Chapter 14

Human Rights Realisation in the African Sub-Regional Institutions

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1 Introduction

Although Africa can be described as a late entrant into the realm of inter-state cooperation in international law, the continent has caught up rather fast as it currently boasts of a significant number of international institutions at both the regional and sub-regional levels. Originally, international institutions in Africa were established with objectives that could be broadly classified either as political or economic. While sub-regional institutions were generally concerned with economic objectives, political objectives in the continent were primarily pursued at the regional level on the platform of the continental Organisation of African Unity (OAU). Considering that human rights realisation was perceived to be a political issue, when the idea of an African human rights system gained acceptance, it was on the platform of the continental body that the system was hoisted. Thus, the African Charter on Human and Peoples’ Rights (African Charter) which has remained the central instrument of the African human rights system was adopted in 1981 as a continental human rights catalogue.

The neat divide that seemed to have existed in the landscape of international institutions in Africa apparently became blurred towards the end of the 20th century with the reconfiguration of several institutions in the continent. It is now difficult to place these institutions into strict political or economic compartments. The early part of the 21st century saw the emergence of African sub-regional institutions as players in the African human rights system. Often drawing from the African Charter, in varying degrees sub-regional institutions have become platforms for human rights realisation, creating a need for their inclusion in any serious study on the African human rights system. This chapter presents a synopsis of the most

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1 The OAU was established in 1963 but was replaced by the African Union (AU) in 2001 as noted in chapter 1 in this volume.

2 See chapter 1 in this volume.
significant aspects of human rights realisation on the platforms of sub-regional institutions in Africa. The chapter is divided into sections which cover the main features of sub-regional institutions, the relationship between economic integration and human rights, the foundation for human rights realisation in the institutions under consideration and the scope of human rights coverage. The chapter then undertakes an overview of human rights standard-setting as well as the promotion and protection of human rights by judicial and non-judicial organs of African sub-regional institutions.

2 The Main Features of Sub-regional Institutions in Africa

Certain features are common to most of the sub-regional institutions in Africa that have developed activities in the field of human rights, but there are other features that are specific to individual organisations. As creations of treaties entered into by their Member States, sub-regional institutions are legally bound to only exercise powers granted by the states. The powers and objectives of these institutions are generally contained in the founding treaties but can also be found in protocols adopted subsequent to the founding treaties. All the institutions exist as independent entities even though some of them are linked to the African Union (AU) by the fact that they have been recognised as building blocks of the African Economic Community (AEC). Currently, there is no formal relationship between these institutions and the structures of the traditional African human rights system. Most of the sub-regional institutions are considered to be regional economic communities (RECs) because of the prominence that is given to economic objectives in their treaties. However, a few also have political or quasi-political objectives and at least one has essentially security-related objectives.

Although there are over 14 different sub-regional institutions in Africa, not all of them have explored the potential for human rights realisation under their institutional frameworks. Sub-regional institutions that have generated some human rights activities include the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC), the Economic Community of West African States (ECOWAS), the International Conference on the Great Lakes Region (ICGLR), the Intergovernmental Authority on Development (IGAD), and the Southern Africa Development Community (SADC). This chapter focuses on the work of these institutions.

3 Human Rights in the Context of Regional Integration

Although not all African sub-regional institutions involved in the field of human rights are RECs, some of the most active institutions in the area are RECs. Hence,