

# Regional economic communities and human rights in West Africa and the African Arabic countries

**Enyinna S Nwauche**

## **Introduction**

Regional human rights protection is often a reaction against the failings of nation states operating on the assumption that the pooled resources of a regional understanding will overcome the weakness of national human rights systems. It is often thought that states with a weak human rights system will change their systems to accord with higher regional normative standards.

Since regional economic integration is about the development of the people of the region concerned, it is about human rights in the process of integration and in the potential results of integration. It is, therefore, not completely true that human rights is a subject that regional integration must address before it becomes part of the process. From the outset, human rights are part of the integration process, since integration is likely to be aimed at satisfying at least the socio-economic rights of the people of the region. Furthermore, the abolition of national restrictions on the movement of people, goods, services and capital, in whatever stage of integration, is about the rights of the people. If the people of a region have a regional right of residence instead of a national right of residence, their freedom of movement, assembly and association are enhanced. Every decision taken towards enhancing the integrative process is likely to impact the human rights of the people of the region. This includes the interpretative jurisdiction of the regional courts of justice and even those whose mandate is restricted to an interpretation of the regional constitutive treaty. Even when there is no court of justice, the organs of a regional economic community are involved in the protection of the human rights of their people, since it is trite that not only the judiciary can promote and protect human rights. Notably in this regard, regional economic integration is about human rights – even if this is not overtly stated or recognised. Of course when human rights are recognised, this factor is more likely to play a central role in the developmental efforts of the regional economic community.

Since human rights are about people, their involvement in an adjudicatory process at a regional body is often a credible yardstick in assessing the nature and quality of regional human rights protection. Ideally, the people of a regional economic initiative or a regional human rights initiative should have an independent body to examine complaints of human rights abuses. While an administrative body whose decisions are not binding is often the first stage of a human rights enforcement mechanism, it is an adjudicatory body with binding powers that is regarded as adequate for credible human rights enforcement. Beyond this point a number of questions arise. Should the regional human rights system be an avenue of appeal from national judicial authorities, or should they be concurrent? And if the regional system is superior even when its competence is concurrent with national judicial authorities, how do we ensure that the decisions of the regional judicial authority are obeyed? Further questions arise regarding the status of the norms of a regional human rights system when those of a national human rights system belong to different legal traditions.

These and other questions will be examined in this paper, which focuses on the human rights protection systems in West Africa and in African Arabic countries. In the second part of the paper, I examine the regional protection of human rights in West Africa through examining the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU). In the third part, the paper turns its attention to African Arabic countries by examining human rights protection in the Arab Maghreb Union, the League of Arab States, and the Community of Sahel Saharan States (CEN-SAD). In part four I make some concluding remarks.

## **West African countries**

### **Human rights protection in the Economic Community of West African States – ECOWAS**

On 28 May 1975, in Lagos, Nigeria, 16 West African countries – Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Mauritania,<sup>1</sup> Niger, Nigeria, Senegal, Sierra Leone and Togo – created ECOWAS<sup>2</sup> as a regional body with the aim of the economic integration

---

<sup>1</sup> Mauritania ceased to be a member state in 2002.

<sup>2</sup> See the text of the Treaty of the Economic Community of West African States (hereafter

of its member states. Indeed, Article 2 of the ECOWAS Treaty provides that the Community's aim is to promote cooperation and development in all fields of economic activity. To achieve this, the Community was to ensure the following in stages:

- The elimination between member states of customs duties
- The abolition of quantitative and administrative restrictions
- The establishment of a common customs tariff and a common commercial policy towards third parties
- The abolition of obstacles to the free movement of persons, services and capital
- The harmonisation of agricultural policies
- The implementation of schemes of joint development
- The harmonisation of the economic and industrial policies of member states, and
- The establishment of a Fund for Cooperation Compensation and Development.

The ECOWAS Treaty envisioned a free trade area as a step towards an economically integrated West Africa. In 1993, ECOWAS member states revised the ECOWAS Treaty,<sup>3</sup> essentially to move towards deeper integration and to recognise, promote and protect a political dimension to its economic objectives. The incorporation of political objectives to the ECOWAS mandate can be traced specifically to the Liberian crisis<sup>4</sup> and to 1990, when a Standing Mediating Committee was set up by the Authority of Heads of State and Government<sup>5</sup> and charged with the task of finding a lasting solution to the crisis. A ceasefire agreement was signed and a civilian regime established. To monitor the ceasefire, a military force – the ECOWAS Ceasefire Monitoring Group (ECOMOG) – was established. In 1991, the Authority met in Abuja and adopted the Declaration of Political Principles of the Economic Community of West African States.<sup>6</sup>

---

*ECOWAS Treaty*) reproduced in 1975 United Nations Treaty Series 1010, 17.

<sup>3</sup> Hereafter *the Revised Treaty*. The Revised Treaty, which is the current Treaty, was accepted in July 1993 in Cotonou, Benin, and entered into force in 1993. Text available at [www.ecowas.int](http://www.ecowas.int); last accessed 7 April 2009.

<sup>4</sup> See ECOWAS (1992:57–58).

<sup>5</sup> Hereafter *the Authority*.

<sup>6</sup> Declaration A/DCL 1/1/7/91; hereafter *Declaration of Political Principles*. Text available at [www.iss.co.za/AF/Reg\\_Org/unity\\_to\\_union/pdfs/ecowas/7DecPolPrin.pdf](http://www.iss.co.za/AF/Reg_Org/unity_to_union/pdfs/ecowas/7DecPolPrin.pdf); last accessed 9 September 2008.

Paragraph 4 of the Declaration of Political Principles provides that ECOWAS states –

... respect human rights and fundamental freedoms in all their plenitude ... .

Paragraph 5 is even more emphatic, and states that ECOWAS States –

... will promote and encourage the full enjoyment by all our peoples of their fundamental human rights, especially their political, economic, social, cultural and other rights inherent in the dignity of the human person and essential to his free and progressive development.

In paragraph 6, the need to encourage and promote political pluralism, representative institutions and guarantees for personal safety and freedom was stressed. ECOWAS was formed at a time when the region was predominantly under military dictatorships. The benefit of hindsight enables us to wonder how naive it was to imagine that economic integration was feasible in such an environment. The Liberian crisis exposed the weakness of the integration process and brought home the reality that a politically plural and democratic society should be one of the ends and means of integration.<sup>7</sup>

It is not surprising, therefore, that, unlike the ECOWAS Treaty, the Revised Treaty elaborates on the Declaration of Political Principles, provides for the protection and promotion of human rights, and provides the context for the enhancement of human rights. The resolve of ECOWAS states is evident in the preamble, which recites the African Charter on Human and Peoples' Rights and the Declaration of Political Principles. While the aims of the Revised Treaty are similar to those of the ECOWAS Treaty, a number of differences exist. Article 2 of the Revised Treaty is dedicated to achieving a common market through the establishment of free trade area, the adoption of a common external tariff and common trade policy, and the removal of obstacles to the free movement of persons, goods, services and capital as well as to the right of residence and establishment. Furthermore, the principles to be adopted in achieving the aims of ECOWAS are spelt out in Article 3. These include equality; solidarity; non-aggression; maintenance of regional peace, stability and security; peaceful settlement of disputes; recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples'

---

<sup>7</sup> Generally, see Sen (1999).

Rights; accountability, economic and social justice, and popular participation; and promotion and consolidation of a democratic system of governance in each member state.

The organs of ECOWAS are set out in Article 6 of the Revised Treaty to be the Authority; the Council of Ministers; the Community Parliament; the Economic and Social Council; the Community Court of Justice; the Executive Secretariat; the Fund for Co-operation, Compensation and Development; Specialised Technical Commissions; and any other institution established by the Authority. Article 6(2) of the Revised Treaty provides that these institutions are to perform their functions and act within the limits of the powers conferred on them by the Treaty and relevant protocols. In this regard, the principles for realising the objectives of ECOWAS as set out in Article 4 bind all organs of the Community and ensure that, as they discharge their duties, they will, amongst other things, seek to promote and protect the rights and freedoms contained in the African Charter on Human and Peoples' Rights. To understand how they may be able to do this, an overview of all the institutions will now be undertaken. However, the paper will later dwell more on the Community Court of Justice, as it is a veritable tool in the enforcement of human rights.

### ***Non-judicial promotion and enforcement of human rights in ECOWAS***

#### *The Authority of Heads of State and Government*

Article 7 of the Revised Treaty provides that the Authority is the supreme organ of ECOWAS, and is responsible for the general direction and control of Community, and will take all measures necessary to ensure its progressive development and the realisation of its objectives. Specifically, the Authority will –

- determine the general policy and major guidelines of the Community
- give directives
- harmonise and coordinate the economic, scientific, technical, cultural and social policies of member states
- oversee the functioning of Community institutions
- follow up the implementation of Community objectives
- refer, where it deems it necessary, any matter to the Community Court of Justice over the interpretation and application of the Revised Treaty, and
- request the Community Court of Justice to give an advisory opinion on any legal question.

Its decisions are binding on all community institutions except the Community Court of Justice. The Authority is, therefore, a critical pivot in the protection and promotion of human rights in ECOWAS. If its decisions are guided by the African Charter on Human and Peoples' Rights, it can be said that its role is important and decisive. First, it is imperative that the Authority elaborates the aims and objectives of ECOWAS found in Article 3 of the Revised Treaty. If the Authority is unable or lacks the political will to do so, the integration objectives of ECOWAS will not be achieved – just as the rights and freedoms guaranteed by the African Charter will not be enhanced. In this regard, the Authority has made many protocols<sup>8</sup> seemingly designed to achieve the objectives of the Revised Treaty.<sup>9</sup>

A very important function of the Authority in the protection and promotion of human rights is to act as the highest decision-making body of the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security, established by the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security. One of the grounds for the triggering of the Mechanism is stated in Article 25 of its associated Protocol to be –

... in event of serious and massive violation of human rights and the rule of law.

---

<sup>8</sup> Article 1 of the Revised Treaty defines a *Protocol* as an instrument for the implementation of the Revised Treaty, having the same force as the Revised Treaty.

<sup>9</sup> The Protocols include the following: Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security; Protocol and Supplementary Protocol Relating to the Definition of the Concept of Products Originating from Member States of the ECOWAS; Protocol Relating to the Application of Compensation Procedures for Loss of Revenue Incurred by ECOWAS Member States as a Result of the Trade Liberalisation Scheme; Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security; Protocol and Supplementary Protocols on the Free movement of Persons, Right of Residence and Establishment; Convention and Supplementary Convention on a Community Guarantee Mechanism for Inter-State Road Transit of Goods; Protocol Relating to Community Enterprises; Protocol Relating to Mutual Administrative Assistance in Customs Matters; Protocol Relating to the Definition of Community Citizens; Protocol Relating to the Fund for Cooperation Compensation and Development of the Economic Community of West African States; Protocol Relating to the Re-exportation Within the Economic Community of West African States of Goods Imported from Third Countries; Protocol on the Assessment of Loss of Revenue by Member States; and ECOWAS Energy Protocol. The texts of these Protocols are available at [www.ecowas.int](http://www.ecowas.int); last accessed 9 September 2008.

Other triggers include aggression and conflict in any member state; internal conflict that threatens to set off a humanitarian disaster or poses a serious threat to peace and security in the region; and the overthrow of a democratically elected government.

The objectives of the Mechanism, set out in paragraph 3 of the associated Protocol, are to –

- prevent, manage and resolve internal and interstate conflicts
- implement the provisions of Article 58 of the Revised Treaty
- implement the relevant provisions of the Protocols on Non-Aggression, Mutual Assistance in Defence, Free Movement of Persons, and the Right to Residence and Establishment
- strengthen cooperation in the areas of conflict prevention, early-warning systems, peace-keeping operations, the control of cross-border crime, international terrorism and the proliferation of small arms and anti-personnel mines
- maintain and consolidate peace, security and stability within the Community
- formulate and implement policies on anti-corruption, money laundering and illegal circulation of small arms
- set up an appropriate framework for the rational and equitable management of natural resources shared by neighbouring member states which may be causes of frequent interstate conflicts
- protect the environment and take steps to restore degraded environment to its natural state, and
- safeguard the cultural heritage of member states.

Article 2 of the associated Protocol states that the principles of the Mechanism are those of the Charters of the UN, the OAU, the Universal Declaration of Human Rights, as well as the African Charter on Human and Peoples' Rights. In the event of a trigger of the Mechanism, a number of institutions can be established to assist the Mediation and Security Council which is mandated by Article 7 to act on behalf of the Authority. These institutions include the Defence and Security Commission, the Council of Elders, and ECOMOG. In Section 1 of the Supplementary Protocol on Democracy and Good Governance<sup>10</sup> complements

---

<sup>10</sup> Protocol A/SP/12/01.

and clarifies the principles of the Mechanism. These principles are declared to be constitutional principles shared by all member states, namely –

- separation of powers
- empowerment, strengthening and immunity of parliaments
- independence of the judiciary
- freedom of members of the Bar
- free, fair and transparent elections
- zero tolerance for power obtained and maintained by unconstitutional means
- popular participation in decision-making
- apolitical armed forces
- secularism and neutrality of the State in all matters relating to religion
- non-discrimination on ethnic, racial, religion or regional bias
- guarantee and enforcement of the rights set out in the African Charter on Human and Peoples’ Rights and other international instruments
- the formation and free operation and State financing of political parties
- freedom of association, and
- freedom of the press.

The principles of the Mechanism and the Supplementary Protocol on Democracy and Good Governance<sup>11</sup> are geared towards an enhanced human rights protection system by ensuring individual rights are protected and by providing a democratic context for human rights. As pointed out above, ECOWAS countries are determined to put behind them decades of military rule and enthrone a democratic culture where human rights are potentially capable of better protection. In this regard, the Supplementary Protocol on Democracy and Good Governance provides democratic standards that complement the Mechanism by pointing to conditions which can prevent triggering it. These standards are in the area of –

- elections
- election monitoring and ECOWAS assistance
- the role of the Armed Forces, the Police and security forces in a democracy
- poverty alleviation and promotion of social dialogue
- education, culture and religion
- the rule of law, human rights and good governance, and
- women, children and the youth.

---

<sup>11</sup> Hereafter *Supplementary Protocol*.



With respect to human rights protection, a number of provisions in the Supplementary Protocol are worth highlighting. In Section 5, member states agree that poverty alleviation and promotion of social dialogue are important factors of peace. In this regard, they undertake to –

- provide for the basic needs of their populations
- fight poverty by encouraging the private sector, and provide the instruments necessary for the enhancement of job creation and the development of the social sector as a matter of priority
- ensure equitable distribution of resources and income, and
- enhance the integration of economic, financial and banking activities through the harmonisation of commercial and financial laws, and the establishment of Community multinational corporations.

In addition, employers' associations and labour unions are to be strengthened in each member state and at the ECOWAS level, while member states are to promote social dialogue amongst them. For the education, culture and religion sector, women are to be guaranteed equal rights with men in the field of education, while the culture of every group of people is obliged to be respected and developed. To enhance religious stability and tolerance, the establishment of permanent structures for consultations amongst different religions and between different religions and the State<sup>12</sup> are provided for at national level.

To ensure social justice, prevent conflict, guarantee political stability and peace, and strengthen democracy, Article 34 of the Supplementary Protocol states the resolve of member states to adopt practical modalities for the enforcement of the rule of law, human rights, and good governance. These modalities include ensuring accountability, professionalism, transparency, and expertise in the public and private sectors; establishing independent national institutions to promote and protect human rights,<sup>13</sup> which are to systematically submit to the Executive Secretariat any report of human rights violations in its territory, which reports

---

<sup>12</sup> One such institution is the Advisory Council of Religious Affairs in Nigeria. This was established in 2004 by the Advisory Council of Religious Affairs Act, Chapter A8, Laws of the Federation of Nigeria.

<sup>13</sup> A number of these institutions are already in existence, e.g. the National Human Rights Commission of Nigeria; the Commission on Human Rights and Administrative Justice of Ghana; the Commission Beninoise des Droits Hommes; and the Human Rights Commission of Liberia.

will be widely disseminated;<sup>14</sup> institutionalise a national mediation system;<sup>15</sup> ensure pluralism in the information sector and the development of the media, including giving financial assistance to privately-owned media;<sup>16</sup> establish an appropriate mechanism to address issues of corruption in member states and at the Community level; and ensure that the Community Court of Justice is able to hear violations of human rights. In addition, the member states agree to eliminate all forms of discrimination and harmful practices against women;<sup>17</sup> guarantee children's rights, including giving them basic education;<sup>18</sup> enact special laws in member states and at Community level against child trafficking and child prostitution; and adopt laws and regulations on child labour in line with the provisions of the International Labour Organisation.<sup>19</sup> To ensure compliance with the provisions of the Supplementary Protocol, Article 45 provides that, where democracy is brought to abrupt end and where there is a massive human rights violation, sanctions may be imposed on the member state concerned, including its suspension from ECOWAS decision-making bodies, and the restoration of political authority by organising elections with the assistance of relevant regional and international organisations.

### *The Council of Ministers*

Article 8 of the Revised Treaty establishes a Council of Ministers for the Community. The functions of this Council are to make recommendations to the Authority on any action aimed at attaining ECOWAS objectives and, by the powers delegated to it by the Authority, issue directives on matters concerning coordination and harmonisation of economic integration policies. As part of the ECOWAS executive authority, the Council is also an important body that is obliged to act in accordance with the African Charter on Human and Peoples' rights, as well as all ECOWAS Treaties and Protocols.

### *The Community Parliament*

Article 13 of the Revised Treaty establishes a Community Parliament and envisages a Protocol to spell out its composition, functions, powers and

---

<sup>14</sup> Article 35, Protocol on Democracy and Good Governance.

<sup>15</sup> Article 36, Protocol on Democracy and Good Governance.

<sup>16</sup> Article 37, Protocol on Democracy and Good Governance.

<sup>17</sup> Article 40, Protocol on Democracy and Good Governance.

<sup>18</sup> Article 41, Protocol on Democracy and Good Governance.

<sup>19</sup> (ibid.).

organisation. A Protocol to this effect was signed in 1994 and came into force in 2002. By this Protocol, the 120-member Parliament is empowered to consider issues concerning –

- human rights and fundamental freedoms of citizens
- the interconnection of energy networks
- the interconnection of communication links between member states
- the interconnection of telecommunications systems
- increased cooperation in the area of radio, television and other intra- and inter-Community media links, as well as the development of national communication systems
- public health policies for the Community
- a common educational policy through harmonisation of existing systems and specialisation of existing universities
- the adjustment of education within the Community to international standards
- the youth and sports
- scientific and technological research
- the Community policy on the environment
- the review of the ECOWAS Treaty
- citizenship, and
- social integration.

Although the Parliament cannot make laws, it can make recommendations to the appropriate Community institutions and/or organs. The impact of this Parliament in enforcing human rights seems limited, therefore: it cannot make legislation, and the Community organs and institutions are not legally bound to comply with the Parliament's recommendations.

### *The Executive Secretariat*

The Executive Secretariat is headed by the Executive Secretary, who is assisted by Deputy Executive Secretaries and such other staff as may be required for the smooth functioning of the Secretariat.<sup>20</sup> The functions of the Executive Secretariat are to execute decisions taken by the Authority and apply regulations made by the Council of Ministers; promote Community development programmes and projects, as well as multinational enterprises of the region; and convene

---

<sup>20</sup> See Article 17 of the Revised Treaty.

sectoral Ministers, where necessary, to examine sectoral issues that promote the achievement of Community objectives.

### *Technical Commissions*

Article 22 of the Revised Treaty establishes Technical Commissions for Food and Agriculture; Industry, Science and Technology, and Energy; Environment and Natural Resources; Transport, Communications and Tourism; Trade, Customs, Taxation, Statistics, Money and Payments; Political, Judicial and Legal Affairs, Regional Security and Immigration; Human Resources, Information, Social and Cultural Affairs; and Administration and Finance. Each Commission is tasked with –

- preparing Community projects and programmes, and is required to submit these for the ECOWAS Council of Minister’s consideration
- ensuring harmonisation and coordination of Community projects and programmes, and
- monitoring and facilitating the application of the provisions of the Revised Treaty and related Protocols pertaining to its area of responsibility.

The nature of the functions of each specialised Technical Commission is found in the Revised Treaty, which sets the contexts of cooperation in the areas concerned. In Article 56 of the Revised Treaty, member states agree to cooperate to realise the objectives of the African Charter on Human and Peoples’ Rights, the Protocol on Non-aggression; the Protocol on Mutual Assistance on Defence; and the Declaration of Political Principles.

More often than not, the importance of the non-judicial enforcement of human rights is not very well appreciated. In fact, in the context of ECOWAS it may be asserted that the activities of ECOWAS organs seem potentially capable of positively impacting the protection and promotion of human rights.

### ***Judicial enforcement of human rights in ECOWAS***

The judicial enforcement of human rights enables a normative challenge of the extent of the non-judicial promotion and enforcement of human rights. For example, the extent of the free movement of persons as facilitated by ECOWAS organs can be tested by a complaint by an ECOWAS citizen before Community

judicial bodies that the corrupt practices of security agencies at national borders leads to intolerable obstacles to the free movement of citizens and goods.

### *The Community Court of Justice*

The Community Court of Justice<sup>21</sup> is established by Article 25 of the Revised Treaty. Article 15(4) declares that the judgements of the Court are binding on all member states, Community institutions, and on individuals and corporate bodies. In 1991, a Protocol on the status, composition, powers, procedure and other issues concerning the Community Court of Justice was established in accordance with Article 15(2) of the Revised Treaty. This Protocol was amended by a Supplementary Protocol in 2005. It can be asserted that the Court has both a Community and a national jurisdiction over human rights issues.

### *Jurisdiction over Community issues*

The jurisdiction of the Court is to be found in Article 9 of the 1991 Protocol (as amended). The Court is competent to adjudicate on any dispute relating to the following:

- The interpretation and application of the Treaty, Conventions and Protocols of the Community
- The interpretation and application of the regulations, directives, decisions and other subsidiary legal instruments adopted by ECOWAS
- The legality of regulations, directives, decisions and other legal instruments adopted by ECOWAS
- The failure by member states to honour their obligations under the Treaty, Conventions and Protocols, regulations, directives, or decisions of ECOWAS
- The provisions of the Treaty, Conventions and Protocols, regulations, directives or decisions of ECOWAS member states, the Community and its officials
- Action for damages against a Community institution or an official of the Community for any action or omission in the exercise of official functions
- Determination of any non-contractual liability of the Community and the power to order the Community to pay damages or make reparation for official acts or omissions of any Community institution or Community officials in the performance of official duties or functions

---

<sup>21</sup> Hereafter *the Court*.

- Jurisdiction over any matter provided for in an agreement where the parties provide that the Court is to settle disputes arising from the agreement, and
- Any specific dispute other than those specified above that is referred by the Authority of Heads of State and Government.

The Court is also competent to act as arbitrator for the purpose of Article 16 of the Treaty.

Examining these heads of jurisdiction it may be asserted that the following human rights issues will be cognisable before the Court. Firstly, there are the so-called Community rights endowed on ECOWAS citizens. As correctly identified by Ajulo, –<sup>22</sup>

ECOWAS Treaties have created rights and obligations for Member States of ECOWAS on the one hand and ECOWAS citizens on the other. For instance, the ECOWAS Protocol relating to the free movement of persons and right of residence and establishment creates obligations for every Member State and rights for every ECOWAS citizen.

Secondly, ECOWAS member states may bring complaints by its citizens of human rights – as protected by the African Charter on Human and Peoples’ Rights – being breached.<sup>23</sup> This would be in furtherance of the mandate of the Court to ensure observance of the Revised Treaty, the Mechanism, and the Supplementary Protocol on Democracy and Good Governance.

#### *Jurisdiction over national issues*

Article 9 of the 1991 Protocol of the Court provides that the latter has the jurisdiction to determine cases of human rights violations that occur in any ECOWAS member state. To complement this jurisdiction, the 2005 Supplementary Protocol grants access individuals to the Court to apply for relief for violations of their human rights; the submission of application for which should not be anonymous, or be made if the same matter has already been instituted for adjudication before another international court.<sup>24</sup>

<sup>22</sup> See Ajulo (2001:73,82); Onwuka (1982:193,195).

<sup>23</sup> Ghana recently brought a complaint against the Gambia for human rights abuses of its citizens; see “Gambia in ECOWAS Court again?”; available at [www.africanews.com/site/list\\_messages/18220](http://www.africanews.com/site/list_messages/18220); last accessed 6 October 2008.

<sup>24</sup> See Banjo (2007); see also *The Guardian*, 16 February 2005: “The amendment of the Protocol to allow individual direct access to the Court is regarded as the major achievement of the Court since its inception about four years ago”. Records from the Court show that

The jurisdiction over human rights is with respect to actions or inactions that have occurred in ECOWAS member states. Since the jurisdiction is with respect to human rights, it is important to examine what is meant by this term: does it mean *human rights* as recognised by member states' legal systems, or does it mean *human rights* as defined in the African Charter on Human and Peoples' Rights? This is not an academic question because the rights recognised in member states' constitutions often differ from those provided for in the African Charter. For example, in Nigeria, while the African Charter recognises socio-economic and cultural rights, Chapter 2 of the Nigerian Constitution of 1999 provides for non-justiciable socio-economic human rights. Happily, the Community Court of Justice in *Leo Keita v Mali*<sup>25</sup> indicated that it was the African Charter on Human and Peoples' Rights that should determine whether or not there had been a human rights violation. The Court referred to Article 4(g) of the Revised Treaty, which declares that one of the principles of ECOWAS is the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. This point was reaffirmed in *Moses Essien v The Gambia*,<sup>26</sup> where the Court stated that it had the jurisdiction to entertain a case brought on the grounds of a violation of Article 5 of the African Charter and Article 23(2) of the Universal Declaration of Human Rights. It is significant, therefore, that the Court decided to use the African Charter on Human and Peoples' Rights, which is a normative standard and common to all member states. Using a national bill of rights would admit variations that would ultimately weaken the jurisprudence of the Court.

---

the number of cases filed at the Court increased tremendously. According to the Registrar of the Court at an address at the opening of the 2007–2008 Legal Year of the ECOWAS Community Court of Justice Court on 18 September 2007, “Six new applications were lodged in 2005, one of which sought for an advisory opinion. The Court held 26 public sittings and examined one request for Advisory Opinion in camera. It is our contention that this was a remarkable improvement, especially when compared with the fact that only two (2) cases were filed before the Court between 2001 and January 2005. This new trend continued in 2006, when twenty-one (21) new cases were filed. So far, eight new cases have been filed in 2007. The Court held 64 Court sessions between January 2006 and July 2007. Thirty-two (32) interlocutory applications were lodged in respect of these cases as at 14th September 2007”. Address available at [www.ecowascourt.org/reports1.html](http://www.ecowascourt.org/reports1.html); last accessed 9 September 2008.

<sup>25</sup> Suit No. ECW/CCJ/APP/05/06; Judgement No. ECW/CCJ/APP/03/07 of 22 March 2007; hereafter *Leo Kaita*.

<sup>26</sup> Suit No. ECW/CCJ/APP/05/05; Judgement No. ECW/APP/05/07 of 29 October 2007.

A related question is whether other treaties such as the African Charter on the Rights and Welfare of the Child,<sup>27</sup> the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women; the Convention on the Elimination of All Discrimination Against Women; and other international human rights treaties ratified by ECOWAS member states will be applied by the Court. It is submitted that the Court should interpret and apply these treaties.

Another important question is the relationship between the national human rights protection system and the ECOWAS human rights system. In *Leo Kaita*, the Community Court of Justice declared that it was not a Court of Appeal for decisions of national courts like the European Court of Human Rights.<sup>28</sup> From this decision it is possible to assert that there is no requirement of the exhaustion of local remedies before an action can be brought before the Court. Thus, every individual who alleges that his or her human right protected by the African Charter has been violated can approach the Court. Arguably, this means that even when a national court has ruled against it, an ECOWAS citizen can approach the Community Court of Justice. Assuming the decision is different from that of the highest domestic court of the land, it is clear that the decision of the Community Court of Justice may be held to supersede the decision of national court, given the supranational status of the Community Court of Justice and the fact that its decision is declared by Article 15(4) of the Revised Charter to be binding on member states, ECOWAS institutions, individuals and corporate bodies. The Community Court of Justice, therefore, is *sui generis*.

Yet another question is whether individuals can bring actions against other individuals before the Community Court of Justice. The answer is in the affirmative. It is to the African Charter that we must look for the answer; and since the Charter in no way restricts its provisions to African states, it may be asserted that there can be horizontal application of the African Charter before the Community Court of Justice. It is acknowledged that this is an issue that will occupy the Court in due course.

The ramifications of the monumental change brought about by the direct access of individuals to the Court needs to be examined closely. Substantive access is greatly affected by the geographical location of the Court and the cost of access

---

<sup>27</sup> OAU Doc. CAB/LEG/24.9/49 (1990). Entered into force Nov 29 1999.

<sup>28</sup> Para 22, note 19.



to it for Community citizens. At present, it is a fact that the Court is largely inaccessible to ECOWAS citizens. To contain this obstacle, the Court moves its sessions to different parts of the Community to enable easier access for citizens. For example, the *Leo Kaita* case was heard in Mali. Just recently, the Court heard a case on an allegation of slavery against Niger.<sup>29</sup> It is also necessary that a transformation occurs in the physical resources of the Court. The Court is presently structured for a pre-access environment. To handle the deluge of cases that will come with individual access, the Court needs to be greatly expanded; in addition, an appellate division needs to be established.

The Court also needs to grapple with the effectiveness of its decisions. Even though the Court's decisions are declared to be binding on all member countries, Community institutions, individuals and corporate entities, the contempt shown by The Gambia to the Court's proceedings and decision in the case of a Gambian journalist, Mr Ebrima Manneh,<sup>30</sup> demand more practical measures to contain this type of impunity that corrodes the Court's authority. One measure that comes to mind is to regard disobedience of a Court decision as a trigger of the Conflict Prevention Mechanism discussed above.

### **Human rights protection in the West African Economic and Monetary Union – WAEMU**

In the West African subregion, a regional economic institution exists that is principally organised around the former French colonies. The devaluation of the CFA Franc<sup>31</sup> in 1994 led to WAEMU's creation on 10 January 1994 in order to ensure stable economic and monetary policies in CFA states. The WEAMU Treaty was ratified by all member states in July 1994. The member states are Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo. WAEMU aims include the creation of a common market among member states, based on the free circulation of people, goods, services and capital, and on the right of people exercising an independent remunerated activity to establish a common external tariff as well as a common commercial policy; the coordination of sectoral policies; and the harmonisation of the fiscal system of member states.

<sup>29</sup> See *Hadijatou Mani Koraou v Niger*, filed on 7 April 2008.

<sup>30</sup> The case was filed by the Media Foundation of West Africa (MFWA) on 20 June 2006.

<sup>31</sup> The CFA Franc was created in 1945 and operated at fixed parities with the French Franc in French colonial economies.

A number of institutions are established to operate the Union. The Authority of Heads of State and Government is the supreme organ of the Union. It is saddled with defining the overall guidelines of Union policy and can introduce amendments to the Treaty. A Council of Ministers is responsible for the implementation of the general policies defined by the Authority. The Commission established by the Union is empowered to make recommendations and give opinions which it deems useful for Union preservation and development. It is also responsible for executing the Union's budget, and can petition the WAEMU Court of Justice when member states fail to meet their obligations arising from WAEMU membership.

The WAEMU Court of Justice<sup>32</sup> is responsible for the interpretation and enforcement of WAEMU-based laws. The WAEMU Court was established on 27 January 1985, and has competence over cases of the legality of a piece of Union legislation brought by the Council of Ministers, the Commission, member states, their citizens, and corporate entities. Furthermore the WAEMU Court may issue a preliminary ruling from a national juridical authority adjudicating an issue in which a question arises as to the interpretation of the WAEMU Treaty or the legality and interpretation of acts committed by a Union organ. The WAEMU Court is given exclusive jurisdiction –

- where, upon complaint by the Commission or a member state, another member state fails to fulfil its obligations under the Treaty
- to review non-contractual damages caused by Union organs or their agents
- over the amendment of decisions and sanctions taken by the Commission against an entity for competition abuses, and
- over the adjudication of disputes between the organs of the Union and their agents in personnel matters.

If the Commission suspects that a member state is interpreting the Union law incorrectly, it may bring an action to review the situation. The WAEMU Court of Justice will then give a correct interpretation which is notified to the Supreme Court. Such interpretation is binding on all authorities in that member state. In this way the WAEMU Court is given powers to control determine and ensure the correct interpretation of Union law.

---

<sup>32</sup> Hereafter *WEAMU Court*.

The fact that individuals have direct access to the WAEMU Court is to be commended. However this does not mean much for the judicial protection of human rights due to the limited mandate of the WAEMU Court. Issues of human rights must be related to the integration process as individuals are not permitted to bring actions for violation of human rights to the WAEMU Court.

As noted in respect of ECOWAS, the activities of organs of a regional economic community such as WAEMU are critical in developing the region and enhancing the human rights of its citizens. WAEMU has put in place a number of common sectoral policies aimed at harmonising indirect taxation and investment regulation, adopted a common external tariff, and largely dismantled internal customs barriers. To a large extent, therefore, WAEMU is a relatively more integrated regional economic community than any other in Africa,<sup>33</sup> including ECOWAS.

### **Regional protection of human rights in West Africa**

One unique fact about human rights protection in West Africa is the fact that it is located within regional economic communities. However, it is ironic that, while ECOWAS has a more comprehensive judicial protection of human rights, the WAEMU community is more effectively integrated, and is therefore potentially more able to offer its citizens the development that may ultimately enhance their human rights. Given the binary dimension of regional integration in West Africa with the coexistence of ECOWAS and WAEMU, it is plausible that ECOWAS will benefit from WAEMU's enhanced integration of activities. Even though both communities cooperate at various levels – ECOWAS and WAEMU have agreed to common rules of origin to enhance trade – it remains a fact that there are tensions in the region due to the colonial rivalry between francophone and anglophone countries, given that WAEMU is largely francophone.

It may well be that any deficiency that exists in WAEMU in respect of the judicial protection of human rights may be potentially remedied by a WAEMU citizen seeking redress before the (ECOWAS) Community Court of Justice. Accordingly, serious questions of duplication and clash of interests are bound to arise with the existence of two Courts of Justice in West Africa with mandates making their decisions binding in their area of competence. How will the situation be resolved

---

<sup>33</sup> See Foreign and Commonwealth Office Africa Research Group (2001).

when a citizen of a WAEMU state, dissatisfied with the decision of the WAEMU Court, files a complaint before the ECOWAS Court?

## **African Arabic countries**

### **League of Arab States**

The League of Arab States was established in 1945 by Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria and Yemen. There are now 22 League members, the rest of whom are Algeria, Bahrain, the Comoros, Djibouti, Kuwait, Libya, Mauritania, Morocco, Oman, Qatar, Somalia, Southern Yemen, Sudan, Tunisia and the United Arab Emirates. Of the 22 members, the following are African states: Egypt, Algeria, Djibouti, the Comoros, Libya, Mauritania, Morocco, Somalia, Sudan, and Tunisia.

The League is set up to strengthen the close relations and numerous ties which bind Arab countries. Article 2 of the Pact of the Arab League<sup>34</sup> provides that the League is obliged to strengthen relations among member states; coordinate their policies; and safeguard their independence and sovereignty. It is also tasked with ensuring close cooperation in economic and financial affairs; communication; cultural affairs; nationality, passports, visas, the execution of judgements and the extradition of criminals; social welfare affairs; and health problems. At its inception, the Arab League was neither a union nor a federation. The League has the following organs: the Council, the Secretariat General, and Permanent Committees.

There is no mention of human rights in its constitutive treaty. In 1968, the Council of the League of Arab States established the Arabic Commission of Human Rights, which has the promotion of human rights as its main purpose.<sup>35</sup> In the main, the human rights framework of the League of Arab States is found in the Revised Arab Charter on Human Rights.<sup>36</sup>

---

<sup>34</sup> English translation available in *American Journal of International Law Supplement: Official Documents* (Oct. 1945), 39(1940):266–272.

<sup>35</sup> See Al-Midani (2005).

<sup>36</sup> The Revised Arab Charter on Human Rights (hereafter *Revised Arab Charter*) succeeds the Arab Charter on Human Rights adopted in 1994 during the Silver Jubilee of the League of Arab States; text available in *Human Rights Law Journal*, 18(2007):151. The Revised Arab Charter entered into force on 15 March 2008, two months after the deposit of the

### ***The Revised Arab Charter on Human Rights***

The preamble of the Revised Arab Charter states that Arab nations –

- recognise the dignity of the human person
- assert the principles of fraternity, equality and tolerance among human beings consecrated by Islam
- believe in Arab unity
- reject all forms of racism and Zionism<sup>37</sup> as constituting a violation of human rights and a threat to international security, and
- reaffirm the principles of the Charter of the United Nations; the Universal Declaration of Human Rights; the provisions of the International Covenant on Civil and Political Rights; and the International Covenant on Economic, Social and Cultural Rights; as well as having regard to the Cairo Declaration on Human Rights in Islam.

In Article 1 of the Revised Arab Charter, states parties assert that their aim is to –

- place human rights at the centre of key national concerns of Arab states
- teach the Arab person pride in his/her identity, loyalty to his/her country, attachment to his/her land, history and common interests and to instil in him/her a culture of human brotherhood/sisterhood, tolerance and openness towards others, in accordance with universal principles and values and with those proclaimed in international human rights instruments
- inculcate the values of equality, tolerance and moderation, and
- entrench the principle that all human rights are universal, indivisible, interdependent and interrelated.

A number of civil and political rights are recognised by the Revised Arab Charter. Citizens of Arab states are entitled to enjoy the right to equality, for example,<sup>38</sup> and of note is the fact that men and women are declared equal<sup>39</sup> and that the following rights are respected:

---

seventh instrument of ratification with the Secretary General of the League of Arab States in accordance with Article 49 of the Revised Arab Charter. For a detailed analysis, see Rishmawi (2005:361).

<sup>37</sup> The reference to Zionism in the preamble caused quite a stir.

<sup>38</sup> Articles 3, 4, 11, and 12, Revised Arab Charter.

<sup>39</sup> Article 3(3), Revised Arab Charter.

- The right to life<sup>40</sup>
- The right not to be subjected to torture or cruel, degrading, humiliating or inhuman treatment<sup>41</sup>
- The right not to be subjected to slavery or trafficking in human beings<sup>42</sup>
- The right to a fair hearing<sup>43</sup>
- The right to liberty and security of person<sup>44</sup>
- The right to privacy<sup>45</sup>
- The right to freedom of association<sup>46</sup>
- The right to protection as a minority<sup>47</sup>
- The right to freedom of movement<sup>48</sup>
- The right to freedom of thought, conscience and religion<sup>49</sup>
- The right to property,<sup>50</sup> and
- The right to freedom of expression.<sup>51</sup>

Two peoples' rights are also recognised. This includes Article 1, which provides that all peoples have the right to self-determination, to control their natural resources, to freely choose their political system, and freely pursue their economic social and cultural development. In addition, Article 1 condemns all practices of racism, Zionism, foreign occupation and domination as an impediment of human dignity and a major barrier to the exercise of the fundamental rights of peoples. Article 37 provides for the right to development.

A number of socio-economic and cultural rights are also recognised by the Revised Arab Charter. They are –

---

<sup>40</sup> Articles 5, 6 and 7, Revised Arab Charter.

<sup>41</sup> Articles 8 and 9, Revised Arab Charter.

<sup>42</sup> Article 10, Revised Arab Charter.

<sup>43</sup> Articles 13, 15, 16, 17, 18, 19 and 20, Revised Arab Charter.

<sup>44</sup> Article 14, Revised Arab Charter.

<sup>45</sup> Article 21, Revised Arab Charter.

<sup>46</sup> Article 24, Revised Arab Charter.

<sup>47</sup> Article 25, Revised Arab Charter.

<sup>48</sup> Articles 25 and 27, Revised Arab Charter.

<sup>49</sup> Article 30, Revised Arab Charter.

<sup>50</sup> Article 31, Revised Arab Charter.

<sup>51</sup> Article 32, Revised Arab Charter.

- The right to work<sup>52</sup>
- The right to form or join a trade union<sup>53</sup>
- The right to social security<sup>54</sup>
- The right to participate in the realisation of development<sup>55</sup>
- The right to an adequate standard of living commensurate with the member states' resources<sup>56</sup>
- The right to enjoy the highest attainable standard of physical and mental health, including free basic health-care services<sup>57</sup>
- The right to education,<sup>58</sup> and
- The right to take part in cultural life, enjoy the benefits of scientific progress and its application, respect the freedom of scientific research and creative activity, and ensure protection of moral and material interests resulting from scientific, literary and artistic production.<sup>59</sup>

One provision of the Revised Arab Charter that is especially important in the manner in which states parties are to implement obligations imposed by the Charter is found in Article 43. The Article declares that the Charter is not to be construed to impair the rights or freedoms protected in states parties' domestic laws or those in force in international and regional human rights instruments, including the right of women, children, and persons belonging to minorities. This is ambivalent: on the one hand it can be interpreted to mean that the Revised Arab Charter is to be the minimum yardstick, but where domestic or international human rights instruments provide for more, the latter will prevail; on the other hand, it may also be construed as preserving the manner in which rights and freedoms are cast in domestic protective instruments. Indeed, the latter interpretation seems at odds with the notion of a regional human rights instrument having a minimum normative content to guide states parties in elaborating their domestic human rights regimes.

---

<sup>52</sup> Article 34, Revised Arab Charter.

<sup>53</sup> Article 35, Revised Arab Charter.

<sup>54</sup> Article 36, Revised Arab Charter.

<sup>55</sup> Article 37, Revised Arab Charter.

<sup>56</sup> Article 38, Revised Arab Charter.

<sup>57</sup> Article 39, Revised Arab Charter.

<sup>58</sup> Article 41, Revised Arab Charter.

<sup>59</sup> Article 42, Revised Arab Charter.

The context of the implementation of the Revised Arab Charter is set by Article 44. In terms of this Article, states parties undertake to adopt, in accordance with their constitutional procedures, whatever legislative and non-legislative measures are required to give effect to the rights in the Charter. The Charter also establishes the seven-person Arab Human Rights Committee, whose members serve in their personal capacity as opposed to some national capacity<sup>60</sup> to receive reports submitted by states parties to the Secretary-General of the League of Arab States of measures that they have taken to give effect to the rights and freedoms espoused in the Revised Arab Charter and the progress made towards their enjoyment.<sup>61</sup> After an initial report to be submitted within one year of the coming into effect of the Charter, subsequent state reports are to be submitted in three-year intervals. On receipt of a report, the Committee discusses it in the presence of a representative of the state party whose report it is.<sup>62</sup> The Committee then comments on the report and makes the necessary recommendations to the Council of the League. It may also disseminate the report's concluding observations and recommendations.

It is important to note that there is no right of petition by individuals or states to the Arab Human Rights Committee in respect of human rights violations. Therefore, it is difficult to argue that the League of Arab States seriously protects human rights: the Revised Arab Charter seems only to be an instrument for the general promotion of human rights in the Arab world without providing a mechanism for individual protection of human rights. Since state reports only seem to require general conclusions by each state of its national human rights regime, individuals who have suffered human rights abuses under such regimes cannot be protected by the Committee. Nonetheless, it ought to be realised that much can be achieved through the periodic state reports, because states parties may be pressured by the report delivery time frame to take concrete steps to improve their human rights record.

### **The Arab Maghreb Union – AMU**

The AMU was established in 1989 by the Treaty of Marrakech,<sup>63</sup> signed by Algeria, Libya, Morocco, and Tunisia. Article 2 of Treaty states the AMU's aim

<sup>60</sup> Article 46, Revised Arab Charter.

<sup>61</sup> Article 48(1), Revised Arab Charter.

<sup>62</sup> Article 48(2), Revised Arab Charter.

<sup>63</sup> Treaty Establishing the Arab Maghreb Union; translated text reproduced in Heyns (2002:352).



as being to reinforce the bonds between its member states; realise the progress and prosperity for member states and defend their rights; contribute to the maintenance of peace work towards a free movement of persons, service and goods; and pursue a common policy in a number of fronts. Article 3 of the Treaty lists these common fronts as close diplomatic cooperation based on dialogue; defence – to safeguard the independence of member states; the economy – to realise the industrial, agricultural, commercial and social development of member states through common projects and the elaboration of global and sector-based programmes; and culture – to establish cooperation aimed at promoting education at all levels, preserving the spiritual and moral values of Islam, and safeguarding the Arab national identity by way of the exchange of teachers and students, the creation of academic and cultural institutions, and the establishment of Maghreb institutes of research.

Since 1990, 30 multilateral agreements have been signed and ratified by all AMU members. These include agreements on trade and tariffs (covering all industrial products); trade in agricultural products; investment guarantees; avoidance of double taxation; and phyto-sanitary standards.<sup>64</sup> Since 1989, the Governors and technical staff of the five central banks of the AMU have been meeting regularly. In December 1991, the five banks signed a multilateral agreement to help facilitate interbank payments within the AMU. The agreement sets unified modalities of payments between the five central banks, and provides for the monthly settlement of balances between any two countries without interest being charged on interim balances.

A number of institutions are established by the Treaty. Article 4 establishes the Presidential Council, which is composed of the Heads of State and Government and is the supreme body of the AMU. Article 6 provides that only the Presidential Council has the right to make decisions. Other bodies include a Council of Foreign Ministers, a Secretary-General, a Consultative Council, and a Judicial Authority<sup>65</sup> comprised of two judges from each member state.

Three jurisdictional competencies of the Judicial Authority are spelt out in Article 13 of the Treaty. The first of these entails disputes related to the interpretation and application of the Treaty, and Agreements concluded within the framework

<sup>64</sup> See [www.africa-union.org/Recs/AMUoverview.pdf](http://www.africa-union.org/Recs/AMUoverview.pdf); last accessed 8 April 2009.

<sup>65</sup> The Judicial Authority was established on 30 November 1989, and became operational on 30 November 2001. It is located at Nouakchott, Mauritania.

of the AMU if the dispute is submitted to the Authority by the Presidential Council or one of the parties to the dispute.<sup>66</sup> Thus, individuals and organisations do not have direct access to the Authority. Secondly, the Authority may deliver advisory opinions on any legal question submitted to it by the Presidential Council. Thirdly, the Statute of the Judicial Authority provides that it can also issue advisory opinions between the AMU and its employees.<sup>67</sup>

Since the Judicial Authority specifically cannot be accessed by private individuals, and since its mandate does not mention human rights, the protection of human rights in the AMU can only be indirect if it arises in the course of disputes on the interpretation and application of the Treaty and subsidiary agreements. If the Judicial Authority were to deal with a human rights issue, it may be guided by general principles of international law as long as these are compatible with the Treaty provisions. Furthermore, if any of the subsidiary agreements reached by member states creates a right for AMU citizens, then they can enforce these rights if their states agree to place the dispute before the Union. One positive point that can generally enhance human rights protection is that, by the terms of Article 13 of the Treaty, the decision of the Authority has supranational effect, and applies directly in member states without need for any domestication.

### **The Community of Sahel-Saharan States (CEN-SAD)**

The CEN-SAD was established on 4 February 1998 in Tripoli. It is presently made up of the following 28 states: Benin, Burkina Faso, the Central African Republic, Chad, Côte d'Ivoire, the Comoros, Djibouti, Egypt, Eritrea, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Libya, Kenya, Mali, Mauritania, Morocco, Niger, Nigeria, São Tomé and Príncipe, Senegal, Sierra Leone, Somali, Sudan, Togo and Tunisia.

The objectives of CEN-SAD<sup>68</sup> are as follows:

- The establishment of a global economic union based on the implementation of a Community development plan that complements the local development plans of member states, and which comprises the various fields of a sustained socio-economic development: agriculture, industry, energy, social, culture, and health

---

<sup>66</sup> Article 13, AMU Treaty.

<sup>67</sup> For more on the Statute, see [www.aict-ctia.org](http://www.aict-ctia.org); last accessed 8 September 2008.

<sup>68</sup> The objectives of CEN-SAD can be found at [www.cen-sad.org/new/index.php?option=com\\_content&task=view&id=33&Itemid=76](http://www.cen-sad.org/new/index.php?option=com_content&task=view&id=33&Itemid=76); last accessed 23 January 2009.

- The removal of all restrictions hampering the integration of the member countries through the adoption of necessary measures to ensure (a) free movement of persons, capital and interests of the nationals of member states; (b) the right of establishment, ownership and exercise of economic activity; and (c) free trade and movement of goods, commodities and services among member states
- The promotion of external trade through an investment policy in member states
- The increase of land, air and maritime transport and communications facilities among member states and the execution of common projects in these fields
- The same rights, advantages and obligations granted to their own citizens to nationals of the signatory countries in conformity with the provisions of their respective constitutions, and
- The harmonisation of educational, pedagogical, scientific and cultural systems.

The objectives of CEN-SAD qualify it as a regional economic community, and it is so recognised by the African Union.

The organs established for the CEN-SAD are a Conference of Heads of State and Government; an Executive Council; a General Secretariat; the Sahel-Saharan Investment and Trade Bank; and the Economic, Social and Cultural Council. There is neither an administrative tribunal nor a court of justice. It is difficult to imagine how disputes within the CEN-SAD will be settled.

Furthermore, it is clear that the protection of human rights can proceed – albeit indirectly – with the realisation of the CEN-SAD’s objectives. This protection is weak, however, as CEN-SAD member states and citizens have no clear channel through which to resolve their grievances. It may well be that the CEN-SAD is still at an embryonic stage, and that dispute resolution will be tackled as one of capacity-building measures to strengthen it.

### **Regional protection of human rights in African Arabic countries**

Unlike the West African region, the regional protection of human rights in the African Arabic region is not completely woven around regional economic

institutions. While the AMU and CEN-SAD are regional economic communities, the League of Arab States is not: it comprises a coordinating body of member states. Even though the recent addition of a human rights competence is evidence of a deeper commitment to this functionality, such competence is more of a promotional than a protective mandate. It is, however, a welcome step, and it is likely that the normative standard in the Revised Arab Charter will guide member states in their national human rights system.

The AMU human rights system is similar to that of the WAEMU, where the protection of human rights is not mentioned indirectly but is implicated in the integrative process. Since the AMU states are also members of the Arab League, it is plausible that the normative standards set out in the Revised Arab Charter will guide the AMU Court of Justice in its interpretation of the AMU Treaty.

It is also clear that the protection of human rights in the CEN-SAD is indirectly tied to the integrative process. On a comparative basis, the CEN-SAD seems to be the weakest, since there are no possibilities for a judicial enforcement of human rights.

## **Concluding remarks**

The state of human rights protection in the West African and African Arabic regions is at best fledgling. There is not much evidence that regional integration has brought remarkable development in human rights protection to these regions. Even though individuals have access to the regional courts of justice in these two regions, the human rights mandate of these courts – except in the case of the ECOWAS Court of Justice – are tied to the integration process. It is commendable that the ECOWAS Court of Justice is building a normative regime around the African Charter on Human and Peoples' Rights, even though the ramifications of its human rights mandate need to be clearly understood. The fact that ECOWAS citizens can approach the Court for human rights violations without exhausting local judicial and administrative remedies should indicate a scenario where the Court could be swarmed with cases. Its infrastructure needs to be radically overhauled to contain this expected increase. Care also needs to be taken to ensure that the human rights mandate of the ECOWAS Court does not draw attention away from the urgent need to improve the human rights system in all West African states. In a sense, the emerging jurisprudence of the ECOWAS

Court will serve as an example for other regional courts. It is also hoped that the Revised Arab Charter on Human Rights will go a long way towards building the foundation for an improved protection of human rights in African Arabic countries.

## References

- Ajulo, SB. 2001. "Sources of law of the Economic Community of West African States (ECOWAS)". *Journal of African Law*, 45:73,82.
- Al-Midani, Mohammad Amin. 2005. *The League of Arab States and the Arab Charter on Human Rights*. Available at [www.acihl.org/articles.htm&article\\_id=6](http://www.acihl.org/articles.htm&article_id=6); last accessed 6 September 2008.
- Banjo, Adewale. 2007. "The ECOWAS Court and the politics of access to justice in West Africa". *Africa Development*, XXXII:69–87.
- ECOWAS/Economic Community of West African States. 1992. *Review of ECOWAS Treaty: Final Report by the Committee of Eminent Persons*. Abuja: ECOWAS.
- Foreign and Commonwealth Office Africa Research Group. 2001. *Growing up with the umbilical cord attached: Developments in the African Franc Zone*. London: Foreign and Commonwealth Office.
- Heyns, C (Ed.). 2002. *Human rights in Africa*, Vol. 4. Dordrecht: Martinus Nijhoff.
- Onwuka, RI. 1982. "The ECOWAS Protocol on the Free Movement of Persons: A threat to Nigerian security". *African Affairs*, 81:193–206.
- Rishmawi, M. 2005. "The Revised Arab Charter on Human Rights: A step forward?". *Human Rights Law Review*, 5:361–376.
- Sen, A. 1999. *Development as freedom*. Oxford: Oxford University Press.
- The Guardian*, 16 February 2005.