# *Legal and Institutional Framework for Monetary Integration in West Africa*

*Kenneth O.D. Okwor*

**ABSTRACT**

The literature on monetary integration in West Africa focuses, almost exclusively, on the economic and political preconditions for, and consequences of, such integration. Very little attention has been paid to the legal and institutional framework that make such monetary arrangements possible. This paper fills that gap and concludes that the current framework is inefficient and will impede the instatement of the Eco as a single currency for a West African currency union. This conclusion is predicated on evidence generated from a punctilious review and comparative analysis of the applicable treaties, protocols, agreements, decisions, laws and internal policies comprising the current legal and institutional framework for monetary integration in West Africa.

In particular, this paper finds that the current framework: (i) is inefficient and costly on account of the multiplicity of laws and institutions, and the horizontal and vertical duplication of institutions and functions; (ii) is unenforceable, in the sense that it lacks direct effect and/or applicability within ECOWAS member states; (iii) makes the currency union's institutions susceptible to capture; (iv) relies on 'dependent' national central banks, and a weak and inefficient mechanism for multilateral surveillance; (v) provides an ineffective agency of restraint on fiscal indiscipline; and (vi) does very little in addressing the moral hazard and incentive problems that are inherent in the creation of a currency union.

**Legal and Institutional Framework for Monetary Integration in West Africa**

## 1. Introduction

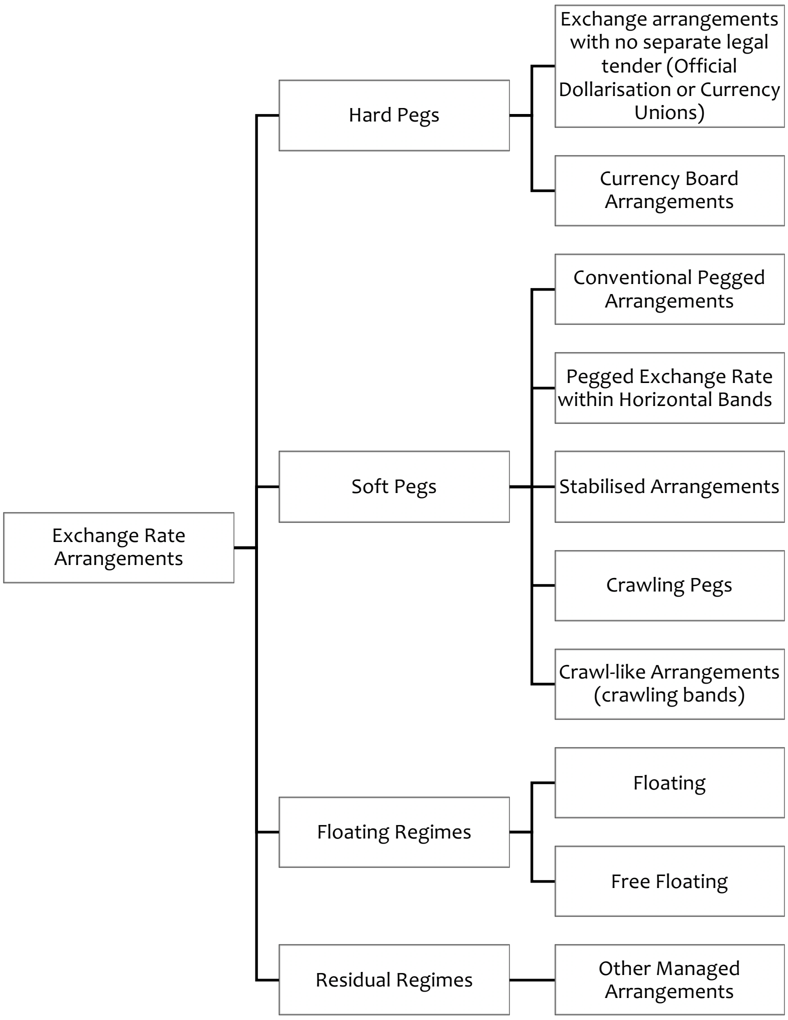
This research aims to appraise critically the legal and institutional framework for monetary integration in West Africa. There are various categories of monetary integration, including currency pegs, dollarisation, currency boards and currency unions. Some of these categories are currently being practiced in West Africa, and there are concerted efforts to establish a currency union within West Africa by 2020.[1] In part two, I will introduce and define the various forms of monetary integration, with particular emphasis on currency unions. Part three provides an analysis of the current frameworks for monetary integration in West Africa, highlighting the weaknesses of those frameworks. My conclusions are in part four.

## 2. Monetary Integration: Conceptual Analysis

The term 'monetary integration' presents some definitional difficulties in international monetary theory. It has been described as a generic term connoting various categories of cooperation on monetary matters between or among countries.[2] The International Monetary Fund (IMF) describes these categories of monetary integration as Exchange Rate Arrangements (see Figure 1) because these arrangements fix or determine the parity amongst the exchange rates of the currencies of the countries involved.

**Figure 1: Classification of Exchange Rate Arrangements**

[1] Article 1 (Article 4 New) Supplementary Act A/SA.01/12/15 of 16 December 2015 Amending the Supplementary Act A/SA.4/06/12 of 29 June 2012 on the Macroeconomic Convergence and Stability Pact Among the ECOWAS Member States.
[2] Giancarlo Gandolfo, *Elements of International Economics* (Springer 2004) 156.



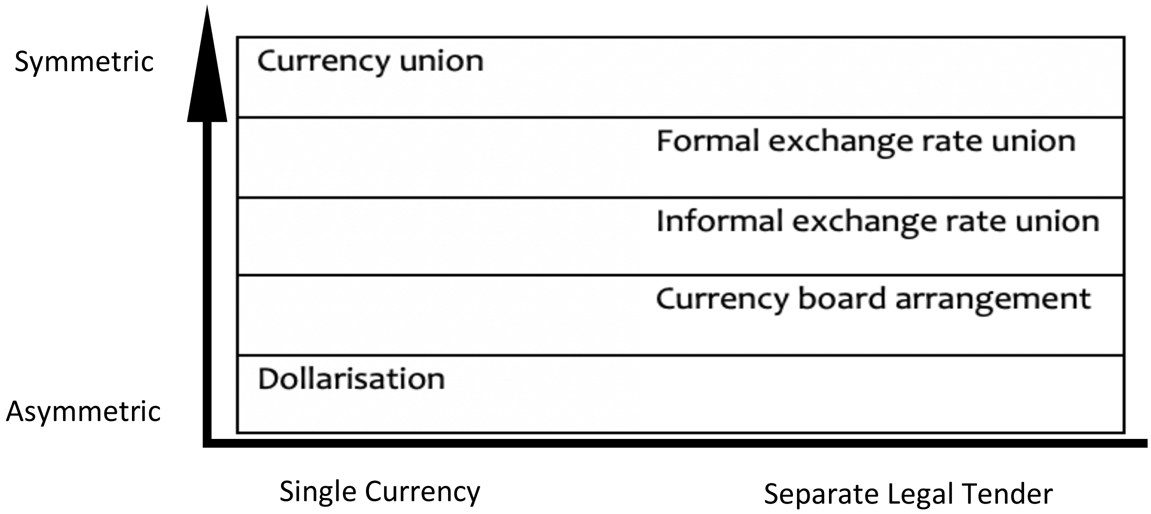

Source: IMF[3]

Masson and Pattillo distinguish between five types of monetary integration.[4] Their analysis distinguishes each type by reference to two factors: (i) whether the countries concerned share a single currency or not; and (ii) whether the making of monetary policy is symmetric or asymmetric. I have provided a visual representation of their analysis in Figure 2. Each of

[3] IMF, 'Annual Report on Exchange Arrangements and Exchange Restrictions 2018' (16 April 2019) 1. The exchange rate arrangements are classified into four types (hard, soft, floating and residual), with each type sub-classified into categories. The methodology for this classification became effective in February 2009. Even though this new methodology does not include currency unions in the list of exchange rate arrangements with no separate legal tender, I have included it here. This is because the previous methodology includes it and the only reason for its exclusion under the new methodology was the desire to shift the focus from the absence of separate legal tender in the individual countries in the currency union, to the exchange rate of the common currency in relation to the currencies of third countries. To buttress this, the Report notes that this '*reflects only a definitional change and is not based on a judgment that there has been a substantive change in the exchange arrangement or in other policies of the currency union or its members.*' See ibid 44. The conventional pegged arrangements may be fixed either in relation to a single currency or in relation to a basket of currencies. The crawling pegs and crawling bands may be forward looking or backward looking. See Andrea Bubula and Inci Otker-Robe, 'The Evolution of Exchange Rate Regimes Since 1990: Evidence From De Facto Policies' (2002) IMF Working Paper No 155, 14–15.
[4] Paul Masson and Catherine Pattillo, *The Monetary Geography of Africa* (Brookings Institution Press 2005) 4–5.

the five types differ in their degrees of asymmetry in relation to the making of monetary policy.

**Figure 2:**




Monetary integration has also been defined[5] by reference to the necessary conditions for a currency union set out in the Werner Report[6] and the Delors Report,[7] namely: irreversible convertibility of currencies, free movement of capital, and immutably fixed exchange rates.[8] This restrictive approach, which equates monetary integration to a currency union, was also adopted by Corden.[9] He argues that monetary integration requires a complete exchange rate union and capital market integration (that is, free movement of capital and complete convertibility) among the countries concerned. The exchange rates among the currencies of the countries concerned must be immutably fixed, there must be a common external exchange rate policy, all exchange controls (for both current and capital accounts) must be eliminated,[10] and a central union authority must be responsible for monetary policy making, managing the pooled foreign reserves of the countries

---

[5] Gandolfo (n 2) 155–56.
[6] 'Report to the Council and the Commission on the Realization by Stages of Economic and Monetary Union in the Community ('Werner Report')' (European Community 1970).
[7] 'Report on Economic and Monetary Union in the European Community ('Delors Report')' (European Council 1989).
[8] Werner Report (n 6) 10. Delors Report (n 7) 18–19.
[9] WM Corden, 'Monetary Integration' [1972] Essays in Int'l Finance, 2.
[10] ibid 2.

concerned, and serving as the common central bank.[11] The problem with this definition is that it essentially suggests that anything short of a full currency union '*is not the real thing*'[12] and will not qualify as true monetary integration.[13] It does not recognise currency board arrangements, pegs, dollarisation, or even what Corden describes as a pseudo exchange rate union[14] as categories of true monetary integration; even though these may facilitate harmonisation in the monetary policies of the countries using them.

A classic, though admittedly simplistic, definition of a currency union is that it is a form of monetary integration involving an arrangement between or amongst sovereign states to cede their monetary sovereignty to a central union authority; surrender control over, and harmonise, their monetary policies; and share a single currency. The Werner Report,[15] which was the roadmap for the European Economic and Monetary Union, described a currency union as an area within which sovereign countries liberalise the movement of capital and irrevocably fix the exchange rates amongst their currencies such that national currencies, if allowed to exist within the union, would effectively become perfect substitutes. A currency union may be created without the need for a single currency.[16] Within the currency union, therefore, the participating countries may opt for a single common currency or may retain their national currencies since they are all perfect substitutes. However, to evince the permanence and irreversibility of the currency union,[17] to ensure efficient currency management, and to eliminate the transaction costs – though marginal – of converting currencies, it may be more efficient for the currency union to opt for a single currency.[18]

Allen[19] distinguishes between the features that are essential for the formation of a currency union and those that are only necessary for its sustainability. The essential

[11] ibid 5.
[12] ibid 7.
[13] ibid 4, 6. See also Mwanji P Fwangkwal, 'Monetary Integration in the ECOWAS' [2014] CBN Understanding Monetary Policy Series 37, 3, who also conflates the definitions of monetary integration and a currency union.
[14] Geoffrey E Wood, 'European Monetary Integration? A Review Essay' (1986) 18(3) Journal of Monetary Economics, 330.
[15] Werner Report (n 6) 10.
[16] Gandolfo (n 2) 155; Werner Report (n 6) 10; Delors Report (n 7) 19.
[17] Werner Report (n 6) 10; Delors Report (n 7) 19.
[18] ibid.
[19] Polly R Allen, 'Organisation and Administration of a Monetary Union' [1976] Princeton Studies in International Finance No 38.

features are: (i) a single currency, or multiple currencies which are perfect substitutes, effectively creating a single currency; (ii) immutably fixed internal exchange rates and a common external exchange rate; and (iii) a central union authority must be responsible for monetary policy and the pooling of the reserves of the participating countries.[20] Within the currency union, responsibility for monetary policy – including interest rates, external exchange rate, pooling of foreign reserves, liquidity and intervention in the foreign exchange market – must be ceded by each participating country and transferred to a central union authority.[21] This central authority could be a currency board, as in the Eastern Caribbean Currency Union; or it could be a central bank as in the European Economic and Monetary Union, the West African Economic and Monetary Union and the Central African Economic and Monetary Union.

As shown in Figure 2; the making of monetary policy is completely symmetrical in a currency union. This is because the countries concerned use the same currency and are organised under a common monetary authority responsible for the making of monetary policy. Given that the common monetary authority would comprise representatives of each participating country, the making of monetary policy would ideally reflect the interests of all the participating countries.[22] In the other forms of monetary integration identified in Figure 2, the degree of symmetry in the making of monetary policy depends on the arrangements among the countries concerned.

A currency union may be a full union or a partial union.[23] So far, what has been described above is a full currency union. A full currency union, as a classic example of a hard-pegged regime, is an important step towards, and is often seen as an example of, complete economic and monetary integration between or amongst states.[24] A partial currency union

[20] Allen (n 19) 4–5.
[21] Werner Report (n 6); Delors Report (n 7) 19.
[22] Masson and Pattillo, *The Monetary Geography of Africa* (n 4) 5. However this may not be the case where certain countries have significant political and economic influence and can transmit their preferred policies to other participants through the union authority.
[23] Paul Masson and Catherine Pattillo, 'Monetary Union in West Africa: An Agency of Restraint for Fiscal Policies?' (2002) 11(3) Journal of African Economies, 388. See also Benjamin J Cohen, 'Are Monetary Unions Inevitable?' (2003) 4(3) Int'l Studies Perspectives, 276. Benjamin J Cohen, *Global Monetary Governance* (Routledge 2008) 293.
[24] Paul Masson and Catherine Pattillo, 'Monetary Union in West Africa (ECOWAS): Is It Desirable and How Could It Be Achieved?' [2001] IMF Occasional Papers No 204, 14. See also Baudouin Lamine, 'Monetary and Exchange Rate Agreements Between the European Community and Third Countries' [2006] European Economy Economic Papers No 255, 10.

– or, as Corden describes it, a pseudo exchange rate union[25] – is a less demanding form of monetary integration, '*requiring something short of a complete pooling of monetary sovereignty.*'[26] The key advantage provided by a partial currency union is the decentralisation of the power over monetary policy, and the fact that it provides a '*compromise between the pressure of defending uncompetitive national currencies and the lack of willing partners for a full monetary union.*'[27] Thus, currency unions without strong national commitments to a common currency and a common monetary authority, are partial currency unions and are not likely to stand the test of time.[28] In the absence of these commitments, participating countries can easily leave the currency union since they still have their national currencies and national institutions, and since there are no barriers to exit.[29]

The first key lesson from the literature on monetary integration is that it is a spectrum;[30] with the hard peg (representing full monetary integration)[31] at one extreme, and full monetary autonomy and independence at the other extreme. The actual degrees of monetary integration between or amongst countries, such as a currency union or a soft exchange rate union, are located at different points along a continuum within the bounds of those extremes.[32] These categories of monetary integration are not mutually exclusive and may be mixed in practice. For instance, the Eastern Caribbean Currency Union is a currency union organised under a currency board – the Eastern Caribbean Central Bank – as the common monetary authority. The eurozone and the CFA Franc zones are currency unions organised under central banks as their common monetary authorities. The exchange rate relationship between the Eastern Caribbean Dollar and the US Dollar is a hard peg. The exchange rate relationship among the members of the West African CFA

[25] Corden (n 9) 3–5, 39. Others describe it as an informal exchange rate union. See David Cobham and Peter Robson, 'Monetary Integration in Africa: A Deliberately European Perspective' (1994) 22(3) World Dev., 287.
[26] Cohen, 'Are Monetary Unions Inevitable?' (n 23) 290.
[27] ibid.
[28] Benjamin J Cohen, *The Geography of Money* (Cornell University Press 1998) 68. See also Allen (n 19) 8–14.
[29] Masson and Pattillo, 'Monetary Union in West Africa (ECOWAS): Is It Desirable and How Could It Be Achieved?' (n 24) 14.
[30] Keith R Jefferis, 'The Process of Monetary Integration in the SADC Region' (2007) 33 Journal of South African Studies, 85.
[31] ibid 86, 87.
[32] Cohen, *Global Monetary Governance* (n 23) 69.

Franc currency union is also a hard peg, but the exchange rate relationship between the Euro and the CFA Franc is a soft conventional peg.

The second, and more important lesson, from the literature on monetary integration, is that it is based on a legal and institutional framework, and the intensity of that framework depends on the degree of monetary integration contemplated. Where full monetary integration – in the form of a currency union or even a currency board[33] – is contemplated, then properly designing these frameworks would be an intensive and time-consuming process. The intensity of this process and the required frameworks reduce systematically, along the spectrum, as the degree of monetary integration reduces. In relation to a currency union, an international treaty or set of treaties typically provide the primary legislative framework under international law. Within the respective territories of the participating countries, the framework for the currency union may be in a standalone legislation, in the central bank legislation, or may be an integral part of the constitution.[34] In addition to facilitating the issuance of the currency and the exercise of the powers of monetary policy, these frameworks would also define the institutions responsible for the management of the monetary system, including their structures, attributed powers, governance processes, legal personalities and status.

## 3. A Currency Union within the Economic Community of West African States

The Economic Community of West African States (**'ECOWAS'**) was formed in 1975 by the fifteen independent countries comprising the West African region.[35] The ECOWAS Treaty laid the foundations for the systematic economic integration of West Africa by providing an international legal framework for the four freedoms – the free movement of people, goods, services, and capital.[36] The stated aims of the ECOWAS include the creation of a

[33] Atish R Ghosh and others, 'Currency Boards: More than a Quick Fix?' (2000) 15 (31) Econ Policy, 270, 292.
[34] ibid 298, 329.
[35] The treaty establishing the ECOWAS ('**ECOWAS Treaty**') was signed in Lagos, Nigeria on 28 May 1975. The member states are Nigeria, Ghana, Sierra Leone, Benin, Burkina Faso, Cote d'Ivoire, The Gambia, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Senegal, Togo, and the Republic of Cabo Verde (joined in 1976). The Islamic Republic of Mauritania was a founding member of the ECOWAS, but left the economic community in 2000. The Appendix provides a grid of key events related to the ECOWAS single currency project.
[36] Preamble and Article 2 to the ECOWAS Treaty.

common market, harmonisation of the monetary policies of the member states,[37] cooperation on monetary and financial questions,[38] free flow of capital,[39] and capital market integration.[40] As demonstrated above, monetary integration involves the harmonisation of monetary policies and capital market integration. Thus, the ECOWAS Treaty was the first international legal commitment towards monetary integration in West Africa.

Given that the multiplicity of currencies in the region was, and still is, inimical to intra-regional trade and collective economic development, member states started exploring the possibility of creating a monetary zone in 1983.[41] Consequently, through the adoption of the ECOWAS Monetary Corporation Programme (‘**EMCP’**) in 1987,[42] ECOWAS member states began the gradual progression towards macroeconomic convergence as a precursor to the creation of a currency union and the adoption of a single currency.[43]

The ECOWAS Treaty was revised in 1993 (‘**Revised ECOWAS Treaty’**)[44] to, *inter alia*: (i) bring the ECOWAS and the EMCP within the framework of the African Economic Community;[45] and (ii) clearly specify the category of monetary integration that would be established in West Africa. Thus, unlike the ECOWAS Treaty which merely required the harmonisation of monetary policies and capital market integration, the Revised ECOWAS Treaty expressly provides that one of the aims of the ECOWAS would be ‘*the establishment of an economic union through the adoption of common policies … and the creation of a monetary union.*’[46] Monetary integration in West Africa, under the Revised ECOWAS Treaty, requires: (i) harmonisation of monetary, fiscal and payment policies; (ii) free flow of capital; (iii)

[37] ibid., Article 2(h).
[38] ibid., Article 2(1).
[39] ibid., Article 39(1).
[40] ibid., Article 39(3).
[41] Decision A/DEC.6/5/83 of 30 May 1983 of the ECOWAS Authority of Heads of State and Government Relating to the Proposal for the Creation of an ECOWAS Single Monetary Zone.
[42] Decision A/DEC.2/7/87 of 9 July 1987 of the ECOWAS Authority of Heads of State and Government Relating to the Adoption of an EMCP. See also ‘Final Communique, 10th Ordinary Session of the Authority of Heads of State and Government, ECOWAS’ (ECW/HSG/X/3/REV.1) of 9 July 1987, p. 7
[43] Fwangkwal (n 13) 5.
[44] It was signed in Cotonou, Republic of Benin on 24 July 1993
[45] Treaty Establishing the African Economic Community, 1991.
[46] ibid., Article 3(1)(e).

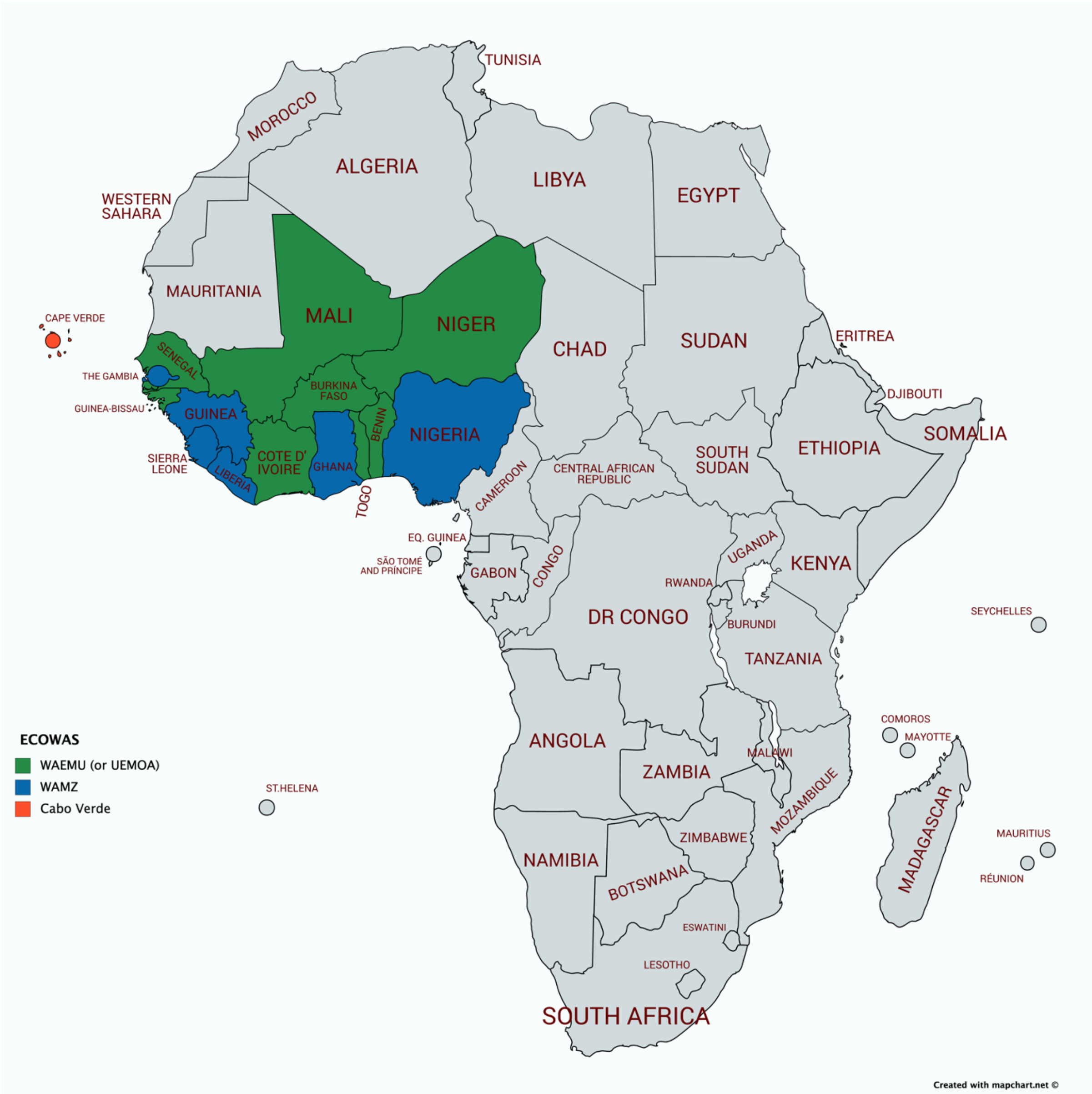
convertibility of currencies; (iv) the creation of common central bank and a single currency zone.[47]

The ECOWAS is divided into three linguistic zones, and by extension, three general legal systems, all having origins in colonialism. Whilst it may be simpler to divide the ECOWAS solely along the lines of official language and colonial history into francophone, anglophone, and lusophone West Africa, as is the case in some of the literature;[48] such a division may be misleading within the context of any conversation on post-colonial monetary arrangements in West Africa. Any references to such divisions in subsequent pages should therefore be treated as groupings based on official language and colonial history without more. ECOWAS, for the purpose of this paper, will be divided into the West African Economic and Monetary Union (**'WAEMU'**), the proposed West African Monetary Zone (**'WAMZ'**), and the Republic of Cabo Verde.

**Figure 3: Map of the ECOWAS**

[47] ibid., Article 51(1).

[48] Fwangkwal (n 13) 6; Iwa Akinrinsola, 'Legal and Institutional Requirements for West African Economic Integration' (2004) 10(3) Law and Business Review of the Americas, 501.




Three very important considerations, all related to the 'monetary geography'[49] of the ECOWAS, informed this division: (i) the fact that an economic and monetary union – the WAEMU[50] – already exists amongst the francophone West African countries and the Republic of Guinea-Bissau,[51] and they use a single currency called the West African *Communauté Financière Africaine* Franc ('**West African CFA Franc**'), which is pegged to the

[49] Masson and Pattillo, *The Monetary Geography of Africa* (n 4).
[50] This is the English translation of its original French name: l'Union Economique et Monetaire Ouest Africaine (UEMOA). This economic and monetary union has colonial roots and is indirectly controlled by France. The WAEMU incorporates the West African Monetary Union (l'Union Monetaire de Ouest-Africaine ('**WAMU**'/UMOA)), which is a currency union formed by the francophone West African states shortly after independence. It has been in existence for about six decades.
[51] Xavier Debrun and others, 'Monetary Union in West Africa: Who Might Gain, Who Might Lose, and Why?' [2002] IMF Working Paper No 226, 3.

Euro;[52] (ii) the fact that a second monetary zone – the WAMZ – is to be established amongst the anglophone West African countries and the Republic of Guinea;[53] and (iii) the Republic of Cabo Verde, though a member of the ECOWAS, is not a member of the WAEMU or the proposed WAMZ,[54] but will join the ECOWAS currency union presumably at the time of the merger of the WAEMU and the WAMZ or shortly thereafter.

The divisions above are very important because available literature often erroneously refers to the WAEMU as a currency union amongst francophone West African countries, and the WAMZ as a monetary arrangement amongst the anglophone West African countries.[55] The Republic of Guinea, though colonised by France and having French as her official language, is not a member of the WAEMU and does not use the West African CFA Franc. The Republic of Guinea is a member of the WAMZ, which is dominated by anglophone West African countries. In a similar vein, the Republic of Guinea-Bissau, though colonised by Portugal and having Portuguese as her official language, is a member of the WAEMU and uses the West African CFA Franc,[56] not the Portuguese Escudo.

## 3.1 Legal and Institutional Framework for the Eco

The subsequent parts provide an analysis of the legal and institutional framework. This analysis is driven by the need to examine the flaws inherent in the current framework and the need to diagnose the reason(s) for the poor implementation of the EMCP. As demonstrated below, there is a complicated relationship among the ECOWAS, the WAEMU and the WAMZ.

---

[52] Lamine (n 24) 19.
[53] Accra Declaration on Creation of a Second Monetary Zone, executed on 20 April 2000 in Accra, Ghana. Liberia joined the WAMZ through a Protocol between the WAMZ and Liberia concerning the Accession of Liberia to the WAMZ (WAMZ/PRT.1/LIB/2010), executed in February, 2010.
[54] See Paragraph 30, Final Report, 21st Session of the Council of Ministers, ECOWAS (ECW/CM.XXI/13/Rev.1), 6 July 1987, p. 10.
[55] Fwangkwal (n 13) 6; Akinrinsola (n 48) 501.
[56] Guinea-Bissau joined the WAEMU on 02 May 1997. See 'About UEMOA' available at http://www.uemoa.int/en/about-uemoa accessed on 02 May 2020

The initial target date for the establishment of the ECOWAS single currency was 2000.[57] However, on account of the political experiences of ECOWAS member states[58] (including, but not limited to, military coups) and their substantial macroeconomic divergence,[59] full monetary integration could not be achieved by that date. The ECOWAS postponed the target date to 2004[60] and decided to accelerate the integration process[61] by adopting a two-pronged fast-track route to the introduction of the single currency.[62] The first step would be the creation of a second currency union within the ECOWAS. This second currency union would comprise ECOWAS member states who are not members of the WAEMU,[63] and would be called the WAMZ.[64] The second step of that two-pronged process would be to manage that second currency union for a transitionary period and slowly merge the WAEMU into it to form a single currency union for the ECOWAS.[65]

Thus, the WAEMU and the WAMZ are separate sub-regional monetary arrangements under the general framework of the ECOWAS. The member states of the WAEMU and the WAMZ are all member states of the ECOWAS. The ECOWAS is keen on instating a full currency union comprising all her member states to improve intra-regional trade and eliminate currency substitution. To achieve this goal, the constitutive treaties of the ECOWAS have established several institutions and empowered them to pursue the goal of full monetary integration. The WAEMU, though within the ECOWAS, is an economic and monetary union with its complete, but separate, set of laws, institutions, institutional processes, and objectives. The WAMZ is another monetary arrangement within the ECOWAS, with its own separate set of laws, institutions, institutional processes, and

---

[57] Decision A/DEC.4/8/97 of 29 August 1997 Establishing an Ad-Hoc Monitoring Committee for the Creation of a Single Monetary Zone by the Year 2000.

[58] Temitope W Oshikoya and others, 'The Political Context' in Temitope W Oshikoya (ed), *Monetary and Financial Integration in West Africa* (Routledge 2010) 13. See also Masson and Pattillo, 'Monetary Union in West Africa (ECOWAS): Is It Desirable and How Could It Be Achieved?' (n 24) 1.

[59] Osaore Aideyan, 'Political and Institutional Prerequisites for Monetary Union: Assessing Progress in the Economic Community of West African States (ECOWAS)' (2016) 44 Politics & Policy, 1195. See also Fwangkwal (n 13) 6.

[60] Article 3, Decision A/DEC.7/12/99 Relating to the Adoption of Macroeconomic Convergence Criteria within the Framework of the EMCP (10 December 1999)

[61] Articles 1 & 2, Decision A/DEC.2/12/99 of the AHSG Adopting the Strategy to Accelerate the Regional Integration Process; Article 1, Accra Declaration (n 53).

[62] Fwangkwal (n 13) 5; Joseph O Sanusi, 'Ongoing Efforts Towards a Monetary Union in the West African Sub-Region' in (Bank of International Settlements 1 July 2003) MEFMI Central Bank Governors Forum, 1.

[63] They are Nigeria, Ghana, Sierra Leone, The Gambia, Liberia and Guinea.

[64] Article 2.1, Agreement of the WAMZ (ECW/AGR/WAMZ/1) of 15 December 2000 (**'WAMZ Agreement'**); see also Decision HS/WAMZ/DEC.1/12/2000 Adopting the Legislative Texts for the Establishment of the WAMZ; Fwangkwal (n 13) 6.

[65] Jacqueline Irving and others, 'The Pros and Cons of Expanded Monetary Union in West Africa' (2001) 38(1) IMF Finance Dev, 1; Sanusi (n 62) 3.

objectives. However, both monetary arrangements are part of the ECOWAS monetary integration agenda and are subject to the ECOWAS institutions responsible for monetary integration.

The target date for the establishment of the ECOWAS single currency was postponed to 2005, 2009, and 2015 due to poor institutional preparations, diminishing political will and macroeconomic divergence.[66] The latest target date is 2020[67] and the ECOWAS appears keen on meeting this target even if it results in the piecemeal establishment of the currency union amongst only those countries that satisfy the macroeconomic convergence criteria. To demonstrate its commitment to the process and to evince some seriousness of purpose, the ECOWAS decided, in 2019, that the ECOWAS single currency would be called the 'Eco' and that the ECOWAS central bank would adopt a federal structure like the European System of Central Banks.[68]

The complicated interrelationships among the ECOWAS, the WAEMU, and the WAMZ derives from historical, political, legal, social and economic diversity among the countries involved. This multi-layered diversity gives rise to a number of concerns – discussed below – which directly affect their willingness to create a currency union among themselves and also affects the legal and institutional frameworks for such a currency union.

### 3.2 The Collective Action Problem

By definition, the creation and management of a currency union is an exercise in mutuality and collective action.[69] Whether the proposed ECOWAS currency union and/or the WAMZ currency union would be created or not depends entirely on the ability and commitment of the member states to work together towards the attainment of that goal. Thus, strong

---

[66] Ferdinand Bakoup and Daniel Ndoye, 'Why and When to Introduce a Single Currency in ECOWAS' (2016) 7 African Economic Brief, 2.

[67] Article 1 (Article 4 NEW), Supplementary Act A/SA.01/12/15 (n 1). See also Article 3, Additional Act N.01/2015/CCEG/UEMOA Establishing a Convergence, Stability, Growth and Solidarity Pact Between the Member States of the WAEMU of 19 January 2015.

[68] Communique, 55th Ordinary Session of the Authority of Heads of State and Government of the ECOWAS, 29 June 2019 in Abuja – see final communique https://amao-wama.org/eco-adopted-as-the-name-of-the-ecowas-single-currency-by-ecowas-member-states/

[69] Cohen, 'Are Monetary Unions Inevitable?' (n 23) 277.

domestic political will, influenced by shared economic and political interests,[70] is essential for the establishment and sustenance of a currency union. In the absence of shared political and economic interests, the benefits of cooperation and collective action towards the formation of the currency union may not be tangible to the member states and may frustrate the process.

This lack of political will and shared economic interests is a major problem within West Africa, and explains why there has been no political interest in domesticating the legal framework for the Eco within member states.[71] Note that the existence of the WAEMU indicates the presence of political will, shared economic interests, and common purpose amongst its member states. However, in relation to the ECOWAS single currency project, the absence of political will and common purpose is obvious when West Africa is taken as a whole, especially the member states *inter se* and as between the WAEMU, as a bloc, and the other non-WAEMU states.

With sufficient domestic political support, it may be possible to design the legal and institutional framework for the currency union in a manner that guarantees and enforces collective action. Strong political leadership is also necessary.[72] In this sense, the literature has recognised the necessity for a 'hegemon'[73] – a strong and fairly stable state within the currency union – that is committed to the goal of full monetary integration, can provide leadership and inspire collective action. Within the eurozone, Germany has been playing the role of the hegemon.[74] Within West Africa, Nigeria dominates the ECOWAS both in terms of GDP and population, and is naturally suited to be the hegemon.[75] In fact, the single currency project is largely a product of leadership from Nigeria and Ghana.[76] Nigeria, though fairly unstable in economic terms, has been serving as the hegemon. Anecdotal evidence suggests that the degree of enthusiasm demonstrated by Nigeria in serving as

[70] Joseph U Nnanna, 'Monetary Unions and Its Discontent: An Institutional Analysis of the West African Monetary Institute' Handbook on Economic, Finance and Management Outlooks 7, 3.
[71] Fwangkwal (n 13) 17. Nnanna (n 70) 5, 6.
[72] Nnanna (n 70) 6. In the absence of this strong political leadership, any currency union created may be prone to cyclical economic crises.
[73] Cohen, 'Are Monetary Unions Inevitable?' (n 23) 278, 281.
[74] ibid 280.
[75] ibid 289.
[76] ibid. See also Irving and others (n 65) 2.

hegemon is dependent on the values of the government in power. Between 1999 and 2007, the Olusegun Obasanjo government was keen on regional integration and was actively pursuing the monetary integration agenda. There was a lull between 2008 and 2015 under the Yar'adua/Jonathan governments. The present government in Nigeria appears keen.[77]

### 3.3 Multiplicity and Unenforceability of Applicable Laws

Within West Africa, three separate, but related, legal frameworks for full monetary integration are currently in existence – see Figure 4. The first is based on international law, provided by the Revised ECOWAS Treaty, and the protocols and decisions made under its authority[78] ('**ECOWAS community law**'). The second is based on a blend of international law and French civil law, provided by the constitutive treaties of the WAEMU, including protocols and decisions made under their authority ('**WAEMU community law**'). The third is based on a blend of international law and English common law, provided by the constitutive treaties of the WAMZ, including protocols and decisions made under their authority ('**WAMZ community law**').

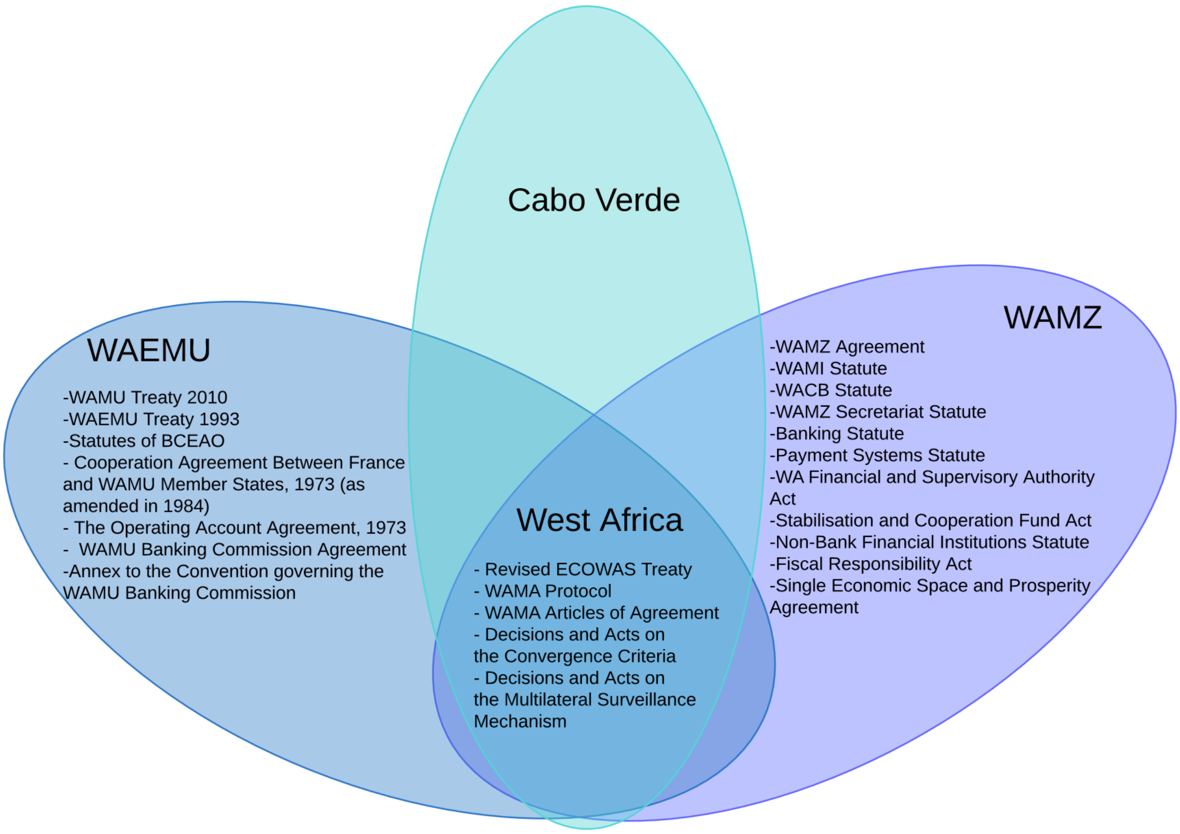
The core objectives of these legal regimes are different and consequently, they may be working at cross purposes. For instance: the core objective of the ECOWAS regime is full monetary integration across West Africa, the primary objective of the WAMZ is to achieve full monetary integration amongst its member states only, and the WEAMU seeks to deepen economic and monetary integration amongst its members. But what is more worrisome is the fact that most of these laws are neither directly applicable nor enforceable within many of the ECOWAS member states, having not been ratified and/or domesticated.

The treaties and protocols that define the community laws above are sources and expressions of international law, which are expected to have effect within national legal

[77] 'Buhari and Ouattara Make Eco Heart of Regional Power Struggle' (*The Africa Report*, 12 February 2020) <https://www.theafricareport.com/23374/buhari-and-ouattara-make-eco-heart-of-regional-power-struggle/> accessed 4 June 2020.
[78] Articles 9 (2 – 4), Revised ECOWAS Treaty.

systems. The relationship between international law and national law has received significant attention in the literature, and two theories – dualism and monism – have been used to explain that relationship. For countries that practice monism, international law and their national legal systems are part of a unitary legal order.[79] Consequently, treaties and other expressions of international law, signed or ratified by them, are directly applicable and enforceable within their national legal systems.[80] Dualist countries, on the other hand, treat international law and their national legal systems as separate and distinct.[81] Consequently, a treaty or other expression of international law signed or ratified by those countries will not have effect within their national legal systems unless they are formally incorporated into those systems through legislative domestication.[82]

**Figure 4: Multiplicity of Laws**




[79] Malcolm N Shaw, *International Law* (8th edn, Cambridge University Press 2017) 48, 98.
[80] ibid 48.
[81] ibid.
[82] *Rustomjee v R* [1876] 2 QB 69, 74 (Lord Coleridge). See also James Crawford, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012) 63; Shaw (n 79) 97.

ECOWAS community law does not have direct applicability or direct effect in the member states.[83] Member states determine whether ECOWAS community law will have domestic effect or not.[84] WAMZ member states,[85] whose legal systems originate from the English common law, practice dualism.[86] Without domestication, therefore, treaties signed and ratified by these countries – like the ECOWAS community law – will be unenforceable within their national territories.[87] Given that there is no evidence that Nigeria, Ghana, Gambia, Liberia, or Sierra Leone have enacted legislation domesticating the ECOWAS community law,[88] it is unenforceable in these WAMZ member states. The WAMZ community law suffers a similar fate.[89] However, notwithstanding the lack of domestication, these member states may not enact laws or policies that are inconsistent with their obligations under community law in order not to violate the principle of *pacta sunt servanda*.[90]

WAEMU member states and the Republic of Guinea, whose legal systems originate from the French civil law, follow the monist system.[91] The lusophone countries also follow the monist system.[92] Once any of these countries signs and ratifies a treaty, it automatically becomes part of their national law, is directly applicable and enforceable.[93] However, some national constitutions within the WAEMU introduce additional conditions precedent

[83] Direct effect of community law refers to the ability of citizens (natural and legal persons) to directly enforce community law in national courts. When community law has direct effect, national courts would be bound to apply and enforce community law. This principle was enunciated in the case of *Van Gend en Loos v. Nederlandse Administratie der Belastingen* [1963] ECR 1. Direct applicability of community law refers to the process through which a country incorporates treaties (community law) into its national legal system (i.e. monism or dualism, with monism being the true example of direct applicability). This is because upon incorporation into the national legal system of a dualist country, what becomes enforceable law is not the treaty itself, but a domestic statute containing the provisions of the treaty. See Enyinna S Nwauche, 'Enforcing ECOWAS Law in West African National Courts' (2011) 55(2) Journal of African Law, 185.
[84] Article 5(2) Revised ECOWAS Treaty
[85] Excluding the Republic of Guinea, with legal origins in French civil law.
[86] *Thomas v Baptiste* [2000] 2 AC 1 (PC), 23, (Lord Millett).
[87] See, for instance, Section 12 Constitution of the Federal Republic of Nigeria, 1999 as amended which provides that no treaty to which Nigeria is a party shall have force of law in Nigeria save to the extent to which such treaty has been enacted into law by the Nigerian federal legislature.
[88] Nwauche (n 83) 186. In Ghana and The Gambia, domestication would require constitutional amendments since both constitutions expressly vest the power over currency issuance on their respective central banks. See Articles 183 and 184 Constitution of Ghana, and Article 161 Constitution of the Republic of The Gambia.
[89] Except in the Republic of Guinea, where it has direct applicability and effect on account of Guinea's monist system.
[90] Article 26, Vienna Convention on the Law of Treaties, 1969; *Abiola v. Abacha* (1998) 7 HRLRA 458.
[91] Article 55 of the French Constitution of 1958 institutionalises the monist system, and places treaties at a level superior to ordinary legislation, but inferior to the Constitution.
[92] Article 11, Cabo Verdean Constitution of 1992.
[93] Hussein Thomasi and others, 'Legal and Institutional Framework' in Temitope W Oshikoya (ed), *Monetary and Financial Integration in West Africa* (Routledge 2010) 237.

to the direct applicability and effectiveness of community law. For instance, the Senegalese and Benin constitutions suggest that ratified treaties would have direct effect and superiority over national law only: (i) upon publication of the treaty; (ii) upon reciprocal application and enforcement by other state parties to the treaty; and (iii) in the event of a conflict between the treaty and a constitutional provision, upon revision of the constitution to bring it into conformity with the treaty.[94]

Given: (i) the requirement for reciprocity in the application and enforcement of ECOWAS community law, as a precondition for its direct effect within WAEMU member states; and (ii) the unenforceability of ECOWAS community law in WAMZ member states, it follows that the requirement for reciprocal enforcement has not been met.[95] Therefore, ECOWAS community law is unenforceable in WAEMU member states. WAEMU community law, on the other hand, is directly applicable and enforceable within WAEMU member states.[96] The better performance of WAEMU member states in relation to the macroeconomic convergence criteria under both ECOWAS and WAEMU community law (see Table 2 and Figure 6) may be credited, in large part, to: (i) an international legal framework which has direct applicability and effect within national systems; and (ii) their long history with a defined set of functional and effective institutions. These are clearly lacking in the WAMZ and may explain the poor performance of WAMZ member states in relation to the macroeconomic convergence criteria. Despite the fact that the WAMZ, as shown in Figure 4, has the greatest concentration of applicable laws, none of those laws have been domesticated.[97]

Besides the problems of applicability and enforceability within member states, these community laws reflect different policy choices and objectives. Consequently, there are inconsistencies among them. For instance, the ECOWAS, WAEMU and the WAMZ all have their own sets of macroeconomic convergence criteria (see Table 1). As part of the EMCP under ECOWAS community law, ten convergence criteria were adopted to facilitate the

[94] Articles 146 and 147, Constitution of the Republic of Benin, 1990; Articles 97 and 98, Constitution of the Republic of Senegal, 2001.
[95] The language of the law says '*…subject… to its application by the other party*.' The jury is still out on whether this means reciprocal enforcement by '*all the other parties*' or by '*at least one other party.*' See Nwauche (n 83) 188.
[96] Article 43, Traite Modifie de l'Union Economique et Monetaire Ouest Africaine, 2003 ('**Amended WAEMU Treaty**')
[97] Thomasi and others (n 93) 238. Note that this excludes the Republic of Guinea. It is a monist state.

macroeconomic convergence of the member states.[98] Macroeconomic convergence criteria are economic indicators that signal the degree of economic and structural variance among the member states. Macroeconomic convergence will make member states structurally homogenous such that economic shocks would become more symmetric.[99] In turn, this will make the ECOWAS an optimum currency area and facilitate the adoption of a single currency. Given the rising public debt within West Africa, a criterion was added, in 2012,[100] to track the ratio of public debt to GDP.[101] To focus more on monetary policy indicators, the convergence criteria under ECOWAS community law were reduced to six criteria in 2015,[102] comprising four primary criteria and two secondary criteria, and the new target date for the completion of the convergence phase and the start of the currency union was set for January 2020.[103] The primary criteria are mandatory standards that must be met by all member states within each monetary arrangement, while the secondary criteria are desirable, but not necessarily mandatory.

**Table 1:** Macroeconomic convergence criteria under ECOWAS community law,[104] WAEMU community law,[105] and WAMZ community law.[106]

[98] Article 1, Decision A/DEC.7/12/99 (n 60).
[99] Jian Zhang, 'Supporting Macroeconomic Convergence in African RECs' (2012) 1(1) AfDB Regional Integration Policy Papers, 17.
[100] Supplementary Act A/SA.4/06/12 Relating to the Macroeconomic Convergence and Stability Pact among the ECOWAS Member States, 29 June 2012.
[101] Ibid, Article 12(7)(v).
[102] Article 1 (Article 12 NEW), Supplementary Act A/SA.01/12/15 (n 1).
[103] Ibid., Article 1 (Article 4 NEW).
[104] Ibid., Article 1 (Article 12 NEW).
[105] Articles 6, 7, and 8 Additional Act N.01/2015/CCEG/UEMOA (n 67). Note that the BCEAO has limits on deficit financing through the central bank and on the peg to the euro, but they do not form part of the convergence criteria.
[106] Articles 3 and 4 Accra Declaration (n 53).

| Macroeconomic Convergence Criteria | ECOWAS | WAEMU | WAMZ |
|---|---|---|---|
| **Primary Criteria** | | | |
| Ratio of budget deficit (commitment basis) to Gross domestic product (GDP) | ≤ 3% | Nil | ≤ 4% |
| Ratio of overall budget balance (including grants) to nominal GDP | Nil | ≥ - 3% | Nil |
| Average annual inflation rate | ≤ 10%, but ≤ 5% by December 2019 | ≤ 3% | ≤ 5% |
| Central bank financing of budget deficit | ≤ 10% of previous year's tax revenue | Nil | ≤ 10% of previous year's tax revenue |
| Gross external reserves | ≥ 3 months of imports (i.e. 3 months' import bill) | Nil | ≥ 3 months of imports (3 months' import bill) |
| Ratio of total public debt to GDP | Nil | ≤ 70% | Nil |
| **Secondary Criteria** | | | |
| Ratio of total public debt to GDP | ≤ 70% | Nil | ≤ 70% |
| Nominal exchange rate variation | stable (± 10%) | Nil (single currency hard-pegged to the Euro) | stable (± 10%) |
| Ratio of total wage bill (payroll) to tax revenue | Nil | ≤ 35% | Nil |
| Ratio of tax revenue to GDP | Nil | ≥ 20% | Nil |

Table 1 signals conflicts among the three legal regimes for monetary integration within West Africa. The convergence criteria under WAEMU community law are designed to avoid slippages in fiscal positions[107] in order to maintain macroeconomic and structural homogeneity, and protect the integrity of the WAEMU. On the other hand, the

[107] Hippolyte Balima and others, 'West African Economic and Monetary Union: Selected Issues' [2019] IMF Country Report No 91, 3.

convergence criteria under ECOWAS and WAMZ community laws are designed to prod the member states towards monetary policy convergence to facilitate the creation of a currency union. Consequently, the ECOWAS and the WAMZ have adopted economic indicators focusing more on monetary policy matters like inflation, budget deficit and central bank deficit financing, exchange rate, and external reserves. On its part, the WAEMU focuses mostly on fiscal policy matters[108] like the ratios of public debt and tax revenue to GDP, and the ratio of the wage bill to tax revenue.

The net effect of the foregoing is that the ECOWAS, the WAEMU and the WAMZ may be working at cross purposes, to the detriment of the ECOWAS agenda for full monetary integration. Even if the initial problem of the unenforceability of the applicable laws is resolved, member states would need to work together to harmonize the applicable laws to define a uniform set of objectives and macroeconomic convergence criteria.

## 3.4 Multiplicity of Institutions and Duplication of Functions

Within ECOWAS, the institutional framework for full monetary integration is marred by multiplicity of institutions and the duplication of functions. This problem is both horizontal and vertical. The former refers to the multiplicity of institutions and duplication of functions at the ECOWAS regional level, while the latter refers to the multiplicity of institutions and duplication of functions between the ECOWAS and the sub-regional monetary arrangements under it. The ECOWAS, the WAEMU and the WAMZ claim to be working towards the singular goal of full monetary integration in West Africa, but each maintains its own separate set of laws, institutions, institutional processes, and objectives. Figure 5 provides an outline of these institutional frameworks.

**Figure 5: Multiplicity of Institutions**

[108] ibid.

**ECOWAS**

- Authority of Heads of State and Government
- West African Monetary Agency
- Convergence Council
- ECOWAS Multilateral Surveillance Mechanism
- Commission on Monetary and Payment Matters
- ECOWAS Court of Justice
- ECOWAS Commission
- ECOWAS Parliament
- ECOWAS Bank for Investments and Development
- Several committees:
  - Ad-Hoc Monitoring Committee of Heads of State and Government
  - Capital Issues Committee
  - Committee of West African Central Banks
  - Technical Monitoring Committee
  - National Coordinating Committees
  - Economic and Monetary Affairs Committee

**WAEMU**

- Banque Centrale des Etats de l'Afrique de l'Ouest (BCEAO)
- WAEMU Multilateral Surveillance Mechanism
- Banking Commission
- Deposit Guarantee and Resolution Fund
- Conference of Heads of State and Government
- The Council of Ministers
- The WAEMU Commission
- WAEMU Court of Justice
- Regional Council for Public Savings and Financial Markets (The Financial Markets Regulatory Authority)
- Securities Agency

**WAMZ**

- Authority of Heads of State and Government
- West African Monetary Institute
- West African Central Bank
- Convergence Council
- Technical Committee on the single currency
- Stabilisation and Cooperation Fund
- West African Financial and Supervisory Authority
- WAMZ Secretariat
- ECOWAS Court of Justice

### 3.4.1 Multiplicity of Institutions: The ECOWAS

To facilitate full monetary integration and the establishment of the currency union,[109] ECOWAS community law has created institutions and empowered them to do all that is necessary for the establishment of the currency union. The Authority of Heads of State and Government (**'AHSG'**) is established as the supreme governing institution of the ECOWAS, with powers to: (i) ensure the achievement of the aims of the ECOWAS, including the creation of a currency union; and (ii) create such other institutions as may be necessary for the achievement of those aims.[110] The AHSG formally decided to establish a single currency zone[111] and adopted the EMCP[112] as a systematic plan for the harmonisation of monetary and fiscal policies, and the eventual creation of the currency union.

[109] Articles 3(1)(e), 51(f) & (g) Revised ECOWAS Treaty
[110] ibid., Articles 6(1)(a) & (i), and 7.
[111] See Decision A/DEC.6/5/83 (n 41).
[112] See Decision A/DEC.2/7/87 (n 42). See also 'Final Communique, 10th Ordinary Session of the AHSG, ECOWAS' (ECW/HSG/X/3/REV.1) of 9 July 1987, p. 7

Following the revision of the ECOWAS Treaty in 1993, the AHSG, exercising its powers to create additional institutions,[113] enacted a Protocol[114] creating the West African Monetary Agency (**'WAMA'**) as an autonomous specialised institution of the ECOWAS,[115] with full legal personality within each member state.[116] WAMA, which comprise the central banks of all member states,[117] is primarily responsible for monitoring and coordinating the implementation of the EMCP.[118] This function is performed through a technical committee on Economic and Monetary Affairs.[119] As part of the programme towards full monetary integration, WAMA also manages the multilateral payment, clearing and settlements systems[120] in West Africa (**'payments system'**) designed to facilitate intra-regional trade in the local currencies of member states.

In addition to the WAMA, ECOWAS community law also established a Commission on monetary and payment matters,[121] and a Capital Issues Committee.[122] Like the WAMA, the former is a technical and specialised institution with powers to ensure the harmonisation of monetary and fiscal policies amongst member states,[123] while the latter is empowered to ensure capital market integration,[124] which is a precondition for a currency union. A Committee of West African Central Banks is also established, with powers to make recommendations on monetary issues and on the operation of the payments system.[125] The AHSG also created an Ad-Hoc Monitoring Committee of Heads of State and Government,[126] with powers '*to take all measures necessary to ensure the speedy and timely attainment of the single monetary zone.*'[127] This Ad-Hoc Committee also has wide powers

[113] Article 6(1)(i) Revised ECOWAS Treaty.
[114] Protocol A/P. I/7/93 to the Revised ECOWAS Treaty Relating to the West African Monetary Agency, 24 July 1993 (the '**WAMA Protocol**')
[115] Article 2 WAMA Protocol. Note that WAMA succeeded the West African Clearing House, established in 1975 to facilitate payments for intra-regional trade. See Article 2(1), Articles of Agreement of the WAMA ('**WAMA Articles of Agreement**'); see also Decision A/DEC4/792 by the AHSG relating to the Transformation of the WACH to the WAMA.
[116] Article 19 WAMA Protocol; Article 27 WAMA Articles of Agreement.
[117] Article 6 WAMA Protocol; Article 4 WAMA Articles of Agreement.
[118] Articles 3(d – f, h – i), 4(a, d) WAMA Protocol; Articles 2(d – f, h – i), 4(a, d) WAMA Articles of Agreement.
[119] Article 9(5)(b) WAMA Protocol; Article 5(2)(g) WAMA Articles of Agreement.
[120] Article 4(b) WAMA Protocol; Article 3(b) WAMA Articles of Agreement.
[121] Article 22(1)(e) Revised ECOWAS Treaty.
[122] ibid., Article 53(1).
[123] Article 36(1)(a) ECOWAS Treaty.
[124] Article 53(3)(a) Revised ECOWAS Treaty.
[125] Article 52 Revised ECOWAS Treaty.
[126] Article 2 Decision A/DEC.4/8/97 (n 57).
[127] ibid., Article 3.

to, inter alia, create additional ministerial and technical committees as it deems necessary.[128]

To add to the long list of institutions, an ECOWAS multilateral surveillance mechanism was established to monitor and ensure harmonisation within the framework of the macroeconomic convergence criteria, through soft compliance-promoting powers like the biannual reviews of convergence reports. The multilateral surveillance mechanism itself, was a committee of institutions, comprising: the WAMA, a Convergence Council (made up of Ministers of Finance and Governors of central banks to monitor macroeconomic policies and performance), a Technical Monitoring Committee (comprising Directors of Research of the various central banks, and senior officials of the ministries of finance of member states), and National Coordinating Committees within each member state.[129]

A critical examination of the institutional arrangements above will reveal a horizontal multiplicity of institutions and several duplications of functions. The WAMA is statutorily required to implement the EMCP and ensure the macroeconomic convergence of ECOWAS member states through the harmonisation of fiscal and monetary policies. It is also statutorily responsible for the establishment of the currency union. There is evidence that the WAMA has been performing these functions both directly and through its Economic and Monetary Affairs committee.[130] The Convergence Council and the Technical Commission on Monetary and Payment matters are also statutorily required to perform these same functions and ensure the harmonisation of macroeconomic, monetary and fiscal policies.[131] Thus, the WAMA, the Convergence Council, and the Technical Commission are separate institutions under the ECOWAS, but are performing the same functions.

Further, the Ad-Hoc Monitoring Committee of Heads of State and Government is created and empowered to facilitate the speedy implementation of the EMCP and evaluate

[128] ibid., Article 4(i).
[129] Article 4, Decision A/DEC.7/12/99 (n 60).
[130] WAMA's website is replete with reports on the status of macroeconomic convergence and on exchange rate developments. See https://amao-wama.org/publications/
[131] Article 23(c) and 51 Revised ECOWAS Treaty; Article 4, Decision A/DEC.7/12/99 (n 60)

compliance with the macroeconomic convergence criteria.[132] These functions are also being performed by the WAMA. Given that this Ad-Hoc Committee comprises politicians and non-experts, an informed observer would expect their roles to be non-technical and limited to the provision of political impetus. However, this is not the case, and the WAMA is required to provide technical assistance to the Ad-Hoc Committee,[133] creating an additional layer of bureaucracy. *De facto*, the WAMA is structurally subordinated to the Ad-Hoc Committee since members of the WAMA are appointed (and can be removed) by the members of the AHSG and the Ad-Hoc Committee. This may affect the WAMA's ability to independently and efficiently perform its functions as its progress may be hampered by interference from the Ad-Hoc Committee.

As the successor of the West African Clearing House, the WAMA has also been managing the payments system.[134] The WAMA is actively governed by a Committee of Governors of Central Banks of Member States,[135] which meets regularly to consider reports on macroeconomic convergence[136] and determine the modalities for the operation of the payments system.[137] As noted above, there is a separate Committee of West African Central Banks[138] which is empowered to make recommendations, to the ECOWAS Council of Ministers, on monetary matters and on the operations of the payments system.[139] This is another example of the duplication of functions as the powers given to the Committee of West African Central Banks ordinarily fall within the scope of WAMA's functions as the manager of the payments system.[140] To complicate this duplication further, there is evidence that a group called the 'Central Banks Working Group on the ECOWAS Single

[132] Article 4 Decision A/DEC.4/8/97 (n 57).
[133] ibid., Article 6.
[134] See WAMA: Objectives and Mandate https://amao-wama.org/aboutus/mandate/
[135] Articles 5(a) & 6 WAMA Protocol.
[136] Final Communique, 51st Ordinary Meeting of the Committee of Central Banks of ECOWAS Member States, Banjul 08 February 2018.
[137] Article 6(b) WAMA Protocol.
[138] Article 52 Revised ECOWAS Treaty. See also Article 38 ECOWAS Treaty.
[139] Article 52(2) Revised ECOWAS Treaty.
[140] Evidence suggests that this committee does not exist only on paper as there are records of a meeting in 2017. See 'Governors Of ECOWAS Central Banks Call For Synergy Towards Common Currency (ECOWAS)' (*ECOWAS*, 1 November 2017) <https://www.ecowas.int/governors-of-ecowas-central-banks-call-for-synergy-towards-common-currency/> accessed 3 June 2020. However, anecdotal evidence suggests that meetings of this committee are quite infrequent.

Currency' (comprising governors of central banks) meets regularly[141] to discuss matters related to the single currency project and the payments system.

The foregoing highlights a key deficiency in the institutional arrangements for the Eco at the ECOWAS regional level. What makes this more interesting is the fact that these institutions all comprise governors of central banks or their representatives, and may include ministers of finance. Given the common memberships and identical functions, there really is no rational basis for the separate existence of these institutions. ECOWAS community law has created, or enabled the creation, of several institutions, with common memberships, all performing the same tasks at the same time. A single institution with extensive powers would more efficiently pursue the goal of full monetary integration. As will be demonstrated below, this deficiency compounds when the institutional arrangements at the ECOWAS level are juxtaposed with the institutional arrangements for the sub-regional monetary regimes in the WAEMU and the WAMZ.

### 3.4.2 Multiplicity of Institutions: The WAEMU

As an economic and monetary union, WAEMU community law provides a fully operational institutional architecture and a central monetary authority – the BCEAO – responsible for issuing currencies, making and implementing monetary policies, and providing an agency of restraint on fiscal policies. These institutions are separate from the WAMA and the many other institutions created under the Revised ECOWAS Treaty, and are subordinate to them within the ECOWAS framework. The mandates and macroeconomic targets of these WAEMU institutions are also different from, and more developed than, those of the ECOWAS' institutions.[142] For instance, the BCEAO uses the Euro as the exchange rate anchor for the WAEMU single currency under a conventional pegged arrangement.[143] On the other hand, the WAMA has adopted an inflation-targeting framework under the

[141] 'ECOWAS Central Banks Working Group Meet on Single Currency in Abuja' (*ECOWAS*, 11 June 2019) <https://www.ecowas.int/ecowas-central-banks-working-group-meet-on-single-currency-in-abuja/> accessed 3 June 2020.

[142] See Paragraph 26, Strategy to Accelerate Regional Integration in West Africa, attached to Article 1, Decision A/DEC.2/12/99 (n 61).

[143] IMF (n 13) 5, 6.

macroeconomic convergence criteria.[144] This exacerbates the problem of multiplicity of institutions because the WAMA and the BCEAO may be working at cross purposes in relation to macroeconomic convergence.

In relation to economic and monetary integration, the WAEMU member states are ahead of the rest of the ECOWAS. In addition to the BCEAO, the WAEMU has fully operational financial regulatory institutions (see Figure 5). For instance: The Banking Commission,[145] is responsible for the safety and soundness of the sub-regional financial system[146] through the regulation, supervision,[147] and resolution[148] of banks and other credit institutions within the WAEMU. The Banking Commission and the BCEAO jointly oversee the micro- and macro-prudential regulation of banks.[149] The regulatory activities of the Banking Commission are complemented by a deposit guarantee and resolution fund, which has international legal personality and provides a sub-regional deposit insurance scheme.[150] There is also a sub-regional regulator for the securities and financial markets. These institutions are indicative of a banking union, and demonstrate the level of institutional advancement within the WAEMU. This advancement explains the divergence in the core objectives of the ECOWAS and WAEMU respective convergence criteria.

The convergence criteria under WAEMU community law focuses more on the harmonisation of fiscal and budgetary policies,[151] and the convergence objectives are required to be consistent with union monetary policies made by the BCEAO.[152] On the other hand, those of the ECOWAS focus more on the harmonisation of monetary policies, and the ECOWAS convergence objectives are required to be consistent with the monetary policies of each member state.[153] To monitor compliance with these convergence criteria, both regimes maintain separate multilateral surveillance mechanisms, each with its own

[144] ibid 5.
[145] See Article 1, WAMU Banking Commission Convention, 2007.
[146] Article 2 Annex to the WAMU Banking Commission Convention (as amended by Decision N.10 of 29/09/2017/CM/UMOA).
[147] ibid., Article 4.1
[148] ibid., Article 5.1
[149] ibid., Articles 21, 22, and 23
[150] Statute of the WAMU Deposit Guarantee Fund 2014.
[151] Article 65(2) Amended WAEMU Treaty.
[152] Ibid., Article 72; Article 12 Additional Act N.01/2015/CCEG/UEMOA (n 67).
[153] Article 1 (New Article 7(2)) Supplementary Act A/SA.3/06/12 Amending Decision A/DEC.17/12/01 Setting up a Multilateral Surveillance Mechanism for the Economic and Financial Policies of ECOWAS Member States.

objectives relative to the degree of economic and monetary integration. Thus, while the ECOWAS multilateral surveillance mechanism is aiming for full monetary integration through the harmonisation of monetary policies, the WAEMU multilateral surveillance mechanism is fortifying its economic and monetary integration through the harmonisation of fiscal policies. This accentuates the divergence in their objectives and mandates, and is detrimental to the goal of full monetary integration in the ECOWAS. This is because the ECOWAS multilateral surveillance mechanism, which applies equally to the WAEMU member states and is hierarchically superior to the WAEMU multilateral surveillance mechanism, is and will always be playing catch-up.

ECOWAS community law provides a legal regime for the resolution of any conflicts that may arise between sub-regional arrangements and the implementation of the EMCP.[154] Treaties predating the Revised ECOWAS Treaty – such as the WAMU Treaty, which is the forerunner to the WAEMU Treaty – are preserved and member states are free to enter into sub-regional or international economic arrangements, as long as these do not conflict with the Revised ECOWAS Treaty.[155] In the event of a conflict between a WAEMU objective/provision and an ECOWAS objective/provision, the WAEMU member states would be required to bring the conflicting WAEMU objective/provision into conformity with the ECOWAS objective/provision.[156] The problem with this regime preserving the WAEMU, and resolving conflicts in favour of the ECOWAS, is the apparent absence of the political will to activate the enforcement mechanism[157] under Articles 76 and 77 of the Revised ECOWAS Treaty.

The ECOWAS Court of Justice and the WAEMU Court of Justice both have jurisdiction within each WAEMU member state, and are responsible for interpreting their respective community laws. The ECOWAS Court of Justice has mostly been active in the determination of human rights cases. However, as monetary integration advances and the court begins to hear disputes relating to monetary integration, there is a likelihood that a

[154] Sunday B Ajulo, 'Sources of the Law of the Economic Community of West African States (ECOWAS)' (2001) 45(1) Journal of African Law, 84–85.
[155] Article 84(1) Revised ECOWAS Treaty
[156] Article 84(2) Revised ECOWAS Treaty
[157] Fwangkwal (n 13) 17.

dispute may arise from conflicting objectives under ECOWAS and WAEMU community laws. If that happens, suits may be filed before both courts. The ECOWAS Court of Justice will apply ECOWAS community law (even if domestic enforcement is impossible), but the WAEMU Court of Justice will apply and enforce WAEMU community law. Political considerations and national interest would ultimately determine which community law would be given priority.[158] Political will, in each relevant member state, is determined by the head of government and their ministers. These persons are members of the WAEMU Conference of Heads of State and Government, the WAEMU Council of Ministers, and are also members of the ECOWAS AHSG. But, as has been demonstrated above, the core objectives of the WAEMU officials and institutions are different from the monetary integration objectives of the ECOWAS, and they may prioritise WAEMU's objectives.

In setting up the ECOWAS multilateral surveillance mechanism in 1998, the ECOWAS was alive to this problem of parallel institutional structures within the WAEMU. In an attempt to manage this problem, the AHSG decided that the WAEMU institutions responsible for monitoring WAEMU convergence criteria in each WAEMU member state – the national committees on economic policy – would serve as the National Coordinating Committee for those states in the ECOWAS' multilateral surveillance mechanism.[159] Whilst this is commendable, it does very little in solving all of the problems discussed above.

### 3.4.3 Multiplicity of Institutions: The Second Monetary Zone (WAMZ)

The institutional architecture of the WAMZ lends the final layer of complication to the problem of multiplicity of institutions and duplication of functions. The WAMZ has its own set of convergence criteria, which are very similar to the ECOWAS convergence criteria (Table 1). But, the WAMZ chose to establish its own parallel set of international institutions:[160] (i) an Authority of Heads of State and Government;[161] (ii) a Convergence

[158] For example, the agreement of 21 December 2019 between France and WAEMU member states is inconsistent with the latter's obligations under ECOWAS community law, but the latter is keen on retaining the agreement and its benefits. See page 41 below
[159] Article 7, Decision A/Dec.4/10/98 of the AHSG Establishing a Surveillance Mechanism for the Harmonisation of the Economic and Financial Policies of Member States.
[160] Article 6.1 WAMZ Agreement; Sanusi (n 62) 2.
[161] Article 7.1 WAMZ Agreement.

Council;[162] (iii) a Technical Committee, to coordinate policies of member states and ensure the stability of the single currency; (iv) the West African Monetary Institute (**'WAMI'**);[163] (v) the West African Central Bank (**'WACB'**);[164] and (vi) a Stabilisation and Cooperation Fund. See Figure 5.

Like the WAMA under the ECOWAS, the WAMI comprises central banks of the WAMZ member states[165] and is required to manage and coordinate the stages for the creation of the WAMZ single currency.[166] Accordingly, the WAMI, with the assistance of the Technical Committee, monitors compliance with the convergence criteria, coordinates the harmonisation of monetary policies, supervises the development of an exchange rate mechanism, ensures the smooth function of the payments system within the WAMZ, and is required to design the legal and institutional framework for the WACB.[167] The implication of the above is that the WAMI joins the long list of ECOWAS institutions responsible for monetary integration and for the management of the payments systems within WAMZ member states.

In fact, in relation to the development of the payments system, the WAMI seems to be more active than the WAMA and all the ECOWAS committees of central banks combined. With funding from the African Development Bank, the WAMI executed the WAMZ Payment Systems Development project to upgrade the payments systems in The Gambia, Guinea, Sierra Leone and Liberia in preparation for the creation of a currency union. Prior to this project, Nigeria and Ghana were the only WAMZ member states that used the Real Time Gross Settlement system (RTGS) as the infrastructure for their payments systems. This project developed the RTGS, a retail payments automation system, and a central banking application for the beneficiary states.

[162] Article 6.1(ii) of the WAMZ Agreement.
[163] ibid., Article 11.1.
[164] ibid., Article 10.1.
[165] Article 2.2 WAMI Statute.
[166] ibid., Article 4.1.
[167] ibid., Article 5.1.1(ii) and (iv)(b), 5.2.1(iv).

The WAMI and the Convergence Council are responsible for multilateral surveillance and monitor macroeconomic convergence within the WAMZ.[168] Again, this is indicative of the multiplicity of institutions and duplication of functions as this is the third multilateral surveillance mechanism operating in West Africa for the purpose of monetary integration. The WAMI is designed to oversee the execution of the WAMZ single currency project up until the WACB takes over the administration of the second currency union. When the WAMZ is created, the WACB would take over as the central bank of the monetary zone and liquidate the WAMI.[169] Given that the WAMI is an interim and transitional institution,[170] and the forerunner of the WACB,[171] the simultaneous establishment and functioning of the WAMI and the WACB makes little practical sense. The powers given to the WACB[172] may easily be exercised by the WAMI and there is no practical need for the WACB to come into existence until the final stages of the establishment of the second currency union.

The WAMI is expected to operate within, and in furtherance of, the broader monetary integration objectives of the ECOWAS.[173] However, WAMZ community law provides that the WAMZ would serve the interests of its member states and would be under their sole management and control.[174] In the event of a conflict between the interests of the WAMZ and the broader monetary integration objectives of the ECOWAS, it is likely that WAMZ member states may serve their own interests. To buttress this, the WAMZ Convergence Council is not obligated to enforce any provision of ECOWAS community law which is inconsistent with WAMZ community law.[175] Treaties are, by nature, horizontal contractual instruments that have no priority amongst themselves under general international law, unless they contain specific rules on priority.[176] The Revised ECOWAS Treaty claims priority

[168] Article 15 WAMZ Agreement
[169] Article 23.1 WAMI Statute. The functions of the WAMI would then be taken over by the WAMZ Secretariat. See Thomasi and others (n 93) 236.
[170] Article 3.1 WAMI Statute; Article 11.2 WAMZ Agreement; Nnanna (n 70) 1.
[171] Article 20.1 WAMI Statute; Article 3.1 Statute of the WACB (WAMZ/STA/WACB/1/Rev.1)
[172] For instance, the West African Central Bank has powers to appoint some members of the WAMZ Technical Committee. See Article 9.2(iii) WAMZ Agreement.
[173] Article 16.1 WAMI Statute; Article 2 Accra Declaration (n 53)
[174] Article 2.2 WAMZ Agreement.
[175] Ibid., Article 8.4.
[176] Ahmad Ali Ghouri, 'Determining Hierarchy Between Conflicting Treaties: Are There Vertical Rules in the Horizontal System?' (2012) 2(2) Asian Journal of Int'l Law, 235.

in the event of conflicts.[177] But, the lax attitude towards enforcement,[178] even with the presence of the ECOWAS Court of Justice, renders this claim to priority ineffective.[179]

As has been demonstrated above, the ECOWAS, the WAEMU and the WAMZ all have separate institutions working towards the singular goal of full monetary integration in West Africa.[180] At the ECOWAS level, the existence of separate institutions, all actively performing identical functions is indicative of the horizontal multiplicity of institutions. The existence of separate institutions, all simultaneously performing closely related functions at the ECOWAS level, within the WAEMU, and within the WAMZ is indicative of the vertical multiplicity of institutions and duplication of functions. Given that the current plan for monetary integration involves the creation of the WAMZ and its subsequent merger with the WAEMU, there seems to be no practical need for the continued existence of the ECOWAS-level institutions for monetary integration. On account of this multiplicity of institutions and duplication of functions, ECOWAS member states are consistently haemorrhaging funds[181] without achieving any meaningful progress. WAEMU member states provide funding both to the WAEMU institutions and to the ECOWAS' institutions, while WAMZ member states provide funding both to the WAMZ institutions and to the ECOWAS' institutions. This funding essentially goes to the same group of people for the performance of the same tasks.

In attempting to resolve this problem of the multiplicity of institutions, the ECOWAS Secretariat, in 2012, exercised its powers to co-ordinate and harmonise the activities of these institutions.[182] The ECOWAS multilateral surveillance mechanism was reformed to include a Joint Secretariat comprising the ECOWAS Commission, the WAMA, the WAEMU, the WAMI, and the ECOWAS Bank for Investment and Development.[183] This Joint

[177] Article 84(2) Revised ECOWAS Treaty; Ajulo (n 154) 84–85.
[178] Fwangkwal (n 13) 17.
[179] The WAMI also suffers a similar problem within the WAMZ. In the event of a conflict between a WAMI objective and a national interest of a member state, it is likely that the member state may pursue their national interest. This is because, the constitutive treaties of the WAMZ and the WAMI do not prescribe any sanctions for non-compliance and do not give the WAMI any powers of enforcement. See Nnanna (n 70) 6.
[180] Fwangkwal (n 13) 12.
[181] These institutions do not publish their budgets, but WAMI's initial budget was US$5.4million for 2001-2002. See Decision HS/WAMZ/DEC.2/12/2000 Relating to the WAMI.
[182] Article 80(2) Revised ECOWAS Treaty
[183] Article 1, Supplementary Act A/SA.3/06/12 (n 153).

Secretariat is superintended by the ECOWAS Commission, with the assistance of the WAMA, and it coordinates the multilateral surveillance of the ECOWAS member states to ensure macroeconomic convergence. The Joint Secretariat attempts to eliminate duplication of functions and ensures that all the institutions involved in the monetary integration process are not working at cross-purposes. The reformed multilateral surveillance mechanism was expected to facilitate macroeconomic convergence by 31 December 2016,[184] but it has not functioned as desired. As Table 2 demonstrates, overall performance in relation to macroeconomic convergence has not improved since the reform of the multilateral surveillance mechanism.

**Table 2:** Number of member states that met the macroeconomic convergence criteria (2013 – 2018).

| Country | 2013 | | 2014 | | 2015 | | 2016 | | 2017 | | 2018 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Primary criteria | All convergence criteria | Primary criteria | All convergence criteria | Primary criteria | All convergence criteria | Primary criteria | All convergence criteria | Primary criteria | All convergence criteria | Primary criteria | All convergence criteria |
| Benin | 4 | 6 | 4 | 6 | 3 | 5 | 3 | 5 | 3 | 5 | 3 | 5 |
| Burkina Faso | 3 | 5 | 4 | 6 | 4 | 6 | 3 | 5 | 3 | 5 | 3 | 5 |
| Cabo Verde | 3 | 4 | 3 | 4 | 3 | 4 | 3 | 4 | 3 | 4 | 3 | 4 |
| Cote d'Ivoire | 4 | 6 | 4 | 6 | 4 | 6 | 3 | 5 | 3 | 5 | 3 | 5 |
| Gambia, The | 3 | 3 | 2 | 2 | 1 | 2 | 1 | 2 | 3 | 4 | 3 | 4 |
| Ghana | 1 | 3 | 1 | 2 | 2 | 2 | 1 | 2 | 2 | 4 | 2 | 4 |
| Guinea | 3 | 5 | 3 | 5 | 1 | 3 | 3 | 4 | 3 | 5 | 3 | 5 |
| Guinea-Bissau | 4 | 6 | 4 | 6 | 4 | 6 | 3 | 5 | 4 | 6 | 4 | 6 |
| Liberia | 3 | 5 | 3 | 5 | 3 | 5 | 4 | 6 | 3 | 4 | 3 | 4 |
| Mali | 4 | 6 | 3 | 5 | 4 | 6 | 3 | 5 | 4 | 6 | 4 | 6 |
| Niger | 4 | 6 | 3 | 5 | 3 | 5 | 3 | 5 | 3 | 5 | 3 | 5 |
| Nigeria | 4 | 6 | 4 | 6 | 4 | 5 | 3 | 4 | 3 | 4 | 3 | 5 |
| Senegal | 3 | 5 | 3 | 5 | 3 | 5 | 3 | 5 | 4 | 6 | 4 | 6 |
| Sierra Leone | 2 | 4 | 3 | 5 | 3 | 5 | 1 | 2 | 1 | 2 | 1 | 2 |
| Togo | 3 | 5 | 3 | 5 | 3 | 4 | 3 | 4 | 4 | 5 | 4 | 6 |
| | | | | | | | | | | | | |
| Total (primary criteria) | 6 | | 5 | | 5 | | 1 | | 4 | | 4 | |
| Total (all convergence criteria) | | 6 | | 5 | | 4 | | 1 | | 3 | | 4 |

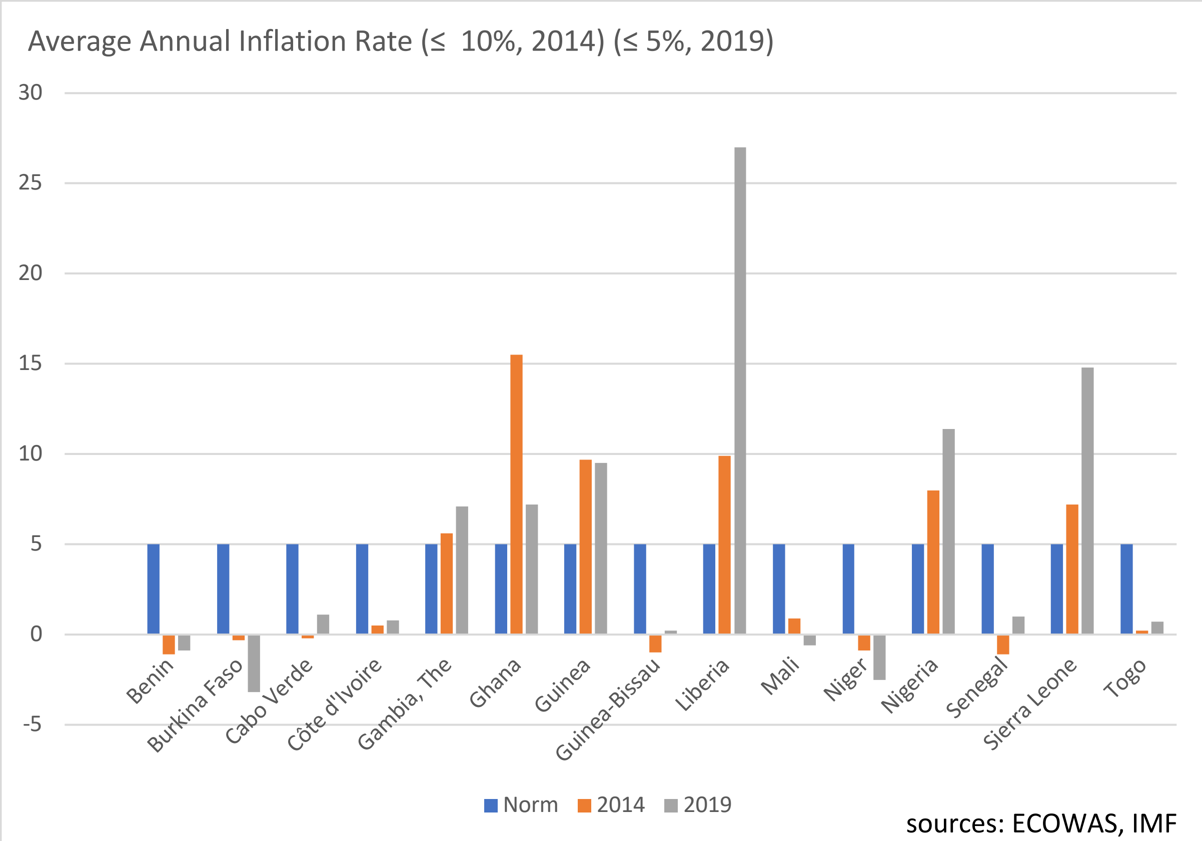
Source: ECOWAS[185]

[184] ibid, Article 1 (New Article 7).
[185] ECOWAS, '2017 Report on the Status of Macroeconomic Convergence' (ECOWAS, 2017).

The reform of the multilateral surveillance mechanism was intended to ensure the effective consolidation of the institutional mechanisms for the single currency project. As part of this reform, ECOWAS member states signed an amended Stability Pact,[186] committing to the implementation of the single currency plan in two phases: a convergence phase from January 2016 to December 2019; and a performance, stability and consolidation phase from January 2020.[187] However, the second phase may only be activated '*when a number of member states have satisfied the primary criteria*,'[188] and attained a fairly similar level of fiscal discipline.[189] As Figure 6 shows, even in relation to the inflation-related primary criterion, only the WAEMU member states and Cabo Verde performed satisfactorily at the end of 2019,[190] but the former is already a fairly stable economic and monetary union. Thus, the second phase cannot be activated in 2020 and it is not likely to be activated until at least 2024 due to the economic implications of Covid-19. In all, the reform of the multilateral surveillance mechanism and the creation of the Joint Secretariat have made very little difference.

**Figure 6**

[186] Supplementary Act A/SA.01/12/15 (n 1).
[187] Ibid., Article 1 (Article 4 New).
[188] Ibid., Article 1 (Article 16(1) New).
[189] Nnanna (n 70) 3.
[190] For comparative purposes, Figure 6 includes data from 2014 to show that the reform of the multilateral surveillance mechanism has not achieved much. 2014 data was sourced from the ECOWAS 2014 Report on the Status of Macroeconomic Convergence.




### 3.5 Institutional Weaknesses and the Risk of Capture

Institutional weaknesses within national central banks, like the lack of independence, also contribute to the overall weakness of the legal and institutional framework for the ECOWAS single currency project. A primary macroeconomic convergence criterion is the reduction of the volume of the central bank's financing of the government's budget deficit to no more than 10% of the previous year's tax revenue. To be able to enforce this, central banks must be fully independent from, and immune to manipulation by, fiscal authorities. The central banks within West Africa have *de-jure* independence, but in reality, they are often subject to the whims and caprices of the fiscal authorities and lack the ability to turn down requests for deficit financing.[191]

Institutional weaknesses may also render the institutions and staff of the currency union susceptible to capture. The WAMA Protocol provides that the WAMA is an autonomous

[191] Nnanna (n 70) 6.

entity with the freedom to act independently.[192] The WAMI Statute has similar provisions on the independence of the WAMI.[193] Both instruments also provide that the Directors-General and staff members of the WAMA and the WAMI shall be loyal to the WAMA and the WAMI respectively. The instruments impose an obligation on member states to respect the international character of this loyalty and allegiance, and enjoins them to refrain from influencing or attempting to influence WAMA, the WAMI and their respective staff in the performance of their functions.[194] But, as has been demonstrated above, the absence of a credible enforcement mechanism or an incentive against capture weakens these institutional safeguards.

## 3.6 Moral Hazard in the Transitional Management of the WAMZ

As noted above, to fast-track the implementation of the EMCP, the process was bifurcated. The first step involves the creation of a second currency union within the WAMZ. The second step would involve the management of that second currency union for a transitionary period and the slow merger of the WAEMU into it to form a single currency for the ECOWAS.[195] If the second currency union is established, Figure 4 shows that the WAMZ member states have already signed a number of laws intended to ensure its efficient management. Upon the establishment of the second currency union, the licensing, regulation and supervision of both banks and non-bank financial institutions within the WAMZ – including the task of ensuring the safety and soundness of the financial system – would be conducted at the union level, as is done within the WAEMU.

The legal framework for this union-level supervisory authority has been provided in three separate international legal instruments: (i) the Banking Statute;[196] (ii) the Non-Bank Financial Institutions Statute;[197] and (iii) the West African Financial Supervisory Authority Act.[198] These instruments have provisions relating to the licensing, supervision and

[192] Article 2, 19(1) WAMA Protocol.
[193] Article 9.1 WAMI Statute.
[194] Article 11 WAMA Protocol; Article 12.1 WAMI Statute.
[195] Irving and others (n 65) 1; Sanusi (n 62) 3.
[196] Approved by the WAMZ Convergence Council in Banjul, The Gambia, 7 November 2008.
[197] Approved at the 22nd Meeting of the WAMZ Convergence Council in Freetown, Sierra Leone, 19 June 2008.
[198] Approved at the 7th Meeting of the WAMZ Convergence Council.

regulation of both bank and non-bank financial institutions, with the West African Financial Supervisory Authority (WAFSA) as the central supervisory authority.[199] Thus, the WACB would operate as the monetary authority, while the WAFSA would operate as the primary regulator of the financial system.[200] There is also a legal regime for the payments system,[201] for the promotion of structural homogeneity,[202] and for fiscal discipline in order to limit expansionary fiscal policies that would weaken the union.[203] However, notwithstanding the fact that the amended Stability Pact intended the commencement of the second phase of the WAMZ single currency agenda by January 2020, none of these instruments have been ratified and/or domesticated by WAMZ member states. Thus, the legal and institutional framework for the transitional management of the second monetary zone, prior to the merger, is very weak.[204]

Furthermore, in the absence of a separate regime for fiscal discipline, characterised by credible and enforceable commitments, the success of the currency union may be limited by unnecessary expansionary fiscal policies. This is because empirical evidence from the experiences of the WAEMU and the eurozone have demonstrated that a currency union, without more, may be insufficient to enforce fiscal discipline.[205] In this sense, a serious moral hazard problem is an unintended consequence of the creation of a currency union. A member state may decide to incur significant fiscal deficits because the costs – whether in the form of higher interest rates, bloated exchange rates, or a bail-out – will not be borne by that member state alone but will be shared by all the members of the currency union.[206] Member states of the currency union who are fiscally disciplined may not be

---

[199] Thomasi and others (n 93) 235–36.
[200] ibid 236.
[201] Payment Systems Statute of the WAMZ, Approved at the 22nd Meeting of the WAMZ Convergence Council in Freetown, Sierra Leone, 19 June 2008.
[202] Single Economic Space and Prosperity Agreement, Approved at the 22nd Meeting of the WAMZ Convergence Council in Freetown, Sierra Leone, 19 June 2008.
[203] The Fiscal Responsibility Act; Nnanna (n 70) 4; Sanusi (n 62) 2.
[204] The current versions of these instruments are lite. It is difficult to tell whether the lack of detail was deliberate or due to ineptitude.
[205] Masson and Pattillo, 'Monetary Union in West Africa' (n 23) 387, 390. In many ways, the currency union can provide an agency of restraint on fiscal policies, particularly through its control over macroeconomic indicators. But the experiences of Greece, Italy and the WAEMU (where fiscal indiscipline remains high) demonstrates that much more is required to curtail fiscal indiscipline.
[206] Within the Eurozone, Greece and Italy pursued large fiscal deficits which increased the general level of inflation in the Eurozone. The ECB had to offset this through monetary policies increasing the interest rate and through an IMF-funded bailout to Greece. See Hal S Scott, 'When the Euro Falls Apart' (1998) 1(2) Int'l Finance, 210; Masson and Pattillo, 'Monetary Union in West Africa' (n 23) 390–91; Masson and Pattillo, 'Monetary Union in West Africa (ECOWAS): Is It

interested in bearing these costs and this may affect the stability of the currency union. The eurozone imposes restrictions that prevent member states from running fiscal deficits in excess of 3% of GDP and a cap on the debt-to-GDP ratio, all backed by sanctions.[207] The ECOWAS macroeconomic convergence criteria and the WAMZ' Fiscal Responsibility Act are designed to curtail fiscal indiscipline within West Africa, but they have had very little effect.

## 3.7 Merger of the WAEMU and the Proposed WAMZ

None of the legal instruments in existence today – within the WAMZ, the WAEMU or the ECOWAS – provide for the structuring of the merger of the WAEMU and the WAMZ.[208] No precedent for the merger of currency unions exists anywhere in the world, and the literature is silent on this subject. This is unchartered territory but it is likely that the process would involve either: (i) the macroeconomic convergence of both currency unions as though they were individual countries seeking to establish a currency union and the fusion of their separate institutions; (ii) WAEMU member states terminating their arrangements under the WAEMU and acceding to the WAMZ; or (iii) WAMZ member states acceding to the WAEMU. In either case, the process would involve lengthy and significant legal and institutional changes, and may raise issues relating to the balance of power within the emergent union. Besides the general structuring and implementation of the merger, two key issues that are likely to arise are:

### (a) Managing private foreign currency obligations within the WAMZ:

Within the WAEMU, the holding and use of foreign currencies for domestic transactions is prohibited by law, and persons are precluded from maintaining deposits or credits

---

Desirable and How Could It Be Achieved?' (n 24) 24; Hal S Scott, 'When the Euro Falls Apart: A Sequel' [2012] Public Law & Legal Theory Working Paper Series No 12-16.

[207] There is a grace period of 10months for remedial action after which the defaulting country will be required to make a non-interest-bearing deposit. If the deficit continues for more than two years, a fine of up to 0.5% of GDP may be imposed. See Masson and Pattillo, 'Monetary Union in West Africa' (n 23) 395. Hal Scott argues that 'it is far from certain that this pact will discipline excessive deficit-spenders, given creative accounting in calculating fiscal deficits and the possibility that politics will prevent fines from being imposed or, if imposed, being paid.' See Scott, 'When the Euro Falls Apart' (n 206) 210.

[208] Masson and Pattillo, *The Monetary Geography of Africa* (n 4) 111.

denominated in foreign currency.[209] The use of foreign currencies is generally not prohibited within WAMZ member states and foreign currencies freely circulate as money, but are not officially designated as legal tender. Liberia, however, operates a 'bimonetary system'[210] under which a foreign currency (US Dollar) and the local currency (Liberian Dollar) are both used as money and are both designated as official legal tender within the country.[211] Citizens of WAMZ member states, therefore, have assets and monetary obligations denominated in foreign currencies. This is why dollarisation (both asset and currency substitution) is a problem within the WAMZ, as it puts significant pressure on local currencies. Thus, whilst dollarisation is a problem within the WAMZ, it is not a problem within the WAEMU.

Merging the WAMZ and the WAEMU would require an ECOWAS decision on whether to permit or prohibit the use of foreign currencies within the ECOWAS. A merger done without the prior resolution of this issue would negatively affect the effectiveness of union monetary policy. This is because within the WAMZ, the single currency would compete with foreign currencies and this may be detrimental to the value of the single currency. The fiscal costs of this currency competition may be transmitted across the ECOWAS and WAEMU member states, who prohibit the use of foreign currencies, would then be compelled to share in those fiscal costs. Given Nigeria's dominance at the ECOWAS, the EMCP's goal of reducing the pressure from dollarisation, and the numerical strength of the WAEMU states, it is likely that the decision would be to prohibit the use of foreign currencies.[212] If this is done, then a legal framework for the merger must provide for the management of existing private foreign currency obligations.

**(b) Managing French economic interests and the indirect presence of the Euro in the WAEMU and in Cabo Verde:**

[209] Mauro Mecagni and others, 'Dollarization in Sub-Saharan Africa: Experience and Lessons' [2015] IMF African Department Paper Series, 7.
[210] Zeljko Bogetic, 'Official Dollarization: Current Experiences and Issues' (2000) 20 (2) Cato Journal, 182.
[211] Sections 19(1) & (2) Central Bank of Liberia Act, 1999.
[212] Since 2015, the policy position has been that it is illegal to price or denominate contracts in foreign currency and that all payment obligations within Nigeria must be satisfied in the official legal tender in Nigeria. See Central Bank of Nigeria: Currency Substitution and Dollarization of the Nigerian Economy BSD/DIR/GEN/LAB/08/013 dated 17 April 2015. In giving judicial approval to this policy position, a Federal High Court, in *RB Properties Ltd v. GTB Plc & Ors*, Suit No: FHC/CS/L/1374/2016, nullified a US Dollar denominated loan simply because it required repayments in the US Dollar, not the Nigerian Naira. However, this decision and policy have attracted significant criticism.

The WAEMU, a vestige of French colonial rule, comprises eight out of the fifteen-member countries of the ECOWAS. French economic interests in West Africa are backed by international legal instruments in the form of treaties and cooperation agreements executed between France, the WAEMU and each WAEMU member state. Whilst a full currency union exists among the WAEMU member states, an exchange rate arrangement, in the form of a conventional fixed peg,[213] exists between the WAEMU and France.[214] Before the adoption of the Euro in 1999, the West African CFA Franc was pegged to the French Franc and the parity could only be changed by the unanimous decision of France and the WAEMU member states. With the adoption of the Euro and the transfer of competence over exchange rate matters to the European Institutions,[215] France was permitted to retain its monetary relationship with the WAEMU[216] and the West African CFA Franc became pegged to the Euro at a fixed parity.[217] Thus, the WAEMU exchange rate arrangement with France is formalised under EU community law through Article 219(3) Treaty on the Functioning of the European Union.[218] Cabo Verde's exchange rate arrangement with Portugal also received similar treatment upon the adoption of the Euro. The Cabo Verdean Escudo is now pegged to the Euro and the arrangement is also formalised under EU community law.[219]

France, Portugal, the WAEMU member states and Cabo Verde have sole responsibilities for the management of their respective exchange rate arrangements.[220] Consequently, France has been able to retain the core features of its colonial monetary arrangement with the WAEMU – the Operations Account, a veto power on any attempt to change the parity, mandatory French membership of WAEMU Banking Commission, Monetary Policy Committee and BCEAO Board of Directors, and the guarantee of unlimited currency convertibility. However, both France and Portugal are required to inform the European

[213] IMF (n 3) 6.
[214] Lamine (n 24) 19.
[215] ibid 5.
[216] ibid 17; Article 1, Council Decision 98/683/EC of 23 November 1998 Concerning Exchange Rate Matters Relating to the CFA Franc and the Comorian Franc.
[217] Lamine (n 24) 23, 27.
[218] Formerly Article 111.3 Treaty Establishing the European Community.
[219] Article 1, Council Decision 98/744/EC of 21 December 1998 Concerning Exchange Rate Matters Relating to the Cape Verde Escudo; Lamine (n 24) 31.
[220] Article 2, Council Decision 98/683/EC (n 216); Article 2, Council Decision 98/744/EC (n 219).

Commission, the European Central Bank (ECB) and the European Economic and Financial Committee of any intention to change the parity and any intention to make minor modifications to their respective exchange rate arrangements.[221] The consequence of this is that, in addition to requiring French and Portuguese approval, the European Commission and the ECB can influence any attempt by WAEMU member states or Cabo Verde to change their respective parities to the Euro. In addition to the above, any modification of these exchange rate arrangements which would change its nature and scope requires the prior approval of the European Council upon the recommendation of the European Commission, the ECB and the European Economic and Financial Committee.

In December 2019, France reached an agreement with WAEMU member states to rechristen the West African CFA Franc as the Eco, to terminate the Operations Account, to return the foreign reserves of WAEMU member states domiciled at the French Treasury, and to withdraw French representatives from WAEMU institutions.[222] France would continue to provide a financial guarantee through a credit line,[223] and the peg to the Euro would be retained. These reforms are to be implemented in 2020. These reforms have been described as an attempt to hijack the single currency project in order to preserve French economic interests in West Africa in other areas like natural resources, defense, and even finance. This pre-empts, and may frustrate, the efforts to establish an independent indigenous single currency, of the same name, for West Africa. These reforms have polarised the ECOWAS:[224] WAEMU member states are happy with the reform,[225] WAMZ member states have condemned the reform,[226] and Ghana's President has announced Ghana's intention to join the WAEMU renamed currency but without the peg to the Euro.[227]

---

[221] Articles 3 and 4, Council Decision 98/683/EC (n 216); Article 3 & 4, 98/744/EC (n 219).

[222] Tiémoko Meyliet Kone (Governor, BCEAO) 'Reform of the CFA Franc' (*BCEAO Press Releases*, 21 December 2019) <https://www.bceao.int/index.php/fr/communique-presse/communique-de-presse-reforme-du-franc-cfa> accessed 18 May 2020.

[223] Clifford Chance, 'Reform of the CFA Franc in West Africa – Introducing the "Eco"' (February 2020).

[224] Elliot Smith, 'West Africa's New "Eco" Currency Sparks Division Over Timetable and Euro Peg' (*CNBC Currencies*, 17 January 2020) <https://www.cnbc.com/2020/01/17/west-african-eco-currency-sparks-division-over-timetable-and-euro-peg.html> accessed 18 May 2020.

[225] 'Reform of the CFA Franc' (n 222).

[226] 'Final Communique, Extra-Ordinary Meeting of the Ministers of Finance and the Governors of the Central Banks of the WAMZ on the ECOWAS Single Currency Programme, January 16, 2020' (WAMZ Convergence Council 16 January 2020).

[227] Aaron Ross, 'Ghana Wants to Join New West African Currency but Ditch Euro Peg', *Reuters* (29 December 2019) <https://www.reuters.com/article/us-westafrica-economy-idUSKBN1YX0EH> accessed 18 May 2020.

With the renaming of West African CFA Franc to Eco, it would be economically efficient for the WAMZ member states to simply accede to the WAEMU[228] and work on terminating all currency relations with France. However, political considerations and the long-held fear of France's hegemonic dominance of the WAEMU may prevent WAMZ member states from pursuing this option.[229] A legal framework for accession already exists under WAEMU community law, but such accession to the WAEMU would extend the scope of the exchange rate arrangement with France and would require the approval of the European Council upon the recommendation of the European Commission and the ECB. If this approval is received, France may not provide a convertibility guarantee to the ECOWAS currency union[230] in the absence of an Operations Account backstop as there may be no incentive for France to continue to do so,[231] and the ECB will also not replace the French Treasury as the guarantor of convertibility.[232] In any case, the likelihood of the ECB granting such an approval is very slim.[233]

It has been suggested that France will frustrate any efforts for regional economic and monetary integration in West Africa as this will negatively affect her economic interests in the region.[234] It has also been argued that the efforts towards monetary integration have yielded little results because those efforts *'… have excluded the most powerful stakeholder – France.'*[235] Thus, full monetary integration in West Africa will only proceed if French economic interests in West Africa are terminated or if WAMZ member states accept France's hegemonic influence with the blessings of the ECB. For the former, WAEMU member states must carry the responsibility of eliminating French economic interests in

[228] Ousmane Diallo, *l'Arrimage du Franc CFA à l'Euro: Conséquences Pour l'Integration Sous-Régionale Ouest-Africaine* (Institut Européen de l'Université de Genève 2002) 80; Chibuike U Uche, 'The Politics of Monetary Sector Cooperation among the Economic Community of West African States Members' [2001] World Bank Institute: Policy Research Working Paper Series, 17.
[229] Charles C Soludo, 'A Framework for Macroeconomic Policy Coordination Among African Countries: The Case of the ECOWAS Sub-Region' (1995) 1(1-2) African Economic and Social Review; Diallo (n 228) 72, 75; Uche (n 228) 17.
[230] Masson and Pattillo, *The Monetary Geography of Africa* (n 4) 111.
[231] Uche (n 228) 17.
[232] Masson and Pattillo, 'Monetary Union in West Africa (ECOWAS): Is It Desirable and How Could It Be Achieved?' (n 24) 27.
[233] ibid.
[234] Uche (n 228) 4, 30. The literature provides evidence of France's attempts to sabotage regional economic arrangements solely to counter-balance Nigeria's influence within West Africa. See ibid 4, 17.
[235] Uche (n 228) 4, 34.

order to give life to the ECOWAS single currency.[236] For the latter, it is not likely to happen. What remains to be seen is whether WAEMU member states would sacrifice the benefits of their long history and relationship with France for the promise of a better future under an ECOWAS arrangement.

## 4. Conclusion

A currency union, as an example of full monetary integration, is a complex and abstract entity established on several building blocks, with the legal and institutional framework constituting the fundamental bedrock.[237] In all the efforts to achieve full monetary integration in West Africa, very little has been done to firm-up the legal and institutional framework that would support its creation and sustain it. Under *lex monetae*, money, as a legal construction, is wholly subject to the sovereign power of the state holding it out as its legal tender.[238] Therefore, any attempt to instate a single regional currency must be situated within an appropriate legal framework supporting its instatement. The adoption of a single currency connotes that the countries involved have achieved a substantial degree of macroeconomic convergence, have ceded their monetary sovereignty to a supranational entity, and have harmonised their monetary policy under that entity.[239] The cession of monetary sovereignty, the operationalisation of a currency union, and the empowerment of institutions to manage economic and monetary convergence and provide an agency of restraint on fiscal policies may only be done through the instrumentality of a credible and enforceable legal and institutional framework.

The human, political and financial resources spent on the West African single currency project since 1983 have achieved nothing. West Africa is not closer to full monetary integration, '*and if there has been any movement, it has been backward.*'[240] Political experiences, economic shocks, and other negative externalities have played key roles in frustrating full monetary integration in West Africa. But, the major frustrating element has

[236] ibid 23.
[237] Thomasi and others (n 93) 233.
[238] Julian DA Wiseman, 'The End of EMU: Legal Ramifications' (February 2000) <http://www.jdawiseman.com/papers/finmkts/emu-breakup.html> accessed 5 November 2019.
[239] Cohen, 'Are Monetary Unions Inevitable?' (n 23) 276.
[240] Allen (n 19) 1.

been poor political commitment expressed through the absence of a credible legal and institutional framework.

The analysis above has shown that, at a basic level, the current framework: (i) is inefficient and costly on account of the multiplicity of laws and institutions, and the duplication of functions; (ii) is unenforceable, in the sense that it lacks direct effect and/or applicability within ECOWAS member states; (iii) makes the currency union's institutions susceptible to capture; (iv) relies on dependent national central banks, and a weak and inefficient mechanism for multilateral surveillance; (v) provides an ineffective agency of restraint on fiscal indiscipline; and (vi) does very little in addressing the moral hazard and incentive problems that are inherent in the creation of a currency union. Even though the eventual merger of the WAEMU and the WAMZ is still far down the road, it is not too early for policy-makers to start considering ways to structure the merger and to manage French and European interests. Where monetary integration contemplates the cession of monetary sovereignty, the role of law becomes significantly more important. Careful legal and institutional design can be used to structure a regime that avoids or resolves these problems.

## APPENDIX
## Grid of Key Events Related to the ECOWAS Single Currency Project.

| DATE | EVENT | | |
|---|---|---|---|
| | ECOWAS | WAEMU | WAMZ |
| 1957 - 1962 | Independence of member states, excluding Guinea-Bissau and Cabo Verde | Independence of member states | Independence of member states and establishment of national central banks or national currency boards |
| 1962 | | Establishment of the West African Monetary Union (WAMU). French name l'Union Monetaire de Ouest-Africaine (UMOA),<br><br>Execution of Pacte Coloniale and Cooperation Treaties on Economic, Monetary and Financial Matters with France | |
| 1973 | Independence of Guinea-Bissau | | |
| 1975 | Establishment of the ECOWAS and ECOWAS institutions amongst all West African States.<br><br>Independence of Cabo Verde | | |
| 1976 | Cabo Verde joined the ECOWAS | | |
| 1983 | ECOWAS decision to explore the creation of single monetary zone. (Decision A/DEC.6/5/83 of 30 May 1983) | | |
| 1987 | ECOWAS decision adopting the ECOWAS Monetary Cooperation Programme (EMCP). (Decision A/DEC.2/7/87 of 9 July 1987). | | |
| 1991 | Establishment of the African Economic Community and the designation of West Africa as a Regional Economic Community. | | |
| 1993 | Revision of the ECOWAS Treaty<br><br>Creation of the WAMA: Conversion of the West African Clearing House to the West African Monetary Agency (Decision A/DEC4/7/92), Protocol A/P. I/7/93 of 24 July 1993, and Articles of Agreement of the WAMA. | | |
| 1994 | | Establishment of the West African Economic and Monetary Union (WAEMU). French name: l'Union | |

| | | | |
|---|---|---|---|
| | | Economique Et Monetaire Ouest Africaine (UEMOA). | |
| 1995 | | Establishment of the WAEMU Court of Justice | |
| 1997 | Establishment of the Ad-Hoc Monitoring Committee for the Creation of a Single Monetary Zone (Decision A/DEC.4/8/97 of 29 August 1997). | Guinea Bissau joins the WAEMU | |
| 1998 | Establishment of the ECOWAS multilateral surveillance mechanism (Decision A/Dec.4/10/98). | | |
| 1999 | Definition of macroeconomic convergence criteria (Decision A/DEC.7/12/99 of 10 December 1999).<br><br>Adoption of Strategies to Accelerate the Regional Integration Process (Decision A/DEC.2/12/99). | Pegging of the West African CFA Franc to the Euro | |
| 2000 | | | Creation of the WAMZ and establishment of the WAMZ multilateral surveillance mechanism<br><br>Accra Declaration on Creation of a Second Monetary Zone, executed on 20 April 2000 in Accra, Ghana<br><br>Agreement of the WAMZ (ECW/AGR/WAMZ/1) of 15 December 2000<br><br>Decision HS/WAMZ/DEC.1/12/2000 Adopting the Legislative Texts for the Establishment of the WAMZ:<br><br>- the Agreement of the West African Monetary Zone (WAMZ Agreement);<br><br>- the Statutes of the West African Monetary Institute (WAMI Statute);<br><br>- the Statutes of the West African Central Bank (WACB Statute). |

| | | | |
|---|---|---|---|
| 2001 | Strengthening of the multilateral surveillance mechanism (Decision A/DEC.17/12/01) | | |
| 2003 | | Revision of the WAEMU Treaty | |
| 2007 | | Revision of the WAMU Treaty<br><br>WAMU Banking Commission Convention, 2007 | |
| 2008 | | | Enactment of the following statutes:<br>- Payment Systems Statute.<br>- Single Economic Space and Prosperity Agreement<br>- Banking Statute<br>- Non-Bank Financial Institutions Statute<br>- West African Financial Supervisory Authority Act<br>- Fiscal Responsibility Act |
| 2009 | Adoption of a roadmap for the ECOWAS single currency | | |
| 2010 | | | Liberia joined the WAMZ through an Accession Protocol between the WAMZ and Liberia (WAMZ/PRT.1/LIB/2010 of February 2010) |
| 2012 | Reform of the multilateral surveillance mechanism and creation of the Joint Secretariat ( Supplementary Act A/SA.3/06/12)<br><br>Enactment of a Macroeconomic Convergence and Stability Pact (Supplementary Act A/SA.4/06/12 of 29 June 2012) | | |
| 2014 | | WAMU Deposit Guarantee Fund 2014. | |
| 2015 | Revision of the Macroeconomic Convergence and Stability Pact (Supplementary Act A/SA.01/12/15 of 16 December 2015). | Enactment of a Convergence, Stability, Growth and Solidarity Pact (Additional Act N.01/2015/CCEG/UEMOA of 19 January 2015) | |
| 2017 | | Amendments to Banking Commission Convention through Annex to the WAMU Banking Commission Convention (as amended by Decision N.10 of 29/09/2017/CM/UMOA). | |

| | | | |
|---|---|---|---|
| 2019 | Adoption of the name 'Eco' and decisions on the structure of ECOWAS central bank.<br><br>Reform of the Western African CFA Franc (renaming to Eco). | | |

## BIBLIOGRAPHY


### Table of Cases

Abiola v. Abacha (1998) 7 HRLRA 458

RB Properties Ltd v. GTB Plc & Ors, Suit No: FHC/CS/L/1374/2016

Rustomjee v. R [1876] 2 QB 69

Thomas v. Baptiste [2000] 2 AC 1 (PC)

Van Gend en Loos v. Nederlandse Administratie der Belastingen [1963] ECR 1

### Table of Legislation

Accra Declaration on Creation of a Second Monetary Zone, executed on 20 April 2000.

Acte Additionel N.01/2015/CCEG/UEMOA Instituant un Pacte de Convergence, de Stabilite, de Croissance, et de Solidarite Entre les Etats Membres de l'Union Economique et Monetaire Ouest Africaine (Additional Act N.01/2015/CCEG/UEMOA Establishing a Convergence, Stability, Growth and Solidarity Pact among WAEMU Member States) of the WAEMU, of 19 January 2015.

Agreement ECW/AGR/WAMZ/1 of the West African Monetary Zone, 15 December 2000.

Annexe a la Convention Regissant la Commission Bancaire de l'UMOA Telle Que Modifiee par la Decision N°010 Du 29/09/2017/CM/UMOA (Annex to the WAMU Banking Commission Agreement Convention, (as amended by Decision N.10 of 29/09/2017/CM/UMOA)).

Articles of Agreement of the West African Monetary Agency (WAMA), 08 March 1996.

Banking Statute of the West African Monetary Zone, approved by the WAMZ Convergence Council in Banjul, The Gambia, 7 November 2008.

Central Bank of Liberia Act, 1999.

Constitution of France, 1958.

Constitution of Ghana, 1992 as amended.

Constitution of the Federal Republic of Nigeria, 1999 as amended.

Constitution of the People's Republic of Benin, 1990.

Constitution of the Republic of Cabo Verde, 1992 as amended.

Constitution of the Republic of Senegal, 2001.

Constitution of the Republic of The Gambia, 1997.

Convention Regissant la Commission Bancaire de l'Union Monetaire Ouest Africaine (Convention of the Banking Commission for the West African Monetary Union), 2007.

Council Decision 98/683/EC of 23 November 1998 Concerning Exchange Rate Matters Relating to the CFA Franc and the Comorian Franc.

Council Decision 98/744/EC of 21 December 1998 Concerning Exchange Rate Matters Relating to the Cape Verde Escudo.

Decision A/DEC.2/12/99 of 10 December 1999 of the ECOWAS Authority of Heads of State and Government Adopting the Strategy to Accelerate the Regional Integration Process.

Decision A/DEC.2/7/87 of 9 July 1987 of the ECOWAS Authority of Heads of State and Government Relating to the Adoption of an ECOWAS Monetary Cooperation Programme.

Decision A/Dec.4/10/98 of 31 October 1998 of the ECOWAS Authority of Heads of State and Government Establishing a Surveillance Mechanism for the Harmonisation of the Economic and Financial Policies of Member States.

Decision A/DEC.4/8/97 of 29 August 1997 Establishing an Ad-Hoc Monitoring Committee for the Creation of a Single Monetary Zone by the Year 2000.

Decision A/DEC.6/5/83 of 30 May 1983 of the ECOWAS Authority of Heads of State and Government Relating to the Proposal for the Creation of an ECOWAS Single Monetary Zone.

Decision A/DEC.7/12/99 of 10 December 1999 Relating to the Adoption of Macroeconomic Convergence Criteria within the Framework of the ECOWAS Monetary Cooperation Programme.

Decision A/DEC4/792 by the AHSG ECOWAS Authority of Heads of State and Government Rrelating to the Transformation of the West African Clearing House to the West African Monetary Agency.

Decision HS/WAMZ/DEC.1/12/2000 of 15 December 2000 Adopting the Legislative Texts for the Establishment of the West African Monetary Zone.

Decision HS/WAMZ/DEC.2/12/2000 of 15 December 2000 Relating to the West African Monetary Institute.

Decision N° 088-03-2014 Portant Creation du Fonds de Garantie des Depots dans l'Union Monetaire Ouest Africaine (Decision Creating the WAMU Deposit Guarantee Fund), 21 March 2014.

Fiscal Responsibility Act of the West African Monetary Zone.

Payment Systems Statute of the West African Monetary Zone, approved at the 22nd Meeting of the WAMZ Convergence Council in Freetown, Sierra Leone, 19 June 2008.

Protocol A/P. I/7/93 to the Revised ECOWAS Treaty Relating to the West African Monetary Agency, 24 July 1993.

Protocol WAMZ/PRT.1/LIB/2010 between the West African Monetary Zone and Liberia concerning the Accession of Liberia to the West African Monetary Zone, 16 February 2010.

Revised Treaty of the Economic Community of West African States (Revised ECOWAS Treaty), 24 July 1993.

Single Economic Space and Prosperity Agreement, approved at the 22nd Meeting of the WAMZ Convergence Council in Freetown, Sierra Leone, 19 June 2008.

Statuts du Fonds de Garantie des Depots dans l'Union Monetaire Ouest Africaine (Statute of the WAMU Deposit Guarantee Fund), 2014.

Supplementary Act A/SA.01/12/15 of 16 December 2015 Amending the Supplementary Act A/SA.4/06/12 of 29 June 2012 on the Macroeconomic Convergence and Stability Pact Among the ECOWAS Member States.

Supplementary Act A/SA.3/06/12 Amending Decision A/DEC.17/12/01 Setting up a Multilateral Surveillance Mechanism for the Economic and Financial Policies of ECOWAS Member States.

Supplementary Act A/SA.4/06/12 of 29 June 2012 Relating to the Macroeconomic Convergence and Stability Pact among the ECOWAS Member States.

The Non-Bank Financial Institutions Statute of the West African Monetary Zone, approved at the 22nd Meeting of the WAMZ Convergence Council in Freetown, Sierra Leone, 19 June 2008.

The Statutes of the West African Central Bank (WAMZ/STA/WACB/1/Rev.1), 2000.

The Statutes of the West African Monetary Institute, 2000.

The West African Financial Supervisory Authority Act, approved at the 7th Meeting of the WAMZ Convergence Council.

Traite Modifie de l'Union Economique et Monetaire Ouest Africaine, 2003 (Amended Treaty of the West African Economic and Monetary Union (WAEMU)).

Treaty Establishing the African Economic Community, 03 June 1991.

Treaty Establishing the European Community, 1957.

Treaty of the Economic Community of West African States (ECOWAS Treaty), 28 May 1975.

Treaty on the Functioning of the European Union, 1957.

Vienna Convention on the Law of Treaties, 1969.

**Secondary Sources**

- ***Reports and Communiques***

Central Bank of Nigeria, Currency Substitution and Dollarization of the Nigerian Economy BSD/DIR/GEN/LAB/08/013 dated 17 April 2015

Final Report, 21st Session of the Council of Ministers, ECOWAS (ECW/CM.XXI/13/Rev.1), 6 July 1987

ECOWAS, '2014 Report on the Status of Macroeconomic Convergence'.

ECOWAS, '2017 Report on the Status of Macroeconomic Convergence'.

IMF, 'Annual Report on Exchange Arrangements and Exchange Restrictions 2018,' 16 April 2019).

'Final Communique, Extra-Ordinary Meeting of the Ministers of Finance and the Governors of the Central Banks of the West African Monetary Zone (WAMZ Convergence Council) on the ECOWAS Single Currency Programme', January 16, 2020.

'Report on Economic and Monetary Union in the European Community ('Delors Report')' (European Council 1989), 12 April 1989.

‘Report to the Council and the Commission on the Realization by Stages of Economic and Monetary Union in the Community ('Werner Report’)’ (European Community 1970), 08 October 1970.

‘Final Communique, 10th Ordinary Session of the Authority of Heads of State and Government, ECOWAS’ (ECW/HSG/X/3/REV.1), 9 July 1987,

‘Final Communique, 55th Ordinary Session of the Authority of Heads of State and Government of the ECOWAS’, 29 June 2019

‘Final Communique, 51st Ordinary Meeting of the Committee of Central Banks of ECOWAS Member States’, 08 February 2018

- ***Books and Journals***

Aideyan O, ‘Political and Institutional Prerequisites for Monetary Union: Assessing Progress in the Economic Community of West African States (ECOWAS)’ (2016) 44 Politics & Policy.

Ajulo SB, ‘Sources of the Law of the Economic Community of West African States (ECOWAS)’ (2001) 45(1) Journal of African Law.

Akinrinsola I, ‘Legal and Institutional Requirements for West African Economic Integration’ (2004) 10(3) Law and Business Review of the Americas.

Allen PR, ‘Organisation and Administration of a Monetary Union’ [1976] Princeton Studies in International Finance No 38.

Bakoup F and Ndoye D, ‘Why and When to Introduce a Single Currency in ECOWAS’ (2016) 7 Africa Economic Brief.

Balima H, Feler A, Newiak M, and Simard D, ‘West African Economic and Monetary Union: Selected Issues’ [2019] IMF Country Report No 91.

Bogetic Z, ‘Official Dollarization: Current Experiences and Issues’ (2000) 20 (2) Cato Journal.

Bubula A and Otker-Robe I, ‘The Evolution of Exchange Rate Regimes Since 1990: Evidence From De Facto Policies’ [2002] IMF Working Paper No 155.

Chance C, ‘Reform of the CFA Franc in West Africa – Introducing the “Eco”’ (February 2020).

Cobham D and Robson P, ‘Monetary Integration in Africa: A Deliberately European Perspective’ (1994) 22(3) World Development.

Cohen BJ, ‘Are Monetary Unions Inevitable?’ (2003) 4(3) International Studies Perspectives.

Cohen BJ, *Global Monetary Governance* (Routledge 2008).

Cohen BJ, *The Geography of Money* (Cornell University Press 1998).

Corden WM, 'Monetary Integration' [1972] Essays in International Finance.

Crawford J, *Brownlie's Principles of Public International Law* (8th edn, Oxford University Press 2012).

Debrun X, Masson P, and Pattillo C, 'Monetary Union in West Africa: Who Might Gain, Who Might Lose, and Why?' [2002] IMF Working Paper No 226.

Diallo O, *l'Arrimage du Franc CFA à l'Euro: Conséquences Pour l'Integration Sous-Régionale Ouest-Africaine* (Institut Européen de l'Université de Genève 2002).

Fwangkwal MP, 'Monetary Integration in the ECOWAS' [2014] CBN Understanding Monetary Policy (Series 37).

Gandolfo G, *Elements of International Economics* (Springer 2004).

Ghosh AR, Gulde A-M, Wolf HC, Haan J de, and Pagano M, 'Currency Boards: More than a Quick Fix?' (2000) 15 (31) Economic Policy.

Ghouri AA, 'Determining Hierarchy Between Conflicting Treaties: Are There Vertical Rules in the Horizontal System?' (2012) 2(2) Asian Journal of International Law.

Irving J, Asante RD, and Masson PR, 'The Pros and Cons of Expanded Monetary Union in West Africa' (2001) 38(1)(1) IMF Finance and Development.

Jefferis KR, 'The Process of Monetary Integration in the SADC Region' (2007) 33(1) Journal of Southern African Studies.

Lamine B, 'Monetary and Exchange Rate Agreements Between the European Community and Third Countries' [2006] European Economy Economic Papers No 255.

Masson PR and Pattillo CA, 'Monetary Union in West Africa (ECOWAS): Is It Desirable and How Could It Be Achieved?' [2001] IMF Occasional Papers 204.

Masson PR and Pattillo CA, 'Monetary Union in West Africa: An Agency of Restraint for Fiscal Policies?' (2002) 11(3) Journal of African Economies.

Masson PR and Pattillo CA, *The Monetary Geography of Africa* (Brookings Institution Press 2005).

Mecagni M, Corrales JS, Dridi J, Garda-Verdu R, Imam P, Matz J, Macario C, and others, 'Dollarization in Sub-Saharan Africa: Experience and Lessons' [2015] IMF African Department Paper Series.

Nnanna JU, 'Monetary Unions and Its Discontent: An Institutional Analysis of the West African Monetary Institute' [no date] Handbook on Economic, Finance and Management Outlooks 7.

Nwauche ES, 'Enforcing ECOWAS Law in West African National Courts' (2011) 55(2) Journal of African Law.

Oshikoya TW, Tei Kitcher JH, and Ukeje E, 'The Political Context' in TW Oshikoya (ed), *Monetary and Financial Integration in West Africa* (Routledge 2010).

Ross A, 'Ghana Wants to Join New West African Currency but Ditch Euro Peg', *Reuters* (29 December 2019) <https://www.reuters.com/article/us-westafrica-economy-idUSKBN1YX0EH> accessed 18 May 2020.

Sanusi JO, 'Ongoing Efforts Towards a Monetary Union in the West African Sub-Region' in (Bank of International Settlements 1 July 2003) MEFMI Central Bank Governors Forum.

Scott HS, 'When the Euro Falls Apart: A Sequel' [2012] Public Law & Legal Theory Working Paper Series No 12-16.

Scott HS, 'When the Euro Falls Apart' (1998) 1(2) International Finance.

Shaw MN, *International Law* (8th edn, Cambridge University Press 2017).

Soludo CC, 'A Framework for Macroeconomic Policy Coordination Among African Countries: The Case of the ECOWAS Sub-Region' (1995) 1(1-2) African Economic and Social Review.

Thomasi H, Karunwi A, Omolehinwa L, and Kufuor G, 'Legal and Institutional Framework' in TW Oshikoya (ed), *Monetary and Financial Integration in West Africa* (Routledge 2010).

Uche CU, 'The Politics of Monetary Sector Cooperation among the Economic Community of West African States Members' [2001] World Bank Institute: Policy Research Working Paper Series.

Wood GE, 'European Monetary Integration? A Review Essay' (1986) 18(3) Journal of Monetary Economics.

Zhang J, 'Supporting Macroeconomic Convergence in African RECs' (2012) 1(1) AfDB Regional Integration Policy Papers.

- ***Online Articles and Resources***

'Buhari and Ouattara Make Eco Heart of Regional Power Struggle' (*The Africa Report*, 12 February 2020) <https://www.theafricareport.com/23374/buhari-and-ouattara-make-eco-heart-of-regional-power-struggle/> accessed 4 June 2020.

‘ECOWAS Central Banks Working Group Meet on Single Currency in Abuja’ (*ECOWAS*, 11 June 2019) <https://www.ecowas.int/ecowas-central-banks-working-group-meet-on-single-currency-in-abuja/> accessed 3 June 2020.

‘Governors of ECOWAS Central Banks Call for Synergy Towards Common Currency | Economic Community of West African States (ECOWAS)’ (*ECOWAS*, 1 November 2017) <https://www.ecowas.int/governors-of-ecowas-central-banks-call-for-synergy-towards-common-currency/> accessed 3 June 2020.

‘Governors of ECOWAS Central Banks Call fFor Synergy Towards Common Currency (ECOWAS)’ (*ECOWAS*, 1 November 2017) <https://www.ecowas.int/governors-of-ecowas-central-banks-call-for-synergy-towards-common-currency/> accessed 3 June 2020.

‘Reform of the CFA Franc’ (*BCEAO Press Releases*, 21 December 2019) <https://www.bceao.int/index.php/fr/communique-presse/communique-de-presse-reforme-du-franc-cfa> accessed 18 May 2020.

Smith E, ‘West Africa’s New “Eco” Currency Sparks Division Over Timetable and Euro Peg’ (*CNBC Currencies*, 17 January 2020) <https://www.cnbc.com/2020/01/17/west-african-eco-currency-sparks-division-over-timetable-and-euro-peg.html> accessed 18 May 2020.

Wiseman JDA, ‘The End of EMU: Legal Ramifications’ (February 2000) <http://www.jdawiseman.com/papers/finmkts/emu-breakup.html> accessed 5 November 2019.