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## **Judicial Activism and Human Rights Protection in West Africa in Light of the ECOWAS Community Court of Justice's Jurisprudence: Substance or Symbolism?**

### **1. Introduction**

The safeguarding of human rights in West Africa continues to be a significant challenge because of ongoing governance problems, institutional weaknesses, and rampant impunity. Within this framework, the Economic Community of West African States (ECOWAS) Community Court of Justice (ECCJ) has emerged as a one-of-a-kind sub-regional judicial entity responsible for interpreting Community law since 2005.<sup>1</sup> Additionally, it deals with adjudicating human rights violations. This expanded role has significantly transformed the Court's position and its perception, marking it as a potential driver of regional accountability and justice. However, its more assertive approach to interpreting and enforcing human rights standards has ignited a growing debate regarding the nature and implications of its judicial practices.

The court's perceived judicial activism is among the most heavily discussed aspects of its operation. This term typically refers to circumstances in which courts interpret legal norms in ways that further social or political goals, sometimes going beyond the original intentions of legislators. In the context of the ECOWAS Court, judicial activism is exemplified by its openness to hearing cases from individuals without mandating the exhaustion of domestic remedies, its broad interpretation of fundamental rights, and its willingness to issue rulings against Member States' violations. These actions have prompted some scholars to laud the Court as a courageous advocate for human rights, whereas others are sceptical about the effectiveness and enforceability of

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<sup>1</sup> See: Protocol A/SP.1/12/01 on Democracy and Good Governance, supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping, and Security, December 21, 2001, <https://www.eisa.org/pdf/ecowas2001protocol1.pdf> [accessed: 10.02.2025]; D.A. Agbezoukin, "Renforcement de l'Etat de droit et de la justice en Afrique de l'Ouest: quel apport de la Cour de justice de la CEDEAO?," *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 2020, vol. 25, n° 8, Series 11, pp. 22–27; K. Mbaye, *Les droits de l'homme en Afrique*, Paris 1992, p. 64; *idem*, "Le concept africain des droits de l'homme," *Bulletin africain des droits de l'homme* 1996, vol. 6, n° 3, p. 3.

its influence, particularly because there are no robust institutional mechanisms to guarantee compliance.

This tension raises an essential question: Does the ECOWAS Court's human rights jurisprudence offer significant judicial substance or is it merely symbolic? Although the Court has issued landmark rulings on topics including freedom of expression, arbitrary detention, and electoral justice, critics contend that these decisions frequently go unimplemented, weakened by political resistance and the absence of coercive power. Additionally, Member States often neglect or postpone compliance, which raises questions regarding the Court's true authority and legitimacy within the ECOWAS legal framework. This study investigates the ECOWAS Court's involvement with human rights through the lens of judicial activism. It assesses whether the Court's methods serve as a true means of transformative justice, effectively closing the enforcement gap left by national courts, or if they simply yield symbolic successes that do not lead to tangible enhancements in reality. I evaluate key judgments, examine state reactions to these decisions, and investigate the wider legal and political landscape in which the Court functions. This article adds to the ongoing discussion about the role of regional courts in politically unstable regions, especially in the Global South. I contend that, although the ECOWAS Court has made notable progress in establishing a normative framework for human rights protection, the success and credibility of its judicial activism largely rely on crucial institutional reforms, political commitment, and the development of a regional culture that is conscious of rights.

Since the early 2000s, ECOWAS has gained recognition as a key organization for protecting human rights, particularly after the 2005 revision of its Community Court of Justice's mandate. Since then, the Court has taken bold and decisive actions in the field of human rights. Nonetheless, implementing this mandate prompts several questions, particularly about its legality and significance. I discuss these issues, demonstrating that, even without explicit legal provisions, the inherent relationship between human rights and the realization of ECOWAS's aims validates the organization's authority in ensuring their protection. Regarding its unconventional legal framework, which depends on external norms because of the lack of a specific human rights catalogue, this method does not present any irregularities. Principles of international law, in general, and ECOWAS law, in particular, support its validity, even though the legal regime governing the imported norms remains uncertain.<sup>2</sup> Beyond this established legality, the ECOWAS mechanism also demonstrates a degree of effectiveness because

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<sup>2</sup> See: L. Burgorgue-Larsen, "Le fait régional dans la juridictionnalisation du droit international" [in:] *La juridictionnalisation du droit international*, Colloque de Lille, Paris 2003, pp. 203–264; J.-B. Du Bois de Gaudusson, "La justice en Afrique: nouveaux défis, nouveaux acteurs. Introduction thématique," *Afrique contemporaine* 2014, n° 250, pp. 13–28. See also: K. Mbaye, "Sources et évolution du droit africain" [in:] *L'État moderne Horizon 2000. Aspects internes et externes. Mélanges offerts à P.-F. Gonidec*, Paris 1985, p. 356; R. Yougbare, "Le mécanisme de garantie des droits de l'homme de la CEDEAO: entre emprunt et appropriation des instruments du système continental," *Annuaire africain des droits de l'homme* 2018, vol. 2.

of the community-based nature of its legal framework and the Court's immediate jurisdiction over human rights violations.

The ECCJ has become a crucial institution for tackling human rights violations in the West African region. This article presents a critical examination of the extent, impact, and challenges related to judicial activism in the ECCJ's jurisprudence, assessing its contribution to strengthening human rights protection and its broader implications for regional governance. Judicial activism entails courts' taking an assertive role in interpreting and enforcing legal standards, often expanding the scope of legal frameworks beyond their literal interpretations to ensure justice. The ECCJ is noted for its progressive rulings on human rights, especially in situations where national legal systems fall short. Nonetheless, concerns continue about the court's legitimacy, adherence to its judgments, and political resistance from Member States. I examine the ECCJ's judicial activism through an analysis of important human rights cases decided by the court. I evaluate the effects of these decisions on the protection of human rights in ECOWAS Member States, examine the institutional, legal, and political obstacles the court encounters, and investigate the ECCJ's capacity to improve human rights enforcement in the region.

## **2. The evolution of the ECOWAS Community Court of Justice and its human rights mandate**

Over the past two decades, the ECCJ has become well-known for its assertive and extensive interpretations of human rights law. Originally established as a regional economic tribunal, the Court's responsibilities were significantly broadened in the early 2000s to include the protection of human rights. Since that time, the Court has issued several judgments concerning severe violations, such as torture, arbitrary detention, and limits on freedom of expression, frequently holding Member States accountable in ways previously unseen. This alteration has spurred scholarly discussions regarding whether the Court is engaging in a form of judicial activism and whether such activism constitutes genuine progress in the protection of human rights across the region. Following the Lagos Treaty, which was signed on 28 May 1975, a regional economic community (REC) known as the Economic Community of West African States (ECOWAS) was established in West Africa. Article 1 of the Treaty declares: "through this treaty, the high contracting parties create an Economic Community of West African States (ECOWAS), hereafter referred to as the Community." The members of the Community, hereinafter referred to as the Member States, "are the States that ratify this Treaty and other West African States that may adhere to it." Currently, ECOWAS comprises fifteen Member States from the West African sub-region.

Article 4 of the Treaty lists the institutions of the Community, among which is the Community Tribunal. More specifically, Article 11 of the Treaty states: "A Community Tribunal is hereby established to ensure compliance with the law and principles of

equity in the interpretation of the provisions of this Treaty. Additionally, it is responsible for settling disputes referred to it under Article 56 of this Treaty." Unfortunately, this Tribunal was never established.

In 1991, the Community adopted Protocol A/P.1/7/91 relating to the Community Court of Justice.<sup>3</sup> This protocol established the Court as an interstate tribunal and the Community's principal legal body. In 1993, the Community adopted a revised treaty. Article 15 of the revised Treaty states: "A Community Court of Justice is hereby established." Twenty years after the adoption of the initial Protocol relating to the Court, the Court's first seven pioneer judges were finally sworn in on 30 January 2001.

Between January 2001 and January 2005, the Court was virtually redundant, as neither the Member States nor the Community institutions that had direct access to the Court used it. Only two applications were filed by individuals during this period, and both were deemed inadmissible. In 2005, the Community adopted the Supplementary Protocol A/SP.1/01/05,<sup>4</sup> which amended the 1991 Protocol relating to the Court by expanding the Court's jurisdiction, granting individuals direct access to the Court for certain causes of action, and outlining the enforcement mechanisms for the Court's rulings.<sup>5</sup> The key aspect of the Supplementary Protocol was its provision for the Court to exercise jurisdiction over human rights violation cases in any Member State.

The implementation of the Supplementary Protocol has positioned the Court with four distinct mandates: as a Community Tribunal, an ECOWAS Administrative Tribunal, a Human Rights Court, and an Arbitration Tribunal. Although the Court's primary function is to interpret the revised ECOWAS Treaty and related protocols and conventions, it has placed renewed focus on human rights initiatives.

Despite initial challenges, the Court has successfully established an ECOWAS human rights mechanism with very distinct characteristics compared to other regional human rights protection mechanisms. This has drawn global attention. The ECOWAS Community Court of Justice has certainly encountered numerous challenges during its existence, yet it has also recorded notable achievements, especially in its human rights mandate. The upcoming twentieth anniversary of the Court invites both the institution and its stakeholders to reflect on past progress and explore future possibilities. Overall, regional courts' role in upholding and advocating for human rights is becoming more crucial in international law.

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<sup>3</sup> See: D.A. Agbezoukin, "Renforcement de l'Etat de droit..." pp. 22–27; G. Aïvo, "La Cour de justice de la CEDEAO et la Charte africaine des droits de l'homme," *Annales africaines* 2017, vol. 2, n° 7, p. 362.

<sup>4</sup> Following the announcement of Protocol A/SP.1/12/01, the Additional Protocol (A/SP.1/01/05) amending the Protocol on the Community Court of Justice was adopted on 19 January 2005. This text represents a decisive step in ECOWAS's evolution towards a genuine human rights protection system, explicitly recognizing the Court's jurisdiction to adjudicate human rights violations committed within Member States.

<sup>5</sup> A pivotal moment in the court's evolution came in 2005 when ECOWAS adopted a supplementary protocol granting the ECCJ jurisdiction over human rights matters. This expansion allowed individuals and non-governmental organizations to file human rights complaints directly, without the requirement of exhausting domestic remedies – an approach that distinguishes the ECCJ from other regional courts such as the African Court on Human and Peoples' Rights.

### 3. Judicial activism and the role of the ECOWAS judge in community building

Judicial activism, which refers to a court's readiness to move away from a strictly textual or limited interpretation of the law to advance justice or social reform, has both supporters and detractors. In West Africa, where many national courts are often weak, politicized, or deficient in resources, the ECOWAS Court frequently fills a significant gap, serving as a supranational forum of last resort for those who have experienced human rights abuses. However, its proactive approach raises essential questions: Does the Court's jurisprudence result in tangible improvements in human rights conditions in practice? Or are its decisions largely symbolic, with limited enforcement and little impact on domestic legal or political systems?

Despite its frequent use in various studies, there is no fixed definition of "judicial activism."<sup>6</sup> It has sometimes been defined as a philosophy that advocates that judges interpret legislative texts in a manner that reflects contemporary conditions and values. At other times, it refers to courts not limiting themselves to reasonable interpretations of the law but actively creating new laws. It may also include a judge's expanding his/her decision beyond the immediate dispute to set a new rule for issues not specifically addressed in the case. Central to this concept is the notion that, in resolving a case, judges either reform existing rules or interpret a text beyond its literal or traditionally accepted meaning. Although the term often carries a positive connotation, it is frequently employed to criticise choices that can be viewed unfavourably. This suggests that judges follow an ideological agenda instead of making decisions grounded in the law or the needs of society. It essentially means that judges rule in bad faith. Any analysis or assertion of "judicial activism" inherently carries the presumption of defining what the act of judging should entail.<sup>7</sup>

Given its mission, the community judges are expected to play a role in building and consolidating the Community.<sup>8</sup> It appears that a certain level of activism is anticipated

<sup>6</sup> Judicial activism is an approach to the exercise of judicial review, or a description of a particular judicial decision, in which a judge is generally considered more willing to decide constitutional issues and to invalidate legislative or executive actions; see: E.K. Quansah, C.M. Fombad, *Judicial Activism in Africa: Possible Defence against Authoritarian Resurgence?*, ANCL-RADC, 2009, <https://www.ancl-radc.org.za/sites/default/files/Judicial%20Activism%20in%20Africa.pdf> [accessed: 25.10.2024]; C. Kaupa, "Maybe Not Activist Enough? On the Court's Alleged Neoliberal Bias in Its Recent Labor Cases" [in:] *Judicial Activism at the European Court of Justice*, eds. M. Dawson, B. De Witte, E. Muir, Cheltenham–Northampton 2013, p. 56.

<sup>7</sup> See: C. Kaupa, "Maybe Not Activist Enough?..." pp. 56–75; M. La Torre, S.D. Smith "Preface" [in:] *Judicial Activism: An Interdisciplinary Approach to the American and European Experiences*, eds. L. Pereira Coutinho, M. La Torre, S.D. Smith, Cham 2015.

<sup>8</sup> D. Lasok, "La cour de justice, instrument de l'intégration communautaire," *Journal of European Integration* 1979, vol. 2, pp. 391–479; see: A. Sall, "La protection juridictionnelle des droits de l'homme au niveau sous régional" [in:] *Manuel pratique des droits de l'homme*, dir. S.A. Ndiaye, 2e éd., Dakar 2022, p. 482; S.N. Tall, *Droit des organisations internationales africaines: Théorie générale. Droit communautaire comparé. Droit de l'Homme, paix et sécurité*, Sénégal 2015, p. 398; J.-M. Pambet Soungani, *Système institutionnel de la CEMAC: Droit communautaire*, Paris 2016, p. 612.

in the integration process. From this perspective, the establishment of a supranational jurisdiction is not neutral but results from the choice to use law as an instrument in the service of political objectives. This same objective is evident in the process of creating a pan-African jurisdiction. The hesitations and explicitly stated objectives behind the creation of a continental jurisdiction clearly show that establishing a supranational jurisdiction is far from an innocent act or one solely aimed at protecting the rule of law. In this regard, “activism” almost naturally becomes part of the judges’ mission; they must defend the cause for which they were instituted. Ultimately, the decisions of the ECOWAS Court, which step in to address the inertia and shortcomings of national human rights protection systems, do not receive a favourable response from national courts – whether supreme, lower, or specialized – which resist them in a manner that could almost be described as acts of defiance. This attitude of national courts is shared by administrative and political authorities, who also display indifference and defiance towards the community judges. As a result, for the time being, the expansion of the ECOWAS Community Court of Justice’s jurisdiction to human rights issues has no real impact on the fate of victims.

The growing body of jurisprudence issued by the ECOWAS Community Court of Justice in favour of individuals alleging human rights violations highlights a pressing and widespread demand for credible avenues of redress in the West African sub-region. The Court is often seen as a last resort for individuals when their national legal systems fail to provide timely or fair justice. This situation highlights the Court’s growing significance and reveals serious structural and institutional shortcomings in national human rights enforcement. Given these challenges, the ECOWAS Court plays a crucial role in promoting a regional framework dedicated to protecting fundamental rights. By establishing uniform legal standards and holding Member States accountable, the Court encourages the gradual alignment and standardization of human rights practices across the Community. Therefore, its decisions not only have the potential to deliver individual justice but also to inspire extensive legal and policy reforms within national systems. In this way, the Court fulfils both judicial and normative functions, enhancing regional integration through a shared dedication to the rule of law and fundamental rights freedoms. To achieve this, its decisions must have a tangible impact on proceedings before national courts. It serves little purpose to rule that a national court’s decision is flawed due to procedural irregularities that have violated fundamental rights if the ECOWAS Court lacks the authority to order the annulment or at least the review of the contested decision. Nothing in the Court’s protocols should be interpreted as an obstacle to such an initiative.

#### 4. Understanding judicial activism in the context of the ECOWAS Community Court of Justice

In the last two decades, the ECOWAS Community Court of Justice has attracted more attention because of its assertive and broad interpretations of human rights law. Initially set up as a regional economic tribunal, the Court's scope broadened significantly in the early 2000s to include human rights protection. Since that time, it has rendered numerous judgments on serious violations such as torture, arbitrary detention, and limits on freedom of expression, frequently holding Member States accountable in unprecedented ways. This transformation has provoked scholarly discussions about whether the Court exhibits judicial activism and whether such activism truly represents advancement in the protection of human rights in the region. Judicial activism is defined as a judicial approach where courts go beyond simply interpreting laws to actively influencing legal and policy outcomes.<sup>9</sup> This typically happens when courts make decisions that broaden their authority, contest executive or legislative actions, or create new legal standards without clear legislative guidance. In the case of the ECCJ, judicial activism has been evident through its broad interpretation of jurisdiction, especially concerning human rights matters, despite there being no formal human rights charter in ECOWAS when it was formed.

The ECCJ has demonstrated judicial activism by expanding its jurisdiction, interpreting legal provisions broadly, and issuing rulings that challenge state sovereignty concerning human rights. This section examines key cases that illustrate this activism. Originally, the ECCJ's jurisdiction was limited to disputes regarding ECOWAS treaty interpretations and the legality of actions by ECOWAS institutions. However, in 2005, an amendment to the Protocol on the Community Court of Justice significantly broadened the court's mandate to include human rights cases. This modification enabled individuals and non-state entities to bring cases directly to the court without needing to first pursue domestic remedies; this represented a significant shift from traditional international legal norms. The court's proactive stance became clear through its readiness to interpret the ECOWAS Treaty and related protocols in ways that allowed it to tackle human rights abuses, despite the lack of a comprehensive ECOWAS human rights framework. Rather, the court has drawn on international human rights treaties, including the African Charter on Human and Peoples' Rights (ACHPR), to support its actions.

Notable cases exemplifying the ECCJ's proactive stance include *Socio-Economic Rights and Accountability Project (SERAP) v. Nigeria* (2012), where the court ruled

<sup>9</sup> See: *Judicial Activism at the European Court...*, p. 304, for an illustration of the debate on what the role of the European Court of Justice should be and what constitutes "activism" on the part of the Court, according to the authors; see also: *Judicial Activism in Comparative Perspective*, ed. K.M. Holland, New York 1991, p. 214; L. Grover, "A Call to Arms: Fundamental Dilemmas Confronting the Interpretation of Crimes in the Rome Statute of the International Criminal Court," *European Journal of International Law* 2010, vol. 21, no. 3, pp. 563–564.

against Nigeria for its failure to regulate multinational corporations implicated in environmental harm in the Niger Delta.<sup>10</sup> This case illustrated the court's readiness to hold states responsible for violations of economic and social rights, even though explicit provisions in the ECOWAS treaty on this matter are lacking. In *Hadijatou Mani Koraou v. Niger* (2008),<sup>11</sup> the ECCJ determined that Niger is liable for not safeguarding a woman from slavery. It expanded the interpretation of human rights standards beyond ECOWAS legal frameworks and strengthened duties under the African Charter. In the case of *Femi Falana v. ECOWAS* (2012), the court confirmed its jurisdiction over human rights abuses, dismissing claims that its powers should be confined to disputes between states.<sup>12</sup> This case solidified the ECCJ's activist role in adjudicating human rights cases.

## 5. Notable decisions of the Court adopted as public policies in Member States

In 2021, Twitter (now X) removed tweets from former Nigerian President Muhammadu Buhari and suspended his account for violating its platform rules. The deleted tweets alluded to the southeastern population of Nigeria, threatening them with the possibility of a repeat of the 1967–1970 civil war. Millions of Southeastern people of Nigeria (predominantly Igbo people) died during the 1966 anti-Igbo pogroms and the government-orchestrated war as a result of the immense human suffering and widespread devastation caused by starvation, disease, and combat.

In an unanticipated move, the Nigerian government banned Twitter's operation in Nigeria indefinitely, leaving many users confounded, in disapproval, as a result of the decision, and in search of Virtual Private Networks (VPNs) as a route to access and use the social media site. This incident prompted the *SERAP v. Nigeria* (2022) case,<sup>13</sup> in which the Court declared Nigeria's seven-month Twitter ban unlawful and inconsistent

<sup>10</sup> See: ECOWAS Court of Justice, *SERAP v. Federal Republic of Nigeria*, Judgment No. ECW/CCJ/JUD/18/12, 14 December 2012, para. 112; ECOWAS Court of Justice, *Aminatou Diantou v. Republic of Mali*, Judgment No. ECW/CCJ/JUD/14/18, 21 May 2018, para. 32; ECOWAS Court of Justice, *WAVES v. Republic of Sierra Leone*, Judgment No. ECW/CCJ/JUD/37/19, 12 December 2019; ECOWAS Court of Justice, *Ajami Yasmine Marie Jeanne v. Republic of Côte d'Ivoire*, Judgment No. ECW/CCJ/JUD/12/20, 8 July 2020,

<sup>11</sup> See: ECOWAS Court of Justice, *Hadijatou Mani Koraou v. Republic of Niger*, Judgment No. ECW/CCJ/JUD/06/08, 27 October 2008, para. 86.

<sup>12</sup> See: ECOWAS Court of Justice, *SERAP v. The Federal Republic of Nigeria*, Judgment No. ECW/CCJ/JUD/18/12, 14 December 2012; ECOWAS Court of Justice, *Hadijatou Mani Koraou v. Republic of Niger*, Judgment No. ECW/CCJ/JUD/06/08, 27 October 2008; ECOWAS Court of Justice, *Femi Falana v. ECOWAS*, Judgment No. ECW/CCJ/JUD/02/12, 29 October 2012.

<sup>13</sup> ECOWAS Court of Justice, *The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) & 3 Ors v. Federal Republic of Nigeria*, Application No. ECW/CCJ/APP/23. Prior to the case, SERAP had unsuccessfully sued the agencies of the government of Nigeria at the Federal High Court in Suit No. FHC/ABJ/CS/496/21.

with Article 9 of the ACHPR and Article 19 of the International Covenant on Civil and Political Rights (ICCPR), as it violated the right to freedom of expression and access to information. The judgment affected Nigeria's approach to the rights of its citizens in the digital environment and Nigeria's adherence to freedom of expression.

In 2010, the ECCJ issued an opinion in *SERAP v. Nigeria*.<sup>14</sup> The initiating application claimed that Nigeria had infringed the human right to quality education, the right to human dignity, people's rights to their wealth and natural resources, and the rights to economic and social development of the Applicants. These rights are safeguarded by Articles 1, 2, 17, 21, and 22 of the ACHPR. The Court affirmed the obligation of Nigeria to implement the ACHPR, which it has ratified and domesticated. The Court ruled that Nigeria contravened its obligation under the charter by its failure to ensure free and compulsory basic education for every Nigerian child. The Court ordered Nigeria to provide adequate financial support for public education.

This decision gave rise to clamour for the implementation of the Nigeria's Compulsory, Free Universal Basic Education Act (2004)<sup>15</sup> and increased the functionality of the Universal Basic Education Commission through enlarged budgetary allocations for recruitment and payment of personnel, provision of infrastructure and materials needed for the implementation of the ideas of universal basic education for all Nigerians. The Universal Basic Education (UBE) program was launched in Nigeria in 1999 with the objective of establishing free and compulsory primary and secondary school education for all Nigerians. This lofty initiative suffered neglect on account of a lack of political will to provide adequate funding. The reforms introduced in 2010 have been sustained by successive governments through varying initiatives formulated to institute unrestrained access and to ensure the quality of basic education across Nigeria.

In *SERAP v. Nigeria* (2012), the court found that Nigeria violated Article 21 (right to natural wealth and resources) and 24 (right to satisfactory environment) of the ACHPR in a case relating to environmental degradation in the oil-rich Niger-Delta region of Nigeria, degradation caused by multi-national oil companies. The Court ordered Nigeria to formulate regulations that would ensure the accountability of oil companies and their adherence to the best international standards. The judgment influenced the introduction of the Petroleum Industry Bill in the Nigerian parliament in 2012.<sup>16</sup> The bill

<sup>14</sup> ECOWAS Court of Justice, *The Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria and Universal Basic Education Commission (UBEC)*, Judgment No. ECW/CCJ/JUD/07/10, 30 November 2010.

<sup>15</sup> The Act provides in its section 2 that every regional government in Nigeria shall provide free, compulsory and universal basic education for every child of primary and junior secondary school age. It further provides that every parent shall ensure that his/her child or ward attends and completes his/her (a) primary school education and (b) junior secondary school education, by endeavouring to send the child to primary and junior secondary schools. The section criminalizes infraction of its provisions and spells out custodial sentencing that the court would impose on default.

<sup>16</sup> Although the first bill was sent to the Nigerian Parliament in 2008 as an executive bill that was introduced by the executive branch of the Nigerian government, it was not passed into law. A remodelled bill was presented for consideration in 2012.

was passed and signed into law in 2021 as the Petroleum Industry Act. Its sweeping provisions introduced environmental management and community development in oil-producing regions.

In the case of Niger, the ECCJ has issued notable rulings especially in relation to the human rights implications of modern-day slavery. The adoption of this decision to national policies in Niger has faced remarkable delay because of political instability, including the 2023 coup. The Applicant in *Hadidjatou Mani Koraou v. Niger* (2008)<sup>17</sup> was born to a mother in slavery and was sold to a merchant at the age of twelve, where she was subjected to terrible inhumane and degrading treatments including rape and forced labour for nine years. On grounds of a technicality, the national court in Niger failed to convict the merchant. The Applicant approached the ECCJ, where her rights under international law were upheld. The case set the precedent for women to protest against the slavery practices common in Niger. The government of Niger criminalized slavery explicitly and bolstered enforcement operations.

Following the 2023 coup in Niger, ECOWAS imposed rigid sanctions on Niger. The military junta disputed the sanctions at the ECCJ for the severe civilian hardship they caused. The court recognized ECOWAS's authority to impose sanctions while emphasizing the importance of minimizing hardship for citizens. It dismissed the case on the grounds that the junta, being an unconstitutional body, did not have the standing to file a lawsuit. This ruling prompted Nigeria to advocate more refined regional sanctions aimed at reducing the economic impact on neighbouring nations.

## 6. Challenges and limitations in the activist stance of the ECOWAS Court

Although the mandate of the ECCJ has been expanded to include original jurisdiction over human rights violations, this transformation has not been accompanied by a corresponding institutional overhaul. As Ebenezer Durojaye and Solomon Ebobrah observe, the Court's unchanged structure, composition, and procedures stand in stark contrast to its broadened jurisdiction, an arrangement Ebobrah metaphorically describes as "new wine in old skins."<sup>18</sup> This institutional inertia raises fundamental questions about the Court's competence and legitimacy as a supranational adjudicator of human rights.

Initially designed to resolve disputes related to economic integration within the ECOWAS framework, the Court was equipped to deliver final and immediately enforceable judgments suited to trade and economic issues.<sup>19</sup> As its mandate regarding

<sup>17</sup> ECOWAS Court of Justice, *Hadidjatou Mani Koraou v. Republic of Niger*, Judgment No. ECW/CCJ/JUD/06/08, 27 October 2008.

<sup>18</sup> S.T. Ebobrah, "Litigating Human Rights before Sub-Regional Courts in Africa: Prospects and Challenges," *African Human Rights Law Journal* 2017, vol. 17, pp. 1–22.

<sup>19</sup> U.O. Umozurike, "The African Charter on Human and Peoples' Rights," *The American Journal of International Law* 1983, vol. 77, no. 4, pp. 902–912.

human rights has broadened, the Court now addresses more intricate and politically sensitive matters. However, it lacks formal hierarchical authority over national courts and does not function as an appellate or cassation entity within the architecture of the regional legal system.<sup>20</sup>

The Court's decision to allow individuals direct access, without the requirement to exhaust domestic remedies, further entrenches its unique position.<sup>21</sup> It now serves as a court of first instance in human rights cases, a role it has acknowledged in its jurisprudence, stating that the ECOWAS legal order reflects a "judicial monism of first and last resort."<sup>22</sup> This dual role imposes notable procedural and substantive constraints.

First, when people file human rights complaints directly with the ECCJ, the Court's decision is final and cannot be contested. This scenario raises issues surrounding judicial accountability and due process.<sup>23</sup> Secondly, the ECOWAS Court may only review human rights cases already addressed by national courts if entirely new issues arise that were not considered at the domestic level.<sup>24</sup> This limits the Court's effectiveness in tackling systemic violations, especially those related to flawed domestic proceedings. Moreover, claims of denial of a fair trial, that is, of a fundamental human right, might lie beyond the Court's jurisdiction, as it is not designed to act as a review mechanism for national judicial systems.<sup>25</sup>

## 7. Conclusions

The ECOWAS Community Court of Justice has emerged as a leading institution for human rights enforcement in West Africa, adopting an activist approach that has

<sup>20</sup> F. Viljoen, *International Human Rights Law in Africa*, 2<sup>nd</sup> ed., Oxford 2012, pp. 423–425.

<sup>21</sup> R. Manuel, "Access to Justice in the ECOWAS Court: Individual Standing and the Absence of Exhaustion of Domestic Remedies," *African Journal of International and Comparative Law* 2013, vol. 21, no. 2, pp. 219–234.

<sup>22</sup> ECOWAS Court of Justice, *Chief Ebrimah Manneh v. Republic of The Gambia*, Suit No. ECW/CCJ/APP/04/07, 5 June 2008, para. 25; Article 24 of the 2005 Supplementary Protocol requires states to execute judgments via national authorities, but compliance rates remain low.

<sup>23</sup> E. Durojaye, "The ECOWAS Court and the Advancement of Human Rights in Nigeria: An Appraisal," *Law, Democracy & Development* 2010, vol. 14, pp. 225–243.

<sup>24</sup> F. Akindès, "The ECOWAS Court of Justice and the Politics of Human Rights in West Africa" [in:] *The African Criminal Court*, eds. G. Werle, M. Vormbaum, The Hague 2017, pp. 183–201.

<sup>25</sup> H. Adjolohoun, "Giving Effect to the Human Rights Jurisprudence of the ECOWAS Court of Justice: Prospects and Challenges," *African Human Rights Law Journal* 2014, vol. 14, no. 2, pp. 429–452. Despite its bold rulings, the ECCJ faces several challenges, like non-compliance with judgments. If an ECOWAS Member State fails to enforce the court's decisions, this undermines its effectiveness. Lacking enforcement mechanisms, unlike domestic courts, the ECCJ lacks direct enforcement power, relying on political will for compliance. There is also political resistance. Some Member States perceive the court's activism as an infringement on national sovereignty and have sought to curtail its powers. There are resource constraints. Limited funding and logistical support hinder the court's ability to function effectively. See: D.A. Agbezoukin, "Renforcement de l'Etat de droit...", pp. 22–27.

significantly increased its regional influence. Nevertheless, its effectiveness is still undermined by factors like non-compliance, institutional challenges, and political resistance from Member States. To bolster the Court's role in regional governance, it is crucial to improve enforcement mechanisms, enhance public awareness, and ensure strong political commitment from ECOWAS Member States. While the Court's broad interpretation of its jurisdiction has facilitated access to justice, it continues to struggle with the implementation of its decisions. The future of the ECOWAS Court will hinge on the interplay between judicial activism and political realities, which will shape its influence on the development of West African jurisprudence. This article provides a critical analysis of the Court's judicial activism, emphasizing its achievements and challenges, while offering insights into the evolving landscape of regional human rights protection in West Africa.

The diversity of supranational and international judicial institutions in Africa complicates efforts to develop a comprehensive framework for analyzing their jurisprudential policies. The reading and classification proposed here are necessarily artificial, and judicial practices are subject to numerous alternative and potentially more relevant interpretations. However, one of the main conclusions that can be drawn is the desire of many African judges to take on a significant, even leading, role in establishing a more democratic, just, and human rights-respecting African society. African supranational judges are thus gradually equipping themselves with the means and tools necessary to achieve this goal through what can be termed a "strategy of power." This strategy aims to maximize the judiciary's influence relative to other political bodies while ensuring that judges retain maximum autonomy in exercising their jurisdictional powers. Judicial power, in this sense, involves giving rulings the broadest possible scope. However, this power that judges grant themselves can also be deliberately restrained. This oscillation between activism and restraint is another way to expand judicial freedom. In Africa, this balancing act between judicial activism and self-limitation is essential for at least two main reasons. The first is the risk of jurisprudential conflicts in a landscape where supranational judicial institutions proliferate. Legal disputes can arise when various normative frameworks exist in the same geographical or jurisdictional area. A prominent example is the Organization for the Harmonization of Business Law in Africa (OHADA), the legal structure of which overlaps with both the Central African Economic and Monetary Community (CEMAC) and the Economic Community of West African States. Furthermore, it also intersects with another legal harmonization effort: the African Intellectual Property Organization (OAPI). In this scenario, judges, despite lacking jurisdiction over these parallel legal frameworks, must interpret and apply their legal instruments in ways that maintain coherence and do not hinder harmonization with other systems.

A second source of normative tension arises from different interpretations of the same legal provisions by institutions with overlapping jurisdiction. This is particularly evident in the interpretation of the ACHPR, which is a crucial tool for various African legal bodies. For instance, the ECOWAS Community Court of Justice may take a more progressive or expansive approach to the Charter compared to the African Court on

Human and Peoples' Rights (AfCHPR), leading to contrasting or even contradictory jurisprudence related to identical legal norms. These discrepancies challenge both the coherence of regional legal integration and the uniform protection of human rights across the continent. Additionally, the need for balance between activism and self-restraint is shaped by the broader political and institutional environment in which African judges function. Judges must exercise measured and cautious boldness when interpreting and applying norms in states that are only beginning to entrust jurisdictional bodies with authority. The words of the senior French judge Guy Canivet hold relevance in this African context: "In common law countries as well as in civil law traditions, in democracies as well as in non-democratic states, any judicial work, whether praised or criticized, always remains at the mercy of a single stroke of the political assembly's pen." For judges tempted to forget this reality, or for NGOs pushing them towards greater activism, the unfortunate precedent of the South African Development Community Tribunal serves as a warning about the potentially dire fate awaiting judicial bodies that provoke excessive resistance from Member States.

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## Summary

*Boubacar Sidi Diallo*

### **Judicial Activism and Human Rights Protection in West Africa in Light of the ECOWAS Community Court of Justice's Jurisprudence: Substance or Symbolism?**

This article explores the extent to which judicial activism has played a role in the development and enforcement of human rights standards in West Africa. By concentrating on the jurisprudence of the ECOWAS Community Court of Justice, the article assesses how the Court's proactive and interpretative approaches have affected the regional human rights landscape, filling institutional gaps left by national judiciaries and political actors. Through this lens, the paper evaluates both the transformative potential and the limitations of judicial activism within the ECOWAS legal framework. The article also emphasizes the progressive nature of certain decisions issued by the Court, demonstrating a dynamic interpretation of legal instruments related to human rights. However, this judicial activism faces several challenges, including the lack of an effective enforcement mechanism and the hesitation of certain Member States to comply, because they often cite concerns over national sovereignty. Despite these limitations, the Court's decisions have greatly contributed to the justiciability of fundamental rights and the consolidation of a regional human rights normative framework protection. The article concludes by stressing the need for institutional and legal strengthening of the Court to ensure the effective implementation of its decisions. It also recommends closer cooperation between regional institutions and Member States to uphold their human rights commitments and enhance the Court's credibility within the West African community.

**Keywords:** judicial activism, human rights protection, West Africa, ECOWAS Community Court of Justice, jurisprudence, legal framework, regional justice system, fundamental rights.

## Streszczenie

*Boubacar Sidi Diallo*

### **Aktywizm sędziowski i ochrona praw człowieka w Afryce Zachodniej – ocena znaczenia orzecznictwa Trybunału Sprawiedliwości Wspólnoty Gospodarczej Państw Afryki Zachodniej (ECOWAS)**

Celem artykułu jest zbadanie roli aktywizmu sędziowskiego w rozwoju i egzekwowaniu standardów praw człowieka w Afryce Zachodniej. Rozważania koncentrują się na orzecznictwie Trybunału Sprawiedliwości ECOWAS oraz wpływie proaktywnych i interpretacyjnych metod wykładni stosowanych przez Trybunał na kształtowanie regionalnego systemu ochrony praw człowieka, w szczególności w kontekście luk instytucjonalnych pozostawionych przez sądy kra-

jowe i aktorów politycznych. Analizie poddano zarówno transformacyjny potencjał, jak i ograniczenia aktywizmu sędziowskiego w ramach porządku prawnego ECOWAS. W opracowaniu podkreślono również progresywny charakter wybranych rozstrzygnięć Trybunału, ukazujących dynamiczną wykładnię instrumentów prawnych dotyczących praw człowieka. Aktywizm ten napotyka jednak liczne wyzwania, w tym brak skutecznego mechanizmu egzekwowania orzeczeń oraz niechęć części państw członkowskich do ich wykonywania, często uzasadnianą obawami o suwerenność narodową. Mimo tych ograniczeń decyzje Trybunału znacząco przyczyniły się do wzmocnienia sądowej ochrony praw podstawowych oraz konsolidacji regionalnych ram normatywnych ochrony praw człowieka. Wskazano jednocześnie na potrzebę wzmocnienia instytucjonalnego i prawnego Trybunału w celu zapewnienia efektywnej realizacji jego rozstrzygnięć oraz na konieczność pogłębionej współpracy między instytucjami regionalnymi a państwami członkowskimi dla efektywnego wykonywania ich zobowiązań w zakresie praw człowieka i wzmocnienia wiarygodności Trybunału w regionie Afryki Zachodniej.

**Słowa kluczowe:** aktywizm sędziowski, ochrona praw człowieka, Afryka Zachodnia, Trybunał Sprawiedliwości ECOWAS, orzecznictwo, ramy prawne, regionalny system wymiaru sprawiedliwości, prawa podstawowe.