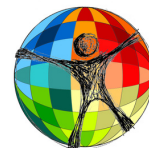


VOL. 11 | NO. 1 | SUMMER 2022

An Analysis of the ECOWAS Community Court of Justice's Treatment of Right to Life Claims from 2015–2022

Cassandra Betts

McGill Centre for
Human Rights
and Legal Pluralism



Centre sur les droits de la
personne et le pluralisme
juridique de McGill



McGill FACULTY OF
Law

ABOUT CHRLP

Established in September 2005, the Centre for Human Rights and Legal Pluralism (CHRLP) was formed to provide students, professors and the larger community with a locus of intellectual and physical resources for engaging critically with the ways in which law affects some of the most compelling social problems of our modern era, most notably human rights issues. Since then, the Centre has distinguished itself by its innovative legal and interdisciplinary approach, and its diverse and vibrant community of scholars, students and practitioners working at the intersection of human rights and legal pluralism.

CHRLP is a focal point for innovative legal and interdisciplinary research, dialogue and outreach on issues of human rights and legal pluralism. The Centre's mission is to provide students, professors and the wider community with a locus of intellectual and physical resources for engaging critically with how law impacts upon some of the compelling social problems of our modern era.

A key objective of the Centre is to deepen transdisciplinary collaboration on the complex social, ethical, political and philosophical dimensions of human rights. The current Centre initiative builds upon the human rights legacy and enormous scholarly engagement found in the Universal Declaration of Human Rights.

ABOUT THE SERIES

The Centre for Human Rights and Legal Pluralism (CHRLP) Working Paper Series enables the dissemination of papers by students who have participated in the Centre's International Human Rights Internship Program (IHRIP). Through the program, students complete placements with NGOs, government institutions, and tribunals where they gain practical work experience in human rights investigation, monitoring, and reporting. Students then write a research paper, supported by a peer review process, while participating in a seminar that critically engages with human rights discourses. In accordance with McGill University's Charter of Students' Rights, students in this course have the right to submit in English or in French any written work that is to be graded. Therefore, papers in this series may be published in either language.

The papers in this series are distributed free of charge and are available in PDF format on the CHRLP's website. Papers may be downloaded for personal use only. The opinions expressed in these papers remain solely those of the author(s). They should not be attributed to the CHRLP or McGill University. The papers in this series are intended to elicit feedback and to encourage debate on important public policy challenges. Copyright belongs to the author(s).

The WPS aims to meaningfully contribute to human rights discourses and encourage debate on important public policy challenges. To connect with the authors or to provide feedback, please contact human.rights@mcgill.ca.

ABSTRACT

Although not originally envisioned as a human rights court, the Economic Community of West African States (ECOWAS) Court of Justice has, over the past two decades, gained significant powers to fulfill a human rights mandate and hear cases relating to infringements of the rights guaranteed by the African Charter on Human and People's Rights. Article 4 of the African Charter outlines the right to life, a foundational human right that is recognized in some form or another by all significant human rights instruments across the globe. This paper examines how the ECOWAS Court has interpreted Article 4 in its jurisprudence from 2015–2022, by surveying all 193 cases publicly available on the ECOWAS website and completing an in-depth analysis on the 38 cases that treat the right to life. I first contextualize the case analyses by examining the different global interpretations of the right to life and the ECOWAS Court's history and procedure. I then conduct a qualitative and quantitative analysis of the 38 right to life cases to extract data on: successful vs unsuccessful claims; the reasons cases fail; the categorization of behaviours that elicit a complaint; the states who are the alleged perpetrators of Article 4 violations; the monetary and non-monetary remedies that the court is willing to order; and the time it takes for a decision to be reached. The goal of this paper is to provide insights on the ECOWAS Court's process, reasoning, and outcomes that will be useful to future litigants and academics.

CONTENTS

INTRODUCTION	6
SECTION I: BACKGROUND AND HISTORY ON THE RIGHT TO LIFE AND THE ECOWAS COURT	7
SECTION II: QUALITATIVE AND QUANTITATIVE ANALYSIS OF ARTICLE 4 CLAIMS BROUGHT TO THE ECOWAS COURT	17
CONCLUSION	33
BIBLIOGRAPHY	35
APPENDIX	41

Introduction

“The right to life is universally recognised as a foundational human right. It is guaranteed by Article 4 of the *African Charter* and all of the other main global and regional human rights instruments. The right not to be arbitrarily deprived of one’s life is recognised as part of customary international law and the general principles of law, and is also recognised as a *jus cogens* norm, universally binding at all times. The right to life is contained in the constitutions and other legal provisions of the vast majority of African and other States. All national legal systems criminalise murder, and arbitrary killings committed or tolerated by the State are a matter of the utmost gravity.”

General Comment No. 3 on the Right to Life, November
28 2015.¹

“[We, the Heads of State and Government of the Member States of the Economic Community of West African States (ECOWAS)], in pursuit of the objectives stated in Article 3 of this Treaty, solemnly affirm and declare their adherence to the following principles: recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the *African Charter on Human and Peoples' Rights*.”

*Revised Treaty of the Economic Community of West
African States*, 24 July 1993.²

When the Economic Community of West African States (ECOWAS) was created in 1975, no one would have predicted

¹ General Comment No. 3 on the Right to Life, Adopted During the 57th Ordinary Session of the African Commission on Human and Peoples’ Rights held from 4 to 18 November 2015 in Banjul, The Gambia, para 26.

² *Revised Treaty of the Economic Community of West African States*, 24 July 1993, art 4(g).

that it would become one of the most important judicial regional human rights instruments in the world. It did not even have a functioning court, let alone a court that was open to private citizens of all member states. Yet today, the ECOWAS Court hears more human cases per year than the African Commission, allows individuals to bring claims without exhausting local remedies and has greatly contributed to the body of jurisprudence that deals with the rights guaranteed by the *African Charter on Human and People's Rights*. Despite its substantial impact, there has been little analysis on ECOWAS Court decisions. This paper will attempt to fill that gap and explore how the ECOWAS Court treats the right to life, one of the most fundamental and widely recognized human rights. In the first part I will contextualize this research, providing insight into the different interpretations of the right to life and the ECOWAS Court's history and procedure. In the second part, I will conduct a case analysis of all the ECOWAS Court decisions in the past seven years that treat the right to life, hoping to provide insights on the ECOWAS Court's reasoning and process that will be useful to future litigants and academics.

Section I: Background and History on the Right to Life and the ECOWAS Court

A. *The Scope of the Right to Life in International Human Rights Law*

Article 4 of the *African Charter on Human and Peoples' Rights* reads: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."³ The right to life shows up in some form or another in most significant human rights instruments across the globe. The *Universal Declaration of Human Rights* simply states that "everyone has the right to life, liberty and security of the person."⁴ The European Convention is more complex, with two sub-sections articulating the parameters of this

³ *African Charter on Human and Peoples' Rights*, OAU Doc CAB/LEG/67/3, rev 5, 27 June 1981, art 4 [ACHPR].

⁴ *Universal Declaration of Human Rights*, New York: United Nations General Assembly, art 3 [UDHR].

paramount right. Article 2.1 states “Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.” Article 2.2 states: “Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: a) in defence of any person from unlawful violence; b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c) in action lawfully taken for the purpose of quelling a riot or insurrection.”⁵ The American Convention is even more extensive. Article 4.1 states that “every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.” The rest of the article (4.2-4.6) deals with the death penalty and under what circumstances its administration will be acceptable.⁶

Even from this brief comparison of human rights instruments, we can see that the right to life is often treated differently in different jurisdictions. Some articles tend to emphasize the role that capital punishment plays in the right to life, while others combine the right to life with others proximate concepts, such as the integrity of the person in the *African Charter* and liberty and security of the person in the UDHR. Despite these nuances, it is still striking that, across international and regional instruments, the right to life is placed front and centre. There is much academic discussion about whether there is a hierarchy of human rights, and if so, which rights should be placed at the top.⁷ In any ranking system, however, the right to life has a secure spot in the upper echelon of rights.⁸ Without the respect of the right to life, other

⁵ *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, Council of Europe, 4 November 1950, art 2 [ECHR].

⁶ *American Convention on Human Rights*, Treaty Series, No. 36, Organization of American States, 1969, art. 4 [ACHR].

⁷ See Tom Farer, “Conference on Human Rights, Public Finance, and the Development Process: The Hierarchy of Human Rights” (1992) 8:1 *Am U J Intl L & Pol’y* 115 at 115.

⁸ See Amitai Etzioni, “Life: The Most Basic Right” (2010) 9:1 *J Hum Rts* 100 at 100.

An Analysis of the ECOWAS Community Court of Justice's
Treatment of Right to Life Claims from 2015–2022

rights cannot be realized. The African Commission seems to agree, calling Article 4 “the fulcrum of all other rights,” the “supreme right of the human being,” and “the foundation, or bedrock human right.”⁹

While this could give the impression that the content and status of the right to life is clear-cut, this is far from the case. The right to life can be treated narrowly, as a negative right that forbids states or individuals from arbitrarily depriving someone of their life, or it can be broadened to encompass a host of social and economic rights and transformed into an obligation of the state to provide, to an extent, the necessary elements to live and thrive in a society. When examining the right to life in the *African Charter*, its meaning is deepened and informed by other documents that make up the African Human Rights system. For example, the *Protocol on the Rights of Women in Africa* associates the right to life with the right to security of the person, which is covered in Article 5 of the *African Charter*.¹⁰ Linking right to life and security of the person is reminiscent of the way this right is treated in the UDHR. The *African Charter on the Rights and Welfare of the Child* states that “Parties to the present Charter shall ensure, to the maximum extent possible, the survival, protection and development of the child.”¹¹ In this instance, the right to life is tied to survival and development, and expands into a socio-economic obligation of a state to create the conditions where children can survive and, if not prosper, at least reach a certain minimum level of development.¹² African Commission jurisprudence acknowledges the breadth of the interpretation that has historically been given to the right to life. In *Sudan Human Rights Organisation, Centre on Housing Rights and Evictions v. The Sudan*, it wrote “The right to life is the supreme right of the human being. It is basic to all human rights and without it all other rights are without meaning. The term ‘life’ itself has been given a relatively broad interpretation by courts internationally, to include

⁹ Rachel Murray, *The African Charter on Human and Peoples’ Rights: A Commentary* (Oxford: Oxford University Press, 2019) at 102.

¹⁰ *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, African Union, 11 July 2003, art. 4(1).

¹¹ *African Charter on the Rights and Welfare of the Child*, Organization of African Unity, 11 July 1990, CAB/LEG/24.9/49 (1990), art. 4(2).

¹² See Murray, *supra* note 9 at 101.

the right to dignity and the right to livelihood.”¹³ By surveying the way Article 4 has been treated in ECOWAS jurisprudence, we will be able to have a better understanding of what Article 4 and the right to life means to this court. We will be able to observe the other rights it is primarily linked to, what sort of infractions amount to a violation of the right to life, who the primary offenders are, and what remedies this court has deemed acceptable to repair this grave violation.

B. Options for Applicants Who are Party to a Right to Life Infringement

Victims, family members or other proximate claimants to an individual who has suffered a right to life violation in West Africa who want to take their case to a judicial body have three options: the African Commission on Human and Peoples’ Rights, the African Court on Human and Peoples’ Rights (ACtHPR), or the ECOWAS Court. The African Commission is the most long-standing and well-established human rights body in the region. The *African Charter*, the document that outlines the rights that all three bodies interpret, was adopted in 1981 and came into force in 1986 once it was ratified by a majority of the members of the Organization of African Unity (now the African Union).¹⁴ The Commission became operational the moment the Charter came into force and has been offering recommendations in cases from its permanent seat in The Gambia for the past thirty-six years.¹⁵ The Commission’s mandate is to protect and promote human and peoples’ rights through: collecting documents; undertaking studies and research on African problems in the field of human and peoples’ rights; organizing seminars; disseminating information; encouraging national and local institutions to comply with human

¹³ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions v Sudan*, Comm. 279/03, 296/05, 28th ACHPR AAR Annex (Nov 2009-May 2010).

¹⁴ See Frans Viljoen, “Understanding and Overcoming Challenges in Accessing the African Court on Human and Peoples’ Rights” (2018) 67:1 ICLQ 63 at 63.

¹⁵ See “Fact Sheet: African Commission on Human and Peoples’ Rights” (June 2013), online: Open Society Justice Initiative <justiceinitiative.org/publications/african-commission-human-and-peoples-rights>.

An Analysis of the ECOWAS Community Court of Justice's
Treatment of Right to Life Claims from 2015–2022

rights standards and; giving recommendations to Governments.¹⁶ One of the core ways it fulfills its mandate is by issuing recommendations in response to complaints brought by individuals or NGOs that have Observer Status. These recommendations are non-binding; however, they still carry great weight within the African human rights system, especially because of all the challenges associated with bringing a case to the ACtHPR.

ACtHPR has historically played a limited role in the regional human rights landscape on the African continent. Although it was established in 1998, it did not begin functioning until judges were elected in 2006.¹⁷ It was envisioned not as a stand-alone body but rather as a compliment to the African Commission, where the Commission could refer contentious matters to the court so that it could issue a binding decision instead of the non-binding recommendations that are handed down by the Commission.¹⁸ In practice, however, the majority of cases reach the ACtHPR by way of direct application and not via the Commission. Direct application is when an individual or NGO with Observer Status brings a case straight to the ACtHPR without first going through the Commission. The nuance to this, however, is that people can appeal directly to the Court only in instances where the State party from which they come from has made a declaration allowing such direct applications.¹⁹ In practice, only seven states, Burkina Faso, Malawi, Mali, Tanzania, Ghana, Côte d'Ivoire, and Benin, currently have such a declaration in place.²⁰ For the individuals who reside in one of the forty-seven AU member states who do not have direct access to the Court, they are left with the option of going through the Commission or, for those who are part of West Africa, the ECOWAS Court.

¹⁶ See ACHPR, *supra* note 3, art 45.

¹⁷ See Vilijoen, *supra* note 14 at 64.

¹⁸ See *ibid.*

¹⁹ "FAQs" (last visited 17 August 2023), online: African Court on Human and Peoples' Rights, <african-court.org/wpafc/faqs/#1587290821799-bee84233-8266>.

²⁰ See Vilijoen, *supra* note 14 at 65.

C. *History and Function of the ECOWAS Court*

The Economic Community of West African States (ECOWAS) was formed in 1975.²¹ It was initially created with the aim of promoting economic cooperation and integration within West Africa and comprised former British, French and Portuguese colonies, and Liberia.²² Fifteen West African countries signed the *Treaty of the Economic Community of West African States* in 1975 to create ECOWAS, and membership has been consistent ever since, with no nations leaving or joining.²³ These countries are: Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. The region is home to 386.9 million people and had a GDP of 816.4 billion USD in 2019. Huge levels of growth are expected over the next couple decades, with the population being projected to reach 982.2 million by 2043 and GDP being forecasted to reach 2.8 trillion by the same date.²⁴

Originally, ECOWAS was primarily an economic project.²⁵ The 1975 *Treaty* states that the organization's aim is to "promote co-operation and development in all fields of economic activity particularly in the fields of industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial questions and in social and cultural matters for the purpose of raising the standard of living of its peoples, of increasing and maintaining economic stability, of fostering closer relations among its members and of contributing to the progress and development of the African continent."²⁶ In the 1990s,

²¹ See Christof Hartmann, "ECOWAS and the Restoration of Democracy in the Gambia" (2017) 52:1 Afr Spectrum 85 at 88.

²² See *ibid.*

²³ *The 1975 Treaty of the Economic Community of West African States*, Economic Community of West African States (ECOWAS), 28 May 1975 [1975 *Treaty*].

²⁴ See Enoch Randy Aikins, "West Africa/ECOWAS" (2 December 2022), ISS African Futures, online: <futures.issafrica.org/geographic/regions/west-africa-ecowas/#cite-this-research>.

²⁵ See Aguibou Yansane, "The State of Economic Integration in North West Africa South of the Sahara: The Emergence of the Economic Community of West African States (ECOWAS)" (1977) 20:2 Afr Stud Rev 63 at 74.

²⁶ 1975 *Treaty*, supra note 23, art 10.

An Analysis of the ECOWAS Community Court of Justice's
Treatment of Right to Life Claims from 2015–2022

however, ECOWAS began to take on a more political role in response to growing domestic conflicts in the region.²⁷ First, member states endeavoured to create a community court with the adoption of *Protocol A/P.I/7/91 on the Community Court of Justice* in 1991.²⁸ Although the *1975 Treaty* had a provision that allowed for the establishment of a Tribunal of the Community, no member states seemed keen to set one up until the Protocol of 1991.²⁹ Even then, it took another ten years for the Community Court of Justice (ECCJ) to finally be constituted in 2000, and it only became functional once judges were appointed in 2001, sixteen years after it had initially been envisioned.³⁰ The 2001 ECOWAS Court was a far cry from the one we know today; it only had the competence to deal with disputes that arose between member states on issues such as the free movement of people, trade liberalisation, and agricultural cooperation.³¹ Despite this, having a working court was an important step towards ECOWAS integration.

Within the same time period, ECOWAS was making more moves to become a political and human rights organization as opposed to merely an economic one. The adoption of *The ECOWAS Revised Treaty*, which was ratified in 1993, ushered in a new era of regional integration.³² The community began to introduce a number of protocols that would grant ECOWAS members expanded powers to intervene in areas such as conflict prevention,³³ democracy and good governance,³⁴ and electoral

²⁷ See Hartmann, *supra* note 21 at 88.

²⁸ *Protocol A/P.I/7/91 on the Community Court of Justice*, ECOWAS, 6 July 1991 [ECOWAS Court Protocol].

²⁹ See *1975 Treaty*, *supra* note 23, art 11.

³⁰ See Solomon T Ebobrah, "Critical Issues in the Human Rights Mandate of the ECOWAS Court of Justice" (2010) 54:1 J Afr L 1 at 1.

³¹ See Karen J Alter, Laurence R Helfer & Jacqueline R McAllister, "A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice" (2013) 107:4 AJIL 737 at 746.

³² See *Revised Treaty of the Economic Community of West African States*, 24 July 1993 [Revised Treaty].

³³ See *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security*, 10 December 1999.

³⁴ See *Protocol on Democracy and Good Governance* (A/SP1/12/01), 21 December 2001 [Protocol on Democracy].

observation and monitoring by other member states.³⁵ The 2001 *Protocol on Democracy and Good Governance* was particularly significant in expanding the human rights mandate of the ECOWAS Court. In article 39 of the *Protocol on Democracy and Good Governance*, member states vowed to review the Court's constituting document in order to "give the Court the power to hear, inter-alia, cases relating to violations of human rights, after all attempts to resolve the matter at the national level have failed."³⁶ This revision was finally codified in 2005 with the adoption of the *Supplementary Protocol*, which amends the *Protocol on the Community Court of Justice* so that access to the Court is open to "individuals on application for relief for violation of their human rights."³⁷ The ECOWAS Court has therefore evolved to take on four different roles: that of an administrative tribunal for ECOWAS, a court of arbitration, an Inter-State dispute resolution tribunal, and a human rights court.³⁸ It is its role as a human rights court, specifically its role as a right to life interpreter, that will be analyzed here.

D. *Procedure to Bring a Human Rights Case to the ECOWAS Court*

ECOWAS has some procedural peculiarities that make it an attractive option for victims of human rights violations who are seeking justice. One is that individuals do not have to exhaust local remedies before filing a complaint with the ECOWAS

³⁵ See *ibid*, s 2; Revised Treaty, *supra* note 32, art 58.2(g).

³⁶ *Protocol on Democracy*, *supra* note 34, art 39.

³⁷ *Supplementary Protocol A/SP.1/01/05 Amending the Preamble and Articles 1, 2, 9, 22 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Said Protocol*, ECOWAS, 19 January 2005, art 4(d) [*Supplementary Protocol*].

³⁸ See "Fact Sheet: ECOWAS Community Court of Justice" (June 2013), online: Open Society Justice Initiative <justiceinitiative.org/publications/ecowas-community-court-justice#:~:text=Under%20Article%2024%20of%20the,according%20to%20its%20national%20courts.>.

An Analysis of the ECOWAS Community Court of Justice's
Treatment of Right to Life Claims from 2015–2022

Court.³⁹ Neither the African Commission,⁴⁰ the ECtHR,⁴¹ or the IACtHR,⁴² will accept cases unless all local remedies have been exhausted. In the case of the African Commission, this requirement is softened due to the wording of Article 50 of the ACHPR, which provides that “The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.”⁴³ Despite this discretionary power granted to the Commission, many cases still fail on the grounds of failure to exhaust local remedies.⁴⁴ Requiring the exhaustion of local remedies can also increase the time it takes for victims to be granted justice as they will have to go through long, potentially onerous local processes and before even being allowed entry to the international system.

Secondly, decisions from the ECOWAS Court are in theory binding.⁴⁵ This is in contrast to decisions of the African Commission, which are framed as “recommendations” and are non-binding. The binding nature of these decisions, however, has been challenged. In 2016, the High Court of Accra, Ghana ruled that decisions of the ECOWAS Court cannot be enforced in Ghana because the country has not implemented domestic legislations to incorporate the Protocols of the ECOWAS Court.⁴⁶ Even without a ruling by a national court, many ECOWAS members simply do not implement ECOWAS decisions. There is currently no

³⁹ See Ebobrah, *supra* note 30 at 9.

⁴⁰ See ACHPR, *supra* note 3, art 50.

⁴¹ See ECHR, *supra* note 5, art 35(1).

⁴² See *Rules of Procedure of the Inter-American Commission on Human Rights*, 137th Sess, 28 October-13 November 2009, art. 31(1) (entered into force 1 August 2013); see ACHR, *supra* note 3, art 46(1)(a) [IACtHR].

⁴³ ACHPR, *supra* note 3, art 50.

⁴⁴ See Nsongurua J Udombana, “So Far, So Fair: The Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples’ Rights” (2003) 97:1 AJIL 1 at 14.

⁴⁵ See Adewale Banjo, “The ECOWAS Court and the Politics of Access to Justice in West Africa” (2007) 32:1 Afr Dev 69 at 75.

⁴⁶ See Kehinde Ibrahim, “The Puzzling Paradox Presented within the African Supranational Judicial Institutions: The ECOWAS Court of Justice” (2020) 28:Supplement Afr J Int'l & Comp L 86 at 86.

mechanism in place to force compliance, and the difficulty of enforcement remains a problem not just with ECOWAS rulings but with Commission decisions as well.⁴⁷

Thirdly, the ECOWAS Court does not have a time limit within which an individual must file a complaint. This makes the ECOWAS Court much more accessible for victims than human rights mechanisms such as the ECtHR, which requires that an applicant file a complaint within four months of when the final domestic decision was handed down.⁴⁸ The only circumstances under which an ECOWAS claim will be rejected due to *rationae temporis* is when the violation occurred before January 19, 2005, when the Court was granted the jurisdictions to hear human rights complaints.

The two requirements for an individual to file a complaint with the ECOWAS Court, besides being a resident of a country that is an ECOWAS member, are that the claim 1) not be anonymous nor 2) made while the same matter has been instituted before another International court for adjudication.⁴⁹ Applicants cannot file against private actors, only member states. To submit a case to ECOWAS claimants must be represented by Advocates or Counsels who are recognized by the law and regulations of the Member States as being empowered to appear in Court in their area of jurisdiction.⁵⁰ They must then file a complaint with the registry of the Court that sets out the subject matter of the dispute, the parties involved, and contains a summary of the argument put forward as well as the plea of the plaintiff.⁵¹ The complaint is immediately served to the defendant, who has one month to respond, although from my research I observed that defendants are often granted an extension.⁵² The Court then analyzes standing, jurisdiction, and admissibility, and if those are satisfied moves on to oral proceedings. A decision will then be issued.

⁴⁷ See *ibid* at 97.

⁴⁸ See ECHR, *supra* note 5, art 35.

⁴⁹ See *Supplementary Protocol*, *supra* note 37, art 4(d).

⁵⁰ See *ECOWAS Court Protocol*, *supra* note 28, art 12.

⁵¹ See *ibid*, art 11(1).

⁵² See *Rules of the Community Court of Justice of the Economic Community of West African States*, ECOWAS, 2002, art 35.

Section II: Qualitative and Quantitative Analysis of Article 4 Claims Brought to the ECOWAS Court

A. *Methodology*

In this paper I surveyed all 193 cases that are available on the ECOWAS Court website under the “Decisions” tab. Although ECOWAS began hearing human rights cases in 2005, the ECOWAS website only contains decisions that date from 2015. This paper therefore provides an analysis of all right to life cases available online from 2015-2022. I want to acknowledge that this study is limited by the available data. There are decisions that have been handed down from the ECOWAS Court that have yet to be made available online. Often when decisions are announced they will be emailed to applicants and their legal representatives without being uploaded.⁵³ For example, the IHRDA database, when filtered for ECOWAS decisions, shows 246 entries instead of 193. While some of these are most surely duplicates, it also indicates there is a vast body of cases that I have not canvassed in this study and that are not available on the official ECOWAS website. When filtered for ECOWAS cases that deal with the right to life, however, the IHRDA database comes up with 40 entries, which is very similar to the 38 cases I canvassed as part of this study. While results are not perfect, I assert that the data compiled is sufficient to create a snapshot of how Article 4 has been treated by the ECOWAS Court over the last seven years.

After finding the 38 cases that treated the right to life, I summarized them and extracted the variables I deemed to be relevant. I included all cases that claimed an Article 4 violation, even if the applicants did not argue the specific violation in their submissions or if the ECOWAS Court did not address the Article 4 claim, as was often the case. The variables I analyzed were: defendant state; date of alleged violation; date of application to the ECOWAS Court; date of judgment; charter violation(s) claimed by applicant; award request amount; non-monetary compensatory measures sought; judgment in favour of claimant;

⁵³ Assertion made based on personal experience interning with the Institute for Human Rights in Africa (IHRDA).

charter violation(s) found; award amount; other measures ordered; number of victims and; whether the victim had died as a result of the violation. I then used this quantitative and qualitative data to answer my research questions.

B. Wins v. Losses

From 2015-2022, 38 claims decided by the ECOWAS Court argued an Article 4 violation. Out of those 38 claims, in 12 instances (32% of cases) the ECOWAS Court agreed that there was an Article 4 violation. In 13 cases (34%), the Court found in favour of the victim but ruled that there had been no Article 4 violation and that other rights had been breached. In the remaining 13 (34%) cases, the ECOWAS court found in favour of the defendant state. This is interesting, because it means that claimants on average have a 66% rate of success at the ECOWAS Court in getting some form of award or recognition that their rights have been violated, even if it was not specifically an Article 4 violation.

C. Reasons for Rejection

Out of the 13 applications where no Charter violation was found, the majority (69%) were dismissed either because the applicant failed to substantiate their claim through convincing evidence or because they did not have standing to submit a claim to the court. The other reasons cases were unsuccessful were either because the Court did not think there had been a violation, there was no *rationae temporis*, or the harm had already been adequately repaired.

	<i>Unsubstantiated Claim</i>	<i>Standing of Claimant</i>	<i>No Violation Found</i>	<i>Rationae temporis</i>	<i>Harm adequately repaired</i>
# of cases	5	4	2	1	1
% of cases	38.5	30.8	15.4	7.7	7.7

An Analysis of the ECOWAS Community Court of Justice's Treatment of Right to Life Claims from 2015–2022

i) Unsubstantiated Claims

In five of the thirteen cases (39%), the ECOWAS Court ruled in favour of the defendant due to the fact that the victim's claims were unsubstantiated. In these cases, applicants failed to bring sufficient factual proof that the events they claimed had actually occurred. As the Court wrote (translated) "...the claimant's allegations appear to be general, vague, peremptory and subjective. He does not present the necessary elements of fact to prove that his right...has been violated."⁵⁴ This sentiment was expressed in all five of the cases that lost for factual and evidentiary reasons.

ii) Standing of Claimants

Right to life cases have the potential to run into problems when it comes to the standing of claimants. This occurs when an NGO attempts to represent victims that have not given their consent. Sometimes this can occur in the case of a single victim, but more frequently standing issues arise when NGOs submit a claim on behalf of a community or large group. ECOWAS judgments have shed some light on what an organization must do in order to represent a victim. In *Lawrence H. Jothan and 13 Others v. Federal Republic of Nigeria* they wrote: "The combined effect of the jurisprudence and statute is that an Applicant/s must establish a direct, utilitarian or instructive interest in any claim...It is settled law in this Court that any action by an individual in a representative capacity must be supported by proof of mandate from the victims."⁵⁵

iii) No Violation Found

In these two cases, the Court accepted the claimant's factual submissions but determined that the state's behaviour did not amount to a human rights violation. This occurred in a case where the applicants attempted to use Article 4 to override the death penalty,⁵⁶ and in a diplomatic dispute where a Liberian Consulate general on mission in the US was arrested for sex-related crimes.

⁵⁴ *Lieutenant Colonel Silas Jock Santoi C/République Fédérale du Nigeria*, 2019 ECW/CCJ/JUG/01/19 at para 99.

⁵⁵ *Lawrence H. Jothan and 13 Others v Federal Republic of Nigeria*, 2021 ECW/CCJ/JUD/33/21 at paras 78–81.

⁵⁶ See *Nnenna Obi On behalf of other death row Prisoners in Nigeria v Federal Republic of Nigeria*, 2016 ECW/CCJ/JUD/27/16.

Although Article 4 does not lay out exceptions to the right to life like the analogous article in the ECHR, the ECOWAS Court seems to make it very clear that the death penalty is not an Article 4 violation, calling the suit an “an academic exercise, in principle, by way of having to examine the law in the absence of any relevant consideration for the violation of a right, which is the fulcrum of the Court’s jurisdiction.”⁵⁷

iv) *Rationae Temporis*

As mentioned in section I.D, there is no time limit within which applicants must file a claim at the ECOWAS Court. The only requirement is that violations have occurred before 2005. In the single *Rationae Temporis* case, the violations occurred from 1994-1996, and the court ruled that due to the principles of non-retroactivity of treaties outlined in article 28 of the Vienna Convention of the Law of Treaties, they did not have jurisdiction to hear the case.⁵⁸

v) *Harm Adequately Repaired*

In *La Rencontre Africaine pour la Défense des Droits de l’Homme (RADDHO) v. République du Sénégal*, a case that dealt with victims who had been killed when Senegalese police officers open fired during a peaceful protest, the Court ruled that Senegal had already taken adequate steps to repair and repent for the violation. This case is noteworthy because it gives applicants an idea of what type of state action the ECOWAS Court deems sufficient to consider a harm to have already been repaired. Based on international human rights law, domestic judicial remedies must be available, effective, and sufficient in order for a state to fulfill their international obligations regarding human rights.⁵⁹ Senegal had already opened a judicial inquiry into the event and had indicted certain individuals for the use of force that caused grave injury and death. Senegal produced documents that showed that they had created a committee to identify and

⁵⁷ *Ibid* at 17.

⁵⁸ See *Mado Fidegnon Frederic v Republic of Togo*, 2022 ECW/CCJ/JUD/21/22

⁵⁹ Kangnikoé Bado, “Good governance as a precondition for subsidiarity: human rights litigation in Nigeria and ECOWAS” (2019) 57:2 *Commonwealth & Comp Pol* 242 at 247.

An Analysis of the ECOWAS Community Court of Justice's Treatment of Right to Life Claims from 2015–2022

indemnify victims.⁶⁰ Based on Senegal's evidence, the ECOWAS Court concluded that the actions they had taken were in line with what the applicants were requesting and that there was therefore no object to the proceedings.⁶¹

D. Types of Violations

Out of the 38 cases I examined, I found that they could be classified into five different groups based on the circumstances under which the alleged violation occurred: arbitrary detention, police violence without detention, workplace disputes, political assassinations, and group claims. Each category will be further explored and expanded on below. In the rare instances where a case could fall into more than one category, I assessed the dominant feature of the case and analyzed it in that category.⁶²

⁶⁰ See *La Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) v République du Sénégal*, 2015 ECW/CCJ/JUD/20/15 at para 37 [RADDHO].

⁶¹ See *ibid* at para 43.

⁶² The only case where this occurred was in *Private Barnabas Eli v the Federal Republic of Nigeria*, 2019 ECW/CCJ/JUD/29/19, where Private Barnabas Eli was a member of the Nigerian Army and he was arbitrarily detained and tortured on the job [Private Barnabas]. I placed it in workplace disputes due to the peculiarity that it was his employer and colleagues who were responsible for the violation.

(2022) 11:1 McGill Human Rights Internships Working Paper
Series

Categories	Arbitrary Detention	Workplace Disputes	Police Violence w/o Detention	Political Assassinations	Group Claims
# of cases	14	8	6	3	7
% of total cases	36.8	21.1	15.8	7.9	18.4
% of cases where any violation was found	71.4	63.0	83.3	100.0	28.6
% of cases where Article 4 violation was found	28.6	13.0	66.7	100.0	14.3
% of cases where no violation was found	28.6	38.0	16.7	0.0	71.4

i) **Arbitrary Detention**

The first category of violations is Arbitrary Detention. This is by far the largest category of right to life claims, accounting for 14 cases, or 37% of all cases from 2015-2022. Arbitrary Detention claims can further be broken down into two sub-categories: cases where the victim died in detention or cases where they were still alive at the time of the claim. In the cases where the victim died in detention, an Article 4 violation was found two out of the three times (66% of the time). This can be compared to cases where the victim survived, in which an Article 4 violation was found only two out of eleven times (18% of the time). In the single case brought to the ECOWAS Court where the victim died in custody and an Article 4 violation was not found, the Court ruled the claimants did not have capacity to represent the deceased's estate.⁶³

⁶³ See *Ousainou Darboe & 31 Ors v The Republic of the Gambia*, 2020 ECW/CCJ/JUD/01/20.

An Analysis of the ECOWAS Community Court of Justice's Treatment of Right to Life Claims from 2015–2022

Regardless of the survival status of the victim, Arbitrary Detention cases resulted in the most favourable outcomes for claimants when compared with the other four categories. Out of all 14 Arbitrary Detention cases, 10 (71%) resulted in a favourable ruling for the claimants, even if it was not specifically an Article 4 violation ruling. This is marginally higher than the average success rate of cases studied, which sits at 66%. When the data is broken down into cases where the ECOWAS Court did find an Article 4 violation; however, the success rate drops drastically with only 32% of claims resulting in a ruling that Article 4 had been infringed.

The discrepancy between favourable rulings (71%) and Article 4 violations (32%) is due largely to the fact that, as the data shows above, many victims of arbitrary detention and torture were claiming right to life violations when they were still alive. Based on the wording of Article 4, which states that “every human being shall be entitled to respect for his life and the integrity of his person,” it is not unreasonable to claim an Article 4 violation after surviving arbitrary detention or torture because the integrity of the claimant’s person has still arguably been violated. The ECOWAS Court, however, does not seem to support of this. In *Private Barnabas Eli v. the Federal Republic of Nigeria*, they wrote that a violation of the right to life “envisages a complete annihilation of a human being which though must not be arbitrary, in other words a victim of the violation of the right to life is expected to be dead and not able to speak for him/herself. From the submissions of the Applicant, it is clear that he is very much alive and well.”⁶⁴ In most instances when there was a human rights violation and the claimant survived, the court preferred to rule that there has been an Article 5 (Prohibition of Torture and Cruel, Inhuman and Degrading Treatment), Article 6 (Right to Personal Liberty and Protection from Arbitrary Arrest), or Article 7 (Right to Fair Trial) violation.

ii) Workplace Disputes

The second largest category of right to life claims occurred in circumstances that I have classified as Workplace Disputes, with 8 out of 38 cases (21%) falling into this group. As the name suggests, the inciting incident for these claims occurred at the

⁶⁴ *Private Barnabas*, supra note 62 at para 50.

victim's place of employment; however, there is a large variation between the types of violations an individual was subject to in the workplace, with 38% of cases arising from instances where the victim suffered grievous bodily harm or death on the job, and the other 63% originating from employment disputes such as wrongful dismissal or failure to pay pensions.

The ECOWAS Court found in favour of claimants during Workplace Dispute claims 63% of the time, which is close to the 66% success rate that the cases surveyed saw on average. However, out of all 8 Workplace Dispute cases, only one (12.5%) resulted in a successful Article 4 claim. To me, this indicates that claimants are either including an Article 4 claim as a hail Mary in a laundry list of human rights claims, hoping something sticks, or they are attempting to expand the right beyond the parameters that currently exist.

Three out of the 8 claims resulted from violent incidents that occurred when the victim was employed by their state military. In one case, an Aircraftwoman of the Nigerian Air Force was raped by a lieutenant, and instead of coming to her assistance, the Air Force detained her, tortured her, and dismissed her from her position.⁶⁵ In another case, the claimant was detained and tortured after he reported that his rifle belonging to the Nigerian Army had been stolen.⁶⁶ The third case was filed by a father on behalf of his deceased son, who had drowned after being forced to swim as part of military training, despite his insistence that he was unable to do so.⁶⁷ While all three of these cases resulted in the defendant state being found guilty of human rights violations and awards being granted to the claimants, an Article 4 violation was only found in the third case where the victim died as a result of the violation.

The other 5 cases resulted from typical employment matters; wrongful dismissal, pension disputes etc. These types of cases resulted in a favourable verdict for the claimants 20% of the time, but no Article 4 violations were found. Claimants typically

⁶⁵ See *Aircraftwoman Beauty Igbobie Uzezi v The Federal Republic of Nigeria*, 2021 ECW/CCJ/JUD/11/21.

⁶⁶ See *Private Barnabas*, supra note 62.

⁶⁷ See *Wing Commander Danladi Angulu Kwasu v Federal Republic of Nigeria*, 2017 ECW/CCJ/JUD/04/17 [*Wing Commander*].

An Analysis of the ECOWAS Community Court of Justice's Treatment of Right to Life Claims from 2015–2022

attempted to expand Article 4 so that right to life encompassed right to a livelihood. As with the Arbitrary Detention cases, the ECOWAS Court seems hesitant to hand down favourable Article 4 rulings when the claimant is not deceased; however, the fact that 13% of all Article 4 claims over the past seven years have attempted to argue that right to life should be expanded to include right to a livelihood is perhaps indicative of an expansion of the right that can occur through jurisprudence in the future.

iii) Police Violence Without Detention

This category is comprised of cases that arose from instances where state police killed or assaulted a victim in a context that did not involve an arrest or a detention. Examples of such cases include police shooting peaceful protesters,⁶⁸ police raids on residential buildings,⁶⁹ and general police violence.⁷⁰

With the exception of the Political Assassination category, which is unique due to the small number of cases of this nature and their high profile, Police Violence Without Detention cases easily resulted in the highest number of favourable decisions for claimants. In 5 out of 6 cases (83%) the ECOWAS Court found that a human rights violation had occurred, and in 4 cases (67%) an Article 4 violation was found. This is well above the average of 32% of successful Article 4 violations found across all categories. In the single case where no violations were found, the ECOWAS Court ruled that the defendant state, Senegal, had already taken appropriate measures to repair the harm that resulted from their unlawful behaviour.

In my opinion, the success rate of these types of cases is anomalous and deserves further scrutiny. In 5 out of the 6 cases the victims died as a result of police violence, which undoubtedly contributes to their success; however, it does not explain why, unlike in other categories, claimants seemed to be choosing not to bring Article 4 complaints in instances where the victim had survived the violence. Additionally, claimants seemed to be close

⁶⁸ See *RADDHO*, supra note 60.

⁶⁹ See *The Incorporated Trustees of Fiscal and Civic Right Enlightenment Foundation & 19 Ors v Federal Republic of Nigeria & 2 Ors*, 2016 ECW/CCJ/JUD/18/16.

⁷⁰ See *Thankgod Legbara David & 4 Ors v Federal Republic of Nigeria*, 2017 ECW/CCJ/JUD/18/17.

family members of the victim, which increases the likelihood of success and helps to avoid issues of standing.

iv) Political Assassinations

This category is very small compared to the others, encompassing only three out of the 38 cases surveyed; however, the specificity of the circumstances of the violation in my view warrants their own category of analysis. In all three cases a prominent political figure was assassinated. In my opinion, this increases the likelihood of a successful Article 4 violation finding for three key reasons. First, the victim died. The ECOWAS Court does not need to deal with the legal meaning of integrity of the person or whether life equates to livelihood in an employment context. Second, due to the high-profile nature of assassination, the events were well-documented, and the proof of the violation was well-established. Third, due to the high-profile nature of the victim and the importance of their role in society, the people making the claim are typically spouses or children and their proximity to the victim does not need to be established. These cases also resulted in high monetary damages awarded, which will be discussed in section II.F.

v) Group Claims

The Group Claims category comprises complaints that were filed on behalf of more than 10 complainants. Usually, an NGO or an advocacy organization would file the claim on behalf of dozens, hundreds, or even thousands of people. These types of claims are by far the least successful of any of the four other categories: only two cases out of seven (29%) resulted in a favourable outcome for the claimants, and only one case (14%) resulted in a successful Article 4 claim.

The majority of these cases faced hurdles when arguing admissibility or standing, as was discussed in section II.C.ii). The ECOWAS Court requires claimants to not be anonymous, which makes filing on behalf of an entire group challenging. For example, in *The Registered Trustees of the Socio-economic rights & Accountability Project (SERAP) v. Federal Republic of Nigeria*, when the applicants submitted their claim on behalf of all Nigerians who have been subject to extrajudicial killings, the Court found that they had failed to establish any community or group whose public interest was allegedly breached and

An Analysis of the ECOWAS Community Court of Justice's
Treatment of Right to Life Claims from 2015–2022

needed vindication as claimed.⁷¹ Although the court could theoretically accept a case on behalf of a well-established community, it has not happened yet and awards have only been presented to named victims.

These cases are particularly interesting to analyze because they typically deal with novel legal issues and have an increased ethical and practical complexity due to the fact that a single organization is tasked with representing the interests of dozens, sometimes hundreds of victims. For example, in *Akungwang M. Sampson & Anor v. Federal Republic of Nigeria*, an NGO was acting on behalf of 3,134 victims.⁷² In *The Registered Trustees of Jama'a Foundation & 5 Others v. Federal Republic of Nigeria & 1 Other*, which was the only case where an Article 4 violation was found, The Registered Trustee of Jama'a Foundation was representing 827 named applicants.⁷³ These cases are challenging both for NGOs to file and for ECOWAS judges to analyze, because the interests of all 827 applicants must be taken into account, while at the same time making generalizations and compromises that will lead to the efficient remedy. Even unsuccessful Group Claim cases shed light on the ECOWAS Court's reasoning and approach to Article 4 violations. For example, in *Nosa Ehanire Osaghae & 3 Ors v. Federal Republic of Nigeria*, an NGO representing numerous claimants attempted to argue that the environmental destruction and marginalization suffered by certain communities as a result of oil extraction and mining activities amount to a violation of the right to life.⁷⁴ Although rejected by the court, these types of cases allow us to witness the ECOWAS Court's reasoning when organizations are attempting to stretch the meaning of the law.

These cases also often have more complex remedies than the other four categories analyzed. Large sums of money must be

⁷¹ *The Registered Trustees of the Socio-economic rights & Accountability Project (SERAP) v Federal Republic of Nigeria*, 2020 ECW/CCJ/JUD/04/20 at para 56.

⁷² *Akungwang M. Sampson & Anor v Federal Republic of Nigeria*, 2017 ECW/CCJ/JUD/16/17.

⁷³ *The Registered Trustees of Jama'a Foundation & 5 Others v Federal Republic of Nigeria & 1 Other*, 2020 ECW/CCJ/JUD/04/20 [Jama'a].

⁷⁴ *Nosa Ehanire Osaghae & 3 Ors v Federal Republic of Nigeria*, 2017 ECW/CCJ/JUD/03/17.

split between claimants who may have suffered different levels of harm in the same event. Frequently, these types of cases are filed after a religious or ethnically motivated massacre or post-electoral violence. Remedies must be prescribed in a way that is cognizant of the social conditions that led up to the alleged violation and must be realistic to the systemic barriers to implementing meaningful solutions for change. These issues will be further discussed in section II.F where I will conduct an analysis of monetary damages and other awards granted in Article 4 claims.

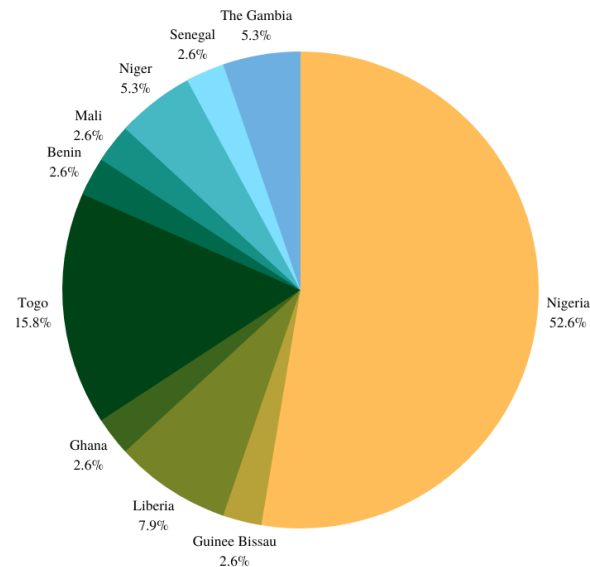
E. Offending State

There are 15 ECOWAS member states: Benin, Burkina Faso, Cabo Verde, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. Of these member states, five did not have any Article 4 complaints lodged against them from 2015-2022: Guinea, Burkina Faso, Cabo Verde, Côte d'Ivoire, and Sierra Leone. Of the 38 right to life complaints analyzed, twenty were brought against Nigeria. This means that in a little over half (52.6%) of cases, Nigeria was the state being accused of violating the right to life. As mentioned in part 1.3, ECOWAS's powers were expanded as a response to various national political crises within member states. One such event was the series of military coups that occurred in the 1980s in Nigeria.⁷⁵ Armed groups frequently abduct and attack civilians, which was the subject of a significant number of the right to life complaints lodged against Nigeria. Nigeria also has a huge population, with 218.54 million people compared to Ghana at 33.48 million, which has the second largest population in ECOWAS.⁷⁶ Nigeria accounts for 56% of ECOWAS's total population, so it is not unusual that it represents 52% of the right to life claims at the ECOWAS Court; however, a whole paper could be written on Niger's role in ECOWAS and the human rights system.

⁷⁵ See Frederick Cowell, "The Impacts of the ECOWAS Protocol on Good Governance and Democracy" (2011) *Afr J Intl & Comp L* 19:2 331 at 331.

⁷⁶ See "ECOWAS Countries 2022" (2022), online: *World Population Review* <worldpopulationreview.com/country-rankings/ecowas-countries>.

An Analysis of the ECOWAS Community Court of Justice's Treatment of Right to Life Claims from 2015–2022



F. Monetary Compensation

Out of the 12 cases where an Article 4 violation was found, the average monetary award was \$1,356,875.⁷⁷ In contrast, the average amount claimed by victims when they submitted their complaints was \$14,995,480. This means that claimants received on average only 11% of what they requested from the court. Attaching a monetary value to any human rights violation is challenging, however, it is specifically contentious in right to life cases. It evokes the unanswerable question: what is the monetary value of a life? In *The Registered Trustees of Jama'a Foundation & 5 Others v. Federal Republic of Nigeria & 1 Other*, the court addressed this issue, stating “while no sufficient value can be placed on life, in consideration of all facts before it, the Court awards the sum of 5 million [Naira] to each of the next of kin as compensation for violation of the right to life of the 827 named Applicants.”⁷⁸ With the exchange rate set at 0.0026 Naira per 1

⁷⁷ All values have been converted from the local currency to American dollars based on the average exchange rate for the year the case was decided and rounded to the nearest dollar amount. See Appendix A for exchange rates used. The two cases where a human rights violation was found but no monetary award was requested by the applicants were not included in this analysis so as not to deflate the average.

⁷⁸ See *Jama'a*, supra note 73 at para 140.

USD as it was in 2020 when the case was decided, this amounts to \$13,000 per victim. Ironically, while this case was the only one to grapple with the value of a life in its judgement, it granted by far the lowest monetary award per victim. The largest award per life lost was \$739,500 after the then president of Niger was assassinated.⁷⁹ The average “price on a life” was \$194,417.

\$ amount (USD)	Arbitrary Detention	Workplace Disputes	Police Violence w/o Detention	Political Assassinations	Group Claims	All claims
Average award	54,900	77,025	844,800	335,667	10,751,000	799,248
Average award Art. 4 violation only	70,875	75,000	1,050,000	335,667	10,751,000	1,356,875
Average award per Art. 4 victim	83,167	75,000	287,500	281,833	13,000	194,417

In the decisions canvased, the ECOWAS Court rarely gave reasons for how they reached a monetary award beyond claiming that the amount requested for the claimants was too high and presenting a seemingly arbitrary smaller number. The chart above allows us to see that certain types of right to life claims receive on average higher awards. Police Violence Without Detention cases and Political Assassinations are significantly higher than the other three categories. Just as Group Claims were challenging to win, it also seems to be more difficult for claimants to receive a significant monetary award in these circumstances.

G. Other Measures Sought

The non-monetary remedies are just as important, if not more so, than the monetary remedies. They are also more difficult to

⁷⁹ See *Les Ayants Droit Ibrahim Mainassara Baré v République du Niger* at 17.

An Analysis of the ECOWAS Community Court of Justice's
Treatment of Right to Life Claims from 2015–2022

analyze, due to the fact that they are tailored to each case and cannot be averaged. The most common non-monetary remedy sought was an acknowledgement that a violation of the victim's rights had actually occurred. In the majority of cases, claimants explicitly requested that the offending state issue a declaration to this extent. Although these demands for acknowledgment of the violation and punishment of the perpetrators are evidently important to the claimants, oftentimes the ECOWAS Court fails to order them, preferring instead to simplify the matter and order exclusively monetary remedies. In *Mrs Nazare Gomes de Pina v. Republic of Guinea Bissau*, the late-President's widow included paragraphs in her submissions about how the lack of an investigation into her husband's death impacted her, and she argued that it violated her right to access to justice within a reasonable time.⁸⁰ The Court acknowledged her arguments in its decision and even agreed with her claims, concluding that political instability was no excuse for the nine-year delay in the investigation and declaring that it violated the right to justice of President Joao Bernado Vieira's heirs. Despite this, the Court only ordered monetary compensation and did not rule that the Republic of Guinea-Bissau had to issue any apologies or take any further steps in the investigation.

Another common remedy that was requested was the condemnation and punishment of the individuals who committed the violation. For example, in the three Political Assassination cases the claimants requested that the ECOWAS Court order the offending state to take all measures to investigate and prosecute the perpetrators of the offence, although this was not always ordered. The Police Violence Without Detention and Arbitrary Detention categories also saw a large number of requests for the punishment of offenders. Other less common remedies requested were the re-instatement of job and backpay in a number of the Workplace Dispute cases, or large-scale social change, such as shutting down oil extraction activities, in a number of Group Claims cases.

Overall, ECOWAS seems to be hesitant to order non-monetary measures. In the twelve cases where a right to life violation was found, a monetary award was ordered 100% of the

⁸⁰ *Mrs Nazare Gomes de Pina v Republic of Guinea Bissau*, 2018 ECW/CCJ/JUD/15/18.

time. Meanwhile, non-monetary measures were only ordered in two cases (17%). In one case, the order was to set up an internally displaced persons camp for survivors of an ethnically motivated pre-electoral killing spree and to organize a procedure to prosecute offenders within a reasonable time.⁸¹ In the second case, an investigation “with a view to prosecuting and punishing the individuals involved” was ordered after a man died as part of a military training exercise.⁸²

H. Time to Reach Decision

On average it took two years, four months, and eighteen days (867 days total) between the date when claimants filed at the ECOWAS Court and the day the decision was handed down. Out of the 38 cases analyzed, eleven did not include a precise filing date and only included a filing year. Those eleven cases were removed for the purposes of the average time analysis in order to be able to come up with an accurate average down to the day. When I analyzed the eleven cases I removed as their own dataset and counted the number of years between filing and a decision, the average time was 2.27 years, in other words two years, three months and nine days. I therefore believe that removing those eleven cases from the dataset for the purpose of the average time analysis had little impact on the results.

The fastest the ECOWAS Court was able to arrive at a decision was 151 days, or five months after the date of filing. The longest it took was 2,778 days or seven years, seven months, and nine days. As can be seen in the table below, the ECOWAS Court took on average one to two years to decide a case. 87% of cases were decided within four years of the initial filing date. The outliers were the cases that took over four years to decide. These cases did not seem to deal with a specific subject matter: three were Group Claims, one was an Arbitrary Detention case, and one was a Police Violence case.

⁸¹ See *Jama’a*, supra note 73.

⁸² *Wing Commander*, supra note 67 at 26.

An Analysis of the ECOWAS Community Court of Justice's Treatment of Right to Life Claims from 2015–2022

	<1 year	1-2 years	2-3 years	3-4 years	4-5 years	5-6 years	6-7 years	7-8 years
# of cases	6	15	5	7	2	1	0	2
% of cases	15.8	39.5	13.2	18.4	5.3	2.6	0	5.3

I. Areas for Further Research

An area of further research should be a comparison of the ECOWAS jurisprudence that was already analyzed in this paper with the African Commission recommendations that treat the right to life. During my time at IHRDA, lawyers would frequently recommend that clients who lived in a West African nation pursue a cause of action with ECOWAS rather than the Commission due to the quicker turnaround time of ECOWAS decisions and the fact that clients would not need to prove the exhaustion of local remedies. Although my research did find that ECOWAS judgments take on average between 1-2 years and my work experience left me with the impression that Commission recommendations take much longer, I was unable to find any data to support this fact. An analysis similar to the one conducted in this paper on Commission recommendations could help fill these knowledge gaps and lead to more data-informed strategies when advising victims of their options.

The ECOWAS jurisprudence is relatively new and therefore presents endless opportunities to examine it to try to understand the court's reasoning and to predict its behaviour in the future. Further areas of investigation could be looking into the composition of the court and if certain judges tend to rule in a certain way or analyzing the way it treats other Charter articles. A crucial piece of scholarship would be an analysis of the implementation of ECOWAS decisions, especially because anecdotally this is where the biggest hurdle to achieving justice lies.

Conclusion

The ECOWAS Court has come a long way from its days as a thought in a treaty in 1975. Its procedural peculiarities make it an attractive alternative to the African Commission for West Africans who need the flexibility of its deadlines and local remedy requirements. In this paper, we were able to get a sense of how it approaches one of the most fundamental human rights: the right to life. Out of the 38 cases analyzed, there was a relatively even split between cases that won an Article 4 claim, won a different claim, or lost entirely. Despite African human rights instruments insisting on a broad interpretation of the right to life, the ECOWAS Court has kept the parameters narrow, refusing in all instances but two to find an Article 4 violation unless the victim was deceased. The majority of cases that fail do so on either standing or evidentiary issues and the rest fail because there was no violation, there was no *rationae temporis*, or the harm had already been adequately repaired. All right to life claims can be broken down into five categories: arbitrary detention, police violence without detention, workplace disputes, political assassinations, and group claims. Police Violence Without Detention and Political Assassinations were the most successful, receiving more favourable outcomes for victims and higher monetary awards. On the flip side, Group Claims saw by far the least favourable outcomes for applicants: they were less likely to be successful, were awarded smaller monetary awards if they were, and were more likely to take over four years to move through the ECOWAS Court. The ECOWAS Court is reluctant to order non-monetary remedies, and when they do, they are usually to do with investigations or apologies. Hopefully the insights from this analysis provide potential claimants with an idea of what to expect when seizing the ECOWAS Court, help legal representatives craft a litigation strategy, and provide a jumping-off point for further academic research.

Bibliography

JURISPRUDENCE

- Aircraftwoman Beauty Igbobie Uzezi v The Federal Republic of Nigeria*, 2021 ECW/CCJ/JUD/11/21.
- Akungwang M. Sampson & Anor v Federal Republic of Nigeria*, 2017 ECW/CCJ/JUD/16/17.
- Ametepe Koffi v République du Togo*, 2016 ECW/CCJ/JUD/07/16.
- Benson Olua Okomba v Republic of Benin*, 2017 ECW/CCJ/JUD/05/17.
- Col. Mohamed Sambo Dasuki (Rtd) v Federal Republic of Nigeria*, 2016 ECW/CCJ/JUD/23/16.
- Dedjo Komla Sena v The Republic of Togo*, 2021 ECW/CCJ/JUD/26/21.
- Dr. George S. Boley v Republic of Liberia & 3 Ors*, 2019 ECW/CCJ/JUD/24/19.
- Dr. Malachi Z. York v Republic of Liberia*, 2016 ECW/CCJ/JUD/5/16.
- Eli Haggarmi v Etat du Niger*, 2015 ECW/CCJ/JUD/04/15.
- Gabriel Inyang & Linus Iyeme v Federal Republic of Nigeria*, 2018 ECW/CCJ/JUD/20/18.
- Godswill Tommy Udoh v Federal Republic of Nigeria*, 2016 ECW/CCJ/JUD/26/16.
- Hans CApehart Williams SR & Anor v Republic of Liberia, Republic of Ghana & 3 Ors*, 2015 ECW/CCJ/JUD/25/15.
- Hembadoon Chia & 7 Ors v Federal Republic of Nigeria & 1 Anor*, 2018 ECW/CCJ/JUD/21/18.
- Justice Joseph Wowo v The Republic of the Gambia*, 2019 ECW/CCJ/JUD/09/19.
- Konso Kokou Parounam v République du Togo*, 2016 ECW/CCJ/JUD/02/16.

La Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO) v République du Sénégal, 2015 ECW/CCJ/JUD/20/15.

Lawrence H. Jothan and 13 Others v Federal Republic of Nigeria, 2021 ECW/CCJ/JUD/33/21.

Les Ayants Droit Ibrahim Mainassara Baré v République du Niger, 2015 ECW/CCJ/JUD/23/15.

Les héritiers de feu Aïssata Cissé et feu Hama Touré & Autres v République du Mali, 2016 ECW/CCJ/JUD/13/16.

Lieutenant Colonel Silas Jock Santoi c République Fédérale du Nigeria, 2019 ECW/CCJ/JUG/01/19.

Mado Fidegnon Frederic v Republic of Togo, 2022 ECW/CCJ/JUD/21/22.

Martha Adamu & 7 Ors v Federal Republic of Nigeria, 2019 ECW/CCJ/JUD/33/19.

Mr. Agbetognon Koffi v Republic of Togo, 2018 ECW/CCJ/JUD/12/18.

Mrs Helen Joshua & Anor v Federal Republic of Nigeria, 2022 ECW/CCJ/JUD/02/22.

Mrs Nazare Gomes de Pina v Republic of Guinea Bissau, 2018 ECW/CCJ/JUD/15/18.

Mrs Sarah Kingsley Oodoro v ECOWAS Commission and 2 Ors, 2021 ECW/CCJ/JUD/06/21.

Ms. Rose Breivogel & Anor. v Federal Republic of Nigeria, 2022 ECW/CCJ/JUD/05/22.

Nnenna Obi On behalf of other death row Prisoners in Nigeria v Federal Republic of Nigeria, 2016 ECW/CCJ/JUD/27/16.

Nosa Ehanire Osaghae & 3 Ors v Federal Republic of Nigeria, 2017 ECW/CCJ/JUD/03/17.

Ousainou Darboe & 31 Ors v The Republic of the Gambia, 2020 ECW/CCJ/JUD/01/20.

Private Barnabas Eli v the Federal Republic of Nigeria, 2019 ECW/CCJ/JUD/29/19.

Rev. Fr. Solomon Mfa & 11 Ors v Federal Republic of Nigeria & 5 Ors, 2019 ECW/CCJ/JUD/06/19.

An Analysis of the ECOWAS Community Court of Justice's
Treatment of Right to Life Claims from 2015–2022

Sudan Human Rights Organisation & Centre on Housing Rights and Evictions v Sudan, Comm. 279/03, 296/05, 28th ACHPR AAR Annex (Nov 2009-May 2010).

Thankgod Legbara David & 4 Ors v Federal Republic of Nigeria, 2017 ECW/CCJ/JUD/18/17.

The Incorporated Trustees of Fiscal and Civic Right Enlightenment Foundation & 19 Ors v Federal Republic of Nigeria & 2 Ors, 2016 ECW/CCJ/JUD/18/16.

The Registered Trustees of Jama'a Foundation & 5 Others v Federal Republic of Nigeria & 1 Other, 2020 ECW/CCJ/JUD/04/20.

The Registered Trustees of the Socio-economic rights & Accountability Project (SERAP) v Federal Republic of Nigeria, 2021 ECW/CCJ/JUD/08/21.

Wing Commander Danladi Angulu Kwasu v Federal Republic of Nigeria, 2017 ECW/CCJ/JUD/04/17.

Wiyao Gnandakpa & Ors v La République Togolaise, 2015 ECW/CCJ/JUD/18/15.

SECONDARY MATERIAL: TREATIES

African Charter on Human and Peoples' Rights, OAU Doc CAB/LEG/67/3, rev 5, 27 June 1981.

African Charter on the Rights and Welfare of the Child, Organization of African Unity, 11 July 1990, CAB/LEG/24.9/49 (1990).

American Convention on Human Rights, Treaty Series, No. 36, Organization of American States, 1969.

European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, Council of Europe, 4 November 1950.

Protocol A/P.1/7/91 on the Community Court of Justice, ECOWAS, 6 July 1991.

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, African Union, 11 July 2003.

Rules of Procedure of the Inter-American Commission on Human Rights, 137th Sess, 28 October-13 November 2009.

Rules of the Community Court of Justice of the Economic Community of West African States, ECOWAS, 2002.

Supplementary Protocol A/SP.1/01/05 Amending the Preamble and Articles 1, 2, 9, 22 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Said Protocol, ECOWAS, 19 January 2005.

The 1975 Treaty of the Economic Community of West African States, Economic Community Of West African States (ECOWAS), 28 May 1975.

Universal Declaration of Human Rights, New York: United Nations General Assembly.

SECONDARY MATERIAL: OTHER

Aikins, Enoch Randy, "West Africa/ECOWAS" (2 December 2022), ISS African Futures, online: <futures.issafrica.org/geographic/regions/west-africa-ecowas/#cite-this-research>.

Alter, Karen J, Laurence R Helfer & Jacqueline R McAllister, "A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice" (2013) 107:4 AJIL 737.

Bado, Kangnikoé, "Good governance as a precondition for subsidiarity: human rights litigation in Nigeria and ECOWAS" (2019) 57:2 Commonwealth & Comp Pol 242.

Banjo, Adewale, "The ECOWAS Court and the Politics of Access to Justice in West Africa" (2007) 32:1 Afr Dev 69.

Cowell, Frederick, "The Impacts of the ECOWAS Protocol on Good Governance and Democracy" (2011) Afr J Intl & Comp L 19:2 331.

Ebobrah, Solomon T, "Critical Issues in the Human Rights Mandate of the ECOWAS Court of Justice" (2010) 54:1 J Afr L 1.

An Analysis of the ECOWAS Community Court of Justice's
Treatment of Right to Life Claims from 2015–2022

- "ECOWAS Countries 2022" (2022), online: *World Population Review* <worldpopulationreview.com/country-rankings/ecowas-countries>.
- Etzioni, Amitai, "Life: The Most Basic Right" (2010) 9:1 *J Hum Rts* 100.
- "Fact Sheet: African Commission on Human and Peoples' Rights" (June 2013), online: *Open Society Justice Initiative* <justiceinitiative.org/publications/african-commission-human-and-peoples-rights>.
- "Fact Sheet: ECOWAS Community Court of Justice" (June 2013), online: *Open Society Justice Initiative* <[justice#:~:text=Under%20Article%2024%20of%20the,according%20to%20its%20national%20courts.](http://justiceinitiative.org/publications/ecowas-community-court-justice#:~:text=Under%20Article%2024%20of%20the,according%20to%20its%20national%20courts.)>.
- "FAQs" (last visited 17 August 2023), online: *African Court on Human and Peoples' Rights*, <african-court.org/wpafc/faqs/#1587290821799-bee84233-8266>.
- Farer, Tom, "Conference on Human Rights, Public Finance, and the Development Process: The Hierarchy of Human Rights" (1992) 8:1 *Am U J Intl L Pol'y* 115.
- Hartmann, Christof, "ECOWAS and the Restoration of Democracy in the Gambia" (2017) 52:1 *Afr Spectrum* 85.
- Ibrahim, Kehinde, "The Puzzling Paradox Presented within the African Supranational Judicial Institutions: The ECOWAS Court of Justice" (2020) 28:Supplement *Afr J Int'l & Comp L* 86.
- Murray, Rachel, *The African Charter on Human and Peoples' Rights: A Commentary* (Oxford: Oxford University Press, 2019).
- Udombana, Nsongurua J, "So Far, So Fair: The Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples' Rights" (2003) 97:1 *AJIL* 1.
- Viljoen, Frans, "Understanding and Overcoming Challenges in Accessing the African Court on Human and Peoples' Rights" (2018) 67:1 *ICLQ* 63.
- Yansane, Aguibou, "The State of Economic Integration in North West Africa South of the Sahara: The Emergence of the

Economic Community of West African States (ECOWAS)”
(1977) 20:2 Afr Stud Rev 63.

Appendix – Exchange Rates

Year	Nigerian Naira per 1 USD
2015	0.0050
2016	0.0041
2017	0.0030
2018	0.0028
2019	0.0028
2020	0.0026
2021	0.0025
2022	0.0024

Year	CFA Franc per 1 USD
2015	0.0017
2016	0.0017
2017	0.0017
2018	0.0018
2019	0.0017
2020	0.0017
2021	0.0018
2022	0.0016