

Jörg Kleis

African Regional Community Courts and their Contribution to Continental Integration



[africa]



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List of abbreviations

| | |
|-------------------------|--|
| ABZ | Agricultural Bank of Zimbabwe |
| ACHPR | African Charter on Human and Peoples' Rights |
| AComHPR | African Commission for Human and Peoples' Rights |
| ACtHPR | African Court on Human and Peoples' Rights |
| AEC | African Economic Community |
| AMU | Arab Maghreb Union |
| APEC | Asia-Pacific Economic Cooperation |
| ASEAN | Association of Southeast Asian Nations |
| AU | African Union |
| BVerfG | Bundesverfassungsgericht |
| CEDEAO | Communauté économique des États de l'Afrique de l'Ouest |
| CEN-SAD | Community of Sahel-Saharan States |
| COMESA | Common Market for Eastern and Southern Africa |
| COMESACJ | Court of Justice of the Common Market for Eastern and Southern Africa |
| EAC | East African Community |
| EACOMP | Protocol on the Establishment of the East African Community Common Market |
| EACJ | East African Community Court of Justice |
| EACJ Rules of Procedure | East African Court of Justice Rules of Procedure |
| EACT | Treaty for the Establishment of the East African Community |
| EALA | East African Legislative Assembly |
| EC | European Community |
| ECCAS | Economic Community of Central African States |
| ECHR | European Convention on Human Rights/ European Convention for the Protection of Human Rights and Fundamental Freedoms |
| ECJ | Court of Justice of the European Union |
| ECOMOG | Economic Community of West African States Monitoring Group |
| ECOWAS | Economic Community of West African States |
| ECOWASCJ | Court of Justice of the Economic Community of West African States |
| ECOWASCJ Protocol | Protocol of the Court of Justice of the Economic Community of West African States |
| ECOWAST | Revised Treaty Establishing the Economic Community of West African States |

List of abbreviations

| | |
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| ECR | European Court Reports |
| ECSC | European Coal and Steel Community |
| ECtHR | European Court of Human Rights |
| ed./ eds. | editor/ editors |
| edn | edition |
| EEC | European Economic Community |
| e.g. | exempli gratia |
| <i>et seq.</i> | et sequentes |
| EU | European Union |
| EUR | Euro |
| GIABA | Inter-Governmental Action Group against Money Laundering |
| <i>ibid.</i> | ibidem |
| i.e. | id est |
| IGAD | Intergovernmental Authority for Development |
| ILM | International Legal Materials |
| IMF | International Monetary Fund |
| JDD | Judgment delivery date |
| JSC | Judicial Service Commission |
| LAA | Land Acquisition Act of Zimbabwe |
| MERCOSUR | Mercado Común del Sur (Southern Common Market) |
| NGO | Non-Governmental Organization |
| OAU | Organisation of African Unity |
| OECD | Organization for Economic Co-operation and Development |
| OLG | Oberlandesgericht (Higher Regional Court) |
| OPDS | Organ on Politics, Defence and Security Cooperation (SADC) |
| OSIWA | Open Society Initiative for West Africa |
| p./ pp. | page/ pages |
| para./ paras. | paragraph/ paragraphs |
| PCA | Permanent Court of Arbitration |
| PEACtHPR | Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights |
| RISDP | Regional Indicative Strategic Development Plan |
| SACU | Southern African Customs Union |
| SADC | Southern African Development Community |
| SADCT | Southern African Development Community Tribunal |
| SADCT Protocol | Protocol on Tribunal and Rules of Procedures Thereof |
| TAEC | Treaty Establishing the African Economic Community |
| TEEC | Treaty Establishing the European Economic Community |
| TEU | Treaty on European Union (Consolidated Version of the Treaty on European Union) |

List of abbreviations

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| TFEU | Consolidated Version of the Treaty on the Functioning of the European Union |
| TSADC | Treaty Establishing the Southern African Development Community |
| UDHR | Universal Declaration of Human Rights |
| UEMOA | Union Economique et Monétaire Ouest-Africaine (West African Economic and Monetary Union) |
| UN | United Nations |
| UNECA | United Nations Economic Commission for Africa |
| UNTS | United Nations Treaty Service |
| USD | United States Dollars |
| v. | versus |
| VCLT | Vienna Convention on the Law of Treaties |
| Vol. | Volume |
| WAMZ | West African Monetary Zone |
| WHO | World Health Organization |
| WTO | World Trade Organization |

1 Introduction

Understanding African Regional Community Courts, their purpose and *raison d'être* requires a bird's eye view of the past and recent macroeconomic developments on the continent. Article 6(1) of the Treaty Establishing the African Economic Community¹ (TAEC) of 1991 describes best what this development entails:

'The Community shall be established gradually in six (6) stages of variable duration over a transitional period not exceeding thirty-four (34) years.'

All essential decisions in order to reach this goal of a continent-wide African Economic Community (AEC) are currently taking place within the framework of different Regional Economic Communities which group together individual – typically neighboring – states in African sub-regions for the purpose of achieving the intended economic integration.² Apart from economic cooperation, their Treaties envisage the foundation of suitable Regional Community Courts which are competent to apply the respective community law and accordingly decide on legal disputes arising therefrom.³ This is where the contribution ties in, namely with the main

1 Treaty Establishing the African Economic Community, 3 June 1991, entered into force 12 May 1994, 30 ILM 1241 (hereafter 'TAEC').

2 Under Article 4(2)(a) of the TAEC the AEC shall 'ensure [t]he strengthening of existing regional economic communities and the establishment of other communities where they do not exist.' Accordingly, under Article 28(1), (2) 'Member States undertake to strengthen the existing regional economic communities and ... shall take all necessary measures aimed at progressively promoting increasingly closer co-operation among the communities, particularly through co-ordination and harmonisation of their activities in all fields or sectors in order to ensure the realisation of the objectives of the Community.' Article 88(1) then sets out that the AEC 'shall be established mainly through the co-ordination, harmonisation and progressive integration of the activities of regional economic communities'.

3 Article 9(1)(a) of the Supplementary Protocol A/SP.1//01/05 amending the Preamble and Articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the said Protocol of 2005, *Official Journal of ECOWAS* 46 (2005), pp. 3-8, entered into force 19 January 2005 (hereafter 'ECOWASCJ Protocol'). The ECOWASCJ Supplementary Protocol amended the Protocol on the Community Court of Justice from 1991, A/P.1/7/91, *Official Journal of ECOWAS* 19 (1991), pp. 4-11, entered into force 5