

AFRICAN (BANJUL) CHARTER: A UNIQUE STEP TO PROTECT HUMAN RIGHTS IN AFRICA

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INTRODUCTION

The origin of Human Rights could be traced back to the Greek antiquity. As individual human beings, we each have an innate sense of the fundamental rights and freedoms that belong to us and that cannot be denied by any government. Therefore, human rights are universally inherent, inalienable and inviolable rights of all members of the human family, which the states are to ensure for their Citizen. A basic understanding and recognition of human rights is in our nature. The notion of human rights can be successfully traced through the linguistic, literary, cultural, and political structures of all societies.

The world's major legal systems all bring important contributions to our understanding of human rights as do the most widely practiced religious beliefs, including Islamic, Buddhist, Christian, Confucian, Hindu, and also Jewish traditions. Attempts to articulate this innate understanding can be traced to writings of such Jurists as Bodin (of France), Grotious (of Italy), Vattel John Locke (of England), Jean Jacques Rousseau (of France), Blackstone (of England), and Karl Marx (of Germany). These philosophers all contributed to the concept of "natural law" which set the stage for wide recognition of human rights and freedoms.

Natural law holds that people are born in an innately "good" state, and that certain fundamental rights can be reasonably deduced from this fact. Although the philosophy of natural law lent much to the conceptual basis for human rights, with the passage of time, it became increasingly important to translate vague concepts of rights derived from nature into specific written laws which would provide concrete protection for the rights of the individual within the larger framework of society. Great precedents in the recognition and protection of specific human rights lie in such documents as the British Magna Carta, the United States Bill of

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Rights, and the French Declaration of the Rights of Man and of the Citizen.

But, all the pre-World War II concern for and efforts in the protection of religious freedom, protection of war prisoners and treatment of wounded, protection of minorities and labour remained for the most part spasmodic and unorganized and was concentrated only on matters arousing specially intense feelings which can't be considered as Universal in nature. Only from the end of the World War II, specially after the establishment of the United Nations, did much concern begin to be expressed in a permanent and institutionalized form for the ideal of general rights to which all were entitled. Beginning with the Universal Declaration of Human Rights(UDHR), the United Nations has presided over the promulgation of over 60 major international human rights instruments by which governments promise other nations that they will not violate the fundamental rights of their own citizens. Thus the last half of the 20th Century may fairly be said to mark the birth of the international as well as the universal recognition of human rights.

It is undeniable that the protection of human rights of the people is much more difficult than either defining them or adopting declarations, bills and covenants concerning human rights. Not the unique nature, but the effectiveness of the Covenants is much more important. The newest, the least developed or effective, the most distinctive and the most controversial of the regional human rights instruments involves African States¹. This is known as the African Charter on Human and Peoples' Rights. It was adopted by the Organization of African Unity (OAU), at Nairobi. It came into force on 21st October, 1986. All fifty-three Member States of the OAU have now ratified the Banjul Charter, the last two ratifying countries being Ethiopia and Eritrea.²

This is the only instrument, which is regional, in which three types of rights have been mentioned, i.e. African Charter on Human and Peoples' Rights. Here, "Human rights" covers the 1st and 2nd generation of human rights, and "Peoples' Rights" covers the 3rd generation of human rights, which is collective rights. This Article will try to trace the uniqueness of the Charter as well as its least effective nature. The study focuses on the way

¹ Steiner, Henry J. & Alston, Philip, *International Human Rights in Context*, (New York: Oxford University Press, 1996) p. 689.

² Ethiopia ratified the Charter on June 15, 1998 while Eritrea ratified on Jan. 14, 1999.

Africans perceive human rights. Then it will see how this approach has been embodied in the African Charter on Human and Peoples' Rights. Finally by giving a overview of the provisions of the African Charter, it will show that there remains much to be done.

HUMAN RIGHTS IN AFRICA AND THE AFRICAN CHARTER

The human rights movement has not found a welcome reception in Africa. It is understandably difficult if not impossible to enforce individual rights and freedoms in most of its countries. In fact, even if most of the African countries have expressed an honest dedication and commitment to improving the standard and quality of living of their inhabitants, they still have been hesitant to adopt more than a minimum machinery for the enforcement of the human rights. Their main argument is that the human rights movement has no relevance to Africa because the culture and the requirements of the continent are unique and thus call for different solutions (the so-called "African solutions for African problems" argument). Some arguments advanced for an "African" concept of human rights are³:

- i) The violations of human rights are mainly the result of historical and systematic economic exploitation. Hence the most relevant right for Africa is the right to development.
- ii) Besides, Africa is a poor continent and can't afford "Western Civil and Political Rights" and most countries in Africa are really poor.
- iii) Moreover, human rights as developed in international instruments (mostly individual rights) are inappropriate to communal societies in Africa.

Above all, human rights are considered as a challenge to state sovereignty and its corollary (the principle of non-intervention)⁴ in this part of the world. Many countries (not only African) raise this argument particularly when they are on the defensive about their international human rights obligations.⁵ This attachment to state sovereignty is partly due to

³ Par Lydie Yog; "Human Rights & Cultural Relativism: An African Perspective"; (1999) available at <www.jullep.free.fr/humanrights.htm> .

⁴ Article 2(7) of the UN Charter: " Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter".

⁵ For example, South Africa and the Nelson Mandela's case or China and the events of Tiananmen Square.

their historical experience in general, and to their fear of post-colonialism in particular. The tension between national sovereignty and the enforcement of international human rights standards is thus often highlighted when governments point to national cultural traditions to justify failures to comply with international law.

The main problem of the above mentioned arguments is that they no longer fit with present Africa. Today, there is no longer the rule of Tribal Chief. The economic crisis, unemployment, the fragmentation of extended families due to labour migration and urbanization and other factors have resulted in a trend towards individualism in certain parts of African society even if the majority of the population is still rural.⁶ Moreover the argument about Africans being more group-oriented than individualistic fails on the grounds that it is not exclusive to the African society. In every society, the rights accrue to the individual by virtue of membership in the community rather than by mere fact of being human. Thus, this is not a basis on which to insist that the African tradition is drastically different from any other tradition or modern practice: every society accords its members certain rights by virtue of membership.

So, it can be said that current international human rights standards are by no means alien to African traditions and could even be defined on the basis of traditional African value systems and institutional practices. Even then, agreeing with the idea that for any law to grow and be productive, it must be rooted in the culture and tradition as well as in the realities of the people for whom it is made, the African States have decided to have their own instrument on human rights. They have created an instrument that reflects their values, their traditions and their cultures while complying with other international instruments. They have created a Unique instrument entitled : African Charter on Human and Peoples' Rights.

History of the Charter

In 1963, the Charter of the Organization of African Unity was adopted at the Summit Conference of the Heads of States and Governments in Addis Ababa. Its Article 2⁷ states some of the goals of the organization including

⁶ Par Lydie Yog; "Human Rights & Cultural Relativism: An African Perspective"; (1999) available at <www.jullep.free.fr/humanrights.htm>.

⁷ Article 2 of the OAU Charter states: " The organization shall have the following purposes; to promote the unity and solidarity of the African States; to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa; to defend sovereignty, their territorial integrity and independence; to

the promotion of the unity and solidarity of African States, the eradication of all forms of colonialism from Africa and the promotion of international cooperation "having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights". African governments were soon invited to study the possibility of adopting an African Convention on Human Rights in order to give full effect to the Universal Declaration. The long process ended in 1981 with the adoption of the African Charter on Human and Peoples' Rights.

During this time, drafters kept in mind that even if the Charter should reflect African values, its contents should nonetheless comply with international standards on human rights. "You have to be careful that your Charter may not be a Charter of 'the African Man'. Mankind is one and indivisible and the basic needs are similar everywhere".⁸

The Charter came into force on 21st October, 1986. The last country to ratify the Charter is Eritrea.⁹ Indeed the Charter has unusual features.

The Preamble of the Charter

The Preamble of the Charter is greatly influenced by the Charter of the Organization of the African Unity(OAU). In its Preamble, a clear reference has been made to the Charter in the following words – "Considering the Charter of the Organization of African Unity, which stipulates that 'freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples'."¹⁰ So, the objectives stipulated in the Charter of the OAU has also been taken into consideration specifically in the Preamble of the African Charter on Human and Peoples' rights.

The Preamble is also influenced by the general rule – "right implies duties." It has been stated in the Preamble of the Charter that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone.¹¹

eradicate all forms of colonialism from Africa; and to promote international cooperation having due regard to the Charter of the United Nations and the Universal declaration of Human Rights".

⁸ Quoted in Par Lydie Yog; "Human Rights & Cultural Relativism: An African Perspective"; (1999) available at: <www.jullep.free.fr/humanrights.htm>.

⁹ Eritrea ratified on January 14, 1999.

¹⁰ See Paragraph 2 of the Preamble of the African Charter.

¹¹ See Paragraph 6, *ibid*.

Again, the Preamble of the Charter recognizes that all the Human Rights are interdependent and interrelated. It specifically states:

it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.¹²

Obligations under the Charter

It's said that, in comparison with International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and also different other regional conventions, Article 1 of the African Charter breaks new ground in a treaty by imposing identical State obligations (for all kinds of rights) that is absolute and immediate.

In ICCPR, it has been found that the obligation of the States Parties with regard to the Civil and Political Rights enshrined in the ICCPR was absolute and immediate.¹³ Again, in the ICESCR, it has been found that the obligation of the States Parties under that Instrument in respect of the Social and Cultural Rights are progressive and qualified.¹⁴ Further, in case of Inter-American Convention, it has been found that, the obligation of the States Parties with regard to the Civil and Political Rights is absolute and immediate¹⁵, but the obligation in respect of the Economic, Social and Cultural Rights is progressive and qualified.¹⁶

But, African Charter is the first instrument of human rights which has imposed identical State obligations for all kinds of human rights. Here, no distinction has been made between the 1st and 2nd generation of human rights. For all kinds of human rights, i.e. for all the Civil, Political, Economic, Social and Cultural Rights as well as the Solidarity Rights, the

¹² See Paragraph 7, *ibid*.

¹³ Article 2 of the ICCPR, 1966.

¹⁴ Article 2 of the ICESCR, 1966.

¹⁵ Article 1 of the Inter American Convention, 1969.

¹⁶ Article 26, *ibid*.

¹⁷ Article 1 of the African Charter.

obligation of the States Parties is absolute and immediate.¹⁷ And to fulfill this obligation, they shall adopt legislative or other measures.

Article 1 of the African Charter runs as follows –

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

So, to give effect to the Economic, Social and Cultural Rights, the States Parties can't take the plea of the poverty or the failure to get financial assistance from other countries as they could in case of the Progressive and qualified obligations.

Philosophy of the Charter

In Article 2, the philosophy of the Charter has been incorporated. Article 2 states that every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. As in Africa, the rate of discrimination is very high, so the grounds for non-discrimination are also many in numbers. Thus the Charter greatly reflects the tradition of African community.

Rights enshrined in the Charter

The rights enshrined in the Charter may be described in three categories, i) Civil and Political Rights, ii) Economic Social and Cultural Rights, and iii) Solidarity Rights.

Civil and Political Rights

Broadly speaking, the Charter grants the same protection to civil and political rights as is found in the other regional and international instruments except with respect to the freedom from slavery, the freedom from forced or compulsory labor, the prohibition of death penalty, the right to marriage and equality during marriage and the right to privacy which have less protection.¹⁸

¹⁸ Par Lydie Yog; "Human Rights & Cultural Relativism: An African Perspective"; (1999) available at <www.jullep.free.fr/humanrights.htm>.

Although the Charter covers more or less the same rights, they are not given the same treatment. Indeed, the provisions are drafted in a way that seems bound to produce difficulties. For example, some of the rights concerned are defined inadequately (e.g. Articles 4 and 6:¹⁹ there is no definition of "arbitrarily"). Fortunately, Articles 60 and 61 of the Charter provide for ways of interpreting the provisions that seem unsatisfactory. According to Article 60:

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the Parties to the present Charter are members.

By making such a reference to international human rights law as a means of interpreting the provisions of the Charter, African States have shown their commitment to the international standards of human rights as stated in the main instruments dealing with this field.

Economic, Social and Cultural rights

As the region with the highest level of poverty and underdevelopment, the Charter made a point of enshrining economic, social, and cultural rights—often seen by Africans “as a component for redressing the colonial heritage typified by governments for and by the minority against the majority”—in addition to traditional civil and political rights. Except for the aged and disabled who receive a special protection, the Charter grants more or less the same protection as in other instruments.²⁰ These provisions of the Charter are of course less elaborated than in the International Covenant and they also cover less rights. Given the fact that most African States are already parties to the Covenant, we can reasonably assume that the

¹⁹ Article 4 states: "Human rights are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right."; Article 6 states: "Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be **arbitrarily** arrested or detained".

²⁰ Par Lydie Yog; "Human Rights & Cultural Relativism: An African Perspective"; (1999) available at <www.jullep.free.fr/humanrights.htm>.

intention of the framers was simply to emphasize the importance of these rights and especially their close relationship with civil and political rights.

Solidarity Rights

The Charter is the first International agreement to list collective rights in such detail but it is not the first to mention them.²¹ In the light of their historical experience, it is hardly surprising to see that the African States wished to include these provisions. The rights to equality and the right to cultural development already appear in the Charter as individual rights. But there are two provisions which have no equivalent in other international instruments: it is Article 22 (right to development) and Article 24 (right to a satisfactory environment favorable to their development).²²

Duties under the Charter

One of the distinctive features of the African Charter on Human Rights is that – this is the first instrument which has enumerated the specific duties together with the rights. There are two broad divisions of duties under the Convention: i) Duties of the States Parties & ii) Duties of Individuals.

Duties of the States Parties:

²¹ Article 1(1) of the ICCPR and ICESCR states: " All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development", or Article 1(2) of the UN Charter states: "to develop friendly relations among nations based on respect for the principle of equal rights and self determination of peoples, and to take other appropriate measures to strengthen universal peace".

²² Article 22 states: " All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity in the equal enjoyment of the common heritage of mankind. States shall have the duty, individually or collectively, to ensure the exercise of the right to development"

Article 24 states: "All peoples shall have the right to a general satisfactory environment favourable to their development".

First type of duties of the States Parties is duty to promote and ensure respect for human rights. According to Article 25, States parties to the African Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

The underlying principle of this provision is that, if the people are not aware of their rights, then these rights can't be implemented. First of all, they need to be aware of their rights, then they can ask for their effective realization. That's why, it's the duty of the State to make the Citizens aware of their rights as well as their duties.

Second type of duties of the States Parties is the duty to ensure the Independence of the Judiciary. According to Article 26, States parties to the African Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

This is a very nice provision. If the Courts are not independent, then the human rights would not amount to much. Because, it's the judiciary, who will impartially uphold the guarantees for the effective enjoyment of the human rights. So, the State must ensure the independence of the Judiciary. Then only, the human rights would be meaningful.

Duties of Individuals

First of all, the duties towards individuals include the duties towards Family, Society etc. These duties have been mentioned in a language almost similar to those of Inter-American Convention as enumerated in Chapter V (Article 32.) of that Convention. According to Article 27(1) of the African Charter, every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. Again in clause (2), the exercise of rights and freedoms of each individual have been made limited by the rights of others, collective security, morality and common interest. This provision is somehow also influenced by the provision of UDHR.²³

Secondly, there are some duties towards fellow beings. Under the African Charter, every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations

²³ Article 29 of the UDHR, 1948.

aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Besides the above mentioned duties, the individual shall also have the duty²⁴:

- i) to preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
- ii) to serve his national community by placing his physical and intellectual abilities at its service;
- iii) not to compromise the security of the State whose national or resident he is;
- iv) to preserve and strengthen social and national solidarity, particularly when the latter is threatened;
- v) to preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defense in accordance with the law;
- vi) to work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
- vii) to preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
- viii) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Unique Features of the African Charter on Human Rights

African Charter on Human and Peoples' rights is the first instrument in which three generations of Human Rights have been enumerated. It not only ensures the co-existence of the 1st and 2nd generation of human rights, (i/e Civil and Political rights and the Economic Social and Cultural rights), but it also attempts in ensuring the Solidarity rights, the 3rd generation of Human Rights. Article 3 – Article 14 contain twelve Civil and Political Rights. Article 15 – Art. 18 contain four Economic social and Cultural rights. Art. 19 – Art. 24 contain six solidarity rights.

Another peculiar feature of the African Charter on Human and Peoples' Rights is that – this is the first instrument which has enumerated the

²⁴ Article 29 of the African Charter.

specific duties of the individuals as well as the States together with the rights. It's noticeable that, references to duties are not alien to human rights instruments. For example, Article 29 of the UDHR, to the effect that "everyone has duties to the community in which alone the free and full development of his personality is possible" also referred to duties. The Preamble to the ICCPR observes that "the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant." Similarly, the Preamble of the Charter states that, "the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone."

Nonetheless, the African Charter is the first human rights instrument/treaty to include an enumeration of, to give forceful attention to, individual's duties. In this respect, it goes well beyond the conventional notion that duties are correlative to rights, such as the obvious duties of States that are correlative (corresponding) to individual rights, — for example, states' duties not to torture, or to provide a structure for political participation. It goes beyond declaring similar correlative duties of individuals — for example, the duty not to invade another individual's right to personal security. The Charter differs in defining duties that are not simply the other side of the individual rights, and that run from individuals to the State as well as to other groups and individuals. Thus, the Charter includes provisions which express the idea that human beings can only realize their potential fully as a member of a group.

This is the first instrument which breaks new ground in a treaty by imposing identical State Obligations for all kinds of rights described in it that is absolute and immediate. African Charter is the first instrument of human rights which has imposed identical State obligations for all human rights. Here, no distinction has been made between the 1st and 2nd generation of human rights. For all human rights, i.e., for all the Civil, Political, Economic, Social and Cultural Rights as well as the Solidarity Rights, the obligation of the States Parties is absolute and immediate.²⁵

Although among the regional human rights systems, African system under the African Charter is the newest one, but it has no court to

²⁵ This emphasis on the indivisibility, universality and inter-dependence of all human rights was recently reiterated in the Algiers Declaration, OAU Assembly of Heads of State and Government, 35th Ordinary Session., Res. AHG/Dec.1(XXXV), OAU Doc. DOC/OS(XXVI)INF.17a (1999). For details, visit : www.au2002.gov.za/docs/summit_council/algiers.pdf.

implement the rights mentioned in the Charter. What it has is only a Commission which has been established under Article 30 of the Charter.

There is no list of non-derogable rights in the African Charter. And, in this instrument, no right has been given clearly to the NGO or individuals to apply to the Commission.²⁶

Thus the Charter is a unique one, which has indeed a number of interesting features. These distinguishing characteristics stem from the drafters' intention that the Charter reflect and emphasize the influence of African traditions—to take “as a pattern, the African philosophy of law” and to be designed to “meet the needs of Africa.” As was declared at one of the final drafting meetings²⁷:

As Africans, we shall neither copy, nor strive for originality, for the sake of originality. We must show imagination and effectiveness. We could get inspiration from our beautiful and positive traditions. Therefore, you must keep constantly in mind our values of civilization and the real needs of Africa.

But, unfortunately, this originality and uniqueness is being counterbalanced by poor technical skills and machinery in the enforcement of the rights and duties stated. In stead of an institutional safeguard in form of a Judicial Organ, the Charter established African Commission on Human and Peoples' Rights as the major OAU instrument for ensuring the observance of the rights in the Charter. The Commission however has proved manifestly incapable of protecting the basic human rights of Africans. However, the study will now discuss about the machinery under the Charter for the enforcement of human rights and its drawbacks, which make it the least effective of all.

AFRICAN COMMISSION ON HUMAN RIGHTS

The African Commission on Human and Peoples' Rights has been established under Article 30, with a view to promoting human and peoples' rights and ensuring their protection in Africa.

²⁶ Under Articles 55-58 of the Charter, where the term “other communication” has been used, which is very much confusing.

²⁷ Nsongurua J. Udombana, “Toward the African Court on Human and Peoples' Rights: Better Late Than Never” available at www.yale.edu/yhrdlj/vol03/udombana.htm.

Organization

In the following we outline the salient organizing features of the African Commission on Human Rights.

Number and Qualifications of the Members

The commission shall be composed of 11 members. The quality needed for the members are: they must be African personalities of: i) the highest reputation, known for their high morality, integrity, impartiality & ii) competence in matters of human and peoples' rights. However, particular consideration is to be given to persons having legal experience.

The members shall serve in their individual capacity.²⁸ If the reference to “individual capacity” is linked to references to “highest reputation” and “competence” of members with an emphasis on their legal experience, the compelling interference is that Commission members are to act independently of the governments of their states, not under orders of their government – as does, for example, a state’s representative (often with a rank of ambassador) on the UN Commission.

Generally this aspiration appears to have been realized, but in many contexts, “independence” in the sense identified has been a relative rather than absolute concept. In practical life, the simple sense of gratitude, which is inherent in human beings, may make the members biased to that particular Government. And it will not be surprising, if anyone of them is found to take attempt in influencing the Commission while taking any decision about that particular Government who has nominated him.

However, according to Article 32, the Commission shall not include more than one national of the same State. Here, it’s noticeable that, unlike the provisions of ICCPR²⁹ or the Inter-American Convention³⁰, here the term “shall” has been used. So, it’s a mandatory provision under the African Charter.

²⁸ Article 31(2) of the African Charter.

²⁹ Article 31(1) of the ICCPR, 1966.

³⁰ Article 37 (2) of the Inter-American Convention, 1969; “No two nationals of the same state may be members of the Commission.”.

Election of the Members

The members of the Commission shall be elected by secret ballot by the Assembly of the Heads of State and Government, from a list of persons nominated by the State Parties to the African Charter.³¹

The States Parties may nominate not more than two persons and the persons need to be the nationals of the nominating State.³²

It's noticeable that, here the word nationals has been used, not the citizen. Nationals include those who don't have the voting powers e.g. Foreigners, Children under 18 etc. So, while nominating the candidates, the Government may choose persons irrespective of their voting power. However, when two candidates are nominated by a State, one of them may not be a national of that State.³³

How the elections will be conducted

At least four months before the election, the Secretary General of the OAU shall invite the State Parties to nominate their candidates. The list shall be prepared in Alphabetical order of all the persons thus nominated, and it shall be communicated to the Head of the State and Government at least one month before the election.³⁴

The preparation of the list in alphabetical order is a good decision to avoid clash between the big and small States.

Tenure of the Members

The members of the commission shall be elected for six years. They shall be eligible for re-election.³⁵ However, the terms of office of four of the members elected at the first election shall terminate at the end of two years, and the term of office of the three others at the end of four years³⁶; immediately after the first election, the names of these members shall be chosen by lot by the Chairman of the Assembly of the Heads of State and Government.³⁷

³¹ Article 33 of the African Charter.

³² Article 34 *ibid*.

³³ *ibid*.

³⁴ Article 35(2) *ibid*.

³⁵ Article 36 *ibid*.

³⁶ Article 36 *ibid*.

³⁷ Article 37 *ibid*.

Here nothing has been mentioned about the times of re-election specifically. That's why, a member may be re-elected more than once. This must be restricted to single time, like the Inter-American Convention³⁸, because being re-elected more than once, the members may influence the decision making process as the senior most member or as a common face in the Commission.

Taking up the Duties on Oath

According to the Provision of Article 38, every member shall before taking up his duties, make a solemn declaration to discharge their duties impartially and faithfully.

The members of the Commission are not Judges or the member of any kind of Parliament. Even then, they are to take an oath before taking up the duties. That's because, they are to perform duties in a similar way like a Judge. This provision influenced by the provision of ICCPR³⁹ just upholds their dignity and important responsibility in the promotion and protection of the Human Rights at the International Level.

Commission's Rules of Procedure and Quorum

The Commission shall elect its Chairman and Vice Chairman for a term of two years. They may be reelected. The Commission shall establish its own rules of procedure. Seven members shall constitute the quorum. In case of equality of Votes, the Chairman shall have a casting Vote.⁴⁰

The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitles to vote. The Chairman of the Commission, however, may invite him to speak.

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of the African Unity.⁴¹ And they shall be given emoluments and allowances under the regular budget of the Organization of the African Unity.⁴²

³⁸ Article 37 of the Inter-American Convention, 1969.

³⁹ Article 38 of the ICCPR, 1966.

⁴⁰ Article 42 of the African Charter.

⁴¹ Article 43 *ibid*.

⁴² Article 44 *ibid*.

Functions of the Commission

The functions of the Commission shall be⁴³:

- i) To promote Human and Peoples' Rights and in particular:
 - (a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
 - (b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
 - (c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
- ii) Ensure the protection of human and peoples' rights under conditions laid down by the African Charter.
- iii) Interpret all the provisions of the Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.
- iv) Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

Procedure of the Commission

Procedure of the Commission may be divided into two main categories: i) Procedure for the 'State Communications' and Procedure for the 'Other Communications'.

If a State party has good reasons to believe that another State Party has violated the provisions of the Charter, it may by written communication, bring the matter to the attention of that State Party. Within three months, the receiving State shall afford the complaining State an explanation or any other statement elucidating the matter with reference to the laws and rules of procedures applied and applicable and the redress already given or course of action available.⁴⁴

⁴³ Article 45 *ibid.*

⁴⁴ Article 47 *ibid.*

If the matter is not adjusted to the satisfaction of both the States Parties within three months of the initial Communication through bilateral negotiation or other peaceful procedure, either State Party shall have the right to refer the matter to the Commission through the Chairman by giving notice to the other State.⁴⁵

The above provisions are greatly influenced by the provision of ICCPR except that the States Parties need not make any declaration to adorn the Commission to deal with the State Communications.⁴⁶ The Commission ipso fact acquires the jurisdiction over the States Parties. However, another improved provision is found in Article 49 of the Charter. According to that, notwithstanding the provisions of Article 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

Condition of admissibility of the communication is that, all available domestic remedies must have been exhausted in the matter. The only exception is that – if the application of the remedies is unduly prolonged, this rule shall not apply.⁴⁷

The intention of this condition of admissibility is to make a communication to the Commission a mechanism of last resort. But still some ambiguity exists surrounding the requirement of exhaustion of domestic remedies. For instance, it may well be questioned whether such exhaustion includes administrative procedures which may not result in a legal remedy, such as an ombudsman investigation. Again, The exhaustion of all domestic procedures can be very costly; for example, conciliation proceedings, tribunal hearings and appeals through courts can be involved. So, the question may arise too as to whether one needs to exhaust all the available remedies which he can't afford.

In dealing with the State Communications, Commission may ask for relevant information from the concerned States Parties. The States Parties concerned shall have the right to be represented when the matter is being

⁴⁵ Article 48 *ibid*.

⁴⁶ Article 41 of the ICCPR, 1966.

⁴⁷ Article 50 of the African Charter.

considered in the commission and to submit written or oral submissions. So, States parties have "standing" before the Commission.⁴⁸

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare a report within a reasonable period of time from the date of notification given under Article 48. The report shall contain - the facts and the findings of the Commission. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.⁴⁹ However, while transmitting its report, the commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.⁵⁰ This is an improved provision than that of ICCPR⁵¹.

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.⁵²

Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission.⁵³ A communication shall be considered by the Commission if a simple majority of its members so decide.⁵⁴

Now, this term "Other Communications" is very confusing. It may be construed as those which are to come from the States not party to the African Charter. Again, this may well be liberally construed as Communications which may come from Individuals and national and International Institutions, that is, NGOs, specially from the Provision of Article 56 that the Communications need to indicate their authors. So, it's said that the Charter has not directly recognized the Commission's jurisdiction to deal with the individual communications.

⁴⁸ Article 51 of the African Charter.

⁴⁹ Article 52 *ibid*.

⁵⁰ Article 53 *ibid*.

⁵¹ Article 41 of the ICCPR, 1966, where the Committee can't make any recommendation on its own.

⁵² Article 54 of the African Charter.

⁵³ Article 55(1) *ibid*.

⁵⁴ Article 55(2) *ibid*.

However, the conditions of admissibility of these communications are⁵⁵

- i) They must indicate their authors even if the latter request anonymity,
- ii) They must be compatible with the Charter of the Organization of African Unity or with the present Charter,
- iii) They must not be written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
- iv) They must not be based exclusively on news discriminated through the mass media,
- v) They must be sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
- vi) They must be submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and
- vii) They must not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

However, according to the Article 56, prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

If it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.⁵⁶

The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.⁵⁷

A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.⁵⁸

⁵⁵ Article 56 *ibid.*

⁵⁶ Article 58 *ibid.*

⁵⁷ *ibid.*

⁵⁸ *ibid.*

Confidentiality of the Procedure

According to Article 59, all measures taken within the provisions of the present Chapter⁵⁹ shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.

This confidentiality can be used as a barrier to effective action taken by the Commission in the case of governments that do not respond to incremental pressure and continue to engage, over several years in grave and widespread violations of human rights. So way, it can well be termed as an instrument not for promoting and protecting and exposing large-scale violations of human rights, but rather for **concealing** their occurrence. However, the report on the activities of the Commission shall be published by its Chairman, but only after it has been considered by the Assembly of Heads of State and Government.⁶⁰

The little effectiveness of the Commission lies in this provision for publication. The people and other States will know about the report of the Commission and that might be shameful for the Country concerned. Nothing else.

The historical value of the contribution of the African Commission on Human and Peoples' Rights can't be doubted. In many ways, it just laid down the groundwork for the development of some sort of mechanisms to promote and protect Human Rights in Africa. But a valuable historical role doesn't of itself justify the procedures' retention unless they are effective enough as the means to promote and protect Human Rights. The foregoing discussion reveals that the Charter, which is a Unique one in various aspects, has failed to provide any effective mechanism to protect the Human Rights. Specially, after more than a decade of existence, the Commission can barely be said to have made any significant contribution to human rights protection in the African continent.

However, the key points of the ineffectiveness of the African Commission on Human Rights may be focused as follows:

General Procedure is that, a State Party to the African Charter at first needs to bring the matter to the attention of the State party against whom the Communications is to be submitted to get a reply within three months

⁵⁹ Chapter III *ibid.*

⁶⁰ Article 59 (2) *ibid.*

and then, if the matter is not resolved satisfactorily, then only the communication may be submitted. In practice, no State wants to sour its relationship with other States by forwarding such a written communication alleging the violation of human rights. So, it's found that States are the least likely of parties to seek vindication of human rights through the Commission. This reality has been borne out by both the African and Inter-American regional systems, in which not a single interstate complaint has ever been filed.

The Charter provides that the functions of the Commission shall be to “ensure the protection of human and peoples’ rights under conditions laid down by the present Charter.”⁶¹ The “conditions laid down,” however, significantly restrict the ability of individuals to seek recourse to the Commission. Indeed, for the Commission to examine private complaints—as opposed to inter-state complaints—a number of enumerated requirements must exist and the Commission must, by a majority, agree to examine it.⁶² As mentioned earlier, pursuant to Article 56, a lot of conditions have to be fulfilled in order that a complaint may qualify to be examined by the condition.⁶³ These requirements, along with the Commission’s ability to exclude petitions by majority vote, allow substantial discretion in picking and choosing amongst complaints to be considered by the Commission. This discretion is particularly worrisome where lack of political independence is at issue.

According to Article 59, “all measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide.” Accordingly, the decision on whether to publicize a human rights violation on the part of an African State is reserved to the discretion of her sister

⁶¹ Article 45(2), *ibid.*

⁶² Articles. 55–56, *ibid.*

⁶³ Such as, communications shall only be heard if they: indicate their authors, even if the latter request anonymity; are compatible with the OAU Charter or Banjul Charter; are not written in disparaging or insulting language directed against the State concerned, its institutions, or the OAU; are not based exclusively on news media reports; are sent after domestic remedies have been exhausted; are submitted within a “reasonable period”; and do not deal with cases settled by these States in accordance with the principles of the U.N. Charter, OAU Charter or the Banjul Charter.

States in the OAU Assembly, who may be responsible for similar abuses.⁶⁴ The restrictiveness of the provision is further heightened when read with Article 58, which provides that the Commission need not involve the OAU Assembly of Heads of State and Government at all unless the individual complaint reveals “a series of serious or massive violations” of rights.⁶⁵

This provision is quite unreasonable. Because, to examine a Communication by a State alleging violation of Human Rights by another State doesn't require any confidentiality. The only motive behind it might be to prevent the publicity of such Communication, which might result in an adverse public opinion. Specially, every State is always alert about maintaining a good reputation to all other States, which might be hampered by the airing of such a news to the effect that a Communication has been submitted against it alleging violation. And so, regrettably, there is little publicity given to the Commission's work. But if public opinion, being the opinion of the body of States and the world community, stood behind the Committee then its work might be more effective.

But in practice, the Commission has interpreted the confidentiality provision quite restrictively, conducting most of its proceedings in secret, insulated from public scrutiny and awareness. Indeed, until 1994 the Commission interpreted Article 59 as expressly prohibiting the publication of communications and its decisions.⁶⁶ This aspect of the Commission's activities has been strongly criticized by NGOs and human rights advocates. Ellen Johnson Sirleaf, presidential candidate in Liberia's 1997 electoral race, spoke the minds of countless Africans when she asserted:

⁶⁴ See for details, Nsongurua J. Udombana, “Toward the African Court on Human and Peoples' Rights: Better Late Than Never” available at <www.yale.edu/yhrdlj/vol03/udombana.htm>.

⁶⁵ Article. 58 of the African Charter. If that is the case, the Assembly “may then request the Commission to undertake an in-depth study of these cases, and make a factual report, accompanied by its finding and recommendations.”.

⁶⁶ The Seventh Activity Report of the Commission, adopted by the OAU Assembly in June 1994, made information on the first 52 communications decided by the Commission available for the first time. [For details, visit <www1.umn.edu/humanrts/africa/ACHPR2.htm>] This information included a summary of the parties to the communication, the factual background, and the Commission's summary decision. With the adoption of the Commission's subsequent two annual reports, the Commission went a step further and issued full texts of its final decisions. *Id.* Currently, while decisions may be published by the Commission, permission must first be obtained from the OAU Assembly of Heads of State and Government. See Article 59(1) of the Charter.

[The Commission] is generally unknown and invisible; it is regarded with suspicion by those who do know of it; and ‘as seen from the eyes of a casual observer,’ it is not performing. I don’t know of any cases that you [the Commission] have resolved related to any of the major human rights problems recently affecting our continent.⁶⁷

The Commission, consequently, has been accused of not taking a stand, publicly and unambiguously, on pressing human rights issues.⁶⁸ Even some of the Commission’s relative successes have gone unnoticed because of its restrictive interpretation of the confidentiality clause. This invisibility has exposed the Commission to charges of ineffectiveness, unpredictability, and lack of vision, initiative, and vigor. It has undermined public confidence in the Commission’s relevance.⁶⁹

The Commission also lacks the institutional independence necessary to be effective as a regional human rights institution. Its proceedings are heavily dependent on the Heads of State and Government. As has been widely observed, the Commission is “largely ignored by the Council and Assembly (although it could be mandated to undertake in-depth studies into serious or massive human rights violations).”⁷⁰ As Justice Lihau points out:

[i]t is unlikely that the Commission will be permitted to take the initiative in presenting documented charges to the Conference of Heads of State and Government, except perhaps in those instances where it is in the interests of governments to permit the Commission to do so.⁷¹

It is, therefore, not surprising that the Commission has played such a docile role as the Assembly of Heads of State and Government have

⁶⁷ Quoted in, Nsongurua J. Udombana, “Toward the African Court on Human and Peoples’ Rights: Better Late Than Never” available at www.yale.edu/yhrdlj/vol03/udombana.htm.

⁶⁸ See for details, *ibid.*

⁶⁹ *ibid.*

⁷⁰ Quoted in, *ibid.*

⁷¹ *ibid.*

included the likes of Eyedema, Mobutu, Babangida, Abacha, Doe, Habre, and other major human rights violators.⁷²

No Enforcement Power

As a powerful Commission might challenge the credibility of African political leaders in their respective countries, the OAU Heads of State were reluctant to grant the Commission a significant role in protecting human rights.⁷³ The Commission was envisaged almost exclusively as a body to *promote* human rights.⁷⁴ It cannot award damages, restitution or reparations. It is not empowered to condemn an offending State; it can only make recommendations to the parties. It was, and still is, vested with very few powers. Consequently, blatant disregard of the Commission's recommendations, orders, and pronouncements by Member States has become the norm in Africa, a situation acknowledged regretfully by the Commission.⁷⁵ An example may be given in this regard:⁷⁶

In a recent case, the Commission was notified by Amnesty International that the government of Rwanda had announced its decision to execute 22 people who had been charged with committing genocide and convicted without fair trial, on the 24th of April. The Commission sent urgent messages appealing for a stay of execution as the intended executions would be in violation of the Charter [specially, Articles 4 (life) and 7 (fair trial) of the Banjul Charter]. The Commission immediately sent a letter to

⁷² See for details, *ibid.*

⁷³ *ibid.*

⁷⁴ Claude E. Welch, Jr., "The African Commission on Human and Peoples' Rights: A Five-Year Report and Assessment", *Human Rights Quarterly* 14, (1992). pp. 43, 49.

⁷⁵ Noting a decrease in the number of complaints filed with it, the Commission wrote in its "Eleventh Annual Activity Report" that "the non-compliance by some States parties with the Commission's recommendations affects its credibility and may partly explain that fewer complaints are submitted to it." See for details, "Eleventh Annual Activity Report of the African Commission on Human and Peoples' Rights", 1997/98, para 38, available at www1.umn.edu/humanrts/africa/11thannualrpt.html.

⁷⁶ Reported in "Eleventh Annual Activity Report of the African Commission on Human and Peoples' Rights", 1997/98, available at www1.umn.edu/humanrts/africa/11thannualrpt.html.

⁷⁷ See "African Commission Condemns Executions in Rwanda", *African Commission on Human & Peoples' Rights. Newsletter (Banjul)*, Oct.–Dec. (1998), p. 4.

the Rwandese authorities. It reminded them of their undertaking under the Charter and appealed to them to suspend the executions pending the Commission's consideration of the matter. In spite of this appeal, the executions were carried out as scheduled. Upon confirmation that the executions were carried out in public, the Commission was, once again, left with no other option than to perform a *post-mortem*; it issued a statement condemning the executions.⁷⁷ A press release was issued on this matter.

Another example of the general disregard for the Commission's jurisdiction among African States is the state reporting system. Under Article 62 of the Banjul Charter, each State Party undertakes to submit a report *every two years* on the legislative and other measure it takes to give effect to the rights and freedoms enshrined in the Charter. The presentation of reports is a process that can be used to stem the tide of conflict, and even avoid wars, as potential causes of conflict can be detected and responded to early. Regrettably, however, the reporting system has been anything but satisfactory: as of May 31, 1999, twenty-eight State Parties had not submitted a single report to the Commission since their ratification of the Charter.⁷⁸

So, although the entry into force of the African Charter on 21 October 1986 (a date now commemorated as African Day on Human and Peoples Rights) and the establishment of the African Commission were significant steps in the advancement of human rights in Africa, there remain

⁷⁸ See "Twelfth Annual Activity Report of the African Commission on Human and Peoples' Rights- 1998/99", available at www1.umn.edu/humanrts/africa/12thannualrpt.htm (listing status of submission of periodic state reports to African Commission as of May 5, 1999). The defaulting countries and their dates of ratification of the Banjul Charter are: Botswana (July 17, 1986), Burundi (July 28, 1989), Cameroon (Jun. 20, 1989), Central African Republic (Apr. 26, 1986), Comoros (Jun. 1, 1986), Congo (Dec. 9, 1982), Democratic Republic of Congo (July 20, 1987), Côte d'Ivoire (Jan. 6, 1992), Djibouti (Nov. 11, 1991), Equatorial Guinea (Apr. 7, 1986), Gabon (Feb. 20, 1986), Guinea-Bissau (Dec. 4, 1985), Kenya (Jan. 23, 1992), Lesotho (Feb. 10, 1992), Liberia (Aug. 4, 1982), Madagascar (Mar. 9, 1992), Malawi (Nov. 17, 1989), Mauritania (Jun. 14, 1986), Niger (July 15, 1986), Uganda (May 10, 1986), Sahrawi Arab Democratic Republic (May 2, 1986), Sao Tome & Principe (May 23, 1986), Sierra Leone (Sept. 21, 1983), Somalia (July 31, 1985), Swaziland (Sept. 15, 1995), and Zambia (Jan. 19, 1984).

⁷⁹ Quoted in, Nsongurua J. Udombana, "Toward the African Court on Human and Peoples' Rights: Better Late Than Never" available at www.yale.edu/yhrdlj/vol03/udombana.htm.

fundamental problems with the capacity of the African Commission to work competently and act effectively.

In conclusion, the Commission, as currently empowered under the African Charter, is not capable of guaranteeing and protecting human rights. Hampered by an inability to back up its recommendations, the Commission has, in fact, “been reduced to a research centre.”⁷⁹ Specially, the Commission is not a court and it does not hand down judgments. Instead, it provides recommendations. They contain the findings of the Commission on the merits of the communications, but do not have legal force and are not binding on the State party concerned.

CONCLUSION

So long the decision of the African Commission on Human Rights doesn't have any binding legal effect, the reformation of them can afford very little remedy. The Commission will never be able to control violations in all parts of the OAU through this ineffective Communications Procedures. Theoretically, the procedures could become permanent, effective and deal annually with thousands of cases rather than dozens. But obviously, there is a better alternative – that is, the abolition of this procedures and building and strengthening a full time Court like the European⁸⁰ or American⁸¹ ones. It is now essential to establish a full time Court having jurisdiction to pronounce Judgements legally binding upon the States. Although the African Court does not yet exist, the Protocol for its establishment was adopted by the OAU Assembly in June 1998 and thus it is no longer a question of whether there should be an African Court, but rather when it will come into being. The Protocol to the African Charter shall come into force thirty days after fifteen instruments of ratification or accession have been received.⁸² The African Commission on Human and Peoples' Rights, meeting at its 31st Ordinary Session in Pretoria, South Africa, from 2nd to 16th May 2002, already adopted a resolution on the ratification of the protocol to the African Charter. In this resolution, it urged all the OAU Member States to ratify or accede as soon as possible to the Protocol on

⁸⁰ A full time European Court has been established under the 11th Protocol to the European Convention, 1950.

⁸¹ Inter-American Convention, 1969 has established the Inter-American Court with vast jurisdiction in dealing with the cases concerning violation of Human Rights.

⁸² According to Article 34(3) of the Protocol.

the Establishment of an African Court on Human and Peoples' Rights.⁸³ But till 12 September, 2002, only six countries have submitted their instruments of ratification.⁸⁴ It is hoped that the African States will response to the resolution as soon as possible.

However, the establishment of an African Court which can render decisions that are binding represents an important development in terms of progress towards a comprehensive regional mechanism of human rights protection in Africa. As the omission of a Court has undermined public confidence in the African human rights system, its immediate establishment will advance the cause and course of the Banjul Charter. For the Court to be truly effective, however, Africans must ensure that it is not handicapped with the same deficiencies and weaknesses that have beset the Commission. Equally significant is the fact that the success of the African Court is to a large extent dependent upon the operational efficiency of the African Commission, as the two are designed to work together and complement each other.⁸⁵ So, simultaneous with efforts to establish the African Court, the OAU should endeavour to further strengthen the role, functioning and working practices of the African Commission.

It's very true that Human Rights would scarcely amount too much if they are not effectively guaranteed. But the mechanism for the promotion and protection of Human Rights under the African Charter is still crossing its childhood. It's true that the foundation for the protection of human rights in Africa was laid when the Banjul Charter was adopted. Some construction work has begun; but it has been very slow as the institutional framework of the Charter was very weak. The building process can be speeded up. The adoption of the Protocol on the African Human Rights Court is a step in the right direction.

The African Court will, of course, not end human rights abuses in Africa overnight. It will, however, strengthen the regional human rights system as a whole, provide an important deterrent to human rights abuse, and help to further build a strong human rights culture in Africa. To conclude with the words of Nsongurua J. Udombana:

⁸³ See Annexure A.

⁸⁴ See Annexure B.

⁸⁵ See paragraph 7 of the Preamble of the Protocol to the African Charter, and Art.2: (the Court... shall complement the protective mandate of the African Commission...).

The battle to make human rights realizable in Africa is not yet over. Africans are anxiously waiting for their Court. The Protocol itself has been late in coming; but it is better late than never.⁸⁶

⁸⁶ Quoted from Nsongurua J. Udombana, "Toward the African Court on Human and Peoples' Rights: Better Late Than Never" available at <www.yale.edu/yhrdlj/vol03/udombana.htm>.
