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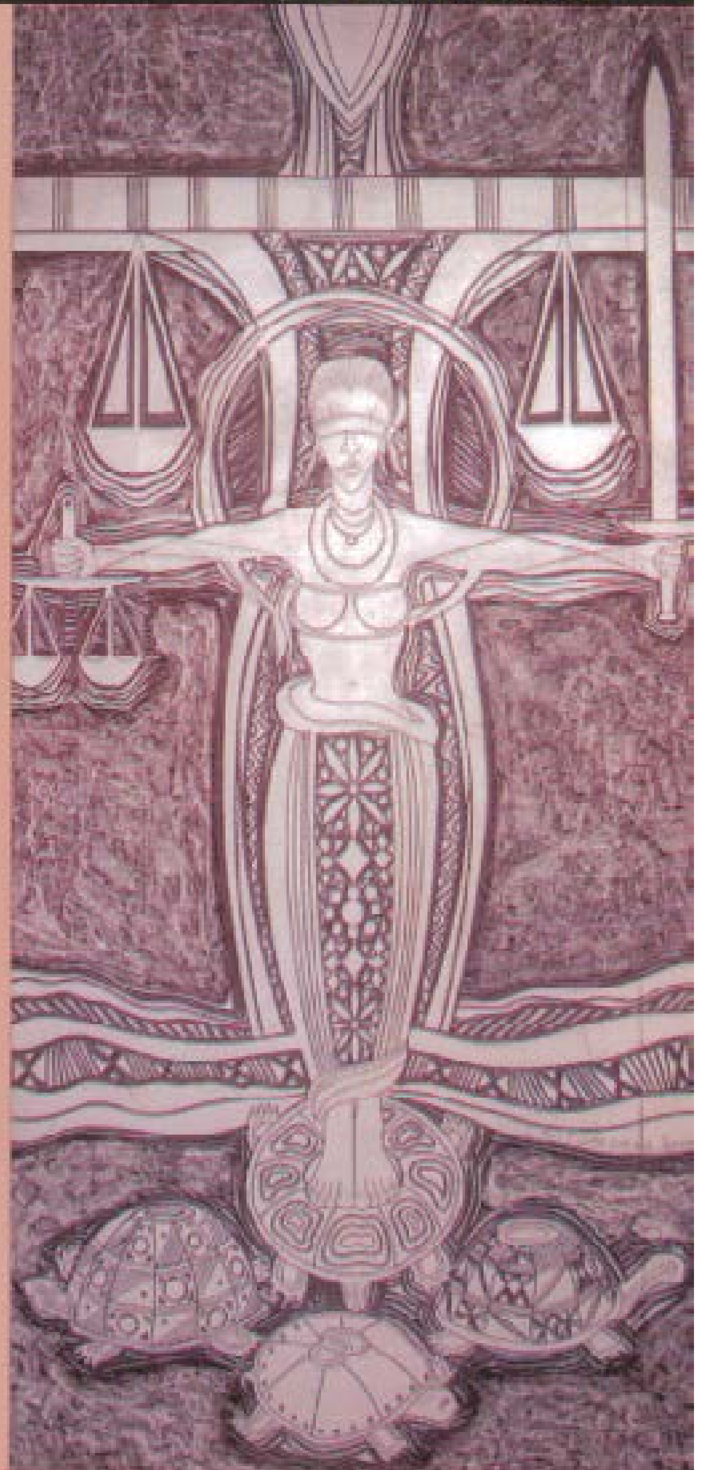

ALL CORRESPONDENCE SHOULD BE ADDRESSED TO: THE COMMUNITY COURT OF JUSTICE, ECOWAS,
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Editorial

The Community Court of Justice acquires an instrument of communication

The creation of the Economic Community of West African States (ECOWAS) by the Treaty of 28 May 1975, revised by the Treaty of 24 July 1993, represents an opportunity for all the leaders in our sub-region to promote co-operation and integration, in the hope of putting in place a West African economic union that is focused on: raising the standard of living of its peoples, maintaining and enhancing economic stability, fostering relations between Member States, and contributing to the progress and development of the African continent.

These objectives, as set out in Article 3 of the Revised Treaty, do call for the creation of Community institutions invested with the appropriate powers for addressing the current and future political, economic and socio-cultural challenges which go along with the process of integration.

In this sense therefore, Article 6 of the said Treaty lists out the ECOWAS Institutions, and positions the Court at number five, after the Authority of Heads of State and Government, the Council of Ministers, the Community Parliament, and the Economic and Social Council.

Such positioning of the Court within the hierarchy of ECOWAS Institutions does not diminish in any way far from it the significance of the role it has been called upon to play in the integration process.

Indeed, as the principal legal organ of the Community, the

Editorial

mandate of the Court is to ensure the observance of law ,and of the principles of equity in the interpretation and application of the provisions of the Revised Treaty, and the derived texts.

The Court equally has the jurisdiction to settle disputes within its scope of competence, as may be referred to it by Member States, Institutions, individuals and corporate bodies which are party to a case.

Hence, the mandate assigned the Court makes it necessary for the Community citizens and stakeholders to become well acquainted with this legal organ.

Conscious of the urgent need to ensure that it is known by the general public, and to disseminate general information on its activities on a daily basis, and on what it intends to achieve in the medium and short term, the Court put in place a general communication strategy which consists of the organisation of sensitisation missions in all Member States, holding of conferences and international seminars, the posting of its decisions and activities on the Internet, and the publication of a Court bulletin.

This bulletin, which is considered as an easily accessible tool of communication, aims at putting into the hands of the general public, useful information on the Court. It also provides an opportunity for the Court to bring to the knowledge of both individuals and corporate bodies within the Community zone, texts relating to the organisational structure and functioning mechanism of the Court, as well as the procedure applicable before it, so as to enable them seek redress whenever their rights are violated.

This is a first experience, it is true, and as such, improvements upon the content of this bulletin, I mean *your* bulletin, will call for contributions from all of you, the stakeholders. Criticisms, recommendations and suggestions from you will be your most precious contribution towards ensuring that the publication of this bulletin becomes a continuous and permanent experience. The *Opinion* column of this bulletin caters for your reflections on any issue that interests the Community.

I hereby express my gratitude to the Honourable Judges and the entire Staff of the Court for their contributions, which have resulted in the production of the first issue of this bulletin.

I also wish to express my special gratitude to the Staff of the Communication Division, the editorial committee and the editorial advisory committee of the bulletin. Their untiring efforts contributed to the publication of this issue.

Finally, I do nurse the hope and aspiration that this issue will arouse the curiosity and interest of our readers and moreover contribute to the sensitisation of the general public on activities of the Institution.

Honourable Justice Aminata Mallé-Sanogo
President, Community Court of Justice, ECOWAS
Chevalier de l'Ordre National du Mali

The Court in Brief

Points to remember on the Community Court of Justice, ECOWAS

BY ABDOULAYE BANE & BLANCHE N'DO PABOZI

The seven Judges of the Court

Creation

The Community Court of Justice was created pursuant to the provisions of Articles 6 and 15 of the Revised Treaty of the Economic Community of West African States (ECOWAS).

Its organisational framework, functioning mechanism, powers, and procedure applicable before it are set out in Protocol A/P1/7/91 of 6 July 1991, Supplementary Protocol A/SP.1/01/05 of 19 January 2005, Supplementary Protocol A/SP.2/06/06 of 14 June 2006, Regulation of 3 June 2002, and Supplementary Regulation C/REG.2/06/06 of 13 June 2006.

Composition

The Court is composed of seven (7) independent Judges who are persons of high moral character, appointed by the Authority of Heads of State of Government, from nationals of Member States, for a four-year term of office, upon recommendation of the Community Judicial Council.

Mandate

The mandate of the Court is to ensure the observance of law and of the principles of equity and in the interpretation and application of the provisions of the Revised Treat and all other subsidiary legal instruments adopted by Community.

The Court in Brief

Jurisdiction

Advisory Jurisdiction

The Court gives legal advisory opinion on any matter that requires interpretation of the Community texts.

Contentious Jurisdiction

- The Court examines cases of failure by Member States to honour their obligations under the Community law;
- The Court has competence to adjudicate on any dispute relating to the interpretation and application of acts of the Community;
- The Court adjudicates in disputes between Institutions of the Community and their officials;
- The Court has power to handle cases dealing with liability for or against the Community;
- The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State;
- The Court adjudges and makes declarations on the legality of Regulations, Directives, Decisions, and other subsidiary legal instruments adopted by ECOWAS.

Competence in matters of arbitration

Pending the establishment of an Arbitration Tribunal, provided for under Article 16 of the Revised Treaty, the Court has competence to act as Arbitrator.

Who is entitled to have access to the Court?
Access to the Court is open to the following:

- All Member States and the Commission, for actions brought for failure by Member States to fulfil their obligations;
- Member States, the Council of Ministers and the Commission, for the determination of the legality of an action in relation to any Community text;
- Individuals and corporate bodies, for any act of the Community which violates the rights of such individuals or corporate bodies;
- Staff of any of the ECOWAS Institutions;
- Persons who are victims of human rights violation occurring in any Member State;
- National courts or parties to a case, when such national courts or parties request that the ECOWAS Court interprets, on preliminary grounds, the meaning of any legal instrument of the Community;
- The Authority of Heads of State and Government, when bringing cases before the Court on issues other than those cited above.

How to access the Court

Cases are filed before the Court through written applications addressed to the registry. Such applications must indicate the name of the applicant, the party against whom the proceedings are being instituted, a brief statement of the facts of the case, and the orders being sought by the plaintiff.

Applicable law

The Court applies the Treaty, the Conventions, Protocols and Regulations adopted by the Community and the general principles of law as set out in Article 38 of the Statute of the International Court of Justice.
In the area of human rights protection, the Court equally applies, *inter alia*, international instruments relating to human rights and ratified by the State or States party to the case.

Decisions of the Court

Decisions of the Court are not subject to appeal, except in cases of application for revision by the Court; decisions of the Court may also come under objections from third parties. Decisions of the Court are binding and each Member State shall indicate the competent national authority responsible for the enforcement of decisions of the Court.

What is new?

Inter-institutional solidarity highlighted at the opening ceremony of the 2007/2008 legal year

BY TOE EMILE BADOU

Like the re-opening ceremonies of educational institutions, legal and judicial institutions do set aside a special time and occasion for the honourable gathering of their lot, the coming together of the judicial family and its fraternisation with the external world. As a merely fashionable phenomenon or as a deeply rooted judicial culture, the ceremony to mark the legal year has come to stay, and to be counted as a worldwide universal practice. We can therefore easily understand that in the absence of legislative or regulatory provisions which formally state whether the Court of Justice of ECOWAS may or may not celebrate the opening of the legal year, and in the absence of modalities for its celebration, this age-long practice has come to acquire an authority of its own, and constitutes henceforth, the legal basis upon which the Court holds this solemn ceremony.

For the year 2007/2008, the ceremony was held on 18 September 2007. Since the highlight was on inter-institutional solidarity of ECOWAS, the occasion was graced with the honourable presence of several dignitaries: Dr. Mohammed Ibn Chambas, President of ECOWAS Commission, Mr. Mahamane Ousmane, President of ECOWAS Parliament, representatives of diplomatic missions accredited to the Federal Republic of Nigeria and ECOWAS, the civil society, Ford Foundation, OSIWA, just to mention but a few.

Group photograph of Judges of the Court and Presidents of ECOWAS Institutions during the opening ceremony of the legal year

During the ceremony, Honourable Justice Aminata Mallé-Sanogo, President of the Court, delivered the speech reproduced below:

Speech delivered by the Honourable President of the Court of Justice of ECOWAS during the solemn court session to mark the opening of the 2007/2008 legal year:

Your Lordship the President of the Supreme Court of the Federal Republic of Nigeria,
The Honourable Minister of Justice (and Attorney General) of the Federal Republic of Nigeria,
The Honourable Minister of State for Justice of the Republic of Ghana,
Your Excellency the President of the ECOWAS Commission,
Your Excellencies the Ambassadors accredited to ECOWAS, and Representatives of the Diplomatic Corps,
The Honourable Speaker of the ECOWAS Parliament,
Honourable Judges of the Community Court of Justice,
Distinguished Heads of ECOWAS Institutions,
The President of the Bar Association of the Republic of Benin,
The President of the Nigerian Bar Association,
The Representative of the West African Bar Association,
The Director of OSIWA,
Staff Members of the Court,
Distinguished Invited Guests, Ladies and Gentlemen,

What is new?

1. It is a great honour for me and for the entire Community Court of Justice, ECOWAS, to host on its premises, for the second consecutive time, this august assembly, on this occasion of the solemn ceremony marking the opening of the Legal Year 2007-2008.

2. This assembly of ours for the day has brought together such a great number of eminent personalities, that it would be impossible for me to name them all. But, permit me to extend a word of welcome, on behalf of the Court, to the Honourable Minister of State for Justice of the Republic of Ghana, and to the President of the Bar Association of the Republic of Benin, who came so far away from Abuja to grace this occasion.

3. I would also wish to recognise the presence, amongst us, of the Honourable Minister of Justice (and Attorney General) of the Federal Republic of Nigeria, whose Government has demonstrated great support and constant interest in our Institution.

4. There is no gainsaying that, having in our midst the President of the ECOWAS Commission and the Speaker of ECOWAS Parliament demonstrates the excellence of the relations of close collaboration existing between our respective Institutions.

Your presence, today, confers on our ceremony, its full solemnity. On behalf of the Members of the Court, I hereby express to you my most sincere gratitude.

Distinguished Invited Guests, Ladies and Gentlemen,

5. If the marking of the annual legal year of the Community Court of Justice, constitutes an occasion for bringing together a wide range of very important and high-ranking personalities from our Community quite apart from its solemn nature it equally affords the Court an opportunity to assess the activities undertaken during the past year, draw lessons from them, and seek prospects for the years ahead.

6. This exercise also offers a great opportunity to the Court to inform such a prestigious gathering of its role and significance in our Community.

7. Since the entry into force of the 19 January 2005 Supplementary Protocol, the significance and role of the Court has assumed a greater dimension something we need to be glad of.

The flood of applications being registered by the Court shows the interest of the ECOWAS citizens in our Court, and it is also as a result of the expansion of the competence of the Court to hear cases of Human Rights violations in all the Member States.

8. Between January 2006 and June 2007, twenty six (26) applications were filed. During the same period, the Court held sixty-three (63) sessions. The applications concerned various issues, for example: **disputes regarding the**

> "It is true that rendering justice is a function which always comes under criticisms be they founded or unfounded for, in most cases, each person coming before the Court to legitimately seek justice, either has a partial perception of the truth or would want to see his own version of "the truth" emerging as the triumphant one, which may not necessarily be the objective truth of the rule of law. It is, precisely, such rule of the law which must always constitute the pointer being followed by the Court, and it is the Court's adherence to such rule which justifies its fundamental role of exercising the powers of control over the Community law in the sub-region."

What is new?

Community and its officials; disputes relating to contracts; determination of the legality of certain acts; and, cases of Human Rights violation.

9. Two decisions of inadmissibility were made in *Case Concerning Moussa Léo Kéita v. Republic of Mali*, and *Case Concerning Alhaji Hammadi Tidjani v. Federal Republic of Nigeria, Republic of Mali, Republic of Benin, Attorney General of Lagos State, and Attorney General of Ogun State.*

10. It happens that, sometimes, following a decision made by the Court, misunderstanding erupts between the Court and certain bodies or parties to the proceedings, with the Court being criticised. This is perfectly understandable and even unavoidable for a judicial body be it at the national or Community level.

11. It is true that rendering justice is a function which always comes under criticisms be they founded or unfounded for, in most cases, each person coming before the Court to legitimately seek justice, either has a partial perception of the truth or would want to see his own version of "the truth" emerging as the triumphant one, which may not necessarily be the objective truth of the rule of law.

It is, precisely, such rule of the law which must always constitute the pointer being followed by the Court, and it is the Court's adherence to such rule which justifies its fundamental role of exercising the powers of control over the Community law in the sub-region.

12. Indeed, to exercise its mandate to the full, the Court must be founded upon its own independence which is its principal feature and at the same time, upon the guarantee of equitable and credible justice for all the citizens of the Community.

13. **Ladies and Gentlemen**, the independence of the judiciary is a fundamental principle of every political and socio-democratic system, whether at the national, regional or international level.

14. But its implementation on a daily basis constitutes a challenge for each and every one of us to surmount first of all, as Judges but also, with the understanding and co-operation of the sister Institutions with whom we share the same ideal of offering an equitable, safeguarded and credible justice a guarantee of stability and economic prosperity in the sub-region.

15. However, when the criticisms of our decisions are well-founded, they do contribute to improve upon the quality of our work, for, needless to recall, rendering justice always remains a human endeavour, and cannot therefore lay any claim to perfection.

16. Conscious of this situation, the Court envisages putting in place, an ambitious programme of the publication of its decisions, not only in the *Official Journal* of the Community, but also on its Website, to make room for an easier access of its decisions to a wide readership, particularly, for legal professionals, who can then make their comments thereon.

17. Such comments and criticisms, from eminent jurists and legal practitioners, would provide a great opportunity for us to open up the Court and its work to the community of jurists, so as to prepare the ground for an intellectual discourse, which cannot but be beneficial to the entire Community.

18. That is why we derive genuine pleasure from the fulfilment of the mandate assigned us a fascinating and thrilling one but sometimes very demanding and difficult, with the objective, among others, of making Integration Law a reality in West Africa.

19. As you are certainly aware, the principal mandate assigned the Court, in accordance with paragraph 1, Article 9 of the 1991 Protocol, is that of ensuring the observance of law and of the principles of equity in the interpretation and application of the provisions of the Revised Treaty.

20. From this general competence is derived other prerogatives of the Court, in respect of the interpretation and application of regulations and directives, and other subsidiary legal instruments adopted by ECOWAS; **the legality of the derived instruments of the Community; actions for damages against the Community or an official of the Community,**

What is new?

for any action or omission in the exercise of his duties; actions against the Community and its officials; disputes relating to the non-contractual liability of the Community; arbitration; questions on referrals for determination on preliminary grounds; and, cases of Human Rights violation.

21. It is therefore the duty of the Court, as the legal organ of the Community, to assign content and meaning to concepts like 'the principles of democracy', 'the rule of law' and 'good governance', to which reference is made in the 21 December 2001 Protocol on Democracy and Good Governance, as well as in the Supplementary Protocol on the Mechanism for the Prevention, Management and Resolution of Conflicts, Maintenance of Peace and Security, which founds the framework for preserving and safeguarding Human Rights.

22. Disputes on Human Rights will undoubtedly constitute, in the coming years, the principal issue that the Judges are going to have to deal with. Indeed, currently, more than 90% of the applications lodged at the Court concern cases of Human Rights violation.

23. Additionally, problems of interpretation will undoubtedly arise, regarding Human Rights the examination of acts of Human Rights violation falls within the scope of competence of the Community Court of Justice.

24. The general content of the provisions of paragraph 4, Article 9 of the 2005 Supplementary Protocol, which establishes the scope of competence of the Court in respect of Human Rights, enables us to make such an observation.

25. **Ladies and Gentlemen**, as you know, the Court is the ultimate expression of justice. Consequently, it owes it as a duty to render itself accessible to all.

Accessibility, today, constitutes a serious handicap to the Community citizen possessing the right to seek justice before the Court due to the long distances separating him from the Court, and as well, the extreme poverty of most of the potential applicants, who cannot therefore take their cases to court. Faced with the inexistence of a legal-aid system, such potential applicants find themselves completely defenceless.

26. The question of accessibility is one of the major challenges facing the Court, and it is obligatory upon us to come up with fresh solutions which are suitable for this emerging problem.

27. This significant issue of *access to justice* has become more pressing, precisely as a result of the increasing demand for justice from the Community citizens.

It was thus, by virtue of Article 26 of the 1991 Protocol, that the Court decided to sit in Mali, in *Case Concerning Moussa Léo Kéita* v. *The State of Mali*.

28. If this stop-gap measure, in certain respects, enables the Court to come closer to persons whose right it is to seek justice before the law courts, it is not less deniable that the accessibility of such persons is still fraught with obstacles, particularly, as regards costs associated with court proceedings.

29. But, you will agree with me that the resources available to the Court do not, most often, permit it to hold court sessions outside the location of its seat.

30. This is why the Court has already established contact with organisations of the civil society, among which one can mention OSIWA, to sensitise them towards taking up the costs of legal fees.

Already, some studies have been made by the West African Bar Association and the OSIWA NGO, on the modalities for setting up a legal-assistance fund.

31. But the support and assistance of such Associations, however significant they may be, will not suffice, if our desire is to put in place a Community solidarity-system for deprived persons.

32. This led us to consider setting up a legal solidarity-system at the Community level, to make it possible for us to come to the aid of the most deprived of the legitimate seekers of justice, so as to help them gain easier access to justice at the Community level.

33. It is the responsibility of the States and other sister Institutions working in partnership

What is new?

with the Court, to help the Court find a permanent solution to this thorny issue.

34. Indeed, the Community Court of Justice, ECOWAS, cannot constitute itself into **"the justice system of only-the-affluent". It is incumbent upon the Court to be of good service to all citizens of our Community, and this is what founds the legitimacy of the Court.**

35. The past year also saw the Court instituting an elaborate training programme, not only for the Judges but also for the Professional Staff and the Auxiliary Administrative Staff.

36. As you are aware, the continuing training of a judge contributes towards improvement in the quality of justice.

It was our firm belief in the foregoing which led us to organise study tours, at the Court of Justice of the European Communities, at Luxemburg; at the International Court of Justice, at the Hague; and at the European Court of Human Rights, at Strasburg.

Judges and officers of the Court equally participated in seminars and training sessions in several countries or training institutes in Europe and United States of America.

Special emphasis is now being placed on the training of the Translators and Interpreters, so as to get them acquainted with legal concepts.

37. In this connection, the Court benefited from the technical assistance of a Canadian expert, with specialisation in Legal Terminology, who offered top-quality training to our Translators and Interpreters.

This very interesting experience should be replicated on a regular basis, to enable our Translators and Interpreters master the legal concepts, and to improve upon the quality of their work; Members of the Court depend, partly, on the quality of their output.

38. One of the central objectives of the Court for the year 2008, is to acquire a reference library which measures up to the standard of international courts, like that of the International Court of Justice, or yet still, the Court of Justice of the European Union.

39. This is why the Court has acquired several books covering various fields of International Law and Community Law.

Certain books were acquired with the Court's own funds, among which **300** were in English, **346** in French and **34** in Portuguese.

40. At the same time, the Court received **1,205** reference books and **19** monographs in English and French from the NGO known as **OSIWA**.

At this juncture, permit me to express our gratitude to OSIWA for this very precious assistance and support it provided for the Court.

41. During the past legal year, activities of the Court were equally directed towards sensitisation missions in Member States.

A sensitisation mission was thus organised in Sierra Leone, last May. It falls in line with a continuous process of sensitisation missions, the earlier editions of which had been conducted, between 2004 and 2006, in Côte d'Ivoire, Burkina Faso, Senegal, Benin Nigeria border, Niger, Mali, Gambia, and Togo.

These missions brought the Court to the fore and to the knowledge of the following: the political and administrative authorities of the Member States of the Community, the national courts, the Bar Associations, the civil society, the economic operators, the media, and the masses of the people.

42. Particular emphasis was laid on the Protocols relating to the Free Movement of Persons, the Right to Residence and Establishment, and the ECOWAS Trade Liberalisation Scheme (ETLS), in order that the targeted actors would make full use of them.

These sensitisation missions provided the opportunity for the Court to inform its various respondents about the organisational framework, functioning mechanism and competence of the Court, while at the same time, assessing the huge expectations of the citizens, as regards justice at the Community level.

43. Two similar sensitisation missions will be conducted in October 2007, in Cape Verde and Guinea Bissau, and three others have been scheduled for 2008, in Liberia, Togo and Guinea Conakry.

What is new?

44. Besides, last year also witnessed the participation of the Community Court of Justice, for the first time, in the ECOWAS Observer Mission on the Presidential elections held in Senegal.

Moreover, the Court participated in the 1st Ordinary Session of the ECOWAS Parliament, for the year 2007, at which event it made a presentation on the role of the Court and the issues at stake in the integration process of West Africa.

Finally, the President of the Court participated in a Press Conference, organised on 25 May 2007, by the President of the ECOWAS Commission, on the occasion of the celebration of the 32nd Anniversary of ECOWAS.

These series of participation by the Court, in inter-institutional activities, gives expression to the willingness of the Court to further strengthen ties with the other ECOWAS Institutions.

45. Similarly, the President of the Court administered the oath of office of the ECOWAS Commissioners, during the 58th Session of the Council of Ministers at Ouagadougou, in Burkina Faso, and also that of the President of the ECOWAS Commission, during the 32nd Ordinary Session of the Authority of Heads of State and Government of ECOWAS, held at Abuja on 15 June 2007.

46. Several personalities from Institutions of the Community, as well as diplomats, were received by the Bureau of the Court.

We can cite the cases, for example, of the Vice-President of the Commission, the Commissioner for Macro-Economic Policy, the Secretary-General of the Parliament, the Director-General of GIABA, and the Ambassadors of the Republics of Guinea and Mali.

47. All these visits were organised within the framework of the strengthening of Inter-Institutional co-operation, vital for the success of the mandate assigned us, and indispensable for the realisation of the political, economic and legal integration of our West African sub-region.

Distinguished Invited Guests, Ladies and Gentlemen,

48. The year 2008 presents the Court with several prospects which have been defined in terms of objectives to be attained. They relate to all areas of activity and are intended to bring significant improvements into the quality of work and performance of the Court.

49. These new prospects concern, in particular, the strengthening of the operational capacity of the Court. In this sense, the Court shall carry on with its recruitment of qualified Professional Staff, in a bid to realise its objectives.

In accordance with its Recruitment Plan, as adopted by the Council of Ministers, covering the period from 2007 to 2010, the Court went ahead and recruited Personal Assistants to the Judges, Interpreters and Translators, a Reviser, a Procurement Officer, a Personnel Officer, and an Accountant.

Other recruitments of Professional Staff will follow, between now and the end of the current calendar year.

50. In the area of co-operation, the Court did enhance its relations with its partners, among which we can cite **Ford Foundation**, and **Konrad Adenaeur Foundation**. The Programme Officers of both institutions were received by the Court.

51. Following the Co-operation Agreement signed between the Court and Ford Foundation, the latter pledged to help strengthen the operational capacity of the Court, particularly, in equipping the library, in carrying out the computerisation of the various Departments, and in the training of the Staff.

52. Besides, through its President, the Court has been invited to Germany for a study tour which will concern, among other themes, the structure, functioning and independence of the justice system in Germany.

53. The Court equally intends to strengthen its bonds of co-operation with the **Commonwealth**; the latter has pledged to offer books on law to the Court, to augment the capacity of the Court library.

What is new?

54. The building up of ties of co-operation was also extended to regional courts such as the Court of Justice of **SADC**.
Members from the SADC Court undertook a study tour of our Institution, in order to take a cue from our Court's mode of operation.
55. It is still in this vein that our officers shall be undertaking study tours or training sessions in the various Institutions such as the Court of Justice of the European Communities, the Court of Justice of UEMOA, the Common Court of Justice and Arbitration of OHADA, and the African Court of Human and Peoples' Rights.
Such study tours and training sessions provide opportunities for the Court to be guided by the experience of other Institutions or legal systems, with a view to perfecting the functioning mechanism of our own Court.
56. A framework of co-operation with the European Union aimed at strengthening the capacity of the Court has been put in place with the assistance of international experts. The Court counts on the support of the ECOWAS Commission for the execution of this project.
57. The Court also undertook to widen the scope of its co-operation with international institutions like the **UNHCR (United Nations High Commission for Refugees)**, whose **Representative at Abuja** was received by the Bureau of the Court.
58. Besides, this year, priority will be given to staff training and the organisation of seminars and conferences, with the aim of strengthening further the capacity of the Court.
59. It is in connection with this, that an international conference will be organised on *"The Law in the Process of Integration of West Africa"*, this November, here in Abuja.
This conference will bring together several experts of various backgrounds and persuasions, to reflect on the prescriptive process of integration in West Africa.
60. Today, the prime objective of the Court is to deliver justice within **reasonable time-limits**.
61. It is to this end, and in compliance with the Rules of the Court, that **Practice Directions** shall be issued to the Registry Department, in order to improve upon the promptness of compiling the General Lists of court cases.
62. During the year 2007-2008, the Court shall apply the various measures designed to bring perceptible improvements into the quality of services it provides, and which first and foremost, will relate to its Decisions, but equally, to its modes of reception, public-information strategy, and the service conditions of the Staff.
63. The creation of an **Arbitration Chamber** within the Court, to enable such a chamber to fulfil its functions of arbitration, forms part of our projections into the future, as provided for by Article 9 (5) of the 19 January 2005 Protocol.
64. Similarly, careful thought and consideration will be given, at the Court, to the creation of an **Appeal Chamber** which will, in no doubt, imply the revision of paragraph 2, Article 76 of the Revised Treaty.
Indeed, a two-tier court system is always beneficial to him whose right it is to seek justice before the court of law, as it contributes to further safeguard his rights.
This idea has been raised and discussed by the West African Bar Association, with a view to sensitise the Community stakeholders on the issue.
65. In the area of **Communication**, the Court shall undertake an ambitious programme of information and communication, in reaching out to all the administrative establishments of Member States, legal professionals, associations and organisations, and the civil society, in order to explain and communicate better, its line-up of programmes and activities.
66. This approach has been adopted in the wake of our perceived need to provide more information on the Court, as observed during the various sensitisation missions to Member States, and as well, from the urgent need for us to take better account of the citizens'

What is new?

complaints, expectations, misunderstandings, and concerns, as expressed by the masses of the people we met.

This is because, quite apart from the great need to address the various challenges cited above, the future of the Court shall equally be enhanced by our citizens' awareness that the Court exists for their sake and that it constitutes a welcome avenue for seeking justice, by ensuring that they have a feeling of a better understanding of the functioning mechanism of the Court.

Distinguished Guests, Ladies and Gentlemen,

67. The new legal year into which we are being ushered, holds great promise for the future, and also, marks a significant stage in the life of the Court.

68. Gradually, but surely, the Court is assuming its full position within the institutional framework of ECOWAS; it also appears that it has become known and recognised, much better now, by the masses of our Community.

69. But these marks of progress should not make us forget that huge efforts still remain to be made to improve upon our achievements, in order to offer the best conditions for the legitimate seekers of justice in the Community.

70. It is upon the basis of the ability of the Court to address these challenges that our Institution will be judged, and it is also upon this that my commitment lies in my capacity as the President of the Institution to see to it, personally, that success crowns our efforts.

Ladies and Gentlemen, I am aware of the huge responsibility associated with my assignment as the President, but this assignment is no less exciting.

71. Also, I intend to carry out this responsibility within the context of genuine team work with my colleague Judges and the entire Staff of the Court, to whom I hereby reiterate my sincere gratitude.

72. Though an independent legal organ, the Court does not, however, live its life as if it were functioning in isolation far from it.

Collaboration with ECOWAS sister Institutions is essential for the realisation of our objectives, and I intend to strengthen this inter-institutional co-operation during my tenure.

Indeed, as is clearly stated by a Bambara proverb of Mali, **"a single finger cannot pick up a pebble"** it is upon the collaboration of all the Institutions of ECOWAS, and that of the partners of the Court, that the success of our mandate will depend.

73. I seize this opportunity to express to them the gratitude of our Institution for their constant support.

74. I cannot end my speech without a word of thanks to all the personalities here present, for the interest they have demonstrated in the Court, by taking part in this solemn ceremony which marks the official opening of the 2007-2008 Legal Year.

75. We hereby convey to you our deepest gratitude and appreciation.

76. While wishing my colleague Judges and all Staff of the Court, success in the coming year's work, I hereby declare open the 2007-2008 Legal Year of the Community Court of Justice, ECOWAS.

Thank you for your kind attention.

Hon. Justice Aminata Mallé-Sanogo\
President\
Community Court of Justice, ECOWAS\
Abuja-Nigeria

Activities of the Court

Judicial Activity

Remarkable progress in the judicial activity of the Court

BY TONY ANENE-MAIDOH

The Court in session.

The Registry Department of the Community Court of Justice is the nerve centre of the Court and plays a fundamental role in the judicial functions of the Court. It is one of the three Departments in the Court and the Chief Registrar is the Head of the Department. Protocol A/P1/7/91, Supplementary Protocol A/SP.1/01/05, the Rules of Procedure of the Court and REGULATION C/REG.2/06/06 prescribe the functions of the Chief Registrar and the Registry Department.

The key function of the Chief Registrar and the Registry Department is to provide services for the efficient discharge of the judicial functions of the Members of the Court. It includes; receiving, processing, transmitting and serving all applications, pleadings and supporting documents lodged in the Registry by parties. The Department is responsible for preparing the minutes of proceedings and for keeping custody of essential registers and judicial records of the Court. The Department is also responsible for the publications of the Court. The Chief Registrar/Registrars are required to attend all Court sittings and to assist the Court, the President and Judges in the discharge of their official functions.

The activities of the Registry Department are directly related to the judicial functions of the Court. The Department is now very busy because the Court is now actively engaged in the performance of its judicial functions. There has been a remarkable increase in the tempo of judicial activities following the adoption of Supplementary Protocol A/SP.1/01/05 in January 2005. Between January 2001 and December 2004 only two cases were lodged before the Court. This was mainly due to the fact that under Protocol A/P1/7/91 only Member States had direct access to the Court. Individuals and corporate bodies did not have direct access to the Court under the said Protocol. In the very first case that was lodged before this Court in 2003; OLAJIDE AFOLABI Vs. FEDERAL REPUBLIC OF NIGERIA the Court held that an individual did not have direct access to the Court under Protocol A/P1/7/91 and therefore struck out the case on the ground that it was incompetent.

Following concerted efforts made by the Court, the Supplementary Protocol was adopted in 2005. It amended the 1991 Protocol of the Court and expanded the jurisdiction of the Court. It also granted direct access to the Court to individuals and corporate bodies in respect of certain causes of action. It also gave the Court power to act as Arbitrator pending the establishment of the Arbitration Tribunal provided for under Article 16 of the Revised Treaty. The granting of direct access to individuals by the Supplementary Protocol has had a positive impact on the judicial activities of the Court.

STATUS OF APPLICATIONS LODGED IN THE COURT

Following the adoption of the Supplementary Protocol, 6 cases were lodged in 2005 and 21 new cases were lodged in 2006, Twelve (12) new cases were lodged in 2007 and so far three (3) cases have been lodged in 2008. Since the inception of this Court, a total of forty-six (46) cases have been lodged before the Court. The Court has held a total of one hundred and twenty (120) Court sessions since its inception. Some of the matters have been heard and concluded or struck out while others are part heard or pending. Fourteen (14) judgments have been delivered in the following cases;

1. ECW/CCJ/APP/01/03
   OLAJIDE AFOLABI
   VS
   FEDERAL REPUBLIC OF NIGERIA
   Judgment delivered on 27th April, 2004

2. ECW/CCJ/APP/01/04
   CHIEF FRANK UKOR
   VS
   MR RACHAD LALEYE
   Judgment delivered on 27th May, 2005

3. ECW/CCJ/APP/01/05
   MRS TOKUNBO LIJADU-OYEMADE
   VS
   1. EXECUTIVE SECRETARY (ECOWAS)
   2. MR. HARUNA WARKANI
   3. MR. JULES GOGOUA
   Judgment delivered on 5th April, 2006

4. ECW/CCJ/APP/01/05
   1. EXECUTIVE SECRETARY (ECOWAS)
   VS
   MRS. TOKUNBO LIJADU- OYEMADE
   Judgment delivered on 24th May, 2006

5. ECW/CCJ/APP/01/05

Activities of the Court
Judicial Activity

MRS TOKUNBO LIJADU-OYEMADE
VS
1. EXECUTIVE SECRETARY (ECOWAS)
2. MR. HARUNA WARKANI
3. MR. JULES GOGOUA
Judgment delivered on 16th October, 2005

6. ECW/CCJ/APP/02/05
HON. DR. JERRY UGOKWE
VS
FEDERAL REPUBLIC OF NIGERIA
Judgment delivered on 7th October, 2005

7. ECW/CCJ/APP/03/05
COMMUNITY PARLIAMENT ECOWAS
VS
COUNCIL OF MINISTER OF ECOWAS
EXECUTIVE SECRETARY ECOWAS
Judgment delivered on 4th October, 2005

8. ECW/CCJ/APP/04/05
CHIEF FRANK UKOR
VS
MR RACHAD LALEYE
THE REPUBLIC OF BENIN
Judgment delivered on 2nd November, 2007

9. ECW/CCJ/APP/05/05
PROF ETIM MOSES ESSIEN
VS
REPUBLIC OF THE GAMBIA
UNIVERSITY OF THE GAMBIA
Judgment delivered on 29th October, 2007

10. ECW/CCJ/APP/01/06
ALHAJI HAMMANI TIDJANI
VS
1. FEDERAL REPUBLIC OF NIGERIA
2. ATTORNEY GENERAL OF MALI
3. ATTORNEY GENERAL OF REPUBLIC OF BENIN
4. ATTORNEY GENERAL OF LAGOS STATE
5. ATTORNEY GENERAL OF OGUN STATE
Judgment delivered on 28th June, 2007

11. ECW/CCJ/APP/04/06
EXECUTIVE SECRETARY (ECOWAS)
VS
MRS. TOKUNBO LIJADU- OYEMADE
Judgment delivered on 16th November, 2006.

12. ECW/CCJ/APP/05/06
MOUSSA LEO KEITA
VS
THE REPUBLIC OF MALI
Judgment delivered on 22nd March, 2007

13. ECW/CCJ/APP/06/06
MRS. ALICE R. CHUKWUDOLUE & 7 OTHERS
VS
REPUBLIC OF SENEGAL
Judgment delivered on 22nd November, 2007

14. ECW/CCJ/APP/03/07
STARCREST INVESTMENT LIMITED
VS
1. EXECUTIVE SECRETARY OF ECOWAS
2. FEDERAL REPUBLIC OF NIGERIA
3. ATTORNEY GENERAL OF THE FEDERAL REPUBLIC OF NIGERIA
4. ADDAX OIL AND GAS NIGERIA LTD.
5. STARCREST NIGERIA ENERGY LTD.
Case struck out on 6th February, 2008

Four (4) matters have been argued and adjourned for judgment. They are as follows;

1. ECW/CCJ/APP/05/07
ODAFE OSERADA
VS
1. COUNCIL OF MINISTERS, (ECOWAS)
2. COMMUNITY PARLIAMENT, (ECOWAS)
3. THE COMMISSION, (ECOWAS)

2. ECW/CCJ/APP/10/06
DJOTBAYI TALBIA & 14 ORS
VS
1. FEDERAL REPUBLIC OF NIGERIA
2. ATTORNEY GENERAL OF THE FEDERATION OF NIGERIA
3. CHIEF OF NAVAL STAFF
4. INSPECTOR GENERAL OF POLICE

3. ECW/CCJ/APP/04/07
CHIEF EBRIMAH MANNEH
VS
THE REPUBLIC OF THE GAMBIA

4. ECW/CCJ/APP/07/07
MOHAMMED KAMEL WANSA TRADING AS D & M IMPEX, MELBOURNE ENTERPRISE & VULGANOVA PHARMACY
VS
1. THE REPUBLIC OF SIERRA LEONE
2. ALH. DR. AHMED TEJAN KABBAH

Twelve (12) other matters are currently pending before the Court. Some of them are part heard, while others are still in the written procedure phase. It should be noted that on the 13th day of March 2007, Fifteen (15) cases; ECW/CCJ/APP/07/06 - ECW/CCJ/APP/21/06 were consolidated into one suit, while on the 10th day of November 2006, Two (2) cases ECW/CCJ/APP/02/06 and ECW/CCJ/APP/03/06 were consolidated. The pending matters are as follows:

1. ECW/CCJ/APP/02/06
QUDUS GBOLAHAN FOLAMI
VS
COMMUNITY PARLIAMENT ECOWAS
DIRECTOR OF ADMINISTRATION & FINANCE,
COMMUNITY PARLIAMENT, ECOWAS

2. ECW/CCJ/APP/03/06
PIYAHARA K. DIAMOUTENE
VS
COMMUNITY PARLIAMENT
DIRECTOR OF ADMINISTRATION & FINANCE
COMMUNITY PARLIAMENT, ECOWAS

3. ECW/CCJ/APP/01/07
DR. EMMANUEL AKPO
DR. MORENIKE AKPO
VS

Activities of the Court
Judicial Activity

1. G77 SOUTH SOUTH HEALTH CARE DELIVERY PROGRAMME.
2. THE REPUBLIC OF SIERRA LEONE

4. ECW/CCJ/APP/02/07
MRS TOKUNBO LIJADU-OYEMADE
VS
1. COUNCIL OF MINISTERS, ECOWAS
2. EXECUTIVE SECRETARY, ECOWAS
3. ADMINISTRATION AND FINANCE COMMISSION
4. MR. HARUNA WARKANI (PROFESSIONAL STAFF REPRESENTATIVE, EXECUTIVE SECRETARIAT)
5. MR. JULES GOGOUA (PROFESSIONAL STAFF REPRESENTATIVE, EXECUTIVE SECRETARIAT)

5. ECW/CCJ/APP/08/07
DAME HADIJATOU MANI KORAOU
VS
THE REPUBLIC OF NIGER

6. ECW/CCJ/APP/09/07
LINAS INTERNATIONAL NIG
VS
1. THE AMBASSADOR OF MALI
2. EMBASSY OF REPUBLIC OF MALI
3. THE REPUBLIC OF MALI

7. ECW/CCJ/APP/10/07
FEMI FALANA
VS
THE REPUBLIC OF BENIN & 14 ORS

8. ECW/CCJ/APP/11/07
MUSA SAIDY KHAN
VS
THE REPUBLIC OF THE GAMBIA

9. ECW/CCJ/APP/12/07
THE REGISTERED TRUSTEE OF SOCIO-ECONOMIC RIGHTS & ACCOUNTABILITY PROJECT
VS
1. THE FEDERAL REPUBLIC OF NIGERIA
2. UNIVERSAL BASIC EDUCATION EDUCTION COMMISSION (UBEC)

10. ECW/CCJ/APP/01/08
STARCREST INVESTMENT LIMITED
VS
1. THE PRESIDENT OF THE COMMISSION OF ECOWAS
2. THE FEDERAL REPUBLIC OF NIGERIA

11. ECW/CCJ/APP/02/08
MR. ADEDIJI BENJAMIN ADELEKE
VS
1. EXECUTIVE DIRECTOR, RECTAS
2. CHIEF ADMIN OFFICER, RECTAS
3. ASSISTANT CHIEF ADMIN OFFICER, RECTAS
4. GOVERNING COUNCIL, RECTAS

12. ECW/CCJ/APP/03/08
MR. REMMY OKEKE
VS
REPUBLIC OF BENIN

EXTERNAL COURT SESSIONS

Article 26 (2) of Protocol A/P1/7/91 provides that where circumstances or facts of a case so demand, the Court may decide to sit in the territory of another member state, that is, outside the seat of Court. In order to bring justice closer to the people, the Court has in the exercise of the powers vested in it by the above provision, sat outside its seat. In 2006/2007 two court sessions were held in Bamako, Mali in respect of suit ECW/CCJ/APP/05/06 MOUSSA LEO KEITA V. THE REPUBLIC OF MALI. The Court has also scheduled a session in Niamey, Niger Republic on 7th April, 2008 in respect of suit No. ECW/CCJ/APP/08/07 DAME HADIJATOU MANI KORAOU V. THE REPUBLIC OF NIGER.

CHALLENGES

The Registry Department has some challenges that we hope to resolve in the course of the year. A bailiff has to be appointed to take charge of the service of court processes. We trust that with the recent acquisition of an office annex, that space will now be created in the main office complex for the establishment of an open Registry. The Recorders have for several years been carrying out their functions without appropriate recording and transcribing equipment. As an interim measure, the Recording equipment procured under the Ford Foundation Project will soon be installed. The delay in the translation of court processes due to the shortage of Translators is a critical challenge that has to be overcome. Provision has been made in the 2008 budget for the computerization of the Registry. Computerization will positively impact on the operations of the Department.

The Registry Department wishes to congratulate the Honourable President, the Bureau and the Editorial Board for the publication of this Newsletter. Since the activities of the Registry are directly related to the judicial functions of the Court, the Department must be alive to its responsibilities. In order to improve its services, the Registry Department will take necessary measures to strengthen its capacity to provide efficient services for the judicial functions of the Members of the Court.

Other Activities

The Court deepens its external relations

BY MUSTAMUSI KILIMBE & KOUCHANOU KOFFI

Following the election of its new Bureau on 29 January 2007, the Community Court of Justice received eminent personalities, who came to express their congratulations to the new leadership.

The first of such VIPs to pay a visit to the Court was the Ambassador of the Republic of Mali accredited to ECOWAS and the Federal Republic of Nigeria, His Excellency Bouhakar Karamoko Coulibaly.

Then on 2, 9, 15 and 22 February, the President received in succession, delegations from Diamond Bank and ECOBANK, followed by the Director-General of GIABA, Dr. Adbulahi Y. Shehu, and the Resident Representative of Konrad Adenauer Foundation of Germany, Mr. Gerd D. Bossen.

Visits organised to the Court to congratulate the new Bureau and to establish ties of co-operation continued with further courtesy calls from the former Secretary General of the ECOWAS Parliament, Mrs. Halima Ahmed, the Vice-President of the ECOWAS Commission, Mr. Jean de Dieu Somda, the Commissioner for Macro-Economic Policy, Prof. L. N'galadjo Bamba, and the Director of Legal Affairs at the ECOWAS Commission, Mr. Roger Laloupo, who was accompanied by Mr. Ferdinand Aho of OHADA.

The Court equally received the following distinguished visitors: Resident Representative of the United Nations High Commissioner for Refugees (UNHCR), Mr. Alphonse Malanda, Ambassador of the Republic of Guinea Conakry accredited to ECOWAS, His Excellency Dr. Cheick Abdoul Camara, an official delegation from the Republic of Guinea Bissau, *Chargé* on ECOWAS Affairs at the Embassy of France in Nigeria, Mr. Francis Guenon, a delegation from the Southern Africa Development Community (SADC) who came on a study tour, Director of the German Centre for Studies on European Integration, Professor Ludger Kuhnardt.

Far from being mere courtesy calls, these visits equally play an active role in enhancing the relationships existing between the Court and those institutions.

The President of the Community Court of Justice, ECOWAS, thanking members of the SADC delegation who had come on a study tour

elevant recommendations emerge from a conference n law and integration in West Africa

BY FÉLICIEN HOUNKANRIN

e recommendations resulting from the ceedings of the conference held on 13 and November 2007, at the Rockview Hotel, uja, do hold great promise for the ancement of law in the ECOWAS sub-ion.

n deciding to hold a conference on the theme "*The Law in the Process of Integration in West Africa*", the Court ended to call for formal discussions on the ject matter, so as to take note of relevant posals which may enable it improve upon its ctioning mechanism, on one hand, and to p it remove certain obstacles which hinder its ional perspective, on the other hand.

Participants at the conference on law and integration in West Africa

conference was also anised with a view to ving the Court along lines of practical inment of integration the Community zone, rough the trumentality of the law.

he course of two days, ninent legal fessionals, namely, lges, lawyers and versity professors in sub-region and from ious backgrounds and suasions, heads of titutions and high-level fessionals from the nistries and departments of Benin, Burkina so, Côte d'Ivoire, Ghana, Gambia, Guinea sau, Guinea, Liberia, Mali, Niger, Nigeria,

"the non-application of the relevant legal norms of the Community which generate the laws and obligations, may, ultimately and permanently compromise the integration process, delay the development of the Member States, frustrate the institutions, and discourage the civil servants of the Community."

the civil society, brainstormed on the role and significance of the law in building a peaceful and economically strong Community.

Conscious of the challenges which still need to be surmounted to bring the thirty-three year old integration process to a point of success, certain key actors, particularly the President of the ECOWAS Commission, Dr. Mohammed Ibn Chambas, represented by the Vice-President of the Commission, Mr. Jean de Dieu Somda, observed that the non-application of the relevant legal norms of the Community which generate the laws and obligations, may, ultimately and permanently compromise the

Other Activities

the Member States, frustrate the institutions, and discourage the civil servants of the Community. Hence, according to him, the conference had come at the right time, to open up discussions on the situation and to find appropriate solutions to it. He thus stressed that all forms of cumbersome procedures and hindrances which impede integration must be fought with legal means, and that to be able to do this, it shall be imperative for one to observe the Community norms; the non-observance of such norms undoubtedly constitutes a hindrance to the forward march of the Community.

Expressing her satisfaction at the smooth conduct of the proceedings and the rich content of the discussions, the President of the Court, Honourable Justice Aminata Mallé-Sanogo, indicated that the proposals and recommendations will contribute to make the Court much more known to the general public and also affirm its role in the integration process of the Community, through the law.

Participants' contribution was indispensable. Indeed, among the recommendations made, one may cite as of prime importance the urgent need to create an appeal chamber within the Court structure and the putting in place of a control mechanism for implementing judgments. Besides, the Commonwealth representative, Mrs. Cheryl Thompson Barrow, made wise proposals concerning information and the training of Community citizens in law and Community justice. The representative of the West African Bar Association (WABA), Femi Falana Esq., on his part, suggested that the texts relating to the ECOWAS Community Court of Justice should be modified much further, in order to institute an appeal mechanism of the decisions of the Court, as well as a judicial and legal aid system and registries in all the Member States.

Participants at the conference on law and integration in West Africa

Group photograph of Judges from the Court and Member States at the conference on law and integration in West Africa,

Another recommendation, of no less importance, concerned the setting up of a mechanism for removing hindrances which impede the applicability of ECOWAS law in the Member States. It was also equally recommended that sensitisation activities should be stepped up.

These recommendations, so relevant, are a source of hope for the efficiency of the Court. They also provide the Institution with an opportunity for future advancement.

Other Activities

Translators and interpreters acquaint themselves with legal terminology

BY FÉLICIEN HOUNKANRIN & ISSA ILLIASSO

In connection with capacity building of its staff, the Court of Justice of the Economic Community of West African States (ECOWAS) organised for the personnel of its Language Services Division, a seminar on *"Legal Terminology"*, which was held at the seat of the Court.

From 20 to 25 July 2007, participants in the seminar shared their experience on the peculiarities of legal language and the comparative stylistics of legal French and English. The methodological approach was in the form of theoretical presentations and practical exercises on stylistic preference.

The lectures and tutorials were focused on the study of "false friends", how to identify them and how to look for the exact word needed. For example, the word "jurisdiction" in English does not mean *"juridiction"* in French. They are known as "false friends'. The practical lessons were also focused on collocations, concision, and reformulation of translated texts for the purposes of obtaining more accurate and concise translations.

The translators and interpreters received further information on the work tools required for doing their job. In addition to standard dictionaries, the Canadian expert, Mr. Louis Beaudoin, a legal language expert from *Trans-Clef Quebec*, Canada, who had travelled to Abuja to conduct the training, did recommend the use of specialised glossaries and dictionaries, CD ROMs, translation software, as well as the Internet.

Discussions were also organised on the daily problems encountered by the translators and interpreters. These discussion sessions were particularly significant because they enabled each and every one to share his or her experience in the field of translation. The seminar registered a big success because the lawyers and legal professionals of the Court also participated in the training sessions and provided clarifications on certain issues of law.

Beneficiaries of this training session included secretaries, personal assistants of judges, and the staff of the court registry.

Group photograph of participants of the seminar on legal terminology

Mr. Louis Beaudoin, the Canadian expert, presenting his speech during the opening ceremony of the seminar on legal terminology

Staff members of the Court receiving training on legal terminology

Opinion

Absence of exhaustion of local remedies before an international court: omission or renunciation?

It often occurs that in matters of submission of pleas for human rights violation before international judicial or quasi-judicial institutions, the applicant is required to contend with 'the non exhaustion of local remedies', as a ground for declaring his application inadmissible.

What is the source of this rule and what is its basis? What are the local remedies which must be exhausted and upon whom lays the burden of proof of the existence of such remedies? What is the current state of practice of this rule, particularly before the Community Court of Justice, ECOWAS?

By Blanche N'Do Pabozi
Holder of a Specialised Diploma in Human Rights Studies, Personal Assistant to a Judge at the Community Court of Justice, ECOWAS

The rule of preliminary exhaustion of local remedies, as a condition for the admissibility of an application, is found in nearly all the texts instituting international mechanisms of human rights protection.

It is easily found in the following provisions: Article 35(1) of the European Convention on Safeguard of Fundamental Human Rights and Freedoms; Article 46(1) (a) of the Inter-American Convention on Human Rights; Article 56(5) of the African Charter on Human and People's Rights; Article 6(2) of the Protocol relating to the African Charter on Human and People's Rights on Creation of African Court of Human and People's Rights; Article 41(1) (c) of the International Pact on Civil and Political Rights; Articles 2 and 5(2) (b) of the First Optional Protocol on the International Pact on Civil and Political Rights; Article 14(2),(5) of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 22(5),(b) of the Convention Against Torture and other Cruel, Inhuman or Degrading Punishments; Article 4(1) of the Optional Protocol on the Convention on the Elimination of all Forms Discrimination Against Women.

The rule of preliminary exhaustion of local remedies, as was affirmed by the International Court of Justice, in the *Anglo-Iranian Oil Company Case* of 22 July 1952 and the *Ambatielos Case* of 19 May 1953, is a rule of customary international law. Some of the provisions cited above, at any rate, expressly do make mention of this. As drawn from this source therefore, and in terms of human rights, it aims at protecting the national sovereignties against unsystematic international procedures. That is why, in the setting up of international mechanisms for the protection of human rights, it was the avowed conviction in international custom, that it is a duty to demand that the applicant addressed himself first of all to the territorial sovereign, in order to obtain justice.

Indeed, individuals are subjects of international law only when their States have accepted the binding principle thereof. Yet, it is precisely in matters of human rights that the individual quickly constitutes an independent subject in international law.

In this context, the rule of exhaustion of local remedies signifies that before summoning a State before an international judicial body, at least, the applicant must have served such a State with a formal notice drawing that State's attention to the human right violation he is complaining of, in order for the incriminated State to provide him with the necessary relief.

The protection of human rights by international institutions is therefore a subsidiary form of protection; that is to say, that, it is a final remedy which is resorted to, only when on the national plane, the

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applicant has not obtained the remedy he is legally entitled to. Either because the State has not put in place one or more mechanisms at the national level, to that effect. Or because the mechanisms put in place do not function, or did not admit the application. Or because the mechanisms instituted repaired the damage only "imperfectly". Or, finally, because the applicant was obstructed from seeking justice before the courts.

This is why in the terms of several international texts guaranteeing the individual's human rights, State parties to such texts come under an obligation not only to safeguard and protect the rights of the persons placed under their jurisdiction, but are also enjoined to grant such persons the right to a properly constituted system of redress when their rights and freedoms are infringed upon.

What are the local remedies which must be exhausted?

Of all the provisions which set out the condition of exhaustion of local remedies, none, except the American Convention on Human Rights, indicate specifically one or more types of local remedies to be exhausted.

On the face of it, and as is indicated in the American Convention, one would have recourse to judicial remedies. And here, it is needless to demonstrate that the judicial apparatus is the institution par excellence entrusted with the duty of curing the wrongs caused to others by the State or by natural or legal persons.

But besides judicial remedies, we may cite other specific juridical or quasi-juridical mechanisms:

To this effect, Article 14 (2) of the International Convention for the Elimination of Racial Discrimination recommends to States to put in place on the national plane, mechanisms (regardless of their status, composition, etc.) responsible for promoting the fight against racial discrimination, to examine and to offer relief to cases of racial discrimination. When examining cases of objection due to non-exhaustion of local remedies, the Committee against Racial Discrimination considers that in States where such structures exist, appearing before such bodies with one's case constitutes a preliminary remedy to be exhausted by the applicant.

Similarly, the European Court of Human Rights, in *Case Concerning Klass* **v.** *Germany*, held that *Fernmeldegeheimnisses* or *Commission G10* (a joint parliamentary commission instituted by the *Gesetz on Beschrankung of Briefpost* (i.e. the law on telephone communication and postal correspondence), responsible for looking into complaints relating to telephone communication, even though not a judicial set up, was all the same an effective and available avenue for redress.

In *Case Concerning Philip Afuson* **v.** *Cameroon*, the UN Committee on Human Rights, adjudicating upon the admissibility of the said communication, held that it had taken note of the evidence and exhibits produced by the author of the communication in respect of the complaints he had addressed to **several bodies**, none of which apparently gave rise to an inquiry.

Proof of the existence local remedies

International case-law unanimously asserts that the formal existence of a remedy is not sufficient for the legally claimed protection of the applicant to be attained.

In current practice, if certain causes of inadmissibility are automatically raised by an international judicial body before which a case is brought (in the cases of anonymous applications for instance), the objection drawn from the non-exhaustion of local remedies cannot be raised by any other than the defendant State.

Thus, neither the applicant (who has no interest, anyway, in raising an objection to admissibility) nor the Court, Committee or Commission, etc., may be able to raise such an objection even if in respect of the case submitted, the international body considers that there exists at the local level, remedies which the applicant has not made full use of.

Nevertheless, in certain cases, the international body must ensure that such local remedies have been fully utilised. Simple methods are employed, as in the *Philip Afuson* **v.** *Cameroon* case where the Human Rights Committee ruled that as regards the obligation of exhaustion of local remedies, the Committee had noted that the State party did not contest the admissibility of any of the grievances filed.

But a State raising an objection of non-exhaustion of local remedies must give a proof of their existence, accessibility, and utility. In clear terms, the defendant State must prove (a) that the remedy exists (b) that it is accessible, and (c) that such remedy has a utility.

(a) The existence of local remedies

In general, it does not suffice for the defendant State to cite non-exhaustion of local remedies. Much more

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importantly, the State must indicate with sufficient clarity, the judicial processes set out in the local legal order, and point out that, the individual applicant must have exhausted them, in so far as such remedies do exist with a sufficient degree of certainty. Cf.: *Judgment of AKDIVAR and Others v. Turkey* of 16 September 1968 European Court of Human Rights.

For example, in a complaint brought against the State of Senegal, the latter raised the issue of exhaustion of local remedies, indicating that in that particular case, the local remedies to be sought were before the Court of First Instance *Hors Classe* of Dakar. In another case against the State of Togo, where the latter was a Defendant, it indicated that the issue in dispute was within the competence of the Administrative Chamber of the Appeal Court of Lome, which constituted therefore the judicial body to be utilised.

(b) Effectiveness of the local remedies

The remedy indicated by the State must be effective. This means that the State must equally prove that the judicial processes which existence it indicates are effective and available as much in theory as in practice as at the time of the facts, and thus capable of granting the applicant the relief to his grievance. Cf.: *Judgment of AKDIVAR and Others* v. *Turkey* of 16 September 1968; id-supra.

Within this context, one may cite the example of the case-law of the *UN Committee on Human Rights* v. *Togo*.

In that Case, and following the objection of non-exhaustion of local remedies raised by the state of Togo before the UN Committee on Human Rights (cf. *Case Concerning Randolph Atti* v. *State of Togo*, Annals of the Committee 2001), the Committee held that a judicial body that had been set up for six (6) years, and which had not as given any decision, did not constitute an accessible and effective source of remedy.

Indeed, in this Case, the State of Togo cited the rule of non-exhaustion of available local processes, by indicating that the grievance raised by Mr. Randolph Atti was within the jurisdiction of the Togolese administrative courts, namely, the Administrative Chamber of the Court of Appeal of Lome, created by virtue of Order No. 37 of 7 September 1979 on the Judicial Framework of Togo. According to the Defendant State, even if this Chamber had remained inactive for a long time, the situation could not have been the same when the cause of the action arose, in so far as since 1996, the Administrative Chambers of the Court of Appeal and the Supreme Court were equipped with judges.

The objection regarding inadmissibility as raised by the State of Togo was dismissed by the Committee, on the grounds that if, physically, one could not deny the existence of such courts in Togo, it is demonstrated that as at the date the applicant brought his case before the Committee (February 2000), the courts in question had no significant volume of work in their case-law system, not even a single decided case.

Let's note that the Administrative Chamber of the Appeal Court of Lome held its first court session and also made its first decision *only* in 2006, i.e. 10 years after the appointment of judges to that chamber.

The African Commission of Human and People's Rights in the case of *Constitutional Right Project* v. *Nigeria*, adopted the same line of thought and declared that in the particular case, and as it had already decided in four (4) other cases brought before the *Commission* v. *Nigeria* case, Article 56(5) of the Charter was examined by taking account of the particular circumstances of that country, before concluding that the exemption clauses as set out create a legal situation where the Judiciary cannot exercise any control over the Executive, and that there were no local remedies to be exhausted.

(c) The remedy must have a utility

The notion of a remedy having a utility complements that of accessibility, meaning that the remedy must grant the individuals reasonable prospects of success. Cf.: *Judgment of AKDIVAR and Others* v. *Turkey* of 16 September 1968; id-supra.

For example, a highly corrupt judicial system or one that is entirely dependent on the Executive stands very high chances of not having any utility, in as far as it does not offer individuals any guarantee of a fair trial.

Contrary to the points drawn from existence and effectiveness of remedies, the burden of proving the utility of a judicial process lies on the applicant. In the example of Togo cited earlier on, the decision of the Committee to dismiss the objection was essentially

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based on the rejoinder of the applicant who insisted on the total absence of court sessions and decisions before the Administrative Chamber of the Lome Court of Appeal, as at the time of his application.

As was held by the European Court in *Judgment of AKDIVAR and Others* cited above, the notion of a judicial process having a utility presupposes that the local remedy whose existence is being affirmed by the State is not merely an illusory one.

It is worthy to note that in the said pleas of defence, the defendant State may, while acknowledging that the applicant had exhausted the local remedies, did mention that the complaint brought before the international body had not been invoked before the domestic judicial body. Hence, there was a ground for the further obligation upon the applicant, to file the said grievance before the national court.

In other words, even when the applicant has made use of the local judicial process, the defendant State may counter the applicant's claims with inadmissibility of his application if the grievance he brings before the international court has not already been brought before the national court.
This may be the case, for example, of an applicant who, before the international court, raises an issue of torture whereas before the national judge, he only complained of arbitrary detention; the application will be deemed inadmissible on grounds of torture.

In this regard, the European Court, the Inter-American Commission and the UN Committee on Human Rights unanimously agree that to lay claim to an issue before an international judicial body, *at least in substance* the applicant must have raised the issue he is complaining of before the national judicial body. In the *Moussa Léo Kéita* v. *Republic of Mali* case (Judgment of 22 March 2007), the Community Court of Justice, ECOWAS, adjudicated by applying this principle.

Ultimately, the rule of exhaustion of local remedies aims at acknowledging that the State is capable of remedying violations complained of at the national level, and that the State is the only entity accountable in this respect, before the international judicial body. The international judge cannot therefore entertain a case brought before him until and unless the national judge has accorded the case all the possible chances of success at the domestic level.

We are all not in doubt about the fact that cases handled by the national judicial apparatus provide the States with the possibility, not only of remedying cases of violation of the rights invoked, but they also stand the chance of detecting the weaknesses in their positive law, so as to adopt preventive measures thereof.

Thus, when it is realised for instance, in the view of the judge, that the root cause of the violation is traced to a legal loophole or lacuna, the State will be in a position to adopt a new legislation or amend the existing one, or yet still, improve upon an existing practice, if the source of the violation is connected to that practice.

Exhaustion of local remedies certainly has a reasonable justification but it is not an authoritative rule. In the interest of individuals, particularly as it regards their right to an efficient system of justice, the rule of exhaustion of local remedies is, in principle, a rule of flexible application.

Moreover, the European Court of Human Rights, in the *De Wilde* v. *Ooms and Versyp* case of 18 June 1971, Series A.12, adjudged that in conformity with the evolution of international practice, States may well **renounce** the benefits of the rule of exhaustion of local remedies, in which case, the rule will no longer constitute a condition of admissibility of cases before international courts.

When can one say that a State has renounced the benefits of the rule of exhaustion of local remedies? How does this apply to the practice obtaining before the Court of Justice of ECOWAS?

The idea of extending the competence of the Court of Justice of ECOWAS, to the domain of human rights violations, was for the first time, formally expressed in the 21 December 2001 Protocol A/SP/12/01 on Democracy and Good Governance, particularly in its Article 39, which provides that: "*Protocol A/P.1/7/91 relating to the Community Court of Justice shall be reviewed so as to give the Court the power to hear, inter alia, cases relating to violations of human, after all attempts to resolve the matter amicably at the national level have failed*".

From this text clearly emerges the ambition of the Heads of State and Government of the Community to entrust to the Court of Justice of ECOWAS, the mandate to examine cases of human rights violation, whether such cases have a link with the Community or

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not; such a mandate is of course incapable of being carried out except *after* the local remedies are exhausted by the applicant.

What meaning do we then attach to such a situation? Is it an omission, or rather, a wilfully taken decision on the part of the Member States, to grant the Community citizens a much greater measure of guarantee of relief, by offering them the free choice of using either the national judicial process or that at the regional level?

Indeed, in the Supplementary Protocol, the absence of the conditions of exhaustion of local remedies is not without its implications on the practice of the Court, in terms of the protection of human rights.

Equally necessary is the need to find out the real motives and intention of those who drafted the Supplementary Protocol. Several hypotheses may be advanced.

Was it nothing but pure and simple omission?

It is permissible to think that the drafters of the 19 January 2005 Supplementary Protocol simply forgot to indicate that in matters of human rights violation, the applicant must exhaust all available local remedies or else have his application declared inadmissible.

Besides, it is worthy to note that Protocol A/SP1/12/01 on Democracy and Good Governance was made within the context of the competence of the Court as far as human rights are concerned, but no reference was made to this very text in the Supplementary Protocol, nor was any reference made either to the specific texts pursued therein nor to the preamble which creates the impression that the framers of the Supplementary Protocol simply overlooked the precursory text, and therefore a portion of the ideas which established that same Protocol.

The present hypothesis becomes all the more reasonable when one considers that the rule of exhaustion of local remedies is not completely absent from the provisions of the Supplementary Protocol.

Indeed, according to Article 10(e) of the Supplementary Protocol, *"Staff of any Community institution, after the Staff member has exhausted all appeal processes available to the officer under the ECOWAS Staff Rules and Regulations"*, may bring the case before the Court.

Is it a renunciation by the Member States?

The absence of the rule of exhaustion of local remedies from the provisions relating to the Court of Justice may be interpreted as its renunciation by the ECOWAS States.

Indeed, nothing prevents one or several States from renouncing the rule of exhaustion of local remedies, in as much as such a renunciation aims, first and foremost, at facilitating individuals' accessibility to the Court, and in the same breath, at uplifting the degree of human rights protection in the sub-region.

This hypothesis seems the most plausible, in the sense that, according to certain unsubstantiated claims, the experts, and even the Council of Ministers, while examining the preliminary draft texts on the Supplementary Protocol, may have debated the issue before opting for the absence of the condition of exhaustion of local remedies.

The objective thereby, according to the same source, was to remove the hindrances to human rights protection at the Community level, by putting in place a fast, easily accessible and cost-effective system of justice. Indeed, we are all aware that very often the procedures at the domestic level are long and costly and citizens end up being discouraged in their search for the just reparation of damages done them. In all the systems (European Court, Inter-African Commission and Court, African Commission, UN Committees), the rule of exhaustion of local remedies is a *flexible one* to apply, such that, today, the supervisory bodies for treaties (judicial or quasi-judicial) consider that States may well renounce the benefits of this rule.

Be that as it may, the fact cannot be denied that, materially, the condition of exhaustion of local remedies is absent from the Protocols which determine the composition, powers, organisational framework and functioning mechanism of the Court.

From the foregoing fact, and in the absence of information on the real intention of the Community lawmaker, the Court must give an interpretation to this absence and derive from such the binding consequences.

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But then, the Court cannot interpret and draw any consequences from the absence of the rule of exhaustion of local remedies within the Community system without taking into account the general principles of human rights, in this instance, the principle of *the primacy of the most protective rule*.

To this end, it must be recalled that in matters of human rights, it is a well established principle that when "two or more rules tend to be applicable, primacy must be accorded the most protective rule"; and this, irrespective of its place in the judicial order of things. The provisions of a law, for example, may take precedence over a constitutional or even conventional provision, if it is established that the law is more protective.

Two examples will help us illustrate the principle of 'the most protective rule'.

In Article 41 of the Convention on the Rights of the Child, it is indicated that none of the provisions of the Convention shall be prejudicial to provisions which are more directed towards the realisation of the rights of the child, such as may be contained:

a) In the legislation of the State party, or
b) In any other convention, treaty, or international agreement in force in that State.

In Article 23 of the Convention on the Elimination of All Forms of Discrimination against Women, it is also indicated that none of the provisions of the Convention shall be prejudicial to provisions which are more directed towards the realisation of the equality between men and women, such as may be contained:

a) In the legislation of the State party, or
b) In any other convention, treaty, or international agreement in force in that State.

The principle of the primacy of the most protective rule, in human rights, is a universal and an extravagant principle of the common law of treaties.

But then, such cardinal principles, typically pertaining to the thematic aspects of human rights are binding on all and their non-observance constitutes, on its own, a violation of human rights.

In limiting ourselves to the two hypotheses inadvertent omission or the simple and pure omission of the rule of exhaustion of local remedies it can be said that the Court of Justice of ECOWAS would be going against the principle of the primacy of the most protective rule if it should interpret this absence in any other way than to state that it was a renunciation.

In other terms, against the background of the silence of the framers of the Supplementary Protocol, and in order to conform to the principle of the primacy of the most protective rule, the Court of Justice of ECOWAS must comply with the letter of the Supplementary Protocol, and consider the absence of the condition of exhaustion of local remedies as a renunciation by the Member States of ECOWAS, for the benefit thereof.

In so far as the absence of the said conditionality facilitates the access of individuals to the Court, and relieves them of the burden of having to go through the full utilisation of local remedies, such absence constitutes a great advantage to the potential applicant, and broadens the scope of guaranteeing the protection of his rights.

It is therefore in the proper order of things that, for example, in *Case Concerning Prof. Etim Moses v. Gambia*, the Court of Justice of ECOWAS dismissed the Objection raised by the State of Gambia claiming inadmissibility of the Application and purporting to cite non-exhaustion of local remedies. But in that particular Case, one significantly observes that the Defendant State vehemently opposed the decision of the Court.

At the current stage of the texts, particularly as regards the Protocol relating to the Community Court of Justice, ECOWAS, the Court cannot impose a condition or formality not provided for by the texts and which moreover, may have the effect of reducing the degree of rights protection guaranteed for the citizens.

CONSEQUENTLY, for the Court to interpret or apply the absence of the condition of exhaustion of local remedies, the Community lawmaker or any Member State must provide the Community with the sufficient and concrete evidence that it (the Community) has not renounced the said condition.