

**The open-door approach to *locus standi* by the African Commission on  
Human and Peoples' Rights in respect of its non-state complaints  
procedure: In need of reform?**

**Submitted in partial fulfillment of the requirements of the LLM Degree  
(Human Rights and Democratisation in Africa)**

**By**

**Mariam Hamidu**

**Student No. 26500320**

**Prepared under the supervision of**

**Mr. Angelo Matusse**

**Faculty of Law, Universidade Eduardo Mondlane**

**Maputo, Mozambique**

**27 October 2006**

## DECLARATION

I, **Mariam Hamidu**, declare that the work presented in this dissertation is original. It has never been presented for the award of a degree at any other University or Institution. Where other peoples' works have been used, references have been provided accordingly. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfillment of the requirements for the award of the LLM Degree in Human Rights and Democratisation in Africa.

Signed .....

Dated.....

**Supervisor: Mr. Angelo Matusse**

Signed.....

Dated.....

## **DEDICATION**

I humbly dedicate this study first to the most compassionate and most merciful God whose grace, guidance, blessings and inspiration empowered me to accomplish this task and to my family and all those who have helped in making this study possible.

## **ACKNOWLEDGEMENTS**

I am highly indebted to the lecturers and staff of the Centre for Human Rights, Faculty of Law, University of Pretoria, for giving me this unique opportunity to take part in the LLM Programme and for their unyielding support and guidance throughout the programme.

Special gratitude go to Professor Frans Viljoen who suggested the topic and directions of this study not to mention the materials he provided me which shaped the focus of this study and to Professor Michelo Hansungule who was always there to take my questions and provide useful insights into my work.

To Tarisai Mutangi, I say a special thank you for your incisive comments on this study and for your encouragement throughout the LLM Programme. I am grateful to Norman Taku, Martin Nsibirwa, Jeremie Uwimana, John Grant Wilson, and Waruguru Kaguongo all of whom contributed in diverse ways to make my stay at the Centre a pleasant one.

I am also thankful to the lecturers and staff of Universidade Eduardo Mondlane, Maputo, Mozambique who made all efforts to ensure that we enjoy our stay in Maputo. I owe a debt of gratitude to Jorge Manuel Bernardo Cuinhane, a final year law student, Eduardo Mondlane University, and Mr. Duma, Legal Officer, Human Rights league, Mozambique for their guidance and useful insights into the standing requirements for the protection of human rights in Mozambique.

To my supervisor, Mr. Angelo Matusse, I am exceptionally grateful for his prompt responses, insightful comments on my drafts, and his encouragement throughout the study.

I wish to express my heartfelt gratitude to my parents Mr. and Mrs. Hamidu, my brothers Mustapha and Abdul Wahab Hamidu, my sister Sarah Hamidu and my dearest husband Sani Ibrahim for their prayers, love, and encouragement which have brought me this far. I am more than grateful.

To the 2006 LLM class I must say I enjoyed my time with each and every one of you.

And finally I wish to express my sincere gratitude to all my friends, colleagues and all those whose prayers, love, and support saw me through this programme.

May the Almighty Allah bless you all.

## LIST OF ABBREVIATIONS

AHSGs	Assembly of Heads of States and Governments
AU	African Union
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CC	Constitutional Court
CCPR	Covenant on Civil and Political Rights
CEDAW	Covenant on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
ECHR	European Court of Human Rights
HC	High Court
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
MASSOB	Movement for the Actualisation of the Sovereign State of Biafra
MWC	Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
NGOs	Non-Governmental Organisations
OAU	Organisation of African Unity
OP1	Optional Protocol I of the CCPR
OP2	Optional Protocol II of the CCPR
OSC	Ordinary Session of the African Commission
SC	Supreme Court
SERAC	Social and Economic Rights Action Centre
UNTMBs	United Nations Treaty Monitoring Bodies
WTOAT	World Trade Organisation Against Torture

## TABLE OF CONTENTS

<b>DECLARATION</b> .....	<b>ii</b>
<b>DEDICATION</b> .....	<b>iii</b>
<b>ACKNOWLEDGEMENTS</b> .....	<b>iv</b>
<b>LIST OF ABBREVIATIONS</b> .....	<b>v</b>
<b>TABLE OF CONTENTS</b> .....	<b>vi</b>
<b>CHAPTER ONE</b> .....	<b>1</b>
<b>1. INTRODUCTION</b> .....	<b>1</b>
1.1 Research question and background.....	1
1.2 Problem statement .....	2
1.3 Literature review.....	4
1.4 Research methodology .....	5
1.5 Chapter overview .....	6
<b>CHAPTER TWO: THE ORIGIN, NATURE AND APPLICATION OF <i>LOCUS STANDI</i>     UNDER DOMESTIC JURISDICTIONS</b> .....	<b>7</b>
<b>2. Introduction</b> .....	<b>7</b>
2.1 Understanding the concept of locus standi .....	7
2.1.1 When and how do standing issues occur?.....	9
2.1.2 Theoretical bases .....	10
2.1.3 Lack of standing <i>vis-à-vis</i> the quest for justice.....	12
2.2 Protection of human rights in Ghana: Who may sue?.....	12
2.2.1 Standing under the 1992 Constitution .....	13
2.2.2 Standing to enforce human rights <i>vis-à-vis</i> enforcement of the Constitution .....	14
2.3 Enforcing human rights in Mozambique: Who may sue? .....	15
2.3.1 Standing under the 2004 Constitution .....	15

2.3.2	Examination of standing under the Criminal Code .....	16
2.4	Protection of human rights in South Africa: Who may sue? .....	17
2.4.1	Before the 1993 Constitution .....	18
2.4.1.1	Standing of individuals.....	18
2.4.1.2	Standing of representative organisations.....	19
2.4.1.3	Public interest litigation.....	19
2.4.1.4	Enforcement of legislation.....	19
2.4.2	The new South Africa .....	19
2.5	Conclusion.....	21
<b>CHAPTER THREE: <i>LOCUS STANDI</i> BEFORE THE EUROPEAN, INTER-AMERICAN AND THE UNITED NATIONS HUMAN RIGHTS PROTECTION MECHANISMS.....</b>		<b>22</b>
3.	Introduction .....	22
3.1	The European human rights system .....	22
3.1.1	Group complaints .....	23
3.1.2	Companies .....	23
3.1.3	Who qualifies as a victim under the Convention? .....	24
3.1.3.1	Direct victims.....	24
3.1.3.2	Potential victims.....	24
3.1.3.3	Indirect victims.....	24
3.1.3.4	Death of a victim.....	25
3.1.3.5	Loss of victim status.....	25
3.2	The Inter-American human rights system .....	26
3.3	The global human rights systems.....	27
3.3.1	The CCPR .....	27
3.3.2	The CERD .....	29
3.3.3	The CAT .....	30
3.3.4	The CEDAW.....	30

3.4	Conclusion.....	31
<b>CHAPTER FOUR: <i>LOCUS STANDI</i> BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS .....</b>		
		<b>32</b>
4.	Introduction .....	32
4.1	Background to the legal basis for the individual communications procedure..	32
4.2	Who has <i>locus standi</i> before the Commission? .....	34
4.2.1	Absence of the victim requirement: from a restrictive to a broader approach.....	35
4.2.2	Definition of victims: from specific to vague .....	36
4.2.3	Nationality and residence .....	36
4.2.4	Victim's consent or authorisation not required .....	37
4.3	Rationale for the broad standing approach .....	37
4.4	Drawbacks of the <i>actio popularis</i> doctrine.....	39
4.4.1	Inherent drawbacks of the <i>actio popularis</i> .....	39
4.4.1.1	Lack of relevant information.....	39
4.4.1.2	Loss of interest/loss of contact/withdrawal without notice.....	41
4.4.1.3	Extension of the <i>actio popularis</i> to cover the interest of states.....	43
4.4.1.4	Burden on the Commission's resources.....	45
4.4.2	Drawbacks associated with the organisational arrangement of the Commission .....	45
4.4.2.1	Naming cases .....	46
4.4.2.1.1	Who is a victim under the Charter? .....	46
4.4.2.1.2	Are all cases <i>actio popularis</i> ? .....	46
4.4.2.1.3	Repetitiveness and monotony .....	47
4.4.2.1.4	Disorder and inconsistency .....	47
4.4.2.2	Terminological difficulties .....	47
4.4.3	Has the Commission gone too far? .....	48
4.5	Conclusion.....	50



<b>CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS.....</b>	<b>52</b>
5. Introduction .....	52
5.1 Summary and conclusions .....	53
5.2 To the Commission .....	53
5.2.1 Strict application of article 56 admissibility requirements .....	53
5.2.2 Time limit for requests .....	53
5.2.3 Time limit between filing and arguments on admissibility .....	54
5.2.4 Communications to be signed by persons competent to represent organisation.....	54
5.2.5 Contact address of next-of-kin .....	54
5.2.6 Notification on withdrawal.....	54
5.2.7 Distinguish between inter-state and individual complaints procedures .....	55
5.2.8 Name cases by their victims or events.....	55
5.2.9 Consistent use of terminology .....	55
i Adopt national and internationally recognised terminologies.....	55
ii Avoid the term 'author'.....	56
iii Avoid the terms 'accused', 'convict', 'petitioner', and 'client'.....	56
5.3 To state parties.....	56
5.3.1 Cooperate with the Commission .....	56
5.3.2 Duty to educate .....	56
5.3.3 Relax domestic rules on standing .....	57
5.4 To individuals and NGOs .....	57
5.4.1 Gather relevant information before filing communications .....	57
5.4.2 Sustain interest till the end of the case.....	57
5.4.3 Give notice for withdrawal .....	57
5.5 To the African Union.....	58
5.5.1 Financial support.....	58

5.6 Conclusion.....58

**BIBLIOGRAPHY .....59**

## CHAPTER ONE

### 1. INTRODUCTION

#### 1.1 Research question and background

The purpose of this study is to inquire into the question: Is *locus standi* as interpreted by the African Commission on Human and Peoples' Rights in respect of its non-state complaints procedure really in need of reform?

The question of *locus standi* regarding the non-state complaints procedure before the African Commission on Human and Peoples' Rights, (the Commission) is a very flexible one. Although the language of the African Charter on Human and Peoples' Rights, (the Charter), the enabling powers and functions of the Commission, does not provide for such broad standing,<sup>1</sup> the Commission has over its 20 years of operation, given broad interpretation to the question of standing by adopting the *actio popularis* doctrine. As a result, the Commission has entertained communications from any person, group of persons or non-governmental organisations (NGOs) whether on their own behalf or on behalf of others. The location or nationality of such persons is also not a bar to standing. Consequently, the Commission has accepted communications from national NGOs operating in the country of the state party against whom the complaint is made,<sup>2</sup> NGOs with a regional focus,<sup>3</sup> international NGOs,<sup>4</sup> and non-African nationals.<sup>5</sup>

The Commission has emphasised that persons wishing to file communications need not be victims or members of the victims family,<sup>6</sup> or that violations of human rights need not amount to serious or massive violations before persons other than victims can file communications,<sup>7</sup> and more importantly,

---

<sup>1</sup> Article 55 of the Charter, which deals with 'Other Communications' does not specifically recognise NGOs in the filing of complaints regarding human rights violations before the Commission.

<sup>2</sup> See example a series of communications filed by Nigerian NGOs against Nigeria in (2000) and (2001) AHRLR.

<sup>3</sup> *Union Interafricaine des Driots de l'Homme and Others v Angola* (2000) AHRLR 18 (ACHPR 1997).

<sup>4</sup> See example the numerous complaints filed by Amnesty International, International Pen, and Interights (2000) AHRLR.

<sup>5</sup> *Maria Baes v Zaire* (2000) AHRLR 72 (ACHPR 1995).

<sup>6</sup> F Viljoen 'Admissibility under the African Charter' in *The African Charter on Human and Peoples' Rights: The system in practice, 1986 -2000* M Evans and R Murray (ed) (2002) 75.

<sup>7</sup> Communication 83/92, 88/92, 91/93, *Jean Yaovi Degli (on behalf of Corporal N. Bikagni) v Togo*.

persons bringing communications before the Commission do not need any authorisation from the victims.<sup>8</sup>

It is thus a free-for-all procedure and an open-door approach to standing different from what pertains in the United Nations Treaty Monitoring Bodies (UNTMBs), and the two other regional systems: the European Court of Human Rights (ECHR); and the Inter-American Commission on Human Rights (IACHR). The Commission's reasons for such an approach are very realistic. They are based on, among others, the peculiar circumstances under which the continent finds itself and the difficulties many Africans face in submitting communications: massive violations; poverty; illiteracy; and ignorance. To this extent, the Commission has even gone further to advise individuals filing communications on their own behalf to seek the help of NGOs.<sup>9</sup>

Flowing from the above, it can be seen that, through this open-door approach to standing, individuals and NGOs play a very important role in the Commission's fulfillment of its protective mandate.<sup>10</sup> The complaints mechanism before the Commission has been dominated by NGOs. Since the establishment of the Commission in 1987, only one inter-state complaint has been submitted to the Commission for determination as at present.<sup>11</sup> This phenomenon clearly shows that the Commission would have been redundant but for the active involvement of NGOs. It is argued that the relevance of NGOs in the African context cannot be over-emphasised. This is evident in the significant role they have played in the work of the Commission since its establishment and without which the Commission would have been ineffectual.

## 1.2 Problem statement

The underlying rationale and relevance of this study is informed by the Commission's ongoing exercise of re-examining the adoption of the *actio popularis* doctrine with the view to reforming its broad standing approach to enhance its efficiency and effectiveness. The re-examination exercise was triggered by the case of *Spilg and Mack & Ditshwanelo v Botswana*<sup>12</sup> which was filed on behalf of one Lehlohonolo Bernard Kobedi by Brian Spilg, an advocate based in South Africa, and Unoda Mack, an attorney with Mack Bahuman & Moncho Attorney based in Botswana. The two attorneys were appointed *pro deo* representatives for the victim, Kobedi, in criminal proceedings before the Courts of

---

<sup>8</sup> Communication 277/2003, *Spilg and Mack & Ditshwanelo v Botswana*.

<sup>9</sup> *John K. Modise v Botswana* (2000) AHRLR 25 (ACHPR 1994). Also R Murray *The African Commission on Human and Peoples' Rights & International law* (2000) 67.

<sup>10</sup> A Motala 'Non-governmental organisations in the African system' in Evans and Murray (ed) (n 6 above) 246.

<sup>11</sup> Communication 227/99, *Democratic Republic of Congo v Burundi, Rwanda and Uganda*.

<sup>12</sup> n 8 above.

Botswana. They complained, among others, against the victim's wrongful conviction and sentence to death for the murder of one Sergeant Goepamang in the face of convincing evidence to the contrary in violation of articles 4, 5 and 7 of the Charter. They further challenged Botswana's legislation which required the imposition of the death penalty in the absence of extenuating circumstances and the victim's anguish in living in anticipation of the execution of the death penalty in violation of articles 2,3,4,5 and 7 of the Charter. The communication was signed by the victim himself, the authors acting only as legal representatives. However the victim died before the case reached the Commission.

Botswana raised three main objections to admissibility regarding *locus standi*. Firstly, the respondent challenged the *locus standi* of the counsel on grounds that they were not personally appointed by the victim. Having been appointed as *pro deo* representatives for the victim by the domestic courts, the said representation terminated with the close of the case at the domestic level. Secondly, Botswana challenged the legal interest whether jointly or severally that the counsel may have in the matter since their legal interest, if any, ceased to exist with the demise of the victim. It argued that *locus standi* in Botswana is based on the victim requirement and therefore the burden lied on the authors to demonstrate sufficient legal interest in the matter. In the absence of sufficient legal interest, they lacked the capacity to assume its authorship after the death of the victim. Lastly, Botswana argued that Spilg, being a foreign national, had no legal interest in the internal affairs of Botswana to enable him engage in the case before the Commission. His only connection with Botswana came in the form of his appointment as *pro deo* and no more. It argued that the state of Botswana did not become a party to the Charter so as to give the *carte blanche* to strangers to engage it in communications before the Commission.

Thus the above case did not only raise the position of the *actio popularis vis-à-vis* authorised legal representation of a victim but also the question of whether the Commission, in adopting the *actio popularis* doctrine exceeded its powers under the Charter. With these attacks coupled with the fact that some communications filed by non-victims particularly NGOs have suffered setbacks, the Commission has decided to re-examine its position on the *actio popularis* and to limit its application where appropriate.

Other problems encountered by the Commission in the application of the *actio popularis* include lack of relevant information on the part of the NGO or individual to effectively prosecute the case, loss of contact with the complainant, and loss of interest by the complainant after filing a communication and

their sudden withdrawal without notice to the Commission.<sup>13</sup> All these have occasioned considerable delay in the disposition of cases and unnecessary cost on the Commission's meager resources. The question, however, still begs whether the Commission, taken these problems, should close its doors to non-victims by modifying its broad standing approach with the aim of ensuring efficient and effective disposition of complaints.

Presently the issue of whether to reform the broad standing approach is being hotly debated by the Commission and there are no indications that it will be resolved anytime soon.<sup>14</sup> The aim of this study is to contribute to the debate by looking into the question of standing before the Commission and the problems associated therewith with a view to ascertaining whether there is really a need for reform and suggest possible solutions to the problem.

It is hoped that the outcome of the study will contribute in shaping up the rules on standing before the Commission and ultimately contribute towards the development of cogent jurisprudence that are progressive in the African context. It is submitted that the open-door approach to standing adopted by the Commission constitutes a very important factor in the effective realisation of human rights in Africa and a source of hope for many African to have their rights protected under the Charter. If some NGOs and individual non-victims have abused this approach, there are numerous ways of dealing with them instead of shutting the door of the Commission.

Furthermore an effective regional human rights system largely depends on functional domestic systems in that human rights are better protected at the domestic level where the appropriate legislative and institutional structures are in place. Hence granting greater accessibility of individuals, natural and juristic alike, at the domestic level will ensure better protection of rights on the continent.

### **1.3 Literature review**

A survey of the literature reveals a general consensus on the crucial role of NGOs in the work of the Commission and the African human rights system as a whole.<sup>15</sup> The literature also seems to agree,

---

<sup>13</sup> Communication 269/2003, *Interights (on behalf of Safia Yakubu Huseini et al) v Nigeria*. Also Communication 273/2003, *Centre for Advancement of Democracy, Social Justice, Conflict Resolution and Human Welfare v Nigeria*.

<sup>14</sup> Annex I Agenda of the 39 Ordinary Session of the African Commission (OSC), 11-25 May 2006, Banjul, The Gambia, Item 12(b) (Private Session) 'The Paper on Locus Standi before the African Commission' available at <[http://www.chr.up.ac.za/hr\\_docs/documents20%20Activity%Report.doc](http://www.chr.up.ac.za/hr_docs/documents20%20Activity%Report.doc)> (accessed 20 October 2006).

<sup>15</sup> Motala (n 10 above). Also O Umozurike 'The complaint procedure of the African Commission' in *International Human Rights Monitoring Mechanisms* A Gudmundur, J Grimheden, G.B Bertram and M Alfred de Zaya (ed) (2001) 707.

although implicitly, that the protective mechanism provided under the African human rights system would have been a total failure but for the active involvement of NGOs.<sup>16</sup> However, the rationale for this phenomenon in the African context has not been explored into detail in the current literature.

Furthermore, regarding the question of standing, several authors have dealt with the category of persons who can bring complaints before the Commission and indeed usually comparatively with the other two regional human rights systems and selected UNTMBs.<sup>17</sup> However, these useful insights into the work of these various bodies usually do not attempt to look into the question of the origin and nature of standing, how it has developed over time within the three main legal traditions operating around the world, how it has come to be applied in international law and the rationale for the victim requirement *vis-à-vis* the *actio popularis* within these various bodies.

In addition, when it comes to the examination of standing under any of these systems, it appears that the application of standing at the domestic level in the protection of human rights is completely ignored, when in fact regional and international human rights protection mechanisms are built and developed on domestic systems.

It is the aim of this study to fill in these gaps by examining the question of standing before the Commission with respect to individuals and NGOs and address the burning question of whether it needs to be reformed. This will be done by looking at standing at the domestic level, before the ECHR and the IACHR, selected UNTMBs, and analysing the application of the *actio popularis* within the African context with the view to identifying the problems associated with it and suggest possible solutions thereof.

#### **1.4 Research methodology**

The study will adopt a descriptive analysis of the origin, nature, application and development of *locus standi* within the three legal traditions namely the Common Law, the Civil Law and Roman Dutch Law. This will be done by taking concrete examples from three countries in Africa: Ghana; Mozambique;

---

<sup>16</sup> C.E Welch *Protecting Human Rights in Africa: Roles and strategies of non-governmental organisations* (1995) 202.

<sup>17</sup> Umozurike (n 15 above). Also S Gumedze 'Bringing Communications before the African Commission on Human and Peoples Rights' (2003) 3 *African Human Rights Law Journal* 121; S Davidson *The Inter-American Human Rights System* (1997) 157; T Zwart *The Admissibility of Human Rights Petitions: The case law of the European Commission on Human Rights and the Human Rights Committee* (1994) 50.

and South Africa as representing the three legal traditions respectively.<sup>18</sup> The study will also adopt a comparative analysis of standing before the other two regional human rights systems namely the ECHR and IACHR and four UNTMBs with individual complaints mechanisms: the Human Rights Committee (HRC); the Committee on the Elimination of All Forms of Racial Discrimination (CERD-Committee); the Committee against Torture (CAT-Committee); and the Committee on the Elimination of All of Forms of Discrimination Against Women (CEDAW-Committee). Finally, the study will focus on a descriptive analysis of the standing requirements before the Commission and the problems associated therewith.

## **1.5 Chapter overview**

The study has five chapters. Chapter One introduces the study and the justification thereof. Chapter Two explores the origin, nature and application of *locus standi* in domestic legal systems with particular respect to private protection of public rights and human rights protection using Ghana, Mozambique and South Africa as case studies. Chapter Three examines the standing requirements before other regional human rights protection systems namely the ECHR, and the IACHR as well as global human rights protection mechanisms through the lens of the HRC, the CERD-Committee, the CAT-Committee and the CEDAW-Committee. Chapter Four traces and assesses the development of the broad standing requirements before the Commission regarding its non-state communications procedure and the problems associated with them. And Chapter Five presents the conclusions and recommendations of the study.

---

<sup>18</sup> These countries were selected for practical reasons only based on the author's familiarity with Ghana's legal system, having been based in Mozambique for the second semester, and South Africa being the home of the Roman Dutch Law in African.



## CHAPTER TWO: THE ORIGIN, NATURE AND APPLICATION OF *LOCUS STANDI* UNDER DOMESTIC JURISDICTIONS

### 2. Introduction

One of the key factors for invoking the wheels of justice for the effective enforcement of laws and regulations is the question of standing. As important as this issue is, it has been largely ignored. This is evidenced by the way standing rules are developed and the inconsistency in their application. There is no consensus about its content as it is understood differently in different contexts be it domestic, international, human rights and non-human rights contexts.<sup>19</sup>

The purpose of this chapter is to explore the origin, nature and the application of *locus standi* in the three legal traditions: the Common Law; Civil Law; and Roman Dutch Law through the lens of the legal systems in Ghana, Mozambique and South Africa. The chapter will begin with a note of the origin, meaning and nature of *locus standi*, when and how they arise in litigation, and its theoretical basis followed by a discussion of the effects of restrictive standing requirements on the protection of human rights. The Chapter will then proceed with a discussion of *locus standi* for the protection of human rights in Ghana, Mozambique and South Africa in that order.

It must be noted that the purpose of this exercise is to understand how the concept operates in various legal systems using the above countries as examples. Furthermore, the exercise is confined to private protection of public rights where issues on standing often arise due to the difficulty in determining whether a private person satisfies the requisite interest for that purpose.<sup>20</sup>

#### 2.1 Understanding the concept of *locus standi*

The term *locus standi* which literally means 'the place of standing', originated within the English common law system during the 19<sup>th</sup> Century, to denote 'a recognised position, an acknowledged right

---

<sup>19</sup> F Matscher 'Standing Before International Courts and Tribunals' in 4 *Encyclopaedia of Public International Law* Bernhardt, R (ed) (2000) 594.

<sup>20</sup> J.A Yakubu *Constitutional Law in Nigeria* (2003) 446. Also A van Aaken 'Making international human rights protection more effective: A rational-choice approach to the effectiveness of ius standi provisions' Preprints of the Max Plank Institute for Research on Collective Goods Bonn September 2005 available at <[http://www.coll.mpg.de/pdf\\_date/2005\\_16online.pdf](http://www.coll.mpg.de/pdf_date/2005_16online.pdf)> (accessed 20 October 2006).

or claim.<sup>21</sup> Different accounts have been given for its evolution.<sup>22</sup> According to one school, the concept evolved from the English parliamentary practice which required opponents of legislative proposals to demonstrate that the proposals directly affect their property or interest before they could be given a hearing by the proposals committee.<sup>23</sup>

Another school traced the evolution of the concept to the developments in the political and justice machinery during the 19<sup>th</sup> and 20<sup>th</sup> Centuries. Before then, public rights, unlike private rights, were the exclusive reserve of the king. The changes during the 19<sup>th</sup> and 20<sup>th</sup> century in the philosophical and political scene saw the introduction of new concepts of public and private legal rights which gradually eroded the domination of the king over public rights. The need to define the scope of such diffused interests brought about the concept of *locus standi* as a standard of determining the interest of an individual who seeks judicial assistance for the protection of a public right.<sup>24</sup>

*Locus standi* which also means 'standing to sue', 'title to sue', or 'right to be heard' thus refers to the capacity or right of individuals (natural and juristic alike) to approach an adjudicating body to have their cause heard and adjudicated upon. The right exists independently from the jurisdiction of the court, admissibility requirements, or the merits of a case.<sup>25</sup> It is not automatically available to every person with a grievance. Traditionally, individuals will be allowed to pursue proceedings for relief only where they can show that they have a direct and substantial interest in the outcome of the case (the victim requirement).<sup>26</sup> What constitutes a direct and substantial interest is seen in the legal interest of the applicant which will be affected by the outcome of the suit.<sup>27</sup>

Whether or not an individual possesses this right can only be found in legislation, rules and jurisprudence of adjudicating bodies.<sup>28</sup> However it has been noted that '[i]n a manner uncommon in

---

<sup>21</sup> K.J Kendrick *Law Dictionary & Glossary* (1893). Also <<http://www.websters-online-dictionary.org/definition/Locus+standi>> (accessed 10 August 2006).

<sup>22</sup> Yakubu (n 20 above) 445-447.

<sup>23</sup> F Clifford *A History of Private Bill Legislation* (1872) 21 in O Igboenuga 'The Doctrine of Locus Standi: An Appraisal' 2 *The Lord Justice* 29 in Yakubu (n 20 above) 446.

<sup>24</sup> A.G Karibi Whyte 'Consideration of Preliminary Objections: Scope of Locus Standi' 2 *Judicial Lectures*, 1990 in Yakubu (n 20 above) 446.

<sup>25</sup> L.A Stein 'The theoretical bases of locus standi' in *Locus Standi* L.A Stein (ed) (1979) 3.

<sup>26</sup> *Teachers Association and Others v Minister of Education and Culture* 1990 (2) ZLR 48 at 53.

<sup>27</sup> *United Watch & Diamonds Co (Pty) Ltd & Ors v Disa Hotels Ltd & Another* 1972 (4) SA 409 (C) 415 per Ebrahim J. The term has been maintained in its original form for one purpose: to preserve the original meaning from dilution through translation.

<sup>28</sup> Stein (n 25 above).

the law ... standing rules are often amorphous, intellectually inconsistent and unnecessarily complex.<sup>29</sup> The reason for this development is three-fold.

Firstly, 'there is no one theoretical construct to support the rules' formulated by the courts. The formulation of the rules is usually influenced by other concepts of law such as 'traditional notions of property rights, the function of courts in reviewing administrative discretion ...and notions of public participation or distributive justice.'<sup>30</sup> Succinctly put '[t]he rules of *locus standi* have not developed as axioms of the legal system but rather as by-products ... of other foundations of the law.'<sup>31</sup>

Secondly, since one or more concepts of law predominate the formulation of standing rules in any particular situation, any future application of the formulated rule is beset by tensions such as which particular concept should prevail.<sup>32</sup>

Thirdly, standing issues are often confused with other preliminary considerations such as hypothetical or moot questions, political questions, inappropriate remedies, jurisdiction<sup>33</sup> or even the merits of a case. The result of all the above is that the jurisprudence defining the meaning, scope and application of the concept is often fluid, inconsistent and multifaceted.

### **2.1.1 When and how do standing issues occur?**

Historically, issues concerning standing principally arise in private law litigation. However, increasingly, standing issues have attracted attention in public law actions such as judicial review cases, and common law public nuisance actions.<sup>34</sup>

Before a court determines any issue concerning its jurisdiction, admissibility or the merits of a case, the first rational issue for determination is whether the applicant has the capacity to invoke the wheels of justice. On a few occasions, a court may defer it for determination after hearing evidence and arguments on the issues in dispute.<sup>35</sup>

---

<sup>29</sup> Stein (n 25 above).

<sup>30</sup> Stein (n 25 above).

<sup>31</sup> Stein (n 25 above) 7.

<sup>32</sup> Stein (n 25 above) 7.

<sup>33</sup> Stein (n 25 above) 5.

<sup>34</sup> Stein (n 25 above) 4.

<sup>35</sup> Stein (n 25 above) 4.

Where it is taken as a procedural issue, standing operates as a gauge for the question of whether the court will take further action on the case. Accordingly, a case may come to an end for the applicant's lack of standing even where it involves an extremely important matter.<sup>36</sup> It has been argued that such a situation raises 'certain fundamental doctrinal issues' where standing precludes illegal actions from being addressed.<sup>37</sup> The question here is whether a court would be right in relying on a standing issue to refuse to pronounce on a case before it.<sup>38</sup>

An answer to this question has been argued from two different angles. In the context of public law, courts have a primary duty to undertake judicial review of all governmental actions. Therefore, it would not be appropriate for a court to refuse to determine such issues because the applicant will not benefit from the outcome. By contrast, courts have the prerogative to refuse to make pronouncements on matters before them. Here issues of standing are linked to the merits of the case. Therefore where there is no standing; there is practically no case before the court.<sup>39</sup>

Taking the two positions as arguably valid, the survey of the jurisprudence on standing allows a court to approach the issue in one of three ways: (1) decide to ignore the standing issue, however important, and deal with the merits; (2) ignore the standing issue by striking a balance between principle and expediency having in mind the outcome of the case; or (3) prioritise the preliminary issue of standing and dismiss the case accordingly.<sup>40</sup>

### **2.1.2 Theoretical bases**

As noted earlier, issues concerning standing arise mainly in private interest litigation and so have the rules evolved to address them. In private law actions, the legal interest of the applicant before the court is paramount in the determination of standing. Accordingly, some of the strict rules regarding the establishment of interest in private law litigation have been extended to public law actions. Both at the heart of Common and Civil Law jurisdictions lies the principle that an individual must have some interest in the subject-matter of the dispute beyond that of a general member of the public to avoid frivolous claims from busybodies. However this victim requirement is increasingly becoming less important due to innovations introduced by the legislature and the judiciary.<sup>41</sup> The rules operate

---

<sup>36</sup> Stein (n 25 above) 4.

<sup>37</sup> A Bickel 'The Supreme Court-1960 Term; Forward: The Passive Virtues' (1961) 75 *Harvard Law Review* 40 in Stein (n 25 above). This also applies to other procedural issues.

<sup>38</sup> Stein (n 25 above) 4.

<sup>39</sup> Stein (n 25 above) 4.

<sup>40</sup> Stein (n 25 above) 4.

<sup>41</sup> Stein (n 25 above) 6.

differently in Roman Law, (Roman Dutch Law as it operates in the Netherlands and Dutch Colonies including South Africa), where resort to the *actio popularis* doctrine, seen as a means of social control, allows any person to come forward to defend some right of the public.<sup>42</sup>

It may be recalled that the development of standing rules have been shaped by other foundations of the law. For our purposes, we will examine that aspect which has public interest and citizenship participation as the bases. This will enable us to appreciate the relaxation of standing rules regarding public interest litigation and the need to maintain such approach. In addition, the concepts of public interest and citizenship participation have significant influence and bear directly on the determination of a *locus standi* question in that regard.<sup>43</sup>

Standing rules in public interest actions have been shaped by the notions of *jurisdiction de droit objectif* (objective law jurisdiction) and *jurisdiction de droit subjectif* (subjective law jurisdiction) both of which stand as foundations for different approaches to judicial review.<sup>44</sup>

In objective law jurisdiction, the judiciary assumes the role of the protection of the public interest by controlling governmental actions. Through judicial review, the rules on standing are relaxed to allow any person to challenge governmental actions. The *actio popularis* is a prominent example of this approach.<sup>45</sup> Under subjective law jurisdiction, the judiciary attaches more importance to an interference of the personal rights and interests of an individual by governmental actions and will only intervene where individuals satisfy the victim requirement.<sup>46</sup>

Both Civil and Common Law jurisdictions reflect a mixture of both approaches. Further there has been an increasing shift towards the objective approach in recent years even in jurisdictions which held on to the subjective approach.<sup>47</sup>

Moreover, other theoretical bases have been put forward as justification for restricting standing rules in public law litigation. Two theoretical bases are noted: the fear of multiplicity of actions; and the need to discourage busybodies from making every governmental action the subject-matter of litigation no

---

<sup>42</sup> Stein (n 25 above) 6.

<sup>43</sup> Stein (n 25 above) 16.

<sup>44</sup> Stein (n 25 above) 15-16.

<sup>45</sup> Stein (n 25 above) 16.

<sup>46</sup> Stein (n 25 above) 16.

<sup>47</sup> Stein (n 25 above) 16.

matter how irrelevant it may be. This is to avoid flooding the courts with frivolous claims and preserve judicial economy.<sup>48</sup>

Whichever justification is put forward for the strict application of standing rules in public interest litigation, the consequences may have untold hardship on the poor, the underprivileged, the ignorant and the fearful who need public spirited individuals to help advance their rights. Furthermore, it may not only have a negative reflection on the judicial machinery whose help are sought in the defence of human rights but also leave very important issues unresolved. These and other concerns will briefly be the subject of the section below.

### **2.1.3 Lack of standing *vis-à-vis* the quest for justice**

The premature disposal of a case for lack of standing may have grave consequences for those who mostly need judicial pronouncement on the case. This is equally so where the gates are closed to public spirited persons.

Firstly, it gives legitimacy to the alleged wrongful act.<sup>49</sup> Secondly, persons adversely affected by the alleged wrongful act will continue to be deeply burdened. In addition, where the relief sought is preventive, non-determination of the merit will remain unachievable and the action will eventually take effect which may have adverse consequences on the public. Thirdly, it prevents an authoritative pronouncement on contentious issues creating an otherwise preventable lacuna in the law. Finally, it sets a bad precedent and deters prospective applicants from challenging similar alleged wrongful acts. In the protection of human rights, a disposal of a case on technicalities like standing means the continuous endurance of violations of fundamental human rights by the victims. Keeping the doors closed also negatively affects the underprivileged that are not in a position to vindicate their rights due to various factors including ignorance and poverty.<sup>50</sup>

---

<sup>48</sup> Yakubu (n 20 above) 447-448. Also *A.G v Independent Broadcasting Authority* (1973) 1 ALL ER 696 per Lord Denning.

<sup>49</sup> Stein (n 25 above) 5.

<sup>50</sup> C Loots 'Standing to Enforce Fundamental Rights' (1994) 10 *South African Journal on Human Rights* 49-50. Also van Aaken (n 20 above) who argues for flexibility and broader standing approaches before international human rights complaints bodies to ensure the collective good.

## 2.2 Protection of human rights in Ghana: Who may sue?

As a country colonised by the British, Ghana inherited the Common Law tradition.<sup>51</sup> Ghana has had four national constitutions since independence in 1957: the 1960; 1969; 1979; and 1992 Constitutions.

Apart from the 1960 Constitution, which did not contain enforceable bill of rights,<sup>52</sup> standing for enforcement of human rights under the 1969, 1979, and 1992 Constitutions remained the same: satisfaction of the victim requirement.<sup>53</sup> The 1969 and 1979 Constitutions were however short-lived having been overthrown shortly after coming into force and did not give the courts ample opportunity to pronounce upon the interpretation to be placed on the restrictive standing requirements.

Between 1981 and 1992, the period between military rule and before the coming into force of the 1992 Constitution, the question of standing for enforcement of fundamental human rights was settled in *Gbedemah v Interim National Electoral Commission*<sup>54</sup> where the court decided that it did not have such jurisdiction.<sup>55</sup> The discussion will therefore focus on standing under the 1992 Constitution.

### 2.2.1 Standing under the 1992 Constitution

Standing under article 33(1) of the Constitution is based on the satisfaction of the victim requirement. Article 33 (1) provides:

Where a person alleges a provision of this constitution on the fundamental human rights and freedoms has been, or is being, or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court [HC] for redress.

The Supreme Court (SC) has emphasised that the satisfaction of the personal interest requirement is a prerequisite to standing for the enforcement of the human rights provisions under Chapter Five of

---

<sup>51</sup> *Kwakye v Attorney General* [1981] GLR 944 at 1055-1056 in S.Y Bimpong-Buta 'The role of the Supreme Court in the development of constitutional law in Ghana' Dissertation submitted in accordance with the requirement for the degree of Doctor of Law-LLD at the University of South Africa 1 February 2005 539.

<sup>52</sup> *In Re Akoto* [1961] 2 GLR 523, SC in Bimpong-Buta (n 51 above) 331.

<sup>53</sup> Articles 28, 35 and 33 of the three Constitutions respectively.

<sup>54</sup> HC Accra, 26 May 1992 Suit No 1087 unreported in Bimpong-Buta (n 51 above) 342-345.

<sup>55</sup> Bimpong-Buta (n 51 above) 345.

the Constitution.<sup>56</sup> In interpreting article 33(1) the SC placed emphasis on the words ‘person’ and in relation to him’ to restrict standing to all persons, both citizens and non-citizens, who show a direct and personal interest in the matter. Further this implies a demonstration of the existence of a dispute or controversy concerning the infringement or intended infringement of the right in question.<sup>57</sup> Accordingly, standing to enforce human rights in Ghana operates at two levels: proof of direct and personal interest in the matter; and the existence of a real dispute.<sup>58</sup> ‘Person’ is interpreted strictly to refer to natural persons.

On the contrary, standing to enforce the Constitution itself under article 2(1) of the Constitution has been broadly interpreted by the SC. It is extended to both natural and juristic persons, and the victim requirement and the requirements of the existence of a controversy are not needed. All that is required is a demonstration that the act complained of is inconsistent with the Constitution<sup>59</sup> but a mere allegation of an act or omission or an intention of contravention will not suffice.<sup>60</sup>

## 2.2.2 Standing to enforce human rights *vis-à-vis* enforcement of the Constitution

At the core of the difference in interpretation of articles 2(1) and 33(1) is the question of forum: human rights - the domain of the HC; as opposed to the Constitution - the prerogative of the SC. The SC would decline to entertain any action however clothed as enforcement action but which in substance is a human rights action and which should properly lie at the door step of the HC.<sup>61</sup> According to the SC where the Constitution provides a specific remedy for redressing human rights violations, the enforcement jurisdiction of the SC under article 2(1) and 130(1)(a) of the Constitution cannot be

---

<sup>56</sup> *Joseph Sam (2) v Attorney General* [2000] SC GLR 305.

<sup>57</sup> As above.

<sup>58</sup> As above.

<sup>59</sup> *Bilson v Attorney General* [1993] 1 GLR 104; *Edusei v Attorney General* (1996-1997) SCGLR 1.

<sup>60</sup> *New Patriotic Party v National Democratic Congress* [2000] SCGLR 461; *National Democratic Congress v Electoral Commission of Ghana* [2001-2002] SCGLR 954.

<sup>61</sup> See for eg *Yiadom I v Amaniampong* [1981] GLR 3 SC; *Yeboah v J H Mensah* [1998-99] SCGLR 492; *Ghana Bar Association v Attorney-General* [2003-2004] SCGLR 250. But see the dissenting opinion of Kpegah JSC who was of the view that the majority confused issues involving the outcome of the case with the enforcement of the Constitution.



invoked.<sup>62</sup> However, it has exclusive jurisdiction in the interpretation of the human rights provisions enshrined under Chapter Five of the Constitution.<sup>63</sup>

From the above, it appears the SC is confusing the issue of standing with jurisdiction. Although the two actions are different in principle, it is submitted that enforcement of human rights invariably amounts to enforcement of the Constitution and therefore the broad standing requirements should equally apply. The artificial distinction between the two actions should therefore be removed.

### 2.3 Enforcing human rights in Mozambique: Who may sue?

Having been colonised by Portugal, Mozambique naturally inherited the Civil Law tradition rooted in various codes that define the scope of all cases.<sup>64</sup> These codes find their bases in the Constitution which serves as principles and guidelines for their application and interpretation. Each area of law is confined to their separate codes that set out the law, the rights and duties of individuals as well as their accessibility to the courts. Every possible action one intends to take must have its bases in the codes. These codes include the *Código Civil*, 1966 (Civil Code), *Código Penal*, 1886 (Criminal Code), and *Código Comercial*, 2005 (Commercial Code).

As a civil law system, case law and judicial precedents do not feature in the jurisprudence. Therefore, the discussion of *locus standi* is confined to the provisions of the 2004 Constitution and some of the Codes referred to above.

#### 2.3.1 Standing under the 2004 Constitution

Unlike the 1990 Constitution which recognised standing for both private and public interest litigation in the defence of human rights under article 80(1), the new Constitution of Mozambique, 2004 sets out two separate forms of standing for the enforcement of the human rights provisions provided under Chapters III, IV and V of the Constitution.

---

<sup>62</sup> *Edusei case* (n 59 above); *Edusei (No 2) v Attorney-General* [1998-99] SCGLR 753. But see the dissenting opinions of Amua-Sekyi JSC and Charles Heyfron-Benjamin JSC who took the view that the effect of articles 33(1) and 130(1) is to confer concurrent jurisdiction on the SC and the HC in the enforcement of human rights.

<sup>63</sup> *New Patriotic Party v Inspector General of Police* [1993-94] 2 GLR 459; *Mensima v Attorney-General* [1996-97] SCGLR 676 in *Bimpong-Buta* (n 51 above) 531- 532.

<sup>64</sup> For the differences between the Civil and Common Law see Civil Law (Legal system) in Wikipedia, the free encyclopaedia available at <[http://en.wikipedia.org/wiki/Civil\\_law\\_%28legal\\_system%29](http://en.wikipedia.org/wiki/Civil_law_%28legal_system%29)> (accessed 10 August 2006).

Article 70 which deals with *Direito de recorrer aos tribunais* (right of access to the courts) provides:

Citizens have the right of recourse to the courts against acts which violate their rights and interests recognised under the Constitution and the law.<sup>65</sup>

This provision is complemented by article 81 which deals with *Direito de acção popular* (right of popular action). Article 81 provides:

1. All citizens have, personally or through interested associations the right of popular actions within the ends of the law. 2. The right of popular actions comprises the following: (a) The right to petition for compensation for rights violated; (b) The right to promote the prevention, the cessation, or the judicial prosecution of violation against public health, consumer rights, the preservation of the environment and cultural heritage; (c) The right to defend the property of the state and local governments.<sup>66</sup>

Although the two provisions are different they are complementary in nature. Standing under article 70 applies to all the human rights provisions guaranteed under the Constitution upon satisfaction of the victim requirement. However, article 81 allows for public interest litigation and the *actio popularis* but only in the three situations identified above, which can be seen as directly affecting the rights of the public at large. The category of persons who have this right is also widened and includes any person, group of persons or an organisation interested in the advancement of the public interest. Beyond these categories, the victim requirement becomes the gauge for standing of individuals before the courts.

### **2.3.2 Examination of standing under the Criminal Code**

The prosecution of human rights in Mozambique is classified into criminal and civil violations. Therefore the determination of which code applies in any particular case depends on which rights are involved. This is very important as the enforcement of the Constitutional provisions must have their basis in the relevant codes.<sup>67</sup>

The litigation of human rights violations under the Criminal Code takes place under three principal situations: public crimes; particular crimes; and semi-public crimes. Public crimes are those crimes the

---

<sup>65</sup> My own translation.

<sup>66</sup> My own translation.

<sup>67</sup> It must be mentioned that following the enactment of the new Constitution, several codes including the Civil Code are under revision to enable them conform to the provisions of the Constitution.

prosecution of which lies on the complaint of any member of the public. The prosecution of public crimes is seen as public interest litigation but only that in this case the prosecution lies at the door step of the public prosecutor, sometimes with the involvement of a human rights organisation. In addition, the consent of the victim is not required for prosecution to commence. Even where the victim withdraws or loses interest in the course of the prosecution, the public prosecutor still has the obligation to continue the case.<sup>68</sup>

Particular crimes are those crimes the prosecution of which starts with the complaint by the actual victim. It is based exclusively on the victim requirement. Representation is only possible with the valid consent and authorisation of the victim.<sup>69</sup>

In semi-public offences, standing is accorded to either the victim or close relations of the victim. A prominent example of a semi-public offence is that which endangers the life of the victim.<sup>70</sup>

The above presents an interesting mixture of restrictive and flexible approaches to standing in Mozambique within the various prescribed reach all of which are aimed at the enforcement of human rights. As innovative and promising as these may be, as for example compared to Ghana, the restriction of public interest litigation to typical public rights situations leaves much to be desired. It is submitted that the extension of such generous standing rules to all the human rights provisions under the Constitution will be in the right direction for the effective enforcement of fundamental rights.

## **2.4 Protection of human rights in South Africa: Who may sue?**

The South African legal system can be said to have a mixture of Roman Dutch law and the British common law having been colonised by both countries in different respects. The discussion will be divided into the periods before and after the 1993 Constitution for a better appreciation of the standing rules as they exist today.

### **2.4.1 Before the 1993 Constitution**

Traditionally, South African courts have adopted a restrictive approach to standing in all respects. The courts repeatedly held that the *actio popularis*, a feature of Roman law, became obsolete in Roman

---

<sup>68</sup> Examples of such crimes include deprivation of the right to life (murder), torture, and abortion under article 358 of the Criminal Code.

<sup>69</sup> Example article 359 of the Criminal Code concerning simple voluntary corporal offences.

<sup>70</sup> Example article 360 of the Criminal Code which provides for situations where an offence results in the illness of the victim or incapacitates the victim regarding their ability to work.

Dutch law in the 16<sup>th</sup> Century and was never received into South African law. However the courts retained that aspect which concerned the *actio de libero homine exhibendo*.<sup>71</sup> With the *actio popularis* abolished, the law remained that private persons can only sue for the protection of private interests.<sup>72</sup>

The South African courts had shown inconsistency in the application of standing rules, a situation which resulted in the existence of a mixture of restrictive and flexible approaches to standing for challenging governmental conduct with human rights implications. For purposes of this discussion, the jurisprudence surrounding South African cases will be divided into three categories: (i) Standing of individuals; (ii) Standing of representative organisations; (iii) Public interest litigation; and (iii) Standing to enforce legislation.

#### 2.4.1.1 Standing of individuals

The standing of individuals challenging governmental actions was based exclusively on the victim requirement.<sup>73</sup> Although this position was criticised by Gregorowski J in *Transvaal Coal Owners Association v Board of Control*<sup>74</sup> later decisions still followed the earlier restrictive standing approach.<sup>75</sup>

#### 2.4.1.2 Standing of representative organizations

The standing rules here were also unsettled. While the standing of organisations to sue on behalf of their members was recognised on some occasions, they were refused on other occasions on grounds that the interest of the organisation was insufficiently defined. The *Transvaal Indian Congress v Land Tenure Advisory Board* is a good example of the former where the court granted standing to the plaintiff organisation which sought to represent the interest of the whole class of the Indian

---

<sup>71</sup> *Bagnall v Colonial Government* 24 SC 470; *Dalrymple v Colonial Treasurer* 1910 TS 372; *Director of Education, Transvaal v McCagie and others* 1918 AD 616 per Innes CJ; *Wood and others v Ondangwa Tribal Authority* 1975 2 SA 294 (A) per Rumpff CJ. Also Report of the South African Law Commission (SALCR): 'The recognition of class actions and public interest actions in South African Law', (1998) 21 available <<http://www.doj.gov.za/salrc/reports.htm>> (accessed 20 October 2006).

<sup>72</sup> Stein (n 25 above) 7.

<sup>73</sup> *African Political Organisation and The British Indian Association v Johannesburg Municipality* (1906) TS 962. Also C Loots 'Keeping locus standi in chains: *National Education Crisis Committee v State President of the Republic of South Africa* WLD 9 September 1986 Case No 16736/86, unreported' (1987) 3 *South African Law Journal on Human Rights* 66; Also T Ngcukaitobi 'The evolution of standing rules in South Africa and their significance in promoting social justice' (2002) 18 *South African Law Journal on Human Rights* 590.

<sup>74</sup> 1921 TPD 447 at 452 in Loots (n 73 above) 74.

<sup>75</sup> *Rossouw v Minister of Mines and Minister of Justice* 1928 TPD 741 per Grey van Pittius J. But see *Gool v Minister of Justice* 1955 (2) SA 682 in Loots (n 73 above) 74.

population.<sup>76</sup> However in *Ahmadiyya Anjuman Ihaati-Islam Lahore ('AAIL'), South Africa v Muslim Judicial Council (Cape)* the court denied standing to the organisation insisting that no evidence showed that the members could not represent themselves.<sup>77</sup>

#### 2.4.1.3 Public interest litigation

With the strict application of the victim requirement, public interest litigation was unknown in South African law.<sup>78</sup> However, there were a few reported cases instituted in the public interest although they were not presented as such.<sup>79</sup> While some successfully crossed the standing threshold,<sup>80</sup> others failed.<sup>81</sup> Seldom the courts misconstrued the interest of the plaintiff to be public and held that there was no action in the public interest.<sup>82</sup>

#### 2.4.1.4 Enforcement of legislation

The rules here are well-settled. Firstly, where a statute is enacted in the interest of a particular class of persons any member of that class has standing to enforce it irrespective of the victim requirement.<sup>83</sup> Secondly, where a statute is enacted in the interest of the public, any member of the public who can show that he is adversely affected by non-compliance will have *locus standi* to enforce it.<sup>84</sup>

---

<sup>76</sup> 1955 (1) SA 85 (W) in Loots (n 73 above) 71.

<sup>77</sup> 1983 (4) SA 855 (C) in Loots (n 73 above) 71.

<sup>78</sup> SALCR (n 71 above).

<sup>79</sup> As above.

<sup>80</sup> Example *Wood* case (n 71 above).

<sup>81</sup> *Dalrymple* case (n 71 above).

<sup>82</sup> *Patz v Greene & Co* 1907 70 TS 427.

<sup>83</sup> *Madrasa Anjuman Islamia v Johannesburg Municipality* 1917 AD 718.

<sup>84</sup> *Director of Education, Transvaal* case (n 71 above).

## The new South Africa

Section 38 of the 1996 Constitution of South Africa entitled 'Enforcement of rights', (which retained the substance of section 7(4) of the Interim Constitution, 1993) categorically replaced the strict rules of standing with a flexible approach for the enforcement of the Bill of Rights.<sup>85</sup> The section provides:

38(1)(a) Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.

38(1)(b) The persons who may approach a court are -

- (i) anyone acting in their own interest;
- (ii) anyone acting on behalf of another person who cannot act in their own name;
- (iii) anyone acting as a member of, or in the interest of, a group or class of persons;
- (iv) anyone acting in the public interest;
- (v) an association acting in the interest of its members.

The importance of section 38 lies in the benefit accorded to the public when one person or organisation approaches the Court to vindicate the rights of the poor, underprivileged, and those afraid of the judicial process for various reasons.<sup>86</sup>

The Constitutional Court (CC) has in the interpretation of section 38 also adopted a broad approach to standing for the enforcement of the rights contained in the Bill of Rights.<sup>87</sup> Thus under the Constitution, any person or organisation can approach the court for the enforcement of the Bill of Rights. An applicant need not establish that a fundamental right of any particular person is infringed or threatened but simply that a right in the Bill of Rights is infringed or threatened. Sufficient interest must however be linked to one of the categories listed in Section 38(1)(b) as the case may be.<sup>88</sup> Further, although

---

<sup>85</sup> *Lawyers for Human Rights v Minister of Home Affairs* 2004 (4) SA 124 in I Currie & J de Waal *The Bill of Rights Handbook* (5ed) (2005) 80. Also *Loots* (n 50 above) 49 and *Ngcukaitobi* (n 73 above).

<sup>86</sup> *Loots* (n 50 above) 49-50.

<sup>87</sup> *Ferreira v Levin NO; Vryenhoek v Powell NO* 1996 (1) SA 984 (CC) para 165 per Chaskalson P in Currie & de Waal (n 85 above) 80. Also *Walker v Stadsraad van Pretoria* 1997 3 BCLR 416 (T); *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1998 6 BCLR 671 (SCA) in SALCR (n 71 above) 17.

<sup>88</sup> *Ferreira* para 25-26 in Currie & de Waal (n 85 above) 84.

the applicant need not persuade the court that the conduct complained of has actually infringed anybody's rights, it is necessary to clearly set out the basis of the allegation in order to succeed.<sup>89</sup>

The above discussion shows how the standing rules in South Africa have shifted from a restrictive to a more flexible approach and how the Constitution has addressed all the past confusion surrounding the rules. Section 38 has also brought sanity, clarity and certainty into the law. It is submitted that this broad approach will ensure an enhancement in the enjoyment of fundamental rights by South Africans as well as a greater opportunity for the courts to define the scope and content of both the standing rules and the provisions in the Bill of Rights.

## **2.5 Conclusion**

The above discussion presented us with an appreciation of the origin, nature and application of standing rules in domestic jurisdiction. The above shows that standing rules are gradually shifting from a traditionally restrictive to a more flexible approach in the enforcement of human rights. Further the rules differ significantly from one place to another taking into account the legal history and the needs of the society in question. And more significantly, the rules are not static and they continuously evolve to address the needs of the times. With this understanding we can better appreciate the discussions in the subsequent chapters which cover a comparative study of standing rules at the regional and global levels for the protection of human rights.

---

<sup>89</sup> *Maluleke v MEC, Health and Welfare Northern Province* 1999 (4) SA 367 (T) 3731-J in Ngcukaitobi (n 73 above) 604. For a discussion of the categories listed under section 38(1)(b) see Currie & de Waal (n 85 above).

## CHAPTER THREE: *LOCUS STANDI* BEFORE THE EUROPEAN, INTER-AMERICAN AND THE UNITED NATIONS HUMAN RIGHTS PROTECTION MECHANISMS

### 3. Introduction

As we observed from the previous chapter, standing to enforce human rights differs from one legal system to another. Therefore standing requirements before regional and global human rights enforcement mechanisms are formulated by way of consensus among member states. The need for a consensus becomes necessary in two respects: firstly, to avoid the predominance of one legal tradition over the others within that system by bringing out the best practices in each legal tradition; and secondly, to create a system that best serves the needs and interests of their populations. This chapter gives an exposition of the standing requirements for individuals before regional and global human rights systems: the European; Inter-American; and the United Nations systems.

#### 3.1 The European human rights system

The ECHR is established under article 19 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (the Convention) as amended by Protocol No. 11, 1994, which abolished the previous European Commission and Court of Human Rights creating a single permanent Court.<sup>90</sup> The ECHR has jurisdiction to deal with inter-state and individual complaints under articles 33 and 34 of the Convention.

Article 34 provides the standing criteria of individuals and recognises the capacity of individuals, group of individuals, and NGOs upon satisfaction of the victim requirement and proof of an existing dispute. The ECHR has emphasised that the Convention does not recognise the *actio popularis* nor will the Court entertain hypothetical breaches of the Convention.<sup>91</sup>

Thus the category of persons who have standing before the ECHR is wide albeit upon the satisfaction of the victim requirement.<sup>92</sup> Children have standing either by themselves, in conjunction with adult victims, or through their representatives.<sup>93</sup> However, representatives other than custodian parents or

---

<sup>90</sup> Articles 19-21 of Convention.

<sup>91</sup> *Lindsey and others v UK* (1997) 23 EHRR CD 199.

<sup>92</sup> P Leach *Taking a case to the European Court of Human Rights* (2001) 62-63. Also L.J Clements, N Mole, and A Simmons *European Human Rights: Taking a case under the Convention* (2ed) (1999) 2-03.

<sup>93</sup> *KL and Others v UK* (1998) 26 EHRR CD 113; *X & Y v The Netherlands* (1983) 8 EHRR 234.



legal guardians will only have standing upon proof of authorisation.<sup>94</sup> Furthermore, personal representatives of incapacitated victims have standing to lodge complaints on their behalf upon proof of authorisation.<sup>95</sup> Standing is accorded to groups, NGOs, companies (including liquidated ones), shareholders, trusts, professional associations, trade unions, political parties, and religious organisations.<sup>96</sup>

Moreover, complainants need not be citizens of the state concerned nor any of the states parties of the Council of Europe, neither do they need to have been established, resident, present, or even have visited the territory of the state party concerned. Where they are physically present, they need not establish that they were lawfully present under national law.<sup>97</sup> In the remainder of this section, the requirements for group and company complaints as well as the scope of the victim requirement will be presented.

### 3.1.1 Group complaints

The standing of NGOs and Trade Unions is also based on the victim requirement<sup>98</sup> although they can provide legal representation to their members. Applications submitted by NGOs or groups must be signed by those competent to represent the organisation or group.<sup>99</sup> Professional associations can act on behalf of their members where they identify those members and show proof of authorised representation.<sup>100</sup>

### 3.1.2 Companies

Companies have standing before the ECHR.<sup>101</sup> Shareholders of a company also have standing to complain against acts directed against the company where the domestic courts accept their personal capacity to do so.<sup>102</sup> However, the Court will rarely recognise the standing of shareholders that

---

<sup>94</sup> *P, P, & T v UK* 22 EHRR CD 148; Rules 36 and 45 of the ECHR Rules of Court, 2006.

<sup>95</sup> *Winterwerp v The Netherlands* (1979) 2 EHRR 387.

<sup>96</sup> Leach (n 92 above).

<sup>97</sup> *D v UK* 24 EHRR 423. Also *Clements, Mole, and Simmons* (n 92 above) 2-02.

<sup>98</sup> *Swedish Engine Drivers Union v Sweden* (1979-80) 1 EHRR 617.

<sup>99</sup> Rule 45(2) of the Rules of Court of the ECHR, 2006.

<sup>100</sup> *Swedish Engine* case (n 98 above).

<sup>101</sup> *Agrotexim and others v Greece* (1996) 21 EHRR 250.

<sup>102</sup> *Neves E. Silva v Portugal* (1989) 13 EHRR 535.

requires piercing the corporate veil or ignoring the company's legal personality even where the company is liquidated.<sup>103</sup> Public corporations lack standing before the ECHR.<sup>104</sup>

### 3.1.3 Who qualifies as a victim under the Convention?

Victims are classified into three categories: direct, indirect and potential victims. To have standing, complainants must at least fall into one or more of these categories.

#### 3.1.3.1 Direct victims

Direct victims arise from the strict application of the victim requirement. The ECHR will decline to entertain complaints challenging the compatibility of a national law with the Convention. To succeed, complainants must show that they have directly been victims of the application of the law in question.<sup>105</sup> The test here is the remoteness of the violation in relation to the complainant. In the *Agrotexim* case where the shareholders of a brewery company complained against acts directed at the company by the municipal authorities, the ECHR refused them standing on grounds that the alleged violation was too remote in relation to them.<sup>106</sup>

#### 3.1.3.2 Potential victims

Potential victims are those who are at risk of being directly affected by a law or administrative act although such has not yet been implemented directly against them. To succeed, they must demonstrate the existence of real personal risk of being directly affected by the violation.<sup>107</sup> Prominent examples include threats of expulsion or extradition,<sup>108</sup> and particular groups of persons likely to suffer from governmental measures or omissions.<sup>109</sup>

#### 3.1.3.3 Indirect victims

These are persons who immediately stand to suffer violations of their Convention rights when the Convention rights of others are directly violated. This arises in the context of the direct violations of the

---

<sup>103</sup> *Agrotexim* case (n 101 above).

<sup>104</sup> *Ayuntamiento de M v Spain* (1991) 68 DR 209; *Rothenthurm Commune v Switzerland* (1988) DR 251.

<sup>105</sup> *Magee v UK* (1996) 21 EHRR 250; *Buckley v UK* (1997) 23 EHRR 101.

<sup>106</sup> *Agrotexim* case (n 101 above).

<sup>107</sup> Leach (n 92 above) 70-72.

<sup>108</sup> *Soering v UK* (1989) 11 EHRR 439; *Chahal v UK* (1997) 23 EHRR 413.

<sup>109</sup> *Open Door and Dublin Well Woman v Ireland* (1993) 15 EHRR 244; *Balmer-Schafroth v Switzerland* (1998) 25 EHRR 598.

rights of close relatives or third parties. Examples include situations where close family relations have been unlawfully imprisoned, deported or killed. In *Kurt v Turkey* the applicant successfully sued for the disappearance of her son and for her own part, inhuman and degrading treatment in respect of the anguish and distress she suffered over that period.<sup>110</sup>

#### 3.1.3.4 Death of a victim

The Court does not accept applications made in the name of a deceased person. However a next-of-kin or a close relative has standing to sue on behalf of a deceased relative.<sup>111</sup> Conversely, where the victim died in the course of the proceedings, they will only have standing to continue upon proof of legitimate interest in the case. The test is whether such relative can be considered as a victim as a result of the death of the deceased relative.<sup>112</sup> The Court may also grant them standing where it is satisfied that the case is of general interest.<sup>113</sup>

#### 3.1.3.5 Loss of victim status

Once acquired, the victim status may be lost where the national authorities acknowledge the violation and provides adequate redress either through the settlement of the case, an acquittal in a criminal case, a successful appeal, or discontinuation of the domestic proceedings.<sup>114</sup>

It may be concluded that the application of the victim requirement to avoid frivolous and popular actions against legislations of state parties is rather too rigid. This notwithstanding, the ECHR has a huge caseload and statistically busier than its counterparts: the Inter-American, African Commission and the UNTMBs.<sup>115</sup> This is largely due to the socio-economic context within which the system functions, a context in which literacy levels are generally high coupled with sound knowledge of Convention rights, recourse for violations, and financial means to successfully pursue a case.

---

<sup>110</sup> (1999) 27 EHRR 373; *Abdulaziz Cabales and Balkandali v UK* (1985) 7 EHRR 471.

<sup>111</sup> *McCann and others v UK* (1996) 21 EHRR 97; *Kurt case* (n 110 above); *Keenan v UK* (2001) 33 EHRR 13.

<sup>112</sup> *X v France* (1983) 32 DR 26614; *Laskey, Jaggard and Brown v UK* (1997) 24 EHRR 39.

<sup>113</sup> *Scherer v Switzerland* (1994) 18 EHRR 276.

<sup>114</sup> *Eckle v Germany* (1983) 5 EHRR 1; *Moustaquim v Belgium* (1991) 13 EHRR 802. Also Leach (n 92 above) 74-75.

<sup>115</sup> C Heyns, W Strasser, and D Padilla 'A schematic comparison of regional human rights systems' (2003) 3 *African Human Rights Law Journal* 76. Also Aaken (n 20 above) 25.

### 3.2 The Inter-American human rights system

Human rights protection under the Inter-American system falls under the American Declaration of the Rights and Duties of Man, 1948 (Declaration) and the Inter-American Convention on Human Rights, 1969 (Convention) and vested in the IACHR and the Inter-American Court of Human Rights (the Inter-American Court). While all members of the Organisation of American States are parties to the Declaration and therefore subject to the jurisdiction of the IACHR, only state parties to the Convention that have recognised the contentious jurisdiction of the Inter-American Court are subject to the jurisdiction of both.<sup>116</sup>

Article 44 of the Convention provides the standing requirements of individuals before the IACHR. Since Individuals do not have standing before the Inter-American Court,<sup>117</sup> complainants must satisfy the standing requirements before the IACHR to enable the IACHR to succeed before the Court.

Standing under the Inter-American system is comparatively liberal. Unlike the ECHR, the victim requirement is not a prerequisite to standing before the IACHR and the standing of national human rights institutions are also recognised.<sup>118</sup> Further, the Convention recognises class actions and the *actio popularis* and the authorisation of victims is not required.<sup>119</sup>

Moreover, although the standing requirement of NGOs is based on their legal recognition in member states, the Inter-American Court has taken the position that the legal recognition of NGOs by member states is not relevant. According to the Court in order to effectively address human rights violations under the Convention, it is important that 'certain formalities [are] excused, provided that there is a suitable balance between justice and legal certainty.'<sup>120</sup>

---

<sup>116</sup> D.J Harris and S Livingstone *The Inter-American System of Human Rights* (1998) 66. Also Davidson (n 17 above) 1-99.

<sup>117</sup> J.M Pasqualucci *The Practice and Procedure of the Inter-American Court of Human Rights* (2003) 99. On referrals to the Court see article 44 of the Rules of Procedure of the IACHR 2003 as amended.

<sup>118</sup> *Baena Ricardo et al (270 workers v Panama)* (Merits), IACHR (2 February 2001) Ser C No. 72, para 6; *Barrios Altos (Chumbipuma Aguirre et al. v Peru)* (Merits) IACHR (14 January 2001) Ser C No. 75.

<sup>119</sup> Davidson (n 17 above) 157. *Constitutional Court Case (Aguirre Roca, Rey Terry and Revoredo Marsano v Peru) (Competence)* IACHR (24 September 1999) Ser C No. 55.

<sup>120</sup> *Castillo Petruzzi et al. v Peru Preliminary Objections*, IACHR (4 September 1998) Ser C No 41 at para 78. Also *Cayara v Peru Preliminary Objections*, IACHR (3 February 1993) Ser C No. 14 para 42; *Valásquez Rodrigo v*

The broad standing approach within the Inter-American system has been justified on the social context within which the system operates 'where poverty, lack of education and lack of legal assistance might otherwise hinder access to the enforcement organs.'<sup>121</sup> Most victims within the region are rural dwellers who have little or no education and who cannot afford the costs of litigation. Furthermore, human rights lawyers refrain from getting involved out of fear of intimidation. Consequently, the case load of the IACHR is mostly made up of international organisations which are less susceptible to intimidation.<sup>122</sup>

### 3.3 The global human rights systems

Out of the seven core human rights treaties, five provide for optional individual complaint procedures: the Convention on the Elimination of All Forms of Racial Discrimination, 1965 (CERD); the Covenant on Civil and Political Rights, 1966 (CCPR) and its Optional Protocols I and II of 1966 and 1989 respectively (OP1 and 2); the Covenant on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW) and its 1<sup>st</sup> Optional Protocol of 1999; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT); and more recently the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (Migrant Workers Convention, MWC) which is yet to be operational.<sup>123</sup> The *locus standi* requirements under the first four will therefore be the subject of this section.

#### 3.3.1 The CCPR

The HRC is established under article 28 of the CCPR to monitor the implementation of the Convention. OP1 provides an optional individual complaint procedure and can only receive and consider individual complaints against states parties which have made a declaration to that effect. The standing requirements are provided under article 1 thereof.

---

*Honduras Preliminary Objections*, IACHR (26 June 1987) Ser C No. 1 para 34. Also Pasqualucci (n 117 above) 100-110.

<sup>121</sup> Pasqualucci (n 117 above) 101.

<sup>122</sup> *Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights)*, Advisory Opinion OC-11/90 IACHR (10 August 1990) (Ser A) No. 11(1990).

<sup>123</sup> The MWC entered into force in 2003. For a discussion of the global human rights systems see M Nowak *Introduction to the International Human Rights Regime* (2003) 78; A.F Bayefsky *How to complain to the UN Human Rights Treaty System* (2003) 6; A.F Bayefsky *The UN human rights treaty system: Universality at the crossroads* (2001) 26.

The HRC largely followed in the footsteps of the ECHR. As the oldest among the UNTMBs, it is therefore unsurprising that latter treaty bodies are largely designed on this precedent.<sup>124</sup> To succeed, applicants must first jump the optional procedure hurdle.

Secondly, the subject-matter of the complaint must relate to the acts or omissions within the jurisdiction of the state concerned, although the HRC has on some occasions granted standing for violations committed by agents of a state outside the territory of the state concerned.<sup>125</sup>

Thirdly, only individual victims within the jurisdiction of the state party concerned have standing before the HRC. Unlike the ECHR, the HRC has interpreted 'individuals' in the strictest sense to refer to only natural persons.<sup>126</sup> Furthermore, the satisfaction of the victim requirement is paramount to standing before the HRC<sup>127</sup> and the *actio popularis* is not recognised under the CCPR. However like the ECHR, the standing of potential victims may be accepted under similar circumstances.<sup>128</sup>

Representation is only possible before the HRC upon proof of authorisation from the victims or their families.<sup>129</sup> This is even the case with close relatives so that authorisation has been required from a son and father submitting communications on behalf of the mother and adult daughter respectively.<sup>130</sup> However, representation in the absence of an authorisation is allowed where two tests are satisfied:<sup>131</sup> (1) proof that the alleged victim is unable to submit the communication personally due to compelling circumstances such as (a) where following an arrest the victim's location is unknown;<sup>132</sup> (b) detained victims;<sup>133</sup> and (c) when the death of the victim was caused by an act or omission of the state concerned,<sup>134</sup> and (2) proof that the alleged victim would approve of the representation.<sup>135</sup> In this

---

<sup>124</sup> W Vandenhoele *The Procedure before the UN Human Rights Treaty Bodies: Divergence or Convergence?* (2004) 193; Also Viljoen (n 6 above) 61; Zwart (n 17 above) 41.

<sup>125</sup> Communication No. 52/1979, *Burgos v Uruguay*, UN Doc CCPR/C/13/D/52/1979.

<sup>126</sup> Communication No. 167/1984, *Chief Ominayak and the Lubricon Lake Band v Canada*, UN Doc CCPR/C/38/D/169/1984.

<sup>127</sup> Communication No. 35/1978, *Aumeeruddy-Cziffra v Mauritius*, UN Doc CCPR/C/12/D/35/1978.

<sup>128</sup> *Aumeeruddy-Cziffra* case as above.

<sup>129</sup> Communication No. 646/1995, *Lindon v Australia*, UN Doc CCPR/C/64/D/646/1995.

<sup>130</sup> Communication No. 890/1999, *Krausser v Austria*, UN Doc CCPR/C/76/D/890/1999 and Communication No. 893/1999, *Sahid v New Zealand*, UN Doc CCPR/C/77/D/893/1999.

<sup>131</sup> Rule 96(b) of the Rules of HRC in Compilation of Rules of Procedure adopted by Human Rights Treaty Bodies HRC/GEN/3/Rev.2 at <<http://www.law.wits.ac.za/humanrts//esc/compilationprocedures2001.html>> (20 October 2006).

<sup>132</sup> Communication No. 8/1997, *Lanza v Uruguay*, UN Doc CCPR/C/9/D/8/1997.

<sup>133</sup> Communication No. 28/1978, *Weinberger v Uruguay*, UN Doc CCPR/C/11/D/28/1978.

<sup>134</sup> Communication No. 194/1985, *Miango v Democratic Republic of Congo*, UN Doc CCPR/C/31/D/194/1995.

regard the HRC has limited such representation within the boundaries of close personal or family relationships existing between the alleged victim and the representative.<sup>136</sup>

Finally, like the ECHR, individual victims may lose their victim status where (i) effective remedy is provided at the domestic level,<sup>137</sup> (2) an individual claims the rights of a company which has its own legal personality,<sup>138</sup> (3) when there has been an agreement between the victim and national authorities about the claim,<sup>139</sup> or (4) where proceedings were never initiated at the national level.<sup>140</sup>

### 3.3.2 The CERD

Monitoring the compliance of CERD falls on the CERD-Committee created under article 8 thereof. Article 14 provides an optional individual complaints procedure and sets out the standing requirements under sub-paragraph 1 in similar terms like the OP1 of the CCPR.<sup>141</sup>

To succeed the threshold of standing before the CERD-Committee, individuals or groups of individuals need to satisfy at least three requirements. Firstly they must be located within the jurisdiction of the state concerned.

Secondly, they must satisfy the victim requirement. According to the CERD-Committee 'any other conclusion would open the door for popular actions against the relevant legislation of State parties.'<sup>142</sup> However like the ECHR and the HRC, the CERD-Committee recognises the standing of potential victims.<sup>143</sup>

Thirdly, the communication must be submitted by the victims themselves, their relatives or authorised representatives. In exceptional cases, persons outside this category may have standing upon proof that the alleged victims are unable to do so personally.<sup>144</sup> Furthermore a group of persons

---

<sup>135</sup> *Sahid* case (n 130 above).

<sup>136</sup> Communication No. 16/1997, *Nbenge v Zaire*, UN Doc CCPR/C/18/D/16/1997.

<sup>137</sup> Communication No. 478/1991, *A.P.I.v.d.M v The Netherlands*, UN Doc. CCPR/C/48/D/478/1991.

<sup>138</sup> Communication No. 502/1992, *S.M. v Barbados*, UN Doc CCPR/C/50/D/502/1992.

<sup>139</sup> Communication No. 714/1996, *Gerritsen v The Netherlands*, UN Doc CCPR/C/65/D/714/1996.

<sup>140</sup> Communication No. 646/1995, *Lindon v Australia*, UN Doc CCPR/C/64/D/646/1995.

<sup>141</sup> Rule 91(a) of CERD-Committee Rules (n 131 above).

<sup>142</sup> Communication No. 28/2003, *The Documentation and Advisory Centre on Racial Discrimination v Denmark*, UN Doc CERD/C/63/D/28/2003.

<sup>143</sup> Communication No. 13/1998, *Anna Koptova v Slovakia*, UN Doc. CERD/C/57/D/13/1998.

<sup>144</sup> Rule 91(b) of the CERD-Committee Rules (n 131 above).

representing a racial or ethnic group may have standing upon proof that the group or one of its members has suffered violations together with proof of authorised representation.<sup>145</sup> Finally an NGO will have standing on grounds that domestic remedies have been exhausted by that NGO and not by another entity.<sup>146</sup> This requirement is too strict and has the tendency to cut-off NGOs who do not have standing at the national level in the first place.

### 3.3.3 The CAT

The CAT-Committee is created under article 17 of CAT to monitor implementation of the Convention. Like its predecessors, the individual complaints procedure under article 22 is optional. Further article 22(1) provides the requirements for standing before the CAT-Committee in similar terms like the HRC and the CERD-Committee.

Firstly, individuals wishing to submit complaints must be located within the jurisdiction of a state party concerned. Consequently an individual who has moved from the state where the violation occurred and legally located in the territory of another state will not have standing.<sup>147</sup> Secondly, standing is based on the victim requirement and like the HRC 'individual' is interpreted in its strictest sense and excludes juristic persons.<sup>148</sup> Finally, a complaint can be submitted by victims themselves or on their behalf by relatives or authorised representatives.<sup>149</sup> Other entities including NGOs may also have standing to submit a complaint on behalf of victims upon proof that the victims are unable do so personally. They must also show proof of authorisation from the victim for the representation.<sup>150</sup>

### 3.3.4 The CEDAW

Under article 17 of CEDAW, the CEDAW-Committee is created with the responsibility to monitor the implementation of the Convention. Like the above, the power of the CEDAW-Committee to receive and consider individual complaints is optional.<sup>151</sup> Article 2 of the Optional Protocol to CEDAW which sets out the standing requirements for individuals is largely the same like the other three monitoring bodies and raises no new requirements. Like its predecessors, the victim requirement is a prerequisite

---

<sup>145</sup> *The Documentation and Advisory Centre on Racial Discrimination* case (n 142 above).

<sup>146</sup> Communication No. 22/2002, *POEM and FASM v Denmark*, UN Doc.CERD/C/62/D/22/2002.

<sup>147</sup> Communication No. 48/1996, *H.W.A v Switzerland*, UN Doc.CAT/C/20/D/48/1996.

<sup>148</sup> Rule 107(a) of the Rules of the CAT-Committee (n 131 above). Communication No. 176/2000, *Rosenmann v Spain*, UN Doc.CAT/C/28/D/176/2000.

<sup>149</sup> Rule 98 (2)(c) of the Rules of the CAT-Committee (n 131 above).

<sup>150</sup> Rule 107(a) of the Rules (n 131 above). Also Vandenhole (n 124 above) 260.

<sup>151</sup> Optional Protocol, 1999 entered into force in 2000. No cases have as yet been determined.



to standing, the *actio popularis* is not acceptable neither are groups or organisations without a sufficient interest allowed to have standing.<sup>152</sup> Complaints can be submitted by the victims themselves or on their behalf with their consent. In the absence of consent, standing is based upon justification for the absence of consent.<sup>153</sup>

The individual complaints procedure before the UNTMBs is highly under-utilised. Their restrictive standing approach has been identified as one of the reasons for this phenomenon. It is rather startling that with the vast membership of these treaties spanning across different geographical, economic, cultural and human rights contexts, the UNTMBs were designed on the ECHR precedent. Clearly populations from economically and literacy challenged countries were not taken into consideration.<sup>154</sup>

### 3.4 Conclusion

The above discussion highlighted the standing requirements within regional and global systems for the protection of human rights. One thing remained clear throughout the exploration: standing requirements differ from one system to another although some systems have closer resemblance than others. Apart from the Inter-American system, the standing rules are generally restrictive and deeply rooted in the victim-requirement. In addition, the systems operate within particular economic, social, and cultural context and the rules and jurisprudence emanating from them have been particularly designed to meet the needs of the populations in that context. However, the restrictive standing requirements before the UNTMBs show that they were not designed having populations from poorer nations in mind. The above ultimately left us with one significant lesson: any attempt to import concepts from one system into another must be done with due caution taking into account the political and socio-economic context within which each of the carefully designed systems operates.

---

<sup>152</sup> Vandenhole (n 124 above) 275.

<sup>153</sup> Rule 68(2) of the Rules of CEDAW-Committee (n 131 above).

<sup>154</sup> Vandenhole (124 above) 193. Also Aaken (n 20 above) 25.

## **CHAPTER FOUR: *LOCUS STANDI* BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

### **4. Introduction**

Africa's regional human rights protection mechanism is the youngest among the three regional mechanisms. Adopted in June 1981, the Charter, the pivotal human rights instrument within the African system, entered into force in 1986. A year later, the Commission, the supervisory mechanism for the implementation of the Charter, was inaugurated in accordance with article 30 thereof. The functions of the Commission under article 45 of the Charter include ensuring the protection of human and peoples' rights under conditions laid down by the Charter.<sup>155</sup> Articles 47 and 55 of the Charter empower the Commission to receive communications from state parties and non-state entities respectively. This chapter will assess the development of its standing requirements regarding the non-state communications procedure. This assessment has become crucial in view of the Commission's present re-examination of its Rules of Procedure in that regard. The chapter will proceed with a background to the legal basis for the individual communications procedure before the Commission, followed by a discussion of the development of the standing rules and the problems associated therewith.

#### **4.1 Background to the legal basis for the individual communications procedure**

The power of the Commission to receive and consider communications emanating from those other than states is set out under article 55 of the Charter dealing with ('Other Communications') which requires the Commission to consider a communication if a simple majority of its members decide. Article 56 sets out the admissibility criteria for such communications.

The Charter also provides a special procedure under article 58 in situations where, in the Commission's opinion, one or more communications reveal the existence of 'a series of serious or massive violations of human and peoples' rights.' Here the Commission is obliged to inform the Assembly of Heads of State and Government (AHSG) who will then give authorisation to the Commission to undertake an in-dept study of the situation and report on its findings and recommendations.

---

<sup>155</sup> Article 45(2) of the Charter. The Commission has the powers to lay down its Rules of Procedure under article 42(2).

The above articles do not give any indication as to what constitutes 'Other Communications'. The Commission's powers regarding the non-state communications procedure has therefore been a subject of debate among scholars.<sup>156</sup> According to one school the Commission lacks the mandate, on the face of the provisions of the Charter, to receive and consider isolated individual cases alleging violations of the Charter. They maintain that the Commission's mandate is confined to the article 58 procedure.<sup>157</sup>

By contrast, another school argues that the combined effect of articles 55, 56 and 58 among other articles, places the Commission's powers on two levels. Firstly, as with the inter-state communications procedure, the Commission has the power to receive and consider communications from individuals once the article 56 admissibility criteria is satisfied. Secondly, the Commission may invoke its mandate in accordance with the article 58 procedure to deal with special cases of serious or massive violations.<sup>158</sup>

Despite this debate, the Commission's conduct indicates that it does not doubt its capacity to consider isolated violations of the Charter. The issue appears to have been settled in *Jawara v The Gambia* where the Commission reiterated its position in response to the respondent state's challenge of its powers to consider cases falling outside article 58 procedures:

This is an erroneous proposition. ... [A]rticle 55 of the Charter provides for the consideration of 'Communications other than state parties'. ... In any event, the practice of the Commission has been to consider the communications even if they do not reveal a series of serious or massive violations. It is out of such useful exercise that the Commission has, over the years, been able to build up its case law and jurisprudence.<sup>159</sup>

---

<sup>156</sup> C.A Odinkalu and C Christensen 'The African Commission on Human and Peoples' Rights: The development of its non-state communication procedures' (1998) 20 *Human Rights Quarterly* 236 at 238-244.

<sup>157</sup> W Benedek 'The African Charter and Commission on Human and Peoples' Rights: How to make it more effective' (1993) 11 *Netherlands Quarterly of Human Rights* 25 at 31; R Murray 'Decisions by the African Commission on individual communications' (1997) 46 *International & Comparative Law Quarterly* 412 at 413; Murray (n 9 above) 67.

<sup>158</sup> Odinkalu and Christensen (n 156 above). Also E.A Ankumah *The African Commission on Human and Peoples' Rights: Practice and procedures* (1996) 24; F Ouguerouz *The African Charter on Human and Peoples' Rights: A comprehensive agenda for human dignity and sustainable development* (2003) 558-561.

<sup>159</sup> (2000) AHRLR 107 (ACHPR 2000) at para 42. Also C.A Odinkalu 'The role of case and complaint procedures in the reform of the African Commission' (2001) 1 *African Human Rights Law Journal* 255.

Once the legal basis of the individual communications procedure is established, the logical question that follows is who has the capacity to appear before the Commission.

#### 4.2 Who has *locus standi* before the Commission?

Neither the Charter, nor the Revised Rules of Procedure, 1995 provide a clear answer to this question. The *travaux préparatoire* to the Charter do not also give a clue.<sup>160</sup> The previous Rules, 1988 was elaborate on the standing requirements before the Commission. Rule 114 which dealt with the admissibility of communications provided two sets of standing requirements for individual and special procedures respectively. Like the ECHR and the UNTMBs standing under article 55 was confined to the victims. Persons other than the victims had standing to file communications on their behalf only when it appears that the victims are unable to do so personally or give authorisation. Conversely, standing under article 58 procedures was accorded to any individual or organisation provided they have proof to support the allegations. Despite this distinction, the location of persons filing communications did not operate as a barrier to standing under both procedures.<sup>161</sup>

These elaborate provisions were deleted in the Revised Rules. The reasons for this are not discernible from the Commission's records. Rule 116 of the Revised Rules, which substituted Rule 114, also does not provide any clue. It simply reiterates articles 55 and 56 of the Charter.<sup>162</sup> Thus presently, the standing rules before the Commission is defined by article 55 coupled with 56(1) of the Charter, which requires communications to indicate their authors even where they request anonymity.

---

<sup>160</sup> While the first draft, article 49, referred to the capacity of individuals, group of individuals and NGOs to file communications before the Commission, subsequent drafts deleted these words introducing the wording under article 55. See Draft prepared by Kéba Mbâye for the Meeting of Experts for the preparation of the African Charter on Human and Peoples' Rights, Dakar, Senegal 28 November-8 December 1979 CAB/LEG/67/1 available <[http://www.chr.up.ac.za/centre\\_publications/hrla/references/documents%20leading%20up%20to%20to%20ACHP%20p.134.do](http://www.chr.up.ac.za/centre_publications/hrla/references/documents%20leading%20up%20to%20to%20ACHP%20p.134.do)> (accessed 20 October 2006); First and Second OAU Ministerial Conference on the Draft African Charter on Human and Peoples' Rights, Banjul 9-15 June 1980 and 7-19 January 1981 respectively at <[http://www.chr.up.ac.za/hr\\_docs/africandocs/cm/cms65.doc](http://www.chr.up.ac.za/hr_docs/africandocs/cm/cms65.doc)> (accessed 20 October 2006).

<sup>161</sup> Rules of Procedure of the African Commission on Human and Peoples' Rights adopted 13 February 1988 at the Second Session Dakar, Senegal, available at <[http://www.chr.up.ac.za/centre\\_publications/hrla/references/Rules%20of%20Procedure%20the%20African%20Comission%20p.540.do](http://www.chr.up.ac.za/centre_publications/hrla/references/Rules%20of%20Procedure%20the%20African%20Comission%20p.540.do)> (accessed 20 October 2006). Also Ougergouz (n 158 above) 558-559.

<sup>162</sup> Rules 102,103,104, and 116 of the Rules of Procedure of the Commission, 1995 in Compendium of Key Human Rights Documents of the African Union (2005) 96.

Without much direction from the Charter and the Revised Rules, the Commission has developed its standing requirements through its body of jurisprudence. They are discussed under the following headings:

#### 4.2.1 Absence of the victim requirement: from a restrictive to a broader approach

Notwithstanding the restrictive requirement of standing in the previous Rules, the Commission progressively adopted the *actio popularis*. In *World Trade Organisation Against Torture, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah (WTOAT) v Zaire*, the Commission reiterated that 'the African Charter is distinctive in that, while it requires that communication indicate their authors, ...[they do not necessarily have to] be the victims or [members of] their families.'<sup>163</sup> However, the Commission restricted the application of the *actio popularis* to cases falling under article 58 when it stated that persons other than actual victims can only file communications on their behalf where the matter involves serious or massive violations. In the Commission's view, this approach

'is a clear response to the practical difficulties that face individuals in Africa, and in particular where there are serious or massive violations that may preclude individual victims from pursuing national or international legal remedies.'<sup>164</sup>

The above caveat on the *actio popularis* was subsequently removed in the *Jean Yaovi Degli case*<sup>165</sup> and *Constitutional Rights Project (in respect of Zamani Lekwot and six Others) v Nigeria*<sup>166</sup> where the Commission extended the *actio popularis* to cover individual cases and situations that do not reveal the existence of serious or massive violations. To this end the *actio popularis* has come to stay regarding all communications.<sup>167</sup>

To summarise, a communication may be filed by victims or on their behalf by other individuals, group of persons or NGOs whether as authorised legal representatives or otherwise. All that is required is that communications indicate their authors in accordance with article 56(1) even if they desire to

---

<sup>163</sup> Communication 25/89, 47/90, 56/91, 100/93. Also Communication 25/89, 47/90, 56/91, 100/93, *Krishna Achutan on behalf of Aleke Banda, Amnesty International on behalf of Orton and Vera Chirwa v Malawi*.

<sup>164</sup> WTOAT case (n 163 above). Also *Malawi African Association and Others v Mauritania* (2000) AHRLR 149 (ACHPR 2000).

<sup>165</sup> n 7 above.

<sup>166</sup> Communication 87/93.

<sup>167</sup> I Österdahl *Implementing human rights in Africa: The African Commission on Human and Peoples' Rights and individual communications* (2002) 95-99.

remain anonymous.<sup>168</sup> In addition, authors are strictly required to indicate their addresses in order to facilitate further correspondence.<sup>169</sup> It may be noted however that individuals rarely file communications before the Commission whether as victims or representatives. The bulk of the cases are filed by NGOs either alone or together with other NGOs.

#### 4.2.2 Definition of victims: from specific to vague

Initially the specification of the alleged victims in communications was crucial to admissibility.<sup>170</sup> In later years, the question of whether communications have to define their victims or whether there should be a victim at all has been answered in the negative by the Commission. With the adoption of the *actio popularis* all that is required is the satisfaction of the admissibility criteria under article 56.<sup>171</sup>

Thus the Commission will consider cases where no victims are identified;<sup>172</sup> they are hypothetically, vaguely and collectively defined;<sup>173</sup> concretely and individually defined;<sup>174</sup> or where they have been specified to the extent that they consist of an identifiable group.<sup>175</sup> Particularly communications involving allegations of serious and massive violations do not need any identification of the victims. In the *Malawi African Association* case, the Commission emphasised that in such situations it will be unreasonable to expect a complete list of the names of all the victims involved. It noted particularly that article 56(1) only requires the identification of the names of authors and not the names of the victims.<sup>176</sup>

#### 4.2.3 Nationality and residence

Persons filing communications before the Commission need not be nationals of a state party to the Charter or even African nor they do need to be located within the region. In *Maria Baes v Zaire* the Commission accepted a communication by a Danish national, Maria Baes, on behalf of a colleague, a

---

<sup>168</sup> *Malawi African Association* case (n 164 above). Also WTOAT case (n 163 above).

<sup>169</sup> Communication 57/91, *Tanko Bariga v Nigeria* where a communication was declared inadmissible in part due to the absence of the author's address.

<sup>170</sup> *Krishna Achutan* case (n 163 above). Also *Centre for the Defence of Judges and Lawyers v Algeria* (2000) AHRLR 16 (ACHPR 1995).

<sup>171</sup> Österdahl (n 167 above) 101- 104.

<sup>172</sup> *Civil Liberties Organisation v Nigeria* (2000) AHRLR 188 (ACHPR 1995).

<sup>173</sup> *Civil Liberties Organisation (in respect of Bar Association) v Nigeria* (2000) AHRLR 186 (ACHPR 1995).

<sup>174</sup> *Krishna Achutan* case (n 163 above).

<sup>175</sup> *Kenya Human Rights Commission v Kenya* (2000) AHRLR (ACHPR 1995).

<sup>176</sup> n 164 above.

national of Zaire for alleged violations of the latter's Charter rights.<sup>177</sup> Regarding NGOs, they need not be present in, or registered in the territory of any of the state parties to the Charter, neither do they need to enjoy observer status with the Commission in order to have standing before the Commission.<sup>178</sup>

#### 4.2.4 Victim's consent or authorisation not required

Finally, unlike the ECHR and the UNTMBs, the application of the *actio popularis* means that communications may be filed on behalf of alleged victims without their express consent or authorisation.<sup>179</sup> Thus the Commission's doors are widely open to any person alleging violations of the Charter. What then is the rationale for such a broad approach to standing?

### 4.3 Rationale for the broad standing approach

The Commission has justified its broad standing approach on three main grounds.

Firstly, the political, social, and economic context within which the protection mechanism operates has been underlined as the rationale for the broad standing approach. The Commission operates in a socio-economic context in which ignorance of the Charter rights and poverty both on the part of individuals and local NGOs, lack of technical expertise and information, and the presence of serious or massive violations arising from repressive forms of governance appear to be the order of the day. Accordingly, in dismissing the victim requirement in the *Malawi African Association* case, the Commission emphasised that

[t]his characteristic of the African Charter reflects sensitivity to the practical difficulties that individuals can face in countries where human rights are violated. The national or international channels may not be accessible to the victims themselves or may be dangerous to pursue.<sup>180</sup>

The seriousness of the difficulties faced by victims of human rights violations in such socio-economic context has been highlighted in a number of cases where the Commission has specifically requested

---

<sup>177</sup> n 5 above.

<sup>178</sup> See the numerous communications filed by African and international NGOs including Amnesty International, Interights, International Commission of Jurists, International Pen, Lawyers Committee for Human Rights, Malawi African Association, Constitutional Rights Project.

<sup>179</sup> *Union Inter africaine des Droits de l'Homme* case for example (n 3 above).

<sup>180</sup> n 164 above.

complainants to seek the help of NGOs or other capable persons.<sup>181</sup> In *Cossi Paul v Benin* for example, the case was postponed on several occasions due to the complainant's inability to present his case logically. In addition, his unfamiliarity with the Commission's procedures made the situation worse. Consequently, the Commission had to request the intervention of two NGOs namely, Interights and the Institute for Human Rights and Development in Africa, to assist the complainant.<sup>182</sup>

Thus the enormous benefits of the *actio popularis* within the African context cannot be over-emphasised and it is unsurprising that the doctrine has found expression in the bulk of the cases before the Commission. More recently the Commission noted with gratitude, in *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* to the NGOs who brought the matter to its attention that it 'is a demonstration of the usefulness to the Commission and individuals of [the] *actio popularis*, which is widely allowed under the Charter.'<sup>183</sup>

Secondly, the uniqueness of the Charter itself informs the rationale behind the broad standing approach. The Charter's protection of both individual and peoples' human rights puts it on a different pedestal from other regional and global human rights instruments.<sup>184</sup> With such a collective understanding of human rights protection, an 'individualised' approach to standing as operates before the ECHR and the UNTMBs will defeat the very purpose and spirit of the Charter. The *actio popularis* is a viable channel through which the collective rights of the peoples' in Africa will be realised.<sup>185</sup>

Lastly, the realisation of human rights through a purposive and generous as opposed to a restrictive interpretation has been given as the rationale for a broad standing approach. In carrying out its mandate, the Commission has the duty to interpret the Charter in a culturally sensitive manner taking into account the needs of the continent and the different legal traditions in Africa.<sup>186</sup>

As a human rights instrument, the only way in which the rights guaranteed under the Charter will have full measure and meaning for those who need them most is to adopt a flexible, generous and

---

<sup>181</sup> *Modise* case (n 9 above).

<sup>182</sup> Communication 199/97.

<sup>183</sup> (2000) AHRLR 60 (ACHPR 2001).

<sup>184</sup> Aaken (n 20 above) 43. Also C Heyns (ed) *Human Rights Law in Africa* (2004) Vol 1 390-394; F Viljoen 'Africa's contribution to the development of international human rights and humanitarian law' (2001) 1 *African Human Rights Law Journal* 18 at 20; R Murray 'The African Charter on Human and Peoples' Rights 1987-2000: An overview of its progress and problems' (2001) 1 *African Human Rights Law Journal* 1.

<sup>185</sup> J.C Mubangizi 'Some reflections on recent and current trends in the promotion and protection of human rights in Africa: The pains and gains' (2006) 6 *African Human Rights Law Journal* 146.

<sup>186</sup> *Constitutional Rights Project and Another v Nigeria* (2000) AHRLR 235 (ACHPR 1999).



purposive interpretation.<sup>187</sup> Such an approach should apply to both the substantive provisions and procedural requirement such as standing which constitutes the vital means of invoking and enforcing the substantive provisions.<sup>188</sup>

#### **4.4 Drawbacks of the *actio popularis* doctrine**

Despite its usefulness, there are drawbacks in the application of the doctrine which is affecting the work of the Commission. The issues here are categorised into three: the inherent drawbacks of the *actio popularis*; the Commission's organisational arrangement hindering its effective operation; and whether the Commission exceeded its mandate in adopting the broad standing approach.

##### **4.4.1 Inherent drawbacks of the *actio popularis***

The inherent drawbacks of the *actio popularis* are discussed under the following headings.

###### **4.4.1.1 Lack of relevant information**

At the heart of the *actio popularis* doctrine lies a free-for-all procedure whereby any entity wherever located may file complaints on behalf of victims without contacting such victims or having a clear picture of the victims' exact location. A logical consequence of such a situation is the possibility of lack of the relevant information on the part of the complainant to effectively prosecute the allegations contained in the complaint.

A typical example of this problem arose in *Interights (on behalf of Safia Yakubu Husaini et al)* case, Interights, a foreign NGO based in the United Kingdom.<sup>189</sup> The complaint alleged among others that Safia, a Nigerian woman and a nursing mother was sentenced to death by stoning for alleged adultery under the new *Sharia* penal legislation in Northern Nigerian States by a *Sharia* Court in Gwadabawa, Sokoto State, Nigeria. Citing other examples, the complaint alleged that Safia's case was only one in a series of serious and massive violations of the rights to a fair trial, personal dignity and the right to life of the residents of those states contrary to articles 2,3,4,5,6,7, and 26 of the Charter.

The complaint was received by the Secretariat of the Commission on 31 January 2002. On 5 February 2002, the Secretariat wrote to the complainant acknowledging receipt and requested for the relevant

---

<sup>187</sup> *Media Rights Agenda and Another v Nigeria* (2000) AHRLR 200 (ACHPR 1998); *Aminu v Nigeria* (2000) AHRLR 258 (ACHPR 2000).

<sup>188</sup> *SERAC* case (n 183 above).

<sup>189</sup> n 13 above.

information and evidentiary materials on the developments surrounding the application of the *Sharia* penal legislation together with the specific cases of alleged irregularities supported by relevant documentation and the decisions which had been executed. On 3 March 2002, the complainant informed the Secretariat that it will assemble as many of the documents as exist and keep the Secretariat updated of its progress.

At the 31 OSC in May 2002, the complainant orally informed the Secretariat of its efforts at compiling the relevant information and pleaded with the Secretariat not to take further action. However at the 32 OSC, October 2002, the complainant informed the Secretariat of its inability to compile the relevant information on time. It was however in touch with its local partners in Nigeria for that purpose and suggested the Secretariat take action on the case. The Commission decided to be seized of the matter at its 33 OSC, May 2003, and requested arguments on admissibility to be submitted before the next session. As at the 35 OSC the parties had failed to file their arguments despite repeated reminders resulting in several deferrals and delays in the consideration of the case.

At the 36 OSC, November-December 2004, the complainant orally informed the Rapporteur of the Communication of its wish to withdraw the case, obviously for lack of information, and confirmed it in writing at the 37 OSC April-May 2005.

It may be recalled that the *Sharia* legislation cases raised huge concerns worldwide about human rights protection in Africa. The complainant may have been prompted by those concerns to hurriedly file the case before the Commission with the hope that gathering the supporting evidence will be much easier but failed.

It may be argued that the location of the complainant may have posed the difficulty it faced in accessing the relevant information. This may have been compounded by the absence of its organisational logistics to evaluate the situation by itself. Therefore this calls on the Commission to close its gates to foreign non-victims and to open it to only African-based NGOs or African NGOs with observer status before the Commission. Foreign NGOs should only be allowed before the Commission where they act through local or African-based NGOs.

However the question is whether an African-based NGO or a foreign NGO with an established local presence in Nigeria would have been better placed to gather the required information. For instance would it have been easier for a Ghanaian NGO to have gathered the information in Nigeria or from another African country for that matter? The answer to this question is likely to be in the negative since

such logistical difficulties are encountered by all non-victims submitting communications without the involvement of the victims.

The above case scenario is unfortunate indeed. However, whether it presents a good basis for a modification of the broad standing approach is another matter. Several foreign-based NGOs including Interights itself have successfully prosecuted and continue to prosecute cases before the Commission. It is argued that such isolated incidents should therefore not be allowed to disturb the valuable open-door standing approach before the Commission.

#### **4.4.1.2 Loss of interest/loss of contact/withdrawal without notice**

Another inherent problem associated with the broad standing approach is the author's subsequent loss of interest leading to the sudden withdrawal of the case without notice. In the absence of the victim requirement, public spirited persons who enthusiastically wish to defend the public interest may lose the zeal to continue with the case for various reasons. While such persons have nothing to lose, it may lead to the detriment of the victims involved.

The case in point is the *Centre for the Advancement of Democracy, Social Justice, Conflict Resolution and Human Welfare*<sup>190</sup> submitted on behalf of Abouma Emmanuel, a member of the Movement for the Actualisation of the Sovereign State of Biafra (MASSOB) for his alleged arrest and detention without charge in violation of articles 2,3,4,5,6,7,8,10, and 20(1) of the Charter.

Despite several reminders to the complainant to submit arguments on admissibility, the Secretariat received no response. On 3 December 2003, the Secretariat wrote inquiring the reasons behind the complainant's failure to respond and requested information on the status and conditions of detention of the victim but received no response. On 19 April 2004, the Commission informed the complainant of its decision to defer the matter to the 36 OSC.

In an email to the Secretariat on 25 May 2004, the author informed the Commission of its decision to withdraw and to discontinue forthwith correspondence in the matter. The Commission noted that the email came from an address different from the usual address of correspondence. All attempts by the Commission to confirm the genuineness of the withdrawal was unsuccessful. The case was closed for lack of interest.

---

<sup>190</sup> n 13 above.

Other cases have been closed for loss of contact where correspondence has broken-down entirely.<sup>191</sup> In *Association Que Choisir Benin v Benin*<sup>192</sup> for example the Secretariat lost all contact with the author of the communication who, for more than a year, failed to respond to requests from the Secretariat.

The above developments raise several questions and uncertainties. While the status of the alleged victims remain uncertain, questions such as whether the withdrawal was made with the consent of the victims or as a result of intimidation remain unsolved. Other questions including whether the Commission should proceed on its own continue to hunt the Commission for answers.

It may be noted that a withdrawal in itself is not a problem. It is the manner in which it is effected that poses a cause for concern for the Commission. The Commission draws a distinction between situations where complainants express the wish to withdraw and where they cut-off correspondence. Regarding the former, the Commission has accepted that the right of complainants to submit communications implies their corollary right to withdraw. Accordingly the Commission has to respect such express requests and proceed no further.<sup>193</sup> However regarding the latter, the Commission has refused, except in certain circumstances, to treat the breakdown of correspondence as withdrawal particularly where the complainant is an individual.<sup>194</sup> This is because various reasons may account for such situation including fear to proceed, lack of resources both in terms of technical knowledge and finance, and an underestimation of the chances of success.<sup>195</sup>

In *Committee for the Defence of Human Rights (on behalf of Madike) v Nigeria* the Commission laid down a three-fold test to serve as guidelines in the determination of whether to interpret silence as withdrawal:

- 1 The Commission must determine if the lack of communication is due to disability, or a desire to cease pursuit of the case;

---

<sup>191</sup> *Union des Scolaires Nigérien and Another v Niger* (2000) AHRLR 176 (ACHPR 1994); *Buyingo v Uganda* (2000) AHRLR 320 (ACHPR 1995); *Joana v Madagascar* (2000) AHRLR 141 (ACHPR 1996).

<sup>192</sup> Communication 264/2002.

<sup>193</sup> *International PEN v Burkina Faso* (2000) AHRLR 47 (ACHPR 1994); *International PEN v Chad* (2000) AHRLR 66 (ACHPR 1994).

<sup>194</sup> *Kalenga v Zambia* (2000) AHRLR 321 (ACHPR 1994) where the Commission did not hear from the complainant after the case was filed, the Commission treated the case as amicably resolved based on information from the respondent state to that effect.

<sup>195</sup> Österdahl (n 167 above) 109.

- 2 Where the complainant is an individual the Commission cannot interpret silence as withdrawal of the communication because individuals are highly vulnerable to circumstances that might prevent them from continuing to prosecute a communication;
- 3 where the communication is filed by a well-known NGO, the Commission must interpret a complete lapse of communication as lack of desire to pursue the communication.<sup>196</sup>

Although the above test is a useful and reasonable approach the Commission may still have difficulties in applying this test in ascertaining the true situation where correspondence has completely broken down.

The question then is how best can the Commission address the above difficulties? Does the solution lie in the restriction of the broad standing approach by introducing requirements such as the victims' consent or at least their contact addresses as prerequisite for standing?

It is submitted that such an approach will defeat the essence of the *actio popularis* as developed before the Commission which allows communications to be brought without the consent or location of the victims. Requiring the consent of the victim will pose a huge obstacle to the defence of human rights in Africa. Granted that the victims' contact is provided, it will still be difficult for the Commission for practical reasons to continue the case in the absence of some form of cooperation from the complainants. This is supported by the fact that, to date, the Commission has not *suo moto* continued with a case that has suffered any of these setbacks.

#### **4.4.1.3 Extension of the *actio popularis* doctrine to cover the interest of states**

Another problem with the broad standing approach is the tendency of entities to represent the interests of states. The case in point is *Association Pour la Sauvegarde de la Paix au Burundi v Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*.<sup>197</sup> This case involved alleged violations of the Charter by the respondents as a result of the embargo against Burundi following the military overthrow of a democratically elected government. The authors argued that the embargo violated articles 4, 17, 22 and 23(2) as it among others had the effect of cutting-off essential goods from getting to Burundi for the survival of the Burundian people.

---

<sup>196</sup> (2000) AHRLR 183 (1995).

<sup>197</sup> Communication No. 157/96.

Although the respondents did not challenge the *locus standi* of the complainants, the Commission had difficulties with their standing as the complaint appeared to be representing the interest of Burundi in all respects. In the Commission's opinion the communication fell squarely under articles 47 to 54 procedures. It was concerned about whether in such situations it should not consider the complaint as that of inter-state. The Commission eventually resolved, recalling its long standing practice of receiving communications from NGOs, to classify the communication as a class action in the interest of the advancement of human rights. The case was however dismissed on the exhaustion of local remedies rule as it was found that the national courts of Burundi had no jurisdiction over the respondent states.

It is recalled that the Commission accepts communications with vaguely defined victims such as that in this case which covers all the people of Burundi. Therefore the communication fell within the scope of the *actio popularis*. However, the link between the victims and the alleged violations was so vague that it comfortably suited the interests of Burundi. At a glance, the face of Burundi appeared instead of the victims.

But the Commission's approach is worrying. Its preparedness to treat such communications as inter-state complaints implies that standing is broad enough to include the representation of the interest of a state by an individual or NGO. In other words, the *actio popularis* could be extended to allow individuals to represent the interests of a state. It is submitted that to accept such a situation will be to over-stretch the tenets of the doctrine and defeat its very purpose.

Communications before the Commission are either inter-state or individual. Where they reveal a series of serious or massive violations the article 58 procedure must be followed. It is noted that standing for inter-state complaints is the exclusive right of state parties to the Charter. Therefore the broad approach to standing in non-state communications, however stretched, cannot arguably cover representation of the interests of a state by a non-state party, an individual or NGO.

Consequently, it is submitted that the Commission's concerns should not have even occurred in the first place, and to the extent that it has presented a basis for revision of the standing rules is rather regrettable. Where from the content of the Communication an individual purports to act on behalf of the state, the commission must be bold enough to declare it inadmissible under article 47 for want of standing. However, where in the Commission's opinion, it nevertheless reveals situations of serious or massive violations, nothing prevents the Commission from dealing with the case in accordance with

the article 58 procedure. As a matter of principle, it will be contrary to the Charter and its Rules to accept communications filed by individuals on behalf of states.<sup>198</sup>

#### **4.4.1.4 Burden on the Commission's resources**

A logical consequence from the difficulties enumerated above is the unnecessary constraints placed on the Commission's meager resources. The countless number of sessions the Commission had to convene and defer consideration of those cases not to mention the unsuccessful efforts at contacting the complainants left much to be desired. It may be argued that on account of the Commission's financial constraints and the huge number of serious violations of human rights in Africa, such communications consumed disproportional amount of the Commission's resources when compared with their outcome.

However, as this problem flows directly from the others, a viable solution to those above should settle the drain on the Commission's resources. It may be noted that the problem of financial constraints may have been exaggerated when viewed on the balance of the number of such incidents as against the number of cases decided by the Commission through the *actio popularis*. These cases form an inconspicuous percentage of all the cases decided by the Commission since its inception 20 years ago. And the Commission has been able to build its jurisprudence through the same broad standing approach. Arguably, it is a bit of an exaggeration to say that such isolated incidents tremendously cause disproportionate burden on the Commission's resources.

#### **4.4.2 Drawbacks associated with the organisational arrangement of the Commission**

The manner in which the Commission operates also hampers the effective operation of the *actio popularis*. The notable difficulties here are the manner in which cases are titled and terminological difficulties.

---

<sup>198</sup> For a discussion of the case see A.D Olingo 'The embargo against Burundi before the African Commission on Human and Peoples' Rights (Note on Communication 157/96, *Association for the Preservation of Peace in Burundi v Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*)' (2005) 5 *African Human Rights Law Journal* 424.

#### 4.4.2.1 Naming cases

Cases before the Commission are titled by their authors so that if an NGO files a communication on behalf of victims, the name of the NGO is put as the title of the case, sometimes together with the name of the victim. This procedure is different from what pertains at national, regional and global jurisdictions where cases are titled by the names of the victims or at least some reference to the event giving rise to them. The difficulties arising from such situation regarding the *actio popularis* are discussed under the following headings:

##### 4.4.2.1.1 Who is a victim under the Charter?

An answer to the question of ‘who actually is a victim of violations under the Charter’ is elusive. A non-victim acting on behalf of victims, whether as authorised representative or otherwise cannot be considered as a victim under any circumstance. Therefore there is no need to put their names as the title of the case. Naming cases after NGOs overshadows the plight and significance of the victims themselves, the events giving rise to the case and they do not disclose anything about the case.<sup>199</sup> It gives a false representation of the true nature and purpose of the *actio popularis* doctrine.

Besides, granted that NGOs bring such cases only to draw attention to themselves and their good work in Africa, putting their names as the title is still not necessary as they will be definitely referred to in the case as representatives of the victims. Indeed their names, addresses, signatures and seal are enough to identify them. Where the victim wishes to remain anonymous, the normal procedure is to resort to the use of alphabets. However, it is understandable to resort to the name of the NGO or individual in pure *actio popularis* actions where there are no identifiable victims at all. Proper titling will bring clarity in the identification of victims in the work of the Commission without the need to modify the broad standing approach.

##### 4.4.2.1.2 Are all cases *actio popularis*?

The answer is definitely no. However, naming cases after their authors instead of the victims has resulted in what appears to be a lack of distinction in the Commission’s practice between *actio popularis* actions and actions arising out of duly authorised representation. It erroneously creates the impression that all actions before the Commission are *actio popularis*.

---

<sup>199</sup> Österdahl (n 167 above) 95.



#### 4.4.2.1.3 Repetitiveness and monotony

The above problem does not only present the reader of the Commission's case-law with a difficulty in distinguishing between the cases decided by the Commission but also results in monotony. This is because the names of NGOs are repeatedly and numerous cited as titles although the cases are different in issues and victims.

#### 4.4.2.1.4 Disorder and inconsistency

It appears the Commission simply lifts the name of the author and puts it as the title of the case so that cases have even been named after officials from NGOs. The difficulty here is whether such individual is acting in a representative or personal capacity. A prominent example is *Annette Pagnouille (on behalf of Abdoulaye Mazou) v Cameroon*<sup>200</sup> where Pagnouille belonged to Amnesty International. It was not clear whether she was acting on behalf of the organisation. Such inconsistency and disorder could have been avoided by simply naming the case after the victim herein, Abdoulaye Mazou.

#### 4.4.2.2 Terminological difficulties

The difficulty here arises from the lack of consistency in the meaning of authors and victims. While the Charter refers to 'authors', the Commission's practice has been to use the words 'complainant', 'victim', 'author' 'representative' and 'counsel' interchangeably to refer to the author and victim. Further the term 'victim' has been used interchangeably with terms like 'the accused' 'the convicted person' 'the petitioner', 'the client' and the 'complainant's client'.<sup>201</sup>

Having examined the Commission's case law, Österdahl noted that the Commission often resorts to the terms 'complainant' and 'victim' to distinguish between the author of the communication and the actual victim. However, such terminology is inappropriate since complainant and victim stand for the same thing.<sup>202</sup>

---

<sup>200</sup> (2000) AHRLR 55 (ACHPR 1995).

<sup>201</sup> Communication 205/97, *Kazeem Aminu v Nigeria*; *Africa Legal Aid v The Gambia* (2000) AHRLR 119 (ACHPR 2000); *Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000). Also Österdahl (n 167 above) 104-107.

<sup>202</sup> Österdahl (n 167 above) 105.

These terminological difficulties hamper the effective operation of the *actio popularis* as it results in uncertainties over who filed a communication in a particular case, on behalf of whom, and clouds the requirements of admissibility before the Commission.<sup>203</sup>

The Commission's lack of consistency is reflected in several decisions. In *Africa Legal Aid v The Gambia* for example, the Commission used the terms 'complainant' and 'petitioner' to refer to the author NGO and at the same time referred to the victim as the complainant.<sup>204</sup> In exceptional cases the Commission has shown consistency by sticking to the terms complainant and victim to distinguish between the author and the victim respectively, despite its redundancy.<sup>205</sup> These exceptional cases involved only one identifiable victim and author.

Thus, it appears the Commission's difficulties over terminologies become apparent in cases filed by NGOs either alone or jointly as the Commission struggles to keep the identity of the entity filing the communication separate from the victims.<sup>206</sup> But the distinction is not necessary as authors need not be referred to in the decision. Where for any reason, it becomes necessary to refer to the author or the legal representative, it has been suggested that it will be more appropriate to use the term 'counsel' or say so expressly.<sup>207</sup>

In conclusion the time is now ripe for the Commission to choose and stick to one or more terms for the sake of clarity and consistency in its case-law.

#### **4.4.3 Has the Commission gone too far?**

The adoption of the broad standing approach by the Commission raises the question as to whether the Commission exceeded its powers under the Charter. Was such an approach envisaged under the Charter and if not how does it affect the obligations of state parties to the Charter. These and other questions came under consideration in the *Spilg and Mack & Ditshwanelo* case<sup>208</sup> the facts and issues of which were presented in Chapter One. The Spilg case is the last straw that prompted the Commission to re-examine its broad standing approach.

---

<sup>203</sup> Österdahl (n 167 above) 104.

<sup>204</sup> *Africa Legal Aid* case (n 201 above).

<sup>205</sup> *Abubakar v Ghana* (2000) AHRLR 124 (ACHPR 1996); *Cudjoe v Ghana* (2000) AHRLR (ACHPR 1999).

<sup>206</sup> Österdahl (n 167 above) 105.

<sup>207</sup> Österdahl (n 167 above) 105.

<sup>208</sup> n 8 above.

Recalling the scope of the broad standing approach all the arguments raised by Botswana can easily be flopped. The nationality of Spilg is irrelevant, nor is the absence of their sufficient legal interest. Equally, the fact that Spilg and Mack were not personally appointed by the victim is immaterial. However, the Commission took these arguments seriously and decided to re-examine its standing rules. Perhaps it was concerned by the idea that it has gone too far. It is submitted that the Commission's approach is within the boundaries of the Charter for the following reasons:

Firstly, the provisions of the Charter give enough space to the Commission to interpret the Charter and formulate its standing requirements, a fact which state parties have undertaken to recognise and respect. The vague and expansive provisions of articles 55, 56, and 58 already created a free-for-all standing procedure before the Commission. Furthermore the Commission did not adopt these standing rules out of context. As noted above, the realistic and practical difficulties in implementing human rights in Africa paved the way for the adoption of such a broad approach. Moreover state parties summoned before the Commission rarely challenge the issue of standing, an indication of the implicit acceptance of the approach. Therefore the broad approach falls within the purview of the Charter and state parties to the Charter have equally embraced it. Botswana cannot back out from its understanding and acceptance of the Charter when it ratified on 17 July 1986.

Secondly, the African Charter is a living document and the Commission has been given the powers to interpret it for the effective realisation of its mandate. It is recalled that the Commission started on the footing of a less restrictive approach to standing as set out in the previous Rules of Procedure to the broad approach as we have it today. Whatever the rules of standing stood at the time Botswana ratified the Charter cannot be said to have been a representation of what the Charter meant.

As a living document, the interpretation of the Charter to accord with the realities and needs of the times cannot be a misrepresentation of the true meaning and effect of the Charter to state parties at the time of ratification. It may be argued that state parties never envisaged such a broad approach under the Charter and that had they known they would have made a reservation at the time of ratification. However, such an argument is based on a false premise that the non-state communications procedure under the Charter is optional. Unlike the UNTMBs the non-state communications procedure under the Charter is not optional and binds state parties upon ratification with a corollary acknowledgment of the powers of the Commission to develop its standing rules in accordance with the Charter. Therefore any reservation that has the effect of restricting standing only to citizens of the state party concerned will defeat the very core and purpose of the Charter.

Thirdly, as noted from Chapters Two and Three, there are no fixed rules of *locus standi* in national, regional and global systems. Besides, the rationale for a consensus among state in formulating standing rules in regional and global mechanisms is to prevent the domination of one country's notion of *locus standi* over the others. State parties to the Charter vaguely formulated the broad standing rules under the Charter and empowered the Commission to put them into shape. It will therefore be out of order to expect the Commission, in every communication, to look into and comply with the standing rules operating in the jurisdiction of the respondent state.<sup>209</sup>

Finally, it must be recalled that the Charter is a unique document and so have the mechanisms developed to enforce it. Should it not be surprising that the Charter was not designed along the lines of the restrictive approaches before the ECHR and HRC which served as models at the time of the drafting? Equally, in the formulation and development of its rules and jurisprudence, the Commission has not towed the line of its predecessors. Rather it has looked at and responded to the uniqueness of the Charter and the human rights situation in Africa. By adopting the broad approach to ensure better protection of human rights in Africa, the Commission acted within its mandate and did not go too far.

It may be noted that the restrictive standing requirements of individuals before the African Court on Human and Peoples' Rights (Court) reinforces the need for the Commission to maintain its broad standing approach if the Court is to have the desired impact in Africa.<sup>210</sup>

#### **4.5 Conclusion**

From the above, it is clear that the broad standing approach adopted by the Commission is not only envisaged under the Charter but also it is necessary to take care of the special needs of the people on the continent. However some of the problems associated with the approach are only superficial and exaggerated and others have arisen from the Commission's own internal organisation and functioning. We noted particularly that all the problems presented are remediable without affecting the broad standing approach. The above left us to ponder over the question of whether, given the balance

---

<sup>209</sup> Even in Botswana the Courts have departed from a restrictive to a broad approach to standing in the prosecution of human rights matters – *Attorney General v Dow* (2001) AHRLR 99 (BwCA 1992).

<sup>210</sup> Articles 5(3) and 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998 provide for an optional individual complaints procedure. Also J Harrington 'The African Court on Human and Peoples' Rights' in M.D Evans and R Murray (ed) (n 6 above) 305; F Viljoen 'A Human Rights Court for Africa, and Africans' (2004) 30 1 *Brooklyn Journal of International Law* 1 at 25.

between the enormous benefits of the *actio popularis* and the problems arising from its application, there is indeed the need for the Commission to revise its broad standing approach.

## CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS

### 5. Introduction

The study's inquiry into the question of whether, for the sake of an effective operation of the Commission, the open-door approach to *locus standi* by the Commission in respect of its individual complaints procedure is really in need of reform unearthed several difficulties facing the Commission in discharging its protective mandate under the Charter. The study also revealed that the broad standing approach adopted by the Commission is not only desirable but necessary if the Commission desires to make the expected impact on the Continent. This chapter presents a summary of the conclusions drawn from the entire study and offers recommendations for the effective operation of the Commission.

#### 5.1 Summary and conclusions

To address the question posed, the study begun with an exploration in Chapter Two into the origin, and nature of *locus standi* and its application in domestic jurisdictions using Ghana, Mozambique and South Africa as case studies. It revealed that the concept does not have a uniform application and it differs from one legal system to another. Its nature and application are defined by various factors including the legal history, and the needs of the particular society in question. There is however an increasing shift from a restrictive to a flexible approach to standing in human rights litigation.

Chapter Three then proceeded into an examination of the standing requirements in the European, and Inter-America human rights systems and four UNTMBs: the HRC; the CERD; CAT; and CEDAW-Committees in comparative terms. The findings were no different from the above. Standing for the individual communications procedure under these systems differed in various respects. With the exception of the Inter-American system where the *actio popularis* is accepted, the rest operated on the strict lines of the victim requirement. The standing requirements in each system, except the UNTMBs, are defined by the socio-economic context within which the system operates.

Chapter Four focused on standing before the African Commission. The discussion delved into the developments of the broad standing approach adopted by the Commission, its rationale and unearthed the problems associated with it. It disclosed that while some of the problems are only perceived and exaggerated, others arise from the internal arrangement and functioning of the Commission itself. However all the problems associated with the broad standing approach are

remediable through the adoption of defined and clear procedures and practices by the Commission without affecting the broad approach.

With the above findings, it is recommended, for purposes of curbing the drawbacks, as follows:

## **5.2 To the Commission**

The success of the Commission in fulfilling its mandate largely depends on well-defined, consistent and clear procedures. The following are proposed.

### **5.2.1 Strict application of article 56 admissibility requirements**

A communication can only be admissible where it complies with the admissibility requirement under article 56 and Rule 116 of the Rules. Failure to comply with the admissibility requirements, due to for example highly inadequate information or information based exclusively on news from the mass media, must lead to communications being declared inadmissible without affecting the capacity of persons bringing the Communication. It is only through such a strict application of the article 56 admissibility requirements that prospective complainants will ensure that their communications contain the required information before approaching the Commission.<sup>211</sup>

### **5.2.2 Time limit for requests**

The Rules must prescribe time limits for submission of requests for clarifications and additional information under Rules 104 and 117. A complainant's failure to respect the time frame in the absence of reasonable excuse or compelling circumstances should render the communication being declared inadmissible. When prospective authors understand the rules of the game they will not only take the communications procedure more seriously but also ensure that they have the relevant information before appearing before the Commission.

---

<sup>211</sup> The Guidelines for Submission of Communications (Guidelines) before the Commission states that Communications must contain all the relevant information. However the problems discussed in the study illustrate that this is not being complied with. This is compounded by the manner in which the Commission handles the matter which is not strict enough to deter future occurrence. Guidelines available at [http://www.achpr.org/english/\\_info/guidelines\\_communications\\_en.html](http://www.achpr.org/english/_info/guidelines_communications_en.html) (accessed 2 October 2006).

### **5.2.3 Time limit between filing and arguments on admissibility**

A time limit must be set in the Rules for the period between filing of a communication and admissibility arguments by complainants. This procedure will avoid the prolongation and unnecessary deferrals due to failure on the part of complainants to file arguments on admissibility.<sup>212</sup>

Under Rule 117(4) a three month time limit is prescribed for respondent states to file submissions on admissibility following the notification of the text of the Communication and when the Commission has not yet decided on seizure. The Commission shall go ahead and decide on admissibility where the state fails to do so. However the same does not go for complainants. It is suggested that such time frames should apply to both parties.

### **5.2.4 Communications to be signed by persons competent to represent organisation**

The Commission should draw on the practice before the ECHR which requires an application submitted by an NGO to be signed by persons competent to represent the organisation. Such persons are in charge of affairs and are better placed to give the position of the organisation at each stage of the communication. This requirement will place responsibility on them to ensure that the procedure is taken seriously by the organisation, and facilitate subsequent correspondence and follow up.<sup>213</sup>

### **5.2.5 Contact address of next-of-kin**

Individuals filing communications on their own behalf or on behalf of others must provide the contact address of their next-of-kin or close relation in addition to their own. This is a useful back-up for ascertaining the status of the case in situations where there is total collapse of correspondence between the Commission and the complainant.

### **5.2.6 Notification on withdrawal**

Neither the Charter nor the Rules of the Commission deal with withdrawal of cases by complainants. There is a need for the Commission to clearly state its position on sudden withdrawals in the Rules or its Guidelines. A requirement that complainants undertake to inform the Commission in case of

---

<sup>212</sup> Although this will in turn depend on the contents of the communication, it is suggested that a communications which manifestly lacks details and relevant information must be declared inadmissible.

<sup>213</sup> The Guidelines provide that communications filed by NGOs must be signed by their legal representatives.



withdrawal will be useful. Although such an undertaking will not be binding nor have any effect on subsequent communications, it will help streamline the procedures before the Commission.

### **5.2.7 Distinguish between inter-state and individual complaints procedures**

The Commission should draw a clear distinction between the standing requirements for inter-state and individual complaint procedures. Standing for inter-state complaints is the exclusive preserve of states parties and must remain as such. An individual or NGO who purports to file a communication on behalf of a state party must be dismissed for lack of standing. Nonetheless where the communication reveals a series of serious or massive violations the article 58 special procedure must apply.

### **5.2.8 Name cases by their victims or events**

The Commission should avoid the practice of naming communications after their authors. Communications should be named after their victims or the events giving rise to them. The Commission must resort to alphabets where victims wish to remain anonymous. This will among others solve the difficulties in the identification of victims, prevent repetitiveness and monotony in the Commission's case law and bring sanity and consistency in the Commission's practices. In pure *actio popularis* cases where there are no identifiable victims, naming cases after authors is understandable.

### **5.2.9 Consistent use of terminology**

#### **i Adopt national and internationally recognised terminologies**

The Commission should stick to the terms 'victim' or 'complainant' and 'counsel' or 'representative of the 'victims' or 'complainant' to denote the victims and the authors respectively. In pure *actio popularis* cases referring to the author as 'complainant' is acceptable.

Where the victims are somehow specified, they still consist of the victims in the case however vaguely defined. The Commission should refer to them as 'complainants' and 'victims' and their representatives as 'counsel' or 'representatives'.<sup>214</sup> This procedure will be in line with national and international procedures and bring consistency and clarity in the Commission's case-law.

---

<sup>214</sup> Österdahl (n 167 above) 105.

**ii Avoid the term ‘author’**

A communication is either filed by one of two persons: the victims or their counsel or representative. The Commission should therefore avoid the use of ‘author’ unless there is something striking about the author that the Commission wants to draw attention to. Resort to ‘author’ is superfluous and misleading.<sup>215</sup>

**iii Avoid the terms ‘accused’, ‘convict’, ‘petitioner’ and ‘client’**

The introduction of such terms as ‘the accused’ ‘the convicted person’, ‘the petitioner’, and ‘the client’ by the Commission to refer to the victim is highly undesirable. The Commission should simply refer to the victim as complainant or victim. Where it is necessary to refer to their representatives, the term counsel or representative is enough.<sup>216</sup>

**5.3 To state parties**

**5.3.1 Cooperate with the Commission**

The success of the Commission depends on the unyielding support of state parties to the Charter. Some states have contributed to the delays before the Commission by failing to respond to queries and file their submissions on time. Such development undermines the system and reveals lack of enthusiasm of African states to support the work of the Commission. One way of solving this problem is to create an office within the Ministry of Justice whose main responsibility will be to take care of matters coming from the Commission.

**5.3.2 Duty to educate**

The undertaking of states to recognise the rights, duties and freedoms under the Charter and to adopt legislative and other measures to give effect to them implies a duty to educate their populations on their Charter rights.<sup>217</sup> Lack of knowledge of the Charter in Africa contributed to the adoption of the *actio popularis* which states view as an unacceptable license to international watchdogs to engage

---

<sup>215</sup> As above.

<sup>216</sup> As above.

<sup>217</sup> Article 1 of the Charter.

them in communications. The more they ensure that their citizens are knowledgeable about their Charter rights the less interference they are likely to have from international watchdogs.

Linked to the above is the duty to educate their citizens on how to demand for those rights. States must educate their populations on how to file simple communications in order to wade off interference by international watchdogs.

### **5.3.3 Relax domestic rules on standing**

The examples from Ghana and South Africa presented two extremes of restrictive and broad approaches with Mozambique in the middle. With a worldwide shift towards flexible approaches to standing for the effective enforcement of human rights, it has become necessary for African states to relax their rules on standing to allow greater access to individuals. The example of South Africa may be worthy to emulate.

## **5.4 To individuals and NGOs**

The credibility and reliability of individuals and NGOs before the Commission is now at stake. NGOs need not be reminded about the discomfort some governments have on their close relationship with the Commission although their role in the effective operation of the Commission is also crucial. The need for them to conduct themselves properly before the Commission has now become necessary in order to regain their credibility and reliability in the eyes of the Commission and victims.

### **5.4.1 Gather relevant information before filing communications**

Individuals and NGOs must ensure that they gather the relevant information in support of their allegations before proceeding to the Commission. This will avoid unnecessary delays and reduce cost.

### **5.4.2 Sustain interest till the end of the case**

Individuals and NGOs must sustain their interest in cases filed till the final determination by the Commission. Withdrawing in the middle of a case due to lack of interest is highly undesirable and must be avoided.

### **5.4.3 Give notice for withdrawal**

As noted in the study, the Commission does not have a problem with withdrawal in itself but the manner in which it is done. Individuals and NGOs must give due notice for withdrawal as soon as it

becomes clear to them that they are unable to continue. They need not give any reasons for withdrawal. It suffices that they inform the Commission on their decision to withdrawal timeously to avoid delay and reduce cost.

## **5.5 To the African Union**

In all, the success of the Commission depends on the support it receives from its parent organisation, the Organisation of African Unity (OAU) now African Union (AU). The need for the AU to provide support both in terms of monetary, logistics and technical expertise to the Commission cannot be over-emphasised. The AU has the duty to ensure that the Commission is successful in carrying out its mandate.

### **5.5.1 Financial support**

The Commission's financial handicap in effectively carrying out its protective mandate needs the immediate attention of the AU. Most of its financial resources are drawn from the European Union and other benevolent organisations. The AU must dramatically increase the budget allocation of the Commission and ensure that it receives all the necessary logistical and technical assistance for an effective operation. It is only by receiving such unyielding support from the AU can the Commission be independent and satisfactorily function effectively.

## **5.6 Conclusion**

Having dealt with the issues in the study, drawn conclusions and findings, and offered recommendations, we can say that the study achieved its aims and objectives by successfully answering the question posed from the beginning: Is *locus standi* as interpreted by the Commission in respect of its non-state complaints procedure really in need of reform? We can confidently conclude by stating that the broad approach to standing before the Commission is very important for the effective protection of human and peoples' rights in Africa and need not be disturbed. The problems affecting the effective operation of the Commission are multi-fold, and indeed have less to do with the broad standing approach in itself. The only way to ensure the effective operation of the Commission is to address all the procedural, structural, institutional, and managerial problems within the Commission and at the level of state parties, the AU as well as prospective applicants in an efficient and practical manner.

**Word count: 18 000 (excluding bibliography, footnotes, and table of contents)**

## **BIBLIOGRAPHY**

### **Basic texts**

African Charter on Human and Peoples' Rights, 1981

American Declaration of the Rights and Duties of Man, 1948

*Código Civil* , 1966

*Código Comercial*, 2005

*Código Penal*, 1886

Compilation of Rules of Procedure adopted by Human Rights Treaty Bodies, HRC/GEN/3/Rev.2

Constitution of Mozambique, 1990

Constitution of Mozambique, 2004

Constitution of South Africa, 1996

Constitutions of Ghana: 1960; 1969; 1979; and 1992

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984

Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990

Covenant on Civil and Political Rights, 1966 and its Optional Protocols I and II of 1966 and 1989

Covenant on the Elimination of All Forms of Discrimination Against Women 1979 and Optional Protocol of 1999

Covenant on the Elimination of All Forms of Racial Discrimination, 1965

European Convention on the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, 1994

Inter-American Convention on Human Rights, 1969

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998

Revised Rules of Procedure of the African Commission on Human and Peoples' Rights, 1995

Rules of Court of the European Court of Human Rights, 2006

Rules of Procedure of the African Commission on Human and Peoples' Rights, 1988

Rules of Procedure of the Inter-American Commission on Human Rights, 2003 as amended

Rules of Procedure of the Inter-American Court of Human Rights, 2003

## **Books**

Ankumah E.A (1996) *The African Commission on Human and Peoples' Rights: Practice and procedures* The Hague/London/Boston: Martinus Nijhoff Publishers

Bayefsky, A.F (2001) *The UN human rights treaty system: Universality at the crossroads* The Hague/London/New York: Kluwer Law International

Bayefsky, A.F (2003) *How to complain to the UN Human Rights Treaty System* The Hague/London/New York: Kluwer Law International

Clements, L.J, Mole, N, and Simmons A (2ed) (1999) *European Human Rights: Taking a case under the Convention* London: Sweet & Maxwell

Clifford, F(1872) *A History of Private Bill Legislation* London: Butterworths

Currie, I & de Waal, J (5ed) (2005) *The Bill of Rights Handbook* landsdowne: Juta & Co Ltd

Davidson, S (1997) *The Inter-American Human Rights System* Aldershot/Brookfield: Dartmouth

Harrington, J 'The African Court on Human and Peoples' Rights' in Evans, M.D and Murray, R (ed) (2002) *The African Charter on Human and Peoples Rights: The system in Practice, 1986-2000* New York: Cambridge University Press

Harris, D.J and Livingstone, S (1998) *The Inter-American System of Human Rights* Oxford: Clarendon Press

Heyns, C (ed) (2004) Vol 1 *Human Rights Law in Africa* Leiden/Boston: Martinus Nijhoff Publishers

Kendrick, K.J (1893) *Law Dictionary & Glossary* Chicago: Callaghan & Company

Leach, P (2001) *Taking a case to the European Court of Human Rights* London: Blackstone Press Ltd

Matscher, F 'Standing Before International Courts and Tribunals' in Bernhardt, R (ed) (2000) 4 *Encyclopedia of Public International Law* Max Plank Institute Amsterdam; New York: North Holland Pub. Co

Motala, A 'Non-governmental organisations in the African system' in Evans, M and Murray, R (eds) (2002) *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* New York: Cambridge University Press

Murray, R (2000) *The African Commission on Human and Peoples' Rights and International Law* Oxford: Hart

Nowak, M (2003) *Introduction to the International Human Rights Regime* Leiden/Boston: Martinus Nijhoff Publishers

Österdahl, I (2001) *Implementing human rights in Africa: The African Commission on Human and Peoples' Rights and individual communications* Uppsala: IUSTUS FÖRLAG

Ouguergouz, F (2003) *The African Charter on Human and Peoples' Rights: A comprehensive agenda for human dignity and sustainable development* The Hague/London/Boston: Martinus Nijhoff Publishers

Pasqualucci, J.M (2003) *The Practice and Procedure of the Inter-American Court of Human Rights* UK: Cambridge University Press

Stein, L.A 'The theoretical bases of locus standi' in Stein, L.A (ed) (1979) *Locus Standi* Sydney: Law Book Company Ltd

Umzurike, O 'The complaint procedure of the African Commission' in Gudmundur, A; Grimheden, J; Bertram, G.B; and Alfred de Zaya, M (ed) (2001) *International Human Rights Monitoring Mechanisms* US: Kluwer Law International

Vandenhole, W (2003) *The Procedure before the UN Human Rights Treaty Bodies: Divergence or Convergence?* Antwerp-Oxford: intersentia

Viljoen, F 'Admissibility under the African Charter' in in Evans, M and Murray, R (eds) (2002) *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* New York: Cambridge University Press

Welch C.E (1995) *Protecting Human Rights in Africa: Roles and strategies of non-governmental organisations* USA: University of Pennsylvania Press

Yakubu, J.A (2003) *Constitutional Law in Nigeria* Nigeria: Demyax Law Books

Zwart, T (1994) *The Admissibility of Human Rights Petitions: The case law of the European Commission of Human Rights and the Human Rights Committee* The Netherlands: Martinus Nijhoff Publishers

## **Cases**

### **Domestic**

#### **Botswana**

*Attorney General v Dow* (2001) AHRLR 99 (BwCA 1992)

#### **Ghana**

*Bilson v Attorney General* [1993] 1 GLR 104

*Edusei (No 2) v Attorney-General* [1998-99] SCGLR 753

*Edusei v Attorney-General* [1996-99] SCGLR 1



*Gbedemah v Interim National Election Commission* High Court Accra, 26 May 1992 Suit No 1087 unreported

*Ghana Bar Association v Attorney-General* [2003-2004] SCGLR 250

*In re Akoto* [1961] 2 GLR 523, SC

*Kwakye v Attorney General* [1981] GLR 944

*Mensima v Attorney-General* [1996-97] SCGLR 676

*National Democratic Congress v Electoral Commission of Ghana* [2001-2002] SCGLR 954

*New Patriotic Party v Inspector General of Police* [1993-94] 2 GLR 459

*New Patriotic Party v National Democratic Congress* [2000] SCGLR 461

*Yeboah v J H Mensah* [1998-99] SCGLR 492

*Yiadom I v Amaniampong* [1981] GLR 3 SC

## **South Africa**

*African Political Organisation and The British Indian Association v Johannesburg Municipality* 1906 TS 962

*Ahmadiyya Anjuman Ihaati-Islam Lahore ('AAIL') South Africa v Muslim Judicial Council (Cape)* 1983 (4) SA 855 (C)

*Bagnall v The Colonial Government* (1907) 24 SC 470

*Dalrymple v Colonial Treasurer* 1910 TS 372

*Director of Education, Transvaal v McCagie and others* 1918 AD 616

*Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council* 1998 6 BCLR 671 (SCA)

*Ferreira v Levin NO; Vryenhoek v Powell NO* 1996 (1) SA 984 (CC)

*Gool v Minister of Justice* 1955 (2) SA 682

*Lawyers for Human Rights v Minister of Home Affairs* 2004 (4) SA 125 (CC)

*Madrasa Anjuman Islamia v Johannesburg Municipality* 1917 AD 718

*Maluleke v MEC, Health and Welfare Northern Province* 1999 (4) SA 367 (T) 3731-J

*Pats v Greene & Co* 1907 TS 427

*Rossouw v Minister of Mines and Minister of Justice* 1928 TPD 741

*The Transvaal Indian Congress v Land Tenure Advisory Board* 1955 (1) SA 85 (W)

*Transvaal Coal Owners Association v Board of Control* 1921 TPD 447

*United Watch & Diamonds Co (Pty) Ltd & Ors v Disa Hotels Ltd & Another* 1972 (4) SA 409 (C) 415

*Walker v Stadsraad van Pretoria* 1997 3 BCLR 416 (T)

*Wood & others v Ondangwa Tribal Authority* 1975 2 SA 294 (A)

## **United Kingdom**

*A.G v Independent Broadcasting Authority* (1973) 1 ALL ER 696

## **Zimbabwe**

*Teachers Association and Others v Minister of Education and Culture* 1990 (2) ZLR 48

## **Regional**

### **ECHR**

*Abdulaziz Cabales and Balkandali v UK* (1985) 7 EHRR 471

*Agrotexim and others v Greece* (1996) 21 EHRR 250

*Ayuntamiento de M v Spain* (1991) 68 DR 209

*Balmer-Schafroth v Switzerland* (1998) 25 EHRR 598  
*Buckley v UK* (1997) 23 EHRR 101

*Chahal v UK* (1997) 23 EHRR 413

*D v UK* 24 EHRR 423

*Eckle v Germany* (1983) 5 EHRR 1

*Keenan v UK* (2001) 33 EHRR 13

*KL and Others v UK* (1998) 26 EHRR CD 113

*Kurt v Turkey* (1999) 27 EHRR 373

*Laskey, Jaggard and Brown v UK* (1997) 24 EHRR 39

*Lindsey and others v UK* (1997) 23 EHRR CD 199

*Magee v UK* (1996) 21 EHRR 250

*McCann and others v UK* (1996) 21 EHRR 97

*Moustaquim v Belgium* (1991) 13 EHRR 802

*Neves E. Silva v Portugal* (1989) 13 EHRR 576

*Open Door and Dublin Well Woman v Ireland* (1993) 15 EHRR 244

*P,P, & T v UK* 22 EHRR CD 148

*Scherer v Switzerland* (1994) 18 EHRR 276

*Soering v UK* (1989) 11 EHRR 439

*Swedish Engine Drivers Union v Sweden* (1979 -1980)1 EHRR 617

*Winterwerp v The Netherlands* (1979) 2 EHRR 387

*X & Y v The Netherlands* (1986) 8 EHRR 234

*X v France* (1983) 32 DR 266

## **The Inter-American system**

*Baena Ricardo et al (270 workers v Panama)* (Merits), IACHR (2 February 2001) Ser C No. 72

*Barrios Altos (Chumbipuma Aguirre et al. v Peru)* (Merits) IACHR (14 January 2001) Ser C No. 75

*Castillo Petruzzi et al. v Peru Preliminary Objections*, IACHR (4 September 1998) Ser C No 41 at para 78

*Cayara v Peru Preliminary Objections*, IACHR (3 February 1993) Ser C No. 14 para 42

*Valásquez Rodrigo v Honduras Preliminary Objections*, IACHR (26 June 1987) Ser C No. 1 para 34

*Constitutional Court Case (Aguirre Roca, Rey Terry and Revoredo Marsano v Peru) (Competence)* IACHR (24 September 1999) Ser C No. 55

*Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights)*, Advisory Opinion OC-11/90 IACHR (10 August 1990) (Ser A) No. 11 (1990)

## **African Commission**

*Abubakar v Ghana* (2000) AHRLR 124 (ACHPR 1996)

*Africa legal Aid v The Gambia* (2000) AHRLR 119 (ACHPR 2000)

*Aminu v Nigeria* (2000) AHRLR 258 (ACHPR 2000)

*Annette Pagnouille (on behalf of Abdoulaye Mazou) v Cameroon* (2000) AHRLR 55 (ACHPR 1995)

*Buyingo v Uganda* (2000) AHRLR 320 (ACHPR 1995)

*Centre for the Defence of Judges and Lawyers v Algeria* (2000) AHRLR 16 (ACHPR 1995)

*Civil Liberties Organisation (in respect of Bar Association) v Nigeria* (2000) AHRLR 186 (ACHPR 1995)

*Civil Liberties Organisation v Nigeria* (2000) AHRLR 188 (ACHPR 1995)

*Committee for the Defence of Human Rights (on behalf of Madike) v Nigeria* (2000) AHRLR 183 (1995)

Communication 157/96, *Association Pour la Sauvegarde de la Paix au Burundi v Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*

Communication 199/97, *Cossi Paul v Benin*

Communication 205/97, *Kazeem Aminu v Nigeria*

Communication 227/99, *Democratic Republic of Congo v Burundi, Rwanda and Uganda*

Communication 264/2002, *Association Que Choisir Benin v Benin*

Communication 269/2003, *Interights on behalf of Safia Yakubu Husaini et al v Nigeria*

Communication 273/2003, *Centre for the Advancement of Democracy, Social Justice, Conflict Resolution and Human Welfare v Nigeria*

Communication 277/2003, *Spilg and Mack & Ditshwanelo v Botswana*

Communication 57/91, *Tanko Bariga v Nigeria*

Communication 83/92, 88/93, 91/93, *Jean Yaovi Degli (on behalf of Corporal N. Bikani) and Others v Togo*

Communication 87/93, *Constitutional Rights Projects (in respect of Zamani Lekwot and six Others) v Nigeria*

Communications 25/89, 47/90, 56/91, 100/93, *Krishna Achutan on behalf of Aleke Banda, Amnesty International on behalf of Orton and Vera Chirwa v Malawi*

Communication 25/89, 47/90, 56/91, 100/93, *World Trade Organisation Against Torture, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah (WTOAT) v Zaire*

*Constitutional Rights Project and Another v Nigeria* (2000) AHRLR 235 (ACHPR 1999)

*Cudjoe v Ghana* (2000) AHRLR (ACHPR 1999)

*International PEN v Burkina Faso* (2000) AHRLR 47 (ACHPR 1994)

*International PEN v Chad* (2000) AHRLR 66 (ACHPR 1994)

*Jawara v The Gambia* (2000) AHRLR 107 (ACHPR 2000)

*Joana v Madagascar* (2000) AHRLR 141 (ACHPR 1996)

*John K. Modise v Botswana* (2000) AHRLR 25 (ACHPR 1994)

*Kalenga v Zambia* (2000) AHRLR 321 (ACHPR 1994)

*Kenya Human Rights Commission v Kenya* (2000) AHRLR (ACHPR 1995)

*Malawi African Association and Others v Mauritania* (2000) AHRLR 149 (ACHPR 2000)

*Maria Baes v Zaire* (2000) AHRLR 72 (ACHPR 1995)

*Media Rights Agenda and Another v Nigeria* (2000) AHRLR 200 (ACHPR 1998)

*Media Rights Agenda v Nigeria* (2000) AHRLR 262 (ACHPR 2000)

*Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (2000) AHRLR 60 (ACHPR 2001)

*Union des Scolaires Nigérien and Another v Niger* (2000) AHRLR 176 (ACHPR 1994)

*Union Interafricaine des Droits de l'Homme and Others v Angola* (2000) AHRLR 18 (ACHPR 1997)

## **Global systems**

### **HRC**

Communication No. 16/1997, *Nbenge v Zaire*, UN Doc CCPR/C/18/D/16/1997

Communication No. 167/1984, *Chief Ominayak and Lubricon Lake Band, v Canada* UN Doc. CCPR/C/38/D/169/1984

Communication No. 194/1985, *Miango v Democratic Republic of Congo*, UN Doc CCPR/C/31/D/194/1985

Communication No. 28/1978, *Weinberger v Uruguay*, UN Doc CCPR/C/11/D/28/1978

Communication No. 35/1978, *Aumeeruddy-Cziffra v Mauritius*, UN Doc CCPR/C/12/D/35/1978

Communication No. 478/1991, *A.P.I.v.d.M v The Netherlands*, UN Doc. CCPR/C/48/D/478/1991

Communication No. 502/1992, *S.M. v Barbados*, UN Doc CCPR/C/50/D/502/1992

Communication No. 52/1979, *Burgos v Uruguay*, UN Doc CCPR/C/13/D/52/1979

Communication No. 646/1995, *Lindon v Australia*, UN Doc CCPR/C/64/D/646/1995

Communication No. 714/1996, *Gerritsen v The Netherlands*, UN Doc CCPR/C/65/D/714/1996

Communication No. 737/1997, *Lamagna v Australia*, UN Doc CCPR/C/65/D/737/1997

Communication No. 8/1997, *Lanza v Uruguay*, UN Doc CCPR/C/9/D/8/1997

Communication No. 890/1999, *Krausser v Austria*, UN Doc CCPR/C/76/D/890/1999

Communication No. 893/1999, *Sahid v New Zealand*, UN Doc CCPR/C/77/D/893/1999

### **CERD-Committee**

Communication No. 13/1998, *Anna Koptova v Slovakia*, UN Doc. CERD/C/57/D/13/1998

Communication No. 22/2002, *POEM and FASM v Denmark*, UN Doc. CERD/C/62/D/22/2002

Communication No. 28/2003, *The Documentation and Advisory Centre on Racial Discrimination v the Denmark*, UN Doc CERD/C/63/D/28/2003

## **CAT-Committee**

Communication No. 176/2000, *Rosenmann v Spain*, UN Doc.CAT/C/28/D/176/2000

Communication No. 48/1996, *H.W.A v Switzerland*, UN Doc.CAT/C/20/D/48/1996

## **Journal articles**

Benedek, W 'The African Charter and Commission on Human and Peoples' Rights: How to make it more effective' (1993) 11 *Netherlands Quarterly of Human Rights* 25

Bickel, A 'The Supreme Court-1960 Term; Forward: The Passive Virtues' (1961) 75 *Harvard Law Review* 40

Gumedze, S 'Bringing Communications before the African Commission on Human and Peoples Rights' (2003) 3 *African Human Rights Law Journal* 121

Heyns, C, Strasser, C and Padilla, D 'A schematic comparison of regional human rights systems' (2003) 3 *African Human Rights Law Journal* 76

Igboenuga, O 'The Doctrine of Locus Standi: An Appraisal' 2 *The Lord Justice* 29

Loots, C 'Keeping locus standi in chains: *National Education Crisis Committee v State President of the Republic of South Africa* WLD 9 September 1986 Case No 16736/86, unreported' (1987) 3 *South African Law Journal on Human Rights* 66

Loots, C 'Standing to enforce fundamental rights' (1994) 10 *South African Journal on Human Rights* 49

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

Murray, R 'Decisions by the African Commission on individual communications' (1997) 46 *International & Comparative Law Quarterly* 412

Murray, R 'The African Charter on Human and Peoples' Rights 1987-2000: An overview of its progress and problems' (2001) 1 *African Human Rights Law Journal* 1

Ngcukaitobi, T 'The evolution of standing rules in South Africa and their significance in promoting social justice' (2002) 18 *South African Law Journal on Human Rights* 590



Odinkalu, C.A 'The role of case and complaints procedures in the reform of the African Commission' (2001) 1 *African Human Rights Law Journal* 225

Odinkalu, C.A and Christensen, C 'The African Commission on Human and Peoples' Rights: The development of its non-state communication procedures' (1998) 20 *Human Rights Quarterly* 235

Olingo, A.D 'The embargo against Burundi before the African Commission on Human and Peoples' Rights (Note on Communication 157/96, *Association for the Preservation of Peace in Burundi v Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*)' (2005) 5 *African Human Rights Law Journal* 424

Viljoen, F 'A Human Rights Court for Africa, and Africans' 30 1 (2004) *Brooklyn Journal of International Law* 1

Viljoen, F 'Africa's contribution to the development of international human rights and humanitarian law' (2001) 1 *African Human Rights Law Journal* 18

## **Other**

African Human Rights Law Reports (2000), Centre for Human Rights, University of Pretoria

African Human Rights Law Reports (2001), Centre for Human Rights, University of Pretoria

Annex I Agenda of the 39 Ordinary Session of the African Commission, 11-25 May 2006, Banjul, The Gambia, Item 12(b) (Private Session) 'The Paper on Locus Standi before the African Commission'

Bimpong-Buta, S.Y 'The role of the Supreme Court in the development of constitutional law in Ghana' Dissertation submitted in accordance with the requirement for the degree of Doctor of Law-LLD at the University of South Africa 1 February 2005

Compendium of Key Human Rights Documents of the African Union (2005), Centre for Human Rights, University of Pretoria

Draft prepared by Kéba Mbâye for the Meetings of Experts for the preparation of the African Charter on Human and Peoples' Rights, Dakar, Senegal 28 November-8 December 1979 CAB/LEG/67/1

First and Second OAU Ministerial Conference on the Draft African Charter on Human and Peoples' Rights, Banjul, The Gambia 9-15 June 1980 and 7-19 January 1981 respectively

Karibi Whyte A.G 'Consideration of Preliminary Objections: Scope of Locus Standi' 2 Judicial Lectures, 1990

Report of the South African Law Commission: 'The recognition of class actions and public interest actions in South African Law', (1998)

The Guidelines for Submission of Communications before the Commission

van Aaken, A 'Making international human rights protection more effective: A rational-choice approach to the effectiveness of ius standi provisions' Preprints of the Max Plank Institute for Research on Collective Goods Bonn September 2005

### **Websites**

<[http://www.achpr.org/english/\\_info/guidelines\\_communications\\_en.html](http://www.achpr.org/english/_info/guidelines_communications_en.html)> (accessed 2 October 2006)

<[http://www.chr.up.ac.za/centre\\_publications/hrla/references/documents%20leading%20up%20to%20t%20ACHPR%20p.134.do](http://www.chr.up.ac.za/centre_publications/hrla/references/documents%20leading%20up%20to%20t%20ACHPR%20p.134.do)> (accessed 20 October 2006)

<[http://www.chr.up.ac.za/hr\\_docs/africandocs/cm/cms65.doc](http://www.chr.up.ac.za/hr_docs/africandocs/cm/cms65.doc)> (accessed 20 October 2006)

<[http://www.chr.up.ac.za/hr\\_docs/documents%20%20Activity%Report.doc](http://www.chr.up.ac.za/hr_docs/documents%20%20Activity%Report.doc)> (accessed 20 October 2006)

<[http://www.coll.mpg.de/pdf\\_date/2005\\_16online.pdf](http://www.coll.mpg.de/pdf_date/2005_16online.pdf)> (accessed 20 October 2006)

<<http://www.doj.gov.za/salrc/reports.htm>> (accessed 20 October 2006)

<<http://www.law.wits.ac.za/humanrts///esc/compilationprocedures2001.html>> (accessed 20 October 2006)

<<http://www.websters-online-dictionary.org/definition/Locus+standi>> (accessed 10 August 2006)

<[http://en.wikipedia.org/wiki/Civil\\_law\\_%28legal\\_system%29](http://en.wikipedia.org/wiki/Civil_law_%28legal_system%29)> (accessed 10 August 2006)

<[http://www.chr.up.ac.za/centre\\_publications/hrla/references/Rules%20of%Procedure%20the%20African%20Commission%20p.540.do](http://www.chr.up.ac.za/centre_publications/hrla/references/Rules%20of%Procedure%20the%20African%20Commission%20p.540.do)> (accessed 20 October 2006)