Chapter 5  Human Rights Cases in Sub-regional African Courts: Towards Justice for Victims or Just More Fragmentation?

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1. Introduction

The Community Court of Justice of the Economic Community of West African States (‘ECOWAS Court’) made history on 27 October 2008 when it handed down judgement in the case of Hadijatou Mani Koroua v Niger, finding the state of Niger in violation of its international obligations to protect Hadijatou Mani from slavery. The historic significance of the judgment relates in part to the fact that it was one of the first slavery cases to be brought or won at the international level and the first to expose and condemn the practice of slavery in Niger which

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2  Prosecutor v Kunarac et al, Judgement, Case No IT-96-23 & IT-96-23/1-A, A. Ch., 12 June 2002 resulted in criminal prosecutions and convictions for sexual slavery at the International Criminal Tribunal for the former Yugoslavia (ICTY); Siliadin v France (2006) 43 EHRR 16 before the ECtHR gave rise to findings not of slavery but ‘forced labour’; and in Malawi African Association and Others v Mauritania, Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98 (2000) the African Commission on Human Rights found ‘conditions analogous to slavery’. See also the
is widespread yet largely unacknowledged. It is also one of the few times that the ECOWAS Court’s human rights jurisdiction has been engaged, and signals the potential strengths and shortcomings of emerging sub-regional courts as human rights fora.

The case illustrates several questions relevant to the issues of fragmentation, proliferation of courts and judicial dialogue being explored in this volume. First, the judgment of the ECOWAS court raises questions around the extent of ‘trans-judicial communication’ between human rights jurisdictions: while on some issues the Court’s approach was dangerously myopic, on the central issue of slavery in international law the judgment illustrates the cross fertilisation from international criminal law into the human rights field. While this phenomenon is not new and in recent years the mutual referencing between criminal and human rights bodies has steadily grown, this has perhaps been less evident in the context of African human rights litigation to date. Yet this case illustrates the global journey of long-established yet little used norms on slavery into the criminal decisions of the ICTY in The Hague and from there to the jurisprudence of the ECOWAS Court sitting on this occasion in Niamey, Niger. Second, but perhaps more significantly, the Mani case heralds the emergence of new and expanding sub-regional human rights fora in the African continent. The ‘proliferation’ of courts and fora is the subject of criticism in some quarters as a contributing factor to fragmentation in international law. It is argued in this chapter that this concern is short-sighted. This case demonstrates the potential of binding, effective human rights fora to influence positively the human rights landscape and to make an essential contribution to the credibility and effectiveness of the rule of international law in parts of Africa. It also demonstrates some of the challenges

subsequent judgment and appeals decision of the Special Court for Sierra Leone concerning sexual slavery and forced marriage: Prosecutor v Brima, Kamara and Kanu, Appeals Chamber, SCSL- 2004- 16/A, 22 February 2008.

3 See ‘La Problematique Du Travail Force, Du Travail Des Enfants Et De Toutes Autres Formes De Pratiques Esclavagistes Au Niger’, August 2008, published by the government of Niger immediately prior to judgment, available at www.presidence.ne/rapportdd.htm. The government’s position in this particular case is set out in its Response, on file with the author. It argued that they were married and the relationship is a private matter, that slavery did not exist and/or if it did arise on occasion it was a marginal problem.

4 See e.g., Manneh v The Gambia, Judgment No. ECW/CC/JUD/03/08 of 5 June 2008 where the ECOWAS Court found serious violations in the form of the arbitrary detention of a journalist.

5 See also e.g., the important judgment of the SADC Tribunal in Mike Campbell (Pvt) Ltd & Ors v Republic of Zimbabwe, SADC (T) Case No. 2/2007, 28 November 2008, concerning land confiscation in Zimbabwe.