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African Union Human Rights System: Ruse or Reality?

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Abstract
The study examined whether human rights actually exist and operate within the African regional system or it is merely a myth. The study further examined the African Union legal and institutional frameworks for human rights. The study found that there is an established human rights system with mechanisms for the protection and promotion of human rights within the African region with legislation such as the African Charter, Conventions, Protocols and Institutions such as the African Commission and the African Court. However, there are challenges undermining the enforcement of human rights within the region. The study concluded by identifying these challenges and proffering solutions for a viable and efficient human rights system in Africa.
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1.0 Introduction

Human rights are sacrosanct. They are fundamental principles that guarantee individual dignity, freedom, and equality. These principles are enshrined in international treaties and other international instruments such as the Universal Declaration of Human Rights (UDHR), the International Convention for Civil and Political Rights (ICCPR), the International Covenant for Economic and Social Cultural Rights (ICESCR), regional and national laws etc. Human Rights are protected by international organisations such as the United Nations and other regional and sub-regional organisations.

The UDHR of 1948 to a great extent helps to define human rights as fundamental entitlements inherent to all human beings, irrespective of nationality, sex, ethnicity, religion, or any other status. These rights encompass freedoms such as the right to life, liberty, freedom of opinion and expression, and the right to work and education. They are universal and inalienable, meaning they cannot be granted or revoked by any state authority. Human Rights may, therefore be defined as those rights which all human beings enjoy by simple virtue of their humanity, the deprivation of which would constitute a grave affront to one's natural sense of justice.[3] In *Uzoukwu v Ezonu & Ors,*[4] the Court of Appeal of Nigeria stated that:

It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. These are termed human rights. When the United Nations made its declaration, it was in respect of human rights as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race, religion and so on.

The United Nations[5], describes Human Rights as rights inherent to all human beings regardless of race, sex, nationality, ethnicity, language, religion, or any other status. It goes further to say that human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and many more. These rights are sacrosanct, meaning that they are sacred, inviolable, and must not be violated, interfered with, or compromised. Everyone is entitled to these rights without discrimination.

2.0 Principles of Human Rights

Human Rights principles are derived from major international legal instruments and frameworks established by the United Nations and other international organizations, which ensure that human rights are universally applicable, protected, and promoted. These fundamental principles include:

a. **Universality and Inalienability** [6]-
All human beings are equal. Human rights apply to all people, everywhere, regardless of nationality, race, gender, or any other status.[7] They cannot be taken away or denied,[8] except in specific circumstances permitted by law like lawful imprisonment, a declaration of curfew or public emergency.

b. **Indivisibility and Interdependence**[9]
All human rights- civil, political, economic, social, and cultural are equally important. No right is superior to another,[10] and the enjoyment of one right often depends on others like the right to health is linked to the right to clean water.

c. **Equality and Non-Discrimination**.[11]
Everyone is entitled to human rights without discrimination based on race, sex, language, religion, political views, or social status.[12] This principle ensures equal opportunities and treatment for all.

d. **Participation and Inclusion**[13]

Every person has the right to participate in decisions affecting their lives, including governance and public affairs.[14] Special attention is given to marginalized groups to ensure their voices are heard and respected.

e. **Accountability and Rule of Law**[15]

Governments and institutions must be held accountable for protecting human rights.[16] There must be legal framework and mechanisms to ensure justice, allowing individuals to seek remedies when their rights are violated.

3.0 History and Evolution of the African Union

The African Union (AU) is a central pillar for the promotion and protection of human rights in Africa. The organisation is saddled with the responsibility of ensuring protection for human rights in the region.

The AU was formerly known as the Organization of African Unity (OAU). The existence of the OAU from 1963, as an institution was brought about by the international law principle that seeks the promotion of global peace and security in line with the rules of the United Nations.[22] African leaders seized the opportunity to organize themselves into regional blocs in order to create a formidable force to agitate for total eradication of all forms of colonialism in Africa.[23] The evolution of the then OAU dated back to the days of Pan-Africanism, which was a reaction against slavery, racism, oppression, exploitation, colonialism, imperialism among other things.[24] The OAU was a political forum that guaranteed the principle of non-interference in internal affairs of member states, with the exception of issues related to anti-colonial struggle. In Southern Africa, this fight was also largely opposed to white minority rule in Rhodesia and South Africa. With many African countries attaining their independence in the 1960s the desire for continental unity led to several attempts at establishing a Pan-African organisation. The OAU gradually moved from its political liberalization and resolved to sustain peace and security in the continent which is crucial for the socio-economic development process.

The AU is therefore, an offspring of a gradual but dedicated progression toward ideals and commitments.[25] In the 1990's, the notion of Pan-African Union was rekindled as a result of the liberation of South Africa from apartheid. The need for greater economic and political unity occasioned by the forces of globalisation also created the need for a stronger union in Africa.
The AU was eventually formed in Lusaka City, Zambia in 2001 after series of initial reviews. The union was envisioned as a sovereign state consisting autonomous political entities with a progressive understanding of human and peoples' rights.[26] It was formed as a defensive response to the persistent marginalisation of African people by an indifferent and predatory international regime.[27]AU was officially launched in 2002 with its headquarters in Addis Ababa, Ethiopia and comprises of fifty- five member countries in Africa. The AU as a continental organization promotes unity, and development among African countries and was established to address new challenges such as human rights, democracy, and economic development. Although the AU is a transformation from OAU, the latter has some objectives which are distinct from the former. Classical example includes the issue of Human and People's Right which is entrenched in the Constitutive Act and which recognises the right to intervene in a member state on humanitarian grounds. This makes AU distinct.[28] The AU is committed to human rights protection through its Constitutive Acts and other policies and treaties.

3.1 African Union's Legal Framework for Human Rights

The AU has developed several legal instruments to promote and protect human rights in Africa. These instruments include treaties, policies, protocols, and declarations that establish legal obligations for AU member states.

a African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights is otherwise called the Banjul Charter.[29] It is the foundational human rights instrument of the AU. The African Charter, upholds fundamental civil and political rights like the freedom of speech and assembly, the right to free and fair elections for citizens to select their representatives, equal tr8eatment under the law, right to a fair trial, and prohibition against torture. Article 3(g) of the Constitutive Act of the AU, provides that the promotion and protection of human and people's rights in accordance with the African Charter and other relevant human rights instruments is an objective of the Union. The Charter affirms a broad range of rights including the right to equality, life, liberty, freedom of expression, and freedom from discrimination.

Importantly, it also emphasizes duties of individuals towards their family, society, and the state, demonstrating a collective and community-based conception of rights, intrinsic to many African societies, but not typically present in other regional human rights instruments.

One of the Charter's distinctive features is its focus on people's rights, such as the right to self-determination, economic development and control over natural resources. This collective rights dimension reflects the historical struggles of African peoples against colonialism and neocolonial exploitation. The Charter enshrines a wide range of rights without making a strict distinction between them. It established the African Commission on Human and Peoples' Rights (ACHPR) under Article 30 to serve as the body responsible for promoting and ensuring the protection of the rights outlined in the Charter.[30] In 2004, the African Court on Human and Peoples' Right was established by a separate protocol to provide binding judicial enforcement of the Charter's provisions.

All African States except Morocco are signatories to the African Charter. Despite its achievements, the Charter has been criticized for the vague wording of some rights, lack of enforcement mechanisms in its early years, and reluctance among African states to fully comply with its judgments and recommendations. Critics like Fatsah,[31] have argued that several rights enshrined in the Charter are articulated in vague terms, leading to challenges in interpretation. For instance , the right to a fair trial under Article 7 lacks specificity compared to similar provisions in other international instruments. It is argued that the vagueness, can hinder the effective protection of rights. On the other hand, Ekhator[32] argues that contrary to some academic opinions, the African Charter has significantly impacted Nigerian law. He highlights that the Charter has been domesticated into Nigerian law through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,[33] making its provisions justiciable in Nigerian courts. This incorporation has allowed Nigerian courts to reference the Charter in various human rights cases, thereby strengthening Nigeria's human rights jurisprudence. Makau Mutua [34]critiques the Charters normative structure, arguing that it often reflects the values of authoritarian regimes and provides insufficient protection for individual liberties. He contends that the Charter's emphasis on duties and the deference to state sovereignty can undermine its human rights objective.
Nevertheless, the African Charter on Human and Peoples' Rights remains the cornerstone of the African human rights system and an important symbol of Africa's commitment to human dignity, equality, and justice.

b. Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa

This is commonly referred to as the Maputo Protocol. It strengthens rights in areas such as gender equality, reproductive health, and protection against gender - based violence.

It is recognized as one of the strongest regional treaties on women's rights and gender justice.[36] The Protocol goes further than many international treaties by explicitly guaranteeing women's rights to health, education, marriage consent, inheritance, and participation in political and decision--making processes. Article 14 is particularly notable for its bold provisions on reproductive health, including access to safe abortion, a right still heavily restricted in many African legal systems. While the Protocol marks a major step forward, its impact is

hampered by challenges in domestication, enforcement, and sociocultural resistance. Banda, highlights how patriarchal legal traditions often undermine implementation, stressing the need for judicial activism and civil society engagement.[37]Annika Rudman, likewise critically analyses the uneven jurisprudential engagement with the Protocol by African regional courts, calling for more consistent interpretative strategies to uphold its transformative potential.[38]

c African Charter on the Rights and Welfare of the Child (ACRWC)[39]

This is a child-specific human rights treaty that promotes education, health, and protection against exploitation. It prohibits child labour, child marriage, and the recruitment of child soldiers[40] The ACRWC is unique for its emphasis on children's rights within the African socio-cultural framework, particularly its recognition of community roles and duties. It provides protection against child labour, harmful traditional practices (like early marriage and female genital mutilation), and military recruitment, while also affirming rights to education, and health. One of its notable features is Article 31, which sets out the responsibilities of children, an unusual provision in international child rights law.

The Charter also establishes the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) tasked with monitoring implementing and examining state reports and communications. Julia, argued that the ACRWC advances a contextually relevant child rights framework, its effectiveness is often undermined by weak enforcement, limited visibility, and resource constraints.[41]
Kaime underscores the Charter's potential to transform child rights jurisprudence in Africa, especially through its culturally embedded approach, but argues that state reluctance and lack of awareness continue to hinder its practical impact.[42]

d. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights[43]

This created the African Court on Human Rights (AFCHPR) to complement the African Commission in enforcing human rights judgments. The court has binding authority but faces challenges due to limited ratification.[44]

e. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa

This is called the Kampala Convention.[45] It obligates African States to protect internally displaced persons (IDPs) from conflict, natural disasters, and development projects.[46] It reinforces the rights of IDPs, including access to humanitarian aid, security and durable solutions and ensures freedom from discrimination. It came into force in 2012 after achieving the required number of ratifications.

f. Protocol to the Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa.[52]

This Protocol is to protect and promote the rights of persons with disabilities across the continent. This protocol strengthens Africa's commitment to disability rights and aligns with global framework.

3.2 African Union Institutional Framework for Human Rights

The African Union human rights institutions play a crucial role in promoting and protecting human rights across the continent. These institutions are established under various AU treaties and protocols.

a) African Commission on Human and Peoples' Rights[53]

The African Commission on Human and Peoples' Rights (ACHPR) was established under Article 30 of the African Charter on Human and Peoples' Rights. Its mandate is to promote and protect human rights in Africa and interpret the African Charter on Human and Peoples' Rights.

The Commission sits biannually at its base in Banjul, Gambia. Fifty four Member States of the AU have ratified the African Charter and it has jurisdiction to hear complaints concerning human rights violations allegedly committed by any one of the member States and to monitor their human rights practices. Under the Charter, the ACHPR has three major functions to wit:

i Promotion of human and peoples' rights
ii Protection of human and peoples' rights
iii Interpretation of the Charter[54]

The ACHPR serves as a quasi-judicial body with three main functions namely, examining state reports, considering individual and interstate communications, and interpreting the provisions of the Charter. The Charter provides for a communication procedure under which it has the authority to receive complaints from individuals, NGOs, and states, alleging a violation of one or more of the rights contained in the Charter. After considering the complaint, the Commission makes recommendations to the State Party concerned and to the AU Assembly. The decisions of the Commission are however recommendatory and not legally binding, which limits enforcement. Heyns and Killander acknowledge the pioneering role of the African Commission in interpreting the Charter, especially in the absence of a court for many years. Their article did not shy away from highlighting issues of compliance, institutional under-funding, and political resistance to accountability as persistent barriers to its effectiveness.[55]

The Commission issues General Comments and Resolutions, and conducts fact-finding missions. The ACHPR has established multiple special mechanisms such as special rapporteurs and working groups, and committees to advance specific areas of work and guide its functioning with the promotion and protection of human rights.

These special mechanisms are mandated to gather and disseminate information on respect for the human rights of certain vulnerable groups. The information gathered are used to guide the States or the Commission towards effectively securing human rights in Africa.

The following which directly relate to human rights, are some of the special mechanisms established by ACHPR :-

1. Committee on the Protection of the Rights of People living with HIV and those at risk, vulnerable to and affected by HIV.
2. Committee for the Prevention of Torture in Africa.
3. Special Rapporteur on Freedom of Expression and access to Information.
4. Special Rapporteur on Human Rights Defenders.
5. Special Rapporteur on Prisons and Conditions of Detention
6. Special Rapporteur on Refugees, Asylum Seekers, Migrants and internally Displaced Persons
7. Special Rapporteur on Rights of Women.
8. Working Group on Death Penalty and Extra Judicial , Summary or Arbitrary Killing in Africa.
9. Working Group on Extractive Industries, Environment an Human Rights Violations.Working Groups on the Rights of Older Persons and People with Disabilities.[56]

Scholars have noted both the achievements and limitations of the ACHPR. Rachel Murray notes that the Commission has been instrumental in advancing the normative framework of human rights in Africa, but its impact is often curbed by political resistance and lack of implementation at the domestic level.[57] Viljoen on his part, observes that while the ACHPR has contributed significantly to African human rights jurisprudence, its influence remains modest due to the absence of binding powers and delayed responses from states.[58] It has also been argued that the Commission does not adequately advise state parties on how to improve their human right situations.[59] According Samb Moussa, the decisions of the Commission are not binding and attracts a little attention from governments, the human rights community and academic journals. A very controversial provision of the Charter is Article 59(1) that provides "all measures taken within the provisions of the present Charter shall remain confidential until such a time as the Assembly of Heads of States and Government shall otherwise decide". States did not follow guidelines on reporting, and failed to include relevant information.[60] Scholars have stated that another big constraint to the Commission's effectiveness is the principle of non-interference between States that seems still entrenched. The Commission has heard only one inter-state complaint since its establishment due to lack of political will on the part of African State or Government to hold

one another accountable for violations of fundamental freedoms.[61]The Commission's shortcomings were mostly practical and political but, notwithstanding, the Commission has adjudicated on many complaints. In *SERAC and Another v Nigeria*,[6] in determining social - economic rights,[2] the Commission found that the Nigerian government had violated several provisions of the African Charter due to its complicity and inaction in the destruction of the Ogoni people's environment by oil companies. The government failed to protect the rights of the Ogoni community, particularly their right to health (Article 16), right to a satisfactory environment (Article 24), and right to housing (implicitly under Article 14 and 16). This was a groundbreaking decision as it affirmed economic, social, and environmental rights under the Charter. It sets a precedent by interpreting the Charter broadly to include implied rights, thereby strengthening the scope of socio-economic rights in African human rights jurisprudence. It also highlighted the duty of States to protect individuals from violations by third parties, including multinational corporations. Also in *Zimbabwe Human Rights NGO Forum v Zimbabwe,*[6] the Commission found Zimbabwe in violation of several Charter provisions, including freedom from torture (Article 5), freedom of expression (Article 9), and right to a fair trial (Article7).

The case arose from the widespread state-sponsored violence and arbitrary detentions following political unrest in 2000. The Zimbabwe case, reaffirmed the ACHPR's role in upholding civil and political rights, even during internal political crises. It emphasized the state's accountability for human rights abuses committed by security forces and reinforced the non-derogable nature of certain fundamental rights. The ruling has been cited in subsequent jurisprudence to underscore the duty of states to protect citizens during periods of unrest.

Although the African Commission on Human and Peoples' Rights (ACHPR) was empowered to promote and protect rights under the African Charter, its quasi-judicial nature meant it could only issue non-binding recommendations. This lack of enforcement power significantly limited its effectiveness in compelling states to comply with its decisions. In response to these limitations, the African Court on Human and Peoples' Right was established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court.[64] The Court was designed to provide binding and enforceable judgments on human rights violations, thereby enhancing the accountability of states and reinforcing the regional human rights system.

According to Ebobrah, the Commission's reliance on soft law approaches and its inability to compel state compliance significantly weakened its protective mandate, necessitating the establishment of a judicial organ.[65] Ibrahim in his article[66] enumerated five failures of the Commission . First is, that the decisions of the ACHPR are not binding which allows member states to disregard its recommendations without facing legal consequences, thereby weakening the enforcement of human rights standards. Second is, political interference and lack of independence as political considerations often influenced the Commission's operations. Member states' reluctance to cede sovereignty and their influence over the Commission's appointment process compromised its independence, leading to biased or ineffective human rights monitoring. Third, Ibrahim notes that the Commission suffers from chronic underfunding and limited human resources. These constraints hinder its ability to conduct thorough investigations, follow up on communications, and engage effectively with civil society and state parties. Fourth, is ineffective state reporting mechanism. He criticized the state reporting system under Article 62 of the African Charter, stating that many countries either fail to submit reports or provide inadequate information. This lack of compliance hampers the Commission's ability to assess and address human rights issues effectively. Fifth, is limited public awareness and accessibility as the ACHPR's work is not widely known among the general public, partly due to limited dissemination of information and language barriers. Lack of awareness reduces public engagement and pressure on governments to uphold human rights obligations

b. **African Court on Human and Peoples' Rights**[67] :-

The African Court on Human and Peoples' Rights (AfCHPR) is another continental body charged with protecting human rights in Africa and interpreting the African Charter on Human and Peoples' Rights. The Court which came into force in 2004, is based in Arusha, Tanzania where it holds four sessions annually.[68] The Protocol establishing the court, is ratified by more than fifteen countries. The Court is comprised of eleven judges from across the continent, who serve six year terms, which is renewable only once.

Under the Protocol establishing the AfCHPR, the court can receive cases filed by State parties to the Protocol establishing it, African inter-governmental organizations, NGOs with observer status before the Commission.

Individuals citizens from State parties that have made a declaration accepting the jurisdiction of the court, can also commence actionsdirectly in accordance with article 34(6). Rights with which the AfCHPR shares responsibility for interpreting and applying the Charter can also refer cases to the court Daniel Juma posited that the Court enhances legal certainty and legitimacy by delivering authoritative interpretations of the Charter and providing remedies that the Commission could not offer.[69] In 2016, the AU Assembly decided to empower individuals to directly petition the Court on the implementation of AU policy organ decisions provided they come from a Member State that is a party to the Protocol establishing the Court and have accepted the jurisdiction of the Court. As at 2024, thirty- four States have ratified the protocol establishing the court but only eight recognize the jurisdiction of the court to accept applications by individuals and NGOs. The decisions of the African Court on Human and Peoples' Rights are binding on state parties to the Protocol establishing the court. In *Umuhoza v Republic of Rwanda*[101] the African Court ruled that the criminal conviction and imprisonment of opposition leader Ingabire Victorie Umuhoza in Rwanda was a violation of her freedom of expression for stating that the crimes against humanity committed during the Rwanda genocide were perpetrated against Hutus as well as Tutsis. The ruling is seen as having facilitated Umuhoza's release from prison later that year. Also, in *APDF and IHRDA v Republic of Mali*[102] the African Court ruled that, aspects of Mali's 2011 Code of Person's and the Family including the validity of marriages in absentia, were in breach notonly the human rights treaties of the AU including the African Charter on the Rights and Welfare of the Child but also the UN Convention on the Elimination of All Forms of Discrimination Against Women. The application was filed by two Malian NGOs that were unable to challenge the law under the Malian legal system.

c. African Committee of Experts on the Right and Welfare of the Child (ACERWC)[70]:

The ACERWC is charged with protecting human rights in Africa and interpreting the African Charter on the Rights and Welfare of the Child. The committee sits in Addis Ababa, Ethiopia, where it holds its biannual sessions. The Committee as part of its mandate monitors the implementation of ACRWC's and out of the fifty-five Member States, forty nine have ratified the African Charter on the Rights and Welfare of the Child. Julia Sloth-Nielsen examined the role of the committee within the regional frameworks for safeguarding children in Africa.[71] Julia highlights the crucial role of the ACRWC in safeguarding children across Africa as the Committee monitors the implementation of the African Charter regarding Children, interprets its provisions, investigates violations an dreceives communications on child rights issues. It collaborates with NGOs through observer status, forums and complementary reporting, strengthening accountability and civil society engagement. Julia recommends that the Committee enhance its focus on safeguarding by integrating related questions into state reporting, promoting national frameworks, and encouraging disciplinary actions or rights breaches.

d. African Commission on International Law (ACIL)[72]:

It was established by AU in 2009, the ACIL provides legal opinions and advice on international law and human rights matters, assisting in the development of legal framework within the AU.

e. The Peace and Security Council (PSC)

The Peace and Security Council is the standing organ responsible for the prevention, management, and resolution of conflicts. It functions as a collective security and early warning, preventive diplomacy, peace-making, peace support operations, recommending interventions, post-conflict reconstruction, and humanitarian assistance. Its authority is derived from Article 20 of the Constitutive Act [73] and Article 2 of the 2002 Protocol establishing the PSC.

4.0 Conclusion

The AU has developed comprehensive legal and institutional frameworks to uphold human rights across Africa. The African Charter on Human and Peoples' provides the foundational basis for the protection of human rights in the region. Through legal and institutional frameworks such as the activities of the regional Court and the Commission, the AU has addressed issues such as arbitrary detention and violation of various human rights. The organisation's commitment to justice is evident in the copious legal and institutional frameworks as well as landmark decisions of the Court and Commission.

However, the AU faces significant jurisdictional and enforcement constraints due to the reluctance of States to grant it full authority, political interference, lack of resources, weak enforcement mechanism, inconsistencies in member states co-operation, conflicts, and suppression of civil liberties, continue to challenge the effectiveness of the organisation. Addressing these challenges require stronger enforcement mechanisms, enhanced cooperation among member States, and increased funding for human rights institutions. Only through these measures can the promise of human rights protection in Africa move from rhetoric to reality. Furthermore, collaboration with civil society organisations, international human rights bodies, and national governments will be crucial in addressing the gaps in enforcement.

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