

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS AND CHALLENGE OF CONSENT TO JURISDICTION BY MEMBER STATES: A RETHINK ON NIGERIA'S POSITION

Abstract

One of the measures adopted by the African Union to straighten the protection of human rights within African region is through the creation of an African Court on Human and Peoples' Rights. The objective of this paper was to examine the challenges faced by Nigerians and Non-governmental Organisations in accessing African Court on Human and Peoples' Rights. The paper adopted a doctrinal research method by examination of the legal instruments for African Court on Human and Peoples' Rights. It was discovered that the major challenge faced by Nigerians and NGOs in accessing the African Court on Human and Peoples' Rights is due to the inability of Nigeria to consent to the jurisdiction of African Court on Human and Peoples' Rights. It was based on the foregoing that we recommended among others for an amendment to Article 34 (6) of the Protocol for the establishment of the African Court on Human and Peoples' Rights by deleting the clause that requires that a State Party must declare to the competence of the Court before individuals and Non-governmental Organisations from that state can access the Court.

Keywords: Africa, Court, Jurisdiction, Challenge, Nigeria

1. Introduction

African Court on Human and Peoples' Right was established on 10th June 1998 in Ouagadougou, Burkina Faso.¹ The aim of establishing the African Court on Human and Peoples' Right is to complement and reinforce the functions of the African Commission on Human and Peoples' Rights.² The Protocol for the establishment of the African Court on Human and Peoples' Right later entered into force on 25th January, 2004. In order to activate the jurisdiction of the African Court on Human and Peoples' Right by member states, Article 34 (6) of the Protocol to establishment of African Court on Human and Peoples' Rights provides that 'at the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a State Party which has not made such declaration'. For this purpose, Article 5 (3) of the Protocol provides that 'The Court may entitle relevant None Governmental Organisation (NGOs) with observer status before the Commission, and individual to institute cases directly before it in accordance with article 34 (6) of this Protocol.' Nigeria ratified the Protocol to the establishment of African Court on Human and Peoples' Rights in 2004. However, since the ratification of the Protocol in 2004, Nigeria has denied None Governmental Organisations (NGOs) and Nigerians access to the African Court by her act of refusal to consent to the competence of the jurisdiction of the Court as required under Article 34 (6) of the Protocol. The purpose of this paper is to probe into the need for Nigeria to urgently declare to the competence of the African Court on Human and Peoples' Rights in order to broaden access to justice in human rights cases by NGOs and citizens of Nigeria. This paper will dig into the background of the African Court on Human and Peoples' Rights, its achievements, challenges and why Nigeria needs to consent to its jurisdiction among others.

2. The Genesis of the Creation of African Court on Human and Peoples' Rights

It is germane to note that the inhumane treatment of the entire populations in concentration camps during the Second World War resulted in the widespread demand for the respect for human rights as the basis of international peace

*By **Igwe Onyebuchi IGWE, PhD**, Lecturer at Faculty of Law, Ebonyi State University Abakaliki-Nigeria;

***Kevin Onwuka UDUDE, PhD**, Dean, Faculty of Law, Ebonyi State University Abakaliki-Nigeria; and

***Chinyere Constance OGAH**, Lecturer at Faculty of Law, Ebonyi State University, Abakaliki, Nigeria.

¹ The Protocol to establish African Court was adopted in 1998 at Burkina Faso by the African Union and it came to force on 25th January, 2004 <www.ihrda.org/.../african_court_on_human_rights> accessed on Thursday, 18th October, 2019

² Article 30 of the African Charter on Human and Peoples' Rights provides for the establishment of an African Commission on Human and Peoples' Rights for the purpose of promoting human and peoples' rights and ensuring their protection in Africa. Article 45(1)(b) of the said Charter mandates the Commission to *inter alia* formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

and progress.³ The result was the adoption of the Universal Declaration of Human Rights in 1948 by the United Nations.⁴ This was followed by the international bill of rights and the regional arrangements for the purpose of the proliferation of international treaties and instruments that placed obligations on member states to treat their citizens with respect and to accord them rights.⁵ The proposal for the establishment of an African Court on Human and Peoples' Rights was initiated alongside with the discussion to adopting an African Charter on Human and Peoples' Rights in 1961 at the African Conference on Rule of Law in Lagos, Nigeria.⁶ The Conference was organised by the International Commission of Jurist for Africa on the Rule of Law. The Conference had in attendance, 194 Judges, Lawyers and scholars from twenty-three African countries.⁷ It was convened to fashion out mechanisms for the protection of human rights including the creation of a court of appropriate jurisdiction to safeguard human rights in the African continent. At the end of the Conference, the participants adopted the Law of Lagos, which declared that:

In order to give full effect to the Universal Declaration of Human Rights of 1948, this Conference invites the African Governments to study the possibility of adopting an African Convention of Human Rights in such a manner that the conclusions of this Conference will be safeguarded by the *creation of a court of appropriate jurisdiction*⁸ and that recourse thereto be made available for all persons under the jurisdiction of the Signatory States.⁹

However, upon the adoption of the African Charter on Human and Peoples' Rights,¹⁰ State Parties to the Charter agreed to the creation an African Commission on Human and Peoples' Rights.¹¹ In the view of Zimmermann and Baumlér:

The justifications cited for the creation of a Commission instead of a court were, *inter alia*, that the selection of a non-judicial procedure was more in keeping with African tradition. The fact that there was not yet sufficient political will among the African states to submit to the jurisdiction of a court is likely also to have played an important role.¹²

The African Commission on Human and Peoples' Rights plays a supervisory role in its mandate of protecting human rights in African region. Article 45(1)(b) of the African Charter specifically mandates the Commission to *inter alia* formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations. However, the major obstacle faced by the Commission is that it can only made recommendations to a state where the violation individual's rights occurred. The Commission cannot award damages to the victim of human rights abuses, it cannot order for restitution or reparations. It cannot condemn an offending state. That is why the Commission was severally described as a toothless bulldog.¹³ In order to strengthen human rights protection in African continent, it became imperative that the move to establish an African Court on Human and Peoples' Rights be reinvigorated.

It was in 1993 that the International Commission of Jurists resurrected the move for the establishment of an African Court on Human and Peoples' Rights.¹⁴ This was coming after more than three decades from the time the idea for the establishment of an African Court on Human and Peoples' Rights was first conceived at African Conference on

³Article 55 (c) of the United Nations charter provides that 'With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self determination of peoples, the United Nations shall promote universal respect for and observance of, human rights and fundamental freedoms for all....'

⁴ The Universal Declaration of Human Rights was adopted by the United Nations General Assembly *via* Resolution 217 A (III) of 10th December, 1948.

⁵ Examples are the European Convention on the Protection of Human Rights and Fundamental Freedoms, 1950, American Convention on Human Rights, 1969, African Charter on Human and Peoples' Rights 1981

⁶ NJ Udombana, *Human Rights and Contemporary Issues in Africa*, (Lagos: Malthouse Press Ltd, 2003) p.119.

⁷*Ibid.*

⁸ Italics mine.

⁹NJ Udombana, *Human Rights and Contemporary Issues in African*, *ibid*, p.20.

¹⁰ African Charter on Human and Peoples' Rights was adopted by the OAU now AU in Banjul in 1981.

¹¹ A. Zimmermann and J. Baumlér 'Current Challenges Facing the African Court on Human and Peoples' Rights' (2010) 7 *Kas International Reports*, 38.

¹²*Ibid.*, p. 39-40.

¹³ NJ Udombana, *Human Rights and Contemporary Issues in African* (Lagos: Malthouse Press Ltd, 2003) p.129.

¹⁴*Ibid.*

IGWE, UDUDE & OGAH: African Court On Human And Peoples' Rights And Challenge Of Consent To Jurisdiction By Member States: A Rethink On Nigeria's Position

Rule of Law held in Lagos, Nigeria in 1961. However, the climax of the events that actually hasten the move to establishing an African Court of Human and Peoples' Rights was the genocide in Rwanda in 1994. In that year, ethnic Hutu extremists killed about 800,000 people who were majorly the members of the minority Tutsi community in Rwanda.¹⁵ The above bloodletting and man inhumanity to man prompted the African Union to request the Secretary General to sketch out a protocol for the establishment of an African Court on Human and Peoples' Rights. The first draft was prepared in Cape Town, South Africa in 1995 during the meeting of experts.¹⁶ This was followed by two other meetings convened in that regard in 1997 before the Organisation of African Unity¹⁷ adopted the Protocol on 10th June 1998 in Ouagadougou, Burkina Faso.¹⁸ After the adoption of the Protocol by the African Union in 1998, it took another six years before the Protocol entered into force.¹⁹ At present, the African Court on Human and Peoples' Rights has dual jurisdiction to *wit*: contentious and advisory jurisdictions.

By Article 3 of the Protocol, the contentious jurisdiction of the African Court of Human Rights extends to interpretation and application of the African Charter, its protocol and any other relevant human rights instruments ratified by the State Party concerned. Article 4 of the Protocol provides that:

1. At the request of a Member State of the OAU²⁰, the OAU, any of its organs, or any African organization recognised by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to matter being examined by the Commission.
2. The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate or dissenting decision.

Article 5 of the Protocol provides for the category of groups or individuals that may access the African Court to include: African Commission on Human and Peoples' Rights;²¹ a State Party which has lodged a complaint to the Commission,²² State Party against which the complaint has been lodged at the Commission,²³ the State Party whose citizen is a victim of human rights violation,²⁴ African Inter-governmental Organisations;²⁵ or Non-governmental Organisations with observer status before the African Commission on Human and Peoples' Rights,²⁶ or Individuals from states which have made Declaration accepting the jurisdiction of the Court under article 34(6) of the Protocol.²⁷

3. Achievements and Challenges of African Court of Human and Peoples' Rights

African Court on Human and Peoples' Rights has recorded a lot of achievements in its efforts to promote and protect human rights within African region since its establishment. This is despite the tooting challenges that faced the Court as a result lack of political will on part of some African countries to consent to the jurisdiction of the Court to enable individuals and NGOs in their respective domains to access the African Court on Human and Peoples' Rights. Available record reveals that as at September, 2019, African Court on Human and Peoples' Rights had received a total of 238 Applications from individuals, NGOs, African Commission and some State Parties that have consented to its jurisdiction.²⁸ The breakdown of the above applications reveals that individuals lodged a total of 223

¹⁵ BBC News, 'Rwanda Genocide: 100 days of Slaughter' <www.bbc.com/news/world-africa-26875506> accessed on Saturday, 9th November, 2019.

¹⁶ A. Zimmermann and J. Baumler, *op cit*, p. 40.

¹⁷ Now African Union.

¹⁸ Africa Union, 'Treaties, Conventions & Protocol' <<http://www.africa-union.org>> Documents > Treaties, Conventions & Protocols, printed in: ZaöRV 1998, 727 - 732. 4.>

¹⁹ The Protocol for the establishment of African Court on Human and Peoples' Rights entered into force in 2004.

²⁰ OAU is now African Union (AU).

²¹ Protocol to African Charter, Article 5 (1)(a).

²² *Ibid*, Article 5 (1)(b).

²³ *Ibid*, Article 5 (1)(c).

²⁴ *Ibid*, Article 5(1) (d).

²⁵ *Ibid*, Article 5(1)(e).

²⁶ *Ibid*, Article 5(3).

²⁷ *Ibid*.

²⁸ African Court, 'Cases' african-court.org.<accessed on Sunday, 20th October, 2019>.

complaints; NGOs file 12 complaints while African Commission lodged 2 complaints.²⁹ Out of the total 238 complaints so far received by the Court, 62 complaints had been determined, 172 complaints are pending while 4 complaints were transferred to African Commission on Human and Peoples' Rights.³⁰

Some of the cases finalised by the African Court on Human and Peoples' Rights include: *Fidele Mulindahabi v. Republic of Rwanda*.³¹ In that case, the Applicant claimed that the Respondent State³² 'violated his right to property provided under Article 17 (2) of the Universal Declaration of Human Rights and Article 14 of the African Charter.' The fact of the Application is that the Applicant, a national of the Republic of Rwanda³³ alleged that he was a victim of human rights violations by the Rwanda Authority in connection with the Applicant exercise of his right to urban transportation activity. According to the Applicant, he applied to the Rwandan Service Control Authority to issue him with a transport licence but his application was refused on the ground that licences are issued to companies and not to individuals. In that case, the Applicant also stated that he had not exhausted the domestic remedies because such remedies would not be feasible since a member of 'Republic Guard was involved.' The Court in it considered ruling dismissed the Application on the ground that the Applicant failed to exhaust the local remedies available to him in the Respondent State and 'his failure to do so does not fall within the exceptions set out in Rule 40 (5) of the Rules of the African Court on Human and Peoples' Rights.'

In *Association of Pour Le Progres Et La Defense Des Dorits Des Femmes Maliennes (APDF) and Anor v. Republic of Mali*³⁴ the Applicants alleged that the Persons and Family Code adopted by the Malian National Assembly on 2nd December, 2011 and signed into law on 30th December, 2011 by the Malian Head of State violated several provisions of international humans rights instruments ratified by the Republic of Mali.³⁵ The Applicants specifically pointed that the Malian Code, the subject matter of the application is a:

- i. Violation of the minimum age of marriage for girls (Article 6(b) of the Maputo Protocol and Articles 1(3), 2 and 21 of the African Charter on the Rights and Welfare of the Child (ACRWC);
- ii. Violation of the right of consent to marriage (Article 6(a) of the Maputo Protocol and Article 16 (a) and (b) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- iii. Violation of the right to inheritance (Article 21(2)) of the Maputo Protocol and Articles 3 and 3 of ACRWC;
- iv. Violation of the obligation to eliminate traditional practices and conduct harmful to the rights of women and children (Articles 2(2) of the Maputo Protocol, 5(a) of the CEDAW and 1(3) of the ACRWC.

The Applicant therefore prayed the African Court on Human and Peoples' Rights to direct the Malian Government to amend its Persons and Family Code, 2011 by: bringing back the minimum marriage age of a girl to 18 years, allow consent of parties to marriage to be obtained first before a religion minister and introduce equitable share of inheritance between male and female. The Court after reviewing the submissions of both parties, ordered the Republic of Mali (the Respondent) to 'amend the impugned law, harmonise its laws with the international instruments, and take appropriate measures to bring an end to the violations established.' In *Lucien Ikili Rashidi v United Republic of Tanzania*,³⁶ the Applicant alleged that the Respondent State violated his right to residence, dignity and movement despite that he was in possession of a certificate issued by the Tanzania police attesting to the loss of his passport. The meat of the application was that the Applicant, his wife and children were arrested,

²⁹ *Ibid.*

³⁰ *Ibid.*

³¹ Application No: 006/2017.

³² Respondent State in this contest is the Republic of Rwanda.

³³³³ It must be noted that Rwanda became a Party to the African Charter on Human and Peoples' Rights on 21 October 1986 and to the Protocol on 25 May 2004. It deposited the Declaration prescribed under Article 34 (6) of the Protocol on 11 January 2013, by which it accepted the jurisdiction of the Court to receive cases from individuals and NGOs. However, on 29 February 2016, Rwanda notified the African Union Commission of its withdrawal of the declaration. On 3 January 2016, the Court issued an order indicating that the effective date of the Rwanda withdrawal would be 1 March 2017.

³⁴ Application NO.046/2016.

³⁵ Republic of Mali was the Respondent in the suit.

³⁶ Application No. 009/2015.

IGWE, UDUDE & OGAH: African Court On Human And Peoples' Rights And Challenge Of Consent To Jurisdiction By Member States: A Rethink On Nigeria's Position

detained and deported by the Tanzanian Government on the allegation of illegally residing in the territory of Tanzania. The Court after reviewing the case held that the Applicant failed to show that he had the requisite documents to reside in Tanzania.

In *Sbastien Germain Ajavony Republic of Benin*³⁷ the Applicant alleged that the Respondent³⁸ violated his rights guaranteed by the African Charter and by the 1789 Declaration of the Rights of Man and of the Citizen. The Applicant particularly alleged among others that the Respondent violated his rights to equal protection of law and respect for the dignity inherent in human person guaranteed by Articles 3 and 5 of the African Charter. The Court after reviewing the submissions of the parties held among others that the Respondent violated the Applicant's rights to equal protection of law and undermined the Applicant's reputation and dignity. The above cases are some of the examples of the achievements recorded by the African Court on Human and Peoples' Rights. The major challenge faced by the African Court on Human and Peoples' Rights is the requirement of consent to its jurisdiction by a member state before an individual or NGOs from such a state can access the Court. This requirement limits the jurisdiction of the Court from entertaining applications from individuals and NGOs from States which have not declare to the competence of the Court. Since the adoption of the Protocol for the establishment of African Court of Human and Peoples' Right in 1998, only 30 States Parties have ratified the protocol. Out of the 30 States Parties that have ratified the Protocol, only 9 of them had made declaration recognising the competence of the Court to receive and adjudicate on complaints submitted to it by the NGOs and individuals from the concerned States.³⁹

The States that have declared to the jurisdiction of the African Court on Human and Peoples' Rights to receive and adjudicate on complaints submitted to it by the NGOs and individuals from the concerned States include: Benin, Burkina Faso, Cote d'Ivoire, Gambia, Ghana, Mali, Malawi, Tanzania and Republic of Tunisia.⁴⁰ With the above challenge, it becomes impossible for the African Court on Human and Peoples' Rights to adjudicate on cases of human rights violations from member states of African Union which have not recognised the competence of the Court to hear applications from individuals and NGOs.

4. A Rethink on the Nigeria's Position

Nigeria became a party to the African Charter on Human and Peoples' Rights on 22nd June 1983⁴¹ and had domesticated same in her national legislation.⁴² Nigeria became a party to the Protocol for the establishment of an African Court on Human and Peoples' Rights on 9th June, 2004. More than 15 years after Nigeria had ratified the Protocol for the establishment of an African Court on Human and Peoples' Rights, Nigeria is yet to make a Declaration accepting the competence of the African Court on Human and Peoples' Rights to receiving applications from individuals and NGOs as required by article 34(6) of the Protocol to the African Charter.⁴³ The implication is that Nigerians and NGOs cannot file case directly against Nigeria at the African Court on Human and Peoples' Rights. Ikhilae⁴⁴ captured the situation when he noted that direct access to the African Court on Human and Peoples' Rights by individuals and NGOs from Nigeria is not possible since access is only limited to the people bringing matter against states who have made the declaration.⁴⁵ In *Falana v. African Union*,⁴⁶ the Applicant alleged:

³⁷Application No. 013/2017.

³⁸The Respondent in this case is the Republic of Benin.

³⁹R. Eno, 'The Gambia becomes the Ninth Country to all NGOs and Individuals to Access the African Court Directly.' AfricanCourtMedia@african-court.org. <accessed on Saturday, 19th October, 2019>.

⁴⁰*Ibid.*

⁴¹ African Commission on Human and Peoples' Rights 'Concluding Observations and Recommendations-Nigeria 3rd Periodic Report , 2005-2008' <<https://www.achpr.org/sessions/concludinggobobservation>>.

⁴² African Charter on Human and Peoples' Rights was domesticated in Nigeria via African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A 10 Laws of the Federation of Nigeria, 2004.

⁴³'Falana Sues AU over Denial of Access to African Human Rights Court', <www.saharareporters.com/.../falana-sues-au-over-denial-of-access-court>, accessed on Thursday, 21st January, 2016.

⁴⁴ Justice Eric Ikhilae was a Nigerian Judge to the African Court on Human and Peoples' Rights.

⁴⁵E Ikhilae, 'Why Nigerians Can't Access African Court' *The Nation*, <www.thenationonlineng.net/why_nigerians_can't_access_african COURT> accessed on Thursday, 21st January, 2016.

⁴⁶Application No. 001/2011

1. That he has made several attempts to get the Federal Republic of Nigeria to deposit the declaration required under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African on Human and Peoples' Rights to no avail.
2. That he has been denied access to the Court because of the failure or refusal of Nigeria to make declaration to accept the competence of the Court in line with Article 34(6) of the Protocol.
3. That since his efforts to have Nigeria make the declaration have failed, he decided to file an application against the African Union (the Respondent) asking the Court to find Article 34(6) of the Protocol as inconsistent with Articles 1,2,7.13.26 and 66 of the African Charter on Human and Peoples' Rights as the requirement for a State to make a declaration to allow access to the Court by individuals and Non-governmental Organisations is a violation of his rights to freedom from discrimination, fair hearing and equal treatment.

The Court after reviewing relevant judicial and statutory authorities came to the conclusion that it lacked the jurisdiction to entertain Falana's application on the ground that it was not filed against a State which has ratified the Protocol and made the declaration to the competence of the Court to receive application from individuals and NGOs. Nigeria needs to rethink her position and accept the jurisdiction of the African Court on Human and Peoples' Rights to enable the Court receive cases from individuals and Non-Governmental Organisations from Nigeria. This is because, the power of the African Court extends to interpretation and application of the African Charter, its protocol and any other relevant human rights instruments ratified by the State Party that has declared to its jurisdiction.⁴⁷ In this light, if Nigeria declares to the competence of African Court to receive complaints from individuals and NGOs, such individuals or NGOs on their behalf would have the opportunity to challenge the violation of their rights under any relevant human rights instruments that Nigeria has ratified and is yet to be domesticated. For instance, Nigeria ratified the International Covenant on Economic, Social and Cultural Rights since 29th July, 1993 but has not made the provisions of the Covenant justiceable under her Constitution. For this purpose, the rights to food, water, clothing and accommodation⁴⁸; the rights to enjoy the highest attainable standard of physical and mental⁴⁹ are still a mirage in Nigeria.

In Nigeria, the Constitution⁵⁰ specifically banished the rights to economic,⁵¹ social⁵² and cultural development;⁵³ the rights to education⁵⁴ and environment⁵⁵ to Chapter 2 which deals on the fundamental objectives and directive principles of state policy. And by the provision of Section 6(6) of the Constitution, items under Chapter 2 of the Constitution are not justiceable. Since the Rights to economic, social and cultural development; the rights to education and environment are not ordinarily⁵⁶ enforceable in Nigeria, individuals and NGOs who would have had the opportunity of challenging the violations of these rights in African Court of Human and Peoples' Rights are incapacitated because of the failure or refusal of Nigeria to make declaration accepting the competence of the Court in line with Article 34(6) of the Protocol.

It is germane to stress that the rationale for the creation an African Court on Human and Peoples Rights is to strengthen human rights protection in African region. The Protocol for the establishment of African Court on Human and Peoples Rights vested the Court with the power to 'make appropriate orders to remedy the violation of human rights including the payment of fair compensation or reparation.'⁵⁷ Even though it is unarguable that African Court on Human Rights lacked enforcement machinery, however, 'States Parties to the Protocol undertake to comply with the judgment in any case to which they are parties within the time stipulated by the Court and to guarantee its

⁴⁷Protocol to African Charter, Article 3.

⁴⁸ International Covenant on Economic, Social and Cultural Rights, Article 11.

⁴⁹*Ibid*, Article 12.

⁵⁰ The Constitution in this context is the Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁵¹Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 16.

⁵²*Ibid*, Section 17.

⁵³*Ibid*, Section 21.

⁵⁴*Ibid*, Section 18.

⁵⁵*Ibid*, Section 20.

⁵⁶ Ordinarily used in this context means that where by law or policy, a State Government or Nigeria has taken step to implement any provision of Chapter 2 of the Constitution, every person within the domain of such State is entitled to benefit from same.

⁵⁷Protocol to the Establishment of African Court on Human and Peoples' Rights, Article 27.

IGWE, UDUDE & OGAH: *African Court On Human And Peoples' Rights And Challenge Of Consent To Jurisdiction By Member States: A Rethink On Nigeria's Position*

execution.⁵⁸ By this provision, it is incumbent on the State Party that has declared to the competence of the African Court to receive applications from individuals and NGOs not only to abide by the decision of the Court on such application but to ensure that the judgment of the Court is executed within time stipulated by the Court. By Article 29(2) of the Protocol, the Court is empowered to notify the Council of Ministers of its judgment and the Council of Ministers is to monitor the execution of such judgment on behalf of the African Union General Assembly. Article 31 of the Protocol also empowered the Court to submit report of non compliance with its judgment to the regular session of the African Union General Assembly.

With the above measures adopted by the African Union in the Protocol to the establishment of African Court on Human and Peoples' Rights, it is obvious that a State Party which has submitted to jurisdiction of African Court on Human and Peoples' Rights is bound to comply with the decision of the Court. That is why Nigeria needs to rethink her position and declare to the competence of the African Court on Human and Peoples' Rights to receive cases from Nigerians and NGOs. This will broaden access to justice in human rights cases in Nigeria.

5. Conclusion

It is not in doubt that many African nations look on Nigeria as the giant of Africa. Nigeria is blessed with abundant human and material resources. Peace keeping and development of courts in Africa cannot be completely discussed without the contributions of Nigeria and Nigerians.⁵⁹ Yet when it comes to matters that will benefit Nigerians at the international scene, Nigeria will start foot-dragging instead of doing what is required to enable her citizens to access the benefits thereof. The meat of this paper is that it is high time that Nigeria declares to the competence of the African Court on Human and Peoples' Rights to pave way for Nigerians and NGOs to access the Court and ventilate cases of human rights violations in Nigeria.

This is important due to the fact that the jurisdiction of the African Court on Human and Peoples' Rights is beyond the interpretation of African Charter on Human and Peoples' Rights but extends to other human rights instruments ratified by a State Party which accepted its jurisdiction. If Nigeria could declare to the competence of the African Court on Human and Peoples' Rights, Nigerians will have the opportunity of challenging their rights to adequate standard of living,⁶⁰ right to social security,⁶¹ right to health care,⁶² right to education,⁶³ right to participate in cultural life,⁶⁴ right to decent environment among others before the African Court on Human and Peoples' Rights. These at present are not enforcement under the Nigerian constitution. As a result of the above, so many Nigerians wallow in poverty resulting in inequality of the distribution of the common wealth of our nation. The overall effect is that so many Nigerians are transiting from poverty into slavery. Nigeria needs to urgently rethink her position and declare to the competence of the African Court on Human and Peoples' Rights in the interest of her citizens. A country is not basically measured in terms of how much is in her foreign reserve but with the measure adopted to accord her citizens rights and treat them humanely. Nigeria should stop being window dresser at the international scene but take practical steps to prove that she is really the giant of Africa.

⁵⁸ *ibid*, Article 30.

⁵⁹ Persons like T.O Elias, Charles Oneama, Bola Ajibola, Chile Eboe-Osuiji, Nwanuri Thompson, Hansin Donli among others were Nigerians who had at one time or the other been the judges at the International Courts.

⁶⁰ Right to adequate standard of living including the rights to food, water, housing and clothing. International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 11.

⁶¹ ICESCR Article 11.

⁶² ICESCR Article 9.

⁶³ ICESCR Article 12.

⁶⁴ ICESCR Article 13.