THE PROSPECT OF PUBLIC RIGHTS LITIGATION BEFORE THE ECOWAS COURT OF JUSTICE

BY

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Introduction

The 1975 treaty that founded ECOWAS envisioned an international tribunal. But governments did not agree to create a community court until 1991, when they adopted a protocol that limited the court’s jurisdiction to interstate disputes concerning the interpretation of ECOWAS legal instruments.1 The actual creation of a court was delayed for another decade. And when the Court finally opened its doors for business in 2001, governments refrained from filing any cases against each other.2

In 2003, a Nigerian goods trader filed the first suit with the ECCJ, complaining that the closure of Nigeria’s border with Benin damaged his import-export business. The suit cast in sharp relief the serious impediments to intra-regional trade. Nevertheless, the Court dismissed the complaint in 2004, relying on the member states’ unambiguous decision to deny access to private parties.

The reaction to the decision was swift and striking. ECOWAS officials, civil society groups, and ECCJ judges all lobbied to expand the Court’s jurisdiction, standing rules, and remedial powers. Less than nine months later, the Authority of Heads of State and Government (ECOWAS Authority)—ECOWAS’ highest political body—agreed. It adopted a 2005 Supplementary Protocol that gives individuals direct access to the ECCJ for —the violation of

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1 Protocol A/P.1/7/91 on the Community Court of Justice (1991 Protocol), reprinted in COMPENDIUM OF AFRICAN SUB-REGIONAL HUMAN RIGHTS DOCUMENTS 194 (Solomon Ebobrah & Armand Tanoh eds., 2010). The 1991 Protocol authorized the ECCJ to adjudicate —disputes referred to it . . . 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.1 Id. Article 9(3).

2 See infra Part II
human rights that occur in any member state without the need to exhaust domestic remedies.³ It does not, however, permit private actors to challenge laws or practices that impede regional integration. The seemingly counterintuitive result is that private actors can sue governments for violating their international human rights but not for violating ECOWAS rules.

The ECCJ’s transformation illustrates how an existing international institution can be redeployed for new purposes. One interesting aspect of this transformation is how the judges themselves contributed to the expansion of their mandate. Most scholars expect international courts to engage in expansive judicial lawmaking to increase their power and the reach of international law.⁴ ECCJ judges did not follow this strategy, rejecting an opportunity to expand their jurisdiction and access rules. Instead, they embarked on an extra-judicial campaign to redesign the Court. They traveled across West Africa on outreach missions and speaking engagements to build support among local bar associations, human rights groups, and government officials. This strategy culminated in the adoption of the 2005 Supplementary Protocol, a treaty that endorsed the redeployment of the ECCJ as a human rights tribunal.

Another theoretically interesting aspect of ECCJ’s transformation is that ECOWAS member states have rejected opportunities to restrict the Court’s authority to review and condemn human rights violations. Whereas other sub-regional courts in Africa have experienced political backlashes,⁵ West African governments have responded to plausible critiques of the ECCJ by strengthening the Court’s independence. They established an ECOWAS Judicial Council to depoliticize the appointments process and encourage the election of highly qualified judges, and they rejected an initiative by the Gambia to narrow the ECCJ’s human rights powers in retaliation for decisions finding that Gambian officials had tortured dissident journalists.

But in its first ten years, the ECCJ has issued several path-breaking judgments, including against the Gambia for the torture and disappearance of journalists, against Niger for condoning modern forms of slavery, and against Nigeria for failing to regulate multinational oil companies

³ Supplementary Protocol A/SP1/01/05 Amending the Protocol (A/P.1/7/91) relating to the Community Court of Justice, adopted 19 January 2005 (2005 Protocol), Article 3 (revising Article 9(4) of the 1991 Protocol).


⁵ During the same period that the ECCJ’s docket of human rights cases was expanding, African governments
that polluted the Niger Delta and for failing to provide free basic education to all children.\textsuperscript{6} The Court has also broadly construed its access and standing rules, enabling individuals, NGOs and other private actors to bypass national courts and file suits directly with the ECCJ. Human rights advocates in West Africa are increasingly mobilizing around the Court and including ECOWAS litigation in their advocacy strategies.

It is against this background that this paper seeks to achieve the following objectives: -

i. To determine the nature and scope of ‘public rights’ under consideration;

ii. To underscore the importance of public rights litigation;

iii. To highlight the prospects of public rights litigation before the ECOWAS Community Court of Justice; and,

iv. To conclude with the way forward.

1. **Nature and Scope of ‘Public Rights’**

The term ‘public rights’ refers to a legally protected public interest guaranteed as fundamental rights of citizens (as a group or a people or collectively) in a given society or regional economic community (like ECOWAS). Hence, Public Right embodies public interest because ‘every right is concerned with an interest and therefore a legal right is defined as an interest protected by law. But interests and rights are not identical. So, in according protection, the law chooses or selects only such interest that it considers worthy of protection; and it is only where an interest is protected by law that it becomes a legal right’.\textsuperscript{7}


Therefore, in this context “Public Rights” are legal rights guaranteed under the ECOWAS Community Law\(^8\) to all Community citizens\(^9\) and by the African Charter on Human and Peoples’ Rights, Cap. A.9. LFN 2004. Such rights are also protected by public law.\(^10\) For example, public’s fundamental rights to participate in, contribute to and enjoy from their natural resources and to seek for these protection against unsustainable management, conservation, utilization and disposal by the state.\(^11\)

Another example is public’s fundamental rights to a healthy environment and to seek for its protection against all forms of pollution and degradation because the environment (water, air, land, forest, biodiversity etc) is their means of survival, livelihood and sustainable development for future generations yet unborn.\(^12\) Further, is the public’s right to consumer protection against all forms of fraudulent business/commercial practices and misleading advertising claims.\(^13\)

More importantly, is the public’s fundamental rights (as a vulnerable group) to protection against all forms of discrimination, marginalization, exclusion and disadvantage in society.\(^14\)

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\(^8\) Is defined to include the Revised ECOWAS Treaty 91975/1993); Protocols, Supplementary Act, Regulations and Directives as well as judicial decisions of the ECOWAS Community Court of Justice. See Ladan M.T., (2010): - Introduction to ECOWAS Community Law and Practice. ABU Press Ltd, Zaria, Nigeria.

\(^9\) See Article 1 of the ECOWAS Protocol A/P.3/5/82 Relating to the Definition of Community Citizen as “any person who is a national by descent of a Member State of the Community; or any person who is a national by birth of any of the Member States either of whose parents is a national by sub-paragraph(1) above provided that such a person on attaining the age of 21 decides to take up the nationality of the Member State.”

\(^10\) Public Law is that part of the law concerned primarily with the functioning of the State/Government and its relations to the citizens, e.g. constitutional law, public international law, environmental and natural resources law. See S. Inchi, The Nigeria Law Dictionary, 1st edn. Tamaza Publishing Co., Zaria, Nigeria, at p.264.

\(^11\) See Articles 19 to 24 of the African Charter on Human and Peoples’ Rights (ACHPR). See also the 1986 UN Declaration on the Right to Development.

\(^12\) Ibid


\(^14\) Vulnerable groups such as women, children, minorities, displaced persons (IDPs and Refugees), migrants, disabled persons, Persons Living with HIV/AIDS etc:- have their rights guaranteed, for example, under the UN CEDAW; UN Convention on the Rights of the Child; OAU Charter on the Rights and welfare of the Child; AU Protocol on the Rights of the women in Africa; African Charter on Human and Peoples’ Rights Cap. A.9 LFN 2004; The Nigerian Child Rights Act, 2003 etc.
2. Why Public Rights Litigation?

Public rights/interest litigation includes the bringing of proceedings before Courts and tribunals assenting that a government official, agency or other person has acted unlawfully; seeking a binding ruling that the Law be complied with; or requiring others clarifying the operation and the meaning of the Law as well as the obligations of those who are subject to it. Further, such a litigation seeks to advance public’s fundamental rights to protection against socio-economic and political injustices, inequities and imbalances in society, particularly, human rights abuses, and to the aspirations of the vulnerable group for a just, pro-poor and humane society.

The term Public rights/ interest litigation is used broadly to refer to legal action to establish a legal principle or right that is of public importance and aimed, as a strategy to voice for the poor and marginalized groups, at social transformation through law. Such a strategy to influence social policy is gaining ground, in many developing Countries, in fields such as health, poverty, environment, housing, land, education and gender. It covers a range of different legal actions:- class actions as well as individual cases, directed against the State/Government or Private companies (including mass tort claims). This means that the value of litigation should not only be judged in terms of how a case fares in court (success in the narrow sense), or whether the terms of the Judgment are compiled with (immediate impact). It is as important to look at the (systemic impact) broader impact of the litigation process on social policy, directly and through influencing public discourses on public rights and the development of Jurisprudence nationally and internationally. The transformation effect or systemic impact of public interest litigation is not necessarily directly related to its success in court, the litigation process may also directly

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16 Ibid


18 Gloppen, op. cit, at p.3
impact on public discourse and policy.\textsuperscript{19} Admittedly, still winning cases remains a core issue in litigation.

It is thus important from the above to understand the process whereby claims emerge; under what conditions are grievances concerning the public rights of vulnerable groups likely to be transformed into effective voice in the form of litigation.

3. **Prospects in Litigating Public Rights before the ECOWAS Community Court of Justice (ECCJ)**

The prospect of Public Rights litigation before the ECCJ lies in the following facts: -

a) Because ECCJ has both the expanded mandate and jurisdiction to entertain Public Rights/Interest Litigation (PRL/PIL)

*Primary Mandate*

The primary mandate of the ECOWAS Court of Justice was ably encapsulated in the preamble of its Protocol in the following words:

“\textit{...the essential role of the Community Court of Justice is to ensure the observance of law and justice in the interpretation and application of the Treaty and the Protocols and Conventions annexed thereto and to be seized with responsibility for settling such disputes as may be referred to it in accordance with the provisions of Article 56 of the Treaty and disputes between States and the Institutions of the Community.}”

Article 9, on the competence of the Court (now repealed) of the Protocol made it abundantly clear, that the mandate of the Court was to resolve disputes between Member States or Institutions of the Community, relating to the interpretation and application of the Treaty and the annexed Protocols and Conventions, while Article 10 thereof, gave the Court the competence to give Advisory Opinion.

The Court highlighted its primary mandate of interpreting and applying Community texts in Hon. Jerry Ugokwe v. Nigeria (2004 - 2009) CCJ ELR 37 at paragraph 20 in the following words:

\footnote{19 Hence the main components of the Public Rights Litigation process are:-(a) public rights cases brought to court; (b) cases accepted/admitted by the courts; (c) Judgments giving effect to social-economic-environmental rights; (d) transformation effect (impact on public rights/inclusion of vulnerable groups.)}
“The Treaty which is the fundamental law of ECOWAS, particularly the Protocols relating to the ECOWAS Court of Justice, only invests the Court with specific powers and prerogatives, insisting always on its mandate concerning the observance of law in their interpretation and application.”

Expanded Mandate

There was a paradigm shift in the mandate of the Court in 2005, following the adoption of the Supplementary Protocol which amended the initial Protocol on the Court. The Supplementary Protocol expanded the jurisdiction and invariably the mandate of the Court. In very broad terms, the current mandate of the ECOWAS Court of Justice can be categorized as follows:

(a) Mandate as a Community Court
(b) Mandate as an Arbitration Tribunal
(c) Mandate as ECOWAS Public Service Court
(d) Mandate as a Human Rights Court

Most significantly, the Supplementary Protocol, for the very first time, granted direct access to the Court to individuals and corporate bodies in respect of certain causes of action, including human rights.

Mandate as a Community Court.

The most significant mandate of the Court as a Community Court is its primary mandate of interpretation and application of ECOWAS Community texts. In the exercise of its jurisdiction of interpreting and applying ECOWAS Community texts, the Court has given numerous Decisions.20 These texts include the Revised Treaty, Conventions, Protocols, Regulations, Directives and Decisions and other subsidiary legal instruments adopted by ECOWAS.

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Also, the Court has competence to adjudicate in disputes relating to the legality of Regulations, Directives, Decisions and other subsidiary legal instruments adopted by ECOWAS or the failure by Member States to honour their obligations under the Treaty, Conventions and Protocols and other Community texts. The Court also has competence to adjudicate on disputes relating to non contractual liability of the Community. It also has jurisdiction in respect of actions relating to damages against a Community Institution or an official of the Community for any act or omission in the exercise of official functions. The mandate of the Court as a Community Court also includes giving Advisory Opinion and giving Preliminary Rulings in respect of referrals from national Courts of Member States. The Court has issued several advisory opinions at the request of the ECOWAS Commission.\textsuperscript{21}

The Authority of Heads of State and Government can also grant the Court the power to adjudicate on any specific dispute that it may refer to the Court other than those specified in the Protocol.\textsuperscript{22}

\textit{Preliminary Ruling (Reference from National Courts of Member States)}

Another important aspect of its mandate as a Community Court is in respect of Preliminary Ruling. Since the Court has exclusive jurisdiction in respect of the interpretation and application of ECOWAS Community texts\textsuperscript{23}, national Courts of Member States are required to refer issues of interpretation of Community texts to the ECOWAS Court of Justice in order to ensure uniformity in the interpretation of

\textsuperscript{21} eg: REQUEST FOR ADVISORY OPINION (2004 - 2009) CCJ ELR 55
Request for Advisory Opinion from Executive Secretary of ECOWAS relating to Article 23 (11) of the Rules of Procedure of the Community Parliament and the provisions of Article 7 (2) and 14 (2) (f) of the Protocol on the Community Parliament.
REQUEST FOR ADVISORY OPINION (2004 - 2009) CCJ ELR 201
Request by the President of ECOWAS Commission on the renewal of the Tenure of the Director General and Deputy Director General of GIABA

\textsuperscript{22} Article 9 (8) of the Protocol of the Court as amended by Supplementary Protocol A/SP.1/01/05
Article 7 (3) (g) of the 1993 ECOWAS Revised Treaty.

\textsuperscript{23} Article 22 (1) (now renumbered Article 23 (1) of Protocol A/P1/7/91 as amended by Supplementary Protocol A/SP.1/01/05.
Community texts. Specifically, Article 10 (f) of the Protocol as amended, provides as follows:

“Where in any action before a court of a Member State, an issue arises as to the interpretation of a provision of the Treaty, or the other Protocols or Regulations, the national court may on its own or at the request of any of the parties to the action refer the issue to the Court for interpretation.”

The European Court of Justice exercises a similar jurisdiction under the concept of Preliminary Ruling. Although the issue of referral is discretionary as stipulated above it appears to be more evolved in the practice of European national Courts that refer cases to the European Court of Justice for Preliminary Ruling. This concept of Preliminary Ruling as practiced by the European Court is yet to take root in the context of regional integration in Africa. No national Court of a Member State has referred a matter for the interpretation of ECOWAS Community texts to the Court. We however believe that this is a useful and necessary provision for the development of ECOWAS Community Law.

_Mandate as ECOWAS Public Service Court_

The ECOWAS Court of Justice has competence under its Protocol to adjudicate on any dispute between the Community and its officials. In this regard, access to the Court is open to 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. Article 73 of the 2005 Staff Regulations preserves the right of staff members to seek redress before the Court. It specifically provides that in all circumstances, the final Court of Appeal shall be the Community Court of Justice. In the exercise of its jurisdiction as an ECOWAS Public Service Court, the Court has resolved many disputes between aggrieved staff members and Institutions of the Community.

24 Article 9 (1) (f) of the 1991 Protocol as amended by the 2005 Supplementary Protocol.

**Mandate as Arbitration Tribunal.**

Article 16 (1) of the Revised Treaty established an Arbitration Tribunal of the Community. Article 16 (2) thereof, provides that the status, composition, powers, procedure and other issues concerning the Arbitration Tribunal shall be set out in a Protocol relating thereto. Until date, the Protocol to set up the Arbitration Tribunal as envisaged above has not yet been adopted. However, the 2005 Supplementary Protocol on the Court, amending the initial Protocol, gave the Arbitration jurisdiction to the ECOWAS Court of Justice, pending the establishment of the Arbitration Tribunal of the Community.

Specifically, Article 9 (5) thereof, provides as follows:

"Pending the establishment of the Arbitration Tribunal provided for under Article 16 of the Treaty, the Court shall have power to act as Arbitrator for the purpose of Article 16 of the Treaty."

The Court has concluded work on its Rules of Arbitration and submitted it for the approval of the ECOWAS Council of Ministers. The Court will start to exercise its Arbitration jurisdiction after the Council approves its Rules of Arbitration.

**Mandate as a Human Rights Court**

The most prominent mandate of the ECOWAS Court of Justice, is its mandate as a human rights Court. It is crystal clear, that the human rights jurisdiction of the ECOWAS Court of Justice is the centre piece of its judicial activities, around which, its jurisprudence has flourished. The adoption of the Supplementary Protocol in January 2005, which granted human rights jurisdiction to the ECOWAS Court of Justice, was a turning point in the history of the Court.

The incredible impact of the Supplementary Protocol is attributable to the access granted to individuals to the Court in respect of certain causes of action, the human rights mandate and the independence of the Court. Today, we can proudly say, that the ECOWAS Court of Justice is a pace setter amongst Regional Courts in Africa. The paradigm shift is essentially anchored on the human rights mandate of the Court.
Fluid and indeterminate human rights jurisdiction.

It should however be noted, that the human rights jurisdiction of the Court is very fluid and indeterminate. Article 9 (4) of the Protocol of the Court, as amended, simply provides that “the Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.” There is no catalogue of human rights and the Protocol does not state the applicable human rights instruments. This lacuna has presented the Court a great opportunity to define and delimit the scope and legal parameters of its human rights mandate in its own image.

Scope of its human rights mandate.

The Court has given many decisions establishing the extent, scope and legal boundaries of its human rights mandate. By virtue of Article 4 (g) of the Revised Treaty and the Protocol on Democracy and Good Governance, the Court applies the African Charter on Human and Peoples’ Rights. The Court will also apply against any Member State any International Human Rights instruments adopted or ratified by the Member State.26

b) Because Access to ECCJ is a fundamental Right of Community Citizens

ECOWAS Court of Justice initially conceived as an Inter-State Court.

The ECOWAS Court of Justice was initially conceived as an Inter State Court. The Protocol on the Court, did not give direct access to the Court to individuals and corporate bodies. Article 9 (3) of the said Protocol (now repealed) provided that 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”. The Revised Treaty of ECOWAS reinforced the inter-state

REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) v. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA – Ruling of paragraph 63
HADIJATOU MANI KORAOU v. REPUBLIC OF NIGER
nature of the mandate of the Court. Article 76 of the Revised Treaty provides as follows:

“1. Any dispute regarding the interpretation or the application of the provisions of this Treaty shall be amicably settled through direct agreement without prejudice to the provisions of this Treaty and relevant Protocols.
2. Failing this, either party or any other Member State or the Authority may refer the matter to the Court of the Community whose decision shall be final and shall not be subject to appeal.”

Under the Protocol and the Revised Treaty, only Member States or institutions of the Community had direct access to the Court. The implication of the said provisions was that ECOWAS Community citizens did not have direct access to their Community Court. This had an adverse effect on the quantum of cases lodged before the Court because Member States and Institutions of the Community that had direct access under the Protocol did not exercise that right. Between January 2001 and January, 2005 when the Protocol was amended only two (2) Applications were lodged before the Court and they were lodged by individuals, which made them inadmissible.

The issue of access to the Court by individuals under the Protocol was the main point for consideration in the judgment of the Court in Olajide Afolabi v. Federal Republic of Nigeria. (2004–2009) CCJELR 1. The decision of the Court in this case made it imperative to amend the Protocol in order to grant direct access to the Court to individuals and corporate bodies. Supplementary Protocol A/SP.1/01/05 that
amended the initial Protocol on the Court, substituted Article 9 of the Protocol with a new Article 9 on jurisdiction, and thereby expanded the jurisdiction of the Court.27

Following the adoption of the Supplementary Protocol in January 2005, individuals and/or corporate bodies were given direct access to the ECOWAS Court of Justice in respect of certain causes of action, including human rights. Therefore, the ECOWAs Court of Justice is no longer strictly an inter-state Court.

Access to ECOWAS Court of Justice under Community Texts

There are provisions in some Community texts that guarantee access to the ECOWAS Court of Justice to Member States, institutions of ECOWAS, individuals and corporate bodies. These texts include: the Revised Treaty, Protocols, Supplementary

27 The new Article 9 as amended by Supplementary Protocol A/SP.1/01/05,

1. The Court has competence to adjudicate on any dispute relating to the following:

   a) the interpretation and application of the Treaty, Conventions and Protocols of the Community.
   b) the interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS.
   c) the legality of regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS.
   d) the failure by Member States to honour their obligations under the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS.
   e) the provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS Member States.
   f) the Community and its officials; and
   g) the action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions.

2. The Court shall have the power to determine any non-contractual liability of the Community and may order the Community to pay damages or make reparation for official acts or omissions of any Community institution or Community officials in the performance of official duties or functions.

3. Any action by or against a Community Institution or any Member of the Community shall be statute barred after three (3) years from the date when the right of action arose.

4. The Court has jurisdiction to determine cases of violation of human rights that occur in any Member State.

5. Pending the establishment of the Arbitration Tribunal provided for under Article 16 of the Treaty, the Court shall have power to act as arbitrator for the purpose of Article 16 of the Treaty.

6. The Court shall have jurisdiction over any matter provided for in an agreement where the parties provide that the Court shall settle disputes arising from the agreement.

7. The Court shall have all the powers conferred upon it by the provisions of this Protocol as well as any other powers that may be conferred by subsequent Protocols and Decisions of the Community.

8. The Authority of Heads of State and Government shall have the power to grant the Court the power to adjudicate on any specific dispute that it may refer to the Court other than those specified in this Article.
Acts, Regulations and Directives. In particular, Article 10 of the Protocol as amended by the Supplementary Protocol has elaborate provisions in respect of access to the Court. Under this provision, Member States, individuals and corporate bodies have access to the Court for different causes of action. Also, the Staff Regulations guarantees access of Community public officials to the Court. Other Community texts, like Supplementary Act A/SA.3/12/08 Adopting Community Rules on Investment and the Modalities for their implementation with ECOWAS, gives access to Member States, Investors and Host States to the Court in respect of dispute settlement under the Act. See also the ECOWAS Directive on the Harmonization of Guiding Principles and Policies in the Mining Sector which grants access to any State, individual or stakeholders to the ECOWAS Court for dispute resolution under the Directive.

Access to a Regional Court

Access to Court is a fundamental issue in the administration of justice and in the rule of law. There is also, a very strong nexus between access to Court and the regime of Human Rights in any given State. The promotion and protection of Human Rights can only be enhanced where the rule of law reigns by having a system of government according to law. The Court system is the bedrock of the rule of law and the

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28 Article 10. Access to the Court

“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 fulfill 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 issue to the Court for interpretation.”
administration of justice, and constitutional right of access to Court is the key to the rule of law.

Access to justice at the international level is also expedient. Previously, only State Parties were subjects of international law. However, new developments in international human rights law and international humanitarian law now give individuals access to international justice. Regional Courts should therefore not merely exist as inter-state Courts. The tendency now globally is for individuals to be given access to Regional Courts, especially for human rights violations. In order to facilitate greater access of Community citizens to the ECOWAS Court of Justice, the Court has been considering the idea of establishing sub-registries in Member States and establishing a legal aid fund.

c) Because ECCJ has developed a Jurisprudence of its own Guiding Principles

*Guiding Principles.*

In the light of its fluid and indeterminate human rights mandate, the Court has through its decisions defined and delimited the scope of its human rights mandate. A careful study of the jurisprudence of the Court on its human rights mandate will reveal some guiding principles.

*No requirement for exhaustion of local remedies.*

A key element of the human rights mandate of the Court is that exhaustion of local remedies is not a requirement. Article 10 (d) of the Protocol as amended, provides that access to the Court is open to individuals on application for relief for violation of their human rights on the condition that the Application is not anonymous nor be made whilst the same matter has been instituted before another International Court for adjudication. The Court has therefore decided emphatically in a long line of cases, that

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29 ACCESS BY INDIVIDUALS TO REGIONAL COURTS

1. EACJ : East African Court. Article 30(1) of the Treaty for the establishment of the East African Community (as amended on the 14th of December, 2006 and 20th of August, 2007).
exhaustion of local remedies is not a requirement under ECOWAS Community texts for human rights litigation.\(^{30}\)

The effect of this is far reaching because victims of human rights violations may choose to directly approach the ECOWAS Court of Justice without exhausting local remedies at the national courts. Although the exhaustion of local remedies is a well recognized principle of customary international law, the Court has held that it can be waived or legislated away.\(^{31}\)

Neither is the lack of provision for exhaustion of local remedies, a lacuna in the law that it can fill in, using its judicial discretion.\(^{32}\)

In Musa Saidykhan v. The Republic of The Gambia (supra) the Court held as follows:

“\textit{The drafters of the Supplementary Protocol clearly decided against making the exhaustion of local remedies a condition precedent to the accessibility of this Court in human rights violation causes. The fact that there is a rule of customary international law is support of the view that local remedies ought to be exhausted before a plaintiff can properly go before international Courts is not in doubt. However, this is not an inflexible rule. It can be legislated away or even parties can compromise it. Article 10(d) of the Supplementary Protocol is an example of legislating out of the rule of customary international law regarding the exhaustion of local remedies. With the enactment of the Supplementary Protocol, ECOWAS Member States expressly dispensed with the customary international law rule regarding the exhaustion of local remedies before access is granted to Plaintiffs coming before this Court}”.

The Court emphasized this point again, in Ocean King Nigeria Ltd v. Republic of Senegal (supra) in the following words:

“\textit{The rule on exhaustion of local remedies is derived from customary international law which requires the exhaustion of local remedies before a

\(^{30}\) \textit{PROFESSOR ETIM MOSES ESSIEN v. REPUBLIC OF THE GAMBIA ECW/CCJ/APP/04/07 Ruling of 14th March 2007; HADJIATOU MANI KORAOU v. REPUBLIC OF NIGER ECW/CCJ/APP/08/08; MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA ECW/CCJ/APP/11/07}

\(^{31}\) MUSA SAIDYKHAN v. REPUBLIC OF THE GAMBIA (Supra) OCEAN KING NIGERIA LIMITED v. REPUBLIC OF SENEGAL (Supra) FEMI FALANA v. REPUBLIC OF BENIN ECW/CCJ/APP/10/07 – paragraph 22 & 23

\(^{32}\) HADJIATOU MANI KORAOU v. REPUBLIC OF NIGER (Supra)
claim may be brought before an international tribunal. However, it is not an inflexible rule. For instance, the International Court of Justice held in the case titled Electronica Sicula Sp.4, (ELSI Case), (Second Phase), ICJ Rep, 1989, that exhaustion of local remedies may be waived by express provision in a treaty. Thus by Article XI(I) of the Convention on International Liability for Damage caused by Space Objects, 1972, the requirement of the exhaustion of local remedies was dispensed with.

Under Article 10 of the Supplementary Protocol of 2005, any provision of a prior Protocol which is inconsistent with the provisions of the 2005 Supplementary Protocol is to the extent of the inconsistency null and void. Thus, Article 39 of the Protocol on Democracy and Good Governance, which is clearly in conflict with the provisions of Article 4(d) of the Supplementary Protocol of 2005 with respect to the exhaustion of local remedies as a condition precedent to the institution of an action in human rights, is null and void to that extent. The 1991 Protocol, as amended by the Supplementary Protocol, forms an integral part of the Treaty and thus the exclusion of exhaustion of local remedies under the Protocol is perfectly valid in international law.

That being the position of the law, this Court has decided in a plethora of cases including Prof. Etim Moses Essien v. Republic of the Gambia & Anor (Suit No. ECW/CCJ/APP/0505, judgment delivered on 29th October, 2007), Musa Saidykhkan v. Republic of the Gambia (Suit No. ECW/CCJ/APP/11/07, judgment delivered on 16th December and Hadijatou Mani Korou v. Republic of Niger (supra) that the exhaustion of local remedies is not a condition precedent for the institution of an action for the relief of violation of human rights before it. Therefore, a plaintiff is not obliged to exhaust local remedies in order to have access to this Court.

Article 10 (d) (ii) of its Protocol as amended

The Court has applied the conditions in Article 10 (d) (ii) of its Protocol, as amended, in its jurisprudence. In Valentine Ayika v. Republic of Liberia ECW/CCJ/APP/07/11, it ruled the case admissible notwithstanding the fact that it was alleged to be pending before the Supreme Court of a Member State. It stated as follows:

“the Supreme Court of Liberia, and for that matter any other domestic court in Member States, does not qualify as international court within the meaning of Article 10 (d) (ii) of the Protocol as amended and that the pendency of an action before the Liberian Supreme Court is no bar to proceedings before this Court.”

--- Ruling of 19th December, 2011
In Mme Aziablevi Yovo et 31 autres v. Societe Togo Telecom et Etat Togolais the Court also declined jurisdiction on the ground that the matter was previously instituted before the OHADA Court, which is an international Court.

**Supranationality of ECOWAS and holding Member States accountable for their Treaty obligations.**

It is significant to note that the Court has maintained the supranationality of ECOWAS and the ECOWAS Court of Justice in its jurisprudence. It has also insisted on holding Member States accountable for their Treaty Obligations under international instruments. It is not constrained by the domestic laws of Member States, including national constitutions that are inconsistent with their Treaty Obligations.

In the case of Musa Saidykhan v. Republic of The Gambia (supra) the Court expounded the law on this issue in the following words:

“ECOWAS is a supranational authority created by the Member States wherein they expressly ceded some of their sovereign powers to ECOWAS to act in their common interest. Therefore, in respect of those areas where the Member States have ceded part of their sovereign powers to ECOWAS, the rules made by ECOWAS supersede rules made by individual Member States if they are inconsistent. The Revised Treaty of ECOWAS was ratified by all the Member States of ECOWAS, including the Defendant/Applicant herein. This Court is the offspring of the Revised Treaty; and this Court is empowered by the Supplementary Protocol on the Court of Justice, which is part of the instruments of implementation of the Treaty and has the same legal force as the Treaty, to adjudicate on issues of human rights arising out of the Member States of ECOWAS.

Therefore, it is untenable for a Member State of ECOWAS to claim that a matter is essentially within its domestic jurisdiction when it had expressly or by necessary implication granted ECOWAS powers to act solely or concurrently with national jurisdiction in respect of that matter. Defendant/
Applicant herein, being bound by both the Revised Treaty and the Supplementary Protocol on the Court of Justice which granted jurisdiction over human rights causes to this Court, cannot be heard to say that human rights causes are matters essentially within their domestic jurisdiction and for which reason this Court ought not to interfere with them.

Article 2 of the United Nations Charter, which seeks to prevent interference in the domestic affairs of sovereign states is not applicable here. Article 2 of that Charter applies to matters that are essentially domestic in nature and over which the state in question has not acquired any international obligation in respect thereof. When a sovereign State freely assumes international obligations and is being held accountable in respect of those obligations, that state cannot renounce those obligations under the pretext that the matter in question is one that falls essentially within its domestic jurisdiction. Defendant/Applicant, being a Member State of ECOWAS, is bound by the obligations that it has assumed under the Revised Treaty and the Protocols thereof. Consequently, Article 2 of the United Nations Charter does not enure to the benefit of Defendant/Applicant in this case.”

In Peter David v. Ambassador Ralph Uwechue (supra) the Court stated as follows:

“the international regime of human rights protection before international bodies relies essentially on treaties to which States are parties as the principal subjects of international law. As a matter of fact, the international regime of human rights imposes obligations on States. All mechanisms established thereof are directed to the engagement of State responsibility for its commitment or failure towards those international instruments.”

The Court will therefore enforce any right guaranteed by the African Charter on Human and Peoples’ Rights notwithstanding the fact that such right is not justiciable under the constitution of a Member State. For instance, the right to education which is guaranteed by Article 17.1 of the Charter, is a non-justiciable or enforceable right under the 1999 Constitution of the Federal Republic of Nigeria. This inconsistency was the main issue for consideration by the Court in its Ruling in Registered Trustee of the Socio-Economic Rights and Accountability Project (SERAP) v. (1) Federal Republic of Nigeria (2) Universal Basic Education Commission (SUIT NO ECW/CCJ/APP/08/08 Ruling of 27th October, 2009 Paragraph 18, 19 and 20) where it held as follows:

“The directive principles of state policy of the Federal Republic of Nigeria are not justiciable before this Court as argued by second defendant and that
fact was not contested by the plaintiff. And granted that the provisions under directive principles of state policy were justiciable, it would be the exclusive jurisdiction of the Federal High Court, being a matter solely within the domestic jurisdiction of the Federal Republic of Nigeria. However, the plaintiff alleges a breach of the right to education contrary to the provisions of the African Charter on Human and Peoples’ Rights. The right to education recognized under Article 17 of the African Charter is independent of the right of education captured under the directive principles of state policy of the 1999 Federal Constitution of Nigeria. It is essential to note that most human rights provisions are contained in domestic legislations as well as international human rights instruments. Some of the fundamental human rights, such as the right to life, have even been elevated to the status of “jus Cogens”, peremptory norms of international law from which no derogation is permitted. Hence the existence of a right in one jurisdiction does not automatically oust its enforcement in the other. They are independent of each other. Under Article 4 (g) of the Revised Treaty of ECOWAS, Member States of ECOWAS affirmed and declared their adherence to the recognition, promotion and protection of human and peoples’ rights and in accordance with the provisions of the African Charter on Human and Peoples’ Rights. The first defendant is a signatory to the African Charter on Human and Peoples’ Right and reenacted it as laws of the Federal Republic of Nigeria to assert its commitment to same. The first defendant is also signatory to the Revised Treaty of ECOWAS and is therefore bound by their provisions. It is trite law that this Court is empowered to apply the provisions of the African Charter on Human and Peoples’ Rights and Article 17 thereof guarantees the right to education. It is also well established that the rights guaranteed by the African Charter on Human and Peoples’ Rights are justiciable before this Court. Therefore, since the plaintiff’s application was in pursuance of a right guaranteed by the provisions of the African Charter, the contention of second defendant that the right to education is not justiciable as it falls within the directive principles of state policy cannot hold”.

In the exercise of its human rights jurisdiction the Court is also not constrained by the fact that the Protocol has not been domesticated by any given Member State. This was one of the issues before the Court in the preliminary objection of the 1st and 2nd Defendants in Moukhtar Ibrahim Aminu v. Government of Jigawa State & 3 Ors. In this case, the Defendants, in their preliminary objection, contended that the Court did not have jurisdiction to entertain the action on the ground, inter alia, “that the Protocol of the Court of Justice which gave it the power to hear and determine issues of violation of Human Rights by individuals has not been domesticated in Nigeria as provided for under Section 12 of the Constitution of the Federal Republic of Nigeria.
It was not in dispute that the Revised Treaty of ECOWAS and the Protocols relating to the Court have not been domesticated by Nigeria. Furthermore, section 12 (1) of the 1999 constitution of the Federal Republic of Nigeria provides inter alia, that “No treaty between the Federation and any other country shall have the force of law except to the extent to which any such Treaty has been enacted into law by the National Assembly”. The Court held as follows:

“It is trite that the question of domestication is entirely a local duty of the State to comply with its domestic laws including its constitution. However, where the action of the State is indicative of the fact that it intends to abide by the contents of the Treaty and proceeded to enact into law the provision of the African Charter on Human and Peoples’ Rights contained in Article 4(g) of the Revised Treaty makes the objection of the 1st and 2nd Defendants a non issue and immaterial. As always, a State cannot approbate and reprobate in respect of domestication of Treaties, that it derives benefits from its application. It is common knowledge that the Revised Treaty was ratified by the Federal Republic of Nigeria, on 1st July, 1994. With such ratification, the Revised Treaty as far as the Community Law is concerned, become applicable in the institutions of the community – ECOWAS including this Court. The Protocols of the Court which are annexed to the Revises Treaty form an integral part thereof”

ECOWAS Court as an International Court

The Court has maintained that it is an international Court, and will therefore follow the practice of other international Courts. It emphasized its international character, in delimiting the scope of its human rights jurisdiction in Peter David v. Ambassador Ralph Uwechue. In this application by an individual, against another individual for alleged violation of rights guaranteed under the Charter, it held that the ECOWAS Court of Justice “is an International Court established by Treaty and by its own nature it should primarily deal with disputes of international character and essentially applies international law, and as an International Court with jurisdiction over human rights violations, the Court cannot disregard the basic principles as
well as the practice that guide the adjudication of the disputes on human rights at the international level.\textsuperscript{37}

The Court further enunciated the jurisprudence on the issue in the following words:

\begin{quote}
Viewed from this angle, the Court recalls that the international regime of human rights protection before international bodies relies essentially on treaties to which States are parties as the principal subjects of international law. As a matter of fact, the international regime of human rights imposes obligations on States. All mechanisms established thereof are directed to the engagement of State responsibility for its commitment or failure towards those international instruments.

Even before the African Commission on Human Rights, the closest reference to this Court, only States parties to the African Charter on Human and Peoples’ Rights are held accountable for the violation of the fundamental rights recognized in the said instrument.

Up till now the responsibility of the individuals at the international level for the violation of Human Rights is limited to criminal domain, and even in such circumstances, the international courts intervene only on subsidiary grounds, that is to say, where the domestic courts cannot or fail to hold the perpetrators of such violations accountable.

From what has been said, the conclusion to be drawn is that for the dispute between individuals on alleged violation of human rights as enshrined in the African Charter on Human and Peoples’ Rights, the natural and proper venue before which the case may be pleaded is the domestic court of the State party where the violation occurred. It is only when at the national level there is no appropriate and effective forum for seeking redress against individuals, that the victim of such offences may bring an action before an international Court, not against the individual, rather against the signatory State for its failure to ensure the protection and respect for the rights allegedly violated.

Within ECOWAS Community, apart from Member States, other entities that can be brought to this Court for alleged violation of human rights are institutions of the Community because, since they cannot, as a rule, be sued before the domestic jurisdiction, the only avenue left to the victims for seeking redress for grievance against those institutions is the Community Court of Justice. Consequently, the Community Court of Justice does not have jurisdiction to entertain a dispute between individuals arising from alleged violation of human rights committed by one against another.
\end{quote}

\textsuperscript{37} PETER DAVID v. AMBASSADOR RALPH UWECHUE ECW/CCJ/APP/04/09 Ruling of 11 June, 2010 paragraph 40 – 41.
The clear decision of the Court is that such disputes are not within its jurisdiction but that of the domestic Courts. Accordingly, the Court has held that it cannot metamorphose into a domestic court and has reserved certain human rights actions for the national courts and in respect of which it has declined jurisdiction. They include action by an individual against another individual for human rights violations. It has also maintained that only Member States and Institutions of the Community can be sued before the Court for human rights violations, and has dismissed applications for human rights violations instituted by or against Limited Liability companies for lack of jurisdiction.

Application of Article 38 (1) of the Statute of the International Court of Justice.

Article 19 of the Protocol on the Court, provides that “the Court shall examine the disputes before it in accordance with the provisions of the Treaty and its Rules of Procedure. It shall also apply as necessary, the body of laws as contained in Article 38 of the Statutes of the International Court of Justice”. In many cases before it, the Court has resorted to Article 38 of the ICJ statutes, which spells out the sources of international law. In Hon Dr. Jerry Ugokwe’s case the Court stated as follows:

“The ECOWAS Court of Justice, in accordance with Article 19(1) of the Initial Protocol, and particularly with reference to Article 38 (1) (c) of the Statute of the international Court of Justice, the latter enables us to apply the general principles of law recognized by civilized nations.

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38 PETER DAVID v. AMBASSADOR RALPH UWECHUE

39 THE REGISTERED TRUSTEES OF THE SOCIO-ECONOMIC RIGHTS AND ACCOUNTABILITY PROJECT (SERAP) v. PRESIDENT, FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/APP/08/09 Ruling of 10th December, 2010

STARCREST INVESTMENT LTD v. PRESIDENT, ECOWAS COMMISSION ECW/CCJ/APP/01/08 Judgment of 8th July, 2011

OCEAN KING NIG LTD v. SENEGAL ECW/CCJ/APP/05/08 Judgment of 8 July 2011

40 Suit No. ECW/CCJ/APP/02/05; Judgment No. ECW/CCJ/JUD/03/05 (07/10/05).
The Court has also applied this provision in many other cases\(^{41}\)

**ECOWAS Court not an Appellate Court of National Courts.**

The Court has also made it crystal clear in several decisions that it does not have appellate jurisdiction over the decisions of national courts. In Frank Ukor v. Rachad Lalaye \(^1\) and The Government of The Republic of Benin, the Court in its judgment of 2\(^{nd}\) November, 2007 stated as follows:

> We therefore agree with Counsel to the 2\(^{nd}\) Defendant that the acts complained of by the Applicant/Plaintiff are devoid of violation of Human Rights. We therefore state that there is a serious misconception as to whether the complaint of the seizure and confiscation of the truck and goods therein, upon the Court order, violates the rights of free movement of goods which Counsel hinges upon as Human Rights violation. It is trite that a valid order of the Court stands until any person dissatisfied with same makes the move by following the relevant judicial process to set it aside. Consequently, this Court which has no appellate jurisdiction over the decisions of the Courts of Member State cannot act as one through this process that Counsel of the Applicant/Plaintiff impressed upon it to enforce. On this note, this Court declines to act outside its mandate as specified in Protocol A/P1/7/91 and the Supplementary Protocol (A/SP.1/01/05) which clearly spelt out such mandate.

See also Hon. (Dr) Jerry Ugokwe v. Federal Republic of Nigeria; Moussa Leo Keita v. The Republic of Mali.

**Alleged Human Rights violation should be clearly indicated.**

In Moussa Leo Keita’s Case, the Court reaffirmed its competence to adjudicate on cases of human rights violation in accordance with Articles 9(4) and 10(d) of its 2005 Supplementary Protocol, but that the specific human right that is violated must equally be clearly indicated. The African Charter on Human and Peoples’ Rights as well as the Universal Declaration of Human Rights have set out rights in such clear terms as to

\(^{41}\) See SUIT NO. ECW/CCJ/APP/04/09 PETER DAVID v. AMBASSADOR RALPH UWECHUE, SUIT NO. ECW/CCJ/APP/02/06 QUDUS GBOLAHAN FOLAMI & ANOR v. COMMUNITY PARLIAMENT, SUIT NO. ECW/CCJ/APP/01/07 DR EMMANUEL AKPO v. G77 SOUTH HEALTH CARE DELIVERY PROGRAMME & ANOR, HON DR. JERRY UGOKWE v. FEDERAL REPUBLIC OF NIGERIA (2004 - 2009) CCJ ELR 37 INCORPORATED TRUSTEES OF MIYETTI ALLAH KAUTAL HORE SOCIO-CULTURAL ASSOCIATION v. FEDERAL REPUBLIC OF NIGERIA ECW/CCJ/APP/-----/------ Ruling of 13\(^{th}\) July, 2011 paragraph 38
indicate precisely what constitutes a Human Right violation and what does not. The Court declared the Application inadmissible because it did not make mention of any infringement which may be characterized as a fundamental Human Right violation. Indeed, the Court held that even if it were competent to adjudicate in cases on Human Rights violation, the Applicant had not indicated any proof of a characteristic violation of a fundamental Human Right.

The Right of NGOs to institute action for Human Rights Violations

The Court has held in numerous cases that NGOs can maintain actions for human rights violations, especially for public interest litigation and in respect of group rights. This issue was dealt with by the Court in a well considered Ruling in The Registered Trustees of The Socio-Economic Rights and Accountability Project (SERAP) v. President of The Federal Republic of Nigeria and 8 Ors (Supra) Two of the issues considered by the Court in its Ruling in this case instituted by an NGO, are the existence of the Plaintiff as a judicial person or legal entity under Nigeria law and the capacity or locus standi of the Plaintiff to institute proceedings for alleged violation of human rights that affects people living in the region of the Niger Delta in respect of environmental devastation.

The Court held that the Plaintiff is an entity duly and legally registered under the Companies and Allied Matters Decree 1 of 1999 of the Federal Republic of Nigeria with a certificate of incorporation and that it had held in a previous case involving the Plaintiff in Registered Trustees and Accountability Project v. Federal Republic of Nigeria & Universal Basic Education Commission, that the Plaintiff (SERAP) is a human rights non-governmental organization registered under the laws of the Federal Republic of Nigeria. On the locus standi of the Plaintiff, the Court stated that it firstly relies on the nature of the dispute brought before it for adjudication, and that there is a large consensus in international law that when the issue at stake is the violation of rights of entire communities, as in the case of the damage to the environment, that access to justice should be facilitated. The Court referred to Articles 2 (5) and 9 of the Convention on “Access to information, Public Participation in DecisionMaking and Access to Justice in Environmental Matter” and noted that although the Convention is not a
binding instrument on African States, its importance, as a persuasive evidence of an international communis opinion Juris in allowing NGO’s to access the Courts for protection of Human Rights related to the environment, cannot be ignored or underestimated by the Court.42

The Court further noted that the capacity of NGO’s to lodge complaints related to Human Rights is also recognized by the American Convention on Human Rights and that Article 33 of the Rules of Procedure of African Court of Justice and Human Rights also opens the door of that Regional Court to non-governmental organizations which have observer status before the African Commission. It referred to the commendation of the role of NGOs and the “usefulness of action popularis, which is wisely allowed under African Charter “by the African Commission in Social and Economic Rights Action Centre (SERAC) & Anor v Nigeria (2001) AHRLR 60

“Based on those authorities, and taking into account the need to reinforce the access to justice for the protection of human and people rights in the African Context, the Court holds that an NGO duly constituted according to national law of any ECOWAS Member State, and enjoying observer status before ECOWAS institutions can file complaints against Human Rights violation in cases that the victim is not just a single individual, but a large group of individuals or even entire communities. Thus in considering the social purposes of the Plaintiff and the regularity of its constitution it does not need any specific mandate from the people of Niger Delta to bring the present law suit to the Court for the alleged violation of human rights that affect people of that region”43

d) Because ECCJ Judgements are legally binding and enforceable

Enforcement of the Decisions of the ECOWAS Court of Justice.

The enforcement of the decisions of the ECOWAS Court of Justice remains a major challenge for the Court. Article 24 of the Protocol, as amended, makes provisions for the method of enforcement of the decisions of the Court. Under the said provision, the decisions of the Court are to be enforced by the relevant Member State in accordance with the Rules

42 paragraph 55-58 of the Ruling of 10th December, 2010

43 paragraph 61-62 of the Ruling of 10th December 2010
of Civil Procedure of that Member State. All Member States are to determine the competent national authority for the purpose of receipt and processing the enforcement. Also, Article 15 (4) of the ECOWAS Revised Treaty provides that the “judgment of the Court of Justice shall be binding on the Member States, the institutions of the Community and on individuals and corporate bodies”. Furthermore, Article 23(3) of the Protocol provides that “Member States and Institutions of the Community shall take immediately all necessary measures to ensure execution of the decision of the Court.

Another provision relating to the enforcement of the decision of the Court is Supplementary Act A/SP.13/02/12 on Sanctions Against Member States that fail to honour their obligations to ECOWAS. Under this Supplementary Act, there are judicial and political sanctions for non fulfillment of legal obligation by Member States. Notwithstanding these provisions, not many decisions of the Court have been enforced. Only three Member States have appointed the competent national authority responsible for the enforcement of the decisions of the Court.

4. Conclusion and Way Forward

It is evident from the above analysis that bright prospects exist in litigating public rights before the ECOWAS Community Court of Justice.

To tap on the existing prospects however, the following hurdles need to be overcome for public rights litigation to succeed beyond the ‘success’ and ‘immediate’impact stages to that of ‘systemic’ or ‘transformation’:- firstly, groups whose rights are violated must be able to identify and articulate their rights claims and voice them in the legal system or have their rights asserted on their behalf; secondly, judicial bodies must be responsive to public rights claims that are voiced in the sense of accepting them as matters within their jurisdiction; and thirdly, the judges must be capable of finding adequate legal means to address the public rights claims and find effective remedies.

Furthermore, for progressive public rights Judgments to have a social or political impact, they must be authentative, in the sense that they are accepted, compiled with and implemented through legislative and executive / administrative action, translated into systemic change through social policy and political practice. The outcome of each stage in turn depends on a complex interaction between different factors such as the following:- (a) those whose rights are violated
(vulnerable groups):- their ability to mobilize their own resources and artificulate them; (b) and the interaction between them and public interest litigators (those taking the cases to Court, be they local, national or international legal services organizations and networks\textsuperscript{44}, law schools’ legal clinics, individual lawyers acting on pro-bono or a contingency-fee basis or public institutions.\textsuperscript{45}

Lawyers in the West African sub-region have a vital role to play in the establishment and sustenance of a verile 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.

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 standard for effective protection of the rights of vulnerable groups in the sub-region against violations by States, individuals or groups.

Most 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) provided for the finality of the decision of the Community Court of Justice (A/P1/7/91) provided that decisions of the court shall be final and immediately enforceable. Furthermore, Article 77(1) of the Revised ECOWAS Treaty provides for the

\textsuperscript{44} Legal service organizations work to achieve equal justices for poor and vulnerable people through community education, advice, legal counsel and representation for individuals and groups, systemic advocacy through litigation and lobbying and/or training for civil society organizations and government officials. (such as SERAP, SERAC, HURILAWS, CISLAC etc in Nigeria).

\textsuperscript{45} In some countries public rights/interest litigation is undertaken by public institutions such as National Human Rights Commission, Legal Aid Councils, Ombudsmen (Public Complaints commission), or like in Brazil, by public prosecutors.
imposition of sanctions by the ECOWAS Authority against a Member State that fails to fulfill its obligations to the Community.\textsuperscript{46}