THE REALISATION OF HUMAN RIGHTS IN AFRICA THROUGH SUB-REGIONAL INSTITUTIONS

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I INTRODUCTION

Global, regional and sub-regional inter-governmental organisations play a significant role in Africa today. On the global plane, all African states have become members of the United Nations (the "UN") soon after their independence. In 1963, 32 independent African states formed the first inter-governmental organisation with a pan-African focus, the Organisation of African Unity (the "OAU"). By its 35th anniversary in 1998, the membership of the OAU had increased to 53. Although the OAU Charter included economic co-operation and the achievement of a "better life for the peoples of Africa" amongst its purposes, these aspects were neglected as the OAU mainly pursued the goals of promoting African solidarity and the eradication


1 This article is based on a chapter from Viljoen, F. J., *The realisation of human rights in Africa through inter-governmental institutions*, unpublished L.L.D. thesis, University of Pretoria, 1997. A distinction is drawn between "organisations" and "institutions". The UN, OAU and SADC are examples of "organisations", while the treaty bodies, committees, other quasi-judicial bodies and judicial structures established in terms of the founding treaties are "institutions".

2 Four independent African states became members of the UN when it was founded in 1945. They were Egypt, Ethiopia, Liberia and the Union of South Africa. After Eritrea has joined the UN on 28 May 1993, the number of African member states now stands at 53. The Saharawi Arab Democratic Republic, declared independent unilaterally on 27 February 1976, has not been admitted as a UN member.

3 The OAU Charter was adopted in Addis Ababa on 25 May 1963, see e.g. (1964) 3 International Legal Materials, p. 1116.

4 The Saharawi Arab Democratic Republic is recognised as a member of the OAU. This recognition led to the withdrawal of Morocco from the OAU in 1984.
of colonialism from Africa. The newly independent constituent states parties of the OAU jealously guarded their own sovereignty. Not only the OAU’s potential impact on internal political issues, but also its potential of collectively addressing economic concerns was constrained in the process. An increased awareness of the need for regional co-operation to attain inter-African economic development culminated in the creation of a number of regional organisations in African sub-regions, and in the establishment of the African Economic Community (the “AEC”).

A number of sub-regional inter-governmental organisations and institutions have been functioning and still function in Africa today. Those pre-dating African independence had (and still have, where they still exist) close links with colonialism (or its aftermath). The East African Community is an example of an organisation that is now defunct. Examples of defunct institutions are the Court of Appeal of East Africa, the West African Court of Appeal and the Rhodesia and Nyassaland Court of Appeal. Presently, a multiplicity of organisations, mainly concerned with economic priorities and co-operation, exist sub-regionally in Africa. Those discussed here are the Economic Community of West African States (“ECOWAS”), the Southern African Development Community (“SADC”), the Common Market of Eastern and Southern Africa (“COMESA”) and the Maghreb Arab Union.

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6 International human rights protection has been established at three levels. At the global (or universal) level, various human treaties and implementation mechanisms have been created under the auspices of the UN. At the regional level, human rights instruments and institutions have been established under the auspices of the Council of Europe (in Europe), the Organisation of American States (in the Americas), and the OAU (in Africa). The third level is usually accepted as the protection granted by the domestic legal system of a particular state. The focus here does not fall on any of these levels, but investigates whether human rights may be realised through institutions at a level between the domestic and the regional, here denoted the “sub-regional” level.

7 These sub-regional organisations sometimes include countries outside Africa, as in the case of the Indian Ocean Rim Association for Regional Cooperation (see (1997) 9 RADIC, p.785).

8 An overview that includes only these four organisations cannot claim to be comprehensive. There are numerous other sub-regional organisations in existence in Africa today, including the Economic Community of the Countries of the Great Lakes (“CEPGL”), the Southern African Customs Union (“SACU”), the Mano River Union, the Customs and Economic Union of Central Africa (“UOEAC”) and the African and Mauritian Common Organisation (“OCAM”). See e.g. Elias, T.O., Africa and the Development of International Law, 1988, pp. 25 – 29.