



# ECOWAS COURT

## NEWS LETTER

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### COURT PAYS TRIBUTE TO A FORMER JUDGE

The Court has paid glowing tribute to a former Judge, Justice Keikura Bangura, who passed away on 6th February 2023. The late judge was buried in his home town after a programme of tribute organised by the judiciary of Sierra Leone.

The solemn ceremony was held on Thursday, 16th February 2023 and included the opening of the book of condolence for the late judge, who served as a judge of the Superior Courts of the Judicature before his appointment to the regional court.

In the tribute read at the ceremony, the President of the Court, Justice Edward Amoako Asante, recalled with a sense of pride the contributions of the late judge to the Community during his four year service that ended in October 2022.

This was exemplified by his role as Judge Rapporteur in the celebrated case of Amnesty International Togo and seven others against the Republic of Togo in which the Court in 2020 ordered the government to pay 2 million CFA to each of the applicants for the violation of their right to Freedom of Expression over the shutdown of the internet in 2017.

The landmark judgment, which was delivered on 25th June 2020, earned the Court the 2022 Global Freedom of Expression prize of the University of Colombia, New York

In the tribute, which was delivered by a judge of the Court, Justice Sengu Mohamed Koroma, the President recalled that the late Judge contributed to the achievements which has



*Late Justice Bangura*

transformed it into an exemplar among regional courts. This include the watershed delivery of the highest number of decisions, some of them landmark, over the last four years. He noted that these decisions helped in the strengthening of the Court's jurisprudence in the protection of the human rights of the citizens.

He recalled the career trajectory of the late judge before joining the Court starting with the law office department of the Ministry of Justice where he spent the greater part of his career starting as State Counsel. He later rose to become a Senior State Counsel before being promoted to the position of Principal State Counsel and then the Acting Head of International and Constitutional Law prior to his elevation to the bench.

Reflecting on his remarkable career, the President noted that the late judge 'has created something that will endure in his dedication to duty and those cherished values for which he will be remembered.'

# NEW OFFICE FOR ECOWAS COURT UNVEILED IN ABUJA



*New Office Building*

**N**igeria's Minister of State for Foreign Affairs, Ambassador Zubairu Dada on 30th January 2023, unveiled the new office complex of the court which was provided by the host government as a replacement headquarters for the Court.

In his speech, he encouraged the Court to 'remain independent, reliable, efficient and accessible as a veritable legal institution of the Community, playing a strategic role' towards the creation of the enabling legal environment for the achievement of the objectives of the Community.'

Unveiling the new building, which is located in the Gudu district of the Nigerian capital, the Minister acknowledged the strategic role of the Court in the establishment and sustenance of an environment amenable to the attainment of the objectives of the Community.

Ambassador Dada assured that as 'a

responsible Member of ECOWAS, Nigeria will continue to ensure that it provides the necessary support and encouragement to all ECOWAS institutions and reiterated the country's commitment to ensure that 'our sub regional organisation remains the best in Africa, and indeed, one of the best in the world.

Alluding to concerns expressed by the President of the Court in his welcome remarks about the low level of enforcement of the decisions of the Court, which stood at 30 per cent, the Minister urged Member States to provide all the necessary support to the Court that will enable it thrive and which will ensure that it continues to efficiently discharge and promote its judicial functions.

The Minister acknowledged the 'rather harsh and difficult environment' that the Court worked in prior to the movement to the new building provided by the government of the

## Federal Republic of Nigeria

Nigeria's Minister of the Federal Capital Territory, Mallam Muhammad Musa Bello said the commissioning 'lends credence to the long standing and cordial relationship' with the Court. He characterised the Court as an 'exemplary ECOWAS institution' and assured that the ministry will accede to the Court's request for the renewal of the rent for the new building when it becomes due.

In the speech, which was read by the General Counsel to the ministry, Mr Mohammed Babangida Umar, the Minister characterised the Court, the Community's judicial organ for the interpretation of its texts, as an ally in the protection of human rights, one of the Court's four mandates.

In remarks earlier, the President of the ECOWAS Commission, Dr Omar Alieu Touray said the building 'represents a significant milestone in the history of the Court and the ongoing efforts to strengthen the rule of law and promote human rights in the region.'

'After several years,' he noted, 'the ECOWAS Court is now positioned as a pivotal judicial institution that inspires the confidence of litigants and that the new office will enable the court to function efficiently and effectively.'

Dr. Touray expressed optimism that the building will enable the Court increase its capacity to hear cases, provide greater access to justice for the Community as well as promote the rule of law in the region.

In his welcome address, the President of the Court, Honorable Justice Edward Amoako Asante, said the relocation opened a new dawn in the life of the Court and that beyond the more congenial physical environment it offers to the staff, the new building will also afford the Court an opportunity to improve efficiently and productivity.

He recalled the decade long engagement by the Court with the host government for the provision of a more befitting replacement office for the Court as the previous office had 'become hopelessly inadequate for the needs of the Court as an international court considering the increase in the number of staff among its other challenges.

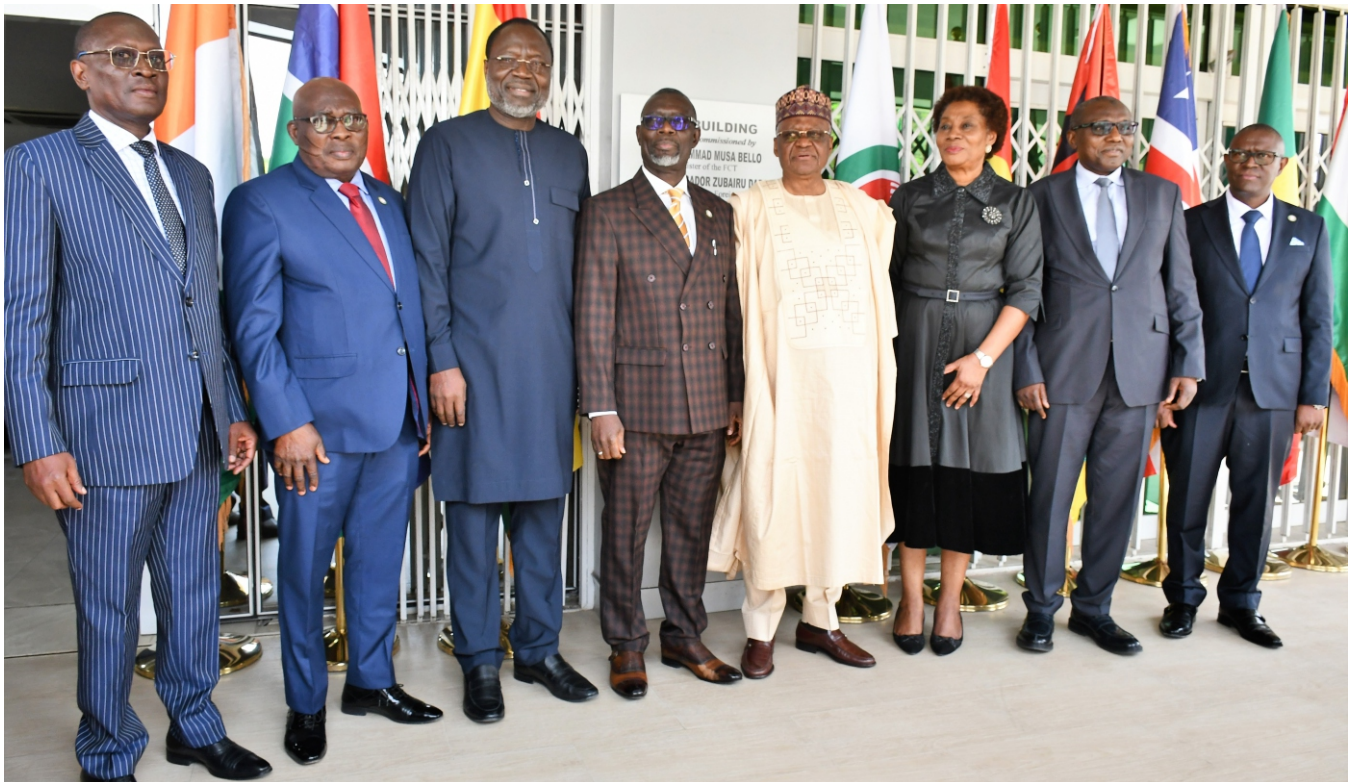
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*... 'the ECOWAS Court is now positioned as a pivotal judicial institution that inspires the confidence of litigants and that the new office will enable the court to function efficiently and effectively.*  
”

He described 2016 as a “turning point in this engagement after the Honorable Minister of the FCT, through the active involvement of the Ministry of Foreign Affairs, made a promise to a delegation of the Court who called on him, to rent a new office building as a temporary solution to the perennial accommodation challenge facing the Court.”

The President commended the two Ministers for their critical roles in the realization of this dream which 'should encourage the Court to expand its staff profile through additional recruitment to fill the vacancies in its organogram in order to leverage the additional skills for increased productivity in meeting the yearnings of the Community citizens and the fulfilment of its mandate.'

As part of the opening ceremony, which was attended by Judges and staff of the Court as well as ambassadors of ECOWAS Member States, guests were conducted around the building after the unveiling of the plaque.

## Pictures from the Unveiling of the New Office Building



## GAMBIAN PRESIDENT COMMITS TO UPHOLDING DEMOCRACY AND RULE OF LAW AT INTERNATIONAL CONFERENCE



*Judges and dignitaries after the opening ceremony of the 2023 International Conference*

Gambia's President, His Excellency Adama Barrow, opened the 2023 International conference of the ECOWAS Court of Justice on Monday 22nd May 2023, by renewing the country's commitment to upholding democracy and the rule of law.

In opening remarks at the opening of the conference, an annual event in the calendar of the Court, President Barrow underscored the importance of maintaining democratic stability and sustainable development in the region against the recent democratic reversals in the region.

In the address, which was delivered by the Vice-President Muhammad B.S. Jallow, the President labelled the Community's intolerance of unconstitutional change in government as essential for progress.

Earlier, the President of the Court, Justice Edward Amako Asante, provided the rationale

for the choice of the theme of the conference, saying that it was intended to provide platform to discuss the recent democratic setbacks in the region. He spoke of the importance of democracy, rule of law, and the fight against unconstitutional changes of government in the ECOWAS region.

Justice Asante said the choice of ECOWAS' Zero Tolerance for Unconstitutional Change of Government as the theme for the conference was "very carefully chosen by the Court because of the several incidence of unconstitutional change of government that we have witnessed in our sub region in recent years."

He reminded the participants that the role of the military was to protect the territorial integrity of the nation, which means that they are not expected to turn their guns against a government elected by the people.

Consequently, he said "the intervention of the

Armed Forces in governance is an aberration that greatly undermines constitutional order, rule of law and participatory democracy. It also hampers economic development, foreign direct investment in the economies of such countries, which are invariably further subjected to economic sanctions. It also undermines the human rights regime.”

Justice Asante urged representatives of Member States to take advantage of the conference to explore ways of entrenching a sustainable democratic culture in the Community and challenged the participants to identify the causes of unconstitutional changes of government, and proffer recommendations that can put an end to military interventions in governance in our sub region.

Realising this objective, he noted, would require the collaboration of academics, jurists, and lawyers, some of who are participating in the conference.

The keynote address was delivered by Professor Chidi Odinkalu, a renowned expert in Human Rights Law from the Fletcher School of Law and Diplomacy in the United States. Odinkalu's speech focused on the theme "Zero tolerance for unconstitutional change in government in West Africa," exploring the intersections of democracy, human rights, and sustainable development. He urged participants to prioritize these principles in the face the creeping threat to democracy posed by military incursions in the region's politics, emphasizing their crucial role in promoting stability and prosperity across West Africa.

About 200 people, mainly jurists, members of the academia and students participated in the conference which was held at the Sir Dawda Kairaba Jawara International Conference Center in Banjul.

The annual conference affords the participants an opportunity to address an

urgent and grave issue of concern in the Community's legal landscape. The Gambian conference came against the backdrop of the unconstitutional changes of government in the Republics of Mali, Guinea and Burkina Faso in the preceding two years. Participants also discussed the imperative for participatory democracy and constitutional order in all Member States against the backdrop of the regional policy of Zero Tolerance for Unconstitutional Change of Government contained in one of the region's extant texts.

*“...the intervention of the Armed Forces in governance is an aberration that greatly undermines constitutional order, rule of law and participatory democracy. It also hampers economic development, foreign direct investment in the economies of such countries...”*

The participants explored various dimensions to the rule of law, and the duty for Member States to respect, protect and fulfil their human rights obligations within their territories. Also discussed were the underlying factors for political instability, terrorism and insecurity in the sub region as well as the impact of the failure by Member States to fulfil their obligations to ECOWAS, weak institutions of Member States; and the lack of political will in the discharge of Community obligations.

The conference also enabled the participants to analyse the mandates of the Court in facilitating the integration of the Community ; hold Member States accountable for their Treaty obligations; the roles of the national courts of Member States and the ECOWAS Court in upholding and sustaining the rule of law and constitutional democracy in the sub region; the ECOWAS Community Law/ ECOWAS legal order; and the challenges of enforcement of the judgments of the Court.

## AFRICA LEADS IN THE LEAGUE TABLE OF COUPS WITH 48.3 PER CENT OF SUCCESSFUL COUPS SINCE 1950



*Professor Chidi Odinkalu delivering his speech*

**A**frican Union members should ratify the 2014 Malabo Protocol of the African Union which extends the jurisdiction of the yet to be established African Court of Justice on Human Rights (ACJHR) to include crimes under international law and transnational crimes, the guest speaker for the 2023 international conference of the Court has said.

The Protocol invests the Court with the jurisdiction to try 14 different crimes, including genocide, crimes against humanity and war crimes and emerged from a rigorous process designed to enhance the jurisdiction of the Court in response to the dynamics of the international environment.

Professor Chidi Odinkalu lamented that no African country has ratified the Protocol, which will create a third section in the ACJHR with responsibility for international law in the Court. The Guest Speaker, whose paper was on Zero tolerance for unconstitutional change in government in West Africa: democracy and

rule of law for sustainable development, urged the Republic of The Gambia to take the lead in the ratification, not only in its capacity as host of the conference but as the headquarters of the African for Human and Peoples' Rights.

Professor Odinkalu, an activist and former Chair of Nigeria's National Human Rights Commission, said the ratification of the Protocol will pave the way for its operationalization considering that Africa accounted for 48.3 per cent of all successful coups since 1950 with West Africa alone accounting for 169 of the coups.

The guest speaker singled out Burkina Faso , with eight successful coups out of the nine, as enjoying the distinction of having the most coups on the continent, followed by other countries including the Republic of Benin and the Federal Republic of Nigeria. Cape Verde bucked the trend, being the only exception in the continent's phenomena of coups.

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*Muhammed B.S. Jallow  
Prime Minister of The Gambia*



*Hon. Dawda A. Jallow  
Attorney General and Minister of Justice of The Gambia*



*Hon. Justice Abubakar Jallow  
Chief Justice of The Gambia*



*Hon. Baboucarr Ousmaila Joof  
Minister of Trade, Industry, Regional Integration and Employment*



*Rt. Hon. Sidie Mohamed Tunis  
Speaker of the ECOWAS Parliament*



*Edwin W. Harris  
Director General, GIABA*



## OFFICIALS AND SOME INVITED GUESTS AT THE CONFERENCE



*Representative of ECOWAS Commission President*



*Justices Koroma (left) and Gonçalves*



## YOUTH, CITIZEN KEY TO SUCCESSFUL DEMOCRACY IN WEST AFRICA – PROFESSOR OF PUBLIC LAW



*Professor Narey presenting his paper*

A professor of public law at a university in Niamey has raised doubts about the efficacy of West Africa's vaunted constitutional convergence principles of 2001 as the panacea for ensuring political stability in the region considering the current upsurge of coups in the region which has compounded by attempts at tenure elongation by elected leaders.

The principles supplements the 1999 regional Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security.

The protocol provides, among other things, for popular participation in decision making, strict adherence to democratic principles and decentralization of power at all levels of governance. It also requires the armed forces to remain apolitical while ensuring it is under the command of a legally constituted politically

authority and precluded from contesting for elective offices.

Contributing to a panel discussion at the 2023 international conference of the Court, Professor Oumarou Narey of the Niamey-based Abdul Moumouni University, argued that these principles, which were adopted as a bulwark against earlier military incursions into the region's politics have become inadequate and therefore needed to be reinforced.

In the presentation delivered on the opening day of the conference, Professor Narey argued that the principles needed to be strengthened with additional measures that takes cognizance of current realities including the inclusion of youth in the implementation of the principles in order to ensure the holistic involvement of Community citizens.

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## COMMUNICATION EXPERT CHALLENGES MEMBER STATES TO IMPROVE ON PROCESSES FOR CREDIBLE ELECTIONS



*Mr. Ejime making recommendation to improve elections in the region*

**A** global Affairs Analyst and Communication Specialist has challenged governments of the ECOWAS member States to improve on the processes for free, fair, and transparent elections in the region in order to ensure an outcome that is reflective of the will of the people.

In his presentation at the 2023 international conference of the Court in Banjul, Mr. Paul Ejime characterised elections as multi-stakeholder enterprise that requires every actor to play their parts effectively.

“It is important to note that the same stakeholders who should facilitate free, fair, and transparent elections can ultimately undermine the process by their conducts or disposition, actions/inactions,” said Ejime.

The paper was on the Lack of Free, Fair and Transparent Elections as a Key Source of

Conflict: Holding ECOWAS Member States Accountable for their Treaty Obligations and the Sanctions Regime. In it, the presenter lamented that in many cases, governments which are supposed to put in place the mechanisms for credible elections, often undermine the process for the selfish interests of politicians.

He listed the plethora of issues that combine to undermine free, fair and transparent elections in the region to include the “partisan disposition of many governments, which indulge in rigging of election to obtain or retain power; starving electoral commissions of funds; control of the Parliaments and the Judiciary; altering the national constitutions and electoral laws; narrowing the democratic space, human rights violations; applying undue pressure on the electoral umpire and clamping down on the opposition.”

Mr Ejime also faulted the illusion of

independence enjoyed by some election management bodies as many are “anything but independent or autonomous because their members are appointed by the Government, and are, therefore, unable to resist political pressure from the government, or inducements by political parties, or candidates.”

He also identified some other stakeholders who undermine electoral process such as the Security Agencies, the Parliament, the Judiciary, Civil Society Organizations, the Media, the electorate, and Development partners, which has cumulatively “ led to instability and the resurgence of military incursions in politics in the ECOWAS region.” For electoral processes to succeed, he said stakeholders must play their part under defined rules of engagement in all stages of the electoral cycle - before, during, and post-election.

“No matter how free, fair, and transparent, elections alone cannot guarantee freedom, democracy, or good governance,” Mr Ejime

said, “elections have been a significant source of violent conflicts and political instability in the ECOWAS region.”

*“It is important to note that the same stakeholders who should facilitate free, fair, and transparent elections can ultimately undermine the process by their conducts or disposition, actions/inactions,”*

The four-day conference, which opened on Monday, 22nd May 2023, was attended by Ministers of Justice and Attorney General, eminent judges and lawyers from ECOWAS member states as well as experts in governance, constitution, human rights, and elections.

The conference, a major annual programme of the ECOWAS Court, made recommendations for improving the electoral processes in order to ensure credible elections and the consolidation of democracy in the region.

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## **Africa Leads in the League Table of Coups with 48.3 per cent of Successful Coups since 1950**

While the continent continues its search for solutions to the resurgence of the military in politics, Professor Odinkalu called for the jettisoning of the notion of a military coup as a 'self-legalizing illegality,' and “alluded to the difficulties associated with the efficacy of the existing legal frameworks in preventing such incursions.” He therefore urged the continent to find ways to deal with popular uprisings and ensure the protection of judges to insulate them from being intimidated into acquiescence.

Additionally, the guest speaker said that it was not enough to condemn soldiers for encroaching on the democratic space, the blame should also be shared by “political adventurers who carry out constitutional and political coups or use court orders for tenure

elongation and the subversion of national constitutions.”

*“...called for the jettisoning of the notion of a military coup as a 'self-legalizing illegality,' and “alluded to the difficulties associated with the efficacy of the existing legal frameworks in preventing such incursions.”*

The four day 2023 conference was attended by about 150 academics, jurists and lawyers. The conference was declared open on Monday, 22nd May 2023 by the Vice President of The Gambia, Mr. Muhammad BS Jallow.

# BANJUL CONFERENCE URGES TOUGH MEASURES AGAINST UNCONSTITUTIONAL CHANGE OF GOVERNMENT IN THE REGION



*Prof. Abotsi (Middle), Mrs. Saine (Left) and Mrs. Nguher presenting the final report of the Conference*

Participants at the 2023 conference of the Court, which was on the theme Zero Tolerance for Unconstitutional Change of Government (UCG) in West Africa, have made wide ranging recommendations for strengthening democracy in the region. This include the criminalisation of UCG and the creation of a special task force to intervene in cases of UCG in Member States.

In a communique at the end of the four-day conference, they also called for the strengthening of “the apolitical nature of the Armed Forces to guard against UCG,” and utilising “early warning tools and existing Protocols to recalibrate the regional peace and security architecture.”

The participants, who are mostly jurists, lawyers and academics, also called for definition of the term “unconstitutional change” in the ECOWAS instruments and what constitutes a violation of the convergence

principles clearly spelt out. It also called on “Member States to stem tenure elongation, eliminate all pseudo-democratic laws, and criminalise UCG at the national level with national courts having jurisdiction.”

It recommended effective sanctions against perpetrators of UCG, including coup plotters and their supporters, with the amendment of the ECOWAS Supplementary Protocol on Democracy and Governance to “ensure that sanctions do not affect the fundamental human rights of ordinary citizens.”

The Communique urged a “review of the efficiency of sanctions” and the creation of an implementation guideline, while urging respect for term limits and an end to constitutional manipulations by incumbents to extend their mandates.

The communique further called for a stop to tenure extension by political leaders, while the

Protocol of the Community Court of Justice should be modified to allow for judicial intervention in election matters.

It also recommended the strengthening of the means of settling electoral disputes at the national level through the enactment of laws and setting up of mechanisms for independent adjudication of electoral disputes.

The Conference called for an increase in the number of judges of the ECOWAS Court of Justice in line with International best practices and the amendment of the “Protocols on the Court to enable access to individual citizens in respect of violations of community laws/obligations including activating sanctions proceedings against member States.”

ECOWAS should “muster the political will to hold member States accountable to their treaty obligations,” the Communique said.

It further called for the guarantee of the independence of the judiciary and the strengthening of the capacity of courts to render justice and also recommended that the root causes of political conflicts should be addressed to ensure political stability, peace, and progress, as well as cultivation and strengthening of a democratic culture for economic growth.

In addition, it urged ECOWAS to “combat corruption in public life as it undermines public confidence in state institutions and creates conditions for instability.”

It also called for measures against misinformation and disinformation, particularly the negative impact of social media and the involvement of the youth.

Moreover, they urged ECOWAS to ensure that Member States strictly adhere to the



*Justice Asante (left) receiving souvenir from Hon. Dawda A. Jallow at the closing ceremony*

provisions of the African Charter on Human and Peoples' Rights, and "effective implementation of regional Treaty and Protocols to make compliance thereof a condition for retaining the membership of the sub-regional bloc."

Furthermore, it urged ECOWAS to strengthen the competences and enforcement capacities of the ECOWAS Court as well as focus on the fight against poverty and the promotion of social dialogue.

It advised that National Electoral Institutions should be supported with structured training of stakeholders such as political parties, Civil Society, academia, and the media, on community principles and values.

According to the Communique, ECOWAS should "utilise proactive preventive diplomacy, mediation and results oriented conflict management strategies driven by consistency, neutrality and inclusivity to deal with management and resolution of conflict." It called for the creation of a functional mediation, conciliation, and arbitration committee for settling disputes in ECOWAS countries while Member States should be encouraged fulfil their treaty obligations within the standard Community legal framework.

Finally, it urged Member States to ensure strict adherence to the provisions of the African Charter on Human and Peoples' Rights, and suggested that "a deliberate effort should be made to discourage the teeming youths from being dangerously radicalised by Terrorists, Separatist Militias, Bandits, Kidnappers, and Ethno-religious fundamentalists within the West African sub-region."

In his remarks at the closing ceremony, the country's Minister of Trade, Industry and Regional Integration, Mr Baboucar Joof described the experience of the conference as a 'first class law school which provided an opportunity to listen to great minds from the region and commended the Court for hosting

the conference in the country."

He expressed optimism that after a 'stimulating conference, the outcome will contribute to the promotion of peace and stability, which are the preconditions for regional the regional development behind the ECOWAS integration objective.

Similarly, the Attorney General and Minister of Justice, Mr. Dawda Jallow described the conference as "humbling," with the expectation that the outcome will ensure that "West Africa is firmly rooted in good democracy and good governance."

He said that through the conference, the region has demonstrated the power of collaboration, which is a critical ingredient in the promotion of a strong democratic couture built on global best practices.

In his closing remarks, the President of the Court, Justice Edward Amoako Asante said the conference was characterised by "excellent presentations by our very knowledgeable resource persons, robust contributions by our distinguished participants and the cross fertilization of ideas resulting in a fruitful conference."

Justice Asante described the timing of the conference as apt, coinciding with a period of the resurgence of military governments in three Member States, assuring that 'we would therefore continue to sound the alarm about the dangers of unconstitutional change of government."

Consequently, he commended the Heads of State and Government of the Community for their efforts to restore constitutional order in the three Member States under military rule. He added: "we recognise the need to strengthen our region, democratic process and culture and reject in its entirety, all forms of military intervention in governance as well as undemocratic ascension to power and tenure elongation.

He insisted that “elections must be free, fair and transparent in order to avoid unnecessary conflicts and political instability in our sub-region as we are convinced that we cannot achieve our economic integration agenda without sustainable participatory democracy, rule of law and respect for human rights.

The President gave an assurance of the willingness of the Court to “deepen our collaboration with the national courts and we would continue to explore ways to deepen our fraternal relations with national courts,” reiterating that “ the Court is not in competition with national courts, rather we are partners in progress.”

In addition, he said the jurisprudence of the ECOWAS Court recognises that it is not an

appellate court over the national courts of Member States, emphasising that under the Community legal order, the Court relied on the national courts of Member States for the enforcement of its judgements.

The Vice President of the ECOWAS Court, Justice Gbéri-Bè Ouattara, who delivered the vote of thanks at the ceremony, commended the participants for their involvement and contributions that contributed to a successful conference.

The keynote address at the opening of the conference on Monday, 22nd May 2023, was delivered by Professor of Practice at Tuft University in the US, Professor Chidi Odinkalu. It was opened by President Adama Barrow.

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### **Youth, Citizen Key to Successful Democracy in West Africa - Professor of Public Law**

He therefore proposed the notion of a "regional constitution" which would be a constitutional model articulated around values supposed to establish new relations between States and their citizens with ECOWAS charged with the responsibility to operationalize the doctrine by generating common minimum standards that would be respected by all States.

Professor Narey noted that the region's sanctions regime against governments that do not abide by these rules have not prevented neighbouring countries from embarking on the path of unconstitutional change of governments.

He also mentioned the intrusion of national armies in the democratic process through coup d'état, noting that since the establishment of ECOWAS in 1975, only Senegal and Cap Vert have been spared the scourge of military rule.

He therefore advised ECOWAS Member States to insist on zero tolerance for critical matters such as the limitation of presidential tenure, the controversial revision of constitutions and corruption which are easily detectable or measurable.

*“...argued that the principles needed to be strengthened with additional measures that takes cognizance of current realities including the inclusion of youth in the implementation of the principles in order to ensure the holistic involvement of Community citizens.”*

Moreover, he urged regional authorities to strengthen national institutions, particularly constitutional jurisdictions and electoral commissions, which because of its sole responsibility for organising elections, should be made independent vis-à-vis the executive and the legislative arms of the government. He insisted on the role of the constitutional jurisdictions which are the last rampart against violation of the principles of the fundamental law.

Professor Narey is professor of public law at the Abdou Moumouni University of Niamey in the Republic of Niger.



## FORMER CHIEF REGISTRAR CALLS FOR REDESIGN OF THE ENFORCEMENT MECHANISM OF THE DECISIONS OF THE COURT TO IMPROVE ON THE LEVEL OF ENFORCEMENT



*Mr. Anene Maidoh making recommendations for improved services from the Court*

**A** former Chief Registrar of the Court, Mr. Tony Anene-Maidoh, says the non-involvement of the region's political authorities in the enforcement mechanism of the judgments of the Court is a lacuna that should compel a "redesign" of the mechanism.

Records at the court showed that about 106 judgments against Member States have not been enforced with another 11 outstanding against the ECOWAS Commission and Community institutions.

Describing the current enforcement mechanism as "rudimentary" and inconsistent with international best practice, the former senior official said in a paper at the 2023 international conference of the Court in Banjul that mechanism needed to be "re-designed" to align it with international best practice "taking into account, the perceived shortcomings of Article 24 of the 2005 Supplementary Act on the Court relating to the enforcement of its decisions."

The change, he said, will "to give ECOWAS political authorities, like the Council of Ministers and the Authority of Heads of State and Government and the Court a role in monitoring and supervising the implementation of its judgments."

He also suggested that the 2012 Supplementary Act on Sanctions should be amended to include a provision empowering the Court not only to set time limits for compliance with its judgments but prescribe the details of the judicial sanctions for non-compliance in the form of day to day or lump sum monetary penalty. He added successful parties in actions before the Court should be empowered to trigger the sanctions mechanism against States for failure to enforce the decisions of the Court.

In the 41-page presentation titled "An appraisal of the judgment enforcement mechanism of the ECOWAS Court of

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## COURT PRESIDENT PLEDGES COOPERATION WITH STAKEHOLDERS TO ENSURE IMPLEMENTATION OF THE RECOMMENDATIONS OF ITS INTERNATIONAL CONFERENCE



*Justice Edward A. Asante*

**T**he President of the Court, Justice Edward Amoako Asante has pledged to engage with the ECOWAS Commission, relevant institutions of the Community and Member States to ensure the implementation of the recommendations of the just concluded international conference of the Court as these will help arrest the resurgence of military rule in the region.

'Obviously, the resurgence is not only a threat

to regional peace and security with implications for all of us but also to our cherished values of human rights, accountability and fundamental freedoms that require our collective effort to reverse for regional stability," the President said during a thank you visit to the Chief Justice of The Gambia, Justice Hassan B. Jallow.

He assured the Chief Justice that the Court will follow up on his proposal for the creation of a

forum of Chief Justices of the region that will facilitate experience sharing, cooperation and interface with the Court as this will help deepen Community law and justice.

“Hopefully, it should be possible to inaugurate such a forum from next year as this will facilitate judicial cooperation and help in the development of Community law,” he said. He used the opportunity to commend the Chief Justice for his contribution, along with the judiciary and other high officials of the government, to the success of the international conference. The conference was hosted by The Gambia between 22nd and 25th May 2023 on the theme ECOWAS' zero tolerance for unconstitutional change of government.

He said that the visit was consistent with the demands of the African tradition and to acknowledge the 'fervent' support enjoyed by the Court for the conference which has left an 'indelible' impression on its management and staff.

In his response, Justice Jallow urged the President to work with Member States to ensure the implementation of the recommendations of conference, particularly those that will enable the region address the creeping threat to the region's democracy with the resurgence of military coups in the Republics of Burkina Faso, Guinea and Mali.

“We wish we could have contributed more to the conference, particularly the participation of officials of the judiciary, including judges in the panel,” the Chief Justice emphasized.

Justice Asante was also at the Ministry of Trade, Industry, Regional Integration and Employment where he was received by the Permanent Secretary, Mr. Lamin Dampha, who used the opportunity to give an assurance of the State's willingness to host another activity of the Court.

In response, the President noted that “with the state of the art facilities available at the new Sir Dawda Kairaba conference centre, we are hopeful of organizing another activity of the Court in The Gambia very soon.”

The President also met with the Attorney General and Minister of Justice, Mr. Dawda A. Jallow, who told him that the government was mulling the possibility of transforming the country into a hub for international conferences because of the facilities available at its new conference centre and the negative effect of the Covid pandemic on its tourism industry, a main source of government revenue.

*“...urged the President to work with Member States to ensure the implementation of the recommendations of conference, particularly those that will enable the region address the creeping threat to the region's democracy with the resurgence of military coups...”*

He also told his visitor that the government plans to construct three star hotels behind the conference center to provide quality hotel contiguous to the centre for visitors while a new VIP facility has been constructed at the airport for the use of this category of visitors.

Earlier, Justice Asante had described the conference as the most successful organized by the Court and the venue as among the biggest and best of such facility in the region.

Some 24 papers were presented and discussed during the four day conference under seven sub themes while Professor Chidi Odinkalu, a lawyer, human rights activist and professor of Practice at Tuft University in the US, delivered the keynote address as the Guest Speaker.

## THE GAMBIA AND NIGER DESIGNATE THEIR AUTHORITIES FOR THE ENFORCEMENT OF THE JUDGMENTS OF THE COURT



*President Asante with the nomination letter from The Gambia*

The Republics of Niger and The Gambia became the latest countries to designate their competent national authorities for the enforcement of the decisions for the Court, after they conveyed their decision to the Court. This brings to nine, the number of Member States that have designated their local authorities for the enforcement of the decisions of the Court.

The letters conveying their decision were received by the Court in May 2023 during the international conference. By designing their authorities, the Member States have complied with the provisions of Article 24 of the 2005 Supplementary Protocol which vests Member States with the responsibility for the enforcement of the judgments of the Court in accordance with its Rules of Civil Procedure.

In particular, Article 24 (4) of the Protocol provides that each Member State shall determine the competent national authority for the purpose of the reception and processing of the writ of execution of the judgments of the Court on its territory.

The President of the Court, Justice Edward Amoako Asante said that with the action of the two Member States, they have joined Burkina Faso, Cote d'Ivoire, Guinea, Ghana, Mali, Nigeria and Togo in the growing list of countries that have determined their competent authority for the enforcement of the decisions of the Court.

“We are excited by this development, which is indicative of the efficacy of our engagements with the Member States through advocacy and sensitization to encourage them not only to determine their competent national authorities but also to enforce the decisions of the Court which remain abysmally low,” the President said.

He said that the two countries designated the offices of their Attorney Generals for this purpose and urged the remaining six Member States that have not done so to determine their own authorities as this will provide further evidence of their commitment to their Community obligations.

## ECOWAS AND AFRICAN COURTS SIGN NEW FIVE-YEAR COOPERATION AGREEMENT FOR IMPROVING THE EXECUTION OF THEIR MANDATES



*Justice Asante (left) and Imani exchanging the Memorandum of Understanding*

**T**he ECOWAS and African Courts have agreed on new initiatives for improving the execution of their respective mandates under a new Memorandum of Understanding (MOU) signed between the two Courts in Arusha, United Republic of Tanzania.

Under the MOU signed at the end of a three day judicial dialogue of officials of both Courts on 24th June 2023, they agreed to cooperate through staff exchanges, representation in each other's programme as well as undertaking joint training, knowledge and information sharing. The cooperation also extend to the publication of their respective jurisprudence as well as research and capacity building within the framework of their constituent instruments.

The document, the successor to the 2018 inaugural MOU by both courts that lapsed in March 2021, is intended to reinforce the existing good relationship between the courts in the protection of peoples' human rights.

During the dialogue, the two Courts discussed a wide range of issues relating to their respective mandates and a number of presentations were made by their officials followed by discussions on their respective jurisprudence. This is mainly in the areas of human rights; their overlapping jurisdictions; their structures, appointment procedures and tenure; funding; access to the two Courts, admissibility of cases, challenges on compliance with their decisions and mechanisms put in place for the implementation of their decisions, among others.

The legal staff of both courts also held a working session to share experiences and exchange ideas on matters of common interests, particularly on case management, drafting of judgments, legal aid, enforcement of judgments as well as the challenges and measures taken to resolve the identified challenges.

In addition, they reviewed their initial MOU and identified the challenges that impeded the effective implementation of its provisions. They then recommended its renewal, and made proposals with a view to ensuring that the successor MOU is more effective and implementable with the adoption of a five -

year Plan of Action for its effective implementation.

The closing ceremony of the dialogue was jointly presided over by the Presidents of the two courts, Honorable Justice Edward Amoako Asante and Honorable Lady Justice Imani Aboud of the ECOWAS and African Courts respectively.

The delegation of the Court, accompanied by some Judges of the African Court, also visited the United Nations International Residual Mechanism for Criminal Tribunals (IRMCT) and the East African Court of Justice also based in Arusha, United Republic of Tanzania.

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**Cont'd from page 15**

## **Former Chief Registrar Calls for redesign of the Enforcement Mechanism of the decisions of the Court to improve on the Level of Enforcement**

Justice," the retired official proposed 11 other measures for improving on the level of enforcement, including the domestication of the Revised Treaty, Protocols and other regional texts and their incorporation into the domestic laws of Member States in accordance with Article 5(2) of the Revised Treaty,

Moreover, he urged Member States to enact the implementing legislation for the enforcement of the Court's decisions to enable national courts recognize and enforce such judgments. In addition, he said the ECOWAS Commission should be assigned a role in the enforcement mechanism while a committee of Ministers should be constituted to monitor and supervise the enforcement.

He added: "The Court should be empowered to send its own annual report to the ECOWAS Council of Ministers and /or the Authority of Heads of State and Government on the status of compliance with its judgments by Member States like in the African Human Rights system and the Inter-American Court of

Human Rights enforcement mechanism."

He told the 150 participants comprising jurists, academics and legal practitioners, that the revised mechanism should provide that upon delivery of a judgment by the Court, a copy should be sent to the President of the ECOWAS Commission and Member States notifying them of the decision in order to ensure that steps are taken towards its enforcement.

Mr Anene-Maidoh, who retired effectively from the Court on 30th September 2022 after about 18 years' service as its Chief Registrar, suggested the creation of a dedicated unit in the ECOWAS Commission, with the mandate to follow up, investigate and verify compliance in collaboration with the relevant unit of the Court responsible for appeals, arbitration and enforcement.

The four day 2023 international conference of the Court was held on the theme ECOWAS Zero tolerance for unconstitutional change of government.

## COURT DELEGATION CONCLUDES STUDY VISIT TO EUROPEAN COURT OF HUMAN RIGHTS



*Justices Asante (right) and O'Leary at the seat of European Court of Human Rights*

A delegation of the Court has concluded a study visit to the European Court of Human Rights in Strasbourg, France during which both courts held a judicial dialogue to discuss issues of common interest.

The delegation was welcomed on arrival on Thursday, 16th March 2023 by the President of the European Court of Human Rights, Justice Siofra O'Leary followed by a meeting with the Arnfinn Bardsen, section President who made a general presentation on the role and work of the Court.

The delegation later met with other officials of the Court who made presentations on the admissibility rights criteria, main substantive rights and statistics of the Court.

There were also presentations by the Directorate of Juriconsult, the knowledge platform and the Superior courts network as well as on Human Rights and Rule of Law and the execution of the judgments of the Court.

After the European Court of Human Rights, the delegation of the Court also visited the European Court of Justice for a three day judicial dialogue involving the President and Judges of that Court. Also in attendance were judges of the East African Court of Justice and the Court South African Development Community.

The delegation of the ECOWAS Court also includes the Vice President and the other three judges of the Court.

## SENEGAL DESIGNATES LOCAL AUTHORITY FOR THE ENFORCEMENT OF DECISIONS OF COURT

The Republic of Senegal has joined the growing list of ECOWAS Member States that have designated their national authority for the enforcement of the decisions of the Court. This is in line with the provision of the Article 24 of the 2005 Supplementary Protocol on the Court.

In a letter conveying the country's decision to the Court, the Republic of Senegal said that its Ministry of Justice will serve as the competent national authority for the enforcement as provided under Article 24 of the Protocol. The protocol requires each Member State to designate the entity responsible for the enforcement of the Court's decision in accordance with its applicable Rules of Civil Procedure.

The Republic of Senegal therefore becomes the 10th Member State to designate its enforcement authority.

An elated President of the Court, Justice Edward Amoako Asante welcomed the development as a "critical step in addressing the vexed issue of the poor enforcement of the decisions of the Court which stands at 106 according to the records available at the Court."

Another 11 unenforced decisions are outstanding against the ECOWAS Commission and institutions of the Community, the President said.

*"...critical step in addressing the vexed issue of the poor enforcement of the decisions of the Court which stands at 106 according to the records available at the Court."*



Coat of Arm of the Republic of Senegal

"Designation of the national authority is an important first step in the process of enforcement and we need to remain engaged with the Member States to resolve the knotty issues that have also contributed to the low rate of enforcement," the Court's President added.

Justice Asante expressed optimism that the remaining five Member States, that have not designated their national authority, will key into the current momentum generated in favour of designation, starting with the 2019 decision by the Republic of Ghana to designate its enforcement authority.

Senegal joins the other Member States of Burkina Faso, Cote d'Ivoire, Guinea, Ghana, Mali, Nigeria and Togo, The Gambia and Niger that have designated their national authorities. The letters conveying the decision of the last two was received by the Court in May 2023.



## COURT BUILDS STAFF CAPACITY ON CORPORATE PRODUCTIVITY IN NASARAWA STATE.



*Participants to the training on organizational development skills*

**T**he Court held a ten-day capacity building program for twenty of its staff at Nassarawa State near Abuja aimed at reinforcing their organizational development skills for greater efficiency.

The President of the Court, Justice Edward Amoako Asante said the exercise was part of the management's strategy for improving staffs' Corporate productivity to enable them cope with the evolving work environment. He described it as the product of the periodic systematic review and evaluation of the activities of the organization for organizational growth and development.

In particular, he said this followed management's impact assessment of the staff training of the last five years , which showed that staff training centered on job specifics and departmental aspirations at the expense of the variables of organizational development, corporate mandate, vision and mission.

He further said that through its strategic plan, the Court had developed its core values which are independence, impartiality, integrity and

accessibility which were never correlated with the work patterns and core values which are identified as important tools and institutional instruments to streamline and facilitate the actualization of an organizational vision.

During the training, two themes were developed according to the department of deployment of the staff with the first centered on “Communication Strategies for Change Management” for Registry, Research, Communication and Administration Divisions. This was designed to equip the participants to understand the value of communication in change management, its impact on the organization and the role of staff in the successful implementation of new policies.

The second theme, for Accounts and Protocol Divisions, aimed at “Improving Work Ethics and Attitudinal Change” and provided participants with practical strategies and techniques to improve attitude and beliefs hindering personal and professional growth. The training was conducted by a human resource management team from Teach House, held from April 23 to May 5, 2023.

## COURT WOMEN CELEBRATE 2023 INTERNATIONAL WOMEN'S DAY WITH TRAINING ON CAREER PROGRESSION AND SEXUAL HARASSMENT IN THE WORKPLACE



*Judges, Dignitaries and Women celebrating the 2023 International Women Day*

The Women forum of the Court organised a day-long training on «Career progression and sexual harassment in the workplace,» on the second day of its two-day elaborate activities to mark the 2023 International Women's Day.

The training, which took place on Thursday, 9th March 2023, was facilitated by a team from the United Nations Women staff led by an Ending Violence against Women Specialist.

The opening ceremony of the celebration on Wednesday, 8th March 2023, was marked by goodwill messages from the Nigeria's National Human Rights Commission, the ECOWAS Parliament, the ECOWAS Commission, the UN Women, the Director of the ILO Country Office, the Representative of the host government and statements from the Patron of the Forum, Justice Dupe Atoki and

the President of the Court, Justice Edward Amoako Asante.

In her speech at the opening, the President of the Forum, Mrs Frances Ibanga said the event was in furtherance of its role to engage in humanitarian actions, advocate for and promote gender equality as well as promote and campaign for the implementation of International, Regional and National legal frameworks for ensuring gender equality.

In this regard, she said the forum has embarked on sensitization campaigns to enlighten the public and indigent women on their rights and access to the Court.

She explained that this year's observance, which is being celebrated under the theme : « Digit ALL : Innovation and Technology for



*Some members of the Women Forum of the Court*

Gender Equality,» was designed to «celebrate the women who are championing the advancement of transformative technology and digital education. »

Moreover, the theme explored the importance of protecting the rights of women in digital spaces in a bid to address ICT gender-based violence.

«As technology advances, we see a wide digital divide between genders and this digital divide has become the new face of gender inequality» she stated noting that these growing inequalities were becoming increasingly evident in the context of digital skills and access to technologies.» She cited the UN data for 2022 which showed that 37 per cent of women did not use the internet while only 22 per cent of positions in artificial intelligence are held by women.

She blamed the situation on the exclusion of women from contributing to technological advancements, due to structural issues like poverty, gender discrimination and digital illiteracy. She therefore called for the strengthening of the campaign to address this gap by reemphasising the value of the pursuit of gender equality with emphasis on the creation of equal opportunities to all human, irrespective of gender noting that « the rise of

women is not about the fall of men.»

In his welcome remarks, the Vice President of the Court, Justice Gbéri-Bè Ouattara described the event as 'historic,' and traced its origin to a demonstration in 1909 for women's suffrage organized by the National Women's Committee of the American Socialist Party. Since then, he said the dynamics have changed reflecting the multiplication of the challenges, concerns and obstacles to the fulfilment of women.

Justice Ouattara, who represented the President of the Court, Justice Edward Amoako Asante at the ceremony, said that the observance has transformed into a day of action, awareness and mobilization dedicated to the fight for women's rights, equality and justice.

Regardless of the achievements and progress of the campaign, the Vice President said “we must not forget that everywhere in the world, every day and at every moment, without distinction of race, religion, opinion or thought, while many women still live in precarious conditions, are mistreated, humiliated, and sometimes abandoned with their offspring by irresponsible men without access to the bare minimum.”

He assured the women of the Court's unwavering commitment to the objectives behind the observance such as magnifying women, reminding us that the fight continues for as long as there exists one girl and one woman whose rights are ignored, flouted or violated.

In her goodwill message, Nigeria's Minister of Women Affairs, Dame Pauline K. Tallen, said that a gender responsive approach to innovation, technology and digital education can increase the awareness of women and girls regarding their rights and civic engagement. In the speech which was delivered by Mrs. Gloria Onwuzirike of the ministry, the Minister noted that advancements in digital technology offer immense opportunities to address the development and humanitarian challenges, and to achieve the 2030 Agenda's Sustainable Development Goals (SDGs).

She noted that the opportunities offered by the digital revolution also risked perpetuating existing patterns of gender inequality, adding that growing inequalities is becoming increasingly evident in the context of digital skills and access to technologies while women are being left behind as the result of this gender divide.

The Minister therefore called for inclusive transformative technology and digital education for a sustainable future.

*“...assured the women of the Court's unwavering commitment to the objectives behind the observance such as magnifying women, reminding us that the fight continues for as long as there exists one girl and one woman whose rights are ignored, flouted or violated.”*

In her keynote address, a judge of the Court, Justice Dupe Atoki stressed the value of digital infrastructure in contemporary life and expressed regret over the marginalisation of women in digital education. She therefore urged them to acquaint themselves of the new technology and assuring them that they will overcome through determination and consistently.

There were three presentations during the afternoon session of the opening day. The first was on the theme: Technological innovation and education in the digital age for achieving gender equality and empowerment of women and girls by Mrs Elizabeth Wuraola Kolade, a Cyber Security Professional. The second paper was on the Strategic positioning of women in the digital Age by Mrs. Titi Ojo, a business Consultant and Entrepreneurship Development Practitioner while the third paper on Gender Equity in the Workplace was delivered by a representative of the UN to Nigeria.



The vote of thanks was delivered by Justice Sengu Mohamed Koroma of the Court, who used the opportunity to thank the Women's Forum and the presenters for their insightful presentations and contributions. He concluded with the battle cry: «Aluta Continua !», in encouraging all the women in the world never to give up but to continue fighting

# PICTURES FROM THE 2023 INTERNATIONAL WOMEN'S DAY



## COURT'S WOMEN FORUM DONATES ITEMS TO ORPHANS AND WIDOWS



*Executives of the Women Forum with Children of Facado Orphanage*

**T**wo Orphanages and a group of widows in Nigeria's Nasarawa State had a memorable Easter and Ramadan Fast after they were presented food items and gifts by the Women Forum of the Court on April 6, 2023 as a goodwill gesture to mark the two observances.

The beneficiaries of the generosity of the Women Forum, a group of female staff of the Court, include the acado Orphanage in New Karu and Alpha and Omega Orphanage, Aso, both located in Nasarawa State. The other food items went to indigent women especially widows in the State.

The chairperson of the forum, Mrs. Frances Ibanga, who led the delegation of the women for the donation said the gesture was the

'beginning of numerous charity visits planned for 2023

Mrs Ibanga, who was accompanied by other members of the executives and staff of the Court encouraged the recipients to remain hopeful, prayerful and hardworking despite their challenges.

The recipients expressed their gratitude to the forum for the donation as this will make the celebration of the two observances more memorable.

The Forum, which also organised a personal development programmes for its members and other staff of the Court recently partnered with UN Women to organize a workshop for staff of the Court to mark the 2023 International Women's Day

# COURT ORDERS THE REPUBLIC OF SIERRA LEONE TO PAY 200,000 USD TO MINING COMPANY FOR VIOLATION OF RIGHT TO PROPERTY



The Court, however, dismissed claims of the violations of fundamental rights and the right to fair treatment and security alleged by the company. The Court also dismissed claims of violation of rights to security, property, work and to development filed by the second Applicant, Angela D. List, the sole shareholder of Algom Resources.

The two Parties were also ordered to bear their respective costs.

In suit no ECW/CCJ/APP/55/21, the first Applicant, Algom Resources Limited, a limited liability company incorporated under the laws of Sierra Leone on 7 June 2016 accused officials of the government of the Republic of Sierra Leone of engaging in malpractice that cost the company its gold mining licence and significant amount in investment.

The company said that it was granted a four year gold exploration licence from 9th January 2017 over the Baomahun exploration area and claimed it spent 4.8 million US dollars on exploration activities during which it discovered gold in commercial quantities.

In order to obtain a large-scale mining license from the government of Sierra Leone, the company said it needed an Environmental Impact Assessment (EIA) License which it expected to obtain from the Environment Protection Agency, Sierra Leone (EPA-SL).

It however claimed that the Agency gave a negative recommendation on the grounds that the project was located within a protected forest reserve and needed clearance from another agency, the National Protected Area Authority (NPAA). Since then, the Applicant added, it has been unable to secure the EIA due to numerous administrative hindrances, which it labelled "fraudulent".

The first Applicant said it applied for a new large-scale mining license on 25 February 2021 but was surprised that a notification was published in a Gazette informing the public that a company named FG Gold Limited had obtained an Environment Social and Health Impact Assessment Report over the same Baomahun Concession.

Algom Resources argued that by virtue of Section 108(4) of the Mines and Minerals Act, the Respondent State ought to have given it the opportunity to make proposals that will resolve the grounds for the refusal.

The Applicant contended that the purpose of that Section is to give applicants of large-scale mining licenses the opportunity to remedy defective or incomplete applications before a final decision is made on the application. Only failure by the Applicant to remedy or complete the application after being notified that there will be an absolute rejection.

Algom Resources said it made several enquiries without response about FG Gold, more particularly, to ascertain the reasons why FG Gold's application took precedence over its own application and described the government's decision as arbitrary and a "...willful disregard of due process of law, an act which shocks, or at least, surprises, a sense of judicial propriety".

The second Applicant in the suit, Angela D. List held that, by arbitrarily depriving the first Applicant of a mining license, the Respondent rendered her property useless, and her investments worthless.

She described the decision as a violation of her right as well as those of the company's employees as it not only subjected them to embarrassment and financial difficulties, but also the possibility of many of the workers not being able to fend for

*Cont'd on page 38*

## COURT DISMISSES SUIT BROUGHT BY FAMILIES OF 2007 HELICOPTER CRASH IN SIERRA LEONE



The Court on 9 May 2023, dismissed a case brought by the families of the victims of the 2007 crash of a Paramount Airlines helicopter in Sierra Leone for their failure to lead evidence to show their relationship with the victims.

Twenty two of the passengers, who were being ferried from the Freetown mainland to the airport in Lungi, were killed with a lone survivor after the helicopter crashed at the airport.

Delivering the Court's judgment, Justice Edward Amoako Asante said that while indirect victims were allowed to bring claims for human rights violation, especially where the direct victims are dead or could not bring claims, the indirect victims must provide evidence of their family or other close relationship to the direct victim(s).

Justice Asante added: "No marriage certificates, birth or adoption certificates, testamentary documents, or even sworn affidavits or statutory declarations were submitted to the Court to establish Applicants' relationships to the crash victims, and therefore, their statuses as indirect victims for admissibility purposes."

The Court had earlier dismissed an application by the State of Sierra Leone to dismiss the case as status barred on the ground that action for human rights should be brought within three years.

But citing Article 9(4) of its Protocol and its rich jurisprudence, the Court ruled that it had jurisdiction to determine cases of human rights violations, for which no statute of limitations is provided.

In suit ECW/CCJ/APP/13/20, the Applicants claimed that the State of Sierra

Leone was negligent and therefore responsible for the crash of the M18 helicopter registered under number 9L LBT in which 22 of the 23 passengers died, including 13 Togolese citizens who were members of an official delegation that had officiated an African Cup of Nations competition involving Togo's national football team.

The victims also included four Gabonese, two French nationals and a Senegalese.

The Applicants relied on the report prepared by a civil aviation expert commissioned by the Sierra Leone for their claim, a report that was officially transmitted to the Togolese authorities and showed that the aircraft was not airworthy

According to them, the investigator asserted the shared responsibility of the Ministry of Transport and Communications, Paramount Airlines and the Autonomous Airport of Sierra Leone in his report. The applicants contended that the airline neither complied with the ICAO standards and recommendations nor the Sierra Leone's civil aviation regulations, which explains the condition of the aircraft.

They claimed that the Ministry of Transport and Communications should not have allowed the helicopter to fly because it had not met at least ten of the critical conditions identified during a recent technical audit carried out by the Organization of the International Civil Aviation (ICAO). Furthermore, they quoted the report as having claimed that none of the three member crew for the flight-captain, co-pilot and flight engineer, were licenced or possessed a valid medical certificate.

Moreover, the Applicants said that the delay in rescue and the

**Cont'd on page 34**



## COURT AWARDS 50 MILLIONS CFA AGAINST BURKINA FASO FOR THE RETIREMENT OF CIVIL SERVANT ABOUT 20 YEARS AGO

The Court on Wednesday, 31st May 2023 ordered the Republic of Burkina Faso to pay 50 000 000 (Fifty Million) CFA as compensation to a retired civil servant, Mr. Kam Sibiri Eric, for the moral damages suffered following his dismissal 20 years ago allegedly for 'breach of the duty of discretion.'

Delivering judgement in the suit, Justice Ricardo Monteiro Gonçalves, the judge Rapporteur held that the Respondent State violated the Applicant's right to an effective remedy pursuant to Articles 7(1) of the African Charter, 14(5) of the ICCPR and 8 of the Universal Declaration of Human Rights. The Court also held that Applicant's right to be tried within a reasonable time by an impartial tribunal by the Respondent was also violated in accordance with Articles 7(1) and 26 of the African Charter, 9 and 14(3)(c) of the ICCPR and 8 of the Universal Declaration of Human Rights.

In papers filed before the Court in suit no. ECW/CCJ/APP/53/20, the Applicant said he worked as the Head of the Legal Affairs and Research Division of the Mediator of Faso until November 2002 when his appointment was terminated by decree for the breach of the duty of discretion.

He averred that several failed steps were taken to get the government to reconsider its action including seizing the administrative court in Ouagadougou which after four years on 8th May 2007 annulled the decree and ordered his reinstatement.

But the Faso mediator appealed the judgment before the Council of State, which reversed the judgment and rejected as "ill-founded," a request for annulment of the disputed decree.

In response to the decision of the Council, the Applicant lodged an appeal on points of law

on July 6, 2007 which is still pending before the Council.

Faced with situation, the applicant, who was represented by his counsel, Mr Naboswindé Barthélémy Zongo approached the Court asking it to hold the government in violation of his human rights and to pay him the sum of seventy-six million nine hundred and twenty-nine thousand seven hundred (76,929,700) CFA francs as damages.

He averred that by delaying the case for more than 13 years, a situation he construed as a refusal to hear his appeal, the Council of State violated his right to fair and timely trial contrary to the country's obligation under the various international instruments to which it is signatory, particularly the Universal Declaration of Human Rights.

He also cited the preamble of the country's constitution which provides under Article 8 that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law."

Unfortunately, the applicant pointed out that "although the appeal in cassation is instituted by law n°15-2000/AN relating to the Council of State, it is clear that the judicial body did not examine the case.

He contended that effective remedy, even if it exists in law, has been rendered non-existent in this case as a fair trial is one that is held within a reasonable time. In the present case, he said the Council neither communicated with the Applicant on the case nor notify him of the status describing this as a violation of a fair trial within a reasonable time, especially when it comes to restoring a civil servant to his administrative position.

The Applicant relied on Article 10 of the Universal Declaration of Human Rights which stipulates that "everyone has the right, in full equality, to have his case heard fairly and publicly by an independent and impartial, who will decide either on their rights and obligations or on the merits of any criminal charges brought against them. »

Among the other international instruments relied on which the country is signatory, are the International Covenant on Civil and Political Rights in its article 2.3 paragraph a and paragraph b and the African Charter on Human and Peoples' Rights in its article 7 (1) and (2)

The Applicant said the violations caused him

moral and psychological damages and that the inaction of the Council on his appeal, despite several unanswered correspondence's and demoralized him while his premature retirement adversely affected him financially.

The Republic of Burkina Faso was not represented at the judgment while Mr Sibiri's lawyer was represented by Barthelemy Zongo.

Also in the three member panel on the case were the president of the Court, Justice Edward Amoako Asante, presiding, and Justice Dupe Atoki.

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**Cont'd from page 32**

## **Court Dismisses Suit brought by families of 2007 Helicopter Crash in Sierra Leone**

malfunctioning of emergency equipment was responsible for the death of many of the passengers.

According to them, Sierra Leone violated the passengers' right to life, in particular the rights recognized in Article 4 of the African Charter on Human and Peoples' Rights of 27 June 1981, Article 6 paragraph 1 of the International Covenant on Civil and Political Rights of 16 December, 1966 and Article 3 of the Universal Declaration of Human Rights of 10 December, 1948.

The Applicants argued that the families of the victims, who have been enduring difficult living conditions, did not benefit from a fair trial during which they would have asserted their rights while a dedicated court should have been set up to hear the case and decide on compensation.

Finally, they expressed disappointment at the State of Sierra Leone, which had not redeemed its 2013 promise to pay the sum of 100,000 US dollars to the families of the deceased.


They therefore prayed the Court to declare Sierra Leone responsible for the violation of the rights as mentioned above and to order it to pay the sum of two hundred million (200,000,000) CFA francs, i.e. a total of four billion (4,000,000,000) of FCFA for compensation as well as the sum of (100,000,000) FCFA to the beneficiaries of each victim, i.e. the total sum of Two Billion (2,000,000,000) FCFA for damages suffered.

In its response, the State of Sierra Leone argued that Paramount Airlines was a private company and that it could not be held responsible for its actions.

The Respondent also submitted that the report on which the applicants relied for its claims was not signed and was, therefore not original. The State therefore urged the Court not to rely on accusations based on an unauthentic report and to ignore the accusations and dismiss the case.

The panel also comprised Justices Dupe Atoki and Ricardo Cláudio Monteiro Gonçalves.

## COURT ORDERS IMMEDIATE RELEASE OF 10 PERSONS DETAINED BY TOGO DURING 2018 DEMONSTRATIONS

he Court on Wednesday, 7th June 2023 ordered the immediate release of ten people who were arrested by officials of the government of the Republic of Togo during a public protest in December 2018 calling for the implementation of political reforms contained in a Global Political Agreement (GPA). The tripartite GPA was signed in 2006 by the ruling party, the opposition and the civil society.

The Court also ordered the State to pay each of the Applicants, the sum of five million CFA for their prolonged detention and treatment while in custody in the decision read by Justice Gberi-Be Ouattara, the judge rapporteur in the case.

The Court said in its judgment that the compensation would have been higher if the applicants had led evidence of torture alleged in their initiating application before the Court.

The agreement, which was the subject of the 2018 demonstration, was reached by the representatives of the ruling party, opposition political parties and the civil society. The demonstrators had also called for the implementation of the recommendations of the Truth, Justice and Reconciliation Commission (CVJR), both of which were aimed at resolving the crisis which arose in the aftermath of the death, on 5 February 2005, of former President Gnassingbé Eyadéma.

The respondent State was not represented in Court.

After the judgment, the lawyer to the applicants, Mr. Raphael Kpande-Adzare expressed gratitude to the Court for the decision which will allow his clients to be freed, especially as one of the demonstrators, who was arrested at the same time, died the day before.

In documents filed before the Court, Sakibou Akohsi and the nine other Applicants said they were arrested during the December 2018 protest over the two issues and subsequently detained during which they were subjected to cruel, inhuman and degrading treatment by the investigating agents of the State with the objective of extracting confessions from them.

Moreover, the Applicants alleged that, despite showing the marks of torture and scars of ill-treatment to the investigating magistrate, the latter continued the proceedings, ignoring the allegations. They said that on appeal to the “Chambre d'accusation de la Cour d'appel”, a court of second instance, the Court ordered the investigating magistrate to direct the competent authority to conduct an investigation into the allegations, which was not complied with within the time limit.

In suit no ECW/CCJ/APP/45/22 filed before the Court, the applicants accused the government of the violation of their rights to physical and mental integrity, fair trial and presumption of innocence.

Among their prayers, was for an order of the Court acknowledging that their rights to protection against torture and cruel, inhuman and degrading treatment, arbitrary detention were violated.

They also urged the Court to order the payment of the sum of 1,250,000,000 FCFA to each of them including 500,000,000 FCFA for damages suffered because of acts of torture and cruel, inhuman and degrading treatment.

The Togolese Republic did not file any response.

Also on the panel were Justices Edward Amoako Asante presiding and Dupe Atoki.

## COURT AWARDS 102,500,000 CFA FRANCS IN FAVOUR OF 205 GUINEANS IN SENEGAL FOR THEIR EXCLUSION FROM PARTICIPATION IN THE COUNTRY'S DECEMBER 2020 ELECTIONS



he on Friday, 9th June 2023 ordered the Republic of Guinea to pay 102 500 000 (One hundred and two Million five hundred thousands) CFA to 205 Guineans resident in the Republic of Senegal as compensation for the moral damages they suffered following their exclusion from participating in the December 2020 elections in their country.

These include the legislative elections, constitutional referendum and presidential elections scheduled in December 2020 which they expected to participate through diaspora voting at the country's Embassy in Senegal.

The Applicants Abdoul Gadiri Diallo and 258 others accused the State of Guinea of violating their human rights, in particular their right to participate in the management of public affairs in their country, their right to equal and non-discriminatory treatment and their right to effective remedy

Delivering judgement in the suit, Justice Gbéri-Bè Ouattara, the Judge Rapporteur, said that on examining the documents filed by the Applicants, the Court counted two hundred and five (205) applicants instead of the two hundred and fifty-nine (259) contained in their application, with each applicant entitled to 500,000 (five hundred thousand). In the decision, the Court agreed with the applicants that their right to take part in the management of the public affairs of their country was violated by the Respondent, including their right to equal and non-discriminatory treatment.

The Court noted that “by not taking the necessary measures to guarantee security and by instead putting an end to the census operations of Guineans residing in Senegal while this same operation was continuing everywhere else and in Guinea, the Respondent violated the rights of the

applicants as provided for by the texts invoked”.

However, the Court held that the Respondent did not violate the Applicants' right to an effective remedy saying that the argument presented by the applicants relating to the lack of an effective remedy lacks relevance and noted that the respondent has created all the necessary jurisdictions, which are functional and available.

Before ruling on the merits of the case, the Court declared it has jurisdiction to entertain the matter and therefore declared the application admissible. It however held that the request for expedited hearing of the suit is devoid of purpose while the request for interim measures is also without object.

The Court had also dismissed as 'ill-founded,' the counterclaim of the defendant for the payment of a symbolic Franc as compensation and therefore dismissed it.

In the initiating application filed before the Court's Registry on 12th March 2020, the applicants said that in order to exercise the right to vote in the Republic of Guinea, a citizen must have a voter's card issued by the Independent National Electoral Commission (CENI) and be at least 18 years of age at the close of the electoral list. Citing the country's constitution, they claimed that registration on the electoral list is a right and a duty for all Guineans. They said that while the CENI had set 28th November 2019 as the date for the registration in the country's Embassies and Consulates and 16th February 2020 specifically for the legislative elections, it was only on 29th November 2019 that the State of Guinea requested the assistance of the Senegalese authorities to put in place the requisite logistics and security measures for the registration, a day after the scheduled start of the registration exercise.

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## COURT DISMISSES CASE ALLEGING THE MISMANAGEMENT OF 14 MILLION DOLLARS IN EBOLA FUNDS BY SIERRA LEONE



The Court on Thursday, 8th June 2023 dismissed a suit brought by a Non-Governmental Organisation (NGO) alleging the mismanagement, by the government of Sierra Leone, of the 14 million dollars of the funds contributed by donors to enable the country cope with the 2014 Ebola outbreak in the country.

The Center for Accountability and the Rule of Law (CARL), which filed the suit along with two Sierra Leoneans, Hawa Jalloh and Fatmata Sesay, claimed that the action of the government resulted in the avoidable death of Sierra Leoneans, thereby violating the right to life and health of the applicants.

But delivering the judgment, Justice Gberi-Be Ouattara, the judge rapporteur, said based on the documents filed before it, two of the applicants are still alive and therefore 'cannot validly maintain that a serious and irreversible attack has been made on their right to life.'

Moreover, it held that "the Center for Accountability and the Rule of Law" (CARL) could not mention a single name of the 14, 000 victims it represents, including four thousand (4,000) people who died. Moreover, the Court held that the applicants had not, "added to the file, nor provide any irrefutable proof of the death of an individual as a result of contamination by the Ebola virus, "such as a medical certificate indicating the cause or type of death of the deceased.

In particular, the Court also rejected the violation of the right to health alleged by the Applicants as "Hawa Jalloh and Fatmata Sesay have not proven that they are nurses and that they have been infected by the Ebola virus if only by the production in the file of the procedure of their professional cards and medical certificates to corroborate their allegations."

The Court therefore held that the State was not in violation of the rights of the applicants in the suit and rejected their claims for the payment of damages, explaining that in support of their allegations, they had not adduced any tangible

evidence attesting to the veracity of their allegations before the Court.

It ordered the applicants to bear their costs.

Before deciding on the merits of the case, the Court previously rejected the claim of the respondent that it has no jurisdiction to hear the matter and therefore declared the application admissible.

In suit no: ECW/CCJ/APP/07/18, filed before the Court on January 23, 2018, CARL, Awa Jalloh and Fatmata Sesay, both Sierra Leonean nurses, alleged that the Government of Sierra Leone lacked the transparency in the management of the funds made available to it to fight the Ebola epidemic which shook the country in 2014.

They contended that the lack of transparency, coupled with nonchalance in the treatment of infected people resulted in the enormous loss of lives, including those of health workers. They further alleged that 14,000 Sierra Leoneans were contaminated by the virus of which 4,000 of the victims died, partly because of the late response of the State to the treatment of those infected with the virus while efforts were not made to control its spread through the closure of the borders.

Moreover, they claimed that the mismanagement of the funds resulted in financial losses, and that the government did not take action despite the report of an audit by a government agency released in February 2015 which confirmed the loss of 14 million dollars due to a misappropriation of the funds contributed by donors to deal with the outbreak and the decline in the quality of health service.

The Applicants, who were represented by Mr. Oludayo Fagbemi of the Banjul-based Institute for Human Rights and Development in Africa (IHRDA ) relied on some international legal instruments relating to the protection of human rights, mainly Articles 1, 4 and 16 of the African Charter on the Rights and Duties of Peoples ( ACHPR) ratified by the Respondent State on

September 21, 1963 and Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by the Respondent State on August 23, 1996.

They also alleged that the Respondent violated Article 6 of the International Covenant on Civil and Political Rights (ICCPR) ratified by the Respondent State on August 23, 1996.

But in its statement of defence, the Republic of Sierra Leone, which was represented by Mr. Osman I. Kanu denied each of the allegations and urged the Court to hold that the allegation of the violation of the applicants' human rights was not established because as it was not supported by evidence.

The Respondent State pointed out that the alleged mismanagement of Ebola funds, unproven by the Applicants, could not have caused the alleged infections and deaths qualified as violations of the right to life and the right to health as the government has never refused to use its available resources for the treatment of those affected.

It therefore urged the Court to hold that the republic of Sierra Leone has not violated the rights of the applicants as alleged and consequently to dismiss the suit with the claims.

Also on the panel for the case are Justice Edward Amoako Asante (presiding) and Justice Dupe Atoki.

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### **Court orders The Republic of Sierra Leone to pay 200,000 USD to mining company for violation of right to property**

their families and dependents, therefore infringing on their right to health, both physical and mental.

The Applicants urged the Court for USD 50,000,000 in exemplary damages, another USD 20,000,000 as damages for anxiety and embarrassment and USD 500,000 as costs.

In response, the Respondent denied all the allegations, pointing to the fact that the Exploration License of Algom Resources expired in 2021, therefore extinguishing all their mining rights in Sierra Leone. It also contended that the company's application for a large-scale mining licence made in February 2021 was treated fairly and denied that the government favoured FG Gold and challenged Algom Resources to provide evidence to the contrary.

On the claims of destruction of property, the Respondent State argued that the first Applicant did not cite any provision that prevented the removal of its equipment and said that by the government's letter dated 25 March 2021 which was acknowledged by the company, the Director of Geological Survey

reminded the first Applicant of their statutory obligations to vacate the licensed area.

On the claims by the second Applicant, the Defendant said it had no direct dealing with her, arguing that the damage suffered by the company and its shareholder did not mean that both are entitled to compensation as "although two separate entities may have suffered from the same wrong, it is only one entity whose rights have been infringed".

The Respondent contended that the applicants decided to bring in the shareholder as a party in order to satisfy the threshold for human rights violation.

The Respondent therefore urged the Court to dismiss the case as there were no violations of a recognized right established by law. It also prayed the Court for an order to dismiss the second Applicant locus standi as a party to the action. The Respondent also asked for 100,000 US dollars as costs.

On the panel were Justices Edward Amoako Asante (presiding), Gberi-Be Ouattara and Dupe Atoki.

## COURT AWARDS 15 MILLION CFA TO GUINEAN LAWYER OVER HIS UNLAWFUL ARREST BY SECURITY AGENTS IN 2020

The Court of Justice has ordered the Republic of Guinea to pay Fifteen Millions (15 000 000) FCFA to a Guinean lawyer as compensation for the moral damages suffered for the violation of his rights following his arrest along with seven of his clients by agents of the State in 2020.

The Applicant, Mamoudou Sane told the Court that while exercising his professional obligation and without any legal basis, he was arrested with his clients on the instruction of the Central Director of the Judiciary Police and led under escort to the departement de la Police Judiciaire (DPJ) where they were detained before his release after the discovery of his identity as a lawyer.

He further told the Court that following the 24th February 2020 arrest, he filed a complaint against the Central Director of the Judicial Police of the Respondent, which has remained untreated by the Attorney General of the Conakry Court of Appeal. Consequently, he was forced to file an action before the ECOWAS Court for the violation of his fundamental rights and freedom by the Republic of Guinea, including his right to fair trial through his lawyer, Pepe Antoine Lama.

Delivering the Court's judgment in the suit on Friday, 9th June 2023, the Judge Rapporteur, Justice Ricardo Claudio Monteiro Gonçalves, recalled the admission by the respondent of the arrest and detention of the applicant, describing this as a violation of his right to liberty and security, as provided for in Articles 6 of the African Charter, 9(1) of the ICCPR and 3 and 9 of the UDHR.

The Court noted that the respondent had dismissed the arrest and detention as "motivated by mere confusion with his clients and that as soon as the Applicant was released as soon as his status was established."

Consequently, the Court held that "in the absence of any legal basis, this Court considers that the arrest of the Applicant was arbitrary and illegal, since the police authorities had to take care in advance who they had to arrest and why the arrest should have been made, therefore, acting otherwise violated the Applicant's right to liberty and security under Articles 6 of the African Charter, 9(1) of the ICCPR and 3 and 9 of the UDHR."

The Court also held that the Respondent violated the Applicant's Right to due process, as provided for in Articles 7(1)(d) of the African Charter, 14(5) of the ICCPR and 8 of the UDHR, noting that it has been 39 months since the applicant filed the complaint on 24th February 2020 with the Respondent not following up as should have been the case.

"This Court is certain that such a time delay is absolutely excessive to obtain a simple order of authorization with a view to the normal progress of the process, no matter how large the volume of cases that enter the Attorney General's Office of the Defendant on a daily basis

*"...in the absence of any legal basis, this Court considers that the arrest of the Applicant was arbitrary and illegal, since the police authorities had to take care in advance who they had to arrest and why the arrest should have been made..."*

"The passage of all this time also demonstrates the lack of interest on the part of the Respondent in the investigation to which, moreover, he is obliged, and the normal follow-up of that process, thus constituting a violation of the right to a fair trial to which the Applicant is entitled, pursuant to Article 7(d) of the Charter."

The Court therefore ordered the Respondent to initiate, without delay, proceedings against the perpetrators of the acts for which the Applicant was a victim, with a view to securing justice for the applicant. However, the Court declared as groundless, the other claims made by the Applicant.

Citing Article 66(2) of its Rules, the Court

ordered the Respondent will bear the costs of the proceedings. The Applicant had asked for an order of the Court to compel the Republic of Guinea to pay him the sum of two hundred (200) Million CFA as compensation for the damaged suffered and another order to compel the respondent to treat his complaint against the office of the Central Director of the Judicial Police.

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### ***Court Awards 102,500,000 CFA Francs in favour of 205 Guineans in Senegal for their exclusion from participation in the country's December 2020 Elections***

Moreover, the applicants noted that to register, a citizen must have a valid passport, contrary to article 19 of the revised electoral code which requires different forms of identification such as an identity card, passport, the military booklet, the civil or military pension book, the student or pupil card for the current year, the consular card or a certificate issued by the district head of the district and countersigned by two notables. The Applicants alleged that the imposition of these conditions was to reduce the number of registered voters as it is impossible to renew passports in Senegal without travelling to Guinea. They declared that on December 3, 2019, the Embassy of Guinea in Senegal unilaterally decided to suspend the installation of all the Administrative Commissions for the Establishment and Revision of the Electoral Lists on the pretext that "this measure aims to finalize the administrative arrangements with the Senegalese authorities," explaining that this decision should in principle have come from the CENI. They said that on December 16, 2019, the CENI definitively suspended the registration and revision of the electoral lists on Senegalese territory even though Guineans in Canada and France, were registered and that the suspension of the exercise in Senegal, which denied them access to an electoral card and which would have allowed them to vote, was a violation of their rights.

The applicants, who were represented by their counsel, Mr. Drame Alpha Yaya, described the suspension as illegal and a violation of their

right to participate in the elections in disregard not only of the Guinean constitution but also in defiance of Articles 1g 7, 33 of the Protocol on Democracy and Good Governance of ECOWAS, Articles 21 of the Universal Declaration of Human Rights; Articles 3 and 13 of the African Charter on Human and Peoples' Rights and 25 of the ICCPR.

The applicants contended that their exclusion from the electoral process caused them harm and therefore urged the Court to order the State of Guinea, among others, to pay each of them Five million (5,000,000) CFA francs which made of One billion two hundred and fifty million (1,295,000,000) CFA francs for all of them. They also asked the Court to order the State of Guinea to pay all costs in the sum of twenty-three million (23,000,000) CFA francs.

But the Republic of Guinea, represented by the State counsel, Mr. Joachim Gbilimou urged the Court to declare that the violations of human rights invoked by the applicants have not been established and therefore asked that the claims of the applicants be dismissed.

The Court also ruled as ill-founded, the counterclaim of the defendant for the payment of a symbolic Franc as compensation and therefore dismissed it.

Also on the panel for the case were Justices Edward Amoako Asante (presiding) and Dupe Atoki.