

ENTREVISTA COM VICTOR DANKWA¹

By RPD on July 5th 2013

Victor Dankwa has been educated at the Universities of Ghana, Oxford and Yale. He was a Senior Member, Faculty of Law, University of Ghana (1972-2005), and a Senior Member at the Department of International Law, University of Limburg, The Netherlands (1985-1987). He was a Member of the Committee of Experts which drafted proposals for the current Constitution of Ghana; Commonwealth Secretariat Consultant to the Constitution Drafting Committee of Swaziland; United Nations Consultant for Review of the Laws of Liberia for their conformity with International Human Rights between 1991-2005. He served as a Member of Ghana Law Reform Commission from 1991-2005. He lectures part-time at Legon and chairs Securities and Exchange Commission of Ghana. He was a Member of the African Commission on Human and Peoples' Rights from 1993-2005, and served as its Vice-Chair, Chair and First Special Rapporteur on Prisons and Detention Centres in Africa. He chaired the Working Group which produced the First Draft of the Protocol to the Charter of the Rights of Women in Africa. He also participated on the Drafting of the Protocol on the Establishment of a Court on Human Rights. He is currently the Chair of Constitution (of Ghana) Review Implementation Committee.

DEVELOPMENT AND HUMAN RIGHTS

The African Charter on Human and Peoples' Rights, also known as Banjul's Charter, was adopted by the African Union on 27 June 1981, and entered into force on 21 October, 1986. It is the main instrument for the protection of human rights in Africa and the only binding instrument that acknowledges the right to development. The African Charter also provides for the protection of both human and peoples' rights and provides a holistic approach, while it deals with civil and political rights, as well as economic, social and cultural rights.

Today, more than a half of the African States have established domestic institutions for the promotion and protection of human rights in partial fulfillment of their obligations under the Charter. Although relevant achievements are noted, challenges and problems confronting Africa in the field of human rights are still to be addressed.

¹ Interview conducted in English

RPD: *We know the role you have been playing on the defense of human rights. You have also been a member of the African Commission on Human and People's Rights. How do you see human rights in Africa at this moment?*

Dankwa: Human rights have challenges. We have found evidence, for example, recently in Egypt, where you find a situation where at the first time people have fully elected a government and the president is removed by a military government. There is a challenge in that regime. In terms of human rights, there are legal constraints about the way states and people can exercise civil and political rights. Having said that, there have been tremendous advances in human rights. Looking back from the current, you have a situation where more and more countries are allowing their people to decide how their governments should be ruled, what should prevail in a country. In that country, you have freedom of expression in several ways: electronic media, organizations advocating for promotion, protection of human rights. There have been advances over the years, although there are also challenges.

RPD: *In your opinion, can the recent situation (changes in the governments, demonstrations and improvement of participatory channels) have an impact on shaping development initiatives in the future?*

Dankwa: It can have an impact on development to the extent international assistance and cooperation can impact on the development of the country and of the people. What we see in the current situation is the difficulty to reach development when the government is not stable, investments are withdrawn, there is little or no commitment with initiatives that can provide the benefit of people. On the other hand, when you have stability and mechanisms for consultation, you can have a positive impact. You can have, at the end, the benefit of the people, because people can decide.

RPD: *At the African Commission on Human and Peoples' Rights, you had the chance to address several cases that attempted to violate the right to development. How would you define the role played by the African Commission² to address the right to development?*

Dankwa: Article 22 of the African Charter provides the right to their economic, social and cultural development³. Every right in the charter is justiciable. Also, the African Commission clearly stated what amounts to a violation to the right to development. In the process against the Government of Kenya⁴, the African Commission noted that when

² The African Commission on Human and Peoples' Rights is a regional body who entails the competence of ensuring the protection of human and peoples' rights in Africa. It was established by the African Charter on Human and Peoples' Rights.

³ Article 22 of the African Charter establishes that: "(1) All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. (2) States shall have the duty, individually or collectively, to ensure the exercise of the right to development."

⁴ In the case Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (ACHPR, 2009), the indigenous people Endorois were expelled from their land to give place to a development initiative provided by the Government of Kenya. The African Commission acknowledged the Endorois people's right to controlling their own land,

people (consent) are objecting, it can impact negatively on development. When there is consultation by government or setting an agreement to that end, the result would be really beneficial. In that case, there was no process of consultation. Furthermore, the interest of the people of Kenya was against the people of that community. The compensation given was inadequate; people did not appreciate the arrangements made. The commission took the case and addressed how you can conclude that there was a violation of the right of development. Cases of displacement in Darfur area in Sudan were also taken to the Commission. The Commission did not find difficult at all to find that the right of the people was being violated. Also, Ogoni people had complained⁵ to the commission. The Commission has tried to give meaning and substance to the right to development.

REFERENCES

African [Banjul] Charter on Human and People's Rights, adopted June 27, 1981, OAU. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

ACHPR. Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya. Communication 276/2003, 27th Activity Report (2009).

_____. Social and Economic Rights Action Centre (SERAC) and Another v Nigeria (2001) AHRLR 60 (ACHPR 2001).

including the right to water and other natural resources. It also understood that the lack of effective participation of the Endorois people in designing development initiatives related to them amounted to a violation of the right to development.

⁵ In the case Social and Economic Rights Action Centre (SERAC) and Another v Nigeria, the Ogoni people (ACHPR, 2001).