

Obiora Chinedu Okafor

The African Human Rights System

Activist Forces and International Institutions.

New York, Cambridge University Press, 2007, 336 pp., £58.00.

ISBN 9780521869065

In 1981, the African human rights system was created with the entry into force of the African Charter on Human and Peoples' Rights and the establishment of the African Commission mandated to promote and protect human rights. Since then, this system has grown to include Protocols on the Rights of Women in Africa and the Rights of the Child and the African Court of Human and Peoples' Rights (the African Court) which came into being in April 2004. Since its creation, the African human rights system has been the most heavily criticized of the three regional convention based human rights systems; the other systems being the European Convention on Human Rights and the Inter-American Convention on Human Rights. According to one commentator the African Commission has "hardly made a dent in the African human rights scene." Others simply consider the system as a whole as ineffective and weak mainly because of its limited impact on state compliance. It is in the midst of such negative perceptions of the African human rights system that *Chinedu Obiora Okafor* is a welcomed dissenting voice through his book, *The African Human Rights System Activist Forces and International Institutions*. An Associate Professor at Osgoode Hall Law School, York University in Canada, Okafor has authored and co-edited five other books and published numerous articles on diverse aspects of international law.

There are two main objectives the author is concerned with achieving while addressing the root of the negativity associated with the African human rights system. These objectives are laid out in pages 3 and 4 of Chapter 1 which serves as a detailed introduction to the book. According to Okafor the primary objective of this book is to demonstrate that the African system "can (under certain identifiable conditions) achieve domestic impact by significantly affecting the thinking processes and actions of state institutions." The secondary objective is to contend for an extension of the measurement tool by which the effectiveness of the African system, and other similar international human rights institutions (IHIs), has been measured. Through his book he offers an enhanced method of assessing IHIs which would demonstrate some positive impacts made by the African human rights system.

Okafor commences his arduous task by addressing, in the second chapter of his book, the basis of measurement or the lenses through which IHIs are evaluated. The most applied yardstick is the state compliance measure, the focus and depths of which are well laid out by Okafor in this chapter. The two conventional streams of the state compliance measure can be summarized as: 1) that the IHI should be able to compel compliance; and 2) states voluntarily comply with decisions. In both streams of thought, overemphasis has been placed on the role of states in assessing the effectiveness of IHIs. As Okafor points out, under this optic, an IHI is viewed as successful based on the level of state compliance either

with its constituting convention or its decisions. It is on this basis that the African Charter, also known as the Banjul Charter, and its institutions have been criticized as weak. Many states were unresponsive to the African Commission's requests for state visits during its early years and a number of its decisions were also ignored.

Okafor astutely contends that this compliance measure is restrictive and ultimately projects the wrong depiction of the success of an IHI, particularly the African human rights system. Respectfully differing with seasoned academics and observers of IHIs, Okafor does not offer a new measurement tool. Rather, he recommends an extension to the compliance measure for IHIs which would reflect the impact IHIs have made on civil society actors (CSAs), and the indirect impacts on executive, legislative and judicial action. Okafor demonstrates in Chapter 3 that even with the compliance yardstick the African human rights system is not as weak and ineffectual as depicted; a theme he continues with detailed illustrations in Chapters 4 and 5. The bulk of Chapter 3 however is devoted to an overview of the African human rights system, what it entails and the general conceptions of the system as weak and ineffectual.

Okafor uses case studies on Nigeria and South Africa in chapters 4 and 5 respectively to analyze the positive, albeit limited, impact by the African human rights system has had on domestic legislative, executive and judicial action. In these chapters he applies the 'extended yardstick' and assesses the impact the African human rights system has had on activist forces, CSAs and the three branches of government. Several positive impacts include the work of the South African Human Rights Commission to integrate the norms of the African human rights system into its domestic setting. Additionally, the efforts applied by the South African Government to secure a seat on the African Commission and the African Court demonstrate its willingness to be involved in the development of the regional human rights system.

Often ignored is the fact that one of the African Commission's most appreciable influences occurred during a time of military rule in Nigeria. In Chapter 4 Okafor discusses the 1987 Nigerian Civil Disturbances (Special Tribunal) Act which provided for the establishment of a special tribunal to conduct the trial of persons charged with communal or civil offenses. The composition of the tribunal included a serving member of the Armed Forces, and those convicted were denied a right of appeal to another judicial body. The decree and ensuing decisions of the tribunal were decried by CSAs and the African Commission, which labeled the decree as "Charter illegal" and expressed concerns about its compatibility with the African Charter. In 1996 following vast criticism, the Nigerian military regime promulgated a decree removing the armed forces member of the tribunal and providing for the right of appeal to a special appeal tribunal.

Staunch advocates of the state compliance measure may not see what Okafor saw in this illustration; namely the indirect compliance with the Commission's decisions on the illegality of the Civil Disturbances Act. Aside from these two African giants, limited success has also been recorded in Ghana, Algeria and Mali which Okafor discusses in Chapter 6.

Fortunately, Okafor does not attempt to paint a rosy picture of the influence of the African human rights system. While demonstrating the positive impacts, Okafor is not blind to some negative developments, including the limited impact the African human rights system has had in the majority of the countries on the continent. Part of Chapter 6 is dedicated to an honest assessment of the varying factors which undermine the potential of the human rights system in Africa as well as the conditions necessary for optimizing the domestic impact of this system. Paramount in negativity is the low-level of awareness and utilization of the African system among CSAs. Okafor's observation is that what binds countries like Nigeria and South Africa in terms of successful domestic impact of the African human rights system are the activist forces which work hard to put the regional system on the domestic platform. Woven through the majority of his chapters, is the theme that success of the human rights system in Africa has been through both a direct and indirect alliance with local civil society organizations. The African Commission has forged a direct alliance through the increased grants of observer status to more CSAs across the continent. The indirect alliance arises where these activist forces and CSAs have acted as transmission lines between the African system and domestic governmental institutions.

Another area which Okafor briefly explores in chapter 7 is the ongoing call for reform of the provisions of the African Charter. Critics of the African human rights system have condemned some of its restrictive textual provisions and limited institutional capacity. For many years the African human rights system was perceived as unsuccessful because it lacked a Court which would reflect domestic institutions. With the Court now in place, criticism of the African human rights system still abounds. Okafor contends the placement of hope on textual and institutional reform, arguing that critics should focus on the impact of the African Commission decisions on activist forces in Africa. Okafor does not disagree that institutional reform may be beneficial; however, he argues for less focus on the textual provisions in the instrument that establishes an IHI and or its institutional capacity. It remains his core position that the presence of a strong activist movement has tended to correlate to a reasonable degree with the capacity of the African system to exert influence within a given state, regardless of its textual shortcomings.

Okafor's style and ease of analysis of technically academic issues efficiently bring to light possibilities that would enhance pre-existing approaches to the study of IHIs. Although focusing on the African human rights system, this book offers important insights into the shortcomings of the state compliance measure, and the need to re-evaluate the dependence placed on IHIs to be or become a panacea for the serious human rights problems occurring around the world. It has also become apparent through a reading of the African Human Rights System, Activist Forces and International Institutions that the African Commission needs to improve publicity of the strides that it has made and obstacles overcome over the years. The Commission has a good advocate in Okafor. Unfortunately the audience for Okafor's book is indeed limited to academics and researchers. Therefore, those CSAs in African countries who need encouragement to believe in and utilize the African human rights system are unlikely to come across this well written book. For those

interested in an analysis of the African Human Rights System and a fresh voice in the IHI discourse, this book serves as useful background information as well as an excellent example of unconventional thinking.

Adejoke Babington-Ashaye, The Hague

Blessings Chinsinga

Democracy, Decentralisation and Poverty Reduction in Malawi

Mainzer Beiträge zur Afrikaforschung Band 15

Köln, Rüdiger Köppe Verlag, 2007, 260 S., 29,80 EUR; ISBN 9783896458155

Der malawische Politikwissenschaftler *Blessings Chinsinga*, der an der University of Malawi lehrt, hat sich in seiner von *Thomas Bierschenk* an der Universität Mainz betreuten Dissertation mit einem ebenso spannenden wie empirisch wenig erforschten Thema beschäftigt: Der Dezentralisierung und ihre Auswirkungen auf Armutsbekämpfung und demokratische Konsolidierung am Beispiel Malawis.

Demokratische Dezentralisierung wird seit einigen Jahren vor allem von westlichen Gebern als wichtige Voraussetzung für die Konsolidierung junger, fragiler demokratischer Systeme und armutsorientierte Entwicklung gefördert. Die in westlichen Entwicklungshilfeministerien gehegten Erwartungen an die Dezentralisierung haben sich vor allem in Afrika bisher nur selten erfüllt. Malawi ist ein Beispiel für ein weitgehendes Scheitern. Chinsinga hat dankenswerter Weise eine detailreiche empirische Studie vorgelegt, in der er die wesentlichen Schwächen des Dezentralisierungsansatzes aufzeigt.

Der größte Schwachpunkt der Dezentralisierungspolitik liegt im bis heute fehlenden politischen Willen der demokratisch gewählten Zentralregierung. Diese hat keine Absicht, ihre Machtposition zu schwächen, indem sie Kompetenzen an Kommunalräte abtritt. Somit ging nicht nur die Initiative zur Dezentralisierung von den Gebern aus. Diese mussten den Prozess auch größtenteils finanzieren und organisieren. Die gesetzliche Grundlage, die zudem noch deutliche technische Schwächen aufweist, wurde maßgeblich von den Gebern im Rahmen der technischen Hilfe vorbereitet. Eine signifikante Finanzautonomie der Distrikte konnte politisch nicht durchgesetzt werden. Erst nach mehrjährigen Verzögerungen wurden im November 2000 die bisher einzigen Kommunalwahlen durchgeführt. Lediglich 14% der Wahlberechtigten beteiligten sich daran (S. 105). Bei den Präsidentschafts- und Parlamentswahlen waren noch fast 94% Wahlbeteiligung zu verzeichnen. Diese Zahlen verdeutlichen das fehlende Interesse der Wähler an den dezentralen Institutionen. Das lag einerseits an der fehlenden oder allenfalls halbherzigen Mobilisierung durch die großen Parteien und andererseits an fehlender Kenntnis und Information bei den Wahlberechtigten. Somit ist die Dezentralisierung eine von außen initiierte, oktroyierte und von den Gebern maßgeblich am Leben gehaltene Intervention, die bisher nicht Fuß fassen konnte. Nach Ablauf der Wahlperiode Ende 2005 wurden die Kommunalräte aufgelöst.