

# Africa

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## I. African Regional Institutions

### A. THE AFRICAN UNION

#### 1. *External Relations*

On January 11, 2007, U.S. President George W. Bush signed into law the Department of State Authorities Act of 2006,<sup>1</sup> which includes in its provisions the granting of diplo-

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1. Department of State Authorities Act of 2006, Pub. L. No. 109-472, 120 Stat. 3554 (2006).

matic rights and privileges to the African Union.<sup>2</sup> The following month, President Bush announced the creation of “AFRICOM,” a U.S. military command for the African continent to provide strategic support for anti-terrorism efforts and secure the flow of oil imports.<sup>3</sup> The AFRICOM announcement raised concerns in Africa and elsewhere that a U.S. troop presence would escalate militarization of the region.<sup>4</sup> (To date, no African countries have offered to host AFRICOM, which currently operates out of Germany.<sup>5</sup>) In response to these concerns, AFRICOM commander General William Ward traveled to Addis Ababa in November 2007 to meet with African Union (AU) leaders and assure them that there were no plans to establish U.S. military bases on the continent or to station troops there.<sup>6</sup>

Portugal’s decision to invite Zimbabwe President Robert Mugabe to Lisbon for a European Union (E.U.)-Africa summit in December 2007, despite a long-standing travel ban on Mugabe, prompted harsh criticism, especially from the political and media establishment in the United Kingdom.<sup>7</sup> A.U. members insisted that Zimbabwe receive equal treatment from the E.U., and Portugal indicated that holding the summit was one of the priorities of its six-month presidency of the E.U.<sup>8</sup> The dispute over Mugabe’s potential appearance was a primary factor in the cancellation of the previous EU-Africa summit, which had been scheduled to take place in 2003.<sup>9</sup>

## 2. AU Summit

In July 2007, the A.U. summit was held in Accra with a focus on the establishment of a pan-African government, an idea vociferously championed by the Libyan head of state, Colonel Muammar Gaddafi.<sup>10</sup> Renewing a debate over political union that dates back to the days of Kwame Nkrumah, attendees were sharply divided over the benefits and the

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2. Press Release, Congressman Chris Smith, Smith Bill to Aid War on Terror Becomes Law: New Law Aims to Stop Spread of Surface-to-Air Missiles, Assist Americans Caught in Crisis Overseas and Support Key U.S. Allies (Jan. 11, 2007), available at [http://www.house.gov/list/press/nj04\\_smith/hr6060law.html](http://www.house.gov/list/press/nj04_smith/hr6060law.html).

3. See Salim Lone, *The Last Thing We Need: The New US Command for Africa Will Militarise the Continent and Inflammate a String of Regional Conflicts*, GUARDIAN (U.K.), Mar. 12, 2007, available at <http://www.guardian.co.uk/commentisfree/2007/mar/12/comment.comment1>.

4. See *id.*

5. *Id.*; *US Africa Command Chief in Talks with African Union*, AGENCE FRANCE-PRESSE, Nov. 8, 2007, available at <http://afp.google.com/article/ALeqM5iCWr8HU4G5o66bNAjCpl2wsHF57A> [hereinafter *US Africa Command Chief*].

6. See *US Africa Command Chief*, *supra* note 5; Elizabeth Blunt, *Uncertainty Over US Africa Force*, BBC NEWS, Nov. 8, 2007, available at <http://news.bbc.co.uk/2/hi/africa/7085775.stm>.

7. See *Breakthrough or Sellout?*, ECONOMIST, Sept. 27, 2007, available at [http://www.economist.com/world/africa/displaystory.cfm?story\\_id=9868071](http://www.economist.com/world/africa/displaystory.cfm?story_id=9868071); Ian Traynor, *Mugabe Invited to Lisbon Summit Despite Ban*, GUARDIAN (U.K.), July 2, 2007, available at <http://www.guardian.co.uk/eu/story/0,,2116326,00.html>; *The Virtues of Isolationism*, ECONOMIST, July 7, 2007, at 14; Peter Clotney & Ndimyake Mwakalyelye, *Portugal, Deciding To Invite Mugabe To Summit, Discomfits UK's Brown*, VOICE OF AMERICA, Oct. 31, 2007, available at <http://www.voanews.com/english/archive/2007-10/2007-10-31-voa72.cfm>; Malcolm Rifkind, *Mugabe Must Not Go to Portugal*, FT.COM, Aug. 7, 2007, <http://www.ft.com/cms/s/2/a9859cbe-4507-11dc-82f5-0000779fd2ac.html> (last visited Mar. 25, 2008).

8. Traynor, *supra* note 7.

9. *Id.*

10. See *Summit Focus on African Unity*, BBC NEWS, July 1, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6258072.stm> [hereinafter *Summit Focus on African Unity*].

viability of a unitary, continent-wide ruling body.<sup>11</sup> Such contentiousness led to modest results—a mere agreement to launch a committee that would look into the logistics of setting up a pan-African government.<sup>12</sup> Still, critics attacked the deliberations as a distraction from the more pressing challenges posed by the political crises in Zimbabwe, Somalia, and Sudan.<sup>13</sup> Other issues discussed at the summit included cooperation with the E.U. on security and migration, as well as the creation of an African investment bank to fund development projects on the continent.<sup>14</sup>

### 3. *Peacekeeping Operations*

As rebel forces continued to clash with the Ethiopia-backed, transitional Somali government, the A.U. joined a number of parties in calling for an 8,000-troop peacekeeping force to be deployed to Somalia under United Nations (U.N.) control.<sup>15</sup> By late January 2007, the A.U. Peace and Security Council had approved a plan to station a total of nine battalions to support the beleaguered Somali regime over a six-month period with the expectation that the U.N. would assume control of military operations afterward.<sup>16</sup> The A.U. was only able to secure commitments to provide half of the 8,000 soldiers previously anticipated, ultimately leaving the Ugandan contingent of over 1,500 alone to carry out the peacekeeping mission as other states delayed sending their own troops as the months wore on.<sup>17</sup> On August 20, 2007, the U.N. Security Council voted to extend the A.U.'s peacekeeping mandate for another six months and urged other African countries to take more active roles in that endeavor.<sup>18</sup> The Security Council resolution came shortly after Uganda announced that it planned to send additional troops, despite complaints by the

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11. See *Leaders Split over African Unity*, BBC NEWS, July 3, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6264612.stm>. Togo, Burkina Faso, and Senegal enthusiastically endorsed Gaddafi's plan, with Ghana adopting an optimistic stance on the issue. South Africa and Nigeria were opposed, while Kenya and Lesotho expressed some reservations. Uganda stressed the importance of economic integration, but regarded full political union as impractical. Senegal also intimated that a smaller federation of states could be created in the meantime. See *id.*; Emmanuel Ngwainmbi & Carole Muchendu, *Leadership: Banking in a Futuristic United Africa*, Nov. 15, 2007, <http://www.businessinafrica.net/leadership/677088.htm> (last visited Mar. 28, 2008); *Summit Focus on African Unity*, *supra* note 10.

12. See *No Timetable for Uniting Africa*, BBC NEWS, July 4, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6268468.stm> [hereinafter *No Timetable for Uniting Africa*].

13. *Summit Focus on African Unity*, *supra* note 10.

14. Tom Nevin, *A Bank for Africa?*, AFR. BUS., Oct. 1, 2007, at S50, available at 2007 WLNR 20158166; *No Timetable for Uniting Africa*, *supra* note 12.

15. See *African Union Team Arrives in Mogadishu*, WASH. POST, Jan. 15, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/14/AR2007011400817.html>; Mohamed Shiek Nor, *As Somalia Disarms, Talks Aim to Bring in Peacekeepers*, CHI. TRIB., Jan. 15, 2007, at 12.

16. *African Union Backs Somalia Plan*, BBC NEWS, Jan. 20, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6281435.stm>.

17. See Mohamed Olad Hassan & Tom Maliti, *Somali Government Imposes Martial Law*, CHI. TRIB., Feb. 1, 2007, at 11; *Somalia: It Just Gets Worse*, ECONOMIST, Apr. 28, 2007, at 54; *Burundi Delays Somali Deployment*, BBC NEWS, Aug. 7, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6935033.stm>; *Burundi Joins Somalia Peace Force*, BBC NEWS, Feb. 1, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6319937.stm>.

18. S.C. Res. 1772, ¶¶ 9-10, U.N. Doc. S/RES/1772 (Aug. 20, 2007). See also *UN Extends AU's Somalia Mission*, BBC NEWS, Au. 21, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6956150.stm>.

Ugandan military that it still had not been reimbursed for the initial deployment in March 2007.<sup>19</sup>

In addition to addressing the bloodshed in Somalia, the A.U. also engaged the UN in finding a resolution to the humanitarian crisis in the Darfur region, as representatives from the two institutions met in Tripoli in July 2007 and hammered out a three-part road map to facilitate talks between the Sudanese government and rebel factions based in southern Sudan.<sup>20</sup> During the following month, however, the UN revealed that a 26,000-strong peacekeeping force comprised mostly of soldiers from eight A.U. member states would be deployed to Darfur in the coming months,<sup>21</sup> an announcement countered several days later by A.U. Chairman Alpha Oumar Konare, who stated that the mission would be comprised only African peacekeepers and that outside troops, which were to be drawn from several Asian nations, were not needed.<sup>22</sup> Konare's decision sparked criticism that, in addition to contradicting the U.N. Security Council's original resolution<sup>23</sup> regarding the composition of the Darfur force, the decision failed to acknowledge that the A.U. did not have a sufficient number of adequately trained personnel on hand.<sup>24</sup> Furthermore, the Sudanese government's past insistence on an all-African peacekeeping force in Darfur raised concerns that such a mission would be unduly deferential in its treatment of the regime in Khartoum.<sup>25</sup>

In the wake of a constitutional showdown that gave rise to violence in the Comoros, the A.U. sent troops to the island nation in May 2007 to preempt clashes surrounding the presidential elections, wherein voters picked leaders in each of the political union's three semi-autonomous islands.<sup>26</sup> Mohamed Bacar's refusal to comply with a court order for him to step down as president of the island of Anjouan led the A.U. to send a special mission to resolve the impasse.<sup>27</sup> Bacar ultimately stood for reelection and formed an interim government, resulting in the A.U. Peace and Security Council's imposition of sanctions on Anjouan in October 2007.<sup>28</sup> The A.U. followed up in November 2007 by

19. See Alexis Okeowo & Scott Baldauf, *Eager to Quell its Own Conflicts, African Union Feels Overstretched*, CHRISTIAN SCI. MONITOR, Aug. 22, 2007, at 4, available at <http://csmonitor.com/2007/0822/p04s01-woaf.html>; *Row Over Africa Peacekeeper Money*, BBC NEWS, May 10, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6641707.stm>.

20. *Libya Hosts Darfur Crisis Talks*, BBC NEWS, July 15, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6899323.stm>.

21. *African Troops Pledged for Darfur*, BBC NEWS, Aug. 8, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6936579.stm>.

22. *Darfur Force to be 'All-African'*, BBC NEWS, Aug. 13, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6943435.stm> [hereinafter *Darfur Force*].

23. See S.C. Res. 1769, U.N. Doc. S/RES/1769 (July 31, 2007).

24. Martin Plaut, *Analysis: Africa's Darfur Bombshell*, BBC NEWS, Aug. 13, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6944277.stm>.

25. See *Darfur Force*, *supra* note 22; Plaut, *supra* note 24.

26. *AU Troop Mission to Go to Comoros*, BBC NEWS, May 10, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6643805.stm>.

27. *African Union Tries to Broker Comoros Standoff Deal*, REUTERS, (May 8, 2007), available at <http://www.reuters.com/article/latestCrisis/idUSL08503454>.

28. *Comoros: A.U. Patience Runs Out*, INTEGRATED REG'L INFO. NETWORKS, U.N., Oct. 31, 2007, available at <http://www.irinnews.org/report.aspx?ReportId=75081>; *Comoros: Non-Cooperation has a Price*, INTEGRATED REG'L INFO. NETWORKS, U.N., Oct. 12, 2007, available at <http://www.irinnews.org/report.aspx?ReportId=74769>.

sending a vessel of Tanzanian soldiers to conduct patrols of the waters surrounding Anjouan.<sup>29</sup>

## B. THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES

### 1. *Economic and Political Integration*

Following the Economic Community of West African States (ECOWAS) summit held in Burkina Faso in January 2007, Liberian president Ellen Johnson-Sirleaf announced that, in pursuit of the ECOWAS Protocol on the Free Movement of People (the "Protocol"), her government would begin implementing measures to issue ECOWAS passports to citizens of Liberia.<sup>30</sup> In September 2007, the heads of the national immigration services of ECOWAS states convened in Accra and issued several recommendations designed to facilitate the Protocol's objectives.<sup>31</sup> The proposals included the introduction of biometric features in ECOWAS passports beginning in 2008, secure national identity cards acceptable for intra-regional travel, and a regional training center for immigration officers.<sup>32</sup>

On August 6, 2007, Dr. Mohamed Ibn Chambas, president of the ECOWAS Commission, signed an agreement with officials from Sierra Leone, Liberia, Nigeria, and the Office of the U.N. High Commissioner for Refugees (UNHCR) regarding the status of Sierra Leonean and Liberian refugees currently residing in Nigeria.<sup>33</sup> Under the accord, those individuals are no longer classified as refugees, thus affording them the same privileges enjoyed by Nigerians by virtue of ECOWAS citizenship, including the right to employment, education, and health.<sup>34</sup> Sierra Leone and Liberia in turn must issue passports to the affected nationals.<sup>35</sup> Notably, the agreement also applies to individuals who did not register for previous voluntary repatriation programs executed by the UNHCR, a group that includes 5,169 Liberians and 1,673 Sierra Leoneans.<sup>36</sup>

The five countries along the Abidjan-Lagos corridor—Ivory Coast, Togo, Ghana, Benin, and Nigeria—signed a memorandum of understanding in September 2007 that affirmed their commitment to improving regional transport, thus furthering ECOWAS' and New Partnership for Africa's Development's (NEPAD) trade policy initiatives.<sup>37</sup> At the conclusion of a business forum held in Accra in late October, ECOWAS announced its "Strategy and Action Plan" for facilitating cross-border trade and investment for the

29. *AU to Start Naval Patrols Outside Rebel Comoros Island*, AGENCE FRANCE-PRESSE, Nov. 2, 2007, available at <http://www.haaba.com/topic/comoros?qN°de/49480>.

30. *Liberia Set to Issue ECOWAS Passports*, WORLD NEWS CONNECTION, Jan. 22, 2007. Liberia has joined Benin, Guinea, Niger, Nigeria, and Senegal in adopting the regional passport. See *ECOWAS: Immigration Services Recommend Easy Community Movement*, BUS. DAY (NIG.), (Sept. 30, 2007), available at <http://businessdayonline.com/national/275.html> [hereinafter *ECOWAS: Immigration Services Recommend*].

31. See *ECOWAS: Immigration Services Recommend*, *supra* note 30.

32. *Id.*

33. Press Release, Econ. Cmty. W. Afr. States, Liberian and Sierra Leonean Refugees in Nigeria for Integration (Aug. 7, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=72&lang=en&annee=2007>.

34. *Id.*

35. *Id.*

36. *Id.*

37. *West Africa: ECOWAS Countries Sign MOU on Transit*, DAILY CHAMPION, Sept. 24, 2007, available at <http://allafrica.com/stories/200709240860.html>.

2007-2008 period, which includes proposals for property and tax law reform as well as the creation of a regional monetary union.<sup>38</sup>

With regard to external relations with other trade blocs, ECOWAS rebuffed attempts by the E.U. to renegotiate economic partnership agreements with its member states.<sup>39</sup> The Europeans had been eager to strike new deals with dozens of former colonies in the African, Caribbean, and Pacific (ACP) regions before the end of the year, when pre-existing preferential trade rules that the World Trade Organization (WTO) had previously ruled illegal were set to expire.<sup>40</sup> ECOWAS instead called for an extension of the waiver issued by the WTO, leading E.U. trade chief Peter Mandelson to accuse economic powers like Nigeria and South Africa of dragging their feet at the expense of their neighbors.<sup>41</sup> In light of the stalemate, Mandelson acknowledged that the E.U. would probably have to rely on a patchwork of interim agreements before any long-term deals with ACP nations would come to fruition.<sup>42</sup>

## 2. *Law Enforcement, Regional Security, and Regulatory Affairs*

A delegation representing the ECOWAS Commission embarked on a four-country campaign over the summer to rally support for the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, which has yet to be ratified by the minimum nine countries required to make the accord effective.<sup>43</sup> The convention, which is meant to replace the weaker Moratorium on Exportation, Importation, and Manufacture of Light Weapons, was signed by ECOWAS leaders in 2006 and calls on party states to set up frameworks for registering local manufacturers of small arms.<sup>44</sup> Furthermore, countries who agree to the convention may import such weapons only for internal security, law enforcement, and facilitating peacekeeping efforts.<sup>45</sup> Niger remains the only signatory to have deposited its instrument of ratification.<sup>46</sup>

In early September 2007, a regional meeting of high-level anti-drug officials was held in Ouagadougou to develop a strategy to effectively target drug trafficking and money laundering on both the local and supranational levels.<sup>47</sup> Later, at a meeting convened in Monrovia in November 2007, top defense officials of ECOWAS member states revealed that they were assembling 2,700 troops for a special regional standby peacekeeping force that

38. Melissa Chea-Annan, *ECOWAS Adopts Action for 2008*, INQUIRER (Monrovia.), Nov. 4, 2007, available at <http://www.aballiance.org/news/ecowas.html>.

39. See *African 'Elephant' Wants to Block Trade Talks—EU*, REUTERS, Nov. 6, 2007, available at <http://af-rica.reuters.com/wire/news/usnL05328211.html>.

40. *Id.*

41. *See id.*

42. *See id.*

43. Press Release, Econ. Cmty. W. Afr. States, Delegation Concludes Sensitization Mission for Ratification of Small Arms Convention (July 23, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=70&lang=en&annee=2007>.

44. *Id.*

45. *Id.*

46. *Id.*

47. Press Release, Econ. Cmty. W. Afr. States, Regional Meeting to Develop Action Plan Against Drug Trafficking Holds in Ouagadougou (Sept. 1, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=81&lang=en&annee=2007>.

would begin training in early 2008.<sup>48</sup> The governments of France and Senegal are providing support for the initial exercises, with the anticipation that an entire battalion will be ready for deployment by 2010.<sup>49</sup>

Citing public health and environmental concerns, the ECOWAS ministers of agriculture also met in Ouagadougou during November 2007 to establish a committee to supervise the manufacture, distribution, and use of pesticides.<sup>50</sup> In addition, the ministers drew up regulations to facilitate access to quality seeds for farmers in West Africa as well as the creation of a common market as envisioned by the ECOWAS Agricultural Policy.<sup>51</sup> In addition, ECOWAS ministers adopted a five-year action plan regarding the development of biotechnology and the promotion of bio-safety.<sup>52</sup>

### 3. *Election Monitoring*

ECOWAS sent observers to monitor national elections held in several member states during 2007 and gave generally favorable impressions of the polling. Although noting a few problems, delegates pronounced the Senegalese presidential vote, which returned the incumbent Abdoulaye Wade to power in February 2007, as having been “sufficiently free and transparent.”<sup>53</sup>

Nigeria’s March 2007 gubernatorial and state assembly elections were hampered by widespread administrative incompetence, voter confusion, and limited incidents of violence; nevertheless, the observers found no anomalies in the actual tabulation of votes.<sup>54</sup> On the other hand, April’s heated presidential election was adjudged “‘fairly acceptable’ rather than ‘free and fair’” by ECOWAS observers.<sup>55</sup> Umaru Yar’Adua, candidate for the ruling People’s Democratic Party, emerged as the official victor despite reports of violence and abuse that drew criticism from observers sent by the Commonwealth of Nations and the E.U. The largest group of independent poll watchers in Nigeria, the Transition Monitoring Group, called for a new round of voting.<sup>56</sup> Nevertheless, during a meeting between ECOWAS and E.U. ministers held in Ouagadougou in October 2007, attendees

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48. See Patrick Wrokpoh, *West Africa: 2,700 Troops for ECOWAS*, INQUIRER (Monrovia), Nov. 7, 2007, available at <http://allafrica.com/stories/200711070917.html>.

49. *Id.*

50. Press Release, Econ. Cmty. W. Afr. States, Ministers of Food and Agriculture Recommend Establishment of Committee to Regulate Pesticides Use in West Africa (Nov. 9, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=108&lang=en&annee=2007>.

51. *Id.*

52. *Id.*

53. See Press Release, Econ. Cmty. W. Afr. States, ECOWAS Observers Endorse Presidential Election in Senegal (Feb. 27, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=13&lang=en&annee=2007>; *Senegal Election ‘Free and Fair’*, BBC NEWS, Feb. 27, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6399873.stm>.

54. See Press Release, Econ. Cmty. W. Afr. States, ECOWAS Mission Describes Governorship and State Assembly Elections as “Relatively Free and Peaceful” (Apr. 17, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=33&lang=en&annee=2007>.

55. *Nigerian Candidates Reject Poll*, BBC NEWS, Apr. 22, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6581993.stm>.

56. *Id.*

from both bodies praised President Yar'Adua's commitment to addressing the problems that arose during the April 2007 vote.<sup>57</sup>

In a reassuring sign from a country recently emerging from the bloody nightmare of civil war, Sierra Leone's presidential and parliamentary elections, held in August 2007, were characterized by the ECOWAS observer mission as "adequately free, peaceful, and credible."<sup>58</sup> The assessment specifically cited the transparency of the voting process and the secure climate in which Sierra Leoneans had exercised their right of franchise, although it also noted a significantly low level of female participation in the election.<sup>59</sup> ECOWAS returned to Sierra Leone in September to monitor the presidential run-off vote, which resulted in victory for opposition candidate Ernest Koroma.<sup>60</sup>

After deploying a delegation of military and civilian observers to monitor the October parliamentary elections in Togo, ECOWAS lauded the voting process as "free, fair and transparent," thus burnishing the image of President Faure Gnassingbe, whose installation by the army in 2005 resulted in international sanctions and drove the leader to hold elections that were ultimately decided in his favor.<sup>61</sup>

#### 4. *Community Court of Justice*

Beginning in July 2007, the ECOWAS Community Court of Justice (CCJ or Community Court) in Abuja heard a human rights case filed by the Ghana-based Media Foundation for West Africa (MFWA) on behalf of Chief Ebrima Manneh, staff reporter for the *Daily Observer*, a Gambian newspaper.<sup>62</sup> Manneh, who has been missing since July 6, 2006, is suspected to be in government custody, based upon claims that he was led by security officers into a vehicle parked outside the *Daily Observer's* offices on the day of his disappearance and allegedly spotted at Fatoto Police Station seven months later.<sup>63</sup> Despite denials of any wrongdoing by police officials and the National Intelligence Agency, the Gambian government did not send any legal representatives to appear at the hearings which took place on July 16 and September 26, 2007, leading critics to reiterate that, under Article 19 of the Protocol on the Community Court of Justice, Gambia is bound by the CCJ's rulings.<sup>64</sup>

57. See Ndubuisi Ugah, *ECOWAS, EU Endorse FG's Electoral Reform Process*, THIS DAY (Nigeria), Oct. 15, 2007, available at <http://www.thisdayonline.com/nview.php?id=92344>.

58. Press Release, Econ. Cmty. W. Afr. States, ECOWAS Lauds Elections in Sierra Leone (Aug. 12, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=76&lang=en&annee=2007>.

59. *Id.*

60. See Press Release, Econ. Cmty. W. Afr. States, ECOWAS Election Observer Mission Returns to Sierra Leone (Sept. 4, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=82&lang=en&annee=2007>.

61. *Togo's Elections 'Free and Fair'—Monitors*, INDEPENDENT ONLINE (S. Afr.), Oct. 16, 2007, [http://www.int.iol.co.za/index.php?click\\_id=68&art\\_id=nw20071016141053288C151293&set\\_id](http://www.int.iol.co.za/index.php?click_id=68&art_id=nw20071016141053288C151293&set_id) (last visited Mar. 28, 2008).

62. ECOWAS Court Hears Chief Manneh, Coal. for an Effective Afr. Ct. on Hum. & Peoples Rts., July 16, 2007, [http://www.africancourtcoalition.org/editorial.asp?page\\_id=113](http://www.africancourtcoalition.org/editorial.asp?page_id=113) (last visited Mar. 28, 2008).

63. See Abdou Jeli Keita, *ECOWAS Court to Hear Chief Manneh's Case Today*, FORAYAA, July 19, 2007, available at <http://www.foroyaa.gm/modules/news/article.php?storyid=97>. Manneh had been accused of passing on information to a foreign journalist during the 2006 African Union summit. See Will Ross, *Fears for Gambia's Missing Reporter*, BBC NEWS, July 12, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6295288.stm>.

64. See *id.*; Yanks Darboe, *Gambia Govt Fails to Appear Before ECOWAS Court*, SENEGAMBIA NEWS, July 18, 2007, available at <http://www.senegambianews.com/article.cfm?articleID=1809>; Editorial, *No Respect for*



The chief justices of the supreme courts of the ECOWAS states, acting in their capacity as members of the Community Judicial Council, adopted new rules of procedure for the CCJ on September 14.<sup>65</sup> The Community Judicial Council was created in 2006 to facilitate the operations of the CCJ, and the recent rules specifically address the recruitment and discipline of CCJ judges.<sup>66</sup> In remarks made before the CCJ several days later, the Attorney General of Nigeria, Michael Kaase Aondoakaa, exhorted ECOWAS members to abide by the CCJ's orders.<sup>67</sup> Aondoakaa, who acknowledged that the lack of an enforcement mechanism undermines the CCJ's ability to deliver justice to litigants, also suggested the creation of a separate international arbitral tribunal to settle disputes within the ECOWAS bloc.<sup>68</sup> Aondoakaa's proposal addresses concerns about possible conflicts of interest arising from Article 9 of the Supplementary Protocol of 2005, which gives CCJ judges the additional power of acting as arbitrators.<sup>69</sup>

### C. THE EAST AFRICAN COMMUNITY

#### 1. *Institutional Developments*

The Sectoral Council on Legal and Judicial Affairs signed a protocol in April 2007 establishing the East African Community (EAC) Civil Aviation Safety and Security Oversight Agency (CASSOA), which will be responsible for implementing standards and recommendations issued by the International Civil Aviation Organization (ICAO). CASSOA is the product of efforts during the past several years to harmonize civil aviation regulations across the region.<sup>70</sup> The East African Legislative Assembly (EALA) elected Abdirahim Haithar Abdi, a representative from Kenya, as Speaker of the Assembly at the start of its second term on June 5, 2007.<sup>71</sup> At the end of the same month, top law enforcement officials convened at the EAC Chiefs of Police meeting and issued several recommendations, including the standardization of national identity cards, the creation of a police liaison office at the EAC Secretariat, and the creation of a sectoral council on interstate security.<sup>72</sup> Rwanda and Burundi officially entered the EAC on July 1, 2007, after

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*ECOWAS Court*, FOROYAA, Sept. 28, 2007, available at <http://www.foroyaa.gm/modules/news/article.php?storyid=567>.

65. Press Release, Econ. Cmty. W. Afr. States, Chief Justices of Member States Approve Rules for Regional Judicial Council (Sept. 14, 2007), available at <http://news.ecowas.int/en/presseshow.php?nb=89&lang=en&annee=2007>.

66. *Id.*

67. Funso Muraina, *AGF Tasks ECOWAS Court on Enforcement of Order*, THIS DAY (Nigeria), Sept. 19, 2007, available at <http://www.thisdayonline.com/nview.php?id=89729>.

68. *Id.*

69. *Id.*

70. Press Release, E. Afr. Cmty., East African Community to Establish Civil Aviation Safety and Security Oversight Agency (Apr. 12, 2007), available at [http://www.eac.int/news\\_2007\\_04\\_EAC\\_CASSOA.htm](http://www.eac.int/news_2007_04_EAC_CASSOA.htm).

71. Press Release, E. Afr. Cmty., 2nd East African Legislative Assembly members Sworn In, House Picks Elected Member from Kenya, Abdirahim Abdi as Speaker (June 5, 2007), available at [http://www.eac.int/news\\_2007\\_06\\_Abdirahim\\_Abdi\\_Speaker.htm](http://www.eac.int/news_2007_06_Abdirahim_Abdi_Speaker.htm).

72. Press Release, E. Afr. Cmty., Regional Police Co-Operation: Combating Cross Border Crime in East Africa (Sept. 12, 2007), available at [http://www.eac.int/news\\_2007\\_sep\\_police\\_cooperation.htm](http://www.eac.int/news_2007_sep_police_cooperation.htm).

signing accession treaties at the EAC Extra-Ordinary Summit in Kampala, joining existing members Tanzania, Kenya, and Uganda.<sup>73</sup>

EAC ministers met with commissioners from the E.U. in November to discuss a new economic partnership agreement, with the E.U. acknowledging the A.U. as a single economic unit by virtue of its status as a customs union.<sup>74</sup> Given the few weeks remaining before the expiration of the previous Cotonou Agreement on December 31, 2007, the parties agreed to a provisional framework that would take effect on January 1, 2008, giving the two economic blocs further time to negotiate a permanent deal and address issues of market access, development cooperation, and regulation of fisheries.<sup>75</sup>

## 2. *East African Court of Justice*

Following discussion by EAC leaders at the Extra-Ordinary Summit in Kampala, the East African Court of Justice (EACJ) officially began exercising appellate jurisdiction on July 1, 2007.<sup>76</sup> The decision to extend the Court's jurisdiction also prompted EAC heads of state to work on a draft of a proposed East African Bill of Rights, an effort that involved input from Kituo Cha Katiba, a nongovernmental organization (NGO) devoted to constitutional development in the region.<sup>77</sup>

In 2007, the EACJ heard two cases involving the election of EALA representatives, both highlighting the lack of uniformity of selection procedures among EAC member states. In a judgment delivered on March 30, the EACJ ordered Kenya to submit a new slate of representatives to the EALA, which had been prevented from convening since the Court blocked the previous group of Kenyan legislators from taking the oath office in November 2006.<sup>78</sup> According to the EACJ, the Kenyan government violated the EAC Treaty by appointing its EALA members rather than electing them as provided in Article 50 of the charter.<sup>79</sup>

On April 26, 2007, the EACJ referred the disputed October 2006 election of Tanzania's EALA representatives back to that nation's High Court, citing Rule 16 of the EALA Election Rules, which provides that petitions to void the election of an EALA member are to be resolved according to the same procedures used for members of the national parliament.<sup>80</sup> The controversy involved the status of the individuals who had been elected by the Tanzanian national assembly in March 2006 to fill two vacant EALA seats but whose spots were filled by new candidates when the assembly voted for the current crop of EALA

73. Press Release, E. Afr. Cmty., Rwanda and Burundi Join EAC (June 27, 2007), available at [http://www.eac.int/news\\_2007\\_06\\_rwanda\\_and\\_burundi\\_join\\_EAC.htm](http://www.eac.int/news_2007_06_rwanda_and_burundi_join_EAC.htm); see also Sarah Grainger, *East Africa Trade Bloc Expanded*, BBC NEWS, June 18, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6762615.stm>.

74. Press Release, E. Afr. Cmty., EAC and EU Agree on Process Towards EAC-EC EPA (Nov. 15, 2007), available at [http://www.eac.int/News\\_2007\\_11\\_EAC\\_EU\\_agree\\_on\\_EPA.htm](http://www.eac.int/News_2007_11_EAC_EU_agree_on_EPA.htm).

75. *Id.*

76. Press Release, E. Afr. Cmty., EAC Turns Attention on Regional Bill of Rights (Sept. 18, 2007), available at [http://www.eac.int/news\\_2007\\_sep\\_bills\\_on\\_rights.htm](http://www.eac.int/news_2007_sep_bills_on_rights.htm).

77. *Id.*

78. Zephania Ubwani, *E.A. Court Ruling: Kenya Told to Enact New Parliamentary Rules*, MONITOR (Uganda), Apr. 11, 2007, available at [http://www.monitor.co.ug/artman/publish/news/E\\_A\\_court\\_ruling\\_Kenya\\_told\\_to\\_enact\\_new\\_parliamentary\\_rules.shtml](http://www.monitor.co.ug/artman/publish/news/E_A_court_ruling_Kenya_told_to_enact_new_parliamentary_rules.shtml).

79. *Id.*

80. Reference No. 2 of 2007, E. Afr. Ct. Justice, at 11-13 (Apr. 26, 2007), available at [http://www.eac.int/EACJ\\_reference\\_No2\\_2007.pdf](http://www.eac.int/EACJ_reference_No2_2007.pdf).

representatives in a regular election just seven months later.<sup>81</sup> The claimant filed suit before the EACJ and argued that the two sitting EALA members must be allowed to finish their terms and consequently only seven of the nine seats should have been open in the later election.<sup>82</sup> Because the claim centered on the membership qualifications of EALA members, the EACJ held that it did not have jurisdiction over the case.<sup>83</sup> The claimant later sought to have the decision reviewed under Article 35 of the EAC Treaty on the ground of injustice, but was again rebuffed by the EACJ. The EACJ maintained that the failure of Tanzanian law to address the nullification of EALA election results did not automatically mean that the EACJ was the proper forum for resolving the matter.<sup>84</sup>

Perceived threats to judicial independence also provided fodder for EACJ litigation in 2007. In May, the East Africa Law Society (EALS) held a colloquium of legal scholars from around the region to discuss recent amendments to the EAC Treaty. In conjunction, EALS announced that it would be spearheading a lawsuit to have the EACJ invalidate the new amendments.<sup>85</sup> The amendments in question introduce measures concerning the removal of EACJ judges and the installation of “transitional judges” by member states as well as the creation of an appellate chamber.<sup>86</sup> The EALS expressed concern that these developments will be used to curtail the independence of the EACJ by the national governments of the EAC.<sup>87</sup> The EALS also argued that the quick enactment of the amendments was a violation of the EAC Treaty because the member states disregarded the timetable laid out in Article 150 and only one of them, Tanzania, obtained approval from its national assembly.<sup>88</sup>

On November 1, 2007, the EACJ held that the government of Uganda had violated the EAC Treaty provisions by allowing the military to interfere with the judiciary. This ruling favored the claimants, suspected members of a rebel faction called the People’s Redemption Army.<sup>89</sup> The case stemmed from a March 1, 2007, incident at the High Court of Uganda, wherein armed soldiers stormed the courthouse, seized the claimants, and dragged them back to jail after the Court had already granted them bail.<sup>90</sup> The claimants’

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81. *Id.* at 2-3.

82. *Id.* at 3.

83. *Id.* at 11-12.

84. Application No. 8 of 2007, E. Afr. Ct. Justice, at 8-10 (June 22, 2007), available at [http://www.eac.int/EACJ\\_application\\_No8\\_2007.pdf](http://www.eac.int/EACJ_application_No8_2007.pdf).

85. Press Release, Communiqué of Legal Scholars and Filing of Treaty Reference at the East African Court of Justice, E. Afr. L. Soc’y (May 18, 2007), available at <http://www.ealawsociety.org/newsdetail.php?newsid=6&subcat=1>; Press Release, Communiqué of Legal Scholars, E. Afr. L. Soc’y (May 18, 2007), available at <http://www.ealawsociety.org/newsdetail.php?newsid=5&subcat=1>.

86. Moses Sserwanga, *Arrest the Mischief in EA Court*, MONITOR (Uganda), June 12, 2007, available at [http://www.monitor.co.ug/artman/publish/opinions/Arrest\\_the\\_mischiefs\\_in\\_EA\\_court.shtml](http://www.monitor.co.ug/artman/publish/opinions/Arrest_the_mischiefs_in_EA_court.shtml).

87. *Id.*; Communiqué of Legal Scholars and Filing of Treaty Reference, *supra* note 85; Communiqué of Legal Scholars, *supra* note 85.

88. Communiqué of Legal Scholars and Filing of Treaty Reference at the East African Court of Justice, *supra* note 85; Communiqué of Legal Scholars, *supra* note 85; Solomon Mutiia, *E.A. Govts Sued over Treaty Amendments*, MONITOR (Uganda), May 21, 2007, available at [http://www.monitor.co.ug/artman/publish/news/E\\_A\\_govts\\_sued\\_over\\_treaty\\_amendments.shtml](http://www.monitor.co.ug/artman/publish/news/E_A_govts_sued_over_treaty_amendments.shtml).

89. Solomon Muiyita, *Country Violated Rule of Law, Says EAC Court*, MONITOR (UGANDA), Nov. 1, 2007, available at <http://allafrica.com/stories/200711011005.html>; see also Nyakundi Nyamboga, *Detained Against Court’s Decision to Release Them on Bail*, STANDARD (Kenya), Nov. 5, 2007.

90. Tim Cocks, *Uganda Opposition Supporters Grabbed in Court Siege*, REUTERS, Mar. 1, 2007, available at <http://www.reuters.com/article/latestCrisis/idUSL01395099>.

attorney was also beaten unconscious during the raid.<sup>91</sup> Consequently, judges in Uganda went on strike to protest the incident as an attack on the rule of law, and EALS decided to bring the matter to the attention of the EACJ.<sup>92</sup> Although the EACJ sided with the claimants and against the Ugandan government, the EACJ nevertheless absolved EAC Secretary General Juma Volter Mwapachu of failure to ensure Uganda's compliance with the EAC Treaty, citing his lack of knowledge of the events that had unfolded in Kampala.<sup>93</sup>

#### D. SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

##### 1. SADC Summit

The military force of the Southern African Development Community (SADC) made its public debut in August 2007 at the SADC summit in Lusaka.<sup>94</sup> The SADC Brigade (SADCBRIG), which operates within the framework of the A.U.'s African Standby Force, will provide support for regional peacekeeping and humanitarian operations.<sup>95</sup> SADC leaders also met behind closed doors to discuss the economic and political crisis in Zimbabwe, which has caused an influx of Zimbabwean migrants to neighboring countries.<sup>96</sup> Ending a three-year absence, the Seychelles were formally readmitted to the SADC following deliberations at the summit.<sup>97</sup>

##### 2. SADC Tribunal

In October 2007, fifteen years after its formal establishment under Article 9 of the SADC Treaty, the SADC Tribunal seated at Windhoek heard its first human rights case.<sup>98</sup> Michael Campbell, a white farmer living in Zimbabwe, has been fighting to keep the Zimbabwean government from confiscating his property and transferring it to a prominent member of the ruling political party.<sup>99</sup> Such seizures began in 2000 as part of President Robert Mugabe's wealth redistribution program. The property seizures had been

91. *Id.*

92. Tim Cocks, *Uganda Judges Strike Over Court Siege*, REUTERS, Mar. 5, 2007, available at <http://www.reuters.com/article/latestCrisis/idUSL05574158>; Husein Bogere & Solomon Muyita, *EA lawyers to Sue Govt Over High Court Siege*, MONITOR (UGANDA), Mar. 8, 2007, available at [http://www.monitor.co.ug/artunani/publish/news/EA\\_lawyers\\_to\\_sue\\_govt\\_over\\_High\\_Court\\_siege.shtml](http://www.monitor.co.ug/artunani/publish/news/EA_lawyers_to_sue_govt_over_High_Court_siege.shtml).

93. Muyita, *supra* note 89; Nyamboga, *supra* note 89.

94. *Southern Africa Gets Peace Force*, BBC NEWS, Aug. 17, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6951971.stm> [hereinafter *Southern Africa Gets Peace Force*].

95. See Press Release, S. Afr. Dev. Cmty., Media Statement on the Official Launching of the SADC Brigade (SADCBRIG) (Aug. 7, 2007), available at [http://www.empbamako.org/IMG/pdf/Media\\_Statement\\_on\\_the\\_official\\_Launching\\_of\\_the\\_SADC\\_Brigade\\_SADCBRIG.pdf](http://www.empbamako.org/IMG/pdf/Media_Statement_on_the_official_Launching_of_the_SADC_Brigade_SADCBRIG.pdf).

96. *Southern Africa Gets Peace Force*, *supra* note 94.

97. *SADC Re-Admits Seychelles*, TIMES OF ZAMBIA, Aug. 18, 2007, available at <http://www.times.co.zm/news/viewnews.cgi?category=all&id=1187450340>. The Seychelles had pulled out of SADC for economic reasons but reapplied for admission in 2006. *Seychelles Will Apply to Rejoin SADC*, S. AFR. DEV. CMTY. TODAY, Feb. 2006, available at <http://www.sardc.net/editorial/sadctoday/view.asp?vol=307&pubno=v8n6>.

98. SADC First Human Rights Case, Coal. for an Effective Afr. Ct. on Hum. & Peoples Rts., Oct. 28, 2007, [http://www.africancourtcoalition.org/editorial.asp?page\\_id=123](http://www.africancourtcoalition.org/editorial.asp?page_id=123). For an overview of the Tribunal's structure and functions, see SADC Tribunal, S. Afr. Dev. Cmty., <http://www.sadc.int/tribunal/functions.php>.

99. See Robyn Dixon, *In Zimbabwe, a White Farmer Digs in*, L.A. TIMES, Oct. 3, 2007, available at <http://www.latimes.com/news/nationworld/world/africa/la-fg-farmer3oct03,1,6422889.story?page=1&coll=la-africa>.

expedited by a constitutional amendment allowing for the arbitrary state acquisition of land and companies without compensation.<sup>100</sup> Campbell, who also alleges that his property has been subject to repeated illegal invasions over the years, was rebuffed in his attempt to have the Supreme Court of Zimbabwe hear his constitutional challenge to the land grabs.<sup>101</sup> As such, he has taken his case to the SADC Tribunal and argues that Zimbabwe's race-based expropriations violate provisions of the SADC Treaty and the A.U. Charter, among other legal instruments.<sup>102</sup>

## E. THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA

Meeting in Kenya in May 2007, members of the Common Market for Eastern and Southern Africa (COMESA) agreed to a common external tariff, a move considered a major step towards the goal of creating a regional customs union by 2008.<sup>103</sup> The new tariff levies taxes on imports at a rate of 10 percent for semi-processed products and 25 percent for finished goods.<sup>104</sup> Expressing reservations about the local economic impact of liberalized trade, Angola, Ethiopia, and Uganda declined to adopt the measure.<sup>105</sup> COMESA trade ministers traveled to Brussels in November to meet with their European counterparts and negotiate a new economic partnership agreement with the EU.<sup>106</sup>

## F. THE AFRICAN DEVELOPMENT BANK

### 1. *Economic Development and Good Governance Issues*

The African Development Bank (ADB or the "Bank") maintained a generally optimistic view of the continent's economic prospects in 2007 and made significant strides in providing support to development efforts in various countries. In May, the ADB released the African Economic Outlook (AEO), a report jointly published with the Organization for Economic Cooperation and Development (OECD).<sup>107</sup> The AEO noted that Africa has experienced unprecedented economic growth during the past twenty years, with gross domestic product (GDP) increasing at a rate of five percent annually in the last six years.<sup>108</sup> A GDP growth rate of six percent was predicted for 2007.<sup>109</sup>

100. *Id.*; see also *Farmer Fights Land Grab*, BUS. DAY (S. Afr.), Oct. 6, 2007, available at <http://www.zwnews.com/print.cfm?ArticleID=17490>.

101. See *Farmer Fights Land Grab*, *supra* note 100.

102. SADC First Human Rights Case, *supra* note 98.

103. See *African Countries in Tariff Move*, BBC NEWS, May 23, 2007, available at <http://news.bbc.co.uk/2/hi/business/6684273.stm>.

104. *Id.*

105. *Id.*

106. *Ministers of Trade from ESA and EU Meet in Brussels to Decide on an Economic Partnership Agreement (EPA)*, e-COMESA NEWSLETTER, Nov. 9, 2007, available at <http://www.comesa.int/COMESA%20Newsletter/e-COMESA%20Newsletter%20130>.

107. Press Release, Afr. Dev. Bank, ADB Releases African Economic Outlook (May 13, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,158705&\\_dad=portal&\\_schema=PORTAL&focus\\_item=18744262&focus\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,158705&_dad=portal&_schema=PORTAL&focus_item=18744262&focus_lang=us) [hereinafter ADB Releases African Economic Outlook].

108. *Id.* Donald Karebuka, president of the ADB, attributed African economic growth primarily to a marked increase in commodity prices. See Daniel Wallis & George Obulutsa, *Commodities Boom Supports Golden Era for Africa—Bank*, BUS. DAY (S. Afr.), Oct. 2, 2007, available at <http://www.businessday.co.za/articles/article.aspx?ID=BD4A577055>.

Notably, the AEO made its debut in Shanghai during the ADB's annual meeting, held in Asia for the first time. The meeting's location reflects the mounting influence of China on the African continent.<sup>110</sup> In his address, Chinese Premier Wen Jiabao tried to reassure attendees that China was genuinely committed to advancing Africa's economic development and called on other countries to follow through on aid pledges and cancel debts owed by African states.<sup>111</sup> Sino-African relations are experiencing increased scrutiny, as critics have likened the extraction of natural resources by Chinese companies to the imperial arrangements of yesteryear.<sup>112</sup> Furthermore, China, which has been portrayed as enabling corrupt regimes in Africa through its no-strings lending policies, also faces accusations that it has exacerbated the humanitarian crisis in Darfur by supplying weapons to the Sudanese government in violation of a U.N. arms embargo.<sup>113</sup> Nevertheless, participants at the ADB meeting, echoing the ADB's chief economist's calls for strengthened cooperation with China, lauded Chinese investment in Africa while also reminding the Asian nation that colonialist-style exploitation would not be tolerated.<sup>114</sup>

On July 5, 2007, the ADB announced that it had distributed over one billion dollars in annual private sector investments for the first time in its forty-three year history.<sup>115</sup> This milestone had been achieved two days earlier, when the ADB approved a loan for the establishment of a power plant in Madagascar and an equity investment in the Access Bank of Tanzania, a micro-lending institution.<sup>116</sup> Other significant ADB financing transactions made in 2007 included an allocation of \$165 million to improve transportation infrastructures across Cameroon, Chad, and the Central African Republic; a \$98 million grant for upgrades of roads in central Tanzania; and the doubling of the ADB's previous pledge of \$200 million in reconstruction aid for the Democratic Republic of the Congo.<sup>117</sup>

Aside from financing several public infrastructure projects, in 2007 the ADB also announced several more broadly based economic development and good governance initiatives. On July 17, the ADB signed an agreement with the International Fund for Agricultural Development (IFAD) to cooperate on a joint review of various agricultural

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109. See *Afr. Dev. Bank*, *supra* note 107.

110. See *id.*

111. See *China Defends Its Role in Africa*, BBC NEWS, May 16, 2007, available at <http://news.bbc.co.uk/2/hi/asia-pacific/6660341.stm>.

112. See Christopher Bodeen, *African Development Bank Affirms China's Growing role, with Caveats*, ASSOCIATED PRESS, May 18, 2007.

113. *Id.*

114. See *id.*; Press Release, Afr. Dev. Bank, "African Countries Need to Address the Barriers that Keep African Business Less Competitive," says AfDB Chief Economist, Louis Kasekende (June 26, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,174339&\\_dad=portal&\\_schema=PORTAL&press\\_item=20560240&press\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=20560240&press_lang=us).

115. Press Release, Afr. Dev. Bank, AfDB Group Tops Billion Dollar Mark in Annual Private Sector Investments in Africa (July 6, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,174339&\\_dad=portal&\\_schema=PORTAL&press\\_item=21062237&press\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=21062237&press_lang=us).

116. *Id.*; see also Press Release, Afr. Dev. Bank, Tanzania: AfDB Approves €600,000 Equity Investment in Access Bank of Tanzania (July 5, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,174339&\\_dad=portal&\\_schema=PORTAL&press\\_item=20984244&press\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=20984244&press_lang=us).

117. See Timothy Armitage, *African Development Bank Provides US \$165 mil. for Central African Transportation Corridor*, GLOBAL INSIGHT, July 10, 2007, In Brief; See also Timothy Armitage, *African Development Bank Provides US \$98 mil. for Road Development in Tanzania*, GLOBAL INSIGHT, Sept. 20, 2007, In Brief; *African Development Bank to Double DR Congo Reconstruction Aid*, AGENCE FRANCE-PRESSE, July 31, 2007.

development policies implemented in Africa over the previous decade.<sup>118</sup> The review's findings, which are slated for completion by 2008, are meant to guide the two institutions in their efforts to alleviate rural poverty.<sup>119</sup> In September 2007, the ADB executed its first disbursement of funds for a good governance project in collaboration with the Kenyan government.<sup>120</sup> This venture will provide institutional support for the Kenya Anti-Corruption Commission, the Public Procurement Directorate, and the Kenya National Audit Office.<sup>121</sup>

The following month, the ADB Board of Directors signed off on a comprehensive strategy to thwart money laundering and the financing of terrorism, two phenomena recognized as inhibitors of good governance and development.<sup>122</sup> The ADB also joined seven other international lending bodies, including the East African Development Bank and the Development Bank of Southern Africa, in an agreement to improve capital flows to emerging markets by promoting more vigilant corporate governance, including bringing accounting practices in line with established financial reporting standards.<sup>123</sup> The end of 2007 brought more positive news as Standard & Poor's affirmed the ADB's AAA long-term and A-1+ short-term issuer credit ratings, a vote of confidence that was also bestowed upon seven other multilateral development finance institutions.<sup>124</sup>

## 2. Internal Governance

The ADB's Board of Directors appointed three experts in May 2007 to staff the Internal Review Mechanism (IRM), an entity established in 2004 to assess compliance with ADB rules and procedures.<sup>125</sup> Specifically, the IRM responds to complaints submitted to the Compliance and Mediation Review Unit (CMRU) by parties alleging potentially adverse impacts from the failure of ADB programs and projects to abide by the Bank's own regulations.<sup>126</sup> If the IRM uncovers instances of non-compliance, it also recommends re-

118. See Press Release, Afr. Dev. Bank, Tackling Rural Poverty—Learning the Lessons Together (July 17, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,174339&\\_dad=portal&\\_schema=PORTAL&press\\_item=21588245&press\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=21588245&press_lang=us).

119. *Id.*

120. See Kenya—*The Institutional Support for Good Governance (KISGG)*, Afr. Dev. Bank, Sept. 15, 2007, [http://www.afdb.org/pls/portal/url/page/ADB\\_Admin\\_PG/ADB\\_PROJECT\\_SINGLE?thing\\_id=22134296](http://www.afdb.org/pls/portal/url/page/ADB_Admin_PG/ADB_PROJECT_SINGLE?thing_id=22134296) (last visited Mar. 28, 2008).

121. See *id.*

122. See Press Release, Afr. Dev. Bank, The AfDB Strengthens its Mechanism to Prevent Money Laundering and Financing Terrorism (Oct. 11, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,158705&\\_dad=portal&\\_schema=PORTAL&focus\\_item=24514307&focus\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,158705&_dad=portal&_schema=PORTAL&focus_item=24514307&focus_lang=us). The provisions of the strategy are available at [http://www.afdb.org/pls/portal/docs/PAGE/ADB\\_ADMIN\\_PG/DOCUMENTS/STRATEGYDOCUMENTS/BANK%20GROUP%20STRATEGY%20FOR%20THE%20PREVENTION%20OF%20MONEY%20LAUNDERING.pdf](http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/STRATEGYDOCUMENTS/BANK%20GROUP%20STRATEGY%20FOR%20THE%20PREVENTION%20OF%20MONEY%20LAUNDERING.pdf).

123. Paul Icamina, *World's Top Lending Institutions Want More Transparency in Emerging Markets*, Allheadlinenews.com, Oct. 23, 2007, <http://www.allheadlinenews.com/articles/7008924007>.

124. *World Bank, Other Supranational Institutions Affirmed—S&P*, THOMSON FIN., Oct. 17, 2007, available at <http://www.abcmoney.co.uk/news/172007146751.htm>.

125. Press Release, Afr. Dev. Bank, AfDB Appoints Experts for Independent Review Mechanism (May 7, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,174339&\\_dad=portal&\\_schema=PORTAL&press\\_item=18376236&press\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=18376236&press_lang=us). (The appointees were comprised of nationals of Senegal and the Netherlands, as well as a dual citizen of South Africa and the United States.)

126. See About the Independent Review Mechanism (IRM), Afr. Dev. Bank, [http://www.afdb.org/portal/page?\\_pageid=473,5848222&\\_dad=portal&\\_schema=PORTAL](http://www.afdb.org/portal/page?_pageid=473,5848222&_dad=portal&_schema=PORTAL); Press Release, Afr. Dev. Bank, CRMU Pres-

medial measures to the Board of Directors.<sup>127</sup> The ADB issued its first annual report on the IRM in May 2007, chronicling the creation of the body and its early activities during 2006.<sup>128</sup>

In September 2007, the ADB approved a compliance review based on a request made in 2006 by individuals and NGOs in Uganda. The review concerned the ADB's financing of a proposed hydropower plant and related interconnection facilities at Bujagali Falls, located near the town of Jinja.<sup>129</sup> The requestors claimed that the ADB did not properly consider the environmental, cultural, and economic impacts on the surrounding area when it approved the project, which involves the construction of several dams on the Nile River.<sup>130</sup> The CMRU began consulting experts in late October 2007 in preparation for additional investigations to be conducted in Uganda.<sup>131</sup>

## II. Country-Specific Reports

### A. WEST AFRICA

#### 1. Ghana

Ghana celebrated fifty years of independence in March 2007. Ghana's independence from British rule began on March 5, 1957.<sup>132</sup> On that day, the British flag was lowered and the Ghanaian flag was raised.<sup>133</sup> Delegates from the American Bar Association, led by International Law Section Chair Deborah Enix-Ross, attended the celebrations while on a rule of law mission to the country.<sup>134</sup> Ghana was the first country in the south of the Sahara to gain independence from British rule.<sup>135</sup> The main objectives of the celebration were to commemorate Ghana's landmark achievements as the first country in Black Africa to attain independence; to reflect on the evolution, development, achievements, and drawbacks; and to look forward to the future and vision of excellence as a country.<sup>136</sup>

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entation (Nov. 26, 2006), available at [http://www.afdb.org/portal/page?\\_pageid=293,174339&\\_dad=portal&\\_schema=PORTAL&press\\_item=22948297&press\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=22948297&press_lang=us).

127. See About IRM, *supra* note 126.

128. See Afr. Dev. Bank, The Independent Review Mechanism: Annual Report 2006 (2007), available at [http://www.afdb.org/pls/portal/docs/PAGE/ADB\\_ADMIN\\_PG/DOCUMENTS/CRMU\\_DOCS/IRM%20ANNUAL%20REPORT%202006.pdf](http://www.afdb.org/pls/portal/docs/PAGE/ADB_ADMIN_PG/DOCUMENTS/CRMU_DOCS/IRM%20ANNUAL%20REPORT%202006.pdf).

129. See Press Release, Afr. Dev. Bank, AfDB Approves Compliance Review of Bujagali Power Projects (Sept. 12, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,174339&\\_dad=portal&\\_schema=PORTAL&press\\_item=23618315&press\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=23618315&press_lang=us).

130. See *id.*

131. See Press Release, Afr. Dev. Bank, CRMU Inspects Bujagali Power Plant (Nov. 6, 2007), available at [http://www.afdb.org/portal/page?\\_pageid=293,174339&\\_dad=portal&\\_schema=PORTAL&press\\_item=25334296&press\\_lang=us](http://www.afdb.org/portal/page?_pageid=293,174339&_dad=portal&_schema=PORTAL&press_item=25334296&press_lang=us).

132. See *Ghana Celebrates First 50 Years*, BBC News, Mar. 6, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6421421.stm>.

133. *Id.*

134. See ABA Section of International Law, ILEX Briefing Trip to West Africa (2007), <http://www.abanet.org/intlaw.intlproj/trips/wafrica.html> (last visited Mar. 28, 2008). See also ILEX Ghana Task Force Information, <http://www.abanet.org/dch/committee.cfm?com=IC550555> (last visited Mar. 28, 2008).

135. See *What is Ghana at 50?*, Ghana at 50, 2007, <http://www.ghana50.gov.gh/ghana50/> (last visited Mar. 28, 2008).

136. *Id.*



Ghana has witnessed sustained democratic civil rule through general elections since 1992.<sup>137</sup> The country has also witnessed several transitional developments at all levels of governance. Economic reform has been at the forefront of Ghana's democratic transition.<sup>138</sup> With the support of international financial institutions, such as the World Bank and the International Monetary Fund (IMF), Ghana's economy has been strengthened by a "broad-based, private sector-led economic growth."<sup>139</sup> The next general election will take place in 2008.

As a major economic player in Africa, Ghana hosted a U.S.-Africa trade relations forum under the African Growth and Opportunity Act (AGOA)<sup>140</sup> in July 2007.<sup>141</sup> Ghana and several other African countries have benefited from the trade opportunities under AGOA,<sup>142</sup> but Ghana has taken the lead in advocating for an extension and expansion of U.S.-Africa trade relations beyond AGOA's current expiration of September 30, 2015.<sup>143</sup>

The Ghana Commission on Human Rights and Administrative Justice (CHRAJ), in collaboration with civil society organizations, is advancing the implementation of laws against child labor.<sup>144</sup> The Supreme Court of Ghana will rule on a case where the CHRAJ is seeking a determination as to whether it has powers under the Constitution to investigate matters published in the media without a formal complaint.<sup>145</sup> The case is important to the determination of the powers of the Human Rights Commission.

## 2. Liberia

As part of its rule of law mission to Africa in March 2007, the American Bar Association Section of International Law led an International Legal Exchange (ILEX) to Liberia,

137. See generally *History of Ghana*, Ghana at 50, 2007, <http://www.ghana50.gov.gh/history/> (last visited Mar. 28, 2008).

138. See James S. Gusah & Emmanuel Oritsejafer, *Democracy and Economic Growth in Africa: The Case of Ghana and South Africa*, J. THIRD WORLD STUDIES, Fall 2005, 121.

139. Press Release, World Bank Trade Research, Ghana to Deepen Economic Reforms with World Bank Support (May 27, 1999), available at <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EXTAFRUMAFTPS/0,,contentMDK:20012594~menuPK:2050032~pagePK:51246584~piPK:51241019~theSitePK:2049987,00.html>.

140. See *Summary of AGOA I*, [http://www.agoa.gov/agoa\\_legislation/agoa\\_legislation.html](http://www.agoa.gov/agoa_legislation/agoa_legislation.html). (last visited Mar. 28, 2008). The African Growth and Opportunity Act (AGOA) was signed into law on May 18, 2000 as Title I of the Trade and Development Act of 2000. Several amendments to the Act—AGOA II, AGOA III and AGOA IV—have been signed into law, expanding trade benefits to sub-Saharan African countries under the law.

141. See *Sixth AGOA Forum*, [http://www.agoa.gov/agoa\\_forum/AGOA%20Success%20Stories%202006-2007.pdf](http://www.agoa.gov/agoa_forum/AGOA%20Success%20Stories%202006-2007.pdf). "The Sixth AGOA Forum was held in Accra, Ghana July 18-19, 2007. The theme of that year's Forum was 'As Trade Grows, Africa Prospers: Optimising the Benefits Under AGOA.'" [http://www.agoa.gov/agoa\\_forum/agoa\\_forum6.html](http://www.agoa.gov/agoa_forum/agoa_forum6.html).

142. See *AGOA Success Stories: 2006-2007*, [http://www.agoa.gov/agoa\\_forum/AGOA%20Success%20Stories%202006-2007.pdf](http://www.agoa.gov/agoa_forum/AGOA%20Success%20Stories%202006-2007.pdf).

143. See *Summary of AGOA I*, *supra* note 140.

144. Laws on Child Labour Must Be Enforced, Ghana Home Page, Nov. 23, 2007, available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=134689>.

145. Supreme Court to Rule on CHRAJ's Case on December 21, Ghana Home Page, Nov. 21, 2007, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=134593>.

where delegates met with government officials, NGOs, the judiciary, and international organizations working on development projects in the country.<sup>146</sup>

In July, Liberia's President, Ellen Johnson-Sirleaf, launched a local chapter of the African Parliamentary Regional Network Against Corruption.<sup>147</sup> The Liberian Cabinet has adopted a National Anti-Corruption Strategy and a Code of Conduct prepared by the Liberian Governance Reform Commission.<sup>148</sup>

The Liberian Truth and Reconciliation Commission (TRC) received a 4,000-page report prepared by the United States on atrocities committed during Liberia's period of unrest.<sup>149</sup> The formerly classified report catalogues all happenings since the 1980 coup plot.<sup>150</sup> The TRC has stated that the Report is not likely to be published at least for the next two decades to avoid any prejudice to the TRC's ongoing investigations.<sup>151</sup> The purpose of the Report is to aid the work of the TRC in probing rights violations, murders, extra-judicial killings, economic crimes, and sexual abuses committed by all parties during the periods of conflict.<sup>152</sup>

On August 20, 2007, judges postponed the trial of former Liberian president Charles Taylor until January 2008. The trial will be held in The Hague and address the war crimes, human rights abuses, and other atrocities allegedly directed by Taylor in Sierra Leone.<sup>153</sup> Taylor's new defense team had requested additional time to prepare after funds were made available to the team for the case.<sup>154</sup> The prosecution has produced a list of seventy-two witnesses to testify against Taylor when the case resumes.<sup>155</sup>

### 3. *Sierra Leone*

In March 2007, the Diamond Cutting and Polishing Act was enacted by the Sierra Leone government to prevent the illicit trading of diamonds within the country.<sup>156</sup> The Act prohibits a person from handling a diamond for the purpose of trade or business

146. See ILEX Briefing Trip to West Africa, *supra* note 134; ABA Section of International Law ILEX West Africa, <http://www.abanet.org/intlaw> (last visited Mar. 28, 2008); ILEX Liberia Africa Task Force, ABA Section of International Law, <http://www.abanet.org/dch/committee.cfm?com=IC550553> (last visited Mar. 28, 2008).

147. *Liberia Takes a Tougher Line*, Legal Brief, July 19, 2007, <http://www.legalbrief.co.za/article.php?story=20070719081742265> (last visited Mar. 28, 2008).

148. *Id.*

149. *Liberia Gets Atrocities Report*, News 24, Oct. 31, 2007, [http://www.news24.com/News24/Africa/News/0,,2-11-1447\\_2212780,00.html](http://www.news24.com/News24/Africa/News/0,,2-11-1447_2212780,00.html) (last visited Mar. 28, 2008); *Report Catalogues War Atrocities*, LEGALBRIEF AFRICA, Nov. 5, 2007, available at <http://www.legalbrief.co.za/article.php?story=20071105153258509>.

150. *Report Catalogues War Atrocities*, *supra* note 149.

151. *Id.*

152. *Id.*

153. See *Taylor's War-Crimes Trial Delayed Until 2008*, MAIL & GUARDIAN ONLINE AFRICA, Aug. 20, 2007, [http://www.mg.co.za/articlePage.aspx?articleid=317018&area=/breaking\\_news/breaking\\_news\\_africa](http://www.mg.co.za/articlePage.aspx?articleid=317018&area=/breaking_news/breaking_news_africa) (last visited Mar. 28, 2008). See also *Taylor's Trial Delayed to January*, LEGALBRIEF AFRICA, Aug. 27, 2007, available at <http://www.legalbrief.co.za/article.php?story=20070827153622552>.

154. See *Taylor's War-Crimes Trial Delayed Until 2008*, *supra* note 153.

155. See George J. Borteh, *72 Witnesses to Testify Against Taylor*, ANALYST, Sept. 6, 2007, available at <http://allafrica.com/stories/200709061181.html>. See also *72 Witnesses to Testify Against Taylor*, LEGALBRIEF AFRICA, Sept. 10, 2007, available at <http://www.legalbrief.co.za/article.php?story=20070910155021192>.

156. See *The Diamond Cutting and Polishing Act*, No. 2 (2007), Sierra Leone Gazette No. 14, available at <http://www.sierra-leone.org/Laws/2007-2p.pdf>.

within Sierra Leone unless such person is properly licensed.<sup>157</sup> Violators of Article 2(1) of the Act incur a civil penalty of up to thirty million leones, a criminal penalty of up to ten years in prison, or both.<sup>158</sup> The Act also provides for diamond valuation, customs clearance, export control, and compliance monitoring.<sup>159</sup> Sierra Leone recently emerged from a brutal civil war that had lasted about ten years and was largely fueled by the illicit trading of diamonds, mostly by rebel groups and foreign mercenaries.<sup>160</sup>

In May 2007, the Other Financial Services Act of 2001 was amended to provide for the establishment and operation of stock exchanges in Sierra Leone.<sup>161</sup> The amended Act strictly prohibits anyone from operating a stock exchange in Sierra Leone without the approval of the Central Bank,<sup>162</sup> imposing a civil penalty of up to 500,000 leones per day.<sup>163</sup> The amended Act also includes other significant provisions, such as the establishment of an investor compensation fund and the licensing and regulation of stock trading facilities, brokers, dealers, and other personnel.<sup>164</sup>

In July 2007, President Tejan Kabbah signed the Refugees Protection Act to implement the Convention Relating to the Status of Refugees signed in Geneva in 1951, its accompanying Protocol of 1967, and the OAU Convention on Refugees signed in Addis Ababa, Ethiopia, in 1969.<sup>165</sup> The Refugees Protection Act provides for the establishment of a National Refugee Authority<sup>166</sup> and contains specific procedures for the application of refugee status or asylum in Sierra Leone.<sup>167</sup> The Act also grants certain rights and imposes certain duties on those granted refugee status or asylum in Sierra Leone;<sup>168</sup> provides for lasting solutions such as local integration, voluntary repatriation, or resettlement in a third country;<sup>169</sup> and permits regional and international cooperation with the A.U. and the U.N. High Commission for Refugees.<sup>170</sup>

Also in July, President Kabbah signed the Child Rights Act, a piece of enabling legislation designed to promote children's rights in keeping with the U.N. Convention on the Rights of the Child, its Optional Protocols,<sup>171</sup> and the African Charter on the Rights and Welfare of the Child.<sup>172</sup> The Child Rights Act establishes an independent National Commission for Children, grants certain rights to children, and imposes duties on parents and

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157. *Id.* § 2(1).

158. *Id.* § 2(2).

159. *Id.* §§ 8-11.

160. See Pervenia P. Brown, *Sierra Leone: Blood Diamonds*, WORLD PRESS, Dec. 13, 2005, available at <http://www.worldpress.org/Africa/2193.cfm>.

161. The Other Financial Services (Amendment) Act, No. 4 (2007), Sierra Leone Gazette Supplement Vol. 138, No. 23, available at <http://www.sierra-leone.org/Laws/2007-4p.pdf>.

162. *Id.* art. 49A(1).

163. *Id.* art. 49A(2).

164. *See id.*

165. The Refugees Protection Act, 138, Sierra Leone Gazette Supplement 42 (2007), available at <http://www.sierra-leone.org/Laws/2007-6p.pdf>.

166. *Id.* arts. 3-4.

167. *Id.* arts. 8-14.

168. *Id.* arts. 15-22.

169. *Id.* arts. 23-25.

170. *Id.* arts. 26-28.

171. Sierra Leone signed this Convention in February 1990 and ratified it in June 1990.

172. The Child Rights Act, 2007, 13B, Sierra Leone Gazette Extraordinary Supplement 43 (2007), available at <http://www.sierra-leone.org/Laws/2007-7p.pdf>.

the state to promote the welfare of the child.<sup>173</sup> The Act also contains other significant provisions relating to the employment of children; parentage, custody, and maintenance of children; and quasi-judicial and judicial adjudication of children.<sup>174</sup> This law is extremely important in avoiding the massive exploitation of children as sex slaves, child combatants, and other instruments of war as seen during the country's decade-long, brutal civil war.<sup>175</sup>

In 2007, several other significant laws were enacted or amended in Sierra Leone. A brief summary follows: The Domestic Violence Act was enacted to suppress domestic violence and provide protection for victims of domestic abuse.<sup>176</sup> The Devolution of Estates Act was enacted to provide for surviving spouses, children, parents, relatives and other dependents of testate and intestate persons.<sup>177</sup> The Prevention and Control of HIV and AIDS Act was enacted to provide for the prevention, management, and control of HIV-AIDS. This legislation also provided for the treatment, counseling, support, and care of infected persons and included anti-discrimination provisions.<sup>178</sup> The Registration of Business Act was enacted to provide for the registration of businesses and business names.<sup>179</sup> The Road Traffic Act was enacted to consolidate the laws relating to road traffic, including licensing and registration of motor vehicles, licensing of drivers and driving schools, the construction and use of motor vehicles and equipment, road safety regulations, and other general provisions and offenses.<sup>180</sup> The Electoral Laws (Amendment) Act was enacted to clarify the judicial procedure to adjudicate a claim by a member, or soon-to-be member, of Parliament. The act stipulates that initial petitions are to be made to the High Court, with appeals to be taken to the Court of Appeals.<sup>181</sup> The Fisheries (Management and Development) Act was amended to provide for fines and monetary penalties to be deposited into a consolidated fund.<sup>182</sup> Finally, the Sierra Leone Maritime Administration Act of 2000 was amended to provide for fines and fees to be paid to a consolidated fund and for the administration to be financed by funds appropriated by Parliament, loans by the Maritime Administration, investment revenue, and gifts or donations from any person or organization.<sup>183</sup>

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173. *Id.*

174. *Id.*

175. See *Sierra Leone: The Battle for Childhood*, BBC NEWS, Jan. 26, 2001, available at <http://news.bbc.co.uk/2/hi/africa/1136430.stm>. (For further information regarding decisions by the Special Court for Sierra Leone in The Hague, see section on International Courts & Tribunals in this volume.)

176. The Domestic Violence Act, Sierra Leone Gazette 20 (2007), available at <http://www.sierra-leone.org/Laws/2007-20p.pdf>.

177. The Devolution of Estates Act, Sierra Leone Gazette Extraordinary 48 (2007), available at <http://www.sierra-leone.org/Laws/2007-21p.pdf>.

178. The Prevention and Control of HIV and AIDS Act, No. 8 (2007), available at <http://www.sierra-leone.org/Laws/2007-8p.pdf>.

179. *Id.*

180. The Road Traffic Act, No. 5 (2007).

181. The Electoral Laws (Amendment) Act, No. 15 (2007), available at <http://www.sierra-leone.org/Laws/2007-15p.pdf>.

182. The Fisheries (Management and Development) (Amendment) Act, 138 Sierra Leone Gazette 45 (2007), available at <http://www.sierra-leone.org/Laws/2007-10p.pdf>.

183. The Sierra Leone Maritime Administration (Amendment) Act, No. 14, available at <http://www.sierra-leone.org/Laws/2007-14p.pdf>.

#### 4. *Guinea*

In January 2007, following crippling trade union strikes and massive economic and social upheaval in Guinea, President Lansana Conte and the trade unions reached an agreement that allowed for the creation of a premiership as an integral part of the executive branch.<sup>184</sup> Under the new power-sharing arrangement, the ailing President's absolute executive powers have effectively been reduced, as he is now expected to share executive power with the new prime minister, who will serve as head of government.<sup>185</sup> The agreement was largely made possible by an effective mediation process between the President and the trade union leaders under the auspices of the Supreme Court, the National Assembly, and the Economic and Social Council.<sup>186</sup>

In November 2007, President Conte signed a law establishing an Independent National Electoral Commission, in response to demands for electoral reforms by political groups and development partners.<sup>187</sup> The Electoral Commission is designed to play an integral part in the electoral process, from voter list compilation to the declaration of election results.<sup>188</sup> It will be composed of twenty-five members, ten of which will come from the majority party, ten from the opposition, three to be appointed by civil society groups, and the remaining two to be appointed by the administration.<sup>189</sup>

#### 5. *Senegal*

In March 2007, President Abdoulaye Wade was elected to a second five-year term of office.<sup>190</sup> President Wade claimed nearly 56 percent of the votes cast amid allegations of electoral fraud, corruption, and mismanagement.<sup>191</sup> Considered an economic liberal, he was elected to office seven years ago based on wide support among discontented and jobless youth.<sup>192</sup> He was also instrumental in the creation of NEPAD, an initiative that encourages African governments to permit scrutiny of their political and economic records as a means of promoting good governance and creating an attractive investment climate.<sup>193</sup>

In April 2007, the Government enacted a new Code for Public Markets.<sup>194</sup> The Code applies to all government or publicly-owned markets as well as private sector markets that

184. See GuinéeNews, Procès Verbal de Négociation Suite à la Grève Générale de l'Inter Centrale CNTG-USTG Elargie à l'ONSLG et l'UDTG Déclenchée le 10 Janvier 2007, Jan. 28, 2007, available at <http://www.guineenews.org/articles/outils/print.asp?ID=200712854911>.

185. *Id.*

186. *Id.* The process was also facilitated by the Head of the Christian Religious Council and the Grand Imam of the Faysal Mosque.

187. Amadou Toure, *Politique: Le Décret sur la CENI Enfin Publie*, Guinée News, Nov. 10, 2007, available at <http://www.guineenews.org/articles/article.asp?num=200711106849>.

188. *Id.*

189. *Id.*

190. See Lydia Polgren, *Senegal's President Elected to 2nd Term by Wide Edge*, N.Y. TIMES, Mar. 2, 2007, available at <http://www.nytimes.com/2007/03/02/world/africa/02senegal.html?n=Top/News/World/Countries%20and%20Territories/Senegal>.

191. *See id.*

192. *See id.*

193. *See id.*

194. Décret No. 2007-545, Code des Marchés Publics, Apr. 25, 2007, available at <http://www.gouv.sn/textes/marches.cfm>.

receive public funding.<sup>195</sup> The Code is designed to regulate the operation of public markets and to respond to their need to perform work and procure supplies or services in their undertaking of contracts for the delivery of public services.<sup>196</sup>

In November, Senegal entered into a tripartite agreement with Mauritania and the U.N. High Commission for Refugees that will allow about 24,000 refugees in northern Senegal to return to Mauritania after spending nearly two decades in exile following a long-standing border dispute between Senegal and Mauritania that escalated into ethnic violence.<sup>197</sup>

## 6. *Burkina Faso*

In May 2007, the Government adopted a National Food Policy to be implemented by the Ministry of Health, the Ministry of Finance and Budget, and the Ministry of Territorial Administration and Decentralization.<sup>198</sup> The National Food Policy was designed to combat malnutrition, infant mortality, and infectious diseases, especially among women and children.<sup>199</sup> As such, the Policy calls for constructive cooperation in terms of technical and financial assistance between the Burkinabe Health Ministry and NGOs such as the World Food Program, the World Health Organization, the U.N. Children's Fund, and Africare, among others.<sup>200</sup> While the principal goal of the Policy is to improve the overall health and nutrition of the Burkinabe population, it specifically aims to: reduce morbidity and mortality due to inadequate protein and carbohydrate consumption; reduce the prevalence of chronic illness caused by malnutrition; promote mass consumption of food rich in micronutrients; encourage a balanced diet for infants and children; improve food service in health facilities; reinforce community participation in nutritional activities; and enhance national food security.<sup>201</sup>

In May 2007, the Government established a consultative structure known as the Supreme Council of Burkinabes Abroad, whose main purpose is to bring together Burkinabe citizens in the diaspora to participate in the social, cultural, and economic development of Burkina Faso.<sup>202</sup> Each host country is entitled to three permanent working groups, from which delegates to the Council's General Assembly will be elected.<sup>203</sup> The Minister of Foreign Affairs and Regional Cooperation will serve as president of the council.<sup>204</sup>

In June 2007, the Government adopted a code for the civil aviation community. Under the new code, no aircraft will be permitted to fly in Burkinabe airspace unless it is registered and bears an appropriate designation indicating its registration and nationality as prescribed by the ministry responsible for civil aviation.<sup>205</sup> The code also requires all

195. *Id.* Title I, §1, art. 2.

196. *Id.* art. 1.

197. See Press Release, U.N. High Comm'r for Refugees, Tripartite Agreement on Return of Mauritanian Refugees, UNHCR Briefing Notes, Nov. 13, 2007, available at <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=47397ea115>.

198. Decret No. 2007-326/PRES/PM/MSMFBMATD, May 24, 2007, arts. 1, 2.

199. *Id.* Avant Propos.

200. *Id.* art. 2.2.3

201. *Id.* art. 4.3

202. Decret No. 2007-308/PRES/PM/MAECCR, art. 1, May 24, 2007.

203. *Id.* arts. 4, 5.

204. *Id.* art. 1.

205. Decret No. 2007-388/PRES/PM/MT/SECU, art. 2, Jun. 20, 2007.

aviation personnel to be duly licensed and all entities wishing to use Burkinabe air facilities to be approved by the ministry responsible for civil aviation.<sup>206</sup> The Ministry of Transport and the Ministry of Security will be primarily responsible for enforcing this law.<sup>207</sup>

Also in June 2007, the Government promulgated a law instituting a National System for Normalization, Certification, Accreditation, and Quality Promotion in Burkina Faso.<sup>208</sup> This new law is designed to achieve standardization, improve quality in the delivery of goods and services, and promote competence in professional services.<sup>209</sup> The law provides for a system of accreditation operating within a regional framework under the auspices of the West African Economic and Monetary Union and ECOWAS.<sup>210</sup>

In July 2007, the Burkinabe Government ratified the accord signed in Luxembourg on June 25, 2005, amending the EU-ACP Partnership Agreement between ACP countries and the EU.<sup>211</sup> The amendment is significant because it envisions a new framework of cooperative relationship between E.U. countries and developing countries, addressing a variety of issues including: poverty reduction, debt and structural adjustment support, accelerated privatization and protection of investments in developing countries, immigration reform, and development financing.<sup>212</sup> The Minister of Foreign Affairs and Regional Cooperation and the Minister of Finance and Budget will be responsible for implementing this accord.<sup>213</sup>

In the same month, the Government passed a law specifying conditions for the use and exploitation of scarce water resources and pastoral grounds.<sup>214</sup> It also imposes sanctions for infractions consistent with the applicable statute in force.<sup>215</sup>

In August 2007, the Government ratified the ECOWAS Convention on Small Arms and Light Weapons,<sup>216</sup> which was signed on June 14, 2006, in Abuja, Nigeria.<sup>217</sup> The Convention seeks to prevent and combat the illicit transfer and use of small arms and light weapons in the ECOWAS region, which has been largely blamed for causing destabiliza-

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206. *Id.* arts. 3, 4.

207. *Id.* art. 14.

208. Decret No. 2007-387/PRES, art. 1, Loi No. 011-2007/AN, Jun. 15, 2007, (Journal No. 27, July 5, 2007).

209. *Id.*

210. *Id.* art. 10.

211. Decret No. 2007-418/PRES/PM/MACER/MFB, art. 1, July 13, 2007.

212. See The ACP-EU Partnership Agreement, 2000, *available at* <http://www.acpsec.org/fr/conventions/cotonou/accord1.htm>.

213. *Id.* art. 2.

214. Decret No. 2007-407/PRES/PM/MRA/MAHRH/MATD, art. 1, July 3, 2007.

215. *Id.* art. 23.

216. The full title of the Convention is "ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials."

217. Decret No. 2007-527/PRES/PM/MAECR/SECU/MEF, art. 1, Aug. 29, 2007, Journal No. 36, Sept. 6, 2007, *available at* <http://www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENG LISH-PDF>.

tion in the West African sub-region.<sup>218</sup> The Convention requires member-states to ban the transfer of small arms and light weapons.<sup>219</sup>

### 7. Nigeria

In 2007, Nigeria's nascent democracy took significant steps towards maturity with the first ever transfer of power from one civilian administration to another and landmark decisions from the Nigerian Supreme Court on the separation of powers and the rule of law.<sup>220</sup> While there is reason to draw optimism from these developments, not all events in 2007 were good news, particularly as the aforementioned civilian transfer of power was clouded by a widely discredited general election.<sup>221</sup>

In 2007, the Nigerian Supreme Court was asked to rule on questions of constitutional law that will frame Nigeria's constitutional democracy for years to come. Such questions touched on the separation of powers, the President/Vice President relationship, and powers of the state electoral commission, known as the Independent National Electoral Commission (INEC). The Supreme Court's unanimous holdings and refusal to rubber-stamp the wishes of the executive branch demonstrate Nigerian judicial independence. Such actions, coupled with the executive branch's implementation of the rulings, are testaments to a developing constitutional democracy in Nigeria.

A feud between President Olusegun Obasanjo and Vice President Atiku Abubakar brought about the case *Attorney General v. Albaji Atiku Abubakar*. The case arose after President Obasanjo declared the Vice President's office to be vacant, on the grounds that Vice President Abubakar had: (i) decamped from the political party under which he was elected to office, (ii) joined a rival political party and became the presidential flag bearer of such party, and (iii) openly criticized President Obasanjo.<sup>222</sup> Vice President Abubakar brought the case to challenge his dismissal from office.

The Supreme Court, in a unanimous holding, invoked the separation of powers doctrine and held that neither the President nor the courts has the power to remove the Vice President from office.<sup>223</sup> The Nigerian constitution specifically reserves such powers to the National Assembly through the impeachment process.<sup>224</sup> Vice President Abubakar resumed his office following the Supreme Court's ruling.

In the second major case before the Supreme Court, *Alhaji Atiku Abubakar v. INEC*, the issue raised was whether INEC has the power to disqualify any candidate sponsored by a

218. See S.C. Res. 1467, U.N.Doc. S/RES/1467 (Mar. 18, 2003), available at <http://www.un.org/News/Press/docs/2003/sc7694.doc.htm>.

219. ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials art. 3, June 14, 2006, available at <http://www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.pdf>.

220. See, e.g., Attorney Gen. of the Fed'n & Ors v. Abubakar, (2007) 4 NLR 202 (S.C.), available at <http://www.nigeria-law.org/Attorney-General%20of%20the%20Federation%20&%20Ors%20v%20Alhaji%20Atiku%20Abubakar%20&%20Ors.htm>; Abubakar v. Indep. Nat'l Electoral Comm'n, 12 N.W.L.R. 220 (S.C.) (Nigeria).

221. See Lydia Polgreen & Helene Cooper, *Governing Party Wins in Nigeria, but Many Claim Fraud*, N.Y. TIMES, April 24, 2007, available at <http://www.nytimes.com/2007/04/24/world/africa/24nigeria.html>.

222. *Attorney Gen. of the Fed'n*, supra note 227.

223. *Id.*

224. *Id.*



political party, including the Vice President, from contesting Nigerian elections.<sup>225</sup> INEC had struck Vice President Abubakar from the list of presidential candidates, based on allegations of corruption, prompting the Vice President, again, to seek redress in the courts.<sup>226</sup>

The Supreme Court, in reversing a judgment of the Court of Appeal, unanimously held that INEC has no power to disqualify any candidate sponsored by a political party from contesting an election.<sup>227</sup> INEC's powers to organize, undertake, and supervise elections in Nigeria do not include or extend to the disqualification of a person from elective office.<sup>228</sup> Such power to disqualify candidates is vested solely in the Nigerian courts, by virtue of the 2006 Electoral Act.<sup>229</sup> The Supreme Court's holding paved the way for Vice President Abubakar to contest the office of President in the 2007 general elections.

Vice President Abubakar, however, did not win the presidential election. Umaru Musa Yar'Adua, former governor of Katsina state, and a member of the ruling People's Democratic Party, was elected President of Nigeria in general elections held on April 21, 2007. He was sworn in and assumed office on May 29, 2007.

While the 2007 general elections represented the first ever transfer of power from one Nigerian civilian administration to another, by most outside accounts the elections were heavily tainted with irregularities, including vote rigging.<sup>230</sup> Allegations concerning improprieties are still being resolved. As of November 2007, state election tribunals had nullified gubernatorial elections in the states of Kogi, Adamawa, Kebbi, and Rivers,<sup>231</sup> with evidence to suggest that other gubernatorial elections will also be nullified.<sup>232</sup> Furthermore, proceedings remain ongoing at the presidential election tribunal, where the opposition candidates have mounted a legal battle to unseat President Yar'Adua.<sup>233</sup> Against this backdrop, 2008 promises to provide further significant developments in Nigeria's ongoing constitutional and political development.

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225. *Abubakar*, *supra* note 227, at 223.

226. *Id.*

227. *Id.* at 236.

228. *Id.* at 239.

229. *Id.*

230. See generally, *How to Steal Yet Another Election*, *ECONOMIST*, Apr. 19, 2007, available at [http://www.economist.com/world/africa/displaystory.cfm?story\\_Id=9050948](http://www.economist.com/world/africa/displaystory.cfm?story_Id=9050948).

231. See Bolade Omonijo, *Tribunal Verdicts Send Shivers Down Politician's Spines*, *VANGUARD*, Nov. 27, 2007, available at <http://allafrica.com/stories/200711270113.html>.

232. See, e.g., Richard Amayo, *Edo: Ballot Recount Shows Guber Results Were Inflated*, *THIS DAY*, Nov. 30, 2007, available at <http://odili.net/news/source/2007/nov/30/299.html>.

233. See *Nigeria Election Tribunal Orders Electoral Commission to Produce Paper Ballots*, *JURIST*, May 15, 2007, available at <http://jurist.law.pitt.edu/paperchase/2007/05/nigeria-election-tribunal-orders.php>.

## B. CENTRAL AFRICA

1. *Democratic Republic of Congo*

Almost two years after the promulgation of a new constitution<sup>234</sup> which paved the way for multiparty elections in the Democratic Republic of the Congo (DRC) in 2006,<sup>235</sup> constitutional matters were again at the forefront of legal developments in the DRC in 2007. In particular, the Congolese Supreme Court of Justice issued rulings on a number of important constitutional matters.<sup>236</sup> Based on those rulings, some Congolese commentators have accused the Court of overreaching or blatantly misinterpreting the Constitution.

In *Trésor Kapuku Ngoy c. Assemblée Provinciale du Kasai-Occidentale*, the governor of the central province of Western Kasai, Trésor Kapuku Ngoy, asked the Court to declare unconstitutional a motion passed by the Provincial Assembly to force him to resign (a “defiance motion”).<sup>237</sup> The Court agreed with the governor’s contention that the motion was premature and, therefore, unconstitutional because it had been passed before the governor had actually taken office. The governor had not yet presented his action plan to the Provincial Assembly as required by article 198 of the Constitution.<sup>238</sup> Commentators who disagree with the Court have criticized it not so much for its final conclusion in the matter, but for the very fact that it had agreed to hear the case. Since the Court’s jurisdiction on constitutional matters extends only to constitutional challenges to “legislative or regulatory acts,”<sup>239</sup> the threshold issue for the Court was whether the defiance motion qualified as a “legislative act” of the Provincial Assembly. Ruling on this threshold issue, the Court declared that such a motion by the Provincial Assembly is a “legislative act” and, therefore, subject to judicial review.<sup>240</sup> The Court indicated that the phrase “legislative act” covers “not only laws *stricto sensu* or other texts with the force of law, but also any document or act that emanates from or is accomplished in the course of exercising legislative powers, such as the defiance motion at issue.”<sup>241</sup>

One of the Court’s critics, Professor Auguste Mampuya, has suggested that the Court’s broad understanding of its sphere of constitutional review risks stifling the Legislature’s ability to fulfill its role of controlling the Executive because even political acts would qual-

234. See CONSTITUTION DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO, Journal Officiel de la République Démocratique du Congo, Feb. 18, 2006, available at <http://www.glin.gov/view.action?glinID=174855> [hereinafter CONSTITUTION OF THE DRC].

235. See Jeffrey Gettleman, *Congo Holds First Multiparty Election in 46 Years*, N.Y. TIMES, July 31, 2006, available at <http://www.nytimes.com/2006/07/31/world/africa/31congo.html>.

236. Until the nine-member Constitutional Court created by the new Congolese Constitution is established, the old Supreme Court of Justice maintains jurisdiction over constitutional disputes. See CONSTITUTION OF THE DRC, *supra* note 234, arts. 161, 223.

237. See *Requête en inconstitutionnalité de la décision de l’Assemblée Provinciale du Kasai-Occidental du 07 juin 2007 portant motion de défiance contre le Gouverneur de Province Trésor Kapuku Ngoy* (Trésor Kapuku Ngoy c. Assemblée Provinciale du Kasai-Occidentale), Arrêt R.CONST.51/TSR, 3-5, 3 (Cour Suprême de Justice, Toutes Section Réunies, 31 juillet, 2007) (on file with author).

238. See *id.* at 4.

239. CONSTITUTION OF THE DRC, *supra* note 234, art. 162, ¶ 2 (“Any person may challenge the constitutionality of any legislative or regulatory act.”).

240. See *Trésor Kapuku Ngoy c. Assemblée Provinciale du Kasai-Occidentale*, *supra* note 237, at 4.

241. See *id.*

ify under the Court's definition of a "legislative act" and be subject to judicial review.<sup>242</sup> In Mampuya's opinion, the Court should have shown restraint and decided against intervening in a political dispute.<sup>243</sup>

Another case where the Supreme Court of Justice arguably stretched its reach involved the Independent Electoral Commission (IEC) that was created under the transitional constitution to organize the multiparty elections of 2006. Under the new constitution, the IEC was supposed to dissolve by operation of law upon the installation of the new parliament.<sup>244</sup> In its place, the constitution institutes the INEC, which may become operational only after the parliament has voted on the instituting organic law.<sup>245</sup> Faced with its dissolution and considering that the parliament had not passed the INEC's instituting organic law, the IEC asked the Supreme Court of Justice to prolong its term so that it may carry out its mandate until the effective installation of the INEC.<sup>246</sup>

Citing the need to avoid a vacuum in the country's institutional framework that would result from the dissolution of the IEC before the installation of the corresponding INEC, the Court allowed the IEC to continue the electoral process by making preparations for local elections scheduled for 2008 and until the effective installation of the INEC.<sup>247</sup> The innovation in this case consisted of the Court's justification for its jurisdiction. Explaining why it had the power to prolong the life of the IEC, the Court stated that, based on its power to regulate (*pouvoir régulateur*), it was within its prerogatives to resolve all constitutional questions inhibiting the normal operation of institutions.<sup>248</sup> But the notion that the Constitutional Court, for which the Supreme Court is a proxy until its effective installation,<sup>249</sup> has the power to regulate the workings of the country's institutions is not found in the Congolese Constitution, at least not expressly.<sup>250</sup> The charge given the Constitutional Court is to control the constitutionality of laws and of acts having the force of law.<sup>251</sup>

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242. See Auguste Mampuya Kanunk'a-Tshiabo, *Non, Messieurs: Une Motion de Défiance N'est Pas un Acte Législatif*, LE POTENTIEL, Nov. 20, 2007, available at [http://www.lepotentiel.com/afficher\\_article\\_archive.php?id\\_article=55586&id\\_edition=4182&yearID=2007&monthID=11&dayID=20](http://www.lepotentiel.com/afficher_article_archive.php?id_article=55586&id_edition=4182&yearID=2007&monthID=11&dayID=20).

The Court's decision, lacking any legal basis, is legally, ideologically, and politically dangerous. Legally speaking, the decision tends to grant to the judge the power to interfere with the constitutional prerogatives of the legislative branch of government and with the relationship between the Legislature and the Executive, hence not allowing the Parliament to exercise its second constitutional fundamental prerogatives (control) and consequently blocking the system provided for in the constitution.

243. *Id.*

244. See CONSTITUTION OF THE DRC, *supra* note 234, art. 222, ¶ 2.

245. See *id.* art. 211.

246. See Requête en prolongation de mandat de la C.E.I. (Requête C.E.I.), Arrêt R.CONST.055/TSR, 7-9, 7 (Cour Suprême de Justice, Toutes Section Réunies, 27 août, 2007) (on file with author).

247. See *Id.* at 9.

248. See *id.* at 7.

249. See CONSTITUTION OF THE DRC, *supra* note 234, art. 223.

250. That is unlike the constitution of the Republic of Benin where the Constitutional Court is expressly recognized as the entity that "regulates" (*organe régulateur*) the functioning of institutions, in addition to controlling the constitutionality of laws. See CONSTITUTION DE LA REPUBLIQUE DU BENIN art. 114, available at [http://www.gouv.bj/doc\\_telecharges/la\\_constitution.pdf](http://www.gouv.bj/doc_telecharges/la_constitution.pdf).

251. See CONSTITUTION OF THE DRC, *supra* note 234, art. 160, ¶ 1.

These two constitutional decisions of the Congolese Supreme Court of Justice raise the question of whether the still-to-be-established Constitutional Court will adhere to its predecessor's broad understanding of the Constitutional Court's jurisdiction. It is very possible that the Constitutional Court, whose composition is likely to include professional politicians who are not jurists,<sup>252</sup> will embrace a more conservative approach regarding the contours of its jurisdiction and show some deference to the political process and to political institutions.

## 2. *Republic of Congo*

2007 began turbulently in the Republic of Congo when France's highest court ruled that a French prosecution of Congolese government and military officials could continue. The prosecution addressed the disappearance of a number of Congolese refugees returning home through the Brazzaville river port in 1999, an incident now known as the "Affaire du Beach" or "Beach Affaire."<sup>253</sup> In 2005, a trial in Congo ended in acquittals for fifteen Congolese security officials (including then-Republican Guard commander Blaise Adoua) on charges of genocide, war crimes, and crimes against humanity relating to eighty-five of the disappeared, ended in acquittals, although the court ordered the state to pay compensation to the relatives of victims.<sup>254</sup> The International Human Rights Foundation (IHRF), a French NGO, brought the French case following that acquittal. The IHRF asked the French courts to take the case on principles of universal jurisdiction. In addition to creating further tension in French-Congolese relations,<sup>255</sup> the decision of the French Court has sparked renewed calls within Congo for a complete accounting of the incident and a final determination of the fate of the missing persons.<sup>256</sup>

The Government, in May 2007, adopted an amnesty law in favor of two former Congolese prime ministers, Yhomby Opango and Claude Antione Da Costa (who had died two weeks before following a brief illness).<sup>257</sup> They had been tried and found guilty in absentia for treason in 2001 by the Congolese High Court of Justice and condemned to an imprisonment term of twenty years of forced labor in addition to other pecuniary payments.<sup>258</sup>

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252. The Constitutional Court will have nine members appointed by the President, three at his own initiative, three designated by the Parliament, and the remaining three designated by the Superior Council of the Magistrature; only six members must be jurists. See CONSTITUTION OF THE DRC *supra* note 234, art. 158, ¶¶ 1-2.

253. Judgment, Cour de Cassation, Chambre Criminelle, No. 7513 (Jan. 10, 2007), available at [http://www.fidh.org/IMG/pdf/beach\\_arret\\_cassation.pdf](http://www.fidh.org/IMG/pdf/beach_arret_cassation.pdf)

254. Congo: *Disappeared but not Forgotten: Brazzaville's Missing Refugees*, IRIN, Nov. 27, 2007, available at <http://www.irinnews.org/report.aspx?ReportId=75431>.

255. In 2002, Congo filed a case against France in the International Court of Justice asking the Court to declare that France does not have a right in international law to pursue a case when the alleged crimes took place elsewhere. In June 2003, the Court denied a request for provisional measures by Congo. See *Certain Criminal Proceedings in France (Republic of the Congo v. France)*, I.C. J. Reports 102 (2003), available at <http://www.icj-cij.org/docket/files/129/8204.pdf>. The case is still pending.

256. *Id.*

257. *Ex-Congo President Returns Home After 10-year Exile*, AGENCE FRANCE-PRESSE, Aug. 10, 2007.

258. *Id.*

### 3. *Cameroon*

During 2007, a number of laws were enacted relating to the organization of the Cameroonian judicial system. Amongst these enactments were:

- Law No. 2006/15 of December 29, 2006, on Judicial Organization, raising the Jurisdiction of the Court of First Instance (Magistrate Court) with regards to competence in civil, commercial, and labor matters from claims of not more than five million francs CFA to ten million francs CFA. Therefore, a claimant who has a claim of more than five million francs but less than ten million francs will not seize the High Court, as was the case before, but the Court of First Instance.
- Law No. 2006/016 of 29 December 2006, organizing the Supreme Court.
- Law No. 2006/017 of 29 December 2006, organizing the functioning of the Regional Audit Courts.
- Law No. 2006/022, organizing the function of Administrative Courts and putting an end to the centralization of public law matters and litigation that hitherto were handled only by the administrative bench of the Supreme Court in the national capital of Yaoundé. Under this legislation, administrative law matters can now be handled at provincial and regional levels.<sup>259</sup>
- Law No. 2007/001 of April 19, 2007, instituting a special judge and court in charge of handling matters related to difficulties encountered in the execution of court decisions, arbitration decisions, and foreign judgments.

2007 also saw the enacting of two important decrees that established a Cameroonian National Identity Card<sup>260</sup> and set conditions for entry and stay of foreign nationals in Cameroon.<sup>261</sup>

### 4. *Equatorial Guinea*

Enactment of new hydrocarbons and minerals laws on November 3, 2006, was the most significant legal development affecting Equatorial Guinea's energy and natural resources sector during the past year. The new Hydrocarbons Law,<sup>262</sup> an integral part of which is a new Model Production Sharing Contract (the "Model PSC"),<sup>263</sup> governs all petroleum operations undertaken in Equatorial Guinea.<sup>264</sup> The law increases the Government's stake in oil and gas concessions from between 3 and 5 percent under the old law to a minimum of 20 percent.<sup>265</sup> It also increases the royalty paid to the Government from 10

259. The court structures are still to be put in place, and judges still need to be appointed.

260. Decree No. 2007/254 (Sept. 4, 2007).

261. Decree No. 2007/255 (Sept. 4, 2007), amending Law No. 97/012 (Jan. 10, 1997).

262. *Hydrocarbons Law*, Law No. 8/2006, (Nov. 3, 2006), available at [http://www.equatorialoil.com/2006-round/PDF%20FILES/EG%20Hydrocarbons%20Law%20\(English%20Translation\)\\_v7.1.pdf](http://www.equatorialoil.com/2006-round/PDF%20FILES/EG%20Hydrocarbons%20Law%20(English%20Translation)_v7.1.pdf) [hereinafter EG Hydrocarbons Law] (replaces Law No. 7/1981 and its amendments).

263. See *id.* art. 13 (the Model PSC is annexed to the Hydrocarbons Law)

264. Petroleum operations include "all operations related to the Exploration, Appraisal, Development, Production, transportation, distribution, storage, conservation, decommissioning, refining, commercialization, sale or other disposition of Hydrocarbons and all related activities." *Id.* art. 8(t).

265. *Id.* art. 83.

percent to a minimum of 13 percent.<sup>266</sup> The new law further requires producers to pay “any windfall tax that may be imposed by the State.”<sup>267</sup> Under the law, a competitive bidding process will determine award of petroleum development contracts in the form of production sharing contracts based on the Model PSC.<sup>268</sup> Exploration periods will generally be limited to four to five years.<sup>269</sup> The new law puts an end to gas flaring and grants ownership of all associated natural gas produced but not utilized in petroleum operations to the state.<sup>270</sup> The Hydrocarbons Law mandates the adoption of measures to increase the participation of Equatoguinean nationals and the use of goods, services and capital of Equatoguinean origin in petroleum operations.<sup>271</sup> Even though the new Hydrocarbons Law and Model PSC are more favorable to Equatorial Guinea than those they replaced, which were designed to favor oil companies to attract investment in the competitive conditions of the late 1980s/early 1990s, overall the new framework remains reasonably favorable compared with regional norms.<sup>272</sup>

The Government of Equatorial Guinea also took legislative measures during 2006 to promote the development of the Rio Muni enclave’s mineral deposits.<sup>273</sup> On November 3, 2006, the President ratified a new Mining Law, which provides for contracts permitting exclusive exploration in areas up to 50,000 hectares—100,000 in the case of diamonds—for up to four years.<sup>274</sup> Prospect areas up to 25,000 hectares for all minerals may be exclusively contracted for up to three years to permit detailed evaluation of mineral deposits prior to conclusion of an exploitation contract, which is valid for up to twenty years under the new Minerals Law.<sup>275</sup>

In an effort to combat terrorist financing, on February 5, 2007, the President of Equatorial Guinea established by decree the National Agency of Financial Investigations (ANIF) to investigate and dismantle, in collaboration with the country’s judicial authorities, money laundering operations suspected of funding terrorist activities.<sup>276</sup> The ANIF will be a financially independent substructure of the Ministry of Finance composed of four investigators designated by the Ministries of Finance and National Security.<sup>277</sup> The ANIF will be tasked with drafting laws aimed at curbing illicit financial activities in Equatorial Guinea.<sup>278</sup>

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266. *Id.* art. 58.

267. *Id.* art. 57(f).

268. *Id.* arts. 13, 26. Direct agreements are also an option in “reserved areas to the state.” *See id.* art. 13.

269. *Id.* art. 26.

270. *Id.* arts. 72, 76.

271. *Id.* art. 91.

272. *Accord Regulatory Watch: Equatorial Guinea*, BUS. AFRICA SELECT (Dec. 1, 2006).

273. *See U.S. Geological Survey, The Mineral Industry of Equatorial Guinea*, 2006 MINERALS Y.B., Sept. 2007, available at <http://minerals.usgs.gov/minerals/pubs/country/2006/myb3-2006-ek.pdf>.

274. Mining Law, No. 9/2006 arts. 10, 12, issued on Nov. 3, 2006, available at [http://www.equatorialoil.com/pdfs/2006%20Mining%20Law\\_English.pdf](http://www.equatorialoil.com/pdfs/2006%20Mining%20Law_English.pdf) [hereinafter E.G. Mining Law] (replaces Law No. 9/1981).

275. *Id.* arts. 15, 17, 22.

276. Adrien Feniou, *President of Equatorial Guinea Creates Anti-Money-Laundering Agency*, GLOBAL INSIGHT, Feb. 16, 2007.

277. *Id.*

278. *Id.*

## C. EAST AFRICA

### 1. Ethiopia

2007 marked Ethiopia's highly anticipated celebration of its new millennium. In response to the millennium celebration, state governments issued new directives enabling the Ethiopian Diaspora to secure land to construct homes as a way to encourage foreigners abroad of Ethiopian origin to participate in the development of Ethiopia.<sup>279</sup> Ethiopia also passed a new broadcasting law, which not only affirms broadcasting as a significant part of the country's development but also establishes the Ethiopian Broadcasting Authority as an autonomous federal agency and provides regulations for both licensing and broadcasting content.<sup>280</sup> Additionally, the government debated legislation on vehicle insurance against third-party risks, which would serve to facilitate the provision of emergency medical treatment to victims of vehicle accidents and require owners of vehicles to have third-party insurance coverage against third-party risks.

In regional matters, Ethiopia ratified the A.U. Convention on Preventing and Combating Corruption and Related Offences.<sup>281</sup> Ethiopia, a member of the Nile Basin Initiative responsible for water affairs, also concluded negotiations on the Nile River Basin Cooperative Framework Agreement on June 26, 2007, in Entebbe, Uganda.<sup>282</sup> As a result, Ethiopia has initiated the undertaking of a pre-feasibility study on three hydropower projects in the Nile Basin.<sup>283</sup> Addressing Ethiopia's border issues, the U.N. Security Council voted unanimously to extend the mandate of the U.N. mission in Ethiopia and Eritrea (UN-MEE) until January 31, 2008.<sup>284</sup> In addition, Ethiopia opened an embassy in Somalia after Ethiopian forces assisted Somali troops against anti-government fighters earlier this year.

Ethiopia's commitment to development and international partnership was evidenced by its proliferation of bilateral investment treaties (BITs). The government ratified BITs with Djibouti, Egypt, and Finland, and further agreed to strengthen its bilateral relations with countries such as Ghana, Germany, Mexico, and the Dominican Republic. Ethiopia also formed an agreement with Kuwait, which seeks to increase tourism, and it entered into a

279. Press Release, States Issue Directives that Avail Land Efficiently to Ethiopians in Diaspora, Fed. Dem. Rep. of Eth. Ministry of Foreign Affairs (Aug. 13, 2007), available at [http://www.mfa.gov.et/Press\\_Section/publication.php?Main\\_Page\\_Number=3787](http://www.mfa.gov.et/Press_Section/publication.php?Main_Page_Number=3787).

280. Broadcasting Service Proclamation No. 533/2007, FED. NEGARIT GAZETA No. 39, July 23, 2007.

281. The African Union Convention on Preventing and Combating Corruption Ratification Proclamation No. 545/2007, FED. NEGARIT GAZETA No. 53, Aug. 21, 2007, available at <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf>. The Convention is a comprehensive document containing mandatory provisions pertaining to private-to-private corruption and transparency in political party funding. Ethiopia also ratified the U.N. Convention Against Corruption. U.N. Convention against Corruption Proclamation No. 544/2007, FED. NEGARIT GAZETA No. 52, Aug. 21, 2007.

282. Ministers Agree on a Cooperative Framework for the Nile Basin, Nile Basin Initiative, Jun. 26, 2007, available at [http://www.nilebasin.org/index.php?option=com\\_content&task=view&id=50&Itemid=84](http://www.nilebasin.org/index.php?option=com_content&task=view&id=50&Itemid=84). The Cooperative Framework Agreement must be adopted by all basin states and then ratified before entering into force as an international treaty. Once ratified, this historic agreement will be the first Nile Treaty to include all riparian states of the Nile River Basin.

283. Kaleyesus Bekele, *Ethiopia: Country Conducts Study on Hydropower Projects in Nile Basin*, REPORTER, Nov. 10, 2007, available at <http://allafrica.com/stories/200711120613.html>.

284. UN Security Council S/RES/1767 (July 30, 2007).

bilateral agreement with Tunisia requiring both countries to avoid the double taxation of income.<sup>285</sup> Additionally, Ethiopia signed a Cooperation Agreement and an Agreement in the Field of Culture, Education and Youths with Spain.<sup>286</sup> Ethiopia and the World Bank initiated a grant for \$30 million to finance the Second Multi-Sectoral HIV/AIDS Project (MSAP II). In addition, Ethiopia entered into a US\$208 million loan agreement with China to finance power generation and a cement factory. Finally, Ethiopia finalized a grant agreement with France to finance projects aimed at increasing safe drinking water provision, strengthening Ethiopia's horticulture sector export capacity, and providing institutional support for the integrated management of the Blue Nile.<sup>287</sup>

## 2. Kenya

The fight against corruption continues to be an important issue in Kenya. In opinion polls taken in advance of general elections in December 2007,<sup>288</sup> corruption surpasses insecurity, poverty, unemployment and poor infrastructure as a concern of voters.<sup>289</sup> Despite the rise in commodity prices,<sup>290</sup> Kenya's citizens want individuals who have stolen public funds to be prosecuted and not granted amnesty by the Kenya Anti-Corruption Commission (KACC).<sup>291</sup> In September 2007, the Kenyan parliament passed a law that limits the powers of the KACC to prosecute politicians<sup>292</sup> engaged in scandals.<sup>293</sup> The limitation affects the investigation of crimes committed after 2003.<sup>294</sup>

A civil society organization, Africa Centre for Open Governance (AfriCOG), and taxpayers are taking the lead for change at the polls to ensure that new leaders invest in Kenya and to help citizens see the return on such investments.<sup>295</sup> According to AfriCOG, members of the Kenya parliament moved to amend the Anti-Corruption and Economic Crimes Act 2003, legislation that rendered the KACC "toothless in the fight against corruption".<sup>296</sup>

285. Ministry of Foreign Affairs of Ethiopia, May 2007, Newsletter 26, available at [http://www.mfa.gov.et/Press\\_Section/Newsletter26/News26.pdf](http://www.mfa.gov.et/Press_Section/Newsletter26/News26.pdf).

286. *Ethiopia and Spain Sign Cooperation Agreements*, Ministry of Finance and Economic Development, Fed. Dem. Rep. of Eth., Jan. 30, 2007, available at <http://www.mofaed.org/press.asp#ec>.

287. *Ethiopia, France Sign 110 Million Birr Grant Agreement*, Ministry of Foreign Affairs, Fed. Dem. Rep. of Eth., Apr. 4, 2007, available at [http://www.mfa.gov.et/Press\\_Section/publication.php?Pub\\_Page\\_Id=3537](http://www.mfa.gov.et/Press_Section/publication.php?Pub_Page_Id=3537).

288. See generally *Candidates Given Polls Go-Ahead*, NATION TEAM, available at <http://africanpress.wordpress.com/2007/11/16/26/candidates-given-polls-go-ahead/>.

289. *Kenya: Corruption Tops Voters Agenda in December Poll*, BUS. DAILY, Oct. 30, 2007, available at <http://allafrica.com/stories/200710301129.html>. See also *Kenya's Biggest Concern is White-Collar Crime*, LEGAL-BRIEF FORENSIC, Nov. 1, 2007, available at <http://www.legalbrief.co.za/article.php?story=20071101082517550>.

290. *Id.*

291. *Kenya: Citizens Want Graft Punished*, NATION, Oct. 31, 2007, available at <http://allafrica.com/stories/200710301201.html>. See also *Public Raises Voice Against Corruption*, LEGALBRIEF AFRICA, Nov. 5, 2007, available at <http://www.legalbrief.co.za/article.php?story=20071105153445792>.

292. See *Politics Sinks Kenya's War on Graft*, BBC NEWS, Sept. 14, 2007, available at <http://news.bbc.co.uk/2/hi/africa/6993826.stm>.

293. See *Kenyan MPs Torpedo Graft Probes*, BBC NEWS, available at Sept. 13, 2007, <http://news.bbc.co.uk/2/hi/africa/6992737.stm>.

294. *Id.*

295. See *Kenya: Citizens Want Graft Punished*, *supra* note 291.

296. *Id.*



In November 2007, an anti-corruption body, the East African Association of Anti-Corruption Authorities (EAAACA), was set up as a regional effort led by three East African anti-corruption agencies: the KACC, the Inspectorate of Uganda (IG), and the Prevention and Combating of Corruption Bureau (PCCB) of Tanzania.<sup>297</sup> These three anti-corruption watchdogs have adopted a constitution for the EAAACA as part of its effort to uphold the rule of law in the region and promote economic growth.<sup>298</sup>

### 3. *Rwanda*

The death penalty was abolished on July 25, 2007, pursuant to an organic law promulgated by Rwandan President Paul Kagame.<sup>299</sup> Persons sentenced to death before the new law came into force have been commuted to life imprisonment or life with special provisions.<sup>300</sup> The lives of over 600 death row prisoners were spared as a result of the new law.<sup>301</sup> Justice Minister Tharcisse Karugarama was hopeful that the abolition of the death penalty would encourage foreign countries currently holding genocide suspects to expeditiously transfer those suspects to Rwanda to face trial.<sup>302</sup>

In September 2007, Justice Hassan Bubacar Jallow was reappointed as the Prosecutor for the International Criminal Tribunal for Rwanda (ICTR).<sup>303</sup> Jallow, who was initially appointed in 2003, was given a new four-year term after a unanimous vote by the U.N. Security Council.<sup>304</sup> Jallow's appointment as Prosecutor may end before the next four years if the ICTR finishes its work by the end of 2010 as projected under its Completion Strategy.<sup>305</sup>

After the death penalty was abolished in July, the ICTR agreed that pending cases would be transferred to Rwanda.<sup>306</sup> At least three organizations, however, have voiced opposition to the transfer of these cases.<sup>307</sup> Human Rights Watch, Amnesty International, and the International Association of Defense Lawyers have each questioned the ability of the Rwandan judicial system to effectively and fairly try genocide suspects.<sup>308</sup> Amnesty

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297. See Oliver Mathenge, *East Africa: Regional Anti-Graft Body Set Up*, NATION, Nov. 11, 2007, available at <http://allafrica.com/stories/200711110034.html>; see also *East Africa Joins Forces in Fight Against Graft*, LEGAL BRIEF FORENSIC, Nov. 15, 2007, available at <http://www.legalbrief.co.za/article.php?story=20071115082159777>.

298. *Id.*

299. See *Rwanda: More Hope for Genocide Extradition*, AFROL NEWS, Aug. 3, 2007, available at <http://www.afrol.com/articles/26328>.

300. *Id.*

301. *Id.*

302. *Id.*

303. *Hassan B. Jallow Reappointed as ICTR Prosecutor*, ICTR NEWSLETTER, Aug./Sept. 2007, available at <http://1169.94.11.53/English/newsletter/aug-sep07.pdf>.

304. *Id.*

305. *Id.*

306. See *Rwanda: More Hope for Genocide Extradition*, *supra* note 299.

307. See *Rwanda: Genocide Justice System Prompts Row with Amnesty*, IRIN AFRICA, Nov. 6, 2007, available at <http://www.irinnews.org/Report.aspx?Reportid=75118>; *Rwanda: Human Rights Watch Wishes to Give Its Opinion on Transfer*, HIRONDELLE NEWS AGENCY (Lausanne), Nov. 3, 2007, available at <http://allafrica.com/stories/200711080095.html>; *Rwanda: Democratic Lawyers Rise Against Possible Transfers to Country*, HIRONDELLE NEWS AGENCY (Lausanne), Nov. 7, 2007, available at <http://allafrica.com/stories/200711080095.html>.

308. *Id.*

International has specifically claimed that the *gacaca* system is flawed.<sup>309</sup> The *gacaca* courts, established in 2001, are charged with trying genocide suspects in community courts in their villages of origin.<sup>310</sup> The *gacaca* courts are expected to complete their work by the end of 2007.<sup>311</sup>

#### D. NORTH AFRICA

##### 1. *Sudan*

The worsening bloodshed in Darfur received wide coverage in the international media amid the Khartoum government's accusation that the international media was exaggerating the scale of the conflict.<sup>312</sup> Nevertheless, the Darfur situation cost Sudan its bid for the presidency of the A.U.<sup>313</sup> Instead, the fifty-three-member bloc chose Ghana to head the A.U.<sup>314</sup>

In April 2007, the International Criminal Court (ICC) issued arrest warrants for a Sudanese minister and a militia leader suspected of war crimes. Humanitarian Affairs Minister Ahmed Haroun and Janjaweed leader Ali Muhammad Ali Abd-Al-Rahman, also called Ali Kushayb,<sup>315</sup> are wanted on fifty-one counts of crimes against humanity and war crimes, including counts for rape, murder, and persecution.<sup>316</sup> The government of Sudan took the position that the ICC lacked jurisdiction over its nationals and argued that it is capable of trying alleged war criminals without the help of the ICC.<sup>317</sup> Notably, the government of Sudan also appointed one of the indictees, Minister Haroun, to head an inquiry into human rights violations in the Darfur region.<sup>318</sup>

In July, the U.N. Security Council issued Resolution 1769, authorizing a joint U.N.-A.U. hybrid mission (UNAMID). This mission will support the A.U. force that has been deployed in Darfur since 2004. International observers have noted that the A.U. force does not have sufficient resources to deal with the complexity of the Darfur conflict, as evidenced by a rebel attack in October in which ten A.U. peacekeepers were killed.<sup>319</sup>

309. *Rwanda: Human Rights Watch Wishes to Give its Opinion on Transfer*, *supra* note 307.

310. *Rwanda: Genocide Justice System Prompts Row with Amnesty*, *supra* note 307.

311. *Rwanda: Country Reiterates Commitment to Finish the Gacaca Trials by the End of the Year*, HIRONDELLE NEWS AGENCY, Oct. 18, 2007, available at <http://allafrica.com/stories/20071090208.html>.

312. *Darfur Rebels Reject New Chinese Peace Force*, REUTERS, Nov. 25, 2007, available at <http://africa.reuters.com/wire/news/usnL24686432.html>.

313. *Darfur Again Costs Sudan Leadership in Role in Africa*, INT'L HERALD TRIB., Jan. 29, 2007, available at <http://www.iht.com/articles/2007/01/29/news/sudan.php>.

314. *Id.*

315. "The Sudanese government had told the ICC . . . that Kushayb was arrested last November [2006] and was in custody pending an investigation into five attacks in which hundreds of people were killed." *Sudan to Try Three People on Crimes Relating to Darfur*, INT'L HERALD TRIB., Mar. 6, 2007, available at <http://www.iht.com/articles/ap/2007/03/06/africa/AF-GEN-Sudan-Darfur.php>.

316. Press Release, Int'l Criminal Court, ICC-PIDS-PR-20070502-214, May 2, 2007, available at <http://www.icc-cpi.int/press/pressreleases/241.html>.

317. *ICC Issues Darfur Arrest Warrants*, BBC NEWS, May 2, 2007, available at <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/6614903.stm>.

318. *War Crime Suspect Leads Human Rights Inquiry*, TIMES, Sept. 7, 2007, available at <http://www.timesonline.co.uk/tol/news/world/africa/article2402846.ece>.

319. *Rebels Accused of Killing Darfur Peacekeepers*, GUARDIAN, Oct. 1, 2007, available at <http://www.guardian.co.uk/sudan/story0,2180607,00.html>.

Also in July, a U.S. District Court judge issued a verdict ordering Sudan to pay almost \$8 million to the families of the seventeen sailors who were killed when al Qaeda militants bombed the U.S.S. Cole, which was docked in Yemen in 2000. The court found as a fact by substantial evidence that Sudan's government provided financial and training support to al Qaeda, including the Yemeni militants who planned the attack on the destroyer. The Sudanese government challenged the federal court's jurisdiction on grounds that the United States had no right to try another sovereign state.<sup>320</sup>

In October 2007, political tension rose over the lack of progress in the implementation of key provisions of the 2005 Comprehensive Peace Agreement (CPA) between the Government of Sudan and the Sudan People's Liberation Movement (SPLM). The SPLM accuses Khartoum of failing to honor the 2005 peace deal with the southern rebels.<sup>321</sup> Major disagreements have resulted from the failure to resolve the boundaries and status of the oil-rich Abyei area as well as the failure to further implement wealth-sharing agreements in the CPA. Each party has accused the other of building up military forces in the Abyei area, which straddles the ill-defined North-South border. Occasionally, small-scale fighting between the SPLA and Sudan Armed Forces has been reported.<sup>322</sup> These disagreements came to a head in October, when the SPLM suspended its involvement in the Government of National Unity (GNU). In November 2007, GNU President Omar al-Bashir called upon the Popular Defense Forces, a paramilitary group that took part in the civil war, to train more mujahideen (holy warriors).<sup>323</sup> The Khartoum government has also accused the Southern government of failing to demobilize SPLA forces.<sup>324</sup> While both Salva Kiir, President of Southern Sudan and Vice-President in the GNU, and President Bashir have made assurances that Sudan is not returning to civil war and that dialogue is continuing, the situation remains relatively tense.

## 2. Egypt

In November 2007, President Hosni Mubarak rejected calls to amend Egypt's libel laws that allow a court to jail journalists for libel and defamation ("publishing offenses") because, he stated, such amendment would contravene the Egyptian Constitution.<sup>325</sup> Since September, at least eleven journalists have been imprisoned for charges ranging from attacking senior members of the ruling National Democratic Party, Mubarak's own party, to misquoting the Minister of Justice.<sup>326</sup>

320. *Sudan to Appeal Verdict in USS Cole Bombing Case*, REUTERS, July 26, 2007, available at <http://www.reuters.com/article/africaCrisis/idUSB868384>.

321. *Sudan: Tension Over Peace Deal, But War Unlikely*, IRIN, Nov. 26, 2007, available at: <http://allafrica.com/stories/200711261282.html>.

322. *Sudan Armed Forces, SPLA Clash in Southern Sudan, 10 Killed*, SUDAN TRIB., Oct. 26, 2007, available at <http://www.sudantribune.com/spip.php?article24428>.

323. *Sudan President Orders Paramilitary Forces Mobilized, Rejects Abyei Report*, SUDAN TRIB., Nov. 18, 2007, available at: <http://www.sudantribune.com/spip.php?article24793>.

324. *Sudan's NCP Accuses SPLM of Failing to Implement CPA*, SUDAN TRIB., Nov. 16, 2007, available at <http://www.sudantribune.com>.

325. Ramadan A. Kader, *Government Won't Amend Libel Law—Mubarak*, EGYPTIAN GAZETTE, Nov. 10, 2007, available at <http://news.gom.com.eg/gazette/pdf/2007/11/10/01.pdf?year=2007&month=11&day=10&page=01&submit=submit>.

326. *Id.*

3. *Morocco*

In April 2007, Morocco joined forty-five other African countries in signing the Rabat Declaration at the African Conference on Human Development<sup>327</sup> held in Rabat, Morocco, from April 6-7.<sup>328</sup> The Rabat Declaration operates as an international legal proclamation by African countries concerning a variety of development issues, including the need for unity, self-help, and cooperation among developing countries; the opportunities and challenges of increasing globalization; and the impact of globalization on African countries. The Rabat Declaration also addresses the devastating impact of infectious diseases such as HIV/AIDS, and the role of the international community, particularly developed countries, in supporting the development efforts of African countries.<sup>329</sup> The Rabat Declaration specifically exhorts the promotion of good governance, the recognition of gender-equality to ensure full participation of each country's citizenry, the promotion of investments in infrastructure and social services, the provision of necessary financial support to the World Solidarity Fund,<sup>330</sup> the acceleration of rural development, and the institution in each African country of a mechanism for promoting micro-credit facilities<sup>331</sup> geared towards the achievement of Millenium Development Goals.<sup>332</sup>

In August, 2007, Morocco entered into an agreement with the Millenium Challenge Corporation<sup>333</sup> entitled "Millenium Challenge Account—Morocco" (MCA-Morocco) that is expected to provide millions of dollars worth of investment and provide direct benefits to approximately 600,000 Moroccans and indirect benefits to over three million Moroccans.<sup>334</sup> The MCA-Morocco program aims to strengthen the fight against poverty, increase economic productivity, and reduce unemployment.<sup>335</sup> Its key components include implementation of sectoral and cross-sectoral strategies in the fields of agriculture, tourism, fishery, and craftsmanship. It is designed to improve agricultural productivity, facilitate access to financial services such as credit financing for business enterprises, pro-

327. The African Conference on Human Development is designed to allow African countries to develop a new process geared towards the achievement of Millenium Development Goals by creating strategic partnerships, holding consultations and promoting South-South cooperation platforms with other regions such as Asia, Latin America, and the Arab world. See African Conference on Human Development Concept Paper, April 6, 2007, available at <http://www.maec.gov.ma/cafdeh/EN/concept.asp>.

328. Rabat Declaration, African Conference on Human Development, Apr. 6, 2007, available at <http://www.maec.gov.ma/cafdeh/FR/declaration.htm>.

329. *Id.*

330. The World Solidarity Fund was created by the U.N. General Assembly in December 2002 to combat poverty and exclusion in the poorest countries of the world.

331. *Id.*

332. The Millenium Development Goals are eight goals to be achieved by the year 2015, including substantially reducing poverty, halting the spread of HIV/AIDS, providing universal primary education, and ensuring environmental sustainability. See *What are the Millenium Development Goals?*, U.N. Millenium Development Goals, <http://www.un.org/millenniumgoals/> (last visited Mar. 28, 2008).

333. The Millenium Challenge Corporation is a governmental institution of the United States responsible for supporting the implementation of socioeconomic policies designed to alleviate poverty and enhance economic development among eligible developing countries.

334. Communiqués of the Office of the Prime Minister of Morocco, Signature d'un Accord entre le Royaume du Maroc et la Millenium Challenge Corporation (MCC) A.U. Titre du Programme Millenium Challenge Account (MCA-Maroc) (Aug. 31, 2007), available at <http://www.pm.gov.ma/fr/detail.aspx?id=1137&cat=6&Lg=Fr>.

335. *Id.*

mote education and training, support the National Initiative for Human Development, and enhance institutional capacity.<sup>336</sup>

#### 4. *Algeria*

In September 2007, the head of the Algerian Government, Abdelaziz Belkhadem, and the Secretary-General of the General Union of Algerian Workers (UGTA),<sup>337</sup> Abdelmadjid Sidi Said, met at the Executive Palace in Algiers to adopt a bipartite agreement on a new salary scale for public service employees.<sup>338</sup> The new salary scale is designed to improve wages and promote competence in the public sector.<sup>339</sup> A working group has been established to develop a new system of classification and remuneration in conformity with Articles 8 and 114-126 of the Public Service General Statute, which is expected to bring about a harmonization of public sector wages and improvement in public sector qualifications and competence.<sup>340</sup>

### E. SOUTHERN AFRICA

#### 1. *Namibia*

The National Society for Human Rights (NSHR), a Namibian-based NGO, waded into a political firestorm when it filed a petition before the ICC in late 2006 seeking an investigation into the leadership of former President Sam Nujoma and the South West African People's Organization (SWAPO) concerning thousands of disappearances and other human rights abuses during the liberation struggle.<sup>341</sup> In particular, NSHR blamed SWAPO for the alleged disappearance of 4,200 people between 1959 and 2003, many of them detained for alleged espionage on behalf of South Africa. While the ICC cannot consider crimes predating the Court's establishment in 2002, NSHR sought to try Nujoma under the "continuous violations doctrine" due to his continued refusal to reveal information about those tortured, kidnapped, and executed during the war.<sup>342</sup>

NSHR made the petition public on July 31, 2007, and the political response was immediate. President Lucas Hifikepune Pohamba strongly condemned the NSHR's actions, calling the NSHR efforts a "dangerous game" that could "plunge Namibia into the dark depths of instability and mistrust."<sup>343</sup> The SWAPO Youth League and the National Union of Namibian Workers planned demonstrations soon after the document's release, demanding Namibia protest to foreign donors of NSHR and calling for criminal charges to be brought against NSHR's executive director, Phil ya Nangoloh.<sup>344</sup> Parliamentarians

336. *Id.*

337. UGTA is the French acronym that stands for *Union Generale des Travailleurs Algeriens*.

338. See Communiqué Commun de la 14eme Rencontre Bipartite Gouvernement – U.G.T.A. (Palais du Gouvernement, Algiers, Algeria, Sept. 3, 2007), available at <http://www.cg.gov.dz/actualites.htm>.

339. *Id.*

340. *Id.*

341. Christof Maletsky, *ICC Submission was a Last Resort, Says NSHR*, THE NAMIBIAN, Aug. 23, 2007.

342. *Namibia: Struggling with the Past*, UN INTEGRATED REG'L INFO. NETWORKS, Aug. 28, 2007, available at <http://allafrica.com/stories/printable/200708280877.htm/>.

343. Oswald Shivute, *President Rejects Probe of Nujoma*, NAMIBIAN, Aug. 28, 2007.

344. Christof Maletsky, *SWAPO Youth Threaten 'War.'* NAMIBIAN, Aug. 9, 2007; Christof Maletsky, *Union Wants to Strangle NSHR*, NAMIBIAN, Aug. 7, 2007.

considered a bill to consider stricter regulation of NSHR and the various newspapers in the country, believing them to be guilty of misconduct.<sup>345</sup> The Media Institute of Southern Africa (MISA) Namibia Chapter described the bill as an assault on freedom of the press.<sup>346</sup> The New York City-based NGO Human Rights First condemned the threats and intimidation by SWAPO allies against NSHR.<sup>347</sup>

NSHR vowed to rescind the submission to the ICC if the government would agree to establish a truth and reconciliation commission and thus end over a decade and a half of uneasy silence about atrocities committed during the Namibian war. While the South African government has uncovered atrocities committed in Namibia by the South African Defense Forces and Koevoet, the counter-insurgency police unit, the Namibian government has never considered a process to reveal atrocities committed by the other side, SWAPO and the liberation fighters, believing such a process to be too disruptive and politically destabilizing.<sup>348</sup>

The ICC submission and the controversy it sparked have followed predictably partisan lines. NSHR filed the petition last year after a motion brought by an opposition MP was withdrawn without discussion; the petition called for an inquiry into numerous human rights violations, including the alleged torture and imprisonment center in Lubango, Angola, a major base of Cuban and SWAPO forces during the war.<sup>349</sup>

## 2. Swaziland

In Swaziland, the pro-democratic reform movement has not softened demands to limit the power of King Mswati III despite the introduction of a new constitution in early 2006. The 2006 constitution suspended the 1968 independence constitution and was the first constitution altogether since the royal regime declared an absolute monarchy in 1973. Though technically lapsed, the state of emergency declared in 1973, which banned political parties and gave ultimate political power to the monarchy, is still effectively in place.<sup>350</sup>

The Constitutional Review Commission, in drafting the new constitution, accepted the government's submission that citizens disliked political parties and preferred an executive monarchy. An umbrella organization of pro-democracy advocates filed suit against the state demanding the publication of the submissions, sealed by royal decree, and denying that the new constitution reflects the will of the people.<sup>351</sup> In late 2006, two former southern African presidents, Botswana's Sir Ketumile Masire and South Africa's F.W. de Klerk, held a closed-door meeting with the king allegedly to promote multi-party democracy in Swaziland.<sup>352</sup>

In the spring and summer of 2007, protests against Swaziland's new constitution and the limits of constitutional reform became more earnest. In February 2007, the government moved to block an attempt by police and prison guards to form a union, despite a

345. Denver Isaacs, *Group Proposes Regulating Media*, NAMIBIAN, Aug. 21, 2007.

346. *Media Organization Condemns Attack on Press Freedom*, NAMIBIAN, Aug. 22, 2007.

347. Chistof Maletsky, *Group Urges President to Protect Local Rights Body*, NAMIBIAN, Aug. 31, 2007.

348. U.N. Integrated Reg'l Network [hereinafter UNIRIN].

349. Maletsky, *ICC Submission Was a Last Resort*, supra note 349.

350. UNIRIN, *Govt Riled by Accusations that Constitution is Undemocratic*, AFRICA NEWS, Oct. 25, 2006.

351. UNIRIN, *Pro-democracy Groups Challenge Executive Monarchy in Court*, U.N. Office for the Coordination of Humanitarian Affairs, Sept. 21, 2006.

352. *Ex-Botswana, South Africa Presidents Said in Talks with Swazi King*, MMEGI (Gaborone), Oct. 27, 2006.

provision in the new constitution permitting collective bargaining.<sup>353</sup> In April, the Congress of South African Trade Unions (COSATU) and Swazi civil society organizations held protests at South Africa's border posts. During the protests, sixteen members of the banned Swaziland People's United Democratic Movement (PUDEMO) were arrested.<sup>354</sup> Finally, on July 25 and 26, 2007, thousands of workers took to the streets in the capital, Mbanane, the country's largest demonstration since 1996 when the constitutional reform process was initiated. Organized by trade union leaders, labor and pro-democracy activists rallied for change ahead of the 2008 general elections.<sup>355</sup> Government employees left their offices, affecting 500 schools and 30,000 pupils, while hospitals operated with skeleton staffs.<sup>356</sup>

The drive for constitutional reform has also sparked a reaction from traditional elements in Swazi political life. Traditional leaders have criticized the constitution as eroding the power of the hereditary chiefs, who, together, have authority over about 80 percent of the population.<sup>357</sup> In September, civil society organizations protested the power of the Labadzala, royally-appointed traditional advisory councils, believed to hold significant and unaccountable power.<sup>358</sup> The king, for his part, announced that the constitution has not legalized political parties, despite earlier indications to the contrary.<sup>359</sup>

### 3. Malawi

On April 27, 2007, the High Court of Malawi handed down *Kafantayeni v. Attorney General*, unanimously overturning Malawi's mandatory death penalty for murder and ordering the re-sentencing of at least thirty prisoners facing the death penalty as a possible, but not an automatic, sanction.<sup>360</sup> A discretionary death penalty, plaintiffs believed, would help advance human rights by allowing judges to systematically consider individual circumstances for capital crimes. The legal team challenging the case included both Malawian and British lawyers, the latter connected to the Death Penalty Project, a London-based legal network that succeeded in striking down the mandatory death penalty in Uganda and nine Caribbean nations.<sup>361</sup> The Court only struck down the mandatory death sentence for murder; other crimes, such as treason, still carry the sentence. In addition, according to the Malawi Constitution, rape, burglary, and armed robbery are still punishable by discretionary death sentence.<sup>362</sup> The justices found the mandatory death penalty violates the Malawi Constitution, specifically the right to be free from inhuman

353. UNIRIN, *Police Unionisation Bid Meets Stiff Resistance*, AFRICA NEWS, Feb. 12, 2007.

354. *Sixteen Political Activists Arrested Near South African Border*, BBC MONITORING INT'L, Apr. 12, 2007.

355. Kitsepile Nyathi, *Country Faces Trouble Amid Protests Over Lack of Reforms*, NATION (Nairobi), July 30, 2007.

356. Yolandi Dixon, *Government Officials in Swaziland Go on Strike to Push for Multi-Party Elections*, GLOBAL INSIGHT, July 27, 2007.

357. UNIRIN, *Traditional Chiefs Find New Constitution Disagreeable*, Aug. 18, 2006.

358. *Swazi Civic Groups Ask State to Protect Constitution from "Cabals"*, TIMES OF SWAZILAND, Sept. 5, 2007.

359. *Swaziland King Mswati Says 'Nothing Has Changed' Regarding Parties*, TIMES OF SWAZILAND, Sept. 5, 2007.

360. *Kafantayeni v. Att'y Gen'l*, Constitutional Case No. 12 of 2005, Malawi High Ct. (Apr. 27, 2007).

361. *Malawi High Court Scraps Automatic Death Penalty*, LAW., May 14, 2007, p. 9.

362. Frank Phiri, *High Court Nullifies Mandatory Death Penalty Rule*, INTERPRESS SERVICE, June 20, 2007.

treatment or punishment (Section 19), the right to a fair trial (Section 42), and the right of access to the courts (Section 41).<sup>363</sup>

Parliamentary opposition stalled the passage of the 2007-2008 annual budget from its introduction in July until September 11, 2007. This action was taken in response to a High Court order preventing the Speaker of the House from expelling members of parliament who switch party affiliation while in parliament (as is seemingly permitted by Section 65 of the Malawian constitution). Because the ruling Democratic Progressive Party (DPP) coalition of President Bingu Wa Mutharika comprises defectors from the opposition United Democratic Front (UDF) and Malawi Congress Party (MCP), application of Section 65 would force mass by-elections and threaten the ruling coalition's majority.<sup>364</sup> After a Supreme Court of Appeal ruling in mid-June validating Section 65, the opposition parties moved to declare the seats of the approximately seventy defectors vacant.<sup>365</sup> Two weeks later, however, the High Court issued an injunction in a case brought by the defectors to prevent the Speaker from using his Section 65 power. As a result, the expulsion of the defectors will be postponed until possibly as late as the 2009 elections. This has tremendous importance for the stability of Malawi's government. Should the defectors be ousted, they would have to re-win their constituencies in order to maintain the DPP majority, or, absent the defectors, the President would have to co-opt one of the opposition parties into a coalition government.<sup>366</sup>

#### 4. Mozambique

In September 2007, district court judges were given more powers in criminal and civil cases after a Law of Judicial Organization was approved.<sup>367</sup> Under the new law, district court judges have the power to rule on criminal cases with penalties that range between eight and twelve years, instead of the current two years.<sup>368</sup> The judges have also been granted the power to try civil cases with fines of up to 100 minimum statutory wages.<sup>369</sup> The district courts had previously been limited to trying civil cases with fines of up to thirty minimum statutory wages.<sup>370</sup>

In October 2007, the Mozambican government announced that it was implementing a system to digitalize its judicial records.<sup>371</sup> According to the Justice Minister Esperanca Machavele, the digitalization of the court records will facilitate the processing of criminal records and enable the court to process information quicker on repeat convicts.<sup>372</sup> With

363. *Kafantayeni*, *supra* note 360.

364. Nana Adu Ampofo, *Budget 2007: Financial Plan Passed in Malawi After Drawn-Out Deadlock*, GLOBAL INSIGHT, Sept. 14, 2007.

365. *Malawian Opposition Parties Give Up Defending of Constitution Section*, XINHUA NEWS SERVICE, Aug. 22, 2007.

366. Nana Adu Ampofo, *Pause in Expulsion of Malawi Parliamentary Party Defectors*, GLOBAL INSIGHT, July 2, 2007.

367. See *Mozambique: More Powers for District Judges*, *Agencia de Informacao de Mocambique* (Maputo), Sept. 4, 2007, available at <http://allafrica.com/stories/200709041389.html>.

368. *Id.*

369. *Id.*

370. *Id.*

371. See *Country Digitalises Judicial Records*, AFRICA NEWS UPDATE, Oct. 9, 2007, available at <http://www.afrika.no/detailed/15184.html>.

372. *Id.*



the new system in place, the applications for criminal records can be processed within one day rather than several weeks.<sup>373</sup> The digitalized system is also promoted as assisting the government in their efforts to determine the extent of corruption in the country's public and private sectors.<sup>374</sup>

In October 2007, Mozambique's former President, Joachim Chissano, made history after becoming the first person to be awarded the Mo Ibrahim Foundation award for achievement in African Leadership.<sup>375</sup> The award, established in 2006, goes to a former African leader who scores good marks on the good governance index during his tenure in office.<sup>376</sup> The former President will receive \$5 million over a ten-year period and an additional \$20,000 each year for the rest of his life.<sup>377</sup> This prize is considered to be the largest individual award in the world.<sup>378</sup>

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373. *Id.*

374. *Id.*

375. See *Lessons Form Chissano's Ibrahim Prize*, Punch on the Web, Oct. 30, 2007, <http://www.punchng.com/Article.aspx?theartic=Art20071030027317> (last visited Mar. 28, 2008).

376. *Id.*

377. *Id.*

378. *Id.*

