



The African Charter on Human and Peoples' Rights at a Glance

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1. The Human Struggles for the Establishment of Human Rights

There is no exaggeration when saying that the struggle for the establishment and application of human rights was the cornerstone for the major movements that took place in the history of human societies. Throughout the various historical stages and in all countries, man sought to ensure his right to exist, and accordingly the others' rights based on that, namely the civil and political rights on one hand, and the economic and social rights on the other.

The human struggle has undertaken many stages and achieved great victories. The most prominent of these victories were granted by divine religions and great civilizations in the history of human societies, such as the ancient Greek civilization, medieval Islamic Arab civilization and modern European civilization. There is much evidence in the Islamic religion on the call for human rights values, or even in the history of Arab Islamic civilization, especially in the preservation of the rights of non-Muslims who were treated properly by the Arab Islamic society without discrimination based on either religion, or ethnic origin.

More than fourteen centuries ago, Islam brought into light "human rights" in a comprehensive, deep manner and secured them with adequate safeguards to protect them. It raised its society on principles and values that enable and promote these rights. In modern European civilization, there were many milestones that reinforced the rights of humans, including the "Magna Charta" issued in 1215 to document the rights of the people of England before King John and also, the Declaration of the Independence of



the United States, drawn up in 1776 by President Jefferson who was inspired by the views of European philosophers such as John Locke, Russo and Voltaire. The permeable of the Declaration says "We believe that people are created equal and have been given by their Creator the right to life, liberty and the pursuit of happiness". These come in addition to the human rights document that was issued after the French Revolution, revoking the theory of the divine right of kings and affirming the right of all people to equality.

2. The International Legitimacy of Human Rights:

The Charter of the United Nations signed in 1945 acts as the cornerstone for the enjoyment of individuals of a range of rights after it became clear to drafters the coherence of these rights with the international peace and security on one hand, and with the respect for human rights and fundamental freedoms for all individuals without distinction on the other. Meanwhile, the United Nations does not only include number of texts that ensure human rights in its Charter, but it goes further to adopt other international covenants and conventions covering other human rights and fundamental freedoms, topped by what so-called "the Legitimacy of Human Rights", such as the Universal Declaration of Human Rights in 1948, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights in 1966 and the first Optional Protocol annexed with the International Covenant, whereby the Member State to the Covenant recognizes the competence of the Human Rights Committee, established under the Covenant, to receiving, reviewing and considering complaints from individuals against States claiming to be victims of the violation of any right granted by the Covenant.

Since then, mechanisms of recognition and protection of human rights and freedoms began to develop at the level of some continents and countries, leading to the emergence of number of charters of regional organizations, along with the specialized universal conventions on rights or freedom of women, children or racial discrimination.

3. The African Charter on Human and Peoples' Rights (1981):

The African Charter on Human and Peoples' Rights is of special importance among similar international conventions, due to the particularity of the issues of human and peoples' rights at the African level.



Africa was the continent in greatest need of a regional human rights charter that was more correlated to the conditions of the continent and more expressive of this area's vision and actual needs emphasized in two levels:

Firstly: The level of the basic rights of the African people in the face of some African governments as well as some elements of the African social and cultural environment, which were still inadequate compared to other international counterparts.

Secondly: The level of political rights of some African people to stand against the attempts of domination and reduction of their sovereignty by non-African countries and also against the disintegration and instability after years of the occupation of their countries.

The general framework of the African Charter on Human and Peoples' Rights reflects the conditions and situation of the African continent in many ways:

1. The Charter was developed to ensure the fundamental human rights on one hand, and the general political rights of the peoples of Africa on the other, dealing with the two types of rights equally.
2. The Charter is perceived comprehensive in dealing with all the rights associated with the two aforementioned types. Also, it draws up the continent's issues and aspirations in this regard.
3. The Charter has endeavored to be "explicit" - to some extent - relevant to its scope of implementing mechanisms, despite the entanglements and contradictions associated with that issue.

In its preamble, the African Charter has tackled the fundamental issues facing the human rights march in Africa. These issues are divided into two sections; each of them is linked to a type of the above mentioned rights, as follows:

- A. Issues of the first type: These issues are related to the aspirations of the African people to obtain internationally recognized rights, freedoms, economic, social, cultural and political rights, in particular the right to development, along with the civil and political rights and the right to eliminate all forms of discrimination based on race, ethnicity, gender, language, religion or political opinion.



- B. Issues of the second type: These issues are related to the aspirations of the African peoples towards the full liberation of Africa and the achievement of real independence, the elimination of "colonialism and neo-colonialism, apartheid and Zionism and the elimination of the rules of military and foreign aggression."

In this context, the African Charter is divided into three sections; the first deals with the rights and duties of human beings and peoples, the second tackles the measures of safeguards, while the third lists some general provisions on the operation and ratification of the Charter.

The basic observation here is that the Charter has given high attention to the protective measures as much as the rights and duties. The key points of the Charter can be presented as follows:

Part I: Rights and Duties:

This part is divided into two sections, the first is dealing with human and peoples' rights, while the other tackles duties.

Rights:

The Charter discusses extensively in number of its articles the human and peoples' rights in Africa for being the core of the Charter. It begins with Article 1 which stipulates the recognition by the Member States of the Organization of African Unity of the Charter's provisions and their commitment to undertake the necessary measures to implement them. Article 2 recognizes that everyone is entitled to the enjoyment of rights and freedoms stipulated in the Charter, without any kind of discrimination, especially those are most common in Africa.

The rest of articles in this section set forth all the rights contained in the Universal Declaration of Human Rights signed in 1948 and the two International Covenants of 1966 as well, giving special attention to the prohibition of all forms of exploitation, degradation and enslavement of human beings and confirming that no one shall be deprived of his liberty except in cases that shall be determined by law, particularly in case of arbitrary arrest or detention (articles 5 and 6). Besides, Article 7 regulates the rights to litigation, while Articles 8 and 9 confirm freedom of belief and the free practice of religion and the right of everyone for access to information. Article 10 refers to the rights of individuals to free associations provided that they abide by the law and that no one shall be compelled to join an associa-



tion. In addition, Article 11 affirms the freedom of individuals to free assembly with others as determined by national laws and interests.

Article 12 refers to one of the human rights dilemma in Africa, specifically the freedom of movement, as well as the departure of and return to the State. It focuses on the right of political asylum, the treatment of foreigners in the country, and the prohibition of "mass expulsion of non-nationals" which indicates the expulsion of certain national, racial, ethnic or religious groups. Also, this Article determines the legal and international frameworks in this regard.

Article 13 deals with the individuals' right of participation in the management of the country's public affairs, and affirms their right to equal access to the public service of the country. Articles 14 and 15 refer to the right to property and the right to work under equitable and satisfactory conditions. Article 16 emphasizes that State parties shall adopt the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick. Article 17 refers to the right to education and Article 18 refers to the rights of the family and stresses on the need to eliminate all discrimination against women.

Starting from Article 19, the rights of peoples have been emphasized extensively. The Charter affirms there is no "justification for the domination of a people by another". It stresses on the right of every people to self-determination, to determine their political status and to be free from the colonial domination" by all means recognized by the international community". As for Article 21, it refers to the rights of the African peoples to free disposal of their wealth and to lawful recovery of their property and to seek an adequate compensation in case of spoliation. Moreover, Article 22 refers to the practice of the right to development, while Article 23 affirms the right to national and international peace and security, with an emphasis on prohibiting asylums for those being engaged in subversive activities against the country of origin or any other State party to the Charter. It prohibits also the use of the territories of States party as bases for the subversive or the terrorist activities against other countries.

Duties:

The articles of this section (27-31) refer to duties of individuals towards their families and societies. They address the need to maintain tolerance, non-discrimination and respect for everyone. Besides, they set forth duties



of individuals of not to compromise the security of the State of their origin or residence and to contribute - to the fullest extent possible - to the development process and the achievement of the African unity.

Part II: Measures of Safeguard

This part is divided into four sections addressing the establishment and formation of the African Commission on Human and Peoples' Rights (section 1), the terms of reference of the Commission (section 2), the procedures of the Commission (section 3) and the principles that can be achieved (section 4).

1. The Commission established within the framework of the Organization of African Unity and consists of 11 members of African personalities “of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights”. Each member of the Commission serves in his own personal capacity. The Commission does not include more than one national of the same State. Members are elected by secret ballot by the Assembly of Heads of State and Government, from a list of persons nominated by the States parties to the present Charter. Members of the Commission shall be elected for a renewable term of six years. The Commission shall lay down its own rules of procedure, forming a quorum of 7 members. The Chairman of the Commission shall have a casting vote when the votes are equal and the members shall enjoy diplomatic privileges and immunities.
2. The mandate of the Commission is to compile documents, conduct researches and studies on African human rights issues, organize seminars, conferences and symposiums, disseminate information and encourage national human rights organizations. It has also the right to "give views and make recommendations to Governments, when necessary, to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations”. In the meantime, the Commission has to guarantee the protection of human and peoples' rights in accordance with the provisions of the Charter, to interpret all its provisions and to carry out other tasks that may be entrusted to it by the Assembly of Heads of State and Government.



3. The Commission's procedures include the possibility of resorting to "any proper method" of investigation and hearing of any person capable of providing it with information. It also provided that any State party to the Charter may draw the attention of the Organization of African Unity and the chairman of the Commission, by written communication, to human rights violations in another State. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. On other hand, the Commission has the right to prepare a report on the facts and findings, referring it to the Assembly of Heads of State and Government and to make recommendations which it considers useful.

As for communications received from non-state parties to the Charter, they may only be considered by the endorsement of the "absolute majority" of the members of the Commission, under strict conditions as defined by the Charter in Article 56. If the conditions are met, the Commission shall prepare a report or an extensive study on the subject with the possibility to give appropriate recommendations. All of the measures in this section shall remain "confidential" unless decided by the Assembly of Heads of State and Government.

4. The Committee shall abide by the principles of international law relating to human and peoples' rights, the provisions contained in the various relevant African conventions, the provisions of the United Nations Convention, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, along with the provisions of other documents adopted by the United Nations and the African States.

The Commission shall take into consideration general or specialized international conventions recognized by the Organization of African Unity Member States, as well as other African and international norms, in addition to other relevant human rights legislations.

Thereby, the African Charter on Human and Peoples' Rights has been largely associated to African human rights and peoples' issues; however, it is considered very broad and is designated by the laws and regulations of its Member States, regardless of whether these laws, sometimes, are in vio-



lation of human rights. Although the Charter seeks to establish a well-functioning mechanism for implementation; on the contrary, it provides a general mechanism of inquiry and recommendation, without developing a robust instrument for the implementation of its provisions.