

Morris Mbondenyi

The African System on Human and Peoples' Rights

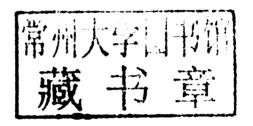
Its Promises, Prospects and Pitfalls



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LAP LAMBERT Academic Publishing

Impressum/Imprint (nur für Deutschland/ only for Germany)

Bibliografische Information der Deutschen Nationalbibliothek: Die Deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über http://dnb.d-nb.de abrufbar.

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Coverbild: www.ingimage.com

Verlag: LAP LAMBERT Academic Publishing AG & Co. KG Dudweiler Landstr. 99, 66123 Saarbrücken, Deutschland Telefon +49 681 3720-310, Telefax +49 681 3720-3109

Email: info@lap-publishing.com

Herstellung in Deutschland: Schaltungsdienst Lange o.H.G., Berlin Books on Demand GmbH, Norderstedt Reha GmbH, Saarbrücken Amazon Distribution GmbH, Leipzig

ISBN: 978-3-8433-5100-3

Imprint (only for USA, GB)

Bibliographic information published by the Deutsche Nationalbibliothek: The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available in the Internet at http://dnb.d-nb.de.

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Cover image: www.ingimage.com

Publisher: LAP LAMBERT Academic Publishing AG & Co. KG Dudweiler Landstr. 99, 66123 Saarbrücken, Germany Phone +49 681 3720-310, Fax +49 681 3720-3109

Email: info@lap-publishing.com

Printed in the U.S.A.
Printed in the U.K. by (see last page)

ISBN: 978-3-8433-5100-3

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ACKNOWLEDGEMENTS

This work is to me both a reminder and commemoration of the inputs of many people and institutions. It has taken years of hard work, sacrifice and relentlessness for this book to be compiled. Without the strength and hand of the Almighty God over my life, this work would definitely not have seen the light of the day. I am therefore grateful to my gracious LORD for His mercy, love, strength and care; for protecting me, saving me and guiding me through every stage of this work.

Many chapters of this book were adopted from my Doctor of Laws (LLD) research hosted by the University of South Africa (UNISA) School of Law, under the supervision of Professor André Mbata Betukumesu Mangu. Indeed, Professor Mangu's invaluable comments and inputs at every stage of my doctoral work are highly appreciated and acknowledged. However, while I am grateful for his contribution, shortcomings, errors and omissions in this book are entirely mine. Additionally, I am greatly indebted to UNISA for its permission to adopt and publish materials from my LLD thesis.

Many other institutions have also been a stepping-stone towards the compilation of this book. These include the United Nations International Criminal Tribunal for Rwanda (UN-ICTR), whose small but resourceful library I was able to consult when working at the institution as a legal researcher. Others are: the University of Witwatersrand (Wits) library in Johannesburg, South Africa; University of Pretoria Library; University of Swaziland (UNISWA) library; and the South African Human Rights Commission (SAHRC) library in Johannesburg.

Of equal importance to this achievement are members of my family to whom I attribute a great deal of my success. They did not spare anything to support, nurture and educate me. I am particularly indebted to my mother, Mrs. Lenah Nakijwa Mbondenyi and my late father, Lewis George Mbondenyi, for their parental guidance, assistance and care. Moreover, through the collaborative efforts of my many friends, relatives, teachers and colleagues, this dream has finally become a reality. Because of their optimism and constant encouragement, they will forever be remembered as long as the development and completion of this book is concerned. Special thanks also go to my spiritual

guardians, mentors and pastors for their guidance, advice and ceaseless prayers. They taught me to build on the solid foundation, which is the word of God.

Lastly, I am indebted to those writers, scholars, leaders and activists whose works have been quoted extensively in this book. This study would not have attained its present status and form without the academic resources produced by them. Their efforts and contribution to the human rights agenda of the continent is acknowledged.

Morris Kiwinda Mbondenyi JOHANNESBURG, SOUTH AFRICA, 2008

LIST OF ACRONYMS

ACHPR African Charter on Human and Peoples' Rights

ACHR American Convention on Human Rights

ACJ African Court of Justice

ACRWC African Charter on the Rights and Welfare of the Child

AEC Economic Community

AHRLJ African Human Rights Law Journal

AHSG Assembly of Head of States and Government
AIDS Acquired Immune Deficiency Syndrome
AJIL African Journal of International Law

AM. J American Journal

APRM African Peer Review Mechanism

ART Article

AU African Union

CAAU Constitutive Act of the African Union

CAT Convention against Torture

CE Council of Europe

CEDAW Convention on the Elimination of All Forms of Discrimination against

Women

CEN-SAD Community of Sahel-Saharan States

CERD Convention on the Elimination of All Forms of Racial Discrimination

CILSA Comparative and International Law Journal of Southern Africa

CIP Country Issue Paper

CODESTRIA Council for the Development of Economic and Social Research in Africa

COMESA Common Market for Eastern and Southern Africa

COMP.L Comparative Law

CRM Country Review Mission

CSAR Country Self-Assessment Report

CSM Country Support Mission

CSSDCA Conference on Security, Stability, Development and Cooperation in Africa

DANIDA Danish International Development Agency

DEVAW Declaration on the Elimination of Violence Against Women

DRC Democratic Republic of Congo

EC Executive Council (of the African Union)

ECCAS Economic Community of Central African States

ECHR European Convention on Human Rights and Fundamental Freedoms

ECOSOC Economic and Social Council

ECOWAS Economic Community of West African States

ED(S) Editor(s)

ESC European Social Charter

EU European Union

FGM Female Genital Mutilation

GA General Assembly

GA. Res. General Assembly Resolution
GDP Gross Domestic Product

HPs Harmful Practices

HRC UN Human Rights Committee

HSGIC Heads of State and Government Implementation Committee

HUM.RTS Human Rights

IACHR Inter-American Convention on Human Rights

ICC International Criminal Court

ICCPR International Covenant on Civil and Political Rights

ICERD International Covenant on the Elimination of all forms of Racial

Discrimination

ICESCR International Covenant on Economic, Social and Cultural Rights

ICJ International Court of Justice

ICTR International Criminal Tribunal for Rwanda

ICTY International Criminal Tribunal for the Former Yugoslavia

IGAD Intergovernmental Authority for Development

IHRR International Human Rights Report

ILM International Legal Material

ILO International Labour Organisation

IMF International Monetary Foundation

INTL International Law

LJ Law Journal

LLB Bachelor of Laws

LLD Doctor of Laws

LLM Master of Laws

MAP Millennium Africa Recovery Plan

MDC Movement for Democratic Change

MDG Millennium Development Goals

MOU Memorandum of Understanding

NAI New African Initiative

NEPAD New Partnership for Africa's Development

NGC National Governing Council

NGO Non-Governmental Organisation

OAS Organisation of American States

OAU Organisation of African Unity

ODM Orange Democratic Movement

OSCE Organisation for Security & Co-operation in Europe

OSIWA Open Society Initiative for West African

P. Page

PARA Paragraph

PCIJ Permanent Court of International Justice

PNU Party of National Unity

POA Programme of Action

PP Pages

PRS Permanent Representative Committee

RECs Regional Economic Communities

RSA Republic of South Africa

SA South Africa

SADC Southern African Development Community

SAJHR South African Journal of Human Rights

SALJ South African Law Journal

SAP Structural Adjustment Programme

SAPL South African Public Law

SAYIL South African Year Book of International Law

SCSL Special Court for Sierra Leone

STCs Specialised Technical Committees

UDHR Universal Declaration on Human Rights

UK United Kingdom

UMA Union du Maghreb Arabe

UN United Nations

UNCRC United Nations Convention on the Rights of the Child

UNDP United Nations Development Programme

UNESCO United Nations Education, Science, and Cultural Organisation

UNGA United Nations General Assembly

UNHCR United Nations High Commission for Refugees

UNICEF United Nations Children's Fund

UNISA University of South Africa
UNISWA University of Swaziland

UNP. Unpublished

UNTS United Nations Treaty Series

US/USA United States / United States of America

USSR Union of Soviet Socialist Republic

V. Versus

VOL Volume

WILDAF Women in Law and Development in Africa

ZANU-PF Zimbabwe African National Union-Patriotic Front

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Azanian Peoples' Organisation (AZAPO) & others v. President of the Republic of South Africa & others 1996 (4) SA 671 (CC).

Campbell and Cosans v. UK 1982 (4) ECHR.

Communication 1/88, Frederick Korvah v. Liberia, Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights, (Annex IX).

Communication 101/93, Civil liberties Organisation in Respect of the Nigerian Bar Association v. Nigeria, Eighth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VI).

Communication 102/93, Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, Twelfth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 103/93, *Alhassan Abubakar v. Ghana*, Tenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex X).

Communication 105/93, 128/94, 130/94, 152/96, Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project v. Nigeria, Twelfth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 11/88, Henry Kalenga v. Zambia, ACHPR/LR/A1 (1997).

Communication 12/88, *Mohamed El-Nekheily v. OAU*, Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights.

Communication 133/94, Association pour la Defence des Droits de l'Homme et des Libertés v. Djibouti, Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 137/94, 139/94, 154/96 and 161/97, International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr. and Civil Liberties Organisation v. Nigeria, Twelfth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 140/94, 141/94, 145/95, Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v. Nigeria, Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 143/95, 150/96, Constitutional Rights Project and Civil Liberties Organisation v. Nigeria, Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 144/95, William Curson (acting on behalf of Severo Moto) v. Equatorial Guinea, Eleventh Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex II).

Communication 147/95, 149/96, *Sir Dawda K Jawara v. The Gambia,* Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

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Communication 159/96, *UIDH, FIDH, RADDHO, ONDH, ANDH v. Angola*, Eleventh Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex II).

Communication 18/88, *El Hadji Boubacare v. Benin*, Law Reports of the African Commission Series A, Volume 1, ACHPR/LR/A1 (1997).

Communication 197/1997, *Bah Ould Rabah v. Mauritania*, Seventeenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 198/97, S.O.S. – Esclaves v. Mauritania, Twelfth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 204/97, Mouvement Burkinabé des Droits de l'Homme et des Peuples v. Burkina Faso, Fourteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 205/97, *Kazeem Aminu v. Nigeria*, Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 209/97, *Africa Legal Aid v. The Gambia*, Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 211/98, *Legal Resources Foundation v. Zambia*, Fourteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 212/98, *Amnesty International v. Zambia*, Twelfth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 215/98, *Rights International v. Nigeria*, Thirteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 218/98, Civil Liberties Organisation, Legal Defence Centre, Legal Defence and Assistance Project v. Nigeria, Fourteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

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Communication 220/98, *The Law Offices of Ghazi Suleiman v. Sudan,* Fifteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 222/98 & 229/98, The Law Offices of Ghazi Suleiman v. Sudan, Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 224/98, *Media Rights Agenda v. Nigeria*, Fourteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 225/98, *Huri-Laws v. Nigeria*, Fourteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 228/99, *The Law Offices of Ghazi Suleiman v. Sudan*, Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 231/99, Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) v. Burundi, Fourteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 232/99, *John D. Ouko v. Kenya*, Fourteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex V).

Communication 233/99, Interights (on behalf of the Pan African Movement and Citizens for Peace in Eritrea) v. Ethiopia, Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 234/99, Interights (on behalf of the Pan African Movement and Inter-Africa Group) v. Eritrea, Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 236/2000, *Curtis Francis Doebbler v. Sudan*, Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 240/2001, *Interights et al (on behalf of Mariette Sonjaleen Bosch) v. Botswana*, Seventeenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 241/2001, *Purohit and Moore v. The Gambia*, Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 242/2001, Interights, Institute for Human Rights and Development in Africa; Association Mauritanienne des Droits de l'Homme v. Mauritania, Seventeenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 254/2002, Mouvement des Réfugiés Mauritanien au Senegal Pour la Defense des Droits de l'Homme v. Senegal, Sixteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VII).

Communication 255/2002, Gareth Anver Prince v. South Africa.

Communication 268/2003, *Ilesanmi v. Nigeria*, Eighteenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex III).

Communication 290/ 2004, *Open Society Justice Initiative v. Cameroon*, Twentieth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex IV).

Communication 39/90, Annette Pagnoulle (on behalf of Abdoulaye Mazou) v. Cameroon, Tenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex X).

Communication 40/90, *Bob Ngozi v. Egypt*, Eleventh Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex II).

Communication 44/90, *Peoples' Democratic Organisation for Independence and Socialism v. The Gambia*, Tenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex X).

Communication 57/91, *Tanko Bariga v. Nigeria*, Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex IX).

Communication 60/91, Constitutional Rights Project (in Respect of Sehab Akumu, G Adega and others) v. Nigeria, Eighth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VI).

Communication 62/91, Committee for the Defense of Human Rights (Jennifer Madike) v. Nigeria, ACHPR/LR/A1 (1997).

Communication 65/92, Ligue Camerounaise des Droits de l'Homme v. Cameroon, Tenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex X).

Communication 70/92, Ibrahim *Diomessi, Sekou Kande, Ousmane Kabe v. Guinea,* Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex IX); Ninth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VIII).

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Communication 74/92, Commission Nationale des Droits de l'Homme et des Liberties v. Chad. (1997) 4 IHRR.

Communication 74/92, Commission Nationale des Droits de l'Homme et des Libertés v. Chad, Ninth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VIII).

Communication 91/93, Commission Internationale de Juristes v. Togo.

Communication 97/93, *John K. Modise v. Botswana*, Tenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex X).

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Communications 25/89, 47/90, 56/91 & 100/93, Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehoveh v. Zaire, Ninth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VIII).

Communications 27/89, 46/91, 49/91, 99/93, Organisation Mondiale Contre La Torture and Association Internationale des juristes Democrates) Commission Internationale des Juristes (C.I.J) Union Interafricaine des Droits de l'Homme v. Rwanda, Tenth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex X).

Communications 53/90 and 53/91, *Alberto T. Capitao v. Tanzania*, Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex IX); Eighth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VI).

Communications 64/92, 68/92 and 78/92, Krishna Achuthan (on behalf of Aleke Banda), Amnesty International (on behalf of Orton and Vera Chirwa v. Malawi, Seventh Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex IX); Eighth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VI).

Communications 75/92, *Katangese Peoples' Congress v. Zaire*, Eighth Annual Activity Report of the African Commission on Human and Peoples' Rights (Annex VI).

CR v UK (1995) 21 EHRR, 363

De Wilde, Ooms and Versyp v. Belgium ECHR (18 June 1971) Ser A 12.

Handyside v UK ECHR (7 December 1976) Ser A 24.