

# **THE AFRICAN CHARTER**

*on*

# **Human and Peoples' Rights**

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### Introduction

Three months after its conclusion by the last state that constituted the majority of OAU members, the African Charter came into force as provided by Article 23(7), on 21 October, 1986. The Assembly of African Heads of State that approved the Charter in 1981 in Nairobi aimed to bring about a new era of human rights in Africa which would be a source of inspiration and motivation for the rest of the world. It was in order to avoid confusion with the OAU Charter. However, the Charter is a landmark in the history of human rights in Africa. It is the only instrument of human rights law in Africa. It is the only instrument of human rights law in Africa. It is the only instrument of human rights law in Africa.

The main organ responsible for the implementation, monitoring and promotion of the African Charter on Human Rights is the African Commission on Human Rights. It was established in 1987. Although the number of members has not yet increased, enough has been put in place for a meaningful study of the Charter.

Perhaps, nowhere else is a governmental organization for the protection and promotion of human rights more active than in Africa which has experienced most of the worst human rights abuses. Between the 1960s and 1980s, the slave trade by Arabs in Eastern Africa and by Europeans in West, Central and South Western Africa was a large source of the continent's economic stagnation. It was only after the end of the 19th century and the beginning of the 20th century that the continent began to develop. It was only after the end of the 19th century and the beginning of the 20th century that the continent began to develop.

By

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## THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

### ***I*ntroduction**

Three months after its ratification by the last state that constituted the majority of OAU members, the African Charter came into force as provided by Article 63(3), on 21 October, 1986. The Assembly of African Heads of State that approved the Charter in 1981 in Nairobi named it Banjul Charter after the capital of Gambia which hosted a number of ministerial conferences that drafted it and in order to avoid confusion with the OAU Charter. However, the name *African Charter* has stuck being in consonance with the continental names of its forbears - the European and American Charters on Human Rights.

The main organ responsible for its enforcement, interpretation and promotion - the African Commission on Human Rights - came into being in 1987. Although the practice of the commission is yet to develop, enough has been put in place for a meaningful study of the Charter.

Perhaps, nowhere else is a continental organisation for the protection and promotion of human rights more desirable than in Africa which has experienced some of the worst abuses of human rights. Between the 17th and 19th centuries, the slave trade by Arabs in Eastern Africa and by Europeans in West, Central and South Western Africa devastated large areas of the continent. As the trade became more unprofitable and increasingly frowned upon as immoral, colonialism was taking strident steps so much that by the end of the 19th century and the beginning of the present, the whole continent with the exception of Abyssinia (now Ethiopia) and Liberia was subjected to colonial rule.<sup>1</sup>

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1. U. O. Umozurike: *International Law and Colonialism* (1979) Chpt. 2.



Colonialism, theoretically ameliorated through a measure of internationalisation by the mandate and trusteeship systems, held sway up to the 1950s. The 60s were years of independence with Ghana blazing the trail in 1957. There were high hopes that independence would usher in an era of development and respect for human rights but these hopes failed for, in many countries, the ruling elites had been steeped in the practice of their erstwhile oppressors. There were flagrant violations of human rights in Bokassa's Central African Empire (1966 - 79), Marcias Nguema's Equatorial Guinea (1969 - 79) and Idi Amin's Uganda (1971 - 79) which in turn fuelled the aversion to those violations. The examples of the European and American Conventions, the UN Commission on Human Rights and the unsuccessful attempt to incorporate human rights in the EEC - ACP Pact (Lome II Convention) encouraged institutional arrangements for the better protections of human rights.<sup>2</sup> The routine condemnation of apartheid was not enough nor could the hackneyed exclusivity of domestic jurisdiction. That the new states were jealous of their hard-worn independence was understandable, it was also important to understand that independence was not an end but a means to improving the material and spiritual circumstances of the people.

In 1961, African jurists meeting in Lagos under the auspices of the International Commission of Jurists suggested an African Human Rights Charter with a court to which individuals or groups could have recourse. Francophone African jurists in Dakar in 1967 and the African Bar Association favoured the internationalisation of human rights in Africa. Although Nigeria wanted a regional commission for human rights under UN aegis in 1967 and 1968, the UN expressed interest in seeing the OAU take

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2. Young-Anawaty: "Human Rights and the ACP - EEC Lome II Convention," 13 *NYUJ Int. L. and Pol.* (1980) 63.

the initiative. In its summit at Monrovia in 1979, the OAU directed its Secretary General to put the machinery into motion for a human rights commission which culminated in the Charter. The rights provided in the Charter may be divided into (a) political and civil, (b) economic, social and cultural and (c) group rights.

### **Political and Civil Rights**

The Charter guarantees without qualifications the right to equality before the law, human dignity and inviolability. It prohibits all forms of degrading treatment and exploitation especially slavery, torture and degrading punishment. The police has been identified in many countries with the extortion of facts from suspects and accused persons by the use of torture. This practice cannot continue nor may corporal punishment or amputation of the limbs be inflicted on persons as legitimate punishment.<sup>2A</sup> This was the stand taken by the European Court of Human Rights in several cases.<sup>3</sup> The right to fair hearing is guaranteed and the elements of these are enumerated in Article 7 - the right to be heard, to appeal, presumption of innocence, right to defence by counsel of one's own choice and trial within a reasonable time by an impartial court or tribunal. Retroactive criminal legislation is

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- 2A. The Zimbabwean Supreme Court recently banned flogging for children as a punishment. It had done so earlier for men and the punishment was not applicable to women. The victim was stripped naked, blind-folded, strapped face down on a flogging bench, a blanket placed across his back and a wet cloth over his buttocks.
3. In *Tyrer v United Kingdom* 1978 2 EHHR 1, the European Court of Human Rights held that birching on the Isle of Man amounted to degrading punishment' and violated Article 3 of the European Convention even though it was not revolting to the islanders; the general European climate had to be considered. In *Campbell and Cosans v UK* 4 EHHR 293, the court held it was against the convention for UK to allow birching in schools even when parents permitted it and though it was traditional in Scotland.