

WORKING VISIT OF JUDGES AND SENIOR STAFF OF THE ECOWAS COURT OF JUSTICE TO THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

26 FEBRUARY- 1 MARCH¹ 2018

ARUSHA, TANZANIA

WELCOME ADDRESS

BY THE PRESIDENT

- Honourable Justice Jérôme TRAORÉ, President of the ECOWAS Community Court of Justice
- Honourable Justice Ben KIOKO, Vice-President of the African Court on Human and Peoples' Rights
- Honourable Justice Yusif KABA, Vice-President of the ECOWAS Court of Justice
- Honourable Judges of the ECOWAS Court of Justice and the African Court on Human and Peoples' Rights
- Registrars of the ECOWAS Court of Justice and the African Court on Human and Peoples' Rights
- Ladies and Gentlemen, Senior Staff of the two Courts
- Distinguished guests, Ladies and Gentlemen

Permit me first and foremost to welcome you all to the seat of the African Court and to thank you on behalf of Judges of the African Court, staff and my humble self for accepting to travel to Arusha at short notice.

Referring to judicial dialogue, Professor Cornu distinguished three forms of dialogue:

- Adversarial dialogue between parties, during which the Judge simply plays the role of a Keeper;
- Interrogatory dialogue, during which the speakers play complementary, but non interchangeable roles; and

¹ The original document contains 29 February, whereas 29 February does not exist this year 2018. On which date is the working visit going to end?

- Cooperation, meaning a neutral dialogue where communication is not marked by any specific relationship.

From the foregoing, the second form, that is interrogatory dialogue, applies to the present context as this working visit formally begins today. A formal working visit of the Judges and Senior Staff of the ECOWAS Court of Justice to the African Court on Human and Peoples' Rights is in fact the first of its kind in the history of the African Judicial system. It is true that in terms of judicial dialogue on a Continental scale, both Courts have already undertaken exchanges on common matters of substantial and structural interest. However, dialogue between the ECOWAS Court of Justice and the African Court goes beyond general matters which the Continental judicial dialogue proposes in terms of complementarity, and which I dub the "greatest African and Judicial Human Rights System."

Mr President, Distinguished Colleagues and staff, it is incumbent on us to formalise judicial cooperation typical of both Courts through the recent emergence of community norms and structures which are becoming more and more regionalised. Between the adoption of the amended 1993 ECOWAS Treaty establishing the African Charter on Human and Peoples' Rights and the supplementary 2012 Act on sanctions, the 2002 Protocol on Good Governance and the 2005 supplementary Protocol on the extension of the jurisdiction of the Court of Justice, a judicial mechanism for Human Rights' protection has been set up in West Africa. After just a decade of supervision of this new mechanism, the ECOWAS Court of Justice has become the new destination for judicial Human Rights' protection in Africa. The relevant provisions of the amended Treaty, interpreted and read alongside those of the 1991 Protocol, incorporated into Article 38 of the International Court of Justice's Statutes, have granted universal jurisdiction to the Court of Justice. This unlimited jurisdiction can be seen through the judgement in *Koraou v. Niger* as well as the Court's landmark decision on the Maputo Protocol following the judgement in *Njemanze v. Nigeria*.

Mr President, Distinguished Colleagues, you can notice that the African Court keenly follows the jurisprudential developments of your Judicial Establishment. We are compelled to act accordingly since these developments make our two establishments the most concurrent and complementary Human Rights Courts in the African continent. Hitherto, this could only be noticed by referring to our respective constitutive instruments; the latest jurisprudential developments being evidence of this practice. I already made mention of the judgement in *Koraou* wherein the Court

of Justice acknowledged the customary nature of the Universal Declaration of Human Rights. However, in *Hissène Habré v. Senegal*, the Court examined the allegations for violations of the International Covenant on Civil and Political Rights before adjudging on the Maputo Protocol in its judgement of the *Njemanze* case.

The jurisprudential and normative reciprocity of our two Courts was achieved when, on one hand, the Court of Justice made pronouncements on violations of the Protocol on Good Governance in its judgement of *CDP v. Burkina Faso* and, on the other hand, the African Court ruled in *ADPH v. Côte d'Ivoire* that the African Charter on Democracy was a key Human Rights' instrument. This said, the jurisprudential act which will be a perfect reflection of the natural judicial dialogue between our two Courts is the judgement which the African Court will give in *Jean-Claude Roger Gombert v. Côte d'Ivoire* at its 48th Ordinary Session which opens today. I am convinced that the *Gombert* case is not new to the ECOWAS Court of Justice which has ruled twice on the matter. Within the purview of respect of confidentiality of deliberations, I would avoid disclosing the position taken by the African Court since I could not rule on the matter by virtue of my Ivorian Nationality. However, I can assure you that the African Court has deliberated upon the matter in the strict respect of complementarity and dialogue among Judges.

Honourable Judges, Dear Colleagues, it is incumbent on us, according to law and practice, to formalise judicial cooperation between both Courts during this historic visit. In my opinion, the programme of the working visit drawn by the two Registries has taken this aspect into account. We may, at the same time, exchange on operational and judicial levels of matters on the functioning as well as issues of law and practice in our respective institutions. Furthermore, I am elated that this visit will culminate into the signing of a Memorandum of Understanding between the two most active Human Rights Courts in Africa. I hope and I am convinced that this Memorandum will offer new opportunities for the reinforcement of the administration of justice at regional levels, in a continent where, in the words of Professor René Dégni Ségui, human rights are greatly spoken of but insufficiently protected and constantly violated.

Mr President, Dear Colleagues, I would like to conclude by reiterating that the African Court is strongly committed to strengthen its cooperation with the ECOWAS Court of Justice. It is in this vein that we have already agreed upon a similar visit, in the month of April this year, of the African Court to the headquarters of the

ECOWAS Court of Justice in Abuja. For both Courts, dialogue and cooperation are no longer options; they are imperative for the benefit of a just Africa and for the continent's human development.

It is at this juncture that I wish you success in the various activities that shall be carried out during this visit and, to our guests, have a fruitful stay in Arusha.

Thank you for your kind attention.

Sylvain Oré