

CASE DIGESTS

Human Rights Decisions of the Community Court of Justice of West African States (ECOWAS)

JULY 2013

SUMMARIES OF DECISIONS by the Community Court of Justice of West African States (ECOWAS) from 2012 and 2013, which relate to its jurisdiction over the rule of law or otherwise impact on human rights. Produced by lawyers at the Open Society Justice Initiative in order to bring the decisions of global human rights tribunals to the widest possible audience.

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Decisions on Jurisdiction or Admissibility

Ocean King Nigeria Ltd. v. Republic of Senegal

8 July 2011, ECOWAS, Suit No. ECW/CCJ/APP/05/08, Judgment No. ECW/CCJ/JUD/07/11

Case not admissible: corporations are not considered human rights victims (Article 10(d))

A Senegalese company towed a vessel owned by the applicant, a Nigerian corporation, to Dakar after it had been found docked off the Cape Verdean coast. After a dispute over the towing fees, the vessel was seized and awarded by a Senegalese court to the towing company. The applicant appealed to the ECOWAS Court, claiming that the seizure of the vessel amounted to piracy in breach of the ECOWAS Treaty and the African Charter, and asked for damages. It also claimed that it was not informed of proceedings leading up to the decision to divest it of ownership and alleged violations of its right to own property, its right to move freely within the ECOWAS member states, and its right to a fair trial. Senegal claimed that the applicant was informed of the proceedings, and argued that only individuals can directly approach the Court on human rights matters, according to Articles 9(4) and 10(d) of the Protocol on the Community Court of Justice. Senegal also argued that the applicant failed to establish any violation of fundamental rights, and that the matter is inadmissible as the ECOWAS Court cannot operate as an appellate court to the courts of Member States.

The Court affirmed that it had jurisdiction over human rights violations under Article 9(4), as amended by the Supplementary Protocol of 2005, and that the applicant was not obliged to exhaust local remedies in order to have access to the Court. However, the Court found that a corporation could not rely on Article 10(d) to access the Court, as it is reserved only for individual human beings as human rights victims to the exclusion of all others. Despite the Court's denial of the application on this ground, it examined the substance of the application and held that the applicant had been offered a fair trial by Senegal's domestic courts, as evidenced by court documents. The Court also found that the applicant's demand was in effect seeking a modification of the judgment rendered by the domestic court, which does not make the state liable for the vessel. The judicial processes that took place in defendant's territory were between two private parties - Senegal was never a party to the dispute. This led the Court to conclude that the state would have borne no liability for the vessel, and it dismissed the application.

[Link to full decision \(PDF\)](#)

Mme Aziblevi Yovo and 31 others v. Togo Telecom Society and Republic of Togo

31 January 2012, ECOWAS, Suit No. ECW/CCJ/APP/08/11, Judgment No. ECW/CCJ/JUG04/12

Case not admissible: matter decided by another court (res judicata)

On 21 April 2001, the Labor Court of Lomé rendered a judgment ordering Togo Telecom Society and Togo to pay the applicants a sum of money to remedy an unspecified human rights violation that the applicants suffered. Despite the Court of Appeal and the Supreme Court upholding the judgment, the applicants were unable to enforce it. This was in part because the Togo Telecom Society enjoyed immunity from enforcement, as it was a state company. The applicants argued that the lack of judicial enforcement amounted to a violation of Article 3 of the African Charter (right to equal protection before the law) and the Togolese Constitution. The Togo Telecom Society argued that the applicants lacked standing because some applicants died before the application was filed before the Court, and asserted that the OHADA Common Court of Justice and Arbitration has already rejected the applicants' appeal, stressing that Article 10(d)(ii) of the 2005 Court Protocol declares disputes arising out of human rights violations decided by other competent courts to be inadmissible under the principle of *res judicata*.

The Court held that the death of a few of the applicants did not render the application inadmissible, though it excluded the deceased from the case, holding that only the living applicants were considered to be parties. The Court found disparate treatment between the applicants and the respondents, involving both equality and protection before the law as prescribed by Article 3 of the African Charter. The state's refusal to implement a binding domestic decision and ensure the respect for rule of law on its territory could give rise to a violation of the African Charter and the Togolese Constitution. However, the Court agreed with the respondents that Article 10(d)(ii) of the Court Protocol declares disputes arising out of human rights violations that have been decided by other competent courts inadmissible. Consequently, notwithstanding that the application would be ordinarily be admissible, the Court was compelled to decline jurisdiction to rule on the merits of the application because the case had already been decided by the OHADA Common Court of Justice and Arbitration. Thus, despite its apparent violation of human rights, the Court was unable to order Togo to enforce its decision.

[**Link to full decision \(PDF\)**](#)

Mrs. Oluwatosin Rinu Adewale v. Council of Ministers, ECOWAS, The President of the ECOWAS Commission, The President of the ECOWAS Community Court of Justice, and the Acting Director of Administration & Finance of the Community Court of Justice

16 May 2012, ECOWAS, Suit No. ECW/CCJ/APP/11/10, Judgment No. ECW/CCJ/JUD/07/12

Refusal to award position: no violation, no implication of human right (Article 10(d))

The applicant, a Nigerian citizen, challenged the failure to award her a position she had applied for at the ECOWAS Community Court of Justice. She claimed that despite her performance being above that of other candidates, the position for which she interviewed was given to another candidate who did not possess required qualifications because the other candidate and the President of ECOWAS were both from Côte d'Ivoire. The applicant alleged violations of: (i) the right to be equal before the law; (ii) the right to have one's case heard; (iii) the right to equal access to the public service; (iv) the right to equality and equal opportunity; (v) the right to be free from discrimination; (vi) the right of every individual to serve his Community and contribute to the best of his abilities at all times and at all levels; and (vii) the ECOWAS Staff Regulations. The respondents objected to the application for lack of interest to undertake this action because the

selection of the candidate for the post was an administrative action that had not infringed on any of the applicant's rights, and that the African Charter is inapplicable.

The Court upheld the objection on the lack of legal capacity and interest of the applicant to lodge the case and dismissed the application. The Court stated that while Article 9 of the Court Protocol, as amended, grants jurisdiction to adjudicate disputes over regulations against a Community institution or official, the case must be lodged by an entity with the necessary capacity to do so. Individuals may only access the Court under Article 10(c) or (d) of the Protocol. The applicant failed to demonstrate any direct violation of her rights or that the contested act caused her any harm, meaning that her case did not fall under Article 10(c); and the effect of the President's administrative decision did not implicate the applicant's fundamental rights, so it also did not fall under Article 10(d) of the Protocol. The Court therefore dismissed the case as the applicant had no legal capacity to bring it.

[**Link to full decision \(PDF\)**](#)

Sa'Adatu Umar v. Federal Republic of Nigeria

14 December 2012, ECOWAS, Suit No. ECW/CCJ/APP/12/11; Judgment No. ECW/CCJ/JUD/17/12

Case not admissible: Court will not rule on matters adjudicated by national courts where appeal has not been sought

The applicant was arrested and detained with her children without any charges brought against her. She claimed that this was arbitrary and illegal under Articles 6 (freedom from arbitrary detention) and 12 (freedom of movement) of the African Charter. She also claimed that doing so while she was a nursing mother in the company of her three children was a form of physical and mental torture violating Article 4 (integrity of person). She asked to be set free immediately and for reparations amounting to one million Naira. After the Court had admitted the case and initiated proceedings, the state argued that her case was inadmissible because the Federal High Court of Nigeria had already rendered a judgment in the applicant's favor.

The Court admitted the past judgment as new evidence despite the state's tardiness in introducing it, as it constituted crucial information for the litigation. The Court then found that the declarations sought in the case, including the one million Naira award, were similar to those that had been heard and determined by the Nigerian Court. The case was essentially the same as the earlier one whose settlement, if unsatisfactory, could have led to an appeal in the domestic system. The court therefore declined to re-consider the matter pursuant to the *res judicata* principle, in addition to its established jurisprudence on not ruling on matters that have already been adjudicated in a national court of a member-state or where an appeal has not been sought.

[**Link to full decision \(PDF\)**](#)

Judgments on the Merits

Barthelemy Dias v. Republic of Senegal

23 March 2012, ECOWAS, Suit No. ECW/CCJ/APP/01/12, Judgment No. ECW/CCJ/JUG/05/12

Prosecution of opposition politician: no violation of right to be free from arbitrary arrest and detention (Article 6 of African Charter), right to impartial proceedings (Article 7 of African Charter), right to equality before the law (Article 13 of African Charter), or right to fair trial (Article 11 of Universal Declaration of Human Rights)

The applicant, Barthelemy Dias, was a popular leading member of a Senegalese opposition party. After the 2011 Senegalese election, he alleged that Senegalese Democratic Party (SDP) members organized armed thugs to eliminate opposition leaders at the time. He claimed that he was a victim of their attacks on 22 December 2011, in response to which he pulled out a firearm and fired shots in self-defense. Despite his claim of self defence, a group of judges opened a criminal investigation into the incident and issued a committal order against him. Senegalese political authorities made various remarks after arresting and detaining the applicant, and he claimed that he was arrested and detained for political reasons. He also alleged that the criminal proceedings against him were influenced by the President, Prime Minister and the Minister of Interior, depriving him of an independent and impartial criminal trial, and that he was selectively prosecuted. He claimed that the selective prosecution violated his right to equality before the law and his right to a presumption of innocence. In response, Senegal explained that the detention was not arbitrary or unfair, and that the criminal process and trial was consistent with legal guarantees in Senegal for criminal defendants.

The Court found the application to be admissible, as it was brought under Articles 10(d) and 9(g) of the Court Protocol. In its evaluation of the criminal proceedings, the Court found that the investigation constituted a satisfactory legal basis for the applicant's arrest and detention because they were in accordance with sufficient legal principles in Senegal. The Court construed the political remarks made by the Senegalese officials as being made in their personal capacity and not reflected in the official actions taken by those officials. Thus, the arrest and detention were not arbitrary under Article 6 of the African Charter. This also led the Court to conclude that the proceedings could not be found flawed on the grounds of a lack of independence or impartiality, and there were no violations of Articles 10 and 11 of the Universal Declaration of Human Rights or Article 1 of the African Charter. Further, there was no evidence of selective prosecution against the applicant, since other people who were not in the applicant's party were also prosecuted, which resulted in the Court holding that the applicant's right to equality before the law was not violated. Lastly, the Court found that the applicant's fair trial and defense rights were observed since the Court had already accepted the fairness of the applicant's overall criminal procedure, leading to the Court to conclude that the state had not committed any human rights violations against the applicant.

[Link to full decision \(PDF\)](#)

Isabelle Manavi Ameganvui and others v. Republic of Togo

13 March 2012, ECOWAS, Suit No. ECW/CCJ/APP/12/10, Judgment No. ECW/CCJ/JUG/06/12

Refusal by domestic court to rule on replacement of parliamentarians: no violation of right to have one's cause heard (Article 7(1)(c) of African Charter) or right to associate freely (Article 10 of African Charter)

The applicants were former members of the Togolese National Assembly who were replaced with new representatives and argued that Togolese Constitutional Court failed to examine and rule on their request for the reinstatement. They asserted that the court's this failure to examine and rule on their request constituted an omission to pass judgment, violating their rights under Articles 7(1)(c) and 10 of the African Charter (right to have one's cause heard and freedom of association). They requested that the Court rule on the Togolese court's omission to pass judgment and order Togo to allow the applicants to resume their positions in the National Assembly. Togo acknowledged that it denied the applicants an opportunity to be heard before the National Assembly Plenary, but argued that this was an insufficient reason to grant them their seats. Togo also argued that national law did not entitle the applicants to a Constitutional hearing: their case had been heard and decided by lower courts in Togo, and that the applicants were attempting to obtain a decision in the ECOWAS Court that it could not obtain from the Togolese Constitutional Court. Further, Togo asserted that *res judicata* precluded the applicants from further challenging the Constitutional Court's decision.

Because the applicants alleged an omission to pass judgment, this had the potential to be a violation of their right to be heard by the National Assembly Plenary and the Constitutional Court. Consequently, the Court found the applicants' request to be admissible pursuant to Article 64 of the Rules of the ECOWAS Court. However, it found their application to be similar to an appeal against the Constitutional Court of Togo, which is a national jurisdiction of a member state. The Court re-iterated past rulings that the ECOWAS Community Court is neither a court of appeal nor court of cassation. The ECOWAS Community Court is incapable of revoking the Constitutional Court's decision. As such, the Court declined to go beyond its jurisdiction to decide on the application for reinstatement, which, if ordered, would be equivalent to an annulment of the Constitutional Court's decision. Thus, the applicants' omission to pass judgment claim was rejected.

[**Link to full decision \(PDF\)**](#)

Siriku Alade v. The Federal Republic of Nigeria

11 June 2012, ECOWAS, Suit No. ECW/CCJ/APP/05/11, Judgment No. ECW/CCJ/JUD/10/12

Detention for nine years on holding charge: violation of right to be free from arbitrary detention (Article 6 of African Charter)

The applicant, a Nigerian citizen, was arrested by a plain clothes person claiming to be a police officer on 9 May 2003. He was then forcefully dragged to the Ketu Police Station and detained until 15 May 2003, when he was arraigned before the Magistrate Court, which detained him on a holding charge and remanded him to Kirikiri Maximum Security Prison, Lagos. He was detained

there from 15 May 2003 until 2012, a period of nine years, awaiting trial. The applicant lodged a complaint to the ECOWAS Court on 24 June 2011, asking for his release and a declaration that his right to fair trial and right to personal liberty had been violated. Among the documents submitted by the applicant to justify his allegations against Nigeria were his holding charge and an affidavit. Nigeria did not produce a detention warrant and denied that the applicant is in Kirikiri Prison. It also argued that the applicant was negligent in the delay of bringing the application.

The Court stated that the holding charge and affidavit were sufficient to satisfy the applicant's burden of proof, evidence and persuasion to convince the Court that he was being detained in the Kirikiri Prison. The Court considered the state's failure to produce the detention warrant as an indication that it would have been unfavorable to its case had it been produced, and drew a negative presumption, concluding that the applicant was in fact being detained by the Nigerian authorities pursuant to the holding charge. It also rejected Nigeria's claim that it should not consider the case because of a delay by the detained applicant in bringing it. The Court found that there were no grounds for the holding charge, and concluded that the applicant's prolonged detention violated his rights under Article 6 of the African Charter (the right to personal liberty). The Court ordered his release, and ordered Nigeria to pay damages to the applicant.

[**Link to full decision \(PDF\)**](#)

Kemi Pinheiro (San) v. the Republic of Ghana

6 July 2012, ECOWAS, Suit No. ECW/CCJ/APP/07/10, Judgment No. ECW/CCJ/JUD/11/12

Refusal to register non-national at law school: no violation of Peoples' right to self-determination (Article 20 of African Charter), Peoples' right to pursue economic and social development (Article 22 of African Charter), or right to establishment (Article 2 of ECOWAS Free Movement Protocol)

The applicant, a Nigerian national, sought to establish a branch of his law firm in Ghana. He claimed that he was denied acceptance to Ghana Law School because he was not of Ghanaian nationality. Despite the fact that other Nigerian and British citizens have been able to attend the school, a limitation was placed on the intake of foreigners in 2009 to clear a back log of Ghanaian applicants. He alleged violations of the rights of "Peoples" under the African Charter, specifically the right to self-determination (Article 20) and the right to pursue economic and social development (Article 22). He also claimed a violation of his right of establishment under the ECOWAS Supplementary Protocol on Free Movement, Right of Residence and Establishment. Ghana argued that the advertisement for the law school course was limited to Ghanaians, and that the violations he claims are not rights enjoyed by individuals.

The Court found that People's rights under the African Charter should be enjoyed collectively and not individually, and that claims brought by individuals for such right must thus be brought in their capacity as a Peoples' representative. Accordingly, the applicant could not invoke the rights of Peoples under the Charter because the individual right to be enrolled in Ghana Law School is not included in the Peoples' rights to self-determination or to pursue economic and social development. The Court then evaluated whether the applicant was able to bring a right of establishment claim under the Protocol on Free Movement. It held that while the refusal to internally implement a community protocol is a violation, the Protocol does not grant individuals standing to sue a member state for violations of Community obligations - only another member

state or the ECOWAS Commission may do so. Individuals are allowed direct access to the Court for actions against the Community or against member states for violations of human rights. Neither was the case here, and as such, the Court dismissed the claim on this count.

[Link to full decision \(PDF\)](#)

Femi Falana and Waidi Moustapha v. Republic of Benin, The Federal Republic of Nigeria and Republic of Togo

24 July 2012, ECOWAS, Suit No. ECW/CCJ/APP/10/07, Judgment No. ECW/CCJ/JUD/02/12

Denial of entry into Togo until election completed: no violation of right to freedom of movement (Article 12 of African Charter)

While travelling along a road linking Benin and Nigeria, the two applicants encountered several road blocks and check points. They identified themselves as lawyers travelling on business and were allowed to pass through, but observed other passengers and travelers being subjected to the officers' harassment and extortion. The applicants were allegedly kept at the Togolese border until after Togolese elections took place, which they claim prevented them from carrying out their duties in Togo. Their application sought a declaration that the respondents had no power to close borders and erect checkpoints in ECOWAS member states, by virtue of the ECOWAS Protocol on Free Movement, and orders to remove and prohibit reestablishing the road blocks and checkpoints.

The Court found *prima facie* evidence of human rights violations by the states of Benin, Nigeria and Togo in the case, and thus ruled the case admissible. Under Article 12 of the African Charter, the right to move freely is guaranteed in a particular state and does not apply to movement between community states, thus the Court found no violation under Article 12 of the Charter. The only restraint on the applicants' movement was at the Togolese border, and the Court held that the authorities' decision to restrict this was justified, because it was done on the grounds of internal security and Article 8 of the Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons provides for this exception. Consequently, the Court found no violation.

[Link to full decision \(PDF\)](#)

Socio-Economic Rights Accountability Project v. Federal Republic of Nigeria

14 December 2012, ECOWAS, General List No. ECW/CCJ/APP/09, Judgment No: ECW/CCJ/JUD/18/12

Failure to prevent environmental degradation from oil production: violation of state responsibility (Article 1 of African Charter) and Peoples' right to satisfactory environment for development (Article 24 of African Charter)

The applicant, a non-governmental organization registered in Nigeria, claimed that the Government was responsible for violations flowing from the degradation of the environment in the Niger Delta. The applicant contended that the Niger Delta, rich in resources, plants and wildlife had suffered decades of oil spills which destroyed the surrounding environment, reducing its farming and fishing productivity for local communities. The spills impacted the communities'

access to food and had a negative impact on their health. The applicant attributed the damage to the government's poor maintenance of infrastructure, human error, vandalism, oil theft and conflict leading to poverty. The applicant argued that as a result of these failures, the people of the Niger Delta were denied their rights to an adequate standard of living, clean water and environment, social and economic development, life, dignity, and human security. The applicant also claimed that the failure of the respondents to adequately remediate and address the environmental damage, their failure to monitor the human impact and continued denial of information to the community amounted to violations of the ICESCR, ICCPR and the African Charter. With respect to remedies, applicants sought pecuniary damages of one billion dollars and an order directing the state to hold the oil companies responsible for their complicity in their human rights violations. Nigeria argued that the Court could not consider claims under the ICESCR and the ICCPR, and that the claim was barred by the three year statute of limitations in Article 9(3) of the Court Protocol.

The Court held that although ECOWAS has not adopted a specific human rights instrument, the Court considers all international human rights treaties to which ECOWAS member states are parties in matters that come before it. The application of the three year statute of limitation depends on whether the case was based on isolated acts or on persistent and continuous omissions. Here, the failure of the state to prevent the damage and hold anyone accountable was a continuous one, and the Court found the application not to be time barred. The Court also held while there were laws regulating the oil industry and safeguarding the environment, these laws were not accompanied by concrete measures aimed at preventing damage, ensuring accountability or repairing the environmental harm that had occurred. Thus, Nigeria had violated Articles 1 (state responsibility) and 24 (Peoples' right to environment favorable for development) of the African Charter. However, the Court noted that the applicant had failed to identify a victim who should benefit from the compensation they claimed, and that granting compensation to individual victims would cause a serious problem in terms of justice, morality and equity within a large population. It therefore dismissed the applicant's claim for pecuniary compensation. It ordered Nigeria to take all effective measures within the shortest time possible to ensure restoration of the environment, prevent occurrence of further damage, and hold perpetrators of environmental damage accountable.

[**Link to full decision \(PDF\)**](#)

Simone Ehivet Gbagbo and Michel Gbagbo v. the Republic of Côte d'Ivoire

22 February 2013, ECOWAS, Suit No. ECW/CCJ/APP/18/11, Judgment No. ECW/CCJ/JUD/03/13

Detention during state of emergency without any contact with family: violation of right to be free from arbitrary detention (Article 6 of African Charter), right to movement and choice of residence (Article 12 of African Charter), moral health of the family (Article 18(1) of African Charter) and right to an effective remedy (Article 7(1) of African Charter)

On 28 November 2010, a post-election crisis shook Côte d'Ivoire, pitting supporters of former President Mr. Laurent Gbagbo against supporters of Mr. Alassane Ouattara. The violence against the civilian population reached a critical level, and Outarra enacted emergency legislation to maintain peace and security. Armed forces removed the applicants – the wife and son of former President Gbagbo – from the presidential residence and separated them, sending Simone to

Odienné and Michel to Bouna. There, despite his request that he be moved to location allowing for the preservation of his human dignity, Michel was held under house arrest and not permitted to communicate with his family. Simone argued that the state had persecuted her in violation of her parliamentary immunity. Michel argued that these actions violated his right to be free from arbitrary arrest and detention, freedom of movement and to choose residence, and moral health, and lack of an effective legal remedy, in violation of the UDHR, the African Charter, the Revised Treaty of ECOWAS, and the ECOWAS Protocol on Democracy and Good Governance, as well as Ivoirian domestic law. The state defended its actions on the ground that the security situation made it imperative for Outarra to issue an emergency decree. It also argued that the applicants were not denied an effective remedy because they had knowledge of the administrative remedies available and had the opportunity to contest the act. The applicants' arrests and detention were necessary to protect public order as well as the applicants' physical integrity. The state further argued that it could not be criticized for violating the provisions of the Protocol on Democracy and Good Governance because Côte d'Ivoire hasn't ratified it.

After the elections, Outarra invited the International Criminal Court (ICC) to investigate those involved in the post-election crimes, and that investigation is currently under way. The ECOWAS Community Court of Justice had previously suspended any proceedings concerning Simone Gbagbo until after the ICC proceedings. In this judgment, the Court found no reason to depart from its previous position to suspend those proceedings, and refrained from rendering any decisions that concerned Simone Gbagbo.

With respect to Michel, the Court found that the state did not comply with the proper procedures while derogating from its treaty responsibilities. The Ivoirian Constitution states that the president may take exceptional measures after consulting with the National Assembly and the Constitutional Council, and shall inform the nation with a message advertising this fact. The state did not consult with national leaders, nor did he notify any other parties to the ICCPR of its derogation as required under Article 4. The Constitutional Counsel was operational a month after the applicants had been arrested, and yet it had not been consulted. The Court thus held that the state did not act in accordance with the derogation principle under Article 4 of the ICCPR and Article 48 of the Ivoirian Constitution. In addition, under the African Charter, the prohibition on arbitrary arrest and detention is absolute, and derogations are not permitted. Thus, the state also violated Michel's Article 6 right to be free from arbitrary arrest and detention. In relation to the compulsory residence order, the Court found that Michel's right to movement and choice of residence (Article 12 of the ICCPR and Article 12 of the African Charter) had been violated, as the authorities did not respond to his request to be moved to a safer and more comfortable location. The state also violated Michel's right to moral health of the family under Article 18(1) of the African Charter, because it denied Michel any communication with his family and didn't inform him when he would be able to leave Bouna. Lastly, the Court held that Michel was not able access any available domestic remedies because he was held under house arrest during a political crisis, and rejected the state's argument that Michel was actually able to enter a compliant through the appropriate channels before a competent judge. He was therefore denied his right to an effective remedy under Article 7(1) of the African Charter.

[Link to full decision \(PDF\) \(French\)](#)

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Human Rights Case Digests: Community Court of Justice of West African States (ECOWAS) July 2013