International Organisations in implementing strategies against Human Rights Violations. A comparative analysis of the work of the African Union and the Council of Europe.

By

Primerose Lucy Maposa

A Dissertation

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Supervised by Professor Kalliopi Chainoglou

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Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
ACtJHR	African Court of Justice and Human Rights
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
APRM	African Peer Review Mechanism
AU	African Union
CoE	Council of Europe
CM	Committee of Ministers
DRC	Democratic Republic of Congo
ECHRa	European Convention for the Protection of Human Rights
ECHRb	European Convention on Human Rights (as amended by the 14th Protocol)
ECOWAS	Economic Community of West African States
ICCPR	International Covenant on Civil and Political Rights
ICCNIs	International Coordinating Committee of National Institutions
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice IHRL International Human Rights Law
NEPAD	New Partnership for Africa's Development
NGOs	Non-Governmental Organizations
NHRIs	National Human Rights Institutions
OAS	Organization of the American States
OAU	Organization of African Unity
RC	Russian Constitution
RECs	Regional Economic Communities
RCC	Russian Constitutional Court
UDHR	Universal Declaration of Human Rights
UN	United Nations
VCLT	Vienna Convention on the Law of Treaties
SADC	Southern Africa Development Community

Abstract

The international proliferation of protection mechanisms for human rights has indeed been applauded for the protection of human rights, holding states accountable for human rights violations. Despite the progress in many areas on codification, implementation and recognition, human rights institutions are increasingly becoming less popular with member states and human rights violations are still rampant. New challenges continue to rise because of the gradual transformation by mounting pressures of globalisation and important to this research is the quest to know how International Organisations tackle these rising challenges.

The African regional system of human rights is often defined by its normative poverty and its institutional ineffectiveness whereas the European regional human rights system is often applauded for its effectiveness and progressiveness. A comparative analysis of the scope and nature of human rights policies, existing institutions, challenges, and various attempts by both the Council of Europe and the African Union will pave way for the illumination of what the best practices maybe. At the same time, eliciting lessons which can be drawn from experiences of the European system to its African counterpart.

Key Words*: International Organisations, Regional Human Rights Systems, African Regional Human Rights System, European Regional Human Rights System*

CHAPTER 1: INTRODUCTION

1.1 Background of the Study

Regional human rights systems are international organizations or schemes for promotion and protection of human rights within a certain geopolitical region. The European system notably has the Council of Europe as the first regional organization to enlist human rights as one of its foundational principles. In 1950, the Convention for the Protection of Human Rights and Fundamental Freedoms was adopted by the member states of the Council of Europe. In a similar manner to the Council of Europe, the foundation of the African human rights system was laid by the Organization of African Unity. Cornerstone of the African system is the African Charter on Human and Peoples' Rights, often called the Banjul Charter.

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1.1.1 African Union

The first step towards Human Rights in Africa at a regional level was the formation of the Organization of African Unity (OAU) which was created in 1963 in the context of political instability. Its primary goal was based on African Solidarity. According to the Preamble to the Charter of the OAU, its mandate includes promoting solidarity among the independent African countries, safeguarding their independence, sovereignty, territorial integrity, and fighting against neo-colonialism in all its forms. Although the OAU Charter affirms its adherence to the Charter of the United Nations and to the Universal Declaration of Human Rights, it fails to mention the promotion of human rights specifically as one of its goals. The first important step in the protection of Human Rights in Africa was the adoption of the June 1988 protocol of the African Charter on Human and People's Rights (African Human Rights Courts) by the Organisation of the African Unity. The African Union constitutive Act contains the first formal and presentation of political commitment to Human Rights in a binding instrument by African States. Article 3 of this same act entails the following objectives in relation to Human Rights

1. "*encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;*
2. *"promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;"*
3. *coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;*

What eventually prompted the dissolving of the OAU was based on how the organization issued strongly worded resolutions urging the need to focus on diplomatic ties with colonial and racist regimes while neglecting the violations in independent African states. An example was President Idi Amin's rule in Uganda from 1971 to 1979 which was described as a "reign of terror" by Amnesty International. Evidence given to the United Nations states that an estimated 250,000 people were killed with incredible cruelty while thousands fled into exile. (Warren, 1980) This prompted other African states to boycott assembly on grounds of President Amin's human rights violations, leading eventually to the need to form a new organization that had upholding individual human rights at its core. In July 1979, at its sixteenth session, the OAU, resolved to conduct a meeting of highly qualified experts to prepare a preliminary draft of the 'African Charter of Human and Peoples' rights. Apart from establishing objectives, the African Union Constitutive envisaged several human rights organs which include the African Court on Human Rights, Peace and Security Council of the African Union and the commission on Human and People's Rights. To precisely put it across these bodies were crafted in an interdependency manner to put human rights at the heart of interstate cooperation in Africa as enunciated by (Chide, 2001)

The African Commission on Human and Peoples' Rights' mandate takes three forms namely promotional, protective and interpretative. Article 45(3) of the Charter provides that the African Human Rights Commission can interpret the provisions of the African Charter on Human and Peoples' Rights at the request of a state party, the AU, or any African Organization recognized by the AU. Article 45 (4) provides that the African Human Rights Commission shall 'perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government' in addition to the specified mandates. Under the promotional mandate, the Commission promotes awareness of human rights in Africa through different methods such as publication, research on human rights problems in Africa while collaborating with African and other international institutions concerned with the protection of human rights. The protective mandate of the Commission generally provides that the Commission shall 'ensure the protection of human and peoples' rights under conditions laid down by the present Charter" through examination of State reports, inter-state communications, and in limited cases, individual complaints of human rights violations.

1.1.2 The Council of Europe

The primary objective of the Council of Europe was European unity just like how that of the OAU was African solidarity. In May 1949, the statute of the Council of Europe was signed by ten states declaring "safeguard and development of human rights and fundamental freedoms" as one of its aims. This aim sparked controversy as some states opposed its inclusion because they considered that the United Nations was already dealing with it (Clarke, 2017). After a series of meetings, the European Convention on Human Rights (ECHR) was adopted in 1950 and entered into force in 1953 when Luxembourg became the tenth state to ratify it.

The convention was the first human rights treaty, contrary to the Universal Declaration on human rights which was merely a proclamation and not a treaty hence not explicitly or legally binding any state. The ECHR laid out fourteen fundamental rights and established two enforcement bodies namely the European Commission of Human Rights (which was a permanent body examining all incoming applications) and the European Court of Human Rights (a part time body deciding a small number of cases in periodic settings). However, the European Commission of Human Rights became obsolete in 1998 when its functions were usurped by the European Court of Human Rights, which was restructured and is still active to date. The distinctive feature of the progressive recognition of the right of individual petition made the existence of Council of Europe unique and necessary. Article 25 of the European Convention on Human Rights states that "any person, non-governmental organizations or group of individuals, tasking the court to examine complaints brought by individuals against member states hence acting as supra-national courts. (Dikov, 2018) Of course this provision caused a lot of contention among member states hence it took five years for it to finally come into force. The content was sparked by the fact that each state had to file a declaration of agreement to article 25, allowing their own citizens to file complaints against their respective governments in the commission.

While the European Convention of Human Rights is the cornerstone of the organization, more conventions have been put in place across the years as the Council of Europe constantly evolves in an attempt to match the changing international climate. These include:

- ***The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment***
- ***European Convention on the Exercise of Children's Rights, Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse***

- ***Convention on Preventing and Combating Violence against Women and Domestic Violence***
- ***The European Convention on Action against Trafficking in Human Beings***

1.2 Objective of the Study

For functional efficacy of the African human rights system to be enhanced, the study juxtaposes two International Organizations with the intention of eliciting lessons which can be drawn from experiences of the European system to its African counterpart. This study examines the policies and structures developed under the auspices of the AU and the Council of Europe, in relation to human rights, and their implications for the enforcement of human rights. It seeks to discover if the adoption of the policies will, in themselves, bring about greater respect for human rights in Africa, and focuses on the possibilities of these policies in solving the nagging problem of non-compliance with human rights norms in Africa. In this respect, it depicts the potential human rights enforcement mechanisms offered by the union of states, and further proposes and explores the possibility of a change in policy implementation and the issue of political willingness as the much-needed 'panacea' to the problem.

1.3 Statement of the problem

From the above background it can be noted that despite the existence of enforcement mechanisms, human rights violations are still prevalent in Africa because lack of political will and enforcement.

1.4 Significance of the Study

The significance of this study lies in its contribution to the existing literature on the AU and human rights protection in Africa by juxtaposing to a similar Inter-state organization in Europe, specifically, in its exploration for a solution of the problem of enforcement of human rights in and lack of political willingness within the framework of norms and offered by the organizations in question. The research should be able to illustrate whether their human rights policy is fractured, cohesive or consistent. This will be done by exploring some of the current and latest issues of concern as far Human Rights are concerned from violations to mechanisms and procedures. However, the research will focus on two specific human rights violations namely Female Gender Mutilation and Enforced Disappearances.

1.5 Research Questions

1. How are the two International Organizations in question paving way in the implementation and effectiveness of Human Rights policy
2. In the case of the African Union, how can the states, institutions and their mandates be synergized to achieve effective enforcement?
3. How do the two regional systems differ from one another?
4. What lessons can the African Union learn from the Council of Europe in terms of policy implementation and response to Human Rights violations?

1.6 Literature Survey

Though plenty of scholarly works exists about the two systems, there is lack of comparative studies which try to elicit similarities and differences between the two systems. Other than providing a descriptive account of the African system and its ineffective policies and examining the structure of the categorically effective European system, the existing literature hardly points out lessons which can be drawn from experiences of the effective European system.

1.7 Scope of the Study

The study focuses geographically on Africa and Europe and specifically focuses on the work of the African Union and the Council of Europe. It narrows the Human Rights violations by looking at only two Human Rights violations namely Enforced Disappearances and Female Gender Mutilation rights.

CHAPTER 2: LITERATURE REVIEW

2.1 Why focus on Regional Systems

Considering the relative linguistic and cultural homogeneity, it is easier to adopt Human Rights dimensions and instruments at the regional level (Smith, 2010) He also echoes that enforcing Human Rights treaties at a regional level is more unexacting considering the states strongly comply to the regional schemes because of the direct impact of diplomatic pressure from nearby states. Can the European rights system and the African human rights system even be compared? This is a question that is necessary to address. In terms of achievements, the two regional human rights systems seem to be incomparable because the European system is identified as one of the most effective if not the best, regional human rights system while the African System seems to be lagging, making it a week system.

There seems to be a lot of literature comparing the African Union and the European Union generally as regional organizations and not as human rights bodies. The difference with this research is that it seeks to investigate why and how the African system shows not only slow improvement but a marginal one in terms of human rights violations. This factor leads to another question; what are the main reasons for the existing functional discrepancy between the two systems? It is against this backdrop that the comparative examination of these two regional systems is necessitated. (Tucker, 1983) attempted to compare the regional human rights bodies in Europe and Africa but, the book seems to be more focused on the efficacy of international human rights protection. In his book titled *Regional Human Rights Models In Europe And Africa: A Comparison," Syracuse Journal of International Law and Commerce,* Tucker juxtaposes the European Convention and the African Charter. The European Commission is applauded for how it stated precise definitions of the specific rights to be safeguarded and of the permitted limitations on those rights. This poses as one of the strengths of regional organizations as they are more specific in terms of highlighting and determining whether a state has violated its obligations under the convention unlike the Universal Declaration which merely enumerated human rights. Tucker's analysis helps in understanding how the Convention not only defined the scope of human rights but also established the necessary machinery for ensuring that the rights are being observed.

Even though the African Charter is similar to the European Convention in the way it seeks to protect civil and political rights, Tucker notes that it goes beyond the traditional Western concept of individual rights by equally emphasizing on economic, social, and cultural rights. The African Charter reflects how colonization and struggle for independence had an influence in its draft. It maintains that nothing shall justify the domination of one people by another while declaring that all peoples have the inalienable right to self-determination. Furthermore, it proclaims the right of colonized or oppressed peoples to emancipate themselves by any means recognized by the international community and asserted that all peoples who are struggling to liberate themselves from foreign domination have the right to assistance from states party to the African Charter. Tucker's book gives a detailed background on how both the regional organizations came into existence and compares their mandate. In as much as the book provides detailed information on how and why the European system is applauded, it was written in 1983 before the Commission was dissolved in the Council of Europe and before some African states had achieved their independence from colonial rule. A lot of changes have taken place over the past three decades in terms of both the regional organizations structure and statutes guiding them; making Tucker's comparative study old.

(Clarke, 2017) offers a very insightful guide in understanding the position of the European Court of Human Rights (ECHR) giving an excellent compilation of cases and jurisprudence. The book titled *"The Conscience of Europe" Navigating Shifting Tides at the at at Court of Europe"* was drafted to examine the contribution of the Council of Europe particularly the ECHR. The writer indulges into the concept of a "European consensus" where a majority of member states try and force the minority to conform to a certain trend or decision resulting in what he terms a "tyranny of the majority" in terms of morally controversial issues. The ECHR uses a comparative method to declare wide or narrow margins of appreciation and Clarke condemns this method by proposing two flaws: "the mechanism of consensus is fundamentally flawed as the ECHR exercises total discretion in how it finds or avoids claims to consensus. Secondly, the foundational premise of seeking consensus runs contrary to human rights theory that is the protection of the minority against the power of the majority." There is absolutely no justification in why a majority of countries who are in favor of a concept force the remaining minority to conform to the trend, especially "in the absence of a clear substantive right based in the text of the ECHR"

In as much as the book gives a timely and compelling account about the history and evolution of the Court from Europe's conscience to how it is posing a serious threat to national sovereignty, the book focuses more on the social issues of our day such as medically assisted reproduction, euthanasia, conscience, religious symbols among many. In doing so, little credit is given to how the Court handles critical political and economic issues in an attempt to protect human rights.

2.2 Underrepresentation of third world countries in the formation of Customary law: Implications on Human Rights Policy

It is generally evident that third world countries are underrepresented because current Customary International Law framework is undemocratic when it comes to the participation of the third world. Most of the corpus of International Human Rights Law takes the form of declarations, resolutions, treaties which is why Customary International Law plays a vital role in the protection of human rights. Treaties bind only countries that have ratified them hence it is important to involve third world countries in drafting and formation of customary law. Customary human rights norms consequently arise from the convergence of uniform state practice as stated under the traditional "two element" theory of customary law which has been endorsed by the International Law Commission in its draft conclusions stating that "To determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law" This is however a bit vague because who determines what's general? Are universal human rights really universal?

The article by (Mutua, 2013) *Human Rights in Africa: The limited Promise of Liberalism* helps to understand how some African leaders and scholars perceive the whole concept of human rights. The article is imperative in that it helps to explain the challenges that regional and international organizations face when implementing human rights as it delves in the nature of the mindset of African perspective. He describes human rights as a concept that does not have holy writ but instead as just another "genre of socially constructed tenets that have come to define modern civilization." He considers human rights as "a part of the colonial project that forms the unbroken chain of the Christian missionary, the early merchant of capitalism and the colonial administrator" This view alone is shared by postmodern and post-colonial thinkers who take any western idea or reconstructionist project as a possible reintroduction of oppressive institution structures and values. This line of thinking partly explains why and how

Africa is lagging in terms of implementing Human Rights because it shows the reason for resistance to change and non-compliance.

Mutua also critically examines the issue of universality, which has often been used to analyze the fit and utility of human rights in Africa. He poses the question that if “social truths are contextual, cultural, historical and time bound” how can one find the relevance of the human rights project in Africa? He attacks human rights documents for neglecting to use some of the most important jargon for instance “imperialism”; “colonialism”; “apartheid”; in describing and formulating societal responses.
“*How credible is a document that calls itself a common standard of achievement for all peoples and nations if it does not recognize that at its writing most of the global south was under European colonial rule and subject to the vilest economic exploitation by the merchants of capitalism*” Mutua manages to expose the irony in some of the customary laws which ignore exploitation and powerlessness .He notes that the European model of Human rights in form of law and development will not work because it is an imposition that deals with symptoms while neglecting to tackle the underlying fundamentals. Mutua’s book dwells more on how and whether liberalism is enough of a panacea for the African states in order to solve the challenge of human rights in the continent. It helps in understanding how some Africans think about international institutions and hegemonic states. The book is a legitimate argument somewhat biased, but the author clearly articulated and illustrated his arguments.

However, the concept or rather accusation of cultural imperialism has been refuted by many scholars including (Leib, 2011) who noted that the claim is ill-founded as the notion of imperialism contradicts the egalitarian nature of universalism. The concept of cultural relativism to protect cultural particularities does not hold much water because dominant elites are likely to oppress minorities or continue to violate people. For example, the act of female gender mutilation violates women by hurting them and denying them certain pleasures all in the name of culture. (Ignaetieff, 2011) pointed out that relativism is the invariable alibi of tyranny which is true as some political leaders use relativism as an excuse to oppress the minorities.

Africa still has dictators as leaders and usually the ideas will be deeply embedded in the concept of relativism and resisting western culture or domination. Culture relativism is a convenient tool often used by undemocratic governments, equipping them with a legitimate reason to

control and often intimidate their citizens. There are several repressive dictators in Africa who have had multiple human rights violations under their rule that have not been accounted for. Paul Biya of Cameroon has been in power up to date for forty-four years. Teodoro Obiang Nguema Masago of Equatorial Guinea has been in power for forty years to date. The former president of Zimbabwe Robert Gabriel Mugabe was in power for thirty-seven years from 1980 to 2017. If this is not dictatorship, then what is? Repressive regimes are usually uneasy with the human rights doctrine hence they create these smoke screens and excuses by blaming imperialism as an excuse to negate the universality of human rights hence diverting from the purposes of human rights which include to protect people from authoritarian, despotic and theocratic regimes.

The whole concept of human rights being tagged as a western idea or reconstructionist project is farfetched. (Leib, 2011) points out that rejecting human rights on bases of their Eurocentric origins is the same as refusing to use an airplane or undergo medical procedures only because they were invented in the West. (Mutua, 1999) suggests that "to be useful to Africa's reconstruction, human rights cannot simply be advocated as an unreformed Eurocentric doctrine that must be gifted to native Africans." In a sharp contrast, Ignatieff dismisses this view by noting that "human rights are not close to being a declaration of the superiority of European civilization but instead should be taken as a warning by the Europeans, so the rest of the world avoids the same mistakes that Europe made that necessitated human rights. In light of this warning, the African Union has developed models almost similar to European and American systems of protecting human rights. Indeed, policies and processes cannot be easily imported from one regional system to another because of the varying contexts of the regional systems. However, the lessons drawn from one system have the possibility to influence and inform approaches and practices of another regional system.

CHAPTER THREE: Juxtaposition of Courts and Legal Instruments

3.1 Introduction

This chapter is an analysis of the scope, nature and challenges of the judicial systems of both the Council of Europe and the African Union and also the statutory instruments that serve to guide them in carrying out their mandate. The manner in which each institution functions has an impact on the member states, individuals and the organisation itself. Human rights protections are influenced by political realities where concepts of sovereignty and jurisdiction are always a defence put in front by member states while they limit access to international justice for victims of violations as shall be discussed below.

3.2 The African Court

There are three bodies most relevant to human rights protection under the African human rights system. These are namely:

- African Commission on Human and Peoples' Rights,
- African Court of Human and Peoples' Rights
- African Committee on the Rights and the Welfare of the Child.

The African Court was established by virtue of Article 1 of the protocol of the African Charter on Human and People Rights. The protocol was adopted on the 10th of June 1998 in Burkina Faso and came into force on 25 January 2004, starting its operations in November 2006. It was established on a basis of complementing and reinforcing the protective mandated of the African Court on Human and People Rights. According to the latest status list obtained from the AU website, out of the 55 African countries, 52 states signed the protocol and 30 states have ratified it. In addition to the protocol, states are required to make a declaration as stated under Article 34(6) of the protocol, to allow individuals and NGOs to bring cases directly before the Court. Without that declaration, the Court has no jurisdiction over cases brought by individuals and NGOs.

The Court's jurisdictions are categorized into two factors which are namely contentious as outlined under Article 3 and advisory as stated under Article 4. In terms of the admissibility requirements, Article 56 of the Charter states the essentials that need to be satisfied by litigants before their cases can be heard by the Commission or the African Court on Human and Peoples' Rights. It is required of litigants to exhaust all local remedies before their cases can be heard before the Commission and the Court. The quintessence of this provision is to ensure respect

for States' sovereignty and to give States the opportunity to ensure the promotion and protection of human rights within their countries before intervention of any sort.

3.2.1 Withdrawal of the right of Individuals and NGOs direct access to the Court

The withdrawal of the declaration allowing NGOs and individuals to lodge complaints against states by Rwanda exposed a weakness of both the African Charter on Human and People's Rights and the Protocol as both did not contain a provision of denunciation. In contrast, the European Convention of Human Rights under Article 58 permits states to withdraw after six months' notice. The African Union lacked foresight when they initially proposed the declaration as they neglected to draft the conditions or process necessary for withdrawal of states from the protocol.

In 2016, the government of Rwanda announced through a press release that it no longer allowed NGOs and individuals to directly file complaints against it with the ACHPR. Through a press statement from the ministry of justice, the justification of the withdrawal was the realization that the "Declaration, as it is currently framed, was being exploited and used contrary to the intention behind it's making. Specifically, convicted genocide fugitives secured a right to be heard by the Honorable Court, ultimately gaining a platform for reinvention ad sanitization in the guise of defending the rights of the Rwandan people." This happened after the ACHPR summoned the Rwandan government to a hearing of a case filed by the opposition leader of the "unregistered" party FDU. Miss. Ingabire submitted her complaint to the African Court in October of 2014, alleging violations of her rights to a fair hearing, freedom of expression, and equal protection under three human rights treaties: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights.

The question of interest here then would be how valid then was Rwanda's withdrawal? To begin with, Rwanda acceded to the 1956 Vienna Convention on the Law of treaties in 1980, which provides that under Article 56, treaties that do not contain a denunciation clause are not subject to denunciation or withdrawal unless it is established that the parties intend to admit this possibility or the nature of the treaty.

Article 56 of the Vienna Convention on the Law of treaties

1. A treaty which contains no provision regarding its termination, and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
(à) It is established that the parties intended to admit the possibility of denunciation or withdrawal; or
(b) A right of denunciation or withdrawal may be implied by the nature of the treaty.
2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

This could have been applied in determining the validity of Rwanda's withdrawal from the declaration as Article 7 of the protocol states that on sources of law, the Court may apply the provisions of the Charter or any other relevant human rights instruments that the state concerned have ratified. However, the questions surrounding the validity and scope of the withdrawal from the declaration were complicated by the fact that Rwanda was not seeking to withdraw from the entire treaty but instead to limit the direct access of individuals to the Court. Individuals and NGOs could still access and file complaints against the stated parties to the protocol only when their cases are referred to the Court by the African Commission on Human Rights. According to article (5) 1 of the African protocol and Rule 33 of the African Court Rules, the African Court may receive complaints or applications submitted by the African Commission upon ratification from:

1. *One of the state parties that has ratified the ACO which has been subject to a complaint or lodged complaint a complaint at the African Court*
2. *A state party whose citizen is a victim of a human rights violation*
3. *An African Intergovernmental Organization*

Not only did the withdrawal of Rwanda undermine the authority of the African Court but it also defeated the purpose of its establishment as it thwarts the continent's efforts to establish continental human rights bodies. Also, it might have influenced other states to follow suit.

Tanzania was the second state to withdraw its declaration on the right of NGOs and individuals to directly file cases against it and consequently ruled against it on 21 November 2019. At the time of writing, Tanzania had the highest numbers, in terms of cases, filed against it. According to the Oakland Institute, of the 70 decisions issued by the African Court at the time of Tanzania's withdrawal, 28 decisions which constitute 40% were on Tanzania. The government of Tanzania has violated several human rights. Its withdrawal came soon after the Court

ordered the Tanzanian government to remove the penal code, a mandatory imposition of the death sentence imposed on persons convicted to murder, as this is a violation of the right to life. Furthermore, the government of Tanzania passed various legislations criminalizing dissent and freedom of opinion. In 2016, the Media Service Act 2016 was promulgated, creating state sponsored bodies with arbitrary powers to grant or revoke licenses for news outlets and also the accreditation of journalists. Another cruel violation of human rights by the Tanzanian government is that of systematically denying the indigenous Maasai pastoralists' basic rights to life, security, food, housing, freedom from arbitrary arrests among other rights. The Oakland Institute's research and advocacy noted that the Maasai Villagers faced intimidation, arrests, beatings, violent evictions and starvation imposed by the government to boost Safari and game park businesses. In August 2017, 5800 homes of the Maasai villagers were destroyed leaving 20 000 people homeless. (Oakland Institute of Research)

All the gruesome violations of human rights committed by the state call for reforms and the withdrawal of the rights of individuals and NGOs to directly file cases against the state before the ACHPR has limited the power of individuals and NGOs to hold states accountable for human rights violations and abuses. Also, the Tanzanian government had already denied its citizens access to a regional court, the SADC Tribunal by withdrawing individual access to the court as well. Although neither the notice of withdrawal nor an official statement alluded to it, one can conclude that the Court's ruling on sensitive issues of socio-political relevance in Tanzania may have contributed greatly to the withdrawal. Tanzania was ordered to amend its Constitution and allow independent candidatures following Mtikila case. Also, the African Court made several rulings that touch on the operation of the judiciary in Tanzania mainly with respect to fair trial rights. (Possi 2017)

Recently on 25 March 2020, Benin gave a notice of withdrawal which according to them is motivated by its "contention that the Court has interfered in areas beyond its competence, resulting in a serious disruption of the national legal order, negatively appealing its economic appeal," as stated by the center of Human Rights, University of Pretoria. The Benin government made specific reference to the Court order of provisional measures, whereby the Court suspended a domestic court order. This was in relation to the cases of Ghaby Kodeih vs Benin and Ghaby Kodeih and Nabin Kodeih vs Benin. In the first case, the Court ordered that Ghaby Kodeih's property should not be transferred while the African Court's decision on the merits of the case was still pending. On the second case, the African Court ordered that the

applicants’ (Ghaby Kodeih and Nabin Kodeih) eight story building should not be demolished while the court's decision on the merits of the case was still pending as well. Benin argued that both matters have been and should have resolved by the Cotonou Court of Appeal and the Common Court of Justice and Arbitration of the Organization for the Harmonization in Africa of Business Law. (OHADA)

A month after Benin gave a notice of its withdrawal, the Court issued an order on 18 April 2020 in the Ajavon-Local Elections matter. AfCHPR (Provisional Measures, 17 April 2020) The applicant Sébastien Germain Ajavon, had argued that a set of new laws enacted in preparation of the 17 May 2020 local elections in Benin violated his right to political participation and generally constituted a setback to democracy and a breach of the Beninese peoples’ right to elect their representatives (Adjolohoun, 2020).The regional African Court of Human and Peoples' Rights ruled the vote should be suspended until it disposes of the merits of the case as it was not inclusive. However, Benin disregarded the ruling and severed some ties with the court in protest at the decision. According to a news article by Adande, 2020, the Minister of Communication stated at a press conference on 23 April 2020 “it stands beyond the jurisdiction of the African Court to order a state to suspend its electoral process, which is an act of sovereignty’. He refuted the order by suggesting that ‘the implementation of that order would be a miracle’ The legislative elections of April 2019 took place and none of the opposition parties had been allowed to present lists, making it impossible to have an opposition candidate.

Cote d’ Ivoire withdrew a few days after Benin. In the Case of Cote d’ Ivoire, the Court has so far, until the time of notice of withdrawal, decided one case against the state, in which it was found in violation in respect of the legal regime regulating the composition of its Independent Electoral Commission. The government of Cote d’ Ivoire did not precisely oppose this finding, but it was slow in putting it into effect. A few days before its withdrawal, Cote d’ Ivoire was issued a provisional measure order in relation to the case submitted by Guillaume Soro, an opposition leader, former Prime Minister and presidential candidate. What prompted the withdrawal of Benin seems to be the decision by the Court to suspend the arrest warrant against Soro while the finalization of the merits of the case was still pending. It is imperative to note that the Court gave a fair ruling as it also declined the order sought by the applicants that the electoral process should be halted, and appointments on the new Electoral Commission be suspended until the merit had been determined. Suy Bi Gohore & Others v Côte

d'Ivoire, AfCHPR (Order, 28 November 2019). In truth, there was an avalanche of cases submitted before the Court against Cote d' Ivoire. According to the Center of Human Rights in a press statement, 24 cases were submitted against Cote d' Ivoire in 2019 alone. One can conclude that Côte d'Ivoire's unexpected but foreseeable withdrawal could have been based on pure politics.

The Ivorian government justified its decision on the proposal that the African Court was attacking and undermining the sovereignty of the country. As stated in an article by the Africa report, "the serious and intolerable actions that the African Court has allowed itself, which not only undermine the sovereignty of the state of Cote d' Ivoire but are also likely to cause serious disruption to the legal order of the states."

3.3 How does the ECHR work? And what has been done to avoid such instances seen in the ACHR

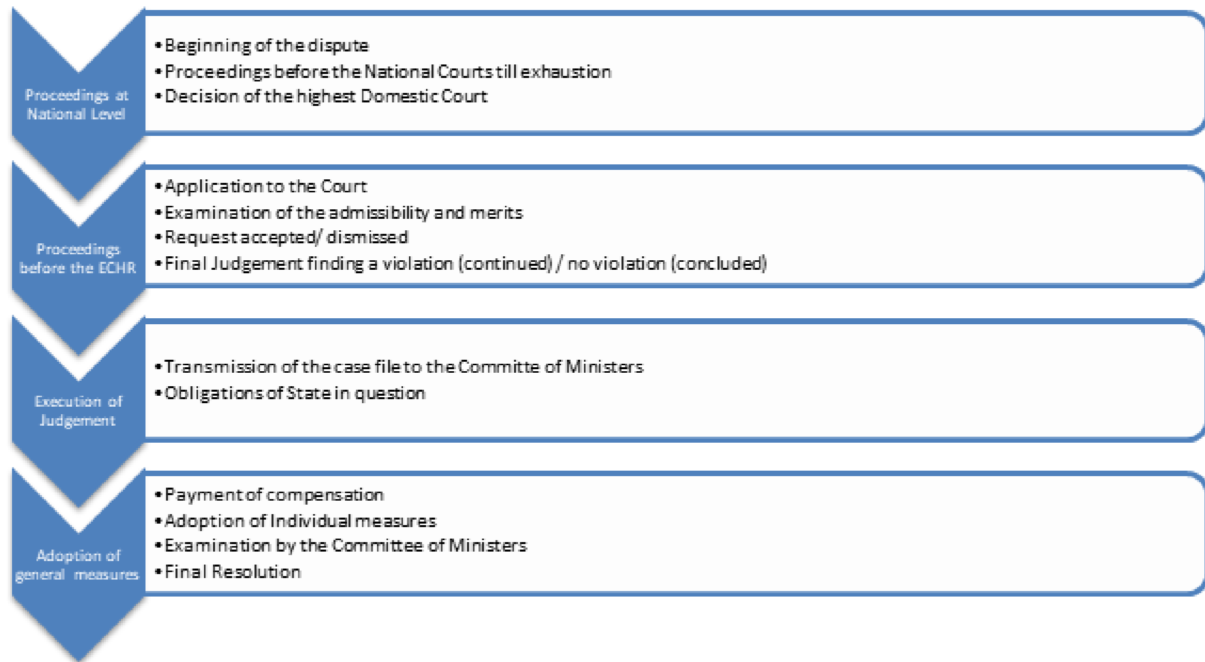
Several human rights bodies have been established by several conventions and decisions by the Council of Europe. The most prominent body is the European Court of Human Rights which is going to be assessed in detail. The other human rights bodies include:

- European Committee of Social Rights and the Governmental Committee under the European Social Charter;
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;
- European Commission against Racism and Intolerance (ECRI);
- Advisory Committee on the Framework Convention for the Protection of National Minorities;
- Commissioner for Human Rights
- the Group of Experts on Action against Trafficking in Human Beings (GRETA)

The part-time Court and Commission were replaced by a full-time European Court of Human Rights which was established by Protocol No. 11 to the European Convention in 1999. It was established with the aim of simplifying the structure, shortening the length of proceedings and strengthening the judicial character of the system by making it fully compulsory. Protocol No. 14 was adopted in 2004 as an attempt to make the Court more efficient and help reduce the

backlog of applications as it had a lot of pending cases. The Protocol was ratified by all member states early except for Russia, which finally ratified it in February 2010.

3.3.1 Case Processing Flow Chart



Every system has challenges and weaknesses, and the ECHR is no exception. Several countries have challenged the ECtHR's authority after being found on the wanting or losing side. By its very mandate, the ECtHR intrudes on the national sovereignty of its members, and Russia is one of the member states that have reacted to this direct interference in domestic affairs. Russia's relationship with the European Court of Human Rights since the time of Russia's accession to the Council of and its ratification to the European Convention on Human Rights in 1998 can be described as turbulent. Russia's Constitutional Court (RCC) has expressed growing concern that its relationship with the ECtHR is one of 'subordination'. (Kahn, 2019) The Court dealt with 9,238 applications concerning Russia in 2019, where 8,793 were declared inadmissible or struck out. It delivered 198 judgments (concerning 445 applications), 186 of which found at least one violation of the European Convention on Human Rights. (ECHR, 2020)

In 2015, a top Russian court ruled that Russia can avoid implementing European Court judgments if they conflict with the Russian constitution. According to an article

by BBC news, the Russian constitutional court ruled that Russia "can step back from its obligations" if that is the only way to avoid violating its constitution. Russia objected the ECHR ruling in July 2014 on the case of Yukos shareholders v Russia where Russia was asked to pay the Yukos shareholders €1.9bn (£1.3bn; $2bn) in compensation. The ECHR found Russia in breach of the convention's Protocol One, Article One, which covers protection of private property. (ECtHR, 2014) The Council of Europe's human rights commissioner responded by saying the action '*threatens the very integrity and legitimacy of the system of the European Convention on Human Rights, because it sends the signal that the standards of democracy, human rights and the rule of law a State subscribes to when joining the Council of Europe can be disregarded at will*' (BBC, 2017)

The UK has consistently played a central role in the human rights' friendly development within the Convention as well as throughout the world, despite the fact that the UK has often objected to how the ECtHR undermines sovereignty. The former UK Prime Minister David Cameron argued for withdrawal from the European Convention on Human Rights (ECHR). (Watt, 2015) The UK has been vocal on the issue of interference for over decade, failing to comply with ECtHR judgments, thereby defying the binding force of the European Court of Human Rights. In his address to the Council of Europe on January 25, 2012, Cameron nevertheless noted that Strasbourg had become the court of fourth instance, giving an "extra bite of the cherry to anyone dissatisfied with a domestic ruling." BBC News (2012) He added that decisions made at the national level should be "treated with respect," and that "when controversial rulings overshadow the good and patient long-term work that has been done, that not only fails to do justice to the work of the Court, it has a corrosive effect on people's support for human rights." The successor of David Cameron, Theresa May was directly lobbying for the Britain's withdrawal from ECHR.

Amongst the several motivating factors for the withdrawal from the Convention, deportation and extradition proceedings of the suspected terrorists and the prisoners' voting rights were at the top. She confirmed Cameron's claim that ECHR makes the UK less secure by preventing the deportation of dangerous foreign nationals. According to ECHR's annual report of 2019, the violations in the UK cases only amounts to a handful, on average, six per year since 2010. The Brexit does not prevent cases being taken to the ECHR but however, the Human Rights Act will be repealed. It stated that the UK courts must take into account (not necessarily follow) and judgement, decision, declaration or advisory opinion of the ECHR.

3.3.2 Turkey and the ECtHR

A historical background is important to understand the relations between Turkey and the Council of Europe as it is among the 12 founder-members of the Council of Europe in 1949, and also one of the 14 signatory countries to the Convention for the Protection of Human Rights and Fundamental Freedoms in 1950, even though it ratified it in 1954. However, it was only in the 1980s when 'human rights' entered the country's political agenda, when systemic repression and human rights violations including torture and extrajudicial killings began to attract domestic and international attention. (Casier, 2009). Turkish governments accentuated Turkey's objective of Westernization by demonstrating their interests to Western institutions in 1950s. (Fall and Winter, 2003). Even though there have been some other issues, the main controversy in the membership venture of Turkey to the European Union has been human rights and level of democracy in Turkey. "Accession is denied on the basis of insufficient democracy, human rights abuses, the excessive involvement of the military in political affairs, restrictions imposed on minority rights, limitations on political and cultural rights under the 1982 constitution. (Kilic, 2001) Turkey has been suspended in limbo for a while now as it has been swinging between "protecting" the territorial integrity by not allowing any opposite movement and completing the westernization project of the Republic by meeting the standards set by the European Union. (Cokmak, 2003)

In the last three decades, Turkey has seen more applications to the European Court of Human Rights (ECtHR) than any other country. Since 1989, when the Turkish government recognized the Court's jurisdiction, by allowing individuals to file cases against the state, the Court has received more than 30,000 submissions, ranging from allegations of torture to discrimination and wrongful imprisonment. (Wiseman, 2020) In the past four years, Turkey has been found by the Court to have infringed its citizens' rights over 400 times. More than 100 of these have related to freedom of expression (Article 10) of the Convention. (ECHR 2019) These violations include the shutting of print and online outlets, extended pre-trial detention of media professionals and the arrest of critical journalists or bloggers.

Even in areas where Turkey exercises effective control of areas outside its national territory, such as Turkey and Cyprus, there is strong evidence that Turkey and its proxy militias have committed numerous human rights abuses and war crimes in these states. This started in 2016 when Turkey invaded and looted Azaz and Jarablus in Operation Euphrates Shield, surmised

on Turkey's fight against terrorism. These violations include suppression of freedom of expression, forced demographic change and property expropriation. At the end of 2019, upon the then President Donald Trump's announcement of U.S. military withdrawal, from Syria, Turkey invaded broad swath of northeast Syria. According to France 24, they were reports of summary executions and the use of white phosphorous, which are of course a prohibited means of warfare, against the local population. In the case of Northern Cyprus, Turkey was accused of numerous human rights abuses which include property expropriation, curtailment of religious and educational rights, forced demographic change, authorizing the trial of civilians by military courts, and failures to investigate the fate of missing persons.

A complaint was brought before the ECtHR by the government of Cyprus on behalf of its aggrieved citizens. In its defense, Turkey challenged the court's jurisdiction since the alleged conduct had not occurred within Turkey's borders. Based on "well-established jurisprudence," the Grand Chamber of the ECtHR rejected this argument, purporting that its jurisdiction "is not restricted to the national territory of the Contracting States," and also that Turkey's responsibility can extend to "acts and omissions of their authorities which produce effects outside their own territory." (CASE OF CYPRUS v. TURKEY Application *no.(25781/94 2001)* It is against this background that one can describe the relationship between Turkey and the Council of Europe as a turbulent one.

3.3.3 Effectiveness of the ECHR in maintaining membership.

Compared to its African counterpart, the European Court of Human Rights plays "the paramount role and can be seen as the strongest and the most effective. (Buergenthal, Shelton & Stewart, 2002) The system has greatly and positively affected states' practices pertaining to human rights. The recognition and reputation of the system, particularly of the Court, has led dramatic legislative amendments in member states. Only one state almost withdrew from the Convention. In the 60s, the Council of Europe had started a procedure of expelling of Greece for gross human rights violations but the 'black colonels' government withdrew before the procedure was complete. (Dzehtsiarou, 2017) In such circumstances, based on article 58 paragraph 3 of ECHR and article 7 of the Statute of CoE, Greece would simultaneously cease membership to CoE and the Convention at the end of the next financial year, particularly, on December 31, 1970. Accordingly, withdrawal from the Convention to nullify obligations arising from the Court judgments is not a viable option under the Convention as the Convention

imposes an obligation on a withdrawing state to remain bound by the judgments of the Court delivered in connection with the acts performed before the denunciation becomes effective.

To date, there has not been any country that has withdrawn from the convention. This could be because the conditions of withdrawal are also tied to ending membership in the Council of Europe as well. The European Convention on Human Rights, article 58, permits contracting parties to withdraw from the Convention by means of denunciation or ending membership to the Council of Europe. The Convention states that a "High Contracting Party may denounce the present Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice." Hence, the denunciation will take effect after the expiry of six months' period from the submission of an advance notice.

3.4 Implications of withdrawal from mandates

As previously noted, as of October 10, 2020, only ten states have signed the additional protocol and four states have withdrawn their declarations. The popular excuse or reason for withdrawals is that the court is exceeding or overstretching its mandate and clearly state' tolerance for these discerned excesses in the Court carrying out its mandate is exceptionally low. One cannot dispute the notion that this emergent trend of withdrawal puts the Court's mandate to protect human rights on the African continent in jeopardy. Amnesty International's Africa Advocacy Coordinator, Japhet Biegon, noted that "It undermines the authority and legitimacy of the African Court and is an outright betrayal of efforts in Africa to establish strong and credible regional human rights bodies that can deliver justice and accountability." This trend of state contestation is not only present in the African Court. Actually, it reflects a global trend, exemplified by the withdrawals of France and the United States from the International Court of Justice (ICJ)

In the cases where the Court has reversed domestic judgements, for example the Wilfred Onyango Nganyi & Others v Tanzania *20219*, it was perceived as delegitimizing domestic criminal policy, in that they indirectly reversed the rulings of the highest court of the land and compensated persons found guilty of crimes by domestic courts. Another example is the Ghaby Kodeih v Benin where in the ruling the Court directed Benin to suspend the transfer of the property deed to the creditor of the domestic court judgment, as well as any measure of dispossession of the applicant. The truth of the matter is the Court is there to uphold human

rights, hence the states will always feel like their domestic courts are being undermined whenever they are held accountable for violations.

Moreover, states have often argued that private prosecution calls for domestic remedy and the African Court should not interfere. The Commission has dealt with the issue of private prosecution as a domestic remedy on a few occasions. In order to understand the jurisprudence of the African Commission on private prosecution, the case of Zimbabwe Human Rights N.G.O Forum v Zimbabwe is going to be analyzed. It is also imperative to note at this point that the African Commission is of great importance in dealing with cases on Human rights violations in the case of the states that have not ratified the protocol that allows individuals and NGOs to directly take their states before the African Court. The Zimbabwean state maintained that the complainant had not exhausted the local remedies and should have approached the Attorney General to prosecute the accused suspects. However, the Commission argued that Zimbabwe did not demonstrate due diligence in providing justice for the victims. It was seen as if the state was protecting the perpetrators.

This case was important because it was the first case that established that sates can be held accountable for human rights violations by private persecutors if they don't address the issue with due diligence. Also, it sheds light on the issue that appears to be emerging from the jurisprudence of the African Court, which is that of the private prosecution as a local remedy. With respect to the core operation of the domestic justice system, the Court has consistently held that the review of judgments and constitutional petitions for breach of fundamental rights are extraordinary remedies that an applicant is not compelled to exhaust under article 56(5) of the African Charter which states that ".... are sent after exhausting local remedies, if any, *unless it is obvious that this procedure is unduly prolonged."*

3.5 Analysing the Legal Instruments In place

The African Union has the African Charter on Human Rights to regulate its operations, within this African Charter there are sections which provide on the creation of structures that guard against human rights violations. The first was the African Constitutive Act, which strengthens the African Union's engagement and commitment in promoting and protecting human rights while that Council of Europe has the European Convention on Human Rights which is an international treaty drawn up within the Council of Europe, which was established in Strasbourg in 1949 in the course of the first post-war attempt to unify Europe. One reason for

the Convention was to elaborate upon the obligations of Council membership. Its fundamental purpose was to institutionalise shared democratic values and provide a bulwark against totalitarianism, in the context of both the atrocities witnessed in Europe during the Second World War and the spread of communism from the Soviet Union to European states. In this case despite the difference in name both institutions (The African Charter on Human Rights and The European Conviction on Human Right) have the same mandates to uphold the human rights in all its forms. The reason for the imitation can mainly be traced from the United Nations conventions and both regional organisations are guided by this International Organisation. However, since the European Convention was the first to be established it can be concluded that the African Charter borrowed some of its procedures from the Council of Europe.

3.6 Economic, Cultural and Social rights

Both regional organisations have an obligation to ensure the protection of Human Rights in terms of Socio- economic and cultural aspects. However, the uniqueness comes on the fact that the African Union does not have a specific institution overseeing on social or cultural rights of the citizens. In this case the African Union embedded this set of human rights within other institutions such as the African Committee of Experts on the Rights of the Child, the Peace and Security Council (2002) and instruments such as the African Charter on the Rights of Women in Africa (11 July 2003) as well as Protocol to the Treaty Establishing the African Economic Community relating to the Pan-African Parliament (2 March 2001) among others.

This however is different from the European System that has two instruments specifically created to deal with Social Economic and Cultural Rights. First to be established was the 1961 European Social Charter which was however revised in 1996 and the 1988 Protocol to the Charter, related to the legal obligations with respect to additional economic and social rights. For the European system these two specifically deal with Social and Economic rights as well as the cultural rights. In analysis one can suggest that the African Union did not create instruments specifically dealing with social rights or economic rights because initially its fight was not to achieve those set of rights but rather, political rights. Thus, the Union rather focussed more on creating an institution that would ensure the continent majority rule in term of sovereignty. This reason may also suggest the late adoption of the social, economic and cultural rights in the African Charter where most of the social rights guiding principle were adopted in the late 1990s.

This is unlike the African Union's Counterpart the Council of Europe which after its creation, quickly created its first instrument to uphold the social and economic rights, the European Social Charter created in 1961 entering full swing in 1963 and then revised in 1996 to accommodate the ever-changing technological environment. Moreover, in 1988 the Council of Europe had the Protocol to the Charter Related to the Legal Obligations with Respect to Additional Economic and Social Rights. The African Union however, still, despite minimal efforts to pursue economic and social rights they have not yet fully been incorporated into the whole African Human Rights Discourse. More than a decade ago, (Green, 2008) stated that

"Ten years after the adoption of the Grand Bay (Mauritius) Declaration and Plan of Action in April 1999, little has changed in the list of 19 identified causes of human rights violations in Africa. Economic, social and cultural rights still receive less attention than civil and political rights, while violations of civil and political rights continue on a massive scale. The concept of group rights is still in an embryonic stage." The same analysis can still be drawn today as human rights violations are still rampant in Africa.

3.7 Political Rights

The historical context of Africa shaped the human rights discourse. The prevailing political, social, economic, and cultural conditions on the continent influenced the course taken by the African Union in its fight against violation of human rights. In this case, the most important part of the African history is marked by social struggle leading to wars to gain independence from the white minority rule, thus explaining why the human rights in African are hinged much on civil and political rights other than economic, social as well as cultural rights. This was also the same view by (Heyns, 2006) who asserted that

"...particularly when it is understood that the struggle for human rights and the establishment of a human rights system are products of a concrete social struggle. In this regard, human rights are also as much about civil and political rights as they are about economic, social and cultural rights".

In order to fully exercise civil and political rights the African Continent later realised that there was a need to effectively implement and develop rights to social, economic and cultural rights as they would promote people's active participation, thereby giving them a voice and a platform from which to assert their rights (Hayns, 2006). In this scenario, to avoid the lagging behind

of economic, socio and cultural rights protection at the expense of civil and political rights the African Union has resorted to an inclusive or base approach. This approach, according to (Nakuta, 2008), combines social, economic and cultural rights with civil and political rights, and the building of a just, equitable social contract between the state and its citizens. Moreover, it has been asserted by scholars such as (Agbakwa, 2006) that most AU member states have adopted a bill of rights in their constitutions to guarantee fundamental human rights and freedoms, but these pertain mostly to civil and political rights, which are regarded as enforceable.

He noted that *"... although it can be argued that the situation regarding the respect for civil and political rights has improved, the same cannot be said of economic, social and cultural rights because Africa continues to face grave challenges and threats. These include HIV and AIDS, diseases, poverty, exclusion, racism, xenophobia, inequality, corruption, conflicts, bad governance, and violence against women and children. As long as these challenges affect people's everyday lives, the problems of sustaining democracy and development and the protection and promotion of human rights will continue to haunt the continent.*

CHAPTER 4: Comparison of strategies employed to address Human Rights Violations by the Regional Organizations in question

4.1 Introduction

This Chapter seeks not only to outline the ongoing human rights violations but the root causes of the challenges and discrepancies. Despite all the systems that have been put in place to safeguard human rights, the standards and principles on which human rights have been built in Europe over the past years are being increasingly challenged. In the 2020 Commissioner report, five main human rights abuses were mentioned, and these include the growing political and societal acceptance of racism; the threats to women's rights; the disregard of the human rights of migrants and refugees; the erosion of judicial independence and lastly the repression of dissent.

4.2 Notable Human Rights Violations

Despite all the institutions and instruments in place to safeguard human rights, violations are still prevalent. Some of the existing violations are discussed below.

4.2.1 Female Gender Mutilation

Female circumcision (FC) or female genital mutilation (FGM) describes practices that manipulate, alter, or remove the external genital organs in young girls and women. (Yirga W. S., 2012) Female genital mutilation (FGM) refers to all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. (WHO, 2008) FGM is widely recognized as a procedure that violates a person's human rights, as well as increasing their risk for health complications (Donohoe, 2006). In Europe, many girls and women are affected or threatened by female genital mutilation (FGM). It is imperative to analyse the ongoing situation with female gender mutilation because according to the recent statistics provided by the European Commission, it is estimated that at least 500,000 women in Europe have undergone FGM/C and 200 million women worldwide and if the practice is not curbed, 68 million girls will be cut between 2015 and 2030 in 25 countries where FGM is routinely practiced and data is available. In November 2018, EIGE published a study on the prevalence of FGM in Belgium, Greece, France, Italy, Cyprus and Malta. In this report, it was noted that even though important steps have been taken in Europe, legislative measures and actions to combat FGM and the women and girls victims that are at

risk of FGM must be strengthened. The victims in these countries are usually migrants, who either run the risk of being taken to their parents' country of origin or of undergoing the procedure in a Council of Europe member state.

4.2.2 Applicable Legal Standards and Norms on FGM in the Council of Europe

The Council of Europe has taken measures on tackling the problem of FGM. In April 2009, the CoE through Resolution 1662 reaffirmed that concrete actions must be taken to combat FGM as part of on action to Combat Gender-Based Human Rights Violations. This Resolution led to the CoE's adoption, on 7 April 2011, of the landmark Convention on preventing and combating violence which is known as the Istanbul Convention. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) is the prime legally binding instrument in the area of violence against women in Europe. This Convention entered into force as of August 1, 2014 after ten countries, including eight member states, had opted in and ratified the convention.

It contains definite provisions on Female Genital clearly stating a four-sided approach which includes the integrated policies, prevention, protection, and prosecution. While the Convention in its totality is relevant to the issues of Female Gender Mutilation, a few provisions deal with the issues specifically. Articles 37 and 38 stipulate that State Parties are to criminalise FGM. In other words, for the legislation to work properly, member states are also expected to incorporate provisions that will lead to the curbing of FGM. In addition to criminalizing, Article 38 stipulates that:

"*Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised:*

a. excising, infibulating, or performing any other mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris;

b. coercing or procuring a woman to undergo any of the acts listed in point a; c. inciting, coercing or procuring a girl to undergo any of the acts listed in point a."

Another important aspect worth mentioning that is that the Istanbul Convention takes steps to criminalise the aiding, abetting and attempt of these acts (Article 41), removes unacceptable justifications for these crimes such as honour or religion or culture (Article 42) and requires the offences be applicable regardless of the relationship between the victim and perpetrator (Article 43).

The Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Convention) requires criminalisation of all kinds of sexual offences against children. It sets out that States in Europe should adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators. Although the Convention makes no explicit references to FGM, the practice of FGM could fall under Article 18 (Sexual abuse) since children are victims. Another instrument of importance is the Committee of Ministers Recommendations 5 (2002) to member States on the protection of women against violence which defined violence against women including FGM to be a violation of fundamental rights. The Guidelines of the Committee of Ministers to member States on the protection and promotion of human rights in culturally diverse societies refer explicitly to FGM stipulating that member States should consistently combat any form of physical, sexual, psychological and economic violence particularly directed against women and girls and these include "stalking, sexual violence, forced and child marriage, female genital mutilation, forced abortion and forced sterilisation, sexual harassment, crimes committed in the name of so called "honour", aiding or abetting and attempt to commit any of these offences.

The Parliamentary Assembly of the Council of Europe (PACE) affirmed in its Resolution 1247 (2001) on female genital mutilation FGM as a violation of Article 3 ECHR calling on ''legislation and education aimed at ending the practice and to prosecute perpetrators even when the crime is committed abroad. Recommendation 1868 (2009) and Resolution 1662 (2009) on action to combat gender-based human rights violation, including the abduction of women and girls refer to FGM Recommendation 1891 (2009) on migrant women: at particular risk from domestic violence relates to FGM. Recommendation 1940 (2010) and Resolution 1765 (2010) on gender-related claim for asylum also refer explicitly to FGM. Resolution 1952 (2013) on children's rights to physical integrity include FGM.

4.2.3 Applicable Legal Standards and Norms on FGM in the African Union

The African Charter on Human and Peoples' Rights similarly contains fundamental rights as that of the Covenants and ECHR. It mentions elimination of discrimination against women in Article 18 Section 3 which states that "*The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women and the child as stipulated in international declarations and conventions.*" Another statutory

instrument is the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which addresses the specific rights of women and therefore has several provisions to contribute to the legal sphere on FGM. It defines discrimination against women as having the effect to "compromise or destroy the recognition, enjoyment or the exercise by women, of human rights and fundamental freedoms" and prohibits harmful practices which endanger the health and general well-being of women. Article 5 contains a specific prohibition of FGM and all harmful practices which "negatively affect the human rights of women and which are contrary to recognised international standards".

4.2.4 The importance of Law enforcement

Article 2(a) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) establishes the obligation of member states to censure discrimination against women in all its forms, and "to embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle". Such international statutory instruments are vital in that they push and guide states in coming up with framework to protect women from any form of abuse or violation. In addition, CEDAW General Recommendation 28 elucidates that States must safeguard, "through constitutional amendments or by other appropriate legislative means, the principle of equality between women and men and of non-discrimination is enshrined in domestic law with an overriding and enforceable status".

A few constitutions specifically protect women and girls against FGM. The Senegalese Constitution, explicitly forbids "physical mutilations" in article 7: "Every individual has the right to life, to liberty, to security, to the free development of his personality, to corporeal integrity, notably to protection against all physical mutilations" Guinea was the first country to institute a law against FGM through the Penal Code of 1965, which banned the genital mutilation of men (castration) and women (excision), and established life sentences for offenders (article 265). Although this is not a specific legal provision or law explicitly on FGM, the practice has been prohibited in Guinea since 1965. Most other African countries developed and initiated legal measures criminalizing FGM in the 1990s.

Fig 2. Map of the legal provision status of FGM

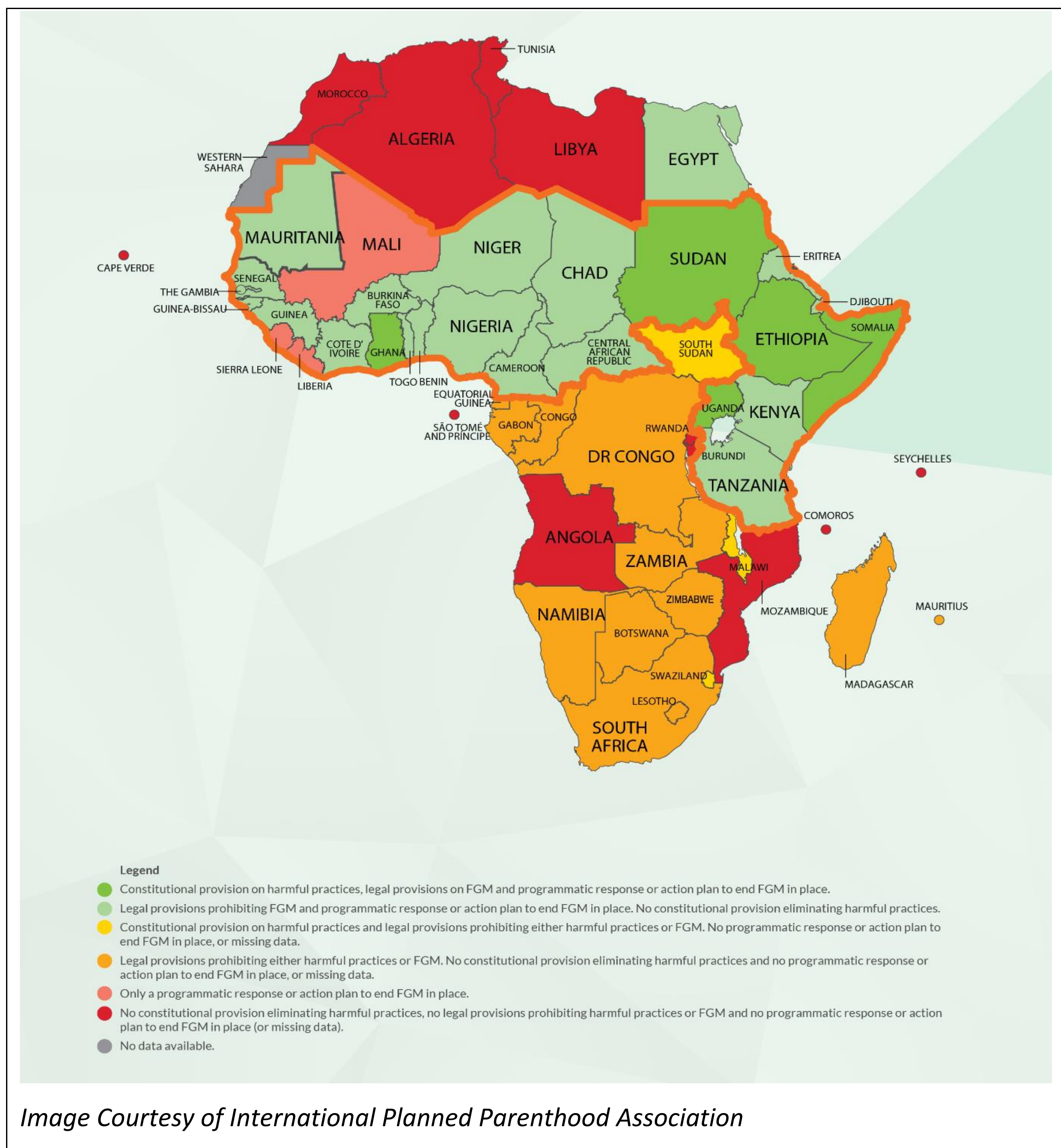


Image Courtesy of International Planned Parenthood Association

While Strong law enforcement on Female Gender Mutilation is appreciated and needed, it is important to note that law enforcement without efforts to promote social change is unlikely to have a positive impact and can even drive the practice underground. There is a need to make communities and societies affected widely understand and discuss the implications of these actions until they are deeply rooted by the people that are affected by these actions.

The main challenge in tackling the issue of FGM in Europe according to the Steering Committee for Human Rights (2016) as stated by several states is that: States find it difficult to collect data on FGM, resulting in the difficulty in communication and coordination of approaches by states and other actors. This in turn just exacerbates the difficulty in acquiring information. It is imperative to note that most Council of Europe member states do not have specific legislation on FGM. Several states have National Plans in place that cover FGM. However, they are being covered under general issues that include violence against women, child protection or human rights action plans. Moreover, awareness among professionals is generally low, including that of social workers, teachers, or health professionals who are often the only ones in a position to identify a girl at risk.

4.3 Enforced Disappearances

The issue of missing persons and victims of enforced disappearance constitutes a particularly important part of the political, legal and social transition processes worldwide following conflicts or repressive regimes. This human right violation, which is considered as a crime against humanity Under Article 7.1.i of the Statute of the International Criminal Court (ICC), "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack", is rampant both in Europe and Africa. The International Convention for the Protection of All Persons from Enforced Disappearance (CPED) defines 'enforced disappearance' as: "*the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.*"

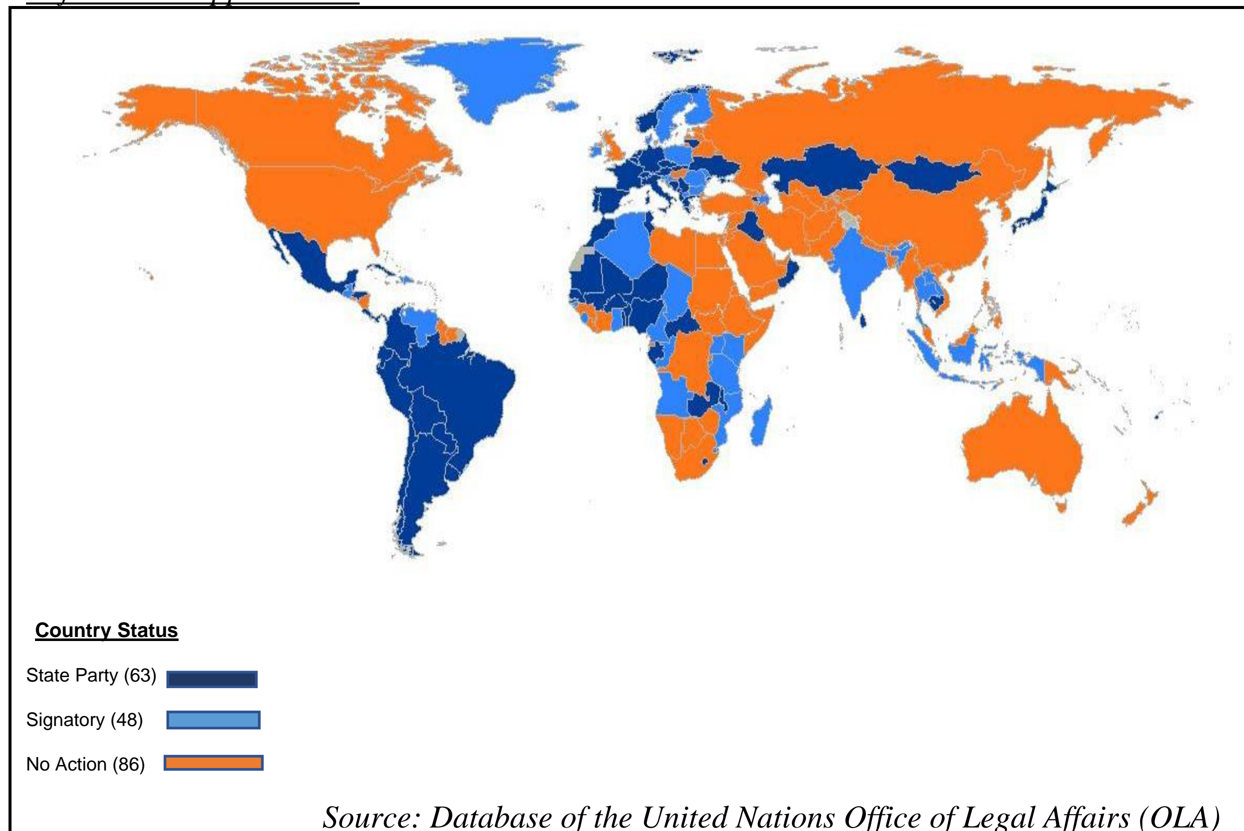
The ECHR has held that enforced disappearances amount to violations of Articles 2 (right to life), 3 (prohibition of torture), 5 (right to liberty and security of person) and 13 (right to an effective remedy) of the European Convention on Human Rights. Many families of disappeared victims applied to the European Court of Human Rights after they exhausted domestic remedies especially in Turkey and in most of these cases, the Court condemned Turkey many times for violating several human rights. In a recent report on Enforced disappearances by the Commissioner of Human Rights, challenges were highlighted, and these were largely characterised by inertia and impunity. The main obstacles include a lack of political will and

determination; limited national capacity and a lack of qualified forensic experts, compounded by economic constraints due to the costly process of DNA identification; lack of relevant information about gravesites due to witnesses' fear of testifying or the lack of co-operation between former rival parties; and reprisals against relatives of missing persons and victims of enforced disappearance, human rights defenders and lawyers.

Are enforced disappearance ever justifiable then? No, enforced disappearances are on occasion perpetrated within the context of armed conflicts or repressive regimes and committed in times of peace and under supposedly democratic regimes. The practice has been used to silence political opponents, and to spread terror among the population, but also to counter organised crime or terrorism, in the form of secret detention and "extraordinary renditions." Many at times, states are the perpetrators who hide behind countering organised crime or demonstrations. When conducting investigations, independence, impartiality, technical capacity, professionalism and autonomy of the bodies in charge of the search should be guaranteed. (Vermeulen, 2012) contends that "the essence of an enforced disappearance is the apprehension of a person by state agents, or at least through an act in which the state is involved, while at the same time the state denies this deprivation of liberty". Using this definition, states can be seen as perpetrators, one can then wonder that if the states that are meant to be protecting its citizens often instigate such crimes, how best can this challenge be litigated.

Moving on to the African Context, this problem of enforced disappearances is not adequately captured in the African legal framework and this could be a result of the gaps in understanding, absence of the binding legal framework, and lack of accurate statistics. There are hardly regional instruments in Africa that can augment understanding of the concept and provide realistic measures to guarantee the prohibition and prevention of enforced disappearances. In terms of International framework, only sixteen African States have either signed or ratified the International Convention on the Protection of all Persons from Enforced Disappearance. As a result of this challenge, many African states lack the necessary framework to investigate, prosecute and provide reparations to victims of enforced disappearances. Similarly, in a regrettable way, according to the UN website, only twenty member states of the Council of Europe have ratified the ICPPRD where most of these states are not even affected by this challenge.

Fig 3. Signatories of the International Convention on the protection of all Persons from Enforced Disappearances



Source: Database of the United Nations Office of Legal Affairs (OLA)

The African Court and the ECOWAS Court have a complete human rights jurisdiction encompassing all human rights treaties ratified by the concerned States including the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED). The African Court has not yet adjudicated cases on enforced disappearances while the ECOWAS Court has issued one judgement on the subject in question in the *Chief Ebrimah Manneh v Gambia* case in 2008. The scarcity of case law from both courts is likely due to their limited territorial jurisdiction. To reflect back on the issue discussed in the previous chapter, only Malawi, Tunisia, Ghana, Burkina Faso, Mali and The Gambia allow individuals and NGOs direct access to the African Court in accordance with article 34-6 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Only four of these countries, Ghana, Burkina Faso, Mali and Gambia together with 11 other states are member states of the ECOWAS. In Africa, only 17 out of 54 states can be brought to account for violating the ICPPED before a regional court.

4.3.1 Fair Trail and Legal Assistance

One of the pillars of the rule of law enshrined in the African Charter is the right to a fair trial and legal assistance, which is protected by Article 7. Under the provision of the Article 7 and

60-61, the African Union seeks to ensure the protection and facilitation of a fair trial and legal assistance by ensuring the independence of the courts of the member states. To fill in the gaps found in the charter on the afore mentioned right, the African Union borrowed from other international instruments to strengthen Article 7. The African Commission established a Working Group in 1999 to prepare general principles and guidelines on the right to a fair trial and legal assistance under the Charter and this was a result of realisation of the need to further strengthen and supplement the provisions relating to fair trial in the African Charter and to reflect international standards. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa were adopted at the AU Heads of State and Government Summit in Maputo, Mozambique, in 2003.

The African Union mechanism of fair trail is not different from that of the Council of Europe. In the case of the Council of Europe the European Convention for Prevention of Torture and Inhuman or Degrading Treatment or Punishment exists hand in glove with the European Court on Human Rights in ensuring the facilitation of fair trail and assistance to legal help. The Convention provides non judicial preventive machinery to protect persons deprived of their liberty by a decision of the authorities thus facilitating fair trial and legal assistance. It is based on a system of visits by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The convention's members are independent and impartial experts elected by the Committee of Ministers. One member is elected in respect of each Contracting State. Article 3 of the Convention provided on the compensation for wrongful conviction while Article 4 provided on the right not to be tried twice for the same conviction. All these provisions were put in place to ensure that the right to a fair trial is guarded.

4.4 Comparison of the two International Organisation in terms of the Strategies employed to address Human Rights Violation.

4.4.1 Domesticating the Legislation.

One of the strategies employed by the African Union through the African Charter is Domestication of the legislation. The African Commission has established itself firmly as the primary human rights body on the African continent. Through its progressive interpretation of the Charter, the Commission has given guidance to states about the content of their obligations under the Charter, and its provisions have inspired domestic legislation. The provisions of the charter have guided the formulation and enaction of local laws or domestic laws in a number

of member state. The charter has provided the yard stick for the formulation of domestic laws in many African countries. A particularly good example is Nigeria. It has made the Charter explicitly part of its law. The Commission's findings have in several instances been implemented and assisted in garnering international awareness and solidarity, as was the case in Nigeria during the Abacha regime hence leading to an improvement in the respect of Human Right in Nigeria.

4.4.2 Conducting Missions.

One of the primary purposes of the Commission is to forward the promotion and protection of human rights in Africa and to ensure that member states comply and abide with their obligations undertaken under the Charter. Article 46 of the Charter which requires the Commission to use 'any appropriate method of investigation' is the legal basis for missions. In this case the Commission emphasised on two type of missions namely promotional missions and protective missions also referred to as the o-site or fact finding. **Promotional missions** are governed by the Commission's guidelines for missions and the format for Pre-mission Reports. The Commission also draws up terms of reference for each promotional mission. The Special Rapporteurs may also carry missions within their responsibility. The Commission undertakes promotion missions as a strategy to sensitise states pertinent to the mandate of the African Charter. This however is done to promote ratification of Human Rights instruments in member states as per the requirement of the African Charter. In 1996 the Commission had its first promotional mission in Senegal after a series of allegations of human rights violations at Kaguitt, Casamance that greeted the clash between Senegal's army and rebels in Casamance.

The Commission has Conducted 36 Promotion missions in 36 different states.

They are two types of **Protective Missions** which are namely on-Site mission and the fact-finding missions. When a certain number of reports have been submitted against a state, the Commission undertakes an on-site mission with the purpose of finding amicable avenues of settling a dispute which would have resulted from human rights violation. Whenever there is an allegation of a general nature or widespread reports of human rights violations against a state party, the Commission undertakes fact-finding missions. In the case of wide-spread reports, there is no need for any communication to have been submitted in order for the Commission to undertake the Fact-Finding mission.

This is no different with the Council of Europe; one may say that the African Union imitated the Council of Europe on the use of missions as a strategy to ensure respect of human rights as (Trindade, 2006) wrote;

" ..Undertaking joint actions by international and regional bodies, such as country missions involving the assessment of human rights situations by experts (special procedures or others, as appropriate), and the adoption of a schedule of visits to places facing fundamental human rights challenges with a view to preparing and publishing joint or coordinated reports, may both be considered."

4.4.3 Employing of Sanctions

Employing sanctions is another strategy that has been used by the African Union to ensure compliance of the member states to the dictates of the African Union Constitutional Act. Some may term it a punitive way for those states that could have been found wanting for Human Rights violations. Gawans (2015) stated that

Whereas the principle of non-intervention in member states' affairs was a principle upheld by the OAU, the AU has adopted a more interventionist approach to end genocide, war crimes and crimes against humanity, human rights violations, and unconstitutional changes of government, through the mechanism of employing sanctions.

It has also continued to develop legal frameworks and establish relevant institutions. In so doing, it has paved the way towards creating a culture of non-indifference towards war crimes and crimes against humanity in Africa. Furthermore, these principles reflect the new thinking and approach among African states on how to coordinate common responses to present-day political and socio-economic challenges, and to be responsive to the contemporary demands and aspirations of ordinary people. (Gawans, 2015) Sanctions may come in various form particularly economic and political sanctions. These sanctions have seen most state with high rate of human rights violations such as Zimbabwe being placed under economic embargoes and being withdrawn from economic institutions such as ECOWAS. Moreover, when the member states have seen it necessary, they can also invite Eastern or Western countries to sanction the state found guilty for human rights violations.

Human rights, democracy and governance are inseparable as each factor has a bearing on the other as noted by Vadi (2008)

"The AU has effectively deployed sanctions against any country that comes to power through unconstitutional means, so military coups as well as any takeover of power from an elected

government are becoming something of the past. Regrettably, recent events in Africa have shown that democracy still remains fragile equally, good governance, including the fight against corruption and its impact on social and economic rights, has become a measure of democracy. To this end, the AU adopted the Charter on Democracy, Governance and Elections and the Convention on Combating Corruption."

More over Green (2008) posited that

"In the spirit of the Constitutive Act, the AU has adopted an institutional focus on human rights, and explicitly recognises the mainstreaming of human rights in all AU activities and programmes. However, it needs to ensure that of human rights norms, standards and principles are effectively integrated into a range of activities and practices, including the AU's peacekeeping operations, election observation, and conflict management." The issue of human rights is not limited to the African Commission on Human and Peoples' Rights but other departments as well such as the Peace and Security Council, which also entails the protection of human rights as part of its mandate.

4.4.4 The Human Rights Strategy for Africa

The Human Rights Strategy for Africa is a guiding framework for collective action by the AU, Regional Economic Communities (RECs) and member states aimed at strengthening the African human rights system. The Strategy seeks to address the current challenges of the African human rights system in order to ensure effective promotion and protection of human rights on the continent (Annan, 2006). This strategy seeks to address challenges which include inadequate coordination and collaboration among AU and Regional Economic Communities organs and Institutions, limited capacity of human rights institutions, insufficient implementation and enforcement of human rights norms and decisions and limited awareness and access to the African human rights mechanisms among others. According to Heyns (2005) the strategy would strive to achieve the following objectives in order to fully address the challenges:

- *Enhance coordination and collaboration among AU and RECs organs and institutions and member states*
- *Strengthen the capacity of AU and RECs institutions with a human rights mandate*
- *Accelerate ratification of human rights instruments*
- *Ensure effective implementation of human rights instruments and decisions*
- *Increase promotion and popularization of African human rights norms*

One can note that the Human Rights Strategy for Africa is part of a broader process to establish greater coordination amongst AU organs and institutions within the framework of the African Governance Architecture. The purpose of the Strategy is to strengthen the African human rights system by deepening the culture of democracy and human rights in conformity with the objectives of the African Charter other relevant instruments. The strategy also provides an opportunity to pursue the protection of woman's rights and on this notion, it is guided by the principle of gender equality and the principle of universalism. Moreover, this marks a similarity between the Council of Europe human rights strategies and African Strategy on Human rights as posited by Desire (2010) who noted that

"Universalism of human rights is indeed largely based on Western philosophy and the value it places on the individual. A product of Greek philosophy, Christianity and Enlightenment thinkers, and this approach contends that one can use nature, God or reason to identify basic rights inherent to every human being which pre-date society."

In this case, the goal of international human rights norms is to establish a standard that disregards national sovereignty in order to protect individuals from abuse. In 1992 African countries adopted the Tunis Declaration which according to Desire (2010) stated that universal nature of human rights is beyond question. However, no ready-made model can be presented at the universal level since the historical and cultural realities of each nation and the traditions, standards and values of each people cannot be disregarded. Murray (2004) postulated that at national level, the strategy seeks that member states ensure that the Strategy is implemented in a way that enhances compliance to the continental and regional instruments. This includes the ratification, domestication, and popularization of human rights norms and mechanisms, as well as the implementation of decisions of AU organs and institutions, and the RECs. National Human Rights Institutions (NHRIs) play an important role in popularization of human rights norms and mechanisms, monitoring state compliance with their obligations, and contribute to the implementation of the decisions of AU organs and institutions and of the RECs. (Murray, 2004).

4.4.5 Partnership with NGOs (African Union NGO Forum)

On the 24th ordinary Session, the African Commission was requested to review its criteria for granting observer status to NGOs. The need for revised criteria was motivated by the following arguments as outlined by (Viljoen, F & Louw, L, 2007)

(i) *The fact that very few NGOs committed themselves to the African Commission, as their track record for submitting activity reports, as decided in Tunis, was dismal.*

(ii) *The Commission was not adequately informed as to what NGOs were doing in the field of human rights; and*

(iii) *The fact that some NGOs apparently misused donor funds*

As a result, at the 25th ordinary session in Burundi 1999 Non-Governmental Organisation working in the field of human rights were given observer status through the adaptation of the 'Resolution on the Criteria for Granting and Enjoying Observer Status. Ever since the adoption of this resolution, great strides had been observed in the protection of human rights as NGOs can work hand in glove with the Commission and at the same time can bring complaints against human rights violators before the AfCHPR. The African Commission also grants observer status to NGOs that satisfy minimum criteria to enable them to participate actively during its ordinary sessions. Members of civil society contribute and propose strategies to resolve various issues of a human rights nature in Africa. Civil society organisations, through NGO forum, prepare and submit draft resolutions on the human rights issues for the African Commission's consideration and possible adoption. Some of these resolutions have condemned States' complicity in human rights violations, such as in Darfur, Zimbabwe, Nigeria and Rwanda. Other roles of NGOs under the African system of human rights as Motala (2002) highlighted include;

"participation in sessions, media and publicity, complaints mechanism, State reporting procedure, assistance with regard to missions, workshops and seminars, elaboration of principles and standards, supporting the work of Special Rapporteur, supporting the secretariat, missions, and drafting human rights instruments".

However, in 2018, a controversial issue sparked a question on the commission's independency after it stripped the Coalition of African Lesbians (CAL) of its observer status following decisions the AU executive council to consider "African Values" when carrying out reviews on observer status applications. According to the International Justice Resource Centre (2018), the ACHPR's decision to withdraw CAL's observer status comes after years of advocacy efforts by CAL to obtain that status, which was marred by discriminatory statements on the part of both the continent's human rights oversight body and the political organs of the African Union. Human rights advocates have raised serious concerns that the Commission's decision to withdraw CAL's observer status at the AU Executive Council's directive is indicative of the political influence at the ACHPR by Member States. If the Commission is biased towards

certain thematic issues over others as in the NGOs that work on sexual orientation and gender identity issues, how then can it protect some of the marginalised groups in the society? Observer status is an official recognition that allows civil society organizations to participate in ACHPR activities and to access the (AfCHPR) so when an NGO is stripped or denied this status on basis of "African Values", the rights of women human rights defenders, LGBTI persons, and sex workers are stamped on. The CAL cannot bring cases to the (AfCHPR) in defence of victims rendering it insignificant and illegitimate.

In contrast, the Council of Europe has the Commissioner on Human Rights as its human right institution, a non-judicial institution which cannot act upon individual complaints but rather works in close co-operation with NGO's and professional groups such as ombudsmen, judges and journalists when carrying out country visits. Mutua (1999) argued that there is no much difference between the African Non-Governmental Organisation and those in Europe as he posited that "*…that many of them are replicas of their northern counterparts in terms of their organisation, objectives, tactics and strategies"* who are to a larger extent dependent on Western resources and support.

4.5 An inclusive approach to Human Rights

Due to difference in culture and religion, some human rights had been rendered not enforceable thus posing a huddle towards the agenda of the African Union in trying to reduce human rights violation. (Tomuschat, 2003) noted that:

"Notwithstanding some rights being regarded as enforceable and others not, the AU should avoid their polarisation and ensure that all rights – including social, economic and cultural rights – are protected and promoted. To avoid the usual polarisation between the latter rights and political and civil rights, it is suggested that a human-rights-based approach to development be adopted. Such an approach combines social, economic and cultural rights with civil and political rights, and the building of a just, equitable social contract between State and citizen" In this case the inclusive approach seeks to ensure a fit between the human rights strategies and the overall African Union development agenda. The approaches taken by individual member state of the African Union would require clear plans of action with achievable objective and goals.

In the case of the Council of Europe, under its auspices is the European Convention on Human Rights, Article 9 ECHR which guarantees 'freedom of thought, conscience and religion'. It also expressly and concisely recognises the right to change one's religion or belief, as well as the right to manifest it 'in worship, teaching, practice and observance' subject to a number of limitations that 'are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others' With all the statutes in place, frequent allegations of religious discrimination, and minority faith groups seem to be rampant in an ever more religiously diverse continent campaigning for the accommodation and recognition of their religious practices In terms of the inclusiveness, we could say that the Council of Europe has more concise statutes in as much as the Court's workload has increased in the field of religion and belief in the decade.

4.6 Arrangements which are constitutional and Institutional

The African Union has a Constitutive act that provides the region with continental legal instruments aiming at protecting and promoting human rights. The protection of Human Rights needs an institutional approach focus thus the Constitutive Act enables the African Union to mainstream human rights in most of its initiatives and programs. This strategy involves ensuring the integration of human rights norms, principles and standards in a number of initiatives including observations of elections, peace keeping missions. In carrying out their programs, AU organs are supposed to mainstream human rights. One of the obligations of the Peace and Security Council is to protect the human rights. (Zeleza, 2006) wrote that; *"It is equally important that the AU should also promote the mainstreaming of respect for values inherent in human rights, both in members states' laws and their policymaking. Strengthening the capacity of institutions with a human rights remit and providing them with adequate resources at the continental, regional and national level to effectively fulfil the mandate of promoting and protecting human rights remains critical."*

Similarly, the Council of Europe has embarked on integration of its human rights and non-human rights institutions as well as with enforcing mechanism as a strategy to ensure respect of human rights in support of the Secondary sources. Saavdra-Alessandri, noted that:

"in 2008 the Council of Europe agreed on the adoption of joint strategies to address the situation of different vulnerable groups, including setting up mechanisms of monitoring and

assessing their implementation". Both regional organisations seem to be making strides in incorporating human rights protection both at institutional level and domestic level.

4.7 Better coordination of mechanisms with a human rights remit

The African Union does not just dive into action and hope for the best. This means that with the adoption of the legal instruments targeting human rights comes with implementation mechanisms. The mechanisms include the African Court on Human Rights, The African Commission, the national human rights institutions as well as the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) and Non-Governmental Organisations. A call for coordination of these implementation mechanisms may help forward the mantra of human rights. (Adisa, 2002) was quoted stating that;

"…it is important that there is proper coordination between all these human rights mechanisms, such as the ACERWC and the African Commission, as well as with other institutions. Equally, the APRM process should complement the efforts of existing human rights institutions."

In this case a vertical and horizontal fit should be achieved between the approaches and the initiatives of the AU Institutions.

4.8 Regional and Domestic awareness campaigns

Effective awareness campaigns have been undertaken by the African Union to change in human social norms such as Female Genital Mutilation. In this case Civil and human rights education have been carried out thought out African countries. This has been done through the involvement traditional and community leadership with the aim of putting an end to toxic practices and gender imbalances. In this case the Commission has hailed the promotion of social protection polices to, as Patel (2005) posited, *"…a scaled-up community-driven model aimed at strengthening community capacity to provide support during times of need, coupled with an effective monitoring and evaluation system to assess the social and economic impact of the programmes that target poverty reduction and inequality"*

This however entails that community-driven approaches led by community-based organisations and informal networks have always been critical for the survival of communities and have been effective in the fight for human rights violations. Communities need to have control over funds, resource allocation, and decision-making, as this relies on people's strengths and knowledge. Such empowerment also helps people to address inequalities inherent in the way society is structured and organised (Ahmadou, 2007).

The strategies employed by the Council of Europe can be summarised as below as noted by Baderin and Ssenyonjo (2011)

- *Integrating human rights into early warning, humanitarian operations, peacekeeping and development*
- *Technical cooperation activities*
- *Human rights education and campaigns*
- *Human rights monitoring*
- *Working with civil society*
- *Publication of information*

4.9 Chapter Conclusion

Although the two regional organisations (African Union and Council of Europe) are in two different worlds, non-much difference can be noticed from the strategies as well as the function of their institution operations. As noticed above from the secondary sources at the researcher's disposal, the institutions put in place by the two organisations might differ in name yet almost identical in duties and initiatives. Both institutions have almost identical obligations over human rights violations. This however probably suggests the replication of the strategies used by both organisations on issues to do with human rights for example the use of Non-Governmental Organisations and Civil Societies, the use of Mission, Human Rights Awareness Campaigns, integration of initiatives, cooperation of mechanisms as well as streamlining or main streaming human rights issues in institutional programs among others discussed above. The chapter below will provide the discussions pertinent to the result and data extracted from the various secondary sources above, challenges faced by the African Union and lesson that can be learnt from the Council of Europe as well as recommendations.

CHAPTER 5: Conclusion

5.1 Introduction

The promotion of human rights concerns is a continuous process. It is not a one-off decision but an objective process where competing interests, understanding and priorities are accommodated. This calls for policies and instruments to be remodelled based on the changing situations and demands stemming from domestic and international environments. One of the objectives of the study is to elicit lessons which can be drawn from experiences of the European human rights system to its African counterpart. This chapter seeks to provide the discussions pertinent to the comparison of the two systems in terms of strategies employed on upholding human rights. The chapter will discuss the challenges faced by the African Union, the lessons which can be learnt and recommendations particularly on possible solutions.

5.2 Discussion: Institutional Reforms

Africa indeed faces many challenges, and it will not meet any of them without competent leaders who have the determination, skill and commitment to implement reforms. President Paul Kagame of Rwanda seems to have made strides in terms of reforms when he had the position of AU Assembly chair. He managed to exert considerable influence over the organisation's direction since 2018. In an AU review in 2016, President Kagame noted that the African Union had a history of good intention that hardly translate to change on the ground. To directly quote him, "*Serious problems were repeatedly identified. Solutions were found. Decisions were made to apply the solutions. And very little happened*". In 2019 March, he secured an agreement to establish a Continental Free Trade Area, aiming to create a single African market and a currency, just like that of the European Union. Almost 50 countries have signed the treaty, 19 have ratified it hence it's just three less of the 22 ratifications needed for it to come into force. Such institutional reforms and strides are important in that they show hope in the effectiveness of the African Union.

5.3 Challenges Faced by the African Union in protecting Human Rights

5.3.1 Bureaucracy

The rules that influence the decision-making processes are complex. To begin with, strategic and judicial processes are made complicated by the fact that all judges perform their function on a part-time basis, a change that was implemented by the European Court more than two decades ago, November 1998, by Protocol 11 to the European Convention. To make its court more effective, The European full time Court replaced the former part time Court and Commission. Whereas in the case of the African Court, Article 15 of the protocol stipulates that judges meet for ordinary sessions four times per year, after every three months for a period of two weeks. The most likely cause for this is the lack of financial resources. The major weakness of the of the protocol lies in how it fails to provide for a distribution of competences regarding administrative or judicial affairs, where all decisions have basically to be taken by plenary with a quorum of seven judges. (Article 23 of the Protocol and Rule 17 of the rules of the Court) This concept of part time judges slows down progress and this is evidenced by the duration of cases until they get judgement. Also, since they meet four times a year, the agenda is always full.

5.3.2 Lack of Political Intent and Will

One problem that appears repeatedly to inhibit and frustrate the realisation of human rights on the African continent is the lack of political will for placing human rights firmly on national agendas, as well as on those of sub-regional and regional umbrella organisations (Maloka et al, 2005). This reticence to pursue a rights-based strategy for achieving the enhanced welfare of African citizens is, *inter alia*, indicative of deficient and antiquated conceptions of sovereignty. States have generally lacked political will to comply with the recommendations of the Commission and the rulings of the Court in some instances. Ibrahim (2016) posited that the African Charter and the establishment of the African Commission did not yield much impact in Africa when it comes to curbing human rights violations. The number of states that have withdrawn and those that have neglected to make the declaration required under Article 34 (6) of the protocol that allows individuals and NGOs to bring cases directly to the court is evidence of the lack of political willingness by the states. (Anyangwe, 2017) argued that while African States are clearly willing to establish human rights institutions, they often lack the political will to submit themselves to a true scrutiny by these mechanisms or to reform their practices and take appropriate measures when they are found to have violated human rights.

Moreover, lack of political elites' intent to be bound by human rights treaties limits their local duties to enforce human rights protecting legislation. Originally the charter itself was blank on limitations of rights. As stated by Bellamy and Wheeler (2008), two conditions precedently required for substantive reforms to curb deep-rooted cultural and social practices that amounts to economic and social rights are strong commitment and political will. Political will deficiency as well as lack of initiative by political masters to deal with serious human rights violations might be a result of the fact that the dictators and human rights violators have been part of the same club of Heads of States to which the African Commission is required to submit its annual report, which include information on serious violations of human rights. As a result, the enforcement and implementation of obligations and commitments in upholding human rights remain a challenge.

5.3.3 Cultural and African Values

A number of human rights violations under the disguise of 'African values' and cultural systems have been considered dangerous as well as criticised for disrespecting the values and rights of woman and children. Most of these values and cultural aspects have been associated with harmful practices such as early child marriages, human trafficking and FGM. These practices are still prevalent and existent because they are considered as traditional practices, which are deeply rooted in society, and cannot simply be legislated away. As a result, the African Union has always been in a cultural and legislation battle. Ending such practices requires political will and commitment, dialogue within communities and with traditional leaders, and civic and human rights education. There is also need to empower women by means of fair representation in positions of authorities. Some of the statesman representing their countries on the AU board are found wanting for such practices. For example, King Mswati of Swaziland has many wives, which he married when they were as young as 16 years old. Child marriages and sexual exploitation are rampant in this country. In this case, it then makes it difficult to legislate early marriages when the policy formulators are found perpetrating and wanting to such human rights violations. However, one may say that the African Union did not come to wipe out the African Cultural fingerprint but to preserve it rather.

5.3.4 Poverty and Unemployment

Due to the high rate of unemployment and poverty in Africa, the African Union has found implementing and upholding human rights policies difficult. Poverty and unemployment have paved way for female rights violation as well as children's rights violations. The low levels of

women’s representation in social, economic, and political decision-making structures, the increasing feminisation of poverty, aggravated by discrimination and unequal opportunities and treatment, the underutilisation of the entrepreneurial creativity and job creation potential of African women are still rampant. The failure of women to acquire employment and a proper source of income has made them vulnerable to abuse as some resort to make money through prostitution. With other organisations fighting for the decriminalisation of prostitution, there is a conflict of rights where the granting of the freedom to sex work is endangering women as it makes them vulnerable to abuse and sex trafficking.

The purpose of development is, therefore, to enhance the capability of individuals to overcome poverty and other social and economic challenges, once poverty has been contained to reasonable levels it becomes easy to enforce legislation protecting human rights and end neglect of women. In this respect, Mubangizi (2005) stated that

“Poverty also affects enjoyment of human rights in many ways including undermining of democracy. Democracy can hardly work in conditions where the people are poor. Based on African experiences with past elections in countries as such Kenya, Nigeria, Togo and so on, the poor and illiterate may be influenced to sell their votes for a mere pittance.”

That being said, poverty and ignorance prove not to provide a conducive environment for advocacy and the promotion of human rights among other challenges for the promotion and enforcement of socioeconomic rights as well as among all the social phenomena that have a significant impact on human rights.

5.3.5 Lack of Resources

Financial constraints have hindered the African Union from enforcing Human Rights, rendering it a toothless bulldog. It has also resulted in poor coordination among the African Union mechanisms. Killander and Abebe (2010) posited that the Board needs to be adequately resourced in order to avoid the ‘toothless watchdog’ syndrome. The human resource mechanism lacks necessary resources to make a difference by compelling respect for human rights. The Organisation lacks resources in all aspects, that is financial, human and material resources. Hyans and Killander (2013) posited that the AU continues to create more instruments and mechanisms with limited resources and overlapping jurisdictions, thus limiting their role in providing effective oversight and enforcement. The judges of the ACHPR are on a part time basis because the African Union cannot afford to employ them full time. And as we

have seen from the Council of Europe, having full time judges decreases the workload and speeds up the handling of cases.

The resources for implementation have not matched the progress achieved in adopting human rights instruments and establishing institutions. Still on the same note, (Durojaye and Murungi, 2014) noted that;

"The African Commission considers at least fifty communications at each Ordinary Session and a lot of research goes in finalising a communication. Given the workload of the special mechanisms each, of them should have a full-time legal officer to coordinate their activities. From time to time, special rapporteurs have been provided with legal officers on short term basis. The staff provided to the African Commission by the AU is clearly inadequate to effectively supporting its extremely broad mandate. At the same time, it should be kept in mind that the effectiveness of the Secretariat is critical for the success of the African Commission".

In terms of monitoring and evaluation, insufficient resources have made it difficult to monitor the initiatives put in place to deal with human rights issues. For instance, the Child Committee has appeared to be a weak body. It is almost invisible, mainly due to its lack of resources and the fact that it does not have its own secretariat. African States have routinely defaulted in meeting their financial obligation to the the African Union. Durojaye and Murungi (2014) posited that;

"the arrears may cause not only the AU to be stillborn but the Human Rights Court as well. On the other hand, if African States are faithful in meeting their financial obligations to the AU, it should be possible for the Union to fund its institutions effectively, including the Court".

Moreover, allocation of resources to the social sector to enhance access and build capacity in institutions, particularly those that strengthen human rights protection mechanisms had been lagging behind thus rendering it difficult to spread human rights information to the most vulnerable groups of people mostly woman in rural areas of Africa. In the absence of financial and logistical support to operationalise the institutions with human rights remit the African Union will always remain ineffective. (Udombana, 2002) stated that *"…Budgetary constraints have often times forced Commissioners to abandon idea of organising promotional activities, such as seminars, visits in State parties. Financial matters have taken up substantial spaces at the Commissions bi-annual sessions, thus, instead of using those limited periods to deliberate*

on important aspects of its mandate, the African Commission spend time discussing strategies for survival".

Scarcity of resources has resulted in inadequate funding for the implementation of initiatives to take place as well as power legislation enforcement. Human rights implementation, enforcement and accountability mainly depend on the availability of resources, the African Union will have to step up its advocacy for increased resources mobilisation both internationally and domestically.

5.3.6 Being Reactive rather than Pro-active

The African Union has been viewed as more of reactive than pro-active when it comes to dealing with human rights violation issues. (Juma, 2007) argued that "…*One of those challenges is that judicial mechanisms are, by nature, reactionary in most cases. Although the decisions and actions of judicial mechanisms have a deterrent and preventive effect, they often come into the picture after grave human rights violations have been committed. For instance, human rights violations are being reported in the Darfur region, the African Court of Justice and Human Rights will not save the victims of these violations. However, it may deter many others from doing the same."*

Thus, the African Union has been caught up in a reactive syndrome whereby it only waits on emerging human rights violation crimes rather than thwarting them before they emerge. This is because the Commission lacks a robust and pro-active human rights system that would also work for the consolidation the rule of law and democracy.

5.3.7 Poor Coordination among the African Union Institutions

Skimpy coordination and collaboration among AU institutions is another hurdle faced by the African Union in the protection and prevention of human rights violations. Hickman (2005) posited that there is inadequate coordination and coherence among the AU organs and institutions and the RECs in terms of policy initiation, development and implementation. This however is worsened by poor resourcing of the institutions and the RECs. In 2011, the organisation intended to achieve full coordination and enhance coherence among AU organs, RECs and member states on human rights by 2015. This was to be done through consolidation and reviewing co-ordination, complementarities and subsidiarity gaps as well as overlaps in the African human rights system so as to reduce duplication of activities and programs or duties, as well as reforming relevant instruments in the human rights framework for policy

decision and action to be taken. However, this yielded less achievements as human right violations across the continent institutions remained reactive to human rights violations thus poor coordination among the institutions continued after 2013. Moreover, the challenge does not only end on poor coordination between the African Union Institutions and the RCEs but extends to various governments, departments, agencies or levels of government as well as State human rights institutions.

5.4 Lesson that can be learnt from the Council of Europe by the African Union

The Council of Europe also has challenges. Yes, its court can be described as skilled at recognizing systematic human rights violations, but it also faces delays in compliance by some of the states responsible for violating, which are becoming endemic. The danger in this is that some countries' government officials point out to the compliance delays in other states as justification of noncompliance in their respective jurisdictions. However, in as much as the Council of Europe has its own challenges, it seems more progressive than its African counterpart. The establishment of the African Charter on Human Rights in 1986 marked the existence of the African Human Rights System. Thus, the system has been in play or more than 33 years now. However, despite considerable effort being put on by the African Union, the organisation is still lagging when it comes to addressing human rights issues. There are a lot of lessons the African Union can learn from its counterpart the Council of Europe. Below are some of the lessons the organisation can learn.

5.4.1 Strong Stakeholder Involvement

One lesson the African Union can learn from the Council of Europe that can see it achieving excellent human rights protection is enhancing and strengthening its partnership with other international organisations as well as with non-governmental organisation. In this case the Council of Europe has since 2016 strengthened its partnership with other international organisations such as the European Union and the United Nations itself. Several non-governmental organisations haves been given full support to undertake their mandates through allocation of resources particularly financial resources. For example, the Council of Europe has strengthened its partnership with the European Union through the Council Conclusion on EU for cooperation with the Council of Europe 2020- 2022. The Council had also engaged the member states to loosen up the legal instruments regulating non-governmental operations domestically.

The African Union has partnered with other international Organisations and non-governmental organisations, but it is not strong and effective. Most probably because of the bad relationship between African politicians and non- governmental organisations, the reason being that most African leaders believe that non-governmental organisations are politically oriented and support opposition parties particularly those funded by Western Countries. Some countries in the Sub-Sahara, Zimbabwe in particular, have gone to the extent of enacting legal instruments that make it difficult for the operation and registration of Non- Governmental Organisations such as the POSA (Public Order and Security Act). What the African Union can do is to strengthen its partnership with international organisations such as the SADAC as well as other European organisations such as the European Union as well as the Council of Europe. One of the benefits derived from strengthening the partnership is that the African Union may strengthen its financial and human resource base, making it possible for the organisation to effectively carryout its mandate.

5.*4.2 Supporting the African Court of Human Rights*

As discussed in Chapter three of this paper, withdrawal decisions serve to undermine aspirations of the AU's Agenda 2063, whereby the AU aims to achieve "an Africa of good governance, democracy, respect for human rights, justice and the rule of law." History from Sub-regional courts in Africa who received backlash from member states on basis of sovereignty and non-intervention can help us in picturing where the African Court is headed considering that a number of countries withdrew from the declaration that gives individuals access to the Court. The ECOWAS Court of Justice, the East African Court of Justice and the SADC Tribunal all experienced counterattacks from particular member states that frequently cited concerns about sovereignty and courts overstepping their authority to interfere in states' internal affairs. History has also shown us how states lobbied their fellow member states to curtail the courts' authority by limiting their jurisdictions. The West African states left the ECOWAS Court's human rights jurisdiction intact. However, the East African states revised

the EACJ's design and changed it to suit them and Southern African states effectively disbanded the SADC Tribunal.

For the same not to happen to the African Court of human Rights, mobilization from Civil Society Organisations will be necessary to alleviate backlash against the African Court. Apart from that, support from other African states and the African Union is vital for defending against the states' attacking the Court after receiving judgements on human rights violations. In 2020, the Executive Council of the African Union called on African States to accede to the Protocol Establishing the African Court and to make the declaration required under article 34(6) of the Protocol. To stop this threat to the progress that has been made towards protection of human rights in Africa, the protocol must be made mandatory and not optional. This will help this institution, created to strengthen human rights enforcement in Africa, fulfil its obligations.

5.4.3 Find practical methods to self-finance the Institution

Over 80% of the AU funding comes from donors. In 2016, a proposal to charge a duty of 0.2% on imports of eligible goods from outside Africa, allowing the AU to be self-financing was made. However, half of the member states are contemplating on the collection of the 0.2% levy, which is supposed to finance the AU while others are refusing to put in place. Attempts to make the AU more financially transparent and self-sufficiently are evident but however moving slowly. In the 2019 July summit, Leaders adopted measures to make the AU budget more credible and transparent through allowing finance ministers to participate in the drafting process and introduction of spending ceilings. The AU also imposed more stringent consequences on member states that do not pay their dues with the aim of decreasing the institution's reliance on donor support. To make progress in achieving a self-sufficient system in terms of financing its operations, the African Union should put in place a legally binding mechanism that ensures member states honour their commitments to implement reforms.

5.4.4. Information Publicity

Another lesson that can be learnt by the African Union from the Council of Europe is to make vital information accessible to everyone vulnerable, which include women and children. The African Union has been deemed less transparent, particularly on proceedings. For example, the judgments reveal that some interim orders were made during the course of the proceedings. But none of those orders were ever made public even though nowhere in the judgment was it

stated that they were confidential. Some of the verdicts were reported missing without a trace. This however is different with the Council of Europe where publicity of their work is done under their stamp.

Publicity is used as a communication channel between all the vital stakeholders of the Council of Europe. The Council of Europe provides its drafts and proposals the widest publicity so as to enable governments to study them thoroughly and ensure that the public expresses its opinions freely. Moreover, publicity does not end with transparency in displaying information but also extends to communicating the rights of the people so as to raise awareness. For example, the Council of Europe is determined to raise awareness of the people particularly children's rights among parents, peers, children, professionals, and policy makers, with much effort being put on online as social visual network tools.

If the African Union reaches such level of publicity, the reporting system at the organisation's various stages increases awareness of human rights, and encourage civil society, as well as the public, to exercise some pressure on their respective government if the report shows any violation of human and peoples' rights. Publicity will put the African Union in the spotlight thus providing awareness of its existence and mandate amongst African peoples. The African Court on Human Rights is required to publicise its annual reports, where it is specifically required to mention whether any Member State has failed to comply with a court judgment on human rights violations.

5.4.5 The African Union should be Pro-Active

The African Union has been accused of being more of a reactive organisation rather than pro-active. In this case the Organisation only waits for violations of human rights to occur first and deal with an already inflicted wound. Moreover, due to its bureaucratic nature it takes time to respond to the violations thus sometimes render it to be called a toothless bulldog. The organisation does not have mechanisms put in place to assess risk of possible human rights violations. In this case, the African Union can learn a lot from the Council of Europe through its achievements by putting in place measures to deal with human right violations, this has seen the Council of Europe being able to thwart imminent human rights violations in Vietnam as well as Scotland. This however was achieved with the help of the United Nations. Pertinent to the African Union, Nmehielle (2004) *"...posited that progressive objectives in regional normative instruments would serve little purpose if a proactive stance is not taken to make*

those objectives a reality" In the same way as the Council of Europe, the African Union can take a proactive stance by advocating and emphasising on a positive approach on human rights practice by Member States in their domestic settings.

5.4.6 Engaging Research Institutions

On its own the African Union is understaffed. Josephs and Macbeth (2010) posited that:
"*…lack of funding and human resources have been major constraints on the work of the Commission. However, with recent massive increases in its budget financial constraints will hopefully be a thing of the past*."
The African Union's Human Resource Department's annual reports have shown that the organisation's organs and institutions have inadequate human resources. However to curb this challenge the African Union can learn from its counterpart the Council of Europe that engages research institutions, particularly tertiary education institutes such as universities for research and information gathering. The Council of Europe also engages volunteer organisations as well as individuals for labour. This however has proved to be effective for example in 2009 the European Convention Used Professor C.A White of the Oxford University and a few Law students for a research on the effectiveness Convention's legal instruments.

The Council of Europe also appointed Professor Monica McWilliams from the University of Ulster to be Commissioner of the organisation's Human Rights Commission. In 2011 a study was conducted using the University Collage of London on the perception on legitimacy of the European Court on Human Rights. Study found out that Council of Europe was facing conflicting expectations pertinent to its legitimacy. This study provided the council with a starting point addressing its legal problems, The African Union can copy from the Council of Europe and start engaging research organisation and tertiary colleges for professional assistance in research as well as labour. The Union can use students' thesis for studies and research purposes, reducing research costs for the organisation. Moreover, the union can also start to engage college students for internship or traineeships for administration operations thus providing the organisation with cheap labour.

5.4.7 Strengthen Monitoring and Evaluating Strategies

Although some monitoring activities are said to have been carried out, their impact is not felt. The monitoring institutions of the organisation can be rendered weak as some projects suffer immature death, and some of them are not even assessed to extract the reasons of their failure.

This however has been blamed on the lack of resources for the organisation particularly financial resource. In this case the African Union can learn from the Council of Europe's methods of monitoring and evaluating performance. For example, the Council of Europe on the 6-year Children's Rights Strategy of 2016, had a mid-term evaluation which was meant for possible adjustments.

The evaluation was carried under the guidance of the 47 member states with other relevant stakeholders. Moreover, the secretariat reported every two years to the Committee of Members pertinent to the implementation of the strategy. The African Union can copy this system on several of its strategies to ensure effectiveness of its initiatives towards Human Right violation fight by means of establishing a monitoring mechanism that follows up on all its projects.

5.5 Conclusion

From the above research and discussions several conclusions can be drawn from the study. The research has brought to light that some states do not evenly apply the principles and norms that form the core tenets of their regional organisation. They only abide by them only as far as it does not impede their freedom to do what they please without being subjected to sanctions or suspensions from their affiliated organisations. This has been seen through the continuous withdrawals of African Member states from the declaration that allows individuals and NGOs to directly access the African Court. In Europe, this can be seen through Turkey and Russia deliberately not implementing the ECHR's judgements. To this extent, the AU cannot control any member state to sustain a norm or prevent it from committing grave violations against its citizens because the AU itself is still functioning on transcended principle of non-interference from its predecessor.

A comparative analysis of the scope and nature of human rights policies, existing institutions, challenges, and various attempts by both the Council of Europe and the African Union paved way for the illumination of what the best practices maybe. This paper has shown that policies and processes cannot be easily imported exclusively from one regional system to another because of the varying contexts and cultures of the two systems. However, lessons drawn from one system have the possibility to influence and inform approaches, norms and practices of the other regional system.

Moreover, the study has led to the conclusion that there is a conflict between the African cultural value, the African social construct and modernity as well as International Law. For example. the LGBTQ rights are still considered a taboo in most African countries taking it from that traditional point of view thus contradicting the International Law. In this case it has been concluded that culture is a strong aspect that influences the respect of human rights and it cannot be easily washed away with legislation. In this case the research recommended the enactment of a universal constitution that respect the cultural values and most importantly protect the African social construct and values while at the same time fighting inhuman cultural practices like Female Genital Mutilation.

The scrutiny of all the secondary sources at the researcher's disposal led to the conclusion that there are a lot of similarities between the two reginal organisations pertinent to their strategies and their institutions and legal mechanisms. The institutions may differ in some areas, but their obligations are almost similar for example the African Court of Human Rights and the European Court of Human Rights are both legal organs of the two organisations in their respective jurisdiction which have almost similar mandates. However, the difference is more perceptible on their success in terms of delivering their duties. The European Court of Human Rights has written more success stories than its African Counter part due to reasons discussed above such as poor implementation strategies as well as monitoring and evaluation strategies.

References

ADELARDUS KILANGI, 2013. *THE WORK OF THE AFRICAN UNION COMMISSION ON INTERNATIONAL LAW (AUCIL) IN THE DEVELOPMENT OF INTERNATIONAL LAW IN AFRICA.* Addis Ababa: s.n.

Adisa, J., 2002. *"A commentary on making the mechanism work".* Cape Town: APRM.

Adjolohoun, S., 2020. 'A crisis of design and judicial practice? Curbing state disengagement from the African Court on Human and Peoples' Rights. *African Human Rights Law Journal Volume 20*, pp. 1-40.

Agbakwa, S. C., 2006. Reclaiming Humanity: Economic, Social and Cultural Rights as the corner stone of the African Human Rights. *Yale Human Rights and Development Law Journal,* Volume 5, pp. 178-185.

Agbakwa, S.C., 2006. Human Rights, the Rule of Law, and Development in Africa.

African Journal of International Criminal Justice, 2014. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. 1(0).

Ahmadou, N., 2007. The African Union and human rights in Africa. *Pretoria: The Institute for Security Studies, http://www. issafrica. org Accessed September 2020*, p.2012.

Alexandria., S., 2006. American Court of Human Rights. *American Jounal of Human Rights,* 5(3), pp. 13-26.

Alston P. and Crawford J, 2000. *The Future of the United Nations Treaty System.* eds ed. Cambridge : Cambridge University Press.

Annan, K., 2006. *Address to the AU Summit in Banjul, The Gambia.* [Online] Available at: http\\www.africa.union.org [Accessed 03 February 2021].

Anyangwe, C., 2017. Obligations of States to the African Charter on Human and Peoples' Rights. *Revue Africaine de Droit International et Comparé,* 10(9), pp. 570-576.

AU, 1981. *African Charter on Human and Peoples Rights,* s.l.: African Union.

Ayeni, V., 2016. *The impact of the African Charter and the Maputo Protocol in Selected African States.* Pretoria: Pretoria University Law Press.

Baderin, M.A. and Ssenyonjo, M., 2010. Development of International Human Rights Law before and after the UDHR. *DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS LAW BEFORE AND AFTER THE UDHR, Mashood A. Baderin & Manisuli Ssenyonjo, eds., Ashgate Publishing*.

BBC, 2017. *BBBC News.* [Online] Available at: https://www.bbc.com/news/world-europe-38691148 [Accessed 20 july 2020].

Bellamy, A.J. and Wheeler, N.J., 2008. Humanitarian intervention in world politics. *The globalization of world politics*, pp.522-538.

Buergenthal, T., Shelton, D., & Stewart, D. (2002). International human rights (3rd ed.). St. Paul, MN: West Group.

Çakmak, C., 2003. Human Rights, the European Union and Turkey. *Alternatives: Turkish Journal of International Relations*, *2*(3&4).

Çali, B., Koch, A. and Bruch, N., 2011. *The Legitimacy of the European Court of Human Rights:.* London: University Collage London Press.

Casier, M 2009 Contesting the 'Truth' of Turkey's Human Rights Situation: State-Association Interactions in and outside the Southeast », *European Journal of Turkish Studies* http://journals.openedition.org/ejts/4190 Accessed 25 August 2020

CDDH, S. C. f. H. R. C. O. E., 2016. *Analysis of the legal situation at international level and in Council of Europe member States on combating and preventing female genital mutilation and forced marriage.* [Online]
Available at: https://rm.coe.int/0900001680692445
[Accessed 04 August 2019].

Chide, O., 2001. 'The Role of Case and Complaints Procedures in the Reform of the African Regional Human Rights System'. *African Human Rights Law Journal ,* Volume 1, pp. 225-246.

Chide, O., 2001. Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights under the African Charter on Human and Peoples' Rights'. *Human Rights Quarterly ,* pp. 327-369.

Clarke, R., 2017. *"The Conscience of Europe" Navigating Shifting Tides at the at at Court of Europe.* Vienna: Kairos Publications.

CoE, C. o. E., 1950. *European Convention On Human Rights and Fundamental Freedoms,* s.l.: Council Of Europe.

Council of Europe, n.d. *Council of Europe Convention on preventing and combating violence against women and domestic violence.* s.l.:s.n.

Desire, .., 2010. *THE AFRICAN HUMAN RIGHTS SYSTEM: CHALLENGES AND PROSPECTS.* Pretoria: University of South Africa Press.

Dikov, B. G., 2018. *The European Human Rights System.* s.l.:s.n.

Donohoe, M., 2006. *Female Genital Cutting: Epidemiology, Consequences, and Female Empowerment..* [Online]
Available at: http://www.medscape.com/viewarticle/546497.
[Accessed 14 October 2020].

Durojaye, E & Murungi, LN , 2014. Durojaye, E & Murungi, LN 'The African Women's Protocol and sexual rights'. *The International Journal of Human Rights 881,* Volume 3, pp. 37-45.

Dzehtsiarou, K., 2017. What is law for the European Court of Human Rights. *Geo. J. Int'l L.*, *49*, p.89.

ECHR, 2020. *European Court of Human Rights, Press country profile – Russia.* [Online]
Available at: https://www.echr.coe.int/documents/cp_russia_eng.pdf
[Accessed 20 October 2020].

ECtHR, 2014. *Neftyanaya Kompaniya Yukos v. Russia, Appl. no. 14902/04, Judgement of 15 December 2014,* s.l.: ECtHR.

Emmerson, B., 2011. *The European Court of Human Rights Enhances Our,* New york: The Independent.

Gabriella Citroni, 2016. *Missings persons and victims of enforced dissapearences ,* France: Council Of Europe Commisioner of Human Rights.

Gawans, B., 2015. The African Union: Concepts and implementation mechanisms relating to human rights. *The African Union: Concepts and implementation mechanisms relating to human rights,* Volume 3, pp. 139-143.

Green, D., 2008. *From poverty to power: How active citizens and effective states can change the world.* Oxford : Oxford Internation .

Harris D.J. and Livingstone S., 1998. *The Inter-American System of Human Rights.* Oxford: Clarendon Press.

Harris, D., O'Boyle, M., Bates, E., and Buckley, C, 2009. *Law of the European Convention on Human Rights.* 2nd ed. Oxford: Oxford University Press.

Heyns, C & Killander, M, 2009. *'The African regional human rights system' inGomez Isa & de Feyter (eds) International human rights law in a global context.* 3rd ed. Bilbao: University of Deusto.

Heyns, C.H. and Stefiszyn, K. eds., 2006. *Human rights, peace and justice in Africa: A reader*. Pulp.

Hickman, T., 2005. 'Constitutional Dialogue, Constitutional Theories and the Human Rights Act. *Public Law,,* Volume 2, pp. 306-312.

Hickman, T.R., 2005. Between human rights and the rule of law: Indefinite detention and the derogation model of constitutionalism. *The Modern Law Review*, *68*(4), pp.655-668.

Horn, N. & Bösl, A., 2008. *Human rights and the rule of law in Namibia.* s.l.:Macmillan Namibia.

H, W., 2019. Council of Europe at 70. *Human Rights Watch,* pp. 14-16.

Joseph, S and McBeth, A, 2010. *Research Hand Book on International Human Rights Law.* 2nd ed. Massachusetts: Edward Elgar Publishing Limited.

Juma, M., 2007. *Eroding Local Capacity: International Humanitarian Action in Africa.* Uppsala:: Nordiska Afrikainstitutet,.

Kahn, J., 2019. 'The Relationship between the European Court of Human Rights and the Constitutional Court of the Russian Federation: Conflicting Conceptions of Sovereignty in Strasbourg and St. Petersburg'. *European Journal of International Law, Volume 30, Issue 3,* 30(3), p. 933–959.

Kilic, Z. 2001 Human Rights in Turkey- Summary Report. Human Rights Review 3 (1), p. 86-91

Killander, M & Abebe, A , 2010. 'Human rights developments in the African Union during 2010 and 2011. *African Human Rights Law Journal 199,* 3 (7), pp. 27-33.

Ibrahim, A.A., 2016. African Union and the challenges of underdevelopment in contemporary Africa. *Journal of Education, Society and Behavioural Science*, pp.1-

Ignatieff, M. and Gutmann, A. 2011. *Human Rights as Politics and Idolatry*. Princeton: Princeton University Press. https://doi.org/10.1515/9781400842841

Leib, L., 2011. AN OVERVIEW OF THE CHARACTERISTICS AND CONTROVERSIES OF HUMAN RIGHTS. *In Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives,* pp. 41-68.

M.K., J., 2007. *Eroding Local Capacity: International Humanitarian Action.* s.l.:s.n.

Maloka, P., 2005. Africa and the war on terror. *New England Journal on Public Publicity,* Volume 6, pp. 45-50.

MARTÍN, F. N., 2019. *THE LOGIC OF CAPITAL AND HEGEMONIC LOGIC..* [Online] Available at: https://doi.org/10.25091/s01013300201900020010 [Accessed 20 September 2020].

Middelburg, A., 2018. *Analysis of Legal Frameworks on Female Genital Mutilation in selected Western African Countries,* s.l.: UNFPA Regional Office for West and Central Africa.

Mileva, N., 2020. *The Under-Representation of Third World States in Customary International Law: Can Interpretation Bridge the Gap? ,* s.l.: ESIL Annual Research Forum, Göttingen; University of Groningen Faculty of Law Research.

Motala,A Evans,S and Murray.P, 2002. Human Rights in Africa: A Cultural, Ideological, and Legal Examination'. *Hastings International and Comparative Law Review,* Volume 5, pp. 374-376.

Mubangizi, J., 2005. 'Know Your Rights: Exploring the Connections between Human Rights and Poverty Reduction with Specific Reference to South Africa'. *African Journal of Human Rights,* Volume 21, pp. 35-37.

Murray, R., 2004. *Human Rights in Africa: from the OAU to the African Union.* Cambridge : Cambridge University Press.

Mutua, M. &. H. R., 2013. Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization. Human Rights in Development Online. 6. 10.1163/221160800X00037.. *Human Rights in Development Online,* Volume 6.

Mutua, M., 1999. The African Human Rights Court: a two-legged stool?'. *Human Rights Quarterly,* 6(1), pp. 342-245.

Nakuta, J., 2008. "The justiciability of social, economic and cultural rights in Namibia and the role of NGOs". In: *Human rights and the rule of law in Namibia.* Windhoek: Macmillan Education, pp. 56-59.

Nmehielle, V., 2004. *The African human rights system: its laws, practice, and institutions.* Martinus Nijhoff: The Hague.

Padilla, D., n.d. *An African Human Rights Court: Reflections from the perspective of the Inter-American system,* s.l.: s.n.

Patel, L., 2005. *Social welfare and social development in South Africa..* Cape Town: Oxford University Press Southern Africa.

Phillips, R. L., 2020. *Just Security: Turkey Opened the door to the ECHR for Syrian Victims.* [Online] Available at: https://www.justsecurity.org/70268/turkey-opened-the-door-to-the-european-court-of-human-rights-for-syrian-victims/
[Accessed 20 June 2020].

Possi, A. 2017 'It Is Better That Ten Guilty Persons Escape than That One Innocent Suffer': The African Court on Human and Peoples' Rights and Fair Trial Rights in Tanzania African Human Rights Year book pg 311-336

Rachel, M., 2019. Confidentiality and the implementation of the decisions of the African Commission on Human and Peoples' Rights. *African Human Rights Law Journal,* 19(1).

Smith, R. K. M., 2010. *Textbook on international human rights 4th ed., Oxford ; New York: Oxford University Press..* 4th ed. New York: Oxford University Press..

Stelkens, U. & Andrijauskaite, A., n.d. *Transnational administrative law View project Allgemeines Verwaltungsrecht View project,* s.l.: s.n.

Tomuschat, C., 2003. *Human Rights: Between Idealism and Realism.* Oxford: Oxford University Press.

Trindade, C., 2006. Inter American Court of Human Rights. *Refugee Survey Quaterly,* 25(3), pp. 96-98.

Tucker, C. M., 1983. *Regional Human Rights Models In Europe And Africa: A Comparison," Syracuse Journal of International Law and Commerce.* Vol. 10 : No. 1 , Article 9. ed. s.l.:s.n.

Udombana, J., 2002. *The African Regional Human Rights Court: Modelling Its Rules of Procedure.* Copenhagen: TheDanish Centre For Human Rights.

Vadi, A., 2008. *"Africa keen on democracy despite mixed results"..* [Online] Available at: www.africafiles.org
[Accessed 003 February 2021].

Vienna Convention on the Law of treaties (n.d.).

Viljanen, 2010. *The Role of the European Court of Human Rights.* Finland: University of Tampere Press.

Viljoen, F & Louw, L, 2007. 'State compliance with the recommendations of the AfricanCommission on Human and Peoples' Rights, 1993-2004'. *American Journal of International Law,* Volume 1, pp. 402-407.

Watt, N., 2015. Cameron Refuses to Rule Out Leaving the European Convention on Human Rights. *The Guardian*, *3*.

Warren, W., 1980. ‚Human Rights in Africa: A Long-Awaited Voice,. *CURRENT HISTORY .*

Wiseman, P., 2020. Disability, gender and violence over the life course: global perspectives and human rights approaches.

Wolfgang.B, 2020. Are tool of the Council of Europe sufficient to protect Human Right Democray and the Rule of Law. *European Converntion,* 7(8), pp. 36-40.

Yirga W. S., Kassa N. A., Gebremichael M. A., Aro A. R, 2012. Female genital mutilation: prevalence, perceptions and effect on women's health in Kersa district of Ethiopia.. *International Journal of Women's Health.,* p. 45–54..

Zeleza, P., 2006. 'Human Rights and Development in Africa: New Contexts, Challenges and Oppotunities. In: W. L. a. S. E, ed. *Human Rights, Regionalism and the Dilemmas of Democracy in Africa.* Dakar: Codesria, pp. 57-60.