

CHAPTER 10

THE POTENTIAL OF THE AFRICAN HUMAN RIGHTS SYSTEM IN ADDRESSING POVERTY

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Abstract

The human rights interaction between the African human rights mechanisms continues to deepen, particularly in the area of poverty alleviation. The inclusion of core economic, social and cultural rights in some of the African Union's normative standards and the recent adoption of the Declaration on Employment and Poverty Alleviation in Africa mark a significant step in the ambitious project of making the AU the primary vehicle for addressing poverty. The legal right to basic necessities such as food, nutrition and safe drinking water represents one of the boldest expressions of supra-nationalism in the AU normative standards. The African Charter, for instance, is celebrated as the first regional instrument that not only linked socio-economic rights to civil and political rights, but also made the former justiciable. This implies that the substantive norms provide formal avenues for the quasi-judicial and judicial ambits of the regional human rights architecture to adjudicate on and enforce socio-economic rights and freedom from poverty. This chapter argues that with continuous and cumulative collaboration, and the harmonisation of the mandates of the monitoring bodies, the AU human rights architecture may be one of the continent's blueprints in reducing and addressing poverty.

1 Introduction

The availability of and access to basic necessities such as food, water, housing and nutrition are of primary significance to many African people. An individual or a community is poverty-stricken where there is a lack of access to these fundamental necessities. A large number of African people live in severe poverty, although the 'severity of the problem is most pronounced in sub-Saharan Africa'.¹ This predicament was succinctly captured by the African Progress Panel when it observed:²

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1 A Flint Trade, *poverty and the environment: The EU, Cotonou and the African-Caribbean-Pacific Bloc* (2008) 98.

2 Africa Progress Report 'Equity in extractives', (2014) 26, http://www.africanprogresspanel.org/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf (accessed 18 August 2017)

[African] governments have failed to put in place the mechanisms needed to transform resource wealth into expanded opportunity for the poor. That failure is reflected in the scale of social disparities. The national average human development indicators highlighted ... mask extreme national inequalities in opportunity, starting with the opportunity to stay alive ... children from poor households are twice as likely to die before their fifth birthday as those from wealthy households.

Freedom from acute poverty is among the fundamental human interests grounded in the necessity for physical beings to have access to adequate food, safe water, basic medical care, shelter and clothing. This freedom is grounded in several international instruments such as the *Universal Declaration of Human Rights (Universal Declaration)*; the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*; the African Charter on Human and Peoples' Rights (African Charter) and other regional instruments. For instance, according to article 25 of the Universal Declaration each individual has 'the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care'. Further, article 11(1) of ICESCR 'recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'.³

Since socio-economic rights have been codified in some international standards, the African Union (AU) monitoring mechanisms can serve as conduits for adjudicating poverty claims. Indeed, numerous Africans lack the basic needs 'in order to live well – indeed, in order to live at all'.⁴ These groups often comprise those directly in need of supra-national intervention, as their domestic prospects of even seeking redress for their grievances may be foreclosed.

In order to execute this task, three selected issues deserve mention here. The first is whether there are adequate instruments for tackling poverty. This will be done by examining the scope and content of the substantive norms of the treaties in relation to poverty. The second is whether the regional monitoring mechanisms adequately fit into the AU architecture relating to poverty reduction. The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) and the African Court on Human and Peoples' Rights (African Court) receive

3 As at July 2017, 49 AU member states are parties to ICESCR, namely, Algeria, Angola, Benin, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, The Congo, The Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Egypt, Ethiopia, Guinea, Guinea-Bissau, Gabon, The Gambia, Ghana, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Namibia, The Niger, Nigeria, Rwanda, Swaziland, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, The Sudan, Tunisia, The United Republic of Tanzania, Togo, Uganda, Zambia and Zimbabwe. See M Ssenyonjo 'The Influence of the International Covenant on Economic, Social and Cultural Rights in Africa' 64 *Netherlands International Law Review* 260.

4 T Pogge 'Severe poverty as a human rights violation' in T Pogge *Freedom from poverty as a human right: Who owes what to the very poor* (2007) 11.

comparatively more attention, as the African Commission on Human and Peoples' Rights (African Commission) will be addressed in a subsequent chapter. Finally, the chapter evaluates the lessons to be drawn from other international standards, particularly the European human rights system, in addressing the issue at hand.

2 Norm creation and norm enforcement: Issues and implications

The African human rights architecture is composed of a set of substantive instruments and institutions created under the aegis of the former Organisation of African Unity (OAU) and subsequently inherited by the AU in 2002. Norms that overtly or implicitly refer to poverty are the African Charter and Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) (their monitoring organ being the African Commission); the African Charter on the Rights and Welfare of the Child (African Children's Charter) (with its monitoring organ the *African Children's Committee*); and the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol) (the monitoring organ being the *African Court* on Human and Peoples' Rights).

In examining the effective and prospective function of the African regional human rights architecture in addressing poverty, consideration should be given to its gradual growth and strengthening. There have been major jurisprudential successes and normative progression. Apart from setting new standards, the regional architecture over the last decade has complemented and strengthened national legal systems in the advancement of recognisable rights.⁵ However, these developments hold little significance for severe poverty as experienced by some African people. The denial of basic necessities often is linked to the general failings and limitations in the African human rights architecture, to which the chapter now turns.

2.1 Normative framework for addressing poverty

From the inception, it should be noted that it is unclear whether the African Charter, the African Charter on the Rights and Welfare of the Child (African Children's Charter) and the African Women's Protocol address poverty. This notion was not clearly set out in any of these instruments. Rather, they provide for some of the fundamental socio-economic rights that are linked to poverty alleviation. This part, therefore, will provide

5 M Mayrhofer et al *Report on the mapping study on relevant actors in human rights protection* Work Package 4 – Deliverable 4.1, Large-Scale FP7 Collaborative Project GA 320000 1 May 2013-30 April 2017 (2014) 24.

a synopsis of anti-poverty provisions in instruments operating under the custody of the AU. Although the assessment focuses on the primary treaty, the African Charter, it will situate the Charter and related human rights standards as 'part of a normative network, instead of isolated loose threads'.⁶ Again, despite significant emphasis being placed on binding normative frameworks, other soft laws such as declarations will also be appraised.

2.2 African Charter on Human and Peoples' Rights

The African Charter is hailed as the first international human rights norm that speaks to poverty alleviation. It sets out sufficient provisions (although implicit at best) addressing issues of sufficient access to basic necessities. The Charter provides for the right of the individual to access public property and services.⁷ This provision by extension entrenches the right of the individual to access without discrimination, all state-owned and funded facilities, *inter alia* schools, hospitals, housing, water and related services. It is also the first international norm to provide for the right to development as justiciable guarantee.⁸ Arguably, the right to development encompasses the totality of socio-economic rights, progressively tailored at ensuring, at the minimum, the basic needs for survival.⁹

Undoubtedly, the foregoing provisions paint a rosy picture. However, explicit provisions dealing with poverty in the African Charter are minimal. For instance, whereas ICESCR explicitly guarantees the 'right to adequate food, clothing and housing and to the continuous improvement of living conditions',¹⁰ the African Charter sets out only the rights to education, health and work.¹¹ Moreover, as a product of competing tensions within the then OAU, these rights and other related socio-economic rights provisions are saddled with numerous claw-back clauses.¹² Arguably, this limitation can be traced back to the early 1980s when the framers of the treaty had the primary aim of saving the emerging states from undue burden.¹³ In terms of operationalisation, the African Charter provides for a weak monitoring system of 11 part-time commissioners convening not

6 F Viljoen *International human rights law in Africa* (2012) 213.

7 Arts 13 & 14 African Charter. Article 14 equally addresses the right to property,

8 Eg, in *Centre for Minority Rights & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) (Endorois case) the Commission emphasised not only the inextricable link between the rights to civil and political rights and socio-economic rights, but also the advantage of using the right to development as a conduit to enhance social wellbeing; paras 277-278.

9 Art 22.

10 The International Covenant on Economic, Social and Cultural Rights (ICESCR) provides for an elaborate catalogue of poverty-related rights, among others the right of everyone to equal work opportunity (art 6); just and favourable remuneration (art 7(a)); the right to form and join trade unions (art 8); social security (art 9); protection of the family (art 10); the right to adequate food, clothing and housing and to the continuous improvement of living conditions (art 11).

11 Arts 15, 16 & 17.

12 See art 14.

13 Viljoen (n 6) 24.

more than twice per year for sessions not exceeding 15 days.

Despite these deficiencies, the African Commission over the last three decades has adopted an expansive and progressive interpretation of the African Charter and for evading the limitation clauses and making vital socio-economic rights justiciable. In the *SERAC* case¹⁴ the Commission implored the implied rights theory and extended the limited scope of the explicitly-guaranteed socio-economic rights to include the rights to housing and food. The Commission argues that the right to food is implicit 'in provisions such as the right to life'¹⁵ and 'essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation'.¹⁶ This pronouncement attests to the unconditional acknowledgment of socio-economic rights as justiciable claims.¹⁷ Subsequently, in the *Darfur* case, as the right to water is not enshrined in the African Charter, the African Commission, apprehensive of the possibility of the implied rights theory weakening its institutional legitimacy, gave an expansive interpretation to the right to health to encompass the right of access to safe and potable water and an adequate supply of food, nutrition and housing.¹⁸ This inference undoubtedly facilitated the ruling that the poisoning of the wells of the people of the Darfur region of Sudan by the Janjaweed amounted to a violation of the right to health.¹⁹

2.3 Little angels: African Charter on the Rights and Welfare of the Child

The African Children's Charter is the sole continental normative framework on the rights of the child. In establishing the basis for providing a safety net for children, its Preamble obligates state parties to provide special measures required to ensure the health and physical, mental and social development of the child.²⁰ This foundation visibly demonstrates that the treaty provides for a rights-based approach in alleviating poverty, specifically towards children in the region.

However, the treaty provides for a relatively detailed catalogue of safeguards against severe poverty. It sets out the obligation of states to provide child education, right to child-specific health services, rights against harmful child labour, *inter alia* conditions of employment, minimum wage and the regulation of working conditions and hours.²¹ Interestingly, to address the question of hunger and stunted growth among

14 *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*).

15 *SERAC* (n 14) para 64.

16 *SERAC* para 65.

17 Viljoen (n 6) 23.

18 *Sudan Human Rights Organisation & Another Sudan* (2009) AHRLR 153 (ACHPR 2009) (*Darfur* case) paras 124, 209.

19 Para 126.

20 Art 14(1).

21 Arts 11, 12, 14 & 15.

children, it obliges states to provide adequate nutrition and safe drinking water, to combat diseases and malnutrition within the framework of the primary health care and to ensure appropriate health care for expectant and nursing mothers.²²

By interpretation this is a provision on the right to food and water which by extension addresses issues of severe hunger and the mortality rate in the region. The above provisions provide a clear indication that the right to basic necessities, *inter alia* food, health care and education, is justiciable claims under the African human rights system.

2.4 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Although the African Women's Protocol does not explicitly seek to address poverty facing women, it sets out a legal framework within which the problem may be addressed. The Protocol stands on the fundamental principles of its mother instrument and provides for a striking array of anti-poverty rights in a comparatively comprehensive approach and even exceeds its predecessor in terms of substantive provisions. The factual provisions are unmatched by other normative frameworks in the AU system, particularly the African Charter.²³ The Women's Protocol has been envisaged as reinforcing the economic empowerment of women which mournfully was ignored in the African Charter.²⁴ In addition it provides a catalogue of provisions addressing the socio-economic development of women, *inter alia* guaranteeing the right of women to the free development of their personality, thereby prohibiting all forms of exploitation.²⁵ The Protocol obliges contractual states to provide basic services such as health services to women when necessary.²⁶

The rights of women to freely attain, administer and manage their property is also entrenched while the right to an equitable share of the joint property deriving from marriage is guaranteed.²⁷ In probably a ground-breaking provision, contractual states to the treaty affirmed to cut down on their military expenditures in favour of spending on social objectives benefiting women.²⁸

It further guarantees 'women equal opportunities in work and

22 Art 14.

23 Viljoen (n 6) 254-255.

24 The African Charter contains only two explicit references to women, in arts 2 and 18(3). See R Manjoo 'Women's human rights in Africa' in M Ssenyonjo (ed) *The African regional human rights system: 30 years after the African Charter on Human and Peoples' Rights* (2012) 146.

25 Art 3(2).

26 Art 5(c).

27 Arts 5(j) & 6(d).

28 Art 10(3).

career advancement and other economic opportunities'.²⁹ The rights of women to food security, adequate housing, water, land, domestic fuel, sufficient food and nutrition are firmly enshrined in the African Women's Protocol.³⁰ However, although Viljoen criticises the Protocol for its failure to adequately highlight on the 'feminisation of poverty, especially in rural Africa',³¹ it implicitly addresses this shortcoming by obligating member states to advance the (socio-economic) rights of women in accordance with international norms and standards.³² Consequently, the Women's Protocols provisions in conjunction with article 56 of the African Charter may be used as a broad legal basis for addressing a denial of basic necessities.

3 Other instruments relating to poverty

3.1 AU Convention on Preventing and Combating Corruption (Anti-Corruption Convention)

The link between corruption and severe poverty is direct. The adoption of this Convention by the AU marked a significant step in attempts to counteract the ills of corruption across the region. It is composed of legislative commands requiring state intervention to curtail the drivers of corruption which 'stifles entrepreneurship, constrains economic development, and ultimately becomes the yeast from which political dissent brewed'.³³

The Convention aims to achieve three primary aspirations, namely, to (i) to prevent, punish and eradicate corruption as a means of strengthening social and economic development; (ii) remove the drivers of poverty; and (iii) establish mechanisms to improve transparency, accountability and justice in the management and use of public funds.³⁴ The human rights approach adopted by the Convention has two merits worth mentioning: (i) it reinforces national accountability institutions and systems designed to alleviate poverty; and (ii) it provides a legal basis for international accountability.

3.2 Declaration on Employment and Poverty Alleviation in Africa

Under this Declaration the heads of state reaffirmed their commitment

29 Art 13.

30 Arts 15 & 16.

31 Viljoen (n 6) 255.

32 See Preamble.

33 Viljoen (n 6) 273.

34 Art 2.

to enhance ‘employment, poverty eradication and inclusive development’ as a pathway to exiting poverty.³⁵ They also agreed to accelerate decent job creation for sustainable and inclusive development as a response to the pervasive unemployment rate among women and the youth as well as underemployment in the region.³⁶ Against this backdrop, two policy documents were adopted to ensure the full realisation of these objectives: (i) the Plan of Action for the Promotion of Employment and Poverty Alleviation; and (ii) the follow-up Mechanism for Implementation, Monitoring and Evaluation. Although AU member states are the principal implementers of these frameworks, the AU, regional economic communities (RECs) and other international donors are envisaged to collaborate in addressing the challenges of employment creation and poverty alleviation.

3.4 Comprehensive African Agriculture Development Programme

One of the groundbreaking initiatives of the New Partnership for African Development (NEPAD) is the adoption of the Comprehensive African Agriculture Development Programme (CAADP). Under this framework, African leaders committed to raise agriculture productivity by at least 6 per cent per year and to increase public investment in this sector to a minimum of 10 per cent of national budgets yearly.³⁷ By bringing together continental, regional and national stakeholders, the initiative was designed to pay attention to disasters and emergencies that require food and agriculture safety nets or responses.

Specifically, the third pillar (Pillar III) of the framework calls on African leaders to guarantee food security by exploring options for increasing food supply, reducing hunger and malnutrition. Despite celebrating its tenth anniversary, food insecurity and poverty remain a challenge on the continent. Two factors have contributed to the failure of this initiative. The first is the declaratory and non-binding nature of this instrument. The second is the lack of a monitoring mechanism to ensure its effective operationalisation.

35 African Union ‘Employment, Poverty Eradication and Inclusive Development’ Extraordinary Summit of the African Union on Employment, Poverty Eradication and Inclusive Development 3-7 September 2014, Ouagadougou, Burkina Faso’, (3-7 September 2014) 2.

36 African Union (n 35) para 17.

37 <http://www.caadp.net/pdf/CAADP%20FAFS%20BROCHURE%20indd.pdf> (accessed 4 November 2014) 2.

4 Institutional frameworks for addressing poverty

4.1 African Commission on Human and Peoples' Rights

Inaugurated in October 1987, the African Commission over the years has attempted to address poverty through its norm expansion, standard setting and the facilitation of these standards in concrete decisions. Under this heading its promotional mandate is evidenced in the setting up of two special mechanisms significant to poverty alleviation. The first is the Working Group on Extractive Industries, and the second, the Working Group on Socio-Economic Rights. Whereas the former has the obligation of researching on and providing recommendations on measures for the prevention and reparation of violations of human rights by extractive industries,³⁸ the latter is mandated to undertake studies on specific socio-economic rights towards the improvement of the living conditions of African people.³⁹

Moreover, the African Commission's Pretoria Declaration on Economic, Social and Cultural Rights in Africa⁴⁰ have contributed to the justiciability of socio-economic rights in the African Charter. Although considered soft law, this norm has extended the civil and political rights and socio-economic provisions of the African Charter by including other essential rights, such as the rights to housing, food, water and sanitation.⁴¹

The African Commission's primary mandate of assessing state report serves as the 'backbone of the mission' of addressing poverty.⁴² In accordance with article 62 of the African Charter, all 54 AU states are required to submit a periodic report every two years stating whether and to what extent they have adhered to the provisions of the African Charter and the African Women's Protocol.⁴³ As of the end of 2018, of the 47 states that have submitted their reports,⁴⁴ only Algeria's report did not contain a section on the negative impact of positive on the livelihood of its citizens.⁴⁵ This provides an indication that the textual and legal basis of these reports 'open[s] the possibility for submission of shadow reports which can inform the Commission' about severe poverty not adequately

38 <http://www.achpr.org/mechanisms/extractive-industries/> (accessed 11 November 2014).

39 <http://www.achpr.org/mechanisms/escr/> (accessed 11 November 2014).

40 ACHPR (2004). Pretoria Declaration on Economic, Social and Cultural Rights in Africa. Available at file:///C:/Users/user/Downloads/achpr_instr_decla_pretoria_esc_rights_2004_eng.pdf (accessed 03 December 2019).

41 Commission's Guidelines 45, 48 & 51.

42 Viljoen (n 6) 349.

43 Art 27.

44 M Killander & B Nkrumah 'Human rights developments in the African Union during 2012 and 2013' (2014) 14 *African Human Rights Law Journal* 278.

45 See eg Angola '2nd Periodic Report, 1999-2010' 5; Benin '2nd Periodic Report, 2000-2008' 28; Botswana '1st Periodic Report, 1986-200' para 466; Namibia '3rd Periodic Report, 2002-2009' 5; Togo '2nd Periodic Report, 1991-2001'.

covered in the report.⁴⁶

Unfortunately the African Commission has not been able to adequately utilise this mandate to address the poverty situation in the region. Four factors account for this. The first is the failure of states to submit their reports; the second is the slow pace of the reporting process. Third, the Concluding Observations that could be used by non-governmental organisations (NGOs) as a follow-up tool are rarely made public. Finally, states bear the primary responsibility for the implementation of these recommendations. Primarily, these impediments limit the effective tackling of poverty by the African Commission as substantive anti-poverty provisions are implicit in the African Charter and the African Women's Protocol.

4.2 African Committee of Experts on the Rights and Welfare of the Child

The African Children's Committee has the primary mandate of promoting and safeguarding the rights and welfare of the African child.⁴⁷ Although its competence is defined by the text of the African Children's Charter, articles 32 and 46 of the Children's Charter mandates it to draw inspiration from other international human rights norms which evidently broaden its competence.

As in the case of the African Commission, the Children's Committee may receive and examine communications from individuals, groups or NGOs recognised by the contracting state, the AU or the United Nations (UN).⁴⁸ In the course of examining communications, the Committee is encouraged to gather reliable evidence or establish key facts based on on-the-spot investigations such as on-site visits and *ad hoc* missions. In terms of poverty applications, the former has the potential of addressing the procedural barriers to the justiciability of basic necessities, particularly in terms of the cumbersome process of gathering evidence for litigation.

More so, akin to the African Commission, the author of the application to the Children's Committee should not necessarily be the victim. However, such an author should have the consent of the child or demonstrate that he or she is acting in the best interests of the child.⁴⁹ In light of the fundamental interests of the child, an NGO or public interest litigant, as a result, may easily institute a poverty action on behalf of a child who could not have afforded to proceed with such a claim. This provision, by extension, also permits a conditional form of class action⁵⁰

46 M Killander 'The African Commission on Human and Peoples' Rights' in Ssenyonjo (n 24) 241.

47 African Children's Charter (n 22) arts 32-33.

48 African Children's Charter art 44.

49 As above.

50 Otherwise termed *actio popularis*.

which is significant for addressing poverty, particularly in communities where citizens cannot afford a lawyer.

Such an understanding has so far been substantiated by the *Nubian* case.⁵¹ In this case the African Children's Committee held that the denial of citizenship to Nubian children was the antithesis of the best interests of the child. It further established that Nubian children lacked access to education, adequate health care and lived in enclaves of poverty as a result of existing discrimination.

However, unlike the African Commission, although the Children's Charter does not mandate it to issue provisional measures based on its discretion or upon the request of a child, it may do so in accordance with its guidelines to forestall irreparable harm to a child or children. This principle evidently has a primary role in addressing severe poverty and related socio-economic needs, such as access to food, education health care and housing.

Moreover, although the Children's Committee's guidelines are silent on substantive relief, similar to the African Commission, it may be argued that the Committee has implied competence to award reparations in matters of negligence leading to severe hunger or disease as enshrined in the African Children's Charter. This was evidenced in its first ruling where it requested the state to adopt 'short-term, medium-term and long-term plans ... and other measures to ensure the fulfilment of the right to the highest attainable standard of health and of the right to education'.⁵²

To ensure timely implementation, the African Children's Committee in accordance with its guidelines assigns/creates a Special Rapporteur of a Communication (SRC) with the mandate to follow up on compliance with its decisions. The Special Rapporteur, who is a member of the Committee, then provides frequent feedback to other members regarding compliance.⁵³ Based on the report, the Committee informs the Chairperson of the AU Commission on the status of implementation.

Against the backdrop of enhancing compliance, contractual states are under an obligation to ensure the wide publicity of the Committee's report in their respective countries, particularly after the consideration and acceptance by the AU Assembly. This publicity perhaps provides an avenue for compliance as it creates a platform for NGOs to assert pressure on the government to implement the decision. In sum, the Committee's individual communication combined with the implied power to award reliefs has the potential of serving as an effective quasi-judicial body for addressing poverty as entrenched in the African Children's Charter.

51 *Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v Kenya* (2011) (*Nubian* case).

52 *Nubian* case (n 51) para 69(4).

53 See Guidelines of the Communications ch3 art 4.

4.3 African Court on Human and Peoples' Rights

Operationalised in 2006, the African Court has both advisory and contentious jurisdiction. The former serves as an important avenue for addressing poverty in two spheres. First, it may be used to provide authoritative opinions on matters regarding poverty claims. Second, evidenced by the Advisory Opinion OC-18 of the Inter-American Court⁵⁴ the African Court may use advisory opinions to settle poverty litigation under its contentious jurisdiction. The contentious jurisdiction conversely gives the Court the competence to consider individual and inter-state applications which could be invoked as a judicial mechanism for addressing poverty.

The Protocol establishing the African Court extends the Court's jurisdiction to matters relating to the African Charter, the African Court Protocol and related human rights treaties ratified by the concerned state.⁵⁵ By extension, the African Women's Protocol and the African Children's Charter equally make up some of the treaties that the Court may interpret and apply.

In principle, the African Court's jurisdiction *ratione personae* (direct access) is limited to states that are parties to its Protocol and have made the declaration in accordance with article 5(3) of the Protocol accepting its competence. However, in view of the reluctance of states to entertain poverty claims coupled with the limited number of state declarations, the Court may circumvent these setbacks through prorogation of competence,⁵⁶ particularly by 'decisive acts or unequivocal behaviour' of the state concerned.⁵⁷ For instance, in the *Yogogombaye* case⁵⁸ the Court attempted to accept the case on the grounds that the respondent state (Senegal) did not raise any objections in relation to the competence of the Court during its initial engagement with the latter.

The consent by a state party indeed is the only precondition for the Court to exercise jurisdiction on applications submitted by individuals or NGOs. A concerned state that has not made the declaration per article 5(3) may expressly or tacitly accept the jurisdiction of the Court to entertain individual complaints through explicit acts or decisive conduct. Such acts include the state's active participation in the proceedings of the case, either by pleading on the merits or by making findings on the merits, or may include a lack of objection against any future decision on the merits of the case. Consequently, according to the African Court, on the

54 Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18, 17 September 2003, Inter-Am Ct HR (Ser A) No 18/03 (2003).

55 See ACtHPR (1998). Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, arts 3 & 7.

56 Or *forum prorogatum*.

57 *Michelot Yogogombaye v Senegal* Application 001/2008 Separate Opinion, para 32.

58 As above.

basis of the principle of *estoppel*,⁵⁹ such conduct, which is akin to tacit or decisive acceptance of its jurisdiction, cannot be revoked.⁶⁰ Accordingly, individuals and NGOs may follow the foregoing precedent in seizing the Court to address poverty claims against contractual states that have not made the declaration.

The African Court is also mandated to engage in and facilitate amicable settlements of disputes.⁶¹ This may be conducted based on the initiative of the Court or the parties involved. Bearing in mind that litigation or adjudication rarely provides a preferable outcome to socio-economic verdicts, this avenue may be put to use to address poverty arbitrations.⁶² In terms of extraterritorial obligations of states, the Court's jurisdiction *ratione loci*, as in the case of the African Commission, is extended to disputes alleging violations outside the jurisdiction of a state party to its Protocol.⁶³ In principle, the African Charter, the African Women's Protocol and the African Children's Charter, unlike *ICCPR*, do not impose a territorial limitation to give effect to rights 'within its territory'.⁶⁴ This by extension means that, in accordance with the relevant human rights instruments ratified by the states, extraterritorial obligations of states relating to poverty action can be justiciable before the Court. The aforesaid provides a clear indication that the Court follows a typical adversarial and judicial approach which guarantees the justiciability of poverty suits, which fall within its competence.

In addition, the African Court's provisional measures, which it prescribes in the interests of justice or at the request of the parties, also fundamentally link to poverty alleviation. For instance, in issues relating to forced eviction or retrenchment, the Court's interim measures have the potential of halting the injustice until such time as the proceeding is concluded. Combined with the overarching subject matter jurisdiction of the Court, and its power to pass binding and precise remedial orders, this guarantees a high level of justiciability of poverty cases.

Consequently, where it finds a breach or denial of basic necessities, it has the legal competence to make a ruling that encompasses orders calling for wider social transformation or restitution for victims. To be effective, remedies should be tailored to the conditions of each specific matter and the realities on the ground. Further, it is worth mentioning that in making such a determination, the Court is projected to make its ruling in light of the appropriateness of the remedies which should be sufficiently detailed

59 A legal principle that proscribes a party from denying or alleging a certain fact due to that party's previous act, allegation or denial.

60 Para 32.

61 See art 9 of the Protocol and Rules of the Court Rules 56 & 57.

62 Eg, this model could have been invoked in *Government of the Republic of South Africa & Others v Grootboom & Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000) (*Grootboom* case) to achieve the immediate desired result.

63 Eg, in *Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (2004) AHRLR 19 (ACHPR 2003) the African Commission found an extraterritorial breach of economic and social rights. See para 98.

64 See art 2(1) of the International Covenant on Civil and Political Rights (ICCPR).

to ensure implementation with no additional explanation.

4.4 Need for complementarity: The road not taken

Considering that only six countries have made the declaration under article 5(3) accepting the African Court's competence, the Court's competence of adjudicating on poverty claims will only be effective, in the interim, through communications from the African Commission. This means that the extent to which the Court can contribute to addressing poverty in terms of accountability and access to justice significantly depends on the level of cooperation with the African Commission. Seemingly, both institutions have initiated steps to enhance this engagement, particularly through the revision of the Rules of Procedure of the African Commission and the Rules of Procedure of the African Court.⁶⁵

The African Commission therefore is mandated to seize the African Court if a contracting party to the latter's Protocol (i) is unwilling or has not complied with its decision; (ii) has not complied with provisional measures; or (iii) a situation constitutes a serious threat to and a gross violation of human rights.⁶⁶ According to Viljoen, the urgency of the third strand mandates the Commission to seize the Court with a case of massive violation based on its own initiative or information submitted to it by a civil society. This leeway enables the Court's competence to be triggered in cases of severe poverty and necessity whereby no formal communication has been filed by individual, group or an NGO.⁶⁷ Against this backdrop, instances of abject poverty that involve matters of violations of resource-dependent obligations and call for a broader social reform adequately fall under this category.

This avenue may be explored to convert quasi-judicial decisions relating to poverty into binding judgments with the possibility of being enforced and complied with. Following the channel of the African Commission's application to the African Court,⁶⁸ the former may submit cumbersome legal cases relating to group or individual poverty claims to the latter for higher legal orders. This approach is highly recommendable taking into account the fact that individual communications submitted by the Commission against a contracting state are not subject to the declaration under article 5(3). In principle and in practice, the claw-back clause under article 5(3) only limits direct applications by individuals and NGOs against a contracting state that has not made the declaration in accordance with article 5(3).

Here, the African Commission appears as a human rights defender and the victims or their representatives may join the Commission and

65 See ACtHPR (n 55) arts 5(1)(a), 6(1) & 8.

66 See Rule 118 of the Rules of Procedure of the African Commission of 2010.

67 Viljoen (n 6) 429.

68 *African Commission on Human and Peoples' Rights v Libya* Application 004/2011.

make submissions if need be. However, regarding petitions transferred to the Court where the state has made the declaration, the individual and the NGO will have direct access to seek anti-poverty redress.

5 Other related mechanisms

5.1 New Partnership for Africa's Development

The New Partnership for Africa's Development (NEPAD) is a programme designed by the AU for eradicating poverty. Regarded as Africa's 'economic blueprint'⁶⁹ or 'development blueprint',⁷⁰ NEPAD seeks to stimulate and accomplish regional and sub-regional development programmes. In its Programme of Action it identifies infrastructure development, investment in people and the development of agriculture as sectoral priorities to development. It has over the years evolved to become a *de facto* mechanism of the AU and its key political hierarchy, the Heads of State and Government Implementation Committee, frequently submits its reports to the AU Assembly.⁷¹

5.2 African Peer Review Mechanism

As of the end of 2013, 33 African states have signed up to this mechanism.⁷² The African Peer Review Mechanism (APRM) represents an attempt by major African countries to 'lever themselves out of the cycle of poverty'.⁷³ It is a voluntary process of submission of a country's record in politics, economy and corporate governance to review by peers or fellow heads of state. This process, akin to the African Commission's state reporting procedure, has the underlying objective of ensuring a culture of states' commitment to the implementation of internationally-recognisable standards.

However, unlike state reporting which often comprises lower-ranking state officials, peer review ensures involvement at the highest governmental level, with a significant possibility of political will. Bearing in mind that 'human rights have a relatively prominent position in the APRM',⁷⁴ and 'has received more attention than the procedures and outcomes of other monitoring mechanisms',⁷⁵ the process can serve as a 'vehicle to improve

69 Viljoen (n 6) 166.

70 JO Adésinà 'NEPAD and the challenge of Africa's development: Towards the political economy of a discourse' (2001) 4 *African Journal of International Affairs* 125.

71 Viljoen (n 6) 167.

72 Killander & Nkrumah (n 44) 293.

73 J Cilliers 'NEPAD's Peer Review Mechanism' (2002) 64 *Institute for Security Studies Papers* 1.

74 M Killander 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' (2008) 30 *Human Rights Quarterly* 55.

75 Killander (n 74) 72-73.

the lives of the downtrodden and materially deprived Africans'.⁷⁶ Viljoen therefore argues that the 'APRM provides a useful mechanism to hold participating states accountable for their lack of achieving sustainable development and to eradicate poverty in line with the MDGs'.⁷⁷

6 International best practice dealing with poverty

The 1948 American Declaration in seeking to address the social needs of American states provides for a full spectrum of socio-economic rights, among others the rights to housing,⁷⁸ health,⁷⁹ education,⁸⁰ work and fair remuneration,⁸¹ social security,⁸² property,⁸³ and special protection for mothers, children and the family.⁸⁴ Although the Declaration is not a treaty in itself, it is regarded as having a binding legal effect on all Organisation of American States member states.⁸⁵

The American Convention, unlike the Declaration, by design is a binding treaty and sets out an expansive catalogue of socio-economic rights under a single provision. Article 26 explicitly provides for the rights to education, collective bargaining, material well-being, strike and work. The Convention serves as the principal treaty that sets out the rights that the Inter-American Commission and Court on Human Rights are competent to apply with respect to the 24 member states to the treaty. Moreover, the Commission enjoys jurisdictional competence over the Protocol of San Salvador which contains a range of anti-poverty provisions, among others the rights to food, education, trade unionisation, special protection for persons with disabilities, social security, work, just and equitable conditions of work, and health.⁸⁶

Although it initially gave a brief and opaque reflection of the rights under section 26 of the Convention, the Commission for the first time in 2003 considered an article 26 claim. In *Five Pensioners v Peru*⁸⁷ the Court held that the arbitrary reduction of the pension fund of a group of retired citizens by the state was in violation of the rights to private property and judicial protection. Again, in *Juan Hernández v Guatemala* the Commission found a violation of the right to life and integrity after a detainee had

76 Viljoen (n 6) 460.

77 Viljoen (n 6) 203.

78 Arts IX & XI.

79 Art XI.

80 Art XII.

81 Arts XIV & XV.

82 Art XVI.

83 Art XXIII.

84 Arts VI & VII.

85 TJ Melish 'The Inter-American Commission on Human Rights: Defending social rights theory through case-based petitions' in M Langford *Social rights jurisprudence: Emerging trends in international and comparative law* (2008) 339.

86 See arts 6-18.

87 *Five Pensioners v Peru, Torres Benvenuto & Others v Peru*, Merits, reparations and costs, IACHR Series C 98, IHRL 1481 (IACHR 2003), 28 February 2003, Inter-American Court of Human Rights [IACtHR].

died of cholera, which was easily preventable.⁸⁸ State responsibility and negligence were further held in *Victor Rosario Congo v Ecuador* where a man suffering from psychosis who was kept in isolation died from dehydration and malnutrition.⁸⁹

In the European context, the European Social Charter (ESC) (both the 1961 and the 1996 Revised Version) provides extensively for anti-poverty rights. The ESC for instance provides for the right to work (article 1); the right to just conditions of work (article 2); the right to fair remuneration (article 4); the right to social security (article 12); the right to social and medical assistance (article 13); and the right to benefit from social welfare services. Nonetheless, the domestication of the Charter into the national legal system is rather circumscribed and fragmented, more often avoided than enforced.⁹⁰

It indeed is common to perceive an international instrument as significant only if its primary impact is to grant individual rights that can be claimed both at the national and supranational levels. Thus, in the European human rights system only two instruments are presently recognised as having a direct impact on individuals' rights in both the national and international legal order, namely, the Treaty of the European Union and the European Convention on Human Rights (European Convention).⁹¹ Yet, with regard to enforcement, only the European Convention provides for an individual's right of appeal at the national level and the level of the European Court of Human Rights.⁹²

However, unlike the ESC, the European Convention contains no references concerning entitlement to key socio-economic rights.⁹³ There is no explicit statement with regard to the right to work, social security or health. The Convention therefore is a classic epitome of a civil and political rights instrument. Consequently, the European Court of Human Rights has applied the negative and positive obligations of states to enforce socio-economic rights, particularly with regard to how the state is culpable. Hence, where a complaint alleges socio-economic deprivation due to state action or inaction which has posed or threatens to pose gross consequences for the victim, the Court imposes a socio-economic remedy for a gross civil and political rights violation in tandem with articles 3 and 8.⁹⁴

88 *Hernández Lima v Guatemala* Case 11.297, Report 28/96, Inter-AmCHR OEA/Ser.L/V/II.95 Doc 7 rev. 406 (1997).

89 *Victor Rosario Congo v Ecuador* Case 11.427, Report 63/99, Inter-Am CHR, OEA/Ser.L/V/II.95 Doc 7 rev 475 (1998).

90 RR Churchill & U Khaliq (2004) 'The Collective Complaints System of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?' 15(3) *European Journal of International Law* 427.

91 J Jean-Paul 'The accession of the European Union to the European Convention on Human Rights and Fundamental Freedoms' (2011) 48 *Common Market Law Review* 996.

92 LR Glas 'European Convention on Human Rights' (2012) 30 *Netherlands Quarterly of Human Rights* 338.

93 L Clements & A Simmons 'European Court of Human Rights' in Langford (n 85) 411.

94 Clements & Simmons (n 93) 412.

For instance, in the *Hadareni* case,⁹⁵ which involved the destruction of property during a riot, the Court held that the state was directly culpable for the victims' homelessness. It imposed a positive duty/obligation on the state to provide them with accommodation. It further held in *Van Kück v Germany*⁹⁶ that the refusal to reimburse the complainants for gender reassignment measures was in breach of her private life and amounted to discrimination on the basis of her particular psychological disorder. Finally, in *D v United Kingdom*, where the complainant suffered from HIV/AIDS, the Court held that it would be illegal to deport the applicant to the island of Kitts, where he would die in complete destitution due to a lack of medicine, a hospital bed or any nursing care.⁹⁷

7 Concluding reflections

The search for a remedy to improve the standard of living of downtrodden and materially-deprived African people arguably influenced the creation of the African human rights architecture. The architecture reflects a growing trend of the enforcement of anti-poverty provisions cloaked in socio-economic rights, and entrenched in the substantive instruments of the architecture. The foregoing has demonstrated that the individual communications procedure of the three monitoring organs offers an appropriate justiciability mechanism in addressing poverty. All have adjudicatory mandates. Whereas the African Commission and African Children's Committee are vested with implicit competence to pass substantive relief, the African Court is equipped to issue binding judgments.

With the recent ratification of the African Charter by South Sudan, all 54 AU member states are now parties to the Charter.⁹⁸ This ultimately broadens the jurisdiction of the African Commission to receive poverty claims from all state parties. After nearly two decades the African Children's Committee's has competence over only 49 or approximately 76 per cent of AU states that have ratified the Convention.⁹⁹ Sadly, the African Court Protocol has been ratified by only 30 states, fewer than two-thirds of AU member states.¹⁰⁰ Even worse, as of October 2014 only seven countries have made the declaration accepting the Court's jurisdiction to

95 *Maldovan & Others v Romania* Applications 41138/98 and 64320/01, judgment dated 5 July 2005.

96 Application 35968/97, judgment 12 September 2003.

97 Para 27.

98 Killander & Nkrumah (n 44) 1.

99 See GIEACPC (2018). African Charter on the Rights and Welfare of the Child (ACRWC). Available at <https://endcorporalpunishment.org/human-rights-law/regional-human-rights-instruments/acrwc/> (accessed 2 December 2019).

100 ACtHPR (2016). Chad becomes 30th AU member state to ratify the Protocol on the establishment of the African Court on Human and Peoples' Rights. Available at <http://en.african-court.org/index.php/news/press-releases/item/64-chad-becomes-30th-au-member-state-to-ratify-the-protocol-on-the-establishment-of-the-african-court-on-human-and-peoples-rights> (accessed 3 December 2019).

receive communications from individuals and NGOs.¹⁰¹

To effectively address the poverty situation in the region, enhanced harmonisation and engagement among the AU human rights institutions and the political organs of the AU are required. The urgency for a reflection and coordination is more critical in terms of the African Commission and the African Court. Although the vehicle for such a partnership has been set in the Rules of Procedure of both bodies, there has been less contact with and non-submission of cases from the Commission to the Court since October 2012.¹⁰² According to Killander and Nkrumah the lack of collaboration 'may be linked to the perception of an overly arduous role of the Commission before the Court',¹⁰³ where the victim is isolated from the proceedings before the Court.

The more recent engagement was the striking out from the roll of the African Court in 2013 due to the non-receipt of information requested by the African Commission.¹⁰⁴ It is imperative to add that all the three organs (the African Commission, Children's Committee and Court) face the uncertainties of functioning from rented buildings and temporary seats. This certainly reflects negatively on their effectiveness. There is an urgency to relocate the African Children's Committee to the AU Commission to enhance its operations. Also, the host states of the African Commission and the Court need to provide the two institutions with permanent headquarters in terms of the criteria for hosting AU organs.

However, despite the importance of the judicial and quasi-judicial components, the caveat is that there are many setbacks that render the utilisation of these institutions illusive. There is the lingering legacy of the paradigm of ignorance, fiscal constraints and illiteracy which restricts individual and group action as a reactive remedial strategy towards poverty alleviation. The conundrum further lies in the lack of political will, which transcends to the low level of compliance with decisions.¹⁰⁵ Thus, to effectively bridge the gap between the justiciability of poverty claims and their impact on the ground, there is the urgent need for the mobilisation of political will and the enhancement of the poverty eradication commitments by African leaders.

Relatedly, approximately 450 NGOs currently enjoy observer status before the African Commission. They can therefore use their standing to

101 The seven states which have made the declaration are Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Rwanda and Tanzania. See AfricanLii (2018). African Court on Human and Peoples' Rights organises sensitisation seminars to Sierra Leone and Liberia next month. Available at <https://africanlii.org/article/20180727/african-court-human-and-peoples%E2%80%99-rights-organises-sensitisation-seminars-sierra> (Accessed 3 December 2019).

102 Killander & Nkrumah (n 44) 295.

103 Killander & Nkrumah 296.

104 As above.

105 B Nkrumah & F Viljoen 'Drawing lessons from ECOWAS in the implementation of article 4(h)' in D Kuwali & F Viljoen *Africa and the responsibly to protect: Article 4(h) of the African Union Constitutive Act* (2014) 251.

tackle poverty at the supra-national level, particularly through lobbying for normative as well as institutional reforms, and the submission of communications.

Inspiration should also be drawn from the successes and failures of supra-national litigation and adjudications such as the European system while taking note of African realities. The African Court should not be extremely hasty, but should follow a progressive procedure, moving step-by-step while establishing the confidence of the contractual states with international adjudication. This procedure will ultimately safeguard the justiciability and compliance of anti-poverty rulings in the respondent state. In summary, through the consistent and progressive improvement of their jurisprudence, and with effective coordination and harmonisation, the AU human rights architecture can serve as the panacea for eradicating poverty in Africa.

References

- ACHPR (2004) Guidelines for submitting complaints. Available at <https://www.achpr.org/guidelinesforsubmittingcomplaints> (accessed 3 December 2019)
- ACHPR (2004) Pretoria Declaration on Economic, Social and Cultural Rights in Africa. Available at file:///C:/Users/user/Downloads/achpr_instr_decla_pretoria_esc_rights_2004_eng.pdf (accessed 3 December 2019)
- ACHPR (2004) Working Group on Economic, Social and Cultural Rights. Available at <https://www.achpr.org/specialmechanisms/detail?id=8>> (accessed 3 December 2019)
- ACHPR (2004) Working Group on Extractive Industries, Environment and Human Rights Violations. Available at <https://www.achpr.org/specialmechanisms/detail?id=13> (accessed 3 December 2019)
- ACHPR (African Commission on Human and Peoples' Rights) (2010). Rules of Procedure of the African Commission on Human and Peoples' Rights. Available at https://www.achpr.org/public/Document/file/English/Rules_of_Procedure_of_the_African_Commission_on_Human_and_PeoplesRightsof2010_%20Legal%20Instruments%20.%20ACHPR.pdf (accessed 3 December 2019)
- ACHPR (African Commission on Human and Peoples' Rights) (2019). State Report: Angola. Available at <https://www.achpr.org/states/statereport?id=117> (accessed 2 December 2019)
- ACHPR (African Commission on Human and Peoples' Rights) (2019). State Report: Benin. Available at <https://www.achpr.org/states/detail?id=3> (accessed 2 December 2019)
- ACHPR (African Commission on Human and Peoples' Rights) (2019). State Report: Botswana. Available at <https://www.achpr.org/states/detail?id=4> (accessed 2 December 2019)
- ACHPR (African Commission on Human and Peoples' Rights) (2019). State Report: Namibia. Available at <https://www.achpr.org/states/detail?id=35> (accessed 2 December 2019)
- ACHPR (African Commission on Human and Peoples' Rights) (2019). State Report: Togo. Available at <https://www.achpr.org/states/detail?id=50>> (accessed 2 December 2019)
- ACtHPR (African Court on Human and Peoples' Rights) (1998). Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights. Available at <http://hrlibrary.umn.edu/instrtree/protocol-africancourt.pdf> (accessed 3 December 2019)
- ACtHPR (African Court on Human and Peoples' Rights) (2009). Rules of Court. Available at http://en.african-court.org/images/Protocol-Host%20Agrtmt/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final_English_7_sept_1_.pdf (accessed 3 December 2019)
- ACtHPR (African Court on Human and Peoples' Rights) (2016). Chad becomes 30th AU member state to ratify the Protocol on the establishment of the African Court on Human and Peoples' Rights. Available at <http://en.african-court.org/index.php/news/press-releases/item/64-chad-becomes-30th-au-member-state-to-ratify-the-protocol-on-the-establishment-of-the-african-court-on-human-and-peoples-rights> (accessed 3 December 2019)
- Adésinà, JO (2001) 'NEPAD and the challenge of Africa's development: Towards the political economy of a discourse' 4 *African Journal of International Affairs* 125-144. <https://doi.org/10.1080/21528586.2004.10419110>
- Africa Progress Report (2014) *Equity in extractives*. Available at http://www.africanprogresspanel.org/wp-content/uploads/2013/08/2013_APR_Equity_in_Extractives_25062013_ENG_HR.pdf (accessed 3 December 2019)
- African Commission on Human and Peoples' Rights v Libya* Application 004/2011
- African Union (2014) *Employment, Poverty Eradication and Inclusive Development*. Extraordinary Summit of the African Union on Employment, Poverty

- Eradication and Inclusive Development 3-7 September, Ouagadougou, Burkina.
- AfricanLii (2018). African Court on Human and Peoples' Rights organises sensitisation seminars to sierra leone and liberia next month. Available at <https://africanlii.org/article/20180727/african-court-human-and-peoples%E2%80%99-rights-organises-sensitisation-seminars-sierra> (accessed 3 December 2019)
- Centre for Minority Rights & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009)
- Churchill, RR & Khaliq, U (2004) 'The Collective Complaints System of the European Social Charter: an effective mechanism for ensuring compliance with economic and social rights?' 15(3) *European Journal of International Law* 417-456. <https://doi.org/10.1093/ejil/15.3.417>
- Cilliers, J (2002) 'NEPAD's Peer Review Mechanism' 2002(64) *Institute for Security Studies Papers* 1-12
- Clements, L & Simmons, A (2008) 'European Court of Human Rights' in M Langford (ed), *Social rights jurisprudence: Emerging trends in international and comparative law* (339-371) New York: Cambridge University Press 339
- Democratic Republic of the Congo v Burundi, Rwanda and Uganda* (2004) AHRLR 19 (ACHPR 2003)
- Five Pensioners v Peru, Torres Benvenuto & Others v Peru*, Merits, reparations and costs, IACHR Series C 98, IHRL 1481 (IACHR 2003), 28 February 2003, Inter-American Court of Human Rights [IACtHR]
- Flint, A (2008) *Trade, poverty and the environment: The EU, Cotonou and the African-Caribbean-Pacific Bloc*. New York: Palgrave Macmillan
- GIEACPC (Global Initiative to End All Corporal Punishment of Children) (2018) African Charter on the Rights and Welfare of the Child (ACRWC). Available at <https://endcorporalpunishment.org/human-rights-law/regional-human-rights-instruments/acrwc/> (accessed 2 December 2019). *Government of the Republic of South Africa & Others v Grootboom & Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000)
- Hernández Lima v Guatemala* Case 11.297, Report 28/96, Inter-AmCHR OEA/Ser.L/V/II.95 Doc 7 rev. 406 (1997)
- Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of Children of Nubian Descent in Kenya) v the Government of Kenya*, Decision No 002/Com/002/2009, African Committee of Experts on the Rights and Welfare of the Child (ACERWC), 22 March 2011
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Jean-Paul, J (2011) 'The accession of the European Union to the European Convention on Human Rights and Fundamental Freedoms' 48 *Common Market Law Review* 995-1023
- Juridical Condition and Rights of the Undocumented Migrants, Advisory Opinion OC-18, 17 September 2003, Inter-Am Ct HR (Ser A) No 18/03 (2003)
- Killander, M (2008) 'The African Peer Review Mechanism and human rights: The first reviews and the way forward' 30 *Human Rights Quarterly* 41-75
- Killander, M (2011) 'The African Commission on Human and Peoples' Rights' in M Ssenyonjo (ed) *The African regional human rights system: 30 years after the African Charter on Human and Peoples' Rights* (pp. 235-248). Leiden: Martinus Nijhoff Publishers
- Killander, M & Nkrumah, B (2014) 'Human rights developments in the African Union during 2012 and 2013' 14 *African Human Rights Law Journal* 275-296
- Glas, LR (2012) 'European Convention on Human Rights' 30(3) *Netherlands Quarterly of Human Rights* 343-348
- M Mayrhofer et al *Report on the mapping study on relevant actors in human rights protection* Work Package 4 – Deliverable 4.1, Large-Scale FP7 Collaborative Project GA 320000 1 May 2013-30 April 2017 (2014) 24
- Maldovan & Others v Romania* Applications 41138/98 and 64320/01, judgment dated 5 July 2005

- Manjoo, R (2012) 'Women's human rights in Africa' in M Ssenyonjo (ed) *The African regional human rights system: 30 years after the African Charter on Human and Peoples' Rights* (pp. 137-154). Leiden: Martinus Nijhoff Publishers
- Michelot Yogogombaye v Senegal* Application 001/2008 Separate Opinion, para 32.
- Nkrumah, B & Viljoen, F (2014) 'Drawing lessons from ECOWAS in the implementation of article 4(h)' in D Kuwali & F Viljoen (eds) *Africa and the responsibly to protect: Article 4(h) of the African Union Constitutive Act* (pp. 251-264). London and New York: Routledge
- Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ('Banjul Charter'), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)
- Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990)
- Pogge, T (2007) 'Severe poverty as a human rights violation' in T Pogge (ed) *Freedom from poverty as a human right: Who owes what to the very poor* (pp. 11-54). Oxford: Oxford University Press
- Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*)
- Ssenyonjo, M 'The Influence of the International Covenant on Economic, Social and Cultural Rights in Africa' 64 *Netherlands International Law Review* 259-289. DOI 10.1007/s40802-017-0091-4
- Sudan Human Rights Organisation & Another Sudan* (2009) AHRLR 153 (ACHPR 2009)
- Melish, TJ (2008) 'The Inter-American Commission on Human Rights: Defending social rights theory through case-based petitions' in M Langford (ed) *Social rights jurisprudence: Emerging trends in international and comparative law* (339-371). New York: Cambridge University Press
- UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171
- Van Kück v Germany* Application 35968/97, judgment 12 September 2003
- Victor Rosario Congo v Ecuador*, Case 11.427, Report 63/99, Inter-Am CHR, OEA/Ser.L/V/II.95 Doc 7 rev 475 (1998)
- Viljoen, F (2012) *International human rights law in Africa*. Oxford: Oxford University Press

