UNIVERSITY OF ESSEX

LLM IN INTERNATIONAL HUMAN RIGHTS LAW

LW919 - PROMOTION AND PROTECTION OF HUMAN RIGHTS IN AFRICA
2011-2012

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Introduction

Welcome to the course! The aim of the course is to provide a detailed examination of the structures in the African regional systems for the promotion and protection of human rights. We will consider the role of the Organization of African Unity/African Union and African Regional Economic Communities (REC) and focus in particular on the African Charter on Human and Peoples’ Rights, the work of its Commission and the work of the judicial institutions of RECs on human rights issues.

Teaching and assessment

The course will be taught by way of a series of mini-seminars, which will take place over the period Sunday 12 to Friday 17 February 2012. Reading for each seminar is provided below and it is expected that you will spend the same time preparing for these seminars as you would for any other course. This will require you to be organised and read all the material in advance of the sessions. Reading is separated into texts, essential and further reading. You are expected to obtain copies and to read the texts and to have read at least the essential reading. Additional reading is provided for your interest and further research.

Seminars will be taught by Frans Viljoen, who is based in Pretoria, South Africa. If you need to get in touch with me my details are as follows:

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Please feel free to email me before and after the weekend session.

Assessment will be by way of take-home exam.
Structure of course

Day 1

Seminar 1: Introduction to the course; the notion of human rights in Africa; overview of the development of the African human rights system; the political landscape and institutional architecture: The OAU/AU, African Economic Community (AEC), New Partnership for Africa’s Development (NEPAD), the African Peer Review Mechanism (APRM), and their role in human rights promotion and protection; the Regional Economic Communities (RECs) and human rights

Day 2

Seminar 2: The African Charter on Human and Peoples’ Rights: core rights and concepts (individual rights; limitations (‘claw-back’ clauses); individual duties; indivisibility/ socio-economic rights); collective rights, right to development

Seminar 3: Introduction: The main mechanism for the promotion and protection of human rights in Africa: the African Commission on Human and Peoples’ Rights

Day 3

Seminar 4: Continuation: The main mechanism for the promotion and protection of human rights in Africa: the African Commission on Human and Peoples’ Rights

Seminar 5: Moot Court Exercise: Submitting a communication to the African Commission on Human and Peoples’ Rights

Day 4

Seminar 6: Minority rights: indigenous peoples’ rights in Africa; rights of sexual minorities in Africa

Seminar 7: Women’s rights in Africa (the Protocol to the African Charter on the Rights of Women in Africa)

Day 5


Day 6
Seminar 9: The African Human Rights Court; implementation and enforcement of the African human rights system: concept of implementation; the African Court on Human and Peoples’ Rights; treaties not yet in force (IDP Convention, Charter on Democracy, Elections and Governance); other bodies; the primacy of the national system

Access to documents and information on the African system

Information and material on the human rights system in Africa was, in the past, limited and a little more difficult to find than perhaps that available on the European or UN systems. This is now changing. The material provided on the reading lists should be available in the library. There is no set textbook in this area but you will be asked to read a number of core books, although because some of these are expensive it might not be worth your while buying copies of them. Most, but not all, of these are in the library:


Journals that are particularly relevant in this area (besides the mainstream ones on human rights) are:

African Human Rights Law Journal (University of Pretoria) AHRLJ
African Journal of International and Comparative Law AJICL
African Yearbook of International Law
Comparative and International Law Journal of South Africa
It is essential to read primary material. The following books provide some:


**Web-sites**

The following web sites should be consulted for other documentation of the African Commission, the OAU/AU and Regional Economic Communities:

- [http://www.au.int](http://www.au.int): African Union website
- [http://www.ecowas.int](http://www.ecowas.int): ECOWAS website
- [http://www.sadc.int](http://www.sadc.int): SADC website
- [http://www.eac.int](http://www.eac.int): EAC website
- [http://www.nepad.org](http://www.nepad.org): NEPAD website
- [http://www.iss.co.za](http://www.iss.co.za): Institute of Security Studies in South Africa holding archive of all OAU and AU materials

The following non-governmental organisations also contain documents of the African Commission:

- [http://www.up.ac.za/chr](http://www.up.ac.za/chr): Centre for Human Rights, University of Pretoria. This website also has links to ‘Human Rights Law in Africa’ series which contains details of constitutions of African states, as well as human rights jurisprudence from their domestic courts and other useful information on the country
- [http://www1.umn.edu/humanrts/africa](http://www1.umn.edu/humanrts/africa): University of Minnesota

Also see, for the case-law of the African Commission and domestic African courts, the African Human Rights Law Reports (AHRLR), published by the Centre for Human Rights, available at [http://www.chr.up.ac.za](http://www.chr.up.ac.za)

All African Human Rights law Journal (AHRLJ) articles that are older than a year are available at [http://www.chr.up.ac.za/centre_publications/ahrlj/ahrlj_contents.html](http://www.chr.up.ac.za/centre_publications/ahrlj/ahrlj_contents.html)
Seminar 1: Introduction to the course; the notion of human rights in Africa; overview of the development of the African human rights system; the political landscape and institutional architecture

This seminar will provide an introduction to the course and start by examining the concept of human rights in Africa. It will also place the African human rights system, holistically, in its historical context. This seminar will examine the OAU and its evolution into the AU; the African Economic Community (AEC), New Partnership for Africa’s Development (NEPAD), the African Peer Review Mechanism (APRM), and their role in human rights promotion and protection. It also examines the Regional Economic Communities (RECs) and their role in realising human rights.

**Texts (see Compendium, or [www.au.int](http://www.au.int))**

**OAU/AU treaties**

1969 OAU Convention governing the Specific Aspects of Refugees Problems in Africa (see Compendium)

African Charter on Human and Peoples’ Rights

Charter of the Organization of African Unity

Constitutive Act of the African Union

African Charter on Human and Peoples’ Rights

New Partnership for Africa’s Development (NEPAD)

**Regional Economic treaties and Protocols**


**Essential Reading**


**Further Reading**

Akinyomi, AB, ‘The Organization of African Unity and the Concept of Non-Interference in the Internal Affairs of Member States’, 46 *BYIL* (1972-1973) 393

Amate, COC, _Inside the OAU: Pan-Africanism in Practice_, 1986


Quashigah, EK and Ofakor, OK, Legitimate governance in Africa : international and domestic legal perspectives, Kluwer Law, 1999, Chapters 1 and 2


Questions

1. It would be wrong to say there was an ‘African’ conception of human rights. Human rights by their very nature and as defined in international law are universal. Discuss

2. The legal protection of human rights is founded in the West and has been yet another requirement imposed on African states. Discuss.

3. Were human rights protected in traditional African societies? Is “human rights” a Western concept? What was the impact of colonialism on human rights in Africa?

4. Human rights played little part during the creation of the OAU but they have considerable significance in the African Union’s Constitutive Act and the Regional Economic Communities constitutive treaties. This indicates increased attention to the issue by African states. Do you agree with this statement?

5. Describe the extent to which human rights were of interest to African states when they established the OAU and to the OAU during its development over the past 40 years.

6. Should Regional Economic Communities be involved in the promotion and protection of human rights in Africa?

7. Does a real danger of overlapping and conflicting mandates between regional and sub-regional human rights mechanisms arise?

This seminar provides a critical overview of the development of the African human rights norms. It will look in general at the rights in the African Charter and the other regional human rights treaties comparing those contained with other international instruments. It looks specifically at limitations (‘claw-back’ clauses); individual duties; and indivisibility/socio-economic rights. The ‘peoples’ rights in the African Charter are also considered in this seminar.

Texts

African Commission Guidelines for National Periodic Reports, Second Annual Activity Report, See Murray and Evans, Documents of the African Commission

Essential Reading
Further Reading


Questions

2. What are the socio-economic rights protected under the African Charter? Do these rights entail state obligations to ‘fulfil’?
3. Regional human rights norms protect the rights of individual. Discuss.
4. The approach of the African Commission to contentious rights has been commendable and should be examined closely. Discuss.
5. Do you support the ‘implied rights’ theory embraced by the Commission in the Ogoniland (*SERAC*) case?
6. Of all the international and regional treaties on human rights the Africa Charter takes the most sensible approach to group rights. Discuss.
7. Does the right to development as enshrined in the African Charter have any legal significance?
This seminar examines the work of the African Commission, how it operates and in particular the communications and state reporting functions. The appointment of special mechanisms will also be considered.

**Texts**

Articles 47-59, and 62 ACHPR


See the guidelines on the Commission's website with respect to state reporting and communications.

Resolution on Granting Observer Status to National Human Rights Institutions in Africa

Guidelines to National Periodic Reporting under Article 62 of the African Charter on Human and Peoples’ Rights (Amended Guidelines)

Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human Rights with the African Commission on Human and Peoples’ Rights

**Essential Reading**


**Further Reading**


**Questions**

1. The reporting procedures under the ACHPR are really not useful as an enforcement mechanism at all and should no longer be used. Discuss.
2. Comment on the failure of the Commission to make public the Concluding Observations adopted after the examination of state reports.
3. What effective steps can be undertaken against states that fail to report?
4. The regional human rights bodies do not suffer from lack of powers to enforce the rights in the Charter and other human rights treaties, just an inability to exploit them to their full potential. Discuss.

**Seminars 4 and 5: Submitting a communication to the African Commission on Human and Peoples’ Rights**
The seminar takes a critical view of the steps through which a submission of a communication to the African Commission has to proceed.

**Texts**

www.achpr.org, see Documentation, Annual Reports, see Annexures in relevant Annual Reports, and from Heyns & Killander (eds) *Compendium of Key Human Rights Documents of the African Union* (2006):

Communication 147/95 (joined with 149/96), Jawara v The Gambia (13th Activity Report)

**Essential Reading**


**Further Reading**


**Questions**

1. Assume that you are working with an NGO based in Britain. Prepare a communication on a current human rights violation in an African state. What would be the greatest obstacles in making a successful submission to the African Commission?

2. Why have so relatively few communications been submitted to the African Commission?

3. Should the ‘doctrine’ of ‘margin of appreciation’ be applied by the African Commission?

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**Seminar 6: Minority rights: indigenous peoples’ rights in Africa; rights of sexual minorities in Africa**

In this seminar, the appropriateness of the concept ‘indigenous peoples’ to Africa is considered in the context of the African Charter. This seminar further aims to examine the relevance of the African Charter and the African Commission for sexual minorities in Africa.

**Texts**

Communication 75/92, Katangese Peoples’ Congress v Zaire, Eighth Annual Report, [http://www.up.ac.za/chr/ahrdb/ahrdb.html](http://www.up.ac.za/chr/ahrdb/ahrdb.html)


Communication 488/1992, Toonen v Australia, UN Doc CCPR/C/50/D/488/1992 (UN Human Rights Committee)

Essential Readings

Further Readings

Questions
1. Indigenous peoples are a difficult concept in Africa and should be discarded. Discuss.
2. The sessions of the African Commission have provided a very viable forum for indigenous peoples’ NGOs in Africa. Why?
3. Are LGBTI people protected under the Charter?
4. Why are sexual minority rights violated on such an extensive scale in Africa?
5. What would be the best arguments on behalf of a LGBTI NGO applying for observer status with the African Commission?

Seminar 7: Women’s rights in Africa
This seminar investigates the rights of women in Africa, as protected in the Protocol to the African Charter on the Rights of Women in Africa and other AU instruments; and a comparison is made with CEDAW.

Texts
Solemn Declaration on Gender Equality in Africa, Assembly/AU/Decl.12 (III), Rev.1, http://www.africa-union.org (go to Declarations of 3rd Ordinary Session of Assembly of Heads of State)
Decision on Mainstreaming Gender and Women’s Issues in the African Union, CM/Dec.684, July 2002 (you can find this on the AU website or the ISS websites)
Essential Reading

Further Reading
Fox and Hasci, The Challenges of Women’s Activism and Human Rights in Africa, Edwin Mellen Press, 1999

Questions
1. Women’s rights are easy for the OAU and others to focus on as they do not threaten the political power of the state (Fareda Banda). Discuss
2. The Protocol on the Rights of Women in Africa is an odd combination as it omits certain rights yet builds on others in CEDAW and elsewhere. Discuss.
3. It has been suggested that the African Commission does not have the competence to consider communications submitted to it alleging violations of the Women’s Protocol. Do you agree with this view?

Seminar 8: Children’s rights in Africa
This seminar compares the African Charter on the Rights and Welfare of the Child with the UN Convention on the Rights of the Child; and interrogates the mandate of the Committee of Experts on the Rights and Welfare of the African Child.

Texts
African Charter on the Rights and Welfare of the Child
UN Convention on the Rights of the Child

Essential Reading

Further Reading

Questions
Is the African Charter on the Rights and Welfare of the Child an unnecessary restatement of the UN Convention on the Rights of the Child?

Seminar 9: The African Human Rights Court; implementation and enforcement of the African human rights system; treaties not yet in force; the future

This seminar highlights the importance of implementation and enforcement of remedies. It investigates the reasons for the current weakness in implementation, and ponders on future prospects for improvement.

Texts (see also Compendium)
Protocol on the African Court on Human and Peoples’ Rights, see http://www.achpr.org/html/basicinstruments.html#3
Rules of the African Court on Human and Peoples’ Rights

Essential Reading
IDP Convention (Kampala Convention) (2009)
African Charter on Democracy, Elections, Governance (2007)

Further Reading
Questions

1. Is the advent of the African Court on Human and Peoples’ Rights likely to lead to the improvement of implementation of the African regional human rights system?
2. Is the fusion of the African Court on Human and Peoples’ Rights with the AU Court of Justice a good idea?
3. Is there a difference between ‘implementation’ and ‘compliance’? Is ‘compliance’ only a matter for states to ensure?
4. What are the major future developments and the prospects for improved human rights realisation through the African regional human rights system?