Chapter 13
From the African Court on Human and Peoples’ Rights to the African Court of Justice and Human Rights

Prof. Githu Muigai*

1 Introduction

The establishment of the African Court on Human and Peoples’ Rights (the African Court or the Court) was need based. Its predecessor, the African Commission on Human and Peoples’ Rights (the Commission), in its architecture and design, has proved to be a toothless bulldog. As affirmed by Nsongurua:

In the area of protection of human rights, the Commission stands as a toothless bulldog. The Commission can bark – it is, in fact, barking. It was not, however, created to bite. After more than a decade of existence, the Commission can barely be said to have made any significant contribution to human rights protection in the African continent.¹

The frequent human atrocities in Africa are a clear testimony of the inefficiency of the Commission and impunity of African Governments.² Extra-judicial executions, massacres, torture, disappearances, arbitrary detention and political surveillance and harassment are a commonplace in the entire continent.³ Recent examples of systematic human rights violations in Africa include the Rwanda genocide which

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* Judge, African Court on Human and Peoples’ Rights.
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occasioned the systematic killing of over 800,000 Tutsi population;⁴ human rights violations in Darfur (Sudan) and in Libya leading to the issuance by the International Criminal Court (ICC) of the warrant of arrest for President Al Bashir (for war crimes, crimes against humanity and genocide)⁵ and for Libyan leader Gaddafi (for alleged crimes against humanity).⁶ Other examples include the kidnapping and killing of Burundi’s first democratically elected president, a Hutu, in October, 1993, by Tutsi paratroopers, saw the killing of over 200,000 civilian population in Burundi.⁷ Armed opposition groups in the Democratic Republic of Congo (formerly Zaire),⁸ Liberia,⁹ Somalia¹⁰ and Sierra Leone¹¹ have committed unprecedented human rights breaches in full view of the Commission.

This chapter traces the origin of the Commission, its architecture and design and the rationale for setting up the Court. It then examines the functioning of the Court and its complimentary role to the Commission. The chapter further analyses the proposed merger of the African Court on Human and Peoples Rights with the African Court of Justice to form the ‘African Court of Justice and Human Rights’ (the merged Court). Lastly, the mandate of the merged Court is considered and its future implications to the effective protection of human rights in Africa.

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5 The Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09 (4 March 2009); The Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09 (12 July 2010).
6 International Criminal Court, Pre-Trial Chamber I, Decision on the "Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI", ICC-01/11-12 (27 June 2011).