



## East African Journal of Law and Ethics

[eajle.eanso.org](http://eajle.eanso.org)

Volume 8, Issue 1, 2025

Print ISSN: 2707-532X | Online ISSN: 2707-5338

Title DOI: <https://doi.org/10.37284/2707-5338>



EAST AFRICAN  
NATURE &  
SCIENCE  
ORGANIZATION

Original Article

## Overview of the African Human Rights and Justice System

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Article DOI: <https://doi.org/10.37284/eajle.8.1.2828>

### Date Published: ABSTRACT

02 April 2025

#### Keywords:

African Human  
Rights,  
African Charter,  
Human Rights  
Commission,  
Justice System,  
Colonialism,  
Enforcement  
Mechanisms,  
Human Rights  
Violations.

This thesis examines the African Human Rights and Justice System, focusing on the mechanisms established to promote and protect human rights on the continent. It provides a comprehensive overview of the African Charter on Human and Peoples' Rights (ACHPR), which represents the foundational legal framework for human rights in Africa. The research details the roles of the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, exploring their functions, challenges, and the impact of their actions on human rights protections. The research methodology was a qualitative analysis of legal documents, case studies, and reports from human rights organizations, this study identifies significant gaps in enforcement mechanisms and the implementation of human rights laws. Moreover, the thesis highlights the historical context of human rights in Africa, emphasizing the effects of colonialism and the need for a concerted effort to eradicate its remnants for genuine human rights realization. The findings suggest that while substantial frameworks exist, effective operationalization remains hindered by political, social, and economic factors. The study concludes with recommendations for strengthening the African Human Rights and Justice System, including enhancing the capacity of the existing institutions, fostering greater accountability, and encouraging civil society participation. This research contributes to the ongoing discourse on human rights in Africa and aims to provide a foundation for future reforms in the regional justice system.

### APA CITATION

Barigayomwe, R. (2025). Overview of the African Human Rights and Justice System. *East African Journal of Law and Ethics*, 8(1), 94-113. <https://doi.org/10.37284/eajle.8.1.2828>

### CHICAGO CITATION

Barigayomwe, Rogers. 2025. "Overview of the African Human Rights and Justice System." *East African Journal of Law and Ethics* 8 (1), 94-113. <https://doi.org/10.37284/eajle.8.1.2828>.

### HARVARD CITATION

Barigayomwe, R. (2025) "Overview of the African Human Rights and Justice System" *East African Journal of Law and Ethics*, 8(1), pp. 94-113. doi: 10.37284/eajle.8.1.2828.

### IEEE CITATION

R., Barigayomwe "Overview of the African Human Rights and Justice System.", *EAJLE*, vol. 8, no. 1, pp. 94-113, Apr. 2025.

### MLA CITATION

Barigayomwe, Rogers. "Overview of the African Human Rights and Justice System." *East African Journal of Law and Ethics*, Vol. 8, no. 1, Apr. 2025, pp. 94-113, doi:10.37284/eajle.8.1.2828.

## INTRODUCTION

Following the adoption of the United Nations Charter and the Universal Declaration of Human Rights, regional organizations implemented reforms to incorporate human rights values. It is argued that historical and political factors encouraged each region to focus on human rights issues. For example, in the Americas, human rights concerns grew out of regional solidarity developed during the movements for independence<sup>1</sup>. Similarly, Europe's experience during the Second World War informed the region's appreciation of international human rights as part of European reconstruction<sup>2</sup>. In Africa, decolonization and self-determination were the point of departure for human rights consciousness on the continent. Also, the apartheid regime in South Africa that was associated with gross human rights violations and the resistance that followed, contributed to regional efforts towards actualizing human rights in Africa. Overall, the human rights consciousness and debate in Africa is a reflection of the continent's political and legal history, which can

be categorized into three broad periods: pre-colonial, colonial and post-colonial.

Of the above periods, human rights did not receive adequate attention during the pre-colonial and colonial periods in Africa. During the later period and even in the initial period of post-colonialism, the focus of African States was to secure independence from colonial rule. This is evident in the fact that the then regional organization, the Organization of African Unity (OAU), merely referred to human rights under the banner of the Universal Declaration of Human Rights (UDHR) in its founding instrument - the Organization of African Unity Charter (OAU Charter)<sup>3</sup>. The OAU focused mainly on the right to self-determination of peoples in the context of decolonization and apartheid and not on human rights<sup>4</sup>. It was not until 1981 that the focus shifted from self-determination to human rights with the adoption of the African Charter on Human and Peoples' Rights. The African Charter is an international human rights instrument that aims to promote and protect human and people's rights in Africa. The Charter provides for the establishment of bodies and or mechanisms to ensure human rights

<sup>1</sup>Buergenthal, T. and Shelton, D. (1995). *Protecting Human Rights in Americas* (4th eds.). Kelh/Strasbourg: Engel Verlag, at pp. 37.

The concern for human rights started with the Pan American Conferences that took place long before the establishment of the United Nations. This is evident in the fact that the Organization of American States referred to human rights in its Charter and to adopt the Declaration on the Rights and Duties of Man some months prior to the United Nations adoption of the Universal Declaration Human Rights. The Inter-American system began with the transformation of the Pan American Union into the Organization of American States (OAS). The OAS Charter proclaims, 'the fundamental rights of the individual as one of the organization's basic principles'. The 1948 American Declaration on the Rights and Duties of Man gives definition to the Charter's general commitment to human rights. In 1959, the OAS created a seven-member Inter-American Commission of Human Rights with a mandate of furthering respect for human rights among member States

<sup>2</sup>Europe considered democracy, the rule of law, and individual rights as measures that could be successful in avoiding future conflict and stem post-war revolutionary impulses instigated by the Soviet Union. European human rights instruments include the 1950 European Convention on Human Rights and Fundamental Freedoms and its fourteen protocols; the 1961 European Social Charter with its protocols; the European Convention of Torture and its protocols; the European Charter for Regional Minority

Languages; and the 1995 Framework Convention for the Protection of National Minorities reinforcing instruments for human rights protection in Europe. Merrills J. G. (2000). "Promotion and Protection of Human Rights within the European Arrangements" in Hanski R. and Suski M. (eds.) *An Introduction to the International Protection of Human Rights*. Turku/Abo: Institute for Human Rights, Abo Akademi University.

<sup>3</sup>Paragraph 9 of the Preamble of the OAU Charter states: "Persuaded that the Charter of the United Nations and the Universal Declaration of Human Rights, to the principles of which we reaffirm our adherence, provide a solid foundation for peaceful and positive cooperation among" States, while Article II(e) reads: "To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights". Apparently, The OAU Charter, adopted by African States on 25 May 1963, did not contain provisions for the implementation and protection of human rights through an African human rights instrument or mechanism, instead its human rights values relied solely on the provisions of the United Nations Universal Declaration of Human Rights.

<sup>4</sup>Article 20 of the OUA Charter emphasized that "all peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen".

actualization in the continent. Consequently, the African Justice System was developed as part of the mechanisms to realize the aims and goals of the Charter, which is primarily to protect and promote human and peoples' rights on the continent, thus the aim of the thesis is to review the African human rights and justice system.

## THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

The African Charter on Human and Peoples' Rights (ACHPR) is an international instrument that provides human rights and freedoms to persons on the continent of Africa<sup>5</sup>. It contains 68 articles that emphasize the fundamental civil, political, economic, social and cultural rights of the people of Africa. The African Charter became the first regional mechanism to incorporate the different classes of human rights in a single document<sup>6</sup>. The African Charter, also known as the Banjul Charter<sup>7</sup>, entered into force on 21 October 1986, upon ratification by a simple majority of member states of the Organization of African Unity (OAU), though currently, there are 54 states which are party to the Charter<sup>8</sup>. This will include an analysis of the African Charter on Human and Peoples' Rights, **the African Commission on Human and Peoples' Rights**

**(ACHPR), the Origin of the African Human Rights Court, the African Court on Human and Peoples' Rights (ACHPR), the Court of Justice of the African Union, African Court of Justice and Human Rights (ACJHR), African Court of Justice and Human and Peoples' Rights (ACJHPR)**

The rights provided for in the African Charter include the right to enjoyment of rights without discrimination of any kind (article 2), the right to life (article 4), the right to dignity of the human person (article 5), the equality of all peoples (article 19), the right to existence and self-determination (article 20), the right to free disposal of natural wealth and resources (article 21) and the right to a satisfactory and clean environment (article 24) amongst other rights. Significantly, the preamble of the ACHPR highlighted the need to "eradicate all forms of colonialism from Africa", making it unique among other regional human rights protection instruments. The premise for the statement above is the belief that human rights can only be attained in Africa if colonialism is abolished on the continent. Consequently, the Charter made provision for the establishment of the African Commission on Human and Peoples' Rights (ACHPR)<sup>9</sup>, a quasi-judicial body with the

<sup>5</sup>See The African Charter on Human and Peoples' Rights (ACHPR). Available at: [https://www.achpr.org/public/Document/file/English/banjul\\_charter.pdf](https://www.achpr.org/public/Document/file/English/banjul_charter.pdf) (Accessed 12/04/2020)

<sup>6</sup>Ssenyonj, M. (2012). *The African Regional Human Rights System: 30 Years after the African Charter on Human and Peoples' Rights*. The Hague: MartinusNijhoff Publishers. Also, see Ekhtator, E. O. (2013). *The Impact of the African Charter on Human and Peoples' Rights on Domestic Law: A Case study of Nigeria*, Paper Presented at the Seventh Annual International Graduate Legal Research Conference (IGLRC), 8-9 April 2013 at King's College London, UK

<sup>7</sup>The African Charter on Human and Peoples' Rights is also known as the Banjul Charter because the final draft was produced in Banjul, the capital of the Gambia. The Charter entered into force on October 21, 1986, upon ratification by a simple majority of member states of the Organization of African Unity (OAU). See, Welch, C. (1992). "The African Commission on Human and Peoples' Rights: A Five-Year Report and Assessment". *Human Rights Quarterly* 14(1), pp. 43-61; *The African Charter on Human and Peoples' Rights* (1981). OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58. (1982). Available at: [file:///C:/Users/admin/Downloads/banjul\\_charter.pdf](file:///C:/Users/admin/Downloads/banjul_charter.pdf) (Accessed 18 April 2020).

<sup>8</sup>See list of parties to the African Charter and year of ratification: Algeria 1987; Angola 1990; Benin 1986; Botswana 1986; Burkina Faso 1984; Burundi 1989;

Cameroon 1989; Cape Verde 1987; Central African Republic 1986; Chad 1986; Comoros 1986; Congo 1982; Cote D'Ivoire 1992; Democratic Republic Of The Congo 1987; Djibouti 1991; Egypt 1984; Equatorial Guinea 1986; Eritrea 1999; Eswatini 1995; Ethiopia 1998; Gabon 1986; Gambia 1983; Ghana 1989; Guinea 1982; Guinea-Bissau 1985; Kenya 1992; Lesotho 1992; Liberia 1992; Libya 1986; Madagascar 1992; Malawi 1989; Mali 1981; Mauritania 1986; Mauritius 1992; Mozambique 1989; Namibia 1992; Niger 1986; Nigeria 1983; Rwanda 1983; Sahrawi Arab Democratic Republic 1986; Sao Tome And Principe 1986; Senegal 1982; Seychelles 1992; Sierra Leone 1983; Somalia 1985; South Africa 1996; South Sudan 2013; Sudan 1986; Tanzania 1984; Togo 1982; Tunisia 1983; Uganda 1986; Zambia 1984; Zimbabwe 1986.

<sup>9</sup>Ogbu, N. (2005). *The African Charter on Human and Peoples Right as Compatible with Despotism: The Nigerian Experience*. University of Benin Law Journal 8(1), at pp. 113. See also, Mutua, M. (2000). *The African Human Rights System: A Critical Evaluation*. Geneva: UNDP. Available at: <http://hdr.undp.org/sites/default/files/mutua.pdf> (Accessed 18 April 2020). The Protocol establishing the African Human Rights Court suggests that the court will ensure the protection and promotion of human rights within the African continent more effective.

responsibility of promoting and protecting human rights and collective (peoples') rights within the African continent, interpreting the contents of the African Charter on Human and Peoples' Rights, as well as receiving complaints of violations of the Charter's provisions<sup>10</sup>. Basically, the ACHPR investigates human rights violations within Africa and formulates programmes of action towards promoting human rights. In addition, the commission is required to set up effective communication between the citizens and states to get first-hand information on violations of human rights.

Also, the Charter introduced a state reporting mechanism, whereby complaints and enquiries regarding the ACHPR can be channelled. The State reporting mechanism aimed at reducing States' impunity over human rights violations, which is usually covered under the sheath of national sovereignty. The proposal for the establishment of an African Court on Human and Peoples' Rights is deemed an initial effort within the regional level in the African continent to address rights violations through a judicial mechanism or system. Through the provisions of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights adopted in June 1998, the African Court of Human and Peoples' Rights was established and began operation on 25 January 2004. The Court delivered its first judgment in 2009 in the *Michelot Yogogombaye v. The Republic of Senegal* case. Its decision on the matter was highly applauded by people across the world. *Michelot Yogogombaye*, a Chadian national on 11 August 2008, brought a suit against the Republic of Senegal before the African Court of Human and Peoples' Rights, asking the court to suspend proceedings instituted by the Republic

and the State of Senegal with the objective to charge, try and sentence Hissein Habré, former Head of State of Chad, who was then seeking asylum in Dakar, Senegal. In its judgment, the court holds that, in terms of Article 34 (6) of the Protocol, it has no jurisdiction to hear the case instituted by *Yogogombaye* against Senegal and orders that each party bear its own costs<sup>11</sup>. The significance of this case is rooted in the concept of complementarity, whereby regional or international courts cannot arbitrarily supersede the primary role of the state judiciary by prosecuting cases that fall directly within national jurisdictions.

Although the African Charter is considered a step in the right direction towards the realization of human rights in Africa, scholars such as Ssenyonjo (2018); Gittleman (1988) and Kiwanuka (1988) argue that it could not ensure human rights protection on the continent<sup>12</sup>. The issue is that at the time the Charter was adopted, Africa was at the height of military regimes, which caused the Charter to be regarded as a mere 'declaration' by African leaders and not a binding instrument. In the 1980s, Africa was characterized by brutal military regimes that were anti-human rights. These regimes include, for example: Mobutu Sese Seko of Zaire, Omar Bongo of Gabon and General Ibrahim Babangida of Nigeria, who was succeeded by General Sani Abacha. It was a dark time for the continent as rights violations abound in this period, the continent was marred by gross and unprecedented human rights violations such as unlawful detentions and unfair criminal persecutions in military courts. Besides, critics contend that 'the provisions of the African Charter are brief, vague, and as a result, they sometimes allow national

<sup>10</sup> Welch, C. (1991). Organisation of African Unity and the Promotion of Human Rights. *The Journal of Modern African Studies* 29(4), pp. 535-555.

<sup>11</sup> See Murray, R. (1997). Decisions by the African Commission on Individual Communications under the African Charter on Human and Peoples' Rights. *The International and Comparative Law Quarterly* 46(2), pp. 412-434. See also, Viljoen, F. (2012). *International Human Rights in Africa* (2<sup>nd</sup> eds.), Oxford: Oxford University Press; Kufuor, K. (2010). *The African Human Rights System: Origin and Evolution*, Palgrave Macmillan; Ayeni, V. (2011). Domestic Impact of the African Charter on Human

and People's Rights and the Protocol on the Rights of Women in Nigeria, Postgraduate Thesis, University of Pretoria, South Africa.

<sup>12</sup> Ssenyonjo, M. (2018). Responding to Human Rights Violations in Africa, *International Human Rights Law Review* 7(1), pp. 1-41. Gittleman, R. (1988). The African Charter on Human and Peoples' Rights: A Legal Analysis, *Virginia Journal of International Law* 22(4), pp. 667-714. Kiwanuka, R. N. (1988). The Meaning of "People" in the African Charter on Human and Peoples' Rights, *The American Journal of International Law* 82(1), pp. 80-101.

laws to derogate from these rights due to a lack of clear derogation clauses for national laws. For example, article 4 of the African Charter (the right to life) states that ‘every human being shall be entitled to respect for his life and integrity of his person. No one may be arbitrarily deprived of his life’<sup>13</sup>. Scholars such as Ogbu (2005) contend that the clause ‘no one may be arbitrarily deprived of this right’ is not emphatic as this right can be curtailed by state laws in Africa due to a lack of uniform standards in such instances<sup>14</sup>. The Charter failed to explicitly define the circumstances wherein the right to life may be derogated as well as the extent to which such derogation can be permitted.

Furthermore, the procedure of the African Court of Human and Peoples Rights does not grant express permission for individuals to have direct access to the court. Instead, state parties are required to make declarations recognizing the jurisdiction of the court as a prerequisite to granting direct access to individuals from such States direct access to the court. By implication, an individual cannot approach the court, except where his/her state has granted the court permission to entertain individual cases brought before it by her citizens. Such a provision apparently provides a leeway for leaders with human rights violation records to avoid being brought to the court by simply not giving consent to individual litigation. Notwithstanding, the aforementioned criticisms of the African Charter, the instrument laid the foundation for the African human rights and judiciary architecture, which will subsequently be discussed.

### THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS (ACHPR)

The African Commission on Human and Peoples’ Rights (ACHPR) was created in November 1987,

based on Article 30 of the African Charter, which provided for the creation of the African Commission with the mandate to promote and protect human and peoples’ rights in Africa. Chapter II of the Charter further clarified and classified the specific mandates of the ACHPR into four categories: i) The promotion of human and peoples’ rights; ii) the protection of human and peoples’ rights; iii) the interpretation of the provisions of the Charter; and iv) the performance of any other tasks entrusted to it by the Assembly of Heads of State and Government<sup>15</sup>.

The “promotional role” of the African Commission was set out in Article 45 of the Charter to include the following: i) To collect documents, undertake studies and research on African problems in the field of human and peoples’ rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples’ rights, and give views or make recommendations to governments; ii) to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African Governments may base their legislations; and iii) to cooperate with other African and international institutions concerned with the promotion and protection of human and peoples’ rights<sup>16</sup>.

Dankwa (2002) noted that the ACHPR uses state reporting mechanisms in its promotional role, whereby the commission assesses states’ human rights performance against reports of human rights violations by institutions and individual citizens and residents of the state. Based on the reports/complaints, the commission reaches a position as to the human rights standards and situations of different states<sup>17</sup>. Article 62 of the Charter states that each State party to the Charter

<sup>13</sup>See article 4 of the African Charter on Human and Peoples’ Rights. Available at: [https://www.achpr.org/public/Document/file/English/banjul\\_charter.pdf](https://www.achpr.org/public/Document/file/English/banjul_charter.pdf) (Accessed 12 February 2020).

<sup>14</sup> See Ogbu (2005), supra 266,

<sup>15</sup>See Chapter II, Article 45 “Mandate of the Commission” of the African Charter on Human and Peoples’ Rights.

<sup>16</sup> *ibid*

<sup>17</sup>Dankwa, V. (2002). “The promotional role of the African Commission on Human and People’s Rights”, in Malcolm Evans and Rachel Murray (eds) *The African Charter on Human and People’s Rights: The System in Practice, 1986–2000*. Cambridge: Cambridge University Press, pp. 335–352. See also, Ankumah, E. A. (1996). *The African Commission on Human and Peoples’ Rights: Practice and Procedures*. Martinus Nijhoff Publishers.

is required to submit a report on legislative or other measures taken to ensure the rights and freedoms recognized and guaranteed by the Charter<sup>18</sup> every two years. Through these reports, the Commission will be able to evaluate the human rights situation in these states and provide recommendations to the General Assembly. However, Evans and Murray (2008) argue that the reporting mechanism is ineffective since the commission has no power to prosecute or punish rights violators, but rather make recommendations to the General Assembly. Given that the General Assembly comprises Heads of State, including those that could be facing indictment by the Commission's report, makes the Commission ineffective in checking human rights abuses on the continent<sup>19</sup>.

The "protective role" of the African Commission is to ensure the protection of rights laid down in the Charter. Based on Article 47 of the Charter, a state may institute a complaint against another state where it believes that a certain state has violated the provisions of the Charter<sup>20</sup>. However, under Article 50 the Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted unless it is obvious to the Commission that the procedure of achieving these remedies would be manipulated to the advantage of the state<sup>21</sup>. Given that the Charter does not expressly admit individual and NGO complaints, this category can only allude to complaints to the Commission on the grounds of the provisions of

Article 55 of the Charter. Article 55 empowers the Secretary of the Commission to transmit to other members a list of communications 'other than those of state parties' for the purpose of deciding which communications would be considered, while Article 56 provides the criteria such communications must meet in order to be eligible for consideration<sup>22</sup>. The conditions include that a complaint must clearly indicate the author(s) have to be compatible with the provisions and guidelines of the Charter; the complainant(s) must have exhausted all domestic remedies and the complaint must not be expressed in disparaging language.<sup>23</sup>

However, the ACHPR lacks the power and a formal mechanism to enforce compliance with the Charter. The Charter does not expressly grant the Commission any judicial authority to make binding decisions or impose sanctions on states. Rather, Article 52 provides that the Commission, in the case of state communications, shall prepare a report to the states concerned and transmit the same to the Assembly of Heads of State and Government. While transmitting the report to the Assembly, the Commission may make 'such recommendations as it deems useful'<sup>24</sup>. Consequently, when there are cases of rights violation, the commission only drafts proposals to the Assembly of Heads of State and Government, recommending an action. Given the above, critics allude that the African Commission was established not to function effectively, but rather to act as an administrative body issuing reports

<sup>18</sup>Article 62 reads that 'Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken, with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter'.

<sup>19</sup>Evans, M. and Murray, R. (2008). *The African Charter on Human and People's Rights: The System in Practice, 1986–2000*. Cambridge: Cambridge University Press; Udombana, N. J. (2006). The African Commission on Human and Peoples' Rights and the development of fair trial norms in Africa. *African Human Rights Law Journal* 6, pp. 299-332.

<sup>20</sup>Article 47, empowers state party to the Charter to report cases of rights violations by others states formally to the state concerned through a written communication. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three of issuing such communication, the state is required to respond to the complaining state with an explanation or a statement clarifying the matter in dispute.

<sup>21</sup>Article 50 provides that The Commission will deal with a matter brought before it only if it is ascertained that all local remedies, if they exist, have been exhausted, unless where the political situation in the state may undermine the process and prospects of achieving these remedies.

<sup>22</sup>See Article 55 and 56. Also see, Viljoen, F. (2008). "Communications under the African Charter: Procedure and Admissibility", in Malcolm Evans and Rachel Murray (eds.), *The African Charter: on human and peoples' rights: the system in practice 1986-2006*. Cambridge: Cambridge University Press, pp. 76-137.

<sup>23</sup> See Article 55&56 of the African Charter. See also, Acheampong, K. A. (2001). Reforming the Substance of the African Charter on Human and Peoples' Rights: Civil and Political Rights and Socio-Economic Rights. *African Human Rights Law Journal* 1(2), pp. 185-204

<sup>24</sup> See Article Article 52 and 53 of the African Charter

and recommendations to the Assembly, which apparently compromises its protective mandate. For the Commission to efficiently carry out its protection mandate, it requires to have some quasi-judicial or administrative authority to enforce human rights. However, this is not the case, going by the provisions of the African Charter. As noted by Udombana (2006), the weakness of the African Commission due to a lack of enforcement mechanisms partly necessitated the establishment of the African Court on Human and Peoples' Rights by the African Union, as an organ that can hold violators of human rights accountable<sup>25</sup>.

<sup>25</sup>Udombana, N. J. (2006). The African Commission on Human and Peoples' Rights and the development of fair trial norms in Africa. *African Human Rights Law Journal* 6, pp. 299-332.

<sup>26</sup>Article 1 of the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa defined the term "refugee" as follows: For the purposes of this Convention, the term "refugee" shall mean every person who, owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it; ii). The term "refugee" shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality; iii). In the case of a person who has several nationalities, the term "a country of which he is a national" shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of which he is a national if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national; iv). This Convention shall cease to apply to any refugee if: (a) he has voluntarily re-availed himself of the protection of the country of his nationality, or, (b) having lost his nationality, he has voluntarily reacquired it, or, (c) he has acquired a new nationality, and enjoys the protection of the country of his new nationality, or, (d) he has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution, or, (e) he can no longer, because the circumstances in connection with which he was recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality, or, (f) he has committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee, or, (g) he has seriously infringed the purposes and objectives of this Convention; v). The provisions of this Convention shall not apply to any

## ORIGIN OF THE AFRICAN HUMAN RIGHTS COURT

As previously stated, the African Human Rights System consists of the African Charter and the African Commission as the two main mechanisms of promoting and protecting human and people's rights within the continent. Broadly speaking, the system includes the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969 that came into force in 1974<sup>26</sup>; the Cultural Charter for Africa of 1976 that came into force in 1990<sup>27</sup>; the African Charter on the Rights and Welfare of the Child of 1990 that came into force in 1999<sup>28</sup>; and

person with respect to whom the country of asylum has serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the Organization of African Unity; (d) he has been guilty of acts contrary to the purposes and principles of the United Nations; and vi). For the purposes of this Convention, the Contracting State of Asylum shall determine whether an applicant is a refugee. The convention agreement is available at: [https://au.int/sites/default/files/treaties/36400-treaty-0005\\_-\\_oau\\_convention\\_governing\\_the\\_specific\\_aspects\\_of\\_refugee\\_problems\\_in\\_africa\\_e.pdf](https://au.int/sites/default/files/treaties/36400-treaty-0005_-_oau_convention_governing_the_specific_aspects_of_refugee_problems_in_africa_e.pdf) (Accessed 04 May 2020).

<sup>27</sup>The Cultural Charter for Africa was adopted on 5 July 1976 in Mauritius and it came into force on 19 September 1990. The charters aim and objectives were: i) to liberate the African peoples from socio-cultural conditions which impede their development in order to recreate and maintain the sense and will for progress, the sense and will for development; ii) the rehabilitation, restoration, preservation and promotion of the African cultural heritage; iii) the assertion of the dignity of the African and of the popular foundations of his culture; iv) the combating and elimination of all forms of alienation and cultural suppression and oppression everywhere in Africa, especially in countries still under colonial and racist domination, including apartheid; v) the encouragement of cultural co-operation among the states with a view to the strengthening of African unity; vi). the encouragement of international cultural co-operation for a better understanding among peoples within which Africa will make its original and appropriate contribution to human culture; vii) promotion in each country of popular knowledge of science and technology, a necessary condition of the control of nature. See the Cultural Charter for Africa of 1976. Available at: [http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIE\\_LD/Dakar/pdf/CulturalCharterAfrica.PDF](http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIE_LD/Dakar/pdf/CulturalCharterAfrica.PDF) (Accessed 12 May 2020).

<sup>28</sup>The African Charter on the Rights and Welfare of the Child (ACRWC) is an international legal instrument adopted by the Organisation of African Unity in 1990 and entered into force in 1999. The ACRWC was Africa's response to the shortfalls

the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa that came into force in 2005<sup>29</sup>.

Despite these human rights instruments being in force, human rights protection remained a challenge within the African continent. There is a lack of enforcement remedies or mechanisms for tracking States' compliance with the above-mentioned instruments, thus making the African Commission ineffective in promoting and protecting human rights. Scholars such as Okoloise (2018); Koomson (2016) however disagree with the notion that the African Commission is inefficient due to a lack of enforcement mechanisms and non-compliance of states to the Commission's recommendations and rulings. They make the case that States are bound to respect and implement the provision of a treaty they are party to, in line with the principle of *pacta*

*sunt servanda*<sup>30</sup> under the Vienna Convention on the Law of Treaties<sup>31</sup>, as well as the provisions of Article 1 of the African Charter<sup>32</sup>. The position of these scholars is that states are bound by law to adhere to the provisions of the treaties they are a party to, however, this is not always the case. In some cases, states have shown defiance of the provisions to treaty provisions and agreements, a situation that puts the argument of the application of the principle of *pacta sunt servanda* into question. The principle of *pacta sunt servanda* is built on the assumption that states will be rational actors and adhere to the provision of treaties and agreements they consented to, whereas the reality is not always the case.

In 2004, the OAU adopted the Protocol to the African Charter on Human and Peoples' Rights, which provided for the establishment of an African Court on Human and Peoples' Rights<sup>33</sup>.

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of the Convention on the Rights of the Child (CRC). African leaders perceived the CRC to be Eurocentric, as it failed to capture the uniqueness and reality of the African child. Consequently, the ACRWC was drafted to cover the gaps in the CRC. The Charter sets out rights and defines universal principles and norms for the status of children in Africa and it is considered the first and perhaps only regional human rights treaties that cover the whole spectrum of civil, political, economic, social and cultural rights. See, The African Charter on the Rights and Welfare of the Child (ACRWC). Available at: [https://www.un.org/en/africa/osaa/pdf/au/afr\\_charter\\_rights\\_welfare\\_child\\_africa\\_1990.pdf](https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf) (Accessed 04 May 2020). See also, Heyns, C. (2004). The African Regional Human Rights System: The African Charter. *Penn State Law Review* 108(3), pp. 679-702, at pp.683; Naldi, G. J. (2008). The African Union and the Regional Human Rights system, in Malcolm Evans and Rachel Murray (eds.) *The African Charter: on human and peoples' rights: the system in practice 1986-2006*. Cambridge: Cambridge University Press, pp. 1-35; Viljoen, F. and Baimu, E. (2004). Courts for Africa: Considering the co-existence of the African Court on Human and Peoples' Rights and The African Court of Justice Netherlands Quarterly of Human Rights 22(2), pp. 241- 255, at pp.245.

<sup>29</sup>The African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted in 2003, but came into force in 2005. It is a human rights instrument that provides a comprehensive set of human rights for African women, covering a broad spectrum of civil and political, economic, social and cultural as well as environmental rights. Some scholars refer to it as the African Bill of Rights of Women's Human Rights, given that its main focus is to redefine the prejudice about women's role in society and present them as full, effective and equal partners with men in the development of their societies. See Banda, F. (2008). *Protocol to the African Charter on the Rights of Women in Africa* Cambridge: Cambridge University Press at pp. 441;

Mubangizi, J. C. (2006) 'Some reflections on recent and current trends in the promotion and protection of human rights in Africa: The pains and the gains'. *African Human Rights Law Journal* 6(1), pp. 146-165, at pp. 148.

<sup>30</sup>*Pacta sunt servanda* is arguably the oldest principle of international law referred to in almost every international agreement governing treaties. It embodies an elementary and universally agreed principle fundamental to all legal systems that agreements which are legally binding must be performed. The principle suggest that clauses of a contract are law between the parties to the contract, and therefore any neglect to uphold respective obligations amount to a violation of the terms of the agreement or contract. See the 1969 Vienna Convention on the Law of Treaties, adopted on 23 May 1969 and entered into force on 27 January 1980.

<sup>31</sup>Okoloise, C. (2018). Circumventing obstacles to the implementation of recommendations by the African Commission on Human and Peoples' Rights *African Human Rights Law Journal* 1(1):27-57; Koomson, K. N. (2016). *The African Commission on Human and People's Rights. Core functions, achievements and failures*. Munich: Grin Verlag.

<sup>32</sup>Wachira, G. M and Ayinla, A. (2006). Twenty years of elusive enforcement of the recommendations of the African Commission on Human and Peoples' Rights: A possible remedy. *African Human Rights Law Journal* 6(2), pp. 465-492, at pp.473.

<sup>33</sup>The Protocol to the African Charter on Human and Peoples' Rights establishing the African Court on Human and Peoples' Rights was adopted in Ouagadougou, Burkina Faso on 9 June 1998 and entered into force on 25 January 2004. Establishing a Court became important to enable the enforcement of binding decisions as opposed to nonbinding recommendations offered by the African Commission. It is believed that a court can hold State Parties accountable for non-compliance and can utilize sanctions as an instrument of enforcing compliance. See Mutua, M. (1999). 'The African Human Rights Court: A Two Legged Stool?' *Human Rights Quarterly* 21, at pp.342

The court was to serve as a mechanism to enforce the African Charter. The proposal for an African Court on Human and Peoples' Rights was met with mixed feelings in the academic community. Scholars such as Ouguergouz (2003); Isa and de Feyter (2006 and Evans and Murray (2002), perceived the move to be progressive. However, others, such as Ouguergouz (2003), argue that 'the mere addition of a court is unlikely by itself to address sufficiently the normative and structural weaknesses that have plagued the African human rights system since its inception<sup>34</sup>. The above argument presents a valid point; however, it does not exonerate the fact that a Human Rights Court is pertinent for the protection and promotion of human rights in Africa and it is needed to bind violators legally to comply with the decisions of the court. The study position is that the non-binding decisions and recommendations of the African Commission are proof that it is not possible for states to willingly conform to internationally acceptable human rights norms, thus a mechanism in the form of a regional court similar to the European Court of Human Rights and the Inter-American Court of Human Rights is needed to compel States to adhere to decisions.

Overall, the establishment of the African Commission as an arm of the African Union has been a positive step towards the protection and promotion of human rights in Africa. Evidently, the recommendations made by the Commission

over the years have evolved in a way that it impacted the emergence of a dynamic and objective conception of the African law of human rights. As highlighted by Okafor (2007), the broad interpretation of the African Charter by the Commission apparently simplifies and stabilizes the operations of the African Human Rights Court<sup>35</sup>.

As of July 2020, the Commission has received 268 applications from Individuals, 14 applications from NGOs and 3 applications from the Banjul Commission, making it a total of 285 applications received by the commission. Out of these applications, 100 have been finalized, 4 were transferred to the Banjul Commission and 181 are still pending. Among the landmark cases of human rights handled by the Commission is the case of "Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt", which was decided by the Commission during its 9th Extra-ordinary Session held on 1 March 2011. The complaint was brought before the commission on behalf of Mohamed Gayez Sabbah, Mohamed Abdalla Abu-Gareer and Ossama Mohamed Al-Nakhlawy (the victims), who were detained and sentenced to death by the Supreme State Security Emergency courts for allegedly masterminding and executing the 2004 and 2005 bombings in Sharm El-Sheikh and the Taba bombings<sup>36</sup>. After due consideration of the merits of the matter, the Commission's decision

<sup>34</sup>See, Ouguergouz, F. (2003). *The African Charter of Human and People's Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*. Brill - Nijhoff; Evans M. and Murray R. (2002). *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*. Cambridge: Cambridge University Press; Isa, F. G. and de Feyter, K. (2006). *International Protection of Human Rights: Achievements and Challenges*. Bilbao Publication of the University of Duesto.

<sup>35</sup>Okafor, O. C. (2007). *The African Rights Systems: Activist Forces and International Institutions*. Cambridge: Cambridge University Press

<sup>36</sup> The complainants argued that while in detention, the victims were subjected to Dues to various forms of torture and ill-treatment by the state security agents to elicit confessions from the. The victims were alleged to be held incommunicado by state agents for a long period of time, without access to a lawyer and were denied basic medical care. Also, it was alleged that the trial by the Supreme State Security Emergency Court was marred by procedural and substantive anomalies, the court's decision was premised

basically on the 'confessions' obtained through torture and prolonged ill-treatment. The complainants claimed that the judgment itself and the process through which the judgement was reached violated of articles 4 (right to life), 9 (right to receive information and free expression), 5 (prohibition of torture), 7(1) (a), (c) (right to a fair trial), and 26 (duty to guarantee independence of courts) of the African Charter. In its award, the Commission concluded that the Supreme State Security Emergency court's independence was compromised due to the executive influence over its proceedings and also agreed with the complainants that the judgment and its procedure constitute a violation article 7 of the African Charter. The Commission stated that the defendant (Arab Republic of Egypt) violated Article 7(1)(a) of the African Charter by denying the victims the right to appeal the decision of the Supreme State Security Emergency Court. Also, that the defendant violated article 7(1)(c) of the Charter by denying the victims access to a legal counsel or not doing so on time. Furthermore, that the respondent failed to uphold the principles of the independence and impartiality of the judicial in line with the provisions of article 7(1)(d) of

was that the Egyptian Supreme State Security Emergency Court's ruling on the matter was not independent, rather the court's decision was influenced by the State. The African Commission held that the Supreme State Security Emergency Court's independence was compromised due to the executive influence over its proceedings and also agreed with the complainants that the judgment was marred by irregularities and thus constituted a violation of Article 7 of the African Charter. The Commission stated that the Arab Republic of Egypt violated Article 7(1)(a) of the African Charter by denying the victims the right to appeal the decision of the Supreme State Security Emergency Court. Also, it violated article 7(1)(c) of the Charter by denying the victims access to legal counsel or not doing so on time. Furthermore, the respondent failed to uphold the principles of the independence and impartiality of the judicial in line with the provisions of article 7(1)(d) of the Charter. Furthermore, it condemned the handing down of the death sentence to the victims after an unfair trial as an apparent violation of Article 4 of the African Charter.

Another landmark case handled by the Commission is the case of Noah Kazingachire, John Chitsenga, Elias Chemvura and Batanai Hadzisi (represented by Zimbabwe Human Rights NGO Forum) v. Zimbabwe, decided by the Commission during its 51st Ordinary Session in April 2012. The complainants approached the Commission with a complaint that on 10 January 2001, the Zimbabwe Police shot and killed Beavan Kazingachire. Mr. Noah Kazingachire, the father of the deceased claimed that the police had pulled him over, but failed to identify themselves, out of suspicion that they may be carjackers he drove off. A pursuit ensued and in the process, the police officers fired serious shots at his car killing his son in the process. The officers responded that they had identified themselves, but Mr. Kazingachire refused to comply with their orders and instead fled,

warranting them to shoot at his car to force him to stop.

A second matter raised in the complaint was the case of Munyaradzi Never Chitsenga, who was shot by the Zimbabwean police on March 14, 2001, for resisting arrest and fleeing from police. The deceased had attempted to evade the police arrest by running and the police officers opened fire, killing him.

The third matter joined in the complaint was the case of Lameck Chemvura, who was beaten to death by military officers on 25 November 2001. The complainants alleged that Mr. Lameck Chemvura was travelling in a train with other passengers who were officers of the Zimbabwean military. At a point in the journey, the officer asked the other passengers for identification. Upon discovering that Lameck, then a student at the University of Zimbabwe, was a member of the opposition political party, the officer beat him to death and threw his body off the moving train.

The fourth matter was about Batanai Hadzisi, a student of the University of Zimbabwe, who participated in a student protest on April 8 and 9, 2001. When officers were called in to re-establish order, they pursued Batanai into the university dormitory and beat him to death.

The African Commission's decision on the above-mentioned matters was that Zimbabwe had violated articles 1 and 4 (right to life) of the African Charter. The Commission argued that while the right to life is not absolute, losing it can only be permitted in self-defence or in the defence of others against the imminent threat of death or serious injury. Use of deadly force must be a last resort and in all four deaths in question, the victims posed no serious risk to anyone and the officers did not act in self-defence in the cases. Therefore, the use of deadly force was not justified and the killings violated the victims' right to life. In the case of Lameck Chemvura, the Commission held that his death was not directly attributable to the state, because the army officers

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the Charter. Also, that handing down a death sentence on the victims after an unfair trial violates article 4 of the Charter.

were not acting on official orders but, rather, were acting in their personal volitions.

However, an act that violates human rights laws, even if it is not directly imputable to a state, can lead to international responsibility of the state if the state fails to exercise due diligence in preventing or responding to the violation. In this instance, Zimbabwe failed to exercise due diligence by not providing an adequate wrongful death remedy, thus the military officers' violations are imputed to the state. The other three homicides were directly attributable to the state. Given that Zimbabwean law has no provisions to recover bereavement damages for wrongful death; a course of action only exists for loss of support or actual damages covering medical, hospital, and funeral costs, the commission thus recommended that Zimbabwe establish a wrongful death suit to provide bereavement damages. The Commission's decision on this matter influenced the State of Zimbabwe to call for a review of the cases. The implication of the above-mentioned decision by the commission is that the state's impunity cannot be condoned, as regional human rights institutions and instruments will serve as a remedy and deterrent to misguided national jurisdictions. In this case, the decision of the commission serves as a remedy to the anomalies of national jurisdictions and a mechanism of redress to the citizens, at a regional level.

Other cases include "Spilg and Mack & DITSHWANELO v. Botswana", and also, the case of "Egyptian Initiative for Personal Rights and INTERIGHTS v. Egypt" decided by the Commission during its 10<sup>th</sup> Extraordinary Session held in December 2011. Another is the case of "Gabriel Shumba v. Zimbabwe" decided by the Commission during its 51<sup>st</sup> Ordinary Session held in April 2012<sup>37</sup>. Apparently, the decision of the Commission on these landmark cases is evidence of the Commission's commitment towards

actualizing the Charter's provisions on human rights protection and promotion within the continent. It shows the Commission's commitments and engagements in protecting and promoting human rights values in Africa. In most cases, the government made a decision to review the cases. However, many have taken so long without a decision from the review committee either to up-turn or uphold the initial decision that was challenged by the Commission. The delay of the government of Zimbabwe to adhere to the award of the Commission is also another issue of concern as to the effectiveness of the Commission in enforcing its decisions. The present writer is of the opinion that the Commission's award should include a timeline for the implementation of its decisions by the affected state. This will definitely go a long way to make the Commission more reliable and appealing to ordinary citizens who may wish to seek redress from it.

### **THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS (ACHPR)**

The Protocol for the establishment of the African Court on Human and People's Rights was adopted by the then Organisation of African Unity in Ouagadougou, Burkina Faso, in June 1998, and came into force on 25 January 2004<sup>38</sup>. The establishment of the court was premised on the provisions of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights. The ACHPR became the first judicial institution created by the African Charter to protect and promote human rights in Africa. The Court compliments the African Commission through its mandate to enforce binding decisions on state parties. The Court has jurisdiction over matters brought before it concerning the interpretation and application of the African Charter on Human and Peoples' Rights, the Protocol to the Charter and any other relevant human rights treaties ratified by the States concerned. Principally, the Court has

<sup>37</sup>For a detailed list, see Decisions of the African Commission on Human and Peoples' Rights, 2010-2014. Available at: <https://www.justiceinitiative.org/uploads/9a38bc11-1fdd-44b4-96e9-46b9f6263b99/case-digests-achpr-20151014.pdf> (Accessed 12 May 2020).

<sup>38</sup>See the History of the African Court on Human and People's Rights. Available at: <https://en.african-court.org/index.php/12-homepage1/1208-welcome-to-the-african-court1> (Accessed 13/05/2020); Kofi, O. K. (2010). *The African human rights system: origin and evolution*. New York: Palgrave Macmillan.

two types of jurisdiction: contentious and advisory.

By contentious jurisdiction, the ACHPR produces binding rulings between states that agree, or have previously agreed, to submit to the ruling of the court. The key principle is that the Court only has jurisdiction on the basis of consent and not compulsory jurisdiction. Advisory jurisdiction stems from the point that opinions on legal questions are provided by the ACHPR at the request of the organs of the African Union and its specialized agencies<sup>39</sup>. The African Charter has been ratified by 53 African states, while the Protocol establishing the ACHPR has been ratified by only 30 States<sup>40</sup>. That just above half of the AU member states have ratified the Protocol establishing the ACHPR presents questions as to whether African states are ready to offer their citizens and entities the opportunity to seek redress for human rights violations through litigations at the regional sphere.

The Court initially started its operations in Addis Ababa, Ethiopia in November 2006, but was later moved to Arusha, Tanzania in August 2007. Article 25 of the Protocol empowers the Assembly of the OAU to determine the seat of the Court but with input from the Court where a change of the seat of the Court is necessary. Also, the Court could convene in the territory of any

Member state of the OAU when the majority of the Court considers it desirable, subject to the consent of the State concerned. However, it is important that the Court is afforded the necessary facilities for it to function effectively wherever it convenes. Being a new Court, the initial focus of the court between 2006 and 2008 was principally on operational and administrative issues, including the development of the structure of the Court's Registry, preparation of its budget and drafting of its Interim Rules of Procedure. In 2008, during the Court's Ninth Ordinary Session, the Court adopted the Interim Rules of the Court, while the harmonization process was completed in April 2010, and in June 2010, the Court adopted its Final Rules of Court. The Court is permitted to entertain cases filed by the African Commission on Human and Peoples' Rights, State parties to the Protocol or African Intergovernmental Organizations. Non-governmental organisations with observer status before the African Commission and individuals can also institute cases before the Court, as long as the state against which they are complaining has deposited the Article 34(6) declaration, recognizing the jurisdiction of the Court to accept cases from individuals and NGOs<sup>41</sup>.

The Court has a single court structure without division into chambers or grand chambers and consists of eleven judges who are appointed from

<sup>39</sup>See Protocol to the African Charter establishing the African Court on Human and Peoples Rights. Available at: [https://au.int/sites/default/files/treaties/36393-treaty-0019\\_-\\_protocol\\_to\\_the\\_african\\_charter\\_on\\_human\\_and\\_peoplesrights\\_on\\_the\\_establishment\\_of\\_an\\_african\\_court\\_on\\_human\\_and\\_peoples\\_rights\\_e.pdf](https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_e.pdf) (Accessed 16 May 2020); Also see Löffelmann, M. (2010). Protection of Human Rights in Theory and Reality: The Case of the African Court on Human and Peoples' Rights. *Konfliktregion Afrika* 85(1/2), pp. 161-175; Yusuf, A. A. and Ougergouz, F. (2012). *The African Union: legal and institutional framework: a manual on the Pan-African organization*. Leiden: Martinus Nijhoff Publishers; Fennell, S. and Andoni, D. (2014). *The African Court on Human Rights and Peoples' Rights: Basic documents*. Eindhoven: Wolf Legal Publishers. See supra note 145, for explanation of contentious jurisdiction and advisory jurisdiction.

<sup>40</sup>As of April 2020, the following 30 States have ratified the Protocol of the African Charter establishing the African Court on Human and Peoples Rights: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte d'Ivoire, Comoros, Congo, Gabon, The Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania,

Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda.

<sup>41</sup> As of April 2020, the following 9 States have accepted the African Court on Human and Peoples Rights to receive complaints brought before it by individuals and NGOs: Benin, Burkina Faso, Côte d'Ivoire, the Gambia, Ghana, Malawi, Mali, Tanzania, and Tunisia.

Rwanda previously accepted the Court's jurisdiction over individual and group complaints, but in February 2016, it applied to withdraw that acceptance. The application was granted and it formally withdrew on March 1, 2017. Apart from Rwanda, three states including Tanzania, Côte d'Ivoire and Benin have announced their intention to withdraw from the Court's jurisdiction over individual and NGO complaints. In November 2019, Tanzania notified the Court it was withdrawing individual and NGO access. If the application goes through, it is anticipated that the withdrawal will take effect in November or December 2020. Similarly, in April 2020, Côte d'Ivoire and Benin applied to withdraw permission for individual and NGO complaints to the African Court on Human & Peoples Rights. Normally, the notice of withdrawal takes a period of one year to be formalized.

the AU member states<sup>42</sup>. The judges are appointed based on their capacity to conduct the business of the position for which they are appointed. Thus, the judges must possess, among others, a high moral character and impeccable academic and judicial competence in the area of human rights. Judges are appointed to serve for a period of six years, with a possibility of renewal for another term<sup>43</sup>. The election of the court president and vice-president is carried out among the judges and all the court's Judges apart from the President are appointed on a part-time basis<sup>44</sup>. During the election of Judges, the Assembly is required to make sure that all the regions of the continent of Africa are represented. In addition, their election is usually gender sensitive. To ensure judicial independence, judges are not allowed to participate in a matter concerning their country of origin or a matter in which they have served as an agent, counsel or advocate for any of the parties or as a member of a commission that has presided over the matter in the past. Also, the judges are entitled to the immunity given to members of the diplomatic corps in accordance with international law.

Article 19 of the Protocol to the African Charter provided for the removal or suspension of a judge through a unanimous decision of the judges. However, removal of a judge is only permissible when it is evident that the judge facing removal is no longer fulfilling his/her responsibilities to the court. A unanimous decision to remove or suspend a member shall be final unless such decision is reversed by the Assembly. This provision of the Charter is to ensure that the removal of a judge is premised on incapacity to fulfil duties and not influenced by the political interest of the members of the General Assembly. Unlike the African Commission, where the Secretary-General of the OAU was responsible

for appointing the Secretary and staff of the Commission, the AfCHPR appoints its own Registrar and other staff of the registry from among Member states.

The *jurisdiction ratione materiae*<sup>45</sup>, which emphasizes the authority of the AfCHPR to decide a particular case can be deduced from Article 3 of the Protocol, which states that:

the main object of the Court's adjudicatory function is to rule on whether a State has violated any of the rights contained in the African Charter, the Protocol of the Court, or any other relevant human rights instruments ratified by the State concerned, for which the victim seeks redress.<sup>46</sup>

In fulfilling the above, the Court has the power to entertain cases challenging violations of the rights, including civil and political rights and economic, social and cultural rights guaranteed under the African Charter, the Protocol and relevant human rights instruments. Then, Article 8 of the Protocol specifies that: "The Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, bearing in mind the complementarity between the Commission and the Court."<sup>47</sup>

The judgment of the Court decided by a majority of the judges is final and not subject to appeal. The Court has the powers to interpret its decisions and review its decisions in the light of new evidence under the conditions that would be set out in its Rules of Procedure. In the situation where there is a dissenting decision in a judgment, either in whole or in part, the judges are entitled to deliver a separate or dissenting opinion. The Court is required to make a decision on a matter and render its judgment within ninety days of having completed its deliberations. Regarding the execution of the judgment of the Court, States that

<sup>42</sup>See Article 11: "Composition" of the Protocol to the African Charter. Available at: <http://hrlibrary.umn.edu/instre/protocol-africancourt.pdf> (Accessed 12 May 2020)

<sup>43</sup>See Article 15(1): "Term of Office" of the Protocol to the African Charter.

<sup>44</sup> Ibid Article 15(4).

<sup>45</sup>*Jurisdiction Ratione Materiae* refers to the court's authority to decide a particular case. It is the jurisdiction over the nature

of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things. The rationale behind the principle of *jurisdiction ratione materiae* is that the court with the greatest interest in deciding a dispute should be the court that to have the opportunity to make a ruling on it.

<sup>46</sup>Article 3 of the Protocol to the AfCHPR

<sup>47</sup>Article 8 of the Protocol to the AfCHPR

ratify the Protocol undertake to comply with the judgment of the Court in any case to which they are parties, and within the time limit stipulated by the Court, as well as guarantee its execution. The Court's judgment must be brought to the notice of the parties involved and Member States of the OAU as well as the African Commission.

The Council of Ministers of the OAU would also be notified and shall have the responsibility of monitoring the execution of the judgment on behalf of the Assembly of Heads of State and Government. The court has the power to award compensation. Article 27(2) provides that "in cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary"<sup>48</sup>. Granting the court, the ability to award provisional measures demonstrates the preventive function of international protection of human rights. This provision is significant in the sense that it could serve as a veritable tool to discourage human rights violations in Africa.

The decision to establish the African Court of Human and Peoples' Rights received support from scholars and human rights organizations. For example, Amnesty International issued the following statement in support of the court:

Amnesty International supports the establishment of an African Court of Human and Peoples' Rights (African Court or Court) as a means of strengthening the regional mechanism for human rights in Africa. Given the continent's history of serious human rights violations, a court of human rights is a potentially significant development in the protection of human rights at the continental level. The adoption of the Protocol by the OAU thus demonstrates a resolve by African governments to realize the spirit of the African

Charter and ensure the protection of human rights in Africa. The Court, once established, will consider cases referred to it by the African Commission and state parties to the Protocol and, where a state party accepts such a jurisdiction, by individuals and non-governmental organizations (NGOs). An African Court is capable of enhancing the effectiveness of the Charter by supplementing and reinforcing the African Commission. Similarly, through it victims of human rights violations or their representatives would have recourse to judicial process on demand. The Court possesses the authority to issue a binding and enforceable decision in such circumstances<sup>49</sup>.

According to Ouguerouz (2003), the establishment of the African Court demonstrates a resolve by African governments to realize the provisions of the African Charter and optimize human rights enjoyment within the continent. Besides, the Court serves as a supplementary reinforcement for the African Commission, as well as a platform where victims of rights violations can seek redress.<sup>50</sup>

The researcher believes that the establishment of an African Court provided the platform for the articulation of international legal principles at the regional level. At the same time, the court should have served as a model, that domestic courts in Africa would look up to for direction and precedents in their application of human rights instruments at national jurisdiction. Ultimately, the Court should have been an important instrument in sustaining constitutional democracies and facilitating the fulfilment of human and people's rights in Africa. However, the court faced a big challenge on issues of funding. The Protocol to the Charter provided for the funding of the Court. Article 32 of the Charter reads as follows: "Expenses of the Court,

<sup>48</sup>See 27(2) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights. Available at: [https://www.achpr.org/public/Document/file/English/achpr\\_instr\\_proto\\_court\\_eng.pdf](https://www.achpr.org/public/Document/file/English/achpr_instr_proto_court_eng.pdf) (Accessed 14 May 2020).

<sup>49</sup>See Amnesty International, *Credibility in Question: proposals for improving the efficiency and effectiveness of*

the African Commission on Human and Peoples' Rights, AI Index: IOR 63/02/1998.

<sup>50</sup>Ouguerouz, F. (2003). *The African Charter on Human and Peoples' Rights, A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*. The Hague: MartinusNijhoff Publishers. Also, see Naldi, G. J. (2006). *The African Court of Justice*. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 66(1), pp.187-213.

emoluments and allowances for judges and the budget of its registry shall be determined and borne by the OAU, in accordance with the criteria laid down by the OAU, in consultation with the Court”<sup>51</sup>. It is argued that the above-mentioned provision of the Protocol is vague, as it failed to specify whether funding of the court will be covered by states on a percentage basis or on equal remuneration. Instead, the section left the funding mechanism to the prerogative of state members and states did not show enthusiasm to comply reasonably towards the court’s funding.

Also, the court’s operation has been affected by the lack of zeal by states to comply with the full length of the court’s decision, particularly on cases brought by individuals. According to Bekker (2017), a lack of adequate funding impacted the operations of the court in terms of covering administrative costs and the payment of judges’ allowances, coupled with the lack of zeal to comply with the court’s decision by States. This has affected the court’s performance and its primary goal of protecting and promoting human rights within the African continent<sup>52</sup>.

## THE COURT OF JUSTICE OF THE AFRICAN UNION

The need to promote the socio-economic development of Africa and to keep up with the challenges of globalization led African leaders to consider having a new organization that will be able to address these issues. In the same time period, the African Union (AU) was established in July 2002 in Durban, South Africa to replace the OAU. The establishment of the AU was hinged on the Constitutive Act of the African Union, which set out the aims and objectives of the union<sup>53</sup>. The Constitutive Act provides for the establishment of a Court of Justice<sup>54</sup>, while the Protocol of the Court of Justice of the African Union states that the court will be the principal judicial organ of the AU<sup>55</sup>. The Constitutive Act made mention of the African Charter in its objectives under Article 3(h), but it did not recognize the already established African Human Rights Court.

Furthermore, the Court of Justice Protocol is supposed to be the source of law and power to the Court of Justice, but the protocol did not mention the African Charter. Also, there was no mention of the relationship between the Court of Justice

<sup>51</sup> See Article 32: “Budget” of the Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights.

<sup>52</sup>Bekker, G. (2007). The African Court on Human and Peoples’ Rights: Safeguarding the Interests of African States. *Journal of African Law* 51(1), pp. 151-172.

<sup>53</sup> The aim and objectives of the African Union are as follows: Achieve greater unity and solidarity between African countries and their the people; Defend the sovereignty, territorial integrity and independence of its Member States; Accelerate the political and socio-economic integration of the continent; Promote and defend African common positions on issues of interest to the continent and its peoples; Encourage international cooperation; Promote peace, security, and stability on the continent; Promote democratic principles and institutions, popular participation and good governance; Promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments; Establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations; Promote sustainable development at the economic, social and cultural levels as well as the integration of African economies; Promote cooperation in all fields of human activity to raise the living standards of African peoples; Coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union; Advance the development of the continent by promoting research in all

fields, in particular in science and technology; Work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent; Ensure the effective participation of women in decision-making, particularly in the political, economic and socio-cultural areas; Develop and promote common policies on trade, defence and foreign relations to ensure the defence of the Continent and the strengthening of its negotiating positions; Invite and encourage the full participation of the African Diaspora as an important part of our Continent, in the building of the African Union.

The AU has organs that handle judicial and legal matters as well as human rights issues include: African Commission on Human and Peoples’ Rights (ACHPR), African Court on Human and Peoples’ Rights (AfCHPR), AU Commission on International Law (AUCIL), AU Advisory Board on Corruption (AUABC) and the African Committee of Experts on the Rights and Welfare of the Child.

<sup>54</sup>The Constitutive Act of the African Union adopted in Lome, Togo on 11 July 2000, entered into force on 26 May 2001 with all 54 African States as signatories and 54 instruments of ratification being deposited. Available at: <http://www.achpr.org> (Accessed 03 April, 2020).

<sup>55</sup>See the Protocol of the Court of Justice of the African Union. Available at: [https://au.int/sites/default/files/treaties/36395-treaty-0026-\\_protocol\\_of\\_the\\_court\\_of\\_justice\\_of\\_the\\_african\\_union\\_e.pdf](https://au.int/sites/default/files/treaties/36395-treaty-0026-_protocol_of_the_court_of_justice_of_the_african_union_e.pdf) (Accessed 20 April 2020)

and the African Human Rights Court in the Court of Justice Protocol<sup>56</sup>. These omissions have raised questions as to how the court will ensure human rights on the continent, given that the continent's human rights values are premised on the provisions of the African Charter. Nonetheless, besides drawing power to adjudicate human rights issues from the Charter, the Assembly of the AU can confer power on the Court of Justice to have jurisdiction over human rights violations. The Court of Justice received 43 State signatories; however, the court did not come into operation and was later merged with the African Human Rights Court to form the African Court of Justice and Human Rights.

### AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS (ACJHR)

The African Court of Justice and Human Rights is an African regional court founded in 2004 by a merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union. The court is the primary judicial agency of the African Union. By the provisions of Article 16 of the Statute of the African Court of Justice and Human Rights, the court is composed of two Sections: A General Affairs Section and a Human Rights Section<sup>57</sup>. According to Article 17 of the Statute, the former is competent to hear all cases except for those involving issues pertaining to human and people's rights, which is expressly reserved for the latter<sup>58</sup>. In accordance with Article 34(1), cases brought before the Human Rights Section must show clear evidence of human rights violations in line with the treaty provisions. In the Protocol's Preamble, the Human Rights Section shall focus on actualizing the objectives of the Banjul Charter and shall

supplement and strengthen the goals and mandate of the African Commission as well as of the African Committee of Experts on the Rights and Welfare of the Child. According to Article 27(2) of the Statute, the ACJHR shall be guided by the complementarity principle and thus, it will maintain a relationship with the African Commission and the Committee of Experts<sup>59</sup>.

The court is situated in Arusha, Tanzania and its jurisdiction covers cases of war crimes, trafficking people and/or drugs, genocide, crimes against humanity, terrorism, and piracy. Given that the ACJHR has no appellate jurisdiction, its decisions are binding and final. The court consists of sixteen judges, appointed from different AU Member States. The formation of the ACJHR through the merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union was premised mainly on two reasons: A lack of resources to fund multiple courts and the quest to avoid a proliferation of courts with the same jurisdiction. On the former, it was considered that the African Court on Human and Peoples' Rights and the Court of Justice of the African Union were partly incapacitated due to a lack of funding and therefore merging the two courts will reduce operational costs and will invariably strengthen the court. While proposing the merger of the two courts, former Nigerian President Olusegun Obasanjo cited concerns over lack of funds among the major reasons why the court should be merged<sup>60</sup>.

The argument of a lack of funds as a reason for the merger is not appreciated by some scholars. For example, Du Plessis (2007), argues that the excuse of insufficient funds is not convincing, given that

<sup>56</sup> *ibid*

<sup>57</sup> See Article 16 of the Protocol on the Statute of the African Court of Justice and Human Rights. Available at: [https://web.archive.org/web/20150605075603/http://www.au.int/en/sites/default/files/PROTOCOL\\_STATUTE\\_AFRICAN\\_COURT\\_JUSTICE\\_AND\\_HUMAN\\_RIGHTS.pdf](https://web.archive.org/web/20150605075603/http://www.au.int/en/sites/default/files/PROTOCOL_STATUTE_AFRICAN_COURT_JUSTICE_AND_HUMAN_RIGHTS.pdf) (Accessed 12/12/2019).

<sup>58</sup> *Ibid* Article 17. Pending cases from the previous African Court of Human and People's Rights are referred to the Human Rights section of the court, while the justice cases from the Court of Justice of the African Union will be referred to the General Affairs section.

<sup>59</sup> *Ibid* Article 27(2). Also see Naldia, G. J. and Magliverasb, K. D. (2012). The African Court of Justice and Human Rights: A Judicial Curate's Egg. *International Organizations Law Review* 9, pp.383-449.

<sup>60</sup> Ogwezzzy, M. C. (2014). Challenges and Prospects of the African Court of Justice and Human Rights. *Jimma University Journal of Law* 6, pp. 1-30. See also, Amnesty International (2016). *Legal and Institutional Implications of the Merged and Expanded African Court*. London: Amnesty International Ltd

all African Union institutions are plagued with inadequate funding and therefore should not be used as the rationale for merging the two courts. He further contends that the consequence of the merger would result in a regression of the jurisprudence already developed by the African Commission<sup>61</sup>. Adejumobi and Olukoshi (2008), argue that AU supranational institutions are financially incapacitated and even the merged court will not be an exception. The argument is that a lack of funding has become normal in AU institutions and therefore should not be a cause for the merger of the courts<sup>62</sup>. The AU and its institutions to a large extent are funded by member States through contributions. However, there seems to be a lack of commitment on the part of member States to comply with their obligations to the AU with regard to paying their contributions<sup>63</sup>. The AU, recognizing the lack of interest of states in supporting the union financially, proposed to impose sanctions on any Member State that defaults in the payment of its contributions to the budget of the AU. Then, in May 2003, a Voluntary Contribution Fund for African Human Rights institutions was approved and incorporated into the Kigali Declaration. The Voluntary Contribution Fund was budgeted to realize about USD 2.25 million for the first operational year of the African Human Rights Court in 2007<sup>64</sup>. Consequently, members were encouraged to make contributions to the fund, but states did not show significant enthusiasm towards the project and the target for the first year was not realized.

According to Viljoen and Baimu (2004), the merger of the African Court on Human and Peoples' Rights and the Court of Justice of the African Union will lead to the proliferation of human rights institutions with an attendant negative impact on the fundamental goal of promoting and protecting human rights in Africa. Besides, the overlapping mandates of the courts could result in conflicting jurisprudence or lead to forum shopping.<sup>65</sup> However, this position has been challenged by some scholars. For example, Yerima (2011) observed that it is improper to monopolize the mandate to interpret the African Charter and other international human rights instruments to the African Court of Justice and Human Rights<sup>66</sup>. On a similar note, Boukongou (2006), argues that the merger would result in a regression of the jurisprudence already developed by the African Commission<sup>67</sup>.

This researcher, however, supports the position of Geoffreys (2013), that the scarcity of financial resources to fund two judicial institutions with concurrent human rights jurisdictions could be detrimental to the efficient operation of both courts, consequently justifying the merger with a clear *proviso* that it will enhance the protection and promotion of human rights in Africa to the fullest extent<sup>68</sup>. It will be inappropriate for the AU to expend its resources on funding separate human rights courts, particularly when the continent has other judicial needs that extend beyond the realm of human rights, such as peace, security and the rule of law. Since the African Human Rights Court and the Court of Justice are both

<sup>61</sup>Du Plessis, M. (2007). A court not found? African Human Rights Law Journal 7(2), pp. 522-544

<sup>62</sup>Adejumobi, S. and Olukoshi, A. O. (2008). *The African Union and New Strategies for Development in Africa*. New York: Cambria Press.

<sup>63</sup>Viljoen, F. and Baimu, E. (2004). Courts for Africa: Considering the co-existence of the African Court on Human and Peoples' Rights and The African Court of Justice. *Netherlands Quarterly of Human Rights* 22(2) at p.253.

The AU recognizing the lack of interest of states in supporting the AOU financially, imposed proposed to impose sanctions on any Member State that defaults in the payment of its contributions to the budget of the AU. Then, in May 2003, a Voluntary Contribution Fund for African Human Rights institutions was approved and incorporated into the Kigali Declaration. The Voluntary Contribution Fund was budgeted to realize about USD 2.25 million for the first

operational year of the African Human Rights Court in 2007. Consequently, members were encouraged to make contributions to the fund, but yet states did not show significant enthusiasm towards the project.

<sup>64</sup>See the 96 Resolution on the Establishment of a Voluntary Contribution Fund for the African Human Rights System - ACHPR/Res.96(XXXX)06. Available at: <https://www.achpr.org/sessions/resolutions?id=112> (Accessed 06 June 2020)

<sup>65</sup>See supra note 317; Viljoen, F. and Baimu, E. (2004).

<sup>66</sup>Yerima, T. F. (2011). Comparative Evaluation of the Challenges of African Regional Human Rights Courts. *Journal of Politics and Law* 4(2), pp.124.

<sup>67</sup>Boukongou, J. D. (2006). The appeal of the African system for protecting human rights. *African Human Rights Law Journal* 6, pp. 268.

<sup>68</sup>Supra note 336, pp 20. Geoffreys, T. C. (2013)

empowered to determine human rights issues, the problem of a duplicated or overlapping mandate could be resolved by merging the two courts. Conclusively, the merger of the African Human Rights Court with the Court of Justice can be summarized to be informed by both economic and political jurisdiction purposes.

### **AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES' RIGHTS (ACJHPR)**

The African Court of Justice and Human and Peoples' Rights came into existence in May 2012, through amendments to the Protocol on the Statute of the African Court of Justice and Human Rights or the Draft Amending Merged Court Protocol and Statute. The draft amendment provided for the change of the African Court of Justice and Human Rights to the African Court of Justice and Human and Peoples' Rights (ACJHPR)<sup>69</sup>.

A major amendment to the court was on its jurisdiction, wherein the court was described as a court of first instance and of appeal<sup>70</sup>. The Draft Amending Merged Court Protocol and Statute provided for the court to be structured in three Sections: the General Section, the International Criminal Law Section, and the Human and Peoples' Rights Section, thus expanding the court's jurisdiction to encompass international crimes, specifically: crimes of genocide, crimes against humanity, war crimes, crimes of unconstitutional change of government, piracy, terrorism, mercenary practices, corruption, money laundering, trafficking in persons, trafficking in drugs, trafficking in hazardous waste, illicit exploitation of natural resources, and aggression<sup>71</sup>.

The addition of a third section to the court did not affect the number of presiding judges, as the judges remained eleven in number, though the number of judges appointed to the Human Rights

Section was reduced from eight to five. Access to the court with regard to individual and nongovernmental organizations is restricted to only African citizens and organizations with observer status with the AU or its organs or institutions. However, the direct individual access to the merged Court was hinged on the ratification of State Parties<sup>72</sup>. This implies that an individual complaint can only be entertained by the court if the State concerned has given the court permission to entertain individual cases from its citizens. Such a *caveat* will obviously have a negative impact on the right of individuals to seek redress for rights violations. While the Protocol entered into force in January 2004, the Court only became fully operational in early 2009 and delivered its first judgment on 15 December 2009. The Court's lifespan will obviously be limited given the fact that it will eventually become the Human Rights Section of the proposed African Court of Justice and Human Rights when its Protocol enters into force. Nevertheless, the court would have played a role in the development of an African legal architecture for the promotion and protection of human rights.

In a recent ruling (014/2024/2025 in the Case of Suleiman Vs African Union and African Union Commission. The Court ruled that it takes jurisdiction over the two entities, which are not considered as state parties but as international organizations.

### **CONCLUSIONS**

The African Human Rights and Justice System is premised on the quest to protect and promote human rights within the continent. As a result, the justice system has transcended four different continental courts, which demonstrates the continent's efforts to find the right mechanism for justice and peace. At present, the African Human Rights Court is the only continental court in operation, despite widespread recognition that the

<sup>69</sup>Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, Revised 15 May 2012 Art. 8. Available at: [https://au.int/sites/default/files/treaties/36398-treaty-0045\\_-\\_protocol\\_on\\_amendments\\_to\\_the\\_protocol\\_on\\_the](https://au.int/sites/default/files/treaties/36398-treaty-0045_-_protocol_on_amendments_to_the_protocol_on_the)

[\\_statute\\_of\\_the\\_african\\_court\\_of\\_justice\\_and\\_human\\_rights\\_e.pdf](#) (Accessed 12/05/2020).

<sup>70</sup>See supra note 45, at Art. 3.

<sup>71</sup>See supra note 45, at Art. 28A.

<sup>72</sup>See supra note 45, at Art. 16(f).

court is inadequately funded and understaffed. The Court of Justice is in limbo, while the other two courts, the African Court of Justice and Human Rights (ACJHR) and the African Court of Justice and Human and Peoples' Rights (ACJHPR) are yet to start operation. The African Human Rights Court is estimated to have spent more than USD12.5 million since its inception, and operating on an estimated annual budget of USD7 million - an amount that is inadequate to smoothly run the court, yet the AU is unable to provide the funds.

It is believed that the AU, through the establishment of the ACJHPR is trying to reduce operational overheads, while ensuring that the merged court is effective, though some observers hold that funding is not a good enough justification for the merger. In as much as the argument of those opposing the merger may have some merit, it is apparent that financing two separate institutions will no doubt inform the need for additional resources. Accordingly, it would make economic sense to rationalize the number of institutions that fall within the ambit of the AU and thereby avoid duplication of costs and perhaps jurisprudence.

Furthermore, the proposed inclusion of the international criminal law section to the merged court has drawn criticism from some human rights observers. The main issue of concern is that the inclusion of the international criminal law section creates an incompatibility of mandates between the general section and the human rights section on the one hand, and the international criminal law section on the other hand. Also, it is argued that the inclusion of the international criminal law section in the merged court may undermine the fundamental goal of protecting and promoting human rights on the continent, as more emphasis will be placed on international criminal law at the expense of human rights. It is believed that the focus will shift to other crimes such as human trafficking and piracy, among others, instead of human rights. Relegation of focus on human rights may pave the way for perpetrators to have a field day.

Obviously, the addition of an International Criminal Law section will definitely increase the Budget of the merged court, when compared to the budget of the African Human Rights Court. However, if merging the two courts would reduce the financial burden associated with having separate courts and improve the efficiency of the court without compromising human rights protection and promotion, then the merger may not be a bad idea in itself. The present researcher holds that if the general section and human rights section can coexist without one section usurping the other, then there is no reason to assume that incorporating an International Criminal Law section into the structure of the merged court will create collusion, save for the fact that the proposed tri-sectional court structure is unprecedented. Overall, States have been reluctant to ratify the Draft Amending Merged Court Protocol and Statute for reasons that will be expanded in subsequent chapters.

## Recommendations

### *Recommendations to strengthen the African Human Rights and Justice System:*

- **Enhance Institutional Capacity:** Increase funding and resources for the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights to improve their operational efficiency, staffing, and training. This will enable them to better address human rights violations and ensure timely investigations and rulings.
- **Strengthen Enforcement Mechanisms:** Develop clearer enforcement protocols and mechanisms to ensure compliance with the decisions made by the African Court and the Commission. This could include establishing sanctions for non-compliant states and creating a monitoring system to track implementation.
- **Foster Collaboration with Civil Society:** Encourage collaboration between the government, regional bodies, and civil society organizations. This partnership can promote

greater awareness of human rights issues, facilitate reporting mechanisms for violations, and empower citizens to advocate for their rights.

- **Promote Public Awareness and Education:** Implement comprehensive education and outreach programs to raise awareness of human rights protections among citizens. Educating communities about their rights and the mechanisms available to them can empower individuals to seek justice and hold their governments accountable.
- **Enhance Inter-State Cooperation:** Encourage African states to ratify and implement additional regional and international human rights instruments. Strengthening inter-state cooperation through regional treaties can enhance the overall human rights framework and provide a more robust legal basis for protection.
- **Address the Legacy of Colonialism:** Develop initiatives aimed at addressing the socio-economic impacts of colonialism on human rights practices within African countries. This could include historical education programs, reparations discussions, and policies aimed at promoting social justice and equality for marginalized groups.

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