

**The International Conference of the ECOWAS Community Court of Justice, Held in Freetown, Sierra Leone, from the 13<sup>th</sup> - 16<sup>th</sup> May, 2024.**

Theme: 'Enhancing the Role, Relevance and Effectiveness of the ECOWAS Court of Justice through the Strengthening of Synergies between the Court and National Stakeholders'.

Subtheme: 'Strengthening Cooperation with the Media and Civil Society Organisations (CSOs) to Improve the Relevance and Effectiveness of the ECOWAS Court of Justice'.

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**1.1 Background and Context**

Mr. Chairman, all protocols observed. My task in this conference is to speak on the subtheme: 'Strengthening Cooperation with the Media and Civil Society Organisations (CSOs) to Improve the Relevance and Effectiveness of the ECOWAS Court'. Prior to this historic conference, little or no attention was paid in the numerous papers presented at the various ECOWAS Court's conferences, held between 2004 and 2023 on the media and CSOs' role in communicating the relevance and effectiveness of the Court to strengthening cooperation with other stakeholders; and simultaneously projecting the human rights culture in the subregion. Let me commend the framers of the theme of this year's conference for being thoughtful of the media and CSOs' role in relation to the jurisprudential and institutional relevance of the ECOWAS Court, at a time that the subregion grapples with the greatest challenges to its nascent democracy. A fortiori, it has been the philosophy of conscientious scholars and practitioners of law and communications media in West Africa to uphold and give succour, to the core values upon which the ECOWAS Court is built. Meanwhile, there are two catalytic themes that are cognate with the media and civil society that constitute the golden thread that holds the beads of the discourses of this paper

together. And the first is the transformation of the media landscape and its increasingly pervasive influence on domestic and global issues. The second is the reinvigoration of the impacts of CSOs in hitherto despotic (now democratic) states in West Africa. Thus, the ECOWAS Court is crucial to the achievements of the fundamental ideals of regional integration, peace and security, economic growth and sustainable development, political cooperation and democratisation, constitutionalism, human rights and justice – the architecture upon which ECOWAS is built<sup>1</sup>.

Significantly, the proper communication of these ideals across the subregion is crucial to ECOWAS' survival and progression, amid the resurgence of political authoritarianism in West Africa. This paper presents a strong and incontrovertible case for a tripartite collaboration of the ECOWAS Court, the media and CSOs, in upholding and promoting the core values, mission and vision of the Court. The Court's unprecedented positive strides are manifested in its contributions to the emergence of a sui generis legal order in the subregion. Nevertheless, because most West Africans are unaware of this admirable accomplishment, the Court's outreach Section must collaborate with the media and CSOs in Member States to disseminate credible information about its jurisprudential and institutional relevance to the subregion. Contrariwise, since the Court's inauguration, there have been a welter of debacles, undermining its efficacy. As it stands, it appears that some media structures have been vociferous in framing this narrative in ways that would negatively impact the perceptions of West Africans at the micro (individual or psychological) and the macro (societal or sociological) levels. The dire need for a change in the narrative, through effective communication and cooperation of all stakeholders (including the media and CSOs) in upholding and promoting the Court's core values, is a sine qua non for ECOWAS.

Thus, the existence of a strong and effective ECOWAS Court would foster human rights ideals and simultaneously check the excesses of the political realists in the sub-region. This would create a peaceful and health democratic environment of human

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<sup>1</sup> The Revised Treaty of 1993, The Protocol on the Community Court of Justice (1991/1996), The Supplementary Protocol Amending the Protocol Relating to the Community Court of Justice (2005), The Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999), The Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping & Security (2001/2008) and The Declaration of ECOWAS's Political Principles.

rights in which West Africa's civic publics are relatively secured. As established in 1.2 communication and cooperation are crucial to governance and human affairs. The Revised ECOWAS Treaty and the aforementioned protocols and supplementary protocols are clear on the constitutionalism of democracy, human rights and the rule of law in West Africa. Structurally, the paper is divided into five components. This first part already presents the background. The second, deals with the theoretical perspectives. The third concerns the analytical exposition. The fourth relates the critical context to the final part: conclusions and recommendations.

## **1.2 Theoretical and Conceptual Framework**

The conceptual thinking and theoretical arguments presented herein are discernible in some deceptively simple concepts in philosophy, politics, law and communications. To start with, communication and cooperation, are crucially important to human affairs and governance. Communication is in fact the most important single act of mankind. When properly performs, it fosters cooperation; protects man's humanity and upholds gender parity; builds bridges across ethno-regional lines, and allows for humanity's peaceful co-existence, relative security, development and prosperity. When improperly performs, it turns friends into foes; heightens violent conflicts; fuels the scourge of human rights violations and plunges nations into wars. The philosophical question of how to organise society is one that humanity has been grappling with for ages. The complexities in some of the answers to this question are rooted in the fact that humanity's nature is underpinned by two extremes: cooperation and conflict.

But humanity has always pushed for cooperation over conflict, because of the former's tendency to uphold man's relative security, bring political communities together and simultaneously propel them to socioeconomic and political developments. Analytically, it is upon cooperation that the concepts of state, governance and sovereignty are built; it is upon cooperation that the international community and its regulatory regimes are constructed; and it is upon cooperation that the sui generis legal order of ECOWAS has emerged in the context of regional international law. Nevertheless, conflict has invariably been unfriendly to humanity's progression because of its debilitating scourges. So, humanity always frowns at it. When conflict raises its ugly head at the micro and macro levels, humanity (depending on the circumstances) turns to the nebulous concept of justice, peace and

reconciliation, leading again to cooperation, which is a sine qua non for peaceful existence. So, cooperation is the first condition and virtue of human relations and the regional international regimes that govern ECOWAS. In fact, the justice that West Africans want from the ECOWAS Court is contingent on cooperation and the political will of Member States to fulfil their obligations with the Court. Justice is the constant and perpetual will to render to others what is due to them. This is what makes justice the crowning glory and the sovereign mistress and queen of all the virtues<sup>2</sup>. Jurisprudentially, justice has been broadly examined across time and space from the standpoints of three theoretical perspectives: virtues and their place in the psychological and sociological levels, maximisation of the welfare of all and sundry and the recognition, protection and enforcements of the rights, freedoms and liberties of citizens<sup>3</sup>.

These tripartite perspectives elevate justice to the position of the most cardinal or supreme political and legal virtue, supposedly rationalised in the laws of a political community<sup>4</sup>. A fortiori, justice is the single most important justification of law<sup>5</sup>. And it is through law that the virtue of justice can triumph and reign supreme; it is through law that the political sovereign's (people's) welfares are maximised; and it is through law that rights and liberties are enforced. For West Africans to realise the ideals of justice, these abstract theorisations must feed into the judicial perspective. Judicially, the practicality of justice is manifested in its content and context<sup>6</sup>. The content being the law and its context is based on the facts underpinning the cases meant for adjudication by the ECOWAS Court. In the context of governance, justice is the juristic foundation upon which political liberalism is built. States have always been the biggest bullies<sup>7</sup>. So, the political realists, in their insatiable quest for consolidating and using state power to their advantage, have constantly relied on the philosophy of statism (in

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<sup>2</sup> Cicero, *Political Speeches: A new translation* by D.H. Berry Oxford World's Classics (Oxford University Press, 2006).

<sup>3</sup> M. J. Sandel, *Justice: What is the Right Thing to Do?* (Penguin Books, 2010) 19-21.

<sup>4</sup> M Tebbit, *Introduction to the Philosophy of Law*, op. cit: 6-7.

<sup>5</sup> G. H. Sabine, *A History of Political Theory* (3<sup>rd</sup> ed., New York: Holt, Rinehart & Winston, 1961) 558

<sup>6</sup> Lord Donaldson MR in *R v. Secretary of State for Home Department ex parte Cheblak* {1991} 2 All ER 319.

<sup>7</sup> Geoffrey Robertson Q. C., *Crimes Against Humanity: The Struggle for Global Justice* (4 edn. Penguin Book).

*the name of sovereignty*) to trample upon the fundamental rights, freedoms and liberties of citizens.

Political liberalism manifests the various ways by which the state and its political realists can be tamed. Political liberalism bolsters the conception that one of the core values upon which the state is built is to protect and enforce the constitutional rights and freedoms of the individual (*the philosophy of personal autonomy*). Therefore, the state must not overwhelmingly exert its powers to usurp such rights and freedoms, without any reasonable or necessary justification sanctioned by law. The state is thus the highest expression of and giver of human freedoms through law<sup>8</sup>. Unlike civil society, which reflects the sphere of universal egoism<sup>9</sup>, where individuals place their own interests over others, the state is an 'ethical community' characterised by mutual sympathy and universal altruism.<sup>10</sup> Arguably, political liberalism manifests universal altruism in its core doctrines of justice and the rule of law, constitutionalism and human rights, democratisation and limited government. Thus, the ECOWAS Court is crucial to the actualisation of these normative governance architecture of ECOWAS.

### **1.2.1 The ECOWAS Court of Justice**

The founding fathers of ECOWAS saw the need for an interstate community court of Justice and also recognised the rationale to establish one in accordance with the organisation's original Treaty of 28<sup>th</sup> May, 1975. Thus, Chapter III of the Revised Treaty of 1993, generically establishes the institutions of ECOWAS together with their compositions and functions, but it is Article 6 of the same Chapter that specifically establishes the Community Court of Justice, as ECOWAS' principal judicial institution. The said Article is nonetheless silent on the composition and jurisdiction of the Court, but these salient issues are however covered with valence in Paragraphs 1 through 4 of Article 15, which reads as follows:

**'There is hereby established a Court of Justice for the Community. The statute, composition, powers and procedure of other issues concerning**

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<sup>8</sup> G. W. F Hegel *Philosophy of Right* (1821), *The Philosophy of History* (1837), in S.M Cahn's *Classics of Moral and Political Philosophy*, op. cit. with introductory notes by Steven. B. Smith, op. cit: 795-826.

<sup>9</sup> *Ibid.*

<sup>10</sup> G. W. F Hegel *Philosophy of Right* (1821), *The Philosophy of History* (1837), in S.M Cahn's *Classics of Moral and Political Philosophy*, op. cit. with introductory notes by Steven. B. Smith, op. cit: 795-826.

**the court of Justice shall be set out in a protocol relating thereto. The Court of justice shall carry out the functions assigned to it independently of the Member States and the Institutions of the Community. Judgments of the Court of Justice shall be binding on the Member States, the institutions of the Community and on individuals and cooperate bodies’.**

Meanwhile, Protocol A/P .1/7/91, which was adopted in Abuja, Nigeria on 6<sup>th</sup> July 1991 and entered into force on 5<sup>th</sup> November 1996, clearly spells out the composition and jurisdiction of the Court. Whereas Articles 3 and 4 concern the composition and terms of Office of Members of the Court; Article 9 resonates with the competence or jurisdiction of the Court. So, the Court principally functioned as a judicial institution meant for the interpretation and application of the Revised Treaty consonant with the principles of equity; settled disputes between Member States and the institutions of the Community<sup>11</sup>; and those brought by Member States on behalf of their nationals against other Member States or institutions of the Community. A fortiori, the Court’s jurisdiction was glaringly restrictive. This was the principal reason why the impacts of the Court were not really felt in the subregion between 1991 and 2004. In fact, the Court was said to have had no jurisdiction to preside over the two individuals cases it was called upon to determine at that time. By then, regional international law in the human rights context was burgeoning in Europe.

The European Court of Human Rights (ECtHR) had developed a solid jurisprudence in the context of supranationalism. Europeans’ rights, freedoms and liberties, guaranteed in their respective states’ constitutions and the European Convention on Human Rights (ECHR) were unreservedly upheld by the ECtHR in circumstances of human rights violations by state and non-state actors across Europe<sup>12</sup>. Regrettably, within that period, there were reports of wide spread human rights violations in some West African States. And it was clear that the provisions in the African Charter on Human and People’s Rights (ACHPR) were violated with impunity by mostly state-actors across the subregion. The need to give credence to Africa’s human rights regimes and ECOWAS’ principles on same (rationalised in the Preamble and Article

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<sup>11</sup> See Article 56 of the Revised Treaty.

<sup>12</sup> The European Convention on Human Rights 1950; *Mirror Group Newspaper Limited v. United Kingdom* (2011) ECHR 66, *Sunday Times v. United Kingdom* (1979) ECHR1, *De Haes & Gijssels v. Belgium* (1997) ECHR 7, *Observer & Guardian v. United Kingdom* (1991) ECHR 49, *Gutierrez Suarez v. Spain* (1997) ECHR 2225.

4 of the Revised Treaty), triggered the adoption of the Supplementary Protocol Amending the Protocol Relating to the Community Court of Justice in 2005. Analytically, Article 9, which originally limited the jurisdiction of the Court, was widened; giving it an original and advisory jurisdiction. The Court now functions as a Community Court of Justice; a Court of human rights for West Africans; an administrative Court; and an arbitration tribunal.

### **1.2.2 Civil Society**

The concept of public sphere strikes a chord with civil society. The public sphere legitimately reflects the national spaces for public debates<sup>13</sup>. Meanwhile, accessibility to the public sphere is free and fundamental freedoms and liberties, including the rights to freedoms of assembly, association and expression, are guaranteed by law<sup>14</sup>. The public sphere mirrors the role which the media can play in a democracy by cultivating a social sphere for ongoing political and legal debates. The trend of thought that is distilled from the existing literature is that civil society is neither state owned nor is it affiliated with the market economy<sup>15</sup>. Civil society is thus theoretically conceptualised as a sphere of social interaction distinct from the state and its economy (characterised by voluntary associations, civic publics and media communications) in which citizens can participate in a wide range of sociopolitical, legal and economic affairs.

In the West African context, civil society could include professionalised NGOs working in areas closely related to democratisation, human rights and justice, interest groups such as trade unions and employers' associations, church-based and Islamic organisations etc. There are now thousands of CSOs across West Africa. The new media has widened the public sphere; making it possible for CSOs in the subregion to effectively participate in national and international discourses and simultaneously monitor the operations of West Africa's states' institutions and the respective Organs of ECOWAS to enhance accountability and transparency in the subregion. Historically, CSOs were very instrumental in articulating the interests and concerns of West

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<sup>13</sup> Croteau, David & Hoynes Williams (2006) *The Business of Media*, Pine Forge Press: A Sage Publications Company, 7-32.

<sup>14</sup> McQuail Denis (2005) *Mass Communication Theory*, Fourth Edition, SAGE Publications Ltd., 171,181, 343-345.

<sup>15</sup> Constatinos, B.T. (2001) *Civil Society in Africa: An Assessment and Strategic Perspective*, Vol. 1 *Civil Society: A Theoretical Construct*, The Foundation of Civil Society in Africa BTC: 2-7., Habermas, Jurgen: *The Structural Transformation of the Public Sphere*, (Cambridge MIT Press, 1989) Thomas Burger & Frederick Lawrence, Trans, Original Work Published in 1962.

Africans, to the chagrin of the colonialists and imperialists. CSOs indeed played a crucial role in the clamour for constitutional and political reforms; and the eventual dismantling of colonialism in the subregion. The National Congress for British West Africa (NCBWA), the West African Youth League (WAYL), the West African Students Union (WASU), the Aborigines Right Protection Society (ARPS) etc. were being vocal against the excesses of the colonialists and imperialists, whilst articulating the grievances of West Africans through the print media<sup>16</sup>. They could not have relied on the broadcast media because it was under the firm grips of the colonialists and imperialists. Shortly after independence, the raise of the one-party political system had an adverse effect on the role of CSOs in holding states' operatives accountable to the political sovereign.

The one-party political realists, whilst manifesting their thirst for absolute power, suffocated the raise of civil society activism and enacted draconian laws against the print media. There is a plethora of historical records, depicting how the oppressive political class in the subregion, maltreated civil society activists with impunity. Even the media which was the vanguard for civil society activism was not spared. The suppression of CSOs and the print media continued during the era of military dictatorship. However, with the triumph of political liberalism in the World's Community of Nations in the 1990s, the need to constitutionalise the ideals of liberal democracy, became a sine qua non in Africa<sup>17</sup>. This is manifested in the transformation of the impotent Organisation of African Unity (OAU) into the AU, through its Constitutive Act of 2001 and the revision of the original ECOWAS Treaty of 1975. These regional and subregion instruments, laid the foundation for a torrent of protocols and supplementary protocols, relating to the fundamental ideals of democratic governance.

This burgeoning democratic climate, ushered in the resurgence of civil society activism and the gradual liberalisation of the communications space. CSOs can now operate in a political environment in which they are relatively secured in the subregion. They can now fearlessly rely on the mainstream (conventional) and social media to

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<sup>16</sup> J H Price, *Political Institutions of West Africa* (1 edn. Hutchinson Educational Ltd) 23-28 and 31, Okigbo, *Media, Civil Society and Politics in Africa*: 63-65, 75-78 in M'Bayo Richard Tamba, Onwumechili Chuku & Nwanko Nwanfo R. (Eds.) *Press and Politics in Africa*, The Edwin Mellen Press Ltd. United Kingdom.

<sup>17</sup> S. P. Huntington, *The Clash of Civilisations & the Remaking of World Order* (1996 Edn. Simon & Schuster, UK Ltd) 192-206.



communicate (to the World at large) the excesses of any oppressive political system in the subregion. And in circumstances wherein their fundamental rights, freedoms and liberties are violated, they can seek redress in the ECOWAS Court. Of course, the Court has handed down a welter of decisions against states and states operatives for violations of the rights of members of CSOs in the subregion. In fact, the Bar Associations and human rights organisations in the subregion are now in a better position to pressure the competent authorities of their respective states, to fulfil their treaty obligations with the ECOWAS Court. The gradual liberalisation of the communications space has provided the enabling environment for them to conscientiously use the media in this direction. They can draw up petitions, organise public meetings and debates, advertise in the media and even hold public demonstrations on issues of subregional concern. The question that is to be asked at this stage, is how visible and potent have CSOs been, in enhancing the relevance and effectiveness of the ECOWAS Court in the subregion?

### **1.2.3 The Media**

The pre-internet age reflected the mainstream media: print and broadcast, but the transformation of the global communications landscape, has fused the internet and satellite services with the modern media. Thus, media now presupposes print, broadcast, internet and satellite services. The internet is very crucial in the dissemination of critical contents, through social media platforms: Facebook, X (formerly Twitter), YouTube, WhatsApp etc. Media exercises are largely influenced by the constitutional and legal framework of ECOWAS Member States<sup>18</sup>. The media thrives in environments wherein its freedoms are constitutionally guaranteed. Media freedoms concern anything in the media's internal and external environments that accelerates media exercises in the complex web of society's information flow as sanctioned by law. In the context of international human rights law, this resonates with Article 19 of the Universal Declaration of Human Rights (UDHR), Article 19 of the International Covenant on Civil and Political Rights (ICCPR), Article 9 of the African

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<sup>18</sup> See section 39 (Chapter four) of the Constitution of the Federal Republic of Nigeria, 1999, Article 21 (Chapter five) of the Constitution of the Republic of Ghana, 1992, section 25 (Chapter three) of the Constitution of Sierra Leone, Act N0.6 of 1991, Article 10 (Title two) of the Constitution of the Republic of Senegal, 2001 As Amended in 2016, Articles 18 & 19 (Chapter one) of the Constitution of the Republic of Ivory Coast 2016, section 25 (Chapter four) of the Constitution of the Republic of the Gambia, 1997.

Charter on Human and Peoples Rights (ACHPR) and the African Union's Commission's Declaration of the Principles on Freedom of Expression and Access to Information in Africa (DPFEAIA).

Meanwhile, the constitutional guarantees enhancing the flow of credible information, reflect the importance of the libertarian and social responsibility theories<sup>19</sup>. Media regulation, which can be either content-based or content-neutral<sup>20</sup> is principally underpinned by two diametrically opposed perspectives: statutory and self-regulations. Whereas the former requires state intervention through legislation; the latter requires a minimal role of the state in overseeing the operations of the media. Circumspectly, media freedoms and regulations are rationalised in the concept of free speech which is a universal, democratic and constitutional right that is recognised and protected in the subregion, but it is restricted by laws that are necessary and reasonably justifiable in democratic societies<sup>21</sup>. Apart from its importance to democratic governance, free speech is as well being viewed as a threat to democracy and a challenge to the digital economy<sup>22</sup>.

Thus, the above concepts have impacted media exercises globally and made the media more ubiquitous in this Internet age<sup>23</sup>. In recent times, the media is characterised as 'the most important power broker in politics'. Thus, mediademocracy, medialism, mediacracy, teledemocracy and mediapolitik, are but a few fashionable terms, coined to describe this new media dominated political system.<sup>24</sup> Analytically, there exists an independent and interlocking relationship, between media and democracy. Democracy needs media for the regular flow of information; and media

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<sup>19</sup> D McQuail, *Mass Communication Theory: An Introduction* (1983 edn. Sage); John Street, *Mass Media, Politics and Democracy* (2nd. Palgrave Macmillan) 303 -311.

<sup>20</sup> M. Tushnet, *op. cit.*: 84

<sup>21</sup> See section 39 (Chapter four) of the Constitution of the Federal Republic of Nigeria, 1999, Article 21 (Chapter five) of the Constitution of the Republic of Ghana, 1992, section 25 (Chapter three) of the Constitution of Sierra Leone, Act N0.6 of 1991, Article 10 (Title two) of the Constitution of the Republic of Senegal, 2001 As Amended in 2016, Articles 18 & 19 (Chapter one) of the Constitution of the Republic of Ivory Coast 2016, section 25 (Chapter four) of the Constitution of the Republic of the Gambia, 1997.

<sup>22</sup> Stone & Schauer, *The Oxford Handbook of Freedom of Expression*, 2021: ix.

<sup>23</sup> E Gilboa *ibid*; J Straubhaar and R LaRose, *Communications Media in the Information Age* (Wadsworth Publishing Company) 14-15.

<sup>24</sup> E. Gilboa, *The CNN Effect: The Search for a Communication Theory of International Relations* (Routledge, Political Communication 22: 27 – 44 2005) 37.

needs democracy for the protection of its freedoms and independence.<sup>25</sup> Thus, media freedoms enable journalists to impart information and ideas<sup>26</sup>, through the public sphere, without fear of being prosecuted and/or persecuted. Media freedoms offer the citizenry, the opportunity of making the most appropriate choices, resonating with their varied socioeconomic and political interests and simultaneously constitute the platform for civil society activism. Media freedoms can as well influence and shape public opinions on issues of national<sup>27</sup> and international importance<sup>28</sup>; and simultaneously raise the awareness of the relevance of the ECOWAS Court in developing West Africa's human rights culture. In summary, the principal function of the media in West Africa's democracy is based on CSOs' clamour for democratic legitimacy and accountability, through the dissemination of reliable and credible information and the sustenance of constructive debates to actualise the liberal democratic values of justice and constitutionalism, human rights and the rule of law in the subregion.

Meanwhile, this functional perspective of the media in modern democracies, resonates with Goal Sixteen of the United Nations Organisation's (UNO's) Sustainable Developments Goals (SDGs: 2017<sup>29</sup>) and Aspiration 3 of Africa's Agenda (2063): The Africa That We Want: 'An Africa of good governance, democracy, respect for human rights, justice and the rule of law'. Communicatively, framing (second-level agenda setting) is one of the ways by which the media can influence or shape public opinion on every pertinent issue and event of the ECOWAS Court. Characteristically, framing can *be* episodic and thematic<sup>30</sup>. The former presents the news as it unfolds with no need for context; whereas the latter does not only present the news, it goes further to

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<sup>25</sup> J Stromback, In Search of a Standard: Four Models of Democracy and Their Normative Implications {6 (3) Journalism Studies} 331-345; W Dizard. Jr. Old Media New Media, Mass Communications in the Information Age (3 edn. Longman) 67-70; L Edwards, Law, Policy and The Internet (1 edn. HART Publishing) 213-228; M Schudson, The Power of News (1996 edn. Harvard University Press) 204

<sup>26</sup> J Akpasubi, A Practical Guide to Investigative Journalism (2010 edn. Mirror Color Prints Limited) 208.

<sup>27</sup> Lord Denning, Due Process of Law (1980 edn. Butterworths) 28; Lord Denning, What Next in the Law (1982 edn. Butterworths) 326-328; K H Jamieson and P Waldman, Press Effects: Politicians, Journalists, and the Stories that Shape the Political World (2003 edn. Oxford University Press) xiii; R M Entman, Media in the Distribution of Power (Journal of Communication 57 (2007) 163- 173 © 2007 International Communication Association); C H. de Vreese, News Framing: Theory and Typology, Information Design Journal and Document Design 13 (1), 51-62 © John Benjamin Publishing Company, p. 1; E Griffin, A First Look At Communication Theory (6 edn. McGraw Hill) 395-406.

<sup>28</sup> P Robinson, Theorizing the Influence of Media on World Politics (European Journal of Communication, Copyright © 2001 SAGE Publications) Vol. 16 (4): 523-544.

<sup>29</sup> The United Nations Organisation Sustainable Development Goals, 2017.

<sup>30</sup> Iyenger Shanto, (1991) Is Anyone Responsible? How Television Frames Political Issues, Chicago, IL, University of Chicago Press: 136 - 137

give it background and context to get audiences to fully understand the issues and events that inform the media's coverage. Conceptually, framing establishes the nexus between media contents and their responses and thereby mirrors how the media shapes public opinion<sup>31</sup>. Methodologically, framing discerns and interprets the 'values' and 'meanings' conveyed in media contents<sup>32</sup>. The synergy between the content and response prism in communications media analysis evolves from the basic assumption that media contents are discourses containing preferred meanings,<sup>33</sup> which are socially constructed to bring about preferred readings into the minds of audiences<sup>34</sup>. Meanwhile, the interplay between the content and response prism in media analysis, unravels the preferred meanings, which the media encodes in its discursive treatments of the heuristics of its coverage.

Research has shown that news is the most controversial thematic construct in media analysis. This controversy is theoretically informed by two heuristics: Journalists on the one hand contend that news provides objective facts to the public to enable them make informed decisions on a variety of national and international issues and events. Therefore, news is a discourse that presents issues and events as they are, and analyses them, in a way that is devoid of journalists' prejudices and idiosyncrasies. Critics on the other hand contend that news is not a natural phenomenon emerging straight from reality, but a product. It is shaped by the bureaucratic and economic structure of that industry, by the relations between the media and other industries, most importantly, by the relations with the government and other political organisations. From a broader perspective it reflects, and in turn shapes, the prevailing values of a society in a particular historical context<sup>35</sup>.

In this sense, news does not objectively present and analyse issues and events fairly, but it is clothed in journalists' preferences and prejudices. The socially constructed

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<sup>31</sup> De Vreese, Claes H (2005) News Framing Theory & Typology, *Information Design Journal plus Document Design* 13 (1), 15-62, 51-61.

<sup>32</sup> McCombs, M.F. Llamas, J. P. Lopez –Escobar, F., & Ray, F. (1997) Candidates Images in Spanish Elections. Second-Level Agenda Setting Effect, *Journalism and Mass Communication Quarterly* 74, 131- 166, 703-717; Alozie Emmanuel C., What Did They Say? African Media Coverage of the First 100 Days of the Rwanda Crisis: 211- 230 in Allan Thompson's *The Media and the Rwanda Genocide*, Fountain Publishers Ltd. 55 Nkrumah Road, Kampala, Uganda.

<sup>33</sup> McCombs, Maxwell (2004) *Setting the Agenda: The Mass Media and Public Opinion*, Cambridge, Policy

<sup>34</sup> McCombs, Maxwell (2005) A Look at Agenda-Setting: Past, Present & Future: *Journalism Studies*, Volume 6 Number 4: 543- 557.

<sup>35</sup> Schudson, Micheal (1996) *The Power of News*, Cambridge, Mass, Harvard University Press, 204.

reality<sup>36</sup> which society consumes is undoubtedly influenced by the construction process, which it goes through, before it is disseminated; and the very language in which it is clothed<sup>37</sup>. The process begins with news gathering and selection (newsworthiness). Meanwhile, the human rights journalism and journalism of civility, are models of news selection that are quite relevant in this context. Theoretically, human rights journalism exposes human rights abuses, promotes free speech as an ideal upon which other human rights are contingent; and reflect the media's responsibility to report - a normative journalistic practice and a right based journalism - based on the respect for human dignity, irrespective of colour, nationality, race, gender, geographical affinity etc.)<sup>38</sup>.

Thus, the existing communications literature considers human rights journalism as a journalism of the human race and for the human race. This journalism of civility resonates with the functional as opposed to the conflictual perspective of the media. The former regards the media as a messiah; and the latter sees it as a menace<sup>39</sup>. Again, whereas the former reflects the public service and social responsibility theories; the later resonates with its conflictual perspective, which sees the media as a problem causer (with the tendency to even foment renewed conflicts in post-conflictual contexts). The commodification of news and the propaganda paradigms are the media's weapons in projecting this diabolical end under the guise of free speech. Of late, the global media (as a messiah) has clung on to the journalism of civility in communicating the sovereign virtues of justice, human rights and democracy; in the global fight against crime and impunity.

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<sup>36</sup> Berger, Peter L & Luckmann, Thomas (1966) *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*, Anchor Books, a division of Random House, Inc., New York.

<sup>37</sup> Abou B. M. Binneh-Kamara (2015) *Media Reporting of War Crimes Trials and Civil Society Responses in Post-Conflict Sierra Leone*, Ph. D. Thesis Submitted to the University of Bedfordshire, England.

<sup>38</sup> I Seaga Shaw, *Human Rights Journalism: Advances in Reporting Distant Humanitarian Intervention* (2012 edn. Palgrave Macmillan) 11-34, 105-121; I S Shaw and S Selvarajah, *Reporting Human Rights, Conflicts, and Peacebuilding: Critical and Global Perspective* (2019 edn. Palgrave Macmillan) 1-10; I Marsh and G Melville (Crime, Justice and the Media (3 edn. Routledge) 1-5., A Thompson, *The Media and the Rwanda Genocide*, op. cit.

<sup>39</sup> D Demers, *Global Media: Menace or Messiah* (1999 edn. Cresskill, NJ: Hampton Press) 3-6; R T Schaefer, *Sociology*, op. cit: 158.

This cosmopolitan role of the media is clearly manifested in human right journalism<sup>40</sup> and the responsibility to report<sup>41</sup> (the new journalistic paradigm). Analytically, the cultural determinism and geographical proximity models<sup>42</sup> are worth alluding to here. These perspectives are based on the idea that it is the national issues and events of Member States of ECOWAS that would really influence news production in the subregion. On the response side, the pertinent question is: does framing influence thinking? Thus, it should be noted that news frames do not necessarily guarantee their influence in audiences thinking<sup>43</sup>, but such frames can have psychological and sociological consequences. At the psychological level, based on exposure to certain frames, there can be changes in perceptions and attitudes. At the sociological level, framing can influence political socialisation, decision-making and collective decisions<sup>44</sup>, but the importance of the concepts of selective exposure and audience fragmentation in the context of the digital media should also be borne in mind.

Circumspectly, humanity now lives in a complex and unpredictable World characterised by the free flow of information via internet connectivity, leading to the accessibility of the requisite information to make the right choices (in the midst of humanity's scarce resources).<sup>45</sup> So, any activity that arouses humanity's interests and attentions in any part of the globe can be an issue of media exercise for either the domestic or global media (depending on the importance), which either or both may attach to it. Thus, the media's coverage of the COVID 19 global pandemic is a case in point. But it appears that the contemporary media is more concerned with political and corporate communications than some other forms of communications, including the

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<sup>40</sup> I Seaga Shaw, *Human Rights Journalism: Advances in Reporting Distant Humanitarian Intervention* (2012 edn. Palgrave Macmillan) 11-34, 105-121; I S Shaw and S Selvarajah, *Reporting Human Rights, Conflicts, and Peacebuilding: Critical and Global Perspective* (2019 edn. Palgrave Macmillan) 1-10; I Marsh and G Melville (*Crime, Justice and the Media* (3 edn. Routledge) 1-5.

<sup>41</sup> A Thompson, *The Media and the Rwanda Genocide*, op. cit.

<sup>42</sup> Galtung J. & Ruge M. (1965), *The Structure of Foreign News*, *Journal of Peace Research* Vol. 2 NO.1: 64-91; Galtung J. & Vincent R. C. (1992) *Glasnost: Toward a New World Informational and Communicational Order*, Cresskill New Jersey, Hampton Press: 141.

<sup>43</sup> Robert M. Entman (1993), *Framing: Towards Clarification of a Fractured Paradigm*, *Journalism of Communication* 43: 51-68; Robert M. Entman (2007) *Framing Bias: The Media in the Distribution of Power*, *Journal of Communication* ISSN 0021-9916: 163-173.

<sup>44</sup> Scheufele D. A. *Agenda –Setting, Priming and Framing Revisited: Another Look at Cognitive Effect of Political Communication*, *Mass Communication & Society* 392 and 3: 12-14, 297- 316, 305-308, 309.

<sup>45</sup> A T Megenta, *Can it Tweet it Way to Democracy? The Promise of Participatory Media in Africa* (Routers Institute for the Study of Journalism, Oxford University Press) 3- 6; N Newman, *Mainstream Media and the Distribution of News in the Age of Social Discovery: How social media are Changing the Production, Distribution and Discovery of News and Further Disrupting the Business Models of Mainstream Media Companies* (Routers Institute for the Study of Journalism, Oxford University Press) 5-7.

quest for human rights and global justice. This communications trend in modern democracies dovetails with the positions which journalists have assumed in the political debate.<sup>46</sup> Their framing strategies mainly reflect the projections of the interests of their financiers.

### **1.3 Analytical Exposition: The ECOWAS Court, the Media and CSOs.**

Justice as a virtue, justice as maximisation of welfare and justice as right, are the concern of the ECOWAS Court, the media and CSOs. So, the coverage of the Court's proceedings is a matter of newsworthiness in the context of human rights journalism and the journalism of civility, rationalised in the new journalistic paradigm – the responsibility to report. This model will certainly get CSOs, through the media, to bring to the fore, very pertinent institutional and jurisprudential issues of the Court to West Africans. This will augment the relevance of the Court and would heighten the zest of West Africans to always come to it for the justice, which they think they would not get in their respective jurisdictions. The Court has indeed manifested justice in its torrent of decisions, relative to its expanded jurisdiction in Article 9 of the Supplementary Protocol of 2005. Since the said protocol extended the Court's jurisdiction over two decades ago, up to 678 cases have been filed with the Court's Registry and 402 judgments have been delivered by its conscientious and dedicated Judges; the Court has had 1, 440 proceedings and has delivered 29 decisions on 41 applications for revision of Judgments filed; 168 cases including those filed in the beginning of 2024 are yet to be determined.<sup>47</sup>

The exponential increase of cases before the Court and the number of judgments it has delivered, are a testament of the Court's unprecedented positive strides in upholding justice in West Africa. Meanwhile, the media and CSOs, can make virtue of this laurel, by deploying the apposite framing strategies in their communications to West Africans. Further, the fact that it was only 2 cases that were pending before the Court between 2003 and 2004. And the fact that there is now a plethora of cases across the subregion that the Court is poised to determine, are a clear manifestation of awareness on the part of West Africans to continue to rely on due process in settling whatever human rights disputes they might have had with Member States and their

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<sup>46</sup> R M Entman, Framing Bias: Media in the Distribution Power (Journal of Communication) ISSN 0021-9916.

<sup>47</sup> Punch, Nigeria's Mostly Widely Read Newspaper, published on 26<sup>th</sup> January, 2024.

operatives. The pertinence of the media and CSOs in building on this laurel cannot be overemphasised. The astounding statistics, depicting the successes of the ECOWAS Court referenced herein was episodically communicated by some of Nigeria's most widely read newspapers (*including The Punch*) on Friday, 26<sup>th</sup> January, 2024. Interestingly, the respective publications concerning the foregoing statistics, contained little or no thematic contents of the unprecedented positive strides of the Court within this period. In fact, episodic framing has been the dominant trend in the West African media's coverage of the ECOWAS Court since its inception. Thus, as far back as 2005, the then Chief Justice of the Republic of Ghana, Justice G. K. Acquah, made this startling statement about ECOWAS, at the First Conference of ECOWAS Chief Justices and ECOWAS Court of Justice:

**'Since the coming into being of ECOWAS and its institutions, it would appear that very little information has filtered through to ECOWAS citizens about the work and structures of these institutions. One often reads from newspapers about the Authority of Heads of State and Government, the Council of Ministers, the Executive Secretariat, the Fund for Cooperation, Compensation and Development..., with little understanding of how the systems work both in treaty and in practice'.<sup>48</sup>**

Apparently, though it would appear that there has been an increase in the awareness campaigns about the efficacy of ECOWAS and its functional institutions, it is important to note that the subregion's media and CSOs' need to be fully involved in these campaigns by deploying the appropriate strategies. Analytically, the aforementioned story in the *Punch* and those in other credible Nigerian newspapers, about the Court's successes in the dispensation of justice in the subregion, were not really given the attention they deserved. The data informing the stories emanated from the Court's Registry and filtered to the media and CSOs. But did the West African media give that data the serious coverage it deserved? It is clear, from the media's reportage of that period that, most news agencies paid little or no attention to the admirable accomplishments of the ECOWAS Court as depicted in the data.

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<sup>48</sup> Conference of ECOWAS Chief Justices and ECOWAS Court of Justice, Accra, Ghana, 24-25 November, 2025: Theme The Judiciary as a Partner in the Regional Integration Process, Welcome Address by His Lordship the Chief Justice of Ghana, Justice G.K. Acquah, page 3, Published by the Judicial Service of Ghana.



A welter of reasons can account for this. The first is not unconnected with the geographical proximity and cultural determinism models of news production. As it stands, news agencies and associations of the subregion are meticulous about the reportage of issues and events that are geographically proximate and culturally determined by their respective national interests. So, it is logical to conclude that the communication of that data might have been influenced by geographical proximity. Again, time and space, would have militated against any form of thematic framing in the editions of the respective media that carry the story. These same geographical proximity and cultural determinism models could as well account for the reasons why the national news agencies and associations of ECOWAS Member States, are still paying more attention to their domestic politics, corporate affairs and sociocultural environments; as opposed to what really obtains in the wider ECOWAS context. The same can as well be said of CSOs (including the Bar Associations of Member States) that are as well meticulous about issues and events that affect their respective countries and nationals.

Circumspectly, national news media and CSOs would likely come to pay attention to the ECOWAS Court when issues and events that are cognate with the above, result in proceedings that are brought to the Court for determination. This was exactly the case with the Sierra Leone media which became very interested in the case which its erstwhile Vice President, Chief Sam Samuel Sumana, took to the ECOWAS Court for redress after Sierra Leone's Supreme Court denied him the remedy which he wanted for what he said was his unconstitutional removal from office. Although the media in Sierra Leone was clearly divided in its coverage of the matter before the ECOWAS Court between His Excellency Vice President Sam Samuel Sumana v. Republic of Sierra Leone {ECW/CCJ/APP/36/16}, there was no sustained effort on the part of the media and CSOs to systematically update Sierra Leoneans about the pre-trial, trial and post-trial processes of this case.

This trend was also distilled in the coverage of the Nigerian media and the discourses of CSOs, when the ECOWAS Court awarded a 30-Million-Naira compensation to a Nigerian online journalist (Jalingo Agba) for unlawful arrest and detention. Same can be said of the media and CSOs in Togo, when the Court ordered the Togolese Government to pay 40 million CFA Francs for violating the right of a former soldier. The media and CSOs in Ivory Coast also demonstrated the same attitude, when the

Court ordered Ivory Coast to pay 1.25 Billion CFA Francs to a Congolese for violation of his property right. This trend is further discernible in the Liberian media's coverage and CSOs discourses,' concerning the action which the former Liberian President, Charles Taylor, brought to the ECOWAS Court, alleging non-payment of pension benefits. Nonetheless, the media and CSOs in West Africa should appreciate the fact that the geographical proximity and cultural determinism models of news production, should no longer be the lenses that should colour their news production strategies in the subregion. The responsibility to report should be the model that should influence the coverage of the Court and issues and events of ECOWAS in general. Had the ECOWAS Court, in collaboration with CSOs and the media, given the appropriate attention, salience and valence, to the above statistics concerning the Court's accomplishments, the relevance of the Court in the regional integration process, would have been clearly felt in the subregion.

This would have motivated West Africans, who are mostly aggrieved with the decisions of their respective domestic courts, to come to the ECOWAS Court for redress. However, since the awareness about the institutional arrangements, activities and operations of the Court is on the increase, episodic framing would still have little or no impact on the media's coverage of the Court. Such framing strategy would rather only reinforce the pre-existing perceptions which West Africans have had about the Court. What is really desirable here is thematic framing. The goals of the media in this direction is to shape the perceptions and attitudes of West Africans at the psychological level; and to influence political socialisation, decision making and collective actions at the sociological level. How can these lofty objectives be realised in the context of thematic framing? Journalists must not confine their coverage of the Court to dramatic issues and events for immediate impacts. Immediacy matters, but the need to provide backgrounds and contexts to their reportage, rationalised in critical analysis, will certainly continue to sustain debates on the part of civic publics about the relevance and effectiveness of the Court across the subregion.

This task is quite daunting for the West African media, which is yet to attract the much needed investments. With the exception of a few news agencies, most of them do not have the requisite finances and professional personnel with the appropriate legal education to pursue this challenging task in the subregion. The Court is remotely located in Abuja, in the Federal Republic of Nigeria. And most West African news

structures are thousands of miles away from the Court. They would need their highly skilled legal correspondents to be doing first hand communication of what is happening on the ground. They would further need to be regular in the rooms and precincts of the Court to constantly follow proceedings and report on the progress being made. They should be learned in both domestic and international law, with a specialisation slant on ECOWAS law, to be able to demystify the Court's jurisprudence and succinctly report its proceedings to West Africans in tandem with the canons of the journalism of civility and human rights. This would necessitate a thorough knowledge of the pre-trial, trial and post-trial processes and procedures of the Court. Further, Article 9 of the Supplementary Protocol of 2005, concerns community justice, arbitration, public service and human rights violations.

These jurisprudential issues would as well have to be made easily understandable for CSOs to engage with states and their operatives in the public sphere, about the relevance and effectiveness of the Court to West Africans. Thus, thematic framing would further raise awareness about the Court's accessibility and also heighten its importance in strengthening regional integration and promoting democratic good governance in the subregion. Further, constitutionalism, human rights and the rule of law, are core liberal democratic doctrines, which are central to West Africa's governance architecture. And these doctrines have as well been rationalised in the Revised Treaty, the Declaration of ECOWAS' Political Principles, the Protocol on the Community Court of Justice, the Supplementary Protocol Amending the Protocol Relating to the Community Court of Justice, the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security and the Protocol on Democracy and Good Governance (the Supplementary Protocol thereto).

As with justice, the ECOWAS Court is as concerned about constitutionalism, human rights and the rule of law, as the media and CSOs. In fact, the Court has meaningfully contributed to the evolving African jurisprudence on human rights in the contexts of constitutionalism and the rule of law. The Court has been able to provide remedies for gross human rights violations; and simultaneously given effects to the ACHPR together with the human rights provisions in its protocol and supplementary protocols. Thus, it cannot be denied that the media and CSOs are very crucial in the human rights campaign. Also, between 2004 and 2024, the Court has been able to bring together a pull of excellent jurisprudents, constitutionalists and policy analysts of

astounding achievements to inter alia deliberate on the central themes, underpinning the functionality of the ECOWAS Court and how West Africans must continue to uphold the values of regional integration in the context of unwavering cooperation. And cooperation which is best manifested in the political will of Member States to fulfil their treaty obligations with the Court, can be strengthened through effective and proper framing of the jurisprudential and institutional relevance of the Court to Member States.

Within these two decades, the Court's conferences have generated a torrent of academic and professional papers that have not only informed the fundamental discourses on the Court's prospects and challenges, but have also shaped the emerging literature of ECOWAS law, which should be quite relevant for the law faculties of the universities and law schools, as well as to media and CSOs' education in the subregion. This literature is also strengthened by the available ECOWAS Law Reports 2004 - 2017, which contains the emerging sui generis legal order of ECOWAS. The COVID 19 global pandemic, triggered a somewhat latent effect, which the Court and CSOs should be proud of, and which the media must properly communicate. This latent effect is the use of virtual technology beyond the COVID 19 pandemic. Since 2020, the Court has relied on this technology to make the Court easily accessible to West Africans, and thereby addressing the issue of cost implications in litigations. The developments in ICTs, which have ushered in the idea of convergence media, have brought CSOs closer to the Court.

In fact, the role of Telecommunications, Information and Technology (TIT) in projecting regional integration and development, peace and security, justice and human rights, cannot be more apt in this phase of the Court's history. This development has resulted in the electronic filling of cases, facilitated the sharing of case information, created access to justice, fostered civics' public trust and confidence and promoted efficiency of the Judges and Court. This adaptation mechanism to primarily make the Court accessible, further brings the media close to its chest. The Court has also delivered many landmark judgments and awarded huge compensations to journalists, whose constitutional rights and freedoms, have been violated with impunity by state actors and operatives<sup>49</sup>. And the Court's decisions in this area are mostly related to the protection and enforcement of the right to free

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<sup>49</sup> Federation of African Journalists (FAJ) & Others v. The Gambia, SERRAP v. Federal Republic of Nigeria ECW/CCJ/JUD/40/22, Zongo v. Burkina Faso, Konate v. Burkina Faso etc.

speech and protection against arbitrary arrest and detention. This achievement of the Court in enforcing the right to free speech is crucial to the realisation of the General Assembly Resolution 60/251 of 2006, Articles 19 of the UDHR and ICCPR, Article 9 of the ACHPR, Aspiration 3 of Agenda 2063: The Africa That We Want, the AU Commission's Declaration on the Principle of Freedom of Expression and Access to Information in Africa (DPFEAIA) and Article 66 of the ECOWAS Revised Treaty. Thus, the foregoing achievements are indeed of news values in the context of human rights journalism and the journalism of civility, but has the Outreach section of the Court been sufficiently collaborating with the media and CSOs in properly communicating these successes to West Africans and the World at large?

#### **1.4 Critical Context**

It is clear from the above analytical exposition that the ECOWAS Court, the media and CSOs, constitute a community of shared interests in the subregion. Generically, everything that concerns ECOWAS and its Organs, concerns the media and CSOs. And anything that affects ECOWAS and its Organs can as well be mirrored in the discourses of the media and CSOs. Characteristically, it is through the media and CSOs that anything that affects the varied interests of West Africans can be speedily brought to the attention of Member States, their institutions and their operatives for redress. This communicative power of the media has widened, with the advent of the new media, which has now made it plausible for ECOWAS citizens (with access to the requisite ICTs) to not only produce news, but to file cases, through their respective solicitors, falling within the Court's jurisdiction for adjudication. As it stands, the Court's admirable accomplishments catalogued in 1.3 should not delude the media and CSOs into thinking that the Court has not been fraught with challenges. In as much as the media and CSOs' communicative and functional roles, are crucial to strengthening the Court's relevance and efficiency, that does not presuppose that their framing strategies should resonate with only its successes.

The West African media must come in as an agenda-setter by deploying (as established above) sound thematic framing strategies in its coverage of the Court. This will *inter alia* bring to the fore and provide context to the welter of challenges underpinning the activities, operations and efficacy of the Court. The principal aims of these strategies are to influence and shape civic publics' perceptions and attitudes to the Court; and simultaneously propel competent national states' authorities to fulfil

their obligations with the Court, hereby making it efficate. So, journalists must not only report the news on the challenges of the Court to listeners, viewers and readers; they must go the extra mile to provide context to it. They must analyse the news, providing detailed information of every dimension of it. They must not leave gaps in the information that they filter about the Court to West Africans. For this will raise more questions than answers. Their coverage must not be spasmodic; it must be thematic, giving accurate information with the requisite depth to enhance understanding of the place and functions of the Court in the regional integration process.

They must also be prepared to invite enlightened members of CSOs and experts' jurists in international law/relations, to express their views on the news and commenting on its ramifications for ECOWAS. Thus, the most frustrating issue that undermines the Court's efficacy, which the media must be constantly making salient, concerns the enforcement of its decisions by competent national authorities. The media being a sociopolitical institution with a specific legal right and duty to receive and impart information, is mandated by national laws and emboldened by regional international law to hold competent states' authorities accountable, responsible and transparent to the political sovereign (the people). One of states' authorities' obligations in international law is to give effect to international treaties, which they have acceded to. A shrewd argument being canvassed by some experts in international law in the context of dualism is that such treaties would only have the force of law when they are ratified and domesticated. So, the non-ratification and domestication of the ECOWAS Court's legal texts by Member States, precludes their applicability in their respective legal systems.

This argumentation is rationalised in the constitutions of dualists states. For monist states, such treaties instantaneously become applicable laws in the context of territorial jurisdiction immediately after they are acceded to. What should really baffle the minds of critical and inquisitive journalists is how to frame their reportage to bring to the fore and provide context to the fact that the much touted concept of cooperation, which is said to be a sovereign virtue is the first condition for human relations, peaceful coexistence and collective security, which are core values upon which ECOWAS and its functional organs are constructed. Therefore, the judicial systems of Member States, are bound to give effect to the ECOWAS Revised Treaty and its protocols and supplementary protocols, relating to human rights. ECOWAS' subregional legal

regimes on human rights are complementary (they are not subsidiary<sup>50</sup>) to those in regional and general international law.

Journalists should be able to provide a comparative analysis in their reportage of the clear nexus between the provisions in international human rights law, rationalised in the General Assembly Resolution 60/251 of 2006, UDHR, ICCPR and ACHPR on the one hand and the respective human rights chapters of the constitutions of Member States on the other hand and pose the following questions on the need for the enforcement of the decisions and judgments of the ECOWAS Court on human rights violations: Are there convergences between the provisions in international human rights law and those in the respective human rights chapters of the Constitutions of Member States? If there are clear convergences, why is it that Member States of ECOWAS, who are also Members of the UNO, refuse to enforce the human rights decisions of the ECOWAS Court?

Further, the media should make virtue of the fact that the General Assembly Resolution 60/251 of 2006, UDHR and ICCPR are an authoritative interpretation of the UNO Charter, they are a constituent part of customary international law and they are binding on every state (monist and/or dualist), pursuant to their *jus cogens* status in general international law. The media can as well rely on the UNO's historical human rights baggage to construct analytical narratives on why Member States of ECOWAS are bound to give effect to the decisions and judgments of the ECOWAS Court when it comes to human rights. Thus, the evidence is clear that the UNO's Human Rights Committee, replaced the Human Right Commission, pursuant to the said General Assembly Resolution 60/251 of 2006, which emphasises the importance of the human rights provisions in the UNO's Charter, UDHR and ICCPR; and establishes the basic facts that all human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing; and that they must be treated in a fair and equal manner and must be placed on the same footing.

The preamble to the said resolution singled out the media's role in upholding the interlocking and mutually reinforcing ideals of peace, security, development and human rights. So, the human rights chapters of the constitutions of Member States of ECOWAS, which are in tandem with those enshrined in the UDHR, ICCPR and

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<sup>50</sup> See the International Court of Justice decision on the Columbian-Peruvian Case, 1950.

ACHPR, are recognised and accepted as peremptory norms, erga omnes norms or jus cogens in general and regional international law from which no derogation is permitted; except by a subsequent norm of general international law having the same character<sup>51</sup>. And, in general, the treaties establishing international organisations bind only their members; they do not bind third States without their consents<sup>52</sup>. However, the modern conception of 'relative normativity' of international law<sup>53</sup>, seems to contradict the foregoing notion on the applicability of treaties in general international law:<sup>54</sup>

Some international legal norms bind subjects who have not agreed to them (e. g. third party effect of treaties) or who expressly objected to them (e. g. limitations on persistent objections to customary international law); they bind them even if they made reservations when agreeing to them (e. g. objective norms such as human rights); and, finally, they sometimes bind them in an imperative fashion (e. g. jus cogens norms).

The other issue that is said to be a challenge to the ECOWAS Court, which the media, through thematic framing, can possibly transform into a prospect is the claim by particularly members of CSOs that it is somewhat expensive to access justice from the ECOWAS Court, considering the fact that it is remotely located in the Federal Republic of Nigeria, Abuja, which is far away from the rest of West Africa. In as much as this is not a superfluous truism, this challenge is being slowly overcome. As noted in 1.3 above, TIT has made it plausible for cases to be electronically filed to the Court for adjudication. This is cost effective. Again, international non-governmental organisations and CSOs in the area of justice and human rights have been supportive of persons whose rights have been violated by state actors and operatives with impunity, to go to the ECOWAS Court for redress. The Court has handled quite a good number of cases falling within this category against Member States. And has ordered the awards of huge compensations to be paid to such persons by the defaulting

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<sup>51</sup> S Besson & J Tasioulas, *The Philosophy of International Law* (2010 edn. Oxford University Press) 10; see also T Endicott, *The Logic of Freedom and Power* in page 245 of the same publication.

<sup>52</sup> See Articles 26 and 34, op. cit.

<sup>53</sup> D Shelton, *International Law and 'Relative Normativity'* in *International Law in M D Evans' International Law* (4 edn. Oxford University Press) 137- 135; P. Weil, *Towards Relative Normativity in International Law*, *American Journal of International Law*, 77 (1983), 413; J Tasioulas, 'In Defence of Relative Normativity: Communitarian Values and the Nicaragua Case', *Oxford Journal of Legal Studies* 16 (1996), 85.

<sup>54</sup> S Besson & J Tasioulas, *The Philosophy of International Law*, op. cit: 10.



Member States. Paradoxically, critics of the Court have argued that the excessive awards of damages against Member States of ECOWAS is undermining the enforcement of the Court's decisions and judgments.

Again, this narrative can be debunked, through thematic framing. Journalists can examine records in the public domain and source the travelling expenses of states' functionaries and other states expenditures, pointing to suspicious misallocations or misappropriation of states' funds in comparison with what the Court awards for gross violations of the rights of their citizen. Further, the Court has never ordered any compensation which any Member State cannot afford. It is their unwillingness to comply with their treaty's obligations with the Court that is the problem. And this problem is rooted in the political realists' quest for absolute power, shrouded in sovereignty and territorial integrity. The unwillingness to comply with treaty obligations undermines cooperation and makes a mockery of the Court in its quest to enforce the universal, indivisible and interlocking human rights of West Africans, which the political idealists that really believe in fostering justice, constitutionalism, human rights and peaceful co-existence will never frown at.

The media's thematic narratives of these issues of serious political and constitutional concerns, should not leave out relevant historical facts and contemporary happenings, relating to how humanity (throughout history) has stood up against the excesses and oppressive forces of the political realists, who are always determined to satisfy their unmitigated selfishness and rapacity in the name of *realpolitik*. The ECOWAS Court's role in enhancing justice and the rule of law in the subregion should be commended. The rule of law and its just, fair and reasonable administration is the most solid and potent panacea for conflict prevention at the macro level of any political community. When human rights are violated with impunity; and when citizens are distrustful of corrupt judicial systems that are tied to the apron strings of the executives; when all hopes for justice and human rights are lost; citizens would always resort to extra-judicial means to get the justice they deserve. When this happens, society suffers and the state is temporarily rendered meaningless, until its institutions, processes and cultures are fixed up. To prevent this, the Bar Associations and human rights organisations of Member States (in the name of civil society activism) must now be potent and visible in drawing up petitions, organising public meetings, advertising in the media and even holding public demonstrations on the need to get Member States

to comply with their treaty obligations to the Court. Moreover, CSOs through the media, can sustain healthy debates on the issues of non-exhaustion of domestic remedies, before citizens can approach the ECOWAS Court. There are complexities relating to this criticism, which the media must make clear in its communications with West Africans.

Thus, the Supplemental Protocol of 2005, which expanded the jurisdiction of the Court in Article 9 was overwhelmingly endorsed by ECOWAS' most powerful Organ: The Authority of Heads of State and Government. And the ECOWAS Court does not oust the constitutional jurisdictions of the Courts of Member States, regarding civil or criminal litigations. It is only issues of human rights that citizens can bring to the Court without having exhausted domestic remedies. This is clearly articulated in Article 9 of the said Protocol. As established above, human rights norms are norms of imperative character, which must be enforced. In circumstances wherein issues of judicial independence are mind-boggling, it should be contested that citizens must first seek for domestic remedies, before approaching the Court. The fact that it is left with the discretions of citizens to either seek for remedies for human rights violations domestically or through the ECOWAS Court, should never be a problem for Member States that are committed in enforcing their treaty obligations. These lines of arguments can be adopted by CSOs in the justice and human rights sector for regular dissemination through the media.

Another issue for thorough social construction of reality by the media is the inability of the Court to directly enforce its own judgments and decisions or sanction Member States, after having failed to comply with the orders of the Court. This is indeed an issue of common concern. This is in fact the main reason why the ECOWAS Court is not as potent as the ECtHR. Unlike the former, the decisions of the latter are being constantly implemented and enforced in the context of supranationalism. Sovereign independence and territorial integrity are the cloak behind which the political realists in West Africa have hidden to forestall the subregional quest for justice and human rights, which they have acceded to. Their failure to comply with the decisions of the Court is a manifestation of their unwillingness to give credence to the rule of law; and simultaneously disregard the spirits and intendments of cooperation upon which ECOWAS is built. The media and CSOs must bring these concerns to the fore and challenge ECOWAS to challenge them that the fundamental ideals of subregional

integration cannot be actualised in an environment wherein Member States are ill-prepared to meet their treaty obligations with the Court.

### **1.5 Conclusions and Recommendations: The Way Forward**

West Africa's regional integration process has subsisted for almost five (5) decades. The subregion has immensely benefited from this process, but there exists a welter of challenges rooted in international and national politics, that are still undermining the efficacy of ECOWAS. In the international arena, the skewing dynamics towards political authoritarianism (*in the name of political realism*) are posing the greatest threats to constitutional and democratic governance in West Africa. In fact, as it stands, some of the ECOWAS' Member States are still suspended from participating in the activities and operations of the subregional bloc, though negotiations to bring them back are ongoing. Such negotiations are crucial for regional peace, security and stability (the most relevant and critical infrastructure of regional integration). In the context of national politics, *the political realists* are now busy flexing their muscles; and simultaneously manipulating their respective states' democratic and constitutional processes with impunity. And most of their actions are being endorsed by their constitutional courts, which are meant to uphold the rule of law. What a paradox!

West Africans, who are mostly respecters of the law, while relying on the legal environment of the regional integration process, have been resorting to litigations at the subregional level, in pursuance of their civil and political rights, enshrined in their respective states' constitutions and regional and general international law. Unfortunately, though the conscientious Judges in the ECOWAS Court have really demonstrated fairness in their administration of justice, by handing down a torrent of decisions on particularly the gross human rights violations across the subregion, the political realists have now come under the guise of a form of national constitutionalism, rationalised in the international law model of dualism to justify their utter disregard for the Judgments and decisions of the ECOWAS Court; and thereby making a mockery of not only its existence, but its legal authority and validity in developing a sui generis legal order for the subregion. This is how the political realists have been manifesting their political superiority under the guise of *legal positivism*. This has been unfair to West Africans, who have judiciously obtained judgments (against ECOWAS Member States and their operatives), but their competent national authorities in governance,

have not appreciated the need to immediately implement such judgments. This is indeed a serious concern for every other West African, who believes that states are still the greatest bullies in the subregion. But how can these bullies, that assume preponderance power be tamed in the subregion so that law abiding West Africans, can breathe a sigh of relieve from the clutches of the political realists?

Thus, the media and CSOs must remain neutral, independent, impartial and incorruptible in the national and subregional political and constitutional debates. They must not be tied to the apron strings of governments in the subregion, but regrettably, there are journalists and CSOs that are now the forerunners and mouthpieces of the political realists in West Africa. Again, there are those who are now in the spheres of commercialisation and commercialism, projecting the selfish interests of national corporate entities and multinational corporations at the expense of their countries' national developments. This is indeed the trend which media and civil society activisms are taking in some Member States. This is in contravention of the theoretical construct that CSOs (including the media) are bound to be apolitical; as they occupy a special space between the state and the market economy; while exercising unique functions, geared towards holding states, governments and their operatives accountable, responsible and transparent to the people, from whom governments through their respective constitutions, derive their powers, authorities and legitimacies.

This space is blurred when the media and CSOs condescend to that level of projecting the selfish interests of those whose activities and operations they must monitor. Their functions are meaningless to West Africans, when they become political cronies, puppets and stooges. This is seen in situations where the media can deploy its propaganda (mass manipulative) and commodification of news models to project the political and corporate interests of the powers that be (*in the name of free speech*). This is the reason why, notwithstanding its relevance to democratic governance, when free speech is abused, it can be threat to democracy and the digital economy.

Some journalists and CSOs members have as well unconscionably deployed the thematic framing strategy in constructing justifiable narratives about why Member States are neither enforcing the ECOWAS Court's decisions, nor meeting their treaty obligations; while relying on the same international law model of dualism in justification of the positive laws of their sponsors and financiers. Nonetheless, it is expected that

the West African Bar Association (WABA), the subregion's leading justice and human rights CSO, should at this stage wake up from its slumber and immediately begin to liaise with the Bar Associations across West Africa to mount the greatest of pressures on competent states' authorities to begin to enforce the decisions and judgments of the ECOWAS Court for the benefit of all and sundry. They can collaborate with the media, other CSOs and Court's Registry and Communications Unit, to put out clearly defined and thematically well-constructed contents, reaching wider audiences across the subregion on the need to get Member States to ratify/domestic ECOWAS instruments; and appoint morally forthright and competent national authorities to immediately begin to enforce the decisions and judgments of the Court. They must as well focus on the rationale to invoke ECOWAS' sanctions regimes against Member States that do not comply with the decisions and judgments of the Court.

They must be seen championing the campaigns to convince their respective nationals that the concurrent jurisdictions of domestic courts and the ECOWAS Court on human rights issues are a positive step in the subregional legal integration process (as seen in the admirable accomplishments of the ECOWAS Court). In this vein, they must further frame the news with a concentrated emphasis on the primacy of the sui generis legal norms of ECOWAS and how they can be interpreted in tandem with the shared constitutional and core democratic principles of governance to make our beloved West Africa a better place. This will necessitate the need for the incorporation and direct applicability of the ECOWAS Revised Treaty, its protocols and supplementary protocols, into the legal regimes of Member States; and thereby making it easier for West Africans to invoke ECOWAS' legal regimes in their domestic courts.

But the media and CSOs can be in a better position to play this crucial role in the regional integration process, when they have the appropriate infrastructure, resources and education. Articles 36 and 37 of the Protocol on Democracy and Good Governance, Supplementary to the Protocol Relating to the Mechanism for Conflict, Prevention, Management, Peacekeeping, Security and Resolution, are clear on how Member States, through independent media organisations (not their statutory media regulatory commissions or institutions) can make funds available to independent media structures for media developments in the subregion. There has also been an idea for the establishment of the Independent Media Fund (IMF) to promote media activism in Africa's ailing democracy. This idea came about as a result of how

technology has crippled the growth of particularly Africa's print media; and its unending potentials to further put hundreds of thousands of journalists out of employments in the region. This has been visualised as direct threat to the survival of the continent's fledgling democracies. And if the media is to continue to play its role in the public sphere, it has to be strengthened with the requisite infrastructure and resources to promote the ideals of democratic good governance in Africa. So, the media and CSOs in West Africa can as well explore the possibility of accessing funds, if at all they are available, from the IMF to project the relevance and efficiency of the ECOWAS Court. Further, Member States must reform their draconian media laws and other regulatory regimes that are inimical to free speech. Some Member States have hurriedly enacted cybersecurity and crime laws, but are not enthusiastic to enact the corresponding data protection laws in tandem with the African Declaration on Internet Rights and Freedoms. What an irony? Again, the need for continuous education in political and moral philosophy, communications media and law for members of CSOs in the justice and human rights sector; and journalists covering the proceedings of the ECOWAS Court, is a sine qua non. The right, proper and genuine education in these disciplines, will prepare them to see the wood for the fire, through thematic framing of the institutional and jurisprudential relevance of the Court; which is increasingly becoming relevant to West Africans, in an era that is witnessing the resurgence of political authoritarianism in the continent.







