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## **AN EVALUATION OF AFRICAN UNION (AU) AND THE PROTECTION OF HUMAN RIGHTS (1990- 2012)**

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***Abstract:** The paper attempts the evaluation of the African Union as a multilateral organization at fifty (50) since its establishment in 1963 as Organization of African Union, until its transformation to AU in 2002. Its activities cover political, social, economic, and security issues as well as harnessing the natural and human resources, social issues, harnessing of the entire-continent for the total advancement of the people. However, despite this laudable role, the issue of human rights protection in the continent has continued to be a critical concern for citizens of the continent. This indeed might be responsible the continent's inability to attain political and economic independence and to compete favorably with other continents of the world. Apart from achieving freedom for the continent, the Union has not been able to protect the rights of its teaming populace as encapsulated in the African Charter. This has generated series of violent conflicts across the continent thereby obstructing the desired political and economic integration for over half a century. The researcher utilized the normative method of analysis to describe the state of human rights in Africa and the role the AU has played in the protection of these rights. It was observed that human rights in Africa have been so violated, as most of the political leaders have perpetuated their stay in power against the will of the people. Thus, the dissatisfied citizens have responded by not only disrespecting the state but by rather taking up arms against it, as is witnessed in the Democratic Republic of Congo, Liberia, Libya, Mali, Nigeria, etc. Finally, the researcher made recommendations and then drew conclusion.*

**Keywords:** African Union (AU), Human Rights Protection.

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### **INTRODUCTION**

The starting point in understanding human rights is the appreciation of the term rights which is covered by the wider concept of claims – for example, the wants, desires and aspirations that people have and express. Those claims are also supported by or in accordance with some objective standards or general theory, whether those of a code of

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morality or ethical theory, or those of a political system or political theory, or of a legal system, are usually and aptly called rights (Dowrick, 1979).

Human rights are a key concept in international law and relations, but its precise meaning and content remain very controversial. The UN Charter, to which the development of human rights law is often attributed, is prototype. Article 1 (3) includes, as part of the purposes of the organization, the promotion and encouragement of a respect for human rights and fundamental freedoms for all, but without defining them (Universal Declaration, preamble, paragraph 1).

Human rights protection in Africa as in any other parts of the world is necessary because these rights are claims asserted and recognized as a right, not claims upon love, grace, brotherhood or charity. These claims are under some applicable law. They are rights upon society as represented by the government and its officials. The good society is one in which individual rights flourish and in which their protection and promotion are the fundamental objectives of the government. They are liberties, immunities and benefits which in terms of accepted contemporary values, means that all human beings should be able to claim as a right from the society in which they live (Henkin, 1985).

African Union formerly called Organization of African Union was established in 1963, in Ethiopia, Addis Ababa. It was initially signed by 36 countries as members and as the number of independent states continued, it increased to 53. It was meant to promote accelerated political and socio-economic integration of the African continent for the purpose of promoting greater unity, solidarity and development. In 2002, the organization was transformed into the African Union, a supranational organization expected to be more proactive than the OAU.

Talking about the protection of human rights in Africa can better be understood if we consider why the African Charter on Human and People's Rights was established in the first place. It was adopted on 27th June, 1981 by the OAU, the predecessor to the AU at its Assembly of Heads of State and Government in Nairobi, Kenya. It came into force on 21st October, 1986. It is a document that recognizes amongst others, the indivisibility of civil and political rights and economic, social and cultural rights, distinct from other international human rights treaties. Article 30 of the Charter states that an African Commission on Human and People's Rights was established within the OAU (AU) to promote human and people's rights and ensure their protection in Africa. Other rights such as the right to privacy do not feature in the Charter and some rights including the right to fair trial are not properly defined (The UN Charter preamble, paragraph 2).

The Protocol to the African Charter on Human and People's Rights was adopted to establish an African Court on Human and People's Rights and the protocol which came into force on 25th January, 2004. The AU Assembly merged the African Court on Human and People's Rights with the African Court of Justice in July, 2005. This led to

the adoption of the protocol on the Statute of the African Court of Justice and Human Rights by the AU Assembly on its 11th Ordinary Session held between 30 June to 2 July, 2008 in Sharm El- Sheik, Egypt Article 9 (1).

Despite its imperfections, the African Charter on Human and People's Rights constitutes a significant cornerstone in the drive towards the promotion and protection of human rights in Africa. It represents a radical change in that direction. No doubt, there is a remarkable and praiseworthy achievement for all those who contributed directly or indirectly. Most of the early efforts of the OAU (AU) as a regional institution were focused on the right of peoples to self-determination and the struggle against racial discrimination (Bello, 1987).

For the rights of the citizens of Africa to be protected, the AU will have to rely on instruments such as: The Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, African Charter on Human and People's Rights; and the UN Safeguard Guaranteeing Protection of the rights of Individuals and any other International Treaties on Human Rights to which AU is a signatory. In compliance to the above instruments, the African Commission on Human and People's Rights should make sure that member states of the AU which violate the African Charter on Human and People's Rights in Africa adhere strictly to the provisions in the instrument. The most striking challenge the AU is facing today is in the area of human rights protection.

The African Union (formed in 2002) is a new political vision geared towards the social uplifting as well as economic independence of the African people. Its basic objective is to achieve economic independence of the continent. Member states are expected to cooperate and combine their resources both human and financial to enhance a true transformation that will put the continent on the path of equity, economic development and social progress. This could be achieved if the rights of its people are adequately protected by the AU.

To admit that the AU is 50 is to mean that it is ripe for assessment, since its birth in 1963 to the present. The idea of the union is a post-independence one, meant to consolidate on the gains of independence achievements. At the early period of its establishment, most member states were entangled in the reigns of military dictators and after which they entered a critical but crucial phase in their political economy with the launching of civil (constitutional government) politics at varying periods.

The AU has the duty to intensify the cooperation efforts of member states in order to achieve a better life for the peoples of Africa, defense of their independence and all forms of discrimination in line with the charter of the UN and the Universal Declaration of Human Rights. At what point has the AU performed its functions in regard to human rights promotion and protection? Many have said that, the AU, instead of protecting human rights it has ended up promoting them.

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In drafting the OAU (now AU) Charter, its founding fathers were conscious to state that there will be no external interference in domestic matters of member states and that states have the right to decide on matters within the ambit of their internal affairs. It would seem therefore that the drafting was a reflection of the basic concern of the founding fathers of the AU that no outside body should deal with matters within their domestic jurisdiction, and human rights questions fall within this. This shows that human rights promotion and protection are limited to inter-state cooperation.

Human rights protection, particularly in Africa is very vital because of the character and attitude of the kind of political leaders that we have. These are not leaders who would accept defeat nor would they relinquish power peacefully in an election considered to be free and fair. Most of them are self-centered, greedy and autocratic and are only bent on accumulating wealth for themselves and their immediate relations living behind a ban of deprived unemployed and poor citizens who are so frustrated and have lost faith in the state. Such frustrated persons who feel dissatisfied are capable of disrespecting the legality of the state by resulting to violent activities that may be detrimental to the state and Africa at large.

At this point, it is important to state briefly the history of human rights. The term human right has a long and rich history that is believed to have been propelled by Second World War, the concept states that the human beings have inalienable rights and liberties that cannot be justly violated by the individual or the state that is linked to the history of democracy. For instance, Socrates chose to die rather than renounce the right to speak his mind in search for wisdom. Most religions of the world believe that, all people have dignity because they are created in the image of God (Velin, 1997). This indicates that human rights are not created by the state and so they cannot be deprived the citizens but rather should be protected and enhanced by the state. Human rights are indeed human entitlements and so they are not for sale.

In assessing or evaluating the AU at fifty(50), the study has looked at how the AU has fared in the protection of the peoples' fundamental rights, the challenges it has faced and the measures it requires to take for guaranteeing these rights. We also tried to see the prospects ahead and then drew conclusion.

### **CONCEPTUAL CLARIFICATION OF HUMAN RIGHTS**

Human Rights are God-given rights to all human beings irrespective of their status, creed, gender, etc. They are not in any way given by the state, but the state has the moral obligation to promote and protect these rights for the sake of human coexistence and national development.

Freedoms such as subsistence, security, liberty, life and other guarantees to which people are bestowed are human rights (Aka, 2004). He considered these as entitlements or claims against the society held equally by all persons simply because they are human

beings. Where these rights are denied the masses, sometimes are forced to take up arms against the state. Human rights are indeed naturally inherent in the human person.

Human rights are rights which all persons, everywhere and at all times equally have by virtue of being moral and natural creatures (Osita, 1999). This simply put means that nobody has the right to mistreat other fellow human beings because God made them equal. The concept of human rights addresses the fundamental human need of people regardless of race, sex, or culture, as the inalienable rights of every human being.

Human rights are claims or entitlements which people can demand from their state. They are claims or entitlements due to people, which the court shall enforce when they are asserted by individuals (Forster, 2008). This in essence means the state has the responsibility to protect and enforce them by adhering strictly to the provisions of the constitution. The deprived person has the right to seek redress in the court of law.

Human rights are universal because history had it that various religions like Christianity, Islam, etc. preach peace, justice, charity, freedom of religion, harmony, sacred of life, freedom, compassion and respect for all human beings. All these concepts are key elements of human rights. The efforts to preach, justice and freedom are a clear indication that human rights have existed long before Universal Declaration of Human Rights (Res, 1948). Deduced from this position, it means all human beings are at liberty to embrace or practice the religion they choose to without any one forcing them to do otherwise. If everyone has peace, equal justice and freedom, there will be prosperity for all (Res, 1948).

Human rights are a set of rights that each human is entitled to equally. Such rights can be civil, cultural, economic or political (Kesley and Peterson, 2003). This simply put means that despite the people's background, they should have equal access to each of these rights.

Indeed, economic and social rights are tied up with the ability of African governments to adopt a strategy that would ensure a frontal attack on imperialism and conducive to development. Effective assertion of national sovereignty over natural wealth and resources, the right of self-determination and the fight against political, economic and cultural domination will all give concrete expression to the right to development (Eze, 1984: 227).

### **EVALUATION OF HUMAN RIGHTS PROTECTION BY AU**

The AU created legal and political openings for enhancing the process of African integration by introducing the African Union Commission to encourage gradual continental integration and strengthen the architecture of the Union. The 2009 decision by African Heads of state and government to establish an African Union Authority (AUA) intended to be the main pan-African body driving African integration – was seen as a new step on the road to a more pan-African-driven form of integration. The ultimate

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aim is to create a United States of Africa, the idea being that the reform and refinement of the AU's current governance structure should enable this ambition to be achieved (Laporte and Mackie, 2010).

Africa has made great progress in establishing the institutional architecture for the promotion of peace and security on the continent such as is witnessed in troubled areas and thus prevents their escalation into full-blown conflicts, e.g. Liberia, Democratic Republic of Congo, and presently in Mali, etc.

The AU has established international machinery for the protection of human rights. This has increased confidence on the African governments, the growing consciousness of African peoples and the desire to stem the atrocities committed in some African Countries that were often shielded from criticism because human rights were regarded as matters falling within the domestic jurisdiction of a state. The AU through the Commission on Human Rights in the African Charter has demonstrated high sense of competence in the area of promoting and protecting human rights. Through it, African governments base their legislations on human rights. The main business of the commission is to protect human rights and perform other functions given to it by the Assembly.

The Commission has the mandate to resolve or settle conflicts arising from the breaches of human rights. It does this by exerting moral pressure in its efforts to settle such conflicts. This moral pressure is also exerted on states involved in human rights violations (Umozurike, 2007:15).

An enumeration of rights may not achieve the desired ends but it serves to give them publicity and entrench them in the minds of men. Enforcement of these rights at the international level may be precarious, and so the commission concerns itself with civil and political matters, rather than on economic and social matters. The level of achievement greatly depends on the vigor or levity of the Commission. While the Commission promote human and peoples' rights, the states have the duty of ensuring the protection of the rights, or respecting the rights themselves, or ensuring through education and teaching that the rights are understood, of guaranteeing the independence of the courts and allowing the establishment of national institutions entrusted with the promotion of rights and freedoms guaranteed (Article 26). Most African states have failed in carrying out their obligations to the citizens, and this has degenerated into chaotic situations resulting to violent conflicts. Most governments in Africa today need to be reminded that the welfare of their citizens is their responsibility (ibid: 25).

Human rights have grown beyond the exclusive concern of individual states. The Banjul Charter has cleared any doubts that may persist and African states cannot contract out of international customary law of respect for human rights. The Charter does not condemn

an offending state but investigates it and makes recommendations to the parties. This may be one of the reasons why some governments disrespect the rights of their citizens. Progress has also been made through the African Peer Review Mechanism (APRM). This is a mutually agreed instrument which was voluntarily acceded to by the member states of the African Union, as an African self-monitoring mechanism. It is a bold, unique and innovative approach designed and implemented by Africans for Africa. It monitors the progress of member states towards adopting and implementing the new partnership for Africa's Development (NEPAD)'s priorities and program on democracy and governance. (Larporte and Mackie, 2010).

The mechanism is one of the core frameworks for upholding and deepening of the shared values of the African union. The process of peer review is premised on the establishment of institutions, structures and systems that are based on African Union shared values, codes, norms and standards in political, economic and social governance; human rights; the rule of law and in the socio-political culture (African Governance Newsletter, 2011: 16).

The AU has convened high level retreats which provided opportunity to concerted and holistically focus on the challenges the continent is facing. The high level retreats called for peace and the support for ongoing transition processes in North Africa to ensure that good governance is met. One of the outcomes of the retreats was the 'Cairo Declaration' which encouraged stakeholders and different actors in governance to address implemented gaps. It is expected that the retreat will be useful in understanding the past performance and anticipation of future trends and developments, on the occasion of the upcoming celebration of the AU's 50<sup>th</sup> Anniversary this year, 2013 (Mac-Ikemenjima, 2008). Some of these gaps include the respect for human rights in Africa considering the gross violation of human and people's rights that citizens experience on a daily basis.

### **CHALLENGES FACING THE AU IN HUMAN RIGHTS PROTECTION**

The major challenge of the AU is the size of its membership (53 member countries). This in essence points to the potential pitfalls that could stall and even reverse the Union's progress. An example is in the area of decision-making at the pace of a snail or even grinding to a halt. Consensus on issues would be difficult considering the fact that member countries have the tendencies to first address self-interest (national interest) before collective interest. This is more so that state actors in the international system are influenced by domestic policies, getting consensus position at the supranational/international level may after all be painstakingly difficult.

Achieving two thirds majority on important substantive issues is a challenge that the AU has to cope with. Member states may get frustrated as a result of inaction arising from the difficulty to take decision due to the size of the Union. However, the union would rather prefer more membership rather than lose membership which may be viewed negatively because the former means progress and the latter portends that all is not well.

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The Charter assigned a duty on African states to promote and ensure that the rights and freedoms as well as the corresponding obligations contained therein are understood. These rights are to be taught, published and respected. The standard-setting function of the commission is to facilitate the promotion and protection of human rights Article (African Charter, 2010).

The requirement that states' parties to the charter shall guarantee the independence of tribunals and allow for the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of human rights not only reinforces the promotional aspect of human rights, but is also intended to ensure the effective protection of the rights guaranteed in the Charter (Article 26).

Paramount among the challenges facing the AU in the area of protecting Human and People's Rights in Africa can be located in the role of the African Commission. The Commission lacks independence, resulting in rather nepotistic relationship between the African Commission and its member states, instead of the Commission acting as an objective and critical observer of human rights violation (Wing and Smith, 2003 ) 61.

Second, most personnel of the African Commission are non- Africans. This is because Western donors and sponsors are not genuinely sincere in the human rights of Africans. A court lacking library, paper, computers, printers, translators, etc may face the lack of professionalism. This in turn may impede the independence of the African Court of Justice and Human Rights.

The relationship between the African Commission and the African Court of Justice and Human Rights is another source of challenge. As for the African Court, the African Court of Justice and Human Rights is to complement the protective mandate of the African Commission. Here, it is clear that there is the possible overlap and conflicts of jurisdiction between the African Court of Justice and Human Rights and the African Commission as well as the sub- regional courts of justice which also have human rights mandate (ECOWAS Treaty, 1993 Article 4).

Another challenge is the interpretation of the African Charter by the sub- regional treaty monitoring bodies applying directly the African provisions in dispute or relying on the African Charter and jurisprudence of the African Commission and the African Court as a source of law (Odinkanu, 2003).

## **MEASURES AND PROSECTS TO GUARANTEE HUMAN RIGHTS PROTECTION**

Strictly speaking, most member states of the AU tend to consider first their personal interest (national interest) as against the common interest of the union. Until these member states are willing to compromise and sacrifice some of what they consider as personal interest for the good of the union, it will indeed remain stagnated. Individual member states should be more diplomatic in their relationship with their neighbors



bearing in mind that insecurity of any kind in one country could likely have spillover effect in their own country.

The mandate of the African Commission can also be situated in Article 17 of the African Charter which accords the right to education, though without specification of the content of this right. It provides individuals with the right to participate freely in the cultural life of the community and imposes an obligation on the state to promote and protect the morals and traditional values recognized by the community. The African Commission on Human and People's Rights was established by the AU to Promote and protect human and people's rights in Africa. This is adequately captured in Article 30- 61 and 120 rules of procedure of the African Charter (African Charter, 2010).

The Protocol to the African Charter on Human and People's Rights established an African Court on Human and People's Rights which was adopted in 1998 and came into force on 25 January, 2004. This court was merged with the African Court of Justice (Protocol on the Statute of the African Court of Justice and Human Rights, Article 9 (1)).

Furthermore, human rights protection could be achieved through the National Human Rights institutions and independent bodies established by governments of member states under the constitution for the purpose of promoting and protecting human rights e.g. National Human Rights Commission, Ombudsman offices, other Human Rights advocates (Gallagher, 2000).

The transformed AU should be able to explore the well endowed human and natural resources of the continent to drive the economies of the world by putting in place democratic governance and protecting human rights which are key elements of sustainable development and peace. This enviable position can be attained if member states strengthen the rule of law, and create conducive atmosphere for civil societies to be independent and politically active.

## **RECOMMENDATIONS**

The AU should see the protection of the rights of its peoples as the most paramount by operating strictly on the provisions of the African Charter. This is captured by Kesley and Peterson when they state that, the charter recognizes that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of people's rights should necessarily guarantee human rights (Kesley and Peterson, 2003).

African Union can achieve its goals if it observes strictly the following as ingredients of democracy as it appears in its best form:

- (i) It is based on the principle of fundamental equality of all individuals before the law and the state. Therefore, it repels all forms of discrimination or exclusion, either by

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legislative acts or by tradition. It embodies a set of norms and rules to be followed by all individuals and institutions, and establish a clear distinction among the basic institutional, political and judicial powers. Therefore, it requires as a condition a state of law;

- (iii) It accepts and encourages the status of freedom and dignity of the human person doing away with all threats to basic human rights.

The Political leadership in Africa should consider Article 45 (2) which specifies the protective mandate of the African Commission which spans the entire African Charter in terms of the specific rights, duties and obligations that have been established. It can do this by examining the complaints that are either state or other complaints as contained in Articles 47- 54 and Articles 55- 59 respectively. This is vital because the political leaders have initiated human rights mechanisms in various instruments but lack the will power to enforce them.

## **CONCLUSION**

The foregoing discussion demonstrates that the protection of human and people's rights is a potential panacea for the African Union's quest for human development and continental integration. Africa has experienced gross violation of human rights by successive administrations and this is quite lamentable. There has been much expectation that the AU would be prompt in the resolution of violent conflicts arising from these violations by ensuring that member countries respect the constitutive act.

Since the treatment of the African Commission is certainly the most elaborate in the entire African Charter, as it takes up 32 Articles (Articles 30-61) and 120 rules of procedures. It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law (Universal Declaration paragraph 3).

The African Union in conjunction with the UN has accepted the internationalization of human rights promotion and protection (Universal Declaration of Human Rights) where countries of the continent have accepted obligations under various international instruments that have laid down universal human rights standards.

The study discovered that political leaders have deprived citizens their fundamental rights and this is responsible for the endless crises in the continent. As such there should be synergy between the AU organs and Human Rights Institutions in the protection and enforcement of human rights as prescribed by the African Charter and other human rights instruments.

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