

An Appraisal of Institutions of Global Governance: The Case of the African Human Rights System

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Abstract

This paper examines the effectiveness of global governance institutions in the light of changes in the global system, and how such changes can be observed in the international arena. This study focuses on the African system of human rights as an example of global governance institutions operating within the liberal global order created in the post-war era by the United States. This paper uses Oran Young's¹ framework of effectiveness of international institutions to examine whether the African human rights system is effective. Based on that framework, the paper observes that the African human rights system has been able to move beyond human rights treaty ratification by African states to the establishment of treaty bodies that have demonstrated dynamism in response to challenges in the African human rights system, as well as changes in the liberal global order. However, there is more to effectiveness of institutions of global governance beyond the dynamism demonstrated by the African system of human rights.

Keywords: African human rights system, effectiveness, institutions of global governance.

Introduction

In an anarchic global system where there is an absence of a central authority to govern states behavior,² within the framework of structural realism, institutions of global governance play a very important role by attempting to fill this gap through the development and enforcement of international norms among states. While admitting that such global governance institutions lack sovereignty to effectively enforce rules, they do wield some forms of power derived from the very essence of such institutions, their resources and those powers conceded to them by states who are party to those global institutions. Moreover, within the understanding of pooled sovereignty, countries that are parties to these global governance institutions recognize the importance of allowing such institutions to perform certain functions on their behalf (Kegley and Blanton 2010).

Institutions such as the United Nations, the World Bank, International Monetary Fund, World Trade Organization, the European and African Unions among others have been able to apply their mandate and powers to make positive impacts in addressing poverty reduction in the global south and the global protection of human rights. For instance, the IMF and the World Bank, through their structural adjustment programs of the 1980s and 1990s came to the rescue of many economies from collapsing in the global south.³ The United Nations has been leading the global crusade for the protection of universal human rights since 1948, advancing from the protection of civil and political rights to its current focus on non-state actors' responsibility to protect human rights. In spite of these endeavors, there have been challenges of enforcement of decisions and the lack of adequate resources.

In Africa, the defunct Organization of Africa Unity (OAU) as well as its predecessor, the African Union, has taken steps to protect human rights in the post-independence era.⁴⁵ The African Union's human rights system which finds expression mainly in the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights have made remarkable efforts aimed at protecting human rights through the African Charter on Human and Peoples' Rights and its protocols, and the respective supervisory mechanisms they have established. However, its ability to be effective has been challenged. This paper examines the effectiveness of the African human rights system within the context of global system changes and how such changes can be studied in international studies using Oran Young's framework of effectiveness of global governance institutions.

This paper proceeds in three main sections. Beyond this introduction, the paper presents the Young framework of the effectiveness of international institutions, which sets out the specific questions this paper answers. Next it presents the institutions and structures that make up the African human rights system while examining the effectiveness of the African human rights system based on that framework. In the final section, it considers the determinants of effectiveness of international institutions in Africa and presents a discussion before it concludes.

The Young Framework of the Effectiveness of International Institutions

Young presents his framework in an attempt to assess the role of international regimes in influencing individual and collective behavior of states at the international level. In short, the framework is developed to determine whether institutions matter in international relations. While suggesting a general level definition of effectiveness as a measure of the role of social institutions in shaping behavior in international society, Young holds that an institution is effective “to the extent that its operations impel actors to behave differently than they would if the institution did not exist or if some other institutional arrangements were put in its place.”⁶ This implies institutional power to make a difference in the behavior of states in the international system. Young’s conception of institutions is similar to political scientists explanation that institutions provide the rules and regulations that guide the activities of individuals (Asare 2012). Essentially institutions make the effort to control the actions and inactions of individuals thereby ensuring that the goals of institutions take precedence over that of individuals working in the institutions.

Young presents the state as the unit of analysis in his framework. The framework’s assessment of effectiveness is not limited to the behavior of states in responding to the requests of international institutions but also, the extent of implementation of regime principles in the territories that fall within states’ jurisdiction.⁷ In this scheme, the behavior of states encompasses their conduct both domestically and internationally. The Young framework identifies the concept of collective behavior as encompassing states aggregate behavior as well as the outcome of collaborative processes of at least two states in the international society.⁸ In specific terms, effectiveness of institutions may be measured based on the responses to the following inquiries. Has the operation of the institution alleviated the problem that led to its formation? Have the participants been able and willing to implement the principal provisions of the institutions in their jurisdictions? Have the provisions of the institution been internalized by members such that they ordinarily comply with the core principles? Is the operation of the institution cost-effective? Can the institution adapt to changing circumstances without losing its capacity to handle the problem it was created to resolve? Is the institution able to survive intact in a changing social, biological, and physical environment?⁹ In short, effectiveness is a measure of the role that institutions play in determining the content of individual and collective behavior.¹⁰ Beyond this, Young identifies certain critical variables which he considers as sources of institutional effectiveness. While categorizing them into endogenous and exogenous factors, he identifies transparency, robustness, transformation rules, capacity of governments, and the distribution of power, independence, and intellectual order.

Young makes use of the term “international society” rather than for instance, states in the international system which is suggestive of a community of states unified by common aspirations and values or at least guided by them. Also, the framework sets the determination of effectiveness as a matter of extent rather than “an all-or-nothing-at all propositions.”¹¹

Importantly, this scheme of institutions of global governance is within the liberal global order created by the United States after the World War II. This paper is therefore structured within this framework. Based on the African system of human rights, it attempts to answer the defining questions of effectiveness of the African human rights system and assesses the variables of effectiveness to see how the variables may affect the extent of efficiency of the African system of human rights.

The African System of Human Rights

The African Human Rights System refers to the human rights institutions established within the defunct OAU, now the African Union. The coming into force of the Constitutive Act of the African Union saw the transformation of the OAU to the African Union.¹² While this implies a number of institutions, this essay will limit the meaning of the African human rights system to the two major treaty bodies-the African Commission on Human and Peoples' Rights (the African Commission) and the African Court of Human and Peoples' Rights (African Court) based on the African Charter on Human and Peoples' Rights which came into force in 1986.¹³

Since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948, human rights treaties and institutions have proliferated across the world.¹⁴ This proliferation has not been limited to the global level as regional blocks have established human rights bodies.¹⁵ While the European continent has the European Convention on Human Rights and the European Court of Human Rights, the Inter-American system has the Inter-American Court of Human Rights as well as the Inter-American Commission on Human Rights based on the Inter-American Convention on Human Rights.¹⁶ These developments are not independent of the liberal global order created by the US after the World War II.¹⁷

Some argue that developments in the international scene under the leadership of the US through its foreign policy enhanced the development of an African human rights system.¹⁸ The construction of a liberal global order involved the foreign policy objective of the spread of US values across the world.¹⁹ During the 1970's the OAU did not have a human rights treaty except its reliance on the UDHR and the OAU's Charter which has some references to human rights in its preamble and four substantive provisions.²⁰ The role of the UN as a creator of human rights norms cannot be over-emphasized as its bill of rights and promotional activities were important in the spread of human rights institutions across the world.²¹ Based on its preoccupation with the liberation of the rest of the continent from colonialism, respect for state sovereignty and the right to external self-determination, the OAU failed to condemn, much less to intervene in the Burundi massacres of 1972 and 1973, where thousands of the Hutu ethnic group lost their lives, the repressive Idi Amin regime in Uganda and the Central African Republic's repressive government under Jean-Bedel Bokasa between 1966 and 1979.²²

The role of the US cannot be overemphasized in the creation of international human rights and its regimes across the world. President Jimmy Carter made human rights an important aspect of his foreign policy.²³ The US used human rights as a Cold War ideological weapon while the United Nations, of which the US was very instrumental in creating, was very active in promoting the idea of establishing regional human rights bodies. Further, the adoption of the Helsinki Final Act in 1975 and media publicity of the sufferings of Vietnamese refugees enhanced an international environment for promoting the human rights agenda.²⁴ It would be incomplete not to include the wave of democratization across the global south in the 1980s as an important stimulant in the development of African human rights.²⁵ In short, the liberal wave of the international system promoted the spread of human rights even though the US continued to support some repressive regimes in Africa when it was in their national interest to ensure the continued governance of a particular government in a particular country, such as the Mobutu Sese Seko of Zaire.²⁶

Relevance of the African Human Rights System

When the African Charter on Human and People's Rights (Banjul Charter) came into force in 1986,²⁷ it provided for the establishment of the African Commission on Human and Peoples' Rights (African Commission).²⁸ With the coming into force of the African Union's Constitutive Act in May 2001,²⁹ the provision for the establishment of an African Court of Human and Peoples' Rights was set.³⁰ Although complementary, both the African Commission and the African Court have specific objectives for which they were established. Whether the operations of the African system of human rights have alleviated the problem for which it was established or whether the African human rights institutions are cost-effective is the subject of discussion under this subsection.

The primary document and the basis of the African human rights system is the Banjul Charter. Except for Morocco and South Sudan, all countries on the continent have ratified the Banjul Charter. The African human rights system has expanded to see optional protocols, the creation of other treaties and institutions such as the African Court, the Committee of Experts on the Rights and Welfare of the Child.³¹ The importance of the African human rights system lies in its objectives and its ability to realize them through its operations. It sets out the human rights framework on the continent. Fundamentally, it sets out the normative importance of human rights on the continent. The Banjul Charter, the protocols and other treaties do set the legal provision through which human and peoples' rights are codified and can be claimed by all persons and peoples protected by the provisions.

While reflecting the international bill of rights, the Banjul Charter has its own unique features made to reflect the African perspective.³² The Banjul Charter reflects the bill of rights by providing for individual rights. However, it also provides for collective rights for peoples on the continent. The Charter identifies duties not only for state parties but for individuals and peoples. The first 17 provisions identify civil, political, social, and economic rights for individuals while other provisions identify collective rights of peoples although the Charter does not mention how conflict between individuals and group rights are to be resolved.³³ For instance, while Article 19 provides that “all peoples shall be equal; they shall enjoy the same respect and shall have the same rights...,” Article 6 provides that “every individual shall have the right to liberty and to the security of his person...”³⁴ Such legal questions may be resolved by the African Court in accordance with its mandate.

Further, it admonishes member states of the African human rights system to recognize the rights, duties and freedoms identified in the Charter and also requires states to give effect to them by enacting appropriate legislation and policies at the domestic level and importantly, to ensure compliance.³⁵ It establishes a conceptualization of human importance by acknowledging that “human beings are inviolable.” Therefore it requests that human life and dignity be protected without arbitrary deprivation.³⁶

The African Commission was established in 1987 within the African Union (then OAU) to promote and protect human and peoples’ rights on the continent.³⁷ The protection of human rights is said to involve the attribution of particular rights and duties on individuals and peoples in order to fulfill their utility and realize their potential.³⁸ Based on its objective to promote and protect human and peoples’ rights on the continent, the Charter mandates the African Commission to perform certain important tasks in order to realize the said objective. The African Commission is further expected to provide authoritative interpretation of the Banjul Charter at the request of any state party.³⁹ The Commission is also required to lay down the principles for resolving legal dilemmas and challenges confronting human rights on the continent.⁴⁰

The promotion of human rights typically involves learning and teaching. Specifically, the Commission is required to undertake studies on the continent and research into the challenges confronting human and peoples’ rights, organize conferences, symposia, encourage national and local human rights institutions and actively engage in information dissemination as well as make recommendations to governments on ways of improving the human rights situation on the continent.⁴¹ The African Commission is empowered to collaborate with other African and international human rights based institutions.⁴² In spite of its mandate and objectives, the Commission has some very important weaknesses. As a quasi-judicial organ, it lacks jurisdiction to make legally binding decisions against parties who violate the charter provisions.⁴³ Rather it only has jurisdiction to make recommendations to the Assembly of Heads of state and governments when it has taken a decision on an application brought before it.⁴⁴

The Assembly may then decide to publish such applications on the Commission's recommendation or otherwise. Effectively, state party compliance is up to the state involved. What is worrying is the fact that the norm violating state is always part of the Assembly of Heads of state and government who decide on whether to publish the recommendations of the Commission or otherwise.

Critics have concluded that the African Commission has been unable to discharge the objectives for which it was established.⁴⁵ A reason for the Commission's lack of success is due to the fact that it has no power to grant specific remedies to victims of human rights violations.⁴⁶ A possible remedy to this malady of the Commission has been the establishment of a Court. Therefore, calls for the African Union to establish the African Court on Human and Peoples' Rights was a step in the right direction. Besides, the African Commission runs as a part time institution which, ordinarily, meets twice per annum for two-week duration in each session.⁴⁷

The coming into force of the Protocol to the Banjul Charter establishing the Court is important for a fundamental reason. It provided for the establishment of a judicial body to complement the functions of the African Commission which is a quasi-judicial body.⁴⁸ It is specifically mandated to complement the protective mandate of the commission which had its own limitation as a quasi-judicial body. The court has jurisdiction over all cases and disputes submitted before it concerning the interpretation and application of the Banjul Charter⁴⁹. The African Court is further empowered to provide advisory opinions on any legal matter concerning the Banjul Charter at the request of any state party or any organization on the continent that is recognized by the African Union.⁵⁰ The coming into force of the protocol establishing the Court as well as its establishment, has alleviated some challenges within the system, however, some weaknesses still persist. The court lacks the power of enforcement of its legally-binding decisions. Like the Commission, the court operates on part-time except that it has double the number of ordinary sessions of the Commission.⁵¹

The value of human life and human dignity the protection of which human rights is established cannot be valued in monetary terms. To that end, irrespective of the amount of resources invested in its protection, it is difficult to raise issues of cost-benefit discussions except under conditions of wastage of resources, gross inefficiency and absolute incompetence. The African human rights system lacks adequate resources for successful operation. Beside the court's inadequate budget of \$8.5 million in 2013, it has challenges of high staff turnover and it is understaffed.⁵² To this end, the effectiveness of the system is severely challenged.

Institutional Development of the African Union since its Establishment

An important measure of institutional effectiveness under the Young Framework is its ability to be dynamic, or rather versatile in a global environment that is fast advancing. In this regard, this section addresses the following questions. Can the institution adapt to changing circumstances without losing its capacity to handle the problem it was created to resolve? Is the institution able to survive intact in a changing social, biological, and physical environment? Since the coming into force of the Banjul charter, the African human rights system has seen remarkable evolution in its institutional structure. After the establishment of the Commission in 1989, the African system has hardly been static. Following the coming into force of the AU Constitutive Act, it has adopted the protocol to the Banjul Charter that has seen the establishment of the African Court, as well as the merger of the African Court with the African Court of Justice to create the future African Court of Justice and Human rights - a move that is expected to cut down the cost of operation.⁵³ It has also developed some other instruments to further the course of the promotion and protection of human rights on the continent. There is the African Charter on the Rights and Welfare of the Child adopted in 1990, the Protocol on the Rights of Women in Africa adopted in 2003, the African Charter on Democracy, Elections and Governance adopted in 2007 and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa in 2009.⁵⁴

Importantly, such an evolution has been occasioned by the need to correct challenges in the existing regime and also in line with global trends. Both the European and inter-American systems of human rights operate with a commission and a court of human rights simultaneously as a complementary body.⁵⁵ This wind of globalization cannot be said to be the only reason for the establishment of the African Court. The mandate of the Court is a definite manifestation of the acknowledgement of the weakness of the Commission as well as the acknowledged need to strengthen the protective mandate of the African human rights system. While the Commission had to submit its decision to the Assembly of Heads of State, the Court only calls on the Assembly of Heads of State in case of non-compliance. This is an instance of progressive evolution within the African Union.

While the Banjul Charter requires state parties to report bi-annually the legislative and policy measures taken with the view to promoting and protecting as well as to give effect to the rights and freedoms codified in the charter, it is not clear which institution state parties are required to submit such reports to, although the African Commission has been the body to receive such reports on account of its mandate. In spite of the coming into force of the protocol to the Banjul Charter establishing the Court, this issue has not been clarified although it has not amounted to a stalemate.

States' Responses to the African Human Rights System

In measuring the effectiveness of international institutions, it is important to consider the efforts of members of the institution towards implementation of, and the responses to, institutional principles. Within the African Union, state parties to the Banjul Charter and its protocol which establishes the Court, are the members of the human rights system. To that end, an assessment of the effectiveness of an institution without an examination of the membership response would not only be incomplete but inaccurate. Have state parties been able and willing to implement the principal provisions of the institutions in their jurisdictions? Have the provisions of the institution been internalized by state parties such that they ordinarily comply with the core principles? In other words, has the African human rights system made a difference?⁵⁶ This section assesses the level of compliance by state parties to the human rights system beyond the establishment of domestic institutions to promote human rights and governments' commitment to avoid human rights violations.

State responses to the African human rights system relates to the willingness of state parties not only to prevent human rights violations but also to ensure compliance with its recommendations, orders, findings, and decisions. African states have displayed willingness to at least make tactical concessions⁵⁷ by the near-universal ratification of the Banjul Charter. However, there is little correlation between norm ratification and compliance.⁵⁸ Meeting the requirements of this section of norm internalization is comparable to the final stage of Risse and Sikkink's spiral model of norm compliance,⁵⁹ where states assimilate and wholly accept the need to respect and protect human rights as an indispensable aspect of human existence. This norm consistent behavior is the point where international human rights provisions are completely institutionalized domestically, such that there is no alternative to norm compliance.⁶⁰ Further, norm compliance becomes the usual practice of state actors and this is reflected through public policy and institutional enforcement.⁶¹

It seems rather straight-forward that this tends to be the Achilles-heel of many human rights treaty bodies across the world, therefore hardly limited to Africa. So long as there continue to be human rights violations on the continent, it may seem difficult to claim that any human rights regime has attained the height of norm-consistent behavior. However, there is the need to make an important clarification. Those violations that are directly committed by the states should be differentiated from those which are perpetuated by others to which the state is called upon to grant remedy to the victims through domestic human rights institutions. Jurisprudence from the African human rights system indicates that both continue to occur. Therefore, at this level, it may be difficult to sustain that state parties to the African human rights system have internalized the provisions of the Banjul Charter and would ordinarily comply with.

A subsequently important observation is that human rights regimes across the world do make, at the least, a subtle acknowledgement of the impossibility of avoiding human rights violations across states by making provision for remedy in cases of human rights violations. This is further strengthened by the procedural requirement of the exhaustion of domestic remedies before filing an application to the African human rights system.⁶² This is to enable the state an opportunity to resolve and perhaps to provide remedy for an alleged violation. In this scheme, therefore, it is largely sound to consider state parties who are, at least, able to provide domestic remedies for human rights violations when they occur as having attained a rule-consistent behavior. Within human rights, therefore, it may suffice to say that a state which, at the very least, provides effective remedies for human rights violations is internalizing the norms. Evidently, very few countries in the global system come close to this threshold.

The relatively smaller number of applications lodged with the African system of human rights rather sends misleading signals about the human rights situation on the continent. Chances are that it is understood as a sign of fewer violations of human rights norms. On the other hand, when considered together with the challenges of enforcement, as well as non-compliance of decisions, orders and recommendations by state parties to the Banjul Charter, it bears testimony to the fact that the attainment of this norm-consistent behavior is still a long way ahead. Further, the smaller number of cases lodged with the African system may imply impediments applicants may be encountering in their quest to lodge a complaint. That is not within the purview of this study.

Since 2008, a total of 35 cases have been lodged to the African Court out of which nine have been finalized by judgment, 10 are pending and eight have been struck out.⁶³ The remaining has been referred to the Commission.⁶⁴ Some very notable cases of non-compliance are worth recalling for analysis, especially those regarding the order of provisional measures against Libya in the case brought to the Court by the Commission citing gross and systematic human rights violations by the state party against the people of Libya.⁶⁵

Importantly, this instance of non-compliance by Libya was the second following the order by the Commission.⁶⁶ Again the case of Ken Saro-Wiwa et al. versus Nigeria is worth discussing as the disrespect of the Republic of Nigeria cost the lives of Ken Saro-Wiwa and eight others who were members of the movement for the survival of the Ogoni people based in the Niger delta of the River State of the Federal Republic of Nigeria.⁶⁷ In Ethiopia, the government continues to use broad and vaguely constructed anti-terrorism legislation to repress the right to freedom of expression while the situation in the Central African Republic is such that human rights violations and humanitarian crises are rife. Muslims continue to suffer violation of their rights to freedom of religion and internal self-determination from Christian militia groups.⁶⁸

In Equatorial Guinea, about a thousand residents in the capital Malabo have been forcefully evicted from their homes and the buildings have been razed to the ground to make way for road construction. What is problematic is that compensation has not been paid to those inhabitants who are now without shelter.⁶⁹ Conditions of prisons and detention centers across the continent are terrible, simply inhumane. There are challenges of overcrowding, poor toiletry facilities, poor ventilation among others.⁷⁰

Based on these instances, it is obvious that the attainment of norm internalization has proven to be a challenge. This is not to imply that there are no instances of compliance and attempts at norm internalization. Notably, Uganda's death penalty placed on the heads on Ugandans found by law to be gay has been ruled unconstitutional by its constitutional court.⁷¹ Whereas it may not be entirely attributable to the African human rights system, it would be inaccurate to suggest that the African system was not useful in the repeal of the death penalty in Uganda. Some cases have recorded full compliance by state parties. In the case of Pagnouille (on behalf of Mazou) v Cameroun, the state party reinstated Abdulaye Mazou as a magistrate in the judiciary and paid a compensation following the recommendation of the African commission after it had found that Mazou's right to fair trial was violated by the state.⁷² In that case, Abdulaye Mazou was sentenced and imprisoned for five years without trial after which he was put under house arrest in 1984.⁷³ In Constitutional Rights Project V. Nigeria, the African commission found the state party in violation of charter provisions for the arrest and detention of five complainants without charge. Nigeria complied with the African Commission and discharged the complainants.⁷⁴ Again, Nigeria complied with the African Commission's recommendation to release four journalists who were tried and imprisoned by a military tribunal which violated fair trial provisions under the Banjul Charter. With no opportunity to appeal, the victims petitioned the African Commission whose decision went in their favor.⁷⁵

Institutional Variables of the African Human Rights System

The outcome of the assessment of the African human rights system's effectiveness or otherwise is also dependent on its own characteristics. Institutional characteristics and their dynamics are important in enhancing efficiency or retarding its success. The state parties to the African human rights system are the primary actors in ensuring the protection and the active creation of human rights in their respective jurisdictions. Meanwhile, not all states are equally capable to ensure the protection of human rights in their jurisdiction. Africa has strong, weak and failed states that have varying degrees of capacity to protect human rights.

As Nigeria, the biggest economy on the continent continue to struggle with the scourge of Boko Haram terrorist group in the north of that country, Somalia and both Sudan and South Sudan are considered failed states and therefore no capacity to protect human rights. More stable countries such as Ghana tend to lack the economic resources to ensure the increasing realization of socio-economic rights of Ghanaians. Libya that probably had the capacity to protect human rights was rather the violator of human rights. Over all, due to the socioeconomic challenges in Africa, very few states are able to attain the capacity to ensure the protection of human rights.

The African human rights system is seen to be adopting transformative rules which seem to be accounting for the progressive evolution of the African system for the better. Institutional processes continue to improve embracing transparency and effectiveness. The coming into force of the Protocol to the Banjul Charter establishing the human rights Court provided a remedy to the major weakness to the African Commission which was that it was a quasi-judicial body and therefore its decisions were not binding. Its adjudicative procedures are organized publicly and cases are published online. This marks a significant departure from the past when many of the cases were kept away from the public. Further, the Court, unlike the Commission, in the past, has adopted a deliberative approach to the treaty provisions before arriving at a judgment, thereby providing the basis for which judgments and orders are made. This serves the purpose of enhancing legitimacy as well as developing an intellectual order for the development of jurisprudence for academic purposes and the development of the foundation of human rights legal reasoning.

Another important dimension of the African human rights system is its ability to make decisions and pass judgments uninterrupted by state party interferences. However, it does not have powers on its own to enforce its decisions. It depends on the Assembly of Heads of State and Governments for enforcements and also depends on them for financing the operations of the system. The powers of the system are limited to those afforded by the charter and protocols as well as those granted by the Assembly of Heads of State and Governments.

We agree with critics that hold the view that the African human rights system has been designed to protect the sovereignty of states rather than to ensure the core of human rights protection, therefore it is ineffective.⁷⁶ The mandate and powers of the Commission to discharge its mandate is limited by Article 78 of the Banjul Charter. The African Commission is not permitted to conduct an in-depth study if it finds the existence of massive and widespread violation of human and peoples' rights except the Assembly of Heads of State and Governments make the request. Worse still, emergency situations are not exempted.⁷⁷ An important setback on transparency within the African system is the issue of confidentiality of the measures taken within the ambit of the Banjul Charter until the Assembly of Heads of State and Governments decide to make such actions known.⁷⁸ Further, the African Commission's considerations of individual communications during its sessions are closed to the public.⁷⁹

Young Framework on African Human rights Assessment

It is worth acknowledging that the assessment of institutions of global governance such as the African human rights system is hardly a straight forward endeavor. Yet, it is important in order to determine the utility and increasing importance or otherwise of such institutions. While the paper has been presented under subsections driven by the framework, the evaluation requires putting it all together for reflection. The assessment of the effectiveness of the African human rights system needs to recognize the African context. This is necessary for the following reasons.

First, the context to which the African human rights system was established is necessary in order to set a reasonable expectation for it, in the light of its peculiar strengths and challenges. Closely related to the first is the fact that such background knowledge will be important in the assessment of the theoretical objectives of the African system to know whether the objectives are appropriate and reasonably achievable. Unfortunately, the Young framework overlooks this. It is important to assess where an institution starts from and the background to that starting point. As identified by Welch,⁸⁰ the African continent has had a lengthy and agonizing association with colonialism with its attendant challenges of suppression and expropriation of natural resources. Others include the often weak state institutions with limited state capacity, the crisis of underdevelopment and the attendant slow pace of socioeconomic growth, inadequately resourced organs of the African Union, including the African human rights system.⁸¹ This is where Young's framework falls short. It does not factor in the context and the consequence of the context on the outcome of an assessment of institutional effectiveness.

Before the intervention in Libya based on the Responsibility to Protect, the African Union had passed a resolution against any form of intervention in Libya.⁸² The basis of the claim was that such interventions have often left states worse than before. The Western coalition blatantly disregarded the African Union and its resolution.⁸³ While this is an important consideration for an analysis on the African Union's effectiveness, the Young framework does not consider how other institutions of global governance respond to the claims of institutions of global governance.

Another weakness of the framework is that, in the determination of efficiency, it does not consider how an institution of global governance compares to similar institutions. This is very important. When the African Commission is compared to its counterpart in the Inter-American system of human rights, it is observed that whereas the Inter-American Commission on Human Rights receives an average of 1500 cases per annum and operate with only seven commissioners, the African Commission with 11 Commissioners receive about one percent of that number although the African Commission continues to carry back-log of cases.⁸⁴

Besides the socio-economic challenges of the African continent, it also has some very disturbing human rights concerns in both the past and the present for which effectiveness of the African human rights system is needed so badly. However, it is worth mentioning that the socio-economic situation of the continent has not been static either. The continent has improved overall in terms of regional GDP growth rates over the years and human rights norms are gaining greater currency by the years.⁸⁵

Conclusion

The African Human Rights System has come a long way, from the era of ambivalence to the establishment of a progressively developing human rights system observed after the constitutive act of the African Union. Yet, serious challenges persist. Based on the Young framework and the analysis presented in this paper, it is justifiable to claim that the African human rights system's effectiveness is rather limited. While some progress has been made in the African system, some important challenges persist, especially in the area of enforcement of the Commissions' decisions.⁸⁶ There is the need for African states to let go of the excessive guard on sovereignty when it comes to the protection of human and peoples' rights on the continent. While states claim human rights are fundamental to human existence, the practices suggest that sovereignty is more important than human rights. Whereas it may be justified that African states held on to state sovereignty in the immediate post-colonial era, such justifications are rather hard to sustain in the post-independence and post-Cold War era and beyond.

With the African Union's commitment to advancing the Africa cause in the international system as well as in inter-African relations, this will require an effective African Human Rights System that ensures that the rights of Africans are protected against states and politicians that are not committed to the protection and advancement of human rights broadly conceived. It should also ensure that the member states of the African Union do not just pay lip service to human rights but rather implement policies that will require states not to encroach upon the basic political and civil freedoms and simultaneously addressing the social and economic rights of their citizens.

Per the structure and powers of the African Human Rights System, efficiency depends on the state parties to a larger extent than the system itself. We agree with critics that the African system has been designed to achieve limited efficiency as this study has found.⁸⁷ The claims within the preamble of the Banjul Charter and the Protocol Establishing the Court need to be demonstrated beyond institutional development to involve institutional empowerment, greater independence and more importantly state compliance and norm internalization. This is an important direction by which human rights can realize its true meaning as rights of individuals and groups by virtue of their existence as human beings.

References

- Abdi, J. 2012. "The Admissibility of Subregional Courts' Decisions before the African Commission or African Court," *Mizan Law Review* 6 (2): 241-272.
- African Commission on Human and Peoples' Rights v. Libya. The African Court of Human and Peoples' Rights, Arusha, 15th March 2013.
- African Commission on Human and Peoples' rights v. Libya. The African Court of Human and Peoples' Rights, Arusha, 25th March 2011.
- African Union. <http://www.au.int/en/commission>
- Amnesty International. Human rights concerns <http://www.amnestyusa.org/our-work/countries/africa/central-african-republic>.
- Amnesty International. Human Rights Concerns <http://www.amnestyusa.org/our-work/countries/africa/equatorial-guinea>
- Asare, B. 2012. "Unitarism and presidentialism: Political institutions and corruption in public management in Ghana." *Journal of Public Administration and Policy Research* 4 (2):32-41.
- BBC News. <http://www.bbc.com/news/world-africa-28605400>
- Banjul Charter. African Charter on Human and Peoples' Rights adopted June 27, 1981, Banjul. OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986
- Bekker, G. "The African Commission on Human and Peoples Rights and Remedies for Human Rights Violations." *Human Rights Law Review* 13,(3): 499-528.
- Boafo-Arthur, K. 1999. Ghana: Structural Adjustment, Democratization, and the Politics of Continuity. *African Studies Review* 42(2): 41-72.
- Center for Free Speech v Nigeria, Communication No. 206/97, 2000. AHRLR 250
- Commissioner Med S.K. Kaggwa, Intersession Activity Report of special Rapporteur on Prisons and Conditions of Detention in Africa. Presented to the 53rd Ordinary Session of the African Commission on Human and Peoples' Rights. 09 to 23rd April 2013, Banjul, The Gambia.
- Constitutional Rights Project v Nigeria, Communication No. 153/96, 2000 AHRLR 248 (ACHPR 1999)

Constitutive Act of the African Union, Organization of African Unity (OAU). Adopted on 1st July 2000, OAU Doc. CAB/LEG/23.15 Lomé, Togo, entered into force on 26 May 2001.

Enonchong, N. 2002. "The African Charter on Human and Peoples Rights: Effective Remedies in Domestic Law?" *Journal of African Law* 46 (2): 197-215.

Hansungule, Michelo. "The African Courts and the African Commission on Human and Peoples' rights" 233-271.
http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/8_Hansungule.pdf

Human rights concerns in Central African Republic.

<http://www.amnestyusa.org/our-work/countries/africa/central-african-republic> accessed on 6th April 2015. <http://www.sudantribune.com/spip.php?article38332>. Accessed on 9th April, 2015.

Ikenberry, J. *Liberal Leviathan: The Origins, Crisis and Transformation of the American World Order*. Oxford: Princeton University Press, 2011.

Interights (on behalf of Safia Yakubu Husaini et al) v. Nigeria. African Commission on Human and Peoples' rights, Banjul, 27th April-11th May 2005.

International PEN, Constitutional Rights Project, Civil Liberties Organization and Interights (on behalf of Ken Saro-Wiwa Jnr.) V. Nigeria. African Commission on Human and Peoples' rights, Banjul, 31st October, 1998.

Kegley, C Jr. & Blanton, S.L. 2010. *World Politics: Trend and Transformation*, Wadsworth: Cengage Learning.

Louw, Lirette and Viljoen, Frans. "State Compliance with the Recommendation of the African Commission on Human and Peoples Rights." *American Journal of International Law*. Vol 101 No. 1, 2007: 1-34.

Mutua, Makau. "The African Human Rights Court: A Two-Legged Stool." *Human Rights Quarterly* Vol. 21 No. 2, 1999: 342-363.

Okere, B. Obinna. "The Protection of Human Rights in Africa and the African Charter on Human and Peoples Rights : A Comparative Analysis with the European and American Systems." *Human Rights Quarterly* vol 6 no 2, 1984: 141-159.

- Pagnouille (on behalf of Mazou) v. Cameroon, Communication No. 39/90, 2000 AHRLR (ACHPR 1997)
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, June 9, 1998, OAU doc. oau/leg/exp/afchpr/prot (iii).
- Risse, Thomas and Sikkink Kathryn "The Socialization of Human Rights Norms" in *The Power of Human Rights International Norms and Domestic Change*, Risse Thomas, Ropp C. Stephen And Sikkink Kathryn, 1-38. Cambridge: Cambridge University Press, 1999.
- Umzurike, U.O. 1983. "The African Charter on Human and Peoples Rights." *American Journal of International Law* 77 (4) : 902-912.
- UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Adopted by General Assembly Resolution 217 A(III) of 10 December 1948
- Viljoen, F. 2011. "Human Rights in Africa: Normative, Institutional and Functional Complementarity and Distinctiveness." *South African Journal of International Affairs*, 18 (2): 191-216.
- Viljoen, F. 2012. *International Human Rights Law in Africa*. Oxford, 2nd Edition: Oxford University Press.
- Waltz, K. (1979). *Theory of International Politics*. Michigan: Addison-Wesley Publishers.
- Welch Jr. Claude E. "The African Commission on Human and Peoples Rights: A Five-Year Report and Assessment." *Human Rights Quarterly* Vol 14 No 1, 1992: 43-61.
- World Bank Report on Africa. <http://www.worldbank.org/en/region/afr/overview> . Accessed on 20th April, 2015
- Young, Oran R. "The Effectiveness of International Institutions: Hard Cases and Critical Variables." In *Governance Without Government: Order and Change in World Politics*, James N Rosenau and Ernst-Otto Czempiel, 160-192. Cambridge: Cambridge University Press, 1992.

Notes

¹Young presents his chapter on “The Effectiveness of International Institutions: Hard Cases and Critical Variables” in chapter six of *Governance Without Government: Order and Change in World Politics*.

²Waltz, 1979

³Boafo-Arthur, 1999

⁴Viljoen, 2012

⁵Umozurike, 1983

⁶Young, p161

⁷ibid

⁸ibid

⁹Young, p162

¹⁰Young, 164

¹¹ Young p 163

¹²Constitutive Act of the African Union, Organization of African Unity (OAU). Adopted on 1st July 2000, OAU Doc. CAB/LEG/23.15 Lomé, Togo, entered into force on 26 May 2001.

¹³Banjul Charter. African Charter on Human and Peoples' Rights adopted June 27, 1981, Banjul. OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

¹⁴Viljoen, 2011

¹⁵ Viljoen, 2011 p2

¹⁶Okere, 1984

¹⁷ Ikenberry, 2011

¹⁸Umozurike, 1983

¹⁹Viljoen, 2012

²⁰ U. O. Umozurike p 902, Viljoen 2012, p159

²¹Viljoen, 2011

²² Ibid 902-903

²³ ibid

²⁴Viljoen, 2012

²⁵Ikenberry, 2011; Viljoen, 2012

²⁶Ibid. 159

²⁷ Welch, 1992

²⁸Article 30, Banjul Charter

²⁹ Viljoen, 2012

³⁰Constitutive Act of the African Union, Organization of African Unity (OAU). Adopted on 1st July 2000, OAU Doc. CAB/LEG/23.15 Lomé, Togo, entered into force on 26 May 2001.

³¹ Viljoen, 2012

³²Paragraph 5, preamble of the Banjul Charter

-
- ³³Banjul Charter
³⁴ibid
³⁵Article 1, Banjul Charter
³⁶Article 4, Banjul Charter
³⁷Article 30, Banjul Charter
³⁸Okere, 1984
³⁹Article 45(3)
⁴⁰ Banjul Charter
⁴¹Article 45 (a,b), Banjul Charter
⁴²Article 45 (c)
⁴³Viljoen, 2011
⁴⁴Enonchong, 2002
⁴⁵ ibid
⁴⁶ ibid
⁴⁷ Abdi Jibril Ali, 2013 The Admissibility of Sub-regional Courts’ Decisions Before The African Commission or African Court
⁴⁸Article 1, Protocol to the Banjul Charter.
⁴⁹Article 3, Protocol
⁵⁰Article 4
⁵¹ Abdi Jibril Ali, 2013
⁵² ibid
⁵³Hansungule, Michelo. “The African Courts and the African commission on human and peoples” rights. 233-271.
http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/8_Hansungule.pdf
⁵⁴ Viljoen, 2012
⁵⁵Until the abolishment of the European Human Rights Commission in 1998
⁵⁶ Viljoen and Louw, 2007
⁵⁷Risse and Sikkink, 1999
⁵⁸ Viljoen, 2011
⁵⁹ Risse and Sikkink, 1999
⁶⁰ Risse and Sikkink, 1999
⁶¹ ibid
⁶² Article 56 (5), Banjul Charter
⁶³ African Court website, <http://www.african-court.org/en/index.php/2012-03-04-06-06-00/cases-status1> accessed 6th April, 2015

⁶⁴ibid

⁶⁵African Commission on Human and Peoples' Rights v. Libya. The African Court of Human and Peoples' Rights, Arusha, 15th March 2013

⁶⁶ ibid

⁶⁷International PEN, Constitutional Rights Project, Civil Liberties Organization and Interights (on behalf of Ken Saro-Wiwa Jnr.) v Nigeria. African Commission on Human and Peoples' rights, Banjul, 31st October, 1998.

⁶⁸ Human rights concerns <http://www.amnestyusa.org/our-work/countries/africa/central-african-republic>

⁶⁹ Human rights concerns <http://www.amnestyusa.org/our-work/countries/africa/equatorial-guinea>

⁷⁰Commissioner Med S.K. Kaggwa, Intersession Activity Report of special Rapporteur on Prisons and Conditions of Detention in Africa. Presented to the 53rd Ordinary Session of the African Commission on Human and Peoples' Rights. 09 to 23rd April 2013, Banjul, the Gambia.

⁷¹ BBC <http://www.bbc.com/news/world-africa-28605400>

⁷²Pagnouille (on behalf of Mazou) v. Cameroon, Communication No. 39/90, 2000 AHRLR (ACHPR 1997)

⁷³ibid

⁷⁴ Constitutional Rights Project v Nigeria, Communication No. 153/96, 2000 AHRLR 248 (ACHPR 1999)

⁷⁵Center for Free Speech v Nigeria, Communication No. 206/97, 2000 AHRLR 250

⁷⁶Viljoen, 2011

⁷⁷ Article 58, Banjul Charter

⁷⁸Article 59, Banjul Charter

⁷⁹Viljoen, 2007

⁸⁰Welch 1992

⁸¹ibid

⁸² African Union, <http://www.au.int/en/commission>

⁸³<http://www.sudantribune.com/spip.php?article38332>. Accessed on 9th April, 2015.

⁸⁴ Abdi Jibril Ali, 2013

⁸⁵World Bank, <http://www.worldbank.org/en/region/afr/overview> Accessed on 20th April 2015

⁸⁶Hansungule, Michelo. "The African Courts and the African commission on human and peoples' rights. 233-271.

http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/8_Hansungule.pdf

⁸⁷Viljoen, 2011; Hansungule