

Thoughts on Enforcement of the ECOWAS Community Court of Justice (ECCJ) Human Rights Judgments at State Level: The Way Forward

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Abstract

The article exrays in brief the enforcement framework for the judgments of the ECOWAS Community Court of Justice (ECCJ) from the primary instruments and statutes of the Community vis-a-vis what is obtainable at the domestic levels of the Anglophone and the francophone countries and come to the conclusion that there is urgent need to enact domestic laws constitutionally recognising the judgments of the ECCJ as enforceable judgment at the various state territories.

Keywords: Enforcement, Human rights, Judgment.

Introduction

The question that readily comes to once mind when reflecting on the enforcement procedures of the human right judgments of the ECOWAS Community Court of Justice⁴ (ECCJ) in relation to the subject of enforcement is, what will be the fate of the victorious party of a judgment,

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⁴ Hereinafter referred to as ECCJ.

if procedures for the enforcement of the Human Right decisions of international Courts such as the ECOWAS Community Court of Justice (ECCJ) are not institutionalized? What is the real state of the Human Right Jurisdiction of the ECCJ? What will happen to the victorious party of a judgment or decision of the Court, if ECOWAS states that freely enter into ECOWAS treaties establishing the ECCJ fail to establish procedures or enforcement framework for the enforcement of the decision of the Court? Is there a self-enforcement procedure with the Court? Any way forward? These thoughts shall guide the interrogation here.

The duty, functions of Courts in interpreting and giving effects to rights has been extensively discussed⁵ and it is also not in dispute that the enforcement of court's decision⁶ whether domestic or international is the central measure of a court's efficacy. Without it, the situation of those who should be helped by the court's decision does not improve. Even the best and most profound jurisprudence may be deemed ineffective, if not enforced and the very legitimacy of the court itself may fall into question.

⁵ Abdullahi, A. An-Na'im. 2004. To Affirm the Full Human Rights Standing of Economic, Social and Cultural Rights. *Economic, Social and Cultural Rights in Practice, The Role of Judges in Implementing Economic, Social and Cultural Rights*. Eds. Y., Ghai & J., Cottrell. Interights; Udombana, N. J. 2005. Interpreting rights globally: Courts and Constitutional rights in emerging democracies, *African Human Right Law Journal* 5:47; Dai, X. 2005. Why comply? The domestic constituency mechanism. *International Organization*, 59:363-398; Anagnostou, D. 2010. Does European human rights law matter? Implementation and domestic impact of Strasbourg Court judgments on minority-related policies. *The International Journal of Human Rights*, 14.5: 721-743; Cichowski, R. A. 2006. Introduction. Courts, democracy, and governance. *Comparative Political Studies*, 39.1:3; Dai, X. 2013. The compliance gap and the efficacy of international human rights institutions. *The persistent power of human rights. From commitment to compliance*. Eds. T. Risse, Ropp, S. C. & K. Sikkink. Cambridge: Cambridge University Press. pp. 85-102; Hillebrecht, C. 2014. Domestic politics and international human rights tribunals. *The problem of compliance*. Cambridge: Cambridge University Press; Gibson, J. L., & Caldeira, G. A. 1995. The legitimacy of transnational legal institutions: compliance, support, and the European Court of Justice. *American Journal of Political Science*, 39.2: 459-489; Douglas-Scott, S. 2006. A Tale of Two Courts: Luxembourg, Strasbourg and the Growing European Human Rights Acquis. *Common Market Law Review* 43. 3: 629-665.

⁶ Which is the actualization of the dictates as contained in the verdict of a Court.

Conceptual Framework

(a) Enforcement

The term “Enforcement” and “Execution” have the same meaning. In *Adesida v. Abebi*⁷ the Court of Appeal of Nigeria quoted with approval the words of the authors of the Halsbury Laws of England⁸ and the definition offered by Lord Denning M.R. in *Re Overseas Aviation Engineering (G.B) Ltd*⁹ “. . . the enforcement of, or giving effect to the judgment or orders of Court of Justice. In a narrower sense, it means the enforcement of those judgments, or orders by a public officer under the writs of fieri facias, possession, delivery etc.”¹⁰

According to the Dictionary, enforcement is the action of “making sure that people obey a particular law or rule”.¹¹ For example, “it is the job of the police to enforce the law”; “the legislation will be difficult to enforce” or ‘United Nations troops enforced a ceasefire in the area’.¹²

In striking contrast to compliance and implementation, the definition of enforcement considers the use to force to obtain obedience from the addressee. This is despite the Dictionary’s soft working of “making sure”. Borzel is of the same view and defines enforcement to be the “use of force to obtain compliance with the law”.¹³ However, in this context, the use of force is to be understood as the use of legal authority rather than merely physical force. That enforcement is purely legal. Laws may seek enforcement through three channels, which are legislative, judicial and executive action.¹⁴

⁷ F.C.A. 109.114. 1978.

⁸ 4th Ed at para 401

⁹ 3 All E.R.12 P.16.1962

¹⁰ See also Fabunmi, J.O, & Akai, O.O, 1988 Execution of judgement and means of enforcement available to a Court in Nigeria. *Journal of African Law*32.2:164

¹¹ The Random House Dictionary of The English Language 2nd Ed. 1987 at p. 644.

¹² Oxford Dictionary.

¹³ See Borzel, T. A. & Moritz, K. 2012. Quantifying Non-compliance in the EU. Berlin Working papers on European Integration No 15 p. 15. Retrieved 20th October 2017 from www.polsoz.fu-berlin.de/.../2012-15_...15

¹⁴ See Koh, H.H. 1997(Footnote 46).

Human Rights Judgment of the ECOWAS Community Court of Justice

The Human Rights Decision of the ECOWAS Community Court of Justice should therefore mean all decisions made by the ECCJ by virtue of its human rights mandate with no prejudice of the limitations to this study.

he term “judgment” refers to any decision given by a Court of Competent jurisdiction on any issue between parties before the Court. The *Black’s Law Dictionary*¹⁵ define the term to mean “A Courts final determination of rights and obligations of the parties in a case”. The meaning of judgment was also exposed in the Nigerian case of *M.T. Makhambet vs. I.T.I.S.A.N*¹⁶ thus “a judgment refers to the official and authentic decision of a Court of law upon the respective rights and claims of the parties to an action on suit which were litigated and submitted for the Court’s determination. It also means the binding, authentic, official judicial determination of the Court in respect of Claim and action or suit before it.”¹⁷

Establishment of the ECOWAS Community Court of Justice (ECCJ)

As earlier submitted, historically the ECOWAS was created through the Treaty of Lagos signed on 28th of May 1975 which is normally referred to as the original ECOWAS Treaty. The Original ECOWAS Treaty, (that is, the ECOWAS Treaty signed in Lagos) never made reference to human rights. The treaty was revised and the revised Treaty was signed on the 24th day of July 1993 which is now referred to as the Revised ECOWAS Treaty.¹⁸ The Revised ECOWAS Treaty provides for the “recognition, promotion and protection of human and peoples’ rights”.¹⁹ In addition, it provides for the creation of the ECCJ,²⁰ which is the very foundation upon which the ECCJ was established.

¹⁵ 7th Edition at page 846.

¹⁶ 2 NWLR.part1283. 2012.184 at page 385 paras D-F

¹⁷ Also, *Saraki vs. Kotoye* 9 NWLR .Part 264.158.1992; *NDIC vs FMBN* 2NWLR.Part 4907.35.1997; *Osafire vs Odi* 3NWLR.Part 137.1990at130;*Oredoyin vs.Arowolo* 4 NWLR.Part 114.1987 at 172.

¹⁸ The Revised Treaty of ECOWAS. Retrieved from 20th November 2017 from [http://www.comm.ecowa s.int/sec/index.php?=treaty&lang=en](http://www.comm.ecowa.s.int/sec/index.php?=treaty&lang=en)

¹⁹ Article 4(g).

²⁰ Articles 6(1)(e) and 15(1).

Later in 1991, the ECCJ was now given effect by a protocol²¹ which was signed in Abuja, Nigeria on the 6th of July 1991 and entered into force, having been incorporated into the Revised ECOWAS Treaty on 5th of November 1996.²² The ECCJ became operational on 5th day of November 2006. This Protocol²³ did not also vest the court with the requisite human rights jurisdiction and competence.²⁴ The ECCJ was never created or contemplated as a forum for promotion and adjudication for human rights cases²⁵ but to adjudicate economic disputes. This can be gleaned from the stand point of locus standi as only member states had access to the ECCJ and could approach the Court or institute any case in relation to the construction, the interpretation and application of ECOWAS instruments or protocols on behalf of their citizens.

The Pre-2005 ECCJ Protocol

Individuals had no right of standing before the ECCJ prior to the 2005 protocol. In Enabuele's words, the jurisdiction of the court was narrow and influenced by the Statute of the International Court of Justice, modeled after the traditional view of International law which only allows states access to an international court.²⁶

Thinking that member states of the ECOWAS will bring human right cases on behalf of their citizens or nationals of other states residents in their various state is highly unlikely because of several factors, for example in Africa a major violator of human right is the state institutions so it is

²¹ Protocol A/P1/7/91.

²² Enabuele, A.O. 2010. Reflections on the ECOWAS Community Court Protocol and the constitutions of member states. *International Community Law Review* 12: 111-137 at 115.

²³ A/P.1/7/91. Retrieved on the 20th day of January 2020 from http://www.courtecowas.org/site2012/index.php?option=com_content&view=article&id=2&Itemid=5

²⁴ Ebobrah, S.T. 2009. Litigating Human Rights Before Sub-regional Courts in Africa, African. *Journal of International & Comparative Law* 17:79 at 86.

²⁵ Alter, K. J., Helfer, L. R., & McAllister, J. 2013. A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice, *American Journal of International Law* 108.737-739 at 746.

²⁶ Enabuele, A.O. 2010. Reflections on the ECOWAS Community Court Protocol and the constitutions of member states. *International Community Law Review*, 12: 111-137.

clear that a state cannot readily institute a human right case on behalf of its citizens against itself. Though, another state may institute a case before the ECCJ on behalf of an individual who is a national of a different state, but this also may be impossible because of political and diplomatic reasons. Based on such examples, the protection of individual's human rights is limited indirectly.

In *Afolabi Olajide v Federal Republic of Nigeria*²⁷ the principle of locus standi was tested by the ECCJ in this case. This case was brought before the ECCJ with the following facts, the facts of this case are that, a Nigerian businessman approach the ECCJ to invoke the jurisdiction of the Court against the government of Nigeria contending that the closure by Nigeria of its common border with Benin in 2009 was a violation of the right of free movement of persons and goods as embodied in the Revised ECOWAS Treaty and the African Charter on Human and Peoples' Rights. That as a result, he suffered financial damage. The respondent challenged the jurisdiction of the court by filing a preliminary objection claiming that the ECCJ lack jurisdiction to hear the case. The ECCJ in a well consider ruling, ruled that under Protocol A/P1/7/91 only member states could bring cases before it. Similarly in *Frank Ukor v Rached Lalaye*²⁸ the plaintiff's claim was also dismissed on the foundation of the individual's lack of right of standing to bring cases before the court. In this above case, the plaintiff challenge an order for seizure of his truck and the goods on the basis that it violated his fundamental right to the free movement of goods.

From the above, it is clear that the ECCJ adopted a narrow interpretation of the Protocol by relying on the principle of express powers. This has resulted in individual matters being thrown out without redress for the alleged human rights violation they may have suffered. Article 4(c) of the revised treaty provides, inter alia, for the "recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights".²⁹ From this, it is submitted that the ECCJ have implied power to hear human rights matters.

²⁷ *Olajide Afolabi v Fed Rep of Nigeria ECW/CCJ/APP/01/03, (2003)* (hereafter the Olajide case).

²⁸ No APP/01/04 (hereafter the Ukor case).

²⁹ Article 4(c) of the Revised Treaty of ECOWAS.

However, the human right jurisdiction of the ECCJ was enlarged by the supplementary Protocol amended in 2005³⁰ Article 3 of the Supplementary Protocol extends the jurisdiction and competence of the court by introducing a new article 9. Article 9(4) of the Supplementary Protocol empowers the ECCJ to receive and adjudicate cases brought by individuals which involves alleged violations of human rights occurring in the territory of any member state. Since the expansion of the ECOWAS CCJ jurisdiction to cover human rights cases, the court has received and decided several such cases.³¹ The express and operational jurisdiction over the promotion and protection of human rights distinguishes the ECCJ from the SADC Tribunal and the East African Court of Justice. It is interesting to note that the ECCJ did not attempt to invoke the doctrine of implied powers to assume jurisdiction and competence over the human rights in the Olajide and Ukor cases, despite the existence of persuasive judgments from the International Court of Justice regarding the application of the doctrine of implied powers ECCJ did not invoke the doctrine of implied powers.

Binding Effect of ECCJ Judgments

The ECOWAS Revised Treaty states clearly that judgments of the ECCJ are binding on Member States and the Institutions of the Community including individuals and corporate bodies. The 1991 Protocol of the ECCJ also provides that the decisions of the ECCJ shall be final and immediately enforceable.

The Protocol further states that Member States including the institutions of the Community shall take immediate steps necessary to ensure the execution of the decisions of the ECCJ. The 1991 Protocol of the ECCJ made no specific provision for the procedure of enforcement of the judgments of the ECCJ. Article 24³² however made provision for the procedure or method of enforcement and placed the duty to enforce the

³⁰ Supplementary Protocol A/SP.1/01/05 Amending the Preamble and arts 1, 2, 9 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and art 4 para 1 of the English version of the Protocol.

³¹ For example, cases such as *Manneh v The Gambia* (2008) AHRLR 171 (ECOWAS 2008) and *Essein v The Republic of the Gambia* (2007) AHLR 131 (ECOWAS 2007).

³² Of the 2005 Supplementary Protocol of the ECCJ which replaced the 1991 Protocol of the ECCJ.

judgment of the ECCJ on the Member States. Article 24(3) of the Supplementary Protocol on the ECCJ, stipulates that each Member State should appoint a National Authority for the purpose of reception and processing of execution of ECCJ judgments.

No matter the foregoing stipulations or provision of the method of enforcement of the decisions of the ECCJ in the Protocol as amended. It needs to be noted that just like other international Courts, the ECCJ has no direct power to ensure enforcement or compliance over non-compliant party or Member States, it is in the womb of states to set up mechanisms for the enforcement of the judgments of the ECCJ. Thus state compliance as a general law obligation will be discussed under the following heading.

The Enforcement of The Decision of The ECCJ

The process for the enforcement of the decision of the ECCJ is all political and administrative in the dualist states. For example, Nigeria, apart from designating the Attorney General of the Federation as the enforcement authority, there is no corresponding legal backing supporting the said designation. The 1991 Protocol of the ECCJ emphasized the fact that, the decisions of the ECCJ shall be final and immediately enforceable.

The Protocol further states that Member States including the institutions of the Community shall take immediate steps necessary to ensure the execution of the decisions of the ECCJ. The 1991 Protocol of the ECCJ made no specific provision for the procedure of enforcement of the judgments of the ECCJ. Article 24³³ however made provision for the procedure or method of enforcement and placed the duty to enforce the judgment of the ECCJ on the Member States, that is, the judgment of the ECCJ should be enforced in accordance with the Civil Procedure Rules of the contracting states and it is the registrar of the ECCJ that will submit a writ of execution of the judgments to the relevant member state for execution. Article 24(3) of the Supplementary Protocol on the ECCJ, stipulates that each Member State should appoint a National Authority for the purpose of reception and processing of execution of ECCJ judgments.

³³ Of the 2005 Supplementary Protocol of the ECCJ which replace the 1991 Protocol of the ECCJ.

However for the monist states, the judgment may be automatically enforceable however, in Cape Verde³⁴ in the case of *Alex Nain Saab Moran v. The Republic of Cape Verde*³⁵ the ECCJ in a well considered decision ordered the Republic of Cape Verde to release the applicant from detention immediately, discontinue all proceedings and process aimed at extraditing the applicant to the United State of America and awarded the sum of 200,000 USD as damages to compensate the applicant for the ECCJ called the moral prejudice suffered by the applicant as a result of the arbitrary and unlawful detention of the applicant, the decision of the ECCJ was roundly rejected by the supreme court of Cape Verde.

The Reality at The Domestic Plain

The Judgments of the ECCJ are meant to be enforced at the domestic level not at the international firmament. The question that requires an answer now is whether the judgment of the ECCJ are enforceable at the domestic realm. To start with Section 12³⁶ of the Constitution of the Federal Republic of Nigeria 1999 (as amended) provide that “(1) No treaty between the Federation and any other country shall have the force of law to the extent to which any such treaty has been enacted into law by the National Assembly . . .” And there is nothing contains in the principal laws for the enforcement of judgment³⁷ in Nigeria that suggest that ECCJ

³⁴ A monist state.

³⁵ ECW/CCJ/APP/43/20.

³⁶ In Nigeria, the legal system is Commonly seen as a dualist-oriented legal system as the Constitution insists that international law cannot be part of the Nigerian legal system unless our national legislators (or with respect to certain subject matters, both national and state legislatures) enact legislation to give such norms of international law the force of law in our municipal or domestic system. This is inspite of the fact that section 12 of the 1999 Constitution only speaks to a certain kind of relationship, that is involving a “treaty between the Federation and any other country, whereas international law encompasses far more than treaties. See Ebobrah, S. T.2011. *International Human Rights Law in the Hands of the Nigerian Judge: A Critique of Current Practice*. Nigeria N. H. Rights Comm. Journal, 1. 98 [how judicial focus has been on the relationship involving international treaties but not other aspects of international law]. Also see Okeke, C. N.1997 *International law in the Nigerian legal system* Cal. W. International Law Journal 27. 311, 336 [who observes that successive Nigerian constitutions have not been sufficiently clear on the relationship between international law and municipal law in Nigeria].

³⁷ Sherriff and Civil processes A Chapter S6 Laws of the Federation of Nigeria, 2004 [which is the law that provide for the Enforcement of judgement in Nigeria] and The Foreign Judgement (Reciprocal Enforcement) Cap F35 Laws of the Federation of Nigeria 2004.

decision is enforceable or any other enforcement of judgment law to the knowledge of this article that gives effect or provide for the judicial enforcement of the decision of the ECCJ in Nigeria.³⁸ It necessary to note that Nigeria for example, domesticated the African Charter on Human and Peoples' Right which is the main Catalogue of right enforceable before the ECCJ but the judgment of the ECCJ are still not enforceable in Nigeria by a simple judicial process.

Section 79(1) (c) of the 1997 Gambia Constitution provides that "The President shall be responsible for . . . (c) the negotiation and, subject to ratification by the National Assembly, the conclusion of treaties and other international agreements."³⁹ Section 75(1) of the 1992 Ghanaian Constitution provides "the President may execute or cause to be executed treaties, agreements or conventions in the name of Ghana. (2) A treaty, agreement or convention executed by or under the authority of the President shall be subject to ratification by- (a) Act of Parliament; or (b) a resolution of Parliament supported by the votes of more than one-half of all the members of Parliament. A treaty not ratify by parliament in Ghana cannot have the force of law.

In all Anglophone ECOWAS Countries, International Law is not directly applicable and their Constitutions have supremacy clauses due to their dualist orientation. Article 98 of the Senegalese Constitution 2001 provides that "Treaties or agreements duly ratified shall, upon their publication, have an authority superior to that of the laws, subject, for each treaty and agreement, to its application by the other party. Article 97 further provides that "If the Constitutional Court has declared that an international agreement contains a clause contrary to the Constitution, that if authorization to ratify it or approve it shall only be given after revision of the Constitution."⁴⁰

³⁸ This is also the case in the Anglophone countries.

³⁹ Also there is nothing contain in the Gambian Foreign Judgement Reciprocal Enforcement Act, No 6 of 1936 that suggest that ECCJ Judgment are enforceable in the Gambia. [as ECCJ donot fall within the definition of Court]. Though section 5(2) of the Constitution of the Gambia makes it an offence to fail to carry out or obey a Court Order, ECCJ is not within the meaning of the word "Court".

⁴⁰ As a civil law country Senegal, receives and enforces judgment according to their Civil Procedure Code of Senegal 2003 as provided under articles 787 and 789. Execution of judgement or Exequatur is under condition that :(1)the judgement was handed down by a competent Court in accordance with the rules of conflict of

Articles 145, 146 and 147 of the Constitution of the Republic of Benin 1990 provides “treaties or agreements relating to international organization, those which involve the finances of the State, those which modify the internal laws of the State, those which allow transfer, exchange or addition of territory may be ratified only in accordance with a law.

No transfer, no exchange, nor addition of territory shall be valid without the consent of the interested populations.⁴¹ If the Constitutional Court, upon a submission by the President of the Republic or by the President of the National Assembly, shall have decided that an international obligation allows a clause contrary to the Constitution, the authorization to ratify it may occur only after the revision of the Constitution.⁴² Treaties or agreements lawfully ratified shall have, upon their publication, an authority superior to that of laws, without prejudice for each agreement or treaty in its application by the other party”.⁴³

These two examples⁴⁴ reveal that two conditions must be satisfied before treaties such as the ECOWAS Revised Treaty or decisions of institutions like ECCJ will have effect domestically in Senegal and Benin Republic.⁴⁵ The first condition requires the reciprocal application of the treaty by another State before it is applicable. The reciprocal application of the Revised Treaty must surely refer to national application. If that is the case it is open to interpretation whether it means that the Revised Treaty is applicable in all other ECOWAS States or that the Revised Treaty is applicable in at least one other State. The second condition is, if the Court is of the opinion that international obligation allows a clause contrary to the Constitution, the authorization to ratify it may occur only after the revision of the Constitution.

competence in force in Senegal;(2) the judgement referred to the applicable law;(3) the judgement is final and enforceable according to the law of the issuing state;(4)parties to the case were accordingly summoned, represented or declared defaulting; and (5) the judgements not contrary to the municipal public order or a domestic final judgement which has precedence to the foreign judgements seeking exequatur. ECCJ decision or judgement are not enforceable in Senegal because they don't qualify as foreign or domestic judgements.

⁴¹ Article 145 of the Constitution of the Republic of Benin 1990.

⁴² Article 146 of the Constitution of the Republic of Benin 1990.

⁴³ Article 147 of the Constitution of the Republic of Benin 1990.

⁴⁴ That Senegal and Benin Republic from the Francophone axis.

⁴⁵ This is the situation in Francophone countries generally.

The Way Forward

Most authors world over have argue on the use of domestic Courts and institutions to enforce judgment of international courts, some of such learned scholars such as Reisman⁴⁶ that expressed support for using domestic courts to enforce the judgments of International Courts of Justice (ICJ). Some legal writers and commentators have also argued that independent national courts “are the ultimate guardians of individual rights in every case that may arise under the Common Law, Statute law and Constitutional Law”.⁴⁷ This much is recognized and captured in the national constitutions.⁴⁸ National courts apparently still hold the ace.⁴⁹

Helfer⁵⁰ while comparing domestic and international compliance and enforcement in domestic and international Courts said in most domestic legal systems, particularly rule of law societies and liberal democracies, the implicit assumption is one of adherence to legal rules. Affected parties may vigorously oppose new legal proscriptions through the judicial process, often by testing them against higher order constitutional norms. Such challenges may on occasion produce crises of constitutional magnitude in which tensions flare between different sources of domestic political authority. In the large majority of cases, once a rule’s validity has been conclusively determined, the parties whom it affects know that the state possesses a variety of tools to sanction non-compliance.

⁴⁶ In an early article, Professor W.M Reisman, proposed a draft protocol for enforcing ICJ judgments, wherein signatories would undertake “to enact such internal legislation as is necessary to require domestic courts and tribunals to enforce judgments, and rights arising thereon, solely and exclusively upon certification of the authenticity of said judgment.” See Reisman, W.M. 1969. The Enforcement of International Judgments, *American Journal of International Law* 63.1: 27.

⁴⁷ Strong, C.F. 1966. *Modern Political Constitutions*. London: ELBS, 284.

⁴⁸ Jackson, V.C. 2010. *Constitutional Engagement in a Transnational Era*. Oxford: Oxford University Press, 3.

⁴⁹ Generally, see for instance, Slaughter A., & Burke-White, W. 2006 ‘The Future of International Law is Domestic (or, the European Way)’ *Harvard International Law Journal*, 47.2: 327.

⁵⁰ Helfer, L.2003. *Constitutional Analogies in the International Legal System*. Loyola Law School Public Law & Legal Theory Research Paper Series Research Paper No. 2003-16 And Program in Law and Public Affairs Princeton University Research Paper No. 03-012.part V. Retrieved April 7, 2017 from Social Science Research Network Electronic at <http://ssrn.com/abstract=437180>

Helfer, further argued that, noncompliance might still occurs, but it does so constrained by the shadow of legal systems that enjoy relatively robust enforcement powers and submits that the international legal system is radically different. For the preceding reasons, constitutional analogies are less salient in this area than elsewhere. Because of underlying power differentials and the dearth of external coercive authority, compliance with treaties and other international commitments is decidedly not taken as a given.

Koh argue that, there is “no causal relationship or relationships exists between a ruling and subsequent implementation (enforcement) by a state.”⁵¹ States have often (partially) satisfied court judgments while making clear that they are only doing so on an *ex gratia* basis,⁵² or have come into compliance with judgment for reasons unrelated to that

⁵¹ In a seminal essay on why nations obey international law, Harold Koh elucidates four possible explanations for why states implement decisions of human rights bodies. The first is coincidence, wherein no causal relationship actually exists between a ruling and subsequent implementation by a state. See Koh, H.H.1997. Who Do Nations Obey International Law? *Yale Law Journal*, 106.8: 599, 600–01. The second is conformity, wherein states might abide by a rule but “feel little or no legal or moral obligation to do so.” (For example, while states have satisfied the payment of damages to individuals based on the findings of the UN Human Rights Committee, many make clear that they do so only on an *ex gratia* basis, not because they consider themselves legally bound to do so.) The third is compliance, wherein entities “accept the influence of [a] rule, but only to gain specific rewards . . . or to avoid specific punishments,” such as fines or reputational damage. Finally, and most rarely, there is obedience, which occurs “when an entity adopts rule induced behavior because it has internalized the norm and has incorporated it into its own internal value system.” See also Cavallaro, J. L., & Brewer, S. E.2008. Reevaluating Regional Human Rights Litigation in the Twenty-First Century: The Case of the Inter-American Court, *American Journal of International Law* 102.4: 768, 769 (noting further that scholars and practitioners have “devoted far more energy to the study of jurisprudential aspects of the decisions of the Inter American human rights system than to assessing the degree to which these decisions are implemented in practice).

⁵² See for example, Reports of the HRC, UN Docs. A/61/40 (2006), at 706–07 and A/62/40 (2007), at 671-72.

decision.⁵³ For Koh,⁵⁴ four identifiable strands of thinking have emerged about compliance. In a subsequent study on how International Human Right Law is enforced, Koh adds a fifth international legal process factor. The first one is power or coercion, also known as realism.⁵⁵ The second is self-interest or rationalism.⁵⁶

Guzman⁵⁷ argued that international court has little or no recourse when its decisions or judgments are not obeyed at the domestic plane, because international courts do not possess real time or concrete enforcement system. Instead, international court relies mainly on state concerns for international reputation, also the concerns for bad international publicity when states refuse to obey or enforce an international judgment.

Chuma-Okoro,⁵⁸ examined the relationship between the ECOWAS community law and national courts of the high contracting parties by examining the Preamble of the ECOWAS treaty which recognizes integration, the partial and gradual pooling of national sovereignties to the ECOWAS Community within the purview of a collective political will.

The relationship between the ECOWAS constitutional framework and the constitutional framework of Member States can be understood by adopting, the two analytical approaches direct applicability and direct effect. Chuma-Okoro relying on the definition offered by Nwauche,

⁵³ For example, although the 2005 United States Supreme Court case, *Roper v. Simmons*, 543 U.S. 551 (2005), which ruled that the death penalty for juveniles was unconstitutional, brought the United States into “compliance” with a similar decision of the Inter-American Commission on Human Rights that had been decided three years earlier, the court did not even mention the commission’s ruling in its reasoning. See also UN Hum. Rts. Comm., Case No. 802/1998, *Rogerson v. Australia*; Case No. 455/1991, *Singer v. Canada*; Case Nos. 666/1995, *Foin v. France*, 698/1996, *Maille v. France*, 690/1996, *Venier v. France*, 691/1996.

⁵⁴ Koh, H.H. 1997. *Why Do Nations Obey International Law?*, *Yale Law Journal* 106.8:2611.

⁵⁵ See *Simmons B. A.*, 1998. *Compliance with international agreement Annual Review of Political Science* 1:75.

⁵⁶ *Ibid* at p. 80.

⁵⁷ Guzman, A. T. 2008. *How International Law Works: A Rational Choice Theory*. New York: Oxford University Press.

⁵⁸ Chuma-Okoro, H. 2015. *The Nigerian Constitution, the ECOWAS Treaty and the judiciary interplay of Roles in the constitutionalization of free trade*. *Global Journal of Comparative Law*, 4.1.

explained direct applicability to mean the assimilation of community law into national legal systems independent of national measures aimed at domesticating the former. On the other hand, direct effect describes the approach by which countries determine how treaties become part of their national legal system and therefore enforceable by national courts as national law.⁵⁹

Drawing from the above views it is crystal clear that, judgment of the ECCJ Can only be enforced, if the the state involve recognizes ECCJ judgments as a deemed judgment of the national Court of that particular state not subject to Appeal.

Conclusion

From the totality of the above, it is clear that, the way to get the judgment of the ECCJ enforced judicial is for the contracting parties establishing ECCJ to constitutional in their respective domain recognize the judgment as judgment that should be enforced domestically as if it is a judgment of the said national Court.

⁵⁹ E S Nwauche, Enforcing Ecowas Law in West African National courts. *Journal of African law* 55.2:181-202 2011 and Oppong, F. R. 2008. *Making Regional Economic Community Laws Enforceable in National Legal Systems – Constitutional and Judicial Challenges*, *Monitoring Regional Integration in Southern Africa Yearbook* 8.