Hadijatou Mani Koroua v Niger: Slavery Unveiled by the ECOWAS Court

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1. Introduction

In a judgment handed down by the Community Court of Justice of the Economic Community of West African States (ECOWAS Court) on 27 October 2008, the state of Niger was found in violation of its international obligations to protect Hadijatou Mani from slavery.1

The judgment has been referred to as historic,2 which is justified in several respects. This is one of the first slavery cases ever to be won at the international level3 and the first to expose and condemn the practice of slavery in Niger.

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1 Mme Hadijatou Mani Koroua v The Republic of Niger, 27 October 2008, ECW/CCJ/JUD/06/08.
3 Prosecutor v Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, Judgment, IT-96-23 and IT-96-23/1-A (2001) and Prosecutor Milorad Krnojelac Judgment, IT-97-25 (2002), resulted in criminal convictions for sexual slavery at the International Criminal Tribunal for the former Yugoslavia (ICTY); Siliadin v France 43 EHRR 16, before the ECHR gave rise to findings not of slavery but ‘servitude’ and ‘forced labour’; and in 54/91, 61/91, 98/93, 164/97, 196/97 and 210/98, Malawi African Association and Others v Mauritania (2000); 8 IHRR 268 (2000) the African Commission on Human Rights found ‘conditions analogous to slavery’.
which although widespread continues to be denied by the state. 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. As a legal document, it has strengths and weaknesses: while stronger in its approach to and findings on slavery, it is open to criticism in its approach to other human rights issues, notably discrimination. The judgment’s primary significance, however, lies in the vindication of the victim’s rights and its potential—as yet uncertain—to contribute to the effective eradication of the abomination of slavery in West Africa.

The first part of this note describes the background and context to this case: Hadjijatou’s experience of enslavement, the broader practice of slavery in Niger that her case illustrates, and her thwarted efforts to secure justice in national courts. The second part concerns the case before the ECOWAS Court, focusing on a summary and analysis of the judgment, followed by comment on the role of the ECOWAS Court. The concluding section explores briefly the judgment’s potential significance and the challenge of implementation.

2. Background

A. Hadjijatou Mani’s Story

In her testimony before the ECOWAS Court, Hadjijatou Mani gave the following account. She was born in 1984. As the daughter of a slave, she inherited her mother’s servile status. At the age of 12 years, she was sold by a representative of her mother’s owner for the sum of 240000 CFA (equivalent to £250 or US$400). Her new master had four wives and seven other ‘sadaka’ (female slaves). She was raped at the age of 13 years and subjected to constant sexual harassment and abuse thereafter. She bore three children, one of whom died. She was beaten, forced to endure harsh labour seven days a week without

4 See ‘La Problematique Du Travail Forcé, 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 the Hadjijatou Mani judgment, available at: http://www.presidence.ne/rapportdd.htm [last accessed 1 December 2008]. The government’s position in this particular case is set out in its Response, on file with 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.

5 See, for example, Manneh v The Gambia, 5 June 2008, ECW/CCJ/JUD/03/08, where the ECOWAS Court found serious violations in the form of arbitrary detention of a journalist.

6 See also, for example, the important judgment of the SADC tribunal in [2008] SADCT 1, Mike Campbell (Pty) Ltd & Ors v Republic of Zimbabwe, 2/2007 concerning land confiscation in Zimbabwe.

7 The Court describes the practice of sadaka or wahiya as ‘acquiring a young girl, generally in servile conditions, to serve both domestically and as a concubine’, supra n. 1 at para. 8.
remuneration or vacation. She lived on a daily diet of insults and degradation by her master who reminded her constantly that she was a slave. She described how she was treated ‘like a goat’. On several occasions she tried to escape and was severely punished.

In 2005, her master decided to ‘liberate’ Hadijatou in order to regularise his relationship with her and make her one of his wives. He duly provided her with a ‘liberation certificate’, later presented to the Court, which stated that ‘I, El Hadj Souleymane Naroua have liberated Mme Hadijatou Koreau on this day 18 August and she is now free and is no-one’s slave.’ The certificate was signed by ‘the chef du village’, ‘the master’ and the ‘beneficiary’. Once she received her ‘liberation certificate’, Hadijatou left and refused to marry her former master. This provoked two parallel lines of legal cases in Niger—her attempts to secure recognition of her right to be free, and her prosecution, at her former master’s instigation, for bigamy.

B. Slavery in Niger

Hadijatou Mani’s case is not an isolated one, but is emblematic of a pervasive phenomenon. Anti-Slavery International reports an estimated 43,000 cases of slavery in Niger alone. While this was the first international or regional legal case to challenge this practice, there have been numerous reports from independent sources, including the Committee established under the Convention on the Elimination of Discrimination Against Women (CEDAW Committee), the Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography and the Working Group on Contemporary Forms of Slavery, as well as by NGOs and academics, recognising the existence and nature of slavery in Niger. The CEDAW Committee has noted that in Niger ‘[s]lavery is a living reality among virtually all ethnic groups’.

8 It is a matter of speculation as to whether this was because of fear of prosecution (advocacy conducted by Anti-Slavery Organization, Timidria, following the criminalisation of slavery in 2003, warned him that at he might faces 30 years in prison if he continued to practise slavery) or because a place became free within the scheme which allows a maximum of four wives.


11 See, for example, Abdelkader, supra n. 9.

12 CEDAW Committee, supra n. 11 at 28.
The form of slavery in practice in Hadijatou Mani’s case was wayiha or sadaka which, as the ECOWAS Court observed in its judgment:

consists of acquiring a young girl, generally a slave, to work as a servant as well as a concubine. The slave woman who is bought under these conditions is called “Sadaka” or fifth wife, i.e. a wife who is not one of the legally married ones, the number of which cannot exceed four (4), according to Islam’s Recommendations. . . . In general the “Sadaka” does housework and is at the “master’s service’. He can, at any time, day or night, have sexual relations with her.¹³

This accords with the reports and findings of the Special Rapporteur on the sale of children¹⁴ and the CEDAW Committee¹⁵ on this continuing practice of domestic and sexual slavery throughout Niger.

The generalised nature of this form of slavery in Niger, its acceptance and implicit legitimacy, also readily apparent from the facts of Hadijatou’s case itself. The facts that the sale and liberation of a human being was governed by contracts of purchase and transfer and certificates of liberation, which were officiated and witnessed by several people, including village chiefs. These were transactions with certain attendant formalities and were not carried out under cover of night without trace or evidence, indicative both of the level of social acceptance of the practice and the lack of meaningful attempts at repression and accountability.¹⁶ Its acceptance is illustrated also in the banality of the response of the courts and the police when the facts of Hadijatou’s case came to their attention. The fact that the applicant was a slave was only noted as a background detail in their reports and decisions and there was no reaction to that information.¹⁷

Niger’s Constitution prohibits slavery.¹⁸ The Nigerian Criminal Code was amended in 2003 to make slavery a crime,¹⁹ and as a matter of law serious

¹³ Supra n. 1 at paras 9 and 10.
¹⁴ The Addendum to the Report of the Special Rapporteur on the sale of children, supra n. 11 at 28, noted that ‘Slavery in the Niger takes many forms, generally prescribed and regulated by custom. One particular form of slavery is the practice of Wahaiya, the purchase of young female slaves for the households of wealthy older nobles. Children become slaves by inheriting the status of their parents. Their parents’ owner decides what is to become of them. Often, female children are sold to wealthy men as concubines.’
¹⁵ ‘“These concubines, referred to as Sadaka, are expected by custom to serve their owners” sexual needs and to serve as unpaid domestic workers in his household’; CEDAW Committee, supra n. 11 at 28.
¹⁶ There only has been one successful prosecution for slavery that resulted in a derisory sentence; see infra.
¹⁷ The police report filed when she was detained for bigamy and the several court cases in Niger refer to her slavery, en passant: see the discussion infra.
¹⁸ Article 12, Constitution of the Republic Of Niger, 9 August 1999, provides that ‘no-one shall be subject to . . . slavery nor cruel, inhuman or degrading treatment or punishment’.
penalties attach to this crime.\textsuperscript{20} However, prosecutions for slavery are not pursued in practice. By the time of the ECOWAS Court’s judgment there had been only one prosecution for slavery, in which the penalty was reduced on appeal to one year’s imprisonment.\textsuperscript{21} Moreover, civil and customary courts continue to ignore these provisions and to apply customary laws that condone and regulate slavery, as illustrated by Hadijatou Mani’s case.

\section*{C. The Domestic Legal Process}

As already noted, two parallel lines of legal cases developed in Niger following Hadijatou Mani’s liberation: her attempts to secure recognition of the right to be free, and her former master’s attempts to prevent this, including by having her prosecuted for bigamy. Only the latter was successful.

Hadijatou Mani took her case to the local tribunal, the \textit{Tribunal Civil et Coutumier}, protesting that her former master sought to prevent her pursuing her freedom despite her ‘liberation certificate’. Her former master objected on the basis that under custom she was in fact married to him. The judge found in her favour and decided that she was free to leave her master, not because slavery was prohibited, but on the basis that the legal requirements for a valid marriage—notably consent, payment of a dowry and a religious ceremony—had not been met. A higher tribunal, the \textit{Tribunal de Grand Instance}, reversed this decision and ruled that under Niger’s customary law a slave girl is \textit{de facto} married to her master once she is released.\textsuperscript{22} The Court found in favour of the former master that customary law permits ‘marrying women in conditions of slavery’, provided certain conditions are met, and held that Hadijatou was obliged to return to live with him as his wife.\textsuperscript{23} When Hadijatou challenged this before the Supreme Court, the highest court of Niger acknowledged that she was a slave, but failed to condemn this as unlawful or treat it as determinative of the question whether she was obliged to live with her former master. Instead it went on to annul the \textit{Tribunal de Grand Instance’s} decision on the basis that it had been unduly influenced by ‘advisors’ in its determination, and it sent the matter back for reconsideration by a differently constituted tribunal.\textsuperscript{24}

In parallel, while Hadijatou was unable to convince the Nigerian courts to confirm her right to be free, her former master successfully pursued a legal

\textsuperscript{20} The penalty is 10–30 years imprisonment and a fine of 1–5 million CFA, or the death penalty if it amounts to a crime against humanity: Article 270.2, Penal Code.
\textsuperscript{21} For a short description of other slavery cases, see Anti-Slavery International, ‘Other Individual Cases of Slavery’, available at: http://www.antislaveryinternational.org/ner [last accessed 1 December 2008].
\textsuperscript{22} Decision No. 30 of 16 June 2006. See \textit{Mme Hadijatou Mani Koraou v The Republic of Niger}, supra n. 1 at para. 17.
\textsuperscript{23} Judgment No. 015 of 6 April 2007, \textit{Tribunal Civil et Coutumier de Konni} [on file with author].
\textsuperscript{24} \textit{Arret No. 06-306}, 28 December 2006, \textit{Cour Supreme Chambre Juridique} [on file with author].
action against her for having proceeded, 18 months after having been granted her ‘liberation certificate’, to marry another man.\textsuperscript{25} She was detained, prosecuted, convicted and sentenced to six months’ imprisonment for bigamy. She spent two months in prison before the sentence was suspended, pending the outcome of the legal proceedings referred to above.\textsuperscript{26} Only after the hearing in the case before the ECOWAS Court, while the judgment was still pending, did the authorities decide not to pursue the criminal case against Hadijatou for bigamy. In a separate action, which he later dropped, her former master also laid claim to her newborn child who was born of the man she later married.\textsuperscript{27}

By 2007, Hadijatou’s case was back where it had started, with experience indicating little basis for confidence in the prospects of success in courts in Niger. No one had been investigated, still less prosecuted, for her enslavement. Instead was a criminal case was pending against her, for daring to be free. She sought support to pursue her legal case outside Niger.\textsuperscript{28}

### 3. The Case before the ECOWAS Court

On 14 December 2007, Hadijatou Mani Koraou filed a submission before the ECOWAS Community Court of Justice.\textsuperscript{29} She did so on the basis of Article 9(4) of Supplementary Protocol A/SP.1/01/05 of 19 January 2005 amending Protocol A/P.1/7/91 of 6 July 1991, which provides that the ECOWAS Court has the jurisdiction ‘to determine cases of violations of human rights that occur in any member state’. She argued that the state was responsible for serious violations of her human rights including slavery, discrimination on grounds of gender and social origin, arbitrary detention and family rights. The respondent state argued that the case was inadmissible as it was pending before Nigerian courts, and that as the applicant and Souleymane Naroua were in fact married, this was not a matter for the state or the ECOWAS Court.

The Court joined the issues of admissibility and merits. A preliminary hearing was held at the seat of the ECOWAS Court in Abuja, Nigeria.

\textsuperscript{25} Supra n. 1 at para. 22: ‘In judgment No. 107 of 2 May 2007, the criminal chamber of the Court of first instance of Konni sentences Mrs Hadijatou Mani Koraou, her brother Koraou Mani and Ladan Rabo to six (6) months of imprisonment and a fine of 50,000 CFA francs each, in accordance with Article 290 of Niger criminal code which criminalises bigamy.’ (all translations from French are unofficial)

\textsuperscript{26} Arret No. 86, 9 July 2007, Chambre Correctionnelle, Cour D’Appel de Niamey [on file with author].

\textsuperscript{27} As a matter of customary law, children of slaves, like slaves, belong to the master irrespective of parentage. In these proceedings the former master argued that under customary law, as she was \textit{de facto} married to him, he was entitled to her children, even those fathered by another man.

\textsuperscript{28} With the assistance of Timidria and Anti-Slavery International, INTERIGHTS was approached to provide advice and assistance in pursuing this case. After discussion and consultation, the decision was taken to proceed to the ECOWAS Court.

\textsuperscript{29} Hadijatou Mani v Republic of Niger. Requête [on file with author].
in January 2008, at which the applicant requested that, as provided for in the Rules of the Court, the Court exercise its discretion to hear the case not at the seat of the Court but in Niger. The Court agreed, citing the nature of the case, the applicant’s circumstances and the need to secure the attendance of witnesses in support of its decision to sit in Niamey, the capital of Niger. A merits hearing was held in Niamey from 7 to 11 April, at which the Court heard the applicant, witnesses and counsel for the applicant and the respondent state. The hearing generated much interest within Nigerian society and was well attended by a diverse public and the press. The critical faculty of the Court to sit in the state where the violations arose proved important to the impact of the process on the applicant and on the debate on slavery in Niger more broadly. Judgment was rendered on 28 October 2008.

A. The Judgment

Key issues arising in the case and their treatment in that judgment are addressed below.

(i) Admissibility

The respondent state presented preliminary objections to admissibility, principally arguing the non-exhaustion of domestic remedies on the basis that the matter was pending before courts in Niger. It argued, by reference to practice of other human rights bodies and the principle of subsidiarity, that a rule requiring exhaustion of domestic remedies should be developed through the Court’s practice. The applicant argued that the requirement of exhaustion of domestic remedies did not apply before the ECOWAS Court. It also noted that, even if such a requirement were to apply, it would not be a bar to admissibility in the circumstances of this case where all reasonable efforts had been

30 Decision of the ECOWAS Court, Case ECW/CCJ/APP/08/08, 24 January 2008 [on file with author].
31 Witnesses for the applicant were a witness to Hadijatou’s original sale who had transferred her from her ‘seller’ to her new master, and a member of the Anti-Slavery NGO Timidria who was a witness to the conditions in which she lived with her master, to obtaining her liberation certificate and to government attempts to ‘clear the mess up’ by having Hadijatou lawfully marry her former master (despite the latter’s refusal on the basis that, he argued, they were already married). The State’s witnesses were a village chief and canton chief who testified against the prevalence of slavery in Niger and a sociologist who testified to the practice of slavery beyond Niger.
32 The courtroom was full each day. In attendance were the President of the Parliament, Supreme Court judges, the Foreign Minister, the National Guard and Members of Nigerian Civil Society.
33 See Section 5, infra.
34 See Article 10(d)(ii), Supplementary Protocol, A/SP.1/01/05.
made to secure justice in Niger, and the system had demonstrated its inability or unwillingness to provide an effective remedy.\textsuperscript{35}

The Court found that ‘the rule of exhaustion of domestic remedies is not applicable before the Court’.\textsuperscript{36} It cited Article 10(d)(ii) of Supplementary Protocol A/SP.1/01/05 on the ECOWAS Court which provides:

\begin{quote}
Access to the Court is open to the following:
\begin{itemize}
\item a) individuals on application for relief for violation of their human rights;
\item the submission of application for which shall:
\begin{itemize}
\item i) not be anonymous; nor
\item ii) be made whilst the same matter has been instituted before another International Court for adjudication.
\end{itemize}
\end{itemize}
\end{quote}

The Court rejected the argument that it could develop such a rule through practice, determining that a decision had been taken by the ECOWAS legislature when it drafted the Supplementary Protocol and that the Court could not impose new requirements on the applicant that were not provided for in the treaty.

The Court also roundly rejected the respondent state’s supplementary argument that Hadijatou Mani Koraou was not competent to bring the case as, by the time she had submitted it, she was no longer a slave.\textsuperscript{37} The state had argued that by failing to submit her application while still a slave, she had rendered it ineffective. The Court stated that ‘[i]t should be underlined that since human rights are inherent to the human being, they are “inalienable, inprescriptible and sacred” and do not suffer any limitation’.\textsuperscript{38}

(ii) Slavery

(a) The nature of slavery

The judgment reaffirms the nature of the long-established prohibition of slavery in international law. The Court noted that the prohibition is absolute, describing slavery as a serious violation of human dignity, and freedom from slavery as non-derogable right under international human rights instruments, as reflected in national law.\textsuperscript{39}

The Court noted the comments of the International Court of Justice in the BarcelonaTraction case which endorsed the \textit{erga omnes} nature of the obligations

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35 The delays and the approach of the authorities—their inability or unwillingness to appreciate the nature of the violations or to address them—were inconsistent with there being an effective remedy available in Niger. See Applicant’s \textit{Memoire en Rponse} [on file with author].
36 Supra n. 1 at para. 49.
37 State of Niger. Supplementary Brief in Response, 9 April 2008, submitted during the hearing of the case, see ibid. at para. 54.
38 Ibid. at para. 56.
39 Ibid. at para. 75.
\end{flushright}
relating to slavery— that is, they are owed to the community of nations as a whole. While well established as a matter of international law, the Court’s recognition of the \textit{erga omnes} nature of the obligations in respect of slavery is significant. It is a reminder of the implications of the existence of slavery exposed in this judgment for other states, who under the general international law of state responsibility share an interest, and in certain circumstances an obligation, to cooperate to bring an end to such egregious violations.

(b) The definition of slavery

The Court was unequivocal in its condemnation of the circumstances of Hadijatou Mani’s life as constituting slavery. In doing so, the Court endorsed arguments put forward by counsel on the nature and definitions of slavery in contemporary international law and practice. As a starting point it took the classic definition of slavery in Article 1 (I) of the Slavery Convention of 1926 (1926 Convention): ‘Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.’ Significantly, it also considered the practice of international criminal tribunals. In particular it cited in detail the International Criminal Tribunal for the former Yugoslavia’s (ICTY) decision in \textit{Prosecutor v Kunarac and Others} where the Appeals Chamber built on the 1926 Convention’s approach but elaborated on the notion of ‘powers attached to ownership’, considering as a key question the actual degree of power or control exercised over an individual. The ECOWAS Court cited the ICTY’s determination that

the question whether a particular phenomenon is a form of enslavement will depend on the operation of the factors or indicia of enslavement . . . .

These . . . include the ‘control of someone’s movement, control of physical environment, psychological control, measures taken to prevent or deter escape, force, threat of force or coercion, duration, assertion of exclusivity, subjection to cruel treatment and abuse, control of sexuality and forced labour.’

\begin{itemize}
\item \textit{Barcelona Traction}, Judgment ICJ Reports 1970, at paras 33 and 34.
\item Supra n. 1 at para. 81.
\item 60 LNTS 253, see supra n. 1 at para. 74.
\item Supra n. 3 at para. 119.
\item Ibid.
\end{itemize}
The ECOWAS Court’s judgment makes an important contribution to a strikingly small body of jurisprudence on slavery in international law. The focus on the exercise of powers normally associated with ownership, certain factors of control over the human being as the key indicators of those powers, builds in a positive way on this limited jurisprudence. Importantly, the Court endorsed the approach that slavery may exist not only where there are powers of ownership in any legal sense, or where such powers are indicated through classic means such as sale or purchase, but also where a certain level of control exists by one individual over another, sufficient to indicate the latter’s enslavement.46

While the relatively few cases that have been litigated take different approaches to the ‘test’ for slavery, a central issue tends to be whether the circumstances of the particular case meet the necessarily high threshold associated with slavery, as opposed to ‘slavery like practices’47 or other violations or forms of exploitation. Examples include the only decision of the European Court of Human Rights (ECtHR) on slavery, *Siliadin v France*,48 and the recent decision of the High Court of Australia in *The Queen v Tang*.49 Both these cases concerned individuals who had incurred ‘debts’ by being brought into a foreign state illegally and were then forced to work either as domestic servants or as prostitutes to pay off those debts. The ECtHR took a narrow, restricted approach, finding that the situation amounted to ‘forced labour’ and domestic servitude but not slavery,50 whereas the Australian Court took an approach more akin to that of the ICTY and found that in all the circumstances, the prostitutes lived under sufficient factors of control to satisfy the definition of slavery.

Unlike these cases, the facts of Hadijatou Mani’s case did not challenge the boundaries of the definitions of slavery. As a case involving the classic exercise of powers of ownership—the sale and purchase and transfer of an individual—as well as the complete subjugation of an individual to the power and control of her owner, it was submitted on her behalf that a clearer case of slavery would be difficult to envisage.51 The Court found that the circumstances of her sale and transfer and the conditions in which she subsequently

46 This approach would presumably not have been critical to the outcome in Hadijatou’s case, where she was bought, sold, transferred and freed, as noted below, but it will be critical in other cases. For academic discussion of the definition of slavery, see Allain, ‘The Definition of “Slavery” in General International Law and the Crime of Enslavement within the Rome Statute’, 26 April 2007, available at: https://www.icc-cpi.int/otp/otp.guest.lectures.html [last accessed 1 December 2008].
47 The 1956 Supplementary Convention refers to such practices including debt bondage.
48 43 EHRR 16.
51 Counsel took the Court through the list of ‘ICTY indiciae’ in light of the applicant’s case: she had no freedom of movement; her master completely controlled how she lived; she was psychologically and physically abused by him; he demeaned her with his sexual and other abuse and insults, reminding her she was no more than a slave; her attempts to escape were
lived, as set out in her testimony to the Court, met all of the indicators of slavery in the 1926 Convention and the ICTY decision. By reference to the facts relating to her sale and transfer to her master, psychological and physical abuse, sexual exploitation, harsh labour, physical violence, insults, threats, humiliation and permanent control over her movements, and the issuance of a ‘liberation certificate’, the Court found the ‘material acts’ underpinning slavery to be well established. It found ‘the moral element’ of enslavement to lie in her former master’s intention to exercise the powers attached to the right of ownership over the applicant, even after the liberation certificate. Consequently, the Court concluded that ‘there is no doubt that the applicant, Hadijatou Mani Koraou, was held in slavery for nearly nine (09) years in violation of the legal prohibition of this practice’.

The state had not sought to refute the allegations concerning her purchase or conditions of life in her master’s house, but instead it opened its Written Response (Mémoire en Défense) by stating that ‘M Souleymane Naroua had married Hadijatou Mani’. The state sought to use the institution of marriage to provide a cloak of legitimacy around the practice of slavery and to put it beyond the responsibility of the state. The Court did not engage in any discussion of the issue of the marriage, but rejected these arguments implicitly and focused instead on the case as, in fact, a clear case of slavery.

(c) State responsibility for slavery

The applicant argued that the state’s responsibility for the violation of her rights was based both on what the state had done through the involvement of its agents—the judiciary, police and others exercising governmental authority—and what it had failed to do to address slavery in Niger. When Hadijatou’s case came before the police or judiciary, they had detained and prosecuted her for bigamy rather than providing her with the protection required. In addition, reference was made to established international law on the state’s

met with punishment; she was forcefully beaten; and she was raped throughout her time as a slave, including when she was a child. This treatment continued over a period of 10 years and attempts at control continued after her ‘liberation’ and departure.

52 Supra n. 1 at para. 76.
53 Ibid. at para. 80.
54 The respondent state argued before the Court ‘that the applicant was . . . El Hadj Souleymane Naroua’s wife, with whom she lived with more or less happiness as any couple until 2005, and that children were born from this union’, at para. 78. The applicant pointed out that there was no evidence of marriage, to establish consent, or to refute that she was in any event a child at time of the transaction, incapable—as international and African standards make clear—of providing such consent or of entering into a valid marriage. See, for example, Article 2, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery 1956, 266 UNTS, regarding the appropriate minimum ages for marriage and procedures that allow spouses to freely express consent; and Article 21(2), African Charter on the Rights and Welfare of the Child 1999, CAB/LEG/24.9/49 (1990), ratified by Niger on 11 December 1999.
responsibility for acts carried out by private individuals, on the basis that although the state did not cause them, it had failed to exercise due diligence to prevent, investigate, prosecute, punish or provide reparation. In the context of the current case, it was argued that the sort of measures that the state should have taken to give effect to these obligations would include: sensitising public officials, including the police and judiciary, to its domestic legislation with respect to slavery and applicable international human rights norms; educating the general public about the rights of women and the prohibition on slavery; investigating and prosecuting those involved in the network of slavery and imposing appropriately severe penalties; and taking necessary and effective measures to abolish customs, and cultural and traditional practices which fall foul of basic human rights.

The Court found the state legally responsible for its failure to protect the victim from slavery. It reiterated that Niger had failed through its judicial and administrative authorities to discharge its protective human rights function. The Court decided to focus in its judgment on the failure of the judiciary in this case to condemn the practice of slavery when Hadijatou's case came to its attention. It criticised the fact that the national judge, instead of denouncing the applicant's status as a slave of its own motion, found that there were circumstances where it was lawful under customary law.

It is worth noting the emphasis on the positive role of the judge, acting on his or her own initiative, in the public interest, to condemn and to initiate a process of punishing those responsible wherever facts indicating slavery came to their attention. The Court described the judicial failure to react as amounting to acceptance or at least tolerance of the practice of slavery. In this context (unlike its position in respect of discrimination, addressed below), the Court explicitly noted that although the slavery was attributable to a particular individual acting in the context of 'custom' and for 'individual' purposes, the victim had the right to be protected by the Nigerian authorities, be they administrative or judicial. The Court underlined the national judge's obligations to ensure that the offence of slavery is subject to criminal

55 Requête.
56 The Court noted that the judge found that 'the marriage of a free man with a slave woman is lawful, as long as he cannot afford to marry a free woman and if he fears to fall into fornication...'. supra n. 1 at para. 83.
57 The state argued during the proceedings that this case had been brought not as a slavery case but as 'divorce' proceedings, as the domestic court documents suggest. The applicant contended otherwise, and the Court accepted in its summary that her case had challenged her enslavement. In any event, the Court's emphasis here on the proprio motu authority of the authorities suggests that, either way, the obligation is on the judge to react to the facts that come to his attention.
58 Supra n. 1 at para. 82, refers to the fact that in a case such as that of Hadijatou Mani Korau, the national judge should have dealt with this slavery case of its own motion and initiated a criminal procedure.
59 Ibid. at para. 84.
60 Ibid. at para. 85.
prosecution and punishment\textsuperscript{61} and to take ‘adequate measures to ensure that acts of slavery are repressed’.\textsuperscript{62} It concluded that in failing to deal with the issue of slavery of its own motion and to take measures to ensure punishment, the national courts had not fulfilled their mission to protect Hadijatou Mani’s human rights and the respondent state’s international legal responsibility was therefore engaged.\textsuperscript{63}

The Court also noted, in broad terms, that a state becomes responsible under international as well as national law for any form of human rights violation founded on slavery that results from its tolerance, passivity, inaction and abstention in relation to the practice. The judgment did not, however, address in detail the applicant’s arguments on the nature of the state’s positive obligations in the context of the prevention of slavery. This may be explained by the Court’s explicit determination not to address legislation or practices \textit{in abstracto} and to confine itself to the case before it.\textsuperscript{64} While the Court is not, as it noted, a review mechanism\textsuperscript{65} and must limit itself to violations arising in a particular application, its comments in this respect may obscure the relevance of certain issues to a proper understanding of the violations arising in the particular case. The absence of an adequate legal framework, or the failure to take all necessary and appropriate measures to ensure that it is understood and applied in practice, are essential elements of states’ obligations to exercise due diligence to prevent violations of the rights of individuals such as, in this case, Hadijatou Mani. It may, however, be the case that the Court, having found the state responsible for its failure towards Hadijatou through its judicial actions, considered it unnecessary to determine the additional arguments regarding the duty to prevent, investigate, prosecute and provide reparation. Guidance on this point, which is critical to understanding the nature of the state’s obligations as well as what the state must now do to meet those obligations, would have been beneficial.

(iii) Other human rights violations

(a) Equality and non-discrimination

The applicant argued in this case that there is no violation of human rights more devastating in practice for the victim than slavery because slavery

\textsuperscript{61} Ibid. at para. 84.
\textsuperscript{62} Ibid. at para. 86.
\textsuperscript{63} Ibid.
\textsuperscript{64} Ibid. at para. 60.
\textsuperscript{65} The Court noted that such general review is done by other mechanisms when monitoring country situations and referred to Article 62, African Charter of Human and Peoples’ Rights, 1981, 1520 UNTS 217, according to which: ‘Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter’, as well as the relevant reports on Niger by the United Nations Human Rights Committee and the Committee for the Rights of the Child: see paras 60 and 61.
negates the very legal personality of the victim, and leads to violations of almost every other human right. While giving due consideration to the issue of slavery, it is this author’s view that the Court failed to seriously engage with the arguments made in relation to those other violations of human rights. Perhaps the Court was of the view that it had addressed the factual substance of the applicant’s case through its slavery claim. It is nonetheless regrettable that it failed to give other issues, most notably discrimination, the attention they deserve, resulting in a decision that is in certain respects inconsistent with international law and practice.

Slavery, in particular sexual slavery, is inherently linked to the question of equality. Discrimination underpins slavery, and is in turn the clearest manifestation of inequality. The applicant in this case argued that she had been subject to discrimination on grounds of gender and social origin, in violation of several treaties ratified by Niger, and that the case highlighted the gravest consequences that arise where discrimination on the grounds of sex and social origin intersect. The slavery practice at issue in this case affects only women and girls, and its impact in terms of detrimental treatment is plain, as graphically illustrated by Hadijatou Mani’s case. The state’s obligations to take appropriate measures to modify social behaviour and discriminatory customs and practices, and to take all necessary measures to prevent, investigate, punish and provide reparation for discrimination, were set out in the applicant’s case.

The Court’s judgment acknowledges that the practice of Wahiya or Sadaka involves young girls being kept under the control—and for the ‘service’—of their male masters, including sexual relations by day and night and domestic violence. The judgment also explicitly recognises that this form of slavery discriminates against the applicant on the ground of social origin. However, the Court went on to find that this discrimination was attributable to the individuals directly responsible, in this case her former master, but not to the state.

This approach to state responsibility for discrimination fails to reflect the fact that in international law the state is responsible where it fails to take the necessary measures to protect women from the sort of violence and

66 These include equality, physical integrity and autonomy, freedom of movement, family rights and liberty.
67 See supra n. 1 at para. 48, Applicant’s brief ‘Requête, which cites, for example, Article 5, CEDAW; and para. 9, CEDAW Committee General Recommendation No. 19, 1 IHRR 25 (1994): ‘The Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation’.
68 Ibid. at paras 10 and 76.
69 Ibid. at paras 62–71. The judgment does not explicitly recognise discrimination on the ground of gender, as opposed to discrimination on the ground of social origin.
discrimination inherent in this case.\textsuperscript{70} The nexus between state responsibility for discrimination and sexual slavery, specifically is explicit in the Solemn Declaration on Gender Equality in Africa 2004 in which states reaffirm their efforts to pursue and accelerate their efforts to promote equality at all levels, including by effectively prohibiting ‘the exploitation of young girls as sexual slaves’.\textsuperscript{71}

The Court’s approach on this point also appears inconsistent with its own view of state responsibility in respect of slavery. In that context, it acknowledged that the judiciary’s particular obligations to protect against slavery would give rise to state responsibility if breached. The question arises as to whether (or, indeed, why) the same obligation to intervene to protect the applicant from violence and discrimination against women should not apply. It is unclear to what extent it can be inferred that the Court considers that these duties arise in respect of slavery but not in respect of other serious violations, or that such duties do arise but might have been satisfied by the very limited (and in the author’s view dubious) steps that the state took to resolve the matter through ‘reconciliation’ between the applicant and her former master.\textsuperscript{72} The rationale provided by the Court is thin. Either interpretation is difficult to reconcile with the Court’s broad acknowledgment of state responsibility for ‘all human rights violations’ that stem from the state’s tolerance, passivity or inactivity in respect of slavery\textsuperscript{73} and conflicts quite starkly with international law and the consistent practice of other human rights courts and books.\textsuperscript{74} It may be more likely that, having found for the applicant on the same facts in relation to the issue of slavery, the Court simply failed to give this issue the careful attention that it merited. This is an unfortunate but significant weakness in the context of a judgment that is otherwise an important step for the protection of women and girls from sexual slavery and the inequality with which it is intrinsically interlinked.\textsuperscript{75}

\textsuperscript{70} As noted above, this is well established as a matter of general human rights law, which enshrines the positive duty to protect individuals from serious human rights violation and has been elaborated on in some detail by the CEDAW Committee. See, for example, CEDAW Committee General Recommendation No. 19, supra n. 67 at para. 9. See also the Protocol to the African Charter of Human and Peoples’ Rights on the Rights of Women in Africa, CAB/EG/666 (2000); 1 Af. Hum. Rts. L.J.40 at the preamble and s. 3, 4, 5 and 23.

\textsuperscript{71} Assembly/AU/Decl.12 (III) at para. 3. and the CEDAW standards referred to above.

\textsuperscript{72} The Court refers to the fact that the authorities did try to arrange a meeting with the former master and official attempts to get the former master to marry Hadijatou in accordance with national law. It notes the conclusion by officials that as the former master was not willing to go along with that proposition, there was no more that could be done: see supra n. 1 at paras 68–71.

\textsuperscript{73} Supra n. 1 at para. 85.

\textsuperscript{74} For a fuller elaboration of these obligations in the context of gender equality, and how they have been developed in international and comparative practice, see the third party intervention made by INTERIGHTS in Opuz v Turkey, Application No. 33401/02, a domestic violence case before the ECtHR, available at: www.interights.org [last accessed 1 December 2008].

\textsuperscript{75} The case clearly exposes many other discrimination issues relating to marriage, divorce and custody rights that were not addressed in these proceedings.
(b) Arbitrary detention

Also without basis as a matter of international law was the Court’s determination that Hadijatou’s two-month detention and sentencing on bigamy charges did not amount to arbitrary or unlawful detention. The Court found that it could not be held unlawful as it was authorised by a court and therefore had a legal basis, ‘whether ill-founded or not’. The Court failed to have regard to established international legal principles indicating that the law itself, and its judicial application, can be arbitrary. International law requires an assessment not just of the existence of a law or a judicial decision authorising detention but of its ‘quality’, including compatibility with basic international and national principles of law. The customary law applied in this case purported to justify slavery and was inherently discriminatory. Its application provided for the further victimisation of the applicant in the form of a six month prison sentence for seeking to be free of her ‘master’ and marry someone of her choice. The Court’s recognition that the handling by the Nigerian judiciary of Hadijatou Mani’s case had amounted to violations of international and national law is difficult to reconcile with its blind reliance on a judicial decision authorising her detention for bigamy as per se rendering detention ‘lawful’. It was the applicant’s view that despite being judicially sanctioned, her detention was arbitrary and unlawful, with the judicial decision constituting a further element in the violation of her rights, rather than a valid legal basis for detention. As with the issue of discrimination, the Court failed to grapple with the issue or to correctly address the human rights principles at stake.

(c) Family rights

The judgment also fails to address arguments made by the applicants on the right to marry. The treatment of the applicant and, in particular, the decisions of the judicial authorities to treat her as ‘married’ to her slave master, despite the fact that she was a child at the time of the supposed union.

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76 Supra n. 1 at paras 90–1. The Court found that it was based on a judicial decision and that ‘[t]his decision, whether ill-founded or not (and it was not for the court to assess), constitutes a legal basis...’

77 See, for example, Winterwerp v Netherlands A 33 (1979); 28 EHRR 387 at para. 39. This arbitrariness test may involve an analysis of the proportionality of the measure to the aim served. On the ‘quality’ of the law, see Steel and Others v UK 1998-VIII; 28 EHRR 603 at para. 54.

78 Requete [on file with author].

79 Article 16(2), CEDAW specifically provides that ‘betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage’, whilst Article 2, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962. (Convention on Marriage) GA Res. 1763 A (XVII) (which Niger ratified in December 1964) provides that ‘States Parties to the present Convention shall ... specify a minimum age for marriage’ which should be
and had not on any view consented, is a violation of numerous binding human rights provisions on the right to family life.

(iv) Reparation for Hadijatou

The Court determined that the state should pay compensation to Hadijatou for harm suffered to the sum of 10,000,000 CFA (approximately £12,000 or US $20,000). While a lesser amount than one might consider appropriate given the nature and extent of her suffering and loss, this order has both a symbolic and an essential material value that should, if complied with, provide her with the opportunity to re-establish her life. The Court also ordered that the state pay Hadijatou Mani’s costs. Although the applicant argued for a fuller approach to reparation, the Court did not specify other possible forms of reparation beyond financial compensation. Consideration of measures

‘not less than 15 years’ according to the non-binding recommendation accompanying this Convention. Article 16(2) of the Convention provides that ‘The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage’. Article 21, African Charter on the Rights and Welfare of the Child 1990, OAU CAB/LEG/24.9.49, provides that: ‘Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years’.

See, for example, Article 18(1), African Charter on Human and Peoples’ Rights on the right to marry and to found a family. The right involves the right to choose when and with whom to marry and/or form a family. Certain international legal sources explicitly emphasise consent as a pre-requisite: Article 16, Universal Declaration of Human Rights 1948, GA Res. 217 A (III), A/810 91 at 71; Article 1, Convention on Consent to Marriage, and Article 10, International Covenant on Economic, Social and Cultural Rights 1966, 993 UNTS 3, which provides that ‘Marriage shall be entered into only with the free and full consent of the intending parties’. See also Article 16(1), Convention on the Elimination of All Forms of Discrimination against Women 1979, 1249 UNTS 13, which prescribes equally for men and women: (i) the same right to enter into marriage; (ii) the same right freely to choose a spouse; and (iii) to enter into marriage only with their free and full consent.

Factors relevant to assessing special or specific damages include: loss of earnings support (Manneh v Gambia, supra n. 5 at para. 29), loss of earning potential (Amparo v Venezuela, IACHR Series C 28, at para. 28, loss of support (Manneh v Gambia, supra n. 5 at para. 29) and inability to own property and possessions (Panel Blanca case v Guatemala, Reparations and Costs, IACHR Series C ’76, at para. 119). As regards general or non-pecuniary damages, factors include: extent of pain, suffering and harm to dignity or reputation (Selmouni v France, 1999-V; 29 EHRR 403 at para. 123), impact on the victim’s ‘life potential’ (Loayza Tamayo Case, Reparations and Costs, IACHR Series C 42, at para. 147), and on the ‘conditions of existence’ affecting her ‘social and personal relations and life’ (Plan de Sanchez, Reparations and Costs, IACHR Series C 116, at para. 80).

The applicant argued for, , just reparation: modification of legislation and practices, including the discriminatory application of customary laws, that discriminate against women and either justify or underpin slavery; capacity building and awareness raising among communities; acknowledgement of the problem of slavery; and full investigation as a basis for a programme of eradication; and state recognition of the wrongs suffered.

The right to reparation for victims of serious human rights violations encompasses restitution, compensation, rehabilitation and satisfaction and guarantees of non-repetition and can take many forms. See the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 21 March 2006, A/RES/60/147.
such as capacity building and reform of the legal system will, nonetheless, be required of the state if it is to meet its international obligations, the violation of which has been highlighted by this case.

4. The Role of the ECOWAS Court

This judgment, and the few others of the ECOWAS Court that preceded it, has served to entrench the jurisdiction of the Court over a broad range of human rights (potentially embracing economic and social as well as civil political rights). It is handed down at almost the same time as the Southern African Development Community (SADC) Tribunal asserts its jurisdictional influence in the human rights arena in relation to unlawful evictions in Zimbabwe. While the exercise of the jurisdiction of sub-regional courts remains in its infancy, the Hadijatou Mani judgment may herald the potential importance of this in the determination of human rights issues. In this respect, certain characteristics of the Court’s process, as illustrated by this case, may be worthy of note.

First the relative speed with which the Court addressed this urgent human rights issue was impressive. The ability to render timely justice is an issue of critical importance, particularly where ongoing grave human rights violations are at issue. The submissions in this case were filed in December 2007. This was followed by a preliminary hearing one month later and a merits hearing three months after that. Judgment was rendered comfortably within one year of filing the original application, in stark contrast to the habitually prolonged proceedings before certain other human rights mechanisms.

A further consideration of importance is the Court’s ability, and ultimately its willingness in this case, to sit outside its own seat, in the state where the violations occurred. This allowed critical access to the Court proceedings by an indigent victim, witnesses and civil society more broadly, with an important impact on the victim and the debate on slavery in Niger.

As noted above, the Court’s Protocol provides jurisdiction ‘to determine cases of violations of human rights that occur in any member state’ without qualification: Article 9(4) of Supplementary Protocol, 19 January 2005, A/SP/01/05. In Ugokwe v Nigeria, 7 October 2005, ECW/CCJ/APP/02/05, at para. 29, the Court noted ‘the inclusion and recognition of the African Charter in Article 4 of the Treaty of the Community behoves on the Court by Article 19 of the Protocol to bring in the application of those rights catalogued in the African Charter’. The Charter covers a broad range of civil and political and economic and social rights.

In (2/2007) Mike Campbell (Pvt) Ltd & Ors v Republic of Zimbabwe [2008] SADC 2 at 25, the SADC tribunal, after referring to Articles 4 (c) and 21(b) of the SADC Treaty, held: ‘It is clear to us that the Tribunal has jurisdiction in respect of any dispute concerning human rights, democracy and the rule of law’. It found at 58 Zimbabwe responsible for unlawful expropriation of land without access to courts and racial discrimination: available at: http://www.saflii.org/sa/cases/SADC/2008/2.html [last accessed 1 December 2008].

On the night following the first day of the hearing, 7 April 2008, slavery was discussed for the first time on national radio in Niger. When questioned during his testimony to the Court the
Critically, this Court issues binding judgments, which Niger must now implement. The state will be accountable to the ECOWAS organs and ultimately the regional community of states for ensuring that the judgment is respected.

On each of these points, the favourable comparison with other available fora is noteworthy. While less experienced in human rights law than certain other bodies, which as noted above this may be reflected in the approach to certain basic human rights principles, the Court also showed itself to be receptive to international and comparative law arguments. The Court’s experience in the human rights field will undoubtedly develop and mature over time. In this author’s view, while its potential remains uncertain, this case highlights the promise of the ECOWAS Court as a mechanism to render speedy, effective and binding justice for violations of human rights in the region.

5. Conclusions

The importance of the *Hadijatou Mani v Niger* judgment lies on many different levels. Its contribution to the body of jurisprudence on slavery in international law and to an assessment of the potential importance, as well as limitations, of the ECOWAS Court, have been referred to above.

Its primary significance, however, lies in the recognition and vindication it provides for the victim. As a slave, Hadijatou Mani was devoid of legal personality. During her testimony before the Court in April 2008, she told how she was treated ‘like a goat’. This judgment reasserts her rights as a human being. In the face of denial by the state, the Court’s clear acknowledgement of the ‘on-going’ nature of Sadaka slavery, and the extent of her own tremendous suffering and enslavement, is itself of real value. The award of compensation and recognition of her entitlement to assistance in reinserting herself in the society from which she has been alienated since birth, provides hope for a different future for her and her children.

The extent of its impact on slavery in Niger remains uncertain. The litigation process itself, even prior to judgment, had already made a significant contribution to exposing the existence of slavery and undoing the conspiracy of next day, a sociologist, brought as a witness by the state, referred to the day the ECOWAS hearing started as one of the two most important days in the history of the country, the other being independence.

87 Article 62, Rules of the ECOWAS Court.
88 Cases can take several years before the African Commission on Human and People’s Rights (as before the European Court of Human Rights in the European context). Hearings before the Commission are generally private, so neither the press nor public have access, and in any event neither hearings nor the issuance of decisions are scheduled in advance. Ultimately, they lead to recommendations of the Commission rather than binding judgments. When the new African Court is operative, it is hoped that the comparison will be different.
silence that has surrounded it to date. While clearly no panacea, it remains to be seen whether it may act as a catalyst to the development of the sort of multifaceted eradication strategy that is urgently required. It is for Niger to conduct a thorough investigation and assess the changes needed to give effect to its international obligations and internal laws. However, the facts of this case suggest that this will include awareness-raising at the community level, capacity building among judicial and administrative organs of the state, tackling the difficult issue of the role and practice of customary law and courts and their consistency with international and internal law, as well as a serious programme of victim protection and of investigation and prosecution of those responsible. Implementation of the judgment is, therefore, a short-term as well as long-term challenge. It remains to be seen whether the state, and the broader international community, will show the necessary commitment to realise the judgment’s potential to protect the thousands of other Hadijatou Manis.