ABSU *Journal of Arts, Management, Education, Law and Social Sciences*.
Vol. 10&11; 199 - 210, 2020/2021 www.absujamelss.org

CHALLENGES CONFRONTING THE RATIFICATION OF THE MALABO PROTOCOL BY AFRICAN STATES: AN APPRAISAL

Chijioke, C.O and Enwere O.E
Faculty of Law, Abia State University, Uturu

Abstract
The adoption of the Malabo Protocol on June 27, 2014, the African Union invites scholars, practitioners and policy makers to contribute to a Special Supplementary Issue reflecting on the Protocol's integral role in enhancing accountability for international and transnational crimes in Africa. This protocol extended the jurisdiction of the African Court of Justice and Human Rights to encompass a wide array of crimes like genocide, war crimes, corruption, and illicit resource exploitation. Despite its potential, the Protocol has faced significant challenges, notably a low ratification rate, with only one of the necessary fifteen ratifications achieved till date. This article critically assessed the Malabo Protocol through various thematic lenses. It explored theoretical and legal frameworks that enhance understanding of international justice and accountability in Africa as well as assesses the challenges hindering ratification and proposed strategies for promoting wider acceptance. Additionally, the article analyzed the impact of the protocol in advancing accountability for international crimes and its significance within the broader African and global justice landscape. Contributions are expected to span interdisciplinary perspectives, examining the role of sociology, political science and civil society advocacy in relation to the Protocol. The Article also explored and proposed future directions, offering insights into the protocol's long-term prospects and recommendations for stakeholders. Together, the article examined and celebrated the progress made over the past decade goal and also reinvigorate efforts towards ratification and implementation, reinforcing the African Union's commitment to combating impunity and promoting justice in Africa.

Keywords: Malabo Protocol, Accountability, Ratification, International Justice, Impunity

Introduction
A key piece legislation within the African Union (AU) is the Malabo Protocol, also known as the Protocols on Amendments too the Protocol on the Statute of the African Court of Justice and Human Rights. Its purpose is to broaden the African Court of Justice and Human Rights (ACJHR) jurisdiction to encompass transnational and international crimes. An important step has been taken in the AU's attempts to handle different legal issues in Africa and fortify the regional judicial system: the Protocol.

By doing so, the protocol represents a crucial step forward in the AU's efforts to address various legal challenges in Africa and strengthen the regional judicial system, ultimately enhancing the continent's ability to tackle complex legal issues and promote justice.

The African Court on Human and Peoples' Rights (ACHPR), established in 1998 under the Protocol to the African Charter on Human and Peoples' Rights, marked the beginning of the road toward the Malabo Protocol. The African Commission on Human and Peoples' Rights' protective role was intended to be supplemented by the ACHPR, which offers a legal framework for upholding human rights throughout the continent. Nevertheless, there were issues with the ACHPR, especially with regard to implementing rulings and offering thorough legal recourse. The African Union (AU) resolved in 2004 to combine the ACHPR with the African Court of Justice (ACJ), which had been founded in 2000 by the African Union's Constitutive Act but had not yet begun to function. As a result, the Protocol on the Statute was adopted.[1]

The difficulties African nations experienced in dealing with crimes including crimes against humanity, war crimes, genocide, and unconstitutional transitions of government persisted in spite of these attempts. Often regarded as the principal international prosecutorial authority for these types of offenses, the International Criminal Court (ICC) was founded in 2002. However,

there were complaints that the ICC unfairly singled out African leaders and countries, which led to a growing tension in ties between the ICC and African states. As a result, there were increasing demands within the AU for a regional structure that could deal with these situations while keeping in mind the African context. Amidst this context, the notion of broadening the African Court of Justice and Human Rights' jurisdiction to encompass transnational crimes acquired impetus. The Malabo Protocol, adopted on June 27, 2014, in Malabo, Equatorial Guinea, was the result of these deliberations. It sought to address the limitations of existing judicial mechanisms and provide Africa with a robust legal framework for dealing with serious crimes and human rights violations.[2]

The African Union (AU) laid the groundwork for its human rights and justice systems as far back as 1988, adopting the Protocol to the African Charter on Human and Peoples' Rights, which paved the way for the African Court on Human and Peoples' Rights. The AU continued to build on this foundation, establishing the African Court of Justice in 2000. In 2005, the AU took a significant step forward by merging the two courts, creating the African Court of Justice and Human Rights, a single, unified body tasked with promoting and protecting human rights and upholding justice across the continent.

In June 2014, the African Union convened in Malabo, Equatorial Guinea, for its 23rd Ordinary Session, where it adopted the Malabo Protocol, officially known as the Protocol on Amendments to the Protocol on the Statute to the African Court of Justice and Human Rights. This protocol expands the jurisdiction of the African Court of Justice and Human Rights to include international crimes and establishes a framework for corporate criminal liability.[3]

However, the court's international criminal law section has faced a sluggish and challenging beginning. The protocol requires 15 member states to deposit instruments of ratification for it to take effect, but so far, only 15 out of 55 AU member states have signed the protocol, with none having ratified it, hindering its implementation.

The members States that have signed the Protocol include; Senegal (16/08/2016, Mauritius (14/03/2018), Equatorial Guinea (16/10/2018), Namibia (01/02/2019), Ghana (03/06/2018), Rwanda (21/11/2019), Mozambique (21/01/2020) , Angola (11/05/2020), Congo (23/10/2020), Zambia (24/03/2021), Togo (19/10/2021), Cape verde (15/02/2022), Niger (16/03/2022), ivory coast (03/04/2023), Mauritania (09/05/2023) with Angola being the only country to ratify the same, having deposited its instrument of ratification of the protocol with the court (ACJHR) on 31/05/2024.

On that note the Malabo protocol still stands not ratified. Consequently The President of the Pan-African Parliament, Hon. Chief Fortune Charumbira has taken time to itemize the benefits of having the protocol ratified noting that its implementation is key to solving many if not all of Africa's continental issues bordering on accountability and justice.

A key concern emerging from recent developments is the blurring of lines between international crimes, such as genocide and war crimes, and transnational crimes like corruption and natural resource exploitation. The Malabo Protocol is a significant step towards boosting accountability for these crimes, but it has also sparked controversy. Specifically, Article 46A, which grants immunity to serving heads of state and top officials, has been widely criticized for conflicting with the Rome Statute's Article 27 and the African Union's own principles. This "impunity clause" has ignited intense debate about the African Court's role in tackling international crimes and upholding the rule of law, with many arguing it undermines accountability.

KEY PROVISIONS OF THE MALABO PROTOCOL

The Malabo Protocol is a comprehensive document that amends the previous Protocol on the Statute of the African Court of Justice and Human Rights. Its key provisions and objectives can be categorized as follows:

2.1 Expanded Jurisdiction

The most significant change introduced by the Malabo Protocol is the expansion of the jurisdiction of the African Court of Justice and Human Rights to include three main sections:

2.2 General Affairs Section

This section handles general legal matters, such as disputes between states, advisory opinions, and cases related to the interpretation of the AU's Constitutive Act and other treaties.

2.3 Human and Peoples' Rights Section

This section deals with human rights issues, providing a judicial mechanism for individuals and NGOs to bring cases against states for violations of human rights under the African Charter on Human and Peoples' Rights.

2.4 International Criminal Law Section

The Malabo Protocol introduces a landmark provision, empowering the Court to prosecute individuals and entities for grave international crimes.

2.5 Immunity for Heads of State and Government

A contentious clause grants sitting heads of state and top government officials immunity from prosecution, sparking intense debate. This provision was driven by African leaders' concerns about being targeted while in office, highlighting the tension between the African Union and the International Criminal Court. While critics argue that this clause shields perpetrators and undermines accountability, supporters claim it is essential to safeguard sovereignty and political stability.[4]

2.6 Complementarity with National and International Courts

The complementarity principle, which states that the Court would intervene when national courts are unable or unwilling to prosecute offenses falling under its purview, is emphasized in the Protocol. This ensures that the Court supports national judicial systems rather than replaces them and is consistent with the larger international legal framework. Although the specific relationship is still unclear because of the immunity clause and different mandates, the Court is also likely to cooperate with the ICC and other foreign tribunals.

2.7 Legal Innovations and Reforms

The Malabo Protocol introduces several legal innovations aimed at strengthening the judicial process, such as:

- *Corporate Criminal Liability*: The Protocol includes provisions for holding corporations and other legal entities accountable for crimes, marking a significant step in international law.
- *Rights of Victims:* The Protocol emphasizes the rights of victims, ensuring their participation in proceedings and providing for reparations and compensation mechanisms.
- *Gender-Based Crimes:* Specific attention is given to crimes of a sexual and gender-based nature, reflecting a growing recognition of the need to address these issues within the legal framework.

- *Institutional and Procedural Aspects*

The Protocol outlines the structure of the Court, including the appointment of judges, the roles of various officers, and the procedural rules governing the Court's operations. It also provides for the establishment of a Trust Fund for Victims, which is intended to support victims of crimes under the Court's jurisdiction.

OBJECTIVES OF THE MALABO PROTOCOL

The overarching objectives of the Malabo Protocol can be summarized as follows:

a. **Strengthening Regional Justice:** By expanding the jurisdiction of the African Court, the Protocol aims to enhance the AU's capacity to address serious crimes and human rights violations within the continent, reducing reliance on external courts like the ICC.

b. **Promoting Accountability and Fighting Impunity**: The Protocol seeks to ensure that individuals and entities responsible for serious crimes are held accountable, while also addressing systemic issues like corruption and illicit trafficking that undermine development in Africa.

c. **Protecting Sovereignty**: The inclusion of immunity for sitting heads of state reflects a desire to protect African leaders from what some perceive as politically motivated prosecutions by external entities, though this has been a point of contention.

d. **Enhancing Legal Integration***:* The Protocol is part of broader efforts to integrate legal systems across Africa, promoting harmonization of laws and cooperation between national, regional, and international courts.

The African Union seeks to create a regional alternative to the International Criminal Court by broadening the mandate of the African Court on Human and Peoples' Rights to tackle international crimes committed on the continent. The 2014 Malabo Protocol proposes a merger between the African Court on Human and Peoples' Rights and the African Court of Justice, resulting in the African Court of Justice and Human Rights. Once 15 member states ratify the protocol, the court will gain jurisdiction over international crimes such as genocide, war crimes, and crimes against humanity, as well as regional concerns like piracy and terrorism. To date, 11 AU member states have signed the protocol, paving the way for its potential implementation.[5]

SIGNIFICANCE OF THE MALABO PROTOCOL FOR AFRICA

The Malabo Protocol has the potential to transform the legal landscape of Africa by addressing the unique challenges faced by the continent, including impunity for serious crimes, the protection of human rights, and the promotion of good governance.

4.1 Expansion of Jurisdiction

The extension of the ACJHR's jurisdiction to encompass international crimes like war crimes, genocide, crimes against humanity, and unconstitutional change of government is one of the Malabo Protocol's most important features. In order to guarantee accountability for grave crimes committed on the continent, this enlargement is a daring move. Due to ineffective national legal systems, unstable political environments, and a dearth of functional regional mechanisms, Africa has historically had difficulty pursuing these kinds of crimes.[6]

It is the intention of the ACJHR to supplement the efforts of the International Criminal Court (ICC) by including these offenses under its jurisdiction. The Malabo Protocol, however, also represents Africa's desire for a more independent and regionally oriented approach to justice, especially in view of complaints that African states and leaders have been unfairly targeted by the ICC. In order to overcome impunity and uphold Africa's sovereignty, the Malabo Protocol establishes a regional court with the authority to punish international crimes.[7]

[

4.2 Promotion of Human Rights

The Malabo Protocol enhances Africa's human rights safeguards by merging two key courts - the African Court on Human and Peoples' Rights and the African Court of Justice - into a single, powerful entity, the African Court of Justice and Human Rights (ACJHR). This integration streamlines the judicial process, creating a more robust and versatile court that can tackle a wide range of issues, including human rights abuses, international crimes, and related concerns, ultimately bolstering the continent's human rights infrastructure and justice mechanisms.[8]

The Malabo Protocol underscores the importance of human rights by explicitly granting the African Court of Justice and Human Rights (ACJHR) authority to hear cases involving breaches of the African Charter on Human and Peoples' Rights, as well as other human rights instruments and treaties ratified by African Union member states. This expanded jurisdiction empowers the ACJHR to more effectively safeguard human rights in Africa, providing individuals and governments with a vital platform to seek justice and redress for human rights violations, thereby enhancing the protection of human rights across the continent.[9]

In addition, the Malabo Protocol includes novel clauses designed to reinforce the application of human rights rulings. These include provisions for the application of fines against states that disobey court rulings and the creation of a Trust Fund to aid victims of human rights breaches. These steps are meant to increase the ACJHR's efficacy and guarantee that member states uphold and carry out its rulings..

4. 3 Addressing Impunity and Promoting Good Governance

In Africa, the issue of impunity for severe crimes has persisted, frequently impeding initiatives to advance the rule of law and good governance. In order to solve this problem, the Malabo Protocol gives the ACJHR authority over a number of international crimes, such as terrorism, money laundering, and corruption.[10] The Protocol seeks to address the underlying causes of instability and underdevelopment in Africa by focusing on these crimes.

Particularly when it comes to holding violent offenders accountable and assisting attempts to establish lasting peace in states affected by conflict, the ACJHR can be extremely important. Therefore, African governments would strengthen the procedures for preventing and resolving conflicts as well as addressing their underlying causes and post-conflict reconstruction by ratifying the Protocol.

Corruption and unlawful government transitions continue to be major issues in many African states, endangering democratic processes, stability, and effective governance. These difficulties frequently impede the advancement of responsible government as well as the respect of fundamental freedoms and human rights..[11]

It is also significant that the crime of illegitimate change of government is included since it shows the African Union's dedication to advancing democratic governance and opposing coups and other unlawful forms of assuming power. This clause supports the African Union's overarching goal of advancing stability, security, and peace throughout the continent. The Malabo Protocol aims to prevent further violations and support the development of a culture of respect for democratic values by holding people and leaders accountable for acts that threaten democracy..[12]

The Protocol defines unconstitutional change of government and serious corruption as international crimes and establishes a judicial mechanism to ensure individual criminal accountability for such threats to democracy, thereby helping to safeguard political stability, good governance and democratic institutions. Ratifying it would therefore send a clear signal that African states are committed to upholding democratic governance and protecting the rights of African peoples.[13]

In addition to its focus on accountability, the Malabo Protocol also emphasizes the importance of good governance by including provisions that address economic crimes such as corruption and money laundering. These crimes have long been recognized as significant obstacles to development in Africa, and the Protocol's emphasis on combating them is a reflection of the AU's commitment to promoting transparency, accountability, and sustainable development on the continent.

CHALLENGES TO RATIFICATION OF THE MALABO PROTOCOL

There are factors that challenge the successful ratification of the Malabo Protocol, especially legal and constitutional factors.

5.1 Constitutional Challenge: Sovereignty

It is quite evident that a constitutional challenge to the adoption of the Malabo Protocol is the important issue of sovereignty. Article 28A(1) of the Malabo Protocol creates specific offenses that the Court can try.

Article 28A(1) of the Malabo Protocol states:

Subject to the right of Appeal, the International Criminal Law Section of Court shall have power to try persons for the crimes provided thereunder:

Genocide, Crimes Against Humanity ,War Crimes, The Crimes of Unconstitutional Change of Government, Piracy, Terrorism, Mercenarism, Corruption ,Money Laundering ,trafficking in Persons, Trafficking in Drugs, Trafficking in Hazardous Waste, Illicit Exploitation of Natural Resources and The Crime of Aggression

A look at some of these crimes listed suggest an interference in the sovereignty of a country in the prosecution of such crimes. The important question therefore and of course the challenge that exists here is probably the challenge of allowing an external body, albeit voluntary, have a say over whether state actors should be prosecuted for any sort of crime.

For example, Article 28A(4) talks about prosecution for unconstitutional change of Government. The question that arises hence is what form of unconstitutional change?

What happens if citizens decide to stage a popular revolution and remove an erring Government, as has happened recently in Niger. Who will be prosecuted ? The citizens or someone else.

The lack of clarity on this point is noted in the Protocol. These issues are therefore issues that touch on sovereignty and sovereignty is a constitutional question.

By virtue of *Section* 1(1), the Nigerian constitution is supreme. Likewise, the protocol would not be superior to the Nigerian Constitution. Any Common law nation would still need to ratify

the Protocol internally, even after it is ratified, and even then, it wouldn't have the same legal force as their national constitution. Therefore, it stands to reason that the constitutional dispute over sovereignty is the cause of the delayed adoption and ratification of the Protocol.
Not only does ratifying it raise valid concerns regarding the sovereignty of each consenting member state, but it goes beyond simple consent.
In summary, the only way to address these problems is for the African States to determine whether or not they are ready to cede some of their sovereignty and authority to an outside organization.

There is also a political challenge to the ratification of the protocol by African States.

5. 2 Sovereignty Concerns and National Interests

The worry among African states that the Malabo Protocol may violate their sovereignty is one of the main political obstacles to its approval. The Protocol calls for the creation of a regional court that would have authority over crimes that are normally the domain of national courts, such as crimes against humanity, war crimes, and genocide. A lot of African leaders are worried that outsiders might meddle in their internal issues. The prospect of incumbent heads of state and government officials being held accountable by a supranational organization, which they see as a challenge to their stability and authority, intensifies this concern.

5.3 Distrust of International Judicial Bodies

The mistrust that certain African states have for international judicial organizations is another major obstacle. This mistrust is frequently based on the belief that African leaders have been unfairly singled out by international criminal justice systems, most notably the International Criminal Court (ICC). Despite its African roots, the Malabo Protocol is viewed by some as an expansion of this international monitoring that has the potential to threaten the political stability of the area. Because of this mistrust, some states have been reluctant to ratify the Protocol because they don't want to expose their leaders and people to prosecutions that they believe could be politically motivated or unfair.

5.4 Political Instability and Governance Issues

The African states' political instability and problems with governance are major obstacles to the ratification of the Malabo Protocol. It's possible that nations with unstable political contexts, inadequate governance frameworks, or internal conflicts lack the political will or ability to participate in the ratification process. In these situations, governments frequently place a higher priority on handling domestic crises and ensuring their immediate survival than on signing treaties with other countries. Furthermore, in certain situations, authorities can be hesitant to ratify the Protocol out of concern that it might be utilized as a weapon by rebel or political opponents to question their authority or damage their legitimacy.

5.5 Lack of Consensus and Regional Cooperation

Another major challenge is the lack of agreement among African states about the advantages and ramifications of the Malabo Protocol. The African Union (AU), the organization that led the Protocol, has had difficulty uniting its member nations. Divergent opinions regarding the necessity and usefulness of the Protocol have resulted from differences in legal systems, political ideologies, and degrees of development. Given the current regional and global judicial procedures, some states see it as a necessary step toward African self-reliance in judicial matters, while others see it as unnecessary or even harmful. States are reluctant to commit to an agreement that does not have widespread support, which has caused the ratification process to stagnate due to a lack of regional unity and collaboration.[14]

Furthermore, significant financial and economic constraints prevent African states from fully implementing international agreements and conventions like the Malabo Protocol. Limited national budgets, conflicting economic agendas, debt loads, and the economic volatility that many African nations face are the causes of these restraints. The need to strike a balance between commitments abroad and home demands exacerbates the financial difficulties and frequently puts further strain on already overstretched resources.

The implementation of the Malabo Protocol, which establishes the African Court of Justice and Human Rights (ACJHR), involves substantial financial commitments. These include the costs of setting up and maintaining the court's infrastructure, salaries for judges and staff, administrative expenses, and the costs associated with legal proceedings, including ensuring fair trials and providing for the necessary legal aid for indigent defendants.
Beyond the initial setup, the operational costs of the ACJHR are considerable. The court requires continuous funding for its daily operations, including case management, legal research, and outreach activities. African states, many of which have limited fiscal space, must contribute to these costs, either directly or through the African Union (AU), which itself relies on member states for funding.

Funding the ACJHR presents a significant burden for African states. The AU and its member states must generate sufficient revenue to support the court. This can be challenging given that many African countries struggle with budget deficits and high levels of public debt. Moreover, the reliance on voluntary contributions from member states can lead to inconsistent and inadequate funding, jeopardizing the court's effectiveness and sustainability.[15]

Reliance on foreign groups and donors, even while they might offer some financial help, could jeopardize the court's African ownership and independence. Finding long-term, internal finance solutions is essential for African states because foreign assistance is frequently conditional and may not be reliable.

African nations must address a number of pressing economic issues, including infrastructure development, healthcare, education, and poverty alleviation. Governments must attend to urgent demands in order to sustain social stability and economic prosperity, which frequently means that domestic objectives take precedence over international obligations like the Malabo Protocol.

The tension between domestic economic priorities and international obligations is a significant hurdle for the implementation of the Malabo Protocol. African governments may be reluctant to allocate scarce resources to international institutions when those funds could be used for pressing domestic issues. This balancing act complicates the commitment to and full implementation of the protocol.
The prioritization of domestic economic needs over international commitments can lead to a lack of political will to fully implement the Malabo Protocol.[16] This not only affects the funding of the ACJHR but also undermines the overall effectiveness of the court and the protocol itself. Without adequate financial support and political backing, the protocol risks becoming a symbolic gesture rather than a functional legal instrument.

Recommendations

The Malabo Protocol, aiming to empower the African Court of Justice and Human Rights to prosecute international crimes, offers immense promise for enhancing justice and human rights in Africa. Nevertheless, its effectiveness hinges on the widespread adoption of the protocol by

African nations, a target that has proven difficult to attain, highlighting the need for increased support and cooperation among member states to realize its full potential. This research recommends the following strategies:

6.1 Strengthening Political Will and Leadership

African leaders lack of political will is one of the main barriers to the Malabo Protocol's approval. Consequently, it is imperative to cultivate a political climate in which the Protocol's ratification is given top priority. This can be achieved through:

a. High-Level Advocacy: Engaging influential African leaders and political figures in high-level dialogues to emphasize the importance of ratifying the Protocol. African Union (AU) summits, regional economic communities (RECs) meetings, and other relevant forums should serve as platforms for such advocacy efforts.

b. Peer Pressure: Leveraging peer influence by encouraging countries that have already ratified the Protocol to advocate for its adoption by their neighbors. The African Peer Review Mechanism (APRM) could be instrumental in promoting this approach.

c. Civil Society Mobilization: Non-governmental organizations (NGOs) and civil society organizations (CSOs) ought to be organized to influence their governments and raise public understanding of the importance of the Protocol. Additionally, they can plan campaigns emphasizing the advantages of ratification for the general public, applying downward pressure on governments.

6. 2 Addressing Legal and Institutional Barriers

Many African countries have expressed concerns over the legal and institutional implications of the Malabo Protocol, particularly regarding the potential conflicts with national laws and the burden of implementing the new judicial structures. To address these concerns:

a. Legal Harmonization: The AU should work closely with member states to ensure that their national laws are harmonized with the provisions of the Malabo Protocol. This could involve providing technical assistance and capacity-building initiatives to help countries amend their laws accordingly.

b. Institutional Support: The AU should also offer institutional support to countries that may face challenges in implementing the Protocol. This could include setting up a dedicated task force within the AU to assist member states with the integration of the Protocol into their domestic legal systems.

c. Flexible Implementation Framework: To alleviate concerns about the immediate impact of ratification, a phased implementation framework could be introduced. This would allow countries to gradually integrate the Protocol's provisions, giving them time to adjust and prepare.

6. 3 Enhancing Regional and International Cooperation

International and regional cooperation is essential to achieving widespread ratification of the Malabo Protocol. The AU, in collaboration with international partners, should:

a. Engage Regional Economic Communities (RECs): RECs can play a critical role in promoting the ratification of the Malabo Protocol. By incorporating the Protocol's objectives into their regional agendas, RECs can encourage member states to ratify and implement it. Joint efforts between the AU and RECs will ensure that the Protocol aligns with regional priorities.

b. Leverage international support: To bolster the ratification process, the African Union should collaborate with global entities like the United Nations, European Union, and

other influential international partners to secure essential resources, including technical expertise, financial support, and diplomatic endorsement. This external assistance can be instrumental in helping African countries overcome capacity limitations and hurdles, thereby facilitating a smoother and more successful ratification process for the Malabo Protocol.

c. Promote South-South Cooperation: Encouraging cooperation between African states and other countries in the Global South can foster knowledge-sharing and best practices in the ratification and implementation of similar protocols. South-South cooperation can help African countries learn from the experiences of others that have successfully integrated international protocols into their domestic systems.

[

6. 4 Rewarding Ratification

To encourage reluctant states to ratify and implement the Malabo Protocol, the AU could introduce a system of incentives and benefits. These could include:

a. Access to Funding: Countries that ratify the Protocol could be given priority access to AU funding for legal and judicial reforms, as well as for capacity-building initiatives related to the implementation of the Protocol.

b. Recognition and Awards: The AU could establish a recognition system that publicly acknowledges countries that have ratified the Protocol and are actively working towards its implementation. Such recognition could be in the form of awards or special mentions during AU events, which could enhance the country's international reputation.

c. Trade and Economic Benefits: The AU could explore the possibility of linking ratification to economic incentives, such as preferential trade agreements or access to certain regional markets. This would provide a tangible benefit to countries that ratify the Protocol, making it a more attractive proposition.

6.5 Raising Public Awareness and Education

Public awareness and education are critical components of the ratification process. The more informed the public is about the Malabo Protocol and its benefits, the greater the likelihood of generating public support, which can, in turn, influence government decisions. Strategies to enhance public awareness include:

a. Media Campaigns: Launching comprehensive media campaigns across various platforms, including television, radio, print, and social media, to educate the public about the Malabo Protocol and its implications for human rights and justice in Africa.

b. Educational Programs: Integrating information about the Malabo Protocol into educational curricula at various levels, from secondary schools to universities. This could involve developing specialized modules on African legal systems, international law, and human rights.

c. Community Engagement: Organizing community forums, town hall meetings, and workshops to discuss the Malabo Protocol with local communities. These forums should be inclusive and accessible, allowing for the participation of women, youth, and other marginalized groups.

6. 6 Monitoring and Reporting Mechanisms

Finally, the AU should establish robust monitoring and reporting mechanisms to track the progress of ratification efforts across the continent. These mechanisms should include:

a. Annual Reports: The AU should publish annual reports detailing the status of ratification among member states, highlighting progress, challenges, and areas for

improvement. These reports should be widely disseminated to ensure transparency and accountability.

b. Ratification Task Force: A dedicated task force within the AU should be established to monitor ratification efforts and provide regular updates to the AU Assembly. This task force should work closely with member states to identify and address any obstacles to ratification.

c. Peer Review Process: Incorporating the ratification of the Malabo Protocol into the African Peer Review Mechanism (APRM) could encourage member states to assess their own progress and share best practices with others.

Conclusion

An important turning point in the development of African law is the Malabo Protocol. The African Court of Justice and Human Rights has extended its jurisdiction to encompass international crimes, signifying the continent's aspiration to assume more authority over its legal matters and tackle issues exclusive to Africa. But there is also controversy surrounding the Protocol, especially with regard to the immunity clause, which has generated discussion about its implications for accountability and justice. The Malabo Protocol has not yet come into effect since a minimum number of AU member states must ratify it. However, its implementation represents a significant step toward the development of a stronger and more independent African legal system. African states' acceptance of the Malabo Protocol is a crucial step toward fortifying the legal and human rights framework on the continent. But there are a lot of difficulties with this process that come from both internal and external sources. The intricate nature of these obstacles is indicative of the wider political, economic, and social forces that define the African continent, making the comprehensive execution of the protocol an ambitious yet important endeavor. One of the most significant challenges confronting the ratification of the Malabo Protocol is the financial burden it imposes on African states. These financial constraints are exacerbated by the economic volatility that plagues many African economies, making it challenging for states to commit to the long-term funding necessary for the court's sustainability. As a result, the financial implications of the protocol often discourage states from ratifying it, despite the potential benefits of a robust continental justice system.

Although challenges persist, it's essential to acknowledge the strides made towards ratifying the Malabo Protocol. Several African nations have endorsed the protocol and initiated the ratification process. However, to fulfill its objectives, a collective effort is necessary to overcome the hurdles that have impeded its broad adoption. A comprehensive strategy is required, encompassing financial support for states, diplomatic engagement to bolster political commitment, capacity building in legal expertise, and raising public awareness about the protocol's advantages, ultimately facilitating its widespread acceptance and implementation.

References

African Union: 'CAADP Country Implementation Under the Malabo Declaration', www.au.int, accessed on 8/9/2024

Agwu, F. A., 'The African Court of Justice and Human Rights: The Future of International Criminal Justice in Africa' [2014], *Africa Review*, (Vol. 6, No. 1) 30

Brody, R., 'Bringing a Dictator to Justice: The Case of Hissène Habré' [2015], *Journal of International Criminal Justice*, (Vol. 13, No. 2), 209.

Bukuru, J. B., et. Al., *The Malabo Protocol on African Criminal Court: Challenges and Perspectives,* Springer Publishers, 2020, 1

Eden, M., 'What Prospects for an African Court under the Malabo Protocol' https://www.justiceinfo.net/en/37633-what-prospects-for-an-african-court-under-the-malabo-protocol.html, accessed on August 11, 2024.

Jessie, C., *'A Review of the Malabo Protocol on the Statute of the African Court of Justice and Human Rights* – Part I: Jurisdiction over International Crimes' on ILA Reporter, 4 January 2021

IJRC. (2014). African Union Approves Immunity for Government Officials in Amendment to African Court of Justice and Human Rights' Statute.

Murungu, C. B., *Towards a Criminal Chamber in the African Court of Justice and Human Rights.* [2011], *Journal of International Criminal Justice*, (Vol. 9, No. 5), 1067

Murray, R. and Long, D., 'Monitoring the implementation of its own decisions: What role for the African Commission on Human and Peoples' Rights?' [2021] *African Human Rights Law Journal* (Vol. 21), 836

Why is the Malabo Protocol still on the shelf? https://atrocitieswatch.org/publications/why-is-the-malabo-protocol-still-on-the-shelf/ Accessed August 11, 2024.