

Recent publications

Malcolm D Evans and Rachel Murray (eds) *The African Charter on Human and Peoples' Rights. The system in practice, 1986–2000* Cambridge University Press (2002)
397 pages

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This well-written book provides substantive insights into the practice of the African regional system of human rights protection and promotion, which is still less accessible than the practice of other systems and therefore too little known. By bringing together 11 contributions from competent authors, it looks at all major aspects of the first 15 years of the African Charter on Human and Peoples' Rights, which came into force in 1986 and today has been ratified by all 53 OAU member states.

Starting from a critical analysis by Gino Naldi of the achievements of the Charter and the increasing role of the OAU in human rights, the question is put whether the decision taken in 2001 on creating an African Union may provide a new momentum. The effectiveness of the Charter depends on the well-functioning of its reporting and communication procedures, which are analysed by Malcolm Evans, Tokumbo Ige, Rachel Murray and Frans Viljoen regarding the hardly functioning reporting mechanism, the questions of admissibility as well as of evidence and fact-finding. The African Commission on Human and Peoples' Rights aims at a 'constructive dialogue', but depends on the timely submission and quality of the reports for which purpose improved guidelines have been elaborated. However, states do take the work of the Commission more seriously now, as can be seen from the reported presence of 50 diplomatic representatives at the 27th session of the Commission in 2000.

The political role of NGO 'shadow reports' is highlighted and suggestions made on how to improve the reporting procedure. The question of admissibility seems to never have been analysed in such depth. In view of the still very limited number of communications, the African Commission has taken a more open approach than other

regional commissions and over time also improved its rules on admissibility. In the field of collecting evidence the Commission since its 16th session has started to have oral hearings, showing flexibility by allowing also NGOs to represent individuals unable to participate. If governments do not respond, which happens rather frequently, the burden of proof is shifted to them. However, the Commission is also found to still depend too much on the cooperation of the states.

A wealth of information on the case practice of the Commission can be found in the contribution on civil and political rights in the Charter by Christof Heyns. The conclusion is that the jurisprudence of the Commission is still in an embryonic stage. Economic, social and cultural rights in the Charter are the subject of a broad analysis by Chidi Anselm Odinkalu in view of the system as a whole. It shows that there is as yet a very limited case practice and suggests a new approach to the protection of economic, social and cultural rights for Africa based on the experiences of peoples.

The challenge of culture for human rights in Africa is analysed in view of the universality of human rights by Commissioner N Barney Pitso. The interpretation of the African Charter by the African Commission, which explicitly finds inspiration from the 'values of African civilisation', is found to be very cautious, that is, with regard to 'peoples rights'. Surprisingly, hardly any cases on women's rights have reached the Commission, although there is a potential for it from traditional rulings by national courts as demonstrated by the author for the case of Zimbabwe. His conclusion is that 'a theory of applied cultural relativism is unavoidable' to achieve greater equality between cultures.

The special importance of the various contributions of non-governmental organisations (NGOs) to the development of the human rights system in Africa is described by Ahmed Motala, who concludes that especially NGOs from within Africa need to take their responsibility of support and critique of the Commission more seriously. An analysis by Evans and Murray of the work of the three Special Rapporteurs on Extrajudicial, Summary and Arbitrary Executions, on Prisons and Conditions of Detention and on the Rights of Women comes to mixed conclusions, finding their performance largely disappointing and suggesting not to draw special rapporteurs from the members of the Commission to give them more independence.

The major innovation of the African system in the future will be the African Court on Human and People's Rights, the statute of which only needs 15 ratifications to come into force. Julia Harrington provides a detailed analysis of its prospects in view of its mandate and organisation, describing also the lack of enthusiasm from African states. She arrives at the conclusion that there are several conditions to be met to make the Court effective, like to integrate it into the structure of the African Union and to endow it with adequate resources.

Finally, the extensive promotional role of the African Commission is discussed by Victor Dankwa. From his experience as former Chairperson of the African Commission he explains the various, partly innovative, ways the Commission took to fulfil its mandate, like the promotional visits to African states by commissioners, who had distributed responsibility for all parties of the Charter among themselves. Again, the importance of co-operation with NGOs is highlighted and the need to close the gap between adherence to the Charter and assurance of its rights in respective jurisdictions is emphasised. Also recognised is the need to make the work of the Commission better known by publication of its activities.

The appendix to the book conveniently contains the text of the African Charter and the Protocol on the Establishment of the African Court as well as the Grand Bay (Mauritius) Declaration and Plan of Action of 1999. The book also contains a list of the first 227 communications until 1999.

No doubt, this book provides one of the best analyses of the African system of human and peoples' rights, which cannot be ignored by any serious researcher. Although critical of its subject, it can be taken as a sign of hope against the widespread Afro-pessimism in the field of human rights.