THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS:

WHICH PEOPLES? WHAT RIGHTS?

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To all of you, I say

“Asante sana”

OTIENDE AMOLLO
JULY 2002
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# GLOSSARY OF ACRONYMS

1. **ACHPR** | African Charter on Human and Peoples Rights
2. **AU** | African Union
3. **EAC** | East African Community
4. **ECOSOC** | Economic and Social Council
5. **ICJ** | International Court of Justice
6. **NGO** | Non Governmental Organisation
7. **OAU** | Organisation of African Unity
8. **UDHR** | Universal Declaration of Human Rights
9. **UN** | United Nations
10. **UNGA** | United Nations General Assembly
LIST OF CASES

1. Amnesty International vs. Tunisia (Case No. 69 of 1992)
2. Annette Pagnoulle vs. The State of Cameroon (Case No. 39/90)
3. Attourney General for Canada vs. Attorney General for Ontario (1937) A.C. 326
4. Civil Liberties Organisation In Respect of the Nigerian Bar Association vs. Nigeria (Communication No. 101/93)
5. Constitutional Rights Project vs. Nigeria (In respect of Wahab Akamu & Others) (Communication No. 60/91)
6. Embga Mekongo Louis vs. Cameroon (Communication No. 59/91)
8. Human Rights Commission vs. Kenya (Case No. 135 of 94)
9. Jean Yaori Degli vs. Togo (Communication No. 91/93)
10. Katangese Peoples Congress vs. Zaire case no. 75 of 1992
11. Maria Baess vs. Zaire (Communication No. 31 of 1989)
12. Mikmar People vs. Canada (Case No. 205 of 1996)
13. Muthuri Njoka vs. Kenya (Communication No. 142/94)
14. Nziwa Buyingo vs. Uganda (Commniaication No. 8/88)
15. Ousman Manjang vs. The Gambia (Case No. 131/94)
16. Paul S. Haye vs. The Gambia (Case No. 90/93)
17. Raddho vs. Zambia (Case No. 71 of 1992)
19. William Courson vs. Zimbabwe (Communication No. 136/94)
CHAPTER ONE

I. INTRODUCTION AND OVERVIEW

In January 1961, something in the order of 200 Jurists from 23 African Countries met in Lagos for the first time as a result of the initiative of the International Commission of Jurists, to examine the theme, the “Rule of Law”. The idea of setting up an African Human Rights Commission was launched at that Conference.¹

The guiding principles for the drafting of the African Charter on Human and Peoples Rights (hereinafter ACHPR) are said to have been threefold:

i) Prepare an instrument in conformity with the Universality of Human Rights, and inspired by the traditions of the African Society, while respecting the parity which should exist among the various doctrinal systems prevailing in Africa;

ii) Give significance acceptable to one and all to the concept of human rights, based on examples from Europe and the Americas; and

iii) Ensure that the Charter did not go beyond what African states would be prepared to accept in the field of protection of human rights².

In its preamble, the ACHPR recognizes that, on the one hand, the fundamental human rights stem from the attributes of human beings, which justifies their International protection, and, on the other hand, that the reality and respect of peoples’ rights should necessarily guarantee human rights.

Whether, and to what extent the ACHPR has known success in its declared mission, has been the occasion of much spilling of ink. This forms part of the inquiry under discussion in this thesis.
In its 13 years of effective life, the ACHPR has been much criticized. It has been said to be conceptually confused and hence impossible to rationalise, to be invoking the term “peoples” inconsistently in different articles, resulting in varied meanings. The ACHPR has been attacked on the ground that the African Commission On Human And Peoples Rights - the Charters’ chief organ so far, is powerless and totally subservient to the OAU Assembly, unrepresentative, wanting in independence and lacking innovation, while financially crippled and over-dependent on western donors.

Others have opposed the conception of “Peoples” and the larger set of “third generation rights”, including the right to peace, a clean environment, equal enjoyment of the common heritage of humankind (all of which accrue to peoples under the ACHPR), on the ground that a simplistic expansion of the human rights corpus as the ACHPR attempts may easily divert attention from the protection and promotion of existing rights, and in any case, the issues at stake are not sufficiently specified and demarcated.

Detractors of the ACHPR and its workings have usually singled out the absence of an African Court on human and people’s rights as the clearest demonstration of its ineffectiveness. On this particular issue however, concrete steps have lately been taken towards operationalisation of an African Court, as we shall later demonstrate.

On the gender plane, it has been argued that the ACHPR does not sufficiently recognize and entrench the rights of women and that nothing short of an Additional Protocol on Women could remedy the situation.

While the combined effect of Articles 1 and 62 of the ACHPR makes it obligatory for states to incorporate the Charter into their municipal systems, it does not specify the specific or legislative measures to be taken by member states to give effect to its obligations, with the result that varying and ineffective measures are taken by member states with the pretension of respecting the ACHPR.
Others have contended that the ineffectiveness of the ACHPR owes to its variance with municipal enforcement mechanisms; the Charter merely contemplates conciliation and negotiation, as opposed to damages, fines, and imprisonment. Criticism of the ACHPR is various and almost inexhaustible.

Against these myriad criticisms, various jurists have proposed various blueprints for the way forward. These include abandoning the entire ACHPR and promulgating a new order in light of the greater infusion of democratic processes in African states, as compared to the position in 1981 when the Charter was promulgated: Proposals to create an African Court as the panacea - which has been done; proposals to divorce the ACHPR from the OAU Assembly of Heads of State and Government, and its Chair; proposals on fresh commitment by states to the ACHPR. These complimentary but sometimes rival proposals are examined and evaluated in the body of this thesis.

II. STATEMENT OF THE PROBLEM AND JUSTIFICATION FOR THE STUDY

A. The Problem

The alpha of disaffection vis-à-vis the African Charter is the idea, ostensibly inherent in the history, preamble and tenor of the Charter, that there is an “African Philosophy of law, and conception of human rights”, distinguishable from the more commonplace and much popularised classical western conceptions.

Upon this foundation, and to counter the criticism that an instrument on human rights should remain silent on the duties of the individual drawing from the necessary
correlation between rights and duties enunciated in Hohfeld's Jural Correlatives\textsuperscript{12} it has been remarked that-

"The West sees the law as an opposition between the individual and the entity representing the community, namely the state, whereas the East regards the law as a series of measures protecting the individual within his community. The same remark could be made on the subject of African Society. In Africa, laws and duties are regarded as being two facets of the same reality; two inseparable realities."\textsuperscript{13}

Proceeding along these lines, it is argued that the community is a privileged subject of law, hence the emphasis accorded to collective rights in the ACHPR, and the articles on national and international solidarity\textsuperscript{14} On the same footing, in explaining the aversion to adoption of judicial solutions, on which many a critic have attacked the ACHPR, it is stated that according to the African conception of law, disputes are settled not by contentious procedures, but through reconciliation, leaving neither winners nor losers. The OAU Convention of 10\textsuperscript{th} September 1969 Concerning the African Aspects Of The Refugee Problem is cited. This convention, unlike its parent, 1951 Universal Convention, avoids judicial solutions to disputes emerging from its application.\textsuperscript{15}

With this "African artillery" of human rights and law, the ACHPR, more than any other instrument before it, recognizes and emphasizes the rights of "peoples". The title to the Charter, and the phraseology in its body, is such as to engender an assumption that "human rights" and "rights of peoples" are distinct, or at least, distinguishable. But the Charter makes no attempt at such distinction. Indeed, the drafters of the Charter consciously avoided a definition of peoples, "so as not to end up in difficult discussion."\textsuperscript{16}

The contentious question that flows from this, is whether any form of rights can flow to a legally undefined, and possibly indefinable entity. Various meanings have been attempted, unsuccessfully,\textsuperscript{17} which has led cynics to readily conclude that the term "peoples" means the state; yet a conception that equates the state to peoples in order to have rights is a misnomer as human rights do not inhere in states. Yet again, if peoples
should mean the individual then the phrase is tautologous as that is the legitimate subject of human rights. Hastily joining the fray, others have thence concluded that the phrase "peoples" in the African Charter is therefore idle and means nothing. These commentators state that state rights are not and should not be human rights, since human rights are rights of an individual vis-à-vis the state. States have an avenue for enforcing their rights under international law. The term "peoples" makes no sense as long as people are represented by the state.

In its emphasis on collective rights in the face of the erstwhile emergent third generation rights, the charter again controversially, enunciates the idea of a right to development. Although, the right was grudgingly pronounced in the United Nations Declaration on the Right To Development (1986) drawn from the African Charter, the holders of the right, the meaning of the right, the conceptual understanding of the right, and the duties created and upon whom they fall, have remained highly contentious issues. Whereas the right has positively been granted status as a human right, its status of being developed in a Declaration and not re-enforced by a separate convention makes it not quite binding, although its legal and substantive components reflect Internationally recognized human rights law.

The U.N. Declaration on the Right to Development, coming more than five years since recognition of the right in article 22 of the African Charter, was markedly different from the latter, not least in its collectivist and statist orientation.

The issue of who can legitimately lay claims on the right to development has also continued to invite varied theses. Somewhat compounding legal conceptions with the real and larger issue of economic inequity in trade and commerce at the international plane, developing countries have sometimes sought to dangle the right, as the panacea to their problems. Some of the protagonists, like Judge Bedjoui, declare that a right to development is a right of peoples and the state, and declares that:
“Unless we are cherishing a doomed illusion, the right to development cannot be an individual right unless it is first a right of the people or the state”\textsuperscript{21}

This line of argumentation seeks to curve out a right to development claimable by the state, which is an active protagonist in international relations, and which represents a right over others; a right which may be exacted by that state from other states and from the international community.\textsuperscript{22}

Radically opposed to such allegations are western states who have expressed reservation, arguably based on the fear not only of the concept of human rights being diluted, but also that they would be faced with claims on the part of developing countries for entitlement to resources. They see the developing countries’ proposals as being beyond the confines and realism of what human rights and their corresponding duties are about. The right to development, in spite of the Declaration on the right, still invites controversy as to its meaning, content, legitimate claimants, duty-holders and the nature of the duty, application and practical enforcement or realization - especially on default. So much, that some have opted to recognize and popularise a “right of development” rather than a “right to development”\textsuperscript{23}. These issues are the subject of analysis in the thesis, with specific focus on whether an African or Third World conception of the right to development exists, and whether it does or needs to conform with orthodox western conceptions of law and human rights, and/or with contemporary conceptions of the right in western countries.

Other than the right to development, the charter also recognizes and entrenches the right to self-determination, the rights of minorities, the rights of indigenous peoples, \textit{inter alia}, as other rights generally accepted in the international sphere, but varyingly interpreted in the charter.

Article 20 recognizes the right to self-determination as a right of peoples, a right of colonized or oppressed people to resort to force in the quest for freedom and their right to
receive assistance. These provisions are rooted in African history, a tale of foreign aggression, subjection, domination, discrimination and exploitation in their own countries. The linkage between the enjoyment of human rights and the freedom of all Africans is thus understandable.

In its attempts to eliminate colonialism, neo-colonialism and apartheid, the ACHPR includes Zionism in a preambular provision, explainable as resulting from the erstwhile Israel - Arab wars, and the large Arabic, element in Northern and Eastern Africa.

Self-determination as a concept of International law knows enough controversy. Some states and writers have argued that the right should only apply to colonized groups. Others have curved out economic self-determination and internal self-determination.

As if there is not enough controversy, the African Charter introduces new pockets of the right, and grants the rights to peoples. The question to address then becomes what the right is in international law, and under the ACHPR. But, more importantly, who can claim the right? The question is not academic, and the African Commission has been called upon to decide on the issue in *KATANGESE PEOPLES CONGRESS - VERSUS- ZAIRE*.

The Commission recognized the controversy regarding the term “peoples” and, without declaring directly on whether or not the Katangese were a people, appeared to consider all Zaireans as a people. Enumerating the instances when the right to self-determination is exercisable, the commission thought the right to be limited by principles of sovereignty and self-determination. Hence, other than that the reference failed, the decision by the Commission raised more questions without even answering the basic ones, and the emergent issues need examination for practical purposes. This is all the more important in view of the rampant internal conflict, claims to secession and self determination as with the Biafra War in Nigeria, the Somali conflict, the Zanzibari claims vis-à-vis mainland Tanganyika, and other examples across the African Continent.
Equally problematic is the place of the African Charter in municipal systems of countries, which have ratified it, and the proper measures to be taken within the municipal legal system in implementation of the provisions of the ACHPR. Under this, the question of monist versus dualist approaches creeps in. Kenya, like much of the Commonwealth, is dualist, with the result that a right enshrined in the African Charter or other treaty cannot be legitimately asserted in the national courts without incorporation by a Parliamentary statute. The rationale and principles behind this position are well enunciated by Lord Atkin in *Attorney-General for Canada -versus- Attorney-General for Ontario.* Does the dualist jurisprudence, then, derogate from the ACHPR obligations? Would the obligations under the charter fall differently upon member states, depending on whether they adopt a dualist or monist approach?

More important is a consideration of methods adoptable to comply with the ACHPR obligations after ratification. Nigeria is the only country, which has enacted the entire African Charter into its municipal law. Some others, like Togo, have simply created institutions charged with enlightening the populace on the charter, and mandated them to promote and protect the rights under the charter.

In practical consideration of the nature of rights protected under the charter, and the remedies available, can the Charter legitimately be enacted law in Kenya to fit with the flow of legal business? Are there not practical constitutional inconsistencies? Taking the Nigerian case, what is to be the effect of the economic and social rights which their constitution makes hortatory, but which the charter makes mandatory and legally binding? In enacting a statute, which employs the term “peoples”, does not that contradict the term “the people of Kenya” used in the constitution? In any case, does it not amount to a nullity if the constitution remains unchanged - or to an admission that there are entities (peoples) within Kenya who have the right to self-determination, a right to secede, much like the position under the ‘Ethiopian Constitution, which recognizes the various “Nations” in the nation of Ethiopia, and entrenches the right to secede? These are difficult questions whose analysis is attempted in the thesis.
B. Justification

Much of what falls as justification for the study readily flows from the discussion on statement of the problem. Additionally, the study aims to enumerate, analyze and present the provisions, problems and workings of the African Charter on Human and Peoples Rights for what they are. Suggestions on the way forward as seen by the author are proffered.

The study seeks to examine the practicality and possibility of local application of both the “rights guaranteed” and the “Human and Peoples Rights Concepts” in the Charter within the Kenyan municipal system. Necessarily, discourse on principles of application of treaties to municipal systems, and the monist-dualist debate, arises. The question of variance in state obligations under the ACHPR depending on the states’ system also fall for discussion.

Closely linked to this is the necessity to affix and identify the goal posts; when can a state be said to be in compliance with its obligations under the ACHPR? This study aims to identify key ingredients, and to isolate minimum prerequisites to which compliance would be tested. Some guidelines within the words and spirit of the Charter, and instructed by deliberations of the African Commission thus far, are to be postulated.

The study seeks to present, discuss and examine recent developments in the field of human rights in Africa within the ambit of the OAU, and to evaluate their contribution to human rights; nationally, regionally and internationally. Specifically, The Mauritius Plan of Action, the Protocol Establishing An African Court of Human and Peoples Rights, the Grand Bay (Mauritius) Declaration and, the very recent documents on The African Union are discussed. The study, in this respect, also endeavors to examine the extent of compatibility of the declarations and plans, with the African Charter and international
law generally. Compatibility between the African Commission and the proposed court is elaborated.

The study aims to demystify the idea of “a people” and find practical exemplification in Kenya or elsewhere. Further, the study seeks to examine the extent to which “a people” can seek support of the Commission through the ACHPR, to pronounce their independence, distinction and recognition as an entity: a state.

We endeavor to examine the conceptions in The Charter, their elaboration, efficacy and possibility of realization as a contribution to discourse and jurisprudence on the ACHPR. We propose to suggest areas for adjustment, and areas for further research towards greater efficacy of the African system of human rights protection.

The thesis seeks to examine the extent to which the African Charter may instruct Kenya’s current constitution making process in principle and content. More important, however, the thesis endeavours to explore the possibilities of meaningful infusion of the principles and provisions in the African Charter into Kenyan law - alive to the constitutional limits, and practical application and enforcement.

An issue has usually arisen on what recourse citizens could have against multilateral corporations outside the normal municipal remedy in courts of law especially where this is disabled in some way. It has been pondered whether the Shell Corporations’ acts in Nigeria are referable to the African Commission. Similarly, such corporations have wondered whether they would have standing before the Commission. While the preliminary answer appears to be in the negative, the study seeks to examine the conceptual issues and justifications for the conclusion arrived at.

And, naturally, the fundamental justification for the thesis is to present a conceptually clear, structurally sound and flowing text with a symmetry on a contemporary legal issue worthy of a Masters Degree.
III. THEORETICAL FRAMEWORK

The study of human rights lends itself to a multidisciplinary approach, all of which are important and deal with human welfare from different perspective. For ethicists, human rights consist of ought propositions derived from the exercise of man's reasoning in search of the ultimate truth. The natural lawyers and Christians believe the concept is Jurisnaturalistic, and derives from the law of man's nature; based on, and constitutes an expression of, the dignity of the human being.29

Others have defined human rights as claims made by men [and women], for themselves or on behalf of other men, supported by some theory, which concentrates on the humanity of man, or man as a human being, a member of human kind.30

Unable to provide a definition, others have sought to distinguish rights from what they are not; from freedoms (privileges), legal powers, and from legal immunities.31 The Vienna Declaration adopts a qualitative approach - that human rights are inalienable, interdependent, interrelated and indivisible.

A review of western and orthodox, definitional spectrum of human rights reveals four elements: that human rights are entitlements - not granted, but merely recognized or entrenched; that they inhere in every human person; they are basic and ride above other ordinary rights; and they should be claimable against society as represented by the state.

This thesis recognizes the difficulties in formulation of a generally acceptable definition of "human rights" - indeed even of the term "law". Yet, we appreciate the incontrovertibility of the concept of human rights, and its general acceptance. The African Charter proceeds, like other instruments before it, to enumerate the rights guaranteed without attempting to define the term "human rights". The Charter further provides for the rights of "peoples", without defining such "rights of peoples", or who "peoples" are.
The ACHPR is not the first instrument on human rights to invoke the term "peoples" or "rights of peoples" even if it may be the first to pronounce these boldly and bluntly. Nor is it the first instrument to invoke the phrase "peoples" and "rights of peoples" without definition. We propose that the want of definition of "peoples" in the African Charter cannot justify subversion of phenomena that aim to achieve human dignity collectively, for, after all, that is the purpose of law in the first place. If the African Charter were to be ineffectual and fallible to the extent that it invokes the phrase "peoples" and attributes rights to them, then a large corpus of now sacrosanct jus cogens would fall with it for the same reason, and that is inconceivable.

While the provisions in the ACHPR are much in accord with the international law of human rights even as abridged in the four elements aforestated, we believe the provisions in the Charter, the practice of the Commission and the practice and utterances of member states clearly qualifies two of the four elements. The idea that "human rights inhere in every human person" appears qualified, so than human and peoples rights inhere in every person and peoples. Also, the conception that "the rights are claimable against society as represented by the state" is slightly varied, so that individuals and groups of individuals also hold duties claimable by others, and the state too may claim adherence to certain principles easily referable to as "rights". The possibility of a state claiming rights, the idea of individuals holding duties and the concept of peoples entitled to rights raise serious constitutional-cum-jurisprudential issues, which we would address.

In its uniqueness, while the African Charter recognizes the universal principles of human rights and defers to them, it simultaneously attempts to introduce an African concept of law and human rights, where laws and duties are regarded as being two facets of the same coin, where the community is a privileged subject of the law, where disputes are settled not by contentious proceedings but through conciliation, where collective rights are important, where economic, social and cultural rights are emphasized, and where "third generation rights" are entertained.
It is our thesis that human rights, as discernable in certain core concepts, is not entirely foreign to Africa. It has roots in the African societies of the past. The concept is neither foreign nor an imposition. It is an outgrowth of African society, with certain peculiarities and specificities. The African Charter is an attempt to embody these specificities and peculiarities, alongside internationally acclaimed contemporary variations of human rights. At another level, the Charter demonstrates the importance of human rights as a code of conduct for all individuals at the family, national, regional and international levels. Its ultimate purpose is the liberty and the development of the African people.

While appreciating the goals and aspirations of the Charter, we must evaluate the relative performance and standing of the African system of human rights protection vis-à-vis other regional systems.

For our part, we take the missionary vision of redeemability. The thesis urges that the erstwhile OAU achieved remarkable progress, although much remains to be done. One such achievement, as notes Professor Umozurike has been to overcome the inhibition of domestic jurisdiction and to move towards greater respect for human rights. The adoption of the African Charter was a major achievement; its shortcomings represent the level of consensus that could be reached in 1981. We believe the way forward entails, inter alia, the promulgation of further protocols where necessary - as with the Protocol Establishing the African Court, now adopted, expansion of the frontiers of human rights by the African Commission, the proposed Court and by all players in the field of human rights in Africa. We believe the first ever meeting of Ministers of member States of the OAU and their subsequent adoption of a rather positive and progressive document in the form of the Grand Bay Declaration and Plan of Action are happy signals of redemption.

One question of primary concern here is whether state institutions created for purposes of the Charter can, without factual or conceptual contradiction of the Charter, also serve as human rights institutions for purposes of the states' obligations under the United Nations System for human rights protection, and state obligations thereunder. More importantly, perhaps, is whether the ACHPR requires an enactment of the entire document into
domestic legislation; an incorporation of the provisions and effect of the Charter into legislation within the constitutional and enforcement framework, or simply the creation of institutions without the enabling change in legislation. The thesis proceeds on the basis that it is the second, laced with the third situation that was contemplated and which is preferable in the municipal sphere. In our view, enactment of the entire ACHPR still subjects it to the test of consistency with the country's constitution. What, for instance, is to be the effect of economic and social rights which most constitutions make hortatory or aspirational but the Charter makes mandatory and legally binding?

IV. RESEARCH METHODOLOGY, OBJECTIVES AND HYPOTHESIS

A) Research Methodology

In the nature of the subject under inquiry, the study primarily relies on library research. Textbooks are utilised, especially more recent texts that discuss changes in the human rights sphere globally. Treaties, conventions, declarations, protocols and resolutions, international and regional, are examined. Articles by authoritative sources, published and unpublished have been sourced. To a fair extent, we rely on presentations and discussions in various regional and international fora, where the African Charter and the African system of human rights protection were specifically in issue.

B) Objectives of the study

Much of what can be discussed under this head is encapsulated under the title "justification of the study", ante. Broadly, however, the thesis presents a critical examination of provisions in the ACHPR, a re-evaluation of its structures and institutions, an analysis of the workings of the Charter for a better theoretical and conceptual appreciation, and suggestions on measures towards redemption of the Charter
from its present seat of relegation and considerable dormancy. More specifically, and to achieve the aims outlined under the heading “justification” the study:

i) Attempts an overview of the Charter, tracing its history, guiding principles and rationale.

ii) Examines pertinent and, in some instances, novel concepts existent in the Charter to delineate their standing in “law”, their province and meaning, the enforceability and workability, and their concordance with generally accepted human rights doctrines and values.

iii) Provides an elucidation of the structural and institutional arrangements under the Charter, and outlines their relation *inter se* and with other entities within and without the African Continent.

iv) Outlines and offers a critical and comparative analysis of the procedures available under the Charter.

v) Discusses the implementation mechanisms and remedies available, so as to isolate and focus on problems under these, and attempts to offer workable alternatives and additions.

vii) And, finally, we attempt to offer palatable and workable proposals for reforms towards greater efficacy and utility of the African Charter On Human and Peoples Rights, and for the OAU/AU in its human rights agenda.

C) Hypothesis

The thesis proceeds on various hypotheses, some of which will have been detected under the heading “statement of the problem”, ante.

One hypothesis is that the African Charter was, and remains, a compromise document carefully negotiated by states and governments not keen on interference with their domestic affairs, thus the document is, and was meant to be, weak as a human rights instrument capable of coercing states to observe its principles. To make it efficacious, it calls for a re-dedication of states to the ideas of human rights leading to deep and fundamental adjustments to the Charter’s provisions and institutions as to engender, in effect, a new instrument. We believe adjustment, as compared to abandonment and promulgation of a fresh instrument is easier, more achievable and practicable.

We hypothesize that apart from the conceptual, structural and institutional inhibitions, non-realization of the Charter’s intentions, for some time, also owed to erstwhile conservatism and want of innovation of the Commissioners. It is supposed that riddance of politics from the process of appointment, insistence of observance of geographical equity, and a conscious attempt to appoint independent and innovative individuals to the Commission, among others, may offer a solution.

It is our hypothesis that the Charter represents an attempt to prepare an instrument in conformity with the universality of human rights, inspired by traditions of the African Union initiative.
society, while respecting the parity which should exist among the various doctrinal systems prevailing in Africa. It is our further supposition that whereas the Charter may have succeeded in this on paper, it has not, and might not, succeed in fact.

We hypothesize that the African leaders set out to draw a Charter that respects positive customs and at the same time to be integrated into worldwide and regional rules drawn up by the world over. Additionally, the Charter constitutes, in our hypothesis, a forum for expression of an African philosophy of law and conception of human rights. Germanc to the above, however, the continued default by African governments in remitting their dues to the erstwhile OAU for running of the Commission, and the Commission’s resultant dependence on Western donor governments and agencies might not serve well the development of an “African human rights jurisprudence” as envisaged. Rather, the entrenched western notions of democracy and human rights are likely to flourish at the call of the financiers. It is thought that the proposed court will fall into the same abyss.

It is our hypothesis that the cloudiness and haziness of certain protective provisions in the ACHPR were not by default. Rather, the member states wished to appear to accept and respect international norms of human rights, without a positive and enforceable duty to comply and observe them. We are strengthened in this by the great reluctance of states to ratify the Protocol establishing the African Court so far only ratified by a few states. The court is given power to award compensations and fines municipally enforceable.

It is our proposition that as long as the OAU Heads of State and Government [or a similar organ under the AU] remains the body to consider reports submitted by the Commission, and as long as the OAU [AU] Chairman retains a say on certain of the Commissions’ activities, and as long as the Commission is granted no greater teeth than issuance of reports, not much would come from the Commission. We urge, inter alia, that the power of consideration and deliberation over the Commissions’ report should be delegated to the OAU[AU] Council of Ministers.
We proceed on the hypothesis that the African system of human rights protection is the weakest of the three that exist, the others being the European system and the Inter-American system. We urge, however, that it is the richest in the formulation of human rights, and necessarily, the more controverted. However, we believe that the way forward is not the abandonment of the Charter - now ratified by all 53 member states, but an able and innovative Commission and Court on establishment, and by widening the frontiers of human rights through the Commissions' innovativeness. Greater adherence by states to the ideals of human and peoples rights as contained in the Charter would also enhance the Charters' effectiveness.

It is our hypothesis that individual lawyers, scholars and serious Non-Governmental Organizations could play a central role in assisting the Commission in its promotional role through education, articles and debates, and in access and presentations before the Commission and, on the effective establishment and operationalisation the African Court.

V. LITERATURE REVIEW

There are many international scholars who have devoted much pen and paper to the discussion on regional protection of human rights. In these treatises, the African Charter, and the African system for human rights protection generally, will usually find pride of place.

Much has been done by way of comparative analysis of the three regional systems, with the African system receiving the brunt of the criticisms.

A number of African scholars have endeavoured to expose the conceptions, context and intent of the Charter. A few have sought to lay bare the historical background as a basis of understanding the Charter provisions, and to instruct efforts in making the Charter more efficacious.

Understandably, however, hardly anything has been written on the Protocol Establishing
the African Court, or on the OAU Grand Bay (Mauritius) Declaration on Human Rights, owing to their very recent birth, the former being in 1998, and the latter in April 1999.

Hardly any writing on the Charter has issued from Kenya, either in serious treatises by Kenyan authors, or in theses and dissertations by students. This, basically, was our motivation in undertaking this study.

Because of the plethora of texts and propositions relating to the African Charter, we herebelow present only a few of the propositions in highly summarized versions.

Richard N. Kiwanuka in his interesting article titled “The meaning of “People” in The African Charter On Human and Peoples Rights”, argues that the African Charter was not the first instrument on human rights to invoke the idea of “peoples”, nor was it the first to leave it undefined.

Under the heading “philosophy of the concept” he derives the idea from the African notion of justification of individual rights only by rights of the community. He juxtaposes this to the Western atomistic view of individual struggle against society to reclaim their rights.

He creates a distinction between human (individual) rights and peoples (collective) rights, and suggests a three premise approach in understanding the distinction:

i) The individual remains the primary subject of international human rights

ii) International human rights law recognizes existence of groups

iii) Enjoyment of individual human rights requires certain human rights to devolve directly upon groups

Kiwanuka undertakes to isolate the “meaning of peoples”. After presenting a spectrum of
attempts at definition by other authors, he suggests that attributes to “peoplehood” include commonality of interest, group identity, distinctiveness and territorial link.

On the meaning of “peoples” as used in the ACHPR, he maintains that the meaning is not consistent, and depends on the context and article under review.

Richard Kiwanuka., now writing on the right to development in an article titled “Developing Rights: The U.N. Declaration On The Right To Development”,38 examines the history leading to recognition of the right to development, and underscores the pioneering role of the African Charter.

He approaches the subject by analyzing the subjects of development, the duty holders, the content of the right and the significance of the U. N. Declaration.

On duty-holders, he avers that the responsibility is placed on individuals, groups of individuals and states. Individuals have the duty to do tasks assigned by the state necessary for achievement of the right. States have a duty to formulate appropriate policies aimed at achievement of the right. They are expected to promote, and protect conditions conducive to development.

On content, he urges that these include the state obligations under the Declaration On The Right To Development, and international obligations comprising co-operation in removing obstacles in the path of development, and action to compliment the efforts of the developing countries in search for solutions.

Judge Mohammed Bedjoui, in a radical article titled “The Right To Development And Jus Cogens”39 creates a distinction between the right to development and a right of development - the latter being uncontroverted. Since the right of development is the collection of rules that enables the right to development to be put into force, there is a logical sequence compelling recognition of existence of a right to development.
Declaring the right to development as a right of peoples and state, he states that unless we are cherishing a doomed illusion, the right to development cannot be an individual right unless it is first a right of the people or the state.

Elevating the right to development as a corollary of the right to life, and declaring that the same flows from the right of self-determination, he argues that the best means of securing a citizen's right to development is by setting the state free from certain international operations which drain its wealth.

Judge Bedjoui proposes declaration of the "world food resources" as "the common heritage of mankind," so that each people can be given what it needs - a complete transformation of international society. He adopts the philosophy of the Koran where giving of alms takes on characters of compulsion as a manifestation of solidarity among men.

Finally, he proposes establishment of an "International Fund For Food Resources" (I.F.F.R.) to operationalise this "new international food order".

Professor Anders Andreassen in his paper titled "The Right To Development On The Nature Of The Right And Its Application" recognises and acknowledges the controversy on the beneficiary, the provider, the substantive content of the right to development, and the safeguarding mechanisms. He sees the right to development as programmatic, a goal right, whose function is to inform national and international policy.

In his view, the Declaration on the Right to Development differs from the right to development contained in the African charter. The former makes a clear attempt at placing the individual as the nucleus of development, while the latter adopts a collectivist approach. He notes that neither of these refer to states as a beneficiary and declares suggestions that states are, and, can be, beneficiaries, an outright misnomer.

He concludes that the recognition of the right to development served to set on the
development agenda the relationship between human rights and development. Its main function is to inform the design of national and international policies and programmes.

Commissioner M.K. Rezzag Bara in an article titled “The African Charter On Human And Peoples Rights 10 Years After Its Coming Into Force: Challenges And Prospects” traces the history of the charter and lays bare the guiding principles. He contends that the African charter is the only instrument that devotes many of its articles to “peoples”. With biblical inspiration, he summarizes the rights recognized and guaranteed into two; that all peoples are equal, and that all peoples have the right of existence.

Additionally, he lauds innovative approaches by the Commission under Article 46, and states these to include Fact Finding Missions, and examination of human rights situation in specific country.

In conclusion, he laments the little incorporation of the Charter in political behaviour and juridical practice of African states and proposes establishment of an African Court - now already addressed. He recommends enhanced information exchange between NGOs, media and the Commission to have early warning mechanism. Lastly, he proposes a redefinition of co-operation between the Commission and states to persuade states to compliance.

R.G. Van Banning (Editor) in a publication of the European Commission commences by presenting an analysis of characterization and classification of human rights.

In his analysis of third generation or “solidarity” rights, he includes the right to peace, the right to a clean environment, and the right to equal enjoyment of the common heritage of mankind. He however sounds the warning that third generation rights must be handled with care, as a simplistic expansion of the human rights corpus may easily divert attention from the protection and promotion of existing rights.

Turning to the African Charter, and after giving the history and background, he states that
the charter has four categories of rights and duties those are, individual rights, rights of peoples, duties of states, and duties of individuals.

He notes the Charter as being unique in two respects; confers rights on peoples, and emphasizes the duties of the individual vis-à-vis the community and the state. He however criticizes the Charter for failing to define the term “peoples” in a legal framework, and for failure to elaborate the mutual relationship between individual rights and the duties that conflict with each other.

On the controversy on the right to development, he declares boldly that “the European Commission member states take the view that the right to development is an individual right”. Development initiatives have to be designed to promote - in parallel with economic and social rights - civil and political liberties by means of pluralistic, representative democracy based on respect for classical rights.

Van Banning examines the definition of “indigenous peoples”. He examines the definitions offered by Martinez Cobo and in the I.L.O. Convention 169, but concludes that the phrase has not known a generally acceptable definition. However, he summarises that characteristics of indigenous peoples include a strong affinity to the land they live on, their environment essential for their survival as a cultural entity, they are not dominant in their present society and have little influence on state policy, speak their own language and have common cultural qualities and have a decentralized organizational structure.

Professor E.V.O. Dankwa in his address on “The African System For The Protection Of Human Rights: The Task Ahead”, starts by lamenting wanton loss of life, inhuman and degrading treatment as well as the pain and suffering which wars have brought in many African countries. He suggests that to have peace and security in the whole of Africa is the first and most fundamental task confronting the African system for the protection of human rights.
Delving into history, Professor Dankwa recalls that it was Dr. Azikiwe, a Nigerian who is credited with the first suggestion in 1945 of the need for an instrument to protection of human rights in Africa. He writes that the first such instrument was drawn in 1961 in Lagos, what was to be called The Law of Lagos.

Turning to the African Commission, he avers that the Commission, in consonance with the African tradition of conciliation and mediation, has adopted dialogue and not confrontation as the means of holding states parties to the obligations which they have undertaken under the Charter. For this approach to produce results, he underscores, the necessity for state parties to open their door to the Commission and Commissioners.

Acknowledging the *Mauritius Plan Of Action of the African Commission On Human And Peoples Rights (1996-2001)*, he laments that no effective mechanism has been developed by the Commission for monitoring the implementation of its recommendations.

In conclusion, and while admitting that Africa is the weakest of the existing regional systems for the protection of human rights, Professor Dankwa offers cautious optimism. Mentioning states which having hosted the Commission or supported it financially, states which have taken measures recommended by the Commission and declaring that violations have abated in some countries at the instance of the Commission, he comes to commend the Nigerian approach. He cites the holding of the Nigerian Court of Appeal that the application of the Charter cannot be ousted by a state party, which has incorporated it within its municipal law, even if the purported ouster was by a military regime whose extensive legislative power is generally acknowledged.


Commencing in Chapter one, with a definitional and conceptual analysis of human rights, and having presented a plethora analyses, he offers his view, that;
“Human rights are thus claims, which are invariably supported by ethics and which should be supported by law made on society, especially on its official managers, by individuals or groups of individuals on the basis of their humanity. They apply regardless of race, colour, sex or other distinction and may not be withdrawn or denied by governments, people or individuals”.

Offering an alternative definition in terms of individual self-interest, he states that human rights are those rights, which every individual claims or aspires to enjoy irrespective of his colour, race, religion and status in life.

Writing on human rights in historical perspective, going all the way back to the English Magna Carta of 1215, the American Declaration Of Independence, the French Declaration Of Rights Of Man and Citizen (1789), to The Declaration Of The Rights Of The Peoples of Russia (1917), he turns to analyse the question of human rights in Africa before 1981. He dichotomises the history into three; pre—colonial period, colonial period, and the years of independence up to 1981.

Of the pre-colonial period, he opines that the social order was ontologically oriented and resolved problems with a few principles of organization - kinship, reciprocity and distribution. Of the second period, he believes that colonialism denied the basic right of a people to determine their political economic and social future. Colonialism was basically antithetical to human rights. Of the third period, he paints a sad situation of negation of democracy. The opposition parties, being prone to oppose on every issue, became clogs on the wheels of progress. The governing parties became more intolerant, denied government resources and facilities to their opponents and veered to the single party system. The military, controlling the bulk of the coercive instruments, took over or attempted to overthrow virtually all-African governments, purportedly to clean the Augean stables. Despite this gloom, the inter-African concern for human rights goes back to 1961, when African jurists met in Lagos Nigeria.
The OAU Charter of 1963 recognised the importance of safeguarding human rights, so did the Lusaka Manifesto of 1969, which the OAU approved. In the same spirit, the 1969 Convention on the Specific Aspects of Refugee Problems in Africa of 1969 was promulgated.

After dedicating much space to civil and political rights, and to economic, social and cultural rights, Professor Umozurike proceeds to analyse the idea of group rights. Noting that the African Charter provides for the so called “third generation” of rights which requires the solidarity of all peoples, he suggests that the concept of a generation of rights has been generally accepted, and that controversy only exists as to whether all of the third generations of rights are internationally accepted.

These rights, in his discussion, appear to include the right of a people to self-determination, the right to international peace and security, the right of a people to dispose of their natural wealth and resources in their own interests, the right of all peoples to the equal enjoyment of the common heritage of mankind, the right to a general satisfactory environment, and the right to development. In each, the Professor attempts a discussion of its contextual meaning and in instances, juxtaposes these with the concepts as more commonly used and accepted internationally. Particular attention is given to the right to development whose originator he cites as Judge Keba M’baye of Senegal in 1972, and whose input saw the inclusion of the right to development in the African charter - later to be recognised internationally through adoption of the Declaration Of The Right To Development by the United Nations General Assembly.

The text gives an analysis of the mandate, procedures and workings of the African Commission and affords space to discuss the Commission Secretariat and the need to strengthen it. This is followed by an inquiry on the extent to which the charter can be said to be an autochthon of African soil. Finding an affirmative answer to this inquiry, the Professor revisits the idea of rights of peoples as used in the Charter.
In his concluding chapter, Professor Umozurike writes that no other continent is in greater need of human rights than Africa. While the OAU has achieved some progress, much more remains to be done. The African charter was one such major achievement and its shortcomings simply reflect the level of agreement that could be achieved in 1981. The task now, as he sees it, is to push the frontiers of human rights outwards, in conformity with the trends in other parts of the world, especially Europe, and in consonance with the needs of the people.

Judge Keba M'baye, in his illuminating keynote address on the African Charter on Human and People’s Rights commences by giving an historical background on the Charter. Tracing the first joint initiative to an International Commission Of Jurists organised meeting in 1961 in Lagos, he however credits Dr. Nnamdi Azikiwe with origination of the whole idea in 1943. Narrating the activities to the end of establishing an African Charter, finally culminating in the OAU Resolution 115 of 1979 by which the Secretary General was mandated to commence the process, the judge underscores the role of four eminent Africans in traversing the continent and persuading Governments on the merits.

The article enumerates the basic principle of the Charter to be groupable into three headings; concerning the values of African civilization; concerning the philosophy of the law and human rights; and concerning the influence of socio-political factors.

The basic concern of African leaders, it is stated, was to draw up a charter that respects traditions and customs that are judged to be worthwhile and at the same time to be integrated into worldwide and regional rules drawn up the world over in order to promote and protect individual and collective rights.

The judge presents what he terms “The African concept of law and human rights” and argues that while the West sees law as an opposition between the individual and the entity representing the community, and the East regards the law as a series of measures
protecting the individual within his community, in Africa, laws and duties are regarded as being two facets of the same reality. This explains the inclusion of duties in the African Charter. In Africa, the community is a privileged subject of law, and this explains the importance given to collective rights.

In explaining the Charters' aversion to adoption of judicial solutions, the judge argues that according to the African conception of law, disputes are settled not by contentious procedures, but through reconciliation. He argues that the authors of the Charter wished to respect the diversity of Africa and the political options of the various states composing the OAU. It was also necessary to give pride of place to the principle of non-discrimination and at the same time emphasize the determination of the African peoples to combat the vestiges of colonialism.

The article presents a studious analysis on the African Commission and indicates that the Commission applies two groups of principles. The first group he calls "principal measures" - whereby the Commission "shall" draw inspiration from international law on human rights. The second are "subsidiary measures" - whereby the Commission "shall also take into consideration" other international conventions on condition that they lay down rules expressly recognized by member states of the OAU.

In his concluding remarks, the judge admits that in comparison, the system established by the OAU for the protection of human rights seemed insufficient, especially owing to the absence of a court. While difficulties must appear concerning the protection of peoples rights, the safeguard of human rights as they are established by the mechanism envisaged in the provisions is far from being insufficient. Great precautions were taken by the authors in order to obtain the assent of the states, while at the same time opening up bold perspectives if circumstances and individuals allow. Much room is left to the initiative of the Commission. If it is composed of competent and independent personalities, and if its membership as a whole is inspired with a will to accomplish to the full its mission of protection of human rights, it will be able to satisfy the most demanding. Indeed, much
room for manoeuvre is recognized implicitly in the various provisions.

The Protocol To The African Charter On Human And Peoples' Rights On The Establishment Of An African Court On Human And Peoples Rights was adopted by the OAU Assembly of Heads of State and Government during the 34th session in June 1998 in Ouagadougou, Burkina Faso. Regrettably, as at 16th April 1999, only Burkina Faso and Senegal had ratified the Protocol.

The preamble to the protocol proposes establishment of a Court to supplement the efforts of the African Commission. The Court comprises 11 judges who serve in their individual capacity for nine year terms and who shall be elected by the OAU Assembly. Independence of the judges is to be ensured under Article 17 and quorum of the court shall be seven.

The Court shall have jurisdiction over all cases extended to it concerning the interpretation and application of the Charter, the Protocol and any other relevant human rights instrument ratified by the states concerned. The Court has jurisdiction to provide an advisory opinion on any legal matter relating to the Charter.

Access to the Court is restricted to the Commission, the state party that has lodged a complaint to the Commission, the state party against which a complaint is lodged, the state party whose citizen is a victim of violation, African intergovernmental Organizations. Additionally, NGOs with observer status before the Commission may be allowed to institute cases directly. Individuals may also be granted such direct access provided their respective states have made a declaration recognizing this under Article 34(6).

Proceedings before the Court are public and the court will follow its rules of procedure. The court shall render its judgment within 90 days, and it has competence to make appropriate orders to remedy a violation, including payment of fair compensation or
reparation.

Only state parties to the African Charter can ratify the Protocol, which shall come into force thirty days after fifteen instruments of ratification or accession have been deposited.

The Protocol may be amended if a state party makes a written request, or if the Court itself makes such a proposal through the Secretary General.

In a document titled "Making Human Rights A Reality For Africans" Amnesty International gives an analysis of what, in their view, bedevils human rights protection and promotion in Africa. Among the proposals offered are that the African Commission should draft and recommend for adoption by the OAU Assembly, guidelines and criteria for independence and impartiality which would disqualify candidates who hold offices incompatible with the office of Commissioner, and ensure adequate gender balance and representation of the different regions and legal systems in the African Commission.

They recommend that the Commission amend its Rules of Procedure to state clearly that members of the African Commission should refrain from considering reports, which emanate from their own countries.

They also propose that establishment of a human rights division within the OAU Secretariat be speeded up, and that the Secretary General send a representative from this division to all meetings of the Commission to inform participants about the deliberations and activities of the OAU and to gather information on human rights situations.

Justice R.H. Kisanga, in his paper titled "The African Charter On Human And Peoples' Rights" commences by stating that the Charter seeks to reflect the African culture and traditions, at the same time acknowledging the universality principle of human rights. While its implementation has produced some results, he identifies obstacles on the path of its full realisation as lack of knowledge of human rights, wide-spread poverty, the state of war or internal armed conflict obtaining in a number of African countries, lack of good
governance and non-observance of democratic principles by some of the African regimes.

Presenting under the rubric "the philosophy and content of the charter", he states that underlying the drafting of the African Charter is the principle that the Charter should reflect the African concept of law and human rights, and take cognizance of African cultures and traditions. In so doing, however, the Charter is to have regard to the principle of the universality of human rights already developed by international instruments.

Turning to the African Commission, and dedicating much space for this, the judge divides the role of the Commission into two broad categories, namely the promotional role and the protective role.

Declaring the African Charter to be a formal expression by the African states of their commitment to promote and ensure respect for human rights on the African Continent, he proceeds to offer an exposition of the role of the state reports; that they are to be submitted to the Commission for consideration of the extent to which states are fulfilling their obligation under the Charter.

Underscoring the need for innovative action by the Commission, the writer considers some of the activities the Commission has undertaken under the theme "other promotional activities", and lists five of these.

In conclusion, the Judge recommends that state parties, which have not yet harmonized their national legislation with the provisions of the charter, should be urged to do so, and to submit their periodic reports timeously to the Commission to enable monitoring of the implementation of the Charter. National, regional and international efforts should be intensified to restore peace, order and stability in the African Countries undergoing civil strife, and African government should adhere to democracy and good governance. Deliberate efforts should be made toward raising the level of human rights education, and the Commission be provided with the necessary resources with which to discharge its
mandate. Lastly, the Charter itself should be amended to empower the Commission to act with commensurate speed in cases of emergency.

Professor J.B. Ojwang, in an article titled “Legal Transplantation: Rethinking The Role And Significance Of Western Law In Africa”, commences by a juxtaposition of the early writings of Montesquieu, that laws reflected the conditions of life of a particular people and could not easily be successfully applied to peoples of other nations, and the views of Professor Watson, that in Western Europe legal transplantation has succeeded, and Professor Ojwang proceeds to demonstrate the fallacy in both. The former, it is argued, is untenable in its full effect, both by antiquity and by its highly theoretical formulation, while the latter so limits itself to the experience of Western Countries.

The term “African Law”, in strict terms, means the indigenous customary laws that, from time immemorial, governed the people of Africa, and which, up to the time of advent of colonisation, were the undisputed sacrosanct norms regulating their lives. These laws, emphasised mediation, conciliation and common ideology shared by the people. They were rarely imposed by an organised, coercive state authority and may be said to have represented the ideal born of convenience and acquiescence, rather than of dictation or imposition.

Each colonial state created was necessarily a negation of the very basis of African law - the ethnic group as an autonomous, self-regulating entity with its own laws affecting behaviour in society.

Quoting R.S. Sutner, the Professor comments that African indigenous law differs from what western scholars conventionally understood to be law, attributed to a difference in social institutions. The tribal law is the law of a peasant, agrarian society with a distinctive form of family organization, while the Roman - Dutch law is the law of an individualistic, urban, industrial society.
Offering an analysis of the structural and functional variance between traditional and western law, it is stated, by way of illustration, that the hallmark of property is alienability - not just of the so/us itself, but also of a variety of possible estates, which may be created over the so/us. That is also the sharpest contrast with customary law, whose essence is lineage - access, or usufruct. The Professor continues to state that the advent of the modern state in Africa, through the colonial process, introduced an organizational situation built on the Gesellschaft concept, resting upon, and advancing, a system of individual responsibility, a system of sanctions superintended by public authorities. This arrangement was to the distinct detriment of the norms of the Gemeinschaft-type societies that had existed in the informal, insular ethnic communities that preceded the centralised system of government.

In another article, Professor J.B. Ojwang and Patrick Karani writing on the theme “Intellectual Property In International Relations: Technology Transfer”⁵³ note that intellectual property rights (IPR) is a critical factor for the transfer of technology and for national development. Intellectual property is intangible and is based on creations of the human mind and intellect, which can be integrated into computer programmes, machines, electronics, among others. Thus, intellectual property forms the basis of technology transfer and development.

Noting that limitations to technology transfer to developing countries include internal financial constraint, international trade regulations, patent, industrial and copyright law, among others, the authors advise that the cost of environmental management is inversely proportional to the value of the cheap technologies in the developing countries.

Stating that technological development in the Northern countries is dominated by private sector invention and innovation as the Northern industry is a market-oriented enterprise, it is averred that in those countries the scope for recourse to environmental technology is partly influenced by juridical criteria - strict regulations controlling releases of hydrocarbons.
Proposing that patents serve as a source of technological information for economic development, the writers suggest that it would be worthwhile for developing countries to access and acquire expired patents and modify the invention for application in their own country.

The world has opted for a common negotiated settlement in solving large-scale global problems, such as those associated with global warming and climate change; degradation of biological diversity; water, land and air pollution. A basic responsibility rests on the South to strive, through appropriate policies and management structures, to find a solution to the technological problem. But no less, is the burden of moral responsibility resting on the North to assist the South to come to participate meaningfully in the quest for agreed solutions, through the paths of international relations and technical cooperation.

The Grand Bay (Mauritius) Declaration And Plan Of Action adopted by the Council of Ministers of the OAU in April 1999, represents the first ever OAU Ministerial Conference on human rights in Africa. In its preambular paragraphs, the Declaration reiterates much of what the Charter contains in its preamble and proceeds to restate commitment to universal human rights instruments, underscores the need to respect human rights, recognizes the role of NGOs and determines to consolidate the gains made in Africa in the promotion and protection of human and peoples rights.

In its opening article, the Declaration restates the Vienna principle - of universality, indivisibility, interdependence and inter-relation of human rights. But, it quickly affirms, in the second clause, the universality and inalienability of the right to development, the right to a generally satisfactory environment, and the right to national and international peace and security; rights sometimes contested chiefly by Northern states and commentators.

In the spirit of the Charter, the Declaration calls for integration of positive African
traditional and cultural values into the human rights debate. It urges the promulgation of an Additional Protocol to the African Charter for more effective protection of women’s rights, and calls for respect of rights of people living with Aids.

Outlining at least nineteen causes of human rights violations in Africa, the Declaration recommends a multi-faceted approach, and specifically acknowledges the link between human rights violations and population displacements. While recognising the role of civil society and the family unit, the Declaration declares that the primary responsibility of protecting and promoting human rights still lies with the state.

On the Commission, the Declaration calls for an evaluation of the structure and functioning of the Commission, and to provide it with adequate human, material and financial resources.

The Declaration, sensibly, “hopes” that the Assembly of Heads of State and Government would delegate to the Council of Ministers the task of taking action or the activity reports of the African Commission. The Declaration, in paragraph 26 appeals to the International Community to alleviate the external debt and take steps necessary to reduce the burden on states.

Writing on the topic “The African Charter On Human And Peoples Rights Germane To Kenyan Jurisprudence”, one Otiende Amollo commences by an examination of the definitional spectrum of the phrase “human rights”, and isolate four elements that appear common to all, namely, that human rights an entitlements, inhere in all human beings, are basic and override other rights, and are claimable against society as represented by the state. The inquiry, then, ‘is whether “human rights” and “rights of peoples” are distinct, and whether the latter would share the four elements. Later in the text, the conclusion is reached that while the title of the charter may suggest a distinction between the two, an examination of the preamble and articles of the charter reveal that no endeavor is made to distinguish and isolate the two. Importance appears to be attached to the recognition that
"rights of peoples" exist, and to entrenchment of these. It is also suggested the "rights of peoples" may not, always, inhere in the individual human being, nor that they will always be claimable only against the state.

Tracing the history of the charter all the way back to 1943, in Dr. Nnamdi Azikiwe's proposals, the paper comes to the proposition that in drafting the charter, the African leaders sought to respect positive African traditions without disowning worldwide and regional rules for protection and promotion of human rights while, at the same time, it afforded a forum for the expression of an African philosophy of law and human rights.

After presenting the rights guaranteed, the paper attempts an analysis of "the meaning of "peoples"". Having examined the various definitions by Kiwanuka, Umozurike, Gudmundur, and Critescu, the writer proffers a seven element pre-qualifications to "peoplehood". More important, perhaps, the writer demonstrates that the African charter is not the first instrument on human rights to invoke the term "peoples", nor is it the first to leave it undefined. Mere want of consensus on definition, it is contended, cannot justify objection to the conception.

Analysing the structures, institutions and implementation procedures under the Charter in some detail, the paper then offers a comparative analysis, recalling the all important injunction of the different histories so clearly underscored by Professor Ojwang, and which is demonstrated to have contributed in part to the successes of regional protection of human rights in Europe. In his lecture Professor Ojwang states that

"The trappings of western jurisprudence date back to the eve of the middle- ages, in the time of St. Augustine of Hippo... This intellectual enterprh became the memorable origin of occidental legal culture. And this is the original basis of a general unity in the European legal tradition".

Turning to the recent developments on human rights in Africa, the paper attempts an analysis of the Protocol establishing the African Court. And, thereafter, the writer examines the place and instruction of the African Charter on the Kenyan jurisprudence.

Under the sub-title "efforts in redemption", the paper attempts an outline of actions to be
taken by the OAU, by the African Commission, by the African Court on establishment, by NGOs, individual lawyers and by the states. The crux of the conclusion being, that the African charter is workable and redeemable so long as necessary adjustments are made, and states adhere to the charter and assume a proper commitment to the culture of respecting human rights and taking positive steps in regard thereto.

VI. CASE REVIEW

SELECTED CASES BROUGHT TO THE AFRICAN COMMISSION

1. Katangese Peoples Congress -Vs- Zaire (75/92)

This was an application to the Commission to recognise the Katangese Peoples Congress as a liberation movement; to recognise the independence of Katanga; and to help secure the evacuation of Zaire from Katanga.

The Commission acknowledged the existent controversy on the term “peoples”, but appeared to take all Zaireans as “a people”, and not the Katangese. Enumerating the instances when the right to self-determination is exercisable, the Commission thought the right ought to be limited by principles of sovereignty and self-determination.

2. Nziwa Buyingo -Vs- Uganda (Communication No. 8/88)

This was Communication by a Zairean national alleging arrest, arbitral detention, torture and extortion by Ugandan soldiers.

The Communication was declared inadmissible since no evidence was presented on whether he availed himself of local remedies under Article 56(5) and Rule 103(1).

3. Constitutional Rights Project -Vs- Nigeria [In respect of Wahab
Akamu & Ors] (Communication No. 60/91)

This was Communication by a Nigerian NGO on behalf of persons, sentenced to death under a special Decree from which no appeal lay.

The Commission found that there was a violation of Article 7(a) and (d), and recommended that the Government of Nigeria should free the complainants.

4. Muthuthuri Njoka -Vs- Kenya (Communication No. 142/94)

In this individual Communication, the complainant alleged illegal admission to Mathare Mental Hospital by duress, wrongful detention, torture, wrongful imprisonment of his family members and harassment.

The Communication was initially submitted in 1993, but was declared inadmissible, as Kenya had not by then ratified the Charter. The same was re-submitted in 1994.

The Commission found the complaint "incoherent and vague" and thus declared it inadmissible.

5. William Courson -Vs-Zimbabwe (Communication No. 136/94);

The Communication here concerned the legal status of homosexuals in Zimbabwe. The domestic law of Zimbabwe criminalises sexual contacts between consenting adult homosexual men in private. The complaint stated this to be violation of Articles 1-6, 8-11.16, 20, 22 and 24.

Unfortunately, for the development of jurisprudence on the issue, the Communication was withdrawn and the Commission dropped it.

6. Civil Liberties Organisation In Respect Of The Nigerian Bar Association -Vs-Nigeria (Communication No. 101/93)
This was a Communication by the Civil Liberties Organisation, a Nigerian NGO, on behalf of the Nigerian Bar Association against a Legal Practitioners Decree setting up a body to govern the Bar, dominated by nominees of the Government.

The Commission held that there was a violation of Article 6, 7 and 10 of the charter. The Decree should therefore be annulled.

7. **Embga Mekongo Louis -Vs- Cameroon (Communication No. 59/91)**

In this case, a Cameroonian alleged false imprisonment, miscarriage of justice and damage, and claimed $105 million.

The Commission found that due process was denied contrary to Article 7, but the Commission expressed inability to determine the amount of damages and recommended that the issue of quantum should be determined under Cameroonian law.

8. **Jean Yaori Degli -Vs- Togo (Communication No. 91/93)**

The complainant alleged serious violations by the administration in Togo. The Commission declared that the acts were committed under a previous regime/administration and felt satisfied that the incumbent administration had dealt with the issues satisfactorily.
ENDNOTES TO CHAPTER ONE


2 Supra Note 1

3 Professor Gudmunder Alfredson, *Economic Social and Cultural Rights and The Right to Development*, Lecture given at the University of Lund - Raoul Wallenberg Institute, Lund Sweden on 28th May 1998,


7 Ibid


11 Supra Note 1, pp. 26 - 30.


13 Supra Note 1, pp. 26 - 27.
14 Ibid, p. 27.

15 Ibid, p 27.

16 Rapporteurs Report, OAU Doc Cm/1149(XXXVII) 1981 Ann 1 at 4 para. 13

17 Supra, Note 10, pp. 6-9.


19 Supra, Note 3


23 Supra, Note 21, p. 95

24 Case No. 75/92.

25 (1937) A. C. 326.


30 A Cassesse, Human Rights in A Changing World. (Temple University Press,

31 Supra, Note 18, p.2.

32 Supra, Note 10, Pp 8-10

33 Supra, Note 1, pp.27 - 29.

34 Supra, Note 18, p. 127.

35 Supra, Note 28.

36 Only two States had ratified as at 11th April 1999, as disclosed by the OAU Chief Legal Adviser while addressing the Conference of OAU Ministers in Grand Bay Mauritius, .

37 Supra, Note 4.


41 M.K. Rezzag Bara, Home Library

42 Supra, Note 8


44 Supra, Note 26.

45 The Registered Trustees of The Constitutional Rights Project -vs- The President of The Federal Republic of Nigeria & Two Others Cited in Professor E.V.O. Dankwa, Supra, Note 43 at 11.
46 Supra, Note 18.

47 Ibid. p.5.

48 Supra, Note 1.

49 Ibid.


52 Professor J. B. Ojwang, Legal Transplantation: Rethinking The Role And Significance of Western Law In Africa. (In P. Sack and E. Minchin (Eds), LEGAL PLURALISM (1986)) 99 AT 111.

53 Professor J. B. Ojwang & Patrick Karani, “Intellectual Property In International Relations: Technology Transfer”, [MIMEO]

54 Supra Note 28

55 Supra, Note 10.

56 Supra Note 4.

57 Supra, Note 18.

58 Supra, Note 3.

59 Aureliu Cîrtescu, in a report written to the United Nations, quoted in Kiwanuka Supra Note 3 p.87.

60 Professor J. B. Ojwang, Laying A Basis For Rights. An Inaugural Lecture Delivered Before The University of Nairobi, , Nairobi p.8
CHAPTER TWO

I. THE AFRICAN CHARTER ON HUMAN AND PEOPLES’ RIGHTS, ITS HISTORY AND RATIONALE- AN OVERVIEW

The primordial germ of the African Charter on Human and Peoples Rights would be found in the 1961 meeting of a number of jurists in Lagos, Nigeria. In his address to the conference, Governor-General Dr. Nnamdi Azikiwe called on African States to adopt a Human Rights Convention as an earnest belief in the rule of law. The Conference adopted various recommendations under the title “The Law of Lagos”, declaring that African States should be committed to constitutionalism, the avoidance of tyranny, and the rule of law. It suggested a human rights Charter with a court to which individuals and groups might have recourse.

Dr. Azikiwe, who is usually credited with the idea and campaign for an African Charter, had started this advocacy way back in 1943, when he published the Atlantic Charter and British West Africa following the Atlantic Charter proclaimed by Britain and the United States of America on the right of all peoples to a government of their choice in 1941. Britain’s Prime Minister sought to exclude application of the Charter to British colonial subjects, prompting Dr. Azikiwe to lead a West African press delegation to present a protest memorandum to the British Government calling for a Charter applicable to Africa.

The OAU Charter of 1963 refers to human rights in general in its preamble and also reiterates the mandate of the OAU to co-ordinate and intensify co-operation and efforts to achieve a better life for the people of Africa. While the OAU Charter did not make express mention of human rights as an objective, it was later to become the
framework and vehicle by which human rights concerns would be raised, articulated and promulgated.

In 1969, the Heads of State of East and Central Africa meeting in Lusaka, Zambia issued "The Lusaka Manifesto of 1969" in which they reiterated the belief that all men are equal and have equal rights to human dignity and respect regardless of colour, race, religion or sex. It embodied the ideals of democracy and denounced the practice of apartheid in South Africa. The OAU gave its official approval and secured its adoption by the UN General Assembly.  

In the same year (1969) the OAU commenced the establishment of an "African Instrument" by the adoption of the Convention on the Specific Aspects of Refugee Problems in Africa, which broadened the definition of "refugees" to cover persons escaping from consequences of aggression, occupation, foreign domination or events disturbing public order. In 1978, a colloquium was organised in Dakar, Senegal, which set up a committee to follow up on the recommendations and to persuade Francophone Heads of state to support the idea of a Charter. That Committee persuaded President Senghor of Senegal, who in 1979 at an OAU Meeting in Monrovia presented a resolution instructing the OAU Secretary General to set machinery in motion for a draft Charter. A working group appointed at the Monrovia meeting and chaired by Justice E. K. Wiredu of Ghana produced the proposals. These preliminary proposals were considered by a Committee appointed by the Secretary General in 1979 to produce a draft Charter that was discussed at the OAU ministerial conference in Banjul in 1980.

The Charter was drafted in Banjul, and adopted by the OAU Heads of State and Government in 1981 in Nairobi, Kenya. It was officially named "The Banjul Charter" in order to distinguish it from the OAU Charter of 1963. The Charter entered into force on October 21st 1986 after it was ratified by a majority of the OAU member
The Charter has since been ratified by all member states of the OAU.

In the course of its evolution, three guiding principles came to emerge and, duly summoned by the politicians, the drafters of the Charter sought to:

I. Prepare an instrument in conformity with the universality of human rights and inspired by the traditions of the African society, while respecting the parity which should exist among the various doctrinal systems prevailing in Africa.

II. Give significance acceptable to one and all to the concept of Human Rights, based on examples from Europe and the Americas.

III. See to it that the Charter did not go beyond what African States would be prepared to accept in the field of protection of Human Rights.

In its preamble, the Charter recognizes that on the one hand, fundamental Human rights derive from the attributes of human beings which justify their international protection, and on the other hand, that the reality and respect of peoples’ rights should necessarily guarantee human rights. The Charter also enunciates, in a peremptory manner, the principle that civil and political rights cannot be dissociated from economic, social and cultural rights. And the Charter, more than any other international instrument on human rights, emphasizes the “rights of peoples”, and the right to development.

Finally, the African leaders set out to draw up a Charter that respects traditions and customs that are judged to be worthwhile and at the same time to be integrated into internationally and regionally accepted rules and norms on human rights, in order to promote and protect individual and collective rights. Additionally, the Charter established a forum for expression of an African philosophy of law and conception of
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Primarily, the African leaders set out to draw up a Charter that respects traditions and customs that are judged to be worthwhile and at the same time to be integrated into internationally and regionally accepted rules and norms on human rights, in order to promote and protect individual and collective rights. Additionally, the Charter constituted a forum for expression of an African philosophy of law and conception of
human rights, where duties are enumerated, and the right to development emphasized and group rights generally prioritised. Of necessity, the Charter also sought to present a regional human rights protection mechanism parallel to the European and Inter-American models.

II. Strengths, Novelties and Criticisms

In its relatively short life, the African Charter has known anything but peaceful existence and operation. It has invited some of the fiercest of criticism of any instrument, but it has also known support in its novelties.

The Charter has been lauded for having departed, in very significant ways, from contemporary multilateral human rights instruments, and dynamically entrenching the concept of “peoples” into international human rights theory.

The Charter has also been commended for its bold pronouncement of the Right to Development. The conception and popularisation of the right is credited to Judge Keba M’baye, a Senegalese who was later to become President of the International Court of Justice. Karel Vassak echoed his efforts.

Recalling that Judge Keba M’baye was the driving force behind the draft of the African Charter, and cognisant of the growing discontent in African states and other undeveloped countries on the “Development Gap” relative to the northern countries, it falls in place that the African Charter was the first international human rights instrument to declare the right to development. It is this recognition of the right that catalysed the Declaration on the Right to Development by the United Nations General Assembly on 4th December 1986.
The Charter has also invited praise for its stipulation and emphasis on the duties of the individual vis-à-vis the community and the state.

Additionally, the Charter expands and reaffirms the rights to clean and healthy environment, right to equal enjoyment of the common heritage of mankind, right to national and international peace, *inter alia*.

Even these innovative approaches have invited criticism, that a simplistic expansion of the human rights corpus may easily divert attention from the protection and promotion of existing rights.

The Charter has been discussed as conceptually confused and hence impossible to rationalise and to be invoking the term “peoples” inconsistently in different articles resulting in varied meanings. It has been stated that the African Commission on Human and Peoples Rights- the Charter’s chief organ so far, is powerless and subservient to the OAU Assembly unrepresentative, wanting in independence and lacking innovation, while financially crippled and ever dependent on Western donors.

Others have opposed the conception of “peoples” and the larger set of “third generation rights” including the right to peace, a clean environment, and to equal enjoyment of the common heritage of mankind on the ground that the issues at stake are not sufficiently specified and demarcated.

The Charter has been faulted for failure to recognize the right to privacy, the right to adequate standard of living and the right to leisure, the right to financial compensation and the right to a name.
ENDNOTES TO CHAPTER TWO


5. Ibid

6. As confirmed by the OAU Chief Legal Advisor while addressing the conference of OAU ministers in Grand Bay, Mauritius, 12-16 April 1999

7. Supra, Note 1.


10. UNGA.Res 41/128.


12. Ibid, p 7


14. Supra, Note 8, p. 80


17 Ibid

18 Supra, Note 11 p.7.

CHAPTER THREE

CONCEPTS

I. THE IDEA OF PEOPLES

Boldly, and radically, the African Charter on Human and Peoples Rights entrenches the notion of “Peoples” in its title. The word “Peoples” is used in eight of the ten-preambulary paragraphs. In the course of drafting the Charter, some states, notably Madagascar and Guinea Republic, insisted at the 1979 OAU Summit, that the proposed Charter had to include peoples’ rights resulting in a resolution to draft a “Human and Peoples rights Charter”.

The very phraseology of the title might engender questions on whether “human rights” and “the rights of peoples” are distinct and different as used in the Charter and suggested by the title. An in-depth examination of the preamble and articles of the Charter reveals, however, that there is no endeavour to distinguish and isolate the two. Importance appears to be attached to the recognition that “rights of peoples” exist, and to entrenchment of these, sometimes in inexorable conjunction with human or individual rights, sometimes not. But “human rights” is commonplace and generally accepted even without uniformity of definition. The more controverted is the idea that “a people” can have rights of the same genre as human rights.

The African Charter is not the first instrument to invoke the term “peoples” in its body. As early as 1790, the decree of the French Constituent Assembly referred to both the rights of man and of peoples.

The Charter of the United Nations was adopted in the name of “We the Peoples”. In Articles 1 and 55, the U.N. Charter mentions “peoples” in relation to the right of self-
determination; the principle of “self-determination of peoples”. In 1941, Britain’s Prime Minister, Sir Winston Churchill, and President Roosevelt of the United States proclaimed the Atlantic Charter, on the right of all peoples to a government of their choice (except that peoples in this context was not to include British Colonial subjects). Common Article 1 of the International Covenants on Economic, Social and Cultural Rights, and on Civil and Political Rights 1966 provides:

1. 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.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of it’s own means of subsistence.

In July 1976, a group of eminent jurists from all over the world met in Algiers and proposed a universal Declaration of the Rights of Peoples. Indeed, the phrase “Peoples” has known invocation in various international instruments on human rights and UN General Assembly Resolutions, especially those dealing with self-determination.

Professor Umozurike writes that the concept of peoples’ rights recognises the existence of collectivities within the state, which may be controlled by one, or more groups defined in terms of inter alia religion, language and class. It tries to harmonise the group with the people as a whole. The stress on peoples' rights along with individual rights seeks to create harmony between the individual and society. The African notion of man in society is one of harmony, for only in society can man find the fulfilment of his/her aspirations. Far from being a relationship of subordination, it is one of complimentarity, participation and dialogue.

In a report written for the United Nations, Aureliu Critescu offered a limited definition of the term “peoples” for purpose of the right to self-determination, and included the following elements:
(i) The terms “people” denotes a social entity possessing a clear identity and its own characteristics

(ii) Implies a relationship with a territory.

(iii) A people should not be confused with ethnic, religious or linguistic minorities, whose existence and rights are recognised in Article 27 of the International Covenant on Civil and Political Rights.

Examining the meaning of “peoples” in the African Charter, Richard Kiwanuka argues that the meaning is not consistent and depends on the context upon examination of the Article in question. He isolates four distinct meanings of “peoples” in the Charter, namely,

(i) All peoples within the geographical limits of an entity yet to achieve political independence or majority rule.

(ii) All groups of people with certain common characteristics who live within the geographical limits of an entity referred to in (i), or in an entity that has attained independence or majority rule (i.e. minorities under any political system).

(iii) The state and the people synonymous - as an external meaning of economic self-determination.

(iv) All persons within a state.

Prof Gudmundur Alfredsson however argues that a conception that equates the state to peoples in order to have rights is a misnomer, as human rights do not inhere in states. If peoples should mean the individual, then the phrase is tautologous as that is the legitimate subject of human rights. He concludes that the term ‘peoples’ in the African Charter is therefore idle and means nothing. He states that state rights are not and should
not be human rights, since human rights are rights of the individual vis-à-vis the state. States have an avenue for enforcing their rights under International law. Further, “peoples” is hardly definable and makes no sense as long as people are represented by the state/government. As such, and since all human rights are universal as approved by the 1993 Vienna Declaration, we do not need a separate instrument.

Others have opposed the idea of “peoples’ rights” on the ground that a simplistic expansion of the human rights corpus may easily divert attention from promotion and protection of existing rights, and in any case, the issues at stake are not sufficiently specified and demarcated.

The absence of a definition of “peoples” in the African Charter is not accidental, as the drafters intentionally left the phrase undefined, to quote them:

“So as not to end up in difficult discussion”

Yet, naturally, the question cannot be wished away forever, and has reared its ugly head before the Commission in the case of Katangese Peoples Congress -vs- Zaire. In this 1992 communication, the Congress applied to the Commission, to recognise the Katangese Peoples Congress as a liberation movement; to recognise the independence of Katanga, and to help secure the evacuation of Zaire from Katanga. The claim was brought under Article 20(1) and claimed denial of the right of self-determination. It is necessary to set out “the law” as declared by the Commission:

1. “The claim is brought under Article 20(1) of the African Charter on Human and Peoples Rights. There are no allegations of specific breaches of other human rights apart from the claim of the denial of self-determination.

2. All peoples have a right to self-determination. There may however be controversy as to the definition of peoples and the content of the right. The issue in the case is not self-determination for all Zaireans as a people but specifically for the Katangese. Whether the Katangese consist of one or more ethnic groups is, for this purpose, immaterial and no evidence has been adduced to that effect.

3. The Commission believes that self-determination may be exercised in any of
the following- independence, self-government, local government, federalism, confederalism, unitarism, or any other forms of relations that accords with the wishes of the people but fully cognisant of other recognised principles such as sovereignty and territorial integrity.

4. The Commission is obliged to uphold the sovereignty and territorial integrity of Zaire, a member of the OAU and a party to the African Charter on Human and Peoples’ Rights.

5. In the absence of concrete evidence of violations of human rights to the point that the territorial integrity of Zaire should be called to question and in the absence of evidence that the people of Katanga are denied the right to participate in government as guaranteed by Article 13(1) of the African Charter, the Commission holds the view that Katanga is obliged to exercise a variant of self-determination that is compatible with the sovereignty and territorial integrity of Zaire.

For the above reasons, the Commission declares that the case holds no evidence of violations of any rights under the African Charter. The request for independence for Katanga therefore has no merit under the African Charter on Human and Peoples’ Rights

Quite obviously, the Commission failed to address the question, “who are “peoples” in the African Charter?” - a Question whose answer was a necessary Conditio sine qua non to addressing the law relevant to the communication. The Commission recognised the controversy on the definition of “peoples”, but like the drafters of the Charter, elected “not to enter into difficult discussion on the term”. The decision clearly suggests that for purposes of the right to self-determination all Zaireans are a “people”, and suggested the Katangese may have had greater chance to success on a claim of any other rights of peoples apart from the one of self-determination. It is implied in the decision that where the entity claiming the rights of peoples consists only of the ethnic group, recognition would be more difficult.

The decision of the Commission echoes the view that claims of right of self-determination in the continent are severely limited by the principles of sovereignty of states and territorial integrity. It further focuses on the perilous position of the Commission. Being a creature of the Charter which is, in turn, a product of the OAU comprising the various states in Africa, it would be tantamount to shooting itself in the
foot were the Commission to declare existence of a people - the primordial germ to statehood - within the borders of an existing member state. That would be the occasion of the unwinding of the OAU and the last date of its existence.

While castigating the timidity of the Commission in its handling of the Katanga case, it must be remembered that Article 60 of the African Charter allows the Commission to “draw inspiration from International law on human rights and the Charter of the United Nations”. Like the decision of the Commission after recognizing the right to self-determination of peoples, the Charter of the United Nations proceeds that:

“Nothing in the foregoing paragraphs shall be construed as authorizing, or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principles of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour”14.

Even the International Court of Justice has stated that the principle of self-determination has, through subsequent development of international law, been accepted as a “right” of peoples in non-self-governing territories.15 Indeed, many states would not accept the principle that the right to political self-determination can apply to people within a sovereign state. India, for example, in becoming a party to the twin 1966 Covenants on Human Rights, made a reservation to the effect that the right of self-determination applied only to peoples under foreign domination and “not to sovereign independent states or to a section of a people or a nation.”16

In similar vein, the erstwhile Secretary General of the UN Dr. Boutros - Ghali warned:

“yet if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation and peace, security and economic well-being for all would become even more difficult to achieve.”17

Clearly, the Commission did no more than invoke the mandate of “drawing inspiration”
from the Charter of the UN and the flow of international law opinion on the subject, even if that was all it did.

Two authors have also attempted to tread the difficult path of defining the criteria for defining a people, focusing on when minority rights may satisfy claims of self-determination. They have suggested three criteria:

(i) Denial of minority rights and the absence of democratic rights for minority groups.

(ii) The claimant community should possess a self-defined identity distinct from the rest of the country and;

(iii) They should inhabit a defined territory that largely supports secession.\(^{18}\)

Drawing from the seven prerequisites to recognition of rebels, and of a conflict as one of international liberation\(^ {19}\), it is arguable that except for the instances when “peoples” rights must be exercisable through the state as “the legitimate entity recognised in international relations - with regard to claims of equity in the International arena,” “peoples” will otherwise require to have:

(i) A common heritage, distinct from others.

(ii) A demonstrable desire among the group to be removed from the rest and to act as such entity.

(iii) To occupy a defined or definable territory, even across boundaries, but with continuity geographically.

(iv) A responsible and effective command structure as to enable legitimate representations and negotiations.
(v) International recognition.

(vi) The demonstrable ability and competence to realise the rights of peoples.

(vii) All these, subject to the legitimate limit of the exercise of the "right" to secession.

With these criteria, clearly, no race, tribe, religion or ethnic group could legitimately claim to be "a people" within the nation that is Kenya at present. Most certainly, no group would claim the right of self-determination successfully, apart from its present repository in the form of the state.

Obviously, a definition and clear conceptual delineation of "peoples and peoples rights" has eluded many but does the want of consensus on definition preclude existence and recognition of "peoples" and "peoples rights"? Even "Human Rights" has not known universal consensus on its definition and limits - yet it is universally accepted. Indeed even the term "law" still invites argument. In our view, want of consensus in definition is no excuse to subvert a concept that aims to achieve human dignity collectively, for, after all that is the purpose of law in the first, and last, place.
II. THE RIGHTS OF PEOPLES

A. GENERALLY ACCEPTED BUT DIFFERENTLY UNDERSTOOD RIGHTS

1. THE RIGHT TO SELF-DETERMINATION

Perhaps astonishingly, the place of self-determination as a right in international law still invites challenge on many fronts. Controversy rages as to the concept, content and occasion of self-determination; so much so that some writers have elected simplistic positions and stated that

"Self-determination is one of those unexceptional goals that can neither be defined nor opposed."20

The word “Self-determination” has been said to be a derivation from German, from the word “Selbstbestimmungsrecht”, frequently used by the German radical philosophers in the middle of the 19th century.21 It was incorporated in a Resolution of the London International Socialist Congress in 1896, which declared that it

"Upholds the full rights of self determination Selbstbestimmungsrecht of all nations"22

Over the years, the right to self-determination has been enshrined in Articles 1(2) and 55 of the UN Charter, Common Article 1 of the twin 1966 Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, in the Declaration of Principles of International Law Concerning Friendly Relations23 and the Declaration of Independence to Colonial Countries and Peoples.24 The African Charter presents one of the strongest and clearest forms of encapsulation of the right to self-determination when it states in Article 20(1) that:
“All people shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination they shall freely determine their economic and social development according to the policy they have freely chosen.”

Despite the various pronouncements of the right, various scholars continued to deny it pride of place among the international human rights. Sir Gerald Fitzmaurice declared that:

“juridically, the notion of a legal right of self-determination is nonsense, for can, an as yet juridically non-existent entity be the possessor of a legal right.”

Prof Cassesse, on his part states that:

“Self-determination is a political principle, not a legal right. It is too nebulous and vague a concept to be included in an international treaty. It is a collective right and therefore would not fit in the covenant which is concerned only with rights and freedoms of the individual... Since it was impossible to proclaim the right to self-determination without also providing for the right of secession, the result would be a fragmentation of state and the multiplication of frontiers and barriers among nations.”

Rupert Emerson contends that the principle of self-determination introduces,

“An incalculably explosive and disruptive element which is incompatible with the maintenance of stable and organised society... people do not have the right to self-determination; they never had it, and they never will have it.”

Despite these objections, the right to self-determination has secured its position firmly as a right in International Law; so firm that it ranks among the International Customary Laws. The International Court of Justice has variously recognised and supported the right to self-determination. In the African context, the existence and reality of the right to self-determination has been reiterated beyond par adventure in the Charter. What continues to attract controversy within and without the African Charter is the occasion of the right and its legal parameters.
In the course of its evolution, dual concepts of the right to self-determination appear to have emerged - “Economic self-determination” and “Internal self-determination”. The former refers to the right of people to freely pursue their economic, social and cultural development, and to freely dispose of their natural wealth and resources. The latter concept holds that self-determination embraces a right to internal democracy for all peoples irrespective of the status of the territory. It is a right of self-government for all peoples. Self-determination has been said to attach to a “nation”. Each “nation” is a group, which perceives itself as having a common and distinctive history, language, culture and/or religion. Essentially, proponents of the concept contend that the well being of a national group is markedly different from that of other groups or aggregations of individuals within an existing state. Only the demonstrably authentic community of a nation can adequately formulate and express the popular or general will.

However, the co-relation of self-determination and the time-honoured idea of state sovereignty is far from calm. Many states do not accept the idea that the right to self-determination applies to people within a sovereign state. Such states maintain that the right accrues only to peoples under foreign domination and not to sovereign independent states or to a section of a people or a nation.

Credible claims to self-determination increasingly cast sovereignty into doubt, or even place it in abeyance. But, self-determination is not the only threat to sovereignty. Increased international attention to human rights practice, humanitarian intervention, proliferation of states, nations, multi-national corporations and non-governmental organisations, has eroded sovereignty. Thus, the erosion of sovereignty, a traditional ground for opposers to self-determination, loses legitimacy. As Professor Koskenniemi has written:

“In other words, sovereignty is no longer so impenetrable as to consistently throw a ‘legitimising veil’ over oppressive domestic practices”
Others have argued that, like other human rights, self-determination limits sovereignty, but legitimates that which it limits by denying a legal justification to external interventions where human rights standards are being observed.35

The resistance to self-determination claims has also been explained on the trade off of human rights to achieve some short-time “state interests.” With independence from colonialism came an intense desire for “nation-building”, which is really state-building. Basically, this political integration requires everyone in the territory to pull in the same direction. State officials strongly oppose self-determination because it appears to counteract this process with a disintegration akin to the segmentation of lineage systems in equatorial Africa.

It is in this context that the case of Katangese Peoples Congress -vs- Zaire 36 is to be understood. Quite clearly, the Commission invoked the dual principles of sovereignty and territorial integrity and thought these to be more sacrosanct as grounds for denial of self-determination in circumstances such as those presented in the case. The case itself demonstrates the grand dilemma which jurisprudence seems caught in. Decision-makers face difficulty in recognising acts as self-determinative before the appearance of the “normal” still largely sovereign, incidents of statehood. Yet the people cannot decide until somebody decides who are the people.

The legal philosophy behind the Commission's decision in the Katangese Peoples case is expounded by Prof Umozurike37. He states that the raison d'être of the right of self-determination is the achievement of a good government responding to the needs of the people. People should be governed only by their consent. Free determination may be expressed through any form of political relations- confederalism, federalism, unitarism or any other form freely chosen by the people. The principle of self-determination must have due regard to other important principles, such as sovereignty and territorial integrity among others. And with considerable certainty the professor states that:

"Self-determination should take the form of secession only if it becomes necessary for the very existence of the people, and the
realisation of their human rights.\textsuperscript{38}

This, it is submitted, is the position taken by the Commission on the issue. It is to be remembered that Professor Umozurike did not only sit in the Commission at the time of making the decision on the Katangese case, but was also the Chair of the Commission for sometime. Clearly, claims to self-determination by entities within existing states have little chance of success before the Commission. In Kenya, for example, not a single group or entity would successfully petition for recognition and qualification to self-determination other than the entire nation as it exists today.

Apart from the above, self-determination in the context of the African Charter also has other peculiarities. The African Charter, on its face, sanctifies the right to self-determination by making it complementary to the right to existence—the right to life. The Charter emphasises the right as a collective right thus answering Cassesse’s objections.\textsuperscript{39} In a clearer manner comparative to other instruments, the Charter also expressly recognizes both economic self-determination and internal self-determination.

Clearly, the African Charter not only entertains no doubt on the existence of the right to self-determination, but also accords it great sanctity in the body of human rights. Unfortunately, however, this sanctity is well negatived by the desire to maintain borders between states as drawn during the partition of Africa and the political shields of sovereignty and territorial integrity. It is difficult to envisage the possibility of sanction by the Charter’s Organs of a claim to self-determination by any entity or group within an existing and effective state, no matter the merits of such claims.

2. THE RIGHT TO DEVELOPMENT

On 4\textsuperscript{th} December 1986, the United Nations, General Assembly adopted resolution 41/128, which contained the Declaration on the Right to Development.\textsuperscript{40} The Declaration was a further attempt by the United Nations to develop a normative regime to deal with the difficult question of underdevelopment. Once the right to self-determination was no longer challengeable, attention shifted to its socio-economic corollary – the right to
The task of officially proposing the right to development was discharged by Keba M'baye who later became President of the International Court of Justice. His inaugural lecture at International Institute of Human Rights in Strasbourg in 1972 dealt with the subject of “the right to development as a human right”. M'baye's efforts were complemented by those of Karel Vasak who greatly promoted the concept of third generation rights. Both M'baye and Vassak were instrumental in getting the UN Commission on Human Rights to pass a Resolution in 1977, calling for a study on the International dimensions of the right to development.

The UN Declaration served the important role of confirming the right to development as a right in international law and relations, even though the fact of its promulgation in the declaration without reinforcement by a separate convention makes it non-binding, but its legal and substantive components reflects internationally recognised human rights law.

The existence of the right was further buttressed at the world conference on Human Rights in Vienna (1993), which reaffirmed the right to development as set out in the Declaration as “a universal and inalienable right and an integral part of fundamental human rights”, and reiterated that “the human person is the central subject of development”.

Well before these, indeed a good five years before the UN Declaration on the Right to Development, the right to development had been included as article 22 of the African Charter on Human and Peoples Rights in 1981 in the following manner:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity, and in the equal enjoyment of the common heritage of mankind.

2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

For the African States party to the Charter, therefore, the right to development is “Hard Law”, notwithstanding the United Nations version was merely a declaration (appreciably
how hard this law can be may well depend on each country’s national economic capacity). More importantly, the right as enshrined in the African Charter is markedly different from the UN resolution, not least in its “collectivist” and “statistic” proclivity.45

When the UN Declaration was adopted, the language and conception of the right to development was noticeably different with a clear attempt at placing the individual as the nucleus of development as explicated in article 1 (1) where it states that the right to development is

“an inalienable human right by virtue of which every person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and individual freedoms can be fully realised”.

The Declaration thus contains dimensions of both individual and collective rights. While article, 1(1) mentions as beneficiaries of development both “every human person and all peoples” articles 2(1) emphasises that “the human person is the central subject of development and should be an active participant and beneficiary of the right to development”. This position was reiterated in Vienna in 1993 as already pointed out. But even these have not served to settle the issue.

While it is beyond controversion that the right to development is a human right, controversy continues to rage on the conception of the right, subject, the beneficiary, the obligor, the substantive contents and the safeguarding mechanisms of the rights46.

Kiwanuka contends that responsibility vis-à-vis the right is placed on individuals, groups of individuals and states. Individuals have the duty to do tasks assigned by the state necessary for achievement of the right. States have a duty to formulate appropriate polices aimed at achievement of the right. They are expected to promote and protect conditions conducive to development47.

Declaring the right to development as programmatic, whose main function was in informing national and international policies, Andreassen maintains that states cannot be the beneficiaries of the right to development “as neither the African Charter nor the
For his part, Judge Bedjaoui creates a distinction between the right to development and the right of development, the latter being generally accepted. The right of development being a collection of rules enabling effectuation of the right to development, he sees a necessary nexus, which then leads inexorably to recognition of the right to development. Declaring the right to development as a right of peoples and state, he writes:

“If it is to have an effective meaning and content the right to development must have a state as its subject and beneficiary.... In fact, unless we are cherishing a doomed illusion, the right to development cannot be an individual human right unless it is first a right of the People or the state. It is not an individual interpretation but a collective and community approach to the right to development, which enables us to identify the real problems involved and the solutions available.”

Judge Bedjaoui elevates the right to development as a corollary of the right to life, and argues that the best means of securing a citizen’s right to development is by setting the state free from certain international operations, which drain its wealth. He proposes a radical transformation of the international economic order and even ventures to suggest establishment of an “International Fund for Food Resources”.

Oyvind Thiis states that the right to development is frequently applied by a number of developing countries as an oral weapon in a struggle for transfer of resources to developing countries. In his view, many Governments of the developing world have emphasised, but deliberately misconstrued, the right to development. One rhetorical dimension is that these governments, when discussing the right to development, as well as economic, social and cultural rights, have focussed on International economic order and thus avoiding the uncomfortable issue of internal distribution.

In the same vein, while comparing, the UN Declaration on the Right to Development and the Lome Conventions concept of development, Karin Arts states that
The most striking difference between the U.N. Declaration on the Right to Development and the Lome concept of development, as described above, is the reluctance of the latter to address the political and other more sensitive aspects of the Development process. The U.N Declaration’s preamble expressly mentions that apart from economic, social and cultural dimensions, the development process is also political. According to Article 8(1), appropriate economic and social reforms should be carried out with a view to eradicating all social injustices. These issues touch directly upon the sovereignty of states which is perhaps the most important explanation for the reluctance shown to address them in the context of Lome Convention.

And to cap it all up, she continues that

“In addition, and perhaps naturally given their short history of independence, the ACP states have always forcefully guarded their sovereignty which made it difficult for the community to raise and tackle the more sensitive political issues.”

Clearly, in our view, there have been differential interpretations of the right to development by the northern and southern countries and their institutions, tailored upon what they have respectively sought to achieve. While the South or so-called developing countries have sought to utilise the right as a vehicle towards attaining international equity in the distribution of world resources, hence their emphasis on “peoples” and collectivities as entitled to the right, the North, or developed, countries have sought to employ the right to justify the now common inter-linkage of development assistance and human rights.

Whether through individual pronouncements of states in the South, or through instrumentalities, like the Lome Conventions, African Charter on Human and Peoples Rights and others, the basic conception of the states in the South is perhaps best captured by Feuer when he remarks that

“The law of development is conceived not as a simple formalization of the existing order, but as an instrument to transform that order in favour of three-quarters of the population of the world. Now those who want to transform the existing order to the benefit of a future order which they want to be more equitable and more rational and perforce looking ahead and act in relation to this prospective view.”
Most northern countries, and institutions including the European community have not supported this conception.\(^{56}\) Not only has it been argued that the concept of human rights risks dilution, but also that the northern state could be faced with claims on the part of developing countries for entitlement to resources.\(^{57}\)

The countries in the North have been happy to conceive the right to development like the right to self-determination, formulating a right of the person against the government\(^{58}\). Indeed, the northern states have reiterated that violation of human rights are obstacles to development and need to be eliminated by the states. And it has been suggested that one main reason why the majority of countries in the North nevertheless supported the Declaration on the Right to Development, was the recognition that the development of the "third World" was an essential pre-condition for enabling the people who lived there to enjoy their human rights\(^{59}\).

Generally, however and despite the differences in interpretation it is to be noted, first, that the African Charter is so far the only binding international Human Rights Treaty, which has recognised the right to development. Whether the U.N. Declaration on the Right to Development can be said to have come to reflect customary law is an open question. The unclarity, in phrase and conception in the Declaration and the raging debate have not however augured well for its plea to join international customary human rights law. Second, it is legitimate to state that the right to development proclaims a right to enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised. Third, with varying emphases in different instruments, the right to development contains elements of individual and group rights. Fourth, even though the U.N. Declaration may not be binding as such, it is a source of inspiration to the developing world in these times of near helplessness and irrelevance of these countries vis-à-vis the United Nation's actions and world events. It creates expectations, which can be used to maintain pressure on the target countries and can be used as a vehicle for change - being an authentic voice of the overwhelming majority of the members of the International Community. Lastly, the matters covered in the Declaration are not only part of the international human rights agenda, but the states that
voted in favour can be held to their undertaking therein contained.

3. THE RIGHTS OF MINORITIES INDIGENOUS PEOPLES AND FREEDOM FROM SLAVERY

Whereas the term “slavery” easily lends itself to conception, principally owing to the history and reality of slave trade in Africa, the terms “minorities” and “indigenous” or “tribal” groups do not so readily invite clear conception in post independent Africa. On the face of it, nearly all ethnic groupings in the various countries could lay claim to being “minority”, “indigenous” or “tribal” - except, perhaps, the Boers and Indians in Southern Africa, and the Indians -and nationalised Europeans, in Eastern Africa and elsewhere in the continent.

Under article 1 of the Indigenous and Tribal Peoples Convention of 1989, “tribal peoples” refers to persons whose social cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations. “indigenous peoples” are considered to be those who descend from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of the legal status, retain some or all of their own socio-economic, cultural and political institutions. Self-identification as indigenous or tribal is considered a fundamental criterion in determining qualification to either of these classes.

Without an attempt at definition or classification of who are “minorities”, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic minorities proceeds to proclaim a host of rights and states duties to protect the same. In a similar manner, the Helsinki Decision on the Conference on Security and Co-operation in Europe (CSCE) High Commissioner on National Minorities established organs and institutions to deal with “minority issues” without a clear delineation of who comprised minorities.
However, the *European Charter for Regional or Minority Languages* sought to distinguish "minority languages" from other languages and accorded them protection. Minority languages were said to mean languages that are:

(i) Traditionally used within given territory of a state by nationals of that state who form a group numerically smaller than the rest of the state's population, and

(ii) different from the official languages of the state;

(iii) "territory in which the regional or minority language is used" means the geographical area in which the said language is the mode of expression of a number of people justifying the adoption of the various protective and promotional measures provided for in this Charter;

(iv) "non-territorial languages" means languages used by nationals of the state which differ from the language or languages used by the rest of the state's population but which, although traditionally used within the territory of the state, cannot be identified with a particular area thereof.

Writing on native and minority rights and while focusing on Canada, Australia and Malaysia Ms. Kanagasabai finds striking similarity in the aboriginal groups in those countries, namely

"The tracing of their ancestry to a territory which has been lost to others by conquest or deceit. They share a special relationship with the land, which they imbue with a spirituality and sacredness. For aboriginal peoples, the land forms a basis for their social, economic and cultural structures and system".

While clearly presenting nexus to land as a pre-qualification, the writer uses the terms "native" "aboriginal" "indigenous" and "minority" interchangeably, and even this does not hinder her from firmly declaring that "the indigenous people of Asia exceed 150 million which is more than half the world population of indigenous people".
The prevailing conceptual difficulties become evident. As writes Christine Bloch,

"The international community then faces a difficult question: which groups can be characterised as "peoples" and which groups can be characterised as minorities" or "indigenous peoples". Indeed, as one scholar states, developments especially with regard to the question of self-determination, demonstrate that categorical distinctions between the three categories are not possible. In most cases, practice allows us to identify the type of group, but political interests have prevailed in maintaining grey areas between the different categories.

An analysis of the African Charter reveals its entrenchment of freedom from slavery and slave trade in article 5, that,

"Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited."

Provisions essentially aimed at protecting minorities are in Articles 10, 13, 19 and 20. Article 19 for example, provides that:

"All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another",

and provisions protective of indigenous groups in Articles 17 and 29(7). At article 17(2) the Charter provides:

"Every individual may freely take part in the cultural life of his community."

Article 29(7) provides:

"The individual shall also have the duty to preserve and strengthen 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"
The African Charter silently acknowledges the concepts of minorities and indigenous groups but shies away from invocation of those terms, electing to use “peoples” and prescribing mechanisms of equal protection to those who would otherwise belong to these groups. In our opinion, part of the reason for this is that almost all groups and collectivities might qualify; the real danger of such entities grounding their secessionist claims to such recognition and seeking to rely on Article 20. Also, African states conceive existing states as comprising different entities that unify to make a nation. Distinctions and peculiarities with political connotations are generally de-emphasised as tribalistic inclinations -except in tyrannical regimes in perpetuation of power. The other reason, in our view, is the very philosophy in which the OAU, and necessarily, the African Charter is founded the need to protect existing boundaries and territorial integrity. Concepts that appear to unite entities across existing boundaries, like the Maasai in Kenya and Tanzania, and which might lend credibility to claims of “independence” are not encouraged. Little wonder, then that the terms “minorities” or “indigenous” do not appear in the Charter.

It may be for these reasons, or it may not, but it is clear that while rights ordinarily available to minorities and indigenous groups are secured in the Charter, any claims to these rights must be through the vehicle of “peoples”. Under the Charter “peoples” subsumes “minorities”, “indigenous groups” and what has been called “tribal peoples”.

B. EVOLVING AND DEBATABLE RIGHTS

1. THE RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT

Under Article 24 of the Charter, “All peoples shall have the right to a general satisfactory environment favourable to their development”.

But what is “adequate” or “satisfactory” is a value judgement that varies in time and
place, and constitutes one of the impediments to a definition of the substantive contents of the right.

The African Charter is not alone in this difficulty, and may well represent a higher and more superior step relative to prior instruments.

The *Universal Declaration of Human Rights* broadly declared that “everyone has the right to life”. It relates to existence of life as a state, but not necessarily to the quality of living as a process. The position improved in favour of the right to a clean and healthy environment when, in 1966, the UN General Assembly adopted the *International Covenant on Economic, Social and Cultural Rights* on 16th December 1966. Article 12 declared

> “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.

Considerable mileage came with the preparatory committee for the UN Conference on the Human environment (Stockholm Conference). The Conference importantly declared that:

> “man has a fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well being”.

Generally, however, it has been noted that the Stockholm Conference placed greater emphasis on environmental responsibilities than rights. Having stated as above quoted, the conference quickly added,

> “The solemn responsibility to protect and improve the environment for present and future generations”

thus reinforcing its basic postulate whereby environmental goals can only be achieved through the acceptance of responsibility.
After 1972, there was much progress and contribution through the various commissions and reports, the more celebrated being the Brundtland Commission’s trend document titled “Our Common Future”, which, for the first time defined and delineated the now celebrated concept of “sustainable development”\textsuperscript{2} It also declared that all human beings have the fundamental human right to an environment adequate for their health and well being.\textsuperscript{73}

Six years before this, the African Charter had captured the same, which was adopted by the Assembly of Heads of State and Government, in 1981 in Nairobi Kenya. The African Charter is easily one of the earliest human rights instruments to entrench provisions on satisfactory and favourable environment. However, like other instruments, it is caught in the difficulty in definition of the substantive rights.

This general deficiency has led some writers to the conclusion that a focus on the procedural aspects of environmental rights, namely the process whereby a judgement on what is “satisfactory” or “adequate” may be made is a more fruitful avenue.\textsuperscript{4}

In this respect, environmental litigation becomes an important key to environmental rights through the examination and expansion of questions of standing, access to information and due process, questions of environmental impact assessment, judicial innovation in cases of public nuisance and related issues. A case demonstrative of this is \textit{Gregoria L’opes Ostra –vs- Spain}\textsuperscript{5} before the European Commission of Human Rights, where the Commission recognised that the applicant’s health problems, caused by fumes from tanneries that were operating without a municipal licence, constituted a violation of the right to respect for private and family life.

We are inclined to agree with the analysis. Indeed, we believe Article 24 is wide enough to enable the African Commission to arrive at a similar finding, except for one little issue. Does the right prescribed by Article 24 accrue to peoples or to individuals as well? Compared with Article 11 of the Additional protocol to the American Convention on Human Rights (Protocol of San Salvador)\textsuperscript{76} which posits every individual as the bearer of environmental rights and speaks about everyone’s right to live in a healthy environment,
the debate has arisen whether the substance of environmental rights is closer to collective than individual rights.

The flow of juristic opinion lies in favour of the right being a collective rather than individual right, especially when conceptualised as a corollary to the self-determination of peoples.\textsuperscript{77}

Clearly, the African Charter conceives the right as accruing to peoples and the debate is irrelevant in its context. The difficulty, however, is whether an individual can move to exercise the right. In our opinion, such a move would meet objections within the phraseology of the Charter, except if the terms “peoples” in the Article is read to mean the individual and collectivities, which is our preferred understanding.

In our opinion, the driving force behind the inclusion of the right in the Charter was threefold:

i) To foster a common front to protect African states from dumping of toxic wastes from Western Europe. Generally, the dumping of toxic wastes in African seas and territories was predicated in two kinds of agreements: agreements with governments: as happened in Guinea Bissau, Benin and Central African Republic,\textsuperscript{78} or agreements between individuals and foreign firms.\textsuperscript{79} To the extent that such dispositions would not only affect the peoples of the given state but also other neighbouring countries, there was need to promulgate a protective instrument that protects the individuals in one state and in neighbouring states. It is our postulation that a state party to the Charter can legitimately institute an inter-state complaint against its neighbour in the event of the neighbouring state allowing such dumping. This, however, has not happened.

ii) As explained, therefore, the Article was meant to protect each state from the other, not only in terms of allowance of deposit of toxic wastes from abroad, but also from such depositions by member states themselves.
iii) For protection of the citizens inter se, from the Government and from other entities within the state local or foreign. Accordingly, not only can the peoples around Kisumu institute a complaint against the Government in condoning the deposition of raw sewage into the waters of Lake Victoria occasioning instances of typhoid, but the Ogoni people in Nigeria could also lodge a complaint against the Shell Corporation for environmentally hazardous activities undertaken by it in the course of its oil extraction activities. In our view, Article 24 would be toothless if it were not possible to cover international corporations who are the guiltiest lot in environmental wrongs. We suggest that is should be possible to lodge a complaint directly against them by any peoples, or by the state on behalf of those affected.

2. THE RIGHT TO EQUAL ENJOYMENT OF COMMON HERITAGE OF MANKIND

Article 22(1) of the African Charter proclaims that

“All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind”

Largely, the Charter was not proclaiming any new right. As has been opined,

“The emergent concept of the common heritage of mankind emphasised in the current law of the sea in connection with the resources of the deep sea bed outside national jurisdiction and of outer space and celestial bodies finds expression in the Charter.80

As a truism, this Article parallels the UN Convention on the Law of the sea,81 and the Treaty on Principles Governing the Activities of States in the exploration and use of outer space, including the moon and other celestial bodies,82 both of which elaborate principles to be observed in relation to the sea and outer space.
Commenting on the convention on the law of the sea, the UN Secretary General has stated that:

“The greatest impact of the convention on the international agenda thus far has perhaps been its contribution to raising awareness of the fundamental importance of the oceans to the overall well-being of the planet”83

Naturally, the African states have much to gain by these instruments as they more than any other continent, have experienced the ravaging effects of toxic dumping in the high seas parallel to some countries, and similar activities.

By virtue of Article 61 of the Charter, the Commission would not only take the principles in the international conventions into account but would easily condemn defaulters to have offended Article 22(1) of the Charter.

However, those are not the controversial aspects. What may be controversial is the attempt to broaden the reach of the Article to the height of being an aspect of the right to development and as the enabling provision for demand for international economic equity - even in food resources. A principal proponent of this proposition, former Commissioner Mohammed Bedjaoui, has dedicated much ink on this aspect. In a lengthy exposition of the proposition, he has stated, and we quote him at length:

“The second implication of this right to development which can be exacted from the international community would seem to be rather more complex. The state is entitled, if not to the satisfaction of all its requirements, at least to its fair share of what belongs to everybody and which then belongs to it by right.... What we have here is an element of jus cogens.

This innovatory approach to the common heritage of mankind is capable of giving real substance to the notion of universal solidarity. It is especially promising for the future prospects of international relations; it can be applied not merely to the resources of the sea bed and of outer space as is already the case but also to the earth, the atmosphere, the climate, the environment... whose wealth must be preserved for future generations”84
Acknowledging that the proposal to consider the world food resources as belonging to the whole human race may be considered utopian, the judge continues that:

“If I advocate that the “world’s food resources” should be declared the common heritage of mankind, so that each people can be given what it needs, this is not out of moral idealism, but from a concern to avoid the dangerous seizing up of international relations today. My proposition would completely transform international society, and could short circuit the major crises and contradictions of our time, also enabling the common responsibility for global needs to be clearly perceived."

Pausing the question as to how the world’s food resources may be made the common heritage of mankind, the writer proceeds to posit that:

“An early temporary measure could be the establishment of a universal institution with an operational management, perhaps under the name of an “International Fund for Food Resources” (I.F.F.R.). It would be financed by a tax levied in each state on a few manufactured products of high added value, made from raw materials originating in third world countries, and/or by a one per cent tax on military appropriations.”

And, to crown it all, the judge declares that:

“Like all generous principles, the common heritage of mankind, especially if it is to follow this precept and embrace world food resources, has a visionary character; yet it would be a mistake to dismiss it as Utopian. In fact, this concept presents the opportunity for man to achieve an impressive breakthrough in his quest for the “right to development; far from being an illusion, it marks a crucial breaking point with various age-old sources of confrontation, domination and appropriation of the wealth of others”.

Just how realistic this proposition is remains to be seen. There is definitely no unanimity in the expansion of Article 22(1) to the heights to which judge Bedjaoui so readily takes the article, and there’s even less likelihood to interpret the concept of “common heritage” at the international level to encapsulate the proposals. While it is true that the developing countries constantly seek to interpret the right to development as the premordial germ to international equity in resources, an argument constantly shot down by northern countries, the possibility of reincarnating the debate from the floor of the seabed, as “common heritage” will certainly invite only greater controversy.
3. THE RIGHT TO NATIONAL AND INTERNATIONAL PEACE AND SECURITY

Article 23(1) of the Charter guarantees the right to international peace and security. The only other instrument that has touched on this right is the *Universal Declaration of Human Rights* (UDHR). This right obliges the parties to promote international peace and security and strengthen friendly relations. No party may allow asylees to subvert other members or allow its territory to be used as base for hostile activities. Necessarily, the right to asylum guaranteed in Article 12(3) of the Charter is qualified by Article 23. The right to asylum may be refused, therefore, or grounds, of likelihood to engage in subversive activities.

While, generally, the UDHR Similarly entrenches this right, there are differences. First, the UDHR focuses on the “individual” as a member of society, while the African Charter refers to “peoples” as the holders of the right. Second, the “security” referred to in the UDHR appears to be of an economic nature as it refers to “the right to social security.” The African Charter, on the other hand refers to “national and international peace and security.” While it may well include social security, the African Charter evidently attempts to focus on security in terms of absence of turmoil, war or other disruptive activities as would disable the observance of peace. Third, while the UDHR entrenches the right primarily focusing on the state, and only cursorily on international co-operation, the African Charter pays little attention to the individual state as the primary obligant and emphasises, the “principles of solidarity and friendly relations.... between states”. Its focus is inter-state, as to extend the obligation even to states to which the “Peoples” in issue do not belong, as opposed to the UDHR’S intra-state approach that primarily makes the respective states the obligants.
4. THE RIGHT TO DEMOCRACY AND GOOD GOVERNANCE

Article 13 of the African Charter provides for the right of every citizen,

"To participate freely in the government of his country, either directly or through freely chosen representatives."89

This provision is largely similar to Article 21 of the UDHR and 25(9) of the *International Covenant on Civil and Political Rights* and, in conjunction with Article 21 of the *African Charter*, largely forms the enablement to a claim of a right to democracy and good governance by a people.

Article 13 expressly applies only to citizens, but, inherently, state parties are free to confer political rights on resident aliens. While the Article does not presuppose a specific political tradition, it does seem to prescribe that state party governments be accountable to citizen electors. “Democratic” government is envisaged, and autocratic governments with absolute power, which offer no opportunities of participation for the ordinary citizen would not satisfy the article.90

The Article allows for indirect and direct participation by citizens in public affairs. Indirect participation would arise, for example, where the electorate elects the government, which directly runs public affairs. Direct participation occurs, for example, when states offer opportunities for plebiscitary participation, as by referenda.

But, is each and every individual citizen to be invited to make an election whether to participate directly or indirectly? In our view not. It cannot be the contemplation that every citizen shall be put to an election whether to take part directly in the conduct of public affairs or to leave it to freely chosen representatives. It is for the legal and constitutional representatives of the state party to provide for the modalities of such participation, except, in voting and constitution making when direct participation is necessary. We are strengthened in this view by the finding of the Human Rights Committee in the case of *Mikmar People vs Canada*91 when interpreting Article 25 (9) of
the International Covenant on Civil and Political Rights whose provisions are essentially similar to Article 13.

It has been argued that the right to democracy and good governance is an aspect of the right to self-determination.92 This is what has been called “Internal self determination”93. Under this conception, self-determination goes beyond the rights of distinctive territorial communities to choose their own government and independence; it is a right of self-government for all peoples. It is a right to internal democracy for all peoples irrespective of the status of the territory.94

5. RIGHT TO ADEQUATE HOUSING, HEALTH, WORK AND EDUCATION

The Right to Adequate Housing is one that has known international recognition in many international instruments including the Universal Declaration of Human Rights,95 the International Covenant on Economic Social and Cultural Rights,96 and the Convention on Elimination of all forms of Discrimination97 among others. However, the one document that has greatly thrown light on the contents of the right is the UN Global Shelter Strategy to the Year 2000 (GSS)98. The GSS defines “adequate housing” to mean;

“Adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at reasonable costs”99

It is from the foregoing description that UN Committee on Economic, Social and Cultural Rights has isolated seven components that comprise the core entitlements to the right, being:

(i) Legal security of tenure

(ii) Availability of services, materials and infrastructure
However, the African Charter does not make provision for this right. A similar omission has been observed in the European Social Charter, and the Additional Protocol to the American Convention on Human Rights. This is certainly one area fit for inclusion in the African Charter. In a Continent where millions of people are squatters, slum-dwellers, refugees or otherwise displaced, the right to adequate housing is so basic, as to rank second only to the right to life.

The Right to Health, however, is contemplated by the African Charter. Article (16) (I) provides for:

"The right to enjoy the best attainable state of physical and mental health"

The second sub-section obligates states to take "measures to protect the health of their people". Thus, the first part creates entitlements for individuals and corresponding obligations for governments, while the second part seems to pronounce that the protection of public health constitutes legitimate grounds for limiting human rights. The Charter, therefore, fully takes care of the two cardinal forms relating to international human rights law on health.

The right to health is not a right to be healthy. The Charter only guarantees the best attainable state of physical and mental health. The substance of the right is necessarily relative, and varies in time and place. This is markedly different from the provisions in Article twelve (12) of the Covenant on Economic Social and Cultural Rights which goes
further and outlines the areas of priority including infant mortality, environmental health, control of epidemics and the like.

The World Health Organization, in its Constitution, declares the “Attainment of the highest possible level of health” as its principal objective. Health is defined as:

“A state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.\(^{103}\)

One scholar has proposed a definition of the human right to health in the following form:

“Every human being has a right to an environment with minimum health risks, and to have access to health services that can prevent or alleviate their suffering, treat disease, and help maintain and promote good health throughout the individuals life”\(^{104}\).

So far there is no authoritative international interpretation on entitlements and corollary obligations under the right to health. Clearly also, none has been given under the African Charter. One reason for this is that there are a number of factors influencing human health.

However, in our view there is enough elucidation of the right as to enable its meaningful protection in the Charter. Basic components of the right including access to health, affordability, ethics, protection of public health, non-discrimination on health status alone without legitimate cause, regulation of drugs and other issues are easily readable from Article 16, breach whereof also easily provable and therefore actionable.

The Right to Work under equitable and satisfactory conditions, and to receive equal pay for equal work done is captured in Article 15 of the African Charter. Importantly, the Charter does not guarantee the right to work simplicitor. Arguably, if the right to work relates to working conditions, the burden is lighter. Did the drafters actually intend to provide only for rights in work - “under equitable conditions” - and not the right to work? Prof Umozurike thinks not.\(^{105}\)
The normative content of the *Sensu largo* right to work has often and wrongly been equated with its comprehension as a right to employment, or to be provided with work. This trend is reflected in ideological concepts that emphasise the achievement of virtually full employment, so that it could be translated to a right of everyone to work. Krzysztof Drzewicki has singled out countries practicing “real socialism” for this, and presents an example of the experiences of the Polish ombudsman.\(^\text{106}\)

Like other international instruments, the African Charter presents the right to work in a general and generous manner, without exerting any concrete interpretation towards recognition of the generally applicable right to employment. Indeed, it may be arguable that Article 15 on the right to work is too general to be enforceable as a right.

However, the African Commission on Human and Peoples Rights has offered an elaboration of the right in the Guidelines for National Periodic Reports.\(^\text{107}\) In the Guidelines, the Commission considers issues of freedom to choose employment, technical and vocational guidance, protection against arbitrary termination, just and favourable conditions at the workplace, equity in remuneration, safe and healthy working conditions, equal opportunity for promotion, limitation of working hours and holiday with pay, freedom to form and belong to trade unions, and issues of social security. Thus, the generality as may appear on the face of the Charter is given meat and meaning by the Guidelines and generally recognised principles of law regarding the right to work. So far, only one case has come before the African Commission regarding the right to work. This was the case of *Annette Pagnoulle (on behalf of Abdoniaye Masou) vs. The State of Cameroon.*\(^\text{108}\) The complainant was imprisoned by a military tribunal without trial. He presented a complaint on various articles, and included violation of the right to work as an appendage. The Commission found that there was violation of various articles, including Article 15 on the right to work and recommended that the Government of Cameroon “draw all necessary legal conclusions to reinstate the victim in his rights”.

Thus, no matter the apparent generality of the Article, it is realizable upon breach of identifiable issues that collectively unite to form the right to work.
C. ARGUABLE RIGHTS:

1. RIGHTS OF COLLECTIVITIES AND COMMUNITIES IN INTELLECTUAL PROPERTY AND IN EXPLOITATION OF NATURAL RESOURCES

As easily defined by Professor Ojwang, intellectual property is the broad description for designs, products, services or works which bear some unique quality or form, which is the creation, imagination or connivance of a particular person. Such property may be categorized into two distinguishable forms: industrial property and literary and artistic property.

Salmond states that the only immaterial things, which are recognised by law as the subject-matter of rights are the various immaterial products of human skill and labour. In modern Law, every person owns that which they create. That which they produce is theirs and they have an exclusive right to the use and benefit of it.

As a general principle of common application, it is stated that the fruits of a person’s ingenuity, whatever, form it may take, is sufficiently proprietary in character to deserve a measure of recognition and protection.

Whereas the exposition above presented is largely incontrovertible, it still leaves the question of “who is man” and “what is the limit of protectable ingenuity” as to fall within the erudition in the context of the African Charter. These are critical questions. These bring into focus “Euro-centric individualistic understanding of property, which ignores the collective labour of generations”. It also raises the case for inclusion of plant genetic resources as “property” within the intellectual property regime.

Within the African Charter, these issues appear to be covered by Articles 14, 21 and 22.
Article 14 guarantees the right to property. The question arises whether the right accrues only to an individual, or to communities or peoples as to sustain the case for a people's proprietary right. Catarina Krause answers the question in the negative. Focusing on Article 14, she writes:

“This may prompt the question whether the right to property in the ACHPR gives rise to an individual right. As Article 14 must be read together with Article 2 of the ACHPR providing that every individual shall be entitled to the enjoyment of the rights and freedom recognised and guaranteed in the present Charter, the conclusion that the right to property is an individual right seems inevitable”.

In our view, this is working over-time to restrict the right to individuals and perpetuate the Euro-centric understanding of property. Were it intended that it be an individual right, it would have commenced:

“Every individual....” as is the case with Articles 2 to 13 inclusive, and others including 15 to 17. The fact that it was not so commenced makes us less prepared to concur with Krause. In our view, the right accrues to both the individual and to peoples.

Article 21 (i) recognizes the right of all peoples to freely dispose of their wealth and natural resources. Sub-article 4 grants the state parties the right to individually and collectively exercise the right to free disposal of their wealth and natural resources.

Article 22 recognizes the right of all peoples to economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.

“Wealth” is not defined in the context of the Articles. However, the African Commission has shed light on the import and inherent expectations under Articles 21 and 22 through Guidelines. It has been stated that

“These rights consist in ensuring that the material wealth of the countries are not exploited by aliens to no or little benefit to the African Countries. Establishment of machinery, which would monitor the exploitation of natural resources by foreign companies and strictly contrasted to the economic and material benefit
accruing to the country... adherence to compensatory ideas like payment of mineral royalty. Co-operation with other African states in removing economic exploitation of African Countries by international monopolies. Measures taken to encourage.... Industrial utilization of local natural resources and wealth

The quoted guidelines, in our view strengthen the case for intellectual property rights - or the benefits derived therefrom-by whatever other name - accruing to peoples.

This calls for a radical and drastic rethinking and redefinition of the patent paradigm by developing countries as presently tailored and known to contemporary jurisprudence. Professor Ojwang has aptly observed that:

"Although a number of developing countries such as Kenya have acceded to the Paris Convention, it was not in the first place designed in their interest. These countries have joined a protected system that had been designed to suit only the original members-members who then were also growing steadily in technological strength.... The new states have in effect committed themselves to give a one - sided advantage to foreigners who operate from their land as against their own nationals who, in any case, have no real technological impact abroad.

Making the same point, but focusing on plant genetic resources, Dr. Odek writes that:

"An analysis of plant breeders rights is incomplete without scrutiny of the ownership and legal status of the plant genetic resources crucial to the sustenance of plant biotechnology. At the heart of these issues lie two equitable considerations. The first consideration is whether developing countries should pay for new plant varieties developed by western seed companies from species obtained from the third world. The second factor is whether plant genetic resources should be commodities, and if so, who should have priority rights?"

Plant genetic resources have largely been appropriated from developing countries without compensation; a phenomenon referred to as "bio-piracy" and examples abound. Kenya, for instance, imports tropical legume seeds developed in Australia that were based on indigenous Kenyan seeds. No record of payment to Kenya exists. The Endod tree (phytolacca dodecandra), a perennial plant that has been cultivated in Ethiopia for
centuries, was to be patented in 1990 by the University of Toledo in its use in controlling Zebra mussels.\textsuperscript{118} Its real "proprietors", the Ethiopian people who selected, nurtured and preserved the *Endod* for centuries would not benefit, nor even use it without paying royalties. A similar story is played regarding the *Neem* tree and its products, used for centuries in India as a bio-pesticide and medicine. In developed countries, *Neem* based products for medicine and bio-insecticides are currently patented but the Indian growers of the *Neem* tree have not received any royalties for protecting and conserving this tree.\textsuperscript{119}

In Madagascar, Eli Lilly & Co made billions on sale of the anti-cancer drugs vinblastine and vincristine, extracted from the rosy periwinkle plant, without any compensation to Madagascar, its country of origin\textsuperscript{120}.

Claims by peoples would meet several obstacles, not least the requirement of an inventive step. We concur with the argument made that:

"This requirement of an inventive step is disadvantageous to developing countries. It affords little leeway in which developing countries can make their claims. Moreover, native people face a legal system that divides the world up in a fashion both foreign and hostile to their sense of felt need."\textsuperscript{121}

Part of what catalyses the uncompensated extraction of plant genetic resources has been the international classification of such resources as part of the common heritage of mankind yet, the elite commercial varieties derived from these resources in developed countries are not classified as "common heritage" and may thus enjoy patenting!

Obviously, this is a skewed balance. Either the concept of common property for plant genetic resources is abolished, otherwise, the varieties and products developed from such plant genetic resources should similarly be considered "Common heritage" and thus freely accessible. As it stands, international law represents the triumph of a Euro-centric individualistic concept of property, which ignores collective labour's role in the acquisition of property, over a group-oriented African concept of property rights. This
“robbery” of group benefits is not unique to bio-piracy. It has been witnessed in various other pockets. For instance, the Ciondo is patented in the United States, while the Kikuyu and Kamba communities of Kenya have been making and preserving that technology for decades! It should not be surprising to discover that the very agwata (calabash) from which we sip uji (porridge) is patented!

When entrenching the right to property, the right to freely dispose of wealth and to enjoy the common heritage of mankind, is the African Charter perpetuating this Euro-centric concept of property? Our answer is firmly in the negative. Not, only is the Charter deliberately steered from “the individual” to “the group” but enjoyment of the peoples’ wealth cannot allow uncompensated exploitation under the weak guise that “the people” cannot be sufficiently cognisable as to possess intellectual of proprietary rights.

In the context of plant genetic resources, it has been argued and we quote at length:

“This article suggests the possibility of abandoning not only the notion of nation-state ownership, but also the concept of individual ownership of plant genetic resources. In so doing, it examines entities in African Customary society that could be made “persons” under international law and therefore vested with property rights.... In customary African Land Law, the notion of individual ownership is alien. Customary practice regards the Chief as the symbol of the residuary, reversionary and ultimate ownership of all land held by the community. In this sense the chief is the trustee. This article proposes resting proprietary rights to Plant genetic resources in such customary groups and communities... Moreover, justification for resting proprietary rights of plant genetic resource for groups finds support in the idea that groups have intrinsic rights and that these rights often are intertwined with groups' relations to history and objects”122.

We make no greater, no newer and no stronger an argument than the afore-quoted. We are persuaded that in the spirit of the African Charter, there is sufficient room and conceptual latitude to argue for the collective and communal right to intellectual property, and in exploitation of natural resources.
III. UNDERSTANDING PEOPLES RIGHTS IN AFRICA - A TAILORED APPROACH

An examination of the history of the Charter, the utterance of political leaders and the tenor of the Charter itself clearly reveals that there was basic consensus on existence of an African philosophy of law and human rights. Inexorably, there developed a clear intention and unity of purpose to write these peculiarities into the Charter. Ultimately, in our view, this was done, resulting in a unique document which greatly expanded the ambit of familiar rights, introduced borderline concepts of moral obligations as rights, pioneered in writing certain hazy rights into treaty, and generally radically revolutionised the form, content and application of, regional human rights treaties.

In his opening speech to the Conference of African Experts given the task of drawing up the preliminary draft, Mr. Leopold Senghor, then President of the Republic of Senegal said:

"We will need to show proof simultaneously of imagination and effectiveness. We may find inspiration in those of our traditions that are good and positive. You should therefore always bear in mind the values of our civilization and the real needs of Africa."^{124}

In reply to the opening speech, the Secretary General of the OAU stated that,

"By requesting a Charter of human rights and peoples' rights to be drawn up, the African Heads of state intended to signal the beginning of a new era, opening out for the majority of our nations, the adaptation of our principles to fit criteria of responsibility and the rethought value of our traditions."^{125}

Elsewhere Mr. Daouda Dawara, then President of the Republic of Gambia noted that:

"A truly African Charter, should reflect our traditions which deserve to be preserved and our values, and the legitimate aspirations of our peoples, in order to complete the global international effort made to reinforce respect for human rights."^{126}
Yet again, perhaps the more eloquent speech on this subject came from President Leopold Senghor at a different function when he quipped that

"Room should be made for this African tradition in our Charter on Human and People's Rights, while bathing in our philosophy, which consists in not alienating or subordination of the individual to the community, in coexistence, in giving everyone a certain number of rights and duties."

Clearly, the basic concern of the African leaders was to draw up a Charter that respects traditions and customs judged positive while being integrated into worldwide and regional rules drawn-up the world over in order to promote and protect individual and collective rights.

In this context, and as a clear emphasis of these expectation, the Terms of Reference of the Committee of Experts left no doubt as to what was expected of them. They were directed:

1) To be inspired by the tradition of African Society and the principles upon which such traditions are based;

2) to respect the political options of states and consequently to ensure a fair balance between the various doctrinal systems, in Africa;

3) to avoid favouring in one way or another, individual or collective rights, civil and political or economic, social and cultural rights;

4) to give a content acceptable to all the people's rights to which express reference was made in resolution 115;

5) to ensure the protection and promotion of human rights declared and accepted as such through the activities of the Commission, although reserving the powers of the Assembly which must be associated with the final decisions; and
6) not to exceed that which African states were ready to accept in the field of the protection of human rights.

Not unexpectedly, then, the Charter came to be what it is. In this sense, the Charter is clearly an autochthony of African soil. It reflects certain philosophical and contextual peculiarities fuelled by perceptions of the leaders and conceptual exposition by African scholars.

The tailored conception of the law and human rights in Africa generally, and in the Charter, is one that does not easily lend itself to expiation unless one lives it. A number of scholars have endeavoured to explain the interlink age of the individual and community, and distinction between the African “Collectivist” approach and the Western “individual” focus.

Having quoted some of the views of political leaders in contribution to the debate on the Charter, Prof Umozurike writes:

“This differs from the Western approach to human rights, with its emphasis on the individual as against the society. It also contrasts with the collectivist approach, which subordinates individual rights to the state and the fundamental development of communism. The state determines, delineates and protects individual rights and by implication, is entitled to curtail them as dictated by the higher interests of the state.”

Prof Hansungule argues that:

“Peoples or third generation rights are particularly important in an African setting. The fact that the terms “peoples rights” is incorporated in the title of the treaty emphasizes the fact that in the African mind, traditional individual rights and peoples rights are inter-woven into one single whole. The African concept permits of no such differences between the three generations of human rights. In the African Society, the community is the primary focus of society and the basis from which the individual derives his or her personality, identity and rights. Africans source their rights from their groups rather than from their being. Every African knows his or her “peoples” which means her extended family members, clan members, village tribe, ethnic group, etc. Although it is easy to identify your “peoples” in practice, it is not so in theory.”
In his analysis of the African Concept of law and human rights, Judge Keba M'baye explains that

"The West sees law as an opposition between the individual and the entity representing the community, namely the state, whereas the East regards the law as a series of measures protecting the individual within his community ... In Africa, law and duties are regarded as being two facets of the same reality, ... the community is a privileged subject of law, whatever form it may take (clan, ethnic group, tribe, etc). This concept reinforces the solidarity between members of the same community. The African Charter on Human and Peoples' Rights reflects this solidarity. This explains the importance it gives to collective rights"\(^{132}\)

Though we have quoted, *in extenso*, only three scholars, we could have quoted more, for the subject is a difficult one, and reporting or paraphrasing would only create further distortions.

In this spirit, the African Charter prides itself with a number of distinctive features - which mirror the African philosophy of law and concept of human rights. For one, the Charter entrenches economic, social and cultural rights, flowing from paragraph 3 of the Terms of Reference. This draws from the preoccupation of many African Policy makers of the seventies and eighties, who stressed the importance of economic, social and cultural rights, even in priority to civil and political rights. The Charter imposes obligations on the individual towards the state, the individual and the community. The Charter, in a deeply African style, ever prescribes a duty to respect and maintain one's parents; an idea many would otherwise dismiss as a moral rather a legal question.

The Charter does not provide for the principle of "derogation". Derogation from the elementary human rights guarantees in times of emergency is a recognised principle of International Law. Under the Charter, then, the instrument is perpetually in force, even during a state of war.

The Charter appears to present an opportunity for "tampered democracy". Article 13 guarantees the right to participate freely in government "in accordance with the provisions of the law". The right is limited to what is allowed within the provisions of the law in each
country. Systems like the “Ujamaa” in Tanzania, the “Tinkhundia” system in Swaziland the one-party participatory democracy” in Zambia and Kenya, and the “No party system” introduced by President Yoweri Museveni in Uganda would pass the test. In a sense, by this clawback provision, the states managed to get back in their national systems what they gave up at the OAU.

Article 18 provides for the right to marry and found a family in a rather unique sense. It declares the family as the natural unit and basis of society, and directs the state to assure its physical health and moral well-being. It prescribes the duty of custody of morals and traditional values recognised by the community upon the family. And the aged and the disabled are granted the right to special measures. Would this provision avail to a homosexual or lesbian family? We think not. Unlike most instruments that simply guarantee the right to marry and found a family, the Charter defines a family as “the natural unit....” This appears to emphasise the natural orthodox association of a man and a woman in a natural way, to form a natural, conventional family. Moreover, the family is declared the custodian of morals and traditional values recognised by the community. Again the possibility of recognition and acceptance by the select African Community of homosexual or lesbian “families” being rather remote, and definitely not traditional or customary, such associations will likely fail the test. Thus, again, the Charter has placed limits drawn from an African philosophy of law and perceptions of morality.

These, among others, are Charter provisions that draw directly from the Terms of Reference, which in turn, were derived from an African philosophy of law and human rights. While some laud them, others loathe them, depending on one preparedness to vary the conventional Eurocentric perceptions of law and human rights. For better, for worse, however, the Charter no doubt boldly declares that there is an African philosophy of law and human rights.
ENDNOTES TO CHAPTER THREE

1 Decision 415 (XVI) Rev. 1 of the 1979 Monrovia Summit.


5 Ibid.


7 Ibid

8 Professor Gudmunder Alfredson, Economic Social and Cultural Rights and The Right to Development, Lecture given at the University of Lund - Raoul Wallenberg Institute, Lund Sweden on 28th May 1998,

9 Ibid.


12 Communication No. 75 of 1992

13 This is as reproduced in “Background Materials compiled for the Fourth All African Human Rights Moot Court Competition held at Universidade Eduardo Mondlane Maputo, Mozambique 28th September to 3rd October 1998, under the sub-heading “Review of the African Commission on Human and Peoples’ Rights”, pp 187 - 188.

I.C.J Advisory Opinion on Namibia (1971) I.C.J at 31


Prof Oji O. Umzsurike, Self-Determination in International Law (Anchor Books, Harmden, 1972) p.3.


General Assembly Resolution 2625 (XXV) of 24/10/1970.

General Assembly Resolution 2200 (XXV) of 16/2/1966

Supra, Note 16. P.287.


Supra, Note 16, p.308.

Brietzke, Paul H., “Self-Determination Revisited In the Era of Decolonisation”, 9 Occasional papers in International Affairs. December 1944 pp 63-64.

Supra, Note 16, p. 304.


Supra, Note 32, p.98.

Supra Note 12.

Supra, Note 21. P.89.

Ibid


Vienna Declaration and Programme of Action, UN DOC ALCONF. 157/2 Paragraph 1/10.

Supra Note 43, p.4.

Ibid, p.2

Supra, Note 41.

Ibid, p.96.

Ibid,

Oyvind W. Thiis, "Norwegian Development Assistance and the Right to Development", Human Rights Year Book in Developing Countries, (Peter Baehr, Lalaine Sadiwa and Jacqueline Smith, (eds), 1996), pp 1-37 at 5.


Ibid


For the European Community Position, see generally Karin Arts, Supra, Note 53


Ibid. P. 254.

Supra, Note 52, P.5.

Adopted by the General Conference of the International Labour Organisation at its 76th Session, Convention No. 169 concerning indigenous and tribal peoples in independent countries, of 27th June 1989.


Adopted by the Council of Europe on 2nd October 1992.


Ibid p. 67.

Ms. Anne - Christine Bloch, “Minorities and Indigenous Peoples” in Asbjorn Eide et al (Eds), Supra, Note 57, p.311.

Ibid, P 309


Katarina Tomasevski, “Environmental Rights” in Asbom Eide, Allan Rosas, Supra Note 52, P, 259.

Ibid.


Ibid, Ann - 1, p 348.

Supra Note 70, P. 261.

Application No. 16798/1990


Supra, Note 70, p.258.

Supra, Note 3, p.56

Ibid

610 U.N.T.S. 205, Article 11


Supra Note, 49, pp 120 - 125.

Ibid, p. 122

Ibid, p. 124

Ibid P. 125

The 1948 Universal Declaration on Human Rights, U.N.G.A. Resolution 217A (III), Article 22


See Steiner H., “Political Participation As a Human Right” 1 Harv Hry 77 (1988).

Case No. 205 of 1996, Para 5.4.

See Henkin L. et al, Supra, Note 16, p. 308.

Ibid.

Supra, Note 57 P.80.

Supra Note 89, Article 25 (1)

The 1966 International Covenant on Economic, Social and Cultural Rights; 993 U.N.T.S. 3, Article 11(1)

Supra, Note 3, p.55


Supra Note, 49, pp 120 - 125.

Ibid, p. 122

Ibid, p. 124

Ibid P. 125

The 1948 Universal Declaration on Human Rights, U.N.G.A. Resolution 217A (III), Article 22


See Steiner H., “Political Participation As a Human Right” 1 Harv Hry 77 (1988).

Case No. 205 of 1996, Para 5.4.

See Henkin L. et al, Supra, Note 16, p. 308.

Ibid.

Supra, Note 57 P.80.

Supra Note 89, Article 25 (1)

The 1966 International Covenant on Economic, Social and Cultural Rights; 993 U.N.T.S. 3, Article 11(1)
The 1979 Convention on the Elimination of all Forms of Discrimination against Women. Resolution 34/189, 18th December 1979, Article 5 (e) (iii)

Adopted Unanimously by the UN General Assembly in 1988,

Ibid

See General Comment No. 4 of 1999, UN Doc. E/1992/23

See Scott Leckie, “The Right to Housing” in Asbjorn Eide et al (eds), Supra, Note 57 at 109


Supra Note 3, p.46.


Supra. Note 110, p.46


114 The 2nd Activity report of the African Commission, P 59.

115 Supra, Note 109, p.51

116 Supra, Note 112, p.142.

117 Ibid at 145.

118 Ibid at 146

119 Ibid at 146

120 Ibid at 147

121 Ibid at 148

122 Ibid. pp 177 - 180


124 Ibid

125 Ibid

126 Mr. Daouda Dawaura’s address to the Ministerial conference, Banjul, 9th June 1980.

127 See OAU DOC. Cab/leg/67/5 p.6.


129 Supra. Note 4, p.87
10 Supra, Note 4, p.91.

131 Supra, Note 128, P. 18 & 19.

CHAPTER FOUR

STRUCTURES & INSTITUTIONS

I. THE AFRICAN COMMISSION ON HUMAN AND PEOPLES RIGHTS

A. ESTABLISHMENT, COMPOSITION AND MANDATE

To promote and protect human and peoples rights recognised by the Charter, the OAU has established an African Commission on Human and Peoples Rights and its Constitution and terms of reference form part of the Second Chapter of the Charter.

As a specific organ, the Commission has the mission of promotion and protection of human and peoples' rights, and interpretation of the Charter provisions. Even with this mandate, and compared to other similar regional bodies, it has been stated that the Commission's powers of implementation are far weaker. It is a timorous body with basically no teeth with which to ensure the enforcement of the Charter.

The Commission came into existence in 1987 and comprises eleven (11) Commissioners nominated by state parties and elected by the entire Assembly of Heads of State and Government of the OAU. They are chosen to serve in their personal capacity from among African persons of the highest reputation, impartiality and integrity. In addition, they are to be competent in the field of human rights.

The Commissioners hold office for six years and are eligible for re-election. The size of the Commission corresponds to the geographical distribution of the seats of the OAU. The odd number eleven (11) is to avoid ties in voting but in case of a tie, the Chairman of
the OAU has a casting vote.

The Composition of the Commission is not based on the principle of regional balance. This principle characterizes the OAU and has severally been used in appointment of the Secretary-General and other staff at the OAU Secretariat. Perhaps drawing from past stalemates in the OAU over the appointment of the Secretary-General, the Charter did not include this principle, resulting in another problem of regional imbalance. So far, most Commissioners have come from Northern and Western Africa. Furthermore, more than three-quarters have come from francophone countries, with Anglophone and Lusophone Africa hardly represented.

Like the problem of language and need for interpretation in English, French, Arabic and Portuguese which led to a flop of the Commission’s 14th and 15th sessions, as funds would only allow the use of English and French, the other problem that haunted the Commission in its early phase was gender imbalance. Initially the Commission was completely gender insensitive—without any female member. This has since improved with four of the eleven Commissioners presently women.

The Commission is headquartered in Banjul, the Gambia. It usually holds its sessions at its headquarters unless a state party invites it to hold meetings in that country—an increasingly common phenomenon in recent years. The Commission would hold two sessions every year, each session lasting about ten (10) days. There is provision for extra ordinary sessions but these have not been very common.

**Secretary to the Commission**

At its inauguration on the Second of November 1987 in Addis Ababa, Ethiopia, the African Commission did not have a permanent secretariat and thus, for its first five sessions, its activities were co-ordinated from the OAU General Secretariat in Addis Ababa. A permanent Secretariat was later secured in November 1989, and is headquartered in Greater Banjul, the Gambia.
The Secretary of the Commission is appointed by the Secretary-General of the OAU, and is charged with the responsibility of handling the daily activities of the Commission. He/She maintains contact with the Commissioners, the OAU Secretariat and with persons and institutions that refer matters to the Commission or seek information, hence serves as a permanent intermediary for the Commission. He/she operates under the general supervision of the Chairman, and particularly he is to assist the Commission and its members in the exercise of their functions, bringing immediately to the knowledge of the members of the Commission all the issues that are submitted to him. More specifically as provided for under Article 41 of the African Charter, he/she is responsible for providing the staff and services necessary for the effective discharge of the Commission. Indeed he is the head of the Commission's Secretariat.

The Secretary to the Commission is engaged on a full time basis, and he needs to be no less qualified than a Commissioner. He/she should be a lawyer trained in International Law and specifically International law on human rights. He/she must be dynamic and possess the initiative to achieve results quickly. He must be in a position to give the Commissioners informed advice on the performance of their duties.

The African Commission is required to submit to each Ordinary Session of the Assembly of Heads of State and Government a report on its activities. Before each session, the Secretary makes a list of the Communications other than those of state parties to the Charter and transmits them to the members of the Commission, who should indicate which ones are to be considered by the Commission.

Since its inception in 1987, the African Commission has been served by three Secretaries. Presently, the Secretariat is headed by Mr. Germain Baricako who was appointed in April 1994, and he receives support from the part-time members of the Commission Secretariat. For the effective fulfilment of its functions, the Commission delegates some aspects of its functions to the Secretariat, especially during inter-session periods.

One of the greatest problems that have affected the activities of the Commission since its inception has been the inadequacy in human resource. Until November 1996, there was
only one full time lawyer, the Secretary to the Commission. The current composition of
the Secretariat’s staff stands as follows: one Secretary to the Commission, one Legal
Adviser, one Accountant, one Bilingual Secretary, one Filing Clerk, one Receptionist,
two Drivers, two security Guards and one cleaner. There are also three legal officers who
work with the Commission, and some interns seconded by various organisations. The
Secretariat is clearly in dire need of staffing by professionally competent persons
sufficiently familiar with human rights law and whose duty would be to gather, assess
and collate information to aid the Commissioners.

For efficient and effective implementation of its activities, adequate human and financial
resources need to be provided. It is in this regard that a list of essential needs of the
Secretariat has been submitted to the OAU Secretariat, some of which have been set out

Cognisant of the fact that the African Commission requires support in terms of
strengthening its promotional and protective functions, different donor organisations have
come forth and sponsored some of the Commission’s projects.

i) The Danish Centre for Human Rights has provided one jurist for a nine-
month period every year for the past five years. It has also assisted in obtaining
funding from the Danish Government for the purchase of computer equipment
and the recruitment of additional staff. Further, it provided assistance for the
publication of State reports.

ii) The International Commission of Jurists has in the past played a key role in
the drafting and facilitation of coming into force of the African Charter. It has
continually assisted the Commission in other key areas, including in sponsoring
and hosting the NGO Conference preceding the Commission’s Sessions.

iii) The Raoul Wallenberg Institute continues to finance promotional activities of
the Commission, including missions undertaken by Commissioners and the
publication of the Commission’s Review.
iv) The European Union has provided funding for the publication, dissemination and distribution of key human rights documentation for a period of twelve months.

v) The UN Centre for Human Rights has been assisting the African Commission in promotional and protective activities.

vi) The Commission has further received substantial support of all kinds from the Friedrich Naumann Foundation and the Austrian Government, which has granted great assistance to the Commission in setting up of its Documentation Centre.

vii) Since March 1996, the African Society of International and Comparative Law has been providing the Commission with two jurists for a period of 12 months. The Society has also provided two computers and a printer for use by the jurists and it also assists in the publication of the Commission's Review.

As the founder and parent organisation OAU should be expected to meet its obligations and take on a substantial and increasing share of the costs required to run the institution efficiently. However, the African Commission being such an important force in promoting and protecting human rights in Africa, donors interested in this course should be prepared to meet the short-fall and thereby take on a considerable portion of these costs. The Danish and, to a lesser extent, the Swedish initiative in this direction should be followed by others.

It is therefore hoped that with this kind of support and co-operation, and with the implementation of the proposals in the Mauritius Plan of Action, the situation at the African Commission is poised to improve.

1. Mandate

The role of the Commission under the Charter falls into two broad categories, namely:
The Promotional Role consists of the following activities:

i. To publicize the African Charter on Human and Peoples Rights and to explain the procedures for the realization of the rights and freedoms enshrined therein.

ii. To hold seminars and Conferences with various persons, institutions and organizations in search of ways in which the Commission may perform its role effectively.

iii. To study and research into human rights problems in Africa.

iv. To interpret the provisions of the Charter at its own initiative or at the request of States.

v. To examine periodic reports submitted by state parties in order to assess the extent to which States are giving effect to the guaranteed rights and freedoms.

vi. To perform any other task that may be assigned to it by the Assembly of Heads of State and Government of the OAU.

For the purpose of its Promotional activities, the Commission has divided Africa into five regions. A Commissioner is assigned to each region with a mandate to visit the countries in the region and *inter alia* hold talks with Government officials, NGOs, and members of the public with a view to seeking co-operation on how best to implement the provisions of the Charter in those countries. Additionally, the Commission has power under Article 62 to examine reports submitted by state parties on the legislative and other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the Charter. States have an obligation to do so every two years.
The Protective mandate of the Commission consists mainly of consideration of Complaints and Communications received in closed sessions. Communications are requests addressed either to the Secretary-General of the OAU or directly to the Commission so as to bring to its knowledge a series of facts and situations which constitute violations of human rights in a state party and requires intervention.

Communications are of two types: Communications—negotiations and Communications-complaints. The former come in where a state party believes another state party has violated the provisions of the Charter. It may draw the attention of that state to the matter and address the communication to the Secretary-General of the OAU and the Chairman of the Commission. If the issue is not settled through bilateral negotiations within three months, the issue is referred to the Commission. Should mediation by the Commission fail, a report stating the facts and findings is sent to the Government concerned and the Assembly of Heads of State and Government of the OAU accompanied by any necessary recommendations.

While provision for inter-state complaint is made, the record has been dismal. There has only been one “near serious” complaint, and another—a sham. Burundi filed a complaint against several states in the Great Lakes region (Kenya, Tanzania, Rwanda, Uganda, and Zambia) alleging that the imposition of economic sanctions by these countries violated the Burundians’ right to health care, the right to education, the right to work and other rights. This complaint was instituted by an NGO but later adopted by the State of Burundi. The Complaint in any event, has never been dealt with. The other Complaint was filed by Libya against the United States, which was declared inadmissible on the ground that the USA was not party to the Charter.

Communication-complaints refer to a request from an individual, group or an NGO denouncing or alleging the violation of rights by a named state. These have also been called individual complaints. The Commission will receive complaints from victims themselves or others on their behalf. Article 55 of the Charter, which is titled ‘other communications’, has been interpreted as to authorize the Commission to entertain Complaints from non-victims such as NGOs. This liberal interpretation has improved the
flow of Communications and enhanced the protection of human and people's rights, drawing from the lack of knowledge, skill and capacity in most victims of violation of human rights. A detailed analysis of this mechanism is provided in chapter five herein.

B. A REVIEW OF THE COMMISSION’S WORK AND UTILITY, AND PRELIMINARY OBSERVATIONS ON THE WAY FORWARD

The procedure in enforcement machinery under Article 55 of the Charter recognises the competence of the Commission to receive Communications other than those of State parties. By this, we mean individuals and non-state entities such as NGOs acquire *locus* before the Commission and can therefore petition the Commission where their rights or those of others have been violated due to capricious exercise of executive powers.

However, the efficacy of such a procedure is greatly reduced bearing in mind that the final decision on implementation of its findings lies with the Assembly of Heads of State and Government, themselves overly immersed in political protectionism, state sovereignty and fraternal integrity. Until and unless a more effective remedy is found for this mischief, the best efforts of the Commission will remain the least effective in fact and law.

Under Article 46 of the Charter, the Commission is mandated, in considering cases where Communications are sent to it by the Complainant but have elicited no response from the State, to resort to any appropriate method of investigation. This process has known very little success. States tend to shy away from availing information and thus ensure the disutility of such procedure. In other cases, States simply ignore requests from the Commission, or claim not to have received such requests. Sometimes, as with Abacha’s tenure in Nigeria, they allow such visits to bolster their human rights image but curtail the Commissioners freedom of movement and interaction.

Thus, the use of “Special Rapporteurs”, engagement of “Fact- Finding Missions” and
conventions of “Special Meetings” to discuss the human rights situation in a given
country, should be encouraged, but the Commissioners need to be more of Human Rights
 crusaders who will not await a red carpet invitation.

The African Commission is a body created by the OAU. However, its place within the
OAU structure has not been clearly defined. The African Charter established a reporting
relationship between the African Commission and the OAU Assembly, but fails to define
its relationship with other bodies of the OAU and the political organs. This undermines
the independence and status of the African Commission.

The OAU and its member states bear the primary responsibility of ensuring that the
African Commission is able to function as the organ for the promotion and protection of
human and peoples’ rights in Africa. This calls for a radical transformation, a re-birth of
African leaders, into the culture of true respect of human rights.

The current method of electing members to the Commission allows persons who hold
certain influential governmental and political positions within their respective
Governments to be elected as Commissioners. Ambassadors, ministers and similarly
influential personalities in the Government have found their way into the Commission in
this manner. This seriously undermines the objectivity, independence and impartiality of
the individual Commissioners, and of the Commission as a whole.

Such a scenario creates a conflict of interest. It is quite inconceivable for an individual
holding such senior position in government to act concurrently as an independent
member of a body which itself seeks to hold that government accountable for its actions.
Amnesty International even goes further to suggest that Commissioners are also
compromised when they hold high-ranking positions within intergovernmental
organisations. Their work often involves confidential political and diplomatic
manoeuvres, clearly at odds with the role of an independent and impartial
Commissioner.6

It is recommended that the Charter should be amended to follow the example of Article
18 of the Additional Protocol establishing the African Court, which declares certain offices incompatible with the office of a judge.  

The sitting Commissioners should draft and recommend for adoption by the OAU Assembly Guidelines and Criteria of Independence and Impartiality, which would disqualify candidates defined as political or governmental appointees.

The African Commission should similarly amend its rules of procedure to state clearly that members of the African Commission should refrain from dealing with and considering reports including periodic reports, and complaints of human rights violations in any investigations concerning their own countries or countries in which they are otherwise involved, in the course of their alternative engagement. This would make the Commissioner immune to criticism from such governments for being party to critical decisions and reports.

Furthermore the issue of how much time Commissioners and in particular the Special Rapporteurs should work for the Commission both during and between the Commission meetings must be looked into.

Since its inception membership of the African Commission has not been regionally balanced, except during the 1st election when the issue of geographical representation was taken into account. It should be noted that the African Charter does not provide for geographical representation. So far, most Commissioners have come from Northern and Western Africa.

The African Commission should propose for adoption by the OAU Assembly, a division of the Continent into nine regions commensurate to the number of Commissioners, to avoid undue concentration of Commissioners in one region. Similarly there is no obligation for the African Commission to reflect a gender balance, which resulted in the complete absence of women Commissioners until 1993. Without a gender balance in the composition of the African Commission key issues relating to the violations of human rights of women were likely to be overlooked. We readily admit, however, that the problem lies in the mode of operationalising this desire. As long as States retain the
discretion to nominate and elect Commissioners, it becomes difficult to insist on the
gender of a state nominee.

The Commission should conclusively draft and recommend for adoption with the
assistance of NGOs guidelines to ensure that there is gender equity among the
Commissioners. There should be established a practice of succeeding male-female
nominations by States and further lobby the Commission to suggest to the OAU
Chairman to publish those to be elected nominees by States for public censure in the
respective countries.

Further, the Protocol to the African Charter on Human and Peoples’ Rights on the
Establishment of an African Court, requires judges to be elected from different regions
and legal systems and entrenches the principle of adequate gender representation for the
nomination and election of judges of the African Court. This should provide the basis for
similar guidelines on the African Commission to be adopted by the OAU Assembly.

The Commission relies entirely on the OAU for funding, which has proved insufficient
and hamstrung the Commission’s activities. The OAU itself being perpetually cash
strapped has consistently failed to provide essential human and material resources for the
Secretariat with the consequence that the African Commission is reliant on donors
especially non- African States for funding of its key tasks. It is thought the Commission
and African NGOs should design ways of solicitation and purveyance of funding
especially from donors within the Continent.

The OAU must provide resources for computers, electronic mail, and a web site and
maintain the existing systems at the Secretariat in order to meet many of the objectives in
the Mauritius Plan of Action.

Article 62 of the African Charter requires each Member State to submit a two-yearly
report on the legislative or other measures, which have been taken in order to give effect
to the rights, and freedoms recognized in the Charter. On the eve of the 20th Session of
the African Commission, 21 African States had submitted their initial or periodic report,
while 29 others had failed to do so, which demonstrates the need for apt means of coercion so as to reverse this tendency. The Commission is plagued with the problem of non-compliance or in other cases, absolute indifference and general want of co-operation among its member states. Even countries that have submitted their reports barely follow the guidelines in the General Instructions set out for them by the Commission concerning the form and content of the national periodic reports.

In our view, some of these shortcomings are conceptual, while others are structural, yet others also owe to attitude- of Commissioners, of the OAU member states and of the Secretariat. The latter two are not too difficult to deal with, unlike the former. We suggest that the Secretary- General should raise the issue of overdue reports systematically with member states as an integral part of his communications, citing the defaulting states by name.

All member states of the OAU should provide all overdue reports to the African Commission as a matter of priority, and respective NGOs, scholars and lawyers should keep reminding the state machinery of this.

Additionally in attempting to improve the efficiency of the existing safeguard mechanisms, the relations of co-operation between the Commission and the member states should be re-defined in more friendly terms so as to convince the states that action for human rights does not necessarily come from a wish to be a nuisance, but makes it possible to ensure the proper governance of public affairs and management in the interest of the citizens.10

The prerequisite for exhaustion of local remedies is another obstacle. The African Commission entertains only complaints that have complied with the pre-requisites as laid down in Article 56 of the Charter. This criterion on local remedies is most certainly the main obstacle towards access to the Commission and numerous complaints have been dismissed owing to the failure by the parties to exhaust local remedies. In some instances the rule on the exhaustion of local remedies has been taken so seriously even to the extent of violating 'the right to be heard'.11 The Commission should shift the burden of proving
non-compliance with this rule to the State. It should be the responsibility of the State to help the Commission with the information on whether the local remedies have been exhausted since it has the capacity to know the prevailing legal situation.

Similarly, the Commission should be flexible and consider the reasons put forward by a complainant explaining why they cannot exhaust local remedies and make appropriate directions rather than brush the Complaint aside. Admitted, the Commission has adopted these innovative paths in instances, but it largely clings to the traditional and opposite holding. In instances where local remedies may be available but are ineffective and impractical, the Commission should and has been known to, desist from insisting on them.

The Commission has on several occasions been considered guilty of causing persistent delays in processing cases, more than the local organs. The Commission has been accused of being clouded with ineffectiveness to the extent that cases could remain pending for years.

Generally, otherwise, the African Commission has over the years been credited for its efforts in creating a culture of human rights in the continent. It has also been able to prevent States from taking certain actions while awaiting its decisions and above all, it has taken several decisions on communications submitted to it, condemning States for human rights violations and recommending restitution.

The eventual success or failure of the Commission however rests mainly on the shoulders of the State parties. Some have taken steps to abide by the decisions of the Commission while others have ignored them. Many have constantly failed to honour their obligations under the Charter, especially under Article 62. It is hoped that the establishment of the African Court on Human and Peoples' Rights will complement the efforts of the Commission, making the protection of human and peoples' rights in Africa a reality.

II. THE AFRICAN COURT ON HUMAN AND
PEOPLES' RIGHTS

A. ESTABLISHMENT, COMPOSITION AND MANDATE

1. Historical Background

The earliest reported proposal on the establishment of an African Court on Human and Peoples' Rights was by Dr. Nnamdi Azikiwe, the first Prime Minister of Nigeria, when he addressed a major conference of African Jurists gathered in Lagos, Nigeria in 1961. Indeed, the Declaration adopted by the Conference entitled “The Law of Lagos” contained a recommendation for the setting up of an African Court on Human and Peoples' Rights. Subsequently, during the process of drafting the African Charter on Human and Peoples' Rights, an experts group was constituted under the Chairmanship of the distinguished Senegalese jurist Mr. Keba M'baye. According to Chairman M'baye, the experts group considered the possibility and approved the idea of establishing an African Court. However, the group did not make a recommendation to that effect since it felt that the time was not opportune and Member States were not likely to accept the idea at that time.

It is against this background that a high level brainstorming session was convened at Dakar, Senegal in January 1993, by the International Commission of Jurists in collaboration with the OAU General Secretariat and the African Commission on Human and Peoples’ Rights. The theme of the Session was “Strengthening the African Human Rights System.”

The proposal for establishing the African Court on Human and Peoples’ Rights was guided by the following considerations:

To strengthen the African Human rights system in order to ensure better protection of human and peoples’ rights;
To complement the efforts of the African Commission on Human and Peoples' Rights which has been doing an effective job in the area of promotion;

To enable the achievement of the objectives of the African Charter on Human and Peoples' Rights.¹⁵

In December 1993, a workshop was held in Addis Ababa as a follow-up to this recommendation, to exchange views on the nature and jurisdiction of such a Court and its relationship with the African Commission. Most of the participants did not concur on the need for a Court, arguing that it was alien to the African concept to have a Court. Thus, if the idea was to be adopted, it was to take a gradualist approach that would see the African Commission strengthened first. Some expressed their support for the establishment of an African Court and stressed that it was a felt need. Despite this, the debate on establishment of an African Court was long won by the protagonists, with the OAU endorsing the idea, and needs no further inquiry.

The OAU Assembly of Heads of State and Government adopted an Additional Protocol to the African Charter establishing an African Court of Human and Peoples' Rights during its 34th Session in June 1998, sitting in Ouagadougou, Burkina Faso. Regrettably, as at July 2000, only three countries had ratified the Protocol, yet almost all member States have signed the Statute. The Protocol needs a minimum number of fifteen ratification to come into force, and the obtaining strategy at the OAU and the Commission Secretariat is centred around ways of ensuring that the minimum number of ratification for the Protocol to come into effect.

In its preamble, the Protocol clearly declares that the Court shall supplement the efforts of the African Commission. The Court shall comprise eleven (11) judges serving in their individual capacities for a nine-year term and who shall be elected by the OAU Assembly from a list of three submitted by member States. The independence of the judges is to be ensured under Article 8 of the Protocol. The quorum of the Court shall be seven judges provided that state parties in any given case may each appoint an ad hoc judge where the bench as constituted has no judges of the nationality of the state parties. The seat of the proposed Court has not been fixed by the Protocol.
2. Mandate

The mandate of the Court is outlined in Article 2 of the Protocol, and titled "Relationship between The Commission and the Court." According to this provision, the Court shall supplement/complement the Protective Mandate of the African Commission on Human and Peoples' Rights conferred upon it by the African Charter on Human and Peoples' Rights.

The Court shall have jurisdiction over all cases extended to it concerning "the interpretation and application of the Charter, the Protocol and any other African Human Rights Convention." In addition, member States of the OAU and other recognised bodies may seek advisory opinion on any legal matters relating to the Charter or any other African Human Rights instrument.

Both State parties to the Protocol and their residents may file petitions before the Court, provided there is a preliminary determination of a private Petition by the African Commission under Article 55 of the African Charter. The Petition must then be filed within three months of the date of determination. Additionally, under Article 23(2), the Commission also has powers to request the Court to act in extreme cases when no petition has been filed.

The procedure under Article 19 may be avoided under Article 20, which recognises the jurisdiction of the Court in exceptional circumstances. These are undefined. Article 20, for instance, may allow a private petitioner access to the Court without first utilising the procedure under Article 55 of the Charter which requires the Commission to first investigate the claim with leave of the OAU Assembly. It is up to the Court to make a preliminary finding by a bench of three that Article 20 is applicable to the case.

Those entitled to submit cases to the Court are the Commission, State parties subject of a complaint to the Commission, a state whose citizen is the subject of violations, African Inter-governmental Organisations, and on special permission by the Court, individuals and African NGOs with observer status before the Commission, in accordance with
Article 34(6). But, necessarily, such states will have made a special declaration accepting the competence of the Court in accordance with Article 34(6) of the Protocol.

Proceedings before the Court shall be public and the Court will follow its rules of procedure. If the Court finds there has been a violation, it shall make appropriate orders to remedy the violation including payment of reparations. The Court is also entitled to take “such provisional measures as it deems necessary” under Article 27(2) of the Protocol. This is a wide discretion indeed.

Under Article 30, State parties “undertake to comply with the judgment in a case in which they are parties.” But, while it is clear that the judgment is not subject to appeal, this provision fails to make it clear that the decision of the Court is, binding. Article 29 states that the judgement shall be supervised by the Council of Ministers of the OAU. But again, there is no indication how this will be achieved by that arm of the OAU, nor of consequences of non-compliance by any given State.

In summary, therefore, the proposed Court’s main characteristics are:

i. The Court will complement the protective mandate of the African Commission on Human and Peoples’ Rights conferred upon it by the African Charter.

ii. The jurisdiction of the Court will extend to all cases and disputes concerning the interpretation and application of the African Charter on Human and Peoples’ Rights, the Protocol and other relevant Human rights instruments. The Court will also be entitled to give an advisory opinion on any legal matter relating to the Charter or any other relevant Human Rights Instruments.

iii. Direct Access to the Court is granted to the African Commission, State parties and African Inter-Governmental Organisations. But the Court may also allow Non-Governmental Organisations (NGOs) with observer status before the African Commission, and individuals, to institute cases directly before it, provided that the Court shall not accept any petition from NGOs or individuals
involving a State Party that has not made a declaration in terms of article 34(6) accepting the competence of the Court under article 5(3).

iv. The Court shall rule on the admissibility of a case taking into account the provisions of article 56 of the Charter.

v. The Court may pursue and reach an amicable settlement in a case pending before it.

vi. In presenting nominations, due consideration shall be given to adequate gender representation in the process. However, this appears more of a general guideline than an obligation.

vii. Election of judges is by secret ballot, by the Assembly of Heads of State and Government. The Assembly shall ensure that there is representation of the main regions of Africa, their principal legal traditions and adequate gender representation. Again the workings of this remains to be seen.

viii. Each judge holds office for six (6) years and may be re-elected only once. All judges except the president of the Court shall perform their functions on a part-time basis, subject to alteration by the Assembly of Heads of State and Government, as it deems appropriate.

ix. The independence of the judges shall be fully ensured in accordance with International Law. The judges are to enjoy the immunities extended to diplomatic agents in accordance with International Law.

x. It is declared that the position of judge is incompatible with any activity that might interfere with the independence or impartiality of such judge or the demands of the office.
xi. The Court shall elect its president and one Vice-President for a period of two years, and they may be re-elected only once.

xii. The Court shall examine cases brought before it, if it has a quorum of at least seven judges, and the seat of the Court is to be determined by the Assembly from among State parties.

xiii. The Court may receive written or oral evidence including expert testimony and shall make its decision based on such evidence. On presentation, the Court may make appropriate orders to remedy violations, including payment of fair compensation or reparation. In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

xiv. The Court shall render its opinion within ninety (90) days of having completed its deliberations. The decision will be by majority and not subject to appeal. However, the Court shall notify the parties of its judgement and transmit copies thereof to the Member States of the OAU and the Commission. The council of Ministers shall be notified of the judgement, and it shall monitor its execution on behalf of the Assembly of Heads of State and Government.

xv. State parties undertake to comply with the judgement in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

xvi. After the various judgments, the Court shall submit to each regular session of the OAU Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the Court’s judgement. The entire budget is to be borne by the OAU.

xvii. Lastly, the Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited with the Secretary-General.
In commentary, it is true that the proposed African Court on Human and Peoples’ Rights is expected to be an important instrument for the protection and promotion of human rights in Africa. However, the existence of such a Court will not, *per se*, ensure the protection of rights, if the necessary political goodwill and sense of tolerance and accommodation continues to elude our societies and its leaders. However, the Court can be an effective weapon for the protection of human rights, if individuals of goodwill, both state and non-state actors, play their part. After all, Africa, more than any other Continent must spearhead the struggle for human rights, having itself suffered all kinds of human rights abuses and indignities ranging from slavery to colonialism.

**B. ANALYSIS OF THE PROTOCOL ESTABLISHING THE COURT**

The Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights consists of some thirty Articles, entirely meant to supplement the efforts of the African Commission.

Unfortunately, some of the problems bedevilling the Commission appear to stand in the path of the Court. Their jurisdiction also appears to overlap in instances. Like the Commission, the Court is granted the mandate of interpretation of the Charter provisions.

Article 3, which provides for the Court’s jurisdiction gives it more powers than the Commission ever had. According to this provision, “the Jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other African Human Rights Convention”. In addition it also has powers to provide opinions “on any legal matter relating to the Charter or any African Human Rights instrument.” In this sense the Protocol has followed the European and Inter-American models by investing the Court with powers to determine disputes and render advisory opinions.

Like the Commission, the Court is made subservient to the OAU Council of Ministers
and plenary. The OAU for example oversees the procedure of election of judges and determines enforcement of judgments. This affects the independence of the judges as it invites problems of reliance on political organs with political agenda, which hold sovereignty and the concept of non-interference with internal matters of state sacrosanct.

Further, the same omissions made with regard to the sustainability of the Commission have also been made with regard to the Court. Both must rely on the OAU for funding. Article 32 of the Protocol provides that the budget of the Court shall be borne by the OAU. As discussed earlier, this reliance has choked the Commission, leaving it understaffed with a threadbare secretariat. The experience with the Commission does not inspire hope for the Court in this regard.

On the important question of *locus standi*, the Court has power to allow individual victims, NGOs and groups of individuals to bring cases before it “on exceptional grounds”, without first having to proceed under Article 55 of the Charter.

Article six (6) thus grants *locus standi* in exceptional circumstances authorising petitioners to appear before it directly from state parties. The problem however is what constitutes “exceptional grounds.” This is a progressive clause and one that is in line with the current reforms in the European system where the Commission has been dethroned to allow the European Court of Human Rights to have direct access to petitions. The clause can only be as useful as the Court allows it to be, which will in-turn depend on commitment, independence and innovation of the individual judges, and the Court as a whole.

### III. THE OAU SECRETARIAT

#### A. The Office of the Secretary-General of the OAU

The Secretary-General of the OAU is appointed by the OAU Assembly and is responsible for directing the affairs of the Secretariat. The impartiality and independence of the Secretary-
General is entrenched in Article XVIII (1) of the OAU Charter, which states that the Secretary General

"Shall not seek or receive instructions from any government or from any other authority external to the Organisation."

The Secretary General is directly responsible to the Council of Ministers, which comprises the Foreign Ministers of member states of the OAU, and meets twice a year. He is required to submit reports requested by the OAU Assembly and the Council of Ministers and is responsible for the finances of the Organisation. The incumbent Secretary-General is Mr. Salim Ahmed Salim, a national of the Republic Of Tanzania.

Under Article 63 of the African Charter on Human and Peoples' Rights the Secretary-General has the custody of the instruments of ratification or adherence to the present Charter. He is further charged with the responsibility of informing member States of the OAU of the deposit of each instrument of ratification. For each State that ratifies the present Charter, the Charter takes effect three (3) months after the date of the deposit by that state of its instrument of ratification or adherence.

Any State that wishes to make an amendment to the Charter may do so by making a written request to that effect to the Secretary-General of the OAU who shall then inform the other States parties and the African Commission. The latter will then communicate their opinion, also referred to as the Notice of Appointment, to the Secretary-General.

As concerns the role in relation to the Commission, the Secretary-General of the OAU is instrumental when it comes to the election of Commissioners to the African Commission on Human and Peoples' Rights. Each State party to the African Charter may nominate certain personalities who meet the criteria as set out in Article 31 of the Charter to be short-listed as eligible candidates for the position of the Commissioner. Under Article 35, the Secretary-General of the OAU is mandated to invite State parties at least four months before the elections to nominate candidates.

The Secretary-General of the OAU then makes an alphabetical list of the nominees and purveys it to the Heads of State and Governments at least one month before the elections. The members
of the Commission are then elected by secret ballot by the Assembly of Heads of State and Government from this list. The Commission shall not include more than one national of the same State.

In case of death or resignation of a member of the Commission, the Secretary-General of the OAU, on notification by the Chairman of the Commission, shall declare the seat vacant from the date of death or resignation. In cases of incompetence by a member of the Commission, the Secretary-General, on consultation with other members and on the advice of the Chairman shall, declare the seat vacant. It is then upon the Assembly of Heads of State and Government to replace the member for the remaining period of his term unless the period is less than six months. The members of the Commission are usually elected to serve for a six-year period and are eligible for re-election.

Further, the Secretary-General of the OAU shall appoint, in consultation with the Chairman of the Commission, a Secretary of the African Commission, while the Commission elects its Chairman and Vice-chairman for a two-year period.

The Secretary-General shall, in consultation with the Chairman, provide the Commission with the necessary staff, means and services for it to carry out effectively the functions and missions assigned to it under the Charter.

The Secretary-General or his representative may attend meetings of the Commission. He shall however not participate in the deliberations, or in the voting. He may, however, be invited by the Chairman of the Commission to make written or oral statements at the sitting of the Commission. In the performance of its functions, the Commission may seek advice on the most appropriate method of investigation from the Secretary-General of the OAU or any other person capable of enlightening it.

Under Article 49 and 50 of the Charter, the Secretary-General to the OAU is also clothed with the authority to receive written Communications from any State party to the African Charter that has good reason to believe that another state party to the Charter has violated the provisions of the Charter. This is then communicated to the Secretary of the Commission and
the members of the Commission who shall indicate which communications are to be considered by the Commission. The Commission initiates the process by attempting an amicable settlement. The Secretary-General of the OAU shall also take all the necessary steps to facilitate the meetings of the Commission.

In commentary therefore, it is our observation that the strength of the African Commission and the workability of the African Charter largely depends on the strength and effectiveness of the incumbent of the seat of Secretary-General. As may be noticeable, the Secretary-General therefore provides the functional continuum between the Commission and the OAU organs, especially the Assembly of Heads of State and Government. Thus, whatever success may be realized will depend on the former’s effectiveness and innovativeness, and the latter’s goodwill and commitment to the ideals adumbrated in the Charter.

On a more practical level, however, there arises some inconsistency when we compare the role of the Secretary-General vis-à-vis the member states and his role in exacting human rights decrees of the Commission. The Secretary-General as seen before, is fundamental in ensuring enforcement of recommendations as relates to cases before the Commission. His position in the OAU Charter is however different since his continuity in office depends on the support of Heads of State and Government. Thus, it is difficult to ensure compliance by a particular state or government with any Decree or Recommendation of the Commission and at the same time maintain political goodwill with the Heads of State and Government; so necessary in defending and maintaining his position.

**B. The Proposed Human Rights Department**

The legal division within the OAU Secretariat is a section of the Political Department and is charged with the responsibility of providing legal services to the Organisation including the drafting of treaties and agreements. It also prepares reports for the Secretary-General on the ratification of treaties such as the African Charter.
The Legal division has the additional responsibility of monitoring ratification and drafting of treaties, and provides advice to the Secretariat on a range of issues pertaining to human rights. Furthermore, it is often left to the Legal Division to act as a representative of the African Commission in Addis Ababa. Indeed, the OAU has had to reconsider whether it is able to deal adequately with the issues concerning the African Commission, especially, question of resources and budget. The Legal Division becomes instrumental in this regard.

The geographical distance between the OAU Secretariat in Addis Ababa, Ethiopia, and the African Commission’s Secretariat in Banjul, the Gambia, and the poor communications facilities between the two locations make it very difficult to co-ordinate efforts adequately.

The proposed Human Rights Division is intended to ensure the early integration of human rights issues into the activities of the various organs of the OAU. The Department is to be staffed with professionals who have expertise in human rights and who would have the responsibility for liaising on human rights issues with various departments and organs within the OAU Secretariat.

As part of its functions, the human rights department would prepare and submit reports on the human rights situation in Africa, which information would be used to advise the Conflict Division on the human rights situation in countries experiencing conflict, and further prepare comments on the same.

The division would also act as the representative of the African Commission’s Secretariat in the following areas:

- Ensuring that its request for resources receives due consideration by the Advisory Committee on Administrative and Budgetary Matters;

- Ensuring that its reports are distributed to representatives of members states in Addis Ababa well ahead of the meetings of the Council of Ministers;
- Liaising with the Refugee Division and the Conflict Management Division on human rights issues;

- Following up on the implementation of Resolutions adopted by the OAU Assembly regarding the work of the African Commission, especially as relates to filing of state reports;

- Monitoring implementation of the Resolutions of the African Commission and preparing a report on this for incorporation into the report of the African Commission presented to the Council of Ministers;

- Making certain that the Resolutions of the African Commission are integrated into the work of all the divisions and departments of the OAU Secretariat.

- Maintaining links with the office of the UN High Commissioner for Human Rights and disseminating the reports on the mechanisms and procedures of the UN Commission on Human Rights such as the Special Rapporteur's reports pertaining to Africa.

**IV. THE OAU ASSEMBLY**

The OAU Assembly of Heads of State and Government, is the highest political organ within the OAU. It is charged with the responsibility of considering the reports of the Council and adopts Resolutions and Declarations, which provide overall direction to the work of the OAU. It is also entrusted with the responsibility of enforcing the Recommendations and Resolutions of the African Commission. It meets once every June.

The African Commission is required to bring to the attention of this Assembly "special cases which reveal the existence of a series of serious and massive violations of human and peoples' rights" and the OAU Assembly "may request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its Findings.
In addition, Article 59 of the African Charter requires the African Commission to report to the OAU Assembly “all measures taken within the provisions of the present Charter” and on its activities. The report of the African Commission includes a summary of its work during its two sessions in November and April each year and annextures of the resolutions adopted by the African Commission on thematic issues and country situations and decisions on complaints, usually from individuals and NGOs, it has considered.

Over the past few years the African Commission, acting in terms of Article 58 of the African Charter, has brought to the attention of the OAU Assembly several cases in which it found facts which constitute “a series of serious and massive violations of human rights.” However, the OAU Assembly did not respond to the African Commission and failed to take any action to address the situation.

A former Chairman of the African Commission, in reference to situations of massive violations of human rights has stated that “none of the letters sent to the OAU President has ever received a reply.” In the case of the Democratic Republic of Congo (formerly known as Zaire), the African Commission alerted the OAU Assembly of the situation of serious and massive violations of human rights in a report submitted to its meeting in July 1996, this was a few months before the situation in the country deteriorated into open conflict and led to the commission of crimes against humanity and genocide.

The failure of the OAU Assembly to take the report of the African Commission seriously provides a striking example of the inability of the OAU to address and prevent conflict and resultant human suffering.

The OAU Assembly meets over a period of three days each year and has, in its recent meetings, been preoccupied with situations of conflict in Sierra Leone, Ethiopia, Eritrea and Guinea-Bissau and other countries. Such urgent matters and the relatively short period of the meeting prevent the OAU Assembly from giving adequate consideration to the report of the African Commission. In its Resolutions, the OAU Assembly usually
merely endorses the report of the African Commission, and calls on member states to adhere to the African Charter. However, there is no scrutiny by the OAU Assembly, on the basis of the African Commission’s report, whether there is in fact adherence by member states to the African Charter and whether they have taken any “concrete measures to implement effectively the provisions of the Charter”, or to respect the recommendations of the African Commission.

For there to be effective protection of human and peoples’ rights enshrined in the African Charter, the political organs of the OAU, especially the OAU Assembly, have to play a significant role in ensuring compliance with the African Charter. They should make specific recommendations to relevant states on the measures that should be adopted to conform to their treaty obligations.

As the Council of ministers is already entrusted with the responsibility of considering and deciding on the majority of issues, which face the OAU, it is our suggestion that the OAU Assembly could delegate part of its responsibility in relation to the African Charter and African Commission to the Council. In terms of Article XIII (2) of the OAU Charter, the Council “shall take cognisance of any matter referred to it by the OAU Assembly”. Therefore the OAU Assembly could refer consideration of the report of the African Commission and any other matter brought to its attention by the African Commission, to the Council, and request it to prepare recommendations for consideration by the OAU Assembly. This would include situations of serious and massive violations of human rights. Once the OAU Assembly has adopted the recommendations, it could request the Council to implement its decision in accordance with Article XII (2) of the OAU Charter.

The OAU Assembly should request the Council to establish a procedure to ensure compliance and follow-up of its decisions arising from consideration of the report of the African Commission. Such procedure should include a regular report by the Secretary-General to each Session of the Council on the extent to which member states have complied with the OAU Assembly’s decisions and the Resolutions emanating from the report of the African Commission.
Once the African Court is established, the need for effective enforcement of its decisions on human rights will become all the more crucial. Without effective implementation of the decisions and a procedure to ensure enforcement, the African Court will be undermined and will have little or no impact on the human rights situation in Africa. This may affect the credibility of the institution and result in the collapse of the system established to protect human rights.

It is therefore imperative that the OAU Assembly ensures the creation of a procedure within the OAU to implement the decisions of the African Commission and the African Court, once established. Non-compliance with the decisions of the African Commission (and the African Court, once established) amounts to a clear repudiation of the obligations undertaken by the member states of the OAU under the African Charter and should be taken up by the political organs of the OAU as a threat to the principles and objectives enshrined in the OAU Charter.

In summary therefore, it is our opinion that for more effective effectuation of the recommendations of the African Commission and the African Court once established, the OAU Assembly should delegate its responsibility to consider their reports to the Council of Ministers and request it to prepare recommendations for adoption by the OAU Assembly thereafter. Additionally, it should request the Council of Ministers to establish a procedure to ensure compliance and follow-up with its decisions arising from its consideration of the report of the African Commission.

A. Council of Ministers

The Council of Ministers of the OAU (the Council), meets twice a year and considers reports presented to it by the Secretary-General and by bodies established by the Council itself. At these meetings, the Council deals with a range of issues including financial and administrative matters, and even economic questions.

Under the heading "Political Matters" it deals mainly with situations of conflict in Africa and considers reports presented by the Secretary-General on countries. The Secretary-
General is to include a specific section on human rights in every report on conflict situations with specific recommendations on the measures to be taken to prevent further human rights violations.

Often, serious human rights situations in Africa do not even appear on the agenda of the Council despite such situations receiving widespread media attention and being the subject of discussions at other Inter-governmental fora. One such situation is that which has been prevailing in Algeria for the past few years. Although there may be quiet diplomacy regarding such situations, the failure to deal with them publicly creates the perception of either lack of concern, lack of knowledge or lack of consistency in the way the OAU deals with its members.

The Council should consider including on its agenda, an item dealing specifically with the human rights situation in Africa and request the Secretary-General to bring to its attention serious situations of human rights violations which are likely to affect the achievement of the purposes of the OAU as stipulated in Article 11 of the OAU Charter and which include the achievement of “a better life for the peoples of Africa”. This report of the Secretary-General could include information from the African Commission, NGOs and UN bodies such as the Human Rights Committee or country and thematic reports of the UN Commission on Human Rights.

After consideration of such a report, the Council could decide on measures which would address the situation and prevent further human rights violations, including the establishment of an ad-hoc committee of Ambassadors or, where there are indications that the situation may develop into conflict, referral to the Central Organ at Ambassadorial level to deal with a situation of serious human rights violations.

It is recommended that the Secretary-General should include a specific section on human rights in every report on conflict situations presented to the Council of Ministers with specific recommendations on the measures to be taken to prevent further human rights violations. Additionally, and even on default by the Secretary-General, the Council itself
should include on its agenda an item dealing specifically with the human rights situation in Africa and request the Secretary-General to bring to its attention serious situations of human rights violations which are likely to affect the achievement of the purposes of the OAU.

V. RELATIONSHIP BETWEEN THE OAU, THE COMMISSION AND THE PROPOSED COURT

One of the objectives of the African Commission as laid out in the *Mauritius Plan of Action* is to enhance the OAU Secretariat’s involvement in its activities related to human and peoples rights. This is basically with regard to, among other things, conflict prevention and management, refugees and displaced people, observation of elections and the establishment of the African economic Community.21 This shows a clear intention to establish practical modalities of cooperation and should be given time and financial resources. Certain recommendations have been suggested which if undertaken would strengthen this relationship.

First, under the rules of Procedure of the African Commission, the OAU Secretary-General may attend and provide written or oral statements to sessions of the African Commission. By attending the African Commission’s meetings this will indicate the importance the Secretary-General attaches to the work of the African Commission. Furthermore, it will enhance the status of the African Commission within the OAU and provide the necessary political weight to improve its effectiveness.

In addition, regular representation of the OAU at meetings of the African Commission would go a considerable way towards bridging the information and conceptual gulf that exists between the two institutions. An OAU representative would avail information directly to the Commissioners and other participants on OAU decisions and resolutions pertaining to country situations and thematic issues, as well as to the African Commission itself.
Second, the OAU must require the African Commission to produce regular, substantive and detailed reports so that it is able to assess the situation of human rights in its member states as part of its deliberations. Such reports are in the nature of communiqués and activity reports which are a brief summary of the recommendations and statements on issues to which the African Commission would like to draw the attention of the current Chairman and member states of the Organisation of African Unity. The Commission already does much of this without much reciprocity in seriousness on the part of the OAU.

VI. THE AFRICAN CHARTER AND MUNICIPAL SYSTEMS

It is one thing to conclude a treaty but a different thing to carry it into effect. A treaty that is not incorporated into municipal law or otherwise municipally recognised is as good as a statement of intent. The effect of a human rights treaty will be greatly reduced if it is not incorporated into law. The principle of *pacta sunt servanda* assumes and requires observance of treaties. An important element of this is incorporation of the treaty provisions into municipal law where necessary.

The question whether, and to what extent, the African Charter is law within the Kenyan municipal sphere inexorably draws us to the old debate on monism as against dualism, the former insisting that both international law and municipal law belong to the same body of rules binding human beings -with international law having primacy, while the latter school maintains that international law and municipal law are separate and self-contained systems having contacts with each other and requiring the recognition of one by the other.

Kenya, like much of the Commonwealth, is dualist, with the result that a right enshrined in the African Charter or other treaty cannot be legitimately asserted in the national courts.
without its incorporation by a parliamentary statute. In *Ukunda vs. Republic* prosecution was brought against two people by the Attorney General under the Official Secrets Act (1968) of the East African community. It was brought without the consent of the counsel of the Community as was required under section 8 (1) of the East African Community Act. It was argued that section 8 (1) of the Act was contrary to section 26(8) of the Kenyan constitution which permitted the Attorney General to prosecute at his own pleasure and that he shall not be subject to the direction and control of any other person or authority. It was further argued that the E.A.C. was the creature of parliament and so the law of the E.A.C were 'other laws' as understood in section 3 of the Constitution. The counsel to the Community argued that according to section 8(1) of the E.A.C. Official Secrets Act, the issue of consent was merely procedural and therefore any dispute raised by it should be resolved in favour of the E.A.C provided that member states were to do everything possible to ensure that there was correspondence between Community and municipal law. The court refused to accept both arguments and held that the conflict between the Attorney General’s functions and the requirement of consent from counsel to prosecute were contrary to the Constitution and that they were void to the extent of that inconsistency. The court argued further that if the Community Treaty or any Act under the Community was allowed to prevail, the court would be amending the Constitution in a manner not allowed by the Constitution thus the court would not effect that amendment.

This position was long established as enunciated by Lord Atkin, that,

> "Within the British Empire, there is a well established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action."^{23}

The juristic logic is simple. If the position were otherwise, then the Executive would acquire legislative power.

The bottom-line is that the rights in the African Charter are not justiciable in Kenya, the Charter provisions not having been enacted by Parliament. Perhaps it may be considered
by courts in policy and persuasion, but no more. However, of course, the rights entrenched can be claimed by a Kenyan citizen, groups, NGOs or even the state at the African Commission; Kenya, having since ratified the African Charter.

The combined effect of Articles 1 and 62 of the African Charter makes it obligatory for states to incorporate the Charter into their municipal systems and report periodically on the progress of implementation. But the Charter does not specify the specific or legislative measures to be taken by member states to give effect to its obligations.

Different countries have adopted different forms of implementation. Incorporation of the African Charter into Togolese law takes the form of setting up of the National Human Rights Commission as an autonomous body with the object of protecting political and civil rights, enlightening the populace on Human and Peoples rights, and recommending measures for protecting and promoting human rights.¹³⁷

The Nigerian case is more interesting. In March 1983, the Nigerian Assembly passed the entire Charter into law, but empowered the President to appoint a date for it to take effect. But the civilian President was overthrown by a coup before he could set the date. The Revised laws of the Federation of Nigeria, signed into law with effect from 1st October 1990 (A Military Decree) include the African Charter but backdates the commencement to 17th March 1983. The implication of this is that the Charter applies to Nigeria to the extent that it is not inconsistent with the Constitution. What will be the effect of the economic and social rights which their Constitution makes hortatory or aspirational but which the Charter makes mandatory and legally binding, must remain a vexed question.

While Nigeria is probably the only country to have incorporated the entire Charter into its domestic law, the emergent issues and problems of practical realisation of the rights enshrined remain germane to all countries contemplating incorporation of the Charter. Indeed, paradoxically, Nigeria remains one the most notorious state violators of human rights.

Other than the difficulties in domestic application of the Charter, the rights are perfectly
pursuable at the African Commission. But, the rights in the African Charter have not found favour in Kenyan human rights jurisprudence so far. This is demonstrated by the paucity of cases referred to the Commission emanating from Kenya. Our perusal of cases referred to the Commission revealed only two Kenyan cases, 

*Muthuthuri Njoka -vs- Kenya,*\(^2\) and *Kenya Human Rights Commission -vs -Kenya.*\(^2\) The complaint by Njoka was initially submitted in 1993, alleging certain violations by the Kenya Government but was declared inadmissible, as Kenya was not then a party to the Charter. The Complainant resubmitted the complaint after Kenya’s ratification, but the Commission thought it “incoherent and vague”. The complainant later withdrew the complaint. The second case instituted by the Kenya Human Rights Commission also crumbled at the admissibility stage.

The non-materiality of the Charter is strengthened by the want of genuine commitment to the rights and ideals in the Charter by the Kenya Government. Despite ratification, Kenya has never submitted any state report contemplated by the Charter. The African Charter was simply ratified as a salutary gesture to commitment to human rights ideals, and a means of showing solidarity with the OAU membership without genuine desire to respect or observe its provisions.

The apparent ineffectiveness of the Charter is also largely inherent. There is great variance in the mode of enforcement within the municipal systems - recourse to court, damages, imprisonment, et al, and in the Charter, which appears not to contemplate municipal enforcement. Yet, the maturity of a legal system is reflected in the manner in which rights are enforced, using the state machinery, if necessary.

Apathy by legal practitioners and NGOs, in so far as the Charter is concerned, has also contributed to the relegation of the Charter. Most Legal practitioners are illiterate as concerns the mode of instituting a Complaint before the Commission, the prerequisites and related matters. On the other hand, many NGOs, being sponsored by western based donors, have tended to concentrate in pockets of human rights prioritised by their funders - and the African Charter is usually not one of them.
VII. COMPARATIVE ANALYSIS: THE AFRICAN CHARTER AND INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS.


The Charter sets an elaborate system of implementation, presenting an institutional framework to supervise observance of the rights. The first organ is the European Commission of Human Rights. This is the organ of inquiry and comprises 21 members, no two of whom are to be from the same nation and are elected by the Committee of Ministers. They serve in their individual capacities for 6 years.

The second organ is the Committee of Ministers, which is the political decision making organ. It comprises one representative for each member state of the Council of Europe. The Committee appoints the human rights Commission, and also takes a case where the Commission reaches no settlement, and the parties and the Commission do not refer it to the European Court.

The last organ is the European Court on human Rights, which is the judicial body. Each member state has one judge, who serves in an individual capacity, elected for 9 years by the European Parliamentary Assembly.

The procedure adopted is simple, but institutionally entrenched. Any claim submitted by a state party or by an individual must be so submitted to the Commission. The Commission determines the admissibility of applications, establishes the facts of each admitted case, and attempts to achieve a friendly settlement. Should this fail, it draws a report on the facts and states its opinion as to whether a state has breached an obligation.
The Commission transmits its report to the Council of Ministers, which may prepare proposals for resolving unsettled cases. The Commission may also submit a case to the European Court. The European Court cannot entertain any case brought directly to it. It must first come before the Commission in the form of an application, be declared admissible and be investigated by the Commission. The Court receives a case only after the Commission has acknowledged its failure to reach a friendly settlement. The Court has jurisdiction with respect to any state party, which has accepted its compulsory jurisdiction, or consented to its jurisdiction in a given case.

The European Social Charter serves to bulwark the Convention's workings. The Charter declares the resolution of the state parties to make every effort in common to improve and promote the social well being of the countries populations by appropriate institutions and actions.

The American System For Human Rights Protection is basically grounded on the American Convention on Human Rights. There are other additional instruments, including the *American Declaration of the Rights and Duties of Man* The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, and the Protocol to the American Convention on Human Rights to Abolish the Death Penalty.

However, the 1969 Convention still remains the centrepiece for human rights protection in the Americas. There are two main organs under the Convention, namely, the Inter-American Commission on Human Rights, and the Inter-American Court of Human Rights. The Inter-American Commission is composed of seven members elected in their individual capacity by the General Assembly of the organisation. The members, who must be persons of high moral standing and recognised competence, are elected for a term of four years.

The Commission assumes a dual mandate. First, it is an organ of the Organisation of
American States Charter, whose principal function is to promote the observance and protection of human rights in member states. Second, as an organ of the American Convention, its role is to oversee the fulfilment of the Commitments made by the state parties under the Convention.

The other chief organ is the Inter-American Court of Human Rights. The Court is composed of seven members elected in their individual capacity by an absolute vote of state parties to the American Convention, from a panel of candidates nominated by those states. Such candidates must be of high moral authority and of recognised competence. The judges are elected for 6 years and are eligible for re-election once. The Court sits in San Jose, Costa Rica.

The Court has both a contentious jurisdiction, and an advisory jurisdiction. The procedure for activating the system is outlined. In order to bring a case against a state party to the Convention, the state must have recognised the binding jurisdiction of the Court - by a special declaration or a special agreement made for a specific period, or for specific cases.

Only the state parties and the Inter-American Commission have the right to bring cases before the Court. Contrary to the European System, individuals are barred from bringing cases to the Inter-American Court. However, victims, their next of kin or their legal representatives usually participate in the Court's proceedings, as part of the Commission's delegation, and "must be consulted by the Court before it adopts certain decisions in a case".34

A case may be referred by a state against another, provided both recognise the Court's jurisdiction, under the condition of reciprocity. The judgements of the Court are final and binding. There is provision for compensatory damages, which may be executed in the country concerned in accordance with the domestic procedures governing the execution of judgements against the state.

The Court's jurisdiction to render advisory opinions interpretative of the American
Convention or other treaties is established in Article 64, and the member states, as well as organs of the OAS, have standing to request advisory opinions. Also the Court has power to interpret any other human rights treaties applicable in the American States.\(^{35}\)

In the Arab World, the League of Arab States founded in 1945 established a Commission on Human Rights in 1968, and that was also the last time it was heard of. It was given the pretentious name of “Permanent Commission on Human Rights”, and aimed to promote respect for human rights, rather than to take measures to protect it.\(^{36}\)

It has been argued, legitimately, in our view, that the prominence and success of human rights protection under the European system owes much to the common heritage of the European Nations. Professor J.B. Ojwang underscores the point thus:

“"The trappings of the western jurisprudence date back to the eve of the middle ages, in the time of St. Augustine of Hippo ... This intellectual enterprise became the memorable origin of occidental legal culture. And this is the original basis of a general unity in the European legal tradition (which was referred to as *jus commune*).\(^{376}\)"

While it is quite true, and both the preamble to the European Convention and the European Court of Justice acknowledge this,\(^{38}\) it is also true that the Convention is meritorious by itself, and presents a model regional human rights machinery worthy of emulation both in scope, structure and implementation.
ENDNOTES TO CHAPTER FOUR


4 Supra, Note 1, p.26.

5 Supra, Note 2, Article 46.


8 Supra, Note 7, Article 14

9 Supra, Note 1, page 24.

10 Comments of Mr. M.K. Rezzag Bara, Member of the African Commission on Human and Peoples’ Rights.


12 John K. Modise vs. Botswana No. 97 of 1993,

13 Raddho vs. Zambia, No. 71 of 1992

14 Complaint made during the 27th Ordinary Session. 27th-11th May 2000, in Algiers, Algeria.


Interview with Isaac Nguema, member of the African Commission, in Terra Viva, March 1998, No. 15.


1970 E.A. 453

In Attorney-General for Canada vs. Attorney General for Ontario (1937) 1 AC 326.


Communication No. 142 of 94.

Communication No. 135 of 94.


Supra, Note 41, pp 658-661.


The 1948 American Declaration on Rights and Duties of Man; Bogota, 2/5/1948.


Santiago, Chile, 8/6/1990.

Supra, Note 30, Article 64.

Supra, Note 27, p. 674,

Professor J.B. Ojwang, Laying A Basis for Rights. An Inaugural Lecture delivered before the University of Nairobi, University of Nairobi Press, Nairobi, p. 8.

In Ireland vs. The United Kingdom, Series A Vol. 25, 2978 pages 90-91.
CHAPTER FIVE

PROCEDURES AND THE ADJUDICATORY PROCESS

I. State Reporting Under Article 62

A. The Obligation of Periodic Reporting

Article 62 of the Charter imposes a duty on each State Party to submit reports to the African Commission, it states thus:

"Each State party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter."

For States that acceded to the Charter after its coming into force, the obligation to report begins to run two years from the date of ratification and thereafter every other two years. In this sense, the African Charter has substantially departed from the European and the Inter-American systems, both of which do not provide for state reporting among their mechanisms of enforcement. The UN system however provides for state reporting.\(^1\)

In 1996, in a bid to facilitate reporting, the African Commission issued guidelines to all members of the OAU. However, due to slow and poor information flow in Africa, bad infrastructure and inefficient bureaucracies, many states either do not have them, or have not had regard for them. This has affected the effectiveness of this machinery as many States do not prepare or submit the reports. For the few who do, most of the reports are incompetent.
The reports are documents for general distribution, which means that publicizing and distributing them does not require any particular condition except for the State party to indicate beforehand that it wishes to preserve its confidentiality. According to Article 81 of the rules of procedure the periodic reports of the State can be set out under three (3) main themes, to wit:

- Measures adopted by the States to give effect to the rights recognised in the Charter.
- Progress made in the enjoyment of the rights.
- Factors and difficulties that affect, eventually, the implementation of the provisions of the Charter.

Unlike in other systems, the state reporting system in Africa is open to the members of the public, making it participatory and inclusive.²

B. The Procedure of Examination

Examination of the periodic reports of States is carried out in the presence of representatives, duly authorised by the respective States, who must be able to give the Commission any complementary information required. In cases of non-presentation of the periodic report by a State Party, the Commission, through the Secretary-General of the OAU, can send a reminder to the concerned state. However, in case of persistent failure to respond, the Commission may mention the default of the said State in the Annual Report, which it submits to the Assembly of Heads of State and Government of the OAU.

1. Under the rules of procedure of the Commission, the process of examination of the periodic report of the States is considered a promotional activity. However, a closer analysis of the process reveals a dual exercise incorporating protective as well as promotional aspects.
This is because during the examination and the ensuing discussions between the members of the Commission and the representatives of the State party, it is often the case that the States have to explain themselves on specific situations of alleged violations of Human rights. Mostly, these would be done by the respective Commissioners under whose territorial jurisdiction the State in issue falls.

C. Evaluation Of The Procedure

It must be noted, regrettably, that most State Parties do not submit their reports. Though some States have submitted their initial or periodic reports, this is after much persuasion. By mid-1998, only nineteen states out of fifty-two had submitted their initial reports, three their second and one (Zimbabwe) its third. Even worse, as mentioned here before, those who have submitted barely followed the Guidelines contained in the General Instructions set out for them by the Commission concerning the form and content of the national periodic reports.

In essence, most States are in breach of, and continue to breach the provisions of Article 62 with much impunity. This situation raises the issue of designing appropriate sanctions to reverse this tendency. Like other monitoring bodies, the African Commission has no enforcement mechanism and is therefore, reliant on the good will of member States to present their reports.

It is recommended that the OAU Secretary-General should raise the issue of overdue reports in bilateral communications with member States of the OAU. The Secretary-General should also ensure implementation of the Resolution on the African Commission on Human and Peoples’ Rights. The Resolution recommended that:

“States Parties to the African Charter designate high ranking officials to act as focal points in the relation between the African Commission and the States as such focal points would facilitate the follow-up on the Commission’s recommendations and contact between States and the Commission.”

The second problem is the poor quality of State Reports. Most reports fail to comply with the intended objective of the mechanism since they end up using this mechanism as a
way of raising complaints against other states while some reports are replete with ambiguity and self-praise.\textsuperscript{6}

In addition, lack of clarity of the intended objective of the process presents another problem. States that do not report suffer no penalty, while those that take courage to present the Report often have to face the wrath and grill of the Commission. This discourages states that would otherwise be keen to present a report.

Another problem is the evaluation skills of the Commissioners. Some Commissioners are so ignorant of their roles that they have on various occasions tried to comment on the state report of their countries in support of it or to fill in the gaps to assist the representative of that state. This is incompatible with the role of an impartial Commissioner.

II. COMMUNICATIONS

Communications are requests addressed, either to the Secretary- General of the OAU, or directly to the Commission, so as to bring to its knowledge a series of facts and situations which constitute violations of Human and Peoples' Rights in a State Party and which require its intervention. There are two kinds of communication:

A. Communication-Negotiations

These relate to the submission of Communications to the Commission by a State Party to the Charter alleging that another State Party has violated the provisions of the Charter. Articles 48-53 of the African Charter and Rules 93-101 of the Commission's Rules of Procedure govern the procedure.

The Commission may draw the attention of that state to the matter and address the Communication to the Secretary-General of the OAU and the Chairman of the Commission. If the issue is not settled by bilateral negotiations within three months, the
issue is referred to the Commission.

Should mediation by the Commission fail, a report stating the facts and findings is sent to the Government concerned and the Assembly of Heads of State and Government of the OAU, accompanied by any necessary recommendations.

While provision for Inter-State Complaint is made, the record has been dismal. There has only been one near serious complaint, and another - a sham. Burundi filed a complaint against several states in the Great Lakes region (Kenya, Tanzania, Rwanda, Uganda, and Zambia etc) alleging that the imposition of economic sanctions by these countries violated the Burundians' right to health care, education, work and other rights. This complaint was instituted by an NGO but later adopted by the State of Burundi. The Complaint in any event, has never been dealt with. The other Complaint was filed by Libya against the United States, which was declared inadmissible on the ground that the USA was not party to the Charter.

B. Communication-Complaints

Communication complaints concern requests from an individual, group or an NGO denouncing or alleging the violation of rights by a named state. These have also been called Individual complaints.

The Commission will receive complaints from victims themselves or others on their behalf. Article 55 of the Charter, which is titled 'other communications', has been interpreted as to authorise the Commission to entertain Complaints from non-victims such as NGOs. This liberal interpretation has improved the flow of Communications and enhanced the protection of human and people's rights, being alive to the paucity of knowledge, skill and capacity in most victims of violations of human rights.

The fact that a Communication is receivable from anyone on behalf of the victim is demonstrated by the case of Maria Baess -vs- Zaire, A Danish National, on behalf of her colleague Dr. Shambuyi Kandola from the University of Kinshasa, submitted the
Communication. She alleged that Dr. Kandola had been detained since April 1988, without a charge, purely for political reasons. The fact that the complainant was not an African national and that she was not the victim did not arise in the communication.

To be receivable however, the Complaint must not have been submitted to another international investigative authority and can only be admissible after all local remedies available in the state are exhausted. Accordingly under Article 56 of the Charter, it is not every violation that will be entertained by the African Commission but only those that qualify under the Article.

The pre-requisites are:

i. Indicate the author's name.

ii. Are compatible with the Charter of the OAU or with the African Charter.

iii. Are not written in language disparaging or insulting to the State or the OAU.

iv. Are not based exclusively on news disseminated through the mass media.

v. Are sent after exhausting local remedies, unless the procedure is unduly prolonged.

vi. Are submitted within a reasonable period.

vii. Do not deal with cases already settled by States under the UN, OAU or the instant Charter.

Several complaints suffered under this Article. In the case of *Amnesty International –vs.- Tunisia*, the Complainant sent a report to the African Commission on detention of thousands of suspected members of a banned Islamic Organisation. In the same year, Amnesty International wrote to the UN requesting that it use Resolution 1503 Procedure under ECOSOC in respect of the same case against Tunisia. For this reason, the
Commission declared the Communication inadmissible and therefore dismissed it under Article 56(7) even though the Article only proscribes cases, which have been settled. Arguably, the Commission erred.

The majority of cases have been dismissed for failure to exhaust local remedies. But the limit of this requirement emerges where the local remedy is inordinately convoluted, where there is no local remedy, or where the remedies available are ineffective and impractical. Where local laws oust the jurisdiction of local courts it is reasonable to assume that local remedies will be prolonged or yield no results. In *Louis Emgba Mekongo versus Cameroon*, the complainant, a Cameroon national residing in France, had been arrested without a warrant and imprisoned on December 1979 until 17 February 1983. He was eventually charged with crimes of a financial nature, relating to income tax and the administration of his businesses. Not until 14 October 1980 was he tried in court. He was sentenced the following April to two years' imprisonment and ordered to pay damages. The complainant filed an appeal to his April 1981 conviction on 17 February 1982. His appeal was summarily dismissed. The complainant filed a second appeal on 20 February 1982. It has yet to be heard. The Commission ruled that where appeals had been pending for twelve years they would be considered to be unduly prolonged and denied the individual the right to be tried within a reasonable time.

However in *Paul S. Haye versus The Gambia* where leave to appeal in national courts was sought but rejected, the Commission in rejecting the communication stated that 'if there exists the possibility of effectively appealing out of time the applicant must do so'. The Commission held that leave to appeal out of time must be sought and if the leave is rejected then there can be no further remedies available to the complainant.

It is insufficient however to state that that the possibility of the success of remedies would be improbable if no attempt has been made to use them. In *Ousman Manjang versus The Gambia* the complainant resorted directly to the Commission fearing that the possibilities of local remedies were 'very little and improbable'. The Commission declared the communication inadmissible stating that the complainant had not attempted in any way to settle the issue at a national level and as such it was unable to conclude that local remedies were futile or ineffective. Similarly cases still pending before the national
courts mean that local remedies have not been exhausted. In Civil Liberties Organisation versus Nigeria\textsuperscript{14} the complainant had instituted several court actions against the state, which were still pending by the time the communication was received by the Commission. Both the complainant and the government acknowledged that cases relating to the communication were still pending before courts in Nigeria. The Commission declared the communication inadmissible, as it was unable to find that local remedies had been exhausted. The Commission may also examine the practicality of circumstances in deciding the possibility of exhaustion of local remedies. In Jean Yaovi Degli (on behalf of Corporal N. Bikagni). Union Interafricaine des Droits de l’Homme, Commission Internationale de Juristes versus Togo\textsuperscript{15} These communications alleged the torture and maltreatment of Corporal Nikabour Bikagni that resulted in a confession that he was planning a coup against the government of Togo. They also consisted a report of a mission sent to Togo by the Union Interafricaine des Droits de l’Homme containing information on an attempt on the life of opposition leader Gilchrist Olympio, the assassination of the driver of the Prime Minister in, extortion and killings in villages in the north of Togo, a shooting incident which resulted in at least 18 deaths. The communication also mentioned the discovery of more than 15 bodies, which were found, mutilated and bound, in the waters around Lomé, and the shooting of 20 peaceful demonstrators in Lomé by the Togolese military. It was also clear that the government had had ample notice of the alleged violations and had accepted that these amounted to violations of the Charter. The Commission held that,

“In respect of those situations that appear to evidence a series of serious or massive violations of human and peoples’ rights the Commission has held on previous occasions that given the great numbers of individuals who allegedly suffered from human rights violations it cannot hold that the requirement of local remedies should be applied literally in cases where it is impractical or undesirable for the complainant to seize the domestic courts in the case of each individual. Due to the seriousness of the human rights situation as well as the great number of people involved, such remedies as might theoretically exist in the domestic courts are as a practical matter unavailable or “unduly prolonged”. ”

While in its formative stages the Commission placed the burden of proof of exhaustion of local remedies upon the shoulder of the complainant, it appears that the African
Commission has moved nearer to the practice in other regional Commissions - to ask the State party; it being in a position to know whether local remedies have been exhausted or not. While the complainant can help explain what steps he may have taken to secure the relief at home, it is the responsibility of the State to help the Commission with information on whether the law on the matter has been exhausted because the state has capacity to know the prevailing legal situation. In the case of *Raddho versus Zambia*¹⁶, Zambia had expelled various West Africans who were illegally in the country. They complained that Zambia had violated Article 12(5) of the Charter, which prohibited State parties from carrying out mass expulsions of non-nationals from each other's borders. Zambia contended that they had not exhausted local remedies and the case therefore was inadmissible. The Commission held that:

"The Contracting state has the burden of proof to show that in the particular circumstances the remedy is to be effective and adequate."

In this case, they decided that "given the circumstances under which the West Africans were arrested and imprisoned, it does not appear that these remedies were as a practical matter made available to the complainants... The Government of Zambia has not proved the available remedy to be effective."

**C. Registration and Admissibility**

Once a Communication has been received, it is entered in a "Register of Communications." The Commission then assigns one of the Commissioners called a Rapporteur for the purpose of assessing its admissibility. The Rapporteur will later bring the Communication to the full Commission with a recommendation on whether or not it is admissible, in accordance with the rules. As a matter of principle, all the pre-conditions are to be observed, otherwise the Communication will be declared inadmissible and the case closed. A decision on admissibility is final and once so declared, the Commission entertains no further consideration of the same.

On the other hand, if the Communication is declared admissible, it then goes to the merit stage. This is when the parties concerned will be informed about the complaint and
In the meantime, the Commission by means of inviting the parties to consider the possibility of securing a friendly settlement of the dispute may initiate interim reconciliatory procedures. The Commission has repeatedly stated that the main goal of its Communications procedure is to initiate a positive dialogue between the complainants and the state concerned resulting in a friendly settlement between the parties.\textsuperscript{17}

To oversee this process, a Rapporteur will be appointed by the Commissioners from amongst themselves. Once the deliberations are exhausted and a friendly settlement reached, consideration of the case is brought to an end. However, if no settlement is reached, the Commissioner will report the matter to the Commission, which will then take a decision on the merits of the case.

In considering the substantive issues of the Complaint, the Commission takes into account the precise allegations of facts as adduced by the complaint, peruses any relevant documents attached, and weighs this against the specific responses and evidence refuting the allegations as submitted by the state. In conducting these Sessions, the Commission is required to draw inspiration from the provisions of the Charter and other International Human Rights norms, with strict adherence to the rules of natural justice.

During the session, the parties concerned are at liberty to make written representations or appear by representative before the Commission. But, in the majority of cases, parties do not appear and consideration of the case takes place only on the basis of their communications.

In instances where there is no reply from the state, the Commission will proceed to consider the Complaint on its merit based on the facts at its disposal for its final decision. In determining the veracity of these facts the Commission can and often does examine such claims \textit{ex-officio} by getting information from alternative sources and third parties\textsuperscript{18}

After these deliberations, the Commission then makes its Recommendations. These
Recommendations are considered the main weapon of the system, even with its limited reach and effectiveness.

III. A REVIEW OF THE FUNCTIONING OF THE PROCESS

As earlier mentioned, the Commission’s mandate is quasi-judicial, and the Recommendations made are not in themselves legally binding upon the States. The Commission lacks the enforcement mechanism to supervise the implementation of its Recommendations, or to compel States to abide by the same. States are only sent reminders and much remains in their discretion, goodwill and commitment in respecting and observing their obligations under the Charter.

Arguably, the Commission’s mandate in this context is essentially one of a “fact-finder”! This is borne out by a reading of Article 52 of the Charter, which provides:

"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, within reasonable period of time from the notification referred to in Article 48, a report stating the facts and findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government."

Hence, the work of the African Commission does not culminate in a judgement as would otherwise be expected, or as known to other systems, but a Report for consideration by the Assembly of the O.A.U. and the Government(s) concerned. This has always provided a soft spot for the detractors of the African system of human rights protection under the African Charter. But, this argument has lost much of its glitter with the passing of the Additional Protocol on the Establishment of an African Court.

Apart from the effectiveness of the decision, longevity of the process has also drawn adverse comment. Whereas states have three months from notification to submit a reply,
the practice has been that states hardly comply with this stipulation and have notoriously failed to observe this stipulation - even in the rare occasions that they do. Oft times, the Commission Secretariat itself takes time to respond or acknowledge correspondence resulting in a prolonged and frustrating process that even deters complainants from raising complaints.

Another area in which the Commission has exhibited weakness is at the stage of making a decision on the merits after amicable settlement fails to yield results. In tandem with the Commission's infirmity of "fact-finding" rather than "Law-making", the Commission has failed to come up with reasoned legal decisions supported by jurisprudence to establish proper precedence or clarify pertinent questions. In its decisions, the Commission has tended to simply extract facts from the Complaints and measures them against relevant provisions of the Charter without any evaluation. Hardly any attempt is usually made to isolate the ratio decidendi".9

Yet another disappointing feature is the tendency to discontinue cases whenever there's a change of government in the state complained against. The change of government should not affect the status of complaints because the liability is on the State party, and it should be held liable for the violations established. But the Commission has opted to terminate Complaints, without a firm basis in fact or law.

IV. IMPLEMENTATION MECHANISMS AND REMEDIES

A. Organs of Implementation

1. The Role of Governments

Articles 1 and 62 of the Charter make it obligatory for states to incorporate the Charter into their municipal systems and report periodically on the progress of implementation. The Charter, however, fails to specify the specific or legislative measures to be taken by member States to give effect to its obligations.
The State parties are therefore left to decide and design the appropriate means of ensuring incorporation of the Charter provisions and principles into municipal law. In the result, States have attempted to address the matter differently, mostly unsuccessfully. While a country like Nigeria has enacted the entire Charter into law, many, including Togo, Kenya, Uganda, and others have been content to simply create Standing Committees on Human Rights to oversee the implementation of the Charter.

Necessarily, in a case like Nigeria’s, the Charter will apply only to the extent that it is not inconsistent with the Constitution. The effect of economic and social rights which their Constitution makes hortatory or aspirational but which the Charter makes mandatory and legally binding, must remain an open question. Such a right may well be frustrated by impossibility of performance due to diminished economic abilities. This is a challenge likely to be faced by any State contemplating wholesome incorporation of the Charter. Hence a mechanism of synchronising this paradox has to be worked out by the member states to ensure legitimate compliance with the obligations under the Charter.

The difficulty of legitimate domestic application of the Charter has been compounded by the want of genuine commitment to the rights and ideals in the Charter by the member states. It appears that the African Charter was only ratified as a salutary gesture to commitment to human rights ideals, and a means of showing solidarity with the OAU membership without genuine desire to respect or observe its provisions.

Member states continue to violate the Charter provisions as regards State Reporting with impunity. Most of them have never submitted any state reports contemplated by the Charter, and those who have do so epileptically, without following the guidelines set out by the Commission.20

State parties would need to rededicate themselves to their obligations by providing all overdue reports to the African Commission as a matter of priority. Periodic reports serve both promotional and protectional purposes. Dialogue initiated between the Commission and the Governments normally result in an improvement of national human rights-friendly legislation or positive practices relating to human rights.
The State Parties also shoulder the important role of nominating qualified candidates who meet the criteria established for the appointment of Commissioners under the Rules of Procedure and who will be able to fulfil their tasks with independence and impartiality. This will ensure that the African Commission has efficacy, credibility and independence. Such weighty a task, one would assume, would invite much seriousness and circumspection. Yet not so. Most State Parties hardly ever bother to send nominations at all. The few that do have tended to nominate persons deemed “good ambassadors” for the State, as if the Commission was a State requiring preservation of its good name.

Ultimately, the promotion and protection of human rights in Africa depends on the necessary political goodwill and sense of tolerance and accommodation among Governments and leaders of States. Individuals of good will, particularly leaders and opinion makers have a role to play in the defence of human rights. As long as this is supposed to be the sole duty of NGOs, the African human rights situation may not know much progress.

2. The African Commission

As earlier noted, the African Commission is mandated to come up with a “Report of Facts and Findings” and not decisions. It has no power to decide on any matter. In terms of Article 52 of the Charter, the Commission is not even required to notify the complainants of its findings.

However, Under Articles 53 and 54 of the Charter, the Commission has power to make Recommendations to the Assembly of Heads of State and Government, as it deems useful, and to submit “to each ordinary session of the OAU Assembly a report of its activities”. This covers the role of the Commission in relation to implementation of the outcome of its efforts.
3. The Place of the OAU Chair and Plenary

Under the Charter, the Chairman of the OAU and the Assembly of Heads of State and Government are entrusted with certain powers and responsibilities, including receiving and enforcing the recommendations and resolutions of the African Commission. In this respect, the OAU Chairperson is the principal person in-charge of initiating the implementation process.

The African Commission is required to bring to the attention of the OAU Assembly cases which reveal factual instances of serious and massive violations of human rights. Over the past few years however, when the Commission has performed its role in this respect, the OAU has failed to respond or take any action to address the situations, which failure has in some instances resulted in open conflict and further commission of crimes against humanity, including genocide.

The OAU Assembly should play a significant role in ensuring compliance with the African Charter and making specific recommendations to relevant states on the measures that should be adopted to conform to their treaty obligations.

Indeed, the OAU should integrate human rights into every sphere of its work, by establishing a Human Rights Division to incorporate human rights issues into the work and programs of the various bodies and organs of the OAU. This department should become the central liaison department on human rights issues.

The OAU Assembly should also request the Council of Ministers to establish a procedure to ensure compliance and follow-up of decisions arising from its consideration of the report of the African Commission. This would include presentation of a regular report by the Secretary-General to each Council session on the extent to which member states have complied with the OAU Assembly’s decisions and resolutions emanating from the report of the African Commission.
4. The African Court

Established through an Additional Protocol, the African Court proposes to implement the provisions of the African Charter. It seeks to create a mechanism and procedure for holding member states accountable for human rights violations. It is suggested that once it is established, there will be a crucial need for effective enforcement of its decisions on human rights. This in turn invites greater political commitment from member states than ever shown before. It is hoped that the reluctance shown by states in ratifying the Additional Protocol is not a window of their attitude towards the Court. Many of the hurdles facing the Court have already been mentioned and we do not propose to restate the same. The idea of the Court is certainly a legitimate idea in theory. We hope it shall be so in practice.

5. The Role of NGOs

The African Commission has always had an excellent relationship with various non-African NGOs, which have assisted in implementing some of the Commission’s projects. The instrumentality of NGOs was acknowledged and formally recognised in the preamble to The Grand Bay Declaration and Plan Of Action, when the OAU First Ministerial Conference on Human Rights acknowledged the contribution made by NGOs in the promotion of Human Rights in Africa.

The Grand Bay Declaration, in its body, recognised the importance of promoting an African civil society, particularly NGOs, rooted in the realities of the continent and called on African Governments to offer their constructive assistance with the aim of consolidating democracy and durable development.

Because of their perceived independence, NGOs are said to be indispensable in the proper protection and promotion of human rights. Since its inception, the Commission has worked closely with, and received great support from NGOs, in carrying out both its promotional and protective functions. Some NGOs have helped by taking and filing
complaints on behalf of individuals or groups of individuals especially in the more serious cases alleging massive violations of human rights by States.

On the Commission’s promotional mandate, NGOs have co-organised seminars and conferences to discuss ways of making the working of the Commission more effective. The International Commission of Jurists (ICJ) Geneva, for example, has severally initiated and sponsored the workshops preceding the Ordinary Sessions of the Commission. This workshop assembles a large number of both African and non-African NGOs, whose object is to co-operate with the African Commission and establish modalities of assisting the latter carry out its mandate under the Charter. Additionally, participants at these Workshops attend and participate in the open Sessions of the Commission.

The African Commission, relying heavily on the cash-strapped OAU for its funding, has been forced to seek extra-budgetary funding from international NGOs to implement some of its projects, such as the Raoul Wallenberg Institute in Sweden, the ICJ (Geneva), Danida, Denmark’s Centre for Human Rights and others. Over-reliance on non-African donors, however, invites the possibility that the Commission may lose its discretion in prioritising issues, or in contextual and conceptual analysis of Human Rights under the Charter.

The Commission has declared its intention to launch a campaign of sensitisation and resource mobilisation among its member states. According to the present Plan of Action, brainstorming has already been initiated with the assistance of NGOs on the setting up of a system of resource mobilisation.

In intensifying the efforts to promote and disseminate the Charter and the activities of the Commission, the NGOs have also supplied useful information to the Commission for the effective discussion of periodic reports submitted by States. Furthermore, through their programmes of human rights education, NGOs have increased the level of awareness of human rights among the masses.
The Commission has granted an observer status to NGOs as a means of providing a forum through which they can attend the open sessions and address the Commission on the human rights situations in their countries, and indicate further measures that could be taken to facilitate the implementation of the Charter. It is recommended that those NGOs in Africa working in the field of human rights should seek observer status with the Commission to enhance their capacity to promote and protect human rights at the Continental level.

Quite apart from the foregoing, NGOs have been credited with the function of funding promotional visits by the Commissioners to various member states and also payment of salaries of some the officials of the OAU Secretariat. Beside the submission of their own report on activities undertaken, it is recommended that NGOs should provide parallel reports alongside the State Report, a move already taken by some.

6. The Place of Individuals

Individuals and groups have a role to play, since human rights are not just for governments. The ultimate purpose of the African Charter is the liberty and development of the African peoples. It is always portrayed as a code of conduct for all individuals at the family, national, regional and international levels. The Charter allows individuals to file Complaints directly to the African Commission in situations of violations of their rights under the Charter. This, they can do by themselves, or through another person.

Whereas the place of individual complaint easily lends itself to comprehension, the issue is bound to arise whether international corporations also fall within the ambit of these. Would the Ogoni people of Nigeria, for example, legitimately present a complaint against the Shell Corporation regarding its activities in oil drilling? In our thinking, as long as such a corporation is a legally recognised entity in any member country, it is a person within the contemplation of the Charter, and subject to the rights and duties therein.
B. REMEDIES AVAILABLE

1. In-depth Study by Commission, Preparation and Presentation of Reports to OAU Heads of State and Government

This remedy is provided for Under Article 58 of the African Charter wherein the African Commission is required to notify the OAU Assembly of any situations that present serious and massive violations of human and people’s rights.

The OAU in return may request the Commission to undertake an in-depth study of the cases submitted before it and make a factual report, accompanied by its findings and recommendations. On receipt of this information, the OAU Assembly may respond to the findings and take necessary action to address the situation. As already mentioned, this has rarely been the case. The OAU has demonstrated, instead, great ineptitude and reluctance to take preventive steps in such situations. This, even despite reports and warnings from the Commission, was the case with what later came to be known as the Rwanda Massacre.

2. Promotional Visits by Commissioners

The first mandate of the Commission as defined under Article 45 of the Charter is the promotion of human rights. The Commissioners have specific entries, which they should visit to educate the public about the Charter.

These promotional visits are mostly funded by donations from outside Africa, which in themselves have been sporadic and inadequate. A further hindrance has been the fact that most Commissioners are part-timers having other professional or political positions in their own countries, therefore unable to give the Commission’s work the priority or attention and sacrifice otherwise called for.

Perhaps most alarming are instances of political sojourns: Commissioners who
completely fail to appreciate the nature of their duties and rather than undertake genuine promotional endeavours, seize the occasion to court and create cordial relations with the leadership, the government and other public officials. This creates unnecessary strain on the meagre resources at the disposal of the Commission, and turns the Commissioner into an un-called-for and unnecessary goodwill Ambassador.

3. Fact-finding Missions

This can be said to be a novel and innovative remedy introduced by the Commission to assist in carrying out its protection mandate. Under Article 46, the Commission is vested with powers to “resort to any appropriate method of investigation...” This has been used to examine claims in situations where the complainants’ allegations are not contested, where there is no reply from the State, or where they were partially contested.

The Commission can examine such claims *ex-officio*, and it can get information from alternative sources and from third parties. The Commission can delegate fact-finding missions in certain countries, as has been the case in Senegal and Mauritania. However this process has proved inadequate as far as dealing with emergency situations is concerned. It is proposed that the Commission should come up with more effective mechanisms for dealing with emergencies, more effective and speedier than the present set-up.

4. Appointment of Special Rapporteurs

The other means of implementing the Charter has been through the appointment of Special Rapporteurs. They are appointed in terms of Article 46 of the Charter, which allows the Commission to resort to any appropriate method of investigation. Under the African system, there has been a Rapporteur on Extra-Judicial Executions, and another on arbitrary detentions and prison conditions. Recently, Rapporteurs on Women’s Rights, and the right to development have also been appointed. In 1994 the Special Rapporteur
on Extra-Judicial Executions was commissioned and sent to study the situation in Rwanda during the run up to the 1994 Genocide of the minority Tutsis and moderate Hutus. The Special Rapporteur was appointed after the Commissioners were divided on how to proceed in handling the issue, especially in view of the fact that the OAU Assembly had failed to respond to the findings and recommendations of the Commission. Unfortunately, this method did not work since the violations reported to have been taking place were not of the nature of extra-judicial executions.

5. Publicity As A Remedy

In undertaking its protective activities, the African Commission principally receives Communications and acts on them according to the Charter provisions, having first considered the question of admissibility of the said communication.

Under Article 59 of the Charter, the Commission is obligated to hold confidential all the reports of its activities and any measures taken on a state. This provision has created much criticism as many have argued that certain complaints are made on matters of public interest and the outcome of the same should be made public.

The Commission has however maintained that it is likely to achieve more results if it maintains confidentiality than if it conducts its investigations under the glare of publicity. This reasoning is further supported by the argument that a state that has co-operated and complied with the recommendations of the Commission would be embarrassed and disappointed if the violations were subsequently made public.

But this argument has been faulted on the ground that a state that is carrying out a recommendation of the Commission should derive satisfaction from helping to achieve the aims of the Charter rather than be embarrassed by its co-operation. The Commission should draw inspiration from other Commissions and keep the Assembly and the public adequately informed about its activities. The African Commission lacks a separate and effective enforcement machinery. Understandably, human rights organisations see in publicity a potent weapon against abuses of human rights.
It is notable, however, that, in the past few years the Commission has become more open and transparent and following strong pressures, particularly from the NGO community, those practices have changed over the years and today the Commission openly disseminates a full account of the procedures and reasoning behind all communications finally decided by the Commission and forwarded to the Heads of State and Government of the OAU. The documents, which include the information mentioned above, are the Final Communiqués which are issued at the end of each ordinary session, press releases, and the Annual Activity Report which becomes a public document after its adoption by the OAU Assembly of Heads of State and Government. It is particularly the latter that includes the most important information. With the help of the African civil society, the Commission also publishes the Review of the African Commission on Human and Peoples’ Rights, which contains articles and information on the Commission. The African Centre publishes accounts from each session in their quarterly newsletter. Finally, the Commission is to publish its own Newsletter at regular intervals. The first issue was published in October 1998\(^{26}\). This very positive development should be further pursued. In particular, the latest Annual Activity Reports should immediately be published in a readable volume Communications being processed should be openly registered and published in e.g. the Newsletter and in the future in the Commission’s website.

As already seen, the Commission’s strength seems to lie in amicable settlement, since its power to address human rights violations is hamstrung by the requirement of confidentiality and crippled by the procedure of reporting to the Assembly of Heads of State. This is undesirable since the concept of human rights has become a matter of international concern, hardly a subject to be left in the domain of exclusive state jurisdiction. It is recommended that the Commission should appoint Commissioners who are less conservative and more forthright in their findings against defaulting governments, and thereby assist in the observance and respect for human rights.
6. Remedies Available From the African Court

As has been the theme of our discussions above, the African Court was introduced to strengthen the enforcement mechanisms under the African system of human rights protection. The African Court has power to provide advisory opinions on any legal matters relating to the Charter or any other Human Rights instrument. The Court aims at ameliorating the Commission’s lack of sting in enforcement without rendering the latter otiose.

The African Court, once established, is therefore meant to complement the Commission in order to enhance the systems’ effectiveness. The Court will be expected to consider cases referred to it by the African Commission and State parties to the Protocol. Additionally, individuals and NGOs will be able to approach the Court where a state party recognises such a jurisdiction. It is expected to render binding decisions and the execution of its judgements will be monitored by the Council on behalf of the OAU Assembly.

The success of the African Court is largely dependent upon the operational efficacy of the African Commission as the two are designed to complement each other. Necessarily, the OAU must strive to strengthen the role, functioning and working practices of the African Commission.

C. Sanctions on Non-compliance, Sufficiency and Effectiveness

Non-compliance or failure by the accused State to respond to a communication against it has been the most common impediment in achieving effectiveness for the Complaint system. Further, while state parties are obligated to submit periodic reports every two years indicating the legislative or other measures that have been taken with a view to giving effect to the rights and freedoms recognised in the Charter, this hardly happens.

In case of default, the Commission may send a reminder to the concerned State through
the intermediary of the Secretary General of the OAU. However, several states have shown such notoriety as to demonstrate complete indifference to the reminders and communication from the Secretary-General. Many times this goes unnoticed since the African Commission lacks the mechanism to ensure compliance. The Commission also lacks the resources to introduce on-the-spot investigations, in turn delaying exercise of its protective mandate. The option left for the Commission is to issue reminders to the defaulting state, through the instrumentality of the Secretary-General, while the victims of violations whine away without any meaningful remedy.

The Commission may make mention of the defaulting state to the Assembly of Heads of State and Government of the OAU. It is to be observed that such a remedy is not effective. As a means of ensuring compliance, it is insufficient since all that the OAU Assembly does is to note the defaulting state but imposes no further penalty. It is recommended that stricter sanctions be imposed on such defaulting states. Member states must exhibit the spirit of Pan-Africanism in implementing the provisions of the Charter. The OAU ought to be able to recommend the imposition of economic and or other sanctions upon States that blatantly flout the Charter.

**D. RECENT DEVELOPMENTS**

1. The Additional Protocol to the Charter Establishing the African Court on Human and Peoples’ Rights

The Protocol on the establishment of the African Court was worked out at a meeting of experts jointly organised by the OAU, the ICJ and the African Commission, which took place in South Africa in September 1995. The draft was circulated among the member States and the final statute creating the Court was adopted by the OAU Assembly of Heads of State and Government during its 34th Session in June 1998, sitting in Ouagadougou, Burkina Faso.

The Protocol requires 15 ratifications to come into force, but only three have been
received. It is in this connection that a meeting of experts was held in Burkina Faso in December 1998 to address, *inter alia*, modalities of ensuring early ratification of the Protocol establishing the African Court on Human and Peoples’ Rights. During this meeting certain recommendations were made, including that the participants shall:

i) Seek to use the good offices of the Chairman of the OAU to appeal to Heads of State and Government for early ratification of the Protocol.

ii) Identify eminent and competent personalities in the different regions of Africa who would enlighten the public and Government officials on the Protocol and appeal for early ratification.

iii) Seek the assistance of the Ministers of Justice / Attorney General, Legal experts and Diplomats who were involved in the preparatory process leading to the adoption of the Protocol to urge and support the ratification process.

iv) Prepare a ratification kit to assist state officials in explaining the provisions of the Protocol and in drafting the necessary background documents for the attention of the ratifying authorities.

v) Prepare a write up for use by the media to disseminate accurate information on the Protocol Establishing the Court.

vi) Explore the possibility of sending missions to various countries and regions to urge all concerned parties to expedite the ratification process.

vii) Mobilize support from the human rights community, including legal and other professional associations, NGOs and National Human Rights Institutions to disseminate the Protocol and contribute to the campaign for ratification of the Protocol.

viii) Identify focal points and officials in each country or region to coordinate the
efforts for ratification of the Protocol. 27

It is therefore up to the African policy makers and civil society to rededicate themselves to the cause of human rights and support the recommendations and the process for early ratification of the Protocol.


This captures a programme of action considered to be a continuation of the 1992-96 programme of action of the African Commission on Human and Peoples’ Rights adopted by the 10th Ordinary Session of the African Commission.

The current Plan of Action is centred on the promotional activities of the Commission and is also meant to pay attention to the mission of protection and co-operation. 28 Among the highlighted programmes are the dissemination of information on the work of the African Commission and Charter in more than one language, and publicity of the Charter to the general public. It is also intended to organise promotional workshops and training courses on the functions of the Commission. The plan aims to canvass for the necessary human, material and financial resources for the running of the Secretariat of the Commission in a bid to strengthen it. It envisages the setting up of a co-operative framework between the institutional, regional and national institutions for human rights, with NGOs and Inter-governmental organs to help implement the Commissions mandate.

The programme represented the conceptual framework that was meant to guide the Commission during the five-year plan.

3. The Grand Bay (Mauritius) Declaration and Plan of Action

The Grand Bay (Mauritius) Declaration Plan of Action pursues the same objectives as the previous preliminary plans adopted in 1988 and the Plan of Action of the African Commission on Human Rights for 1992-1996. These plans were implemented only partially because of the serious resource constrains facing the Commission. The current
In its construction, the Plan appreciates the new developments in Africa especially in the political, social, economic and cultural spheres. These changes add new dimensions to the work of the Commission, and hence its need to adjust and be in a position to attend to the new challenges.

Further, the plan seeks to go further than promotion and protection of human rights in Africa as it seeks to make co-operation and close collaboration between the African Commission and its partners within and without Africa a core feature. Quite importantly also, unlike any plan preceding it, the Plan emanates from the first ever OAU Ministerial Conference on Human Rights, and expressly admits and underscores the role of NGOs.

The African Commission, which will carry out this function of co-ordinating the various initiatives of its members, will largely depend on the co-operation of all its partners in order to achieve maximum results in the promotion and protection of human and peoples' rights in Africa.

4. Restructuring of the OAU Secretariat and Establishment of a Human Rights Department

As discussed earlier, the OAU Secretariat provides the Commission with the necessary human, material and financial means for the effective exercise of its functions. This has however proved to be inadequate. But for assistance from donors, even the little activity currently being undertaken by the Commission would not be possible. The Secretariat is plagued with the problem of unqualified staff and a collapsed infrastructure. The Plan of Action (1996-2001), makes certain proposals regarding the Secretariat of the OAU, which if implemented will assist in strengthening the Secretariat. But the implementation of this programme in turn requires extra support from donors in terms of provisions of adequate human and material resources to undertake the exercise.
The OAU Secretariat has within its political department a legal division, which provides legal services to the organisation. This includes drafting of treaties and agreements and also preparing reports for the Secretary General on the ratification of treaties.

However, the role of the Legal division as regards human rights issues is not clear. There seems to be a lack of clarity as regards the specific roles carried out by the legal division and the African Commission. Often, the African Commission has been caught up in the position of acting as a representative of the OAU, where it is required to deal with matters of resources and budgets. Given this scenario, and as earlier mentioned, it is imperative that the OAU speeds up the establishment of a permanent mechanism in the nature of a Human Rights Division, to specifically liaise on human rights issues, and also to ensure the integration of human rights issues into the activities of the different organs of the OAU.

5. Constitutive Act of the African Union

In its thirteen years of effective life the Charter has been much criticised it has been said to be conceptually confused and impossible to rationalize, to be invoking the term "peoples" inconsistently in different articles resulting in varied meanings. The Charter has been attacked on the ground that the African Commission on Human and People’s Rights- the Charter’s chief organ so far is powerless and totally subservient Assembly, unrepresentative, wanting in independence and lacking in innovation, while financially crippled and over-dependent on Western donors.

On 11th July 2000, in Lomé, Togo, the 36th Ordinary Session of the Assembly of heads of State and Government of The African Union adopted the Constitutive Act of the African Union intended to rectify the shortcomings of the Charter.

Article 33 (1) of the said Act, states that:

“This Act shall replace the Charter of the Organization of African Unity”.

The main objectives of the Union include inter-alia:
To achieve greater solidarity between African countries and the peoples of Africa.

To encourage international co-operation taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights

Promote peace, security and stability on the continent

Promote democratic principles and institutions, popular participation and good governance

Promote and protect human and peoples rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments

Promote sustainable development at the economic, social and cultural levels

Advance the development of the continent by promoting research in all fields, particularly science and technology

Work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent

The Act establishes 9 organs and delegates to them the powers to perform its functions. The chief organs are as follows:

i. The Assembly which is the supreme organ of the Union, is composed of heads of State and Government or their duly accredited representatives

ii. The Executive Council whose function is to co-ordinate and take decisions on policies in areas of common interest to the member states

iii. The Pan-African Parliament, which is established in order to ensure the full participation of African peoples in the development and economic integration of the continent.

iv. The Court of Justice

v. The Commission, which is the secretariat of the Union.
vi. The Permanent Representatives Committee which is charged with the responsibility of preparing the work of the Executive Council and acting on the Executive Council's instructions.

vii. The Specialized Technical Committees charged with duty of preparation supervision follow up evaluation and implementation of projects and programs of the Union that fall within their respective areas of competence.

viii. The Economic, Social and Cultural Council acts as an advisory organ composed of different social and professional groups of the member states of the Union.

ix. The Financial Institutions namely:

   a) The African Central Bank

   b) The African Monetary Fund, and


The Assembly imposes appropriate sanctions on any member State that fails to comply with the decisions and policies of the Union.
ENDNOTES TO CHAPTER FIVE

1 The International Convention on the Elimination of All Forms of Racial Discrimination at Article 9, The Convention on the Rights of the Child at Article 44, the Convention on the Elimination of All Forms of Discrimination Against Women at Article 18, the International Covenant on Economic, Social and Cultural Rights at Article 17 and the International Covenant on Civil and Political Rights at Article 40 all provide for state reporting.


3 See appendix 5 on status of submission of State reports as at May 2001

4 Supra, Note 2, p.42

5 Adopted by the OAU Assembly during its 29th Ordinary Session held on 28-30th June 1993 in Egypt.

6 Supra, Note 2, p.42.


8 No. 31 of 1989.

9 No. 69 of 1992.

10 No. 129/94 Civil Liberties Organisation/ Nigeria.

11 No. 59/91.

12 No. 90/93.

13 No. 131/94.

14 No. 45/90.

15 No. 83/92, No. 88/93, No. 91/93.

Free Legal Assistance Group, *et al* versus Zaire. No. 25 of 89.


Amnesty International on behalf of Orton and Vera Chirwa, Case No. 78 of 92.

For a further analysis see Hansungule *Supra*, Note 2, p.38.

*Supra*, Note 18; Article 52

As was the situation in the Rwanda and Burundi in 1994


*Supra* note 1, at page 39.


Evaluation report of 1998 by the Danish Centre for human rights


Annexure No. 4.
CHAPTER SIX

CONCLUSION

TOWARDS GREATER EFFICACY: PROPOSALS FOR REFORM

1. THE AFRICAN CHARTER

i) The African Charter came into force more than 12 years ago. With time a number of weaknesses and obstacles and omissions have been identified, which should be dealt with. The Charter should be revised and the claw back clauses revoked at some point. In the meantime the Commission should continue to interpret the Charter both broadly and boldly.

ii) Neither the African Charter on Human & Peoples Rights, nor the Rules appended thereto exclude engagements incompatible with the office of a Commissioner, so that a President, Prime Minister, or other Minister may be a member of the Commission. There's need to amend the Charter to follow the example of Article 18 of the Protocol establishing the Court, which declares certain offices to be incompatible with the office of a judge. Meantime, there’s need to lobby against election of persons who hold certain positions within the Government. This is all the more necessary in view of the many dictatorial regimes in Africa.

2. THE AFRICAN COMMISSION

i) The African Commission should draft and recommend for adoption by the OAU Assembly, guidelines and criteria for independence and impartiality, which would disqualify candidates defined as 'political' or 'governmental' appointees, and
ensure adequate gender balance and representation of the different regions and legal systems of Africa in the African Commission.

ii) The African Commission should conclusively draft and recommend for adoption with the assistance of NGOs, guidelines to ensure that there is gender equity among the Commissioners. There should be established a practice of succeeding male-female nominations by States and further lobby the Commission to suggest to the OAU Chairman to publish those to be elected nominees by States for public censure in the respective countries.

iii) The African Commission should similarly amend its rules of procedure to state clearly that members of the African Commission should refrain from dealing with and considering reports, including periodic reports, and complaints of human rights violations and particularly in any investigations concerning their own countries or countries in which they are otherwise involved, in the course of their alternative engagement. This would make the Commissioner immune to criticism from such governments for being party to critical decisions and reports.

iv) The African Commission should propose, for adoption by the OAU Assembly, a division of the continent into nine regions commensurate to the number of Commissioners, to avoid undue concentration of Commissioners from one region.

v) It is recommended that the Commission should appoint Commissioners who are less conservative and more forthright in their findings against defaulting governments, and thereby assist in the observance and respect for human rights.

vi) The Commission should prefer guidelines on who are “peoples” in the African sense, and prescribe requisite prequalifications to claims by an entity or entities to the rights of peoples.
vii) It is thought the Commission and African NGOs should design ways of solicitation and purveyance of funding especially from donors within the Continent.

viii) The Commission should shift the burden of proving non-compliance with the rule of exhaustion of local remedies to the State. It should be the responsibility of the State to help the Commission with the information on whether the local remedies have been exhausted since it has the capacity to know the prevailing legal situation.

ix) Similarly, the Commission should be flexible and consider the reasons put forward by a complainant explaining why they cannot exhaust local remedies and make appropriate directions rather than brush the Complaint aside.¹

x) It is proposed that the Commission should come up with more effective mechanisms for dealing with emergencies, more effective and speedier than the present set-up.

xi) The Commission should work out an information strategy including the quick and timely publication, in the necessary languages, of all decisions taken on state reports and complaints about human rights violations. The final decision on complaints should be well supported on legal grounds, well formulated and published as quickly as possible. In particular, the latest Annual Activity Reports should immediately be published in a readable volume, Communications being processed should be openly registered and published in for example among the Newsletter and in the Commission's website. The recently established Newsletter could be an important instrument for such a strategy.

xii) The Commission's meetings should be better prepared with a well thought through agenda and be of sufficient length to allow for the agenda to be exhausted.

xiii) The Secretariat's plans for promotional activities should be financed and implemented. More countries should be visited by teams from the Commission. The
Commission must recognise and support the fact that local NGOs take over where the Commission does not reach.

xiv) The Secretariat must now consolidate its operations. A strategic plan should be worked out on how to implement its duties with the present number of staff. Improved efficiency of the administration, accountability, transparency and a good recruitment policy should be emphasized. The plan should also assess the total costs necessary for the efficient operation of the Commission, an assessment which should be borne in mind for fund raising.

xv) Additionally in attempting to improve the efficiency of the existing safeguard mechanisms, the relations of co-operation between the Commission and the member states should be re-defined in more friendly terms so as to convince the states that action for human rights does not necessarily come from a wish to be a nuisance, but makes it possible to ensure the proper governance of public affairs and management in the interest of the citizens.

xvi) A study should be undertaken on the issue of how much time Commissioners should be required to work for the Commission during and between meetings and the consequences of this as regards costs both for remunerations and for travel and communications. Particular consideration should be given to the needs of Special Rapporteurs. They require research assistants to produce substantial reports and publicity machinery to ensure wide attention for their findings.

xvii) Another important issue is to make it possible for the Commissioners to also work in their inter-sessional time. They must be provided with among other things funds and equipment to make this possible particularly internet/ e-mail access must be emphasised as it will save money, give them much easier/greater access to comparative information. The lack of resources has been particularly damaging for the work of the Special Rapporteurs. They have not been able to fulfil their
important tasks as they have neither time nor resources set aside to implement their work. This has to be looked into further with the aim of finding a proper solution.

3. THE AFRICAN COURT ON HUMAN AND PEOPLES RIGHTS

i) Article 3 of the Protocol gives the Court jurisdiction not only over interpretation of the Protocol and Charter, but also “any other human rights instrument ratified by the state”. How does the Court interplay with the UN system of human rights protection, with the sub-regional human rights instruments? On effective establishment of the Court, there’s need for a clear enumeration of the limits of the Court’s jurisdiction to interpret “other human rights instruments” in the Courts Rules of Procedure.

ii) While the Court is made complementary to the Commission, and Article 6(3) contemplates free transfer of cases between the two organs, it is unclear what is to be the position of a state, which ratifies the Charter but not the declaration recognising the jurisdiction of the Court, in conflict with another state, which has ratified both. The Protocol appears to presuppose that all who ratified the Charter will ratify the Protocol, and the Court, on establishment, must clearly give guidelines on this.

iii) The Protocol positively gives the Court jurisdiction to render advisory opinions. Under Article 4, this appears possible only at the instance of states, the OAU or other inter-governmental organisation and appears to preclude individuals and NGOs even where their competence to institute cases in the Court is recognised as under Articles 5(3) and 34(6). Short of amendment to Article 4(1), the Court on establishment should liberally interpret the phrase “any other African Organisation recognised by the OAU” to include NGOs with standing before the Court.
iv) The Protocol creates the Court to “complement” the protective mandate of the Commission, and may transfer cases to the latter under Article 6(3). The relationship between the two bodies is rather hazy and ambiguous, and is dependant upon the drawing up of Rules of Procedure. The Rules of Procedure will be vital to the success or failure of the African Court as they will create the framework for the operationalisation of the Protocol. There’s need to sensitise the Court on effective establishment of the need to clearly delineate the relationship between the two organs.

v) The Protocol exhibits the same problem faced at the Commission level on nomination of candidates for judges’ posts at the Court. Nominations are still by states, and gender representation is unsuccessfully attempted by requiring “due consideration” for adequate gender representation by states, without clearer mechanisms to ensure that. Also, on nomination, contradiction appears irrelevant between Article 11(1) and 12(1). While the latter allows nominations of non-nationals without limiting that to nationals of only African members states, the former allows only nationals of member states to be elected. Similar ambiguity as with gender is exhibited in Article 14(2), which provides for regional representation without providing mechanisms for effectuation or other guidelines. On effective establishment, the Court should draft and recommend for adoption by the OAU Assembly, guidelines requiring at least one of the three nominees to be of opposite gender to the other two, that the non-national nominable by a state must be a national of a member state, and that the continent be divided into regions commensurate with the number of Judges posts.

vi) While Articles 18 of the Protocol meritoriously injuncts persons who undertake activities incompatible with the office of a judge from being elected, the Article gives no further guidance. There’s thus need for the Court on effective establishment to give clear guidelines on its rules of procedure on which engagements would be considered incompatible.
vii) While Article 22, meritoriously, excludes judges from member states from entertaining matters, from that state, this injunction does not extend to non-national judges nominated by that state. In its rules of Procedure, the Court must also exclude such persons from sitting or otherwise participating.

viii) Unlike deficiencies at the Commission, the President of the Court is engaged on full time basis. Further, the Court can award compensatory and reparatory relief. Additionally, Article 27(2) allows “such provisional measures as it (the Court) deems necessary”. On establishment, the Court should be urged to interpret this article liberally and functionally.

ix) Subservience of the Court, like the Commission, to the OAU Assembly and Council of Ministers is evident in the Protocol. Every effort must be made by the Court, in its Rules of Procedure, and by NGOs, to minimise the Omni-presence of the OAU in the Court.

4. THE OAU SECRETARY-GENERAL

i) The OAU Secretary-General should attend, or send a senior representative regularly to the meetings of the African Commission.

ii) The Secretary-General should also send a representative from the proposed Human Rights Division to all meetings of the African Commission with the aim of informing participants about the deliberations and activities of the OAU and to gather information on human rights situations.

iii) The Secretary-General should raise the issue of overdue reports systematically with member states as an integral part of his communications with them citing the defaulting states by name.
iv) The Secretary-General should also ensure implementation of the Resolution on the African Commission on Human and Peoples’ Rights. The Resolution recommended that:

"States Parties to the African Charter designate high ranking officials to act as focal points in the relation between the African Commission and the States as such focal points would facilitate the follow-up on the Commission’s recommendations and contact between States and the Commission."

v) The Secretary-General should establish a co-operative relationship with the Office of the UN High Commissioner for Human Rights in regard to the provision of technical assistance to OAU member states for the preparation of periodic reports.

vi) It is recommended that the Secretary-General should include a specific section on human rights in every report on conflict situations presented to the Council of Ministers with specific recommendations on the measures to be taken to prevent further human rights violations. Additionally, and even on default by the Secretary-General, the Council itself should include on its agenda an item dealing specifically with the human rights situation in Africa and request the Secretary-General to bring to its attention serious situations of human rights violations which are likely to affect the achievement of the purposes of the OAU.

5. ALL MEMBER STATES OF THE OAU

i) All member states of the OAU should provide all overdue reports to the African Commission as a matter of priority, in particular, those states who have never submitted a report should be urged to do so by the OAU. Respective NGOs, scholars and lawyers should keep reminding the state machinery of this.
ii) All member states of the OAU should inform the Secretary-General of the designated official who will act as a focal point between the government and the African Commission.

6. THE OAU

i) The OAU should increase the budget of the African Commission to enable it to meet for 14 days at each session.

ii) The OAU should consider providing resources for the Chairperson of the African Commission to serve on a full-time basis during the tenure of two years.

iii) The OAU must provide resources for computers, electronic mail, and a web site and maintain the existing systems at the Secretariat in order to meet many of the objectives in the *Mauritius Plan of Action*.

iv) The OAU should provide essential resources for the Secretariat of the African Commission including additional permanent posts.

v) Indeed, the OAU should integrate human rights into every sphere of its work, by establishing a Human Rights Division to incorporate human rights issues into the work and programs of the various bodies and organs of the OAU. This department should become the central liaison department on human rights issues.

vi) It is recommended that stricter sanctions be imposed on defaulting states. Member states must exhibit the spirit of Pan-Africanism in implementing the provisions of the Charter. The OAU ought to be able to recommend the imposition of economic and or other sanctions upon States that blatantly flout the Charter.
7. THE OAU ASSEMBLY

i) The OAU Assembly should require the African Commission to produce regular and detailed reports, including the production of summary records of its meetings.

ii) For there to be effective protection of human and peoples’ rights enshrined in the African Charter, the political organs of the OAU, especially the OAU Assembly, have to play a significant role in ensuring compliance with the African Charter. They should make specific recommendations to relevant states on the measures that should be adopted to conform to their treaty obligations.

iii) As the Council is already entrusted with the responsibility of considering and deciding on the majority of issues, which face the OAU, it is our suggestion that the OAU Assembly could delegate part of its responsibility in relation to the African Charter and African Commission to the Council of Ministers. In terms of Article XIII (2) of the OAU Charter, the Council “shall take cognisance of any matter referred to it by the OAU Assembly”. Therefore the OAU Assembly could refer consideration of the report of the African Commission and any other matter brought to its attention by the African Commission, to the Council, and request it to prepare recommendations for consideration by the OAU Assembly. This would include situations of serious and massive violations of human rights. Once the OAU Assembly has adopted the recommendations, it could request the Council to implement its decision in accordance with Article XII (2) of the OAU Charter.

iv) The OAU Assembly should request the Council to establish a procedure to ensure compliance and follow-up of its decisions arising from consideration of the report of the African Commission. Such procedure should include a regular report by the Secretary-General to each Session of the Council on the extent to which member states have complied with the OAU Assembly’s decisions and the Resolutions emanating from the report of the African Commission.
v) It is imperative that the OAU Assembly ensures the creation of a procedure within the OAU to implement the decisions of the African Commission and the African Court, once established. Non-compliance with the decisions of the African Commission (and the African Court, once established) amounts to a clear repudiation of the obligations undertaken by the member states of the OAU under the African Charter and should be taken up by the political organs of the OAU as a threat to the principles and objectives enshrined in the OAU Charter.

vi) In summary therefore, it is our opinion that for more effective effectuation of the recommendations of the African Commission and the African Court once established, the OAU Assembly should delegate its responsibility to consider their reports to the Council of Ministers and request it to prepare recommendations for adoption by the OAU Assembly thereafter. Additionally, it should request the Council of Ministers to establish a procedure to ensure compliance and follow-up with its decisions arising from its consideration of the report of the African Commission.

vii) The Council should consider including on its agenda, an item dealing specifically with the human rights situation in Africa and request the Secretary-General to bring to its attention serious situations of human rights violations which are likely to affect the achievement of the purposes of the OAU as stipulated in Article 11 of the OAU Charter and which include the achievement of “a better life for the peoples of Africa”. This report of the Secretary-General could include information from the African Commission, NGOs and UN bodies such as the Human Rights Committee or country and thematic reports of the UN Commission on Human Rights.

viii) The OAU Assembly should play a significant role in ensuring compliance with the African Charter and making specific recommendations to relevant states on the measures that should be adopted to conform to their treaty obligations.
8. STATE PARTIES

i) State parties would need to rededicate themselves to their obligations by providing all overdue reports to the African Commission as a matter of priority. Periodic reports serve both promotional and protectional purposes. Dialogue initiated between the Commission and the Governments normally result in an improvement of national human rights-friendly legislation or positive practices relating to human rights.

ii) State parties should strive to develop (if they have not already) a human rights curriculum at the level of primary and secondary education. They should also be encouraged to incorporate issues of human rights in Africa in institutions of higher learning especially law schools, in their syllabus to ensure an educated and informed populace who are aware of the rights owed to them. This human rights education should also aim at overcoming and correcting certain attitudes and traditional practices that militate against the human rights of women.

9. NON-GOVERNMENTAL ORGANISATIONS

i) African NGOs need to work closely with the Commission, encouraging greater innovation by the Commission under Article 46. Accordingly, the use of *inter alia* "Special Rapporteurs" engagement of "Fact-Finding Missions", and convention of "Special meetings" to discuss the human rights situation in a given country is to be encouraged,

ii) To have an efficient, innovative and independent panel of Commissioners, national NGOs should take a keen interest in the nominees of the state, and
network on their qualities and capabilities, externally with other national and international NGOs, and continue lobbying for nomination of competent persons of standing from within. National NGOs are encouraged to propose names for nomination.

iii) NGOs should assist the African Commission to draft and recommend for adoption, guidelines to ensure gender equity among the Commissioners. African and international NGOs, should lobby for a practice of succeeding male-female nominations by states; lobby the Commission to suggest to the OAU chair to publish nominees by states for censure, and lobby for consideration of amendment of the Charter to entrench measures for ensuring gender balance.

iv) The Commission recommended that October 21st (the date the Charter came into force) should be celebrated as African Day on Human & Peoples Rights, much like December 10th on which the UN commemorates the Universals Declarations of Human Rights. African NGOs should support the idea, popularise it and organise the celebrations as part of our efforts in supporting the Commission.

v) African NGOs must work towards optimising the quality of information and exchange relations between the Commission, the NGOs, the populace and the media in order to constitute efficient tools of early warning, so as to have a reliable knowledge of situations which threaten human rights in Africa. The Commission has shown willingness to foster this polygamous marriage, and it is now for the NGOs and the media to demonstrate their acceptance.

vi) Cognisant of the truism that reliance of funding for the Commission on the OAU has proved insufficient and hampered the Commission’s activities, the Commission and NGOs should continue to solicit and purvey, finding for the Commission’s activities, without attaching such agendum as the donor world prefer.
vii) Beside the submission of their own report on activities undertaken, it is recommended that NGOs should provide parallel reports alongside the State Report, a move already taken by some.

viii) NGOs and in particular international NGOs have to reassess their ways of working and find new avenues to broaden the involvement of local NGOs and other parties within the different African states.

ix) NGOs must forcefully pressurize states to immediately ratify the Protocol establishing the African Court on Human Peoples Rights to enable the Court commence its functions.

x) National, regional, continental and international NGOs should foster meaningful co-operation with the Commission towards co-organising fora for discussion of Human Rights, in the style of the ICJ in organising the NGO forum.

xi) NGO's must work to create and increase awareness of the citizenry of their human and people's rights by mounting human rights literary campaigns through the media seminars and in teachings. For, an informed citizenry will expect more from the government, which will enhance the level of respect for human rights.
ENDNOTES TO CHAPTER SIX

1 John K. Modise vs. Botswana No. 97 of 1993,

2 Comments of Mr. M.K. Rezzag Bara, Member of the African Commission on Human and Peoples’ Rights.

3 Adopted by the OAU Assembly during its 29th Ordinary Session held on 28-30th June 1993 in Egypt.


5 Resolution AHG (165 XXV) Annex VII.
SELECT BIBLIOGRAPHY

A) TEXTBOOKS


2. Human Rights In Developing Countries, Peter Baehr, Lalaine sadiwa & Jacqueline Smith(Eds), Yearbook, 1996.


13. Prof J.B. Ojwang, Laying A Basis For Rights, An Inaugural Lecture Delivered Before The University Of Nairobi, Nairobi, University Of Nairobi Press, 199


B) ARTICLES


15. Howard, “Is There An African Concept Of Human Rights?”, In Foreign Policy And Human Rights, R.J. Vincent (Ed), 1985, University Of Toronto Development


20. Prof J.B. Ojwang, “Legal Transplantation; Rethinking The Role And Significance of Western Law In Africa”, In P. Sack and E. Minchin (Eds), Legal Pluralism (1986) 99.


APPENDICES


5. Table Of Ratification And Signatures Of The Main United Nations And African Human Rights Instruments.
AFRICAN CHARTER
ON HUMAN AND PEOPLES' RIGHTS

Published by the Secretariat of the African Commission on Human and Peoples' Rights.
P.O. Box 673
Banjul
The Gambia

With the Assistance of UNESCO
PREAMBLE:

The African States members of the Organisation of African Unity, parties to the present convention entitled « African Charter on Human and Peoples' Rights »:

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a preliminary draft on an African Charter on Human and Peoples' Rights providing *inter alia* for the establishment of bodies to promote and protect human and peoples' rights;

Considering the Charter of the Organisation 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 »;

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their international protection and on the other hand that the reality and respect of peoples' rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

Convinced that 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;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo colonialism, apartheid, Zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instruments adopted by the Organisation of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

HAVE AGREED AS FOLLOWS:
PART I

RIGHTS AND DUTIES

CHAPTER I
HUMAN AND PEOPLES' RIGHTS

Article 1

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

Article 2

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, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings 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 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.
Article 6
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.

Article 7
1. Every individual shall have the right to have his cause heard. This comprises:
   a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
   b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
   c) the right to defence, including the right to be defended by counsel of his choice;
   d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8
Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9
1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10
1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.
Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

**Article 12**

1. Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with the law of those countries and international conventions.
4. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

**Article 13**

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

**Article 14**

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.
Article 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

Article 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17

1. Every individual shall have the right to education.
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 18

1. The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral.
2. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.
Article 20

1. All peoples shall have right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.
3. All peoples shall have the right to the assistance of the States Parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States Parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.
1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organisation of African Unity shall govern relations between States.

2. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that:
   a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter;
   b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

Article 24

All peoples shall have the right to a general satisfactory environment favourable to their development.

Article 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 26

States parties to the present 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.
CHAPTER II
DUTIES

Article 27

1. Every individual shall have duties towards his family and society, the State and other legally recognised communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty:
1. 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;
2. To serve his national community by placing his physical and intellectual abilities at its service;
3. Not to compromise the security of the State whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;
5. To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to his defence in accordance with the law;
6. To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society;
7. 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;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.
PART II
MEASURES OF SAFEGUARD

CHAPTER I
ESTABLISHMENT AND ORGANISATION OF THE
AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called «the Commission», shall be established within the Organisation of African Unity to promote human and peoples' rights and ensure their protection in Africa.

Article 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.

2. The members of the Commission shall serve in their personal capacity.

Article 32

The Commission shall not include more than one national of the same State.

Article 33

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

Article 34

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the States Parties to the present Charter. When two candidates are nominated by a State, one of them may not be a national of that State.
Article 35

1. The Secretary General of the Organisation of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates;

2. The Secretary General of the Organisation of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the Heads of State and Government at least one month before the elections.

Article 36

The members of the Commission shall be elected for a six year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of three others, at the end of four years.

Article 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organisation of African Unity shall draw lots to decide the names of those members referred to in Article 36.

Article 38

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

Article 39

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary General of the Organisation of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.

2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary General of the Organisation of African Unity, who shall then declare the seat vacant.

3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.
Article 40

Every member of the Commission shall be in office until the date his successor assumes office.

Article 41

The Secretary General of the Organisation of African Unity shall appoint the Secretary of the Commission. He shall provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organisation of African Unity shall bear cost of the staff and services.

Article 42

1. The Commission shall elect its Chairman and Vice Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form the quorum.
4. In case of an equality of votes, the Chairman shall have a casting vote.
5. The Secretary General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

Article 43

In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Communities of the Organisation of African Unity.

Article 44

Provision shall be made for the emoluments and allowances of the members of the Commission in the Regular Budget of the Organisation of African Unity.

CHAPTER II

MANDATE OF THE COMMISSION

Article 45

The functions of the Commission shall be:
1. 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, organise 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 legislation.

c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

3. Interpret all the revisions of the present Charter at the request of a State Party, an institution of The OAU or an African Organisation recognised by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

CHAPTER III
PROCEDURE OF THE COMMISSION

Article 46
The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organisation of African Unity or any other person capable of enlightening it.

COMMUNICATION FROM STATES

Article 47
If a State Party to the present Charter has good reasons to believe that another State Party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. The communication shall include as much information as the enquirer may consider necessary to be in possession of the enquired State.

Article 48
If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

Article 49
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 Organisation of African Unity and the State concerned.

Article 50
The Commission can only deal with a matter submitted to it after making sure that all local remedies have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

Article 51
1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

Article 52
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, within a reasonable period of time from the notification referred to in Article 48, a report to the States concerned and communicated to the Assembly of Heads of State and Government.
Article 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

Article 54

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

OTHER COMMUNICATIONS

Article 55

1. 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.

2. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communication relating to Human and Peoples' Rights referred to in Article 55 received by the Commission, shall be considered if they:

1. indicate their authors even if the latter request anonymity,

2. are compatible with the Charter of the Organisation of African Unity or with the present Charter,

3. are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity,

4. are not based exclusively on news disseminated through the mass media,

5. are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged,

6. are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and

7. do 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 Organisation of African Unity or the provisions of the present Charter.
Article 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

Article 58

1. When 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.

2. 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.

3. 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.

Article 59

1. 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.

2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.

3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

CHAPTER IV
APPLICABLE PRINCIPLES

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 Organisation 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 Specialised Agencies of the United Nations of which the parties to the present Charter are members.

Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognised by member states of the Organisation of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognised by African states as well as legal precedents and doctrine.

Article 62

Each State Party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognised and guaranteed by the present Charter.

Article 63

1. The present Charter shall be open to signature, ratification or adherence of the member states of the Organisation of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary General of the Organisation of African Unity.
3. The present Charter shall come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the member states of the Organisation of African Unity.

PART III

GENERAL PROVISIONS

Article 54

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.
2. The Secretary General of the Organisation of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organisation within three months of the
constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

Article 65

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by that State of its instrument of ratification or adherence.

Article 66

Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.

Article 67

The Secretary General of the Organisation of African Unity shall inform member states of the Organisation of the deposit of each instrument of ratification or adherence.

Article 68

The present Charter may be amended if a State Party makes a written request to that effect to the Secretary General of the Organisation of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States Parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States Parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

Adopted by the eighteenth Assembly of Heads of State and Government, June 1981 - Nairobi, Kenya.
PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS
PRESS RELEASE

25TH JANUARY 2004:
A TURNING POINT IN THE HISTORY OF THE AFRICAN SYSTEM FOR THE PROTECTION OF HUMAN AND PEOPLES’ RIGHTS

The Protocol to the African Charter on Human and Peoples’ Rights establishing an African Court on Human and Peoples’ Rights, which was adopted in Ouagadougou, Burkina Faso, in 1998 by the Conference of the Heads of State and Government of the Organization of African Unity, currently African Union, has just received a new impetus.

On 26th December 2003, Comoros Islands deposited their instrument of ratification of this Protocol. Pursuant to the provisions of its Article 34.3, the Protocol shall enter into force 30 days following the deposit of the 15th instrument of ratification.

Thus, 25th January 2004 will mark the coming into force of the aforementioned Protocol.

There is no doubt that the long awaited establishment of the African Court on Human and Peoples’ Rights will strengthen the existing mechanism for the protection of human and peoples’ rights in Africa.

The African Commission is pleased with this memorable advent and hails the significant contribution it has received from the States Parties and the community of the defenders of human rights, who spared no efforts to move forward the process of formulation, adoption and ratification of this invaluable instrument.

The African Commission urges Member States of the African Union and all its partners to take necessary steps to facilitate the setting up and effective functioning of the Court.

The African Commission on Human and Peoples’ Rights makes an urgent appeal to the States Parties that have not yet ratified the said Protocol to do so as expeditiously as possible in order to give this important human rights protection instrument a really pan African scope.

Banjul, 23rd January 2004
PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Member States of the Organization of African Unity hereinafter referred to as the OAU, States Parties to the African Charter on Human and Peoples' Rights:

Considering that the Charter of the Organization of African Unity recognizes that freedom, equality, justice, peace and dignity are essential incentives for the achievement of the legitimate aspirations of the African peoples;

Noting that the African Charter on Human and Peoples' Rights reaffirms adherence to the principles of human and peoples' rights, freedoms and duties enshrined in the declarations, conventions and other instruments adopted by the Organization of African Unity, and other international organizations;

Recognizing that the twofold objective of the African Charter on Human and Peoples' Rights is to ensure on the one hand promotion and on the other the protection of human and peoples' rights, freedoms and duties;

Recognizing further, the efforts of the African Commission on Human and Peoples' Rights in the promotion and protection of human and peoples' rights since its inception in 1987;

Recalling resolution AHC/Res.230 (XXX) adopted by the Assembly of Heads of State and Government in June 1994 in Tunis, Tunisia, requesting the Secretary-General to convene a Government experts' meeting to ponder, in conjunction with the African Commission, over the means to enhance the efficiency of the African Commission and to consider in particular the establishment of an African Court on Human and Peoples' Rights;

Noting the first and second Government legal experts' meetings held respectively in Cape Town, South Africa (September, 1995) and Nouakchott,
Firmly convinced that the attainment of the objectives of the African Charter on Human and Peoples' Rights requires the establishment of an African Court on Human and Peoples' Rights, to complement, and reinforce the functions of the African Commission on Human and Peoples' Rights.

HAVE AGREED AS FOLLOWS:

Article 1  ESTABLISHMENT OF THE COURT

There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights (hereinafter referred to as "the Court"), the organization, jurisdiction and functioning of which shall be governed by the present Protocol.

Article 2  RELATIONSHIP BETWEEN THE COURT AND THE COMMISSION

The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission") conferred upon it by the African Charter on Human and Peoples' Rights (hereinafter referred to as "the Charter").

Article 3  JURISDICTION

1. The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.

2. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.
Article 4  ADVISORY OPINIONS

At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate or dissenting decision.

Article 5  ACCESS TO THE COURT

The following are entitled to submit cases to the Court

a. The Commission;

b. The State Party which has lodged a complaint to the Commission;

c. The State Party against which the complaint has been lodged at the Commission;

d. The State Party whose citizen is a victim of human rights violation;

e. African Intergovernmental Organizations.

When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.

The Court may entitle relevant Non Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.
Article 6   Admissibility of Cases

The Court, when deciding on the admissibility of a case instituted under article 5 (3) of this Protocol, may request the opinion of the Commission which shall give it as soon as possible.

The Court shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter.

The Court may consider cases or transfer them to the Commission.

Article 7   Sources of Law

The Court shall apply the provisions of the Charter and any other relevant human rights instruments ratified by the States concerned.

Article 8   Consideration of Cases

The Rules of Procedure of the Court shall lay down the detailed conditions under which the Court shall consider cases brought before it, bearing in mind the complementarity between the Commission and the Court.

Article 9   Amicable Settlement

The Court may try to reach an amicable settlement in a case pending before it in accordance with the provisions of the Charter.

Article 10   Hearings and Representation

The Court shall conduct its proceedings in public. The Court may, however, conduct proceedings in camera as may be provided for in the Rules of Procedure.

Any party to a case shall be entitled to be represented by a legal representative of the party's choice. Free legal representation may be provided where the interests of justice so require.
3. Any person, witness or representative of the parties, who appears before the Court, shall enjoy protection and all facilities, in accordance with international law, necessary for the discharging of their functions, tasks and duties in relation to the Court.

Article 11  COMPOSITION

1. The Court shall consist of eleven judges, nationals of Member States of the OAU, elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights.

2. No two judges shall be nationals of the same State.

Article 12  NOMINATIONS

1. States Parties to the Protocol may each propose up to three candidates, at least two of whom shall be nationals of that State.

2. Due consideration shall be given to adequate gender representation in the nomination process.

Article 13  LIST OF CANDIDATES

1. Upon entry into force of this Protocol, the Secretary-General of the OAU shall request each State Party to the Protocol to present, within ninety (90) days of such a request, its nominees for the office of judge of the Court.

2. The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates nominated and transmit it to the Member States of the OAU at least thirty days prior to the next session of the Assembly of Heads of State and Government of the OAU hereinafter referred to as "the Assembly".
Article 14  ELECTIONS

1. The judges of the Court shall be elected by secret ballot by the Assembly from the list referred to in Article 13 (2) of the present Protocol.

2. The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.

3. In the election of the judges, the Assembly shall ensure that there is adequate gender representation.

Article 15  TERM OF OFFICE

1. The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.

2. The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed.

3. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor’s term.

4. All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

Article 16  OATH OF OFFICE

After their election, the judges of the Court shall make a solemn declaration to discharge their duties impartially and faithfully.
Article 17  INDEPENDENCE

The independence of the judges shall be fully ensured in accordance with international law.

No judge may hear any case in which the same judge has previously taken part as agent, counsel or advocate for one of the parties or as a member of a national or international court or a commission of enquiry or in any other capacity. Any doubt on this point shall be settled by decision of the Court.

The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law.

1. At no time shall the judges of the Court be held liable for any decision or opinion issued in the exercise of their functions.

Article 18  INCOMPATIBILITY

The position of judge of the Court is incompatible with any activity that might interfere with the independence or impartiality of such a judge or the demands of the office, as determined in the Rules of Procedure of the Court.

Article 19  CESSATION OF OFFICE

1. A judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.

2. Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.
Article 20  VACANCIES

1. In case of death or resignation of a judge of the Court, the President of the Court shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.

2. The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.

3. The same procedure and considerations as set out in Articles 12, 13 and 14 shall be followed for the filling of vacancies.

Article 21  PRESIDENCY OF THE COURT

1. The Court shall elect its President and one Vice-President for a period of two years. They may be re-elected only once.

2. The President shall perform judicial functions on a full time basis and shall reside at the seat of the Court.

3. The functions of the President and the Vice-President shall be set out in the Rules of Procedure of the Court.

Article 22  EXCLUSION

If a judge is a national of any State which is a party to a case submitted to the Court, that judge shall not hear the case.

Article 23  QUORUM

The Court shall examine cases brought before it, if it has a quorum of at least seven judges.
The Court shall appoint its own Registrar and other staff of the registry from among nationals of Member States of the OAU according to the Rules of Procedure.

The office and residence of the Registrar shall be at the place where the Court has its seat.

The Court shall have its seat at the place determined by the Assembly from among States parties to this Protocol. However, it may convene in the territory of any Member State of the OAU when the majority of the Court considers it desirable, and with the prior consent of the State concerned.

The seat of the Court may be changed by the Assembly after due consultation with the Court.

The Court shall hear submissions by all parties and if deemed necessary, hold an enquiry. The States concerned shall assist by providing relevant facilities for the efficient handling of the case.

The Court may receive written and oral evidence including expert testimony and shall make its decision on the basis of such evidence.

If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.
2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

Article 28  JUDGMENT

1. The Court shall render its judgment within ninety (90) days of having completed its deliberations.

2. The judgment of the Court decided by majority shall be final and not subject to appeal.

3. Without prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure.

4. The Court may interpret its own decision.

5. The judgment of the Court shall be read in open court, due notice having been given to the parties.

6. Reasons shall be given for the judgment of the Court.

7. If the judgment of the Court does not represent, in whole or in part, the unanimous decision of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.

Article 29  NOTIFICATION OF JUDGMENT

1. The parties to the case shall be notified of the judgment of the Court and it shall be transmitted to the Member States of the OAU and the Commission.

2. The Council of Ministers shall also be notified of the judgment and shall monitor its execution on behalf of the Assembly.
Article 30  EXECUTION OF JUDGMENT

The States Parties to the present Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its execution.

Article 31  REPORT

The Court shall submit to each regular session of the Assembly, a report on its work during the previous year. The report shall specify, in particular, the cases in which a State has not complied with the Court’s judgment.

Article 32  BUDGET

Expenses of the Court, emoluments and allowances for judges and the budget of its registry, shall be determined and borne by the OAU, in accordance with criteria laid down by the OAU in consultation with the Court.

Article 33  RULES OF PROCEDURE

The Court shall draw up its Rules and determine its own procedures. The Court shall consult the Commission as appropriate.

Article 34  RATIFICATION

1. This Protocol shall be open for signature and ratification or accession by any State Party to the Charter.

2. The instrument of ratification or accession to the present Protocol shall be deposited with the Secretary-General of the OAU.

3. The Protocol shall come into force thirty days after fifteen instruments of ratification or accession have been deposited.
4. For any State Party ratifying or acceding subsequently, the present Protocol shall come into force in respect of that State on the date of the deposit of its instrument of ratification or accession.

5. The Secretary-General of the OAU shall inform all Member States of the entry into force of the present Protocol.

6. At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.

7. Declarations made under sub-article (6) above shall be deposited with the Secretary General, who shall transmit copies thereof to the State parties.

Article 35  

1. The present Protocol may be amended if a State Party to the Protocol makes a written request to that effect to the Secretary-General of the OAU. The Assembly may adopt, by simple majority, the draft amendment after all the States Parties to the present Protocol have been duly informed of it and the Court has given its opinion on the amendment.

2. The Court shall also be entitled to propose such amendments to the present Protocol as it may deem necessary, through the Secretary General of the OAU.

3. The amendment shall come into force for each State Party which has accepted it thirty days after the Secretary-General of the OAU has received notice of the acceptance.
APPENDIX II: RULES OF PROCEDURE OF THE AFRICAN COMMISSION

Rules of Procedure of the African Commission on Human and Peoples' Rights

Deliberated and adopted by the Commission at its 18th session held in Praia, Cape Verde 6 October 1995

The African Commission on Human and Peoples' Rights, having considered the African Charter on Human and Peoples' Rights, acting in accordance with Article 42.2 of the Charter, has adopted the present revised Rules of Procedure

General Provisions

Organisation of the Commission

Chapter 1 - Sessions

Rule 1 - Number of Sessions

The African Commission on Human and Peoples' Rights (hereinafter referred to as "the Commission") shall hold sessions which may be necessary to enable it to carry out satisfactorily its functions in conformity with the African Charter on Human and Peoples' Rights (hereinafter referred to as "The Charter").

Rule 2 - Opening Date

1. The Commission shall normally hold two Ordinary Sessions a year each lasting for about two weeks.

2. The Ordinary Sessions of the Commission shall be convened on a date fixed by the Commission on the proposal of its Chairman and in consultation with the Secretary General of the Organisation of African Unity (OAU) (hereinafter referred to as "The Secretary General").

3. The Secretary General may change under exceptional circumstances, the opening date of a session, in consultation with the Chairman of the Commission.
Rule 3 - Extraordinary Sessions

1. The Commission may decide to hold extraordinary sessions. When the Commission is not in session, the Chairman may convene extraordinary sessions in consultation with the members of the Commission.

The Chairman of the Commission shall also convene extraordinary sessions:

a. At the request of the majority of the members of the Commission or

b. At the request of the current Chairman of the Organisation of African Unity.

2. Extraordinary sessions shall be convened as soon as possible on a date fixed by the Chairman, in consultation with the Secretary General and the other members of the Commission.

Rule 4 - Place of meetings

The sessions shall normally be held at the Headquarters of the Commission. The Commission, in consideration with the Secretary General may decide to hold a Session elsewhere.

Rule 5 - Notifications of the Opening Date of the Sessions

The Secretary of the Commission (hereinafter referred to as the Secretary), shall inform members of the Commission of the date and venue of the first meeting of each session. This notification shall be sent, in the case of an Ordinary Session, at least eight (8) weeks, if possible, before the Session.

Chapter II - Agenda

Rule 6 - Drawing up the Provisional Agenda

1. The Provisional Agenda for each Ordinary Session shall be drawn up by the Secretary in consultation with the Chairman of the Commission in accordance with the provisions of the Charter and these Rules.
The Provisional Agenda shall include if necessary, items on: "Communications from States", and "Other Communications" in conformity with the provisions of Article 55 of the Charter. It should not contain any information relating to such communications.

Except as specified above on the communications, the Provisional Agenda shall include all the items listed by the present Rules of Procedure as well as the items proposed by:

a) The Commission at a previous Session;

b) The Chairman of the Commission or another member of the Commission;

c) A State party to the Charter;

d) The Assembly of Heads of State and Government or the Council of Ministers of the Organisation of African Unity;

e) The Secretary General of the Organisation of African Unity on any issue relating to the functions assigned to him by the Charter;

f) A national liberation movement recognized by the Organisation of African Unity or by a non-governmental organisation.

g) A specialised institution of which the State parties to the Charter are members.

The items to be included in the provisional agenda under sub paragraphs b, c, f and g of paragraph 3 must be communicated to the Secretary, accompanied by essential documents, not later than eight (8) weeks before the Opening of the Session.

a) All national liberation movements, specialised institutions, intergovernmental or non-governmental organisations wishing to propose the inclusion of an item in the Provisional Agenda must inform the Secretary at least ten (10) weeks before the opening of the meeting. Before formally proposing the inclusion of an item in the Provisional Agenda, the observations likely to be made by the Secretary must duly be taken into account:
two thirds (2/3) of the members present and voting so decide.

6. The Provisional Agenda of the Extraordinary Session of the Commission shall include only the items proposed to be considered at that Extraordinary Session.

Rule 7 - Transmission and Distribution of the Provisional Agenda

1. The Provisional Agenda and the essential documents relating to each item shall be distributed to the members of the Commission by the Secretary who shall endeavour to transmit them to members at least six (6) weeks before the opening of the Session.

2. The Secretary shall communicate the Provisional Agenda of that session and have the essential documents relating to each Agenda item distributed at least six weeks before the opening of the Session of the Commission to the members of the Commission, member States parties to the Charter, to the current Chairman of the Organisation of African Unity and observers.

3. The draft agenda shall also be sent to the specialised agencies, to non-governmental organisations and to the national liberation movements concerned with the agenda.

4. In exceptional cases the Secretary may, while giving his reasons in writing, have the essential documents relating to some items of the Provisional Agenda distributed at least four weeks prior to the opening of the Session.

Rule 8 - Adoption of the Agenda

At the beginning of each session, the Commission shall if necessary, after the election of officers in conformity with Rule 47, adopt the agenda of the Session on the basis of the Provisional Agenda referred to in Rule 6.

Rule 9 - Revision of the Agenda

The Commission may, during the Session, revise the Agenda if need be, adjourn, cancel or amend items. During the Session, only urgent
Rule 10 - Draft Provisional Agenda for Next Session

The Secretary shall, at each session of the Commission, submit a Draft Provisional Agenda for the next session of the Commission, indicating with respect to each item, the documents to be submitted on that item and the decisions of the deliberative organ which authorized their preparation so as to enable the Commission to consider these documents as regards the contribution they make to its proceedings, as well as their urgency and relevance to the prevailing situation.

Chapter III - Members of the Commission

Rule 11 - Composition of the Commission

The Commission shall be composed of eleven (11) members elected by the Assembly of Heads of State and Government hereinafter referred to as "the Assembly", in conformity with the relevant provisions of the Charter.

Rule 12 - Status of the Members

1. The members of the Commission shall be eleven (11) personalities appointed in conformity with the provisions of Article 31 of the Charter.

2. Each member of the Commission shall sit on the Commission in a personal capacity. No member may be represented by another person.

Rule 13 - Term of Office of the Members

1. The term of office of the members of the Commission elected on 29 July 1987 shall begin from that date. The term of office of the members of the Commission elected at subsequent elections shall take effect the day following the expiry date of the term of office of the members of the Commission they shall replace.

2. However, if a member is re-elected at the expiry of his or her term of office, or elected to replace a member whose term of office has expired or will expire, the term of office shall begin from that expiry date.
If no member obtains this two-thirds majority in a second, third and fourth ballot, the member having the highest number of votes at the fifth ballot shall be elected.

The officers of the Commission shall be elected for a period of two (2) years. They shall be eligible for re-election. None of them may, however, exercise his or her functions if he or she ceases to be a member of the Commission.

Rule 18 - Power of the Chairman

The Chairman shall carry out the functions assigned to him by the Charter, the Rules of Procedure and the decisions of the Commission. In the exercise of his functions the Chairman shall be under the authority of the Commission.

Rule 19 - Absence of the Chairman

1. The Vice Chairman shall replace the Chairman during a session if the latter is unable to attend a whole or part of a sitting of a session.

2. In the absence of both the Chairman and Vice Chairman, members shall elect an acting Chairman.

Rule 20 - Functions of the Vice Chairman

The Vice Chairman, acting in the capacity of the Chairman, shall have the same rights and the same duties as the Chairman.

Rule 21 - Cessation of the Functions of an Officer

If any of the officers ceases to carry out his or her functions or declares that he or she is no longer able to serve as an officer or exercise the functions of a member of the Commission, a new officer shall be elected for the remaining term of office of his or her predecessor.

CHAPTER V - SECRETARIAT
Commission. He shall neither participate in the deliberations, nor in the voting. He may, however, be called upon by the Chairman of the Commission to make written or oral statements at the sittings of the Commission.

2. He shall appoint, in consultation with the Chairman of the Commission, a Secretary of the Commission.

3. He shall, in consultation with the Chairman, provide the Commission with the necessary staff, means and services for it to carry out effectively the functions and missions assigned to it under the Charter.

4. The Secretary General acting through the Secretary shall take all the necessary steps for the meetings of the Commission.

Rule 23 - Functions of the Secretary to the Commission

The Secretary of the Commission shall be responsible for the activities of the Secretariat under the general supervision of the Chairman, and particularly:

a) He/she shall assist the Commission and its members in the exercise of their functions;

b) He/she shall serve as an intermediary for all the communications concerning the Commission;

c) He/she shall be the custodian of the archives of the Commission;

d) The Secretary shall bring immediately to the knowledge of the members of the Commission all the issues that will be submitted to him/her.

Rule 24 - Estimates

Before the Commission approves a proposal entailing expenses, the Secretary shall prepare and distribute, as soon as possible, to the members of the Commission, the financial implications to the proposal. It is
Rule 25 - Financial Rules

The Financial Rules adopted pursuant to the provisions of Articles 41 and 44 of the Charter, shall be appended to the present Rules of Procedure.

Rule 26 - Financial responsibility

The Organisation of African Unity shall bear the expenses of the staff and the facilities and services placed at the disposal of the Commission to carry out its functions.

Rule 27 - Records of Cases

A special record, with a reference number and initials, in which shall be entered the date of registration of each petition and communication and that of the closure of the procedure relating to them before the Commission, shall be kept at the Secretariat.

Chapter VI - Subsidiary Bodies

Rule 28 - Establishment of Committees and Working Groups

1. The Commission may during a session, taking into account the provisions of the Charter establish, if it deems it necessary for the exercise of its functions, committees or working groups, composed of the members of the Commission and send them any agenda item for consideration and report.

2. These committees or working groups may, in consultation with the Secretary General, be authorised to sit when the Commission is not in session.

3. The members of the committees or working groups shall be appointed by the Chairman subject to the approval of the absolute majority of the other members of the Commission.

Rule 29 - Establishment of Sub-Commissions
Unless the Assembly decides otherwise, the Commission shall determine the functions and composition of each Sub-Commission.

**Rule 30 - Offices of the Subsidiary bodies**

Unless the Commission decides otherwise, the subsidiary bodies of the Commission shall elect their own officers.

**Rule 31 - Rules of Procedure**

The Rules of Procedure of the Commission shall apply, as far as possible, to the proceedings of its subsidiary bodies.

**Chapter VII - Public Sessions and Private Sessions**

**Rule 32 - General principle**

The sittings of the Commission and of its subsidiary bodies shall be held in public unless the Commission decides otherwise or it appears from the relevant provisions of the Charter that the meeting shall be held in private.

**Rule 33 - Publication of Proceedings**

At the end of each private or public sitting, the Commission or its subsidiary bodies may issue a communiqué.

**Chapter VIII - Languages**

**Rule 34 - Working Languages**

The working languages of the Commission and of all its institutions shall be those of the Organisation of African Unity.

**Rule 35 - Interpretation**

1. An address delivered in one of the working languages shall be interpreted
Any person addressing the Commission in a language other than one of the working languages, shall, in principle, ensure the interpretation in one of the working languages. The interpreters of the Secretariat may take the interpretation of the original language as source language for their interpretation in the other working languages.

Rule 36 - Languages to be used for Minutes of Proceedings

The summary minutes of the sittings of the Commission shall be drafted in the working languages.

Rule 37 - Languages to be used for resolutions and other official decisions

All the official decisions and documents of the Commission will be rendered in the working languages.

Rule 38 - Tape recordings of the Sessions

The Secretariat shall record and preserve the tapes of the sessions of the Commission. It may also record and conserve the tapes of the sessions of the committees, working groups and sub-commissions if the Commission so decides.

Rule 39 - Summary Minutes of the Sessions

The Secretariat shall draft the summary minutes of the public and private sessions of the Commission and of its subsidiary bodies. It shall distribute them as soon as possible in a draft form to the members of the Commission and to all other participants in the session. All those participants may, in the thirty (30) days following the receipt of the draft minutes of the session, submit corrections to the Secretariat. The Chairman may, under special circumstances, in consultation with the Secretary-General, extend the time for the submission of the corrections.

In case the corrections are contested, the Chairman of the Commission or the Chairman of the subsidiary body whose minutes they are, shall resolve the disagreement after having listened to, if necessary, the tape recordings of the discussions. If the disagreement persists, the Commission or the subsidiary body shall decide. The corrections shall be
1. The final summary minutes of the public and private sessions shall be the document intended for general distribution, unless the Commission decides otherwise.

2. The minutes of the private sessions of the Commission shall be distributed forthwith to all members of the Commission.

Rule 41 - Reports to be submitted after each session

The Commission shall submit to the current Chairman of the Organisation of African Unity, a report on the deliberations of each session. This report shall contain a brief summary of the recommendations and statements on issues to which the Commission would like to draw the attention of the current Chairman and member States of the Organisation of African Unity.

Rule 42 - Submission of official decisions and reports

The text of the decisions and reports officially adopted by the Commission shall be distributed to all members of the Commission as soon as possible.

Chapter X - Conduct of the Debates

Rule 43 - Quorum

The quorum shall be constituted by seven (7) members of the Commission, as specified in Article 2.3 of the Charter.

Rule 44 - Additional Powers of the Chairman

1. In addition to the powers entrusted to him/her under other provisions of the present Rules of Procedure, the Chairman shall have the responsibility to open and close each session, he/she shall direct the debates, ensure the application of the present Rules of Procedure, grant the use of floor, submit to a vote matters under discussion and announce the result of the
Subject to the provisions of the present Rules of Procedure, the Chairman shall direct the discussions of the Commission and ensure order during meeting. The Chairman may during the discussion of an agenda item, propose to the Commission to limit the time allotted to speakers, as well as the number of interventions of each speaker on the same issue and close the list of speakers.

He/she shall rule on the points of order. He/she shall also have the power to propose the adjournment and the closure of debates as well as the adjournment and suspension of a sitting. The debates shall deal solely with the issues submitted to the Commission and the Chairman may call a speaker, whose remarks are irrelevant to the matter under discussion, to order.

Rule 45 - Points of Order

1. During the debate of any matter, a member may, at any time, raise a point of order with the Rules of Procedure. If a member appeals against the decision, the appeal shall immediately be put to the vote and if the Chairman's ruling is not overruled by the majority of the members present, it shall be maintained.

2. A member raising a point of order cannot, in his or her comments, deal with the substance of the matter under discussion.

Rule 46 - Adjournment of Debates

During the discussion on any matter, a member may move for the adjournment of the debate on the matter under discussion. In addition to the proposer of the motion, one member may speak in favour of and one against the motion after which the motion shall be immediately put to the vote.

Rule 47 - Limit the Time accorded to Speakers

The Commission may limit the time accorded to each speaker on any matter, when the time allotted for debates is limited and a speaker spends more time than the time accorded, the Chairman shall immediately call him to order.
Rule 48 - Closing the list of speakers

The Chairman may, during a debate, read out the list of speakers and with the approval of the Commission, declare the list closed. Where there are no more speakers, the Chairman shall, with the approval of the Commission, declare the debate closed.

Rule 49 - Closure of Debate

A member may, at any time, move for the closure of the debate on the matter under discussion, even if the other members or representatives expressed the desire to take the floor. The authorisation to take the floor on the closure of the debate shall be given only to two speakers before the closure, after which the motion shall immediately be put to the vote.

Rule 50 - Suspension or Adjournment of the Meeting

During the discussion of any matter, a member may move for the suspension or adjournment of the meeting. No discussion on any such motion shall be permitted and it shall be immediately put to the vote.

Rule 51 - Order of the Motions

Subject to the provisions of Rule 45 of the present Rules of Procedure the following motions shall have precedence in the following order over all the other proposals or motions before the meeting:

a) To suspend the meeting

b) To adjourn the meeting

c) To adjourn the debate on the item under discussion

d) For the closure of the debate of the item under discussion.

Rule 52 - Submission of Proposals and Amendment of Substance

Unless the Commission decides otherwise the proposals, amendments or motions of substance made by members shall be submitted in writing to the Secretariat; they shall be considered at the first sitting following their submission.
Subject to the provisions of Rule 45 of the Procedure, any motion tabled by a member for a decision on the competence of the Commission to adopt a proposal submitted to it shall immediately be put to the vote.

Rule 54 - Withdrawal of a Proposal or a Motion

The sponsor of a motion or a proposal may still withdraw it before it is put to the vote, provided that it has not been amended. A motion or a proposal thus withdrawn may be submitted again by another member.

Rule 55 - New Consideration of a Motion

When a proposal is adopted or rejected, it shall not be considered again at the same session, unless the Commission decides otherwise. When a member moves the new consideration of a proposal, only one member may speak in favour of and one against the motion, after which it shall immediately be put to the vote.

Rule 56 - Interventions

No member may take the floor at a meeting of the Commission without prior authorisation on the Chairman. Subject to Rules 45, 48, 49 and 50 the Chairman shall grant the use of the floor to the speakers in the order in which it has been requested.

The debates shall deal solely with the matter submitted to the Commission and the Chairman may call to order a speaker whose remarks are irrelevant to the matter under discussion.

The Chairman may limit the time accorded to speakers and the number of the interventions which each member may make on the same issue, in accordance with Rule 44 of the present Rules.

Only two members in favour and two against; the motion of fixing such time limits shall be granted the use of the floor after which the motion shall immediately be put to the vote. For questions of procedure the time allotted to each speaker shall not exceed five minutes, unless the Chairman decides otherwise. When the time allotted discussions is limited and a speaker exceeds the time accorded the Chairman shall immediately call him to order.
requesting it. The member must, while exercising this right, be as brief as possible and take the floor preferably at the end of the sitting at which this right has been requested.

Rule 58 - Congratulations

The congratulations addressed to the newly elected members to the Commission shall only be presented by the Chairman or a member designated by the latter. Those addressed to the newly elected officers shall only be presented by the outgoing Chairman or a member designated by him.

Rule 59 - Condolences

Condolences shall be exclusively presented by the Chairman on behalf of all the members. The Chairman may, with the consent of the Commission, send a message of condolence.

Chapter XI - Vote and Elections

Rule 60 - Right to Vote

Each member of the Commission shall have one vote. In the case of equal number of votes the Chairman shall have a casting vote.

Rule 61 - Asking for a Vote

A proposal or a motion submitted for the decision of the Commission shall be put to the vote if a member so requests. If no member asks for a vote, the Commission may adopt a proposal or a motion without a vote.

Rule 62 - Required majority

1. Except as otherwise provided by the Charter or other Rules of the present Rules of Procedure, decisions of the Commission shall be taken by simple majority of the members present and voting.
The members who shall abstain from voting shall be considered as non-voting members.

Decisions may be taken by consensus, failing which, Commission shall resort to voting.

**Rule 63 - Method of Voting**

1. Subject to the provisions of Rule 68, the Commission, unless it otherwise decides, shall normally vote by show of hands, but any member may request the roll-call vote, which shall be taken in the alphabetical order of the names of the members of the Commission beginning with the member whose name is drawn by lot by the Chairman. In all the votes by roll-call, each member shall reply "yes", "no", or "abstention". The Commission may decide to hold a secret ballot.

2. In case of vote by roll-call, the vote of each member participating in the ballot shall be recorded in the minutes.

**Rule 64 - Explanation of Vote**

Members may make brief statements for the only purpose of explaining their vote, before the beginning of the vote or once the vote has been taken. The member who is the sponsor of a proposal or a motion cannot explain his vote on that proposal or motion except if it has been amended.

**Rule 65 - Rules to be observed while voting**

A ballot shall not be interrupted except if a member raises a point of order relating to manner in which the ballot is held. The Chairman may allow members to intervene briefly, whether before the ballot beginning or when it is closed, but solely to explain their vote.

**Rule 66 - Division of Proposals and Amendments**

Proposals and amendments may be separated if requested. The parts of the proposals or of the amendments which have been adopted shall later be put to the vote as a whole; if all the operative parts of a proposal have been rejected, the proposal shall be considered to have been rejected as a whole.
A amendment to a proposal is an addition to, deletion from or revision of part of that proposal.

Rule 68 - Order of Vote on Amendments

When an amendment is moved to a proposal, the amendment shall be voted on first.

When two or more amendments are moved to a proposal, the Commission shall first vote on the amendment furthest removed in substance from the original proposal and then on the amendment next furthest removed therefrom and so on until all the amendments have been put to the vote. Nevertheless when the adoption of an amendment implies the rejection of another amendment, the latter shall not be put to the vote. If one or several amendments are adopted, the amended proposal shall then be put to the vote.

Rule 69 - Order of Vote on the Proposals

1. If two or more proposals are made on the same matter, the Commission, unless it decides otherwise, shall vote on these proposals in the order in which they were submitted.

2. After each vote the Commission may decide whether it shall put the next proposal to the vote.

3. However, the motions which are not on the substance of the proposals shall be voted upon before the said proposals.

Rule 70 - Elections

Elections shall be held by secret ballot unless the election is for a post for which only one candidate has been proposed and that candidate has been agreed upon by the members of the Commission.
Rule 71 - Participation of States in the Deliberations

1. The Commission or its subsidiary bodies may invite any State to participate in the discussion of any issue that shall be of particular interest to that State.

2. A State thus invited shall have no voting right, but may submit proposals which may be put to the vote at the request of any member of the Commission or of the subsidiary body concerned.

Rule 72 - Participation of other Persons or Organisations

The Commission may invite any organisation or persons capable of enlightening it to participate in its deliberations without voting rights.

Rule 73 - Participation of Specialised Institutions and Consultation with the latter

1. Pursuant to the agreements concluded between the Organisation of African Unity and the Specialised Institutions, the latter shall have the right to:

   a) Be represented in the public sessions of the Commission and its subsidiary bodies:

   b) Participate without voting rights, through their representatives in deliberations on issues which shall be of interest to them and to submit, on these issues, proposals which may be put to vote at the request of any member of the Commission or the interested subsidiary body.

2. Before placing on the provisional agenda an issues submitted by a Specialised Institution, the Secretary General should initiate such preliminary consultations as may be necessary with this institution.

3. When an issue proposed for inclusion in the provisional agenda of a session, or which has been added to the agenda of a session pursuant to Rule 5 of the present Rules of Procedure, contains a proposal requesting the Organisation of African Unity to undertake additional activities relating to issues concerning directly one or more specialised institutions, the Secretary General should enter into consultation with the institutions.
concerned and inform the Commission of the ways and means of ensuring coordinated utilisation of the resources of the various institutions.

4. When at a meeting of the Commission a proposal calling upon the Organisation of African Unity to undertake additional activities relating to issues directly concerning one or several specialised institutions, the Secretary General, after consulting as far as possible the representatives of the interested institutions, should draw the attention of the Commission to the effects of that proposal.

5. Before taking a decision on the proposals mentioned above, the Commission shall make sure that the institutions concerned have been duly consulted.

Rule 74 - Participation of other Inter-Governmental Organisations

1. The Secretary shall inform not later than 4 weeks before a session, non-governmental organisations with observer status of the dates and agenda of a forthcoming session.

Representatives of Inter-Governmental Organisations to which the Organisation of African Unity has granted permanent observer status and other Organisations recognised by the Commission, may participate without voting rights, in the deliberations of the Commission on issues falling within the framework of the activities of these organisations.

Chapter XIII - Relations with and Representation of Non-Governmental Organisations

Rule 75 - Representation

Non-governmental organisations, granted observer status by the Commission, may appoint authorised observers to participate in the public sessions of the Commission and of its subsidiary bodies.

Rule 76 - Consultation

The Commission may consult the non-governmental organisations either directly or through one or several committees set up for this purpose. These consultations may be held at the invitation of the Commission or at the request of the organisation.
Chapter XIV - Publication and Distribution of the Reports and Other Official Documents of the Commission

Rule 77 - Report of the Commission

Within the framework of the procedure of communication among States parties to the Charter, referred to in Articles 47 and 49 of the Charter, the Commission shall submit to the Assembly a report containing, where possible, recommendations it shall deem necessary.

The report shall be confidential. However, it shall be published by the Chairman of the Commission after reporting unless the Assembly directs otherwise.

Rule 78 - Periodical Reports of Member States

Periodical Reports and other information submitted by States parties to the Charter as requested under Article 62 of the Charter shall be documents for general distribution. The same thing shall apply to other information supplied by a State party to the Charter, unless the Commission decides otherwise.

Rule 79 - Reports on the Activities of the Commission

1. As stipulated in Article 54 of the Charter, the Commission shall each year submit to the Assembly, a report on its deliberations, in which it shall include a summary of the activities.

2. The report shall be published by the Chairman after the Assembly has considered it.

Rule 80 - Translation of reports and other documents

The Secretary shall endeavour to translate all reports and other document of the Commission into the working languages.

Part Two

Provisions Relating to the Functions of the Commission
Chapter XV - Promotional Activities

Reports Submitted by States Parties to the Charter Under Article 62 of the Charter

Rule 81 - Contents of Reports

1. States parties to the Charter shall submit reports in the form required by the Commission on measures they have taken to give effect to the rights recognised by the Charter and on the progress made with regard to the enjoyment of these rights.

The reports should indicate, where possible, the factors and difficulties impeding the implementation of the provisions of the Charter.

2. If a State party fails to comply with Article 62 of the Charter, the Commission shall fix the date for the submission of that State party's report.

3. The Commission may, through the Secretary-General, inform State parties to the Charter of its wishes regarding the form and contents of the reports to be submitted under Article 62 of the Charter.

Rule 82 - Transmission of the Reports

1. The Secretary may, after consultation with the Commission, communicate to the specialised institutions concerned, copies of all parts of the reports which may relate to their areas of competence, produced by member States of these institutions.

2. The Commission may invite the specialised institutions to which the Secretary has communicated parts of the report, to submit observations relating to these parts within a time limit that it may specify.

Rule 83 - Submission of Reports

The Commission shall inform, as early as possible, member States parties to the Charter, through the Secretary, of the opening date, duration and venue of the Session at which their respective reports shall be considered.
Representatives of the States parties to the Charter may participate in the sessions of the Commission at which their reports shall be considered. The Commission may also inform a State party to the Charter from which it wanted complementary information, that it may authorise its representative to participate in a specific session. This representative should be able to reply to questions put to him/her by the Commission and make statements on reports already submitted by this State. He may also furnish additional information from his State.

Rule 84 - Non-submission of Reports

The Secretary shall, at each session, inform the Commission of all cases of non-submission of reports or of additional information requested pursuant to Rules 81 and 85 of the Rules of Procedure. In such cases, the Commission may send, through the Secretary, to the State party to the Charter concerned, a report or reminder relating to the submission of the report or additional information.

If after the reminder referred to in the preceding paragraph a State party to the Charter does not submit the report or the additional information requested pursuant to Rules 81 and 85 of the Rules of Procedure, the Commission shall point it out in its yearly report to the Assembly.

Rule 85 - Examination of information contained in reports

1. When considering a report submitted by a State party to the Charter under Article 62 of the Charter, the Commission should first make sure that the report provides all the necessary information including relevant legislation pursuant to the provisions of Rule 81 of the Rules of Procedure.

2. If, in the opinion of the Commission, a report submitted by a State party to the Charter, does not contain adequate information, the Commission may request this State to furnish the additional information required, by indicating the date on which the information needed should be submitted.

3. If, following the consideration of the reports, and the information submitted by a State party to the Charter, the Commission decides that the State has not discharged some of its obligations under the Charter, it may address all general observations to the State concerned as it may deem necessary.
Rule 86 - Adjournment and Transmission of the Reports

1. The Commission shall, through the Secretary, communicate to States parties to the Charter for comments, its general observations made following the consideration of the reports and the information submitted by States parties to the Charter. The Commission may, when necessary, fix a time limit for the submission of the comments by the States parties to the Charter.

2. The Commission may also transmit to the Assembly the observations mentioned in paragraph 1 of this Rule, accompanied by copies of the reports it has received from the States parties to the Charter as well as the comments supplied by the latter if possible.

Rule 87 - Promotional Activities

1. The Commission shall adopt and carry out a program of action which gives effect to its obligations under the Charter, particularly Article 45.1.

2. The Commission shall carry out other promotional activities in member states and elsewhere on a continuing basis.

3. Each member of the Commission shall file a written report on his/her activities at each session including countries visited and organisations contacted.

Chapter XVI - Protection Activities: Communications From the States Parties to the Charter

Section I - Procedure for the Consideration of Communications Received in Conformity with Article 47 of the Charter: Procedure for Communications-Negotiations

Rule 88 - Procedure

1. A communication under Article 47 of the Charter should be submitted to the Secretary General, the Chairman of the Commission and the State party concerned.

2. The communication referred to above should be in writing and contain a detailed and comprehensive statement on the actions denounced as well as the provisions of the Charter alleged to have been violated.
The notification of the communication to the State party to the Charter, the Secretary General and the Chairman of the Commission shall be done through the most practicable and reliable means.

Rule 89 - Register of Communications

The Secretary shall keep a permanent register for all communications received under Article 47 of the Charter.

Rule 90 - Reply and time limit

1. The reply of the State party to the Charter to which a communication is addressed should reach the requesting State party to the Charter within 3 months following the receipt of the notification of the communication.

2. It shall be accompanied particularly by:

   a) Written explanations, declarations or statements relating to the issues raised;

   b) Possible indications and measures taken to end the situation denounced;

   c) Indications on the law and rules of procedure applicable or applied;

   d) Indications on the local procedures for appeal already used, in process or still open.

Rule 91 - Non-Settlement of the Issue

1. If within three (3) months from the date the notification of the original communication is received by the addressee State, the issue has not been settled to the satisfaction of the two interested parties, through the selected channel of negotiation or through any other peaceful procedure selected by common consent of the parties, the issue shall be referred to the Commission, in accordance with the provisions of Article 48 of the Charter.

2. The issue shall also be referred to the Commission if the addressee State party to the Charter fails to react to the request made under Article 47 of the Charter, within the same 3 months' period of time.
Rule 92 - Seizing of the Commission

At the expiration of the 3 months' time limit referred to in Article 47 of the Charter, and in the absence of a satisfactory reply or in case the addressee State party may submit the communication to the Commission through a notification addressed to its Chairman, the other interested State party and the Secretary General.

Section II - Procedure For the Consideration of The Communications Received in Conformity With Articles 48 And 49 of The Charter: Procedure For Communication-Complaint

Rule 93 - Seizing of the Commission

1. Any communication submitted under Articles 48 and 49 of the Charter may be submitted to the Commission by any one of the interested States parties through notification addressed to the Chairman of the Commission, the Secretary General and the State party concerned.

2. The notification referred to in paragraph 1 of the present Rule shall contain information on the following elements or accompanied particularly by:

a) Measures taken to try to resolve the issue pursuant to Article 47 of the Charter including the text of the initial communications and any future written explanation from the interested States parties to the Charter relating to the issue;

b) Measures taken to exhaust local procedure for appeal;

c) Any other procedure for the international investigation or international settlement to which the interested States parties have resorted.

Rule 94 - Permanent Register of Communications

The Secretary shall keep a permanent register for all communications received by the Commission under Articles 48 and 49 of the Charter.

Rule 95 - Seizing of the Members of the Commission

The Secretary shall immediately inform the members of the Commission...
of any notification received pursuant to Rule 91 of the Rules of Procedure and shall send to them, as early as possible, a copy of the notification as well as the relevant information.

Rule 96 - Private Session and Press Release

1. The Commission shall consider the communications referred to in Articles 48 and 49 of the Charter in closed session.

2. After consulting the interested States parties to the Charter, the Commission may issue through the Secretary, release on its private sessions for the attention of the media and the public.

Rule 97 - Consideration of the Communication

The Commission shall consider a communication only when:

a) The procedure offered to the States parties by Article 47 of the Charter has been exhausted.

b) The time limit set in Article 48 of the Charter has expired.

c) The Commission is certain that all the available local remedies have been utilised and exhausted, in accordance with the generally recognised principles of international law, or that the application of these remedies is unreasonably prolonged or that there are no effective remedies.

Rule 98 - Amicable Settlement

Pursuant to the provisions of the present Rules of Procedure, the Commission shall place its good offices at the disposal of the interested States parties to the Charter so as to reach an amicable solution on the issue based on the respect of human rights and fundamental liberties, as recognised by the Charter.

Rule 99 - Additional Information

The Commission may through the Secretary, request the States parties or one of them to communicate additional information or observations orally or in writing. The Commission shall fix a time limit for the submission of the written information or observations.
1. The States parties to the Charter shall have the right to be represented during the consideration of the issue by the Commission and to submit observations orally and in writing or in either form.

2. The Commission shall notify, as soon as possible, the States parties concerned, through the Secretary of the opening day, the duration and the venue of the session at which the issue will be examined.

3. The procedure to be followed for the presentation of oral or written observations shall be determined by the Commission.

Rule 101 - Report of the Commission

1. The Commission shall adopt a report pursuant to Article 52 of the Charter within 12 months, following the notification referred to in Article 48 of the Charter and Rule 90 of the present Rules of Procedure.

2. The provisions of paragraph 1 of Rule 99 of these Rules of Procedure shall not apply to the deliberations of the Commission relating to the adoption of the report.

3. The report referred to above shall concern the decisions and conclusions that the Commission will reach.

4. The report of the Commission shall be communicated to the States parties concerned through the Secretary.

5. The report of the Commission shall be sent to the Assembly through the Secretary General, together with the recommendations that it shall deem useful.

Chapter XVII - Other Communications Procedure For The Consideration of the Communications Received in Conformity With Article 55 of the Charter

Section I - Transmission of Communications to the Commission
Pursuant to these Rules of Procedure, the Secretary shall transmit to the Commission the communications submitted to him for consideration by the Commission in accordance with the Charter.

2. No communications concerning a State which is not a party to the Charter shall be received by the Commission or placed in a list under Rule 103 of the present Rules.

Rule 103 - List of Communications

1. The Secretary of the Commission shall prepare lists of communications submitted to the Commission pursuant to Rule 101 above, to which he/she shall attach a brief summary to their contents and regularly cause the lists to be distributed to members of the Commission. Besides, the Secretary shall keep a permanent register of all these communications which shall be made public.

2. The full text of each communication referred to the Commission shall be communicated to each member of the Commission on request.

Rule 104 - Request for Clarifications

The Commission, through the Secretary, may request the author of a communication to furnish clarifications on the applicability of the Charter to his/her communication, and to specify in particular:

a) His name, address, age and profession by justifying his very identity, if ever he/she is requesting the Commission to be kept anonymous;

b) Name of the State party referred to in the communication;

c) Purpose of the communication;

d) Provisions of the Charter allegedly violated;

e) The facts of the claim;

f) Measures taken by the author to exhaust local remedies, or explanation why local remedies will be futile.
2. When asking for clarification or information, the Commission shall fix an appropriate time limit for the author to submit the communication so as to avoid undue delay in the procedure provided for by the Charter.

3. The Commission may adopt a questionnaire for the use by the author of the communication in providing the above-mentioned information.

4. The request for clarification referred to in paragraph 1 of this rule shall not prevent the inclusion of the communication on the lists mentioned in paragraph 1 of Rule 102 above.

Rule 105 - Distribution of Communications

For each communication recorded, the Secretary shall prepare as soon as possible, a summary of the relevant information received, which shall be distributed to the members of the Commission.

Section II - General Provisions Governing the Consideration of the Communications by the Commission or its Subsidiary Bodies

Rule 106 - Private Session

The sessions of the Commission or its subsidiary bodies during which the communications are examined as provided for in the Charter shall be private.

Rule 107 - Public Sessions

The sessions during which the Commission may consider other general issues, such as the application procedure of the Charter, shall be public.

Rule 108 - Press Releases

The Commission may issue, through the Secretary and for the attention of the media and the public, releases on the activities of the Commission in its private session.
Rule 109 - Incompatibility

No member shall take part in the consideration of a communication by the Commission

a) If he/she has any personal interest in the case, or

b) If he/she has participated, in any capacity, in the adoption of any decision relating to the case which is the subject of the communication.

2. Any issue relating to the application of paragraph 1. above shall be resolved by the Commission.

Rule 110 - Withdrawal of a Member

If, for any reason a member considers that he/she should not take part or continue to take part in the consideration of a communication, he/she shall inform the Chairman of his/her decision to withdraw.

Rules 111 - Provisional Measures

1. Before making its final views known to the Assembly on the communication, the Commission may inform the State party concerned of its views on the appropriateness of taking provisional measures to avoid irreparable damage being caused to the victim of the alleged violation. In so doing, the Commission shall inform the State party that the expression on its views on the adoption of those provisional measures does not imply a decision on the substance of the communication.

2. The Commission, or when it is not in session, the Chairman, in consultation with other members of the Commission, may indicate to the parties any interim measure, the adoption of which seems desirable in the interest of the parties or the proper conduct of the proceedings before it.

3. In case of urgency when the Commission is not in session, the Chairman, in consultation with other members of the Commission, may take any necessary action on behalf of the Commission. As soon as the Commission is again in session, the Chairman shall report to it on any action taken.
Prior to any substantive consideration, every communication should be made known to the State concerned through the Chairman of the Commission, pursuant to Article 57 of the Charter.

Section III - Procedures to Determine Admissibility

Rule 113 - Time Limits for Consideration of the Admissibility

The Commission shall decide, as early as possible and pursuant to the following provisions, whether or not the communication shall be admissible under the Charter.

Rule 114 - Order of Consideration of the Communications

1. Unless otherwise decided, the Commission shall consider the communications in the order they have been received by the Secretariat.

2. The Commission may decide, if it deems it good, to consider jointly two or more communications.

Rule 115 - Working Groups

The Commission may set up one or more working groups: each composed of three of its members at most, to submit recommendations on admissibility as stipulated in Article 56 of the Charter.

Rule 116 - Admissibility of the Communications

The Commission shall determine questions of admissibility pursuant to Article 56 of the Charter.

Rule 117 - Additional Information

1. The Commission, or a working group set up under Rule 113, may request the State party concerned or the author of the communication to submit in writing additional information or observations relating to the issue of admissibility of the communication. The Commission or the working group shall fix a time limit for the submission of the information or observations to avoid the issue dragging on too long.
3. A request under paragraph 1 of this Rule should indicate clearly that the request does not mean any decision whatsoever has been taken on the issue of admissibility.

4. However, the Commission shall decide in the issue of admissibility if the State party fails to send a written response within three (3) months from the date of notification of the text of the communication.

Rule 118 - Decision of the Commission on Admissibility

1. If the Commission decides that a communication is inadmissible under the Charter, it shall make its decision known as early as possible, through the Secretary to the author of the communication and, if the communication has been transmitted to a State party concerned, to that State.

2. If the Commission has declared a communication inadmissible under the Charter, it may reconsider this decision at a later date if it receives a request for reconsideration.

Section IV - Procedures for the Consideration of Communications

Rule 119 - Proceedings

1. If the Commission decides that a communication is admissible under the Charter, its decision and text of the relevant documents shall as soon as possible be submitted to the State party concerned through the Secretary. The author of the communication shall also be informed of the Commission's decision through the Secretary.

2. The State party to the Charter concerned shall, within the 3 ensuing months, submit in writing to the Commission, explanations or statements elucidating the issue under consideration and indicating, if possible, measures it was able to take to remedy the situation.

3. All explanations or statements submitted by a State party pursuant to the present Rule shall be communicated, through the Secretary, to the author.
of the communication who may submit in writing additional information and observations within a time limit fixed by the Commission.

4. States parties from whom explanations or statements are sought within specified times shall be informed that if they fail to comply within those times the Commission will act on the evidence before it.

Rule 120 - Final Decision on the Communication

1. If the communication is admissible, the Commission shall consider it in the light of all the information that the individual and the State party concerned has submitted in writing; it shall make known its observations on this issue. To this end, the Commission may refer the communication to a working group, composed of 3 of its members at most, which shall submit recommendations to it.

2. The observations of the Commission shall be communicated to the Assembly through the Secretary General and to the State party concerned.

3. The Assembly or its Chairman may request the Commission to conduct an in-depth study on these cases and to submit a factual report accompanied by its findings and recommendations, in accordance with the provisions of the Charter. The Commission may entrust this function to a Special Rapporteur or a working group.

Final Chapter - Amendment And Suspension of the Rules of Procedure

Rule 121 - Method of Amendment

Only the Commission may modify the present Rules of Procedure.

Rule 122 - Method of Suspension

The Commission may suspend temporarily, the application of any Rule of the present Rules of Procedure, on condition that such a suspension shall not be incompatible with any applicable decision of the Commission or the Assembly or with any relevant provision of the Charter and that the proposal shall have been submitted 24 hours in advance. This condition may be set aside if no member opposes it. Such a suspension may take place only with a specific and precise object in view and should be limited to the duration necessary to achieve that aim.
CONSTITUTIVE ACT OF THE AFRICAN UNION

CERTIFIED COPY

Signature
OAU Legal Counsel
CONSTITUTIVE ACT OF THE AFRICAN UNION

We, Heads of State and Government of the Member States of the Organization of African Unity (OAU):

1. The President of the People’s Democratic Republic of Algeria
2. The President of the Republic of Angola
3. The President of the Republic of Benin
4. The President of the Republic of Botswana
5. The President of Burkina Faso
6. The President of the Republic of Cameroon
7. The President of the Republic of Cameroon
8. The President of the Republic of Cape Verde
9. The President of the Central African Republic
10. The President of the Republic of Chad
11. The President of the Islamic Federal Republic of the Comoros
12. The President of the Republic of the Congo
13. The President of the Republic of Côte d’Ivoire
14. The President of the Democratic Republic of Congo
15. The President of the Republic of Djibouti
16. The President of the Arab Republic of Egypt
17. The President of the State of Equatorial Guinea
18. The Prime Minister of the Federal Democratic Republic of Ethiopia
19. The President of the Republic of Equatorial Guinea
20. The President of the Gabonese Republic
21. The President of the Republic of Gambia
22. The President of the Republic of Ghana
23. The President of the Republic of Guinea
24. The President of the Republic of Guinea Bissau
25. The President of the Republic of Kenya
26. The Prime Minister of Lesotho
27. The President of the Republic of Liberia
28. The Leader of the 1st of September Revolution of the Great Socialist People’s Libyan Arab Jamahiriya
29. The President of the Republic of Madagascar
30. The President of the Republic of Malawi
31. The President of the Republic of Mali
32. The President of the Islamic Republic of Mauritania
33. The Prime Minister of the Republic of Mauritius
34. The President of the Republic of Mozambique
35. The President of the Republic of Namibia
36. The President of the Republic of Niger
37. The President of the Federal Republic of Nigeria
INSPIRED by the noble ideals, which guided the founding fathers of our Continental Organization and generations of Pan-Africains in their determination to promote unity, solidarity, cohesion and cooperation among the peoples of Africa and African States,

CONSIDERING the principles and objectives stated in the Charter of the Organization of African Unity and the Treaty establishing the African Economic Community,

RECALLING the heroic struggles waged by our peoples and our countries for political independence, human dignity and economic emancipation,

CONSIDERING that since its inception, the Organization of African Unity has played a determining and invaluable role in the liberation of the continent, the affirmation of a common identity and the process of attainment of the unity of our continent and has provided a unique framework for our collective action in Africa and in our relations with the rest of the world.

DETERMINED to take up the multifaceted challenges that confront our continent and peoples in the light of the social, economic and political changes taking place in the world,

CONVINCED of the need to accelerate the process of implementing the Treaty establishing the African Economic Community in order to promote the socio-economic development of Africa and to face more effectively the challenges posed by
"Court" means the Court of Justice of the Union,

"Executive Council" means the Executive Council of Ministers of the Union;

"Member State" means a Member State of the Union;

"OAU" means the Organization of African Unity,

"Parliament" means the Pan-African Parliament of the Union,

"Union" means the African Union established by the present Constitutive Act.

**Article 2**

**Establishment**

The African Union is hereby established in accordance with the provisions of this Act.

**Article 3**

**Objectives**

The objectives of the Union shall be to:

(a) achieve greater unity and solidarity between the African countries and the peoples of Africa;

(b) defend the sovereignty, territorial integrity and independence of its Member States,

(c) accelerate the political and socio-economic integration of the continent,

(d) promote and defend African common positions on issues of interest to the continent and its peoples,

(e) encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights,

(f) promote peace, security, and stability on the continent.
GUIDED by our common vision of a united and strong Africa and by the need to
build a partnership between governments and all segments of civil society, in particular
women, youth and the private sector, in order to strengthen solidarity and cohesion
among our peoples,

CONSCIOUS of the fact that the scourge of conflicts in Africa constitutes a
major impediment to the socio-economic development of the continent and of the need to
promote peace, security and stability as a prerequisite for the implementation of our
development and integration agenda,

DETERMINED to promote and protect human and peoples’ rights, consolidate
democratic institutions and culture, and to ensure good governance and the rule of law,

FURTHER DETERMINED to take all necessary measures to strengthen our
common institutions and provide them with the necessary powers and resources to enable
them discharge their respective mandates effectively,

RECALLING the Declaration which we adopted at the Fourth Extraordinary
Session of our Assembly in Sète, the Great Socialist People’s Libyan Arab Jamahirya,
on 9-9-99, in which we decided to establish an African Union, in conformity with the
ultimate objectives of the Charter of our Continental Organization and the Treaty
establishing the African Economic Community,

HAVE AGREED AS FOLLOWS

Article 1
Definitions

In this Constitutive Act:

“Act” means the present Constitutive Act,

“AEC” means the African Economic Community,

“Assembly” means the Assembly of Heads of State and Government of the
Union,

“Charter” means the Charter of the OAU,

“Commission” means the Secretariat of the Union,

“Committee” means a Specialized Technical Committee of the Union,

“Council” means the Economic, Social and Cultural Council of the Union,
(g) promote democratic principles and institutions, popular participation and good governance,

(h) promote and protect human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments,

(i) establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations,

(j) promote sustainable development at the economic, social and cultural levels as well as the integration of African economies,

(k) promote co-operation in all fields of human activity to raise the living standards of African peoples;

(l) coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union,

(m) advance the development of the continent by promoting research in all fields, in particular in science and technology,

(n) work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent

**Article 4**

**Principles**

The Union shall function in accordance with the following principles

(a) sovereign equality and interdependence among Member States of the Union,

(b) respect of borders existing on achievement of independence,

(c) participation of the African peoples in the activities of the Union,

(d) establishment of a common defence policy for the African Continent,
(c) peaceful resolution of conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly,

(f) prohibition of the use of force or threat to use force among Member States of the Union,

(g) non-interference by any Member State in the internal affairs of another,

(h) the right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity,

(i) peaceful co-existence of Member States and their right to live in peace and security,

(j) the right of Member States to request intervention from the Union in order to restore peace and security,

(k) promotion of self-reliance within the framework of the Union,

(l) promotion of gender equality,

(m) respect for democratic principles, human rights, the rule of law and good governance,

(n) promotion of social justice to ensure balanced economic development;

(o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities,

(p) condemnation and rejection of unconstitutional changes of governments.

**Article 5**

**Organs of the Union**

Organs of the Union shall be

(a) The Assembly of the Union,

(b) The Executive Council,

(c) The Pan-African Parliament,
The Couil of Justice,
The Commission,
The Permanent Representatives Committee,
The Specialized Technical Committees,
The Economic, Social and Cultural Council,
The Financial Institutions,

2. Other organs that the Assembly may decide to establish

Article 6
The Assembly

1. The Assembly shall be composed of Heads of States and Government or their duly accredited representatives.

2. The Assembly shall be the supreme organ of the Union.

3. The Assembly shall meet at least once a year in ordinary session. At the request of any Member State and on approval by a two-thirds majority of the Member States, the Assembly shall meet in extraordinary session.

4. The Office of the Chairman of the Assembly shall be held for a period of one year by a Head of State or Government elected after consultations among the Member States.

Article 7
Decisions of the Assembly

1. The Assembly shall take its decisions by consensus or, failing which, by a two thirds majority of the Member States of the Union. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.

2. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Assembly.
Article 8
Rules of Procedure of the Assembly

The Assembly shall adopt its own Rules of Procedure.

Article 9
Powers and Functions of the Assembly

The functions of the Assembly shall be to:

(a) determine the common policies of the Union;

(b) receive, consider and take decisions on reports and recommendations from the other organs of the Union;

(c) consider requests for Membership of the Union;

(d) establish any organ of the Union;

(e) monitor the implementation of policies and decisions of the Union as well ensure compliance by all Member States;

(f) adopt the budget of the Union;

(g) give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace;

(h) appoint and terminate the appointment of the judges of the Court of Justice;

(i) appoint the Chairman of the Commission and his or her deputy or deputies and Commissioners of the Commission and determine their functions and terms of office.

The Assembly may delegate any of its powers and functions to any organ of the Union.
Article 10
The Executive Council

1. The Executive Council shall be composed of the Ministers of Foreign Affairs or such other Ministers or Authorities as are designated by the Governments of Member States.

2. The Executive Council shall meet at least twice a year in ordinary session. It shall also meet in an extra-ordinary session at the request of any Member State and upon approval by two-thirds of all Member States.

Article 11
Decisions of the Executive Council

1. The Executive Council shall take its decisions by consensus or, failing which, by a two-thirds majority of the Member States. However, procedural matters, including the question of whether a matter is one of procedure or not, shall be decided by a simple majority.

2. Two thirds of the total membership of the Union shall form a quorum at any meeting of the Executive Council.

Article 12
Rules of Procedure of the Executive Council

The Executive Council shall adopt its own Rules of Procedure.

Article 13
Functions of the Executive Council

1. The Executive Council shall coordinate and take decisions on policies in areas of common interest to the Member States, including the following:

(a) foreign trade,
(b) energy, industry and mineral resources,
(c) food, agricultural and animal resources, livestock production and forestry,
(d) water resources and irrigation,
(e) environmental protection, humanitarian action and disaster response and relief,
(f) transport and communications,
(g) insurance,
(h) education, culture, health and human resources development,
(i) science and technology,
(j) nationality, residency and immigration matters,
(k) social security, including the formulation of mother and child care policies, as well as policies relating to the disabled and the handicapped,
(l) establishment of a system of African awards, medals and prizes.

Executive Council shall be responsible to the Assembly. It shall consider referred to it and monitor the implementation of policies formulated by the Executive Council. It may delegate any of its powers and functions mentioned in paragraph 1 of this Article to the Specialized Technical Committees established under Article 14 of this Act.

Article 14

The Specialized Technical Committees

Establishment and Composition

is hereby established the following Specialized Technical Committees, which shall be responsible to the Executive Council:

(a) The Committee on Rural Economy and Agricultural Matters,
(b) The Committee on Monetary and Financial Affairs,
(c) The Committee on Trade, Customs and Immigration Matters,
(d) The Committee on Industry, Science and Technology, Energy, Natural Resources and Environment

(c) The Committee on Transport, Communications and Tourism,

(f) The Committee on Health, Labour and Social Affairs, and

(g) The Committee on Education, Culture and Human Resources.

2. The Assembly shall, whenever it deems appropriate, restructure the existing Committees or establish other Committees.

3. The Specialized Technical Committees shall be composed of Ministers or senior officials responsible for sectors falling within their respective areas of competence.

**Article 15**

**Functions of the Specialized Technical Committees**

Each Committee shall within its field of competence:

(a) prepare projects and programmes of the Union and submit it to the Executive Council;

(b) ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union;

(c) ensure the coordination and harmonization of projects and programmes of the Union;

(d) submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of this Act; and

(e) carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of this Act.

**Article 16**
Meetings

Subject to any directives given by the Executive Council, each Committee shall meet as often as necessary and shall prepare its Rules of Procedure and submit them to the Executive Council for approval.

Article 17
The Pan-African Parliament

1. In order to ensure the full participation of African peoples in the development and economic integration of the continent, a Pan-African Parliament shall be established.

2. The composition, powers, functions and organization of the Pan-African Parliament shall be defined in a protocol relating thereto.

3. 

Article 18
The Court of Justice

1. A Court of Justice of the Union shall be established;

2. The statute, composition and functions of the Court of Justice shall be defined in a protocol relating thereto.

Article 19
The Financial Institutions

The Union shall have the following financial institutions whose rules and regulations shall be defined in protocols relating thereto:

(a) The African Central Bank;
(b) The African Monetary Fund;
(c) The African Investment Bank.

Article 20
The Commission

1. There shall be established a Commission of the Union, which shall be the Secretariat of the Union.

2. The Commission shall be composed of the Chairman, his or her deputy or deputies and the Commissioners. They shall be assisted by the necessary staff for the smooth functioning of the Commission.

3. The structure, functions and regulations of the Commission shall be determined by the Assembly.

Article 21

The Permanent Representatives Committee

1. There shall be established a Permanent Representatives Committee. It shall be composed of Permanent Representatives to the Union and other Plenipotentiaries of Member States.

2. The Permanent Representatives Committee shall be charged with the responsibility of preparing the work of the Executive Council and acting on the Executive Council’s instructions. It may set up such sub-committees or working groups as it may deem necessary.

Article 22

The Economic, Social and Cultural Council

1. The Economic, Social and Cultural Council shall be an advisory organ composed of different social and professional groups of the Member States of the Union.

2. The functions, powers, composition and organization of the Economic, Social and Cultural Council shall be determined by the Assembly.
Article 23

Imposition of Sanctions

The Assembly shall determine the appropriate sanctions to be imposed on any Member State that defaults in the payment of contributions to the budget of the Union in the following manner: denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union; to benefit from any activity or commitments, therefrom;

therefore, any Member State that fails to comply with the decisions and orders of the Union may be subjected to other sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly.

Article 24

The Headquarters of the Union

The Headquarters of the Union shall be in Addis Ababa in the Federal Democratic public of Ethiopia.

There may be established such other offices of the Union as the Assembly may, on recommendation of the Executive Council, determine.

Article 25

Working Languages

The working languages of the Union and all its institutions shall be, if possible, Italian, Arabic, English, French and Portuguese.

Article 26

Interpretation

The Court shall be seized with matters of interpretation arising from the implementation of this Act. Pending its establishment, such matters shall be referred to the Assembly of the Union, which shall decide by a two-thirds majority.

Article 27

Signature, Ratification and Accession
1. This Act shall be open to signature, ratification and accession by the Member States of the OAU in accordance with their respective constitutional procedures.

2. The instruments of ratification shall be deposited with the Secretary General of the OAU.

3. Any Member State of the OAU acceding to this Act after its entry into force shall deposit the instrument of accession with the Chairman of the Commission.

Article 28
Entry into Force

This Act shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States of the OAU.

Article 29
Admission to Membership

1. Any African State may, at any time after the entry into force of this Act, notify the Chairman of the Commission of its intention to accede to this Act and to be admitted as a member of the Union.

2. The Chairman of the Commission shall, upon receipt of such notification, transmit copies thereof to all Member States. Admission shall be decided by a simple majority of the Member States. The decision of each Member State shall be transmitted to the Chairman of the Commission who shall, upon receipt of the required number of votes, communicate the decision to the State concerned.

Article 30
Suspension
Governments which shall come to power through constitutional means shall not be allowed to participate in the functions of the Union.

**Article 31**

**Cessation of Membership**

Any State which desires to renounce its membership shall forward a written notification to the Chairman of the Commission, who shall inform Member States thereof. At the end of one year from the date of such notification, if not withdrawn, the Act shall cease to apply with respect to the renouncing State, which shall thereby cease to belong to the Union.

During the period of one year referred to in paragraph 1 of this Article, any Member State wishing to withdraw from the Union shall comply with the provisions of this Act and shall be bound to discharge its obligations under this Act up to the date of its withdrawal.

**Article 32**

**Amendment and Revision**

1. Any Member State may submit proposals for the amendment or revision of this Act.

2. Proposals for amendment or revision shall be submitted to the Chairman of the Commission who shall transmit same to Member States within thirty (30) days of receipt thereof.

3. The Assembly, upon the advice of the Executive Council, shall examine these proposals within a period of one year following notification of Member States, in accordance with the provisions of paragraph 2 of this Article;

4. Amendments or revisions shall be adopted by the Assembly by consensus or, failing which, by a two thirds majority and submitted for ratification by all Member States in accordance with their respective constitutional procedures. They shall enter into force thirty (30) days after the deposit of
shall upon entry into force of this Act register the same with the Secretariat of the United Nations.

FITNESS WHEREOF, WE have adopted this Act.

at Lome, Togo, this 11th day of July, 2000.
shall upon entry into force of this Act register the same with the Secretariat of the United Nations.

WITNESS WHEREOF, WE have adopted this Act.

at Lome, Togo, this 11th day of July, 2000.
the instruments of ratification with the Chairman of the Commission by a two thirds majority of the Member States.

Article 33
Transitional Arrangements and Final Provisions

1. This Act shall replace the Charter of the Organization of African Unity. However, the Charter shall remain operative for a transitional period of one year or such further period as may be determined by the Assembly, following the entry into force of the Act, for the purpose of enabling the OAU/AEC to undertake the necessary measures regarding the devolution of its assets and liabilities to the Union and all matters relating thereto.

2. The provisions of this Act shall take precedence over and supersede any inconsistent or contrary provisions of the Treaty establishing the African Economic Community.

3. Upon the entry into force of this Act, all necessary measures shall be undertaken to implement its provisions and to ensure the establishment of the organs provided for under the Act in accordance with any directives or decisions which may be adopted in this regard by the Parties thereto within the transitional period stipulated above.

4. Pending the establishment of the Commission, the OAU General Secretariat shall be the interim Secretariat of the Union.

5. This Act, drawn up in four (4) original texts in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic, shall be deposited with the Secretary-General of the OAU and, after its entry into force, with the Chairman of the Commission who shall transmit a certified true copy of the Act to the Government of each signatory State. The Secretary-General of the OAU and the Chairman of the Commission shall notify all signatory States of the dates of the deposit of the instruments of ratification or accession and
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1 The overdue reports are put into italic and bold.

Since the Note Verbale ACHPR/PR/A046 of 30 November 1995, several reports can be combined into one report.
|--------------|------------|------------|------------|------------|------------|------------|------------|------------|------------|

1st Report: February 1993
2nd Report: May 2000
3rd Report: October 1994
4th Report: 16th Ordinary Session
5th Report: 20th Ordinary Session
6th Report: 21st Ordinary Session
7th Report: 22nd Ordinary Session
8th Report: 23rd Ordinary Session

1st Report: 28th Ordinary Session
2nd Report: 29th Ordinary Session
3rd Report: March 2000
4th Report: 30th Ordinary Session
5th Report: Algiers, April/May 2000
6th Report: 31st Ordinary Session
7th Report: 32nd Ordinary Session
8th Report: 33rd Ordinary Session
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38. Rwanda: 2nd Report March 2000 (Combining all overdue)
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**41. SENEGAL**

1st Report 13/08/1988
2nd Report 13/08/1990
3rd Report 13/08/1992
5th Report 13/08/1996
7th Report 13/08/2000
8th Report 13/08/2002

1st Report October 1989
2nd Report April 1992
12th Ordinary Session

**42. SEYCHELLES**

1st Report 13/04/1994
2nd Report 13/04/1996
3rd Report 13/04/1998
4th Report 13/04/2000
5th Report 13/04/2002
6th Report 13/04/2004

1st Report September 1994
Scheduled for consideration at postponed from session because the Goverment of the Seychelles did not send representatives to present the report.

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