Introduction

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To protect the inviolability of human dignity worldwide is the ultimate objective of the concept of human rights. Human rights are considered and officially accepted as universal – regardless of their genesis or cultural manifestation. History and experience show, however, that respect for the dignity and rights of human beings cannot be taken for granted: they must be constantly nurtured and vigorously guarded.

It is against this background that this publication evolved. Its contents stem from the conviction that, amongst several means, legal instruments and institutions can contribute to the advancement of human rights.

*Human rights* as a legal concept arrived in Africa relatively late. The United Nations (UN) System, international law and the African Union have certainly all contributed to the establishment of a human rights system in Africa, which has positively and indispensably impacted on the advancement of human rights and of justice. Yet some of the promises made about such rights being guaranteed under global, continental, regional and national legal instruments have remained unfulfilled.

Therefore, this publication on human rights on the continent tries to capture the current status of the African human rights protection system and the various legal instruments, institutions and mechanisms at its disposal. It summarises, from a legal perspective, the achievements gained and challenges faced when it comes to respecting human rights in Africa.

SECTION I, entitled “The paradigm of human rights and its relevance for Africa”, is discussed from a general perspective. In his article, “Human rights between universalism and cultural relativism?”, Manfred Hinz pleads for the need for anthropological jurisprudence in the globalising world. Despite the universality of human rights and their principles, different cultural norms place universal human rights in relation to their cultural context, hence leading to ‘soft’ universalism or ‘soft’ relativism. This concept is elaborated on in the article from a jurisprudential perspective informed by anthropology.
The article by Charles Villa-Vicencio entitled “Transitional justice and human rights in Africa” discusses the dichotomy of traditional African mechanisms of reconciliation and Western notions of conflict resolution. It identifies the limitations of prosecutorial justice as witnessed in the dominant transitional justice debate, and ponders the origins and parameters of the transitional justice debate in Africa.

In his article, “Human rights education in Africa”, Nico Horn argues for the importance and necessity of human rights education in implementing and advancing human rights effectively in Africa. He refers especially to the UN declaration of a Decade of Human Rights Education (1995–2004), to which African states gave scant attention. This Decade was followed by another declared by the UN, namely the World Programme for Human Rights Education (2005–ongoing). Horn proposes that human rights institutions, treaty bodies and civil society need to collaborate more effectively in human rights education in Africa.

SECTION II is dedicated to the theme “The international justice system and human rights in Africa”. In his article entitled “The United Nations and the advancement of human rights in Africa”, Wilfred Nderitu focuses on the issue of poverty as a violation of human rights, elaborates on definitions of poverty in various international human rights documents, and describes various UN efforts in this regard as human-rights-related regimes or initiatives. Synergies between and among different international institutions and actors in the fight against poverty are debated, and the responsibility of the State in alleviating poverty is considered from a juristic perspective.

The article by Francois-Xavier Bangamwabo, entitled “International criminal justice and the protection of human rights in Africa”, examines the current prosecution of international crimes perpetrated in Africa. Judicial institutions are explored, like the ad-hoc UN International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), and the International Criminal Court (ICC). Bangamwabo looks at the creation, mandate, legality and jurisdiction of these bodies and their relevance for the protection of human rights in Africa. He describes the dilemma that, on the one hand, these international judicial institutions have provoked criticism over their potential (political) impact, their pursuit of ‘abstract justice’ and – with regard to the ICC – the perceived
prioritisation of Africa. On the other hand, these international institutions often complement weak and/or unwilling domestic legal institutions in Africa.

In SECTION III, entitled “The African Union and the regional protection of human rights”, the article “The African Union: Concepts and implementation mechanisms relating to human rights” by Bience Gawanas explains the different human rights premises of the Organisation of African Unity (OAU), which was preoccupied with human rights as a right to self-determination and independence in the context of the struggle for the decolonisation of Africa, and that of the African Union (AU), which – in contrast to the OAU – made human rights an explicit part of its mandate and officially mainstreamed human rights into all its programmes. For Gawanas, the AU also adopted a human rights approach to development with a focus on social, economic and cultural rights. She discusses the various human-rights-related charters and protocols of the OAU and the AU, including the New Partnership for Africa’s Development (NEPAD) and the African Peer Review Mechanism (APRM). The human-rights-related key issues for the AU identified include culture and African values, the right to development, HIV and AIDS, vulnerable groups, and gender. For Gawanas a more coherent approach of the AU on the human rights standards, their implementation and more effective mechanisms for their enforcement would further advance human rights in Africa.

The article by Sheila Keetharuth follows, entitled “Major African legal instruments and human rights”. An analysis of the following major African legal instruments is provided:

1. The African Charter on Human and Peoples’ Rights
2. The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa
3. The Declaration of Principles on Freedom of Expression in Africa
4. The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa
6. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
7. The African Charter and the Protection of Refugees through Communications before the African Commission, and
8. The AU Convention on Preventing and Combating Corruption.
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The article presents a descriptive study of these major legal instruments, situates them in their historical context, and examines their key principles and provisions, guidelines and specificities. Despite the shortcomings and inherent problems with African legal instruments (apart from those associated with their implementation), Keetharuth shows that Africa has in many cases led the way in setting norms. In the field of international human rights law, African legal instruments have been trailblazers. Most significantly, the African Charter has incorporated the three categories/generations of human rights in one instrument, emphasising their indivisibility.

The Protocol on the Statute of the African Court of Justice and Human Rights, which merges the two continental courts – the African Court of Human and Peoples’ Rights and the African Court of Justice – and replacing their respective Protocols is dealt with by Michelo Hansungule in his article entitled “African courts of human rights and the African Commission”. The author discussed the evolution of the current justice architecture, the three courts and the African Commission, their mandate, structure, composition, communication and – for the courts – their jurisdiction. Hansungule critically reviews the challenges for these institutions, their problematic mechanisms and inherent limitations, as well as their shortcomings, which include a lack of focus and poor implementation. He hopes the new African Court of Justice and Human Rights and the African Commission will have a positive impact and benefit the African human rights architecture and, eventually, individual victims.

SECTION IV is themed “Subregional human-rights-related institutions in Africa”. Although regional economic communities (RECs), as subregional institutions, do not explicitly have human rights at the core of their agenda, it becomes increasingly evident that human-rights-related topics play an important role in their legal framework and implementation – as Oliver Ruppel shows us in his article, “Regional economic communities and human rights in East and southern Africa”. The RECs’ objective of deeper regional integration in order to enhance economic development includes the harmonisation of laws and jurisprudence. RECs have also integrated human rights into their various regional treaties since good governance and human rights have a beneficial effect on the investment climate. Ruppel introduces the respective backgrounds, human rights protection and enforcement mechanisms to the following RECs:

1. The Common Market for Eastern and Southern Africa (COMESA)
2. The Southern African Development Community (SADC)
3. The Eastern African Community (EAC)
4. The Economic Community of Central African States (ECCAS), and
5. The Intergovernmental Authority on Development (IGAD).

Ruppel concludes that COMESA, SADC and the EAC have integrated human rights into their legal frameworks to a greater extent than have ECCAS and IGAD.

In his article, “Regional economic communities and human rights in West Africa and the African Arabic countries”, Enyinna Nwauche captures the following RECs which are officially acknowledged by the AU:
1. The Economic Community of West African States (ECOWAS)
2. The Arab Maghreb Union (AMU), and
3. The Community of Sahel-Saharan States (CEN-SAD)

as well as other regional economic institutions, not acknowledged as RECs by the AU, as follows:
4. The West African Economic and Monetary Union (WAEMU), and
5. The League of Arab States.

Nwauche explains the different objectives and challenges of these institutions, and describes their jurisdictions and judicial enforcement mechanisms. He concludes that human rights protection in West African and African Arabic regions can only be seen as fledging from the perspective of these communities and institutions, since they focus on regional economic integration. However, Nwauche commends the ECOWAS Court of Justice for building a normative regime around the African Charter on Human and Peoples’ Rights, and feels that its emerging jurisprudence will serve as an example for other regional courts.

In SECTION V, entitled “National human rights institutions in Africa”, the article by Chris Maina Peter, “Human Rights Commissions – Lessons and challenges”, provides an overview of the national dimension of the protection and promotion of human rights. The currently 31 national human rights institutions in Africa operate as commissions, ombudspersons or institutions. These bodies, although established by the State, are supposed to act independently of it, instead complementing the country’s efforts to protect its citizens and develop a culture that is conducive to the protection of human rights. The author elaborates on the commissions in South Africa, Uganda and Tanzania, and points out lessons
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and opportunities from these examples. These institutions are more flexible and accessible than courts of law, and can be effective in settling disputes amicably and peacefully. However, a lack of education and knowledge on (and, hence, ownership of) such institutions, a lack of funding, political obstacles and sometimes politically aligned and incompetent Commissioners pose threats to the effectiveness of these important institutions.

In his article, entitled “Can Truth Commissions in Africa deliver justice?”, Dumisa Buhle Ntsebeza argues that truth (and reconciliation) commissions cannot replace justice systems, but, in post-conflict societies, they can provide a complementary measure to criminal prosecution of past crimes by governments. For Ntsebeza, the public disclosure of egregious human rights violations and crimes and the added opprobrium constitute a blow to the perpetrator similar to that of a jail sentence. Unlike the notion of retributive justice with its criminal prosecution, the authors believes a truth commission can, through the notion of restorative justice and the non-prosecution of offenders, restore relations through forgiveness between victims/survivors and perpetrators. For Ntsebeza, the trend for truth commissions in Africa emanates from a traditional approach to dispute resolution and ubuntu, the African principle of humanity. He warns, however, that commissions can only achieve their aims in transitional societies if their mandates and composition are determined by broad consultation.

Thus, the 12 articles collected here speak of the human rights protection system in Africa and its current transformation; they elaborate on its achievements, but also mention the shortcomings evident in its implementation and effectiveness.

The publication is also a tribute to the increasing significance of human rights as a policy issue in Africa, and as a primary component of global regulatory policy and global governance.

With this publication the Konrad Adenauer Foundation aims to heighten awareness of and further promote human rights in Africa, and to strengthen the rule of law on the continent.

The opinions expressed in the papers presented in this publication are those of the contributors and do not necessarily represent the organisations for which they work nor the opinion of the Konrad Adenauer Foundation.