

The OAU and Political Economy of Human Rights in Africa**

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Introduction

The ideology of Human Rights is probably the only one which can be combined with such diverse ideologies as communism, social democracy, religion, technocracy, and those ideologies which may be described as national and indigenous. It can also serve as a foothold for those who do not wish to be aligned with theoretical intricacies and dogmas and who have tired of the abundance of ideologies, none of which have brought mankind simple happiness.

The defence of human rights is a clear path towards the unification of people in our turbulent world and a path toward the relief of suffering.

Andrei Sakharov.¹

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If we lose our capacity to be outraged when we see others subjected to atrocities, then we lose our right to call ourselves human beings.

Vladimir Herzog.²

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The state of Human Rights in independent African States, is, to put it very mildly, very dismal. The contrast between the paper declarations in constitutions and laws and the actual practice is staggering. The law of Human Rights is at one extreme, whilst the practice of African States, is at the other. This shocking state of affairs is closely related to the state of democracy in Africa. Democratic governments and respect for Human Rights and Fundamental Freedoms go hand in hand.³

... Sadly enough, the interplay of uncontrollable human, or rather in-human forces have contributed to engulf this slumbering continent into a chasm of politico-diplomatic impotence. This chronic impotence has made the march of human rights movement on the African Continent a story of hypocrisy, a farce, and an endlessly tortuous pilgrimage of contradictions and negations.⁴

The Members of the Organization of African Unity (OAU) are more concerned with sovereignty and territorial integrity than with human rights. Indeed the only type of human rights for which they have ever shown any enthusiasm, are the one's violated in Southern Africa, i.e., self-determination, the legitimacy of liberation struggles and the prohibition of racial discrimination. Even in these areas in which African States have enthusiastically supported the application of the principles of Human Rights, their practice has been, at best, inconsistent and selective.⁵

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Tyranny is colour blind and should be no less reprehensible whether perpetrated by our own kind or the racists in South Africa.

Yoweri Museveni.⁶

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** A paper prepared for the Human Rights Commission at the XIIth General Conference for the International Peace Research Association (IPRA), Rio de Janeiro, Brazil, August 14 - 19, 1988.

It is abundantly clear from most of the statements quoted above that the story of the struggle for human rights in Africa has not been a particularly promising one. Indeed, nobody can accuse Africa of taking human rights seriously.⁷ And, sadly, it is in the area of human rights in Africa that one finds the greatest gap between loud profession of adherence to principles and practice. However, recent developments, particularly the adoption in 1981 and entry into force in 1986 of the OAU's African Charter on Human and Peoples' Rights, indicates that Africa is at last beginning to show concrete concern over protection and promotion of human rights at the regional level. This paper represents an attempt to understand and analyse conditions and contradictions in the historic struggle for human rights in Africa which encompasses all efforts "to achieve a better life for the peoples of Africa".⁸ The important question is, in whose interests is the idea of human rights put forward and by who and on what premises?

There could be no stronger profession of adherence to human rights principles than that of the Preamble to the OAU Charter which declares in unequivocal terms:

We, the Heads of African States and Governments assembled in the City of Addis Ababa, Ethiopia; CONVINCED that it is the inalienable right of all people to control their own destiny; CONSCIOUS of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples; ... DEDICATED to the general progress of Africa; PERSUADED that the Charter of the United Nations and the Universal Declaration of Human Rights, to the principles of which we affirm our adherence, provide a solid foundation for peaceful and positive cooperation among States.

The respect for human rights and fundamental freedoms is further reaffirmed and elaborated in the African Charter on Human and Peoples' Rights drafted in Banjul and adopted by the Heads of State and Government of the OAU in Nairobi on 28 June 1981. The Charter came into force on 26 October 1986. According to the African Charter,

Human beings are inviolable ... Exploitation and degradation of man, particularly slavery, slavery trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited... No one may be arbitrarily arrested or detained...⁹

Significantly, Articles 1 of the African Charter on Human and Peoples' Rights provides that,

The Member State of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Charter and shall undertake to adopt legislative or other measures to give effect to them.

Naturally enough, the responsibility for the protection and promotion of human rights largely rests with the members of the OAU.

In dealing with the human rights situation in Africa, it may be useful to start with an examination of African conditions in general. It is well known that Africa today is caught up in a convergence of crises in all sectors of economic, political, social and cultural life. Its economies are in a shamble. The euphoria and optimism that marked the first years of independence have vanished. Today the governments of the post-colonial states in Africa are characterized by an almost total lack of democratic relations with the civil society. Too many governments have fallen prey to autocratic and sometimes monstrously dictatorial practices. In brief, a heavy burden is weigh-

ing African down. This burden is made heavier still by the world economic crisis and by famine and natural disasters which lend it a catastrophic, fatal character, a character that is also global, systemic and dialectical. Everything is interrelated. The causes of Africa's economic problems themselves and the solutions they require cannot be pinpointed by purely economic analysis and therapy. This would be but an alibi for evading or obscuring reality.

It should be stressed here that all the problems and predicament of Africa is a reflection of the state of human rights in Africa. Human rights are both an end and a means in the struggle for liberation and development in Africa. At this point it may be pertinent to digress a little and briefly consider the meaning and nature of human rights in general, before we examine the conditions in Africa.

What are Human Rights

Human rights are not static, carved in tablets of stone, revealed to some group of people or defined by them at some high point in their history. As such, they are not given by nature, but rather emanate from society. They are essentially the rights or mutual entitlements of human beings in a given society. For example, in the slave society one does not even talk about rights of the slaves. The serfs in the feudal system were slightly better off, for they could change lords, and they had other minor choices. The period of revolutionary transition from feudalism to capitalism gave rise to several liberal philosophers who insisted that all human beings are created equal and are endowed by their creator with certain inalienable rights such as, right to life, liberty, property and the pursuit of happiness. This liberal conception of human rights is reflected, among others, in such historical documents as the English Magna Carta of 1215; the English Bill of Rights 1689; the American Declaration of Independence and the American States' Bill of Rights 1776; the French Declaration of the Rights of Man and the Citizen, 1789; the German Weimar Constitution 1919; the Declaration of the Rights of the People of Russia 1917; the Atlantic Charter of 1941; and Universal Declaration of Human Rights 1948.

Human rights arise in historical progression from the felt and expressed needs of humanity. While there is a primary care of basic needs that find new formulations as groups, classes and people find ways of recognizing and laying claim to them. Therefore, human rights are comprised of the basic claims that individuals and groups have on the state and the world system for the protection and fulfilment of historically derived and socially defined primary needs.¹⁰

There are different ways of defining human rights. The Western European tradition has primarily emphasised concepts of civil and political liberties which have been enshrined and codified in constitutions, legal systems and international documents from the Magna Carta to the Universal Declaration of the United Nations. They are often referred to as first generation rights. Second generation rights are social and economic in character and received recognition in the right to employment and social security rights of industrial revolution. They have become an important emphasis of socialist states. The United Nations Covenant of Economic, Social and Cultural Rights, 1966, is one of the more universally accepted formulations of these rights.¹¹ The discovery of African and other Third World peoples' unfavourable position within the world system is the basis for the growing awareness of a third generation of rights.¹² These people have taken their place in a world dominated by the

rivalry of the two super powers, and have felt the need to formulate specific statements of the rights threatened by this situation. These collective rights of the poor and oppressed, whose entire existence is threatened by the power system, and who have been historically the victims of some of the most flagrant forms of injustice, have been termed "peoples' rights", included in the OAU's African Charter on Human and Peoples' Rights.

The "peoples" who are the focus of these rights are often transnational groups who are poor, deprived, endangered and repressed with a claim on the secure and the prosperous in the rest of the world system. Often, their own governments refuse to recognize their claims or are incapable of enforcing these rights within the framework of the existing power structures. These groups of people can be seen to suffer under one or more types of injustice related to their identity as a group: poverty, racism, famine, war, repression, genocide. Individual rights are not important, but are effectively denied to all members of a group suffering under one of these forms of repression resulting from global inequality.

Thus the claim to recognition of the rights of the impoverished and segregated blacks in South Africa is not simply a claim against apartheid, as imposed by the Government of South Africa, but also against the world political and economic system that supports such injustice. All racially oppressed people share this peoples' rights against discrimination. The world order that could justify such grievances obviously exists only partially at best. But even the recognition of these rights by the oppressed themselves is a major step toward universal justice.

Since state is the primary means by which all rights are implemented today, the recognition of these peoples' rights by the state and International Covenants is the important next step. And, as many have argued, a worldwide strategy has now to be devised, both regionally and globally to rectify the growing violations.

International Protection of Human Rights

Historically speaking, recognition of human rights can be traced to the dawn of civilization. However, the human rights movement of the modern times has its roots in the humanist traditions of renaissance, the historical struggle for self-determination, independence and equality and the philosophical concepts of John Locke, J.J. Rousseau, Thomas Jefferson, Karl Marx, V.I. Lenin, etc., and the impact of such events as the issuance of the Magna Carta in England in 1215, the adoption of the Habeas Corpus Act by the British Parliament in 1679, the French Declaration of the Rights of Man and the Citizen, 1789, and others noted earlier. In more recent years the horrendous atrocities committed by the Nazi regime before and during the Second World War led to a general aversion against the suppression of human rights. It was, therefore, natural that the Charter for the United Nations drafted in the wake of such nightmarish atrocities should make definite provisions for the respect of human rights.¹³ These provisions may be criticised for being general and imprecise, but they nevertheless constituted an international legal obligation.¹⁴

Human rights were later developed and amplified in the Universal Declaration of Human Rights in 1948 which was then regarded as having moral or hortatory effect. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted in 1966 include these rights in legally binding instruments. There have since been numerous other conven-

tions, declarations and resolutions of the United Nations and other organizations reaffirming and expanding the scope of human rights. The situation today is that respect for human rights has become a matter of international concern and that the legal interest of other states in their observance cannot be stifled by a claim of domestic jurisdiction.¹⁵

Regional Protection of Human Rights

At present there are three major regional instruments for the protection of human rights. The first and most effective is the European Convention on Human Rights under the Council of Europe adopted in 1950 and which came into force in 1953. It provides for the European Court of Human Rights and a Council of Ministers to which even individuals can take complaints of violations of human rights. The second is the Inter-American Convention on Human Rights, under the Organization of American States (OAS) adopted in 1969 which came into force in 1978. It also provides for a commission which has wide powers to conduct studies and make recommendations. Any person or group of persons can complain about human rights violations to the commission. The Convention also provides for an Inter-American Court of Human Rights which can receive complaints of breaches from states and from the commission. The third is the OAU's African Charter on Human and Peoples' Rights of 1981 which is examined in detail below.

The OAU and Human Rights in Africa

During the formation of the OAU in 1963 the setting up of a Human Rights Commission under a separate protocol was widely discussed. But no agreement was reached on this, and member states have never taken a firm stand on gross violations of human rights within Africa. In fact, at its inception, human rights was not a pressing consideration for the OAU, as observed by M'Baye and Ndiaye:

Africa's concerns were quite different. Having long suffered from poverty, they wanted above all to make up for their economic backwardness, protect their fragile independence and help the other peoples of the continent to shake off colonial yoke. This single-mindedness is revealed by the importance they accorded to commissions of an economic character. They reached a point where they neglected all that did not seem likely to consolidate their sovereignty and ensure their economic progress.¹⁶

However, it is interesting to note that the OAU Charter is replete with references to human rights. Apart from the bold declarations in its preamble, quoted at the outset, one of the major purposes of the OAU is "to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights". [Article II(e)]. Article III of the OAU Charter (on Principles), contains some provisions on human rights such as respect for the inalienable right to independent existence, peaceful settlement of disputes and decolonization of African territories which are still under colonial rule. It is, however, important to note that Article III(2) of the OAU Charter categorically prohibits interference in the internal affairs of states and human rights violations are claimed by African states as falling in this category, and African Heads of State wanted no outside body should deal with matters within their domestic jurisdiction.

The record of the OAU members in the field of human rights has been simply appalling. It is well known that oppressive and highly authoritarian regimes were

freely taking their murderous toll on the people of Africa. As Chief Obafemi Awolowo has noted:

With one or two exceptions, I think it is correct to say that today, African States are guilty of tyranny and oppression towards the masses of Africans in the same way as the colonial powers were. Indeed, it can be said that the African States concerned are guilty. For under colonial rule, the voice of dissent was allowed to be raised and was not silenced or forbidden as now. Political activities were permitted and there was no indefinite state of emergency such as is now common feature all over Africa.¹⁷

Here I do not intend to go into the sordid details of gross violations all over Africa, the high points being in Burundi especially under the regime of Michael Micombero, Central African Empire (now Republic), especially under Jean Bedel Bokassa, Equatorial Guinea especially under Marcias Nguema; Uganda, especially under Idi Amin and Milton Obote and Zaire under Mobutu Sese Seko. In fact, the list is endless. Micombero in Burundi eliminated over 100,000 Hutus (the majority ethnic group) between 1972 and 1973 so as to "maintain his own personal rule and that of his minority ethnic group, the Tutsis".¹⁸ Bokassa's case is well described by Professor Itse Sagay:

The case of the Central African Republic which became an empire and reverted back to the status of a Republic once more, has always oscillated between the tragic and the comical, between the ridiculous and the sublime. The murders, tortures, mutilations and detentions of the Bokassa regime were shocking enough. But when he added to all this the massacre of school children, even his French backers were forced to organise a coup to get him out. The C.A.R. remains unstable today.¹⁹

Yet, Bokassa remained a leader of the OAU until he was overthrown. In Equatorial Guinea, Marcias Nguema "as if driven by an irresistible maniacal force, commenced a programme of regular depopulation of his little republic by mass murders and other genocidal acts." By 1977, about a "quarter of the population of 3,000,000 had been massacred, and another one quarter driven into exile. The civil service was decimated..."²⁰ What did the OAU do about these criminal acts? Nothing. The case of Idi Amin is too well known to require any recounting here. It is well known that a special unit, ironically named the State Research Bureau, was established specifically to torture and murder. Nobody was exempted from the orgy of death: from students to workers, from Cabinet Ministers to Amin's wife, the purges continued, unrelenting and unabating. The total number of murders committed under Amin's regime will never be accurately determined. An estimate of 300,000 is probably on the conservative side.²¹ And Amin was made the OAU Chairman in 1975!!

The case of Guinea under Sekou Toure is equally revealing. His 26 years stay in power witnessed the gradual institutionalization of repression, violence, mismanagement and abuses of the rights of the poor. The lust for power made him see coup plotters everywhere and each "exposure" was an opportunity to eliminate opponents and critics. In 1960, Toure accused France of plotting to overthrow his government. This led to the execution of 19 persons. In 1969, Toure executed 13 persons on the same charge and imprisoned 27 others. Following the invasion of Guinea in 1970 by Guinean dissidents and Africans of the Portuguese army, Toure sentenced 91 persons to death and 66 to life imprisonment. In 1971 he executed General Keiba

Noumandian, his army chief of staff; the entire members of his general staff and 17 of his cabinet ministers; 18 other persons were sentenced to life imprisonment. All were as usual charged with attempting to overthrow Toure's regime. Infact, one of these executed was the former Secretary General of the OAU, Dr. Diallo Telli. This was against appeals from all over the world. By the time Toure died in 1984 he had imprisoned between 21,000 and 41,000 and over 2,900 persons disappeared without any trace. While the tenacity to office partially explains Toure's behaviour, deepening economic crisis and the attendant tensions and conflicts pressured Toure to resort easily to repression and elimination of all opposition elements so as to perpetrate his hold on power.

In Zaire, Liberia, Sudan, Sierra Leone, Zambia, Lesotho, Ethiopia, Nigeria and a host of other African States leaders pay only lip service to human rights. To be sure, the influence of imperialist interests, the ideosyncracies of leaders, the lust for power and gross irresponsibility contribute to the general disregard of human rights. As Professor Sagay has noted:

It does not take much empirical research to discover that those in power in African States (...) feel impelled to oppress, and suppress Human Rights, in order to retain their hold on power indefinitely. The lust for office, and the urge to hold on to it leads to the need to eliminate all those who could challenge this desire, or who are regarded as a threat in any sense. Once power is maintained in this manner, oppression and total disregard of Human Rights become part and parcel of the regime's strategy of survival.²²

Here it is also important to stress that it is in the area of violations of economic and social rights that most African countries are even more guilty of. For example, in the case of Nigeria the most important act of violence and human rights violation perpetrated against the Nigerian people is in the area of economic and social deprivation in spite of the vast human and material resources. It is interesting to note that the conditions of the poor became worse in the period when the country actually collected more foreign exchange from oil exports. The International Labour Office in 1981 reached the conclusion that Nigerians were then worse off than they were in 1960; that the country's huge expenditures have made no difference in the conditions of the majority, the rural areas were decaying, life was becoming insecure and tensions, likely to lead to the replication of the Iranian situation, were getting deeper.²³ Undoubtedly, the manner in which Nigeria managed her economic resources has constituted a breach of the economic and social rights of the vast majority of people of the country. The situation in most other African countries, whether capitalist or socialist are not fundamentally different.

In fact the appalling state of human rights in most African countries raised serious moral issues for the OAU. In line with all international organizations which are based on the principle of sovereign equality of member states, the OAU Charter also specifically forbids interference in the domestic affairs of any of its member states. This has meant that no discussion, let alone decision could take place dissociating Africa, at least rhetorically from the repugnant policies pursued by many African tyrants. The problem was how to preserve the constitutional requirements of the OAU, while at the same time condemning practices repugnant to most of its members. A positive outcome of the debate over the dilemma was the adoption by the OAU of the African Charter on Human and Peoples' Rights on 28 June 1981 which came into

force on 21 October 1986, three months after the deposit of the required 26 ratifications.

The African Charter on Human and Peoples' Rights

Most of the articles are similar in intention if not in wording to those of the UN Covenants referred to earlier. There is a stressing of African principles, ideals and "values of African civilization which should inspire and characterise their reflection on the concept of human and peoples' rights..." (Preamble).²⁴ Part one of the Charter (Articles 1 to 29) deals with rights and duties and encompasses all categories of the so-called three generations of rights, namely, civil and political rights; economic and social rights, and brotherhood or solidarity rights. At the same time it is important to note that all categories of rights are restricted in such a way as to make them somewhat difficult to be enjoyed. For example, Article 11 says that individual rights shall be subject to "necessary restrictions provided by the law, in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others". Article 12 adds further restrictions such as "law and order, public health, or morality". It is to be stressed that in a continent where the concept of national security is often equated with the security and survival of the Presidents and Heads of States these restrictions can easily be used to suppress individual political rights as understood in the western world.

The African Charter also provides for economic, social and cultural rights, apparently included on the insistence of socialist oriented African states. Article 15 provides that "every individual shall have the right to work under equitable and satisfactory conditions and receive equal pay for equal work". Articles 16 and 17 provided for equal rights to medical and educational facilities, as well as the right of every individual to participate actively in the cultural life of his community. Article 18 provides for the elimination of discrimination against women, and the protection of the rights of women and children, aged and disabled as laid down in various international conventions.

It is significant to note here that side by side with individual rights and freedoms, the African Charter makes provisions for 'peoples rights' or what may be called 'collective rights' (Articles 19-24). The rights of ethnic, racial or minority groups as well as the right of peoples and nations to self-determination are examples of such rights. Article 19 of the African Charter states: "All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another". Further, it is provided that all peoples shall have the right to assistance of the state parties to the Charter in their liberation struggle against foreign domination, be it political, economic, or cultural (Article 20). Article 21 states that all peoples may freely dispose of their wealth and natural resources and in case of spoliation the dispossessed people shall have the right to lawful recovery of its property as well as to adequate compensation.

A significant feature of the African Charter is the inclusion of the 'right to Development'. Article 22(1) provides that: "All peoples shall have the right to their economic, social, and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind." Also, the "states shall have the duty, individually or collectively, to ensure the exercise of the right to development" [Article 22(2)]. Every person has the right to participate in,

and benefit from, development. A unique feature of the African Charter in this context is the inclusion of the right to national and international peace and security [Article 23(1)]. It is assumed that arms and war subvert opportunities for development. International peace and security, including pacific settlement of international disputes and disarmament are vital for the enjoyment of human rights.

The African Charter also lays great emphasis on duties. Normally human rights instruments deal with the rights of individuals and in some instances, groups. Duties, on the other hand, imposes a number of duties on every person to other individuals, to the family, to society, to the state, to Africa and the international community (Articles 27, 28 and 29). The enumeration of these duties, however, pose a major problem: to whom or what will those who breach these duties be accountable? And under what standards accountability be measured? The Charter is not clear on these issues.

For the implementation of its provisions the African Charter provides for the establishment of an 11-member African Commission on Human and Peoples' Rights elected by the OAU Assembly of Heads of State and Government (Article 30).²⁵ The Commission instituted within the OAU, has the responsibility, among others, "to ensure the protection of human rights" [Article 45(2)] through cooperation with African and other international institutions working in the same area, the formulation of principles and rules aimed at solving legal problems relating to human rights and the undertaking of studies and researches; the organizing of seminar, symposia and conferences, as well as the giving of views and recommendations to governments. Additionally, the Commission has the duty to interpret all provisions of the Charter and to "perform any other task entrusted to it by the Assembly of Heads of State and Government" [Article 45(4)]. The Charter also provides for reasonably detailed procedures by which states that are parties to it as well as other entities may communicate concerns regarding human rights violations (Articles 46 to 59).

An Appraisal of the African Charter

A careful reading of the African Charter would show that the Charter was skilfully drafted to make it almost impossible of implementation, a document that cannot really be used to protect or advance the cause of human rights in the continent. As indicated earlier, most provisions of the Charter require that actions by states and individuals "abide by the law" subject themselves to "law and order", respect "appropriate laws" and be in "accordance with the provision of the law". Since such laws are the internal affairs of member states, it follows that the OAU has very little clout in determining the extent of violation within the member states. In article 50, the Charter stipulates that the Human Rights Commission whose members are initially nominated by the respective OAU leaders "can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted..." The point is that in African States, once violation takes place, such violated persons lose all access to such local means or remedies. Article 55 stipulates that not all communications to the commission concerning cases of Human Rights violations shall be considered; only those decided by simple majority of its members will be considered. Furthermore, Article 56 stipulates that only communications which indicate their authors are compatible with the Charter of the OAU and "are not written in disparaging or insulting language directed against the state concerned or its institutions or to the Organisation of African Unity" shall be considered. Furthermore, such

communication must "not be based exclusively on news disseminated through the mass media", must be sent "after exhausting local remedies" and "are submitted within a reasonable period from the time after all local remedies are exhausted."

It is clear from the provisions above that the OAU leaders have created so many loopholes for themselves. They are concerned about the language in which a petition is written, forgetting that violated persons are usually agitated and angry persons. What is more, the OAU leaders expect petitioners to travel at their own risk or expense to spots where human rights are violated before drawing the attention of the commission to such cases. Infact, the stipulation that petitions can only be submitted "within a reasonable period of time from the time local remedies are exhausted or from the date the commission is seized of the matter" is ridiculous. So is the stipulation that petitions must not deal "with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity..." when it is well known that African leaders have no respect for these Charters. When Article 56 requires all petitioners to comply with the Charter of the OAU, it failed to specify which aspects or sections of the Charter such petitioners are expected to respect. Such a vague and open ended provision is a major loophole to prevent the consideration of serious petitions. Article 57 stipulates that all petitions shall be brought to the knowledge of the state concerned, without making provisions for the initial protection of such already violated individuals. African leaders, true to tradition can be expected to eliminate or further harrass such petitioners and compel them to withdraw such complaints.

African leaders were quite careful to emasculate the Charter of Human and Peoples' Rights by not making provisions for enforcement of the Commission's decisions or providing for sanctions against states which violate human rights. Thus, the Commission according to Article 58, can only "draw the attention of the Assembly of Heads of State and Government to ... special cases" of "serious or massive violations of human and peoples' rights". Until the Assembly of Heads of State and Government, made up of African leaders with their respective records of violations (including the violating state) gives a go-ahead to the Commission to "undertake an in-depth study" and make a "factual report" on such cases, the Commission can actually do little about complaints no matter how urgent or serious. Even a case of emergency according to Article 58(3) still requires a go-ahead from the Chairman of the Assembly of Heads of State and Government before an "in-depth study" can be conducted. Of course all measures taken by the Commission including findings and recommendations are to "remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide" Article 59(1). The Charter is very silent on what happens under such circumstances. The assembly has to decide when to publish particular reports or reports of the general activities of the Commission. This means that the very persons who are supposed to be checked by the Commission are expected to take decisions on whether or not to give world-wide publicity to their own crimes! The failure, in spite of the European experience, to make provisions for an independent African Court of Human Rights clearly shows the extent to which OAU leaders and their agents take the guarantee of human rights. Infact, the OAU Ministers of Justice rejected the suggestion that such a court be established. In any case, the Provision on non-interference in the "international affairs" of member states in the OAU Charter is sufficient to militate

against the work and the Commission.

These few examples are highlighted to show the limits of the highest attempt by African leaders to address the issue of human rights.

Whatever be the extent and content of the rights contained in the various human rights Charters and Covenants, the objective conditions under which they are meant to be implemented are more crucial. In the light of the kind of economic, socio-political and other condition prevailing in Africa today one can well visualise the chances of the African system making any dent on the problems of massive violations of human rights on the continent.²⁶

It is pertinent to point out that most independent African states, as members of the UN, have become parties to many international Covenants and other instruments on human rights, including the UN Covenants on Civil and Political Rights and Economic, Social and Cultural Rights. Yet with few exceptions, if any, little change has occurred in the pattern of oppressive and increasingly centralised and ever growing number of military regimes in Africa. Moreover, there is no reasonable basis to conclude that the present ruling class in African or those who are likely to succeed them will suddenly modify past behaviour, as a result of the coming into force of the African Charter.

Besides, it may be noted that honouring of obligations assumed under human rights instruments (like other international agreements) is best assured by the actual weight of moral and other examples by other countries. The situation in Africa in this regard can be only visualised in the context of their human rights records. How can one expect, for example, Liberia (one of the first few states which signed and ratified the African Charter) to serve as a moral example to the repressive regime in Zaire, when Monrovia has been closing schools because the latter's authorities have been allegedly "harbouring individuals who attempt to teach socialism to the young." Such examples are buttressed by the general state of human rights in other African countries.

Moreover, the economic and social rights which the African Charter guarantees are least likely to be honoured. African states, unless they radically reorganize their own economies to ensure a more equitable sharing of material resources they command, cannot hope to ensure the right to a job, to education, to adequate health care etc. It is also argued that, economic, social and cultural rights can take place only after there has been reforms in the global economic system, which is quite unlikely in the foreseeable future.

In addition, it may also be pointed out that the effectiveness of any institution created under the OAU is well imaginable given the bankrupt financial conditions of the OAU. Needless to stress that whatever effectiveness the African Commission of Human Rights may be able to realize, will, to a very great extent, depend on the financial support it receives from the OAU. Another daunting problem in this regard relates to the danger of explicit emphasis on duties in the African Charter, which is likely to be very tempting for aspiring despots in Africa to subordinate the fledgling protection of human rights to a focus on duties.

What is to be Done

Undoubtedly, development, peace and progress in Africa are not possible without guaranteed enjoyment of human rights. However, massive violations of human

rights continue in independent Africa. The unique case of apartheid in South Africa is too well known to need elaboration here. The blacks in South Africa have never enjoyed any human rights ever since the colonization of South Africa by the white Europeans. As we have seen, independent Africa's record in the area of protection of human rights has been appalling! Indeed, the crisis of human rights in Africa is a reflection of the wider continental socio-economic and political crisis. Africa's primary need is to achieve a certain level of standard of living which takes care of the basic material necessities of life (economic rights). Economic underdevelopment poses the gravest threat to the progress of human rights struggles in Africa.

Here it should be pointed out that international agreements alone cannot guarantee the protection of human rights anywhere. Eternal vigilance by the people to resist authority, when abused, alone could provide the answer to authoritarianism and abuse of human rights. Public opinion could provide the momentum that is needed to ensure that human rights instruments are respected irrespective of the tangle of power politics. Therefore, there is greater need to educate and create awareness in order to intervene whenever human rights are violated. In this context it is important for people to organize themselves since individuals could be easily brushed aside. Here the various non-governmental organizations (NGOs) could play a meaningful role. Indeed, they could even be regarded as the transnational actors in the protection and promotion of human rights, as they can also make direct criticisms of countries which their governments might find it politically embarrassing to make. But such organised efforts need to be closely linked with globally based NGOs to avoid suppressive tactics of authoritarian regimes. In Africa, there is an imperative need to create effective non-governmental organizations for the political education of the people in regard to their rights and liberties as well as their duties and responsibilities. This would also increase people's collective strength, self-confidence and sense of human dignity.

Here, it is also pertinent to examine the causes of frequent and flagrant violations of human rights in Africa and elsewhere in the Third World. Who unleashes them? Authoritarian regimes, of course. But why do authoritarian regimes abound in Africa and elsewhere in the Third World? How are they sustained, militarily and financially and for whose benefit? What has been the role of the superpowers and other imperialist powers? To what extent do the threat to peace and security – and related developments including the arms race and the continuation of an unjust and immoral world economic system, adversely affect the state of human rights in Africa and the rest of the Third World? Here the pertinent observation made by Theo C. Boven is worth recalling. He said:

It is perhaps, for many of our Western countries, easy to clean up their own garden and to establish a relatively high degree of enjoyment of human rights in their own countries, while at the same time profiting from violations of human rights occurring elsewhere, or promoting systems of injustice, making profits from sale of arms or from exploitative activities of transnational corporations thus becoming an accomplice to violation of human rights elsewhere.²⁷

Ideally, therefore, an important first step towards improvement in human rights would be to fight against imperialism and foreign intervention in Africa. Besides, a significant degree of disarmament, with the money saved raising the standard of living of the masses in Africa would be necessary. This should also include the depar-

ture of foreign troops and military advisers and domestically the replacement of military governments by civilian ones.

More importantly, for the starving millions of African particularly the first and foremost right is the right to survive. There is no freedom for the hungry people or those suffering from malnutrition or deadly diseases. The idea of conventional human rights is but a hollow dream for them.²⁸ Only rich people are in a position to enjoy the legal rights which the society allows. Hence the saying "human rights begins with breakfast". Therefore, it is to be stressed that the satisfaction of basic human needs should be primary goal of any meaningful programme of human rights.

Conclusions

It is clear Africa's human rights record is nothing to write home about. It is often quite easy to mention the Idi Amins, the Bakossas, Nguemas and other blood-thirsty tyrants who have single handedly or in cooperation with external interests eliminated millions of Africans dis-regarding the OAU provisions and professions. However, this approach tends to overlook the concrete socio-economic dimensions of human rights violations in Africa.²⁹ In fact the frequent and flagrant violations of human rights in Africa and the disrespect for international conventions is to be understood within the context structural violence and underdevelopment of the continent. The continents historical experiences which have created concrete conditions, contradictions and crises in themselves have encouraged human rights violations. Human rights and underdevelopment certainly cannot go together.

The African people fought for independence for the purpose of abolishing the colonial system by establishing democratic institutions which would ensure their liberation, development and full participation in the responsibilities of national life. After independence, in the majority of African States, the objectives of the liberation struggles have been misappropriated and the peoples' dreams and ambitions betrayed. Democracy has remained confined to leaders' declarations, and to the imitative drawing up of constitutions that are rarely respected. Democracy is absent from everyday life. As Professor George Shepher, rightly points out, in Africa the State has become predatory, repressive, serving the interest of the dominant and external powers rather than providing development and human rights.³⁰

Most African leaders have abandoned democracy in favour of political repression and increasing reliance on force as they become increasingly delinked and alienated from the people. Political repression rampant in Africa ensures that the ordinary people who are the objects of development remain silent. The proliferation of authoritarian regimes in Africa, is fraught with greater dangers for the protection and promotion of human rights. This increasing threat of fascism dictates that the struggle for human rights in Africa should be intensified. The realization of rights is best guaranteed by the power of those who enjoy the rights. Since rights are never given but only taken, what is needed is the political and economic empowerment of the common peoples. This is not a matter for legislation, although legislation could help a little. It is essentially a matter of redistribution of economic and political power across the board. That means that, in the final analysis, it is a matter of political mobilization and struggle. And it is likely to be a protracted and bitter struggle because those who are favoured by the existing distribution of power will not give up easily.

As noted at the outset, the Members of OAU are more concerned with sovereignty and territorial integrity and protection of the trade union interests for the African Heads of State. Moreover, the debilitating impoverishment of the State, the shattered and collapsed economy and the terrible sufferings of the people are used as excuses to employ extreme measures which justify departure from democratic norms. Many of these states specialise in mass murder of whole populations, torture, cruel and inhuman treatment of their victims and detentions without trial. Besides existence the grave problem of refugees in Africa who today number over five million is a clear reflection of the violations of human rights on the continent.³¹

Finally, it may be noted that even though, the prospects for any effective promotion of human rights in Africa are dim, the very factors that cause these prospects to be dim make imperative even more intensified struggle by African peoples who cherish the values of a free, peaceful, united, democratic and self-reliant Africa, in the long run. Therefore, the task before all democratic and popular forces in Africa today is to mobilise and organise to put an end to economic backwardness, tyranny, oppression and exploitation. As a recent 'Declaration on Africa' by a group of eminent Africans rightly notes:

An awakening is imperative to start and successfully bring about the recovery which the dramatic situation facing our continent urgently requires... Faced with this intolerable situation, we must intensify our struggle to establish and strengthen democracy. Democracy alone may provide security, stability and development for societies and citizens alike. ... Unity, democracy and development constitute the three pillars of African progress, the three pillars on which our dynamism and hopes are founded. To create these foundations for our future, an awakening is imperative in our determination to radically transform the structures and patterns of behaviour no longer just to survive, but to live fully.³²

How likely is such a social and political transformation? I can see little or no reason for optimism. What is required is nothing short of a fundamental change in the nature of most African States, from authoritarian instruments of elite and personal privilege and accumulation, to democratic institutions actively fostering equitable economic and human development. However, the practical path, remains a rough one and one which must be discovered and forged by political action and struggle. As Jack Donnelly rightly points out, we cannot underestimate the political obstacles that will be raised by these who hold political and economic power and use the state, not to pursue social purposes and human rights, but to protect or acquire personal, group and class interests and privileges. In the short and medium run, these obstacles and the forces behind them, seem likely to predominate. One should not however, forget the ideal of human rights, or the importance of political action to realize this ideal.³³

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6. Yoweri Museveni, "Address to the 22nd OAU Summit, Addis Ababa, 28-30 July 1986, quote in *Africa* (London) No. 181, September 1981, p. 52.
7. See Claude Ake, "The African Context of Human Rights", *Africa Today* (Denver) Vol. 34, Nos. 1 & 2, 1987, pp. 5-12.
8. Article II 1(b) of the OAU Charter.
9. *The African Charter on Human and Peoples' Rights*, adopted by the OAU Summit in Nairobi, Kenya, 28 June 1981, OAU Doc. CAB/LEG/6713, Rev. 5. This has been reprinted in several international journals and documentary sources.
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25. In July 1987 the Assembly of Heads of State and Government of the OAU set up an 11-member African Commission on Human and Peoples' Rights. The following are the members of the Commission:
 M.D. Mokama (Botswana),
 Mubanga Chipoya (Zambia)
 Alexis Gabou (Congo); Isaac Nguema (Gabon),
 Grace Ibingira (Uganda),
 Robert Eabesh Kisanga (Tanzania),
 Ali Mahmond Hadmah (Libya),
 Ibrahim Badwi El-Sheikh (Egypt),
 Aliouna Blondin Beye (Mali),
 Youssoupha Niaye (Senegal) and
 Sourabata B. Semege Janneh (Gambia).
26. See Rhoda Howard, *Human Rights in Commonwealth Africa*, (N.J. Rowman and Littlefield, 1986) and Claude Welch Jr. & Ron I. Meltzer (eds.), *Human Rights and Development in Africa* (New York, SUNNY, 1984).
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