

West-African court slavery judgement

It was the first time the Court of an economic and political body ruled in a slavery case: the judgement may have broader implications for human rights in West Africa

The Community Court of Justice of the Economic Community of West African States (ECOWAS) ruled on 27 October 2008 in the case of *Hadijatou Mani vs Niger*. Several aspects of this case will interest readers of International Union Rights.

Before going into the details of this particular court case, it may come across as somewhat artificial that a Court that was created by a primarily economic political community body has ruled so strongly on a question of fundamental human rights. The ECOWAS Court was established in 1991 when Member States adopted a Protocol. The Protocol does not make any reference to human rights although it explicitly mentions the competence of the Court over disputes related to trade, industry and commerce. In 1993, however, the Protocol was revised as Member States agreed that human rights were at the basis of ECOWAS and that the Community Court had jurisdiction over alleged violations of rights contained in the 1948 Universal Declaration of Human Rights. When it became apparent that Member States would never sue themselves a supplementary Protocol was adopted in 2005 which allowed individuals in Member States to challenge their governments with regard to violations of human rights and fundamental freedoms. Until then individuals could only seize the Court through their own government.

In relation to the case itself, it was the first time that the court seated in Niamey, the capital of Niger rather than in Nigeria where it has its headquarters. This approach has a few good elements. Firstly it allowed access to the court case to the necessary witnesses and all actors and stakeholders involved, including senior politicians. Secondly, it allows the judgement to have a real impact through good visibility and press conference in the country where the ruling is actually most relevant. It was the first time that the ECOWAS court ruled in a slavery case which is promising. When the judgement is effectively followed and adequate measures are taken by the government as a reaction to this, the ECOWAS Court may prove to be an important additional instrument for the improvement of the human rights situation in West Africa. This could be called historic since much discussion has taken place about the persistence of traditional forms of slavery, especially in countries in the region covered by the ECOWAS.¹ Reports of international human rights bodies and supervisory agencies (e.g. the ILO Committee of Experts on the implementation of Convention 29) have in recent years reported evidence of slavery practices, not only in Niger, but in several countries in the region. This is despite the fact that most of these countries including Niger have outlawed slavery in

their own constitution and/or penal code and have ratified the relevant ILO Conventions as well as UN and regional charters.

The Nigerien NGO Timidria assisted the complainant Hadijatou Mani, now 24 years old, throughout her legal battle. In fact, Timidria originally brought the case to Court for Hadijatou, a possibility created by the Penal Code. The London based International NGO Anti-Slavery International and legal campaign group Interrights supported Timidria with the development of the case.

Hadijatou Mani's story

Hadijatou's mother was a slave woman, known as 'Sadaka'. Hadijatou inherited her mother's class status when she was born in Dogaraoua in the Tahoua region. When she reached the age of twelve she was sold to Souleymane Naroua, a friend of her mother's master as a traditional 'sex slave'. The commercial transaction is known as 'Wahiya', buying a servant to serve as domestic helper and concubine. Outside answering to the sexual needs of her master she was also forced to clean and work the land which in the end did not allow her more than a few hours of sleep every night. She was not paid at all and any first hint of 'disobedience' was brutally suppressed with physical violence. Hadijatou was raped for the first time before she was thirteen by her master. Under pressure from the publicity around his case and the Penal Code of 2005 criminalising slavery under a penalty of 30 years of imprisonment, he granted her a 'liberation certificate'. It soon showed that the man never intended to free Hadijatou completely as he was convinced that she was still his lawful wife owing him 'marital duties'. The Nigerien Civil Court first confirmed that there was no formal marriage between the two. This was later overruled by the Tribunal de Grand Instance (TGI) which based its judgement on customary law. The Supreme Court sent the case back to the TGI but meanwhile Hadijatou married a husband of her own choice resulting in an additional claim and conviction for bigamy, six months imprisonment (of which she has actually served two) and a penalty of 50,000 West African Francs (CFA). When she appealed in this last case the Court of Appeal of Niamey declared that it would await the ruling of the newly assembled TGI and to align with that.

The ECOWAS case

Meanwhile, however, Hadijatou and the legal team had appealed to the ECOWAS Court. It subsequently ruled in favour of her claim. Rulings of the Court are binding on all ECOWAS Member States. The judgement acknowledges that



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Hadijatou was clearly a slave and that the State of Niger was responsible for not doing enough to protect its citizen from slavery. The ruling included an award of compensation for the damages suffered. All these elements are very important since there have been quite a number of court cases for similar cases in which it has proven to be very difficult to obtain a conviction (or, if there was a conviction, then sentences for the slave masters were minimal). It is also an important and progressive step to see compensation being awarded to the victim.

A breakdown of the judgement is necessary to analyse the important message it contains. The Court interpreted the term of slavery in the contemporary context and highlighted the use of powers associated with ownership and elements of control over a person. It concluded that the case under discussion was a case of slavery beyond any doubt. Hadijatou had been abused in slavery conditions for nearly a decade.

The court ruled also that slavery is a crime against humanity and that the abolition of slavery as a general principle in international law was to be upheld. Even though the court explicitly mentions that its ruling is only applicable to this particular case it acknowledges at the same time the existence of the phenomenon in Niger and the fact that this was definitely not a stand alone case. In a context of undisputable evidence of these practices the government has in the most recent decades always denied that slavery still existed in the country or at least, the government stated that it had done everything within its powers to eliminate the practice, and claimed that the numbers of slaves stated by trade unions and other campaigners were exaggerated, and that lower caste people were often confused with slaves. The ILO Committee of Experts on the Application of Conventions and Recommendations reflects these concerns.

The Court convicted the State of Niger for its lenient attitude towards protecting its citizens from slavery. While the judgement does not outline in concrete terms what the government should have done, it has convicted the state of failing to take any active steps to protect its citizens and to protect Hadijatou in particular. The Court ordered the State of Niger to pay compensation of 10 million West African Francs (CFA). The compensation awarded will allow Hadijatou to rebuild her life and to ensure that her children do not suffer the same kind of abuse.

A final element, but not to be neglected in this analysis, is the Court's reluctance to take in a radical standpoint in its position towards Niger's customary laws which regulate these slavery cases and to an important degree legitimise these practices. These aspects of customary law are discriminatory against women. In Niger the regulations followed by different ethnic groups in society permit the concept of a 'fifth wife' whereas this would in general not be allowed in Islam. In

this case customary law also said that a freed slave remains the wife of her master, which concept led to the finding of bigamy against Hadijatou following her original release from slavery. Even though customary law is often in conflict with the constitution and the penal code such as in this particular case, the court did not make specific findings in relation to customary law and only convicted the slave master in person of discrimination.

Implications of the case

It must also be recognised that Niger was the first African country to outlaw slavery by a specific law providing for 30 years imprisonment and a fine. The Government had also set up a National Committee to Combat Forced Labour and Discrimination looking into developing a National Action Plan. This court ruling is definitely another step in the right direction and at least it sets the circumstances for concrete and active steps to be undertaken by the Nigerien Government to once and for all rule out slavery on its territory.

Whether this ray of hope is announcing a new dawn for the tens of thousands of slaves in the country (Timidria's research indicates that there are a minimum of 43,000 slaves in Niger) and additional tens of thousands held in servitude in the region as a whole remains to be seen. In any case, it should offer them the perspective that legal redress is no longer unrealistic and this should encourage them to take cases to court or to have cases brought forward by trade unions and other anti-slavery organisations. Relevant stakeholders will need to do a lot of awareness raising to disseminate the strong message sent out by this regional African Court, not in the least to judges in the national courts of the region.

A regional African court with judges from Mali, Senegal, Togo, set with this binding judgement from within the West African legal system a regional standard in international human rights law. The decision could significantly increase or at least influence the political will in a number of ECOWAS Member States in the region to reassess the slavery situation on their territory and to step up efforts to protect workers in slavery. In general, the ECOWAS Court has a good track record when it comes to Member States respecting the outcomes of court decisions. In this case, Mossi Boubacar, a representative for the Nigerien Government at least stated after the trial that the government has accepted the verdict. In times where the African Court on Human and Peoples' Rights is still to take up a proper role and in any case would have to dismiss direct claims from individuals, the ECOWAS Court may fill up a part of a void that has been around for far too long.

¹ Benin, Burkina Faso, Cape Verde, Ivory Coast, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

Hadijatou Mani's painful story shows the potential of regional human rights courts