

Appraisal of the Enforcement of Human Rights in Selected African States

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Abstract: *The human rights practices across many contemporary African states is in many respects similar to what was obtainable under the colonial rule, this paper critically evaluates the human rights practices across African States, focusing particularly on Zimbabwe, South Africa, Nigeria and Sudan. The result is abysmal failure of African States to deliver on their respective obligations under the various, and many existing human rights treaties and covenants. The paper assesses the impact of the violation, by African states on human conditions on the continent. It asks whether there is compliance of state parties to the African Charter. The paper reveals that hunger, deprivation, ill-health and illiteracy have plagued humans across African states, human rights violations produces unrest, rebellion and internal conflict, which itself produces and encourages child abuse, violence against women and slavery. This paper shows there is a mounting evidence of human rights violations across Africa states. There seems to be no hope of abatement in sight. Finally, it discusses ways in which the African human rights system can be adapted to deliver the protection and enjoyments of human rights*

I. Introduction

The natural law philosophers¹ and the positivists² have made various contributions to the enrichment of the concept and content of rights. Attempts were also made by some countries to give statutory effect to the understanding gained from the works of the proponents of both the natural law and the positivist school of thoughts. Such attempts are contained in 'the British Magna Carta (1215), the US Bill of Rights (1791), and the French Declaration of the Rights of Man (1789)³ However, these documents suffered from diverse shortcomings and were unable to achieve their full potentials. In addition they were not recognized as universal instruments, this is because they were seen as predominantly domestic.

The events of World War II transformed the understanding of human rights from certain nations and regions to the global level. The scale of dehumanization of human dignity and values before and during the war was never to be allowed to be repeated. The genocide against the Jews and the discriminatory practices against people with disabilities, gypsies, blacks, homosexuals and other minorities were generally condemned by civilised countries. It is presented thus by the UN:

During the war, the momentum toward universal recognition of inalienable human rights was propelled by the Atlantic Charter and by President Franklin D. Roosevelt's Four Freedoms speech before the United States Congress in 1941. In his address, Roosevelt proclaimed four basic freedoms that could never be legitimately abridged; they were freedom of speech and expression, freedom of worship, freedom from want and freedom from fear. In Britain, Prime Minister Winston Churchill echoed the American President, asserting that an Allied victory would be marked by the "enthronement of human rights." This message was communicated to the people very explicitly in statements like the "United Nations Declaration" and pamphlets like the "United Nations Fight for the Four Freedoms". As the War neared an end, the need to codify human rights was not on the minds of diplomats and leaders alone. After Germany's unconditional surrender, further information of Nazi atrocities slowly became available. With these horrific revelations the determination to secure enduring respect for human rights became indelibly ingrained in the minds of all peoples.⁴

¹ Locke J *The Second Treatise on Government* (Oxford University Press: B Blackwell 1956) 4. Contrast with Marx 'On the Jewish Question' in RC Tucker(ed.) *The Marx-Engels Reader* (WW Norton: New York 1972); Ndubisi FN & Nathaniel Issues in Jurisprudence and Principles of Human Rights (Dmodus Publishers: Lagos 2002) 65

² Hamburger J *Intellectuals in Politics: John Stuart Mill and the Philosophical Radicals* (Yale University Press: New Haven 1965); Hart HLA 'Positivism and the Separation of Laws and Morals' *Harvard Law Review* (1958) 71: 593

³ 'Drafting and Adoption of the Universal Declaration of Human Rights' Available at: <http://www.udhr.org/history/default.htm> Accessed on 07 November, 2011

⁴ Available at <http://www.udhr.org/history/default.htm> Accessed on 09 October, 2011.

The United Nations Charter of 1945 is the first international instrument to recognise human rights as such⁵: though its content is worded in general form, it gives recognition to human rights generally including socio-economic rights. The Charter expressly states that human rights are central to the aims of the UN:

Article 1(3) provides:

To achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion

Article 13(1) (b) provides:

Promoting international co-operation in the economic, social, cultural or educational, and health fields, and assisting in the realization of human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion...

Article 55 provides:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- (a) higher standards of living, full employment, and conditions of economic and social progress and development;
- (b) solutions of international economic, social, health, and related problems; and international cultural and educational co-operation; and
- (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Next is the Universal Declaration of Human Rights (UDHR), which confirms the emergence of socio-economic rights in their present form on the international scene. The UDHR incorporates the recommendations of the American Law Institute Committee on the international Bill of Rights which contains several socio-economic rights. The Bill of Rights was drafted in 1944. This was with the active support of Mrs Eleanor Roosevelt, wife of Franklin Roosevelt, President of the US from 1933-1945. Third World countries endorsed the proposal, but there was opposition from governments in Europe, which were undergoing post-war reconstruction, so a more modest statement rather than a binding treaty emerged⁶.

When the UN was formed, the Commission on Human Rights received the mandate to draft a bill of rights which would be binding on all sovereign members of the UN and be capable of being implemented. The resolution for the bill was adopted, by a vote of 48 with no opposition and 8 abstentions, by the members of General Assembly on the 10th of December, 1948⁷. It contained both civil and political rights and socio-economic rights. It thus became the first universally agreed instrument to give explicit recognition to socio-economic rights. The UDHR was received by world governments with mixed feelings⁸. The aim to recognise and protect human rights and freedoms was achieved, but the objective to propose an implementation strategy for human rights was not achieved.

In the post-war landscape the UDHR suffered a serious setback arising from the suspicion between the United States and Soviet Union, by reason of their political and ideological differences, then, between capitalism and communism.

Eventually, in 1965 the UN Commission on Human Rights proceeded to draft two treaties to take the UDHR to the next stage: the International Covenant on Civil and Political Rights (ICCPR) and its optional Protocol, and

⁵ Buergenthal T 'Normative and Institutional Evolution of International Human Rights' *Human Rights Quarterly* (1997) 19: 703; Sohn L B 'The New International Law: Protection of the Rights of Individuals Rather than States' *American University Law Review* (1982) 32: 1-16. 16

⁶ Hass M *International Human Rights: A Comprehensive Introduction* (Routledge: Oxford 2008) 116.

⁷ Adopted by the United Nations General Assembly by Resolution 217A (III) of 10 December 1948.

⁸ Communist countries described UDHR as 'vague', and with inherent 'deficiencies'. See Zdenek Augenthaler of Czechoslovakia and L. I. Kaminsky of Byelorussia, in UN, GA, Official Records, Plenary Meetings, 1948, pp 882 and 896-97; Apartheid South Africa commented that the UDHR went 'far beyond' the United Nations Charter, H.T. Andrews in Ibid. 910-911; Eleanor Roosevelt saw it as a 'moment of achievement' and the UDHR 'may well become the international Magna Carta of all men everywhere...we stand here at the threshold of a great event both in the life of the United Nations and in the life of mankind...At a time when there are so many issues on which we find it difficult to reach the common basis of agreement it is a significant fact that ...states have found such a large measure of agreement in the complex field of human rights' -Eleanor Roosevelt, full text of speech in US National Archives, RG 59, Box 2258, 501. BD Human Rights/12-848

the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights⁹.

Officially, three main reasons, all hinged on differences in implementation strategies, have been adduced to explain the decision to produce two covenants out of the UDHR:

(1) Economic and Social rights are objectives to be achieved progressively; therefore a much longer period of time is contemplated for the fulfilment of the objectives. For civil and political rights, States ratifying the covenants will immediately be subjected to an obligation to give effect to the rights:

(2) The enactment of legislation is generally sufficient to effect the enjoyment of civil and political rights, while legislation is not generally sufficient for the attainment of socio-economic rights.

(3) The machinery of complaint, the Committee on Human Rights

The ICCPR focuses on such issues as the right to life, and freedom of speech, religion, and voting. The ICESCR focuses on such issues as food, education, health, and shelter. Aside from the International Bill of Rights,¹⁰ African States have a plethora of human rights instruments protecting the enjoyment and realization of human rights in Africa.¹¹ Despite the many human rights conventions, treaties, and transformation of some of these treaties, human rights violations remain rampant across the African continent. The realization and enjoyments of human rights across, Africa has remained substantially elusive.

The African States are consistent violators of human rights, scholars have found this to be a carry over from colonial heritage.¹² From Zimbabwe, Morocco to Nigeria torture is a tool of investigation, and to make matters worse, evidence obtained through the use of torture is admissible in evidence.¹³ In many African countries, detainees can expect to be tortured, beaten and sometimes rape in police detention. In a bid to obtain confessional statements, accused are often tortured to death or summarily executed. Relatives of the victims normally do not press charges for fear of reprisals attacks or for fear of being associated with a suspected criminal.¹⁴ There has also been a rise on armed conflicts and internal strives in Africa, as a result of bad governance and deliberate attempt by the incumbent to perpetuate himself in power. This has led to gross violation of the socio-economic rights of the ordinary people. It is reckon that more than 20 million Africans are currently displaced from their homes by reason of deprivation occasioned by internal conflicts.¹⁵ Recent examples include Libya¹⁶ and Côte d'Ivoire¹⁷.

...human rights problems abound everywhere on the continent. Despite the establishment of the regional human rights system and the creation of national human rights institutions in places as diverse as Kenya, South Africa, and Uganda to mention a few, the continent remains a euphemism for human suffering. In the Democratic Republic of the Congo, Sudan, Burundi, Rwanda, Somalia, Ethiopia, Uganda, the Republic of Congo, and Angola, human rights conditions remain bleak and grim. There have been painful reversals in some states, such as Burundi and the Republic of Congo where democratic gains were made earlier in the decade. Elsewhere, the deepening and consolidation of democracy is becoming a serious challenge. One thing is clear: the emergent paper-thin democracies of Africa will fail or revert to dictatorship unless a confluence of domestic and international factors combine to lift these societies over the threshold.¹⁸

⁹ Steiner J Alston P & Goodman R *International Human Rights in Context* (Oxford University Press: London 2007) 136.
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¹⁰ A combination of the three major international instruments on human rights is generally known as the international bill of human rights. The instruments are: Universal Declaration of Human Rights (1988), International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966)

¹¹ African Charter on Human and Peoples' Rights (1981); (2003); African Charter on the Rights and Welfare of the Child (1990); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

¹² Ali A. Mazrui, "The African State as a Political Refugee: Institutional Collapse and Human Displacement," *Int'l J. Refugee L.*, Special Issue, July 1995; Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (1996)

¹³ *Osahon v FGN*

¹⁴ Imasogie, M. O., *Death Penalty as a Violation of the Right to Life in Nwazueke, A. N. (ed.) Essays in Human Rights Law*, Department of Commercial & Industrial Law, Faculty of Law, EBSU, 2004, P.88

¹⁵ "Internally Displaced Persons: Report of the Representative of the Secretary General, Francis Mading Dieng, submitted pursuant to commission on human rights resolutions 1993/ 95 and 1994/68", UN Doc. E/CN.4/1995/50, 2 February 1995.

¹⁶ Libya was thrown in turmoil when Muammar Gaddafi who ruled Libya from 1969 to 2011 refused to step down after popular demand and uprising. Many lives and properties were lost in the armed conflict that followed.

¹⁷ After a presidential election generally adjudged to have been won by the opposition candidate Ouattara, Alassane OuattaraLaurent Gbagbo, the then President of Côte d'Ivoire since 2000, refused to step down and hand over power to the newly elected. After months of attempted negotiation, pro-Ouattara forces backed by the French forces began a military offensive to oust the incumbent. Several lives and properties were lost.

¹⁸ Makau Mutua *The African Human Rights System: A Critical Evaluation*, Available at: <http://hdr.undp.org/en/reports/global/hdr2000/papers/MUTUA.pdf> Accessed on 06 November, 2001

There is a continued and increasing violation of human rights across Africa, despite the much human rights legislation across African continent. Aside, from violations by state, activities of private armies, private security firms, Islamic fundamentalists and mercenaries are on the increase. This group equally violates the human rights of innocent Africans. For example, the roles of mercenaries in the Libyan conflict is well pronounced also is the activities of the *al-Shabab* in Somalia and the *Boko Haram* in Nigeria.

The human rights practices across many contemporary African states is in many respects similar to what was obtainable under the colonial rule,¹⁹ this paper critically evaluates the human rights practices across African States, focusing particularly on Zimbabwe, South Africa, Nigeria and Sudan. The result is abysmal failure of African States to deliver on their respective obligations under the various, and many existing human rights treaties and covenants. The paper assesses the impact of the violation, by African states on human conditions on the continent. It asks whether there is compliance of state parties to the African Charter. The paper reveals that hunger, deprivation, ill-health and illiteracy have plagued humans across African states, human rights violations produces unrest, rebellion and internal conflict, which itself produces and encourages child abuse, violence against women and slavery. This paper shows there is a mounting evidence of human rights violations across Africa states. There seems to be no hope of abatement in sight. Finally, it discusses ways in which the African human rights system can be adapted to deliver the protection and enjoyments of human rights.

The Nature of Human Rights

According to Beitz²⁰, there are two concepts of human rights; the orthodox and the practical. The orthodox is concerned with the philosophical. It the right ascribed to a person by reason of being a human being. Such right is available to the individual, against all others, every time and all the time. Orthodox concept of human rights is based on philosophical literature using moral tools. On the other hand, practical human rights are more in consonance with international political considerations than philosophical considerations. This paper focuses on the practical human rights.

The practical conception of human rights is quite different, and is more familiar from international politics than from the philosophical literature. On the practical conception, human rights define a boundary of legitimate political action. Human rights specify the ways in which state officials must and must not act toward their own citizens, where it is understood that violations of these human rights can morally permit and in some cases morally require interference by the international community. This practical conception of human rights is what one finds in the various proclamations and treaties on human rights, such as the Universal Declaration and the Convention against Torture.²¹

This paper takes the view that human rights are indivisible. The UN has always stressed the indivisibility of human rights²². In this circumstance, this paper focuses and evaluates African states practices on socio-economic rights, civil and political rights and group rights, particularly through the African Charter.

Evaluating State Practices on Human Rights through the African Charter

The African Charter on Human and People's Rights²³ was adopted in June 1981 but entered into force on the 21st of October, 1986. All State parties to the AU are qualified to be parties to the Charter.²⁴ This is an unprecedented instrument, it remains the only human rights treaty to provide express protection for the three classification of human rights; it provides for the protection of both civil and political rights and socio-economic rights in one Charter. There is also the inclusion of the right to favourable environment. The Charter provides for the right to equality, the right to liberty, the right to a fair trial, right to religion, freedom of association and expression, right to education, right to health, right to work, right to participate in the culture of one's community, right of the aged and right of the people suffering from disability. It also provides for the right to economic and the right to political self-determination. Individual and Collective complaints are admissible. The Charter also provides for the duties of the citizens.

¹⁹ Ibid

²⁰ Beitz, *The Idea of Human Rights* Oxford, Oxford University Press, 2009

²¹ Wenar L 'The Nature of Human Rights' in from *Real World Justice*, ed. A. Føllesdal and T. Pogge (Kluwer, 2005)

²² See The Proclamation of Teheran , resolution XVII titled Economic Development and Human Rights' Proclamation of Teheran Para 13; See also the Affirmation of the UN General Assembly in UN document G. A. Resolution 32/130 of 16 December 1977

²³ It is also known as the Banjul Charter.

²⁴ Odinkalu C. A. and C. Christensen, 'The African Commission on Human and People's Rights: The Development of its Non-State Communication Procedures' 20 HQR (1998) 235 at pp 236-237

Despite these admirable provisions, many of the rights promised by the African Charter are continued to be violated. Article 62, provides that each state party is obliged to submit every two years a report of efforts made in compliance with the Charter. The reports are hardly ever made, infact the Charter does not state the body to which the report is to be submitted or provide guidelines as to the structures of those reports. The African Commission on Human and Peoples' Rights is charged with supervisory responsibility. However, the Charter has severe limitation clauses, also known as the claw-back clauses. These are clauses which authorize the state to deprive the individual of his or her rights.²⁵ For example, "except for reasons and Conditions previously laid down by law," "subject to law and order," "within the law," "abides by the law," "accordance with the provisions of the law," and other restrictions justified for the "protection of national security."²⁶

Presently, The African Court on Human and Peoples' is charged with the responsibility of deciding disputes in respect of the provisions of the African Charter.²⁷ The court has now been merged with the African Court of Justice to integrate into the African Court of Justice and Human Rights²⁸

The next segment will highlight specific violations of human rights and draw from experiences from Zimbabwe, South Africa, Nigeria and Sudan.

Documented Violations of Human Rights by State Parties

Zimbabwe

The government of Robert Mugabe is generally known for violating human rights of members of the opposition and anyone deemed to be critical of his regime. Research reveals consistent violation of the right to freedom from discrimination, the right to life and the right to property; including the right to property (Article 14). Other rights which were violated include the right to freedom from discrimination (Article 2), equality before the law (Article 3), the right to life (Article 4), the right to liberty (Article 5), the right to have one's cause heard (Article 7), and the right to work under equitable and satisfactory conditions (Article 15).²⁹ Under the under the land reform programme and Operation Murambatsvina, the government claimed to have taken lands from the white elite for redistribution to the majority poor. The philosophy of the programme is commendable but the mode and manner of accusation of the lands is condemnable. Ex war veterans are often accompanied by armed militia to evict the white farm owners and the several workers working in the farms. This is done through violence and without regards to the rights of the workers and the farm owners. Sadly, acquired lands are distributed in discriminatory and only to party faithful. 700,000 people lost their homes, livelihoods, or both as the result of the evictions. About 2.4 million people affected by Operation Murambatsvina.³⁰

There is also uncontroverted evidence detailing activities of the Zimbabwean government in undermining the rule of law and how and the independence of the courts in Zimbabwe have been severely compromised through intimidation of judges and lawyers.³¹ Article 26 of the African Charter guarantees the independence of the courts³². However, the Zimbabwe government has failed to guarantee the independence of the judiciary, the government has failed or neglected to protect the judges from attack from war veterans and state officials. The resultant effect is that the judiciary is compromised.

²⁵ Welch C. E., 'The African Commission on Human and Peoples' Rights: A Five Year Report and Assessment' 14 HRQ(1992) 43 at p.46

²⁶ Makau wa Mutua, "The African Human Rights System in a Comparative Perspective," 3 Rev. Afr. Comm. Hum. & Peoples' Rts. 5, 7 (1993); see also Articles 5-12

²⁷ It came into being on January 25, 2004 with the ratification by fifteen member states of the Protocol to the African Charter on Human and Peoples' Rights Establishing the AfCHPR

²⁸ See the Protocol on the Statute of the African Court of Justice and Human Rights, available at <http://www.africa-union.org/root/au/Documents/Treaties/text/Protocol%20on%20the%20Merged%20Court%20-%20EN.pdf> (last visited 18 October 2011); Protocol and the Statute annexed to it shall, enter into force thirty

(30) days after the deposit of the instruments of ratification by fifteen (15) Member States.

²⁹ Human Rights Watch, 'Human rights violations under the land reform programme and Operation Murambatsvina' in *Zimbabwe: human rights in crisis, Shadow report to the African Commission on Human and Peoples' Rights* 2007 pp 5-17

³⁰ UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs Anna Kajumulo Tibaijuka, Report of the Fact-Finding Missions to Zimbabwe to Assess the Scope and Impact of Operation Murambatsvina, 22 July 2005 [online], <http://www.unhabitat.org/documents/ZimbabweReport.pdf> (accessed 10 November 2011)

³¹ International Bar Association 'Attacks on the rule of law' in *Zimbabwe: human rights in crisis, Shadow report to the African Commission on Human and Peoples' Rights* 2007 pp 18-26

³² Dato Param Cumaraswamy, the former UN Special Rapporteur on the independence of judges and lawyers said: "The provision of adequate protection to judges and lawyers when their safety is threatened is a basic prerequisite for safeguarding the rule of law. This is simply fundamental, in order to guarantee the right to a fair trial by an independent and impartial tribunal and the protection of human rights. The apparent failure to do so in this case represents a serious threat to the independent judicial system in Zimbabwe." (United Nations Press release, 2 September 2002).

During a mission to Zimbabwe by the International Bar Association (IBA) in 2001, attacks on the judiciary by senior members of the executive, Ministers, Members of Parliament and the President were reported.⁴² The Minister of Justice, Patrick Chinamasa, is on record as stating that judges should be politically correct, and not behave like “unguided missiles”, a situation in which he “wish[es] to emphatically state that [they] will push them out”.⁴³ In November 2000, so-called war veterans and ZANU-PF supporters physically attacked the Supreme Court during a case, beating up a guard and preventing the court from sitting. The police dispersed the invaders, but took no further action against them.⁴⁴ In a separate incident in August 2001 a large crowd, allegedly ZANU-PF supporters, demonstrated for three days against a Karoi magistrate after he had granted bail to 106 farm workers who were charged with public violence for attempting to remove war veterans from their farms. In September 2001, after a Bindura magistrate sentenced 17 ZANU-PF supporters to three years’ imprisonment each for public violence ahead of a by-election in June, it was reported that other party supporters held “an all-night vigil” outside his home and intimidated his wife. In November 2001 ZANU-PF militants assaulted a senior magistrate in Gokwe after he convicted a ruling party supporter on a robbery charge and sent him to jail for eight months. In August 2002 Walter Chikwanha, a Chipinge magistrate, was dragged from his courtroom by a group of war veterans and allegedly assaulted at the government complex after he dismissed an application by the state to remand in custody five opposition MDC officials. The magistrate reportedly had broken ribs and a fractured collar-bone.⁴⁵ These threats and acts of violence against magistrates and courts have not been condemned by the government and the perpetrators have not been brought to justice. In a widely reported case in September 2002, Justice Blackie was unlawfully arrested and arbitrarily detained.⁴⁶ Justice Blackie retired and later indicated that his decision to retire was prompted by the pressures he was under. As a result of undue pressure a significant number of judges have resigned.³³

This is a gross violation of articles 3 (Equality before the law and equal protection of the law) and article 6 (Liberty and security) of the African Charter. The details of systemic use of torture by the Zimbabwe government have also been well highlighted. In its fact-finding report on Zimbabwe the African Commission stated:

there was enough evidence placed before the Mission to suggest that, at the very least during the period under review, human rights violations occurred in Zimbabwe. The Mission was presented with testimony from witnesses who were victims of political violence and others victims of torture while in police custody...[T]he Government cannot wash its hands from responsibility for all these happenings...Government did not act soon enough and firmly enough against those guilty of gross criminal acts.³⁴

Perpetrators include the army, law enforcement agencies and other state agents including so-called “war veterans”.³⁵ It is also on record how the government of Zimbabwe has consistently violates the rights to freedom of association and assembly through a combination of the excessive use of force by the police,³⁶ particularly under the Public Order and Safety Act (POSA) has been employed to silence dissent.³⁷

³³ Ibid Page 19

³⁴ African Commission, *Executive Summary of the fact-Finding Mission to Zimbabwe 24th to 28th June 2002*

³⁵ Redress ‘Torture and ill-treatment’ in *Zimbabwe: human rights in crisis, Shadow report to the African Commission on Human and Peoples’ Rights 2007* pp 27 -34 ‘In 1999 Mark Chavunduka and Raymond Choto, two journalists were unlawfully detained by the military and severely Tortured; In March 1999, three US nationals Gary Blanchard, John Dixon and Joseph Pettijohn were arrested for the illegal possession of firearms at Harare International Airport on their way to Switzerland and were tortured; ‘the week before the June 2000 parliamentary elections, war veterans kidnapped MDC polling agent Patrick Nabanyama from his home in Bulawayo. He was never seen again but no body has ever been found. The alleged kidnappers were arrested and charged with murder in 2001. One of the accused was Cain Nkala, a war veteran leader in Bulawayo. In November 2001 Cain Nkala himself was kidnapped and within days several MDC members were arrested and charged with his murder. They were kept in custody under appalling conditions for many months. The trial of six of them began in February 2003: Sonny Masera, Army Zulu, Remember Moyo, Kethani Sibanda, Sazini Mpofu and Dulini-Ncube, an MDC MP. Dulini-Ncube was denied treatment for his diabetes whilst in custody and later had to have an eye surgically removed’ Ibid. P. 30

³⁶ Dede Amanor-Wilks, *Zimbabwe’s Farm Workers and the New Constitution*, 12 February 2000,

South Africa

There is no doubt that human rights enjoyments and protection have tremendously improved since the end of apartheid.³⁸ It is generally agreed that South Africa plays a leading role in the realization of socio-economic rights in Africa, but her human rights practices is still short of expectations of a liberal democracy. Violation of Article 4 of the African Charter 'Human Rights are inviolable, every human being shall be entitled to respect for his life and the integrity of his person. No one shall be arbitrarily deprived of his life.

According to the governmental Independent Complaints Directorate (ICD), there were 294 deaths in police custody and 566 deaths as a result of other police action during the year ending March 31, a 6 percent decrease from the previous year. Of the 860 deaths, 479 resulted from being shot, 122 from assault, 112 due to suicide, 93 from natural causes while in custody, 27 as a result of injuries from being struck by a police vehicle, 15 as the result of an auto collision, seven as the result of torture, three from suffocation, and two from poisoning³⁹

There is also the violation of the obligation to protect. There were variously motivated judicial killings in South Africa. For example, in January 2009 ANC stalwart Inkosi Mbongeleni Zondi was murdered, and in July 2009, a stalwart of the Inkatha Freedom Party (IFP), Makhosabo Mkhize was killed by unknown persons. Other unlawful killing include the murder of Sombane Lungile by Police Constable Elliot Khaka for allegedly attempting to steal a car. In Pretoria police killed unarmed sound engineer Nkosinathi Ntuli for driving against traffic and failure to stop on police order. Riaan Velloen was alleged to have been beaten to death by the police for driving while intoxicated.

Apart from police extra-judicial killings, ritual killings and body part trading remains a huge problem in South Africa.

Violation of Article 5: Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

There have been frequent cases of torture, rape, and beating of accused persons and undocumented foreigners by the police. South African Police has been accused of using fists, baton and boot to assault detainees.

In sum

Principal human rights problems included police use of lethal and excessive force, including torture, against suspects and detainees, which resulted in deaths and injuries; vigilante and mob violence; prison overcrowding and abuse of prisoners, including beatings and rape by prison guards; arbitrary arrest; lengthy delays in trials and prolonged pretrial detention; forcible dispersal of demonstrations; pervasive violence against women and children; societal discrimination against women, persons with disabilities, and the lesbian, gay, bisexual, and transgender (LGBT) community; trafficking in persons; violence resulting from racial and ethnic tensions and conflicts with foreigners; and child labor, including forced child labor and child prostitution.

It has also been noted that the government has not been doing enough in the area of provision of access to health care facilities and shelter. The failure of the South African government to give substantial effect to the Judgments of the Constitutional Court in respect of socio-economic right cases is not good enough. See *Government of South Africa v Irene Grotboom and others*⁴⁰; *Treatment Action Campaign v. Minister of Finance*⁴¹ In recent times, there has been rampant racial attacks on immigrants from neighbouring countries and other African countries.

Nigeria

Human rights violations in Nigeria have considerably reduced since 1999, following the re-introduction of democratic rule. Under the military rule, human rights violations were crude and brutal, vital provisions of the Constitution were suspended, court jurisdiction was ousted on human rights issues, there was a gagging

available on the Africa Policy Information Center home page, www.africapolicy.org. Accessed 15 October 2001; See also Mark Chavunduka and Ray Choto v The Minister for Home Affairs & Attorney General of Zimbabwe S.C. 36/2000 [the Chavunduka case]; Independent Journalists Association of Zimbabwe and Others v The Minister of

State for Information and Others S.C 136/02 [the IJAZ case]; Section 22(3)(a) of the Constitution (2005) to allow restrictions on the freedom of movement of human rights activists and others in the name of national interest, the public interest or the economic interests of Zimbabwe

³⁷ Amnesty International 'Violations of the rights to freedom of association and assembly' pp 35-41

³⁸ See *Government of South Africa v Irene Grotboom and others* CCT 11/10; *Treatment Action Campaign v. Minister of Finance* CCT 8/02; 2002 (4) BCLR 356 (T)

³⁹ Bureau of Democracy, Human Rights, and Labor '2010 Human Rights Report: South Africa' 2010 Country Reports on Human Rights Practices Available at: <http://www.state.gov/g/drl/rls/hmprt/2010/af/154370.htm> Accessed on 15 October 2011

⁴⁰ CCT 11/10

⁴¹ CCT 8/02; 2002 (4) BCLR 356 (T)

decreed against press freedom. State sponsored killings and abduction were rampant. Human rights practices have improved. There are no recorded state sponsored killings, and press freedom is guaranteed. However:

politically motivated and extrajudicial killings by security forces, including summary executions; torture, rape, and other cruel, inhuman or degrading treatment of prisoners, detainees, and criminal suspects; harsh and life-threatening prison and detention center conditions; arbitrary arrest and detention; prolonged pretrial detention; denial of fair public trial; executive influence on the judiciary and judicial corruption; infringement on citizens' privacy rights; restrictions on freedom of speech, press, assembly, religion, and movement; official corruption and impunity; violence and discrimination against women; the killing of children suspected of witchcraft; female genital mutilation (FGM); child abuse and child sexual exploitation; societal violence; ethnic, regional, and religious discrimination and violence; vigilante killings; trafficking in persons for the purpose of prostitution and forced labor; discrimination against persons with disabilities; discrimination based on sexual orientation and gender identity; child labor; forced and bonded labor; and abductions by militant groups,⁴² remains.

It is generally agreed that extra-judicial killing in Nigeria by the police and other law enforcement agencies is rampant; the use of lethal and excessive force is common place. Reports of security services executing detainees in custody, execution of persons who refused to pay bribes, and execution persons stopped during road checks abound. Extra judicial killings are of daily occurrence. Police is perceived as brutal, reckless and unfriendly:

Where police deviance ends and corruption begins is sometimes difficult to determine. Brutality, discrimination, sexual harassment, intimidation and illicit use of weapons constitute deviant behaviour, if it is designed to achieve personal wants it also characterizes itself as corrupt. But corrupt behaviour as understood by the ordinary Nigerian probably consists of (i) pay-offs to the police by essentially law abiding citizens for infringements of statutes such as traffic laws, (ii) pay-off to the police by organized crime or individuals who habitually break the law to make money such as drug dealers or prostitutes, (iii) the receipt of money, favours or discounts for services rendered, (iv) pocketing recovered money from proceeds of crime, (v) giving false testimony to ensure dismissal of cases in court and (vi) the actual perpetration of criminal acts to mention a few. The danger apparent is that in extreme cases, police are not just "protecting" criminals, but have become a complicit part in the planning and execution of crimes.⁴³

In June 2009, the body of Salisu Ahmadu found was found in a Jos mortuary after he was missing for five days. He abducted by the police for driving a motorcycle during a government crackdown on commercial motorcycle ("okada") drivers. There were injuries and gunshot wounds on his body; 'In April 2009 police in Mowe, Ogun State, indiscriminately fired into the home of Patrick Akama, who had called police because his home was being burgled. Akama died instantly. In April a Maiduguri high court found that in July 2009 police detained and subsequently killed Baba Fagu, the father-in-law of then Boko Haram leader Muhammad Yusuf. In November 2009 a 70-year-old man on the way home from the wedding of his son died after being shot in the head at a police checkpoint in Osogbo, Osun State. The man had refused to pay a 20-naira (13-cent) bribe. According to news reports, fellow officers removed the intoxicated police officer from the scene.'⁴⁴

The Amnesty International has published a detailed report on extra judicial killings in Nigeria between July 2007 and July 2009. The research documented 39 cases of security force killings and enforced disappearances. This includes the killing of a bank manager Modebayo Awosika who was killed by the police for failing to stop after his car collided with a police vehicle in Lagos. A life could be lost for failure to pay bribes, for confrontation with the police, for engaging the police in argument, for being a suspect and for other frivolous reasons. The police tell the families that they were transferred to a different police station or released on bail, but have no documentation to confirm it. The police are not normally challenged neither is a report against them processed.⁴⁵

Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

⁴² Bureau of Democracy, Human Rights, And Labor '2010 Human Rights Report: Nigeria 2010 Country Reports on Human Rights Practices Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154363.htm> Accessed on 14 October, 2011

⁴³ ICPC 'Combating Corruption in the Nigerian Police Force' a paper presented by the Independent Corrupt Practices & other Related Offences Commission at the Police Service Commission Retreat August 2008, p.4 Available at: <http://www.psc.gov.ng/files/Combating> (Accessed on 20 October, 2011)

⁴⁴ Ibid

⁴⁵ Amnesty International, *Killing at Will: Extrajudicial Executions and Other Unlawful Killings by the Police in Nigeria* (Amnesty International Publications: London, 2009)

The sickening details of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment is well documented in a research titled 'Criminal Force: Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force' by the Open Society Justice Initiative, together with the Network on Police Reform in Nigeria. The documents acknowledges that torture is prohibited within the Nigerian Legal Framework but but the government has allowed the practice to continue with reckless abandonment. The research was conducted with a visit to over 400 police stations in Nigeria. The culture of torture permeates the entire 400 police stations. Torture is an established tool of investigation within the Nigerian Police Force by reason of the fact that the Nigerian Police Force lacks the capacity to investigate crimes. The research noted:

Police in Nigeria commit extrajudicial killings, torture, rape, and extortion with relative impunity. Nigeria Police Force (NPF) personnel routinely carry out summary executions of persons accused or suspected of crime; rely on torture as a principal means of investigation; commit rape of both sexes, with a particular focus on sex workers; and engage in extortion at nearly every opportunity. Nigeria's government has previously acknowledged these problems and promised to address them. But as this report demonstrates, the government has allowed the abuse to continue, and there is virtually no accountability for it⁴⁶

In 2008, a presidential commission on the NPF headed by former Inspector- General of the Police Mohammed Dikko Yusuf concluded that policing in Nigeria was characterized by a pattern of "unlawful arrest and detention, extortion, torture, rape, extrajudicial killings and other forms of brutality. The negative image of the police in the eyes and minds of the public arose from the high level of crimes in the force and its failure to carry out genuine police functions successfully."⁴⁷ In its Universal Period Review (UPR) report submitted to the United Nations Human Rights Council in January 2009, Nigeria's federal government acknowledged "allegations of extrajudicial killings against members of the Nigerian security agencies, especially the police," but claimed that it "neither sanctions, nor will it allow extrajudicial killings to be carried out with impunity in Nigeria."⁴⁸

On September 6, an unnamed government official and his police escort encountered a Lagos traffic jam. The police officers jumped into the traffic, armed with long rifles and wielding long horsewhips. They proceeded to hit the stopped cars with their rifle butts and then, angered because the traffic did not move, they began to flog drivers with the whips to clear the road. Security forces' use of bullwhips was declared illegal by the Lagos State governor in 2009; in this case, the federal police ignored state law. Authorities took no action against police⁴⁹

Child Abuse

A worrying aspect of violation of human rights obligation is the child abuse syndrome. It takes various dimensions. Child trafficking for the purposes of child labour and salvery is the most common. Virtually every family is involved in child labour. These are engaged as domestic staff, with duties including baby sitting, hawking, cleaning, and general house keeping. The child is either not paid or inadequately paid, for everyday round-the-clock duties. Often mere feeding of the child is considered sufficient consideration. Some of the 'most-generous' pay monthly token to the traffickers, the child is denied a vocation. Despite the fact that education is free in most states of the federation, the child is often not sent to school. This is raw cruelty, yet so commonly practiced. It is barbaric against natural justice and good conscience. Yet majority of those involved in this practice are men and women of faith.

Accusing innocent Children of witchcraft is another appalling violation of human rights:

⁴⁶ Open Society Justice Initiative and Network on Police Reform in Nigeria, *Criminal Force: Torture, Abuse, and Extrajudicial Killings by the Nigeria Police Force* (Open Society Institute: New York, 2010) P.11

⁴⁷ Federal Republic of Nigeria, *Presidential Committee on the Reform of the Nigeria Police Force, Main Report*, Vol. 1, p. 196 (April 2008), hereafter referred to as *Yusuf Committee Report*.

⁴⁸ Nigeria's Universal Periodic Review (UPR) National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to the Human Rights Council Res. 5/1, A/HRC/WG.6/4/NGA/1, January 5, 2009, paras. 73-74

⁴⁹ BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR '2010 Human Rights Report: Nigeria 2010 Country Reports on Human Rights Practices Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154363.htm> Accessed on 14 October, 2011

Children accused of witchcraft were kidnapped, tortured, and killed. In September media reported that the public outcry and effort by the government, particularly in Akwa Ibom State, had caused a drop in new cases of children abused for alleged witchcraft. According to two local NGOs, Stepping Stones Nigeria (SSN) and the CRARN, attackers drove nails into children's heads, cut off fingers, tied children to trees, and abandoned them in the jungle. Self-proclaimed "bishop" Sunday Williams publicly claimed to have killed 110 child witches and asserted that Akwa Ibom had as many as 2.3 million witches and wizards among its population of 3.9 million. In 2008 authorities arrested Williams and charged him with torture and murder; he was arraigned in May 2009, and the case continued at year's end. The government did not acknowledge the wider problem of accusing children of witchcraft.

These practices are sustained by the lukewarm attitude of all strata of government.⁵⁰ Although the law prohibits forced or compulsory labor, including by children, it was widespread, particularly bonded labor and domestic servitude.⁵¹ The numbers of homeless children in Nigeria is alarming. Homeless homes are virtually non-existence. Many factors account for homelessness and abuse of children, including, hunger, extreme poverty, domestic violence, and acquiesces by government.

Other forms of human rights violations in Nigeria include abuse of workers, abuse and discrimination against women. Violent against women is of unimaginable proportion in rural Nigeria. Kidnapping of people 'including children, in Abia state, sometimes for as little as 10,000 Naira (US\$65). According to the Nigerian Medical Association, 21 doctors were kidnapped. On 29 September, the army was deployed to Abia state. On 12 October, the Joint Task Force (JTF), which combined troops of the army, navy, air force and the mobile police, announced that they had killed 172 suspected members of kidnapping gangs in shoot-outs, and arrested 237. NGOs estimated that hundreds of people were killed by security forces in Abia state in 2010'⁵²

Nigeria has also fail to implement the ECOWAS court decisions in *SERAP v. Federal Republic of Nigeria and Universal Basic Education Commission*⁵³

In this case the plaintiffs alleged the violation of the right to quality education, the right to dignity, the right of peoples to their wealth and natural resources and the right of peoples to economic and social development guaranteed by Articles 1, 2, 17, 21 and 22 of the African Charter on Human and Peoples' Rights. The ECOWAS court ruled that every Nigerian is entitled to the right of education. The government is treating this judgment with disdain.

It is unfortunate to note that many millions of Nigerians children are still out of school. The problem is complex and acute. Admittedly, primary and secondary education is free in most part of the country and within a reasonable distance. However, quality is lacking, and libraries are either empty or non-existent in these schools. Another major problem is that some parents and guardians are not enrolling their wards in schools and the government seems not to bother, during school terms and school hours, children are out there on the streets, hawking and engaging in all forms of worst child labour servitude.

Sudan

It is generally believed that hundreds of thousands of people have lost there lives since the conflict of Darfur erupted in 2003. It is also believed that the government of Sudan with the assistance of the Janjawid militia has engaged in substantial violations of human rights, including, violence against women and children, the use of child soldiers, rape of men and women, repression of the press and persecution of human rights defenders. Based on these atrocities, the International Criminal Court, for the first time, issued a criminal warrant of arrest against a sitting president; Omar al Bashir on seven charges of crimes against humanity and war crimes.⁵⁴

Recently, based on the referendum on southern independence on January 9, 2011, Sothern Sudan gained independence from the Sudanese government. The violence continues though, just last week there was an

⁵⁰ The Child Rights Act was enacted in 2003, but it required state-level ratification for full implementation. A total of 24 states, plus the FCT, have passed the Act. However, only Lagos State appears to be implementing the provisions of the Act.

⁵¹ Ibid.

⁵² Amnesty International, 'Annual Report: Nigeria 2011' Available at: <http://www.amnestyusa.org/research/reports/annual-report-nigeria-2011?page=2> Accessed on the 31 October, 2011

⁵³ ECW/CCJ/APP/08/08

⁵⁴ Amnesty International, 'Sudan Human Rights' Available at: <http://www.amnestyusa.org/our-work/countries/africa/sudan> Accessed on 31 October, 2011

unprovoked aerial bombardment of the South Sudan by persons suspected to be agents of the Sudanese government.

The following human rights abuses occurred: abridgement of citizens' right to change their government; extrajudicial and other unlawful killings by government forces and other government-aligned groups throughout the country; torture, beatings, rape, and other cruel, inhumane treatment or punishment by security forces; harsh prison conditions; arbitrary arrest and detention, incommunicado detention of suspected government opponents, and prolonged pretrial detention; executive interference with the judiciary and denial of due process; obstruction of the delivery of humanitarian assistance and the expulsion of individuals working for humanitarian nongovernmental organizations (NGOs); restrictions on privacy; restrictions on freedom of speech; restrictions on the press, including direct censorship; restrictions on freedoms of assembly, association, religion, and movement; harassment of internally displaced persons; harassment and closure of human rights organizations; violence and discrimination against women, including female genital mutilation; child abuse, including sexual violence and recruitment of child soldiers; prevention of international human rights observers from traveling to and within the country; trafficking in persons; discrimination and violence against ethnic minorities; denial of workers' rights; and forced and child labor.⁵⁵

The conflict in Darfur continues. The government continues with the bombardment of civilians and civilian populated areas, the use of indiscriminate aerial bombardments and ground attacks on unarmed civilians; and the use of disproportionate force by the Government of Sudan continues. Rape of women and the use of child soldiers continue unabated. There is accusations and counter accusations between government forces and the rebel factions over these atrocities.

In Southern Sudan (the South) interethnic fighting and Lord's Resistance Army (LRA) attacks continued to kill and displace civilians. According to UN estimates, violence in the South resulted in an estimated 986 deaths and the displacement of 223,708 persons during the year. Attacks by local militias occurred after the April elections. Registration for the 2011 Southern Sudan self-determination referendum occurred from November 15 through December 8 in all 25 states. Lack of progress on preparations for a separate referendum on whether the border region of Abyei should be part of the North or the South led to sporadic violence and rising tensions in the area⁵⁶

Prosecution and Intimidation of Human Rights Defender

Mudawi Ibrahim Adam, a leading human rights activist in Sudan has repeatedly been persecuted because of his human rights commitments to Sudan Social Development Organization⁵⁷. His several arrests has been condemned by several human rights organization. He is widely known in Sudan as a "prisoner of conscience". The government also ordered the closure of SUDO, and its building immediately possessed by state security officials⁵⁸. Also, Bushra Gamar Hussein Rahma, a Sudanese human rights activist, continues to be detained without trial since 25 June, 2011 the government, though a court had order his release on 14 August 2011, he was immediately re-arrested by the government. Despite his health issues, he has since embarked on hunger strike⁵⁹ continue to flout court order.

Child Soldiers

The use of child soldier in the Sudan conflict is perhaps the worst in the world. Both sides to the conflict engage the use of child soldiers. Thousands of children, some as young as 10 are engaged in armed conflicts in Sudan⁶⁰

The Human Rights Committee considered the third periodic report of the Sudan⁶¹, which is nine years late. It adopted the following concluding observations.⁶² The Committee notes with concern,

⁵⁵ Bureau Of Democracy, Human Rights, And Labor '2010 Human Rights Report: Sudan 2010 Country Reports on Human Rights Practices Available at <http://www.state.gov/g/drl/rls/hrrpt/2010/af/154363.htm> Accessed on 14 October, 2011

⁵⁶ Ibid

⁵⁷ SUDO is an NGO that has done tremendous work in the fight against poverty in Sudan

⁵⁸ Nick Kristof 'Sudan closes a domestic aid group' Available at: <http://kristof.blogs.nytimes.com/2009/03/05/sudan-closes-a-domestic-aid-group/> Accessed on 10 November, 2011

⁵⁹ Amnesty International, Urgent Action Activist Remains In Detention Without Trial' Available at: http://www.amnestyusa.org/sites/default/files/uaa20511_1.pdf Accessed on 10 November, 2011

⁶⁰ BBC 'Child soldiers in the firing line' Available at: <http://news.bbc.co.uk/2/hi/1266534.stm> Accessed on 09 November, 2011

⁶¹ (CCPR/C/SDN/3) at its 2458th, 2459th and 2460th meetings on 11 and 12 July (CCPR/C/SR.2458, 2459 and 2460).

widespread and systematic serious human rights violations, including murder, rape, forced displacement and attacks against the civil population, have been and continue to be committed with total impunity throughout the Sudan and particularly in Darfur.⁶³ The Committee also notes with concern the practice of female genital mutilation;⁶⁴ with concern reports suggesting that torture and cruel, inhuman or degrading treatment are widespread in the State party;⁶⁵ also noted and condemned by the Committee is the recruitment and use of child soldiers and the abduction of women in Sudan;⁶⁶ The Committee is troubled that many human rights organizations and defenders are unable to operate freely and suffer frequent harassment and intimidation including arbitrary detention at the hands of State employees.⁶⁷

Violence Against Women

Apart from the risk of rape, women can be arbitrarily arrested on the street for immodestly dressed and for violating Article 152 in the Memorandum to the 1991 Penal Code which provides that:

- (1) Whoever does in a public place an indecent act or an act contrary to public morals or wears an obscene outfit or contrary to public morals or causing an annoyance to public feelings shall be punished with flogging which may not exceed forty lashes or with fine or with both.
- (2) The act shall be contrary to public morals if it is regarded as such according to the standard of the person's religion or the custom of the country where the act takes place.

This may attract up to 40 lashes of flogging in public place.⁶⁸ The humiliation being faced by women in this regard was brought to international attention by the case of Lubna Hussein.

On 3 July 2009, Lubna Hussein was arrested with 12 other girls for wearing trousers in violation of Article 152 of the the Public Order Act. Ten of the girls pleaded guilty and were given 10lashes of cane. Lubna Hussein and two other women pleaded not guilty. Between the arrest and the trial, made huge publicity of our case by inviting journalists and human rights activist across the globe to witness he flogging, the invitation reads "Sudanese journalist Lubna invites you again to her flogging tomorrow'. However by reason of the huge publicity attracted by the case, including the attention of the Secretary General of the UN she was only convicted and sentenced with and option of fine.

At the resumed hearing police was seen heckling journalist outside the court premises. Police used tear gas and about 40 activists were arrested and later released on bail.⁶⁹

Flogging generally raises severe issues of compatibility with human rights provisions, particularly, Article 5 of the African Charter which provides for freedom from all forms of degrading, torture, cruel, inhuman or derogatory treatment, if flogging a lady 10-40 lashes of in the public for wearing trousers is does not amount to torture or derogatory treatment one wonders what will.

II. Conclusion

For human rights activists and lovers of human rights across the world, the practice and enforcement of human rights in Africa represents a sour taste in the mouth. The practice of human rights across African states has predominantly been an unfortunate one. African governments are autocratic and dictatorial in nature and have shown a great disdain for human rights practices. African states continue to witness substantial violations

⁶² at its 2479th meeting (CCPR/C/SR.2479) on 26 July 2007

⁶³ Ibid Para 14; It is particularly concerned at the immunity provided for in Sudanese law and untransparent procedure for waiving immunity in the event of criminal proceedings against State agents.

⁶⁴ Ibid Para 15

⁶⁵ Ibid Para 16

⁶⁶ Ibid Para 17-18

⁶⁷ Ibid 29

⁶⁸ Article 152 of the Sudanese Criminal Act of 1991

⁶⁹ The Guardian Editorial, 'In praise of... Lubna Hussein (2009) Available at: <http://www.guardian.co.uk/commentisfree/2009/jul/31/inpraiseof-lubna-hussein-sudan> Accessed on 30 October, 2011.

of human rights from oppressive regimes⁷⁰. Testimonials abound from Zimbabwe, Sudan, Gambia, and Egypt. For example, the African Charter prohibits slavery yet this research has shown that all forms of slavery and servitude are in practice across African states, particularly child labour and servitude and discrimination against and abuse of women.

This paper has presented an overview of the African human rights law and state practices. The enforcement of the African human rights is primarily based on the African Charter. This paper has revealed the weaknesses of the African Charter, which are derived from the substantive provisions and implementation of the Charter. For example, the African Charter does not provide for any effective implementation mechanism, but relies on the political organ of the AU which is the Assembly of Heads of State and Government. The Assembly of Heads of States and Government have failed to adequately confront violations of these rights: not even in the realm of diplomacy has any action been taken against any country for violations of human rights. At the height of the Libyan conflict and unprecedented human rights violations in that country the AU blew muted trumpet, so also was the case in the crisis and the human rights violations that engulfed post election Zimbabwe and Kenya. It has been shown above that in 2008 the African Court of Justice and the African Court on Human and Peoples' Rights were merged and integrated into the African Court of Justice and Human Rights (ACJHR). The new court is bound to face political and financial challenges⁷¹. We patiently wait to see how this new court will deal with these ageless challenges and constraints, giving the fact that its main financiers (Algeria, Egypt, Libya, Nigeria and South Africa) have been noted as the major violators of human rights in Africa⁷². Other challenges include its capacity to deal with deluge of cases that will be coming across African State, a continent known as the Dark Continent by reason of its violation of human rights. It most interesting that the court is also conferred with jurisdiction in respect of any other dispute arising from other international human rights treaty which has been ratified by the country in question⁷³. For example, the court might also assume jurisdiction in respect of dispute under the ICCPR, CEDAW, ICESCR and CRC. The court runs the risk of its decisions being treated with impunity.

After the evaluation of human rights practices in African states, one may now be tempted to ask the obvious question, how then can human rights practices be improved in the African states. We must admit this to be a difficult question. However, for there to be a meaningful compliance with international human rights standard in Africa, African countries must embrace democracy, not shallow democratic practices as presently the case in most countries in Africa. We recommend constitutional democracy anchored on strong institutions; free and fair elections conducted by transparent and independent electoral bodies, application of the rule of law, independence of the judiciary and there must be zero tolerance for corruption, in essence there must be effective anti-corruption enforcement agency in place. Elected leaders must be made accountable for their deeds during and after their terms of offices. Freedom of the press must be guaranteed, NGOs and civil societies must be allowed to operate freely. Without all these in place, and not forgetting the recommendations above, in respect of the African Charter, violations of human rights in African states will continue unabated.

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⁷⁰ Umozurike U.O., 'The African Charter on Human and Peoples' Rights' 77 AJIL (1983) 902; Umozurike U.O., 'The Domestic Jurisdiction Clause in the OAU Charter' 31 African Affairs (1979) at 199

⁷¹ Thompson B U 'The African Court of Justice and Human Rights: Future Political and Jurisdictional Realities and Challenges' Available at: http://www.monitor.upeace.org/innerpg.cfm?id_article=714 Accessed on 10 November 2011

⁷² *The Observer HR Index*, see http://www.guardian.co.uk/Tables/4_col_tables/0..258320.00.html (last visited 18 April 2010). Also, Algeria, Egypt and Libya are also in Amnesty International top twenty HR worst offenders list, see <http://www.amnesty.org/ailib/index.html> (last visited 18 October 2011).

⁷³ *African Court Of Human And Peoples' Rights*, a Project on International Courts and Tribunal (PICT) Publication, available at <http://www.pict-pecti.org/courts/ACHPR.html> (last visited 18 October 2011).

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