Digital Commons @ Georgia Law

LLM Theses and Essays

Student Works and Organizations

1-1-2006

Enforcement of Human Rights under Regional Mechanisms: a Comparative Analysis

Fekadeselassie F. Kidanemariam
University of Georgia School of Law

Repository Citation

Kidanemariam, Fekadeselassie F., "Enforcement of Human Rights under Regional Mechanisms: a Comparative Analysis" (2006). *LLM Theses and Essays.* Paper 80.
http://digitalcommons.law.uga.edu/stu_llm/80

This Article is brought to you for free and open access by the Student Works and Organizations at Digital Commons @ Georgia Law. It has been accepted for inclusion in LLM Theses and Essays by an authorized administrator of Digital Commons @ Georgia Law. For more information, please contact tstriepe@uga.edu.

ENFORCEMENT OF HUMAN RIGHTS UNDER REGIONAL HUMAN RIGHTS MECHANISMS: A COMPARATIVE ANALYSIS

by

FEKADESELASSIE F. KIDANEMARIAM

(Under the Direction of professor Daniel Bodansky)

ABSTRACT

This is a study about the protection of human rights by regional human rights bodies. The thesis identifies the major regional human rights protection systems i.e. the African human rights system, the inter-American human rights System and the European human rights system.

The paper examines the types of mechanisms employed by each regional system and examines each mechanism. The three major mechanisms dealt with in this work are inter-state complaints, state reporting, country reports, finally individual complaints, and execution of the judgments rendered by these regional bodies.

The thesis analyzes the procedures involved in each of these mechanisms and examines the rate of success of each mechanism. Finally, it will make a recommendation for each regional system and each protection mechanism.

INDEX WORDS: African Commission and Court of Human Rights, European Court of Human Rights, Inter-American Court and Commission of Human Rights, Inter-state Complaints, Country reports and Individual Complaints, African Union, Organization of American States, Council of Europe.

ENFORCEMENT OF HUMAN RIGHTS UNDER REGIONAL HUMAN RIGHTS MECHANISMS: A COMPARATIVE ANALYSIS

by

FEKADESELASSIE F KIDANEMARIAM

LL.B, Addis Ababa University, Ethiopia, 1995

LL.M, Central European University, Hungary, 2005

A Thesis Submitted to the Graduate Faculty of The University of Georgia in Partial Fulfillment of the Requirements for the Degree

MASTERS OF LAWS

ATHENS, GEORGIA

2006

© 2006

Fekadeselassie F Kidanemariam

All Rights Reserved

ENFORCEMENT OF HUMAN RIGHTS UNDER REGIONAL MECHANISMS: A COMPARATIVE ANALYSIS

by

FEKADESELASSIE F. KIDANEMARIAM

Approved :

Major Professor: Daniel Bodansky

Committee: Gabriel Wilner

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
The University of Georgia
December 2006

ACKNOWLEDGEMENTS

First I am indebted to Professor Daniel Bodansky, who, irrespective of his other academic engagements agreed to supervise my thesis. I appreciate the constructive comments he made on my thesis and thank him for his patience with me. Without his help this paper would not have come about.

I am also indebted to Professor Gabriel Wilner who has agreed to read my thesis as a committee reader. I thank him for his valuable comments and readiness to suggest improvements. I also would like to thank him for the personal assistance and friendship he accorded to all 2006 LL.M students while we studied at The University of Georgia. He has been like a family.

My thanks also go to all the staff of Dean Rusk Center, especially to Rebecca O'Grady. They have been a great help. I also would like to thank Ms. Paige Ottwell who has been a good professor and friend to us.

I also want to thank all my classmates in the LLM class, especially Dauren Tynybekov and Ricardo Mulano for their support and encouragement throughout the program. They were there for me.

Finally, I would like to thank my family, my friends Asseged Yimer and Yonathan Admassu for their support and encouragement during my studies at the University of Georgia.

TABLE OF CONTENTS

Page

ACKNOWLEDGEMENTS IV

CHAPTER

1 Introduction 1

2 Regional Human Rights Mechanisms: General 4

2.1 Post-World War II Development 4

2.2 Advantages of Regional Human Rights Protection Mechanisms 6

2.3 Principal Regional Human Rights Protection Mechanisms 7

2.4 Other Regional Initiatives 21

3 Enforcement of Human Rights Under Regional Mechanisms:

Inter-State Complaints. 24

3.1 Introduction 24

3.2 The African Human Rights System 25

3.3 The Inter-American Human Rights System 27

3.4 The European Human Rights System 29

4 Enforcement of Human Rights Under Regional Human Rights Mechanisms: State

Reports and Country Reports 33

4.1 Introduction 33

4.2 State Reporting 34

4.3 Country Reports by Regional Human Rights Bodies 40

5 Enforcement of Human Rights under Regional Human Rights Mechanisms: Individual Complaints and Execution of Judgments.....49

5.1 Introduction 49

5.2 The African Human Rights System.....50

5.3 The Inter-American Human Rights System 54

5.4 The European Human Rights System 59

6 Conclusions and Recommendations 64

6.1Introduction 64

6.2 The African Human Rights System.....64

6.3 The Inter-American Human Rights System 71

6.4 European Human Rights system 74

Bibliography 76

Chapter One

Introduction

Post World War II era has witnessed the flourishing of various international human rights regimes. Among these regimes are the regional human rights systems. These regional systems have developed various treaties and provided means for enforcement.

The objective of this paper is to analyze such developments within the context of the three principal regional human rights systems, i.e. the African, Inter-American and European human rights systems. In Particular, the paper tries to:

1. Understand the main human rights enforcement mechanism and their applications within the three principal systems;
2. Assess the contribution of these mechanisms to the protection of human rights with each regional system, understand contributing factors for their success or failure within each system, and assess their potential for future use;
3. Identify the lessons to be drawn from one system to another; and
4. Make conclusions and recommendations on how to exploit effectively these various mechanisms.

The term “enforcement” is used in a very loose sense to include compliance monitoring mechanisms, such as state and country reports and other strictly execution mechanisms, like individual complaints and enforcement of decisions of regional human rights bodies. The paper, however, focuses on principal instruments of the main regional systems.

Chapter One deals with general introductory remarks about human rights and regional human rights systems. It states the advantages these systems have over other international and national human rights protection systems. It also examines the legal basis and institutional framework of each regional system. It ends with a brief description of other regional human rights initiatives.

Chapter Two examines the inter-state complaints. These form one of the mechanisms that the regional human rights systems utilize. The discussion focuses on understanding how well this mechanism has been used in the three systems, including exposing the particular way in which each system incorporated this mechanism. It also aims at understanding possible reasons for varied levels of exploitation of this mechanism by each regional system.

Chapter Three analyzes the state reporting and country reporting mechanisms. It examines the availability of these mechanisms in all three systems and how effective they have been. It also examines how their availability helps regional systems cope with violations of human rights.

Chapter Four examines individual complaints and execution of judgments against deviant states. It deals with the normative aspects of regional human rights instruments relating to individual complaints and execution of the judgments of regional decision bodies. Through its analysis, it reveals possible underlying weaknesses affecting the performance of each system. It differentiates between various types of decisions in order to understand what is expected of states to implement a decision. Finally, the paper will look at the real test, i.e., the actual level of execution of judgments.

Chapter Five brings the paper to a conclusion. It summarizes what was already discussed and draws conclusions. Based on these conclusions, the paper additionally makes

recommendations to revamp the weaknesses found in these systems. The recommendations are both system specific and mechanism specific. It recommends the creation of incentives and disincentives to induce states to act in certain ways. It also focuses on the need to develop new bodies in some circumstances or use already existing ones in different ways in other circumstances. The paper also makes recommendations regarding more effective ways of increasing publicity in some of the systems where less impact is felt.

Chapter Two

Regional Human Rights Protection Mechanisms: General

2.1 Post-World War II Developments

Following the atrocities of the Second World War, the world witnessed unparalleled development in international human rights law.[1] New legal regimes, that have the protection of individuals at their core and aim to a limit the traditionally exclusive jurisdiction of states over their citizens, emerged.[2]

These developments have unfolded at the international,[3] regional,[4] and national levels.[5] At the international level, the human rights regime has developed under the auspices of the United Nations. [6] The United Nations Charter declares that "Promotion and protection" of human rights as one of goals of the United Nations.[7] Following it, the Universal Declaration of Human Rights,[8] International Covenant on Civil and Political Rights[9] and International Covenant of Economic, Social and Cultural Rights [10] were developed.[11]

---

[1] CHRISTIAN TOMUSCHAT , HUMAN RIGHTS: BETWEEN IDEALISM AND REALISM 22(2003)
[2] Id.
[3] IAN BROWNIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 564(4th ed. 1992)
[4] Id, at 574
[5] GERALD L NEUMAN, *Rights in New Constitutions: Introduction*, 22 COLUM. HUM. RTS. L.REV.1,1(1994)
[6] JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 5(2nd ed. 1998)
[7] UN Charter,2nd Paragraph of its preamble, articles 13(1)b , 55,56,62(2)and 68 mention human rights although they do not contain any substantive rights with them. The only exception to this assertion is equal protection.
[8] G.A Res. 217(A),U.N. Doc. A/810,71(1948)
[9] G.A. Res. 2200A (XXI),21 UN GAOR Supp.(No. 16),UN Doc. A/6316(1966)
[10] G.A.Res. 2200A (XXI),21UN GAOR Supp(No 16),UN Doc. A/6316(1996)
[11] The three instruments form what is known as the international bill of rights; *see* JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 9(2nd ed.,1998)

In addition to the bodies, directly working within the United Nations system, treaty bodies were also developed to work within the context of individual treaties.[12]

At the national level, national constitutions and other pieces of legislation have increasingly continued to contain human rights provisions.[13]When African states became independent, for instance, almost all of them adopted constitutions that guaranteed human rights.[14] Despite differences in the actual rights content in the various national constitutions, some basic core human rights are common in most constitutions.[15]

At the regional level, human rights protections systems developed independent of the United Nations system.[16] The United Nations Charter has not made any provision for the possibility of the development of regional human rights systems.[17] The only reference made to regional systems was in relation to peace and security. [18] In fact, the United Nations was skeptical about the development of regional human rights system, fearing that they would undermine the universality of human rights.[19]

The development of regional systems, however, recognized the basic instruments developed by the United Nations system. The European Convention on Human Rights clearly refers to Universal Declaration of Human Rights.[20] The African Charter of Human and Peoples' Rights, in its preamble, states the relevance of the Universal Declaration of Human Rights.[21] More importantly, the Charter allows the African Commission of Human Rights to draw

---

[12] *See,e.g.*, the Human Rights Committee working within ICCPR
[13]ALTSON PHILIP, PROMOTING HUMAN RIGHTS THROUGH BILLS OF RIGHTS 1-2 (1999)
[14] Id, at
[15] 2 NSONGURUA J. UDOMBANA, *Toward the African Court on Human and Peoples' Rights: Better Late Than Never*, 3 YALE HUM. RTS. & DEV.L.J.. 45,48(2000
[16] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS 83(2003)
[17] Id.
[18] UN charter chapter VIII
[19] SMITH, *supra* note 15, at 83
[20] ECHR,Preambular paragraph
[21] Banjul Charter Preambular paragraph

inspiration from other international human rights instruments including, but not limited to the Universal Declaration of Human Rights and other instruments adopted by the United Nations.[22] The Inter-American Convention on Human Rights also refers to the Universal Declaration of Human Rights.[23]

2.2 Advantages of Regional Human Rights Mechanisms

Regional human rights mechanisms present certain advantages that other protection mechanisms cannot offer.[24] The likelihood of similarity in cultural, political, and economic peculiarities among states that are in a region makes it easier to reach agreement on the text of a common convention.[25] States tend to show more inclination to conform to regional initiatives than international ones and thus this adds to the advantage of better enforceability to decisions of regional mechanisms over their international counterparts.[26]

It is also true that regional organizations are located closer than other international human rights organizations; they offer a more accessible forum in which individuals can pursue their cases.[27] The political, cultural, and economic similarity further enables regional systems to offer better enforcement potential than their international contemporaries.[28] States tend to show stronger political will to conform to decisions of regional bodies.[29] Regional sanctions can be more effective than other international sanctions.[30]

---

[22] Banjul charter Art. 60
[23] The Declaration of the Rights and Duties of Man was adopted six months before the Universal Declaration of Human Rights ; see Vincent O. Orlu Nmehielle, The African Human Rights System : Its Laws , Practice, and Institutions 55(2001)
[24] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS 84(2003)
[25] Id.
[26] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS 85(2003)
[27] Currently the Inter-American system has adopted a system, which allows online applications. This helps further to minimize the impact of distance., see Rhona K.M Smith , International Human Rights, 85(2003)
[28] SMITH, Supra note 27, at 85-86
[29] Id, at 85
[30] Id.

National enforcement mechanisms function under the political framework of a national executive and this fact makes them susceptible to intimidation and censure by the executive. [31]

2.3 Principal Regional Human Rights Protection Mechanisms

Currently there are three major regional systems.[32] These systems are : the African human rights system, the Inter-American system, and the European system.[33] In this section, the paper will briefly discuss the legal basis and normative rules of each of the systems. In the next section, it will examine the institutional framework of each of these systems. This will facilitate understanding of the actual enforcement mechanisms of the systems.

2.3.1 Legal Basis and Normative Rules

2.3.1.1 The African System of Human Rights

The African human rights system is organized under the African Union.[34] Initially the system was anchored in the framework of the Organization of African Unity, which is a predecessor to the African Union.[35] The Charter of Organization of African Unity made a few references to the United Nations Charter and the Universal Declaration of Human Rights.[36] However, it did not contain any catalogue of rights in it.[37] The struggle against colonialism at the time of the making of the Charter of Organization of African Unity can explain the absence of any human rights provision within the main text of the Charter.[38] Later developments, including the decline of colonialism and the awareness of the imminence of end of apartheid, created the

---

[31] The case of three Peruvian judges who were dismissed from their offices after finding against a law that allowed the president to run for second consecutive time., see Christina M Cerna, The Inter-American System for the protection of Rights, 16 Fla. J. Int'l L 195,205 (2004)
[32] SMITH, supra note 27, at 86
[33] Id.
[34] U OJI UMOZURIKE, THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS 26-27(1997)
[35] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS,132(2003)
[36] VINCENT O.ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS, PRACTICE AND INSTITUTIONS 67(2001)
[37] Id.
[38] Id.

impetus to seriously consider developing an African human rights system.[39] The outcome was the creation of the African Charter on Human Rights and Peoples' Rights.[40] The Charter was adopted in 1981 in Banjul and in 1986 in Nairobi.[41]

The Banjul Charter follows a different approach than other human rights instruments in that it incorporates all civil, political, cultural, economic, cultural, and social rights together in the same document.[42] Besides this, the Charter reflects its African identity and experiences by creating collective rights such as the right to freely dispose of wealth and natural resources.[43]

The concept of individual duties also differentiates the Banjul Charter.[44] The duties include those owed to the family,[45] society[46], and the State.[47] Another distinguishing feature of the Banjul Charter is the absence of any general limitation and derogation clauses.[48]

The Charter, however, contains "claw-back" clauses attached to each right provision.[49] These clauses, by giving deference to national laws over Charter provisions, undermine the

---

[39] Id.
[40] UMOZURIKE, supra note 31, 26; The African Charter on the Rights of Human and Peoples' Rights is often referred to as the Banjul Charter to differentiate it from the OAU Charter.
[41] Id, at 26-27
[42] NSONGURUA J. UDOMBANA, *Toward the African Court on Human and peoples' Rights: Better Late Than Never,* 3 YALE HUM. RTS. & DEV.L.J.. 45,60-1(2000) ; apart from the Banjul Charter the Declaration of the Rights and Duties of a Man and the Universal Declaration of Human rights contain all generations of rights in the same documents.
[43] SMITH, supra note 34, 134; The Banjul Charter contains group rights under articles 19-24. These rights include the right to an existence , the right to international peace and security, and the right to satisfactory environment
[44] U OJI UMOZURIKE, THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS, 64 (1997)
; The Declaration of the Rights and Duties of Man also contains a catalogue of duties.
[45] BANJUL Charter art. 29(1)
[46] BANJUL Charter art. 28
[47] BANJUL Charter art. 29(2)
[48] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS, 133(2003); currently article 27 is serving as a limitation clause. Article 27 reads '[ ] shall be exercised with due regard to the rights of others, collective security, morality, and common [ ] For further discussion on how article 27 has been used as a limitation clause *see* Christof Heynes , The African regional Human Rights System : The African charter, 108 Penn St. L. Rev. 679, 692(2004)
[49] CHRISTOF HEYNES, *The African Regional Human Rights System: The African Charter,* 108 PENN. St L. REV 679,688(2004)

rights guaranteed by the Charter.[50] The inclusion of such clauses creates national standards of measure against which the rights of the Charter are measured. [51]

The Banjul Convention also allows for deriving inspiration from other international instruments in interpreting the provisions of the Banjul Charter.[52] The African system also contains other treaties, including Specific Aspects of Refuge Problems in Africa,[53] African Charter on the Rights and Welfare of the Child,[54] the Protocol to the African Charter on Human Rights on the Rights of Women in Africa, [55] and the Protocol Establishing the African Court on Human and Peoples' Right.[56]

2.3.1.2 The Inter- American Human Rights System[57]

The Inter-American system is established within the ambit of the Organization of American States. [58] The system has developed a unique dual system[59]of human rights protection.[60] Understanding how the inter-American system developed helps one to grasp the duality aspect of the rights protection of this system. The first system developed out of the

---

[50] Id.; These clauses often times contain phrases like "subject to law' (art.8), " provided he abides by law" (art.10), " in accordance with the provisions of the appropriate laws"(art. 14), see VINCENT O ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM : ITS LAWS, PRACTICE, AND INSTITUTIONS 165(2001)

[51] The Commission, however, in Media Rights agenda & Others V Nigeria (case 152/96, paragraph 66) held that allowing national laws prevail over international standards would render the entire exercise a futile one.

[52]CHRISTOF HEYNES, *The African Regional Human Rights System: The African Charter*, 108 PENN. St L. REV 679,693(2004)

[53] Id.

[54] OAU Doc. CAB/LEG/249/49(2000)

[55] OAU Doc.CAB/LEG/66.6(2000)

[56] OAU DOC.CAB/LEG/66.5(1998)

[57] For further reading on the Inter-American human rights system. *See* : Scott Davidson, Inter-American Court of Human Rights ,1992; Scott Davidson ,The Inter-American System Human Rights System ,1997;

[58] CHRISTINA M CERNA *The Inter-American system for the protection of Human Rights*, 16 FLA. J. INT'L L. 195,195(2004); OAS is a regional international organization whose membership is open to all American states. See Scott Davidson, The Inter-American Court of Human Rights, 7-12, 1997

[59] Some writers do not describe it as dual but rather treat it as three-route system; *see e.g*. Christian M Cerna, International Law and the protection of Human Rights in the Inter-American System, 19 Hous. J. Int 67(2001'l L. 731,740(1997)

[60] VINCENT O.ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS, PRACTICE AND INSTITUTIONS,54(2001)

Charter-based system; the other system emanated from the Inter-American Convention of human rights.[61] One writer has described it as:

> In the OAS system, human rights are protected under two interrelated frameworks. The first is founded upon charter . . . and the 1948 American Declaration of the Rights and Duties of Man. The second, and more effective, is founded upon the American Convention of Human Rights . . . The Convention is applicable to only those states that have ratified it, whereas the Declaration is applicable to all OAS member states. [62]

The Charter of the Organization of American States,[63]which forms part of the OAS Charter-based system, contained and still contains very few references to human rights.[64] In its preamble, the OAS Charter declares fundamental rights to be "a historic mission of American" and human rights to be part of consolidation process of the American continent.[65]

The Declaration of the Rights and Duties of Man,[66] which also forms the second instrument in the charter-based system, on the other hand, contains a detailed list of rights.[67] It also contains few duties of man.[68] The rights contained in the Declaration range from civil and political rights to economic and social rights.[69]

The status of the Declaration of the Rights and Duties of Man has been the subject of much debate.[70] One writer argues that the adoption of the Revised Charter has changed the status

---

[61] SCOTT DAVIDSON, INTER-AMERICAN HUMAN RIGHTS SYSTEM 8 (1997)
[62] WILLEM-JAN VAN DER WOLF, *Indigenous Peoples Rights in International Law*, 4 GLOBAL JOURNAL OF HUMAN RIGHTS LAW,87,107(1991)
[63] 119 UNTS, entered into force on December 13,1951; Amended by the protocols of Buenos Aires, Cartagena, Washington and Managua.
[64] MARK FREEMAN & GIBRAN VAN ERT, INTERNATIONAL HUMAN RIGHTS LAW 101 (2004)
[65] Preambular Paragraphs, OAS Charter
[66] OAS Res XXX, adopted by the ninth inter-Conference of American States(1948), reprinted in Basic Document Pertaining to Human Rights in the Inter-American System, OAS/Ser.L.V/11.82 doc.6 rev 1 at 17 (1992)
[67] SCOTT DAVIDSON, INTER-AMERICAN HUMAN RIGHTS SYSTEM,13(1997)
[68] See articles 29-38, Declaration of the Rights and Duties of Man; The Banjul Charter and the Universal Declaration of Human Rights also contain duties in them.
[69] SCOTT DAVIDSON, INTER-AMERICAN HUMAN RIGHTS SYSTEM ,13 (1997)
[70] VICTOR RODRIGUEZ RESCIA & MARK SEITTLES , *The Development of the Inter-American Human Rights System : A Historical Perspective and Modern day Critique*, 16 N.Y. L. SCH. J. HUM. RTS. 593,604, (2000)

of the Declaration.[71] The Revised Charter refers to the Declaration as one of the instruments containing the catalogue of rights protected by the Charter and this act, according to the same writer, led to the incorporation of the Declaration into the Charter through reference.[72] Several writers, taking into account that its adoption gained a unanimous support by the members, even go to the extent of holding that it has attained regional customary international law status.[73] Moreover, in an advisory opinion, the Inter-American Court of Human Rights opined that the Declaration of the Rights and Duties of Man constituted an "authoritative interpretation" of the fundamental individual rights as expressed in article 33 of the OAS Charter.[74] Still many OAS member states do not believe it is a binding document.[75] The United States and Venezuela are the leading members of this group.[76]

The Inter-American Convention on Human Rights, which forms the second and main leg of the protection system, came into existence after its adoption in 1969 and entry into force in 1978.[77] The Convention remedied the weak legal status of the Declaration.[78] The Convention left out some of the rights in the Declaration and completely left out the duties.[79] The contents of the Convention include only civil and political rights.[80]

---

[71] THOMAS BUERGENTHAL, *The Revised OAS Charter and the Protection of Human Rights*, 69 AM. J. INT'L. L. 828, 829(1975)
[72] Id.
[73] VICTOR RODRIGUEZ RESCIA & MARK SEITTLES , *The Development of the Inter-American Human Rights System : A Historical Perspective and Modern –day Critique*, 16 N.Y. L. SCH. J. HUM. RTS. 593,604, (2000)
[74] MARK FREEMAN & GIBRAN VAN ERT, INTERNATIONAL HUMAN RIGHTS LAW,102, (2004)
[75] CHRISTINA M CERNA, *The Inter-American System for the Protection of Human Rights*, 16 Fla. J. Int'l. L 195, 196, 2004
[76] CHRISTINA M. CERNA, *International Law and the Protection of Human Rights in the Inter-American System*, 19 HOUS. J. INT'L.. 731, 741-743(1997)
[77] A GLEN MOWER,JR, REGIONAL HUMAN RIGHTS : A COMPARATIVE STUDY OF THE WEST EUROPEAN SYSTEMS 43 (1991)
[78] MARK FREEMAN & GIBRAN VAN ERT, INTERNATIONAL HUMAN RIGHTS LAW,103, (2004)
[79] Id.
[80] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS , 117,2003; the economic and social rights were replaced in the convention by a single article(article 26) which obliges states to take appropriate legislative and other measures for realization of these rights, see A Glenn Mower,Jr. Regional Human Rights : A Comparative Study of the West European and Inter-American Systems, 46,1991

Other treaties of the system include the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights,[81] the Protocol to Abolish the Death Penalty[82] and the Inter-American Convention for the Prevention, Punishment, and Eradication of Violence Against Women.[83]

2.31.3 The European Human Rights System[84]

The European system is set up under the auspices of the Council of Europe.[85] The principal convention of the system is the European convention on Human Rights and Fundamental Freedoms.[86] It entered into force in 1953.[87] It provided and still provides individual remedies to violations of human rights by providing common human rights across the board and including a mechanism for remedying violations.[88]

The rights contained in the European Convention are civil and political.[89] The rights include the right to life,[90] freedom from torture and other inhumane or degrading treatment or punishment,[91] right to a fair trial, freedom of conscience and thought,[92] and freedom from discrimination.[93]

---

[81] VICTOR RODRIGUEZ RESCIA & MARK SEITTLES , *The Development of the Inter-American Human Rights System : A Historical Perspective and Modern –day Critique*, 16 N.Y. L. SCH. J. HUM. RTS. 593,604, (2000)
[82] Id.
[83] Id, at 594
[84] For further reading on the European Human Rights see the following: Clare Ovey & Robin C.A. White, European Convention on Human Rights, 3rd edition, Oxford University press, 2002; A.H. Robertson, Human Rights in Europe , 4th Edition, Juris Publishing 2001; P. Van Dijk & G.J.H Van Hoof, Theory and Practice of the European Convention on Human Rights, 2nd , Kluwer, 1990
[85] J.D. MERRILLS & A.H. ROBERTSON, HUMAN RIGHTS IN EUROPE 3-5(4th ed.2001)
[86] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS,93(2003)
[87] Id.
[88] Id.
[89] A GLEN MOWER,JR, REGIONAL HUMAN RIGHTS : A COMPARATIVE STUDY OF THE WEST EUROPEAN SYSTEMS,53 (1991)
[90] ECHR Art.2
[91] ECHR Art 3
[92] ECHR Art. 9
[93] ECHR Art. 14

Additional protocols have added more rights and new structures into the system. Protocol 1 introduces the rights to property, education, and free elections.[94] Protocol 2 provides for the competency of the European Court of Human Rights to give advisory opinions.[95] Protocol 4 establishes the right of free movement and freedom to choose a place of residence.[96] Protocol 6 prohibits the death penalty in times of peace.[97] Protocol 7 introduces the rights of aliens not to be deported without due process of law.[98] Protocol 9 gives direct access to individuals in the court.[99] Protocol 10 reduces the requirements for the adoption of commission reports to simple majority of the council of ministers.[100] Protocol 11 achieves a major restructuring by abolishing the commission and creating a full-time court. [101]

In addition to these protocols, the system contains several conventions. One such convention is the European Charter, which concerns with economic and social rights.[102] The Convention on the Exercise of Children's Rights is also one such conventions.[103] Conventions on Human Rights and Biomedicine, and the Framework Convention for the Protection of National Minorities are further instruments providing for the protection of human rights in the Council of Europe countries.[104]

2.3.2 Institutional Framework

2.3.2.1 The African Human Rights System

2.3.2.1.1 The African Commission of Human Rights

---

[94] J.D. MERRILLS & A.H. ROBERTSON, HUMAN RIGHTS IN EUROPE ,13 (4th ed.2001)
[95] Id.
[96] A GLEN MOWER,JR, REGIONAL HUMAN RIGHTS : A COMPARATIVE STUDY OF THE WEST EUROPEAN SYSTEMS,55 (1991)
[97] Id.
[98] Id.
[99] J.D. MERRILLS & A.H. ROBERTSON, HUMAN RIGHTS IN EUROPE ,19-20 (4th ed.2001)
[100] Id.
[101] Id , at 22
[102] RHONA S M SMITH, INTERNATIONAL HUMAN RIGHTS,95(2003)
[103] Id , at 97
[104] Id., at 96-97

The African Commission is a body established by the Banjul Charter with the mandate to protect and promote human rights on the continent. [105] The Banjul Charter contains many provisions dealing with the composition, election, and membership of the Commission.[106] The African Commission carries out its mandate of promoting human rights by disseminating human rights information, organizing seminars, carrying out research and studies, and encouraging and assisting national human rights commissions.[107] The African Commission carries out its preventive mandate by entertaining both inter-state and private complaints,[108]and receiving state reports.[109] The African Commission can also assume any other functions as provided under its article 45(4).[110] The commission is a part-time body meeting twice a year for fifteen days.[111] Despite these mandates, the African Commission suffers from serious defects.[112] The requirement of confidentiality has crippled the efforts of the Commission.[113]All decisions and activities of the Commission remain confidential until Assembly of the Heads of State and Government make a decision otherwise.[114] The Commission also suffers from the lack of a mandate of enforcing its own decisions.[115] States, by appointing high-ranking government

---

[105] RHONA S M SMITH, INTERNATIONAL HUMAN RIGHTS,136(2003)
[106] See for instance the following: Members of the commission should have high reputation, morality, impartiality, and competence in relevant matters(art.31), nomination and appointment of commissioners (art.33), commissioners to serve in their personal capacity(art. 31), Commissioners serve for a period of six years with a possibility of re-election once(art. 36).
[107] NSONGURUA J. UDOMBANA, *Toward the African Court of Human and Peoples' Rights: Better Than Late,* 3 YALE HUM. RTS. & DEV. L..J 45,65(2000).
[108] Id, 66
[109] EVELYN A. ANKUMAH, THE AFRICAN COMMISSION OF HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES 25 (1996)
[110] Artcle 45/4 of the Banjul Charter reads: " perform any tasks which may be entrusted to it by the Assembly of Heads of State and Government."
[111] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS,136(2003).
[112] NSONGURUA J. UDOMBANA, *Toward the African Court of Human and Peoples' Rights: Better Than Late,* 3 YALE HUM. RTS. & DEV. L..J 45,66(2000)
[113] Id.
[114] Id at 69.
[115] Id, at 67.

officials, always compromise their independence.[116] The commissioners have also not been keen on giving the Banjul Charter its maximum effect.[117]

2.3.2.1.2 The African Court of Human Rights

The African Court of Human rights was established by a Protocol to the African Charter on Human and Peoples' Rights.[118] The Protocol establishing the African Court came into force in 2003 after it got the fifteen ratifications required to come into force.[119] The African Court has both contentious[120] and advisory jurisdiction.[121] The Protocol establishing it contains several provisions relating to the composition, structure and appointment of judges.[122]

The African Court's decisions are binding on states.[123] Under the current structure, only the African Commission and states have direct access to the African Court.[124] Individuals and NGOs do not have direct access to it.[125] They can only get direct access to the African Court if states make a declaration to that effect.[126]

This arrangement leaves two ways individuals and NGOs can get access to the African Court.[127]The first way is through states' recognition of the Court's competence to entertain cases of individuals.[128] The second way is when the African Commission takes a case of an individual before the African Court.[129]

---

[116] Id, at 70-71
[117] EVELYN A. ANKUMAH , THE AFRICAN COMMISSION OF HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES,196(1996)
[118] FRANS VILJOEN, *Human Rights for Africa and Africans*, 30 BROOK J.. INT' L. 1,1(2004)
[119] Id. at 8
[120] Protocol to the Charter on the Establishment of the African Court, art 3
[121] Protocol to the Charter on the Establishment of the African Court, art 4
[122] See for instance article 11 provides for 11 judges, and article 12 declares that the Assembly will appoint the judges, article 15 provides that judges are appointed for sex years with the possibility of reelection.
[123] Protocol to the Charter on Establishment of the African Court. Art. ,
[124], Protocol to the Charter on Establishment of the African Court, Art.5
[125]FRANS VILJOEN, *Human Rights for Africa and Africans*, 30 BROOK J.. INT' L. 1,23(2004)
[126] Art.5 (3) and art. 34(6) cumulatively, Protocol to the Charter on Establishment of the African Court
[127] FRANS VILJOEN, *Human Rights for Africa and Africans*, 30 BROOK J.. INT' L. 1,23(2004)
[128] Id.
[129] Id.

The remaining main issue is to understand how the African Commission will forward cases to the African Court. The Protocol creating the court does not contain any provisions dealing with this issue.[130] One writer proposed potential relationships between the African Court and Commission. The first suggestion assumes that the African Commission will not involve itself in the merits of the case except to carry out some preliminary fact-finding.[131] The second suggestion is to have the African Commission carry out partial review of cases, make decisions on issues like admissibility, and pass cases to the African Court on the merits.[132] The third scenario is where the Commission fully deals with all individual petitions and making a recommendation.[133] The case goes to the African Court only when the state against which such decisions are passed fails to implement the decision.[134]

2.3.2.2 Inter-American System Human Rights System

2.3.2.2.1. The Inter-American Commission

The Inter-American Commission of Human Rights plays a major role in the protection of human rights in the region.[135] Originally, the Inter-American Commission was established by a resolution of the OAS.[136] As a Charter-based organ, it used the Declaration of the Rights and Duties of Man to enforce human rights.[137]

Article 9 of its Statute enumerated the powers of the Inter-American Commission.[138] The Commission interpreted article 9 to enable to issue country reports.[139] A country report is an

---

[130] Id., at 24
[131] Id, at 25
[132] Id, at 28
[133] Id, at 32
[134] Id.
[135] SCOTT DAVIDSON, THE INTER-AMERICAN COURT OF HUMAN RIGHTS,11(1992)
[136]SCOTT DAVIDSON, INTER-AMERICAN HUMAN RIGHTS SYSTEM 99 (1997)
[137] Id, at 16
[138] Statute of the Inter-American Commission, OEA/Ser.L.V/II.82 Doc 6 rev. at 93(1992) reads: "1 Except when justifiably prevented, to attend the regular and special meetings of the Commission holds at its permanent head quarters or in any other place to which it may have decided to sit temporarily. 2 To serve, except when justifiably

enforcement mechanism comprising studies and investigations about the human rights situations in member countries and finally culminates in the production of Country reports.[140]

When a special Inter-American Conference took place in 1965, it revamped the powers of the Commission by authorizing it to receive individual communications.[141] However, this empowerment mandated it to receive individual communications only for some rights.[142]

The Inter-American Commission gained a more sound constitutional ground when the Protocol of Buenos Aires amended the OAS Charter making the Inter-American Commission one of the formal organs of the OAS.[143] This amendment however left issues of procedure and competence to the American Convention of Human Rights, which came into force later. [144] The Convention clearly put the powers of the Inter-American Commission into two different systems.[145] First, the Inter-American Commission has the power to enforce human rights with regard to non-convention OAS member states. [146] In a case like this, the Inter-American Commission uses the Declaration of the Rights and Duties of Man.[147] The second category of countries are those subject both to the Declaration and to the Convention.[148]

In addition to such protection mandates, the Inter-American Commission also has promotional mandates. [149] The Statute of the Inter-American Commission deals with various

---

prevented, on special Committee which the Commission may form to conduct on-site observations, or to perform any other duties within their ambit.

[139] SCOTT DAVIDSON, THE INTER-AMERICAN COURT OF HUMAN RIGHTS 15 (1992)

[140] See discussion in chapter three on country reports.

[141] SCOTT DAVIDSON, INTER-AMERICAN HUMAN RIGHTS SYSTEM 17 (1997)

[142] Id, at 17; Only the following rights were subjects of individual petitions- the right to life, Liberty and security of persons, equality before the law, freedom of religion, freedom of expression, freedom from arbitrary arrest and the right to due process.

[143] SCOTT DAVIDSON, THE INTER-AMERICAN COURT OF HUMAN RIGHTS 15 (1992)

[144] SCOTT DAVIDSON, INTER-AMERICAN HUMAN RIGHTS SYSTEM 99 (1997)

[145] Id, at 22

[146] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS 125,(2003)

[147] SCOTT DAVIDSON, INTER-AMERICAN HUMAN RIGHTS SYSTEM ,22 (1997)

[148] Id.

[149] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS ,122(2003)

issues like the members and other internal matters.[150] The Inter-American Commission also issues country reports on the situation of human rights in particular countries after carrying out investigations in those countries.[151]

2.3.2.2.2 The Inter-American Court of Human Rights

Unlike the Commission, the Inter-American Court is completely a creation of the American Convention of Human Rights.[152] The Inter-American Court has both contentious and advisory jurisdictions. [153] Only states and the Inter-American Commission have standing before the court. [154] States have to accept expressly the competence of the Inter-American Court before they become subject to its jurisdiction.[155] Its Statute deals with the Court's composition and other internal matters.[156]

Finally, it is worth discussing the relationship between the Inter-American Court and the Commission. Since only states and the Commission have access to the Inter-American Court, the only was individual cases go to the Inter-American Court is through the Inter-American Commission. However, there is no guiding principle directing the Inter-American Commission in making such decision. This area is still left to the discretion of the Commission.[157]

---

[150] See for instance, article 34 requiring members of the Commission to have right moral character; articles 36-37 dealing with election , the length of each term of the member.
[151] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS,122(2003)
[152] Scott Davidson, supra note 130, 123
[153] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS,122(2003)
[154] Id, at 23
[155] Id, at 122-23
[156] See, for instance, article 52 dealing with the number of judges serving , about judges serving on their personal capacity , requiring them to have qualifications.; article 54 dealing with how the election of judges is carried out , and providing OAS General Assembly to elect them; article 55 allowing a state to appoint ad hoc judges in cases that involve them.
[157] SCOTT DAVIDSON, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM,185(1997)

2.3.2.3 The European Human Rights System

2.3.2.3.1 The European Court of Human Rights

Before the establishment of the current system, the European system had both a commission and a court.[158] Under the current system, there is only the European Court of Human Rights.[159] The European Court can award damages and make declaratory judgments.[160] The European Convention on Human Rights and Fundamental Rights has devoted some provisions to the structure of the court, the qualifications of judges and their appointments.[161] The European Court sits on committees that decide on the admissibility of a case.[162]The Chamber, which is a bench of seven judges, decides all inter-state and individual complaints on the merits. [163] The European Court sits in Grand Chambers of seventeen judges to decide on the merits of all inter-state and individual complaints in cases where the Chambers relinquish their powers in favor of the Grand Chambers.[164] The Grand Chamber also decides on the merits of cases where applicants request a referral to the Grand Chambers of the decision by the Chambers within three months time.[165] Decisions of the Grand Chamber are final.[166] This body can also give advisory opinions if requested by the Council of Ministers.[167]

---

[158] CLARE OVEY & ROBIN C.A. WHITE, EUROPEAN CONVENTION ON HUMAN RIGHTS 396 (3rd ed. 2002)
[159] Id.
[160] Id.
[161] See , for instance the following articles: Art.20 provides that each member state appoint one judge; art.21 (1) provides that each judge should posses the qualification or recognized competence for the position, art.21 (2) provides that each judge serve in his/her individual capacity, art. 22(1) declares that the General assembly appoints judges, art. 23(1) provides that judges serve for a period of six years
[162] ECHR art. 27(1),
[163] ECHR art 29(2)
[164] ECHR Art. 30,
[165] ECHR art.47(1)
[166] ECHR art.44
[167] ECHR art. 47(1)

2.3.2.3.2 Committee of Ministers

The Committee of Ministers is a body of the Council of Europe[168] entrusted with the tasks of supervising the implementation of the decisions of the European Court of Human rights.[169] The Committee of Ministers meets only twice a year[170] and operates through deputies who meet every two weeks[171] and permanent representatives for which the other times during which it is not in a session.[172] The Committee of Ministers has developed its own rules for exercising its task of supervising the implementation of the decisions of the court of human rights. [173]

2.3.2.3.3 Commissioner for Human Rights

This is a body established for raising awareness about human rights and respect for human rights.[174] It was established by a resolution of the Committee of Ministers.[175] Its mandates include promotion of human rights through education and identification of shorting coming in law and practice concerning human rights.[176] It also organizes Seminars and conducts site visits that culminate in country reports like visit reports.[177]

---

[168] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS,98(2003)
[169] Art. 46/2, ECHR; It provides " The final judgment of the court shall be transmitted to the Committee of Ministers which shall supervise its execution."
[170] CLARE OVEY & ROBIN C.A. WHITE, EUROPEAN CONVENTION ON HUMAN RIGHTS,421 (3rd ed.2002)
[171] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS,98(2003
[172] CLARE OVEY & ROBIN C.A. WHITE, EUROPEAN CONVENTION ON HUMAN RIGHTS,421 (3rd ed.2002)
[173] See Rules Adopted By the Committee of Ministers for the Application of Article 46, Paragraph 2 of the European Convention on Human Rights and Fundamental Freedoms, adopted on 10,2001; available @ www.cm.coe.int or reprinted in 24 HRLJ 281.
[174] www.coe.int/T/Commissioner/About/mandate-en.asp (last visited may 10th,2006)
[175] Id.
[176] Id.
[177] Id.

2.4 Other Regional Initiatives

Apart from the principal regional systems considered in this chapter, there are other initiatives developed for the protection of human rights.[178] These systems, for the most part, lack enforcement mechanisms.[179]

2.4 1 Arab Charter of Human Rights

This Charter is created within the framework of the Arab League.[180] Members of the Arab League have adopted the Arab Charter[181] of Human Rights in 1994.[182] A Revised Charter[183] came into existence in 2004.[184] The Revised Charter requires seven state ratifications to enter into force.[185] So far, only Jordan and Tunisia have given their ratifications.[186] Regarding its contents, the major concern has been that it does not meet international standards.[187] The Charter recognizes most of the civil and political rights but in most instances leaves out important component aspects of the rights.[188]

2.4.2 European Union

The European Union is a unique supranational organization that has exclusive competence in certain areas over its member states and operates as an intergovernmental organization in some areas.[189] Due to its original concern with economic integration, the system

---

[178] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS,87(2003)
[179] Id; EU is an exception to this assertion. It has ECJ as enforcement mechanism. See the discussion on EU in section 1.4.2
[180] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS,87(2003)
[181] The full text of the original Arab Charter of Human Rights is reproduced in 18 Hum. Rts. L. J. 151(1997)
[182] RHONA K.M. SMITH, INTERNATIONAL HUMAN RIGHTS,87(2003)
[183] The full text of the Revised Charter is available in 12 IHHR 983(2005)
[184] MERVAT RISHMAWI, *The Revised Arab Charter on Human Rights: A Step Forward?,* 5 HUM. RTS.. L. REV. 361, 362 (2005)
[185] Id, at 364
[186] Id.
[187] Id. at 370
[188] Id, at 369-375
[189] GIORGIO SACERDOTI, *The European Charter of Fundamental Rights: From A Nation-state Europe to Citizens' Europe,* 8 COLUM. J. EUR. L. 37, 38-9(2002)

did not develop formal human rights instruments until very recently.[190] The European Court of Justice[191] had to develop its own case law to remedy this handicap, drawing inspiration from international instruments like the European Convention of Human Rights and constitutional principles common to Member states.[192]Currently the system has a Charter of Fundamental Rights.[193] However, it remains a mere declaration without the possibility of judicial enforcement.[194] In an effort to avoid possible contradictions between the European court of Human Rights and the European Court of Justice, accession of the EU to the European Convention was suggested.[195]

2.4.3 Asia and The Pacific Regions

So far, this region has exerted the stiffest resistance to the concept of human rights.[196] Asian leaders have persistently argued that human rights are particular to the West and do not fit Asian values and traditions.[197] There have not been any inter-governmental human rights instruments in this region until now. [198] At present, there is an Asian Human Rights Charter[199]developed by non-governmental organizations as a declaration.[200] It has been adopted by many non-governmental organizations as reflective of their position on human rights.[201]

---

[190] HANS CHRISTIAN kRUGER, *Reflections Concerning Accession of the European Communities to the European Convention of Human Rights*, 21 PENN. St. INT'L. L. REV. 89, 89(2002)

[191]The European Court of Justice is the judicial body of the European Communities. Its functions include the interpretation and application of the treaties of the European Union. *See* JEAN M SERA, *The Case for the Accession by the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 14 B. U. INT. L. J. 151 (1996)

[192] BARTHOLOMAUS BESTIAN WASSERSTEINER, *Common Traditions of All member States : The Court's method of Defining the EU Human Rights Standards*, in HUMAN RIGHTS WITHIN THE EUROPEAN UNION, 27, 27(2004)

[193] HANS CHRISTIAN kRUGER, *Reflections Concerning Accession of the European Communities to the European Convention of Human Rights*, 21 PENN. St. INT'L. L. REV. 89,91(2002)

[194] Id.

[195] KOEN LENAERTS, *Respect for Fundamental Rights as a Constitutional Principle of the European Union*, 6 COLUM.. J. EUR. L. 1,1(2000)

[196] MICHAEL C DAVIS, Constitutionalism *and Political Culture: The Debate Over Human Rights and Asian Values*, 11 HARV. HUM. RTS. J. 109, 109(1998)

[197] Id.

[198] VITIT MUNTABH,, *Asia, Human Rights and the New Millennium: The Time for a Regional Human Rights Charter?* , 8 TRANSNAT'L L & CONTEMP. PROBS. 407, 411(1998)

[199] the full text of the document is available at www.ahrchk.net/charter/mainfile.php/eng-charter

2.4.4 The New Partnership for Africa's Development (NEPAD)

Developed out of the need of Africans to prove to the developed countries and financial institutions that they shared mutual concerns such as good governance and human rights,[202] NEPAD provides the ultimate framework aimed at eradicating poverty from Africa and putting Africa on a path to sustainable development.[203] The relevant aspects of NEPAD in the present context are its concern with human rights,[204] and its peer review mechanism.[205] The peer review mechanism is a voluntary reviewing mechanism[206] whereby African states conduct self-monitoring.[207]NEPAD'S importance in the protection of human rights is undeniable.[208] The reviewing takes place through government officials.[209]

---

[200]VITIT MUNTABH,, *Asia, Human Rights and the New Millennium: The Time for a Regional Human Rights Charter?* , 8 TRANSNAT'L L & CONTEMP. PROBS. 407, 413(1998)
[201] Id.
[202] VINCENT O. ORLU NMEHIELLE, *The African Union and African Renaissance: A New Era for Human Rights Protection in Africa?*, 7 SING. J. INT'L & COMP. L. 412,430(2003)
[203] Id.
[204] DEJO OLOWU, *Regional Integration, Development and The African Union Agenda: Challenges , Gaps and Opportunities*, 13 TRANSNAT'L & CONTEMP. PROBS. 211, 229(2003)
[205] VINCENT O. ORLU NMEHIELLE, *The African Union and African Renaissance: A New Era for Human Rights Protection in Africa?*, 7 SING. J. INT'L & COMP. L. 412,431(2003)
[206] Id, at 430
[207] DEJO OLOWU, *Regional Integration, Development and The African Union Agenda: Challenges , Gaps and Opportunities*, 13 TRANSNAT'L & CONTEMP. PROBS. 211, 229(2003)
[208] Id at ,229
[209] Id; the relevance of the NEPAD peer review mechanism is obvious. However how it fairs with Inter-state complaint mechanism is yet to be seen at this point in time. Given that, states do not prefer to point fingers at each other and they feel that they are just doing that when they file inter-state complaint. See Chapter two section 3.2.1). In addition, given the fact African states have chosen to show unprecedented indifference to human rights violations on the continent it would remain to be seen how this mechanism would unfold.

Chapter Three

Enforcement of Human Rights Under Regional Human Rights mechanisms: Inter-State Complaints

3.1 Introduction

The term Inter-state complaint, in international law, refers to complaints made by one state against another before an international body or tribunal alleging a violation of other state's obligations.[210] The rationale behind an inter-state complaint mechanism is that states are interested in the protection of human rights [211] and as such will be diligent participants in such litigation.[212] Human rights treaties create obligations, firstly, states towards their citizens and, secondly, towards third states.[213] This secondary obligation forms another legal justification for the procedure.[214] Currently international human rights systems recognize the inter-state complaint mechanism as one of the means of human rights enforcement. [215]

Generally, two situations explain why states utilize inter-state complaints procedures. One situation is a purely human rights consideration with no economic or political interest.[216] The case filed by Netherlands, Demark, Norway, and Sweden against Greece was such an

---

[210] MARK FREEMAN & GIBRAN VAN ERT, INTERNATIONAL HUMAN RIGHTS LAW,397(2004)
[211] STEFAN TRESCHEL , *A World Court for Human Rights*?, 1 NW U. J. INT. HUM. RTS.,3,29 (2003)
[212] Id.
[213] SCOTT LECKIE , *Inter-state complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q. 249, 253 (1988)
[214] This obligation of states that they owe to other states to respect human rights within their territories creates tension with the principle of sovereignty and other non-intervention principles derived from it. While these treaties pierce into the domestic affairs of a state, the principle of sovereignty on the other hand shields the state accounting foreign bodies.
[215] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS, 147, 2003. See e.g., art 21. CERD, Art. 41 ICCPR, art.21 CAT
[216] SCOTT LECKIE , *Inter-state complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q. 249, 256 (1988)

example.[217] These cases relate to the suspension of certain rights and the alleged torture and inhumane treatment of citizens of Greece after the Communist regime took power in Greece.[218]

The second situation occurs when states have their own interests and concerns.[219] The case filed by Austria against Italy is a good example.[220] Austria brought a case against Italy alleging that the way Italy treated German-speaking communities in a criminal investigation of the murder of an Italian customs officer violated the European Convention on Human Rights.[221]

3.2 The African System of Human Rights

The African System recognizes an inter-state complaint mechanism.[222] Under the Banjul Charter, the inter-state complaint mechanism is a mandatory procedure.[223] Once a state becomes a state party to the Banjul Charter, it is bound by the inter-state complaint mechanism.[224] The Banjul Charter provides two different ways of making an inter-state application. The first way gives a state the option of directly communicating with the state alleged to have violated rights before going to the African Commission with the complaint. [225] Under this system, a state has a three-month period during which it must to seek a diplomatic solution to the problem.[226] The second option is that a state can bring the case directly to the African Commission without the

---

[217] See infra section 2.4
[218] SCOTT LECKIE , *Inter-state complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q. 249, 250 (1988)
[219] SCOTT LECKIE , *Inter-state complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q. 249, 256 (1988)
[220] See infra section 2.4
[221] Austria V Italy, case no 299/57
[222] VINCENT O ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS,PRACTICE, AND INSTITUTIONS,198(2001)
[223] Id.
[224] Compare with inter-American system where it is left to the discretion of each member state.
[225] Banjul Charter Arts 47 and 48
[226] VINCENT O ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS,PRACTICE, AND INSTITUTIONS,199(2001)

need to exhaust the first option.[227] Article 49[228] provides that a state may make an inter-state complaint directly to the Commission.

Once a member state decides to bring an inter-state complaint against another Member state, rules begin to apply and the states must meet certain criteria.[229] One such condition relates to the exhaustion of domestic remedies. However, exhaustion of domestic remedies does not apply in cases that involve a vast violation of human rights.[230]

The African system has not exploited this mechanism. Only a few inter-state complaints have, thus far, been made in the life of the Banjul Charter. [231] One is the complaint filed by Sudan against Ethiopia in 1997 alleging that Ethiopia violated human rights of the local residents of Kurmmuk and Gissan cities bordering on Ethiopia.[232] Sudan alleged that the Ethiopian Army invaded these cities and engaged in continuous violations of rights of the residents of these cities.[233] This inter-state complaint did not succeed[234] because Ethiopia was not a state party to the Banjul Charter at the time of the complaint.[235]

---

[227] BANJUL Charter art 49

[228] Article 49 of the Banjul charter reads: " Notwithstanding the provisions of 47, if a state party to the present Charter considers that another state party has violated the provisions of the Charter, it may ferer the matter directly to the Commission by addressing a communication to the Chairman to the Secreatary General of the Organization of African Unity and the state concerned."

[229] See Guidelines On submission of Inter –state complaints : Information sheet No 4; see Vincent, suprra note , 200 ; The guidelines provide that the application must contain the names of the states involved, the official languages of the states involved, the years when the state parties ratified the Banjul Charter, the facts of the case, description of the efforts taken to solve the problem amicably, domestic remedies perused and not pursued and the reasons why they were not perused. ; This last requirement of explaining why states did not pursue domestic remedies seems to indicate the possibility not exhausting domestic remedies when the case is one where vast and massive violations are the object of the complaint. See SCOTT DAVIDSON, THE INTER-AMERICAN HUMAN RIGHTS SYSTEM,20(1997)

[230] SCOTT LECKIE , *Inter-State Complaint Procedure in International Human Rights : Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q 250,274(1988)

[231]VINCENT O ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS,PRACTICE, AND INSTITUTIONS,203(2001)

[232] Id, at 202 n. 758

[233] Id.

[234] VINCENT O ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS,PRACTICE, AND INSTITUTIONS,202 n. 758(2001)

[235] NSONGURUA J UDOMBANA, *Toward the African Court of Human and Peoples' Rights: Better Late Than Never,* 3 YALE HUM. RTS. & DEV. L. J. 45, 111 n. 18(2000)

Another inter state complaint filed was the one Libya made against the United States following the U.S. bombing of Libya.[236] The complaint was inadmissible because the United States was not a member to the Banjul Charter.[237]

The third inter-state complaint is the one that the Democratic Republic of Congo made against Burundi, Rwanda and Uganda.[238] It seems to be the one complaint filed properly since all parties to the complaint were state parties to the Banjul Charter.[239]

Given the widespread violation of rights and abuse of power in the region,[240] the inter-state complaint mechanism should be used more frequently. One writer ascribes hesitance by the African states to use the inter-state complaint mechanism to their highly protective attitudes toward their very recently gained sovereignty.[241]

3.3 The Inter-American System

The inter-American system of human rights recognizes the right of states to file against another for alleged violations of human rights.[242] The Inter-American Convention provides that only states that have accepted the competence of the Inter-American Commission to entertain inter state complaints where the state is either the complaining or the responding party in such cases.[243] This Inter-American System made inter-state complaints voluntary, leaving it to

---

[236] U OJI UMOZURIKE, THE AFRICAN CHARTER ON HUMAN AND PEOPLES RIGHTS, 75(1997)
[237] Id.
[238] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS,141(2003)
[239] Id.
[240] NSONGURUA J UDOMBANA, *Toward the African Court of Human and Peoples' Rights: Better Late Than Never,* 3 YALE HUM. RTS. & DEV. L. J.45,56(2000)
[241] SCOTT LECKIE , *Inter-State Complaint Procedure in International Human Rights : Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q 250,263(1988)
[242] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS,126(2003)
[243] ACHR ART 54(2)

member states whether to join this procedure or not.[244] So far, only few states have accepted the competence of the Inter-American Commission to receive inter-state complaints.[245]

In addition, the inter-state complaint is subject to some procedural requirements. Domestic remedies must be exhausted; there is a six-month time limit for the filing of such inter-state complaints after the notification of the final decision on the case, and a requirement that the subject matter of the case not be pending in another international dispute settlement body.[246] After the Inter-American Commission carries out its investigation, it will try to reach a friendly settlement and report its findings to the Secretary-General of the OAS.[247] If such a settlement is not reached, the Inter-American Commission draws up a report and sends it to the state parties to the litigation.[248] If either state disagrees with the report and brings the case to the attention of the Inter-American Court of Human Rights and it does entertain the case, the Inter-American Court will have the final say on the case.[249] Otherwise, the Inter-American Commission will pronounce its final recommendation and fix the time for compliance by the deviant country.[250]

So far, there have been no inter-state complaints filed. [251] One writer has forwarded possible suggestions explaining why this procedure has not been used in the region. One problem he identifies is the existence of other procedures available to the Inter-American Commission and use of these procedures by various bodies might have contributed to non-exploitation of this

---

[244] SCOTT LECKIE , *Inter-State Complaint Procedure in International Human Rights : Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q 250,259(1988)
[245] Id.
[246] ACHR Art.46
[247] SCOTT LECKIE , *Inter-State Complaint Procedure in International Human Rights : Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q 250,260(1988)
[248] Id.
[249] Id.
[250] Art. 51(1), Inter-American Convention on Human Rights
[251] SCOTT LECKIE , *Inter-State Complaint Procedure in International Human Rights : Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q 250,261(1988)

procedure.[252] The ability of the Inter-American Commission to take up matters at its discretion might also have compromised the use of this procedure.[253] Moreover, the particular history of the region particularly the non-intervention policy, has also explained the reluctance of states to avail themselves of this procedure.[254]

3.4 The European Human Rights System

The European Convention on Human Rights recognizes the inter-state complaints procedure as one of its enforcement mechanisms.[255] Article 33[256]of the European Convention on Human Rights and Fundamental Rights provides that a state can bring a case against another if it believes that the latter is violating human rights. Under the European human rights system, this mechanism is mandatory on all Member states.[257] A state making inter-state complaints need not have an interest in the case.[258] The inter-state complaint mechanism is not a means to advance self-interest but rather part of an enforcement mechanism aimed at maintaining the "public order in Europe."[259] This inter-state complaint mechanism is also available to a state, which wants to bring an action to force another state to implement decisions of the European Court of Human Rights.[260]

---

[252] Id.
[253] Id.; potential inter-state complaints between states in the region ended up becoming subjects of the country reports. The Commission resorted to preparing country reports on the complaints rather than peruse them as inter-state complaints. For instance the request made by the El Salvador against Honduras for abusing the rights of El Salvadoran families living in Honduras (OAS/Ser.L/V/II.22 doc.2 (1969). The case developed into a site visit and finally culminated as a Country report by the Commission rather than as a case between two states, which required a site visit. The country report procedure here undermined what could have been a potential inter-state complaint.
[254] Id.
[255] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS,101(2003)
[256] Article 33 of the European Convention reads : " Any Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and Protocols thereto by Another Contracting Party."
[257] SOREN C PREBENSEN, *Inter-State Complaints under Treaty provisions-The Experience under the European Convention on Human Rights,* HUM.. RTS. L. J 446, 449 (1999); this procedure used to be a voluntary undertaking in the pre-protocol 11 system. However, after the introduction of protocol 11 states do no longer have an option.
[258] SCOTT LECKIE , *Inter-State Complaint Procedure in International Human Rights : Hopeful Prospects or Wishful Thinking?*, 10 HUM. RTS. Q 250,272(1988)
[259] Austria V Italy, case no 299/57
[260]SCOTT LECKIE , *Inter-State Complaint Procedure in International Human Rights : Hopeful Prospects or Wishful Thinking?,* 10 HUM. RTS. Q 250,273(1988)

After receiving about twenty-one inter state complaints, this system has seen the highest number of such complaints from the three principal systems.[261] These twenty-one complaints, however, relate to seven situations.[262]

Two of the cases are the cases filed by Greece against the United Kingdom.[263] Both these cases relate to the United Kingdom's colonial rule in Cyprus and the various laws and practices in Cyprus that allegedly allowed corporal punishment on males below eighteen and summary punishment and hence violated the European Convention on Human Rights.[264] Following two recommendations by the European Commission, the Committee of Ministers resolved that no further action was needed after taking into consideration the agreements of Zurich and London, which focused on the independence of Cyprus.[265]

Another inter state complaint is the one filed by Austria against Italy alleging the inhumane treatment of the local German-speaking community in a criminal investigation of the murder of an Italian customs officer violated the European Convention on Human Rights.[266] In relation to this case, the Committee of Ministers[267] resolved that there was no violation of the European Convention.[268]

---

[261] SOREN C PREBENSEN, *Inter-State Complaints under Treaty provisions-The Experience under the European Convention on Human Rights,* HUM.. RTS. L. J 446, 446(1999)
[262] Id.
[263] Greece V UK, cases no 176/56 & 299/ 57
[264] SOREN C PREBENSEN, *Inter-State Complaints under Treaty provisions-The Experience under the European Convention on Human Rights,* HUM.. RTS. L. J 446, 446 (1999)
[265] DH(59) 21 and 32, Collection of Resolutions Adopted by the Committee of Ministers in application of Articles 32 and 54 of the European Convention on Human rights and Fundamental Freedoms, 1959-1983.
[266] Austria V Italy, case no 299/57
[267] Prior to protocol 11, The Committee of Ministers had the power to decide on cases coming from Commission if no state or the Commission itself brought the case to the Court of Human rights within three months of such decisions. See Articles 32 and 48 cumulatively)
[268] DH(63)3, Collection of Resolutions Adopted by the Committee of Ministers in Application of Article 32 and 54 of the European Convention on Human Rights and Fundamental freedoms, 1959-83; For further reading see DJ Harris , Law of the European Convention on Human Rights,691-705,1995

The Netherlands, Norway, Sweden and Denmark filed four cases[269] against Greece for violating the rights of Greece citizens by suspending certain rights and allegations of torture and inhuman treatment following the taking of power by the communist regime in Greece.[270] Regarding this case, the Committee of Ministers passed two resolutions. In the first resolution, it held that Greece had violated a number of provisions of the European Convention. Additionally it held that there were no further grounds for action, as Greece had already renounced the Convention and its membership in the Council, but held to follow up on the situation in that country.[271] In the second resolution, the Committee of Ministers held to discontinue its follow-up development in Greece as the re-admission process had examined all relevant aspects thoroughly.[272]

Ireland brought two cases against the United Kingdom.[273] The cases involved the allegations that the interrogation techniques used by the U.K. authorities amounted to torture and thus violated the European Convention on Human Rights. [274]

Cyprus launched a different set of inter state complaints against Turkey.[275] They alleged violations of the European Convention by the Turkish military operations in northern Cyprus in 1974.[276] In relation to Communications 6780/74 and 6950/75, the Committee of Ministers

---

[269] Cases no 3321/67, 3322/67, 3323/67& 3344/67

[270] SCOTT LECKIE , *Inter-State Complaint Procedure in International Human Rights : Hopeful Prospects or Wishful Thinking?,* 10 HUM. RTS. Q 250,290(1988)

[271] DH(70)1 , Collection of Resolutions Adopted by the Committee of Ministers in Application of Articles 32 and 54 of the European convention on Human Rights and Fundamental Freedoms, 1959-1983

[272] DH(74)2, Collection of Resolutions Adopted by the Committee of Ministers in Application of Articles 32 and 54 of the European convention on Human Rights and Fundamental Freedoms, 1959-1983

[273] Cases no 5310/71 & 5451/72

[274] SOREN C PREBENSEN, *Inter-State Complaints under Treaty provisions-The Experience under the European Convention on Human Rights,* HUM.. RTS. L. J 446, 447 (1999)

[275] Cases no 6780/74 & 6950/75

[276] SOREN C PREBENSEN, *Inter-State Complaints under Treaty provisions-The Experience under the European Convention on Human Rights,* HUM.. RTS. L. J 446, 447 (1999)

passed a resolution urging the two sides to resume talks and declassified the case.[277] In relation to case 8007/77, the Committee of Ministers did not make any resolution except adopting the report of the Commission.[278] In relation to case 25781/94, the European Court of Human Rights made a finding of fourteen violations since the time of invasion of Cyprus.[279]

Another group of inter-state complaints includes those by France, Norway, Denmark, and the Netherlands against Turkey regarding the widespread and systematic violations of rights during its military regime, which lasted from September 1980 to July 1982.[280] The Committee of Ministers acknowledged an agreement reached between the complainant states and Turkey and resolved to recognize it as a friendly settlement.[281]

Denmark also brought a complaint against Turkey claiming that the latter had tortured a Danish man who was in detention in Turkey.[282] The two countries made a bilateral treaty in which Turkey obligated itself to end the practice of torture in the country and pay Demark damages.[283] The Court also acknowledged the agreement as a friendly settlement.[284]

---

[277] Dh(79) 1, Collection of Resolutions Adopted by the Committee of Ministers in Application of Articles 32 and 54 of the European convention on Human Rights and Fundamental Freedoms, 1959-1983
[278] SOREN C PREBENSEN, *Inter-State Complaints under Treaty provisions-The Experience under the European Convention on Human Rights,* HUM.. RTS. L. J 446, 447 (1999)
[279] The fulltext of the decision reprinted in 22 HRLJ 217-167,2001
[280] SOREN C PREBENSEN, *Inter-State Complaints under Treaty provisions-The Experience under the European Convention on Human Rights,* HUM.. RTS. L. J 446, 447 (1999)
[281] Id.
[282] Id.
[283] Fulltext of the agreement is reprinted in 21 HRLJ 58-61, (2000)
[284] Id.

Chapter Four

Enforcement of Human Rights under Regional Human Rights Mechanisms: State Reporting and Country Reports

4.1 Introduction

In this chapter, the focus will be on the reporting system as a human rights enforcement mechanism. The reporting system can take either the form of a state report or a country report. This chapter examines how these mechanisms developed in the various regional systems and how they work within these systems and the advantages it offers over other human rights enforcement mechanisms.

State reporting refers to the communication made by a state to a specified treaty or charter body regarding the reporting state's compliance with treaty obligations from time to time.[285] Most United Nations treaties[286] and other regional bodies require states to submit a periodic report.[287] After the submission of the report, what usually follows is the examination of the reports that will culminate in posing questions to the reporting state.[288]

State reporting is based on two assumptions. The first assumption relates to the impact of publicity on the conduct of states who are reporting.[289] No state wants to stand out as a deviant

---

[285] MARK FREEMAN & GIBRAN VAN ERT, INTERNATIONAL HUMAN RIGHTS LAW,386(2004)
[286] See, for instance, ICCPR art.40 (1), ICESCR art.17, CAT art. 19, CERD art. 9, CEDAW art. 18, Contention on the Rights of the Child art. 44
[287] MALCOLM EVANS ET AL., THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS: THE SYSTEM IN PRACTICE 1986-2000,(37,MALCOLM EVANS & RACHEL MURRAY eds. 2002)
[288] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS, 65(2003)
[289] Id, 146

from the standards of international law.[290] Publicity serves as the catalyst for prompting the international community to respond to the deviant state.[291] It is true that states want to avoid publicity of their delinquency as much as possible.[292]

The second assumption is that state reporting offers the reporting state with a chance to reflect on their internal human rights situation while preparing the report.[293] State reporting also helps them to engage in a constructive dialogue with the examining body; [294] state reporting is not confrontational and adjudicatory[295] and helps states find out their policy issues and reflect on possible future improvements.[296] As most reporting regimes recognize the input of NGO submissions, state reporting can also facilitate the participation of various segments of the society.[297] It also helps the examining body to identify recurring problems with states' compliance and devise possible remedies.[298] Of the principal regional systems, only the African system explicitly recognizes this system.[299]

4.2 State Reporting

4.2.1 The African Human Rights System

Article 62[300]of the Banjul Charter states: "Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative measures taken with the view to giving effect to the rights and freedoms recognized and

---

[290] Id, 147
[291] JACK DONNELLY, INTERNATIONAL HUMAN RIGHTS 75 (2nd ed., 1998)
[292] See section 3.2 the reaction of Chile and Argentina. Although their reaction was not related to state reporting mechanism as such, it can explain how far states can go to avoid publicity.
[293] SMITH, supra note 203, 146
[294] Id.
[295] Id, 65
[296] EVELYN A ANKUMAH, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES 80 (1996)
[297] Id.
[298] Id.
[299] Only the Banjul Charter recognizes this mechanism under its article 62. The Inter-American system uses the country reporting system(see section 3.2). The European system, on the other hand,
[300] Banjul Charter, art. 62

guaranteed by the Charter." Article 62[301] poses a general obligation of reporting on all state parties without specifying who is the competent body to receive,[302] and examine such reports,[303] or what the contents of the reports should be,[304]or how the reports are submitted and presented.[305]

Subsequent actions have addressed many of these issues. The Assembly of Heads of State and Government bestowed the Commission with the competence to receive such communications.[306] This authorization followed a recommendation by the Commission asserting that it was the only competent body to receive such reports.[307]In the same decision, the Assembly of Heads of State and Government addressed the issue of the contents of the state reports by authorizing the African Commission to issue guidelines on reporting.[308] Pursuant to such authorization, the Commission developed its first guidelines prescribing what the reports should contain.[309]

The first reporting guideline addressed, in a very detailed manner, what issues the reports should tackle.[310] The guidelines require the report to handle various rights under subject matter organization rather than a particular right contained in the Banjul Charter.[311] It organized the reports under seven different headings. These are: civil and political rights,[312] Economic and

---

[301] Id.
[302] EVELYN A ANKUMAH, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES ,79 (1996) 79
[303] MALCOLM EVANS ET AL., THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS: THE SYSTEM IN PRACTICE 1986-2000,(39,MALCOLM EVANS & RACHEL MURRAY eds. 2002)
[304] Id.
[305] Id.
[306] Id.
[307] Id.
[308] Id.
[309] Id, 42
[310] EVELYN A ANKUMAH, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES 83 (1996)
[311] Id
[312] See Chapter one , Guidelines on National Periodic Reports

social rights, [313]peoples' rights, [314]specific duties under the Charter, [315]elimination of racial discrimination,[316]and elimination of discrimination against women.[317]

A second guideline, developed in 1997, complemented the first guidelines after it was felt that the original guideline was unnecessarily detailed from a practical point of view. [318] The complementing guideline is only a page long,[319] unlike the original guideline, which was about twenty-five pages long.[320] The newer guideline prescribes concisely what the content of a report should be. [321] Several writers express their fears that such widely constructed guidelines might not provide guidance sufficient to produce a report that meets the standards the African Commission can effectively use.[322] The revised guideline provides that a reporting state should include a brief statement about its legal system, form of government, relations between various branches of the government, and urges the production of copies of basic documents like the constitution and basic codes along with the initial reports.[323]

Regardless of these efforts, state practices have been very varied.[324]African states have been neither diligent on timely reporting[325] nor provided relevant and sufficient information in

---

[313] Chapter II, id.
[314] Chapter III, Id.
[315] Chapter IV, Id.
[316] Chapter V, Id.
[317] Chapter VII, Id.
[318] MALCOLM EVANS ET AL., THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS: THE SYSTEM IN PRACTICE 1986-2000,(48,MALCOLM EVANS & RACHEL MURRAY eds. 2002)
[319] Id.
[320] EVELYN A ANKUMAH, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: PRACTICE AND PROCEDURES 83 (1996)
[321] MALCOLM EVANS ET AL., THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS: THE SYSTEM IN PRACTICE 1986-2000,(48,MALCOLM EVANS & RACHEL MURRAY eds. 2002)

[322] Id., at 49
[323] Id, at 48
[324] Id, at 49
[325] See www.achpr.org (official website of the African Human Rights Commission) It deal with the state reporting (visited on March 17th / 2006)

their state reports.[326] As of March 17, 2006, about seventeen states had not yet submitted their initial state reports.[327] These countries include Botswana, Central African Republic, Cote d'Ivoire, Djibouti, Equatorial Guinea, Ethiopia, Eritrea, Gabon, Guinea Bissau, Liberia, Madagascar, Malawi, Niger, Sao Tome Principe, Sierra Leone, Somalia and Zambia.[328]Even most of the states that submitted reports did so by lumping together many overdue reports.[329] Such practice was motivated by a decision of the African Commission to allow states to combine overdue reports in one to submit them as a single report.[330]

A claim was made that twelve states were on time with their submission of reports.[331] This claim, however, hides the fact that such combined reports reduce the number of reports that should have been submitted.[332] As at March 2006, no state was up to date with submission of reports.[333]

The problem does not end with timely submission of reports. The content and form of the reports pose another problem for the efficiency of this mechanism.[334] The reports submitted substantially vary in both content and length.[335] One state report submitted by Algeria to the nineteenth session of the African Commission, for instance, was ninety-six pages whereas the

---

[326] MALCOLM EVANS ET AL., THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS: THE SYSTEM IN PRACTICE 1986-2000,(49,MALCOLM EVANS & RACHEL MURRAY eds. 2002)
[327] www.achpr.org (visited on March 17th/2006)
[328] Id.
[329] For example- Egypt made a report in May 2000 by combining all overdue reports since 1994; Ghana submitted its second report by combining 3 overdue reports since 1995; Lesotho made a report in 2000 after combing 4 overdue reports, Libya in 2000 after 5 overdue reports, Mauritania in 2001 after combing 6 overdue reports, Mali in 1999 by combing 3 overdue reports, Sahrawi Arab Republic in 2003 after combing 8 overdue reports, Sudan in 1996 after combing 5 overdue reports, Swaziland in 2000 after combing 2 overdue reports, Togo in 1990 after combing 3 overdue reports, and Zimbabwe in 1996 after adding one overdue reports(see www.achrp.org)
[330] Evans, supra note 236, 42
[331] Id, at 41
[332]

report of Mozambique was only seven pages long.[336] This difference between the two reports means a big difference in the content and specificity of the report.[337] Surprisingly enough, the report of Seychelles submitted to the twenty-third session of the African Commission was comprised of only the constitution of that state.[338] Zimbabwe submitted its report to the twenty-second session of the commission and its report was sixty-three pages long and touched upon every right contained in the Banjul Charter.[339]

4.2.2 The Inter-American Human Rights System

The Inter-American human rights system does not provide for state reporting as one of its enforcement mechanism.[340] However, it bestows on the Inter-American Commission the power to request state reports from member states regarding their human rights situation.[341]

Because the Inter-American Commission has exercised broad powers in relation to country reports and used this tool aggressively, the development of country reports [342] has greatly undermined the potential development and subsequent utilization of the state reporting option in the Inter-American human rights system.[343] In addition, the Inter-American Human Rights Convention places an obligation on states to put measures in place to implement social, economic and cultural rights progressively as enshrined by implication in the Charter of OAS.[344] States submit reports to the Inter-American Economic and Social Council and Inter-American

---

[336] RACHEL MURRAY, *Report on the 1996 Sessions of the African Commission on Human and Peoples' Rights,* 18 HRLJ 16, 24-25(1997)
[337] Id.
[338] RACHEL MURRAY, *Report on the 1998 Sessions of the African Commission on Human and Peoples' Rights,* 21 HRLJ 374, 378(2000)
[339] RACHEL MURRAY, *Report on the 1997 Sessions of the African Commission on Human and Peoples' Rights,* 19 HRLJ 169,182(1998)
[340] CELILIA MEDINA, *The Role of Country Reports in the Inter-American System of Human Rights*,15 NQHR 457,459(1997)
[341] Art.43,ACHR
[342] See the discussion in section 3.2 on country reports as enforcement mechanisms of regional human rights systems.
[343] , CELILIA MEDINA, *The Role of Country Reports in the Inter-American System of Human Rights*,15 NQHR 457,459(1997)
[344] ACHR Art.26

Council of Education, Science and Culture on the measures they took in implementing Convention rights.[345] States are also required to forward these reports to the Inter-American Convention on Human Rights.[346] This reporting system has not been nurtured toward independence and has been used as a source of information for the Inter-American Commission of Human Rights in its country reports.[347] The practice of using such state reports as one source in country reports is not uniform due to the irregular practice of the Inter-American Commission in this regard.[348]

4.2.3 The European Human Rights System

The European system does not have a developed state reporting mechanism.[349] The European Convention on Human Rights, however, provides that the Secretary General of the Council could request member states to produce reports on how it is implementing the rights of the European Convention.[350] Initially such requests were made to all states.[351] However, this did not prohibit the Secretary General from singling out specific states.[352] Recently, the only time the Secretary

The European system is based on an individual complaints-centered strategy[355] and this enables all types of violations to reach the European Court.[356] However, its overemphasized reliance on individual communications might prevent it from detecting the bigger picture that individual complaints might not disclose.[357] This is one reason that the Inter-American Commission developed the practice of country reports apart and distinct from individual complaints.[358] An Individual petition system seems inadequate to ensure compliance in situations where violations emanate from vast or massive violations of human rights.[359]

Although the principal European conventions of the European system do not use state reporting as an enforcement mechanism, other treaties within the auspices of the Council of Europe require periodic reports.[360] The European Social Charter requires states to submit reports.[361] The Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities also require states to submit state reports. [362]

4.3 Country Reports by Regional Human Rights Bodies

4.3.1 African System Human Rights System

The African human rights system does not have any requirement relating to the production of country reports by its organs. Therefore, the system does not utilize country

---

It does not say anything about what factors the Secretary General take to put a country under such reporting requirements.

[355] Id.

[356] Id.

[357] CELILIA MEDINA, *The Role of Country Reports in the Inter-American System of Human Rights*,15 NQHR 457,460(1997)

[358] Id.

[359]SOREN C PREBESEN , *Inter-State Complaints Under Treaty Provisions: The experience Under the European convention* , 20 HRLJ 446, 454,(1999)

[360] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS 146(2003)

[361] Article 21 of the European Social Convention reads: " The contracting Parties shall send to the Secretary General of the Council of Europe a report at a two-yearly intervals, in a form to be determined by the Committee of Ministers, Concerning the application of such provisions of part II of the Charter as they have accepted."

[362] Article 25 of the framework Convention reads : " [T]hereafter, each party shall transmit to the Secretary General on a periodic basis and whenever the Committee of Ministers so requests any further information of relevance to the implementation of the Framework Convention.

reporting at all. The small details that the African Commission gives in its annual reports can hardly be described as country reports.

4.3.2 The Inter-American Human Rights System

The Inter-American system makes up country reporting for the non-existence of a state reporting mechanism by developing a country reports mechanism in its system.[363] However, the Inter-American Commission did not put a clear and specific mandate provisions in the Inter-American Convention of Human Rights.[364] The Inter-American Commission developed this mechanism through its own ingenuity.[365]

The Inter-American Commission used various provisions in the 1960 Statute of the Inter-American Commission to claim it had the mandate to issue country reports.[366] The provisions[367] it relied on to assume the mandate of issuing country reports include its power to prepare studies or reports as it deemed necessary on the implementation of the Inter-American Convention by the states,[368] the power to make recommendations to states,[369] and the power to move into the territory of a state with the state's consent.[370]Country reports were the major mechanisms used

---

[363] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS,126(2003)
[364] CHRISTIAN M CERNA, *The Inter-American System for the Protection of Human Rights,* 16 FLA. J. INT'L L. 195, 199(2004)
[365] Id.
[366] CECILIA MEDINA , *The Role of Country Reports in the Inter-American System of Human Rights*, 15 NQHR 457,458 & n 11 Cumulatively
[367] Similar provisions conferring similar powers are included in article 18 a-c. of the 1979 Statue of the Commission; See also article 41 of the American Convention and also Regulations of the Inter-American Commission of Human Rights , chapter five exclusively deals country reports. ; The commission justified its mandate of preparing country reports on the 1960 Statute because the practice developed during this period. The First country report was published in 1962 .see Medina, supra note 313, 459
[368] Art. 11/d, 1960 Statute of the Commission of Human Rights
[369] Id
[370] Id.

during the era when military regimes were common in the Americas.[371] These reports made up the bulk of the agenda of the General Assembly of the OAS during these times.[372]

The Inter-American Commission decides on which country it will prepare a country report.[373] However, it follows certain criteria in making the selection.[374] High numbers of complaints against a state can trigger a decision by the Inter-American Commission to launch this mechanism on that state. [375] The country report on Chile is an example of this.[376] The Inter-American Commission, in its annual report, has enumerated the criteria it uses to select countries that would become subject to this procedure.[377] The grounds include suspension of any of Inter-American Convention and Declaration rights;[378] undemocratic governments; [379] and any evidence of any gross violations of rights. [380]

A state can also request the Commission to prepare a country report on it.[381] A country report on Panama was the result of such initiative.[382] Usually states make such requests when

---

[371] Juan E Mendez & Jose Miguel Vivano, Disappearances and the Inter-American Court: Reflections on a Litigation experience, 13 Hamline L Rev. 507, 526,1990
[372] CHRISTIAN M CERNA, The Inter-American System for the Protection of Human Rights, 16 FLA. J. INT"L L.195,199(2004)
[373] Id
[374] VICTOR RODRIGUEZ RESCIA & MARCH SEITLES, *The Development of the Inter-American Human Rights System: A Historical Perspective and a Modern –Day Critique,* 16 NYL SCH. J HUM. RTS., 593,601(2000)
[375] Id; The 1978 Country report on Nicaragua was first initiated due to private communications disclosing gross and systematic violations containing complaints regarding suspension of constitutional rights and mass exodus of Nicaraguan citizens to neighboring states seeking protection there, see Cecilia Median Quiroga, Battle of Human Rights : Systematic Violations and the Inter-American System, 222-223, 1988
[376] Id.
[377] Cecilia Medina, Toward Effectiveness in the Protection of Human Rights in the Americas, 8 Transnat'l L & Contemp. Probs. 337, 352, 1998
[378] Id; see also Cecilia Median, The Role of Country Reports in the Inter-American System of Human Rights, 15 NQHR,457,n 69(1997)
[379] Id.
[380] Id
[381] CECILIA MEDINA , *The Role of Country Reports in the Inter-American System of Human Rights*, 15 NQHR 457,462(1997)
[382] VICTOR RODRIGUEZ RESCIA & MARCH SEITLES, *The Development of the Inter-American Human Rights System: A Historical Perspective and a Modern –Day Critique,* 16 NYL SCH. J HUM. RTS., 593,602(2000)

they want to amass diplomatic support and publicity for their new policies.[383] They can also follow a request from any of the inter-governmental organizations of the OAS.[384] The country report on Bolivia resulted from such a request from the Permanent Council. [385]

In the course of preparing country reports, the Inter-American Commission can resort to seeking information from the state concerned and other governmental and non-governmental agencies,[386] hearing witnesses, [387]conducting site visits[388] and even resorting to individual complaints.[389] Ideally, the country reports result from site visits.[390] Initially, the entire Commission as a body conducted the site visits.[391] Later on, sub-committees carried out the site-visits,[392] and, even later, they were done by a representative.[393] The mission during the visit should be to have access to jails, power to interview individuals, and get any information from any source including the government.[394] These powers, among others, were included in the regulations and resolutions developed by the Commission regarding site visits by the

---

[383] CECILIA MEDINA , *The Role of Country Reports in the Inter-American System of Human Rights*, 15 NQHR 457,463(1997

[384] Id

[385] Id.; The Meetings of Ministers of Foreign Affairs , for instance , had asked the Commission to monitor the situations in Haiti. See Cecilia Medina , The Role of Country Reports in the Inter-American System of Human Rights, 15 NQHR , n. 25, 1998

[386]VICTOR RODRIGUEZ RESCIA & MARCH SEITLES, *The Development of the Inter-American Human Rights System: A Historical Perspective and a Modern –Day Critique*, 16 NYL SCH. J HUM. RTS., 593,605-6(2000); In preparing its country reports of Nicaragua of 1978 , the Commission members spoke with high ranking government officials including the president, the Supreme court justices, members of the national Congress and local authorities

[387] Id

[388] Id.

[389] Id.

[390] CECILIA MEDINA , *The Role of Country Reports in the Inter-American System of Human Rights*, 15 NQHR 457,463(1997

[391] CECILIA MEDINA QUIROGA, THE BATTLE OF HUMAN RIGHTS: GROSS , SYSTEMATIC VIOLATIONS AND THE INTER-AMERICAN SYSTEM,130(1998)

[392] Id; the 1962 visit to Miami to prepare country report on Cuba was conducted by a sub-Committee and it got the approval from the Commission, see Robert E Norris, Observations in Loco: Practice and Procedure of the Inter-American Commission, Human Rights quarterly, 46, 56-57,(1980)

[393] The site visit to Dominican Republic was conducted by the Chairman of the commission with few stuff members, for further discussion see Robert E Norris , Observations in Loco : Practice and Procedure of the Inter-American Commission, Human Rights Quarterly ,46, 56-57(1980)

[394] Id

Commission.[395] In the event that a physical visit is impossible, the Inter-American Commission conducts interviews and refers to other documents to gather appropriate information.[396] The Inter-American Commission, for instance, had conducted its fact-finding from Miami when it was preparing its country reports on Cuba.[397]

The Inter-American Commission has been very effective in ascertaining the facts on the grounds.[398] Site visits have enabled the Inter-American Commission to establish detailed facts.[399] The reports have occasionally been targets of severe criticisms from states.[400]

In terms of Content, these country reports begin by discussing the description of the overall political and legal system of the country.[401] Comparisons of their domestic legal principles with international counterparts follow.[402] The Inter-American Commission can also use individual communications in its reports.[403] The rights frequently examined in these reports

---

[395] Regulations Regarding On Site Visits Observations, OEA/Ser.L.V/II.35,doc. 4,rev. 1 ; see for instance , articles 44 and 45 of these regulations providing that the host state should provide the Commission with all necessary facilities and that the commission has the mandate to interview persons freely , in private and that the government shall warrantee the safety of such persons and that it shall have the right to travel freely within the country including jails ands other detention centers.

[396] Id.

[397] Id, n 31

[398] CECILIA MEDINA QUIROGO, THE BATTLE FOR HUMAN RIGHTS: GROSS, SYSTEMATIC VIOLATIONS AND INTER-AMERICAN SYSTEM,237(1988)

[399] For instance, in a loco visit in Nicaragua in 1978, the Commission was able to establish that the existence of willful extermination the population of certain areas suspected of harboring rebels , leveling to the ground of churches and schools by government forces, how the assassination of two Red Cross workers was orchestrated and how the government troops killed a 12 year old boy due to his services to the Guerillas.; see Id, 237

[400] See, for instance, the reaction of Argentina to the country report made against in 1980(OAE/Ser.P,AG/CP/doc.256/80,29). The Argentine government described the role of the Commission as a prosecutor , and stated that it was biased and lacked objectivity and fairness , claimed it solely relied on individual communications over which Argentina was not given a chance to rebut. For further discussion on the reaction of Argentina see Thomas Buergenthal et al, Protecting Human Rights in the Americas : Selected Problems, 169-1670,1982; see also the reaction the Nicaraguan government to the country report on Nicaragua of 1978. The government claimed that the Commission merely talked to the opposition and the whole report was on hearsay or propaganda of the socialist guerillas. See Cecilia Medina, Quiroga, The Battle for Human Rights: Gross, Systematic Violations and the Inter-American System,237, 1988

[401] VICTOR RODRIGUEZ RESCIA & MARCH SEITLES, *The Development of the Inter-American Human Rights System: A Historical Perspective and a Modern –Day Critique*, 16 NYL SCH. J HUM. RTS., 593,606(2000)

[402] Id

[403] CECILIA MEDINA , *The Role of Country Reports in the Inter-American System of Human Rights*, 15 NQHR 457,463(1997

are civil and political rights.[404] However, the practice has changed to include occasional discussions of social and economic rights.[405] This practice, however, is so irregular that it is very difficult to ascertain whether economic and social rights form part of the reports.[406]

Country reports often end with conclusions [407] and sometimes the Inter-American Commission can include recommendations.[408] Currently states get a chance to express their observations regarding the report.[409] This practice developed after states bitterly criticized the reporting mechanism for not giving them a chance to respond to reports.[410] However, the final decision on the contents of such reports remains with the Commission.[411]

The recommendations in the reports vary significantly.[412] Reports can recommend that states reform their systems to avoid prospective violations.[413] The Inter-American Commission can also request states to investigate certain incidents.[414] Country reports reach the General Assembly of the OAS after their completion.[415] This aspect ensures the involvement of the political organs of the OAS and creates an environment that can exert pressure on states to comply with the recommendations.[416] However, it was not until 1976 that OAS political organs discussed country reports.[417] In the period from 1976 to 1980, the OAS carried out a thorough

---

[404] Id, at 464
[405] Id, at 465
[406] Id.
[407] VICTOR RODRIGUEZ RESCIA & MARCH SEITLES, *The Development of the Inter-American Human Rights System: A Historical Perspective and a Modern –Day Critique,* 16 NYL SCH. J HUM. RTS., 593,606(2000)
[408] Id.
[409] Id.
[410] CECILIA MEDINA, *Toward Effectiveness in the Protection of Human Rights in the Americas,* 8 TRANSNAT'L L & CONTEMP. PROBS. 337, 352(1998)
[411] Id.
[412] CECILIA MEDINA, TOWARD EFFECTIVENESS IN THE PROTECTION OF HUMAN RIGHTS IN THE AMERICAS, 8 TRANST'L & CONTEMP. PROBS 337,465(1998)
[413] Id.
[414] Id.
[415] Id.
[416] Id.
[417] VICTOR RODRIGUEZ RESCIA & MARCH SEITLES, *The Development of the Inter-American Human Rights System: A Historical Perspective and a Modern –Day Critique,* 16 NYL SCH. J HUM. RTS., 593,606(2000)

discussion on country reports and even passed decisions condemning them.[418] In the post-1980 period, the OAS has avoided condemning a specific country and just dealt with violations in general.[419]

The follow-up procedure developed by the Inter-American Commission follows either issuance of new country reports [420]or just small reports included in its annual reports.[421] The efficacy of the country reports depends on the consequences that follow country reports.[422] A country report is published[423] and transmitted to the General Assembly of the OAS for discussion.[424] The debate that ensues following submission of country reports attracts a lot of publicity concerning that state.[425]

So far, the biggest weakness in the country reports mechanism lies in the way the Inter-American system has been using country reports.[426] The OAS General Assembly might not take firm stand on the reports.[427] However, apart from the decisions to be made by the General Assembly, the issuance of reports has met with some success.[428]

---

[418] Id;
[419] Id.
[420] The Commission produced seven country reports on Cuba.; see also the 2 nd and 3 rd country reports on Columbia. In third report, the Commission followed up on the level of compliance with its recommendations regarding paying compensation to victims. It found that Colombia issued a law facilitating the payment of damages to those "judgment-creditors" from international bodies of which the Inter-American Commission was one.; see third Report on Human Rights Situation in Columbia, OAE/Ser. L./V/II.102 doc. 9 rev.1,26 February 1999);see also the 1988 and 1990 country reports on Haiti. The 1990 report, under paragraphs 25-40, reiterated its finding in its 1988 report. See generally report on the Situation of Human Rights in Haiti, OAE/Ser. L.V./II.77 rev. 1 doc. , 18 May 1990, paragraphs 25-40. However, the 1995 Country report did not mention anything about the earlier ones.; see OAE/Ser.L V./II/77.rev., 9 Febraury 1995
[421] The 2003 report on Haiti as included in the annual report of the Commission took up the issue of victims of armed conflict in Colombia which it had raised in its 2002 annual report. See Annual Report of the Inter-American Commission of Human Rights, OEA/Ser.L/V/II.114 doc. 5 rev. 26 April, 2002, paragraphs 27-30
[422] CECILIA MEDINA , *The Role of Country Reports in the Inter-American System of Human Rights*, 15 NQHR 457,468(1997)
[423] THOMAS BUERGENTHAL ETAL., PROTECTING HUMAN RIGHTS IN THE AMERICAS: SELECTED PROBLEMS 179 (1982)
[424] Id.
[425] Id.
[426] CECILIA MEDINA, *The Role of Country Reports in the Inter-American System*, 15 NQHR 457, 468(1997)
[427] Id; see for instance, The Resolution(Resolution I) passed by the General Assembly dealing with human rights conditions in Nicaragua in a very peripheral way. It included human rights issues in its preamble and dealt with the

4.3.3 The European Human Rights System

The European system does not recognize country reporting under its principal instruments. However, through a resolution the Committee of Ministers have created and authorized the Commissioner for Human Rights to visit reports.[429] The reports can be annual[430] or be on particular issues and states.[431] Annual reports generally reflect general human rights situations in Member states and even focus on particular groups.[432] Other reports are either general reports on particular countries[433] or may pursue a thematic or even group focused pattern.[434] The Commissioner also carries out follow-up reports with the aim of ascertaining

---

international incident surrounding the border areas between Nicaragua and Costa Rica. Generally see Cecilia Medina Quiroga, The Battle of Human Rights: Gross, Systematic Violations and the Inter-American System, 243, 1988. On the other hand, the General Assembly expelled Cuba from OAS membership after considering the 1962 country report against Cuba. A closer look at the operative part of the resolution, however, might suggest that even earlier resolutions might have been motivated by political than human rights considerations. These paragraphs exclusively focused on the fact that Cuba was Marxist-Leninist state., see sixth Report on the Situation of Political prisoners in Cuba, OAE/Ser.L.V/II.48 doc 24, 14 December 1979, paragraph 2 ; *see* Resolution II against Nicaragua in which the General Assembly resolved that the government of Nicaragua should be removed from power.

[428] For instance, Colombia made a law making payment of damages automatic on decisions made by international bodies like the Inter-American Commission of Human Rights following a recommendation of the in its second country report on Colombia. The impact of such laws is tremendous on human rights situation in Colombia. See Third Report on Human Rights Situations in Colombia , OAE/Ser.L/V/II.102 doc. 9 rev. 1, 26 February 1999, paragraph 5 ; the Peruvian Government indicated that it was preparing two bills on indigenous peoples of Peru in response to the recommendations made by the commission ; see Second Report on the Situation of Human Rights in Peru, OAE/Ser.L/V/II.106 doc.59 rev. 2 June 2000, n 12 & 13

[429] Resolution (99) 50, www.coe.int (last visited on may 10/2006)

[430] Art. 3/h, Resolution(99) 50

[431] Art.3/f,Resolution(99) 50

[432] See, for instance, 3rd Annual Report, CommDH(2003)7, www.coe.int (last visited on May 10/2006); In this report the Commissioner ..

[433] The Commissioner intends to visit all member states within his 6 years in his office. See www.coe.int/T/Commissioner/activities/visits_en.asp ; After visiting member states, the commissioner produces reports about human rights situation in these countries he visited. So far countries about which reports have been produced include Russian Federation, Turkey, Bulgaria, Italy , Denmark, Hungary, Latvia, Romania, Italy, and Czech Republic; See generally www.coe.int (visited on May 10/2006) to see the countries on which a report has been produced.

[434] See, for instance, Report by Alvaro Gil-Robles, Commissioner for Human Rights , Kosovo: The Human Rights Situation and The Fate of Persons Displaced From Their Homes, CommDH(2001)11, October 16/2002 ,This report relates specifically to addressing the issue of displaced persons; see also the Final Report by Alvaro Gil-Robles, Commissioner for Human Rights , on the Human Rights Situation of the Roma, Sintis and Travellers in Europe , CommDH(2006)1,15 February 2006, www.coe.int (visited on May 10 , 2006); This report addressed the issues relating to Roma in relation to housing, segregated schools, access to employers and health care issues.

whether states have complied with his recommendations.[435] At times, the request for the reports comes from the Parliamentary Assembly.[436] Sometimes, it comes from the states themselves.[437] During the country visits, the Commissioner visits many locations and sites such as detention facilities and prisons. Doing this contributes to the report's objectivity, and first hand information it contained in the reports.[438] Usually reports do not contain a recommendation to the Parliamentary Assembly or to the Committee of Ministers.[439]

One is bound to ask how much this reporting system has contributed to improving human rights situations in Europe. The readings of the follow-up reports seem to suggest that there is a positive trend.[440]

---

[435] See, for instance, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, On His Visit to Norway , 12-14 April 2001, CommDH(2001)4 and Follow-up Report on Norway(2001-2005), Assessment of the Progress Made in Implementing the Recommendations of the Council of Europe for Human Rights, CommDH(2006)10, www.commissioner.coe.int (last visited May 10,2006)

[436] See, for instance, Report by Alvaro Gil-Robles, Commissioner for Human Rights Situation and The Fate of Persons Displaced From Their Homes, CommDH(2002)11, 16 October 2002, www.coe.int (last visited May 10,2006); In the report, the request came from the Parliamentary Assembly requesting the Commissioner for human Rights to study the situation and present a report to it.

[437] See, for instance, Report by Mr. Alvaro Gil-Robles, Commissioner for human Rights , On His Visit to Malta 20-21 October 2003, February 12,2004, CommDH(2004)4, www.ceo.int (visited on May 10,2006)

[438] See, for instance, Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights , On his visit to the Russian federation, In Particular Chechnya, Dagestan and Ingushetia, 7-10 December 1999, CommDH(1999)1, www.coe.int (visited May 10,2006). In preparing this report, the Commissioner visited many sites including small towns, which were demolished due to bombs, and even a site, which was blown just tow hours prior to his very visit.

[439] One exception to this is the recommendation made by the Commissioner for Human Rights to the Council of Europe that it should send staff to assist efforts made by the Russian Government to receive and entertain private complaints regarding human rights abuse in Chechnya and also that the council should contribute financially to these efforts. See the Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights , On his visit to the Russian federation, In Particular Chechnya, Dagestan and Ingushetia, 7-10 December 1999, CommDH(1999)1, www.coe.int (visited May 10,2006).

[440] In most follow-up reports found on the Council of Europe's website, it has been noted that states improved their human rights situations by taking the recommendations of the Commissioner for human Rights. For instance , in follow-up report regarding Norway , the commissioner indicated that Norway complied with the recommendations of the Commissioner relating to asylum seekers, racism, and non-discrimination by adopting rules and procedures to facilitate the processing of asylum applications and also put in place " plan of action against racism and discrimination. See generally Follow-up Report on Norway (2001-2005), Assessment of the Progress Made in Implementing the Recommendation of the Council of Europe Commissioner for Human Rights, CommDH(2006)10, www.Commissioner.coe.int (visited May 10,20060; see also the follow-up Report indicating the changes made by the Maltase government in response to visit and report of the Commissioner. Malta has put new administrative practice that changed the practice of detaining asylum seekers from 18 months to 12 months. Such a change that complies with the recommendations of the commissioner is commendable.. See generally Follow-up Report on Malta(2003-2005), Assessment of the Progress Made in Implementing the recommendations of the council of Europe Commissioner for Human Rights, 29 March 2006, CommDH(2006)14, www.coe.int (May 10, 2006).

Chapter Five

Enforcement of Human Rights under Regional Human Rights Mechanisms: Individual Complaints and Execution of Judgments

5.1 Introduction

International human rights law broke ranks from traditional international law [441]and established a system of law that has the protection of individuals at its center.[442] This development in international human rights brought about a corresponding development in its individual-centered enforcement mechanisms.[443]Using such mechanisms, individuals can resort to an international body or tribunal to hear the cases they bring against states for violating their human rights.[444] In the United Nations system, various treaty and Charter bodies can receive individual petitions.[445]

Treaties establishing these bodies often include an implementation mechanism which allows "judgment –creditor" state to enforce the decisions of these international bodies against "judgment-debtor" states. [446] These remedies suffer a major mutilation when it comes to enforcing them because of the contemporary Organization of international law that has states as

---

[441] Under traditional international law system only states and to certain extent international organizations can participate in its processes. Individuals are not subjects of any rights or duties under this corpus of law; see Mark Freeman & Gibran Van Ert, International Human Rights Law, 5, 2004

[442] MARK FREEMAN &GIBRAN VAN ERT, INTERNATIONAL HUMAN RIGHTS LAW, 7(2004)

[443] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS, 145(2003)

[444] Id.,148

[445] See, for instance, Convention Against Torture (CAT) art. , Convention on Elimination of Racial Discrimination (CERD) art. , Human Rights Committee, and Convention on the Elimination of Discrimination Against Women(CEDAW) art.

[446] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS, 148(2003)

the main constituent units.[447] Parallel to this international system are the regional human rights systems. They have also developed individual-based enforcement systems.[448]

5.2 The African Human Rights System

The Banjul Charter, under article 55,[449] mandates the Commission to receive communications other than those of states. It provides :

> 1. Before each session, the Secretary of the Commission shall make a list of the communications other than those of states parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the commission.
> 2. A Communication shall be considered by the commission if a simple majority of its members so decide.

This broad mandate has developed into the practice of accepting communications from individuals and non-governmental organizations (NGOs).[450]One writer argues that the African Commission does not have the mandate to remedy individual cases.[451] He maintains that the African Commission can receive individual cases to the extent that they reveal "massive violations" [452]of human rights.[453] Another writer also shares this opinion.[454]

---

[447] The international law still has states as its basic founding units and has "sovereignty" at its core. This is a concept that allows exclusive power to states within their territories. This concept has been a big impediment to the level to which decisions of international or regional organs are enforceable; see Mark Freeman & Gibran Van Ert, International Human Rights Law, 4, 2004

[448] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS, 148(2003)

[449] Banjul Charter art. 55

[450] CHIDI ANSELM ODINKALU & CAMILLA CHRISTENSEN, *The African Commission on Human and peoples Rights : The Development of its Non-State Communication Procedures,* 20 HUM. RTS Q. 235, 239)1998) ; see also Christof Heyns, The African Regional Human Rights System: The African Charter, 108 Penn. St. L. Rev. 679,694,2004

[451] WOLFGANG BENEDICK, *The African Charter and Commission on Human and peoples Rights : How to make it More Effective* , 11 NQHR 25, 31(1993)

[452] Medina has defined massive violations of human rights as " Gross , systematic violations of human rights are those violations , instr1(n)-5(h)-5(oeA 0 Tw 7.97h)8(has)5(e)2(p.0016 cheiev)-7(m)9her goiernn hoslicis,pe-5(ie(oeAre-5(ietrte)6(pi

In handling individual complaints, the African Commission first tries to reach a friendly settlement.[455] This practice flowed from article 52[456] of the Banjul Charter dealing with inter-state complaints and declaring that in an inter-state mechanism a friendly settlement should precede adjudication of the same.[457] The African Commission proceeds to checking the communication for admissibility [458] and decides the merits of the case once the friendly settlement attempt fails.[459] Article 56[460] of the Banjul Charter enumerates those admissibility requirements.[461] When dealing with the merits of the case,[462] the mandate of the African Commission is very weak.[463]

The ultimate power of the African Commission is limited to making a recommendation to the Assembly of the Heads of States and Government.[464] It does not have any credible enforcement mechanism.[465] It has not developed any follow-up procedure to monitor states' compliance with its decisions.[466]

---

[455] CHIDI ANSELM ODINKALU & CAMILLA CHRISTENSEN, *The African Commission on Human and peoples Rights : The Development of its Non-State Communication Procedures,* 20 HUM. RTS Q. 235, 249(1998)
[456] Banjul Charter art. 52
[457] Id.
[458] Admissibility is different from receivebility. A petition is irrecievable, when for instance, is brought against a state, which is not a state party; see Odinkalu & Christensen, The African Commission on Human and Peoples' Rights : The Development of its Non-state Communication Procedures, 20 Hum. Rts. Q. 235, 294,& n 11; see also Eveleyn A Ankuamh, The African Commission on Human Rights : Practice and procedures, 56-58, 1996
[459] CHIDI ANSELM ODINKALU & CAMILLA CHRISTENSEN, *The African Commission on Human and peoples Rights : The Development of its Non-State Communication Procedures,* 20 HUM. RTS Q. 235, 249(1998)
[460] Banjul Charter art. 56
[461] Article 56 gives the following as admissibility grounds:- disclosure of authors' identity, compatibility of the Communication with the provisions of the Charter, use if insulting language against the respondent state, its insitutions or the African Union, exclusive dependence (reliance) on media for the alleged violation,exhaustion of domestic remedies, submission of the communication with a reasonable time after final dicision of the domestic organs, and cases not dealt with and settled before.
[462] After admissibility of individual complaints is settled , the parties are notified about the hearing of the case.
[463] EVELYN A ANKUMAH, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS : PRACTICE AND PROCEDURES, 74 (1996)
[464] Id.; see also Vincent O. Orlu Nmeheille, The African Human Rights : Its Laws and, Practice and procedure and Institutions, 236, 2001; Article 52 provides that after the Commission deals with the merits, it draws a report about the facts and its findings and forward it to the Assembly of Heads of State and Government; Article 53 adds that the Commission while transmitting the report could add a recommendation as it deems fit.
[465] FRANS VILJOEN, *A Human Rights Court for Africa and Africans*, 30 Brook J Int'l L,1,15,2004
[466] Id.

The recent addition to the African human rights system, i.e., the African Court of Human Rights, has a mandate to receive individual communications and decide on whether states have infringed rights contained in the Banjul Charter.[467] The mandate of the court relating to individual's complaints is expressed under article 3(1). It provides : "The jurisdiction of the African Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Banjul Charter, this protocol and any other relevant human rights instruments" [468]

When discussing with actual level of execution of the recommendations of the African Commission, one should start by emphasizing the very low binding status of such recommendations.[469] The final say on the recommendations remains in the hands of the assembly of heads of State and government.[470] This arrangement makes the African human rights system unable to give remedies to individual petitions.[471] The Assembly of Heads of State and Government has not been diligent in authorizing studies of alleged human rights violations.[472]

---

[467] VINCENT O ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS, PRACTICE AND INSTITUTIONS,263(2001)

[468] One writer maintains that "other relevant human rights" instruments should mean all international human rights conventions to which African states are parties to and this gives the court mandate to interpret the substance of all relevant international conventions; see Mukua Mutua, The African Human Rights Court: A two-Legged stool? , 21 Hum. Rts. Q 342, 362, 1999; However mandating the African human rights court to interpret other international human rights instruments will prove counter-productive in the long run. Such system creates confusion by allowing various bodies interpret same instruments using their varied standards and thus produce different jurisprudence. This will create a legitimacy problem to rather young human rights law. Rather a reasonable interpretation will be to understand it as mandating the court to draw inspiration form such international instruments. The Commission is also mandated to do this under the Banjul charter.

[469] VINCENT O. ORLU NMEHIELLE, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS, PRACTICE AND INSTITUTIONS 236(2001)

[470] Id.

[471] Id.

[472] Id, at 238

On the other hand, the African Commission has also not been known for its recommendations that authorize monetary payments.[473] Only in very few cases did it recommend monetary damages.[474]The African Commission has also made recommendations entailing individual measures[475] and general measures.[476] The African Commission's early recommendations exhibit reluctance to indicate clearly specific propositions even where it had found violations.[477]

The major problem, in the African system, has been the blatant disregard for the recommendations of the African Commission. [478] One example of blatant disregard to the Commission can be found in two cases against Nigeria.[479] The African Commission in Constitutional Pen et al and Nigeria [480] found that the Civil Disturbances Act under which the tribunal tried the applicants to be in violation of the Banjul Charter.[481] A few years later, these tribunals established under the same established Civil Disturbance Act sentenced Ken Saro –

---

[473] Id.

[474] See John K Modise V Botswana, communication 97/ 93, the Commission in its recommendation suggested that compensation should be paid for the victim without specifying the amount and how it is to be executed. Also in Law offices of Ghazi Suleiman V Sudan, communications 228/ 98 and 229/98 , the commission urged that the government of Sudan pay compensation to the victims without specifying the amount and mode of execution.

[475] In Constitutional Project Right V Nigeria, Communication no 87/93, the Commission held that the Nigerian Government should free the complainants, reproduced in 18 HRLJ 30 (1997)

[476] In Civil Liberties Organization V Nigeria , Communication 129/94, The Commission held that Decree No 107 of 1997 which suspended the Nigerian Constitution and barred Courts form reviewing actions taken under the Decree violated articles 7 and 26 of the Banjul Charter and held that the Nigerian Government should nullify the Decree, reproduced in 18 HRLJ 31 (1997)

[477] See, for instance, Krishna Achutan V Malawi , Communication no 64/92, The Commission used one sentence to render its decision. It reads: " The Commission finds that the State is in breach of articles 4.5 and 7 of the African Charter on Human and peoples' Rights and decides to refer the situation to the assembly of Heads of State and Government under article 58?1? of the Charter of Human and peoples' Rights, http://www1.umn.edu/humanart/africa/comcases/64-92_78-92.html (last visiteed on march 17th 2006)

[478] For instance, the interim measure the commission passed to postpone the set execution time of one Ken Saro Wiwa and 8 other people was disregarded by the Nigerian Government when it executed the persons in favor of the whom the interim measure was made. ; see generally International Pen et al V Nigeria , communications 137/94,54/96&161/97, reproduced in 21 HRLJ 424, 424-429

[479] See The Constitutional Rights Project V Nigeria, communication 87/93,AHG/Res/240(XXXI), reproduced in 18 HRLJ 30,30(1997) and International Pen et al V Nigeria , communications 137/94,54/96&161/97, reproduced in 21 HRLJ 424, 424-429

[480] Communications 137/94, 154/96, 161/97

[481] Id, paragraph 5

Wiwa and eight other persons[482] to death.[483] In giving its recommendations, the African Commission, " [r]eiterates its decision on recommendation 87/93 that there has been a violation of article 7.1(d)[484] with regard to the establishment of the Civil Disturbance Tribunal." In ignoring this decision," The Commision stated, "Nigeria has violated article 1 of the Charter."[485]

Writers have expressed their frustration with the system. Professor Mukua Mutua has written that both individual complaints and state reporting were disappointing exercises.[486] Another writer has described his frustration by calling the system "a facade, a yoke that African leaders have put around our necks.[487] The same writer noted that even in some cases where the African Commission decided on the merits, there was no way of ascertaining whether the state complied with the decision or not.[488] One writer, although she shared the opinions of these writers,[489]maintained that there were isolated instances where the African Commission contributed to the protection of human rights in Africa.[490]

5.3 The Inter-American Human Rights System

The Inter-American Commission of Human Rights receives individual complaints.[491] Non-governmental organizations can also file complaints with the Inter-American Commission.[492] The Inter-American Commission has been able to utilize individual

---

[482] The Subjects of these cases were executed on November 10/ 1985 in clear defiance of interim measure to postpone the execution date. However the Commission went ahead and considered the case on its merits.
[483] International Pen et al V Nigeria, Communications 137/94, 139/94, 154/96,ACHPR/PRT/12, paragraph 7
[484] Banjul Charter article 7..1.d. reads: "the right to be tried within a reasonable time by an impartial trial or tribunal."
[485] Id.
[486] MUKUA MUTUA, *The African Human Rights Court : A two-Legged Stool?*, 21 HUM. RTS. Q, 342, 354(1999)
[487] CHIDI ANSELM ODINKALU & CAMILA CHRISTENSEN , *The African Commission on Human and Peoples' Rights : The Development of Its Non-State Communications Procedures*, 20 HUM. RTS Q 235,278(1998)
[488] Id, at 279
[489]EVELYN A ANKUMAH, THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS : PRACTICE AND PROCEDURES, 196 (1996)
[490] She picked communication 60/91 between Constitutional Project V Nigeria where the intervention by the African Commission persuaded a Nigerian court to reduce a death penalty to imprisonment.
[491] ACHR Art.44
[492] Id.

communications to examine broader violations of human rights.[493] Individual complaints are subject to admissibility criteria.[494]

After receiving a complaint, the Inter-American Commission, requests information from the accused state and sends out copies of the petition to that state.[495] After receiving a reply from the accused state or after the state's failure to reply is established, the Inter-American Commission proceeds to ascertain whether the facts that led to the petition persist.[496] If grounds for the complaints cease to exist, the Commission closes the case.[497] If they persist, the Inter-American Commission then has to ascertain the facts of the case.[498] In the course of ascertaining the facts of the case, the Inter-American Commission can resort to investigation it deems necessary.[499] It can request the state to provide information or resort to hearing oral statements.[500]

The Inter-American Commission tries to resolve the dispute between the parties.[501] If a friendly settlement is reached, the Inter-American Commission forwards the report to the parties and OAS Secretary General for publication.[502] If the attempt to reach a friendly settlement fails, then the Inter-American Commission draws up a report summarizing the facts and

---

[493] RHONA K M SMITH, INTERNATIONAL HUMAN RIGHTS 127 (2003); see also the discussion on country reports in chapter three section 3.2 dealing with how the Inter-American Commission used individual complaints to launch country reports on Argentina and Nicaragua.
[494] Banjul Charter Art. 46,; According to this article any complaint must exhaust domestic remedies to be pursued and exhausted, it must be filed within six moths from the last decision on which the finding of violation is based, a similar complaint must not be pending in another international proceeding for settlement, it must contain the name, nationality profession , domicile and signature of the person or persons or legal representative of the entity making the petition. But the requirements of exhaustion of domestic remedies is waived in cases where the domestic system does not have sufficient due process of law for the right violated or the complain has been denied or prevented from such remedies or when there is too long a delay in the process.
[495] ACHR Art. 48/1a,
[496] ACHR Art. 48/1/b
[497] Id.
[498] ACHR Art. 48/1/ c
[499] Id.
[500] ACHR Art.48/1/d
[501] ACHR Art.48/2
[502] ACHR Art. 49

conclusions.[503]Under article 50/3,[504] the Inter-American Commission has the mandate to make a recommendation.[505]

Within the three months following such a report, either the state or the Commission can submit the case to the Court.[506] If no such attempt is made during that time, the Inter-American Commission makes it final report[507] and pertinent recommendations and fixes a timetable for implementation by the states.[508]

The Inter-American Commission, through its recommendations, has awarded monetary damages, ordered individual and general measures.[509] It has developed a system of following up on the execution of its recommendations. This practice has its basis in the various instruments.[510] Article 46 of the rules of procedure of the Inter-American Commission mandates the Inter-American Commission to develop a follow-up procedure such as soliciting information from the accused state and holding a hearing to assess compliance with its recommendations. In addition, the General assembly of the OAS has ordered the Inter-American Commission to continue the practice of annual reporting and follow-up information.[511]

---

[503] ACHR Art.50/1
[504] ACHR art 50/3
[505] The normative value of such recommendation have been the subject of dispute. The Inter –American Court of human rights, in Callebro V Colombia(see infra…), held that the recommendations of the Commission did not have a binding normative value and as such non-compliance with the recommendations and resolutions would result in Violations. .Cerna attributes such opinion of the court to the effort of the court to down play the role of the Commission that is created as an equal body. See Christian M Cerna, International Law and the protection of Human Rights in the inter-American System, 19 House J Int. L 731,751(1997).
[506] ACHR Art. 51/1
[507] ACHR Art.51/1
[508] ACHR Art. 51/2
[509] See OEA/ser.L/V/II.122 doc 5 rev.1; This annual report of the inter-American Commission of Human Rights expressly divides recommendations of the Commission as monetary reparations, individual and general measures.
[510] OEA/ser.L/V/II.122 doc 5 rev.1
[511] See AS/RES.1894(XXX II –o/02; Resolution of the General Assembly of OAS authorizing the follow-up procedure the Commission employs.

In some cases, the compliance of recommendations has been accomplished through a friendly settlement.[512] Even in such cases, the Commission might supervise the terms and execution of friendly settlements.[513] Domestic legal issues have affected compliance to some extent.[514] The Inter-American Commission assumes non-compliance[515] or even at times declares it pending compliance[516] in the event of no news of compliance, from either party.[517]

States tend to comply more readily with Commission recommendations that impose monetary obligations on them than recommendations that impose other measures.[518] The Inter-American Commission also follows up to ensure compliance.[519] In the compliance status reports[520] in the annual report of the Inter-American Commission, out of a total of sixty cases it

---

[512] See, for instance, Maria Merciadi de Morini V Argentina, case no. 11.307 & Jose Pereira V Brazil, case no. 11.289

[513] See, for instance, Jose Periera V Brazil, case no 11.289, report number 95/03

[514] See, for instance, in Maria da Penha Frenandes V Brazil, case no 12.051, Brazil gave its federal form of government as a reason for not revising its laws on domestic violence as recommended by the inter-American Commission. In the same case it complied with all other recommendations. As recommended by the Commission Brazil launched various public conferences to raise awareness about the impact of domestic violence ,organized training for its Police and Law Enforcement Personnel to sensitize them on domestic violence and complied with symbolic reparation by naming the petitioner for prizes to be handed out by the federal Senate and Chamber of Deputies and also trying the perpetraotor; In Parque Sao Lucas V Brazil, case number 10.031 , brazil admitted it had not paid the recommended reparation because it was waiting for a domestic court's decision on the amount to be paid. It, however, complied with most of the other recommendations of the Commission.

[515] See, for instance, Alusisio Cavalcanti et al V Brazil, OEA/ser.L/II 117 doc. 1 rev, the Commission presumed non-compliance from Brazil's failure to report on the measures it took to comply with recommendations.

[516] See, for instance, Juan Manuel Contereras V Chile and Otro V Chile , in OEA/ser.L/II.118. Doc.5 rev. 2, Annaul Report of the Inter-American Commission on Human Rights. In both these reports, the Commission reported them as pending full compliance.

[517] Although pending compliance refers to non-compliance, at least, at the time of the report, it does not become clear how this distinction unfolds in relation with recommendations in which the Commission has send to send not complied with recommendations to the Court for enforcement. From the readings of the reports , one can not tell when the Commission declares a case "pending compliance" or "non-compliance" and what the outcome of such a distinction in labeling.

[518] See, for instance, report no 93/00, in Edison Patricio Quishpe Alciavar V Ecuador , the state paid the 30,000 $ US repatriation. But it did not punish those responsible for the violation as per the recommendation of the Commission. Similar situations also persist in Roberto Canaveral V Ecuador , report no 96/00, in OAE/Ser.L/II.117 doc.1 rev.1. This information is also available at www.cidh.org/annaulpre/2003.eng/toc.htm

[519] See, for instance, Maria de Panha V Brazil, report no 54/01,. In the 2002 report, the Commission reported that Brazil only complied with the recommendation regarding to trying and punishing the perpetrator of domestic violence, in OAS/ser.L/V/II.117 doc.1 rev.1 ; In the 2003 Annual report, the Commission reported that Brazil made progress in compliance with its recommendation by drafting a bill on domestic violence and increasing the penalty in already existing laws.; In 2004 Annual report the Commission reported that Brazil reported that it had faced difficulties in enacting the law because legal issues relating with federalism.

[520] See annual report of the Inter-American Commission of Human Rights, OEA/Ser. L./V/II.118.doc.5 rev. 2

was supervising five were declared fully complied with, 29 partially complied with, and twenty-seven fully not complied with. From these figures, still admitting error of generalizations, one can conclude that compliance with the Inter-American Commission recommendations remains low.

Those cases declared partially complied with were cases in which the states paid the monetary repatriation but failed to comply with other recommendations.[521] The number of total non-compliance cases appears to indicate those cases whose compliance the Inter-American Commission is waiting for compliance.

Another equally important body dealing with individual complaints and execution of judgments is the Inter-American Court of Human Rights.[522] It can make decisions entitling the victims to reparations and can order that violations be stopped.[523]

The implementation process has taken many forms. At times, it takes the form of a continuous negotiation between various stakeholders.[524]At other times, the Inter-American Court has just simply recognized agreements reached between the victims and the states and monitored its faithful execution.[525]

---

[521] See most of the reports against Ecuador in the 2 003 Annual report of the Commission of Human Rights , OAE/Ser.L/V/II.118.doc.5 rev.2(December 29/2003)
[522] ACHR Art.63
[523] ACHR Art.63/1
[524] In caballero Delgado and Santana against Columbia, for instance, compliance with reparation part of the judgment took a long negotiation between Columbian government, the court and the victims. As the result of these negotiations , the suggested form of compliance changed its form several times. Initially the suggested compliance was just payment made to the victims and later it was made into “a fixed term certificate of deposit” with the Colombian Government and finally with a specific bank. See generally 199 Annual Report of the Inter-American Court of Human Rights, OEA/Ser.L/III.47 Doc 6, January 24,2000, paragraphs 37-8, 2000.
[525] The Court , for instance, took cognizance of agreements made between the victims and Peru in relation to the case of Chumipuma Agirre Et al V Peru. It acknowledged the payment already paid Peru and held that Peru should report all paymentas per the agreement as soon as it made them and would monitor the genuine execution of the agreement. See generally Annual Report of Inter-American Court of human Rights ,OAe/Ser.L.V/III.54 Doc 4 , February 18,2000,V II, p 1003

States have been inclined more to comply with decisions requiring them to pay money damages.[526] However, this should not imply that there have been no problems relating to reparation judgments' execution.[527] In decisions requiring states to identify and punish perpetrators, the compliance rate has been very low.[528] Moreover, state compliance depended on the sensitivity of the issues involved.[529]

On a final note, it is appropriate to ask whether the Inter-American Court has a better record of compliance than the commission. It is, however, difficult to conclude that the Inter-American Court has better level of compliance than the Inter-American Commission due to states failure to report their compliance.[530]

5.4 The European Human Rights System

The European Convention on Human Rights provides that member states have assumed an obligation to ensure the enjoyment of all convention rights by everyone.[531] In addition, it provides that member states abide by the decisions of the European Court of Human Rights.[532] Although these provisions do not say much about the content of the judgments and the power of

---

[526] VICTOR RODRIGUEZ RESCIA & MARC DAVID RESCIA, *The Development of the Inter-American Human Rights System: A Historical Perspective and a Modern-Day Critique*, 16 NYL. SCH. J. HUM. RTS.593,615(2000)

[527] CHRISTIAN M CERNA, The *Inter-American System for the Protection of Human Rights*, 16 FLA. J. INT'L, 195, 203(2004)

[528] Id

[529] See, for instance, the reaction of Peru in Loayze V Peru and Casstillo Petruzzi et al. In the first case Peru released the victim within a short period of time while in the latter case Peru declared that it was impossible to execute and announced it had withdrawn form the contentious jurisdiction of the court. See generally Christian M Cerna, , The Inter-American System for the Protection of Human Rights , 16 Fla. J. Int'l L 195, 205(2004) . One writer relates this defiance of Peru to the opportunity President Fujimore took to avoid compliance measures in cases like Ivcher Brostein V Peru which involved the revoking of citizenship to the an wonder of a TV station that reported torture and extra-judicial killing in Peru and Constitutional Court Case in which the judges that found the efforts of President Fujimore to run for the third time to be illegal. See generally Douglas Cassel , Peru Withdraws from the Court: Will the inter-American Human Rights System Meet the Challenge, 20 HRLJ 167, 168(1999)

[530] See most of the report about the compliance of judgments with the decisions of the court in its annual reports on its official website and notice in many cases the issue of compliance is not put in definite terms because of the failure of the states to report back to the court on the measures they took to comply with the decisions.

[531] ECHR art. 1

[532] ECHR Art.46/1

the European Court,[533] articles 1[534] and 46[535] combined give the three responsibilities of states, i.e., the duty to stop the violation, to pay reparation for the harm caused, and make system reform to avert the future violations.[536]

The European Court, in Papamichalopoulus and other v. Greece,[537] that a violation of the European Convention had occurred entailing a duty of the state to put an end to the violation and make reparations to bring victims to the position where the victims would be had it not been for the violation.[538] However, the European Court on Human Rights does not posses a mandate to dictate how member states comply with European Court's decisions.[539] It is up to each state concerned how to bring about the change pronounced by the decision.[540]

In Marckx v. Belgium,[541]the European Court affirmed this proposition.[542] It held that the European Human Rights Court's decision might not have a direct consequence in national legal system,[543] and that it was left to each state to formulate its own means of fulfilling the execution of judgments.[544] The European Convention makes the Committee of Ministers the responsible

---

[533] The Inter-American Convention on Human Rights , on the other hand, clearly gives the power of the court. The Convention confers a wide range of powers on the court. The court, under article 63, has the power to declare appropriate measures to changes to be made and it can give directions on how the judgments may be executed .There have been suggestions to revamp the powers of the European court to enhance and put its powers on clear legal basis. See, for instance, Alan Rogers, The Future of the European Court of Human Rights, 24 HRLJ. 149,151(2003)

[534] Article 1 of the European Convention reads: " The High contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in section I of this Convention.

[535] Article 46 of the European Convention reads: " 1 The high Contracting Parties undertake to abide by the final judgements of the Court in nay case to which they are parties, 2 The final judgment of the Court shall be transmitted to the Committee of ministers, which shall supervise its execution"

[536]ELIZABETH LAMBERT-ABDELGAWAD , THE EXECUTION OF JUDGMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS 10(2002)

[537] Papamichalopoulus and others V Greece, 330 Eur.Ct.H.R. 48(1995)

[538] Id., at 59

[539]PETER LEUPRECHT, *The Execution of Judgments and Decisions*, in THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS 791, 792(J Macdonald et al. eds. 1993)

[540] Id.

[541] Marckx V Belgium, 31 Eur. Ct. H. R. 1807(1998)

[542] Id.

[543] Id., paragraph 58

[544] Id.

body for the execution of the decisions of the European Court.[545] Pursuant to this mandate, the Committee of Ministers has issued rules for the execution of judgments.[546] Under rule 3B, it has divided judgments of the court into those entailing just satisfaction, individual measures and general measures.[547] The type of decision the European Court gives, therefore, dictates the type of remedial measures states take to comply with the decision of the European Court.[548] Pursuant to these rules of execution of judgments, which the Council of Ministers developed, the Committee of Ministers can keep any outstanding judgment on its future agenda indefinitely.[549] Alternatively, the Committee of Ministers can also take a persistently defaulting state to the European Court of Human Rights to force execution of judgments.[550] The Council of Europe statute, when articles 3 and 8 are read together, [551] empowers the Committee of Ministers to suspend any persistent defying state from membership in the Council of Europe.[552] Beside the Committee of Ministers, the Assembly of the Parliament of the Council of Europe has assumed some responsibility in regards to execution of judgments.[553]

---

[545] ECHR art. 46/2

[546] See Rules Adopted by the Committee of Ministers for the Application of Article 46 , paragraph 2, of the European Convention on Human Rights, Adopted on January 10.2001,reproduced in 24 HRLJ 281 , 2003 and also in Council of Europe, The execution of Judgments of the European Court of Human Rights, 2002

[547] Rules Adopted by the Committee of Ministers for the Application of article 46, paragraph 2, of the European Convention on Human Rights , Rule 3B

[548] ELIZABETH LAMBERT-ABDELGAWAD,THE EXECUTION OF JUDGEMENTS OF THE EUROPEAN COURT OF HUMAN RIGHTS,9(2002) ; also PETER LEUPRECHT, *The Execution of Judgments and Decisions*, in THE EUROPEAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS 791, 793(J Macdonald et al. eds. 1993)

[549] Rule 4, Rules for the Application of Article 46 , Paragraph 2 of the European Court of Human rights

[550] Art. 46/4, Protocol 14 to the convention of European Convention for the Protection of human rights and Fundamental freedoms.

[551] Article 3 of the statute of the council reads- " every member of the council of Europe must accept the principles of the rules of law and the enjoyment of all persons within its jurisdiction of human rights and fundamental freedoms and collaborate sincerely and effectively in the realization of the aim of the council…"; Article 8 reads " Any member of the council of Europe which has seriously violated article 3 may be suspended from its rights of representation …."

[552] Council of Europe, supra note 421, 38; this situation has occurred only once with regard to Greece during the Military coup for its massive violation and suspension of rights. Greece, however, withdrew itself before the Committee of ministers could make any decision.

[553] Id, at 39

The real test for this adjudicatory system is the level of effective remedies accorded to individuals.[554] European states, in general, have exhibited readiness to execute the judgments of the European Court[555] and the defunct European Commission of Human Rights.[556] The compliance level of the European Commission was described as "not only generally complied with by the contracting states concerned, although noting some delays in compliance[...]"[557] The European Court also suffers from similar delays in compliance.[558]

Regarding decisions of the European Court of Human Rights requiring states to pay money to victims, the delay in paying or failure to confirm payment has been a critical issue.[559] In cases in which the default is less than six months, France, Italy and Turkey are the main defaulters with 43, 120 and 34 defaults respectively.[560] In cases involving defaults more than six months, the major defaulting states are France, Italy, and Turkey with 22, 51, and 12 defaults respectively.[561]

Concerns about non-compliance also exist concerning individual measures, where Turkey alone accounts for more than 110 cases of non-compliance.[562] Non-compliance with decisions of the Court has to certain extent, been traced to reasons related to domestic legal, economic and other issues.[563]

---

[554] Id, at 5
[555] ELIZABETH LAMBERT-ABDELGAWAD, THE EXECUTION OF THE DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS 43 (2002)
[556] LAURENCE R HELFER & ANNE-MARIE SLAUGHTER, *Toward A Theory of Effective Supranational Adjudication,* 107 Y L J 273, 298(1997)
[557] Id, n 96
[558] ELIZABETH LAMBERT-ABDELGAWAD, THE EXECUTION OF THE DECISIONS OF THE EUROPEAN COURT OF HUMAN RIGHTS 43 (2002)
[559] 960th (DH) Meeting Adopted decisions , CM/Del/dec92006) 960.
[560] Id.
[561] Id.
[562] Id.
[563] In Mathews V UK, The UK explained its non-compliance with decision of the Court of Human Rights requiring it to amend its laws to allow people in Gibraltar could vote by referring to EU regulations that provide that each member state has to vote for the accession of nay new territory and as such needed time. In addition in Wineries V

Some states have exhibited particular delinquency in complying with the decisions of the European Court of Human Rights.[564] But these exceptional holdouts in some cases, though issues for concern, should not create a gloomy picture of the level of compliance in the European human rights system of execution of judgments[565] and the efficacy of the system in prompting positive changes in legal systems of the countries.[566]

Greece, Greece tried to justify its inability to pay the money as required by the decision of the court by invoking its economic problems.

[564] See , for instance, Resolutions (DH)258 , DH(2004) 13, DH(2002) 30 and DH(2005) 85 requesting Italy to reopen the case against petitioner in Dorigo Paulo V Italy and adopt a law that allows reopening of cases following decisions of the European Court of Human rights. See also Parliamentary Resolution 1411 (2004) urging the Italian authorities to reopen the case against the petitioner in Dorigo Paulo V Italy who was remaining in jail for 10 years after a decision was made by the European court of human Rights. Text of this resolution is available at http:assembly.coe.int/main.asp?link=/documnts/adoptedtext/ta04/eres1411(visited march 17th/2006)
Another instance of blatant disregard for the decision of the court has been in the case Loizidou V Turkey. This case was decided in 1996 on indivual measures and in 1998 for reparation. The decision required Turkey to make reparation to the petitioner for the loss of income due to loss pf property and also required Turkey to reinstate the owner to her property(full text reproduced in 18 HRLJ 50(1997). Turkey has delayed the execution of this judgment. The Council of Ministers and even the Parliamentary Assembly has been following the execution of this judgment. The Committee of Ministers has issued resolutions DH (99) 680, DH(2000)15, DH(2001)80 while following up execution of the judgment. Finally on December 2003, it passed DH(2003) 190 acknowledging the payment of money to the victim as required by the decision. With Resolution DH(2003) 191 the committee of ministers continued to push with the Compliance of Turkey with individual measure require it to reinstate the victim to the property.

[565] The European system as been described, “the arte of compliance by states with ECHR rulings is extremely high. Indeed, its judgments have been described as being “as effective as any domestic court”; see Laurence R Helfer & Anne – Marie Slaughter , Toward A Theory of Effective Supranational Adjudication, 107 Y.L.J 273, 298(1997). Therefore, non-compliance forms the exception and the rule is states ordinarily comply with the decisions of the Court.

[566] Despite its bad record with compliance with the decisions of the Court, Turkey for instance has made constitutional and legislative amendments. See Parliamentary Assembly of the Council of Europe, Resolution 1256 (2001). The Parliamentary assembly acknowledged the constitutional and other changes introduced Turkey introduced, reproduced in 22 HRLJ 146-148(2001)

Chapter Six

Conclusions and Recommendations

6.1 Introduction

In this chapter, the paper draws conclusions based on the preceding chapters. Conclusions made in each chapter are reiterated here. Recommendations draw on the conclusions. However, unlike the rest of the paper, conclusions and recommendations follow a system-by-system approach. The recommendations given here are specific to each system.

6.2 The African Human Rights System

6.2.1 State Reporting

Under the African human rights system, some improvements are needed if state reporting is to have a noteworthy impact on human rights conditions on the continent.

6.2.1.1 Creation of a System of Incentives and Disincentives

African States have not been very diligent regarding submission of state reports. To change this tendency, adopting a system that contains an incentive or applies negative reinforcement to bring about a certain pattern of conduct will salvage the system.

6.2.1.1.1 Establishing a Fee Based System

A late or a non-submission fee levied against any state that does not submit on time would prompt states to submit reports on time. The assumption is that states would react to a sanction they would face for not submitting a state report.

To add efficacy to this arrangement, the African Commission could be empowered to decide whether a state is late in presenting its report and so subject to the late fee penalty. It should also be empowered to bring a case to the African Court of Human Rights to have an enforceable judgment against such a state, which the Council of Ministers of the African Union would have to supervise the execution just like any other decision of the African Court on Human Rights.

Many scholars have rightly pointed out their skepticism of the political feasibility of such a system. This is a valid point. However, the introduction of fee-based systems would put blemish on a state's image both in the international relations arena and in domestic politics of the state. The role of such a system to serve as a catalyst in prompting state compliance should not be underestimated.

6.2.1.1.2 Production of Country Reports

Another approach would be to empower the African Commission to produce and adopt a country report in lieu of an absent state reporting. The assumption is that it would prompt states to submit reports on time to avoid the harassment of being subjected to country reporting.

The preparation of such country reports can benefit a great deal from the participation of local NGOs, which are already playing a major role in the state reporting system by providing "shadow" reports that the African Commission utilizes when it examines states reports. The production of country reports instead of the expected state reports serve as a disincentive to failure to report or delay in reporting.

The importance of the power of country reports is evident from the experience of the Inter-American Commission of Human Rights. The African Commission of Human Rights should exploit its mandate to carry out a site visit to prepare its country reports. It should also be

born in mind that the African Commission should also learn from the weakness of the country reports of the Inter-American system and should take clear stands in its reports.

6.2.1.1.3 Increased Publicity

Increased publicity of state reports or even country reports can play even a greater role than they are playing now if they have better publicity with the right groups. The assumption is that by linking these reports with organs or bodies in which states have a big stake, the state reporting system can play a greater role on the enforcement of human rights in the region. Such reports, for instance, could be forwarded to international organizations that deal with international monetary disbursement. These organizations include, among others, the International Monetary Fund[567], the World Bank[568]and the African Development Bank.[569] These institutions make policy decisions affecting African states and can play a large role in overseeing human rights situations in Africa. Because this increased publicity gives these international institutions some relevant information they need to make policy decisions towards aid recipient states, these reports certainly enhance their ability to make policy decisions.

Still the bigger point is that African states, for fear of adverse decisions against them by these monetary institutions, would report on time and most importantly would earnestly try to improve human rights situations in their jurisdiction.

---

[567] It is an organization established with the pupose of "to promote international money co-operation; the expansion and balanced growth of international trade, to promote exchange rate stability, to maintain orderly exchange arrangement and prevent competitive depreciation[ ]." See EVA REISENHUBER, INTERNATIONAL MONETARY FUND UNDER CONSTARINT,4 (2004)

[568] Initially the World Bank was established to reconstruct war-stricken Europe. Later on , it evolved into international financial institution which aims to reduce poverty and improve living standars in developing world. Within it the World Bank has five institutions, each with its own area of specialization. See The World bank, The world Bank, 3-11)2003)

[569] African Development Bank aims at assisting African states in their economic development, both each state and jointly. It can supply funds for Any Member State or any political sub-division within the territory of a Member State. See JOHN WHITE, REGIONAL DEVELOPMENT BANKS, 104(1972) and also http://www.afdb.org (last visited May 17th , 2006)

Another form of publicity comes from linking such reports to local communities. These communities have direct knowledge and experience of the activities and governance records of African states. Therefore, giving them direct access to such reports will increase their awareness of their state's activities outside the country and prompt them to exert pressure at least at the election polls. This creates enormous pressure on the states to produce on time reports and really care about their actions for fear of repetitive censure at the polls. This kind of publicity is achievable through the publication of the contents of the reports and the discussions that would ensue following the presentation of the reports.

6.2.1.2 Create a Link with International Fund Dispersing Organizations

As indicated above, the creation of such a linkage between international monetary organizations and the regional human rights system, apart from promotion of compliance for fear of publicity, will work as a substantive deterrent to actual human rights violations. The impact of such institutions on developing states is enormous. This influence should be channeled to impact human rights situations in Africa. The reports produced by African states or the country reports produced by the African Commission should be submitted to these organizations for consideration in their policymaking towards African states.

6.2.1.3 Content of Reports

Another frequently encountered problem in the state reporting system has been the content of state reports. Lack of uniformity in regard to the content of the reports has been a persistent problem and one that needs remedying if the state reporting mechanism is to produce any meaningful results. The African Commission has tried to ameliorate the problem by issuing guidelines as to the contents of state reports. However, these guidelines have not helped a great

deal. Many state representatives have indicated during discussions that they did not know about the guidelines during discussions.

The way to get around this problem is that the African Commission should make these guidelines and sample state reports available online so that any relevant authority of any state in charge of preparing state reports would be able to access them. The availability of the guidelines online will address the claim of unavailability made by state representatives. The availability of sample reports will address the issue of lack of uniformity in terms of the contents of such reports submitted by states.

6.2.1.4. Presentation of reports

Another problem area relates to the presentation of reports to the African Commission. The practice indicates that states mostly do not send a representative at all, or even when they do, they do not send a person with appropriate rank and authority to speak for the government on all issues. This problem can be addressed by fixing the level of rank of the person representing the state in front of the African Commission and taking any default in this regard as a complete non-submission of report and thus should prompt the African Commission to adopt a country report.

6.2.2 Inter-State Complaints

The African Commission has not received many inter state-complaints. The only viable complaint has been just one. African states do not seem to want to point fingers at each other. This can be addressed by allowing certain non-African states or organizations to have standing before the Commission to bring actions against African states. This would remove the mutually protectionist environment developed by African states.

The experience of inter-state complaints that have existed until today might cast doubts on the relevance of allowing non-African states to bring cases against African states before the

African Commission of Human Rights. Provided the rights of non-African States to bring cases before the African Commission are confined to cases that reveal vast and systematic violations and not individual cases, it will certainly improve the inter-state complaint mechanism in Africa. Most democratic nations have been exploiting various means to end severe human rights violations. If they are given this right, they will certainly make use of it.

The issue of allowing a non-African state or institution standing before the Commission will certainly face strong resistance from many, especially African, states. However, one should not forget that donor countries and institutions have already been doing this in other political arenas and giving it a legitimate face concerning human rights would not be such a drastic move.

Decisions produced by the African Commission should be linked to international organizations in the same way discussed above in relation to state reports, in order to create an environment, with sufficient incentives and disincentives to make African states take their obligations earnestly.

One other concern that needs some consideration is how the NEPAD system fares in connection with the inter-state complaints mechanism. In the Inter-American system, it is easily noticeable how the country report system undermined the development of an inter-state complaints mechanism. Can that situation be true of the relation between NEPAD and the inter-state complaint system in the African system? States not wanting point fingers at each other in front of international adjudicatory bodies would rather resort to the political system offered by NEPAD.

Even if this happens, it is possible that inter-state dialogue under the framework of NEPAD can bring improvement to human rights situations on the continent provided that NEPAD retains its

close relationship with the international community and is able to create serious consequences on states.

6.2.2 Individual Complaints and Execution of Judgments

The current system has a Commission and a Court. Individuals and non-governmental organizations do not have direct access to the African Court unless the states expressly make a declaration to this effect. The only way individuals can access the court is through the African Commission when it takes cases to the African Court.

The practice of the African Commission taking individual cases to the African Court has many shortcomings. Experience of the Inter-American system suggests that such an arrangement can really undermine the efficiency of the court and eventually the entire system. In Chapter One section 1.3.1.2, a variety of relations between the African Commission and Court were suggested. However, the best system is one where there is a complete division of labor between the two organs. The African Commission should retain the promotional activities, the state reporting and the inter-state complaints mechanisms and the African Court should have exclusive jurisdiction over the private complaints.

Another danger of the current arrangement is the application of different standards to cases exhibiting similar circumstances. The European experience indicates that the European Commission and the Court applied different standards and thus created uncertainty in the system.

Regarding the execution of judgments in the African system, there is not much to say. There is even dispute among African and other human rights lawyers whether the Commission has a mandate to make enforceable decisions and even it has a mandate to receive individual complaints. Leaving aside intellectual arguments, the African Commission's ability to execute its

decisions (i.e., recommendations) has been a disaster. There is nothing to show what it has done to execute its decisions.

The ultimate authority in the system, i.e., the Assembly of Heads of State and Government has not also been keen on doing anything about it after hearing reports of the African Commission.

Currently, the establishment of African Human Rights Court has partially remedied this problem. However, it remains to be seen how much the African Court will improve this problem. It is premature to speculate at all about the Court's performance since it has just been established.

6.3 The Inter-American Human Rights System

6.3.1 State reporting and Country Reporting

The Inter-American system has not developed state reporting mechanisms. Rather, it has relied heavily on country reports. So long as country reports can produce the desired result for making states take their international human rights obligations seriously, there is no need that the system to have a well-developed state reporting mechanism.

Regarding country reports, few suggestions can be made to enhance their impact on the protection human rights.

6.3.2.1 OAS General Assembly to Take a Position on Country Reports

A discussion on this issue in the relevant chapter and section revealed that the OAS General Assembly does not take a firm stand or position on country reports. To do away with this handicap affecting the efficacy of the mechanism, it should be made mandatory that the OAS General Assembly take a clear stand on the report. The General Assembly should indicate in

clear terms whether the state in question has violated human rights or not and, if possible, go so far as to the extent of suggesting measures to be taking regarding such violations.

6.3.2.2 Link Country Reports and OAS Assembly General Deliberations to Relevant International Institutions

Copies of country reports and deliberations of the OAS political organs should be transmitted to international organizations entrusted with disbursement of funds to developing countries. The rationale behind such approach is the same as the one for the African system, i.e., to create publicity as one means of coercing states to comply with their international obligations and to establish additional incentive and disincentive systems to.

Conditions on aid have been complained about widely for many years. However, the fact remains that all aid will remain conditional on some considerations. This is a fact of international politics. Already situation of human rights are considerations for these international organizations and giving this a legal basis will not change anything.

6.3.2 Inter-State Complaints

The inter-state complaints mechanism has been undermined by the reliance on the Inter-American system country reports. The ability of the Inter-American Commission to produce country reports has enabled it to channel potential inter-state complaints into country reports. The Inter-State complaint mechanism has not worked effectively in Europe and especially in Africa. The member states of OAS might not have used it effectively either. Because country reports are produced without the involvement of member states, the course taken by the Inter-American Human Rights Commission has enabled it to make up for any losses they might have been caused by the absence of inter-state complaints in its system. Therefore, if the system is

able to make up for the loss in the protection of human rights it sustains from the unavailability of inter-state complaints, then it is a tolerable loss.

6.3.3 Individual Complaints and Execution of Judgments

The system has a Commission and a Court. However, individual complainants do not have access to the Court unless states expressly acknowledge the Inter-American Court's jurisdiction to hear individual complaints. Outside this option, the only way individual complaints can make it to the Inter-American Court is when the Inter-American Commission takes their cases to the Inter-American Court. This arrangement suffers from many drawbacks. First, there are no set criteria to decide which cases go to the Inter-American Court and which do not. This creates arbitrariness. Second, it creates room for a competitive, rather than cooperative, working atmosphere. This has been seen clearly in the initial stage of the Inter-American Court. Such intra-system problems ultimately affect victims. Third, as indicated above, the Inter-American Commission and the Court might apply varied standards cases with similar facts.

To do away with such problems, a system with a clear division of labor should be established. The Inter-American Commission should retain its promotional activities and the country reporting mechanism, thus leaving the Court with exclusive jurisdiction over private complaints.

6.4 The European Human Rights System

6.4.1 State reporting and Country reports

The European system relies heavily on individual complaints. However, as much as individual complaints are important to the protection human rights, one should not forget that they fail to expose the overall picture of human rights prevailing in countries. They only allow

the court to see individual complaints one at a time and thus deny it a macro-level view of the human rights situations in member states.

The system of country reports was developed in the Inter-American system out of the realization that individual complaints insufficiently curb vast rights violations. So the European system will benefit by establishing either a state reporting or a country report system. This, however, does not mean that the European system does not have any state reporting or country reports presented on an ad hoc basis. The system allows its political organs to request states to produce human rights situation reports or to request its own organs to produce reports similar to country reports.

Moreover, the European human rights system, after realizing the weakness resulting from reliance on individual complaints, adopted a resolution to authorize the Commissioner of Human Rights to report on human rights situation in member states. However, it appears that it should be given more constitutional foundations through an amendment to the European Convention. These ad hoc "practices resembling state reports" and this mandate given to the Commissioner for Human Rights should be merged on more constitutional grounds to give efficiency to the European System and also avoid redundancy.

6.4.2 Individual Complaints and Execution of Judgments

Given the current state of international law and its principle of sovereignty, the European Court has been very effective in dealing with individual complaints and executing its judgments. The European Court of Human Rights deals only with individual and inter-state complaints. Its decisions are regularly enforced. European States take their human rights obligations seriously.

The weakness of the European human rights system, as discussed above, lies in its heavy reliance on its court system. There are situations that such individual complaints do not simply

disclose at face value. As much as the European Court of Human Rights has been successful in its functions, it has limitations in addressing broad violations of human rights. Therefore, the European System should also revamp its activities that are similar to reporting.

Bibliography

Altson, Philip, Promoting Human Rights Through Bills of Rights, 1999

Ankumak, Evelyn a., The African Commission on Human and Peoples' Rights : Practice and procedures, 1996

Bloed ,Arie & Et Al, Monitoring Human Rights in Europe: Comparing International Procedures and Mechanisms, 1993

Beurgenthal, Thomas & Et Al, Protecting Human Rights in the Americas: Selected Problems, 1982

Cassesse, Antonio, Human Rights in a Changing World, 1990

Davidson, Scott, The Inter-American Court of Human Rights, 1992

Davidson, Scott, The Inter-American Human Rights System, 1997

Dijk, P. Van & G. J. H. Hoof, Theory and Practice of the European Convention on Human Rights, 2nd ed., 1990

Donnelly, Jack, International Human Rights,2nd ed., 1998

Eide, asbjorn & August Schou (eds.), International Protection of Human Rights, 1968

Evans, Malcolm D & Rachel Murray, The African Charter on Human and Peoples' Rights: The System in Practice 1986-2000, 2002

Freeman, Mark & Gibran Van Ert , International Human Rights Law, 2004

Geary Adam, Globalization and the Law : Trade, Rights , War , 2005

Gries Tobias & Ralf Alleweldt (eds.), Human Rights Within The European Union, 2004

Harris D.J. Et Al., Law of the European Convention on Human Rights, 1995

Kiss, Alexandre, & Dinah Shelton, International Environmental Law, 2nd ed., 2000

Lambert-Abdelgawad, Elizabeth, The Execution of the decisions of the European court of Human Rights, 2002

Macdonald, R. St. J. Et al. , The European System for the Protection of Human Rights,1993

Medina, Cecilia, The Battle of Human Rights: Gross, Systematic Violations and the Inter-American system, 1988

Merrills, J.C & Robin C.A White, European Convention on Human Rights, 3rd ed., 2002

Mower, A Glenn, JR., Regional Human Rights: A Comparative Study of the West European and inter-American Systems, 1991

Nmehielle, Vincent O. Orlu, The African Human Rights System: Its Laws, Practice, and Institutions, 2001

Neuwahl, A. Nanette& Allan Rosas (eds.), The European Union and Human Rights, 1995

Ovey, Clare & Robin C.A White , European Convention on Human Rights in context, 2nd ed., 2002

Renucci, Jean-Francois, Introduction to the European Convention on Human Rights: The Rights Guaranteed and the protection Mechanism, 2005

Schreiber, Anna P, The inter – American Commission on Human Rights, 1970

Smith, Rhona K.M , International Human Rights, 2003

Steiner, Henry J. & Philip Alston, International Human Rights in Context, 2nd ed., 2002

Tomushat, Christian, Human Rights : Between Idealism and Realism , 2003

Umojurike, U Oji, The African Charter on Human Rights and peoples' Rights, 2002