

THE ROLE OF SUB-REGIONAL COURTS IN THE PROTECTION OF HUMAN RIGHTS: SUCCESSES AND CHALLENGES IN WEST/EAST AFRICA.

By

Kalada S. Nonju*

INTRODUCTION

In 1948, precisely on the 10th day of December, the Universal Declaration of human right was adopted and proclaimed by the General Assembly of the United Nations as:

A common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly mind, shall strive by teaching and educating to promote respect for these rights and freedoms and progressive measures, national and international to secure their universal and effective recognition and observance, both among the peoples of member state themselves and among the people's territories under their jurisdiction.

These words opened a floodgate for regional and sub-regional bodies to make declarations on human rights in their various charters. This article analyzes the role of the sub-regional human right courts such as; West and East Africa sub-region, in protection and promotion of Human Right.

THE ROLE ECOWAS REGIONAL COURT IN PROTECTION OF HUMAN AND PEOPLES' RIGHT

In the year 1980, the organization of African unity OAU, in Lagos adopted a plan of action¹ addressing the political and economic crises affecting African states. It's resolved inter alia to promote economic and social integration of African economics in order enhance self-reliant and self-centred development.² It proposed the creation of national sub-regional and regional institutions on pursuit of self-reliance.³

It should be noted that the Abuja process culminated on the adoption of the Abuja treaty establishing the African economic community (AEC).⁴ In 1975, fifteen countries in West Africa came together and formed ECOWAS in order to promote economic integration of its member states. Its scope of co-operation was expanded in tandem with the need to respond to issues on the member states which also

* Kalada D.S. Nonju, ESQ, is a Legal Practitioner and a Lecturer with Faculty of Law, University of Port Harcourt, Rivers State. He is presently a PHD. Student in University of Nigeria, Nsukka, Enugu Campus.

¹ Organization of African unity Lagos plan of action for the economic Development of Africa (1980-2000) available at http://www.uneca.org/itca/are_portal/docs/Lagos_plan.PDF accessed on 16 July, 2016.

² R.N. Koussai see [note 6 above] available at <http://www.africa.union.Org/root/UA/news/letter/ea/vol/no2/koussai>. Pdf accessed 16 July 2016.

³ See paragraph 3 (iii) of the preamble of the plan of action. See note 15.

⁴ Treaty establishing the African Economic communities 1991 (Abuja treaty)

created an entry point for human rights, also the agenda of ECOWAS.⁵ It should also be noted that its founding Treaty⁶ did not contain any reference to human rights,⁷ later the protocols adopted under the Treaty incorporated different rights on their scope, climaxing into the ECOWAS in 1991, making a declaration of political principles which expressed inter alia a determination by members state to respect fundamental human rights as embodied in ACHPR.⁸ In 1993 the Treaty of ECOWAS was amended to recognize promotion and protection of human and peoples' right in accordance with the ACHPR as a fundamental principle of the community.⁹

PROTECTION OF HUMAN RIGHTS IN THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES

Article 2 of the ECOWAS Treaty put the aim of the community as the promotion of cooperation and development in all fields' economic activity. To achieve this aim, the community established an Economic Community of West Africa Court.

It should be noted that the community court of Justice of the Economic community of West African States (ECOWAS COURT) is increasingly becoming active in the adjudication of human rights within the community. The court was clothed with Jurisdiction over human rights complaints in 2005, and has since then issued several decision condemning human right violation by member states.¹⁰ The court has a two-fold role; to settle, in accordance with international law, legal disputes submitted to it by states (contentions cases) and to give advisory opinions on legal questions referred to it by the member states and any institution of the community.

EVALUATION OF THE JURISDICTION OF THE COURT

The community court have as its mandate the ensuring of the observation of law and the principle of equity and human rights within the Regional community.¹¹ Before 2005¹² the ECOWAS court did not exercise Jurisdiction over Human

⁵ S.T. EBOBRAH, A critical analysis of the human rights mandate of ECOWAS community court of Justice (2008) Danish institute of Human Rights7.

⁶ Treaty of the economic community of west African states (ECOWAS) 2f may 1975 available at <http://www.unchr.org/re/world/docid/49217f4c2.html> (accessed)

⁷ Eboobrah (note 5 above)9

⁸ Declaration A/DCLI/7/91 of political principles of ECOWAS, paragraph 5 of the preamble and paragraph 4,5 and 6 of the substantive part of the Declaration.

⁹ Art. 4(g) of 1993 revised Treaty for the establishment of ECOWAS which also refers to civil rights and obligation of member states in art. 56(2)59 and 66(2)(c).

¹⁰ A list of all judgments and rulings of the ECOWAS Court, as well as copies of selected decisions, are available on the Court's website. ECOWAS Community Court of justice, list of Decision Cases from 2004 Till Date, at <http://www.courtecowas.org/site2012/index.php?option=com-content&id=157&Itemid=27>. The first five years of judgment s and rulings have been published in an official reporter, but it is not widely available. 2004-2009 COMMUNITY COURT OF JUSTICE, ECOWAS LAW REPORT (2011). Selected decision some in unofficial translation, are available on other online database. Eg. Centre for Human Rights, university of Pretoria, African Human rights case Law Database, at <http://www1.chr.up.ac.za/index.php/browse-by-institution/ecowas-ccj.html>; World Courts, ECOWAS Community Court of Justice: Decisions, at <http://www.worldcourts.com/ecowascj/eng/>.

¹¹ Economic community of West African states (ECOWAS)

¹² supplementary protocol A/SP.I/01/05

Rights violations that occur in member states. But from the year 2005 the community court started entertaining matters resulting from violation of individual's Human Right.

As a result of this supplementary protocol individual and corporations within the community started approaching the court to find remedy on the violation of their human right. In heading this applications the court interpret the African charter of Human and people's Rights.¹³ This protocol is to the effect that the constitutional principles shared by member states shall be detained to be binding on them¹⁴ with its new role, is ECOWAS court not shifting from its initial mandate to focus and serve foster economic growth, build economic market and other related development, to the handling of Human Right violations within the community.

In Nigeria there seems to be the problem of ECOWAS court giving into extra-constitutional Adjudication of Rights and the Desacralisation of the Nigerian Courts.¹⁵

According to the S.T. Ebobrah:¹⁶

The effect is that as far as rights adjudication within our legal system is concerned, the Nigerian Courts are sacred institutions enjoying constitutional protection of their exclusive judicial authority. But then, there are other courts the international courts that have emerged. They do not belong to our legal system, they are not acknowledged in our constitutional architecture of courts. It is therefore the sacred versus the alien invaders.

Through the Nigerian constitution do not recognized the ECOWAS court as one of the courts in Nigeria, but it seems to be enforcing its decision, selectively, the reason for our Government to enforce decision of the ECOWAS may not be farfetched; the constitution contains provisions which obligate the organs of Government to respect international law and its processes including adjudication by international courts.¹⁷ The Alien invader¹⁸ in Nigerian legal system are causing conflicts in the area of judgment on human rights matter. This is mainly noticeable when both domestic courts and regional courts have jurisdictions over same subject matter and are also courts of first instance. None of them is said to be superior to the other, depending the crisis on which judgment is more potent when there is conflict. This is so because there is no requirement for the exhaustion of local or national remedies limiting the ECOWAS court's jurisdiction.¹⁹ This also means that individuals or corporate bodies are not restricted or compelled to exhaust national judicial remedies in their states before Regional Courts.²⁰

¹³ Article 1(h) ECOWAS protocol A/SP1/12/01

¹⁴ Ibid

¹⁵ . S.T. Ebobrah extra constitutional Adjudication of Rights and the Desacralisation of the Nigerian Courts: end of the Beginning of the 18th January, 2017 at Niger Delta University, Wilberforce Island, Bayelsa State.

¹⁶ Ibid 10-28

¹⁷ Ibid 10

¹⁸ International Courts.

¹⁹ Economic Community of West African States' court of Justice IJRC 145 international justice resource centre.

²⁰ Article 10(d) of the supplementary protocol, 2005.

This requirement of non-exhaustion of local remedies is a controversial area however, barring the eight (8) exceptions where complainants need not exhaust local remedies before approaching an international court or tribunal, it is well-established principle of customary international law, and the most important requirement for admissibility of cases before international courts including the European Human Rights Commission, the African Human Rights Commission and other international human rights bodies, this requirement is thus ambitious, over reaching, curious, hasty, seemingly unruly and can lead to judicial rascality and bureaucratic impropriety.²¹

It should be noted that the court would not entertain anonymous applications or assume jurisdiction over any matter pending before another international court. But the ECOWAS court of Justice defined the requirement of exhausting of local remedies, when it entertained a matter pending before Supreme Court of a member state in the case of VALENTINE AYIKA VS REPUBLIC OF LIBERIA²²

But same court declined jurisdiction in a similar matter in MME AZIEBLEVI YOVO et 31 ANTRES Vs SOCIETE TOGO TELECOM et ETAT TOGOLAIS²³ this to me is double standard. It should be noted further that member states created ECOWAS Courts to adjudicate economic disputes between member states. But in the wake of Humanitarian interventions of the 1990's and as human right NGOs became more active in regional policy making, an involvement made possible by the community 's new openness to civil society, the NGOs saw an opportunity to redeploy an existing institution to promote their objectives.

They focused on a provision in 2001 Good Governance protocol that suggested that not yet operational court might one day hear cases relating to violations of human rights, after all attempts to resolve the matter at the national level here failed.²⁴

The decision of the ECOWAS Court in the case AFOLABI NIGERIA,²⁵ gave the opportunity for change. The above case challenged the blatant non-compliance with ECOWAS free movement.²⁶ The facts of this case was that AFOLEBI sued Benin Republic challenging the closure of the border which according to him

²¹ The Role of the economic community court of justice in promoting economic community Laws and Human Rights in Nigeria; Being institutional presentation by the faculty of law, Ekiti state university, Ado-Ekiti, Nigeria, at NALT Annual Conference held at Nasarawa State University, Keffi, Nigeria, may 22-27 (2016)5.

²² ECW /CCJ/APP/07/11-ECW/CCJ/JUD/04/12/ of 1st JAN, 2012.

²³ Suit No ECW/CCJ/APP/08/11/

²⁴ Karen J. Altar, Laurence R. Helfer and Jacqueline R. Mc Allister: A new international Human Rights Court for west Africa: Ecowas community court of justice; (2013) vol. 107:737, American journal of international law 748.

²⁵ case No EWC/CCJ/APP/01/03, judgement (Apr 27, 2004) reprinted in 2004-2009. Community court of justice, ECOWAS Law report 1(2011)

²⁶ Ibid

violated the right of movement of persons and goods AFOLEBI'S argument was hinged on a protocol provision that a member state may, on behalf of its nationals institute proceedings against another member state. He contended that the word "may" permits states to raise such cases but does not preclude an individual from bringing compliant before the court.²⁷ AFOLABI raised other issues, amongst which is the invoking of the principles of equity in the 1991 protocol to support an expansive interpretation of the court jurisdiction.²⁸

The dismissal of Afolabi's case expose a basic flaw in the court's architecture, government had little incentive to challenge barriers to regional integration and private loaders had no judicial mechanism for doing so. Responding to this flaw, ECOWAS judges, NGOs and community officials launched a campaign to expand the court's jurisdiction. The campaign succeeded, but the institutional reform did not address the unsatisfactory outcome in Afolabi case. The decision in Afolabi's case, gives an opportunity to human rights groups for court reform leaders of the West African Bar Association met with ECOWAS judges and address human right issues with the judge's support, bar association attorneys consulted with other NGOs and ECOWAS official for develop a proposal to revise the Courts jurisdiction. The key stake holder met in Dakar, Senegal, in October 2004 at a consultative forum organized by the open security initiative for West Africa.²⁹ The forum issued a declaration calling for the urgent adoption of protocol that give individual's direct access to the court in human right cases. This eventually both to the expansion of the court's jurisdiction to accept individual's application to the court in 2005,³⁰ than giving the court a capacious human right mandate.

THE LEGAL AND INSTITUTIONAL FRAMEWORK OF ECOWAS COMMUNITY COURT OF JUSTICE

The economic community of West African states (ECOWA) Court of justice is amongst the nine (9) existing institutions.³¹ By the wordings of the Revised Treaty, the supreme authority of the community is the institution of the head of state and Government. It is mainly responsible for existence and substance of the community. It also give direction, control, oversea and implement the objective of the community.³² The community to a large extent serves as a check to the overbearing actions of the authority of head of state and Government. Through the

²⁷ Afolabi v Nigeria, judgment (n. 45) paras 14, 23.

²⁸ Ibid para 41

²⁹ The consultative forum on protecting the Rights of ECOWAS citizens through the ECOWAS Court of Justice was held in Dakar, Senegal on October 18-20 2004. See <http://laros.trustafrica.org/index.php/ECOWAS> Community Court of Justice.

³⁰ supplementary protocol A/SPI/01/05 Amending the preamble and Articles 1,2,9, and 30 of protocol (A/P,1/7/91/ relating to the community court of justice and Article 4 para of the English version of the said protocol. Jan 19. 2005 hereinafter 2005 protocol) at <http://www.courtecowas.org/site> 2012 pdf files/supplementary pdf.

³¹ Authority of heads of state and Government, the council of ministers, the community parliament, the economic and social council, the executive secretariat the fund for cooperation, compensation and Development, specialized technical commissions, see Article 6 of ECOWAS Revised Treaty.

³² Article 7 ECOWAS Revised Treaty.

heads of state and Government of member state must often disobey judgments handed down by the community. This undermines the principles of separation of power and doctrines of checks and Balance. Members' state should be compelled to implement and enforce the judgments of the community; this will preserve the sanctity of the court.

The community should not deter or be discouraged and should without fear or favor continuously preserve, protect and promote the human right of individuals and corporate bodies living and doing business within ECOWAS through the noncompliance of its decision by Head of state and Government of member states, seems to undermine by inadequately raises the question of appropriate checks and balance and the propensity of the community court to be undermined by the institutional superiority of the Heads of state and Government.³³ The Heads of state and Government should not be excessive in the exercise of their powers within its area they should also not be threatened of losing their sovereignty of the obey judgments from the ECOWAS Court. The ECOWAS activities are guided by its rules and procedure. The court equally applies the body of laws contained in Article 38 of the statutes of the international court of Justice and the ECOWAS Treaty. ECOWAS also has as its objective the promotion of the cooperation and integration leading to the creation of the Economic Union for West African state to elevate the living standard and improving the economic conditions of member states. The decision of ECOWAS community court is said to be final. This to me may result in arbitrariness as parties aggrieved with its judgment, have no option for appeal. It is therefore my humble submission that appeals from ECOWAS court should lie to African union's court of Justice and there to international court of Justice. Let us again point out the fact that the broad delegation of human right authority to the ECOWAS court is likely to elicit incredulity from those who expect African leaders to guide jealously to their sovereignty and tightly control the international institution they create. This expectation relations theory, which assumes that states delegate authority to international institutions only when doing so furthers narrowly conceived functional objectives.³⁴

CHALLENGES/ROLES OF THE ECOWAS COMMUNITY COURT'S OF JUSTICE ON HUMAN RIGHTS

The ECOWAS Court has survived several political controversies and challenges since twelve years of its operation as a human rights court. First of its challenges was its intervention in a contested Nigerian election.³⁵ This triggered a lot of

³³ Faculty of Law, Ekiti State University, Ado Ekiti, Nigeria; the role of ECOWAS community court of justice in promoting economic community laws and Human rights in Nigeria, (n) (2016)7.

³⁴ Karren J. Altar, Laurence R. Helfer and Jacqueline R Mc Allister: A new international Human Rights Court for West Africa: the ecowas community art of justice. (n) 768.

³⁵ Lilian Okenwa, election petition ecowas court stops Ugokwe's successor, THIS DAY (Nigeria) Tunc 2, 2005) at <http://allafrica.com/stories/200506030463.html>. In this case, Jerry Ugokwe has been declared winner of election by independent National electoral commission. A Nigerian election tribunal reversed the commission finding that JerryUgokwe was ineligible to run for the federal House of Representative. The court of Appeal, the final court of review for all election despite at that level in Nigeria, upheld Ugokwe's

reactions from Nigeria politicians, judges and legal practitioner. The second one is that of Gambia's government curtailing the court's jurisdiction in response to court findings that the state is responsible for the torture of journalist. In all these the court came out unscathed and stronger, the third cases are Nigerian currently before the ECOWAS court, notable of them is the col. Sambo Dasuki and Nnamdi Kanu's case against the Nigerian government on the continuous infringement of their human right of unlawful detention. The fourth challenge is ongoing and focuses on improving members state compliance with the court's judgments compliance with the decisions of the court by way enforcing such are of the serious challenges facing the ECOWAS court, the court has no efficient means of coercion and enforcement mechanism for pulling through its respective member states. This tends to make the decision of the court nugatory especially in exercise of jurisdiction of mostly human right violation. I humbly suggest that member states should collectively put up a machinery of enforcing the court's decision. State that failed should be sanctioned by way of isolation. The second identifiable challenge is the absence of time frame within which an application can be reacted to, and the time limit of enforcing a judgment. The high cost of instituting an action in the court, court lacking man power, inadequate funding are amongst some challenges bedeviling the court.³⁶

The influx of the court with human right case is becoming alarming, especially those emanating from the political class. The hands of the court seems to be full, with this cases instituted by aggrieved individuals, especially those in opposition political parties.³⁷ Prominent amongst these politically motivated cases in that of Col. Sambo Dasuki, the erstwhile, National security adviser to former president Goodluck Ebele Jonathan, accused of financial misappropriation of two billion, One Hundred Million Dollar (\$2.1b), money meant for purchase of Arms to fight against Boko Haram and other insurgents. The EFCC arrested Sambo Dasuki since December, 2015, arranged him for financial crimes, the court granted him bail severally, but the federal Government of Nigeria through its agencies have refused to release him. He approached the ECOWAS court to intervene. The Nigerian government filed a preliminary objective that the court lacks jurisdiction on criminal matter, but Justice Nwoke³⁸ assumed jurisdiction, deeming the matter a human rights violation. I agree totally with the learned judge for assuming jurisdiction. The matter the complaint brought before the court was mainly the

disqualification Dissatisfied with this outcome, Ugokwe filed a complaint with the ecowas court alleging a violation of his right to a fair hearing. Ugokwe asked the court to issue a special interim order to prevent Nigerian government from invalidating his election victory or from seating his apponent. President Donli issued the interim order barring the legislature from swearing in Okeke, while Ugokwe's complaint was pending.nigerian official complied with order as Attorney General directed. a month later the ecowas court dramatically dismissed the suit.

³⁶ ECOWAS Report www.ihrda.org/court-of-justice-of-the-west-african-states Accessed Feb.14th, 2017.

³⁷ In Nigeria, members of the PDP more often approach the court, believing that national courts won't be fair in their decision.

³⁸ Col. Sambo Dasuki (Rtd). Former National security Adviser to Former president, of Nigeria Dr.Goodluck E. Jonathan.

violation of his freedom of movement³⁹ by the Nigerian government and not the charges brought against him in Nigerian courts. The Nigerian government is advised to respect whatever decision the court will arrive at in its judgment.

In Gambia, ECOWAS decisions in two cases became a political flash point. The said decision was against the Gambia government. The Court held the state responsible for the disappearance and future of two journalist. The state was unable to challenge the judgment but reasoned that the court is interfering with its domestic authority it launched a campaign in 2009 to limit the court's human rights jurisdiction.

The Gambia case involved Chief Ebrima Manneh a reporter for the Daily observer who disclosed information that appeared in a new article critical of the government.⁴⁰ Plain clothe intelligence agents arrested Manneh in July, 2006. He disappeared until January, 2007, when reports emerged that he was detained in a local police station. Intelligence and police officials denied that he was in their custody.⁴¹ An NGO, media foundation for West Africa in May, 2007 filed a complaint with the ECOWAS court charging the Gambia with numerous human rights abuses, demanding Manneh's release and requesting compensation for his injuries,⁴² the Gambia Government refused to react to the petition and ignored several requests to appear or file documents.⁴³ The court in June, 2008 ruled in favor Manneh ordering the Gambian Government amongst order relief; to release Manneh from custody without further delay and to pay him (U.S. \$100.00) One Hundred Thousand Dollars as damages and bear the cost of litigation.⁴⁴ The Gambia Government refused to comply with the judgment this noncompliance portrayed the government in bad light. The African commission on Human Rights also added their voice by calling on them to comply with the judgment. There is also the second case of unlawful detention and torture of Musa Saidykhan⁴⁵ the Gambia government was aggrieved by the judgment in the Manneh's case and set the political process in motion to set aside the judgment.⁴⁶ In September, 2009. The Gambia called a meeting of government experts to review the 2005 protocol and to restrict the court's authority.⁴⁷ Its main aim is to restrict the ECOWAS

³⁹ See 41(1) constitution of federal Republic of Nigeria, (1999) as amended.

⁴⁰ IPI cells on the Gambian Government to cooperate with ECOWAS legal proceedings, FREEDOM NEWSPAPER (mar. 12, 2008) at <http://www.free.media.at/press-room/public-statements/press-releases/single-view/article/IPI-carlls-on-the-Gambian-government-to-co-operate-with-ecowas-legal-proceedings.html>.

⁴¹ Manneh v the Gambia, case No ECW/CCJ/APP/04/07, judgements paras 7-8 (June 5,2008), reprinted in 2004-09 community court of Justice, ECOWAS LAW REPORT 181(2011), available at [http://www.chr.up.ac.za/index.plp/browse by institution/ecowas-CCJ.html](http://www.chr.up.ac.za/index.plp/browse%20by%20institution/ecowas-CCJ.html).

⁴² Ibid

⁴³ Ibid para 4,28

⁴⁴ Ibid para 44

⁴⁵ see ECOWAS Torture case Against the Gambia Near an end, AFROL NEWS (sept. 22, 2011), at <http://www.afrol.com/articles/36623>.

⁴⁶ the Gambian Attorney General Denies Holding missing journalist, AGENCE FRANCE PRESS, Apr 7, 2009.

⁴⁷ West Africa country submits proposal to Amend ECOWAS protocol, FOROYAA NEWSPAPER.

court jurisdiction on human rights to treaties ratified by the respondent state and to require exhaustion of local remedies.⁴⁸

The Gambia proposals provided another opportunity for member state to review the 2005 protocol. Despite the recommendation by the ECOWAS committee of legal experts to narrow the court's human rights jurisdiction and Council of Justice minister's unanimous endorsement in October, 2009, the council of foreign ministers rejected the proposal in their meeting the following month.⁴⁹

Let's us also not forget the case of *OLAJIDE AFOLABI v FEDERAL REPUBLIC of NIGERIA*.⁵⁰ Earlier were the court rules that it has no jurisdiction over cases involving natural persons and that only member state could institute matters before it. The decision in this case however led to the expansion of the Jurisdiction of the court.⁵¹

STRATEGIES TO PROMOTE COMPLIANCE; STRICT PROOF REQUIREMENTS, LIMITED REMEDIES AND PUBLIC OUTREACH

The ECOWAS Court as of 2013, has issued nearly seventy merits judgment, most of it hinges on human rights.⁵² The number is more presently. Many of the judges have legal and political consequences. In the much publicized Niger case of *HADIJATOU MANI KOURAOU v NIGER*.⁵³ The ECOWAS court of female slavery. Nigeria too was not left out as the court issued a path breaking judgment against her for failing regulate international oil companies that polluted the Niger Delta on the case of *socio-economic RIGHTS AND ACCOUNTABILITY PROJECT v NIGERIA*.⁵⁴ Based on this judgment the country was ordered to clean up the Ogoni land and that its environs polluted by the multi-national oil companies operating in the area. The federal government of Nigeria has in 2016 flagged off the cleanup process. Other high profile decisions are that of the decision in *HABRE v SENEGAL*,⁵⁵ *ALADE v NIGERIA*,⁵⁶ *SERAP Basic*

⁴⁸ the Gambia also proposed that cases should be admissible for only twelve months after the exhaustion of domestic remedies, that applicants should not be anonymous, and that complaints submitted to the ECOWAS Court should be barred from later being filed with other international courts. The Gambia reiterated the need for a process to appeal all ECOWAS Court decisions. West Africa: Country submits proposals to Amend ECOWAS Protocol, *supra* note 185.

⁴⁹ Justice Minister Endorse Experts' Decision on ECOWAS Jurisdiction, IFEX, (Oct. 14, 2009), at http://www.ifex.org/west_africa/2009/10/14/gambia_proposal_defeated/. One source told us that, while the justice ministers unanimously rejected the Gambia's proposals, the foreign minister were split, with one-third supporting and two-thirds opposing the proposals. Telephone interview with Human Rights Advocate A, *supra* note 91.

⁵⁰ ECW/CCJ/JUD/01/04.

⁵¹ Supplementary

⁵² As of July 2013, the ECOWAS Court's decisions included seventeen rulings and sixty-seven judgments on the merits. Amie Sanneh, West Africa: ECOWAS Court of Justice Brief the press, FOROYAA NEWSPAPER (Serrekunda) (July 26, 2013) (reporting statement of the ECOWAS Court Chief Registrar), at <http://allafrica.com.proxy.lib.duke.edu/stories/201307291277.html>. Solomon Ebobrah has provided the most detailed analysis of the ECOWAS Court's human rights jurisprudence. See, e.g., Ebobrah, Critical Issues, *supra* note 112

⁵³ Case NO ECW/CCJ/APP/08/07. Judgement, para. 74-75-77 (oct. 27, 2008), an official translation available at <http://www.refworld.org/pdfid/496641fa2.pdf>.

⁵⁴ case No ECW/CCJ/APP/08/09, judgement (Dec 14, 2012 hereinafter *SERAP NIGER DELTA* Judgement

⁵⁵ 75. Case NO ECW/CCJ/APP/07/08. Judgement (Nov. 18, 2010)

⁵⁶ Case NO ECW/CCJ/APP/05/11. Judgement, para 24 (June 11,2012, Keita: ECW/CCJ/APP/05/06, Judgement para.34 (Mar. 22, 2007)

education judgement.⁵⁷ Despite the non-enforceability of most of its judgment, by member state, people are daily invading the courts to address human rights violation, mostly resulting from political vendetta. According to the Chief Registrar of the court in a paper in 2013 stated that not many decision of the court have been enforced. This trend has triggered criticism from civil society groups, issuing public declarations demanding that states comply with ECOWAS Court decision and urging community officials to step up enforcement efforts.⁵⁸ It should be noted that noncompliance with the court judgment is the major challenges the court is facing, though some member states have designated a ministry to oversee the implementation of the court's judgment. And it has discussed ways to promote compliance in meetings with government officials and national judges.⁵⁹ Pressure for compliance also comes from outside the ECOWAS community, for instance, the disappearance of Chief Ebrima Manneh in Gambia case was discoursed in 2010 during the universal periodic Review of the Gambia before the UN Human Rights Council.⁶⁰ In conclusion although the ECOWAS community court of Justice is young as an international tribunal with a future not so bright, it has survived two major challenges that almost took off its jurisdiction to hear human rights cases. It is becoming stronger as the year passes. One of its Success is the implementation of its judgment on Niger Delta in Nigeria. The Nigeria governments is setting up all processes in motion to clean up the polluted area.⁶¹

THE EAST AFRICAN COURT OF JUSTICE

Worthy of note is the fact that regional economic communities (REC) in Africa dated back to the 1960's, when African states were encouraged by the United Economic Commission for Africa to incorporate single economic sub regional systems with the sole objective of creating a single economic union on the continent.

In that vein the attempt to establish an intergovernmental organization in east African began in 1967, when the east African corporation was established. It eventually collapsed after ten years, precisely, 1977. The reason attributed to its collapsed was lack of political will by the founding leaders and strong participation in the activities of the community by private sector and civil

⁵⁷ Supra (n-74) para 59-61 (Dec. 10, 2010)

⁵⁸ Bassey Udo, West Africa: Human Rights Groups want mechanism to enforce ECOWAS Court Decisions, PREMIUM TIMES (Nigeria) May, 2, 2013.

⁵⁹ E.g. community court of Justice ECOWAS, Summary of Activities for the year 2011, at 5,(2012), available at <http://www.courtecowas.org/site2012/pdf-files/annual-reports/activities-report-2011.pdf>; press Release, media Foundation for West Africa, MFWA Holds Forum on ECOWAS Court in Abuja (July 27, 2012) at <http://www.mediafound.org/index.php?option=com-content&task=view&id=857>.

⁶⁰ UN Human Rights Council, Report of the working Group on universal periodic Review, Gambia, 125/20/pdf/G1012520. Pdf? Open Element.

⁶¹ the Ogoni and its environs clean up exercise

societies.⁶² Another reason for its collapse was the lack of appropriate policies to strengthen regional integration in the region.⁶³

The issue of human rights received little or no attention during the time of east African corporations.⁶⁴ As at then the East African Court of Appeal was saddled with the responsibility of hearing all appeals on civil and criminal matters relating to constitutional matters of member states.

There were several failed attempts to re-establish, the East African Corporation. This attempt succeeded in 2000 when the New East African Community came into existence after the signing of the EAC Treaty by some countries,⁶⁵ in 1999.

The EAC Treaty makes several references to human rights, defining the norms with which the EAC members should comply.⁶⁶ The east African court Justice is established mainly to complement the African judicial system as practiced in east Africa.

Article 6 of the treaty provided for the community's fundamental principles. It went further to list good governance, the role of law, democracy and the promotion and protection of human and people's rights in accordance with the provisions of the African charter.⁶⁷ The Treaty in subsequent article provides for the principles that shall govern the practical achievement of the objectives of the community, of which maintenance of universally acceptable standards of human rights is one.⁶⁸ The east African community enjoined member state to abstain from measure that will or likely to jeopardize the achievement of its objective or implementation of the provisions of the Treaty, especially that of human rights.⁶⁹

In the case of *PLAXEDA RUGUNDA v THE SECRETARY GENERAL OF THE EAST AFRICAN COMMUNITY AND ATTORNEY GENERAL OF RWANDA*⁷⁰ the east African court of justice held that the inserting of articles 6 and 7 by the member state was not a cosmetic act. It was mainly inserted to ensure that member states implement in their respective countries the objectives of the community. Similar decision was given by the court in *JAMES KATABAZI AND 21 OTHERS v THE SECRETARY GENERAL OF EAC ANND THE*

⁶² Ally possi: the east African court of justice: towards effective protection of Human Rights in the east African community, max planck UNYB (2013)17

⁶³ see the preamble to the EAC Treaty.

⁶⁴ see for example the United Republic of Tanzania, where the bill of rights was not incorporated its constitution until 1984.

⁶⁵ Kenya, Uganda, and United Republic of Tanzania, Burundi and Rwanda acceded in 2007

⁶⁶ Article 3(3) (b) of the EAC Treaty provides that adherence to universally acceptable principles of good governance, democracy the rule of law, observance of human rights and social justice are among the pre-requisites for a non-member to be accepted to the community.

⁶⁷ Article 6(d) EAC Treaty.

⁶⁸ Article 7 EAC Treaty see also article 7(2) of the Treaty.

⁶⁹ Ibid Article 8(1) (c).

⁷⁰ REF: NO.8 of 2010, EACJ First instance Division

ATTORNEY GENERAL OF UGANDA.⁷¹ It is therefore submitted that there are provisions in EACJ jurisprudence that ensure the promotion of and prevention of human rights abuses amongst member states. The courts are enjoined to safeguard same.⁷² The above mentioned provisions cover human rights protection in general, whereas the EAC Treaty and other legal instruments and programs focus on specific human rights related issues, the role of woman men in society is also taking care of by mainstreaming gender in all its endeavors and the enhancement of the role of women in cultural, social, political, economic and technological development.⁷³ The recognition of gender equality by EAC is reflected in the provisions relating to the appointment of staff.⁷⁴

HUMAN RIGHTS JURISDICTION OF EAST AFRICAN COURT OF JUSTICE (EACJ)

The EACJ is established under its treaty as a different institution, separate from the former east African court of Appeals on terms of the exercise of its Jurisdiction. The EACJ as Judicial body ensure the adherence to law in the interpretation, application and of compliance with Treaty of the community's (EAC) by member state.⁷⁵ According to article 27, the court shall as an initial jurisdiction, interpret and apply EAC Treaty. Paragraph 2, further states thus:

*the court shall have such other original appellate, human rights and other Jurisdiction as will be determined by the council at a suitable subsequent date. To this end, the partner states shall conclude a protocol to operationalize the extended jurisdiction.*⁷⁶

With the introduction of the customs union and the common market, which created an environment of increase in cross border trade, movement and investment, the EAC see the need to extend to the jurisdiction of the EACJ.⁷⁷ They do not accept human rights jurisdiction as member states are already Signatories to the protocol of the African Charter on Human and Peoples' Rights, on the establishment of an African court on Human and people's Rights.⁷⁸

In 2012 East African Legislative Assembly debated and passed the EAC Human Rights Bill,⁷⁹ paving the way for a new law (Act of community). Upon the assent of this Bill into law, the EACJ was eventually clothed with the jurisdiction hear and determine human rights violations within member state.

⁷¹ REF. NO.1 of 2007.

⁷² Referred to as operational principles. Art. 7(2) urges members to undertake to abide by the principles of good governance including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights.

⁷³ Article 5(3) (e) EAC Treaty.

⁷⁴ Article 6(d). *ibid.* see also Article 9(5), chapter 22 (Article 121 and 122 of EAC Treaty) Dedicated to enhancing woman role in socio-economic development.

⁷⁵ Article 23 (1) of EAC Treaty.

⁷⁶ Article 27 (para) 2 *Ibid.*

⁷⁷ the report of the meeting of the sectoral council on legal and judicial affairs of 2-3 November, 2011.

⁷⁸ EAC Secretariat: *Ibid.*

⁷⁹ the prime mover of the is Hon Frederic Ngenzenbuhoro .

The court in summary has the following as its jurisdiction:

It is to hear and determine;⁸⁰

1. Despite on the interpretation and application of the Treaty.
2. Dispute between the community and its employers arising from the terms and conditions of employment on the interpretation and application of the staff rules and regulations.
3. Dispute between the partner states regarding the Treaty of the disputes is submitted to founder a special agreement.
4. Dispute arising out of an arbitration clause contend in a contract or agreement which confers such jurisdiction on the courts to which the community or any of its institutions is a party.
5. Disputes arising out of an arbitration clause contained in a commercial contract or agreement in which the parties have conferred jurisdiction on the court.
6. The jurisdiction of the court may be extended to human rights at a suitable date to be determined by the council.

Our concern in this article is mainly its role in adjudicating human rights violations in the sub-Region. The recent decision in *DEMOCRATIC PARTY v THE SECRETARY GENERAL OF THE EAC*,⁸¹ will make the functions of the EACJ rather interesting within the near future. In that case, the EACJ unequivocally held that it has jurisdiction to interpret the charter (African charter on Human and peoples' Rights herein the African charter) in the context of the (EAC) Treaty. This lining of the decision becomes more authoritative as it is from the Appellate Division section of the court. The decision in this case makes it official for the exercise of human rights jurisdiction by the EACJ. The facts if this case was that, Democratic Party approached the EACJ to find Burundi, Kenya and Uganda in violation of the EAC Treaty, due to their prolonged process in depositing their declarations under.

Article 5(3) and 34(6) of the African Court protocol. Specifically it was the contention of the applicants that such delays constituted on infringement of Article 5,6,7(2),8(1)(c), 126 and 130 of the Treaty; and Article, 2,7,13,26,62,65 and 66 of the African charter the EACJ.

The first instance Division dismissed the case on the ground that it has only the jurisdiction to ensure adherence to the law in the interpretation and application of and compliance with EAC Treaty; but not with the African charter and its protocol.

⁸⁰ see www.eala.org>media>view>bill-on

⁸¹ Appeal No. 1 of 2014 (Democratic party case)

On appeal, one of the issue raised, whether the first instance Division and in law by finding that it has no jurisdiction to interpret African charter the protocol and other relevant international conventions to which EAC member state are parties. In affirmative response to the issue the appellate Division stated thus:

Article 6(d) and 7(2) of the Treaty empowers the (EACJ) to apply the provision of the charter, the Vienna convention, as well as any other relevant international instrument to ensure the partner state observance of the provisions of the Treaty, as well as those of other international instruments to which the Treaty makers reference the role of the court on the instance reference are to ascertain the partner states adherence observance of, and or compliance with the Treaty provision including the provisions of any other international instrument s which are incorporated in the Treaty, whether explicitly (as an Article 6 (d)) or implicitly (as in Article 7(2)).

Let us recall that the first instance hold same new in RUBUMBA v SECRETARY GENERAL OF THE EAC & AG OF RWANDA⁸² and in IMLU v AG of Kenya.⁸³ In both cases the appellate Division established a stance that the EACJ will entertain a matter with human rights allegations. It is submitted that the current reasoning of the EACJ in the Democratic Party case will officially enable the EACJ to handle allegations of human rights violations. Prospective litigations are advised not to be complacent, as member states will fiercely fight against the development.⁸⁴

CHALLENGES CONFRONTING EACJ

Regrettably, the operation of the EACJ has been politicized thereby putting a string in its wheel of progress. This has greatly affected the effective and official discharge of its duties. The issue of politicization was evidenced after its ruling in the case of PETER ANYANG' NYONG'O AND 10 OTHERS v THE AG OF KENYA AND 5 OTHERS.⁸⁵ Following the ruling in the case, restraining nine members of Kenya National Assembly following irregularities in the process of electing and its attendant tension, the EAC summit, in an extra- ordinary meeting held in November 2006 endorsed the recommendations of the council of ministers to amend the EAC Treaty.⁸⁶

The amendments restructured the court by introducing the first Division and the Appellate Division,⁸⁷ limiting the court's jurisdiction,⁸⁸ introduced a two months' time limitation clause for individuals to lodge their complaints before the court,⁸⁹ introduced additional grounds for the removal and suspension of the courts judges,

⁸² Rep No. 8 of 2010.

⁸³ Rep No.3 of 2010.

⁸⁴ Ally possi : its official: the east African court of justice can now adjudicate human rights case: Africa Law <https://atrilaw.com/2016/02/01>.

⁸⁵ Rep no. 1 OF 2006, see H. ONORIA, "Batched up election, treaty amendments and judicial independence in east African community" journal of African Law 54(2010),74

⁸⁶ see the communiqué of the EAC SUMMIT OF 30 Nov, 2006 on 14 December, 2006, the EAC summit adopted the amendments to the EAC Treaty. The last instrument for ratification of the amendment of the EAC Treaty was deposited on 19th march, 2007, and the Treaty could be enforced.

⁸⁷ Article 23(2) of the Treaty.

⁸⁸ Article 30(3) Ibid

⁸⁹ Article 30(2) Ibid

and increased the control of the EAC summit over court.⁹⁰ The East African Law Society challenged the legality of the process of amending the treaty in *EAST AFRICAN LAW SOCIETY AND OTHERS v THE ATTORNEY GENERAL OF KENYA 2 OTHER*.⁹¹ It was contended that the amendment was not in compliance with the procedures under Article 150 of the EAC Treaty, and that the amendment amounted to infringement of the principles enshrined in the Treaty.⁹² The EACJ held that failure to carry out consultations was contrary to the principles governing the EAC. This negative response to REC Judicial organs decisions was also noticeable in other REC'S. For instance ECOWAS saw an unsuccessful attempt by the government of Gambia to distort the functioning of the ECOWAS court in *CHIEF EBRIMAH MANNEH CASE*. Again the SADE Tribunal in *MIKE CAMPBELL v ZIMBABWE*⁹³ gave a judgment which Zimbabwe refused to comply with. The tribunal has been suspended since August 2010 following the questioning of the legitimacy of its existence by Zimbabwe. The SADE Tribunal twice referred the matter to the SADE summit to take further action against Zimbabwe. The applicants also filed an application asking the Tribunal to restrain the government of Zimbabwe from renouncing or allowing the removal of the applicants from their land, pending the determination of the matter.

The human rights situation or East Africa still is not of a desirable standard. There has been series of human right violation in 2007, during the post national elections violence. It was estimated that about One Thousand Two Hundred persons died in the violence that erupted after the presidential election results.⁹⁴ The region also witnessed the Rwandan genocide of 1994, in which about 800,000 persons were estimated to have lost their lives.⁹⁵ There are still restrictions in the region as to the enjoyment of civil and political rights, such that in *CHRISTOPHER MITIKILA v THE ATTORNEY GENERAL*,⁹⁶ the Court of Appeal of the United Republic of Tanzania was not bold enough to declare that citizens of Tanzania had a right to take part in the general elections without being forced to be affiliated with any political party. Acts of physical violence, particularly to vulnerable groups and deprivation of justice is a daily occurrence in the union.⁹⁷ This was contained in the report presented to the 49th session of the African commission on Human and peoples' Right in Banjul, 2011.⁹⁸

Another obstacle is article 30(2) of the EAC Treaty which provides that proceedings shall be "Instituted within two months of the enactment, publications,

⁹⁰ see Article 26 Ibid

⁹¹ Rep. No. 3 of 2007

⁹² Article 150(4) and (5) provide for the framework of the amendment process of the EAC Treaty.

⁹³ SADE (T) 02/2007 violence that erupted after the presidential election.

⁹⁴ See the report from the OHCHR, fact finding mission to Kenya, 6-28 February, 2008.

⁹⁵ D. Adjovi N. Knust, Rwanda: max planck Encyclopedia of public international Law.

⁹⁶ Civil case No. 10 of 2005.

⁹⁷ see the east and Horn of Africa Human Rights Defenders project (EHAHRDP): A Report on the overview of the human rights situation in the east and Horn of Africa.

⁹⁸ Available under <http://www.defenders.org>

directive, decision or action complained of or in this absence thereof, of the day in which it came to the knowledge of the complainant, as the case may be”

The obstacle posed by article 30(2) has severally been argued before the EACJ. In *INDEPENDENT MEDICAL UNIT v AG KENYA & OTHERS*,⁹⁹ the case where 3,000

Kenyans resident in the Mount Elgon District were subjected to acts of torture, cruelty inhuman and degrading treatment by the Kenyan authority. The East African court of justice (EACJ) at the first instance held that the court had jurisdiction and decided that the reference was not barred by limitation of time.¹⁰⁰ On appeal, the EACJ held that the medical unit have knowledge of the violations as the acts was widely reported and therefore the reference was time barred,¹⁰¹ applying strict interpretation of article 30(2) of the EAC Treaty. In *PLAXEDA RUGUMBA v AG of RWANDA*.¹⁰² The applicant contended that seveline Rugigana Ngabo, a lieutenant colonel in the Defense force of Rwanda, was arrested and detained without trial by the Rwandan authorities, which thus contravened the fundamental principles enshrined in article 6(d) and 7(2) of the EACJ Treaty. The court of first instance held that where the issues on contest are criminal in nature and the action complained of is continuous (such as detention), the matter cannot be dismissed on account of lapse of time as provided in article 30(2) of EAC Treaty.¹⁰³ But on appeals the court held that the Rwandan government had failed to prove that the respondent are aware of the time during which the detainee was illegally detained by the Rwandan authorities and held that the case was not time barred.¹⁰⁴ What could be inferred in this case time barred is when the applicant has knowledge of the time when such violation occurred and delayed in taking action. It is submitted that in EAC where majority of people are not aware of their right, limitation of time in instituting human rights case is unnecessary and therefore should be abrogated. The two month time limit is itself against the principles of Rule of Law, to which the EAC partner state have committed themselves.

Furthermore, the independence of the judges of the EACJ is another challenge. They are appointed in a summit based on their nominations from, member states¹⁰⁵The summit also choose the president and vice president of the appellate jurisdiction and the principal judge and Deputy principal judge of the first instance Division. They are all responsible for the supervision and administration of the

⁹⁹ Rep No 3 of 2010, EACJ, First instance Division

¹⁰⁰ Ibid: 10

¹⁰¹ Appeal No. 1 of 2011.

¹⁰² Rep. No. 8 of 2010, EACJ, First instance Division

¹⁰³ Plaxeda Rugumba Ibid para 28

¹⁰⁴ see AG. Of RWANDA v PLAXEDA RUGUMBA, Appeal No 1 of 2012, EACJ Appellate Division

¹⁰⁵ Article 24(1) of the EAC Treaty

activities of their respective Division of the court.¹⁰⁶ By article 26 of the EAC Treaty, judges of the EACJ are removed or suspended from office by the summit. This calls for worry, as the independence of the judges is not guaranteed. This means that judges could compromise in order to protect their office. In fact in their communiqué of the 8th summit the EAC Heads of state and government directed among other things, the review of the procedure for removal of judges from office as provided in the Treaty. The treaty was eventually amended, introducing additional ground for the removal and suspension of judges, giving more powers to the summit.¹⁰⁷ Those additional ground giving the summit to remove a judge without a recourse to an independent ad hoc Tribunal calls for caution. It arouses suspicion about the independence and impartiality of the council, and may provide room for abuse.¹⁰⁸

SUCCESSSES AND CHALLENGES OF WEST/ EAST AFRICAN COURTS OF JUSTICE IN HUMAN RIGHTS CASES

As a matter of fact the primary focus of the sub-original communities is economic, political integration and good governance, human rights issues are coming to the fore as both bodies' moves deeper into regional integration. As at the end of November, 2012, the EACJ has rendered 24 judgments; of these, almost half entailed human rights issues. The EACJ has consistently stated that it has no jurisdiction to hear human rights matter, but has jurisdiction to interpret the EAC Treaty. The EACJ in most of their judgment is careful not to be seen to be exercising jurisdiction on human rights issue especially as It concerns individuals but have through their interpretative jurisdiction, drawn their reasoning by using the African charter and other international human rights instruments. In most cases, the judged make reference to the principle of the rule of law and good governance as enshrined in the EAC Treaty when adjudicating on cases relating to human rights. Unlike the EACJ, the ECOWAS community court of justice has human rights jurisdiction. Today the court adjudicate on human rights violation cases such as, unlawful detention,¹⁰⁹ to slavery, from matters relating to education to labour rights and environmental degradation.¹¹⁰ In Gambia, the Chief Ebrimah Manneh,¹¹¹ unlawful detention for months without that is a notable case where the ECOWAS court of Justice, exercise its protective powers in ensuring that Chief Ebrimah regained freedom and was also awarded a total of US \$100,000 as compensation.

¹⁰⁶ Article 24(4) and (5) Ibid

¹⁰⁷ Article 26(2) (b) of the EAC Treaty.

¹⁰⁸ L. Bartels "Review of the role, responsibilities and terms of the SADE TRIBUNAL " International Human Rights Law in Africa (2012) 2nd edition, 499

¹⁰⁹ Col. Sambo Dasuki and Nnamdi Kanu (IPOB) LEADER) case all against, the Nigerian government.

¹¹⁰ the Ogoni cleanup case between SERAP v Nigerian government

¹¹¹ CHIEF EBRIMAH MANNEH v THE REPUBLIC of GAMBIA. (n.)

The court also adjudicated on the case of *KORAOU v NIGER*,¹¹² involving a woman who was held in slavery for a continuous period of nine years. This was the practice in Niger where a girl can be acquired, under condition of servitude, as a domestic servant or concubine.¹¹³ The ECOWAS court of Justice declared that the applicant was a victim of slavery and held the respondent responsible for in action through its administrative and judicial systems.¹¹⁴ The applicant was compensated for the injuries she suffered in course her servitude in Niger. The ECOWAS community court of Justice is systematically stepping into the legal system of Nigeria, though the court is not listed as courts of Records in the constitution,¹¹⁵ the ECOWAS court is also not a creation of the States/National Assemblies,¹¹⁶ but that of the sub regional body.

Another success recorded by the court is the judgment in *SERAP* case, wherein Niger Delta communities, whose environment has been devastated by oil pollution is undergoing cleanup of organic land and its environs.¹¹⁷ The ECOWAS court of justice annual report of 2009 to 2011 acknowledges that the court steadily “increases in its credibility and confidence, while consolidating its role as the principal legal organ of the community.

According to the report, the court recorded a remarkable increase in its judicial activities including the number of decisions made and hearing hld.

The court as at 2010 was able to record 85 hearings and deliver 15 judgments, including seven final judgments are 8 rulings.

The rise in cases before the ECOWAS court of justice is as a result of the adoption of the supplementary protocol of the court in January, 2005 by the Authority of Heads of States and Government.¹¹⁸

Both the ECOWAS Court of justice and the East African Court of Justice has succeeded in checking the excesses of Heads of States and Government of members’ states. The courts have stood their ground which discharging its functions in accordance with the various treaties that brings them into life. The courts are gaining confidence by each day for instance in Nigeria, despite the opposition of the federal government, arguing that the court lacks jurisdiction in hearing criminal matters, the court assumed jurisdiction, stating that there is an element of human rights violations in the case between *Nnamdi Kanu v*

¹¹² DOC-ECW/CCJ/JUD/06/08

¹¹³ S.T. EBOBRAH/A. TANO: Compendium of African sub-regional Human Rights Documents (2010)286

¹¹⁴ Ibid 298

¹¹⁵ see 6(5) 1999 Constitution of Federal Republic of Nigeria as amended

¹¹⁶ Ibid see 6(2) and (4)

¹¹⁷ The Ogoni cleanup exercise was flagged off by the Acting president (vice president, Prof. Yemi Osibanjo) of Federal Republic of Nigeria in June, 2016.

¹¹⁸ The supplementary protocol amended the 1991 protocol of the court, which permits individual and cooperate bodies to have direct access to the court.

NIGERIA'S Government.¹¹⁹ This is a step in right direction, the EAC should also act expeditiously to amend the treaty and cloth the EACJ jurisdiction with human right violation cases, especially as it effects the individual and corporate bodies. This will promote good governance and rule of law.

It is worthy of note that the east African court of justice, can now adjudicate on human rights violation. This is because of the number of human rights case flooding the court. About ninety percent of cases before the EACJ are of human rights. As a result, courts have yielded to litigants' pressure, due to progressive submission and persuading argument. The courts have also given landmark judgments on human right violation of individuals, against government.

CHALLENGESS

The ECOWAS and East African courts of justice have a lot of challenges inhibiting its smooth operation. The opposition is mainly from despotic governments that do not respect the rights of their citizens. This was evident in Gambia during the leadership of Yaya Jamael.¹²⁰ The Gambia president did everything possible to review the jurisdiction of the ECOWAS Court on human rights, after the decision against his government on the unlawful detention of Chief Ebrimah manneh. It took the resilience of civil rights organizations to stop the review.

Another challenges facing the ECOWAS court of justice is that of enforcement of its decisions. It has little or no efficient mechanism of coercion in enforcing the judgment.

The problem is more worrisome especially on its expanded jurisdiction of adjudication over human rights violation. This is also a challenge for the EACJ and other regional bodies in Africa. There is also no punitive measures or sanctions against government of member states that fails to fulfill their obligations as spelt out in the ECOWAS and EAC treaty.

Similarly, the court do not also have a time limit, within which an application can be responded to under the ECOWAS court, neither did it provide such time limit within which an annulment decision would be enforced.

The EACJ do have two months to file a suit before the court. This invariably means that if an action is not commenced within the specified time it will be barred by limitation of time.

High cost of instituting action in these courts is also a challenge to citizens "there is also inadequate manpower, lack of sufficient funding, financial and material

¹¹⁹ Nnamdi Kanu, the leader of IPOB took Federal government of Nigeria to the ecowas court for the violation of his human rights. He has been held in prison custody since October, 2015 without bail for the offence of treason.

¹²⁰ The immediate past president of Gambia, who was forced into exile in Equatorial Guinea after he refused to relinquish power, having lost the election to the incumbent president, Adamah Barrow.

resources, greatly hamper the court's Impact and success amongst the member state.¹²¹

There is also an influx of human rights violation cases, resulting from the enlarged human rights Jurisdiction of the court. Individuals and institutions are accessing the court in their numbers. Some are election related, which the courts did not decline jurisdiction. The Nigerian political class seems to have hijacked the court due to its proximity.

Col Sambo Dasuki who is standing trial in Nigerian courts on the allegation of misappropriation, and diversion of funds meant for Arms purchase. He has dragged the federal government before the ECOWAS Court¹²² to enforce his rights to freedom guaranteed by the African charter on Human and peoples' Rights.¹²³ It is my humbly submission that Dasuki's move is plausible due to the refusal of the Nigerian government to allow him enjoy the freedom having been granted bail severally by the domestic courts in Nigeria. He has been in detention since December 2015. The Nigerian government opposed the application through its counsel, making a preliminary objections on grounds that the court lacks jurisdiction on criminal matters, but the court through one of its judges,¹²⁴ assumed jurisdiction, deeming the matter to be purely a human rights violation. I totally agree with him. In East African court of justice, there have been frantic efforts to clothe the court with human right jurisdiction. But even if the EACJ is given explicit human rights jurisdiction some other obstacles as discussed above will need to be taken into consideration, especially the execution of its judgment.

The existence of different legal system, and procedure within EAC, makes execution of judgment complicated. By depending on various legal system to execute the EACJ judgment, there exists a danger of having double standard concerning the execution as such, as well as different time frames.

CONCLUSION

It could be inferred from the discussion so far that the main focus of the sub regional courts of ECOWAS and EAC has shifted from the promotion of economic and political activities of member states, to the protection of human rights of individuals within the communities.

According S.T. EBOBRAH:¹²⁵

As a result of the growing dissatisfaction with the state of human rights adjudication in our national legal system, a protection gap has emerged. And further that, in search of alternatives to fill the gap, litigants who are supposed to be key actors in our bonded community of national constitution, national

¹²¹ ecowas report www.ihrda.org/court-of-justice-of-the-west-africa-states accessed 23rd February, 2017.

¹²² www.thisdaylive.com/index-nigeria > Accessed 23 April, 2017.

¹²³ See Article 17, of the international covenant on civil and political Rights and Article 12 of the 1948 universal Declaration of Human Rights.

¹²⁴ Judge, Friday chijioke nwoke is a judge of ecowas court.

¹²⁵ S.T. EBOBRAH: extra-constitutional Adjudication of Rights And the Desacralisation of the Nigerian courts: end of the Beginning or Beginning of the end 22nd inaugural lecture, Niger Delta University.

norms and national court have resorted to finding succor before international courts, the prime example of it is ECOWAS Court.

The ECOWAS court in carrying out its human rights adjudication, have a lot of limitations and challenges set out as besetting it, despite this, it has consistently demonstrated uncommon courage in the discharge of its vital roles of interpreting economic community laws and legitimately putting in check the rising case of human rights violation in the regions.

On ECOWAS it is therefore suggested that there should be a collaboration between the, legislative, executive and judicial arms of government of member States to set out an adequate legal framework, that will advise the clash of jurisdiction between courts in the region and the Regional courts.

Again ECOWAS Court should create an appellate jurisdiction like that of EACJ in order to allow those aggrieved with its judgment to seek further redress. EACJ, member states should explicitly confer human rights jurisdiction on the court. The current lack of jurisdiction cannot be compensated for the fact the court is active in adjudicating human rights violations.

Another issue to be addressed is the issue of limitation of time which is also a hindrance in community human right actions in the region.

Finally, it is recommended that both the ECOWAS and EAC should set up judicial commissions that will be made independent. These bodies should be responsible for the nomination of judges, while the Heads of state and government should only appoint. They should not have the power to reject whoever is nominated. This will check the control of judges by states.

On the issue of enforcement, states should put up machineries for effective enforcement of the judgments of the court. There should be sanction for non-compliance.

Lastly, the various member state of both regional courts should domesticate the treaties establishing the court. In Nigeria section 6(5),¹²⁶ should be amended and the ECOWAS court of justice added as one of the courts recognized by the constitution.

¹²⁶ 1999 constitution of Federal Republic of Nigeria as amended.