

ADVOCATING SUPRANATIONAL AFRICAN CITIZENSHIP AS A PANACEA TO XENOPHOBIA IN AFRICA*

Abstract

Xenophobia is endemic to the successful economic, political and cultural integration of the African continents. Political commentators and writers have concentrated their criticism on xenophobia as the failure of states to protect foreign nationals living within their territories. Not much has been discussed from the point of failure of African Union to live up to its expectations as an agent of human integration in Africa. This work is an attempt to x-ray the effectiveness of the African Union in the realization of African integration. Drawing from the impact of the European Union in the realization of full political, economic, and cultural integration among member states territories in Europe it criticized the sluggishness of the African Union to move further from its success in eliminating the apartheid regime in South Africa to the realization of African integration. It employed doctrinaire and analytical research methodology and found the African Union rather sluggish in the pursuits of its dream of integrating African continent. Drawing from the example of EU, it advocated the evolution of African integration in the form of supranational African citizenship, as a panacea to xenophobia in the African continent.

Keywords: Supranational citizenship, African Union, European Union, African citizenship, African Integration, xenophobia, discrimination

1. Introduction

Xenophobia is the strong feeling of dislike or hatred for a foreigner. It is derived from a combination of two Greek words ‘*Xenos*’ and ‘*Phobos*’ which means fear of foreigner.¹ In Africa the expression refers to the demonstration of hatred and an outright attack on non-citizens of a particular state. The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance defined xenophobia as a rejection of outsiders by nationals or a form of ‘national preference’ ‘ethnic cleansing’ and exclusion of persons outside the national community from benefitting from such community wealth and services.² Xenophobia is said to be a direct consequence of globalization.³ Xenophobia is not racism because it is nationalistic in inclination. Unlike racism that is expressed against members of different race, xenophobia may be expressed against a foreign national even when such national is from the same race with the xenophobe; provided that he is not a national of the state where he resides.⁴ While racism is mostly based on physical differences, xenophobia is not. According to Hawabibi, Xenophobia is driven by some factors which includes; negative beliefs and stereotypes, cultural and national identity perception, religious doctrine and competition for scarce resources.⁵ The World Conference against Racism, Racial Discrimination, Xenophobia, and related Intolerance held in 2001 defined xenophobia as ‘attitudes, prejudices, and behavior, that reject, exclude and often vilify persons based on the perception that they are outsiders or foreigners to the community society or national identity.’⁶

Government policies may influence, trigger or exacerbate xenophobia attack. In 1969, the Ghana government reacting on the citizens’ perception of foreigners as the cause of unemployment in Ghana enacted the Alien Compliance Order (Alien Order) which sought to drive away undocumented aliens.⁷ Further the government introduced the Ghanaian Business Promotion (GBP) which reserved certain businesses for Ghanaians.⁸ This led to the mass expulsion of about 1,200,000 foreigners from Ghana predominantly Nigerians.⁹ Other African states

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¹ J. Bordeau, *Xenophobia: the Violence of Fear and Hate* (New York : Rosen Pub. 2010) 4

² See Report of the Special Rapporteur Doc. E/CN.4/1995/78, para3. Rudiger Wolfrum, ‘The Committee on the Elimination of Racial Discrimination’ (2009) <https://www.mpil.de/files/pdf2/mpunyb_wolfrum_3.pdf> accessed 9 September 2022

³ R. Adeola, Preventing Xenophobia in Africa: What Must the African Union Do? *AHMR* (2015) 1 (3)23

⁴ For example The Republic of Congo (Congo Brazaville) shared ethnic ties with Congo Kinshasa yet in 2014 Congo Kinshasa expelled over 50,000 citizens of Republic of Congo. See, Human Right Watch, ‘If You Come Back we will Kill You’: Sexual Violence and other Abuses against Congolese Migrants during Expulsion from Angola: (Human Right Watch Publications 2012) 11

⁵ L. Hawabibi, Explaining Xenophobic Attitudes , Antagonism toward African Immigrants in Johannesburg, South Africa (2010) *VDM Verlag* <<https://www.amazon.com/Explaining-Xenophobic-Attitudes-Antagonism-Johannesburg/dp/3639012461>> accessed 9 September 2022

⁶ The Declaration on Racial Discrimination, Xenophobia, and Related Intolerance Against Migrants and Trafficked Persons, Asia Pacific NGO Meeting for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Tehran, Iran 18 February 2001. See https://www.ohchr.org/Documents/Publications/Durban_text_en.pdf accessed 9 September 2022

⁷ R. Gocking, *The History of Ghana*, (Greenwood Publishing Group 2005)156

⁸ A.Y. Asemoah, *The Political History of Ghana (1950-2013): The Experience of a Non conformist* (Author House 2014)187

⁹ J.O. Aremu and A. T. Ajayi, ‘Expulsion of Nigerian Immigrants Community from Ghana in 1969: Causes and Impact’ *Developing Country Studies* (2014) 4(10) 1

that have embarked on acts of expulsion of aliens include Uganda in 1972,¹⁰ Gabon in 1971,¹¹ Nigeria in 1983¹² and 1985,¹³ Cote d'Ivoire in 1999,¹⁴ Angola in 2004¹⁵ and 2008¹⁶ Congo Kinshasa in 2019¹⁷ and Tanzania in 2013.¹⁸ South Africa commenced its notable attacks on foreigners in 2008¹⁹ and 2015²⁰ and has continued till date.

The irony of xenophobia in Africa is that it is meted out against fellow Africans of foreign nationals. It is a case of Africans discriminating against Africans. The new wave of xenophobia in Africa has been described as new wave of nationalism anchored on citizenship right.²¹ Thus in the era of heightened global migration, national economic hardship, persons regarded as 'foreigners' are more vulnerable as they can be easy targets of blame and anger for political, economic and social failures.²² On the other hand, supra nationality can be employed as a tool for tackling xenophobia. This is as a result of its capacity to give birth to Supra-national citizenship. Supra nationality takes place when states come together to form an international union. However, for such union to be effective states members must surrender part of their sovereignty to the union. While the idea of state surrendering her sovereignty appears oppose to the Westphalia conception of sovereignty.²³ We must admit that globalization has already weakened states sovereignty. According to Evers; globalization, international and bilateral agreements between and among states has created a state of inter dependency such that the original meaning of sovereignty has become less meaningful. Further, is the impact of international communication, and cultural exchanges occasioned by multiple and often complex social interrelations and multifaceted areas of interdependencies between and among states; these have trivialized the practice of states sovereignty. Today no state can claim absolute sovereignty in its original form.²⁴

Citizenship is an identifying mark for political and social attachment to a given polity.²⁵ Citizenship means belonging as well as expresses an association to or being part of something. Citizenship indicates membership in

¹⁰ A. E. Escriba-Folch & J. Wright, *Foreign Pressure and Politics of Autocratic Survival* (Oxford University 2015) 145

¹¹ J. M. Henckaert, *Mass Expulsion in Modern International Law and Practice* (Martinus Nijhoff Publishers 1995) 16

¹² J. O. Aremu, 'Responses to the 1983 Expulsion of Aliens from Nigeria: a Critique', *International Multidisciplinary Journal, Ethiopia*, 2013 7(3)340

¹³ This gave rise to the popular expression 'Ghana must Go', A. Otoghile & O. Obakhedo, 'Nigeria-Ghana Relations from 1960 to 2010: Roots of Convergence and Points of Departure' *African Research Review*, (2011) 131, 139

¹⁴ This was predominantly against Burkina Faso farmers. see *Human Right Watch*, the New Racism: The Political Manipulation of Ethnicity in Cote d'Ivoire' (*Human Rights Watch Publications* 2001)4

¹⁵ D. Siegel, *The Mazzel Ritual: Culture, Customs and Crime in the Diamond Trade* (Springer 2009) 23

¹⁶ A. Adebajo, *UN Peacekeeping in Africa: From the Suex Canal to the Sudan Conflicts* (Lynne Rienner Publisher 2011) 91

¹⁷ The Government expelled Angolans in 2019 in retaliation of the Angola expulsion of its nationals between 2004 and 2009, *Human Right Watch* (2012)11

¹⁸ P. A. Ghoss, 'Tale of Two Crises: Illegal Immigrants in Tanzania and Malaysia' *International Business Times*, 3 September, 2013.

¹⁹ M. Duponchei 'Who's the Alien? Xenophobia In Post –Apartheid South Africa', *United Nations University World Institute for Development Economics Research Working Paper* No. 2013/003, 5

²⁰ G. Mwakikagile, African immigrants in South Africa (Pretoria: New Africa Press 2008) 335; B. Hanekom and L.A. Webster, 'The Role of South Africa's Government in the Xenophobic Violence of May 2008', *University of Pennsylvania Journal of Law and Social Change* (2010) 13, 91; O. O. Illesanmi, 'Xenophobic attacks and other Violence in South Africa: a Challenge to World Peace', *IFE Psychologia* (2008) 16 (2) 274-295; A. I. Alarape, 'Xenophobia: Contemporary Issues in Psychology', *IFE Psychologia* (2008)16(2)72-84; Francis B. Nyamnjoh (eds) 'Exorcising the demons within: Xenophobia, violence and statecraft in Contemporary South Africa', *Journal of contemporary African Studies*, (2014) 32(3)397-401 OO AKINRINDE AND U Tar, An Empirical –Causative Analysis of the Politics of Xenophobia in South Africa, *Law Research Review Quarterly*, (2021) 7(4) 383-402 <https://doi.org/10.15294/lrrq.v7i4.48055> access 9 March 2023; P. A. Essa 'Is South Africa Taking Xenophobia Seriously?' *Al Jazeera*, (2015) cited in E. O. Oni & S. K. Okunade, The Context of Xenophobia in Africa: Nigeria and South Africa in Comparison, 10.1007/978-3-319-64897-2_4. Online: <https://www.google.com/url?sa=t&source=web&rctj&url=https://www.researchgate.net/publication/321060115_The_Context_of_Xenophobia_in_Africa_Nigeria_and_South_Africa_in_Comparison&ved> accessed 9 November, 2022

²¹ N. Kersting, New Nationalism and Xenophobia in South Africa-a New Inclination? Online: <<https://www.google.com/url?sa=t&source=web&rct=j&url=https://d-nb.info/995931232/34&ved...>> (accessed 9 September /2022)

²² L. B. Landau, *et al.* 'Urbanization and Migration: The Governance of Mobility and Spatial Inequalities' in U. Pillay, G. Hagg and F. Nyamnjoh (eds) 'State of the Nation: South Africa' (HSRC Press 2013)356

²³ Westphalia sovereignty refers to a situation where a country does not take orders from outside authority. See, J.O. Lokubo –Sodipe and A.J. Osutogon 'The Quest for a Supranational Entity in West Africa; can the Economic Community of West Africa States Attain the Status?' *Potchefstroom Electronic Law Journal* (2012) 16(3) DOI:4314/lelj.v.16i3.9p.271 Online: <https://hdl.handle.net/10520/EJC141419> access 6 September 2022

²⁴ E.k. Tilmán, 'Supranational Statehood the case of the European Union: *Civitas Civitatum or Monstrum*' *Law and State* (1993) 31-48

²⁵ Nationality overlaps with the notion of citizenship. However the use of the expression citizenship has connotation in participation and the exercise of civil and political rights that are not implied in 'nationality'. Though contemporary international law uses both interchangeably to describe the legal relationships that exist between an individual and the state, See, Pierre Fracois Gonidec 'la nationalite dans les Etats de la Communauté et dans les Etats marginaux', in *Annuaire Francais* Page | 96

a bounded democratic community.²⁶ Conventional conception of citizenship is associated with nation-state paradigm which does not recognize citizenship across state borders. Thus individuals are expected to possess citizenship of one state only except in cases of dual citizenship. This notion is further rigidified by the principle of sovereignty of nations which disallows the surrendering of state sovereignty to external interference. The recent development of human rights of groups migrants have necessitated some level of rights akin to or at least closer to citizenship right of migrants and foreign residents, according such class of permanent or temporary residents, some measure of rights reserved to members of the state. Foreign residents are entitled to some varying rights in their host states depending on whether they are permanent or temporary residents. On the other hand, supranational citizenship are more akin to federal or con-federal nested polities, wherein individuals maintained citizenship of both their nationality as well as that of the federal union. Thus, in multinational federations, devolution of powers and political autonomy for nationals or sub-entities or minorities create nested citizenship.²⁷ Same applies to supra-national citizenship. The advantage of supra-nationality lies in its potential to evolve towards regional integration in the form of federation or confederation. This is because regional integration diffuses the social and political boundaries of members' states of the union. Such integration is therefore advocated as a precursor to regional community building. Just like federal or con-federal formations, states surrender sovereignty to supranational organization because of the associated benefit which practically outweighs the cost.²⁸ Regional integration can be achieved either through mutual transfer of socio economic and political rights to nationals of member states or by outright conferment of sets of rights on nationals of member states.

This paper intends to draw from the structures of the European Union (EU); a regional supranational Union for European states with respect to supra-nationality and its conferment of citizens of member states with socio economic and political rights and privileges of citizenship and how the African Union (AU) can replicate these structures in Africa to mitigate xenophobia. First let us look at the structures of the A.U. and its mandate.

2. The Mandate of the African Union

The idea of African integration dates back to the eve of Africa's independence when a group of Africans assemble in Manchester, UK, to promote freedom, justice, equality and economic welfare of African peoples.²⁹ These aspirations gave birth to the OAU in May 25, 1963. However, the Charter provisions failed to meet with the desires of many notable Pan African leaders.³⁰ Leaders like Nkrumah and Nyerere called for outright establishment of a supranational African Union.³¹ On the other hand most other leaders had preference for the idea of African cooperation, unity and development and advocated for a gradual movement toward supranational pan Africanism.³² They preferred African economic integration as a prelude to gradual political integration. This later position prevailed since it was much in accord with national sovereignty of which most African leaders were afraid to surrender. The primary mandate of AU is to advance its objective of fostering African integration and to address its multi-faceted challenges of social, economic and political nature occasioned by globalization. Having achieved its role of fighting apartheid in South Africa, the O.A. U. was metamorphosed to the AU with the aspiration to look inward in order to combat the challenges of African development through regional cooperation. The vision of the AU was expressed to be "an integrated prosperous and peaceful Africa driven by its own citizens and representing a dynamic force in global arena."³³ Other Africa leaders however prevailed in their push for a moderate form of union anchored on cooperation and a gradual push commencing form economic cooperation to economic integration as a precondition to political integration in the future.³⁴ To keep its dream of African

de Droit International (AFDI) (1961) 7 814-835, cited in ACHPR, 'The Right to Nationality in Africa' (2015) 8, Online: <<https://www.refworld.org/pdfid/5acb3c8f4.pdf>> (accessed 9 September 2022)

²⁶ R. Baubock, Political Membership and Democratic Boundaries in A. Shacher *and others* (eds) the Oxford Hand Book of Citizenship (Oxford University Press 2017) 60-83, Online:<<https://hdl.handle.net/1814/48848>> (accessed 9 November 2022); L. Bosniak, Citizenship Denationalized, *Indiana Journal of Global Legal Studies* (2000)447, 501; cited in P. J. Neuvonen 'Transforming Membership? Citizen Identity and The Problem of Belonging in a Regional Integration Organization' *European Journal of International Law* (Oxford University Press 2019) 30 (1) 229-255

²⁷R. Baubock, 'Transnational Citizenship: Membership and Rights in International Migration' (Edward Elgar Publishing 1994), Online:<[https://www.google.com/url?sa=t&source=web&rct=j&url=https://philpapers.org/rec/BAUTCM-4&ved...>](https://www.google.com/url?sa=t&source=web&rct=j&url=https://philpapers.org/rec/BAUTCM-4&ved...); M. K. Keating, Plurinational Democracy: Stateless Nations in a Post-Sovereignty Era,(oxford 2001)32; James Tully & Alain G. Gagnon, Multinational Democracies (2003) Cited In R. Baubock, ' Why European Citizenship? Normative Approaches to Supranational Union' *Articles in theoretical Enquiries in Law* (2007) 8(2)22

²⁸ J. Tallberg 'Delegation To Supranational Institutions: Why, How, and With What Consequences' *West European Politics* (2002) 25 (1) 25

²⁹ Profile: Organization of African Unity (OAU) African Union, www.africa-union.org

³⁰ K. Nkrumah, Africa must unite (Praeger, 1963),1-4; J. Nyerere, 'A United States of Africa,' *Journal of Modern African Studies*, (1963) 1, 1-6

³¹ *ibid*

³² *ibid*

³³Agenda 2063-UCLG https://www.uclga.org/wpcontent/uploads/2018/02/01_Agenda2063_popular_version_ENGs2028129.pdf> access 8 September 2022;

³⁴ Nkrumah, *n30*

integration alive, in 1991 the OAU members states signed the Treaty of Abuja which was aimed at providing a gradual movement toward African economic community.³⁵ The Treaty supplemented the OAU Charter until the transmutation of the OAU in July 2002 to the AU. The Constitutive Act of AU adopted in Togo by July 2000 comprises of 33 chapters. It provided for the objective of the Union in its articles 2 and 4. Its objectives are among others; to accelerate the political, social and economic integration of the African continent,³⁶ achieving greater unity and sovereignty of the political, social and economic integration of the African continent.³⁷ Other aims include promotion of peace, security and stability, democracy, human rights, sustainable development, research and development and so on.³⁸ Article four provides among other things, the participation of the African peoples in the Union activities, the promotion of gender equality, social justice, respect for democracy, rule of law and good governance, etc.

Articles 5 to 22 established the 9 institutions of the A.U.; the Assembly, the Executive Council, the specialized Technical Committees, the Pan-African Parliament, the Court of Justice, three financial institutions; the Commission, the Permanent Representative Committees and Economic and the Cultural Council. The Assembly of head of states and government is the supreme organ of the Union. A head of state or government of member state shall be the chairman of the Assembly for one year. The Constitutive Act provided for its meetings, voting and functions. The Executive Council comprises of the foreign affairs or other ministers of member states.³⁹ The Act mandates the Executive Council to coordinate and take decisions on policies in areas of common interest to members. Such matters included but not limited to trade, energy, industry, and mineral resources, food, agricultural and animal resources, livestock production and forestry, water resources, and irrigation, environmental protection, humanitarian action and disaster response and relief, science and technology. The Peace and Security Council (PSC) was established in 2003 to act as a standing decision-making body saddled with the function of preventing, managing and resolving conflicts in Africa.⁴⁰

3. The AU as a Supra-National Organisation

Supra-nationalism is defined as ‘the existence of governmental authorities closer to the archetype of federation than any post international organization but not yet identical with it’.⁴¹ According to Rosamond,⁴² ‘it is the development of authoritative institution of governance and the network of policy making activity above the nation state’⁴³ Supra-nationalism entails an existence of an international organization that is capable of acting independently of members state, taken binding decision and responsible for supervision and implementation of its decision as a separate legal order, although the members states are part of the decision making process.⁴⁴ To attain supra-nationalism the AU must be capable of making laws and such laws and policies must have direct effect on members’ states.⁴⁵ In other sense, the laws of the organization must be superior to that of the member states.⁴⁶

A closer look at the functions of the AU institutions demonstrates an intention to confer it with the status of supra-nationalism.⁴⁷ Example is the Assembly under article 9 which is empowered to decide on common policies of the Union, monitor implementation, and ensure compliance by states members. The Assembly can also impose sanctions. The Executive Councils can coordinate and make decisions on policies relating to foreign trade,

³⁵ Abuja Treaty Establishing the African Economic Community: ratification, <https://pmg.org.za/committee-meeting/67/> accessed 8 March 2023

³⁶The Constitutive Act of the African Union, *adopted July 11 2000, OAU Doc. CAB/LEG/23.15 (entered into force May 26, 2001, hereinafter AU Constitutive Act)*. <http://www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/oau/treaties/Constit_Act_of_of_AU_2000.pdf, http://www.iss.co.za/AF/RegOrg/unity_to_union/oau_index2.html>, and http://www.au2002.gov.za/docs/background/oau_to_au.htm accessed 12 September 2022

³⁷ *ibid*

³⁸ *ibid*

³⁹ *ibid*

⁴⁰ AU Constitutive Act, 13(1) see also protocol on Amendment to the AU Act, art, 9(1) AU doc. Ass/AU/Dec.26 (11)(2003)(AU Act Amendment Protocol)

⁴¹ Ernst B. Haas, *The Uniting of Europe ‘Political, Social, and the Economic Forces, 1950 to 1957*. University of Notre Dame Press, 2004, JSTOR, <<https://doi.org/10.2307/j.ctv19m62zk>> accessed 10 September 2022

⁴² B. Rosamond, *Theories of Europe Integration (2000) 204*, cited in B. Fagbayibo, ‘Supranational African Union? Gazing into the Crystal Ball’ (2004) <https://www.academia.edu/47988749/A_supranational_African_Union_Gazing_into_the_crystal_ball> accessed 10 September 2022

⁴³ *Ibid*

⁴⁴ K. Lenaerts, P. V. Nuffel & R. Bray (eds), *Constitutional Law of European Union* (Sweet and Maxwell 1999)16-22

⁴⁵ A. A. Dashwood & others, *Wyatt and Dashwood’s European Union Law*; 5th ed. {2006} 158-159

⁴⁶ This is based on the doctrine of the supremacy which is defined as the capacity of the community norm to override the inconsistency norm of national law in domestic law proceedings see, De Witt ‘Direct Effect, Supremacy and the Nature of the Legal Order’ in P. Craig and G. Burca (eds), *The Evolution of European Union Law* (Oxford University Press 1999) 152

⁴⁷ M. Kilander, C. Heyns, *Constitutive Act of the African Union (2000/01)*, in, *Compendium of Key Human Right Documents of the African Union* (Pretoria University Law Press 2005)4-11

immigration, transport and communication, education, health and agriculture.⁴⁸ The general affairs section of the proposed Court will have the jurisdiction to interpret the provisions of the Constitutive Act, adjudicates over disputes between member states.⁴⁹ Also, article 4(h) permits the AU to intervene in member state affairs in cases of war crimes, genocides, crime against humanity and by virtue of its 2009 amendment, ‘a serious threat to legitimate order’.⁵⁰ The AU Act contains sanctions provisions for non compliance with policies and decisions of the Union. For example article 23 (1 and 2) empowers the assembly to sanction any member state that fail to comply with the union policies and decisions. Such sanctions may take the form of restrictions of transportation and communication links with other member states.⁵¹

It is the aspiration of the AU, to create African citizenship at the final integration stage. The Act enshrines as fundamental principle, the ‘participation of the African peoples in the activities of the Union’.⁵² These provisions speak to citizen ownership of the political and social economic space. Agenda 2063 also aspires for a continent of free citizens and expanded horizons, where the full potential of women and youth are realized.⁵³ It states that Africa will be a continent where the institutions are at the service of its people(s). Citizens will actively participate in social Economic and political development and management.⁵⁴ On the part of economic integration, the AU incorporated the AEC ⁵⁵Treaty. The AEC Treaty primary objective is to promote economic, social and cultural development and the integration of African Economics in order to achieve economic self-reliance and promote an endogenous means for attaining self reliance and sustainable development. The rationale is that integration and the resultant expansion of territorial frontiers would lead to increased economic activity.

The attainment of the status of supranational union by the AU is predicated on the extent and measure of the sovereignty the states members are willing to transfer or accede to it. This is because supra-nationality demands that union members are willing and ready to relinquish their respective claim of sovereignty in agreed and diverse matters for the common good of the supranational union.⁵⁶ Traditional sovereignty is divided into two. One is the internal sovereignty which connotes the exercise of supreme authority by a state within its borders; in order sense the exclusive rights ‘to give laws unto all and every one of its...subjects and to receive none from them’.⁵⁷ On the other hand external sovereignty connotes the legal independence of a state from other state. In other sense: equality of states.⁵⁸ This connotation is however limited by international law.⁵⁹ A supranational union must have the capacity to exercise sovereign powers over member states in areas of common interest as well as represent states members over such interest on the international arena. This entails a limitation on national interest of state members as they are precluded from enacting laws that are inconsistent with that of the supranational laws.⁶⁰ The metamorphoses of OAU into the AU showcased the aspiration of the member states to designate a veritable platform for the realization of closer regional integration. Not much has been done however to move intention into action. To achieve this vision, governments and member states must develop attachment to some basic norms of democracy, good governance and human right. These tenets, African states are still struggling weakly to grasp. Interestingly the organic structure of the AU anticipates an organization that functions with the plenary powers comparable with that of a modern independent state comprising of a legislative, executive and a judicial arms. However, contrary to municipal legal systems the AU has no central authority capable of wielding either legislative or executive powers.⁶¹ The dream of an AU which is similar to EU in nature is worth pursuing as it will go a long way in ameliorating xenophobia tendencies in Africa. Therefore much can be gleaned from the EU structure and policies in this regard.

⁴⁸ Article 13, The AU Constitutive Act

⁴⁹ Article 18(1) *ibid*

⁵⁰ *ibid*

⁵¹ Art. 23(2) The AU Constitutive Act, see also Art 23(1) which authorizes the AU Assembly to impose ‘appropriate sanctions’ on any member that ‘defaults in the payment of its contribution to the budget of the Union’, which may include ‘denial of the right to speak at meetings, to vote, to present candidates for any position or post within the Union or to benefit from any activity or commitments, there-from’

⁵² *Ibid Art. 4 (c)*

⁵³ Agenda 2063 FD, para 6

⁵⁴ *Ibid* para 29

⁵⁵ AU Constitutive Act , preamble

⁵⁶ P. Hay, *Federalism and Supranational Organizations, Patterns for New Legal Structures* (University Illinois Press 1966) 69

⁵⁷ G. L. Goodwill, ‘The Erosion of External Sovereignty’ *Government and Opposition*, (1974) 9 (1) 61 <<https://www.jstor.org/stable/44482053>> accessed 11 August 2022

⁵⁸ H. Kelsen, ‘The Principle of Sovereign Equality of States as a Basis for International Organization’ *Yale Law Journal*, (1944) 53 (2) 208. /<https://doi.org/10.2307/792798>> accessed 11 August 2022

⁵⁹ Goodwill, 62 n74

⁶⁰ Lauterpacht stated; ‘sovereignty ends where international obligations begin,’ see E. Lauterpacht, ‘Sovereignty –Myths or Reality?’ *International Affairs*, (1997) 73(1) 149 <<https://doi.org/10.2307/2623554>> accessed 13 August 2022

⁶¹ N. J. Udombana, *The African Union in International Law, Selected Studies*, (Ibadan, John Archers, 2020)53-57

4. The E.U. As A Model of Supra-Nationality: A Case for African Supranational Citizenship

The European Union (EU) as a supra-national union was born in 1993 following the Treaty on European Union (TEU) otherwise known as the Maastricht Treaty.⁶² The TEU created institutions aimed at the integration of the people of Europe. It created a simple market structure supported by a single currency and provided for a common foreign and security policy (CFSP). The TEU also provided for a democratically elected parliament elected through adult suffrage of all citizens of members' states.⁶³ It provided for seven institutions viz; the European parliament: a representative institution consisting of 705 members elected by EU citizens through universal suffrages with responsibility of adopting legislations on the initiation of the EU Commission. It provided for executive body represented by the European Commission of the European Union (CEU) also known as 'the council' or 'council of ministers'; an inter-governmental body consisting of 27 members each from each state members. Its primary duty is to amend or approve legislative proposal initiated by the European council. The EU is unique with its possession of the essential features of democratic government viz. Executive, Legislative and Judicial bodies. Following the Treaty on the Functioning of European Union (TFEU) all legal citizens of members' states are automatically citizen of the European Union. This automatically transforms all nationals of European Union into Supra-national citizens. With the citizenship status of all citizens of members states the rest of the provisions of the TFEU on non-discrimination,⁶⁴ freedom of movement within the E.U states and social security,⁶⁵ freedom of establishment for the self-employed, consular right of protection from other states, rights to vote and stand in both local and E. U. elections, rights to petition E. U. parliament and E. U. ombudsman and to send and receive information from E. U. institutions in one's language become more efficiently realizable. Article 17(1) of the TEU provides: 'Every person holding the nationality of a member state shall be a citizen of the union. Citizenship of the union shall complement and not replace national citizenship'.

The EU Parliament's Policy Department for Citizens Rights and Constitutional Affairs has a number of enforceable policy and legal framework against racism and xenophobia.⁶⁶ There exists a broad set of rules pursuant to the Council of Europe (CoE) aims at promoting the rule of law, democracy, human rights, social development through the ECHR binding Treaties. Further the EU Commission monitors implementation of its laws and has power to initiate infringement proceedings. The first notable anti-racism measure introduced by the EU was in the mid-1990s as a result of increasing awareness of the dangers posed by racism and xenophobia. A development in Austria ignited fear of xenophobic attack across Europe. Thus by 1997, the EU Year against Racism was declared.⁶⁷ Though the original EEC Treaty and the EU 1992 Treaty did not contain anti-discrimination provisions, it however contained provisions on equality of all EU citizens. By 1997 the EU adopted a Council Regulation establishing the EU Monitoring Centre on Racism and Xenophobia [EUMC]. By 2007, the EUMC was replaced by the EU Agency for Fundamental Rights (FRA) it provided for the institutions and authorities of the Community.

The evolution of European citizenship is to give positive effect to the realization of the objective of EU into an integrated socio- economic and politico-cultural union. The EU citizenship has been described as a model for democratic participation and a borderless free movement of persons among the member states of the union.⁶⁸ It is unarguably in commonality with confederation or loose federation where the union government can act to address challenges which could have been difficult if left to the individual state. Thus like national citizenship, the citizens of the union are defined by enshrined civil and political rights as well as duties. Every legal persons or citizens of member's states have access to the E.U. documents.⁶⁹ Article 2 of the union treaty guaranteed the right to human dignity, freedom, democracy, equality, respect for human rights, rule of law, and human rights of minorities.

5. Conclusion

We have seen the rising trend of xenophobic violence in Africa and the vincible status of the African Union especially with regard to combating xenophobia in the African Continent. We have traced this weakness to the inability of the Union to engender African integration as envisioned by its founding fathers. We advocate African integration as a panacea to xenophobia and other forms of human rights abuse against African migrants within the

⁶² TEU Feb 7, 1992

⁶³ Treaty on European Union Art 26, see also <https://www.politicheeuropee.gov.it/en/european-institutions/institutional-framework/european-parliament/> (visited 11/8/2022)

⁶⁴ TEU, Art 45-48

⁶⁵ TEU, Art.49-52

⁶⁶ E.g the EU has the Fundamental Rights Agency (FRA). See FRA Fundamental Rights Reports 2021, cited in Author: Rebecca Zahn, The EU Lisbon Treaty: What implications for anti-racism? (2009) <<https://pureportal.strath.ac.uk/en/publications/the-implications-of-the-lisbon-treaty-for-anti-racism/>> (accessed 12/12/2022)

⁶⁷ <https://ec.europa.eu/commission/presscorer/api/files/document/print/en/ip_97_72/IP_97_72_EN.pdf> (accessed 12 September 2022)

⁶⁸ See Wikipedia: Fact Sheets on the European Union <<https://www.europarl.europa.eu/factsheets/en/sheet/147/free-movement-of-persons>> accessed 5 September 2022

⁶⁹ Article 15(3) TEU

African Continent. The Importance of African Regional integration cannot be over emphasized. This is because migration is historical way of life in West Africa.⁷⁰ Whereas the pre-colonial African society had operated on the basis of free movement of goods and services, starting from the Sahara routes; colonialism on the other hand, created artificial borders which inhibited free movement of trade. New states evolving from colonialism followed the version of centralized system of national unity which made national boundaries sacrosanct over ethnic and cultural diversities. Increase in Migration is not only caused by increased economic activities but internal conflicts, political operations, economic crises and environmental factors. Thus increase in African refugees and asylum seekers, poverty and economic crises, cultural and biological differences, religious differences, drug trafficking and criminality, states agent discrimination and information mismanagement etc. created immigration policies, social stratifications and citizenship status which ultimately infringes on free movement and trade.

African states have insisted on the guarantee of the human rights of its nationals living abroad. Yet, less attention has been given to the impact which the transformation of the AU as a supranational organization could have on African integration. An integrated, cultural, Economic and political society of Africa will go a long way in mitigating xenophobia tendencies. This is because regional integration diffuses the social and political boundaries of member states extending social, economic and political rights to foreign nationals, whose state are members of the union. Such integration is therefore advocated as a precursor to regional community building. Regional integration may be achieved either by a mutual transfer of rights to members or by creating and conferring new sets of rights on nationals of member of states. African Regional association must step beyond intergovernmental paradigm to supranational union as exemplified by EU. This is because regional integration can only be possible where the relevant actors in the integration process are not restricted to member's states but is extended to citizens of member's states unlike what is obtainable with intergovernmental organizations.

The AU and its members need to take some important steps in order to give practical meaning to her political and economic integration goals. Closer effort should be made toward institutional capacity-building and the prevention of instability within African states, enforcement of democracy and the strengthening of Inter-regional Corporation as a prelude to continental integration in line with the Niamey Declaration.⁷¹

One major obstacle to the Attainment of Union government is the structural pattern of the government of the AU. With African heads of state and government constituting the Assembly and being his alter-ego the AU cannot go far in his integration goal. A reform of the governance relationship of the AU with its members is an imperative to achieving integration. The AU could consider transferring its supreme organ to the commission or any other non-state organ so that the organization can achieve relative independence from members.⁷² It is imperative that the AU emulates the EU by stripping members' states a good measure of their national sovereignty. According to Kissinger; "...European Union diminishes its member states sovereignty and traditional government functions such as control of their currency and borders".⁷³ The artificially constructed colonial boundaries made the concept of political or economic integration meaningless. They continue to hinder intra-African trade and the continents quest for Economic integration and sustainable development. A robust intra-African trade is a major viable option to sustainable development. African citizenship will pave the way for economic activities within the continent. It will encourage and boost factor mobility, pulling down the "Berlin wall so to say". African regional citizenship will enhance free mobility across the continent according all African citizens at least rights of residency, trade, work and other ancillary economic and social rights that can gradually developed to full political rights. No doubt, a supra-national citizenship in African will provide equal sets of rights to all citizens of African states, wherever they may be in Africa. Municipal legal system of African states will be bound to enforce these sets of rights. These will surely ameliorate xenophobia in the African continent.

⁷⁰ A. Adepoju, 'Creating a Borderless West Africa', Constraints and Prospects for Intra-Regional Migration: The UNESCO Migration without Borders Doc UNESCO SHS/2005/MWB/1(205@1 available at <http://unesdoc.unesco.org/images/0013/001391/139142e.pdf>. accessed 5 September 2022

⁷¹ Niamey Declaration, para 4 (stressing the need to improve the level of integration within the RECs as well as the continental level)

⁷² N. J. Udombana (2020)89 n78

⁷³H. Kissinger, World Order (Penguin Press 2014) 92