

# The Burden of Enforcing ECOWAS Court Judgement in Member States: Lessons from The European Court of Justice

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## Abstract

*The enforcement of judgments by the Economic Community of West African States (ECOWAS) Court of Justice poses significant challenges within its member states, mirroring issues faced by other regional judicial bodies. This paper examines the burden of enforcing ECOWAS Court judgments and draws comparative lessons from the European Court of Justice (ECJ). By analyzing the ECJ's mechanisms for ensuring compliance and the integration of its jurisprudence into national legal systems, the study highlights best practices and potential strategies for ECOWAS. The analysis reveals that enhanced legal frameworks, stronger institutional support, and increased political will are essential for effective enforcement. Recommendations/suggestions include adopting ECJ-like procedures such as preliminary rulings, sanctions for non-compliance, and fostering a culture of legal cooperation among member states. This comparative approach aims to provide a pathway for improving the efficacy of the ECOWAS Court and bolstering the rule of law within the region.*

**Keywords:** Court, Enforcement, ECOWAS, Member States, European Court of Justice

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## 1. Introduction

The Treaty of the Economic Community of West African States (ECOWAS) established the Community Court of Justice. Although the ECOWAS Court of Justice adopts basically the same legal and institutional attributes with some of the regional courts – namely, the European Court of Justice and the Court of Justice of the East African Community – cases of non-enforcement of its decisions are becoming quite rampant.<sup>1</sup> In the past, most community courts were faced with problems of non-enforcement of decisions. There is a complex terrain of enforcing regional court decisions through mechanisms that ordinarily appear to exceed the territorial perimeter of their boundaries.<sup>2</sup>

Hence, considering the embryonic status of community courts, the problem of enforcing their decisions is understandable. In order to foster a community of respect for the rule of law and to effectively discharge their mandates, decision of community court must be enforced. Yet, concerns over uncooperative atmosphere from member states hamper strong confidence that decisions will be taken seriously. Currently, there is a lack of formal enforcement procedures pursuant to the enforcement of judgments and orders of the ECOWAS Court. Enforcement of community court decisions is largely dependent on hierarchical political, economic and compliance incentives. For these enforcement incentives to be substantial, community legal systems must seek to select norms and organizational structures facilitating legitimacy in case law—i.e., those fostering strong-based compliance behaviors in member states.<sup>3</sup>

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<sup>1</sup>O. D. Akinkugbe (2020), "Towards an Analyses of the Mega-Politics Jurisprudence of the ECOWAS Community Court of Justice" in James Thuo Gathii, ed, The Performance of Africa's International Courts: Using International Litigation for Political, Legal, and Social Change (Oxford University Press).

<sup>2</sup>Ibid, (n1)

<sup>3</sup> Aigbomian, Fatima Mercy (2023), "Human Rights Regime in West Africa: The Case of ECOWAS and the Journey to Nigeria's Fourth Republic". Department of Political Science: Dissertations, Theses, and Student Research. 59.

## 1.1. Background and Rationale

Given that the enforcement of Community Court of Justice judgments is essential for its overall effectiveness in contributing to the ECOWAS goals, this research is also premised on the realization that enforcement issues occur both in developing and developed societies. Therefore, a good starting point since the laws in the ECOWAS region were modeled after the European precedents and the Member states are obliged to 'give effect' to the relevant European Court of Justice's judgments which require implementation in domestic law or where domestic law violates the rules of fundamental human rights provided for in the European Convention on Human Rights.<sup>1</sup> This research further attempts to tease out the binding effect and enforcement mechanisms under the laws that comprised ECOWAS and the EU, from available literatures and establish how the European Court of Justice (ECJ) has addressed judgment enforcement from the perspective of domestic laws of Member States. The overarching aim of this research is to expatiate on the ECOWAS Jurisprudential stance and the member states in which ECOWAS principles and obligations can be effectively and efficiently enforced through judgments rendered by the Court of Justice.

Members of the ECOWAS community often come across news reports and interviews in local media where judgments of the ECOWAS Community Court of Justice are criticized as being 'impracticable', 'unenforceable', and with 'no consequence'. Such characterization cannot be sustained. First, the Lome Protocol<sup>2</sup> establishing the ECOWAS Community Court of Justice provides for an enforcement mechanism of the Court judgments to safeguard the integrity and authority of the Court as a judicial institution of the ECOWAS community. In addition, legal scholars have cited the paucity of literatures that have treated the question of enforcement of ECOWAS ECCJ judgments, and therefore call for local contextualization of transnational and international law principles.<sup>3</sup>

## 2. The ECOWAS Court of Justice

The most important feature of the ECOWAS Court is its protection jurisdiction, a peculiarity not present in the European Court of Justice. The ECOWAS Court has substantive jurisdiction in the area of human rights and encourages courts in Member States to respect and enforce human rights protected by the African Charter on Human and People's Rights. The broad scope of the ECOWAS Court's jurisdictional mandate is also revealed by its access rules. In fact, while ECOWAS legal entities and Member States will always have access, individuals, corporate bodies, and all legal entities including the Finance Institutions such as the West African Development Bank and the West African Monetary Union are subject to special jurisdictional rules, notably with regard to locus standi. These rules vary according to the nature of the claim and the identity of the applicant but generally subject applicants to a more lenient regime.<sup>4</sup>

The ECOWAS Court of Justice, established under Article 15 of the Revised Treaty of ECOWAS, is often considered the only sub-regional court in Africa actually vested with a supranational jurisdiction that rules on human rights infringements. Indeed, the Court of Justice in the Economic Community of the West African States (ECOWAS) was established with a clear mandate to interpret the ECOWAS Treaty and to decide disputes resulting from the non-observance of responsibilities by Member States, appropriate Community institutions, natural or legal persons, and partners of the Community. Under the provisions of the Revised Treaty, the ECOWAS Court's core task is to rule on disputes as brought before it by individuals, corporate bodies, and legal persons whose rights have been violated, along with the ECOWAS Commission and Member State government agencies.<sup>5</sup>

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<sup>1</sup>Belemsobgo (2022), S.N. Justification and impact of international environmental agreements on West African sub-region: the ECOWAS' experience. *Environ Syst Decis* 42, 85–102 (2022). <https://doi.org/10.1007/s10669-021-09837-9>

<sup>2</sup> Protocol on the Court of Justice (A/P1/7/91)

<sup>3</sup> Erika de Wet (2021), The African Union's Struggle Against 'Unconstitutional Change of Government': From a Moral Prescription to a Requirement under International Law?, *European Journal of International Law*, Volume 32, Issue 1, February 2021, Pages 199–226, <https://doi.org/10.1093/ejil/chab015>

<sup>4</sup> Mohammed-Bashar, Farouk (2020), *Integrated Threat Management: An Alternative Approach to Regional Security System for ECOWAS*. Walden University ProQuest Dissertations Publishing, 2020. 28148996.

<sup>5</sup> Supra, (n5)

## 2.1. Establishment and Structure

The integration process in West Africa commenced in May 1975 with the proclamation of the treaty of Lagos. It provided for the establishment of the Economic Community of West African States (ECOWAS). Establishment was successfully completed in thirteen short years in May 1988 with the adoption of the ECOWAS extended community program. The principal organs of ECOWAS are the commission, the community parliament, the community court, the community fund, the community central bank, the security unit, the council of ministers, and the heads of state and government meetings. The community parliament can either be advisory or consultative as provided by the supreme organ. Forty-five community member state organizations and institutions make up the community court. However, the community court is the only institution created to enforce or dispense justice in accordance with the treaty. Just like its European Union counterpart, it has no mandate to enforce its decision.<sup>1</sup>

Every integration process is established with a common vision for its member states. This is how the European integration process was conceived as early as 1951. The primary objective of the treaty establishing the European Coal and Steel Community was to facilitate full economic integration in the interest of promoting economic development. This was achieved in the creation of the common market of the European Economic Community on the 1<sup>st</sup> of January, 1958. Succeeding treaties have spelled out the specific subsidiary objectives related to the creation of a monetary union and a political union. The twenty-seven member states of the community and the European Community who form the supranational institutions of the European Union are the European Parliament, the European Commission, the Council of the European Union, and the community.<sup>2</sup>

## 2.2. Jurisdiction and Powers

The jurisdiction of the Community Court of Justice of the Economic Community of West African States (ECOWAS Community Court) consists of contentious and advisory jurisdictions. The contentious jurisdiction stems from the Protocol of the Court which accords the Court authority to, inter alia, determine cases of alleged violation of human rights that occur in the territory of a Member State of ECOWAS; and settle disputes either between one or more ECOWAS Member States, and between the Community and other legal entities, whether private or state owned. Just like the African Charter and ICCPR, the human rights jurisdiction does not only extend to natural persons but also to entities under international law.<sup>3</sup>

The Community Court's advisory jurisdiction is a legal arrangement for giving legal advice or an opinion on matters of law and matters of fact to the requesting institution, organization, or state. The jurisdiction is derived from the Court's inspiration from both the European Union (EU) Court and the International Court of Justice (ICJ). More specifically, the EU Court, upon request by a Member State or the General Secretariat of the Council, has the power to provide an advisory opinion on a draft Agreement, where the opinion has a specific impact on the standing of EC law. In a similar vein, the ICJ is equipped with perpetual authority to provide legal opinions with respect to requests from the United Nations. With the advisory jurisdiction of the Community Court, such court can be used to provide clarity in situations falling within its competence, guaranteeing that these powers are wisely handled or force others to forge reasonable solutions to legal problems.<sup>4</sup>

### 2.2.1. Original Jurisdiction

Like the International Court of Justice and some other international judicial bodies, the Community Court also has original jurisdiction to adjudicate on disputes in which a member state to the dispute is a party. Issues concern the following:

- Community instruments (treaty, regulations, directives, decision, approved regulations) and legal acts of ECOWAS

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<sup>1</sup> A. Mahmoudi & A. Rudman (2023), A critical analysis of resocialization as an obligation, right and remedy under the Maputo Protocol in the jurisprudence of the African Court on Human and Peoples' Rights and the ECOWAS Court of Justice. Raoul Wallenberg Institute, Pretoria University Law Press, 2023.

<sup>2</sup> Dandy Chidiebere Nwaogu (2022), Ecowas Community Court of Justice: Features and Challenges of Its Human Rights Mandate. UCC Law Journal. Volume 2 Issue 2 Dec. 2022, pp. 265-292

<sup>3</sup> Supra, (n1)

<sup>4</sup> Ibid, (n 8)

- Obligations imposed on the community by international agreements (public international law)
- Acts of community institutions
- Legal act of a member state, withdrawing from the community
- Observance of principle of good governance
- Popular action and promotion of human rights
- Cases of violation of human rights during armed conflicts in any member state
- Preventive and provisional measures

The unique feature of the Community Court on original jurisdiction lies in its ability to make decisions that directly impact the national legal systems of member states. This contrasts with the International Court of Justice and many other international tribunals whose decisions do not have such direct effects. Specifically, within the African Regional System, the African Commission holds a level of power that is even greater than its appellate body, the African Court, making it on par with the African Court on Human and Peoples Rights.<sup>1</sup>

### 2.2.2. Appellate Jurisdiction

For the court to have appellate jurisdiction, it has to be in a position of a higher court, i.e. a court of second instance. The court adjudicates upon appeals from decisions of member states, community officials, and individuals through the actions of declaratory orders. In the exercise of this appellate jurisdiction, which may be original, the court applies community texts, general principles of law, and international labour law. It ensures that the law is uniformly interpreted and applied, ensuring legal certainty and predictability.<sup>2</sup>

However, the court is not mandated to annul acts of the community, member states, or their agents. The decisions of the court have the force of *res judicata*, and member states have to enforce them. Furthermore, the court's decision, through the granting of provisional measures, is also enforceable. But there is a need to ensure an effective form of execution of the decisions of the court, for example, by allowing the court, like other human rights institutions, to be able to refer cases of non-compliance to the United Nations Security Council.

### 3. Enforcement Mechanisms in ECOWAS

In an action it should take on behalf of its citizens, the ECOWAS Commission showed its dissatisfaction with the enforcement constraints of the 1991 protocol. The Protocol leaves it to individual citizens to enforce their rights before the domestic courts, even in those cases in which a clear violation of community law were to emerge from the ECOWAS Court's judgment. With the help of the existing provisions of the treaties and collaboration with the relevant local judicial institutions, member states can evolve a judicious *modus operandi* to give effect to the decisions of the court. This provision is indicative of the dependence of the ECOWAS Court on political and other modalities of pressure on member states to enforce its judgment. If a member state fails to enforce an ECOWAS judgment, the ECOWAS Commission can exercise another political weapon, the impression of public opinion, to force the erring state to comply.<sup>3</sup>

Judgment of the ECOWAS Court comes into force upon notification to the Member States. In principle, these judgments should be regarded as judgments of state authorities and therefore strictly enforceable in Member States. However, the enforceability of the ECOWAS Court judgments is uncertain at best. There is no clear mechanism in place which stipulates the method of enforcement of judgments of the ECOWAS Court. Article 24 of the 1991 Protocol shies away from discussing the enforceability of its judgments.<sup>4</sup> In member states, the

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<sup>1</sup> Adigun, M. (2024). A human rights approach to climate litigation before the ECOWAS court. *Environmental Law Review*, 26(1), 16-32.

<sup>2</sup> *Supra*, (n 7)

<sup>3</sup> Kehinde Ibrahim (2020), The Puzzling Paradox Presented within the African Supranational Judicial Institutions: The ECOWAS Court of Justice. *African Journal of International and Comparative Law*, November 2020, vo. 28, No. Supplement: pp. 86-109

<sup>4</sup> *Ibid*, (n 9)

enforcement of judgments of the ECOWAS Court has been portrayed as being difficult. The charter did not establish a mechanism to enforce its rulings, and the ECOWAS Court's judicial processes failed to ensure enforcement of its decisions.

### 3.1. Legal Framework and Instruments

ECOWAS protocols and amendments adopted in 1991 and 1993 made it possible, paving the way for the founding of the ECOWAS community of states within the framework of the ECOWAS Treaty and transforming the West Africa Economic Community (CEAO) into ECOWAS. The revised treaty was thereafter adopted on 24th July 1993 on the same day as the protocol relative to the community Parliament. The merger, which enabled regional economic cooperation bodies to become a single entity, aimed at establishing a new regional group capable of establishing and managing unified policies, and with different institutions from previous institutions.<sup>1</sup>

The ECOWAS Court of Justice was established by the ECOWAS community pursuant to Articles 6(l) and 15 of the Treaty of Lagos adopted in 1975 in Lagos, Nigeria. The Treaty is the fundamental legal instrument of the ECOWAS community. It is the constituent treaty which establishes the ECOWAS community, the principal organs like the Authority of Heads of State and Government, the Council of Ministers, the Community Parliament, the Community Court of Justice (ECOWAS Court), and others. The ECOWAS Treaty, created by the former OAU, and agreed on in Lagos on 28th May, 1975, entered into force on 28th February 1975, following its ratification by State Parties excluding Mauritania from the establishment.<sup>2</sup>

## 4. Challenges in Enforcing ECOWAS Court Judgements

Non-compliance with judgments from the Economic Community of West African States (ECOWAS) Court could result in member states experiencing a sense of fatigue when it comes to adhering to these decisions. Essentially, if more member states consistently fail to carry out these judgments, it could lead to an increased unwillingness among other parties to comply. This cycle of non-enforcement perpetuates itself and severely undermines the perceived credibility of the judicial system. In order to address this issue, it is crucial to consider both internal regulations and external mechanisms that can help re-establish respect and authority for ECOWAS Court rulings.<sup>3</sup>

Various studies suggest that the legitimacy of the World Trade Organization (WTO) Dispute Settlement System was based on a combination of self-interest and the belief in the fairness and impartiality of dispute resolution decisions. The ECOWAS Court relies on political authorities within its member states to ensure that its judgments are enforced. When states ignore these judgments or fail to uphold them due to political motivations or other reasons, the access to justice provided by the court becomes merely symbolic. As a result, the court lacks the necessary authority to fulfill its mandate of promoting adherence to the rule of law within the treaty system. The court's concerns primarily revolve around internal challenges, whether improving the quality of its decisions or implementing some form of symbolic deterrent to prevent state non-compliance with rulings.<sup>4</sup>

The Barrow case serves as a prime example of the disregard for ECOWAS Court judgments. This case highlights the difficulties in enforcing rulings when a state refuses to comply with the court's decision. The fact that multiple rounds of enforcement proceedings are required to compel a national entity to execute a judgment not only increases the associated costs but also undermines the principles of judicial integrity and court

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<sup>1</sup> A. Adeosun (2022), Measuring the Quality of the International Judiciary: The ECOWAS Community Court of Justice. A Dissertation submitted to the Open University, United Kingdom, in partial fulfilment of the requirement for the degree of Doctor of Philosophy available at <https://oro.open.ac.uk/86967/1/Measuring%20the%20Quality%20of%20the%20International%20Judiciary%20PDF.pdf> accessed on the 20<sup>th</sup> May, 2024

<sup>2</sup> Ibid, (n 11)

<sup>3</sup> F.M. Aigbomian (2023), "Human Rights Regime in West Africa: The Case of ECOWAS and the Journey to Nigeria's Fourth Republic". Department of Political Science: Dissertations, Theses, and Student Research. 59.

<sup>4</sup> S.K. Okunade & O. Ogunnubi (2018), A "Schengen" Agreement in Africa? African Agency and the ECOWAS Protocol on Free Movement, *Journal of Borderlands Studies*, DOI: 10.1080/08865655.2018.1530128

compliance. Hence, it is vital for member states to recognize the adverse effects of non-enforcement and take proactive steps to ensure the implementation of ECOWAS Court rulings. By doing so, they can restore confidence in the justice system and uphold the values of fairness and accountability.<sup>1</sup>

#### 4.1. Sovereignty Concerns

Where member states resist adopting a European-style approach to enforcing Court judgments, one option may be to involve national courts as the "guardians of the treaty." Concerns about the potential politicization and loss of sovereignty of member states could be countered by the argument that national courts play a crucial role in ensuring compliance with ECOWAS regulations.<sup>2</sup> The ECOWAS Court establishes its authority by enforcing judgments, prompting Member States to adhere to their obligations when confronted with legal orders. The Court's role is especially valuable in relation to facilitating free movement, as evidenced by its decisions and the referral of related cases by member state judiciaries. Since its inception, the Community Courts have faced significant obstacles in enforcing judgments within member countries, notably in cases involving fundamental human and institutional rights outlined in the ECOWAS Treaty. As described by Quashie, the Court often issues judgments against a member state for non-compliance, only to be ignored or criticized without consequences, leading to doubts about its authority.<sup>3</sup> It is essential for member states to appreciate the Court's role in upholding the rule of law and advancing regional integration. Embracing a European-style approach that involves national courts in enforcing ECOWAS judgments can strengthen the regional legal framework.

This collaborative effort would ease the burden on the ECOWAS Court and promote a culture of compliance among member states. Engaging national courts does not necessarily undermine sovereignty; rather, it is a collective effort to uphold the values of the ECOWAS Treaty. By empowering both the ECOWAS Court and national courts to enforce judgments effectively, the community can enhance the legitimacy of its legal system and foster greater cooperation among member states. Therefore, exploring alternative strategies to enforce judgments is crucial for achieving the objectives of the ECOWAS Treaty.<sup>4</sup>

### 5. Comparative Analysis with the European Court of Justice

Currently, the ECOWAS Court procedures are characterized by a ruling being a violation of the ECOWAS treaty, and the court period of enforcement of judgment is subject to the discretion of the contracting member states, thus making the finality of the court rulings questionable. The very essence of the judgment is to ensure that parties affected by its judgment effect should enforce it, and where they default in doing so, the court judgment should be self-executing to enforce the judgment without unnecessary difficulty. Consequently, the effective implementation or enforcement of the ECOWAS Court judgments is very difficult. In this research, the comparative analysis from the European Court of Justice to guide the ECOWAS Court by ensuring that its judgments would be enforced in member states without obstacles is adequately considered.<sup>5</sup>

#### 5.1. Enforcement Mechanisms

The ECOWAS Court's power is limited to independent Member States who ratified the Protocol removing the sovereignty barrier. The scope of National Courts varies from one Member State to another. While some courts will not enforce the judgment of the ECOWAS Court unless it is transformed into municipal law, some are working in progress to align themselves to the Supplemental Protocol. In support of its position, the Court cited *Kenya National Commission on Human Rights v. The Attorney and Thoriós Plc.*,<sup>6</sup> the Supreme Court of Kenya

<sup>1</sup> Ibid, (n 14)

<sup>2</sup> I. Iman & W.O. Egbewole (2020), Weakening National Judicial Institutions and the Rescue Mission of Regional Courts: A Critical Assessment of the ECOWAS Community Court of Justice. Available at <https://journals.co.za/doi/abs/10.25159/2520-9515/7073> accessed on the 20th May, 2024

<sup>3</sup> L. Muhammed (2023), An Appraisal of the Judgement Enforcement Mechanism of the Ecowas Court of Justice (May 22, 2023). Available at SSRN: <https://ssrn.com/abstract=4461024> accessed on the 20th May, 2024

<sup>4</sup> Supra, (n 16)

<sup>5</sup> S. Temitope (2020), The Human Rights Jurisdiction and Jurisprudence of the Community Court of Justice of ECOWAS (December 17, 2020). Available at SSRN: <https://ssrn.com/abstract=3750610> accessed on the 21st May, 2024

<sup>6</sup> Kenya National Commission on Human Rights & another v Attorney General & 3 others, Petition No. 227 of 2016, Kenya: High Court, 9 February 2017, <https://www.refworld.org/jurisprudence/caselaw/kenhc/2017/en/115436> [accessed 24 July



held that the East African Court of Justice has no jurisdiction to award a judgment enforceable within Kenya. Even though efforts at domesticating international human rights have not yielded any meaningful result. In the most recent case of *Tsatsu Tsikata v Republic*,<sup>1</sup> the Supreme Court of Ghana declared that discrimination is unconstitutional, but the judgment received substantial criticisms for failing to use international obligations, including the African Charter on Human and Peoples' Rights, of which Ghana is a signatory.

The ECOWAS Court's enabling instrument, the Revised 1991 Treaty ('the Treaty'), provides the Court with mechanisms to ensure the enforcement of its judgments. Articles 77(2) and 78 of the Treaty enable the Court to apply "any appropriate measures" in effecting its judgment. There are two previous instances where the ECOWAS Court used its "measure of execution" to ensure the enforcement of its judgment. The most recent is *ECOWAS v. FIRS*, where on finding that Nigeria had failed to comply with its obligation by not subscribing to the competence and jurisdiction of ECOWAS, the Court stated that "Nigeria as a Member State has the obligation under the Revised 1991 ECOWAS Treaty to fully implement and protect the Community's Directives and Regulations and, also, to ensure that compliance by specified bodies with the obligations is effective. I reiterate the need for the deadline imposed on the Nigeria Government to pass on the judgment as it was explicitly stated in the judgment."<sup>2</sup>

## 6. Lessons Learned from the European Court of Justice

The question can now be raised as to the conditions for the success of the Court of Justice of the European Union (CJEU) — the current successor of the ECJ, in the enforcement of its judgments by the member state judiciaries and the safeguards that have been put in place in connection with the operation of the preliminary ruling and direct effect principles. What lessons can the CJEU offer the ECOWAS Court? In the first place, the CJEU is the only supranational court to operate such a far-reaching preliminary ruling procedure. It is hard to justify the fact that the European states that adhere to the ECOWAS judicial system do not appreciate this opportunity to cooperate with each other to ensure that the court, established to fulfill a specific role, attained some level of success.<sup>3</sup>

The ECJ, first in the form of the Court of Justice of the European Coal and Steel Community (ECSC) and then as the European Communities Court, now the ECJ, came into existence before the EEC Treaty was even concluded. In June 1956, well before the EEC Treaty was signed, its statute had established the ECJ.<sup>4</sup> As a supranational court for the system of the Community, as it was then called, the ECJ was to ensure the interpretation and application of the Treaty establishing the ECSC (the ECSC Treaty). The ECJ, during the EPC and EEC, had no equivalent of supranational sanctions or measures against the member states that refused to honor the judgment of the court. Even where the Treaty setting up the ECSC existed, it provided no sanctions for the member state government that refused to honor the judgments of the court.<sup>5</sup>

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<sup>1</sup>[2004] DLSC2474

<sup>2</sup> L. Muhammed (2023), An Appraisal of the Judgement Enforcement Mechanism of the Ecowas Court of Justice (May 22, 2023). Available at SSRN: <https://ssrn.com/abstract=4461024> or <http://dx.doi.org/10.2139/ssrn.4461024> accessed on the 23<sup>rd</sup> May, 2024

<sup>3</sup> H., Jos (2021), Black Box in Luxembourg: The Bewildering Experience of National Court Judges and Lawyers in the Context of the Preliminary Ruling Procedure (Januari 01, 2021). Hoevenaars, J. & Krommendijk, J. (2021) Black box in Luxembourg: the bewildering experience of national court judges and lawyers in the context of the preliminary ruling procedure. *European Law Review*, 46 (1), 61-80., Available at SSRN: <https://ssrn.com/abstract=3810068> accessed on the 24<sup>th</sup> May, 2024

<sup>4</sup>: Jaremba U, Kappé M (2024). The Unfolding Story of Judicial Dialogue in the EU: The Coercive and Persuasive Motives Behind the Participation of Belgian Highest Courts in the Preliminary Ruling Procedure. *German Law Journal*, 1–17. <https://doi.org/10.1017/glj.2024.9> accessed on the 25th May, 2024

<sup>5</sup> von Luckner JG (2022). The End of Satellite Treaty Law as We Know It? The German Federal Constitutional Court, European Integration by International Law and Treaties "Supplementing or Being Otherwise Closely Tied the EU". *German Law Journal* 23, 157–172. <https://doi.org/10.1017/glj.2022.14>

## 6.1. Best Practices

The jurisprudence of the ECJ is replete with instances where the EU Member States have breached their treaty obligations to individuals, airlines, and private companies who often seek compensation from the ECJ. The Member States have complied with these judgments. Though some instances of non-compliance still recur, the EU has established a supranational enforcement mechanism to ensure compliance with ECJ judgments. Both the ECOSOC Defendant States and the Community Court of Justice have much to learn from the existing enforcement arrangements between the ECJ and the EU Member States, and the Court has acknowledged the need for the ECOSOC to understand the unique features of the ECJ and tailor the implementation framework with respect to the ECOWAS Court accordingly.<sup>1</sup>

The current reporting framework between the Plaintiff and the Court is not effective as the Plaintiff's status reports are usually not responsive to the court's instructions and expectations. The Applicant States should be required to provide periodic implementation reports as the Plaintiff, through the Ministry of Justice, is better placed to track implementation of the Court's judgments as it has a better visibility of the various departments and agencies whose functions were sought to be subject to the Court's remedial jurisdiction through enforcement and implementation processes. The practice in the decision of the United Nations Human Rights Committee to channel and consolidate State Reports on violations of the International Covenant on Civil and Political Rights is a useful model.<sup>2</sup>

## 7. Recommendations for Enhancing Enforcement in ECOWAS

A significant part of the reasons for occasional non-enforcement of ECOWAS Court enforceable judgments in member states lies in their operational policies, omissions, and commissions. Therefore, to enhance compliance with ECOWAS Court judgments, both ECOWAS and the Court will need to perform specific tasks and advocate the modification of their current jurisdiction and advisory mechanisms to enhance enforceability of their judgments in member states. Concisely, the ECOWAS Commission and Court should address their current capacity limitations and some defects of jurisdiction. Consequently, the author of this work suggested that at the ECOWAS level, ECOWAS should base its agenda on, in the short to medium term, the following specific tasks.<sup>3</sup>

Furthermore, to be more consistent in not just instituting infringement procedures but also enforcing their relevant judgments in cases where their ultimate dispositions have not been enforced by the defaulting country. With regards to the ECOWAS Court, the Court should advocate the inclusion of a more comprehensive enforcement of its judgments clause within the relevant ECOWAS Protocols, especially those instruments establishing obligations against the community at large.<sup>4</sup> The Court should ensure that to enforce its judgments, waiver or modification of its member states' sovereignty with appropriate settlement or conciliation tribunal or an arbitration tribunal to be created will be exercised seamlessly. Additionally, it should engage in public diplomacy more frequently with the enforceable judgments to secure the compliance of the member state with such ECOWAS Court judgments. And in return, they should attach more relevance to the Court's judgment. Such engagement is expected to stimulate debate and demand for compliance domestically in the defaulting country.<sup>5</sup>

### 7.1. Policy Implications

The policy implications are numerous and are derived from the thesis that the continuous violation of the human rights of community citizens, even by member states, on the basis of a 'dualist approach' to the enforcement of

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<sup>1</sup>Cheruvu, S. (2022). When does the European Commission Pursue Noncompliance? *European Union Politics*, 23(3), 375-397. <https://doi.org/10.1177/14651165221087635>

<sup>2</sup>M. Johansson and O. Larsson (2022), *The Commission v the Member States: who wins in court, and why?* Swedish Institute for European Policy Studies, available at [https://www.sieps.se/globalassets/publikationer/2022/2022\\_18epa.pdf](https://www.sieps.se/globalassets/publikationer/2022/2022_18epa.pdf) accessed on the 26th May, 2024

<sup>3</sup>J. A. Adeyeye (2024), *ECOWAS Court of Justice: its linkage with the African Charter on Human and People's Rights*. *GroJIL* 10(2)(2024), 51 - 71

<sup>4</sup> *Ibid*, (n 27)

<sup>5</sup> K. Ibrahim (2020), *The Puzzling Paradox Presented within the African Supranational Judicial Institutions: The ECOWAS Court of Justice*. *African Journal of International and Comparative Law*, Vol 28(Supplement)



community laws and conventions, is intolerable and must no longer be condoned by the leadership and the citizens of the community. It may be noted that at other times, the different results of the interpretation of the same provision of the ECOWAS Treaty by the ECOWAS Community Court and the quest for uniformity of interpretation of the provision of the Treaty for the entire community have been raised as reasons for according bindingness to ECOWAS Court judgement. In the same way, common arrangements exist as to the role of national courts of Member States and the superiority of the application of the Treaty over national law in the enforcement of the Treaty norms are stakeholders in the community projects.<sup>1</sup>

In other words, the ECOWAS Court is built upon the national legal order of the community, which is the Treaty. It occurs to the present writer that, as a corollary, just as litigants in national courts have the responsibility of meeting legal and procedural requirements before their claims would receive judicial disposal, because the ECOWAS Community Court, which is a derivative of the Treaty, operates on the basis of means and resources procured through national governments of member states. And with the knowledge that none of the judgments so far given by the ECOWAS Court remains satisfied within the four corners of the State parties, and that all of their judgments are not healthy so far.<sup>2</sup>

## 8. Conclusion

The aim of this article has been to provide an analysis of the neither all grassroots nor gross top-down approach to enforcement of the ECOWAS Tribunal's judgments with respect to the responsibility of member states to enforce judgments within their jurisdictions. The article submits that the manner in which the European Union model of enforcement will be employed by ECOWAS member states remains unsure, and that there is a dearth of jurisprudence from any member state on how domestic courts will approach the issue. What will sanctions look like in relation to large countries or member states with important security and geopolitical influence when found in breach of their obligations under the ECOWAS Treaty or Protocols? This article has provided an analysis of the European Court of Justice not just as a best practice model for judicial enforcement of regional court judgments, but also as an aspiration in the class of similar courts, to provide an enduring community to over 300 million citizens of member states.

The ECOWAS Tribunal (formerly the ECOWAS Court of Justice) despite the existing breaches of its judgments by member states has taken no effective practical steps to enforce its judgments in any member state since its foundation in 1991. As well as calling the independence of the ECOWAS Tribunal into question, breaches of judgments negatively impact the protection offered to citizens through implementation by member states. The only effect of non-compliance by a member state is to submit its non-compliance to the Authority of Heads of State and Government who shall "take practical measures likely to ensure the execution of the judgment".<sup>3</sup>

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<sup>1</sup> Supra, (n 17)

<sup>2</sup> Supra, (n 28)

<sup>3</sup> S. Oniye (2021), Analysis of the Jurisdiction of Ecowas Court of Justice on Human Rights Violation in Nigeria. NAU.JCPL Vol. 8 (1) 2021.