

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

*The Role and Contribution of the African Court on Human and People's
Rights in Africa*

By Getrud Kanguro Shindimba

200706934

*A DESSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENT FOR THE AWARD OF THE DEGREE*

OF

BACHELLORS OF LAW (HONOUR)

AT THE FACULTY OF LAW

UNIVERSITY OF NAMIBIA

Supervised by Mr. F .X Bangamwabo

1 November 2011

Supervisor's Certificate:

I, (Xavier Bangamwabo) hereby certify that the research and writing of this dissertation was carried out under my supervision.

Supervisor's signature: Date

Declaration

I Getrud Shindimba hereby declare that the work contained in this dissertation for the purpose of obtaining my degree of LLB is my own original work and I have not used any other sources other than those listed in the bibliography and quoted in the reference.

Signature: Date.....

Acknowledgment

First my entire thanks go to my Heavenly Father and Lord, who created all things and made it possible for me to write this academic paper by giving me all the talents and abilities.

My sincere thanks go to my supervisor Mr. F X Bangamwabo, who irrespective of his other commitments guided me through this paper. I appreciate all the constructive comments he made and also thank him for his patience. Without his assistance my ability to write could not have been enhanced and this paper would not have materialised.

My deep gratitude also goes to my family especially my father who encouraged and supported me throughout this period. My family was there for me through this challenging period.

Finally I would like to thank many of my friends especially Ndatega Asheela and Ruusa Ntinda, it was amazing what their support and encouragement did for me during this period.

Getrud Shindimba

LLB Honours Degree

Faculty of Law

University of Namibia

October 2011

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Abstract

This dissertation is about the role and contribution of the Africa human rights court. It is a reflection of the concept of human rights and its development. Specifically looking at the human rights court within the African human rights system; it will identify major stakeholder within the African system tasked with upholding and protecting human rights, this will include the African Commission on Human and people's Rights and the Organization of African Union.

The main focus of this paper is the role that the African Human Rights Court is to play in the protection and promotion of human rights. What are its challenges and opportunities? Further what can Africa learn from Europe and Americas system of Jurisprudential development as well as enforcement in protecting human rights?

From the assessment above a conclusion will be drawn and referring to that conclusion, the prominence and strong features of the other regional bodies' recommendations will be drawn.

Contents

Supervisor’s Certificate:	2
Acknowledgment	3
Abstract	4
List of Cases	7
Abbreviations	8
List of Statutes	8
CHAPTER ONE	9
Introduction	9
1.1 Statement of Research Paper	11
1.2 Literature Review	11
1.3 Research Methodology	13
CHAPTER TWO	14
2.1 The Concept of Human Rights	15
2.2 Historical Development: Human Rights	16
CHAPTER THREE	18
The African System of Human Rights	18
3.1 The African Commission on Human and Peoples Rights	19
3.1.1 Communications by the African Commission	21
CHAPTER FOUR	33
Role and contribution of the Human and People’s Rights Court of Africa	33
4.1 The complementary Role of the Human rights Court of Africa	33
4.2 Independence of the Court	35
4.3 The Issue of Jurisdiction	36
4.4 Access to the court	37
4.5 Enforcement and Implementation	40
CHAPTER FIVE	42
The European and American Systems of Law	42
5.1 Human rights system in Europe	42
5.1.2 The European Commission on Human Rights	43
5.1.3 The European Court for Human Rights	44

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

5.2 The Human Rights System in America.....	45
5.2.1 Jurisdiction.....	48
5.2.2 Procedure	48
5.2.3 Exhaustion of Local Remedies	49
5.2.4 Function of the American Court and Commission.....	49
CHAPTER SIX	54
Conclusion.....	54
LIST OF BIBLIOGRAPY.....	56

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

List of Cases

Recontre Africaine Pour La Defense Des Droits De l'Homme, (RADDHO)/ Zambia
71/92

Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Inter
Africaine Des Droits De l'Homme, Les Temoins De Jehovah/DRC25/89-47/90-56/91-
100/93

Embga Mekongo Louis/ Cameroon 59/91

Malawi African Association and Ors. v. Mauritania Communications 54/91, 61/91, 98/93,
164/97, 196/97 and 210/98

Viviana Gallardo Government of Costa Rica, Decision of Nov. 13, 1981, Inter-Am.
Ct.H.R

Angel Manfredo Velasquez Rodriguez 1988

Michelot Yogogombaye v The Republic of Senegal, 2009

Attorney General, Kaduna State v. Hassan 1988

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Abbreviations

Organization of African Union	OAU
African Union	AU
African Charter on Human and Peoples Rights	ACPHR
International Court of Justice	ICJ
Inter- American convention on Human Rights	IACHR
Organization of American states	OAS
Inter American Court of Human Rights	IACHR
The European Court Human Rights	ECHR
Non-Governmental Organizations	NGO

List of Statutes

Vienna Declaration and Program of Action 1993

Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights 1998

European Convention on Human Rights and Fundamental Freedoms 1950

The African Charter on Human and People's Rights 1981

The American Convention to Human Rights

Universal Declaration of Human Rights 1948

CHAPTER ONE

Introduction

The 21st century has witnessed remarkable development as well as serious violations of human rights within the African continent.¹ The 1994 Rwandese genocide and the atrocities in Nigeria, Liberia, Somalia, Ethiopia, Sudan, Sierra Leone, Burundi, The Republic of Congo and of recent Libya show the need for strong domestic as well as regional protection for Human rights.²

The idea of an African Human Rights Court could not have come at a much significant and favorable time today.

Africa as a continent has been a major hit in coarse human rights violations and many³ attribute it to the prolonged intra and interstate conflict that has ravaged the continent for decades. In an attempt to promote and protect human rights therefore Africa has an extensive journey to embark. The African Human rights Court becomes necessary and essential for the said purpose.⁴

According to Mutua⁵ there were basically three purposes why international and regional bodies became necessary; maintaining the rules of law by providing justice in an individual, protecting rights through deterrence and behavior modification, clarifying legal instruments and making law through explanation and interpretation.

¹ Kidamenemariam, F. 2006. "Enforcement of Human Rights under Regional Human Rights Mechanism A Comparative Analysis". *LLM Theses and Essays*. USA: University of Georgia, p 1.

² Mutua, WM. 2000. African Human Rights System A Critical Evaluation. Human Rights Development Papers (1992-2007) no 200-15, p 4.

³ Bangamwabo, F .2009. "International Criminal Justice and the Protection of Human Rights in Africa". Bosl, A & Diescho, J (Eds). *Human Rights in Africa Legal Perspective on their Protection and Promotion*. Windhoek: Macmillan Education Namibia, p 105.

⁴ Smith, RK. 2005. *Textbook on International Human Rights*: New York: Oxford University Press, p 5.

⁵ Mutua (2000:32).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

It is expected therefore that, the African Human Rights Court reflect on these criteria's for a significant contribution to the African continent's Human Rights development and protection.

The main purpose of this thesis is an elucidation on the role and contribution of the African human Rights Court (Herein referred to as the African Court) in the protection and promotion of human and people's rights.

Chapter one of the paper is a general introduction to the research thesis, the statement of the problem, the research methodology as well as a brief overview of literature review.

Chapter two looks into the concept and historical development of human rights. It states that human rights are not a new phenomenon, but dated back from ancient times and have been deep rooted in most society,⁶ although it was under the control and treatment of rulers at the time particularly government, Monarchs presidents or heads of states.

Chapter three deals with the system of human rights in Africa, its development and evolution, explaining the two institutions respective roles and function in human rights. This is especially in terms of jurisdiction, *locus standi*, access and enforcement. In addition, the chapter discusses some of the communication of the African Commission on human and Peoples rights.

⁶ Alibadawi El Sheikh, A. 1993. "Human Rights and Challenges for Implementation in Africa". Human Rights Education and Advocacy in Namibia in the 1990s, a Tapestry of Perspective. A collection of Papers Submitted at a Workshop on Education, Training and Information Concerning Human Rights in Namibia: Windhoek, p 23.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Chapter four will deal with the role and contribution of the African court on human and people's rights. The part of this paper aims at addressing the role that the court is to play, its independence, its access, its challenges as well as opportunity and its enforcement mechanism. In this light therefore will the court contribute to jurisprudential growth and protection of human rights in Africa?

Chapter five looks at a comparative study with the Inter American Human rights system and the European Human rights system. The aim is to figure out in a discussion of lessons to be learned by the African court for making it an effective human rights judicial enforcement body.

Chapter six of this paper will then conclude with recommendations.

1.1 Statement of Research Paper

The African Court on human and peoples' rights is a recent human rights enforcement body established in protection and promotion of human rights in Africa. It is essential to outline its role and contribution it is to have on human rights, with the assistance from the examples and experiences of the other two human rights courts.

An entity established must be able to effectively carry out its duties. In Africa the court becomes an umbrella body in a quest to root democracy, ⁷particularly on human rights violation and abuses.

1.2 Literature Review

⁷ Alibadawi El Sheikh, A. 1993. "Human Rights and Challenges for Implementation in Africa". *Human Rights Education and Advocacy in Namibia in the 1990s, a Tapestry of Perspective*. A collection of Papers Submitted at a Workshop on Education, Training and Information Concerning Human Rights in Namibia: Windhoek, p 23.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Lyons⁸ did a similar research and discussed the need for a human rights court in Africa at a regional level. Similarly he compared it to the other two regional courts as mentioned above. In his conclusion he emphasized that:

The formation of the African Court on human and people's rights is possibly a decisive moment in human rights enforcement.

It was understood therefore that the court was a necessary vitality in Africa for the protection and promotion of human rights. Africa has progressed in human rights promotion for the past decade, but sight cannot be lost that the continent has witnessed war crimes, genocides, and the establishment of crime tribunal. The continent's abuses has seen through the first case brought before the international Criminal Court of Justice. Serious human rights abuses are hard to advocate for now⁹ thus the African Court human rights must begin to take shape and form in favor of Africa and its inhabitants.

Udombana¹⁰ looked at the human rights court on modeling its rules and structure, and he acknowledged the fact that the African court should proceed to find its place in this world. This was not to happen over night and that it will take time to build the court, he thus therefore called upon African leaders to take the cross and make the court a successful one.

The writers of this paper is in support of the views as mentioned above, heads of states in Africa must step-up and enforce the creation of African Court, this is a tribunal to hear more abuses and violation, create platform for adjudication on promotion and protection of human being's rights and see Africa victorious.

⁸ Lyons. S. 2006. The African Court on Human Rights. *ASIL Insights*, 10(24): 1.

⁹ Lyons (2006: 24).

¹⁰ Udombana, NJ. 2002. The African Regional Human Rights Court: Modeling its Rules of Procedure. Research Partnership 5/2002, Denmark: The Danish Centre for Human Rights, p 17.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

God had created human being through his image to live on earth equally without discrimination against each other. My expectation is to see the physical structure of the African Court and its functionality is to the maximum in the African continent.

1.3 Research Methodology

This paper mainly focused on qualitative research on i.e. library and desktop based research. The research was conducted by using textbooks, internet sources, newspapers, publications, case law, acts and legislation and international journals, i.e. all literature available on the topic.

CHAPTER TWO
Key Concepts, Historical Development and Evolution of Human Rights

The Vienna Declaration and Program of Action had this to say about human rights:

*'Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governance.'*¹¹

Human rights are the cornerstone of human beings. Their practice and application becomes the basis of human interaction. Human rights have developed deep in the midst of time; yet the term itself dates back since early sixty years ago to international discussions proceeding the founding of the United Nations.¹² Some writers like Smith and Grief¹³ said that it had dated back from the times of the Old Testament which gave early example of human rights. Human rights therefore are not a new concept but one that has deep roots in history.

Inherent to all beings, human right stem from the premise of equality of all man. State of affairs and experience shows that violations of human rights are inevitable and always concurrent. What is required is co-operation among member states, tolerance and having regard for the law of the neighbour.

In Africa Human rights came late as a growing concept. Smith¹⁴ attributes thus to it being the youngest system developed at the regional level. Against violent and often

¹¹ Vienna Declaration and Program of Action 1993.

¹² Smith, RKM. 2005. *Text Book on International Human Rights*. (Second Edition). New York: Oxford University Press, p 5.

¹³ Betten, L. & Grief, N. 1998. *EU Law and Human Rights*. London: Longman, p 4.

¹⁴ Smith (2005: 5).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

undemocratic background, the African system has succeeded in developing a coherent regional system of protecting human rights.¹⁵

2.1 The Concept of Human Rights

As pointed earlier, human rights are not a new concept, but relatively old dating from time memorial. They have become the basis of human relations and an integral part of human to foster communications as well as solidarity amongst states.

According to Shivi¹⁶ Natural law provides the point of departure in defining the term human in human rights. Human Nature” is posited a priori, pre- existing any form of political organization. Various qualities and characteristic including rights then pertain to this human and constitute his essential nature. The term ‘right’ is a moral right, an entitlement to an individual. Thus it can subject itself to a variety of meaning, and legally it is a claim enforceable by law of any state.¹⁷ A right is prerogative that belongs to each and every individual and it may be subject to limitation depending on a certain state or country.

The general concept is that every man is born equal and certain rights attach to and are inalienable and inherent. Thus all these claims articulated and formulated encompass what is being termed as human rights, and are therefore translated into legal rights, the basis of these legal rights are from the consent of the governed body of these rights.¹⁸

For that reason, human rights do not subject itself to the rule and submissions of one

¹⁵ Smith, RK. 2005. Textbook on International Human Rights. New York: Oxford University Press, p 86.

¹⁶ Shivi, IG. 1989. *The Concept of Human Rights in Africa*. London: Codestria Book Series, p 21.

¹⁷ (ibid: 21).

¹⁸ Levin, L .2004. *Human Rights: Questions and Answers*. (Fourth Edition). France: UNESCO Publishing, p 17.

state; quoting Alibadawi El Sheikh¹⁹

“This is so because human rights have been linked to the history and development of man and society. As such the concept of human rights finds its roots in different civilizations, religious, philosophies, writing and beliefs and, as such, the evolution of the concept has been tied to the history of mankind, society and international relations”.

2.2 Historical Development: Human Rights

Human rights are much older than many writings discussed by philosophers, poets and thinkers in primeval time.²⁰ Due to their ancient nature, much writing and publication is found about same.

It was the times of the world wars that put into perspective the need and extent of that need for human rights. The human suffering, the genocide, killings and the atrocities of the past decades of the world war revealed these gruesome violations.

After the Second World War three organizations were created, namely the United Nation (1945), the Council of European Union (1949) and the Organization of American States (1948).²¹ These organizations were to face a new phase and disseminated human rights and humanitarian legal standards and adopted treaties that established protection mechanism.²²

¹⁹ Alibadawi El Sheikh, A. 1993. “Human Rights and Challenges for Implementation in Africa”. Human Rights Education and Advocacy in Namibia in the 1990s, a Tapestry of Perspective. A collection of Papers Submitted at a Workshop on Education, Training and Information Concerning Human Rights in Namibia: Windhoek, p 23.

²⁰ Togni, LT. 1994. *The Struggle for Human Rights An International and South African Perspective*. Cape Town: Juta& Co, p 3.

²¹ Martin, FF. Schnably, SJ. Wilson, RJ. Simon, JS. &Tushnet, MV. 2006. *International Human Rights & Humanitarian Law, Treaties, Cases, & Analysis*. New York: Cambridge University Press, p 5.

²² (ibid: 5).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

From the time these organs were fully functional international law had been created and drafting of structures such as the, Universal declaration of Human Rights (1948), the International Convention on Economic, Social and Cultural Rights (1966) and the International convention on Civil, and Political Rights (1966) and tribunals including the Criminal Tribunal for the Former Yugoslavia and Rwanda and the International Criminal Court,²³ which all aimed at enhancing and protecting rights of human beings.

The journey of human rights recognition in Africa has been long and hard, marked with violence and systematic erosion.²⁴ However for most African states the concentration was more on the need to enhance development rather than human rights. Nations during this time were still struggling with post independence expectation²⁵.

In a much later time the organization of African Unity established the African Commission and Court of human rights which was tasked with enforcing the African Charter on Human and people's rights.²⁶

The Council of Europe adopted the European Convention on Human Rights (ECHR) in 1950 which established the European Commission on Human rights (EC) and Court of Human Rights.²⁷

The organization American States adopted the American Declaration on the Rights and Duties of Man in 1948 and the American Convention on Human Rights in 1969 and established the Inter American Commission and Court of Human Rights.²⁸

²³ (Ibid: 6).

²⁴ Akokpari, J. 2008. "Human Rights Actors and Institution in Africa". Akokpari, J & Zimble, DS. (Eds) *Africa's Human Rights Architecture*. Cape Town: CTP Book Publishers, p 1.

²⁵ (Ibid: 1).

²⁶ Martin et al (2006: 6).

²⁷ (Ibid.).

²⁸ Martin et al (2006: 6).

CHAPTER THREE

The African System of Human Rights

The Organization of African Union (OAU) founded in 1963 was the central and initial regional organizational body in Africa.²⁹ Within the time frame of its formation, human rights were not so prominent on its agendas.³⁰ This was due to the fact that most African states were more concerned about rooting out colonialism than fully concentrating on human rights. Surprisingly though how human rights could not feature bemuses the author as they were central to freeing the African people. It was only after twenty years of its creation that the OAU adopted human rights document.³¹

The charter creating OAU, was based on the principles of sovereignty and non interference, it aimed mainly at fighting for the decolonization of Africa.³² An indication of the reason it took such a long time on the reflection and realization of human rights in Africa, which could have contributed positively to the continued feud of human rights abuses.

As one of its principle mandate, it made sure that Africa could only progress if it was completely free from oppression of western colonies.³³ The OAU thus never really focused on Human rights, it however came up with many conventions, including the African Charter on Human and Peoples rights as a positive move towards protecting and upholding human rights in Africa.³⁴

²⁹ Naldi, GJ. 2002. "Interim Measure of Protection in the African System for the Protection of Human and Peoples Rights". *African Human Rights Journal*, 2(2): 1.

³⁰ Evans, DM. & Murray, R (Eds). 2002. *The African Charter on Human and Peoples Rights, the System in Practice, 1986-2000*. Cambridge: Cambridge University press, p 1.

³¹ (Ibid: 1).

³² Gawanas, B. (2009). "The African Union: Concept and Implementation Mechanism Relating to Human Rights". Bosl, A. & Diescho, J (Eds). *Human Rights in Africa, Legal Perspective on their Protection and Promotion*. Windhoek: Macmillan Publishing Namibia, p 135.

³³ (ibid: 135).

³⁴ (Ibid.).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Human rights became a focal point when the Organization of African Union was succeeded by the African Union (AU). It was created by the African Constitutive Act and it reaffirmed Africa's commitment to promoting and protecting human rights.³⁵

The following is a description of the two human rights bodies within the system of Africa; the African Commission and the African Court of People and Human rights. The African charter created the African Commission on Human rights, which became principal body to deal with human rights issues in Africa. Of recent the addition was the protocol to the African Court on human and people's right creating the African court.

3.1 The African Commission on Human and Peoples Rights

In line with section 30 of the African Charter on Human and Peoples Rights (ACHR) the African Commission was the primary organ responsible for the promotion and protection of human rights in Africa under the ACHR³⁶ which makes the commission its primary body to enforce human rights.

The commission came into force in October 1987. It was a quasi-judicial body that functioned in promoting human and people's rights throughout Africa as well as interpreting the African charter and considering individual complaints of violations of the African charter.³⁷

As part of protective mandate, the commission was competent to entertain application from individuals and Nonprofit making organizations (NGOs) alleging violations of the charter.³⁸ Under the African charter the commission was mandated with promoting and ensuring the protection of human rights. It therefore, had a promotional mandate.

³⁵ Gawanas (2009: 135).

³⁶ Evans, DM. & Murray, R (Eds). 2002. *The African Charter on Human and Peoples Rights, the System in Practice, 1986-2000*. Cambridge: Cambridge University Press, p 36.

³⁷ Naldi, GJ. 2002. "Interim Measure of protection in the African System for the Protection of Human and Peoples" Rights. *African Human Rights Journal*, 2(2).Lansdowne: JUTA and Co, p 2.

³⁸ Naldi (2002: 3).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Udombana³⁹ said that:

“Besides any other tasks which may be entrusted to it by the Assembly, the commission performs three primary functions: to promote and protect human and people’s rights and interpret the provisions of the African charter: promotion, protection and interpretation.”

In terms of Article 45,⁴⁰ the African Commission carries out its mandate of promoting human rights by disseminating human rights information, organizing seminars, carrying out researches, studies, encouragements and assisting national human rights commissions.⁴¹

The African Commission carried out its preventive mandate by entertaining both inter-states and private complaints, and receiving state reports. Its protective mandate, in particular, took the form of receipt of communications from states and other communications from individuals or nongovernmental organizations (NGOs) alleging any violation of the Charter. Such communications, however, had to satisfy certain conditions laid down by the Charter.⁴²

The Commission, inter alia, could only deal with a matter submitted to it after making sure that all local remedies, if they exist, had been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.⁴³

The local remedies rules, stipulates that, a State should be given the chance to rectify a supposed mistake within the framework of its own domestic legal system before its

³⁹ Udombana, NJ .2003. “So Far So Good: Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples Rights”. *The America Journal of International Law*, 91(1): 2

⁴⁰ Article 45 ACHR.

⁴¹ Article 24 1 ACHR.

⁴² Udombana (2003: 2).

⁴³ Udombana(2000: 2).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

international responsibility can be called into question at the international level.⁴⁴

It was used to protect state sovereignty against excessive infringement by state to state claims on behalf of private individuals. It is the one condition most frequently invoked and contested by the parties before the African Commission and that usually requires the most attention.⁴⁵

Udombana⁴⁶ contended the rule is a source of both fascinations and confusion

Indeed, much confusion and complexity still surround the prerequisites for its application.

Thus, many aspects of the rule as yet require clarification. Of which this paper cannot venture into as it is another topic on its own.

Heynes⁴⁷ points out that

“It is not clear which important aspects of the Commission’s mandate to monitor compliance with the Charter norms are not provided for, or are not clearly provided for, in the Charter. This in fact applies in respect of the two most important monitoring mechanisms used by the Commission, namely the individual complaints system and the state reporting procedure.”⁴⁸

The African Commission does however also assume any other functions as provided under its article 45(4).⁴⁹

3.1.1 Communications by the African Commission

⁴⁴ (ibid.).

⁴⁵ (ibid.).

⁴⁶ (Ibid.).

⁴⁷ Heyns, C. 2001. “The African Regional Human Rights System: In Need of Reform?” *African Human Rights Law Journal*, 1(2). Lansdowne: JUTA and Co, p164.

⁴⁸ Heyns (2001: 164).

⁴⁹ Kidamenemariam (2006: 14).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Apart from the roles that the African Commission was mandated to perform, the African commissions in fulfillment of their duty heard communications. These were disputes brought by certain organizations the merits to be decided on.

Recontre Africaine Pour la defense des droits de l'Homme, (RADDHO)/ Zambia 71/92,

Facts: The complainants (517 in number) represented by a Senegalese NGO, Recontre Africaine, had been expelled from Zambia on the grounds of being in Zambia illegally. Prior to their expulsion most of the individuals had been subjected to administrative detention for more than two months, the deportees lost all their material possessions they had in Zambia and many were also separated from their families. The communication was admitted and sessions were seized.

The law and Admissibility

The Zambian government argued that, the communication is declared inadmissible as the complainants did not exhaust all local remedies as provided for by Article 54 of the African charter. This did not in any way mean that, the complainants were required to exhaust any local remedy if it were to be found as impractical matter unavailable or ineffective.

Because of those allegations the government had to prove such availability of the local remedies. It was found out that, the local remedy given did not constitute adequate remedies in respect of the complaints case.

In addition the massive nature of the arrest and the fact that the victims were kept in detention prior to their expulsion and the speed at which the expulsion was carried out, gave the complaints no opportunity to establish the illegality of these actions in court, nor were the complaints had to contact their families or attorneys.

Thus the recourse referred to by the government of Zambia was a practical matter not available to the complainants. The recourse was in the Immigration and Deportation Act which provided for appeal of expulsion.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Merits of the Case

The commission looked first to the question of law, recognizing that amicable resolution could take a period of time.

Looked first from different Article to Article, article 12 of the African Charter specifically provides that mass expulsion of non- national shall be prohibited, this mass expulsion which is aimed at national, racial, ethnic or religious groups. Chapter 2 of the African Charter provides that every individual be entitled to the rights and freedoms recognized and guaranteed in the African Charter without distinction of any kind, as race, ethnicity, color, sex, language, religion, political or any other national and social origin fortune birth or other status.

The above then imposed a duty on contracting states to secure the rights protected in the charter to all persons within their jurisdiction. The Zambian government argued that, the complainants were in Zambia illegally.

It was contented the charter did not per se bar deportation, but Zambia's right does not justify the manner in which it was done. Zambia maintained that, the two months during which some of the deportees were held were necessary to verify their nationality in some cases and also that the Complainants might have used this time to contact their lawyers.

Article 7 of the Charter specifies that:

Everyone shall have the right to have his cause heard. This comprises: the right to an appeal to competent national organs against acts violating his fundamental rights as recognized and guaranteed by the conventions, laws, regulations and customs in force.

In holding the case admissible the Commission had established that none of the deportees had the opportunity to seize the Zambian courts to challenge their detention or deportation. This has constituted a violation of their rights under Article 7 of the Charter and under Zambian national law.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Holding

The commission held that, the deportation constituted a violation of Article 2, 7.1(a) and 12(5) of the African charter.

Free Legal Assistant Group, Lawyers committee for Human rights, union Interafricaine des droits de l'Homme, Les Temoins de Jehovah/DRC25/89-47/90-56/91-100/93

The facts were as follow Communication 25/89 was filed by the Free Legal Assistance Group, the Austrian Committee against Torture, and the Centre haitien des droits et libertés, all members of the World Organization against Torture (OMCTT) the communication alleges the torture of 15 persons by a Military Unit, on or about 19th January 1989, at Kinsuka near the Zaire River.

On 19th April 1989 when several people protested their treatment, they were detained and held indefinitely.

Communication 47/90 was filed by the Lawyers Committee for Human Rights in New York. It alleged arbitrary arrests, arbitrary detentions, torture, extra-judicial executions, and unfair trials, severe restrictions placed on the right to association and peaceful assembly, and suppression of the freedom of the Press.

Communication 56/91 was submitted by the Jehovah's Witnesses of Zaire. It alleged that the prosecution of the Jehovah witnesses, including arbitrary arrest, appropriation of church properties and the exclusion from access to education

Communication 100/93 was submitted by the Union Interafricaine Des Droits de l'Hommea. It made allegations of torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press.

It also alleged that public finances were mismanaged; that the failure of the government to provide basic services was degrading; that there were shortages of medicine that the universities and secondary schools had been closed for year and freedom of movement

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

was restricted and violated and ethnic hatred was incited by the official media.

In determining the communications the African Commission took all communications together found grave evidence of massive violations of human rights in Zaire.

The communication was then seized by the commission and as envisioned by Article 58 of the African Charter.

The commission considered that, Communications 25/89, 47/90, 56/91 and 100/93 against Zaire which revealed the existence of serious and massive violations of human rights, was therefore admissible.

Merits of the case

The main goal of the communications procedure before the Commission was to result in an amicable resolution between the complainants and the state concerned. However, there were no substantive responses from the government of Zaire from all the notifications made to them by the commission. Based on it, several principal decisions that the African commission had set out, even after repeated notifications, the Commission decided on the facts provided by the Complainants.

This was in line with the principle that conforms to the practice of other international human rights adjudicatory bodies and the Commission's duty was to protect human rights. Since the Government of Zaire refused participation dialogue, the Commission had to continue its consideration of the case on the basis of facts and opinions submitted by the complainants alone.

Article 5 of the African Charter prohibits torture and inhuman or degrading treatment. The torture of 15 persons by a military unity at Kinsuka, near the Zaire River, as alleged in Communication 25/89, constitutes a violation of this article.

Article 6 of the African Charter guaranteed the right to liberty and security of person. The indefinite detention of those who protested against torture, as described in Communication 25/89, violated Article 6.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Article 4 of the African Charter protects the rights to life, Communication 47/90, in addition to alleged contrary arrests, detention and torture, alleged extrajudicial executions were a violation of Article 4.

Article 7 of the African Charter specifies the right to have one's cause heard. The unfair trials described in Communication 47/90 constitute a violation of this right.

Article 8 of the African Charter protects freedom of conscience. The harassment of the Jehovah's Witnesses, as described in communication 56/91, constituted a violation of this article, since the government had presented no evidence that the practice of their religion in any way threatens law and order.

The arbitrary arrests of believers of this religion likewise constituted a contravention of Article 6, above. The torture, executions, arrests, detention, unfair trials, restrictions on freedom of association and freedom of the press described in Communication 100/93 violated the above articles.

Article 16 of the African Charter states that every individual shall have the right to enjoy the best attainable state of physical and mental health, and that States Parties should take the necessary measures to protect the health of their people. The failure of the government to provide basic services such as safe drinking water and electricity and the shortage of medicines as alleged in Communication 100/93 constituted a violation of Article 16.

Article 17 of the Charter guaranteed the right to education. The closures of universities and secondary schools as described in communication 100/93 constituted a violation of Article 17.

Holding

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

The commission held that the facts constituted serious and massive violations of the African Charter, namely Articles 4, 5, 6, 7, 8, 16 and 17. The above cases had accession to be heard by the African commission when brought under a nongovernmental body or state.

EmbgaMekongo Louis/ Cameroon 59/91,

A Cameroon citizen alleged false imprisonment, miscarriage of justice and damages for which he claimed a sum of \$ 105 Million.

The commission found out that, the author had been denied due process, contrary to Article 7 of the African Charter and had in fact suffered damages. Being unable to determine the amount of damages, the commission recommended that the quantum be determined under the law of Cameroon.

The African commission has made an effort in upholding human rights. The advisory opinion of the African Commission on Human and Peoples' Rights comprehensively responded to each of these concerns. The gist of the opinion was to demonstrate that the apprehension on the part of African states was unfounded.

The opinion clarified that, the standards and norms enumerated by the Declaration were indeed consistent with the African Charter on Human and Peoples' Rights.

Common to all those cases was the facts that, the commission did not accept cases from individuals who at most were the victims of those human rights violations.

Locus standi had to be obtained through nongovernmental organization or the state. What are these limits the victims as they did not have standing before the commission an instance which was supposed to have been dealt with in the African Court for Human Rights?

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

The exhaustion of local remedies rule plays an important role, the *Zambian case* above showed the effectiveness of this rule. What about enforcement of these decisions, were they taken up effectively, were they given much weight by those who yield that power? The system is to redress that problem with conviction and certainty.

The League of Nation is being described today as, a dog that could not bite because it has no teeth, will this then be the fate of the African system or is there hope in the light of the African Court of Human and People's Rights? Answers are awaited further.

*Malawi African Association and Ors. v. Mauritania*⁵⁰ had this to say about the African Commission itself it stated that, its role consists precisely in pronouncing on allegations of violations of the human rights protected by the Charter of which it is seized in conformity with the relevant provisions of that instrument.

And that, precisely, is where its job ends, as its recommendations were seldom taken seriously by States Parties⁵¹.

The result was that the complaint procedure before the Commission has done very little to protect an individual complainant, as it started too late, took too much time, did not lead to a binding results and was short of any efficient enforcement.⁵²

3.2 The African Court on Human and People's Rights

In June 1998, the Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights was adopted by the Assembly of Heads of States and Governments of the Organization of African Unity

⁵⁰ Communication 54/91, 61/91, 98/93, 164/97 and 210/98.

⁵¹ Udombana (2003: 18).

⁵² (ibid.).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

(OAU) in Ouagadougou, Burkina Faso. ⁵³With the deposit of the 15th instrument of ratification by the Union of Comoros on 26 December 2003, the required number of ratifications was received by the Chairperson of the AU Commission in Addis Ababa, allowing the Protocol to enter into force on 25 January 2004. ⁵⁴

The court is recent developed regional human rights judicial bodies and to this minute the court is not yet actively functional and as such, much of its work in terms of advisory opinion will not be reflected in this paper.

The creation of the Court is to serve and strengthen the African regional system,⁵⁵ unlike the other two regional bodies; its role is more of a facilitative one. European and American without the courts would have had little chance to affect their societies in the way that they have.⁵⁶

With the court at hand, the African Commission is to play their role as before and the court being a facilitative role in the system. Moreover the court is not to stand as a body on its own but to be integrated in the African Court of Justice. How this is to be achieved is a test of credibility and effective mechanism that ensures quality assured system working for the benefit of all African nations involved.

3.2.1 Rules of Procedure

Similarly with the European and the American Convention on Human Rights, the African

⁵³ Pityana, NB. 2004. "Reflection on the African Court on Human and peoples Rights". *The African Human Rights Journal*, 2 (2). Lansdowne: JUTA and Co, p 121.

⁵⁴ Elshiek IAB .2002. "The Future Relationship Between the African Court and African Commission". *The African Human Rights Journal*, 2 (2). Lansdowne: JUTA and Co, p 252.

⁵⁵ Heynes (2001: 166).

⁵⁶ Udombana (2002: 22).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Protocol to the human rights creation of an African Human Rights Court did not impose Rules of Procedures on the Court.⁵⁷ It provides, rather tersely, that the Court shall draw up its rules and determine its own procedures. The rules do not have to be approved by any other body, such as the Assembly or the Committee of Ministers of the OAU.

This contrasts with the practice of some other international judicial bodies. The rules of the Court of Justice of the European Union, for example, require the unanimous approval of the Council.⁵⁸

The practice of not setting up rules of procedures has been argued by most scholars as a fault yet others see it as not being of any consequences. The argument was that without rules of procedures the court will have to sit down first before it could officially commence to draw up its rules of procedures causing another delay,⁵⁹ which is the current situation of the court as of writing this paper.

Other writers oppose this view saying that it is beneficial when the court crafts its own procedures and rules in this way it will effectively manage its own mandate. Rules imposed from elsewhere could weaken instead of strengthening the court, such that the court will not be able to react flexibly to new situations, it might not happen most often but at least it would be in the interest of continuity of procedures and participation of it to the maximum.⁶⁰

3.2.2. Jurisdiction

Reading Article 3 of the draft protocol to the African Court it provides that the jurisdiction

⁵⁷ (Ibid.).

⁵⁸ Udombna (2002: 22).

⁵⁹ Udombana(2002: 23).

⁶⁰ (ibid.).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

of the court covers all cases and disputes submitted to it concerning the interpretation and application of the charter. The court also has a mandate to issue advisory opinions at the request of the African Union or any of its organs on any legal matter related to the charter or any other relevant human rights instrument provided that the subject matter of the opinion is not related to matters being examined by the commission.

The court has a substantive jurisdiction which is considered to be broader than that of the commission, indicating that the drafters of the protocol intended on giving the court the widest possible jurisdiction.⁶¹

The contentious jurisdiction had extended to all cases and disputes submitted to it concerning the interpretation and application of the Charter.

This Protocol and any other relevant Human Rights instrument ratified by the States concerned, opinion on any legal matter related to the Charter or any other relevant human rights instruments will be considered, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.⁶²

Requests for advisory opinions could be made by a member state of the African Union, or any of its organs, and/or any African organization recognized by the AU.⁶³

3.2.3 Locus Standi

Articles 5 and 6 to the African Court Protocol outline the *locus standi* of the court. It provides the following to submit cases to the court; the commission, the state party which has lodged a complaint to the commission, the state party against which the complaint has been lodged at the commission the state party whose citizens are a

⁶¹ (Ibid.).

⁶² Harrington, J. 2002. *The African Charter on Human and Peoples Rights, the System in Practice, 1986-2000*. Cambridge: Cambridge University press, p 318.

⁶³ Harrington (2002: 318).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

victim of human rights violation African intergovernmental organizations.

In addition to this Article, Article 5 (3) states that, the court may entitle relevant Non-Governmental Organizations (NGO's) with observer status before the commission and individuals to institute cases directly before it in accordance with Article 34(6),⁶⁴ of the court protocol.

The most amazing thing of all the provision of the articles above is that they did not make provision for victims of human rights violations, individuals and NGO's to bring cases as a right, this has been omitted from the protocol giving only section 5 (3) which gives states right to make declarations accepting the competence of the court, else the court will not receive such a matter from individuals. So without the consent of the state involved the individuals, human rights victims and NGOs cannot access the court.

What is also evident is that the protocol then limits the number of cases that can be taken to the court. Most human rights violations are against individuals of a state and at most the state would like to preserve its credibility and would not want a lot of cases brought against it. This accountability process is therefore limited when the *locus standi* of the court is restricted;⁶⁵ this is being argued as one of the regressive nature of the court protocol.

Article 6, admissibility of cases, refers to Article 56 of the charter, making admissibility conditions the same for both bodies. Article 6 leaves the possibility for the court to request the opinion of the commission on the admissibility Article 6(1) of cases or to transfer them to the commission Article 6(3).

⁶⁴ Article 34(6) states that at the time of the ratification of this protocol or any time thereafter, the state shall make a declaration accepting the competent of the court to receive cases under article 5 (3) of this protocol.

⁶⁵ Harrington (2000: 320).

CHAPTER FOUR

Role and contribution of the Human and People's Rights Court of Africa

This chapter explores the contribution and the role of the African court of Human and Peoples Rights. More so was how the commission enforcement mechanism has had a satisfactory implementation for victims of human rights violation.⁶⁶

Not long ago Zimbabwe a crucial country in Africa was raged with many suspicious killings and brutal mistreatment of its people by the state government. The human rights bodies in place must work hard to ensure the least occurrences' of human rights violations. The African human rights court will play a vital role to enforce and anchor democracy in the African region.⁶⁷

4.1 The complementary Role of the Human rights Court of Africa

As mentioned earlier the court itself is not to replace the African Commission on human rights, but to play a complementary role. The relationship being that the African Court is to enhance the efficiency of the African Commission, to complement and reinforce its functions and its protective mandate especially.⁶⁸

The commission would still get to hear matters referred to it on a regular basis and would carry out its report as per its mandate. The problem is that the commission pro-active role will be binding and enforceable within a judicial court system. Because From

⁶⁶ Udombana (2003:821).

⁶⁷ Wachira, GM. 2008. "African Court on Human and People's Rights: Ten Years and Still no Justice". *Minority Rights Group International*. UK: MRG, p2.

⁶⁸ Murray, R. 2002. A comparison Between the African and European Courts of Human Rights. *The African human Rights Journal*. 2 (2). Lansdowne: JUTA Law, p 196.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

the wording of the Protocol on the Court, it would appear that the Commission would continue with sole responsibility for the promotional function, sharing the protective mandate and the power to examine communications with the Court. ⁶⁹

With this in mind therefore one would expect that the human rights system in place will be effective. Similarly it can also mean that there's a need for a clear cutting line, the commission playing the promotional role and the court doing the protecting mandate.

What does complementary mean or what would it entails? The principle of complementarity is enshrined in the African Protocol; ⁷⁰ however, there is no legal obligation on the commission to exercise its right to bring cases to the African court. The protocol is unclear about the relationship between the courts mandate and that of the commission and which cases are to be referred to the commission; perhaps the rules and procedure now established by the judges mandated with this task will be able to give the answers to some of the questions posed academic writers. ⁷¹

So far it is very evident that the Africa Court still stands on testing ground. Questions such as whether there are any indications of category cases that would qualify for referral to the court and what stage should the commission bring case need responses. Should the commission bring an appeal by the individual or NGO, Juma,⁷² points out that;

It appears only the courts procedure and rules and practices may answer some of these questions.

Perhaps this may well be so, Murray ⁷³ however sees it from this light quote

⁶⁹ (Ibid.).

⁷⁰ Juma, D.2007. "A Case of the Poacher Turned Gamekeeper". *Exxex Human Rights Review*, 4(2): 8.

⁷¹ (ibid.).

⁷² (Ibid.).

⁷³ Murray (2002: 198).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

“Article 8 of the Protocol on the African Court requires that, Rules of the Court should indicate when cases should be brought before it .bearing in mind the complementarity between the Commission and the Court. This would appear to suggest that the African Court will only consider cases which have already been considered by the Commission, thus following the approach of the previous European organ”.

4.2 Independence of the Court

The effectiveness of this court will depend on the independence and the competence of the individuals that constitute its bench. The court is expected to be an impartial arbiter between individuals and states that violate their fundamental human rights.⁷⁴ The Protocol thus provides that jurist of high moral character and recognized practical judicial or academic competence and experience in the field of human and people’s rights to be considered for the position of the judges; this would also mean having a balanced composition and gender receptive.⁷⁵

In terms of Article 15(1),⁷⁶ the judges are to serve a period of six years and eligible for re- election only once. Mutua⁷⁷disagree saying this is a set back:

“...Shortcoming is that all judges except president of the court are to serve on a part time basis, though their independence is formally guaranteed and protected by the immunities of diplomats under international law, their part time service will

⁷⁴ See Wachira (2008: 17).

⁷⁵ Zimmermann, A &Baumler, J .2010.“Challenges facing the African Court on Human and Peoples Rights”. *KAS International Reports*, 17: 42.

⁷⁶ Protocol to the African Charter on Human and Peoples Rights on the Establishment of the African Court on Human and peoples Rights.

⁷⁷ Mutua, WM .2000.“African Human Rights System A critical Evaluation”. Human Rights Development Papers (1992-2007) no 200-15, p 27.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

undermine the integrity and independence of the court.”⁷⁸

This approach resembles that had been taken by the Convention for the Protection of Human Rights and Fundamental Freedoms and the International Court of Justice (ICJ) Statute, and was distinguishable from the requirement of the American Convention on Human Rights that candidates possess qualifications were required for appointment to the highest judicial offices. Composition the judgeship of the African Human Rights Court must provide a balanced representation of the main African regions and of their principal legal traditions just like that of the ICJ.⁷⁹

The second election of the new incoming judges that took place in 2008 is a case on. It was already marked with controversy; Uganda’s one nomination of Justice Kanyihamba was blocked due to the fact that Uganda government felt the judge would embarrass the state of Uganda at the African Court.⁸⁰

Basically this action would show that independence of the judges of the African Court could signal a disaster.⁸¹

4.3 The Issue of Jurisdiction

The African Court has both the contentious as well as advisory jurisdiction; the Court may provide an opinion on any legal matter related to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to any matter being examined by the Commission.⁸²

Notwithstanding the above-discussed shortcomings, the Protocol provides the Human Rights Court with broad advisory jurisdiction, allowing it to engage in a robust and sustained analysis of the meaning of the African Charter and the Human Rights Protocol as well as the compatibility of domestic legislation and regional initiatives with

⁷⁸ Mutua (2000:27).

⁷⁹ See Udombana (2003: 826).

⁸⁰ See Wachira (2008: 17).

⁸¹ See Wachira (2008: 17)

⁸² Udombana (2003: 286).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

the human rights norms contained therein.⁸³

The advisory opinions of the Inter-American Court, for example, has had a significant impact on both protecting human rights in the Americans and on providing needed guidance to domestic courts. Those advisory opinions have also enabled some governments to introduce necessary domestic reforms or to abandon legislation that would have breached the American Convention on Human Rights without being compelled to do so by controversial decisions stigmatizing them as violators of human rights.⁸⁴

Certain governments, in particular those of fragile emerging democracies, would find it easier to give effect to an advisory opinion than to comply with a contentious decision on a case they lost. Additionally, advisory opinions could provide speedy judicial responses to questions it would take years to determine in contentious proceedings, while avoiding the friction and bitterness judgments in contentious cases and are likely to generate in some other countries.⁸⁵

4.4 Access to the court

Article 5 of the Protocol to the creation of the Human rights Court of Africa outlines who has *locus standi* before the court; there were what was called automatic and selective or optional jurisdiction. Individual's and NGOs have a restrictive access to the court; they have the optional access to it which is a major Flaw⁸⁶.

⁸³ Juma, D.2007. "A Case of the Poacher Turned Gamekeeper". *Exxex Human Rights Review*, 4(2) 8.

⁸⁴ (Ibid).

⁸⁵ (ibid.).

⁸⁶ Juma(2007: 8).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

In Michelot Yogogombaye v. The Republic of Senegal 2009 (the maiden case of the African Human Rights Court) the Applicant, a Chadian National, instituted an action to prevent the Government of Senegal from conducting the trial of the former Chadian Head of State, Hissene Habre, in Dakar, Senegal. The question was whether the Court had jurisdiction to entertain the matter. The Court answered this question in the negative as Senegal had not made Special Declaration allowing individuals to file cases directly with the Court. This shows the plague of individuals in the African human rights system.⁸⁷

This case was, the matter of which was never heard in the African Court, because it was inadmissible. The government of Senegal had not even granted their affirmations to facilitate individuals in their action in the Human rights Court. To date states are reluctant to give such declaration limiting the access of the individuals to the African Court.⁸⁸

In *Attorney General, Kaduna State v. Hassan 1988*, it said that “Denial of individual direct access to the Court shows lack of effective legal protection of human rights in Africa. Only few African States are willing to make Special Declaration allowing individuals to have direct access to the Court.”⁸⁹ Steiner⁹⁰ gives the following reasons why:

Scheme of access to a human rights court in which primacy was given to the state defies the conventional understanding of international human rights law.⁹¹

Second, the limitation contradicted the intent of the internationalization of human rights and the development of the regional human rights system as a complementary ladder.

Finally, it was and should be considered that individuals were the typical consumers of human rights courts, and as such they should have unfettered access to those

⁸⁷ Zimmermann & Baumlér (2010: 42).

⁸⁸ (Ibid).

⁸⁹ Yerima, TW. 2011. “Comparative Evaluation of the challenges of the African Regional human Rights Courts”. *Journal of Politics and Law*, 4(2)

⁹⁰ (Ibid: 760).

⁹¹ Steiner HJ. 2003. “International Protection of Human Rights” in M. D. Evans (Ed.), *International Law*. Oxford: Oxford University Press, at 760.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

institutions.

Furthermore, NGOs have played a phenomenal role in the African human rights system, as evidenced by the fact that most of the individual communications before the African Commission have been lodged by or at the initiative of those organizations.⁹²

By far the most controversial feature of the Court is the difficulty of bringing cases. Human rights activists lobbied hard for direct access to be given to individuals and non-governmental organizations (NGOs), but that was resisted by African governments. As a consequence, individuals and NGOs were only able to bring cases in their own right if the state against which they were complaining has signed a special declaration accepting the competence of the Court to hear cases brought via that route.⁹³

Under the European Convention there was no initial power of individuals or NGOs to submit cases before the Court; they had to go through the Commission and rely on it to choose to submit the case.⁹⁴

Protocol 9 as amended the European Convention to enable individuals and NGOs who had already submitted cases to the Commission to submit a case also to the Court. That was because it was felt that “a system which gave rights to an individual but not the full power to enforce them, thus violating the principles of equality of arms; the right of access to a tribunal to defend rights and the participation of both parties in proceedings,” which principles were not guaranteed by allowing the state to submit a case but not the individual.⁹⁵

Accessing the Court will therefore be very difficult for most victims of human rights abuses in Africa about the willingness of African states to submit themselves to judicial scrutiny in the field of human rights. When this reluctance is added to the sheer scale of human rights abuses across this continent and still doubtful effectiveness of the AU

⁹² (Ibid.).

⁹³ Sceat, S. 2008. Africa New Human Rights Court: Whistling in the Wind. Amnesty International Reports. London: Amnesty International, p 3.

⁹⁴ Murray (2002: 201).

⁹⁵ (Ibid.).

itself, the challenges confronting this Court begin to look very grave.⁹⁶

4.5 Enforcement and Implementation

Article 6 (2) lays down the courts rule on the admission of cases to the court as has been discussed above, once the court has accepted to rule on a decision thereof. Each judgment is taken by the majority rule and a judge is entitled to add his or her separate dissenting opinion.⁹⁷

In terms of Article 27(1), the court can make appropriate orders to remedy a situation if there has been a violation of human or people's rights, including the payment of fair compensation.

Zimmermann &Baumler⁹⁸ argue that in so doing, it was not restricted to imposing a monetary fine like the European Court of Human Rights, in line with practice in the inter-American system, could order other action to be taken. The judgment of the court is final, binding and is not to be appealed the court interprets its decision and reviews it.⁹⁹

In accordance with Article 30, which stipulates that, state parties to the protocol undertake to comply with the judgments in cases they are parties to and guarantee effective execution within the time period set by the court, in addition another measure liable to prove helpful in terms of "naming and shaming" is the naming of the states that have failed to comply with a judgment in the court's annual report (Art. 31 of the Protocol). This report is submitted to the Assembly of Heads of State and Government and is made public.¹⁰⁰ this process if is to be implemented would be interesting to observe as at most African states are not that much concerned with humiliation. It is

⁹⁶ Sceat, (2008: 3).

⁹⁷ Gautier, JJ. 2000. The African Court on Human and Peoples Rights. Accessional Paper on the Presentation and Commentary the Protocol to the African Charter on Human and Peoples Rights, Establishing the Court: Geneva.

⁹⁸ See Zimmermann & Baumler (2010: 47).

⁹⁹ Article 28 to the Protocol of the African Charter on Human and Peoples Rights on the Establishment of the African Court on Human and Peoples Rights.

¹⁰⁰ Juma (2007:47).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

however as has been argued depended on the pro active participation and step up role of the African governments that would be a determining factor.

Under the European human rights system, the Department for the Execution of Judgments of the European Court of Human Rights assists in the execution of the judgments of the European Court of Human Rights. The Inter-American Convention also provides that: "Part of a judgment that stipulates partly compensatory damages may be executed in the country concerned in accordance with domestic procedures governing the execution of judgments against the State." These procedures are recommended for Africa.¹⁰¹

¹⁰¹ Yerima (2011: 124).

CHAPTER FIVE

The European and American Systems of Law

Both America and Europe form part of the three regional bodies in the world in the promotion and protection of human rights. The European human rights system is described as being the oldest of the three and though flawed it still remain without a doubt the most successful of the world.¹⁰² The jurisprudential growth of these two bodies has been vast and advanced relatively. Following is an exposition of these regional bodies and Africa would do well to observe and learn from them.

5.1 Human rights system in Europe

5.1.1 The Council of Europe

In a desire to shield themselves from the Nazi horrors of the past and the Soviet fears of the day, the countries of Western Europe agreed to establish a regional Council of Europe.¹⁰³ It is this council that established the European system for the protection for Human rights.¹⁰⁴

Created in 1949 by a group of western European nations, the system was tasked with a purpose of protecting human rights and facilitating social economic progress.¹⁰⁵ The draft to the European Human rights convention came immediately after the creation of the council of Europe and came into force in September 1953. Today it's hailed as one of the most successful system of international law for the protection of human rights and

¹⁰² Dickson, B. 1997."The Council of Europe and the European Convention". Dickson, B. (Ed). *Human Rights and the European Convention*. London: Sweet & Maxwell, p 1.

¹⁰³ (Ibid).

¹⁰⁴ Buergental, T .1995. *International Human Rights*. St. Paul, Minn: West Publishing Co, P 102.

¹⁰⁵ Clements, L.1980.*European Human Rights, Taking a Case Under the Convention*. London: Sweet & Maxwell, p 2.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

the most advanced form of any kind of international legal process.¹⁰⁶ Before the establishment of the current system, the European system had both a commission and a court.¹⁰⁷ Under the current system, there is only the European Court of Human Rights.¹⁰⁸

Evidently the African Charter provides for a single body the African Commission as its enforcement mechanism, while the court being an afterthought. Primarily the European convention provided for both the European Commission and the European court and they functioned together, until protocol 11¹⁰⁹ changed this position, establishing a permanent court with new aspects of structure, enforcement and standing.¹¹⁰

5.1.2 The European Commission on Human Rights

As an overview the position of the Commissioner for Human Rights was approved at the Summit of Heads of State and Government in October 1997, it was part of the original structure of the Court and mechanism for handling cases which provided for a two-tier system of rights protection, with the Human rights court. It was established in April 1999 when the Committee of Ministers adopted it.¹¹¹

Main purpose was raising awareness about human rights and respect for human rights,¹¹² it also organized Seminars and conducts site visits that culminate in country

¹⁰⁶ Janis, MW. Kay, RS & Bradley, AW. 1995. *European Human Rights Law: Text and Material*. Clarendon: Press Oxford.

¹⁰⁷ Kidamenemariam (2006: 20).

¹⁰⁸ (Ibid).

¹⁰⁹ Protocol 11 of the European Convention on Human Rights came into force in November 1998. It has brought about a complete change in the conventions control mechanism. The protocol creates a new single court to replace the commission and the court. An automatic right to individual petition instead of the renewable declaration under the old Article 25 is created. Miller, V.1998. Protocol 11 and the New European Court of Human Rights. Research Paper 98/109. Accessed on the 23 of August 2011 at <http://www.parliament.uk>.

¹¹⁰ Murray, R. 2002. "A Comparison Between the African and European Courts of Human Rights". *The African human Rights Journal*, 2(2) Lansdowne: JUTA and Co, P 196.

¹¹¹ Human Rights Association Study Guide. www.hrea.org accessed on the 15 August 2011.

¹¹² Kidamenemariam (2006: 19).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

reports like visit reports. The dichotomy between the two institutions initially worked well since the Court dealt with a relatively small caseload. On 1 November 1998, Protocol 11 of the European Convention on Human Rights came into force, eliminating the Commission of Human Rights as a new European Court of Human Rights and replacing the former system.¹¹³

5.1.3 The European Court for Human Rights

The system in Europe today is not the same as the previous one. Once there was a human and people's rights court and a human rights commission, currently however there exists only the one human rights court. The commission having being dissolved. The new important aspect being the individuals right to direct access to the new court of human rights a positive step and response to the general rules of international law as pointed out above.

The European Court can award damages and make declaratory judgments¹¹⁴. The European Convention on Human Rights and Fundamental Rights (ECHR) has devoted some provisions to the structure of the court, the qualifications of judges and their appointments. The European Court sits on committees that decide on the admissibility of a case.¹¹⁵ The Chamber, which is a bench of seven judges, decides all inter-state and individual complaints on the merits.¹¹⁶

The European Court sits in Grand Chambers of seventeen judges to decide on the merits of all interstate and individual complaints in cases where the Chambers relinquish their powers in favor of the Grand Chambers.¹¹⁷ The Grand Chamber also decides on the merits of cases where applicants request a referral to the Grand Chambers of the decision by the Chambers within three months time.¹¹⁸ Decisions of the Grand Chamber

¹¹³ (Ibid.).

¹¹⁴ (Ibid.).

¹¹⁵ Article 27(1) of the ECHR.

¹¹⁶ Article 29(2) of the ECHR.

¹¹⁷ Article 30 of the ECHR.

¹¹⁸ Article 47(1) ECHR.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

are final. ¹¹⁹This body can also give advisory opinions if requested by the Council of Ministers. ¹²⁰

The ECHR article 1 deals with jurisdiction. Whatever the route by which a case may be referred to the court, it can deal with it only if the state involved has already accepted jurisdiction of the court under article 46 of the European convention. ¹²¹

5.1.4 The Committee of Ministers

The committee of ministers is a body of the Council of Europe entrusted with the tasks of supervising the implementation of the decisions of the European Court of Human rights. ¹²² The Committee of Ministers meets only twice a year and operates through deputies who meet every two weeks and permanent representatives for which the other times during which it is not in a session. The Committee of Ministers has developed its own rules for exercising its task of supervising the implementation of the decisions of the court of human rights.

5.2 The Human Rights System in America

The system in America is an interesting one due to its duality aspect. Meron ¹²³ pointed out that

¹¹⁹ Article 44 ECHR.

¹²⁰ Article 47(1) ECHR.

¹²¹ Dickson, B. 1997. "The Council of Europe and the European Convention". Dickson, B. (Ed). *Human Rights and the European Convention*. London: Sweet & Maxwell, p 2.

¹²² Rhona, K. 2003. *International Human Rights*. London: Oxford University Press, p 98.

¹²³ Meron, T .1984. *Human Rights in International Law: legal and Policy Issues*. New York: Oxford University Press, p 439.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

“the inter America system for the protection rights has two distinct legal sources, giving rise to a dual institutional structure. The first is founded upon charter, and the 1948 American Declaration of the Rights and Duties of Man. The second, and more effective, is founded upon the American Convention of Human Rights.

The Convention is applicable to only those states that have ratified it, whereas the Declaration is applicable to all OAS member states.¹²⁴

The Inter- American convention on Human Rights (IACHR), form part of the second leg, and is the major protection body, it was adopted in 1969, at an intergovernmental conference convened by the organization of American states (OAS). The convention entered into force in July 1978, after the eleventh instrument of ratification had been deposited.¹²⁵ The OAS is the primary international forum for governments to deal with political, judicial and social affairs in North, Central and South America.¹²⁶ The Convention therefore remedied the weak legal status of the Declaration, strengthening the human rights system established by the charter of the OAS.¹²⁷

Basically the American human rights protection system historical originated with the proclamation of the Charter of the Organization of American States (Charter of Bogota) in 1948, adopted at the 9th inter American states conference which also celebrated the declaration of the rights and duties of man.¹²⁸ The latter formed the basis of regulatory

¹²⁴ Van Der Wolf, W. 1991. “Indigenous People’s Rights in International Law”. *4 Global Journal of Human Rights Law*, 87(4): 107.

¹²⁵ Harrington, J. 2002. *The African Charter on Human and Peoples Rights, the System in Practice, 1986-2000*. Cambridge: Cambridge University press.

¹²⁶ Sign, A. 2011. The Inter -American Human Rights system. Rights Working Group Accessed on the 15 August 2011.

¹²⁷ Mazzuoli, V. 2011. “The Inter American Human Rights Protection System: Structure, Functioning and Effectiveness”. *Anuario Mexicano de Derecho Internacional*, XI:336 accessed on 12 September 2011. www.juridicas.unam.mx

¹²⁸ Weston, BH. 1992. “Human Rights”. Weston, BH. & Cluade, RP. (Eds) *Human Rights in the World Community Issues and Actions*. (Second Edition). Philadelphia: University of Pennsylvania Press, p 28.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

protection in the American system before the conclusion of the convention in 1969 and still remains the instrument of regional expression in this area mainly to the non parties of the American convention, ¹²⁹as was pointed out earlier. Under the organization of American States (OAS); there are two bodies primarily responsible for the protection and promotion of human rights: the Inter- American commission on human rights and the Inter American court of human rights.

The Inter-American Court of Human Rights and its sister institution, the Inter-American Commission on Human Rights (IACHR) is charged with protecting human rights in the Western Hemisphere. ¹³⁰ The Commission was established in 1959 and began to operate in 1960. In 1969, the Organization of American States adopted the American Convention on Human Rights (the American Convention), which called for the creation of the Court. The Court began to operate only 1979, after eleven states had ratified bringing the American Convention into force. ¹³¹

Within the Inter-American Human Rights System, the Court and the Commission play distinct yet complementary roles. The Court resolves contentious disputes and issues advisory opinion on specific questions while the Commission has a much broader role. It acts as the first step in the admissibility process for contentious cases, promotes friendly settlements between parties, and investigates and presents reports on human rights conditions in American States, even where no legal claim has been filed. ¹³²

¹²⁹ (Ibid.).

¹³⁰ Shaver, L. 2009. The Inter -American Human Rights System: An Effective Institution for Regional Protection. Washington University global studies law review, 9:639 accessed on 212 September 2011. <http://ssrn.com/abstract>.

¹³¹ Inter-American Court of Human Rights, history at <http://www.corteidh.or.cr/historia.cmf> accessed on the 12 September 2011.

¹³² Juma, D. 2007. "A case of the Poacher Turned Gamekeeper". *Exxex Human Rights Review*, 4(2):8.

5.2.1 Jurisdiction

Both the commission and the court consist of seven judges nominated and elected by state parties to the convention.¹³³ That has acceded to its jurisdiction. Unlike the African System of admission of cases to the court, in America State parties and the American commission are the only entities that may refer cases to it or be parties before the American Human rights court.¹³⁴

In the Matter of *Viviana Gallardo, et. Al Government of Costa Rica, Decision of Nov. 13, 1981, Inter-Am. Ct.H.R.*¹³⁵ Judge Rodolfo E. Piza Escalante, in both separate and dissenting opinions, maintained that the only active party to a contentious proceeding is the victim who possesses the rights allegedly infringed. In his view, the role of the Commission is similar to that of a public prosecutor; it is a party only in a procedural sense and not in a substantive or material sense. The decisions of the court are final and binding on the parties to the dispute.¹³⁶

In addition to the above, the court has also a mandate to give advisory opinions for all OAS members on interpretation of certain article or convention or application of a domestic law or rule that fall within the sphere of competence.¹³⁷

5.2.2 Procedure

Unlike other human rights systems, there is virtually no limit on who may file a petition with the Inter-American Commission.¹³⁸ A vital element lacking from the African court

¹³³ Shelton, D. 1994. "The Jurisprudence of the Inter American Court of Human Rights". *Jurisprudence of the IACHR* AM. U.J.INT'L. & POL'Y, p 338.

¹³⁴ Article 62 of the IACHR.

¹³⁵ Scaat (2008: 3).

¹³⁶ Article 67 of the IACHR.

¹³⁷ Article 64(1) of IACHR.

¹³⁸ Shelton (1994: 343).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

system; any person or group of persons or any non-governmental entity legally recognized in a member state may lodge a petition, regardless of whether or not the petitioner is the victim. After the Commission completes its consideration of a petition, however, only the Commission or a member state may submit a case to the Court.¹³⁹

5.2.3 Exhaustion of Local Remedies

In the Inter-American system, the obligation that domestic remedies be exhausted before a petition may be considered is less severe than in other human rights systems.¹⁴⁰ Both the Convention and the Commission's Statute and Rules¹⁴¹ require that the petitioner exhaust domestic remedies. The Convention adds, however, that the requirement shall not apply in a number of circumstances: (1) where the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated, (2) where the party alleging violation of his rights is denied access to the remedies under domestic law or prevented from exhausting them, and (3) where there is unwarranted delay in rendering a final judgment in the domestic forum.¹⁴²

5.2.4 Function of the American Court and Commission

Functionally, the Court and the Commission play quite distinct roles in promoting human rights in the Americas.¹⁴³ The Court operates as a forum of last resort for complaints of human rights abuses that are not sufficiently addressed by domestic remedies. The Commission assists the Court by identifying and handling these cases, and also develops separate activities of human rights monitoring and promotion in order to prevent future abuses.

¹³⁹ Article 61(1) IACHR.

¹⁴⁰ Scaat(2008: 3).

¹⁴¹ (Ibid.).

¹⁴² Article 46(2) IACHR.

¹⁴³ See Shelton(1994: 343).

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Under the American Convention, the Commission is broadly charged with the responsibility to promote respect for and defense of human rights.¹⁴⁴ The Commission performs this mandate through a range of activities. First, the Commission monitors the situation of human rights in all countries of the hemisphere, publishing reports on subjects and countries of special concern.¹⁴⁵

Second, the Commission receives and processes complaints of specific human rights abuses. If the claim is admissible and has merit,¹⁴⁶ the Commission will seek to negotiate a friendly settlement between the offending State and the injured party,¹⁴⁷ or make a finding of fault and recommendations as to how the State should resolve the matter. If the State does not comply with the recommendations and has accepted the contentious jurisdiction of the Court, the Commission may submit the matter to the Court,¹⁴⁸ which has the power to issue legally binding orders to the State.¹⁴⁹

The Court determines whether it has jurisdiction to hear the case, entertains preliminary objections, and rules on whether a State has committed a violation of human rights as set forth in the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man. If the Court finds that a violation has occurred, it may award injunctive relief and compensatory damages.¹⁵⁰

¹⁴⁴ Article 41 ICAHR.

¹⁴⁵ Inter-Am. C.H.R., *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, doc. 60), @ <http://www.cidh.oas.org/countryrep/Colombia04eng/toc.htm>; Inter-Am. C.H.R., *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 accessed on the 22 of July 2011.

¹⁴⁶ Article 26-36 of the America Convention on the Human Rights Charter.

¹⁴⁷ Article 40 America Convention on the Human Rights Charter.

¹⁴⁸ Article 45 America Convention on the Human Rights Charter.

¹⁴⁹ Article 68 America Convention on the Human Rights Charter.

¹⁵⁰ Article 63(1) America Convention on the Human Rights Charter.

5.3 Impact of the Inter American Human Rights System: the Case of Angel Manfredo Velasquez Rodriguez¹⁵¹

Angel Manfredo Velasquez Rodriguez disappeared on September 12, 1981, in downtown Tegucigalpa, Honduras. His friends and family never saw him again, the Honduran government denied any knowledge or involvement in his disappearance, and the Honduran courts would not hear the family's case. "The petition in the Velasquez Rodriguez case was filed with the Commission in October 1981, alleging that the Honduran government was responsible for Manfredo Velasquez's disappearance.

The government of Honduras failed to provide the Commission with evidence and information about the disappearance. Honduras's lack of cooperation left the Commission with no option but to presume the validity of the facts as alleged by the petitioner, a presumption provided for at that time in Article 42 of the Commission's Rules of Procedure. The Commission's report on the merits indicated that Manfredo Velasquez had been detained and most likely disappeared because of state agents in Honduras, and that his disappearance violated the right to life (Article 4) and the right to personal liberty (Article 7) of the American Convention. The Commission recommended investigation and punishment of those guilty as well as reparations.

The American Convention does not explicitly criminalize disappearances. Nonetheless, the Court ruled that forced disappearances constitute multiple and continuous violations of the rights enshrined in the Convention. The Court concluded that the practice of disappearances violated four articles of the American Convention, specifically Articles 1 (duty to guarantee), 4 (right to life), (right to personal integrity), and 7 (right to personal liberty). "The kidnapping of a person is an arbitrary deprivation of liberty, an

¹⁵¹ Angelo Manfredo Velasquez Rodriguez v Honduras 1988.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty. The Court interpreted Article 5's provisions regarding cruel, inhuman and degrading treatment, concluding that they prohibit incommunicado detention. It also found that prolonged and isolated imprisonment harms the "psychological and moral integrity of the person. Finally, the Court acknowledged that disappearances involving clandestine executions without trials and clandestine burials violated the right to life under Article 4.

Prior to the Court's decision in *Velasquez Rodriguez*, international and regional bodies responded to disappearances in general terms, issuing resolutions and creating working groups to address this practice¹⁵². The Inter-American Commission had previously condemned the practice and urged that it be investigated and stopped.

The OAS General Assembly characterized the crime of disappearances as "an affront to the consciousness of the hemisphere" and a crime against humanity. Still, most human rights instruments created before the decision did not address disappearances as a specific violation. Since the *Velasquez Rodriguez* decision, the crime of disappearances has been codified, both regionally and internationally. The Inter-American Convention on the Forced Disappearance of Persons (which incorporates the definition of disappearances used in *the Velasquez Rodriguez* case and also encompasses the crimes of kidnapping, torture, and murder) was passed in 1994 and entered into force in 1996.

The *Velasquez Rodriguez* decision was the impetus for drafting and passing the Convention. It also contributed to the inclusion of disappearances in the Rome Statute

¹⁵² Grossman, C. 2009. The Inter American System of Human Rights Challenges for the Future. *Indiana Law Journal*, 83 (14) Available at <http://ssrn.com/abstract=1371692>.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

of the International Criminal Court (ICC) ¹⁵³and the International Convention against Disappearances. ¹⁵⁴ The Rome Statute defines forced disappearances as a crime against humanity (a grave violation of human rights and fundamental liberties) that is subject to the jurisdiction of the International Criminal Court. ¹⁵⁵These developments at the regional and international level have made forced disappearances an international crime, further strengthening a normative framework that condemns and punishes this type of inhumane behavior. ¹⁵⁶

Both the European and the inter American Human rights system give the impression that a human rights court is essential, if not indispensable component to an effective regime for protection of human rights. Norms prescribing state conduct are not meaningful unless they are anchored in functioning and effective institution. ¹⁵⁷

Ultimately an important lesson to be learned from the above is that the effectiveness of these human rights bodies depends on the willingness of the states to consent to the jurisdiction of the respective bodies. Europe is been described as one of the most effective system of human in the world, one reason being that it places much importance to individual petition, a vital element missing from the African Human rights court. Protocol 11 to the convention of on Human rights made sure it eliminated the optional nature of the right of individual petition to the court. ¹⁵⁸

¹⁵³ Rome Statute of the International Criminal court Article 7(2), July 17, 1998, 2187.N.T.S.90.

¹⁵⁴ International Convention for the Protection of All Persons from Enforced Disappearance, December 20, 2006, 14 IHRR 582.

¹⁵⁵ Human Rights Association Study Guide.www.hrea.org accessed on the 15 August 2011.

¹⁵⁶ Dickson(1997: 2).

¹⁵⁷ Makau, M. 1999. "The African Human rights Court: A two legged Stool?" *Human Rights Quarterly*, 21 (343):351.

¹⁵⁸ Hansangule, M. 2009. Towards A more Effective system of Human Rights Entebbe Proposal Accessed 23 October 2011.

CHAPTER SIX

Conclusion

Human rights play an important role, and they are not peculiar to one state, common to all and are beneficial for all involved. Regional bodies play an important role in their protection and promotion of the same purpose. The African Human Rights Court is to play such a role to develop the protection of human rights, especially on the continent which has been plagued by serious human rights violations since the colonial era.

Human rights are an old concept and find their roots deep in history and thus many are its sources and reference. It is suggested that the jurisprudential growth of the African court is anchored in this way. Much example can be got from the American as well as European experiences. Evidently once a court has been set up, it is not to disappear but to effectively carry out its mandate.

It is not expected that human rights will magically end due to the African human rights court. As pointed out above, it will take strength of the regional body that must touch on all aspects in order to effectively deter human rights abuses in Africa. The protocol to the court will thus empower Africa to deal with human rights abuses on face value. This was not the case before as at most the International Criminal Court dealt with these matters. My sincere hope is that these abuses and human rights violations are dealt with according to the law.

The worth of any institution designed to tackle human rights abuses must ultimately be evaluated by its ability to make a difference on the ground for victims and potential victims. The reality is that, like the AU itself, the African Court of Justice and Human Rights will be very distant from the lives of African people, and judging by the decision to deny direct access for individuals and NGOs, this may be just what many African governments intend.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

The African human rights court has a big role to play in the promotion and protection of human rights, from the above it can be seen that it will not be easy, evidently also is the fact that the other regional bodies to human rights went through the similar process

Its being suggested that the African Court learn more from the other bodies, however its being encouraged that it experiences its own setback its own mistakes and such develop its own workable solutions for Africa. It yet remains to be seen how the court will deal with all the problems and challenges elaborated in this paper, considering as the courts effectiveness will depend largely on state ratifying the protocol and subsequently endow it with the necessary means to be operational. The African Court is here to stay, it's within its establishment stages, further development and improvement will surely result in an effective court.

LIST OF BIBLIOGRAPY

Books

- Akokpari, J. 2008. "Human Rights Actors and Institution in Africa". Akokpari, J & Zimble, DS. (Eds.). *Africa's Human Rights Architecture*. Cape Town: CTP Book Publishers.
- Bangamwabo, F.2009. "International Criminal Justice and the Protection of Human Rights in Africa". Bosl, A & Diescho, J (Eds.). *Human Rights in Africa Legal Perspective on their Protection and Promotion*. Windhoek: Macmillan Education Namibia.
- Betten, L. & Grief, N. 1998. *EU Law and Human Rights*. London: Longman.
- Buergetal, T .1995. *International Human Rights*. St. Paul, Minn: West Publishing Co.
- Clements, L.1980. *European Human Rights Taking a Case Under the Convention*. London:Sweet & Maxwell.
- Dickson, B. 1997."The Council of Europe and the European Convention". Dickson, B. (Ed.). *Human Rights and the European Convention*. London: Sweet & Maxwell.
- Evans, DM. & Murray, R (Eds.). 2002. *The African Charter on Human and Peoples Rights, the System in Practice, 1986-2000*. Cambridge: Cambridge University press.
- Gawanas, B. (2009). "The African Union: Concept and Implementation Mechanism Relating to Human Rights". Bosl, A. &Diescho,J (Eds.). *Human Rights in Africa, Legal Perspective on their Protection and Promotion*. Windhoek: Macmillan Publishing Namibia.
- Steiner HJ .2003. "International Protection of Human Rights". Evans, MD. (Ed.). *International Law*. Oxford: Oxford University Press.
- Harrington, J. 2002. *The African Charter on Human and Peoples Rights, the System in Practice, 1986-2000*. Cambridge: Cambridge University press.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

- Janis, MW. Kay, RS & Bradley, AW .1995. *European Human Rights Law: Text and Material*. Oxford: Clarendon Press.
- Levin, L .2004. *Human Rights: Questions and Answers*. (Fourth Edition). France: UNESCO Publishing.
- Martin, FF. Schnably, SJ. Wilson, RJ. Simon, JS. &Tushnet, MV. 2006. *International Human Rights & Humanitarian Law, Treaties, Cases, & Analysis*. New York: Cambridge University Press.
- Meron, T.1984. *Human Rights in International Law: legal and Policy Issues*. New York: Oxford University Press.
- Rhona, K. 2003. *International Human Rights*. London: Oxford university press.
- Shivi, IG. 1989. *The Concept of Human Rights in Africa*. Codestria Book series: London.
- Smith, RKM. 2005. *Text Book on International Human Rights*.(Second Edition). New York: Oxford University Press.
- Togni, LT. 1994. *The Struggle for Human Rights An International and South African Perspective*. Cape Town: Juta & Co.
- Weston, BH. 1992. "Human Rights". Weston, BH. & Cluade, RP. (Eds.). *Human Rights in the World Community Issues and Actions*. (Second Edition). Philadelphia: University of Pennsylvania press.

Articles

- Elshiek IAB, 2002. "The Future Relationship Between the African Court and African Commission". *The African Human Rights Journal*, 2(2).Lansdowne: JUTA and Co.
- Grossman, C. 2009. "The Inter American System of Human Rights Challenges for the Future". *Indiana Law Journal*, 83(14). Available at <http://ssrn.com/abstract=1371692> accessed on the 10th August 2011.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

- Hansangule, M. 2009. "Towards a more Effective system of Human Rights Entebbe proposal". Accessed on 23 October 2011.
- Heyns, C. 2001. "The African Regional Human Rights System: In Need of Reform?" *African Human Rights Law Journal*, 1 (2). Lansdowne: JUTA Law.
- Murray, R. 2002. "A comparison Between the African and European Courts of Human Rights". *The African human Rights Journal*, 2(2) Lansdowne: JUTA and Co.
- Pityana, NB. 2004. "Reflection on the African Court on Human and peoples Rights." *The African Human Rights Journal*, 2(2). Lansdowne: JUTA and Co.
- Udombana NJ. 2003. "So Far so Good: local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples Rights". *The America Journal of International Law*, 91 (1).
- Van Der Wolf, W. 1991. "Indigenous People's Rights in International Law". *4 Global Journal of Human Rights Law*, 87(4).
- Yerima, TW. 2011. "Comparative Evaluation of the challenges of the African Regional Human Rights Courts". *Journal of Politics and Law*, 4(2).

Dissertation and Paper

- Alibadawi El Sheikh, A. 1993. "Human Rights and Challenges for Implementation in Africa". Human Rights Education and Advocacy in Namibia in the 1990s, a Tapestry of Perspective. A collection of Papers Submitted at a Workshop on Education, Training and Information Concerning Human Rights in Namibia: Windhoek.
- Gautier, JJ. 2000. The African Court on Human and Peoples Rights. Accessional Paper on the Presentation and Commentary the Protocol to the African Charter on Human and Peoples Rights, Establishing the Court: Geneva.
- Kidamenemariam, F. 2006. "Enforcement of Human Rights under Regional Human Rights Mechanism A Comparative Analysis". *LLM Theses and Essays*. USA: University of Georgia.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Mutua, WM. 2000. "African Human Rights System A critical Evaluation". Human Rights Development Papers (1992-2007) no 200-15.

Reports

Zimmermann, A & Baumler, J .2010."Challenges facing the African Court on Human and Peoples Rights". KAS International Reports, 7.

Quarters, and other sources

Juma, D .2007. "A Case of the Poacher Turned Gamekeeper". Exxex Human Rights Review, 4(2).

Lyons. S. 2006. "The African Court on Human Rights".*ASIL Insights*.Vol 10.Issue 24.

Makau, M. 1999. The African Human rights Court: A two legged Stool? Human Rights Quarterly., 21:343.

Mazzuoli, V.2011. "The inter American Human Rights Protection System: Structure, Functioning and Effectiveness." *Anuario Mexicano de Derecho Internacional*, XI: 336 accessed on 12 September 2011.www.juridicas.unam.mx.

Sceat, S. 2008. Africa New Human Rights Court: Whistling in the Wind. Amnesty International Reports.London: Amnesty International.

Shaver, L. 2009.The Inter -American Human Rights System: An Effective Institution for Regional Protection. Washington University global studies law review, 9. Accessed on 212 September 2011. <http://ssrn.com/abstract>.

Shelton, D. 1994. The Jurisprudence of the Inter American Court of Human Rights. Jurisprudence of the IACHR AM. U.J.INT'L.& POL.

Sign, A. 2011.The Inter -American Human Rights system. Rights Working Group Accessed on the 15 August 2011.

Undombana, NJ. 2002. The African Regional Human Rights Court: Modeling its Rules of Procedure. Research Partnership 5/2002.Denmark: The Danish Centre for Human Rights.

Wachira, GM. 2008. "African Court on Human and People's Rights: Ten Years and Still no Justice". Minority Rights Group International.UK: MRG.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Internet sources

Human Rights Association Study Guide. www.hrea.org accessed on the 15 August 2011.

Inter-Am. C.H.R., *Report on the Demobilization Process in Colombia*, OEA/Ser.L/V/II.120, doc. 60), @ <http://www.cidh.oas.org/countryrep/Colombia04eng/toc.htm>; Inter-Am. C.H.R., *Report on Terrorism and Human Rights*, OEA/Ser.L/V/II.116 accessed on the 22 of July 2011.

Inter-American Court of Human Rights, history at <http://www.corteidh.or.cr/historia.cmf> accessed on the 12 September 2011.

Miller, V.1998. Protocol 11 and the New European Court of Human Rights. Research Paper 98/109. accessed on the 23 of August 2011 at <http://www.parliament.uk>.

Cases

Rercontre Africaine Pour La Defense Des Droits De l'Homme, (RADDHO)/ Zambia 71/92

Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Inter Africaine Des Droits De l'Homme, Les Temoins De Jehovah/DRC25/89-47/90-56/91-100/93

Embga Mekongo Louis/ Cameroon 59/91

Malawi African Association and Ors. v. Mauritania Communications 54/91, 61/91, 98/93, 164/97, 196/97 and 210/98

Viviana Gallardo Government of Costa Rica, Decision of Nov. 13, 1981, Inter-Am. Ct.H.R

Angel Manfredo Velasquez Rodriguez 1988

Michelot Yogogombaye v The Republic of Senegal, 2009.

The Role and Contribution of the African Court on Human and Peoples Rights in Africa

Attorney General, Kaduna State v. Hassan 1988

Statutes

Vienna Declaration and Program of Action 1993

Protocol to the African Charter on Human and Peoples' Rights on the establishment of the African Court on Human and Peoples' Rights 1998

European Convention on Human Rights and Fundamental Freedoms 1950

The African Charter on Human and People's Rights 1981

The American Convention to Human Rights

Universal Declaration of Human Rights 1948

Word count: 14 927