

AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي		UNIÃO AFRICANA
UNIÓN AFRICANA		UMOJA WA AFRIKA
AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES		

THE MATTER OF

CHIEF FESTUS A. OGWUCHE & 24 OTHERS

V.

BURKINA FASO & 5 OTHER STATES

APPLICATION No. 005/2024

ORDER
[PROCEDURE]

11 SEPTEMBER 2026



The Court composed of: Blaise TCHIKAYA, President; Chafika BENSAOULA Vice - President; Rafaâ BEN ACHOUR, Suzanne MENGUE, Tujilane R. CHIZUMILA, Stella I. ANUKAM, Imani D. ABOUD, Dumisa B. NTSEBEZA, Duncan GASWAGA – Judges; and Grace W. KAKAI, Deputy Registrar.

In accordance with Article 22 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (hereinafter referred to as "the Protocol") and Rule 9(2) of the Rules of Court (hereinafter referred to as "the Rules"), Justice Modibo SACKO and Justice Dennis D. ADJEI, Judges of the Court, and nationals of Mali and Ghana, respectively, did not hear the Application.

In the Matter of:

- i. Chief Festus A. OGWUCHE
- ii. Obinna UMEH
- iii. Traore KASSOUM
- iv. Gnohore Fortune KIPRE
- v. Camara MALLICK
- vi. Camara ASSIETOU
- vii. Kobre HULLAIRE
- viii. Seydou GUINDO
- ix. Sakpa Jean FRANCOIS
- x. Guikpa LUKEMAN
- xi. Ekwuha JULIETTE
- xii. Akissi AFFOUE
- xiii. Assamoi ZAKARI
- xiv. Sianthe EMMANUEL
- xv. Mahmodou KAREEM
- xvi. Saly SILIFFOU
- xvii. Laurent HUBERT
- xviii. Iyansie DANIEL LOKOU
- xix. Diouf ISMAEL
- xx. Nagadeff SALIFOU
- xxi. Ahmad BABA

- xxii. Daho Oumou AFFOUE
- xxiii. Karamoko MAMIADOU
- xxiv. Casav. Marie FRANCOISE
- xxv. Liberador JOSELP

Represented by:

CHIEF Festus A. OGWUCHE, Crownfield Solicitors

Versus

- i. BURKINA FASO

Represented by:

Karfa GNANOU, Agent Judiciaire du Tresor

- ii. REPUBLIC OF GAMBIA

Not represented.

- iii. REPUBLIC OF GHANA

Represented by:

- i. Dr. Dominic A AYINE, Attorney General and Minister for Justice
- ii. Helen A.A. ZIWU (Mrs), Solicitor General
- iii. Jonathan ACQUAH, Chief State Attorney
- iv. Reginald Nii ODOI, State Attorney
- v. John ENCHILL, Assistant State Attorney

- iv. REPUBLIC OF GUINEA BISSAU

Not represented.

v. REPUBLIC OF MALI

Represented by:

Moussa Kenneye KODIO, Director General

vi. REPUBLIC OF NIGER

Represented by:

Mainassara OUMAROU, Advocate registered at the Bar of Niger

After deliberation,

Issues this Order:

I. THE PARTIES

1. The Application is filed by Chief Festus A. Ogwuche and 24 others (hereinafter referred to as “the Applicants”) who are nationals of various member States of the Economic Community of West African States (hereinafter referred to as “the ECOWAS”). They allege violation of their rights due to the proposal to amend Protocol A/P.1/7/91 on the ECOWAS Community Court of Justice.
2. The Application is filed against the following six States (hereinafter referred to as “the Respondent States”):
 - i. Burkina Faso, which became a Party to the African Charter on Human and Peoples’ Rights (hereinafter “the Charter”) on 21 October 1986 and to the Protocol on 25 January 2004. Burkina Faso deposited the Declaration required under Article 34(6) of the Protocol (hereinafter “the Declaration”) on 28 July 1998 thereby accepting the

jurisdiction of the Court to accept cases from individuals and NGOs with observer status before the African Commission on Human and Peoples' Rights (hereinafter "the Commission").

- ii. The Republic of the Gambia, which became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. It deposited the Declaration on 3 February 2020.
- iii. The Republic of Ghana, which became a Party to the Charter on 1 March 1989 and to the Protocol on 16 August 2005. It deposited the Declaration on 10 March 2011.
- iv. The Republic of Guinea Bissau, which became a Party to the Charter on 21 October 1986 and to the Protocol on 2 November 2021. It deposited the Declaration on 2 November 2021.
- v. The Republic of Mali, which became a Party to the Charter on 21 October 1986 and to the Protocol on 25 January 2004. It deposited the Declaration on 19 February 2010.
- vi. The Republic of Niger, which became a Party to the Charter on 21 October 1986, and to the Protocol on 26 June 2004. On 7 April 2022 it deposited the Declaration.

II. SUBJECT OF THE APPLICATION

- 3. The Applicants allege that following an extraordinary summit of the ECOWAS Heads of State and Government,¹ the Chief Justices of ECOWAS member States, acting in their capacity as the "Community's Judicial Service Commission", proposed an amendment to Protocol A/P.1/7/91 on the ECOWAS Community Court of Justice (hereinafter referred to as "the ECOWAS Court") to incorporate the requirement for exhaustion of domestic remedies as a prerequisite for the admissibility of cases before the ECOWAS Court.

¹ The Applicants do not specify the date(s) on which the Extraordinary Summit was held or the date(s) when Chief Justices of ECOWAS member States met to propose the amendment to Protocol A/P.1/7/91 on the ECOWAS Community Court of Justice.

4. The Applicants contend that the proposal to incorporate the requirement for the exhaustion of domestic remedies would procedurally and substantively deprive them of their fundamental rights enshrined in the Charter and other international human rights instruments.
5. The Applicants also assert that the establishment, and expanded jurisdiction of the ECOWAS Court, was driven by the recognition that domestic courts had largely failed to guarantee the protection and enforcement of individuals' rights. They assert that the ECOWAS Court was created to serve the people of the region, not the interests of member States against whom those people frequently bring claims of rights violations. Consequently, the Applicants argue that any decision affecting the functioning and accessibility of the ECOWAS Court cannot be legitimately made without consulting the very individuals for whose benefit the Court was established.

III. ALLEGED VIOLATIONS

6. In the main Application, the Applicants allege that the Respondent States' conduct violates the following rights and obligations:
 - i. The obligation of States to recognize and implement the rights, duties, and freedoms enshrined in the Charter, as provided under Article 1 of the Charter;
 - ii. The right to have one's cause heard, including the right to appeal, presumption of innocence, legal defence, and trial within a reasonable time, as provided under Article 7 of the Charter;
 - iii. The right to self-determination and to freely determine political status and economic, social, and cultural development, as protected under Article 20(1) of the Charter;
 - iv. The right of colonized or oppressed peoples to free themselves from domination, as provided under Article 20(2) of the Charter;

- v. The right of oppressed peoples to receive assistance in their liberation struggle against foreign domination, as protected under Article 20(3) of the Charter;
 - vi. The right to self-determination, as protected under common Article 1 of the International Covenant on Civil and Political Rights (hereinafter “the ICCPR”) and the International Covenant on Economic Social and Cultural Rights (hereinafter the “ICESCR”);
 - vii. The obligation of States to adopt necessary legislative or other measures to give effect to recognized rights, as provided under Article 2(2) of the ICCPR;
 - viii. The right to an effective remedy for violations of fundamental rights, as provided under Article 3 of the ICCPR;
 - ix. The right to an effective remedy for acts violating fundamental rights, as protected under Article 8 of the Universal Declaration of Human Rights (hereinafter “the UDHR”);
 - x. The right to a fair and public hearing by an independent and impartial tribunal guaranteed under Article 10 of the UDHR;
 - xi. The right to a social and international order in which rights and freedoms can be fully realized enshrined under Article 28 of the UDHR and;
 - xii. The prohibition against engaging in activities that undermine the rights and freedoms in the Declaration, as enshrined under Article 30 of the UDHR.
7. The Applicants also allege, without specifying the particular provisions thereof, that the Respondent States’ conduct violates the ECOWAS Protocol on Democracy, Elections and Good Governance, the African Charter on the Rights and Welfare of the Child and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.

IV. SUMMARY OF THE PROCEDURE BEFORE THE COURT

8. The Application, together with a request for provisional measures, was filed as against all 15 member States of the ECOWAS on 10 May 2024.²
9. On 28 July 2024, the Registry informed the Applicants of the registration of the Application and requested them to provide further information in relation to the decision(s) complained of.
10. On 9 October 2024, the Applicants filed “documentary materials” that they alleged were in support of their Application. They also informed the Court that “appropriate applications for regularization of our processes” would be filed later.
11. In a Ruling dated 17 June 2025,³ the Court struck out one of the Applicants, being a Non-Government Organisation, for not having observer status before the Commission.⁴ Additionally, the Court found that some of the Respondent States included by the Applicants were not Parties to the Protocol, while others had deposited instruments withdrawing their Declarations, which had already taken effect. Accordingly, the Court struck them out from being parties to the Application.⁵
12. The Application was served on the Respondent States on 27 June 2025. They were requested to submit the list of their representatives within 30 days and to file their Responses to the request for provisional measures and the main Application within 30 and 90 days of receipt, respectively.
13. On 12 July 2025, the Republic of Niger filed its Response to the Application.

² The full list of Respondents was as follows: Republic of Benin, Burkina Faso, Republic of Cape Verde, Republic of Cote d'Ivoire, Republic of the Gambia, Republic of Ghana, Republic of Guinea, Republic of Guinea-Bissau, Republic of Liberia, Republic of Mali, Republic of Niger, the Federal Republic of Nigeria, Republic of Senegal, Republic of Sierra Leone, and Republic of Togo.

³ See, *Chief Festus A. Ogwuche & 25 Others v. Republic of Côte d'Ivoire & 14 Others*, ACtHPR, Application No.005/2024, Ruling of 17 June 2025 (Jurisdiction).

⁴ The Non-Governmental Organisation - Campaign for Social Justice and Constitutional Democracy in Africa was struck out from the list of Applicants

⁵ *Ogwuche & 25 Others v. Côte d'Ivoire & 14 Others*, (Jurisdiction), *supra*.

14. On 2 October 2025, the Republic of Ghana filed its Response to the request for provisional measures.
15. On 10 October 2025, Burkina Faso filed its Response to both the request for provisional measures and the main Application.
16. On 6 November 2025, the Republic of Ghana filed a request for extension of time for filing the Response. Filed together with this request for extension of time was a copy of its Response.
17. On 13 March 2026, the request for extension of time by the Republic of Ghana was served on the Applicants and the other Respondent States who were all given fifteen (15) days, from the date of notification, to file any observations on the request.
18. On 19 March 2026, the Court dismissed the request for provisional measures and reserved its determination of the main Application.
19. By an Order dated 23 April 2026, the Court granted Ghana leave to file its Response out of time and deemed the Response duly filed. Ghana's Response was transmitted to the parties on 17 June 2026.
20. On 26 May 2026, the Republic of Mali filed, electronically, a request for an exceptional extension of time to file its Response. A copy of its Response was attached to the electronic communication. The signed hard copies were, subsequently, filed on 11 June 2026.
21. On 18 June 2026, the Registry acknowledged receipt of the request by the Republic of Mali and transmitted the same to the Applicants and the Respondent States inviting them to file observations on the request within 15 days of receipt.

22. The Republic of Niger acknowledged receipt of the request by the Republic of Mali on 18 June 2026 and informed the Registry that it endorsed the additional factual and legal arguments advanced by the Republic of Mali.
23. None of the other Parties to the Application filed any observations to the request by the Republic of Mali.

V. ON THE REQUEST FOR EXTENSION OF TIME BY THE REPUBLIC OF MALI

24. In its request, the Republic of Mali acknowledges that it failed to file its Response within the prescribed time but submits that its failure was not borne out of disrespect for the Court. It explains that changes within the *Direction Générale du Contentieux de l'État*, together with other official commitments connected to the particular situation of the country, disrupted the ordinary performance of administrative tasks and prevented filing within time. It thus prays for the Court to extend time for filing its Response.

*

25. In so far as the time limit for filing pleadings is concerned, the Court considers that Rules 44(5) and 44(6) of the Rules are relevant. These Rules provide as follows:

44(5) Any further extension of time may only be granted by decision of the Court taking into account the particular circumstances of the case.

44(6) The decision to extend time is at the discretion of the Court.

26. The Court notes that a combined reading of Rules 44(5) and 44(6) confirms that it has the discretion to determine whether or not to reopen pleadings.
27. The Court also notes that Rule 90 of the Rules stipulates that “nothing in these Rules shall limit or otherwise affect the inherent power of the Court to

adopt such procedure or decisions as may be necessary to meet the ends of justice.”

28. Ultimately, therefore, it lies within the discretion of the Court to decide whether or not to extend time for filing pleadings.⁶
29. In the instant Application, the Court observes that no objection to the request for extension of time has been registered by the Applicants or any other party to the proceedings. In the circumstances, the Court holds that, for the proper administration of justice, the request by the Republic of Mali must be granted.
30. Given that the Republic of Mali already filed a copy of its Response, the Court thus holds that the Response be deemed to have been properly filed.
31. The Court, in the circumstances, orders that the Response filed by the Republic of Mali be served upon the Applicants and the other Respondent States in this Application. The Applicants and the other Respondent States are given 30 days, from the date of notification of this Order, to file a Reply, should they so wish.

VI. OPERATIVE PART

32. For these reasons:

THE COURT,

Unanimously,

- i. *Grants* the request by the Republic of Mali to file its Response out of time;

⁶ *Moses Amos Mwakasindile v. United Republic of Tanzania*, ACtHPR, Application No. 045/2019, Order of 2 June 2025 (reopening of pleadings), § 9.

- ii. *Holds* that the Response filed by the Republic of Mali be deemed to have been duly filed;
- iii. *Orders* that the Response by the Republic of Mali be served on the Applicants and other Respondent States, who shall file a Reply, if any, within 30 days from the date of notification of this Order.

Signed:

Blaise TCHIKAYA, President;



and Robert ENO, Registrar.



Done at Arusha, this Eleventh Day of the Month of September in the Year of Two Thousand and Twenty-Six, in English, French and Portuguese, the English version being authoritative.

