

Book Review

Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press, Oxford, 2007, 670 pp.) ISBN 978-0-19-921858-5

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With the end of colonialism, Africa had begun to grapple with a range of issues to put its house in order. In this regard, the protection of human rights continues to be the most formidable challenge to independent Africa. African states have taken different steps to curb human rights violations and establish a credible system for the sustained protection and promotion of human rights. As a first step, African states have ratified the Charter of the United Nations (UN Charter) and the different international human rights treaties. African states took their commitment to human rights to a higher level with the adoption of the first ever regional human rights treaty, the African Charter on Human and People's Rights (the African Charter) in 1981. The African Charter established the African Commission on Human and People's Rights (the African Commission), the institutional framework for the enforcement of its provisions.

The normative and institutional framework for the protection of human rights in Africa continued to evolve, *inter alia*, with the adoption of a number of specific regional human rights treaties as well as the coming into force of the African Court of Human and People's Rights (the African Court of Human Rights). Though their main agenda is promoting economic integration, African Regional Economic Communities (RECs) have also taken the promotion and protection of human rights as one important agenda. It is not also uncommon to see national constitutions in Africa inundated with human rights provisions, often in the form of a direct replica of the international human rights treaties.

Despite all the human rights norms and institutions at the regional, sub-regional and national levels, realization of international human rights in Africa remains much to be desired. The issue of realization of international human rights in Africa is certainly a complex issue that requires a multi-faceted analysis. It is this critically important issue that the book entitled '*International Human Rights Law in Africa*' by Dr. Frans Viljoen has sought to address.

The aim of the book as stated by the author is to provide a comprehensive, systematic and holistic overview of the African states' obligations under international human rights law and the realization of this law in the continent (p.xxiii). The book has thus sought to examine the norms, institutions and processes relating to human rights in the global and regional systems of the UN, the AU and the Regional Economic Communities (RECs) and their relationship with national legal systems in Africa. While the book addresses a range of issues related to international human rights law, its

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prime focus is the African regional human rights system and the challenges against the realization of human rights in Africa.

The book is divided into five parts, and each part is further divided into different chapters. Part I is basically introductory and addresses background issues such as the very basic issue of what international human rights law is all about, and other important issues such as the different levels of international human rights law, the relation between the international and national systems of human rights, the sources of and limits to international human rights law. The analysis in this part laid the basis for the discussions on the more advanced issues in subsequent parts.

Part II of the book, which is divided into two chapters, takes the reader through the UN system of human rights. The discussion in this part introduces the UN human rights system to the reader, and more importantly, examines the role of this system in realizing human rights in Africa. While recognizing the important role of the UN system in promoting human rights and curbing human rights violations through measures such as by integrating human rights in its development agenda, the author argues that the UN system and its different institutions “have not served as an adequate catalyst to jerk the global consciousness into action, and have not succeeded in making a marked difference to the material realization on the African continent” (pp 87-88). This part focuses on the seven human rights treaties under the UN human rights treaty system and their relevance to Africa. The author points out that while ratification of these treaties epitomizes a first important step to human rights commitment-and Africa is not behind in this front and in some cases it leads the rest of the world- African states generally shy away from accepting the optional protocols to the international human rights treaties which allow for individual complaint mechanisms and much closer scrutiny on enforcement of the treaties (p.150). Addressing the relevance of the UN human rights system to Africa, the author argues that for the UN human rights treaty system to be taken as one of the great achievements of the organization, as often is claimed, there is a need to have evidence of the achievements in Africa (p.146). Though not precisely stated by the author, the message appears to be that no such evidences are available in Africa yet. Part II goes beyond the UN human rights system and briefly outlines the UN financial and trade institutions as well, in particular, the Bretton Woods Institutions, in the context of the realization of international human rights in Africa. More specifically, this part of the book outlines the negative effects of the (in) famous Structural Adjustment Programs (SAPs) spearheaded by these institutions. The author argues that the SAPs negated the structural causes of poverty in Africa that go beyond economic management and priorities(p.79).

Part III of the book is devoted to the critical analysis of the African human rights system in realizing international human rights. With its eight different chapters, Part III deals with issues in the African human rights system with the necessary depth and breadth. As such, Part III represents the main focus of the book. The discussions in this part include the origin of the African human rights system, the regional normative architecture, the institutional framework, in particular, the African Commission on Human and People’s Rights, and the African Court on Human and People’s Rights.

After analyzing the different aspects of the African regional human rights system, the author has concluded that the African human rights system is the weakest regional human rights system compared to the European and Inter-American systems. According to the author, duplication of mandates, lack of coordination among the different institutions and the very limited resources availed to the institutions have, among others, undermined the effectiveness of the African regional human rights system. In examining the role of the AU in promoting and protecting human rights, the author commented that the very foundation of the AU should be people centered, involving people at all levels and that “Only if it is able to allow for a truly deliberative and inclusive culture will the AU become an institution of the African People, by them and for them, and not an institution of, by, and for the African heads of state” (p.234). Part III of the book discusses the African Commission with a particular emphasis on its protective mandate and offers a critical insight into the strengths and weaknesses of the Commission with some suggestions for the improvement of the operation of the Commission. Moreover, this part also discusses the prospects and challenges of the African Human Rights Court where the author warns that with the coming into force of the African Human Rights Court there is a danger of placing much emphasis on judicial and quasi-judicial dimensions of human rights by neglecting the broader issues that hinder the realization of human rights in Africa such as illiteracy, ignorance, lack of resources, etc (p. 230). Based on the experience so far, the author argues that even if high hopes are certainly legitimate for the African Human Rights Court, unrealistic expectations from the court does not seem to be warranted.

Part IV of the book takes the discussion one step down and evaluates the role of the African RECs in advancing human rights in the continent. It has been noted by the author that RECs have the potential not only to create strong and viable economic units but can also serve as forum for the development of common human rights standards and for effective implementation of the standards. The author thus recognizes the very important role of RECs in the context of the realization of international human rights in Africa.

In its Part V, the book addresses the issue of implementation of international human rights law at national levels in Africa. In this regard, the author appropriately noted that international human rights law does not form an effective part of domestic law in Africa and that it is rarely used as a source of enforceable rights in domestic legal systems (p.565). Particular attention was given to the issue of justiciability of socio-economic rights and human rights questions relating to HIV/AIDS. In relation to the first issue, the book addresses the challenges in making socio-economic rights justiciable which is partly associated with the loopholes in the interpretation of these rights. The author tried to suggest some strategies for enforcement of such rights domestically. But, above all, the strong message the author wanted to convey appears to be that enforcement of these rights rests more on judicial activism than on the legal status of such rights (p.585). The main problem identified by the author in relation to HIV/AIDS is lack of human rights based approach in the implementation of the different policies and strategies of most African states. Moreover, the author argues that the issue of HIV/AIDS should not be considered from the medical perspective (access

to HIV/AIDS drugs) alone, and the other dimensions of the issue such as the social and human rights dimensions should also be looked into.

Part VI of the book wraps up the discussions by providing concluding remarks. The central message of the book is that realization of international human rights in Africa has been very limited for several reasons. For example, the author pointed out that even if human rights issues appear to be high on the agenda of the UN and the AU, sometimes priority is given to other political or economic agendas. Moreover, the author pointed out that human rights are not integrated into the policies and functions of these institutions. Lack of coherence between the international and regional systems has also been identified as one of the problems in realizing international human rights in the Continent. The author has also noted that still the notions of national sovereignty and non-interference are being taken as excuses to do nothing about human rights violations across the Continent. The author has also made the observation that in the context of Africa poverty is at the centre of human rights violations and suggested that good governance and justiciability of socio-economic rights may create the basis for addressing poverty in the Continent.

The book presents a very comprehensive work covering a wider range of issues on international human rights law in the context of Africa. It indeed appears that the author has done a hard work to include all relevant issues related to the topic. The work takes the reader through the basics of international human rights law, to the more complex issues of enforcement and implementation of the laws at the regional and national levels. Perhaps not surprisingly for an ambitious work such as this, the book appears to be voluminous. The author's pursuit of comprehensiveness and all-inclusiveness might have also risked a limited treatment of some important issues.

Nonetheless, the book is thoroughly researched, highly informative, clearly written and carefully structured. The clarity with which the different issues are explained in the book is impressive. This indeed is one important quality of this book. The author deserves praise for his pursuit of simplicity while maintaining comprehensiveness. The problem with other works in this area is that they are often very technical and thus not easily accessible for readers with limited or no knowledge of the subject. Discussions in the book often go beyond mere description of doctrinal issues and the author has made the best effort to look at the realities on the ground. Indeed, the work has attempted to capture the jurisprudence of the international courts and quasi judicial bodies such as the African Commission, to a limited extent the courts of the RECs in Africa, the European Court of Human Rights and the European Court of Justice, the international Court of Justice, the communications to the different committees of the UN as well as the national courts in Africa.

The book is also well organized and the very detail list of contents together with the index makes it easy to find a specific topic or issue in the book without much difficulties. The author's boldness in his critique of several issues is also something to be recognized. Several authors in the area limit themselves to the analysis of normative

and institutional frameworks of human rights with a general tendency to shy away from the *realpolitik*.

In general '*International Human Rights Law in Africa*' by Dr. Frans Viljoen is the most comprehensive and well researched work on international human rights in Africa this reviewer has ever seen. It is undoubtedly a very valuable book for everyone interested in human rights issues in Africa and a very important addition to the literature on international human rights law in Africa.