

THE HUMAN AND PEOPLES' RIGHTS AND ARMED
CONFLICTS IN AFRICA

By

MOSES KAJOBA

LLB, Makerere University, Uganda, 1985
Dip. Legal Practice, Uganda, 1986

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS

in

THE FACULTY OF GRADUATE STUDIES
(Faculty of Law)

We accept this thesis as conforming
to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

February 1989

© Moses Kajoba, 1989

In presenting this thesis in partial fulfilment of the requirements for an advanced degree at the University of British Columbia, I agree that the Library shall make it freely available for reference and study. I further agree that permission for extensive copying of this thesis for scholarly purposes may be granted by the head of my department or by his or her representatives. It is understood that copying or publication of this thesis for financial gain shall not be allowed without my written permission.

Department of LAW.

The University of British Columbia
Vancouver, Canada

Date FEBRUARY 14th, 1989.

A B S T R A C T

Armed conflict and the systematic violation of human rights have been characteristics of life in much of Africa. The interrelationship between these two phenomenon is explored; armed conflict is both the result of the denial of such human rights as the right of political participation, and a cause of further denial of human rights both by States and by armed guerrilla movements.

The cases of Ethiopia, Sudan and Uganda are discussed in detail. In the first two cases the denial of the right to autonomy and self-determination have clearly been major factors in the armed conflict and in the further denial of human rights. The clearest failure in Uganda has been the continued failure of regimes to ensure reasonable political participation of the people in government.

In the light of the situation, the adequacy of the African Charter of Human and Peoples' Rights, the African Commission on Human and Peoples' Rights, and the machinery available through the United Nations and existing Non-Governmental Organizations is examined.

The African system, in comparison to the human rights systems in Europe or the Americas, is excessively dominated by State political leaders, leading to doubts whether the new African Commission on Human Rights will be able to be effective. For various reasons, the United Nations organs have not addressed the human rights situation in much of

black Africa, concentrating concern on Southern Africa and Apartheid.

The study concludes that the African human rights machinery should be altered to make the Commission more independent and to add a court or an arbitration tribunal. It is also necessary to develop indigenous Non-Governmental Organizations concerned with human rights in Africa.

Foreign States could condition their foreign aid on State respect for human rights, and should avoid armed support for particular factions, as has occurred in Ethiopia, Angola and Mozambique. But humanitarian intervention in genuine cases of gross human rights abuses should be provided for, as with the Tanzanian entry into Uganda in 1979.

T A B L E O F C O N T E N T S

ABSTRACT.....	ii
LIST OF TABLES.....	viii
ACKNOWLEDGEMENT.....	ix

INTRODUCTION

Scope of Study.....	1
Objective of Study.....	12
Divisions of Study.....	15
Footnotes.....	17

PART ONE:

AFRICAN ARMED CONFLICTS AND HUMAN RIGHTS

1. GENERAL OVERVIEW OF ARMED CONFLICTS IN AFRICA.....	21
Footnotes.....	32
2. HUMAN RIGHTS AND ARMED CONFLICTS IN SELECTED COUNTRIES.....	36
Ethiopia.....	36
Sudan.....	53
Uganda.....	64
Footnotes.....	80

PART TWO:

INTERNATIONAL PROTECTION OF HUMAN RIGHTS

3. UNITED NATIONS AND HUMAN RIGHTS.....	96
Individuals and Groups under International Law..	96
Role of the United Nations.....	101
The United Nations Charter, 1945.....	105
The International Bill of Human Rights.....	107
Footnotes.....	111
4. THE UNITED NATIONS MACHINERY FOR ENFORCEMENT OF HUMAN RIGHTS.....	116
The General Assembly.....	116
The Economic and Social Council.....	118
Other United Nations Organs.....	122
Role of Human Rights Non-governmental Organizations.....	123
Footnotes.....	130

PART THREE:

AFRICA AND HUMAN RIGHTS

5. AFRICAN CONCEPTIONS OF HUMAN RIGHTS.....	134
Traditional Views.....	134
African Values and Cultural Relativism.....	136
Footnotes.....	144

6. PRIORITIES AMONG HUMAN RIGHTS.....	146
International Categorization of	
Human Rights	146
African Priorization of Rights.....	149
One Party States and Human Rights in Africa.....	159
Footnotes.....	165

PART FOUR:

THE ORGANIZATION OF AFRICAN UNITY AND HUMAN RIGHTS

7. THE OAU DOUBLE STANDARDS APPROACH TO HUMAN	
RIGHTS.....	170
Footnotes.....	176
8. THE AFRICAN CHARTER ON HUMAN AND PEOPLES'	
RIGHTS.....	179
Rights and Duties in the African Charter.....	179
Why Duties and Peoples' Rights in the Charter...	183
Meaning of "Peoples" in the Charter.....	186
Commission on Human Rights.....	191
Footnotes.....	193

9. THE AFRICAN MACHINERY FOR ENFORCEMENT OF	
HUMAN RIGHTS.....	197
The Human and Peoples' Rights Commission.....	197
Comparison of the African Machinery with	
other Regional Systems.....	203
Comparison with UN Human Rights Committee.....	213
Assessment of the African Human Rights	
Enforcement Machinery.....	218
Footnotes.....	220
CONCLUSION.....	224
BIBLIOGRAPHY.....	236
Books and Texts.....	236
Articles.....	240
Newspapers and Magazines.....	244
APPENDIX.....	250

L I S T O F T A B L E S

Table I: Summary of the four Human Rights Regimes.....	217
---	-----

ACKNOWLEDGEMENT

Many people have contributed either directly or indirectly, to the success of this work. I am very grateful to all of them. It is just not possible to acknowledge each of them individually.

My deepest thanks go to my Professors in the Faculty of Law. In particular, I am very grateful to the head of the Law Graduate program, Marilyn MacCrimmon, and to my two supervisors, Douglas E. Sanders and William B. Black. Without their constant supervision, encouragement and academic support, this thesis would never have been what it is.

My classmate and friend, Alexander Black, (now Lecturer University of Glasgow, Scotland), was very much helpful. His efforts in introducing me to the computer have enabled me to put this work in its current form.

I am very much indebted to the Law Foundation of British Columbia, and to Makerere University and the Ford Foundation. In the absence of their financial assistance, my masters studies and this work would never have been undertaken.

I N T R O D U C T I O N

SCOPE OF STUDY.

Africa is marked by a prevalence of various armed conflicts and guerrilla wars. This paper is an attempt to identify the salient legal issues involved in these insurgencies as they relate to human rights and fundamental freedoms, and vice versa. Human rights violations of one sort or another have led, or otherwise contributed, to the commencement of various guerrilla wars on the continent.

Conversely, these guerrilla wars and the government responses thereto have led to, and continue to elicit further violations of human rights. Consequently, this study shall focus on both the human rights abuses and armed conflicts, in particular guerrilla wars, because the two are interrelated and affect one another.

Violation of human rights, and the various armed conflicts, have become a common feature of the African continent particularly in the seventies and eighties. Most of Africa is deeply involved in this quagmire. While the degree of resistance is not uniform and is manifested more in some countries than in others, a majority of the governments in black Africa appear to be resisted by guerrilla movements.

In light of the above, one scholar has correctly observed that the vast continent of Africa is full of trouble; there exists "oppression, poverty, starvation, drought, disease and political unrest".¹ Similarly, it has been noted that:

There have been large-scale breaches (of human rights) in a number of countries since independence was achieved. Military intervention in politics and its dubious legitimacy has had a destabilising effect in many countries. It has also resulted in the watering down of constitutional guarantees. Armed conflicts, often based on ethnic differences, (have) encouraged large-scale desecration of human rights either by government agents or by ethnic chauvinists whom their governments could not control.²

The root causes for this state of affairs may be found in the continent's historical, political, and cultural background. Africa's arbitrary partition during the colonial period and on the eve of independence³ failed to take into account tribal, ethnic, communal, cultural, religious, 'political' and other African interests.⁴ Thus various tribes with almost nothing in common save for a colonial master were brought together into single countries while other tribes were divided up and put into two or more countries.

In many cases, this historical, political, and cultural background has played a large part in the violations of human rights on the continent. This is not to mean that human rights can only be respected in culturally homogeneous states. In any case, there are very few culturally homogeneous states in the world.⁵

Nevertheless, in the case of Africa traditionally hostile tribes which had been kept separate in different administrative units, and which had not learned to tolerate one another, were for the first time put together within the same boundaries and under the same administration, which almost immediately revived or sparked off old tribal rivalries.

These boundaries have been maintained by the African governments upon attainment of independence despite their arbitrariness allegedly for the purpose of maintaining stability, as well as being enforced by international law.⁶ Thus in the recent frontier dispute between Burkina Faso and Mali,⁷ the International Court of Justice held that the principle of uti possidetis juris, and its exceptional importance for the African continent could not be disregarded. It was stated that:

[although the] principle appeared to conflict with the right of peoples to self-determination....the maintenance of territorial status quo in Africa was often seen as the wisest course. The essential requirement of stability in order to survive and develop had induced African states to consent to the maintenance of colonial frontiers.⁸

This partition, together with the seemingly deliberate policy of the colonial masters, particularly but not limited to the British, to keep the peoples separated from one another within their traditional units,⁹ helped to maintain and perpetuate tribalism, ethnicity, and regionalism in Africa.¹⁰ We must however not be interpreted as saying that this policy had no advantages at all; in the short run

it helped to stop inter-tribal wars, each country gained a common language and common administration, and a national and dependent economy was created.

Notwithstanding these exigencies, the policy helped perpetuate tribal differences by co-opting traditional leadership in support of the colonial master and preventing inter-tribal alliances. This was achieved through encouraging each tribe to continue looking to itself as a complete unit or entity and not the whole country, and people had little meaningful communication with their neighbouring tribes. This negated the advantages of the policy and meant serious repercussions for Africa.

The rather 'premature' granting of independence to the territories earmarked by these arbitrary boundaries aggravated an already bad situation - it was all too sudden because African involvement in politics had been completely discouraged; and true to the de facto policy of divide and rule, no attempts had been made to unite the various heterogeneous tribes and communities living in each of the territories. Thus it has been noted that:

decolonization did not necessarily follow the path prescribed by the General Assembly in its resolution of 1952; People were rarely consulted and the African states followed the arbitrary boundaries of the colonizers. ...In the haste to bring freedom and Independence to the colonial peoples, a grave and lasting injustice was done to millions the world over not only outside the colonial sphere, but also within the colonial sphere itself.¹¹

Unequal distribution of the meagre resources within these territories is another factor helping to make an

already bad situation worse because tribalism and scarcity of resources have led to nepotism and favouritism to the detriment of peoples, tribes and regions not in power. This is made worse by corruption which is rampant on the continent, as well as by the involvement of the military in politics. It is these (and perhaps other factors) which have combined to create discontent and opposition among the neglected and oppressed peoples, tribes and regions.

African leaders and politicians, who are sometimes referred to as 'professional' heads of state or 'life' presidents,¹² have responded to this discontent by resorting to brutal and ruthless methods, especially using the police and military organs, so as to destroy all opponents and crush all opposition and thereby stay in power without satisfying the interests of the discontented peoples, tribes and regions.

Blatant human rights violations are a tragic result of these measures, hallmarked by such abuses as political killings, arbitrary arrests, torture and imprisonment. Denial of the right to political self-determination, which takes various forms such as rigging of elections or not holding them at all, is the order of the day. In many countries some regions are economically neglected, while in others tribal and ethnic social and cultural values, including religion and language, are being suppressed.

As a counter to this oppression and violation of human rights, guerrilla movements have developed among the

oppressed and deprived peoples so as defeat this "internal colonialism"¹³ and assert the right to so-called "internal self-determination".¹⁴ This denotes such rights as political participation and freedom from oppression of disadvantaged ethnic, racial, and religious communities by the central government.¹⁵

Guerrilla movements in Africa today may be notionally divided into four categories especially if they are classified in terms of their goals.

First are those liberation movements struggling for self-determination (independence). Examples of such movements include the struggles in Western Sahara and Namibia, and the battle against apartheid in South Africa. The secessionist movement in Eritrea may also fit in this category. A few of these are recognized in that capacity by the United Nations (U.N.) and the Organization of African Unity (O.A.U.).

The second category are those seeking democratic participation, and opposing tyranny and oppression, whether of a tribe, region, or the majority people in a country, by the ruling classes. This is also termed "internal self-determination". Good examples of this category are the movements which have taken place in Uganda, and the underground movements in Kenya and Zaire.

The third category comprises those movements seeking regional autonomy. Save for autonomy, the aims of these movements and those in the second category are similar; they

are all seeking democratic participation, and opposing tyranny and oppression. It is only the means through which this is to be achieved which differ. Examples of this category are the SPLA in Sudan, and the Tigrean movement in Ethiopia.

There are a few other movements which do not fit in either category and should therefore be grouped into their own category. These are the irredentist movements seeking to bring together people of the same ethnic background but who are found in different countries as a result of the partition of Africa by the colonialists. The Somali movements in Eastern Ethiopia and northern Kenya, and the "Casamancaous Maquisards" in Senegal fall in this category.

Many of the guerrilla wars on the continent have also come to be influenced by regional and global politics either directly or indirectly through third parties. Super power rivalry has played a big part in the horn of Africa and in southern Africa. Regional politics is to be seen in North Africa, as well as in Central Africa and some parts of Southern Africa.

To a large extent these guerrilla movements have resulted from the various human rights abuses and the former tends to lead to further violations of human rights. This happens not only on the side of the government which is attempting to crush the movements, but also on the side of the guerrillas themselves which makes the whole situation a vicious circle. Many people are tortured, illegally

detained, raped, or killed while many areas are socially and economically destroyed. This is not to mention the creation of internal and external refugees,¹⁶ as well as social, economic, and political instability.

Designing measures for solving and avoiding these blatant human rights abuses is the problem facing all African human rights scholars and well wishers since the governments which could have done so from the domestic level are themselves deeply involved in the rampant abuses. The attempts so far made do not seem to be very successful.

The U.N. established a human rights machinery comprising the U.N. Commission on Human Rights and its affiliate organs. It has been argued that in spite of all "the original intentions of setting up an enforcement machinery", this mechanism has understandably turned out to be more of a 'standard-setting' body rather than an implementation machinery.¹⁷ However, whether or not this was the original intention is highly debatable. It could be argued that the United Nations only set out to set human rights standards and not an enforcement machinery especially since it is very hard to enforce international law.

Whatever the original intentions, the fact is that the machinery is a "standard-setting" mechanism. Worse still, the majority of African human rights abuses are exempted from criticism. This is possibly because the U.N. is influenced by political factors. The States attacked at the U.N. are the great powers or those within their hegemony.

Thus criticism will be made against countries like United States, USSR, Chile, Guatemala, Afghanistan and Cambodia, and not against the African and Asian countries.

The majority of the African and Asian countries are currently not States where there is intense political competition between the great powers. They are exempted because the great powers, particularly United States and USSR, and to some extent China, have hopes of increasing their influence in the region. Other hindrances include UN funding and staffing problems, and the fact that the machinery is quite slow.

Moreover, the interpretation given to the term "self-determination" by the U.N. is restricted to the struggle against apartheid and colonialism all geared towards the attainment of independence. Worse still, the majority voice in the U.N. happens to include the very perpetrators of these human rights abuses who, more often than not, hide under Article 2(7) of the U.N. Charter - the non-interference in the domestic affairs of member states. This is clearly manifested in the so-called "Try OAU first" principle. However, it must be pointed out that by majority vote we mean numbers and not veto powers and other determining factors. Where veto powers and other determining factors come into play, the so-called 'majority voice' of the third world may not be of much use.

Nevertheless, one point we must not overlook is the fact that governments say they are committed to the

observance and respect of human rights. Likewise, human rights have become a part of international values upon which international aid many times depends. Moreover, rhetoric can sometimes lead to actual changes. Better still, although states may avoid blaming themselves or one another for human rights abuses, they cannot perpetually hinder positive developments in the human rights direction.

The O.A.U.'s attitude toward these human rights abuses has been a dichotomous one - it has always criticized abuses in South Africa and perhaps Namibia which is occupied by South Africa, but not the abuses in independent African countries.¹⁸ However, in 1981 the African member states adopted an African Charter on Human and Peoples' Rights which later came into force in October, 1986. This Charter establishes an African human rights enforcement machinery, constituted during the 1987 Assembly of Heads of State and Government Meeting.¹⁹

Africa's problem however remains since this machinery is pegged upon the O.A.U. wherein sits the very perpetrators of these human rights abuses. Worse still, the principle of "non-interference in the internal or domestic affairs of member states" is very much alive and kicking in the O.A.U. more than anywhere else; the interpretation given to the right to self-determination is the same as in the U.N.; and the general view of the O.A.U. member states seems to be that all other human rights should be sacrificed for the attainment of "economic rights and development".

The other bodies which have been instrumental in the human rights field are the international human rights non-governmental organizations (N.G.O.s). These have played a very important role in promoting human rights particularly through carrying out investigations and compiling data about human rights abuses, as well as publicizing such abuses. They also help to disseminate ideas about human rights especially through organizing seminars and conferences for the promotion of human rights. Better still, they have played a very important, though perhaps sometimes indirect, role in the drafting and signing of the various human rights instruments.²⁰

Nevertheless, their work depends upon the availability of finances; also, there is an imbalance in the geographical distribution of these human rights N.G.O.s²¹ - far less work has been done in Africa than in Latin America or some countries in the developed world. Worse still, a large section of those human rights N.G.O.s which operate in Africa tend (perhaps understandably) to concentrate their work in South Africa leaving much of the human rights abuses in the rest of Africa uncatered for.²²

However, this trend is likely to change with the formation of a new "Africa Watch" as part of "Asia Watch, Americas Watch, and Helsinki Watch". The Africa Watch intends to promote human rights in other African countries where little work is being done, having realized that international focus on South Africa alone has serious

consequences for human rights in Africa. This is because it tends to ignore or leave underreported South Africa's destabilization policies in the region of Southern Africa, as well as other human rights abuses in the rest of Africa.²³

This may facilitate the resolution of Africa's quagmire. Of course we are not overlooking the very valuable work done in Africa by such organizations as Amnesty International, the International Commission of Jurists, the Minority Rights Group, the International Committee of the Red Cross, and recently, that of Survival International which has began expanding its concern to black Africa.²⁴ It is just that the magnitude of the problem requiring N.G.O.s attention in Africa is so big that it makes the work already done seem almost insignificant.

Therefore, the need to devise ways and means of preventing these armed conflicts and human rights abuses seems to be axiomatic. If the end result of this study is to provide these remedies, our motive for undertaking this study shall be accomplished with maximum satisfaction.

OBJECTIVE OF STUDY.

Our stand in this work is that armed conflicts or guerrilla wars and human rights abuses in Africa are interrelated; human rights violations lead, or otherwise contribute, to the commencement of guerrilla wars and vice

versa. If human rights abuses can be stopped or otherwise reduced, less and less guerrilla movements, if at all, will take place on the continent. We believe that better respect and protection of human rights, especially through a better human rights enforcement machinery, will help solve or otherwise reduce Africa's quagmire.

The object of this work, therefore, is to analyze the causes, scope and nature of human rights abuses in Africa in light of the prevailing armed conflicts, as well as the interrelationship between the two. We shall also examine whether or not the existing human rights law both at the international and African levels, is well equipped to contain or otherwise solve these abuses and the resultant armed conflicts, and if not, what measures could help improve this situation.

Thus, in addition to examining the human rights abuses and a few armed conflicts on the continent, we shall specifically look at U.N. and O.A.U. made laws in respect to human rights. It will be pointed out that the U.N. and African human rights enforcement machineries are not fully equipped to solve the human rights abuses in Africa. It will further be argued that there is no 'African' conception of human rights as such; human rights are universal.²⁵

The alleged 'African' conception of human rights upon which many African scholars and politicians base their theory of prioritization of rights - that is, economic and development rights taking priority over civil and political

rights - is a pretext used for purposes of maintaining the elite and politicians perpetually in power at the expense of everybody else. This has in fact cost Africa dearly not only in terms of lives but also of property, money and development.

My conclusions are based upon a systematic analysis of the facts and circumstances prevailing in Africa as contained in text books, articles, journals, newspapers, magazines, and other information sources, or within the knowledge of the writer. I will also take into account the relevant existing law and that which is still in its formative stages and draw my conclusions based on that analysis.

Inevitably the study shall take into account some 'weak' cultural relativism in light of the various cultures in Africa which are to a greater extent heterogeneous despite the alleged existence of an 'African culture'. This is in spite of our contention that human rights are universal and not cultural relative as such.²⁶

Personal views will also be expressed where necessary and justifications for such views made, though none of these shall adversely influence the general flow of the analysis and the conclusions reached.

DIVISIONS OF THE STUDY.

This study shall comprise nine chapters, and a Conclusion, as well as this Introduction. However, for convenience the nine chapters shall be grouped into FOUR parts as follows:

Part One - African Armed Conflicts and Human Rights - shall introduce the problem at hand, namely the various armed conflicts on the African continent which to a large extent have arisen from or otherwise been fueled by various human rights abuses.

Part Two - International Protection of Human Rights in Africa - shall endeavour to show the level at which human rights are protected within the international system as well as the role played in this by non-governmental human rights organizations. We shall also attempt to show the extent to which the international system can go in protecting human rights in Africa, and therefore avoiding guerrilla wars.

Part Three - Africa and Human Rights - shall introduce various concepts used in Africa in reference to human rights as well the manner in which Africa has so far treated human rights and the alleged justifications for such treatment.

Part Four - The Organization of African Unity and Human Rights - shall deal with the past, present as well as the intended OAU approach to human rights in Africa. It shall also concern itself with the Human Rights enforcement machinery established by the OAU, and whether this machinery is well equipped to contain the various human rights abuses

on the continent and thereby avoid guerrilla movements and wars. In this regard a comparison with the European and America Human Rights regimes, as well as with the U.N. Committee on Human Rights, shall be made for the purpose of judging the efficacy of the African regime.

Part One shall be preceded by the Introduction while Part Four shall be followed by the Conclusion. The African Human Rights Charter, 1981, shall form the Appendix of this work.

FOOTNOTES

- 1 Emmanuel Bello, Human rights: The rule of law in Africa
30 Int'l and comp. L. Q. (July, 1981) 628, 629.
- 2 Umozurike U.O, The present state of human rights in
Africa, in Ginther and Benedek (eds) New perspectives
and conceptions of International Law. An Afro-European
Dialogue, 1983, 112-130 at 114.
- 3 See Yilma Makonnen, International law and the New
States of Africa, 1983 esp. 9, 439, 441, and 456-457.
- 4 Ibid.
- 5 The ideal conditions for respect of human rights, which
of course do not exist any where in the world, are a
"free" and stable society which is also closely knit
through culture, language and religion. Umozurike U.O,
in: Ginther and Benedek (eds) New Perspectives and
Conceptions of International Law. An Afro-European
Dialogue, supra, at 114, seems to suggest that Africa
abuses human rights due to the non-existence of these
conditions. Nevertheless, many countries in the world
which comprise culturally plural societies have quite
good records for respect of human rights while many
others which are more or less homogeneous societies
have relatively bad human rights records.
- 6 See the O.A.U. Charter, article III(3) on sovereign
equality and territorial integrity; and O.A.U.
Resolution on boundaries which declared that "all
member states pledge themselves to respect frontiers
existing on their achievement of National Independence"
[AMG/RES.16(1) of 17-21 July, 1964]. See also Yilma
Makonnen, supra, 459-462; and Ian Brownlie, African
Boundaries. A Legal and Diplomatic Encyclopaedia,
London, 1979, 9-12. Of course, any attempts at
altering these boundaries at the time of independence
would have led to the collapse of these already fragile
states, and alteration after several decades would
create problems because certain lands have come to be
identified as belonging to particular countries in
spite of the differences.
- 7 Decision of 22 December, 1986. See Frontier Dispute
(Burkina Faso/Mali) Commonwealth Law Bulletin, Vol.13
(No 1 January, 1987) 208-211.
- 8 Ibid 209.
- 9 Some African Scholars have termed this "the divide and
rule policy". However, it should be noted that although
it turned out to be so in fact, this was never a stated

policy. It was used as a means of carrying on with the already existing political and social institutions for purposes of expediency.

- 10 Nayar K.G.M, Self determination beyond the colonial context: Biafra in retrospect 10 Texas Int'l. L.J. (1975) 321, 324. He suggests that tribalism is the scourge of Africa but that Africa's tribal problems have been intensified by the borders it inherited from its colonial masters.
- 11 Moses Moskowitz, The Roots and Reaches of United Nations Actions and Decisions, Sijlhoff and Noordhoff, Netherlands, 1980, 32-33.
- 12 This pattern is not restricted to Africa. It is a 3rd world pattern which was only recently occurring in Europe in such countries as Spain and Greece, and is now on a decline in Latin America. It can also be seen in Asia. It could therefore be argued that this phenomenon arises from the weakness of the state structure. Alternatively, it could be argued that the traditional ideas of lifetime rulers, common everywhere in the world, had not been displaced by the ideas of institutionalized political competition hence the phenomenon of absolute leadership. However, it would also be argued that the reliance placed upon the military by the various leaders plays a rather important role in this.
- 13 Sornarajah M, Internal colonialism and Humanitarian intervention 11 Ga. J. Int'l and comp. L. 45-77 (Winter 1981) esp 46.
- 14 Cassesse, Political self-determination - old concepts and new Developments, in Cassesse, ed, U.N. law/Fundamental Rights (1979) at 137.
- 15 Ibid.
- 16 See, for example, Peter Woodward, Political factors contributing to the refugees in the horn of Africa, Int'l relations IX No2 (Nov.1987), 111-121; and Ugboaja Ohaegbulom F, Human rights and the refugee situation in Africa, in Shepherd and Nanda, Human rights and Third world development, Connecticut, 1985, 197-230 esp 200.
- 17 Jack Donnelly, Recent trends in U.N. human rights activity: Description and Polemic 35 Int'l Organization 635, 653 (1981).

- 18 See, among others, Monica N. Hall, The Curious Blind Spot of the O.A.U., 9 Human Rights 32 (Summer 1981); and A. Glenn Mower, Jr, Human Rights in Black Africa: A Double Standard? 9 Human Rights J. (Jan.-March 1976) 39-70.
- 19 See Richard N. Kiwanuka, The Meaning of "People" in the African Charter on Human and Peoples' Rights, 82 American J. Int'l Law, 100-101 (1988); and Roger Chongwe, African Charter on Human and Peoples' Rights, Commonwealth Law Bulletin, October, 1987, 1605.
- 20 See, among others, Virginia Leary, A new role for non-governmental organization in human rights: A case study of non-governmental participation in the development of international norms on torture, in Cassesse A. U.N. Law ... et al, supra, 197-210
- 21 Blaser A.W, Human rights in the third world and the development of international non-governmental organizations, in Shepherd and Nanda, Human rights and third world development, supra, 274-276.
- 22 H. M. Soble, Human rights N.G.O.s in black Africa: Their problems and prospects in the wake of the Banjul charter, in Human rights and development in Africa (Welch and Meltzer, ed, 1984) 177-203; H. Thoolen and B.Verstappen, Human rights missions. A study of fact-finding practices of N.G.O.s. 1986; and David Weissbrodt, The contribution of international N.G.O.s to the protection of human rights, in T. Meron, ed, Human rights in international law, 1984, 403.
- 23 Human Rights Watch Number 2, May-June 1988, 9, AN AGENDA FOR AFRICA WATCH. Human Rights Watch Begins Feasibility Study.
- 24 Survival International, Africa: Unnatural Disasters, August 1988.
- 25 For a supportive view see Donnelly Jack, Cultural relativism and Universal human rights 6 H. R. Q.400-419 (Nov.1984) esp 401.
- 26 Ibid.

P A R T

O N E

African Armed Conflicts and Human
Rights

C H A P T E R O N E

GENERAL OVERVIEW OF ARMED CONFLICTS IN AFRICA

A majority of the African countries are involved in armed conflicts of one sort or another. Across the length and breadth of this vast continent, there is oppression, poverty, starvation, drought, disease, and political unrest.¹ These conflicts are not limited to the horn and southern Africa but extend to central and eastern Africa, and in some cases to the west and north of Africa. However, the magnitude of these conflicts varies - in some cases the movements are still underground. In this chapter, we shall deal with a few of these conflicts, although in a cursory manner, so as to illustrate the extent of the problem.

The war in Western Sahara is among the most notable conflicts in Africa. Fighting has gone on between the Polisario guerrillas and the Moroccans ever since the withdrawal of the Spanish in 1975. The root cause of this conflict is the denial of the Saharaoui people's right to self-determination and independence. Even before the withdrawal of the Spanish rulers, the issue of Western Sahara was always considered by the United Nations and the OAU as a decolonization problem - one where people were seeking self-determination and independence through the regular decolonization process.²

In total disregard of United Nations resolutions and the advisory opinion of the International Court of Justice,³ Morocco and Mauritania occupied Western Sahara upon the withdraw of the Spanish in 1975. The two countries alleged that the territory formed part of their countries before colonization by the Spanish. In 1979, Mauritania withdrew from the territory after signing a peace agreement, but Morocco proceeded to annex the whole territory. Fighting has gone on ever since then between the Moroccans and the Saharaoui people who are now based in Algeria and call themselves the Polisario guerrillas.⁴

Chad has experienced a guerrilla war for the last three or so decades and is only punctuated by changes in government. The hand of the Libyans and the French, among others, is always to be found behind these Chadian developments. Just like Chad, the conflicts in Ethiopia, especially in the regions of Eritria, Tigre, the Haud, Ogaden, and Oromoland, have transpired for the last three or so decades. The causes of these Ethiopian conflicts are to be traced back to political repression as well as encroachment upon social and cultural rights including religion and language.⁵

In 1983, following the imposition of shari'a law throughout the whole country irrespective of religious denomination as well as the watering down of the autonomous status of the south, Sudan saw the resurrection of the guerrilla war which had been resolved in 1972 after 17 years

of fighting. The majority of the people in the north profess Islam and are basically composed of Arab blood, while the south is christian and animist, and basically African.⁶ The introduction of shari'a was an interference with the religious beliefs of the southerners and non-Muslim northerners while the reduction of the autonomous status of the south was an encroachment upon the political rights of the southerners.

The Somali Nationalist Movement which is resisting Siad Barre's oppressive regime in Somalia is the expression of the disaffection of northern clans arising from the imbalance in development and other opportunities. Mogadishu (capital city of Somalia) and the south have received the biggest share of the development budget, especially since President Siad Barre took power in the 1969 military coup and instituted a one-party socialist system.⁷

Like many African leaders, Siad Barre attempts to suppress opposition and resistance through detentions. One writer has termed this - the "politics of detention".⁸ There is therefore a denial of economic, as well as political rights, among others. It is said that the Somali Nationalist Movement is supported by Ethiopia, while Somalia in turn supports the Western Somali Liberation Front in the Ogaden region of Ethiopia which is populated by ethnic Somalis.⁹

In Uganda, fighting has existed since the allegedly rigged elections in 1980 despite various changes of government. The rigging of the elections which was

tantamount to denial of political rights and in particular, political participation, sparked off guerrilla fighting which has led to or otherwise contributed to the fall of several governments. It has also led to various abuses of human rights on both sides - guerrilla and government.¹⁰

In Mozambique and Angola, guerrilla wars have continued to be waged despite the attainment of independence in 1975, while the liberation wars in Namibia and South Africa against the apartheid regime continue unabated.¹¹ There are also some guerrilla movements which are being waged underground such as the Mwakenya in Kenya; the M.F.D.C. (Mouvement des forces democratiques de la Casamance) in Senegal; and the MNC-L (Mouvement National Congolais-Lumumba) and its military wing APL (Armee Patriotique Lumumba) in Zaire. The MNC-L is coming into the open and is said to have carried out a series of attacks in Eastern Zaire in March and April of 1988.¹²

Mwakenya started soon after the 1982 constitutional changes which established a de jure one-party state in Kenya. It has support among intellectuals and farmers in the highlands which were the home of the Mau Mau in the 1950s. It has much in common with its predecessor, the Mau Mau, including the secret oaths and the support of the Kikuyu farmers save that it has support from more than one tribe including the Luo.

Although the Kenyan government is afraid of Mwakenya, it has tried to turn the threat to its own advantage by

labelling all opposition as Mwakenya subversion.¹³ In 1986, scores of people were arrested, detained or executed on suspicion of belonging to Mwakenya, the allegedly marxist movement seeking to overthrow President Daniel Arap Moi's regime.¹⁴

In spite of being one of the very few remaining multi-party democracies in Africa, Senegal has problems in its Casamance region. The MFDC (Mouvement des forces democratiques de la Casamance), which was created in 1947 but remained quiescent until 1982, organized demonstrations as a separatist movement in December, 1982. As a result of these riots, many people were arrested, tortured and detained while many others hid in the bushes/forests and became the first "Casamancaous Maquisards". In 1983 there were further riots as those arrested in 1982 were being tried. November, 1986, and January, 1987 saw even more riots but this time for outright Independence of Casamance.¹⁵

In the last two years, there has been increasing talk of separation in the Casamance region of Senegal. This talk has been buttressed by rumours that the "Maquisards" have training camps in the forests and in neighbouring Guinea-Bissau. Casamance region was a Portuguese colony until 1888, and the same ethnic groups live in Casamance and Guinea-Bissau, another ex-Portuguese colony. In lower Casamance the people even speak Portuguese Creole as their lingua franca.¹⁶ They therefore feel more attached to their "cousin brothers" in Guinea-Bissau than with the rest of Senegal.

The central factor behind all these guerrilla wars and movements on the continent is the violation of human rights including but not limited to, the right to self-determination. In the words of one writer, with whom we agree:

....Violations of human rights, especially where there is a consistent pattern of gross violations, can be a cause of war although of course not the only cause. ...War and the fear of war are reasons and sometimes pretexts for suspending the exercise of certain rights.¹⁷

The decolonization movement, sanctioned by the Declaration on the granting of independence to colonial countries and peoples,¹⁸ equated self-determination with the right to statehood. Consequently the resolution did, and has continued to, inhibit the United Nations from even as much as paying nodding attention to the racial, religious, linguistic, and ethnic diversity of the African peoples.

Thus, on the one hand small countries which were unable to stand on their own feet were created. On the other hand, many peoples and nationalities which met the objective criteria for entitlement to self-determination were barred from asserting their claims by the overwhelming concentration on independence for the colonially established state units. Consequently, the willful disregard of the ethnic factor in the determination of boundaries of newly established states was a negation of self-determination as was colonialism itself.¹⁹

In pursuit of the above, traditionally hostile tribes which had been kept separate in different administrative

units during colonialism, and which had not learned to tolerate one another, were put together in same boundaries, political units, and administration. This created artificial States and almost immediately revived or otherwise sparked off the old tribalism. These differences were soon to be reflected in the administration, as well as in the distribution of resources and opportunities.

These artificial States, containing conflicting tribes loosely put together by colonialism, together with the granting of independence to an immature and inexperienced national political elite, led to autocratic leadership or in some cases weak leadership, as well to the denial of human rights by the autocratic leaders or by the tribal forces not contained by the State. It is not surprising, therefore, that most of independent Africa is embedded with strife, cruel leadership, mismanagement, and self-serving elites.

Many african leaders, more often than not, manipulate the political organs as well as violating human rights including but not limited to, denial of political participation, political killings, torture, and detention or false imprisonment so as to stay in power.²⁰ More often than not, this is worsened by the direct involvement of the military in African politics.

African armed forces have increasingly become major power contenders in the domestic politics of many countries in Africa. This intervention has been made possible by the decline in the established machinery for the transfer of

power, which has made political change within a state very problematic. Often the military have been the only force capable of challenging the government. Furthermore, disrespect for political institutions has in many cases led to blatant abuses of human rights, and rampant corruption at the top of the political and civil administration.²¹

Combined with the steady weakening of the political leadership and the intense and uncompromising rivalry among the political elites, these factors have given the military a "rationale" (Is it a pretext?) for overthrowing the civilian governments. This involvement of the military into politics has increasingly become a common feature of the continent.²² Although some military regimes perform better than some "civilian" governments, the general trend is that military governments violate human rights just like many "civilian" governments. Many times they may even perform in a worse manner.

Military takeovers tend to increase internal instability and contribute to the breakdown in law and order. The institutional framework always becomes dysfunctional.²³ These factors combine to create the dislocation of society which in turn leads to the displacement of nationals, who through fear of persecution, are forced to become refugees not only in neighbouring countries, but also within their own countries. All this leaves various people oppressed and deprived of their

rights. More often than not, these manipulations and violations are based upon tribal, ethnic or regional lines.

One scholar terms these violations of human rights, be it by a military or 'civilian' government, or by some other organ, as "internal colonialism". He asserts that this results when an ethnic group in control of government systematically exploits resources of the regions occupied by minority ethnic groups reducing the development of those regions to that of dependencies and allocating the members of the minorities to specific roles in the social structure on the basis of objective cultural distinctions. He gives typical results of such a situation as an inequitable distribution of national wealth, as well as access to employment, and educational and other opportunities.²⁴

Guerrilla wars are an attempt to defeat this "internal colonialism" and assert what has been termed the right to "internal self-determination." This connotes the right of people within a sovereign state to elect and keep a government of its choice or that of an ethnic, racial, religious or other minority within a state to be free from oppression by the central government.²⁵ Some scholars argue that this should also include the right to secession. However, this has not as yet been accepted by international opinion.²⁶

The above notwithstanding, it must be noted that the denial of the right to "self-determination" in all its forms is not the sole cause of guerrilla wars. It is just one of

the principle causes. In addition to violation of other rights, (not only the civil and political rights but also rights of the economic category), various other factors contribute to this quagmire. One scholar has summarized these various causes as follows:

These destabilizing situations [guerrilla wars] involving violations of human rights in varying degrees stem from a variety of sources; the ancient themes of human greed, betrayal of popular will, lust and struggle for power, ethnic hatred, fear of political and economic domination of one nationality group by another, and perceived unfair distribution of national wealth and resources.²⁷

Nevertheless, the hand of human rights abuses can still be traced in these other so-called causes of guerrilla movements. For example, "betrayal of popular will" directly implies denial of the right to political participation, while "lust and struggle for power" has direct connotations of violation of civil and other rights. A similar argument can be advanced for "political and economic domination", and for "unfair distribution of national wealth and resources" as causes of guerrilla wars on the African continent.²⁸

It could therefore be argued that in one way or another, these various factors point to one major factor, namely, abuse of human rights. But even if this were to be interpreted otherwise than as above, it could alternatively be argued that these factors, allegedly independent of human rights abuses, have been fathered by, or otherwise emanated from, the interpretation given to the right to self-determination. If a wider and more liberal approach had been taken toward "self-determination" it may be that many of

these factors forming the basis of this thesis may never have arisen.

Whereas the central aim of a majority of the guerrilla movements on the continent is allegedly the attainment of the right to "self-determination" in its various forms ("external" and "internal"), the degree of the intended self-determination is not uniform. Some movements are after "internal self-determination" in the sense of giving people the power to choose their own government as well as ridding them of oppression by the central government, while others would like to attain greater autonomy in addition to freedom to choose their governments; At the extreme end are a few others which are geared toward secession, and external self-determination or political independence.

In the next chapter an attempt shall be made to examine in greater detail the guerrilla wars in three countries - Ethiopia, Sudan, and Uganda - with the purpose of advancing my analysis.

FOOTNOTES

- 1 See Emmanuel G. Bello, Human Rights: The Rule of Law in Africa, supra, 629.
- 2 There are various United Nations Resolutions to this effect including Resolution 2229 (XXI) of 1966 which urged for a referendum under UN sponsorship to enable the Saharaoui people to freely exercise their right to self-determination and Independence.
- 3 ICJ Advisory opinion of 16 October, 1975 in respect of Western Sahara upon request by Morocco. It was held, inter alia, that the evidence could not support Morocco's claim to "immemorial possession" of the territory because it did not establish any link of territorial sovereignty between the territory of Western Sahara on the one hand, and the kingdom of Morocco or Mauritania, on the other hand. (See Memorandum, The Saharaoui Arab Democratic Republic: Presidency, Hauza, SADR, Liberated Territories, July, 1981).
- 4 The Saharaoui people's resistance to their being annexed by Morocco attracted the unleashing of Moroccan aggressive forces upon the Saharaoui people. This led to about half the population fleeing into Algeria. Today more than half of the original population (over 75,000 Saharans) live under the Polisario banner around Tindouf in Algeria. Some figures put this at 190,000 [Africa Confidential, Vol.28, No.15, 22 July, 1987, Western Sahara: The Polisario Factor]. This seems inaccurate because the original population including those who stayed behind, was about 150,000 people. About 85,000 people, many of who are Moroccan brought into Western Sahara by the government of Morocco or their civil employers, live behind Morocco's defensive wall, thousands of miles long, and stretching from the Atlantic coast up to the Mauritania border and turns north roughly parallel to the Algerian border. Although in exile, the Polisario guerrillas proclaimed their 'Independence' on 27 February, 1976, as well as the setting up of their Republic - the Saharaoui Arab Democratic Republic (SADR). The Polisario movement is recognized by the United Nations and the OAU, as well as by many countries (over 50 countries of which 29 are African countries). Attempts by the United Nations and the OAU at resolving the problem have so far not been very successful. This conflict has also caused several problems in the OAU especially as to the OAU's recognition, and admittance into the organization, of the SADR. This was one of the major causes of the failure of several OAU Summits as well as the withdraw of morocco from the OAU in November, 1984. Recently,

however, a possibility of a peaceful settlement through U.N. auspices has arisen [The Globe and Mail, Wednesday August 31, 1988, A1, Morocco, Polisario rebels approve UN peace plan; and IHT, Tuesday August 23, 1988, p4, In the Sahara, a Fight For Independence winds Down]. We only hope that a lasting peaceful settlement will materialize.

5 See Chapter Two, in fra.

6 See Chapter Two, in fra.

7 See The Times, Thursday, March 10, 1988, Unrest in Somalia. Barre keeps the north in check.

8 Greenfield Richard, What Price Political Prisoners? Somalia, Africa Report (America's leading magazine on Africa) January-February 1988, 48-51, 49.

9 See The Times, Monday, March 7, 1988, Tensions in Somalia. Barre plagued by warfare and debt.

10 See Chapter Two, in fra.

11 The situation in Mozambique, Angola, Namibia, and South Africa is, to a great extent, quite different from that in the rest of Africa. In all of these four situations one discovers the hand of the apartheid regime in South Africa. These countries therefore requires a different study from the current one. Consequently, they shall not be the subject of this study. The Mozambique National Resistance Movement (RENAMO) was started by a few Portuguese whites soon after the attainment of independence allegedly because the then President, the late Shamora Machel, had threatened all Portuguese, which led to their running to South Africa and other countries. Originally a very weak movement, RENAMO only gained some support after several years when the northern tribes realized that most of the important positions in the government and civil service were being held by southerners, and when the government failed to fulfill its promises made at independence. This has been worsened by the South African government which has taken it upon itself to finance the movement in pursuit of the South African government's policy of destabilising its neighbours. The Angolan struggles between the government and the UNITA rebel headed by Jonas Savimbi commenced almost immediately upon the granting of independence in 1975. Soon thereafter, Angola became a fertile ground for regional as well as super power politics. The case of Namibia is in many ways similar to that of South Africa - people are struggling against the apartheid regime for the attainment of independence. Currently, there is a

possibility of a settlement of the Angolan and Namibian situations following the negotiation, through the U.N. auspices, of a peace agreement between the governments of South Africa and Angola as well as other concerned parties for the withdrawal of Cuban and South African troops and the granting of independence to Namibia.

- 12 See Africa Confidential, Vol.29, No.7, 1 April, 1988, Pointers, Zaire: Attack.
- 13 See Africa Confidential, Vol.28, No.1, 7 March, 1987, Kenya: Facing Mwakenya.
- 14 See Mary Anne Fitzgerald, KENYA, in: The Africa Review, 11th edition, 1987 (World of Information), 114-126. Also see The Christian Science Monitor, Thursday, December 3, 1987, Atmosphere of suspicion troubles Kenya. Government actions foster tensions among Kenyans and foreigners; and The Times, Saturday, March 19, 1988, Violent run-up to Kenya poll.
- 15 See Africa Confidential, Vol.28, No.3, 4 February, 1987, Senegal: Casamance.
- 16 Ibid.
- 17 Humphrey, J.P., Human Rights and the Peace of Nations, International Commission of Jurists Review, 71-74, December, 1983, 73.
- 18 Sec.Res.1514(XV).
- 19 See Moses Moskowitz, *supra*, 33.
- 20 A few African leaders such as the then president of Tanzania, Julius Nyerere, and perhaps the late Jomo Kenyatta of Kenya, performed a bit better than the other leaders have done. Nevertheless, even the records of these few are not completely free of taints.
- 21 Ojo, Orwa, and Utete, African International Relations, Longman, New York, 1985, 133.
- 22 John Harbeson, Military rulers in African politics, in: John W. Harbeson, ed, The Military in African Politics, Praeger, New York, 1987, 1, observed that as of mid-1986, 31 African countries had experienced a total of 68 military coups de'tat ever since the attainment of independence which commenced in the 1950s.
- 23 To use the words of Ojo, Orwa, and Utete, African International Relations, *supra*, 133.
- 24 Sornarajah M, *supra*, 46.

- 25 See Cassesse, *supra*, 137; and Vincent, *supra*, 80.
- 26 See Chapter Three of this work.
- 27 U. Ohaegbulom, Human Rights and the Refugee Situation in Africa, in: Shepherd and Nanda, *supra*, 197-230, 202.
- 28 The justifications for this can be found in article 1(2) of the Covenant on Civil and Political Rights, 1966, and article 1(2) of the Covenant on Economic, Social, and Cultural Rights, 1966. Both articles specifically provide that no people is to be deprived of their resources and means of subsistence.

C H A P T E R T W O

HUMAN RIGHTS AND ARMED CONFLICTS IN SELECTED COUNTRIES

ETHIOPIA.

Ethiopia comprises more than eighty ethnic groups. These may however be re-grouped, at least for the purposes of this study, into five major groupings, namely, the Eritrians, and the Tigrians in the north (Eritrea and Tigray), the Shoa Amhars (sometimes written "Amhara") in the centre, the Oromos in the south and south east, and the Somalis in the Ogaden and Haud regions which border Somalia. Although the Shoa Amhars do not form the single largest group, they are the dominant and ruling group in Ethiopia.

Today the Ethiopian government faces four major guerrilla movements in Eritrea, Tigray, Oromia, and the Ogaden, respectively. Of these, the most feared are to be found in Eritrea and Tigray. Whereas the Eritreans' major concern is secession and therefore the formation of an independent Eritrea, the Somalis in Ogaden and the Haud would like to join their blood brothers in Somalia. On the other hand, the Tigrians seem to seek greater regional autonomy within a reformed Ethiopia just like the Oromos who claim that they are discriminated by the ruling Shoa Amhars.¹

The roots of the tensions in Ethiopia are to be traced back into history, in particular to the conquest and subjugation of the various ethnic groupings which comprise present day Ethiopia by the Shoa Amhars. This may be partly responsible for the existence of tribal or regional loyalty which is akin to tribal or regional nationalism.²

The first great Ethiopian Empire - the Roman era kingdom of Axum - was centred in Tigre, and Axum's maritime trade was conducted through the ancient Eritrian port of Adulis near modern-day Massawa. In the ninth century A.D., internal dissension, the migration of Beja nomads from Sudan, and the rise of Islam eventually led to the demise of Axum. After the tenth century, the center of power steadily moved south causing Eritrea to drift apart from the rest of the region although it retained its importance as an outlet to the sea. The Amhara people managed to conquer the southern and eastern tribes, and in the fifteenth century they were finally able to re-establish a tenuous hold over Eritrea.³

In light of the above, the Amhara people have been and are still regarded as an imperial/colonial power by the rest of Ethiopians. Although they are Africans like the rest of Ethiopians, they are conquerors who imposed themselves upon the rest of Ethiopians in a manner similar to that of the European colonialists. Thus it is suggested that:

...by 1889 all Eritrea had been occupied [by the Italians] and Menelik [the Amahara Emperor] had signed the treaty of Ucciali, under which he recognized Italian rule over Eritria... Two different imperial territories existed side by side. One, Eritrea, ruled by a white European colonial power. The other, Ethiopia, ruled by a black African colonial power - the Amharas under Menelik, whose subjugation of the Tigrrians to the north and the Oromos to the south was viewed by the conquered people as no more desirable than European rule.⁴

The Eritrean struggle commenced in the early 1960s. Following the Italian defeat at the hands of the British in 1941 (second world war), the British occupied Eritrea until 1952. Eritrea was therefore actually ruled for sometime by a colonial power, first by Italy and then Britain, while the rest of the country was never effectively colonized. Thus Eritrea and the rest of Ethiopia were governed separately - one by white rulers and the other by black rulers.

However, when the British were leaving Eritrea in 1952, Eritrea was not recognized as an independent state. Instead of so doing, the Western powers imposed a United Nations mandate on the region and made Eritrea a semi-autonomous territory under the sovereignty of Ethiopia. As if this was not bad enough for the Eritreans who had gained over time a distinct and separate existence, Emperor Selassie never respected the autonomy agreement. Eritrea's independent institutions were gradually subverted, political parties were banned, and Tigrinya, Tigre, and Arabic were suppressed as the languages of Eritrea and replaced by Amharic, just like was the case for the rest of the country.

The above events precipitated the formation of the Eritrean Liberation Front (ELF) in 1961, followed by the break out of civil war in September of that year when guerrillas began mounting hit and run attacks with antiquated Italian weapons. In retaliation, the Ethiopian government formally annexed Eritrea in 1962, making it just another of its provinces.⁵ Thus the rejection of autonomy is be found at the root cause of the Eritrean insurgency.

Eritreans, who number 4-5 million people, see as alien the generally dark-skinned Amharas of the central highlands, who speak a different sematic tongue and have been perpetually insulated from the cosmopolitan influences of foreign cultures,⁶ just as they do not feel part of the rest of Ethiopia. They believe their inclusion in Ethiopia is a betrayal of the principle of, and a denial of the right to, self-determination. They therefore seek, through military means, to secede from the rest of Ethiopia.⁷

In the late seventies and early eighties, following fighting between the ELF and the Eritrean Peoples Liberation Front (EPLF) which came into formation in 1970, the ELF lost its importance in the Eritrean struggle. The final blow came in 1981 when the ELF was defeated by the EPLF and its remaining troops driven over the border into Sudan. Although it still has a small following among Eritrean refugees in the Sudan, the ELF has been militarily irrelevant ever since.⁸

The second movement is the Oromo Liberation Front (OLF) which operates among the Oromo people in the south and south-east of Ethiopia. The Oromo are the single largest ethnic group in Ethiopia comprising a population of 15-18 million people. Their inclusion into present day Ethiopia resulted from Emperor Menelik's policy of expansion to, and pacification of, the south in the late nineteenth century. This was closely followed by the imposition of the Amharic language and culture upon the Oromo as well as the alienation of land.⁹

The Oromo national movement, which surfaced in the urban centers in the mid-1960s, had its roots in the resistance of the 1880s and 1890s which were in opposition to the subjugation of the Oromo people, language and culture. In 1967, the Oromo national movement was banned but its members went underground. The young and more militant began organizing among the Oromo peasants and urban dwellers. This formed the foundation for the Oromo Liberation Front (OLF) whose program was formally announced in October, 1974.¹⁰

A majority of the Ethiopians welcomed the revolution of 1974 which overthrew Emperor Haile Selassie and brought the Dergue (Amharic for "committee") into power. The Dergue's rural land reform program, which promised to benefit the conquered peoples of southern Ethiopia, was much welcome to the Oromo especially as they formed the bulk of the beneficiaries. It is not surprising therefore, that many

Ethiopians regarded the so-called 1974 revolution as "an Oromo revolution".

This notwithstanding, further demands by the Oromo for "internal self-determination", which encompassed other spheres of their life such as free election of their representatives to the farmers' associations which replaced the old feudal structure, as well as the use of Oromo language,¹¹ were not as welcome to the Dergue. The Oromo, in spite of their demographic size, could not use their language for anything except domestic purposes. This demographic fact, in addition to other political and social factors, sharpened Oromo national conscienceness and provided fuel for the pan-Oromo political activity organized by the OLF.¹²

The overall objective of the Oromo struggle was "the realization of national self-determination for the Oromo people and their liberation from oppression and exploitation in all their forms". This could only be realized through "the successful consummation of of the new democratic revolution by waging an anti-feudal, anti-colonial, anti-imperialist struggle, and by the establishment of a people's democratic republic of Oromia".¹³

Just like the Eritrean and Oromo resistances, the resistance of the Tigrean people, a population of 5-6 million, to Amhara rule goes back to the Amhara expansion, particularly under Menelik, in the nineteenth century. Rebellions have existed ever since, the most famous of which

was the Woyane revolt against Haile Selassie in 1943.¹⁴ Following the suppression of this rebellion, the movement was forced to go underground. In early 1970s all these efforts were united under the Tigray National Organization (TNO), which began underground political activity.¹⁵

In February, 1975, pursuant to the Dergue's failure to substantially correct the social and political situation which it inherited from Haile Selassie in the 1974 revolution, the Tigray People's Liberation Front (TPLF) was established. Soon after, it began armed struggle in the western lower lands.¹⁶ The overall aim of this movement is full attainment of the right to self-determination. It is stated that this does not necessarily mean secession; nor does it mean unity for the sake of unity:

(a) If there is a democratic political atmosphere, it means the creation of voluntarily integrated nations and nationalities whose relations are based on equality, democracy, and mutual advantage.

(b) If the existing national oppression continues or is aggravated, then it means the birth of an independent Tigray.¹⁷

It must be noted that the TPLF has had to struggle with a few other movements before it could assume supremacy in Tigray. Among these are the Ethiopian Democratic Union (EDU), and the Ethiopian People's Revolutionary Party (EPRP). These two were allegedly more concerned with the establishment of a reformed, and democratic, Ethiopia than with secession. It should also be pointed out that sometimes the TPLF has worked in close co-operation with the EPLF, and the two movements support each other's cause.

The resistance struggle in the Ogaden is part and parcel of the idea of the creation of a greater Somalia encompassing present day Somalia and the so-called "lost territories" which comprise the Ogaden, Djibouti and the Northern Frontier District of Kenya.¹⁸ All the people in these various 'territories' have common historical, ethnic, linguistic, and cultural continuities.¹⁹ Hence underlying this territorial claim was the extraordinary phenomenon of Somali nationalism, which encompassed all Somali peoples not only within Somalia but also in the "lost territories".

Roots of this struggle, just like those of the other struggles within Ethiopia, run deep and go back earlier in history to the nineteenth century when Menelik conquered the walled city of Harar, and placed his cousin Ras Mekonnen (Haile Selassie's father) in charge of consolidating and expanding from the base of Harar. By 1896 when Menelik's forces defeated the Italians at the battle of Adowa, Ras Mekonnen had managed to set up military garrisons throughout the Ogaden and thus extending the Ethiopian empire to its present day border with Somalia.²⁰

The Anglo-Ethiopian treaty of 1948 which recognized the Ogaden as part of Ethiopia and accepted the present border demarcations,²¹ and the granting of independence to Somalia in 1960, failed to take into account Somali nationalism. Thus the various territories comprising Somali peoples were kept separate in different countries including the Ogaden in Ethiopia.

It is not the intention of this study to deal with the earlier phase of the Ogaden struggle. The present phase began with the establishment of the Somali republic, and the creation of the Western Somali Liberation Front (WSLF) almost immediately thereafter.²² The movement immediately engaged in skirmishes with the Ethiopian army and scored victories in the Bale area the majority of whose inhabitants are Somali speakers. It also organized a revolt in 1963 which covered the Bale region until 1965.²³ Almost from the very beginning, the Somali government has supported the movement in various ways.

The climax of the struggle seems to have been reached in 1977 when the Somali government, obsessed with territorial claims, joined hands with the WSLF in a fully fledged war against Ethiopia. However, Somali victories were later to be reversed by a combination of Ethiopian, Cuban and Soviet forces and this culminated in the Somali defeat and withdrawal in the summer of 1979.²⁴ In spite of this defeat, the Ogaden struggle has continued but basically as a guerrilla war.

In addition to the WSLF a few other movements are alleged to have come into existence in the Ogaden, namely, the Somali and Abo Liberation Front (SALF), the Sidama Liberation Movement (SLM), and the Oromo Islamic Liberation Front (ILF). Nevertheless, none of these movements seems to be a very serious challenge to the Ethiopian government at present. The ILF has no real military presence and is rather

shadowy; the SLM is little more than a name; and the WSLF and SALF are both seriously split and largely inactive.²⁵

The Somali government has had to temporarily give up or otherwise suspend its territorial claims, and to be content with giving moral and perhaps material support to the WSLF which seems to be the 'strongest' movement in the region. This may partly be due to the fact that the Barre regime is facing opposition at home (also in the form of guerrilla movements), which opposition is said to be supported by Ethiopia. It might be this situation, that is, each country supporting guerrilla movements in the other, which may force both countries into negotiating a solution to the Ogaden question.²⁶ However, as suggested by some writers:

the biggest problem in any Somali-Ethiopian negotiations is the future of Ogaden. Somalia will only drop its demand for self-determination of the Somali speaking people in the Ogaden if the Ethiopian regime gives them a larger measure of autonomy.²⁷

This does not seem to be the case as is depicted by the progress of the negotiations. To date not much has been achieved. Moreover, the magnitude of Somali nationalism in the Ogaden region remains high. It has not subsided despite the weakening of the guerrilla movements in the region.

Of the guerrilla movements in Ethiopia, the EPLF would seem the strongest and most organized. It is also the biggest threat to the Mengstu regime and this goes back to the period immediately following the overthrow of Emperor Haile Selassie in 1975. In November of that year, the

figurehead chief of state, General Aman Michael Andom, a man of Eritrean heritage who had been negotiating with the Eritrean guerrillas, supposedly on the Dergue's behalf, was killed in his Addis Ababa villa by Dergue troops allegedly because he was believed to be close to achieving a settlement. This turned the great mass of Eritreans into enemies of the government and supporters of the movements. Thus many Eritreans, be they in police, army or schools, joined the EPLF and the then existing ELF.²⁸

Lt. Col. Mengstu Haile Mariam, who emerged Ethiopia's undisputed strongman in 1977 after a series of power struggles among military officers during which scores of rivals were either killed or executed, has shown himself utterly ruthless in destroying opponents be they in the government, army, or guerrillas. In the years that followed his rise to power, an estimated 5000 Ethiopians were killed as Mengstu forced his brand of Soviet-supported marxism on the country. Bodies of tortured political prisoners were displayed on state-owned television perhaps as an attempt to discourage any opposition to his policies and government. To date, thousands of political prisoners still languish in Ethiopian prisons.²⁹

From the very beginning, the Dergue and the Mengstu regime have used starvation as one of the main weapons against a recalcitrant people. In the mid-1970s, the Dergue not only forbade its newly created relief agency to distribute food in Eritrea; it also forbade foreign donor

organizations to work there.³⁰ It has been suggested that the famine in Eritrea and Tigre created by the 1984-85 drought was as much a man-made crisis - brought on by Mengstu's military, political, agricultural, and fiscal policies - as a natural disaster.³¹

Government representatives carrying out several different policies have destroyed food supplies, disrupted normal commerce which would have allowed individuals to acquire food, prevented people from reaching food, withheld food from those in need, forcibly relocated people well away from their own ample food supplies, forcibly cleared areas of indigenous occupants to make room for settlers, and imposed crushing tax and voluntary contribution levels on peasant producers which forced them to sell their food and even their own productive assets such as oxen or the seed for the next year.³²

Moreover, the government spends most of its hard currency on military equipment despite the fact that it gets supposedly 'free' weapons from the Soviet Union. In pursuit of a military solution to the insurgencies in Eritrea and Tigre, over forty percent of the national budget goes to supporting Ethiopia's standing army - one of the largest in black Africa - and very little is geared toward agriculture and the alleviation of famine.

Worse still, even when food aid is donated by the international community, the government, perhaps in pursuit of its policy of deliberately starving its opponents, many times carries out one or more of the following:

- (a) Prevents food and other aid from being promptly unloaded when it arrives in Ethiopian ports.

- (b) Once food is unloaded from the ships, the government fails to immediately transport it to areas affected by the drought. Priority is normally given to military supplies and hardware.
- (c) When it decides to transport the food, the government does not distribute it to the areas where it is needed most, but instead to areas sympathetic to the government. This is worsened by a corrupt bureaucracy which hinders the entire network for distributing food from the ships to famine camps.³³

When Ethiopian farmers were allowed to own land, they had always produced enough food to prevent any large-scale famine. In March 1975, however, all agriculture was collectivized. The government continues to require most subsistence farmers to sell a large portion of their meager surplus to its Agricultural Marketing Corporation at prices far below the market rate. It is suggested that the decline in agricultural production is a result of these agricultural policies since the farmers have no incentive to increase production let alone maintaining the then prevailing production level.³⁴

In addition to the collectivization of agriculture, villagization has been introduced in recent years allegedly to fight famine. Villagization is another population relocation project which involves the forced relocation of people, particularly farmers, from their hill-top communities to centralized villages in the lowlands

allegedly to help them acquire better lands for agriculture and thereby avoid famine.³⁵

It is suggested that the real purpose of this policy is to serve political interests - it is a strategic move to transfer a hostile ethnic minority. Under the pretext of saving them from starvation, pro-guerrilla populations are moved from their traditional homelands in the north to places further south where they may not easily come into contact with the guerrillas and where they could be more easily controlled. Further still, they are allocated the less fertile lands while the fertile ones are given to government supporters.³⁶

As a result of this policy, many people have lost their lives through starvation, torture or direct execution by the soldiers. Those who have survived are denied their rights including freedom of movement. People are forced to move against their will, and once resettled, they are not allowed to move even within Ethiopia except with a 'permit' and this may not easily be obtained.³⁷ Agricultural production has further reduced, thanks to this policy. This makes Ethiopia and Ethiopians some fertile ground for further bouts of famine in the near future, not to talk of the present.³⁸ It is suggested that at present, resettlement and not famine, is the biggest killer in Ethiopia. In the words of one scholar:

While the resettlement program may have had some superficial appeal, it has, in fact, led to more deaths. Over 600,000 famine victims have been resettled so far. Many people, perhaps as many as 100,000 have died in the move because of their weakened condition. Others have died from the treatment they receive in resettlement camps. The Ethiopian army treats the resettlers as prisoners; they are placed on strict regimen of forced labor and are given little food and water. Those who try to escape are shot and killed by the Ethiopian soldiers.³⁹

In spite of all the negative effects of these policies, the Mengstu regime has not effected any changes in policy,⁴⁰ for example, villagization is still being carried on at the same rate and manner as before or even higher notwithstanding international out-cry.⁴¹ Regardless of the government's scandalized protestations to the contrary, food is still being used as a weapon - the Ethiopian government attempts to keep food from the rebel provinces in an effort to Starve them into submission.⁴² As if refusal to help in the distribution of food to the starving masses was not enough, in April, 1988, the government went to the extent of telling the aid workers who were distributing the food to leave Ethiopia.⁴³

Discontented with the government's political, economic, and social policies, and unable to bare the resultant abuse of human rights and suffering any longer, many people have been forced to seek refugee in neighbouring countries. Today many Ethiopians are to be found living in refugee camps in Sudan, Somalia and Kenya. Quite a few others, perhaps the more affluent, have gone into exile in various countries in search of security and better economic and educational

opportunities. However, what must be noted is that even in exile, be it in refugee camps or otherwise, a majority of the people remain loyal to the guerrilla cause. This is especially so for those who are in the neighbouring countries.

The overall effect of all these brutalities (abuses of human rights) has been to rally the people more and more behind the guerrillas which is the direct opposite of what the government intended. Instead of submission, the guerrillas have become even more determined in their goals. For example, despite the presence of up to 5,000 Soviet nationals and 3,000 Cubans in Ethiopia, a majority of which are in the military sphere, the EPLF has continued to gain more and more victories against the Ethiopian forces.⁴⁴ This is therefore a pointer to the Ethiopian regime that a military solution to the Ethiopian question is not feasible.

Since the beginning of 1987, there has been much talk about "redrawing the map of Ethiopia" by creating new regions which would take into account ethnic loyalties and perhaps help end the war.⁴⁵ So far not much has been done allegedly because of the war. Greater autonomy may help resolve some of the conflicts. It is however debatable whether this can negate the secessionist intentions of groups like the Eritreans. In any case, the government does not seem genuine in this talk of giving greater autonomy to the regions.

Following Eritrean crushing victories over the Ethiopian soldiers in April, 1988, especially at Af Abet among other places,⁴⁶ and its subsequent agreement on military coordination with the TPLF, the EPLF is once again keen to open talks with the Addis Ababa government.⁴⁷ In spite of its current military superiority, the EPLF intimates that it is not after a military solution. It believes in a negotiated settlement but based upon the EPLF's 1980 seven point program which allegedly states the EPLF's war aims.⁴⁸

The most important term of this program is the holding of a referendum to determine the status of Eritrea, and the voting is to be based upon three choices namely: full independence; federal association with Ethiopia; or regional autonomy. The other terms are mainly intended to ensure that the referendum is held in a genuine manner and that the results are fully implemented.

Notwithstanding the government's currently weak military position and the fact that the EPLF is willing to negotiate a settlement, the Mengistu regime is not keen upon negotiations especially if they are to be conducted in accordance with the Eritrean's seven point program. Instead Col. Mengistu is offering the EPLF what he allegedly offered in 1987, namely some autonomous status but with a re-division of Eritrea into two or more regions.⁴⁹ Of course this cannot be accepted by the Eritreans.

It would seem that Mengistu's intention is to delay any peace talks until he re-establishes the military balance in the north (Eritrea). However, this is not an easy affair. Moreover, there seems to some pressure on the government to negotiate with the guerrillas. This comes from two major sources: one is Soviet Union which has for long helped finance the war. It is said that the Ethiopian government has been told that the present arms agreement, signed in 1986 and expiring in 1991, will be the last in its present form and scale. Future arms supplies will be more limited.⁵⁰ The other source is the famine which is partly fueled by the war. Ethiopia's only hope would seem to be that these and other international pressure will force the Mengistu regime into a negotiated settlement so as to end this three decades old war.

SUDAN.

The Republic of the Sudan, like most African territories, is a political but not an ethnological unit. It is composed of a variety of small tribal groupings - almost six hundred in total - in a population of about twenty million people. These tribes also speak various languages. Thus it is noted that:

The Sudan, in the variety of its peoples, languages, and religions, is virtually a microcosm of the whole African continent. ...[M]ore than one hundred languages are spoken by at least fifty major ethnic or tribal groupings, with almost six hundred significant subgroupings. This staggering cultural diversity is a very important factor in Sudanese life. It underlies, in many ways, the characteristic Sudanese moods of compromise and conflict, of balance and tension.⁵¹

Nevertheless, many of these groupings overlap which makes the identities of people in the Sudan more complex. An over-simplification of this complexity is to group everybody into the major groupings,⁵² namely:

- (a) the Arabs in the north;
- (b) the Nubias in the Nile Valley in southern Egypt and the northernmost sections of the Sudan;
- (c) the Beja in the eastern highland region and along the Red Sea coast;
- (d) the Nuba in the Nuba mountain area of Kordofan in the west;
- (e) the Fur of the western region now called Darfur;
- (f) the Dinka, who are the largest ethnic group in the south but are related to other major groups in the south, such as the Nuer and Shilluk, by common historical migration and similarity in language;
- (g) the Nuer, the the Bari, and the Shilluk in Southern Sudan, and who, together with the Dinka, are normally grouped into the Nilotes; and
- (h) the Azande and Moru who are the other smaller major groupings in the south but who speak different languages.

The above over-simplification notwithstanding, the various ethnic groupings have come to be loosely united into two major groupings - the 'Arabized' and mainly Islamic north, and the African and largely Christian and animist south. This is largely a result of Sudan's colonial history.

While ruling Sudan as a condominium, the British colonialists decided to administer the south separately from the north. There was therefore very limited contact between the north and south and this exacerbated a north-south schism.⁵³ At the eve of internal self-government in 1954 (the stage which always preceded the granting of independence), the north dominated almost everything in the country including the civil service and the army. This further reinforced the north-south conflict. It has therefore been suggested that:

Sudan is bedeviled by a very serious "north-south" conflict of intranational regionalism between the predominantly Islamic and Arabic-speaking northern Sudanese majority and the medley of ethno-linguistic groups of the southern Sudanese minority, led by a western-educated christian elite. This problem of regionalism between the north and south involves, among other things, differences in socio-cultural institutions, different historical experience, numerical imbalance and educational, technical, economic and political inequalities. It is a by-product of many factors, geographical, social, cultural, colonial administrative policies and the attitudes of national politicians and parties, including the role of the southerners themselves, especially their educated elite.⁵⁴

The author further asserts that although the role of the British administrative policies in exacerbating the problem was remarkable, the approaches of all Sudanese

political circles to the problem failed because of lack of unity among them; that important among these were Southern intellectuals and politicians, who in most cases had no clarity of vision, directive, purpose or specific programs for economic, social and cultural development in the south and, above all, the ability to suggest effective devices for the solution of the problem.⁵⁵

This north-south schism, reinforced by the northern dominance of the civil service and the military, as well as other institutions, precipitated the August, 1955, southern military revolt at Torit, thus commencing the 17-year "Anyanya" civil war. By the time of independence in 1956, Sudan was already undergoing a fully-fledged guerrilla war. Thus Guerrilla warfare is not a new phenomenon in Sudan.

For 17 years, 1955-1972, Southern Sudan waged a bloody guerrilla war - the "Anyanya" civil war - against the 'Arabized' north.⁵⁶ It was only brought to an end in 1972, after draining much of the country's resources and facilitating the fall of two 'national' governments, by the signing of the Addis Ababa agreement.⁵⁷ Under that agreement, the then President, Jaffari Nimeiri, conceded to many of the more moderate southern demands, as well as giving regional autonomy (within national unity) to the south.⁵⁸

The present Sudanese civil war, based upon the north-south conflict just like the first "Anyanya" civil war, was sparked off by various events which took place in 1982 and

1983 although the real causes lay much deeper in history and time.⁵⁹ In 1982, amidst debate over regional devolution (allegedly in pursuit of the 1978 regional devolution policy by which the north was re-divided into five regions), and of Islamization of the Southern Sudan, several southerners opposed to the re-division and the Islamization of the south were arrested and imprisoned. This followed earlier arrests of various politicians opposed to Nimeiri.⁶⁰

In June 1983, the Nimeiri government turned the old southern provinces of Equatoria, Bahr-al-Ghazal and Upper Nile into new regional governments.⁶¹ Before this, these provinces were under one regional government of Southern Sudan established under the 1972 Addis Ababa peace agreement which ended the 17-year Anya nya civil war. This re-division created resentment in the south especially as it was seen as a breach of the Addis Ababa agreement which established and guaranteed southern autonomy.⁶² It was therefore viewed as a way of cutting down southern power or otherwise weakening the South.

Southern resentment heightened in September 1983, when Nimeiri decreed a nationwide immediate imposition of strict Islamic shari'a law in Sudan.⁶³ This was accompanied by great ambiguity with regard to its application either in the south which is largely Christian, or to non-Muslims in the north. The spectre of Islamization had been, mistakenly or not, a perennial worry in the south. Worse still, under Nimeiri's decrees, the south was told that henceforth Arabic

would be the sole official language nationwide, all of which made the chances of a political settlement with the south very slim.⁶⁴

The other aspect arose out of the fear expressed over economic exploitation of two important new resources being developed in the south. One was the Jonglei canal, designed primarily to increase the volume of water available for agriculture in northern Sudan and Egypt and was thus funded by the two governments. There were fears expressed that the loss of water locally in the Sudd would upset the delicate ecology of the region and damage self-subsistence agriculture.⁶⁵

The second new resource was the oil fields discovered by Chevron at Bentui in Upper Nile. Southern hopes of an oil bonanza were soon dashed when it was announced first that a new oil refinery would be built not at Bentui but at Kosti in the north, and later, perhaps due to the government's fear of the resentment this had caused in the south, that the building of a refinery had been abandoned in favour of a pipeline direct to the Red Sea for export of the crude oil.⁶⁶ This was in addition to the earlier attempt by the Khartoum parliament to re-divide the south in such a way that the oil fields formed part of the north. Although the Act of parliament which had been passed to this effect was later repealed, the damage had already been done.⁶⁷

To the southerners, these decisions presented the northern's final attempt at domination of the south - a

northern scheme to pre-empt southern autonomy - as well as exploiting it for the benefit of the north but at the expense of the south. For example most of the huge burden of debt and balance of trade deficit which the oil would offset related to the north, and not the hitherto neglected oil-producing south.

It was in the aftermath of these decisions that violence sprang in the south among the great Nilotic communities of Upper Nile, the Dinka and the Nuer. The month of June 1982 saw the emergence, for the first time, of "Anyanya II" as a significant force in the south. Army and police officers and men defected to become "Anyanya II" guerrillas. This was worsened by Nimeiri's decision to disperse Southern composed Army units which was a direct breach of the Addis Ababa agreement as to composition of the army.⁶⁸ Among the deserting officers was Colonel John Garang⁶⁹ who later formed the Sudanese Peoples' Liberation Movement (SPLM) and its military wing, the Sudanese Peoples' Liberation Army (SPLA). Several political leaders also left the country to organize the SPLM.

SPLA/SPLM objectives would seem to be the eventual winning of control of the entire country and get rid of the idea of Islamization particularly of the south, as well as the alleged discrimination by the north against the south. In the words of SPLA spokesmen:

Secession is not what we are working for. We are appealing to all opponents of Nimeiri to join us in our campaign for a progressive Sudan and to sweep away his ideas of Islamicization ...It is absurd for anybody to imagine that the Shari'a laws could be imposed on the 30 per cent or so of Sudanese who are not Muslims.⁷⁰

We are not fighting for autonomy in the South. We are fighting for a restructuring of Khartoum. We envisage a system where power is [given] to all the regions and limited central government control. Eventually we [the SPLA] plan to take the whole country. We are fighting a cultural, political and economic war.⁷¹

The SPLA has apparently succeeded in integrating within its ranks, through persuasion and coercion, many Southern elements that had deserted the army including many members of the "Anyanya II" movement.⁷² It also managed to obtain the support of Israel as part of its anti-Arab activities, of Libya which was opposed to Nimeiri, and of Ethiopia which appeared motivated by the neo-marxist ideology seemingly adopted by the SPLA leadership, and by Sudan's continuing support for the Eritrean and Tigrean guerrillas.⁷³ Presently, however, Libyan support is questionable following the overthrow of the Nimeiri regime on April 6, 1985.

Guerrilla attacks in 1983 and early 1984 led to the closure of operations on both the Jonglei Canal and the Bentui oilfield. The government's response was to send in military troops in a wave of repression intended to instill fear among the people and therefore stifle all opposition. In pursuit of this goal, the soldiers committed various atrocities particularly upon innocent civilians and this caused many of the civilians to flee Southern Sudan.⁷⁴

However, this could not solve the problem. The war has continued unabated; more and more atrocities have been committed; and more civilians have become refugees either within Sudan itself or in neighbouring countries.

Soon after the fall of Nimeiri, the successor government attempted to reach a compromise with the guerrillas but to no avail. The major obstacle seemed to be that the SPLA leadership wanted the shari'a law repealed while the government was only willing to modify it to the extent that it should not be applied rigidly or at all to non-muslims.⁷⁵ Having failed to attain a negotiated and peaceful settlement, the government resorted to seeking a military solution to the problem.

The strategy was to use southern tribes which are traditionally hostile to the Dinka against the Dinka who form the backbone of the SPLA.⁷⁶ The intention was to destabilise Dinka society so as to empty the countryside and remove the SPLA's 'food-on-the-hoof', and thereby attain the overall objective of regaining control of the Bentui oilfields from the SPLA. Among the militias created are the Baggara Arab nomads who are supposed to cover the north-western flanks of Upper Nile province; the Mundari tribal militia near Jubā; the Rezigat tribesmen; and the Missiriya nomads in Bahr-al-Ghazal (around Babanusa area);⁷⁷

Another of the armed tribal militias is the Anya nya II the bulk of whose membership is from the Nuer tribe who are traditionally antagonistic to the Dinka.⁷⁸ Anya nya II was

one of the guerrilla movement before it fell out with the SPLA and then joined the government. Each of the tribal militias above said has received arms and ammunition, but not wages, from the government and is obligated to fight the war on behalf of the government using the guerrilla tactics and local knowledge which the army does not possess.⁷⁹

Tribal militias, perhaps at government instigation, have carried out atrocities in the south particularly among the Dinka, including the massacre of whole villages.⁸⁰ The arming of these militias with automatic weapons has also revived the centuries-old tribal practices of carrying out raids for slaves, cattle, and other property. This has given the conflict another tinge, that is, of a north-south militia problem. Raiders have reportedly moved back and forth across the traditional border region that separates Sudan, that is, north from south, Moslem from Christian, Arab from African.⁸¹ The situation now seems to be both ways. Thus it is suggested that:

...besides triggering a dramatic increase in tribal slave-raiding, new levels of fire powder on both sides of the war have led to tribal massacres, the theft of millions of heads of cattle and wholesale destruction of villages and cropland in central Sudan. These developments - escalation of fire powder and the resultant increase in slave-raiding - jeopardize the chance of any settlement of the civil war.⁸²

In spite of the attempts at destabilizing Dinka society, the SPLA has grown stronger and perhaps more tribally diversified. It is claimed that many outsiders (meaning non-Dinka) have joined the rank and file of the

SPLA (perhaps as away of acquiring arms so as to protect themselves from the raiding militias⁸³) and that a number of the commanders of its various military sectors are not Dinka.⁸⁴ Thus, instead of serving the purpose for which it was intended, the policy of arming tribal militias would seem to have played equally into SPLA favour.

The movement has also has gained control over more and more areas not only in the southern areas, but also in central Sudan.⁸⁵ In April, 1988, it was reported that although government troops and the SPLA were locked in a battle of attrition with no obvious end in sight, the latter were having the military upper hand, pinning down a demoralized and under-equipped army. Only parts of Western Bahr al Ghazal and Western Equatoria remained free from sustained rebel attacks. The guerrilla army (perhaps 40,000 strong) was roaming at will over an area of one quarter million square miles of bush and forest.⁸⁶

These victories notwithstanding, a total SPLA military victory over the government, or vice versa, does not seem feasible in the near future, and both sides seem to realize this. Yet continued war is causing more deaths and suffering for the people.⁸⁷ More people have been forced into exile or into becoming refugees, and a very serious famine, which was only a possibility in mid-1988, is devastating the Sudan. The war is also throwing the country's already bad economy into ruins. It might be the realization of these factors that is once again forcing the parties into negotiations.

Secret peace talks are said to have been held beginning toward the end of 1987 and into January 1988.⁸⁸ Although the two sides failed to come to an agreement to end the war, it is believed that both sides were nearer a peace pact than ever before.⁸⁹ This inspires some hope that eventually the parties might come to a peaceful settlement like was the case in 1972 when the Addis Ababa Agreement was signed.

The major cause of disagreement, among other factors, arises out of the fact that the government is not willing, as yet, to completely abandon Nimeiri's Islamic revolution. On the other hand Garang does not also seem willing to forego his demand for 'religious freedom', and in particular the repeal of shari'a law, which was in effect one of the major reasons for the commencement of the war.

If no peaceful solution is reached in the near future, the combined effect of the war and the crumbling economy might lead to another military coup which in any case will not help ease the situation. It will merely aggravate the situation perhaps to the point of the people becoming convinced that secession is the only answer to the Sudanese problem.⁹⁰

UGANDA.

The more than forty ethnic groups which comprise today's Uganda were a colony of Great Britain which established imperial rule over them in 1894. These

heterogeneous groups, which are sometimes divided into larger groups of Bantu Speakers, Nilotic Speakers, and Central Sudanic Speakers, had and still have little in common to the extent that even today many may not understand each others' languages.⁹¹

Upon colonization of Uganda, the British found that the area had a number of well-organized societies, to wit, the kingdoms of Buganda, Bunyoro, Toro and Ankole, of which the kingdom of Buganda seemed the most well organized and co-operative with the new comers. They therefore decided to apply the Dual Mandate or policy of indirect rule as developed by Lord Lugard, largely for expediency purposes. This implied ruling through the existing 'governments' and chiefs, and using the existing institutions.⁹²

Consequently, ethnic groups continued to exist separately from each other and this helped perpetuate tribal and clan affiliations. Not even religious denominations - Protestants, Catholics and Muslims - which had been introduced some time before colonialism, could cut across this 'separate existence' of ethnic groups within 'Uganda'. In fact religion just helped to create further cleavages.⁹³

Another factor which aggravated the cleavage was the export of the Buganda Model of administration which the British considered to be superior in the area, to the rest of Uganda which did not have centralized administrations. This was closely accompanied by the recruitment of Baganda civil servants whom the rest of Uganda considered to be the

colonial favourites, and who were supposed to establish the Buganda Model of administration in those areas.

Further still, the administrative units were as much as possible based upon tribal residence and this contributed to a sense of district nationalism and separatism. Thus it is noted that:

Indirect rule was made the basis of British policy in Uganda.... Administrative units called districts were drawn to ensure that in most cases each tribe composed a district itself. The few educated Africans looked at the service of their tribal local government as the worth of their highest ambitions, and they were encouraged by the British officers to think so. Consequently they worked their way up to the pinnacle of power in their respective districts with satisfaction and contentment. There was almost no need for them to look beyond the tribe, to view any issue as a Ugandan.⁹⁴

These tendencies, particularly the tribal and ethnic loyalties, were carried forward into independent Uganda. Thus Milton Obote (Prime Minister at independence and later President) summed up the situation he inherited at the time of independence as one in which the districts regarded the central government, that is the ministers and leading civil servants, as representatives of their respective tribes whose function in government was to safeguard and plead tribal interests in matters of appointments, distribution of development projects and social services.⁹⁵

To all these should be added the British policy of development in Uganda. Various educational and other institutions, as well as cash crops such as coffee, cotton and tea were introduced in southern Uganda and in particular

in Buganda at a very early age but not to the rest of the country. Consequently by 1916 the south was financially self-supporting while the northern districts such as Lango, Acholi and West Nile remained largely undeveloped until the 1950's.⁹⁶ It would seem that there was a deliberate policy of reserving the warlike tribes of the north as the main source for recruits to the colonial army, prisons and police as well as a source of labour for the factories, and sugar and tea plantations in the south.

It is worth noting that shortly before independence, Buganda boasted nearly half the country's graduates, businessmen and civil servants⁹⁷ while more than sixty per cent of the army and police forces were from the northern districts.⁹⁸ This therefore culminated into a colonially encouraged North/South divide between the "warrior" and "educated" classes,⁹⁹ which division was to be encouraged and used to the advantage of many of the rulers of independent Uganda. This division is also to be reflected in the guerrilla war taking place, and perhaps in the human rights violations in Uganda.

Uganda has had various changes of government since it attained independence in 1962. In this study I will only mention these governments chronologically. The country became independent on October 9, 1962 under the leadership of Apollo Milton Obote as Prime Minister and Sir Edward Mutesa II as constitutional president. On February 24, 1966, the Prime Minister instituted a palace coup, abrogated the

1962 federal constitution, and established himself as the executive president of the country.¹⁰⁰ Obote's government was brought to an end on January 25, 1971 by a military coup led by Major General Idi Amin Dada and supported by the Israelis and the British.

Following the rampant murders, detentions and other human rights abuses by the Idi Amin government, Ugandan exiles formed themselves into the Uganda National Liberation Front (UNLF) and, with the help of the Tanzanian government, overthrew the Amin regime on April 11, 1979. The first UNLF government was led by Professor Yusuf Kironde Lule. However, he was voted out of power 68 days later on June 19, 1979 and was replaced by Godfrey Lukongwa Binaisa. The Binaisa government was overthrown on May 10, 1980 by the Military Commission (one of the arms of the UNLF) with the backing of the army.

The Military Commission, under the chairmanship of Paulo Muwanga, brought the country to the December 10, 1980 general elections through which Apollo Milton Obote's Uganda People's Congress (UPC) came to power under suspicious circumstances. The UPC government was overthrown in a military coup on July 27, 1985. The Military Council which formed the government after the UPC was also overthrown on January 25/26, 1986 by the National Resistance Movement (NRM)¹⁰¹ and its military wing, the National Resistance Army (NRA) under the leadership of Yoweri Kagutta Museveni, the current president of the country.

Although various human rights violations took place in the first two decades of Uganda's independence,¹⁰² including political and other killings, imprisonment and the denial of political participation; and the blatant violations by Idi Amin¹⁰³ - murders, disappearances,¹⁰⁴ torture, and detention, to mention but a few - a guerrilla war did not break out in Uganda until the highjacking of the general elections in 1980.

This fact should not in any way weaken our theory, namely that violation of human rights may lead to guerrilla wars and vice versa. The people's lack of knowledge of a guerrilla war at this time should be taken into account as well as the fact that their opposition to these violations may have been reflected in the various changes of governments which took place and the war which overthrew the regime of Idi Amin Dada.¹⁰⁵

The 1980 election fiasco, which is believed by many to have been rigged or otherwise manipulated¹⁰⁶ and was therefore in effect a denial of the people's right to political participation among other things, sparked off the wave of guerrilla movements in Uganda which have persisted to date but with substantial changes. Among the reasons given for the commencement of the guerrilla movements in 1981¹⁰⁷ were the highjacking of elections by the Uganda Peoples' Congress (UPC) party headed by Milton Obote, and the violation of other human rights especially by the army including murder, rape and theft.

In response to the commencement of guerrilla movements, the then government resorted to repressive means in the hope that the people would be discouraged from supporting the movements. Any persons suspected of being in sympathy with the guerrilla movements were arrested, kidnapped, imprisoned, tortured, or killed.¹⁰⁸ Civilian populations who lived among the areas where the guerrillas operated were subjected to military operations termed "Panda gari" (Swahili meaning that get in the lorry). The purpose of these operations was screening 'guerrillas' from innocent citizens, but the end result normally was torture, theft of money and other property, rape, blackmail, and many times - death of some people. In some areas massive killing operations were carried out such as was the case in West Nile, and in Luwero District.¹⁰⁹

Many people were forced to abandon their property and live in mop-up camps where their rights were again violated by the soldiers in different ways. Many others got displaced and this came to be termed "internal exile."¹¹⁰ Thus it is reported that in Luwero District, as many as 120,000 people were held in detention camps as long as two years in the early 1980's as Obote's forces attempted to clear out Baganda-based guerrilla opposition.¹¹¹ Yet this is a conservative estimate.

Freedom of the press and freedom of expression did not exist in fact though the government normally alleged that it was one of the best in Africa. Many newspapers were banned

and many newspaper editors suffered arrests, torture and imprisonment without trial or charge.¹¹² Is it any wonder then that the violation of human rights in Uganda under Obote (Mark II) have been said to have been greater than under Idi Amin and a higher estimate of people killed made?¹¹³

As a result of subsequent violations of human rights especially by the army, the guerrilla movements acquired even more support from the people than ever before. Thus it has been observed that:

Throughout its tenure in office, the Obote (Mark II) government proved incapable of containing the N.R.A. (National Resistance Army), which seemed to have gathered some popular support not only in southern and western Uganda but also in certain northern areas as well. Under the pretext of apprehending N.R.A. guerrillas, the soldiers of Uganda army..... engaged in an orgy of killing, rape and looting especially but not only in the thickly populated villages of Buganda Districts.¹¹⁴

Likewise, it is stated that the abuse of parliamentary norms of behaviour helped the guerrilla forces to develop a new kind of political approach, namely, that of identifying with the people in their day to day struggles of living under precarious security and economic conditions.¹¹⁵ Another scholar suggests that because parliamentary politics was a farce and many opposition Members of Parliament were being detained, tortured or murdered, opposition political parties turned to violent guerrilla activities either to further their aims as a result of the allegedly rigged

losses, or in retaliation for the brutalities of the second Obote regime.¹¹⁶

However, it must be noted that the ethnicity factor and the Bantu (south)/Nilotic-Sudanese (North) division may have played a part not only in the commencement of the movements but also in the support they acquired subsequently. The army which was responsible for most of these acts, though at government instigation, was largely from the north and it identified itself with Obote, while the guerrillas and the people among whom they were operating were basically southern Bantu tribes, and they identified themselves as such. Nevertheless, this does not change the fact that the root cause of all this was the abuse of human rights.

When the National Resistance Army, under the leadership of Yoweri Kagutta Museveni, marched victoriously into Kampala on January 25, 1986,¹¹⁷ war-weary Ugandans hoped for a new era of peace and stability. Museveni commenced a power-sharing exercise, building a coalition by giving ministerial seats to representatives of all political parties and to the four fighting forces which had battled Obote.¹¹⁸

However, the attempt to balance the cabinet ethnically, that is, between the Nilotic northerners and easterners, and the southern Bantu, was not very successful; the southerners predominated, and they still form the majority in the cabinet.¹¹⁹ Likewise, the recruitment of northerners and

easterners into the Bantu/southerner dominated army (N.R.A.) has not proceeded at a sufficiently high rate.

Seven months after the coming to power of the N.R.M., the hopes of Ugandans for peace and stability were shattered when new guerrilla movements were formed.¹²⁰ Among those groups which are based in Northern Uganda are the following: Uganda People's Democratic Army (UPDA) based around Gulu town; the Holy Spirit Movement of Alice Lakwena which operated in a large part of northern and eastern Uganda, but is now defunct following several confrontations with the National Resistance Army (government forces) and the arrest of its leader in Kenya in November, 1987;¹²¹ and two new and far less disciplined groups - "Rubanga Won" (God the Father) and Lakwena Part Two - which arose out of the ashes of Lakwena's Holy Spirit Movement and started terrorizing civilians in Acholi.¹²²

Among the groups which are based in Eastern Uganda are Uganda People's Army (UPA) of Peter Otai which comprises mainly Obote loyalists; Uganda People's Front (UPF) of Colonel Omaria which is based north of Pallisa town; FOBA (Force Obote Back Again) based around Iganga town; and far less organized groups operating around Kumi and are headed by Ereju and others.¹²³

Rebel leaders in London and Nairobi allege that they are fighting because Museveni is a tribalist and that the government is dominated by westerners. They also say that the resistance committees¹²⁴ are communist; that the NRA is

backed by Libyan, PLO, Cuban, and Rwandan mercenaries, and that it is abusing human rights.¹²⁵ Many of these reasons lack credibility and therefore may not sufficiently justify the commencement of war. In fact quite a number may be mere pretexts.

The key reason may be loss of power and access to state wealth. Under the old regimes, soldiers could loot and steal with impunity. A minister could be openly corrupt. A district commissioner could run his area like a personal fiefdom - putting taxes directly into his pocket, using government cars for his private businesses, evicting his political opponents from their homes, seizing properties he desired.¹²⁶ It is therefore not so much for the reasons given by the rebel leaders that the fighting is taking place as for loss of this power and "privileges". This is buttressed by the ethnicity factor - the northerners, particularly the Acholi and Langi, see themselves as removed from power by the Bantu.¹²⁷

However, actual, and perceived,¹²⁸ abuse of human rights may have contributed to the perpetration of the guerrilla movements. Immediately upon coming to power, the NRM banned politics for the rest of the 80's¹²⁹ allegedly because the political parties had conducted themselves in an utterly discreditable fashion throughout the last quarter of the century, and that Uganda's immediate need was to recover from the economic and political chaos into which it had been plunged in the last 20 years of more or less bloodshed and

strife rather than politics.¹³⁰ It may be that this move by the NRM was interpreted by several people as a means of perpetually edging other groups and parties out of power.

The above suspicions may have been buttressed by the government's reaction to opposition and subversion. In mid-1986, rumours of a planned coup resulted in the arrest and imprisonment of "the Kirimuttu group" in August, 1986.¹³¹ This was allegedly a group of monarchists in Buganda who were alleged to want the return of kingdoms which had been abolished by Obote in 1966. However, many of these people have now been released without any charges. In October, 1986, another group involving, among others, three cabinet ministers (Evaristo Nyanzi, Andrew Kayiira and David Lwanga) were arrested and detained allegedly for plotting to overthrow the government.¹³² Just like "the Kirimuttu group" many of these were later released, though Andrew Kayiira was soon after murdered by 'Unknown gunmen' in some dubious circumstances.¹³³

Actual, and suspected rebels have many times been treated by the government in a tough manner. In February and March, 1986, following the allegations of the formation of FOBA, many people in Busoga were arrested, and imprisoned only later to be released without charges.¹³⁴ Many of them were tortured by tying them up in the "Kandoya" or "three piece" style - this is a practice involving a prisoner's upper arms being tied tightly together behind his or her

back and this may cause restricted breathing and at times death.¹³⁵

In northern and north-eastern Uganda many people alleged to be guerrillas have been arrested by the NRA. Many others have been tortured in the "Kandoya" style, while quite a number have been killed.¹³⁶ It is claimed that by November, 1987, as many as 5,000 people may have been killed since the rebellion began.¹³⁷ It is also claimed that that the NRA has burnt houses and food stores and 'hunted' all young males in the north which has caused resentment among the Acholi (and other northerners and easterners) of Museveni's southern-dominated administration.¹³⁸

We must acknowledge the fact that the human rights situation in Uganda has greatly improved in comparison to past regimes.¹³⁹ This notwithstanding, human rights are still being violated at a large scale. In its July 1987 submission to the government, Amnesty International cites over two dozen cases of Acholi civilians dying at NRA hands, and it claims that several thousand suspected rebels are being held without charges in barracks and prisons.¹⁴⁰ Perhaps the only consolation, whatever its worth, is that the government tries not to condone intimidation of civilians by the army. Quite a few NRA soldiers, probably as a lesson to others, have been executed after being convicted of rape or for the killing of civilians.

While Alice Lakwena's Holy Spirit Movement has been demobilized, two knew but perhaps less organized groups have

developed in its place. The other groups above said are also still going strong. Their presence is manifested by such actions as the seizing of government ministers,¹⁴¹ the killing of a Libyan diplomat and five others in Kampala,¹⁴² and the various military engagements between the NRA soldiers and the guerrillas,¹⁴³ as well as the ambushing of civilian and other vehicles.¹⁴⁴ All this points to the fact that the war is not ended.

President Museveni does not believe in negotiations on an equal basis with the fighting forces. Yet a military solution may be far from feasible. However, his appeal to the rebels to lay down their arms during the N.R.M.'s Second Anniversary on January 26, 1988,¹⁴⁵ as well as the extension of the amnesty to those willing to lay down their arms for another period may have generated some good results.

There seems to be a possibility of the Uganda People's Democratic Army (UPDA), perhaps the largest of the guerrilla movements in Uganda, fully join the NRM government and merge with the government forces - the National Resistance Army. A peace agreement to that effect was signed between the government and this group.¹⁴⁶

Under the terms of the NRM/UPDA Peace Agreement which was signed on June 3, 1988,¹⁴⁷ the cabinet¹⁴⁸ is to be expanded to include UPDA/UPDM representatives and all UPDA officers and men who wish to continue with military service and are qualified shall be absorbed into the national resistance army (NRA) in a manner proportional to districts

of origin.¹⁴⁹ It is claimed that under this truce many rebels are making peace with the government and emerging from their hideouts to help rebuild the nation.¹⁵⁰ Perhaps a few of their officers have also been incorporated into the government.

In spite of this, a tough hurdle remains, namely, full implementation of this agreement which is itself not an easy matter. In 1985, a similar agreement was signed in Nairobi between the NRM/NRA (by then it was still a guerrilla movement) and the then ruling Military Council which overthrew the Obote government. This was the so-called Nairobi Peace Accord, signed December 17, 1985 under the auspices of President Daniel Arap Moi of Kenya.

As it turned out, the Nairobi Peace Accord was merely intended by both parties as a 'diplomatic coup' to buy either party more time in the battle field. It was therefore never honoured, and was breached by both sides even as it was being signed. The NRA then proceeded to take power which it accomplished barely one and half months after the signing of the Peace Agreement.¹⁵¹

It is the writer's hope that this time the parties to the June 1988 Peace Agreement are genuine in their intentions. It is also my sincere hope that the rest of the guerrilla movements will follow the footsteps of the UPDA and come to terms with the NRM government. This may help lead the country out of the quagmire, at least in the short

run, since even the government soldiers would seem to be all out for a peaceful settlement.¹⁵²

Of course a major duty lies upon the government to see to it that it encourages the establishment of a peaceful settlement with all the fighting forces. This can especially be achieved through establishing and maintaining a clean human rights record. One step has already been taken in this direction, namely, the establishment of a Commission of inquiry into violations of human rights.¹⁵³

The Commission's main purpose is to inquire into all aspects of violations of human rights, breaches of the rule of law and excessive abuse of power, committed against persons in Uganda by the regimes in power, their servants or agents during the period from 9 October, 1962 to 25 January, 1986, and to recommend possible ways of preventing the recurrence of those violations.¹⁵⁴

We only hope that the Commission will live up to the purposes for which it was established; that it will improve itself so as to carry out its work more efficiently; and that there shall be no political interference in its work. Presently, the poorly trained and corrupt Uganda Police is a major hindrance to its work.

FOOTNOTES

- 1 See Peter Woodward, Political factors contributing to the refugees in the horn of Africa, International Relations, Vol.IX, No.2, November 1987, 111-112.
- 2 For example, see Africa Confidential, Vol.27, No.1, 2 January, 1986, Ethiopia: Regional Wrangles; and Africa Confidential, Vol.27, No.16, 30 July, 1986, Ethiopia: Opposition Disintegration.
- 3 See Robert D. Kaplan, The Loneliest War, The Atlantic Monthly, July 1988, 58-65, 60; and D. Donhan and W. James (eds), The Southern Marches of Imperial Ethiopia, Cambridge, Cambridge University Press, 1986.
- 4 See Robert D. Kaplan, The Loneliest War, supra, 60.
- 5 See Sherman R., Eritrea. The Unfinished Revolution, New York, Praeger, 1980, esp.73; and Erlikh Hagai, The Struggle Over Eritrea, 1962-1978: War and Revolution in the Horn of Africa, Stanford, California, Hoover Institution Press, 1983, 1-11.
- 6 See Robert D. Kaplan, The Loneliest War, supra, 60.
- 7 See Sherman R., Eritrea. The Unfinished Revolution, supra, 32-36; Erlikh Hagai, The Struggle Over Eritrea, supra, 1-33; and Mary Dimes, Ethiopian repression in Eritrea, in: The Eritrean Case. Proceedings of the permanent Peoples' Tribunal of the International Leagues for the Rights and Liberation of Peoples Session on Eritrea, Milan, Italy, May 24-26, 1980, 308-323.
- 8 See Robert D. Kaplan, The Loneliest War, supra, 63.
- 9 Bereket Habte Selassie, Conflict and Intervention in the Horn of Africa, New York:Monthly Review Press, 1980, 77.
- 10 Ibid, 78-81.
- 11 Id, 81.
- 12 Id, 83.
- 13 Id.
- 14 Bereket Habte Selassie, supra, at 88 states that this revolt destroyed Ethiopian garrisons in Tigray, defeated Haile Selassie's British-trained armed forces, and for a time liberated the town of Makale. The revolt

was only quelled after obtaining more British help, including airplanes to bomb Makale.

- 15 See Bereket Habte Selassie, *supra*, 88-89.
- 16 *Ibid*, 89.
- 17 *Id.*
- 18 *Id*, 97.
- 19 See Tom J. Farer, War Clouds on the Horn of Africa: The Widening Storm, 2nd, rev.ed., New York: Carnegie Endowment for International Peace, 1979, 69-89.
- 20 See Bereket Habte Selassie, *supra*, 100.
- 21 *Ibid*, 105.
- 22 See Tom J. Farer, *supra*, 123-124.
- 23 *Ibid*, 106-107.
- 24 For a more intensive coverage of the Ethiopia-Somali Ogaden war 1977-79, see Tom J. Farer, *supra*, 120-123; and Bereket Habte Selassie, *supra*, 116-125.
- 25 See Africa Confidential, Vol.27, No.3, 29 January, 1986, The Horn: Barre and Mengstu.
- 26 See, among others, Africa Confidential, Vol.27, No.5, 26 February, 1986, Somalia: Towards an Ogaden Pact?
- 27 See Africa Confidential, Vol.27, No.1, 2 January, 1986; and Vol.27, No.3, 29 January, 1986, The Horn: Barre and Mengstu.
- 28 See Robert D. Kaplan, The Loneliest War, *supra*, 61.
- 29 See Michael J. Bazyler, Re-examining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia, Stanford J. Int'l Law, Vol. XXIII, Issue 2, Summer 1987, 547-619, 556.
- 30 See Robert D. Kaplan, The Loneliest War, *supra*, 61.
- 31 See Michael J. Bazyler, *supra*, 557. Dr Jason Clay, Research Director of Cultural Survival, a Massachusetts-based human rights organization, is said to have testified that "With regard to the question: Is the government Ethiopia of engaged in a policy of deliberate starvation of its own people, particularly in dissident regions of the country?, the answer is

complicated but unequivocally yes." (Quoted by Michael J. Bazyler, 555).

32 Ibid, 555.

33 For an elaboration on these points see Michael J. Bazyler, *supra*, 560-569.

34 Ibid, 558.

35 Id, 567. Also see Africa Confidential, Vol.27, No.12, 4 June, 1986, Pointers, Ethiopia: Villagization.

36 See Andrew Lycett, ETHIOPIA, in: The Africa Review, 11th edition, 1987 (World of Information), 93-96, 94.

37 See The Economist, World Human Rights Guide, London, 1986, (Originated and compiled by Charles Humana), 88-91. In that work Ethiopia is rated as one of those countries having the lowest human rights records in the world. The people are subordinated to the aims and survival of the Provisional Military government which rules by arbitrary and summary decrees and controls.

38 See, among others, The Times, Saturday November 21, 1987, 5 million face Ethiopia famine; Patrick Moser, Ethiopia: On Famine's Brink, Africa Report (America's leading magazine on Africa) January-February 1988, 40-43; The Times, Friday, April 15, 1988, Famine feared as Ethiopia prepares to crush rebels; and The Globe and Mail, Thursday, June 9, 1988, Canadian Hercules spell relief for the hungry.

39 See Michael J. Bazyler, *supra*, 565.

40 See Manchester Guardian Weekly, February 28, 1988, 16, Tradition versus Revolution in Ethiopia.

41 See The Times, Friday, February 19, 1988, Denial by Ethiopia. Ethiopia's Prime Minister, Mr Fikile Selassie Wogderess announced that the resettlement program is being expanded, but denied all allegations reported on BBC that people were being forced into the scheme or that some had been killed for refusing to move.

42 See Michael Yellin, Eritrea: The Food Weapon, Africa Report (America's leading magazine on Africa) January-February 1988, 44; and The Globe and Mail, Friday, April 8, 1988, Ethiopia's Wars.

43 See The Times, Thursday, April 7, 1988, Fighting in Ethiopia: Addis Ababa tells aid workers to go. It must however be noted that the guerrillas themselves have also sometimes made the work of aid workers difficult -

- see The Times, Thursday, March 31, 1988, Famine in Ethiopia: Stepped-up guerrilla raids threaten food deliveries. In fact, a number of times, the guerrillas have gone to the extent of hitting food trucks allegedly because they were carrying military supplies in addition to food - see The New York Times, Friday, January 22, 1988, U.S. assails Ethiopian rebel raid; and Manchester Guardian Weekly, January 24, 1988, 8, Ethiopian rebels hit food trucks..
- 44 See Africa Confidential, Vol.28, No.7, 1 April, 1987, Ethiopia: Eritrea takes stock; and Africa Confidential, Vol.29, No.9, 29 April, 1988, Ethiopia: A battle lost, a war in stalement.
- 45 See Africa Confidential, Vol.28, No.7, 1 April, 1987, Ethiopia: Nationalities and the Constitution; and Africa Confidential, Vol.28, No.23, 18 November, 1987, Ethiopia: Redrawing the map.
- 46 See Africa Confidential, Vol 29, No.9.
- 47 See Africa Confidential, Vol 29, No.11, 27 May, 1988, Ethiopia: EPLF Peace Conditions.
- 48 Ibid.
- 49 See Africa Confidential, Vol.29, No.13, 1 July, 1988, Ethiopia: Mengistu's Soldiers On.
- 50 Ibid.
- 51 John Voll and Sarah Voll, The Sudan: Unity and Diversity in a Multicultural State, supra, 6.
- 52 Ibid, 6-13.
- 53 See, among others, Rafia Hassan Ahmed, Regionalism, Ethnicity and socio-cultural pluralism. The case of southern Sudan, in: Mohamed Omer Beshir, ed, Southern Sudan: Regionalism and Religion, supra, 6-59, esp. 26; John Voll and Sarah Voll, The Sudan: Unity and Diversity in a Multicultural State, Westview Press, Boulder, Colorado, 1985, esp. 49-65; and Minority Rights Group, Uganda and Sudan, Report No. 66, London, 1984, 24.
- 54 Rafia Hassan Ahmed, Regionalism, Ethnicity and socio-cultural pluralism. The case of southern Sudan, in: Mohamed Omer Beshir, ed, Southern Sudan: Regionalism and Religion, supra, 26. It is argued that the southerner feels himself to be an African, while the ruling northerner is proud of his Arab consciousness (R. Gray, "Introduction" in J. Oduho and W. Deng, The

Problem of the Southern Sudan, London, Oxford University Press, 1963, 2).

- 55 Ibid, 26-27. This assertion overlooks various points, among them, the fact that the southerners have never been given real chance to devise peaceful means to the solution of the problem. Each side has always been suspicious of the other. Moreover, the northerners who have always been in a better position to do so, have only thought of subjugating the culture, religion and interests of the south to those of the north.
- 56 This civil war shall not be the concern of this study. It shall be referred to only in so far as it relates to the present war in the Sudan. For fuller accounts of this war see, among others, Hizkias Assefa, Mediation of Civil Wars: Approaches and Strategies - The Sudan Conflict, Westview Press, Boulder, Colorado, 1987, 53-85; Elias Nyamlell Wakoson, The Origin and Development of the Anya-Nya Movement 1955-1972 in: Mohamed Omer Beshir, ed, Southern Sudan: Regionalism and Religion, Graduate College Publications, University of Khartoum, Sudan, 1984, 127-204; and Charles Gurdon, Sudan at the Crossroads, Menas Press, Whitstable, Kent, 1984, 19-21..
- 57 This is regarded as Nimeiri's greatest achievement. A coverage of the negotiations leading up to the agreement as well as its salient features is made by Hizkias Assefa, *ibid*, 131-143; and Charles Gurdon, *ibid*, 30-31
- 58 *Ibid*.
- 59 See The Guardian Weekly, November 8, 1981, 7 "Enclave Arrangements" Simmering Secession upstages Gadafy's threats; and The Guardian Weekly, February 14, 1982, 12 Sudan - regional instability and internal tension. Also see generally Mansour Khalid, Nimeiri and the Revolution of Dis-May, KPI, London, 1985, 193-253.
- 60 See Minority Rights Group, *supra*, 24-25.
- 61 See Mohammad Hamid, Devolution and National integration in Sudan, in: Al-Rahim, Badal, Hardallo and Woodward, eds., Sudan Since Independence, Gower, Aldershot, England, 1986, 121, 133-134; Charles Gurdon, Sudan at the Crossroads, *supra*, 60; and Africa Confidential, 27 June 1983;
- 62 See The New York Times, February 22, 1982, Regional dispute divides the Sudan. Nimeiri's move to subdivide the South stirs opposition and fear of strife; and The

New York Times, March 10, 1983, The struggle to govern the ungovernable in Sudan.

- 63 See Mohammad Hamid, Devolution and National integration in Sudan, in: Al-Rahim, Badal, Hardallo and Woodward, eds., Sudan Since Independence, supra, 121, 133-134; Charles Gurdon, Sudan at the Crossroads, supra, 65; and Africa Confidential, 27 June 1983; Also see P. Woodward, Sudan: Threats to Stability, Conflict Studies No. 173, Institute for the Study of Conflict, London, 1985, 11-12; and The Globe and Mail, Monday December 19, 1983, Surge of fundamentalism remolding shape of Islam..
- 64 See Minority Rights Group, supra, 25.
- 65 See Rapheal Badal, Oil and Regional Sentiment in the South in: Al-Rahim, Badal, Hardallo and Woodward, eds., Sudan Since Independence, supra, 143, 147-150; and P. Woodward, Sudan: Threats to Stability, supra, 12. [The Sudd is an area in south-central Sudan where the inhabitants depend solely on the water of the Nile for their survival].
- 66 Ibid. See also Charles Gurdon, Sudan at the Crossroads, supra, 76-86.
- 67 See The Guardian Weekly, November 13, 1983, Oil holds promise for Sudan.
- 68 See Mansour Khalid, Nimeiri and the Revolution of Dis-May, supra, 284.
- 69 Col. Garang, a Dinka by tribe, served in the Sudanese armed forces and lectured on a part-time basis in the University of Khartoum's Faculty of Agriculture. He is a holder of a PhD in rural economy from Iowa State University.
- 70 Third World Reports: Colin Legum 23 March 1984, and quoted by Mansour Khalid, Nimeiri and the Revolution of Dis-May, supra, 286.
- 71 Per John Garang (military leader of the SPLA movement) in an an interview with Africa Report, and reported by Robert M. Press, Prospects for peace? Africa Report, January-February 1988, 45, 46-47.
- 72 Mansour Khalid, Nimeiri and the Revolution of Dis-May, supra, 284. Various clashes have taken place between the SPLA and "Anyanya II". These were partly ideological and partly ethnic. The later movement was more secessionist while the former was interested in a radical alteration of the whole Sudan. The ethnic

tensions were mainly as a result of the fear of Dinka dominance in the south since it is the largest single tribe in the south. These clashes culminated in the later movement joining the government in late 1984 following some negotiations. Today "Anyanya II" is said to fight the SPLA on the side of the government although its membership is very low and its strength is highly questionable.

- 73 See Woodward, Sudan: Threats to Stability, supra, 12; and Mansour Khalid, Nimeiri and the Revolution of Dis-May, supra, 286-287; and Woodward, Political factors contributing to the refugees in the horn of Africa, supra, 115-116 (under 'Domestic Instability and Neighbour Intervention').
- 74 See The Vancouver Sun, Saturday October 8, 1983, Fleeing Southern Sudan. Refugees claim atrocities.
- 75 See IHT, Tuesday, August 27, 1985, In Sudan new leaders battle an old civil war; The New York Times, Sunday, May 4, 1986, Sudan's new leaders are in a corner; Manchester Guardian Weekly, June 21, 1987, The honeymoon is over for the government in Sudan; and Week-end Australian, August 23-24, 1986, Civil war polarizes the North and South in Sudan.
- 76 See Manchester Guardian Weekly, August 31, 1986, Sudan's War of secession.
- 77 Ibid. Also see Africa Confidential, Vol.27, No.10, 7 May, 1986, Sudan: Towards Government; and Africa Confidential Vol.28, No.3, 4 February, 1987, Sudan: North and South.
- 78 See Africa Confidential, Vol.27, No.23, 12 November, 1987, Sudan: Inside Malak.
- 79 See Africa Confidential, Vol.28, No.3, 4 February, 1987, Sudan: North and South.
- 80 See The Globe and Mail, Friday, April 17, 1987, 2,000 Dinka tribesmen reportedly killed in Sudan; and Africa Confidential, Vol.28, No.9, 29 April, 1987, Sudan: Post-mortem.
- 81 See Manchester Guardian Weekly, September 6, 1987, New guns revive slavery in Sudan.
- 82 Ibid.
- 83 See Africa Confidential, Vol.28, No.19, 23 September, 1987, Sudan: Tribal Divides.

- 84 See Robert Press, Sudan: Prospects for peace? Africa Report, January-February, 1988, 46. However, it should be pointed out that the attempts to broaden the tribal base of the Dinka-dominated SPLA are to some extent thwarted by the increase in tribalism fueled by the war and in particular, the government policy of arming tribal militias (See Africa Confidential, Vol.28, No.19, 23 September, 1987, Sudan: Tribal Divides; and Africa Confidential, Vol.29, No.8, 15 April, 1988, Sudan: The SPLA in Focus).
- 85 See Africa Confidential, Vol.28, No.23, 18 November, 1987, Pointers, Sudan: Troubled Waters.
- 86 See Africa Confidential, Vol.29, No.8, 15 April, 1988, Sudan: The SPLA in Focus
- 87 See The New York Times, Sunday October 23, 1988, Debate on Islamic Law Further Strains Sudan; and Sudan's Secret Slaughter, (Anonymous), Cultural Survival Quarterly, Vol.10 No.2, 1988, 41-47.
- 88 See Africa Confidential, Vol.29, No.8, 15 April, 1988, Sudan: The SPLA in Focus. See also The Globe and Mail, Wednesday, January 13, 1988, Sudan says rebels ready for truce.
- 89 See Robert Press, Africa Report, supra, 45
- 90 Africa Confidential believes that after several years of fighting, the gap between the north and south has continued to grow creating a major change in Northern opinion. A belief in national unity that once seemed to be unshakable has been replaced by a widely-held willingness to let the south go. Ironically the Southerners who at one time wanted independence, are demanding a greater national role more vociferously than ever before. (Vol.28, No.18, 2 September, 1987, Sudan: The Drift Toward Dictatorship). In my opinion the latter statement (in relation to the south) is more true than the former (in relation to the north). Northern opinion has not yet reached this stage but may reach it with continued fighting.
- 91 See Minority Rights Group, Uganda and Sudan, Report No. 66, London, 1984, 4.
- 92 See Lugard, The Dual Mandate in British Tropical Africa; and Lugard, The Rise of Our East African Empire, Vol.1, 649 and quoted in: Ibingira Grace K, The Forging of an African Nation, Viking Press, New York, 1973, 19.

- 93 See Welbourn, Religion and Politics in Uganda, 1952-62, Nairobi, 1965; and Jorgensen, Uganda: A Modern History, London, 1981.
- 94 Ibingira, *supra*, 65.
- 95 Milton Obote, The Footsteps of Uganda's Revolution, East African Journal, 5, 10, October, 1968.
- 96 See The Minority Rights Group, Uganda and Sudan, *supra*, 4-5.
- 97 *Ibid*, 5.
- 98 See Holger Børnt Hansen, Ethnicity and Military Rule in Uganda, Research report No.43, Scandinavian Institute of African Studies, Uppsala, 1977, esp. Chapter 9. Avirgan Tony and Honey Martha, War in Uganda. The Legacy of Idi Amin, Connecticut, 1982, 6, observe that: "Obote's ten-thousand-man army, a child of the colonial army, was composed largely of Acholi, Langi, and Itesot peoples, the tribes considered most 'warlike' by the British. The colonial pattern of recruiting mainly from these three tribes for the army, police, and prisons was strengthened by Obote, himself a Langi.
- 99 To use the words of the Minority Rights Group, Uganda and Sudan, *supra*, 5.
- 100 Mutesa was forced to go into exile in Britain where he died in 1969. Members of parliament and ministers who did not agree with the president were imprisoned. Kingdoms were abolished. All these actions were later purportedly legalized in the 1966 constitution and then even later on in the Republican constitution, 1967. All detentions were later to be retrospectively justified under the Public Order and Security Act, 1967.
- 101 This was a guerrilla movement formed in 1981 allegedly in opposition to the rigging of the 1980 general elections.
- 102 In the first Obote regime (1962-1971), Ugandans saw the abrogation of the Independence Constitution, the abolition of kingdoms, detention of the opposition and denial of political participation, and the suppression of various tribes. For example, while recounting his greatest achievements in 1969, Obote is said to have boasted of having cut the Baganda down to size. For a detailed analysis of these events see, among others, Ibingira Grace, The Forging of an African Nation, *supra*; and Kanyeihamba G.W, Constitutional Law and Development in Uganda, Nairobi, E.A.L.B, 1973.

- 103 Idi Amin came to power on January 25, 1971 following a military coup which was partly supported by Israel and Britain. There are numerous accounts of Idi Amin's atrocities and his times. Among these are the following: Amnesty International, Human Rights in Uganda, London, 1978; International Commission Jurists, Uganda and Human Rights: Report to the United Nations Commission on Human Rights, Geneva, 1977; Kyemba H, A State of Blood: The Inside Story of Idi Amin, 1977; Kiwanuka M.S.M, Amin and the Tragedy of Uganda, 1979; Grahame I, Amin and Uganda: A Personal Memoir, 1980; Hills Dennis C, Rebel People, 1978; Melady T. Patrick, Idi Amin Dada: Hitler in Africa, 1978; and Smith G. Ivan, Ghosts of Kampala, 1980..
- 104 For a relative account on the nature and meaning of disappearances see Shestack, Jerome J, The Case of the Disappeared. "In Foreign Countries 'missing persons' are the nightmare victims of state terrorism" 8 Human Rights 24-27 and 51-53, Winter, 1980.
- 105 Milton Obote was overthrown in a military coup by Idi Amin in January, 1971; Amin was overthrown in April, 1979 in a war of exiles supported by neighbouring Tanzania. Three successive governments were set in the period prior to the December, 1980 elections headed by the late Yusuf K. Lule (68 days), Godfrey L. Binaisa, and the Military Commission under the chairmanship of Paulo Muwanga, respectively.
- 106 See Minority Rights Group, *supra*, 7-8. The U.P.C. was reported to have secured seventy-two seats, the Democratic Party (D.P.) fifty-one, Uganda Patriotic Movement (U.P.M.) one, and the Conservative Party (C.P.) none. The basis for doubting the results were the events prior to and during, and immediately following the elections which involved manipulations and manoeuvres including the U.P.C.'s securing of 17 seats said to be unopposed in suspicious circumstances. The Commonwealth Observer Group which reported that the elections were fair given the circumstances on the whole made its report too early and left the country long before the election results were announced. For a coverage of these elections see among others: Sathyamurthy, The Political Development of Uganda, 1900-1986, Gower, Aldershot, England, 1986, 670-671; Avirgan and Honey, *supra*, 225-8; Rhoda Howard, Human Rights in Commonwealth Africa, *supra*, 135; Minority Rights Group, *supra*, at 7; and Commonwealth Observer Group, Uganda Elections December, 1980: Report (London. Commonwealth Secretariat, 1980) Final Report. It is partly reprinted in Uganda Information Bulletin 6 (January, 1981) 13-15, and is also quoted by Rhoda Howard, and by the Minority Rights Group.

- 107 For an account of the guerrilla movements involved until the coming to power of the National Resistance Movement (N.R.M.) under the chairmanship of Yoweri K. Museveni in January, 1986, see Minority Rights Group, *supra*, 8. They included the N.R.M., the Uganda Freedom Movement (U.F.M.), the Federal Democratic Army (FEDEMU), and the Uganda National Rescue Front (UNRF).
- 108 The writer happens to have been born in one of the areas which were deeply affected. There are also elaborate accounts of these human rights abuses such as: Colin Legum, "After the Amin Nightmare", Report, January-February, 1983; Amnesty International, Memorandum to the Government of Uganda on an Amnesty International Mission to Uganda in 1982 and further exchanges between the government and Amnesty International (April 1983) and Uganda: Evidence of Torture, (June 18, 1985); Amnesty International Reports, 1982 (pp. 88-92), 1983 (pp.88-93), 1984 (pp.107-111), 1985 (pp.105-109), and 1986 (pp. 106-110); Jeff Crisp, National Security, Human Rights and Population Displacements: Luwero District, Uganda, Jan-Dec. 1983, Review of the African Political Economy, 27-28 (1983):164-174; The Minority Rights Group, *supra*; and Yusuf K. Lule, Human Rights Violations in Uganda under Obote, California, 1982.
- 109 See in particular, The Minority Rights Group, *supra*, 8-10 and 12-15; Yusuf Lule, *supra*, esp. 13-15; and Jeff Crisp, *supra*. However, it must be noted that quite a number of killings were also carried out by the guerrilla movements. The National Resistance Army and the Uganda Freedom Army were particularly known for executing government agents such as chiefs and party officials, as well as civilians who did not seem to support the guerrilla's cause.
- 110 See Jeff Crisp, *supra*.
- 111 *Ibid*, 169.
- 112 See Minority Rights Group, *supra*, 14-16.
- 113 See Yusuf K. Lule, *supra*; The then leader of the Parliamentary Opposition placed the minimum figure of people killed during Obote's second term of office at 500,000.
- 114 Sathyamurthy T.V., *supra*, 671.
- 115 *Ibid*, 716.
- 116 Rhoda Howard, Human Rights in Commonwealth Africa, *supra*, 135.

- 117 See Africa Confidential, Vol.27 No.3, 29 January, 1986, Uganda: By Storm.
- 118 See Africa Confidential, Vol.27 No.4, 12 February, 1986, Uganda: Gotterdammerung at Gulu; See also Catharine Watson, Uganda: Ending the Rule of the Gun, Africa Report (America's leading magazine on Africa) January-February 1988, 14, 15. Despite the alleged power-sharing, the people who were in power immediately preceding the N.R.M. were not effectively represented in the "accommodatory" N.R.M. government. Museveni called them "human rights criminals who had massacred people in Luwero and could not come back to Uganda without facing trial", and that they were "politically bankrupt" with no local support.
- 119 This predominance may however not be so great if it is viewed proportionately to the population of each ethnic group.
- 120 See Africa Confidential, Vol.27 No.18, 3 September, 1986, Pointers, Uganda: Northern Troubles; Vol.28 No.3, 4 February, 1987, Uganda: False Messiah; Vol.29 No.1, 8 January, 1988, Uganda: Insecurity East and North; and Vol.29 No.7, 1 April, 1988, Uganda: Unholy Spirit.
- 121 See The Times (London), Thursday, December 31, 1987, Ugandan rebel jailed in Kenya; The Globe and Mail, Thursday, December 31, 1987; The Vancouver Sun, Thursday, December 31, 1987, Kenya nabs Ugandan rebel who led troops via Voodoo. Lakwena's Holy Spirit Movement had attracted a substantial following in the north as well as registering several successes against the NRA prior to its defeat. For an account of these see Maclean's Magazine, November 2, 1987, 24, Alice's Army on the March; The Globe and Mail, Friday, November 13, 1987, 'Magic of Ugandan Priestess conjures trails of rebel blood'; and The New York Times, Thursday, November 5, 1987, Ugandan Cult is carrying out suicidal raids.
- 122 See Africa Confidential, Vol.29 No.1, 8 January, 1988, Uganda: Insecurity East and North.
- 123 See Africa Confidential, Vol.29 No.7, 1 April, 1988, Uganda: Unholy Spirit.
- 124 These have been established at various levels allegedly to allow political participation by the masses (sic) and many people have been elected to them. They may be equated to the palever which is described as "organized and open debates on various issues in which everybody, regardless of age and sex, is encouraged to participate with a view to reaching a consensus and keeping the

- community closely linked."(U.N.E.S.C.O., Social-political aspects of the palever in some African countries, 1979, in the preface). Although this general purpose may be served, the resistance committees are in reality organs of the NRM through which it hopes to entrench itself, as well as attracting the masses and rallying them behind NRM.
- 125 See Catharine Watson, *supra*, 16.
- 126 *Ibid*, 16-17. Of course many of these acts, and in particular corruption, cannot be ruled out in the present regime. The only difference from past regimes is that the current regime does not, at least in principle, encourage these acts and in fact attempts to punish the perpetrators when apprehended. The major problem is that the machinery responsible for this law enforcement, namely the police, is itself affected by the very forces it is supposed to fight.
- 127 See The Address to the Nation by His Excellency the President Hon.Yoweri Kagutta Museveni on the twenty-fifth anniversary of Uganda,s Independence on the 9th October in 1987 at Kampala (copy in Writer's possession); and the President's speech at Vancouver on Friday, October 16th 1987 to Ugandans in Vancouver and Victoria when he came for the commonwealth conference, October, 1987, held in Vancouver. Also see The New York Times, Thursday, November 5, 1987, Uganda Cult is carrying out suicide raids.
- 128 Since the army and government are to a large extent dominated by the Bantu, the northerners among whom the movements operate, and who were responsible for much of the human rights abuses and suffering during the Obote and Okello regimes, must have feared retaliation/revenge by the NRA.
- 129 See NRM Proclamation, 1986 (Legal Notice No.1 of 1986) as amended by Legal Notice No.6 of 1986, and later by Legal Notice No.1 of 1986 (Amendment) Decree, 1987 which replaced Legal Notice No.6 of 1986 upon its being declared unconstitutional in the case of Ssempebwa Vs Attorney General, Constitutional Court Case No.1 of 1986. A comment on this is given in Commonwealth Law Bulletin, 1987 Vol.13, 1151.
- 130 See Sathyamurthy T. V., *supra*, 724.
- 131 See Amnesty International Report, 1987, 116.
- 132 *Ibid*.

- 133 Andrew Kayiira was also the leader of UFM, one of the guerrilla movements which fought the Obote government. He was believed in many circles as Museveni's equal in guerrilla organization and one of the persons whom Museveni feared most. His death is therefore suspected of foul play especially in view of the contradictory statements made by the government as to his death.
- 134 See Amnesty International Report, 1987, 115.
- 135 Ibid, 117.
- 136 See Museveni's Independence Anniversary speech on October 9, 1987, and his speech at Vancouver on October 16, 1987, supra; Also see The New York Times, Thursday, November 5, 1987, Uganda Cult is carrying out suicidal raids.
- 137 The Globe and Mail, Friday, November 13, 1987, 'Magic of Ugandan Priestess conjures trails of rebel blood'.
- 138 See The New York Times, Thursday, November 5, 1987, Uganda Cult is carrying out suicidal raids.
- 139 See Amnesty International Report, 1987, 114.
- 140 See Africa Report, January-February, 1988, supra, 16.
- 141 See The Globe and Mail, Saturday, January 2, 1988, Ugandan Officials reported seized.
- 142 See The Globe and Mail, Tuesday, January 12, 1988, One dead and five wounded in Uganda rebel attack; and The Globe and Mail, Thursday, January 14, 1988, Two arrested in Libyan's death.
- 143 The Times, Thursday, November 26, 1987, Uganda flare-up.
- 144 See The Times, Wednesday, February 17, 1988, Bus ambush. Mbale; and The Globe and Mail, Thursday, February 18, 1988, Ugandan rebels hit 6 truck U.N. convoy.
- 145 The Times, Wednesday, January 27, 1988, Museveni's Plea.
- 146 See The Times, Thursday, March 24, 1988, Ugandan rebels to join army.
- 147 The salient features of this agreement are reproduced in Uganda News Bulletin, June/July, 1988, (Presented by the Uganda High Commission, Ottawa), 1-4.

- 148 The present cabinet, the largest so far in Uganda's history, comprises 69 ministers and deputy ministers. See Uganda News Bulletin, January/February, 1988, 1-3, under the heading 'Cabinet Reshuffle'.
- 149 Parts A and B of the Agreement. See Uganda News Bulletin, June/July, 1988, 2-3.
- 150 THE NATION/Thailand's English Language Newspaper, Saturday, July 16, 1988, Peace hopes kindled in E.African nation. Guns Fall Silent in Uganda.
- 151 Of course it could be argued that the circumstances then and now are not the same. The NRM/NRA as a guerrilla force had far more support from the majority of the people than the government. Similarly, it was more disciplined and it committed far less human rights abuses than the government troops. Similar observations cannot easily be made of the current guerrilla forces.
- 152 It is reported that on 7 April, 1988, the 19th Artillery Regiment and the 8th Infantry Battalion carried out a mutiny (later they were overpowered) inter-alia, because the government was not holding peace talks with the several rebel armies. It is further reported that there was an assassination attempt on the president four days later. See The Globe and Mail, Thursday, June 9, 1988, 200 mutineers slain in Uganda. This report was however dismissed as false by the Ugandan government. According to the government, it was "false information calculated to cause alarm and discontent within Uganda at the time when various former rebel groups are ceasing acts of hostility and voluntarily coming forward to contribute toward national building" - See Uganda News Bulletin, June/July, 1988, 9.
- 153 Legal Notice No.5 of 1986. For a brief outline of its salient features see the Commonwealth Law Bulletin Vol.13 (No.1 January 1987), 349. See also The Globe and Mail, Wednesday March 2, 1988, A 11, Ugandan rights probe hears tales torture.
- 154 See the Commonwealth Law Bulletin Vol.13 (No.1 January 1987), 349.

P A R T

T W O

International Protection of Human
Rights in Africa

C H A P T E R T H R E E
UNITED NATIONS AND HUMAN RIGHTS

One of the greatest achievements of international law in this century concerns the protection of human rights.¹ This has especially been so in the field of definition; today human rights cover a broad range of issues - the physical integrity of the person, political freedoms, the elimination of discrimination, as well as economic and social rights.² By so doing, substantial rights have been broadly defined which has greatly enhanced the dignity of the human being in the world. There is now increasing recognition of the individual as a subject of international law.³

There is as well some special recognition of non-State groups and in particular the liberation movements such as PLO (the Palestinian Liberation Organization), SWAPO (the South West African Peoples' Organization), and ANC (the African National Congress). In the near future, this may extend to solidarity rights or rights of groups. A brief analysis will show that the above trend has not always been the case.

Individuals and Groups Under International Law.

Prior to the second world war, individuals and groups were neither the subjects of, nor directly protected by

international law, though there were series of rules and institutions the effect of which was to protect the rights of individuals and groups.⁴ International law was solely a law of States under which the individual and groups could only enjoy rights through, and by virtue of being a national of, a State. This view of classical international law has been summarized by one scholar as follows:

The orthodox positivist doctrine has been explicit in affirming that only States are the subjects of international law. In those cases in which individuals seem to derive benefits under international law, the predominant view has been that such benefits are enjoyed not by virtue of a

right which international law gives to the individual, but by reason of a right appertaining to the State of which the individual is a national..... Similarly, if individuals have no rights under international law, it seems to follow that they can have no locus standi before international tribunal and other international agencies.⁵

Likewise, it has been opined that since the law of nations is based on the common consent of individual states, and not of individual human beings, states solely and exclusively are the subjects of international law, and the law of nations is a law for international conduct of states and not their citizens.⁶

The individual's lack of status under classical international law was followed, until recently, by the failure of international diplomacy and customary international law to address the matter of individual human rights.⁷ It was only after the second world war that human rights were given much attention; thus some scholars regard

the second world war as a war to vindicate human rights and they cite various provisions in the U.N. charter as a reflection of this.⁸

Likewise, 'peoples' did not attract the attention of the international community until after the second world war. But even then, this did not mean the acceptance of "peoples" in the sense of encompassing groups within a country, or of "solidarity rights". There has been a clear avoidance of the definition of "peoples" and of "solidarity rights". True several definitions of "peoples" have been advanced by scholars, and various rights - the so-called "solidarity rights" accorded to them.⁹ Nevertheless these scholarly arguments have not as yet attracted international acceptance.

What the international community has accepted as 'peoples' is an identifiable group of people who are fairly homogeneous and are aware of their collectivity.¹⁰ In fact 'peoples' has come to be equated to all the people (total population) living in a particular country, and the right which is accepted to belong to them is 'self-determination'.¹¹ The only exception are the "minorities" who are increasingly being recognized as having certain rights. However, these rights do not include the right to self-determination or the right to secession.

Nevertheless, it must be noted that sometimes it may be proper to equate "peoples rights" with "State rights" if such rights can only be handled collectively on behalf of

all the people by the State. Examples of such a situation are where the State is negotiating prices for commodities or treaties be they commercial or otherwise. It is however wrong to equate "peoples" with "States" if it is to deny minority or group rights.

'Self-determination', as contained in the various international documents, decisions and resolutions,¹² is taken to mean simply the independence of peoples under colonial rule and apartheid.¹³ The tendency is to limit the principle of self-determination to "salt-water" colonialism and to equate it with the right to statehood.¹⁴ Once independence is achieved, this right ceases. For example, States do not desire to extend the principle to minorities in their own countries. Thus any attempts at secession have not gained much support from the international community. The only exception in Africa was the case of Biafra which gained recognition from a number of countries.¹⁵ The other example which not only gained recognition but was in fact a total success is the case of Bangladesh in Asia.

This denial of the extension of self-determination beyond the colonial context is intended to protect State sovereignty and international security.¹⁶ One scholar has termed this interpretation of the principle as "external self-determination", and he defines it as:

the ability of a people or a minority to choose freely in the field of international relations, opting for independence or union with other states.¹⁷

It is our contention that 'self-determination' should be extended beyond the colonial context. Williams and de Mestral¹⁸ suggest that this should not imply independence but rather a freedom to choose how the people will be governed. Similarly, Cassese,¹⁹ argues that a new and more meaningful concept of political self-determination, which is more consonant with new demands of freedom than the traditional approach to self-determination, has gradually emerged. He terms this 'internal self-determination' and defines it as denoting that:

a people in a sovereign State can elect and keep a government of its choice or that an ethnic, racial, religious or other minority within a sovereign State has the right not to be oppressed by the central government.²⁰

Further more, it is suggested that self-determination means a right of all States and peoples under foreign occupation or alien and colonial domination or living under an apartheid system to restitution and full compensation for the exploitation, depletion of and damage to, their natural and other resources.²¹ Therefore, it seems that in spite of the arguments, International opinion is still not ready to accept secession as being part of "self-determination."

We would think that in addition to a right to autonomy within the state, self-determination should be extended to include a right to secession. However, this should only be allowed under exceptional cases, including such circumstances as when the clash between a segment of a State's population and the government becomes so acute that

no local remedies can avail, and the government pursues undemocratic and brutal measures aimed at the suppression of that segment.²² This may help to avoid the repercussions associated with this denial.²³

Therefore, it would seem that modern international law has come to accept the individual as its subject and not object, in so far as human rights are concerned.²⁴ However, in so far as groups are concerned, the tendency still is to equate group rights with the rights of States. Yet there seems to be no precedent for vesting human rights in States.²⁵

The area of group rights is a poorly defined and evolving area. It may therefore take sometime before group rights are fully accepted. Thus, whereas a few States have come to accord a few rights to minorities within their countries, a majority of the States and in particular the Third World, scarcely accord any group rights to their minorities. Africa is no exception in this regard.

Role of the United Nations.

Responsibility for the achievements in the area of individual and group rights goes to the United Nations which has played a profound role both as 'motor and catalyst'²⁶ in the development of the modern law of human rights. Is it any wonder then that while evaluating the United Nations after thirty years of its existence, one scholar came to the

conclusion that the U.N. has proved its indispensability in the field of human rights and deserves everybody's support and assistance?²⁷

Many times, the majority of the principle institutions of the U.N. including the security council, the General Assembly, the International court of Justice, the Secretariat, and the Trusteeship council, in some degree concern themselves with human rights issues. However, competence to deal with human rights issues is accorded by the United Nations Charter to the Economic and Social Council, and the commission on human rights and its various affiliates. These may therefore be termed the U.N. human rights enforcement machinery.

Nevertheless, what these institutions can do is severely limited by staffing and funding problems, and by the first principle of the U.N. (sovereign equality of all its members),²⁸ and the reality of the powers of States.²⁹ These U.N. bodies, inasmuch as they are composed of representatives of governments, are political organs wherein the political factors tend to prevail.³⁰ Many times purely political interests and considerations do prevail over genuine human rights concern.³¹ This is buttressed, in the case of Africa, by the absence of an African major player in international politics and the fact that African governments tend to hide their human rights abuses under the seventh principle of the U.N. (non-intervention in affairs that fall within the domestic jurisdiction of member states).³²

These factors combine to keep a majority of the African human rights issues off the U.N. agenda. The political factor tends to operate more often than not, as a defender of oppressive powers and neglects the fate of the oppressed peoples and persons. It seems to be the driving force for any human rights action.³³ Thus one scholar notes that the United Nations is a most intensely partisan, political organization, which has proved successful only when ideological and political differences are overcome by the issue at hand.³⁴

Cultural diversity of the States further aggravates this situation. It is thus observed that,

given the cultural diversity of the independent States created by the ending of European colonialism, the United Nations' purpose of organizing international actions to protect human rights and fundamental freedoms had, and still has, little chance of success.³⁵

Inevitably, therefore, the U.N. has only been working with force and conviction with regard to three specific human rights situations - standard setting,³⁶ promotion, and protection.³⁷ As regards implementation, it has played safe with such issues as attainment of self-determination of overseas colonies (political independence), and racial equality especially the elimination of apartheid and zionism. Demands for political and social justice in the various continents, to mention but a few areas, have to a greater extent been ignored.

A few exceptions however exist. The U.N. has been active in condemning abuses in parts of Latin America and in

particular Chile and Guatemala, as well as concerning itself with the issue of apartheid in South Africa, and the Palestinian/Israel conflict. Nevertheless, these exceptions do not negate the United Nations' inaction in other areas.

All blame should however go to the member States themselves and not to the U.N. as a collective body since this body can only be as strong as the individual member States allow it to be. As long as the various countries fight implementation by either refusing to succumb to United Nations resolution or otherwise not allowing to surrender any of their alleged sovereign rights, the U.N. cannot achieve much. Thus one time United Nations Secretary General, U Thant, commented that:

It is not the charter that has failed the international community; it is the international community that has failed to live up to the responsibilities under the charter - The United Nations can be only as strong as its member governments permit it to be. As long as governments jealously guard their sovereign rights and as long as they are unwilling to surrender any part of their sovereignty to serve the common good of the international community, it would be futile to expect the United Nations to develop into a supranational authority.³⁸

These weaknesses notwithstanding, standard setting is not such a mean achievement. International standards may have a positive effect on the development of a government's will to progress in the area of human rights. This may particularly be the case in respect to governments concerned with their international reputation or those seeking grounds for altering their practices.³⁹ The standards could also be a yard stick for international public opinion and a useful

tool to citizens attempting to pressure their governments for a change in its policies.⁴⁰

Many of the set standards, if not all, are to be found in the United Nations charter and the international bill of human rights,⁴¹ as well as in various Declarations and Resolutions. We shall only make note of the salient features of the most important of a few of these instruments, for purposes of this work.

The United Nations Charter, 1945.⁴²

The first major attempts toward the international protection of human rights are to be found in the United Nations Charter which provides, though perhaps not in a very clear manner, not only for the claims of a citizen of one country against another country (foreigners), but also for claims arising out of violations of international law by its officials, citizens, or inhabitants.⁴³ Thus it laid the foundation stone for the level of human rights which are being promoted today.

In its preamble, reaffirmation is made of "faith in fundamental human rights, in dignity and worth of the human person, (and) in equal rights..." Article 1(3) provides one of the purposes of the U.N. as being "promoting and encouraging respect for fundamental freedoms for all without distinction as to race, sex, language, or religion"; while article 13(1)(b) grants a role to the general Assembly in

the promotion of human rights. Further provisions are to be found in articles 55 and 56 wherein members pledge themselves to take joint and separate action in cooperation with the organization to "promote ...universal respect for, and observance of human rights and fundamental freedoms".

As a further measure, article 68 empowers the Economic and Social Council (established under article 7) to set up one or more commissions "for the promotion of human rights"; and article 76(c) requires the trusteeship system (which was established to continue the League mandates and to bring colonial territories to rapid achievement of self-government) to "encourage respect for human rights and fundamental freedoms for all".

These and other provisions create a "broad and impressive"⁴⁴ mandate for the United Nations in respect of human rights. It has been suggested that this mandate implies:

action on a wide range of points both political and legal, through debate, intervention, the setting of human rights standards by the adoption of international conventions and the fashioning of adequate techniques of enforcement of these standards.⁴⁵

In spite of the above, the Charter was criticized for lack of an implementation machinery and a failure to define human rights.⁴⁶ One scholar has even asserted that for all its references to human rights and aspirations, the Charter is at bottom a collective-security pact designed to prevent the most recent war.⁴⁷ True as these weaknesses are, they cannot negative the historical achievement of the Charter as

a departure from previous approaches to international protection of human rights. In any case, definition of human rights and an attempt to establish an implementation machinery have now been done in other documents. More work may also be in the pipeline.

The International Bill of Human Rights.⁴⁸

This comprises three documents: the Universal Declaration of Human Rights, 1948,⁴⁹ the International Covenant on Civil and Political Rights (together with its optional Protocol, 1966), and the International Covenant on Economic, Social, and Cultural Rights, 1966. Among other things, these instruments collectively serve as touchstones for interpreting the human rights provisions of the United Nations Charter.⁵⁰

An attempt at defining human rights is first made in the Universal Declaration adopted by the General Assembly of the United Nations without a dissenting vote.⁵¹ However, this attempt was not conclusive, for example no minority rights provisions were made. Consequently, today reference is made to later declarations and covenants than to the Universal Declaration, leaving the latter to play more of a historic rather than a substantial role. In any case, the Universal Declaration was never meant to be a treaty with enforceable legal obligations; it was merely a proclamation

of "a common standard of achievement for all peoples and all nations".⁵²

General Assembly intentions notwithstanding, the Declaration acquired the status of an authoritative guide for interpretation of the U.N. Charter.⁵³ Some scholars even argued that it forms part of the constitutional law of the world community and is superior to all other international instruments and to domestic laws.⁵⁴ It is also noted to have been "widely used even by national courts as a means of judging compliance with human rights obligations under the U.N. charter."⁵⁵

Of course these arguments were more true for the 1960s than for the 1980s. As noted earlier, today more reference is made to subsequent Declarations and to the two 1966 Covenants than to the Universal Declaration. Nevertheless, the legal basis of the Declaration as part of the international bill of rights, and its importance as the foundation upon which subsequent Covenants and Declarations have been based is beyond doubt.

The International Covenant on Civil and Political Rights⁵⁶ restates many of the rights contained in the Universal Declaration. However, some rights listed in the Declaration such as "the right to own property" and "the right to asylum" are not included in the Covenant. Similarly, the Covenant introduces some new rights such as "the right to self-determination" and "the right of ethnic, religious, or linguistic minorities to enjoy their own

culture, to profess and practice their own religion, and to use their own language".⁵⁷ It is suggested that to the extent that the Universal Declaration and the Covenant overlap, the latter is understood to explicate and interpret the former.⁵⁸

While evaluating the significance of the Covenant on Civil and Political Rights, one scholar has stated that:

For the first time, the international community reached an agreement not only on the list of basic human rights, but also on the content of each right and on the most important limitations to such rights... Secondly, the covenant contains various measures of implementation; though some of them are optional in character, they recognize the right of individuals to seek redress of their grievances on the international plane... [It is an] authoritative interpretation of the basic rules of International law on the subject of human rights which are embodied in the charter...⁵⁹

Unlike the first two components of the International bill of rights, the International Covenant on Economic, Social, and Cultural rights,⁶⁰ "is not geared, with modest exceptions, to immediate implementation". What was envisaged is only "to take steps" toward "achieving progressively full realization of the rights recognized in the...covenant" but subject to "the maximum of available resources". Therefore, the covenant is essentially a 'promotional convention' stipulating objectives more than standards and requiring implementation over time rather than all at once.⁶¹

Prohibition of discrimination in the enjoyment of the rights enumerated on grounds of race, colour, sex, language, religion, or political or religious or other opinion,

national or social origin; property; and birth or other status, is the only obligation which requires immediate application.⁶²

A number of Resolutions and Declarations have also been adopted by the General Assembly for the purposes, among others, of elucidating on, and implementing, the enumerated rights. They include the Proclamation of Teheran, 1968,⁶³ the Declaration on the Granting of Independence to Colonial Countries and Peoples, and the International Convention on the elimination of all forms of Racial Discrimination. This is to mention but a few.⁶⁴

FOOTNOTES

- 1 See Williams and de Mestral, An Introduction to International law, 2nd ed, Butterworths, Toronto, 1987, 299.
- 2 Ibid.
- 3 Ibid, 302.
- 4 Jessup, P, A modern law of nations (1948) 2.
- 5 Lauterpacht, International law and human rights (1950) 6-8.
- 6 Oppenheim, I.L, International law: A Treatise, para 13, at 20-21 (A.D. McNair ed. 1928)
- 7 See L. Matthew, Human rights revisited: The protection of human rights under the international covenant on civil and political rights, 10 Cal. W. Int'l. L.J. 450 (1980) 453.
- 8 Ian Brownlie, Principles of Public International law, 3rd ed, Oxford, 1979, 564; and Skelton J. W. jr, Standards of procedural due process under international law Vs preventive detention in selected African countries, 2 Houston J. Int'l L. 307 (1980) 307-8. For earlier attempts at protecting human rights, which attempts are for the most part spasmodic and unorganized, see Lippman M. supra, 453-357; and Weston Burns H, Human rights, 6 H. R. Q. 257 (1984) 269-271.
- 9 This issue shall be given better treatment later on in Chapter Eight.
- 10 Williams and de Mestral, supra, 57-61.
- 11 Ibid. For an alternative definition of peoples see in front, Chapter Eight.
- 12 United Nations charter, art.1(2) and 55; Res.1314(XIII) on self-determination of Dec.12,1958; Declaration on the granting of independence to colonial countries and peoples, sec. Res 1514(XV); Declaration on the inadmissibility of intervention in the domestic affairs of states and the protection of their independence and sovereignty, Dec. 21, 1965, G.A Res 2131(XX); the covenant on civil and political rights and the optional protocol, and the covenant on economic, social and cultural rights, 1966 [Annex to G.A. Res 2200(XXI)]; the 1970 Declaration on the principles of international law; and the International Court of Justice Advisory

Opinions on Namibia (I.C.J. Reports, 1971, 31), and Western Sahara (I.C.J. Reports, 1975, 31-33).

- 13 Williams and de Mestral, *supra*, 59.
- 14 Moskowitz Moses, The Roots and Reaches of United Nations Actions and Decisions, Netherlands, 1980, 32.
- 15 See Nayar K, Self-determination beyond the colonial context: Biafra in retrospect 10 Texas Int'l L.J.321-45 (1975).
- 16 Sornarajah M, Internal colonialism and Humanitarian intervention, *supra*, esp 45.
- 17 Cassese A, in Cassese, ed, U.N.Law... et al, *supra*, 137. See also R. J. Vincent, Human Rights and International Relations, Cambridge, 1986, 80.
- 18 *Supra* 57.
- 19 *Supra* 138.
- 20 Cassese, *supra*, 137. At 147, he argues that to date the work of the U.N. has been one-sided in that it has concentrated on 'external self-determination' and neglected 'internal self-determination'.
- 21 Williams and de Mestral, *supra*, 59. Support for this is derived from various Declarations and Resolutions such as Declaration on Permanent sovereignty over natural resources, Res.1803(VIII), Dec.14, 1962; the Declaration on the establishment of a New International Economic Order, A/Res.3201(S-VI) May 9, 1974; and the Charter of Economic Rights and Duties of states A/Res.3281(XXIX), Dec.12, 1974.
- 22 See T. S. Rama Rao, Human Rights in Developing Countries, in: Agrawala, Rama Rao, and Saxena (eds) New Horizons of International Law and Developing Countries, Int'l law ass., India, 1983, 25. A similar view is advanced by Sornarajah M, Internal colonialism and Humanitarian intervention, *supra*, 46-47, when arguing the cause of the minority.
- 23 See PART ONE of this work.
- 24 See L. N. Mathur, in: Agrawala, Rama Rao, and Saxena (eds) New Horizons of International Law and Developing Countries, *supra*, 50; and Anthony D'Amato, International Law: Process and Prospect, Transnational publishers, New York, 1987, 89 and 205.

- 25 Kathleen Taperell, in: Bulletin of the Australian Society of Legal Philosophy, Vol.9, No 33, June 1985 Special Issue: The Rights of Peoples.
- 26 To use the words of Williams and de Mestral, supra, 306.
- 27 Bert V.A. in Cassese, supra, 35.
- 28 Article 2(1), U.N.Charter.
- 29 Gray L. Dorsey, Beyond the United Nations: Changing discourse in international politics and law, Lanham, 1986, 44.
- 30 Theo C. Van Boven, United Nations and human rights: A critical appraisal, in Cassese, supra, 119, 128.
- 31 Ibid, 126. Also see Moskowitz Moses, The Roots and Reaches of United Nations Actions and Decisions, supra, 171-173. He asserts that the United Nations is a "partisan" organ which "has developed a capacity for creating stereotypes so pronounced as to compel their own political imperatives, and for examining issues totally divorced from any other social, political, or moral concerns".
- 32 Article 2(7), U.N. Charter.
- 33 Ibid, 128.
- 34 Donnelly, Recent Trends in U.N. Human Rights Activity ...et al, supra, 653.
- 35 Gray L.Dorsey, supra, 47.
- 36 Jack Donnelly, supra, 653-4.
- 37 Theo C. Van Boven, supra, 124.
- 38 U.N., OPI, Press Release, SG/SM/982 p 3, and quoted by S. Dayal, Developing Countries and Universal and Regional Approaches to Human Rights in Light of Changing Context and Perspectives, in: Ginther K. and Benedek W, (eds) New Perspectives and Conceptions of International Law. An Afro-European Dialogue, New York, 1983, 99.
- 39 Jack Donnelly, supra, 654.
- 40 Ibid.

- 41 The international bill of human rights comprises three instruments: the Universal Declaration of human rights, 1948; the international covenant on civil and political rights; and the international covenant on economic, social and cultural rights. See Burns H. Weston, Human Rights, 6 H.R.Q. 257, (1984) 273.
- 42 The charter is reproduced (among others) in Ian Brownlie, Basic Documents in International Law, 3rd ed. Oxford, 1983; and Brownlie, Basic Documents on Human Rights, 2nd.ed, Oxford, 1981. It came into force on 24 October, 1945.
- 43 Sohn, The Human Rights Law of the Charter 12 Tex. Int'l L. J. 129 (1977).
- 44 To use the words of Williams and de Menstrai, supra, 308.
- 45 Ibid.
- 46 Ezejiufor G, Protection of human rights under the law (1964) 59.
- 47 Anthony D'Amato, International Law: Process and Prospect, Transnational publishers, New York, 1987, 220.
- 48 See note 41.
- 49 U.N. Doc. A/811. Full text is reproduced in Brownlie, Basic Documents...et al, supra.
- 50 See the introduction in Brownlie, Basic Documents In International Law supra.
- 51 For the various rights see the text of the Declaration.
- 52 See Universal Declaration of Human Rights, Am. J. Int'l L. Supp. 127 (1949).
- 53 See Brownlie, Basic Documents in international law, supra, 250, and Basic Documents on Human Rights, supra, in the Commentary preceding the text of the Declaration; See also Lauterpacht, International law and Human Rights (1950) 400; and Skelton James jr, supra, 311.
- 54 Sohn, The Universal Declaration of Human Rights 8 J. Int'l Comp. Jur. 17, 26 (1967).

- 55 Burns H. Weston, *supra*, 273. He argues that it acquired this status partly because of an eighteen year old delay between its adoption and the completion for signature of the two covenants.
- 56 UN Doc A/6546 (1966), reprinted in 56 Dept. State Bull, 111 (1967), and also in Brownlie, *supra*. It was adopted on 16 December, 1966 but it did not enter into force until 23 March, 1976.
- 57 Burns H. Weston, *supra*, 274.
- 58 Ibid.
- 59 Sohn, *supra*, 135.
- 60 UN Doc A/6316 (1966), reprinted in 56 Dept. State Bull, 107 (1967). Also in Brownlie *supra*. Adoption date is 16 December, 1966 but entry into force was on 3 January, 1976.
- 61 Burns H. Weston, *supra*, 275.
- 62 States are nevertheless required to report to the United Nations Economic and Social Council on the steps they have adopted and the progress they have made in achieving the realization of the enumerated rights.
- 63 U.N.Doc A/CONF. 32/41, Sales No. E 68, XIV 2.
- 64 Space does not allow us to deal with each of these Declarations and Resolutions let alone those not even mentioned. For an elaboration of each of the various Declarations and Resolutions, see among others, Human Rights: A compilation of International Instruments (U.N. 1983), and both texts by Brownlie, *supra*.

C H A P T E R

F O U R

THE U.N. MACHINERY FOR ENFORCEMENT OF HUMAN RIGHTS

Various organs facilitate the observance, promotion, and to an extent enforcement of human rights through the United Nations. These include the General Assembly, the Secretariat, the Security Council, the International Court of Justice, the Trusteeship Council, and the Economic and Social Council. However, the Economic and Social Council, through its commissions and their various affiliates, plays the most immediate role for purposes of the individual and groups. This role is specifically assigned to the Council by the UN Charter.

The work of these organs is many times facilitated by international human rights non-governmental organizations (NGOs) which have played a very significant, though sometimes indirect role, in facilitating the observance, promotion and perhaps enforcement of human rights. In this chapter, for lack of space, I shall only mention the salient features of these organs.

The General Assembly.

One of the functions of the General Assembly is to "initiate studies and make recommendations for the purpose

of....assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion".¹ A majority of the human rights items dealt with by the General Assembly originate in sections of the report of the Economic and Social Council relating to human rights, or in decisions of the Assembly in earlier sessions to take up particular issues.² Some special items have also been proposed for inclusion in the General Assembly's agenda by the Economic and Social Council, by the Trusteeship Council, by a Member State or by the Secretary General.³

Within the General Assembly, human rights issues are handled through its various committees, the most important of which is the Third (Social, Humanitarian, Cultural) Committee.⁴ However, some specific issues may be referred to other Main Committees; thus items of an essentially political character go to the Second Committee or to the Special Political Committee, and those of an essentially economic character, to the Second Committee. The Fourth Committee deals with issues relating to non-self-governing or trust territories, while the Fifth Committee handles the financial aspects and budgetary provisions relating to human rights items. Some human rights issues have also been dealt with by the Sixth (Legal) Committee.⁵ A few issues have also been handled by some ad hoc organs or committees of the General Assembly.⁶

The Economic and Social council.

Article 62(2) of the U.N. charter empowers the Council to "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all", while article 68 requires it to "set up commissions....for the promotion of human rights, and such other commissions as may be required for the performance of its functions. Pursuant to the above, the Council has established several commissions, sub-commissions and procedures for the purpose of achieving its obligations.

The Commission on Human Rights is one of the functional commissions of the Council, and whose work, since its inception in 1946, has been directed towards submitting proposals, recommendations, and reports to the Council regarding, among others, an international bill of rights; international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; the protection of minorities; the prevention of discrimination on grounds of race, sex, language or religion; and any other matter concerning human rights not covered by the above.⁷ The Commission also makes studies and recommendations and provides information and other services requested by the Council. It may also recommend the establishment of any sub-commission it considers appropriate.

In a bid to facilitate its work, the Commission on Human Rights has established sub-commissions and procedures

to handle various human rights issues. These include the Sub-Commission on Prevention of Discrimination and Protection of Minorities whose major function is to undertake studies and make recommendations to the Commission concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious, and linguistic minorities.⁸

Among the Working Groups established are, one on Indigenous Populations, and the other on Minorities. The job description of these ad hoc functionaries usually contains an element of fact-finding (preparing a report on the human rights situation in country X) and an element of mediation (establishing a dialogue with the government and preparing recommendations for improvement of the human rights situation). They are not mandated to respond to individual instances of human rights violations.⁹

The more recent functionaries established by the U.N. Commission on Human Rights in response to human rights violations are the "thematic" or issue-oriented procedures.¹⁰ They comprise four elements: the Working Group on Enforced or Involuntary Disappearances (1980);¹¹ the Special Rapporteur on Summary or Arbitrary Executions (1982);¹² the Special Rapporteur on Torture (1985);¹³ and the Special Rapporteur on Religious Intolerance (1986).¹⁴ The importance of these procedures to the observance and

implementation of human rights has been summarized as follows:

Taken together, the thematic procedures could well be regarded as an elementary form of International habeas corpus, or even an embryonic U.N. High Commission for Human Rights..... (They) constitute the only devices of the United Nations which act continuously and report publicly on human rights violations on a world wide basis.¹⁵

[The] "theme" mechanisms.... have developed into effective and flexible institutions for identifying abuses and intervening rapidly in urgent cases.¹⁶

Nevertheless, perhaps due to the staffing, funding and political problems of the United Nations system, these procedures are yet to be applied on an extensive scale; their effect is also yet to be felt in Africa in spite of the prevailing human rights violations.¹⁷ Further still, these mechanisms, where they operate, are sometimes hampered by States which fail to respond to requests for information, respond with blanket denials or give misleading or inaccurate responses.¹⁸

Another of the functional Commissions of the Economic and Social Council is the Commission on the Status of Women established in 1946. Its functions are: "to make recommendations and reports to the Council on promoting women's rights in political, economic, civil, social, and educational fields...[and]...on urgent problems requiring immediate attention in the field of women's rights with the object of implementing the principle that men and women shall have equal rights, and to develop proposals to give effect to such recommendations".¹⁹

Prior to the establishment of the thematic procedures by the Commission on Human Rights, the Economic and Social Council adopted the Resolution 1503 Procedure²⁰ for the purpose of facilitating the work of the Commission and its affiliate organs, particularly the Sub-commission on Prevention of Discrimination and Protection of Minorities. Under this procedure, individual petitioners and non-governmental organizations are provided with an international complaint procedure through which to charge any state with "gross and reliably attested violations of human rights and fundamental freedoms" including policies of racial discrimination and segregation and of apartheid in any country, including colonial and other dependent countries and peoples.²¹

In order to have standing a petitioner need not be a victim; the complaint (communication) may originate from an individual, a group, or an organization as long as it is based upon either direct and reliable knowledge, or second hand information accompanied with clear evidence. However, it must be free of any political motivations and the petitioner must have exhausted any reasonably effective local remedies and then communicated with the U.N. within a reasonable time.²²

Although adopted with the best of intentions, the Commission has failed to use the procedure to achieve the stated objective, namely, to stop gross violations of human rights. The reasons for this failure are to be found in the

fact that the procedure is so lengthy and slow; communications cannot be updated, and it is politicized and embedded with many technicalities.²³ Thus it has been suggested that the procedure is so politicized, secretive and slow that offending governments may escape meaningful scrutiny.²⁴ The performance of this procedure has been summed up in the following words:

To a far greater extent than a judicial tribunal the Commission decides cases on the basis of political rather than legal criteria. Regional political relationships unrelated to the merits of a complaint may dictate the result. At most the procedure has benefited a few individuals released as a symbolic gesture in response to Commission pressure. ... N.G.O. activists who initially hoped the Resolution 1503 procedure would lead to meaningful international scrutiny have found the process as a shield against public embarrassment and an attempt to muzzle N.G.O.s by invoking the confidentiality rule to prevent disclosure of documented atrocities. ... A procedure fashioned to redress patterns of gross violations thus produced an isolated individual remedy for symbolic effect.²⁵

Other U.N. Organs.

The other United Nations organs which in one way or another deal with human rights shall only merit mentioning in this work. They include the Security Council which is given the primary responsibility of maintaining international peace and security, and which responsibility may at times extend to violations of human rights and fundamental freedoms such as is the case with the apartheid regime in South Africa; the Trusteeship Council; the

Secretariat; and the Office of the United Nations High Commissioner for Refugees (UNHCR).

These organs also include specialized agencies such as the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the Food and Agricultural Organization of the United Nations (FAO).²⁶

One other organ which merits attention is the Human Rights Committee established under the International Covenant on Civil and Political Rights. This shall be dealt with later, although briefly, in Chapter Nine of this work while dealing with a comparison of the regional human rights enforcement regimes.

Role of Human Rights Non-governmental Organizations.

Many human rights non-governmental organizations (N.G.O.s) have been established over time for the purpose of promoting human rights. More than 700 N.G.O.s have accredited status with the United Nations Economic and Social Council.²⁷ While many N.G.O.s devote only part of their time and resources to human rights, quite a number of them have full-time international human rights programs.

Among the latter category are the following: Amnesty International, Anti-slavery Society, Commission of the Churches on International Affairs, International Association of Democratic lawyers, International Commission of Jurists,

International Committee of the Red Cross, International Confederation of Free Trade Unions, International Federation of Human Rights, International League for Human Rights, Minority Rights Group, World Conference on Religion and Peace, and World Federation of Trade Unions.²⁸

Some of the N.G.O.s are specialist organizations which seek to protect particular human rights such as Amnesty International, the Minority Rights Group, the Anti-slavery Society, and the International Committee of the Red Cross. A few others have more general human rights concerns the examples of which are the International League for Human Rights, and the International Commission of Jurists. Quite a number of them are not established for the purpose of promoting human rights, but have them as part of their more general concerns such as churches, trade unions, professional Associations and political parties.²⁹

The role the N.G.O.s have played in the human rights field has not been a minor one. They have facilitated the promotion of human rights particularly through carrying out investigations and compiling data about human rights abuses, as well as publicizing such abuses. They also help to disseminate ideas about human rights especially through organizing seminars and conferences for the promotion of human rights. Further more, their not insignificant role in the drafting and signing of the various human rights instruments cannot be overlooked.³⁰

The hand of the N.G.O.s is also to be found in their use of the Resolution 1503 Procedure. N.G.O.s are noted for documenting the most informative and detailed complaints which not only state enough abuses so as to establish a consistent pattern of violations, but also simplify the Sub-Commission's task by aggregating individual cases. They also help the Secretariat by identifying which international instruments to apply, as well as submitting twelve copies of their work and by preparing brief summaries suitable for referral to Commission members.³¹ In fact this gives the N.G.O.s an advantage over individuals under the procedure.³²

N.G.O.s accomplish these roles through various means such as agitation, expressing views in reports and public statements, drawing up resolutions, drawing attention to violations, urging studies, sending fact finding missions, protesting misconduct, and so on.³³ Thus they function as "unofficial ombudsmen safeguarding human rights against governmental infringement"³⁴ and are "the ginger groups of International society".³⁵

What facilitates implementation is the fear by the governments responsible for human rights violations, of public exposure. Governments particularly do not like to be criticized in the openness of international debate especially as this may lead to their isolation following exposure.³⁶ This goes to strengthen the N.G.O.s' belief in the power of opinion and the fact that such opinion is based upon the truth.

Notwithstanding these roles, the performance of the N.G.O.s has not been without limitations. N.G.O.s contend that they are given only peripheral status within the U.N. which prevents them from exercising effective influence within that and other organizations with which they may have consultative status.³⁷ The resources of these N.G.O.s are also limited and may sometimes not be constant which may be a contributing factor to the small sizes of these N.G.O.s. This leads to allocation of effort. Thus N.G.O.s may avoid pursuing some violations because that might upset influential friends, sources of financial support, friendly governments, and so on. Some countries may also be chosen and not others merely because they appear to be easier targets.³⁸

These above factors have contributed to the poor performance of NGOs in Africa. Another factor, which directly derives from the African governments themselves, is the unwillingness of some governments to allow N.G.O.s to visit their countries. However, one of the greatest weaknesses may perhaps be the non-existence of "indigenous" N.G.O.s on the continent; the few which seem to have an "African" element are in fact branches or subsidiaries of N.G.O.s outside Africa and they derive their finances and instructions from the parent N.G.O.s.

These limitations have perhaps caused there to be an imbalance in the overall N.G.O. participation in the third world, with Africa not being the exception.³⁹ The number of

N.G.O.s which operate in Africa are quite few. Worse still, many of these tend to concentrate their work in South Africa.⁴⁰ Thus it is observed that:

Despite their growth in numbers, the overwhelming majority of existing human rights N.G.O.s remain located in the western industrial nations..... For westerners and blacks alike, the persistence of gross racial injustices in South Africa apparently inhibits the development of human rights N.G.O.s concerned with other African countries.⁴¹

The above does not mean that there are no NGOs which are operating outside of apartheid South Africa. Among those N.G.O.s which have done much work in a big section of Africa are Amnesty International, the International Commission of Jurists, the Minority Rights Group, and the International Committee of the Red Cross. Survival International has also started expanding its concerns to black Africa.⁴² However, even these have proportionately not done much if the size of Africa and the rate of human rights abuses is taken into account.

Consequently, the influence of human rights N.G.O.s in Africa remains to be felt. The fact that some governments are unwilling to allow visits to their countries cannot of itself be a perpetual deterring factor to N.G.O.s' participation in Africa because international public opinion will sooner or later force these governments to succumb to the N.G.O.s' requests for investigations.

A new development which is likely to help in this direction is the formation of a new "Africa Watch" as part of Asia watch, Americas watch and Helsinki watch. Currently

a feasibility study is being carried out in this direction.

It has been specifically stated that:

The number of experienced and highly sophisticated domestic human rights groups in South Africa, and the range of groups, both in Europe and the U.S., that focus exclusively on South Africa, indicates that there is a danger of duplicating the efforts of others. We believe it would be better to use our resources to promote the protection of human rights in other African countries, where little is being done. (emphasis added)⁴³

It is further stated that given the number and severity of wars in Africa, the question of human rights monitoring in war situations will be given serious consideration. Among other issues, the relationships between human rights and humanitarian law, the reporting of violations committed by insurgents, and the problems inherent in compiling accurate reports on violations against civilians in remote areas where military operations are carried out, will have to be examined.⁴⁴

Better still, in some African countries a few religious and legal organizations are gradually but steadily beginning to devote a substantial part of their efforts to promoting human rights. Good examples of these are to be found in Zimbabwe, and also in Uganda where a human rights Commission was set up in 1986.⁴⁵

Although the work of these local organizations is likely to be frustrated by some governments, the former are likely to receive support and encouragement from Africa Watch. One of the aims of Africa Watch is to help protect and promote the work of local human rights activities.

Specifically, it intends to mobilize immediate and effective international campaigns when domestic human rights activists are arrested, intimidated or harassed in any manner.⁴⁶

Thus NGOs play a very important role in the promotion of human rights particularly on the international level. Although they have been very helpful on the African plane, their role has been more limited for various reasons seen above. However, the role of NGOs in Africa is likely to increase in the near future especially if given support and encouragement not only internationally but also locally and regionally.

FOOTNOTES

- 1 U.N. Charter, art. 13(1)(b).
- 2 L. B. Sohn and T. Buergenthal, International Protection of Human Rights, Indianapolis, 1973, 523.
- 3 Ibid.
- 4 Ibid; see also Jack Donnelly, Recent Trends et al, supra, 635.
- 5 Sohn, *ibid*.
- 6 Ibid.
- 7 Ibid, 524.
- 8 See *ibid*, 525.
- 9 M.T.Kamminga, The Thematic Procedures of the U.N. Commission on Human Rights, Netherlands Int'l L. Rev. (1987) XXXIV Issue 3, 299
- 10 Ibid, 299-323, but esp. 301; Also see M. J. Bossuyt, The Development of Special Procedures of the United Nations Commission on Human Rights, 6 H. R. L. J. (1985) 179; D. Weissbrodt, The Three "Theme" Special Rapporteurs of the U.N. Commission on Human Rights 80 A. J. I. L. (1986), 685; and N. Rodley, U.N. Action Procedures Against "Disappearances", Summary or Arbitrary Executions, and Torture, 8 H. R. Q. (1986) 700.
- 11 Established under U.N. Commission on Human Rights Res. 20 (XXXVI), 10 (XXXVII), 1982/24, 1983/20, 1984/23, 1985/20, 1986/55, and 1987/27.
- 12 Set up under U.N. Commission on Human Rights Res. 1982/29, 1983/36, 1984/50, 1985/37, 1986/42, and 1987/57.
- 13 Set up under U.N. Commission on Human Rights Res. 1985/33, 1986/50, and 1987/29.
- 14 Set up under U.N. Commission on Human Rights Res. 1986/20, and 1987/15.
- 15 M. T. Kamminga, *supra*, 321 and 323. However, he notes one major problem, namely, the geographical imbalance in the distribution of these procedures and their sources of information. As of today, few have been sent to Africa.

- 16 See the International Commission of Jurists, THE REVIEW No.40 June 1988, UN Commission on Human Rights, at 18 (Editor: Niall MacDermot).
- 17 The writer is only aware of the visit by the Special Rapporteur on Summary or Arbitrary Executions to Uganda 17-20 August 1986, U.N. Doc. E/CN.4/1987/20 Annex II. However, the purpose for this visit was not to carry out investigations in the current abuses but rather to confirm the abuses of passed regimes.
- 18 See THE REVIEW No.40 June 1988, supra, 18.
- 19 See Sohn and Buergenthal, supra, 526.
- 20 E.S.C. Res. 1503 (XLVIII) adopted 27 May 1970, 48 U.N. Doc. E/4832/Add. 1 (1970).
- 21 See Sub-Comm. Res. 1 (XXIV) U.N. Doc. E/CN.4/1070 (1971), and Howard Tolley, jr, The Concealed Crack in the Citadel; The United Nations Commission on Human Rights' Response to Confidential Communications, 6 H. R. Q. 420 (Nov.1984) 432.
- 22 Ibid, 433.
- 23 Space does not allow us to deal with the specifics of the procedure. For these, see among others, Howard Tolley, supra, esp.433-450, and Dinah H. Shelton, Individual Complaint Machinery under the United Nations 1503 Procedure and the Optional Protocol to the International Covenant on Civil and Political Rights, in Hannum H, ed, Guide to International Human Rights Practice, Philadelphia, 1984, 59-73.
- 24 Disappointing Start to New U.N. Procedure on Human Rights, I. C. J. Review 9 (1972) 5; and Howard Tolley, supra, 433.
- 25 Howard Tolley, supra, 453 and 457.
- 26 For an analysis of these organs see, among others, Sohn and Buergenthal, supra, 527-532.
- 27 U.N. Doc.E/INF.162 (1977).
- 28 See David Weissbrodt, The Contribution of International Non-governmental Organizations to the Protection of Human Rights, in T. Meron, ed, Human Rights in International Law, Oxford, 1984, 403.
- 29 See R. J. Vincent, Human Rights and International Relations, Cambridge, 1986, 97.

- 30 V. Leary, A new role for non-governmental organization
in human rights: A case study of non-governmental
participation in the development of international norms
on torture, in Cassesse A. U.N. Law ... et al, supra,
197, 198.
- 31 Howard Tolley, supra, 434-435.
- 32 Ibid. Also see Dinah H. Shelton, Individual Complaint
Machinery... et al, supra, 60 and 64.
- 33 R. J. Vincent, supra, 98; and D.Weissbrodt, supra, 404.
- 34 David Weissbrodt, supra, 404.
- 35 R. J. Vincent, supra, 98.
- 36 David Weissbrodt, supra, 411.
- 37 Virginia Leary, supra, 206.
- 38 David Weissbrodt, supra, 409.
- 39 Blaser A. W, supra, 274-276.
- 40 H. M. Scoble, supra, 183-5; and Hans Thoolen and Berth
Verstappen, supra, 137-8.
- 41 H. M. Scoble, supra, 179 and 185.
- 42 As as example, see Survival International, Africa:
Unnatural Disasters, August 1988.
- 43 Human Rights Watch Number 2, May-June 1988, 9, AN
AGENDA FOR AFRICA WATCH. Human Rights Watch Begins
Feasibility Study.
- 44 Ibid.
- 45 See page 79 of this work.
- 46 See Human Rights Watch, supra, 9.

P A R T

T H R E E

A f r i c a A n d H u m a n
R i g h t s

C H A P T E R F I V E
AFRICAN CONCEPTIONS OF HUMAN RIGHTS

Traditional Views.

The law of human rights as it is known today is basically of European origin. This can be traced as far back as the Magna Carta Libertatum in England in 1215 and the English Bill of Rights of 1689, through to the 1789 American Bill of Rights, and the French Declaration of the Rights of Man and the Citizen of 1793.¹ It is within these documents that the roots of the International Bill of Rights are to be found. This notwithstanding, a number of African scholars contend that human rights are inherent in every human being and have a "universal character";² that they are not "rights" as properly conceived but "powers" in the human being.³

Within this form, it is argued, "human rights" exist in all political and social systems including traditional societies in Asia and Africa, and that if empirical research into the internalized conceptions of human rights recognized by a traditional society were conducted, one would find enormous satisfaction as to the basically democratic way in which the society protects its own values.⁴ Thus it is contended that:

Conceptions of human rights could be found in most civilizations and this means African communities had such conceptions bearing or representing various contents. It could be that the same ideas as those existing in European communities were being expressed in African communities only that the different environments and cultural structures made the appearance of such ideas in different terms. (emphasis added)⁵

It cannot be doubted that the well-organized and centralized societies such as the Asantis of Ghana, the Ibo of Nigeria, the Shona and Ndebele of Zimbabwe, and the Baganda of Uganda, to mention but a few, had a semblance of democracy and protected various values through the family, clan, village, community, or tribe. This could therefore be rightly argued as an attempt at protecting human rights because the protection of various values was tantamount to protecting the rights of individuals and the community.

However, what must not be overlooked is the fact that majority of the African societies were not "centralized"; Yet this so-called "respect for human rights" was only restricted to the centralized societies. Secondly, even within the centralized societies, the values respected were not uniform; they varied from community to community and within communities due to tribal, religious, and cultural differences. Of course, this does not necessarily mean that respect for human rights can only be achieved through "a single human rights model".

What the African scholars and politicians advocate for is this "uniquely African concept of human rights" (that is, the protection of community values and rights which

ultimately amounted to protection of individual rights). This is reflected, though perhaps not very successfully, in the African Charter on Human and Peoples' Rights. However, because there is no "universal" and homogeneous African culture and society, they argue that the African concepts of human rights are culture specific and that the International Bill of Rights should only be applied to Africa with modification.⁶

African Values and Cultural Relativism.

Cultural relativism as far as human rights in Africa are concerned, is a doctrine which holds that any variations in the observance and respect for human rights should be exempt from legitimate criticism by outsiders and is strongly supported by notions of "communal autonomy and self-determination".⁷ It asserts that:

- (a) Rules about morality vary from place to place;
- (b) The way to understand this variety is to place it in its cultural context; and
- (c) Moral claims derive from, and are enmeshed in, a cultural context which is itself a source of their validity.⁸

The argument which has been advanced is that there is a plurality of cultures in the world, and these cultures produce their own values. There are no universal values and no universal morality. Any attempt to assert universality as a criterion of all morality is more or less a well-disguised

version of the imperial routine of trying to make the values of a particular culture general.⁹

It is upon this argument that the conservative African scholars base their allegation for a need to substantially modify the International Bill of rights, particularly the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights, so as to take into account "African values", before it can be applied to Africa.¹⁰

Arguments for modification are in spite of the fact that the Organization of African Unity endorsed the Universal Declaration and that almost all the African states copied and included a majority of the human rights and fundamental freedoms contained in the Declaration within their constitutions upon attainment of independence. In fact, quite a few incorporated a bill of human rights as a chapter in the constitution.

Of course it could be argued that the African politicians had no choice at the time of independence; that it was a condition for the granting of independence. However, even if this were the case, the majority of the States have maintained bills of human rights as chapters within their constitutions in spite of the amendments which have been effected upon the constitutions ever since independence was attained. These constitutions are legally binding upon the respective countries.

Assuming that the politicians had no choice but to include these rights and freedoms at the time of

independence, we see no reason why these constitutions have not been modified so as to reflect these alleged "African values" at least for the sake of constitutionalism. It is absurd for bills of human rights to be kept on the statute books without being followed.

Village, family, clan, Community, and tribe would seem to be the African values and culture upon which the scholars' arguments are based.¹¹ Under traditional African culture, groups and collective rights were given a superior position to that of individuals and individual rights. Social harmony or the preservation of the fabric of social life came first in African thought, hence the prevalence, among other things, of the extended families.

This placing of groups and collective rights, which have come to mean States and rights of States, above the individual and individual rights, has played a substantial part in the human rights record in Africa since independence, and it seems to have been recently given legal sanction by the African Human Rights charter. However, it must be pointed out that these group and collective rights recognized in this Charter do not include the rights of minorities.

Whereas the preservation of African culture and values is important, and welcome at least among the conservative Africans, the point which seems to be missed is that culture is neither homogeneous nor static. It changes gradually but perhaps steadily over time. In Africa, the process of change

was buttressed by colonialism whose lasting marks have been the introduction of "western" practices and institutions. A majority of Africa has been penetrated and influenced by foreign culture (values, practices and institutions) ranging from the modern state, to the money economy, and to "western" values, languages, products and practices. In a majority of the cases, what exists today are not traditional communities but "dual societies and patchwork practices" that seek to accommodate seemingly irreconcilable old and new ways.¹²

Traditional culture is gradually being replaced by a "disruptive and incomplete westernization, cultural confusion, or the enthusiastic embrace of modern practices and values".¹³ While some autonomous and basically traditional communities which decide their destiny largely in accordance with traditional values and practices still do exist in Africa, for example the Karamojong in Uganda and the Maasai in Kenya and Tanzania, they are the exception rather than the rule.

Whereas the cultural survival of these basically traditional groups is important, they are inevitably minority groups within the state such that they do not justify a general conclusion that the state must observe or otherwise respect human rights in a culturally relative way. The only way these groups can be protected is by dealing with minority rights and not individual human rights.

In light of all the above circumstances, therefore, traditional African culture, which is the basis of the arguments for cultural relativism, cannot and does not, any longer exist in majority of Africa. Thus it is suggested that:

To base human rights policy on this model of rural Africa....is to ignore the changes which have occurred and are occurring in the way Africans live, in particular how their lives are affected by the institutions that the State controls. Under such new social conditions, new methods of guaranteeing human rights become essential. ...Pre-colonial society is [only] useful insofar as it explains the cultural and psychological roots of modern African man, but not...as a factual description of contemporary African social organization.¹⁴

It would therefore seem that the African elites (scholars and politicians) are manipulating human rights by enunciating a specifically "African theory of human rights" allegedly taking into account African values and culture, merely as a legitimizing ideology and cover for their own interests. Appeals to traditional practices and values are more often than not "a mere cloak for self-interest or arbitrary rule"¹⁵ and are most often intended only for external consumption so as to escape criticism for non-observance and abuse of human rights.

Support for this argument is to be found in the fact that the advocates of this "human rights theory" have little connections, if at all, with "traditional" society; they have taken all steps to extract themselves from any strands of traditional society and have no intentions of returning to it. Secondly, majority of the practices which underlie

the human rights abuses in Africa and which are sometimes wrongly justified as part of Africa's traditional values or culture, have nothing "African" in them; they are as antithetical to African cultural traditions as they are to western human rights conceptions.¹⁶ Thus one scholar has warned that:

We must be alert to cynical manipulations of a dying, lost, or even mythical cultural past. We must not be misled by complaints of the inappropriateness of "western" human rights made by repressive regimes whose practices have at best only the most tenuous connection to the indigenous culture; communitarian rhetoric too often cloaks the depredation of corrupt and often westernized or deracinated elites. In particular, we must be wary of self-interested denunciations of the excessive individualism of "western" human rights.¹⁷

Consequently, cultural relativism as a basis for variations in the observance of human rights cannot be justified. African culture which could have supported this doctrine has to a large extent been watered away. To accept such a doctrine would be to perpetuate and protect the self-interests of the elites and politicians at the expense of human rights and the rest of the masses on the continent. This would also be a way of sanctioning the perpetuation of Africa's current quagmire.

However, in view of the fact that most of Africa is now composed of "dual societies" which are having "patchwork practices" taken from both the old and new ways, total rejection of cultural relativism would be a great mistake. Whereas strong or radical cultural relativism must be avoided for the reasons given above, some level of weak

cultural relativism should be maintained so as accommodate this dual society and culture. Weak cultural relativism is taken to mean that:

[Whereas] culture may be an important source of the validity of a moral right or rule.....there is a weak presumption of universality, but the relativity of human nature, communities, and rights serves as a check on potential excesses of universalism.weak cultural relativism would recognize a comprehensive set of prima facie universal human rights and allow only relatively rare and strictly limited local variations and exceptions.¹⁸

Prima facie, human rights should always be taken to be universal and each country and people should endeavour to respect them in that capacity. Modification should only be applied to the potential excesses which may be impossible or otherwise difficult for the people to observe due to cultural and other differences. The only problem with this assertion is that it is likely to be used by self-serving elites and politicians for their own purposes. It is this weak cultural relativism, and not the radical or strong one, which should be considered when formulating, interpreting, and enforcing human rights in Africa.

In spite of our arguments above, this allegedly "African concept of human rights" which is said to be cultural relative and supposedly takes into account African values, has been used to formulate various concepts. Many of these are to be found in the African Charter on Human Rights Charter. A few others have not yet been documented but can be seen in practice.

Among these concepts are solidarity rights or the rights of groups based upon African traditions which place the group above the individual; the according of priorities among human rights and this derives from the above in that those rights belonging to groups are treated as superior to individual rights; and the idea of the one-party State system which is so notorious on the continent. These concepts shall be the concern of the next chapter of this study.

FOOTNOTES

- 1 See Szabo, Historical Foundations of Human Rights and Subsequent Developments, in: Vasak (ed.), The International Dimensions of Human Rights, Vol.1, Westport, Paris 1982, 11; and C. R. Mahalu, Africa and Human Rights, in: Kunig P., Benedek W. and C.R. Mahalu, Regional Protection of Human Rights by International Law: The Emerging African System, Baden-Baden, Germany, 1985, 2.
- 2 C. R. Mahalu, *ibid*, 1.
- 3 L. Marasinghe, Traditional Conceptions of Human Rights in Africa, in: C. Welch Jr and R. Meltzer, Human Rights and Development in Africa, Albany, 1984, 43.
- 4 L. Marasinghe, *supra*, 43. These arguments are based upon such societies as the Asantis of Ghana, the Ibo in Nigeria, and some Bantu tribes in East and Central Africa such as the Baganda in Uganda, and the Shona and Ndebele in Zimbabwe.
- 5 C. R. Mahalu, *supra*, 2.
- 6 See among others, Obinna Okere, The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American Systems, 6 H. R. Q. 141 (1984), esp.143-144. Compare with Rhoda Howard, Evaluating Human Right in Africa: Some Problem of Implicit Comparisons, 6 H. R. Q. 160-179 (1984).
- 7 See Jack Donnelly, Cultural Relativism and Universal Human Rights 6 H. R. Q. 400 (November,1984).
- 8 See R. J. Vincent, Human Rights and International Relations, *supra*, 37.
- 9 *Ibid*, 38. It may be worth mentioning that an argument is increasingly gaining ground among a few scholars that although human rights must be universal, the rights contained in the international bill of human rights are not adequate perhaps because they were largely developed within the setting of the Western world alone. They therefore envisage a need to modify or perfect these rights so as to make them universal. Of course it will take time before this argument may be accepted by the international community, if at all.
- 10 For a list of some of these scholars see Rhoda Howard, Evaluating Human Rights in Africa...et al, *supra*, 173.

- 11 Ironically, these "values" do not seem to be reflected in the African Charter on Human and Peoples' Rights save for the family (article 18).
- 12 To use the words of Jack Donnelly, Cultural Relativism and Universal Human Rights, supra, 411.
- 13 Ibid.
- 14 Rhoda Howard, Evaluating Human Rights in Africa et al, supra, 177.
- 15 See Jack Donnelly, Cultural Relativism and Universal Human Rights, supra, 412. He cites some leaders who have gone to the extent of picking out certain elements of traditional African culture to anesthetize the masses. These include President Kamuzu Banda of Malawi who resorted to the use of "traditional courts" in order to deal with political opponents outside of the regular legal system; President Mobutu of Zaire who created the practice of Salongo, a form of communal labor with a supposedly traditional basis when in fact it is a revival of the colonial practice of Corvee labor; and the Samarias in Niger, which are traditional youth organizations allegedly revived out of respect for traditional culture when the actual reason may be to channel youth energies away from politics.
- 16 See Jack Donnelly, Cultural Relativism and Universal Human Rights, supra, 413. Among such practices are disappearances, arbitrary arrests and detentions, torture, and rigging of elections.
- 17 Jack Donnelly, Cultural Relativism and Universal Human Rights, supra, 411.
- 18 Ibid, 401.

C H A P T E R S I X
P R I O R I T I E S A M O N G H U M A N R I G H T S

International Categorization of Human Rights.

International law groups human rights into three major categories, also termed generations.¹ These are the first, second, and third generations of human rights. We shall only attempt to list the various rights contained in each of the three categories.

The first generation is that of the Civil and Political Rights which includes the rights to life, security of the person, privacy and property; the right to marry and found a family; the right to a fair trial; freedom from slavery, torture and arbitrary arrest; freedom of movement and to seek asylum; the right to a nationality; freedom of thought, conscience and religion; freedom of opinion and expression; freedom of assembly and association; and the right to free elections, universal suffrage and participation in public affairs.² In general terms the rights of the first generation require immediate implementation and this is to be achieved by means of the government abstaining from interfering with the individual.

The second generation comprises the Economic and Social Rights. These are a claim upon the government for

intervention in the economic or social sphere and they include the following rights: the right to work and for a just reward; the right to form and join trade unions; the right to rest, leisure, and periodic holidays with pay; the right to a standard of living adequate to health and well-being; the right to social security; the right to education; and the right to participate in the cultural life of the community.³

The third generation is that of Collective rights (also known as solidarity rights or the rights of groups). They include the rights of nations to political, economic, social, and cultural self-determination, of races to freedom from discrimination, and of classes to freedom from neo-colonialism; the right to economic and social development; the right to participate in and benefit from "the common heritage of mankind" (that is, shared earth-space resources; scientific, technical, and other information and progress; and the cultural traditions, sites, and monuments). They also include the right to peace; the right to health and balanced environment; and the right to humanitarian disaster relief.⁴

Unlike the first and second generation rights, the third generation rights make a collective claim upon the government and can be realized only through the concerted efforts of governments at the international level - they are concerns of a planetary nature. Secondly, majority of the third generation rights are more aspirational than

justiciable in character, and as yet they only enjoy an ambiguous jural status as international rights norms.⁵

Much debate exists on the international plane over the legitimacy and priorities of claimed rights.⁶ One conservative view recognizes only the civil and political rights of the individual as human rights so-called, and tends to exclude the second and third generation rights from their definition of human rights altogether (or at best, to label them as "derivative").⁷ The claims they place are for moral necessities which cannot immediately be met. By the standard of what is very important and what can be achieved now, the second, and third generation rights do not qualify.⁸

Another view, which perhaps may not attract much support in the international community, is that which tends to accord equal status to all human rights be they of the first, second, or third generation. It asserts that all human rights are inter-dependent and support one another; there should therefore be no priority among the human rights categories because without the rights of any one category, those of another cannot be attained.⁹

Conversely, second and third generation defenders recognize not only the second and third generation rights but also the first generation of human rights. However, they regard the first generation rights as insufficiently attentive to material human needs and as legitimating

instruments to unjust domestic, transnational, and international social orders.

Consequently, they tend to assign the first generation of human rights a lower status than the second and third generation rights and thereby treat the former as long-term goals that will come to pass only with fundamental economic and social transformations, to be realized progressively and fully consummated only sometime in the future.¹⁰ This is the view which is most acceptable to a majority of African scholars and politicians.

African Priorization of Rights.

Many African States, scholars, and politicians argue that priority should be given to the implementation of economic rights rather than of civil and political rights. They therefore advocate for the promotion of the second and third generation rights in disregard of first generation rights.¹¹ Some scholars have even argued that African thought is to put collective rights first in importance, second comes economic and social rights, and third the civil and political rights.¹²

Arguments for this view seem to be based upon the conventional wisdom of the sixties and seventies¹³ which held that rapid development and human rights were competing, and not complementary, concerns except in the very long run; and development was seen as a prerequisite for effective and

widespread implementation of human rights. Basing upon the above, their contention is that in the interests of both human rights and development, many of the human rights, especially in the civil and political sphere, should be suspended until the attainment of economic development; what should not be suspended are those rights in the second and third generations which are directly concerned with economic development.

Justifications for the trading off of civil and political rights for economic rights and development have been given as follows:¹⁴

- (a) that more of the world's population is suffering from denial of the economic rights to work, food, health, shelter and education, than from violations of the rights to freedom from torture, arbitrary detention, and censorship of the press.¹⁵
- (b) that a starving, illiterate man cannot understand civil and political rights and therefore human rights in some cases should be set aside until the majority of the people are educated and conditions of living are improved.¹⁶ This has come to be described as the "full belly thesis."¹⁷
- (c) that civil and political rights are not universal concepts and have very little application to the non-western world.

- (d) that giving priority to civil and political rights or putting them at par (observing them simultaneously) would make the achievement of economic development difficult.
- (e) that mass communication media and other western influences stimulate expectations which are likely to complicate the task of economic development in states observing civil and political rights.
- (f) that multi-party political systems inherent in the concept of civil and political rights would tend to reflect tribal particularism in Africa and to create unwanted opportunities for foreign influences in African states' internal affairs; and
- (g) that it is doubtful whether the observance of civil and political rights in the developing countries will lead to political and economic stability. Because the African states are new, their first priority should be to establishing strong, viable governments.

Basing upon all or several of the above reasons, African governments have denied their populations most of the civil and political rights. To them this denial is a necessary evil and is inevitable. Thus they stated that:

The concepts of political rights [in Africa] were bound to be different.... After independence the major problems of economic development and national building had to be tackled from scratch [and] the existence of these imperatives and the overall economic and social conditions of the African countries made it necessary to modify the classical European concepts.... Certain practices widely considered to be violations of human rights were, in the context of Africa, merely efforts to correct situations which had developed in pre-independence days and encourage and protect human rights of the masses of people.¹⁸

Perhaps as a result of the fact that African and other third world countries form a majority in the United Nations, this trend of according priority to economic rights has been extended to the United Nations.¹⁹ Whereas United States will talk of civil and political rights, and the Soviet Union will concern itself with racism and apartheid, the majority of the third world will talk of the "new international economic order" and economic rights.

The equivocal espousal of this trend is to be found in Resolution 32/130 of 1977 wherein the General Assembly, while recognizing perfunctorily the indivisibility of all human rights and freedoms, declared that "the full realization of civil and political rights is impossible".²⁰ There after, the trend in the U.N. in the area of development has been toward greater support of the economic rights first approach and relative neglect of civil and political rights and personal security rights.²¹

Thus it has been noted that the present practice of most states (in the United Nations) is to neglect or downplay the importance of political rights in favour of

economic development and economic rights. This majority has been waging a battle in the U.N. to excuse, even to approve, their violations of civil and political rights in particular, and personal economic rights as well.²²

However, it should be pointed out that many times this majority has no much power in determining what comes onto the UN agenda especially where veto powers are involved. But once an issue has successfully been brought to the UN agenda, this majority can use their numerical superiority to block it.

Notwithstanding the above arguments and their alleged justifications, neither economic development nor sufficient observance of economic rights have been achieved by the African governments since independence. This approach to economic development has been a total failure in most of Africa in light of the military coups, dictatorships, and human rights violations it has contributed to.

Although some leaders believed in good faith that they could attain economic plenty for their people at a faster rate if they eliminated civil and political rights such as political participation and freedom of speech (especially as to public criticism of government policy), a majority of the African leaders have preferred to give priority to economic rights so as to provide themselves with a ready made means of acquiring political power or perpetuating their tenure in office. Thus one scholar has warned that:

The 'right to development' touted by African elites as a prerequisite to the more traditional human rights, may well be merely a cover for the denial of those basic civil and political liberties which will allow the dispossessed masses to act in their own interests.... Without human rights, the evidence suggests, economic growth may occur, but economic development will not. "Full bellies" require political participation and civil liberties.²³

Africa's experience would therefore seem to leave this approach to economic development with little credibility, if at all. The experiences of Brazil, South Korea, and sometimes India, where this approach to human rights and economic development is believed to have worked miracles, are often cited in its support.²⁴ True, a substantial level of development was attained in these countries; Nevertheless, the sacrificing of civil and political rights for a rapid economic development is not safe from generating negative results as well. Thus it is suggested that in the absence of civil and political rights, for example, investment takes unproductive wasteful forms, and without popular participation in decision-making, very serious mistakes in economic policy are difficult to correct.²⁵

Similarly, the experiences of Brazil and South Korea show that upon the attainment of a substantial level of economic development, a return to the observance of, and respect for, human rights is not automatic; It would seem to suggest that the suspension of civil and political rights is more likely to be grounded in an attempt to protect or strengthen elite privileges and an inequitable distribution

of the benefits of growth.²⁶ It is not surprising, therefore, that one scholar has concluded that:

A policy that postpones promotion of human rights until economic development is achieved.....is not hospitable to human rights even in the long run. For economic development is a long term affair. Without developing human skills, enterprise and creativity, it cannot be achieved even in the long run. A policy that suppresses human rights may retard development of these factors. A society that experiences suppression of human rights for a long time is likely to develop a culture that is hostile to human rights, and from such culture it is hard to obtain liberation.²⁷

It would therefore seem, at least in the context of Africa, that, human rights and economic development are not competing but contemporary goals. The two must be seen as fundamentally complementary and mutually reinforcing in all time frames.²⁸ Since economic development is often treated synonymously with economic rights, prioritization of human rights should be avoided. Africa's experience in the decades after independence would seem to suggest that adequate economic development in general and improvement of agrarian production in particular cannot be achieved without the implementation of certain civil and political rights.

Civil and political rights such as freedom of speech and assembly, and the right to political participation provide the only practical mechanism available to the people of Africa to force their political leaders both to respond to their economic needs and to abandon the economic policies that are hindering progress;²⁹ they give people political power which can be used to gain economic and social rights whereas the economic and social rights provide only material

needs - goods and services - which may not necessarily be useful in forcing progress on civil and political rights.³⁰

We would suggest that there is some relationship, although not clearly defined, between economic and social rights, and civil and political rights. The two seem to reinforce one another almost to the extent of interdependence. In fact, this would seem to have been the message of the 1968 Proclamation of Teheran which is contained in the phrase "human rights and fundamental freedoms are indivisible".³¹ It is therefore erroneous to pursue economic development goals allegedly through the observance of economic rights in total disregard of civil and political rights. Consequently, there is need to revise the prioritization of human rights if economic and social development are to be achieved.

Donnelly suggests that civil and political rights should take priority over all other rights. He believes that civil and political rights may prove to be a crucial instrument for turning a country toward egalitarian development. He further asserts that they may be the only way, short of revolution or overwhelming external pressure, to bring about the transition to equitable development. His explanation is that even if bread comes first, since poverty is in large measure a social and political, not a natural product, civil and political rights may be the best, or at least the most peaceful, way to get bread.³² Similarly, Minasse Haile asserts that although both sets of human

rights are important, civil and political rights are the means through which economic rights can be enforced in the African context.³³

These recommendations seem to miss one point, namely, that for there to be meaningful respect for civil and political rights, some basic needs, particularly as to subsistence, must be satisfied, and this may require immediate satisfaction. The assertion that civil and political rights are the best and most peaceful way of getting bread is not convincing enough. It may take long before bread is obtained through pursuit of civil and political rights in isolation of other rights, by which time the suffering of the people would have been tremendous.

In contrast to the above recommendations, Vincent R. J. suggests that the provision for subsistence rights has a strong claim to priority over all other human rights. He asserts that what should be pursued first and foremost are those human rights that facilitate provision for and satisfaction of the needs of survival. The argument upon which his recommendation is based does not derive from any conviction that subsistence rights are prior to other basic rights such as those to security and liberty but rather from sympathy to starving and malnourished people.³⁴

Much as malnourishment and starvation must be alleviated, it is not possible to provide subsistence rights in total isolation of other rights. Bread may be given to a starving person but if his life is going to be taken away

soon after eating the bread, then no purpose would have been served by providing the bread. Similar arguments could be advanced for security. Security is as essential to a person's survival as is bread.

Therefore, the interdependence of human rights should not be denied. Civil and political rights on the one hand, and economic and social rights on the other, are inter-related and reinforce one another. Collective or solidarity rights derive from the above two categories of human rights since the ultimate beneficiary is the individual, and their overall effect is to reinforce civil and political, as well as economic and social rights, and vice versa.

However, we must acknowledge one fact, namely, that in Africa all human rights cannot be effectively implemented at the same time. It is too big a task. This fact notwithstanding, one category of human rights must not be pursued in isolation because no purpose will be served in the long run. What needs to be done is to attempt to satisfy the basic rights from each category so as to lay a foundation for the eventual observance of all other human rights.

Among the rights which should be observed immediately and perhaps before all others are: the right to life, and security of the person; freedom of speech, and of association; the right to political participation; the right to work, and to social security; the right to internal self-determination, peace, and disaster relief; and the right to

social and economic development. These would seem to be the core rights, at least in the case of Africa, which will help lay the foundation for the observance of other rights.

Once these rights or a majority of them are observed, there will be less instability on the continent; dictatorships will be eliminated, economic and social development should be able to take place. This in turn will facilitate the observance of the remaining lists of human rights. However, it is very unlikely that these rights will be achieved within the frame work of the one-party state which is not so uncommon on the continent.

One-party States and Human Rights in Africa.

The idea of a one-party State has become practical politics in Africa.³⁵ A majority, if not all, of the African governments which are not military dictatorships are one-party states. Today only Botswana, Gambia, Mauritius, Morocco, Senegal, Sudan and Tunisia practice multi-partyism. The rest are under civilian one-party or military dominated regimes. This was not so at independence. African countries, almost without exception, adopted multi-party political systems and elaborate bills of human rights at the time when each attained independence.

After a short period of liberal, constitutional government characterized by freedom of speech, press, and political activity, severe restrictions were imposed on the

exercise of rights, and in particular, political rights. The mechanism through which this curtailment of political and other rights was institutionalized was the one-party State system and any resistance to this was invariably met with severe repression.³⁶

Allegedly in an effort to fight grave economic problems and divided tribal loyalties as well as obtaining more effective control of their citizens, African leaders, almost without exception, renounced multi-party democracy in favour of one-party political systems. One-party States systems were seen as the solution to Africa's political malaise and under development.³⁷ Multi-party political systems were seen as divisive and a bar to the attainment of economic development.

Another justification (is it a pretext) used for adoption of the one-party political systems were the African traditions and values - it was alleged that Africans were not used to western multi-party democracy. This argument seems to have been based upon the fact that a majority of the African societies were being ruled by hereditary chiefs and kings prior to the coming of the colonialists. It is true that many traditional rulers had absolute powers but this does not mean that they used them arbitrarily.

Many of these governments were soon seized by strong executives, military cabals, or dictators. Perhaps with the intention of creating circumstances akin to those of hereditary rulers, such leaders destroyed the multi-party

political systems which they inherited at time of independence, replacing them with one-party State systems. The erosion of human rights in this respect was usually not far behind.³⁸

However, it must be pointed out that neither the African constitutions nor the United Nations Charter require the guaranteeing of human rights through a competitive multi-party democracy. This is not even so with the recently enacted African Charter on Human and Peoples Rights. Though partly in conformity with the U.N. covenant on Civil and Political Rights, the African Charter makes no mention of voting nor of genuine periodic elections.³⁹

Likewise, it must be noted that it is not impossible to observe and respect human rights, including the holding of genuine periodic elections, within a one-party State system. It would be erroneous to interpret the one-party system as the embodiment of absolute evil. Ideally, one-party States are taken to be a vehicle of political participation. It is sometimes argued that it is easier to choose freely within a one-party State system because the differences are supposedly less than in a multi-party political system. One scholar suggests that:

depending on countries, circumstances, and events, the one-party system could truly gain acceptance by all as the ideal instrument for the rallying of centrifugal forces, as the temple of frank and sincere dialogue, and the backstay of States weakened and fossilized by the vicissitudes of history. ...it could be a temple ideal devised to face situations of public salvation, major crises, situations of emergency and exigency, thus a sort of sacred union in exceptional circumstances, a response to situations that require a call to the people.⁴⁰

Notwithstanding these arguments, Africa's experience shows that this is not always the case. Many of the African leaders practice an almost absolute despotism which is also almost always autocratic, and the primary organizational expression of this despotism is the one-party State. Many times a leader concentrates all powers under his sole authority, even when there are parliamentary assemblies and a judicial system apparently independent but in reality confined to the role of rubber-stamping verdicts and instructions handed down in cases where "State interests" are involved.

Since no criticism and opposition is tolerated, Africa's one-party state systems have turned out to be rubber-stamping mechanisms for the party leadership. The examples of Kenya, Tanzania, and Zambia, which are among the African countries which have established one-party State systems for a long time, are cases in point.⁴¹ Perhaps because Zimbabwe is new in the arena, its performance as a one-party state is so far not as bad as in the other African countries which practice one-party State politics.

Consequently, the idea of a one-party State system has proved not to be healthy for human rights in Africa. In practice, it is clearly inconsistent with the enjoyment of fundamental freedoms and rights.⁴² Likewise, it solves neither the continent's political malaise nor its economic development problems. African leaders have used this one-party political system (the neo-marxist idea of a vanguard party) to create personal cults which are almost tantamount to personal empires.

In order to sustain themselves in power, African leaders violate human rights particularly but not limited to the civil and political rights category, by stifling all opposition and criticism through such means as detentions, torture, and deaths, to mention but a few.⁴³ Many times the means of stifling opposition have included the distribution and allocation of resources and opportunities. Party supporters are allocated job opportunities and other benefits while those who seem not to support the government are denied many of the opportunities and resources.

Political participation, when allowed, is itself a mockery. Only the ruling party sycophants are 'elected', all opposition having been almost automatically screened out during the preliminaries.⁴⁴ This is in spite of the constructive elements embedded in parliamentary opposition. The performance of one-party States in Africa is better revealed in the words of one scholar as follows:

Whether or not the one-party solution to the present African political malaise is the best approach can better be judged by the wave of military coups, chaos, corruption and instability pervading the continentMany of the new leaders have tampered with the political principles that lie at the very heart of democratic government....⁴⁵

Consequently, one-party State systems are a liability rather than an asset in Africa. They neither facilitate economic development, nor help the observance and respect for human rights and fundamental freedoms. Their single and most important purpose is to help establish and perpetuate "personal rule" or sometimes class rule. Many times the means through which this is achieved is abuse of human rights. In the words of one scholar, Africa's one-party State systems are:

the cornerstone and the prime base of obscure [read absolute] despotism. [This] uses the structure of an idealized one party to ensure the permanence of a totalitarian system. Under the pretense of being the cradle for the building of the nation-State, [the one-party State] is nothing but a movement to rally people in the service of the one in power. Organized as it is according to the monolithic model of totalitarian system [it] has no room for any discussions. It stifles any creative capacity since the party leader is considered as holding Universal truth by the grace of God.⁴⁶

In light of all the above, whether or not the alleged "African" concept of human rights together with the prioritization of human rights are dropped, any attempts at enforcing human rights in Africa, at least on the domestic level, should not be through a one-party State system.

FOOTNOTES

- 1 See Burns H. Weston, Human Rights, supra, 264-266; and R. J. Vincent, Human Rights and International Relations, supra, 11-12.
- 2 Ibid.
- 3 Ibid.
- 4 Ibid.
- 5 Burns H. Weston, supra, 266.
- 6 It is not my intention to deal, in great detail, with the various arguments and counter-arguments in this respect. Our major concern in this work is the way these various rights are treated in Africa. For a detailed coverage of this debate on the international plane see, among others, Burns H. Weston, Human Rights, supra, 264-269; and R. J. Vincent, Human Rights and International Relations, supra, 12-36 and 81-90.
- 7 Burns H. Weston, supra, 267.
- 8 R. J. Vincent, supra, 12.
- 9 Ibid, 81-90.
- 10 Burns H. Weston, supra, 267.
- 11 Minasse Haile, Human Rights in Africa: Observations on the implications of Economic Priority, 19 Venderbilt Journal of Transnational Law 299 (Spring 1986), 300.
- 12 R. J. Vincent, supra, 40.
- 13 See Jack Donnelly, Human Rights and Development: Complementary or Competing Concerns? in: Shepherd and Nanda, (eds) Human Rights and Third World Development, supra, 26.
- 14 See Minasse Haile, supra, 303-307.
- 15 It cannot be disputed that a large number of people in Africa are not enjoying their economic rights. However, the rate at which civil and political rights are denied transcending to the extent of loss of life, negates all the justifications for denial of civil and political rights.
- 16 Julius Nyerere, former President of Tanzania, thought that civil and political rights are a luxury to extremely poor people (Julius Nyerere, Stability and

- change in Africa, in: Colin Legum, ed, Africa Contemporary record, Vol. 2, London:Rex Collings, 1969-70, c30-c31).
- 17 Rhoda Howard, The Full-Belly Thesis: Should Economic Rights take Priority over Civil and Political Rights? Evidence from Sub-Sahara Africa, 5 H. R. Q. (November, 1985) 467 and 478.
- 18 Seminar on Human Rights in Developing Countries, Dakar, Senegal, 8-22 February, 1966 (ST/TAO/HR/25, 1966, pp 34-35), and quoted by S. Dayal, Developing Countries and Universal and Regional Approaches to Human Rights in Light of Changing Context and Perspective, in: Ginther I. C. and Benedek, W. (ed) New Perspectives and Conceptions of International Law, supra, 102.
- 19 Jack Donnelly, Recent Trends in U. N. Human Rights Activity: Description and Polemic, supra, esp. 639-642. Compare Philip Alston, The Alleged Demise of Political Human Rights at the U.N.: A Reply to Donnelly, 37 Int'l Organization 538 (1983).
- 20 U.N. Gen. Ass. Res. 32/130 of Dec. 1977, [G.A. Res. 130, 32 U.N. G A O R Supp.(No 45) at 150, U.N. Doc. A/32/45 (1977)]
- 21 Minasse Haile, supra, 307.
- 22 Jack Donnelly, The Human Rights Priorities of the U.N.: A Rejoinder to Alston, 37 Int'l Organization 547 (1983), 562.
- 23 Rhoda Howard, The Full-Belly Thesis: et al, supra, 467 and 478
- 24 For arguments for and against these examples, see Jack Donnelly, Human Rights and Development: Complementary or Competing Concerns? in: Shepherd and Nanda, (eds) Human Rights and Third World Development, supra, 44; and Minasse Haile, supra, 309.
- 25 See Minasse Haile, supra, 309.
- 26 See Jack Donnelly, Human Rights and Development: Complementary or Competing Concerns? in: Shepherd and Nanda, (eds) Human Rights and Third World Development, supra, 44.
- 27 B. S. Murty, Human Rights and the Basic Perspectives of Developing Countries, in: Agrawala, Rama Rao, and Saxena, (eds) New Horizons of International Law and Developing Countries, Int'l Law Ass., India, 1983, 17.

- 28 See Jack Donnelly, Human Rights and Development: Complementary or Competing Concerns? in: Shepherd and Nanda, (eds) Human Rights and Third World Development, supra, 28-29.
- 29 See Minasse Haile, supra, 317.
- 30 See Jack Donnelly, Human Rights and Development: Complementary or Competing Concerns? in: Shepherd and Nanda, (eds) Human Rights and Third World Development, supra, 46.
- 31 U.N. Doc. A/CONF.32/41, Sales No E 68, XIV 2, para. 13. It is also reproduced in Brownlie, Basic Documents on Human Rights, supra. Of course this does not seem to be the interpretation given to it today.
- 32 Ibid.
- 33 Supra, 329.
- 34 Supra, 2 and 150.
- 35 It is interesting to note that the idea of one-party States has increasingly become an african pattern. One-party States are limited to States in Africa and in the socialist and communist countries. Thus, although Latin America has often had military dictatorships, whenever parties have functioned the idea of a one-party state has not been pressed. The only exception are the countries which profess communism or socialism such as Cuba. The same applies to a majority of the Asian countries outside of the communist states.
- 36 See Edward Kannyo, The OAU and Human Rights, in: Yassin El-Ayouty and William Zartman, eds, The OAU After Twenty Years, SAIS, Praeger, New York, 1984, 157; and John Ebiasah, The Contradictions and Paradoxes in the African Experiences, 22 Howard Law Journal, 3.
- 37 See John K. Ebiasah, Africa: New Masters, New Slaves 8 Human Rights J. 10, 12-13.
- 38 See Carol M. Tucker, Regional Human Rights Models in Europe and Africa: A Comparison, 10 Syracuse J. Int'l L. and Commerce 135 (1983) 153.

- 39 Article 13, African Human Rights Charter. Rhoda Howard, in her work entitled: Human Rights in Commonwealth Africa, Rowman and Littlefield, New Jersey, 1986, 134, suggests that this omission must have been done deliberately so as to leave open the possibility of choosing representatives by other means other than elections on the basis of universal suffrage; for example by elections or appointment within the ruling party.
- 40 Edemo Kodjo, Africa Tomorrow, Continuum, New York, 1987, 129 (Translated by E .B. Khan)
- 41 See Africa Confidential, Vol.29, No.10, 13 May, 1988, Zambia: Backbench revolt. It talks of President Kaunda's attempts to stifle any opposition in parliament. His Special branch is said to have already earmarked the outspoken backbenchers who have often embarrassed the government so that they may not qualify in the next elections. The United National Independence Party (UNIP) is the only political party in Zambia.
- 42 See James W. Skelton, *supra*, 322.
- 43 See Robert H. Jackson and Carl G. Rosberg, Democracy in Tropical Africa: Democracy versus Autocracy in African Politics 38 J. of Int'l Affairs, (No 2, Winter, 1985) 302-305. See also International Commission Jurists, Human Rights in a One-Party State, Search Press, London, 1978.
- 44 Ibid.
- 45 John K. Ebiasah, *supra*, 13.
- 46 See Edemo Kodjo, Africa Tomorrow, *supra*, 129.

P A R T

F O U R

The Organization Of African Unity
and human rights

C H A P T E R

S E V E N

THE OAU DOUBLE STANDARD APPROACH TO HUMAN RIGHTS

The Organization of African Unity (OAU), formed in May 1963,¹ was conceived of principally as a political organ and not an instrument for the promotion, protection or enforcement of human rights. Protection of human rights was merely peripheral in the scheme of priorities. This is clearly manifested in the OAU Charter itself which makes no direct mention of human rights except in its preamble,² apart from the right of peoples to self-determination in the sense of attainment of independence from colonialism.

The objectives of the OAU are set out in its Charter,³ as follows: (a) to promote political unity and solidarity of African states; (b) to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa; (c) to defend their sovereignty, their territorial integrity and independence; (d) to eradicate all forms of colonialism from Africa; and (e) to promote international co-operation, having due regard to the Charter of United Nations and the Universal Declaration of Human Rights.

Although the duty to encourage the promotion and protection of human rights could be implied into the interpretation of objectives (b) and (e) above, no steps

were ever taken in this direction until 1979. Thus one scholar concludes that:

Human rights were not a major concern of African States after each country had gained independence, nor by the Organization of African Unity at the time it was set up. At the time political and economic independence, non-discrimination and liberation by Africa were the immediate objectives to be achieved by the Organization of African Unity.⁴

Consequently, within the first two decades of its formation, the OAU's only human rights oriented goals have been the elimination of colonialism in respect of those countries which were not yet independent, and the eradication of racial discrimination (apartheid) from Africa.⁵ To this end, various resolutions have been passed not only within the OAU itself, but also within the United Nations upon the insistence of the OAU group at the United Nations. An OAU Co-ordinating Committee for the liberation of Africa was also set up with the duty of supervising moral, financial, and military aid to liberation movements in dependent African countries.⁶ Within this ambit, any reference to human rights is essentially for the purpose of achieving any one of the stated objectives and not for the protection of human rights per se.

In pursuit of its above said principles, the OAU maintained an indifferent attitude toward the suppression of human rights in a number of independent African countries by unduly emphasizing the principle of non-interference in the internal affairs of member States at the expense of human rights. Blatant violations of human rights ranging from such

mass killings and abuses as those of the Tutsi and Hutu in Rwanda in the early seventies, of Idi Amin in Uganda, Marcius Nguema in Guinea and Bedel Bokassa in Central Africa, to political detentions, torture and other abuses by the so-called "democratic" countries of Africa such as Kenya, were not given as much as a nod but were instead brushed away as matters solely within the internal affairs of the member State concerned.⁷

Within its Summit Conferences the OAU has, more often than not, overlooked such abuses and instead concentrated its attention to the issues of apartheid in South Africa, and the independence of such countries as Namibia and Western Sahara, as well as Zimbabwe (until 1979), and Angola and Mozambique (until 1975). In light of this attitude, several scholars commented that the OAU's approach to human rights was a dichotomous one in that it turned a blind eye toward human rights violations in member States but blamed violations in South Africa and those countries still under the yoke of colonialism.⁸ Others argued that the OAU was a little more than an organization for the protection of the rights of heads of States.⁹

This attitude was also reflected in the activities of the African States within the United Nations wherein the OAU group has many times insisted upon "the try OAU first" principle¹⁰ allegedly based upon article 52(2) of the United Nations Charter. Thus, whenever human rights oriented issues (except those relating to independence, and perhaps

economic, social and cultural rights) were brought to the attention of the United Nations in respect of any African State, the OAU organs, more often than not, made it a point in their resolutions to emphasize the need to seek regional remedies first, as well as putting "this need" in such a way as could ensure for the OAU the widest possible jurisdiction.¹¹

The African group's attitude at the United Nations, just like the one within the OAU, has caused scholars to charge that Africa's approach to human rights at the United Nations is tainted with double standards.¹² Reasons for this dichotomous approach to human rights, be it within the OAU or at the UN, have been given as follows:¹³

- (a) that the African leaders adopted a narrow and state-centric interpretation of the international bill of human rights - to them the instruments were just a means of peaceful and positive cooperation among states;
- (b) that the OAU itself is largely an association of heads of States and governments whose primary concerns have nothing to do with the protection and promotion of human rights. They focus upon self preservation, regime security, and the sovereignty and territorial integrity of their States; and
- (c) that some of the provisions of the OAU Charter are major barriers to the promotion of human rights. This is particularly so with article III(2) in respect of non-interference in the internal affairs of member States,

under which many African leaders have hidden human rights violations in their countries.

However, one point which must not be forgotten is the fact that the OAU is a fragile political entity whose primary objectives have been the protection of the newly acquired independence of their countries, and African solidarity or unity as is reflected by the name of the organization. Therefore human rights violations among its members present one of the most delicate challenges.¹⁴

Just as has been the situation in the last two decades, the OAU may hardly be in a position at present to cope with enormous problems involving, and arising out of human rights abuses and civil wars, or from protracted inter-State conflicts. In addition to not being a truly cohesive entity, the OAU lacks sufficient military, financial, and personnel resources for such functions as enforcement of resolutions, border-sealing, truce observation, and restoration of law and order, just like it lacks resources for large-scale relief operations.¹⁵

Notwithstanding the above, the OAU could still have performed better in the human rights field than it has done in the past two and a half decades. The above factors should be no justifications for the African governments not respecting and promoting human rights. They are not insurmountable. In fact several of them are self-generated. For example an OAU force can be raised just like the United Nations raises its peace-keeping forces; personnel resources

can be available especially if those people who have been forced into exile to serve as "international civil servants" can be induced into going home; and finances can be raised particularly if African leaders can be less obsessed with maintaining themselves in power through spending too much of the national budget on defense.

It might have been partly the realization of the fact that in spite of all the problems and alleged hindrances, the OAU could still play an important role in the promotion and protection of human rights (in addition to other factors),¹⁶ that some change of attitude toward human rights protection took place among the African leaders in 1979-80. This change culminated in the the adoption of the African Charter on Human and Peoples' Rights by the Summit of the African Heads of State and Governments of the the OAU in Nairobi, Kenya, in June of 1981.¹⁷ This Charter, also known as the Banjul Charter on Human and Peoples' Rights,¹⁸ shall be the concern of Chapter Eight of this study.

FOOTNOTES

- 1 A. Sesay, O. Ojo, and O. Fasehun, The OAU After Twenty Years, Westview Press, Boulder, Colorado, 1984, 1-2.

- 2 For example Paragraph 9 of the Preamble to the OAU Charter states that "PERSUADED that the Charter of the United Nations and the Universal Declaration of Human Rights, to the principles of which we reaffirm our adherence, provide a solid foundation for peace and co-operation among states".

- 3 See the OAU charter, article II(1); Also see article III in relation to the OAU principles.

- 4 Roger Chongwe, African Charter on Human and Peoples' Rights, Commonwealth Law Bulletin, October 1987, 1605.

- 5 See, among others, Moses E. Akpan, African Goals and Diplomatic Strategies in the United Nations, Christian Publishing House, North Quincy, Massachusetts, 1976.

- 6 See Monica N. Hall, The Curious Bind Spot of the OAU, supra, 32.

- 7 There are a few times when the OAU has intervened in some countries in spite of the non-interference principle. These include: the "Congo Crisis", the Nigerian Civil War, and the Chadian Civil War. The other situation was when Tanzania invited OAU forces to replace British troops that had quelled the 1964 army mutiny in Tanzania. Edward Kannyo, The OAU and Human Rights, in: Yassin El-Ayouty and William Zartman, eds, The OAU After Twenty Years, SAIS, Praeger, New York, 1984, 155, 162, argues that the OAU has only intervened where there is presence or threat of foreign intervention. We would however think that the alleged need to maintain the status quo (especially the boundaries and territorial integrity of states) has had more weight in this than fear of foreign intervention.

- 8 See among others, Ebiasah, New Masters, New Slaves, supra, 10; Monica N. Hall, The Curious Bind Spot of the OAU, supra, 32; Costa Ricky Mahalu, in: Kunig, Benedek and Mahalu, Regional Protection of Human Rights by International Law: The Ermeging African System, supra, 22-23; A. Sesay, O. Ojo, and O. Fasehun, The OAU After Twenty Years, Westview Press, Boulder, Colorado, 1984, 80-82; and Ojo and Sesay, The OAU and Human Rights: Prospects for the 1980s and Beyond 8 H. R. Q. 89 (February, 1986), 89-91.

- 9 See Olajide Aluko, The OAU and Human Rights, The Round Table 283 (July 1981) 240, and cited in: Rhoda Howard, Human Rights in Commonwealth Africa, supra, 4.
- 10 See Rhoda Howard, Human Rights in Commonwealth Africa, supra, 5; Berhanykun Andemicael, The OAU and the UN. Relations Between the Organization of African Unity and the United Nations, UNITAH, African Publishing Company, New York, 1976, 51 and 91; and Wellington Nyangoni, Africa in the United Nations System, Associated University Press, Cranbury, New Jersey, 1985, 245.
- 11 See Berhanykun Andemicael, *ibid*, 92. Nyangoni, *ibid*, at 245, has attempted to justify this principle by alleging that it eliminates superpower rivalry in the solution of African problems, cold-war confrontation in Africa, and the competition for the establishment of superpower and great power clientele in Africa, as well as allowing the United Nations more time to deal with other issues. Perhaps with the exception of the last reason, none of these is convincing enough especially as they are more of wishes than the reality.
- 12 Warren Weinstein, Africa's Approach to Human Rights at the United Nations, Issue. A Journal of African Opinion 6, No 4(Winter 1976) 16, and quoted by Rhoda Howard, Human Rights in Commonwealth Africa, supra, 5.
- 13 O. Ojo and A Sesay, The OAU and Human Rights: Prospects for the 1980s and Beyond, supra, 92.
- 14 Examples of its fragile condition are reflected in Morocco's withdraw from the OAU because of the issues of Western Sahara - the Africa heads of State and Government admitted the Sahraoui Arab Democratic Republic to the OAU; and recently, in the walk out by the representatives of Mauritius from the 25th Summit Conference in Addis Ababa (May 1988) due to the fact that the OAU member states had accused Mauritius of trading with the apartheid regime of South Africa.
- 15 See Andemicael, supra, 165.
- 16 Roger Chongwe, African Charter on Human and Peoples' Rights, supra, states that the factors that prompted the African leaders to do something about human rights in Africa are: (a)the gradual acceptance by the African leaders of the OAU as a principal forum for the resolution of African problems; (b)the embarrassment caused for the OAU and African leaders in general by the activities of Amin, Bokassa, and various regimes in Uganda, the former Central African Empire and Equatorial Guinea, respectively; (c)the acrimonious debate at the 1979 OAU Summit Conference marked by the

invasion of Uganda by Tanzanian troops and armed Ugandan exiles that led to the downfall of Amin regime; (d) the work of the United Nations in its efforts to encourage the establishment of regional human rights commissions; and (e) the increased attention paid to reports of human rights violations in the international media by politicians, intellectuals, and the general public all over the world beginning in the mid-1970s. See also Edward Kannyo in: Yassin El-Ayouty and William Zartman, eds, The OAU After Twenty Years, supra, 163-166.

- 17 OAU Doc. CAB/LEG/67/3/Rev.5 (1981), reprinted in 21 ILM 59 (1982); and 27 Review Int'l Comm'n Jurists 76 (1981). The Charter received its requisite ratification (a simple majority of 26 members of the OAU) at the end of July, 1986, and it entered into force on October 21, 1986, in accordance with Article 63(3) thereof. For a list of the signatories which brought it into force, see Banjul Charter comes into force, 11 Human Rights Internet Rep., September 1986, 46. ,
- 18 See, among others, Richard N. Kiwanuka, The Meaning of "People" in the African Charter on Human and Peoples' Rights, 82 Am. J. Int'l Law, 80 (1988).

C H A P T E R E I G H T
THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

Much literature has been written about this Charter and the reasons for its adoption.¹ We shall therefore only concern ourselves with its salient features for purposes of this study. These are of two types: those common to other human rights documents both international as well as regional; and those seemingly unique to the African Human and Peoples' Rights Charter.

Rights and Duties in the African Charter.

In addition to expressing intentions to promote and protect human rights contained in the preamble, the Charter provides for the basic civil and political rights and economic, social and cultural rights postulated in the international bill of human rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights).

The civil and political rights guaranteed in the African Charter include: freedom from any kind of discrimination (Article 2); equality before the law (Article 3); the right to life and integrity of the person (Article

4); the right to liberty and security of the person including freedom from arbitrary arrest and detention (Article 6); the right to a fair trial (Article 7); freedom of conscience and religion (Article 9); freedom of information (Article 9); freedom of association (Article 10); freedom of assembly (Article 11); freedom of movement (Article 12); the right to free participation in government (Article 13); and the right to own property (Article 14).

Among the economic, social, and cultural rights which are guaranteed are the following: the right to work under equitable and satisfactory conditions, and the right to equal pay for equal work (Article 15); the right to enjoy the best attainable state of physical and mental health (Article 16); and the right to education (Article 17).

However, it is one thing to proclaim social and economic rights, and quite a different matter to establish the infrastructure necessary for their enjoyment. Given the poverty of the African states, the immediate enjoyment of these rights or the efficacy of the provisions is highly doubtful. It is suggested that these socio-economic rights are purely exhortatory; by their nature, they are rights which can only come into existence after the government has provided facilities for them. It would be ludicrous to refer to such rights where no facilities exist.² Nevertheless, reference to them may force the government into providing the necessary facilities for their enjoyment.

Although the civil and political, as well economic, social, and cultural rights enumerated in the Charter closely follow those contained in the international bill of human rights, many provisions in the African Charter contain clawback clauses that entitle a state to restrict the granted rights to the extent permitted by domestic law.³ These cannot be equated to derogation clauses contained in the international bill of human rights or in other regional human rights documents such as the European Charter of Human Rights. Thus one scholar suggests that:

While derogation clauses permit the suspension of previously granted rights, clawback clauses restrict rights ab initial. As a result clawback clauses tend to be less precise than derogation clauses because the restrictions they permit are almost totally discretionally. The granted rights may be restricted by local law or the existence of a national emergency - two vague and limitless broad standards. By virtue of these, clawback clauses do not provide the external control over State behaviour that derogation provisions provide.⁴

Consequently, the Charter leaves too much lee way for the government to legally not respect rights, particularly in the civil and political category. There are too many unresolved ambiguities that the Charter is capable of legitimizing a cruelly perverted jurisprudence of human rights under which the individual is permitted no more than the right to engage in public praise of the omniscient ruling party or its leader.⁵

In addition to civil and political rights, as well as economic, social and cultural rights, the Charter provides for another category of rights - the third generation of

rights of the so-called rights of Peoples' or solidarity rights. They are also known as collective rights. Peoples' rights are among the unique features of the African Human Rights Charter.

Although much concern had been given to peoples' rights within the international community for quite some time, the African Charter was the first document to codify these rights together with the rights of the other generations, in a single document. The peoples' rights stipulated in the Charter include: the right to equal treatment (Article 19); the right to liberation from colonialism and oppression (Article 20); the right to freely dispose of a peoples' wealth and natural resources (Article 21); the right to economic, social, and cultural development (Article 22); and the right to national and international peace and security (Article 23).

The Charter also stipulates a number of duties which the individual owes (Articles 27, 28 and 29). These duties are allegedly correlative to the rights guaranteed in the Charter.⁶ They include the duty to the family, society, the State, "other legally recognized communities", and the international community as a whole (Article 27). They also encompass the duty to respect and consider fellow human beings without discrimination (Article 28); to preserve the harmonious development of the family (Article 29[1]); to serve the national community (Article 29[2]); not to compromise the security of the State (Article 29[3]); to

preserve and strengthen social and national solidarity (Article 29); and to preserve and strengthen national independence and territorial integrity of one's country (Article 29[5]). These duties would seem to be another of the unique features of the African Human Rights Charter.

Why Duties and Peoples' Rights in the Charter.

It has been argued that in Africa a person is not conceived of as an isolated and abstract individual. He is an integral member of a group animated by the spirit of solidarity.⁷ It is further contended that in Africa, the individual, completely taken over by the archetype of the totem, the common ancestor or the protective genius, merges into the group.⁸ In the view of these scholars, living in Africa means abandoning the right to be an individual, particular, competitive, selfish, aggressive, conquering being in order to be with others in peace and harmony with the living and the dead, with the natural environment and the spirits that people give it or give life to it.⁹

It must be noted that these are part of the cultural-relativist views we have argued against in Chapter Five above. If such arguments were correct, then Africans would today be living with each other "in peace and harmony with the living and the dead".¹⁰ Africa would have been one of the most peaceful places on Earth, and guerrilla wars and other disturbances would have been unknown on the African

continent. Of course this is not the case which goes to further weaken these arguments.

In spite of their weaknesses, these views were taken into account in the inclusion of peoples' rights and duties in the African Charter. The Draftsmen were enjoined with the duty of taking into account "the African concept of human rights". It was indicated that:

the African Charter of human and peoples' rights [had to] reflect the African concept of human rights [and] take as a pattern the African philosophy of law and meet the needs of Africa.¹¹

Room should be made for this African tradition in our charter on Human and Peoples' Rights, while bathing in our philosophy, which consists in not alienating the subordination of the individual to the community, in co-existence, in giving everyone a certain number of rights and duties.¹²

Allegedly taking into account this "African tradition", the OAU Secretary General instructed the Draftsmen to give special attention to the following matters:¹³

- (a) to give importance to the principle of non-discrimination;
- (b) to lay emphasis on the principles and objectives of the OAU as defined in Article II of the Charter of the OAU with particular emphasis on respecting the sovereignty and territorial integrity of each State and each State's inalienable rights to independent existence, and on reflecting absolute dedication to the total emancipation of African territories which are still dependent;
- (c) to include peoples' rights in addition to individual rights;

- (d) to determine the duties of each person towards the community in which he lives and more particularly towards the family and the state;
- (e) to show that African values and morals have an important place in our societies; and
- (f) to give economic, social and cultural rights the place they deserve.

The duties, and peoples' rights in the Charter are allegedly reflecting these "African traditions and values". It would therefore follow from this that the rights and duties in the African Charter are "not universal" but rather "specific to Africa". But is this the case? As we have argued elsewhere in this study, much of this culture which is allegedly being accommodated in the Charter has already been eroded. The majority of Africans have, overtime, been moving slowly towards western and other culture.

To ignore universality while interpreting the African Human Rights Charter is erroneous. This is especially so since interpreting the Charter as "specific" to Africa and for that matter to Africans who are aware of these traditions, is prone to being used as a pretext for neglecting certain human rights, especially of the civil and political rights category, or as an excuse for outright abuse of these human rights as already pointed out.

Meaning of "Peoples" in the Charter.

Whereas a useful step was taken to include peoples' rights within the African Human Rights Charter, no definition of "peoples" was made. That 'peoples' is nowhere defined in the Charter is no accident. It was deliberately avoided.¹⁴ This creates problems because the Charter was left too open for any interpretations of the meaning of "Peoples" to be implied. In the long run, this may be detrimental to protection of human rights. Thus one scholar suggests that the deliberate avoidance of definition of "peoples" in the Charter is an "attempt to use an ideology of African communalism to justify reaffirmation of national interests by referring to weakly-integrated nation-States as peoples".¹⁵

The meaning of "peoples" has been a subject of contention in scholarly circles. Some scholars think that it refers to peoples' or group rights intended to protect the inherent communal, group-oriented African societies against the unbridled individualism characteristic of Western capitalistic society.¹⁶ This is similar to the meaning given to "peoples" in the "Universal Declaration of the Rights of Peoples" also known as the "Declaration of Algiers" of 1976.¹⁷

Nevertheless, this meaning is not acceptable to African leaders, politicians, and some African elites,¹⁸ as well as to some other scholars.¹⁹ This is clearly manifested in the

discussion held in Nairobi in respect of the Charter wherein it was stated that:

It was noted that Westerners tend to consider clans, ethnic units, tribes, and even communities as 'peoples'. In Africa the notion of a people refers to the national community as distinct from an ethnic, linguistic, or tribal community... [A] distinction must be drawn between the rights of peoples and the rights of minorities.... [The] legally recognized communities in Article 27 referred to administrative divisions within a State, for example, communes and rural communities of Senegal.²⁰

This would mean that "Peoples" are equated to the total population in a country and not to distinct groups or communities within the State. This is tantamount to calling "peoples' rights", rights of sovereign States since States are allegedly composed of the total community in a country. If this is the correct interpretation, then the African Human Rights Charter would be contradictory since it purports to take into account African traditions and values.

Since the present States were never in existence as single units prior to colonialism but were instead composed of distinct groups and communities, we would think that the African traditions and values which the Charter purports to take into account include the distinct groups or communities found within each State. To interpret it otherwise would be to defeat the very basis of a majority of the features of the Charter.

African scholars and leaders contend that Africa's approach to human rights is community-oriented and this is emphasized by the inclusion of "peoples' rights" in the

African human rights Charter. The Charter purports to take into account African traditions as already pointed out. However, Charter references to African traditional systems, which were built on highly decentralized autonomous structures, would make little sense if those communities still in existence were excluded from the scope of the Charter.²¹

Thus it is suggested that since the realization of peoples' rights requires the joint efforts of all social actors, and the beneficiary of these rights are the individual as well as all social groups,

comparing the doctrine of human rights of a third generation with peoples' rights would suggest the conclusion that the concept of 'peoples' has to be understood in a wide sense, including also "intermediary groups" between the national people and the individual... Africa is particularly rich in such decentralized structures of a certain autonomy like the village, the clan, ethnic group etc.²²

Likewise, it has been suggested in a recent study²³ that more than one definition of "peoples" is necessary to fit the different references to "people" and "peoples" in the Charter; that the term "peoples" should have four definitions, namely;

- (a) all persons within the geographical limits of any entity yet to achieve political independence or majority rule;
- (b) all groups of people with certain common characteristics who live within the geographical limits of an entity referred to in (a), or in an entity that has attained

independence or majority rule (i.e., minorities under any political system);

(c) the State and the people as synonymous (He says this is only an external meaning of "people"); and

(d) all persons within a State.

It is further suggested that:

the concept of "peoples" should be an enabling tool. It should empower the people to do something about their future; to take charge of their destiny and control their affairs. The only way they can do so in today's world is if the dichotomy between them and the State is minimized. If it endures, there is little hope of realizing any of the peoples' rights in the Charter.²⁴

Consequently, giving a "State-centric" interpretation to the term "peoples" in the African Human Rights Charter is erroneous. African tradition recognizes various groups such as clan, tribe, village, community and so on, as distinct entities depending on the circumstances at the time. Such entities would therefore qualify as "peoples". Since the Charter purports to take into account these "African values", the term "peoples" must be given a wide interpretation so as to encompass all the various African "traditional values and practices".

Such a wide interpretation will help avoid any contradictions which would otherwise arise in the Charter. This is especially so since there are instances in the Charter where "people" refers to more than one meaning; for example in relation to the rights to development (Article 22), peace (Article 23), and a clean environment (Article 24).²⁵ A State-centric interpretation will therefore make

such provisions contradictory with each other which cannot be the desired end of the Charter.

However, much as this wide interpretation of the meaning of "Peoples" is necessary, one should add that it must be limited in at least one respect. Since a majority of the African countries are weakly integrated nation States, the issue of national integrity is a delicate one. Consequently, in order to avoid political instability and unrest the right to self-determination in the sense of "national political independence" envisaged in article 20 of the African Human Rights Charter should not be automatically open to the various peoples found in each State.

In otherwords, although secession is not healthy for the territorial integrity of States, there are a few circumstances when this should be allowed. This should include situations when a group is so distinct, and antagonistic with the rest of the population in a given country that it is impossible to fully incorporate it, be it peacefully or otherwise, into the rest of the country.

However, before a decision to allow secession can be made, a free and fair referendum within the region or area in question must be held to that effect to decide such an issue. A vote of atleast 75 percent in favour of the motion should be attained to enable the secession to be allowed. To hold a referendum throughout the whole country instead of the region in question would in most cases amount to

outright denial of secession since the people who want secession will almost always be in the minority.

Commission on Human Rights.

The other major feature of the African Human Rights Charter is the Commission on Human Rights the provisions for which are to be found in Part II of the Charter. The functions of the Commission are given²⁶ as follows:

- (a) to promote human and peoples' rights.
- (b) to ensure the protection of human and peoples' rights under conditions laid down in the Charter.
- (c) to interpret all the provisions of the Charter at the request of a State party, an institution of the OAU, or an African organization recognized by the OAU, and
- (d) to perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

The composition of the Commission is to be 11 (eleven) members serving in their personal capacity, no two of which may come from the same State.²⁷ They must be eminent nationals of member States enjoying the highest respect and known for their high morality, integrity and impartiality. They should also be competent in the field of human rights, though they do not have to have had legal training.²⁸ The figure 11 (eleven) allegedly corresponds to the equitable geographic distribution that the OAU usage devotes to the North, East, Centre, and South of Africa, and the odd number

is supposed to facilitate the making of decisions in the event of division in votes.²⁹

What is probable, however, is that there will be attempts to put political pressure upon these personalities by their own countries so that they are made more of political representatives than members serving in their individual capacities. Secondly, not many of these so called experts are widely travelled throughout the whole of Africa outside their own countries. Much of their expertise is obtained while studying in Europe and North America, and not from within Africa. Hence they may not, in reality, be experts upon some of the issues they may be dealing with.

The Commission is one of the major arms of the African Human Rights enforcement machinery. It shares its competence in the field of protection of human rights with the Assembly of Heads of State and Government, which supposedly acts as a supervisory body for the Commission. However, in a majority of the instances no action can be taken by the Commission without the consent of the Assembly of Heads of State and Government. In fact, the Commission is itself an organ of the OAU. The OAU's Secretary-General provides and bears the costs of the staff of the Commission, as well as for all the services necessary for the effective discharge of the Commission's duties.³⁰

The African Human Rights enforcement machinery shall be the concern of Chapter Nine and it is in that Chapter that the Commission shall be given detailed treatment.

FOOTNOTES

- 1 Among others see: Kunig, Benedek and Mahalu, Regional Protection of Human Rights by International Law: The Emerging African System, supra; Balonda, African Charter on Human and Peoples' Rights in: New Perspectives and Conceptions of International Law: An Afro-European Dialogue, supra; Edward Kannyo, The Banjul Charter on Human and Peoples' Rights: Genesis and Political Background, in: Human Rights and Development, supra; Ojo and Sesay, The OAU and Human Rights: Prospects for the 1980s and Beyond, supra; and Umozurike, The African Charter on Human and Peoples' Rights 77 Am. J. Int'l. L. 902 (1983).
- 2 See B. Obinna Okere, The Protection of Human Rights in Africa and the Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American System, 6 Human Rights Quarterly, 141, 148 (May 1984).
- 3 See articles 8-14 of the Charter.
- 4 Richard Gittleman, The Banjul Charter on Human and Peoples' rights: A legal Analysis, in: Welch and Meltzer, eds, Human Rights and Development in Africa, supra, 158.
- 5 See Harry Scoble, Human Rights Non-governmental Organizations in Black Africa: Their Problems and Prospects in the Wake of the Banjul Charter, in: Welch and Meltzer, eds, Human Rights and Development in Africa, supra, 200. He believes that one or more nations can and will manipulate the contradictions embraced in the Charter to establish an anti-human rights regime, and also that no nations, however indignant, will be able to employ the Charter successfully to call the violations to account (page 201). We believe that this is being too pessimistic. Whereas it may be true that governments are likely to manipulate the Charter to suit their ends, it is erroneous to state that it is not possible to successfully use the Charter so as to call violations to account.
- 6 See for example, B. Obinna Okere, supra, 148; and Richard Gittleman, The Banjul Charter on Human and Peoples' rights: A legal Analysis, in: Welch and Meltzer, eds, Human Rights and Development in Africa, supra, 155.
- 7 See B. Obinna Okere, supra, 148.
- 8 K'eba Mbaye and quoted by Obinna Okere, supra, 148.

- 9 See Obinna Okere, *supra*, 149.
- 10 To use the words of Obinna Okere, *supra*, 149.
- 11 See the Meeting of experts for the preparation of the Draft African Charter of the Human and Peoples' Rights, Dakar, Senegal, 28 November to December, 1979. [OAU Doc. CAB/LEG/67/3/Rev.1]. Full text is reproduced in: Kunig, Benedek and Mahalu, Regional Protection of Human Rights by International Law: The Emerging African System, *supra*, 107-108, 107.
- 12 See the Address delivered by H.E. Mr Leopald S. Sengor, then President of the Republic of Senegal on 28 November 1979, to the Meeting of African Experts preparing the Draft African Charter on Human and Peoples' Rights. [OAU Doc. CAB/LEG/67/5]. Full text is reproduced in: Kunig, Benedek and Mahalu, Regional Protection of Human Rights by International Law: The Emerging African System, *supra*, 121-124.
- 13 See the Report of the Secretary general on the Draft African Charter on Human and Peoples' Rights [CM/1149 (XXXVIII) 1], and cited by Ojo and Sesay, The OAU and Human Rights: Prospects for the 1980s and Beyond, *supra*, 93-94.
- 14 For example see, Philip Kunig, The Role of "Peoples' Rights" in the African Charter on Human and Peoples' Rights, in: New Perspectives and Conceptions of International Law. An Afro-European Dialogue (Ginther and Benedek, eds.) *supra*, 167; Rhoda E. Howard, Human Rights in Commonwealth Africa, *supra*, 6-7; W. Benedek, Peoples' Rights and Individual Duties as Special Features of the African Charter on Human and Peoples' Rights, in: Kunig, Benedek and Mahalu, Regional Protection of Human Rights by International Law: The Emerging African System, *supra*, 66-69; and K'eba Mbaye's Keynote address, and the Summary of Discussion, in: Human and Peoples' Rights in Africa and The African Charter (International Commission Jurists) Report of a Conference held in Nairobi from 2 to 4 December, 1985, convened by the International Commission of Jurists, 27-28 and 54.
- 15 Rhoda E. Howard, Human Rights in Commonwealth Africa, *supra*, 6-7.
- 16 For example Asmarom Legasse, and quoted in: Rhoda E. Howard, Human Rights in Commonwealth Africa, *supra*, 6.

- 17 This was drafted by private initiative by a number of individuals, including well-known international jurists. However, it is not a legally binding document. For a useful account on this Declaration see F. Rigaux, The Algiers Declaration of the rights of peoples, and Richard Falk, The Algiers Declaration of the Rights of Peoples and the Struggle for Human Rights, in: UN Law/Fundamental Rights (Antonio Cassese, ed.) 211-218 and 225-235 respectively. For other similar views see International Experts Meeting on the Problems Connected with the Rights of Peoples and the Historical and Practical Significance of these Problems, Harare, Zimbabwe, 2-5 December 1985 (UNESCO, Division of Human Rights and Peace, Final Report, SHS 85/CONF. 613/10, 15 December, 1985); and Gillian Triggs, The Rights of Peoples and Individual Rights: Conflict or Harmony? Law School, University of Melbourne (Draft Article). Compare BULLETIN of the Australian Society of Legal Philosophy, Vol.9, No.33, June 1985, Special Issue: The Rights of Peoples, particularly, the Article by Ian Brownlie, The Rights of Peoples in Modern International Law, 108, 113. He rejects the Algiers Declaration and the idea that "rights of peoples" exist. To him those who talk of peoples' rights are merely enthusiastic. However, he leaves the door open for empirical studies.
- 18 See Human and Peoples' Rights in Africa and The African Charter (International Commission Jurists), *supra*, 53-54.
- 19 For example see BULLETIN of the Australian Society of Legal Philosophy, Vol.9, No.33, June 1985, Special Issue: The Rights of Peoples, *supra*, especially Ian Brownlie's Article (page 113).
- 20 Human and Peoples' Rights in Africa and The African Charter (International Commission Jurists), *supra*, 54.
- 21 See Wolfgang Benedek, Peoples' Rights and Individual Duties as Special Features of the African Charter on Human and Peoples' Rights, in: Kunig, Benedek and Mahalu, Regional Protection of Human Rights by International Law: The Emerging African System, *supra*, 71.
- 22 Ibid.
- 23 Richard N. Kiwanuka, The Meaning of "People" in the African Charter on Human and Peoples' Rights, 82 American J. Int'l Law, 100-101 (1988).
- 24 Ibid.
- 25 Ibid.

- 26 See article 45 of the African Human Rights Charter.
- 27 Whether or not these personalities will serve in their individual capacity and not as political representatives of their states remains to be seen. Examples may perhaps be got from the UN equivalents where this works unevenly. Thus, most experts nominated to the UN Sub-Commission have represented their States politically, and a number are foreign service officers.
- 28 African Charter, articles 31 and 32.
- 29 See K'eba Mbaye in: Human and Peoples' Rights in Africa and the African Charter (International Commission of Jurists), supra, 35.
- 30 African Charter, article 41.

C H A P T E R

N I N E

THE AFRICAN MACHINERY FOR ENFORCEMENT OF HUMAN RIGHTS

The African human rights enforcement machinery comprises the Human and Peoples' Rights Commission as the major component, together with the Assembly of Heads of State and Government or the Chairman thereof, and the Secretary-General of the Organization of African Unity as supervisory organs. Ideally the Commission is supposed to act independently but in reality it cannot make substantial decisions without getting a 'go-ahead' from the Assembly of Heads of State and Government, or from its Chairman particularly in cases of emergency. It is therefore part of the Organization of African Unity and its performance will in most cases depend on the performance of the OAU.¹

The Human and Peoples' Rights Commission.

As is revealed in its functions, the Commission's major duty is to promote and protect human rights. This is to be achieved through documentation, studies, seminars, symposiums, and conferences to disseminate information; to encourage other human rights institutions; and should the case arise, give its views or make recommendations to governments. It shall formulate rules and principles for the solution of human rights problems, interpret the Charter at

the request of a State party, an institution of the OAU, or an African organization recognized by the OAU, and perform other functions given to it by the Assembly.² In its investigative capacity, it may employ any appropriate method of investigation and may be contacted by any one capable of enlightening it.³

In addition to the above, the eleven-man Commission may receive inter-State complaints in respect of human rights abuses. These are termed communications. Any State-party that believes that another State has violated the Charter shall communicate the alleged breach to the violator in writing and send copies to the Secretary-General and to the Chairman of the Commission. The alleged offending State has three months within which to reply in writing to the complainant State.⁴ If the matter is not resolved within three months to the satisfaction of both parties, either State may submit the matter to the Commission.⁵ Alternatively, the accusing party may approach the Commission directly by lodging a complaint with the Commission Chairman and also serving a copy on the Secretary-General and the alleged offending State.⁶

However, the Commission may not deal with any matter submitted to it unless all local remedies, if they exist, have been exhausted. The only exception is if it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.⁷ When the Commission decides upon acting, it may request for all relevant

information and have the State concerned to appear before it in an attempt to reach an amicable solution.⁸

If no amicable solution can be reached, the only course open to the Commission is to prepare and transmit a report of the facts, its findings, and any recommendations to the States concerned and to the Assembly of Heads of State and Government.⁹ The Commission is also under an obligation to submit to each ordinary session of the Assembly of Heads of State and Government a report on its activities.¹⁰

Although States Parties to the African Human Rights Charter have the greatest standing in bringing complaints before the Commission within the provisions of the Charter, the Charter also empowers the Commission to receive complaints concerning human rights violations from non-State parties. These have been categorized as "other communications". It has been argued that the "other communications" envisaged are those from physical or moral entities other than State parties. They therefore include individuals, human rights non-governmental organizations, and international and national organizations. The Charter does not envisage complaints from States that are not parties to the present Charter.¹¹

Unlike communications from States, before "other communications" can be eligible for consideration by the Commission, seven prerequisites must be satisfied. These are set out in article 56 of the Charter as follows:

- (1) They must indicate the author even if the latter requests anonymity;

- (2) They must be compatible with the Charter of the OAU or with the present Charter;
- (3) They must not be couched in a language that is insulting to a State or its institutions, or to the OAU;
- (4) They must not be based exclusively on news disseminated through the mass media;
- (5) All local remedies must be exhausted unless it will unduly prolong the procedure;
- (6) They must be submitted within a reasonable time from the time the local remedies are exhausted or from the date the Commission is seized of the matter; and
- (7) They must not deal with cases which have already been resolved.

Whether or not a communication meets these prerequisites will be determined by a simple majority of the members of the Commission.¹²

However, the Commission cannot act on these "other communications" until it has notified the State concerned.¹³ Secondly, no steps can be taken unless the Commission is satisfied that the communication relates to special cases which reveal the existence of serious or massive violations of human and peoples' rights. But even then it has to first bring these cases to the attention of the Assembly of Heads of State and Government which may then request the Commission to undertake an in-depth study of the cases and make a factual report, accompanied by its findings and recommendations.¹⁴

The only exception to the above are those communications depicting cases of emergency duly noticed by the commission. However, even these cases cannot be dealt with immediately. They have to be submitted by the Commission to the Chairman of the Assembly of Heads of State and Government who may then request an in-depth study.¹⁵

Much as the only course open to the Commission is to make a report and recommendations, whatever report is made must remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide. Even the report on the activities of the Commission can only be made public after it has been considered by the Assembly of Heads of State and Government.¹⁶ Does this then mean that the Charter envisages some form of censorship upon the commission's work to be carried out by the Assembly of Heads of State and Government?

Therefore the role of the Assembly of Heads of State and Government in the African human rights enforcement machinery is very clear. The Human Rights Commission is part and partial of the OAU and all its actions are determined by it in spite of the fact that the members of the Commission are supposed to act in their individual capacities independent of any State. In fact, the final decision in all cases will come from the Assembly of Heads of State and Government and not from the Commission.

The African Commission on Human and Peoples' Rights was constituted during the 1987 OAU Assembly of Heads of State and Government meeting,¹⁷ and on 13th February, 1988, it

adopted its rules of procedure comprising 120 articles.¹⁸ Perhaps due to a number of gaps and ambiguities in the Charter provisions, the Commission has not as yet achieved much. For example, to the knowledge of the writer, the recent August-September (1988) massacres in Burundi have not been given the necessary attention and treatment they deserve. Nevertheless, it may be too early to judge the African Commission.

In the 1987 Seminar on the African Human and Peoples' Rights Commission held in Dakar, Senegal, it was suggested that the Commission may not do much in its initial stages; that, as a first priority, it will devote itself to "drawing its own rules of procedure to fill up a number of lacunae that are discernible in the provisions of the Charter".¹⁹

Although a number of gaps still remain in the Charter, the rules of procedure have been drawn up. Hence they should not be the justification for the Commission's inaction. It may be that the Commission is facing problems of funding. The Commission obtains its finances from the OAU budget. Since the OAU cannot be said to be exactly in the best financial position, it may be that the Commission has not as yet received all the requisite funding so as to commence effective work.

Comparison of the African Human Rights machinery
with other Regional Systems.

The protection and promotion of human rights on a regional basis was not an innovation by Africa. Such regional human rights regimes were already operating in Western Europe and the Americas. A human rights regime also exists in the Middle East, although no enforcement mechanism within the framework of a human rights Charter has been established as yet. Since the European and American Human Rights regimes have operated quite successfully for some time, a comparison of these regimes with the African regime may help assess the success of the African human rights regime.

In all the three Human Rights regimes, (that is the European regime, the American regime and the African regime), provision is made for a Commission of Human Rights for the purpose of promotion and protection of human rights. Thus the European Convention for the protection of Human Rights and Fundamental Freedoms (European Convention) provides for the European Commission of Human Rights;²⁰ the American Convention on Human Rights committed the previously established Organization of American States Inter-American Commission on Human Rights to the implementation of the Convention.²¹

Likewise, the African Charter on Human and Peoples' Rights establishes the African Commission on Human and Peoples' Rights.²² We have already given much treatment to this African Human and Peoples' Rights Charter. Therefore,

we shall only concern ourselves with the other two Commissions, though in a cursory manner, for the purpose of achieving our goal.

The European Commission, composed of twenty-one members each serving for a term of six years, is elected by the Committee of Ministers of the Council of Europe. Unlike the African Commission, the European Commission has automatic jurisdiction over inter-State applications without requiring the express consent of the parties involved or the Committee of Ministers of the Council of Europe. This automatic jurisdiction also extends to petitions by any person, group of individuals or non-governmental organization (NGO) claiming to be a victim of a human right violation by a State Party to the European Convention. The only proviso is that the respondent State Party must have made a declaration recognizing the Commission's competence to receive such petitions.²³

This Commission is empowered to determine admissibility of applications, as well as ascertaining facts in respect of an application properly before the Commission, and to attempt to secure a friendly settlement.²⁴ Unlike the African Commission whose only option is to ascertain the facts and make recommendations to the Assembly of Heads of State and Government in case of a failure to reach a friendly settlement, the European Commission has a few options. It may report the facts and its opinion of the case to the European Council's Committee of Ministers, and optionally, make any number of recommendations to the

Committee.²⁵ Alternatively, it may bring suit before the European Court of Human Rights²⁶ as long as the respondent State Party has recognized the Court's compulsory jurisdiction.²⁷

Likewise, the Inter-American Commission, composed of seven members (no two from the same State) elected in their personal capacities and serving for a one-time renewable term of four years, is given the main function of promoting respect for and defense of human rights.²⁸ This is to be achieved through developing awareness of human rights, making recommendations to OAS Member States, preparing studies or reports, requesting information from OAS Member States, responding to and advising OAS Member States on matters relating to human rights and submitting annual reports to the OAS General Assembly.²⁹ The other avenue is to take action on petitions and other communications.³⁰

Other duties of the Inter-American Commission, just like the European Commission, are determination of admissibility of individual petitions,³¹ fact-finding, as well as establishing friendly settlements.³² It is also obligated to make a report to the OAS Secretary General as well as to the parties involved, for publication, about the facts and the solution reached if it attains a friendly settlement and, if it fails to achieve a friendly settlement, to prepare a confidential report. Optionally, it may tender proposals and recommendations and submit cases to the Inter-American Court of Human Rights.³³ Also, it must receive and review annual reports from the States Parties so

as to monitor their progress in relation to economic, social and cultural rights.³⁴

Perhaps due to the fact that it was formed before the American Convention ever came into force, the Inter-American Commission, unlike the European Commission, plays a dual role; one as an organ of the American Convention, and the other as an organ of the OAS, with the OAS Charter and the American Declaration as its normative instruments.³⁵ The jurisdiction exercised in this dual role has been summarized as follows:

As an [O.A.S.] Charter organ, the Commission has jurisdiction over all O.A.S. Member States, whether or not they have ratified the Convention; as a Convention organ, its jurisdiction extends only to States Parties to the Convention. Here its jurisdiction is more specific and its powers extensive. The powers of the Commission as Charter organ lack precision, which is just as well, for the ambiguities about the scope of its powers gave it greater flexibility to deal imaginatively with gross violations of human rights prior to the entry into force of the Convention. It retains that flexibility in dealing with states that have not ratified it and in responding to emergency situations involving large-scale human rights abuses in the region.³⁶

All three regional systems envisage an important role to be played by the General Assembly of each region. Thus under the European regime, the Committee of Ministers of the Council of Europe, though not a creature of the European Convention and composed of government representatives instead of members serving in their individual capacities as is the case for the various Human Rights Commissions, plays a major role in the promotion and protection of human rights in Europe.

The Committee is responsible for deciding whether or not a breach of the European Convention has occurred in all those cases where no application has been made to the Court by the Commission or a concerned State Party.³⁷ Further still, it has the absolute duty of executing the judgments made by the European Court.³⁸ One of the methods through which this is done is passing resolutions requiring States to remedy proven violations.³⁹ It has therefore been suggested that the Committee is "the ultimate guarantor of human rights under the [European] Convention".⁴⁰

Likewise, although it is established by the OAS Charter and not the American Convention, the OAS General Assembly is empowered to execute the judgments passed by the Inter-American Court. It is therefore free to discuss the matter and adopt whatever OAS sanctions it deems appropriate which to some extent mitigates the Court's incapacity to enforce its own judgments.⁴¹ In this it is assisted by the annual reports that the Court is under an obligation to submit to the General Assembly specifying the cases in which a State has not complied with the Court's judgment and making any pertinent recommendations.⁴²

In the case of Africa, the Assembly of Heads of State and Government is given tremendous powers as far as the enforcement of human rights is concerned. As has already been seen, the African Human Rights Commission, which in principle is the body responsible for the promotion and protection of human rights in Africa, cannot take any concrete action until it has received 'a go ahead' from the

Assembly.⁴³ For example, in cases of massive violations it cannot carry out 'an in-depth' study unless it notifies the Assembly and the latter so requests.⁴⁴ Likewise, all measures taken within the provisions of the Charter must remain confidential until the Assembly considers otherwise.⁴⁵ Thus no report made by the Commission can be published unless and until it has been considered by the Assembly.⁴⁶

Consequently, the (African) Assembly of Heads of State and Government is given far more powers as far as promotion and protection of human rights is concerned than those of its counter parts in the European and American regimes. One wonders whether this is for better or worse. Will it make the regime more powerful and efficient than those in Europe and America? In view of the past record of the OAU in respect to human rights,⁴⁷ chances for this trend are slim. It is more probable than not that it will make it weaker and less efficient. This is especially so since, other than the African Human and Peoples' Rights Commission, the African regime provides for no other avenue for reviewing of cases considered by the Commission.

Unlike the African system, the European and American systems have each got a court structure. They therefore provide second avenues for the review of cases first brought before the Commission. Such a second avenue does not exist in the African regime. Thus in the European system, if the Commission cannot bring about a friendly settlement of a case, it may refer the case to the court. Although the court

has been given secondary position as against the Commission so far as reference of cases are concerned, in practice the Commission has acknowledged the important role of the court and referred cases to it whenever a friendly settlement has not been reached.⁴⁸

Just like the European Convention, the American Convention provides for the Inter-American Court consisting of seven members no two of which may come from the same State. They are elected by the States parties to the Convention from among jurists of the highest moral authority and recognized competence in the field of human rights for a renewable term of six years, and they serve in their individual capacity. The Inter-American Court is directed to interpret the American Convention in both contentious and advisory jurisdiction.⁴⁹ The latter jurisdiction may result in an order for compensatory damages, permanent or temporary injunction or both.⁵⁰

However, in exercising its contentious jurisdiction, the Court is accessible only to the Inter-American Commission and to those States Parties to the American Convention that have expressly recognized such jurisdiction.⁵¹ On the other hand, in exercising its advisory jurisdiction, the Court is open not only to States Parties to the American Convention and to the Inter-American Commission, but also to all Member States of the Organization of American States (OAS) including non-State Parties to the Convention and to the OAS and all its organs.⁵²

Nevertheless, just like in the European regime, individuals have no formal standing before the Inter-American Court. They have standing only before the Commission. The individual's case will therefore only be brought before the Court by the Commission after the Commission has completed its proceedings applicable to the case. Secondly, similar to its equivalent in the European regime, the Court lacks the power to enforce its judgments and preliminary rulings; it must rely on the OAS General Assembly just like the European Court relies on the Council of Europe's Committee of ministers.⁵³

In the African Human Rights enforcement machinery, a court was deliberately avoided allegedly because African customs and traditions emphasize conciliation rather than judicial settlement of disputes. In the words of one eminent scholar who is also one of the draftsmen of the African Human Rights Charter;

According to African conception of the law, disputes are settled not by contentious procedures, but through reconciliation. Reconciliation generally takes place through discussions which end in a consensus leaving neither winners nor losers. Trials are always carefully avoided. They create animosity. People go to court to dispute rather than to resolve difficulty.⁵⁴

This therefore leaves no final recourse for the parties under the African human rights enforcement machinery in case no friendly solution is reached by the Commission. It would seem that the assumption is that the publication of the report of the Commission will force such State into remedying the situation and thereafter observing human

rights. However, since no report can be published unless and until it has been considered by the Assembly of Heads of State and Government, chances are that this effect will take long to be achieved or never at all as the African Heads of State and Government have established a precedent of protecting each other as far as abuse of human rights is concerned through omission or commission. The African Heads of State and Government still have to convince us, through their actions, that this attitude has changed.

The right to petition the various Commissions is also worthy mentioning. Under the African Human Rights regime, only States which are parties to the Charter can petition the African Commission.⁵⁵ This would mean that all non-member States are excluded irrespective of the fact that the complaint being made is against a State Party to the Charter.

This notwithstanding, it could be argued that the right of non-member States to petition the Commission may easily be implied in the "other communications"⁵⁶ until amendment to the contrary is effected. However, this has been rejected by African scholars. For example K'eba Mbaye argues that "other communications" do not include petitions of non-member States and public national institutions dependent upon them.⁵⁷ If this is true then States which are not parties to the Charter cannot petition the Commission even if the complaint is against a State parties to the Charter.

The American Convention envisages an optional inter-state complaint procedure. In addition to the requirement

that complainant States have to be members to the Convention, the Convention gives option to States parties to declare recognition of the Commission's competence to receive complaints from other States parties. The proviso to this is that the complainant State must also have recognized the Commission's competence to receive State complaints.⁵⁸ However, as mentioned earlier the American Commission is competent to entertain complaints of non-member States while exercising its second role as an organ of the Organization of American States.

On the other hand, the European Commission can be petitioned not only by member States to the European Convention, but also by non-member States as long as the complaint is being levied against a State party to the Convention. It therefore envisages a mandatory inter-state complaint procedure.⁵⁹

As regards individual petitions, the American regime is the broadest of the three. The African regime is so State-centric that no express provision was made in respect of individual petitions. Provision for these petitions can only be implied in article 55 of the Charter in respect of "other communications". Therefore, individuals and groups are given a qualified right to petition the African Commission.

Under the European regime individuals and groups have the right to petition the European Commission. However, this right is optional in that the high contracting power against which the complaint is made must have declared its

recognition of the competence of the Commission to receive such petitions.⁶⁰

The American regime, on the other hand, not only expressly provides for the right of individuals and groups to petition the Commission against any State simply on the basis of the respondent State being a party to the American Convention⁶¹ but also does not limit the right to file individual petitions only to victims of violations. This leaves the process open to almost everyone.⁶²

Comparison with UN Human Rights Committee.

The International Covenant on Civil and Political Rights establishes a Human Rights Committee⁶³ (hereinafter "the Committee") for the purpose of promoting human rights in the manner envisaged in the Covenant. It consists of eighteen members who shall be nationals of States Parties to the Covenant, and having high moral character and recognized competence in the field of human rights.⁶⁴ Although this regime is wider in the sense that it cuts across geographical regions, it has similarities with the African regime and is therefore worth looking at.

Just like the African Commission which receives its funding from the OAU budget upon approval of the Assembly of Heads of State and Government, the members of the Committee receive emoluments from United Nations resources upon approval of, and terms and conditions established by, the General Assembly.⁶⁵ All the staff of the Committee and the

necessary facilities for the effective performance of the functions of the Committee are provided by the Secretary-General of the United Nations.⁶⁶ It cannot therefore be independent of the United Nations which is of course understandable since it is established under its auspices.

The States Parties to the Covenant are under an obligation to submit to the Secretary-General, whenever the Committee so requests, reports on the measures they have adopted to give effect to the rights recognized in the Covenant and on the progress made in the enjoyment of those rights. The Secretary-General shall then transmit them to the Committee for it to study them and make recommendations if necessary. He may also, after consultation with the Committee, transmit to the specialized agencies concerned copies of such reports as may fall within their field of competence.⁶⁷

Unlike the African Commission which has to send its reports and recommendations to the Assembly of Heads of State and Government, the Committee transmits its reports and comments directly to the State Parties concerned without first consulting with Secretary-General of the United Nations. It may also transmit these comments and the reports to the Economic and Social Council.⁶⁸

Whereas the African Commission has competence to consider any communication as long as it originates from, and concerns a State Party to the African Charter, there is further limitation upon the Committee. It can only deal with communications originating from State Parties in respect of

those State Parties which have recognized the competence of the Committee to receive and consider communications to the effect that a State Party complains that another State Party is not fulfilling its obligations under the Covenant.⁶⁹

However, just like the African Commission, the communication can only be dealt with after exhaustion of local remedies unless the application of local remedies will be unreasonably prolonged. The Committee shall also hold its meetings under closed doors and it shall provide its good offices to the parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms recognized in the Covenant.⁷⁰

If a solution is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached. If no solution is reached, the report shall state the facts, the written submissions and record of the oral submissions made by the State Parties concerned. In every matter, the report shall be communicated to the State Parties concerned.⁷¹

In cases where the Committee does not resolve a communication to the satisfaction of the State Parties concerned, the Committee may, with prior consent of the State Parties concerned, appoint a five-man ad hoc Conciliation Commission whose good offices shall be made available to the State Parties concerned with a view to an amicable solution of the matter on the basis of respect for the Covenant.⁷² The expenses of the ad hoc Conciliation

Commission are to be met by the State parties concerned though the Secretary-General of the United Nations may, if necessary, meet the expenses before reimbursement by the State Parties concerned.⁷³

Lastly, the Committee shall submit to the general Assembly of the United Nations through the Economic and Social Council, an annual report on its activities.⁷⁴ However, since no express provision as regards approval of the reports before publication is made, it would seem that the Committee is not restricted in the publication of its reports. This is unlike the African Commission which has to obtain the approval of the Assembly of Heads of State and Government before any publication can be made.

Table I: Summary of the four Human Rights Regimes.

<u>FEATURES</u>	<u>AFRICAN</u>	<u>EUROPEAN</u>	<u>AMERICAN</u>	<u>UN</u>
1.Composition of Commission*	11	21	7	18
2.State communications	Yes	Yes	Optional	Optional
3.Individual communications	Yes/No**	Optional	Yes	Optional
4.Confidentiality of procedure	Yes	Yes	Yes	Less***
5.Confidentiality of publications	Too much	Yes	Yes	No
6.Action without approval	No	Yes	Yes	Yes
7.Court System or second avenue	No	Yes	Yes	Yes ⁺
8.Any options to Commission	No	Yes	Yes	Few
9.Enforcement procedure	Yes	Yes	Yes	Yes
10.Jurisdiction over non-members	No	No	Yes ⁺⁺	No

* In the case of the UN Regime, this is called a Committee.

** No express provision is made hence this can only be implied in the "other Communications".

*** The hearing is confidential but the views reached are not confidential.

+ In case of the UN Regime, the second avenue is an Ad hoc Conciliatory Commission and not a court, and as the name suggests, it does not arbitrate but rather tries to reconcile the parties.

++ This is in its second capacity as an organ of the Organization of American States.

Assessment of the African Human Rights Regime.

Much as an attempt was made by the drafters of the African Charter to provide for an enforcement machinery which will suit and accommodate all Africa's human rights abuses within their alleged traditional setting, and purportedly taking into account African values, there are many gaps in the machinery which will inevitably make it less effective.

As seen above, the less emphasis placed upon individual petitions and the lack of a second avenue in the form of a Court or Tribunal are major weaknesses in the African machinery. The according of tremendous powers to the Assembly of Heads of State and Government, in addition to the lack of a Court or Tribunal are likely to make the machinery much weaker. This is especially so since, in addition to making the machinery slow just like any of the other human rights mechanisms, the Assembly of Heads of State and Government has a reputation of protecting African presidents irrespective of the violations their governments have committed. Unless this reputation is improved, the machinery will not operate very efficiently if it is pegged, in all its entirety, upon the Assembly of Heads of State and Government.

Many Scholars hoped that, while drawing its rules of procedure, the Commission would fill up most of the lacunae in the Charter provisions as well as according itself such powers as will enable it to operate efficiently. These rules have now been drawn and presumably attempts have been made

to ensure efficiency.⁷⁵ However, issues like providing for a second avenue in the form of a Court or Tribunal can only be remedied through amendment by the Assembly of Heads of State and Government within article 63 of the Charter.

FOOTNOTES

- 1 Of course it is not possible for the Commission to be wholly independent of the States establishing it. However, what is important is the level to which it is dependent upon them and whether this dependency can be reduced.
- 2 African Charter, article 45.
- 3 Ibid, article 46.
- 4 Id, article 47.
- 5 Id, article 48.
- 6 Id, article 49.
- 7 Id, article 50.
- 8 Id, article 51.
- 9 Id, articles 52 and 53.
- 10 Id, article 54.
- 11 See, among others, K'eba Mbaye in: Human and Peoples' Rights in Africa and the African Charter (International Commission of Jurists), supra, 41; Umozurike, The African Charter on Human and Peoples' Rights, 77 Am. J. Int'l. L. 902, 908; and Daniel C. Turack, supra, 376.
- 12 African Charter, article 55(2).
- 13 Id, article 57.
- 14 Id, article 58(1) and (2).
- 15 Id, article 58(3).
- 16 Id, article 59.
- 17 See Richard N. Kiwanuka, The Meaning of "People" in the African Charter on Human and Peoples' Rights, supra, 101.
- 18 See The International Commission of Jurists, THE REVIEW No.40 June 1988, Rules of Procedure of the African Commission for Human and Peoples Rights, 26 (Editor: Niall MacDermot). Unfortunately, we have not been able to get hold of a copy of the Rules of Procedure of the Commission.

- 19 Roger Chongwe, African Charter on Human and Peoples' Rights, supra, 1611..
- 20 See article 19(1) of the European Convention for the protection of Human Rights and Fundamental Freedoms, Nov.4, 1950, Europ.T.S.No.5. (It entered into force on September 3, 1953). It is supplemented by eight protocols.
- 21 See article 33 of the American Convention on Human Rights, Nov.22, 1969, OAS T.S. No.36, at 1. OAS Off.Rec.OEA/Ser.L/V/II.23 doc.21 rev.6 (1979), reprinted in I.L.M. at 673 (1970), and in Kunig, Benedek, and Mahalu, Regional Protection of Human Rights Under International Law; The Emerging African System, Supra, 137-156.
- 22 See African Human Rights Charter, supra, article 30.
- 23 See articles 20-25 of the European Convention.
- 24 Ibid, article 28(b).
- 25 Id, article 31.
- 26 Id, articles 44 and 48.
- 27 Id, article 46.
- 28 American Convention, supra, article 41.
- 29 Ibid.
- 30 Ibid.
- 31 Id, articles 46 and 47.
- 32 Id, article 48.
- 33 Id, articles 50 and 61.
- 34 Id, articles 42 and 43.
- 35 See B. Weston, R. Lukes, and K. Hnatt, Regional Human Rights Regimes: A Comparison and Appraisal, Vol.20 No.4, Vanderbilt J. Transnational L. (October 1987) 585, 603.
- 36 Buergenthal, Human Rights in the Americas: View from the Inter-American Court, 2 Conn. J. Int'l. L. 303, 306-7 (1987) and quoted in: B. Weston, R. Lukes, K. Hnatt, Regional Human Rights Regimes: A Comparison and Appraisal, ibid, 603.

- 37 European Convention, *supra*, article 32(1).
- 38 *Ibid*, articles 32(4) and 54.
- 39 See B. Weston, R. Lukes, K. Hnatt, Regional Human Rights Regimes: A Comparison and Appraisal, *supra*, 597.
- 40 Professor Kevin Boyle in: *Guide to International Human Rights Practice* (H. Hannum ed. 1984) and quoted by B. Weston, R. Lukes, K. Hnatt, Regional Human Rights Regimes: A Comparison and Appraisal, *supra*, 596-597.
- 41 See B. Weston, R. Lukes, K. Hnatt, Regional Human Rights Regimes: A Comparison and Appraisal, *supra*, 605.
- 42 American Convention, article 65.
- 43 See the sub-section of this Chapter entitled "The Human and Peoples' Rights Commission".
- 44 African Human and Peoples' Rights Charter, article 58.
- 45 *Ibid*, article 59(1).
- 46 *Id*, article 59(2) and (3).
- 47 See Chapter Seven of this work entitled "THE OAU DOUBLE STANDARD APPROACH TO HUMAN RIGHTS".
- 48 See C.K.N Raja, *Jurisprudence of the European Court of Human Rights*, in: Agrawala, Rama Rao and Saxena, eds, New Horizons of International Law and Developing Countries, *supra*, 64.
- 49 See American Convention, *supra*, articles 62 and 64.
- 50 See *Ibid*, article 63.
- 51 *Id*, articles 61(1) and 62(3).
- 52 *Id*, article 64.
- 53 *Id*, article 65.
- 54 See K'eba Mbaye, Keynote Address on the African Charter on Human and Peoples' Rights, in: Human and Peoples' Rights in Africa and the African Charter (International Commission of Jurists), *supra*, 27. Elsewhere in this work we have argued against the unnecessary clinging onto African traditions, which in most cases have or are in the process of diminishing, at the expense of human rights. Therefore, it will serve no purpose to repeat these arguments here.

- 55 African Charter, article 47.
- 56 Ibid, article 55.
- 57 K'eba Mbaye, Keynote Address on the African Charter on Human and Peoples' Rights, in: Human and Peoples' Rights in Africa and the African Charter (International Commission of Jurists), supra, 41.
- 58 American Convention, article 45.
- 59 European Convention, article 24.
- 60 Ibid, article 25.
- 61 American Convention, article 44.
- 62 See B. Weston, R. Lukes, K. Hnatt, Regional Human Rights Regimes: A Comparison and Appraisal, supra, 606.
- 63 Article 28 of the Covenant.
- 64 Ibid.
- 65 Article 35.
- 66 Article 36.
- 67 Article 40.
- 68 Article 40(4).
- 69 Article 41(1).
- 70 Ibid.
- 71 Id.
- 72 Article 42(1).
- 73 Article 42(9) and (10).
- 74 Article 45.
- 75 As stated above, we have not been able to get the full text of the Rules. However, a few of these attempts can be seen from the words of the International Commission of Jurists who state that: "A careful examination of the rules of procedure, especially as regards the clauses in part II relating to the functions of the Commission demonstrates the determination of the Commission's members to safeguard their independence vis-a-vis both the member States and the OAU." (See the REVIEW No.40 June 1988, supra, 30).

C O N C L U S I O N

The prevalent guerrilla movements and wars on the African Continent are largely a result of the abuse of human rights by the various African governments and their various organs, be they military or otherwise. At the root causes of a majority of the guerrilla wars in Africa are to be found, among others, such human rights abuses as the denial of political rights including political participation and intervention into politics by the military; the denial of internal self-determination manifested in such acts as oppression and economic deprivation; and the denial of religious freedoms witnessed in such countries as Sudan.

The above is accentuated by the abuse of other human rights. For example the disrespect of civil rights such as the right to life and property has led to the intensification of the guerrilla wars in that more and more people are forced by these abuses and the prevailing circumstances into joining the already existing guerrilla movements.

Such issues as tribalism and regionalism should not, by themselves, be considered as the real causes of the African guerrilla movements. They are merely factors contributing to the accentuation of these movements. At the bottom of these tribal and/or regional feelings are to be found human rights

violations of one sort or another. Many people are forced to look to their tribe or region and hence the development of tribal or regional feelings due to the abuses of human rights being perpetrated upon them by the government managed by people who happen to be from different tribes than those they are oppressing.

It therefore follows that if human rights were to be respected and observed, tribalism and regionalism would not, by themselves, lead to the commencement of guerrilla wars in Africa. Consequently, if human rights were to be fully respected throughout Africa, fewer guerrilla movements and wars would arise on the Continent, if at all, and those few which would arise would more easily be contained because they would attract little support from the majority of the masses.

The analysis in chapter two in respect of Ethiopia, Sudan and Uganda leads to a few conclusions; In Ethiopia and Sudan there is the need to allow increased regional autonomy or federalism so as to avoid repression of some regions and peoples as well as enabling them to have more effective political participation. Better still, the quagmire in the Eritrian region of Ethiopia can only be effectively solved by subjecting Eritria to a free and fair referendum to determine whether or not Eritrian secession should be allowed.

In the case of Uganda, ensuring effective political participation within the frame work of a unitary State

system may be the best answer. Alternatively, a federal system could be used but this should not be effected unless it is decided upon by a majority vote in a free and fair referendum throughout the whole of the country. The disadvantage with a federal system in the case of Uganda is that it may have the tendency of creating small units some of which may not be very viable.

Since the root causes of the majority of the guerrilla movements in Africa are to be found behind human rights abuses of one sort or another, what is necessary is a mechanism which will ensure that human rights are observed and respected throughout the African continent. Although mediation and negotiation is one form of stopping a guerrilla war, it is not conclusive in itself. This can be illustrated by the Anya nya civil war in Sudan, and the guerrilla war in Uganda, among others.

Through negotiations and mediation, the 17-year old Anya nya civil war was ended in 1972. However, because the various human rights abuses continued, this war was to resurrect in even a more serious war which is currently devastating Sudan. Similarly, the guerrilla war in Uganda could not be stopped by the December, 1985 Nairobi Peace Accord due to the various human rights abuses which were being carried out by the Obote government.

In our study we have attempted to show that the current United Nations human rights enforcement machinery cannot be used to solve Africa's quagmire - it cannot adequately help

protect human rights and thereby avoid the commencement of internal armed conflicts or guerrilla wars. Its role is more of standard-setting as to the level to which human rights should be respected rather than enforcing the implementation and protection or respect of human rights.

Likewise, the African human rights enforcement mechanism which would have played this role of protecting human rights on the continent is not adequately equipped so as to ensure respect for human rights and therefore help avoid the commencement of guerrilla wars on the continent as well as containing those already in progress. True, it may play some major role in this regard if and when properly and fully utilized.

Nevertheless, lack of a court or an arbitration machinery makes the African mechanism to have almost no teeth. As it currently stands, the only thing the African Commission on Human Rights can do is to make a report and recommendations to the (African) Assembly of Heads of State and Government if so requested. Thereafter, the Commission can do nothing. It remains for the Assembly of Heads of State and Government to consider whether or not the recommendations tendered by the Commission are feasible, and if they are, what steps should be taken in the circumstances.

Since this is not a legal decision, and since the whole mechanism is supposed to take into account the allegedly African conception of law where disputes are said to be

settled not by contentious procedure but rather through reconciliation, probably what the Assembly will do is to give advice to the state party concerned or otherwise make requests to it which advice or requests may or may not be agreed to by the said State party. This therefore means that there is no final recourse since there is no visible decision to which the aggrieved party can hold. In otherwords, a visible decision is often essential and this can be seen from the UN system which tries to avoid visible decisions but in fact allows them to be made.

Worse still, the African mechanism is so much pegged upon the Assembly of Heads of State and Government. In addition to the fact that the budget and finances of the Commission are directly controlled by the Assembly of Heads of State and Government, all major actions of the Commission require the consent of the Assembly or, in cases of emergency, that of the Chairman of the the Assembly of heads of State and Government.

All this combines to make the African enforcement machinery a de facto political organ which, ironically, is alleged to have been specifically avoided by the drafters of the African Charter on Human and Peoples' Rights. In otherwords, the African Commission is far more subject to the Assembly of Heads of States and Government than the comparable Commissions or Committees in the American, European, or UN systems.

It has been pointed out that the human rights non-governmental organizations (NGOs) which would have helped in making the work of the Commission easier by bringing to it all those cases in which human rights are being violated but which may not have been brought to the notice of the Commission, as well as helping in compiling data relating to the facts and the evidence available, are not well spread in Africa.

In addition to the non-existence of indigenous human rights NGOs in Africa, those (non-indigenous) NGOs which exist are not uniformly spread throughout the whole of Africa. The tendency is for a majority of them to concentrate in apartheid South Africa. Hence, even if the African human rights enforcement mechanism were to operate effectively and efficiently, not all human rights abuses would be brought to the attention of the Commission because of this deficiency.

We have also shown that some of the concepts which are said to be reflected in the African Human Rights Charter in particular, and in Africa's human rights record in general, and are allegedly based upon African traditions and values, are at their best baseless. They are merely pretexts for justifying various human rights abuses and tendencies. If they are allowed to stand while interpreting the African Human Rights Charter, they will turn out to be a strong fetter upon the effectiveness of the African human rights

enforcement machinery. Ultimately, this will accentuate Africa's quagmire rather than solving it.

In view of all the above, several things have to be done if the mechanism is to be effective and therefore capable of preventing human rights abuses and the resultant civil wars. This does not only mean amending the Charter but also taking practical steps toward respecting human rights on the African continent.

The need for a second avenue in the form of a Court structure or an arbitration tribunal is very axiomatic. The Charter should therefore be amended to this effect and the Assembly of Heads of State and Government should be made the body to enforce the decision's of the Court or Arbitration tribunal depending on the name decided upon. This will provide a final recourse for the parties and will help improve the effectiveness of the enforcement machinery.

The powers of the Assembly of Heads of State and Government in respect to the African human rights machinery should be reduced so as to make it less and less, if at all, a political body which in fact it is at present. Thus it should be made to have no control whatsoever upon any of the decisions of the African Human Rights Commission be it in undertaking studies, cases, or publishing the reports and recommendations made.

We feel that the Commission should be able to operate independently - more like a human rights non-governmental organization. Thus it should be able to undertake studies

without requiring the consent of the Assembly or of its chairman as long as the Commission members deem such studies or investigations necessary. It should also be able to publish reports of its studies as soon as they are completed without first obtaining the permission of the Assembly. This should of course not affect the funding which should continue to come from the general OAU budget. In this way the decisions and recommendations will in most cases be free of all political biases.

However, it must be pointed out that the independence of the Commission may be a question of who is a member of the Commission and not necessarily on its structure. The personalities are very important especially in the initial stages of the Commission. Since the African Human Rights Charter has a number of ambiguities, these could be interpreted in many ways so as to ensure independence. Hence the need for strong personalities on the Commission at least in its early stages.

Likewise, if a Court structure is adopted, it must be able to function independently save for the finances which must come from the general OAU budget, and for the enforcement of Court decisions which should be done by the Assembly of Heads of States and Government. There should be something akin to "the independence of the judiciary".

On the practical side, an attempt must be made to encourage the development of indigenous human rights NGOs and thereby increasing the role of these organizations in

Africa. We would suggest that for starters these organizations should be developed on a regional basis, that is, East, West, North, South and Central. This will ensure that all the violations on the Continent can be given attention. If this is done, there will be less gross human rights abuses and therefore less conditions for the commencement and sustenance of guerrilla wars on the Continent.

Another attempt which should be made is to increase awareness about human rights among the masses. Many people do not know their rights and those who know fear to exercise or demand them. Therefore there should be a literacy campaign in this respect. Of course this should be a long term issue and it must also involve changing the attitudes of the powers that be because they are the ones that instill fear even among those who may be aware of their rights.

One method which is suggested in much of the literature for changing the attitude of these rulers is pegging international aid upon respect for human rights. Of course the extent to which this has worked or been attempted is highly questionable especially as it affects the very masses that it is supposed to protect.

One other suggestion which may perhaps be outside the powers of Africa in general and the OAU in particular, is Super power involvement. We think that much of Africa's quagmire would be easier to solve if the Super powers and other regional powers stopped using Africa as an arena for

exercising their military asernals and political ideologies. Cases in point are, among others, Ethiopia, Angola, and Mozambique.

If no outside countries provided military and other support to either side in the conflicts, we think that some guerrilla movements would fail to take off or if they do they would be considerably weak and therefore easy to contain. Alternatively, those governments which are so repressive would be thrown out of power merely by the simple rule of majorities. If a majority of the people in a country were to gang against a repressive government chances are that such a government will, in the absence of foreign help, be overthrown within a short while.

Lastly but not least, there should be provision for humanitarian intervention in genuine cases of gross human rights abuses. Such mass killings as the recent massacres in Burundi cannot be stopped by the human rights enforcement mechanism however effective the mechanism may be. By the time the final steps are taken, it may be too late to save many lives.

A fairly good example of humanitarian intervention was the Tanzanian entry into Uganda, in 1979, in an effort to stop the atrocities which were being committed by Idi Amin. The only problem with it was that the then Tanzanian president, Mwalimu Julius K. Nyerere, used it for some ulterior motives, namely, to facilitate the coming to power of his friend Apollo Milton Obote.

Consequently, humanitarian intervention by any country or group of countries which may be in position so to do, should be allowed in the short run so as to save lives which would otherwise perish because of the technicalities and bureaucratic tendencies of the mechanism. However efficient the mechanism could turn out to be, the various technicalities and bureaucratic tendencies would make it too slow and too late to react to such situations.

Humanitarian intervention doctrine may also help to deter many leaders and their military and police organs from abusing human rights if they are sure that in case they do so some country will immediately intervene to stop such abuse. Provision for this doctrine should not only be put in the African Charter but also in the International bill of human rights if the doctrine is to have much significance.

The immediate criticism which will be made against this doctrine is that it will be contrary to the much cherished principle of non-interference in internal affairs of member States. It is our considered opinion that there should be an exception to this principle such that it should be waived in this regard. There is no point in insisting on sovereignty when the very people whose sovereignty is allegedly being protected are in fact perishing. Sovereignty should therefore be subject to the lives of the peoples in each country.

One danger which cannot of course be over-looked is misuse of the doctrine of humanitarian intervention. In

order to minimize abuse of this doctrine, specific conditions which must be fulfilled before, during, and after the intervention must clearly be set out.

Whereas these need to be clearly thought out and formulated, they must include such conditions as existence of massive atrocities, preference to joint action unless this cannot be achieved, and limited intervention, that is, only as much military force should be used as is necessary to help stop the massacre and the intervening State or States must withdraw immediately this purpose is attained. This may help stop abuse of this doctrine.

It is our belief that if the various suggestions above said are taken into account, much of the human rights abuses on the continent will be avoided and this also means that many guerrilla wars will not arise since the major factor behind most of them is abuse of human rights. It also means that the few that will arise will be easy to contain.

B I B L I O G R A P H Y

BOOKS AND TEXTS.

- Agrawala, Rama Rao, and Saxena (eds) New Horizons of International Law and Developing Countries, Int'l law ass., India, 1983.
- Akpan Moses E., African Goals and Diplomatic Strategies in the United Nations, Christian Publishing House, North Quincy, Massachusetts, 1976.
- Al-Rahim, Badal, Hardallo and Woodward, eds., Sudan Since Independence, Gower, Aldershot, England, 1986.
- Amnesty International, Human Rights in Uganda, London, 1978.
- Amnesty International, Memorandum to the Government of Uganda on an Amnesty International Mission to Uganda in 1982 and further exchanges between the government and Amnesty International (April 1983).
- Amnesty International Reports, 1982, 1983, 1984, 1985 and 1986.
- Amnesty International, Uganda: Evidence of Torture, (June 18, 1985).
- Anthony D'Amato, International Law: Process and Prospect, Transnational publishers, New York, 1987.
- Avirgan Tony and Honey Martha, War in Uganda. The Legacy of Idi Amin, Connecticut, 1982.
- Berhanykun Andemicael, The OAU and the UN. Relations Between the Organization of African Unity and the United Nations, UNITAH, African Publishing Company, New York, 1976.
- Beshir Mohamed Omer, ed, Southern Sudan: Regionalism and Religion, Graduate College Publications, University of Khartoum, Sudan.
- Brownlie Ian, African Boundaries. A Legal and Diplomatic Encyclopaedia, London, 1979.
- Brownlie Ian, Basic Documents on Human Rights, 2nd. ed, Oxford, 1981.
- Brownlie Ian, Basic Documents in International Law, 3rd ed, Oxford, 1983.

- Brownlie Ian, Principles of Public International law, 3rd, ed, Oxford, 1979.
- Cassese Antonio, ed, U.N. law/Fundamental Rights, Sijthoff and Noordhoff, Netherlands, 1979.
- Colin Legum, "After the Amin Nightmare", Report, January-February, 1983.
- Commonwealth Observer Group, Uganda Elections December, 1980: Report (London. Commonwealth Secretariat, 1980) Final Report.
- Donhan D and James W. (eds), The Southern Marches of Imperial Ethiopia, cambridge University Press, Cambridge, 1986.
- Dorsey Gray L, Beyond the United Nations: Changing discourse in international politics and law, Lanham, 1986.
- Edemo Kodjo, Africa Tomorrow, Continuum, New York, 1987, (Translated by E .B. Khan).
- Ezejiufor G, Protection of human rights under the law (1964).
- Farer Tom J, War Clouds on the Horn of Africa: The Widening Storm, 2nd, rev.ed., Carnegie Endowment for International Peace, New York, 1979.
- Gillian Triggs, The Rights of Peoples and Individual Rights: Conflict or Harmony? Law School, University of Melbourne (Draft Article).
- Ginther K. and Benedek W, (eds) New Perspectives and Conceptions of International Law. An Afro-European Dialogue, New York, 1983.
- Grahame I, Amin and Uganda: A Personal Memoir, 1980.
- Gurdon Charles, Sudan at the Crossroads, Menas Press, Whitstable, Kent, 1984.
- Hagai Erlikh, The Struggle Over Eritrea, 1962-1978: War and Revolution in the Horn of Africa, Hoover Institution Press, Stanford, California, 1983.
- Hannum H, ed, Guide to International Human Rights Practice, Philadelphia, 1984.
- Harbeson John W, ed, The Military in African Politics, Praeger, New York, 1987.
- Hills Dennis C, Rebel People, 1978.

- Hizkias Assefa, Mediation of Civil Wars: Approaches and Strategies - The Sudan Conflict, Westview Press, Boulder, Colorado, 1987.
- Holger Bernt Hansen, Ethnicity and Military Rule in Uganda, Research report No.43, Scandinavian Institute of African Studies, Uppsala, 1977.
- Howard Rhoda, Human Rights in Commonwealth Africa, Rowman and littlefield, New Jersey, 1986.
- Human Rights: A compilation of International Instruments (U.N. 1983).
- Ibingira Grace K, The Forging of an African Nation, Viking Press, New York, 1973.
- International Commission Jurists, Human Rights in a One-Party State, Search Press, London, 1978.
- International Commission Jurists, Uganda and Human Rights: Report to the United Nations Commission on Human Rights, Geneva, 1977.
- Jessup, P, A modern law of nations, 1948.
- Jorgensen, Uganda: A Modern History, London, 1981.
- Kanyeihamba G.W, Constitutional Law and Development in Uganda, E.A.L.B, Nairobi, 1973.
- Khalid Mansour, Nimeiri and the Revolution of Dis-May, KPI, London, 1985.
- Kiwanuka M.S.M, Amin and the Tragedy of Uganda, 1979.
- Kunig P, Benedek W. and C.R. Mahalu, Regional Protection of Human Rights by International Law: The Emerging African System, Baden-Baden, Germany, 1985.
- Kyemba H, A State of Blood: The Inside Story of Idi Amin, 1977.
- Lauterpacht, International law and human rights, 1950.
- Lule Yusuf K, Human Rights Violations in Uganda under Obote, California, 1982.
- Makonnen Yilma, International law and the New States of Africa, 1983.
- Melady T. Patrick, Idi Amin Dada: Hitler in Africa, 1978.

- Memorandum, The Saharaoui Arab Democratic Republic: Presidency, Hauza, SADR, Liberated Territoires, July, 1981.
- Meron T, ed, Human Rights in International Law, Oxford, 1984.
- Minority Rights Group, Uganda and Sudan, Report No. 66, London, 1984.
- Moskowitz Moses, The Roots and Reaches of United Nations Actions and Decisions, Sijlhoff and Noordhoff, Netherlands, 1980.
- Nyangoni Wellington, Africa in the United Nations System, Associated University Press, Cranbury, New Jersey, 1985.
- Oduho J. and Deng W, The Problem of the Southern Sudan, Oxford University Press, London, 1963.
- Ojo, Orwa, and Utete, African International Relations, Longman, New York, 1985.
- Oppenheim, I.L, International law: A Treatise, (A.D. McNair, ed.), 1928.
- Sathyamurthy T. V., The Political Development of Uganda, 1900-1986, Gower, Aldershot, England, 1986.
- Selassie Bereket Habte, Conflict and Intervention in the Horn of Africa, Monthly Review Press, New York, 1980.
- Sesay A., Ojo O., and Fasehun O., The OAU After Twenty Years, Westview Press, Boulder, Colorado, 1984.
- Shepherd and Nanda, Human rights and Third world development, Connecticut, 1985.
- Sherman Richard, Eritrea. The Unfinished Revolution, Praeger, New York, 1980.
- Smith G. Ivan, Ghosts of Kampala, 1980.
- Sohn B. and Buergenthal T, International Protection of Human Rights, Indianapolis, 1973.
- The Address to the Nation by His Excellency the President Hon.Yoweri Kagutta Museveni on the twenty-fifth anniversary of Uganda,s Independence on the 9th October in 1987 at Kampala.
- The Economist, World Human Rights Guide, London, 1986, (Originated and compiled by Charles Humana).

- Thoolen H and Verstappen B, Human rights missions. A study of fact-finding practices of N.G.O.s, 1986.
- U.N.E.S.C.O., Social-political aspects of the palever in some African countries, 1979.
- Vasak (ed.), The International Dimensions of Human Rights, Vol.1, Westport, Paris, 1982.
- Vincent R. J., Human Rights and International Relations, Cambridge, 1986.
- Voll J. and Voll S, The Sudan: Unity and Diversity in a Multicultural State, Westview Press, Boulder, Colorado, 1985.
- Weissbrodt David, The contribution of international N.G.O.s to the protection of human rights, in T. Meron, ed, Human rights in international law, 1984.
- Welbourn, Religion and Politics in Uganda, 1952-62, Nairobi, 1965.
- Welch C. Jr and R. Meltzer, Human Rights and Development in Africa, Albany, 1984.
- Williams and de Mestral, An Introduction to International law, 2nd ed, Butterworths, Toronto, 1987.
- Woodward P, Sudan: Threats to Stability, Conflict Studies No. 173, Institute for the Study of Conflict, London, 1985.
- Yassin El-Ayouty and William Zartman, eds, The OAU After Twenty Years, SAIS, Praeger, New York, 1984.

ARTICLES.

- Alston Philip, The Alleged Demise of Political Human Rights at the U.N.: A Reply to Donnelly, 37 Int'l Organization 538 (1983).
- Banjul Charter comes into force, 11 Human Rights Internet Rep., September 1986, 46.
- Bazyler Michael J, Re-examining the Doctrine of Humanitarian Intervention in Light of the Atrocities in Kampuchea and Ethiopia, Stanford J. Int'l Law, Vol. XXIII, Issue 2, Summer 1987, 547-619.

- Bello Emmanuel G, Human rights: The rule of law in Africa 30 Int'l and comp. L. Q. (July, 1981).
- Bossuyt M. J, The Development of Special Procedures of the United Nations Commission on Human Rights, 6 H. R. L. J. (1985) 179.
- BULLETIN of the Australian Society of Legal Philosophy, Vol.9, No.33, June 1985, Special Issue: The Rights of Peoples.
- Chongwe Roger, African Charter on Human and Peoples' Rights, Commonwealth Law Bulletin, October, 1987, 1605.
- Crisp Jeff, National Security, Human Rights and Population Displacements: Luwero District, Uganda, Jan-Dec. 1983, Review of the African Political Economy, 27-28 (1983):164-174.
- Cultural Survival Quarterly, Vol.10, No.2, 1988, 41, Sudan's Secret Slaughter (Anonymous).
- Disappointing Start to New U.N. Procedure on Human Rights, I. C. J. Review 9 (1972) 5.
- Donnelly Jack, Cultural relativism and Universal human rights 6 H. R. Q. 400-419 (Nov.1984).
- Donnelly Jack, Recent trends in U.N. human rights activity: Description and Polemic 35 Int'l Organization 635.
- Donnelly Jack, The Human Rights Priorities of the U.N.: A Rejoinder to Alston, 37 Int'l Organization 547 (1983).
- Ebiasah John K, Africa: New Masters, New Slaves 8 Human Rights J. 10.
- Ebiasah John, The Contradictions and Paradoxes in the African Experiences, 22 Howard Law Journal, 3.
- Fitzgerald Mary Anne, KENYA, in: The Africa Review, 11th edition, 1987 (World of Information), 114-126.
- Frontier Dispute (Burkina Faso/Mali) Commonwealth Law Bulletin, Vol.13 (No 1 January, 1987), 208-211.
- Glenn Mower A, Jr, Human Rights in Black Africa: A Double Standard? 9 Human Rights J. (January-March 1976), 39-70.
- Hall Monica N, The Curious Blind Spot of the O.A.U., 9 Human Rights 32 (Summer 1981).

Howard Rhoda, Evaluating Human Right in Africa: Some Problem of Implicit Comparisons, 6 H. R. Q. 160-179 (1984).

Howard Rhoda, The Full-Belly Thesis: Should Economic Rights take Priority over Civil and Political Rights? Evidence from Sub-Sahara Africa, 5 H. R. Q. (November, 1985), 467.

Howard Tolley, jr, The Concealed Crack in the Citadel; The United Nations Commission on Human Rights' Response to Confidential Communications, 6 H. R. Q. 420 (1984).

Human Rights Watch Number 2, May-June 1988, 9, AN AGENDA FOR AFRICA WATCH. Human Rights Watch Begins Feasibility Study.

Humphrey J. P, Human Rights and the Peace of Nations, International Commission of Jurists Review, 71-74, December, 1983.

International Commission Jurists, Human and Peoples' Rights in Africa and The African Charter (Report of a Conference held in Nairobi from 2 to 4 December, 1985, convened by the International Commission of Jurists), 26-30.

The International Commission of Jurists, THE REVIEW No.40 June 1988, Rules of Procedure of the African Commission for Human and Peoples Rights, 26-30, (Editor: Niall MacDermot).

International Commission of Jurists, THE REVIEW No.40 June 1988, UN Commission on Human Rights, 18-26, (Editor: Niall MacDermot).

Jackson Robert H. and Rosberg Carl G, Democracy in Tropical Africa: Democracy versus Autocracy in African Politics 38 J. of Int'l Affairs, (No 2, Winter, 1985), 302-305.

Kamminga M. T, The Thematic Procedures of the U.N. Commission on Human Rights, Netherlands Int'l L. Rev. (1987) XXXIV Issue 3, 299.

Kaplan Robert D, The Loneliest War, The Atlantic Monthly, July 1988, 58-65, 60.

Kiwanuka Richard N., The Meaning of "People" in the African Charter on Human and Peoples' Rights, 82 American J. Int'l Law, 80 (1988).

Matthew L, Human rights revisited: The protection of human rights under the international covenant on civil and political rights, 10 Cal. W. Int'l. L.J. 450 (1980).

- Minasse Haile, Human Rights in Africa: Observations on the implications of Economic Priority, 19 Vanderbilt Journal of Transnational Law 299 (Spring 1986).
- Nayar K. G. M, Self determination beyond the colonial context: Biafra in retrospect 10 Texas Int'l. L. J. (1975), 321.
- Obinna Okere B., The Protection of Human Rights in Africa and the Charter on Human and Peoples' Rights: A Comparative Analysis with the European and American System, 6 Human Rights Quarterly, 141.(May 1984).
- Obote Milton, The Footsteps of Uganda's Revolution, East African Journal, 5, 10, October, 1968.
- Ojo and Sesay, The OAU and Human Rights: Prospects for the 1980s and Beyond 8 H. R. Q. 89 (February, 1986), 89-91.
- Rodley N, U.N. Action Procedures Against "Disappearances", Summary or Arbitrary Executions, and Torture, 8 H. R. Q. (1986) 700.
- Shestack, Jerome J, The Case of the Disappeared. "In Foreign Countries 'missing persons' are the nightmare victims of state terrorism" 8 Human Rights 24-27 and 51-53, Winter, 1980.
- Skelton J. W. jr, Standards of procedural due process under international law Vs preventive detention in selected African countries, 2 Houston J. Int'l L. 307 (1980).
- Sohn, The Human Rights Law of the Charter 12 Tex. Int'l L. J. 129 (1977).
- Sohn, The Universal Declaration of Human Rights 8 J. Int'l Comp. Jur. 17 (1967).
- Sornarajah M, Internal colonialism and Humanitarian intervention 11 Ga. J. Int'l and comp. L. 45-77, (Winter 1981).
- Survival International, Africa: Unnatural Disasters, August, 1988.
- Tucker Carol M, Regional Human Rights Models in Europe and Africa: A Comparison, 10 Syracuse J. Int'l L. and Commerce 135 (1983).
- Umozurike U. O., The African Charter on Human and Peoples' Rights 77 Am. J. Int'l. L. 902 (1983).

UNESCO, International Experts Meeting on the Problems Connected with the Rights of Peoples and the Historical and Practical Significance of these Problems, Harare, Zimbabwe, 2-5 December 1985 (UNESCO, Division of Human Rights and Peace, Final Report, SHS 85/CONF. 613/10, 15 December, 1985).

Universal Declaration of Human Rights, Am. J. Int'l L. Supp. 127 (1949).

Weissbrodt D, The Three "Theme" Special Rapporteurs of the U.N. Commission on Human Rights 80 Am. J. Int'l. L. (1986), 685.

Weston Burns H, Human rights, 6 H. R. Q. 257 (1984).

Weston B., Lukes R., Hnatt K., Regional Human Rights Regimes: A Comparision and Appraisal, Vol.20 No.4, Vanderbilt J. Trasnational L. (October 1987) 585.

Woodward Peter, Political factors contributing to the refugees in the horn of Africa, International Relations, Vol.IX, No.2, November 1987, 111.

NEWSPAPERS AND MAGAZINES

Africa Confidential, Vol.27, No.1, 2 January, 1986, Ethiopia: Regional Wrangles.

Africa Confidential, Vol.27, No.3, 29 January, 1986, The Horn: Barre and Mengstu.

Africa Confidential, Vol.27 No.3, 29 January, 1986, Uganda: By Storm.

Africa Confidential, Vol.27 No.4, 12 February, 1986, Uganda: Gotterdammerung at Gulu.

Africa Confidential, Vol.27, No.5, 26 February, 1986, Somalia: Towards an Ogaden Pact?

Africa Confidential, Vol.27, No.10, 7 May, 1986, Sudan: Towards Government.

Africa Confidential, Vol.27, No.12, 4 June, 1986, Pointers, Ethiopia: Villagization.

Africa Confidential, Vol.27, No.16, 30 July, 1986, Ethiopia: Opposition Disintegration.

- Africa Confidential, Vol.27 No.18, 3 September, 1986,
Pointers, Uganda: Northern Troubles.
- Africa Confidential, Vol.27, No.23, 12 November, 1987,
Sudan: Inside Malak.
- Africa Confidential, Vol.28, No.1, 7 March, 1987, Kenya:
Facing Mwakenya.
- Africa Confidential, Vol.28, No.3, 4 February, 1987,
Senegal: Casamance.
- Africa Confidential, Vol.28, No.3, 4 February, 1987, Sudan:
North and South.
- Africa Confidential, Vol.28 No.3, 4 February, 1987, Uganda:
False Messiah.
- Africa Confidential, Vol.28, No.7, 1 April, 1987, Ethiopia:
Eritrea takes stock.
- Africa Confidential, Vol.28, No.7, 1 April, 1987, Ethiopia:
Nationalities and the Constitution.
- Africa Confidential, Vol.29, No.8, 15 April, 1988, Sudan:
The SPLA in Focus.
- Africa Confidential, Vol.28, No.9, 29 April, 1987, Sudan:
Post-mortem.
- Africa Confidential, Vol.28, No.15, 22 July, 1987, Western
Sahara: The Polisario Factor.
- Africa Confidential, Vol.28, No.18, 2 September, 1987,
Sudan: The Drift Toward Dictatorship).
- Africa Confidential, Vol.28, No.19, 23 September, 1987,
Sudan: Tribal Divides.
- Africa Confidential, Vol.28, No.23, 18 November, 1987,
Ethiopia: Redrawing the map.
- Africa Confidential, Vol.28, No.23, 18 November, 1987,
Pointers, Sudan: Troubled Waters.
- Africa Confidential, Vol.29 No.1, 8 January, 1988, Uganda:
Insecurity East and North.
- Africa Confidential, Vol.29, No.7, 1 April, 1988, Pointers,
Zaire: Attack.
- Africa Confidential, Vol.29 No.7, 1 April, 1988, Uganda:
Unholy Spirit.

Africa Confidential, Vol.29, No.9, 29 April, 1988, Ethiopia:
A battle lost, a war in stalement.

Africa Confidential, Vol.29, No.10, 13 May, 1988, Zambia:
Backbench revolt.

Africa Confidential, Vol 29, No.11, 27 May, 1988, Ethiopia:
EPLF Peace Conditions.

Africa Confidential, Vol.29, No.13, 1 July, 1988, Ethiopia:
Mengistu's Soldiers On.

Fitzgerald Mary Anne, KENYA, in: The Africa Review, 11th
edition, 1987 (World of Information), 114-126.

Greenfield Richard, What Price Political Prisoners? Somalia,
Africa Report (America's leading magazine on Africa)
January-February 1988, 48-51.

Lycett Andrew, ETHIOPIA, in: The Africa Review, 11th
edition, 1987 (World of Information), 93-96.

Macleans Magazine, November 2, 1987, 24, Alice's Army on the
March.

Manchester Guardian Weekly, August 31, 1986, Sudan's War of
secession.

Manchester Guardian Weekly, June 21, 1987, The honeymoon is
over for the government in Sudan.

Manchester Guardian Weekly, September 6, 1987, New guns
revive slavery in Sudan.

Manchester Guardian Weekly, January 24, 1988, 8, Ethiopian
rebels hit food trucks.

Manchester Guardian Weekly, February 28, 1988, 16, Tradition
versus Revolution in Ethiopia.

Michael Yellin, Eritrea: The Food Weapon, Africa Report
(America's leading magazine on Africa) January-
February 1988, 44.

Moser Patrick, Ethiopia: On Famine's Brink, Africa Report
(America's leading magazine on Africa) January-
February 1988, 40-43.

Press Robert M., Sudan: Prospects for peace? Africa Report,
January-February 1988, 45.

The Christian Science Monitor, Thursday, December 3, 1987,
Atmosphere of suspicion troubles Kenya. Government
actions foster tensions among Kenyans and foreigners.

The Guardian Weekly, November 8, 1981, 7 "Enclave Arrangements" Simmering Secession upstages Gadafy's threats.

The Guardian Weekly, February 14, 1982, 12 Sudan - regional instability and internal tension.

The Guardian Weekly, November 13, 1983, Oil holds promise for Sudan.

The Globe and Mail, Friday, April 17, 1987, 2,000 Dinka tribesmen reportedly killed in Sudan.

The Globe and Mail, Friday, November 13, 1987, 'Magic of Ugandan Priestess conjures trails of rebel blood'.

The Globe and Mail, Monday December 19, 1983, Surge of fundamentalism remolding shape of Islam.

The Globe and Mail, Thursday, December 31, 1987.

The Globe and Mail, Saturday, January 2, 1988, Ugandan Officials reported seized.

The Globe and Mail, Tuesday, January 12, 1988, One dead and five wounded in Uganda rebel attack.

The Globe and Mail, Wednesday, January 13, 1988, Sudan says rebels ready for truce.

The Globe and Mail, Thursday, January 14, 1988, Two arrested in Libyan's death.

The Globe and Mail, Thursday, February 18, 1988, Ugandan rebels hit 6 truck U.N. convoy.

The Globe and Mail, Wednesday, March 2, 1988, All, Ugandan rights probe hears tales of torture.

The Globe and Mail, Friday, April 8, 1988, Ethiopia's Wars.

The Globe and Mail, Thursday, June 9, 1988, Canadian Hercules spell relief for the hungry.

The Globe and Mail, Thursday, June 9, 1988, 200 mutineers slain in Uganda.

The Globe and Mail, Wednesday, August 31, 1988, All, Morocco, Polisario rebels approve UN peace plan.

THE NATION/Thailand's English-Language Newspaper, Saturday, July 16, 1988, Peace hopes kindled in E. African nation. Guns fall silent in Uganda.

The New York Times, February 22, 1982, Regional dispute divides the Sudan.

The New York Times, March 10, 1983, The struggle to govern the ungovernable in Sudan.

The New York Times, Sunday, May 4, 1986, Sudan's new leaders are in a corner.

The New York Times, Thursday, November 5, 1987, Ugandan Cult is carrying out suicidal raids.

The New York Times, Friday, January 22, 1988, U.S. assails Ethiopian rebel raid.

The New York Times, Sunday, October 23, 1988, Debate on Islamic Law Further Strains Sudan.

The Times, Saturday November 21, 1987, 5 million face Ethiopia famine.

The Times, Thursday, November 26, 1987, Uganda flare-up.

The Times (London), Thursday, December 31, 1987, Ugandan rebel jailed in Kenya.

The Times, Wednesday, January 27, 1988, Museveni's Plea.

The Times, Wednesday, February 17, 1988, Bus ambush. Mbale.

The Times, Friday, February 19, 1988, Denial by Ethiopia.

The Times, Monday, March 7, 1988, Tensions in Somalia. Barre plagued by warfare and debt.

The Times, Thursday, March 10, 1988, Unrest in Somalia. Barre keeps the north in check.

The Times, Saturday, March 19, 1988, Violent run-up to Kenya poll.

The Times, Thursday, March 24, 1988, Ugandan rebels to join army.

The Times, Thursday, March 31, 1988, Famine in Ethiopia: Stepped-up guerrilla raids threaten food deliveries.

The Times, Thursday, April 7, 1988, Fighting in Ethiopia: Addis Ababa tells aid workers to go.

The Times, Friday, April 15, 1988, Famine feared as Ethiopia prepares to crush rebels.

The Vancouver Sun, Saturday October 8, 1983, Fleeing Southern Sudan. Refugees claim atrocities.

The Vancouver Sun, Thursday, December 31, 1987, Kenya nabs Ugandan rebel who led troops via Voodoo.

Uganda News Bulletin, June/July, 1988, (Presented by the Uganda High Commission, Ottawa), 1-4.

Uganda News Bulletin, January/February, 1988, 1-3, under the heading 'Cabinet Reshuffle'.

Watson Catharine, Uganda: Ending the Rule of the Gun, Africa Report (America's leading magazine on Africa) January-February 1988, 14, 15.

Week-end Australian, August 23-24, 1986, Civil war polarises the North and South in Sudan.

A P P E N D I X

The African Charter on Human and Peoples' Rights

PREAMBLE

The African states members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights,"

Recalling Decision 115(XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a "preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice, and dignity are essential objectives for the achievement of the legitimate aspirations of the African people";

Reaffirming the pledge they solemnly made in Article 2 to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the people of Africa, and to promote international cooperation having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings, which justifies their national and international protection, and on the other hand that the reality and respect of peoples' rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone;

Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality, and that the satisfaction of economic, social, and cultural rights is a guarantee for enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the people of which are still struggling for their dignity and genuine independence, and undertake to eliminate colonialism, neo-colonialism, apartheid, zionism, and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion, or political opinions;

Reaffirming the adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions, and other instruments adopted by the Organization of African Unity, the Movement of Non-aligned Countries, and the United Nations;

Firmly convinced of their duty to promote and protect human and peoples' rights and freedoms, taking into account the importance traditionally attached to these rights and freedoms in Africa;

have agreed as follows:

PART I: RIGHTS AND DUTIES

CHAPTER I: HUMAN AND PEOPLES' RIGHTS

ARTICLE 1

The member states of the Organization of African Unity parties to the present Charter shall recognize the rights, duties, and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

ARTICLE 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind, such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth, or other status.

ARTICLE 3

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection before the law.

ARTICLE 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may arbitrarily be deprived of this right.

ARTICLE 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman and degrading punishment and treatment, shall be prohibited.

ARTICLE 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ARTICLE 7

1. Every individual shall have the right to have his cause heard. This comprises:
 - (a) the right to appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations, and customs in force;
 - (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - (c) the right to defence, including the right to be defended by counsel of his choice;
 - (d) the right to be tried within a reasonable time by an impartial court or tribunal;
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

ARTICLE 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

ARTICLE 9

1. Every individual shall have the rights to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

ARTICLE 10

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.

ARTICLE 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by the law, in particular those enacted in interests of national security, the safety, health, ethics, and rights and freedoms of others.

ARTICLE 12

1. Every individual shall have the right to freedom of movement and residence within the borders of a state provided that he abides by the law.
2. Every individual shall have the right to leave any country including his own, and to return to his country. The right may only be subject to restrictions, provided for by the law, for the protection of national security, law and order, public health or morality.
3. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions.
4. A non-national legally admitted in a state party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.
5. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that aimed at national, racial, ethnic, or religious groups.

ARTICLE 13

1. Every citizen shall have the right to participate freely in the government of his country either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right to equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

ARTICLE 14

The right to property shall be guaranteed. It may only be encroached upon in the interests of public need or in the general interests of the community and in accordance with the provisions of appropriate laws.

ARTICLE 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

ARTICLE 16

1. Every individual shall have the right to enjoy the best attainable state of physical and mental health.
2. States parties to the present charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

ARTICLE 17

1. Every individual shall have the right to education.
2. Every individual may freely take part in the cultural life of his community.
3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the state.

ARTICLE 18

1. The family shall be the natural unit and basis of society. It shall be protected by the state, which shall take care of its physical and moral health.
2. The state shall have the duty to assist the family, which is the custodian of morals and traditional values recognized by the community.
3. The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and disabled shall also have the right to special measures of protection in keeping with their physical and moral needs.

ARTICLE 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

ARTICLE 20

1. All peoples shall have the right to existence. They shall have the un-questionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen.
2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community.

3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic, or cultural.

ARTICLE 21

1. All peoples shall freely dispose of their wealth and natural resources. This shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.
2. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law.
4. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.
5. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation, particularly that practiced by international monopolies, so as to enable their peoples to fully benefit from the advantages derived from their national resources.

ARTICLE 22

1. All peoples shall have the right to economic, social, and cultural development, with due regard to their freedom and identity and in the equal enjoyment of common heritage of man kind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

ARTICLE 23

1. All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States.
2. For purposes of strengthening peace, solidarity, and friendly relations, States parties to the present Charter shall ensure that:
 - (a) any individual enjoying the right of asylum under Article 12 of the present Charter shall not engage in subversive or terrorist activities against his country of origin or any other State party to the present Charter;

- (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

ARTICLE 24

All peoples shall have the right to a general satisfactory environment favorable to their development.

ARTICLE 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education, and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

ARTICLE 26

States parties to the present Charter shall have the duty to guarantee the independence of courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of rights and freedoms guaranteed by the present Charter.

CHAPTER II. DUTIES

ARTICLE 27

1. Every individual shall have duties towards his family and society, the State and other legally recognized communities, and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality, and common interest.

ARTICLE 28

Every individual shall have the duty to respect and consider his fellow being without discrimination, and to maintain relations aimed at promoting, safeguarding, and reinforcing mutual respect and tolerance.

ARTICLE 29

The individual shall also have the duty:

1. To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need;
2. To serve his national community by placing his physical and intellectual abilities at service;
3. Not to compromise the security of the state whose national or resident he is;
4. To preserve and strengthen social and national solidarity, particularly when the latter is threatened;

5. To preserve and strengthen the national independence and territorial integrity of his country and to contribute to its defence in accordance with the law;
6. To work to the best of his ability and competence, and to pay taxes imposed by the law in the interests of society;
7. To preserve and strengthen positive African cultural values in his relation with other members of society, in the spirit of tolerance, dialogue, and consultation, and in general, to contribute to the promotion of moral well-being of society;
8. To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

PART II: MEASURES OF SAFEGUARD

CHAPTER 1. ESTABLISHMENT AND ORGANIZATION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

ARTICLE 30

An African Commission on Human and Peoples' Rights, hereinafter called the "Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

ARTICLE 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality, and competence in matters of human and peoples' rights, particular consideration being given to persons having legal experience.
2. The members of the Commission shall serve in their personal capacity.

ARTICLE 32

The Commission shall not include more than one national of the same state.

ARTICLE 33

The members of the Commission shall be elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the states parties to the present Charter.

ARTICLE 34

Each State party to the present Charter may not nominate more than two candidates. The candidates must have the nationality of one of the States parties to the present Charter. When two candidates are nominated by a state, one of them may not be a national of that state.

ARTICLE 35

1. The Secretary-General of the Organization of African Unity shall invite States parties to the present Charter at least four months before the elections to nominate candidates;
2. The Secretary-General of the Organization of African Unity shall make an alphabetical list of the persons thus nominated and communicate it to the heads of State and Government at least one month before the elections.

ARTICLE 36

The members of the Commission shall be elected for a six-year period and shall be eligible for re-election. However, the term of office of four of the members elected at the first election shall terminate after two years and the term of office of the three others, at the end of four years.

ARTICLE 37

Immediately after the first election, the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity shall draw lots to decide the names of those members referred to in Article 36.

ARTICLE 38

After their election, the members of the Commission shall make a solemn declaration to discharge their duties impartially and faithfully.

ARTICLE 39

1. In case of death or resignation of a member of the Commission, the Chairman of the Commission shall immediately inform the Secretary-General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. If, in the unanimous opinion of other members of the Commission, a member has stopped discharging his duties for any reason other than a temporary absence, the Chairman of the Commission shall inform the Secretary-General of the Organization of African Unity, who shall then declare the seat vacant.
3. In each of the cases anticipated above, the Assembly of Heads of State and Government shall replace the member whose seat became vacant for the remaining period of his term unless the period is less than six months.

ARTICLE 40

Every member of the Commission shall be in office until the date his successor assumes office.

ARTICLE 41

The Secretary-General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services.

ARTICLE 42

1. The Commission shall elect its Chairman and Vice-Chairman for a two-year period. They shall be eligible for re-election.
2. The Commission shall lay down its rules of procedure.
3. Seven members shall form a quorum.
4. In case of equality of votes, the Chairman shall have the casting vote.
5. The Secretary-General may attend the meetings of the Commission. He shall neither participate in deliberations nor shall he be entitled to vote. The Chairman of the Commission may, however, invite him to speak.

ARTICLE 43

In discharge of their duties, the members of the Commission shall enjoy diplomatic privileges and immunities provided for in the General Convention on the Privileges and Immunities of the Organization of African Unity.

ARTICLE 44

Provision shall be made for the emoluments and allowances of the Commission in the Regular Budget of the Organization of African Unity.

CHAPTER II. MANDATE OF THE COMMISSION

ARTICLE 45

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:
 - (a) to collect documents, undertake studies and research on African problems in the field of human and peoples' rights, organize seminars, symposia, and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to the governments.
 - (b) to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which the African governments may base their legislations.
 - (c) to co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2. Ensure the protection of human and peoples' rights under the conditions laid down in the present Charter.
3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU, or an African Organization recognized by the OAU.
4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

CHAPTER III. PROCEDURE OF THE COMMISSION

ARTICLE 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary-General of the Organization of African Unity or any other person capable of enlightening it.

COMMUNICATIONS FROM STATES

ARTICLE 47

If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary-General of the OAU and the Chairman of the Commission. Within three months of the receipt of the communication, the state to which the communication is addressed shall give the inquiring state written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

ARTICLE 48

If within three months from the date on which the original communication is received by the State to which it is addressed the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman, and shall notify the other States involved.

ARTICLE 49

Notwithstanding the provisions of Article 47, if a State party to the present Charter considers that another State has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary-General of the Organization of African Unity, and the State concerned.

ARTICLE 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

ARTICLE 51

1. The Commission may ask the States concerned to provide it with all relevant information.
2. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

ARTICLE 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in Article 48, a report stating the facts of its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

ARTICLE 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

ARTICLE 54

The Commission shall submit to each ordinary session of the Assembly of Heads of State and Government a report on its activities.

OTHER COMMUNICATIONS

ARTICLE 55

1. Before each session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications shall be considered by the Commission.
2. A communication shall be considered by the Commission if a simple majority of its members so decide.

ARTICLE 56

Communications relating to human and peoples' rights referred to in Article 55 received by the Commission shall be considered if they:

1. Indicate their authors even if the latter request anonymity,

2. Are compatible with the Charter of the Organization of African Unity or the present Charter,
3. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organization of African Unity,
4. Are not based exclusively on news disseminated through the mass media,
5. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,
6. Are submitted within a reasonable time from the time when local remedies are exhausted or from the date the Commission is seized of the matter, and
7. Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity, or the provisions of the present Charter.

ARTICLE 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

ARTICLE 58

1. When it appears after deliberation of the Commission that one or more communications apparently relate to special cases which reveal the existence of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases.
2. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations.
3. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government, who may request an in-depth study.

ARTICLE 59

1. All measures taken within the provisions of the present Chapter shall remain confidential until such time as the Assembly of Heads of State and Government shall otherwise decide.
2. However, the report shall be published by the Chairman of the Commission upon the decision of the Assembly of Heads of State and Government.
3. The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

CHAPTER IV. APPLICABLE PRINCIPLES

ARTICLE 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights, as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

ARTICLE 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and peoples' rights, customs generally accepted as law, general principles of law recognized by African States, as well as legal precedents and doctrine.

ARTICLE 62

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

ARTICLE 63

1. The present Charter shall be open to signature, ratification, or adherence of the member states of the Organization of African Unity.
2. The instruments of ratification or adherence to the present Charter shall be deposited with the Secretary-General of the Organization of African Unity.
3. The present Charter shall come into force three months after the reception by the Secretary-General of the instruments of ratification or adherence of a simple majority of the member states of the Organization of African Unity.

PART III. GENERAL PROVISIONS

ARTICLE 64

1. After the coming into force of the present Charter, members of the Commission shall be elected in accordance with the relevant Articles of the present Charter.

2. The Secretary-General of the Organization of African Unity shall convene the first meeting of the Commission at the Headquarters of the Organization within three months of the constitution of the Commission. Thereafter, the Commission shall be convened by its Chairman whenever necessary but at least once a year.

ARTICLE 65

For each of the States that will ratify or adhere to the present Charter after its coming into force, the Charter shall take effect three months after the date of the deposit by the State of its instrument of ratification or adherence.

ARTICLE 66

Special protocol or agreement may, if necessary, supplement the provisions of the present Charter.

ARTICLE 67

The Secretary-General of the Organization of African Unity shall inform member states of the Organization of the deposit of each instrument of ratification or adherence.

ARTICLE 68

The present Charter may be amended if a State party makes a written request to that effect to the Secretary-General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the States parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring State. The amendment shall be approved by a simple majority of the States parties. It shall come into force for each State which has accepted it in accordance with its constitutional procedure three months after the Secretary-General has received notice of the acceptance.