THE CHALLENGES OF INTERNATIONAL HUMAN RIGHTS ORGANIZATIONS IN PROMOTING AND PROTECTING HUMAN RIGHTS: A CASE STUDY OF AFRICAN COURT ON HUMAN AND PEOPLE'S RIGHTS

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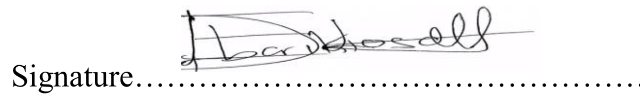

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CERTIFICATION

The undersigned certifies that he has read and herby recommends for acceptance by the University of Dodoma, a dissertation entitled **"*The Challenges of International Human Rights Organizations in Promoting and Protecting Human Rights: A Case Study of African Court on Human and People's Rights*,"** in partial fulfillment of the requirements for the degree of Master in International Relations of the University of Dodoma.

Dr. Leonce Mjwahuzi

Signature…………………………….. Date…………………………………

(SUPERVISOR)

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DEDICATION

I dedicate this work to my son Arvin David and my wife Onesta Kalinga. I also dedicate this work to parents, Mr. and Mrs. Elibariki Losaru and my brothers, Nixon Elibariki and Noel Elibariki, who have supported and encouraged me dearly all the way, tirelessly invested from the beginning of my academic career, and have always been there in making sure I reach my academic aspirations.

ABSTRACT

This study explored the challenges faced by the International Human Rights Organizations in promoting and protecting civil and political rights. African Court on Human and Peoples Rights was selected to inform the study. The study had four specific objectives these are; the first objective was to determine the funding and financial situation of the African Court; the second objective was to identify the accessibility and coverage of the Court; the third objective was to assess the state compliance and effectiveness of enforcement mechanism of the Court; and the fourth was to identify public awareness about the Court.

The study employed a case study design to collect data qualitatively from 37 purposively and random sampled respondents through interviews, and supplemented by documentary review. The data were analyzed qualitatively using Thematic and Content Analysis, Pattern Matching and Strong Explanation Building technique to develop themes and contents that were followed by descriptions and discussions.

The results indicated that the African Court faces several challenges in executing its mandate: the court has insufficient funds which cause difficulties in coordinating some activities. The findings of the study have also revealed that the court is not easily accessible by the public. The findings also revealed that the court lack of support from the partner states, particularly by failing to comply with the decisions of the court. The findings have further revealed that the court is lacking enforcement mechanism to monitor implementation its judgments, and the public is not aware of the existence of the court.

It is concluded in this study that the challenges facing the African court hinder the effectiveness of the court in executing its mandate of protecting and promoting human rights. The study, therefore, recommends the AU Member States are to address these challenges for the effectiveness of the court in promoting and protecting human rights.

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LIST OF ABBREVIATIONS

AfCHPR	African Court on Human and People's Rights
AHSG	African Heads of States and Governments
APF-NHRIs	Asia Pacific Forum of National Human Rights Institutions
AU	African Union
CSOs	Civil Society Organizations
EU	European Union
GIZ	Deustsche Gesellschaft fur Internationale Zusammenarbeit
HR-NGOs	Human Rights Non-Governmental Organizations
HRCs	Human Rights Commissions
ICCPR	International Covenant on Civil and Political Rights
IHROs	International Human Rights Organizations
NGOs	Non-Governmental Organizations
OAU	Organization of African Union
QDA	Qualitative Data Analysis
SSA	Sub-Saharan Africa
TA	Thematic Analysis
UN	United Nations
UN-OHCHR	United Nations Office of High Commissioner on Human Rights
US	United States

CHAPTER ONE

INTRODUCTION

1.1. Background of the Study

Defending human rights is taken to be a slippery and risky work for the defenders of the rights. Most often, the violations target the human rights defenders, the organizations or mechanisms through which they work (UN-OHCHR, 2018). In the UN-OHCHR continues arguing that some countries, the human rights defenders, organizations and the mechanism through which they work have been well protected. Human rights organizations and defenders tend to be at bigger risk depending on the nature or type of the rights they protect. For instance, women, civil and political rights defenders sometimes confront risks by addressing issues that require particular attention (UN-OHCHR, 2018). Different human rights are violated depending on the circumstance and the environment at the time, but the most common violated rights are civil and political rights. According to the Amnesty International (2014), in their global investigation on violation of these rights in 160 countries, nearly three-quarters of governments, that is 119 out of 160, arbitrarily limited freedom of expression, and launch crackdowns on press freedom. Their findings further showed that newspapers were forcibly closed and journalists are threatened because of their fights against human rights violations. Further, more than a third of governments that, is 62 out of 160, locked up prisoners of conscience people who were simply exercising their rights and freedoms.

This problem is said to as well exist in third world countries, particularly in Africa. Hamilton (2009) provides that this proplem is most common in Sub Saharan Africa (SSA). Hamilton (2009) further argues that, across SSA, many groups are denied the opportunity of exercising these rights either because of their religion, ethnicity, gender or region. They habitually face neglect, violence, threats, and exploitation. However, violation of these rights tends to take different notions of why they are violated. Some argue that these rights are violated to allow economic growth and others argue to allow the government to fulfill its promise or to pursue the national interest(s). For instance, Howard-Hassmann (1983) argued that there is a debate in SSA about which human rights should be given top priority. Howard-Hassmann (1983) provide that some countries in Africa propose that economic rights must be

given priority over civil and political rights and if need be they should be suspended for the economic course to take place and usually economic rights are meant as the right to development in SSA. The Tanzania Civil and Political Rights Perceptions Index (2016), demonstrate how these rights are restricted to “allow” the government to deliver on its election promises. In this case, it is clear that civil and political rights can be suspended in favor of economic or development rights or to allow the government to achieve the national interests.

However, there are other causes which contribute to the violations. Pillay (2014) argues that violations can be instigated by failure to ensure the equitable rule of law, good governance, comprehensive social justice and development, local beliefs and superstitions and poor adherence to democratic values. However, this does not mean there are no violations in developed countries. According to the Human Rights Measurement Initiative (2014), sometimes, the violations of these rights often take place in secret and sometimes violators attempt to place the blame for their actions on victims who are termed to be threats to national security, criminals or radicals.

In Tanzania these rights are violated as well, and the violations are caused by different reasons. Some are as those explained by Rhoda Howard-Hassmann (1983) and Tanzania Civil and Political Rights Perceptions Index (2016) along with those pointed out by Pillay (2014). Amnesty International (2017), and the US Department of State, Bureau of Democracy, Human Rights, and Labor (2010) have demonstrated the extent to which these rights are violated in Tanzania. Amnesty International (2017) argue that violation of civil and political rights have been increasing significantly in Tanzania between 2017 and 2018, whereby for them there are some rights which are restricted by the authorities. For instance, freedom of expression and association, freedoms of press and assembly are the mostly restated rights. The US Department of State, Bureau of Democracy, Human Rights, and Labor (2010) have pointed out other rights which are violated, like trafficking in persons and child labor, societal violence against women and peoples with albinism, discrimination based on sexual orientation, child abuse including Female Genital Mutilation (FGM). Therefore, the blame for the violations of human rights is not only by the authorities even community members or civilians can violate each other’s rights.

Viewing this, it is often that violation of civil and political rights is indeed a global, regional and state problem, and promoting and protecting has become a challenging task. However, this does not mean that there are no domestic and international organizations or institutions that promote and protect human rights. Internationally, the sole organization dealing with promotion and protection of human rights is the United Nations (UN). However, the UN by itself cannot promote and protect human rights; therefore, the UN advocates for the establishment of other organizations assist it. These other organizations include the Intergovernmental Organizations (IGOs) such as Regional Organizations (EU, AU and the inter-American), and the Non-governmental Organizations (NGOs). For instance, many regional blocks or organizations (EU, AU, Inter-America) have developed human rights systems; within these systems, there are bodies that are assigned with the protection and promotion of human rights; for example, the European Union has its Human Rights Commission and Court, the same applies to the Inter-American and African Union. The commissions within these regional blocks are tasked with the objective to promote and protect the human rights. To make these commissions effectiveness, they are complemented with the Courts to avoid the questioning of the binding nature of the commissions decisions. This gives the commission, the adjudicative body in protecting the human rights. Needless to say, these organizations face a lot of challenges in promoting and protecting human rights. Research is, therefore, important to reveal these factors which limit the protection and promotion of human rights. It is this reason that the researcher was motivated to research on the challenges faced by these Human Rights Organizations in their quest of promoting and protecting human rights, but particularly in promotion and protection of civil and political rights.

1.1.1. Historical background of the African Court on Human and People's Rights

Many of the regional blocks in the world have developed a Human Rights system for them to administer and oversee the human rights conducts within their regions. Africa is amongst those regions which have established their own Human Rights system. The African Human rights System is based on the African Charter on Human and People's Rights which entered into force 21st October 1986. However, the

African human rights system is considered to be weak, disappointing and an embracement to the continent (Matua, 2000). After discovering the African human rights system was a disappointment and an embarrassment to the continent, the call for the meaningful human rights institutions gained a momentum in the mid to late 1990s whereby Academics and NGOs mounted pressure and lobbying for the establishment of the new meaningful human rights institutions. However, the call of the establishment of the court for the first time was in 1961 at the conference of African jurists in Lagos that year as a part of African convention for human rights. However, the idea was not popular at the time, seen as something new or alien to most of the African leaders (Cole, 2010). It was until two decades later the AHSG adopted the African Charter on Human Rights which did not establish the court but the Commission on Human and People's rights. However, the commission was regarded to be weak and ineffectual and therefore there was a call for the establishment of the court to correct the glaring failures of the African human rights system (Matua, 2000). On 30th Ordinary summit of the AHSG mandated the Secretary-General to establish a committee of experts to work together with the commission to determine the ways to enhance the efficiency of the commission by putting into consideration the establishment of the AFCHPR. In 1995 the draft document on the establishment of the court was produced, whereby in 1997 after a number of meeting the draft proposal was adopted by a conference of OAU ministers of justice and attorneys-general. The draft was finally adopted by the AHSG in Ouagadougou in 1998 and in January 2006 the judges of the court were elected.

The establishment of the court was largely inspired by the existence of human rights court in Europe and America (Matua, 2000), whereby for the European and the America human rights system they had an impression that human rights court is an essential component for protection of human rights (ibid). But for Matua (2000) for the court to succeed the court has to avoid the pitfalls that have trapped the African Commission. However, Cole (2010) argues that the journey of the establishment of the court was long and a difficult one. In 1998 after the Assembly of Heads of States and Government adopted a draft protocol of the establishment of the court, it took another six years for the required number of states to ratify the protocol. Where it occurred in December 2003 together with the ratification of the union of Comoros which allowed the protocol to enter into force in January 2004. Something to note is

that the court is not the supplement of the African Commission on Human and People's Rights but it is a complement, that is, the commission had a promotional and protection mandate on human rights, but to give the commission more power on the protective mandate the court was established, therefore the court is rather a sibling to the commission than a supplement.

1.2. Statement of the Problem

Human rights organizations often face tremendous challenges in addressing and defending the human rights. These challenges can either emanate internally or externally; i.e. form the growing numbers of government crackdowns, to pressures exerted by private corporations, and even basic difficulties with fundraising (Raman, 2016). The UN-OHCHR (2018) informs that the human rights organizations have been facing the challenges of addressing, protecting and preventing the human rights violation, these organizations as well become victims of the violations. For instance, the Human Rights Frontline Defenders (2017) have reported that more than 312 defenders in 27 countries were killed in 2017, which is about 67%. UN-OHCHR (2018), further, reports that there are governments which tend to use their legislation against these organizations, they as well face all sort of violence and false allegations. However, such cases tend to happen to HR-NGOs with no diplomatic immunity and domestic HROs, whereby they are subjected to domestic laws and authority.

Despite challenges facing the IHROs being interesting topic to investigate most of studies (Désiré, 2010; Mutua, 2000; and Udombana, 2002; Howard-Hassmann, 1983; and Cole, 2010) and reports (Amnesty International, 2017/2018; Human Rights Watch, 2018; and the UN-OHCHR, 2018) have been focused more on the violations of human rights in general. Furthermore, very few studies have touched on the challenges facing IHROS in promoting human rights, thus causing paucity of information that suffices to explain the challenges facing particular organisations. This poses the puzzle and situates a research problem which many researchers and scholars have ignored. This study, therefore, bridges this gap by focusing on the challenges facing IHROs in protecting and promoting HR.

1.3. Objectives of the Study

The researcher was guided by the following objectives.

1.3.1. General Objective

The general objective of this study was to explore the challenges of international human right organizations in promoting and protecting human rights.

1.3.2. Specific Objectives

i. To determine the funding and financial situation of the Court
ii. To identify accessibility and coverage of the Court
iii. To identify states compliance and the enforcement mechanisms of the Court
iv. To determine the public awareness about the African Court.

1.4.Research Questions

i. How is the funding and financial situation of the AfCHPR?
ii. How accessible is the Court and how far does it cover?
iii. To what extent do the states comply with the recommendations of the Court?
iv. Does the Court have any enforcement mechanism?
v. How far does the public know or aware of the existence of the Court?

1.5.Significance of the Study

The study provides awareness to the nation on the vital role played by the IHROs in the promotion and protection of civil and Political Rights. The study has significant information that may contribute to changing the way to promote human rights by empowering the HROs. The study informs the policymakers to design policies which can promote Human rights and empower the bodies designed to oversee the Human Rights. The study informs researchers on the aspects of human rights in the community for them to know where to research and assist the government and the HRCs to promote their rights.

CHAPTER TWO

LITERATURE REVIEW

2.0. Introduction.

This chapter is about the literature consulted in the course of conducting this study examines the definitions and conceptualization of terms and describes the literature regarding the challenges of International Human Rights Organizations in promoting civil and political rights. The literature review section is divided into theoretical and empirical literature. In theoretical literature, the related theories to the topic are used. But under the empirical literature review will take into account other literature related to the study. But also the chapter demonstrates the research gap and the conceptual framework.

2.1. Conceptualization of Key Terms

This section presents the conceptualization of the key terms used in this study. The key terms used in this study include Human Rights and International Human Rights Organizations.

2.1.1. Human Rights

There is no universally accepted definition of the concept of the human rights. The UN Office of the High Commissioner, Handbook for Parliamentarians (2016) defines Human rights as the rights which are essential to all human beings. They define interactions between individuals and power structures, particularly the State. Human rights demarcate State power and, at the same time, necessitate States to take positive measures by guaranteeing an environment that enables all people to enjoy their rights. For Piechowiak (1996) in the utmost general sense, human rights are rights which belong to any individual as a result of being human, independently of acts of law. However, defining human rights is wide open for debate and this debate is between the universalism of human rights and cultural relativism (Stango, 2014).

2.1.2. International Human Rights Organizations

International Human Rights Organization sometimes known as the Human Rights groups or Institutions are both intergovernmental and non-governmental organizations which support human rights through identification of their defilement, collecting incident data, its analysis, and publication, promotion of public awareness while conducting institutional advocacy, and lobbying to halt these violations (Lindblom, 2005). The international human rights organization are sometimes known as the human rights defenders as they defend the human rights globally in every country, however, for Lina Marcinkutė (2011) these organization can be human rights defenders and at the same time the state sovereignty destroyers. Therefore, an international human rights organization in a general view are groups of individuals or institutions that deal with the promotion and protection of human rights.

2.2.Theoretical Literature Review

Under this subsection the researcher review the theories related to the topic under investigation. The researcher used the Natural Rights theory and Legal Right theory to explain as to how the IHROs describe Human rights by taking into account the angle of these two theories.

2.2.1. Natural Rights Theory

Denotatively when something is said to be natural it means that is beyond the human making, thus for this theory human rights are not man-made. Therefore, the natural rights theory it is a theory that takes human rights to be the rights that are not man-made are rights which are natural, whereby on the grounds of theology or religion are the rights that are granted by God. Myers (2017) he tries to distinguish between natural rights and the rights which are government made, for him, he argues that a natural right exists in a manner which is beyond human art or convention. For this theory takes an individual to have entered to the society with certain basic rights and no other individual or government can deny them. To support his claim is by looking at the writing of the pioneer of this theory John Locke, for him he argues that all individuals were gifted by nature with the inherent rights to life, liberty, and property and could not be waved or removed by the state. However, looking at the other

political or philosophical writings of John Locke in describing the state of nature to be harsh, brutal, solitary and nasty, therefore man needed the government to protect him. Therefore despite these rights are not made by the government but they require the government to protect these rights (Myers 2017). However, the government can as well violate these rights, whereby this is supported by Thomas Jefferson the third US president were he claims that governments exist in order to secure these rights, although they might fail to do so. Therefore this is where the other actors come in (IHROs or HR-NGOs) to ensure that governments protect the rights of their people which are naturally granted to them.

2.2.2. Legal Rights Theory

For this theory view things different from the natural rights theory. Since natural rights theory claim that human rights are the rights that are granted natural or by God and not the government, this theory sees things from a different perspective. For the legal rights theory, human rights are not natural but they are the state's creation, despite being created by the state are also be maintained by it. Therefore, Legal rights theory takes human rights are those rights which are established and enforced by the state, and any desecration of any right is punished by law, and these rights are enforced by the state through its courts of law (Sadish, 2014). In this case, the theory takes human rights to be created by the state but the state has the obligation to protect these rights. For Dunne and Wheeler (1999), in explaining the Legal rights theory they focused on four aspects, they focused on what Human Rights are (what are they), towho do they apply, where do they derive their authority and what is their purpose. Therefore for Dunne and Wheeler (1999) legal right theory takes human rights as legal commands and protections for individuals, they apply to all people who are subjects of the law, they derive their authority from positive law (i.e. acts, conventions etc.) and their purpose is to protect citizens from injustice and uphold the authority of the law. Therefore, looking at these theories they differ in some aspects, but despite these differences, they concur in one thing and that is in human rights.

Thus, according to these theories it is seen that Human rights are rights entitled to every individual no matter the race, sex, political affiliation or physical condition and

everybody has the right to enjoy them. Since these rights, according to these theories are either natural from nature or God or are made by the states to protect its citizens. However, the duty to protect these rights is not only left to the state alone, since in the international system exist other actors apart from the state, but these are also non-state actors. These include the NGOs, intergovernmental organizations, influential individuals, Multinational corporations and so forth. Therefore, these also have a duty to protect human rights.

2.3.Empirical Literature Review

This section presents the empirical literature review of the study. The study reviewed the documents from different authors and previous conducted studies pertaining to the challenges faced by the IHRO in promoting and protecting human rights. The review focused on the effectiveness of IHROs, funding of the IHROs, enforcement mechanism of the IHROs and public awareness, coverage and accessibility of the IHROs.

2.3.1. The Effectiveness of the International Human Rights Organizations

For most international institutions effectiveness has always been a challenge, despite of the efforts they make to attain their objectives or execution of their mandate. Edwards (2010) in his journal article of assessing the success of the human rights NGOs, came up with different ways of assessing effectiveness of human rights NGOs. One of the way is by looking at the efforts done by these organizations and how close are affiliated with the United Nations in the aspect of promoting and protecting the Human Rights. For Edwards (2010) assessing the efforts is by taking into account the activities done by the Human Rights NGOs, these activities include: the participation of these organization in the UN conferences, the shadow reports about the conducts of the states, participating in international complaints mechanism, taking part in UN agencies or bodies and taking part in academic activities to promote Human Rights. However, for Edwards these organizations might have the efforts of performing such activities but they can be meaningless if they do not possess certain characteristics of being the Human Rights NGOs. For him for any HR-NGO to be effective and to achieve its objectives it needs to possess certain characteristics and these includes; HR-NGO must have a clear mission, adherence to

Human Rights principles, must be independent and non-partisan, transparent and accountable, service for others and non-profit, must have adequate and appropriate funds, it must adopt and respond to changes and it must be cooperative and collaborative. In this case according to Edwards the HR-NGO will be effective and able to accomplish or achieve its objectives and its efforts won't end up in vein.

However, according to the study conducted by Désiré (2010) on assessing the challenges faced by African HR system, has provided with other reasons which can make an organization to be considered effective, for him the effectiveness of any human rights organization or body can be determined by several aspects, this includes: level of independence and impartiality, level of professionalism, the resources it commands, its accessibility and coverage, states compliance with the recommendation and the availability of the enforcement mechanisms. Therefore, combining these criteria proposed by Edwards (2010) and Désiré (2010) an HR organization is considered to be effective. However, most of the IHROs and particularly those operating in Africa they tend to face this challenge of effectiveness and mostly because most of them lack the criteria proposed by Désiré (2010) efforts and characteristics proposed by Edwards (2010). According to Cole (2010) for a human rights organization to be meaningful must be effective/deterrent and if it's not effective even the decisions or its mandate becomes meaningless. Cole (2010) proposed that these organizations to be effective must have effective enforcement mechanism of its own and must be independent. Therefore, if an organization is not effective enough, then not being able to promote and protect human rights.

2.3.2. Funding of IHROs

Funding is the most essential part of any organization for it to have the ability to run its activities. However, most of the international organizations face the challenge of funding in which due to the lack of adequate funds they fail to carry out and coordinate different activities. According to the study conducted by Jean Désiré (2010) he argues that most of the international human rights organizations face the challenge of funding especially those operating in Africa. Most of the organizations operating in Africa they depend on the contribution of states and donors for funds in which due to the weak economies of the states they fail to support these

organizations financially and the funds from the donors are unpredictable and are for only specific programs. Whereby according to a study conducted by Udombana (2002) demonstrates the implication of inadequacy of funds. He argues that the financial constrains have forced these organization to abandon their mandate of promoting and protecting human rights and striving to find for funds so as they can survive. Whereby these organization fail to carry out their promotional activities such as seminars, sensitization missions and visits due to inadequate funds. Another implication is that these organizations can transform into Trojan horses whereby according to Goran Hyden instead of NGO to carry out their original functions they will be advocating the donor's interests. In other words these organizations they can lack independence in carry out their activities if they depend much on states or donors for funding. Therefore, the level of economic development can determine the funding of these organizations. For instance the organizations operating in Europe and America tend to face this challenge but not as severe as those in Africa, because the level of economic development in Europe and Africa are not the same and even those in Europe tend to support those in Africa.

2.3.3. State Compliance with the IHROs Recommendations

It is being argued that to a greater extent the states tend not to comply with the recommendations of the international organizations and this is this is due to several reasons put forward by different scholars. It is argued that maybe it's because of the nature of the international system (Olukayode, 2015) or because the organizations do not have enforcement mechanism of their own they depend on the states to enforce their decisions (Désiré, 2010) or simply the states fear to lose their sovereignty to these entities (Cole, 2010) or these decisions are not legally binding (Viljoen and Louw, 2007).

According to Viljoen and Louw (2007) the states tend to adopt treaties concerning the promotion and protection of human rights, in which they give the states obligations under the international law to take into account the Human rights and to comply with the treaties of human rights. However, for Viljoen and Louw (2007) they pose a general question, if at all these treaties entered by the states make any difference for the states to comply with observing, promoting and protecting the

human rights. Whereby this becomes the subject of discussion, if at all the recommendations provided by the international human rights organizations are taken into account. Where it turn out in most of the states, the Human Rights Organizations are not feared even if are powered by the international community, Human Rights are still violated.

According to Olukayode (2015) he demonstrates how the international human rights law is not enforced, despite the existence of supranational organizations which ensure this law is not violated. He argues that the international human rights law is a law that is never enforced; this is because many states violate that law and are never held accountable, especially strong states. He further argues that the international human rights law is not enforced because its enforcement methods and mechanisms of are weak and ineffective. Therefore, since these enforcement mechanisms are toothless the states will not comply with the decisions or recommendations of these organizations of not violating the international human rights law.

The other reason for non-compliance is that the member states lack the political will of accepting the competence of these organizations, the recommendations or decisions they provide to the states (Cole, 2010). Also states tend to live in fear of losing their sovereignty to these organizations by assuming that when they let these organizations to tell them what to do they will not be sovereign whereby for Lina Marcinkutė (2011) in her article about the Roles of Human Rights NGOs where there is questioning of the roles of HR-NGOs either if they are Human Rights Defenders or State sovereignty Destroyers, explains the fear of the states towards the HR organizations. For her the human rights organization play a vital role by forcing the state to treat its citizens in a right way by protecting their rights, whereby the states fear that these organizations are eroding their sovereignty by telling them how to treat their citizens. Therefore, for Lina Marcinkutė (2011) this leads to the tentative conclusion that human rights NGOs are taken to be both human rights defenders and at the same time state sovereignty destroyers. Therefore, in this case the state compliance to the decisions or recommendations of these organizations becomes a difficult since are in fear of losing their sovereignty to the human rights organizations, whereby simply the human rights organization are just defenders of the human rights. In this case the states tend to have the fear of the unknown.

However, for Marcinkutė (2011) state compliance can happen but depends on many factors, such as the country's level of development, political regime, and the capacity of human rights organization.

2.3.4. Enforcement Mechanism and Implementation of the IHROs Recommendations or Decisions

Not all IHROs have the non-binding decisions or recommendations, some such as judiciary or legal organizations like the African Court on Human and People's Rights are having legally binding decisions or recommendations. But despite of these organizations having legally binding decisions, these decisions tend to be ignored by states due to the reason that these organizations have no enforcement mechanisms that will coerce the states to comply with the recommendations or the decisions of these organizations. According to Viljoen and Louw (2007) they argue that the non-compliances of the states is largely due to the reason that these organizations have no enforcement mechanisms. According to Cole (2010), if there are no enforcement mechanisms, then the decisions of these organizations are useless. For Cole provides that any organization dealing with the human rights to be effective it must have its own enforcement mechanisms. But according to Jean Désiré (2010) since these organizations do much depend on the states or political organs to enforce their decisions or recommendations in most of the time states never enforce them if they lack a political will to do so.

Therefore, Matua (2000) argues that these organizations will simply be administrative organs since they do not have their own enforcement mechanisms since they will be reporting to the states to enforce their decisions. For instance, in the AfCHPR when it gives out a judgment and the state fails to comply implementing that judgment, normally it draft a report listing the non-complying states and present the report to the Council of Ministers at the AU whereby the Council will present the report to the Assembly of Heads of States of AU. This is called a "naming and shaming" tactic and the chairman of the AU might write down the non-complying state to respect the judgment of the court. Therefore, looking at all these procedures the Court it becomes more of an administrative organ that a Judicial organ, but if it had its own enforcement mechanism of not depending on the

states to implement their judgment it would have been effective, ensuring compliance by the states. Therefore, it is needless to say that most of the IHROs face this challenge of not having enforcement mechanism. However, it is argued that sometimes there are mechanisms in place but they are dormant, for instance in the constitutive act of the AU article 23(2) it provide that if a state does not comply with the decisions of the AU or any of its organ must be denied communications with other states and economic relations, in other words it should be sanctioned. But this has never be applied, the AU has never taken action on its Member States according to the article. But since it doesn't do so some say the article should be removed because it's useless.

2.3.5. Public Awareness, Accessibility and Coverage

Edwards (2010) argued that for any successful and vibrant HR-NGO must be inclusive, cooperative and must be for the benefit of the public. However, without the awareness of the public the HR-NGO might not get the support from the people and can never be vibrant or effective, thus the HR-NGO must at first make the public aware of their basic human rights so as in return it gets support from them and to easily defend their rights. According to the Research and Innovation Grants Working Papers Series of University of Minnesota (2017) on Making Human Rights Campaigns Effective While Limiting Unintended Consequences, it has stipulated on how the public can be made aware of the Human Rights whereby through this the human rights campaign can be effective. According to this research paper it has portrayed several ways of which the public can be made aware of the Human rights in which for them they have termed this as Campaign Channel and Media. Therefore, through different means of communication people can be made aware of their fundamental Human Rights.

These campaign channels include the Mass/Traditional Media, Internet, Social Media, Laws Inform Media Frames, Multi-Faceted Media Approach, Entertainment and Media Partnerships. For them through this awareness can be planted to the people, but not only that but also make the campaigns on Human Rights to be effective. Therefore, looking at this it seems to be true that if the public is aware of their fundamental Human Rights they will support these Organizations in the process

of ensuring that they are granted their Rights. However, the question remains if these organization reach every place and to every person in the process of impacting awareness to the public.

Jean Désiré (2010) answers describing the accessibility and coverage of the African commission on human and people's rights. He argues that most of these organizations are not easy to access and their coverage is limited and most depressing of all is ordinary citizens are not aware of existence of these organizations, even their locations. Cole (2010) argues that even the mechanisms which could have been used like the NGOs tend to be excluded sometimes. In this case the public remain uninformed, they will not know how to access these organizations, the remedies available to them using these organization. Therefore, this can emanate the challenge to the organization, by not being able to protect and promote human rights. Not only this, the public will not be aware of the organizations because of the absence of political will of their governments to accept the competence of these organizations in promoting and protecting human rights.

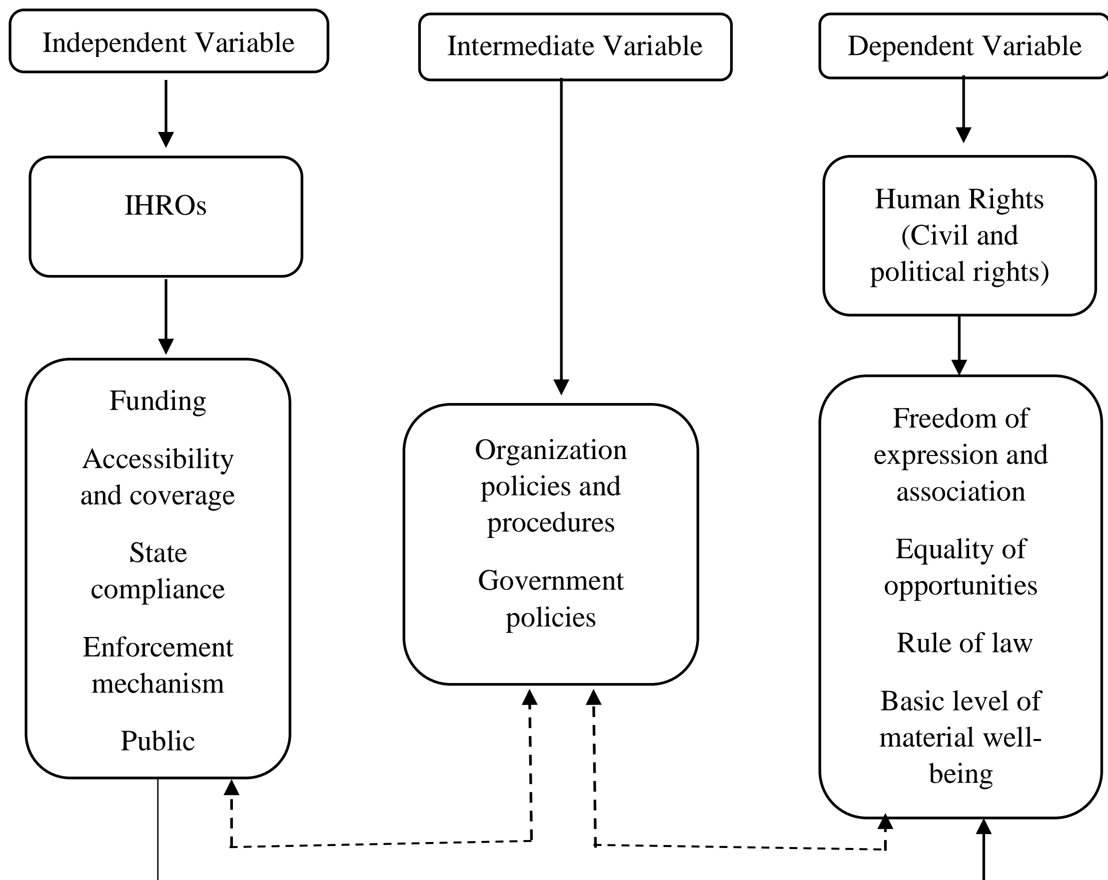
2.4. Research Gap

Basing on the literature review above indicate that several studies conducted placed their focus on the creation of Human Rights organizations and their impact on the state, for instance the study conducted by the Asia Pacific Forum of National Human Rights Institutions (APF-NHRIs), which has focused on the creation of the national human rights organizations and how they impact the state to comply with their recommendations. However, others like Désiré (2010), Matua (2000) and Udombana (2002) have focused on the challenges facing regional human rights system which is comprised of several organizations. Therefore, looking at these reports and studies none has based specifically on the challenges facing a specific International Human Rights Organization in promoting and protecting human rights. In this case, the researcher has deemed necessary to fill this gap by focusing on the challenges that face the human rights organization in promoting and protecting human rights.

2.5.Conceptual Framework

The independent variable of this study is challenges of international human rights organizations, whose indicators are; funding, accessibility and coverage, state compliance, enforcement mechanisms and public awareness. The aforesaid indicators for the independent variable are said to affect the indicators of the dependent variable. As per this study, the dependent variable is civil and political rights, as is assumed to have indicators such as; Freedom of expression and association, Equality of opportunity, Rule of law, and Basic level of material well-being. On the other hand, both the independent and dependent variables are assumed to be intervened by the intervening variable with a number of indicators, this includes organization policies and procedures and government policies. The relationship between dependent and intervening and independent variable is indirect, whereas the relationship between independent and dependent variable is assumed to be direct.

Figure 2.1: Conceptual Framework.



Source: Researcher's Construct, 2019.

Key:
Straight un-dotted line (below) indicate a direct relationship between independent and dependent variable.

Straight dotted lines (below) indicate indirect relationship between independent and intervening and between intervening and dependent variables.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1. Introduction

This chapter presents the methods of data collection and analysis. Methodology is the strategy or plan of action for responding to research problem which lies behind the choice and use of particular research design, methods, tools, and procedures for collecting and analyzing data or information. It is concerned with what/which, why and how data are collected and analyzed. Among other things, the chapter begins by presenting the study area, followed by research design, sampling design, methods and tools of data collection, data analysis plan, data presentation, reliability and validity of the study as well as ethical considerations.

3.2. Area of the Study

This study was conducted in Arusha Region of Tanzania. Arusha is located Northern Tanzania with a Grid reference of -3°22' South, 36°40' East, with a population of 1.694 million. The City was selected based on the fact that it hosts the African Court on Human and Peoples Rights and other regional and International Organizations. The court was selected since it is the only International Organization dealing with human rights that is located in Tanzania. In addition, the court was selected due to the reason that other international organization dealing with human rights such as Amnesty International, Human Rights Watch, and UN agencies dealing with human rights such as UN-OHCHR have no offices in Tanzania. Therefore, due to the fore mentioned reasons motivated the researcher to select the African Court to discuss with the key informants on the challenges that they face in promoting and protecting human rights.

3.3. Research Design

Leedy (1997) defines research design as a plan or strategy for a study which provides the overall framework for collecting data. MacMillan and Schumacher (2001) define it as a strategy for choosing subjects, research sites, and data collection procedures in order to answer the research question(s). This study used a case study research design. Yin (1983), provides that case study research design can be either embedded or holistic. Embedded is when a case has multiple units of analysis while holistic is when the case has a single unit of analysis. According to Cole (2018), a research can

contain multiple units of analysis in which the units of analysis are the objects of study within a research project which include organizations and institutions, groups, individuals, social interactions, and social and cultural artifacts. This study employed a single case (embedded) research design which was sought important to enable the researcher to focus on a single case but with multiple units of analysis, whereby the researcher focused on AfCHPR as a single case with several units to analyze.

3.4. Research Approach

Hancock and Algozzine (2006) argue that the selection or assortment of the approach to use in a research effort depends largely on the goals, objectives and preferences of the researcher. In this case, selecting of the approach largely depends on the nature of the research, research question as well as predisposition of the researcher. Since this study is a case study, the researcher opted for the qualitative research approach. The approach enabled the researcher to gather more information for intensive analysis and descriptions about the challenges faced by AfCHPR, though interviews and discussion with the officials of the AfCHPR. This also helped the researcher to gain a detailed understanding of situations, meaning and experiences of the respondents pertaining to the matter under investigation.

3.5. Sampling Procedures and Sample Size

3.5.1. Sampling Procedures

The study employed purposive sampling procedure. The purposive sampling was used to select the key informants for interviews and discussion from the African Court on Human and People's Rights. The key informants included the Registrar of the court and Court Heads of Departments. The researcher decided to use purposive sampling due to the nature of the study and the issue under investigation, whereby it required the officials of the AfCHPR to provide detailed information about the challenges they face since not all individuals in the study area were informed or detailed about the issues and challenges of AfCHPR. However, in some instances the researcher used random or non-probability sampling of which the researcher carried out interviews by other courts officials and some civilians especially in in determining the public awareness of the AfCHPR.

3.5.2. Sample Size

Lavrakas (2008) defines sample size as the number of units that are to be chosen from which data is gathered or collected. The study comprised a sample size of 37 respondents, whereby 27 respondents were from the African Court on Human and People's Rights and 10 were civilians whereby the researcher wanted to determine their awareness about the AfCHPR and other issues pertaining to the AfCHPR within their knowledge. The sample distribution is further depicted in table 3.1 below.

Table 3.1: Distribution of Sample Size.

Category of Respondents	Sample Size	Sampling Technique
Key Informants		Purposive Sampling
AfCHPR Registrar	1	
AfCHPR HODs	10	
Other Respondents		Random Sampling
AfCHPR other officials	16	
Civilians	10	
Total	37	

Source: Field Data, 2019.

The rationale behind using this sample size (37) was due to the fact that majority of the people especially the civilians were not informed about the African Court therefore they had no idea of the challenges facing the court. In addition to this the researcher used this sample size by using many court official since most of the aspects required court officials response as they hold much information of the court compared to the individuals outside the court.

3.6. Data Collection Methods and Tools

This study is based on both primary and secondary data. The secondary data in this study were gathered from relevant authorities and different kinds of literature. Also, the researcher used the annual reports provided by the African Court on Human and Peoples Rights but, to complement the reports of the African Court, the researcher as well used the works and reports of scholars and other international human rights organizations. The researcher collected primary data directly from the study area, so as to determine the challenges the selected international human rights organization is facing in promoting civil and political rights. Data collection can be carried out using

a variety of data collection methods and tools. However, since this study is qualitative the researcher used qualitative methods of research data collection which involves method which are interviews and review of documents.

3.6.1.1. Interviews

Burns (1997) defines interview as a verbal interchange, often taking place face to face or though telephone, in which an interviewer tries to extract or elicit the information, belief or opinion from the interviewee. This method was used in order to determine respondents' beliefs, values, understanding, emotional state, experience, and perspective of a matter under investigation. It also allowed the researcher to engage into a multifaceted issues and enabled the researcher to learn more about the back ground factors that govern the experience. Thus, the researcher made contact with the key informants chosen from the African Court on Human and Peoples Rights and few civilians in order to capture their views, experiences and perspectives on the challenges facing AfCHPR. The key informants included the Registrar of the court and the courts Heads of Departments. Nevertheless, the researcher was guided by interview guide in conduct the interviews with the key informants and other respondents including the civilians and other court officials. Therefore, the interview guide contained both structured and semi-structured questions.

3.6.1.2. Documentary Review

It is argued that, in a case study, a researcher can collect data from interviews and observation as well as through by reviewing current documents which are available or by creating and administering new documents from which information related to the research or research questions can be gathered (Hancock and Algozzine, 2006). Documents to be reviewed by a researcher who conducts a case study research include material extracted from the private and public records, internet, physical evidence, and instruments created by the researcher. However, these documents are not mutually exclusive. In this study however, the researcher reviewed documents from different reports published by the African Court on Human and People's Rights, reports from other human rights organizations and works of different scholars concerning the research topic. Furthermore, these documents were gathered from the internet, and physical court records, reports and journals.

3.7. Data Analysis Procedures

Dawson (2002) defines data analysis as the process or method of bringing structure, order, and meaning to the mass of the collected data. Data analysis is influenced by a researcher depending on the type of research he/she has chosen to do, either qualitative or quantitative research. The researcher conducted qualitative research the data was analyzed qualitatively through Theme and Content Analysis, pattern matching and strong explanation building. In Theme and Content Analysis the six phases, as proposed by Braun and Clarke (2006) were followed. These phases include: familiarization with the data, categorizing and coding as the way for establishing themes, defining and naming themes and producing report. Therefore, the study considered all the TCA phases by familiarizing with the data, formulating the themes by coding and categorizing the data, naming themes and produced the report.

3.7.1. Data Presentation

Data presentation involves the ways through which the collected data or information will be presented for interpretation. Data can be presented depending on the type of research being conducted (Chenail, 1995). In this study the data collected were presented qualitatively of which the researcher quoted what was said by the respondents during the one to one interview. But the data was presented in terms of themes after a thorough examination of the data from the interviews the researcher developed themes out of each objective of study.

3.8. Validity

Golafshani (2003) argues that validity is to determine or find out whether the research has truly measured what was intended to be measured or truthfulness of the research results. Validity applies to both qualitative and quantitative research, despite other scholars arguing that validity is compatible with only quantitative research and incompatible with qualitative. However, others argue that it is as well important in qualitative studies. Since the researcher conducted qualitative research, the researcher ensured validity of the study and by ensuring there is a degree of correspondence between the explanations of the phenomena and the realities of the world. Creswell (2003) argues that, to ensure validity in qualitative research, there must be different sources data or information through examining evidence from the

sources and using the evidence to construct a coherent justification for themes. Also, different methods can be applied to ensure validity such as interviews, recordings, documentary review and observation this will lead to more validity. Therefore, since this study is qualitative, the researcher used various data sources such as AfCHPR documents, journals and reports but also the researcher used multiple data collection methods such as interviews and documentary review.

3.9. Reliability

Reliability refers to the ability to which the tools of assessment used in a research are able to provide results which are consistent and stable or is the ability of research instruments to yield same results even when used repeatedly under same conditions (Kumar, 2011). Since this study is qualitative, reliability is analyzed in qualitative perspective. In a qualitative perspective, according to Lincoln and Guba (1985), reliability or dependability of qualitative research depends on the validity of the study. In a qualitative study, reliability and validity depend on each other, where by a demonstration of the validity is enough to establish the reliability. Therefore, the reliability of this study depends on its validity.

3.10. Research Ethical Consideration

Ethics in research is whereby the researchers are supposed to adhere to a number of research ethical principles (Walliman, 2011). In this study, the researcher took into account all ethical principles in conducting research. First and foremost the researcher got the clearance from respective authority of the University (UDOM). Also, the researcher respected the law (domestic and international) and the authorities but also the researcher respected the principles of the selected human rights organization. Also, the researcher informed the respondents in the selected human rights organization that research is for academic purpose and it is not politically, religious, or ethnically associated. In line of maintain the research ethics the researcher informed the respondent that anonymity and confidentiality will be observed that their identity and information they provided was treated confidential. Moreover, no respondent was forced to participate in the study free consent was observed.

CHAPTER FOUR

FINDINGS AND DISCUSSION

4.0. Introduction

This chapter presents the Findings and Discussion of the Study. The findings of the study are presented and discussed basing on the objectives and methodologies used in the study to collect data, whereby the results of the study are presented qualitatively.

4.1. Funding and Financial Situation of the AfCHPR.

The first objective of the study was to examine the funding and financial situation of the court. In determining this the researcher conducted interviews with the key informants and reviewed document related to the topic under investigation. The findings of the study have revealed that the court faces the challenge of finance and funding. In other words the funding and financial situation of the AfCHPR is not good. The findings of the study revealed that the AfCHPR do not have sufficient funds to facilitate some of the activities. The findings further revealed that funding is not enough since the court depends on the AU Member States for contributions and most of the AU Member States are reluctant to contribute. Désiré (2010) argues that it is however not the fault of AU failing to finance its organs but of the AU Member States since the AU depends on States to finance it so as it finance its other organs.

The researcher interviewed some of the respondents from different departments of the Court to provide with their views about financial situation of the Court. One of the respondent implied that all the three continental human rights bodies (The Court, Commission and Committee) have a serious constrains on resources, the finance provided is very limited. To quote the respondent:-

> All the three bodies the Court, the Commission and Committee they have serious resource constrains, the amount of money given to them to do their work is very limited, the staff that we have here is very limited, if you just go around at the offices you see how cramp the offices are… because the resources are not there to get sufficient offices. Therefore, because of lack of resources we cannot employ a number of staff that we need current here at the court we have a structure of 90 which was adopted in 2012, but we have recruited so

> far only about 60 something. This is because the AU does not have enough money to give us to recruit all the staff members at once. We agreed in 2012 to spread staff over a period of five years but until now we have not recruited because the AU says they don't have any money for the court to recruit every year (interview held with the AfCHPR Registrar on 11th April 2019).

Also the researcher interviewed another respondent from one of the Court's department to describe the financial situation of the court, the respondent commented that this is a problem and is a big problem. To quote the respondent:

> Finance is one of the big challenges, we never have enough money, I can give you an example in my department the budget has been reduced significantly, the budget is never consistent and this applies to other departments. What is consistent is the salary because the Court cannot afford to lose personnel, what the court does if there is shortage of finance they cut of the program or activity budget so that they can be able to pay salaries. So finance is a challenge it is never enough (Interview held on 10th April 2019).

And another respondent commented that:

> Normally, we have a lot of challenge when to comes to finance in court you know the court is being financed by the Member States are the stake holders at the sometimes are the one who we are accusing them of doing injustice to the people, you cannot fund something which will affect yourself. Take an example of Tanzania, for this court Tanzania is one of the country with the highest number of cases its more than 75% so if you ask Tanzania to finance the court and they know they are going to pay for it they won't fund…take another example of Rwanda it also has many cases here so they cannot finance the court that why the finance is not adequate because they have to put a meager amount so that you cannot run is like they want to cripple the court. So if they can't fund the court fully because they know is going to be on them. So in order for them to avoid that is not to finance it to the fullest (Interview held on 15th April 2019).

For another respondent commented that, funding is not enough because funding and staffing go hand to hand, if the funding where enough then the staffing could as well increased and some units could have been funded well in order to carry out different activities properly.

> …I don't know the funding which the court started with but I can imagine the staffing because funding and staffing are two aspects which are interconnected so I don't know the funding at the initial stage has increased at the tune of increase of staffing. If yes that will be ideal…but also if the funds where enough different activities could

> have been mitigated easily…if funds where enough for me some units could have been funded to ensure that some activities are properly handled (Interview held on 12th April 2019).

Another court official commented that the funding provided by the member states to the court is not sufficient because there are activities such as career development and training are stagnant because they have not been done for a long time. To quote the official:-

> …as the court basing on the member states funds are not enough. The amount provided by the member states is for specific training for the employees, particularly in languages but on the career development and training of the staffs to improve on the performance funds are not enough (Interview held on 12th April 2019).

Therefore, following these findings they reveal that the court faces this challenges of finance and funding that the courts does not have enough funds and poor financial support from the AU member states. In concurrence to the field findings a study conducted by Désiré (2010) poses that the basic and recurrent problem facing many international institutions in Africa is finance. Ankumah, (1996) argued that AU for instance faces this problem of finance to the extent that it sometimes fails to support financially its other organs.

4.1.1. Reasons for Insufficient Funds

The study prompted investigate why the funds are not sufficient to facilitate the actions and processes to fight against the violation of the human rights. The findings of the study revealed that one of the major reason is the over dependence of the court on member states for funds and there is a tendency of some states to never or are reluctant to pay their fees to fund the processes and actions of the court to fight against the violation of the human rights. According to the African Court's Journal (2019) of ensuring protection of people and human rights in Africa, it states that the bulk of the courts funding is from the AU and this presents a sustainable challenge as the internal policy and operational standards have often limited the courts budgetary limitations. During the interviews one of the respondent implied that some states never pay and they have a tendency of not giving the issues of AU a priority and on top of that many member states they lack of political will to support the court. To quote the respondent:

> I can tell you why is never enough some countries never pay, remember our budget come from the contributions of AU Member States, but there are some countries which have not paid in many years. If the countries they pay there is good money to go around if they don't it's a problem, you find a country paying one year the following year they don't. So finance is a challenge. (Interview held on 10th April 2019).

Another respondent added:

> We rely on the African countries and the AU as a whole for funding, but some countries do not pay, for me I agree with you that because of the weak economies but one of the issue is they do not want to ratify the protocol of the court how will they fund something they have not ratified. Despite of their weak economies but countries normally meet at the AU to discuss and these are the forums which they should discuss about funding of the court. Therefore, we are operating under limited funds but we are able to operate. (Interview held on 5th April 2019).

In the light of these findings they reveal that the over dependence of the court to the AU member states has been the main reason for the court not to have sufficient fuds to facilitate its operations and programs.

4.1.2. Reasons for AU Member States Low Contributions to the AfCHPR

The study was further prompted to investigate why Member States never pay to finance the Court. Désiré (2010) argue that most of the African states fail to support the AU financially it is because of the Weak economies many of the African states have. In an interview conducted majority of the respondents provided that it's true some countries never pay or don't want to pay because of the weak economies they have. For other respondents implied that some states are scared of paying to fund an organ that will hold them accountable. While for other respondents implied that some states face internal crisis like conflicts that's why they never pay and others responded that some states don't contribute simply because they have not ratified the protocol of establishment of the court. Other respondents had a view that it is just a matter of lack of political will and not prioritizing the AU matters and not because of weak economies of States. One of the informants commented that:-

> I don't know if we can say is because of the weak economies… because the member states contribution to the AU it is assed based on the GDP, so the stronger your economy, the higher your GDP the more you pay. So I don't think there some countries basing on that

> assessment of weak economies they cannot pay, because there are some countries are required to pay about 50 thousand dollars (USD)but they are not paying and there are countries that are required to pay about 12 million but they have paid. So to me is the matter of political will, some member states do not prioritize the AU business, therefore they think paying on time is not a priority, they prefer with the little resources that they have to focus on something else especially their domestic affairs, even you look on the trend of payment most of the countries pay at the end of the year… very few pay at the beginning of the year. So to me is not the matter of weak economies is the matter of political will, mind you if is the matter of weak economies the same countries are appearing to the UN well in advance, so is not the matter of weak economies, it is just a matter political will and another thing is priority. (Interview held with the Court Registrar on 11th April 2019).

Another respondents added that majority of the states fear to fund the court since it is going to hold them accountable of the evils they are committing and others states even cut the funds with the aim of crippling the court.

> …they can't fund the court fully because they know is going to be on them….they have to put a meager amount so that you cannot run is like they want to cripple the court" (Interview held on 15th April 2019).

Another respondent provided that some countries cannot pay to fund the court simply because they are in a political turmoil or instability and the AU or the Court cannot force such countries to pay to finance the court on the other hand the respondent argued that there are countries which are really poor their economies are not strong.

> "…some countries are in crisis so the AU cannot force such countries to contribute we also admit that there are some African countries which are really poor and they do not have that financial means to pay"(Interview held on 12th April 2019).

However, one of the respondent had a different view that despite of the weak economies the reluctance of states of not ratifying the protocol of establishment of the AfCHPR it makes the states not to pay or contribute to fund the court because they cannot fund something that they have not ratified or accepted its establishment.

> "…one of the issue is they do not want to ratify the protocol of the court how will they fund something they have not ratified. Despite of their weak economies…." (Interview held on 5th April 2019).

4.1.3. Funds Received from Donors or Development Partners

In the process of identifying the finance and funding of the court the study investigated about the funds received from the development partners if they are sufficient or not. According to different reports of the court and the analysis of the court financial report of 2017 by Windridge (2017) revealed that the development partners contribute about 16% of the court budget. However, according to the Court Journal (2019) of ensuring the protection of human and people's rights in Africa, it states that, the funds from development partners are erratic or unpredictable and often limited to specific programmes. In addition to this during the interviews some of the respondents provided that the funds from the development partners is never enough as well. One of the respondent implied that, indeed the court receives funding and support from the development partners like the GIZ, EU, UN-OHCHR, UNDP, World Bank, but the funds that are received from the partners are limited to specific activities. To quote the respondent,

> …we receive funds from the GIZ and from the EU as a matter of fact we receive a lot of support from these two bodies in particular, we also receive assistance from the Office of High Commissioner (UN-OHCHR), UNDP and World Bank. But we have to limit the amount of funding that we receive from the partners, because given the very nature of our mandate and sensitivity, human rights issues are very sensitive, you don't want to receive funding from a partner that can compromise your independence so the funding we receive are limited to certain activities like outreach activities like sensitization, you don't want receive funding to recruit staff to come and work for sensitive cases, funding to pay for judges No! We don't use the donor funding for operational of the court, we use them for programs. That's why when you look at our budget only about 16% is from the donors and the remaining is from the AU member states. But also the African leaders have expressed concern is not a good thing for African HR institutions to be funded from outside it's the responsibility of the member states to fund…however, in 2018 the AU adopted a decision to fund the court 100% from 2019 but while we submitted our budget they couldn't fund 100%, so we are forced to get money from our partners. But we hope in the near future the AU will be able to fund 100%, so that we don't get any reason to get funds from the partners. So to answer your question we receive donors funding but in a very limited amount and for specific activities in the case of the court. (Interview held on 11th April 2019).

Another respondent commented that:

> Despite having partners but the funding is never enough, for instance we applied to the EU to request money for materials in my department but we receive for some materials and other we didn't. for instance the computers we have in my department are outdated are supposed to be replaced, the rules say this every after three years the ICT machines are to be replaced but for my department are not. Therefore, despite of having GIZ and EU but the funding is never enough. Another example is the sensitization missions we are supposed to have them frequently as possible that one is funded by the partners but it never enough. Last year we planned to go to four countries but we went only to two. So we cannot go to as many countries that we want because of money challenges. (Interview held on 10th April 2019).

Another informant commented that:

> They are funding the court but for them also they are not funding in the amount that is adequate to the court it is just part, it's not all project they got their own projects specific projects that they want to finance they cannot finance everything. For them in fact they are like not interested per say with this court they have just been asked to fund. So if you ask somebody to come to fund you don't expect to fund you fully and the African now we are cheating ourselves we can finance the court but at the same time we are not financing it, Africans we have some sort of tricks we say we are doing this one but in theory but practically we are not. They say this court is supposed to be financed by AU Member States 100% but when we look in practical aspect it's not, but theoretically this is what they are saying but practically is different with what they are saying. So the tune and the style of dancing is different. (Interview held on 15th April 2019).

Also, another respondent said:

> …most of these conferences are sponsored by donors like the EU and the GIZ, now what happens is for these conferences the funds might not be available on first of January the funding may be available later in the year as the results of the administrative bottle necks. Now it leads to the situation where sometimes when the funding is available let's say May or June it leads to the situation where the court cannot consume all the money and the money has to go back to the donors. But we also had cases that we had programs in January but we had no funding for those programs because the funds came very late. There are some of the problem that you face when dealing with donor institutions you are at a messy to a certain extent because you have to wait until the money is available. (Interview held on 12th April 2019).

Therefore, basing on the findings of the study it is revealed that the court is inadequately financed, it receives limited funds to facilitate its operations, conducting different activities and planning for different programmes. The findings also revealed that the court depends on the funds and financial support from the AU

Member States and each year there is a budget of the court and other AU organs originating from the AU member states, however, the findings have revealed that the AU Member States do not fund the court with 100% budget, they receive 84% from the AU Member States and the other 16% come from the donors or the development partners EU, GIZ, World Bank, and UNOHCHR (Windridge, 2017). But despite of these organization receive finance from the AU Member States and development partners the findings have demonstrate that funds are never enough. The funding from the Member States is inadequate since there are some states that never pay or contribute to the AU. AU Member States do not contribute due to many reasons, some are reluctant they do not care about the AU affairs, others due to the weak economies they have and others are in crisis either in a civil war or in a financial crisis (Désiré, 2010).

However some argue that this is not the case and if so why do most of the African states tend to contribute to the UN and fail to contribute to the AU? So it is just a matter of lack political willingness of the AU Member States to prioritize the AU affairs. On the other hand, the funds received from the donors are also not enough, first of all the donor funds are erratic or unpredictable and secondly the funds from the donors are limited to specific activities are not to finance the operation of the three African Human Rights Organizations. In this case these organizations cannot execute their mandate effectively.

These findings can be concluded that due to the fact that the AfCHPR do not have enough funds and finical support it becomes a challenge to the court to facilitate or carry out its activities and it also becomes a challenge to the court to protect and promote the human rights in Africa.

4.2. The Accessibility and Coverage of the AfCHPR

The second objective of the study was to examine the accessibility and coverage of the court. Désiré (2010) argues that it is not clear whether many African people are aware of the remedies available to them through these sub-regional courts, and even more, pressing question is whether the majority of citizens could afford to seek redress in these courts assuming that all remedies at the national level had been exhausted. The second objective of the study was to examine the accessibility and coverage of the AfCHPR. In determining this the researcher carried out interviews

and reviewed documents about the accessibility and coverage of the court. In this the study wanted to examine who can access the court and how has the court cover in terms of its jurisdiction and implementing its mandate.

The findings of the study revealed that the AfCHPR face a challenge of accessibility and coverage. According article 5 (1-3) of the Protocol of establishment of the court it provides with the parties that can bring the case to the court and this includes; individuals, NGOs and state parties they can bring their case to the court, however, in article 56 of the African Human Rights Charter it provides for the individuals there are procedures that they have to follow in order for them to submit a case to the commission or file a case to the court and the most important procedure is that of an individual is supposed to exhaust all the domestic remedies at the domestic level before going to the AfCHPR and for the NGOs they have to have the commission observer status.

Nonetheless, it has been argued that by several scholars like Désiré (2010) and Cole (2010) that the existing procedures are long and cumbersome for the individuals to access the court and in some instances they are like excluding the individuals and NGOs from accessing the court. However, the findings demonstrate that it is not only the matter of rigidity and length of the procedures of accessibility, but there are other factors. In an interview carried out with some officials of the court provided that a factor like location of the court hinders accessibility. However, majority of the respondents provided that a factor like public unawareness hinders individuals to access the court, for one (1) respondent said illiteracy of the people can hinder accessibility since many of the individuals are not aware of the existence of the court.

The researcher interviewed several respondents and asked them about the accessibility of the court. One of the respondent implied that to some extent it is true and this is because of the location of the court, the Court is stationed in Arusha Tanzania, not all African know Arusha not all Africans can afford the costs of coming to Arusha. The respondent further added that the policy of individuals to exhaust all the domestic remedy also impends the accessibility of the court, the cases in the domestic level may often take a very long time to be finalized, therefore before and individual finishes at the domestic level he/she is exhausted and they can reach a

point of abandoning their cases. Therefore, an individual can give up even before going at the international level. To quote the respondent:-

> To some extent that might be correct. One, the court is based in Arusha, how many Africans know Arusha? How many Africans can afford to come to Arusha? So that in itself is an accessibility problem. Not only, don't they know about the court, they don't know where the court is located and they don't have the resources to come here. The second thing is the policy that an individual must exhaust all the domestic remedies before coming to the court, which means an individual must take his/her case right up to the highest court in his/her country, for Tanzania should be the court of appeal. But we know that in most African countries cases will take a time even 15 years before they are finalized so before even finish at the domestic level you're tired, some people even abandon their cases… for you to now say even if you don't succeed at the domestic level for you to say to go and start all over at the international level some people just give up. (Interview held on 11th April 2019).

Another respondent commented that:

> Accessibility of the court is not easy especially from the regions apart from Tanzania, I think why we have many cases of Tanzania here is because the court is in Tanzania at least most of the people know about the court but if you talk about the case of some countries like Mali, Togo which are very far from East Africa they don't have access to this court even to hear about the court. The court is try to do a lot of sensitization but I think is not adequate, now the issue of sensitization because of funding the court is not doing a big coverage just a small coverage they are just selecting some few countries, however not all the countries have ratified the protocol of the court so the court don't go to those countries, so they will go to those countries that have ratified the protocol but have not ratified the declaration of the court they will try to go there and try to persuade them to ratify the declaration…even the legal cost the people cannot afford". (Interview held on 15th April 2019).

Another respondent implied that:

> …the other problem is that how do they access the court? if you look at the way of filing the complaint, they can file the complaint through the internet if you look at generally not all people are accessible to the internet so the court is very far away there should be may be a way which I know people can bring a case to the court. Another thing which I see is those people bring the cases to the court there are those who do not have representation because for you to bring the matter to the court you must have either a lawyer or attorney to take the matter to court to represent you some people cannot afford the costs but I know the court will do something to find the legal counselors who are registered with the court so the court will pay the counselors…that's

> why we want to establish the legal aid… (Interview held on 5th April 2019).

Another respondent commented that:

> I think accessibility is an issue, but that is something that the African Union should consider in looking to see how to decentralize some services and ensure either they establish regional sub registries for the different people who wish to use this court to access the court through sub registries, which I don't know if the African Union is willing to create a sub registry at the national level or at the regional level. Because every operation of this court goes with the financial implication, I don't know if the AU will reconsider this to make the court more operational because the establishment of the sub registries will make the court more operational. If somebody has to bring a case may be from Saharawi or from Liberia is different from a person who is to bring a case from Dar-es-salaam or from Kampala or Nairobi. People far from East Africa to bring the cases the cost is an issue. So for me the AU should reconsider this issue so as to make sure the issue of proximity is resolved. (Interview held on 12th April 2019).

One of the respondent argued that due to the unawareness of the people about the court it makes accessibility to be more difficult, since there are individuals who wants to bring their cases to the court but they don't know about the court. To quote the respondent:

> …accessibility of the court becomes very difficult because watu wengi hawajui (many people don't know) there are people who should be accessing the court but they cannot access it. The court the court is supposed to have so many cases but people don't know about it…" (Interview held on 10th April 2019).

Another respondent commented that:-

> The matter of fact the procedure are not long is just might be a matter of ignorance because when you click on this computer you go to the section known as access to the court it is very simple you can access the court through a simple email writing a simple letter stating your case in the fact that you are an interested party because you cannot bring the case to the court if you are not an interested party….but in case of procedures know they can tell the applicant you have not exhausted the local remedies so he/she should exhaust the local remedies". (Interview held on 12th April 2019).

But accessibility is not only for the organization to operating within a particular area for the citizens to be able to see and go when their rights are violated, but the question is can they manage the legal costs? Désiré (2010) argues that it is hard to imagine that many people could ever afford the legal costs that would be incurred by

taking on their respective governments in bids to seek redress for violations of their rights. He further argues that human rights mechanisms are often elite-driven and therefore far-removed from and inaccessible to ordinary citizens. For instance, article 5 (1-3) of the protocol of establishment of the African court provides who can bring the case to the court, according to the article (5) the State, NGOs with observer status and individuals can bring cases to the court.

However, according to the Basic Factbook of the African Court pg. 7 on how to bring cases to the court it states that states, NGOs, individual and entity with the capacity to bring cases to the court must address their application to the registry of the court. In this case, if an individual does not have the capacity or cannot bear the costs of taking the case against his/her government to the court when his/her rights are violated he/she will not get justice. In this case, Désiré (2010) concluded that as for the African Court of Human and Peoples' Rights, the exclusion of individuals and NGOs to submit cases before the African Court of Justice and Human Rights will be a major challenge that will impede the effectiveness of the Court.

Cole (2010) argues that the NGOs are excluded from accessing the court while at large part the NGOs played a vital role in the establishment of the court, the NGOs allowed are those only with observer status but those with no observer status cannot file a case or access the court. Whereby for Cole (2010) argues that NGOs can be effective vehicles for bringing complains before the court/commission on behalf of the individuals and groups. To exclude them from the jurisdiction of the court is to alienate the ordinary and uninformed Africa from benefiting from the court.

Also the conditions to take the case to the court are cumbersome for individuals, according to the Article 56 of Banjul/African Charter these conditions include: disclosure of applicant identity even if the applicant has requested not to, compatibility/comply with provisions of the Charter or the constitutive act of the AU, use of non-insulting language against the respondent state, its institutions or the African Union, exclusive dependence (reliance) on media for the alleged violation, exhaustion of domestic remedies, submission of the communication within a reasonable time after final decision of the domestic organs, cases not dealt with and settled before and that the state whose individual brings the case to the court must have made a declaration accepting the jurisdiction of the Commission/court.

Looking at these conditions are cumbersome and longer, therefore if an individual does not follow any of the condition or miss one will not get accessibility or file a case to the court and therefore individual rights can be easily violated at the time individual struggles to exhausts the domestic remedies. Hence, since the accessibility of the courts by individuals becomes cumbersome and containing longer procedures it becomes a challenge to the court to protect and promote human rights since the individuals will not refer to the court and their rights will continue to be violated.

In terms of coverage the AfCHPR has jurisdiction in few countries in Africa. The AfCHPR is supposed to cover the entire African continent but its jurisdiction is limited to only 9 countries who have accepted the competence of the court. The issue that makes coverage of the court to be difficult is the failure of the states to make declaration of protocol establishing the court. One among the conditions set forward for the individuals to access the court and for the court to have jurisdiction is for the states parties to make a declaration pursuant to art 34(6) of accepting the competence of the court to receive cases from the individuals and other entities. However, out of 30 states which have ratified the Protocol of establishment of the court only 9 member have make a declaration of accepting the competence of the court as provided in article 34(6). In this case the individuals will not be able to access the court even after exhausting the domestic remedies and in this way the court will have limited coverage since there are governments that have not make a declaration of the protocol. The Institute for Security Studies paper (2012) it provides that the countless African victims of human rights violations who, in the absence of an article 34(6) declaration by their state, will be unable to access the AfCHPR and the court will have limited jurisdiction. For instance, a case of *Yogogombaye v The Republic of Senegal* the court failed to rule on this case since Senegal has not made a declaration.

Basing on the findings above have revealed that, the African Court is not easily accessible by the individuals. The court was designed whereby the individuals, NGOs, States and Commissions could bring their cases whenever there is violation of human rights, but most of the cases that are brought to the African Court are for individuals whose rights are violated. But the findings have revealed that most of the individuals cannot access the court due to several reasons. First, most of the people in the African continent and Tanzania in particular they don't know about the court, they don't know

if such court exists they don't know where it is located. Therefore to access the court will be difficult. Another reason is that is the location of the court the court is located in East Africa in Arusha City Tanzania, individuals far from East Africa cannot afford the cost of traveling to East Africa to either submit their claims or attend to the hearing, despite an individual can submit the case electronically via email but there are those individuals who don't have access to electronic devices like smart phones, computer or the internet. Therefore, for such individuals accessibility to the court becomes a difficult.

Another reason is that individuals fail to access the court because their states have failed to ratify the protocol of either establishing the court or the declaration of accepting the competence of the court for individuals to take their cases to the court. According to the African charter on human and people's rights and establishment to the court, Article 34(6) it provides that the State shall make a declaration accepting the competence of the court to receive cases from the individuals or NGOs. But also the article provides that the court shall not receive any petition from the individual or NGOs involving a State party which has not made such a declaration. According the reports of the African Court, the AU Member States that have ratify the protocol of establishment of the court are only 30 out of 55 and the ones who have made a declaration to accept the competence of the court are 9 out of 30. Therefore, it is only the individuals from the 9 States that have purchased the declaration of accepting the competence of the court can bring the cases to the court. But individuals from the remaining 21 cannot bring any case because their states have not purchased the declaration of accepting the competence of the court, but also the individuals from the remaining 25 States who are not part of the protocol establishing the court can neither bring their cases to the court. Therefore, continentally the individuals from 46 states cannot access the court.

The findings revealed that, there are several reasons why the AU Member States become reluctant of ratifying the two protocols. The Member States have a notion that if they ratify the protocol they will open Pandora's Box that their citizens will bring unlimited cases against them, while they forget that an individual will only bring a case if has exhausted the local remedies. Apart from this the states are in fear that if they ratify the protocol they will lose their sovereignty over to these institution, but

also they fear that they will be held accountable by these institution if they commit any atrocity against their citizens.

The findings have demonstrated that, individuals cannot access the court due to rigidity of the procedures of accessibility. Some scholars like Jean Désiré (2010) and Cole (2010) argue that these procedures are long and cumbersome, even some respondents agreed that these procedures of accessing the court are comber some and long in which make individuals to give up before reaching the court. According to Article 5 of the Human and people's rights charter it provides with the parties that can access the court, this is to include the commission, State Part that has an interest in a case as well as individuals and NGOs. However for the individuals must undergo certain procedures before accessing the court, according to the Basic Fact book of the African Court pg. 7 it elaborates how to bring the cases to the court. The Fact book elaborates seven procedures to be adhered for an individual or NGO to follow in order to bring the case to the court, but the most important procedure is that of exhaustion of local remedies. An individual is supposed at first exhaust the local remedies before bringing the case to the court, that is, an individual must at first take the claim to the State judicial bodies before taking it to the African court. But at the local level there is a tendency of unnecessary delays and a case if submitted can take a long time to be ruled can even take more than 5 years. Despite on the Basic fact book it has elaborated that an individual can bring a case if the processes at the local level are delayed. But that is not the case with Africa. Therefore, an individual become exhausted while exhausting local remedies before reaching the Court, and consequently an individual gives up. For the NGOs to take the case must have an observer status granted by the commission if it does not have it cannot bring the case to the court. Whereby according to Cole (2010) is like excluding the NGOs from the court and excluding the NGOs is like excluding the individuals from accessing the court.

Therefore, it can be concluded that, individuals and NGOs not being able to access the court it imposes a serious challenge to the court in the quest of promoting and protecting human rights. The Court depends on the individuals to file their cases so they can receive justice and their rights to be well protected, therefore, if the court will

be inaccessible by the individuals and the NGOs and covering a small area by operating in few countries there will be no protection of individual's rights.

4.3. States Compliance and enforcement mechanism of AfCHPR.

The third objective of the study was to examine the state compliance and then existence of enforcement mechanism of the AfCHPR. However, the objective began by examining the state compliance whereby in this the study focused as to why the states fail to comply with the recommendations and judgement given by the court. This was then followed by examining whether the court has enforcement mechanism.

4.3.1. State compliance.

State compliance of international rules and norms has always been the subject for debate in the field of International Relations (Olukayode, 2015). The findings of the study revealed that many of the states do not comply with the recommendations of the AfCHPR. For most of the respondents implied that the states tend not to comply or implement the judgment or order of the African court when they are rendered. According to the registrar of the court he argues that this is a challenge which all the three African human rights bodies are facing that is the Commission, Court and Committee, despite the decisions of the commission and committee are recommendations not legally binding as for the court are but still there are states do not comply or implement with the judgment of the court, sometimes they do not respond or they do nothing. To quote the registrar:

> This is a challenge affecting the commission, the committee and the court…for the commission and the committees their decisions are like recommendations which means are not legally binding but for the court are legally binding, even then the states are still not respecting judgments of the court. We have a number of judgment against Tanzania they are not responding, they are not doing anything so they are not complying, apart from the one of Rev. Mtikila case where they complied partially the others have simply kept quiet. (Interview held on 11th April 2019).

One of the respondent commented that:

> …they will not comply I gave you an example of Mtikila's case he passed away some many years ago he had some cases and he won the cases but who is making a follow-up the court cannot take any action to execute any judgment the court has a mandate but it doesn't have power". (Interview held on 15th April 2019).

One informant argued that international courts everywhere face this challenge of compliance not only the AfCHPR and especially the human rights courts. For this

respondent since the African Court is not like a national court which can issue an arrest if its order or judgment is not complied or implemented, and since the international environment is not the same as domestic environment, and therefore the issues of non-compliance of the order and judgements of the AfCHPR are inevitable. To quote the respondent:

> …international court everywhere they face this challenge of compliance is not only the African Court, it's not like a national court if you don't comply with the judgment the judge can go and order your arrest or the arrest of the public official it is not the same with the African Court. Because of the system in which the Court operate has different rules, is a different arena, you're in international relations you understand…so compliance it is on the good will of the states...so it is for the states to decide…but naturally judgment should be complied with…but is not only this court faces that challenge other international courts face it especially human rights courts (Interview held on 12th April 2019).

Another respondent commented that:

> I think this should start at the top, the chairperson of the AU to question this people at least this thing is done, it is required that once the states are given the information they are supposed to implement but it seems to take long to do the implementation of the judgment of the court… (Interview held on 12th April 2019).

4.3.2. Reasons for States Non-compliance

Cole (2010) argues that states fail to comply because of fear of losing their sovereignty to the supranational entities. The study was prompted to determine as to why states are reluctant to comply with the recommendations or judgment of the Court. According to the response of some respondents provided that, the reason behind the non-compliance is it because of lack of political will or are in fear of losing their sovereignty to the court. For other respondents States don't comply because of absence of enforcement mechanism. Others it was because of both absence of political will and enforcement mechanism. Other respondents provided that is just State ignorance to comply, for one respondent provided that states might lack capacity to comply. Others provided that all the above contribute to the States no-compliance.

However, the registrar of the court implied that fear of losing sovereignty is not the reason why they don't want to comply or implement the decisions of the court, for

him, internationally when a state ratifies an agreement/protocol it has agreed to be bound by the norms or principles of that agreement or protocol, in this case a state has agreed voluntarily to surrender part of its sovereignty. So to him is just a matter of political will and in some instances is the lack of capacity of a state to implement the judgments. To quote the registrar:-

> …by ratifying the protocol you say to yourself that you agree and you want to be bound by certain norms internationally and so to that extent you surrender some of your sovereignty to the international institution. Secondly for the case of Tanzania, Tanzania did not only ratify it went ahead to make the declaration accepting the competence of the court, that this court my citizen may come to you if they are not satisfied at the domestic level and whatever you say I am going to respect it, so it has surrender some of its sovereignty to this court. So it cannot come later and say it is affecting our sovereignty, because voluntarily did that, voluntarily ratified and purchased the declaration…to me is a matter of political will, of course there are some instances where you can say maybe is lack of capacity to handle all the cases because many of the cases are from Tanzania, therefore one can understand the capacity to handle all these cases at the same time and implement them. But to me largely is the problem of political will. For instance, take the Rev. Mtikila judgment where the court has requested that the constitution should be amended to provide for independent candidate to stand for elections that was in 2013 the constitutional review commission has recommended that the independent candidate should be in the new constitution. So almost five years later the government is talking about it might need a referendum. But me I think that if the political will is there you don't need a court to give a legally binding judgment for you to implement, if there is political will even the recommendations of the commission will be implemented. This is not only for Tanzania, there is Ivory Coast (Cote de Voir), Rwanda, and Libya they have all not complied". (Interview held on 11th April 2019).

Another respondent commented that:

> States do not comply because states are reluctant and because they know even if they are not going to comply the court will not do anything to them and this is because there is no enforcement mechanism. They also don't have the political will that they will accept what they believe, they believe in justice but now when come to practical aspect of judgment they are not ready to execute the judgment the court will not force the Member States to comply. So at the end of the day is like justice is done but it is not seem to be done, the court can say this is the order they want the responding state to do 1234 that is judgment but who is going to see that what the court has ordered is being done. So it is like justice delayed is justice denied…it is the obligation of the court to see that what they ordered or what they

> decided is being done no body is making a follow-up… there is no enforcement mechanism and the absence of that we cannot say the judgment has been fully executed. (Interview held on 15ht April 2019).

Also another respondent had the following to comment:-

> Compliance with the judgment of the court is a complex issue some states may not comply because the judgment rendered has very huge implication in terms of the funding to be relocated to reparations, the issue maybe that the judgment is complex and it has financial implication if that judgment was rendered and the country was not prepared with that funding in order to proceed with the reparation demanded by the court it may take time. (Interview held on 12th April 2019).

One of the respondent argued that the matter of states non-compliance, the states should be asked why they do not want to comply because they create many reason of non-compliance. To quote the respondent:-

> In a matter of fact the states should be asked why they are not complying because they provide many reasons like they are not satisfied with the recommendation of the Banjul commission or the decisions of the court….but they should keep in mind that this is a non-appellate court…and they should consider that when the decisions are given are final they only have to implement. (Interview held on 12th April 2019).

Another respondent commented that:-

> …there is a judicial process yes this has been found you have done it or you have not done it and the states have different reasons for complying or not complying, may be is not in their interest to comply or even if they don't comply there is no impact on their domestic affairs. (Interview held on 12th April 2019).

Another respondent commented that:-

> …the leaders think they are big people, they are not supposed to adhere to the judgement of the court…the issue is that there is no enforcement mechanism and if it is there should be strengthened (Interview held on 12th April 2019).

4.3.3. Irratification of the Protocol

According to different literatures, reports of the court and the response which the researcher gained from different respondents, there has been this problem of the AU Member States of not ratifying either the protocol of establishment of the court or the protocol of accepting the competence of the court for the individuals to bring the

cases to the African court and this has been hindering the court from effectively discharging its mandate as a continental judicial organ. Therefore, the researcher deemed necessary to look further into this aspect by trying to find out why do the member states fail to ratify these two protocols and how this circumstance affects the court. But according to the response of different respondents is that the AU Member States are in fear that the court will hold them accountable if they violate the human rights and they will also lose their sovereignty to the court. However, for the registrar of the court had a different view, he argues that it is not the matter of the states losing the sovereignty to court but they just don't have the political will to accept the court. According to the registrar of the court a state agreeing to ratify an international protocol it has accepted to bond by that protocol and in doing so it has accepted to surrender some of its sovereignty to the pact in which it has voluntarily agreed to accept it, so for the case of the African States is they don't have a political will of adhering to the agreements they ratify especially their own knowing that they have a nepotistic relations of not hold each other accountable. Also, some of the countries have the view that if they ratify the protocol of accepting the competence of the court is like opening a Pandora's Box. To cote him:-

> …by ratifying the protocol you say to yourself that you agree and you want to be bound by certain norms internationally and so to that extent you surrender some of your sovereignty to the international institution… So it cannot come later and say it is affecting our sovereignty, because voluntarily did that, voluntarily ratified and purchased the declaration… to me is a matter of political will… (Interview held on 11th April 2019).

For other respondents they argued that the states are in fear of being held accountable if they violate human rights. For this respondent commented that:-

> I can give you an example of my own country, if it ratifies there are a lot of cases pending of abusing people, killing a lot of things high corruption whatever so it's like they are scared that there are people who will rush to the African court to take their cases in which for now people in my country cannot put a case in the African court because my country has not ratified. So, that is the with the case with this other member states they are scared and there are a lot of things which have been happening and are still happening about violating the rights of the people…that is what I can say they fear to hold accountable for the atrocities that they will commit. (Interview held on 12th April 2019).

Another respondent argued that it is the matter of losing sovereignty, states don't want to surrender their sovereignty to a supra national entity and many states have the view if they ratify the protocol is like opening a Pandora's Box that many cases will be brought against them. The states fail to understand that the individuals cannot just bring the cases to the court there are procedures that need to be followed and most important procedure is that an individual must exhaust the domestic remedies. To quote him:-

> …states talk about their sovereignty they don't want to surrender their sovereignty to a supra national entity like the African union, secondly many states believe that when they sign or ratify the protocol and make the declaration there will be many cases brought against them. How does the court solve this problem the court solves this problem? The court solves this problem by explaining to all the countries that an individual cannot just bring in the case to the court they have to first of all exhaust all local remedies…the states are just scared and some were not even aware that the local remedies where supposed to be exhausted. (Interview held on 12th April 2019).

One of the respondent argues that the states are not prepared to accept the court since they know that it will hold them accountable for any evil they will commit. To quote the respondent:-

> They don't want to ratify because they know what they are doing is evil, they are scared that once they rectify this is going to be on them, so they are not prepared so there is no political will for them to accept the competence of the court…take an example of USA they recognize the existence of ICC but they don't want to be the part of it because they are scared because what the Americans are doing to other nations is totally unacceptable so they are not prepared to do so. So, the same applies to the African countries, they know that once they rectify it is going to be on them so they are not willing so there is no political willingness to accept and they will keep on buying time and apparently nobody is going to force them even if the AU says every state should ratify it but it must come with very strong proposition that every country must ratify the protocol…but there is no such thing from the member states because they know what they are doing is evil. So they are very reluctant once they accept it is going to be on they so if you know that once you accept this is going to be on you why should you accept it……so they are buying time talking about "we are still thinking about it"……this is not the time to think about ratification it is the time to think on the way forward what should be done about the court, about the judgment coming out of the court. But we are still talking about ratification at this age we look like we are not serious of what we are doing at this time is not to think about which country should ratify there should be an order all countries to

> ratify. So if a country knows that is a main breacher of human rights is not going to ratify the court it will keep on buying time". (Interview held on 15th April 2019).

It is argued that he African Commission on Human and People's Rights has the obligation to investigate and find facts about issues and violations pertaining to human rights, then draft a report and make recommendations to the AU Assembly which comprises of the AU member states, as it is stated in Articles 52 and 53 of the charter that the commission shall draw up a report containing facts and findings that it finds useful, and make recommendations to the AU Assembly. After that the report is submitted to the AU Assembly, however, in practice, the African Commission submits its report to the AU Executive Council and after the submission the AU assembly makes decisions. According to Article 6(2) of the African Charter provides that the AU Assembly is the supreme organ of the AU and one of its tasks is to make, receive, consider and take decisions on reports and recommendations from the other organs of the Union. But the question is do the recommendations made by the African Commission or the decisions of the court become binding once the report has been adopted and published or judgment has been made? The answer to this question is no, and this is due to several reasons.

One of the reason is, according to Désiré (2010) argues that the constitutive act of the AU it has not explicitly stipulated that the decisions of the AU Assembly are binding to the member state or in other words according to Viljoen and Louw (2007) recommendations of the commission are not legally binding to the states, despite the fact that it is a supreme organ in which it means that its decisions are binding for other AU organs and the Member States. Whereby article 23(2) of the AU Constitutive Act stipulate that any member who refuses to comply with the decisions of the AU Assembly is subjected to punishment like sanctions and denial to communication with other states. However, in reality, or in practice AU Assembly has never taken any steps or actions to force any Member State to comply with decisions of the African Commission by sanctioning or denying it communication with other states.

Also in the African Charter on human rights, it argued to have "claw back" clauses whereby these clauses allow the states to violate individual's fundamental rights on certain circumstances, for instance, by allowing for economic development or

national security. For instance, according to Mutua (2000) he argues that the charter has “claw back” clauses which allow the states to deny the fundamental rights particularly civil and political rights, for Matua (2000) these fundamental civil and political rights are severely limited by clauses like “except for reasons and conditions previously laid down by law”, “subject to law and order”, “within the law”, “abides by the law”, “in accordance with the provisions of the law”, and other restrictions justified for the “protection of national security”. Therefore, the presence of these claw back clauses gives a room for the states to violate the rights of the individuals and not to comply with the decision/judgment or recommendations of the court or the commission.

To prove that the states do not comply with the recommendations of the commission is when the African Commission on human and people’s rights required or recommended that the member states have to provide the human rights reports every after two years in order for the commission to know the situation of human rights in every state, but 30 of the 55 states have failed to provide a single report and other many refuse to respond to the commission's requests for information pertaining to human rights (Magnarella, 2000). In the study of Viljoen and Louw (2007) they concluded that the level of compliance is being determined by political factors rather than legal factors. That is to say, the African states lack a political will to comply with the recommendations of the human rights commission.

4.3.4. Enforcement Mechanism (s) of AfCHPR

Along objective three of this study the researcher wanted to identify if the court has any enforcement mechanisms that assists the court on the implementation of its judgement for the states to comply. The finding revealed that the AfCHPR has no enforcement mechanism that could assist the Court to monitor implementation of their judgments, recommendations or decisions. Most of the respondents, said that the court has no enforcement mechanism of its own or there is no proper enforcement mechanism to ensure that the courts decisions are implemented. As a result, the absence of enforcement mechanism imposes a challenge to the court since its judgments and orders are not implemented by the states which are part to the protocol of accepting the competence of the court. The researcher interviewed the registrar of the AfCHPR, whereby the registrar implied that the court does not have

enforcement mechanism, but in order for the AfCHPR to have enforcement mechanism the AU is supposed to develop an enforcement mechanism so as for AfCHPR to monitor compliance and the implementation of the judgment by the states parties to the declaration of the court. To quote the registrar:-

> No we don't have enforcement mechanism, but the AU has to or supposed to develop an enforcement mechanism. Because what happen when we prepare our report article 31 of the protocol provides that when we prepare our report to the AU we should indicate those instance in particular where the states have not complied with our judgments. So every activity report that we prepare we indicate those countries that have not complied with judgments of the court. So it is now for the AU to decide on what sanctions to take against those countries, but the AU as for now does not have enforcement mechanism on how to deal with that. However, we are current working with the commission and committee to develop a framework which we are going to propose to the AU on how to monitor compliance of the court and other AU organs. (Interview held on 11th April 2019).

Nevertheless, the researcher needed to know if the AU does not have enforcement mechanism what is the essence of article 23(2) of the constitutive act of the AU about taking action to the non-complying states by sanctioning them because the AU has never taken any action to the non-complying states. The registrar implied that most of the people have argued that the AU should invoke the article. But the AU must have in place a mechanism that will establish the grounds that a state has not complied. For instance the European System they have a committee of ministers that deal with monitoring compliance and a compliance secretariat which is called department of execution of judgment which comprises of lawyers and researchers whose task is to verify that the claims proposed to the assembly by the human rights court are true about the state non-compliance so as the state cannot deny. But the AU do not have such a mechanism in which sometimes the court can prepare report but the council has no verification whether the court's claims are true or not and this gives a chance to the states to deny that they did not comply. To quote the registrar:

> Yes some peoples have argued that the AU should invoke article 23 of the constitutive act to put sanction to these states, but it must have in place a mechanism to first of all establish that a state has not complied. If you follow the European system they have a committee of ministers that monitor compliance and it is the committee of ministers that will prepare reports to the assembly to see that these state has complied or has not complied, but the AU has no that mechanism. The protocol

> simply say that the executive council shall monitor compliance on behalf of the assembly but the executive council has not put in place a mechanism to verify whether what we have said is correct or not, because the state can come and say we have complied, but how do the executive council verifies? In the European system they have huge secretariat which is called a department of execution of judgment made up of lawyers and researchers who verify and prepare reports that the state has complied or not complied". (Interview held on 11th April 2019).

The researcher asked the registrar of the court if the African Union should adopt the same system as for the Europeans. The registrar of the court implied that indeed they should adopt the system. But according to him he argued that the three African bodies of human rights (Court, Commission and Committee) are working together to prepare a proposal of mechanism that will monitor compliance. However, the researcher wanted to know if the mechanism(s) the three bodies are preparing are coercive in nature. The registrar implied that they are not coercive, the mechanism which they intend to propose to the AU they intend to provide incentives and assistance to the states that are not complying, maybe is because the states are facing problems implementing the judgments or recommendations. So the mechanism intends to assist states and not to coerce them. To quote the registrar:

> The proposal we are making may not be the same as the European system but something that can monitor execution of our judgment…we don't think it has to be coercive, we are proposing something which is an incentive, because it might be that a state has not complied because they actually have challenges in complying so we have put in place a certain number of incentives including providing assistance to states that are supposed to implement the judgment of the court, for example technical assistance if it means that they should reform their laws we can provide a technical expert from the AU to go and assist them. (Interview held on 11th April 2019).

Apart from the registrar of the AfCHPR the researcher went ahead to ask other respondents from the court if the court has enforcement mechanism and how does the absence of the enforcement mechanism affect the court. One of the court official remarked that:

> One of the challenge that we face as the court is lack of enforcement mechanisms, once as the Judgments have been rendered usually as I see that there is no proper mechanism to ensure that the decisions are implemented or the governments are complying with the judgment, it is indeed a challenge since we do not have a mechanism to enforce the

> order or judgment given by the court. Due to this we are about to fail because people will take things normal and governments will continue to violate human rights of their citizens. For what I think there should be enforcement mechanisms. If judgments are rendered who checks on the leaders, the political leaders who checks on them to see if they abide to the court judgments. If there is no body to follow up that is a challenge. (Interview held on 5th April 2019).

The researcher asked another respondent if he knows about the enforcement mechanism(s) that is or are in place for the moment, the respondent stated that:

> That is more legal, despite I am not a lawyer, but I can tell you the court has no enforcement mechanism we rely on the good will of the countries, once the decisions have been made for country to implement we trust they will do it, I think so far we do not have the problem, but you need to consult the lawyers for more insights. But so far we have no enforcement mechanism we do not have the police to ensure the enforcement it is just the good will of the states since they agreed to ratify the protocol they will implement. (Interview held on 10th April 2019).

But the researcher asked the respondent that there have been some complains that the states do not implement the courts decisions or judgments. For instance, there are cases of civil and political rights that Tanzania has not implemented for instance that of Rev. Mtikila. The respondent insisted the researcher that he should consult the legal division for more insights, but commented that:

> Since there are no enforcement mechanisms it is an entrance for the states to refuse to implement the decisions of the court and for the states to violate human rights. Therefore, we cannot force a state to implement, if they implement or they do not, it depend on their good will. Because if a court order's a country to do something but they won't it is a big problem for human rights in Africa. (Interview held on 10th April 2019).

Another respondent implied that:

> The court by itself does not have an enforcement mechanism, but the African union as a whole has one because when the judgment of the court are rendered at the end of the year the court writes a report which is presented at the assembly of HOS and Governments and in this report the court has to state a nation or state which is found guilty it has not implemented its judgment or has failed to implement its judgment. So the organ of the African union which is in charge of ensuring implementation of the judgment of the court is the executive council of the AU, so the council ensures states execute the judgment of the court. Now! Where a state fail to execute a judgment it will identified…and many states don't want to be identified as a defaulting

> state in that way they have to implement the decisions of the court".(Interview held on 12th April 2019).

The above respondent on the other hand he argued that there were no cases of non-compliance, but the researcher posed a question to the respondent that, according to different reading and reports even of the court there are states which it has identified for not complying including Tanzania is it because of the absence of enforcement mechanism of the court. The respondent implied that it could have been so much easier if the court had its own enforcement mechanism to monitor implementation of its judgments but since it doesn't have it depends on the other organ to monitor implementation the instances of non-compliance may occur

> Yes of course if the court had a mechanism to enforce its judgment or decisions would have been so much easier but it does not have and its judgments are supposed to be enforced by the executive council… Of course there might be cases here and there where states have refused to comply to implement the decisions… so yeah it quite possible for the non-compliance to occur. (Interview held on 12th April 2019).

The researcher asked the respondent is the absence of enforcement mechanism makes the court more of an administrative organ that a judicial organ since it has to report of the executive council for non-compliances. The respondent implied that the according to the structural arrangement enforcement is not the task of the court and that is the task of the executive council of the AU. Therefore, the court will remain the judicial organ and the executive council will perform other administrative task of enforcing the judgments of court.

> No! it remains a judicial organ in fact as a matter of fact enforcement is not the duty of the court the structure is such that enforcement is in the hand of the executive council so the court will continue to do its judicial work while the executive council will have to implement, it is the executive council that has to do the administrative work while the court will continue its judicial work where it is not enforced the court will have to complain" (Interview held on 12th April 2019).

However, the researcher imposed another concern that the African states have the tendency of not holding each other accountable is it sufficient for the court to report to the people who are afraid of holding each other accountable. The respondent implied that AU has been tagged or described to be the "club of friends" afraid to annoy each other; therefore in such instances they will not hold each other accountable. The respondent suggested that the executive council has a duty to

ensure that the decisions of the court are implemented but even the sanctions that are in article 23(2) are on the paper and they have never being implemented against defaulting state. Therefore, the respondent believes that if the implementation mechanism will be attached to the court it will empower the court and it will become much easier for the court itself to monitor compliance.

Another respondent commented that:-

> …there is no enforcement mechanism; there is no enforcement mechanism that can force responding state to abide by the decision of the court. Take an example the case of Mtikila v/s Tanzania he won the cases and he passed way but nothing has been done he has never been paid and nobody is making a follow up to see what is supposed to be done…there is no enforcement mechanism and the absence of that we cannot say the judgment has been fully executed. (Interview held on 15th April 2019).

Another respondent implied that:

> …the court does not have a law enforcement arm, like for national courts, national courts if they have rendered a judgment and you tend to ignore there will be another arm of the government which will come to ensure what the judiciary said is abided. So that is a missing aspect of international courts, they don't have law enforcement mechanisms and that imposes a serious challenge (Interview held on 12th April 2019).

The researcher also asked another respondent from another court department if the respondent happens to know the existence of enforcement mechanism of the court. For the respondent argued that the court does not have any enforcement mechanism that could follow up or ensure that the judgment or orders are implemented by the Member States. To quote the respondent:-

> For as far as I know there is no mechanism… in following up with member states that's where I realized there is a problem because the court can give out the judgment but the member states don't implement and it seems like the court doesn't follow-up with them...so there is no enforcement mechanism to follow-up on the implementation of judgment by the Member States (Interview held on 12th April 2019).

To complement the field findings Désiré, (2010) argued that due to the fact that AU has no enforcement mechanism it becomes difficult for the member states to abide by the recommendations provided by the commission/court. Murray (1997) argues that decisions of theAfrican on communications lack formal binding force of aruling of

acourt of law. Also, Viljoen and Louw (2007) discovered that the lack of an effective follow-up system had been a key cause of low compliance with the admittedly non-binding recommendations of this body. In this case since the AU is toothless in other words, some States take as an advantage of violating human rights since there is no action that will be taken upon them, therefore, the commission/court may struggle to prepare for the report by finding the facts and prepare the recommendations or give out judgment in which will require the AU Assembly to take action, but sad enough the action is in the papers and non-binding to the member states it gives an opportunity for some of the states to violate the human rights (Murray, 1997).

4.3.4. Effects of absence of enforcement mechanism.

On the other hand the researcher wanted to know how is the absence of enforcement mechanism affect the court or how is it a challenge to the court. The registrar of the court implied that this affect the court because many of the judgments have not implemented. To quote the registrar:

> One of the major effects is that the majority of the judgment of the court has not been implemented. Only about two against Burkina Faso have been complied completely the rest have not been complied (Interview held on 11th April 2019).

On the other hand, another respondent implied that the judgments of the court are supposed to be enforced but when it happens the judgments of the court are not implemented the court loses its credibility, but it also loses its respect internationally. So the court want to ensure that its judgment are enforced that why it prepare this report and present to the executive council of the AU. For this respondent if a state fails to implement the court's decision it demonstrates the lack of respect to the judgment of the court or to the existence of the court. Therefore, it affect the court since it loses its credibility and its respect internationally.

> Of course it affects the court because the judgment of the court is meant to be enforced where the court judgment is not enforced the court loses its credibility that is very first thing and it loses its respect to the eyes of different nations. So the court will want to ensure that its decisions are enforced that's why it prepare these reports every year which present at the level of executive council of the AU so any failure to implement the court's decision shows the lack of respect for the judgment of the court even for the existence of the court. (Interview held on 12th April 2019).

On this part of how absence of enforcement mechanism affects the court another respondent implied that:

> …it will affect the court in the sense that people who file their cases here if they will find nothing has been done their morale will be demoralized….people cannot bring the cases which they know at the end of the day nothing will be done. In fact in terms of implementation theoretical this and this should be done but in practical aspect nothing is being done… so the court is not effective as it wanted to be or somebody ought it to be. (Interview held on 15th April 2019).

On this part one of the court official remarked that:

> It affects the court in the way that people will not be willing to present their cases to the court because they will just present and the judgment is rendered and no implementation so it's like the same as you have not submitted your case to the court… (Interview held on 12th April 2019).

It is argued that one of the effect of absence of enforcement mechanism is; the states do not comply with the commission so is to the court judgments. In this case, the non-compliance of the states to the recommendations of the commission or court imposes a serious challenge to the court or commission in promoting and protecting human rights. For instance, it is argued that Tanzania being the host country of the court whereby many of the cases against her are brought to the court about 80%, but Tanzania fail to comply with the judgement or provisional measures of the court (Windridge, 2017). According to Windridge (2017) referring to the Report of the court, it provides with the judgement of the cases which are not yet implemented for instance *Mtikila vs Tanzania, Alex Thomas vs Tanzania, Onyango and others vs Tanzania, Abukari vs Tanzania* these cases remain to be implemented. He further added that Tanzania's apparent failure to implement provisional measures to halt the execution of several applicants currently on death row it seems somewhat worrying that it is not prepared to comply with Provisional Measures to halt executions. The non-compliance occurs because of lack of enforcement mechanism to demand the states to comply and implement the judgement.

According to Olukayode (2015) provided with an example of the African Court of Justice and Human Rights, argues that the African Court of Justice and Human Rights has no enforcement mechanism whatsoever instead the court act as an administrative body than a judicial organ, whereby the judgment/ decisions of the court are normally enforced by the council of ministers and not the court itself

whereby the council of ministers reports of the Assembly Head of states for implementation but it is argued that the implementation is never put into force because the African leaders lack political will (Olukayode, 2015 and Désiré, 2010).

In this case the African court of justice does not have an enforcement mechanism its duty is only to report its activity to the AU and the noncompliance of states, whereby this is said to hinders the effectiveness of the court since the enforcers do not enforce and they have not given the court a full mandate and independence to develop its own mechanism to enforce its judgment/ decision. The same applies to the African court on human and people's rights, whereby it reports the noncompliance of the state to the AU council of ministers where it's called a "shaming" tactic that marks the violator, for the AU council to take action. However, what the AU council of ministers or the AU Assembly of heads of states does is to pass resolutions advising states to respect the court's judgments or the AU Chairman alternatively could be empowered to write to delinquent states asking that they honor the court's judgments (Matua, 1985).

But this is said not to be effective by just passing resolutions and to write the noncomplying state to honor the judgment of the court, there should be effective if not coercive mechanisms to force the states to comply as it is stipulated in the charter by denying communication and sanctions to the noncomplying state. Therefore this being a case, the court cannot effectively protect human rights particularly civil and political rights if there is an absence of effective enforcement mechanisms. Whereby, for Cole (2010) a court is a deterrent only if is effective, whereby for him the regional courts or supranational institutions whose judgment largely depend on the states for enforcement if they do not have an effective enforcement mechanism their judgment become meaningless. For him, without the effective enforcement mechanism, the judgment of the African court on people and human rights will be meaningless.

Therefore, basing on the findings of the study have revealed that that States never comply or comply partially with the recommendations, decisions or the judgment rendered by the court. The AU Member States have a tendency to ignore the recommendations, decisions or the judgments that come from the court even if the claim or case brought against them is won but they tend not to agree with those

decisions and therefore become reluctant in implementing those decisions. States despite of being part of pacts that they agree to be bound by, they sometimes have a habit of ignoring the pacts or agreements which they have entered especially when it comes to the national interest and especially when they know that no action is going to be taken against them. The states take an advantage that these organization do not have enforcement mechanism that is coercive enough to coerce them to implement what has been suggested by these organizations.

However, according the findings of the study States tend not to comply with the recommendations of these organizations because of many reasons apart from these organizations to lack coercive or proper enforcement mechanisms. Many of the states they contemplate that they will lose their sovereignty when they allow these organizations to tell them what to do with their people, but others is that they lack the capacity to implement, they lack the financial or expertise capacity to implement the decisions and other states are just reluctant or ignorance and they lack a political will of implementing the decisions or recommendations of these organizations. The findings demonstrate that, the state non-compliance tend to cripple the effectiveness of human rights bodies in protecting and promoting human rights. These organizations depend more on the states to implement what they have decided or recommended. Therefore, if the states fail to comply and implement the decisions or recommendations of these organization they feel like they are established to safe guard a certain mandate like protecting human rights but they are useless and they are about to fail.

The finding revealed that these organizations lack enforcement mechanism that could enable them to monitor their implementation of their recommendations, decisions or judgment rendered by them, they only depend on the good will of the states to accept and implement the recommendation, judgments or decisions rendered by these organizations. For instance according to the findings, the AfCHPR lacks an enforcement mechanism that could monitor compliance or implementation of its judgments they only depend on the good will or the political will of the States Party to the protocols to implement the judgment of the court. However, the finding revealed that since the AfCHPR lack enforcement mechanism and States Parties lack the political will, compliance has never been easy. According to Cole (2010), he

argues that for any court to be deterrent it must have in place an enforcement mechanism that could monitor compliance, however according to Olukayode (2015) he argues that enforcement of law at the international level is not easy as in the domestic level, since the states will only comply if they wish to or have a political will that will make them to comply, whereby according to Viljoen and Louw (2007) argue that even if the States have sign up Pacts to be bound by them will not make a difference if they have no political will to adhere to the pacts they have entered. Therefore, lack of enforcement mechanism makes the Court, Committee and commission not to be vibrant in protecting and promoting human rights. Due to this makes these organizations not to have power to hold accountable the violators of the human rights especially States that violate human rights and this provides a loop hole for continuation of violation of human rights.

Therefore, conclusion can be made is that, due to the failure of the States parties to the protocol of accepting the competence of the court failing to implement the recommendation, decisions or judgments of the court, the court is about to fail to promote or protect human rights due to the reason that it provides with the decisions which are not implemented. Therefore, justice will not be obtained since justice will not be obtained if there is no implementation.

Furthermore, due to this situation the court not having its own enforcement mechanism, the court has been termed to be a mare administrative organ rather than a judicial organ since it depends on the political organ (Council of Ministers) for enforcement. The court reports to the council of ministers for the case of non-compliance expecting that the decision to be taken by the council of minister will be effectively enforced according to article 24 of the charter, but it is not. Naming and shaming tactic is not effective in Africa since some states do not care if they are identified defaulting or non-complying states. If this tactic was effective then the states could have felt guilty and implement the judgment of the court.

4.4. The Public Awareness of the AfCHPR

According to UN Women Virtual Knowledge Center (2018) defines public awareness as the level of understanding about the implication or importance of something by the member of the community, it is not telling the public what to do, but public awareness is the process of disseminating knowledge and explaining

issues to the members of the society so they can make their own decisions. The fourth objective of the study was to examine the public awareness about the AfCHPR. In determining this the researcher conducted interviews and reviewed documents. The findings revealed that the many people are not aware of the existence and the roles of the AfCHPR. The findings reveal that most of the people are not aware of the court for several reasons. According to majority respondents one of the reason is that the public is not well informed about the court, that is, there is absence of exhaustive public awareness campaign. Other respondent provided that the location of the court is also a reason for public unawareness. For other respondents it is just reluctance and ignorance of the people. For one respondent had a different view and that is because of the existence of different IHROs with the same role.

Therefore, the researcher interviewed some of the court officials on how far is the public aware of the court but also the researcher selected other respondents out of the court and asked the same question in order to determine if they know about the existence of the court. The researcher interviewed the Registrar of the court and asked about this aspect, according to the registrar of the court he argued that one of the challenge we are facing is low level of awareness of the people about the African human rights institutions, he provided that:-

> …the challenge that we are facing is the low level of awareness by Africans, very few African know about the existence of the court, even the existence of the African commission which has been there for more than thirty years not to talk about the committee some people don't know even about the committee. So that is one huge challenge if they don't know about these institutions it means that they can't even use them, they can't even access them. So their rights are violated and they have exhausted all the domestic remedies and they don't know about these institutions it is useless. Even here in Tanzania Arusha where the court is they don't know where it is, you can ask a tax man to take you to the African Court but they don't know, I have tried that several times they took me to the Rwanda tribunal. Due to lack of awareness there is a lot to be done, to sensitize African about the existence of these international human rights bodies on the continent. To me is one of the huge challenges …if they are not aware these institutions cannot be utilized at all (Interview held on 11th April 2019).

The researcher asked other respondents to describe the public awareness of the court. For one of the court official the public is not much aware despite of the sensitization

missions and for the respondent it was amazing that even some residents of the region where the court is located (Arusha) they don't know about the existence of the court and its location, even the people nearby if they don't know about the court. To quote the official:-

> eeh! Utashangaa ata hapa Arusha (you will wonder even here in Arusha)…very few Africans know about the court despite our sensitization missions. There is documentary called the African Court they have interviewed watu wa hapa Majengo (people around here at Majengo) people don't know about the court…so very few people know about the court for sure. Don't talk even outside Tanzania hapa hapa Majengo wanafikiria hapa ni TANAPA (here at Majengo they think here is TANAPA). For sure the visibility of the court is still very poor. (Interview held on 10th April 2019).

Another official commented that:

> Even in Tanzania not everybody knows about this court they know that after the judgment from the high court is the end of business they cannot go anywhere they know the process ends there. Even in Tanzania the awareness is not enough we have not be sensitized enough despite the fact that the court is still here and now what happened that most of the cases that are here from Tanzania are from prisons they know okay there is a court exists there so the legal officers or representative of other cases they will just go and sensitize some of the prisoners that there is a court exist so you can take up your case. So if you look at the nature of the cases here it is almost the same, the grounds it is almost the same grounds….therefore it is the will of the prisoner to take the case to the African court after being sensitized but for themselves they don't know about the existence of the court. (Interview held on 15th April 2019).

Also another court official had commented that:-

> …I know the challenge is that many people don't know about the existence of the court, even here in Arusha you ask people where is the African court they don't know, they will tell you about the ICTR because they know it was dealing with the Rwandan cases. So many people seems not to know the Court, they confuse the court with the EAC and ICTR, but it is the matter of publicity, because we started in 2008 and the EAC and ICTR were here longer than the Court that's why they are known.(Interview held on 5th April 2019).

Another official commented that:-

> …to date we have so many organizations and some organization you will find they are almost doing the something or some organization are pursuing a judicial mandate at regional level, others are doing the same at continental level. So you might find some people know the body at

> the regional level and they are taking it at the continental and vice versa, so there is need to continue that awareness campaign…there are those who know the African court is the one at the EAC and the ICTR those are the two courts they know and I know because of the bigger staff they have because the bigger the staff the more visible the organization. But also the presence of EAC and ICTR is older than the African Court… (Interview held on 12th April 2019).

For another official had the following to comment:-

> …if you look Tanzania for instance we have conducted an interview internal and we discovered that many people do not know about the existence of the court even here in Arusha…at the continental level is even worse there many legal officers, lawyers, judges who do not know about the existence of the court even though they are in the legal field in many African countries. (Interview held on 12th April 2019).

One official argued that there are those who know about the court and there are those who don't know about it and the majority of the ones who know about the court they are in the field of human rights. For those who don't know are mostly the ordinary citizens. To quote the official:-

> Some of them know, but I think is when you are in certain field like for example if you are in the human rights field you may know about it or if your studying human rights law something like that but the ordinary citizens may be not in terms of statistics I cannot tell you, but really is something that need to be worked on, the awareness. (Interview held on 12th April 2019).

Furthermore, the researcher wanted to know the strategies which the court has to approach the citizen directly and apart from approaching them through their Head of States, NGOs or the civil society organizations. According to the registrar of the court, implied that the court's sensitization missions are limited only to persuade the States which have not ratified the protocol of establishment of the court and those which have not purchased the declaration of accepting the competence of the court and therefore, the court doesn't do a general sensitization on human rights, the general sensitization is the responsibility of the African commission. To quote the registrar:

> Our sensitization campaign is very limited in nature, it is meant to encourage states that have not ratified the court protocol… our campaign is only limited to the ratification of protocol establishing the court. So we are not doing a general sensitization campaign on human rights that is the responsibility of the African commission to go about teaching people about their rights and to sensitize people about their

> rights, that is not our responsibility as a court, ours is only to encourage the states to ratify the protocol establishing the court and for them to accept the declaration to allow individual to access the court. For that reason we target to people to go to, we go to the Heads of States or we go to those people we believe can influence the ratification so we visit the HOS, PMs or the speakers of the parliament because we believe these are the people to influence to ratify the court protocol…so our campaign is not fully flagged sensitization campaigns. (Interview held on 11th April 2019).

The researcher asked another court official if it is maybe because of the Court is approaching the public indirectly through the CSOs, HOS and NGOs is the reason that the public doesn't know about the court? The official replied that it is correct the court seems to be targeting the elite and excluding the common men at the grass root level.

> I agree with you we are targeting the elite, because when you go to sensitization you go to department of justice there are few lawyers and NGOs, down here we don't need the common man. What I was suggesting is that we can maybe have a meeting in a stadium or a public rally, but since our sensitization mission is limited we can't do that even the registrar won't agree with me, but I think we should even here at the premises of the court we have a big hall here lets organize for people to come here, the neighbors around here to know about the court, the grass root should know about the court……therefore, I agree we target only the elite we don't target the common man. Even look at the cases even if is elite lawyer bringing the case but is for a common man…so we should also target that type of group. (Interview held on 10th April 2019).

However, the registrar argued that the courts never conduct sensitization mission, however for the case of the African Court it was a deliberate decision it took in order for the court to be known. He further argued that sensitization mission is not something the court is going to do forever it will reach a point that it will live that responsibility to the civil society organization to promote the ware bouts of the court. However, the researcher asked the registrar if the government will allow CSOs to promote freely such a sensitive matter of human rights, the registrar implied that it depend on the way the CSO will approach the government, despite there are governments that are hostile to the CSOs no matter how they are approached, but the political climate is changing governments are starting to accept the CSOs. Therefore, for him he believed that the CSOs are the mediums through which the court can be promoted to the public. To quote him:

> …NGOs do quite a lot of works to support the activities of governments…for example if an NGO dealing with promotion of human rights and it writes a very good policy proposal and submit to government they will consider it…but only when it present itself and the government perceive it as an opposition, criticizing and not making any meaningful contribution it might learn into problems, of course there are some governments don't want to hear about the NGOs at all it doesn't matter what they say they are just hostile towards the NGOs. But you agree with me that the climate is changing gradually…government they start to working with the NGOs despite they choose which to work with but is a development. Besides the NGOs there are national human rights institutions like the BAR association, the faith organizations like the churches that can promote things like this. (Interview held on 11th April 2019).

According to the report of African Court on Human and People's Rights on relevant aspects regarding to the judiciary in protecting human rights in Africa by Justice Sophia Akuffo the president of the court 2012 she argues that, amongst the challenge the court is facing is the overall unawareness of the very existence of the court among the African, there is lack of knowledge about who and how to access the court.

Désiré (2010) in his study he argues that the commission and the court are elite driven they have placed themselves very far from the ordinary civilians and according to Cole (2010) he argues that NGOs can be good drivers to be used by the civilians, however there are NGOs excluded from accessing the court, whereby for an NGO to access the court must have observer's status of the commission the one with no observer's status cannot, but for Cole the NGOs are important mechanism of presenting the individuals to the court excluding them is denying ordinary individuals their rights. For Cole (2010) the NGOs should not be excluded from accessing the court. Therefore, if they can be used by the individuals to bring the matters to the court, the court can as well use them to promote awareness to the public not only those with observer status of the commission. However, the court in some instances cannot be blamed the political climate can also limit the NGOs to conduct human rights Advocacy.

4.4.1. Effects of Public Unawareness of the Court.

The researcher went further to ask the respondents (Court officials) how the public unawareness affects the court in implementing its mandate of protecting human rights. The response from most of the respondents was that they are about to fail and they will be useless since nobody will bother to bring the case to the court when their

rights are violated because they don't know about the court. For one official implied that:

> In fact if there is no awareness we are not going to have many cases here and at the end of the day we are going to be useless as well because we are not receiving any cases. The cases we are receiving are from particular country Tanzania the same nature, so we are not learning new things from other countries we are just binding ourselves within a particular context …where this makes the court to appear like the supreme court of Tanzania and not the African court. (Interview held on 15th April 2019).

Another official commented that:

> …there are cases that should be here na hazipo (are not there) despite of our financial and human resource problem we should be able to handle more cases from other countries and not only from Tanzania. We receive many cases from Tanzania than other countries because to some extent the court is known here, so we should also receive other cases from other parts of Africa but we are not much known so we are not receiving the cases. For instance, the European Court on Human Rights it's based on France but most of the cases are not from France, the UK has more applicants than France. However, if you look at eastern Europe has more cases than the traditional western, but on the traditional western France has very few cases on the European court, UK, Italy and Germany have more cases than France….the African court should receive more cases but many people don't know about it (Interview held on 10th April 2019).

Another official also commented that:

> The court deals with the cases, so if people are aware they will bring the cases to the court, where they are not aware they will not bring the cases….the unawareness of the people will affect the court in the sense that there may be people who would have brought cases to the court there maybe people who have problem which would have brought to the court and the court could have been able to deal with such problem. Unfortunately they are not aware of the court then their problems cannot be brought here… (Interview held on 12th April 2019).

The researcher went further by approaching the public direct, by asking the ordinary citizens of if they know the ware bout of the court. But sad enough almost all of them don't know about the AfCHPR. Most of them didn't know if there is such a court and those who heard about it they don't know where it is located and other where confusing it with AICC, EACJ or the ICTR. For instance the researcher asked one of the citizen if he knows the African Court, the citizen replied that *"Yes I have heard about it, is it the one located in AICC".* The researcher went further and asked

another if she know about the AfCHPR, the citizen replied that *"I don't know even about my rights, how am I supposed to know about the court on human rights?* So the response which the researcher got from most of the respondents (ordinary citizens) was the same of not knowing about the existence of the court or they heard about it but they don't know where it is located.

In this case since the public is not aware of the existence of the court it becomes difficult for the court to implement its mandate of protecting human rights. The public doesn't know the remedies and the benefits they will gain out of the court. However, in addressing these challenges within the report of the court, it states that the court arranged for seminars and conferences in different countries and Colloquium of Human Rights Courts and with different institutions of the similar nature.

Basing on these findings it is revealed that the public is not aware of the existence of African human rights bodies. They are not aware of existence of the Court, Commission or the Committee and if they are aware, they are partially informed or just heard about them. This situation imposes a challenge to the human rights institutions because the public or the individuals don't know how to use or to access these bodies and therefore, these institutions will not be able to protect their rights when they are violated. The findings of the study shows that most of the individuals don't know if there is an African court and if they know its existence then they don't know where it is located and if they know its location they don't know how to access it, what type of case is to take to the court and how it operates. According to the findings of the study revealed that public awareness at the state level is a problem but is a much a bigger problem at the continental level. For instance, Most of the people in Tanzania don't know about the existence of the AfCHPR, however, there are those who know about its existence, they just don't know how to access it. Therefore, if this is the situation within a single African state (Tanzania) where the AfCHPR resides, the situation of the continental level is even much worse.

Most of the individuals don't know about these institutions because, some are just ignorant, they are reluctant to know about these institutions, because there are individuals who reside near the court but don't know if the court exists there. But they lack knowledge about the court because they are not sensitized. For instance

according to the court registrar he reckoned that the court does have sensitization program, but this program is limited only to sensitize the states to ratify the protocols, therefore they meet with Heads of States, CSOs and NGOs. Therefore, the court does not conduct general sensitization mission, it is the task of the commission to conduct general sensitization to the individuals at the grass root level. But the commission is not Tanzania and has never done so. In this case the individuals tend not to be knowledgeable with the court, because the court targets the elite and not individuals at grass root level. At the continental level individuals are unaware of the court, commission and the committee because at first they are not sensitized enough and the location where these organization are stationed. The court is stationed in Tanzania and the commission is in Gambia. These organizations do not have sub-registries or offices in all countries in Africa, in which if they will conduct intense sensitization and they have sub-regional offices people could have known about them.

It can be concluded that the situation of the public not knowing about the AfCHPR it imposes a serious challenge to the court since the Court depends to the public or individuals to bring in complaints about violation of their rights so as they can be protected. Therefore, the public not knowing about the existence of the Court, the Court cannot receive cases or grievances from the individuals and therefore, the court cannot protect their rights. Furthermore, since the public is unaware of the existence of the court it becomes difficult for them to access it.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0. Introduction

This chapter presents the summary of this dissertation by providing conclusion and recommendation concerning the challenges faced by the international human rights organization in promoting and protecting human rights a case study of African Court on Human and People's Rights. The conclusion of the study is drawn basing on the objectives of the study.

5.1. Conclusion

The general objective of the study was to assess the challenges of International Human Right Organizations in promoting and protecting Civil and political rights. The findings of the study revealed that international human rights organizations face a lot of challenges, some of the challenges originate from inside and other originate from outside, however, most of the challenges instigate from outside these organizations. According to the case study, reviewing the challenges faced by the AfCHPR in protecting human rights, the findings revealed that most of the challenges emanate from outside which affect the internal processes.

5.1.1. Availability of Funds

Under this objective the researcher examined whether the court commands sufficient financial resources or not. But also the researcher examined the sources which the court obtains its funds. The results demonstrate that the AfCHPR faces serious financial constraints. Also the results have revealed that the Court does not have any source of its own that can generate its own income, it depends on the AU to finance it and the AU depend on the contribution of the Member States so as it can finance its other organs. Furthermore, the findings they revealed that most of the AU Member States have a tendency of not contributing to the AU and therefore, the AU fails to meet its financial obligation of financing other organs including the Court. In this instance, the court finds itself lacking funds to facilitate its internal activities and programmes. For instance, the court cannot recruit new staff to fill in the remaining positions. The African Court adopted a structure of 90 personnel in 2012, the court

was supposed to fill in these 90 position within a period of five years from the day it adopted the structure, but up-to-date it has passed more than five years the position are still vacant and the court cannot recruit new staff because it lacks enough funds.

The findings of the study revealed that the African Court also depend on the donor funding, however, the donor funding are limited to specific programmes and are not for the operation of the Court. For instance, the Court uses the donor funding for carrying out sensitization missions across Africa to persuade the African States which have not ratified the two protocols to ratify. But the donor funds are unpredictable, the court might have programmes at the beginning of the year but the donor funds may arrive late. But also the donor funding are not enough to facilitate all the programmes, the donors contribute only 16% of the court's budget. Therefore, in this case the programmes can either not get implemented or receive late implementation. Therefore, this is an external challenge, but it affects the internal processes.

Therefore, it can be concluded that the African Court face a serious challenge when it comes to finance, the court depends on the AU member states to finance it and the some of the AU member states are reluctant to finance the court, in which it causes the court to not have enough finance to facilitate some of its activities and acquiring or recruiting new personnel. Therefore, finance is vital to the court for its operations.

5.1.2. Accessibility and Coverage

Under this objective the search was to identify whether the IHROs are accessible and how far IHROs cover in terms of their operations in protecting and promoting human rights. The results demonstrated that there are some instances that impends the accessibility and coverage of the Court. The results demonstrate that the court becomes inaccessible because of most of the individuals not knowing about the court and therefore they cannot access it. Also the results indicated that the inaccessibility of the court is because of longertivity and rigidity of the procedures of accessibility. Also the results demonstrated that the court becomes inaccessible due to the reason that most of the AU member states have not purchased the protocol accepting the competence of the court for the individuals and NGOs to bring the case to the court. The results have demonstrated that the situation of the AU Member States not purchasing or ratifying the protocol of accepting the competence of the court it limits

the coverage of the court. The AfCHPR is supposed to be a continental court but it covers only 9 states out of 55. Furthermore, the results have demonstrated that the inaccessibility of the court by the individuals is because unawareness of the existence of the Court by individuals.

Therefore, it can be concluded that, individuals and NGOs not being able to access the court it imposes a serious challenge to the court in the quest of promoting and protecting human rights. The Court depends on the individuals to file their cases so they can receive justice and their rights to be well protected, therefore, if the court will be inaccessible by the individuals and the NGOs and covering a small area by operating in few countries there will be no protection of individual's rights.

5.1.3. State Compliance with the Recommendations of the AfCHPR

Under this objective the search was to identify how far the states comply with the recommendations, decisions or judgment of the IHROs. The findings of the study demonstrated that, the court largely depend on the states parties to the protocol for implementation of its recommendation, decisions or judgment, whereby according to the findings most of the states do not comply with the recommendation, decisions of the judgments of the court, despite of these states being part to the protocol accepting the competence of the Court, since many of the judgment or decisions rendered by the Court are not implemented by the states party to the protocol. For instance, the results have revealed that most of the judgments against Tanzania have not been implemented or others have just received partial implementation. On top of this, the results have revealed that states do not comply because of several reasons, one is that they fear of losing their sovereignty, fear to be held accountable by the court, they might be lack the capacity or technical know-how to initiate implementation and sometimes the decision or judgment might be interfering with the state interest. But most importantly the results of the study have demonstrated that most of the AU member states be it Parties to the protocol or not they lack political will to accept and implement the judgments of the Court. Furthermore, the results demonstrated that in the AU charter has scapegoat phrases which allow States to neither comply nor implement the judgments of the court.

Therefore, conclusion can be made is that, due to the failure of the States parties to the protocol of accepting the competence of the court failing to implement the

recommendation, decisions or judgments of the court, the court is about to fail to promote or protect human rights due to the reason that it provides with the decisions which are not implemented. Therefore, justice will not be obtained since justice will not be obtained if there is no implementation.

5.1.4. Enforcement Mechanism

Under this objective, the search sought to determine if the AfCHPR has any enforcement mechanism(s) that it uses to monitor the implementation of its judgment, decisions or recommendations. But also the search was to determine if there is an enforcement mechanism how effective is that mechanism. However, the finding demonstrated that the court has no enforcement mechanism of its own, whereby due to this it has become a loop hole for the states to ignore the judgment of the court. The findings reveal that the African Court depends on the AU Council of Ministers to monitor implementation of the judgments rendered by it. The mechanism used by the AU Council of Ministers is called "naming and shaming tactic". However, the AU Member States have been labeled as a "club of friends" fearing of holding each other accountable whenever they do something wrong. According to Article 23(2) of the AU charter it stipulate that a state will be held accountable if it ignores the recommendation or decision of any of AU organ, either through sanctions (economic sanctions) or denying it transport and communication links with other states. But this article is theoretically valid but practically this article has never been implemented. In this case the AU Member States they know that even if they do not comply the AU or the Court has no power to hold them accountable. Furthermore, the findings demonstrate that the court simply depend on a political organ to implement its judgment while the political organ is full of states which have no political will of accepting the judgments of the court. On top of that, the findings of the study reveal that since the court has no enforcement mechanism of its own depends on the council of ministers for enforcement of its judgment, the mechanism or tactic used by the council of ministers is not effective.

Therefore, it can be concluded that, due to this situation the court not having its own enforcement mechanism, the court has been termed to be a mare administrative organ rather than a judicial organ since it depends on the political organ (Council of Ministers) for enforcement. The court reports to the council of ministers for the case

of non-compliance expecting that the decision to be taken by the council of minister will be effectively enforced according to article 24 of the charter, but it is not. Naming and shaming tactic is not effective in Africa since some states do not care if they are identified defaulting or non-complying states. If this tactic was effective then the states could have felt guilty and implement the judgment of the court.

5.1.5. Public Awareness

Under this objective the search was to identify if the general public is aware of the existence and the roles performed by the IHROs. The results demonstrate that very few individuals know about the existence of the court, however those few who know about the court they do not know how it works or how to access it. The results demonstrate that the public is unaware about the existence of the AfCHPR, also the results demonstrate that the public is unaware about the remedies available to them through AfCHPR. On top of this, the results demonstrate that the public does not know even the location of the Court. For instance, many of the residents of the region in which the court is located they don't know about the existence of the court. Furthermore, the results have demonstrated that the unawareness of the public about the court is because the public is not intensively sensitized either by the Court itself or the Commission which has the core responsibility of promoting public awareness.

In this case, it can be concluded that the situation of the public not knowing about the AfCHPR it imposes a serious challenge to the court since the Court depends to the public or individuals to bring in complaints about violation of their rights so as they can be protected. Therefore, the public not knowing about the existence of the Court, the Court cannot receive cases or grievances from the individuals and therefore, the court cannot protect their rights. Furthermore, since the public is unaware of the existence of the court it becomes difficult for them to access it.

5.2. Recommendations

From the findings and the conclusion of this study the following are recommended.

i. The AU Member States should at first have a political will to accept and support the AfCHPR both morally and financially. The Member states are supposed to; first accept the Court and its mandate, but also be able or willing to take action to the defaulting Member States and also accept to

implement the judgments rendered by the court for this case the Court will be effective or have an impact in protecting human rights. Furthermore, the states are supposed to a political will to purchase both of the protocols, the one establishing the court and that of accepting the competence of the court. But also the state are supposed to have a political will to support these organization financially, because the Court, the Commission or the Committee do not have an alternative sources of income rather they depend on the States to finance them, whereby if these organizations receive enough funds they will be able to operate smoothly.

ii. The court must have its own enforcement mechanism. According to the findings of the study the African Court does not have a law enforcement mechanism of its own, rather it depends on the AU Council of ministers to ensure that the judgments it renders are implemented. The court has been reporting to the council of ministers for the instances that the states have failed to comply with the judgment whereby such state is identified as defaulting state. The tendency of a court being reporting to the political organ it is being considered that the court is becoming more of an administrative organ rather than a judicial organ. Despite the African court is an international judicial organ where sometimes implementation at this level becomes difficult to take place, but at least to have its own enforcement mechanism as a judicial body. The AU Member States should empower it or allow it to have its own enforcement mechanism rather than reporting to a political organ which makes it more of an administrative organ than a court.

iii. The AfCHPR is supposed to conduct a general sensitization missions to impact awareness to the public; many of the individuals on the African continent do not know about the existence of the African Court, Commission or the Committee. It true that the court being as the judicial organ it is not its mandate to promote general awareness about its existence or how it operate and it is the task of the Commission, but neither is the commission conduct generals sensitization in every country in Africa. Therefore, the court should just take a deliberately decision to conduct general sensitization to the public so as it can be known to the people, the

way it took a deliberate decision to face the states which have not ratified the protocol and sensitize them.

iv. The AU Member States should consider opening up sub-court registries or the liaison offices or facilities in State parties so as the individuals in such states can get an opportunity to access the court easily even being able to attend the hearing. Since some countries are located very far from East Africa, there are individuals that cannot access the court because they cannot afford the cost of travelling to Tanzania to file a case or to attend the hearing. Yes, it's true that individuals can file cases through internet via emails or they can file a case through post office, but there are individuals who do not have access to the internet. But also yes an individual can file a case electronically the case might be accepted, but how will that individual attend the hearing. The other thing is that not all individuals know the legal procedures of filling cases, but if there could have been a physical office they could have gone there physically and receive legal assistance on the way to file a case. Therefore the AU Member State should consider this if they want to embrace the culture of respecting human rights.

v. The AU Member States and the AfCHPR should consider easy the accessibility procedures for the individuals to be able to access it. The procedures are considered to be long and others seem to be cumbersome for some individuals. Therefore, the court should consider for more easy and simple procedure for individuals to access the court.

5.3. Suggestions for Further Research

The following are areas suggested for further research.

i) A similar study should be conducted involving more than one IHRO in order to get a comparison and more details on the challenges faced by these organizations in promoting and protecting human rights.

ii) Further studies to be conducted focusing on the effects caused by the challenges faced by these organization.

iii) This study is Qualitative the suggestion is that a similar study should be conducted involving a quantitative approach to quantify the effects challenges of these organization.

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APPENDICES

APPENDIX 1: INFORMED CONSENT FOR PARTICIPANTS IN RESEARCH

01	Title of the Study	
02	Researcher's Name.	

I. Purpose of this Research/Project

The purpose of this research project is to gather data about various challenges encountered by International Human Rights Organizations in promoting civil and political rights. It is hoped that this research will provide valuable insights to the organizations in the efforts of promoting and protecting human rights especially the African court/commission on Human and People's Rights. The subjects will consist of members of the African court/commission on human and people's rights and other organizations (IGOs, NGOs & RECs). Several interviews will be conducted.

II. Procedures

This research will entail semi-structured interviews. The researcher will administer questionnaires to members/personnel of the African Court on human and People's Rights and other organizations (IGOs, NGOs & RECs). Names and other identifying characteristics will eliminated from the transcripts of the taped interviews.

III. Risks

There are minimal risks involved in participation of this study. The whereabouts of the tapes will be only known by the researcher and the transcripts will only be accessible to the researcher and his supervisor. The notes will not be made available to any other person.

IV. Benefits

There is no promise or guarantee of benefits for participating in this research project. It is hoped that the benefits from this project will be for the field of education and society as a whole.

V. Extent of Anonymity and Confidentiality

All participants' responses will be anonymous and there will be no identifying information collected in this research project. Notes will be taken, but in the final write-up there will not be any use of names or any other identifiers. If names are used they will be pseudonyms.

VI. Compensation and Freedom to Withdraw

There will not be any compensation of participating in this study. The participant is free to withdraw from the study whenever she/he feels it necessary.

APPENDIX II: INTERVIEW GUIDE

<table>
<tr><td colspan="2">Research Title: The challenges of International Human Rights Organizations in promoting and protecting civil and political rights: A case study of the African Court on Human and People's Rights.</td></tr>
<tr><td colspan="2">Interviewer's Name: Losaru, David Elibariki.</td></tr>
<tr><td>Date of Interview:</td><td>Location of Interview:</td></tr>
<tr><td>Time started:</td><td>Time ended:</td></tr>
<tr><td>Respondent's Gender:</td><td>Respondent's Level of education:</td></tr>
</table>

I: Hello! I am David E. Losaru student at the University of Dodoma, pursuing a Master's degree in International Relations. Thank you for meeting with me.

R: ……….

I: I am conducting an academic research pertaining to International Human Rights Organizations, by finding out the challenges they face in promoting civil and political rights. Well, this research is purely academic is not political or activistic based. It is my hope you understand?

R: ……….

I: Therefore, I am going to ask you a couple of questions concerning your organization that will help me to have better findings on my study. I am looking forward for your cooperation.

R: ……….

Questions:

1. What enforcement mechanisms does the court have in place?
    - Do you think the mechanisms are sufficient?
    - Is there a need of sanctioning or coercive enforcement mechanism as stipulated in article 23(2) of the constitutive act?
    - In the insights provided in the journal that there are mechanism the court intends to propose to the council, can you mention them??
    - Are the proposed mechanism sanctioning in nature?

- Does the absence of enforcement mechanism make the court an administrative organ rather than a judicial organ?
- How does this affect the court?

2. How is the financial situation of the court?
   - Is the financial support from the AU Member states and development partners adequate?
   - As it ever happened that the finical deficit made the court to abandon it mandate of protecting human rights and start dealing with fundraising or looking for where you can get the funds?
3. Is the court having enough human resources to carry out or coordinate different activities?
   - How is this deficit affect or a challenge to the court?
4. Why do you think is the reason for the state non-compliance to implement the judgement or provisional measure of the court?
   - Do political will has to do with this?
   - How about enforcement mechanism?
   - Fear to be exposed or lose their sovereignty?
   - How the States non-compliance affect the court?
5. Why do you think many states do not want to make a declaration of accepting competence of the court?
   - How does this affect the court?
6. Tell me about the accessibility of the court, because it has been argued that the court is not easily accessible to the individuals having cumbersome and long procedures which make the individuals to not access the court?
   - Do you think the location of the court also contribute to the inaccessibility of the court? (too many Tanzanian Cases)
   - How do you make the court accessible for the citizens from other countries apart from Tanzania who have made a declaration accepting the confidence of the court because due to the number of cases about 75% of them are here from Tanzania due to fact that the court is stationed here in Tanzania?
   - Have you ever had an individual or NGO accessing the court direct without exhausting the local remedies?

- What else do you think make the court inaccessible? (purchasing the declaration by states parties has to do with this)

As the legal aid program initiated or is it active?

7. How far the public aware of the court?
    - Is the public unawareness affecting the court or is it a challenge to the court?
    - I have observed that most of the seminars and sensitization program are targeting the NGOs, HOS and civil society do you think this is sufficient than approaching the citizen themselves directly by arranging for a seminar or conference with the citizens or the authorities restrict this?
    - Even though you have trusted the NGOs and civil society organizations to aid you with the promotional activities do you think they are getting such an opportunity to do so or is the political climate not allowing?
    - Have the NGOs apart from the ones with observer status from the commission being used by the court to promote public awareness about the court?
8. Considering aspects like inadequate finance, absence of enforcement mechanisms, states non compliances and public unawareness.
    - Do you think these aspects question the effectiveness/usefulness of the court?

APPENDIX III: PERMISSION LETTER

AFRICAN UNION
الاتحاد الأفريقي

UNION AFRICAINE
UNIÃO AFRICANA

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
COUR AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES
P.O Box 6274 Arusha, Tanzania, Tel: +255 732 979506/9; Fax: +255 732 979503
Web site: www.african-court.org Email registrar@african-court.org
The Registry of the Court

Reference: AfCHPR/HR.ADM./2019/109
Date: 21 March 2019

Dear Mr. David Elibariki Losaru

Subject: Letter of acceptance to the Research Internship Program

I write with reference to your application for research internship with the African Court on Human and Peoples' Rights.

I am pleased to inform you that your application has been accepted to undertake your Master in International Relations research for 4 weeks, **beginning on 25/03/2019**.

Please find enclosed the Internship terms and conditions form of the Court. Should you accept this offer, please fill, sign and return this form to the Court on or before 22 March 2019. After this allotted time, this internship offer is no longer valid.

You will do your research internship in the Library of the Court. You will not be supervised since you will doing your research and if you require to do interviews with Court staff, please inform the Human Resources Officer (Management & Development) to make the appointments for you.

For any assistance or queries, please contact the Human Resources and Administration Unit in charge of coordinating internships, to addresses below:

1. Senior Human Resources Officer
   - Email : ngarhasta.neldjingar@african-court.org
   - Phone: +255 762033122
2. Human Resources officer (Management and Development)
   - Email : douglas.tholo@african-court.org
   - Phone : +255 783567901

Registrar

Dr. Robert ENO

Mr David Elibariki Losaru
Email: losarujr93@gmail.com
Phone: +255 754970249

CC
- Human Resources and Administration Unit
- All Units (for information)