than 249 cases⁷⁴ with other important verdicts and opinions⁷⁵ there are still some challenges confronting the court in effectively fulfilling its human rights mandate. These challenges are hereby discussed as follows:

Disregard of the court's decisions by Member States

By Article 15(4) of the 1993 ECOWAS Treaty, the Judgment of the court shall be binding on Member States of ECOWAS, the Community Institutions, Individuals and Corporate bodies. The decisions of the court shall be final and enforceable.⁷⁶ Similarly, Article 24(2) of the ECOWAS Supplementary Protocol clearly provides that the execution of any judgement of the court shall be in a writ form, submitted by the registrar of the court to the member state concern, properly received by the member state and enforced accordingly.

Despite the above provisions compelling member States to abide by the decisions of the court, it is important to state that the hope and confidence of prospective litigants within the region is fast declining as a result of the refusal of Member States of ECOWAS to respect and comply with the decisions of the court. This is primarily rooted in the inability of the

⁷² Article 32 of the Rules of Procedure, available at <http://www.oas.org/en/iachr/mandate/Basic/rulesiachr.asp>, accessed June 4, 2022

⁷³ Article 35(2) of the European Convention, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf, accessed June 4, 2022

⁷⁴ ECOWAS Community Court of Justice, available at <https://www.premiumtimesng.com/foreign/west-africa-foreign/245545-ecowas-court-delivers-249-verdicts-16-years.html>, accessed June 4, 2022

⁷⁵ Bola Olajuwon, "Travesty of ECOWAS Court's Verdicts Raises Concern" *The Nation*, (December 22, 2021), available at [the nationonlineng.net/travesty-of-ecowas-courts-verdicts-raises-concern](http://thenationonlineng.net/travesty-of-ecowas-courts-verdicts-raises-concern). Accessed March 4, 2022

⁷⁶ Article 19(2) of the 1991 Protocol of the ECOWAS Community Court of Justice

ECOWAS Court to have a reliable institution having the capacity to enforce its own judgement. The court simply depends on the assistance of national governments and domestic courts in this regard.⁷⁷ This is unlike the International Court of Justice (ICJ), which has the Security Council to follow up on its decisions to ensure that affected States comply with the court's decisions.

Some top officials of the ECOWAS court have at different time expressed worry as a result of the attitude of some member states towards the court's decisions⁷⁸ for the court to retain its pride and continue to remain relevant, there is the need for it to have a formidable institution having the necessary powers to effectively enforce the judgments of the regional court.

The negative attitude of member states towards the decision of the court is demonstrated for instance in the case of Col. Sambo Dasuki, the former National Security Adviser, who was arrested by the Nigerian government for alleged economic crimes and other type of offences. In an action filled at the ECOWAS Court of justice bordering on his fundamental human rights. The regional court held that it was inappropriate for the Nigerian Government to insist on keeping him in custody over unnamed offences even after Dasuki was granted bail by a court in Nigeria. Thus, the Nigerian government was asked by the ECOWAS Court to pay damages of fifteen million naira for the unlawful detention of Dasuki, despite the order, the Nigerian government disregarded the court's decision and continued to keep him in detention and even refused to pay the costs awarded.⁷⁹

The same was the case of Sheikh Ibraheem el- Zakzaky who was granted an order of release by the ECOWAS Court in 2016 from detention, the regional court saw his continued detention as unlawful and unjust. Despite the order by the ECOWAS Court, the Nigerian government has also refused to release him from detention.⁸⁰

Similarly, the Regional Court had passed a decision directing the government of Niger Republic to pay certain amount of money as compensation to the family of General Ibrahim

⁷⁷ S. T. Eboerah, "Litigating Human Rights before Sub-regional Courts in Africa" (2009), *African Journal of International and Comparative Law*, P.79

⁷⁸ Justice Maria do Ceu Silva Monteiro, the Leadership, "ECOWAS Court Asks Members to Execute Judgments, Leadership, 24 October, 2015 available at <http://leadership.ng/news/469442/ecowas-court-asks-members-to-execute-judgments>, accessed March 7, 2022

⁷⁹ Bola Olajuwon, "Travesty of ECOWAS Court's Verdicts Raises Concern' *The Nation*, (December 22, 2021), available at thenationonlineng.net/travesty-of-ecowas-courts-verdict-raises-concern, accessed March 9, 2022

⁸⁰ *Ibid*, P.4

Mainassara who was killed in an unlawful circumstance. However, the government of Niger Republic refused to obey the court's decision. Also in *Manneh v. Gambia*,⁸¹ the Government of Gambia failed to implement the decision of the regional court to release the applicant from detention. And as well refused to pay other costs and damages awarded against it in favour of the applicant.⁸²

It must however be noted that there has been scanty compliance to the decisions of the ECOWAS Court by member states. A good example of such compliance is the case of *Hadijatou Mani Koraou v. Niger*⁸³ in this case the ECOWAS court passed a decision directing the republic of Niger to pay the sum of \$20,000 (USD) to the applicant for her unlawful enslavement. The Niger government fully obeyed this decision of the court within three months of the pronouncement.

Over the years, enforcing the judgments of the ECOWAS Community Court of justice has been a big challenge. This is because both the Revised Treaty of ECOWAS as well as the ECOWAS Supplementary protocol did not stipulate the means or procedure to be applied in enforcing and executing the decisions of the court in the event that State Parties refuse to carry out the judgments of the court.⁸⁴ On the other hand, the authority of heads of state and government of ECOWAS has been given the power to impose some measure of discipline on member States who refuses to comply with the decision of the court.⁸⁵ The discipline of such erring member state usually come in form of sanctions, which may include expulsion, suspension or the withdrawal of certain benefits or assistance. Such a state can also be suspended from actively participating in important activities carried out by members of the ECOWAS community.⁸⁶

One truly wonders if the Authority of heads of state and government have lived up to expectation in exercising its given powers in the light of the gross disobedience of the Court's judgments by member state. It must be stated that this elevated organ of ECOWAS is yet to put its powers into use. And unless this is done, the confidence and trust which

⁸¹ ECW/CCJ?APP/04/07, June 5, 2008

⁸² *ibid*

⁸³ ECW/CCJ/APP/08/07, October 27, 2008

⁸⁴ Collins Okeke and Kikelomo Lamidi, "Enforcement of the Judgment of the ECOWAS Court" Olisa Agbakoba Legal November 20, 2018, available at <https://www.mondaq.com>Nigeria>, Accessed June 10, 2022

⁸⁵ Article 77 of the ECOWAS Revised Treaty

⁸⁶ *ibid*

individuals within the region reposed in the court will soon be taken away. And at that point it would be difficult for the court to completely fulfil its human rights mandate.⁸⁷

As a result of the incessant neglect of the ECOWAS Court's judgments by regional member, a prominent human rights lawyer have therefore lent his voice by calling on the Nigerian authority and other state leaders to comply with the decisions of the court in the interest of justice and political stability.⁸⁸

The gross disobedience of the court's judgment is to large extent is traceable to the fact that Article 24 of the court's protocol have not been implemented by member states. It provides that member states are to determine the national authority for receiving and enforcing the court's judgment.⁸⁹ From the above provision, it is a mandatory requirement for all member countries of ECOWAS to implement the court's decisions and therefore make efforts to establish a national body which would assist in complying with the decisions of the court within its domestic arena.

According to the president of the court, out of the 15 member countries, only 6 of them have complied with setting up a national authority for receiving and enforcing the decisions of the court, and they include Nigeria, Mali, Guinea, Burkina Faso, Togo and Ghana. The other member countries are yet to establish theirs.

However, despite compliance with article 24 of the protocol of the court, Nigeria for instance have refused on different occasions to honour and carry out the decisions of the ECOWAS Court.⁹⁰ The author therefore calls on the authority of heads of state and government to urgently find a way of imposing strict sanctions on member states like Nigeria and the other countries for perpetually disregarding the decisions of the ECOWAS court of justice, as the importance and continuous existence of the court does not rest in its popularity or quality of judgments, but rather rests in the effective and timely compliance with the judgment it gives.

Shortage of manpower

Owing to the outstanding achievements of the court since 2005 when it expanded its human rights jurisdiction, the court however became popular and attractive within the sub-region.

⁸⁷ Collins Okeke and Kikelomo supra, at p. 3

⁸⁸ Bola Olajuwon, "Travesty of ECOWAS Court's Verdicts Raises Concern" *The Nation*, (December 22, 2021) 5 available at thenationonline.net/travesty-of-ecowas-courts-verdicts-raises-concern, Accessed March 10, 2022

⁸⁹ Article 24 of the ECOWAS Supplementary Protocol

⁹⁰ Bola Olajuwon, Supra, note 60 at p.5

This in no small way has made the court's human rights mandate to become the focal point of the court's judicial assignments.⁹¹ There has been tremendous increase in the number of human rights cases before the court. And hence the need to re-organize the court to effectively attend to the cases as they come without delay to maintain its attractiveness and relevance. The author advocates that the number of judges in the court need to be or increased to meet up with attending to the increasing volume of human rights cases before the court. According to the vice president of ECOWAS Community Court of justice, Justice Gberi-Be Quattara, the new decision by the leadership of ECOWAS in reducing the number of the court judges from seven to five may obviously now make it difficult for the court to fulfil its human rights mandate. By the 1991 ECOWAS Protocol⁹² the court shall consist of seven (7) members, no two of whom shall be citizens of the same country.

But the recent decision of the authority of heads of state and government to reduce the number of judges from seven to five constitutes a potential challenge to the effectiveness of the court. In June 2017, the ECOWAS Authority of heads of States and Government at its 51st Summit took a decision to reduce the number of judges of the court from seven to five.⁹³ This decision was reached because the ECOWAS Commission was not getting sufficient financial contributions from member countries to take care of the court staff.⁹⁴ This decision has been highly criticized by several scholars and lawyers within the West-African sub-region. In this regard, the former president of the West African Bar Association Femi Falana (SAN) a Nigerian human rights lawyer has challenged the rationale behind the decision reached by the apex organ of the regional organization stressing that such decision was unfounded and not in the best interest of the court.⁹⁵ He contended further that the decision to reduce the number of judges was an illegality which was contrary to the provisions of Articles 3 and 15 of the ECOWAS Revised Treaty.⁹⁶ However, the ECOWAS Court of justice in a decision given on December 12, 2019 unequivocally held that Authority of Heads of State and Government have the capacity to reduce the number of judges and that such decision is considered legal and effective by the court.⁹⁷

⁹¹ Ibid at P.9

⁹² Article 3(2) of the 1991 Protocol

⁹³ Eric Ikhilae, "ECOWAS Court Upholds Reduction in its Judges' Number", *The Nation* (December 14, 2019)

⁹⁴ Unini Chioma, "ECOWAS Court: Held Up By Challenges, The Nigeria Lawyer, November 19, 2019, available at: <http://thenigerialawyer.com/ecowas-court-held-up-by-challenges>, accessed June 11, 2022

⁹⁵ Ibid at p. 3

⁹⁶ Ibid at p. 4

⁹⁷ Eric Ikhilae, *supra* at p. 2

The author argues that the decision to reduce the number of presiding judges at the ECOWAS Community Court of Justice can be described as a decision made hastily and not in the overall best interest of the court. The author further uses this opportunity to call on the Authority of Heads of States and Government to reconsider her decision, this is owing to the fact that such policy will hamper on the court's effectiveness, cause a delay in justice delivery and at the same time constitute excess labour for the five judges of the court in view of the increasing number of human rights cases before the court.⁹⁸ The court should by all means be forward looking by appointing at least 16 more judges to man the court and not reduce the constituted seven judges. It should even go ahead to inaugurate at least four more judges to make up an appeal division where dis-satisfied State parties can further seek redress, bringing the number of judges of the court up to 20. The court needs a separate Appellate Chamber where its judgments can be re-evaluated. This kind of structure will indeed help to expand the capacity of the court in dispensing quick and reliable justice within the region.⁹⁹

RECOMMENDATIONS

Despite the numerous challenges of the ECOWAS Court of justice in the last 20 years of its existence, it has made some remarkable progress especially since 2005 when the protocol of the Court was amended to give individuals and NGOs access to the court. Thus far, the court have received 561 applications and have delivered 301 judgments. However, the following recommendations are proposed to reposition the court for effective operation and better justice delivery.

Legal Assistance to indigent litigants

Legal assistance to individual member of the public having difficulty in accessing justice at the court of law is to a large extent regarded as a key feature of an excellent justice system predicated on the rule of law.¹⁰⁰ The ECOWAS Court of justice did not in any way provide for assistance to indigent individuals in its rules of operation. This is considered a major gap which urgently needs to be addressed. Thus, the Rules of procedure of the court need to

⁹⁸ Unini Chioma, "ECOWAS Court: Held Up by Challenges" *The Nigeria Lawyer*, November 19, 2019, available at: <https://the.nigerialawyer.com/ecowas-courtheld-up-by-challenges>, accessed June 11, 2022

⁹⁹ ECCJ, Summary of Activities for the Year 2011, available at: <http://www.courtecowas.org/site2012/pdf-files/annual-reports/activites-report-2011.pdf>, accessed June 11, 2022

¹⁰⁰ The United Nations Principle and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012, available at: https://www.unodc.org/documents/justice-and-prison-reform/UN_principle_and_guidlines_on_access_to_legal_aid.pdf, accessed June 11, 2022

be amended to accommodate poor litigants within the region in dire need of legal assistance. According to Femi Falana, a prominent human rights lawyer in Nigeria, “it seems that the ECOWAS Court is restricted to a few persons who are considered privileged”¹⁰¹ in this light, there is therefore the need for the court to work together with important non-governmental bodies within the region such as the West African Bar Association, Human Rights Association as well as national governments in assisting indigent litigants get prompt and adequate justice.

Undisruptive Succession of the tenure of judges

The recent interruption in the tenure of Judges of the ECOWAS Court has become a source of concern to lawyers and prospective litigants within the West African Region. In 2017, the Authority of Heads of States and Government decided to review and consequently altered the traditional succession regime of the judges. A situation in which a judge was to be in office for five years subject to renewable tenure of another five years to a totally new arrangement of just one single tenure of four years non-renewable.¹⁰² The author contends that this new arrangement is not in any way in the best interest of the court. The obvious consequence of this is that there will be lack of continuity in the operation of the court system, a situation in which all four judges resume office the same period of time and as well vacate office at the same time, it becomes difficult this way to keep tap with history and institutional records.¹⁰³ I hereby call on the leadership of the ECOWAS Community to immediately review its decision on the tenure of the court’s judges for the smooth and effective operation of the court.

Provision of infrastructural and Technical Resources

Other major challenges confronting the court just now needing urgent attention are those of insufficient accommodation and technical resources. As the court get busier by the day entertaining more human rights cases the need for more office spaces and accommodation for judges and staff of the court becomes paramount. As at 2002, when Nigeria, the court’s host country provided the present building accommodation, the staff strength of the court

¹⁰¹ ECOWAS Community Court of justice, “Human Rights Lawyer Endorse Calls for Legal Aid for West Africa”, 2015, available at: http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id+276:human-rights-lawyer-endorese-calls-for-legal-aid-scheme-for-west-africa&catid=14:pressrelease&Itemid=36, accessed June 14, 2022

¹⁰² Unini Chioma, ECOWAS Court: Held up by Challenges, *The Nigeria Lawyer*, (November 19, 2019), available at: <https://thenigerialawyer.com/ecowas-courtheld-up-by-challenges>, Accessed March 14, 2022

¹⁰³ Ibid at p.2

at that time was very small compare to what it is today.¹⁰⁴ According to justice Edwin Asante, “due to increase in the number of staff over the years, the office space has become grossly inadequate, the court was therefore compelled to rent an annex office to accommodate some departments of the court”¹⁰⁵ for the effective operation of the court, the author calls on the Nigerian government as the host state to make efforts to provide the court with a befitting building big enough to accommodate the court judges, staff and departments of the court.

Again, there is the urgent need to modernize and digitize the regional court to bring it up to speed with other regional courts across the globe. The need to make the court innovative and technology driven has further been exposed by the COVID- 19 pandemic. Although a directive was issued in the wake of the pandemic on the need for online management of cases, this effort was however not completely productive as a result of the following factors including non-availability of good office space, lack of technology materials, lack of trained and efficient ICT personnel as well as the lack of language translators¹⁰⁶

To solve the above identified problems, the author considers it imperative for the leadership of ECOWAS to immediately set up a working committee of prominent scholars and judges within the sub region to review the activities of the court and recommend ways of repositioning the court to properly face the challenges ahead of it in the future, otherwise the court may soon go into extinction.

Creating a means for ECOWAS to Monitor and Enforce the Decisions of the Court

Presently, there is no known organ or arm of ECOWAS saddled with the responsibility for monitoring and implementing the decisions of the court in other to determine if its judgment is complied with or not, the court would usually rely on litigants to feed it back.¹⁰⁷ Member states cannot be left to themselves to pick and choose the decisions of the regional court they want to comply with. I hereby call on the leadership of ECOWAS to immediately establish an organ or a reliable means of monitoring and enforcing the decisions of the court in line with other international and regional courts. ECOWAS must find a way to stop

¹⁰⁴ Ibid at p.3

¹⁰⁵ ibid

¹⁰⁶ Bola Olajuwon, “Travesty of ECOWAS Court’s Verdicts Raises Concern”, *The Nation*, (December 22, 2021), available at: thenationonlineng.net/travesty-of-ecowas-courts-verdicts-raises-concern, accessed March 15, 2022

¹⁰⁷ Ibid at p.8

depending on the voluntariness of member States in enforcing the decisions of the ECOWAS Community Court of justice which is regarded as its principal judicial organ.

CONCLUSION

The paper has examined the innovative human rights mandate of the ECOWAS Community Court of Justice which has positioned the court as a new international human rights court for the West African sub-region. The paper noted that since 2005 when the human rights jurisdiction of the ECOWAS Court was established, the court has been attractively busy in giving attention to human rights violation matters arising from its various member countries within the West African region. The paper further posited that the ECOWAS Court now serves as an alternative platform for the protection of human rights for addressing and protecting the human rights of individuals within West Africa outside national courts of member countries.¹⁰⁸ The court therefore has become popular and attractive as a results of its unique human rights features, key amongst them includes the non-requirement of exhaustion of domestic remedies, no list of human rights laws applicable before the court and also, the fact that there is no time limit barring the application of human rights cases. The Court has the competence to hold member states accountable for the breach of other important rights obligations found in international instruments where member states are parties to such legal instrument, whether or not such a state has domesticated such international instrument.¹⁰⁹ Although the court has made some remarkable progress especially since it expanded its human rights mandate in the 2005 Supplementary Protocol, for it to continue to operate effectively, remain relevant and consistently gain the confidence of prospective litigant within the West African sub-region some urgent steps need to be taken by the leadership of the ECOWAS Community to re-position the court to bring it up to speed with other international and regional courts around the world. The paper concludes that except the ECOWAS Community Court of Justice find a workable means of enforcing the decisions of the community court, the court may soon lose its credibility and thus, discourage prospective litigants from bringing applications before the court.

¹⁰⁸ Nwoke Chijioko, "Alternative Platform for the Protection of human Rights in the West African Sub-Region: ECOWAS Court in Perspective", lecture delivered at the 17th Justice Idigbe memorial Lecture on the 18th of June 2019, p. 33 at the University of Benin, Benin City, Nigeria,

¹⁰⁹ *Aminu v. Government of Jigawa State and 3 ors*, where the defendant contended that the human right which the applicant claimed to have been breached have not been domesticated in Nigeria by virtue of S. 12 of the 1999 Constitution, this objection thus overruled by the ECOWAS court.

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Article 35(2) of the European Convention, available at http://www.echr.coe.int/Documents/Convention_ENG.pdf, accessed June 4, 2022

Article 4 (d) of the Supplementary Protocol

Article 4 of the ECOWAS Supplementary Protocol

Article 77 of the ECOWAS Revised Treaty

Article 9 (3) of the ECOWAS Protocol 1991

Rule 40 of the Court's Rules of Procedure

Case laws

Adewale v. Council of Ministers and 2 Ors ECOWAS/CCJ/JUD/07/12 Judgment given on May 16, 2012, at para 48, the court held that individuals do not have the capacity to challenge acts ECOWAS institution that have not caused any direct injury to the individual.

Alade v. Federal Republic of Nigeria , (2012) CCJELR, 10

Aminu v. Government of Jigawa State and 3 ors, where the defendant contended that the human right which the applicant claimed to have been breached have not been domesticated in Nigeria by virtue of S. 12 of the 1999 Constitution, this objection thus overruled by the ECOWAS court.

ECW/CCJ/APP/08/07, October 27, 2008

ECW/CCJ/APP/30/11, available at <https://globalfreedomexpress.columbia.edu/cases/hydera-v-gambia/>, accessed June 4, 2022

ECW/CCJ/JUD/02/12, available at [http://www.courtecowas.org/site2012/pdf/file/decisions/judgements/2012/FEMI%20FALANA & ANOR V REPUBLIC OF BENIN & 2 ORS.p](http://www.courtecowas.org/site2012/pdf/file/decisions/judgements/2012/FEMI%20FALANA%20&ANOR%20V%20REPUBLIC%20OF%20BENIN%20&20ORS.p)

ECW/CCJ/JUD/04/18, available at <https://www.mediadefence.org/news/ecowas-court-delivers-landmark-decision-one-our-strategic-cases-challenging-laws>, Accessed June 3, 2022

ECW/CCJ/JUD/08/07, available at <https://www.africanwomeninlaw.com>, accessed March 4, 2022

ECW/CCJ/JUD/08/17, available at <https://www.africanwomeninlaw.com>, accessed June 3, 2022

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Judgment No: ECW/CCJ/JUD/18/12

Mjawasi & Others v. The Attorney General of Kenya