

THREE DECADES OF THE AFRICA CHARTER ON HUMAN AND PEOPLES RIGHTS: AN APPRAISAL OF THE NORMATIVE AND INSTITUTIONAL ENFORCEMENT REGIME*

Abstract

The year 2016 marked the thirtieth anniversary of the African Charter on Human and Peoples' Rights following its adoption in 1981 and subsequent coming into effect in 1986. Upon the adoption in 1981, Africa laid its foundation for an indigenous human rights mechanism beyond the stereotyped western-oriented individual rights treaties. As the principal regional human rights treaty, the Africa charter introduced features recognising the African history and tradition in a manner which warrants universality and equality of different categories of human rights. This study evaluates the impact of this treaty by reflecting on the normative and institutional strengths, weaknesses and priorities for change needed for effective protection of the treaty rights and freedom. This evaluation is crucial because the African Charter emerged at a time in African history when human rights violations were prevalent in many African states.

Keywords: Human rights; African Charter, Normative, Institutional, Enforcement, Regime

1. Introduction

In 1986, a new indigenous human rights treaty for Africa, the African Charter on Human and Peoples' Rights¹ came into force following its adoption by the Organisation of African Unity² in 1981.³ Since coming into force, the African Charter has been ratified by 54 of the 55-member states of the African Union (AU); Morocco is in the process of ratifying after re-joining the AU in January 2017 at the time of writing. Unlike similar regional human rights mechanisms, the African Charter established a single enforcement and monitoring body- the African Commission on Human and Peoples' Rights⁴, with a tripartite mandate of promoting, protecting and interpreting the African Charter.⁵ However, in late 1987, the African Commission started to function. Following the unveiling of the African commission's tripartite mandate under the African human rights system, criticisms about its usefulness as a quasi-judicial institution became common amongst scholars and human rights crusaders.⁶ An instance of such criticism is

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¹Hereinafter called The African Charter

²Hereinafter called OAU. It was the continental organization of the Independent African countries. It has since 2002, transformed into the African Union

³ The African Charter was adopted by the OAU General Assembly on 27 June 1981 in Nairobi, Kenya and came into force on 21 October 1986 after meeting the absolute majority ratification requirement by OAU member states. See OAU Doc. CAB/LEG/67/3/Rev.5. By June 2017, the African Charter has been ratified by 53 of 55-member states of the AU. South Sudan and Morocco (which was readmitted into the AU in January 2017) are the two countries yet to ratify the African Charter.

⁴Hereinafter called the African Commission.

⁵ Part 2, Article 45 of the African Charter.

⁶ See generally, C Heyns, 'The African Human Rights System: In Need of Reform' (2001) 2 *African Human Rights Journal*, 155; F Onguergouz, *The African Charter on Human and Peoples' Rights: A comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (Martinus Nijhoff Publishers, Netherlands, 2003) 791; H Okoth-Ogund, 'Human and Peoples' Rights: What Point Is Africa Trying to Make?' In R. Cohen, G. Hyden, and W. Nagen, (eds.), *Human Rights and Governance in Africa*, (University Press of Florida, Gainesville- Florida, 1993) 76; J Boukongou, 'The Appeal of the African System for Protecting Human Rights' (2006) 6 *African Human Rights Law Journal*, 269; O Umzuruike, 'The African Charter on Human and Peoples' Rights' (1983) 77 *American Journal of International Law*, 902; E Kannyo, *Human Rights in Africa: Problems and Prospects* (1980) A report prepared for the International League for Human Rights (Human rights working paper) 15; N Udombana, 'Can a Leopard can its Spots? The African Union Treaty and Human Rights' (2002) 17 *American University International Law Review*, 1177; M Mutua, 'The African Human Rights System:

its referral as a ‘paper tiger’ and a ‘toothless bulldog that only bark but cannot bite’.⁷ Whereas it is contended that the African human rights system was relegated to a ramshackle structure built on a shaky foundation,⁸ it is also been submitted that this technical and conceptual standpoint of the African Charter was intentional at that time given that the drafters of the Charter were realistic in producing a legal instrument that would be accepted by the OAU member states by not setting a high standard.⁹ Conspicuously absent in the African charter was a regional court. However, an African court became a reality following the subsequent adoption in 1998 of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples’ Rights¹⁰. The African Court on Human and Peoples’ Rights¹¹, a judicial institution established to complement the African Commission,¹² came into force in 2004.

It has been over thirty years since the coming into effect of the African charter; thus, the burden of its effectiveness has been shifted to its institutions and sometimes to the state parties. According to this study, four factors account for this. The first is the quasi-judicial nature of the African Commission; the second is the late emergence of a regional court; thirdly, the requirement that state parties make a declaration under article 34(6) of the Court Protocol allowing individuals and non-governmental organisations (NGOs) access to the African court against the states; and lastly, the absence of effective follow-up mechanism under the African charter to monitor compliance with decisions from the African Charter institution.

African history cannot be adjudged to be a pleasant one. In the past, the continent has experienced events that resulted to a massive violation of human rights. Instances of historical events in the region include slave trade, colonialism,¹³ internal wars and armed conflicts, and despotic regimes under several African leaders such as Gnassingbe Eyadema of Togo (1967-2005), Hastings Banda of Malawi (1963-1994), Siad Barre of Somalia (1969-1991), Obiang Mbasogo of Equatorial Guinea (1979-Date), Hissene Habre of Chad (1982-1990), Omar Al-Bashir of Sudan (1989 –Date), and Muammar Gaddafi of Libya (1969-2011). Also, Africa is a continental home to people with diverse religion, culture, race, colour, nationality, and backgrounds separated by independent states with democratic, military, one-party, multi-party, capitalist, socialist, dictatorial, totalitarian, and monarchical states.¹⁴ With this diversity in mind, it is contended that the African Charter not only made a remarkable departure from the pattern of existing international human rights instruments but also responded to unique African circumstances and history.¹⁵ Especially is this given the fact that Africa comprises of numerous traditional and customary rules that are continually invoked by its diverse indigenous people.¹⁶ To this end, the African Charter has been described as the most authoritative rendition of African tradition in human rights discourse.¹⁷

A Critical Analysis’, available at ><http://hdr.undp.org/sites/default/files/mutua.pdf>< accesses 21 May 2017; M Mutua, ‘The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties’ (1995) 35 *Virginia Journal of International Law*, 339.

⁷N Udombana, ‘Towards and African Court on Human and Peoples’ Rights: Better Late than Never’ (2014) 3 (2) *Yale Human Rights and Development Journal*, 45.

⁸T Yarima, ‘Comparative Evaluation of the Challenges of African Regional Human Rights Courts’ (2011) 4 (2) *Journal of Politics and Law*, 120.

⁹F Ougergouz, ‘The African Charter on Human and Peoples’ Rights: A Living and Evolving Instrument for the Promotion and Protection of Human Rights in Africa’ *A paper presented at the African Commission for the celebration of African Charter at 30*.

¹⁰ Hereinafter called Court Protocol

¹¹ Hereinafter called the African Court

¹² Article 2 of the Court Protocol.

¹³ Majority of African states were colonised in the 19th century by the English, French, Spanish, Arabic and Portuguese.

¹⁴ According to United Nations Educational, Scientific, Cultural Organisation 2005 report, the number of languages in Africa is put at over 2000. See >https://web.archive.org/web/20080602050234/http://portal.unesco.org/ci/en/ev.php-URL_ID=8048&URL_DO=DO_TOPIC&URL_SECTION=201.html< accessed 12 April, 2016.

¹⁵V Boven, ‘The Relations Between Peoples’ Rights and Human Rights in the African Charter’ (1986) 7 *Human Rights Law Journal*, 182; see also, paragraph 4 of the African Charter preamble.

¹⁶R Smith, *International Human Rights* (5th edition, Oxford University Press, New York, 2012) 138.

¹⁷O Eze, *Human Rights in Africa: Some Selected Problems* (Macmillan, Lagos, 1984) 29.

The objective of international human rights law is to ensure uniformity in the protection of human rights across the globe.¹⁸ The African Charter, however, makes significant contributions in the sphere of international human rights law towards the realisation of universal human rights.¹⁹ It opened the African region to international human rights principles of accountability, transparency, non-discrimination and equality. This notwithstanding, many African states have continued to record pockets of human rights violations.²⁰

This article is divided into four sections. The first section examines the normative style of the African Charter. It analyses the unique style of the African charter and the extent it reflects or departs from the existing two other regional instruments, namely, the European Convention on Human Rights and Fundamental Freedoms and the American Convention on Human Rights. The second section evaluates the enforcement institutions of the African Charter. Consequently the weaknesses facing these institutions and extent to which they have influenced human rights in the continent through their interpretation of the African Charter were examined. The third section examines the future of human rights in Africa. This section is essential given suggestions that were made for an enhanced human rights protection in Africa. Finally, the study concludes its discussion in section four.

2. Normative Style of the African Charter on Human and Peoples Rights

The African Charter enumerates several rights across the three classes of human rights. These include the civil and political rights, social and economic rights, and collective rights in addition to peoples' rights. In respect of the content of the charter, the African charter preamble reiterated an intention to legally protect human rights with due regard to the Universal Declaration of Human Rights (UDHR). The African charter preamble further highlighted the need to align the enjoyment of various categories of rights; thereby emphasising the interrelatedness and indivisibility of human rights.²¹ This approach of indivisibility of rights reflects the idea of a universal, indivisible, interdependent and interrelatedness of human rights agreed upon in the Vienna Declaration and Programme of Action.²² The role and importance ascribed to indivisibility and interdependence of rights cannot be over-emphasised as it is seen as a guarantee to holistic human rights enjoyment which ordinarily would be hindered by poverty and scarce finances by states.²³ This is expected given the fact that all classes of human rights are by their nature attributable to human beings and transcend boundaries of state parties to the African charter. Hence, race, religion, political system, gender or nationality ordinarily should not impede human rights obligation of state parties. For this reason, the African charter mandates state parties to adopt legislative or other measures to ensure the rights and freedoms enshrined therein are given effect to.²⁴

Indeed, it is contended that the primary concern of international human rights was to safeguard individual rights by limiting the absolute power of the state.²⁵ The UN, for example, has been instrumental at the global level with the adoption of the UDHR, the International Covenant on Civil and Political Rights (ICCPR),²⁶ International Covenant on Economic, Social and Cultural Rights (ICESCR),²⁷ and several other human rights Declarations, Resolutions, and Treaties. Whereas the UDHR marked the birth of contemporary human rights ideology based on inalienable human

¹⁸ Universal Declaration of Human Rights GA Res.217A U.N. Doc A/810 (1948).

¹⁹ G Mugwanya, *Human Rights in Africa: Enhancing Human Rights Through the African Regional Human Rights System* (Transnational Publishers, Michigan, 2003) xv.

²⁰ Instances of AU member states presently experiencing massive human rights violation are Burundi, Democratic Republic of Congo, Somalia, South Sudan, Sudan, Cameroon, Ethiopia, Nigeria and many more.

²¹ Paragraph 7 of the African Charter preamble; The African charter was the first to recognise the three generations of rights in the same instrument. See E O Ekhator. 'The Impact of the African Charter on Human and Peoples Rights on Domestic Law: A Case Study of Nigeria' (2015) 41 (2) *Commonwealth Law Bulletin*, 253.

²² Article 5 of Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

²³ O Umozuruike, 'The present state of human rights in Africa' (1986) 1 *Calabar Law Journal* 62.

²⁴ Article 1 of the African Charter.

²⁵ O Eze, *Human rights in Africa: some selected problems* (Macmillan, Lagos, 1984) 3-8

²⁶ Adopted by the UN General Assembly resolution 2200A (XXI) of December 1966 and came into force 23 March 1976.

²⁷ Adopted by the UN General Assembly resolution 2200A (XXI) of 16 December 1966 and came into force 3 January 1976.

rights, democratic rights, and equality,²⁸ this document lacks the binding force of a treaty; thus, making it a mere declaration and an appeal for a world with more dignity for human beings.²⁹ Like other regional human rights instruments,³⁰ the African Charter on Human and Peoples' Rights provides for redress through its indigenous mechanisms. Despite this achievement, these rights have at one time or the other been asserted, denied, waived, respected and above all, extensively discussed and interpreted in Africa.

The position of the African human rights system has been one critical area in which the relativism-universalism debate is prominent.³¹ Take, for instance, the recognition accorded to the historical tradition and values of African civilisation in the preamble of the African Charter.³² It may be suggested that the inclusion of African values such as the peoples' rights has to a great extent complemented broad human rights guarantee. Likewise, some traditional African values still obstruct the full enjoyment of African Charter rights. For instance, gender inequalities which are justified based on cultural values and religion in some African societies.³³ That notwithstanding, it has been argued that regional human rights treaties are more attractive to states because they deal more with cultural sensitivities which posed a barrier to the universalist application of rights.³⁴ There is no doubt that in adopting the African Charter, African states adopted a unique human rights contextual approach inspired by African legal philosophy which responds to the African needs.³⁵ As we shall see below, the African charter's ideology was necessary to tactically overcome the effect of colonialism and authoritarian ideologies prevalent in the region at that time. Importantly, some unique features of the African charter include use of the claw-back clauses, an absence of a derogation clause, introduction of peoples' rights, nature of individual and state duties, inclusion of the three categories of human rights, the absence of a human rights court and absence of a follow-up and enforcement mechanism.

First of all, the African Charter consisted of sixty-eight articles comprising of individual and group rights covering civil and political rights; social, economic and cultural rights; and group and peoples' rights. Aside from the inclusion of these rights, the African commission emphasised in *Social and Economic Rights Action Centre (SERAC), and Centre for Economic and Social Rights (CESR) v Nigeria*, that the African Charter recognises the indivisibility of all rights which must be enforced at all time.³⁶ The significance of the inclusion of various categories of rights in the African Charter was not an accident of history in the quest for an indigenous human rights treaty.³⁷ Presumably, coming after the adoption of the ICCPR and ICESCR, the African Charter approach prevented a situation where states will have to ratify two or more human rights treaties for human rights protection. Some scholars have dismissed this approach as ambitious and unrealistic as they argued that it failed to consider the availability of financial resources needed to give effect to some rights, particularly, the social and economic rights.³⁸

²⁸E Blumenson, 'Four Challenges Confronting a Moral Conception of Universal Human Rights' (2015) 47 *The George Washington International Law Review*, 327.

²⁹M Hinz, 'Human Rights Between Universalism and Cultural Relativism? The need for Anthropological Jurisprudence in the Globalising World' in A Bosl and J Diescho (eds), *Human rights in Africa: Legal Perspective on their Protection and Promotion* (Macmillan Education, Namibia, 2009) 5.

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³¹B Faturoti, 'Women's Rights in Africa: An Examination of African Human Rights System in the Context of CEDAW and the Universalism Versus Cultural Relativism Debate' (2016) 3 *Journal of Comparative Law in Africa*, 149.

³²Paragraph 5 of the African Charter preamble.

³³F Alokun, 'Domestic Violence against Women: A family Menace' (2013) Conference paper presented at 1st Annual Interdisciplinary Conference, Portugal; A Uzuogunam, 'Women in Domestic Violence in Nigeria: Gender Perspective' (2013) 3 *Open Journal of Philosophy*, 185; Hadiza Iza Bazza, 'Domestic Violence and Women's Rights in Nigeria' (2009) 4 *Societies without Borders* 175.

³⁴R Houghton, Publication review of Rosa Freedman *Failing to protect: the UN and the Politicisation of Human Rights* (2015) 28 *Leiden Journal of International Law*, 171.

³⁵M Mutau, 'The African Human Rights System: A Critical Evaluation' (2001) Human Development Report Background Paper, available at ><http://hdr.undp.org/sites/default/files/mutua.pdf>< accessed 24 April 2017; R Gittleman, 'The African Charter on Human and Peoples' Rights: A Legal Analysis' (1988) 22 (4) *Virginia Journal of International Law*, 667.

³⁶Communication 155/96.

³⁷M Mutau, 'The African Human Rights System: A Critical Evaluation' (2001) Human Development Report Background Paper, available at ><http://hdr.undp.org/sites/default/files/mutua.pdf>< accessed 24 April 2017.

³⁸C Odinkalu, 'Implementing Economic, Social and Cultural Rights under the African Charter on Human and Peoples' Rights' in M Evans and R Murray, *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000* (Cambridge University Press, Cambridge, 2002) 196; O Umozuruike, 'Annual Activity Report of the African

However, whereas such argument are to some extent largely correct, it is also trite to state that the civil and political rights and collective rights place a reasonable good financial burden on state parties. Take, for instance, the conduct of elections if individuals are to participate in the electoral processes or the finance expended on security agencies for the safety of lives and property. In addition, a critical analysis of the case law jurisprudence from the African Court and African Commission shows civil and political rights provisions as the most litigated class of rights.³⁹ Another way of surmounting such criticism is by examining international standard on human rights application. Whereas the Vienna Declaration and Programme of Action is not a binding treaty, it resonated the relevance of a uniform application of the various categories of rights by states. In some African states, the African Charter rights, especially the social and economic rights are promulgated under the Fundamental Objectives and Directive Principles of State Policy section of their constitutions rather than as fundamental rights; they are seen as non-justiciable.⁴⁰ On the other hand, the African charter normative inclusion of claw-back clauses permits state parties to enact laws limiting the enjoyment of the African Charter rights and freedoms.⁴¹ These claw-back clauses are phrased as follows: ‘within the law’;⁴² ‘subject to law and order’;⁴³ ‘except for reasons and conditions previously laid down by law’;⁴⁴ ‘necessary restriction provided for by law’;⁴⁵ ‘in accordance with the provisions of the law’;⁴⁶ and, ‘provided he abides by the law’.⁴⁷ Although these clauses are largely visible in civil and political rights, Enabulele has argued that it aims to appreciate and respect certain domain of sovereignty of member states legitimacy to regulate their affairs.⁴⁸ By so doing, absolute enforcement of African charter rights may be limited. However, an examination of the decisions of the African Commission has explained the position of claw-back clauses in the African Charter. In *Media Rights Agenda v Nigeria*,⁴⁹ the African Commission held that a claw-back clause should not serve as a restriction on the enjoyment of the African Charter rights and freedoms as such interpretation would be counter-productive to the intent of the Charter. Going further, a claw-back clause cannot justify the derogation or violation of provisions of the African Charter.⁵⁰ For this reason, the Commission declared that the phrase ‘within the law’ and other claw-back clauses should only be interpreted concerning other international human rights treaties recognised by states.⁵¹ Similarly, the African court in *Tanganyika Law Society and Legal and Human Rights Centre and Rev. Christopher Mtikila v Tanzania*,⁵² adroitly, without much emphasis on the claw-back clause provision of Article 13, ruled that the domestic law which prohibits independent candidature in state general elections is a violation of Article 13 right to participate in government and Article 10 right to freedom of association. That notwithstanding, it is as a result of this suggestion that the claw-back clauses are a first-hand invitation to state parties to the African Charter to limit and derogate the enjoyment of African Charter rights.

Remarkably, in contrast with other international human rights instruments, the African Charter does not contain any derogation clause.⁵³ A derogation clause temporarily permits state parties to backtrack on some of their human rights treaty obligations in some circumstances permissible by law.⁵⁴ It is observed that the presence of derogation in international human rights instruments guarantees a ‘rational response to domestic political uncertainty’ given that it

Commission on Human and Peoples’ Rights: 3rd Activity Report’ (1990), Available at >http://www.achpr.org/files/activity-reports/3/achpr6and7_actrep3_1991_eng.pdf< accessed 23 May 2017.

³⁹ African commission communications, available at ><http://www.achpr.org/communications>< accessed 17 January 2018, and African court finalised cases, available at ><http://en.african-court.org/index.php/cases#finalised-cases>< accessed 17 January 2018.

⁴⁰ An instance is Chapter 2 of the 1999 constitution of Nigeria and chapter 6 of the 1992 constitution of Ghana.

⁴¹ S Martorana, ‘The New African Union: Will it Promote Enforcement of the Decisions of the African Court on Human and Peoples’ Rights?’ (2009) 40 *George Washington International Law Review*, 583.

⁴² Article 9 of the African Charter.

⁴³ Article 8 of the African Charter.

⁴⁴ Article 6 of the African Charter.

⁴⁵ Article 11 of the African Charter.

⁴⁶ Article 13 and 14 of the African Charter.

⁴⁷ Article 10 of the African Charter.

⁴⁸ A Enabulele, ‘Incompatibility of National Law with the African Charter on Human and Peoples’ Rights: Does the African Court on Human and Peoples’ Rights have the final say?’ (2016) 16 *African Human Rights Law Journal*, 1.

⁴⁹ Communication 222/98

⁵⁰ *Jawara v Gambia*- Communication 147/95-149/96.

⁵¹ *Constitutional Rights Project and others v Nigeria*- Communication 102/93.

⁵² App. No. 009/2011.

⁵³ See generally article 4 of ICCPR and article 15 of ECHR.

⁵⁴ A Ali, ‘Derogation from Constitutional Rights and its Implication under the African Charter on Human and Peoples’ Rights’ (2013) 17 *Law, Democracy and Development*, 78.

confers on states the time to confront a crisis.⁵⁵ Whereas the silence of the African Charter on a derogation clause has been regarded as a failure when compared to other international treaties. Such lacuna ought to have been corrected by the African Commission through its evolving interpretation.⁵⁶ Rather, the African Commission declared, in a case where the military leadership suspended the state constitution as undesirable and ruled that the African Charter does not permit derogation except under article 27.⁵⁷ The position of the African Charter implies that states, at all time and irrespective of national circumstances, but except as provided under article 27, must apply the provisions of the African Charter. Today, even with the standpoint of the African Charter on derogation, some African charter state parties' constitutions contain derogation clauses.⁵⁸

Another unique feature of the African Charter is the people's rights. Though the African charter failed to describe what peoples' rights entailed, Kiwanuka contends that it can be discussed in the context of the right to self-determination wrapped with an objective for the promotion of the existence of ethnic groups.⁵⁹ The African charter's concept of peoples' rights covers such rights as 'equality of all peoples' right⁶⁰; peoples' right to existence and self-determination;⁶¹ peoples' right to sovereignty over group wealth and natural resources;⁶² peoples' right to development;⁶³ peoples' right to national and international peace and security;⁶⁴ and peoples' right to general satisfactory environment favourable to development.⁶⁵ The uniqueness of this feature in international human rights domain has given rise to some legal and conceptual dilemma and may breed uncertainty and speculation.⁶⁶ Likewise, it opens a new development of international human rights jurisprudence even though it may seem advantageous to the numerous ethnic and other groups within the African continent.

Notably, the African Charter displays an array of individual and states duties.⁶⁷ These duties, however, re-echoes state party legal obligation to promote the respect of the African Charter rights and freedoms and guarantee the independence of national courts and other institutions entrusted with the protection and promotion of African Charter. To determine the state party obligation under the African Charter, article 1 mandates states to take legislative and other measures necessary to ensure the implementation of the African charter rights. Accordingly, the contextual approach of the African Charter implies that enjoyment of the Charter rights is consequent upon the performance of duties which embodies the values of African civilisation.⁶⁸ Whereas state party duties are positioned to ensure effective promotion and protection of the charter rights and freedom, individual duties are towards the family and society, the state, international community and other recognised communities. This is, in addition to respect for other peoples' rights, national security, promotion of African unity, preservation of the harmonious development of the family, respect for parents, and strengthening of African cultural values. Some duties have been described as incapable of effective legal implementation and thus should have been regarded as moral obligations instead of legal obligations in the form of duties.⁶⁹ However, the concept of state duty to guarantee the independence of court was highlighted in *Amnesty International, Comite Looseli Bachelard, Lawyers' Committee for Human Rights, Association of Members of the Episcopal Conference of East Africa v Sudan* wherein the African Commission ruled that Decree 2 of 1989 which oust the ordinary courts in Sudan is in violation of its duty to guarantee the independence of judiciary under Article 7 and 26 of the African Charter and further ruled that the government has bound itself under Article 1

⁵⁵ E Hafner-Burton, 'et al', 'Emergency and Escape: Explaining Derogations from Human Rights Treaties' (2011) 65 *International Organisation*, 673.

⁵⁶ C Heyns, "The African Regional Human Rights System: In Need of Reform?" (2001) 1 *African Human Rights Law Journal*, 155.

⁵⁷ This was the decision in *Media Rights Agenda*; see also *Constitutional Rights Project V Nigeria*; Article 27 of the African Charter allows limitation clause only with regards to the rights of others, collective security, morality, and common interest.

⁵⁸ Section 31 of the 1992 constitution of Ghana; section 45 of the 1995 constitution of Malawi.

⁵⁹ Article 20; preamble of the African charter; R Kiwanuka, 'The Meaning of "People" in the African Charter on Human and Peoples' Rights' (1988) 82 *American Journal of International Law*, 87.

⁶⁰ Article 19 of African Charter.

⁶¹ Article 20 of African Charter

⁶² Article 21 of African Charter.

⁶³ Article 22 of African Charter.

⁶⁴ Article 23 of African Charter.

⁶⁵ Article 24 of African Charter.

⁶⁶ S Dersso, 'The Jurisprudence of the African Commission on Human and Peoples' Rights with Respect to Peoples' Rights' (2006) 6 (2) *African Human Rights Law Journal*, 360.

⁶⁷ See generally, article 25-29 of the African Charter.

⁶⁸ African Charter Preamble, paragraph 7.

⁶⁹ Article 29 (8) of the Charter- duty to promote African unity; R. M. D'Sa, 'The African Charter on Human and Peoples' Rights: Problems and Prospects for Regional Action' (1983) *Australian Year Book of International Law*, 101.

to respect the Charter rights and freedoms.⁷⁰ Consequently, the African charter made some contextual omissions of rights internationally recognised by other international human rights instruments at the time of its emergence.⁷¹ Irrespective of its obvious incompleteness when compared to the ICCPR and ICESCR regarding the rights covered, the African Charter institutions have made commendable efforts in interpreting the provisions of the African Charter.⁷² In part, the normative style of the African Charter has contributed to the challenges facing the enjoyment of its rights and freedoms.⁷³ In this vein, the next section analyses the impact of the African Charter through its enforcement institutions.

3. Monitoring and Enforcement of the African Charter

The African Charter is monitored and protected by two institutions—the African Commission and the African Court. As stated earlier, the African Commission was established by the African Charter whereas the African Court was a creation of a later Protocol adopted by the OAU in 1998. While these instruments have represented important steps in the regional human rights development, they contain flaws, both normatively and structurally, that impede their effectiveness in the protection of human rights. An examination of these institutions is necessary because human rights challenges are derived not only from the substantive provisions of the Charter but also from its enforcement mechanisms.⁷⁴

The African Commission

At inception, the African Commission was the sole enforcement institution for the promotion, protection, and interpretation of the African Charter provisions.⁷⁵ The nature of this mandate entails that the commission has an educational and quasi-judicial role respectively. Such a wide responsibility exposed some of its early difficulties such as poor staffing, political influence, and inadequate funding.⁷⁶ Consequently, the African Commission became cautious in the exercise of its mandate and powers; mainly, its protective mandate.⁷⁷ This is more visible in its early years' use of declaratory judgments against violating state parties where it finds that a violation of human rights has occurred. Today, the African commission use of declaratory judgments has reduced as seen in some of its landmark decisions against state parties. For example, in *IHRDA, ACIDH and RAID v Democratic Republic of Congo*,⁷⁸ the African Commission ordered the prosecution of a mining company for its role in the killings and violation of other rights of the complainants and further awarded a record high amount of money as damages against the state. Another example is the case of *Jean-Marie Atangana Mebara v Cameroon* the African Commission ruled that the respondent state should release the complainant from detention and pay the sum of four hundred million (400,000,000) CFA francs as compensation for the material and non-material damages suffered as a result of the established violations.⁷⁹ However, some of these decisions placed the quantum and sum to be received as compensation at the mercy of the defaulting state party's legal process. Take, for instance, the decision in *Monim Elgak, Osman Hummeida and Amir*

⁷⁰ Communication 48/90-52/91-89/93; See also, *Zimbabwe Lawyers for Human Rights and Institute for Human Rights and Development in Africa (on behalf of Andrew Barclay Meldrum) / Zimbabwe* (Communication 294/04).

⁷¹ Notable rights omitted in the African Charter include right to privacy, right to nationality, right to form and join trade unions, right to marriage, prohibition of forced labour, prohibition of death penalty, and right to change religion.

⁷² S Yeshanew, 'Approaches to the Justiciability of Economic, social and Cultural Rights in the Jurisprudence of the African Commission on Human and Peoples Rights: Progress and Perspectives' (2011) 11 *African Human Rights Law Journal*, 317.

⁷³ J B. Mzizi, 'Human rights, Peace and the African Charter on Human and Peoples Rights' (1998, July-September) *Africa Legal Aid Quarterly*, 37.

⁷⁴ J Rehman, *International Human Rights Law* (2nd edition, Pearson Education Limited, England, 2010) 350.

⁷⁵ Article 45 of the African Charter; O Umzuruike, 'The African Commission on Human and Peoples' Rights' (1991) *Review of African Commission Human and Peoples' Rights*, 5; The African Commission was the sole monitoring and enforcement body until the adoption of the Court Protocol in 1998.

⁷⁶ V O. Nmehielle, 'Development of the African Human Rights System in the Last Decade' (2004) 11 (3) *Human Rights Brief*, 6; Christof Heyns, 'The African Regional Human Rights System: In Need of Reform?' (2001) 1 *African Human Rights Law Journal*, 155.

⁷⁷ H Steiner, P Alston and R Goodman, *International Human Rights in Context: Law, Politics and Morals* (3rd edition, Oxford University Press, New York, 2008) 1065.

⁷⁸ Communication 393/10.

⁷⁹ Communication 416/12.

Suliman (represented by FIDH and OMCT) v Sudan,⁸⁰ wherein the African Commission ordered compensation to the complainants but in accordance with the domestic law of Sudan.⁸¹

The African Commission consists of eleven members and personalities with high reputation, morals, integrity, and impartiality and competence in matters of human and peoples' rights.⁸² It is crucial to reiterate that the African Commission was inaugurated on 2nd November 1987, a year after the African Charter came into force and its members serve in their personal capacity⁸³ for an elected term of 6 years.⁸⁴ Notably, the business of the Commission is carried out during sessions, and as at June 2017, the Commission had held 60 Ordinary Sessions and 21 Extraordinary Sessions. Whereas the Ordinary Session is held twice a year, the African Commission may meet, if need be, in Extraordinary Sessions.⁸⁵ However, the sitting arrangement of the Commission takes the form of a part-time sitting; and as such, may result to delays in the consideration of communications and periodic reports.

The African commission allows unfettered access to states, individuals and non-governmental organisation to present complaints before it.⁸⁶ An important aspect of this wide access is that victims or their representatives can directly approach the Commission for redress upon complying with article 56 requirement. Accordingly, communications other than state communication must meet the following requirements: the name of the author must be indicated; communication must show compatibility with the OAU Charter; must not be written in insulting language; must not be mostly based on mass media information; must be sent to the Commission after exhaustion of local remedies; must be submitted within reasonable time from the exhaustion of local remedies; and, must not deal with cases that have been settled by states involved.⁸⁷ Hence, it has been noted that Article 56 requirement acts as a screening and filtering mechanism for the African charter protection before the regional institutions and thereby emphasizing the principles of sovereignty and regional supervision.⁸⁸

It has also been noted that the African charter failed to establish a follow-up mechanism for the enforcement of the decisions of its institutions. Over time, the African Commission has taken its initiative to establish Special Rapporteurs, Working Groups and Committees⁸⁹ towards its goal of an enhanced human rights protection in Africa. However, it is difficult to accept the lack of a follow-up procedure under the African Charter as the fundamental factor affecting the effective protection of human rights in Africa. The decisions of the commission are non-binding. Thus, it attracts little or no attention from state parties.⁹⁰ This reality has overtime encouraged state parties to refuse compliance with African Commission decisions. For instance, in *Good v Botswana*,⁹¹ Botswana expressly notified the Commission that it would not be subject to its decision. However, African Commission is enjoined to draw the attention of the Assembly of Heads of States and Government (AHSG) to cases of human rights violations together with its findings and recommendations.⁹² Whereas this information is regularly contained in the annual Activity Report of the African Commission, it cannot be authoritatively said that the AHSG's role has improved state

⁸⁰ Communication 379/09.

⁸¹ See also, the case of *Louis Emegba Mekongo v Cameroon* wherein the African Commission found that the complainant was entitled to compensation but instead of deciding the value to be awarded, it delegated that to be done by the violating state respondent.

⁸² Article 31 of the African Charter.

⁸³ Article 31 (2) of the African Charter.

⁸⁴ Article 36 of the African Charter.

⁸⁵ The first session of the African Commission took place on 2nd November 1987 at Ethiopia while the first extraordinary session took place 13-14 June 1989 at The Gambia; See the website of the African Commission, available at ><http://www.achpr.org/sessions/>< accessed 23 May 2017.

⁸⁶ Article 47-59 of the African Charter.

⁸⁷ Article 56 (1) – (7) of the African Charter; see Communication 338/07 – *SERAP v Nigeria* (2010) ACHPR para 43, and Communication 284/03 - *Zimbabwe Lawyers for Human Rights and associated Newspapers of Zimbabwe v Zimbabwe* (2009) ACHPR para 81.

⁸⁸ F Viljoen, 'Admissibility under the African Charter' in M Evans and R Murray, *The African Charter on Human and Peoples' Rights: The system in practice, 1986-2000* (Cambridge University Press, Cambridge, 2002) 62.

⁸⁹ See generally, a few of the Special Rapporteurs, Working Groups and Committees established by the African Commission- Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV; Committee for the Prevention of Torture in Africa; Special Rapporteur on Human Rights Defenders; Special Rapporteur on Freedom of Expression and Access to Information; Special Rapporteur on Rights of Women; Working Group on Communications, and Working Group on Economic, Social and Cultural Rights.

⁹⁰ M Mutua, 'The African Human Rights Court: A Two-Legged Stool?' (1999) 21 *Human Rights Quarterly*, 342.

⁹¹ Commission 313/05, available at ><http://www.achpr.org/communications/decision/313.05/>< accessed 30 November 2016

⁹² Article 58 of the African Charter.

compliance of African Commission decisions. Nonetheless, there are instances where the Commission took a courageous step by referring cases of non-compliance with its provisional measures to the African Court.⁹³

The African Court

The criticisms on the African human rights system eventually paid off in 1998 following the adoption of the Protocol to the African Charter on Human Rights on the Establishment of an African Court on Human and Peoples' Rights⁹⁴ on 9th of June 1998, and it entered into force on 25th January 2004. The central mandate of the African Court is to complement the protective mandate of the African Commission.⁹⁵ As at June 2017, 30 of the 55 AU member states have ratified the 1998 Protocol with 8 States declaring to allow individuals and NGOs access to the African Court.⁹⁶ Accordingly, the drafters of the 1998 Protocol asserted that the protocol was inspired by the establishment of international courts by other existing regional human rights instruments such as the European and Inter-American human rights system and the Statute of International Court of Justice.⁹⁷ The African Court consists of eleven judges elected for six years in an individual capacity from Member States and must be jurists of high moral character and judicial or academic competence and experience in human and peoples' rights.⁹⁸ Furthermore, the Court sits four times a year in two-week ordinary sessions, and extraordinary sessions may also be held. In that regard, the African Court is the only regional Court that still sits on a part-time basis when compared with the European and Inter-American systems. Take, for instance, since after the amalgamation of the Court and Commission in 1998 under the European system, the European Court has been sitting on a full-time basis. It is hardly arguable, that the nature of the sitting of any court would reflect on the quality and quantity of its output.

The African Court is conferred with jurisdiction extending to all cases and disputes submitted to it concerning the interpretation and application of the African Charter.⁹⁹ The African Court complements the protective mandate of the African Commission,¹⁰⁰ and it is conferred with jurisdiction extending to all cases and disputes submitted to it concerning the interpretation and application of the African Charter.¹⁰¹ In the exercise of its protective role, the African Court has the power to entertain complaints from the African Commission, state parties to the Court Protocol, and individuals and non-governmental organisations.¹⁰² Whereas both the Commission and state party can submit claims on behalf of individuals or their citizens, non-governmental organisations and individuals can only enjoy direct access to the court if their state has deposited a declaration under article 34(6).¹⁰³ Concerning enjoyment and protection of the African charter rights and freedoms, access to the African court is limited through the Court Protocol.¹⁰⁴ Accordingly, the legal consequences of any manner of denial to the courts cannot be ignored because it erodes justice from the courts.¹⁰⁵ It, therefore, restricts and deprives individuals, who constitute a majority of the

⁹³ See for instance, *African Commission V Kenya*, Application 006/2012, (*Communication 381/09, Centre for minority development and minority rights group V Kenya*).

⁹⁴ Protocol to the African Charter, available at ><http://en.african-court.org/images/Basic%20Documents/africancourt-humanrights.pdf>< accessed 19 June 2017.

⁹⁵ Article 2 of the 1998 Protocol

⁹⁶ To date, eight AU States allow individuals and NGOs to directly petition the African Court, namely: Burkina Faso (1998), Malawi (2008), Mali (2010), Tanzania (2010), Ghana (2011), Cote d'Ivoire (2013), Benin (2016), and Tunisia (2017). Rwanda had previously deposited a declaration in conformity with Article 34 (6) in 2013 but subsequently withdrew with effect from March 2017; See African Union List of Countries that have ratified the 1998 Protocol as at the end of 2016, available at >https://www.au.int/web/sites/default/files/treaties/7778-sl-protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_17.pdf< accessed 23 May 2017.

⁹⁷ Explanatory Notes to the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, 1, (6-12 September 1995), Cape Town South Africa.

⁹⁸ Article 11 and 15 of the 1998 Protocol.

⁹⁹ Article 3 of the 1998 Protocol.

¹⁰⁰ Article 2 of the Court Protocol.

¹⁰¹ Article 3 of the 1998 Protocol.

¹⁰² Article 5 of the Court Protocol.

¹⁰³ See the provisions of article 34 (6) of the Court Protocol.

¹⁰⁴ Articles 5(3) and 34(6) of the Court Protocol.

¹⁰⁵ *Attorney General Kaduna State v Mallam Umaru Hassan* (1985) Nigerian Weekly Law Report, Pt. 8, 483.

victims of these human rights violations, access to the only regional institution capable of issuing binding orders and decisions.¹⁰⁶ Thus, article 34 (6) requirement defeats the entire essence of the existence of the African Court.¹⁰⁷

The Court Protocol has so far been ratified by 30 AU member states¹⁰⁸ of which only eight has deposited a declaration in conformity with article 34(6).¹⁰⁹ This is a serious problem to African Charter enforcement where jurisdiction is derived from ratification. Thus, in the absence of ratification or deposit of Declaration under article 34(6), it will be difficult for the court to assume jurisdiction over a state party or entertaining a complaint from an individual or an NGO under article 5 of the court protocol. Nonetheless, since the African Court came into force in 2004, the Court has delivered 48 judgments with 98 pending cases as at the time of writing.¹¹⁰ Upon becoming operational in 2004, the African court declined jurisdiction pursuant to article 34 (6) in its first finalised case in 2009.¹¹¹ Notwithstanding this disappointment, the court delivered a prominent judgment in its first decision on merit in 2013 by ordering Tanzania to take constitutional, legislative and other measures to remedy violations complained by applicants.¹¹² In *Tanganyika Law Society and Legal and Human Rights Centre and Rev. Christopher Mtikila*,¹¹³ the applicants prayed the African Court to declare that provisions of the amended constitution of Tanzania violated citizens' right to participate in public or governmental affairs and freedom of association under articles 10 and 14 of the African Charter. In its judgment, however, the African Court admitted that a constitutional requirement that a candidate for a general election must belong to a political party to participate in the governance of Tanzania derogates from the rights enshrined in article 13 and article 10 of the African Charter.¹¹⁴ The African Court noted in this case that the abolition of independent candidates in a general election in Tanzania violated the right of the general populace to choose a representative as well as the right of candidates to participate in the general electoral processes freely. Thus, it mandated Tanzania to amend its constitution and other relevant legislation to reflect the African Charter intent and rights. However, this decision has not been complied with given that articles 36, 67 and 77 of 1977 constitution of Tanzania are yet to be repealed or amended.

The function of the African Court comprises advisory,¹¹⁵ adjudication, interpretation and application of the African Charter and any other human rights instrument.¹¹⁶ One typical case that showcases the functions of the African court is its increasing number of case law jurisprudence. Although it is understandable that judicial development in various African countries varies, the African court has continued to make appropriate orders to remedy human rights violations in line with Articles 9 and 27 of the Court Protocol. For example, the African Court has ordered states to amend domestic laws and constitutions to reflect the true intent and content of the African Charter;¹¹⁷ and in another area of jurisprudential success in the interpretation on national law compatibility with the African Charter, the African Court in *Peter Joseph Chacha v Tanzania*¹¹⁸ ruled that a complainant must not state provisions of the African Charter if he/she can show violation of any human rights instrument ratified by the state concerned.¹¹⁹ By this ruling, failure

¹⁰⁶ F Viljoen, 'Understanding and Overcoming Challenges in Accessing the African Court on Human and Peoples' Rights, (2018) 67 *International and Comparative Law Quarterly*, 63; T Yerima, 'Comparative Evaluation of the Challenges of African Regional Human Rights Court' (2011) 4 (2) *Journal of Politics and Law*, 120; S Sceats, 'Africa's New Human Rights Court: Whistling in the Wind?' (2009) *Chatham House Briefing Paper*, available at ><https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/International%20Law/bp0309sceats.pdf>< accessed 21 March 2018.

¹⁰⁷ T Yerima, 'Comparative Evaluation of the Challenges of African Regional Human Rights Courts' (2011) 4 (2) *Journal of Politics and Law*, 120.

¹⁰⁸ The following states have ratified the Court Protocol: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Sahrawi Arab Democratic Republic, Senegal, Tanzania, Togo, Tunisia, and Uganda.

¹⁰⁹ The following states have made the declaration: Burkina Faso, Malawi, Mali, Tanzania, Ghana, Benin, Tunisia and Cote d'Ivoire. Rwanda previously made this declaration in 2013 but withdrew with effect from March 1, 2017.

¹¹⁰ Information is as at February 2018. See African Court finalised cases index, available at ><http://www.african-court.org/en/index.php/cases#finalised-cases>< accessed 28 July 2017.

¹¹¹ See App. No. 001/2008 – *Micheal Yogogombaye v Republic of Senegal*.

¹¹² App. No. 009 and 011/2011- *Tanganyika Law Society and Legal and Human Rights Centre and Rev. Christopher Mtikila*.

¹¹³ App. No. 009 and 011/2011.

¹¹⁴ *Ibid*, paragraph 99.

¹¹⁵ As at July 2017, the African Court has 8 finalised opinions and 3 pending opinions.

¹¹⁶ Article 3 and 4 of the Protocol.

¹¹⁷ See the judgments in the following cases: *Lohe Issa Konate V Burkina Faso (2015)*; *Rev. Christopher R. Mtikila V. Tanzania (2013)*; *Action pour la protection des Droits de l'Homme (APDH) V. Cote d'Ivoire (2014)*.

¹¹⁸ App. No. 003/2012; Ruling on admissibility delivered 28 March 2014.

¹¹⁹ App. No. 003/2012; Ruling on admissibility delivered 28 March 2014.

of the complainant to cite specific articles of the African Charter cannot oust African Court jurisdiction if the complaint contains a *prima facie* violation of human rights which the Charter or respondent state recognises.

However, the addition of remedies in the Court Protocol is a unique departure from the context of the African Charter.¹²⁰ Unfortunately, an objective examination of the decisions reached by the African Court shows that majority of its finalised cases have not been complied with.¹²¹ Despite its power to give binding decisions, the African Court has not been known for its strong stance on enforcement even with the procedural structure allowing the Council of Ministers to monitor the execution of decisions on behalf of the AHSG.¹²² The sad event of non-compliance cannot be underscored. Sometimes this is heightened by the voluntary nature of state party obligation in complying with decisions of the Court in any case which they are parties within the time stipulated by the African Court.¹²³ Take, for instance, following the decisions in *African Commission v Republic of Libya*, whereas it is worth mentioning that Saif Al-Islam has been released from prison, his release was not due to the decision of the African Charter institutions; rather, on an instruction of a House of Representatives of an armed group based in the eastern city of Tobruk.¹²⁴

Furthermore, the African Court is mandated to list and submit to the AHSG reports on its annual activities with specific information about states that fail to comply with its judgments.¹²⁵ It has been argued that the content of article 31 of Court Protocol to name non-complying states can boost the authority of the African Court and the enforcement of its decisions.¹²⁶ However, this depends on how the AU decides to use its powers under article 23 (2) of the Constitutive Act on member states. Under the AU Constitutive Act, sanctions can be used against state parties that violate the Act or decisions of the organs of the AU. Thus, whether this provision can be invoked against erring state parties depends on the political will of the AHSG and its organs involved in the human rights protection.

4. Future of the African Charter on Human and Peoples' Rights in Africa

An examination of the African Charter shows that its enforcement institutions have through the interpretation of the Charter formulated guidelines and developed enormous case law jurisprudence for an enhanced understanding of the African Charter. Human rights situation in many African states remains bleak. This has overtime been characterised by the non-compliance of the decisions of the African Charter institutions; and, division amongst various categories of African Charter rights for purposes of enforcement. It is noteworthy that several African states enacted economic, social and cultural rights as non-justiciable rights in their constitutions; thus, giving civil and political rights prominence for enforcement. The recognition of socio-economic and cultural rights as non-justiciable is against the unequivocal intention of the African Charter drafters.¹²⁷ Of course, it contradicts the entire indivisibility and interrelatedness idea of the Africa Charter and the essence of the international human rights movement. For this reason, it is expected that more focus on the realisation of the African Charter provisions be shifted to states parties while sanctions should be used by the AU against erring states parties. The complexity of access to African Charter institutions reaches its extremes when juxtaposed with the Declaration's requirement under article 34 (6) of Court Protocol. This is against the backdrop that the future of the African Charter can only be tested by its enforcement by victims. Hence, where these institutions are inaccessible, this will result in lack of confidence in human rights enforcement mechanisms. Given such circumstance, the shortcomings of human rights enforcement are now vast such that it calls for treaty reforms to the African human rights system. Added to this is the fluidity of things concerning the status of the court itself. This is against the backdrop of the merger of the court with the AU Court of

¹²⁰ Article 27 empowers the African Court to offer remedies such as compensation or reparation to victims of human rights violations.

¹²¹ Africa Union Executive Council, Report on the Activities of the African Court adopted January 2017 at Thirtieth Ordinary Session, available at ><http://www.african-court.org/en/index.php/publications/activity-reports>< accessed 25 February 2018.

¹²² Article 29 (2) of 1998 Protocol; Rule 64 of the Rules of Court; R Murray, 'The African Court of Human and Peoples' Rights order for provisional measures against Libya: greater promise for implementation of human rights in Africa' (2011) 3 *European Human Rights Law Review*, 464.

¹²³ Article 30 of the Court Protocol.

¹²⁴ Aljazeera News, 'Saif Al-Islam Gaddafi freed from prison in Zintan' available at ><http://www.aljazeera.com/news/2017/06/saif-al-islam-gaddafi-freed-prison-zintan-170610190700610.html>< accessed 29 September 2017.

¹²⁵ Article 31 of the 1998 Protocol.

¹²⁶ N Udombana, 'Towards the African Court on Human and Peoples' Rights: Better Late than Never' (2000) 3 (2) *Yale Human Rights and Development Journal*, 45.

¹²⁷ C Kabange Nkongolo, 'The Justifiability of Socio-economic Rights under the Africa Charter on Human and Peoples' Rights: Appraisal and Perspectives Three Decades after its Adoption' (2014) 22(3) *African Journal of International Comparative Law*, 492.

Justice to form the AU Court of Justice and Human Rights and the further amendment of the inchoate merger protocol to birth the African Court of Justice and Human and Peoples' Rights¹²⁸ together with the financial implication of maintaining the new court structure.¹²⁹ It is interesting to note that this new court is still awaiting the requisite ratifications before it could become operational thus creating uncertainties as to the existence of an African court for the ventilation of human rights breaches. The African Union must be seen as actually participating in the area of human rights development in Africa. For example, this inter-governmental body should be more visible not only in ensuring state compliance with decisions of the African charter institutions and funding, but also in the area of training of the workforce, and prevention of massive human rights violations. It is undebatable that training of African Court judges and Commissioners can fast-track the introduction of the principle of mutual trust between states and the regional institutions and further promote adequate enforcement in affected states. Another relevant factor that must be considered for the future of the African Charter is citizens' education on the African Charter rights. Whereas part of the promotional mandate of the African Commission requires it to undertake studies and researches on African problems in the field of human rights, it is further required to conduct seminars, symposia, and conferences, and disseminate information to national and local institutions relating to human and peoples' rights and fundamental freedoms.¹³⁰ It is therefore fitting to argue that inadequate human rights education continue to pose a problem to the understanding and enforcement of the African Charter rights and freedoms. Ignorance has been amongst the key obstacles hindering the promotion of rights in Africa, and this is because many Africans do not have good knowledge of the functions, existence and procedures of these institutions.

5. Conclusion

As the principal indigenous human rights treaty for the African continent, the African Charter has set a standard for international human rights through its unique normative context. The adoption and wide ratification of the African Charter were amongst the most remarkable achievement of the OAU (now AU) in the 20th century. It was a giant stride towards revolutionising international human rights, albeit within the historical and traditional values of the African people. This marked the birth of an Africanised human rights structure, serving as a foundation for subsequent development of human rights instruments. It has had positive impact on the legal, political, social and cultural evolutions of AU member states and has acted as a mirror by which its enforcement institutions view national constitutions and legislation on human rights issues. By serving as a benchmark for states, the African Charter sets the pace for an effective human rights enforcement in Africa, but gaps remain between the rights on paper and its actual realisation. The future of the African Charter can be different for Africans whose rights have been violated or at the risk of being violated, but Africa needs a new paradigm to confront the contributing normative and institutional lapses in the African Charter. Reform to the existing structure will make a huge difference in realising the African Charter rights and freedoms and aligning it more with international human rights law standard.

Thus, as the African Charter enters into its third decade of existence, it is expected that Africa focuses on two factors: firstly, enforcement of the African Charter provisions through compliance of the decisions from African Charter institutions. This should be bolstered by removing the current haze that surrounds the status of the judicial institution saddled with interpreting the charter provisions. Secondly, prioritise its promotional activities through compulsory human rights education and information dissemination. Both efforts will guarantee prudent and realistic enforcements of the African Charter rights and freedoms and develop an enforcement relationship between state bodies and the regional institutions. Finally, state parties to the African Charter should make implementation of rights a priority and reality rather than their cosmetic ratification of the African Charter. This will encourage the indivisibility and intrinsic relationship between the various categories of rights of the African Charter as well as promote justice, equality, freedom, and development in Africa.

¹²⁸ For a full text of the merger protocol and statute of the African Court of Justice and Human and Peoples' Rights, see http://www.issafrica.org/anicy/uploads/protocol_on_the_statute_of_the_ACJHPR.pdf . Accessed on 22/4/2018

¹²⁹ For a detailed discourse on the African Court of Justice and Human and Peoples Rights, see HC Alisigwe, *Judicialism in International Law: Pivots, Prospects And Challenges* (Unpublished Ph.D Dissertation, Nnamdi Azikiwe University, Awka, 2015) 285-324

¹³⁰ Article 45 (1) of the African Charter.