Chapter 19
Institutional Mainstreaming and Rationalisation

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1 Introduction

The developments considered in the preceding chapters in this book registered by the African system for the protection of human and peoples’ rights over the last few decades are a clear indication and a positive sign that the system is gradually moving towards success. The complete success of the system, however, calls for a closer relationship amongst all its institutions. These institutions should complement rather than compete with one another; the relationship between them should be one of collaboration, as distinguished from that of control.¹ Although it is encouraging to note that the African system has made some positive contributions in the sphere of international human rights law in its relatively short period of existence, there is an emerging trend of institutional proliferation that needs to be addressed. This is because the existing and emerging institutions tend to overlap and duplicate each other’s mandates and functions.²

It is therefore necessary to mainstream and rationalise the existing regional human rights institutions in a way that they will complement and not duplicate or compete with each other. In this context, ‘mainstreaming’ refers to the process of consolidating the regional human rights mechanisms within the African Union (AU) framework.³ The AU, as the ‘parent’ institution, would therefore hold the cen-

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eral place in ensuring the co-ordination and synergy of these mechanisms. Rationalisation, on the other hand, would involve defining the ‘inter-personal’ relationships and synergies between the human rights mechanisms in order to minimise or overcome overlaps and duplication of functions and mandates. In other words, while mainstreaming intends to improve the ‘vertical relationship’ between the AU and regional institutions with human rights responsibility, rationalisation will harmonise the ‘horizontal relationship’ between these human rights institutions.

The main focus of this chapter is to propose possible strategies of mainstreaming and rationalising the African human rights system. The chapter begins with a review of the definition and scope of the African human rights system then proceeds to analyse the mandates and functions of some of its key enforcement institutions. Before proposing possible strategies of rationalisation, the chapter elucidates the extent to which some of the institutions overlap and duplicate each other’s functions and mandates. The chapter concludes with some general recommendations on the way forward.

2 A Review of the Definition and Scope of the African Regional Human Rights System

The expression the ‘African regional human rights system’ or the ‘African system on human and peoples’ rights’ refers to the regional system of norms and institutions for enforcement of human and peoples’ rights in Africa. There appears to be uncertainty on the scope and definition of this system. Gutto, for example, argues that a distinction should be made between the broader ‘African human rights system’ and the narrower ‘African Charter system’. Accordingly, whereas the African Charter system centres around two enforcement institutions—the African Commission on Human and Peoples’ Rights (hereafter the ‘African Commission’ or ‘Commission’) and the African Court on Human and Peoples’ Rights (hereafter ‘African Court’ or ‘Court’) – the African human rights system goes beyond to include the ‘political institutions’ and other organs created under the AU.

Gutto’s observations could be faulted because the African Charter, which is at the core of his so-called ‘African Charter system’, is a very important instrument of the broader ‘African human rights system’, hence the latter cannot be construed separately from the former. Secondly, it will not be correct to view the ‘African Charter system’ distinctively from the pan-continental ‘political institutions’ principally because the latter seem to anchor the former. This position is confirmed by the fact that the African Charter effectively puts the African Commission under the control of the Assembly of the Head of State and Government (AHSG), which is a regional ‘political institution’. Again, just before the inception of the AU, the former Organisation of African Unity (OAU) Council of Ministers called for the

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4 Ibid., 176.
5 Ibid., 184.