

**AN APPRAISAL OF THE COMMUNITY
COURT OF JUSTICE OF THE ECONOMIC
COMMUNITY OF WEST AFRICAN STATES
(ECOWAS) IN CONFLICT RESOLUTION.**

BY

STELLAMARIS IBEGBULAM

JANUARY, 2011

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THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES
(ECOWAS) IN CONFLICT RESOLUTIONS**

BY

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LLM/LAW/05878/2006 – 07

**A THESIS SUBMITTED TO THE FACULTY OF LAW
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JANUARY, 2011.

DECLARATION

I hereby declare that this work is the product of my own research efforts, undertaken under the supervision of Professor Y. Y. Bambale and Dr. Yusuf Dankofa and has not been presented elsewhere for the award of a Degree or Certificate. All sources have been duly distinguished and appropriately acknowledged.

Stellamaris Ibegbulam

LL.M/LAW/05878/2006 - 7

(January, 2011)

CERTIFICATION

The thesis entitled: AN APPRAISAL OF THE COMMUNITY COURT OF JUSTICE OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) IN CONFLICT RESOLUTIONS meets the regulations governing the award of the degree of Master of Laws LLM of Ahmadu Bello University Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This thesis is dedicated to the blessed memory of my late father, Mr. A.D. Ibegbulam who died 25 years ago. May his soul and all the souls of the faithful who have departed this world rest in peace with the Lord. Amen.

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I give all thanks to God Almighty who in his infinite mercy and wisdom enabled me accomplish this task of knowledge.

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LIST OF ABBREVIATIONS

ECOWAS	--	Economic Community of West African States
C.C.J	--	Community Court of Justice
C.J.E.U	--	Court of Justice of the European Union
I.C.J	--	International Court of Justice
OHADA	--	Organization for the Harmonization of Business Law in Africa.
AEC	--	African Economic Country
OAU	--	Organization of African Unity.
COMESA	--	Common Market for Eastern and Southern Africa.
ECCAS	--	Economic Community of Central African States
IGAD	--	The International Authority on Development
SADC	--	Southern African Development Community
REC	--	Regional Economic Community
UBEC	--	Universal Basic Education Commission
SERAP	--	Socio Economic Rights and Accountability Project
AGO	--	Automotive Gas Oil
N.I.A.L.S	-	National Institute of Advanced Legal Studies

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Supplementary Protocol (A/SP.1/06/06) Amending the Revised Treaty of 1975.

Supplementary Protocol on the Community Court of Justice (A/SP.1/01/05)

Amending the protocol (A/P.1/7/91) relating to the community court of justice.

The Revised Treaty of the Economic Community of West African States (ECOWAS) 28th May, 1975.

ABSTRACT

This thesis has found out that the court does not have an efficient means of coercion to apply delivered decisions, there by making the enforcement of the court's decision cumbersome; decision of the court dealing with sanctions on member state who fail to fulfil their obligations are more complex than the interpretation of ECOWAS text; the research showed that the court also did not provide for the time limit in which an application can be reacted or responded to or time limit in which an annulment decision must be enforced. This thesis has put forth suggestions for the court. The suggestions essentially call for full sub-regional integration process by the court like all other ECOWAS institutions. The research revealed that the place of the court in the sub-regional integration will be more important if the decisions delivered by it can be enforced without encumbrance within the ECOWAS region; and that member states and some national institutions should not hold on tightly to their sovereignty but rather try to put enough zeal into facilitating rapid and efficient execution of decisions made by the court. This research work highlighted the extent of the powers of the Community Court of Justice and the factors that have led to it a judicial body with limited powers as regards the lack of access to court being by individual citizens, with the expansion of the provisions of the protocol, the court is bound to blossom in the scope of jurisdiction. It is hoped that this will help to move the sub-region towards greater integration so as to be able to compete in the new competitive global market. The ECOWAS Court has consistently demonstrated courage in the discharge of its vital role in putting an end to violation of all human rights and impunity of perpetrators in the sub region.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

The Community Court of Justice of the Economic Community of West African States (ECOWAS) was created pursuant to the provisions of Article 6 & 15 of the revised ECOWAS Treaty of 1975.¹

The court² started its sitting in 2001 and so far it has decided 64 cases.³

The court is composed of 7 independent judges who are persons of high moral characters appointed by the Authority of Heads of States and Governments, from nationals of member states, for a non – renewable four (4) year term. The judges must have the qualification required in their respective countries for appointment as the highest judicial officer or are Jurisconsults of recognised competence in the International Law.⁴

¹ The EOWAS Revised Treaty 28th May of 1975

² The ECOWAS court of justice is situate at Dar Es Salaam Crescent, off Aminu Kano Crescent, Wuse II, Abuja, Nigeria.

³ The ECOWAS Court Biannual Publication No.2, Vol.2, January – June 2009, Abuja pg 11.

⁴ Article 3 of Protocol (A/P1/7/91) On the Community Court of Justice.

Nigeria produced the first judge of the Community Court of Justice by name Hon. Justice Hansine N. Donli.

The mandate of the court is to ensure the observance of law and of the principles of equity and human rights within the ECOWAS Community. It is the principal legal organ of the community.⁵

From the foregoing, it is clear that this court which was set up to ensure the observance of law and justice in the interpretation and application of the Treaty and Protocols and Conventions annexed thereto, started its sittings five years ago and the problem of this court is that it is still new and by its nature, its existence or its role is not yet well known by many community citizens, hence the reason behind this research work.

This research work affords a rare opportunity for the exchange of useful ideas about the ECOWAS Court. This research work have been very well chosen with the aim of highlighting the developments, structure and jurisdiction of the court as well as the enforcement of the decisions of the court and the challenges facing it. Also the role the court ought to play in the integration process will be examined.

This research work is very relevant because the ECOWAS Court has a unique practice and procedure unlike other international courts. Therefore, in this work we hope to examine the rules, practice and procedure of the court and consider an overview working of the court.

⁵ Article 9 of Protocol (A/P1/7/91) on the Community Court of Justice.

This research work will be concluded with observations and useful recommendations that will help the court move forward.

The court has advisory jurisdiction by giving legal advisory opinion on any matter that requires the interpretation of the community texts or treaty which the court shall give in public.⁶ The essential role of the Community Court of Justice is to ensure the observance of law and justice in the interpretation and application of the treaty and the protocols and conventions annexed with the provisions of Article 6 of the treaty and disputes between states and the Institutions of the community.⁷

A member state may, on behalf of its nationals institute proceedings against another state or institution of the community, relating to the interpretation and application of the provisions of the treaty after attempts to settle disputes amicably have failed.⁸

The proceedings before the court consist of two parts: written and oral. The written proceedings consist of the application entered in the court, notification of application, the defence, the reply or counter – statements et cetera. While the oral proceedings consist of the hearing of the parties, agents, witnesses, experts, advocates or counsels.

The court examines the dispute before it in accordance with the provisions of the treaty and its rules of procedure. It also applies, as a

⁶ Article 10 of Protocol (A/P1/7/91) on the Community Court of Justice, Abuja, 2002.

⁷ *ibid*

⁸ *ibid*

necessity, the body of laws as contained in article 38 of the Statutes of the International Court of Justice.

The court's decisions are read in the open court and reason for such decisions given or stated and subject to the provisions on review contained in the protocol; such decisions are final and immediately enforced.

But, upon an application, the court can decide to revise its decisions only when such application is based upon the discovery of some new facts such that, when the decision was earlier given, the facts were unknown to the court and also to the party claiming revision, provided also that such ignorance was not due to negligence. And such an application for revision must be brought within 5 years from the date of decision.

1.2 STATEMENT OF THE PROBLEM

The jurisdiction of the court does not cover areas like criminal matters, boundary or border disputes, just to mention a few. Also the court does not have machinery in place for the enforcement of its decisions. The court also appears not to have judicial divisions in other member states neither does it have any provision for legal aid assistance for the indigent citizens. The Community text did not provide for the time limit within which an applicant can react to, or time limit for the annulment decision must be enforced. The issue here is whether a member can refuse to comply with the decisions of the court. Does the court have

the means to compel a state to comply with its decisions and whether this court can really play a role in the integration process in West Africa? Also majority of the ECOWAS Citizens do not seem to be aware of this court or how to approach it for redress of wrongs done to them. The number of Judges in the court does not represent all the ECOWAS member states.

These are all the problems this research work intends or sets out to tackle.

1.3 AIMS AND OBJECTIVES OF THIS RESEARCH

The main aim of this thesis is to review some of the relevant authorities with the view to finding out the exact role which the ECOWAS Court of Justice plays in conflict resolutions within or in a member state.

This thesis will examine all the problems associated with the jurisdiction of the court under the various Treaties and Protocols and the adjudications of the court since inception.

This thesis also aims at examining whether the court really is at the centre stage of integration process, development and objective assigned to it as the supreme legal organ of the ECOWAS Community by the ECOWAS Revised Treaty.

This thesis will also examine whether the court as the supreme legal organ of the ECOWAS Community is really serving its purpose and

whether ECOWAS Citizens are really aware of the existence of this court and its benefits to them.

1.4 SIGNIFICANCE OF THE RESEARCH

The ECOWAS Court of Justice as one of the nine Institutions of the Economic Community of West African States is a most valuable institution vested with the supreme legal authority to determine disputes between member states and ECOWAS citizens and to play a great role in conflict resolution between member states. Therefore, this research work should be of interest to the court, the ECOWAS member states, ECOWAS citizens, Human rights activists, judges and the general public. The work will update missing materials in the area of Human Rights in general and African Human Rights in particular.

1.5 SCOPE OF THE RESEARCH

This thesis will be limited to the ECOWAS Court of Justice as one of the nine Institutions of Economic Community of West African States.

Discussions on other institutions of ECOWAS Court are outside the scope of this research. However, for comparism purposes recourse will be made to the other regional and sub regional Courts of Justice such as European Court of Justice and East African Court of Justice especially as it relates to the rights of individuals only.

1.6 RESEARCH METHODOLOGY

This research work was carried out based on doctrinal methodology which involved intensive library oriented research based on theory for consideration of materials. Using the doctrinal research methodology, we have the primary and the secondary sources. The primary source includes the protocols, treaties, and conventions of the ECOWAS and the secondary source includes textbooks, articles, journals newspapers and the internet.

1.7 LITERATURE REVIEW

The topic of this thesis enjoyed a tremendous amount of literature. The literature includes textbooks, ECOWAS treaty, ECOWAS protocol, journals of various authors-Nigerian and foreign and conventions.

Sunday Babalola Ajulo⁹ In his book titled *ECOWAS at 20*, discussed tremendously the ECOWAS Court of Justice, but as at the time the court had not yet been established and the competence of the court still a matter for conjecture,¹⁰ For instance, he discussed the bloody border clashes between Burkina Faso and Mali which took place in 1985¹¹ when the court had not yet come into existence. Oydebode, A.¹² In his book titled *International Law and Politics* discussed the new ECOWAS Treaty of 1975¹³ and the Revised Treaty but did not make any reference to the ECOWAS Court that later applied the treaties as its sources in

⁹ ECOWAS at 20: Some Significant Milestone in its Evolution, Abuja (1995)

¹⁰ Ajulo S.B. "The OAU and UN" Regionalism and the UN: A UNTAR Regional study No. 2 African Publishing Co. 1979 p.254

¹¹ The Liberian Crisis and ECOMOG, A Bold Attempt at Regional Peace Keeping: Veto, M.A. (ed). Gubunio Limited, Lagos, p. 1992.

¹² International Law and Politics: An African Perspective, Lagos: Bolabay Publications;(2003)

¹³ Paper delivered at the second Annual Corporate Lawyers Forum organised by the centre for Business and investment studies limited, Lagos, Nov. 29th – Dec. 1st 1993.

the adjudication of matters before it. However with respect, the various works did not discuss how the court's decisions can be enforced, the time limit within which an individual can react against the decisions of the court and the time limit in which an annulment decision must be enforced. This lacuna must be bridged because time limit for procedure must be known in advance by the applicant so as to avoid the pitfalls of lapses, foreclosure and forfeiture.

Ojomo M.A and Adewale O.¹⁴ African Economic Community Treaty in their various works discussed greatly the process of economic integration among nations and the issues concerning United Nations and the protection of Human Rights in Africa. However, they did not in any way discuss the Community Court of Justice which is the main area covered by this thesis.

Epiphany Azingo,¹⁵ In his book the *Jurisprudence of Jurisdiction* discussed in details about jurisdiction of the ECOWAS Court of Justice, which helped this thesis in a great deal. But with respect to his work, he did not discuss areas like the rules, and practice of the court nor the relevance of this court in conflict resolutions which are the areas this thesis laid emphasis on.

Ladan M.T.¹⁶ in his book titled *Introduction to ECOWAS Community Law and Practice*, discussed greatly about the ECOWAS Court of

¹⁴ African Economic Community Treaty, Issues, Problems and Perspective, Lagos: Nigerian Institute of Advanced Legal Studies; (1993)

¹⁵ Jurisprudence of Jurisdiction, Abuja: Oliz Publications; (2005)

¹⁶ Introduction to ECOWAS Community Law and Practice; ABU Press, Zaria (2009)

justice, its jurisdiction under the various treaties and protocols but did not make any reference to the need for a further expansion of the court's jurisdiction to include criminal matters, genocide cases, war crimes and border or boundary disputes. This research considers these areas imperative for the court's jurisdiction.

From the books/authors' reviewed in this work, the various rights of citizens of member states were discussed, what it was three decades ago and how the founding fathers of ECOWAS became fully aware of the urgent need to create a sub regional grouping that is capable of offering the best chances for the citizens of ECOWAS to get their rights protected. They, however, failed to state or bring to the awareness of the citizens where and how to enforce such rights or seek redress for the violation of such rights.

Also, from the books reviewed, extensively discussed, is the fact that the process of integration has several dimensions such as, political, economic, socio cultural and legal. However, they did not stress the need to place ECOWAS Court of Justice at the centre stage of the integration process if the development objectives assigned ECOWAS is to be attained. This is because the Court is an institution of such legal order and important to every integration process.

Furthermore, the mention of the above works in this thesis shows how greatly it has helped in understanding that the powers of ECOWAS Court of Justice covers, among other things, the domain of human

rights protection and the granting of access of individuals and corporate bodies to the court with the collaboration of civil society groups and also that the ECOWAS Court of Justice finds itself in the forefront of the protection of citizens' rights, and thus constitutes a sure hope for the masses of our people .

However, with respect, the works of the foregoing authors did not discuss how the court's decisions can be enforced, the time limit within which an individual can react to the decisions or judgement of the court, and the time limit within which an annulment decision must be enforced. This lacuna must be bridged because it is time to know the time limit for procedure in advance by the applicant.

In a relatively recent work, titled "The Official Journal of the Economic Community of West African States (ECOWAS)"¹⁷ various contributors dealt with burning issues bordering on the enforcement of the Human Rights of ECOWAS Citizens at the ECOWAS Court of Justice. These discussions directly or indirectly touch on the topic of this thesis thereby immensely enriching the literature.

The ECOWAS Court of Justice and its relevance in conflict resolutions involve both the political, economic and most importantly, the legal aspect of integration of the law which guarantees the legal and judicial security referred for the attainment of objectives assigned the ECOWAS Court of Justice.

¹⁷ Vol 49 June 2006

In this sense, the development objectives assigned the ECOWAS court of justice cannot be attained if we do not place the law at the centre stage of the integration process.

With changes in the socio-economic life of the citizens of ECOWAS member states new issues arise which call for new response. A classical example is the ECOWAS Court as the principal legal organ of the community, entrusted with the duty of making the law one of the pillars of ECOWAS integration, such integration presents itself as a huge challenge to the leaders of our member states and the Heads of the Community institutions because the world we live in now has become a globalised one that is becoming increasingly complex with relations between states becoming more and more interdependent.

Therefore, notwithstanding the great contributions of the various authors on the topic, this thesis intends to improve upon the literature by appraising it in much wider perspective. To this end, all available materials relevant to the topic will be used for a comparative study and also for bringing forth suggestions to reforms.

1.8 ORGANIZATIONAL LAYOUT

In carrying out this research work, the work is divided into five chapters.

Chapter one contains the general introduction of the thesis. It introduces the contents of the whole thesis. It also states the statement of the problem, aims and objectives, the scope of the research,

literature review, methodology, justification and the organizational layout.

Chapter two introduces the Community Court of Justice, its development, the circumstances of its establishment, the language of the court, the Vision of the Court, the member states that constitute the community and other institutions of ECOWAS.

Chapter three offers the actual position of the court In respect of its organization, the Rules, Practice and procedure of the Court, how to Access the Court, judgement of the Court and its Enforcement.

Chapter four discusses jurisdiction of the court, the Sources of law, which the Court applies in the adjudication of cases before it, highlights of adjudications of the Court, and its relevance, if any, to the African sub region.

Chapter five concludes the work with, summary, Findings, suggestions and conclusions.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF THE ECOWAS COURT OF JUSTICE.

2.1 INTRODUCTION

This research will briefly analyse the structure of ECOWAS before discussing the history of the ECOWAS Court of Justice.

It also discusses the structure of ECOWAS Court of Justice which is one of the nine institutions of ECOWAS and this is towards the attainment of the aims and objectives which the ECOWAS set out to achieve. Therefore, the main objective of this chapter is to show case the History of ECOWAS Court, its establishment or creation, the vision of the court, the members of the ECOWAS and the institutions of ECOWAS.

The Economic Community of West African States (ECOWAS) was set up in 1975 in Lagos Nigeria, to promote cooperation and integration in West African sub-region. It is a union of 16 West African States into a single community¹⁸. The aim of the Union, as provided under Article 3(1) of the ECOWAS Treaty is to promote cooperation and integration leading to the establishment of an economic union in West Africa in order to raise the living standards of its people and at the same time enhance economic stability, foster relation among member states and

¹⁸ See Appendix A

contribute to the progress and development of the African Continent.¹⁹

ECOWAS integration policies and programmes are influenced by the prevailing economic conditions in its member countries, the need to take the principal provisions of the AEC Treaty into account, and relevant development on the international scene.

The revised treaty of 1993, which was to extend economic and political co – operation among member States, designates the achievement of a common market and a single currency as economic objectives while in the political sphere it provides for a West African parliament and an economic and social council and an ECOWAS Court of Justice to replace the existing Tribunal and enforce community decisions.

To achieve these aims and objectives, ECOWAS created eight institutions²⁰ the Community Court of Justice which is the subject matter of this thesis is the fifth institution.

The Community Court of Justice is one of the institutions of ECOWAS working together for the realization of the overall objectives. Established under Article 15(1) of the Revised Treaty as the principal legal organ of the community, its mandate is defined by Article 76 (2) of the treaty and by the protocol on the Community Court of Justice.

¹⁹ Donli, H.N. "The Law, practice and procedure of the Community Court of Justice – meaning and implication" – being a paper presented at the workshop on the law and practice and procedure of the community court of justice ECOWAS – organized by the West African Human Rights Forum from 7th – 9th Dec 2006 at Bamako, Mali pg. 2

²⁰ The Authority of Heads of State and Government, The Council of Minister, The Community Parliament, The Economic and Social Council, The Community Court of Justice, the Executive Secretariat, The Found for Cooperation, Compensation and Development, and Specialised Technical Commissions and any other Institution that the authority may establish.

The Community Court of Justice of West African States was created pursuant to the provisions of Articles 6 and 15 of the Revised Treaty of the ECOWAS.²¹ Though the protocol of the court was adopted in 1991, the court only became operational in 2001 with the appointment and swearing in of its members.²²

The Community Court of Justice is thus a very young institution as it was only set up few years ago. As is to be expected of such a young institution, the Community Court of Justice had a lot of teething problems and is still facing a lot of challenges.

The court is composed of 7 independent judges²³ who are persons of high moral character appointed by the Authority of Heads of State and Government for a four (4) year non renewable term.²⁴

The mandate of the court is to ensure the observance of law and of the principles of equity and human rights within the ECOWAS community. It is the principal legal organ of the community.²⁵

The court has advisory jurisdiction by giving legal advisory opinion on any matter that requires the interpretations of the community texts. It also has other jurisdiction such as examining cases of the failure by member states to honour their obligations under the community law,

²¹ 1993 July, 24

²² Supra at pg 12

²³ Article 3 of protocol (A/P1/7/91) on the Community Court of Justice

²⁴ Article 4(3) of the supplementary protocol (A/SP.2/06/06) on the community court of justice amending protocol (A/P1/7/91)

²⁵ Articles 15(1) and 76(2) of the 1993 Revised ECOWAS Treaty.

examining actions by or against the community and jurisdiction to entertain cases of violation of human rights in the member states²⁶.

The Community Court of Justice plays a vital role in the legal framework of the West African sub – region. The formation of the court has brought about uniformity in the rules and laws governing the objectives of ECOWAS in the birth of a unified union of states, integrated by the prospects of free movement of persons and goods, free movement of services and the protection of the rights of citizens of ECOWAS member states among other numerous objectives.

In this sense, the development objectives assigned to ECOWAS cannot be attained if we do not place the law at the centre stage of the integration process. The institution of such legal order is important to every integration process.

2.2 MEMBERS OF ECOWAS

The Economic Community of West African States came into existence by the signing of a Treaty by the Member States in Lagos, Nigeria on the 28th of May 1975.

By the coming together of sixteen (16) Nations, the African sub – region was born. Presently however, fifteen (15) Nations form this community. The Islamic Republic of Mauritania withdrew from the community on the

²⁶ Articles 9& 10 of the protocol (A/P1/7/91)

26th of December, 1999. The membership of the Economic Community of West African States are as shown in the table below: ²⁷

S/NO	COUNTRY	CAPITAL	OFFICIAL LANGUAGE
1.	BENIN	PORTO NOVO	FRENCH
2.	BURKINA FASO	OUAGADOUGU	FRENCH
3.	CAPE VERDE	PRAIA	PORTUGUESE
4.	COTE D'IVOIRE	YAMOOUSSOUKRO	FRENCH
5.	THE GAMBIA	BANJUL	ENGLISH
6.	GHANA	ACCRA	ENGLISH
7.	GUINEA BISSAU	BISSAU	PORTUGUESE
8.	GUINEA	CONAKRY	FRENCH
9.	LIBERIA	MONROVIA	ENGLISH
10.	MALI	BAMAKO	FRENCH
11.	NIGER	NIAMEY	FRENCH
12.	NIGERIA	ABUJA	ENGLISH
13.	SENEGAL	DAKAR	FRENCH
14.	SIERRA LEONE	FREETOWN	ENGLISH
15.	TOGO	LOME	FRENCH

²⁷ Population source – The Economic Newspaper Ltd. 2000 or <http://www.is.co.za/af/regorg/unity> or www.ecowas.int accessed on 20/4/2011

The countries shown in the above table came together and initiated the fundamental principle of:²⁸

1. Equity and inter – dependence of member states;
2. Solidarity and collective self-reliance;
3. Inter – states co – operation, harmonization of policies and integration of programmes;
4. Non – aggression between member states;
5. Maintenance of regional peace, stability and security through the promotion and strengthening of good neighbourliness;
6. Peaceful settlement of disputes among member states, active co-operation between neighbouring countries and promotion of peaceful environment as a prerequisite for economic development;
7. Recognition of promotion of human and people’s rights in accordance with the provisions of African Charter on Human and People’s Rights;
8. Accountability, economic and social justice and popular participation in developments;
9. Recognition and observation of the rules of the principle of the community;
10. Promotion and consideration of democratic system of Government in each member states as envisaged by the

²⁸ <http://www.court.ecowas.int/en/introduction.htm> accessed on 21/4/2011 and Article 5 of the ECOWAS Revised Treaty of 1975.

declaration of political principles adopted in Abuja on 6th July 1991; and

11. Equitable and just distribution of cost and benefit of economic co-operation and integration.

The paramount aims and objectives for the coming together of these countries are to promote cooperation and integration leading to the establishment of an economic union in West Africa in order to raise the living standard of its people and to maintain and enhance economic stability, fostered relations among member states and contribute to the progress and development of the African continent.²⁹

Each member state undertook to create favourable conditions for the attainment of the objectives and fundamental principles of the community and particularly taking all necessary measures to harmonise their strategies and policies and to refrain from any action that may hinder the attainment of the said objective.³⁰

2.3 INSTITUTIONS OF THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS)

To achieve the objectives and fundamental principles of the Economic Community of West African States, ECOWAS created 8 institutions.³¹

This is to say that the Economic Community of West African States ECOWAS is made up of eight (8) institutions.

²⁹ <http://www.court.ecowas.mt/en/introduction.htm>

³⁰ Article 5 of the ECOWAS Revised Treaty

³¹ Article 6 of the ECOWAS Revised Treaty

The Community Court of Justice is the fifth institution of ECOWAS. In general the institutions of the Court are:

1. The Authority of Heads of State and Government;
2. The Council of Ministers;
3. The Community Parliament;
4. The Economic and Social Council;
5. The Community Court of Justice;
6. The Executive Secretariat;
7. The Found for Cooperation, Compensation and Development; and
8. Specialised Technical Commissions and any other institution that the authority may establish.

By Article 7 of the Revised Treaty of the ECOWAS, the Authority of Heads of State and Government is the supreme institution of the Economic Community of West African States. It is responsible for the general direction and control of the community and also oversees to the follow up of implementation of the community objectives. This body also refer where it deems necessary any matter to the Community Court of Justice when it confirms, that a member state or institution of the community has failed to honour any of its obligations or an institution of the community has acted beyond the limits of its authority or has abused the powers conferred on it by the provisions of the Treaty, by a decision of the Authority or a regulation of the council.

The Authority meets once a year in ordinary session. An extra ordinary session may be convened by the chairman of the Authority or at the request of a member state provided that such a request is supported by a simple majority of member states. Decisions of the Authority shall be binding on the member states and institutions of the community, without prejudice to the provisions of paragraph (3) of Article 15 of this Treaty.

Council of Ministers comprises the minister in charge of ECOWAS affairs and any other minister of each member state. It makes recommendations to the Authority on any matter concerning the community. The Council meets at least twice a year in ordinary session. One of such sessions shall immediately precede the ordinary session of the Authority

2.4 ESTABLISHMENT OF THE ECOWAS COURT OF JUSTICE

Protocol A/P1/7/91 on the Community Court of Justice, particularly Article 2 provides for the establishment of the court. It reads:

“The Community Court of Justice established under Article 2 of the Treaty as the principal legal organ of the community shall be constituted and executes its function in accordance with the provisions of this protocol”.

The Community Court of Justice was established in line with the provisions of Article 6 and 15 of the Revised Treaty of ECOWAS of 1975. The Protocol was adopted on a solemn declaration by the

Authority of Heads of States and Government of the Organization of African Unity (OAU) in Burkina Faso on the 19th of June 1998.

Prior to this, the West African Regional Authority of Heads of State and Government of the ECOWAS decided that the legal protection of rights is best guaranteed through integration of the region which was adopted on the 6th of July 1991. This was the protocol that gave life to the Community Court of Justice of ECOWAS and so West Africa has a court for the protection of human rights.³² The seat of the court is in Abuja, the Federal Capital Territory of Nigeria.

The protocol (A/P.1/7/91) relating to the Community Court of Justice sets out the status, composition³³, powers³⁴, procedure³⁵ and other issues relating to the court. The protocol clearly states that the court is the principal legal organ of ECOWAS with the main function of resolving disputes relating to the interpretation and application of the provisions of the Revised Treaty and the annexed protocol and conventions. The court was enjoined in Article 9(1) of the 1991 protocol to ensure the observance of law and of the principles of equity in the interpretation and application of the provisions of the Treaty.

Article 9(6) of the Amended Protocol of 2005 of the court provides for a reference to be made either by the national court, or a party to the ECOWAS Court for interpretation of various Community texts for an

³² *ibid*

³³ Article 3 of protocol 1991 on the community court of justice

³⁴ Article 9 of protocol 1991 on the community court of justice

³⁵ Article 13 of 1991 protocol on the community court of justice.

eventual emergence of a Community legal order. This will be of immense benefit to the ECOWAS Court and the national courts.

2.5 CHALLENGES OF THE COURT

The Community Court of Justice, being the principal legal organ of the community, its vision includes ensuring the observance of law and the principles of equity and human rights within the ECOWAS Community. We can rightly notice that the existence of the Court of Justice is an essential element in an integration process. Under this form and by its general or specific jurisdictions that are aimed at resolving sensitive disputes between states of ECOWAS, the Community Court of Justice can create an integrated and stable regional judicial environment.

Given that the ECOWAS Treaties have as a principal aim the economic integration, the economies constitute also issues into which the court's activities are inserted. The latter is then called to ensure a coherent interpretation of the treaties notably their provisions relating to the integration of economic and social policies. In this context, interpretation is not only on the provisions of the treaties but also on all the roles relating to its application that is the derived norms or law made by the institutions of the community.

For the reason of integration of the treaties, the Community Court of Justice whose mission it is as we have seen, to ensure the respect of the law and the principles of equity in the application and interpretation of treaties can favour the functional methods of interpretation that is

taking into consideration the general aim of the treaties in view of reconstituting the spirit.

The Community Economic constitution serve as a frame – work to a numerous jurisprudence that concerns more on the realisation of the free movement of goods and persons as well as the putting into action, common policies. Essentially, it has to do with principles of equity, liberty, solidarity and unity which constitutes, among other things the foundation of the community legal order.³⁶

The role of the law in our community been accorded a better perception and greater recognition, is development trend which must give us cause for joy, but such affirmation, cannot constitute an end in itself; the law must serve the purpose of integration by creating the best conditions for attaining the development gaols of the community.

The role of the Community Court of Justice is to give legal judgement for the benefit of individuals and legal entities of the ECOWAS community.

A striking resemblance can be seen in the structure of the Community court of justice ECOW AS and that of the court of justice of the European Union. The ECOWAS court of justice is inspired to follow the format of the European court, in its structure, form and objective to regulate the legal climate in its region namely, this includes the enforcement treaties and protocols, the resolution of inter-state

³⁶ Daouda Fall: The ECOWAS COURT OF JUSTICE AND THE PROCESS of integration in West African International law in focus ABU, Joournal off International law vol 1v NO. 1v 2004.

disputes, the guarantee of rights of citizens and states within the region. So also the sustenance of a conclusive safe region for free movement of persons, goods and other economic activities.

Exclusive jurisdiction to intervene and settle disputes between member states of ECOWAS and its institutions is the reserve of the Community Court of Justice.³⁷ Individual members of the community whose fundamental human rights have been violated or infringed upon by any person(s) or state have a right of access to the court.³⁸

By making rules and interpreting treaties the court serves and can create an equitable avenue to facilitate integration of the West African sub – region. The jurisdiction of the court spans and ends within the West African region upon member states that have endorsed its treaties.

The decisions of the court are binding on all member states of the community and it is a court of final jurisdiction. An important observation is to acknowledge the fact that where a national court is faced with an issue which relates to or borders on any aspect of the treaties or protocol of the community, the national court must refer the matter first to the community for appropriate interpretation before proceeding on the case.³⁹

ECOWAS is made up of fifteen sovereign states which fall within the jurisdiction of the Community Court of Justice, which is the fifth of the

³⁷ Article 3 of the supplementary protocol (A/SP.1/01/05)

³⁸ Article 3(3) of the supplementary protocol (A/SP.1/01/05)

³⁹ Article 4(f) of the supplementary protocol (A/SP.1/01/05)

eight (8) institutions of ECOWAS. The language of the court is that of the community, namely English, French, and Portuguese.

Theoretically, this judicial arm of ECOWAS was provided for in 1975, created in 1991 and finally set up in the year 2001. The law applicable in the court is that of West African States.

With the evolution of the community court of justice towards allowing individuals direct access to the court, the court will over time develop jurisprudence concerning its role within the ECOWAS union to ensure respect for human rights by member states and community institutions.

There has been a trend in the evolution of similar regional unions and the European Community Court will be used as a basis of comparison here, not necessarily as a pacesetter but to highlight how similar the history of the European Community Court is, to that of the ECOWAS Court of Justice which is still in its budding phase.

2.6 HUMAN RIGHTS PROTECTION AND ECOWAS COURT OF JUSTICE

Human rights have intrinsic and consequential dimensions. They are based on certain intrinsic attributes of shares of humanity which are then clothed in law with legal consequences. These different dimensions begin with the nature of the concept of human rights itself. Human beings and their communities enjoy human rights. If or when the fulfilment of these rights are threatened an enforcement or implementation machinery whose jurisdiction is geo-politically defined

such as national courts, regional courts or the ECOWAS Court of Justice may be needed to secure their enjoyment.⁴⁰

The corpus and goals of human rights are rich with contradictions, for instance, the goals of security and stability are sometimes at odds with strict justice and individual rights. Such conflicts between human rights norms, whether as a system of ends or rules embodying means, or between human rights and other public policy goals require arbitration by political institutions and authority whose powers and conduct are, in turn, constrained by these norms. The efficacy of human rights norms is dependent on this interaction between the dynamic normative framework of human rights and political context for its enjoyment.

In its preamble, the UN Charter reaffirms faith in “fundamental human rights, in the dignity and worth of the human person, in the equal rights of men, women and of nations, large and small”

Fundamental rights form an integral part of the general principles of law, the observance of which is ensured by the court. In safeguarding these rights the court has to look to the constitutional traditions common to the member states, so that measures which are incompatible with the fundamental rights recognised by the constitution of those states may not find acceptance in the community.

The actions for violations of human rights by individuals are within the competence of the Court except where the action fails to specify the

⁴⁰ M.T.Ladan, Introduction to ECOWAS community law and practice (2009) ABU press, Zaria

name of the applicant. Actions for breach of the principles of fair hearing may fall within the ambit of the competence of the Court. For example, the case of HON DR. JERRY UGOKWE V. THE FEDERAL REPUBLIC OF NIGERIA AND HON DR. CHRISTIAN OKEKE AND OTHERS⁴¹ may appear to be beyond the jurisdiction of the ECOWAS Court but on the consideration of the application it was found that the applicants relied on an alleged breach of the principles of fair hearing. The treaty is to enable the court to bring in the application of those rights catalogued in the African Charter.

Unlike the 1975 Treaty, the Revised ECOWAS Treaty of 1993 refers to the African Charter on Human and Peoples' Rights in its preamble. One innovation in the Revised Treaty was recommendation for the adoption of fundamental principles by the community, implemented in Article 4 of the 1993 Treaty. These principles include maintenance of regional peace, stability and security through the promotion of good neighbourliness, peaceful settlement of disputes among member states, recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. Accountability, economic and social justice and popular participation in development, promotion and consolidation of a democratic system of government in each member state and equitable and just distribution charter on human and peoples' right and the

⁴¹ Unreported

protection of both fundamental principles of ECOWAS mechanism for conflict prevention, management, resolution, peace-keeping and security. The ECOWAS Court of Justice examined the legality of the commitments in the case of Hon. Dr. Jerry UGOKWE V. Federal Republic of Nigeria, and held that the reference to the African Charter on Human and Peoples' Rights as a fundamental principle of the community in Article 4(g) of the Revised Treaty enables the court to look into the applications of those rights catalogued in the African Charter. The court thus claims jurisdiction to enforce human rights, (a domestic law in Nigeria) and Universal Declaration of Human Right. It follows that to the extent that the ECOWAS treaty is a supra – national treaty instrument directly applicable within its member state, domestic application of the African Charter on Human and Peoples' Rights through the fundamental principles of ECOWAS is automatic and mandatory. The Charter is not just a source of law for the court; it is also a legal instrument that frames the ECOWAS court's human right jurisdiction.

2.7 LANGUAGE OF THE COMMUNITY COURT OF JUSTICE

Article 25, Chapter IV of the Rules of the ECOWAS Court of Justice, states:

“The official language of the court shall be the languages of the Community in accordance with Article 87(2) of the Treaty”⁴²

⁴² Rules of the Community Court of Justice ECOWAS 2002

Language of a case shall be chosen by the applicant except that:

- a. Where the defendant is a member of a state, the language of the case shall be the official language of that state;
- b. Where the state has more than one official language, the applicant may choose between them.

The language of the case shall in particular be used in the written and oral proceedings of the parties and in supporting documents and in the minutes and decisions of the court. Any supporting documents expressed in another language must be accompanied by a translation into the language of the case.

In the case of lengthy documents, translations may be confined to extracts. However, the court may on its own motion or at the request of a party at any time call for a complete or further translation.

Where a witness or expert states that he is unable adequately to express himself in one of the languages referred to in paragraph 1 of this Article, the court may authorise him to give evidence in another language. The court may, in conducting oral proceedings, use one of the languages referred in paragraph 1 of the Article other than the language of the case.

The supplementary protocol has established the provision of Article 9 of the supplementary which reads: "the official language of the court shall be English, French and Portuguese.

CHAPTER THREE

THE RULES, PRACTICE AND PROCEDURE OF THE COURT

3.1 INTRODUCTION

The aim of this chapter is to discuss the rules, practice and procedure of the court, the working and organization of the court.

The rules of procedure of the ECOWAS Court were adopted in August 2003 by the court on the basis of authority granted in article 32 of the 1991 Protocol of the Community Court of Justice. At the time those rules were adopted, the court did not have jurisdiction over human rights and the court was not competent to receive cases from individuals.

On the contrary, the current rules of procedure are generally adequate even for the purpose of the human rights competence. The only visible problem or concern is the fact that there is no provision for legal assistance to indigent litigants. Considering that some of the people most commonly at the receiving end of human rights violations are those at the lower end of the economic spectrum, omitting to create room for legal assistance may easily result in disempowerment of people with genuine cases.⁴³

Article 32 of the 1991 Protocol of the Community Court of Justice empowers the court to establish its own rules of procedure to be

⁴³ Article 31 of the Interim Rules of the African Court on Human and Peoples' Rights 1990.

approved by the Council of Ministers. Pursuant to this provision, the court formulated its rules of procedure which was approved by the Council vide Regulation C/REG/O4/8/02 of 28th August 2002. The approved rules of procedure of the Community Court of Justice of the Economic Community of West African States has been published in vol. 41, August 2002, of the official Journal of ECOWAS.

The rules of procedure have been formulated to regulate the proceedings of the court. It is expected that lawyers wishing to appear before the court should be very familiar with the provisions of the said rules. The procedure of the Court is governed by the Protocol and the rules of procedure of the court. Proceedings before the court shall consist of two parts: written and oral.

The written procedure includes – the application, the defence, the reply or counter statement, the rejoinder and other briefs or documents in support⁴⁴

Cases may be brought before the court by an application addressed to the Court Registry.⁴⁵ By virtue of the provision of Article 33 of the Rules of Procedure, every application shall state:

- a. The name and address of the applicant;
- b. The designation of the party against whom the application is made;

⁴⁴ Article 13(1) - (3) of the protocol and 32 -51 of the rules of procedure of the court

⁴⁵ Article 11 of the protocol (A/P1/7/91)

- c. The subject matter of the proceedings and a summary of the pleas in law on which the application is based;
- d. The form of order sought by the applicant;
- e. Where appropriate, the nature of my evidence offered in support;
- f. An address for service in the place where the court has its seat and the name of the person who is authorised and has expressed willingness to accept service. In addition, instead of specifying an address for service, the application may state that the lawyer or agent agrees that service is to be effected on him by telephone or other technical means of communication.

Article 35 of the Rules of Procedure provides that within one month after service on him (defendant) of the application, the defendant shall lodge a defence stating:

- a. The name and address of the defendant;
- b. The arguments of fact and laws relied on;
- c. The form of order sought by the defendant;
- d. The nature of any evidence offered by him.

The application initiating the proceedings and the defence may be supplemented by a reply to be filed within one month from the date of receipt of the defence and by a rejoinder by the defendant within one month from the date of that receipt of the reply by the applicant.⁴⁶

⁴⁶ Article 36 of the Rules of the Court.

It is also a requirement under the rules of court that Notice of the Registration of an Application initiating proceedings be given in the official journal of the community. The notice shall state:

- a. The date of registration of the application;
- b. The names and addresses of the parties;
- c. The subject matter of the proceedings;
- d. The form of order sought by the applicant; and
- e. A summary of the pleas in law and of the main supporting arguments.⁴⁷

It should be noted that the Notice of Registration is significant because it serves the purpose of putting members of the public on notice, so that interested persons who may wish to intervene in the proceedings can do so, and this is in accordance with the provisions of Article 21 of the Protocol, which empowers any interested member state to intervene in a dispute before the court. By virtue of Article 89, of the Rules of procedure of the Court, an application to intervene must be made within six weeks of the publication of the notice of registration.⁴⁸ The application for intervention shall contain;

- a. The description of the case;
- b. The description of the parties;
- c. The name and addresses of the intervener;

⁴⁷ Article 13(6) of the Rules of the Court.

⁴⁸ Article 59(4) of the protocol (A/P1/7/91)

- d. The intervener's address for service at the place where the court has its seat. The form of order sought, by one or more of the parties in support of which the intervener is applying for leave to intervene; and
- e. A statement of the circumstances establishing the right to intervene, where the application is submitted pursuant to Article 21 of the protocol (A/P.1/7/91).

3.2.1 HOW TO ACCESS THE COURT

The requirements for lodging applications before the court are provided for under Article 11 of the Protocol A/P1/7/91 as follows:

- a. Cases may be brought before the court by an application addressed to the Court Registry. These applications shall set out the subject matter of the dispute and the parties involved and shall contain a summary of the argument put forward as well as the plea of the plaintiff;
- b. The Chief Registrar of the court shall immediately serve notice of the application and of all documents relating to the subject matter of the dispute to the other party, who shall make known his grounds for defence, within the time limit stipulated by the rules of procedure of the court.

Furthermore, Article 33 of the Rules of Procedure provides that every application shall state:

- a. The name and address of the applicant;
- b. The designation of the party against whom the application is made;
- c. The subject matter of the proceedings and a summary of the pleas in law on which the application is based;
- d. The form of order sought by the applicant;
- e. Where appropriate, the nature of any evidence offered in support;
- f. An address for service in the place where the court has its seat and the name of the person who is authorised and has expressed willingness to accept service; and
- g. In addition or instead of specifying an address for service, the application may state that the lawyer or agent agrees that service is to be effected on him by telephonic or other technical means of communication

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.

The court applies the Treaty, the Conventions, Protocols, and Regulations adopted by the community and general principles of law. In the area of human rights protection, the court equally applies the

international instruments on human rights ratified by the state or the state part to the case.

Decisions of the court are not subject to appeal except in the cases of application for revision by the court. Decisions of the court are binding and each member state shall indicate the competent national authority responsible for the enforcement of the decisions of the court.

It should also be noted that the application shall be accompanied by supporting documents.⁴⁹ To every pleading there shall be annexed a file containing the documents relied on in support of it, together with a schedule listing term. Where in view of the length of a document only extracts from it are annexed to the pleadings, the whole document or a full copy of it shall be lodged at the Registry.⁵⁰ The court is also empowered by Article 15 of the protocol A/P1/7/91 to request the parties at any time, to produce any document and provide any information or explanation which it may deem useful. Formal note shall be taken of any refusal.

Where an application does not comply with the requirements set out in Article 33(1) – (4), the Chief Registrar shall prescribe a period not more than 30 days within which the Applicant is to comply with them. This will be either by putting the application itself in order or by producing any of the above mentioned documents. If the Applicant fails to put the application in order or to produce the required documents within the

⁴⁹ Article 35(5) of the Rules of Procedure and Article 15 of the Protocol.

⁵⁰ Article 32(4) and (5)

time prescribed, the court shall after hearing the judge rapporteur decide whether the non-compliance with these conditions renders the application formally inadmissible.⁵¹

The Oral Proceedings shall consist of the hearing of the parties, agents, witnesses, experts, advocates or counsels.⁵² Under the oral procedure, after the completion of the preparatory inquiry, the president fixes also the date for the opening of the oral procedure. The proceedings shall be opened and directed by the president who shall be responsible for the proper conduct of the hearing. The court summons a witness by its own motion or upon an application by a party. After the conclusion by the parties the president shall declare oral procedure closed.⁵³

Article 12 of the 1991 protocol of the court provides that each party to a dispute shall be represented before the court by one or more agents nominated by the party concerned, and the agents may request the assistance of one or more advocates or counsel who is qualified to appear in court in their area of jurisdiction. A lawyer acting for a party is required to lodge at the registry of the court a certificate showing that he is authorised to practice before a court of a member state or of another state which is a party to the Treaty.⁵⁴

⁵¹ Article 33(b) of the Rules of court

⁵² Article 52 – 58 of the Rules of Procedure of Court.

⁵³ Article 50 57 of the Rules of the court

⁵⁴ Article 28(3) of the Rules of the Court.

Provisions have also been made in the Rules for Agents, Advisers and Lawyers appearing before the court to enjoy immunity in respect of words spoken or written by them concerning the case or the parties.⁵⁵

The court may however exclude from the proceedings any adviser or lawyer whose conduct towards the court or a judge is incompatible with the dignity of the court.⁵⁶

In the trial cases before the court, the judge rapporteur plays an important role. The main task of the judge rapporteur is to make a preliminary report to the court in respect of an application. The preliminary report shall contain recommendations as to whether a preparatory step should be undertaken. The measures of inquiry that the court has ordered shall also be conducted by the judge rapporteur. Where the court commissions an expert report, the expert works under the supervision of the judge-rapporteur .⁵⁷

After the conclusion of the written proceedings, the president of the court fixes the date on which the judge-Rapporteur is to present his preliminary report to the court. Upon his recommendation, the court shall decide what action to take. Under Article 3 of the Protocol A/P1/7/91 the court may, in any circumstances and in accordance with its rules of procedure order any manner of judicial enquiry summon any person, organization or institution to carry out an enquiry or give an

⁵⁵ Article 28, 29 and 30 of the Rules of the court.

⁵⁶ Article 31 of the Rules of the court

⁵⁷ Articles 39, 41 and 45 of the Rules of the Court.

expert opinion. It is further provided under Article 41 of the Rules that the court may adopt any of the following measures of enquiry:

- a. The personal appearance of the parties;
- b. A request for information and production of documents;
- c. Oral testimony;
- d. The commissioning of an experts' report; and
- e. An inspection of the place or thing in question.⁵⁸

Pursuant to the provisions of Article 14(2) of the protocol, the quorum of the court consists of the president and at least two other judges. The sittings of the court shall comprise of an uneven number of its member that is 3, 5 or 7. The dates and times of the sessions of the court shall be fixed by the resident. The court may, however, choose to hold one or more sessions outside its seat of court. Where the court has been convened and it is found that there is no quorum, the president shall adjourn the sitting until there is quorum. The sittings of the court shall be in public, but the court may sit in camera at the request of one of the parties or for reasons, which only the court may determine.⁵⁹ It is submitted that it is necessary to amend the provisions of Article 14(2) of the protocol in order to ensure that two panels of court can sit at the same time or sit without the president.

⁵⁸ Articles 39 and 41 of the Rules of Court and Article 16 of the 1991 protocol.

⁵⁹ Articles 21 and 22 of the Rules of the court and Articles 26(1) and 27 of the 1991 protocol

Pursuant to the provisions of Article 26(1) of protocol A/P1/7/91 the Authority of Heads of State and Government fixed the seat of the court in Abuja, Nigeria vide decision A/DEC.23/12/01. However, under Article 26(2) of the protocol where circumstances or facts of the case so demand, the court may decide to sit in the territory of another member state. In an appropriate case the court will exercise this power by sitting outside Nigeria in order to bring justice closer to the people. We are aware that because of poverty and the great distance from Abuja to the member states, it is difficult for some community citizens to access the court. Therefore, in the exercise of the powers vested in the court by Article 26 (2) of the 1991 protocol, the court sat in Bamako Mali in 2006/2007 in the case of Moussa Keita v. Republic of Mali.⁶⁰ The main consideration of the court in its decision to sit in Bamako was the age of the Applicant, a retired civil servant who was eighty one year old.

Also in the case of Hadijatou Mani Koraou v. Republic of Niger⁶¹ where the court moved its sitting to Niamey due to the poor financial situation of the applicant who could not pay the transportation bills of her witnesses.

3.3 THE JUDGMENT OF THE COURT

The court's deliberations upon what its judgement shall be, takes place in a closed session and only those judges who were present at the oral proceedings are entitled to take part in the deliberations. Every judge

⁶⁰ Suit No. ECW/CCJAPP/05/06

⁶¹ Suit No. ECW/CCJ/JUD/06/08

taking part in the deliberations shall state his opinion and the reason for it. Conclusions reached by the majority of the judges after final discussion shall determine the decision of the court. The judgement of the court shall be read in open court and shall state the reasons on which it is based.⁶²

Article 62 of the Rules of Court provides that the judgment shall be binding from the date of its delivery. Article 22(3) of the 1991 protocol enjoins all member states and institutions of the community to immediately take all necessary measures to ensure the execution of the decisions of the court.

Article 15(4) of the Revised Treaty provides that:

“Judgment of the Court of Justice shall be binding on the member states, the institutions of the community and on individuals and corporate bodies”.

It has been observed that the foregoing provisions are not adequate for the enforcement of the decisions of the court. More elaborate provisions have been made in the proposed new Article 24 which reads as follows:

- a. Judgments of the court that have financial implications for nationals of member states or member states are binding;
- b. Execution of any judgment of the court shall be in the form of a writ of execution which shall be submitted by the Registrar of

⁶² Articles 23, 60, 61 and 62 of the Rules of the Court and Article 19 of the protocol

- the court to the relevant member state for execution according to the rules of civil procedure of that member state;
- c. Upon the verification by the appointed authority of recipient member state that the writ is from the court, the writ shall be enforced;
 - d. All member states shall determine the competent national authority for the purpose of receipt and processing of execution and notify the court accordingly; and
 - e. The writ of execution issued by the community court may be suspended only on the authority of a decision of the Community court of justice.

3.4 ENFORCEMENT OF THE COURT'S DECISIONS

According to Article 76(2) of the Revised Treaty, decisions of the Community Court of Justice shall be final and shall not be subjected to appeal.

A state, institution, an individual or legal entity of the community must comply with the decisions of the court from the moment the principles of monism to the privacy of the community law is accepted which prevails within the ECOWAS region then the obligation to implement the decisions of the court is subject to legal order, to all the organs of Member States.

Thus, a national judgement cannot reverse the decision of the Community Court of Justice on matters defined by the Treaty or related instruments such as the human and citizen's rights. The court has no power of coercion, no army nor police. Its weapon is the sentence it pronounces or creates. With limited infrastructure, it relies on Member States of ECOWAS to execute its decisions.⁶³

However, the ECOWAS Revised Treaty has developed a range of gradual sanctions provided by Article 77 against defaulting Member States who do not respect their obligations towards the community. The Authority of Heads of State and Government may adopt sanctions which may include suspension of concession to borrow, withdrawal of all grants, projects or rejection of applications for statutory or professional positions, the suspension of the right to vote or participate in the activities of the community.

An exclusion procedure of a member state of the community or the use of armed forces on her is not provided for in the Revised Treaty of the community, but member states and institutions of the community must apply necessary measures to execute the decisions of the court. The Article defines the procedure of forced execution of the court's decision as governed by the rules of civil procedure in the state of the Territory it took place.⁶⁴ Forced execution does not concern decisions on

⁶³ Article 22 (3) of the 1991 Protocol.

⁶⁴ Supplementary protocol 2005, Article 24(2)

individuals or state involving financial obligations. It can only be suspended by virtue of a decision by the Community Court of Justice.⁶⁵

The Supplementary Protocol 2005 with the insertion of a new provision in Article 24(1) provides that:-

“Judgements of the court that have financial implications for nationals of member state or member states are binding.”

Furthermore, the decisions of the court are binding on member states, institutions of the community and individuals and corporate bodies.⁶⁶

In the preamble of the 2005 supplementary protocol the High Contracting Parties stated their desire to take any other measures that will favour the good functioning of the court and guarantee the enforcement of its decisions.

With regards to these pertinent provisions which clearly emphasize on the binding nature and the desire to see to the enforcement of the decisions of Community Court of Justice, there is room to consider the enforcement of the courts decisions from two angles: First, the enforcements of decisions delivered by the court, with the aim of sanctioning a violation of community texts, or the interpretation of the said text; and secondly, the enforcement of the decisions of the court by member states.

⁶⁵ The legal protection of the rights of ECOWAS citizens. A paper by Dr. Fall (unpublished).
The ECOWAS court of Justice and the process of integration in West Africa-By Dr. Fall.
International Law in Focus A.B.U, Journal of International Law Vol. IV No IV 2004.
Article 24 (5) of the supplementary protocol 2005.

⁶⁶ Article 15 (4) of the Revised Treaty.

Conference on the law in the integration process in west Africa Abuja, 13th November 2007 presented by Hon. Justice Sidibe Soumana Dirarou – member of the community court of justice, ECOWAS, Abuja.

3.4.1 SANCTIONS BY THE COURT AGAINST NON ENFORCEMENT OF ITS DECISIONS

a. Violation or ignorance of community texts.

Access to the Community Court of Justice is open to any individual who alleged whatever damage caused by an act of the community.⁶⁷ It seems from this provision that any act having binding legal effects, emanating from an ECOWAS institution and having caused damages to an individual of the community, may be contested by the latter.

Several applications by citizens of the community or officers of ECOWAS institutions, who felt that their rights were being infringed upon by decisions or acts of the community, came before the court.

The ECOWAS Court of Justice is like the Supreme Court of the community; its decisions are binding on all institutions and member states concerned. However, community text did not provide for the time limit in which an individual can react for the application of community act, the time limit in which an annulment decision must be enforced. But the enforcement of the decisions of the court is seen otherwise when it has to do with the interpretation of the texts.

b. The interpretation of community texts and interlocutory questions.

The mechanism of interlocutory questions offers an important opportunity to the community court of justice to interpret the provisions of the Revised Treaty and the annexed document for the benefits of

⁶⁷ Article 10 (c) of the supplementary protocol, 2005

national courts that came before it for such matters. Being that the Community Court of Justice is the only competent authority to interpret texts adopted by ECOWAS, National Courts are obliged to defer judgement when the provisions of community text which demands for the resolution of the pending suit before it are ambiguous, inexplicit and to refer such issues to the ECOWAS Court of Justice for interpretation.

This Court cannot be substituted with a national court of a member state to resolve a suit brought before it, but the role of the community court is to interpret community law so as to make it clear to the national court, author of the interlocutory question.

The case remains pending before the national court till the interpretation of the point of community law by the Court of Justice. Once this interpretation is given, it is authentic and binding on national courts and other courts of member state who will possibly be confronted with the same points of law. This means that the Court of Justice plays an essential role in matters of interpretation of ECOWAS texts.

In the light of the foregoing development, the enforcement of decisions delivered on an interlocutory question does not pose any difficulty, because the national courts are obliged to wait for the decision of the community court, to state the law, according to its interpretation.

Besides the different areas discussed in the foregoing paragraphs, and from which the enforcement of decisions stemming from them are simpler, there are cases whereby this enforcement may seem more

complex. These have to do with decisions sanctioning the failure to fulfil obligations, by member states or cases of Human Rights Violations.

c. Failure to fulfil obligations and Human Rights Violations.

Failure to fulfil community obligations by member state is provided for in Article 10(a) of the 2005 supplementary protocol. The Executive Secretary, who is today the president of the ECOWAS Commission, and any other member state have the right to seize the Court of Justice to request for sanction against a member state that does not fulfil its obligations.

The Revised Treaty in its Article 7(g) gave right to the Authority of Heads of State and Government to seize the Court of Justice where it deem necessary, when a member state or any ECOWAS institution of the community has failed to honour any of its obligations or has acted beyond the limits of authority.

If the court finds out that the member state in the suit has committed a violation of community law, it shall pronounce a judgement stating this failure and this only has a declaratory effect in the sense that the Court of Justice does not have the power to enforce the sanctioned member state to take adequate measure with regards to ensuring the enforcement of its decision.

But the Authority of Heads of State and Government can seize the court with the view of sanctioning an institution that has acted beyond the scope of its authority. The question that arises is the issue of whether,

member state can actually seize the court in order to sanction another member state of the community.

Concerning human rights violation, Article 10(d) of the supplementary protocol gave access to any individual of the community who will be a victim of its violation. In this perspective, several cases are before the ECOWAS Court of Justice for hearing.

The decisions of the court are binding and must be enforced. Article 22(3) of the July 1991 protocol provides that:-

“Member State and institutions of the community shall take immediately all necessary measures to ensure execution of the decisions of the court.”

Article 24 of the Supplementary Protocol states that:

- a. Execution of any decision of the court shall be in the form of a writ of execution, which shall be submitted by the Registrar of the court to the relevant member state for execution according to the rules of civil procedure of that member state;
- b. Upon verification by the appointed authority of the recipient member state that the writ is from the court, the writ shall be enforced; and
- c. All member states shall indicate or determine the competent national authority for the purpose of receipt and processing of execution and notify the court accordingly.

Once the decision has been delivered it is the duty of the Chief Registrar to notify the national authorities of the member state concerned.

In this area, the national administrations and courts of member state plays an essential role in the implementation of community law.

Though the court does not have an efficient means of coercion to enforce delivered decisions, Article 77 of the Revised Treaty provided for some forms of sanctions to be imposed on any member state where such a member state fails to fulfil its obligations to the community.

These sanctions are:-⁶⁸

- a. Suspension of new community loans or assistance;
- b. Suspension of disbursement on on-going community projects or assistance on programmes;
- c. Exclusion from presenting candidates for statutory and professional posts;
- d. Suspension of voting rights; and
- e. Suspension from participating in the activities of the community.

Judgments of the Court are without appeal, and by virtue of the commitments made by ECOWAS Member States, the member states are under obligation to enforce decisions made by the ECOWAS Court. But the Court can only rely on the good faith of the Member States to see its judgments enforced.

⁶⁸ Article 77 (2) (i) – (v) of the Revised Treaty.

The role of the Community Court of Justice gives legal judgment for the benefit of individual and legal entities of the ECOWAS Community. Like all other ECOWAS Institutions, the court must fully play its part in the sub-regional integration process. The place of the court in the sub-regional integration will be more important if the decision delivered by it can be enforced without encumbrance within the ECOWAS region.

Despite their commitments, member states and some national institutions, still hold on tightly to their sovereignty and do not put enough zeal into facilitating rapid and efficient execution of decisions made by the court.

Following the example of the UND that adopted a charter solely for the mandatory execution of the decisions of the International Court of Justice (ICJ), the question is whether the ECOWAS Authority of Heads of State and Government Development from the purely political and diplomatic aspect ready to emphasize on the mandatory enforcement of the decisions of the court of justice?

The question before us presents itself both as a necessity and as a huge challenge to the ECOWAS court and to the leaders of our member states and Heads of the community institutions entrusted with the duty of translating the ambition thereof into concrete realities on daily basis.

We now live in a world that is becoming increasingly complex, with relations between states becoming more and more interdependent.

Indeed, no state or nation can afford to live in isolation, or else it runs the risk of perishing.

It was the will to develop the economics of the member states that marked the early beginnings of the formation of the West African sub-regional grouping. Thus, more than three decades ago, the founding fathers of ECOWAS became fully aware of the urgent need for the law to be integrated in West Africa.

The political will of our leaders regarding integration was translated into the setting up of institutions which was assigned particular mandate, but with an overall common objective to ensure a successful integration of the member states.

An evolution of the sub-regional organization has led to the necessity of taking into consideration the other aspects of community integration, particularly as regards the legal aspect of integration, which guarantees the legal and judicial security required for economic investments.

The legal order of the community as you may know, in its very essence does generate law. It is this order which ensures a very high degree of the development of the legal rules and norms as well as their observance by the member states which cannot guarantee but a community legal institution within the community itself.

3.5 THE ORGANIZATION OF THE COURT

The organizational guide of the Community Court of Justice delineates the court into various departments and shows the chain of command.

The main departments being; the office of the president, the office of the Vice- president, the office of the judges, the Chief Registrar's office, the Administration Department and Finance.⁶⁹

The court is independent as an institution of the ECOWAS, its structure revolves around its members and its administration is centered on the registry. The court is also empowered to institute a closed session of judges upon a request from the petitioners or for reasons of expediency.

3.5.1 OVERVIEW OF THE ORGANIZATION OF THE COMMUNITY COURT OF JUSTICE

The Community Court of Justice, pursuant to Article 3 of the Protocol,⁷⁰ is composed of independent judges selected from nationals of member states from persons of high moral character and with appropriate qualifications and experience to qualify for the appointment into the highest judicial offices of their countries.

It consist of a President, a Vice-President and five other justices nominated by the member states and appointed by the authority of Heads of State and Government. The judges appoint from among themselves a president and vice-president who serves for a four (4) year non renewable term.⁷¹ The president is responsible for the administration of the court and he presides at hearings and

⁶⁹ Annual Report 2003

⁷⁰ Protocol AP/P1/7/91 on the community court of justice

⁷¹ Article 4(3) of the Supplementary Protocol A/SP.2/06/06 on the CCJ amending protocol (A/P1/7/91)

deliberations.⁷² The first sets of judges were sworn in on the 30th of January, 2001 in Bamako, Mali.⁷³

The court also has a Chief Registrar to be appointed for a period of six (6) years. He may thereafter be reappointed for a further term. One or two other Registrars may also be appointed to assist the Chief Registrar. Duties of the Chief Registrar include the acceptance, transmission and custody of court documents under the authority of the president, effecting service as provided for by the rules of procedure, taking charge of the records and publications of the court as well as having custody of the seals. The Community Court of Justice has other departments necessary for the proper functioning of the court. These includes, a translating service staffed by experts with adequate legal training, the office of the Management Accountant and other supportive staff.

3.5.2 THE JUDGES

The Community Court of Justice became operational on the 30th January, 2001 when its first judges took their oath of office,⁷⁴ eight (8)

⁷² See the official journal vol 41 of the Economic Community of West African States (ECOWAS) The Rules of procedure of the community court of justice, g.10

⁷³ See ECOWAS in brief, department of communication, info @ ecowasmali.net 2003

⁷⁴ Hon. Justice Hansine N. Donli - President (Nigeria) Former
Hon. Justice El-moonsour Tall - vice-president (Senegal)
Hon. Justice Anthony A. Benin - Member (Ghana)
Hon. Justice Ana Dabaya Nana - Member (Togo)
Hon. Justice Barthelemy Toe - Member (Burkina Faso)
Hon. Justice Dirarov S. Sidibe - Member (Niger)
Hon. Justice Aminata Malle - Member (Mali)

years after the court was created by the 1993 Protocol and ten years after adoption of the 1991 protocol.⁷⁵

These judges do not represent the Government of their States of origin, or Government of any member state. They are not answerable to any state or institution of ECOWAS in the performance of their duties. They deliver their judgements without interference and its judgment is binding in nature with no possibility of appeal in accordance with Article 15(4) and 76(2) of the Revised Treaty.

The court shall be constituted by independent judges selected by the Authority of Heads of State and Government from Nationals of the Member States. It shall consist of (7) Members each highly experienced and distinguished judges with recognised competence in the field of international law who shall elect a president and vice president from among their members.⁷⁶

The Authority appoints these court members from a short list of fourteen (14) persons proposed by the Council, and this is provided for by article 3 paragraphs 6 of the protocol (A/P1/7/91).

An important fact to note is that the judges rank equally in precedence according to their seniority in the court and where there is equal seniority in office; precedence shall be determined by age.

⁷⁵ Presentation of C.C.J and its contribution towards the attainment of the objectives of ECOWAS and NEPAD:

By DAOUDA FALL.

⁷⁶ Article 3 (1&2) of the protocol on the C.C.J (A/P1/7/91)

Retiring judges, who are appointed, shall retain their former precedence. The president is responsible for administration of the court and presides at hearings and deliberations.⁷⁷ The term of office of the judges of the court begins on the date laid down in the instrument of appointment.⁷⁸

By article 4 paragraph 2 no member of the court may exercise any political or administrative function or engaged in any other occupation of a professional nature.

3.5.3 PRIVILEGES AND IMMUNITIES

The privileges and immunities of the court and its members are enshrined in article 6 of the protocol on the Community Court of Justice and reads as follows:-

1. The court and its members shall, during the period of their tenure, enjoy privileges and immunities identical to those enjoyed by diplomatic missions and diplomatic agents in the territory of member states as well as those normally accorded to international courts and the members of such courts.
2. In this capacity, members of the court shall not be liable to prosecution or arrest for acts carried out or statements made in the exercise of their functions.

So, are the privileges and immunities of members of the Community Court of Justice as outlined in the Court Protocol.

⁷⁷ Article 5 and 7 of the Rules of the C.C.J

⁷⁸ Protocol on the C.C.J (A/P1/7/91)

The court may, however, exclude from the proceedings any Adviser or Lawyer whose conduct towards the court or judge is incompatible with the dignity of the court.⁷⁹

ADMINISTRATION OF THE COURT

The court registry is the permanent administrative body of the court made up of the Chief Registrar and other officers of the court.

THE CHIEF REGISTRAR OF THE COURT

The chief registrar is in charge of the administration of the court under the authority of the president. Article 9(4) of the Rules of the Community Court of Justice (CCJ) states that:-

“The Chief Registrar shall take an oath before the president in accordance with Article 17(2) of the Rules.”

The Chief Registrar shall be appointed for a term of six (6) years. He may be re – appointed for a further term. He may be deprived of his office only if he no longer fulfils the requisite conditions or no longer meets the obligations arising from his office.

The court shall take its decisions after giving the registrar an opportunity to make representation and where his office fall vacant before the normal expiry date a new registrar shall be appointed by the court for a period of six (6) years.⁸⁰

⁷⁹ Article 31 of the Rules of the Court

⁸⁰ Article 9 (3),(5) and (6). Of the Rules of the court.

Article 13 provides that the Chief Registrar shall keep under his control a register initiated by the president in which pleadings and supporting documents shall be entered in the order they were lodged. The entries shall be authentic; the rules for keeping such register shall be as in article 14 of the Rules⁸¹

The Chief Registrar is given custody of the seal, responsibility to keep records and charge over publications of the court. And except otherwise stated in the Rules, the Chief Registrar shall attend the sittings of the court. These are the provisions of Article 15 and 16 of the Rules of the Community Court of Justice, ECOWAS.

3.5.4 ADMINISTRATIVE DEPARTMENTS OF THE COURT

Article 17 of the Rules of the Community Court of Justice provides that officials and other servants of the court shall be appointed in accordance with the provisions of the staff regulations either on permanent or temporary contract basis. They shall take the oath of office as provided in sub – section 2 of article 17.

There are various departments made up of bilingual secretaries with proficiency in at least 2 of the working languages of the court namely:- English language, French and Portuguese as provided in Article 19 of the Rules.⁸² So also the department shall be made up of administrative

⁸¹ The chief registrar shall be responsible under the authority of the president for acceptance, transmission and custody of documents and for effecting service as provided for by the Rules.
⁸² Rules of C.C.J, ECOWAS

assistants, research officers, interpreters, translators, computer analysts, recorders and accountants.⁸³

The financial management and accounting service are run under the authority of the president of the court as provided for in article 20(2).

The financial and accounts management of the court shall be carried out by the Management Accountant under the authority of the president.

Where the deliberations of the court concern questions of its own administration, it shall be put to vote and the Chief Registrar shall be present unless the court decides to the contrary.⁸⁴

3.6 WORKING OF THE COMMUNITY COURT OF JUSTICE

The dates and times of the session of the court is usually at the discretion of the president of the court but such discretion must be in accordance with the provisions of Article 7 of the protocol⁸⁵

The court may chose to hold one or more sessions in a place other than that in which the court has its seat.⁸⁶ The court cannot hold a session if a quorum as referred to in article 14(2) of the Protocol is not attained, even if the court has been convened and later found out that the quorum is not sufficiently attained, the president will be left with no choice than to adjourn the sitting until there is a quorum.⁸⁷

⁸³ Presentation of CCJ and its contribution towards the attainment of the objectives of ECOWAS and NEPAD; BY DAOUDU FALL.

⁸⁴ Article 23 paragraph 8 of the Rules of C.C.J., ECOWAS

⁸⁵ Article 21 Rules of the CCJ

⁸⁶ Article 21(2) Rules of the CCJ

⁸⁷ Article 22(2) Rules of the CCJ

The sitting of the court sometimes comprises of even numbers of its members and the sitting of the court shall be in public. Though, the court cannot sit in camera, at the request of one of the parties or for reasons, the court may determine to sit in camera.⁸⁸

Judges in the deliberation shall state their opinions and reasons for it.⁸⁹

Conclusion reached by majority of the members (judges) shall determine the decision of the court. Votes shall be cast in reverse order to the order of precedence laid down in Article 5 of the Rules of the Court. Where there is divergence in opinion or question of interpretation the court shall decide by votes. Where the question concerns the administration of the court, it shall be put to vote and the chief registrar shall be present unless the court decides to the contrary.⁹⁰

⁸⁸ Article 22(4) Rules of the CCJ

⁸⁹ Article 23(4) Rules of the CCJ

⁹⁰ *supra*

CHAPTER FOUR

4.1 THE JURISDICTION OF THE COMMUNITY COURT OF JUSTICE

This chapter aims at highlighting the Jurisdiction of the Court, the sources of law the court applies in the adjudication of cases before it, the adjudications of the court since inception, access to the court and the relevance of the court in conflict resolutions.

The operational framework of the Community Court of Justice, ECOWAS leads to the issue of access to and jurisdiction of the court. Access to and jurisdiction of the court encompasses the entire statement or declaration of the courts competence.

The competence of the court is in essence the jurisdiction of the court. If a court has no jurisdiction, then it lacks competence.

The Community Court of Justice has jurisdiction to adjudicate on any dispute relating to the following⁹¹

- a. The interpretation and application of the Treaty, Conventions and Protocols of the Community;
- b. The interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS;

⁹¹ Article 9 of the Supplementary Protocol (A/SP.1/01/05) Amending the protocol (A/P1/7/91) relating to the community court of justice.

- c. The legality of regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS;
- d. The failure of member states to honour their obligations under the treaty, conventions and protocols, regulations, directives or decisions of ECOWAS;
- e. The provisions of the Treaty, convention and protocols of ECOWAS member states;
- f. The Community and its officials; and
- g. The action for damages against a country, institution or an official of the Community for any action or omission in the exercise of official functions.

By paragraph 2 of Article 9, the court shall have the power to determine any non – contractual liability of the community and may order the Community to pay damages or make reparation for official acts or omissions of any community, institution or community officials in the performance of official duties or functions.

Any action by or against a community, institution or any member of the Community shall be statute barred after three (3) years from the date when the right of action arose.⁹²

The court has jurisdiction also to determine cases of violation of human rights that occur in any member state.⁹³ In presenting an overview of the Rules of Procedure of the court, it is necessary to highlight the

⁹² Paragraph 3 of Article 9 of the supplementary protocol (A/SP.1/01/05)

⁹³ Paragraph 4 of Article 9 of the supplementary protocol (A/SP.1/01/05)

competence of the court and sources of law that the Community Court of Justice applies in the adjudication of disputes. It is only against this background that the rules of procedure can be fully appreciated. It is important for lawyers in the sub region to be fully aware of the competence and jurisdiction of the court and those that have access to the court for the various causes of action under the protocol of the court.

4.2 SOURCES OF LAW

The sources of law in respect of the practice and procedure of the ECOWAS Court of Justice are as follows:

- a. The ECOWAS Treaty of 28th May, 1975
- b. The Revised Treaty of the ECOWAS of 1993
- c. Supplementary Protocol A/SP.1/06/06 amending the Revised Treaty.
- d. Protocol A/P1/7/91 relating to the Community Court of Justice.
- e. Supplementary Protocol A/SP.1/01/05 amending protocol A/P1/7/91
- f. Supplementary protocol A/SP.2/06/06 amending Article 3 paragraph 1, 3, and 7, Article 7 paragraph 3 of protocol A/P1/7/91
- g. The Rules of Procedure of the Community Court of Justice 2002

- h. Article 38 of the Statutes of the International Court of Justice 1945

4.2.1 The ECOWAS Treaty of 1975

This Treaty first established the ECOWAS Tribunal that subsequently became ECOWAS Community Court of Justice. ECOWAS as an Economic Community of West African States, was created in Nigeria (Lagos) by the 1975 Treaty on the 28th of May and this Treaty was revised in Cotnoun Republic of Benin in July 1993.

4.2.2 THE REVISED TREATY (1993)

The West African Sub Region in 1975 established its own Regional Economic Community (REC) known as the Economic Community of West African States (ECOWAS) pursuant to the Lagos Treaty of 28th May 1975. The revised treaty was adopted in 1993. The aim, objectives and Fundamental Principles of ECOWAS are clearly spelt out in Articles 3 and 4 of the revised treaty. In a nutshell, the treaty is a blue print for regional economic cooperation and integration in the West African sub region. The revised treaty also established the various institutions of ECOWAS and their powers and responsibilities.

4.2.3 SUPPLEMENTARY PROTOCOL A/SP.1/06/06 AMENDING THE REVISED TREATY OF 1975

In June 2006, the Authority of Heads of State and Government adopted the supplementary protocol A/SP.1/06/06 amending the revised treaty as stated in the metamorphosis of the Executive Secretariat of

ECOWAS into the Commission of ECOWAS. The other reasons include the need to endow the community with modern legal instruments whose interpretation shall contribute to the acceleration of the integration process and the adoption of a new legal regime for community acts to enable the community adapt to the international environment and more successfully fulfil its role in the sub regional integration process.

4.2.4 PROTOCOL A/P1/7/91 RELATING TO THE COMMUNITY COURT OF JUSTICE

This protocol was adopted in July 1991. The protocol sets out the status, composition, powers, procedure and other issues concerning the court. Article 32 provides that the court shall establish its own Rules of Procedure to be approved by the Council.

4.3 JURISDICTION OF THE COURT UNDER PROTOCOL A/P1/7/91

The Protocol of the Community Court of Justice prescribed its jurisdiction. Protocol A/P1/7/91 sets out the competence of the Court in Article 9. The Court was also empowered under article 10 to give advisory opinion to member states, the president of the ECOWAS Commission and Institutions of ECOWAS on their request. The competence of the Court under Protocol A/P1/7/91 was very narrow. Community citizens or nations of member states, private individuals and cooperate bodies did not have direct access to the court. It was only provided that a member state may, on behalf of its nations, institute

proceedings against another member state or institution of the community, relating to the interpretation and application of the provisions of the treaty, after attempts to settle the dispute amicably have failed. Therefore, only member states and institutions of ECOWAS had direct access to the court under protocol A/P1/7/91.

The lack of direct access to the Court by individuals was the main issue for consideration in the judgment of the court in OLAJIDE AFOLABI V. FEDERAL REPUBLIC OF NIGERIA.⁹⁴ The applicant, Mr. Olajide Afolabi, a community citizen and a business man filled an application before the court challenging the closure by Nigeria of its own common border with Benin Republic on 9th August, 2003. He allegedly suffered some losses due to the closure. Since it is crystal clear that judges do not make law, but only interpret or apply the law as it is, the only option the court had was to uphold the preliminary objection of Nigeria by striking out the suit for lack of jurisdiction. It is a land mark case because it defined clearly the competence of the court under Article 9(3) of the protocol.

Between 2001 and January 19th 2005 when protocol AP/1/7/91 was finally amended to allow individuals access to the court,⁹⁵ only two cases were filed before the court and both were filed by individuals directly at the time the court had no jurisdiction to hear them. Therefore, the problem of lack of direct access to the court by individuals was of

⁹⁴ Suit No. ECW/CCJ/APP/01/03

⁹⁵ Article 9(3) of the protocol of the Court 1991k

great concern to the court because it had an adverse effect on its operations. It was obvious that individuals must be granted access to the court for it to become operational.

In January 2005, the Authority of Heads of State and Government adopted supplementary Protocol A/SP.1/01/05 amending Protocol A/P1/7/91/. The said Supplementary Protocol expanded the jurisdiction of the court and substituted Article 9 of the 1991 Protocol with a new provision.⁹⁶ The highlights of the Supplementary Protocol are that individuals and cooperate bodies now have direct access to the court in respect of certain causes of action. The court now has jurisdiction in respect of human rights. Under Articles 9(4) and 10(d), and pending the establishment of the Arbitration Tribunal, the court shall have powers to act as arbitrator. It also established the method of implementation of the judgments of the court.⁹⁷

The adoption of the supplementary protocol has had a positive impact on the judicial activities of the court. Following the adoption, 6 cases were lodged in the court in 2005, 21 cases in 2006 and so far 10 cases have been lodged in 2007.⁹⁸

Pursuant to the provisions of Article 32 of the protocol A/P1/7/91, the Community Court of Justice formulated its Rules of procedure, which was approved by Council of Ministers.⁹⁹ The approved Rules of

⁹⁶ Article 10 of the 2005 supplementary protocol

⁹⁷ Article 9, 10 and 24 of the 2005 protocol

⁹⁸ Ladan, M.T. Introduction to ECOWAS Community Law and Practice (2009) ABU Press, Zaria.

⁹⁹ Vide Regulation C/REG/04/8/02 of 28th August 2002.

procedure of the court have been published in volume 41, August 2002 of the Official Journal of ECOWAS. The Rules of Procedure have been formulated to regulate the proceedings of the Court.

However, an overview of the Rules of Procedure of the Court will include generally the practice and procedure of the court which is governed by the revised treaty, the rules of procedure, and the protocols of the court and Article 38 of the statute of International Court of Justice. Under the rules of procedure of the court, proceedings before the court shall consist of the application, the defence, the reply or counter-statement, the rejoinder and other briefs or documents in support.¹⁰⁰ The oral proceedings shall consist of the hearing of the parties, agents, witnesses, experts, advocates or counsels.¹⁰¹

Under Article 38 of the Statute of the International Court of Justice, 1945,

The court shall examine the disputes before it in accordance with the provisions of the Treaty and its Rules of Procedure.¹⁰² It shall also apply as necessary the body of laws as contained in Article 38 of the Statute of the International Court of Justice such as: International Conventions, whether general or particulars establishing rules expressly recognized by the contesting states;

- a. International customs as evidence of a general practice accepted;
- b. The general principles of law recognised by civilised nations;

¹⁰⁰ Article 13(1) – (3) of the protocol and Article 32 – 51 of the rules of procedure.

¹⁰¹ Article 52 – 58 of the Rules of procedure.

¹⁰² Article 19(1) of protocol A/P.1/7/91

- c. Subject to the provisions of Article 59, Judicial Divisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

This provision shall not prejudice the power of the court to decide a case pro bono if the parties agree thereto.

From the above, the court in the exercise of its power of arbitration, applies the general principles outlined in Article 38 of the Statutes of International Court of Justice. Therefore, the Court applies both Community law and Universal law in adjudicating upon matters before it.

FUNCTIONS OF THE COMMUNITY COURT OF JUSTICE

The revised Treaty in Article 15 creates the Court of Justice which carries out its functions independently of the member states and the institutions of the community. The functions of the court as ascribed by Article 76 of the Revised Treaty and may be specified thus:

- a. Any dispute regarding the interpretation or the application of the provisions of this Treaty shall be amicably settled through direct agreement without prejudice to the provisions of this treaty and relevant protocols;
- b. Failing this, either party or member states or the authority may offer the matter to the court of the community whose decisions shall be final and shall not be subjected to appeal.

The judgment of the court shall be binding on the member states as well as the institutions of the community, individuals and corporate bodies.

The community court is to adjudicate on any matter relating to the interpretation and application of the revised treaty and the attached protocol while ensuring the observance of law and of the principles of equity. This means that the parties coming before the court may institute actions relating to matters contained in the protocol, convention and the treaty signed by the member states.

The community court of justice is competent to deal with disputes arising between the member states or between one or more member states and the institutions of the community on the interpretation or application of the provisions of the treaty after attempts to settle the disputes amicably have failed.

4.4 ADJUDICATIONS OF THE COURT

Since the inception of the ECOWAS Court of Justice, it has adjudicated upon 23 cases only and most notable of them are:

AFOLABI V FEDERAL REUBLIC OF NIGERIA¹⁰³ the subject matter of which was the violation of the applicant's right to free movement of his person and goods across the border between Nigeria and Benin Republic as enshrined in Article 12 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.¹⁰⁴ The applicant claimed that the unlawful and unilateral closure of the Nigeria

¹⁰³ Suit No. ECW/CCJ/APP/01/03

¹⁰⁴ LFN 200, CAP 29 2004.

Boarder with Benin Republic, contrary to the provisions of the Treaty and Protocol on free movement of person's and goods¹⁰⁵ was unlawful and against the spirit of the treaty and protocol and hindered him in the course of transacting his legitimate business and earning a living. Nigeria had unilaterally shut its boarder for one week in protest of what it called Cotonou's reluctance to crack down on cross boarder criminal activities and armed robbery. The Federal Government filed an objection stating that individuals are barred from instituting actions directly before the court and should go through their member states. The court decided in favour of the Federal Government of Nigeria in accordance with Article 9(3) of the protocol which states:

“A member state may on behalf of its nationals, institute proceedings against another member state or institution of the community relating to the interpretation and application of the provisions of the treaty, after attempts to settle the dispute amicably failed.”

This particular case was decided in 2003 when the Community Court of Justice did not have the jurisdiction to cover cases brought before it by individual. The short coming of the court is that whereas the protocol clearly indicates that any member state or institutions may file actions before the court, the bulk of what the protocol aims at achieving relates to individuals. This lack of direct access to court by an individual then

¹⁰⁵ Article 3(2)(d)(iii) and Article 4(9) of the revised treaty; Article 12 of the African Charter on Human and Peoples Rights (ratification and enforcement) Act Chapter 10 laws of the Federation of Nigeria.

hampered the judicial functions of the court due to its limited scope of competence.

This concern over limited jurisdiction was not only held by the court but also by individuals who indicated their dismay at not being allowed to file actions directly when the contents of the treaty and protocol were made for their benefits.

This led to the applications and submissions made by individual member states to the Council on the need to amend the protocol and expand the jurisdiction and competence of the ECOWAS Court of Justice to include cases brought forward by individual citizens so as to ensure access to justice in the integration process of West African.¹⁰⁶

Then four years after its inception, the Community Court of Justice had its Protocol expanded to allow individuals direct access to the Court.¹⁰⁷

Amended in August 2004, the Supplementary draft printed was formally drafted at the 28th session on the Authority of the Heads of State and Government in January 2005 at Accra, Ghana.¹⁰⁸

This fact was reinforced by the president of the court where she stated that “the supplementary protocol has expanded the jurisdiction of the

¹⁰⁶ Justice H. Donli; ECOWAS Court’s jurisdiction will be expanded: Article in This Day Newspaper September 21 4004 pg. 43

¹⁰⁷ Okenwa Lilian: ECOWAS court; individuals to have access. Article in This Day Newspaper February 9, 2005 pg. 11

¹⁰⁸ Individuals to be given direct access to the ECOWAS court of justice at <http://www.wildaf.ao.org> visited on 8/3/2010.

court and granted direct access to the court to private individuals in respect of certain causes of action”¹⁰⁹

This was the door opener that will lead to the effective contribution of the Community Court of Justice to the integration process of the sub-region.

Another notable case decided after the amendment of the Protocol is the case of Hadijatou Mani Koroau v The Federal Republic of Niger.¹¹⁰

The applicant, Mrs. Hadijatou Mani Karaou, of Nigerien Nationality is a citizen of ECOWAS Community and the defendant, the Republic of Niger is a member state of the ECOWAS Community. In 1996 while she was only 12 years old, the applicant of the Bouzou customs was sold to the tribe of Chief, Mr. El Hadj Soule Ymane of the Haousa custom aged 46years old for two hundred and forty thousand (240.000) CFA France as a slave who sexually abused her severally and also used her at his farm.

On the 18th of August 2005 she was set free as a slave and on the 14th of February 2006 she brought a compliant before the Civil and Customary Tribunal of Konni, to have her desire to be totally free and live her life elsewhere. The court delivered judgment in her favour since there was no payment of dowry or any form of formal marriage. The defendant appealed and the decision of the Court of First Instance was

¹⁰⁹ Justice Hansi Donli addressing the press after hearing in the suit where a Nigerian Chief Frank Ukor is contesting the seizure of his trailer loaded with goods by a magistrates court in Benin Republic in suit No. ECW/CCJ/APP/01/04

¹¹⁰ Suit No.ECW/CCJ/JUD/06/08

quashed. On the 14th of December 2007 she filed a submission before the ECOWAS Community Court of Justice on the basis of Article 9(4) and 10(d) of the supplementary protocol A/P.1/7/91 of July 6th 1991 relating to the court, seeking to:

1. Condemn the Republic of Niger for violation of Articles 1, 2, 3,4,5,6 and 18(3) of the African Charter on Human and Peoples Rights;
2. Request Niger authorities to adopt legislations that effectively protect women against discriminatory customs relating to marriage and divorce; and
3. Urge the Republic of Niger to abolish harmful customs and practices founded on the idea of women's inferiority, slavery et cetera.

The defendant presented a preliminary objection on the admissibility to say that the complaint is not admissible because domestic remedies have not been exhausted and the case is still pending before the Nigerian domestic court. The ECOWAS Court of Justice rejected the preliminary objection on the ground that exhaustion of domestic remedies is not one of the conditions for admissibility of cases before it and ruled against inadmissibility on all points and declared her application admissible and says she is qualified to submit it and awarded an all-inclusive compensation of 10 million CFA France in her favour against the defendant and further ruled that the defendant had to

pay the expenses, in accordance with Article 66(2) of the Rules of Procedure.

Further more, since the inception of this court only fifty six (56) cases have been lodged before the court. The court has also held not less than one hundred and forty eight (148) court sessions.

The reasons for the low turn up of cases to the ECOWAS Court since its inception is due to the fact that the court is a very young institution and it is not in doubt that many community citizens are still not aware of the existence of the court or the role it ought to play in the integration process.

Hadijatou Mani Koraou, who, in the eyes of the whole world, has become the symbol of feminine courage, the rejection of a seemingly inevitable fate, and the fight against archaic and degrading social practices, has also earned international fame and harvested honours, prizes and awards from the highest personalities of this world, after her legal battle against slavery.

Hadijatou Mani Koraou brought her case before the ECOWAS Court of Justice to press charges against the Republic of Niger for violation of her fundamental human rights, requesting the court to find that she has been in a situation of slavery and to prefer sanctions for violation of her rights.

This landmark judgment of the Court of Justice of ECOWAS had multi-dimensional impact, not only in judicial terms, but also on the national,

regional and international plane.¹¹¹ Indeed, the wide media coverage of the case brought unto the international scene a poor slave who fought against the established order of customs and traditions in order to claim and obtain her dignity as an independent human being.

For that exceptional courage, Hadijatou Mani Koraou received on, 11 March 2009, the 2009 Women of Courage Award from the hands of Mrs. Hillary Clinton, Secretary of State of the United States of America, in the presence of Mrs. Michelle Obama.

This recognition was all the more exceptional because it was awarded to a person about whom nothing seemed to predict that, one day she would receive such an outstanding honour. One can only imagine the kind of injustice she would have lived with for life if she was not aware of the ECOWAS Court of Justice and how to approach it for the redress of wrong done to her person.

Hadijatou Mani Koraou received other high honours, notably from Spain, and she has gone round the continents to condemn certain customary practices which violate human dignity, in order to ensure that such practices are outlawed in her country, the sub – regional Community and all other nations.

Her example provides genuine hope for all women who suffer all over the world from the injustice of slavery, discrimination and intolerance. But this hope has equally been nourished by the courage of the judges

¹¹¹ Court Bulletin No. 2 Vol, 2 January – June 2009

of the ECOWAS Court of Justice, who have unequivocally set down a much expected case-law in the area of Human Rights and more specifically on the subject-matter of slavery.

Not only has this Court's decision contributed in generating a debate in all circles, both judicial and political, and among the civil society, but also made the ECOWAS Community Court of Justice known across the world, which is very important for a young court like it.

The educative value of the Court's judgment, one can only hope, will make a positive impact beyond the legal and judicial microcosm, and will no doubt be of interest to associations devoted to the defence of human rights, which must not be forgotten, were at any rate key players in the proceedings of the case.

Indeed, the support and assistance of international bodies for the defence of human rights, was crucial for the wide media coverage of the case and for amplifying its historic and symbolic significance.

One should, therefore, expect heightened interest from these groups and associations, to step up their fight in the cause of victims of the practice of slavery and other customs which contravene national and international Conventions.

One of the happy ends to the Hadidjatou's case, is certainly the due compliance of the Republic of Niger to the decision of the court, in paying the amount of CFA F 10,000.000 to the Applicant. This positive responds of the Republic of Niger is to be commended on another

account: as soon as the judgment was read out, the Niger authorities very quickly declared their willingness to comply with the court's verdict and promised to take all the necessary measures to that effect.

It should be recalled that judgments of the court are without appeal, and by virtue of the commitments made by ECOWAS Member States, the member states are under obligation to enforce decisions made by the ECOWAS court. But the court can only rely on the good faith of the member states to see its judgments enforced.

This is why the Republic Niger's payment of the amount imposed by the court, in compliance with the court's judgment, is a shining example of the political will of a Member State, to comply fully and totally with the law and with Community.

The judgment of the court in this case has registered such an extraordinary and positive impact at various levels. It is true that the role of the judiciary is to state the law and to deliver justice. If, in addition to this cardinal function, the Court of Justice of ECOWAS has turned an ordinary citizen into a symbol and an icon in the fight for human dignity and also contributed in putting the name of the Community Court of West Africa on the world map, being cited as a court of reference, then one can only say that the Court has indeed carried out its mandate.

This mandate is first of all to be exercised at the service of the citizen, great or small, rich or poor, as was Hadijatou Mani Koraou, who today is

the ideal ambassador for combating women, humiliated and discriminated against all over the world.

Furthermore, in a dramatic and ground – breaking decision¹¹² the ECOWAS Court of Justice in Abuja, on the 22nd of November 2009 declared that all Nigerians are entitled to Education as a legal and human right.

The court declared that the right to education can be enforced before the court and dismissed all objections brought by the Federal Government through the Universal Basic Education Commission (UBEC), that education is a mere directive policy of the Government and not a legal entitlement of the citizens.

The ECOWAS court's decision, delivered in November 2009, followed a suit instituted by the Registered Trustees of the Socio Economic Rights and Accountability Project (SERAP) against the Federal Government and UBE, alleging the violation of the right to quality education, to dignity, the right of peoples' to their wealth and natural resources and to Economic and Social Development Guaranteed by Article 12, 17, 21 and 22 of the African Charter on Human and Peoples' Rights to which Nigeria is a signatory.¹¹³

Reacting to the ruling, SERAP's solicitor, Femi Falana, who filed and argued the case before the court with the assistance of Adetokumbo Mumuni said "this is the first time an International court has reorganized

¹¹² Suit No. ECW/CCJ/APP/08/08

¹¹³ <http://www.ecowas.int>

citizens' legal rights to education and sends a clear message to ECOWAS member states including Nigeria and indeed all African Governments that the denial of this human right to millions of African citizens will not be tolerated”

4.5 EXPANDING THE SCOPE OF JURISDICTION

Even with the recent expansion of the protocol to allow individuals direct access to the community court of justice, it is expected that the scanty hearing of applications will be a thing of the past and that the court will now have the task of finding a way to get through the applications without unnecessary delays. The only way that the court's jurisdiction will expand is for it to be conscious of the fact that its functions were hardly known to the community citizens who are supposed to be the beneficiaries to all the treaties, protocols and conventions. Therefore the court should embark on sensitization missions to member states, organise conferences and seminars or even workshops where community citizens will be educated about the existence of the court and its role in their day to day life as ECOWAS citizens. The court should send out delegations from member states to visit other member states. We have fifteen countries forming the ECOWAS member states with large populations but the court has adjudicated upon only 23 cases so far. Is it that the ECOWAS citizens have no cases of human rights violation by their states? The answer is an emphatic no; and it is only because they do not know about the existence of this court and how to

approach it. The delegations should interact with officials of various ministries of integration and justice constitutional and supreme courts, law faculties of higher institutions et cetera. It is doubtful if even educated citizens of the ECOWAS Member States knew about the existence of this court before now and as ECOWAS Citizens they can seek redress from the Community Court of Justice for violations of our fundamental rights.

The court should also interact with members of the press through press briefings in order to reach out to the general public.

The court should also host conferences on the protection of the rights of ECOWAS citizens through the ECOWAS Court of Justice in all or some of the member states. At such conferences, there might be proposals and amendments and suggestions on the court's protocol and treaty on the way forward for the court especially on the promotion and protection of the human rights of ECOWAS citizens. This is very important because majority of the ECOWAS citizens are not literate so until and unless they are told about this court and how to approach it, they will continue to suffer violations without knowing that they can seek redress as the Community Court of Justice which is the whole essence of the court's creation in the first place.

Conferences on the implementation of ECOWAS Community Laws should also be seen as very necessary to sensitize the civil society and

economic operators on their rights and obligations and the manner of seeking redress before the court.

Further on the issue of jurisdiction, the Authority of Heads of State and Government shall have the power to grant the court the power to adjudicate on any specific dispute that it may refer to the court other than those specified in the Article.¹¹⁴ The community court ensures the observance of law and of the principles of equity in the interpretation and application of the provisions of the Treaty. Its competence extends also to dealing with disputes relating to a member state or on behalf of its nationals or community, as it affects the interpretation and application of the provision of the Treaty, after attempts to settle the dispute amicably have failed.¹¹⁵

The court has in addition, an advisory opinion on any matter that requires the interpretation of the community text. It also has jurisdiction over cases relating to failure by member state to honour their obligation under the community law.¹¹⁶

From the above, it is obvious that the court has a double jurisdiction: contentious and advisory. As regards its advisory jurisdiction, the court may, at the request of the Authority, Council, one or more member states or the president of the commission; and any other institution of the community, express in an advisory capacity a legal opinion on question of the Treaty.

¹¹⁴ Paragraph 8 of Article 9 of the supplementary protocol (A/SP.1/01/05)

¹¹⁵ Article 9 of the protocol (A/P.1/7.91) on the CCJ

¹¹⁶ Article 10 of the protocol (A/P.1/7/91) on the CCJ

As to contentious jurisdiction and before the adoption of the 19th January 2005 supplementary protocol, the mandate of the court essentially consisted of:

1. Ensuring the observance of the law and of the principles of equity in the interpretation and application of the provisions of the Treaty, protocols and related conventions;
2. Settling disputes arising between states or one or more member states and institutions of the community on the interpretation or application of the provisions of the Treaty, as well as any disputes that may be referred to it in accordance with Article 76 of the said Treaty.

The court has exclusive jurisdiction over matters dealing with the interpretation of the provisions of the Revised Treaty and instruments adopted by institutions of ECOWAS.

This exclusive power over the interpretation of the community texts enables the court to conceptualise, promote and develop a community legal order.

The court by seeking and obtaining the widening of its jurisdiction, among others, to cover the domain of Human Rights Protection and the granting of access to individuals and co-operate bodies to the court, with collaboration of civil society groups, the community court of justice finds itself in the forefront of the protection of citizens' rights and thus constitutes a sure hope for the masses of our people.

The widening of the power of the court reinforces, indeed, the position of the court of justice of ECOWAS among the other ECOWAS institutions and also points to the significance of the law in the integration process of our sub-regional community.

4.6 ACCESS TO THE COURT

The primary objective of the administration of justice is to render justice according to law. In every judicial system, practice and procedure is of paramount importance because of its relevance in the application of the substantive law.

Legal practitioners are expected to have a good knowledge of substantive law as well as practice and procedure of the various court systems. It should be of great concern to us all that many lawyers in our sub region are not familiar with the ECOWAS court, its competence and practice procedure.¹¹⁷ The ECOWAS Court is an international court and its practice and procedure are different from the practice and procedure of the domestic courts in member states.¹¹⁸ In other words, as much as the ECOWAS Citizens must be aware of the ECOWAS court and its benefits to them and how to maximise these benefits, lawyers in the West African sub region have a vital role to play in the establishment and sustenance of a virile court of justice for the sub region. It is therefore imperative for the lawyers to be knowledgeable and well

¹¹⁷ Donli, H.N. "The Law, practice and Procedure of the Community Court of Justice – Meaning and Implication" – being a paper presented at the workshop on the Law, Practice and Procedure of the Community court of Justice – ECOWAS organised by the West African Human Rights Forum from 7-9 of December 2006 at Bamako, Mali pg 13

¹¹⁸ M. T. Ladan, Introduction to ECOWAS Community Law and Practice,(2009) A.B.U press, Zaria.

informed about the community texts and rules of procedures of the ECOWAS court of justice. It is only a knowledgeable and well informed lawyer on the community texts that can play an effective role in the integration process of West Africa

Access to court is open to the followings:-¹¹⁹

- a. All member states and the commission for actions brought for failure by member states to fulfil their obligations;
- b. Member states, the council of ministers and the commission for the determination of the legality of an action in relation to any community text;
- c. ECOWAS institutions;
- d. Individuals and corporate bodies for any act of the community which violates the rights of such individuals or corporate bodies; and
- e. Staff of any ECOWAS institutions.

Access to court that was initially only open to Member States, the Authority of Heads of State and Government and Institutions of the Community was extended to individuals of the ECOWAS sub-region, as well as national courts of Member States.¹²⁰

¹¹⁹ Article 10 of the 2005 Supplementary Protocol

¹²⁰ Article 10(b) of the 2005 supplementary protocol on the community court of justice.

This opening to individuals resulted in the proliferation of cases to the court in that from the period between 2006 to June 2007, the court registered a total of 26 cases.¹²¹

In this arena, a distinction is made between two contexts:

- a. Access to seek advisory opinion;
- b. Access to seek the settlement of a dispute.

It is however important to bring to the awareness of the community citizens how to access this. Any last success of the ECOWAS union would definitely require the observance by the member states of the provisions of the treaty, but how can the citizens of member states observe this treaty if they do not know about its existence or how to access the court.

4.6.1 ACCESS TO SEEK ADVISORY OPINION OF THE COURT

As regards this sub-heading, the court is guided by the provisions of Article 10 of the 1991 protocol which govern access to the court. In this respect, subsection 1 of this Article states as follows:-

The court may at the request of the Authority, Council, one or more member states or the Executive Secretary and other institutions of the community, express in an advisory capacity, a legal opinion on questions of the Treaty.

From the foregoing, it is obvious that the court has a double jurisdiction: contentious and advisory. The court has exclusive jurisdiction over

¹²¹ Speech presented by the president on the occasion of the 2007 – 2008 legal year ceremony

matters dealing with interpretation of the provisions of the Revised Treaty and instruments adopted by institutions of ECOWAS.

This exclusive power over the interpretation of the community texts enables the court to conceptualise, promote and develop a community legal order. The court, by seeking and obtaining the widening of its jurisdiction, among others, cover the domain of human rights protection.

The Article further provides that in seeking such advisory opinion, the question upon which the opinion is sought shall be in writing accompanied by all relevant documents likely to throw light on the question. Upon receipt of the request the Chief Registrar shall immediately inform the Member States, notify them of the time limit fixed by the president for receipt of their written observations or hearing their oral declarations. In reality the advisory opinion enjoys nothing but the status of a legally backed opinion, which may be translated into practical effect.

The court shall give such advisory opinion in public. In exercising this function the court shall be governed by the provisions of the protocol which apply in contentious cases where the court recognises them to be so applicable. Individuals and corporate bodies do not come in as far as access to court for advisory opinion is concerned. Advisory opinions are not binding, except where they are adopted.

4.6.2 ACCESS TO SEEK THE SETTLEMENT OF A DISPUTE

In the former system established by Article 9(3) of the 1991 Protocol, direct access to the court was reserved for Member States and the Authority of ECOWAS. Individuals could only have direct access to the court through ones state of origin.¹²²

However, there has been progress here. The direct access to the court was reviewed by Article 10 of the supplementary protocol of the 19th January, 2005. It is, however, in terms of its capacity to settle dispute that the role of the court may particularly prove to be determinant.

The supplementary protocol in contrast to the 1991 protocol in Article 10 (c) and (d) has now given individuals and corporate bodies a right of access to the court to determine the legality of an act, or in action of a community official which violate the right of such individuals or corporate bodies. The possibility of direct access is also available equally to all victims of human rights violation.

Worthy of note is the fact that the right of direct access to the Community Court of Justice is the exclusive preserve of Nationals of Member States of ECOWAS. Thus, Nationality is either by birth or by naturalization in accordance with Article 1 of the Protocol Relating to the 29th may, 1982 Community Citizenship Code.

Apart from individuals and corporate bodies, Article 10 (a), (b), (e) and (f) of the Supplementary Protocol also give the following entities the

¹²² Case of Afolabi V Federal Republic of Nigeria. In this case the CCJ referred to Article 9(3) of the 1991 protocol and struck out the application of Mr. Afolabi.

right of access to appear before the community court of justice in the following wordings of the protocol:-

- a. Member States and unless otherwise provided by protocol, the Executive Secretary cannot bring an action for failure by a member state to fulfil an obligation;
- b. Member States, the Council of Ministers and the Executive Secretary in proceeding for the determination of the legality of an action in relation to any community text;
- c. 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;
- d. Where in any action before a court of a Member State, an issue arises as to the interpretation of a provision of the Treaty or the other Protocols or Regulations, the National Court may on its own or at the request of any of the parties to the action refer the issue to the court for interpretation;

The extension of the powers of the court through the Supplementary Protocol has the effect of widening the competence of the community jurisdiction of the court. This is fundamental. The traditional spheres of jurisdiction were in Article 9(1) and (2) of the 1991 protocol. This reads as follows:

The court shall also be competent to deal with disputes referred to it, in accordance with the provisions of Article 76 of the Treaty, by Member

States or the Authority, when such disputes arise between the member states or between one or more member states and the institutions of the community on the interpretation or application of the provisions of the Treaty.

The court has been vested with new prerogatives additionally in the region of human rights. This new added competence to the jurisdiction of the ECOWAS court opens the doors to victims of human rights violations to seek redress at the court. The precedence conditions are two:-

Firstly, the application file must not be anonymous. Secondly, the action must be pending before another International Court of Justice competent to adjudicate on matters of human rights.¹²³

It is important to emphasise that the powers of the ECOWAS Court of Justice cover the extra – contractual responsibility of the community, and community laws subject to the courts control which also sees to the observance of such law by the various agents of ECOWAS. The extension of the court's jurisdiction poses a problem of relations between the Community Court of Justice and the National Court of ECOWAS Member States.

The Supplementary Protocol of 2005 regulates this problem of relationship between the ECOWAS courts and the National Courts of member states, since the court is the only one qualified to interpret texts adopted by or under the auspices of ECOWAS. The National Courts are

¹²³ Article 10(d) (1) and (11) of the supplementary protocol 2005.

obliged to stay proceedings when provisions in an ECOWAS text which professes to propose a regulation of any dispute brought before them tends to be ambiguous. The issue shall on preliminary grounds be referred to the Community Court for interpretation.

National Courts have, however, not been deprived of their power to adjudicate on such issues. Proceedings are simply suspended until the Community Court has given appropriate interpretation to guide the National Court judge in adjudication. Here, the interpretation of ECOWAS Community Court of Justice shall prevail and effectively take precedence over decisions of the National Courts.

The Court's powers further consolidated by Article 22 of the 1991 Protocol binds states not to submit disputes arising between them to any form of settlement other than the one provided for in the Treaty.

4.7 INTERPRETATION AND APPLICATION OF ECOWAS PROTOCOLS

The Community Court of Justice was established as the principal legal organ of ECOWAS. The main function of the court is the interpretation and application of the provisions of the Revised Treaty and the annexed Protocols and Conventions. The Treaty defines "Protocol" as instrument of implementation of the treaty and having the same legal force as the Treaty. In discharging this responsibility, the court is enjoined to ensure the observance of law and of the principles of equity.

The preamble of the protocol of the court (Protocol AP/P1/7/91) provides

“The essential role of the community court of justice is to ensure the observance of law and justice in the interpretation and application of the Treaty and the Protocols and conventions annexed thereto”.

The protocol defines Treaty to mean: “The Treaty of the Economic Community of West African States and includes protocols and conventions annexed thereto”.

4.7.1 PRINCIPLES OF INTERPRETATION OF TREATIES

There are three basic principles that International Law Tribunals use in resolving the problems of Interpretation of Treaties. The first relates to the actual text of the Treaty and the analysis of the words used.

The second approach is to look at the intention of the parties adopting the treaty while the third deals with the object and purpose of the Treaty. However, any true interpretation of a Treaty in International law will have to take into account all aspects of the Treaty, from the words employed to the intention of the parties and the aims of the Treaty.

Article 31(1) of the Vienna Convention declares that a Treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of its

object and purpose. It has often been emphasized that the interpretation of a Treaty must be based upon the text of the treaty especially where the words are clear and unambiguous. In such a situation, the natural and ordinary meaning of the terms of the Treaty must be applied.

The Community Court of Justice applied this principle in the case of *OLAJIDE AFOLABI V FEDERAL REPUBLIC OF NIGERIA* where it held that the text of Article 9(3) of the Protocol is clear and unambiguous and applied the provision by holding that only member state can institute proceedings before it on behalf of their nationals. The point has, therefore, been made that in discharging the responsibility of interpretation and application of the Treaty, Protocols and Conventions of ECOWAS, all the court has to do, where the texts are clear and unambiguous is to simply apply the text.

4.7.2 OVERVIEW OF THE PROVISIONS OF THE TREATY

The Treaty of the community contains numerous Articles which aim at promoting co-operation and integration leading to the establishment of an economic union in West Africa. This is, in the aim to achieve the goal of raising the standards of living of its people, to maintain and enhance economic stability, to foster relations among states and continent as a whole.¹²⁴ In order to achieve these aims, the community set out to, among others, harmonise national policies and integration programmes

¹²⁴ Article 3(1) if the Revised Treaty

particularly in food agriculture and national resources industry, transport and communications, trade, economic reform policies as well as legal matters. The community also undertook to establish a common market through the establishment of a common external tariff and trade policy, the abolition of customs duties and non tariff barriers among member states as well as the removal of any obstacles to the free movement of an economic union through the adoption of common policies on the economic, financial and cultural sectors and the eventual adoption of a single community investment code establishment of an enabling legal environment, the adoption of a regional agreement on cross – border investment among others.

4.8 RELEVANCE OF THE COURT TO THE AFRICAN SUB – REGION

The Community Court of Justice (ECOWAS) plays a vital role in the legal framework of the West African sub region. The formation of the court has brought about uniformity in the rules and laws governing the objectives of ECOWAS in the birth of a unified union of states, integrated by the prospects of free movements of persons and goods, free movement of services, and the protection of the rights of citizens of ECOWAS member states, among other numerous objectives.

The Court of Justice, being the principal legal organ of the Community is saddled with the responsibility to “ensure the observance of law and

the principles of equity in the interpretation and application of the provisions of the Treaty.”¹²⁵

The court is, therefore, empowered to enforce compliance of all treaties and protocols adopted by member states, upon all defaulting states. By so doing the court stands in a position of neutrality, before all states and as an avenue to settle grievances that may arise between nations. Where they fail to settle amicably, the court can then compel them to act or settle in accordance with the provisions of the treaties and protocol they have endorsed and as such subjected themselves to its prescriptions.

The court is an impartial institution formed by the Authority of ECOWAS Heads of State and Government, and is a court of final resort for all parties that come before it, either states or individuals.

It plays also an indispensable role in conflict resolution between the member states of ECOWAS, institutions of ECOWAS and individual members of ECOWAS states. It safeguards the fundamental human rights of ECOWAS citizens, wherever this violation takes place within the sub region.¹²⁶

The court stands to play a role in the maintenance of peace and peaceful co – existence of all states and citizens of ECOWAS.

From 18th to 20th November, the Court of Justice of ECOWAS organised at the international Conference Centre of Cotonou, in the

¹²⁵ Article 9(1) of the protocol (A/P1/7/91)

¹²⁶ Supplementary protocol 2005, Article 10(d).

Republic of Benin, a conference on “Free Movement of Persons, Goods, Services and Capital, and the Right of Residence and Establishment”.

Participants at this conference include officers of the customs and immigration services, police officers at the boarder posts, officials from the ministries of finance and integration, and agents of the civil society of ECOWAS Member States.

The theme may appear to be a dull one for the court, whose essential mandate is to deliver judgments. Throughout the committee-based sessions and the plenary discussions, it was realised, that the initiative was a much laudable one and could not have come at a better time.

Indeed, from inception, the Court has organised sensitisation missions across the ECOWAS sub-region, focused on various themes, including the protocol relating to free movement of persons, goods and capital; the trade liberalisation scheme; et cetera.

Unfortunately, despite the efforts made towards popularising the various protocols and derived texts, officers at the border posts seem to have placed a premium on sticking to the same old daily routine. Of course, such a practice generates huge sums of money, for the sole benefit of the officers on ground.

The organization of this seminar by the court gives practical expression to promises it made to citizens of the Community during its various sensitization outings. From the direct-contact encounters with target

groups among the masses of the people, the fact clearly stands out that harassment by officers at the borders of the ECOWAS sub-region is so disconcerting that free movement of persons and goods remains nothing but an illusion in the eyes of the Community citizens.

By means of the chosen theme, and beyond searching for an ideal tool for integration, the Court equally took the opportunity to enlighten participants on the various protocols and texts relating to the subject-matter dealt with. This approach will have the benefit of dissuading sufficiently enough the border-patrol officers, who by their frequently mischievous attitude, undermine all the efforts put in towards a model integration of the ECOWAS sub-region, with a view to creating an economic union so dear to the Heads of State of the member countries.

It is inconceivable that certain countries in the ECOWAS sub-region greatly abound in food surpluses whereas others suffer chronic food shortages, with no access to these surplus food products. This is because the peasant farmers are unable to sell their surplus produce due to the non implementation of the relevant protocol. Following this, the Court urged the officers manning the border posts to adopt attitudes which aid free movement of persons, goods and capital.

The role of the Community Court of Justice is to give legal judgement for the benefit of individuals and legal entities of the ECOWAS community.

Like all other ECOWAS institutions, the court must fully play its part in the sub regional integration process. Almost unknown as of recent past, this institution today creates a certain attraction looking at the diverse nature of cases coming from different member states.

Meanwhile, the place of the court in the sub regional integration will be more important if the decision delivered by it can be enforced without encumbrance within the ECOWAS region.

Despite their commitments, member states and some national institutions, still hold on tightly to their sovereignty and do not put enough zeal into facilitating rapid and efficient execution of decisions made by the court.

Following the examples of the UNO that adopted a charter solely for the mandatory execution of the decisions of the International Court of Justice (ICJ), the ECOWAS Authority of Heads of State and Governments should also depart from the purely political and diplomatic aspect and emphasize on the mandatory enforcement of the decisions of the Court of Justice.

Without thinking of the armed forces or the embargo that is generally used by the UNO, Security Council, ECOWAS can envisage a harmonization and application of its texts throughout the community like it is with OHADA (Organization for the Harmonisation of Business Law in Africa), which is very recent, but whose application become effective in all member states that are party to the Treaty.

From the foregoing, there is every reason to hope that the next decade will see substantial progress in the competence and jurisdiction of the ECOWAS Court of Justice as regards access to justice by citizens of the sub-region, most especially as it relates to rights of the individual ECOWAS citizens. This is because there are so many people out there who are ECOWAS citizens stranded, trampled upon, their rights have been violated but they cannot get redress either in their country or outside their countries, they are not aware of the Community Court of Justice and how to approach it for redress.

The ECOWAS member states have the commitment to surpass the free trade zone and customs union stages of regional integration to a full economic and monetary union and a strong and independent Community Court of Justice with a wider jurisdiction needed to move the ECOWAS region forward.

This research work highlighted the extent of powers of the Community Court of Justice and the factors that have led to it being a judicial body with limited powers as regards the lack of access to court by individual citizens, with the expansion of the provisions of the protocol, the court is bound to blossom in the scope of jurisdiction. It is hoped also that this will help to move the sub-region towards greater integration so as to be able to compete in the new competitive global market. The ECOWAS court has consistently demonstrated courage in the discharge of its vital

role in putting an end to violation of all human rights and impunity of perpetrators in the sub region.

The court also has jurisdiction over human rights enshrined in the African Charter and the fact that these rights are domesticated in the municipal law of member states cannot oust the jurisdiction of the court.

CHAPTER FIVE

CONCLUSION

5.1 SUMMARY

Chapter one discusses the General Introduction, Statement of the problem, Aims and Objectives, Scope of the Research, Literature review, Methodology, Justification, Organizational Layout and Definition of terms.

Chapter two discusses the Historical Development of the ECOWAS Court of Justice, Vision of the Court, Establishment of the Court, Language of the Court, Members of ECOAWS and Institutions of ECOWAS. This chapter also discusses how the idea of ECOWAS was conceived up till the day and time it came into force and also the number of Heads of State and Government who adopted the Treaty that brought ECOWAS into being.

Chapter three highlights the Rules, Practice and Procedure of the Court, the actual position of the court in respect of its Organization, Administration of the Court, and other Departments involved in its process. This chapter also brings to limelight the true position of the Chief Registrar of the court, his appointment, role and the working of the court as a whole and finally, the Judgement and Enforcement of the Court's Judgement.

While chapter four discusses the jurisdiction of the court, jurisdiction of the court under the protocol, limitations of the protocol, how the court is accessed and the applicable laws thereof. It also discusses the Status of cases currently in the court, ECOWAS court of justice and the supplementary protocol, and the relevance of the court to the African sub region.

The community court of justice which was created pursuant to the provisions of Article 6 and 15 of the Revised Treaty of the Economic Community of West African states. Protocol (A/P1/7/91), as amended by the 19th January 2005 protocol (A/SP.1/01/05) brought an enlightenment to the minds of the people that the West African sub – region has not been left behind in its pursuit to unit its people like so many regions have. For example, the European Union (E.U), the North American free trade Agreement (NAFTA) and others found in other regions and continents.

This unity is essential for fostering free trade, easy access of ingress and egress among other benefits so also a court for settling disputes between members of different states and also those arising between the states themselves and other institutions of ECOWAS.

The court is the principal legal organ of the community charged with the essential role to ensure the observance of the law, equity and justice in the interpretation and application of the Treaty, Protocol, and conventions regulations, directives, decisions and all other subsidiary

legal instruments adopted by the community annexed there to which is in consonance with Article 9 of the protocol.¹²⁷

The mandate of the court is to ensure the observance of law and of the principles of equity and Human Rights within the ECOWAS Community. The court has both contentious and advisory jurisdiction¹²⁸ on any matter that requires the interpretation of the community texts and failure by member states to honour their obligations under the community law; the court adjudicates on disputes between the institutions of the community and its officials; it also examines actions by or against the community; it has right to entertain cases of violation of human rights in the member states. It decides on the legality of regulations; directives, decisions and other subsidiary legal instruments adopted by the community.

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

The court is accessed by filing cases before it through written applications addressed to the Registry.¹²⁹ Such application must indicate the name of the applicant, the party against whom the proceedings are being instituted, a brief statement of facts of the case and the orders being sought by the plaintiff.

¹²⁷ Article 9 of the protocol (A/P.1/7/91) on the CCJ

¹²⁸ Article 10 of the protocol (A/P.1/7/91) on the CCJ

¹²⁹ Article 10 of the supplementary protocol (A/SP.1/01/05)

The applicable law are the treaties, the conventions, protocols and regulations adopted by the community and general principles of law. In the area of human rights protection, the court equally applies the international instruments on human rights ratified by the state or the states party to the case.

Decisions of the court are not subject to appeal except in the case of application for revision by the court.¹³⁰ Decisions of the court are binding and each member state shall indicate the competent national authority responsible for the enforcement of the decisions of the court.

The court also has jurisdiction over human rights enshrined in the African Charter and the fact that these rights are domesticated in the municipal law of member states cannot oust the jurisdiction of the court.

5.2 FINDINGS

Having made the above summary, it is hereby observed as follows:

1. There is little or no awareness about the existence of the ECOWAS Court of Justice. A lot of ECOWAS Citizens are not aware of the Court and how to approach it for redress of wrongs done to them when the said court was created for their benefits. This is evidenced by the existence of only few number of cases adjudicated upon by the court of such standard with 15 member countries.¹³¹

¹³⁰ Article 19 of the protocol (A/p1/7/91).

¹³¹ Sheek, L. The Relationship between the European Courts and integration through Human Rights (2005) ZaoRV pg. 837, 844.

Besides the ECOWAS Citizens not being aware of this court which was created for their benefits, many lawyers also in the sub region are not familiar with the ECOWAS court, its competence and practice procedure.¹³²

2. The number of the justices of the ECOWAS Court of justice is grossly inadequate to be a provision for a court of such an international standard. The composition of the court presently comprises of seven (7) members, who then elects a president and vice president from among themselves.¹³³
3. The Jurisdiction and competence of the court of justice of West Africa appears quite insufficient as provided for in its protocol.¹³⁴
4. Another issue is in regard to the practical enforceability of court decisions. How are the decisions of the ECOWAS Court of justice enforced, being that it has no army, police or machinery in place for such tasks?¹³⁵
5. The ECOWAS Court operates as both the court of first and last arbiter. Thus a national judgment cannot for example reverse a decision of the court on matters defined by the revised treaty or related instruments such as the Human and Citizens Rights. Judgments of the ECOWAS court are without appeal.¹³⁶

¹³² Supra at pg. 75

¹³³ *ibid*

¹³⁴ Supplementary protocol of 2005

¹³⁵ Biannual publication of the Court of Justice ECOWAS No. 2, Vol. 2, January- June 2009

¹³⁶ Article 19(30) of the 1991 Protocol

6. The ECOWAS Court of Justice has no other Judicial Division in any of the member states this cause's serious hardship on individuals who have to financially sacrifice so much to access this court for justice. A case study here is the celebrated case of HADIJATOU MANI KORAOU V. REPUBLIC OF NIGER where the court had to relocate its sitting to Niamey due to the fact that the applicant was poor and could not bear the cost of transporting all her witness in the case to Abuja.¹³⁷
7. Also, the ECOWAS Court or the Community texts did not provide for the time limit in which an individual can react to its decision or time limit within which their court decisions can be enforced. The issue here is whether a member can refuse to comply with the decisions of the court. Does the court have the means to compel such as state since it relies mainly on member states off ECOWAS on their good will to execute its decisions? Can this court really play a role in the integration process in West Africa? Can it become a fundamental factor in the re-enforcement of West Africa integration and above all a civil Community? Answers to these questions shall be supplied in the next sub heading.¹³⁸
8. The poor citizens cannot access the court due to cost and there is no provision for legal aid in the court to assist them.¹³⁹

¹³⁷ Supra at pg. 75

¹³⁸ Available at <http://www.sec.ecowas.int> (accessed 18th April, 2011)

¹³⁹ Ebor, S.T. "A Critical Analysis of the Human Rights Mandate of the ECOWAS Court of Justice (2009) Danish Research Partnership, Denmark.

5.3 RECOMMENDATIONS

Having made the above Findings, it is hereby recommended as follow:

1. There should be a creation of awareness of the existence of the ECOWAS Court of justice among ECOWAS Citizens and member states so as to enable them seek redress when their rights are violated. In other words, the court should embark on sensitization mission to member states, Institutions, organise conferences and seminars or even workshops where the community citizens will be educated about this court and its role in their day to day activities as ECOWAS citizens. Also, the court should visit places like the (NBA) Nigerian Bar Association Conferences arrange lectures or talks where lawyers would be on ground to appreciate the existence of this court and its role to the African sub region.
2. Only seven (7) judges in a court with a jurisdiction over the entire West African sub region are grossly insufficient. The court of justice of West Africa should have a judge from each of the member states. So also the procedure and criteria for appointment of a president and vice president should not be left to the judges to decide among themselves, but rather an independent body should be saddled with this responsibility with clear guidelines to follow in its assessment process.

3. A court of such calibre as the ECOWAS Court of justice should have far reaching tentacles. Its jurisdiction should reach out to also cover boundary disputes, an area of great controversy in West Africa. The air over the West Africa should also form part of its area of jurisdiction. The court's criminal jurisdiction should be extended to other crimes like Genocide and War crimes as well.
4. The place of the court in the sub regional integration will be more important if the decisions delivered by it can be enforced without encumbrance within the ECOWAS region. Instead of just relying on the commitments and good faith of ECOWAS Member States, to see its judgment enforced. It should put in place machineries and instruments to compel the enforcement of its decisions. This is because despite the commitments of member states, they still hold on tightly to their sovereignty and do not put enough zeal into facilitating rapid and efficient execution of the decisions made by the court. Following the examples of the UNO (United Nations Organization) that adopted a charter solely for the mandatory execution of the decisions of the international court of justice (ICJ), the ECOWAS Authority of Heads of State and Government should also depart from the purely political and diplomatic aspect and emphasize on the mandatory enforcement of the decisions of the court. Without thinking of the armed forces or the embargo that is generally used by the UNO and the

Security Council, ECOWAS can envisage a harmonization and application of its texts throughout the community like its is with OHADA (Organization for the Harmonization of Business Law in Africa), which is very recent, but whose application becomes effective in all member states who are parties to the Treaty.

5. There should be Judicial Divisions or Sub Registries created in other member states. This apart from better enhancing justice, also reduces litigation cost to the barest minimum.
6. The court sitting as both the court of first and the last instance, and also the fact that its judgment cannot be appealed against, offends the legal principles of judicial precedent. There should be judicial divisions of the court so that when it makes a mistake in its judgment there will be a division to rectify it to avoid litigants suffering innocently. Since the protocol of the court has been adopted by the O.A.U. its stance as a court of final resort should be revisited.
7. The lacuna created by the lack of time limit for enforcement of the courts decisions must be bridged because time limits for procedure must be known in advance by the applicant so as to avoid the pitfalls of lapses, foreclosure and forfeiture.
8. The court, to avoid injustice, should make provisions for legal aid that will help litigants that have no money otherwise only the rich will be able to access the court.

In relation to the relevance and role of the court in the area of dispute resolution, a possible solution is for the court to create an integrated and stable regional judicial environment, ensuring coherent interpretation of the treaties notably their provisions relating to the integration of Economic and Social Policies. In this context, interpretation is not only to its application i.e. the derived norms or laws made by the institutions of the community.

The community court of justice must play a vital role in the legal framework of the West African sub region. The formation of the court has brought about uniformity in the rules and laws governing the objectives of ECOWAS in the birth of a unified union of states, integrated by the prospects of free movement of persons and goods, free movements of services and the protection of the rights of citizens of ECOWAS Member States among other numerous objectives.

Also, no regional grouping or economic integration is viable without an integration of the legal systems thereof. Such integration is the vehicle for a uniform application of the rules of law in the integrated region; an integrated legal system enhances both national and international investments, and also constitutes a real opportunity for the economic expansion of the states.

In this sense, the development objectives assigned to ECOWAS cannot be attained if we do not place the law at the centre stage of the

integration process. The institution of such a legal order is consubstantial to every integration process.

Just like the European court of justice has been referred to as an important factor, and a catalyst for European integration,¹⁴⁰ the ECOWAS court of justice can make history by playing a similar role where they are allowed to play a mere significant role in the development of community law by endowing it with grater powers and broader jurisdictional mandates.

Given Africa's tradition of political subjugation of the judiciary, it is vital that the statutes of the court include real guarantees of independence especially regarding the methods of appointing and dismissing judges and the duration of their tenure. Though all these factors are interlinked with what level of competence the court can really have and the institutional structure of ECOWAS alongside a truly integrative measures or modalities.

Furthermore, in order not to undermine the integrity of the community court, the requirement that any dispute be resolved by diplomatic means and should only be brought before the community court of justice where they are unable to reach a settlement should be removed as prior submission of any dispute over the interpretation or enforcement of the community treaty to bilateral diplomatic negotiation

¹⁴⁰ <http://www.ecowas.org>

introduces the risk of differing interpretation and inconsistent enforcement of the community's legal instruments.

On the issue of human rights, the ECOWAS court certainly has the potential to promote and protect human rights in the sub region. Using the experience of the European court of justice as a reference point, if the community court of justice is to be a protector of human rights, the nature of their jurisdiction and the efficacy of their decisions are of key importance.

The subject matter that comes within their scope of authority, the category of people who have lawful access to the court and the choice of enforcement mechanism have been shown to be of vital importance. Human rights violations are more often than not the result of Government actions towards its citizens or those of other countries. It therefore follows that concerns to address human rights abuses will more often be the preoccupation of individuals, group of individuals as opposed to the state. Any machinery for the enforcement of human right that is not easily accessible to ordinary people is therefore inappropriate. With the new access to court and the enforcement mechanism contained in Article 5 of the revised treaty making for the abidance of member states to the decisions and regulations of the community, the human right jurisdiction of the community court of justice has come to stay.

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