

AMNESTY INTERNATIONAL

Public Statement

AI Index: AFR 05/005/2009
28 September 2009

West Africa: Proposed amendment to ECOWAS Court jurisdiction is a step backward

We are concerned about reports of a proposed amendment to limit access of victims of human rights violations to the Economic Community of West African State (ECOWAS) Court of Justice, and consider this to be a step backward in the fight against impunity in Africa.

The Technical Committee on Judicial and Legal Affairs of the ECOWAS is expected to meet in Abuja, Nigeria, from 28 September to 3 October 2009 to discuss a proposal by The Gambian government to amend Articles 9(4) and 10(d) of the Supplementary Protocol A/SP.1/01/05 of the Community Court of Justice, which grants direct access to the Court in cases involving violation of human rights, making the rule of exhaustion of domestic remedies not applicable before the Court.

The principle of direct access to the ECOWAS Court must be retained if the Court is to continue to apply human rights norms to effectively redress human rights violations in ECOWAS member states' territories, and if victims are not to be denied an effective remedy.

Article 9(4) of the Supplementary Protocol empowers the Court to determine cases of violation of human rights that occur in any Member State while Article 10(d) allows individuals to apply for relief in the Court for violation of their human rights provided the petitions for relief are not anonymous, and have not been presented to another international court.

However, the Gambian government is now proposing an amendment to include a third condition of admissibility of a petition to the ECOWAS Court to the effect that all local remedies within national jurisdiction should be exhausted before victims can approach the Court.

We are concerned that the Gambian government's proposal is based on political considerations rather than the need to achieve a functional, accessible and effective human rights court.

While the principle of exhaustion of domestic remedies and subsidiarity of human rights protection by international mechanisms is longstanding, it has evolved over time. As a result, interpretation of the rule of exhaustion of domestic remedies has been very flexible and progressive. Therefore, there is nothing to prevent states from waiving the benefit of the rule of exhaustion of domestic remedies.

We believe that reversing the decision to grant direct access to the Court will be retrogressive and undermine the ability of the Court to render justice in genuine cases of human rights violations. The Court's practice and jurisprudence has demonstrated that the Court will not allow abuse of its process and jurisdiction.

Through its pronouncements and judgements, the Court has made an important contribution to the development and protection of human rights in the sub-region, and to holding ECOWAS governments accountable to their human rights obligations. In July 2008 the Court ordered the Gambian government to release Chief Ebrima Manneh, a former reporter from the Daily Observer who was arrested in 2006, and to pay him USD 100,000. The Gambian government however ignored the ruling and continues to deny that Chief Manneh is in custody.

We consider that Chief Manneh was subjected to enforced disappearance. We also believe that the initiative of The Gambia, to restrict the jurisdiction and access to the Court, is related to the findings of the Court in the Chief Manneh case.

In another landmark case in October 2008 the Court ordered the Niger government to pay reparations to a woman who had been kept as a domestic and sexual slave for a decade. The woman had filed a complaint against the Niger government for failing to implement existing laws against slavery.

The Community Court of Justice is the principal legal organ of ECOWAS and its main function is to ensure the observance of law and justice in the interpretation and application of the Revised Treaty of ECOWAS and the Protocols and Conventions annexed to it.

We believe now is the time to demonstrate ECOWAS member states' commitment to the promotion and protection of human rights, as elaborated in Article 4(g) of its Revised Treaty (1993).

We therefore call on the member states of the ECOWAS to reject the proposed amendment by The Gambia, and to ensure that the jurisdiction of the Court is not eroded in any way with regard to the adjudication of human rights cases from the sub-region. It is crucial that the ECOWAS member states are not used as a mechanism to advance an agenda so at odds with the fundamental goals of the ECOWAS. All ECOWAS member states that value the ideals of accountability and justice must make every effort to avoid this from happening.

Signed

Access to Justice - Nigeria

Action des chrétiens pour l'abolition de la torture - Bénin (ACAT-Benin)

Amnesty International

Centre for the Rule of Law - Nigeria

Civil Society Legislative Advocacy Centre (CISLAC)

Coalition béninoise pour la Cour pénale internationale

Coalition guinéenne des Organisations des Droits de l'Homme

Coordination guinéenne du Forum des Organisations de la Société Civile de l'Afrique de l'Ouest (FOSCAO/Guinée)

Collectif des associations contre l'impunité au Togo (CACIT)

Committee for Defence of Human Rights - Nigeria

Darfur Consortium

Mouvement Burkinabè des Droits de l'Homme et des Peuples (MBDHP)

Mouvement Ivoirien des Droits Humains (MIDH) Côte d'Ivoire
National Association of Democratic Lawyers - Nigeria
Nigerian Bar Association Human Rights Institute (NBA HRI)
Organisation Guinéenne de défense des Droits de l'Homme et du citoyen (OGDH)
Partnership for Justice - Nigeria
Rencontre africaine pour la défense des droits humains (RADDOH)
Réseau des Organisations pour la transparence et l'analyse budgétaire (ROTAB)/
Publiez ce que vous payez (PCQVP) - Niger
Réseau Ouest Africain des Défenseurs des Droits de l'Homme (ROADDH) / West Africa
Human Rights Defenders Network (WAHRDN)
Socio-Economic Rights & Accountability Project (SERAP)
West African Bar Association (WABA)
Women Advocates Research and Documentation Centre (WARDC)

/ENDS