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AFRICA AND HER CHARTER ON HUMAN AND PEOPLES' RIGHTS

- NOT YET "OMINIRA"

by

THOMAS ADEOYE OLUGBEMIGA FAWOLE

LL.B., Obafemi Awolowo University, Ile-Ife, Nigeria, 1978

A Thesis Submitted to the Graduate Faculty of The University of Georgia in Partial
Fulfillment of the Requirements for the Degree

MASTER OF LAWS

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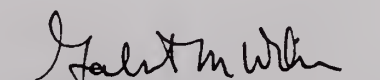
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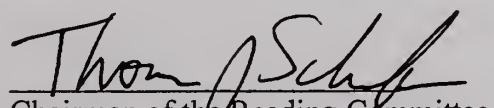
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DEDICATION

To the Almighty, Alpha and Omega, the Beginning and the Ending, the Author and Finisher ...

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I cannot close this part of the thesis without acknowledging the invaluable moral and technical support that I received from my wife and friend, Jan. I also acknowledge the patience and understanding displayed by my kids, Funlola, Detola, and Seun. I thank Funke for the great work that God is using her to do in their lives.

All the errors contained in this thesis remain mine.

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CHAPTER I

INTRODUCTION

"[L]ife is regressive", a current affairs commentator, George F. Will, recently opined.¹ "That is, people with problems have a high probability of acquiring more problems." This is also in line with the Yoruba proverb which says: When a person is afflicted with a serious ailment, several minor ailments then feel free to come knocking at his or her door.

George Will's opinion (which was in respect of a totally different issue) and the Yoruba proverb best sum up the situation of the African countries today. Most of these countries became independent in the 1960s. The biggest problem then was underdevelopment. This remains the biggest problem facing the African continent today.² When the other problems - mass poverty, corruption, unemployment, social unrest, disease, hunger and ignorance - plaguing the continent are taken into consideration, only a pitiable sight is presented. In the face of the socio-economic stagnation in Africa, the injunction given by the first President of Ghana, Dr. Kwame Nkrumah, "Seek ye first the political kingdom and all other things will be added unto it",³ becomes meaningless.

¹ George F. Will, *An Epidemic's Evolution*, Newsweek, 72, February 5, 1996

² See H.W.O. Okoth-Ogendo, *Human and Peoples' Rights: What Point Is Africa Trying to Make?* Citing the United Nations Economic Commission for Africa (UNECA 1983), in *Human Rights and Governance in Africa*, 83 (Ronald Cohen et al, eds., 1993)

³ Quoted in George M. Houser, *Human Rights and the Liberation Struggle: The Importance of Creative*

In view of the enormous human and natural resources with which the continent is blessed, it is difficult to justify or rationalize the present deplorable conditions of the countries on the continent of Africa. It is generally agreed that sub-Saharan Africa, in particular, is in serious economic crisis.⁴ This is so in view of the fact that although in the 1960s, the growth rate of its Gross National Product was 1.3 per cent per person per annum, negative per capita growth rates are now the order of the day in many of the countries. Many of them are now net importers of crops in which they had been self-sufficient in the 1960s. A case in point is that of Tanzania vis-a-vis the production of maize. Also, Nigeria was a leading exporter of palm oil in the 1960s but has since slipped from that enviable position. In fact, two Asian countries, Malaysia and Indonesia, currently among the world's leading exporters of palm oil, obtained the seed from Nigeria in the early 1960s.

Various reasons have been suggested as being responsible for Africa's underdevelopment. These, according to Howard, include (1) the fact that "it never underwent an agricultural revolution that could provide a surplus sufficient to release human and other resources for sustained industrial development", (2) its reluctance to do away with the "economy of affection", or kin-based peasant methods of production which has prevented any possible transition to capitalist growth in Africa, (3) the four or five centuries of active underdevelopment of the continent by European imperialist powers and latterly, by a neo-colonial economic structure dominated by transnational corporations, (4) the phenomenon of heavy export dependence on one or two crops,

Tension, in *Africa, Human Rights and the Global System – The Political Economy of Human Rights in a Changing World*, 14 (Eileen McCarthy-Arnolds et al, eds., 1994)

(5) the imbalance of terms of trade between agricultural products (exported by Africa) and industrial products (imported by Africa), and (6) the low level of investment in Africa by transnational corporations.⁵

However, corrupt, wicked, and inept leadership is by far the most important reason for Africa's persistent underdevelopment.⁶ Most African leaders are insensitive to the plight of the masses under their rule. When their attention is drawn to the fact that their people are suffering, they retort that these people have not started to scavenge food from garbage cans, as the poor in some developed countries have to do in order to eat. They are bereft of ideas as to how to solve their countries' problems. Yet they will do anything to hold on to power. They never learn from their predecessors' mistakes.

A good example is Nigeria where the late General Sani Abacha, as military head-of-state, spared none of the state resources in his control in his abortive attempt to perpetuate his stay in power by succeeding himself as an elected president. Before his sudden death in June, 1998, he had either physically eliminated all those who could effectively challenge his authority or clamped them into jail. Some of those who managed to escape are still on self-exile in various western countries. Many of these people were tried in absentia on various spurious charges. Most of those who had been preparing to present themselves as presidential candidates in the elections which he had planned for August 1998 were scared into renouncing all presidential ambitions. During his tenure in office, the only people who were free to move around in the country were the government stooges and sycophants who went about canvassing that the army

⁴ See Rhoda E. Howard, *Human Rights in Commonwealth Africa*, 60 (1986)

⁵ R. E. Howard, *supra*, note 4, at 72-78

general should be drafted as sole candidate for the election. Of course, he kept the person who won the free and fair presidential election of June 12, 1993 (which was annulled by the military), Chief Moshood Abiola, languishing in detention for daring to declare himself President of Nigeria. Despite appeals from both within and outside Nigeria for his release, Abacha did not release him before he (Abacha) died in office. Chief Abiola himself died in detention on the eve of his release from detention by Abacha's successor in July, 1998.

Citing Professor Nwabueze, Okoth-Ogendo has summed up the situation in Africa as follows:

[I]t is indisputable that for most of Africa the most visible symbol of power is the presidency and the primary mode of exercise of that power is discretion ... [T]he effect of that situation is that the main preoccupation of contemporary power elites in Africa is no longer the search for economic development and social progress but the perfection of ways, means and techniques of survival and the expansion of opportunities for private accumulations.⁷

In this kind of situation, the slightest internal criticism is met with the most brutal repression imaginable. The "sit-tight" attitude of the political heads of the African countries, who have no respect for free and fair elections and the wishes of the electorate, has created a situation in which the coup has become the most important method of regime change in Africa. The resultant political instability is one of the most important constraints to economic and human developments in Africa.⁸ It is, therefore, not surprising that most African countries have experienced various forms of civil strife.

⁶ R. E. Howard, *supra*, note 4, at 73

⁷ H.W.O. Okoth-Ogendo, *supra*, note 2 at 25.

⁸ See John M. Mbaku, *Institutions and Reform in Africa: The Public Choice Perspective*, 91 (1997)

It is in the light of the foregoing that we intend in this thesis to examine the state of human rights in Africa. It would be the province of the thesis to find out how far the African Charter on Human and Peoples' Rights has enhanced the independence of the various African countries and improved on the quality of the rights enjoyed by the citizenry.

While Chapter 2 deals with human rights in precolonial Africa, human rights in “modern day” Africa, i.e. from the colonial era, are dealt with in Chapter 5. Treating human rights under colonial rule and human rights since independence in the same chapter is to allow us to compare the situations under foreign rule and under African leaders, especially since the coming into force of the African Charter. The African Charter on Human and Peoples' Rights and other regional human rights instruments are considered in Chapters 3 and 4 to enable us to know the standard against which modern human rights practices are to be judged.

It is necessary to point out that, this writer being a Nigerian, a lot of references are made to Nigeria in the thesis. In fact, the word, “ominira”, which appears in the title of the thesis, is a Yoruba (a Nigerian language) word which means freedom or independence as “uhuru” in Oginga Odinga’s “Not Yet Uhuru.”

CHAPTER II

THE NATURE OF AFRICAN HUMAN RIGHTS

1. African Culture or Cultures?

It is pertinent to state at the onset that Africa is a large continent with over fifty different countries. The effect is that there are several different ethnic groups on the continent and even within most of the various countries. For example, in Nigeria alone which has a population of 100 million people, there are over two hundred ethnic groups each with its own language or dialect.

With this kind of background, it is natural to expect differences and indeed, contradictions, in the beliefs and practices in various parts of the African continent. Within Nigeria, for example, the northern states are predominantly Moslem while the southern states are predominantly Christian. There is also a high degree of arabization in the north while the people in the south are more westernized.

If culture is accepted as the "totality of values, institutions and forms of behaviour transmitted within a society, as well as the material goods produced by man [and woman]"⁹, it is clear that we cannot talk of an "African culture" but of "African cultures".

⁹ Roy Preiswerk, *The Place of Intercultural Relations in the Study of International Relations*, Year Book of World Affairs, vol. 32, 251 (1978)

The differences have been in existence from precolonial times. Citing various scholars, Timothy Fernyhough has stated:

[I]n much of North Africa the sharia denied women the right to exercise unilateral divorce, but in Christian Ethiopia, as in many other parts of Islamic Africa, either partner could initiate separation. Strict adherence to Islamic law implies that women could not acquire education or employment ... except in the latter case for subsistence. Thus the historical expectations of women in the Sokoto caliphate were quite different from those of their counterparts in the coastal societies of West Africa, where women have long enjoyed considerable economic independence, marketing beer, dried fish, and other local produce. Indeed, in central Africa, most notably in Angola in the figure of Queen Njinga Ndongo, there were examples of women serving as political leaders and chiefs ...¹⁰

Among the Yoruba people of southwestern Nigeria, the Iyalode (mother/leader of the women) was always one of the most important chiefs in the community. This chieftaincy title was normally conferred on the most successful woman in the community.

2. The Idea of an Indigenous Human Rights Tradition in Africa

While most scholars agree that precolonial Africa was precapitalist, predominantly agrarian, and communal in nature, there are two schools of thought on the existence or otherwise of an indigenous human rights tradition in Africa. One school denies while the other affirms the existence of such a tradition.¹¹

Denying the existence of an indigenous African human rights tradition, Donnelly claims that “the idea of human rights, as the term is ordinarily understood – namely, as rights/titles/claims held by all individuals simply because they are human beings – is

¹⁰ Timothy Fernyhough, *Human Rights and Precolonial Africa*, in *Human Rights and Governance in Africa*, 39, 54 (Ronald Cohen et al, eds., 1993)

¹¹ Timothy Fernyhough, *supra*, note 10, at 39

foreign to traditional African society and political culture.”¹² Cautioning against confusing human rights with limited government, he argues:

There are many bases on which a government might be limited – divine commandment, human rights, legal rights, and extra-legal checks such as a balance of power, to name a few. Simply having a limited government does not in any way entail that one has human rights... In traditional African societies, however, rights were assigned on the basis of communal membership, family, status, or achievement, and thus were not personal, human rights.¹³

Similarly, Rhonda Howard is of the view that the so-called “African concept of human rights” is actually a concept of human dignity.¹⁴ She submits:

The argument that different societies can have different concepts of rights is based on an assumption that confuses human rights with human dignity. All societies have concepts of human dignity, but few accept the notion of human rights, in the sense that individuals have the right to make claims on or against the state... Those who argue for an African concept of human rights take as its key the alleged existence of a communitarian ideal in Africa. Within that ideal the group is more important than the individual, decisions are made by consensus rather than by competition, and economic surpluses are disposed of on a redistributive, rather than a profit-oriented, basis.¹⁵

For support, this school has relied, inter alia, on a quote from Kenneth Kaunda, the first President of Zambia, which goes thus:

The tribal community was a mutual society. It was organized to satisfy the basic human needs of all its members... individualism was discouraged... Human need was the supreme criterion of behaviour... social harmony was a vital necessity... Chiefs and tribal elders... adjudicated between conflicting parties... and took whatever action was necessary to strengthen the fabric of social life.¹⁶

¹² J. Donnelly, *The “Right to Development”: How Not to Link Human Rights and Development in Africa*, in *Human Rights and Development in Africa*, 261, 268 (Claude E. Welch, Jr., et al., eds., 1984)

¹³ J. Donnelly, *supra*, note 12, 269

¹⁴ Rhonda E. Howard, *supra*, note 4, at 18

¹⁵ R. E. Howard, *supra*, note 4, at 17-18

¹⁶ Kenneth D. Kaunda, *A Humanist in Africa* (1966), 24-25. Quoted in R.E. Howard, *supra*, note 4, at 18.

As far as this school was concerned, precolonial Africa never provided for claims to rights such as the protection of human life and dignity in terms of human rights. It is only the emergence of Africa into “the capitalist world economy, albeit in a subordinate role, that has created a new and individual ‘modern man and woman’, physically removed from family and local community and reaching for protection, often in new urban contexts, beyond these primary effective and supportive ties to new concepts of human rights.”¹⁷ Among the scholars in the other school affirming the existence of traditional African human rights is Lakshman Marasinghe who in fact asserts that these traditional human rights are more enduring than human rights in the western sense. He writes:

Constitutions protecting human rights can be ended, suspended, or amended. The extended family, on the other hand, is a permanent institution which must exist as long as the individuals who form a part of it exist. To that extent the vulnerability of the traditional conceptions of human rights is minimized... it is important to recognize that the values we embody within our own conceptions of human rights are identical with the value system which traditional societies endeavor to protect through their conceptions of human rights. But there is one difference: While our conceptions are guaranteed to the extent to which our rules guarantee them through tightly drafted constitutional documents, theirs becomes institutionalized as an essential part of their own social organization which guarantees their existence in society. This makes their conceptions of rights less vulnerable and more permanent than ours.¹⁸

Howard also quotes the contention by President Julius Nyerere of Tanzania (Njamaa: Essays on Socialism, 1968, 11) that “the idea of ‘class’ or ‘caste’ was non-existent in African society. The foundation, and the objective, of African socialism (communalism) is the extended family.” The idea actually existed in some African societies, e.g. the Igbos of Nigeria.

¹⁷ T. Fernyhough, *supra*, note 10, 39

¹⁸ L. Marasinghe, *Traditional Conceptions of Human Rights in Africa*, in Human Rights and Development in Africa, 43-44 (C. E. Welch, Jr., et al., eds., 1984).

Another scholar in this school, Lateef Adegbite, has rated the quality of the human rights enjoyed in precolonial Africa much higher than that enjoyed in modern times.¹⁹

Stressing the communal nature of the rights, Chris Mojekwu states:

The concept of human rights in Africa was fundamentally based on ascribed status... One who had lost his membership in a social unit or one who did not belong – an outcast or a stranger – lived outside the range of human rights protection by the social unit.²⁰

It is clear that both schools agree on the communal nature of precolonial African rights. Fernyhough is of the view that, on this basis, the argument of the school, which denies the existence of African rights, is more consistent with the generally accepted theory of human rights. He opines:

The strength of their argument is that they place the source of human rights exactly where it belongs, with the individual, not the collective...The alternative, as many Africans believe, is to base human rights theory on the collective and not the individual. This poses both philosophical and practical problems.²¹

He, however, disagrees with the two schools in their emphasis on the communal nature of indigenous African human rights. Citing two African scholars, Eze and Asante, among the few that have questioned the communal basis of African human rights, he rightly states:

My view is that, just as in the West, the historical development of limitations on government in Africa was a function of the interaction

¹⁹ L.O. Adegbite, *African Attitudes to the International Protection of Human Rights*, in *International Protection of Human Rights: Proceedings of the Seventh Nobel Symposium*, Oslo, 69-81 (A. Eide et al, eds., 1967)

²⁰ Chris C. Mojekwu, *International Human Rights: The African Perspective*, in *International Human Rights: Contemporary Issues*, 90 (Jack L. Nelson et al, eds., 1980)

²¹ T. Fernyhough, *supra*, note 10, 45

between individuals and the state. Restraints on state action were worked out in the “space” between rulers and ruled... Once we set aside the dismissive notion that Africans based their rights only on community and kin, there is no reason to distinguish between African and Western experiences. In both milieus human rights were derived from human nature...²²

Those who hold the view that the notion of human rights was foreign to Africa are clearly wrong as “Africa did have notions of human rights qua human rights.”²³ Individuals as such in Africa have also held the usual rights which individuals have always had as individuals in the West. The undue emphasis on the communitarian aspect of life in precolonial Africa by some scholars is a mistake. There is the wise saying among the Yorubas that even when a farm is said to belong to a father and his son, there will still be some démarcations or indications as to which part belongs to whom. The mere fact, for example, that marriage between two young persons usually involved their two families does not mean that the right to marry was vested in the family as a group and not in those two persons as individuals. The main role of their families was to provide financial and moral support for the young couple.

While it was in the interest of the woman for her parents’ consent to be obtained so that it would not seem that she was just picked up from the street, it does not appear that the consent of the man’s parents was required as a matter of law. On this, the comments of Osbourne, C. J., in the Nigerian case of Re Sapara²⁴ are instructive:

It has been urged that native marriage was a contract between family and family and therefore that a man could not marry without the consent of

²² Ibid., 50

²³ See I. G. Shivji, *The Concept of Human Rights in Africa*, 13-14 (1989), citing a Nigerian scholar, O.C. Eze.

²⁴ [1911] Ren. 605

the head of his family, though the experts were not agreed that such is the case. If it were so, then it follows that a man who had no family could not marry, yet according to the evidence, he could, and could get some of his neighbours to assist him; of course, in olden days, before the acquisition of individual wealth, it is probable that the entire family of the man contributed to the marriage expenses, but the woman was not bound to remain in the family after her husband's death... I am unable to accept the proposition which is contradicted by one of the most reliable expert witnesses, that the consent of the man's family is a legal essential to his marriage.²⁵

It certainly made sense to ensure that a member's would-be spouse was acceptable to the family since in the event of a problem between the couple after the wedding, each family would be expected to appeal to their own son or daughter in the interest of peace. This was the basis for the Yoruba proverb which says that it is pardonable to have a bad spouse but unpardonable to have bad in-laws. Since each family lived together on their farm, in the bride's case, it made more sense for her to be accepted by the family she was going to join and live with.

Before entering into the marriage contract, certain discreet background investigations – the history of each family, whether certain diseases ran in a particular family, etc. – had to be conducted about each other's family and young persons could not be expected to do all these on their own. The older members of their families usually undertook the task. Most times, this would be unknown to the persons intending to get married to each other unless there was an adverse report.

The financial responsibility of the family was limited to their son's first marriage. A man who was interested in having a second or third wife would do so on his own. Similarly, a divorced woman was free to remarry usually on her own. Since a

²⁵ *Supra*, note 24, at 607

woman could not have more than one husband at a time, all she had to do was to get properly divorced and dispose of all lawful obligations to her previous husband. So, the right to marry was vested in the individual.

The foregoing is not in any way meant to deny the fact that traditionally, in many parts of Africa, most marriages were arranged by the parents when the children were young.²⁶

While it is conceded that, in precolonial Africa, there was no formal and elaborate formulation of the human rights theory as in the West, it is crystal-clear that human rights did exist as human rights.

3. A Uniquely African Concept of Human Rights?

Having concluded that human rights did exist as human rights in precolonial Africa, it is clear where this writer stands on the debate as to whether human rights are universal or culturally relative.

As Harold Laski once aptly put it, “rights” are “those conditions of social life without which no man can seek, in general, to be himself at his best”.²⁷

Citing various writers, Professor Fernyhough has listed four assumptions about human rights as follows – First, human rights derive directly from a person’s humanity and their source is the best side of man’s moral nature. Second, human rights uphold human dignity but these two are by no means synonymous. Third, the different kinds or “generations” of human rights are interdependent and equivalent. Finally, since human

²⁶ A.B. Kasumu et al, *Nigerian Family Law*, 43 (1966)

²⁷ Harold J. Laski, *A Grammar of Politics*, 91 (1978)

rights derive from human nature, both moral and physical, they must inhere in individuals and in our mutual need to live meaningful lives.²⁸

Human nature has always been the same everywhere – whether in the west, in precolonial Africa, or in Asia. We all feel pains alike. We all know that in spite of the brave face put up by the cow when it is to be slaughtered, the knife does not feel good at the neck of any living being. According to Fernyhough, “In Africa, as in most historical societies, common people had clear notions of individual (and collective) rights as human rights and responded when these rights were abused by elites or superordinate groups.”²⁹

The argument in favor of an African or Asian or other concept of human rights only supports the wicked activities of many of the political leaders in the developing countries as they oppress the masses in their countries. Human rights have always been universal. It would seem appropriate to close this debate with Busia’s warning that any attempt to present human rights as “ours” or “theirs” would do more harm than good, especially when the evidence available does not lend itself to such categorical assertions.³⁰

4. Some of the Protected Rights in Precolonial Africa

As noted earlier on, Africa is a large continent and, consequently, there were a lot of often-contradictory beliefs and practices all over the continent. Although there is no definitive list, certain rights were generally recognized in precolonial Africa. These

²⁸ Fernyhough, *supra*, note 10, at 41-2

²⁹ Fernyhough, *supra*, note 10, at 51

³⁰ N.K.A. Busia, Jr., *The Status of Human Rights in Pre-Colonial Africa: Implications for Contemporary Practices*, 228, in *Africa, Human Rights, and the Global Economy* (McCarthy-Arnolds et al, eds., 1994)

include the rights to life; to liberty; to justice; to marry and have a family; to freedom of speech, conscience, and association; to participation in political process; to freedom from poverty; and to own property.³¹ It should not be surprising to find out that the right to join a trade union, for example, is missing from the list.

There was a great respect for the right to life in precolonial Africa.³² This is borne out by the fact that only a few individuals or groups of elders were entrusted with the power of life and death. A long and highly developed tradition of jurisprudence based on the Koran and the hadith and embodied in the Sharia was operated in the areas of Islamic influence. In Kuba society in Zaire, all cases involving bloodshed and murder were reserved for the central judicial court at the capital.³³ Among the Igbo of Nigeria, the elders, or oha, had the power to judge those accused of homicide.³⁴

There were exceptions to the rule. One of these was during times of war. Even during peacetime, the practice of human sacrifice constituted an important exception. On the death of an Igbo elder, as many as sixty human sacrifices might occur.³⁵ The Asante sacrificed slaves, prisoners of war, and criminals, and, ironically, after the British abolition of slavery in 1807, sacrifices of slaves on the Gold Coast increased because their price slumped.³⁶ On the contrary, Wilkes insists that in the Asante case,

³¹ Fernyhough, *supra*, note 10, at 55

³² Fernyhough, *supra*, note 10, at 56

³³ J. Vansina, *The Children of Woot: A History of the Kuba Peoples*, 150-1 (1978). See also T. Fernyhough, *supra*, note 10, at 56

³⁴ E. Isichei, *Igbo Worlds: An Anthology of Oral Histories and Historical Descriptions*, 96 (1978). See also T. Fernyhough, *supra*, note 10, at 57

³⁵ J. Isichei, *supra*, note 34, at 256

³⁶ C. Williams, *Asante: Human Sacrifice or Capital Punishment? An Assessment of the Period 1807-1874*, *International Journal of African Historical Studies*, 21(3): 438-49 (1988)

most sacrificial victims were those found guilty of capital offenses.³⁷ It is noteworthy that Dr. Elias has indicated that the lives of slaves could not be taken at will.³⁸

The right to liberty was also protected in precolonial Africa although some writers say that in many precolonial societies, the outcast or stranger had no rights.³⁹ This right was closely allied to the right to resist oppression. In Old Oyo in Nigeria, the notables, the Oyo Mesi (a council of seven kingmakers), could ask their ruler, the Alafin, to commit suicide if he had lost the confidence of the people.⁴⁰ The most notable way in which precolonial African societies curtailed personal freedom was through the institution of slavery and pawnship.

Many precolonial African societies also protected the right to freedom of speech, conscience, and association. The women of Kom, in the Cameroon grasslands, exerted extreme social pressure in the form of “anlu”, ostracizing and humiliating in public those (usually men) who had transgressed certain moral rules – for example, by acting incestuously, by insulting or injuring either parent, or by beating pregnant or elderly women.⁴¹ In the eighteenth- and nineteenth-century Yoruba societies, the only constraint to the right to freedom to speak and express an opinion was a hierarchy of respect for parents, heads of households, and elders.⁴²

Even in those precolonial African societies that did not allow for vocal claims to freedom of expression and opinion, the ordinary people still tempered deference with

³⁷ I. Wilks, *Asante: A Rejoinder*, Int'l Journal of African Historical Studies, 21(3): 443-52 (1988)

³⁸ T.O. Elias, *The Nature of African Customary Law*, 107 (1957)

³⁹ T. Fernyhough, *supra*, note 10, at 57

⁴⁰ R.C. Law, *The Constitutional Troubles of Oyo in the Eighteenth Century*, Journal of African History 12(1): 25-44 (1971)

⁴¹ E. Ritzenthaler, *The Fon of Bafut*, 98-101 (1967)

⁴² L. Marasinghe, *supra*, note 18, at 32-45

healthy defiance as embodied in a proverb from the strictly hierarchical society of highland Abyssinia: “The wise man bows low to the great lord and silently farts.”⁴³

There was also the right, in precolonial Africa, to marry and have a family. Among the customs in this area were polygamy and the inheritance of widows by members of the deceased husband’s lineage. Some of the customs have been discontinued in some parts. For example, under Nigerian law, widow inheritance has been held to be contrary to “natural justice, equity, and good conscience.”⁴⁴

Apart from the efforts made by states and households to demonstrate their concern for impoverished subjects and kinsmen, the extended family system was also used to protect people’s right to freedom from poverty in precolonial African societies. In fact, the practice of widow inheritance was a form of social assistance meant to protect the bereaved wife and children. It is, therefore, easy to understand why in many African languages, the word “poor”, as among the Chewa of Malawi, implies lack of kin and friends.⁴⁵

From the foregoing, it would be easy to know how “African” the African Charter on Human and Peoples’ Rights is. We shall be examining the charter in the next chapter.

⁴³ A. Hoben, *Social Stratification in Traditional Amhara Society*, in *Social Stratification in Africa* (A. Tuden et al, 212, 1970)

⁴⁴ L. Marasinghe, *supra*, note 18, at 40

⁴⁵ J. Iliffe, *The African Poor: A History*, 7 (1987)

CHAPTER III

THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

1. Historical Background

The birth of the African Charter on Human and People's Rights (the Banjul Charter)⁴⁶ can be traced back to 1961 when African jurists meeting in Lagos, Nigeria under the auspices of the International Commission of Jurists (I.C.J.) suggested an African Human Rights Charter under which would be created a court to which individuals or groups could have recourse.⁴⁷ Jurists from French-speaking African states made a similar call in Dakar, Senegal in 1967.⁴⁸ Later, the African Bar Association proposed the establishment of a commission on human rights to operate along the same lines as Amnesty International in London and the International Commission of Jurists in Geneva.

In 1967, at the 23rd session of the Commission on Human Rights, Nigeria proposed that the United Nations establish regional commissions where none existed. An eleven-member ad hoc study group recommended that such commissions should be established by members of each region and not imposed from outside.⁴⁹ At the commemoration of the twentieth anniversary of the Universal Declaration of Human Rights in Teheran, Iran in 1968, Nigeria renewed its campaign for the establishment of

⁴⁶ Adopted on 27th June, 1981. Cf. OAU Doc. CAB/LEG/67/3/Rev.5; reprinted in 21 I.L.M. 58 (1982); 27 I.C.J.Rev. 76 (1981); see also U.O. Umzurike, *The African Charter on Human and Peoples' Rights*, 77 A.J.I.L. 902 (October, 1983)

⁴⁷ I.C.J., *An International Charter on the Rule of Law* (1961)

⁴⁸ Bull. I.C.J., No. 29, 1, March, 1967

regional commissions.⁵⁰ The Organization of African Unity (O.A.U.) summit held in July 1979 resolved that the Secretary-General should set the process in motion for a commission on human rights, and a UN seminar in Monrovia, Liberia attended by thirty African states later in the same year produced a draft for the O.A.U. Working Committee that was established.⁵¹ In three meetings, held once in Dakar in 1979 and twice in Banjul, Gambia in 1980 and 1981, the last attended by O.A.U. ministers, the final draft was produced. The final draft was adopted unanimously by the O.A.U. heads of state at the summit conference in Nairobi, Kenya in June 1981.

In accordance with Article 63(3) of the Charter, the African Charter on Human and People's Rights came into force on October 21, 1986, three months after the Secretary-General received the instrument of ratification or adherence to the Charter of the twenty-sixth member-state of the O.A.U.

It is noteworthy that for various reasons, the issue of human rights observance did not occupy an important position on the political agenda of most African states and, indeed, the O.A.U. in the 1960s and 1970s. Most member-states had just gained independence and were more concerned with the total liberation of Africa from colonial rule. Member-states also rigidly adhered to the principle of non-interference in the international affairs of other countries. President Sekou Toure once asserted that the

⁴⁹ UN Doc. E/CN.4/966, paras. 41-44 (1968)

⁵⁰ In spite of her poor human rights record, Nigeria's leading role on this issue could be explained by the fact that late Dr. T.O. Elias, later President of the World Court, was her Attorney-General and Minister of Justice during the period. In that capacity, Dr. Elias had been closely connected with the preparation of the background papers for the conferences in 1961, 1967, and 1968.

⁵¹ UN Seminar on the Establishment of Regional Commissions on Human Rights with Special Reference to Africa, Monrovia, 10-21 September 1979, UN Doc. ST/HR/SER.A/4 (1979). See Commission to Study the Organization of Peace, 29th Report, Regional Protection and Promotion of Human Rights in Africa (1980).

O.A.U. was not "a tribunal which could sit in judgment on any member-state's internal affairs."⁵² The O.A.U., therefore, did not condemn wicked African leaders like Idi Amin of Uganda (1971-1979) who was even once O.A.U. Chairman, Jean Bedel Bokassa of Central African republic (1979-1979), and Francisco Marcias Nguema of Equatorial Guinea (1966-1979) until after they had been overthrown. Most African leaders presided over authoritarian and dictatorial regimes and so had no moral authenticity to condemn human rights violations by their colleagues. It was also the stated goal of most of the governments to enhance the development of their states within the shortest possible time and they embarked on this project with a total lack of tolerance for political opposition.⁵³

Certain developments on the international scene favored the idea of an African Charter on Human and People's Rights.⁵⁴ These included the emphasis that President Carter placed on human rights in the international relations of the United States, the emphasis placed on respect for human rights in the Helsinki Final Act of 1975 which was signed by the United states, Canada, and several European countries, the suffering of millions of people in southeast Asia in the 1970s, with its phenomenon of the "boat people" which stirred the conscience of mankind, and the attempt, albeit unsuccessful, to include human rights in the renewed EEC-ACP pact, the Lome II Convention.

Before the coming into force of the Banjul Charter, the basic documents in the inter-African relations were the UN and the O.A.U. Charters. Although there was no

⁵² African Research Bulletin (Political, Social and Cultural Series) 5329B (1979)

⁵³ Ebou Bondzie-Simpson, *A Critique of the African Charter on Human and Peoples' Rights*, 31 How.L.J. 643, 645 (1988)

⁵⁴ U.O. Umozurike, *supra*, note 46

African regional instrument specifically dealing with human rights, the O.A.U. Charter,⁵⁵ in Article II, affirms commitment to the United Nations Charter and the Universal Declaration of Human Rights. Also, most African states, in their capacities as members of the United Nations, had ratified the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, which, together with the Optional Protocol to the latter Covenant and the Universal Declaration of Human Rights, make up the International Bill of Human Rights (UNCHR1987).⁵⁶

The Banjul Charter was specifically geared towards reflecting the African conception of human rights. As President Senghor of Senegal admonished the committee of experts who drafted the Charter:

As Africans, we shall neither copy nor strive for originality for the sake of originality. We must show imagination and effectiveness. We will get inspiration from our beautiful and positive traditions. Therefore, you must keep consistently in mind our values of civilization and the real needs of Africa.⁵⁷

It necessarily follows, therefore, that the Charter has certain characteristics.⁵⁸ It recognizes the importance of the principles of non-discrimination both as between individuals and as between peoples. Unlike previous regional charters, it specifies the duties of the individual toward the community in which he lives, more particularly toward the family and state. The Charter pays special attention to values and morals in

⁵⁵ Charter of the Organization of African Unity, adopted 23rd May 1963; 479 U.N.T.S. 39 (1963); reprinted in 2 I.L.M. 766 (1963)

⁵⁶ H.W.O. Okoth-Ogendo, *supra*, note 2

⁵⁷ OAU Doc. CAB/LEG/67/5. Meeting of 28th November, 1979 held in Dakar.

⁵⁸ See generally B.O. 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*, Human

African societies. It emphasizes the importance of economic, social, and cultural rights, especially the right to development. However, as we shall see later in this thesis, some of these measures are not far-reaching enough.

2. Rights and Duties under the Banjul Charter

The Banjul Charter is divided into the Preamble and three other parts: "Rights and Duties," "Measures of Safeguard," and "General Provisions." Chapter 1 of Part I contains what are described as human and people's rights, while Chapter 2 deals with the individual's duties to the society at large as well as to the state in particular.

Although the Charter does not distinguish between "human" and "peoples" rights, it is generally accepted that it regards what others refer to as first- and second-generation human rights -- i.e., political/civil and economic/cultural/social rights -- as forming the essential core of the former, and some modified forms of the rights of the third generation -- i.e., solidarity -- as comprised in the latter.⁵⁹

The conventional human rights, i.e., those similar to the well-known rights and freedoms enshrined in the International Bill of Rights, are listed in Articles 2 through 18 and include the following: non-discrimination on grounds of race, ethnic group, color, sex, language, religion, opinion, origin, status, etc.;⁶⁰ equality before the law and equal protection of the law;⁶¹ dignity inherent in a human being;⁶² liberty, security, and freedom from arbitrary arrest or detention;⁶³ free access to judicial organs and freedom

Rights Quarterly 6(2): 141 (1984)

⁵⁹ H.W.O. Okoth-Ogendo, *supra*, note 2, 77

⁶⁰ Art. 2, *supra*, note 46

⁶¹ Art. 3, *supra*, note 46

⁶² Art. 5, *supra*, note 46

⁶³ Art. 6, *supra*, note 46

from retroactive penal legislation;⁶⁴ information, expression, and dissemination of ideas;⁶⁵ association and assembly;⁶⁶ movement and asylum, freedom from unlawful restrictions or expulsion and the prohibition of mass expulsion of non-nationals;⁶⁷ the citizen's right to participate freely in government and equal access to the public service;⁶⁸ the right to property;⁶⁹ to work;⁷⁰ to health;⁷¹ and to education.⁷²

It is noteworthy that the enjoyment of the socioeconomic rights or welfare rights like those to health and education recognized by the Charter depend on the availability of the necessary infrastructure. Unfortunately, most African governments do not have the resources to provide the infrastructure and the Charter generally failed to indicate the nature of the obligations placed on the OAU as an organization and on its member states by the rights created. The following comments made by the Constitution Drafting Committee in defense of the non-justiciability of the Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution of 1979 would seem to apply to the socioeconomic rights under the African Charter with equal force:

By their nature, they are rights which can only come into existence after the government has provided facilities for them. Thus, if there are facilities for education or medical services, one can speak of the “right” to such facilities. On the other hand, it will be ludicrous to refer to the “right” to education or health where no facilities exist.⁷³

⁶⁴ Art. 7, *supra*, note 46

⁶⁵ Art. 9, *supra*, note 46

⁶⁶ Arts. 10, 11, *supra*, note 46

⁶⁷ Art. 12, *supra*, note 46

⁶⁸ Art. 13, *supra*, note 46

⁶⁹ Art. 14, *supra*, note 46

⁷⁰ Art. 15, *supra*, note 46

⁷¹ Art. 16, *supra*, note 46

⁷² Art. 17, *supra*, note 46

⁷³ Report of the Nigerian Constitution Drafting Committee, vol. 1 at xv (1976). See also B.O. Okere, *Fundamental Objectives of Nigerian Constitution*, *Int'l and Comparative Law Quarterly* 32, pt. 1, at 1

The Charter also provides special protection for women, children, the aged, and the disabled.⁷⁴ Naturally, there is a distinction between the rights of every individual and those of every citizen, as persons who are not citizens are not given the right to participate in government or access to the public service.⁷⁵

The peoples' rights under the Charter are those usually categorized as third-generation rights. They are to be found in Articles 19 through 24 and include such rights of social solidarity as the right to peace; to security; political and economic self-determination; and the right to development. As Kiwanuka has said, the Banjul Charter, by separating peoples' from human rights does not obfuscate but progressively develops international human rights law.⁷⁶ It shows clearly that there is a conceptual difference between collective (peoples') rights and individual (human) rights.

Kiwanuka has also suggested four meanings of the word "people", indicating that there are instances where "people" refers to more than one of those meanings: (A) all persons within the geographical limits of an entity yet to achieve political independence or majority rule; (B) all groups of people with certain characteristics who live within the geographical limits of an entity (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 (however, this is only an external meaning of "people"); and (D) all persons within a state.⁷⁷

January 1983).

⁷⁴ Art. 18, *supra*, note 46

⁷⁵ Ebow Bondzie-Simpson, *supra*, note 53, at 646

⁷⁶ Richard Kiwanuka, *The Meaning of "People" in the Charter on Human and Peoples' Rights*, 82 A.J.I.L. 80, 86 (January, 1988)

The Banjul Charter has been criticized for its failure to provide a definition of the word “people”. It is also said to be conservative on the issue of collective rights for omitting important new and collective rights like the one to food.⁷⁸

Articles 27 through 29 contain the duties imposed on the individual by the Banjul Charter. These include the duty to preserve the harmonious development of the family; the duty to serve the community and the nation; the duty to preserve African values; the duty to defend the security of the state; and the duty to pay taxes. This was the first time that such duties had been included in an international instrument. The inclusion, however, seems unnecessary.

Apart from the duties imposed on individuals, there are also some duties imposed on the states. These include adoption of legislative or other measures to give effect to the Charter,⁷⁹ protection of the health of their people,⁸⁰ elimination of discrimination against women, protection of women and children,⁸¹ protection of the physical and moral health of the family,⁸² guarantee of the independence of the judiciary,⁸³ the exercise of the right to development,⁸⁴ and promotion, through teaching, education, and publication, of respect for, and adherence to, the rights, freedoms, and obligations contained in the Charter.⁸⁵ In addition, states are to submit to the African Commission on Human and Peoples’ Rights reports every two years on the legislative

⁷⁷ R.N. Kiwanuka, *supra*, note 76, at 100-1

⁷⁸ H.W.O. Okoth-Ogendo, *supra*, note 2, at 78

⁷⁹ Art. 1, *supra*, note 46

⁸⁰ Art. 16(2), *supra*, note 46

⁸¹ Art. 18, *supra*, note 46

⁸² Art. 18, *supra*, note 46

⁸³ Art. 26, *supra*, note 46

⁸⁴ Art. 22(2), *supra*, note 46

⁸⁵ Art. 25, *supra*, note 46

or other measures taken with a view to giving effect to the rights and freedoms provided for by the Charter.⁸⁶

3. Other Provisions

The Commission established by the Banjul Charter has eleven members.⁸⁷ The Commission shall include not more than one national of the same state. Members, normally elected for a 6-year period, are nominated by member-states. A member-state may nominate two members, in which case one must be a non-national of the nominating state. The rationale behind this is two-fold: to have a wide and fair representation of the states, and to make it possible for persons of high calibre and renowned competence who will not otherwise be nominated by their own governments (e.g. because of political differences) to serve on the Commission.⁸⁸

All members of the Commission must be Africans with the highest reputation and relevant competence, especially in the field of law.

The main duty of the Commission is to promote and protect human rights through documentation, studies, seminars, symposia, and conferences, disseminate information on human rights, and encourage other human rights institutions.

When a state is of the opinion that another state has violated the Charter, the complainant state must communicate the alleged breach to the respondent state in writing and send copies to the Chairman of the Commission. If the states cannot resolve the matter between them within 3 months, either state may submit it to the Commission.

⁸⁶ Art. 62, *supra*, note 46

⁸⁷ Art. 31, *supra*, note 46

A state party may, however, decide to report the matter straight to the Commission without following this procedure by submitting two copies of the complaint to the respondent state and the OAU Secretary-General. Before dealing with the matter, the Commission must ensure that all local remedies have been exhausted, unless the matter would be unduly prolonged.

Each state party may submit written or oral representations to the Commission. It is noteworthy that the spirit of the Charter is to encourage bilateral settlement of differences rather than “getting involved”. However, when the Commission does get involved, it acts like an arbiter trying to reach an amicable settlement rather than like a judge using judicial fiat.

The Commission may also receive communications from nongovernmental organizations and individuals after the exhaustion of local remedies unless this will cause undue prolongation. Such communications must not be couched in a language insulting to a state or its institutions or to the OAU and must not be based exclusively on news disseminated through the mass media. Personal knowledge of relevant facts is very important. Whether the Commission considers such a complaint or not shall be determined by a simple vote of its members.

The Commission shall draw the attention of the Assembly of Heads of State and Governments (AHSG, Assembly, or heads of state) to communications that reveal special cases of a series of serious or massive violations of human and peoples’ rights. The Assembly may request an in-depth study of such situations by the Commission and reports of the Commission’s findings and recommendations. The Commission shall

⁸⁸ Ebou Bondzie-Simpson, *supra*, note 52, at 650

refer a case of emergency to the Chairman of AHSB who may ask for an in-depth study. States are obliged to cooperate with the Commission in the conduct of investigations and to provide relevant information. They may also be called upon to submit written or oral representations.

The Commission is expected to work in secrecy “until such time as the Assembly ... shall decide otherwise.”⁸⁹

The Commission shall interpret the provisions of the Charter if requested by a state party, an institution of the OAU or an African organization recognized by the OAU.⁹⁰ The Commission shall also perform other tasks which may be entrusted to it by the AHSB.

Proposals for amendment of the Charter can be instituted by state parties only. The Commission is required to be consulted and to state an opinion on a proposal for amendment. The amendment shall be approved by a simple majority of all the state parties – not merely those present and voting. The amendment comes into force for each state party that has signed it three months after the Secretary-General has received notice of the acceptance.⁹¹

⁸⁹ Art. 59(1), *supra*, note 46

⁹⁰ Art. 45(4), *supra*, note 46

⁹¹ Art. 68, *supra*, note 46

CHAPTER IV

THE BANJUL CHARTER AND OTHER REGIONAL CHARTERS - A COMPARISON

By the time the Banjul Charter was drafted, there were already in existence some regional human rights instruments which could serve as precedents, not to mention the wide range of non-regional international conventions which had been concluded under the auspices of international organizations, especially, the United Nations and its specialized agencies. The two regional instruments were the European Convention⁹² and the American Convention.⁹³ We shall now consider some of the similarities and dissimilarities between the Banjul Charter and the two instruments.

The three instruments are generally similar in their protection of some of the most basic and well-recognized human rights like those to life,⁹⁴ protection from torture, inhuman, or degrading treatment,⁹⁵ liberty of the person,⁹⁶ and fair trial.⁹⁷

Article 17, paragraph 5 of the American Convention expressly provides for equal rights for children born out of wedlock and those born in wedlock. While the

⁹² European Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature November 4, 1950, entered into force September 3, 1953; 213 U.N.T.S. 222; reprinted, along with five subsequent protocols, in Council of Europe, Collected Texts (1979).

⁹³ American Convention on Human Rights, signed November 22, 1969, entered into force July 18, 1979; O.A.S.T.S. No. 36, at 1; O.A.S. Doc. OEA/ser.k/XVI/1.1. doc. 65. Rev. 1, corr. 1 (1970); reprinted in Inter-American Commission on Human Rights, O.A.S. Doc. OEA/ser. L/V/II.50, doc. 6 (1980); and 9 I.L.M. 673 (1970).

⁹⁴ Banjul Art. 4, *supra*, note 46; European Art. 1, *supra*, note 92; American Art. 2, *supra*, note 93

⁹⁵ Banjul Art. 5, *supra*, note 46; European Art. 3, *supra*, note 92; American Art. 5, *supra*, note 93

European Convention does not have such explicit provision, the European Court of Human Rights has held in *Marckx v. Belgium*⁹⁸ that there was no objective and reasonable justification for treatment in which the illegitimate child had no entitlement on intestacy in the estate of members of her mother's family. Consequently, it would seem that most distinctions between the legitimate and the illegitimate child are in violation of the European Convention as being discriminatory within the meaning of Article 14 read in conjunction with Article 8.⁹⁹

It is strange that the Banjul Charter contains no provision similar to Article 17(5) of the American Convention. Using Nigeria as an example, Okere has sought to explain this visible omission on the grounds that such explicit recognition would offend against both Moslem and Christian conceptions of morality.¹⁰⁰ Section 39(2) of the 1979 Constitution of Nigeria prohibits discrimination against a citizen "merely by reason of circumstances of his birth." However, Section 35(3) of the Draft Constitution had prohibited discrimination against a citizen merely on the ground that "he was born out of wedlock."¹⁰¹ Many members of the Constituent Assembly objected to this original provision, arguing that under Islamic Law, a bastard has no right to the estate of his deceased putative father. Consequently, a constitutional provision which nullifies this Islamic Law would be contrary to the way of life of a large majority of the population. To the Christians, too, recognition of illegitimacy might encourage promiscuity and they did not support the provision.

⁹⁶ Banjul Art. 6, *supra*, note 46; European Art. 5, *supra*, note 92; American Art. 7, *supra*, note 93

⁹⁷ Banjul Art. 7, *supra*, note 46; European Art. 6, *supra*, note 92; American Art. 8, *supra*, note 93

⁹⁸ Series A, No. 31, Judgment of June 13, 1979

⁹⁹ B.O. Okere, *supra*, note 58, at 154-5

¹⁰⁰ B.O. Okere, *supra*, note 58, at 154-5

The Banjul Charter, the American Convention, and the European Convention each provide for a Human Rights Commission. However, while individuals and groups have a qualified right to petition the African Commission similar to the unqualified right to petition the American Commission,¹⁰² the European Commission receives individual and group petitions only if the state against which the complaint is made has declared its recognition of the Commission's competence to receive them.¹⁰³ The African Commission, however, lacks one important tool – publicity.

One big difference between the Banjul Charter on the one hand, and the European and American Conventions, on the other, has been the absence of a court of human rights in the Banjul Charter. The drafters of the Banjul Charter had ignored calls¹⁰⁴ for such a court, arguing that the formal adversarial procedures common to Western legal systems were inappropriate. African customs and traditions emphasize conciliation rather than adjudication.¹⁰⁵ So unlike the American and European Conventions which give the Courts of human rights power to review cases brought first before the Commission, there is no such second avenue of redress under the Banjul Charter as the OAU cannot give such redress under the Banjul Charter.¹⁰⁶

The production of the Draft Additional Protocol to the African Charter on Human and Peoples' Rights which, on coming into force, will provide for the establishment of an 11-member African Court of Human and Peoples' Rights is,

¹⁰¹ See Report of the Nigerian Constitution Drafting Committee, vol. 1, at 21 (1976)

¹⁰² Banjul Art. 56, *supra*, note 46; American Art. 44, *supra*, note 93

¹⁰³ European Art. 25(1), *supra*, note 92

¹⁰⁴ See, e.g., Esiemokhai, *Towards Adequate Defence of Human Rights in Africa*, 13 VERFASSUNG & RECHT IN UBERSEE 151, 156-157 (1980)

¹⁰⁵ Commission to Study the Organization of Peace, 29th Report, Regional Protection and Promotion of Human Rights in Africa (1980)

therefore, a welcome development.¹⁰⁷ It is noteworthy that while the European Court of Human Rights and the Inter-American Court of Human Rights are similar in jurisdiction and functions, they differ in composition. The Inter-American Court of Human Rights has seven judges while its European counterpart has judges from all the member states of the Council of Europe.¹⁰⁸ It is noteworthy that in October 1992, the Parliamentary Assembly of the Council of Europe made a proposal for the merger of the Commission and the Court, with petitions being submitted directly to the Court.¹⁰⁹

While the American Convention¹¹⁰ and the Banjul Charter¹¹¹ provide for the right of citizens to participate in government, the European Convention¹¹² guarantees only the right to free elections. Both the American Convention and the Banjul Charter also provide for rights and duties.

Unlike the other two regional documents, the Banjul Charter provides for a right to development.¹¹³

It is also important to note that, unlike the European Convention, there are no derogation clauses in the Banjul Charter. Derogation clauses usually permit a state to hold their obligations under treaties in abeyance in cases of public emergencies or wars, for example.¹¹⁴

¹⁰⁶ U.O. Umzurike, *supra*, note 46, at 908

¹⁰⁷ OAU Doc. OAU/LEG/MIN/AFCHPR/PROT.1 rev. 2 (1997)

¹⁰⁸ American Art. 52, *supra*, note 93; European Art. 38, *supra*, note 92

¹⁰⁹ The Reuter Library Rep. (October 6, 1992)

¹¹⁰ American Art. 23, *supra*, note 93

¹¹¹ Banjul Art. 15, *supra*, note 46

¹¹² European Art. 3 of the First Protocol

¹¹³ Banjul Art. 22, *supra*, note 46

¹¹⁴ Ebow Bondzie-Simpson, *supra*, note 53, at 648

The Banjul Charter, however, contains claw-back clauses which could give the same Charter provisions different effect in different member states.¹¹⁵ A claw-back clause is one which permits a state its almost unbounded discretion to restrict its treaty obligations or the rights guaranteed by the Banjul Charter. They must be distinguished from derogation clauses which also permit the temporary suspension of treaty obligations. However, derogation clauses are temporary; claw-back clauses may be permanent. Derogations can only be invoked in cases of public emergency; claw-back clauses may be applied even in normal situations, so long as national law is passed to that effect. Derogation clauses warrant the suspension of only certain – not all – obligations and rights. Claw-back clauses have no such limit.¹¹⁶

¹¹⁵ The provisions are typically worded as follows: Every individual shall have x-right or y-freedom provided he abides by the law. See Ebow Bondzie-Simpson, *supra*, note 53, at 660-2

¹¹⁶ Ebow Bondzie-Simpson, *supra*, note 53, at 660-1. See also Gittleman, *The African Charter on Human and Peoples' Rights: A Legal Analysis*, 22 Va.J.Int'L. 667, 712 (Summer, 1982).

CHAPTER V

THE HUMAN RIGHTS SITUATION IN AFRICA

1. Human Rights during the Colonial Period

Having discussed the human rights situation in precolonial Africa in Chapter II, we will now briefly examine the state of human rights during the period of colonial rule in Africa.

In their quest to exploit the resources of the New World, and with the active connivance of the Church, the European powers transported millions of Africans taken as slaves to North and South America. It was only after a sufficient number of Africans had been taken over there that the Church turned against the slave trade.

The parties to the Treaty of Paris 1814 agreed to suppress “the sin of the slave trade” while the Congress of Vienna 1815 conceded that the slave trade was “repugnant to the principles of humanity and of universal morality.” The European powers then started to occupy different parts of Africa.

With the signing of the Berlin Treaty of 1885, which was the first multilateral treaty that recognized the illegality of the slave trade, the European powers were able to agree on the modalities for partitioning and colonizing the unoccupied parts of Africa. This step formally signaled the beginning of the scramble for Africa. The treaty also provided for some limited protection of human rights:

All the powers exercising sovereign rights or influence in the aforesaid territories bind themselves to watch over the preservation of the native tribes, and to care for the improvement of their moral and material well-being, and to help in suppressing slavery, and especially the Slave Trade. They shall, without distinction of creed or nation protect and favour all religious, scientific, or charitable institutions and undertakings created and organised for the above ends, or which aim at instructing the natives and bringing home to them the blessings of civilization.¹¹⁷

Some writers have suggested that the improvement of the moral and material well-being of Africans was the fundamental purpose of European expansionism.¹¹⁸ However, Professor Umozurike insists that “there can be no doubt that profits and territories were the driving motor.”¹¹⁹ The European powers adopted various administrative styles in achieving their goal of exploiting the resources of the continent. In fact, it has been said that the British policy of Indirect Rule incubated apartheid in South Africa.¹²⁰ Under the Indirect Rule policy, the British colonial administrators ruled through local chiefs and, where none existed, warrant chiefs appointed by the administrators. The policy relied heavily on divide-and-rule tactics.

The quality of the human rights permitted the Africans was, however, lower than what obtained in the European administrators’ home countries. Also, those rights were allowed as long as the Africans did not challenge colonial domination. Despite the provision of Article 421 of the treaty of Versailles for the application of the International Labor Organization Conventions in the colonial territories, those

¹¹⁷ Art. IV, Berlin Treaty of 1885

¹¹⁸ P.M. Mitchell, *Africa and the West*, in *Historical Perspective Today*, 12 (C.G. Hainer, ed., 1959); Lucas, *The Partition and Colonization of Africa*, 97-8 (1992); A. Cohen, *British Policy in Changing Africa*, 13 (1959)

¹¹⁹ U.O. Umozurike, *The African Charter on Human and Peoples’ Rights*, 20 (1997)

conventions were largely excluded from the territories and forced labor was rampant, especially in the French colonies.

In his letter to the Secretary of State in London urging the enactment of the Seditious Offences Ordinance of 1909 which was one of the predecessors of the Nigerian sedition law, the then colonial governor of Nigeria, Egerton, had contended that such a legislation would give the government “power ... to punish publications and speeches designed to inflame an excitable and ignorant populace, the bulk of whom are absolutely under the control of Headmen and Chiefs who themselves have only recently emerged from barbarism and are still actuated by the traditions of their race.”¹²¹

The immediate reason for the enactment of the Ordinance was the publication of a pamphlet entitled “Governor Egerton and the Railways” by frontline nationalist Herbert Macaulay. In the pamphlet, of which Macaulay sold 1,000 copies, Egerton was accused, among other things, of disregard for serious allegations of scandals in the railways, refusing to prosecute one friend of his who was allegedly involved in the scandals, and expropriation of land.¹²²

Winston Churchill, as Prime Minister of Britain, sought to exclude the application of the Atlantic Charter of 1941 to British colonial subjects. In that charter, he and President Roosevelt of the United States had proclaimed the right of all peoples

¹²⁰ See, e.g., H.J. Toubenfeld, *Race, Peace, Law, and Southern Africa* (1968)

¹²¹ Fred Omu, *Press and Politics in Nigeria 1880-1937*, 183 (1978). In *Arthur Nwankwo v. The State* (1983) 1 N.C.R. 366; (1985) 6 N.C.L.R. 228, the Federal Court of Appeal (as it then was) held that the law of sedition, as set out in section 51 of the Criminal Code, was a derogation from the freedom of speech guaranteed under the 1979 Constitution of Nigeria and was inconsistent with the Constitution, especially when the alleged seditious act could not lead to a public disorder as envisaged under section 41(1) (a) of that Constitution.

¹²² Fred Omu, *supra*, note 121, at 182. See also Thomas A.O. Fawole, *Fundamental Human Rights in Nigeria: Towards the “1990 Constitution”*, a paper delivered at the 25th annual conference of the

to a government of their choice. He argued that the charter was intended only for Europeans under Nazi yoke, which was “a separate problem from the progressive evolution of self-governing institutions in the regions and peoples which owe allegiance to the British Crown.”¹²³

It was clear that without the right to self-determination, the Africans could not really enjoy any of the other rights. Local chiefs who expressed their opposition to colonial rule were banished. Similarly, a lot of the nationalist leaders, like Jomo Kenyatta of Kenya and Kwame Nkrumah of Ghana, were jailed for demanding the right to self-determination.

2. Human Rights in Independent African Nations before 1981

Following the attainment of independence by Ghana in 1957, the vast majority of African states became independent in the 1960's. Many of them adopted constitutions and legal systems similar to those of the colonial powers that ruled over them. There were provisions for the multiparty system, the independence of the judiciary, the rule of law, and the guarantee of human rights among others.

However, the euphoria that greeted the attainment of independence was short-lived in most of the countries on the African continent as the governments in power seemed to be striving to outdo each other in the level of human rights violations committed by each against their own people.

The new governments quickly replaced the colonial administrators and started to inflict worse human rights violations on the people than those committed by the

Nigerian Association of Law Teachers (June, 1987).

¹²³ Hansard, Parl. Deb., H.C. Official Report, 374 Cols. 67-69 (1941)

colonialists. They were intolerant of opposition and the opposition was not prepared to see anything good in the incumbent governments' programs. The leaders became corrupt being merely interested in embezzling state funds and preserving their hold on political power. People were jailed without trial. Elected officials preferred to "sit-tight" and rig elections rather than bow to the wish of the electorate when they were voted out of power.

In many African countries, this scenario provided the right opportunity for ambitious military officers to overthrow elected governments by force ostensibly to correct the situation. Rather than correct the situation, they invariably worsened it and so, all over the continent, there were many cases of coups and counter-coups.

African governments suspended human rights promising to develop their countries first. In the end, there was no development and the masses were made to suffer for nothing.

Greed, mistrust, poor governance, and lack of respect for human rights led to civil strife in many of the African countries. There was a pogrom in Nigeria in 1966, which culminated in a civil war.¹²⁴ The pogroms in Burundi and Rwanda in the 1970's and 1990's are still fresh in people's memories. Indeed, the 1970's were Africa's worst human rights years with Jean Bokassa in charge in the Central African Republic, Marcias Nguema in Equatorial Guinea, and Idi Amin in Uganda.

3. Human Rights in Africa since 1981

Africa has come a long way since the days of Idi Amin and his ilk. Or has she? As stated earlier, the Banjul Charter was adopted in June 1981.

As the world moves into the 21st century, slavery and the slave trade are still going on undisturbed in the Sudan. No other African country seems to be concerned. Those ugly activities have only been brought to light by various Christian organizations in the United States and Europe.

There are reports of continued persecution of people in various African countries on the basis of their religious views.

Many countries on the continent have experienced or are experiencing civil war and other kinds of civil strife. When one realizes that even during peacetime, there is little respect for human rights on the continent, the implications (for human rights) of the several civil wars being fought there become clearer.

Following Siad Barre's many years of misrule in Somalia, the country is yet to have a central government. Different groups of armed men control small portions of Somalia.

The government of Sierra Leone and the rebel groups with which they had been engaged in a senseless civil war for several years recently signed a peace accord. Under the accord, the rebels have now joined the government and some of their members hold important political offices. The rebels had killed and raped many of their compatriots. The special humanitarian problem in Sierra Leone now is that thousands of Sierra Leonians are amputees. While the war lasted, the rebel troops made it their practice to cut off people's limbs for supporting the government. These were the same people that the rebels were fighting to rule over. If it is true that morning shows the day, there will

¹²⁴ See D.A. Ijalaye, *Was "Biafra" at any Time a State in International Law?* 65 A.J.I.L. 551 (1971)

be little to expect from Sierra Leone in the area of human rights observance for the next few years.

In the Congo (formerly known as Zaire), late President Mobutu Sese Seko relentlessly plundered the country's resources until he was forced to flee by an armed rebel group led by Kabila who is the current president of the Congo. He is in turn currently pitted in a civil war against rebel groups who control half of the country. Congo's rich mineral resources have attracted some neighboring African countries whose troops are fighting alongside various parties to the conflict.

By the time he was ousted from power, Mobutu was one of the richest people in the world despite the fact that his people were, and still are, among the poorest on the face of the earth.

In Nigeria, General Babangida annulled the 1993 presidential election, which was widely acclaimed both within and outside Nigeria, as Nigeria's freest election. His action immediately plunged Nigeria into another round of political turmoil. Before his hurried departure from power to avoid an impending disaster, he was trumpeting the need for western governments to allow Africans to put into practice an African concept of democracy. That was a man that came to power promising to respect the people's human rights and was spontaneously well received by the people on that basis.

Late General Abacha did not waste much time before dismissing the interim government that Babangida installed in power. One of Abacha's worst atrocities was the hanging of Ken Saro Wiwa and eight other members of the Movement for the Survival

of the Ogoni People (MOSOP) who were found guilty of some trumped-up charges by Abacha's special military tribunal.

In line with the divide-and-rule tactics that he used effectively at home, when the United States and the Commonwealth countries condemned his human rights violations, rather than change, Abacha made new friends. He became a close ally of Gaddafi of Libya and attended the meeting of heads of governments of France and francophone African nations. The only African leaders who spoke up against him were Nelson Mandela of South Africa and Mugabe of Zimbabwe, the latter in spite of his own skeletons.

In the absence of a serious catastrophe, Abacha, unlike Babangida, was not expected to flee. However, by divine intervention, Abacha died suddenly in June 1998, a month before his planned presidential election in which he was going to be the sole candidate. One of his sons is currently charged, along with some military officers, with the murder of Mrs. Kuburat Abiola, Chief Abiola's wife. Some armed men had shot her dead on one of the streets of Lagos and the mystery surrounding her murder was not solved before Abacha died. Mrs. Abiola had been busy fighting for her husband's release from detention before she was killed.

It is hoped that the newly elected government of Nigeria which recently took over power from the military will put an end to the steady decline in the quality of governance and human rights that has been on for many years in Nigeria.

CHAPTER VI

A FINAL LOOK AT THE BANJUL CHARTER

1. Some Pluses

Dr. Elias once said, “This document (the Banjul Charter) should be like a lady’s skirt. Long enough to cover the subject-matter; but short enough to be interesting.”¹²⁵ True to Dr. Elias’ admonition, the Banjul Charter has generated a lot of interest among international human rights scholars.

It is a unique African contribution to the human rights discourse. It is something of which Africans can be truly proud. It is one of the only three regional human rights charters in existence. Europe and the Americas are the only other continents with such documents. Even Asia, where about half of the world’s population live, does not have one.

The stipulation of the duties owed by the individual, the express incorporation of the phrase “peoples’ rights” in the title, the provision for the third-generation rights, and the special attention paid to the values and communal nature of African societies are very interesting issues.

Also, in spite of its many deficiencies, the African Commission on Human and Peoples’ Rights has not been totally idle. For example, it found in *Constitutional Rights*

¹²⁵ Quoted in C.M. Peter, *Human Rights in Africa: A Comparative Study of the African Human and Peoples’ Rights Charter and the New Tanzanian Bill of Rights*, 1 (1990)

*Project v. Nigeria (in respect of Wahab Akanmu and others)*¹²⁶ and in *Constitutional Rights Project v. Nigeria (in respect of Zamani Lekwot and others)*¹²⁷ that trial by a tribunal that includes Army and police personnel under a law that excludes the right of appeal to a court of law contravened Article 7 of the Banjul Charter, making the trial null and void under the Charter.

2. Some Problems

However, it seems that the Banjul Charter is just the manifestation of a conspiracy between the ruling class and the academics in Africa. Since the African leaders adopted the Charter, they have not bothered seriously to respect its provisions. At any rate, to them, “people” refers to the state. Still exhibiting the mentality of the Kings of France during the “ancien regime”, most African leaders believe that the state and the head of state are one and the same. Meanwhile, the academics are free to go to conferences on other continents proclaiming Africa’s unique contributions to international human rights law.

The important question is “Have the masses in Africa fared any better since the coming into force of the Banjul Charter?” The answer seems to be an emphatic “No”.

Africa still has the highest level of disease, hunger, ignorance, poverty, unemployment, underdevelopment, and human rights violations in the world. Most African governments have nothing to do with the rural areas of their countries and the people who live there apart from exploiting the mineral resources that may be available

¹²⁶ Case No. 60/91

¹²⁷ Case No. 87/93

there. The situation is such that it is convenient for other continents to trace the origin of every conceivable disease to Africa.

For Africa to be taken seriously on the issue of human rights, the leaders on the continent will have to adopt a humane attitude to the task of governing their own people as well as to the Banjul Charter. Their track record so far provides nothing to write home about. In fact, the Organization of African Unity has been described as little more than an organization for the protection of rights of heads of state.¹²⁸ If the Banjul Charter had not been drafted in a manner that placed a lot of emphasis on the rights of the states, the heads of state would not have adopted it. As Professor Howard has rightly observed, “One way to preserve the rights of heads of state is to preserve the states they head.”¹²⁹

3. The Reports

Article 62 of the Banjul Charter mandates each country to “undertake to submit every two years ... a report on the legislative and other measures taken with a view to giving effect to the rights and freedoms guaranteed by the present Charter.” As of early 1994, only 15 states out of 50 ratifying states had submitted reports.¹³⁰ The only good thing about this sad state of affairs is that the Commission has learnt to lean on the more reliable reports submitted by the nongovernmental organizations (NGOs). The states will have to take their reporting obligations more seriously.

¹²⁸ Olajide Aluko, *The Organization of African Unity and Human Rights*, *The Round Table*, 234, 240 (July, 1981)

¹²⁹ Rhoda E. Howard, *supra*, note 4, at 5

¹³⁰ Claude E. Welch, Jr., *Protecting Human Rights in Africa: Roles and Strategies of Non-Governmental Organizations*, 155 (1995)

4. The Communal Nature of African Societies

A lot has been said about the communal nature of African societies. As we noted in Chapter II, this has misled some writers into thinking that there were no human rights in precolonial Africa and that only group rights were available. The communal nature did not in any way affect the universality of human rights. It was of great relevance in interpersonal relationships and the way everybody joined hands to help each other. At any rate, this communal nature has been undergoing some drastic changes.

Two factors are responsible for the changes: (a) African countries are at various levels of industrialization and westernization; and (b) the mismanagement of the African economies has created a situation in which people can barely struggle to fend for themselves and their immediate families. The sense of community is fast disappearing. A lot of people are being uprooted from their villages and families to go to urban areas in search of better job opportunities.

Once in the cities, they generally have to live like the westerners. They do not live together in “family compounds” as they used to do in the rural areas. Some of the traditional practices, like the extended family system and polygamy, have been adversely affected. Some customary practices, like widow inheritance, have been held to be unlawful and are being discouraged.

The point that we are trying to make is that the individual in contemporary Africa (as on the other continents) is, above all, an economic and political man or woman.¹³¹ There is a need for a free society to enable him to enjoy his rights.¹³² At no

¹³¹ Rhoda E. Howard, *supra*, note 4, at 33

¹³² Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32

time have individuals in Africa, ancient and modern, been robbed of their personal identities and rights by the communal nature of their societies.

The attention paid to African values in the Banjul Charter is a step in the right direction. Indeed, one of the advantages of having regional human rights charters is that by reason of proximity and shared values, nations can come together to speedily address human rights issues at that level. Those African values should not be used to deny the people of their rights.

5. Peoples' Right to Self-Determination

Article 20 of the Banjul Charter provides for peoples' right to self-determination. The term, "people", has been used in human rights documents in the past but this was the first time that it was being used in a contemporary multilateral human rights instrument.¹³³ Despite the crucial nature of this term as far as the Charter is concerned, the term was left undefined "so as not end up in difficult discussion."¹³⁴

The term seems to carry a state-centric meaning at least from the point of view of African leaders. Their main concern at the time of adopting the Charter was the decolonization of all the African countries that were still under the yoke of colonial rule. This was in line with the position in international law which had accepted self-determination as a right of peoples in non-self-governing territories.¹³⁵ Self-determination was just a more appealing term for decolonization. So, generally,

Am.U.L.Rev. 1, 48 (1982)

¹³³ Richard N. Kiwanuka, *supra*, note 76, 81

¹³⁴ Rapporteur's Report, OAU Doc. CM/1149 (XXXVII), Ann.1, at 4, para. 13 (1981). Quoted in Richard N. Kiwanuka, *supra*, note 76.

¹³⁵ Louis Henkin et al., *International Law: Cases and Materials* 203 (1993)

“people” does not apply to sovereign independent states or to a section of a people or nation.

Since World War II in particular, the world has ordered its affairs with an international system based on the concept of states whose borders, no matter how they were originally determined, are considered inviolable. Consequently, the right to secession has not been recognized in international law. Neither is the right prohibited by international law.¹³⁶

However, Africa has a peculiar problem. Most of the countries were arbitrarily created by the European colonial powers. This was an area where the ingenuity of the African traditional system and its conciliatory nature could have been useful. Even though the African countries are now leaning towards having an African Court of Human and Peoples’ Rights, it was on the grounds of that conciliatory nature that the Banjul Charter did not originally provide for a court. In view of the facts that Africa was at the tail-end of the decolonization process at that time and that there were a lot of oppressed peoples within the independent African states, the Banjul Charter should have expressly defined “people” to include peoples within a state.

In the true African spirit of conciliation, the Charter should have specified an African procedure for the peaceful breaking-up of states which oppress their peoples. Czechoslovakia was able to do it peacefully. If there is a need for military intervention, this should be done under the auspices of the OAU or a sub-regional organization like the Economic Community of West African States (ECOWAS). This would be a

¹³⁶ Hurst Hannum, *Rethinking Self-Determination*, 34 Va.J.Int’l L. 1, 42 (1993). See also Tom Franck, *Postmodern Tribalism and The Right to Secession*, in *Peoples and Minorities in International Law* 1, 19

necessary departure from the general principle of non-intervention by other states in matters which are essentially within the domestic jurisdiction of any state. This arrangement could have provided a means of rapid intervention to prevent the pogroms that have occurred in Rwanda and other countries.

Whatever happens in one African country is likely to affect at least the neighboring countries directly or indirectly. Such events can also trigger off similar occurrences even in non-neighboring African countries. When Idi Amin was having a field day in Uganda in the 1970's, a lot of Nigerians thought that such a leader could not thrive in Nigeria. Nigeria has since had a leader named Ibrahim Babangida. She was even unlucky a second time to have another named Sanni Abacha. No country is immune from such leaders. The only way to prevent the rise of such evil leaders in the future is to crack down on those that have reared their ugly heads.

Tanzania, under Julius Nyerere, intervened militarily to free the people of Uganda from Idi Amin's oppressive rule. The West African states, through the ECOMOG, have also intervened militarily in Liberia and Sierra Leone to restore order.

A useful guide as to what "people" means is the Algiers Declaration of 1976¹³ which was proposed by a group of eminent individuals meeting in Algiers. Article 7 of the Declaration, amplifying the democratic as against the state-centric content of self-determination, states:

Every people has the right to have democratic government representing all the citizens without distinction as to race, sex, belief, or colour and capable of ensuring effective respect for human rights and fundamental freedoms for all.¹³⁷

(Catherine Brolmann et al., 1993).

¹³⁷ Universal Declaration on the Rights of Peoples, IODC Bull., 47 International Documentation Center,

African leaders should realize, as Professor Ralph Steinhardt has observed, that claims to self-determination usually indicate a human rights problem in its final stages.¹³⁸ They should, therefore, address complaints about human rights violations before they reach this stage. That would help to reduce the number of wars on the continent and bring about peace, stability, and rapid development.

6. Right to Development

It is not our intention to discuss extensively the right to development in this thesis. Suffice it to say, however, that the right was first enunciated by the President of the Senegal Supreme Court, Keba M'Baye in an address to the International Institute of Human Rights, Strasbourg in 1972.¹³⁹ He relied on Articles 55-56 of the UN Charter and 22-27 of the Universal Declaration of Human Rights, as well as on statutes of specialized agencies in which international cooperation and solidarity are important.

We are here concerned with the issue whether development efforts should take precedence over human rights or not. Some African leaders have argued that respect for human rights will have to wait until their countries have caught up with the developed countries. Kwame Nkrumah, the first leader of Ghana wrote shortly after independence:

The economic independence that should follow and maintain political independence demands every effort from the people, a total mobilization of brain and manpower resources. What other countries have taken three-hundred (300) years or more to achieve, a once dependent territory must try to accomplish in a generation if it is to survive ... [E]ven a system of social justice and a democratic constitution may need backing

September 1976)

¹³⁸ See Patricia Carley, *Self-Determination: Sovereignty, Territorial Integrity, and the Right to Secession*, Report from a roundtable, 9 (U.S. Institute of Peace, Peaceworks No. 7, March, 1996)

¹³⁹ Keba M'Baye, "*Le Droit Development comme un Droit de l'Homme*", 5 Rev. Droit de l'Homme 623, 626 (1982). See U.O. Umozurike, *supra*, note 119, at 59

up, during the period following independence by emergency measures of a totalitarian kind.¹⁴⁰

African leaders have used this argument over the years to deny their people of the opportunity to enjoy human rights. It has not helped their nations and the people have been suffering unnecessarily. It has merely enabled the leaders to shirk their duty to develop the countries while embezzling state funds meant for development unchallenged. Without the right to freedom of expression, for example, it would be difficult for the people to challenge a bad government. In Africa, as Colin Morris has stated,

Governments don't feel shame, and it is government by the rich for the rich that guards the gap between the Haves and Have-nots against shrinkage during our lifetime or anyone else's short of bloody revolution.¹⁴¹

Quite apart from the fact that they have had the opportunity to put their argument into practice and it has not helped Africa, African leaders must be told in no uncertain terms that there is no room for double standards in the application of human rights. They were known for speaking up at the UN against the apartheid policy in South Africa during the struggle against that country's policy but keeping quiet about the human rights violations that they were inflicting on their fellow citizens. The oppression of man by man – be it black by white, white by white, white by black, or

¹⁴⁰ Kwame Nkrumah, *Autobiography* (1959). Quoted in Ebow Bondzie-Simpson, *supra*, note 53, at 658-9.

¹⁴¹ Colin Morris, *The Unyoung, The Unpoor, and The Uncolored* (1962). Quoted in George W. Shepherd,

black by black - is wrong. In particular, it is un-African. As Hillary Clinton has rightly observed, in Africa, the prevalent belief is that "it takes a village to raise a kid."¹⁴²

It is only when every individual is allowed to have a sense of belonging and accorded all his or her rights that he or she will be loyal to the group or nation. It is then that all members of the society can join hands together in producing meaningful development.

It is for this reason that contemporary African leaders must de-emphasize peoples' right to development as meaning the states' (or leaders') right to receive aids from developed nations and to squander those aids as they like without regard for the rights of the masses. "People" should include the individuals within an independent state and the peoples' right to development should be emphasized to include the right of individuals within the states to demand that governments perform the duty of providing them with economic, social, and cultural development.

Jr., et al. (eds.), *Emerging Rights: The African Political Economy Context*, 41 (1990).

¹⁴² Hillary Clinton, *It Takes a Village: and Other Lessons Children Teach Us* (1996)

CHAPTER VII

CONCLUSION

We have shown in this thesis that the concept of human rights is universal.

Precolonial Africans knew both the concept of individual human rights and the concept of group rights. The present state of human rights practice in Africa is deplorable. The African Charter on Human and Peoples' Rights is an instrument that is bound to help in improving on the poor human rights situation in contemporary Africa.

The failure to provide for a court of human rights has been an important omission in the Charter. Luckily, the OAU is now making plans to amend the Charter to provide for such a court. That is a step in the right direction.

It is also hoped that the organization will take steps to improve on some of the other enforcement provisions and strengthen the Commission. The Commission should have the power and means to apply publicity in appropriate cases in carrying out its task.

However, no matter how good a law may be, its success depends on the people who operate it. The African people will have to be vigilant about the observance of their rights. The contemporary African leaders, in particular, will also need to respect their peoples' rights as contained in the Charter. The much-talked-about development can only come if they discard wicked policies that chase away the best minds among their citizens from those countries. Talking of the relevance of African values, it is un-

African to siphon the peoples' money to private bank accounts in foreign countries. The precolonial African leaders never engaged themselves in such a wicked practice.

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