

**PEACEFUL RELATIONSHIPS IN AFRICA:
THE ROLE OF THE DISPUTE SETTLEMENT MECHANISM OF THE AFRICAN
UNION (AU)**

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ABSTRACT

The adoption of the African Charter on Human and Peoples' Rights in 1981 brought Africa into the league of the other continents in their quest to ensure the observance of human rights of the peoples. This Charter contains a dispute settlement mechanism designed to ensure peace in the continent. The African Charter is fashioned to suit the perceived peculiar circumstances of Africans. This paper examines the normative right contents of the African Charter and the measures of implementation to ensure the dignity and worth of the African people; and lasting peace in the continent. The paper shows a mechanism designed to maintain socio-political stability and how its effective application enhances peace in the continent. It is however found that some of the provisions of the African Charter make reference to the conditions laid down in national law, and this limits the enforcement of the Charter in domestic jurisdictions. The methodology we adopt is the doctrinal research method which is a legal research approach. This paper focuses on the protection of civil, political, economic, social and cultural rights as an instrument peace building in a heterogeneous continent as Africa. The paper is of great significance to the public as it highlights the rights conferred on all persons on the continent and the means by which such individuals can seek redress in the event of infraction of those rights. The dispute settlement mechanism provided by the Charter has the potential of maintaining peaceful relationship in Africa.

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INTRODUCTION

Anchored on the Western concept of individualism, human rights are said to undermine the solidarity underlying and sustaining traditional societies such as Africa. In other words, the Charter hinges on the principle of cultural relativity. African societies and communities have always had collective cultures and collective concepts such as the family, age grade, ethnic groups, etc. The concept of right is therefore, emphasised in favour of the collective right of the people of each community which subjugates that of the individual. The traditional culture did not accord the individual an autonomous entity possessed of rights above and prior to society (Oyajobi 1993). It was on the basis of the foregoing and the need for a solid economic base that the inclusion of group or solidarity right in the African Charter on Human and Peoples' Rights was made possible. (Marasinghe, 1984)

Beyond the traditional human rights provisions of the Universal Declaration and the International Covenants, the right to development was, yet, another innovation occasioned by the African Charter. The Charter is therefore, an instrument of struggle to shake off the debris of imperialism and enhance the

realisation of human rights protection for the people. (Gye-Wado, 1992)

The Charter contains a long list of rights covering a wide spectrum not only of civil and political rights, but also of economic, social and cultural rights. It further created the African Commission on Human and Peoples Rights to promote human and peoples' rights and ensure their protection in Africa. The Protocol to the Charter on the Establishment of an African Court on Human Rights was adopted in 1998; but just entered into force on January 1, 2004 having secured the required ratifications by 15 State Parties.

The African Charter is also conditioned to enable member countries seek the protection of the socio-economic rights in their own pace and at par with their varying economic circumstances. The Charter recognises the trends in the development of the human rights regime: first, second and third generation of human rights.

The first generation of human rights relates to the civil and political rights. This set of rights is embodied by the Universal Declaration of Human Rights (1948) as well as the International Covenant

on Civil and Political Rights. The first generation rights pertain to the sanctity of the individual in connection with his rights within the socio-political environment he belongs. The African Charter guarantees a considerable number of unqualified civil and political rights: the right to the enjoyment of right without any form of discrimination,(Art. 2) equality before the law and equal protection of the law(Art. 3) right to fair hearing with its multi-dimensions *viz*: right of audience, appeal, presumption of innocence, representation by counsel of one's own choice, trial within reasonable time by an impartial tribunal or court, and freedom from retroactive criminal legislation;)Art. 7) and the right to asylum (Art. 12).

The qualified civil and political rights include right to life (Art.4); right to dignity of human person(Art.5); right to liberty and security(Art. 6); freedom of conscience, profession and religion(Art.8); freedom of expression, information and knowledge(Art.9); freedom of association(Art. 10); right to assembly(Art. 11); and right of movement(Art.12). The Charter further guarantees the right to participate freely in government either directly or through representation. Also, individuals shall have equal access to public service and to the public property and service (Art.13).

The second generation of rights is concerned with the total and full realisation of the worth of the individual within his milieu. These rights pertain to the economic, social and cultural rights of the individual. The International Covenant on Economic, Social and Cultural Rights is the most authoritative instrument for the protection of these rights at the international level. This encompasses the right to property which is subject of course, to the overriding principle of eminent domain (Art.14); the right to work under equitable and satisfactory conditions and to receive equal pay for equal work(Art.15); right to good health(Art.16); right to education(Art.17); and right to participation in the cultural life of the community in which one resides and the protection of the traditional values recognised by the community(Art.17). They also include the right to family life, the protection of the child and the aged and to non-discrimination against women, a bane in the traditional African society(Art.18; Umozurike 1986).

The third generation rights could be referred to as group rights, solidarity or people's rights. This set of rights is concerned with the organic, corporate existence and workings of the society. This is a great innovation the African Charter has over the preceding human rights instruments. It is apt to identify the rights also associated with the different categories *viz*: This comprises the right to equality of all people (Art.19), right to self determination (Art.20), right to free disposal of wealth and natural resources and

lawful compensation in the event of spoliation (Art.21), right to economic, social and cultural development and enjoyment of the common heritage of mankind (Art. 22), right to national and international peace and security(Art. 23. The African Charter also guarantees the right to a general environment favourable to their development (Art. 24).

However, the African Charter imposes a number of duties on the individual--duty towards the family, society, state and other legally recognized communities and the international community(Art. 27), respect for fellow human being without discrimination(Art. 28); to preserve the harmonious development of the family and to work for the cohesion of the family; and to respect parents and maintain them in case of need; to serve the national community; not to compromise the security of the state whose national or resident a person is; to preserve and strengthen positive African cultural values, and promote African Unity(Art. 29).

It is crucial to note, at this point, that the States Parties to the African Charter undertake to recognise the rights, duties and freedoms enshrined therein and undertake to adopt legislative or other measures to give effect to them(Art. 1). It is further provided that they shall have the duty to promote and ensure through teaching, education and publication, the respect of other rights and freedoms contained in the present Charter, and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood. Moreover, the States Parties shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter (Art. 26).

Limitation on the Exercise of the Rights

The exercise of some of the guaranteed rights under the African Charter is conditioned by limitation provisions. Some of such provisions indicate specific aims for which limitations might be imposed whereas others make reference to the conditions laid down in national law. For instance, the right to leave any country including one's own country may only be subject to restrictions provided for by law for the protection of national security, law and order, public health or morality(Article 12(2) However, everyone has the right to free association provided that he abides by the law.(Article 10). It should be noted that there is no indication as to the grounds that national law can legitimately be invoked to limit this right.

Derogations from Legal Obligations

In contrast to the International Covenant on Civil and Political Rights and the American and European Conventions on Human Rights, the African Charter does not provide for any right of derogation for the States Parties in public emergencies. The absence of derogation provision has been interpreted by the African Commission on Human and Peoples' Right to mean that derogations are not permissible under the African Charter.

The Mechanism of the African Commission on Human and Peoples' Rights

The entering into force of the African Charter on Human and Peoples' Rights on October 21, 1986 marked a significant step in terms of the recognition and implementation of human rights in Africa. The Charter did not only make provision for the rights that should be guaranteed in the African continent, but also provided for the creation of a body, the African Commission on Human and Peoples' Rights, to monitor the implementation of the guaranteed rights. This is an 11-member Commission set up as an organ of the Organization of African Unity (OAU), now, African Union (AU) to promote and protect human and peoples' rights. The members of the Commission serve in their individual capacity.

This body, the African Commission on Human and Peoples' Rights (African Commission), created to monitor compliance by states with the African Charter has over the years functioned in an environment plagued by civil wars in several countries including Sudan, Democratic Republic of Congo, Chad, Cote d' Ivoire and Sierra Leone. The violation of human rights of a serious nature transcends through the continent, as far as Egypt, Equatorial Guinea and Ethiopia. Many countries are still suffering the consequences of *coup d'etats* and counter coups. Often times, measures taken by governments to tackle terrorism invariably make serious incursion into long-standing human rights values and norms in Africa.

The African Commission shall, in promoting human and peoples' rights, collect documents, undertake studies and researches on African problems, organize conferences, encourage domestic human rights institutions, and should give its views and make recommendations if need be. The Commission shall also formulate and lay down principles and rules aimed at solving legal problems relating to human and people's rights. Finally, it shall cooperate with other African and international institutions concerned with the promotion and protection of these rights.

The Commission has competence to receive communications from States and other sources(Article 45(2)) The Commission is also authorized to interpret all the provisions of the

African Charter at the request of a State Party, an institution of the OAU (now African Union) or an African Organization recognized by the OAU (African Union).

Inter-State Communications

Where a State Party has good reasons to believe that there has been a violation of the provisions of the African Charter by another State Party to the Charter, it may by written communication, draw the attention of that State to the matter. That State should submit a written explanation within three months of the receipt of the communication. Where the matter is not settled to the satisfaction of both States involved through bilateral negotiation or otherwise, either State can bring it to the attention of the Commission. Apart from the foregoing, a State Party can refer the matter directly to the Commission. However, the condition precedent for the Commission to deal with the matter is the exhaustion of all domestic remedies by the complainant. This requirement can only be displaced if the procedure of achieving the domestic remedies would be unduly prolonged. The States involved may, by written and oral statement, make their representations before the Commission. Upon the Commission being furnished with all necessary information and having explored all appropriate avenues to secure amicable solution based on the respect of human and people's rights, the Commission prepares its report. The report contains the facts of the matter and the Commission's findings, and is forwarded, along with the recommendations to the States concerned and to the Assembly of Heads of States and Government.

Communications other than those of States parties

The African Charter provides that before each session of the Commission, its Secretary shall make a list of the communications other than those of State Parties to the Charter and transmit them to the members of the Commission, who shall indicate which communication should be considered by the Commission.

The Charter did not expressly provide for individual complaint procedure under the Commission except as implied in the foregoing provision (Article 55(1)). However, such complaints from non-state members including individuals can only be received and considered by the Commission on the condition precedent that such communications:

- (i) disclose the identity of the author despite plea of anonymity;
- (ii) are compatible with the purpose of the African Charter;
- (iii) are not couched in disparaging and insulting language directed against the State concerned and its institutions or to the African Union;
- (iv) are not mere speculations of the mass media;

- (v) are filed only at the wake of the exhaustion of all local remedies unless injustice would be occasioned as a result of delay in the process;
- (vi) are submitted within reasonable time from the period local remedies are exhausted or before the date the Commission is seised of the matter, and
- (vii) do not renew cases already settled by the states involved in accordance with the principles of this Charter, the United Nations Charter and that of the African Union (Article 56).

The Chairman of the Commission shall bring all communications to the knowledge of the State concerned prior to any substantive consideration. If it appears, upon the deliberation of the Commission, that any communication bothers on serious violation of human and peoples' rights the Commission shall draw the attention of the Assembly of Heads of State and Government. The latter shall call for a factual report of an in-depth study of cases of human rights abuses undertaken by the Commission with its corollary findings and recommendations. In case of emergency, the Commission submits notice to the Chairman of Heads of State and Government who may request in-depth study by the Commission. Measures taken by the Commission assume a considerable confidentiality. The Chairman, upon due consideration and approval of the Assembly of Heads of State and Government, would only make the report of the Commission public.

Periodic Reports

States Parties that have ratified African Charter undertake to submit, every two years, a report of legislative or other measures taken with a view to giving effect to the terms or provisions of the African Charter on Human and People's Rights. No specific procedure is laid for the examination of these periodic reports. However, the Commission has over-time examined these reports in public sessions without a display of confidentiality. It may be argued that the development of the individual petition procedure demonstrate the awareness and utility of adjudication mechanisms generally in addressing the kinds of human rights violations in several parts of Africa. The Commission has always been disposed in favour of the State Parties by seeming too ready to uphold the existence of amicable settlement.

The Commission however, does not bother itself on possible schemes for verifying and complying with the terms of settlement. The introduction, by international instruments, of the principle of individual recourse to an international body of a judicial nature against a State Party in cases of abuse of human rights is salutary, although it varies considerably from one instrument to the other and from one state to the other. While the International

Covenant on Civil and Political Rights has attendant First Optional Protocol permitting individuals to bring their communication before the Human Rights Committee, the International Covenant on Economic, Social and Cultural Rights has no corresponding provision. Even the African Charter does not specifically provide for individual communication except that it (individual communication) could be read into Article 55(1) of the Charter which contemplates 'communications other than those of State Parties.

The Commission has continued to develop jurisprudence suiting to the state of human rights in Africa, consistent with its mandate of promoting and protecting human rights. Apart from the interpretation role of the Commission, it shall perform any other task entrusted to it by the Assembly of Heads of State and Government. The aim of this is to complement the promotion and protection mandate of the Commission.

In conducting its detailed study, the Commission draws inspiration from general international law on human rights, including African instruments on human rights, UN Charter, African Charter, AU Constitutive Act, the Universal Declaration of Human Rights, as well as other instruments adopted by the specialised agencies of the United Nations.

The Procedure Governing Communications before the Commission

There are four procedural steps governing communications before the African Commission: the seizure, admissibility, merits and remedies. In course of the foregoing steps, the Commission could also conduct on-site investigations and recommend interim measures.

The Seizure Procedure

Communication may only be considered if a simple majority of the members of the Commission so decide. After listing the communications, the Secretary transfers it to the commissioners, and the commissioner concerned (i.e., the Rapporteur) is required to make a recommendation on whether or not the Commission may be seized of a communication. The examination of communications by the Commission or its subsidiary bodies is conducted in camera. As a condition precedent for seizure of communication, the communication must allege a *prima facie* violation of the provision of the African Charter, and must relate to a Member State of the African Union that has ratified or acceded to the African Charter. If the Commission is seized of the communication, both the complainant and the respondent State must be notified. Notably the seizure procedure and the admissibility procedure are undertaken at different sessions of the Commission, and need not be successive. In *Modise v. Botswana*

(2), the Commission was seized of the communication at its 13th session but declared it admissible at its 17th session. But in *Movement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso*, the Commission was seized of the communication, and declared it admissible at its 23rd and 24th sessions respectively. No substantive consideration is given to a communication at the state of seizure. After the Commission is seized of a communication, it shall be brought to the notice of the respondent State for it to make its reaction to the admissibility of the communication.

Admissibility Procedures

The Commission goes to the next stage of determining whether those communications meet the requirements for admissibility. Unlike the seizure state, the complainants are granted preliminary hearing to address the Commission on the question of admissibility. In doing this, the Commission may set up working groups, each composed of a maximum of three members, who shall determine the question of admissibility and make recommendations to the Commission. The Commission then makes a final determination on the question of admissibility. Both the working groups and the Commission may call for additional information from the author of the communication or from the respondent State in determining the issue of admissibility. The Charter stipulates the requirements that must be satisfied for a communication to scale through admissibility test. Therefore, the Commission must give clear reason for its decision on admissibility. Though earlier mentioned, the requirements are as discussed below:

- a. Communication must indicate their authors even if they plead anonymity
- b. Communications must be compatible with both the African Charter and the Constitutive Act of the African Union
- c. Communications must not be written in disparaging or insulting language directed against the State concerned and its institutions or to the African Union
- d. Communications must not be based on news disseminated through the mass media
- e. Communications must be sent after exhausting all local remedies unless such remedies are unduly prolonged
- f. Communications must be submitted within a reasonable period from the time local remedies are exhausted or before the date the Commission is seized with the matter
- g. Communications must not relate to cases, which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, the Charter and Constitutive Act of the African Union and the African Charter.

Fact-Finding Mission

The African Commission can adopt methods of investigation including fact-finding, suiting to the nature of the complaint brought before it by a complainant. The only impediment is that the conduct of such investigation is dependent on the willingness of the State Party involved to cooperate with the Commission. In *Free Legal Assistance Group and Others v. Zaire*, the Commission sought to embark on fact-finding mission in respect of alleged human rights violations; to find the extent of the violation, and possibly assist the government of Zaire to restore respect for human rights. Regrettably, the government of Zaire declined to cooperate with the Commission and turned down the request for a mission for fact-finding. However, the Commission found the government of Zaire of human rights abuses of a serious and massive nature contrary to Articles 4,5,6,7,8,16 and 17 of the Charter.(Gumedze) However, the Commission has embarked on successful fact-finding missions to countries such as Senegal, Nigeria, Togo, Sudan and Mauritania. Special Rapporteur mechanism exists for prisons, and conditions of detention in Africa, the rights of women, and extra-judicial, summary or arbitrary executions. By this, specifically appointed members of the Commission are authorised to monitor the human rights situation therein by undertaking missions with the purpose of gaining further information and assessing the reality surrounding these rights in the Member States. This also facilitates collaboration with local and international NGOs working in related areas of human rights. Special Rapporteurs are not necessarily proven experts in the field concerned, but are selected from the existing members of the Commission. Each Rapporteur presents a report of their activities at each session of the Commission.

Merit of Communications

The admission of the communication is a condition precedent for the consideration of the communication on merit. It involves the consideration of the substantive issues arising in communications brought before the African Commission. The determination on merit is done by way of examining the alleged infringement of the provisions of the Charter and other international human rights instruments from which the Commission can gain inspiration in fulfilment of its protective mandate.

In practice, the Secretariat prepares the draft decisions on the merits. Although all the facts as stated in the communication are adequately considered, the draft decisions do not displace the responsibility of the Commission in deciding on the merits. The draft decision however, serves as a guide in the deliberations of the Commission.

The Commission, in its deliberations, considerably rely on the written and oral submissions the parties advance. In considering the merits, the Commission applies international human rights law, offers interpretation of the provisions of the Charter that deals on the allegations in the communication. The Commission also weighs the evidence, and considers the argument by parties to arrive at its decisions. In supporting their arguments, complainants rely considerably on the past decisions of the Commission which embody vivid elaborations on specific and substantive human and people's rights. This invariably enhances the development of the jurisprudence of human rights law in Africa. The Commission thereafter forwards a recommendation on that communication to the Assembly of Heads of State and Government. After the Assembly has considered the report on the activities of the Commission, the Chairperson of the Commission shall publish it. The report contains the decisions of the Commission on communications. The inexistence of effective enforcement mechanism was the greatest impediment to the protective mandate of the Commission. This prompted the adoption of the Protocol to the African Charter on Human and People's Rights. The existence of the African Court assures litigants of binding decisions against their respondent states, as State Parties to the Protocol undertake to comply with the judgement in any case to which they are parties. It also provokes an understanding of the relationship between the African Court on Human and People's Rights and the African Commission.

The Commission adopted an effective interpretation of the rights in the Charter. The following cases offer good illustration. In *Civil Liberties Organisation v. Nigeria*, the communication complains that the ouster of court's jurisdiction to adjudicate the legality of any decree threatens the independence of the Nigerian judiciary, and therefore, a violation of article 26 of the African Charter. It also complains that the ouster clause deprives the citizens of Nigeria of their right to seek redress in the court for the violation of their fundamental rights by the acts of Nigerian government, and therefore, a violation of Article 7(1)(a) of the African Charter.

After careful considerations of the facts, and satisfying the procedural requirements as articulated earlier, the Commission held:

- (i) that the Decrees ousting the court's jurisdiction is a breach of Article 7 of the African Charter;
- (ii) that the ouster clause also offends Article 26 of the African Charter; and
- (iii) that the act of the Nigerian government to nullify the domestic effect of the Charter constitute an affront to the African Charter on Human and Peoples' Rights.

In the case of *Constitutional Rights Project v. Nigeria*, it was argued in the communication that the prohibition on judicial review of the special tribunals and lack of judicial appeals of judgment of these tribunals violate the provision of Article 7(1)(a) of the African Charter on Human and Peoples' Rights. It is also complained in the communication that the conduct of the trials which is characterized by harassment and deprivation of defence counsel, violated the provision of Article 7(1)(c) of the African Charter. It is further complained in the communication that the composition of the special tribunal dominated by military personnel violates the right to be tried by impartial tribunal as protected by Article 7(1)(d) of the African Charter. Upon careful examination of the complaints and observance of all procedural steps, the Commission declared that there was a violation of the provision of Article 7(1)(a), (c) and (d) of the African Charter. The Commission further recommended that the Military Government of Nigeria should free the condemned persons. The result of the communication procedure used to depend largely on the volition and good faith of the State Party who is usually the respondent in the case. This often leads to a defeat of the undertakings by State Parties under Article 1 of the African Charter. State Parties such as Zaire and Malawi, had repeatedly turned down requests from the Commission to conduct fact-finding missions in their territories.

Remedies

Although there is no provision mandating the Commission to order any specific remedy for human and people's rights infractions, the Commission has traditionally widened the interpretation of its mandate to realize effective protection of human rights contemplated by the African Charter on Human and People's Right. For instance, in *Mekongo v. Cameroon*, the Commission recommended compensation of an individual by the offending State Party. It could be argued that the award of compensation could be read into the protective mandate of the Commission even though the African Charter did not explicitly make provision for it. In *Malawi Africa Association and Others v. Mauritania*, the Commission ordered remedies as pleaded in the communication. Therefore, the complainants may even state in explicit terms the ways the Commission can cooperate with the respondent state in the enforcement of its decisions.

Non-Governmental Organisations (NGOs)

Non Governmental Organisations (NGOs) supply vital information as to the actual human rights situation prevalent in their countries of operation. The NGOs also provide information as to human rights situation and their management in various countries and regions of the world which enables the Commission to make informed decisions. The NGOs

contribute to the effective functioning of the Special Rapporteur mechanism by providing fund to them and publishing reports. These reports can serve as very useful information and guide in respect to particular areas and questions that may need to be clarified to the Special Rapporteur. NGOs can hold brief for individuals or a group of claimants in bringing communications against State Parties. The NGOs must have observer status with the Commission before it could make such contributions. With the observer status, the NGO could attend the Commission's sessions. This enables them to make contributions during the proceedings of the public sessions and also obliges them to submit a report of their activities to the Commission every two years. NGOs with observer status have access to the Commission during public sessions and can also bring communications to the Commission. NGO participation at the sessions is limited to oral statements and interventions on particular items on the agenda and these are reflected in the report of the session, although this is not a public document.

The Commission reserves the power to decide what action to take in response to these contributions as well as urgent human rights situations that may arise both whilst the session is taking place and during the inter-session period. The Commission is gradually attaining success given the increasing recognition of Member States of their obligations under the Charter, as well as the increasingly proactive approach of NGOs to human rights in Africa. NGOs continue to make valuable contributions to the development of the Commission, and to the recognition and implementation of human rights in Africa.

National Human Rights Institutions

The Commission can also grant 'affiliate-statuses' to National Human Rights Institutions. These institutions are obliged to comply with the Paris Principles and also submit a report to the Commission every two years. The National Human Rights Institutions with affiliate status before the Commission include those of Algeria, Chad, Malawi, Niger, Rwanda, Senegal and Sierra Leone. The effect of 'affiliate status' is the same as 'observer status'. Both entitles the NGO concerned an access to the Commission; the right to receive copies of its publications, and a right to participate at the public sessions of the Commission.

The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights (ACHPR) is the most recent of all the three regional human rights judicial bodies. The Protocol establishing the African Court on Human and Peoples' Rights entered into force on January 1, 2004 upon its ratification by fifteen Member States. The statute of the court was yet to be promulgated and a seat for the court yet to be determined. The

establishment of the African Court must have been expedited by the legal and political developments in the continent. The enactment of the Constitutive Act of the African Union is of much influence in the emergence of the African Court on Human and People's Rights.

The Constitutive Act of the African Union is significantly strong on the human rights principles set out in the African Charter. It was adopted at Lome, Togo, in 2000. Its objective is, *inter alia*, 'the promotion and protection of human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments'. The Act also entrenches respect for democratic principles, human rights, the rule of law and good governance.

Although, the Constitutive Act is silent on the African Commission and on the proposed African Court on Human and Peoples' Rights, it was nevertheless, generally believed that the Court of Justice, would become the main instrument for the interpretation of the Constitutive Act and for the resolution of dispute arising between states in relation to the Constitutive Act (Baimu, 2001). The adoption of the Protocol on the establishment of the African Court was therefore hugely actuated by the impact of the Constitutive Act of the African Union.

Prior to the adoption of the Protocol on the establishment of the African Court on Human and Peoples' Rights, the protection of the guaranteed rights under the African Charter rested on the shoulders of the African Commission on Human and Peoples' Rights. The Commission is merely a quasi-judicial body fashioned after the Human Rights Committee of the United Nations. The Commission's recommendations have no binding force. The African Commission is limited to its functions of examining state reports, considering communications alleging serious and massive violations of human and peoples' rights, and interpreting the provisions of the African Charter at the instance of a State Party, the African Union, or any organisation or body of persons recognised by the African Union. The weak records of the African Commission on Human and Peoples' Rights necessitated the urgent need for the African Court on Human and Peoples' Rights that will ensure stronger protection of human rights both at the domestic and the regional levels. It was not surprising, realising the paucity of the enforcement and compliance control mechanism as contained in the African Charter given the fact that most African States had great disregard for human right at the period the African Charter was adopted. However, the situation improved in the 1990's with several African states advancing in democracy.

Jurisdiction of the Court

The Court is conferred with competence *ratione personae* (personal jurisdiction of the court) which comprise of two types of jurisdiction *viz*: compulsory jurisdiction and optional jurisdiction. The courts compulsory jurisdiction entitles the following to submit cases to it:

- i. the African Commission on Human and Peoples' Rights;
- ii. the State Party which has filed a complaint to the commission;
- iii. the State Party against which the complaint has been filed;
- iv. the State Party whose citizen is a victim of a human right violation; and
- v. African Intergovernmental Organizations, for issues concerning them.

The Court is empowered to act both in adjudicatory and advisory capacities. A State Party, not initially involved in a case, may refer the matter to the court as a third party if he has an interest to protect. However, the optional jurisdiction of the court is in respect of cases submitted by individuals or non-governmental organisations (NGOs) with observer status before the African Commission on Human and Peoples' Rights. As a condition precedent, the state against which the complaint has been lodged must first have recognised the competence of the African Court to receive such communications pursuant to Article 34(6) of the Protocol on the African Court.

The Court also has the power to render an opinion, at the instance of a Member State or of an organisation recognised by the African Union, on any legal matter relating to the African Charter or any other applicable African human rights instruments. The advisory opinions are not binding. The opinions could however, serve as a reference for a dynamic and progressive interpretation of the African Charter on Human and Peoples' Rights and other human rights instruments. The Court has powers to apply the provisions of the Charter and any pertinent human rights instruments ratified by the states concerned. The Court may therefore, apply other international bill of human rights and other international human rights treaties, whether adopted within the framework of the United Nations or its specialised institutions.

Organisation of the African Court

The Court is constituted by eleven judges elected by the States Parties to the African Union for a six-year term of office which is renewable once only. Only the State Parties to the Protocol may propose candidates. A State Party may nominate three candidates, at least two of whom must be her nationals. However, the Court may not comprise more than one national of the same state. There must be adequate gender representation in the nomination of candidates, and an equitable representation of the

main regions of Africa and their principal legal traditions when electing the judges. The election is by secret ballot by the Assembly of Heads of State and Government of the African Union. The terms of four judges elected at the first election expire after two years, and the terms of four more judges expire at the end of four years, while the terms of the remaining three expire after six years. This is to ensure that the judges perform their functions on a part-time basis, excepting the president who performs his functions on a full-time basis. The African Court elects its president and vice president for a two-year period, renewable once only.

Independence of the Judges

The independence of the judges is guaranteed in accordance with international law. They enjoy the diplomatic immunities and privileges necessary for them to discharge their duties. The judges are elected in an individual capacity from among jurists of high moral character and of recognised practical, judicial or academic experience in the field of human rights. Although presented by the states, the judges are not representatives of the states. They undertake to discharge their duties faithfully and impartially. The judges may not hear any case in which they have previously taken part in any capacity, and must decline to give an opinion in all cases concerning the state of which they are a national. This is in projection of their moral independence. In accordance with professional ethics, the judges may not carry out any act which is incompatible with the demands of office or which might interfere with their independence or impartiality. At any rate, the judges are subject to the disciplinary measures of the Court. Thus, a judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court. Unless set aside by the Assembly of Heads of State and Government at its next session, such a decision of the Court shall become final.

Court Procedure, Judgment and Execution

The protocol on the African Court does not contemplate every imaginable rule of procedure. The Rules of Procedures of the Court therefore, stands in cross-reference to the Protocol. Bearing in mind the complementarity between the African Court and the Commission, the African Court shall set forth the conditions under which the court shall consider cases. The African Court shall conduct its proceedings in public unless it decides, in particular instances such as one involving a juvenile, to hold them in camera, consistent with the conditions established by the Rules of Procedure of the Court. A party to a case is entitled to be represented by a legal practitioner of his or her choice. Where the interest of justice so requires, a legal aid may be made available to a party.

Any person, witness or representative of the parties who appears before the court, shall be provided with necessary protection and facilities in accordance with international law. For examination of any case, a quorum is formed by at least 7 judges. Matters of evidence are also considered by the court, including conducting an enquiry. In course of the proceedings, the court can avoid irreparable harm to persons in cases of extreme gravity and urgency, by adopting necessary provisional measures.

The African Court however, rules on the admissibility of cases submitted by individuals. The provision of Article 56 of the African Charter on Human and Peoples' Rights stipulates the conditions for admissibility of communications addressed to the African Commission on Human and People's Rights, and these conditions are applicable to cases brought before the African Court. The court may also request the opinion of the Commission before ruling on the admissibility of a case. Whatever be the conditions, the court is free to either consider the case or to transfer it to the Commission.

The Court delivers its judgement within 90 days of the conclusion of its deliberations. The reason for the decision must be embodied in the judgement of the Court. The judgments of the Court are decided by a simple majority. Each judge is at liberty to hold his or her dissenting opinion to the majority decision. Upon giving due notice to the parties, the judgement is read out in open court. In the event that a violation of a human or peoples' right is established, the Court makes appropriate orders or grant proper remedies to the situation, including the payment of fair reparation or compensation. The court may interpret and review its own decision in the light of new evidence under conditions to be stipulated in the Rules of Procedure. The judgment of the court is therefore final and not subject to an appeal.

The Council of Ministers is responsible for monitoring the execution of the judgment of the Court. State Parties to the Protocol undertake to comply with judgment in any case to which they are parties and to guarantee execution within the time stipulated by the Court. Hence, execution of court judgement is basically voluntary. In a report submitted to each regular session of the Assembly of Heads of State and Government, the Court particularly specifies the cases in which a state has failed to comply with its judgment.

CONCLUSION

In the protection of human and people's rights, the mechanism of the African Commission is complemented by the mechanism of the African Court on human and People's rights. This suggests that both the Court and the Commission will coexist as independent bodies but within a mutually

reinforcing relationship. On the basis of its status as a court, the African Court will be the final arbiter and interpreter of the African Charter. It suffices to state that in the furtherance of effective protection of human rights, certain features of the African Court on Human and Peoples' Rights are prevailing over the American and European congeners, including other judicial bodies. Actions may be brought before the Court on the basis of any instrument which has been ratified by the State Party concerned.

The African Court could become a judicial arm of panoply of human rights instruments concluded under the aegis of the United Nations. Many of those instruments do not contain judicial mechanisms for ensuring their implementation. There is therefore the potentiality of several African States ending up with a dispute settlement and implementation control system stronger than the one provided by the UN and other treaties. Given the standing of individuals and NGOs, advisory opinion can be asked for by not only Member States and African Union Organs, but by any African NGO that has been granted recognition by the African Union. This is consistent with the proviso that at the time of ratifying the Protocol or thereafter, the State concerned must have made a declaration accepting the jurisdiction of the Court to hear such cases. On the strength of the foregoing, individuals also can bring cases to the Court.

By the strength of these, the mechanism of the African Union has the potential to guarantee peaceful co-existence and relationship among nations of the continent.

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