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

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Thesis submitted in partial fulfilment of the requirements for the degree of Doctor of Laws (LLD) at the University of Pretoria

Prepared at the Centre for Human Rights, Faculty of Law, University of Pretoria, under the supervision of Professor Frans Viljoen

30 September 2009

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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.
ACKNOWLEDGEMENTS

My sincere gratitude goes to the Centre for Human Rights, University of Pretoria, for giving me the opportunity to do this programme. I am particularly indebted to my Supervisor, Professor Frans Viljoen for his patience and meticulous supervision of my work. I am grateful to everyone at the Faculty of Law, University of Pretoria who assisted me in one way or another. My gratitude goes especially to the Dean, Professor Christof Heyns, Mr Norman Taku, the Deputy Director of the Centre for Human Rights, University of Pretoria, and the wonderful people who work at the Centre for Human Rights. I appreciate the invaluable comments that I received on the draft of this work from my colleagues during the LLD meeting. The friendship and encouragement I received from my office mates at the Centre for Human Rights is deeply appreciated. I am also grateful to the Danish Institute for Human Rights for the support I received during my fellowship at that institution. It contributed in no small measure to my completion of this programme. I am also grateful to my friends in successive LLM classes for their comments, encouragements and friendship.

My heartfelt gratitude goes to various other people whose contributions facilitated my study: Prof and Mrs S Odiowei and family, Mr and Mrs B Seibidor and family, Mr and Mrs A Eseimokumoh and family, Pastor and Mrs BT Obunge, Prof ES Nwauche for your invaluable support, the Ojo family, Bishop Willy Bunting, Mr A Beredugo, Prof. Fekumo, Mr Inurio Wills, Prince O Shittu and Mr Isaac George for the various ways in which you all supported me.

My wife Christy, and my boys, Stanley and Derek, for enduring my absence for all these years and supporting me in your prayers. My mother, Chief R Y Akpoyibo for her patience and prayers. My employers, the Niger Delta University, especially the Vice Chancellor, Prof Okporikpo and my colleagues at the Faculty of Law. I am grateful to Uncle Komi, the Okudus, the Fohs, the Abiris and all the Ebobrahs for your support. My very special and ever-dependable friend I D Mbengue Eleke, your friendship, belief, support and understanding was priceless as always.

To all my friends and colleagues in Pretoria and back in Nigeria that I failed to mention due to the constraint of space (I know that you know yourselves), I am truly grateful. May the Lord reward every one of you for your encouragement and support.
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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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 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


**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

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Supplementary Protocol A/SP1/6/89 Amending and Complementing the Provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment. 1986

Supplementary Protocol A/SP1/01/05 Amending the Protocol (A/P.1/7/91) relating to the Community Court of Justice 2005


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

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<tr>
<td>AAPC</td>
<td>All African Peoples’ Conference</td>
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<td>ACP</td>
<td>African-Caribbean–Pacific</td>
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<tr>
<td>AEC</td>
<td>African Economic Community</td>
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<td>AHRLJ</td>
<td>African Human Rights Law Journal</td>
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<td>APRM</td>
<td>African Peer Review Mechanism</td>
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<td>AMU</td>
<td>Arab Maghreb Union</td>
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<td>AU</td>
<td>African Union</td>
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<td>AUPSC</td>
<td>African Union Peace and Security Council</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of all forms of Discrimination Against Women</td>
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<tr>
<td>CEMAC</td>
<td>Central African Economic and Monetary Community</td>
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<td>CEN-SAD</td>
<td>Community of Sahel Sahara States</td>
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<td>CEPGL</td>
<td>Great Lakes River Basin</td>
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<td>CESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>CFR</td>
<td>EU Charter of Fundamental Rights</td>
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<td>CIAS</td>
<td>Conference of Independent African States</td>
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<td>COMESA</td>
<td>Common Market for Eastern and Southern Africa</td>
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<td>CoE</td>
<td>Council of Europe</td>
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<td>CT</td>
<td>Consolidated Treaty of the European Community</td>
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<td>EAC</td>
<td>East African Community</td>
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<td>EACJ</td>
<td>East African Court of Justice</td>
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<td>EC</td>
<td>European Communities</td>
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<tr>
<td>ECA</td>
<td>United Nations Economic Commission for Africa</td>
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<td>ECCAS</td>
<td>Economic Community of Central African States</td>
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<td>Abbreviation</td>
<td>Full Name</td>
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<td>ECCJ</td>
<td>ECOWAS Community Court of Justice</td>
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<td>ECHR</td>
<td>European Convention for the Protection of Human Rights and Fundamental Freedoms</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>ECOMOG</td>
<td>ECOWAS Monitoring Group</td>
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<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>ECSC</td>
<td>European Coal and Steel Community</td>
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<td>ECtHR</td>
<td>European Court of Human Rights</td>
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<td>EEC</td>
<td>European Economic Community</td>
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<td>EGDC</td>
<td>ECOWAS Gender Development Centre</td>
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<td>ESCRs</td>
<td>Economic, social and cultural rights</td>
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<td>EU</td>
<td>European Union</td>
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<td>Euratom</td>
<td>European Atomic Energy Community</td>
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<td>FAL</td>
<td>Final Act of Lagos</td>
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<td>FRA</td>
<td>EU Fundamental Rights Agency</td>
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<td>ICJ</td>
<td>International Court of Justice</td>
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<td>IDPs</td>
<td>Internally displaced persons</td>
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<tr>
<td>IGAD</td>
<td>Intergovernmental Authority for Development</td>
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<td>IGADD</td>
<td>Intergovernmental Authority on Drought and Development</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<td>IOC</td>
<td>Indian Ocean Commission</td>
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<td>LPA</td>
<td>Lagos Plan of Action</td>
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<td>MRU</td>
<td>Manu River Union</td>
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<td>NEPAD</td>
<td>New Partnership for Africa’s Development</td>
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<tr>
<td>NGOs</td>
<td>Non Governmental Organisations</td>
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<tr>
<td>Acronym</td>
<td>Description</td>
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<tr>
<td>OAU</td>
<td>Organisation of African Unity</td>
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<td>OAU/AU-RECs Protocol</td>
<td>OAU/AU Protocol on Relations Between the African Economic Community and the Regional Economic Community</td>
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<tr>
<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
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<tr>
<td>PJCC</td>
<td>Police and Judicial Cooperation in Criminal Matters</td>
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<tr>
<td>PSC</td>
<td>Peace and Security Council</td>
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<tr>
<td>PSC Protocol</td>
<td>Protocol relating to the Establishment of the Peace and Security Council of the African Union</td>
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<tr>
<td>REC</td>
<td>Regional Economic Community</td>
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<tr>
<td>SACU</td>
<td>Southern African Custom Union</td>
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<tr>
<td>SADC</td>
<td>Southern Africa Development Community</td>
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<tr>
<td>SADC PDS Protocol</td>
<td>SADC Protocol on Politics, Defence and Security Cooperation</td>
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<tr>
<td>SADCC</td>
<td>Southern African Development Coordination Conference</td>
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<tr>
<td>SEC</td>
<td>Subregional Economic Communities</td>
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<tr>
<td>SMC</td>
<td>Standing Mediation Committee</td>
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<tr>
<td>TEU</td>
<td>Treaty of the EU</td>
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<tr>
<td>UDAO</td>
<td>Union Dounaniere de L'Afrique de l'Ouest</td>
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<tr>
<td>UDEAC</td>
<td>Union Douaniere et Économique de l'Afrique Centrale</td>
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<tr>
<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<tr>
<td>UMA</td>
<td>Union du Maghreb Arabe</td>
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<tr>
<td>UN</td>
<td>United Nations</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<tr>
<td>UNHCR</td>
<td>United Nations High Commission for Refugees</td>
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VCLT Vienna Convention on the Law of Treaties
WAHO West African Health Organisation
ZaöRV Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
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