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)
African Court on Human and Peoples’ Rights
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
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.
Lohé Issa Konaté v. Burkina Faso
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Lohé Issa Konaté v. Burkina Faso
East African Court of Justice
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.
**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.
Burundi Journalists’ Union v. Burundi
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Burundi Journalists’ Union v. Burundi
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
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.
FAJ and Others v. The Gambia
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