ACCESS TO JUSTICE AS A HUMAN RIGHT UNDER THE ECOWAS COMMUNITY LAW

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Introduction

This paper seeks to realize the following objectives:

1. To provide conceptual clarification of the following key terms: “access to justice”, “human rights” and “ECOWAS Community Law”;
2. To contend that without effective access to justice there is no effective legal protection of human rights. That is why the legislatures, governments and courts of every country have a positive duty to translate the ideal of effective access to justice into practical reality. Effective access to justice is not just an optional luxury of the rich and economically advanced societies. Everyone, everywhere, should enjoy the equal protection of the law if there is to be justice for all;
3. To highlight efforts made under the ECOWAS Community law to enhance access to justice as a fundamental human right to community citizens in West Africa;
4. To conclude with some recommendations on how to improve on effective access to the ECOWAS Community Court for justice and human rights protection.

1.0 Conceptual Clarification of Key Terms: - Access to Justice, Enhancing Access to Justice, Human Rights and ECOWAS Community Law.

This part of the paper seeks to clarify briefly the key terms: - “access to justice”, “enhancing access to justice”, human rights and ECOWAS community law.

1.1 “Access to Justice”, “Justice Sector” and “Enhancing Access to Justice”

The term ‘access to justice’ means that people in need of help, finding effective solutions available from justice systems which are accessible, affordable,
comprehensible to ordinary people, and which dispense justice fairly, speedily and without discrimination, fear or favour and a greater role for alternative dispute resolution.¹

The term ‘access to justice’ refers to judicial and administrative remedies and procedures available to a person (natural or juristic) aggrieved or likely to be aggrieved by an issue. It refers also to a fair and equitable legal framework that protects human rights and ensures delivery of justice.

Without effective access to justice there is no effective legal protection of human rights. That is why the legislatures or parliaments, governments and courts of every country have a positive duty to translate the ideal of effective access to justice into practical reality. Effective access is not just an optional extra or a luxury of affluent and economically advanced societies. Everyone, everywhere, should enjoy the equal protection of the law if there is to be justice for all.²

In his recent report on the English civil justice system, the Master of the Rolls, Lord Woolf, identified a number of principles which the system should meet in order to ensure access to justice. The justice system should, he wrote, “(a) be just in the result it delivers; (b) be fair in the way it treats litigants; (c) offer appropriate procedures at a reasonable cost; (d) deal with cases with reasonable speed; (e) understandable to those who use it; (f) be responsive to the needs of those who use it; (g) provide as much certainty as the nature of the particular case allows; and (h) be effective, adequately resourced and organized.”³

Those principles of access to justice are of general application to all systems of justice, civil and criminal.
The term “justice sector” is used here in a broad sense, comprising not just the judiciary, lawyers, and justice and interior ministries, but also police, prosecutors, prisons system, human rights bodies, non-state mechanisms (e.g. traditional chiefs and traditional systems of justice) and civil society organizations involved in justice work.  

The term “Enhancing Access to Justice” is used here to refer to initiatives that seek to improve on the protection and promotion of the legal rights of all persons, especially, those suspected and accused of crime, vulnerable groups who often experience all forms of discrimination, marginalization, exclusion or are disadvantaged or victims of crime and abuse of power. The term refers also to initiatives that seek to improve on access to court for justice, access to law and information about legal rights and duties through a just or equitable, responsive, affordable and accessible legal regime for the administration of civil and criminal justice.

1.2 Nature and Scope of Human Rights

In the most general sense human rights are understood as rights which belong to any individual as a consequence of being human, independently of acts of law. Awareness of the existence of this type of rights finds its expression in the output (especially in literature) of various cultures of various times. However the real career of the category of human rights which led to its common use in disputes of practical type, not only in the area of law but also in politics, morality or religion, dates only from the Second World War. The modern concept of human rights is rooted in the experiences of ‘legal lawlessness’ when crimes were committed with the authorization of law, and some human beings possessing certain characteristics were refused the status of being human. The emergence of international law of human rights was an answer to these experiences. The conception of human rights adopted in the acts which laid foundations for this law determines nowadays the paradigm for the understanding of human rights.
not only in international law, but also in other areas of culture. International community’s appreciation of the unique worth of every human being led to the concern not only to eliminate elements destructive for an individual but also to create the conditions for his or her development and flourishing. In spite of cultural changes which took place during the last half of the 20th century, in spite of the critics, the basic original ideas of human rights have seemed to remain the same.

The first, identical, sections of the Preambles to the Universal Declaration of Human Rights8 and to the International Covenants of Human Rights9 read:

Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

The Preambles to the Covenants add also:

These rights derive from the inherent dignity of the human person.

First of all it should be noted that the fundamental rights and freedoms are universal, that is, they belong to each and every human being, no matter what he or she is. Universality is rooted in inherency of dignity and rights. Although universality and inherency are decisive for specificity of human rights as rights, these characteristics are most often contested by the theoreticians of law. It should be however underlined that both universality and inherence are flatly recognized and emphasized on the level of practical discussion. The Vienna Declaration, a final document of the World Conference of Human Rights (1993), which was adopted by consensus of unprecedented number of 171 representatives of states, contains, partially in answer to the raised doubts, the following unambiguous phrases: “Human rights and fundamental freedoms are the birthright of all human beings” (1.1); “The universal nature of these rights and freedoms is beyond question” (1.1). Ignoring the fact that human right concept was born partially
to challenge the positivistic approach to law; human rights are sometimes rejected only because they do not fit these characteristics of rights which were elaborated on the ground of statutory law.

The fundamental rights and freedoms are *neither obtained, nor granted* through any human actions. They may not be recognized or respected in these actions, but they still belong to each individual. The rights which derive from inherent dignity are also *inalienable*. Nobody can deprive anybody of these rights and nobody can renounce these rights by himself. In this approach the fundamental human rights and freedoms are not related to the duly adopted legal norms, but adoption of the appropriate norms is postulated to protect human rights and to determine the ways of their realization. Legal norms (human rights law) do not establish fundamental rights and freedoms but only guarantee them. The fact that certain actions or abandonment of actions are due to an individual has its primary reason in the uniqueness of being a human. This uniqueness is also a ground for assigning *dignity* to each and every human being. Every human being is regarded to be an aim in himself; therefore *non-instrumental treatment* and acknowledgement that an individual is entitled to *personal development* and to the conditions which lead to it are postulated.

Another important feature of the contemporary conception of human rights is the recognition of *indivisibility* and *interdependence* of different rights.

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. *Vienna Declaration*, 1.5

Different aspects of a human being (physical, moral, spiritual, environmental, etc) deserve proportional concern. Individual development requires appropriate social,
political, economic, cultural, and ecological conditions. Moreover, ensuring a minimum in one respect is usually indispensable for developing or preventing degradation in another; for example, a fulfillment of minimal social standards may be necessary for enjoyment of political rights. Nevertheless, proportions in which means for prevention of degradation or ensuring development should be distributed are difficult to define. The point of departure is a specific person living in unique circumstances. The aim of the formulated law is the individual and his or her development, not abstract values.

Equality is another major element of the conception of human rights. Article 1 of the Universal Declaration of Human Rights declares:

\begin{quote}
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.
\end{quote}

First the equal dignity is pointed out as there are no human beings which are more human than other human beings. Equal dignity requires equal respect for an individual related to his or her personal development and for his or her rights based on this relation. Respect for equality does not mean an equal treatment in the way of imposing equal aims and equal circumstances of action; differences are even desirable if there are proportional reasons justifying them. That is why equality may be sometimes expressed also in the terms of non-discrimination, if discrimination means differentiating without proper reason. The point of departure is again a specific human being, living in unique circumstances and endowed with unique abilities. Therefore, while constructing laws, the postulate of equality combines equality before the law and equal protection of the law. It is not sufficient that the same judgement is past in the circumstances which in the face of positive law do not differ in a relevant degree, it is also important that there are proper reasons to regard certain differences as relevant in law.
Addressing in Article 1 the *freedom* of a human being, the Universal Declaration points to human dignity, *reason* and *conscience*. The reference to reason and conscience underlines that the human being is not absolutely free in defining the standards. In every free decision which contributes to the personal development the indications of reason and conscience have to be taken into account. In such decisions inherent dignity and rights derived thereof are to be respected.

If we recognize that inherent dignity is a source of human rights and that human rights are inalienable, we have to accept as a consequence that human rights are not related to any concrete property of human being. If recognition of human rights were to be related to any human characteristic, the deprivation of it would have to mean a deprivation of the rights related to it. Therefore possession of human rights is not a consequence of, for example, being able to exercise free choices or to think logically. Every human being is recognized as free and rational, so being free and rational are not properties related to some functional abilities, but are inherent and may be regarded as at least an element of the foundations of uniqueness and dignity of a human being. Here the universality of human rights finds its real roots.

Article 1 of the Universal Declaration of Human Rights speaking about “a spirit of brotherhood’ draws attention to the fact that in principle members of society or global community are not competitors who constitute a danger for each other. A human being is a *social being*; relations with others are an indispensable condition of development, and at the same time concern for the well-being of others is also an obligation and a part of one’s own personal development. International Covenants on Human Rights in their preambles stress: -

*the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights.*
Recognition of the indispensability of social environment may not lead to assigning priority to the community in the case of conflict between respect for the dignity of an individual and the well-being of the community. A human being is autonomous, he is not a mere part of a society; the society exists for the benefits of the individual.

In the paradigmatic conception of human rights, recognition of dignity and of the rights which derive from it is the basis of justice and therefore the basis of every legal system which claims to be just.

The requirement, not to be treated inhumanely, makes it possible to determine the limits of that which is acceptable. Compromise outside these limits would be contrary to the respect of dignity and would lead to violation of human rights. Recognition of the fact that there are limits which can be crossed neither by an individual, nor by a majority of citizens, nor by a state authority, is one of the basic elements of the contemporary conception of human rights (specific "fundamentalism" of human rights). Secondly, the respect for a human being related to his or her development requires ensuring – in the limits of what is acceptable – conditions for free and rational choice of aims of actions and ways of his or her development. If conflicts arise here, there is a space for a compromise in the discussions on the means and ways of development of a human person. But such discussions and compromise do not aim at uniformity; in contrary, realization of human rights means realization of plurality: postulated because of the specific potentialities of each human being, freedom in choosing his or her own way, relation of an individual to a culture which forms an indispensable environment for his or her development, etc. There is no contradiction between plurality and universality once we realize that determining what is wrong and unjust does not mean determining a uniform way of realizing the individual.
Human rights law, both international and domestic, aims at grasping the relations constituting human rights in their existential aspect, and at creating instruments of protection of these rights. Catalogues of human rights formulated in positive law, and partially also the conceptions of human rights themselves, are an answer to threats to human being and its development. Various fundamental rights and freedoms point to different aspects of the human being, to his or her different potentialities and different categories of goods. In the world of different cultures and rapidly changing circumstances it is not easy to get to know these threats and concrete ways of realizing of a person. It is not easy to find appropriate remedies and to agree the organization of social life. This explains the historic and dynamic character of the concepts and standards offered in human rights law. However, this does not deny the existence of human rights and their inherent and universal character, but rather is an affirmation of uniqueness of each human being.

1.2.1 Human Rights as a Fundamental Value of ECOWAS

The onset of conflicts in Liberia in 1989 and in Sierra Leone in 1991 compelled a re-examination of the role of human rights in guaranteeing regional stability and security in ECOWAS. By the end of the next decade in 2001, ECOWAS Member States could agree that “good governance and press freedom are essential for preserving justice, preventing conflict, guaranteeing political stability and peace and for strengthening democracy. The processes that led to the evolution of this treaty-based consensus began in 1991.

In July 1991, ECOWAS Heads of States adopted a Declaration of Political Principles, the preamble of which reaffirmed the need for the creation of a Stable and secure region in which peoples of West Africa can live in freedom under law and for concerted regional action to promote democracy “on the basis of political pluralism and respect for fundamental rights as embodied in universally recognized international
instruments on human rights and in the African charter on Human and peoples’ Rights. In the Declaration, the ECOWAS States undertook as follows:

We will respect human rights and fundamental freedoms in all their plenitude, including in particular, freedom of thought, conscience, association, religion or belief for all our peoples without distinction as to race, sex, language or creed. We will promote and encourage the full enjoyment by all our peoples of their fundamental human rights, especially their political, economic, social, cultural, and other rights inherent in the dignity of the human persons and essential to his free and progressive development.

Prior to the adoption of this Declaration, ECOWAS convened in 1990 a Committee of Eminent Persons to review the 1975 Treaty. Among its conclusions and recommendations, the Committee urged ECOWAS, through a revised treaty, to ‘shift from its exclusive focus on government to government, to involving the people, NGOs and private sector’ and adopt “provisions establishing organs such as the Parliament of the community composed of representatives elected by the peoples of the Member States, and an Economic and Social Council (ECOSOC) comprising socio-professional groups drawn from all sections and categories of the population of the Member States. The Committee suggested that effective protection of human rights in West Africa, arguing that:

Effort towards the establishment of an economic community embracing all the States of the West African region were initiated in the early sixties not long after most of the countries had emerged from colonial domination into independence and Statehood. In this formative state, the natural inclination of the countries was in the direction of consolidating their independence and preserving and enhancing national sovereignty. Additionally, inter-State relations in the region were generally plagued by deep suspicions and political and ideological differences. Perceptions about national sovereignty and the principle of non-interference in the internal affairs of other States are now undergoing gradual transformation as the world shrinks more and more into a ‘global village’. Gross abuse of human rights in a State, for example, now elicits prompt international
reaction, often in the form of coercive and other measures. More and more countries are now opening their international political processes, including the subjection of general elections to international observation in order to earn legitimacy for their governments.

The Committee proposed a new draft treaty with significant new amendments to the 1975 treaty. The revised Treaty was adopted in Cotonou, Benin Republic, in July 1993. In the framework of the Revised ECOWAS Treaty, including its accompanying protocols, human rights are recognized as fundamental principles of the Community, rights in factor mobility, substantive State obligations, and as obligations enforceable by the ECOWAS Court of Justice.

Unlike the 1975 Treaty, the Revised ECOWAS Treaty of 1993 refers to the African Charter on Human and Peoples' Rights in its preamble. Under Article 3(1) of the revised Treaty, the aims of the Community are to promote co-operation and integration leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among member States and contributes to the progress and development of the African continent. To achieve this aim, the State parties to the revised Treaty undertake through the Community to pursue a set of objectives including harmonization and co-ordination of national policies and the promotion and integration of programmes, projects and activities in, *inter alia*, transport, natural resources, food and agriculture, economic reform policies, human resources, education, information, culture, science, the environment, health, tourism and legal matters. The Authority of Heads of States and Government adopt necessary decisions and protocols to implement the obligations under the Revised Treaty.

One innovation in the Revised Treaty was a 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 peoples’ 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 distribution system of governance in each member State, and equitable and just distribution of the costs and benefits of economic integration. Commitment to the African Charter on Human and Peoples’ Rights and to protection of both fundamental human rights and international humanitarian laws are also fundamental principles of the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeper and Security.

The recognition of human rights as fundamental values in the Revised ECOWAS Treaty is quite significant. This consecrates human rights into common political values underpinning integration. By comparison, similar principles in the European Community evolved judicially. The European Court of Justice has explained the legal consequence of such principles thus:

Fundamental rights form an integral part of the general principles of the 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 recognized by the constitutions of those States may not find acceptance in the Community.

The ECOWAS Court of Justice examined the legal implication of these commitments in the case of Hon. Dr. Jerry Ugokwe v. Federal Republic of Nigeria & Hon. Dr. Christian Okeke & Other Intervening, 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 “bring in the application of those rights catalogued in the African Charter.” The Court thus claims jurisdiction to enforce

It follows that, to the extent that the ECOWAS treaty is a supra-national treaty instrument directly applicable within its Member States, 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 rights jurisdiction.

Member States of the community agree in Article 56(2) of the Revised Treaty to co-operate for the purpose of realizing the objectives of several instruments, including the African charter on Human and Peoples’ Rights. Charter X of the Treaty contains general provisions relating to other aspects of human rights, including, immigration, regional peace and security, legal and judicial matters, women and development, health and labour rights, information, radio and television, and the press. For instance, in relation to sex and gender discrimination, ECOWAS States agree under Article 63(2) of the Revised Treaty to take all measures to:

a) Identify and assess all constraints that inhibit women from maximizing their contribution to regional development efforts, and
b) Provide a framework within which the constraints will be addressed and for the incorporation of women’s concerns and needs into the normal operations of society.

To attain these goals, they undertake, at the level of the Community to “stimulate dialogue among themselves on the kinds of projects and programmes aimed at integrating women into the development process...” and “establish a mechanism for co-operation with bilateral, multilateral and non-governmental organizations. Under Article 66, member States of the Community agree also to maintain within their border
and between one another, freedom of access for professional of the communications industry and for information sources, facilitate exchange of information between their press organs, and ensure respect for the rights of journalists.

In relation to the right to democratic participation, ECOWAS States adopted in 2001, a supplementary Protocol on Democracy and Good Governance which sets regional standards on elections and independence of the legal profession and the judiciary and prohibits power obtained or maintained by unconstitutional means. The Member States also agree under this Protocol to review the jurisdiction of the ECOWAS Court of Justice to extend to cases relating to violations of human rights.

1.2.2 The ECOWAS Court of Justice

The revised Treaty creates a Community Court of Justice as one of the principal organs of the Community. In 1991, the Community adopted a Protocol on the Establishment of a Community Court of Justice empowered to “ensure the observance of law and of the principles of equity in the interpretation and application of the provisions of the Treaty.” The ECOWAS Court of Justice is four courts in one: the judicial organ of the Community with composite treaty supervision and oversight functions; the administrative tribunal court of the ECOWAS Commission; pending the establishment of the Arbitration Tribunal provided for under Article 16 of the Revised Treaty, a Court of arbitration, and a human rights court for the sub-region. The Court comprises seven “independent” members elected by the Authority of Heads of State and Government of ECOWAS for renewable terms of five years each.

Originally, access to the ECOWAS Court was restricted to States and Community Institutions. In its report, the Committee of EminentPersons had recommended that this should be extended to individuals and non-State entities. In 2001, the Member States of the Community agreed to extend the jurisdiction of the Court explicitly to
cover human rights violations. This was implemented through a Supplementary Protocol adopted in January 2005.

Under the Protocol Relating to the Community Court of Justice as amended by this Supplementary Protocol, the Court has subject-matter jurisdiction over the interpretation and application of the Revised Treaty, Conventions, Protocols, Regulations, Directives, Decisions and other subsidiary legal instruments of the community. In particular, the Court has jurisdiction over cases of violation of human rights that occur in any Member State. Proceedings relating to the failure of Member States to fulfil their obligations can only be instituted by Member States or the Executive Secretary. In addition to Member States and the Executive Secretary, the Council of Ministers may also initiate proceedings to determine the legality of official action in relation to a Community instrument. Individuals and corporate bodies also have standing in cases to determine whether an act or omission of a Community official violates their rights.

Individuals may apply to the Court "for relief for violation of their human rights." Cases in this last category must satisfy two conditions: they must not be anonymous nor be initiated while the same matter is pending before another international court for adjudication. National Courts may also refer to the Court, questions of interpretation of ECOWAS instruments that arise in domestic proceedings. These provisions confer on the ECOWAS Court of Justice, Jurisdiction over "any violation of human rights in any Member States" brought before the Court by individuals. The Court is presently located in Abuja, Nigeria. However, in December 2006, the Authority of Heads of State and Government decided that its permanent Seat will be in Mali.

Notably, the admissibility conditions in Article 10(d) of the amended Court of Justice Protocol omit any reference to the exhaustion of domestic remedies. The ECOWAS Court has, thus, held that the Community legal order is monist, thereby
dispensing with any requirement for exhaustion of domestic remedies as a pre-condition for initiating proceedings before the Court. According to the Court:

Appealing against the decision of the national court of Member States does not form part of the powers of the Court, the distinctive feature of the Community legal order of ECOWAS is that it sets forth a legal monism of first and last resort in Community law...the kind of relationship existing between the Community Court and these national courts of member States are (sic) not of a vertical nature between the Community and the Member States, but demands an integrated Community legal order. The ECOWAS Court of Justice is not a Court of Appeal or a Court of Cassation.

This opinion confirms the supra-national effect of ECOWAS legal instruments and decisions. Its implications are quite far reaching. For litigators, there is now an additional forum with arguably more robust normative repertoire than national courts. However, this also saddles the Court with the Responsibility of being a forum of first instance and primary fact-finder in essentially international proceedings. The cost implications for litigators in cases with contested factual foundations may turn out to be quite significant. This may involve, in human rights cases, in particular, moving the court to the sites or locations of violations for ease of collection of evidence. Thirdly, however, the asserted monism of the Community legal order implies that to the extent that the Community Court of Justice is a Court of first and last resort, there is an inherent violation of the due process right to an appeal in the structure of the Community judicial system. This design flaw requires to be remedied urgently, even if doing so will add to the institutional costs of the Community and the costs of litigants in individual cases.

1.3 ECOWAS Community Law

1.3.1 ECOWAS as a Regional Community in West Africa

Under the leadership of Nigeria and Togo, West African States established the Economic Community of West African States in March 1975. Under the 1975 ECOWAS
Treaty, Membership of the Community was open to all West African States, an expression that is not defined by the Treaty.11

The main objective of the 1975 ECOWAS Treaty and its associated Protocols was the establishment of an economic community with full factor mobility to be achieved incrementally.12 In furtherance of this objective, the 1975 Treaty identified several areas of co-operation around such as immigration, trade and related matters of development.13 The main organs of the Community included an Authority of Heads of State and Government, a Council of Ministers, an Executive Secretariat (now Commission of ECOWAS) and a Tribunal for resolution of inter-State disputes (now the ECOWAS Court).14

Following its establishment, ECOWAS adopted expanded protocols to extend its scope to collective security and mutual defence.15 These were to be tested through the deployment of a West African peace keeping operation in Liberia in 1991,16 later followed by similar operations in Sierra Leone, Guinea Bissau and Cote d'Ivoire.

In 1992, ECOWAS commissioned a review of its founding treaty in 1992.17 The resulting report recommended that ECOWAS “shift from its exclusive focus on government to government, to involving the people, NGOs and private sector”,18 and adopt “provisions establishing organs such as the Parliament of the Community composed of representatives elected by the peoples of the Member States, and an Economic and Social Council (ECOSOC) comprising socio-professional groups drawn from all sections and categories of the population of the Member States.”19 These and most other recommendations contained in the report were implemented through the adoption of a revised Treaty in 1993.20 The principal objectives of ECOWAS as contained in Article 3(1) of the Revised ECOWAS Treaty of 1993 are:

To promote co-operation and integration, leading to the establishment of an economic union in West African, in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster
relations among Member States and contribute to the progress and development of the African Continent.

These goals are to be achieved through policy harmonization and co-ordination in several areas, including macro-economic policy making, transport, communication and infrastructure, human resources and skill development, culture, taxation, natural resources, citizenship, migration and factor mobility, and legal issues.\(^{21}\)

Among other things, the revised ECOWAS Treaty introduced full *supra*-nationality into the decision making of ECOWAS, enhanced its economic integration and regional peace and security functions, established a Community Parliament as an organ of the Community and, in place of the former Tribunal creates a Community Court of Justice as the Community's judicial organ.\(^{22}\)

To reflect the increased role of *supra*-national decision-making as ECOWAS operational instrument, the ECOWAS Summit in December 2006, re-designated the Executive Secretariat into a Commission headed by a President, with a Vice-President and seven Commissioners responsible respectively for infrastructure; macro-economic policy; agriculture; environment and water resources; political affairs, peace and security, human development and gender; trade, customs and free movement; and finance and administration. For expedited decision-making the principal instruments of law-making will no longer be Protocols (which require ratification by the Member States) but Acts and Decisions, which will be applicable directly in Member States. Thus, the new legal regime of ECOWAS envisages that:

Community Acts will be Supplementary Acts, Regulations, Directives, Decisions, Recommendations and opinion. Thus, the Authority passes Supplementary Acts to complete the Treaty. *Supplementary Acts* are binding on Member States and the institutions of the Community. The Council of Ministers enacts Regulations and Directives and makes Decisions and Recommendations. *Regulations* have general application and all their provisions are enforceable and directly applicable in Member
States, they are enforceable in the institutions of the Community. *Decisions* are enforceable in Member States and all designated therein. *Directives* and their objectives are binding on all Member States. The modalities for attaining such objectives are left to the discretion of States. The Commission adopts *Rules* for the implementation of Acts enacted by Council. These Rules have the same legal force as Acts enacted by Council. The Commission makes *Recommendations* and gives advice. Recommendations and advice are not enforceable.23

In this context, *supra*-nationality "refers to a situation where an international institution is endowed with powers to take decisions binding on sovereign States either generally or in specific areas of State activity."24 In effect, most legal instruments adopted by ECOWAS are now directly applicable within Nigeria. This has far-reaching implications for legal practice as we know it.

The legal instruments and tools at the disposal of the Community have become simultaneously both simplified and more complex. The process of instituting or adopting new norms within ECOWAS has become much simpler to the extent that Protocols which require prolonged process of adoption, followed by domestic processes of ratification, have now diminished in their significance as instruments for decision making within the Community. However, the new structure of instruments in the Community, their relative significance *vis-à-vis* the national legal systems of ECOWAS and the evolving regional legal system sought to be created, will take some getting used to among legal professionals.

### 1.3.2 Legal Implications of the Supranationality of ECOWAS and the Scope of Community Law25

The decision to introduce the principle of supranationality into the ECOWAS structure and operations was taken by the Heads of State and Government during the review of the ECOWAS Treaty, with a view to removing the numerous impediments to
efficacious regional cooperation and effective implementation of the many Community programmes.

The idea was to overcome the national egoisms whereby the States stuck to the concept of sovereignty in decision-making and conduct of their activities.

It was a matter of actually uniting efforts at regional level and exercising sovereignty mutually. Supranationality has consequently been naturally concretized through the creation of national institutions invested with powers to initiate and develop common policies defined and managed by the Community.

At the time of the creation of ECOWAS, and during the long years thereafter, inter-State relations in the region were often characterized by deep suspicions fermented by different policies and ideologies. The States were overly cautious and pragmatic on the question of supranationality and ECOWAS, as an international organization, was not invested with the power to take decisions that could be enforced by the sovereign Member States either generally or in specific areas of State activities. Under those conditions, the harmonization of policies became the principal ambition of ECOWAS.

The legal implications here are those of supranationality which corresponds to the present state of development of our Community, for it is obvious that ECOWAS supranationality will become more pronounced and more visible as and when our organization evolves from a Community of independent States towards a Union of States with federal competence.

The ECOWAS Treaty of 28 May 1975 did not provide for the creation of supranational institutions to superintend the regional integration process, for the prevailing tread then was for the States to consolidated their independence and preserve and strengthen their national sovereignty.
In the desire to rectify this weakness and omission which contributed to impeding progress towards the accelerated integration of our region, the ECOWAS Treaty as revised created institutions to which it entrusted supranational functions.

Thus, the Authority of Heads of States and Government defined by the Revised Treaty as being the supreme institution of the Community “shall be responsible for determining the general policy and control of the Community and shall take all necessary measures to ensure its progressive development and the realization of its objectives” Article 7, paragraph 2 of the Treaty as revised).

Other details in the definition of the functions of the Authority leave no doubt as to the will of the Heads of State and Government to confer a supranational character on the Authority. As a matter of fact, the Revised Treaty instructed the Authority to “determine the general policy and major guidelines of the Community, give directive harmonize and co-ordinate the economic, scientific, technical, cultural and social policies of Member States” (Article 7 Paragraph 3a).

Similarly, the Council of Ministers which, under the sovereign authority of the Treaty of 28 May 1975, had either its own power nor the power of delegation to issue directives to the Member States, has now been granted, by the Authority appropriate powers in some cases, to “issue directives on matters concerning co-ordination and harmonization of economic integration policies” (Article 10 paragraph 3c of the Treaty as revised).

The ECOWAS Commission, which replaced the Executive Secretariat on 14 June 2006, has become the prime mover of the Community, the pivot around which all activities revolve. The Revised Treaty conferred on the Commission the Power to undertake initiatives and activities to monitor the application of Community texts and, generally, achieve Community objectives through the formulation of programmes of activity (Article 19 paragraph 3d of the Revised Treaty). To these responsibilities, the
Revised Treaty added that of “convening, as and when necessary, meetings of sectoral Ministers to examine sectoral issues which promote the achievement of the objectives of the Community” (Article 19 paragraph 3c of the Revised Treaty).

The competence of the Court of Justice created by the Treaty of 28 May 1975 as a regional authority to ensure the respect of law and of the principles of equity in the interpretation and application of the provision of the Treaty, has been broadened to include the interpretation and application of Conventions and Protocols, Decisions, Regulations, Directives and all other subsidiary legal instruments adopted in the framework of ECOWAS. The competence of the Court has equally been broadened to include appraisal of the legality of the texts, consideration of the Member States’ breaches of their obligations to the Community, and consideration of cases of human rights violations in any Member State (Article 3 of Supplementary Protocol A/SP/01/05 of 19 January 2005).

Similarly, the idea of ensuring grassroots involvement in the Community development process which was the principal factor in the creation of the Community Parliament by the Treaty of 28 May 1975, led to the involvement of the Parliament in the ECOWAS decision-making process and to the conferment of a supranational character on it (Article 6 of the Protocol on the ECOWAS Parliament). The supranational character of the ECOWAS Parliament was confirmed by Decision A/DEC6/01/06 of 13 January 2006 on the procedures for an effective implementation of Article 6 of the Protocol on the Community Parliament which henceforth gives the Institution the power of legislative initiative through which it may proposes draft Community texts.

The revised Treaty and its subsequent amendments have endowed the ECOWAS supranational institutions with supranational powers to meet the principal political, economic and social challenges, which the Minister States are unable to meet individually.
I must point out that the decisions of the Authority of Heads of State of Government have, for several years, co-existed with the Protocols and Conventions which could not enter into force unless ratified by nine (9) Member States. Maintaining the Protocols and Conventions in the legal sequencing of the Community until recently has unfortunately entailed considerable delays in the implementation of these instruments, thereby limiting the scope of the decisions which, under the Revised Treaty, are binding on the Member States.

Indeed, most often, Community texts adopted in the so-called areas of sovereignty were in the form of protocols, and there was considerable delay in their application owing to the slow pace of protocol ratification. By way of illustration, it is interesting to point out that, of the fifty-two (52) protocols signed since the creation of ECOWAS, seventeen (17) have not yet undergone the nine (9) ratifications required for their definitive entry into force.

It is regrettable that the Convention on extradition signed on 6 August 1994 came into force on 8 December 2005, i.e., over ten (10) years after signature.

The Protocol instituting a value-added tax in the Member States, signed on 27 July 1996, has unfortunately not entered into force even as I speak to you as it has not been ratified by nine (9) Member States, ten (10) long years after its signature.

The same goes for the Protocol on Democracy and Good Governance and the Protocol on the fight against Corruption, both signed on 21 December 2001, which are still awaiting ratification by nine (9) Member States in Order to enter into force.

Notwithstanding the repeated appeals and decisions of the Authority of Heads of State and Government prescribing deadlines for the Member State to do so, there has not been any significant improvement in the level of ratifications., a can be seen, until quite recently, the legal status of Community Acts bore the seeds of paralysis of the implementation of ECOWAS texts.
Under such conditions, it is understandable that the Community decision-making bodies availed themselves of the opportunity of the transformation of the executive Secretariat into a Commission to adopt, on 14 June 2006, a new legal status that is consistent with that of regional integration organizations that have adopted a Commission-type organizational structure.

1.4 Scope of the ECOWAS Community Law

This new legal regime confers on the Community the power to enact binding legal instruments conforming to the principles of immediate and direct effect, and enshrining the primacy of Community law over national legislations.

Immediate effect obviates the need for the transformation of Community norms to the national level and for any procedure involving their inclusion into national law.

Direct effect means that the rules of Community law must deploy their full effects in a uniform manner in all Member States from their date of entry into force and throughout the period of their validity.

The primacy of Community law over national legislation enjoins each Member State to apply the Community norm, notwithstanding any contrary national legislation before or after. In all cases, the Community law annuls and replaces all contrary national provisions.

The new legal regime of Community acts comprises binding and non-binding legal instruments. Binding acts are binding on all Member States and all Community institutions upon their entry into force at the date set by these acts.

**Binding acts** include Supplementary Acts, Regulations, Directives, Decisions and Implementing Regulations.

**Supplementary Acts** are passed by the Authority of Heads of State and Government to supplement the ECOWAS Treaty to which they form an integral part.
They enter into force at a date fixed by them, and are directly applicable by the Member States.

**Regulations** are enacted by the Council of Ministers and they establish the same laws throughout the Community without taking account of borders. They are applicable in all Member States and need not be transformed into national laws, since they confer laws or directly impose duties on Community citizens just as national laws. The Member States, Administrative Institutions and Courts are obliged to confirm thereto just as they conform to national laws.

The Council of Ministers may equally adopt **Directives**, which are binding on Member States. The Directives set the general objectives to be attained by the Member States but allows them the initiative to lay down the procedures for attaining them.

It is up to each Member State to promulgate new national ones, merge or abrogate existing laws, with a view to making them consistent with the objectives set by the Directive, taking due account of local conditions. The Council will use Directive on Harmonization, for instance, to remove incoherencies or iron out differences between national administrative rules.

**Decisions** are binding acts with individual scope taken by the Council of Ministers. They may be aimed at States or individuals.

**Implementing Regulations** are acts of the President of the Commission for the implementation of the acts of the Authority or Council of Ministers. They may equally be enacted by the President of the Commission in areas where the Council of Ministers delegates powers to the Commission.

**Judgments** of the Community Court of Justice are equally binding on Member States, Community Institutions and natural or legal persons.

**Non-binding legal instruments** also have their place in the legal regime of the Community. They are:
Council of Ministers’ **recommendations** to the Authority of heads of State and Government, recommendations and options of the Commission and Specialized Technical Committees, as well as the opinions of the Community Court of Justice and the ECOWAS Parliament.

**2.0 Access to the ECOWAS Community Court for Justice and Human Rights Protection**

Under Protocol A/P.1/7/91 of the Community Court of Justice, the adjudicative jurisdiction of the Court was limited specifically to issues dealing with the interpretation and application of the ECOWAS Treaty, Protocols and conventions with individuals lacking direct access to it even on such issues. See Article 9 of that Protocol which provides.

1. *The Court shall ensure the observance of law and of the principles of equity in the interpretation and application of the provisions of the Treaty.*

2. *The Court shall also be competent to deal with disputes referred to it, in accordance with the provisions of Article 56 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.*

3. *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 have failed.*
4. *The Court shall have any powers conferred upon it, specifically by the provisions of this Protocol.*

**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 corporate 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 judgement of the Court in Suit No: ECW/CCJ/APP/01/03 *Olajide Afolabi v. Federal Republic of Nigeria*. The applicant, Mr. Olajide Afolabi, a Community Citizen and businessman, filed an application before the Court challenging the closure by Nigeria of its 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 landmark case, because it defined clearly, the competence of the Court under Article 9.3 of its Protocol.
Limitations of Protocol A/P1/7/91

Between 2001 and January 19th 2005 when Protocol A/P1/7/91 was finally amended only two cases were filed before the Court and both were filed by individuals directly. Of course, the Court had no jurisdiction to entertain the matters. Therefore, the problem of lack of direct access to the Court by individuals was of 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.

The adoption in January 2005 of the Supplementary Protocol A/SP.1/01/05 greatly expanded the jurisdiction of the Court while at the same time granting individuals direct access (in specific causes of action) to the Court.

Article 3 of that Supplementary Protocol A/SP.1/01/05 deleted Article 9 of Protocol A/P1/7/91 and substituted same with a new Article 9 while creating a new Article 10 which provides as follows:

"Access to the Court is open to the following:

a) Member States, and unless otherwise provided in a Protocol, the Executive Secretary, where action is brought 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) Individuals and corporate bodies in proceedings for the determination of an act or inaction of a Community official which violates the rights of the individuals or corporate bodies;

d) Individuals on application for relief for violation of their human rights; the submission of application for which shall:
i. not be anonymous; nor

ii. be made whilst the same matter has been instituted before another International Court for adjudication;

e) 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;

f) 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 issues to the Court for interpretation."

The Court now by virtue of Article 9(4) and 10(d) above has jurisdiction to hear human rights cases provided that such application is not anonymous and not made while same matter is pending before another international court for adjudication.

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 2006, 21 cases in 2006 and so far, 10 cases have been lodged in 2007.

2.1 New Cases Lodged Between October 2008 and March 200930

i. ECW/CCJ/APP/07/08 Hissein Habre v. Republic of Senegal

In this case, the Applicant, the Former President of Chad, obtained asylum in Senegal after being overthrown in a military coup d'état mounted by Idris Deby Itno. But contrary to the expectations of the Applicant, and in contrast with judicial decisions which had become final, the Defendant have the Applicant tried in one of its Courts, for acts committed while he was Head of State in Chad. The Applicant therefore considers that the Defendant does not guarantee him any condition whatsoever of a fair and just trial. He is asking the Court to determine
the violation of the principle of non-retroactivity of Criminal Law, the Principle of equality before the law and the right to an equitable trial.

And also for an order directing the Republic of Senegal to stop all prosecutions and actions against him.

ii. ECW/CCJ/APP/08/08 Petrostar Nigeria Limited v. Blackberry Nigeria Limited & 2 Ors

The Application, a legally incorporated Company, delivered on request 5 Million Litres of Automotive Gas Oil (AGO) to Shell at a total sum of 485 Million Naira. The Applicant filed an application against the Defendants for breach of the terms of contract of sale, and for attempting to bribe influence the Counsel to the Plaintiff, in order to prevent him from proceeding with the recovery of the remaining 255 Million Naira.

iii. ECW/CCJ/APP/09/08 Dauda Garba v. Republic of Benin

The Applicant, a citizen of the Community and a Programme Officer at the Centre for Democracy and Development, situated in Abuja, was questioned and beaten up by officers of the Immigration Services of Benin. He filed an application before the Court for the alleged violation of his fundamental human rights and the right to free movement, as guaranteed by Articles 1, 5 and 12 of the African Charter on Human and People’s Rights.

iv. ECW/CCJ/APP/10/08 Nuhu Ribadu v. Federal Republic of Nigeria

Mr. Nuhu Ribadu, a Nigerian citizen and senior officer of the Nigerian Police, who was promoted to the rank of Assistant Inspector-General of Police and later demoted, filed an action for the violation of his human dignity.
v. ECW/CCJ/APP/11/08 Mahamat Seid Abazene Seid v. Republic of Mali & 2 Ors

Mr. Mahamat Seid Abazene filed an application for the violation of his fundamental human rights by the Defendants, who dismissed him from his office without regard to the provisions of the Staff Rules and Regulations.

vi. ECW/CCJ/APP/01/09 Amouzou Henri & 5 Ors v. Republic of Cote d’ivoire

The Applicants jointly filed an action alleging the violation of their rights to fair hearing, presumption of innocence, unlawful detention, defamation and violation of the rights of pregnant women and breast-feeding babies. Consequently, the Applicants are demanding for their immediate release from unlawful detention and compensation for damages suffered.


The Applicants jointly filed an action for alleged violation of their human right to equal re-numeration and the violation of the principle of equality before the law by all citizens.

Furthermore, the Applicants are seeking from the Defendants compensation for violation of their human right.

viii. ECW/CCJ/APP/03/09: Private Aliyu Akeem v. Federal Republic of Nigeria

The Plaintiff, a Community citizen, was arrested and detained in military custody without trial for two years on the allegation that a riffle was missing from General Malu's house. He filed an action before this Court for alleged violation of his fundamental human right to dignity and personal liberty and for 10,000,000 (Ten Million Naira) compensation for injuries suffered.
2.2  **Interlocutory Applications**

Within the said period, ten (10) interlocutory applications were filed in the following cases:

i. **ECW/CCJ/APP/02/07**: Mrs Tokunbo Lijadu Oyemade v. Council of Ministers & 4 Ors.
   - An application by the Defendants for extension of time within which to file their defence.
   - Notice of additional Counsel filed by the Plaintiff.

ii. **ECW/CCJ/APP/07/08**: Hissein Habre v. Republic of Senegal
    - An application by Monsieur Souleymane Guengueng & 116 Ors to intervene in the matter.
    - An application challenging the jurisdiction of this Court and the admissibility of the suit.

iii. **ECW/CCJ/APP/10/08**: Nuhu Ribadu v. The Federal Republic of Nigeria
    - Preliminary objection challenging the jurisdiction of the Court to hear and determine the suit.
    - Notice of discontinuance filed by the Plaintiff.

    - Application to enter final judgement for the Plaintiff due to failure by the Defendants to file their defence.

v. **ECW/CCJ/APP/04/08**: Chief F.O. Offia v. Community Parliament ECOWAS & Anor
    - Notice of discontinuance filed by the Plaintiff

vi. **ECW/CCJ/APP/11/07**: Musa Saidykhan v. Republic of the Gambia
    - Notice of preliminary objection challenging the jurisdiction of the Court to entertain the suit.
vii. ECW/CCJ/APP/01/08: Starcrest Investment Limited v. The President ECOWAS Commission & Anor
   - Application by Starcrest Nigeria Energy Ltd & Anor to intervene in the matter.

2.3 Court Sessions

The Court held Twenty one (21) Sessions between October 2008 and March, 2009.

Judgments

In addition, four judgments were delivered in the following cases:

i. ECW/CCJ/JUD/05/08: Qudus Gbolahan Folami & Anor v. Community Parliament ECOWAS & Anor
   Judgment delivered on 28th November, 2008

ii. ECW/CCJ/JUD/06/08: Dame Hadijatou Mani Koraou v. Republic of Niger
   Judgment delivered on 27th October, 2008

iii. ECW/CCJ/JUD/01/09: Djotbayi Talbia & 14 Ors v. Federal Republic of Nigeria & 4 Ors
    Judgment delivered on 28th January, 2009

iv. ECW/CCJ/JUD/02/09: Linas International Limited v. Ambassador of Mali & 2 Ors
    Judgment delivered on 19th March, 2009

2.4 Rulings of the Court Between October 2008 and March 2009

i. ECW/CCJ/RUL/04/08: Emmanuel Akpo & Anor v. G77 South South Healthcare delivery programme
ii. ECW/CCJ/RUL/01/09: Nuhu Ribadu v. Federal Republic of Nigeria

iii. ECW/CCJ/RUL/02/09: Starcrest Investment Ltd v. President ECOWAS Commission 
    & Anor

iv. ECW/CCJ/RUL/03/09: Chief F.O. Offia v. Community Parliament, ECOWAS & 
    Anor

There are sixteen (16) pending cases before the Court, ten (10) of which are 
being heard while six (6) cases are not yet ready for hearing and are still in the 
written procedure phase.

2.5 Pending Cases

Cases on the case list

i. ECW/CCJ/APP/02/07: Mrs. Tokunbo Lijadu Oyemade v. Council of Ministers 
    ECOWAS & 4 Ors

ii. ECW/CCJ/APP/10/07: Femi Falana & Anor v. Republic of Benin & 14 Ors

iii. ECW/CCJ/APP/11/07: Musa Saidykhan v. Republic of The Gambia

iv. ECW/CCJ/APP/12/07: The Registered Trustees of the Socio-Economic Rights & 
    Accountability Project (SERAP) v. The Federal Republic of Nigeria & Anor

v. ECW/CCJ/APP/01/08: Starcrest Investment Ltd v. Executive Secretary ECOWAS & 
    4 Ors

vi. ECW/CCJ/APP/02/08: Mr. Adediji Benjamin Adeleke v. Executive Director RECTAS 
    & 3 Ors

vii. ECW/CCJ/APP/03/08: Mr. Remmy Okeke v. Republic of Benin

viii. ECW/CCJ/APP/06/08: Hon Tony Anyanwu v. Federal Republic of Nigeria

ix. ECW/CCJ/APP/08/08: Petrostar Nigeria Ltd v. Blackberry Nigeria Ltd & 2 ors

x. ECW/CCJ/APP/09/08: Dauda Garba v. Republic of Benin
2.6 Cases not ready for hearing

Cases lodged in the Court undergo certain processes before they are ready for hearing. This is mainly due to the fact that under the Rules of the Court, we have a written procedure and an oral procedure. Until the written procedure is completed, the oral procedure cannot commence. Secondly, the applications and pleadings have to be translated in the official languages of the Court. Because of the limited number of Translators in the Court, it takes some time before a case can be ready for hearing. In a nutshell, the written procedure must be concluded and the service of the Court processes effected before a case can be ready for trial. The following cases are not ready for hearing:

i. ECW/CCJ/APP/05/08: Ocean King Nigeria Ltd v. The Republic of Senegal
ii. ECW/CCJ/APP/07/08: Hissein Habre v. Republic of Senegal
iii. ECW/CCJ/APP/11/08: Mahamat Seid Abazene Seid v. Republic of Mali & 2 Ors

Conclusion

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 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 Community texts that can play an effective role in the integration process of West Africa.

It is evident from the above analysis that there are adequate provisional measures within the ECOWAS/AU/UN frameworks binding on Member States for the protection of human and citizenship rights by the ECOWAS Court of Justice.

By virtue of the cumulative effect of Articles 9 and 10 of the 2005 Supplementary Protocol (A/SP.1/01/05) on expanded jurisdiction and individual access to the court for
justice; Article 15(3) and 3(i) of the Revised ECOWAS Treaty on the independence of the Court/Judges, the ECOWAS Court must be bold and purposive in its interpretation of treaties and other legal/human rights standards for effective protection of the rights of refugees and migrants in the sub-region against violations by States, individuals or groups.

More importantly in this regard is the binding nature, finality and enforceability of the Court's Judgment in the sub-region. While Article 15(4) of the ECOWAS Revised Treaty makes the judgment of the Court binding on Member States, institutions of the Community, individuals and corporate bodies, Article 76(2) provides for the finality of the decision of the Court. Further, Article 19(2) of the 1991 Protocol Relating to the Community Court of Justice (A/P1/7/91) provides that the decisions of the court shall be final and immediately enforceable. Furthermore, Article 77(1) of the Revised ECOWAS Treaty provides for the imposition of sanctions by the ECOWAS Authority against a Member State that fails to fulfill its obligations to the Community.

The ECOWAS Community Court of Justice can also borrow a leaf from the experience of European Court of Justice on the interpretation and application of the right of access to European Court of Justice with special reference to Article 6(1) of the European Convention on Human Rights and to European Community Law.\textsuperscript{31}
ENDNOTES AND REFERENCES

3. Ibid, at p.11
11. Ibid., Article 1(2). The Treaty was later ratified by 16 members: Benin, Cape Verde, Ghana, Ivory Coast (Cote d’ Ivoire), Gambia, Guinea, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, Togo and Upper Volta (Burkina Faso). In 2000, Mauritania denounced the ECOWAS Treaty in favour of full membership of the Maghreb arrangements.
12. Ibid., Article 12.
13. Ibid., Article 2.
17. The review was authorized by Decision A/Dec. 10/5/90 of the Authority of Heads of States and Government of 30 May, 1990. Under this decision, each member State of the Community was entitled to nominate one person onto the Committee (of Eminent persons) set up to review the 1975 Treaty. Only Mauritania failed to do so. Prominent among the members of the Committee, which was chaired by General Yakubu Gowon, former military ruler of Nigeria, were Professor Ibrahima Fall (Senegal) and Idee Oumarou (Nigeria), former Secretary-General of the OAU.
19. Ibid., para 27(b)9vii).
21. Ibid., Article 3(2), 56-57
22. For a discussion of all the innovative features of the Revised ECOWAS Treaty, see UNCTAD, Handbook of Economic Integration and Cooperation Groupings of Developing Countries: Regional and Sub-Regional Economic Integration Groupings, UN, New York, Vol. 1, 17 (1996). The Report of the Group of Eminent persons that reviewed the 1975 ECOWAS Treaty had recommended that standing before the ECOWAS Court be made accessible to non-State entities too. This was not implemented in the Revised Treaty. However, at its Summit in Accra, Ghana, in January 2005, ECOWAS Summit adopted a Protocol liberalizing access to the Court in favour of individuals and non-State entities.
26. Ibid at 5-9. Ibid, see also Chapter Seven pp. 364-619 for the Appendices of ECOWAS Treaties, Supplementary Acts, Decisions, Regulations, etc.
27. Ibid Chapter Five at pp. 253-255
28. Ibid Chapter Five at p.256
29. Ibid Chapter Five at pp. 256-257
30. Ibid Chapter Five at pp. 262-266