EXTERNALISATION OF BORDERS
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Human rights protection mechanisms in Africa[*]

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1. Introduction

The African Human Rights System was born in the context of the Organisation for African Unity (OAU)[1] – later replaced by the African Union (AU)[2] – when its Member States adopted the African Charter on Human and Peoples' Rights (henceforth: African Charter), namely the instrument that both defines the human rights to be protected and establishes the African Commission on Human and Peoples' Rights (henceforth: African Commission) as the monitoring body.[3]
However, the African Commission is not the only monitoring body any longer. At a continental level, the African Court on Human and Peoples' Rights (henceforth: African Court) now flanks the African Commission, while at a sub-regional level some jurisdictional organs belonging to the African Sub-Regional Economic Communities (RECs) have progressively extended their competence to the disputes concerning the interpretation and implementation of the African Charter. The most representative sub-regional jurisdictional organs are the Tribunal of the Southern African

[*] Speaking notes, not for quotation or attribution. For any reference, see my monograph: *La tutela internazionale dei diritti dell'uomo nel continente africano*, Jovene Editore, Napoli, 2017

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[1] In 1963, the African States stipulated the Addis Ababa Charter and created the OAU for purposes of decolonisation, self-determination, economic development, struggle against the apartheid regimes, and settlement of border disputes. The OAU acted according to the principle of non-interference in the domestic affairs of Member States, which at that time was considered dogmatic. As a consequence, the OAU initially rejected the possibility to create a regional human rights system in Africa. Such perspective changed at the end of the Seventies.

[2] The AU Constitutive Act was signed on 11 July 2000 in Lomé, and entered into force on 21 May 2001. Nowadays, all African States are AU Members. Art. 3 and 4 of the Lomé Act enumerate the aims and principles inspiring the actions of the AU. Contrary to the OAU, the AU attributes great importance to international peace and security, the rule of law, good governance, democracy and human rights.

[3] The African Charter was adopted during the eighteenth OAU Assembly of Heads of State and Government, which took place in Nairobi on 27 June 1981. The African Charter entered into force on 21 October 1986. At present, almost all African States have ratified the African Charter, the only exception being the Kingdom of Morocco. The latter has never ratified the African Charter as a protest against the participation of the Arab Saharawi Democratic Republic in this treaty. However, on 31 January 2017, Morocco entered the AU. It means that Morocco will probably ratify the African Charter soon.

Development Community (SADC), the Court of Justice of the East African Community (EAC) and the Court of Justice of the Economic Community of Western African States (ECOWAS).

2. The Continental Human Rights Monitoring Bodies

The human rights monitoring mechanism created in Africa at a continental level draws inspiration from that previously operating in the European Human Rights System and from that still existing in the Inter-American Human Rights System. It is made up of an international 'quasi-jurisdictional' organ, the African Commission, and an international jurisdictional organ, the African Court.
The second part of the African Charter directly deals with the African Commission, which took office in 1987 and consists of eleven members, who shall act in their personal capacity. The African Commission examines the periodical reports submitted by the States Parties to the African Charter about the domestic implementation of human rights. It also receives communications from States, individuals and NGOs denouncing any alleged violation of the African Charter.
The African Court has been created with the Protocol adopted in Ouagadougou in 1998 and come into force in 2004.[4] It is composed of eleven judges, exercises a human rights action which is complementary to that of the African Commission, and may adopt judgments and binding decisions. A Protocol, adopted in Sharm el-Sheik in 2008, shall merge the African Court with the AU Court of Justice.[5]

a. The African Commission

The ultimate aim of every human rights system is the enjoyment of human rights by human beings. In order to correctly and properly achieve such ultimate aim, States should be ready to correctly and properly enforce each act delivered by the monitoring bodies created thereto. That is not the case of the African States with respect to the acts of the African Commission. It is not by chance that the Commission is described as «a toothless bulldog that barks but cannot bite». This metaphor is appropriate above all as concerns the outcomes of the communications that individuals and NGOs bring before the African Commission.
Indeed, contrary to the European Court on Human Rights, the African Commission requires no coincidence between the author of the communication and the victim of the alleged violation. That encourages NGOs to file communications. That is very positive per se. Nonetheless, if the African Commission finds a human rights violation, it can only issue a non-binding report addressing recommendations to the responsible State. Furthermore, the reports of the African Commission are confidential, since their publication is to be authorised by the AU Conference, namely by all the African States including the State allegedly responsible. In addition, a weak mechanism supervises

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[4] The Protocol has been currently ratified by thirty AU Member States and signed by fifty-two out of fifty-five (Cape Verde, Eritrea and Morocco have never signed).
[5] The aim of the Sharm el-Sheikh Protocol would be to create a unique African Court of Justice and Human Rights made up of two Sections: the first one competent for AU general affairs and the second one in charge of human rights issues. Another Amendment Protocol, adopted in Malabo in 2014, shall further extend the competence of the merged African Court inasmuch as it adds a third Section mandated to deal with international criminal law. At present, the Sharm el-Sheikh Protocol has received only six ratifications (Benin, Burkina Faso, Congo-Brazzaville, Liberia, Libya and Mali), a number which is far from the fifteen requested for its entry into force. So, it is very unlikely that the Sharm el-Sheikh Protocol and the Malabo Amendment Protocol will enter into force soon.

the implementation of such reports.[6] Similar problems affect the orders for provisional measures delivered by the African Commission. As a consequence, the African States maintain a certain freedom with regard to the enforcement of the acts of the African Commission relating to individual communications. In general terms, the more intrusive these acts are, the less willing to implement them the affected States are.

The African Commission can also receive interstate communications.[7] As a matter of principle, each State Party to the African Charter should have a general interest to bring a communication against another State Party that has allegedly committed human rights violations. However, the African States do not usually care about that. Only four interstate communications have been introduced as of yet, and only one has been eventually examined by the African Commission. Moreover, in that case the claimant did not bring the communication because of the general interest to protect human rights, but in order to defend its territorial sovereignty and nationals, namely its own interests.[8]

The scarce effectiveness of the action of the African Commission seemingly depends on the African States. Even though the African Commission has recently tried to go beyond such limits,[9] it is a matter of fact that the African States do not encourage its action and rarely implement its acts. Should the renewal of the African Commission be supported by the African States, it would be successful. Otherwise, any attempt to duly protect human rights would not go beyond the borders of the African Commission itself.

b. The African Court

As an international jurisdictional organ enabled to issue judgments and binding decisions, the African Court should reinforce the continental human rights monitoring mechanism. In particular, it should complement the African Commission. However, between the concrete outcomes of the African Commission and those of the African Court there are actually few differences. In a nutshell, the 'jurisdictionalisation' of the continental monitoring mechanism has not improved the protection of human rights in Africa. In order to give evidence of that, suffice it to refer to the *ratione personae* competence of the African Court and to the domestic implementation of its binding acts.

Art. 5 of the Ouagadougou Protocol governs the *ratione personae* competence of the African Court. The 'filter' claimants (African Commission and States parties to the Protocol) can turn to the African Court just for cases pertaining to communications already brought before the African Commission. As of yet, only the African Commission itself has deferred three cases to the African Court.[10] The

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[6] According to Art. 112 of its procedural rules, the African Commission may invite the concerned State to submit information on the measures taken in response to a recommendation. If the African Commission ascertains that its recommendation has not been eventually implemented, it shall draw the attention of the AU Sub-Committee on the Implementation of AU Decisions. However, the Sub-Committee has never been instituted.

[7] According to Arts. 47-49 of the African Charter, each State Party may denounce another State Party for alleged human rights violations and thus institute a communication-negotiation (which entails direct diplomatic contacts between the two States, without any interference from the African Commission) or a communication-complaint (which envisages proceedings before the African Commission). A communication-negotiation has never been submitted as of yet.

[8] See *Democratic Republic of The Congo* v. *Burundi, Rwanda and Uganda*, Communication no. 227/99, Report of 29 May 2003.

[9] For instance, the African Commission is trying to eliminate the politicisation often featuring its bench. Then, in 2010, it reformed its procedural rules in order to reduce its dependence on the AU Conference. Moreover, even if Art. 58 of the African Charter provides that the African Commission could admit only communications pertaining to serious and massive human rights violations, it examines even cases of isolated violations (for this approach, see *Sir Dawda K. Jawara* v. *The Gambia*, Communications no. 147/95 and 149/96, Report of 11 May 2000, Paras. 41-42).

[10] The African Commission deferred to the African Court the case concerning human rights violations perpetrated in Libya in 2011. The claim was eventually removed from the register due to the evolution of the situation in Libya (*African*

'direct' claimants (African intergovernmental organisations and States parties to the Protocol whose nationals have suffered human rights violations perpetrated by other States parties) can act without any limit before the African Court.[11] However, they have never brought a claim so far. The States parties to the Protocol accept to appear before the African Court whenever involved in an application introduced by both the 'direct' and the 'filter' claimants.

Individuals and NGOs are 'non-direct' claimants. The African Court can examine their claims provided that the involved State has given its authorisation by means of a prior official declaration.[12] Only eight States currently accept the competence of the African Court for such claims.[13] Combined with the social and economic limits which are intrinsic to the African environment, such situation considerably restricts the workload of the Court. Otherwise, individuals and NGOs would have clearly been the most active claimants before the Court. In the end, that seemingly entails that the African States are ready to institute jurisdictional monitoring bodies as long as their interests are not seriously threatened.

With regard to the implementation of the binding acts of the African Court, little information is available. It is true that, so far, the African Court has passed a limited number of judgments as well as of decisions on reparations and orders for provisional measures.[14] In any case, had the African States enforced the acts of the African Court, their interest would have been to communicate that. So, since the African States have not given updates about the follow-up of such acts, it is likely that they have not implemented them as of yet.[15] Furthermore, according to Art. 29, Para. 2, of the Ouagadougou Protocol, the AU Executive Council is in charge of monitoring the domestic implementation of the acts of the African Court. Since the Executive Council is composed of States representatives who decide by *consensus*,[16] it is unlikely that it would adopt sanctions against the

Commission on Human and Peoples' Rights v. Socialist Peoples' Libyan Arab Great Jamahirya, Application no. 004/11, Decision of 25 March 2013). Then, the African Commission sent to the African Court the cases pertaining to the eviction of the Ogiek indigenous peoples from the Mau Forest in Kenya (*African Commission on Human and Peoples' Rights v. Kenya*, Application no. 006/12, Judgment of 26 May 2017) and to Saif al-Islam Khadafy, arrested and sentenced to death by an insurrectional Libyan tribunal (*African Commission on Human and Peoples' Rights v. Libya*, Application no. 002/13, Judgment of 3 June 2016).

[11] The Protocol underlines the difference between the interest of a State Party acting for the general purpose of protecting human rights and the interest of a State Party whose citizens are victims of the violations perpetrated by another State party. Only the latter can directly bring a claim before the Court. So, the Protocol acknowledges both the tendency of States not to introduce interstate claims before international organs and the exception concerning a situation when a direct interest is at stake.

[12] Art. 5(3) of the Protocol provides that the African Court may entitle individuals and NGOs to institute cases directly before it only in accordance with the subsequent Art. 34(6). Such provision specifies that, at the time of the ratification of the Protocol or any time thereafter, the States parties shall make a declaration accepting the competence of the Court to receive cases under Art. 5(3). Otherwise, the Court will not receive any claim coming from individuals or NGOs.

[13] Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tanzania and Tunisia. Rwanda has recently withdrawn its previous declaration as a protest against the African Court, that is dealing with a case concerning the violations allegedly suffered by the main political opponent to the Rwandese President. See the press release of the Rwandese Ministry of Justice, transmitted to the President of the African Court on 3 March 2016, available at www.minijust.gov.rw.

[14] To have a complete panorama of all the acts adopted by the African Court so far, see its official website, www.african-court.org

[15] By way of illustration, Tanzania has never given official information about the implementation of the first judgment passed by the African Court (*Tanganyika Law Society, The Legal and Human Rights Centre and Reverend Christopher R. Mtikila* v. *Tanzania*, Applications no. 009/11 and 011/11, Judgment of 14 June 2013). However, in the context of the following procedure concerning the reparations sought by one victim, Tanzania revealed that its laws conflicting with the African Charter have not been nor will be modified (*Reverend Christopher R. Mtikila v. Tanzania*, Application no. 011/11, Decision of 13 June 2014, Para. 23).

[16] See Art. 10-13 of the AU Constitutive Act, dedicated to the AU Executive Council.

States (whose representatives also participate in its meetings) that did not enforce the acts of the African Court.
As it is, contrary to the expectations manifested in the preamble to the Ouagadougou Protocol and in some AU acts,[17] the institution of the African Court has proved not to be the best solution to the problems affecting the continental human rights monitoring mechanism.

3. The African Sub-Regional Jurisdictional Organs and the Extension of their Competence to Human Rights Disputes

The bodies that protect human rights in Africa at a sub-regional level are placed under the general frame of the African Economic Community (AEC).[18] The AEC should evolve according to the establishment of the RECs as areas of economic and commercial integration at a sub-regional level. Some of the treaties instituting the RECs also create sub-regional jurisdictional organs, while others require the States Parties to stipulate specific protocols to this effect. Initially, the sub-regional jurisdictional organs could not examine human rights disputes, since the *ratione materiae* competence attributed to them exclusively concerned the interpretation and application of their respective RECs treaties. However, these treaties contain some references to the African Charter and to human rights. In addition, all sub-regional jurisdictional organs can (or could) receive individual claims. All that soon gave them the opportunity to autonomously extend their material competence to the field of human rights.[19]
The sub-regional jurisdictional organs began to deal with human rights affairs when the African States declared they would negotiate the African Court Protocol. Then, while the entry into force of the Protocol was facing obstacles, the sub-regional jurisdictional organs strengthened their human rights competence, mainly because of their effortless and simple rules and their geographical proximity to the individual applicants. They maintained such human rights competence even immediately after the establishment of the African Court, in consideration of the abovementioned limits of the African Court.
The African States reacted in different ways to the increasing human rights activism of the sub-regional jurisdictional organs: nowadays, while some of these organs continue to have competence for human rights disputes, others have experienced a dissimilar fate. In the following pages three examples will shed light on the current outcomes of the activism of the African sub-regional jurisdictional organs in the field of human rights.

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[17] See the last Paragraph of the preamble to the Ouagadougou Protocol. Also see OAU Assembly, *The Strengthening of the African Commission on Human and Peoples' Rights and the Establishment of an African Court of Human and Peoples' Rights*, Resolution no. 230 of 15 June 1994, Para. 4, and OAU Executive Council, *Resolution on Measures Taken to Implement Resolution AHG/RES. 230 (XXX) Relating to the Strengthening of the African Commission on Human and Peoples' Rights and the Establishment of an African Court of Human and Peoples' Rights*, Resolution no. 1674 of 5 July 1996, Para. 4. The OAU organs adopted many similar acts in the years 1994-1998.
[18] The AEC is an intergovernmental organisation instituted in 1991 through the Abuja Treaty. Djibouti, Eritrea, Madagascar, Morocco, Somalia and South Sudan are not AEC Members.
[19] After all, the well-known example of the EU had already clarified the tie between the processes of regional economic integration and the jurisdictional protection of human rights. Nevertheless, it will be seen in the following pages that, while the EU jurisdictional organs can exclusively examine the alleged human rights violations related to EU law, the African sub-regional tribunals developed their human rights competence beyond the legal frame underlying the RECs.

a. The SADC Tribunal

The SADC Tribunal extended its competence to human rights disputes due to a broad interpretation of the preamble and some provisions of the SADC Treaty.[20] On this basis, in the years before 2010, the SADC Tribunal confronted Zimbabwe about the human rights violations suffered by the white minorities living in the Country. In particular, the family-owned Campbell company denounced Zimbabwe before the SADC Tribunal because of the *Land Acquisition Amendment Act*, passed in order to dispossess the white farmers of their properties, and other alleged human rights violations. The situation culminated when the SADC Tribunal confirmed the responsibility of Zimbabwe in its subsequent judgment.[21]

The Zimbabwean Government soon affirmed to feel bound neither to that specific judgment nor to any other decision concerning human rights matters, given that a human rights mandate had never been conferred upon the SADC Tribunal. Furthermore, some prominent Zimbabwean politicians indirectly threatened the judges of the SADC Tribunal. Basically, Zimbabwe did not appreciate the human rights activism of the SADC Tribunal.[22] In 2010, it eventually persuaded the SADC Summit (the executive organ made up of all Member States) to suspend the activities of the SADC Tribunal.[23] Later, on 21 August 2014, the SADC Summit adopted a new Protocol instituting a new SADC Tribunal.[24] Since the new SADC Tribunal can examine only interstate claims, it will unlikely deal with human rights disputes again. As a result, the SADC Member States 'emasculated' the SADC Tribunal, eradicating the human rights competence it had developed.

[20] The SADC Treaty was stipulated in 1992 and amended many times afterwards. Art. 16 of this Treaty requires the States Parties to create a Tribunal. The Protocol instituting the SADC Tribunal was stipulated in 2000 and entered into force in 2001. Then, it has been amended several times. The SADC Tribunal extended its competence to human rights disputes on the basis of Art. 4(c), of the SADC Treaty, providing that «SADC and its Member States shall act in accordance with […] human rights, democracy and the rule of law», and Art. 6(2), stating that «SADC and its Member States shall not discriminate against any person on grounds of gender, religion, political views, race, ethnic origin, culture or disability». All the SADC documents mentioned hereafter are available at the SADC official website, www.sadc.int

[21] See *Mike Campbell (PVT) Ltd and Others* v. *Zimbabwe*, Application of 11 October 2007, Judgment of 28 November 2008.

[22] In two interviews given in December 2008 to the newspapers *The Zimbabwean* and *The Zimbabwe Times*, Mugabe defined the judgment issued in the *Campbell* case as «an exercise in futility», while the Ministry for Lands qualified the judges of the SADC Tribunal as «day-dreaming», stating that «we are not going to reverse the land reform exercise». In another interview given to the newspaper *The Namibian* on 28 February 2009, Mugabe underlined that «[t]here is no going back on the land reforms» and that «[s]ome farmers went to the SADC Tribunal in Namibia but that's nonsense, absolute nonsense, no one will follow that [...]. We have courts here in this country that can determine the rights of people. Our land issues are not subject to the SADC Tribunal». Then, on 2 September 2009, the Ministry of Justice published the note *Legal Opinion on Zimbabwe and the Jurisdiction of the SADC Tribunal* (available at www.sadc.int and also published on *The Zimbabwean* and *The Zimbabwe Times*), where he argued that «any decision that the SADC Tribunal may have or may make in future against the Republic of Zimbabwe is null and void».

[23] The suspension of the SADC Tribunal was deliberated by the Thirtieth SADC Summit on 17 August 2010 (see above all Para. 32 of the final communiqué), and confirmed by the extraordinary SADC Summit held on 20 May 2011. In its diplomatic pressure concerning the suspension of the SADC Tribunal, Zimbabwe was strongly supported by Tanzania, whose President, referring to the SADC Tribunal, seemingly declared that «we have created a *monster* that will devour us all».

[24] The decision to stipulate a new Protocol instituting a new SADC Tribunal was adopted during the Thirty-Second SADC Summit, on 18 August 2012 (see Par. 24 of the final communiqué). Then, the new Protocol was approved on 21 August 2014, during the Thirty-Fourth SADC Summit. The new SADC Tribunal will take office after two thirds of the SADC Member States ratify the new Protocol according to its Art. 35. So far, only Zimbabwe has ratified the new Protocol.

b. The EAC Court of Justice

As observed, the development of the human rights competence of the African sub-regional jurisdictional organs started as a matter of judicial initiative. Then, in some cases, the African States intervened, eliminating or confirming such competence by means of treaty provisions. Instead, in other cases, these organs still now examine human rights disputes exclusively on the basis of their judicial discretion, thus without a precise treaty competence. The example of the EAC Court of Justice is the most prominent.[25]

Indeed, the AEC Treaty itself requires the Member States to conclude a protocol that officially attributes a human rights mandate to the EAC Court of Justice.[26] The AEC Member States had begun to negotiate such protocol immediately after the entry into force of the AEC Treaty. However, the talks encountered an obstacle in 2007, when the EAC Court of Justice issued its judgment in the *Anyang Nyong'o* affair, declaring that Kenya had violated some political rights enshrined in the African Charter.[27] As well as the SADC Tribunal, the EAC Court of Justice delivered that judgment without an express human rights competence.[28] Along these lines, Kenya protested and caused the interruption of the drafting process of the protocol for a long period. The negotiations have been recently revitalized, but they are progressing with no haste.

Waiting for the EAC Member States to adopt the protocol, the EAC Court of Justice has always continued to deal with human rights disputes. By way of illustration, in the judgment issued in the *Katabazi* affair immediately after the 'Kenyan impasse', on the one hand, it admitted not to have any explicit competence for human rights disputes while, on the other, it added not to consider itself exempt from settling disputes 'also related' to human rights.[29] The EAC Court of Justice did not give more details about such reasoning in the other decisions (also) concerning human rights questions. However, as a matter of fact, in those decisions it ascertained the responsibility of the defendant States for some human rights violations.[30]

c. The ECOWAS Court of Justice

The ECOWAS Court of Justice initially extended its competence to the field of human rights on the grounds of the adherence of ECOWAS to the promotion and protection of human rights and of the cooperation required of ECOWAS Member States to realise the objectives of the African Charter (see respectively Art. 4(g), and Art. 56(2) of the ECOWAS Treaty). The ECOWAS Member States did not object and, what is more, in 2005 they attached a Supplementary Protocol to the ECOWAS Treaty,

[25] The EAC Treaty (signed in 1999) directly created the EAC Court of Justice after it came into force in 2000. The EAC Treaty has been amended twice, in 2006 and in 2007. Now, Chapter Eighth (Artt. 23-47) of the EAC Treaty is entirely dedicated to the EAC Court of Justice. All the documents concerning EAC are available at the EAC official website, www.eac.int.

[26] See Art. 27(2) of the EAC Treaty.

[27] See *Anyang' Nyong'o and Others* v. *Kenya*, Application of 8 November 2006, Judgment of 29 March 2007. In this case, the applicant successfully challenged the Kenyan Government's mode of selecting delegates to the EAC Legislative Assembly.

[28] After all, it does not seem that the preamble and Art. 6(d) of the EAC Treaty («the fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include […] the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights») can be interpreted as conferring a human rights mandate upon the EAC Court of Justice.

[29] See *Katabazi and Others* v. *Uganda*, Application of 29 August 2007, Judgment of 1 November 2007, section on admissibility.

[30] As examples, see *Independent Medical Unit* v. *Kenya and Four Others*, Application of 2 July 2010, Judgment of 29 June 2011, and *Plaxeda Rugumba* v. *Secretary General of the East African Community and Rwanda*, Application of 8 November 2010, Judgment of 1 December 2011.

whose Art. 9(4), and Art. 10(d), now explicitly confirm such competence.[31] Nowadays, the ECOWAS Court of Justice exercises a very broad human rights mandate: suffice it to say that the exhaustion of domestic remedies is not included among the admissibility conditions for individual claims.[32]
Nevertheless, the ECOWAS Member States are currently examining a draft reform aimed at dismissing the human rights competence of the ECOWAS Court of Justice. The Gambia has suggested this reform in the context of a contrast with the ECOWAS Court of Justice about the domestic implementation of two judgments where the responsibility of The Gambia for human rights violations was declared.[33] Even if such situation turns out to be very similar to those occurred in both the SADC and the EAC frames, the outcome will predictably be different. In general terms, the majority of the ECOWAS Member States does not show an effective proclivity to approve the reform under examination.
The impression is that the ECOWAS Governments are trying to increase human rights awareness in Western Africa in order to depict themselves as human rights supporters. One can just consider that five out of eight African States accepting the competence of the African Court for individual and NGOs claims belong to ECOWAS (Benin, Burkina Faso, Côte d'Ivoire, Ghana and Mali). Probably, the aim of the majority of the ECOWAS Member States is to feed the relations with the traditional international donors (EU, UN, Scandinavian States and some NGOs), that take care of human rights. As a matter of fact, China and India (and other new donors who attribute less importance to human rights) do not usually send many development aids to the Western African Countries, since they prefer to invest in other African regions. Therefore, in the end, it is likely that the ECOWAS Member States will opt for avoiding any blatant conflict with the ECOWAS Court of Justice on the topic of human rights.

[31] The ECOWAS Treaty had been signed in 1975. Then, it was revised in 1993. The Protocol on the ECOWAS Court of Justice was stipulated in 1991 and later attached to the new ECOWAS Treaty. It entered into force in 1996. The Supplementary Protocol Amending the Protocol Relating to the ECOWAS Court of Justice was adopted in 2005, after the ECOWAS Court of Justice dealt with human rights in the case *Afolabi Olajide* v. *Niger*, Application no. 01/03, Judgment of 27 April 2004. Since then, the ECOWAS Court of Justice has very often examined human rights disputes. For all the documents concerning ECOWAS that will be mentioned hereafter, see the ECOWAS website, www.ecowas.int

[32] The ECOWAS Court of Justice clarified many times that the exhaustion of domestic remedies is not an admissibility condition. By way of illustration, see *Essien* v. *The Gambia and Another*, Application no. 05/05, Judgment of 29 October 2007, and *Koraou* v. *Niger*, Application no. 08/08, Judgment of 27 October 2008. With regard to such peculiarity, the ECOWAS Court of Justice is different from the majority of the international organs dealing with human rights disputes.

[33] See *Manneh* v. *The Gambia*, Application no. 04/07, Judgment of 5 June 2008, and *Saidykhan* v. *The Gambia*, Application no. 11/07, Judgment of 16 December 2010, both concerning tortures suffered by journalists.