

Comparative Evaluation of the Challenges of African Regional Human Rights Courts

Dr. Timothy Fwa Yerima

Senior Lecturer and Acting Dean of Law, Kogi State University, Anyigba-Nigeria

E-mail: tfyerimah1@yahoo.com

Received: March 14, 2011

Accepted: April 14, 2011

doi:10.5539/jpl.v4n2p120

Abstract

Recent developments in Africa have witnessed the establishment of African Court of Human Rights and African Court of Justice; and the eventual merger of the two Courts as the African Court of Justice and Human Rights. The Courts were established to compliment the protective mandate of African Commission on Human Rights. The establishment of African Human Rights Courts has catapulted scholars into considering whether the option is better for African human rights system or whether it was taken impetuously. The question is imperative in view of the problems that besiege the African Commission. This article considers the foreseeable hurdles that the African Court of Human Rights and the merged Court are likely to face. It points out that the African human rights system was built on a shaky foundation and suggests ways for revamping the system.

Keywords: African Charter, African Commission, African Court, AU, Economic Rights, Human Rights, Political Rights, OAU

1. Introduction

The establishment of the African Human Rights Court had long been overdue. This was not because the European and Inter-American human rights systems had, over many decades ago, established a Human Rights Court in their respective continents; but for the reason that Africa has been known for its egregious violation of human rights (Anyangwe C:1998).

However, that African Human Rights Courts are established at the *24th hour* does not depict that the idea of establishing a Human Rights Court in Africa is novel. In fact, the idea was sold since 1961, but was flatly turned down. It was felt that Africa was not matured enough to establish such a Court (Law of Lagos: 1961). Even if this reason was justified in 1961, it could not have been justified in 1981, when the African Charter on Human and Peoples' Rights (OAU Charter: 1986) was adopted under the auspices of the Organization of African Unity. It was hoped that Africa would follow the example of its European and Inter-American counterparts that established a Court and a Commission, but to no avail. The Charter established only African Commission on Human and Peoples' Rights, with a tripartite mandate. Since 1987, when the Commission was constituted, it has been severely criticized as a *toothless bulldog* that only *barks but cannot bite* because the decisions of the Commission are not binding on State Parties (Udombana N. J.: 2000). Secondly, African States are still *tied to the apron string* of the much –vaunted principles of state sovereignty and *reserve domain*. Financial predicaments also frustrate many activities of the Commission, among others. (Wachira G. M.: 2006).

Since the African Charter was adopted, the African human rights system has been relegated to a ramshackle structure that was built on a shaky foundation. One measure adopted to overcome some of the problems was the adoption of the Protocol establishing the African Human Rights Court by the African Heads of State and Government in 1998. In 2000, they also adopted the Constitutive Act of the AU to replace the OAU Charter (AU Constitutive Act: Art. 33). The Act created the African Court of Justice as the judicial organ of the AU. However, concern over the proliferation of enforcement bodies in Africa brought to the fore the question whether the establishment of the Courts was “a needful duality or a needless duplication” (Udombana N. J.: 2003). The question was answered in 2005, when the suggestion made by the former Head of State of Nigeria, President Olusegun Obasanjo to merge the two Courts as one Court was accepted with a *warm arm*. This culminated to the adoption of the Protocol and Statute of the African Court of Justice and Human Rights (Merged Court) in 2008.

The moment the Protocol comes into force, it shall replace the African Human Rights Court Protocol and the Protocol of the African Court of Justice; (Protocol of the Merged Court: Art. 1) and any reference to the African Court of Justice under the AU Constitutive Act shall be read as referring to the merged Court (Protocol of the Merged Court: Arts. 1&3) But it was in December 2010 that the African Human Rights Court delivered its maiden decision in *Michelot Yogogombaye v. The Republic of Senegal* (2009). The scenario in the African human rights system was likened to *digging the grave of a child not yet born*.

The establishment of the Courts is a welcomed development in Africa. It will, no doubt, strengthen the universality norm and at least discourage the much-vaunted principle of absolute sovereignty. The Court will also aid in the development of human rights jurisprudence in Africa and set precedents for African sub-regional Courts and domestic Courts in Africa to follow. Indeed, when the Protocol of the Merged Court comes into force, it will be a *flying colour* for Africa to have succeeded in *killing two birds with one stone*.

However, the establishment of Human Rights Court in Africa should not be seen as the arrival of a Human Rights *Messiah* in the continent. There are some foreseeable obstacles to the effective functioning of the Courts. Some of these foreseeable obstacles emanate from the provisions of the African Charter, which render the African Commission a helpless human rights institution. It will be the stand of the writer that unless some steps are taken to revamp the African human system, efforts taken so far in establishing the African Human Right Court will become an exercise in futility.

2. The Main Burning Issue

The main issue emerging from these new developments in the African human rights system is whether the establishment of African Human Rights Court and the Merged Court, in addition to the existing African Commission, are welcomed developments or the decision was taken impetuously. Many of the obstacles that hamper the effective performance of African Commission are still *rearing their ugly heads* in the African human rights system. The question is whether the system is standing on a shaky foundation or it has been rebuilt. "The mere establishment of a Court empowered legally to condemn State Parties for human rights violations," a scholar said, "is no guarantee of success. An effective human rights mechanism requires more" (Anne Pieter V. D. M.: 2005). This is the crux of the issue.

3. The Foreseeable Obstacles and Challenges of the Courts

3.1 Interpretation and Enforcement of Socio-Economic Rights

One remarkable feature of the African Human Rights Court and the merged Court is that, in addition to hearing cases of abuses of civil and political rights, it also has power to tackle violations of socio-economic rights, as well as collective or peoples' rights.

Over the years, there has been a special emphasis on the indivisibility of human rights. It has been argued that civil and political rights cannot be dissociated from economic, social and cultural rights and these rights do not take precedence over the other. Setting aside the question of status, the most important issue is the justiciability of socio-economic rights. "Justiciability," according to Fon Coomas, "...means the extent to which an alleged violation of an economic or social subjective right invoked in a particular case is suitable for judicial or *quasi* judicial review at the domestic level." (Coomans F.: 2006)

The Universal Declaration of Human Rights recognises the civil and political rights and socio-economic and cultural rights. Although, most of the civil and political rights recognised by the UDHR have the weight of customary law, the significance of decent living conditions for the protection of human rights does not necessarily depict that the social rights in the UDHR are part of customary international law. (Juliane K.: 1996). In the International Covenant on Economic, Social and Cultural Rights, each State party merely "undertake to take steps...to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized" in the Covenant.

The African Charter guarantees socio-economic rights and places these rights on the same status with the civil and political rights by declaring that "civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality." The problem lies with judicial enforcement of socio-economic rights at the domestic Courts of Africa. In most African States these rights are not justiciable and Courts are incapable of making decisions about their implementation because they require making political choices, setting priorities, allocating resources and re-arranging budgets. (Coomans F: 2006) "Such decisions," it is stated, "should be left to the political bodies in a domestic system, not to Courts."

The standard against which to assess the performance of the Government in the area of socio-economic rights realization is another problem because of the technical nature of the matters involved. It would be difficult for an African Human Rights Court to find that a State has violated socio-economic rights. (Frans V.: 1998).

U.O. Umozurike, (1988: 65 & 71) had also captured the problem that African regional human rights body might face in interpreting socio-economic rights under the African Charter on the basis that the provisions of burdensome "social services and ailing economics are incompatible"; and as Franz Viljoen (1998: 40) observed, even if the political role of judges was uncontroversial, and they (judges) possessed the requisite expertise to make decisions on

socio-economic issues, Courts will still focus on civil and political rights as socio-economic rights are regarded as non-justiciable.

In most African countries, economic and social rights are part of the Directive Principles of State Policy and, therefore are not enforceable by the Court. It is also doubtful (with the exception of South Africa) whether domestic Courts in Africa are capable of interpreting some socio-economic rights such as right to health and the right to education as forming part of the fundamental right to life as the Supreme Court of India has done. (*Paschim Banga Khet Majoor State of West Bengal*: 1996).

African States that practise a dualism system, by incorporating socio-economic rights under the African Charter into their domestic laws will definitely compound the problem. In Nigeria, for example, there is clear conflict between Chapter II of the Constitution and the socio-economic rights provisions of the African Charter. Whereas the economic and social rights are non-justiciable by virtue of section 6(6) (c) of the Constitution, the civil and political rights, similar to those of the African Charter, are justiciable rights by virtue of section 46 of the Constitution (*Ezeukwu v. Ezeonu II*: 1991). In *Abacha v. Fawehinmi*, (2000) the Supreme Court of Nigeria stated that: "...the African Charter, having been incorporated into the body of the Nigerian Municipal Laws, cannot be preferentially treated but should rank at par with other municipal legislation and be subordinated to the constitution." Professor U.O. Umzurike reiterated similarly that: "If a treaty is domesticated, the statute doing so is subject to the Constitution." (Umzurike U.O: 2008).

The yardstick the African Human Rights Court will adopt to determine whether or not a State has violated socio-economic rights will be more problematic because African States, like other countries, have different economic policies. It will be difficult for the Court to decide that such violation has occurred where resources are not available. Demarcating acts which *per se* are not violations of socio-economic rights but which affect other aspects of civil and political rights with those that are strictly violations of socio-economic rights is another problem. It is illustrated that, though to prevent a group of people from having access to a hospital affects their right to health it is different from violation of the right to health in general. (Umzurike U.O.: 2008) In the same vein, reduction by Government of the entitlements of employers to Medical care is not the same as violation of the right to health. In India, where the Supreme Court has interpreted the right to life as an extension of the rights to health and others, the same Court was able to grant the defence of "unaffordability" of the Government in the case of *State of Punjab v. Ram Lubhaya Bagga* (1998).

Even in South Africa, where socio-economic rights are included in the Constitution as justiciable rights; and affirmed by Court, the same Court have been careful to avoid imposing obligations that the Government cannot afford (*Government of the Republic of South Africa v. Grootboom*: 2001).

Similarly, in the English speaking Caribbean, it has been admitted that although some form of political justice has been won by the masses, economic justice is still a dream to be pursued with greater fixity of purpose. One inescapable reason for this is that the economies of these States are also characterized by widespread unemployment, high population growth, low per capita income and wide disparities in wealth. (Iton W: 1988).

3.2 Claw-back Clauses and absence of Derogation Clauses in the African Charter

It is pertinent to reiterate that the civil and political rights guaranteed under the African Charter restrict the rights and freedoms enshrined in the Charter, so far such restrictions are in accordance with domestic laws of States. The Claw-back clauses confine many of the Charter's protections to rights as they are defined and limited by domestic legislation.

The problem of claw-back clauses is further compounded by the absence of the requirement that the restrictions must be in the interest of national security, public safety, public health or public order as provided in some international and regional human rights instruments. It has been pointed out that "an attempt to set a standard for such laws would have been more helpful..." (Umzurike U. O: 1999).

Some African countries have enacted laws that empowered different State functionaries to issue a detention order against any person engaged in acts prejudicial to State Security. In Nigeria under the past military regimes, for example, this was formulated by making the fundamental human rights provisions of the Constitution impotent while the Court's jurisdiction was ousted generally (*Labiya v. Anretiola*: 1992).

However, enacting domestic laws that restrict the rights guaranteed by the African Charter, even when the State is not at the state of emergency, is not only a feature of African States under military rule but also under democratic dispensation. The Gambian Parliament, for example, had passed a National Media Commission Bill, which gave the Media Commission power to grant, suspend or withdraw registration of media practitioners; and also ousted the jurisdiction of any Court or Tribunal from entertaining any matter emanating from the Bill. (Udombana: N.J.:1997).

If similar matter comes up before the African Human Rights Court (or later the merged Court) the Court's hands would be tied strictly in view of the provision of Article 9(2) of the Charter. Claw-back clauses permit national laws to take precedence over international law and this "would defeat the purpose of codifying certain rights in international law and indeed, the whole essence of treaty making." (Ankumah E.A.:1991). Claw-back clauses had placed the African Commission in the unenviable position of deciding what applicable standard should be used in determining what is in accord with a Member State's Laws. In this light, defence might be accorded to the State in the interpretation of its own Law out of respect of Governmental decisions that are purportedly based on legitimate National Legislation, even at the expense of human rights (Anthony A.E.:1997).

As claw-back clauses and absence of derogation clauses under the African Charter are concerned, the African Human Rights Court and later the merged Court must take bold step to give strict interpretations to the provisions, following example of the African Commission in *Amnesty International (on behalf of Benda and Chinida) v. Zambia*, (2000: 325) where the Commission ruled that "recourse of these (claw-back clauses) should not be used as a means of giving credence to violations of the express provisions of the Charter." Also, in the *Commission Nationale des Droits de l' Homme et des Liberties v. Chad* (1994:74) the African Commission reinforced the absence of a general derogation clause in the Charter by holding that under no conditions whatsoever will a State be allowed to derogate from a provision of the Charter, and that not even a state of emergency such as a civil war in Chad justified such derogation.

3.3 Denial of Individual Direct Access to the Courts

In Africa, individuals are the most victims of human rights violations but due to high rate of illiteracy and poverty most of the victims find it difficult to seek redress in Court when their rights guaranteed by domestic laws of their States or international law are being violated. Even those who are aware of their fundamental rights under their domestic laws only pursue them in domestic Courts. This is a pointer to the fact that most cases that have come before the African Commission were brought by NGOs on behalf of individual victims; it further buttresses that under the Court system, as in the Commission system, individuals and NGOs are the most beneficiaries of the Court.

That individuals would not have direct access to the Africa Human Rights Court and later the merged Court depicts that accessing those Court will be difficult for most victims of human rights abuses in Africa (Sceats S: 2009). The indispensable legal consequence of this can not be ignored. The Supreme Court of Nigeria had stated that "he who cannot reach the Courts cannot talk of justice from the Courts." (*Attorney General, Kaduna State v. Hassan*:1985). Denial of individual direct access to the Court shows lack of effective legal protection of human rights in Africa. Only few African States are willing to make Special Declaration allowing individuals to have direct access to the Court. The implication of this is that individuals and NGOs of States that have ratified the Protocol establishing the Court but are yet to make the Declaration would access the Court (and later the merged Court), through the African Commission or the State itself. Though, this method has its own insignificant advantage, it will cause unnecessary delay in the administration of justice. True, denial of direct access to individuals is 'a step back' in access to justice for all in Africa. (Agbakoba: 2010). It is considered as "a matter of considerable embarrassment"; and "a major obstacle to assessing the Court." (Mugwai:2010).

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

Also, judging from the jurisprudence of African Commission, it is doubtful if in practice African States will be willing to bring cases against each other. Since its inception in 1987, the African Commission has heard only one case brought by a State against another State; that is the case of *Democratic Republic of Congo v. Burundi, Rwanda & Uganda* (1999:22). Distilled from the foregoing is that African Human Rights Court and later the merged Court, like the ECOWAS Court of Justice before 1999, might be redundant.

3.4 Enforcement of the Judgments of the Courts

Another area of problems concerns the "enforceability" of the Court's ruling. It has been pointed out that "a key problem was the lack of 'visibility' of the Court's judgments." (Coalition for an Effective Court: 2007). Under the African Human Rights Court Protocol, the Court is allowed to make appropriate orders to remedy violations (including payment of fair compensation or reparation) or in cases of extreme gravity and urgency adopt such provisional measures as it deems fit and necessary (African Human Rights Court Protocol: Art.27; Statute of the Merged Court: Art. 45). It is also required to notify its decisions to all the parties and transmit copies of the same

to Member States and Council of Ministers of the AU, which is duty bound to monitor its proper execution.(African Human Rights Protocol: Art.29).

Although, this is a welcomed development compared to the Commission system, scholars are of the opinion that giving the gross human rights violations that are being embarked upon by Government agents in Africa, it is doubtful if the Court has such efficacy. According to Makau Mutua:“The modern African State, which in many respects is colonial to its core, there has been such an egregious violator that skepticism about its ability to create an effective regional human rights is appropriate.”(Mutua W.M: 1999).

According to Franz Viljoen,: “A Court gives findings on the facts of individual cases presented to it; it is ill-equipped to addressing situations involving numerous victims: Court that operates on part-time basis, as African Human Rights Court, will be incapable of resolving urgent human rights violations.” The problem is compounded by the fact that only those victims who are able to gain access to the Court are granted remedies.(Frans V: 1998).

The merged Court is likely to face with the same problem. It is doubtful if imposing of sanctions is relevant to victims of human rights violations; most especially where the Court orders payment of fair compensation and the State Party against which the judgment was given fails to comply.

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

3.5 Concurrent and Conflicting Jurisdiction of the Courts with African Sub-Regional Courts

Apart from the African Human Rights Court and the merged Court, there is multiplicity of regional bodies established in Africa that have mandates that are concurrent and conflicting with the mandates of African Human Rights Court. These sub-regional institutions include ECOWAS Court of Justice, East African Community Court of Justice and others. A perusal of the laws establishing these respective bodies also give them mandate to interpret the African Charter and other international human rights instruments. C.A. Odinkalu rightly identified this problem where he stated that “a brief examination of these Treaties and of the African Human Rights Court Protocol clearly indicates the existence of a rich zone of overlap, potential competition and possible complementarity. It also presents rich possibilities of forum shopping in the enforcement of regional human rights standards in Africa.”(Odinkalu C. A: 2003).

Although, the primary function of the ECOWAS Court is generally to examine any disputes arising out of the application and interpretation of ECOWAS Treaty, it might also be required to examine litigations arising out of human rights violations in the area covered by the Community (Tall el Mansour: 2007). The inescapable concurrent jurisdiction of ECOWAS Court is justified on the reason that all Members of ECOWAS have not only acceded to the African Charter but also the rights in the Charter have been incorporated and enshrined in their respective Constitutions.

Paragraph 6 to the preamble of the ECOWAS Revised Treaty reiterated the respect, promotion and protection of human rights of the African Charter and included this in Article 4(g) as one of the fundamental principles of the Treaty. It is also significance that the additional Protocol to the ECOWAS Treaty adopted in 2005 permit a person to bring suits against Member States.

Similarly, the fundamental principles, which Partner States to the EAC Treaty undertake to abide by include: good governance, democracy, respect of the rule of law, gender equality and the recognition, promotion and protection of human and peoples’ rights in accordance with the provisions of the African Charter (East African Community Treaty: Art. 6(2)). The Treaty also created unrestricted freedom of movement of persons, rights of residence and establishment within the EAC (*Ibid*: Art. 104).

Article 6(2) of the EAC Treaty relates to the obligations of the Partner States to protect human rights in accordance with the African Charter (*Ibid*: Art. 27(1)) It is submitted from the forgoing that the EAC Court of Justice has power to interpret the provisions of Article 6(2) and other provisions of the Treaty relating to human rights under the African Charter. Accordingly, the mandate to interpret the African Charter and other international human rights instruments is not the monopoly of African Human Rights Court or the Merged Court.

In the same vein, unlike the subject matter of the European and Inter-American Courts of Human Rights that are restricted to the interpretation of their respective Conventions and Protocols, the African Human Rights Court and later the Merged Court can apply any instrument concerning human rights that is ratified by all the States concerned.

This, by implication, means that the Court will address new issues of human rights including those emanating from Treaties that established sub-regional Courts.

However, unlike the African Human Rights Court, Article 22(1) of the ECOWAS Court Protocol enshrines the principle of exclusivity of competence. It declares that “no dispute regarding interpretation or application of the provisions of the treaty may be referred to any other form for settlement except that which is provided by the Treaty or this Protocol.” The writer submits that this provision conflicts with the provisions of Articles 3 and 7 of the African Human Rights Court Protocol and Article 28 of the Statute to the merged Court, which allows the Courts to apply other human rights instruments, including Protocol of the ECOWAS Court of Justice. An application might be brought before the African Human Rights Court, involving the interpretation of human rights provisions under the ECOWAS Treaty and a preliminary objection might be raised that the Court has no jurisdiction to entertain the matter. Although, it has been submitted that this problem can be tackled by the Court itself because the African Human Rights Court Protocol gives the Court power to decide whether it has jurisdiction where such question comes before the Court, the writer prefers the recommendation proffered by Tall el Mansour that in order to avoid duplication and duplicity, it is crucial in practice for the Court to have an exchange of information and possible joint investigation between it and African Commission and other sub-regional human rights bodies (Tall el Mansour: 2007). This recommendation is also imperative for the merged Court.

3.6 Problems of Funding and Resources

One of the problems the African Commission faces is that, apart from being chronically under resourced, it also faces the problem of under-funding (Udombana N. J: 2003). On paper, there exist in Africa the African Commission, African Human Rights Court and the merged Court. The African Union would need a standard building for African Human Rights Court and later a more expanded building for the merged Court; provide Registry staff, crop of lawyers, well equipped library and documentation centre. The Court would also need permanent quarters for the president (and Vice president in case of the merged Court) who functions on permanent basis. Although, the site of the Rwandan Tribunal has been allocated to the African Human Rights Court for a start, the use of the place should only be for a short period.

Distilled from the foregoing is that African Human Rights Court needs sufficient financing, which is a serious problem. Rachel Murray had predicted that the African Human Rights Court would be besieged by the same sorts of resource problems confronting the African Commission giving the paucity of resources available to its parent body-the (O) AU.(Murray R: 2004). This line of reasoning cannot be faulted: “...the Court is unlikely to escape the effects of these same problems.”(Obiora C. o: 2007). That the African Commission suffered from a “capacity deficit” and other problems was confidently admitted by the Commission in a number of occasions. That is why it was recommended strongly that Member States of the AU must support the Commission morally and financially or else they would be undermining the African Charter and its Commission (Safari A. 1999).

Although, according to the Amnesty International, the AU provided an initial budget of \$2,250,000 for African Human Rights Court to commence operation, there must be serious financial commitment by Member States of the AU to enable the Courts function effectively. There is indication that the Courts would rely on foreign donations as the African Commission. A Member of a NGO *Federation Internationale des Droit del’Homme* and a European Commission representative had voiced concern at the Court’s lack of “financial independence” and sought the assistance of the European Union (Coalition for an Effective Court: 2007).

Some years ago, Foreign Governments had provided funds for the initial establishment of African Court. In particular, the European Foreign and Commonwealth Office (FCO) had provided the sum of 92,573 and 61,500 dollars to projects that were “aimed at promoting early ratification of the Protocol for the African Court,” and “to enhance the capacity of the African Commission in Africa through the creation of an African Court on Human Rights.”(FCO, Human Rights Annual Report: 2005). It has been estimated that since the creation of the African Human Rights Court, more than 12.5 million dollars has been expended; and the yearly budget of the Court is US 7 million dollars. There is every indication that with the establishment of the merged Court, the yearly spending of the Court would double since what is now known as the “African Human Rights Court” would only be a Section of the merged Court.

4. The Way Forward

There is need to reconcile some provisions of the African Charter with other international and regional human rights instruments. These include provisions on claw-back clauses, absence of derogation clauses, and individual duties among others. The African Human Rights Courts should endeavour to give vibrant and holistic interpretations of the provisions of African Charter by reconciling the controversial provisions of the Charter. African States, parties to African Human Rights Court Protocol and Protocol of the merged Court should be willing to make the Special

Declaration allowing individual direct access to the Courts. In the long run, there is need to expunge the provisions of the instruments denying individual direct access to the Courts.

Judges of the Courts should operate on a permanent basis. This is necessary because there is a glimmer of hope that many cases will be brought before the Courts. The system will also avoid conflicts in their functions as judges and their official duties.

The African Human Rights Court and the merged Court should embark on a speedy trial in dispensing justice. They should avoid the practice of the African Commission of delaying cases for more than five years (*Social and Economic Rights Centre v. Nigeria* (1995: 155). The African Commission should embark on elaborate public awareness campaign of its mandate and the existence of African Human Rights Court and later the merged Court.

Above all, for the Courts to meet the aspirations of Africans, State Parties should have the political zeal to comply with their obligations under the African Charter. They should comply with their financial obligation, obey the decisions of the Court and submit their periodic reports on human rights promotion and protection in their respective States. The African Human Rights Commission should be given adequate resources to enable it function effectively. If these suggestions are taken seriously, African human rights system will be placed on the same pedestal as the European and the Inter-American systems.

References

- African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Vol. 1, Cap A9, LFN, 2004.
- Ankumah E.A. (1991). The Right to Counsel and the Independence of Judges against the Background of the African Charter on Human and Peoples' Rights, *Afric. Journal of Inter'l & Comp. Law*, Vol. 3, pt. 3, at 582.
- Anne Pieter V.D.M. (2005). The New African Court on Human and Peoples' Rights: Towards an Effective Human Rights Protection Mechanism in Africa? Vol. 18, No. 1, *Leiden Journal of International Law*.
- Anthony A.E. (1997). Beyond the Paper Tiger: The Challenge of a Human Rights Court in Africa, *Texas Inter'l Law Journal*, Summer, available at [www.africancourtcoalition.org/content_files.Beyond the Tiger.doc](http://www.africancourtcoalition.org/content_files.Beyond_the_Tiger.doc).-last visited 06/06/2007
- Anyangwe C. (1998). Obligations of State Parties to the African Charter on Human and Peoples' Rights, *10 Afric. Journal of Inter'l & Comp. Law*.
- Coomans F.(ed.). (2006). *Justiciability of Economic and Social Rights: Experiences from Domestic Systems* (Antwerpen-Oxford: Inter Sentia).
- Coalition for an Effective African Court on Human and Peoples' Rights. (2007). available at http://www.africancourtcoalition.org/editorial.asp?Page_id 246.- last visited, 04/06.
- Dankofa Y. (2003-2004) Towards an Effective Safeguard for the Enforcement of Human Rights in Africa – The Need for an African Court, *Ahmadu Bello Univ. Law Journal*, Vol. 21-22, at 83.
- Democratic Republic of Congo v. Burundi, Rwanda & Uganda. Afic. Comm'n on Peoples' Rights, Commission 22/99, adopted at the 33rd Sess. 20th Activity Rep.
- Frans V. (1998). Some Arguments in Favour of and Against an African Court on Human and Peoples' Rights, *The Afric. Society of Inter'l Comp Law Proc.* 10th Ann. Conf. at 40.
- FCO, Human Rights Annual Report. (2003). Annex II: FCO Funding for Human Rights, 258 (2003), available at <http://www.fco.gov.uk/serlet/Front?pagename=OpenMarket/Xcelerate/SowPage&c=Page&cid=1028302592088>; & FCO, Human rights Annual Report 2005, Annex II:GOF Projects, 258 (2005), available at <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1028302592008-04/06/2007>.
- General Sani Abacha & Ors v. Chief Gani Fawehinmi. (2000). 2 SCNQR 489.
- Government of the Republic of South Africa v. Grootboom. (2001). 1 SA 46 (CC).
- Iton W. (1988). Human Rights in the English Speaking Caribbean: The Case for the Pre-eminence of Economic and Social Rights Revisited, *Afric. Journal of Inter'l Law*, Vol. 1. No. 1, at 88.
- Ladan M.T. (2001). Should all Category of Human Rights be Justiciable? in Ladan M.T., (ed.), *Law, Human Rights and Administration of Justice in Nigeria* (ABU Zaria: Dept. of Pub. Law, 2001), at 78-81.
- Michelot Yogogombaye v. (2009). *The Republic of Senegal, Application No. 001/2008*. <http://www.africa.court.org/en/cases/latest-judgment-05/04/2009>.

- Mughwai A. (2010). The Role of the African Court on Human and Peoples' Rights: Prospects and Challenges, available at <http://www.cam.es/docs/fiheros/20081003000769pdf>- last visited, 05/03/2010.
- Murray R. (2004). *Internal Law, Human Rights System: Activist Forces and International Institutions* (Cambridge: Cambridge University Press), at 29.
- Obiora C.O. (2007). *The African Human Rights System: Activist Forces and International Institutions* (Cambridge: Cambridge University Press), at 74.
- Obiora C.O. (2007). *The African Human Rights System: Activist Forces and International Institutions* (Cambridge: Cambridge University Press, 2007).
- Odinkalu C.A. (2003). Contemporarity, Competition or Contradiction: The Relationship between the African Court on Human and Peoples' Rights and Regional Economic Courts in East and South Africa", unpublished paper presented at a Conf. of East and Southern States, Gaborone, Botswana, 9-10 Dec., at 21.
- Protocol and Statute of the African Court of Justice and Human Rights. (2007). available at http://www.hurisa.org.za/Advocacy/AfricanCourt/single_Legal_instrument [hereinafter Protocol of the Merged Court and Statute of the Merged Court respectively]-last visited, 04/06/2007.
- Saffari A. (1999). The Enforcement of Human Rights in Africa with Reference to Tanzania, 8 *Revision of the African Commission on Hum. & Pples' Rts*, at 302-303.
- Sceats S. (2010). Africa's New Human Rights Court: *Whistling in the Wind?* *International Law* March 2009/IL BP 09/01, available at <http://www.chathamhouse.org.uk/files/13587bp030sceatspdf>- last visited, 07/12/2010.
- Social and Economic Rights Action Centre v. Nigeria. (2001). Comm. No. 155/95, reproduced in Fifteenth Annual Report of the African Commission, 2001-2002, where the Commission received communications in the case on March 1996, but it did not examine them until 27th October, 2001 (a period of more than five years).
- State of Punjab v. Ram Lubhaya Bagga. (1998) . 4 SCC 117, 130.
- Tall el Mansour. (2007). The Relationship Between ECOWAS Court of Justice and the Future African Court on Human and Peoples' Rights, available at <http://www.africancourtcoalition.org/content-files/files/RelationshipbetweenECOWASCourtandAFRICANCourt.doc>- last visited, 07/04/2007
- Udombana N.J. (2003). An African Human Rights Court and an African Union Court: A Needful Duality or a Needless Duplication? *Brooklyn Journal of International Law*, Vol. 28, No. 3.
- Udombana N.J. (2000). Towards the African Court on Human and Peoples' Rights: Better Late than Never, *Yale Human Rights & Development Law Journal*.
- Udombana N.J. (1997). *Human Rights and Contemporary Issues in Africa* (London: Martinus Nijhoff Publishers,) at 210.
- Umozurike U.O. (1988). The Protection of Human Rights under the Banjul (African) Charter on Human and Peoples' Rights, *Afric. Journal of Inter'l & Comp. Law*, at 65 & 71.
- Umozurike U.O. (2008). The Juridical Nature of Economic and Social Rights in Nigeria, *Abia State Law Journal*, Vol. 10, at 46.
- Umozurike U.O. (1999). The Protection of Human Rights under the Banjul (African) Charter on Human and Peoples' Rights, *Afric. Journal of Inter'l & Comp. Law*, Vol. 1, No. 1, at 68.
- Umozurike U.O. (2007). The African Charter on Human and Peoples' Rights" Suggestions for More Effectiveness", *Annual Survey of International and Comparative Law* (Vol. XIII).
- United Nations.. *Basic Facts about the United Nations* (New York: UN Information Centre, 2004), at 230. See also *Namibia (South-West Africa)* case, ICJ Reports, at 55, (1971).
- Wachira G.M. (2006). Twenty Years of Elusive Enforcement of the Recommendations of the African Commission on Human and Peoples' Rights: A Positive Remedy, *African Human Rights Journal*,