

Court Bulletin

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The Court of Justice of ECOWAS at the dawn of its Tenth Anniversary

Page 3

Capacity Building: A Major Stake...

Page 8

OPINION Some Specific Features Of The Legal Framework Of Human Rights Protection Of The Court Of Justice Of The Economic Community Of West African States (ECOWAS)

Page 31



ALL CORRESPONDENCE SHOULD BE ADDRESSED TO: The Community Court of Justice, ECOWAS,

No. 10 Danes-Salaam Crescent, Off Aminu Kano Crescent, Wuse II, Abuja, Nigeria.

P. M. B. 567 Garki, Abuja. Website: www.ecowascourt.org. E-mail: information@ecowascourt.org Tel.: +234-0-6240781

Editorial

THE COURT OF JUSTICE OF ECOWAS
AT THE DAWN OF ITS TENTH
ANNIVERSARY

Page 3

The Court in Brief

PRESIDENT OF ECOWAS COURT
STRESSES NEED FOR
CONSOLIDATION OF REGIONAL
GROUPINGS.

Page 5

What is New?

CAPACITY BUILDING: A MAJOR
STAKE FOR ATTAINING THE
COURT'S OBJECTIVE ON OUTPUT
PERFORMANCE

Page 8

Judicial Activity

STATUS OF APPLICATIONS LODGED
IN THE COURT

Page 11

Other Activities

JOURNALISTS FROM ECOWAS
MEMBER STATES ADOPT
A NEW INFORMATION
STRATEGY ON THE COURT

Page 21

JUDICIAL RETREAT OF THE COURT
AND PROSPECTS

Page 24

INTER-INSTITUTIONAL RELATIONS

Page 28

Opinion

SOME SPECIFIC FEATURES OF THE
LEGAL FRAMEWORK OF HUMAN
RIGHTS PROTECTION OF THE COURT
OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN
STATES (ECOWAS)

Page 31

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Community Court of Justice,
ECOWAS

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PHOTOGRAPHS

Mr. Lawal Abdulrahman



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ECOWAS

THE COURT OF JUSTICE OF ECOWAS AT THE DAWN OF ITS TENTH ANNIVERSARY



The Community Court of Justice, ECOWAS will be celebrating at the end of this year its ten years of existence. Indeed, we recall that on 31st January 2001, the first judges of the Court were sworn in before the Chairman of the Authority of Heads of State and Government, thus marking their assumption of office and the commencement of activities for the Court. It is ten years already! What a journey so far!

From the laying of the structural and administrative foundations to the institution of regulatory reforms, the Court has been making steady progress in its judicial function. Starting off on a more or less unsteady footing, the Court gathered great momentum from the time it received the mandate to ensure human rights protection within the Community

zone. Since then, the Court has become, for the other Institutions of the Community, for the Member States, and for the citizens of ECOWAS, a centre of information, an institution whose views are sought after, and a forum for the protection of human rights.

Mandated to ensure the protection of citizens' rights and to monitor the observance of Community law and the obligations upon States, the Court spares no effort in equipping itself with the necessary means and resources for accomplishing its mandate. From a general point of view, an overall assessment of the decade appears largely positive, as corroborated by the successive annual reports published by the Court.

But the Court is convinced that a lot more needs to be done, since the ground to be covered by integration through the instrumentality of law concerns all areas. By its action, the Court has become all the more committed to raising the stakes, since it is very much aware that the integration of West Africa would be in vain if the objectives which ECOWAS has set for itself do not become binding on all, and if citizens' rights are not respected and the violation of their rights not sanctioned. Similarly, the purpose of sub-regional integration would be defeated if democracy and the rule of law are flouted here and there. To put it in better terms, is it not disappointing at times to observe that, in viewing the Court from afar, the citizens do not

perceive the extent to which its role contributes to the development of a peaceful and assuring integration process, which places all the actors before the same rights and obligations in the observance of the cardinal principles of equality and interdependence between the Member States, as stated strongly in the ECOWAS Treaty? We therefore need to work harder to find better ways of projecting the image of the Court within the ECOWAS sub-region.

Also, the Court's main focus for the celebration of its tenth anniversary is the consolidation of its judicial mandate. We need to promote a new judicial climate devoid of splits and divisions, where co-operation and interaction between the Court and the domestic courts of Member States will thrive in the area of enforcement of the Court's decisions; and on the other hand, the existence of a fruitful co-operation between the Court and the civil society, towards ideal human rights protection and greater legal assistance to all those who are qualified to come before the Court.

The internal focus on the judicial functioning of the Court which was opened last year is aimed at outlining, at the Court, ways and means of instituting a more engaging approach towards making the Court a constantly beaming searchlight, as far as the primacy of the law within the ECOWAS sub-region is concerned. The challenges facing us are numerous but they can be summed up as the

obligation to do everything possible to make the Court *the jewel* of West African integration. It is only in this way that we will have paid tribute to the founding fathers of ECOWAS and contributed to the attainment of the noble objectives of ECOWAS.

ECOWAS and its Institutions are on the move, and given that no progress is achieved in ultimate terms, the Court, on reaching its tenth milestone, is more than ever determined never to give ground.

Honourable Justice

Awa Nana Daboya

President

Community Court of Justice,
ECOWAS

Abuja-Nigeria



PRESIDENT OF ECOWAS COURT STRESSES NEED FOR CONSOLIDATION OF REGIONAL GROUPINGS.

By Mr. M. Mustamusi Kilimbe

The President of Community Court of Justice, ECOWAS, Hon. Justice Awa Nana Daboya has said that the current World Economic Crisis calls for the consolidation of regional economic groupings like our community.

Speaking, in a goodwill message through the Vice President of the Court, Hon. Justice Mosso Benfeito Ramos who represented her at the 2009 First Ordinary Session of the ECOWAS Parliament in Abuja, Nigeria held on 12th May 2009, the President explained that consolidation of the regional economic groupings and cooperation will help ease business exchanges, liberalize the movement of goods, harmonize customs procedures and the putting in place of judicial and administrative rules and procedures in our member countries needed for durable economic development.

The ECOWAS Court of Justice, she maintained, as the principal judicial organ of our Community is conscious of its role and is ready to bring its contribution in meeting those conditions which are favourable in creating a secured judicial environment, and to make effective the respect for the rights of Community citizens, but however noted that in realizing this goal, the Court has a duty of deepening its relationships with sister institutions in order to develop a synergy that could effect that consolidation.

The Hon. Judge Benfeito Mosso

Ramos said the consolidation of regional groupings is also achieved by harmonizing the diverse legislations which is the reason the Court appreciates the fact that our Community Parliament is evolving from a consultative organ into an institution endowed with all necessary legislative prerogatives to enable our Community move from an ECOWAS of States to an ECOWAS of people and finally pledged the Court's support and encouragement to both new and old legislatures in their business of writing harmonized and integrated instruments of legislation for the Community.

REGIONAL BODIES, COURTS TO COLLABORATE ON HUMAN RIGHTS PROTECTION IN AFRICA

By Mr. M. Mustamusi Kilimbe

Strengthening of cooperation between regional and international organizations for the promotion and protection of human rights in Africa was the focal point of a workshop organized by UN, Human Rights Commission held at the Hilton Hotel, Addis Ababa, Ethiopia from 30th November to 2nd December, 2009.

Participants to the workshop include, African Union Commission, African

Court on Human and Peoples Rights, the African Committee of Experts on the Rights and Welfare of the Child, the Southern African Development Community (SADC) Court of Justice, ECOWAS Community Court of Justice, United Nations Experts, other UN agencies and National Human Rights Institutions (NHRI) and the academia among others.

Apart from the drive to collaborate at both the regional and international levels; the stakeholders highlighted the urgent need to sensitize the civil populace on human rights violations with a view to stem the tide in Africa.

At its plenary session, the workshop congratulated ECOWAS Court of Justice for its jurisdiction in the area of Human Rights.

The conference also recognized the imperative of convening workshops of the kind been held on a regular basis to facilitate sharing of information and concrete proposals on ways and means of fast-tracking human rights issues and the identification of strategies geared towards overcoming obstacles to human rights promotion and protection at all levels.



Participants in the seminar on human rights protection held at Addis Ababa from 30 November to 2 December 2009

PARTICIPATION OF ECOWAS COURT AT THE CONFERENCE ON THE THEME: ECONOMIC RIGHTS AS HUMAN RIGHTS.

By Mustamusi Odah Kilimbe

The Community Court of Justice of the Economic Community of West African States, ECOWAS, the South Africa Development Community Tribunal (SDACT) East African Court of Justice and other regional courts in the continent have been identified as vehicles for the entrenchment of Economic Rights as Human Rights in Africa.

This was the popular position of a four-day stakeholder's conference with the theme "Economic Right as Human Rights" held at the Protea President Hotel, Cape Town, South Africa from 23rd - 26th September, 2009.

The conference was convened under the aegis of the Rule of Law Program for Sub-Saharan Africa of the Konrad Adenauer Stiftung Foundation with participants drawn from within and outside the continent.

on how to effectively promote and protect economic rights of the people. The conference also condemned non-compliance with regional courts judgments by member states and commended member states who complied.

The president of the Community Court of Justice, ECOWAS, Hon. Justice Awa Nana Daboya speaking through Mrs. Franca Ofor, a Research Officer who represented the Court at the conference, stated that with the expansion of the jurisdiction of the Court in 2005 to include cases of human rights violations, ECOWAS Court is better disposed to address the concerns of the conference.

Various presentations were made on the theme of the conference by among others, Hon. Justice Pius Langa, the Chief Justice of the Republic of South Africa, Prof. Christian Roschmann, Director of Rule of Law Program Konrad Adenauer Stiftung Foundation, Prof. Hartmut Hamann of the Free University of Berlin, Germany and Hon. Justice Ariranga Govindasamy Pillay, Judge President of South Africa Development Community Tribunal (SDACT).

CAPACITY BUILDING: a major stake for attaining the Court's objective on output performance

By Maître Abdoulaye Bane

One of the most significant activities of the Court in the past year was certainly the training of secretaries and administrative assistants. The originality of this training does not only lie in the resource personnel for the training, who were all professional staff of the Court, but it equally has to do with the beneficiaries of the training (secretaries and administrative assistants) and the course content (the disciplines of law).

The objective of this training was to get the beneficiaries acquainted with the basic concepts of law. The training programme comprised: labour law, constitutional law, community law, administrative law, commercial law, criminal law, and human rights.

The training, which was carried out within a period of 95 hours, was welcomed with great enthusiasm, not only by the trainers but by the trainees; the effective participation of the latter

was a sign of their active interest in the various disciplines covered.

Within those few weeks of training, the secretaries and administrative assistants were given lessons, notably on the jurisdiction and rules of procedure of the Court in general, and on matters of human rights in particular. They also learnt the rules governing the administrative functioning of the Court and those which regulate their own rights within the framework of the Community civil service. The other disciplines of law helped them to understand the significance of law in the daily conduct of their private and professional lives.

Among the ECOWAS Institutions, the Court stands out as a unique institution, with its own rules of operation, like the national courts whose rules of operation are different from the other public administrative institutions.



Closing ceremony of training programme on law organised for secretaries and administrative assistants

According to the President of the Court, "Law is everywhere. It is in the family: from engagement to marital life and inheritance; it is in commerce: from the determination of the terms of a contract to its execution; it is in employment: from the employment proposal to the conduct of one's career, and to the enjoyment of the retirement benefits."

The Vice President of the Court, Hon. Justice Benfeito Mosso Ramos, in supporting the initiative, indicated that instead of being alarmed by the problems arising in the course of one's duties, each one of us must contribute his or her quota in the resolution of the problems which emerge. He therefore called on participants not to wait and expect what the Institution can do for them but to think of how best they can serve the Institution.

Along the same lines, and in referring to the utilisation of the knowledge and skills acquired, the Dean of the Judges, Hon. Justice Hansine N. Donli, urged the participants to be creative and innovative so that the Institution will be proud of them.

It worthy to note that since she assumed the headship of the Institution, the Honourable President of the Court, Hon. Justice Awa Nana Daboya, has placed a high premium on capacity building, placing it on equal level with the judicial function of the Court.

To this end, she has put in place a vast training scheme which caters for all categories of staff. This new development, which gives top priority to competence, recognises the employer's right to training, which is nothing more than "giving unto Caesar what is due to Caesar". It was in this connection that Your Excellency the President pointed

out that "The innovations we are trying to introduce into the capacity-building system of the Court are not merely a change of mode in the management of our Institution, but rather a kind of reform inspired by the concern to provide the entire staff with the skills and knowledge suitable for their specific duties and assignments, and a rationalisation of the resources allocated for the training of the Staff."

Spanning a period of two years, and financed from the Court budget and by the Ford Foundation, this training scheme should enable the vast majority of the employees of the Institution to adapt their current skills and knowledge to the requirements of the posts they occupy.

Apart from this programme, and others held outside Nigeria, the staff of the Language Services Division received training, during the same period, on Machine Assisted Translation. Thus, from 11 to 15 January 2010, translators and interpreters (whose standard of work has a direct bearing on the quality of judgments delivered by the Court) continued their training on legal terminology, the first edition having taken place in July 2007.

It must be expected that the hope of replicating this training programme on a much larger scale will be fulfilled, to ensure greater capacity building in law for the staff of the Court, and to provide the Institution with the necessary tools for carrying out its mandate, because the output performance of every administration is measured in terms of the quality of its staff.

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notice and on grounds unclear to him.

He contends that he has been deprived of his right to fair hearing and had exhausted all local remedies provided under the ECOWAS Staff Rules and Regulations.

That was why he prayed the Court to order his unconditional reinstatement, payment of arrears of his salaries and allowances, transfer to another department of ECOWAS and application of sanctions against his attacker in accordance with the Staff Rules and Regulations of ECOWAS.

3. **ECW/CCJ/APP/06/09**

**Hon. Valentine Jimmy Ewor
V.
Federal Government of Nigeria &
3 Others**

The Applicant, a Community citizen, instituted an action before the Community Court of Justice, ECOWAS alleging the violation of his human right to equal protection of the Law, right to privacy of his home, right to liberty and security of his person. He also alleges the continued threat to his life and that of his relations, the destruction of his house and household properties by the Defendants and their agents which violate the provision of the African Charter on Human and People's Rights. The Applicant seeks an Order of the Court compelling the Defendant to pay jointly and severally compensation in the sum of USD \$5,000,000 (five million US dollars) and the sum of USD 3,000,000 (three million US dollars) as punitive damages.

4. **ECW/CCJ/APP/07/09**

**Centre for Democracy and
Development & Anor**

**V.
President Mamadou Tandja &
Anor**

The Plaintiffs are both Non-Governmental Organisations located within the ECOWAS Community. The Plaintiff filed an application before the Court against the Defendants for the violation of the human and people's right of the people of Niger to participate freely in the governance of their country by electing a new President in December 2009. The Plaintiffs allege that despite the fact that the 1st Defendant's second tenure terminates in December 2009, he decided to conduct a referendum on or about 4th August 2009 to enable him seek a third term in office. The Plaintiffs contend that this decision is against the provisions of Article 36 and 136 of the Constitution of Niger Republic which stipulates that the President cannot serve for more than ten (10) years in office and that this provision cannot be reviewed or amended by any means. The Plaintiffs also allege that the decision of the Defendants to manipulate the Constitution of Niger Republic violates the human rights of the peoples of the Republic of Niger to be governed democratically as enjoined by Article 13 (1) of the African Charter on Human and People's Rights.

The Plaintiff prayed the Court to make an order to restrain the 1st Defendant from remaining in office as President of the 2nd Defendant beyond December 2009.

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inconsistent with the flexible and progressive interpretation of the rule of exhaustion of local remedies as reflected in international legal jurisprudence.

9. ECW/CCJ/APP/12/09

**Sidi Amar Ibrahim & Anor
V.
Republic of Niger**

The Applicants filed an action before the Community Court of Justice, ECOWAS alleging the violation of the Rights of the deceased Mr Sidi Amar Ibrahim and Ousmane Ali who travelled from Dirkou to Agadez. They were tortured and shot by the Members of the Nigerian Armed Forces after dispossessing them of their properties.

The Applicants seek the Order of the Court directing the Defendant to bring the perpetrators of these heinous acts to book and to pay compensation to the heirs of the deceased.

10. ECW/CCJ/APP/13/09

**El-Hadja Tidjani Aboubacar
V.
RCEAO Central Bank of West
Africa & Anor**

The Applicant, a Community citizen, brought an action before the Community Court of Justice, ECOWAS alleging the violation of his fundamental human rights through the loss of his money. He alleged that he owned old denominations of Niger currency that was devalued totaling 1,200,000,000 CFA Francs and that the authorities of Niger refused to grant his application for

repayment of same. He also alleged that the 1st Defendant refused to exchange his old denomination for the new denomination despite the reimbursement of same by the 2nd Defendant to the 1st Defendant and that his old currency is still in the possession of the Defendants. The Applicant seeks an Order of the Court directing the defendants to pay jointly and severally the sum of 1,200,000,000 Francs of his old denomination converted to the new currency.

11. ECW/CCJ/APP/14/09

**Mr Jibril Yusuf
V.
Republic of Benin**

The Plaintiff, a Community citizen, instituted an action before the Court alleging the breach of his fundamental Human Right by his illegal and unwarranted arrest and subsequent imprisonment by the Defendant at "Abume" Prison from the 24th day of November 2008 to the 5th day of February 2009 without a fair trial.

Furthermore, he also alleges the violation of his right to the free movement of his person and goods and the seizure and destruction of his Honda Civic Car 1992 Model by the Defendant.

**INTERLOCUTORY
APPLICATIONS**

Within the said period, fifteen (15) interlocutory applications were filed in the following cases:

a. ECW/CCJ/APP/01/08

Starcrest Investment Ltd
V.
The President ECOWAS
Commission & 3 Others

- A first Application was filed on the 5/5/09 for an Order granting leave to the Plaintiff to amend his statement of claim.

- A second Application was filed by the Plaintiff on 6/7/09 for an order of Interlocutory injunction restraining the 2nd - 4th Defendants from dealing with a Nigerian oil field License.

- A third Application was filed by the Defendant on the 6/11/09 for extension of time within which they may file their statement of defence.

These three interlocutory applications have been dealt with and the case is still pending before the Court for adjudication on the merits.

b. ECW/CCJ/APP/08/08

Petrostar Nigeria Ltd
V.
Blackberry Nigeria Ltd

- Motion ex parte filed on the 13/5/09 for an Order that the originating process be served on the 1st and 2nd defendants by posting.

- A notice of preliminary objection filed on 29/6/09 challenging the jurisdiction of the Court and for an order striking out the name of the 2nd Defendant from the suit.

c. ECW/CCJ/APP/11/07

Musa Saidykhan
V.
Republic of The Gambia

- An application filed on the 26/10/09 by the Plaintiff for extension of time within which to file his brief of argument in response to the Defendant's preliminary objection.

- On 15/12/09, a motion on notice was filed for an Order granting the Defendant an extension of time within which to file her defence.

d. ECW/CCJ/APP/10/07

Femi Falana
V.
Republic of Benin & 14 Others

- An application filed on the 27/10/09 for extension of time within which the Plaintiff may file their reply and written address in response to the Preliminary objection filed by the Defendants.

e. ECW/CCJ/APP/07/09

Centre for Democracy and
Development & Anor
V.
President Mamadou Tandja & Anor

- Application filed on the 27/7/09 for an Order restraining the Defendant from holding a referendum on or about the 4th of August, 2009.

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The President ECOWAS
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e. ECW/CCJ/APP/07/09

Centre for Democracy and
Development & Anor
V.
President Mamadou Tandja & Anor

- Application filed on the 27/7/09 for an Order restraining the Defendant from holding a referendum on or about the 4th of August, 2009.

f. ECW/CCJ/APP/04/09

Peter David
V.
Ambassador Raph Uwechue

- Two applications for extension of time filed by 18/9/09 and 23/11/09, respectively, by the Applicant and the Defendant.

g. ECW/CCJ/APP/03/09

Private Aliyu Akeem
V.
Federal Government of Nigeria

- An application was filed by the plaintiff on 28/9/09 for Default Judgment against the Defendant for failure to enter appearance or to file any process.

- Therefore on the 10/11/09, the Defendant reacted by asking for extension of time to file Reply to the defendant's statement of defence.

h. ECW/CCJ/APP/05/08

Ocean King Nigeria Ltd
V.
Republic of Senegal

- In this suit, a Preliminary Objection was raised on 06/11/09 by the Defendant, refuting the admissibility of the action brought against it.

COURT SESSIONS

The Court held Twenty Five (25) Sessions from March to December,

2009 and made the following Decisions:

Judgments

1. ECW/CCJ/JUD/03/09

Mrs Tokunbo Lijadu Oyemade
V.
Council of Ministers ECOWAS & 4 Others

Judgment delivered on 17th November, 2009

2. ECW/CCJ/JUD/04/09

Amouzou Henri & 5 Others
V.
Republic of Cote d'Ivoire

Judgment delivered on 17th December, 2009

3. ECW/CCJ/JUD/05/09

National Coordination of Departmental Delegates of The Coffee & Cocoa Sector
V.
Republic of Cote d'Ivoire

Judgment delivered on 17th December, 2009

Rulings

1. ECW/CCJ/RUL/04/09

Adediji Benjamin Adeleke
V.
Executive Secretary RECTAS & 3 Others

1. ECW/CCJ/APP/10/07

Femi Falana & Anor
V.
Republic of Benin & 14 Others

Scheduled for deliberation on 03/06/10, to be decided in an Interim Ruling on the jurisdiction of the Court.

2. ECW/CCJ/APP/11/07

Musa Saidu Khan
V.
Republic of The Gambia

After the Interim Ruling of 30/06/09 on the Preliminary Objection, as to the jurisdiction of the Court; the latter declared that it had jurisdiction to adjudicate on the case and adjourned the proceedings for a hearing on the merits and the taking of evidence from the parties and witnesses.

3. ECW/CCJ/APP/12/07

The Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP)
V.
The Federal Republic of Nigeria & Anor

After the Preliminary Ruling of 27/10/09, the case was adjourned successively to various dates and was called for hearing on 08/06/10.

4. ECW/CCJ/APP/01/08

Starcrest Investment Ltd
V.
Executive Secretary ECOWAS & 4

Others

After the Interim Ruling on the preliminary objection as to the jurisdiction of the Court, delivered in this case on 02/07/09, the case was adjourned several times upon the request of the ECOWAS Commission and was called for hearing on 08/07/10.

5. ECW/CCJ/APP/0508

Ocean King Nigeria Ltd
V.
Republic of Senegal

This case was scheduled for deliberation on 27/04/10 on the preliminary objection; the decision on the preliminary objection was made and the case was adjourned to June 2010 for a hearing of the parties.

6. ECW/CCJ/APP/07/08

Hissein Habré
V.
Republic of Senegal

A second Interim Ruling was delivered on the jurisdiction of the Court on 14/05/10; the case was adjourned to 18/06/10 to be pleaded on the merits; the judgment on the merits is scheduled for 19/10/10.

7. ECW/CCJ/APP/08/08

Petrostar Nigeria Ltd
V.
Blackberry Nigeria Ltd & Anor

Adjourned to June 2010 for a hearing of the parties.

1. ECW/CCJ/APP/10/07

Femi Falana & Anor
V.
Republic of Benin & 14 Others

Scheduled for deliberation on 03/06/10, to be decided in an Interim Ruling on the jurisdiction of the Court.

2. ECW/CCJ/APP/11/07

Musa Saidu Khan
V.
Republic of The Gambia

After the Interim Ruling of 30/06/09 on the Preliminary Objection, as to the jurisdiction of the Court; the latter declared that it had jurisdiction to adjudicate on the case and adjourned the proceedings for a hearing on the merits and the taking of evidence from the parties and witnesses.

3. ECW/CCJ/APP/12/07

The Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP)
V.
The Federal Republic of Nigeria & Anor

After the Preliminary Ruling of 27/10/09, the case was adjourned successively to various dates and was called for hearing on 08/06/10.

4. ECW/CCJ/APP/01/08

Starcrest Investment Ltd
V.
Executive Secretary ECOWAS & 4

Others

After the Interim Ruling on the preliminary objection as to the jurisdiction of the Court, delivered in this case on 02/07/09, the case was adjourned several times upon the request of the ECOWAS Commission and was called for hearing on 08/07/10.

5. ECW/CCJ/APP/0508

Ocean King Nigeria Ltd
V.
Republic of Senegal

This case was scheduled for deliberation on 27/04/10 on the preliminary objection; the decision on the preliminary objection was made and the case was adjourned to June 2010 for a hearing of the parties.

6. ECW/CCJ/APP/07/08

Hissein Habré
V.
Republic of Senegal

A second Interim Ruling was delivered on the jurisdiction of the Court on 14/05/10; the case was adjourned to 18/06/10 to be pleaded on the merits; the judgment on the merits is scheduled for 19/10/10.

7. ECW/CCJ/APP/08/08

Petrostar Nigeria Ltd
V.
Blackberry Nigeria Ltd & Anor

Adjourned to June 2010 for a hearing of the parties.

has been a major challenge to the Court, it takes some time before a case can be ready for hearing. Thus, some cases are still undergoing translation and are not ready for hearing.

They are:

1. ECW/CCJ/APP/06/09

**Hon. Valentine Jimmy Ewor
V.
Federal Government of Nigeria & 3
Others**

Has been put on the cause list, for a first hearing on 07/06/10.

2. ECW/CCJ/APP/07/09

**Centre for Democracy &
Development & Anor
V.
President Mamadou Tandja & Anor**

Called for hearing for the first time on 03/06/10; the case is adjourned to 30/09/10 upon a request from Counsel to the Defendant.

3. ECW/CCJ/APP/10/09

**Amouzou Henri & 3 Others
V.
Republic of Cote d'Ivoire**

The case re-opens under other grievances, to be called for hearing on 09/07/10.

4. ECW/CCJ/APP/12/09

**Sidi Amar Ibrahim & Anor
V.
Republic of Niger**

The case is adjourned to 30/09/10 upon the request of Counsel for the Defence.

5. ECW/CCJ/APP/13/09

**El-Hadja Tidjani Aboubacar
V.
BCEAO Central Bank of West Africa
& Anor**

Same situation as in the previous case; adjourned to 30/09/10 for the Defence.

6. ECW/CCJ/APP/14/09

**Mr. Jibril Yusuf
V.
Republic of Benin**

Case to be called for hearing for the first time on 09/07/10.

JOURNALISTS FROM ECOWAS MEMBER STATES ADOPT A NEW INFORMATION STRATEGY ON THE COURT

By Felicien Hounkanin

Reactivating information and communication strategies so as to bring the ECOWAS Court closer to Community citizens: this was the ultimate objective behind the information workshop and seminar organised on 12 and 13 October 2009, at Lomé, in Togo, for journalists of the public and private press from the Francophone and Portuguese speaking Member States of ECOWAS.

At that event, the participants made recommendations intended to pave the way for journalists to equip themselves with the necessary information on integration in general, and more specifically on the functioning of the principal legal organ of the Community, so as to enable them play their optimal role in the realisation of the great

regional project, ECOWAS. The seminar equally recommended putting in place a new information strategy based on interaction between the Court and the media of West Africa.

At the dawn of the tenth anniversary of the Court, when the occasion calls for a stock taking of the activities of the Court, it is not surprising to notice that a lot remains to be done in the area of information and communication because many are the people who still remain ignorant of the existence of the Court. Given the prevailing state of affairs, a review of the existing strategies is on-going and it is imperative to improve upon the relations between ECOWAS Institutions and the media, and reduce the increasing dearth of communication between the legal



Group photograph of participants at seminar held of Lomé for French-speaking and Portuguese-speaking journalists of West Africa

organ of Community and those expected to file cases before it. It was from this angle, and upon the initiative of the Court, that the meeting with the media was organised.

During the meeting, the Representative of the Togolese Minister of Communication and Culture, urged the journalists to create the ideal conditions for effective learning in order for them to derive the maximum benefit from the lessons of the seminar, since journalists constitute a strategic link in the dissemination of information on the activities of an organisation. Collaboration with journalists is so important that all the efforts to get the people informed and to participate in the integration process will be in vain without their support, he said. That is why the Representative of the Director of Communication at the ECOWAS Commission called on the journalists to support the difficult but exciting undertaking of building an integrated West-African sub-region.

The Representative of the Minister for Finance and the Economy, also Minister for Regional Integration of Togo, remarked that the desire to collaborate with men of the press for the purposes of attaining the noble objectives of the Community, gives practical expression to the devotion and concern of the Members of the Court, to make the Court known by Community citizens. For the Representative of the Minister, this initiative contributes to give meaning to concepts like democracy, rule of law, and good governance within our

Community zone.

The participants attended presentations on various themes on the role of the media in the building process of ECOWAS, the role of the Community Court of Justice, ECOWAS in the integration process, the specific nature of the Court's mandate in matters of human rights protection, the procedure followed before the Court, and the necessity of enforcement of the Court's decisions.

Equipped with concepts on Community justice, the journalists were convinced that they were henceforth ready to relay news on the Court, not only to the people in the towns and villages of their respective States of origin, but also at the regional and international levels. However, the use of mass-media communication methods implies concluding agreements of collaboration with the public and private media and an active involvement of the stakeholders in the designing and implementation of wide information and sensitisation campaigns, assisted by the media houses.

It is worthy to recall that before the Lome meeting, and from the inception of the Court, the latter had undertaken sensitisation missions in Member States, targeted at various socio-professional groups, thereby sharing information with judicial stakeholders, media houses, human rights groups, universities, and economic stakeholders, on its jurisdiction and the modes of access to the Court. The



Opening ceremony of seminar held at Lome for French-speaking and Portuguese-speaking journalists of West Africa

Court also initiated radio and television programmes in Benin, Ghana and Liberia, thus making it possible to reach people in the remotest parts of towns and villages in those Member States and the neighbouring ones.

The recommendations which came out from this seminar were aimed at reaching a vast and undifferentiated audience and this was why participants at the seminar proposed that the main focus should be on mainstream and widely popular television and radio programmes in the public and private sector, including local and community radio stations in Member States.

The participants equally recommended that prime attention should also be directed towards newspapers capable of covering the Court's activities and creating a column specifically devoted to the Court.

Acknowledging the importance of the Internet, participants at the seminar deplored the current state of the Court's website and recommended that this big vacuum should be filled. Finally, the participants recommended the organisation of open days, the issuing of press releases, regular organisation of press conferences and press reviews, distribution of leaflets and other handouts on the Court, the production of bulletins and periodicals, and school kits stamped with the logo of the Court, as well as meetings with lawyers, other legal practitioners and civil society organisations.

The recommendations did not leave out the creation of a nerve centre for the media houses of each of the Member States and a regional network to link the nerve centres of the 15 Member States.

JUDICIAL RETREAT OF THE COURT AND PROSPECTS.

By Maitre Athanase Atannon Mr. Anani Kunkivi



“To be absolutely sure of what we believe to be true, we must begin by doubting”, says a Corsican proverb.

That is a simple way of saying that it is never a futile exercise to reflect on, or better still, to question periodically what one has thoroughly mastered or whatever seems to give room for improvement.

It is in this frame of mind, of seeking improvement, that the Court has henceforth instituted an annual judicial retreat which is expected to be a forum for bringing together all the judicial officers and Judges of the Court, at a location outside Abuja, the seat of the Court, to

reflect and debate on a number of issues directly related to the judicial functioning of the Institution. As is usually done in the preparation of the budget, the object of the judicial retreat is to take the best advantage of a short period of isolation, away from the seat of the Court, for the purpose of taking stock of the judicial operation of the Court, to identify the strengths of the Court, consolidate upon the efforts made so far, and find ways and means of remedying the weaknesses of the Institution.

For three days, Judges, lawyers and legal professionals focused on a range of themes selected on the basis of certain crucial ideas appropriately put forward by the President of the Court in her opening speech, in the form of

objectives, namely: taking stock of the various texts governing the functioning of the Court, noting the achievements, with a view to consolidating upon them, and making up for any weaknesses.

Thus, the Court examined one after the other, the Protocols on the Court, the Rules of Procedure, the challenges relating to the practice and procedure of the Court, difficulties relating to the service of pleadings and court processes, prospects in respect of enforcement of the Court's decisions, etc.

The urgent need to take a second look at the Protocols on the Court, together with the Rules of the Court, arises from the necessity to

harmonise all the documents relating to the procedure before the Court. Indeed, since the coming into being of the two Supplementary Protocols on the Court (that of January 2005 and that of June 2006), the amendments they effected on the original protocol (the 1991 Protocol) and the contradictions they generated in certain provisions of the Rules of the Court (adopted in 2002) have remained unchanged, thus creating confusion in the minds of parties and their counsels when reading the texts. These texts therefore need to be rectified. After a lengthy debate on the issue, it was finally recommended that discussions will be pursued further on the significant amendments to be made on the



Lawyers and legal professionals among the staff of the Court, at a judicial retreat at Minna (Niger State)

basic texts of the Court.

Another issue the retreat tackled was access to the Court and the service of pleadings and court processes. After a very lively presentation made by the Chief Registrar, the retreat assembly came to the realisation that the procedure before the Court is not only faced with difficulties of accessibility and legal aid for the destitute, but problems relating to the partition between the written and oral phases.

It was observed that quite often lawyers do not keep to the time-limits of the proceedings and they appear for the first court hearing, i.e. of the oral proceedings, to ask for adjournments in order to respond, in written form, to the orders sought by the other party, thus opening a new phase of exchange of pleadings. The retreat considered that the letter of the Rules of Procedure must be adhered to in ensuring that there is a clear demarcation henceforth between the written and oral phases of the procedure before the Court. Participants recommended that parties should be encouraged to make use of the electronic mediums of communication in the exchange of documents.

As for the problem of service of pleadings and court processes, the retreat took note of the difficulties

the Registry faces in managing the case-files of certain parties during proceedings, as a result of the great distances separating those parties from the seat of the Court. In this connection, the retreat assembly reiterated its own proposal which had been made beforehand, to the effect that, sub-registries should be opened in Member States to avoid the situation where legitimate litigants will have to travel long distances to Abuja to file their applications. The modalities for creating sub-registries in Member States, particularly the material and financial aspects of the issue, will constitute a matter for deeper reflection, in due course, with recommendations to be made to the Community. It was in the same light that the retreat deferred the thorny issue of legal aid for destitute persons, acknowledging however that the implementation of such a project must involve the creation of a Community legal-aid fund.

The retreat took note of the high number of applications filed at the Court relating to human rights. That was why it appeared justified for the retreat to see how one could delimit this aspect of the jurisdiction of the Court so as to avoid playing into the hands of litigants who may attempt to bring every case under human rights, in order to have their case heard. Without specifically discussing the limits of the jurisdiction of the Court in terms of human rights protection,

the retreat assembly stated however that the exhaustion of local remedies is not a condition for the admissibility of applications filed before the Court.

On the arbitral jurisdiction of the Court, it is worthy to recall that in the terms of Article 9(5) of Supplementary Protocol A/SP.1/01/05, the Court shall have power to act as arbitrator, pending the establishment of the Arbitration Tribunal as provided for under Article 16 of the ECOWAS Revised Treaty. It was necessary to take advantage of the judicial retreat to discuss the practical steps for bringing this function into effect, even if provisionally. That was why the retreat equally decided to examine the Draft Rules of Arbitration as well as the Draft Practice Directions designed by the Court to complement certain provisions of the Rules of Procedure. The Practice Directions is intended to guide prospective users of the Registry as to what steps to take, the fees charged, and the conditions for the use of New Information and Communication Technologies in the service of documents and other forms of notifying pleadings, etc. Due to the voluminous nature of the documents on the Draft Rules of Arbitration and the Draft Practice Directions, the retreat could not have a discussion on them.

The issue of enforcement of the Court's decisions was considered essential for the practical delivery of the Court's mandate. The retreat looked at the difficulties related to the implementation of the decisions of the Court and recommended that appropriate mechanisms should be put in place for the execution of the Court's judgments. Finally, it was also decided at the retreat that henceforth, in the annual reports of the Court, the status of implementation of the Court's decisions should be indicated, as well as a mention of the Authority responsible the implementation of the decisions in each Member State for.

The judicial retreat of the Court was ambitious in its recommendations, to the extent that it may be permissible for one to wonder about the means for matching these ambitions, all of which constitute some of the challenges facing the Court.

The answers to these challenges will depend upon the will and commitment of each and everyone in the integration process.

INTER-INSTITUTIONAL RELATIONS

By Koffi Kouchanou

The Community Court of Justice, ECOWAS set out to conduct working visits to institutions similar to its own, for the purposes of mutual exchange and to establish relations of co-operation.

To this end, a delegation of the Court, comprising Mr. Tony Anene-Maidoh, Chief Registrar, and two Research Officers, Dr. Daouda Fall and Mrs. Franca Ofor, were in Luxemburg from 23 to 30 May 2009, in connection with a study tour at the European Court of Justice.

In the same vein, the three new judges of the Court: Hon. Justice Ramos Mosso Benteito (Vice-President), Hon. Justice (Tatilda

Nougbodé Médégan, and Hon. Justice Eliam M. Poley, accompanied by Mr. Eric Akuete (Chief Protocol Officer), went on a two-week working visit at the European Court of Justice, Luxemburg, and at the European Court of Human Rights, Strasbourg, from 24 June to 3 July 2009.

The objective behind these visits is to understand the structure and functioning of similar courts, with a view to establishing co-operation relations between the ECOWAS Court of Justice and these two European courts.

At the European Court of Justice, the judges attended a court hearing on a case dealing with the free movement of capital, whereas at the European Court of Human Rights, they followed the



Visit to the Court by the Belgian Ambassador to Nigeria

proceedings of a case on human rights violation.

During the visit, the protocol sections of the two courts made communications to the judges, on various activities of their respective courts.

As for the staff members of the Community Court of Justice: Mr. Tony Anene-Maidoh (Chief Registrar), Mrs. Franca Ofor (Principal Research Officer) and Mr. Abdoulaye Bane (Research Officer), they participated in the annual conference of the International Bar Associations (IBA), held from 4 to 10 October 2009 at Madrid, Spain.

The IBA is regarded as the largest grouping in the international legal community and they meet once a year to promote solidarity among legal practitioners from different jurisdictions, and especially to improve upon legal practice across the world.

Similarly, a delegation of the Court led by the President, Hon. Justice Awa Nana Daboya and accompanied by Hon. Justice Hansine Donli, had a working visit at the International Court of Justice (ICJ), at the Hague, Netherlands, from 27 to 30 October 2009. The delegation had discussions with their ICJ counterparts on inter-institutional co-operation. The delegation also attended a court hearing in a case between Argentina and Uruguay.

The Court's background, particularly its functioning mechanism and its jurisdiction in matters of human rights

violation, attracted the admiration of certain regional bodies and European countries.

Thus, a delegation from the East African Court of Justice, based in Arusha, Tanzania, visited the Community Court of Justice, ECOWAS on 20 October 2009, to compare notes and take a cue from the ECOWAS Court.

The delegates, Miss Stella Mutu (Head of Administration) and Miss Grace Okungu (Chief of Personnel), were received by Hon. Justice Donli (the Dean) and Hon. Justice Alfred Anthony Benin on behalf of the President of the Court, Hon. Justice Awa Nana Daboya.

After the traditional introductory greetings, Hon. Justice Donli gave them an overview of how the Court functions, emphasising the fact that since the two courts are institutions within the framework of the African Union (AU), they need to work closely together to ensure their own growth and the development of the continent as a whole.

The delegation made it known that the laudable achievements recorded by the Community Court of Justice, ECOWAS, was the reason why they chose to come to the Court for the study tour.

During a working session chaired by the Chief Registrar, the delegates were briefed by the Heads of Department

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A delegation of the Court of Justice of SADC in a working session at the Court of Justice of ECOWAS

on the roles and functions of their respective Departments. A complete set of documentation was presented to them.

On 24 and 25 November respectively, their Excellencies Mr. Michel Dewez, the Ambassador of Belgium, and Mr. Joao Cabral, the Ambassador of Portugal, paid a courtesy call on the Court and pledged their support for the Court.

During discussions with the President of the Court, Hon. Justice Awa Nana Daboya and the Judges present, the Ambassadors subscribed to the idea that ECOWAS Member States, and by implication, the international community as a whole, have common pursuits and priorities, particularly in the area of human rights protection.

The visiting Ambassadors congratulated the Court and stated that it is necessary that the Court should be supported along the lines of its mandate, given the commendable work it has been doing. They recalled

the recent Judgments delivered by the Court on cases of human rights violation, and sensitisation missions in Member States, to make the Court known to the citizens and legitimate litigants. They also asked for clarification on certain issues relating to the jurisdiction of the Court, as to whether a person who is not an ECOWAS citizen can bring a case before the Court on human rights violation.

The President of the Court replied that it is possible, in as far as the violation in question took place within the territory of an ECOWAS Member State. The discussions also centred on the free movement of persons and goods within the ECOWAS zone, the financial means of the Court, staff capacity- building, and the ways by which the Member States and the Court can work closely together to enhance human rights protection in the sub-region.

SOME SPECIFIC FEATURES OF THE LEGAL FRAMEWORK OF HUMAN RIGHTS PROTECTION OF THE COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

By Mr. S. Ghislain Agbozo,
Personal Assistant to Judge Clotilde Médégan Nougbodé

The Court of Justice of the Economic Community of West African States, among others, has a mandate to ensure the protection of human rights. By virtue of this remit, it may be considered as the West African equivalent of the African Court of Human and Peoples' Rights, the European Court of Human Rights, the Inter-American Court of Human Rights, just to mention but a few.

The basis of the jurisdiction of the Court

It is the Supplementary Protocol A/SP.1/01/05 amending Protocol A/P.1/7/91 relating to the Community Court of Justice, which, in its Article 3, establishes the jurisdiction of the Court in matters of human rights protection.

The 2005 Protocol was adopted by Member States for the sake of harmonising the Community texts and, as far as the Court is concerned, to take particular account of certain events which were of a considerable legal scope, namely, the adoption of the ECOWAS Revised Treaty of 24 July 1993, and more importantly, the adoption of the Protocol on Democracy and Good Governance of 21 December 2001.

The Revised Treaty called for a formal amendment of the 1991 Protocol on the Court so as to update the references made to it in the Treaty of 28 May 1975.

The Protocol on Democracy and Good

Governance demanded, on its part, a substantial amendment of the 1991 Protocol on the Court in terms of widening the Court's jurisdiction. Indeed, within the spirit of Article 4(g) of the Revised Treaty, the Protocol on Democracy and Good Governance renewed the adherence of Member States to the guarantee and protection of human rights. It set out the scope of these rights, by classifying within the "principle of constitutional convergence", *the guarantee of human rights as contained in the African Charter on Human and Peoples' Rights and other international instruments*. As for its Article 39, it expressly provided for the review of the powers of the Court to hear cases relating to violations of human rights.

A Community legal framework of protection brought under the African and universal framework

Thus, within the Community legal framework, one observation stands out. On one hand, the competence of the Court in matters of human rights protection has been formally laid down. On the other hand, the rights to be protected have not been enshrined in any specific Community text.

From this observation and from the spirit of Article 4(g) of the Treaty and the above-cited provisions of the Protocol on Democracy and Good Governance, it is clear that States, in a renewed adherence to the content of the African Charter on Human and Peoples' Rights and the other international instruments relating to human rights, have taken the option of

determining and setting out these rights by way of **reference** to the treaties in question.

The Community legal framework for human rights protection takes a leaf from other legal orders, and it depends on them. It is therefore not an autonomous legal framework. This is expressed by the obvious separation between the legal basis of the jurisdiction of the Court (i.e. Protocol A/SP.1/01/05 of 19 January 2005) and the legal basis of the rights to be protected (i.e. the African Charter on Human and Peoples' Rights and other international instruments). Indeed, the 19 January 2005 Protocol is founded on the Community legal order, the African Charter on Human and Peoples' Rights is based on the African (regional) legal order, and the other international instruments derive from the universal (international) legal order.

However, the practice by States and international organisations in this domain clearly shows that the recognition of rights and the institutionalisation of courts charged with the protection of those rights are done in or by a treaty or successive treaties dealing with the same subject matters. These practices, in themselves, are in agreement with the rule of *pacta sunt servanda* ("agreements are binding" any treaty in force binds the parties and must be executed in good faith) and that of *pacta tertiis nec nocent nec prosunt* ("agreements cannot impose obligations upon nor create rights for third parties" the so-called rule of relative effect of treaties), well established in international law. These rules can partly be found in Article 26 of the 23 May 1969 Vienna Convention on the law of treaties and in the 21 March 1981 Vienna Convention on

the law of treaties between States and international organisations or between international organisations. They can, on the other hand, be found in Article 34 of the 23 May 1969 Vienna Convention on

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the law of treaties and in the 21 March 1981 Vienna Convention on the law of treaties between States and international organisations or between international organisations.

Implications of the choice of bringing the West African framework of human rights protection under the African and universal framework

One cannot fail to ask a few questions. Can rights conferred by treaties, as concluded between States, create effects within the framework of an international organisation like ECOWAS which is not a party to those treaties, whereas the provisions of those treaties do not create rights or obligations for a third Organisation? What consequences may be deduced from the choice made by ECOWAS?

To the first question, one is tempted to answer in the negative. This is because as far as the special regime of human rights is concerned, formally speaking, there is a distinction between the regional or sub-regional legal order, on one hand, and the universal legal order, on the other hand. These regional or sub-regional legal orders are autonomous even if they all share in the international order. Within each of these orders, there is a range of

The Member States therefore made the choice of integrating the Community legal model into an already existing system rather than an infinite duplication of particular features in pure form. This choice reduces the risk of atomising human rights.

jurisdictions and specialisation based on the instruments which regulate each particular order.

The regional frameworks and the universal framework of human rights, by their individual nature, are each unitary in character. At the regional level, the enshrined human rights and the institutionalisation of mechanisms for the protection of those rights rely on the same instrument and they are applicable to the same geographical space. At the universal level also, the same instrument creates the bodies for monitoring these rights and institutes the jurisdiction of these bodies with regard to a specific category of human rights.

They also marked out as closed systems. The rights are enumerated in an exhaustive manner, and the rights protection and monitoring are done with respect to those rights, in principle, on the basis of an exclusive, unrivalled jurisdiction.

Moreover, they conform to the obligation of consistency. The determination of the meanings of the provisions is revealed through the States parties' implementation of the rights, and the function of the institutional framework for protecting these rights is that of eliminating divergences in comprehension among States parties, and to regulate State practice. The institutional mechanism thus preserves a uniform interpretation, specifically designed to safeguard a "common denominator" of rights as conceived for a group of States. Also, the judicial activity of the bodies or organs set up to protect or monitor these rights may be considered as essentially geared towards ensuring precision in the meaning and content of the rights and obligations of the States parties.

In a word, the model of protection is that of an exclusive jurisdiction which is exercised with regard to determined rights within a given geographical sphere (regional or universal). The framework for protection is, by nature, a closed one.

The Court of Justice of ECOWAS does not function along the lines of this model, as far as human rights protection is concerned. As we emphasised above, the West African framework is not autonomous; it is brought under the

African regional framework and under the universal framework. We can put forward the hypothesis that at the Community level, it is the systemic integration which has been chosen.

By renouncing the option of inscribing specific Human Rights in the Community text rights which could not be new at any rate, and which, moreover, run the risk of being a repetition of the rights already enshrined in African and universal texts the Member States avoided the "proliferation" of instruments on human rights. By such technical device, it seems they preferred to admit into the Community law, rights contained in the African and universal instruments. This choice strengthens the "universal" nature of human rights and constitutes a most successful expression of the preamble to the Universal Declaration of Human Rights. The Member States therefore made the choice of integrating the Community legal model into an already existing system rather than an infinite duplication of particular features in pure form. This choice reduces the risk of atomising human rights.

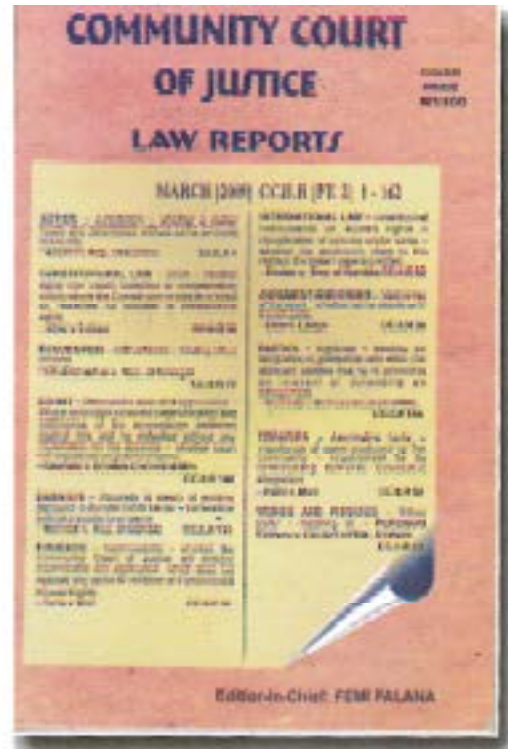
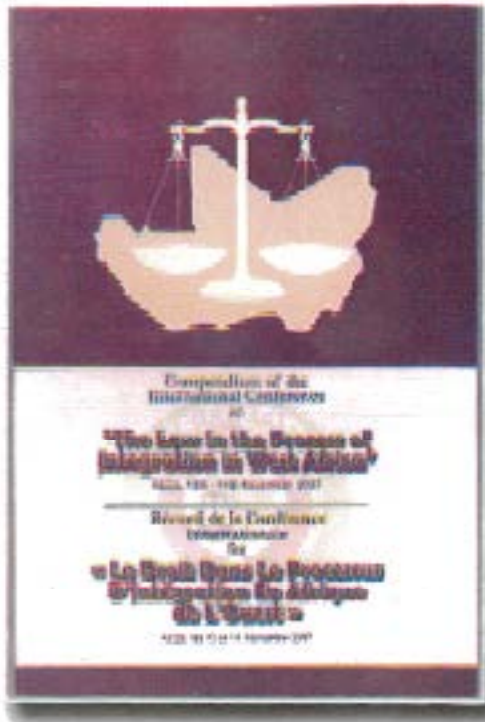
Viewed from this angle, one perceives a link between the provisions of Article 4(g) of the Revised Treaty and those of Article 1(h) of the Protocol on Democracy and Good Governance. Indeed, these provisions compel the Member States of the Community to rely on and refer to the rights contained in the African Charter on Human and Peoples' Rights and the other international instruments of human rights.

Incidentally, it appears that the Member States of the Community are in a quadruple linkage, as regards human

rights: i.e. a national, Community, regional, and universal correlation. There is therefore no juridical sphere within which they can seek refuge and escape the obligation to observe human rights; there are no more avenues open to claim any exemption whatsoever.

However, this choice is not without a disadvantage. It creates a dual regime of competence which may eventually weaken the consistency of the Community's adherence to the regional and universal orders. Indeed, the jurisdiction of the Court rivals with that of the courts or quasi-judicial bodies established by these Treaties for the protection of the rights enshrined in those Treaties. The existence of several courts and tribunals competent to apply international instruments, offers, without doubt, further protection for persons who are victims of human rights violation. But, it gives room for forum shopping (since several courts have jurisdiction, the litigant assesses his chances of success before one or the other court, by playing on the criteria of proximity, reputation, or the case law of these judicial institutions, and he puts aside one court in favour of another, purely upon the basis of his chances of success). This raises three difficulties: the co-existence, in time and space, of the jurisdictions of these courts; the operation or regulation of these jurisdictions; finally, the consistency in the interpretation of the provisions of the Treaties. This is an issue which provides food for thought for another article.

Copies Available at the Court



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Burkina Faso
Cape Verde
Ivory Coast
The Gambia
Ghana
Guinea
Guinea Bissau
Liberia
Mali
Niger
Nigeria
Senegal
Sierra Leone
Togo