

PROTECTION OF HUMAN RIGHTS – AFRICAN UNION

Alena TOMÁŠIKOVÁ ¹

¹ *Trenčianska univerzita Alexandra Dubčeka v Trenčíne, Študentská 2, Trenčín 91101, Slovenská republika*

*Corresponding author E-mail address: alena.tomasikova@tnuni.sk

Received 29. 04. 2013; accepted 30. 06. 2013

Abstract

Historically, all regional systems of human rights protection derive from the universal system set by the United Nations and the African system is regarded as the youngest. As consequence, to undertake the present essay requires to make a comparison of the African system with its predecessors. In such respect a great emphasis will be laid on the main instruments, the rights entrenched and the enforcement machinery. These benchmarks are kinds of tools that will be use to achieve the comparison and to show up how original the ACPRH is, to what extend the African system differs from other regional systems.

Keywords: protection of human rights, regional system, Africa, human rights

1 Introduction

In the African context, the AU Charter was the first regional instrument that dealt with the protection of human rights in the continent. However, it contained very little references to the concepts of human right sand made reference to the protection of human rights as well as general statements regarding the welfare and well being of Africans. The AU was pre-occupied with more pressing issue such as unity, non interference in internal affairs and liberation. Practically, the AU has served as talking shop for African states but has displayed considerable reluctance in intervening in systematic human rights abuses by various regimes in the region. That is what made Keba Mbaye to state that African Governments appeared clearly to have sacrificed rights and freedoms for the sake of development and political stability. With both the domestic and international pressure, African leaders adopted in 1986 the African Charter on Human and People Rights which is the major instrument aimed at protecting human and peoples' rights in Africa. When it came into operation on 21 October 1986, the ACHPR was considered a miracle an extraordinary and powerful instrument of liberalization, and an unprecedented event in the history of the continent. It establishes the African Commission on Human and Peoples' Rights with the responsibility to promote human and peoples' rights and ensure their protection in Africa. However, the lack of a judicial enforcement mechanism pushed the African Union members to adopt on the 9 June 1998 a Protocol to the ACHPR establishing an African Court on Human and Peoples' Rights. (Viljoen 2007).

2 Protection of human rights

The OAU – Organisation of African unity (2002 – African union) was established on 25 May 1963 in Addis Ababa, Ethiopia, on signature of the OAU Charter by representatives of 32 governments. A further 21 African states joined gradually over the years, with South Africa becoming the 53rd member on 23 May 1994. At the extraordinary OAU Summit in Sirte, Libya on 2 March 2001, heads of State declared the establishment of the African Union. By 9 July 2001, the Constitutive Act of the African Union had been signed by all OAU member states and ratified by fifty-one countries. Virtually all African states are members of the OAU/AU. (Smith, 2005)

The OAU's mission was to promote the unity and solidarity of African States; co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa; defend their sovereignty, territorial integrity and independence; eradicate all forms of colonialism from Africa; promote international co-operation, giving due regard to the Charter of the United Nations and the Universal Declaration of Human Rights; and co-ordinate and harmonize members' political, diplomatic, economic, educational, cultural, health, welfare, scientific, technical and defense policies.(Ouguergouz, 2003). Implementation of the provisions of the African Charter on implementing the Commission on Human Rights. (Bočáková, Tomášiková 2008).

With parts of Africa still colonized or under apartheid between 1963 and into the early 1990s, much of the OAU's attention had to be devoted to supporting the freedom struggles. Furthermore, this was the era of the Cold War when the big powers tended to back undemocratic, repressive governments. Now with the end of colonial rule as it existed before the 1960s, the end of apartheid in South Africa and the emergence of more democratically elected governments in Africa, the conditions in Africa have become more favorable for building economic, political and social unity. To effectively address the challenges of this new era, African leaders

envisioned a newer approach. At the Lusaka Summit which decided to begin the transition to the AU in July 2001, leaders made several references to the AU being loosely based on the European Union model. It was, however, agreed that the AU should be something new, with the emphasis on being an African experience. Whereas the OAU was in principle a political organization that also discussed matters of economic and social concern, the AU should be an organization aimed at economic integration and social development, which should lead to political unity. Ouguergouz, 2003).

The AU's mission, as contained in the constitutive act, is to: achieve greater unity and solidarity between the African countries and the peoples of Africa; defend the sovereignty, territorial integrity and independence of its Member States; accelerate the political and socio-economic integration of the continent; promote and defend African common positions on issues of interest to the continent and its peoples; encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; promote peace, security, and stability on the continent; promote democratic principles and institutions, popular participation and good governance; promote and protect human peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments; establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations; promote sustainable development at the economic, social and cultural levels as well as the integration of African economies; promote cooperation in all fields of human activity to raise the living standards of African peoples; coordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union; advance the development of the continent by promoting research in all fields, in particular in science and technology; and work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent. (Ouguergouz, 2003).

The official languages of the AU are the same as in the OAU: African languages, Arabic, English, French, Portuguese, but Arabic was moved up from 4th place in the OAU to 2nd in the AU.

3 Protection of human rights

Note that the African Court on Human and Peoples' Rights is not yet established because the Protocol on the establishment of an African Court on Human and Peoples' Rights has not been ratified by 15 Member States required for it to enter into force. (Agarwal, 2003).

Art. 68 of the African Charter on Human and Peoples' Rights allows for amendments to the Charter. Pursuant to this provision, the OAU Assembly of Heads of States and of Governments adopted the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights at its 19th Ordinary Session on 9 July 1998 in Ouagadougou, Burkina Faso. The AU, as the successor organization to the OAU, inherited the "African Charter on Human and Peoples' Rights and other relevant human rights instruments" in art. 3(h) of its Constitutive Act, thereby effectively inheriting the Protocol establishing the African Court on Human and Peoples' Rights as well. (Church, Schulze, 2007.)

The process of drawing up the Protocol was initiated at the Summit of Heads of State and Government of the OAU in Tunis in June 1994. A resolution adopted at this Assembly requested the Secretary General of the OAU to convene a meeting of government experts to examine ways of enhancing the efficiency of the African Commission on Human Rights and to consider in particular the question of the establishment of an African Court on Human and Peoples' Rights.

A draft Protocol was submitted to a meeting of government experts in Cape Town, South Africa, in September 1995. The draft Protocol was adopted at the meeting of Ministers of Justice in December 1997 before ratification in Burkina Faso.

As at the Commission's 32nd ordinary session, held on 17-23 October, 2002 in Banjul, The Gambia, the Protocol on the establishment of an African Court on Human and Peoples' Rights had not been ratified by 15 Member States required for it to enter into force. (Ankumah, 1996)

4 Conclusion

This guide has attempted to create a picture of the African system of human rights by giving sources of information available electronically and in print. However, the sources cited are by no means exhaustive and there are a lot of unanswered questions concerning the African system of human rights. For instance, questions concerning the African Court on Human and Peoples' Rights and its entry into force still remain. These questions are complicated by the fact that the transition from the Organization of African Unity to the African Union is still in progress and has only recently engendered interest in academic discourse. To date, the most reliable information on the transition is mostly available in newspapers and journals as these resources are better able to cover the day-to-day events concerning the transition. Certainly, the goal of establishing an effective system for change and development in Africa is a step in the right direction. Indeed it represents a ray of hope in an otherwise historically unpromising setting. Hopefully, this guide will be helpful in provoking more questions

in the reader and guiding the researcher in the right direction when seeking information on the African system of human rights.

References

- [1] H. O. Agarwal: *International Law and Human Rights*. 2003.
- [2] A. E. Ankumah: *The African Commission on Human and Peoples' Rights*. MartinusNijhoff, 1996.
- [3] O. Bočáková, A. Tomášiková: *Vybrané kapitoly k ľudským a občianskym právam*. TnuAD, Trenčín, 2008, ISBN 978-80-8075-362-7.
- [4] J. C. Church: *Human Rights from a Comparative and International Perspective H Strydom*. 1st ed, UNISA, 2007.
- [5] F. Ouguergouz: *The African Charter on Human and Peoples' Rights*. Martinus Nijhoff, 2003.
- [6] R. K. M. Smith: *Textbook on International Human Rights*. Oxford, 2005.
- [7] F. Vilojen: *International Human Rights Law in Africa*. Oxford, 2007.

*Review: Oľga Bočáková
Zuzana Kubišová*