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**Important Lessons from African Human Rights Mechanism for ASEAN:  
Common Path and Self-Enforcing Equilibria**

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**Abstract**

*Ideally, regional regimes are promising for investigating and remedying human rights violations. This manuscript focuses on the establishment process of regional mechanisms in Africa, specifically on the similarities and dissimilarities among them and look at how the enforcement mechanisms work. It seeks and analyses the process of creating a mechanism to protect individuals' rights in the African region, and present thoughts about how the institution can improve in protecting their peoples' human rights. According to the African experience, institutional building is a long process requiring flexibility and adaptiveness to many conditions facing ahead. As it goes with many uncertainties, all stakeholders, especially those in power, have strong and proactive leadership. In this regard, ASEAN can follow African states' path to seek and build their human rights mechanisms under their interest as well as other regions' common paths, such as establishing a commission followed by a court. Further, Africa succeeded in creating a Self-Enforcing Equilibria where African states and elites believe that they can violate the rule and would be worse off if they did so. It has passed this step successfully by establishing human rights institution, including human rights court, to avoid that. Conclusively, African proves that human rights can be protected and promoted without damaging state sovereignty and along the principle of non-interference. Therefore, ASEAN can learn from African's experience. To begin with, ASEAN is unnecessary to have the ideal human rights convention; at the beginning, it shall focus on what it needs and what can be agreed upon.*

*Keywords: ASEAN, Regional Human Rights, Self-Enforcing Equilibria*

**Kajian Strategis Mekanisme Penyelesaian Hak Asasi Manusia di Afrika untuk ASEAN: Jalur  
Umum dan Self-Enforcing Equilibria**

**Abstrak**

Secara ideal, rezim hukum regional menjanjikan dalam menyelidiki dan menyelesaikan pelanggaran hak asasi manusia. Tulisan ini memfokuskan diri pada proses pembentukan mekanisme regional di Afrika, terutama berkenaan persamaan dan perbedaan yang ada, serta meneliti cara kerja penegakan hukum yang ada. Tulisan ini turut menganalisis proses pembentukan mekanisme dalam melindungi hak individu

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di Afrika, dan memberikan pandangan bagaimana institusi terkait dapat mengembangkan diri dalam melindungi hak asasi manusia. Berdasarkan pengalaman Afrika, pembentukan institusi adalah proses panjang yang membutuhkan fleksibilitas dan adaptasi terhadap situasi masa depan. Oleh karena ketidakpastian yang ada, seluruh pihak yang terkait, terutama yang berkuasa, memiliki kepemimpinan yang kuat dan proaktif. ASEAN dapat mencontoh langkah negara Afrika dalam membangun mekanisme hak asasi manusia seturut kepentingannya dan juga mencontoh langkah umum wilayah lain, seperti membentuk komisi dan pengadilan. Afrika berhasil membentuk self-enforcing equilibria, di mana negara dan pemimpin Afrika sadar bahwa aturan tersebut dapat dilanggar, namun dengan konsekuensi yang buruk. Afrika telah membentuk institusi hak asasi manusia, termasuk pengadilan hak asasi manusia, untuk mencegah hal tersebut. Pada akhirnya, Afrika membuktikan bahwa hak asasi manusia dapat dilindungi dan dimajukan tanpa merusak kedaulatan negara dan sejalan dengan prinsip non-intervensi. Dalam hal ini, ASEAN tidak perlu memiliki konvensi hak asasi manusia pada tahap awal, melainkan memfokuskan diri terhadap kebutuhannya dan apa yang dapat diselesaikan bersama.

Kata Kunci: ASEAN, HAM Regional, Self-Enforcing Equilibria

## A. INTRODUCTION

Ideally, a regional regime that is commonly based on geographic proximity and cultural propinquity makes it more probable for investigating and remedying human rights violations. The regime is more likely than the universal ones in manifesting their competence. Therefore, they are more likely to be effective in applying diplomatic, economic, and other sanctions in defense of human rights.<sup>1</sup> The discussion on regionalism is indeed a basis or a reference for regional mechanisms to promote and protect international human rights.<sup>2</sup> This manuscript focuses mainly on the establishment process of regional mechanisms in Africa. Noting especially the similarities and dissimilarities among them, but it looks at how the enforcement mechanisms work. It limits to only seek and analyses the process of creating the mechanism to protect the human rights of individuals in the African region. It also presents thoughts about how the institution might improve their work in protecting their peoples' human rights. In the end, African experience will become a lesson for ASEAN

to create a more reliable human rights institution. It acknowledged that literature works on this matter are enormous, but the views from ASEAN scholars, especially Indonesian scholars, are not much. Therefore, this manuscript will contribute to the current literature and add value to readers from both ASEAN and other regions.

## B. HUMAN RIGHTS MECHANISM IN AFRICA REGION: A HISTORICAL BACKGROUND OF THE AFRICAN HUMAN RIGHTS SYSTEM

Today the African region is one of the small number of regions possessing regional organizations, with both The Commission and The Court of human rights being present. Their existence has passed many struggles. When the Organization of African Unity (OAU) was established, human rights were not a primary concern. Therefore, the protection of human rights was not a part of their mandate; to that end, there was no human rights body.<sup>3</sup> Besides, the OAU had its primary goals of protecting sovereignty and non-interference in domestic affairs for

<sup>1</sup> Burns H. Weston (et. al.), "Regional Human Rights Regimes: A Comparison and Appraisal", *Vanderbilt Journal of Transnational Law*, Vol. 20, Issue 4, 1987, p. 590.

<sup>2</sup> *Ibid*, p. 592.

<sup>3</sup> Curtis FJ Doebbler, "A Complex Ambiguity: The Relationship between the African Commission on Human and Peoples' Rights and Other African Union Initiatives Affecting Respect for Human Rights", *Transnational Law & Contemporary Problems*, Vol.13, Issue 7, 2003, p. 9.

member states that often perceive as contradictory principles to human rights.<sup>4</sup> However, time proves that these principles did not prevent Africa from having a human rights mechanism.

It took many years for Africa to develop its human rights systems, and the 1960s marked as the OAU's initiation of it. Twenty-one years later, in 1981, The African Charter of Human and People's Rights was open for signature, and five years later, in 1986, the Charter entered into force. The most significant change in their human rights movement was the shift from the OAU to the African Union (AU) in 2002.<sup>5</sup>

There was an institutional revolution in Africa, where the AU replaced its predecessor, the OAU, in 2000, based on the Constitutive Act of the African Union (CAAU). The AU creation was to bring a more integrated Africa in economic and social spheres.<sup>6</sup> It comprises many organs and appears somewhat closer to their United Nations equivalents' model rather than those of the European Union.<sup>7</sup> Principally, the OAU's work and responsibility under the African Charter of Human and Peoples' Rights will automatically be taken over by organs of the AU.<sup>8</sup>

Africa's involvement and international law approach to many human rights violations in the region stimulated the development of Africa's human rights system. For example, the genocide in Rwanda which led to the establishment of the ICTR, and the apartheid cases which led

to the establishment of the Convention on the Elimination and the Suppression of the Crime of Apartheid and an international penal court.<sup>9</sup> There was also an involvement of the UN in the creation of an African Human Rights mechanism.<sup>10</sup> This influence and involvement of the UN must also be considered when assessing or observing human rights' development in the Southeast Asian region.

Under the African Human Rights Charter, there are three organs relating to the enforcement of human rights in the region: The General Assembly of Heads of State and Government (The Assembly), the African Human Rights Commission (the Commission) and the African Court of Justice and Human Rights (The Court). Important to note is that the Human Rights Commission is an independent body created under a separate treaty,<sup>11</sup> and continues to exist as the most prominent human rights body in the AU.<sup>12</sup> Besides, Africa also has the African Committee of Experts on the Rights and Welfare of the Child (ACRWC Committee), a charter-based body of the African Charter on the Rights and Welfare of the Child (ACRWC).<sup>13</sup>

There are also several sub-regional institutions or arrangements directly or indirectly involved in human rights protection such as the East African Court of Justice (EACJ), the Court of Justice of the Economic Community of West African States (ECOWAS), and the Southern African Development Community (SADC)

<sup>4</sup> Gina Bekker, "The African Human Rights System: An Uphill Struggle", *German Yearbook of International Law*, Vol. 45, 2009, p. 47.

<sup>5</sup> Jeremy Sarkin, "The Role of Regional Systems in Enforcing State Human Rights Compliance: Evaluating the African Commission on Human and People's Rights and the African Court of Justice and Human Rights with Comparative Lessons from the Council of Europe and the Organization of American States", *Inter-American & European Human Rights Journal*, Vol. 199, Issue 1, 2008, p. 213.

<sup>6</sup> Curtis FJ Doebbler, *Op. Cit.*, p. 16.

<sup>7</sup> *Ibid*, p. 17.

<sup>8</sup> *Ibid*, p. 17.

<sup>9</sup> Frans Viljoen, "A Human Rights Court for Africa and Africans", *Brooklyn Journal of International Law*, Vol. 30, 2004, p. 4.

<sup>10</sup> C. R. M Dlamini, "Towards a Regional Protection of Human Rights in Africa: The African Charter on Human and Peoples' Rights", *Comparative and International Law Journal of Southern Africa*, Vol. 24, Issue 2, 1991, p. 189.

<sup>11</sup> It is established under the African Charter on Human and Peoples' Rights, 1981 (African Charter).

<sup>12</sup> Curtis FJ Doebbler, *Op. Cit.*, p. 17.

<sup>13</sup> Jeremy Sarkin, *Op. Cit.*, p. 214.

Tribunal.<sup>14</sup> NEPAD (The New Partnership for Africa's Development) has also shaped human rights in Africa, and is an excellent example of how economic cooperation and integration among African countries remain a concern for human rights. There was a hope; through NEPAD, greater respect for human rights can be achieved in Africa.<sup>15</sup> Many human rights improvements have been settled due to the transformation from the OAU into the AU.<sup>16</sup> However, the section will not discuss all institutions. It focuses only on the two main enforcement bodies under the Charter: The Commission, and the Court. The African Charter, as their constituent instrument, will be discussed first before those bodies.

### C. THE AFRICAN CHARTER

The African Charter, also known as Banjul Charter, was adopted by the Assembly of Heads of State and Government of the OAU in Nairobi, Kenya, on 24-28 June 1981, and came into force in 1986.<sup>17</sup> The African Charter is seen as providing significant development on human rights law, whereby the principle of non-interference can no longer provide a convincing defense for violators of human rights. Additionally, the Charter indicates that African leaders accept human rights violations in their region for the first time as a matter of concern for the international community.<sup>18</sup>

The African Charter is unique, and quite different from the other regional human rights instruments. It regulates not only rights but also duties on the individual towards "his family and society, the State and other legally recognized communities and international community," and rights against the State.<sup>19</sup> Also, African societies

are more group-oriented than individualistic and more group-oriented than most other societies in the world.<sup>20</sup> This uniqueness shows that the region fits the needs of African society and culture, where an individual's rights and the obligation shall be at a balance. Perhaps, this kind of instrument can also apply within ASEAN, although it will be more satisfactory for ASEAN to seek their own uniqueness, shared by all ASEAN citizens.

African Charter is unique in the way it has been developed. The OAU needs sixteen years to adopt a resolution for a human rights charter, another eighteen years to adopt the Charter, and enter into force after twenty-three years since the adoption.<sup>21</sup> It was a very long journey. Another uniqueness of Africa is where they build their human rights with "an African flavor" consisting of self-determination, non-interference in internal affairs, national and African unity, and economic development, human rights have (hitherto) been non-priority.<sup>22</sup> The region dares to be different to show their human rights identity.

Many critics said that the Charter is weak. However, this legally binding human rights instrument played an essential role in particular to develop a human rights-oriented culture. Hence, for African society, this was one factor that brings the region to slowly move from an authoritarian to a democratic society.<sup>23</sup> Despite its weakness, the African Charter is one of the most comprehensive international and regional human rights instruments covering civil, political, social, economic, and cultural rights.

<sup>14</sup> *Ibid.*

<sup>15</sup> Curtis FJ Doebbler, *Op. Cit.*, p. 18.

<sup>16</sup> Jeremy Sarkin, *Op. Cit.*, p. 215.

<sup>17</sup> C. R. M Dlamini, *Op. Cit.*, p. 193.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, p. 197.

<sup>20</sup> Ebow Bondzie-Simpson, "A Critique of the African Charter on Human and People's Rights", *Howard Law Journal*, Vol. 31, 1988, p. 656.

<sup>21</sup> *Ibid.*, p. 644.

<sup>22</sup> *Ibid.*, p. 645.

<sup>23</sup> C. R. M. Dlamini, *Op. Cit.*, p. 203.

#### D. THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (THE COMMISSION)

The African Commission on Human and Peoples' Rights (the Commission) was established in 1986 as a quasi-judicial body to protect and promote Africans' rights under the African Charter.<sup>24</sup> It is a human rights body of the African Charter on Human and Peoples' Rights, which has a mandate to "(...) promote human and peoples' rights and ensure their protection in Africa".<sup>25</sup> Thus, the African Commission's mandate has been both promotional and protective.<sup>26</sup> It is also known as the sole supervisory body of the African Charter.<sup>27</sup>

Although the Commission has a protection mandate, they do not have any credible enforcement mechanism as well as to remedy situations. The ultimate mandate of the African Commission is limited to making a recommendation to the General Assembly of Heads of State and Government. The body functions more akin to an administrative body than a judicial organ. The Commission sends its decisions to the Council of Ministers of the African Union for enforcement. However, the Council, like the General Assembly, does

practically nothing with the decisions.<sup>28</sup> The Commission could not do anything if the Council stands still with inaction.

The Commission performs a mostly supervisory role.<sup>29</sup> Therefore, the Commission's efficacy is to rely on the member states, and it leads to the question on the issue of a protection mandate's execution of the Commission. Accordingly, the Commission's mandate is mainly promotional.<sup>30</sup> A critical attitude must be set when we create an institution or mechanism to function as it is.

Despite its limited power or mandate, in practice, the Commission interpreted its mandate broadly and progressively.<sup>31</sup> Implicitly the Commission's mandate to monitor compliance with the Charter norms is not provided for or are not provided for, in the Charter. Therefore, it is the Commission itself that interprets extending its power to implement the Charter. The two most crucial monitoring mechanisms, the individual complaints system and the state reporting procedure, are 'products' of a creative and powerful Commission.<sup>32</sup> Another example was the creation of special rapporteurs, which is not explicitly mentioned in the African Charter.<sup>33</sup>

<sup>24</sup> Frans Viljoen, *Op. Cit.*, p. 1.

<sup>25</sup> Article 30, African Charter.

<sup>26</sup> Frans Viljoen, *Op. Cit.*, p. 7.

<sup>27</sup> Christof Heyns, "The African regional human rights system: the African Charter" *Penn State Law Review*, Vol. 108, 2003, p. 682. As a sole supervisory body of the African Charter, the main mechanisms employed by the Commission to fulfill its task of supervising compliance with Charter norms by state parties are the following:

1. The Complaints Procedure

This procedure is not implicitly stated in the Charter, but the Commission develops it.

2. Consideration of State Reports

Every two years, the state party must submit a report on their compliance with the Charter. The report was not submitted to the Commission, however, the commission requested the Assembly to have such a mandate. Unfortunately, the fact shows that the level of compliance is inadequate; approximately half of the state parties do not submit any reports.

3. Special Rapporteurs

Special Rapporteurs are appointed by the Commission to assist in executing their function, although such a mechanism is not implicitly stated in the Charter. Indeed, this is another innovation of the Commission. Besides, the Commission also appointed a Working Group on Freedom of Expression and a Working Group of Experts on Indigenous People or Communities.

4. Site Visits

Supporting their protective mandate, the Commission has also conducted several on-site visits ranging from general promotional visits to fact-finding.

5. Resolution

<sup>28</sup> Omoleye Benson Olukayode, "Enforcement and Implementation Mechanisms of the African Human Rights Charter: A Critical Analysis", *Journal of Law, Policy & Globalization*, Vol.40, 2015, p. 52.

<sup>29</sup> *Ibid.*, p. 50.

<sup>30</sup> C. R. M. Dlamini, *Op. Cit.*, p. 200.

<sup>31</sup> Shadrack Gutto, *Op. Cit.*, p. 180.

<sup>32</sup> Christof Heyns, *Op. Cit.*, p. 162.

<sup>33</sup> Shadrack Gutto, *Op. Cit.*, p. 180.

The Commission consists of eleven members elected by secret ballot by the Assembly from a list of candidates nominated by the states party to the Charter. Although nominated by states, they serve in their capacity from among African personalities with the highest consideration for their high morality, integrity, impartiality, and competence in human and peoples' rights. Particular consideration should be given to people with legal experience.<sup>34</sup> The eleven members of the Commission were elected for the first time on 29 July 1987 by the Assembly of Heads of State and Government of the OAU.<sup>35</sup> The Commission is an independent body, but it remains within the OAU. Accordingly, the Commission has a close relationship with the OAU, and currently with the AU, the OAU's successor.<sup>36</sup>

In order to make the Commissioner more independent and productive, in 2006, the AU found that a candidate should not hold a government position. Besides, states should comply with the precise eligibility criteria. Such effort is believed to increase fairness and transparency as well as the effectiveness and credibility of the institution.<sup>37</sup> However, the un-independent Commission remains to exist as if, in most cases, they were acting as liaisons for their own country.<sup>38</sup> In order to redress those issues, the Commission should appoint more commissioners and staff on a full-time basis. This would open more chances to the Commission to accomplish their tasks to give a more significant impact on human rights development in the region.<sup>39</sup>

To support the Commission's function, the Secretary-General of the OAU appoints the Secretary of the Commission and

provides the staff and services.<sup>40</sup> Badawi El-Sheikh said that the infrastructure of the Commission that consist of the Commission's status, rules of procedure, and secretariat, would reflect the independence, competence, transparency, and efficiency of the Commission.<sup>41</sup> When there is vagueness on some provisions in the Charter or other forms of constituent instrument, the Commission can do something to make it clear. This is as has been done by the African Commission, where they found a vague and insufficiently grounded individual complaint in the Charter, they would strengthen and clarify it.<sup>42</sup>

One of the Commission's infrastructures, the Rules of Procedure, has successfully transformed the African Charter into a working language that can easily be used and understood by all stakeholders. The rule of procedure is a complement of the Charter. The Commission may amend its procedure based on their experience.<sup>43</sup> This is supposing that the Charter did not rule any specific needs. In that case, the rules of procedure could rule on that matter. In Africa, the Commission does not have any power to take provisional or interim measures because the Charter does not contain such a rule, however the Rule of Procedure of the Commission grants the Commission such authority.<sup>44</sup> Accordingly, the Commission's power can develop beyond what has been agreed in the Charter; however, it is indeed encouraged to do so. In the case of ASEAN, the AICHR can also do protection by making a real and brave step in responding to many human rights violations in the region. This flexible character of the rules of procedure open

<sup>34</sup> C. R. Dlamini, *Op. Cit.*, p. 199.

<sup>35</sup> Ibrahim Badawi El-Sheikh, *Op. Cit.*, p. 272.

<sup>36</sup> Curtis FJ Doebbler, *Op. Cit.*, p. 12.

<sup>37</sup> Jeremy Sarkin, *Op. Cit.*, p. 220.

<sup>38</sup> *Ibid.*

<sup>39</sup> *Ibid.*, p. 221.

<sup>40</sup> C. R. Dlamini, *Op. Cit.*, p. 199.

<sup>41</sup> Ibrahim Badawi El-Sheikh, *Op. Cit.*, p. 272.

<sup>42</sup> Frans Viljoen, *Op. Cit.*, p. 6.

<sup>43</sup> Ibrahim Badawi El-Sheikh, *Op. Cit.*, p. 275.

<sup>44</sup> Christof Heyns, *Op. Cit.*, p. 698.

ample opportunities for the Commission to develop the institution and achieve their goals.

The Commission may resort to any appropriate method of investigation to reach an amicable solution. However, unlike the judicial organ, the Commission cannot deliver a judgment, but only a recommendation to the Heads of States. The decision of the Commission is not considered as a judicial decision, and therefore it lacks enforceability. States too often ignore the Commission's decision.<sup>45</sup> This is not only on authoritative matters; the Commission also lacks resources to follow up on their decision, including monitoring State's compliance.<sup>46</sup>

Limited sources are also an issue in the work of the African Commission. The 2007 budget of the African Commission amounted to only US\$ 1,199,557.80. Only US\$ 47,000 of this was for programs. This limited budget has had massive implications not only for its workload but also for its independence.<sup>47</sup> The lack of budget causes many problems, including lack of resources, lack of Commission's professionalism, lack of independence, lack of powers to enact their mandate, and the enforcement of its decision.<sup>48</sup>

However, despite those weaknesses above, the Commission has indeed made a valuable contribution to protecting human rights. One of its legacies is where the Commission has extended human rights protections to areas where no other international human rights body has dared to tread upon.<sup>49</sup> For example, the Commission is well-known for its creativity in dealing with human rights than any other international human rights body, such as when the Commission found that a severe

and massive violation of human rights precludes a government from relying on the exhaustion of domestic remedies.<sup>50</sup> Besides, the Commission has adopted resolutions on several human rights issues in the region, such as on issues regarding fair trial, freedom of expression, torture, slavery, HIV/AIDS, among others.<sup>51</sup> Unfortunately, the issue of a state's compliance with the Commission decision is shallow. It is in the hand of the AU Assembly to penalize states that are negligent to comply with the Commission's findings within a specific period. The AU should adopt a clear procedural or mechanism for non-compliance states to support the work of the Commission.<sup>52</sup>

#### E. THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS

Every Court is born with different histories therefore it has to deal with different issues and problems. The African tend to settle the dispute with their traditional ways through mediation and conciliation. Thus, the idea of having a court receives many critics as it is in contradiction with African traditions.

The idea of having a human rights court stems from the late 1970s and early 1980s when the African human rights system was forged, but, unfortunately, it was rejected.<sup>53</sup> The main drafter, Keba M'Baye, thought that it was too early to have such a judicial institution like a court.<sup>54</sup> Interestingly, the fact has proved that the idea of human rights courts was present from 1961 in the conference on "the Law of Lagos" where judges, practicing lawyers and law professor from 23 states, not merely of activist or NGO backgrounds, recommended the establishment of the Court in conjunction

<sup>45</sup> N. Barney Pityana, "Reflections on the African Court on Human and Peoples' Rights: Recent Developments", *African Human Rights Law Journal*, Vol. 4, Issue 1, 2004, p. 126.

<sup>46</sup> Ebow Bondzie-Simpson, *Op.Cit.*, p. 662.

<sup>47</sup> Jeremy Sarkin, *Op. Cit.*, p. 221.

<sup>48</sup> Curtis FJ Doebbler, *Op. Cit.*, pp. 13-14.

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*, p. 25.

<sup>51</sup> Christof Heyns, *Op. Cit.*, p. 697.

<sup>52</sup> Jeremy Sarkin, *Op. Cit.*, p. 226.

<sup>53</sup> Frans Viljoen, *Op. Cit.*, p. 4.

<sup>54</sup> *Ibid.* See also the *travaux preparatoires* of the African Charter's substantive provisions

with the adoption of the African Convention on Human Rights.<sup>55</sup> This African jurist meeting in 1961 was one of the earliest forums discussing the establishment of the African Court of human rights, which at that time was facing resistance. Also, NGO actively campaigned for a court.<sup>56</sup> The establishment of the International Criminal Court (ICC) at The Hague influenced the African human rights court's establishment.<sup>57</sup> Finally, in June 1998, the OAU's Assembly of Heads of State and Government adopted the Protocol establishing the African Court on Human and Peoples' Rights (ACtHR).<sup>58</sup>

The Court was established in the middle of many complexities the African region had, including the African States' traditional and robust attachment to the principle of non-interference in internal affairs and their extreme reluctance to trust the Commission.<sup>59</sup> At that time, the Commission as the human rights system in Africa was relatively weak.<sup>60</sup> The idea of the African Court is to complement the protective mandate of the Commission.<sup>61</sup> The Court must be independent and authoritative, while the Commission assists the Court with a more user-friendly approach, including educating Africans about the Court's mechanisms.<sup>62</sup> The establishment of the Court is believed to strengthen the African Human Rights System.<sup>63</sup>

There is an interesting fact of Africa, where evidently, the involvement of African States during the 1980s to bring their case to the ICJ had been influenced by their acceptance to the regional mechanisms. In

addition, their active participation in international relations, which often end up with an international agreement, internationally and regionally, constitutes a new legal attitude that also positively impacts the development of the Court in the region.<sup>64</sup>

The moment when the OAU adopted the Protocol establishing the African Court on Human and Peoples' Rights was a remarkable moment for Africa. However, it took six years for the Court to come into being on 24 February 2004.<sup>65</sup> In 2004, the AU, the OAU's predecessor, decided to merge this new Court with the African Court of Justice. It then was merged in July 2008 with the new name of "The African Court of Justice and Human Rights (ACtJHR).<sup>66</sup>

The ACtJHR jurisdiction covers both general international and human rights law. The parties could bring the case before the Court if the State concerned has accepted such jurisdiction. Parties consist of the State parties, the African Commission on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child, African intergovernmental organizations accredited to the African Union or its organs, African national human rights institutions, as well as individuals or non-governmental organizations accredited to the AU or its organs.<sup>67</sup>

States have to accept the Commission's and Court's jurisdiction to bring the case and to obtain a legally binding decision. For an individual to bring the case, a state must make an additional declaration authorizing the Court to adjudicate the case.<sup>68</sup> According to Article 30 of the Protocol, the

<sup>55</sup> *Ibid*, p. 6.

<sup>56</sup> *Ibid*, p. 8.

<sup>57</sup> *Ibid*, pp. 8-12.

<sup>58</sup> Christof Heyns, *Op. Cit*, p. 174.

<sup>59</sup> Fatsah Ouguergouz, "The Establishment of an African Court of Human and Peoples' Rights: A Judicial Premiere for the African Union", *African Yearbook of International Law Online/Annuaire Africain de droit international Online*, Vol. 11, Issue 1, 2003, p. 81

<sup>60</sup> Jeremy Sarkin, *Op. Cit*, p. 241.

<sup>61</sup> N. Barney Pityana, *Op. Cit*, p. 126.

<sup>62</sup> Jeremy Sarkin, *Op. Cit*, p. 241.

<sup>63</sup> David Padilla, *Op. Cit*, p. 194.

<sup>64</sup> Fatsah Ouguergouz, *Op. Cit*, pp. 84-85.

<sup>65</sup> Jeremy Sarkin, *Op. Cit*, p. 229.

<sup>66</sup> *Ibid*, p. 230.

<sup>67</sup> *Ibid*, p. 239.

<sup>68</sup> *Ibid*, p. 699.

State has primary responsibility for the execution of the Court's judgment,<sup>69</sup> while the secondary responsibility lies in the collective body of the Heads of State and Government.<sup>70</sup> A remedy must be made once the Court finds that there has been a violation of human or peoples' rights. It includes the payment of fair compensation or reparation.<sup>71</sup> As a monitoring mechanism, the Court's judgment is also delivered to the Council of Ministers, who will monitor the judgment implementation on behalf of the Assembly.<sup>72</sup> For Africans, this is a new hope. However, as the final enforcement of the judgment is at the hand of the Council of Ministers of the African Union, any concrete measures to enforce the decisions or judgment of the Court [if the State is unwilling to comply with the Court's decision or judgment) is rather unlikely.<sup>73</sup>

It seems likely that most complainants will choose to approach the Court directly since this step provides a chance to obtain a binding decision in one's favor. Choosing the route of the Commission, on the other hand, means forfeiting the opportunity, later on, to take the case to Court. The option gives the Court significant power, if it so wishes, to side-line the Commission and to leave it without a role.<sup>74</sup>

The judges of the ACTJHR court serve six-year terms.<sup>75</sup> The judges must be nationals of protocol-ratifying states. It only permits two judges from a country.<sup>76</sup> The Court must be trusted, independent, impartial, and just; a non-transparent appointment process can damage trust in the Court's institution.<sup>77</sup> The financial

aspect also influences the work of the Court. In the African context, judges' salary is relatively low, and it threatens the Court's independence.<sup>78</sup> Besides, there is also a lack of sufficient funds for the Court to work. This results in the lack of professional staff, which, too, impacts the effectiveness of the Court itself.<sup>79</sup>

## F. OTHER HUMAN RIGHTS MECHANISM

In addition to the Commission and the Court, Banjul Charter provides a state reporting mechanism. The State makes a report on its compliance with its treaty obligation.<sup>80</sup> According to Article 62 of the Charter, each party shall submit their report every two years on the legislative measures taken that affect the rights and freedoms recognized and guaranteed by the Charter.<sup>81</sup> Unfortunately, study shows that state reporting has not achieved much success — timely reporting and insufficient states' compliance information constitute issues. Even worse, in the previous years, many states have defaulted in submitting their state reports. Hence, the State reporting mechanism is unsatisfactory enough to make Banjul human rights effectively implemented and enforced.<sup>82</sup> Their experience on this matter must be taken into account by ASEAN in creating their human rights mechanism.

The Banjul Charter also provides individuals and NGOs' with access to complaints of human rights violations against their host government.<sup>83</sup> The Charter rules that certain conditions must be fulfilled by individuals and non-

<sup>69</sup> N. Barney Pityana, *Op. Cit.*, p. 128.

<sup>70</sup> *Ibid.*, p. 129.

<sup>71</sup> Christof Heyns, *Op. Cit.*, p. 699.

<sup>72</sup> N. Barney Pityana, *Op. Cit.*, p. 129.

<sup>73</sup> Omoleye Benson Olukayode, *Op. Cit.*, p. 51.

<sup>74</sup> Christof Heyns, *Op. Cit.*, p. 171.

<sup>75</sup> Jeremy Sarkin, *Op. Cit.*, p. 232.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*, p. 236.

<sup>79</sup> *Ibid.*, p. 231.

<sup>80</sup> Omoleye Benson Olukayode, *Op. Cit.*, p. 51.

<sup>81</sup> Article 62, African Charter.

<sup>82</sup> Omoleye Benson Olukayode, *Op. Cit.*, p. 51

<sup>83</sup> As stated in Article 55, African Charter:

"Before each session, the secretary of the Commission shall make a list of the communications other than those of states parties to the present Charter and transmit them to the members of the commission, who shall indicate which communications should be considered by the Commission."

governmental organizations before they can file complaints with the Commission. These are disclosure of author's identity; compatibility of the communications with provisions of the Charter; the use of non-insulting language against the respondent state, its institutions or the African Union; coverage of the alleged violation; exhaustion of domestic remedies; lodging the submission within a reasonable time after the final decision of the domestic organs; and submitting a declaration accepting the jurisdiction of the Commission where the case has not been dealt with and settled before.<sup>84</sup>

These conditions make it cumbersome and difficult in accessing the Commission. No wonder only a few complaints have been successfully filed with the Commission. Most of the complaints were struck out due to the issue of jurisdiction.<sup>85</sup> On one side, the individual complaint mechanism appears to be not an effective enforcement mechanism; on the other, peer pressure appears as an effective enforcement mechanism.<sup>86</sup>

There is another mechanism to deal with conflict in Africa. The development program of the AU, the New Partnership for Africa's Development ("NEPAD"), has an active human rights component and provides for the development of an African Peer Review Mechanism, which will also deal with the human rights practices of member states. This mechanism is an indirect response to the occurrence of massive human rights violations in Africa.<sup>87</sup> Africa always tried to find some ways to address human rights in their region. NEPAD was created with an active human rights component. It provides for the development of an African Peer Review Mechanism, an indirect response to the

region's many conflicts.<sup>88</sup>

In conclusion, the existence of both the Commission and the Court in the African region can be said as African success in accepting human rights values in their system. Acceptance of the African region to human rights is unique. The Charter shows its uniqueness by delineating peoples' rights and obligations in it.<sup>89</sup> Perhaps, it is never imagined that human rights become a widely used term in the African context today. Despite its acceptance, African people remain struggling for freedom, dignity, equality, and social justice they are lacking for centuries.

Despite all weaknesses of the African human rights systems under the African Charter, the Charter's inauguration raised the prospect of full and meaningful realization of human rights in all its ramifications - civil and political rights, economic, social, and cultural and other rights.<sup>90</sup> However, the realization of these rights has been obstructed by ineffective enforcement and implementation mechanisms.<sup>91</sup> It is recommended that the mechanism must be kept away from any political interest.

Among other regions, Africa has successfully developed and fulfilled the normative, jurisprudential, and institutional demands of human rights in their young age and complicated situations. Those three things should ideally work together to make an enforcement mechanism work effectively. It also shapes African legal attitudes to human rights. Despite all weaknesses in the implementation and enforcement, a legal attitude that has been built is seen as an essential factor in the ultimate human rights protection in Africa. Support from national human rights institutions in African states is another

<sup>84</sup> Omoleye Benson Olukayode, *Op. Cit.*, p. 51.

<sup>85</sup> *Ibid.*, p. 52.

<sup>86</sup> *Ibid.*

<sup>87</sup> Christof Heyns, *Op. Cit.*, p. 684.

<sup>88</sup> *Ibid.*

<sup>89</sup> Chapter II of the Charter Rules on Duties of the Individuals Over Human Rights Protection in the Society

<sup>90</sup> Omoleye Benson Olukayode, *Op. Cit.*, p. 52.

<sup>91</sup> *Ibid.*, p. 53.

critical factor in bringing the region to create a judicial mechanism for human rights through both the Commission and the Court.<sup>92</sup>

Among the whole process of these mechanisms, enforcement and implementation are critical processes in Africa and other regions. However, compared with other regions, Africa does the minimal concrete realization of their "ideal" or far-reaching human rights provisions.<sup>93</sup> The findings showed that the General Assembly of Heads of State and Government lacks the political will to enforce the Charter provisions. According to Benson, in a metaphorical language, the organ is a toothless dog that barks but cannot bite.<sup>94</sup> This is similarly applicable to the AICHR.

There is a positive and vital message from Africa about being authentic and different, but nevertheless sustained and supported by the people. They build their human rights system based on their initiative and needs without outside interference. Politically, it was not driven by the West or America to be recognized as a civilized society. Rather, it was the African leaders and civil societies who discovered the need to have a system in solving many human rights problems in their region.<sup>95</sup> The good thing about having a human rights mechanism is that the region could not become any more silent to many human rights violations. This situation becomes a turning point for the region to build a platform for protecting its human rights.<sup>96</sup>

#### **G. THE FIRST LESSONS: AFRICAN TOOK A COMMON PATH AND STRATEGIES OF OTHER REGIONAL HUMAN RIGHTS MECHANISMS**

The core structure of the European, American, and African regions is similar, in

that they have the Commission, the Court, and the Assembly. However, the story behind the establishment of the institutions as well as the work of each institution is different. The common path was their strong motivation to institutionalize human rights for the sake of their interest. However, the interest of each region to institutionalized human rights is different. There was strong will from the states' leaders in Europe to avoid any war in the future; a situation that had ravaged Europe in 1939-45 and earlier in 1914-18.

They believe that human rights, democracy, and the rule of law must exist across Europe for a peaceful region. This will lead European states to establish the human rights mechanism that serves as a 'beacon' to any other region. In America, the persistent intervention of the United States (US) into the domestic affairs of Latin American neighbors in the early part of the twentieth century had led the Latin American region to create a regional arrangement in which human rights form one of its main principles. Human rights arrangement in the OAS is established under the principle of non-intervention and equal sovereignty. These principles bring them together in agreeing on the regional mechanisms that gave them power over the US. Since the US is also a member State, it could not any longer intervene in other state affairs.

Quite similarly to OAS, African human rights mechanisms exist with strong adherence to the principle of non-interference and sovereignty being present as well. In this case, they learned from the UN system's involvement in settling their human rights case. Perhaps, to avoid any interference with their internal affairs in the future, they agreed to have their regional human rights mechanism, despite their belief that their rights possess different

<sup>92</sup> Christof Heyns, *Op. Cit.*, p. 173.

<sup>93</sup> Omoleye Benson Olukayode, *Op. Cit.*, p. 52.

<sup>94</sup> *Ibid.*

<sup>95</sup> C. R. M. Dlamini, *Op. Cit.*, p. 203.

<sup>96</sup> *Ibid.*, p. 189.

character than the universal regime. As mentioned earlier in this writing, time proves that these principles did not prevent Africa from having a human rights mechanism, including the Court. Countries in Africa have similar interests that human rights can bring them a better life and put them equally with other countries. According to all three regions' experiences, the similar interest of member states has strongly motivated them to institutionalize human rights through establishing human rights institutions, including a court. So, it is important to find the common interest of member states in ASEAN regarding human rights.

Despite what they have today, the African region faced many struggles at the beginning of their establishment. Many complexities have arisen in particular the traditional and robust attachment of the African States to the principle of non-interference in internal affairs and their extreme reluctance to entrust the system. However, in the middle of this situation, they manage to establish a human rights court because of the elite's strong will to have the mechanism.

Accordingly, there are many lessons for ASEAN. Firstly, ASEAN is unnecessary, to begin with, to possess the ideal human rights convention. There is always time and room for improvement afterward to achieve universal human rights. ASEAN can address what would be the future human rights mechanism step by step. Secondly, the ASEAN leaders have to be on the frontline for any human rights improvement in the region. To support this, the ASEAN needs to empower its institution to function as agreed by member States in their constituent instrument, the ASEAN Charter. The institution must remind member States' commitment concerning human rights.

Thirdly, ASEAN has often claimed itself as a very diverse and complex region among other regions. Hence, the region faces many difficulties in having a reliable human rights

mechanism. Africa also has many complexities, including being a die-hard region defending the principle of non-interference and sovereignty over human rights; however, it has successfully established a human rights court because of the elite's strong will. ASEAN's elite must support such will and effort tirelessly to compel States to agree on more reliable human rights mechanisms.

Africa took the longest and hardest route in having a court when compared to America and Europe. Like other regions, Africa started with a commission that functions to monitor the implementation of the convention at the national level. Furthermore, they made the Commission stronger while preparing for a judicial body (a court). Accordingly, ASEAN is on its track with having the AICHR. Unfortunately, there is no significant effort from the ASEAN as its main institution and member states' leader to strengthen AICHR. However, there shall be an appreciation for some AICHR's State representatives, who are actively involved in improving AICHR's capability as a human rights body in the region. However, support from ASEAN and member States' leaders is crucial to make the body stronger.

According to the African experience, several strategic options can be considered for creating a powerful regional institution that could be useful for ASEAN in the form of a Commission. They are: firstly, the Commission, as a supervisory body should have both legal and diplomatic competence; Secondly, the Commission's member has to be appropriately sourced from various fields, consisting of professional workers from NGO, Government, academic, and others; Thirdly, the Commission must be engaged in, and possess a framework for, on-site visit to gain significant and real data; fourthly, the Commission's declaration of jurisdiction must exist as a handy tool to extend human rights supervision towards a non-member of the Convention; it has to work parallel

with conventional jurisdiction; fifth, the Commission, in the case of an international crime conducted by states, should take a position akin to the Inter-American Court that individuals can be held responsible for that crime, so they could not escape from the punishment; sixth, the Commission has to closely work with the NGOs, and perceive them as an essential partner; seventh, the Commission has to consistently reject the argument that human rights can only be implemented after societies have reached a certain level of economic development or when the government in a given state is legitimate and shows respect for its international human rights obligations, in which, this kind of perspective hardly to find in such a system;

Eighth, the Commission in Africa works in a supportive and appropriate way with governments and vice versa, they are not against them and avoid polarization, however, they critically and forcefully speak out when necessary to compel governments comply and enforce human rights.

The Commission in all regions possesses a protection mandate through on-site visit, as well as handling of individual and inter-states complaints. They also have a promotion mandate through the country report, which is diverse in terms of application. As compared with other regions, Africans have a similar admissibility procedure. Once a case has been submitted to the Commission, it conducts fact-finding missions and attempts to achieve a friendly settlement. If the attempts are successful, each Commission prepares a report to the regional organs designated by each governing instrument; the European regime to the Secretary-General of the Council of Europe, The Inter-American regime to the OAS Secretary-General, and the African regime to the OAU Assembly of Heads of State and Government.<sup>97</sup> Unfortunately,

ASEAN and its AICHR does not have such a mandate comparable to Africa or other regions. Learning from their experience, this admissibility procedure is a fundamental need for a mechanism to work effectively. ASEAN should support the amendment of the TOR of AICHR to include these mandates.

A reliable mechanism does not mean that it has to bind legally. An effective mechanism can be measured by how far the State complies with their agreement and how far the citizen benefits from it. Human rights court exists in all existing regions strongly supported by the powerful Commission, a non-judicial body. Africa, which tends to settle the dispute with the traditional way through mediation and conciliation, having found it effective, finally adopted the Court to make such mechanism stronger. However, there are arguments that the Court is created to gain acknowledgment from outside regions.

In many cases, the Court's importance is to make for a more reliable human rights mechanism as the Commission does not possess the authority to issue a binding and enforceable decision; the Commission is not an authoritative body able to articulate any international legal principles. The Court can exercise these functions. However, the human rights commission must be ready to work with the Court, so the Commission must function well and powerful before the Court exists. The Court will not be present in a region with weak human rights protection and related mechanisms (including its commission). ASEAN currently has the AICHR, but unfortunately, as has been stated previously, it is a very weak commission. It is too far for ASEAN to have a human rights court. One thing to be remembered is that the Court's existence does not mean the problem of enforcement is automatically settled. It remains the biggest problem. Therefore, the main

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<sup>97</sup> Burns H. Weston (*et. al.*), *Op. Cit.*, p. 631.

organization must address any enforcement handicap that could not be addressed by the Court.

The development of African human rights mechanisms are also heavily influenced by the ratification or accession of countries to many international human rights treaties. It accelerates the region's unification of human rights norms, which is stipulated in their human rights conventions. Furthermore, the convention norms will function as the basis for harmonizing national laws of member States.

The "story" will be different if national law functions as a basis to unify regional human rights norms. It takes a longer time to harmonize national law to foster regional norms or regional conventions. ASEAN can follow Africa regions' strategy in this case but with certain modification. It can be started by identifying which international conventions have been ratified by the majority of ASEAN member States to have one common human rights norm in the region. As only the UN Convention on the Rights of the Child (CRC) is an international human rights convention where all ASEAN member States are parties to, it is unnecessary for ASEAN to create a regional human rights convention. If it pushes too hard to create it, it will fall through and end up with nothing.

In addition to the international commitment of countries to many international human rights instruments, economic growth of countries leading to the establishment of many economic arrangements and agreements will too result in big support for a strong human rights regime.<sup>98</sup> This can also happen in ASEAN Countries. Ideally, human rights institutionalization can narrow their economic gap. As ASEAN at first tended to

focus on their economic integration, and today they currently possess abundant economic agreements, including with other non-member states of ASEAN, this will serve as another fundamental basis to have a strong human rights mechanism. If it works, the regional mechanism is perhaps the most effective institution for advancing human rights protection. They deserve, therefore, maximum attention and commitment.

#### **H. THE SECOND LESSON: SELF-ENFORCING EQUILIBRIA FOR A STRONGER HUMAN RIGHTS MECHANISM**

Human rights institutions are categorized as specific international bodies dealing with human rights issues. Such a specific body might be developed only if they create self-enforcing equilibria, where parties who think that can violate the rule, also believe that they would be worse off if they do so.<sup>99</sup> European, Inter-American, and African regions have passed this step successfully by establishing their human rights institution, including the human rights court. How about ASEAN?

When one state becomes a party to an international organization, they actually surrender parts of its sovereignty. Shared sovereignty arrangements would have to be present to create self-enforcing equilibria that would bring success to achieve the goal. Unfortunately, ASEAN countries do not see the regional regime as a solution, unlike Africa or in other regions; the leader has to have faith to implement what they had agreed in the ASEAN Charter, particularly with the human rights mandate. Besides, ASEAN countries also did not see regional arrangement as a device for promoting particular interests like in the

<sup>98</sup> Paul W. Kahn, "Speaking Law to Power: Popular Sovereignty, Human Rights, and the New International Order", *Chicago Journal of International Law*, Vol. 1, Issue 1, 2000, p. 2.

<sup>99</sup> Stephen D. Krasner, "The Hole in the Whole: Sovereignty, Shared Sovereignty, and International Law," *Michigan Journal of International Law*, Vol. 25, Issue 4, 2004, p. 1075.

African region.<sup>100</sup> ASEAN perhaps will continue to focus their primary concern on poverty and domestic conflict.

ASEAN member states are fewer compared to Africa. However, ASEAN member states have a big difference in terms of values and interests, wildly uneven capabilities, and the absence of a real authoritative decision-maker to resolve many problems, especially human rights. Therefore, it should not be surprising that any kind of effort would be contested.<sup>101</sup> It can be said that, at the moment, ASEAN lacks self-enforcing equilibria. The principle of sovereignty remains a shield for human rights protection. The leaders misunderstand, if not misuse, the essence of the principle of sovereignty in international fora.

Respect for both State sovereignty and human rights is essential in the international legal system, including at the regional level, to form a self-enforcing equilibrium.<sup>102</sup> Human rights can be protected and promoted without causing damage to State sovereignty. Respecting for human rights and national sovereignty is mandatory and can be complementary with each other. Both should be viewed from the perspective of positive international law, not just from the perspective of value, religion, culture, and ideology.<sup>103</sup> Both shall not be viewed as two contradicting principles on human rights, as individual rights are the state's fundamental interests.

Making states capable of employing their sovereignty over their interest will strengthen the State's ability to protect the people. Furthermore, in contrast where the State cannot fully employ its sovereignty, human rights are at stake to be violated. International human rights law's efficacy

must be found upon respect to States' national sovereignty, political independence, and territorial integrity. The state is not an enemy of international human rights mechanisms, unlike as many perceived. The state is at the forefront in protecting people's rights, more so than any other entities, including international organizations.<sup>104</sup>

States' leaders must have faith that the principle of sovereignty is a basis to protect their citizens from any kind of violation from internal or external actors. However, chaos and unpredictable relations between states could suddenly and freely interfere with other State's domestic affairs under human rights protection. They were usually conducted by a strong to a weaker state. If the weaker states denied it, they would use the principle of sovereignty to defend themselves. They will close any opportunity of other states to protect human rights in their region. If it happened, there would be no peace.

In ASEAN, most member states' leaders and citizens are strong supporters of nationalism. They tend to see many problems rising across the border from only their national interest. They ignore the international rule of law unless it benefits or affects their interests. If such behavior remains, it will be harmful to world peace. President Soekarno, the first Indonesian President, strongly stated, "Internationalism cannot flower if it is not rooted in the soil of nationalism, and nationalism cannot flower if it does not grow in the garden of internationalism." He reiterated the fundamental relations between Indonesian nationalism and how it should interact in international fora.<sup>105</sup> This kind of perspective must be built in the

<sup>100</sup> Stephen D. Krasner, *Op. Cit.*, p. 1076.

<sup>101</sup> *Ibid.*, p. 1077.

<sup>102</sup> Jianming Shen, "National Sovereignty and Human Rights in a Positive Law Context", *Brooklyn Journal of International Law*, Vol. 26, Issue 2, 2000, p. 434.

<sup>103</sup> *Ibid.*, p. 436.

<sup>104</sup> *Ibid.*, p. 437.

<sup>105</sup> Aristyo Rizka Darmawan, "Indonesian Nationalism and International Law" <https://theaseanpost.com/article/indonesian-nationalism-and-international-law>, accessed 25 November 2019.

Southeast Asian region in particular to human rights.

States' ratification or accession to many international human rights instruments is proof that a State is willing to fulfill their obligation under positive international law and hence, they shall open opportunities to work with other States and the related institution. All ASEAN member States are parties to many international human rights treaties and, therefore, supposedly, making it easier to cooperate at the regional level. Any ratification and accession can be presumed as an acceptance of States to positive international law. ASEAN, as an institution, must remind their member states about this obligation. It can be a basis to identify customary international law norms generally accepted by or living in ASEAN States.

## I. CONCLUSION

According to those regions' experiences, institutional building is a very long process requiring flexibility and adaptive-ness to many conditions facing ahead. As it goes with many uncertainties, all stakeholders, especially the people who are in power, have to have strong and proactive leadership. Besides, the decision-maker needs to open for any external involvement since it will influence the development of the institutional building process. Two systems must be taken into account in the process: microsystem (within the institution) and macrosystem (looking at a broader social context).

Microsystems have to be built for a more reliable mechanism, including legal instrument, implementation mechanisms, and enforcement mechanisms. Macrosystem, on the other hand, shall be viewed through the lens of national and international context and support. Political standing of member states, including the

elites and parties, can also be categorized as parts as a macrosystem that influences human rights.

In the microsystem, the regional system must serve what the domestic system needs. Due to member states' many interests and diverse conditions, the system may offer many ways for states to settle their dispute, including human rights cases. For example, European success might inspire the way Africa's human rights body develops as the COE has combined the Commission and the Court. However, since the Court was a merged court with extensive jurisdiction combining both the Commission and the Court, it would be very complicated. For Africa, it would be better to separate it. A clear division of the role of each body is a must.<sup>106</sup>

Not only the regional organization must have a "political goal" to make human rights a cultural value, but all member states shall have it too. There are facts that the government or member states are rejecting the monitoring system as they are supported by political parties not in terms with the government. ASEAN needs to seek how they respond to this issue. Making a map of parties' human rights goals is important, and it can be a basis for the leader to set goals and programs. Furthermore, this assists the region in achieving ideal human rights conditions. In addition, the political will of the national justice system also leads to an existing strong human rights institution.

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