

Nani Jansen Reventlow

HUMAN RIGHTS

STRATEGIC LITIGATION

FREEDOM OF EXPRESSION

Litigating Free Speech Cases in African Regional Courts

Harvard Law School Human Rights Program

3 November 2016

What will be covered in this session?

- African Court on Human and Peoples' Rights
 - *Lohé Issa Konaté v. Burkina Faso*
- East African Court of Justice
 - *Burundi Journalists' Union v. Burundi*
- ECOWAS Community Court of Justice
 - *FAJ and Others v. The Gambia*
- Legal framework
- Case: facts + strategy
- Impact
- Everything you always wanted to know about litigating at the African regional courts, but were afraid to ask (or: Q&A)

Nani Jansen Reventlow

African Court on Human and Peoples' Rights



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

African Court on Human and Peoples' Rights

Where is it?

Arusha, Tanzania

Over which states does it have jurisdiction?

All states that have ratified the Protocol of the Court

On which matters?

Cases and disputes concerning the interpretation and application of the African Charter, the Court's Protocol and any other human rights treaty ratified by the state concerned. A list of key agreements:

- African Charter on Democracy, Elections and Governance
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
- African Charter on the Rights and Welfare of the Child
- African Charter on Human and Peoples' Rights
- AU Convention Governing Specific Aspects of Refugee Problems in Africa
- International Covenant on Civil and Political Rights

Nani Jansen Reventlow

African Court on Human and Peoples' Rights

Who can bring cases?

NGOs with observer status before the Commission, individuals, and the Commission itself.

Do you need to exhaust domestic remedies?

Yes

What time limits apply?

Within a “reasonable period” of time from exhaustion of domestic remedies. The Court has not yet made explicit what it considers reasonable.

Remedies Available

Declaratory relief, orders for legislative change and compensation/reparations.

Judgments so far

The Court has delivered only a limited number of judgments on the merits so far, concerning the right to participate in government, freedom of expression, the right to life, and the right to a fair trial.

Nani Jansen Reventlow

Lohé Issa Konaté v. Burkina Faso



Nani Jansen Reventlow

Lohé Issa Konaté v. Burkina Faso



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

Lohé Issa Konaté v. Burkina Faso



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

Lohé Issa Konaté v. Burkina Faso



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

Lohé Issa Konaté v. Burkina Faso



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

Lohé Issa Konaté v. Burkina Faso



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

Lohé Issa Konaté v. Burkina Faso



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

Lohé Issa Konaté v. Burkina Faso



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

East African Court of Justice



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

East African Court of Justice

Where is it?

Arusha, Tanzania

Over which states does it have jurisdiction?

Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania

On what matters?

The Court's major responsibility is to ensure the adherence to law in the interpretation and application of and compliance with the EAC Treaty.

There are community principles enshrined in Art 5, 6 and 7 of the Treaty. The Court has decided it can consider a human rights violation in the context of considering a complaint about a violation of the Treaty.

Nani Jansen Reventlow

East African Court of Justice

Who can bring cases?

A legal or natural person resident in any of the Partner States may challenge the legality of any Act, regulation, directive, decision or action of a Partner State.

Do you need to exhaust domestic remedies?

No

What time limits apply?

2 months

Remedies Available

Declaratory relief and sometimes orders for legislative change

Judgments so far

The court has delivered judgments concerning *habeas corpus*, freedom of expression and the right to a fair trial.

Nani Jansen Reventlow

Burundi Journalists' Union v. Burundi



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

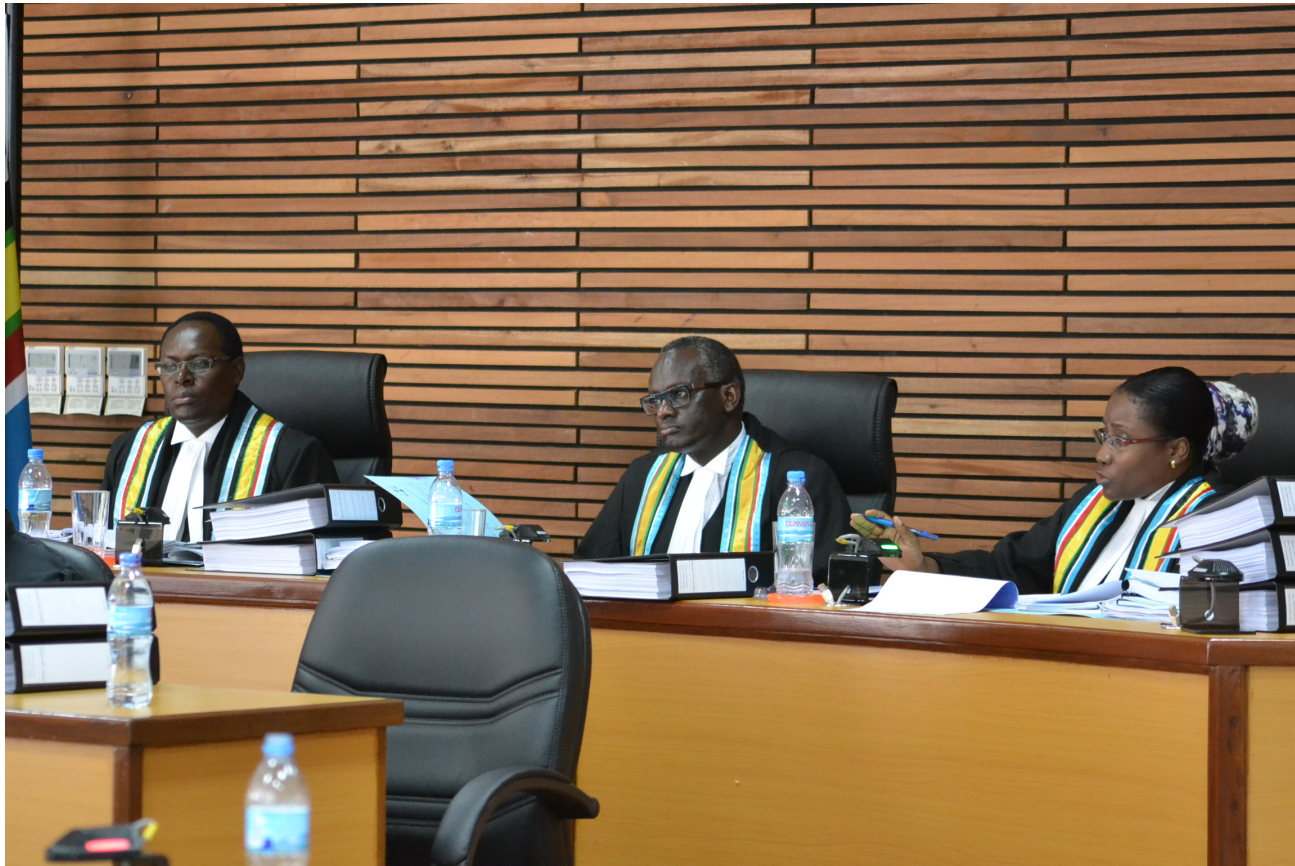
Burundi Journalists' Union v. Burundi



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

Burundi Journalists' Union v. Burundi



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

ECOWAS Community Court of Justice



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

ECOWAS Community Court of Justice

Where is it?

Abuja, Nigeria

Over which states does it have jurisdiction?

15 Member States

On what matters?

The court can determine cases concerning violations of human rights that occur in any of the Member States.

Who can bring cases?

NGOs registered in ECOWAS Member States and individuals

Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

ECOWAS Community Court of Justice

Do you need to exhaust domestic remedies?

No

What time limits apply?

Within three years (although: watch this space...)

Remedies Available

Declaratory relief, compensation/reparations and specific orders including release from custody.

Judgments so far

The court has handed down about 150 human rights decisions so far. It has heard cases concerning slavery, torture, freedom of expression, the right to education, child rights, access to justice, fair trial and arbitrary detention, access to medical treatment, right to family life.

Nani Jansen Reventlow

FAJ and Others v. The Gambia



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

FAJ and Others v. The Gambia



Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

Nani Jansen Reventlow

HUMAN RIGHTS STRATEGIC LITIGATION FREEDOM OF EXPRESSION

 nanijansen.org

 hello@nanijansen.org

 [@interwebznani](https://twitter.com/interwebznani)