



UNIVERSITEIT VAN PRETORIA  
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YUNIBESITHI YA PRETORIA

**LEGITIMACY AND FEASIBILITY OF HUMAN RIGHTS  
REALISATION THROUGH REGIONAL ECONOMIC  
COMMUNITIES IN AFRICA: THE CASE OF THE  
ECONOMIC COMMUNITY OF WEST AFRICAN  
STATES**

By Solomon Tamarabrahemi Ebobrah

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Prepared at the Centre for Human Rights, Faculty of Law, University of  
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## DECLARATION

I, Solomon Tamarabrakemi Ebobrah hereby declare that this thesis is my original work and it has not been previously submitted for the award of a degree at any other university of institution.

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Place: \_\_\_\_\_



## DEDICATION

This work is dedicated to the memories of my fathers: Late Dennis B. Ebobrah (my biological father) who unfortunately, was not alive to see me grow up and Late Clement E. Okpokiti, who saw me through the early and formative stages of my life but unfortunately, was not alive to see how I turned out.

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## Summary of thesis

Since 1981, when the African Charter on Human and Peoples' Rights was adopted on the platform of the Organisation of African Unity, one of the main challenges for players in the field of human rights in Africa has been to find effective fora in which the rights of the most vulnerable can be vindicated. The African Charter on Human and Peoples' Rights, together with other African human rights instruments, the global human rights instruments to which African states are parties and national bills of rights entrenched in the national constitutions of most African states make up the body of human rights norms that exist for the benefit of victims of human rights violation in the continent. This body of normative standards are expected to be given effect at the national level. However, given that the expectation has not always been met, international supervisory bodies have played an increasingly important role in the African human rights landscape.

At the continental level, the African Commission on Human and Peoples' Rights which was established under the African Charter was the original forum for the vindication of human rights for a number of years. Over the years, other continental human rights supervisory bodies have been established under the defunct OAU and the AU. National human rights institutions and these continental bodies have gained recognition as the structures of the African human rights architecture. However, since the early part of the new millennium, new institutional actors have begun to appear in the African human rights landscape. Originally established as vehicles for subregional economic integration, regional economic communities (RECs) in Africa have expressly or implicitly authorised their organs and institutions to engage actively in the field of human rights. This trend has been most evident in the operations of the Economic Community of West African States (ECOWAS).

The entry of African RECs in the continental landscape has raised several questions. From the perspective of international law, against the background of the principle of attributed competence that guides the existence and operations of international organisations, the question of legality and legitimacy is triggered. From the perspective of protecting the unity and continued existence of the African human

rights system, questions relating to the feasibility and desirability of REC involvement in the African human rights landscape emerge for determination.

Using ECOWAS as the main case study but also touching on the budding human rights activities of the East African Community and the Southern Africa Development Community, this study has sought to demonstrate that REC involvement in the field of human rights is legitimate and feasible. Combining descriptive, prescriptive and comparative analytical approaches, this study argues that African RECs, in particular ECOWAS, can be effective vehicles for human rights realisation in Africa without compromising their original stated objectives or upsetting the work of the structures in the traditional African human rights architecture. Extracting the challenges that can be associated with REC involvement in the field of human rights, this study sets up the criteria for a non-disruptive model for subregional realisation of human rights under the platform of RECs in Africa.

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#### **East African Court of Justice**

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*Prof Nyoungo'o & 10 others v The Attorney General of Kenya & others*, Ref No. 1 of 2006

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### **SADC Tribunal**

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## **List of treaties and instruments**

### **African Union and Organisation of African Unity**

African Charter on Human and Peoples' Rights 1981

African Charter on the Rights and Welfare of the Child 1990

African Union Constitutive Act 2000

African Economic Community Treaty 1991

African Union Convention on Preventing and Combating Corruption 2003

African Charter on Democracy, Elections and Governance 2007

Charter of the OAU 1969

OAU Convention Governing the Specific Aspects of Refugee Problems in Africa 1963

OAU Convention on the Prevention and Combating of Terrorism 2004

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003

Protocol relating to the Establishment of the Peace and Security Council of the African Union 2002

Protocol on the Statute of the African Court of Justice and Human Rights 2009

Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament 2001

### **Council of Europe**

European Convention for the Protection of Human Rights and Fundamental Freedoms 1951

### **East African Community**

EAC Treaty 1991

## **Economic Community of West African States**

Accra Declaration on War-Affected Children in West Africa 1991

Convention Regulating Interstate road Transportation between ECOWAS Member states 1982

Declaration on Political Principles 1990

ECOWAS Treaty 1975

Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security 1999

Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment

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Supplementary Protocol A/SP2/06/06 Amending Article 3 Paragraphs 1, 2 and 4, Article 4 Paragraphs 1, 3 and 7 and Article 7 Paragraph 3 of the Protocol on the Community Court of Justice 2006

Supplementary Protocol A/SP1/06/06 Amending the Revised Treaty 2006

## **European Union**

Community Charter of Fundamental Social Rights for Workers 1989

EU Charter of Fundamental Rights 2000

Treaty of Amsterdam 1997

Treaty of Lisbon 2007

Treaty of the European Union (TEU) at Maastricht in 1992

Treaty of Nice 2001

Treaty of Paris for the establishment of the European Coal and Steel Community 1952

## **Southern Africa Development Community**

Charter of Fundamental Rights in SADC 2003

SADC Protocol on Gender and Development 2008

SADC Protocol on Politics, Defence and Security Cooperation 2001

SADC Treaty 1992

## **United Nations**

Convention on the Elimination of All Forms of Discrimination Against Women 1979

International Covenant on Economic, Social and Cultural Rights 1966

Statute of the International Court of Justice 1945

Universal Declaration of Human Rights 1948

United Nations Charter 1945

Vienna Convention on the Law of Treaties (1969)

## List of abbreviations

AAPC	All African Peoples' Conference
ACP	African-Caribbean-Pacific
AEC	African Economic Community
AHRLJ	African Human Rights Law Journal
APRM	African Peer Review Mechanism
AMU	Arab Maghreb Union
AU	African Union
AUPSC	African Union Peace and Security Council
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CEMAC	Central African Economic and Monetary Community
CEN-SAD	Community of Sahel Sahara States
CEPGL	Great Lakes River Basin
CESCR	International Covenant on Economic, Social and Cultural Rights
CFSP	Common Foreign and Security Policy
CFR	EU Charter of Fundamental Rights
CIAS	Conference of Independent African States
COMESA	Common Market for Eastern and Southern Africa
CoE	Council of Europe
CT	Consolidated Treaty of the European Community
EAC	East African Community
EACJ	East African Court of Justice
EC	European Communities
ECA	United Nations Economic Commission for Africa
ECCAS	Economic Community of Central African States

ECCJ	ECOWAS Community Court of Justice
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
ECSC	European Coal and Steel Community
ECtHR	European Court of Human Rights
EEC	European Economic Community
EGDC	ECOWAS Gender Development Centre
ESCRs	Economic, social and cultural rights
EU	European Union
Euratom	European Atomic Energy Community
FAL	Final Act of Lagos
FRA	EU Fundamental Rights Agency
ICJ	International Court of Justice
IDPs	Internally displaced persons
IGAD	Intergovernmental Authority for Development
IGADD	Intergovernmental Authority on Drought and Development
ILC	International Law Commission
IOC	Indian Ocean Commission
LPA	Lagos Plan of Action
MRU	Manu River Union
NEPAD	New Partnership for Africa's Development
NGOs	Non Governmental Organisations

OAU	Organisation of African Unity
OAU/AU-RECs Protocol	OAU/AU Protocol on Relations Between the African Economic Community and the Regional Economic Community
PAP Protocol	Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament
PCIJ	Permanent Court of International Justice
PJCC	Police and Judicial Cooperation in Criminal Matters
PSC	Peace and Security Council
PSC Protocol	Protocol relating to the Establishment of the Peace and Security Council of the African Union
REC	Regional Economic Community
SACU	Southern African Custom Union
SADC	Southern Africa Development Community
SADC PDS Protocol	SADC Protocol on Politics, Defence and Security Cooperation
SADCC	Southern African Development Coordination Conference
SEC	Subregional Economic Communities
SMC	Standing Mediation Committee
TEU	Treaty of the EU
UDAO	<i>Union Douanière de L'Afrique de l'Ouest</i>
UDEAC	<i>Union Douanière et Économique de l'Afrique Centrale</i>
UDHR	Universal Declaration of Human Rights
UMA	<i>Union du Maghreb Arabe</i>
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commission for Refugees



VCLT	Vienna Convention on the Law of Treaties
WAHO	West African Health Organisation
ZaöRV	<i>Zeitschrift für ausländisches öffentliches Recht und Völkerrecht</i>



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