Assessing the effectiveness of the African Charter and its corresponding mechanisms for the Human rights violations in Mauritius

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Abstract:

This study gives an overview of the African Human Rights outlining the uniqueness of the African Charter on Human and Peoples' Right and the mechanisms available under the Charter. It also explains the readers about the situation of human rights in Mauritius whilst highlighting the fact that Mauritius has not used the mechanisms available under the Charter even after having signed and ratified the Charter. Some important cases through the history of Mauritius has been explained in order to demonstrate how the use of the proper channels available under the Charter could have made a different impact, positive or not, it's up to you to judge.

Résumé :

Cette étude donne une vue d'ensemble sur les droits de l'Homme en Afrique, soulignant le caractère unique de la Charte Africaine des Droits de l'Homme et des Peuples, ainsi que des mécanismes disponibles en vertu de celle-ci. Elle présente également au lecteur la situation des droits de l'Homme à Maurice tout en soulignant le fait que Maurice n'a pas fait usage des mécanismes rendus disponibles par la Charte, même après l'avoir signée et ratifiée. Un panel d'importantes affaires judiciaires a été analysé en vue de montrer de quelle manière l'usage de ces mécanismes spécifiques aurait pu produire des résultats différents de ceux obtenus dans certaines affaires mauriciennes – positive ou non, l'appréciation de la portée de ces résultats éventuels vous est laissée.

List of abbreviations

ASIL	American society of International Law
AU	African Union
BIOT	British Indian Ocean Territory
BLS	Best Loser System
BLUP	Building and Land Use Permit
Charter (The)	African Charter on Human and Peoples' Right
COMESA	Common Market for Eastern and Southern Africa
Commission (The)	African commission on Human and Peoples' Right
Court (The)	African Court on Human and Peoples' Right
EOA	Equal Opportunity Act
EOC	Equal Opportunity Commission
EOT	Equal Opportunity Tribunal
EPA	Environmental Protection Act
ESCR	Economic Social and Cultural Rights
ICCPR	Inernational Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
NGO	Non-Governmental Organisation
NHRC	National Human Rights Committee
OAU	Organisation of African Unity
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Committee
SADC	Southern African Development Community

Do your little bit of good where you are;

it's those little bits of good put together that overwhelm the world

Desmond Tutu

Introduction

A. Background

The gregarious nature of the human race is no secret to anyone. Throughout history, human beings have been depending upon each other in order to survive. States also have woven strong relationships among themselves for various reasons. This interlace of relationships in the African context have been strengthened by the will to eradicate colonialism. In their common fight for independence and liberation, African people drew their inspiration from human rights standards to justify their struggle. Therefore, the concept of human rights is deeply engrained in the struggle against colonialism and apartheid. Since then, the need for regional protections was indispensable in order to fight against the most pressing and specific human rights abuses. Africans adhered to these human rights principles because they were drafted keeping in mind the African traditions.

Focusing the attention upon Mauritius, it can be seen that the Island does use the avenue of regionalisation in the context of its economy mostly. Being a member of regional organisation such as SADC and COMESA, it enjoys numerous advantages such as the free trade area. In March 2017, Mauritius was the host country to launch the African Economic platform However, in the context of regional human rights, a lack of determination can be observed. Till date, Mauritius has never sent a communication to the African Commission on Human and peoples right and it has never approached the African Court on human and peoples right. There are more avenues for progress in this pathway as these regional institutions are underutilised.

B. Problem statement

It has been observed that Mauritius does not make proper use of the regional institutions for human rights protection. The plausible reason behind this lack of exploitation of these resources can be related to the fact that Mauritius has not submitted a special declaration as per the article 34(6) of the Court's protocol conferring the rationae personae to individuals and NGO. Individuals are the one who normally suffer from human right abuses and the denial to access the court for redress shows a lack of effective legal protection against abuses. There are

many current human rights issues in Mauritius that could have been adjudicated by the African court.

C. Research question

The above problem statement leads us to the following research question.

1) What additional value does the African Charter, its commission and its court provide for a better protection of human rights?

2) Could specific human rights issues that Mauritius is facing currently be better adjudicated in front of the African Court?

D. Chapterisation

Chapter one starts by giving an overview of the African human rights and its relevance to Mauritius. The chapter 2 outlies the uniqueness of the charter as well as elaborates on the establishment of the protection mechanism. Chapter 3 gives an overview about the situation of human rights in Mauritius and what the country can benefit from the regional human right mechanism. Chapter 4 is related to cases of human rights that occurred in Mauritius. The last and final chapter concludes on the topic and elaborates on the recommendations proposed.

The complimentary jurisdiction of the Court and the Commission is also highlighted. Finally, it assesses whether the court is a success story or not.

I. - The African Charter

A. - The creation of the African Charter on Human and Peoples' Rights

1 – A brief situation of the African population in the 19th century

Taking a leap of century backwards, Africa was plunged into a sea of darkness characterised by the suffering of its own people. Exploitation, imperialism and degradation formed part of the daily misery of the African population. Plagued by extreme poverty, they did neither eat properly nor had access to the potable water or even health care.

It is overt that the history of Africa has been dominated by hostilities between a minority that wanted to retain all the powers to them and a majority who tried to resist that oppression. The Caucasian rulers were merciless, stripping

off the basic rights of the non-white population. The apartheid rule prevailed all over the country promoting racist segregation. The rights of the black majority were curtailed to such an extent that they were even refused the right to choose where they could live or not. Even after decolonization, the African states' leaders acted in the same way the colonial powers did.

2 – A plea to end the suffering of the people of the land of Ubuntu- The Law of Lagos

Due to the alarming situation of the inhabitants, the International Commission of Jurist sponsored a conference in 1961 in Nigeria on the Rule of Law. This conference was the foundation of the idea to draft a document which will encompass a regional mechanism for protecting and promoting human rights accompanied by an institution which will act as its guardian. A declaration entitled as the "Law of Lagos" was adopted by the African congress with regards to the rule of law with particular reference to African human rights. This declaration required the governments of African states to adopt a convention with proper mechanism in order to allow human rights violations to be heard in front of a court of law. Nevertheless, no concrete actions were taken by the African leaders to implement these recommendations and therefore the concept of having a regional instrument for the protection of human rights of the African population was abandoned due to a lack of interest.

3 – The failure of the OAU to create a regional human rights mechanism

The failure to materialise the dream of having a regional human rights treaty was also due to the fact that the Organisation of African Unity ("OAU") focused all its efforts on specific matters it deemed important. The OAU was a regional organisation established in 1963 after a conference with the main objective to promote African unity and solidarity. At that time, the OAU focused its entire struggle into the abolition of colonisation, eradicating apartheid, achieving a better standard of living for its people and intensifying the corporation amongst states but however keeping in mind that each state is sovereign and has its own territorial integrity. The OAU Charter did not even cater for any distinct obligation for states to have due regards to uphold human rights. However, even without a clear mandate, the OAU took far reaching steps in for the protection of human rights with due respect to the principle of non-interference in the internal matters of each state.

4 – The intervention of the United Nation to help in the creation of a regional mechanism

The idea of having a treaty adapted to the African needs to protect human rights was then revived in 1967 at the 1st Conference of Francophone African Jurists held in Dakar. The members of that conference reiterated the desire to have their own human rights mechanism. The United Nations played a crucial role in facilitating the organisation of seminars and conferences on this subject across Africa. An ad hoc committee was also set up by the UN- secretary General to assist the creating of a regional human rights mechanism. However, these initiatives were in vain and all the negotiations haltered.

One of the committees which was set up to visit African leaders to mandate for the need to have a regional system successfully convinced the President of Senegal to table a proposition at the OAU next assembly. The next assembly was thereby seen as a landmark for the regional system as all the members of the OAU unanimously requested the secretary general to set up a committee to draft an instrument for the African human rights

5 – The dream finally becomes a reality

The dream was once again threatened to be shattered. Certain African government had reservations concerning the idea of having a regional mechanism to protect human rights. This led to various hostilities amongst Africa leaders resulting into the cancelling of a conference in Ethiopia where the draft charter would have been adopted. However, the ray of hope came from the president of Gambia who, at the invitation of the OAU secretary General, convened two ministerial conferences in Banjul where the draft was finally completed submitted to the OAU. The Charter was adopted in 1981 in Kenya and came into force in 1986 due to the ratification by a majority number of states.

It's only 30 year after the adoption of the UDHR by the United Nations that the African continent decided to equip itself with a regional human right mechanism. The African Charter on the Protection of Human and People's Right (hereinafter referred to as The Charter) was finally a reality. It is also referred as the Banjul Charter due to the significant role The Gambia played in the history of the creation of the Charter.

6 – The uniqueness of the Charter

There has been a notable deviation from the conventional classification of human rights by the legislators of the Charter by regrouping them into 3 different generations; namely the first generation being the civil and political rights, the second one is the economic, social and cultural rights and finally the third

generation, also called the collective rights encompass the right to development, to peace and to environment. The African charter differentiates itself from its European and American counterpart by also including the duties of each individual under the Chapter II. Moreover, there is the absence of any derogation clause in the Charter which means that no situation can justify the violation of human rights. These provisions would be dealt with in the following sections.

B. - The instruments of protection of human rights according to the Charter – the African Commission

1 – The establishment of the African commission on the protection on human and people's right

By then, it was clearly understood by the legislators of The Charter that the protection of human rights is fundamental to human kind. The charter would have no importance if it does not have an instrument for its protection. Thereby, The Charter provides for an African Commission on Human and People's right (hereinafter referred to as The Commission) by virtue of its article 30 stating that "*An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organisation of African Unity to promote human and peoples' rights and ensure their protection in Africa*".

This article provides that The Commission is established to promote human and people's right and also to guarantee that these rights are protected in Africa. The Chapter II Part II of The Charter sets out the mandate of The Commission.

2 – The mandate of The African Commission

The main provision of the Charter dealing with the mandate of The Commission embodied under article 45 of The Charter, identifies that The Commission has a tripartite function, namely to promote and ensure protection human and people's right and to interpret all the provisions of The Charter. According to Saffari (1999: 301-302) "The Commission, therefore, has educational, advisory and quasi-judicial roles respectively". The Charter also provides for an omnibus clause which requires The Commission to perform any function allocated to it the Assembly of Heads of State and Government of the African union according to article 45(4) of The Charter.

a – Promotion of Human and Peoples' Rights

The Commission has the responsibility to promote human and peoples' right as per the article 45 of The Charter. The significance of this role is to sensitise the African population of its rights as well as to inform those people about

The promotional function of the commission is considered to be as primary before others. According to Gasiokwu (2001: 188) this is founded on the basis that The Commission is not empowered to compel states to abide by its decisions.

Even if the findings and conclusions on the observation of the Commission are not legally binding, the member states do take them seriously. For example, the Endorois decision (AHRLR 75 (ACHPR 2009) was the basis for an intensive dialogue concerning the plight of the indigenous people and their accommodations in Kenya.

b – The protection of Human and Peoples' Rights

The protective mandate of The Commission requires it to take positive measures to guarantee that the people of Africa enjoy the rights laid down in the Charter. In order to fulfil this protective mandate, The Charter has set up a complaint system through which a State, an individual or an NGO can petition The Commission through a communication about human rights violations.

The Charter also provides for the device of "amicable settlement" which ends dispute between the parties as witnessed in Kalenga v Zambia (2000) AHRLR 321 (ACHPR 1994).

The Commission has also sent mission to several states in order to investigate about massive human rights violation. Considering the Ogoni case, a mission to Nigeria was initiated as a result of a communication filed by SERAC alleging massive human rights violations. (Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001)

In fulfilling its role, the Commission has the jurisdiction to direct a state concerned to take provisional measure pending the final decision.

c – The interpretational role

Apart from its promotional and protective function, the Commission has a quasi-judicial role which vests the power to interpret provision of the African Charter. This function allows the Commission to give an advisory opinion on any legal question using international human rights instruments.

Its interpretational role can be traced in the case of *SERAC v. Nigeria* where the right to food was deduced from the fact that every human being has a dignity and that it is essential to the enjoyment of the right to health, education, and work.

C. - The African court

1 – The foundation of the Court

The African court on human and peoples' right was established in1998 and came into force in 2004. If the legislators of The Charter had as an aim to enact an instrument to protect the human and people's right, then why was there such a delay to establish a proper court of law in order to enforce the laws under The Charter?

According to S.Lyons(2006) "While the African Charter attempted to protect the rights and freedoms of the African population and reaffirm the dedication of the Organization of African Unity (OAU) towards promoting human rights, it strategically omitted the creation of a court in order to achieve consensus regarding the human rights document. Instead, an African Commission was created with weakened supervisory powers and an inability to make binding decisions."

The African Court of Justice and Human Rights (herein after referred to as The Court) finally sees the day after a decade of negotiations. A draft protocol was adopted in 1998 by the OAU which, by virtue of its Article one, established the foundation of the court. However, it took another 6 years for fifteen African countries to ratify the Protocol on the of the African Human Rights Court of Justice and Human rights to make it enter into force.

2 – The composition of the court

Eleven judges are elected African Union (here in after referred to as AU) Assembly from a list of candidates who are nominated by the member states of the AU. The judged are elected in their personal capacity and they are not affiliated to their country thus they have to discharge their duties faithfully and independently. Only the president of the court is elected on a full-time basis and the rest holds office as part time workers.

3 – The jurisdiction of the Court

According to article 29 of the protocol, The Court's jurisdiction applies only to member states that have ratified the Court's protocol. The court can interpret and apply provision from the African Charter, the Court's Protocol and any other human right's provisions ratified by that state. The AU and member states can also request The Court for advisory opinions. The court is also vested with the power to conduct amicable settlements.

It is often said that The Court has a temporal jurisdiction which means that it can only look into disputes which arose after the court protocol came into force except in cases of continuing violation such as explained in the case of Lawyers for Human Rights v Swaziland (2005) AHRLR 66 (ACHPR 2005) by The Commission.

4 – Admissibility of cases in front of The Court

The article 5 of the Court's Protocol gives access to the Commission, state parties which have lodged cases to whom cases have been lodged at the Commission, a state party whose citizens are suffering from human rights violations and African intergovernmental organisations. NGOs with observer status and individuals can institute a case before the court in accordance to article 5(3) and 34(6) of the Protocol. The article 34 lays down rules for ratification of the protocol and the sub section 6 dictates that at the time of the ratification or even after that, NGOs and individuals would only be allowed to institute a case against a country before the Court if that specific country has made declaration accepting the competence of the court to receive petitions from those NGOs and individuals.

D. - Success or failure?

In a country where once apartheid was considered legal and crimes such as female genital mutilation are still lawful, it was high time for the setting up of a proper instrument for the protection of human and peoples' rights.

The Court was therefore set up in order to "complement the protective mandate of the Commission" according to article 2 of the protocol. The decisions of the court are consequently final, and binding upon all state parties. The court has already finalised about 33 cases and there are still about 90 pending cases. The statistic shows by itself that The Court is trusted by people in the African region.

Like all international courts, the African court as well as the Commission also deals with cases of non-compliance. Unfortunately, the international courts do not possess an enforcement mechanism to oblige the states to comply with their decision.

The presence of the clawback clauses can be a threat the provisions in the African Charter. Some governments determine the scope of their obligations through these claw back clauses for their own benefits. This defies the main purpose of the charter, which is to provide a standardise human rights throughout Africa.

The absence of withdrawal clauses can also be considered as problematic. If ever, a state feels that the Charter is not beneficial to it, there is not provision for withdrawal.

II. Mauritius and the African Charter

A. - Mauritius as a member State of the African Charter

1 – Historical account of Mauritius ratifying the Charter

The Charter has been ratified by all members of the African Union (formerly known as the OAU) including Mauritius. Even if Mauritius is not geographically attached to the African continent, it is well considered as being part of Africa. On the 19th June 1992, Mauritius has ratified the African Charter and thus abiding to all its provisions.

2 – The situation of human rights in Mauritius

Compared to other African countries, Mauritius can consider itself to be one of the leading countries in its region concerning human rights protection. The proof lies in the notably peaceful history it had after its independence. There is no account of extreme human rights violations as it is the case of other member states of the African region. Cases of massive killing or deprivation from access to health or food have not been recorded till date. Yet categorising Mauritius as a utopic land whereby human rights violations does not exist, would be incongruous with the reality.

B. The legal framework about human rights in Mauritius

1 – The different instrument of human rights

One of the most important provisions of human rights in the country can be found in its Constitution dated 1968. In addition to this, Mauritius has enacted the Protection *of Human Rights in 1998* and this has been amended in 2012 by the *Protection of Human Rights Amendment Act.* HIV and Aids were causing phobia amongst the population. Thus, in order prevent discriminations against those suffering from HIV AND AIDS, the HIV and AIDS ACT was constituted in 2006. *In* 2008, the *Equal Opportunities Act* was also legislated with the intention of curtailing discriminations amongst the population. The *National Preventive Mechanism Act and the Police Complaints Act 2012* was constituted in order to prevent inhuman and degrading torture against people.

2 – The constitution

As most democratic states have done to ensure human rights protection, Mauritius has incorporated a chapter based on human rights protection in its Constitution, considered as the supreme law of the land according to its section 2. Their insertion means that they are demarked over other laws enacted by the legislative body and thus it necessitates special requirements to amend those sections regulated by the section 47 of the Constitution.

The fundamental rights and freedom are embedded in Chapter II of the Constitution named as the "Protection of Fundamental Rights and Freedoms of Individual." The Mauritian human rights protection model is based upon the European Convention on Human rights due to the influence the British colonial period. Section 3 to section 16 of the Constitution contains common standards for human rights that have to be observed for all people without any discrimination.

These constitutional provisions however are considered as insufficient and "self-constrained" in the Law reform commission paper on the Constitutional Protection of Human Rights in 2010. The Constitutional provision prohibits violations on definite grounds which are clearly against international human rights practices. According to the Article 2 and 26 of the ICCPR, states should enact open ended provisions whereby violations are regrouped under an uncategorised number of grounds.

Moreover, there is no respect to the right to life and right to privacy guaranteed under the Constitution. Individuals do not possess the right to access to information which is gaining much importance nowadays in combating corruption. Undeniably, the Mauritian law provides for no provision of the Socio-economic rights even if it had ratified the ICESCR.

3 – The Protection of Human Rights Act

This act was enacted with the aim to set up a National Human Rights Commission (NHRC) in order to better protect human rights and to investigate accurately about complaints against police brutality. It was further amended by the Protection of Human Rights Amendment Act to have a better protection of human rights.

a – The National Human Rights Commission

The National Human Rights Commission has as key function to promote and protect human rights. It is empowered to evaluate other enactments concerning the safeguards of human rights. The responsibility to harmonise

national legislations with international standards or practises is vested upon the NHRC.

The Protection of Human Rights Amendment Act categorised the NHRC into 3 main divisions namely the Human rights divisions, the police complaint division and the National Preventive Mechanism Division.

b – The Human Rights Division

Any person who feels that his or her rights have been violated by any public official or by a police officer can draft a complaint to the NHRC, specifically to the Human rights division. It is empowered to enquire into these complaints of human rights violations. This division is vested with the power to visit police stations or prisons to attest the conditions and treatments afforded to the convicts. It also has a promotional role concerning human rights in the country and reviews any situations that prevent the enjoyment of these rights.

The other 2 divisions will be discussed in the next sub section as it is linked with other acts of parliaments.

4 – The National Preventive Mechanism Act 2012

This act was legislated in line with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and thus to set up a National Preventive Mechanism Division alongside the NHRC. This division is deals with the rights of the detainees and can visit places of detention as well as investigating any complaint that made by detainees. This division is empowered to have access to all information concerning detainees and to the treatments afforded to them.

5 – The Police Complaint Act 2012 and the Police Complaint Division

The Police Complaint Act provides for a proper division known as the Police Complaint division in order to better investigate into complaints made against the members of the police force. This Division has the function to look into suspicious death of persons while being in police custody. It has the jurisdiction so summon any witness before it as well as to visit places of detention.

6 – The Equal Opportunities Act 2008

The essence of human rights teaches us that all human beings should be equal and thus in the same line of thought, the Equal Opportunities Act (EOA) was legislated in order to promote equal opportunities between persons and to prevent discrimination based upon status or by oppression or victimisation. The act

establishes a list of activities whereby discriminations is strictly prohibited which includes the world of employment, education, sports or even in access to premises.

a – The Equal Opportunities Commission

By virtue of the Article 27 under the Part VI of the EOA, the Equal Opportunities Commission (EOC) was established in order to eliminate all forms of discrimination and promote equal opportunities to everyone. It's Chairperson and the members are appointed according to their knowledge and expertise in the field. The members are appointed by the President acting on the advice of the Prime Minister after having consulted the leader of the opposition. This shows the fairness and independence of the EOC.

The EOC is empowered to resolves cases by reconciliation and it has been unsuccessful, the matter has to be referred to the Tribunal.

b – The Equal Opportunities Tribunal

No act is properly implemented without a tribunal. The EOC provides for the Equal Opportunities Tribunal according to Article 34 which shall consist of a President and 2 other persons. However, it only has jurisdiction to hear complaints referred to it by the EOC. It can also issue interim orders in cases of urgency. Moreover, it only entertains complaints whereby the complainant has sworn a voluntary statement to waive his rights to initiate civil proceedings in front of a court in Mauritius. Appeals are also allowed in front of the Supreme Court within 21 days of the date of order of the Tribunal.

C. - The African Charter as an enhancement to local human rights laws.

Mauritius has certainly equipped itself with a strong legal framework in order to combat human rights violations. As seen above, laws have been legislated in order to meet global standards provided by international charters. However not every structure proves to be effective and there exists certain areas which demands for attention.

The African Charter provides for an effective alternative to fulfil to void and loopholes that cripples the human rights protection in the country. Having a charter tailor made to suit the requirements of the African society, facilitates the protection of human rights in Mauritius as well.

1 – What can Mauritius benefit from the Charter?

The Charter is unique when compared to its European and American counterparts. The distinctive features of The Charter can assist Mauritius in combating human rights violations.

One of the first features concerns the equal treatment that is afforded to the first generations of human rights namely the civil and political rights as well as the second generation of human rights which is the economic, social and cultural rights. In line with the African values, The Charter also includes the duties of individuals. One of the commendable achievements of The Charter concerns the third generation of rights as it is the only international charter to include these rights. The 'peoples' rights' are also given effect in the African Charter broadening the ambit of the right holders which are also known as the solidarity rights.

2 – The Economic, Social and Cultural rights (ESCR)

Human rights are often divided into "3 generations of rights" (Kiwanuka, 1988: 88-91) and the Economic, Social and Cultural rights are considered as the second generation of rights. What can be inferred from these generations is that the protections of certain types of human rights are considered to be predominant upon other rights. The generational classification paved its way into the Mauritian legal framework and its expression is to be found in the way the Chapter 2 of the Constitution is drafted. Only Civil and Political rights are afforded protection under the Constitution. Rights such as the Right to Education, Culture or Health are nowhere to be found in the local jurisprudence.

This disparity can be weakened by the Charter which consolidates the notion of indivisible and interdependent human rights. The fact that ESCR are drafted in the same document proves that it is given the same priority ensuring the protection and promotion of all rights. The African Commission has also established a "Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Right" which sets out that states have some positive and negative duties which englobes the obligation to "respect, protect, promote and fulfil" these rights. There is a minimum core obligation that all states should follow in order to achieve a constant and progressive realisation of the ESCR human rights. National plans and policies have to be set out in order to be in line with the Commission's principles.

One of the best know example where the Commission has intervened in order to curtail the human rights violations occurring can be ascertained in the case of *Social AND Economic Rights Action Centre (SERAC) and Another v*

Nigeria. It was alleged by the NGOs SERAC and Centre for Economic and Social Rights (USA) that the Nigerian government, through its military powers has helped an oil company in its operation which has caused environmental degradation resulting in health problems amidst the Ogoni people. Moreover, Nigerian forces have attacked Ogoni villages when they tried to protest. The merits of the case are based upon the obligation of a state to respect, protect, promote and fulfil those rights which involves certain positive and negative duties.

The federal republic of Nigeria was found to have disregarded its duties as it has not taken any appropriate steps to protect the human rights of its citizens. In doing so, the Nigerian government has violated the right to health and the right to a satisfactory environment recognised under article 16 and 24 of The Charter respectively.

By engaging directly in the oil production and disregarding the regulation of the oil companies, the respondent state has violated the right of the Ogoni people to freely dispose of their wealth as mentioned in article 21. The government should have taken positive measure in order to protect its people from damages caused by third parties and not engage itself in perpetrating those acts.

Moreover, the Nigerian government was found to have violated the right to adequate shelter by an implied reading of the article 14, 176 and 18(1) as they have destructed the Ogoniland. A destruction of the houses of the Ogoni people causes a direct prejudice to their family, property and health. The state had the minimum obligation not to destroy those houses and protecting them from other individuals or non-state actors violating their human rights.

By contaminating and destroying their food resources, their right to food was disregarded. This right is implicitly found in Article 4 dictating the right to life, article 16 which relates to the right to health and article 22 which concerns the right to development. The right to food is essentially linked to the dignity of human beings and thus is directly related to the right to life, health and development. Finally, the widespread killing that was perpetrated by the security forces violated the most basic right which is the right to life.

This case clearly depicts the obligations of every state to respect, protect, promote and fulfil all the rights of the African charter equally.

3 – The duties of the individuals

One of the most commendable innovations of the African Charter, embodied in its Chapter II, concerns the Duties. Compared to its European and American counterpart, by incorporating the duties in the individual, the African

Charter has demarcated itself. It is very rare, or even impossible to find a legal instrument to integrate duties as part of a legal ground. This is nowhere to be found in the Mauritian legislature.

Article 27 of The Charter specifies that all individuals have duties towards their "families and the society, the state and other legally recognised communities and the international community". Article 28 encompasses the duty to respect every human being without discrimination. An individual also has the duty to maintain relationships in order to promote, safeguard and reinforce respect and tolerance.

It has to be reminded that The Charter provides for no derogation clause which means that violations of the rights and freedom protected by the African charter cannot be justified under any emergency situation or any other special circumstances. However, the Charter does provide for a limitation on those rights and freedoms under the article 27(2) which clearly explains that the provisions of The Charter are not inexhaustible. These rights have to be exercised in accordance to the "rights of others, collective security, morality and common interest".

After the annulment of the elections in1993, the Nigerian government issued several decrees, one of which proscribed to seal premises of certain magazines and banned the sales of those magazines. It was also punishable by the law to operate a newspaper without registration. However, these registrations were controlled a board which was set by the decree. The fees imposed for registration were considered to be unfair and expensive. The laws in the decree were also made retroactive albeit the fact that these decrees were also declared null and void by the High Court and the Lagos High Court.

One of the other decrees concerned the ousting of the jurisdiction of the court which the military government explained by the fact that "resourced of litigation becomes too cumbersome for the government to for what it wants to do".

What concerns us in this case is about the explanation given by the commission upon the article 27(2) whilst arguing whether the Nigerian State has violated the article 9(2) which relates to the restriction on the dissemination of information by law.

The commission states that the only basis for a legitimate reason to limit the rights and freedoms enshrined in the African Charter should be based upon the article 27(2). "The reasons for possible limitations must be founded in a legitimate state interest and the evils of limitations of rights must be strictly proportionate with and absolutely necessary for the advantages which are to be obtained." It is important to assure that a limitation does not have a repercussion upon the law itself making it illusionary.

What can be inferred from the reasoning of the commission in the case of Media rights Agenda and Others V Nigeria is that for a state to invoke article 27(2) for any limitations of the rights and freedoms, it should be based upon 3 criteria. Firstly, it should be in the state's interest to do so. The harms caused by the limitations should be comparable to and essential for the benefits acquired from it. Finally, it has to be assured that consequences of these limitations do not delude the basis of the law itself. (Media rights Agenda and Others V Nigeria (2000) AHRLR 200 (ACHPR 1998))

4 – The Third Generation of Rights: The Peoples' Right

A reading of the African Charter clearly demonstrates that the legislators have shifted the limelight accorded to individuals in human right to peoples. These rights accorded to the peoples were classified by Karel Vasak(1977) as being the third generations of human rights. In contrast to the first and second generation of rights, the third generation addresses the collective social groups, which is why it is often termed as solidarity rights.

The enjoyment of certain specific human rights is associated to the collective groups. Karel Vasak (1997) explained the link between the solidarity rights and groups as follows: "…*they can be realized only through the concerted efforts of all the actors on the social scene: the individual, the state, public and private bodies and the international community*."

Thus, there need to be a concerted effort from different groups in the society in order to achieve those rights.

In an attempt not to obfuscate the demarcation between the three generations of rights, it is crucial to distinguish the right holders of the solidarity rights termed as "people" in The Charter. According Hens and Stefiszyn(2006, 63), the characteristics of the term people can be described as "the main attributes of peoplehood are presented, namely commonality of interests, group identity, distinctiveness and a territorial link. It is clear, therefore, that 'people' could refer to a group of persons within a specific geographical entity."

In the case of Jawara v The Gambia (2000) AHRLR 107 (ACHPR 2000), the president of Gambia was deposed by a military coup d'état in 1994. The political party of the former government was even prevented from participating in any political activity. The Commission recognised that the regime came into power by force, although in a peaceful manner. It cannot be ignored that this cannot be considered as the "will of the people" as the new government was not voted through the elections. Thus, the military coup d'état was in grave violation of Article 20(1) which edicts the right to self-determination of one's political status.

III. - Is Mauritius making proper use of the regional protection mechanisms?

A. - Proper use of the African Court and the African Commission

Till date Mauritius has not signed this reservation and has not approached the African court for any of the human rights violations cases It is arguable that there are very few human rights violations that occur in Mauritius but it would have been interesting to have the opinion of the African Court and the African Commission on certain issues that Mauritius is dealing with in the field of human rights.

1 – The Chagossian Case

a – A brief historical account

Diego Garcias was once considered as the only inhabited island of the group of atolls. It is nowadays renowned to be the largest out of country secretive military base of the United States Military. It has been claimed that at the time of its negotiations for its independence, Mauritius has sold the island to the United Kingdom in 1965(Boolell: 2010).. As from 1968, the United Kingdom started to clear Diego Garcias in an aim to build a military base for the United State. The United Kingdom still holds ownership of the island but it has leased Diego Garcias for 50 years initially to the United States. (Lunn, 2011: 3)

Amidst the two powerful countries, the unfortunate Chagossians were left stranded upon their own faith. Through the Immigration Ordinance in 1971, it was made unlawful for any person to enter the island without a permit. The entire Chagossian civilisation was forcefully deported to Mauritius, Seychelles and part of them to United Kingdom. In return they were given a compensation to assist their resettlement and also to a trust fund were created in their benefit.

b – The legal battles in the British Courts (2000-2016)

Chagos islands have been in the international limelight for the past two decades due to the numerous cases filed because of the eviction of its inhabitants. Olivier Bancoult brought a claim for the judicial review of the 1971 ordinance at the British High Court contesting its legality. The Guardian reported that in 2000 the High Court ruled that the Immigration ordinance was illegal and that the removal of the islanders were unlawful, granting them the right to return to their country. (Doward: 2016)

However in 2004, the British Government nullified the court's decision by invoking the royal prerogative to ban the Islanders from returning to Diego Garcias, giving numerous reasons involving a feasibility study which revealed that the resettlement of those Chagossian would be costly and would not be environmentally sustainable.

The Chagossian Refugee Group did not concede defeat easily and challenged the decision against the 2004 Order. The Court again considered that these Orders were unlawful. However at this instance, the Government appealed to the High Court. Yet again, the court of appeal found that the Orders in Council to prevent the Islanders to return to their native land were unlawful. It even declined the Government the permission to pursuit the case to the House Of Lords.

In 2007, the Government petitioned the House of Lords directly which ruled in favour of the government preventing the Chagossians to return to their homeland.

The case was even brought in front of the European Court of Justice in December 2012 which adjudicated that it had no jurisdiction to examine the claim of the Chagossian.

c – The issue of sovereignty

The other outstanding dispute concerns the sovereignty of the Chagos Island between Mauritius and United Kingdom. Successive Mauritian governments have claimed the sovereignty of the island over the BIOT, contesting the fact that Chagos was illegally detached from Mauritius before its independence in 1968. Mauritius argues that the United Kingdom has been in violation of the UN general Assembly resolutions which urged for independence of all colonies and called on United Kingdom to refrain from taking actions that affect the territorial sovereignty of Mauritius while granting it its independence. However United Kingdom has always refuted this claim but it has asserted that to cede the BIOT to Mauritius once the Island is no longer of use as a military base.

d – What if this case was brought in front of the African Commission or the African Court?

Case against the United Kingdom. Unfortunately neither the African Court nor the African Commission would have the jurisdiction to hear the case of the Chagossian and Mauritius simply because the United Kingdom is not a party to the African Charter. These institutions are regional protection mechanisms.

Mauritius V United Kingdom. However, under the basis of the article 45(1) (a) and 45(3), the Commission has the jurisdiction to give an advisory

opinion upon the matter of sovereignty upon Chagos upon the request of Mauritius by interpreting the provisions of the Charter. This was the case when the assembly of head of states and governments of the African Union requested the Commission to give an advisory opinion upon the Declaration on the rights of indigenous people by the United Nations.

Having an advisory opinion would better equip Mauritius to approach the United Nations as it is currently doing concerning the sovereignty of Chagos. The advisory opinion would have an important political implication as it would raise awareness among the African states to rally to the cause of the Chagossian if ever the case comes in front of the General Assembly of the United Nations.

Chagos Refugees V Mauritius. The Chagos refugees still have a course of action which they have not yet envisaged. Shedding light upon the fact that the chagossian were left stranded on their own in a new territory, Mauritius should bear some of the responsibilities as well. History proves that it was the delegation of Mauritius had decided to sell the island during the negotiations of its independence. (Boolell: 2010). Most of the Chagossian now reside in Mauritius in the regions of Cassis and Roche-Bois It might be of concern to mention here that these regions are considered to be one on the most poverty-stricken area.

Under this aegis, the Chagossian could approach the African Commission upon this matter. It has however to seek redress from the local jurisdiction first before seeking redress from the Commission or the Court.

Outcome of the case if it was submitted to the African Commission. This part of the dissertation would deal with the decision of the African Commission if ever all the criteria under article 56 of the African Charter are fulfilled. It is argued that Chagosssian are a distinct community which need special protection.

Violation of article 2. There is an undeniable violation of article 2 of the African charter which prohibits the discrimination of people. This article guarantees the enjoyment of all human rights irrespective of their "national and social origin". Taking the case of the **Chagossian** refugees, Mauritius does violate their rights on the basis of their national status.

Violation of article 12. By taking away the right to freely choose their residents, Mauritius has violated the article 12(1) of the African Charter. It has to be made clear that Mauritius was certainly not their residence but it was their only choice as they were subjected to exile form their island. Stepping on the Mauritian soil, they still faced difficulties to obtain a proper residence as they were put in slum areas and left on their own.

Violation of article 14, 16 and 18(1). According to the case of SERAC V Nigeria, the consequence of the combination of the provisions protecting the right to enjoy the best attainable state of mental and physical health according to article 16, the right to adequate property under article 14 and the right to right to be protected as a family unit can be implicitly considered as the right to shelter or housing which the Nigerian government has violated.

Violation of article 17(2) and 17(3). In the case of Endorois, the African commission was of the view that every government has a higher duty of taking positive steps to protect groups and communities but also to promote cultural rights including the creation of opportunities, policies and mechanism that allow different way of life to coexist. They also have the duties to prevent those communities to face challenges such as extreme poverty. Mauritius is in clear violation of the article 17 as the refugees were left on their own without proper inclusion in the society. The lack of willingness of Mauritius to protect the Chagossian constitutes a violation of its duties.

Therefore, in this case as well, by virtue of the forced removal of the Chagossian from their native land in such a treacherous way is considered a violation of all these rights. Under the article 12(2), the refugees also have the right to compensation.

Violation of article 20. By refusing them the right to return on their island, the refugee had their right to self-determination violated. They were forced to exile that their island and there opinon was not sought while deciding upon this matter.

Violation of article 22. The right to development has been discussed in the case of Centre for minority right development (kenya) and minority rights group international on behalf of Endorois welfare council V Kenya whereby it was concluded that a government must consult and respect the people especially in dealing with sensitive issues as land. This was also the case of the Chagos. The people living on the island were not consulted before their evictions and this there is an undisputable violation of the article 22 by the Mauritian government.

2 – The case against the Best Loser System

The best Loser system forms part of the electoral system of Mauritius and till date it has been surrounded by controversies and it was even criticised by the United Nations. To better understand the case, it is imperative to study the Mauritian electoral system.

a – The electoral system of Mauritius

Having distinct features, the electoral system is established under the first schedule of the Constitution. Mauritius has a unicameral system whereby the Members of parliaments are elected from 21 constituencies by universal adult suffrage. There are 20 mainland constituencies returning 3 members of the Parliament and 1 constituency for Rodrigues returning 2 members after the elections.

In an attempt to guarantee political stability, multi ethnic countries provide for an effective representation of the minorities, despite the fact that their voting power can be considered to be insufficient to join the parliament.

b – The functioning of the Best Loser System (BLS)

The BLS can be traced back to the Banwell Commission which proposed to allocate 8 additional seats through direct suffrage. This system was adopted to reflect the multi-cultural society of Mauritius more specifically to protect the minority ethnic groups such as Christians, Muslims and Sino-Mauritians according to a 1972 population census.

According to the first schedule of the constitution of Mauritius, every candidate is obliged by the law to indicate his community affiliation on the nomination paper at the expense of s his candidacy being rejected. The candidates make a choice between the Hindu, Muslim or Sino-Mauritian community. Based on his or her way of life, if the candidate cannot be categorised under any of the three communities, the candidate is then deemed to belong to the General Population.

c – The controversies

The functioning of this system has been plagued by controversies. There have been numerous calls for an electoral reform. The use of the 1972 census was even criticised by The Supreme Court of Mauritius which has expressed its reservations upon the fact that the allocation of best losers seats “in the year 2000 will apply the figures of the 1972 Census creates a situation which may not reflect reality (Narain et al v. Mauritius Communication No.1744/2007) It can also be argued, instead of contributing to a harmonious cohabitation of all the ethnic groups, the best loser system could exacerbate these communal divisions

The law in Mauritius provided that every candidate had to mandatorily declare to which community they belong to. The Supreme Court of Mauritius has ruled that “there is a legal obligation for candidates to declare on their nomination

papers to which community they belong and that without this information the nomination is invalid'.

d – The legal battles

There has been a consensus by different stakeholders that there is an urgent need for an electoral reform however, there is a huge political unwillingness whereby major political stallholders are reticent to bring about any change in the electoral system.

e – Lalit

One of the first oppositions came from Lalit, a left winged party, whose members drew lots to arbitrarily declare their communities. Nonetheless, they were prosecuted in 2005 and the Judges even acknowledged in his judgement that it was embarrassing for him to determine a candidate's community and thus he finally concluded to classify them a "General Population"

f – Rezistans Ek Alternativ

It is interesting to note that another left-wing party *Rezistans ek Alternativ* has been militating for the complete abolition of the BLS on the fact that it institutionalises communalism by imposing upon candidates to declare their communities to be able to participate in the elections.

In 2005, their struggle culminated to a turning point during the general elections. The members of that party purposely enrolled themselves as candidates for the general elections without mentioning their ethnic affiliations, even though they were aware that their candidacies could be subject to a rejection according to the Constitution. Consequently, *Rezistans ek alternativ* appealed to the Supreme Court whereby the judge ruled that the demand for electoral candidate to declare ones ethnic background constituted a violation of the constitutional provisions.

However, the Electoral Supervising Commission contested that judgment and thus a full bench panel of the Supreme Court quashed the judgement declaring that it is a legal obligation for the candidates to declare their communities on the nomination forms and failure to do so amounts to a rejection of their candidacies.

Rezistans Ek Alternativ decided to pursuit their legal battle in front of the Judicial Committee of the Privy Council. However, in 2007 they were not granted leave from the Supreme Court to proceed with their case to the Judicial Committee Privy Council.

Rezistans Ek Alternativ did not abandon their fight against communalism and decided to approach the UNHRC. They wanted to bring light to the infringement of their fundamental rights under Article 18, 25 and 26 of the ICCPR on an international level. The committee in 2012 decided that rejection of candidacies due to the failure of ethnic declaration was a human rights violation under Article 25(b) of the ICCPR. The committee even imposed certain obligations upon the government to be fulfilled within a time limit of 180 days which includes to update the 19972 census and to consider whether the BLS is still imperative for Mauritius.

g – Entering the case of BLS in front of the African commission

It would be interesting to read the judgement of the Commission in this case. An in-depth analysis of previous decisions and the facts of this case have resulted in what might be the conclusion of the court concerning the best loser system.

Admissibility. The case could have been heard in front of both the commission and the court. The admissibility of the communication to the commission is governed by the article 56 of the Charter and the same provisions are reiterated under article 6 of the African Court's protocol. This case does fulfil all the requirements set out, specifically under the article 56(5) which mentions the exhaustion of local remedies. This rule can be considered to be one of the most important conditions for admissibility of communications which has been fulfilled by *Rezistans ek alternativ*.

Violation of Article 1. First of all, there is an alleged violation of the Article 1 by demanding the candidates to declare to which ethnic groups they belong to.

According to the case of Jawara V The Gambia, "Article 1 gives the Charter the legally binding character always attributed to international treaties of this sort. Therefore a violation of any provision of the Charter automatically means a violation of Article 1. If a State party to the Charter fails to recognise the provisions of the same, there is no doubt that it is in violation of this Article." (46p.p).

By refusing a candidacy based upon the fact that he has refused to declare his ethnic belonging, the government restricts the enjoyment of the rights present in the Article 1.

Violation of Article 2. The provision under the first schedule was in restriction of the enjoyment of the rights and freedoms enunciated under Article 2 of the Charter. This article forms the basis of the right to non-discrimination. In the general elections held in 2010, 104 candidates were rejected for their failure to

declare their community affiliation. It is clear that in order to be able to stand as a candidate, the community declaration is of utmost importance proving that the Mauritian electoral system places significant burden upon the ethnic backgrounds of the candidates. The government of Mauritius is in clear violation to the article 2.

As in the case of The Nubian Community in Kenya V Kenya (communication 317//06(2015), the commission reiterates that "differential treatment on the basis of ethnic and religious affiliations is specifically prohibited under Article 2 of the Charter..."

Violation of Article 3. The case of Purohit and Another v The Gambia (2003) AHRLR 96 (ACHPR 2003), the paragraph 49 explains the article 3 as being the guarantor of fair and just treatment of individuals within a legal system of a given country. These principles are considered as non-derivable and must imperatively be respected by all state parties.

Under Mauritian law, all candidates are not considered equal. If ever they are not willing to declare their ethnic belonging, they are discriminated by the provisions of the constitution in standing as candidates.

Violation of Article 13 and 20. Article 13 of the Charter provides for the right to participate freely in the government of his country. The fact that there exist certain criteria, based upon the declaration of one's ethnicity, in order to validate ones candidacy violates the right of any Mauritian to freely participate in the government of his country. Any standards applied to the exercise protected under article 13 should have objective and reasonable basis.

The regulation 12 paragraph 5 of the National Assembly Elections Regulations 1968 and paragraph3 (1) of the First Schedule of the constitution violates the article 13 as they create unjustifiable restrictions upon candidates.

Article 13 has interpreted in the case of Legal Resources Foundation v Zambia (2001) AHRLR 84 (ACHPR 2001) whereby the African Commission held that the phrase 'in accordance with the law' does not allow states to create legislations that discriminates an individual from freely exercising his right under article 13 and thus the "provisions of the Charter should be interpreted in a holistic manner with all clauses reinforcing each other." (Mahadew, 2014)

The general comment 25 of the United Nation provides that any people who are eligible as candidates should not be excluded by discriminatory requirements.

The article 13 is reinforced by article 20 in the protection of the right to self-determination which provides for the right of peoples', including that of minorities to freely determine their political status.

3 – Environmental law

a – Background of environmental law

Environmental law in Mauritius has a very developed legal framework in Mauritius with a plethora of local legislations. The word "environment" is given a definition under the section 3 of the Environment Protection Act 2002. This was further elaborated by the court in the case of Mesnil Investment Co. Ltd v Environment Appeal Tribunal & ors (2000) SCJ 172, "…the protection of the environment is an all embracing concept which not only deals with environmental issues proper, but also deals with public interest issues or issues affecting the welfare or economy of a state."

It has to be pointed out that the Mauritian Constitution does not provide for a right to environment as it is the case of the Seychelles Islands. The EPA does provide for measures and safeguards against the degradation of the environment such as the imposition of fines according to its article 85.

Nevertheless, can we say that these measures are enough to protect fundamental right to environment which is directly linked to the right to sustainable development and to the right to life? The Supreme Court of India went to the extent to infer the right to environment from the right to life in the case of Mukti Morcha V Union of India (1997) 10 SCC 549. However it can be argued that the Supreme Courts of Mauritius adopts a very conservative approach concerning the interpretation of laws, thereby it will be very improbable to say whether the right to environment could be inferred form the right to life in Mauritius as well.

b – The case of Yan Hookoomsing and Ors V Le Chaland Hotel Ltd and Anor

This case concerns an application in front of the Environmental and Land Use Appeal Tribunal for an interlocutory injunction against the construction of a hotel by the respondent at Le Chaland. The appellant wished contest the decision of the District Council of Grand Port for having granted a Building and Land Use Permit (BLUP) by depositing an appeal at the registry of the tribunal within the time frame of 21 days.

This appeal was firstly heard before the Tribunal in order to determine whether the applicant had locus standi to bring the application. To demonstrate that the applicants have locus standi, they should suffer from "special prejudices" and secondly they should have "a legitimate personal interest" in the case. (Ricot v Mauriplage Beach Resort Ltd 2004 scj 329)

The applicant has stated that they fear they lose their right to enjoy the beach due to the sand erosion caused by the disruption of sand dunes which may affect the ecosystem. The applicant contests the fact that hotel would be constructed on sand dunes and thus the possible digging done would detrimental to the ecosystem. The instability of the ecosystem could affect the Blue Bay marine Park which is situated nearby.

It was concluded that the environment is a concern for each individual and that everyone bears a duty to protect the environment. Damages caused to the environment can be irreversible which in turn cannot be compensated by any pecuniary consideration.

This case was brought to the tribunal to determine with whether the interlocutory injunction should be granted or not. First of all, under the Mauritian law, no injunction can be granted if damages would be an adequate alternative remedy to the applicants and whether the respondent can afford to pay those monetary damages. It is clear that the issue at hand concerned the irreversible impact of the project on the environment. If ever the injunction is not granted and the construction processes starts, the battle to preserve the ecosystem would be lost.

The tribunal adjudicated on this matter by granting the interlocutory injunction in order to preserve the ecosystem pending the main case.

c – Outcome if the case was brought in front of the African Court

A thorough analysis of the Mauritian environmental law and the case mentioned above leads to the conclusion that the right to environment in not provided as such in under the Mauritian jurisdiction. Group actions are normally brought by NGOS under the ambit of the "public interest litigation" which is unfortunately not recognised under our jurisdiction. The case of Hokoomsing was also fought on procedural grounds rather on the basic right to a proper environment.

Therefore, the African court or the African commission would be the correct avenue to seek for redress. It has to be highlighted here that Mauritius has not yet submitted its Declaration under Article 34(6) of the African courts protocol. This part would be dealt with in the recommendations.

d – The decision

This decision is based upon the hypothesis that the communication has fulfilled all the criteria under the African Charter

The duties of the state. It there is a wide range of rights that have been violated in this case. It has to been pointed out that according to international standards, in order to adhere to human rights, states have to comply with certain duties. These duties can be broken down in 4 levels; the duty to respect, protect, promote and fulfil the human rights under any charter. These duties entail certain negative and positive actions from the state. It has been explained in the case of SERAC V Nigeria that every states burdened themselves with these duties once they become a party to the African Charter.

The state of Mauritius would be found to be in violation of the following articles of the African Charter if ever the hotel is constructed.

Violation of Article 1. First of all there is a violation of article 1 as explained by the case of Jawara V The Gambia as explained above under the paragraph 4.2.2.8.

Violation of article 16 and 24. If the project of constructing the hotel goes forward, it is an undeniable fact that the right to health and the right to clean environment under the article 16 and article 24 respectively would be violated as the State would fail to respect its minimum duties.

According to the article 16 of the Charter, states should take necessary measure to protect the health of the people. This has not been taken care of in the case of the construction of the hotel.

Article 24 establishes the need for a healthy and clean environment which imposes clear obligations on any government. As explained in the case of SERAC V Nigeria, the state has the duty to take reasonable measures to prevent environmental degradation and to ensure sustainable development.

It is clear that the hotel would be constructed on sand dunes that would lead to san erosion. People would also be prevented the direct access to public beach. The state has failed to enact appropriate measures to protect its citizens from environmental and health problems.

The state would fail to protect the citizens from the pollution that would be caused by the construction of that hotel hereby harming the health of the people residing nearby. By awarding the BLUP, the state has participated in the harm that could be caused by the construction process. It has given the greenlight to Le Chaland to devastatingly affect the wellbeing of the neighbouring residents.

The case of SERAC V Nigeria points out that states also have a responsibility to protect their citizens against "damaging acts perpetrated by private parties." There is an obligation to take steps in order to make sure that the enjoyments of the rights are not disturbed by private parties.

5 – Benefits for Mauritius

By virtue of having ratified The African Charter, Mauritius has the responsibility and obligation to abide by the Charter and the Guidelines set by the Commission for the safeguard of all second generations of rights on its territory at the expense of facing legal reprisals if a case in entered at the Commission or the Court or even face regional condemnation. Mauritius can highly benefit from the duties found in chapter II in order to justify any limitations which are in line with the Charter's standards.

It can be clearly deduced from the case of Jawara v The Gambia that a collective group was regarded as the right holder under Article 20(1). The third-generation rights are not incorporated in the Mauritian jurisdiction and thus the protection of these human rights would be impossible by the local courts.

To sum up, being a party to the African Charter expands the protection of human rights afforded to Mauritians.

B. – Conclusion and recommendations

In order to conclude on this subject, let us remember what Nelson Mandela has once said:

"To deny people their human rights is to challenge their very humanity"

Therefore, their regional human rights mechanism exists in order protect human kind. By having signed and ratified the African Charter, Mauritius binds itself to the entire legal obligation pertaining to the civil and political rights, socio economic rights as well as the people's right. Mauritius cannot under any circumstances derogate from those rights.

A profound analysis of the legal framework in chapter 3 can lead to the conclusion that they seem to be working effectively. Even if the socio-economic rights have not been included in the constitution of the Mauritius, they are awarded due protection. Moreover, Mauritius seems to be a country where most of the human rights are protected. This can be deduced from the low number of cases that have been reported until now.

So far, the question about the use of the African Court or the commission has not risen in Mauritius. The analysis of the cases in chapter 4 leads us to think that Mauritius should consider using the avenues of the mechanism under the African Charter. The unique features would undeniably enhance the human rights protection in Mauritius. In the event of the cases analysed, the African commission and the African court can provide remedies for relief that would probably not be available under Mauritian law.

Therefore, there should imperatively be an increase in the relevance of the Charter and its protective mechanisms. In this view, a change of mind-set is primordial for the court and the commission to become supranational enforcement bodies.

The aim and objectives of this dissertation was to assess whether Mauritius is making an effective use of the African Charter and its corresponding mechanism for the violations of human rights. It could be deduced that the Charter can proves to be an effective redress mechanism in case of violations. Consequently, the recommendations that can help to improve the situation of human rights are listed below.

1. Mauritius must submit a declaration under article 34(6) of the court in order to allow individuals and NGOs to submit cases to the African Court. This would definitely be beneficial for the protection of human rights in Mauritius.

2. There is a lack of awareness amongst the population as well as among the law practitioners of the avenues that are available to seek redress from the regional human rights protection. The state should take measure in order to palliate for these discrepancies. Mauritius also has an obligation under article 25 to educate its population about the rights and duties under the African Charter.

3. The last recommendation concerns the people who have suffered from human rights violations as analysed in cases under chapter 4. The parties aggrieved in those cases were the Chagossian refugees, *Rezistans ek Alternativ* and the Mr Hookoomsing and the co applicants in the case of Hookomsing v Le Chaland. Firstly, to urge the victims to submit their cases against Mauritius to the commission. Individuals are allowed to submit their cases to against state that have ratified the Charter. They can also request NGOs with observer status, to submit cases on their behalf. The commission can further submit their cases to the Court to adjudicate on the matter at hand. In the event that Mauritius submits a declaration under the article 34(6), the victims can ask the court to adjudicate on the matter directly after fulfilling all the requirements.

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