

To cite: JA Brauch 'Is the ECOWAS Community Court of Justice the answer to the religious freedom challenges in West Africa?' (2026) 26
African Human Rights Law Journal 55-97
<http://dx.doi.org/10.29053/1996-2096/2026/v26n1a3>

Is the ECOWAS Community Court of Justice the answer to the religious freedom challenges in West Africa?

*Jeffrey A Brauch**

Professor, Founding Director, Centre for Global Justice, Regent University School of Law, Virginia Beach, United States
<https://orcid.org/0009-0009-1664-0188>

Summary: *Religious believers across West Africa face serious threats to their religious freedom from both governments and non-state actors. Christians, Muslims and minority faith adherents encounter state prosecution for blasphemy, restrictions on religious practice and religious-based violence. When domestic human rights protection fails, most West Africans traditionally have two international options: the African Commission on Human and Peoples' Rights, which enforces the African Charter on Human and Peoples' Rights, and the UN Human Rights Committee, which enforces the International Covenant on Civil and Political Rights. However, citizens of 12 West African states have a third option: the ECOWAS Community Court of Justice (ECCJ). Originally established to promote economic cooperation among West African states, ECOWAS has expanded its mission, and the ECCJ has emerged as a significant human rights enforcement body. This article examines whether the ECCJ provides a viable – or even superior – forum for religious freedom claims in West Africa. It details the challenges facing believers in*

* BA (Wisconsin) JD (Chicago); jeffbra@regent.edu. The author wishes to thank Kola Alapinni, Meg Kelsey, Craig Stern and Judge Robert MacDonald for their substantive and editorial comments on earlier drafts of this article, and Anna Winterfeldt for her invaluable assistance in preparing the manuscript for publication.

the region, outlines the ECCJ's unique procedural advantages over other international enforcement mechanisms, and examines how the Court has already addressed critical issues, including blasphemy prosecutions and violence by non-state actors. The article also evaluates obstacles facing ECCJ litigants, particularly compliance challenges with court decisions. The article concludes that, despite significant weaknesses, the ECCJ represents a promising avenue for addressing the most pressing religious freedom violations in West Africa today.

Key words: *religious freedom; enforcement body; ECOWAS Community Court of Justice*

1 Introduction

Religious believers in parts of West Africa face grave challenges today. Threats to religious freedom arise from both state and non-state actors. Two accounts from Nigeria illustrate the predicament faced by believers there.

In August 2020, a court in Kano, a state in Northern Nigeria, sentenced to death 22 year-old singer Yahaya Sharif-Aminu.¹ Sharif-Aminu, a Sufi Muslim, had performed and circulated a song via WhatsApp that praised an imam from the Tijaniya Muslim Brotherhood.² The song enraged some listeners who claimed that it elevated the imam above the Prophet Mohammad.³ The opposition drove Sharif-Aminu into hiding.⁴ Protestors then burned down his family home and gathered outside the headquarters of the Islamic police (the Hisbah) demanding action.⁵ Sharif-Aminu was arrested, tried, convicted of blasphemy by a Shari'a court, and sentenced to death.⁶ In 2021, a higher court in Kano overturned the conviction based on irregularities in the original trial, but Sharif-Aminu remains detained and awaits a retrial.⁷

1 'Nigerian singer sentenced to death for blasphemy in Kano state' *BBC News* (London) 10 August 2020, www.bbc.com/news/world-africa-53726256 (accessed 23 July 2025).

2 United States Commission on International Religious Freedom (USCIRF) 'Yahaya Sharif-Aminu', <https://www.uscirf.gov/religious-prisoners-conscience/forb-victim-database/yahaya-sharif-aminu> (accessed 23 July 2025).

3 'Nigerian singer sentenced to death' (n 1).

4 As above.

5 As above.

6 USCIRF (n 2).

7 As above.

On 23 December 2023, a group of Fulani militants attacked 26 Christian farming villages in the Plateau state of Nigeria.⁸ At least 190 Christians died in the attacks.⁹ The attackers had sent warning messages ahead of time, telling villagers that they ‘will not celebrate Christmas, but run away with their rice’.¹⁰ These attacks were not isolated: For two decades, Nigeria has been plagued by religious and ethnic violence.¹¹ That violence has reached devastating levels in recent years, with tens of thousands of civilians killed or abducted in over 13 000 documented incidents of extreme violence in just a five-year period, from 2019 to 2024.¹²

Nigeria is not the only country in West Africa facing severe threats to religious freedom. Government officials in some nations have restricted or even prevented religious worship¹³ and, alarmingly, religiously motivated extremist violence has occurred in Benin, Burkina Faso, Côte d’Ivoire, Ghana, Mali, Niger and Nigeria.¹⁴ The violence does not only target Christians, but is directed against believers from many faiths.

The problem is not a lack of legal protection for the freedom of religion. The Universal Declaration of Human Rights (Universal Declaration), for example, proclaims: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone

-
- 8 J Casper ‘Christmas massacres challenge secular explanations of Nigeria conflict’ 29 December 2023, <https://www.christianitytoday.com/2023/12/nigeria-christmas-massacre-plateau-fulani-herders-farmers/> (accessed 23 July 2025).
- 9 USCIRF ‘2024 Annual Report United States Commission on International Religious Freedom’ 37, <https://www.uscirf.gov/sites/default/files/2024-05/USCIRF%202024%20Annual%20Report.pdf> (accessed 23 July 2025).
- 10 Casper (n 8).
- 11 M Hill & TJ Hellenbrand ‘Religious persecution in Africa: Nigeria, Algeria and Eritrea’ (2022) 97 *Notre Dame Law Review Reflection* 231.
- 12 S Kefas ‘How Fulani militias became Nigeria’s deadliest group while escaping global notice, Observatory for Religious Freedom in Africa’ 14 July 2025, <https://orfa.africa/how-fulani-militias-became-nigerias-deadliest-groupwhile-escaping-global-notice/> (accessed 6 February 2026).
- 13 Open Doors ‘World Watch List 2026: What does persecution look like in Niger?’ January 2026, www.opendoors.org/en-US/persecution/countries/niger/ (accessed 6 February 2026).
- 14 As above; Aid to the Church in Need ‘Religious freedom report 2023: Ivory Coast’ 22 June 2023, <https://acninternational.org/religiousfreedomreport/reports/global/2023> (accessed 23 July 2025); International Christian Concern ‘Jihadism on the rise in Benin’ 4 January 2023, www.persecution.org/2023/01/04/jihadism-on-the-rise-in-benin/ (accessed 23 July 2025); MM Muqthar ‘Ghana’s exposure to violent extremism’ (West Africa Centre for Counter-Extremism, May 2022), waccegh.org/wp-content/uploads/2022/10/Ghanas-Exposure-to-Violent-Extremism-WACCE-May-2022.pdf (accessed 23 July 2025); Open Doors ‘World Watch List 2025: What does persecution look like in Burkina Faso?’ January 2025, www.opendoors.org/en-US/persecution/countries/burkina-faso/ (accessed 23 July 2025); Open Doors ‘World Watch List 2025: What does persecution look like in Mali?’ January 2025, www.opendoors.org/en-US/persecution/countries/mali/ (accessed 23 July 2025).

or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹⁵

In addition, all West African states have ratified both regional and global treaties that commit them to protecting the right to believe in and practise one's faith.¹⁶ Article 8 of the African Charter of Human and Peoples' Rights (African Charter) states: 'Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.'¹⁷ Article 18 of the International Covenant on Civil and Political Rights (ICCPR), the most influential global human rights treaty, similarly provides, in relevant part:¹⁸

- (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

...

- (3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Beyond this, many nations in the region, as elsewhere in the world, have strong domestic protections for the freedom of religion. Section 38 of the Nigerian Constitution, for example, tracks the language of ICCPR:¹⁹

Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

15 Universal Declaration of Human Rights art 18.

16 All African nations, including all ECOWAS states, have ratified the International Covenant on Civil and Political Rights. All African nations, including all ECOWAS states, except Morocco, have ratified the African Charter on Human and Peoples' Rights. See United Nations 'Ratification status for CCPR – International Covenant on Civil and Political Rights', https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en (accessed 6 February 2026); African Commission on Human and Peoples' Rights 'State parties to the African Charter' <https://achpr.au.int/en/states> (accessed 6 February 2026).

17 African Charter on Human and Peoples' Rights, adopted 27 June 1981, art 8.

18 International Covenant on Civil and Political Rights (ICCPR) (1966), entered into force 23 March 1976.

19 Art 38 Constitution of the Federal Republic of Nigeria, 1999.

Article 21(1) of Ghana's Constitution provides, in relevant part: 'All persons shall have the right to ... (b) freedom of thought, conscience and belief, which shall include academic freedom; (c) freedom to practice any religion and to manifest such practice.'²⁰

Article 24(1) of Sierra Leone's Constitution similarly provides strong protections for freedom of religion:²¹

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience and for the purpose of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom either alone or in community with others and both in public and in private to manifest and propagate his religion or belief in worship, teaching, practice and observance.

The problem is not creating legal protections; it is enforcing them.

What options do West African believers have to enforce their fundamental right to believe and practise their faith? First and foremost are domestic courts. The international human rights system is designed for nations to be the primary source of human rights enforcement.²² The international system is to be a backstop to domestic enforcement.

However, what happens when a state itself violates its citizens' religious freedom rights – or when it stands by and allows non-state actors to do so? African citizens have several options at that point. Both the African Charter and ICCPR have enforcement mechanisms. Victims of human rights violations can file a communication with the African Commission on Human and Peoples' Rights (African Commission), the prime enforcement body of the African Charter, located in Banjul, The Gambia.²³ In addition, individuals in eight African nations – Burkina Faso, The Gambia, Ghana, Guinea-Bissau, Malawi, Mali, Niger and Tunisia – can directly file cases with the other key enforcement body of the African Charter – the African Court on Human and Peoples' Rights (African Court).²⁴ Alternatively, if the

20 Art 21 Constitution of the Republic of Ghana, 1992.

21 Art 24(1) Constitution of Sierra Leone, 1991.

22 H Hannum and others *International human rights: Problems of law, policy, and practice* (2018) 464.

23 Art 55 African Charter.

24 Each of the eight nations submitted a declaration under art 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights permitting individual direct access to the Court. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights art 34(6), on 25 January 2004. This includes three ECOWAS member states: The Gambia, Ghana and Guinea-Bissau; see African Court on Human and Peoples'

state at issue has ratified the Optional Protocol to ICCPR, victims can file a communication with the Human Rights Committee of the United Nations (UN), the entity designated to enforce ICCPR.²⁵

Citizens of 12 West African states, however, have another option. They can file a claim with the Economic Community of West African States (ECOWAS) Community Court of Justice (ECCJ). ECOWAS is a sub-regional organisation established in 1975.²⁶ As its name suggests, ECOWAS was initially designed to foster economic cooperation and integration among West African states; its scope was limited.²⁷ Over time, though, ECOWAS member states expanded that scope significantly. In 1991 they created a protocol to establish a court – the ECCJ.²⁸ About a decade later they agreed that human rights should be a matter of the organisation's – and the ECCJ's – concern.²⁹ In 2005, after the adoption of an amended treaty in 1993 to replace the 1975 treaty, they created another protocol that clarified that the ECCJ has jurisdiction to hear claims brought by individuals alleging state human rights violations.³⁰

Since the adoption of its 2005 protocol, the ECCJ has become quite active. As of the end of July 2025, it had delivered 487 judgments in 748 cases filed before it.³¹ It is a noteworthy human

Rights 'Declarations', www.african-court.org/afchpr/declarations-2/ (accessed 27 March 2026).

- 25 Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR); 119 states have ratified the Optional Protocol, including 41 African states and 11 ECOWAS member states. Nigeria is the sole ECOWAS member state that has not ratified the Optional Protocol.
- 26 Treaty of the Economic Community of West African States (ECOWAS Treaty). This Treaty has since been amended by the adoption of the 1993 Revised ECOWAS Treaty.
- 27 C Betts 'An analysis of the ECOWAS Community Court of Justice's treatment of right to life claims from 2015-2022' (2022) Working Paper 11, McGill Centre for Human Rights and Legal Pluralism, International Human Rights Internship Programme Working Paper Series 12.
- 28 Protocol A/P.1/7/91 on the Community Court of Justice, 6 July 1991.
- 29 ECOWAS Supplementary Protocol A/SP1/12/01 on Democracy and Good Governance, Supplementary to the Protocol Relating to Conflict Prevention, Management, Resolution, Peacekeeping and Security (adopted December 2001) (ECOWAS Supplementary Protocol on Good Governance). This was a significant expansion of the ECCJ's mandate. Initially, the ECCJ only resolved interstate matters; it did not have jurisdiction to hear cases brought by individuals. S Eboobrah 'Critical issues in the human rights mandate of the ECOWAS Court of Justice' (2010) 54 *Journal of African Law* 1-2, 7-8; F Viljoen *International human rights law in Africa* (2012).
- 30 Supplementary Protocol A/SP.1/01/05 Amending the Preamble and arts 1, 2, 9 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and art 4 para 1 of the English version of the said Protocol (adopted 19 January 2005) art 9(4), courtecawas.org/wp-content/uploads/2025/06/Supplementary_Protocol_ASP.10105_ENG.pdf (accessed 27 March 2026).
- 31 ECOWAS Community Court of Justice 'ECOWAS Court highlights its judicial outlook: Reinforces commitment to regional justice' 7 August 2025, <https://courtecawas.org/ccj-news/ecowas-court-highlights-its-judicial-outlook-reinforces-commitment-to-regional-justice/#:~:text=The%20Court's%20judicial%20statistics%20from%20January%20to,judicial%20activities%20>

rights enforcement body. However, is it a viable forum in which to bring claims alleging violations of religious freedom such as those described above? Is it, in fact, the best option for West Africans? These questions are the focus of this article.

Part 2 of the article details the challenges confronting West African believers. Part 3 describes the formation and structure of ECOWAS and the ECCJ. Part 4 outlines some of the unique procedural advantages the ECCJ has over other international enforcement options and how the ECCJ has already engaged helpfully on two of the greatest challenges faced by West Africans – blasphemy prosecutions and violence by non-state actors. Finally, part 5 evaluates the challenges faced by litigants using the ECCJ – particularly challenges to compliance with ECCJ decisions. The article concludes that while ECCJ has significant weaknesses, it offers a promising option to address the greatest obstacles to religious freedom in West Africa today.

2 Threats to religious freedom in West Africa today

Freedom of religion is under severe challenge in many countries of West Africa. In its 2025 Annual Report, for example, the United States Commission on International Religious Freedom (USCIRF) found that ‘religious freedom conditions in Nigeria remained poor’.³² It referenced government actions, such as the enforcement of blasphemy laws, as well as inadequate government responses to non-state actors that violate religious freedom. ‘Federal and state governments continued to tolerate attacks or fail to respond to violent actions by nonstate actors who justify their violence on religious grounds.’³³ In November 2025, the United States State Department followed USCIRF’s recommendation to designate

will%20resume%20in%20September%202025 (accessed 6 March 2026); D Nwaogu ‘ECOWAS Community Court of Justice: Features and challenges of its human rights mandate’ (2022) 2 *UCC Law Journal* 284.

32 USCIRF ‘2025 Annual Report’ 25 March 2025, www.uscirf.gov/sites/default/files/2025-03/2025%20USCIRF%20Annual%20Report.pdf (accessed 2 February 2026).

33 Human Rights Watch ‘Nigeria: Prioritise security amid rising violence in Benue state’ 18 June 2025, www.hrw.org/news/2025/06/18/nigeria-prioritize-security-amid-rising-violence-in-benue-state (accessed 6 February 2026). In reference to a deadly attack on a community in Benue state, Human Rights Watch’s Nigerian researcher concluded: ‘This brutal attack is the latest reminder of how badly the government has failed to protect communities from violence and secure accountability.’ Amnesty International ‘The state of the world’s human rights: Nigeria’ 28 April 2025, www.amnesty.org/en/documents/pol10/8515/2025/en/ (accessed 6 February 2026). In reference to hundreds of deaths from mob violence between 2012 and 2023, Amnesty International concluded: ‘The small number of these incidents investigated and prosecuted demonstrated a failure by the authorities to protect people from violence.’

Nigeria as a country of particular concern.³⁴ Countries of particular concern are those where the government ‘engages in or tolerates ... particularly severe’ violations of religious freedom.³⁵

However, Nigeria is not the only West African nation where religious freedom is threatened. As the introduction notes, believers from multiple faiths in multiple nations of West Africa face threats to religious freedom today, and those threats arise from both state and non-state actors.

2.1 Government actions violating religious freedom

One of the greatest state-directed threats to religious freedom today comes from laws that criminalise blasphemy – the insulting of a religion or religious objects, places or persons. The Gambia and individual states in Nigeria have laws criminalising blasphemy.³⁶ Despite Nigeria’s strong constitutional protection for the freedom of religion quoted above, since 1999, 12 states in Northern Nigeria have implemented Shari’a criminal and family legal frameworks.³⁷ These include prohibitions on blasphemy.³⁸ A Nigerian High Court has ruled that such blasphemy laws are constitutional.³⁹

Blasphemy laws in Nigeria have been used to prosecute Muslims, Christians and atheists. Sheikh Abduljabar Kabara, a Muslim cleric, remains on death row after a December 2022 blasphemy conviction in an Upper Shari’a Court in Kano.⁴⁰ He was alleged to have preached ‘defamatory sermons’ that were ‘mortifying [to] the companions of, and the Holy Prophet Muhammad’.⁴¹

34 M Khan ‘US designates Nigeria “country of particular concern” after Trump threat over alleged attacks on Christians’ *ABC News* (New York) 3 November 2025, <https://abcnews.go.com/Politics/us-designates-nigeria-country-concern-after-trump-threat/story?id=127148133> (accessed 6 February 2026). The United States Commission on International Religious Freedom had been recommending this designation for 15 years. 2024 Annual Report (n 9) 28.

35 2025 Annual Report (n 32) 28.

36 Humanists International ‘Africa, sub-Saharan’, end-blasphemy-laws.org/countries/africa-sub-saharan/ (accessed 24 July 2025).

37 2024 Annual Report (n 9) 37.

38 As above.

39 USCIRF ‘2023 Annual Report’ May 2023, www.uscirf.gov/sites/default/files/2023-05/2023%20Annual%20Report.pdf (accessed 24 July 2025); USCIRF (n 2).

40 JO Nwachukwu ‘Islamic group reveals why Ganduje arrested Sheikh Kabara, demands his immediate release’ *Daily Post* (Lagos) 19 July 2021, <https://dailypost.ng/2021/07/19/islamic-group-reveals-why-ganduje-arrested-sheikh-kabara-demands-his-immediate-release/> (accessed 24 July 2025); ‘Sharia court sentence Islamic cleric Abduljabbar Kabara to death for blasphemy’ *BBC Pidgin* (London) 15 December 2022, <https://www.bbc.com/pidgin/articles/cd1v7wllzn5o> (accessed 24 July 2025).

41 USCIRF ‘Abduljabar Nasiru Kabara’, <https://www.uscirf.gov/religious-prisoners-conscience/forb-victims-database/abduljabar-nasiru-kabara> (accessed 24 July 2025).

Christian Rhoda Jatau was detained for 19 months in Bauchi state after sending a message on WhatsApp criticising the lynching of Christian college student Deborah Emmanuel Yakubu.⁴² Jatau was charged with ‘inciting public disturbance; exciting contempt of religious creed; and cyber stalking’ under the state Penal Code.⁴³ Jatau was acquitted on 19 December 2024.⁴⁴

Atheist Mubarak Bala served four years in prison for blasphemy in Kano state before his release in January 2025.⁴⁵ Bala, the president of the Humanist Association of Nigeria, was accused of blasphemy after he created a Facebook post comparing Mohammed to a current Nigerian religious figure.⁴⁶ He was initially sentenced to 24 years’ imprisonment by the Kano State High Court, but the sentence was reduced on appeal to five years.⁴⁷

Blasphemy laws can be broad and vague. For instance, The Gambia’s Penal Code provides:⁴⁸

Any person who, with the deliberate intention of wounding the religious feelings of any person, utters or writes any word, or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, is guilty of a misdemeanour, and is liable to imprisonment for one year.

Blasphemy laws and other speech prohibitions are not the only means through which West African governments directly interfere with the religious freedom of their citizens. Open Doors International reports that Niger has an ‘arduous and protracted’ process for registering churches.⁴⁹ Its ‘legal roadblocks have been used to prevent Christians from gathering’.⁵⁰ In Liberia, Muslim women have been barred from

42 Alliance Defending Freedom International (ADF International) ‘Christian mother on bail after 19 months in Nigerian prison for “blasphemy”’ 13 December 2023, <https://adfinternational.org/news/rhoda-jatau-bail> (accessed 24 July 2025); USCIRF ‘Rhoda Jatau’, <https://www.uscirf.gov/religious-prisoners-conscience/forb-victims-database/rhoda-jatau> (accessed 24 July 2025).

43 USCIRF (n 41).

44 USCIRF ‘USCIRF welcomes the acquittal of Rhoda Jatau’ 26 December 2024, <https://www.uscirf.gov/release-statements/uscirf-welcomes-acquittal-rhoda-jatau> (accessed 24 July 2025).

45 Y Adegoke ‘Nigerian atheist freed from prison but fears for his life’ *BBC News* (London) 8 January 2025, <https://www.bbc.com/news/articles/c62zpk4nxxdo> (accessed 24 July 2025).

46 I Khalid ‘Nigeria atheist Mubarak Bala jailed for blaspheming Islam’ *BBC News* (London) 5 April 2022, <https://www.bbc.com/news/world-africa-60997606> (accessed 24 July 2025).

47 USCIRF ‘Mubarak Bala’, <https://www.uscirf.gov/religious-prisoners-conscience/forb-victims-database/mubarak-bala> (accessed 24 July 2025).

48 Criminal Code of The Gambia (Act 25 of 1933) art 120, cited in F Bagga & K Lavery ‘Apostasy, blasphemy, and hate speech laws in Africa’ (December 2019) USCIRF 19, https://www.uscirf.gov/sites/default/files/Africa%20Speech%20Laws%20FINAL_0.pdf (accessed 28 July 2025).

49 Open Doors (n 13).

50 As above.

voting unless they remove their hijab.⁵¹ In Guinea, a Muslim nation, government officials have exercised control over the content of sermons (the government reviews sermons to ensure that they are not pro-jihadist).⁵² In Nigeria, '[t]he federal government continues to persecute the leadership and members of the Islamic Movement in Nigeria (IMNi), a Shi'a minority group'.⁵³

2.2 Government failure to prevent non-state actors from interfering with religious freedom

Many violations of religious freedom arise from non-state actors. Under human rights standards, states are responsible for these violations if they fail to take reasonable steps to prevent and investigate them and prosecute the offenders. In West Africa, some of the most severe threats to religious freedom come from private jihadist groups that attack religious minorities. Religious freedom violations can also come through social ostracism where religious minorities are discriminated against in education, employment and marriage.⁵⁴

For two decades, Nigeria has faced high levels of religious and ethnic violence.⁵⁵ This violence has only intensified in recent years. The Observatory for Religious Freedom in Africa (ORFA) reports that in the five-year period from October 2019 to September 2024, there were 13 437 documented incidents of extreme violence in Nigeria.⁵⁶ The attacks killed 36 056 civilians.⁵⁷ In addition, 29 180 civilians were abducted.⁵⁸ The main perpetrators are Boko Haram, the Islamic State West African Province (ISWAP) and Fulani ethnic militia members (the Fulani are a nomadic, largely Islamic tribal group).⁵⁹ These groups take or destroy property and kill, rape and kidnap for ransom.⁶⁰

51 United States Department of State '2017 report on international religious freedom: Liberia' 15 August 2017, <https://2021-2025.state.gov/reports/2017-report-on-international-religious-freedom/liberia/> (accessed 24 July 2025).

52 United States Department of State '2023 report on international religious freedom: Guinea' 26 June 2024, <https://2021-2025.state.gov/reports/2023-report-on-international-religious-freedom/guinea/> (accessed 24 July 2025).

53 USCIRF 'Religious freedom conditions in Nigeria', www.uscirf.gov/countries/nigeria (accessed 24 July 2025).

54 H Bielefeldt (Special Rapporteur on Freedom of Religion or Belief) 'Interim report of the Special Rapporteur on freedom of religion or belief' UN Doc A/71/269 (2 August 2016) 18.

55 Hill & Hellenbrand (n 11) 231.

56 Kefas (n 12).

57 As above.

58 As above.

59 As above; see also 2025 Annual Report (n 32) 28.

60 Hill & Hellenbrand (n 11) 231; Open Doors 'World Watch List 2024: What does persecution look like in Nigeria?' 17 January 2024, <https://www.opendoors.org/en-US/persecution/countries/nigeria/> (accessed 25 July 2025).

While motivations for the attacks can be complex, perpetrators often justify the violence on religious grounds and target communities that share a religious faith.⁶¹ The violence affects people of all faiths. In a comprehensive breakdown of the victims of violent attacks between 1 October 2019 and 30 September 2023, ORFA found that 16 769 Christians and 6 235 Muslims were killed.⁶² It also found that 16 761 civilians were abducted during this period, including 11 185 Christians and 7 799 Muslims.⁶³ Another report found that adherents to traditional African religions have also suffered religious-based violence, with some believers accused of and executed for witchcraft.⁶⁴

While the attacks have impacted adherents to all religions, they have been particularly devastating to Christian communities. ORFA reports: 'When taking into account the size of the Christian and Muslim populations in the individual states where attacks occurred, the proportional ratio of Christians to Muslims killed rises to 6,5:1.'⁶⁵ Open Doors International, a global organisation supporting persecuted Christians, notes that 'Nigeria has been the most violent place in the world for followers of Jesus for several years'.⁶⁶ It identifies Nigeria as number seven in the list of countries in the world where Christians face the most extreme persecution.⁶⁷ It reports that 3 490 Christians were killed for their faith in 2025.⁶⁸ It had previously reported that 3 100 Christians were killed for their faith in 2024 and another 4 098 were killed for their faith in 2023.⁶⁹

Violent attacks have destroyed property, including places of worship and schools. '[S]ince 2009, at least 18 000 Christian

61 2025 Annual Report (n 32) 28; Hill & Hellenbrand (n 11) 231; Kefas (n 12).

62 Observatory of Religious Freedom in Africa 'Countering the myth of religious indifference in Nigerian terror (10/2019-9/2023)' 29 August 2024 6, <https://orfa.africa/wp/wp-content/uploads/2024/08/26082024-ORFA-4-YEARS-REPORT.pdf> (accessed 6 February 2026).

63 As above.

64 C Onah 'Religious extremism in Africa' *Adamah Media* 27 February 2024, <https://adamah.media/religious-extremism-in-africa/> (accessed 26 July 2025); AFP 'Nigeria jihadists kill women over witchcraft charges: Families, residents' *Barron's* (New York) 15 November 2022, <https://www.barrons.com/news/nigeria-jihadists-kill-women-over-witchcraft-charges-families-residents-01668446108> (accessed 26 July 2025).

65 Observatory of Religious Freedom in Africa (n 62) 6.

66 Open Doors 'World Watch List 2026: Nigeria' 15 January 2026, <https://www.opendoors.org/en-US/persecution/countries/nigeria/> (accessed 6 February 2026).

67 As above.

68 Open Doors 'World Watch List 2026: Nigeria Country Dossier', https://www.opendoors.org/persecution/reports/Nigeria-Media_Advocacy_Dossier-ODI-2026.pdf (accessed 6 February 2026).

69 UK Parliament House of Commons Library 'Religious persecution and the World Watch List 2024' 17 January 2024, commonslibrary.parliament.uk/research-briefings/cdp-2024-0017/ (accessed 26 July 2025).

churches and 2 200 Christian schools have been set ablaze, and five million Christians have been internally displaced.⁷⁰ It is also reported that shrines and sacred lands of traditional African faiths have also been violated.⁷¹

These attacks are not confined to Nigeria. The West Africa Centre for Counter-Terrorism (WACCE) says that 'more than 53%' of all ECOWAS states 'are experiencing insurgencies'.⁷² In Mali, Islamic militants have burned down churches and kidnapped both boys and girls – the boys to be child soldiers and the girls for forced marriage.⁷³ The same activity has occurred in Burkina Faso and Niger.⁷⁴

Mali, Burkina Faso and Niger have recently withdrawn from ECOWAS, but violent insurgencies have also taken place in nations that remain in ECOWAS, such as Benin, Côte d'Ivoire and Ghana.⁷⁵ According to the Armed Conflict Location and Event Data Project, jihadist attacks in Benin increased more than tenfold between July and December 2022 compared to the same time the previous year.⁷⁶ 'As a result, Benin now suffers from more extremist violence than any other coastal nation in West Africa.'⁷⁷ In Ghana, spill-over violence from regional neighbours 'makes Ghana's border regions a key area of concern'.⁷⁸

West African religious minorities frequently face social ostracism as well as violence. Heiner Bielefeldt, Special Rapporteur on the Freedom of Religion and Belief from 2010 to 2016, describes how this ostracism can occur – often again with the implicit blessing of the government:⁷⁹

In a number of countries, self-appointed militant vigilante groups patrol their neighbourhoods to ensure that everyone behaves in ways deemed religiously appropriate, including by threatening violence. Women and girls typically run an increased risk of being sanctioned, for instance, when failing to conform to certain imposed dress codes or other norms of behaviour. Even if not being mandated by the government, militant vigilante groups nonetheless may receive

70 T Rausch 'Christians are dying for their faith all around the world. Do US Catholics care?' 23 August 2023, <https://www.americamagazine.org/faith/2023/08/23/christian-persecution-martyrs-nigeria-pakistan-india-245782> (accessed 25 July 2025).

71 Onah (n 63).

72 Muqthar (n 14).

73 Open Doors (n 14).

74 As above.

75 International Christian Concern (n 14); Muqthar (n 14); ACN International (n 14).

76 International Christian Concern (n 14).

77 As above.

78 Muqthar (n 14).

79 Beilefeldt (n 54) 18.

direct or indirect support from certain government agencies, which systematically turn a blind eye to abuses committed by such groups.

International Christian Concern, a ministry serving persecuted Christians, reports that in Guinea, while there is tribal violence, 'the majority of persecution cases involve the rejection and harm of Christians by family members'.⁸⁰ It likewise notes that in Benin, '[n]ew converts to Christianity are beaten and sometimes killed, while church buildings are routinely destroyed. Villages keep evangelists out and prevent construction of new churches.'⁸¹

In sum, believers in West Africa face multiple threats to freedom of religion. These threats are severe and come from both state and non-state actors, and they affect people of many faiths. Can the ECOWAS Community Court of Justice help? That is the subject of the remainder of the article.

3 ECOWAS Community Court of Justice

ECOWAS celebrated its fiftieth anniversary in 2025. It was formed in 1975 by 15 West African states in the Treaty of the Economic Community of West African States (Treaty of Lagos).⁸² As its name suggests, the main purpose was to promote regional economic cooperation.⁸³ ECOWAS was to be a vehicle to raise living standards for West Africans and maintain economic stability.⁸⁴ Even today, ECOWAS describes its aim as follows:⁸⁵

The aim of the Community is to promote cooperation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African continent.

The original 15 ECOWAS member states were Benin, Burkina Faso, Côte d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Sierra Leone, Senegal and Togo.⁸⁶

80 The Voice of the Martyrs 'Global Prayer Guide: Guinea', www.persecution.com/globalprayerguide/guinea/ (accessed 25 July 2025).

81 The Voice of the Martyrs (VOM) 'Global prayer guide: Benin', <https://www.persecution.com/globalprayerguide/benin/> (accessed 25 July 2025).

82 ECOWAS Treaty.

83 OC Okafor and others 'On the modest impact of West Africa's International Human Rights Court on the executive branch of the government of Nigeria' (2022) 35 *Harvard Human Rights Journal* 174.

84 As above.

85 Economic Community of West African States 'About ECOWAS', <https://ecowas.int/about-ecowas/> (accessed 25 July 2025).

86 As above.

Cabo Verde joined in 1977. Mauritania dropped out in 2000.⁸⁷ For the next 25 years, ECOWAS enjoyed stability with a consistent membership of 15 states, but on 29 January 2025, Burkina Faso, Mali and Niger officially withdrew.⁸⁸ Each is run by a junta that took power in a military *coup* between 2020 and 2023.⁸⁹ They now form the Alliance of Sahel States.⁹⁰ Thus, today's ECOWAS has 12 member states. Nigeria, the most populous nation in Africa, with over 230 million people, makes up over half of the population and gross domestic product (GDP) of ECOWAS.⁹¹

West Africa is a significant region. It is home to 386,9 million people and had a GDP of US \$816,4 billion in 2019. Huge levels of growth are expected over the next few decades, with the population being projected to reach 982,2 million by 2043 and GDP being forecast to reach 2,8 trillion by the same date.⁹² Nigeria alone is expected to become the fourth most populous nation in the world by 2050.⁹³

Under the 1975 Treaty of Lagos, ECOWAS consisted of several key institutions: the Authority of Heads of State and Government (the principal governing institution); the Council of Ministers; the Executive Secretariat; the Tribunal of the Community; and four 'Technical and Specialised Commissions'.⁹⁴

Over time, ECOWAS nations chose to expand the organisation's structure and mission. The 1990s saw high levels of domestic conflict. Member states took several actions in response. In 1991 they signed a protocol to create the ECOWAS Community Court of Justice (ECCJ).⁹⁵ In 1993, they revised the Lagos Treaty to address issues such as good governance, conflict prevention and electoral monitoring by other states.⁹⁶ This revised treaty greatly enhanced

87 As above.

88 As above; C Asadu 'ECOWAS pledges to "keep door open" after 3 coup-hit West African nations exit regional bloc' *AP* 29 January 2025, <https://apnews.com/article/ecowas-niger-mali-burkina-faso-672c3db44eb28fd4a181840f5ba00296> (accessed 25 July 2025).

89 D Zane 'Junta chiefs "turn their backs" on West Africa bloc' *BBC News* (London) 6 July 2024, <https://www.bbc.com/news/articles/cp38v5p6g35o> (accessed 25 July 2025); AFP 'Thousands rally in Burkina, Mali and Niger to cheer ECOWAS exit' *France 24* (Paris) 28 January 2025, <https://www.france24.com/en/live-news/20250128-thousands-rally-in-burkina-mali-and-niger-to-cheer-ecowas-exit> (accessed 25 July 2025).

90 Zane (n 89).

91 US Department of State 'US Relations with Nigeria' 23 August 2023, <https://2021-2025.state.gov/u-s-relations-with-nigeria/> (accessed 25 July 2025).

92 Betts (n 27) 11.

93 US Department of State (n 91).

94 ECOWAS Treaty (n 26) arts 4 & 5.

95 Protocol A/P.1/7/91 on the Community Court of Justice, adopted 6 July 1991 arts 9(2)-(3).

96 Revised Treaty of the Economic Community of West African States (ECOWAS), adopted 24 July 1993, art 15(4); Okafor and others (n 83) 174.

ECOWAS's authority to intervene regarding such issues. Article 58 illustrates this well. In article 58(1), member states agreed 'to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region'.⁹⁷ In article 58(2) they conferred upon ECOWAS some rather expansive powers, including to

- (b) establish local or national joint commissions to examine any problems encountered in relations between neighbouring states;
- ...
- (f) establish a regional peace and security observation system and peacekeeping forces where appropriate;
- (g) provide, where necessary and at the request of member states, assistance to member states for the observation of democratic elections.⁹⁸

Member states took a decade to ratify the protocol to create the ECCJ. At inception, the ECCJ's jurisdiction was rather limited: 'It only had the competence to deal with disputes that arose between member states on issues such as the free movement of people, trade liberalisation, and agricultural cooperation.'⁹⁹ However, in 2001, member states adopted another protocol suggesting a significant expansion of the ECCJ's work: the Protocol on Democracy and Good Governance.¹⁰⁰ Article 39 of that Protocol stated that the 1991 Protocol (that created the Court) 'shall be reviewed so as to give the Court the power to hear, inter alia, cases relating to violations of human rights, after all attempts to resolve the matter at the national level have failed'.¹⁰¹ An additional protocol brought about this expansion of jurisdiction. The 2005 Supplementary Protocol states: 'The Court has jurisdiction to determine cases of violation of human rights that occur in any member state.'¹⁰²

The 2001 and 2005 Protocols created a court with an expansive jurisdiction and a four-fold function. The ECCJ Registrar describes that function this way:¹⁰³

97 Revised Treaty of the Economic Community of West African States art 58(1).

98 Revised Treaty of the Economic Community of West African States art 58(2).

99 Betts (n 27) 13.

100 Protocol A/SP1/12/01 on Democracy and Good Governance, adopted 21 December 2001.

101 Protocol A/SP1/12/01 (n 100) art 39.

102 Supplementary Protocol A/SP.1/01/05 (n 30 art 9(4)).

103 T Anene-Maidoh 'Enforcement of the judgments of the ECOWAS Court of Justice' paper presented at the Nigerian Institute of Legislative and Democratic Studies Conference April 2011 58, <https://ir.nilds.gov.ng/bitstream/handle/123456789/387/ENFORCEMENT%20OF%20JUDGMENTS%20OF%20>

- (a) mandate as a Community Court, which involves the interpretation and application of ECOWAS Community texts and the giving of advisory opinions;
- (b) mandate as ECOWAS Public Service Court which gives the Court competence to adjudicate on any dispute between the Community and its officials;
- (c) mandate as a Human Rights Court which gives the Court jurisdiction to determine cases of violation of Human Rights that occur in any member state;
- (d) mandate as Arbitration Tribunal which gives the Court the power to act as arbitrators pending the establishment of the Arbitration Tribunal under article 16 of the Revised Treaty.

Despite its expansive portfolio, the ECCJ is not large. It currently has five judges who each serve four-year non-renewable terms.¹⁰⁴ The judges are independent; they do not represent their home states, and no two judges may be nationals of the same state.¹⁰⁵ They must be individuals of high moral character.¹⁰⁶

Though small, the ECCJ has been an active court. As of July 2025, the ECCJ had received 748 claims and delivered 487 judgments.¹⁰⁷ The human rights jurisdiction of the ECCJ has been prominent; it is not a minor part of the court's work. It has received much acclaim for some groundbreaking decisions. For example, in *Hadijatou Mani Koroou v Niger* (2008),¹⁰⁸ the ECCJ reached a consequential decision on modern-day slavery. It ruled in favour of an applicant who had been sold into slavery at the age of 12 and who was subjected to rape, violence and forced labour without remuneration. The ECCJ held Niger responsible for passively tolerating the practice and not convicting the perpetrator. In another highly publicised decision, *SERAP v Nigeria*,¹⁰⁹ the ECCJ addressed Nigeria's development of its

THE%20ECOWAS%20COURT%20OF%20JUSTICE.pdf?sequence=1 (accessed 25 July 2025).

104 Economic Community of West African States 'The Community Court of Justice', <https://ecowas.int/institutions/community-court-of-justice/> (accessed 25 July 2025).

105 Protocol A/P. I/7/91 on the Community Court of Justice art 3.

106 As above.

107 Nwaogu (n 31) 284.

108 *Hadijatou Mani Koroou v Niger* ECW/CCJ/JUD/06/08, Community Court of Justice, ECOWAS (27 October 2008); KJ Alter and others 'A new international human rights court for West Africa: The ECOWAS Community Court of Justice' (2013) 107 *American Journal of International Law* 737.

109 *Socio-Economic Rights and Accountability Project (SERAP) v Nigeria*, ECW/CCJ/JUD/18/12, Community Court of Justice, ECOWAS (14 December 2012); Okafor and others (n 83) 190-191.

substantial oil and gas reserves – and the impact of that development on the health of its citizens.

The ECCJ has resolved many types of cases. Some frequently adjudicated matters include the right to a fair trial (article 7 of the African Charter);¹¹⁰ the right to property (article 14 of the African Charter);¹¹¹ contract or employment matters;¹¹² and disputed elections or government offices.¹¹³

Commentators have praised the ECCJ for its human rights jurisprudence. Smith notes that '[t]he Community Court is providing a rich seam of cases on human rights in West Africa'.¹¹⁴ Betts agrees: The ECCJ has 'greatly contributed to the body of jurisprudence that deals with the rights guaranteed by the African Charter'.¹¹⁵

4 Advantages of the ECOWAS Court

While the ECCJ has claimed a place as a consequential human rights court for the people of West Africa, a review of its cases reveals that it has not yet addressed religious freedom on the merits under either the African Charter or ICCPR. Is it a viable alternative for those whose rights to religious freedom have been violated? Is it the best alternative available? This part describes some of the procedural and other advantages the ECCJ has over other options in resolving such claims.

110 *Sahabi Moussa v Niger*, ECW/CCJ/JUD/28/16, Community Court of Justice, ECOWAS (6 December 2016); *Yao v Côte d'Ivoire*, ECW/CCJ/JUD/15/16, Community Court of Justice, ECOWAS (17 May 2016); *Mamadou Moustapha Kakali v Niger*, ECW/CCJ/JUD/26/15, Community Court of Justice, ECOWAS (1 December 2015); *Société AGRILAND v Côte d'Ivoire*, ECW/CCJ/JUD/07/15, Community Court of Justice, ECOWAS (24 April 2015).

111 *Alice R Chukwudolue & Others v Senegal*, ECW/CCJ/APP/07/07, Community Court of Justice, ECOWAS (22 November 2007); *Chief Frank Ukor v Rachad Laleye & Another*, ECW/CCJ/JUD/06/07, Community Court of Justice, ECOWAS (2 November 2007); *Nancy Bohn-Doe v Liberia*, ECW/CCJ/JUD/12/19, Community Court of Justice, ECOWAS (28 February 2019); *Diawara v Mali*, ECW/CCJ/JUD/22/15, Community Court of Justice, ECOWAS (23 October 2015).

112 *Odafe Oserada v ECOWAS Council of Ministers, ECOWAS Parliament & ECOWAS Commission*, ECW/CCJ/JUD/01/08, Community Court of Justice, ECOWAS (28 November 2008); *Professor Etim Moses Essien v The Gambia & University of The Gambia*, ECW/CCJ/JUD/05/07, Community Court of Justice, ECOWAS (14 March 2007); *Registered Trustees of Association of Former Telecom Employees of Nigeria & Others v Nigeria & Others*, ECW/CCJ/JUD/20/19, Community Court of Justice, ECOWAS (15 May 2019).

113 *Hope Democratic Party & Another v Nigeria & Others*, ECW/CCJ/JUD/19/15, Community Court of Justice, ECOWAS (14 October 2015); *Karim Meissa Wade v Senegal*, ECW/CCJ/JUD/13/19, Community Court of Justice, ECOWAS (4 March 2019).

114 RKM Smith *International human rights law* (2022) 146.

115 Betts (n 27) 7.

4.1 ECOWAS Court decisions are binding as a matter of law

One important advantage the ECCJ has over both the Human Rights Committee and the African Commission is that its decisions are binding as a matter of law. Article 15(4) of the ECOWAS Revised Treaty states: 'Judgments of the Court of Justice shall be binding on the member states, the institutions of the Community and on individuals and corporate bodies.'¹¹⁶ As Okeke and Lamidi note, decisions of the ECCJ are

final and immediately enforceable ... member states of ECOWAS are mandated to ratify and domesticate the ECOWAS Treaty, protocol and other legal instruments for the effective and unimpeded implementation of the provisions of the Treaty including the enforcement of the judgments of the Court.¹¹⁷

ECCJ decisions are very different from those rendered by the Human Rights Committee and the African Commission. The ECCJ reviews the facts and law, determines whether the defendant state has violated the applicant's rights and, if so, enters a judgment, often including that the state must compensate the victim with damages.

A good example is the 2014 case of *Hydara v The Gambia*.¹¹⁸ Two plaintiffs in *Hydara* were Gambian nationals living as political refugees overseas after the murder of their father, journalist Deyda Hydara.¹¹⁹ A third plaintiff was the African chapter of the International Federation of Journalists.¹²⁰ The plaintiffs claimed that The Gambia had failed to effectively investigate Hydara's murder and identify and punish the perpetrators.¹²¹ They also claimed that by tolerating threats and attacks on journalists, The Gambia had created a climate of impunity for such crimes.¹²² They insisted that The Gambia had thereby violated the right to life under articles 1 and 4 of the African Charter and the rights to freedom of expression and the press under article 9 of the African Charter.¹²³ The ECCJ upheld these claims and entered a judgment against The Gambia.¹²⁴ It ordered The Gambia to pay the applicants \$60 000 in damages.¹²⁵

¹¹⁶ Revised ECOWAS Treaty (n 96) art 15(4).

¹¹⁷ C Okeke & K Lamidi 'Enforcement of the judgments of the ECOWAS Court' 12 October 2018, <https://oal.law/enforcement-of-the-judgments-of-the-eco-was-court/> (accessed 25 July 2025).

¹¹⁸ *Deyda Hydara Jr & Others v The Gambia*, ECW/CCJ/JUD/17/14, Community Court of Justice, ECOWAS (10 June 2014).

¹¹⁹ *Hydara* (n 118) 2.

¹²⁰ As above.

¹²¹ *Hydara* (n 118) 2-3.

¹²² As above.

¹²³ *Hydara* (n 118) 4.

¹²⁴ *Hydara* (n 118) 10.

¹²⁵ *Hydara* (n 118) 10-11. Of course, that a decision is binding does not mean that it will necessarily be enforced. The ECCJ, like all international enforcement bodies,

Contrast *Hydara* with the approach of the Human Rights Committee. The Committee also receives communications from victims of human rights violations. However, it does not render judgments. It shares its 'views' with the parties,¹²⁶ and these views are not legally binding on the parties.¹²⁷ An example can be seen in *Huseynova & 4 Others v Azerbaijan* (2023),¹²⁸ a religious freedom case. The authors of the communication were Jehovah's Witnesses who alleged that police broke into one of their homes during a religious discussion. The police seized personal property, searched those gathered, took them to the police station, and detained them for more than seven hours without food or water.¹²⁹ The authors were then convicted of attending an unauthorised religious meeting and fined.¹³⁰ The Committee found that Azerbaijan violated article 9 of ICCPR (right to liberty and security of person) and article 18 (freedom of religion).¹³¹

The Committee's language illustrates how different its proceedings are from those of the ECCJ. The Committee states that it was 'of the view that the facts before it disclose a violation of the authors' rights under articles 9(1) and 18(1) and (3)'.¹³² It then reminded Azerbaijan that it was obligated to provide a remedy to the authors and to prevent similar violations in the future,¹³³ but it could not require this. It told Azerbaijan that it 'wishes to receive from the state party, within 180 days, information about the measures taken to give effect to the Committee's views'.¹³⁴ It also told Azerbaijan that it was 'requested to publish' and 'disseminate the views'.¹³⁵

Another alternative for West Africans who believe their rights have been violated is to bring a complaint before the African Commission.

struggles with enforcement of its decisions. This will be addressed extensively in part 5 of the article.

126 Hannum (n 22) 679.

127 As above.

128 *Rahuma Huseynova & Others v Azerbaijan*, Communication 2832/2016, UNHR Committee (14 July 2023) UN Doc CCPR/C/138/D/2832/2016 (*Huseynova*).

129 *Huseynova* (n 128) para 2.1.

130 As above.

131 *Huseynova* (n 128) para 7.8.

132 *Huseynova* (n 128) para 8.

133 *Huseynova* (n 128) para 9.

134 *Huseynova* (n 128) para 10.

135 As above. *Barbarin Mojica v Dominican Republic*, Communication 449/1991, UNHR Committee (15 July 1994) UN Doc CCPR/C/51/D/449/1991 para 6 (Committee finds violation of arts 6, 7 and 9 and 'urges' the Dominican Republic to 'investigate thoroughly the disappearance of Rafael Mojica, to bring to justice those responsible for his disappearance, and to pay appropriate compensation to his family'); *Strakhova & Fayzullaev v Uzbekistan*, Communication 1017/2001 & 1066/2002, UNHR Committee (20 July 2007) UN Doc CCPR/C/90/D/1017/2001 & 1066/2002 para 11 (Committee likewise expresses its views that Uzbekistan had violated its treaty obligations and 'requests' that it give effect to and publish the Committee's views).

Like the Human Rights Committee views, African Commission decisions are not legally binding.¹³⁶ It also must urge and cajole member states to comply.

A good example is seen in one of the African Commission's most famous cases, *SERAC*.¹³⁷ The case addressed the concern that Nigeria, in working with private companies to develop its oil resources, had caused 'environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People [an indigenous tribal people]'.¹³⁸ The African Commission found that Nigeria had violated articles 2, 4, 14, 16, 18(1), 21 and 24 of the African Charter.¹³⁹ However, rather than enter a binding judgment, the African Commission announced that it 'appeals to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoniland' by taking certain remedial actions.¹⁴⁰

Another example of the non-binding nature of African Commission's decisions can be found in a 2009 case in which Kenya was alleged to have violated the religious freedom and other rights of the Endorois indigenous community by displacing them from their ancestral lands. In *Centre for Minority Rights Development v Kenya* the African Commission declared: 'In view of the above, the African Commission finds that the respondent state is in violation of articles 1, 8, 14, 17, 21 and 22 of the African Charter'.¹⁴¹ What followed was: 'The African Commission recommends that the respondent state (a) recognise rights of ownership to the Endorois and restitute Endorois ancestral land.'¹⁴² The decision was important. It may have been influential, but it was only a recommendation.

It must be noted that the African Commission is not the only African human rights enforcement body. There is also the African Court of Human and Peoples' Rights (African Court). Like those of the ECCJ, the decisions of the African Court are binding as a matter of law.¹⁴³ Its accessibility to individual claimants, though, is more

136 African Commission on Human and Peoples' Rights 'Information sheet 3: Communication procedure' 8; F Viljoen & L Louw 'The status of the findings of the African Commission: From moral persuasion to legal obligation' (2004) 48 *Journal of African Law* 1.

137 *Social and Economic Rights Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*).

138 *SERAC* (n 137) para 1.

139 *SERAC* (n 137) para 69.

140 *As above*.

141 *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) para 298.

142 *As above*.

143 Smith (n 113) 139.

limited than that of the ECCJ. The African Commission, member states and African intergovernmental organisations may always file complaints with the African Court.¹⁴⁴ Individuals, however, may not bring cases directly to the African Court alleging human rights violations by a member state unless that member state has made a declaration accepting the competence of the African Court to receive such cases.¹⁴⁵ Only three ECOWAS nations currently have such a declaration on file and effective: Ghana, Guinea Bissau and The Gambia.¹⁴⁶ Côte d'Ivoire and Benin at one time had made this declaration but they later withdrew it.¹⁴⁷

One advantage, then, that the ECCJ has over its alternatives (other than the African Court for individuals in The Gambia, Ghana and Guinea Bissau) is that it is binding as a matter of law. Of course, that a decision is binding does not mean that it will necessarily be enforced. The ECCJ, like all international enforcement bodies, struggles with the enforcement of its decisions. This concern will be addressed extensively in part 5 below.

4.2 Important procedural features

The ECCJ also boasts of having some key procedural features not offered by other enforcement bodies.

4.2.1 *Direct access for private litigants*

One procedural advantage is the one just mentioned: The ECCJ offers direct access to individual human rights claimants. Article 10 of Protocol of the Community Court of Justice states:¹⁴⁸

Access to the Court is open to the following: (a) member states, and unless otherwise provided in a Protocol, the Executive Secretary, where action is brought for failure by a member state to fulfil an obligation; (b) member states, the Council of Ministers and the Executive Secretary in proceeding for the determination of the legality of an action in relation to any community text; (c) individuals and corporate bodies in proceedings from the determination of an act or inaction

144 Art 5 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 10 June 1998 (African Court Protocol).

145 Art 34(6) African Court Protocol.

146 African Court on Human and Peoples' Rights 'Declarations', <https://www.african-court.org/afchpr/declarations-2/> (accessed 6 March 2026). The three states that have most recently left ECOWAS still have a declaration in place: Burkina Faso, Mali and Niger.

147 As above.

148 Supplementary Protocol A/SP.1/01/05 art 10.

of a Community official which violates the rights of the individuals or corporate bodies; (d) individuals on application for relief for violation of their human rights.

The African Commission also offers direct access to individuals. However, as described above, for most West Africans, the African Court does not. Similarly, individual claims to the Human Rights Committee under ICCPR are not permitted for all West Africans. The Committee will hear claims by individuals against member states only if those states have ratified ICCPR's Optional Protocol. In one sense, this is not a severe problem since ten ECOWAS states have ratified that Protocol.¹⁴⁹ Only Nigeria and Liberia are not state parties to the Optional Protocol. Importantly, Nigeria, making up over half of ECOWAS' population (and the defendant in over half of the ECCJs cases) has not ratified it.¹⁵⁰ Liberia has signed but has not yet ratified the Optional Protocol.¹⁵¹

4.2.2 *No exhaustion of domestic remedies required*

A more significant procedural advantage offered by the ECCJ is that applicants need not exhaust domestic remedies before bringing a case to the Court.¹⁵² Requiring exhaustion is standard in the admissibility criteria of other human rights enforcement bodies. For example, article 56(5) of the African Charter states that the African Commission will consider individual communications if (among other requirements) they 'are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged'.¹⁵³ Similarly, article 2 of the Optional Protocol to ICCPR provides: '[I]ndividuals who claim that any of their rights enumerated in the Covenant have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.'¹⁵⁴

149 United Nations Human Rights: Office of the High Commissioner, 'Ratification of 18 International Human Rights Treaties', <https://indicators.ohchr.org/> (accessed 28 July 2025).

150 As above.

151 As above.

152 *Sikiru Alade v Nigeria* ECW/CCJ/JUD/10/12, Community Court of Justice, ECOWAS (11 June 2012); *Nwaogu* (n 31) 275; *Alter and others* (n 108) 737. Interestingly, in 2009 The Gambia proposed two revisions to the Court's jurisdiction: first, to add an exhaustion of remedies requirement; and, second, to limit the ECOWAS Court of Justice's mandate to only addressing human rights treaties that the country at issue had ratified. These were rejected (*Alter and others* (n 108) 761-765).

153 Art 56(5) African Charter.

154 Art 2 ICCPR Optional Protocol.

Contrast that language with the ECCJs on admissibility. Article 10 of the Protocol on the Community Court of Justice sets forth these requirements for ‘access to the Court:’ The submission ‘shall (i) not be anonymous; nor (ii) be made whilst the same matter has been instituted before another international court for adjudication’.¹⁵⁵ In practical terms, this means that the ECCJ has concurrent jurisdiction with national courts.¹⁵⁶ This was powerfully illustrated in *Valentine Ayika v Liberia*. The ECCJ considered the case admissible even though the matter was pending before the Liberian Supreme Court.¹⁵⁷

The ECCJ’s description of its authority to hear cases is striking:¹⁵⁸

ECOWAS is a supra national authority created by the Member States wherein they expressly ceded some of their sovereign powers to ECOWAS to act in their common interest. Therefore, in respect of those areas where the Member States have ceded part of their sovereign powers to ECOWAS, the rules made by ECOWAS supersede ... rules made by individual Member States if they are inconsistent ... it is untenable for a member state of ECOWAS to claim that a matter is essentially within its domestic jurisdiction when it had expressly or by necessary implication granted ECOWAS powers to act solely or concurrently with national jurisdiction in respect of that matter.

Eliminating the need to exhaust domestic remedies is a substantial procedural advantage to litigants before the ECCJ. Domestic legal processes can take a long time even when nations are proceeding expeditiously with law enforcement investigations and prosecutions, and when a nation is accused of violating or failing to protect rights, it has a natural incentive to delay or obfuscate.

The challenges in exhausting domestic proceedings are illustrated in some of the cases that have been brought to the ECCJ. For example, in *Nazare Gomes de Pina v Guinee Bissau*, the plaintiff alleged that her husband had been assassinated in 2009 after having been elected President of Guinee-Bissau.¹⁵⁹ While national authorities claimed to be investigating the matter, the plaintiff insisted that they had ‘not showed any will to shed light on these happenings’.¹⁶⁰ The ECCJ was not persuaded either. It noted that national authorities had not made tangible investigatory progress in nine years,¹⁶¹ and it refused

¹⁵⁵ Art 10 Supplementary Protocol A/SP.1/01/05.

¹⁵⁶ Okeke & Lamidi (n 117).

¹⁵⁷ *Valentine Ayika v Liberia*, ECW/CCJ/JUD/09/12, Community Court of Justice, ECOWAS (8 June 2012); Okeke & Lamidi (n 117).

¹⁵⁸ *Saidykhon v The Gambia*, ECW/CCJ/APP/11/07, Community Court of Justice, ECOWAS (30 June 2009) para 39, cited in Okeke & Lamidi (n 117).

¹⁵⁹ *Nazare Gomes de Pina v Guinea-Bissau*, ECW/CCJ/JUD/15/18, Community Court of Justice, ECOWAS (24 May 2018) (*Gomes de Pina*).

¹⁶⁰ *Gomes de Pina* (n 159) 2.

¹⁶¹ *Gomes de Pina* (n 159) 13.

to allow Guinee-Bissau to blame the delay on national political instability.¹⁶² It found that the nation had violated the right to life (article 4 of the African Charter and article 6 of ICCPR) and the right to have one's cause heard (article 7 of the African Charter and article 14 of ICCPR).¹⁶³

Another example of how slow national legal processes can be (and, thus, how difficult it can be to exhaust domestic remedies) is seen in *The Registered Trustees of Jama'a Foundation & Others v Nigeria*, a case that has great relevance to some of the violent religious freedom threats so prevalent in Nigeria and other West African nations.¹⁶⁴ There the plaintiffs were Fulani Muslims who alleged that Nigeria had failed to protect them from violent attacks in the period leading up to the 2011 election. They claimed that Nigeria was aware of both previous attacks and concrete threats in this instance and yet failed to prevent the violence.¹⁶⁵ They also claimed that Nigerian officials had failed to effectively investigate the prior attacks and to bring perpetrators to justice in this instance.¹⁶⁶ Nigeria responded that it had set up a panel to inquire into what had happened and to make recommendations to stop future occurrences.¹⁶⁷ Nigeria also noted that its resources to respond to such instances were overstretched.¹⁶⁸ Despite Nigeria's establishment of an investigatory panel, the ECCJ found that it had violated the applicants' right to life under articles 1 and 4 of the African Charter. In particular, it failed in its duty to investigate and punish the perpetrators of the violence.¹⁶⁹

Plaintiffs in both these cases would have faced admissibility challenges had they brought the matter to the African Commission. Both Guinee-Bissau and Nigeria had taken some steps to investigate the incidents at the heart of the cases, but the domestic investigatory process was not completed. The African Commission may have determined that it was 'obvious' that these proceedings were 'unduly prolonged' and found the exhaustion requirement met,¹⁷⁰ but it may not have. Betts observes that before the African Commission, 'many cases still fail on the grounds of a failure to exhaust local remedies. Requiring the exhaustion of local remedies can also increase the

162 As above.

163 *Gomes de Pina* (n 159) 13-15.

164 *The Registered Trustees of Jama'a Foundation & Others v Nigeria* Suit ECW/CCJ/APP/26/13, Judgment ECW/CCJ/JUD/04/20, 20 March 2020 (*Jama'a Foundation*).

165 *Jama'a Foundation* (n 164) paras 5-11.

166 *Jama'a Foundation* (n 164) para 11.

167 *Jama'a Foundation* (n 164) paras 45-47.

168 *Jama'a Foundation* (n 164) para 112.

169 *Jama'a Foundation* (n 164) para 151. See also *Hydara* (n 118).

170 Art 56 African Charter.

time it takes for victims to be granted justice as they will have to go through long, potentially onerous local processes and before even being allowed entry to the international system.¹⁷¹

Nwaogu explains that the lack of the exhaustion requirement has significantly aided the ECCJ and its litigants:¹⁷²

The non-requirement of exhaustion of local remedies has in no small way aided the growth and popularity of the court in the aspect of human rights protection. The author further contends that community court of justice has greatly given a lot of hope to litigants within the West-African region who have been denied justice in the various domestic courts as a result of undue delay in the judicial system of many African countries. Most times, a matter can linger in court for a period between 20 to 40 years. In Nigeria as well as other African countries, victims of human rights violations often suffer untold judicial hardship which sometimes could include the death of victims before seeking help from an international court. Thus, the ECOWAS Court bridges this gap in helping potential litigants to save time and financial resources that could have been otherwise wasted at their national courts pursuing justice over a case for longer period of time.

4.2.3 *The ECOWAS Court will apply any human rights treaty*

A third procedural advantage of the ECCJ over other international enforcement bodies is that it is willing to assess member states' obligations under any human rights treaty to which they are bound.¹⁷³ Practically, this implies that the ECCJ will consider compliance with ICCPR and other important treaties ratified by the 12 ECOWAS state parties, alongside the African Charter and other AU human rights treaties.¹⁷⁴

This is seen in *Nazare Gomes de Pina v Guinee Bissau*, discussed above. In finding that Guinee Bissau violated both the right to life and the right to have one's cause heard, the ECCJ applied both the African Charter and ICCPR. It found that Guinee Bissau violated articles 4 and 7 of the African Charter and articles 6 and 17 of ICCPR.

171 Betts (n 27) 15.

172 Nwaogu (n 31) 276.

173 Alter and others (n 108) 753-56; Nwaogu (n 31) 273. Art 9(4) of the Supplementary Protocol simply states that '[t]he Court has jurisdiction to determine cases of violation of human rights that occur in any member state'. Art 9 Supplementary Protocol A/SP.1/01/05 (n 30).

174 Ebobrah (n 28) 17-18; E Nwauche 'The ECOWAS Community Court of Justice and the horizontal application of human rights' (2013) 13 *African Human Rights Law Journal* 41-42.

The ECCJ applied several treaties in *Njemanze v Nigeria*, where the plaintiffs alleged that they had been subjected to arbitrary arrest, detention and harassment by government officials.¹⁷⁵ They also alleged that Nigeria had failed to properly investigate, discipline and prosecute the persons responsible for infringing the plaintiffs' rights.¹⁷⁶ The ECCJ ruled for the plaintiffs and held that Nigeria had violated its obligations under the African Charter, ICCPR, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and the Convention Against Torture (CAT).¹⁷⁷ The ECCJ even found that Nigeria had failed to comply with the requirements of the Universal Declaration of Human Rights.¹⁷⁸

That the ECCJ considers multiple treaties is particularly important in cases alleging religious freedom violations. This is because the religious freedom protections of ICCPR are stronger than those of the African Charter. Article 8 of the African Charter's description of what specifically is protected is rather thin: 'Freedom of conscience, the profession and free practice of religion shall be guaranteed.'¹⁷⁹ It also contains an expansive limitation clause: 'No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.'¹⁸⁰ By contrast, ICCPR in article 18(1) expresses in much more detail what freedom of religion entails:¹⁸¹

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

This provision helpfully expounds that manifesting one's religion involves more than mere belief or worship. Its insistence that individuals have the freedom to adopt a religion of their choice is particularly important in nations (or states within nations) that seek to apply Shari'a law to converts from Islam. Article 18(3) of ICCPR

175 *Njemanze v Nigeria*, ECW/CCJ/JUD/08/17, Community Court of Justice, ECOWAS (12 October 2017) (*Njemanze*).

176 *Njemanze* (n 175) 10.

177 *Njemanze* (n 175) 41-42.

178 *Njemanze* (n 175) 42. The ECOWAS Court of Justice does not consistently hold nations accountable to the Universal Declaration since it is a declaration only and not a binding treaty. Eg, in *Obianuju Catherine Udeh & Others v Nigeria*, ECW/CCJ/JUD/29/24, Community Court of Justice, ECOWAS (10 July 2024), while the ECOWAS Court of Justice considered the Universal Declaration, it stated that 'the use of the Universal Declaration of Human Rights will be for instruction only as it is not binding on any state' (*Njemanze* (n 175) para 75).

179 Art 8 African Charter.

180 As above. In general, the African Commission has not read this clause as expansively as it is written. See *Prince v South Africa* (2004) AHRLR 105 (ACHPR 2004) para 43; *Centre for Minority Rights Development v Kenya* (n 141) para 172.

181 Art 18(1) ICCPR.

also has a narrower limitation clause than that of the African Charter, thus better restraining nations from relying on vague national interest justifications to restrict the freedom of religion:¹⁸²

Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

4.2.4 *There is no time limit for bringing cases to the ECOWAS Court*

A fourth procedural advantage offered by the ECCJ is that it does not impose a time requirement for bringing cases before it.¹⁸³ This contrasts with admissibility requirements applied by some regional bodies. The Inter-American Commission on Human Rights similarly requires petitions to be brought within six months of the date the final judgment from the local remedy has been pronounced.

Unlike the other advantages described above, this procedural difference is not as pronounced when compared with the other enforcement options available to West African human rights victims. For example, the African Charter is vague on when a communication must be brought to the African Commission. Article 56 states that it must be 'submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter'.¹⁸⁴ The time limit imposed by the UN Human Rights Committee is longer and potentially more flexible than those of the European Court and the Inter-American Commission:¹⁸⁵

[A] communication may constitute an abuse of the right of submission, when it is submitted after 5 years from the exhaustion of domestic

¹⁸² Art 18(3) ICCPR.

¹⁸³ Betts (n 27) 16; *Federation of African Journalists v Gambia*, ECW/CCJ/JUD/04/18, Community Court of Justice, ECOWAS (13 February 2018); *Nwaogu* (n 31) 277-279. Eg, the European Court of Human Rights (European Court) requires applications to be brought within four months of the date when the domestic tribunal makes its final decision in the matter. European Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950) 213 UNTS 221 art 35(1). The Inter-American Commission on Human Rights similarly requires petitions to be brought within six months of the date the final judgment from the local remedy has been pronounced. American Convention on Human Rights: Pact of San Jose, Costa Rica (22 November 1969) 1144 UNTS 123 art 46.

¹⁸⁴ Art 56 African Charter; *Majuru v Zimbabwe* (2008) AHRLR 146 (ACHPR 2008) paras 104-110; *Monakali & Others v South Africa* Communication 377/09, African Commission on Human and Peoples' Rights, 76th ordinary session (19 July-2 August 2023) paras 87-93.

¹⁸⁵ United Nations Human Rights: Office of the High Commissioner 'Individual communications', www.ohchr.org/en/treaty-bodies/individual-communications (accessed 28 July 2025).

remedies by the author of the communication, or, where applicable, after 3 years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication.

In the end, then, the ECCJ offers some noteworthy procedural advantages not found with alternative enforcement bodies such as the African Commission and African Court and the UN Human Rights Committee.

4.3 The ECOWAS Court has rendered significant decisions relevant to the freedom of religion

While the ECCJ has not yet reached the merits of a freedom of religion claim, it has made noteworthy decisions that would strongly buttress claims alleging religious freedom infringements by both state and non-state actors. Even more than the ECCJ's considerable procedural advantages, these decisions give hope that the ECCJ offers meaningful help to religious believers in West Africa.

4.3.1 *The ECOWAS Court has ruled that the blasphemy law of Kano State, Nigeria, violates the African Charter*

Perhaps most significantly, on 9 April 2025 the ECCJ announced a landmark decision in which it declared that the blasphemy law of Kano State in Nigeria violates the African Charter and ICCPR. The ECCJ did not base its decision on freedom of religion or interpret article 8 of the African Charter; it found that the law violates the right to freedom of expression. Nonetheless, it directly attacks the greatest state-generated religious freedom violation in West Africa, namely, blasphemy laws.

The case, *The Incorporated Trustees of Expression Now Human Rights Initiative v Nigeria*,¹⁸⁶ was brought by a Nigerian non-governmental organisation (NGO) alleging that Nigeria had violated its obligations under the African Charter, ICCPR and CAT by using blasphemy laws to arrest, detain, imprison and impose death sentences upon its citizens.¹⁸⁷ The NGO represented no individuals, but it supported

¹⁸⁶ *The Incorporated Trustees of Expression Now Human Rights Initiative v Nigeria*, ECW/CCJ/JUD/20/25, Community Court of Justice, ECOWAS (9 April 2025) (*Kano State Blasphemy*).

¹⁸⁷ *Kano State Blasphemy* (n 186) paras 2, 4. It also accused Nigeria of failing to prevent extra-judicial killings by mobs of persons alleged to have committed blasphemy; *Kano State Blasphemy* (n 187) para 4. In the end, the ECCJ determined that the NGO had failed to support this claim with sufficient evidence; *Kano State Blasphemy* (n 187) paras 138-145.

its case by describing the blasphemy prosecutions of Yahaya Sharif Aminu, Muhammad Mubarak Bala and Rhoda Jatau (among others), discussed above.¹⁸⁸

Nigeria denied responsibility for any of the human rights violations alleged. It noted that Nigeria is a federal state, and that 'the blasphemy laws, of which the applicant complains, are all laws of the component states, and not those of the Federal Republic of Nigeria, which is the respondent in this case'.¹⁸⁹ Those states, it asserted, 'have law-making powers to ensure peace, order and good government of the states'.¹⁹⁰ Nigeria insisted that its Constitution aligns with the African Charter and ICCPR and that all rights are enforceable in its domestic courts.¹⁹¹

The ECCJ rejected Nigeria's defence and found that two provisions of the Kano State Penal Code violated article 9 of the African Charter and article 19 of ICCPR (both dealing with freedom of expression).¹⁹² The first was section 210, which provides that '[w]hoever, by any means, publicly insults or seeks to incite contempt of any religion in such a manner as to be likely to lead to a breach of peace, shall be punished with imprisonment for a term which may extend to two years or with a fine or both'.¹⁹³

The ECCJ determined that while this law pursued a legitimate aim of seeking to prevent a breach of peace and security, it violated the principle of legality. It found the words of section 210 'are vague and are not precise as they do not clearly set out the parameters of the conduct that is prohibited. Moreover, being vague, they leave room for individual discretion of law enforcement authorities in determining what is likely to lead to a breach of peace'.¹⁹⁴

The ECCJ also examined section 382(b) of the Kano State Penal Code: 'Any person whosoever found using any expression by means of words, gestures, abusing the Holy Prophet Muhammad shall be convicted to death'.¹⁹⁵ It determined that this provision also pursued a legitimate aim – promoting stability and respect between religious groups and seeking to prevent religiously motivated violence.¹⁹⁶ However, it found that imposing the death penalty for abusing or

188 *Kano State Blasphemy* (n 186) paras 12-15.

189 *Kano State Blasphemy* (n 186) para 26.

190 *Kano State Blasphemy* (n 186) para 25.

191 *Kano State Blasphemy* (n 186) paras 27 & 32.

192 *Kano State Blasphemy* (n 186) para 131.

193 *Kano State Blasphemy* (n 186) para 107.

194 *Kano State Blasphemy* (n 186) para 113.

195 *Kano State Blasphemy* (n 186) para 116.

196 *Kano State Blasphemy* (n 186) para 119.

insulting a religious leader was excessive and disproportionate to this aim.

Indeed, while respect for religious beliefs is important, it should not come at the cost of free speech, justice and human dignity. Blasphemy is an offence against religious sentiments, not a crime that causes physical harm to individuals. Insulting someone is a verbal offence, not a violent crime.¹⁹⁷

It ruled that there are less restrictive ways for the state to accomplish its aim (such as enforcing hate speech laws that 'typically result in imposition of fines or imprisonment in severe cases').¹⁹⁸

In the end, the ECCJ ordered Nigeria to 'repeal or amend these legal provisions, as well as similar provisions in the laws of the respondent, to bring them in line with the obligations of the respondent under the African Charter on Human and Peoples' Rights, and the ICCPR'.¹⁹⁹

The NGO alleged that Nigeria had also violated the rights to life and freedom of religion. However, the ECCJ found these claims inadmissible because they were not brought by victims themselves, and the NGO could not bring them under the principle of *actio popularis* (under which an entity brings an action in the public interest to protect a shared right).²⁰⁰ It ruled that the rights to life and freedom of religion are personal and private rights that cannot be the subject of an *actio popularis* application.²⁰¹

The Incorporated Trustees of Expression Now Human Rights Initiative v Nigeria is a consequential decision. It directly calls into question the validity of blasphemy laws that have been used to stifle religious speech and action. These laws suppress religious witness, teaching, debate and commentary. They cause minority believers to live in fear. More is needed to examine how blasphemy laws interfere with the freedom of religion. Such cases must be brought by individuals who have been prosecuted for blasphemy. However, the ECCJ has forged ahead of the African Commission, the African Court and the Human Rights Committee, which have not yet addressed blasphemy laws.

197 *Kano State Blasphemy* (n 186) para 127.

198 *Kano State Blasphemy* (n 186) para 128.

199 *Kano State Blasphemy* (n 186) para 149.

200 *Kano State Blasphemy* (n 186) para 48.

201 *Kano State Blasphemy* (n 186) paras 57 & 64.

4.3.2 *The ECOWAS Court has an established track record of resolving cases involving rights violations by non-state actors*

The ECCJ already hears more cases than the African Commission.²⁰² Importantly, it has begun developing a robust jurisprudence on state accountability for infringements of rights by non-state actors. This is critical for perhaps the most urgent violations of religious freedom taking place in West Africa today: religious-motivated attacks by extremist groups such as Boko Haram and Fulani militants. These attacks occur with great – and increasing – frequency and intensity, and the private actors often act with impunity.

While the ECCJ has not addressed the religious freedom aspect of these attacks, it has addressed such attacks and their impact on the right to life and the duty of states to prevent these attacks and to investigate and punish the perpetrators. Two cases illustrate well the ECCJ's approach to such attacks: *Rev Fr Solomon Mfa v Nigeria (Mfa)*²⁰³ and *Jama'a Foundation*.²⁰⁴

Mfa was brought by 12 individuals from Benue state, Nigeria. Their core claim was that Fulani militants had launched 50 terror attacks against 15 villages over a period of three years. In these attacks, they killed 1 000 people and destroyed homes, farms and vehicles.²⁰⁵ The plaintiffs insisted that the government had failed to take measures to protect against such attacks; instead, they acted to protect the cows of the Fulani rather than the people being attacked.²⁰⁶

The plaintiffs alleged that Nigeria had violated numerous rights guaranteed by the African Charter: equal protection under the law (article 3); life and integrity of the person (article 4); liberty and security of one's person (article 6); national and international peace and security (article 23); and a general satisfactory environment favourable to their development (article 24).²⁰⁷ Nigeria denied responsibility. It stated that 'the problem arose out of an ethnic clash between the Fulani herdsmen and the applicants' community and therefore [Nigeria] cannot be held liable for any of the violations of rights that occurred'.²⁰⁸

202 Betts (n 27) 7. The ECCJ has heard more than 500 cases, issuing over 300 judgments. Nwaogu (n 32) 284.

203 *Rev Fr Solomon Mfa v Nigeria*, ECW/CCJ/JUD/06/19, Community Court of Justice, ECOWAS (26 February 2019) (*Mfa*).

204 *Jama'a Foundation* (n 164).

205 *Mfa* (n 203) para 2.

206 *Mfa* (n 203) paras 5-6.

207 *Mfa* (n 203) para 8.

208 *Mfa* (n 203) para 28.

The ECCJ rejected Nigeria's claim that it could not be held responsible for its response to this 'ethnic clash'. In addition to analysing the substantive rights identified by the plaintiffs, it thoroughly probed article 1 of the African Charter, which imposes on states the obligation to 'undertake to adopt legislative or other measures to give effect to' rights.²⁰⁹ The ECCJ noted that this requires states to act even when the direct infringement of rights is by non-state actors. Under article 1, it held that 'the respondent is obliged to protect the human rights of its citizens, in the instant case, the Agatu communities as guaranteed under the African Charter and prevent their violations even by private actors'.²¹⁰

What protections were required? According to the ECCJ, Nigeria should have taken steps to 'promptly arrest the crisis and nip it in the bud'.²¹¹ Likewise, it had a 'duty to carry out an effective investigation into acts amounting to human rights violations, with the aim of prosecuting the perpetrators and redressing the victims'.²¹² The ECCJ found that Nigeria had failed in its obligations. It ordered Nigeria to investigate the attacks, identify and prosecute perpetrators and redress victims.²¹³ It also ordered Nigeria to provide adequate security and deploy more personnel to protect and prevent further attacks.²¹⁴

Jama'a Foundation, decided a year later, similarly highlighted Nigeria's duty to protect its citizens' rights from interference by non-state actors. As described above, this case provides a striking factual contrast with *Mfa*: It was brought by Fulani herders who claimed that Nigeria had failed to protect them from violent attacks (in this case attacks ahead of the 2011 election). They claimed that Nigeria had failed to take steps to protect against these attacks despite being aware both of previous attacks and immediate threats in this instance.²¹⁵ They alleged that Nigeria had thereby violated their rights to life, security, dignity of human persons, and equal protection of the law as protected in numerous human rights conventions.²¹⁶ In this case, Nigeria responded that it had acted appropriately. It insisted that it was committed to protecting all citizens and that it had been working with other ECOWAS nations to prevent terror attacks in the region.²¹⁷

209 Art 1 African Charter.

210 *Mfa* (n 203) para 65.

211 *Mfa* (n 203) para 66.

212 *Mfa* (n 203) para 67.

213 *Mfa* (n 203) para 69.

214 As above.

215 *Jama'a Foundation* (n 164) paras 5-11.

216 *Jama'a Foundation* (n 164) para 27.

217 *Jama'a Foundation* (n 164) paras 36-37.

As in *Mfa*, the ECCJ thoroughly examined Nigeria's responsibility under article 1 of the African Charter to protect rights even against violations by non-state actors:²¹⁸

This Court reaffirms that the provision contained in Article 1 of the ACHPR created an obligation of absolute character requiring the States Parties to take legislative, judicial, administrative, educational and other appropriate measures to fulfil their obligations. These obligations cannot be derogated from for reasons that perpetrators are non-state actors. The obligation to protect is more of a positive nature and require state to guarantee that private individuals do not violate these rights. States will be held responsible for any violations of rights under the charter regardless if such acts of violations were carried out by state agents or not.

The ECCJ found that Nigeria was required to, among other things, 'ensure that all reasonable measures have been taken' to deploy security agents to prevent attacks, 'investigate and punish all acts of violations committed on its territory', and make reparations where harm has occurred.²¹⁹ It determined that Nigeria had failed in its obligations to prevent the attacks and to arrest and prosecute the offenders.²²⁰ It ordered Nigeria to compensate the victims.²²¹

These cases are not isolated. The ECCJ in other cases has held member states accountable for failures to prevent or properly respond to infringements of rights by non-state actors, including *Hydara* and *Nazare*, discussed above.²²² It has developed a strong jurisprudence under article 1 of the African Charter, fleshing out precisely what state duties are in such cases.

In contrast, the African Commission and African Court have developed a much thinner – and somewhat inconsistent – jurisprudence on article 1. For the most part, both enforcement bodies have treated article 1 as a functionally irrelevant add-on provision; it offers little meaningful guidance on what governments must do to protect rights from violations by non-state actors.

A good example of the African Commission's approach to article 1 is found in *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions v Sudan*.²²³ The case shares some factual similarities with *Mfa* and *Jama'a Foundation*. The complainants alleged violent acts of

²¹⁸ *Jama'a Foundation* (n 164) para 98.

²¹⁹ *Jama'a Foundation* (n 164) paras 101, 113-127.

²²⁰ *Jama'a Foundation* (n 164) para 151.

²²¹ *Jama'a Foundation* (n 164) para 152.

²²² *Hydara* (n 118); *Gomes de Pina* (n 159).

²²³ *Sudan Human Rights Organisation & Another v Sudan* (2009) AHRLR 153 (ACHPR 2009) paras 3, 9.

murder, rape and property destruction against black African tribes in Darfur, Sudan. They insisted that non-state actors (Janjaweed militia groups) had committed many of these acts and that the Sudan government had failed to protect them.²²⁴ Unlike the ECCJ in the cases above, the African Commission failed to analyse what article 1 requires of states to prevent and respond to rights violations by non-state actors. It found that Sudan had violated several substantive rights (including the rights to life and security of the person), but it turned to article 1 only at the end of this analysis:²²⁵

The ACHPR concludes further that Article 1 of the African Charter imposes a general obligation on all State parties to recognise the rights enshrined therein and requires them to adopt measures to give effect to those rights. As such any finding of violation of those rights constitutes violation of Article 1.

Article 1 played no meaningful role in the case. The African Commission treated it as a largely irrelevant add-on; Sudan must have violated article 1 since it violated other rights.

The African Court largely uses the same approach. A good example is *ACHPR v Kenya*, the African Court's most important case addressing the freedom of religion.²²⁶ The African Commission brought the case after it had determined that Kenya violated several rights of an ethnic minority (the Ogiek Community of the Mau Forest). The African Commission alleged – and the African Court found – that Kenya had violated article 1 of the African Charter (taking adequate measures to give effect to Charter rights); article 2 (non-discrimination); article 8 (freedom of religion); article 14 (property); article 17(2)(3) (right to participate in community cultural life and duty of state to promote and protect morals and traditional community values); article 21 (use of natural resources); and article 22 (economic, social, and cultural development).²²⁷

Significantly for our purposes, the African Court analysed and found a violation of these substantive rights before ever considering what article 1 requires of states to 'give effect' to those rights. When, at the end of the case, the African Court turned to article 1, it noted that the ACHPR had urged it 'to apply its own approach and that

224 *Sudan Human Rights Organisation* (n 223) para 2. They also alleged that the government had participated in the attacks.

225 *Mfa* (n 203) para 227.

226 *African Commission on Human and Peoples' Rights v Kenya* (Merits) (2017) 2 AfCLR 9 para 62.

227 *African Commission on Human and Peoples' Rights v Kenya* (n 227) paras 10, 68. The African Commission also alleged that Kenya had violated the right to life under art 4, but the African Court found no violation of this article; *Jama'a Foundation* (n 165) para 68.

of the ACHPR in respect of Article 1 of the Charter, that if there is a violation of any or all of the other Articles pleaded, then it follows that the Respondent is also in violation of Article 1'.²²⁸

It must be noted that both the African Commission and the African Court have occasionally diverged from this pattern and done more to describe the duties of states to give effect to rights. For example, in *Association of Victims of Post Electoral Violence & Another v Cameroon*, the African Commission noted that article 1 imposes a four-fold obligation on state parties 'of respecting, protecting, promoting and implementing' Charter rights.²²⁹ Similar decisions include *Zimbabwe Human Rights NGO Forum v Zimbabwe*²³⁰ and *Ligue Ivoirienne des Droits de l'Homme (LIDHO) v Côte d'Ivoire*,²³¹ but these cases tend to be the exception rather than rule.

In the main, ECCJ cases contrast strongly with those of the African Commission and African Court. They are deeper and feature a more robust analysis of state duties when rights have been infringed by non-state actors.²³²

5 Drawbacks of the ECOWAS Court

Despite these advantages, there are drawbacks to looking to the ECCJ as the answer to West Africa's religious freedom challenges.

5.1 ECOWAS Court limitations

First, the ECCJ has some key limitations. Most obviously, it has jurisdiction over only 12 nations, the member states of ECOWAS. Since the withdrawal of Niger, Mali and Burkina Faso in January 2025, the ECCJ can no longer assist victims of human rights abuses from those nations. Those individuals can look only to the enforcement

228 *Jama'a Foundation* (n 164) para 212. The African Court used the same approach to art 1 in *Rajabu & Others v Tanzania* (Merits and reparations) (2019) 3 AfCLR 539.

229 (2009) AHRLR 47 (ACHPR 2009).

230 (2006) AHRLR 128 (ACHPR 2006).

231 Application 41/2016, African Court on Human and Peoples' Rights [2023] AfCHPR 21 (5 September 2023).

232 One more case illustrates the ECCJ's approach. In *Aircraftwoman Beauty Igbozie Uzezi v Nigeria* (2019), the ECCJ found that Nigeria had violated several rights of a woman who had been raped by her superior officer after she had enlisted in the Nigerian Air Force at age 19. In doing so, it articulated a framework that member states are 'clothed with obligation to respect, protect and fulfil human rights that they have committed to under article 1 of the African Charter' (para 112). With regard to the duty to protect rights, it asserted that 'states are obliged amongst others to prevent third parties from carrying out practices that interfere with' rights; para 113.

entities of the African Union (AU) or the UN if they find no relief in national courts.

The ECCJ also faces significant resource limitations. While the Court's caseload is growing (as noted above, it already hears more cases than the African Commission), the Court itself is shrinking. The ECCJ initially had seven judges.²³³ However, in 2017 the decision was made to reduce the number of judges to five. That decision was made because some member states were not contributing enough money to pay court staff.²³⁴ Professor Dandy Chidiebere Nwaogu, observing the growth in the ECCJ's caseload and influence, argues that the ECCJ should have 20 judges, including a separate appellate chamber.²³⁵ He also notes that the ECCJ needs more infrastructural and technical resources.²³⁶ The ECCJ's size and resource limitations pose a long-term threat to its effectiveness.

5.2 Credibility

The ECCJ also faces credibility challenges. Of immediate concern is that 20 per cent of the member states have left ECOWAS – and the jurisdiction of the ECCJ – in the last few months, but even before that, commentators have noted that 'concerns have arisen regarding the legitimacy of the enforceability of the ECOWAS Court'.²³⁷

Part of the credibility concern may be a side effect of one of the ECCJ's advantages – that plaintiffs need not exhaust domestic remedies before filing a claim. As described above, the ECCJ has concurrent jurisdiction with national courts; but this produces a challenging situation. For example, there is a danger of competing judgments: 'Having multiple proceedings in different systems can indeed lead to multiple problems, including the delivery of conflicting judgments by both courts, which would lead to problems of enforcement and increased tension between institutions at the regional and national level.'²³⁸ This is critical because court decisions must be enforced at the national level.

²³³ Nwaogu (n 31) 283.

²³⁴ As above.

²³⁵ Nwaogu (n 31) 284.

²³⁶ Nwaogu (n 31) 285-286.

²³⁷ Media Defence 'Litigating at the ECOWAS Community Court of Justice', www.mediadefence.org/ereader/publications/advanced-modules-on-digital-rights-and-freedom-of-expression-online/module-6-litigating-digital-rights-cases-in-africa/litigating-at-the-ecowas-community-court-of-justice/ (accessed 28 July 2025).

²³⁸ E Ojomo 'Competing competences in adjudication: Reviewing the relationship between the ECOWAS Court and national courts' (2014) 7 *African Journal of Legal Studies* 87. Other commentators have similarly noted the challenges posed

As the ECCJ presents an alternative enforcement mechanism to that of the African Commission, it is important to consider that despite the African Commission's weak enforcement record, it has built a degree of credibility as the main human rights enforcement body on the African continent. While its decisions are non-binding, 'they still carry great weight within the African human rights system'.²³⁹ Commentators have referred to the 'ACHPR phenomenon': 'Though it is viewed by many as weak, the African Commission on Human and Peoples' Rights (ACHPR) has had significant impact on Nigeria, South Africa, and other African countries.'²⁴⁰ Its decisions can 'achieve domestic impact by affecting significantly the thinking processes and action of the key domestic institutions of certain African states'.²⁴¹ As a newer and less established body, it is unclear whether the ECCJ's decisions similarly affect national behaviour.

5.3 Compliance with judgments

Related to the issue of credibility, the greatest criticism of the ECCJ by far is the lack of compliance with its decisions. Producing an extensive collection of decisions, even with rich legal analysis and concrete remedies, is meaningless if nations ignore it. Commentators regularly criticise the compliance rate with ECCJ decisions, calling it 'unsatisfactory'²⁴² or even 'a major problem'.²⁴³

The ECCJ's compliance challenge goes deeper than the non-enforcement of specific decisions. For example, while article 24(4) of the Supplementary Protocol requires ECOWAS member states to designate an official to receive and process the execution of decisions from the ECCJ, two member states still have not done so.²⁴⁴ Relatedly, some member states have failed to create a domestic legislative framework to enforce ECCJ judgments through national courts.²⁴⁵

by the potential conflict between decisions of the ECOWAS Court of Justice and national courts. Ebobrah (n 29) 14-16; Nwauche (n 174) 43.

239 Betts (n 27) 11.

240 Okafor and others (n 83) 178-179.

241 Okafor and others (n 83) 179.

242 Anene-Maidoh (n 103) 59.

243 Okeke & Lamidi (n 117); Okafor and others (n 83) 171; Alter and others (n 108) 766.

244 Community Court of Justice, ECOWAS 'Inaugural meeting of Competent National Authorities responsible for enforcement of ECOWAS Court judgments begins in Lagos, Nigeria' 23 June 2025, courtecowas.org/ccj-news/inaugural-meeting-of-competent-national-authorities-responsible-for-enforcement-of-ecowas-court-judgments-begins-in-lagos-nigeria/ (accessed 27 March 2026).

245 Anene-Maidoh (n 103) 66; MT Ladan 'An appraisal of the judgment enforcement mechanism of the ECOWAS Court of Justice' (SSRN, 22 May 2023), ssrn.com/abstract=4461024 (accessed 30 July 2025).

In addition, some member states have ignored the requirement of article 5(2) of the Revised Treaty to domesticate the treaty: 'Each member state shall, in accordance with its constitutional procedures, take all necessary measures to ensure the enactment and dissemination of such legislative and statutory texts as may be necessary for the implementation of the provisions of this Treaty.'²⁴⁶

Former ECCJ Chief Registrar Tony Anene-Maidoh calls this a 'major challenge for the enforcement of the judgments of ECCJ by national courts of member states, especially for the dualist common law countries, since the ECOWAS community texts do not have the force of law without domestication'.²⁴⁷

This challenge was evident when a Ghana High Court in *Chude Mba v Ghana* refused to enforce an ECCJ judgment because the Court Protocol had not been incorporated into Ghana's domestic law.²⁴⁸

ECOWAS itself has contributed to the ECCJ's enforcement challenges. Unlike those in the AU and the Council of Europe, the ECOWAS political authorities have no role in monitoring compliance with ECCJ decisions,²⁴⁹ and the ECCJ itself takes no action to monitor compliance.²⁵⁰

Despite these serious compliance challenges, there are some reasons for optimism. First, compliance rates, while low, are not out of line with those of other human rights enforcement bodies. Because neither ECOWAS nor the ECCJ officially collects compliance data and member states do not report it, it is difficult to know exactly how many ECCJ decisions have been implemented, in whole or in part.²⁵¹ The best available data comes from Court Registrar Anene-Maidoh in his 2018 article, *Enforcement of judgments of the ECOWAS Court of Justice*. He begins by acknowledging that there are no official compliance records, but based on unofficial information from lawyers and parties, '[t]he statistics of the Court shows that out of 64 (sixty four) enforceable decisions delivered by the Court against

246 Anene-Maidoh (n 103) 67; Ladan (n 245) 29; Revised ECOWAS Treaty (n 96) art 5(2).

247 Anene-Maidoh (n 103) 67-68. A dualist system is one in which international law is not directly applicable domestically unless implemented by domestic legislation. M Chiam 'Monism and dualism in international law' Oxford Bibliographies 27 June 2018, www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0168.xml (accessed 30 July 2025).

248 Anene-Maidoh (n 103) 68; Betts (n 27) 15.

249 Ladan (n 245) 29.

250 As above.

251 Anene-Maidoh (n 103) 59.

member states and ECOWAS institutions, since the adoption of the Supplementary Protocol on the Court, only 35 (thirty five) of the said decisions have been complied with'.²⁵² He rightly describes this 55 per cent compliance rate as 'unsatisfactory'.²⁵³

That said, a 55 per cent compliance rate is comparable to – and exceeds that of – some other enforcement bodies. Compliance data from those bodies, such as data from the ECCJ, is hard to find and compare because different compliance measurements are sometimes used, but here is a glimpse into compliance with the decisions of other entities.

In 2023, Open Global Rights shared results from a comprehensive review of compliance rates with over 1 400 decisions by eight UN Treaty bodies (for instance, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination (ERD Committee), the Committee on Economic, Social and Cultural Rights (ESCR Committee)) from 1979 to 2019. It found that compliance ranged between 19 and 39 per cent.²⁵⁴ This is consistent with prior studies that found a compliance rate with Human Rights Committee decisions on individual communications of between 12 and 21 per cent.²⁵⁵ Commentators note that these rates may undercount both direct compliance with and the broader human rights impact of Committee decisions.²⁵⁶

Full data regarding compliance with African Commission decisions is very difficult to find. In its fifty-two and fifty-third Activity Report (dated November 2022), the African Commission reported: 'The level of compliance by state parties with the Commission's Decisions, Requests for Provisional Measures and Letters of Urgent Appeal is still low.'²⁵⁷ A comprehensive survey of state compliance

252 As above. A 2013 study of compliance with ECOWAS Court of Justice decisions found that in six of nine cases studied, there was 'full or situational compliance'. In none of the cases had a state expressly rejected the ECOWAS Court of Justice's decision. The review concluded that 'states have generally been sensitive to the decisions of the ECOWAS court'. H Adjolohoun 'Giving effect to the human rights jurisprudence of the Court of Justice of the Economic Community of West African States' LLD thesis, University of Pretoria, 2013 321, repository.up.ac.za/items/927a5b06-f5ac-448e-a1e1-19bcf14ed08e (accessed 30 July 2025).

253 Anene-Maidoh (n 103) 59.

254 A Ullman 'Compliance with UN treaty body decisions: A glass one-third full or two-thirds empty?' *Open Global Rights* 5 September 2023, www.openglobalrights.org/compliance-UN-treaty-body-decisions/ (accessed 28 July 2025).

255 K Fox Principi 'United Nations individual complaints procedures – How do states comply? A categorized study based on 268 cases of "satisfactory" implementation under the follow-up procedure, mainly regarding the UN Human Rights Committee' (2017) 37 *Human Rights Law Journal* 1 4 5 9 12.

256 As above.

257 African Commission on Human and Peoples' Rights '52nd and 53rd Activity Reports of the African Commission on Human and Peoples' Rights' (November

with Commission recommendations between 1994 and 2004 revealed that in only 14 per cent instances 'did state parties comply fully and in a timely fashion with the recommendations of the African Commission'.²⁵⁸ In 2024, a more limited study focused on compliance by three countries – Botswana, Kenya and Ethiopia – in all decisions on the merits rendered against them through 2022.²⁵⁹ It found that none fully complied with the recommendations made.²⁶⁰ Botswana partially complied with one of four decisions rendered against it.²⁶¹ Kenya partially complied with two of three decisions rendered against it.²⁶² Ethiopia refused to comply with either of the two decisions rendered against it.²⁶³

More compliance information regarding African Court decisions is available. In 2021 the African Court convened the Conference on the Implementation and Impact of Decisions of the African Court. In the conference's final Communiqué, the delegates

took note that at the year 2020, the level of full compliance with the Court's judgments stood at only 7%. In 18% of the applications there was partial compliance with the Court's judgments and in 75% of the applications there was non-compliance with the Court's judgments. Furthermore, there has been 10% compliance with the Court's rulings on provisional measures.²⁶⁴

-
- 2022) 3, achpr.au.int/sites/default/files/files/2023-06/eng-achpr-52nd-53rdactivity-report.pdf (accessed 30 July 2025).
- 258 F Viljoen & L Louw 'An assessment of state compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1994-2004' (2007) 101 *American Journal of International Law* 1. In 2024, Lydia Kembabazi, Legal Advocacy Officer for the Institute for Human Rights Development in Africa concluded: 'It is important to note that the impact of the African Commission's decisions has been significantly limited, largely due to the lack of effective and strategic follow-up to ensure the full implementation of its decisions. This, combined with lack of political will by state parties, lack of awareness about the existence of the recommendations, and lack of clarity as to which government agency has the mandate to ensure compliance with recommendations, has inhibited the full enjoyment of human rights in general and inadvertently impeded access to justice for individuals.' L Kembabazi 'The role of the African Commission in enhancing compliance with its decisions on communications' (2024) 24 *African Human Rights Law Journal* 783.
- 259 JO Obwogi & HA Kremte 'Decoding implementation of African Commission on Human and Peoples' Rights decisions on communications in Botswana, Kenya and Ethiopia' (2024) 24 *African Human Rights Law Journal* 804.
- 260 Obwogi & Kremte (n 259) 849-850.
- 261 Obwogi & Kremte (n 259) 849.
- 262 As above.
- 263 Obwogi & Kremte (n 259) 850.
- 264 African Court on Human and Peoples' Rights 'Conference on the implementation and impact of decisions of the African Court on Human and Peoples' Rights, the Dar es Salaam Communiqué' (3 November 2021), www.african-court.org/wpaf/wp-content/uploads/2022/02/EN-DAR-ES-SALAAM-COMMUNIQUE-CONFERENCE-ON-IMPLEMENTATION-AND-IMPACT-OF-THE-DECISIONS-OF-THE-AFRICAN-COURT-10-November-2021.pdf (accessed 30 July 2025). Regarding the African Court, the Raoul Wallenberg Institute concludes: '[T]he Court does not appear to have advanced more than the ACHPR on the realm of compliance.' A Fuentes & P Pillay 'Compliance with (quasi-)judicial decisions within the regional African human rights system: Challenges and opportunities'

Perhaps the most telling evidence of the low compliance rate with African Court decisions is that, in its 2021-2025 Strategic Plan, the African Court set a target of having nations comply with 30 per cent of decisions.²⁶⁵

Other regional human rights enforcement bodies also struggle with compliance. Global Human Rights estimates a 14 per cent compliance rate with decisions by the Inter-American Court of Human Rights.²⁶⁶ Marin puts the rate much higher (but still quite low) at 38,37 per cent.²⁶⁷

Traditionally, the European Court of Human Rights is viewed as having the highest compliance rate in the world with its decisions,²⁶⁸ but even it struggles. Open Global Rights estimates that the rate is between 50 and 60 per cent.²⁶⁹ Democracy Reporting International and the European Implementation Network reported that in January 2024, 624 leading decisions were awaiting implementation.²⁷⁰

(Raoul Wallenberg Institute 2017), rwi.lu.se/wp-content/uploads/2017/02/Compliancewithjudicialdecisions_2017-02-10.pdf (accessed 27 March 2026). Viljoen agrees that if the impact of the African Court is measured only by implementation of its decisions in contentious cases (which he describes as 'very low') there is reason for disillusionment, but he argues that court judgments have a broader impact by indirectly shaping national legal and policy decisions and actions. F Viljoen 'Embedding regional human rights in adverse times: The judgments of the African Court on Human and Peoples' Rights as interpretive precedents for national actors' (2025) 25 *African Human Rights Law Journal* 1083 1113-1114.

265 African Court on Human and Peoples' Rights 'Strategic Plan 2021-2025', <https://www.african-court.org/wpafcp/wp-content/uploads/2021/06/ACTHPR-Strategic-Plan-2021-2025-Deepening-Trust-in-The-African-Court.pdf> (accessed 30 July 2025).

266 Ullman (n 254).

267 PC Marin 'Compliance of judgments of the Inter-American Court of Human Rights' (SSRN 9 July 2020) 2, papers.ssrn.com/sol3/papers.cfm?abstract_id=3647326 (accessed 30 July 2025). The compliance rate varies greatly with the kind of remedy awarded. According to Marin, compliance with orders to make restitution mirrors that of the overall compliance rate (compliance is 38,78%). However, compliance with rehabilitation orders is 18,73% and compliance with orders to investigate, prosecute and sanction offenders is only 8,46%. Compliance rates also vary depending on what branch of government is being required to act. Huneeus estimates that nations comply with 44% of decisions requiring injunctive relief if only executive action is required, but that percentage drops dramatically if legislative and executive action is required (22%) and plummets if executive, legislative and public ministry action is required (2%). A Huneeus 'Courts resisting courts: Lessons from the Inter-American Court's struggle to enforce human rights' (2011) 44 *Cornell International Law Journal* 508 509.

268 See Smith (n 114) 108 ('State compliance is relatively high').

269 Ullman (n 254).

270 Democracy Reporting International and European Implementation Network 'Justice delayed and justice denied: Non-implementation of European courts' judgments and the rule of law' 2024 edition, September 2024 30, static1.squarespace.com/static/55815c4fe4b077ee5306577f/t/66ed8049848b160f452bad6f/1726840921344/Justice+Delayed%2C+Justice+Denied+2024+Edition.pdf (accessed 30 July 2025).

Forty-four per cent of the leading judgments of the European Court pronounced with regard to Council of Europe member states in the last ten years are still pending implementation, compared to 40 per cent in 2022, and 37,5 per cent in 2021.²⁷¹

Thus, how should we view the compliance rate with ECCJ decisions? The Anene-Maidoh estimate is based on a relatively small sample of 64 cases, but as Okafor and others note:²⁷²

Nevertheless, this is an approximately fifty-five percent compliance rate that, although not excellent, does indicate that there has been more compliance than non-compliance with the ECOWAS Court's decisions across West Africa, a finding borne out by this Article's subsequent interviewing, research, and data analysis, as well as the findings of some previous studies.

There are reasons for tempered optimism on compliance beyond the compliance rate alone. For example, Niger complied with the ECCJ's groundbreaking slavery decision in *Hadijatou Mani Koraou v Niger* (2008).²⁷³ The Gambia complied with the ECCJ's decision in *Deyda Hydara v the Gambia* (2011).²⁷⁴ Nigeria was the complying state in 11 of the 35 cases where court registrar, Anene-Maidoh, reported compliance.²⁷⁵

Further, recall the discussion of the 'ACHPR Phenomenon' above. There is some evidence that there has been an ECCJ Phenomenon too – where ECCJ decisions have had a broader impact on government behaviour and policy. This is true of the actions of the Nigerian government. Okafor and others observed that Nigeria changed executive decision making after high-profile ECCJ decisions in *SERAP v Nigeria* (2012) and *Njemanze v Nigeria* (2017).²⁷⁶ Specifically, after the ECCJ found the existence of sex and gender-based violence in *Njemanze*, Nigeria engaged in a comprehensive investigation of such violence and created training sessions for law enforcement officials.²⁷⁷ The researchers conclude:²⁷⁸

Though significantly fewer cases of direct compliance with the ECOWAS Court's rulings are observable in the Nigerian executive branch context, an appreciable amount of evidence exists and suggests

271 Democracy Reporting International and European Implementation Network (n 270) 31.

272 Okafor and others (n 83) 184.

273 As above.

274 Okafor and others (n 83) 185.

275 Anene-Maidoh (n 103) 59.

276 Okafor and others (n 83) 191, 210.

277 Okafor and others (n 83) 210.

278 Okafor and others (n 83) 213-14.

correspondence between executive decision-making in Nigeria and the human rights values and jurisprudence of the ECOWAS Court.

They add: 'The Court's proceedings and rulings have helped strengthen the human rights voice within the executive, in executive policy documents, in some of the memoranda the executive has produced, and some of its other actions.'²⁷⁹

6 Conclusion

Is the ECCJ the answer to West Africa's religious freedom challenges? The answer is no. No international enforcement body is, and to date, neither the Human Rights Committee nor the main bodies tasked with enforcing the African Charter have addressed the main threats to religious freedom from both states and non-state actors in West Africa.

The ECCJ, however, offers a promising option. While it faces challenges to its credibility, compliance with its decisions is poor, and it faces alarming resource challenges, it has some significant advantages over other options available to victims of human rights abuses in West Africa. Its decisions are binding as a matter of law. It boasts meaningful procedural advantages such as the lack of a requirement that applicants exhaust domestic remedies before bringing a claim. Crucially, it has an established track record of resolving cases involving blasphemy laws and rights violations by non-state actors, and it has done so in cases of religious-based violence that are the source of perhaps the greatest threats to religious freedom in the region today. Real and lasting protection will require the nations of West Africa to champion the freedom of religion in their domestic courts, but the ECCJ may provide some needed assistance in that direction. In the meantime, West African lawyers should turn to the ECCJ as a court of first resort for religious freedom cases. It arguably is the human rights enforcement body best suited to advance religious freedom for the people of West Africa.

²⁷⁹ Okafor & others (n 83) 214. Significantly, Nigeria is also one of the nations to designate an official to receive and process ECCJ decisions. Anene-Maidoh (n 103) 62.