

welche das Institut in Asylverfahren laut Tätigkeitsbericht allein 1994 erstattet hat (1995: 217).

Gegenüber derartigen Schatten überwiegt jedoch bei weitem das Licht. Unzweifelhaft sind Herausgeber und Autoren mit den beiden Jahrgängen 1994 und 1995 ihrem Ziel, das Jahrbuch möge "eine Orientierungshilfe im unübersichtlichen Geflecht zeitgeschichtlicher Abläufe darstellen und sich im Laufe der Zeit als wegweisendes Referenzwerk erweisen", zwei große Schritte näher gekommen.

Karl-Andreas Hernekamp

M. Cherif Bassiouni / Ziyad Motala (eds.)

The Protection of Human Rights in African Criminal Proceedings

Martinus Nijhoff Publishers, Dordrecht / Boston / London, 1995, 477 pp., US\$ 165.00

One of the areas of law that has lagged behind in incorporating international human rights standards in Africa is that dealing with criminal proceedings, a theme well tackled in this publication. The book is based on contributions and proceedings of a seminar on the protection of human rights in criminal justice for African jurists which was held in Siracusa, Italy in July 1992. Participants in the seminar included leading jurists, cabinet ministers, attorney generals, chief justices and judges and academics from Africa as well as some from the European Union, the Inter-American Commission and the United Nations. The seminar was held at time when Africa was witnessing dramatic political changes with most of the one-party states adopting a multi-party system and therefore either amending their constitutions to incorporate the changes or adopting new constitutions. Many of these constitutions have now, to a certain extent, embodied internationally accepted norms which attempt to control the actions of the government and police and strengthening the constitutional guarantee of the due process of law which is essential for criminal justice.

The book is divided into five sections dealing with specific themes such as human rights in Africa, human rights and education, an overview of the transition to democracy in sub-Saharan Africa and country reports of some of the countries represented in this seminar. Eighteen English-speaking African countries were represented in the seminar. These are Botswana, Cameroon, Ethiopia, Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Namibia, Nigeria, South Africa, Sudan, Swaziland, Tanzania, Uganda, Zambia and Zimbabwe. The book includes a section which reproduces important documents on human rights in Africa.

The first section on human rights in Africa comprises five contributions and of these two deal with the African Charter of Human and Peoples' Rights (AfrCHPR) and three specifically address the issue of criminal justice. In his contribution entitled "The African system of Human Rights: Notes and Comments", *Ibrahim Ali Badawi El-Sheikh* from the Sudan,

Commissioner and Chairman of the African Commission of Human and Peoples' Rights, discusses, *inter alia*, the background, philosophy and the content of the AfrCHPR. One of the aspects which is significant in this contribution is the section dealing with the operation of the Commission. El-Sheikh deliberates on the Rules of Procedure adopted by the Commission. According to him the 120 rules adopted have "transformed the provisions of the African Charter into a working language. Furthermore, the Rules complement the provisions of the Charter" (p. 27). The Rules allow the Commission to receive complaints from the victims of violation by a state party or, if necessary, someone acting on his behalf, be it another individual, a lawyer or organisation. The Rules also allow the Commission to grant observer status to NGO's and observers can prepare items to be included in the agenda of the Commission.

The discussion on the AfrCHPR in this book includes a contribution from an academic who draws a balance-sheet on the work of the Commission. In doing that *Tewodros Yirgu*, Addis Ababa, in his contribution entitled "The African Commission on Human and Peoples' Rights", urges the Commission to develop its practice beyond the narrow confines of the express words of the Charter and adopt a liberal and vigorous approach to interpreting it. The discussion of the AfrCHPR is enriched further by a contribution by *Kivutha Kibwana* and *Kathurima M'Inoti*, both Nairobi, on "Human Rights Issues in the Criminal Justice System of Kenya and the African Charter on Human and Peoples' Rights: A Comparative Analysis".

Criminal justice is the central theme of this book and there are several contributions on the topic, but the most thorough and detailed chapter is that by *Adedokun A. Adeyemi*, Lagos, writing on "United Nations Human Rights Instruments and Criminal Justice Norms and Standards" he makes an analysis on the principles of due process of law in relation to criminal justice as established by the UN instruments. These principles such as presumption of innocence, fair hearing and right to silence are discussed in the light of such norms and standard-setting instruments, such as the Convention on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment or Principles on the Prevention of Arbitrary Arrest and Detention. Adeyemi allocates a whole section in his contribution on the situation of victims of crime and human rights in his discussion on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the United Nations General Assembly on 29th of November 1985. He states that "Africans, as a people, have never accepted the dichotomous approach, which recognises only the State and the offender as the parties in criminal cases, with specific rights, relegating the victim to the role of only a mere witness, just like any other witness" (p. 13). To the contrary, Adeyemi submits that Africa has traditionally adopted a tripartite model of justice which preserves rights and interests of all, that is the victim, the society and the offender.

One of the country reports focuses on Nigeria where many have questioned the constitutionality and legitimacy of special tribunals conferred with wide powers established by the military government. *M.A. Owoade*, Abuja, in his contribution entitled "Some Aspects of Human Rights and the Administration of Criminal Justice in Nigeria", makes a critical

evaluation of various special tribunals which have been established by the Military Government of Nigeria to hear what have been categorised as sensitive cases. These tribunals have been given a wide jurisdiction and, in spite of the fact that they are now chaired by a judge, they are an affront to the requirements of independence and impartiality of the judiciary which is one of the constitutional requirements of a court.

Both in the book and during the conference itself, South Africa which was for all the years of apartheid barred from participating in such events and publications is well represented. One of the contributions is by *Dirk van Zyl Smit*, Cape Town, on "South African Prisons and the Standards of International Human Rights Law", where he points out that at the time he was writing the article in 1992 South Africa had not acceded to even the most basic international instruments relating to human rights. This applies to international conventions and treaties which apply to the status of prisoners. That being the case van Zyl Smit also dwells at length on customary international law to try to establish which rules relating to rights of prisoners have been accorded that status of customary international law. However, he points out that in South Africa customary international law like any part of the South African customary law must give way to legislation in the case of conflict.

Sudan introduced, in 1991, what are known as Islamic penalties in her penal code. An article written by the Director of Public Prosecution of the Sudan, *El Bushra Mohammed El Amin* on "The Criminal Justice System of the Republic of Sudan" restates the position of the Penal Code of 1991 and the Code of Criminal Procedure of 1991 all promulgated after the application of Shari'a (Islamic law) was declared in January 1991. The penalties meted out to convicts according to the Penal Code of 1991, for example include death by hanging, stoning and crucifixion, etc. (section 27), cutting off a hand (section 171) and cutting off a hand and a foot alternately (section 168). According to El Amin the three Southern states of Sudan, where the majority are either Christians or believers in traditional African religions, are exempted from the application of the provisions of the Penal Code providing for Islamic penalties. There is little if not at all discussion of the criminal justice system in Sudan in relation to international conventions and treaties to which Sudan is a member. In one of his conclusions El Amin states that: "The rights of the accused are dominating the legal system to the extent that the rights of the victims have been forgotten. ... Unlike the offenders, all victims are known and suffering from criminal acts, but their voice is hardly heard" (p. 251).

Two African judges who have earned a name in the Commonwealth to be among those judges who are considered to be bold spirits and at the forefront of promoting human rights either in their judicial pronouncements or in their ex-cathedra talks are among the contributors in this book. The Ghanaian Judge *A.R. Gubbay* who is the Chief Justice of Zimbabwe contributed an article entitled "Human Rights in Criminal Justice Proceedings: The Zimbabwean Experience" in which he makes a review of landmark judgments of the Supreme Court of Zimbabwe on the subject. The Zimbabwean court has been commended for adopting an expansive and broad approach in the interpretation of the bill of rights as shown for example in the most famous Zimbabwean case in the Commonwealth, that of

*The State v. Ncube and others*¹, where it struck down the institutionalisation of whipping as a punishment holding that it is both inhuman and degrading. The other is Judge *James Mwalusanya* of Tanzania² who in his article "The Protection of Human Rights in the Criminal Justice – The Tanzania Experience" also makes a review of the UN human rights instruments and other regional instruments on criminal justice norms and standard. The discussion is enriched by examples from his celebrated judgments and those of other judges in Tanzania who have attempted to apply them in their interpretation of the Tanzania bill of rights.

The book has two conference reports dealing with the issue of legal education. *M.L. Uwais*, Nigeria, and *Shadrack Gutto*, South Africa, have written on "Criminal Justice and Human Rights in Judicial Education" where they emphasize the need for the provision of special practical training to the judiciary in matters relating to human rights in judicial proceedings. In a report on university legal education written by *D.J. McQuoid-Mason*, Durban, the conference recommended that human rights taught in other years and which includes human rights litigation.

The fifth section of the book which is about democracy in Africa has only one contribution from *Peter Manikas*, Chicago, entitled "Transitions to Democracy in Sub-Saharan Africa: An Overview". Before embarking on discussing the recent democratisation process in Africa after the collapse of communism in Eastern Europe he makes a detailed analysis of the roots of democratic failure in independent Africa. Among the contributory factors he discusses in this part of his article are problems of national unity where independent African states are a creation of colonialism, problems of political values and ideology where pluralism and multi-party politics was considered to pose a threat not only to national unity but also to economic development and also the problem of military overthrow of civilian government in majority of African countries. Discussing the recent and on-going return to pluralism and multi-party democracy, Manikas categorises democratisation changes that have taken place in Africa in three groups: change from above, change through protest and change through elections. On those from above he gives the example of Benin and Ghana, while Kenya, Djibouti as well as Mali are those representing countries where changes have occurred in the wake of massive protests. In changes through elections he cites the example of Zambia and Benin. In discussing the obstacles to democratic reforms which are going on in Africa, Manikas is of the view that: "The obstacles that many sub-Saharan African nations face – such as ethnic strife, military intervention and rampant corruption – will, for some nations, prove to be insurmountable. Nevertheless, there is more reason for optimism now than in the past thirty years" (p. 387).

Palamagamba John Kabudi

¹ [1988] Law Reports of the Commonwealth (Const) 442.

² One of his celebrated judgments is that of *Ephraim v. Holaria*, [1990] Law Reports of the Commonwealth (Const) 757. In it he declared a customary law of the Bahaya in Tanzania which restricted inheritance rights of daughters to be discriminatory and therefore violative of the Tanzanian bill of rights.