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The System of Protection of Human Rights under the African Charter on Human and Peoples' Rights: Problems and Prospects

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INTRODUCTION

The African Charter on Human and Peoples' Rights (hereinafter referred to as the "African Charter") was adopted at the 18th Summit meeting of the Heads of State and Government of the Organization of African Unity (OAU), in Nairobi, in 1981. The adoption of the African Charter was a result of a series of efforts and pressures generated from within and without the continent for the promotion and protection of human rights. Africa became the third continent, after Europe and Latin America, to establish a regional human rights system.

Although the pace of ratification was initially slow, the African Charter entered into force on 21st October 1986, after having received the required number of ratifications in conformity with article 63(3). According to available information at the time of writing this paper, 40 States have ratified while 11 States have not ratified the African Charter. The list of ratifications is appended to this paper.

The mandate of promotion and protection of human rights is entrusted to the African Commission on Human and Peoples' Rights, (hereinafter the "African Commission") an organ linked to the Assembly of Heads of State and Government of the OAU. The African Commission which has its seat in Banjul, the Gambia, was elected on 29 July 1987, and sworn in November 1987. Apart from its promotional activities, the African Commission is charged with the task of dealing with inter-State and "other" communications.

This paper examines the implementation of the African Charter, and in particular, the effectiveness of the system of protection established under it. The paper argues that despite the adoption of the African Charter and the obligations that ensured for state parties to promote and protect the rights of their citizenry, human rights violations have worsened rather than ameliorated. Some African leaders have been indifferent - and even responded with brute force and detentions to the growing demand for better governance and democratization of political processes to accommodate freedom of assembly, expression, and movement. Internal and external pressures for political pluralism have intensified since the adoption of the African Charter, fuelled by *Perestroika* and events in

Eastern Europe as well as by recent initiatives in South Africa towards the establishment of a democratic, non-racial government. In Liberia, lots of lives have been lost in a civil war to get rid of the government of Samuel Doe, the latter being, like most African leaders, more concerned about retaining power, than solving his country's problems. The wave of protestation and condemnation for violations of human rights has hit countries like Gabon, Kenya and Ivory Coast, hitherto louded in western circles as exemplary of good governance, stability and prosperity. Kenya, the maternity ward from which the African Charter was born, has not yet ratified this convention.

Faced with these scenarios, much cannot be expected from the African Commission. The African continent has been marginalized not only by external forces but increasingly so by internal ones. The economic plight of the masses continue to worsen with most governments failing to meet their basic needs while calling for more sacrifices and imposing austerity measures on them. Recovery and development of these countries can only be possible and sustained if priorities are defined by the people within an environment and structures that allow democratic participation. This is not in place in most countries and is the greatest challenge for the operation of a continental human rights system.

The paper is divided into three parts. *Part One* examines the content of the African Charter. We shall deliberately avoid a historical narration of its evolution, although this has had a great impact on the final shape of the African Charter. *Part Two* will examine the operation and effectiveness of the African Commission, drawing comparisons from existing Latin American and European systems. This will be followed by a *Conclusion* which will carry tentative suggestions for improvement.

The completion of this paper was made possible by the financial support received from the Institute of Southern African Studies (ISAS) of the National University of Lesotho, and the Stichting European Human Rights Foundation, to which acknowledgement is made. The original proposal was to focus on the link between human rights and development within the Southern Africa Development Coordination Conference countries (SADCC) but this suffered a series of setbacks. Further delays in the conclusion of this work were contributed by the non-availability of the *Rules of Procedure* of the African Commission, which have in certain cases elaborated or expanded on the substantive provisions in the African Charter, otherwise very brief.

N S Rembe

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PART I

THE AFRICAN CHARTER: WHAT DOES IT CONTAIN?

> "All that could be said about this document... is that it strives to secure a certain flexibility, equilibrium, and to emphasize certain principles and guidelines of our Organization as well as the aspirations of the African peoples. It seeks not to isolate man from society but as well that society must not swallow the individual. Such is the African wisdom that was to be recalled from the very beginning of the proceedings"[1]

The above statement captures in a nutshell the content and philosophy behind the African Charter on Human and Peoples' Rights. The use of the word "Charter" elevates this document to the same status as the OAU Charter itself, thus underscoring its importance. However, during its drafting, some delegations did prefer to use *Declaration, Protocol* or *Convention* to designate the African Charter. More importantly, and to honour its birth place in Banjul, the *Banjul Charter* - which is frequently used - was suggested.[2]

The phrase "peoples' rights," is a new terminology being introduced into a human rights document, a concept which covers *third generation* of human rights or *solidarity rights*. This includes the right to development which has assumed a central place in human rights resolutions and instruments.[3] The African Charter deliberately avoided defining *"peoples' rights"* knowing the problematics posed by this notion.[4]

The African Charter contains a preamble and a substantive part consisting of 68 articles. *Part I* dealing with Rights and Duties is sub-divided into two chapters on "Human and Peoples' Rights (articles 1-26), and "Duties" (articles 27-29). *Part II* contains "Measures of Safeguards" sub-divided

1 OAU Doc. AHG/102/XVII, Nairobi, June 1981, at p. 22.

2 See OAU Doc. CM/1149 (XXXVII) Annex 1, p. 26, para 116.

3 See Declaration on the Right to Development, General Assembly Resolution 41/128, December 4th, 1986.

4 Note 2 above, p. 4, para 13.

into four Chapters; namely, "Establishment and Organization of the Commission (articles 30-44); the "Mandate of the Commission" (articles 45), "Procedure of the Commission and Applicable Principles" (articles 46-59 and 60- 63 respectively). The Final Provisions are contained in *Part III* (articles 44-68).

The preamble to the African Charter is contained in ten paragraphs. The preamble is the key to any convention; it captures its contents and particularly, the philosophy underlying its conclusion. Therefore, it is, unlike preambles to most domestic constitutions, part of the text, of significance in interpretation of the document.

From the preamble it is clear that the conception of human rights contained in the African Charter goes beyond the provisions of the Universal Declaration and subsequent international and regional human rights instruments. The spirit that surrounded the drafting of the African Charter laid emphasis on the following:

(i) the specificity of African problems relative to human rights;

(ii) the link between human and peoples' rights and the importance of economic, social and cultural rights to developing countries;

(iii) the total liberation of the continent from foreign domination and the need to eradicate apartheid in particular, and,

(iv) the need for the establishment of a new economic and social order.

Right from its preamble, the African Charter emphasizes its link with the OAU Charter. The former makes reference to principles and aspirations already contained in the OAU Charter such as those underlying freedom, equality, justice and the dignity of the human person, non-discrimination, eradication of colonialism, neo-colonialism and apar'heid. The African Charter recognizes, in addition to the above, that:

(i) human rights are inherent attributes of human beings, hence the need for their protection and guarantee;

(ii) the enjoyment of rights and freedoms carries with it the performance of corresponding duties;

(iii) the centrality of the right to development, although all rights are inter-linked and indivisible;

(iv) the importance traditionally attached to rights and freedoms in Africa and therefore the need for the African Charter to reflect historical traditions and values of African civilizations.

The preamble thus leads us to believe that the African Charter is original in its conception of rights and specific to the African conditions. This is underscored by this official view of the OAU:

> We feel gratified not only about the clarity with which decision 115 (XVI) of the Monrovia Summit was implemented, but as well about the originality of the text which reflects the concerns expressed by one and all, in that the Charter must reflect an African conception of Human Rights and Duties, in other words the respect the African has for individuals and peoples ...[5]

Whether this is true remains to be demonstrated from the substantive provisions of the Charter as well as from African State practice. However, the following questions can be raised at this point in time.

(i) How far does the African Charter, in its formulation of rights and freedoms, depart from, or conform to, existing or desired regional and international standards and practices in the field of human rights?

(ii) To what extent does the African Charter embody values that are inherently 'African' in the sense that they are not shared by other regions? Put differently, does the African Charter contain principles and norms which are African in origin - e.g., customary norms - or does it embody certain values that are imperative to the socio-economic concerns of the African States?

(iii) Can it be said that the African Charter is "*whole*" or has it, as a document resulting from a negotiated compromise - omitted certain rights or values which ought to have been reflected?

It must be pointed out that the African Charter as a document is modest, necessarily so because it was a product of diplomatic negotiations and it had to take into account intra-regional constraints and diversities that then existed otherwise it would have suffered total rejection.

5 See OAU Doc. CM/112/Part 1, Nairobi, June 1981, at p. 31.

A glaring feature of the African Charter is the briefness, simplicity and vagueness of many of its provisions, particularly those dealing with justice. It makes the African Charter, like the Universal Declaration of Human Rights, appear like a working declaration embodying consensus for elaborating on a final but more comprehensive document.[6] The vagueness and open-ended texture of the African Charter may create problems for its interpretation and uniform application; it may also create flexibility which the African Commission can exploit in developing its jurisprudence on human rights based on the petitions and communications received.[7] At another level, it becomes difficult to compare the more elaborate and detailed provisions of the American[8] and European[9] conventions with those of the African Charter.

However, the briefness and simplicity of the African Charter was not an oversight but a conscious effort by its frame. The African Charter was likened to a 'miniskirt'[10] which must be short enough to be fascinating; the provisions dealing with justice must be brief because "their conception may differ according to the political choice of the State;[11] the articles must be drafted in a simple form 'so as to enable the future users of the legal

6 Although proclaimed as 'universal,' the Universal Declaration of Human Rights, 1948, was not adopted in the form of a treaty, but as a resolution of the UN General Assembly. The Declaration was concretized into two binding international Covenants in 1966, which, taken with the Declaration, constitute 'the International Bill of Rights'.

7 See the African Charter, Art. 60-61.

8 American Convention on Human Rights, (ILM, Vol. 9 (1970) p. 101) adopted in 1969, entered into force in 1978. In addition to providing comprehensive catalogue of rights protected and to be promoted, the Convention established an Inter-American Commission on Human Rights and an Inter-American Court of Human Rights.

9 European Convention for the Protection of Human Rights and Fundamental Freedoms, (UNTS, Vol. 213, p. 221), adopted in 1950, entered into force in 1953. This Convention has been supplemented by the European Social Charter, and by 8 Protocol. The Convention established an elaborate system of protection which involves the Committee of Ministers; a European Commission on Human Rights; and, a European Court of Human Rights.

10 Doc. HR/LIBERIA/1979/EP.1, at p. 4, para 13. This phrase is taken from Judge T. O. Elias who likened the Convention to a lady's miniskirt. He described it thus: ... it should, as someone had said in another connection, be like a lady's skirt, long enough to cover the subject matter, but short enough to be fascinating.

11 Note 2 above, at p. 4 para 13.

instrument to apply and interpret them with some flexibility."[12] Notwithstanding the wisdom of the drafters, the value of the African Charter as a legal document which should endure is eroded. Of necessity, the African Commission, in discharging its mandate, must redefine and refine certain provisions and constantly expand on the African Charter unless this is formally done by special protocols or agreements.[13] This has to some extent been carried out in the Rules of Procedure.[14]

The African Charter provides in 23 articles individual rights and freedoms alongside peoples' rights, and in 5 other articles, obligations of states and duties of individuals towards their community, in particular, the family and the State.

In its opening articles the African Charter provides that:

Article 1

> The Member State... parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative and 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

12 *Ibid.*

13 The African Charter does recognise this weakness and looks into the future. Art. 66 provides: "Special protocols or agreements may, if necessary, supplement the provisions of the present Charter."

14 The Rules of Procedure were deliberated and adopted by the Commission at its second session held in Dakar, Senegal, on February 13th, 1988 (Doc. AFRI/COMM/HPR. 1 (II), and adopted by the 24th Ordinary session of OAU Head of State and Government, meeting in Addis Ababa, May 25th-28th, 1988 (Doc. AHF/155 (XXIV).

group, colour, sex, language, religion, political or any other opinion, national and social origin, birth or other status.

The wording of the above provisions is not as forceful as the wording of the Dakar Draft proposal from which the African Charter originated. Article 1 of the Dakar Draft proposal obliged states to:

> *recognize* and *guarantee* the rights and freedoms in the present convention ... and to adopt measures in accordance with their constitutional provisions, legislative and other measures to *ensure* their respect.[15]

The African Charter is also lacking on a clear undertaking by State Parties on provision of effective remedies, access to relevant institutions for aggrieved parties, as well as enforcement of remedies when granted. The International Covenant on Civil and Political Rights, for example, provides in Article 2 paragraph 3 that each State Party undertakes:

> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

The lack of effective remedies and the brevity in which the articles are cast leads us to conclude that the African Charter is more heavily tilted towards promotional rather than the protection aspect. This has been emphasized in all initiatives prior to the adoption of the African Charter. However, it is clear that the African Charter creates and re-affirms human and

15 Doc. CAB/LEG/67/3/Draft Rept. (III) Rev. 1. Similarly, art. 1 paragraph 1 of the American convention is more concrete and forceful. It provides: The State Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without dicrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

peoples' rights and renders them binding norms guaranteed by law. State parties "undertake to adopt legislative and other measures to give effect to the rights and freedoms recognized." This obligation includes, *inter alia,* the passing or repeal of municipal legislations; changes in municipal policies; building of municipal structures and institutions, and, accountability through a system of periodic reports.[16] Moreover, the African Commission is created "to ensure the protection of human and peoples' rights under conditions laid down in the Charter."[17] The obligation placed on states is to protect the rights provided for and also to promote their continuous and progressive realization.

The rights provided for in the African Charter include (i) the traditional civil and political rights;[18] (ii) economic, social and cultural rights,[19] and, (iii) peoples' rights.[20] In addition, the African Charter contains an impressive catalogue of duties and obligations of individuals and States.[21]

Civil and Political Rights

The African Charter opens with the more fundamental rights that revolve on the liberty, equality and security of the individual.[22] These include non-discrimination,[23] equality before the law and equal protection of the

16 See Art. 62.

17 See Art. 30, and 45.

18 Art. 2-13.

19 Art. 14-18.

20 Art. 19-24.

21 Art. 27-29.

22 The phrase "every individual" referred to in the African Charter is not defined. The American Convention prefers "every person" which is defined to mean "every human being" (See Art. 1(2). The European Convention, on the other hand, uses "everyone." Other terminologies in the African Charter include:- "human beings" (Art. 4); "every citizen" (Art. 13); "all peoples" (Arts 19-23); "all people" (Art. 24); "any individual" (Art. 23 (2); the individual (Art. 29).

23 Art. 2.

law.[24] That these articles feature prominently at the beginning of the African Charter signify the importance attached to equality of all before the law; non-discrimination, including eradication of apartheid.

The inviolability of the human person and respect for his life and the integrity of his person is provided for in Article 4. That human life is sacred and inviolable is unquestionable and this Article should have been inscribed as the most fundamental, well detailed and with the excepted derogation carefully specified and delineated. The drafting history of Article 4 show that it was controversial with some States making reservations.[25] Its implementation is not without difficulties in a continent where the death penalty still exists; capital punishment for political offences increasingly resorted to, including death from torture while in police custody. Mention may be made, for example, of shameful acts amounting to the crime of "genocide" commited by African governments to their own populations, notwithstanding the existence of the African Charter. Events that took place in Burundi and Liberia raise serious problems about the continent's commitment to the protection of human rights, as much as the effectiveness of the regional human rights watchdog already in place during these events.

Article 5 is closely connected to the preceding and subsequent Article. It provides for the respect of the dignity inherent in the human person, and in particular, it prohibits slave trade and slavery, torture and all forms of cruel, inhuman and degrading punishment and treatment. The practices enumerated in Article 5 constitute part of an international public policy towards their prohibition. These practices are, however, reportedly rampant in a number of African countries. Various reports have pointed out to the existence of slavery (and slave trade) in Mauritania, for example. Corporal punishment, including other degrading punishment such as mutilations or stoning to death, are officially sanctioned in some African countries. In others, torture, cruelty and maltreatment of persons is inflicted by the very agencies charged with the protection of individuals - the police and the army. The former wield considered police powers outside the control of the judicial system. This has further been

24 Art. 3.

25 These included Mozambique, Angola, Cape Verde and Guinea Bissau. See Doc. CM/1149(XXXVII) Annex 11, p. 8, para 37-38.

exacerbated by vigilante, militia and even death squads, officially sanctioned by the State but outside the reach of the laws of the land.

The right to liberty and to the security of the person, including freedom from arbitrary arrest or detention is provided for in Article 6. This is one of the most abused right by the African States. In some countries, a state of emergency is often declared or perceived. Detention laws - including deportations and internal security laws - are instruments that exist in all African States and for political motives for which the courts, fearing the arm of the executive, often abdicate jurisdiction under "non-justiciability."[26] The effect of detention is not only to strip the individual of all protection, but to deny him his most fundamental rights, including democratic participation in governance. A healthy democratic culture cannot therefore be sustained without tolerance of freedom of opinion, speech, and association.[27]

Article 7 is another key article in the African Charter. It is a composite article embodying a number of rights related to the procedural and substantive administration of justice in both criminal and civil litigation - what may be characterized as "due process." This include the right to appeal; right to a speedy trial by a competent and impartial court or tribunal; right to be presumed innocent until proved guilty; right to defence. The article also prohibits trial and punishment founded on retroactive penal legislation - that is, an act or omission which did not constitute a legally punishable offence at the time it was committed. The article also makes it clear that punishment is personal and it can only be imposed on the offender and not on members of his family. The implementation of this

26 See J.T. Mwaikusa, "Government Powers and Human Rights in Africa: Some observations from the Tanzanian Experience" Paper presented at a "Workshop on Constitutional Government and Human Rights in Africa", Maseru, Lesotho, October 4-9, 1989.

27 See K. Kibwana, "Development of Democratic Culture and Civil Society in Africa: An Analysis of Relevant Constitutional Initiatives and Models", Paper presented at Workshop on Constitutional Government and Human Rights in Africa, Maseru, Lesotho, October 4-9, 1989; and J. Ojwang, "Constitutionalism - In Classical Terms and in African Nationhood," Paper presented at Workshop on Constitutional Government and Human Rights in Africa, Maseru, Lesotho, October 4-9, 1989.

article requires an independent judiciary which states undertake to guarantee.[28]

Articles 8-13 are closely inter-linked. They provide for freedom of conscience (Article 8); right to information and to express and disseminate one's opinion (Article 9); right to free association (Article 9); right to assembly (Article 11); right to freedom of movement (Article 12); right to participate in government (Article 13). All these rights are important not only for the individual but for his relationship with the group and the government. The above articles are however, seriously limited by law and, as stated earlier, vaguely drafted. Moreover, the right to form trade unions is not expressly stated, nor is there a provision for regularand free elections and a government accountable to the electorate.[29]

Article 12 is one of the most elaborate provisions in the African Charter. It provides for freedom of movement, including the right to leave and return to one's country and the right to asylum; it limits the expulsion of non-nationals if it is not based on a decision made in accordance with the law, and also prohibits mass expulsion of non-nationals.[30] This article is significant since it offers protection to nationals and non-nationals. The drafters were undoubtedly conscious of two problem areas of concern to

28 See Art. 26.

29 *Ibid.* See also Kibwana, *loc. cit.*, and Ojwang, *loc. cit.*

30 This refers to large scale expulsions such as those involving Ugandan Asians or black Senegalese from Mauritania.

many African States, namely, refugees and mass expulsions, which have been exacerbated by arbitrary divisions of ethnic groups into two or more States. In this respect, the article is strengthened by its reference to international conventions, of which the OAU Convention Governing Specific Aspects of Refugees[31] is but one. The implementation of this article has already suffered a number of setbacks, evidenced, for example, by the Nigerian and Kenyan expulsion of non-nationals.[32] Measured in numbers and the resources to cope with it, the problem of refugees in Africa is a grave one. This problem has been accentuated by civil wars and natural disasters in many African States, not to mention the Liberation war in South Africa. Because the refugee situation in Africa has been severely affected by drought and other natural disasters, as well as by the critical economic situation prevailing in Africa, international assistance to refugees in Africa has been called for.

The guarantee for the right to property is a curious provision in the African Charter, essentially because of the views of the African States on property and nationalisations at both regional and international fora. The right to property has been controversial not only in international human rights instruments,[33] but in General Assembly resolutions on sovereignty over resources,[34] the establishment of the New International Economic Order[35]

31 See OAU Convention governing specific Aspects of the Problems of Refugees in Africa adopted 10th September, 1969. This Convention is a regional supplement to the UN Convention Relating to the Status of Refugees, adopted 28th July, 1951, and the Protocol Relating to the Status of Refugees, adopted 31st January, 1967.

32 Such expulsions, it has been urgued elsewhere, negates the very objective of creating "community citizen status" to nationals of member states and freedom of movement and residence. See N.S. Rembe, "Regional African Cooperation Arrangements," in Manlio Frigo, Paolo Martinello (eds.), *La cooperazione allo sviluppo tra Italia e Paesi africani.* Roma: Edizioni Lavoro, 1990, p. 11-140, at 136-137. See also J.E. Oloko, "Free Movement of persons in ECOWAS and Nigeria's Expulsion of illegal aliens." *The World Today,* (1984) p. 428-436.

33 Although the right to property is referred to in the Universal Declaration of Human Rights, it is omitted altogether in the two binding International Covenants on Human Rights. At the time of their adoption in 1966, the right to property was already controversial.

34 See General Assembly resolution 1803(XVII) of 14th December, 1962; and

and the Charter of Economic Rights and Duties of States.[36] Even the European convention omitted any reference to this right but referred to it marginally and vaguely in its First Protocol as an entitlement of each person to "the peaceful enjoyment of his possession."[37]

This writer believes that the inclusion of this right found uneasiness among many African States. Its exercise may contradict traditonally held notions of communal ownership.[38] It may also conflict with a State's right of eminent domain, particularly where the right to development is underscored.

Economic and Social Rights

Despite the emphasis put on social, economic and cultural rights, they are not extensively developed in the African Charter. Only few rights are provided for, namely, the right to work and equal remuneration for equal work (Article 15); the right to physical and mental health, including medical care for the sick (Article 16); the right to education including the free participation in the cultural life of one's community (Article 17); the protection of the family, its morals, women, children and the disabled (Article 18). The right to privacy; to social security and to rest and leisure which feature in other documents is absent in the African Charter.

The above rights are to be promoted progressively, within the limitations and constraints of the African States. In view of this, and although the African Charter recognizes the indissoluble link in the conception and universality of civil and political rights on the one hand, and economic, social and cultural rights on the other - it is difficult to make the latter group of rights justiciable in the same way as the former. In this regard the above

36 General Assembly Resolution 3281 (XXIX) of 12th December, 1974.

37 Art. 1, Protocol (No. 1) to the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted March 20th, 1952; entered into force May 18th, 1954 UNTS Vol 213 p. 262. The Article provides: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

38 See Mwaikusa, *loc. cit.*

provisions must be read together with Articles 1 and 62. Under Article 1, State Parties undertake to adopt legislative and other measures to give effect to the rights and freedoms enshrined in the African Charter. Article 62 imposes an obligation on States to submit every two years a report on the measures taken with a view to giving effect to the rights and freedoms guaranteed in the African Charter. "Reporting procedure" is a well established mechanism under most international human rights arrangements and has further been developed under the Rules of Procedure. The reports and debates on them, if properly handled, can be an effective way of implementing the provisions relating to social and economic rights.

A brief mention on Article 18 on the rights of the family. The family is portrayed as the custodian of morals and traditional values recognized by the community. It is seen as the natural unit and basis of society which shall be protected by the State. The latter undertakes to ensure the elimination of discrimination against women and the protection of the rights of women and the child, those of disabled and the aged, as stipulated in international declarations and conventions. This article is in line with the philosophy underlying the drafting of the African Charter, namely, the need to reflect

African values and traditions. However, a number of misgivings may be pointed out.

Firstly, the African Charter makes only tinkering reference to the rights of women. The plight of women on the African continent is well known, and the OAU adopted substantial policy recommendations in the Lagos Plan of Action,[39] the latter document having been adopted in the course of the drafting of the African Charter. The same can be said of the rights of the child which have received growing international recognition and protection.[40]

Secondly, the implementation of the African Charter calls for States to redress at the national level numerous problems of serious magnitude relating to women such as sexual discrimination and prejudices against women; cruel and inhuman treatment; equality of the sexes and of recognition before the law; participation and equal access to opportunities and resources.

Lastly, many customary practices and institutions connected with marriage, matrimonial home and property, inheritance, circumcision need

39 Lagos Plan of Action for the Implementation of the Monrovia Strategy for the Economic Development of Africa, Doc. ECOM/ECO/9(XVI) Rev. 2. The Lagos Plan of Action resulted from the "Monrovia Symposium on the Future Development Prospects of Africa Towards the Year 2000." See Doc. E/CN. 14/698, Add. 2.

40 Although the rights of the child were recognised far back in 1959 in the Declaration on the Rights of the Child, it was not until 1989 that the UN Convention on the Rights of the Child was adopted. The Convention which received sixty signatures on the first day entered into force on 2nd September, 1990, after meeting the required twenty ratifications.

re-examination. This also includes the position of women under Islamic Shariah law[41] and Roman Dutch law.[42]

Peoples' Rights

One of the novelty included in the African Charter is the concept of "peoples' rights," which was seen as a crucial provision from which all other rights should flow. The Rapporteur's Report highlights the philosophy behind the inclusion of this concept:

> *Noting* that, in Africa, Man is part and parcel of the group, some delegations concluded that individual rights could be explained and justified only by the rights of the community. Consequently, they wished that the Draft Charter made room for Peoples' Right and adopt a more balanced approach to economic, social and cultural rights on the one hand and political and civil rights on the other.[43]

The concept of peoples' rights is an innovation in the African Charter, and the first time it is included in a binding legal instrument although the phrase

41 Under Islam, men have *gawana* (guardianship) over women, the latter being regarded as inferior. El Naiem writes thus: "... many limitations on the rights of women are based on specific Koranic and Hadith texts. These include the various rules of inferior matrimonial rights, inferior inheritance rights, limitation or denial of capacity to testify, denial of competence to assume high ranking judicial and political office." See Abdullahi El Naiem, "To Resolve the Islamic Dilemma," Colombia University: Centre for the Study of Human Rights, 1982 (unpublished) p. 12-14.

42 On this see, for example, Poulter, S., *Legal Dualism in Lesotho,* Morija Book Depot, Morija, 1979; Maqutu, W.C.M., "Internal Conflicts in Law of Succession of Lesotho", *LCLQ*, (1978).

43 Rapporteur's Report, Doc. CM/1149 (XXXVII) Annex II, p. 3 para 10.

"peoples" has been referred to in the UN Charter,[44] the two International Covenants,[45] General Assembly resolutions on permanent sovereignty over resources;[46] those on decolonization;[47] and the Algiers Declaration,[48] among others. The latter Declaration sets out twenty-one "Universal Rights of Peoples' classified as: Right to Existence; Right to Political Self-Determination; Economic Rights of Peoples; Right to Culturel; Right to Environment and International Resources; and, Rights of Minority.

The concept of peoples' rights represents a significant shift from looking at human rights purely as individual rights; it emphasizes collective or solidarity rights for the larger group - the society or community, including the State and the international community - to which the individual is interlinked.

Among the peoples' rights provided for in the African Charter are equality of all peoples (Art. 19); the unquestionable and inalienable right to self-determination (Article 20); the right to exercise permanent sovereignty over natural resources, including the right of dispossessed peoples to recovery of their property and compensation for damage done to its resources (Article 21); the right to economic, social and cultural development and the equal enjoyment of the common heritage of mankind

44 The preamble opens with "We peoples of the United Nations".

45 Art. 1(1) and 1(2) of both Covenants opens with the phrase "All peoples".

46 See note 34 above.

47 Resolution 1514 (XV) of December 1960 contains copious references to "peoples" in its preamble and paragraphs 1-2, 4.

48 See A. Cassese, and E. Jouve, Pour un Droit des Peuples: Essais sur la Declaration d'Alger. Paris: Edition Berger-Levrault, 1978.

(Article 22); the right to international peace and security (Article 23); the right to a satisfactory environment favourable to development (Article 24).

The concept of peoples' rights was not defined in the African Charter "so as not to end up in difficult discussions."[49] If that was avoided, this cannot be said of difficulties that will arise from the interpretation and application of the provisions of the African Charter relating to peoples' rights. First is a fundamental question - who are"peoples"? - is it a group of individuals; the State (or States); tribal or ethnic minority within the State etc? [50] Does not, for example, a minority or ethnic group within a State asserting its peoples' rights to political existence not violate or conflict with cardinal principles of the OAU? The African Charter should therefore have been more specific about the concerns already raised and experienced, concerning ethnic and minority rights.

The inclusion of the right to development reflect another area of African concern. Concerns of the African States on issues of development featured prominently in various regional and international documents including numerous UN resolutions on the least developed among the developing countries, of which the African States form a significant part.[51]

The link between development and human rights finds emphasis right from the preamble to the African Charter which provides:

> "it is therefore henceforth essential to pay particular attention to the right to development... the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights."

49 Rapporteur's Report, OAU Doc. CM/1149 (XXXVII) Annex II, p. 4 para 13.

50 See R. Kiwanuka, "International Law, Human Rights and Development: An African Challenge." Thesis presented for the degree of Doctor of Philosophy of the University of Western Australia, Law School, 1987, Chapter 6., p. 318 *et seq*.

51 In addition to the Lagos Plan of Action, *loc. cit.,* See for example, Africa's Alternative to Structural Adjustment Programmes; Declaration on the Critical Economic Situation in Africa (General Assembly Resolution 39/29 of 3rd December 1984); Substantial New Programme of Action for the 1980s for the Least Developed Countries, *Official Records of the General Assembly, Thirty- third Session, Supplement No. 15* (A/33/15 and Corr. 1). Vol. 1, Part Two, Annex 1.

The ultimate value of human rights is to advance not only the respect and integrity of the individual, but as well as his material well-being. The realization of the right to development which has increasingly received international recognition in recent years, will play a central role in the development and full enjoyment of individual and peoples' rights.

Other features of the African Charter

The African Charter contains two features which might have certain consequences to its implimentation, namely, limitations of the rights by law and non-derogation clauses.

The African Charter restricts the rights provided by adding limitations on the exercise of these rights. Numerous articles in the African Charter subject the exercise of these rights by law;[52] others to national security, [53] safety, health, ethics, public need or general interest;[54] rights of others, morality or common interest.[55] Such restriction or limitations by operation of law are often vague and may be abused. There is no provision safeguarding abuses so that particular limitations imposed by States are not arbitrary or are made permissible to that particular overriding purpose for which they relate. At any rate, any restriction must at all times conform to

52 See African Charter Arts. 6, 8, 9, 10(1), 11, 12, 13, 14. See also C.M. Peter, "Human Rights in Africa: A Comparative Study of the African Human and Peoples' Rights Charter and the New Tanzanian Bill of Rights." University of Dar es Salaam: Faculty of Law, 1989, Part Two, p. 72-74.

53 See Art. 11, 12.

54 *Ibid.* See also Art. 14.

55 Arts. 11, 12, 14.

the spirit of the African Charter. A cardinal principle of international law and interpretation of international obligations is that State parties must fullfil their contractual obligations in good faith, in accordance with the principle of *pacta sunt servanda*. Limitation of rights by national legislations should therefore not destroy the integrity of the African Charter. In other human rights conventions, permissible exceptions and the circumstances justifying limitations of rights are more clear, detailed, and specific.[56] Furthermore, abuse is checked by providing for non-derogation from certain fundamental rights,[57] as well as prohibiting restrictive interpretation of such rights.[58]

Similarly the African Charter exhibits the absence of provisions dealing with suspension of rights in times of war, or State of emergency, and non-derogation from certain rights. A State of emergency provides a fertile ground for violation of human rights. A number of African States have invoked sweeping emergency measures backed by internal security legislations to stamp out opposition, including human rights activism. Some of the emergency measures have persisted well beyond the exigencies of the situation. Most human rights conventions allow States to take measures in derogation from their contractual obligations in times of war, public danger or other emergency that threatens the independence or security of the State. Such measures, however, must be to the extent and time strictly required by the exigencies of the situation, non-discriminatory in nature, and they should not violate the States' other obligations under international law. Moreover, notification to other State parties of the provisions suspended and the reasons for their suspension, and the date for termination of such suspension is required.[59] Precautions should have been

56 European Convention, *loc. cit.*, Art. 11(2); 17; American Convention, *loc. cit.*, Arts. 29-30.

57 These rights are spelt out in the European Convention, *loc. cit.*, Art. 15; and American Convention, *loc. cit.*, Art. 27 (2). This also includes the judicial guarantees essential for the protection of such rights. *See* also the *International Covenant on Civil and Political Rights, loc. cit.*, Art. 4 (2).

58 Article 29-30, American Convention, *loc. cit.*, Art. 17-18, European Convention, *loc. cit.*

59 On this see American Convention, (Art. 27); European Convention, (Art. 15); International Convenant on Civil and Political Rights, (Article 4).

taken in the African Charter to safeguard human rights in emergency situations in line with the other regional and international conventions.

Lastly, mention may be made of the balance made between rights and obligations, and in particular, the imposition of duties on the part of individuals and the State.[60] Individual rights and freedoms are therefore not absolute; they should be exercised with due regard to the rights and freedoms of others.

60 Art. 27-29, African Charter.

PART II

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Creation of the African Commission

In order to safeguard the promotion and protection of human and peoples' rights established under the African Charter, the African Commission on Human and Peoples' Rights (the African Commission) was created.[61] The African Commission is an organ of the OAU charged with specific competences in the field of human rights.

The Commission is composed of eleven members elected from among African personalities of the highest reputation, moral integrity, impartiality and competence in human rights.[62] The members serve in their personal capacity; they need not be lawyers, although consideration is given to persons having legal experience.

Before their election, the Secretary-General of the OAU draws an alphabetical list of the nominees received from State parties.[63] Each State party may nominate two candidates, who must be nationals of one of the State parties to the African Charter,[64] but the African Commission shall not include more than one national of the same State.[65] The election is made by secret ballot by the Assembly of Heads of State and Government

61 Art. 30.
62 Art. 31.
63 Art. 35.
64 Art. 34.
65 Art. 32.

of the OAU (AHG), from a list of persons nominated by State parties to the Charter.[66]

The tenure of office of members of the African Commission is six years and they can be re-elected. However, at the first election, the term of office of *four* members shall be two years, while *three* others shall serve for four years.[67] The names of the seven members shall be determined by the Chairman of the AHG immediately following the elections.[68] Following the first election, the following were elected members of the African Commission. Following the first elections, the composition of the Commission was as follows:[69] Members elected for six years were Mr. Alioune Blondin Beye (Mali), Mr. Alexis Gabou (Congo), Mr. M. D. Mokama (Botswana), Mr. Youssoupha Ndiaye (Senegal); Members elected for four years were Mr. Grace S. Ibingira (Uganda), Mr. Habesh Robert Kisanga (Tanzania), Mr. C.L.C. Mubanga-Chipoya (Zambia); members elected to serve for two years were Dr. Ibrahim Ali Badawi El Sheikh (Egypt), Mr. Sourahata B. Semega Janneh (Gambia), and Mr. Isaac Nguema (Gabon).

The members of the African Commission represent African political divisions and legal system (French; English and Arabic) as well as geographical regions (West Africa *three* members; North Africa *three* members; Central and Southern Africa *three* members; Eastern Africa *two* members).

At its first session held on 2 November 1987, the African Commission, in conformity with Article 42 of the African Charter elected Mr Isaac Nguema as its Chairman and Mr Ibrahim Ali Badawi El Sheikh as its Vice Chairman. In the meantime, Madam Esther Tchouta-Moussa was designated Secretary of the African Commission in conformity with Article 41 of the African

66 Art. 33.

67 Art. 36.

68 Art. 37.

69 See doc. AHF/155(XXIV) Annex II. The current composition of the African Commission includes Prof. U.O. Umozurike (Chairman, Nigeria). The other members remain the same with the exception of Mr. Grace S. Ibingira. The Vice- Chairmanship is held by Mr. Alexis Gabou (Congo).

Charter.[70] This leads us to observe here that apart from this officer, there is no woman included among the members of the African Commission.

Among the initial problems that confronted the African Commission was the choice of its seat; emoluments of members, and Rules of Procedure.

The question of the seat of the African Commission is neither specified in the African Charter, nor in the OAU Charter itself. At its 3rd Session held in Libreville, Gabon, April 18-28, 1988, the African Commission recommended to the AHG that the seat of the African Commission be located in a State party to the African Charter with substantial facilities for its work and research. Banjul, the Gambia, was subsequently approved by the AHG.[71]

The African Commission also considered regulation of financial provisions and other expenses of the African Commission pursuant to Article 41-44 of the African Charter. Appropriate recommendations were put before the AHG so that the financial provisions could become annexed to the Rules of Procedure.[72]

The African Commission had to elaborate on and formulate its own Rules of Procedure. This was done at its second ordinary Session held in Dakar, Senegal.[73] The 120 Articles contained in the Rules of Procedure not only rationalizes the work of the African Commission, they also supplement in a significant way the vagueness and briefness of many of the provisions of the African Charter as stated heretofore.

Having finalized these, the African Commission also adopted a programme of action for promotion and protection of human rights, the realization of which depends on the budget of the African Commission.[74] Matters concerning cooperation with non-governmental organizations were also looked into.

70 See doc. AFR/COM/HPR/ACTY/RPP (III), p. 3.

71 *Ibid.*, p. 9.

72 *Ibid.*, p. 4 - 5 and doc. AHG/155 (XXIV), Annex VII. See also Rule 24 of the Rules of Procedure.

73 See AFR/COM/HPR. 1 (II).

74 See doc. AHG/155 (XXIV) Annex VIII.

The above discussion relating to the structure and organization of the African Commission reveal a number of problems. Firstly, in order to function more effectively in a continent of fifty or more States with insurmountable problems not only in the field of human rights but in transport and communications, the capacity of the OAU to meet the emoluments and operational expenses of the African Commission, including its administrative costs is doubtful. The budget of the Inter-American Commission on Human Rights, for example, stood at US $90,000 more than a decade ago.[75]

Secondly, a criteria has to be formulated for representation within the African Commission, whether based on equitable geographical/sub-regional representation or purely on merits. The African Commission functions against diverse political, social, cultural, and legal systems, and therefore its efficiency will depend on knowledge and accommodation of these diversities. Both the European and American human rights systems provide for representation of all contracting States.[76] Such as arrangement may arrest a feeling of non-representation and the possibility of an adverse judgement that may result from it.

Thirdly, membership to the African Commission is open to any person; expertise in legal matters, especially in human rights, is a preference but not a requirement. In the absence of a Court and when it is apparent that the African Commission may increasingly encroach on judicial functions, this provision is dangerous. Legal expertise should specifically have been made one requirement, with preference given to those who are appointable or have served as judges of the High Court of their respective countries or in international organizations where substantive and procedural human rights matters are involved.

Fourthly, the link between the African Commission and various organs of

75 This figure is taken as at 1978. See J. C. Twittle, *International Human Rights Law and Practice,* Philadelphia, 1978, p. 52.

76 European Convention, Art. 20 and 35 dealing with the European Court of Human Rights; American Convention, Art. 35. Article 52 dealing with judges to the Inter-American Court of Human Rights requires that the seven judges of the Court be nationals of the member States of Organization, not state parties to the Convention.

the OAU may be desirable but this creates difficulties. The subordination of the African Commission to the AHG and the involvement of the latter in elections of members of the former raises doubts about the effectiveness and impartiality of the African Commission. In the absence of a Court, the African Commission must be seen to function independently without fearing the ultimate verdict of the AHG on its decisions. At present, the African Commission is like a functional sub-Committee of the AHG.

Fifthly, the Secretary of the African Commission is a key officer in the African human rights system, yet his appointment is not by the OAU Council of Ministers (CM) or AHG.[77] The Secretary and his staff should do more than clerical/administrative work. He or she should assist the African Commission by furnishing it with necessary information and facilitating screening the admissibility of the various communications. The provisions in the African Charter are vague on the mandate of the Secretary and these had to be defined in the Rules of Procedure.[78]

Lastly, the role of the CM is not defined in the African Charter nor developed in the Rules of Procedure. This is a serious omission taking into account the CM as the executive arm of the OAU and the role it will necessarily play in any enforcement action.[79]

Mandate of the African Commission

Under the African Charter, the African Commission has three broad functions spelt out in Article 45. The mandate of the African Commission is spelt out as follows:

> 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, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions

77 The appointment of the Secretary to the Commission is made by the Secretary General of the OAU. The functions of the latter are spelt out in Rule 22.

78 The functions of the Secretary of the Commission are now spelt out in Rule 25-26 of the Rules of Procedure.

79 Compare for example the role assigned to the Committee of Ministers under the European Convention. See Art. 31-32.

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) Cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2. Ensure the protection of human rights under conditions laid down by the present Charter.

3. Intepret all the provisions of the present Charter at the request of a state Party, an institution of the OAU or an African Organization recognized by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

From the foregoing article, it is evident that the mandate of the African Commission is heavy on standard setting and promotion of human rights. This is not surprising, as the various regional initiatives leading to the adoption of the African Charter emphasized promotion, not protection. It is trite that promotion has to precede, and in reality enhances, protection.[80] The African Commission adopted an elaborate promotion programme at its second session held in Dakar, Senegal, February 8th - 13th, 1988. The programme involves three broad functions spelt out as: information and dissemination; quasi-legislative; and cooperation.[81]

The second and third mandate of the African Commission are judicial functions, which involved receiving and considering inter-State and "other cummunications," including interpretation of the African Charter. This function brings the African Commission closer to a quasi-judicial body, more so in the absence of an African Court of Human Rights.

It is evident from Article 45 (4)that the mandate of the African Commission is not exhaustive, and the AHG may entrust it with other functions not

80 See N S Rembe, *Africa and Regional Protection of Human Rights: A Study of the African Charter on Human and Peoples' Rights; Its effectiveness and Impact on the African States*. Leoni Editore, Rome, 1985, Chapter Two.

81 See doc. AHG/155 (XXIV) Annex VIII.

enumurated in the above Article. This provision is forward looking, since other functions central to human rights, like fact finding, are not expressly provided for in the African Charter, nor developed in the Rules of Procedure.

Levels of Protection

There are three levels at which human rights are protected, namely, at national, regional and international level. The first is by far the most important; the last two are similar since they involve treaty arrangements and more or less invoke similar procedures and machinery.

National Protection

National protection is effected mainly through national courts, tribunals and institutions, e.g., Ombudsman charged with this task. This type of protection involve the ordinary individual who is a victim of violation of his/her human rights, litigating for them against the violator, usually his own State. Recourse to local institutions and procedures is a necessary pre-condition for access to regional or international protection. Most conventional procedures require that an aggrieved individual must first seek and obtain redress at the national level and exhaust all available local remedies.

This procedure, central though it may be, is not without serious shortcomings:

1) The right violated may not be an existing right which the individual can claim against his State. A number of States ratify regional or international conventions without enacting appropriate national legislations to make those rights enforceable by law at the national level.

2) The individual may have limited access to the organs of protection, even when theoretically they are open to all.

3) In most jurisdictions, it is difficult to sue the State or organs of the State.

4) Effective local remedies may not be available to satisfy the individual even when he is successful.

5) In a number of cases, governments have circumvented court decisions awarding compensation to aggrieved individuals, by legislative or executive action.

Regional/International Protection

A myriad of conventions exist at the regional and international level for the protection of human rights, through committees or, in the case of regional arrangements, human rights commissions, ministerial committees and human rights courts. These arrangements are restricted to State parties and individuals may not automatically have access unless such competence is derivative from the convention or it has been given. Most human rights treaties now contain an optional protocol where such competence is given for individuals to sue violating States. This situation arises from the fact that States consider themselves as subject of international law and rights of individuals at the international plane can only be derivative from their national States. The individual must therefore posses the nationality of the claimant State. Though this position is changing, a situation arises here whereby, in the absence of an individual not having been granted such competence at the international level will have to await for his State - the violator of his rights - to entertain his claim at the international level. An equally difficult situation exists when a State becomes a party to a human rights convention, but does not ratify the optional protocol adopted under such convention.

At the international level, various bodies deal with human rights, among them:

a) The UN through its various organs and agencies for example, the General Assembly (under Art. 13 of the Charter); ECOSOC, and the Third Committee dealing with Social, Humanitarian and Cultural Matters;

b) The Commission on Human Rights established under Article 68 of the UN Charter, which is the central UN policy organ in the field of human rights. The Commission on Human Rights works through working groups and sub-commitees, among them, the Sub-Commission on Prevention of Discrimination and Protection of Minorities under ECOSOC Res 1503 procedure;

c) The Committee on the Elimination of Racial Discrimination established

on the basis of the International Covenant on the Elimination of all Form of Racial Discrimination (1965);

d) The Human Rights Committee established under the International Convenant on Civil and Political Rights, with powers pursuant to the Convenant and the Optional Protocol.

In addition to the above, there are a number of committees established under the conventions on torture, women, etc. There are also investigatory and monitoring groups established on Southern Africa; apartheid, Arab occupied territories; or under specific conventions like UNESCO and ILO.

Due to the existence of various levels of protection, especially at the regional and international level, an aggrieved party is confronted with the choice of the most appropriate forum. This in turn depends on a number of things:

1) What is the objective of the petition? Is the aggrieved party seeking publicity or pressure against the excesses committed by his government or is he/she drawing the attention of the government to the existence of the violation?

2) Is the complainant seeking redress for the violation in terms of monetary compensation?

3) Is time relevant, for example, is the complainant seeking an injunction for a continuing violation, e.g. in the case of detention?

4) Is the complaint the victim of violation or is the petition a group action?

5) If more than one avenue is available, what is the most appropriate "forum convenience" for that type of violation? Recourse to one procedure may exclude another.

Petitioning Procedures under the African Charter

The African Charter provides for two systems of complaints and the

procedures for dealing with them, namely, inter-State complaints or communications[82] and "other communications."[83] The complaints or communications made depend on whether they fall under the area of competence of the African Commission, *rationae materiae, rationae loci, rationae personae,* or *interpretative* competence of the Commission *rationae temporis*.

Competence *rationae materiae* and *rationae temporis*

Complaint to the African Commission must relate to any violation of the provision of the African Charter. This flows from the provisions of Article 1 read together with Article 47 of the African Charter. Moreover, the African Commission has a wide competence on the law applicable set out in Articles 60-61. Flowing from this, the African Commission has competence *rationae temporis,* for violation of principles that constitute international customary human rights law.

Competence *rationae personae*

Only African States are parties to the African Charter. It follows, therefore, that violations that may be brought before the African Commission must originate from a State Party to the African Charter. Violations originating from individuals or other legal personalities do not fall within the competence of the African Commission, unless their acts can be imputed to the State. This is different from the complainant, who may be an individual or other legal person.[84]

Competence *rationae loci*

The African Commission has competence to receive complaints on

82 African Charter, Arts. 47-49.

83 *Ibid.,* Art. 55-56.

84 See Mr. Justice Keba Mbaye, Opening Address on the African Commission on Human and Peoples' Rights, ICJ Colloquium on the African Commission on Human and Peoples' Rights, Dakar, 17-19 June 1987. p. 11.

violations committed on the territory of one of the State Parties. It is not clear from the provisions of the African Charter whether the African Commission has competence to examine violations committed outside national territory. Article 30, for example, establishing the African Commission specifically refers to the competence of the African Commission "to promote human and peoples' rights and *ensure their protection in Africa*."

Interpretative Competence of the African Commission

The African Commission has competence, under Article 45(3), to "interprete all the provisions of the present Charter at the request of the OAU or an African Organization recognized by the OAU".

The African Commission is not established as a court, but it will constantly assume functions of a judicial nature which involve interpretation. A cursory examination of the law applicable under Arts. 60-61 supports this view. There are, however, grey areas on this competence, which prompted some delegations to make reservations.[85] Should the African Commission, for example, have competence to deal with a conflict between the OAU Charter and the African Charter?

PROCEDURES FOR PETITIONING AND EXAMINING PETITIONS

The African Charter lays down the procedure for examining complaints on violation of human rights. This includes conditions for admissibility and the manner of disposing of such complaints. There are two complaint procedures, namely "Communication from States" involving States, and "other communications" involving non-State entities. The former can be

85 The delegations of Burundi, Kenya and Tanzania were unhappy about this provision. See Doc. CM/1149 (CMVII) at p. 28, paras 121-123.

divided into "procedure for communications-negotiations"[86] and "procedure for communication- complaint."[87] We shall treat each in turn.

Procedure for communications-negotiations

One procedure of dealing with human rights complaints is to seek a friendly settlement among the States concerned. This procedure is well established in most conventions.[88] The African Charter provides that a State which considers that another State party has violated the Charter can by a written communication also addressed to the Secretary-General of the OAU and to the Chairman of the Commission draw the attention of the violating State to the matter. The complaint shall disclose the provisions alleged to have been violated and a comprehensive statement of the action denounced.[89]

Within three months the State receiving such communication should furnish a reply to the requesting State party which should be accompanied by:

a) written explanations, declarations or statements relating to the issues raised;

b) possible indications of measures taken to end the situation denounced;

c) indications on the law and rules of procedure applicable or applied;

d) indications on the local proceedings for appeal already used, in process or still open.[90]

If within three months from the date the communication is received by the State alleged to have violated the provisions of the African Charter, there is no reply or the matter is not settled to the satisfaction of the two States

86 See Rule 87 of the Rules of Procedure. See also Keba Mbaye, *loc. cit.,* p. 11 *et. seq.*

87 See 92 of the Rules of Procedure.

88 Art. 30, European Convention; Article 48(f) American Convention; Article 41(e) of the International Covenant on Civil and Political Rights.

89 African Charter, Art. 47. Compare this with the International Covenant on Civil and Political Rights, Art. 41(1)(a).

90 Rule 89, Rule of Procedure. See also Art. 47, African Charter.

bilaterally or through other peaceful procedures, the matter may be referred to the African Commission by either State.[91] Once the matter is before the African Commission, the same procedure is followed for all State petitions.

Procedure for Communication-Complaint

The African Charter provides for a procedure where a State can lodge a petition directly before the African Commission against another State party it considers to have violated the provisions of the Charter, without first seeking a friendly settlement.[92] The communication which will be addressed to the Chairman of the Commission, the Secretary-General and the State Party concerned, must contain the following information or be accompanied by:

a) Measures taken to resolve the issue persuant to Article 47;

b) Measures taken to exhaust local remedies;

c) Any other procedure to which the parties have resorted.[93]

Before consideration of such communication the African Commission shall be satisfied that the period of three months set out in Article 48 has expired and the procedure outlined under Article 47 has been exhausted, including exhaustion of available local remedies.[94] The task of the African Commission is foremost to try to reach a friendly solution by placing its good offices at the disposal of the parties.[95] It is only when an amicable solution is not reached that the African Commission, after examining the relevant information and representations made before it, which is done in closed session, draw a report of its decision and conclusions which shall be submitted through the Secretary-General, to the State parties concerned and the AHG. The Report will carry any recommendations to

91 Art. 48, *ibid.*, and Rule 91.
92 Art. 49, *ibid.*
93 Rule 92, Rules of Procedure.
94 Rule 96, *ibid.*, and Art. 50, African Charter.
95 Rule 97.

the AHG that the African Commission deems useful, and shall be made within 12 months following the time the African Commission was seized of the matter.[96]

"Other Communications"

The African Charter provides a procedure for lodging "other communications," a term presumably referring to communications other than those involving State parties as outlined above. The exact meaning of this term is not elaborated in the African Charter nor in the Rules of Procedure.[97] The elaboration of this term will therefore depend on practice and the jurisprudence of the African Commission. The American Convention, for example, provides that:

> Any person or group of persons, or any governmental entity legally recognized in one or more member States of the Organization may lodge petitions with the Commission containing denunciations or complaints of violations of this Convention by a State party.[98]

Writing on lack of definition of this phrase Judge T.O. Elias stated:

> One might legitimately wonder what is meant by "other communications": The drafter seems to have drawn back from the difficulty of defining them. In my opinion, *these are communications from physical or moral persons. Therefore, an individual, a non-governmental organization, or even an international or national organization may denounce before the Commission any act considered a violation of the provisions of the Charter.* Of course, in my view, this formula, as wide as it is, rules out States that are not party to the Charter or their national public institutions from bringing actions before the Commission.[99]

Later on, the Honourable Judge might have doubted in his mind whether the Article provided for more than individual communication when he states:

96 Art. 52, and Rule 100.

97 Keba Mbaye, *loc. cit.,* p. 12.

98 Art. 44.

99 Judge Keba Mbaye, *loc cit.,* p. 12.

> ... As a consequence, one may consider that in mentioning "other communications," the African drafter intended to make available to individuals recourse before the Commission. This interpretation is reinforced, not only by the general terms of Article 55 of the Charter, but also by the fact that an author of a communication may be protected by requesting to remain anonymous, *something which is not possible in the case of a legal personality*.[100]

The provisions of the Rules of Procedure dealing with admissibility of communications, however, leave no doubt as to who can petition before the African Commission. Rule 114 provides:

> 1. Communications may be submitted to the Commission by:
>
> a) an alleged victim of violation by a State party to the Charter of one of the rights enunciated in the Charter or, in his name, when it appears that the latter is unable to submit the communication himself;
>
> b) an individual or an organization alleging, with proofs in support, a serious or massive cases of violation of human and peoples' rights;
>
> 2. The Commission may accept such communication from any individual or organization irrespective of where they shall be.

The procedure requires the Secretary of the Commission to short-list such communications and transmit them to members of the Commission, who shall, by a simple majority decide which communications should be considered.[101] The States concerned shall be informed prior to any substantive consideration of any communication. However, the conditions for admissibility under this procedure are stringent. Under Article 56 of the African Charter, other communications shall be considered if they:

> 1. indicate their authors even if the latter request anonymity,
>
> 2. are compatible with the Charter of the Organization 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 Organization of African Unity,

100 *Ibid.*, p. 13.

101 Art. 55, African Charter.

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 States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.[102]

In addition, Rule 114 of the Rules of Procedure has further circumscribed the conditions of admissibility stipulated in Article 56.[103] It stipulates that the complainant must be a victim of a violation. Reference is also made, as a condition of admissibility, to the existence of a series of "serious or massive violation"[104] of human rights, without a definitive demarcation of this phrase.

Whatever the shortcomings of this procedure, the African Charter made a significant headway compared to other existing regional and international systems. To quote Judge T.O. Elias again:

> In using the term "other communications" the authors of the Charter surely recalled the stages the Commission on Human Rights passed through before its right to examine individual communications relating to human rights violation was recognised. They remembered the warning and eventual steadfastness with which it examined the countless communications reaching it each year by way of the Human Rights Division. They remembered the efforts of the Social and Economic Council to realize that objective for the Commission on Human Rights, culminating in the famous Resolution 1503 (XLVII). We shall see that the procedures to be followed before the Commission borrow certain rules from that

102 See also Rule 102; 114 (3) (a) - (h); 115.

103 There is no stipulation under article 56 that the complainant should be an actual victim of a violation. The effect of Rule 114(1)(a) and 114(3)(b) is to take away this advantage.

104 Art. 58.

Resolution as well as subsequent complementary ones, but that they go even further.[105]

The most significant headway provided by the African Charter is the system of direct petitioning without the requirements of additional competence or protocol. With the exception of the American System, other human rights arrangements provide that States have to sign an additional protocol giving the individual competence before the organs of protection. The effectiveness of individual petition is therefore minimized where a state party to the convention does not ratify the additional protocol.

Despite the advantages of the procedure set out under the African Charter, there are obvious obstacles. Rights are not always asserted through litigation, and a lot of groundwork has to be done if the system is to work for the benefit of the African populace. Access to courts, even at national level, is an obstacle in many African countries and suing the government, let alone an individual, is next to a myth.[106] Above all, the African Charter and its procedures are unheard of and therefore education and sensitization on human rights has to be stepped up. We shall revisit some of these obstacles below.

COMMISSIONS RECOMMENDATIONS

An aggrieved State or individual, whose rights have been violated, appeals to a higher tribunal or court for redress. Redress may take the form of an apology; reparations or damages for the alleged wrong; declaration of rights; condemnation of the act of the violator; injunction in the case of a continuing wrong; or removal of the source of the wrong, for example, repeal or enactment of a new legislation.

What then, is open to the African Commission, after it considers the merits of an application which has passed the test of admissibility? In the absence of other grounds of inadmissibility, the Commission shall draw up a report of its findings, based on the facts and information received. This report shall be communicated to the State parties concerned, through the

105 Judge Keba Mbaye, *loc. cit.,* p. 13.

106 See Mwaikusa, *loc. cit.,* and C.M. Peter, Part Four *loc. cit.,*.

Secretary-General, and shall be transmitted to the AHG, together with the recommendations that the Commission shall deem useful.[107] In cases which reveal the existence of "a series of serious and massive" violation of human and peoples' rights, the Commission shall draw the attention of the AHG, which in turn, may request the Commission to make a factual report, accompanied by its findings and recommendations.[108] The Commission may also submit directly to the AHG cases of emergency it has noticed, and the latter may request the Commission to make an in depth study.[109]

A number of questions can be raised about the efficacy of the system of redress under the African Charter. Firstly, it is not clear whether an individual petition will be considered only when an egregious pattern of violation is established. What constitutes a series of "serious or massive" violations need to be defined. It is not clear whether the drafters of the African Charter had in mind the rules of admissibility of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which require that communications will be admissible only if they reveal "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms..."[110]

Secondly, the place and role of the AHG in the system of protection. The Commission is an organ which accounts to the AHG, a political organ composed of Heads of States and Governments of the OAU. Since human rights can generate into political issues, and in most cases, States are the violators, this arrangement will make human rights more and more subservient to political ends and manoeuvres. Experience, as demonstrated by debates in the OAU during the tenure of Idi Amin of Uganda, has shown that the OAU acts as a trade union of African leaders, in defence of each others existence.

Thirdly, it may also affect the confidence, independence and impartiality of the Commission. The Commission must be seen to function impartially and independently. That independence and impartiality is questionable

107 Arts. 52, 53, and Rule 100; 118.

108 Art. 58.

109 *Ibid.*

110 ECOSOC Resolution 1503 (XLVIII) of 27 May 1970, para 5.

when there is another higher body which can direct and influence its decisions, even censure such decisions.

Fourthly, the role of the OAU Council of Ministers does not appear defined in the African Charter, though this organ could play a central role in enforcement of the decisions of the Commission.

Fifthly, all measures taken within the provisions of the African Charter remain confidential unless decided otherwise by the AHG.[111] Consideration of communications referred to the Commission takes place in camera.[112] Even publication of the annual report of the Commission will have to be first considered by the AHG.[113] Confidentiality of measures undertaken or recommended by the Commission removes the element of adverse publicity as a form of sanction in human rights petitions. The findings and reports of the Commission should be published, and the respective parties informed of such findings and the underlying reasons.

Sixthly, the procedures for entertaining communications should be speeded up. The Commission does not meet frequently, (only once a year) and its members are not full time. It will therefore take a long time before a petition brought before the African Commission is concluded. As Professor Umozurike laments:

> "Consider a hypothetical situation if a government that is more concerned with the interest of a class or a section sets about massively suppressing the human rights of a particular group. The Commission would meet after several outcries against its lethargy. It would wait for a formal complaint from a state before it acts or may reluctantly act on its own. The Commission then calls for information from the offending state which replies belatedly and evasively. The Commission submits its report to the Secretary-General and to the Assembly. Arranging a meeting of the Assembly takes a long time and when finally it meets, there is a dead-lock. The way out is to call for an "in-depth study" of the situation.

111 Art. 59.

112 Rule 95 and 105.

113 Art. 59 (2) (3).

> This is done and re-submitted. The Assembly meets after another delay and the rigmarole continues. The relief for the victims of the denials of rights may come from the publicity given to their plight and from the surreptitious intervention of members of the international community who may not necessarity be African.[114]

Seventhly, the Commission lacks the mandate to make binding recommendations. Specific remedies are neither provided for nor does the African Charter spell out how the recommendations are to be implemented. Under the American Systems, for example, the following remedies are available:

a) ruling that the injured party be assured the enjoyment of the rights and freedoms violated;

b) that the situation which constituted the breach be remedied;

c) payment of fair compensation;

d) compensation for miscarriage of justice;

e) an order on provisional measures even before the case is properly before the court.[115]

The above remedies under the American Convention are further reinforced by article 25 on the Right to Judicial Protection. Under this Article, State Parties undertake:

> a) to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the State;
>
> b) to develop the possibilities of judicial remedy; and
>
> c) to ensure that the competent authorities shall enforce such remedies when granted.

Only Rule 109 of the Rules of Procedure refers vaguely to provisional

114 See U. O. Umozurike, "The Present State of Human Rights in Africa", in K. Ginther and W. Benedek, (eds.), *New Perspectives and Concepts of International Law: An Afro-European Dialogue.* Springer-Verlag, Wien, New York, (1983) p. 113, at 126.

115 See Art. 63.

measures. Even then, this is a mere recommendation, not a binding decision. The Rule provides:

> 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 prejudice being caused to the victims of the alleged violations. In so doing, the Commission shall inform the State party that the expression of its views on the adoption of these provisional measures does not imply a decision on the substance of the communication.

Lastly, the mandate of the Commission needs to be enlarged to include fact-finding, a competence which is provided for in most human rights instruments, but lacking in the African Charter.

Periodic Reports

The system of periodic reports is entrenched in most international human rights instruments.[116] Apart from being a specific undertaking under specific human rights arrangement, in respect to economic, social and cultural rights, it is a recognition that they are not justiciable in the same way as political rights. They are to be realized progressively. To ensure this, most human rights conventions oblige State parties to undertake to submit reports on legislative, judicial, administrative, and other measures which they have adopted and which give effect to the provisions of those conventions.[117] These reports which are submitted periodically, are scrutinized by a supervisory body established under a particular instrument. This process and the accompanying debates among State parties and non-governmental organizations act as a restraint and pressure

116 Covenant on Economic, Social and Cultural Rights, Art 16., Covenant on Civil and Political Rights, Art. 40.

117 See for example, Committee on Economic, Social and Cultural Rights established by the International Covenant on Economic, Social and Cultural Rights, under ECOSOC resolution 1985/17; Human Rights Committee established under the International Covenant on Civil and Political Rights; etc.

on the would-be violators, and thus institutionalize a system of monitoring the application of the convention.

Under article 1 of the African Charter, State parties "undertake to adopt legislative or other measures to give effect to [the]rights, duties and freedoms enshrined in the African Charter." More specifically, under article 62:

> Each State party 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 recognized and guaranteed by the present Charter.

However, the form and content of such reports, including the procedure for their examination, has not been detailed in the provisions of the African Charter but in the Rules of Procedure. The Rules require the reports to contain all the necessary information and to indicate, among others, the factors and difficulties impeding the implementation of the provisions of the Charter.[118] Specialized institutions (a phrase which is not defined) may be furnished with copies of the reports relating to their fields of competence, and may be invited to make observations on such reports.[119]

It is not clear from the Rules of Procedure whether all State parties can participate in the sessions of the Commission during the examination of the reports, apart from the State parties whose reports are being considered or State parties from whom the Commission wants additional information.[120] However, after consideration of the reports and the additional information submitted by State parties, the Commission shall invite comments from State parties to the Charter.[121] Finally, the observations made by the Commission on the reports shall be transmitted to the AHG together with copies of reports received from and comments made by State parties. The final verdict on the reports thus lies with the AHG.[122]

118 Rule 81.
119 Rule 82.
120 Rule 83.
121 Rule 86.
122 *Ibid.*

The Rules of Procedure are not specific on the form and content of the reports, which is left to be defined by the Commission. More importantly, no specific sanction is imposed on non- submission of reports or additional information, other than the inclusion of it in the annual report of the Commission to the AHG.[123] By October, 1990, only four State parties, namely Libya, Tunisia, Nigeria, and Rwanda had submitted their periodic reports.[124] This raises serious doubts on the willingness and commitment of the State parties to the obligations undertaken under the African Charter. Non-submission of periodic reports is a clear breach of the obligations of State parties under Article 62.

CONCLUSION AND RECOMMENDATIONS

The adoption of the African Charter has been outwardly a demonstration by the African States that they uphold and will promote fundamental human and peoples' rights. Such a move has restored, albeit temporarily, the image of Africa tarnished by the excesses committed by Idi Amin and others, at a time when the human rights agenda had prominently featured in international relations. As pointed out, the African Charter contains ingenious innovations as well as serious shortcomings: the latter have to be addressed to during the implementation stage.

The African Charter is a treaty regime born out of the regional political set-up, the OAU, and the machinery established under the Charter is subservient to this regional political organization. Born out of a treaty arrangement, the rights and machinery established under the African Charter can only be what was acceptable by delegations at the negotiating table as a product of compromise, not as one might wish them to be. Thus, the rights are brief and vague; the organ of protection exhibits procedural and structural defects; and more importantly, an African Court on Human and Peoples' rights has not been established.

The commitment to uphold human rights has been more rhetorical than actually demonstrated. Since the adoption of the African Charter, human rights violations among the State parties to the Charter remain unheaded;

123 See also Rule 85.

124 See *Newsletter* Vol. 1. No. 1, February 1991, p. 2:2 (published by African Centre for Democracy and Human Rights, Banjul, The Gambia).

in a number of countries this has resulted in civil wars and fratricide. Individual liberty has therefore worsened and the hope and the climate that the Charter initially created seem to be waning away.

A number of countries have not ratified the African Charter despite the excitement generated by its adoption in 1981. Even those States that ratified, they have not enacted enabling munincipal legislation nor changed much of their munincipal legal systems and policies to conform to the human rights regime under the African Charter. As we pointed out, only four State parties submitted periodic reports as required by the Charter.

A regional human rights arrangement is important in supporting and supplementing national promotion and protection efforts. However, the diverse nature of the African political, economic, social and cultural set-up has not only contributed to the form the regional arrangement took; it will, above all, affect the effectiveness of the African Commission in the implementation process.

The presentation has examined what happens when human rights of individual or States are violated; who vindicates them; the procedures laid down and the effectiveness of such procedure and measures for redress. The regional human rights system as presently structured, it was revealed, exhibits a number of shortcomings.

Firstly, in the absence of an African Court of Human and Peoples' Rights, the African Commission should be given the mandate to make final binding decisions. As presently structured, the African Commission is merely a committee making recommendations to the AHG, which holds the ultimate word. This procedure will subject human right to subjective political considerations and inevitably weaken the position of the only organ of protection. It is therefore recommended that either a Court with final decision making be set up, or the competence of the Commission be enlarged, and its link with the AHG be severed or reduced to a mere working relationship.

Secondly, under most human rights arrangements, State-to-State petitions are very few, and in addition, fewer cases will pass the admissibility test. This will also be the case in Africa. States operate with a variety of considerations, trade offs and reciprocity. In Africa, because of the human rights record of virtually every State, it is unlikely that States will vindicate each other before the regional organ, only because tomorrow the complainant will find herself in the dock. Therefore "other

communications" or individual communications will flood the African Commission. This brings us to our third point.

For an individual petition to reach the African Commission, it would have to satisfy the stringent requirements for admissibility. To initiate a case in a local jurisdiction against the government - which is virtually impossible in some cases - and to exhaust all available local remedies takes time. It may take on the average a year before a case is concluded in some countries. To this prolonged procedure taken by the victim of violation at the national level, is equally added the same procedure at the regional level. It will not take less than a year before a communication is disposed of at the level of the Commission. One wonders whether this is any relief to the victim of violation incacerated and tortured in detention camps! It is also recommended that members of the African Commission work full time or meet more frequently in view of the human rights landscape.

Fourthly, what remedies are available to the victim of violation? The African Charter is silent on remedies, much is left to the outcome of the consideration of the recommmendations of the African Commission by the AHG. To petition a tribunal without knowing the relief that can be ordered by the tribunal is most absurd. In this respect, appropriate steps need to be taken to amend the African Charter and incorporate specific remedies.

Fifthly, an effective regional human rights system must have roots firmly anchored in the respective national constituencies. While a regional system is important in laying down a framework for promotion and standard-setting, these are meaningless unless realized at the national level. In many African States, existing conditions pose serious obstacles to promotion and protection activities. The conditions that exist - ranging from military set up and political systems that deny any form of participation to abject poverty - are the greatest affront to the diginity, humanity and personality of all Africans. The greatest task in any human rights effort is how to create an environment conducive to the growth of a human rights culture and attitudes at the national level and this will be the major preoccupation of the African States in decades to come.

In all African polities, there have been a sustained campaign and mobilization for greater individual liberties. The starting point has been an onslaught against existing regimes which do not allow political participation nor tolerate different view points. The momentum generated by these events has generated new hopes towards freedom and the dignity of all Africans. Sensitization and conscientization of human rights will

therefore find roots in the new democratic ideals and therefore will help to fulfill the goals of the future African States towards promotion and protection of human rights.

ANNEX I

LIST OF STATE PARTIES TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

No.	Name of State	Date of Signature	Date of Ratification	Date of Deposit
1	Algeria	10/04/86	01/03/87	20/03/87
2	Angola			
3	*Benin			
4	Botswana		17/07/86	22/07/86
5	Burundi			
6	Burkina Faso	05/03/84	06/07/84	21/09/84
7	*Cameroon	23/07/87		
8	Cape Verde	31/03/86	02/06/87	06/08/87
9	Central African Republic		26/04/86	27/07/86
10	Chad	29/05/86	09/10/86	11/11/86
11	Comoros		01/06/86	18/07/86
12	Congo	27/11/81	09/12/82	17/01/83
13	Djibouti			
14	Egypt	16/11/81	20/03/84	03/04/84
15	Equatorial Guinea	18/08/86	07/04/86	18/08/86
16	Ethiopia			
17	Gabon	26/02/82	20/02/86	26/06/86
18	Gambia	11/02/83	08/06/83	13/06/83
19	*Ghana			
20	Guinea	09/12/81	16/02/82	13/05/82
21	Guinea Bissau		04/12/85	06/03/86
22	Ivory Coast			
23	Kenya			
24	Lesotho	07/03/84		
25	Liberia	31/01/83	04/08/82	29/12/82
26	Libya	30/05/85	19/07/86	26/03/87

27	Madagascar			
28	*Malawi			
29	Mali	13/11/81	21/12/81	22/01/82
30	Mauritania	25/02/82	14/06/86	26/06/86
31	Mauritius			
32	*Mozambique			
33	Namibia			
34	Niger	09/07/86	15/07/86	21/07/86
35	Nigeria	31/08/82	22/06/83	22/07/83
36	Rwanda	11/11/81	15/07/86	21/07/86
37	Saharawi Democratic Arab Republic	10/04/86	02/05/86	23/05/86
38	Sao Tome & Principle		23/05/86	28/07/86
39	Senegal	23/09/81	13/08/82	25/10/82
40	Seychelles			
41	Sierra Leone	27/08/81	21/09/83	27/01/84
42	Somalia	26/02/82	31/07/85	20/03/86
43	Sudan	03/09/82	18/02/86	11/03/86
44	Swaziland			
45	Tanzania	31/05/82	18/02/84	09/03/84
46	Togo	26/02/82	05/11/82	22/11/82
47	Tunisia		16/03/83	22/04/83
48	Uganda			
49	Zaire	23/07/87	20/07/87	28/07/87
50	Zambia	17/01/83	10/01/84	02/02/84
51	Zimbabwe	20/02/86	30/05/86	12/06/86

* States thus marked are parties to the African Charter. Details of the dates of ratification etc. were not available at the time of writing.

Morocco is currently not a member of the OAU, therefore cannot be a party to the African Charter.

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