

***REALISATION OF HUMAN RIGHTS IN AFRICA THROUGH  
INTER-GOVERNMENTAL INSTITUTIONS***

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*SUMMARY*

Violations and infringements of human rights have characterised African history more than their protection and promotion. This study is premised on the assumption that one of the preconditions for an African Renaissance is that the human rights records of African states must improve. Although the realisation of human rights primarily depends on domestic (national) systems and procedures, international (supra-national) institutions have an increasingly important role to play. This is where the focus of this study falls.

International law and the activities of inter-governmental institutions play an increasingly important role in the world today. After the Second World War the internationalisation of human rights has become an accepted fact. The impact of inter-governmental institutions on human rights in Africa at three levels is discussed. At the global level, the activities of the United Nations and its specialised agencies are surveyed. At the regional level, the role of human rights instruments and institutions under the Organisation of African Unity is analysed. At the sub-regional level, the role of some of the major sub-regional institutions in Africa is placed in the spotlight. The aim of this study is to investigate the extent to which human rights have been realised in Africa through these institutions, and to examine possible ways of improving the present system of human rights protection.

After gaining independence African states became part of the global community by obtaining membership of the UN. Most African states have ratified the major UN human rights treaties. The principle became established that the internal affairs of one state may be scrutinised by the international community, as far as human rights is concerned. The UN system does not provide for effective implementation, but serves as a force to pull and push states towards acceptance of human rights norms. African states have generally been reluctant to ratify optional provisions to UN treaties allowing for individual petition, thereby restricting the impact of UN human rights law to a minimum.

After the OAU initially largely ignored human rights, the African Charter was adopted under its auspices in 1981. A non-judicial institution, the African Commission on Human and Peoples' Rights, was established to supervise implementation of the Charter. In November 1997 the

Commission celebrates its tenth anniversary. By gradually extending its role, the Commission has in these ten years developed from a timid and almost invisible lap dog to an institution that matters. The role of other African human rights treaties is also examined.

Sub-regional institutions have been established in Africa as economic pendants to the OAU. Although the furthering of human rights is nowadays accepted in principle as an aim by these institutions, implementation mechanisms and the right of individual petition do not exist. These bodies have a much bigger role to play in the realisation of human rights on the continent. This could be done by their accession to the African Charter and by establishing regional sub-commissions on human rights to redress some of the problems faced by the African Commission.

The improvement of African human rights systems has for a number of years been the subject of discussion. Already in 1961 the desirability of a human rights Court for Africa was highlighted. This idea lay dormant for many years, but was resurrected in the context of greater democratisation in African systems of governance during the 1990s. In 1994 the OAU Assembly called a meeting of government experts to consider the establishment of a human rights Court. Various discussions resulted in a draft Protocol, which is still in the process of being finalised. A critical analysis of the provisions of the draft Protocol is provided.

Arguments in favour of and against the establishment of the Court and alternative models to the proposed Court are examined. In conclusion, a three tier system of human rights realisation in Africa is proposed. This model supports the retention of the Commission, but with an amended mandate, the establishment of a Court of Human and Peoples' Rights, and the creation of sub-regional human rights commissions under the auspices of existing sub-regional institutions.



OPSOMMING

Menseregteskendings en -vergrype, eerder as die bevordering en beskerming van menseregte, kenmerk Afrika se geskiedenis. Hierdie studie gaan van die verondertelling uit dat die verbetering van die menseregterekord van Afrikastate 'n voorvereiste is vir 'n Afrika Renaissance. Alhoewel die verwerkliking van menseregte uiteindelik afhang van plaaslike (nasionale) stelsels en prosedures, het internasionale (supra-nasionale) instellings ook 'n rol om te speel. Dit is op hierdie instellings wat die studie fokus.

Internasionale reg en die aktiwiteite van tussen-staatlike instellings speel vandag 'n al belangriker rol in die wêreld. Na afloop van die Tweede Wêreldoorlog het die internasionalisering van menseregte 'n voldonge feit geword. Die impak van tussen-staatlike instellings op menseregte in Afrika op drie vlakke word toegelig. 'n Oorsig word gegee oor die aktiwiteite van die Verenigde Nasies op die universele (globale) vlak. Die menseregte-instrumente en instellings van die Organisasie van Afrika Eenheid word op die regionale vlak onder die loep geneem. Vervolgens word van die vernaamste sub-regionale strukture in Afrika ondersoek. Die doel van die studie is om die mate waartoe menseregte deur hierdie instellings in Afrika verweselik is, te skets, en om moontlike verbeterings aan die huidige stelsel te ondersoek.

Na onafhanklikheid het Afrikastate gou deel geword van die internasionale gemeenskap, deur van die VN lid te word. Die meeste Afrikastate het die vernaamste VN-menseregteverdrae geratifiseer. Die beginsel is ingeburger dat die interne aangeleenthede van een staat, vir sover dit menseregte aangaan, deur die internasionale gemeenskap gefynkam kan word. Die VN-stelsel maak nie vir effektiewe afdwinging voorsiening nie, maar dien as 'n trek- en drukkrag om state tot die aanvaarding van menseregtenorme te bring. Afrikastate was oor die algemeen traag om opsionele bepalinge tot verdrae te aanvaar in terme waarvan individue die reg het om klagtes teen state te bring. Sodoende is die invloed van die VN menseregte stelsel tot 'n minimum beperk.

Nadat menseregte die OAE aanvanklik koudgelaat het, is die Afrika Handves van Mense- en Volkereregte in 1981 onder die vaandel van dié organisaie aangeneem. 'n Nie-judisiële instelling, die Afrika Kommissie van Mense- en Volkereregte, is in die lewe geroep om oor die Handves se implementering toesig te hou. Die Kommissie vier sy tiende verjaardag in November 1997. Deur

sy rol stelselmatig uit te brei, het die Kommissie in die tien jaar ontwikkel van 'n gediensige en bykans onsigbare skoothondjie tot 'n instelling wat 'n verskil maak. Die rol en potensiaal van ander Afrika menseregte verdrae word ook ondersoek.

Sub-regionale instellings is in Afrika opgerig as ekonomiese teenhangers van die OAE. Alhoewel hierdie liggame vandag die bevordering van menseregte in beginsel aanvaar, bestaan afdwingingsmeganismes en die reg tot individuele petisie glad nie. Hierdie liggame kan 'n groter rol speel in die verwesenliking van menseregte in die verskillende streke van Afrika. Hulle kan tot die Afrika Handves toetree en sub-regionale kommissies op die been bring om verskeie van die probleme wat die Kommissie aan bande gelê het, te oorbrug.

Die verbetering van die Afrika menseregte sisteem is al vir 'n paar jaar die onderwerp van bespreking. Reeds in 1961 is die wens uitgespreek dat 'n menseregtehof in Afrika opgerig moet word. Die idee het vir baie jare dormant gelê, maar het herry's as deel van die groter demokratisering in Afrika tydens die negentigerjare. In 1994 het die OAE leiersberaad 'n vergadering van regeringsdeskundiges belê om die oprigting van 'n hof te oorweeg. Verskeie besprekings het uitgeloop op 'n ontwerp Protokol wat tans in 'n proses van afhandeling is. Die Protokol word krities ontleed.

Argumente ten gunste van en teen 'n geregtelike instelling, en alternatiewe tot die voorgesteld Hof, word ondersoek. Ten slotte word 'n drievlakkige stelsel voorgestel. Hierdie model steun die behoud van die Afrika Kommissie, maar met 'n gewysigde mandaat, die oprigting van 'n Hof van Mense- en Volkereregte, en die skepping van sub-regionale menseregte kommissies onder die vaandel van bestaande sub-regionale instellings.

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**ABBREVIATIONS AND ACRONYMS**

ACJ	:	African Court of Justice
AEC	:	African Economic Community
AFLAQ	:	African Legal Aid Quarterly
AfrJIL	:	African Journal of International Law
AJIL	:	American Journal of International Law
All ER	:	All England Law Reports
ANC	:	African National Congress
ANPACAN	:	African Network for the Protection against Child Abuse and Neglect
ASICL Proc	:	African Society for International and Comparative Law Proceedings of Annual Conference
AZAPO	:	Azanian Peoples' Congress of South Africa
AYBIL	:	African Yearbook of International Law
BCLR	:	Butterworths Constitutional Law Reports
BYIL	:	British Yearbook of International Law
CAR	:	Central African Republic
CAT	:	Convention against Torture
CBO	:	Community-based Organisation
CCPR	:	International Covenant on Civil and Political Rights
CCW	:	Convention on Certain Conventional Weapons
CEDAW	:	Convention on the Elimination of All Forms of Discrimination against Women
CEPGL	:	Economic Community of the Countries of the Great Lakes
CERD	:	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	:	International Covenant on Economic, Social and Cultural Rights
CHOGM	:	Commonwealth Heads of Government Meeting
CHRLD	:	Commonwealth Human Rights Law Digest
CILSA	:	Comparative and International Law Journal of Southern Africa
CMCA	:	Commission of Mediation, Conciliation and Arbitration



COMESA	:	Common Market of Eastern and Southern African States
Comp	:	Comparative
CRC	:	Convention on the Rights of the Child
CSCE	:	Conference on Security and Co-operation in Europe
EA	:	East African Law Reports
EC	:	European Community
ECA	:	UN Economic Commission for Africa
ECOMOG	:	ECOWAS Military Observer Group
ECOSOC	:	UN Economic and Social Council
ECOWAS	:	Economic Community of West African States
ECPT	:	European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment
ECR	:	European Court Reports
ed(s)	:	editor(s)
EEC	:	European Economic Community
EU	:	European Union
FAO	:	UN Food and Agricultural Organisation
HR	:	Human Rights
HRC	:	UN Human Rights Committee
HRLJ	:	Human Rights Law Journal
HRQ	:	Human Rights Quarterly
ICJ Review	:	Review of the International Commission of Jurists
ICJ	:	International Court of Justice
ICLQ	:	International and Comparative Law Quarterly
ILC	:	International Law Commission
ILM	:	International Legal Materials
ILO	:	International Labour Organisation
ILR	:	International Law Reports
INGO	:	International Non-Governmental Organisation
Intl	:	International
JAL	:	Journal of African Law
Jnl	:	Journal

LRC (Const)	:	Commonwealth Law Reports (Constitutional and Administrative Law Reports)
LRC	:	Commonwealth Law Reports (consolidated since 1993)
MCPMR	:	Mechanism for Conflict Prevention, Management and Resolution
MINURSO	:	UN Mission for the Referendum in Western Sahara
MLR	:	Malawi Law Reports
NGO(s)	:	Non-governmental Organisation(s)
NPFL	:	National Patriotic Front of Liberia
NQHR	:	Netherlands Quarterly of Human Rights
NR	:	Namibian Reports
NTVM	:	Nederlands Tijdschrift voor de Mensenrechten
OAS	:	Organisation of American States
OAU	:	Organisation of African Unity
OIC	:	Organisation of the Islamic Conference
OPDS	:	Organ on Politics, Defence and Security (of SADC)
OPI	:	First Optional Protocol (to CCPR)
OPII	:	Second Optional Protocol (to CCPR)
OSCE	:	Organisation for Security and Co-operation in Europe
PCIJ	:	Permanent Court of International Justice
PTA	:	Preferential Trade Area of Eastern and Southern African States
RADIC	:	Revue Africaine de Droit International et Comparé (African Journal of International and Comparative Law)
RUDH	:	Revue Universelle des Droits de l'Homme
SA	:	South African Law Reports
SACLR	:	South African Constitutional Law Reports
SACR	:	South African Criminal Law Reports
SACU	:	Southern African Customs Union
SADC	:	Southern African Development Community
SADCC	:	Southern African Development Co-ordination Conference
SADR	:	Saharawi Arab Democratic Republic
SAHRINGON	:	Southern African Human Rights NGO Network
SAJHR	:	South African Journal of Human Rights

SALJ	:	South African Law Journal
SAYBIL	:	South African Yearbook of International Law
UN	:	United Nations
UNAMIR	:	UN Assistance Mission for Rwanda
UNASOG	:	UN Aouzou Strip Observer Group
UNAVEM	:	UN Angola Verification Mission
UNDP	:	UN Development Programme
UNESCO	:	UN Educational, Scientific and Cultural Organisation
UNHRC	:	UN Human Rights Commission
UNICEF	:	UN Children's Fund
UNITA	:	Union for the Total Independence of Angola
UNITAF	:	UN Task Force
UNOMIL	:	UN Observer Mission in Liberia
UNOMOZ	:	UN Operation in Mozambique
UNOSOM	:	UN Observer Mission in Somalia
UNTAG	:	UN Transitional Assistance Group
WEO	:	Western and Other States
WHO	:	World Health Organisation
WLR	:	Weekly Law Reports
YB	:	Yearbook
ZäoRV	:	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht
ZLR	:	Zimbabwean Law Reports