**LIMITS OF PERSONA JURISDICTION—PERSPECTIVE OF ECOWAS COURT OF JUSTICE**

**PRESENTED BY FRANCA OFOR**

**INTRODUCTION**

1. The Economic Community of West African States (ECOWAS) was set up to promote cooperation and integration in the West African sub region. It is a union of 15 West African States into a single community.

2. The aim of the Union as provided under Article 3 (1) of the Revised ECOWAS Treaty is to promote cooperation and integration leading to the establishment of an economic union in West Africa in order to raise the living standards of its people and at the same time enhance economic stability, foster relation among Member States and contribute to the progress and development of the African continent.

3. In furtherance of the stated aim, the Economic community of West African States adopted fundamental principles under Article 4 of the Treaty. Article 4(g) of the Treaty guarantees its peoples:

***“The recognition, promotion and protection of human and people’s rights in accordance with the provisions of the African Charter on Human and Peoples Rights.”***

4. Some of the most important achievements of ECOWAS include the adoption of the Protocols on free movement of persons, Goods and residence, and the Protocol on Democracy and good governance. The Free Movement Protocol aims to eradicate obstacles to free movement of persons and goods within the sub-region and in so doing allow free flow of goods, capital, labour and services within the sub region. The protocol on democracy and good governance having spelt out the importance of independence of the judiciary and legal profession, proposed for the enlargement of the powers of the Court to allow individuals direct access to it.

**THE COMMUNITY COURT OF JUSTICE OF ECOWAS**

5. The Community Court of Justice, ECOWAS, established pursuant to the provisions of Articles 6 and15 of the Revised Treaty of ECOWAS is the sole judicial organ of the community. The court comprises of seven judges drawn from the judiciary academia and legal practitioners of the Member States.

The preamble to the Courts Protocol provides:-

“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, 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”

6. The jurisdiction of the Court at inception was as contained in Articles 9 of the 1991 protocol of the court. Under this provision, the court has no specific human rights mandate and only the Member States and Institutions of ECOWAS have direct access to it. Private individuals or corporations do not have direct access to it.

7. This limitation had two-fold effect. On the one hand it rendered the court almost redundant and on the other hand it limited the citizens’ access to justice as individuals can only access the court if represented by their Member State. The first cases heard by the court were filed by individual and struck out for want of jurisdiction. For a long time there after the court remained idle as no Member State nor institution filed actions before it.

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

9. The 1991 Protocol of the Court under Article 26(2) allows it to sit outside its seat when the circumstances demand.

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**HUMAN RIGHTS MANDATE OF THE COURT**

10. Article 3 of the Supplementary Protocol A/SP.1/01/05 deleted Article 9 of Protocol A/P1/7/91 and substituted same with a new Article 9

Article 9(4) vests the court with powers to determine**“** cases of violation of human rights that occur in any member state”

11. A new Article 10 was also introduced which provides under Article 10(d) for access to the Court to be open to individuals on application for relief for violation of their human rights provided the application is not anonymous, nor made whilst the same matter has been instituted before another International Court for adjudication.

12. Article 19 of the 1991 protocol of the court provides for the application by the court of the body of laws contained in Article 38 of the Statute of the International Court of Justice.

13. The court thus applies international human rights instruments to which member states are party especially the Universal Declaration of Human Rights and two basic United Nations human rights instruments covering economic social and cultural rights and civil and political rights.

**PERSONAL JURISDICTION**

14. As can be seen from the provisions of the Protocol above, individuals have direct access to the court and no reference to the requirement of exhaustion of local remedy as a condition for the access to the court was made in the Protocols. This is a unique characteristic of ECOWAS Court which has held repeatedly that the requirement for exhaustion of local remedy is not a precondition for individual’s access to it.

15. The land mark case on this issue is the Courts decision in Musa Saidy Khan VS The Gambia (2010) CCJELR 115 where the defendant objected to the courts competence to hear the case for non exhaustion of local remedies by the applicant placing reliance on the provisions of Article 50 of the African charter and the ECOWAS protocol on democracy and good governance in which the court touched on all areas of objections raised by parties on this issue of non exhaustion of local remedies.

i. That the provision of a statute cannot be ousted by implication and that though there is a rule of customary international law in support of exhaustion of local remedies, that rule is not inflexible since it can be legislated away or compromised by parties

ii. That the Protocol on Democracy and good governance was earlier in time than the 2005 Supplementary Protocol which granted access to the court to individuals without providing for the pre-condition of exhaustion of local remedies

iii. That even if the Protocol on Democracy and good Governance came into force at the same time as the 2005 Supplementary Protocol, the Supplementary Protocol provisions will take precedence over the provisions of the protocol on democracy and good governance in that it was made specifically for the court.

iv. That Article 50 of the African charter, which mandates the African commission to admit cases only after the exhaustion of local remedies is inapplicable to this court being a directive meant only for the African Commission.

16. In Hadijatou Mani Karaou (2004 CCJELR) 228 where the issue was as to whether or not the non-inclusion of the precondition for exhaustion of local remedies was a lacunae which the court has to fill, the court made an exhaustive analysis of Article 4(g) of the Revised Treaty of ECOWAS vis à vis Article 56 of the African charter and concluded that the modalities for the protection and promotion of human rights by the ECOWAS court must not be those provided for by the African charter in that a distinction must be made between the setting out of the fundamental principles of the charter and the modalities for implementing such rights. It then held that the absence of the requirement for preliminary exhaustion of local remedies in article 10(d) is not a lacuna which must be filled within the practice of the court for the court cannot impose on individuals more onerous conditions and formalities than those provided for by the texts without infringing on the rights of such individuals.

17. On proper parties to be sued in human rights cases brought before it the court in Peter David v Uwechue (2010 CCJELR) 223 held that it will be wrong to assume that since there is no delimitation in the law as to which cases of abuse it can hear, any violation no matter the perpetrator can be heard by the court. It went on to state that for disputes between individuals on alleged violations of human rights, the proper venue is the domestic courts of the member state where the violation occurred and it is only where there is no appropriate and effective forum for redress that the victim can bring an action against the member state for failure to ensure the protection and respect of the rights allegedly violated.

18. In SERAP V The President of the Federal Republic of Nigeria and 8ors (2010 CCJELR) it held that only member states and institutions of the community can be sued before it for human rights violations.

See also CDD & Anor V Mamadou Tandja 2011 CCJELR103 where the Court held that it cannot adjudicate over abuses filed against natural persons

19. In National Coordinating Groups of cocoa (2004-2009 CCJELR) where the objection was based on the fact that the Applicant is a body corporate and so has no access to the court in human rights violation cases the court held referring to Article 10(d) that“ the said text talks of “toute personne victim without stating whether it is a question of natural person or legal person, That article 10(d) of the 2005 Supplementary Protocol must be interpreted in accordance with the spirit and letter of article 1(h) of Protocol A/SP1/12/01 of 21st December, 2001 on Democracy and Good governance which advocates for corporate persons accessing the court for human rights violations.

20. In Starcrest Investment V President ECOWAS (2011 CCJELR) 165 the court held that by granting access to both individuals and corporate bodies in Article 10(c) and failing to mention both in 10(d), the authority clearly intended to exclude corporate bodies from the purview of human rights cases.

21. In Ocean king Vs Senegal (2011 CCJELR) 139 the court pointed out that a corporate body cannot file an action before the court under article10(d) of the supplementary protocol, since human rights is human centered but went on to state that since the complaint is based on alleged denial of right to fair hearing which is a fundamental right, this court will entertain such application even if it is based on its inherent jurisdiction.

22. As an exception to the strict rule of locus standi and the exclusion of corporate bodies from instituting action under article 10(d) of the protocol, the court has acknowledged the possibility of public interest litigations being maintained before it.

23. In SERAP V President FRN & UBEC (2010) CCJELR p.199 and also in SERAP V President, FRN and 8 Ors (2010) CCJELR p. 249 the court held the view that an NGO duly constituted can file action on behalf of victims of abuse and all they need to show is that there is a public right worthy of protection

24. In CDD V Tandja (2011) CCJELR p. 115 the court went round its position in SERAP and held that though the applicants can access the court for human rights abuses, they could not do so in that instant case as the decisions taken by Tandja which is the object of their complaint has effect only on citizens and residents of Niger and the Applicants being neither citizens of Niger nor resident in Niger cannot be classified as victims as the rights complained of are not for corporate bodies.

**OBSTACLES TO INDIVIDUAL ACCESS**

25. Though the Court’s Protocol has given individuals direct access to it, several factors interplay to hinder that access to individuals among which are poverty and lack of knowledge.

26. The location of the Court and the attendant problems of transportation across the Member States also pose problems which militate against the people’s utilization of the Court.

27. This problem is being reduced by the utilization of the provision in the Court’s Protocol (Article 26 (2)) whereby the Court can sit outside the seat of the Court. This is however constrained by budget provisions as the court is allowed only two such sittings in a year.

28. The court is currently exploring means of enhancing individuals’ access to it through the creation of a legal aid fund by the Community, encouraging the Bar Associations to promote the practice of pro bono litigation by legal practitioners and the creation of sub-registries of the court in Member States to facilitate filing of applications by litigants.

29. An awareness program within the Member States is in place whereby staff members of the court engage in various sensitization activities in Member States in form of conferences, seminars and radio and television programs.

30. We are convinced that if adequate awareness of the court is created among the citizens and access is facilitated, the court will greatly contribute in bringing about peace and stability in the sub region.

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