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## **State Reporting under the Banjul Charter: Its Role and Pitfalls in the Protection and Promotion of Human Right in Africa**

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A thesis submitted to the faculty of Law Addis Ababa University in partial fulfilment of the requarment for the award of the degree of LLM in Human Rights.

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**Addis Ababa University  
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Faculty of Law**

**State Reporting under the Banjul Charter: Its Role and Pitfalls in the Protection  
and Promotion of Human Right in Africa**

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## LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
APRM	African Peer Review Mechanism
AU	African Union
CEDAW	Convention on Elimination of all form of Discrimination Against Women
CIE	Committee of Independent Expert
COE	Council of Europe
CRC	Convention on the Right of Child
ECHR	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECOSOC	Economic and Social Council
ESC	European Social Charter
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICJ	International Court of Justice
ILO	International Labor Organization
NGO	Non Governmental Organization
NEPAD	New Partnership for African Development
OAU	Organization of African Unity
SC	Security Council
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Right Commission
UNICEF	United Nations Children Emergency Fund
UNESCO	United Nations Education Social and Cultural Organization
WHO	World Health Organization

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## Chapter One

### Introduction

#### 1.1 Background of the study

During the two world wars, the international community without having the means and chance to act witnessed the murder of so many people and gross human right violations by their own governments. In response to this horror event, after the establishment of the UN, the international community came up with a new branch of international law especially concerned with the relations between governments and their own subjects.<sup>1</sup> These were mainly achieved by adoption of different multilateral human right treaties under which member states became answerable to international community in case of violation of human rights. As a result, following the Universal Declaration of Human Rights (UDHR), various International<sup>2</sup> and regional<sup>3</sup> bill of rights were adopted.

To monitor states about their implementation of human right as it is envisaged in the conventions and at the end to enable individuals to be the beneficiaries, the instruments themselves contain mechanisms for such effect, of which state reporting is one. State reporting is a means of ensuring the observance of human rights at the international level as well as ensuring a government's accountability to its own people and the international

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<sup>1</sup> Christian Tomuschat, Human Rights between Idealism and Realism, (2003), p.22.

<sup>2</sup> The 'International Bill of Human Rights' consists of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) ICESCR and its two Optional Protocols. ICESCR and ICCPR were adopted in 1966, as well as the First Optional Protocol to the ICCPR, which established an individual complaints procedure. Both Covenants and the Optional Protocol entered into force in 1976. A Second Optional Protocol to the ICCPR, on the abolition of the death penalty, was adopted in 1989 and entered into force in 1991.

<sup>3</sup> The European Convention on Human Rights and Fundamental Freedoms (ECHR) adopted in 1950 and entered into force in 1953, European Social Charter (ESC) adopted in 1961 and entered in to force in 1965, The American convention on Human Rights (ACHR) adopted in 1969, and entered in to force in 1978 the Protocol of San Salvador adopted in 1988, and the African Charter on Human and Peoples' Rights adopted in 1981 and entered in to force in 1986.

community. It is established on the very assumption of benefiting states from the advice on how to improve their human rights situation from independent experts up on their regular submission of reports which states make about their implementation of a particular convention within the time frame work set in each instrument.<sup>4</sup>

During the time state reporting was incorporated for the first time instead of the benefit it brings to the state, it was taken as an infringement of states sovereignty; however; latter, it is considered as one mechanism of insuring the application of human right standards as envisaged in the treaty. It has its own role in the protection of human right if genuinely made, if not by putting member state in to mobilization of shame, to come up with a better future report and benefiting sates from the recommendation of the treaty body. In addition, it benefits the reporting state to have full information about human right implementation in their own territory and enables them to have a mechanism to control the situation by themselves if the situation is beyond their control to call for external help. Therefore it has early warning or preventive fruition.

In African, following the establishment of the organization of African Unity (OAU) which was the first African regional organization, the African Charter on Human and Peoples Right was adopted by the OAU in Nairobi, Kenya, in June 1981 and entered into force in October 1986. It has been ratified by all members of the OAU/AU.<sup>5</sup> In Article 1 of this Charter, member states pledged themselves to adopt legislative and other measures to give effects to the rights contained in the Charter. To this effect, members are required to report on the measures taken. The Charter obliges members to submit report every two

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<sup>4</sup> Kofi Quashigah, The African Charter on Human and Peoples' Rights: Towards a more effective reporting mechanism, African Human Rights Law Journal,(2002) vol. 2, No 2,P. 261.

<sup>5</sup> F Viljoen, State reporting under the African Charter on Human and Peoples' Rights: A boost from the south, African Human Rights Law Journal, (2000), Vol 44, No 1, P.10.

years<sup>6</sup>. In addition to this, two sets of guidelines for state reporting were adopted by the Commission at its 4th and 23rd ordinary sessions respectively.<sup>7</sup> The first guidelines have been criticized as being too detailed, lengthy and repetitive, while the second ones are said to be too brief. Nevertheless, it has been said that the relationship between the two sets of guidelines is not clear and practice, inevitably, lies somewhere between the two extremes.<sup>8</sup>

The Charter does not state who is to receive and review the reports. For F. Viljoen<sup>9</sup>, this was left deliberately vague so as not to jeopardize ratification. In any event, at its 3rd ordinary session in April 1988, the African Commission on Human and Peoples' Rights requested the OAU to specifically assign it with the mandate to consider the reports and to indicate the general orientation as regards their form and substance. This recommendation was adopted at the 24th ordinary session of the OAU Assembly of Heads of State and Government. It should be noted from the outset that the African Commission's competence to ensure effective implementation of the Banjul Charter by member states has been affected due to various problems affecting the state reporting system. The most endemic of these include infrequent and inadequate reporting.

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<sup>6</sup> Article 62 of the Charter provides that: Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.

<sup>7</sup> F Viljoen Introduction to the African Commission and the regional human rights system in C Heyns (ed), Human rights law in Africa – International human rights law in Africa Vol. 1 (2004) ,P.470.

<sup>8</sup> M Evans, T Ige & R Murray, The reporting mechanism of the African Charter on Human and Peoples, (2002), p. 45.

<sup>9</sup> Viljoen, *supra* Note 5, P. 110.

## 1.2. Statement of the problem

As mentioned above, state reporting under the African system is essential to the promotion and protection of human rights, but its effectiveness is undermined by several factors which need to be remedied. Despite the existence of state reporting as a monitoring mechanism in the Charter, Africans witnessed unprecedented and well documented assaults on life and properties by their own governments and other nongovernmental actors.<sup>10</sup> Virtually all African states have been and continue to be the most egregious human rights violators, rendering human rights illusory in the daily lives of the majority of people in Africa<sup>11</sup>. Changes in some African states have created room for optimism however; generally human rights conditions remain critically precarious on the continent. Even within largely 'democratic' or 'liberal' African states, governments have acted and continue to act in ways antithetical to their international human rights obligations. This perennial state of affairs continues to illuminate the challenge of the African regional human rights system.<sup>12</sup> In spite of the fact that state reporting as a controlling mechanism is agreed up on, states usually fail to report on due time nor in sufficient manner. African states are usually lack political willingness to report or at least delay in submitting their report. Until this time out of the 53 states which ratified the Charter, Until May 2010, out of 53 states which ratified the Charter, 12 states, which consists of 22.6%, never submitted report to the Commission so far and 49% of the member states have submitted one (1) or two (2) reports but still owe more Reports.<sup>13</sup>

This research, therefore, intends to address the role, pitfall and effectiveness of state reporting in the protection of human right in general and specific to Africa, the general problem of non-submission and delay in submission of the report; its cause and effect and

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<sup>10</sup>George William Mugwanya, Examination of State reporting by African Commission, African Human Rights Law Journal,( 2002), P.268.

<sup>11</sup> ibid

<sup>12</sup> ibid

<sup>13</sup> Status on submission of state initial/ periodic reports to the African Commission (Updated: May 2010) , <http://www.achpr.org> (accessed on October 20,2010), See Annex I

the implication and the relationship between existing human right situation and economy and state reporting obligation under the Charter. Thus, the paper will answer the following and other related research questions.

1. What is the role and pitfall of state reporting in human right protection in general?
2. Is state reporting under Banjul charter effective? What makes ineffective? And what additional option is there?
3. What makes state to delay or fail to report to the treaty body?
4. How non-compliance states are and should be treated?

### **1.3 Research Methodology**

With the main objective of evaluating and investigating role, pitfall and practical effectiveness of state reporting under Banjul Charter, the thesis will make use of the following qualitative methods.

#### **1.3.1 Literature review**

Relevant literature on the meaning, nature and historical background of state reporting and also its theoretical benefit and limitation in general and specific to the facts and existing situation of Africa will be assessed.

#### **1.3.2. Documentary Analysis**

International human right instruments and other regional human right documents, in addition to the Banjul Charter and the relevant guidelines of the African Commission on Human and People's Right in relation to state reporting, will be assessed for a better understanding of the role, Pitfall and effectiveness of the African system.

#### **1.3.3 Case analysis**

Reports of selected member states to the African Commission on Human and Peoples' Right and recommendation of the Commission which are relevant to the scope of this

paper will be analyzed. Facts and figures specific to the scope will be taken in to consideration in analyzing the cases.

#### **1.4. Objectives of the study**

The main objective of the research is to investigate state reporting under Banjul Charter and its supplementary documents. More specifically, the research has an objective to assess the role and pitfall and practical effectiveness of state reporting in the protection and promotion of human right in the continent.

##### **1.4.1 General Objectives**

The thesis primarily focuses on the following major objectives: First, investigating the general role and goal of state reporting in the protection, promotion and enforcement of human right in the continent; Second, investigating effectiveness of the mechanism to bring the desired goal and if not effective, to recommend the means to achieve the end; and finally, Examining whether stat reporting as a mechanism is a problem by itself or the procedure or other factors contributed negatively in the protection of human right in the continent.

##### **1.4.2 Specific Objectives**

In particular, this study attempts to examine the reporting procedure of the Charter and the reporting history of African states; the relationship between economy and other factors in one hand and reporting obligation in other hand; explore the factors that lead stats not to submit or delay to submit the report; compare state reporting under the Charter with the UN system and European system and draws lesson from these systems.

#### **1.5. Significance of the study**

The research will have very relevant finding and recommendation. Both the findings and recommendations, beyond future academic research clues, play their own role in the promotion and protection of human right in the continent wherein poor performance of

human right protection is alleged by many. In doing so it ultimately benefits the people of Africa.

### **1.6 Scope and Limitation of the study**

The research, specially, investigates the role and pitfall of state reporting in the protection promotion and enforcement of human right in Africa, in addition its practical effectiveness and the factors that lead to the problem, if any, will be researched. The experience under UN system and European system will be assessed but the total research is limited on African reporting system- its role, pitfall and promise in the protection of human right in the continent and asses alternative or additional mechanisms like the African court and the African peer review mechanism. And the African human right system means, for this paper, Banjul Charter. Thus, the reporting system is limited on such Charter.

### **1.7. Overview of Chapters**

Chapter one introduces the study, the framework of the problem that the study seeks to address and the methodology to be employed. Chapter two discusses the concept of state reporting in general-its meaning, nature, objectives and functions. Chapter three makes a comparative analysis of state reporting under UN system and regional systems. Especially this chapter deals with normative instruments of the African human right system and Institutional structure of African human right system. Chapter four critically analyses how the system works under the African Charter and the challenges therein and also it assesses compliment and alternative mechanisms to the reporting system. Finally, it will have conclusion and recommendations.

## Chapter Two

### General Overview of State Reporting

#### 2.1 Meaning and nature of state reporting

International Law did not regulate how Sovereign States should treat their citizens or subjects before World War II. Accelerated growth of human rights law which protect individuals from state abuse actually began a little more than half a century ago.<sup>14</sup> So States were in their own will, to respect and ensure the enjoyment of human rights by their own citizens within the boundary of their jurisdiction. The main reason that can be mentioned for the lack of a supra-state mechanism for the purpose of monitoring the act of states with regards to their own subjects was a well founded concept of the time-“State sovereignty”.<sup>15</sup> This concept reserves to each sovereign State the exclusive right to take any action it thinks fit, provided only that the action doesn't interfere with the rights of other States and is not prohibited by international law on that or any other ground. Therefore, what a Government did to its own citizens was its own affair and beyond the reach of international law of the time and /or legal intervention by other States.<sup>16</sup>

The atrocities of the War put an end to the traditional view that states have full liberty to decide the treatment of their own citizens.<sup>17</sup> In response to the tragedy events of the war, the international community especially the victorious nations determined to introduce in to international law new concepts designed to prevent the re-occurrence of such events in the future. The means adopted were the establishment of new inter Governmental organizations such as the UN. The UN Charter, under which all the UN activities depend,

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<sup>14</sup> Louis B.Sohn and Thomas Buergenthal, International protection Human Rights,(1973) and Scott Davidson, Human rights ,( 1993),p.1.

<sup>15</sup> According to this principle, a sovereign state has a complete freedom of action, in international law, to deal with its own nationals (personal sovereignty) and with its own territory (territorial sovereignty).

<sup>16</sup> Paul sieghart Clarendon, The International Law of Human Rights, (1983), P.11.

<sup>17</sup> Magdalena Sep.lveda, Theo van Banning, Gudrn D. Gudmundsd.ttir, Christine Chamoun and Willem J.M. van Genugten, Human Rights Reference Handbook ,( 2004), p. 5.

establishes the promotion and protection of human rights as one of the main objective of the organization<sup>18</sup>.

Starting from Universal Declaration of Human Right (UDHR)<sup>19</sup>, UN played a role of human right standard setting function by making different treaties, recommendations, guidelines, principles etc.

The UN Charter explicitly proclaimed human rights to be a matter of legitimate, international concern: 'the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'<sup>20</sup>; and 'All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55.'<sup>21</sup>

This shows the transfer of the human right issue from national to that of international. But the issue was settled in the Vienna Declaration and Programme of Action<sup>22</sup>, since it was stated by the participants that the promotion and protection of all human rights is a legitimate concern of the international community. Because of this development States could no longer claim that human rights as such were essentially domestic in character when they are questioned by the international community about violation of the human rights of their own citizens. The traditional (broad) interpretation of the principle of

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<sup>18</sup> United Nations Charter, Article 1.

<sup>19</sup> The Universal Declaration of Human Rights (UDHR), adopted by a resolution of the United Nations General Assembly (UNGA) in 1948. Although not a treaty, it is the earliest comprehensive human rights instrument adopted by the international community and most of its principle through time acquired the status of customary international law as a result states are obliged to observe them.

<sup>20</sup> United Nations Charter, Article 55.

<sup>21</sup> Id, Article 56.

<sup>22</sup> Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

national sovereignty has thus been limited in two crucial, and related, respects. Firstly, how a state treats its own subjects is nowadays considered a legitimate concern of the international community. Secondly, there are now superior international standards, established by common consent, which may be used for appraising domestic laws, and the actual conduct of sovereign states within their own territories, and in the exercise of their internal jurisdiction.<sup>23</sup>

Following the UDHR, various International<sup>24</sup> and regional<sup>25</sup> bill of rights were adopted. To make sure the implementation of these human right instruments at the domestic level and to enable individuals to be the beneficiaries, the instruments themselves include monitoring mechanisms. At present the monitoring takes different forms. The major ones are; investigating reports, prepared for the monitoring by special rapporture or working groups, individual compliant procedures by which nationals and other resident of a state can complain to international bodies for alleged violations of their human rights, inter State complaints where a state complain about the human right violation of another state and reports prepared by States which have ratified international human rights conventions.

To monitor state compliance to the obligation of the conventions and ensure compliance with international norms, different strategies mentioned above have been developed by

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<sup>23</sup>Henry Steiner, International Human Rights in Context: Law, Politics, Morals, 2<sup>nd</sup> ed. (2000),P.15.

<sup>24</sup> The 'International Bill of Human Rights' consists of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocol of ICESCR and ICCPR as well as the First Optional Protocol to the ICCPR, which established an individual complaints procedure, were adopted in 1966. Both Covenants and the Optional Protocol entered into force in 1976. A Second Optional Protocol to the ICCPR, on the Abolition of the Death Penalty, was adopted in 1989 and entered into force in 1991.

<sup>25</sup> The European Convention on Human Rights and Fundamental Freedoms (ECHR) adopted in 1950 and entered into force in 1953, European Social Charter (ESC) adopted in 1961 and entered in to force in 1965, The American convention on Human Rights (ACHR) adopted in 1969, and entered in to force in 1978, and the African Charter on Human and Peoples' Rights adopted in in 1981 and entered in to force in 1986.

the treaties themselves. Of these mechanisms of ensuring compliance, which is the concern of this paper is State reporting.

The International Labour Organization (ILO) was the first to establish a reporting system in respect to rights coming within its mandate and based on international instruments adopted under its auspices. This was followed by the United Nations regarding the recommendations of its organs.<sup>26</sup> However, by the time of the first proposal of state reporting, for many, it would have seem nearly inconceivable that most of the world's states would periodically submit a report to an international body about their internal matters involving many politically significant aspects of relations between government and citizens and then participate in a discussion about that report with members of that body drawn from all over the world<sup>27</sup>.

State reporting is found in all the principal UN human rights treaties and, indeed, is the only procedure that is compulsory in all instruments.<sup>28</sup> Under each of these treaties, states parties undertake to submit reports to the treaty bodies explaining the progress made and problems encountered in implementing treaty obligations.<sup>29</sup>

State reporting is designed to make States accountable to the international community in case of their violation of the human rights of their own citizens. It is a means of ensuring the observance of human rights at the international level, as well as ensuring a

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<sup>26</sup> Vojin Dimitrijevic, International human Rights monitoring Mechanisms,(2001), p.189.

<sup>27</sup> Henry, supranote 23, p. 850.

<sup>28</sup> All UN human rights conventions contain a reporting procedure: See foreexample ,Article 16 ICESCR, Article 40 of ICCPR, Article 9 of CERD, Article 19 of CAT, Article 44 of CRC, Article 18 of CEDAW and Article 73 of CMW. Under the regional systems, reporting mechanisms are found under Article 21 of the European Social Charter, Article 19 of the Protocol of San Salvador, and Article 62 of the African Charter on Human and Peoples' Rights.

<sup>29</sup> Malcolm Evans and Rachel Murray, The State Reporting Mechanism of the African Charter on Human and Peoples' Rights ,2<sup>nd</sup>ed. ( 2002), p50.

Government's accountability to its own people and international community.<sup>30</sup> It is an assessment mechanism of State performance with regards to human right instruments they ratified. The very assumption of this monitoring mechanism is to make States beneficiary of the advice on how to improve their human rights situation from independent international experts.<sup>31</sup>

Even if all the human right instruments fail to provide how States can prepare a report in a timely and efficient manner, the committee of experts that is established for supervising the report submitted for each human right treaty issued a guideline<sup>32</sup> on how States can prepare a clear, organized and satisfactory report which is arranged in order of the specific right in each instrument. The guidelines are intended to provide guidance to state parties in their reporting activities and to avoid general and incomplete presentation. They are further designed to ensure that reports are presented in a uniform manner and that they often show a complete picture of the situation in each State regarding the implementation of the rights contained in the Covenant.<sup>33</sup>

## **2.2 The objectives of the reporting procedure**

State reporting has long been regarded as the lowest common denominator, and has been argued for being inadequate to force States to comply with their treaty obligations. However, Reporting procedures are intended to oversee compliance and are not a form of enforcement mechanism as such. To be sure, the potency of a reporting system as a catalyst for change and as a point of pressure upon States should not be underrated, but

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<sup>30</sup> Kofi, supra note 4, P.261.

<sup>31</sup> Mugwanya, supra note 10, P.273.

<sup>32</sup> At the UN level, each treaty body has formulated general guidelines regarding the form and contents of the reports to be submitted by states parties (see HRI/GEN/2/Rev.2), and in the African system, Guidelines for National Periodic Reports, Second Annual Activity Report of the African Commission on Human and Peoples' Rights 1988–1989, ACHPR/RPT/2<sup>nd</sup> and Amendment of the General Guidelines for the Preparation of Periodic Reports by States Parties, DOC/OS/27 (XXIII).

<sup>33</sup> Kofi, supra note 4, P. 295.

the essence of the process lies in the State presenting its record of compliance to the monitoring body and receiving the benefit of external scrutiny.<sup>34</sup>

State reporting is based on two assumptions. The first assumption relates to the impact of publicity on the conduct of states who are reporting. No state wants to stand out as a deviant from the standards of international law. Publicity serves as the catalyst for prompting the international community to respond to the deviant state. It is true that states want to avoid publicity of their delinquency as much as possible. The second assumption is that state reporting offers the reporting state with a chance to reflect on their internal human rights situation while preparing the report. State reporting also helps them to engage in a constructive dialogue with the examining body; state reporting is not confrontational and adjudicatory and helps states find out their policy issues and reflect on possible future improvements. As most reporting regimes recognize the input of NGO submissions, state reporting can also facilitate the participation of various segments of the society. It also helps the examining body to identify recurring problems with states' compliance and devise possible remedies.<sup>35</sup>

According to *Kofi Quashigah*<sup>36</sup>, the benefits of reporting to the human rights system may be summarised as: first, all the contracting states can be controlled; second, resistance to supervision may be less because all the states are equally subject to examination; third, because of the possibility of comparison, a more balanced picture may be obtained of the state of affairs with respect to the implementation of the treaty in question within the whole group of contracting states; fourth, it permits a comprehensive overview of all the rights guaranteed as against the selective examination of individual rights under the

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<sup>34</sup> Evans and Murray Supra note 29,P. 50.

<sup>35</sup>Fekadeselassie F. Kidanemariam, Enforcement of Human Rights under Regional Mechanisms: a Comparative Analysis, University of Georgia School of Law, (2006),p 34.

<sup>36</sup> Kofi , supra note 4, P. 265.

complaint procedure; and finally, it makes possible continuity in the supervision process as against the *ad hoc* character of the complaint system.

### **2.3 Advantage of state reporting to the reporting state**

A recent publication by the UN Secretariat summarised the advantage of state reporting to the reporting state as follows:<sup>37</sup>The process of reporting provides an opportunity for an individual state party to conduct a comprehensive review of the measures it has taken to bring its national law and policy into line with the provisions of the treaties to which it is a party; the preparation of reports provides a platform for national dialogue on human rights amongst the various stakeholders in a state party. It also encourages and facilitates public scrutiny at the national level of government approaches to implementation and stimulates constructive discussion with civil society of ways to advance the enjoyment by all of the rights laid down in the various conventions; consideration of the reports by treaty supervisory bodies, through constructive dialogue with state parties, allows individual states and states as a whole to exchange experiences on the problems faced in implementation of the instruments, and good practices that facilitate enhanced implementation. It also allows for international scrutiny, which underlines states' responsibility and accountability for human rights protection.

Similarly Philip Alston<sup>38</sup> summarized the advantage of state reporting to the reporting state as:

#### **1. Initial Review Function**

Almost all human right treaties which incorporate State reporting mechanism require States to take legislative, administrative, Judiciary and practical measures to domesticate the provisions of the human right treaty they have ratified. Even when prior to ratification, some of the State rules and practices found compatible with the treaty signed,

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<sup>37</sup> Concept paper on UN High Commissioner for Human Rights' [UNHCHR] proposal for a unified standing treaty body, Report by Secretariat, 22 March 2006, Para. 8.

<sup>38</sup> Philip Alston, The purpose of Reporting in manual on Human Rights Reporting, (1991), P.14.

the obligation to make an initial review ensure the fullest conformity with the provisions of the treaty.

## 2. Monitoring Function

To ensure effective implementation, States should review their legislative, administrative, judiciary rules and practices on a regular base. This enables the State to have a full information about the human right implementation in their Country and if a need arise it enable them to have a mechanism to control the situation by themselves or if the situation is beyond their control to call for external help.

## 3. Policy Formulation function

There are some issues that can't be solved or can't be made in conformity with the human right treaty concerned by only reviewing the existing legislation. In such case the State needs to formulate a long term set of legislation or set of policies designed to ensure full and lasting compliance with obligations.

## 4. Public Scrutiny Function

In State reporting process, public can be involved at different stages of the mechanism. Among these stages, the involvement of NGOs in the preparation of a State report or submitting their own report for a treaty body is a major one. This facilitates the involvement of the public in the making of different laws that help for the implementation of the human rights. Putting the report for public for debate, in addition to increase the citizens confidence in their own Government, it enable the society in large to be aware to its human rights and finally it contributes for the creation and development of a human rights violation sensitive society.

## 5. Acknowledgment of Problem Function

In the report, States are required to include information about the "factors and difficulties" they encounter domestically with regards to realization of human right. To

be a beneficiary of the advice given by the members of the treaty body or to request assistance from the outside, States need to acknowledge the problem they have and present the actual situation on the ground.

#### 6. Information Exchange Function

The information Exchange function of reporting provides one of the fundamental foundations of state reporting since it enables states to learn from each other. This is mainly done by publicizing the general comments of a treaty body. In some cases, during the consideration of a State report members of a treaty body mention the successful experience of other states to make the state to follow the same.

#### 7. Early Warning or Preventive Function

In recent years, more attention is given to prevention of violation of human right after the “early warning” policies have been advocated by UN Secretary General.<sup>39</sup> As previously provided States are expected to acknowledge in their report about the difficulties or problems that are encountered in the implementation of the human rights guaranteed in different human right treaties, if these problems are included in the reports, they can be used as “early warning” sign of conflicts and it will be easy for the outside forces to intervene in the country if things become out of the State control.

The preventive action plans designed to fight and remove the cause of human rights violation are better and cheaper than having to end gross and systematic human rights violation already committed and then having to embark on the long and thorny road towards reconciliation, peace, reconstruction, justice and reparation of the victims.

#### **2.4.Problems in achieving aims and objectives of the state party reporting procedure**

The aims and objectives of the state party reporting procedure can only be achieved in the presence of several factors. These include; the willingness and capacity of states to report regularly and frankly and engage in a dialogue with national stakeholders before and after

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<sup>39</sup> Vojin, supra note 26, P. 199.

submission of reports; the awareness, knowledge and interest of national constituencies to participate in the process; and the lapse of time between submission and consideration of a report, the quality and fairness of the dialogue, concluding observations and recommendations and any follow-up action that may occur.<sup>40</sup> In the absence of one of these factors the achievement of the aim of the reporting procedure faces problems.

The preparation of State reporting requires the State to allocate adequate time, money and expertise on this field.<sup>41</sup> It also requires the States commitment to exert its best effort to make the recommendation given by the treaty body applicable. But the question is what if the State fails to perform this obligation that it assumes by ratifying the human right instruments? Since the existing human right system is part of the international law it shares the same problems as that of international law. This is lack of effective implementation and enforcement mechanism.<sup>42</sup> Long ago, "premature ratification" or ratifying a treaty only for a means of propaganda was cited as one of the major reason for States lack of political willingness in meeting the reporting obligation.

In addition to non- submission, there is also a failure on the part of the State to submit reports on due time and a report which consists of satisfactory information. In some cases, during the consideration of their report, States also fail to send a State representative to the treaty body.<sup>43</sup> Some states are also reluctant to reveal the true human right situation with in the Countries to examination.

In the already existing UN human right system, there are six treaty bodies which are established to monitor the implementation of different human right treaties. In addition to this there are different regional treaties under which states are obliged to report. Most

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<sup>40</sup> Concept paper , supra note 37, Para 10.

<sup>41</sup> Philip, supra note 38, P. 16.

<sup>42</sup> Ibid.

<sup>43</sup> Micheal Oflahrty, Human Rights and the United Nations: Practice before the treaty bodies, 2nd ed. (2002), P.4.

Governments complain about the number of reports they are obligated to draft periodically to these treaty bodies.<sup>44</sup>

## 2.5 State Reporting Procedures

There are differences in the procedure adopted by each of the treaty bodies in monitoring state reports. However, there are common elements.

Under the treaties, each state party undertakes to submit an initial report within a time frame specified in the treaty (normally one or two years from the entry into force of the treaty for the state concerned). Initial report is the first contract between the reporting state and the treaty body and, in a sense, establishes the base line against which subsequent progress or regression will be measured<sup>45</sup>. Before submitting its initial report to the relevant treaty body, the State party is expected to undertake a comprehensive review of national legislation, administrative, judiciary and practices in order to ensure the fullest possible conformity with the provisions of the treaty. The report is supposed to detail: the measures that the state party has adopted to give effect to the provisions of the treaty, the progress made in giving effect to the provisions of the treaty, and the factors

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<sup>44</sup> To solve the problem of multiplicity of reports there are two opinions that are subject to consideration by human right scholars. The first one is, rather than drafting many different yet frequently overlapping reports and appointing bodies, States ought to be obligated to prepare one comprehensive report in every five year concerning the implementation of all human rights treaties they have ratified as well as potential problems and difficulties they might encounter during the implementation. For its consideration, according to these scholars, a single permanent examination body composed of a sufficient number of full-time expertise should be employed. The second one is, instead of organizing one permanent examining body which evaluates all human right treaties that consist State reporting monitoring mechanism, it is better to make States to prepare a full-coverage report in which each treaty body would then pick and choose what is relevant to it.

<sup>45</sup> Theo V. Boven, The International System of Human Rights: overview on human rights reporting, (1991), p.8.

and difficulties the state party has encountered that have affected the degree of fulfillment of its obligations under the treaty.<sup>46</sup>

States parties also undertake to submit subsequent periodic reports, at an interval that is either specified in the treaty itself, or stipulated by the relevant treaty body. Periodic reports are intended to update information provided in previous reports, respond to questions which are not fully answered at a State's previous appearance and explain in detail how treaty obligations are actually being implemented.<sup>47</sup>

The quality of the reports submitted by states varies. Some reports are reliable and reflect serious efforts to comply with the reporting requirements, while others are lacking in credibility. In any case, the reports generally reflect the view of the respective state. In addition to the government report, the treaty bodies receive information on a country's human rights situation from other sources, including non-governmental organisations, UN agencies, other intergovernmental organisations, academic institutions, and the press. The quality of decision-making throughout the reporting procedure depends to a great extent on this additional information that the experts may receive from the external sources. Additional information provided by, in particular, NGOs and agencies of the United Nations grant a wider perspective as to the actual situation in the country concerned. In an increasing number of countries, NGOs prepare and submit to the treaty bodies alternative reports aimed at counter balancing the information submitted by the state.<sup>48</sup>

The report is analysed by the relevant supervisory body, which comments on the report and may request the state concerned to furnish more information. In general, reporting

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<sup>46</sup>Sandra Coliver, International Reporting Procedure, in guide to International Human Rights Practice, (2003), P.177.

<sup>47</sup> Ibid.

<sup>48</sup> Magdalena, *Supra* note 17, P. 54.

procedures under the different treaty-based mechanisms are meant to facilitate and initiate a 'dialogue' between the supervisory body and the state party. The treaty bodies then meaningfully proceed to offer specific recommendations to the particular state in its observations on the report and transmit its experiences insights and conclusions.<sup>49</sup> Typically concluding observations of a treaty bodies are divided in to several parts: after the introduction, they refer to factors and difficulties affecting the implementation of the treaty, register positive aspects, identify principal subjects of concern and end with suggestions and recommendations. Even if they contain strong statements indicating that the treaty has not been complied with by the state, this does not amount to condemnation for non fulfilment of the treaty obligations because treaty bodies have not been considered that they could undertake any action against even clear breaches of as failure to report altogether. But its determination can serve as basis for action of other state parties and other organs such as UN and regional organs.<sup>50</sup>

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<sup>49</sup> .Vojin, supra note 26, p.200.

<sup>50</sup> Id, p.199.

## Chapter Three

### State reporting under UN and Regional human right systems

#### 3.1 State reporting under UN human right system

Modern international human rights law is to a large extent founded on the standard-setting work of the United Nations (UN); through UN efforts governments have established many multilateral agreements and this comprehensive body of international law, including human rights law, is one of the UN's greatest achievements.<sup>51</sup> The UN Charter, under which all the UN activities depend, establishes the promotion and protection of human rights as one of the main objective of the organization.<sup>52</sup> The Charter obliges the organization to be a center for cooperation and for harmonization of action in the attainment of the objectives of the organization, and calls on its members states to make joint and separate action to promote universal respect for and observance of human rights. The charter also devises certain powers and methods for the work of the UN in the human right field. Human rights are mentioned in nine places in the charter including in its preamble<sup>53</sup>. With its standard-setting work nearly complete, the UN is shifting the emphasis of its human rights efforts to the implementation of human rights laws and this is achieved by its organs<sup>54</sup> and institutions.<sup>55</sup>

There are a plethora of UN organs and institutions which have a greater or lesser degree of responsibility with in the general field of human rights. These include:

First, the General Assembly; it is the first and plenary organ of the UN having broad competence under the Charter to consider questions concerning human rights. These questions may be dealt with by the General Assembly of its own motion or they may be

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<sup>51</sup> Magdalena, supra note 17, P.77.

<sup>52</sup> UN Charter, Article 1, 55 and 56.

<sup>53</sup> Human rights are referred to in article 1, 8, 13, 55, 56, 62, 68, and 76 as well as in its preamble.

<sup>54</sup> According to Article 7 of the UN Charter, The United Nations has six principal organs: the General Assembly (GA), the Security Council (SC), the Economic and Social Council (ECOSOC), the Trusteeship Council, the International Court of Justice (ICJ) and the Secretariat.

<sup>55</sup> Magdalena, supra note 17, P.77.

referred to it by one of its seven Main Committees.<sup>56</sup> The major obligations of the General Assembly with respect to human rights are to initiate studies and to make recommendations for the purpose of assisting in the realization of fundamental rights and freedoms for all.<sup>57</sup> A number of studies have been commissioned by the General Assembly, and it has made a large number of recommendations on human rights issues. Such recommendations are not legally binding on members,<sup>58</sup> but when taken in conjunction with the obligations contained in Articles 55 and 56 of the Charter, they assume considerable legal significance, and may even be said to create legal obligations where they are stated with sufficient precision. The most important contribution of the General Assembly to human rights has been the significant number of international instruments adopted by it in the field following reference from the Commission on Human Rights<sup>59</sup> which is now replaced by Human Rights Council and Economic and Social Council (ECOSOC). These have included the Universal Declaration, the two International Covenants and a number of UN conventions in specialized human rights fields. It should also be noted that under these UN sponsored human rights conventions, the General Assembly is the ultimate destination of all reports made on questions of

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<sup>56</sup> These are: First committee(disarmament and related matters);second committee(economic and financial matters);Third Committee(Humanitarian and cultural Matters);Fourth committee(de colonization and trust Territories);Fifth committee (Administrative and Budgetary Matters);sixth committee(Legal matters); and the special political committee. The first, fourth and sixth have at times dealt extensively with human rights issues.

<sup>57</sup> UN Charter, Article 13 (1) (b).

<sup>58</sup> UN Charter, Article 10.

<sup>59</sup> The General Assembly established the Human Rights Council (UNHRC) by adopting a resolution (A/RES/60/251) on 15 March 2006, in order to replace the previous CHR, which had been heavily criticized for allowing countries with poor human rights records to be members. The Human Rights Council is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe with the main purpose of addressing situations of human rights violations and make recommendations on them. (See <http://www.ohchr.org/english>)

implementation and on may special procedures to be followed. The General Assembly has also established, in accordance with its powers under Article 22 of the UN Charter, a number of subsidiary organs to deal with human rights issues.

Second, Security Council (SC) and International Court of Justice (ICJ); While the security council has no specific responsibility for human rights, it has, on a number of occasions, made pronouncements<sup>60</sup> on such matters acting under Chapters VI (disputes and situations likely to endanger maintenance of international peace and security) and Chapter VII (enforcement action) of the Charter. <sup>61</sup> The ICJ, which is the principal judicial organ of the UN, also clearly has competence to determine questions concerning or involving human rights under its contentious and advisory jurisdiction.<sup>62</sup>

Third, the Economic and Social Council (ECOSOC); it is a political organ of the UN. In the field of human rights, it is charged with making recommendations for the purpose of promoting respect for and observance of human rights and fundamental freedoms and, as we have seen above, submitting draft conventions to the General Assembly. ECOSOC is also the organ which is responsible for receiving reports from, coordinating activities with and concluding agreements with UN specialized agencies having certain human rights competences such as ILO, UNESCO and WHO. ECOSOC is also responsible for coordinating activities with NGOs. Much of ECOSOC's work is undertaken by commissions which it is required to establish under article 68. The most important of these commissions, as far as human rights are concerned, is the Commission on Human Right<sup>63</sup>.

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<sup>60</sup> For example the Council has considered, inter alia, the question of apartheid in South Africa and the treatment of Palestinians in the Israeli occupied territories.

<sup>61</sup> Scott Davidson, Human Rights, (1993), p.74.

<sup>62</sup> Ibid.

<sup>63</sup> Id, P. 68.

Besides its organs, it has several specialized agencies and a number of other specialized bodies dealing with human rights. The UN Commission<sup>64</sup> on Human Rights is a functional commission of the ECOSOC and the main UN organ dealing with human rights.

The original mandate of the Commission, now changed to Human Right Council, was to submit proposals, recommendations and reports to the Council concerning: an international statute on human rights; International declarations or conventions on civil liberties, the status of women, freedom of information and related matters; The protection of minorities; The prevention of discrimination on the grounds of race, sex, language or religion; Any other matters concerning human rights.

The mandate has been extended several times, especially in 1967 and 1970 when the Commission, in addition to its standard-setting task, was given the task to deal with human rights practices all over the world by ECOSOC Resolution 1235. In 1979, its mandate was extended to include supporting the ECOSOC in the co-ordination of human rights activities within the UN system<sup>65</sup>.

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<sup>64</sup> It was provisionally established by the ECOSOC on 16 February 1946, with nine members serving in their personal capacity (chaired by Eleanor Roosevelt), and became a permanent body with members from eighteen countries on 21 June 1946. In 1979, the ECOSOC increased the number of members of the Commission to 43 and extended the duration of its normal session to six weeks, with an additional week for the working groups. In 1990, the ECOSOC further enlarged the membership of the Commission to 53. The seats are distributed geographically: each of the five regional groups has a fixed number of seats. The Commission meets every year in March and April. The members are elected by the ECOSOC for a period of three years; every year, one-third of the seats are up for election. In its successor Human Right Council, The members of the General Assembly elect the members who occupy the UNHRC's forty-seven seats. The term of each seat is three years, and no member may occupy a seat for more than two consecutive terms. The seats are distributed among the UN's regional groups as follows: 13 for Africa, 13 for Asia, six for Eastern Europe, eight for Latin America and the Caribbean, and seven for the Western European and Others Group.

<sup>65</sup>Magdalena, *Supra* note 17, p. 82.

The Commission plays a central role in the supervision of human rights. Supervisory mechanisms are set up by decisions of the UNGA, the ECOSOC or the Commission itself. The Commission is authorized to appoint special rapporteurs<sup>66</sup>, representatives, experts and working groups, subject to the approval of the ECOSOC. The appointed persons report in their personal capacity to the Commission on human rights topics and make recommendations.<sup>67</sup>

As the main UN organ dealing with human rights, the Commission is particularly important with regard to standard-setting; its first task was to draw up the International Bill of Rights consisting of the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). It has also drafted a substantial number of other international human rights conventions and declarations.<sup>68</sup>

Under each of each of these conventions has a supervisory body. These bodies consist of a number of experts of a high moral character and recognized competence in the field of human rights. They act in their personal capacity, which means that although they are normally nationals of a state party to the treaty in question, they are not acting under instructions from respective governments. The treaty based procedures are the mechanisms established within the context of a specific human rights treaty. The treaty bodies, with the exception of the Committee on Economic, Social and Cultural Rights,<sup>69</sup> derive their status from the convention concerned. To implement these conventions, regular meetings of states parties are held to discuss issues regarding the conventions, mainly in connection with the election of members to the treaty bodies. As mentioned in

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<sup>66</sup> The special rapporteurs are divided into two groups: a) country rapporteurs, whose focus is on violations in a particular country, and b) thematic rapporteurs, who deal with a particular human rights issue worldwide.

<sup>67</sup> Magdalena, *supra* note, 17.P.77.

<sup>68</sup> *Ibid.*

<sup>69</sup> Concept paper, *supra* note 37.

chapter II, there are different types of supervisory procedures: reporting procedures, inter-state complaint procedures, individual complaint procedures and inquiry procedures.<sup>70</sup>

All UN human rights treaties establish a reporting system. Although each Committee has developed its own particular methods, most of them are similar and the following are common elements;

First, Submission of Initial and Periodic Reports by States Parties;<sup>71</sup> Under the treaties, each state party undertakes to submit an initial report within a time frame specified in the treaty (normally one or two years from the entry into force of the treaty for the state concerned). The report is supposed to detail: the measures that the state party has adopted to give effect to the provisions of the treaty the progress made in giving effect to the provisions of the treaty, and the factors and difficulties the state party has encountered that have affected the degree of fulfillment of its obligations under the treaty. States parties also undertake to submit subsequent periodic reports, at an interval that is either specified in the treaty itself, or stipulated by the relevant treaty body. In order to assist states parties in their reporting tasks, the treaty bodies issue general guidelines for the preparation of reports, which detail the preferred format and the information that should be included in the reports.

Second, Lists of Issues; on receipt of states parties' initial and periodic reports, the practice of many (but not all) of the treaty bodies is to prepare a list of issues, which notifies the state party of the matters of particular interest to the treaty body. Some of the treaty bodies ask the state party to submit written answers to the list of issues in advance of the treaty body's formal consideration of the state party's report.<sup>72</sup> Prior to each Committee session, five members of the Committee meet in order to identify in advance

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<sup>70</sup> Magdalena, *supra* note 17, p. 95.

<sup>71</sup> Concept paper, *supra* note 37.

<sup>72</sup> Magdalena, *supra* note 17.

the questions which will constitute the principal focus of discussion with state representatives during the constructive dialogue. This 'recessional working group' prepares a list of issues to be taken into consideration when examining the state party report, which is transmitted to the permanent delegation of the state concerned. The idea is to provide the state with the possibility to prepare answers in advance and thereby to facilitate dialogue with the Committee. The list of issues is not meant to be exhaustive and the dialogue may refer to other points as well. States should provide written replies to the list of issues well in advance of the session, in order to make these available to the Committee members in the respective working languages. Generally, the 'list of issues' of a given country contains the points which are of concern to the Committee or which have not been properly addressed by the state in its report<sup>73</sup>.

Third, Formal Consideration of the State Party's Report; The state report is scheduled for examination at a meeting of the treaty body, and the state party is invited to send representatives to present the report and answer the treaty body's questions. At the scheduled meeting, the representatives of the state party make an initial presentation, and then the members of the treaty body engage in a dialogue with the representatives, asking questions about the state party's implementation of the treaty and raising any concerns they might have<sup>74</sup>. The Committee strongly encourages states to be present at the meeting when their reports are examined. The discussion between government representatives and Committee members is called the 'constructive dialogue'. Representatives of specialised agencies concerned such as ILO, WHO and UNICEF and other international bodies may also be invited to contribute at any stage of the dialogue. The dialogue with state representatives is a valuable opportunity for the Committee to explain the normative content of particular provisions of the Covenant and to comment on difficulties in the implementation of the Covenant. The dialogue is often very open and frank, and state experts frequently recognize the failures of the states they represent and the difficulties

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<sup>73</sup>Magdalena, *supra* note 17, p.56.

<sup>74</sup> Concept paper, *Supra* note 37.

encountered in the implementation of the Covenant. Committee experts have the opportunity to provide a clear explanation of the scope of the obligations.<sup>75</sup>

The treaty bodies evaluate states parties' reports in light of whatever information is available to them about the situation in the country at issue, including external sources. This may include, for example, country information prepared by the treaty body's secretariat, information provided by other UN agencies, and information provided by any non-governmental organizations that may have a particular interest in the subject matter or the country at issue. Practices differ between the respective treaty bodies as to how actively they seek out such information.

Fourth, Concluding Observations or Comments; the treaty body then adopts concluding "observations" or "comments" on the state party's report. In the concluding comments or observations the treaty body identifies concerns that it has about non-compliance.

The concluding observations are usually made public only on the last day of the session and are available to all interested parties<sup>76</sup>. Since 1993, the established structure of the 'concluding observations' is as follows: 'introduction,' 'positive aspects,' 'factors and difficulties impeding the implementation of the Covenant,' 'principal subjects of

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<sup>75</sup>Magdalena, *Supra* note 17, p.56.

<sup>76</sup> States parties' reports are made available to the public, if not by the state party (contrary to their responsibilities), then by the UN secretariat. The treaty bodies' formal consideration of states parties' reports also takes place in public. Practices differ among treaty bodies as to whether lists of issues are made available to the public and whether the meeting at which concluding observations are adopted is open to the public. Once adopted, however, the treaty bodies' concluding observations are always released publicly. Practices differ between treaty bodies as to when and in what circumstances Committee members meet with the press. However, a press statement is released by the media section of the United Nations Secretariat at the end of each session. A "summary record", which summarizes the dialogue between the treaty bodies and the states parties' representatives, is sometimes published as a UN document, but practices vary widely as to the timing of the availability of the summary record which may be years after the actual meeting.

concern,' and 'suggestions and recommendations'. Despite the fact that this structure employs rather diplomatic language, the Committee has become increasingly more adversarial and inquisitive in its work. Nowadays, the concluding observations do not merely contain 'suggestions and recommendations' and careful examination reveals that many Concluding Observations are to a greater or lesser extent formal declarations of compliance or non-compliance.

The treaty bodies of UN face a number of practical impediments in monitoring states parties' reports. In particular, many states parties have fallen significantly behind in the submission of reports. A significant number of states parties have never submitted their initial reports. The treaty bodies do not have adequate resources to keep up with the burden of considering states parties' reports, and consequently there are considerable delays, sometimes of several years, between receipt of a report by a treaty body and the formal consideration of the report.<sup>77</sup> This phenomenon is decreasing; however, as treaty bodies have adopted rules permitting states to expunge their whole record of overdue reports with the submission of a single report. It remains to be seen whether this approach will have the ultimate effect of encouraging or discouraging the submission of state reports at regular intervals (as required by the treaties).<sup>78</sup> When states have failed to produce a report for many years, some of the treaty bodies will now examine the country situation in the absence of a report. This process entails additional difficulties, concerning information-gathering and the ability of the process to encourage reform at the domestic level without the engagement of the state party.<sup>79</sup>

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<sup>77</sup>Concept paper, Supra note 37.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

### 3.2 State reporting under regional human right systems

At the regional level, human rights protections systems developed independent of the United Nations System.<sup>80</sup> The United Nations Charter has not made any provision for the possibility of the development of regional human rights systems.<sup>81</sup> The only reference made to regional systems was in relation to peace and security.<sup>82</sup> However, for many years, the United Nations (UN) has recognized and promoted Regional arrangements for the protection of human rights. At its 92<sup>nd</sup> plenary meeting in December 1992, the UN General Assembly reaffirmed that ‘regional arrangements for the promotion and protection of human rights may make a major contribution to the effective enjoyment of human rights and fundamental freedoms.’<sup>83</sup> The following year (in June 1993), the World Conference on Human Rights (held in Vienna)<sup>84</sup> also reaffirmed the fundamental role that regional and sub regional arrangements can play in promoting and protecting human rights and stressed that such arrangements should reinforce universal human rights standards, as contained in international human rights instruments. The development of regional systems also recognized the basic instruments developed by the United Nations system. The European Convention on Human Rights and Fundamental Freedoms (ECHR) clearly refers to Universal Declaration of Human Rights.<sup>85</sup> The African Charter of Human and Peoples’ Rights, in its preamble, states the relevance of the Universal Declaration of Human Rights<sup>86</sup>. More importantly, the Charter allows the African Commission of Human Rights to draw inspiration from other international human rights

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<sup>80</sup> Rhona K.M. Smith, International Human Rights, (2003), P.83

<sup>81</sup> Ibid.

<sup>82</sup> UN Charter, chapter VIII.

<sup>83</sup> Regional arrangements for the promotion and protection of human rights, UN General Assembly Resolution A/RES/47/125.

<sup>84</sup> Art 37 of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, See at <http://www.ohchr.org/English/law/vienna.htm> (accessed 1 March 2006).

<sup>85</sup> ECHR, Preambular paragraph.

<sup>86</sup> Banjul Charter, Preambular paragraph.

instruments including, but not limited to the Universal Declaration of Human Rights and other instruments adopted by the United Nations.<sup>87</sup> To date, there are three regional human rights systems, largely based on regional inter-governmental organizations that revolve around continental arrangements in Europe, the Americas and Africa.<sup>88</sup> However this paper focuses on African system in depth and the European System for comparison purpose as this system is more developed and it has lesson for the African system which is the focus of this paper.

### **3.2.1 State reporting under European human right system**

The European system for the protection of human rights is primarily composed of two major treaties: The European Convention on Human Rights and Fundamental Freedoms (ECHR) and the European Social Charter (ESC)<sup>89</sup>.

The ECHR, which is focused up on the protection of civil and political rights, was adopted on November 4, 1950 and entered into force in 1953. It is thus the oldest specific human right convention in existence. The ESC, which covers the implementation of economic and social "rights and principles", was adopted in 1961 and entered in to force in 1965. Both conventions were drafted under the auspices of the Council of Europe

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<sup>87</sup> Banjul charter, Article 60.

<sup>88</sup> John C Mubangizi, Some reflections on recent and current trends in the promotion and protection of human rights in Africa: The pains and the gains, (2006) ,p146.

<sup>89</sup> The ESC is a so-called 'à la carte' convention; states parties do not have to accept all articles, but can choose the articles by which they consent to be bound. Article 20 does, however, oblige every state party to consider Part I of the ESC as a declaration of the aims that it will pursue by all appropriate means, both national and international. Moreover, states parties have to consider themselves bound by at least five of the seven listed articles of Part II (Articles 1, 5, 6, 12, 13, 16 and 19) and they have to make a choice among the other articles in Part II so that a 'package' is formed of at least 10 articles (or 45 numbered paragraphs of Part II, into which the articles are subdivided). States parties have to accept this package before ratifying the Charter. At a later stage, states parties may declare themselves bound by any of the other articles or paragraphs as well.

European convention on human rights and fundamental freedoms. This deals mainly with the cluster of human rights referred as civil and political and starts from the assumption that all of them are enforceable before courts. None-compliances can therefore be detected through individual complaints directed to the European court of Human rights<sup>94</sup> or action by state parties to establish that another state party does not comply with its international obligations. These explanations can be requested by Secretary General of the Council of Europe, who cannot pronounce any judgment as to the internal arrangements described by state party do in fact ensure effective implementation.<sup>95</sup> Therefore, the discussion on the European reporting system shall be based on the ESC.

The European Social Charter contains a supervisory mechanism, which is comparable to the mechanisms of the ILO. Every state party must report on a regular basis to the Secretary General of the CoE on the implementation of the obligations accepted. The Committee of Independent Experts (CIE) examines this report and submits its findings, together with the country reports, to the Governmental Committee. This Committee is composed of representatives of the states parties and the international employers' and employees' organizations. The Governmental Committee (GC) selects, on the basis of social, economic and other policy considerations, the situations that call for recommendations to the states parties. The Committee of Ministers issues recommendations to states that fail to comply with the Charter's requirements. The conclusions of the Committee of Experts are used as a basis for the periodical organization of social policy debates.<sup>96</sup>

The ESC reporting system faced some challenges. These include, infrequent reporting, an overload of work due to a large number of ratifications, inadequate resources, and limited

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<sup>94</sup> With the entry in to force of protocol number 11 on November 1, 1998, the "new" European court of human Rights came into operation and new application procedure were put in place.

<sup>95</sup>, Vojin, supra note 26, P. 189 and 190.

<sup>96</sup> Magdalena, supra note 17, p.140.

NGO participation. A further problem under the ESC reporting system was duplication of work amongst the supervision organs, especially the CIE and the GC. The Council of Ministers depended on the findings of these organs to make its recommendations on reports.

Their lack of coordination therefore led to the Council of Ministers failure to make recommendations on state reports<sup>97</sup>. The Council has over a number of years initiated reforms to the reporting system under the ESC. This is because for a long time, the system had been facing several challenges which were mainly caused by its organizational structure.

Two major reforms were initiated by the Council to revitalize the ESC reporting mechanism. The first was a protocol amending the ESC (the Turin Protocol) of 1991.<sup>98</sup> Although it brought important changes like the enlargement of the CIE, broadened NGO participation, and clarification of the roles of the supervision bodies,<sup>99</sup> it is still not in force because it has to be ratified by all member states. It has therefore been superseded by the Revised European Social Charter of 1996 which entered into force in 1999.<sup>100</sup>

The revised ESC represents the second major initiative of the council to strengthen the supervision mechanism of the ESC. In this regard, the revised ESC has greatly improved the reporting system by mainly bringing in coordination between the relevant organs involved in the process. It has defined their competences. For instance, assessment of reports from a legal stand point is done by the European Committee of Social Rights

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<sup>97</sup> M Nowak, Introduction to the international human rights regime, (2003), P.175.

<sup>98</sup> M Mikkola, The European Social Charter and the CEE-Countries in R Blanpain (ed) The Council of Europe and the social challenges of the XXIst century, (2001), p.33.

<sup>99</sup> M Mohr, The Turin Protocol of 22 October 1991: A major contribution to revitalizing the European Social Charter, European Journal of International Law, (1992), p.363 and 366.

<sup>100</sup> T V Banning, M Sepulveda, G Gudmundsdottir & C Chamoun, Human Rights Instruments, (2004), p. 186.

(ECSR) - former CIE. The fact that the organs involved in the reporting system have specific and defined competencies has made it easier for the Council of Ministers to use their findings on state reports to make recommendations. Thus, in the period 1993 to 2003, the Council was able to make more than 30 recommendations to several member states. Further, as a result of the reforms, the ESC reporting system is now said to have an enviable record of success. For instance, although reports are commonly some months late and the information provided is not always complete, there has never been a case of a state not submitting a report. The success of the reporting system has been attributed to several factors including the active involvement of the Council and its organs in the reporting process. For instance, due to peer pressure, each member of the GC ensures that the requisite effort is put into the preparation and early submission of his or her country's report.<sup>101</sup>

According to Harris<sup>102</sup> this positive state of affairs can be attributed to the following: The member states are generally better equipped administratively and financially to prepare national reports. They also possess greater experience of doing so; The Council of Europe is composed of a relatively small and homogeneous group of states whose representatives meet regularly for many Council of Europe purposes; the result is a strong collegiate sense of obligation to comply with the undertakings that go with Council membership; The Governmental Committee which is made up of civil servants representing their various countries plays a central role in the enforcement process. Its members who are at some level responsible for the submission of their state's national reports are subjected to questioning by their colleagues on matters of compliance with the reporting obligations. The consequence is that each member ensures that the requisite effort is put into the preparation and early submission of reports; The Governmental Committee has, on its own, developed a system of warnings for states that have failed to provide the European

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<sup>101</sup> D Harris, Lessons from the reporting system of the European Social Charter, (2000), p. 274-275.

<sup>102</sup> Ibid.

Committee of Social Rights with the information needed.<sup>103</sup>

### 3.2.2 State Reporting under Banjul Charter

Africa's political inheritance from colonial rule was a mass of artificial "nations" with arbitrary drawn borders and ethnically diverse populations with few or no historical ties. In the build up to independence, "Nationalism" presented only a façade of unity in the face of colonial opponent. After independence that unity only survived while the new African government was able to deliver on its promise to improve the lives of its citizens, particularly in terms of human rights and social services.<sup>104</sup> In the first decades of independence, fear of divisive tendencies encouraged many African governments to set up one-party states in which it was argued that the entire population could work together for the common good of development. In practice, this allowed weak governments to become dictatorial in order to stay in power. In many of these cases, the country's military responded by intervening and seizing power by force. These military interventions were often welcomed by urban populations who felt betrayed by weak civilian governments tainted by corruption and failed economic schemes. Military governments proved no better, however, and they too supported themselves by corruption. Many grew even more brutally dictatorial and, unrestricted by constitutional rule, committed atrocities against their perceived opponents. Many dictators were kept by external support, usually in the name of cold war politics.<sup>105</sup> During this time and as a result, Africa witnessed unprecedented and well documented assaults on life and property, including extra judicial executions, massacres, disappearances, torture and arbitrary detention.<sup>106</sup>

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<sup>103</sup> Kofi, *supra* note 4, p.275.

<sup>104</sup> Newman, Jamsil, et al. "Africa" Microsoft@student 2008 (DVD) Redmond: Microsoft corporation 2007.

<sup>105</sup> *Ibid.*

<sup>106</sup> Field Marshall El-hajji Idi Amin, symbolized Africa's inglorious past, with human right violation unparalleled in the continent's history. After taking power in 1971, he oversaw the murder of ten thousand Ugandans and soon after, he expelled seventy thousand foreigners from the country, expropriating their property without compensation.

While these monstrosities of power were occurring in Africa, the organization of African Unity (OAU) did little. The OAU was originally established in 1963 to promote unity, solidarity and international co-operation among the newly independent African states. During the past four decades, however, the organization's struggle to achieve its stated goal of 'a better life for the people of Africa' was hindered by internal conflict and self-serving heads of state. According to some critics, the OAU protected the interests of African heads of state without addressing the real problems that plagued the continent<sup>107</sup>. The main problem was throughout much of OAU history; it was troubled by disputes among its member nations.<sup>108</sup> Its strength was sapped further by an accelerating economic decline in Africa.<sup>109</sup>

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<sup>107</sup> Kofi, supra note 4, p.159.

<sup>108</sup> In 1975 the organization's members became divided over which side to support in the Angolan Civil War. In this conflict, rival factions fought for control of Angola, which had won independence from Portugal in 1974. One faction, the Popular Movement for the Liberation of Angola (officially known as Movimento Popular de Libertação de Angola-Partido de Trabalho, or MPLA), was backed by Cuba and the Soviet Union. Two other factions, the National Front for the Liberation of Angola (Frente Nacional de Libertação de Angola, or FNLA) and the National Union for the Total Independence of Angola (União Nacional para a Independência Total de Angola, or UNITA), were supported by the United States, its Western allies, and South Africa. In a December 1975 vote to decide which side to support, half of the nations in the OAU chose one side, and half the other. The split in the organization continued during a series of wars, including the 1977 and 1978 invasions of the Katanga Province in Zaire (now the Democratic Republic of the Congo) by Angolan-backed forces, Somalia's invasion of Ethiopia in 1978, and the conflict between Uganda and Tanzania in 1978 and 1979. In 1981 the same nations that had supported the MPLA government in Angola also recognized the Western Sahara as an independent state and admitted it into the OAU. Morocco and other states that had supported the UNITA/FNLA side of the Angolan conflict did not approve of this move and Morocco temporarily withdrew from the OAU.

<sup>109</sup>Newman, supra note 104.

Owing to the problem in OAU, African Union, came into being,<sup>110</sup> succeeding the discredited Organization of African Unity which was dissolved.<sup>111</sup> This notable event had its origins in the Sirte Declaration adopted by the OAU in September 1999, where African leaders had met to discuss the future of the OAU. There was an acceptance that the OAU, as originally conceived in the early 1960s, could no longer serve or satisfy the needs and aspirations of the Continent, and it was decided to replace it with a more dynamic organization capable, on the one hand, of preserving and building upon the OAU's achievements and, on the other hand, of promoting Africa's role in the twenty-first century. The Sirte Declaration sought, *inter alia*, to address in an effective manner the new social, political and economic realities in Africa through a revitalized pan-African organization that would have an enhanced role in meeting the needs of the peoples of the Continent.<sup>112</sup> The AU, in all essential regards a political and economic institution, is loosely modeled on the European Union and constitutes the expression of a renewed determination in Africa to expedite political co-operation and economic integration. The AU is designed to provide the African continent with the legal and institutional framework to tackle successfully the twin challenges of the post-Cold War

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<sup>110</sup> Its constituent instrument, the Constitutive Act of the African Union, was adopted by the 36th Ordinary Session of the Organization of African Unity, meeting in Lomé, Togo in July 2000; the establishment of the AU was declared by the 5th Extraordinary Session of the OAU, meeting in Sirte on 2 March 2001; Decision on the African Union, OAU Doc. EAHG/Dec.1 (V). It entered into force on 26 May 2001; see Article 28 of the Constitutive Act which stipulates that it would enter into force thirty days following the deposit of the instruments of ratification by at least two thirds of the Member States of the Organization of African Unity. The official launch of the AU was effected in July 2002 in Durban, South Africa: Durban Declaration in Tribute to the Organization of African Unity and on the Occasion of the Launching of the African Union, AU Doc. ASS/AU/Decl.2 (I). All of the Organization of African Unity's fifty-three Member States have joined the AU.

<sup>111</sup> Article 33(1) of the Constitutive Act, specifying that the AU would replace the OAU after a transitional period of one year.

<sup>112</sup> Sirte Declaration of 9 September 1999, OAU Doc. EAHG/Decl. (IV) Rev.1.

age and globalization.<sup>113</sup> Of particular interest is the fact that human rights and democratic values are founding principles of the AU and, unlike the OAU Charter, express references to these core beliefs are made in the Constitutive Act.<sup>114</sup> It is also important to note that the AU has inherited the OAU's endeavors in the field of human rights

### **3.2.2.1 The African Charter on Human and Peoples' Rights, (Banjul Charter)**

The African system for the promotion and protection of human rights is the most recent, having its origins in the early 1980s. The system is based primarily on the African Charter on Human and Peoples' Rights, also known as the Banjul Charter (African Charter or Charter).<sup>115</sup> It was designed to function within the institutional framework of the then Organization of African Unity, The OAU has since been replaced by the African Union , but it is important to note that the new AU recognizes the African Charter. Article 3(h) of the Constitutive Act of the AU provides that the promotion and protection of human and peoples' rights in accordance with the African Charter and other relevant human rights instruments are objectives of the AU. In that regard, therefore, the African Charter remains the primary instrument for the protection and promotion of human rights in Africa.<sup>116</sup>

For various reasons, the African system and the African Charter on which the system is based have both been found wanting, at least in comparison to the other regional systems

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<sup>113</sup> According to the OAU Secretary-General, '[The African leaders] certainly had in mind an organization that would provide a framework for enhanced cohesion, cooperation, integration and strengthened capacity to deal with the crises that face the African continent today': Report of the Secretary-General on the Implementation of the Sirte Decision on the African Union, OAU Doc. CM/2210 (LXXIV), p. 10, para. 26.

<sup>114</sup> A fact acknowledged by the African Commission on Human and Peoples' Rights in Communication 157/96, *Association Pour la Sauvegarde de la Paix au Burundi v. Tanzania, Kenya, Uganda, Rwanda, Zaire and Zambia*, Seventeenth Activity Report 2003–2004.

<sup>115</sup> The Charter was adopted by the 18th Assembly of the Heads of State and Government of the Organization of African Unity on 17 June 1981 and came into force on 21 October 1986. OAU Doc CAB/LEG/67/3 rev 5 (1982).

<sup>116</sup> Mubangizi, *supra* note 88, p. 146.

and human rights instruments. Concerns have continuously been raised about certain features of the African Charter.<sup>117</sup> These concerns include the equivocal way in which the substantive provisions of the Charter are phrased, the extensive use of ‘claw-back’ clauses,<sup>118</sup> the imposition of obligations upon the individual towards the state and the community, and the inclusion of provisions which are generally seen as ‘problematic and could adversely affect enjoyment of the rights set forth in the Charter’. Moreover, the African Commission on Human and Peoples’ Rights (African Commission), which was the only institution initially mandated under the African Charter with the function of promoting and protecting the rights in the Charter, was given relatively weak powers of investigation and enforcement and has generally been seen as a failure. The lack of any formal or legal binding force of the African Commission’s decisions has not helped to enhance its image. As a result of these and other shortcomings, the African human rights system has always been seen as the least developed and the least effective in comparison to its European counterpart. Such unfavorable comparison might be deemed to be unfair, considering that the African Charter was drafted to take account of the unique African culture and legal philosophy and it was hence directed towards addressing particular African needs and concerns. In that regard, the African Charter contains certain positive attributes that should be acclaimed. One such attribute is the inclusion of second and third generation rights as legally enforceable rights. In that regard, not only does the Charter provide for the traditional individual civil and political rights, but it also seeks to promote economic, social and cultural rights and the so-called third generation rights. Accordingly, it is the first international human rights convention to guarantee all the categories of human rights in a single instrument. Another constructive attribute relates to the individual communication or complaint mechanism. Under the African Charter, the ‘locus standi’ requirements before the African Commission are relatively broad since,

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<sup>117</sup> GJ Naldi, *Future trends in human rights in Africa* in M Evans & R Murray (eds) *The African Charter on Human and Peoples’ Rights: The system in practice, 1986-2000*, Vol.6, (2002) ,p. 147.

<sup>118</sup> It is important to note that the African Commission has rejected the interpretation usually attached to the use of ‘claw-back’ clauses, namely that they seem to make the enforcement of certain rights dependent on municipal law.

besides the victim, individuals and organizations can also submit complaints. This procedure has been adopted and incorporated in the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

### **3.2.2.2 The African Commission on Human and Peoples' Rights**

The African Commission on Human and Peoples' Rights was established in 1987 under the African Charter on Human and Peoples' Rights to protect and promote human and peoples' rights in Africa. The African Commission was incorporated into the AU framework at the Durban Summit held in July 2002. The Commission is composed of eleven members, who are elected for a term of six years by secret ballot by the Assembly of the African Union from a list of persons nominated by the states parties to the Charter. The mandate of the Commission as set out in article 45 of the African Charter may be itemized as: to promote human and peoples' rights; to protect human and peoples' rights; to interpret provisions of the African Charter; any other tasks that may be referred to the Commission by the OAU/AU.

The Commission has adopted the devised Rules of Procedure,<sup>119</sup> acting in accordance with authority conferred on it by the Charter. The procedure covers several subject matters including, among other things, the modes to be followed in organizing and managing its regular and extra-ordinary sessions. The Rules of Procedure is intended to apply guiding the workings of the Commission and its subsidiary bodies.

The Commission is allowed to use the working languages of AU including Arabic, English French and Portuguese.<sup>120</sup> Thus, minutes of the proceedings of the Commission

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<sup>119</sup> The African Commission on Human and Peoples' Rights, Rules of Procedures of The African Charter on Human and Peoples' Rights, revised and adopted on June 6, 1995.

<sup>120</sup> Id, rule 34.

and that of its subsidiary bodies as well as all the official decisions and documents of the Commission shall be rendered in each working language.<sup>121</sup>

The Rules of Procedure also carry provisions relating to the conduct of debates and proceeding of the Commission as provided under article 42 (3) of the Charter. The chairman of the Commission has the responsibility to ensure that the debate and other official business of the Commission are conducted duly in accordance with the Rules of Procedure.

According to rule 2 of the Rules of Procedure, the Commission holds two ordinary sessions per a year and quorum shall be constituted by seven members of the Commission.<sup>122</sup>The decisions of the Commission are to be taken by simple majority of the members of the Commission present and voting.<sup>123</sup>In the case of equal number of vote, the chairman has a casting vote.<sup>124</sup>

The Rules of Procedure also provided for participation of non-members of the commission in the proceedings of the Commission or its subsidiary bodies.<sup>125</sup>The commission is permitted to invite any state having a vested interest in the issue under deliberation to participate in the decision without having voting right. Further any organization or person capable of enlightening the commission may be invited to participate in the same manner.<sup>126</sup>

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<sup>121</sup> Id, rule 36.

<sup>122</sup> Id, rule 43.

<sup>123</sup> With the context of the Rules of Procedures of the commission, the term “present and voting” shall mean members voting for or against a proposal or a motion submitted for the commission. Members abstaining from voting are considered to be non-voting members.(Rule 62(2)).

<sup>124</sup> Rules of Procedures ,Supra note 119, rule 60.

<sup>125</sup> Id, rule 71.

<sup>126</sup> Id, rule 72.

### 3.2.2.3 State reporting protecting mandate of the African Commission

Under Article 62 of Banjul Charter, member states are obliged to submit reports every two years on legislative and other measures they adopted in order to give effect to the provisions of the African Charter. The African Charter failed in Article 62 to identify the organ competent to review these reports.<sup>127</sup> In order to remedy this situation, the African Commission adopted a resolution at its third session requesting the OAU Assembly to allow it to review state reports. The request was approved by the OAU Assembly, and the state reports are now presented to the African Commission for examination<sup>128</sup>.

In order to assist the states in their reporting, the Commission at its 4th ordinary session in October 1 991 adopted the 'General Guidelines for National Periodic Reports'<sup>129</sup> These set of guidelines are a very detailed document that seeks to explain what is expected in the report as regards to each right guaranteed in the Charter.<sup>130</sup> However, these set of guidelines have been criticized as being too detailed, lengthy and repetitive, and have been described as “excessively detailed and unnecessarily complex”. Latter, at the request of Member States and at the insistence of NGOs, discussion took place on amendments to the Guidelines<sup>131</sup> and inspired by the recommendations of two seminars<sup>132</sup> held to discuss and improve the existing guidelines, in 1997, at its 23rd ordinary sessions the Commission came up with, a less detailed - but equally unhelpful -

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<sup>127</sup> For some writers, this was left deliberately vague so as not to jeopardize ratification. (see Viljoen, supra note 7).

<sup>128</sup> Magdalena, supra note 17,P.164.

<sup>129</sup> Guidelines for National Periodic Reports, Second Annual Activity Report of the African Commission on Human and Peoples' Rights 1988–1989, ACHPR/RPT/2nd, (Murray and Evans (eds.), Documents of the African Commission.

<sup>130</sup> Viljoen, supra note 7.

<sup>131</sup> Amendment of the General Guidelines for the Preparation of Periodic Reports by States Parties, DOC/OS/27.

<sup>132</sup> One in English for Anglophone states parties (Harare, August 1993), another in French; for Francophone States parties (Tunis, April 1994).

set of guidelines.<sup>133</sup> Nevertheless, it has been said that the relationship between the two sets of guidelines is not clear and practice, inevitably, lies somewhere between the two extremes.<sup>134</sup>

The contents<sup>135</sup> of states' periodic reports, according to simplified guideline for state reporting, should contain first, the major human right instruments to which the state is a party, dates of ratification, its obligations under those instruments, and steps taken to make such instruments part of its national legal system, and reports, if any, submitted under such instrument; second, measures and/or steps taken by the reporting state to implement rights protected by the Banjul Charter and rights not protected by the charter but that are protected by the states if any, steps taken to insure that individual duties are observed and difficulties encountered in implementing the charter in general or any of the rights guaranteed there under having regard to the political, economic or social circumstances of the state; third how the state is caring out its obligations to promote and insure the respect of human rights through teaching, education and publication in accordance with article 25 of the Charter, how far the state uses the charter in its relations with other state parties or other subjects of international law and any other information relevant to the implementation of and promotion of the Charter.

In addition to the above, state parties must, before submitting their reports, assess the compatibility of each piece of their national legislation with each article of the charter including brief comment on each article. State parties that have been found in violation of the charter must include the measures they have taken to comply with the decisions of the African Commission.

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<sup>133</sup> Viljoen, supra note 5, P. 110.

<sup>134</sup> Evans and Murray, supra note 29, P. 45.

<sup>135</sup> The actual content of the reports are expected to follow the pattern laid out in the Guidelines. The primary reason for this was to ensure that reports were uniform in content, which would, among other things, assist the Commission in obtaining a global view of the human rights situation in Africa, in addition to the position in each reporting country.

Reports, as per the guideline, need to be substantive, containing accurate information, it must as far as possible, include recent events on human rights that have taken place in the country and must be submitted within appropriate time provided for in the charter.

### **3.2.2.3.1 Procedures adopted when examining State Reports**

The recommendation requesting the OAU/AU Assembly of Heads of State and Government to mandate the Commission to examine State reports requires “the General Secretariat of the OAU to receive the said reports and communicate them to the Commission without delay”. In practice, however, most States send their reports directly to the Secretariat of the Commission. Those sent to the General Secretariat of the OAU/AU are also communicated to the Secretariat of the Commission.<sup>136</sup>

#### **i. Procedure at the Secretariat**

Upon receipt of a report, the Secretariat studies it and informs all the Commissioners. Copies of the report are sent to all the commissioners. Prominent human rights institutions, such as Amnesty International and the International Commission of Jurists, local NGOs from the State that has submitted the report, are either informed or sent copies of the report. This distribution of the State report is in conformity with Rule 78 of the Commission’s Rules of Procedure which provides that: “Periodical reports ... submitted by State Parties to the Charter ... shall be documents for general distribution ...” These human rights institutions are requested to avail to the Commission, information and/or questions on the human rights institution of the State concerned. The Secretariat, with all the information at its disposal, prepares questions that would be asked to the representative of the State. The questions are not necessarily limited to information in the report. The questions are transmitted to the State concerned and to all Commissioners at least six weeks before the date of the session at which the report is

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<sup>136</sup> African Commission on Human and Peoples’ Rights state reporting procedure, Information Sheet No 4.

going to be examined. A letter, together with a list of the questions prepared at the Secretariat, is sent to the State requesting it to send a highly qualified official (s) to the session to present the report. It is very important that States send representatives who will be able to answer questions posed to them on the spot. The Secretariat also specifically contacts the Commissioner responsible for promotional activities in the country concerned, which, under normal circumstances is going to be the rapporteur to lead discussion on the report, and provides him with any further information on the report.<sup>137</sup>

## **ii. Procedure at the Session**

The examination of State periodic reports is done in open sessions of the Commission, that is, before all the participants, including NGOs, national human rights institutions, State representatives and other invitees. However, only the Commissioners can pose questions to the State representatives.

There is no fixed time limit for the state representatives to make the presentation. After the presentation, the rapporteur poses questions to the representatives. These are supplemented by additional questions from other Commissioners. The line of questioning is not limited to the questions prepared by the Secretariat.

In the past, after the question and answer session, the Commission went into a close meeting to discuss possible recommendations. This practice has the “advantage of creating a dialogue and at the same time gives the Commission some privacy in making some comments among the Commissioners”. The practice however has changed, and presently, after the question and answer process, the rapporteur sums up and the Chairman concludes the discussion<sup>138</sup>

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<sup>137</sup>Ibid.

<sup>138</sup>Ibid.

### **iii. Follow-up**

After the examination of a State report, the Commission usually decides that a follow-up letter be sent to the state concerned, summing up the examination and putting in writing the questions that were not given satisfactory answers, if any. Rule 85 (3) required that “if, following the consideration of the report, and the information submitted by the State..., the Commission decides that the State has not discharged its obligations under the Charter, it may address all general observations of the State concerned as it deems necessary”. The State is then requested to submit to the Secretariat of the Commission any additional information that it may require. The Commission may, where necessary, fix a time limit for the submission of the comments by the States”.

Rules 86 (2) states that “The Commission may also transmit to the Assembly, the observations ... accompanied by copies of the reports it has received from the States ... as well as the comments supplied by the latter if possible”. There is no precision as to how the State concerned should submit the additional information. For instance, in some cases, they were requested to include the information in the next report, while in other cases, they were asked to submit the additional information without delay in a separate letter.<sup>139</sup>

### **iv. Non-submission of Reports and Examination without State Representatives**

Rule 84 states that “the Secretary shall, at each session, inform the Commission of all cases of non-submission of reports or of additional information. In such a case, the Commission may send through the Secretary, to the State Party a report or reminder relating to the submission of the report or additional information”. If after the reminder, the State Party still does not submit the report or the information requested; the Commission shall indicate this in its annual report to the Assembly of Heads of State and Government of the AU. Reminders are sent to State Parties every three months, (in the past it was once every six months). The Commission usually attaches a list to the annual activity report which illustrates the status of submission of State periodic reports. This

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<sup>139</sup>Ibid.

list contains the names of those States that have submitted their reports, the number of reports submitted, the reports due, and the names of those States which have not submitted any report.<sup>140</sup>

When a report is submitted to the Secretariat, a letter is sent to the State informing it of the session at which the report will be examined and inviting it to send a high level representative to the session to present the report. The Rules and Procedure does not make it compulsory for State to send representatives before their reports could be considered. Rule 83 provides that “Representatives of the States Parties to the Charter may participate in all the sessions of the Commission at which their reports shall be considered”. In the past, the Commission adopted a practice whereby it will not consider a report if there is nobody from the State to present it. However, at its 23<sup>rd</sup> Ordinary Session, the Commission decided that if there is no response, it will go ahead with examination of the report and forwards its comments to the State concerned.<sup>141</sup>

#### **v. Recommendations of the Commission**

The Commission’s final decisions are called recommendations. It may be argued that these recommendations have no binding effect because no article in the Charter or Rules of Procedure defines the status of the Commission’s recommendation. At the Same time, the mandate of the commission is quasi-judicial. However, it can also be argued that by signing and ratifying the Charter, states signify their intention to be bound by and to adhere to the obligations arising from it even if they do not enact domestic legislation to effect.<sup>142</sup> The Commission includes these recommendations in its annual activity reports submitted to the Assembly of head of stats and governments<sup>143</sup> and once it has been adopted by the assembly, then it will be published.

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<sup>140</sup>Ibid.

<sup>141</sup>Ibid.

<sup>142</sup> Vienna Conventions, Article 14.

<sup>143</sup> Banjul charter, Aarticle 54.

## Chapter Four

### Pitfalls of state reporting under Banjul Charter in the protection and promotion of human rights in Africa and new incentives to fill the gaps

#### 4.1 State compliance with the reporting obligation of the Charter

Member states that have ratified the Charter obliged themselves to recognize the rights, duties, and freedom enshrined in the Charter. To this effect, they are expected to adopt legislative or other measures<sup>144</sup>. This requirement parallels a state obligation to respect, insure or secure rights and freedoms under ICCPR article 2. The Banjul Charter is unique, however, on its additional demand on States parties “to promote and ensure through teaching, education and publication the respect of rights and freedoms” guaranteed by the Charter.<sup>145</sup> States also have the duty to allow the establishment and improvement of appropriate national institutions interested with the promotion and protection of the Charter<sup>146</sup>. The full compliance of these duties highly depends on the willingness of each state party individually and collectively. However, the state reporting mechanism as required under article 62 of the Charter and the state compliance with the recommendations given by the Commission would amount to discharging obligations under the Charter.

The Charter is ratified by all 53 members of OAU/AU<sup>147</sup>. These all States as said earlier, under the Charter, obliged to submit reports, every two years from the time they ratified, on the measures they adopted to give effect to the provisions of the Charter. Accordingly,

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<sup>144</sup> Banjul Charter, Article 1.

<sup>145</sup>Id, Article 25.

<sup>146</sup>Id, Article 26.

<sup>147</sup> List of countries which have signed, ratified/acceded to the African Union Convention on African Charter on Human and People’s Rights; [www.africa-union.org](http://www.africa-union.org) (accessed on October 20,2010), (see Annex II)

the first States which ratified the Charter<sup>148</sup>, until 2009/10, are expected to submit their report eleven times if they were strictly adhere to the reporting obligation of the Charter. Those member States which ratified the charter late, that is, South Africa in 1996, Ethiopia in 1998, Eritrea in 1999, are expected to make at least five submissions.

When we see the status of submission and presentation of the Periodic Reports of States as at the 46th Ordinary Session of the African Commission<sup>149</sup>, until this time, no State strictly abides by the reporting obligation of the Charter. The maximum number of report is made by Rwanda which is 4 times but still very less compared to its total obligation. All Arab member States of the charter in addition to Nigeria, Sudan and Zimbabwe submitted 3 of their reports. 28.3% of the member states made two submissions and 33.9% of the states made only one.

Until May 2010, out of 53 states which ratified the Charter, 12 states, which constitute 22.6%, never submitted report to the Commission so far. These states are:

1. Comoros, with 10 overdue Reports;
2. Côte d'Ivoire, with 7 overdue Reports;
3. Djibouti, with 8 overdue Reports
4. Equatorial Guinea, with 10 overdue Reports
5. Eritrea, with 4 overdue Reports
6. Gabon, with 10 overdue Reports
7. Guinea Bissau, with 11 overdue Reports
8. Liberia, with 12 overdue Reports
9. Malawi, with 9 overdue Reports

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<sup>148</sup> These states are those states ratified the Charter before 1987. These are 34 in number which amount to 64% of the total of current member States. (see Annex II)

<sup>149</sup> Status on submission, supra note 13.

10. Sao Tome & Principe, with 10 overdue Reports
11. Sierra Leone, with 12 overdue Reports
12. Somalia, with 11 overdue Reports

The African Commission continues to urge states parties to the Banjul Charter that have not yet done so, to submit their Initial and Periodic Reports. States Parties can combine all the overdue Reports into a single Report, for submission to the African Commission.<sup>150</sup> Accordingly most state parties of the Charter made combined report (some even made more than four reports combined). Some states simply report without taking the overdue reports in to consideration as a result some states fail to do the report found before or in between their reports<sup>151</sup>.

By combining their overdue reports, there are states which fulfilled their reporting obligation of the Charter. These states, which have submitted and presented all their Reports, are: Algeria, Benin, Botswana, Republic of Congo, Ethiopia, Mauritius, Nigeria, Rwanda, Sudan, Tanzania, Tunisia and Uganda.<sup>152</sup> There are also states which have submitted all their Reports and will present the latest one at the 47<sup>th</sup> Ordinary Session of the Commission. These are: Democratic Republic of Congo, Madagascar and Cameroon.<sup>153</sup>

States which have submitted one (1) or two (2) Reports but still owe more Reports are 26 in number and these states are<sup>154</sup>:

1. Angola 6 overdue Reports
2. Burkina Faso 2 overdue Reports
3. Burundi 4 overdue Reports

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<sup>150</sup> 27<sup>th</sup> Activity Report of the ACHPR, <http://www.achpr.org> (accessed on October 20, 2010), page 36.

<sup>151</sup> See annex II.

<sup>152</sup> 27<sup>th</sup> Activity Report, Supra note 150, page 35.

<sup>153</sup> Ibid

<sup>154</sup> Ibid.

4. Cape Verde 6 overdue Reports
5. Central African Republic 1 overdue Report
6. Chad 6 overdue Reports
7. Egypt 2 overdue Reports
8. Gambia 6 overdue Reports
9. Ghana 3 overdue Reports
10. Guinea Republic 6 overdue Reports
11. Kenya 1 overdue Report
12. Lesotho 3 overdue Reports
13. Libya 1 overdue Report
14. Mali 4 overdue Reports
15. Mauritania 2 overdue Reports
16. Mozambique 6 overdue Reports
17. Namibia 2 overdue Reports
18. Niger 2 overdue Reports
19. Saharawi Arab Democratic Rep 3 overdue Reports
20. Senegal 1 overdue Report
21. Seychelles 2 overdue Reports
22. South Africa 2 overdue Reports
23. Swaziland 4 overdue Reports
24. Togo 2 overdue Reports
25. Zambia 1 overdue Report
26. Zimbabwe 1 overdue Report

From the above picture we can conclude that all states do not strictly adhere to their reporting obligation. But by combining over due reports some states fulfilled the reporting obligation and some states still owe one or more over due reports. The reporting procedure by combining overdue reports indeed helped states to fulfill their obligation but when we see the status of submission of the report, some states fail to submit the

report found before or in between their reports. Therefore, non- submission and delay in submission of reports envisaged from the above picture, shows that, most state parties have not been observing their reporting duty.

#### **4.2 Consideration of state reports by the Commission**

More than two decade have passed since the Banjul Charter is entered in to force and the African commission under it is established. However, the State reporting system of the African Commission is still in its infancy.

The Commission considered the first three state reports at its ninth session in March 1991. These reports were from Libya, Rwanda and Tunisia. After that, the following reports have been considered: 11<sup>th</sup> session: Egypt and Tanzania; 12<sup>th</sup> session: The Gambia, Senegal (combined first and second reports) and Zimbabwe; 13<sup>th</sup> session: Nigeria and Togo; 14<sup>th</sup> session: Ghana only, 16<sup>th</sup> session: Benin, Cape Verde and the Gambia (second report); 18<sup>th</sup> session: Tanzania (second report) only; 19<sup>th</sup> session: Algeria and Mozambique; 20<sup>th</sup> session: Mauritius only; 21<sup>th</sup> session: Sudan and Zimbabwe (combined second and third report); 23<sup>th</sup> session: Guinea and Namibia; 24<sup>th</sup> session: Angola only; 25<sup>th</sup> session: Burkina Faso, South Africa and Chad; 26<sup>th</sup> session: Mali only; 27<sup>th</sup> session: Burundi (1<sup>st</sup> report), Rwanda (2<sup>nd</sup> report), and Uganda (1<sup>st</sup> report); 28<sup>th</sup> session: Benin (2<sup>nd</sup> report) only; 29<sup>th</sup> session: Congo (1<sup>st</sup> report), Algeria, Ghana and Namibia (second report); 31<sup>th</sup> session: Cameroon, Lesotho and Mauritania (1<sup>st</sup> report), Togo (second report); 33<sup>th</sup> session: only Saharawi Arab Democratic Rep (1<sup>st</sup> report); 34<sup>th</sup> session: DRC (1<sup>st</sup> report) and Senegal (2<sup>nd</sup> report); 35<sup>th</sup> session: Burkina Faso, Niger and Sudan (all 2<sup>nd</sup> report); 36<sup>th</sup> session: only Rwanda (3<sup>rd</sup> report); 37<sup>th</sup> session: Egypt (3<sup>rd</sup> report) and Mauritius (second report); 38<sup>th</sup> session: only South Africa (2<sup>nd</sup> report); 39<sup>th</sup> session: Seychelles and Cameroon (2<sup>nd</sup> report), Central African Republic (1<sup>st</sup> report) and Libya (3<sup>rd</sup> report); 40<sup>th</sup> session: Nigeria and Uganda (both 2<sup>nd</sup> report); 41<sup>th</sup> session: Kenya and Zambia (Both 1<sup>st</sup> report) and Zimbabwe (3<sup>rd</sup> report); 42<sup>th</sup> session : Algeria and Tunisia ( both 3<sup>rd</sup> report) and Rwanda 4<sup>th</sup> report); 43<sup>th</sup> session: DRC and

Tanzania ( both 2<sup>nd</sup> report);44<sup>th</sup> session: only Nigeria (3<sup>rd</sup> report); 45<sup>th</sup> session: Benin and Uganda ( both 3<sup>rd</sup> report) and Mauritius (2<sup>nd</sup> report).<sup>155</sup>

At 46<sup>th</sup> session, the Republic of Botswana, the Republic of Congo and the Federal Democratic Republic of Ethiopia presented their periodic reports to the Commission. The Commission examined the reports and engaged in constructive dialogue with the three States Parties. The Commission adopted Concluding Observations on the Periodic Reports of the Republic of Congo and deferred adopting the Concluding Observations on those of the Republic of Botswana and the Federal Democratic Republic of Ethiopia until after the receipt of more information, as undertaken, by those States.<sup>156</sup>

At the 47<sup>th</sup> Ordinary Session, the Commission is expected to examine the reports of Democratic Republic of Congo, Madagascar and Cameroon.<sup>157</sup>

Unlike the UN Human Rights Committee, the African Commission examines very few reports during each of its sessions. As envisage from the above picture, the Commission is examining only few reports during each of its sessions. This is because of its limited capacity of the commission to examine the reports accompanied with the fact that various other issues are dealt with the Commission in each session forces the commission to examine very few reports.

To be benefited fully from the advantages of the reporting procedure, the monitoring organ should have the required enough amount of time and money so as to examine all the reports at its disposal on time; otherwise the Commission's ability to examine few report adversely affect the human right protection in the continent.

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<sup>155</sup> See annex I, session considered.

<sup>156</sup> 27<sup>th</sup>.Activity Report, supra note 150

<sup>157</sup> Ibid

### **4.3 Challenges of the reporting system of Banjul Charter**

It is very clear that the reporting process under the African Charter faces challenges. The total lack of infrequency of reporting is not the only problem of the system of state reporting under Banjul Charter. Even when states have reported, the system often does not function very well. This is because states have often not followed the reporting guidelines, have provided incomplete or scant information have not been self-reflective and critical, the process is given in adequate publicity in municipal system.<sup>158</sup> As a result, one can say that the African reporting system is far from effectiveness in the protection of human right in Africa.

The factors inhibiting the effectiveness of the reporting mechanism under the Charter can be summarized below.

#### **1. Economic factor**

The preparation of state reporting requires the state to allocate adequate time, money and expertise on this field. States with strong and developed economy can easily afford the required amount of money to prepare the report and will have skilled persons that can skillfully assess the human right situation. As a result, these states can easily afforded the preparation coast of the report and make constructive dialogue with the Commission during examination of the report. But states having weak economy may not relatively afford the expense of the report or at least lack interest to spend money on the reporting process as many prior domestic affairs need a lot of expenses. The problem of non-submission and delay in submission of the African reporting system is partly emanate from economic strength of these African states as many of African states are of very weak economy. For example, Ethiopia made the consolidated report of the initial and periodic reports. However the report is made after the 10 years from the due time. This is, according to the government of Ethiopia, because of the inadequacy of resources. And

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<sup>158</sup>Viljoen ,supra note5 , P.111.

the report is made by the fund of external donations.<sup>159</sup>This can be one instance how lack of resource forced the African states to overdue their report.

## 2. Political instability

Political instability is the other factor that forces African states not fulfill their reporting obligation. When a state is engaged with continuous civil and international war; when there is in secure political system and when there is no peaceful transition of government let alone regional and international obligation, a state cannot fulfill its national obligation as a government towards its people. Political stability is highly connected with economic security. Once political security is achieved it is one step ahead towards economic security and economic security leads to regional and international cooperation. These facts enable states to fulfill their international and regional obligation and state reporting is one of such obligations. Most of African states following colonial periods engaged with continuous civil wars, and boarder disputes, as a result military coups and political instability characterized the post colonial Africa states. Still some states are politically instable or at least do not awake from their civil war hang hover. In this condition states will not have time, money and willingness to fulfill their reporting obligation and that is why most of African states fail to fulfill their reporting obligations. States such as Somalia, Sierra Leone, Liberia and Eritrea as stated above never submitted their repot to the commission. As these states were engaged in continuous intra and extra wars, they had no time and money to report to the commission.

## 3. Lack of Political willingness on the part of the states

Even when states are both economically and politically stable, they fail to adhere to its reporting obligation.<sup>160</sup> This can be because of lack of political willingness on the part of the state to fulfill international obligation. The success of a reporting system requires

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<sup>159</sup> Combined (Initial and Four Periodic) Report of Ethiopia to the African Commission on Human and Peoples' Rights, P.17, <http://www.achpr.org> (accessed on October 20).

<sup>160</sup> For example, Egypt and South Africa relatively with good economic and political stability still owe 2 overdue reports. (See annex I).

strong in-built control systems to encourage states to honor their reporting obligations, but there is also the need to develop in the member states a realization of the necessity, responsibility and benefits of reporting.<sup>161</sup> The irregular submission of reports are problems that the African Commission has always complained about and lack of political willingness on the part of the states is one factor for the problem and this problem emanates from the lack of effective implementation and enforcement mechanism and lack of political responsibility on the part of states to obey the Charter's rules on which they pledged themselves.

#### 4. The burden of multiple reporting

Almost all African states are parties to the six, already existing UN human right system, treaties which have their own reporting obligation. In addition to this, as stated above, under article 62 of the Banjul Charter, These states are obliged to report. As a result, most governments complain about the number of reports they are obligated to draft periodically to these treaty bodies. The burden of multiple reporting; thus, given reporting as resource oriented and as African states lack resources, created problem on African states to fulfill their obligation to report.

#### 5. Lack of uniformity in regard to the content of the reports

Another frequently encountered problem in the state reporting system has been the content of state reports. Lack of uniformity in regard to the content of the reports has been a persistent problem and one that needs remedying if the state reporting mechanism is to produce any meaningful results. The African Commission as discusses in chapter three, has tried to ameliorate the problem by issuing guidelines as to the contents of state reports<sup>162</sup>. However, these guidelines have not helped a great deal<sup>163</sup>. This is because of the lack of political willingness on the part of state to make their report according to the guideline.

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<sup>161</sup>Kofi, supra note 4, P.273.

<sup>162</sup> The guideline, supra note 129 and 131.

<sup>163</sup> Fekadeselassie, supra note 35,p. 67.

#### 6. Lack of seriousness on the part of the Commission during the reporting process

A brief historical overview demonstrates that the reporting obligations under the African Charter are not taken seriously by the Commission. Until its 46<sup>th</sup> session, as stated above, 22.6% of the state parties to the Charter never submitted their report and 49% of these states owe one or more reports. At each session, status of submission of state reports will be published. This is one strategy used, so far by the Commission in order to persuade the non reporting state to comply with its requirement. But the Commission did little more than reminding states to submit their reports.<sup>164</sup>

The Commission's manner of treating the reports has also come up for comment. In its Final Communiqué of the 11th ordinary session, for example, the Commission regretted the lack of conformity of state reports to the orders and questions put to them when they were compiling the report. Thereafter, instead of giving its recommendations, the Commission simply hailed the usefulness and appropriateness of the constructive dialogue which had developed between the Commission and the states concerned, and thanked the governments of the Arab Republic of Egypt and of Tanzania for their reports and for their willingness to co-operate with the Commission. No recommendations on the nature of the reports, nor on the substantive rights were given to serve as guides for other states. And also the conclusion on the Zimbabwean report, examined at the 21<sup>st</sup> ordinary session, just simplistically stated that 'after a fruitful debate, the Commission commended Zimbabwe for the good quality of the report'.<sup>165</sup> In a similar vein, the conclusion on the report presented by Sudan recited that the presentation was followed by a discussion of the report to examine the human rights situation in that country and its compliance with

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<sup>164</sup> Malstrom & G Oberleitner, 18th ordinary and 2nd extra-ordinary session of the African Commission on Human and Peoples' Rights Netherlands Quarterly of Human Rights, vol.14 (1996),P. 93.

<sup>165</sup> Final Communiqué of the 21st ordinary session of African Commission on Human and Peoples' Rights ACHPR/COMM/FIN (XI). <http://www.achpr.org> (accessed on October 20).

the provisions of the Charter. It has practically nothing of educational value in these conclusions for any state to benefit from.<sup>166</sup>

This lack of incisiveness in its conclusions and recommendations can lead to a reduction of the whole exercise into a rigmarole which the states would come to undertake just as a way of appeasing the Commission. If the whole reporting process and examination are not to be in vain, then 'it is absolutely crucial that the Commission starts to take the exercise more seriously'.<sup>167</sup>

#### 7. Lack of adequate time to consider state reports

It is known fact that, consideration of a state reports require adequate time. For example, the UN Human Rights Committee spends approximately a day and a half in reviewing initial reports.<sup>168</sup> But when we see the experience of the African commission, at each session the commission will have various agendas which cover protective, promotional and administrative matters, examination of state reporting is one. For this reason the commission usually lacks adequate time to consider the repots properly. For example, The African Commission at its 9th session in 1991 was recorded as having examined each report within a time period of one and a half hours. And also in other instance, the proceedings of the 18th ordinary session of the African Commission in 1995 shows that the agenda of the Commission at the session was very heavy; it covered protective, promotional and administrative matters; and all these were to be under-taken within a period of ten days.<sup>169</sup> This, apart from psychologically undermining the seriousness with which states parties may take the whole process, will not permit a thorough examination to be done. When reviews are reduced to only a few hours, the exercise becomes 'formulaic and ineffective'.<sup>170</sup>

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<sup>166</sup>Kofi, supra note 4, P. 277.

<sup>167</sup>Ibid.

<sup>168</sup> Malstrom, Supra note 164.

<sup>169</sup> Id, P. 93.

<sup>170</sup>Kofi , Supra note 4, P. 276.

#### 8. Absence of government representative while in consideration

Even though states made their report, sometimes, absence of government representatives during consideration of the report is the other problem that contributes on the ineffectiveness of the African reporting system. For example, the African Commission scheduled the examination of the report of South Africa during its 24<sup>th</sup> session. However, the report was not discussed at that occasion as no South African representative was present.<sup>171</sup> In another instance, out of four countries whose state reports under article 62 of the African Charter were scheduled to be examined during the 18th session, only Tunisia sent representatives. Mozambique, Mauritius and Seychelles failed to do so. Even when representatives are sent by states, they are often unable to provide the required information in response to questions from the Commission. Ghana was represented by its Charge d'Affairs in Ethiopia when the Commission examined her initial report in 1993. The lack of expertise of the representative warranted the Commission to 'urge the government of Ghana and its representative to submit in writing additional information and response to questions which could not be answered'.<sup>172</sup>

#### 9. Non-provision of state reports in all the approved languages

States may prepare the report by working languages of the AU including Arabic, English, French, and Portuguese<sup>173</sup>. However, for consideration of the report it must be prepared or translated by all the language to enable all kind of speakers understand the report. But non- provision of state reports in all approved languages is not uncommon in African reporting system and this fact also contributed its own negative impact on the effectiveness of reporting system of Africa.

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<sup>171</sup> Viljoen ,supra note5, p. 277.

<sup>172</sup> Kofi , Supra note 4.

<sup>173</sup> Rules of Procedures, supra note 119, rule 34.

In the examination of the Tunisian report, some shortcomings regarding the techniques applied by the Commission and the preparation of the discussion can be one instance. While the Tunisian report itself - the second the country has submitted to the Commission was of high quality, the same cannot be said of its examination. The rapporteur and the commissioners have not been provided with copies of Tunisia's first report or with minutes of its discussion and other relevant documents and background material. The English-speaking commissioners could hardly participate in the discussion, as no English translation of the report could be provided to them. The commissioners rather restricted themselves to listening to the presentation of the Tunisian delegate and to exchanging opinions than posing concrete questions of substance and criticizing governmental information or offering assistance and guidance for changes of the Tunisian legislation and administrative practice.<sup>174</sup> Also at the 21st ordinary session of the African Commission in 1997, the state reports of Sudan and Zimbabwe were available only in English, thus eliminating the non English-speaking commissioners from the examination process.<sup>175</sup>

#### 10. Budgetary constraints and secretarial problems

Some of the problems mentioned above, such as the lack of adequate time to consider state reports and non-provision of state reports in all the approved languages, are linked to budgetary constraints and the resulting lack of secretarial support. Problems of finance have contributed to the Commission's inability to keep up with the onerous duty of examination of the reports. If the principle of state reporting and periodic review is right, as has been repeatedly asserted, then the first step must be to allow to the Commission the time, resource and staff to deal effectively with the backlog.<sup>176</sup> There are consequences in terms of secretariat/personnel constraints; general constraints affecting

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<sup>174</sup> Kofi , Supra note 4, p.277.

<sup>175</sup> Ibid.

<sup>176</sup> J Crawford , The UN human rights treaty system: A system in crisis in P Alston & I Crawford (eds), The future of UN human rights treaty monitoring, (2000), p.6.

the effective functioning of the Commission, for example, limited periods of working sessions, inability to make documents available for circulation to those who need them, default in transcription and translation of reports; and the unavailability of easy access to modern communication technology. These problems exist at the UN level, but are more endemic at the African level. Financial allocations for the OAU/AU have often declined rather than increased. This, of course, can be attributed to the existent difficulty of the organization to recover the total amount of budget contributions from members.<sup>177</sup>

#### **4.4 State compliance with the recommendation of the Commission**

For the state reporting to bring the required tangible result, the compliance of states to the recommendation of the monitoring organs is crucial. The African commission gives its recommendation after examining the reports and at each session, status of submission of state reports will be published. This recommendation is one mechanism which the Commission communicates its position, on a given human right case, to the states concerned. As is provided under Art 45(2) of the Charter the commission issues recommendation to the states parties, which is different from decisions which would be binding to the state parties. However, very little is known about what state usually do in response to the Commission's recommendations. Again the Charter and rules of procedures of the Commission do not address the fate recommendations communicated to the state concerned. The Commission also does not have any follow up mechanisms or policy in place to monitor state compliance with its recommendations.

The practice of the Commission shows, the secretariat usually keeps on reminding the status to honour their obligations, under Art 1 of the Charter<sup>178</sup>. This is because the Commission does not have a clear mandate to take further action, by way of enforcing its decisions. The Commission has acknowledged that the lack of state compliance with its

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<sup>177</sup> Kofi, *Supra* note 4. p. 280.

<sup>178</sup> African Commission on Human and People's Rights, comm. Procedure, info sheet No 3, p.17 .

recommendations as “one of the major facts of the erosion of the Commission’s credibility”<sup>179</sup>. Thus compliance relies on the good will of member states.

#### **4.5. The role of the African Union in the Charter’s reporting system**

The African Charter was adopted by OAU Member States ‘firmly convinced of their duty to promote and protect human and peoples’ rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa’.<sup>180</sup> As its parent body, therefore, the AU has an obligation to ensure the implementation of the provisions of the Charter. Unfortunately, minimal efforts have hitherto been made to ensure meaningful implementation of these obligations by the AU.<sup>181</sup>

As with the European and UN human rights mechanisms, the ACHPR and its Commissions are established under the auspices of a political body, the OAU/AU. The Commission’s effectiveness in promoting and protecting human rights therefore depends, to a certain extent on whether the necessary support is provided by the AU. However, unlike in the UN and European reporting systems, the AU as the main political organ of the African human rights system has not been actively involved in the African Charter reporting system.<sup>182</sup> The failure of the AU to seriously provide the African Commission with the necessary support it needs to effectively carry out its state reporting mandate is clearly compounding the problems that the system is already facing. The AU needs to draw a lesson from the general integration and coordination approach of the UN and European systems. It needs to become more actively involved in the reporting system<sup>183</sup>. Arguably, the African Commission needs a greater level of coordination with the AU compared to the coordination between the other treaty monitoring bodies of the UN and

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<sup>179</sup> 11<sup>th</sup> Annual activity report in Nov/1997-98/, ACHPR, 22<sup>nd</sup> – 23<sup>rd</sup> ordinary session, Para. 38, OAU Doc. Doc/05/43(XXII).

<sup>180</sup> Banjul Charter, Preamble.

<sup>181</sup> R Murray, Human rights in Africa: From the OAU to the African Union, (2004), P.60-61.

<sup>182</sup> Id, P.72

<sup>183</sup> Ibid.

European systems, and their respective systems' main political bodies. This is because compared to the other monitoring bodies, the African Commission has a broader mandate, the largest number of states to deal with,<sup>184</sup> and less economic resources, all compounded by the fact that the reporting problems under the African Charter are more endemic than in the other systems. The legal framework of the African system provides ample opportunity for the active involvement of the AU, its organs and related programs in the state reporting process. First, article 45(1)(c) of the African Charter makes provision for the Commission, in its functions, to 'cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights'. As Kofi Quashigah observes,<sup>185</sup> a liberal interpretation of this article should be enough to give authority to the Commission to involve the various organs and agencies of the AU. In addition, the Rules of Procedure of the African Commission have a provision similar to that found in the UN human rights treaties for the involvement of 'specialized institutions' in the reporting process.<sup>186</sup>

#### **4.6. New initiatives to fill the gap of state reporting under Banjul Charter in protection and promotion of human rights**

In spite of the fact that different controlling mechanisms are devised by the Charter, state reporting is one, virtually all African states have been and continue to be the most egregious human rights violators, rendering human rights illusory in the daily lives of the majority of people in Africa<sup>187</sup>. Changes in some African states have created room for optimism; however, generally human rights conditions remain critically precarious on the continent.<sup>188</sup> Even within largely 'democratic' or 'liberal' African states, governments have acted and continue to act in ways antithetical to their international human rights

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<sup>184</sup> I Osterdahl, *Implementing human rights in Africa*, (2002), P. 28-29.

<sup>185</sup> Kofi, *supra* note 4, p. 269.

<sup>186</sup> Rules of Procedure, *supra* note 119, rule 82.

<sup>187</sup> George William Mugwanya, *Examination of state reports by the African Commission: A critical appraisal*, *African Human Rights Law Journal*, (2001), p.268.

<sup>188</sup> *Ibid.*

obligations. This perennial state of affairs continues to illuminate the challenge of the African regional human rights system<sup>189</sup>

The reporting system of Africa, as said earlier, have pitfall to bring real change on the protection of human rights of the people of the continent. And even the communication procedure<sup>190</sup> of the Banjul Charter by itself is not free from problem to enhance human right situation in the continent. Thus, besides the strengthening of the reporting system so as to enable states and individuals from the benefit of state reporting as a mechanism, the system should be supplemented by other mechanism. The African Peer Review Mechanism (APRM) and the recent addition to the African human rights system, i.e., the African Court of Human Rights, having a mandate to receive individual communications and decide on whether states have infringed rights contained in the Banjul Charter.

#### **4.6.1. The African Court on Human and Peoples' Rights**

The African Court on Human and Peoples' Rights (African Court) was established by a Protocol to the African Charter on Human and Peoples' Rights, which was adopted by Member States of the then Organization of African Unity in Ouagadougou, Burkina Faso in June 1998. The Protocol entered into force in January 2004. Until 2010, only twenty-five states have ratified the Protocol. These Member States are: Algeria, Burkina Faso,

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<sup>189</sup> Ibid.

<sup>190</sup> The African Charter's protective ambit (or 'communications procedure') comprises two main procedures: the inter-State and individual communications procedures. So far, the African Commission has dealt almost exclusively with individual communications, The African Commission has not received many interstate complaints. The only viable complaint has been just one which is the first inter-State communication being published in July 2006 as part of its Twentieth Activity Report. African states do not seem to want to point fingers at each other. The individual compliant mechanism of the Charter is also not free from problems. The main problem is that when dealing with the merits of the case, the mandate of the African Commission is very weak. The ultimate power of the African Commission is limited to making a recommendation to the Assembly of the Heads of States and Government. It does not have any credible enforcement mechanism. It has not developed any follow-up procedure to monitor states' compliance with its decisions.

Burundi, Côte d'Ivoire, Comoros, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda.<sup>191</sup>

The African Court started its operations in Addis Ababa, Ethiopia in November 2006 but moved to its permanent seat in Arusha, Tanzania in August 2007. The Court has since its establishment held eleventh ordinary sessions and one extraordinary session. One of the challenges of the African Court in its initial stages was to complete its operationalization process. In total, the African Court will have 57 members of staff including the judges<sup>192</sup>. The President of the African Court is resident at the seat of the African Court whereas the other ten (10) judges work on a part-time basis.<sup>193</sup>

The Court has the competence to take final and binding decisions on human rights violations perpetrated by AU Member States. The competence of the African Court is based on its jurisdiction and the law that it will apply when exercising this jurisdiction.<sup>194</sup>

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<sup>191</sup><http://www.african-court.org/en/court/history/> (accessed on October 20).

<sup>192</sup>The Court consists of eleven judges who are nationals of Member States of the African Union. According to Article 11 to 14 of the Protocol they are elected by secret ballot by the Assembly of the Heads of State of the African Union from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights. The election was also based on equitable representation of the five major African regions, and major legal systems and jurisdictions. Accordingly, The first judges of the African Court were elected, in January 2006, in Khartoum, the Sudan, who were later sworn in before the Assembly of Heads of State and Government on 2 July 2006, in Banjul, the Gambia. In July 2008, the Executive Council of the African Union and the Assembly of Heads of State and Government during the Thirteenth and Eleventh Sessions of the African Union respectively, re-elected and re-appointed two judges whose terms had elapsed and were up for re-election. Two new judges were also elected and appointed.

<sup>193</sup>Supra note 187.

<sup>194</sup> Ibid

The Court was established to 'complement' the protective mandate of the African Commission<sup>195</sup> and it exercises contentious, advisory and conciliatory jurisdiction.

The Court may, as part of its advisory jurisdiction, at the request of a Member State of the African Union, any of the organs of the AU, or any African organization recognized by the AU, provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the African Commission<sup>196</sup>

The Court, by its contentious jurisdiction, can deal with all cases and disputes submitted to it concerning interpretation and application of the Charter, the Court's Protocol and any other relevant human rights instrument ratified by the States concerned<sup>197</sup>. The Court also has jurisdiction to promote amicable settlement in cases pending before it in accordance with the provisions of the Charter<sup>198</sup>. In addition, the Court has the jurisdiction to interpret a judgment it has rendered and can also review its own judgment in light of new evidence.<sup>199</sup>

The Court shall apply the provisions of the Charter and any other relevant human rights instruments ratified by the states concerned in a particular case<sup>200</sup>. The Charter provides that the sources of law that apply for the monitoring of the implementation of the Charter are international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, now the Constitutive Act of

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<sup>195</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998/2004), Art. 2.

<sup>196</sup> Id, Article 4(1).

<sup>197</sup> Id, Art.3.

<sup>198</sup> Id, Art.9.

<sup>199</sup> Id, Art.28 (3 and 4).

<sup>200</sup> Id, Art.7.

the AU, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the Charter are members.<sup>201</sup>

The Court's relationship with the African Commission on Human and Peoples' Rights is determined by Article 2 of the Protocol Establishing the Court, which states that the Court shall complement the protective mandate of the African Commission on Human and Peoples' Rights. The Protocol elaborates on this collaboration between the two institutions by stating that the Commission is entitled to submit to the Court cases of alleged human rights violations; that the Court may request the opinion of the Commission or transfer cases to it; that the Court shall in its Rules lay down detailed conditions under which it shall consider cases brought before it, bearing in mind the complementarity between the Commission and the Court; and that the Court shall consult the Commission as appropriate on issues of procedure. This therefore means that the two institutions must harmonize their respective Rules to avoid contradictions and to ensure consistency of the two texts.

The creation of the Court could serve to strengthen the African regional system. Without courts, the European would have had little chance to affect their societies in the way that they have.<sup>202</sup> At the same time, care should be taken to ensure that the African Human Rights Court does not undermine the African Commission, either by weakening its budget or by making the Commission irrelevant. Africa needs a fully functioning Commission as well as a Human Rights Court.<sup>203</sup>

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<sup>201</sup>Supra note 195.

<sup>202</sup> Christof Heyns, The African regional human rights system: In need of reform? African Human Rights Journal, Vol. 1, No. 2 (2001), p.170.

<sup>203</sup> Ibid.

The Commission plays a great role in protection of human rights of individuals via the court. The Protocol grants the Commission (and state actors) access to the Court, presumably after the Commission has heard the case in question.<sup>204</sup> This is an automatic consequence of the ratification of the Protocol. Access by individuals to the Court is provided for in article 5(3) in the following terms: The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Article 34(6) of this Protocol. According to article 34(6) states may make a declaration accepting the competence of the Court to receive such cases.<sup>205</sup>

The Commission role in the court system and the capacity of individuals to institute cases directly fills the gap in the reporting system as a result, the systems together benefits African peoples in their human right protection.

#### **4.6.2. The African Peer Review Mechanism (APRM)**

The African Peer Review Mechanism (APRM) is a mutually agreed instrument voluntarily acceded to by the Member States of the African Union as an African self-monitoring mechanism.<sup>206</sup> The APRM is a bold, unique and innovative approach designed and implemented by Africans for Africa. The Mechanism aims to put in motion a strategic re-orientation towards the validation of universal as well as African values and accelerate the process of intra-African cooperation and integration.<sup>207</sup> Without doubt, the APRM therefore is a key driver of African renaissance and rebirth, and is a centre piece of the New Partnership for Africa's Development (NEPAD)<sup>208</sup> process for the socio-

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<sup>204</sup>The protocol, supra note 191 , Art. 5(1)

<sup>205</sup>Christof, Supra note ,p.202.

<sup>206</sup> <http://www.nepad.org> (accessed in October,2010).

<sup>207</sup> Ibid.

<sup>208</sup> The NEPAD strategic framework document arises from a mandate given to the five initiating Heads of State (Algeria, Egypt, Nigeria, Senegal, South Africa) by the Organization of African Unity (OAU) to

economic development of Africa. Its mandate is to ensure that the policies and practices of participating countries conform to the agreed values in the following four focus areas: democracy and political governance; economic governance; corporate governance; and socio-economic development.<sup>209</sup> The APR process entails periodic reviews of the policies and practices of participating countries to ascertain progress being made towards achieving the mutually agreed goals and compliance in the four focus areas. National ownership and leadership by the participating country are essential factors underpinning the effectiveness of the APRM. The process is designed to be open and participatory. The APRM is also guided by the principles of transparency, accountability, technical competence, credibility and is free from manipulation. The review process is not meant to exclude or punish countries. There is no conditionality attached to the Mechanism.<sup>210</sup>

The APRM is a new, unique and flexible instrument which has the potential to coordinate with various African human rights bodies in resolving the numerous problems afflicting the system. Therefore, through the APRM, the AU has the opportunity to improve different aspects of the African human rights system one of these aspects, is state reporting.

The APRM and the African Commission operate in the realm of the African human rights system which is, to a large extent, a creation of the OAU/AU. The APRM through NEPAD is an initiative of the OAU/AU and so is the African Charter which establishes the African Commission as it is established by article 30 of the Charter. The APRM has a

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develop an integrated socio-economic development framework for Africa. The 37th Summit of the OAU in July 2001 formally adopted the strategic framework document. NEPAD is designed to address the current challenges facing the African continent. Issues such as the escalating poverty levels, underdevelopment and the continued marginalization of Africa needed a new radical intervention, spearheaded by African leaders, to develop a new Vision that would guarantee Africa's Renewal.

<sup>209</sup> Supra note 206.

<sup>210</sup> Ravi Kanbur, The African Peer Review Mechanism (APRM): An Assessment of Concept and Design, [www.people.cornell.edu/pages/sk145](http://www.people.cornell.edu/pages/sk145), January, 2004.

mandate to ensure implementation of human rights standards by participating states (who are also AU members) as provided for under the Declaration on Democracy, Political and Corporate Governance (DDPECG).<sup>211</sup> The African Charter establishes the human rights mandate of the African Commission to include ensuring ‘the protection of human and peoples’ rights under conditions laid down by the present Charter.’<sup>212</sup> The APRM and the African Commission both have a specific mandate to review the relevant members’ implementation of the African Charter. Under the APRM, as part of the review process, participating states are required to outline legislative, policy or institutional frameworks that have been put in place to implement the African Charter<sup>213</sup>, and also to ‘outline the challenges experienced and the steps taken to address shortfalls and capacity constraints.’<sup>214</sup> This review is to be conducted every two to four years.<sup>215</sup> Similarly, as per article 62 of the Charter, each state party to the African Charter is obliged to submit to the African Commission every two years ‘a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter.’ This shows that the APRM and the African Commission have a common mandate in terms of review of the relevant member states’ implementation of the African Charter. This common mandate also relates to the fact that the same group of states are subject to review by both the APRM and the African Commission. This common mandate can be used as a spring board for the coordination in state reporting between the two structures.

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<sup>211</sup> APRM Base Document, para 2 read together with paras 7-15 of the DDPECG), the section on ‘Democracy and good political governance.

<sup>212</sup> Banjul Charter, article 45(2).

<sup>213</sup> Country Self-assessment for the APRM, paras 2.2 and 3(iii).

<sup>214</sup> Id, para 3(iv).

<sup>215</sup> Although three other periods are provided for, 2 to 4 years is the regular one. APRM Base Document, para 14.

## **Chapter Five**

### **Conclusion and Recommendations**

#### **5.1 Conclusion**

In response to the tragedy events of the two world wars, the international community determined to introduce in to international law new concepts designed to prevent the re-occurrence of such events in the future and the protection of human rights. The means adopted were the establishment of new inter Governmental organizations such as the UN and introduction of Human right documents aimed to protect individual human rights. As a result following the UDHR, various International and regional bill of rights was adopted. To make sure the implementation of these human right instruments at the domestic level and to enable individuals to be the beneficiaries, the instruments themselves include monitoring mechanisms. The most basic of all of these mechanisms is that of state reporting. Under each of these treaties, states parties undertake to submit reports to the treaty bodies explaining the progress made and problems encountered in implementing treaty obligations.<sup>216</sup>

State reporting as a mechanism has various role in the general promotion and protection of human rights. This is done as it provides an opportunity for an individual state party to conduct a comprehensive review of the measures it has taken to bring its national law and policy into line with the provisions of the treaties to which it is a party; the preparation of reports provides a platform for national dialogue on human rights amongst the various stakeholders in a state party. It also encourages and facilitates public scrutiny at the national level of government approaches to implementation and stimulates constructive discussion with civil society of to advance the enjoyment by all of the rights laid down in the various conventions and Consideration of the reports by treaty supervisory bodies, through constructive dialogue with state parties, allows individual states and states as a

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<sup>216</sup> Evans and Murray, *supra* note 29.

whole to exchange experiences on the problems faced in implementation of the instruments, and good practices that facilitate enhanced implementation. It also allows for international scrutiny, which underlines states' responsibility and accountability for human rights protection.<sup>217</sup> It also helps the examining body to identify recurring problems with states' compliance and devise possible remedies.<sup>218</sup>

State reporting is found in all the principal UN human rights treaties and most of regional human right treaties and, indeed, is the only procedure that is compulsory in all instruments.

The African system for the promotion and protection of human rights is the most recent, having its origins in the early 1980s. The system is based primarily on the African Charter on Human and Peoples' Rights, also known as the Banjul Charter (African Charter or Charter). It was designed to function within the institutional framework of the then Organization of African Unity (OAU), The OAU has since been replaced by the African Union (AU), but it is important to note that the new AU recognizes the African Charter.

Under Article 62 ACHPR, member states are obliged to submit reports every two years on legislative and other measures they adopted in order to give effect to the provisions of the African Charter. The African Charter failed in Article 62 to identify the organ competent to review these reports. In order to remedy this situation, the African Commission adopted a resolution at its third session requesting the OAU Assembly to allow it to review state reports. The request was approved by the OAU Assembly, and the state reports are now presented to the African Commission for examination.

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<sup>217</sup> Concept paper, supra note 37.

<sup>218</sup> Fekadeselassie, supra note 35, P. 34.

In order to assist the states in their reporting, the Commission at its 4th ordinary session in October 1991 adopted the 'General Guidelines for National Periodic Reports'<sup>219</sup>

When we see the status of submission and presentation of the Periodic Reports of States at the 46th Ordinary Session of the African Commission, until this time, no State strictly abides by the reporting obligation of the Charter. Until May 2010, out of 53 states which ratified the Charter, 12 states, which amount to 22.6%, never submitted report to the Commission so far.

The Reporting mechanism of the African system has become ineffective to bring tangible change on the protection and promotion of human rights in the continent as expected because of the challenges envisaged in the system. The problems of infrequent and inadequate reporting are major challenge to the reporting system under the African Charter. The effectiveness of the African Commission as the body mandated to examine states on their implementation of the Charter has been adversely affected due to these problems.

Infrequent and inadequate reporting which the African system is facing occurred due to various factors including: economic factor, political instability, lack of political willingness on the part of the states, the burden of multiple reporting, lack of uniformity in regard to the content of the reports and lack of seriousness on the part of the Commission. In addition, the general ineffectiveness of state reporting in Africa is also attributed to: absence of government representative during consideration of the report, non-provision of state reports in all the approved languages, unwillingness of states to comply with the recommendation of the commission, and budgetary constraints and

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<sup>219</sup> Guidelines for National Periodic Reports, Second Annual Activity Report of the African Commission on Human and Peoples' Rights 1988–1989, ACHPR/RPT/2nd, (Murray and Evans (eds.)), Documents of the African Commission,

secretarial problems of the commission and Lack of adequate time to consider state reports.

These all pitfalls of the reporting system in African human system can also be linked to the AU. Although the reporting system is part of the African human rights system as a whole, the African Commission has not received active assistance from the AU, its organs or structures in trying to resolve infrequent and inadequate reporting. A comparative analysis of other international and regional reporting systems has shown that they have made progress in addressing similar problems and those specific to their relevant systems through active participation of political organs and their structures in the reporting system.

## **5.2 Recommendations**

It is undeniable fact that state reporting as one monitoring mechanism has a great role in the protection and promotion of human rights in Africa but owing to the various problems inherent in the African human right system, the system should be strengthened as it is and should be supplemented with other mechanisms to fulfill its pitfalls as a result to realize protection and promotion of human rights in the continent in full.

Therefore, this paper recommends the following:

Economy and political instability as said earlier are factors that put their shadow on the reporting obligation of states. Therefore, African states, in cooperation with the international community, regional and sub regional organization, should do a lot to solve their economic and political problems. The role of AU in these areas is vital in solving inter and intra conflicts and in finding external helps to strengthen the economy of member states.

To avoid the burden of multiple reporting, states should be allowed and encouraged to use information used in other UN and regional reports. This reduces the unwillingness of the states to make reports to the Commission.

The Commission should be equipped with the necessary office, fund and personnel. And it also should be given adequate time to consider state reports. It also should be empowered to produce and adopt a country report in lieu of an absent state reporting. The assumption is that it would prompt states to submit reports on time to avoid the harassment of being subjected to country reporting. The preparation of such country reports can benefit a great deal from the participation of local NGOs, which are playing a lesser role in the state reporting system by providing “shadow” reports that the African Commission utilizes when it examines states reports. The production of country reports instead of the expected state reports serve as a disincentive to failure to report or delay in reporting.

Another problem area relates to the presentation of reports to the African Commission. The practice indicates that states mostly do not send a representative at all, or even when they do, they do not send a person with appropriate rank and authority to speak for the government on all issues. This problem can be addressed by fixing the level of rank of the person representing the state in front of the African Commission and taking any default in this regard as a complete non-submission of report and thus should prompt the African Commission to adopt a country report.

International organizations that work on monetary areas such as, the International Monetary Fund, the World Bank and the African Development Bank make policy decisions affecting African states and can play a large role in overseeing human rights situations in Africa. As a result, The African Commission should devise a mechanism to notify the state reports and its final recommendation to these institutions because this publicity gives these international institutions some relevant information they need to

make policy decisions towards aid recipient states. These reports certainly enhance their ability to make policy decisions. The advantage of notifying to these institutions is that African states, for fear of adverse decisions against them by these monetary institutions, would report on time and most importantly would earnestly try to improve human rights situations in their jurisdiction.

Besides the strengthening of the reporting system and the performance of the Commission, the system in general and the Commission in particular should be supplemented by the active involvement of the AU, APRM and court system in order to fill its pitfall .

Under UN and European System political organs and their structures have taken an active part in their respective reporting systems in order to resolve standard reporting problems like infrequent and inadequate reporting and other problems specific to their systems. The AU therefore, needs to draw a lesson from the general integration and coordination approach of the UN and European. It needs to become more actively involved in the reporting system. In doing so, first, it enhances the capacity of the Commission in budgetary and necessary staff to enable the commission effectively examine the reports in its disposal and forces states to fulfill their due reporting obligation.

APRM, a structure within the ambit of the AU, constitutes processes that can be used to help the African Commission address the problems of infrequent and inadequate reporting. As stated above, the APRM and the African Commission have a common mandate in terms of review of the African Charter and the countries subject to review. This could facilitate coordination between the two more quickly and effectively. The coordination between the APRM and African Commission is encouraging as accessions to the APRM are growing steadily such that it can be envisaged that more African countries will be subject to this arrangement. Therefore, facilitating the coordination

between the APRM and the African Commission through solves some of the problems of state reporting inherent in African system.

The court system is one of the mechanisms which have a great role in the protection of individual rights. As a result the creation of the African Court on Human and peoples' rights could serve to strengthen the African regional system. Without courts, as explained elsewhere, the European would have had little chance to affect their societies in the way that they have. The African Court has advantage in solving the very argument of the justice ability of socio-economic right as both sets of rights are found together in the Banjul charter. Therefore, the court should be strengthened and should involve itself in the system. At the same time, as said elsewhere, care should be taken to ensure that the African Human Rights Court does not undermine the African Commission, either by weakening its budget or by making the Commission irrelevant. Africa needs a fully functioning Commission as well as a Human Rights Court.<sup>220</sup>

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<sup>220</sup> Christof, Supra note 198,p.170.

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2. International Covenant on Economic Social and Cultural Rights (1966/76)
3. UN Charter (1945)
4. Vienna Declaration and Programme of Action (1993)

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1. African Charter on Human and Peoples' Rights (1981/86)
2. European Convention on the Protection of Human Rights and Fundamental Freedoms (1950/53)
3. European Social Charter (1961/65)
4. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998/2004)

# Annex

# Annex I

STATUS ON SUBMISSION OF STATE INITIAL/PERIODIC

REPORTS TO THE AFRICAN COMMISSION

(Updated: May 2010)

NO.	COUNTRY	NUMBER OF REPORTS SUBMITTED	DATE SUBMITTED	SESSION CONSIDERED	DATE OF CHARTER RATIFICATION	DATE WHEN THE REPORTS ARE DUE
1.	<b>Algeria</b>	<b>3</b>	1st Report, October 1995 (combining 1989 - 1995 overdue reports).  2nd Report, December 2000 (combining 1998 - 2000)  3rd Report, September 2006 (combining 2003/2005 overdue reports)	1st Report, April 1996 (19th Ordinary Session).  2nd Report, April 2001 (29th Ordinary Session).  3rd Report, November 2007 (42nd Ordinary Session.)	01/03/1987	1st Report: 01/03/1989 2nd Report: 01/03/1991 3rd Report: 01/03/1993 4th Report: 01/03/1998 5th Report: 01/03/2000 6th Report: 01/03/2003 7th Report: 01/03/2005 8th Report: 01/03/2007 9th Report: 01/03/2009
2.	<b>Angola</b>	1	1st Report, October 1998 (combining 1992 -1998 overdue reports)	24th Ordinary Session	02/03/1990	1st Report: 02/03/1992 2nd Report: 02/03/1994 3rd Report: 02/03/1996 4th Report: 02/03/2000 5th Report: 02/03/2002 6th Report: 02/03/2004 7th report: 02/03/2006 8th report 02/03/2008
3.	<b>Benin</b>	2	1st Report, February 1993  2nd Report, May 2000  3rd Report,	1st Report, October 1994 (16th Ordinary Session)  2nd Report, October 2000	20/01/1986	1st Report: 20/01/1988 2nd Report: 20/01/1990 3rd Report: 20/01/1992 4th Report: 20/01/1996 5th Report: 20/01/1998 6th Report: 20/01/2000 7th Report: 20/01/2002 8th Report: 20/01/2004

				(28th Ordinary Session)  3rd Report, May 2009 (45th Ordinary Session)		9 <sup>th</sup> Report 02/03/2006 10 <sup>th</sup> Report 02/03/2008
4.	<b>Botswana</b>	-	Initial/1st Report, 2008	Initial Report (46th Ordinary Session)	17/07/1986	1st Report: 17/07/1988 2nd Report: 17/07/1990 3rd Report: 17/07/1992 4th Report: 17/07/1994 5th Report: 17/07/1996 6th Report: 17/07/1998 7th Report: 17/07/2000 8th Report: 17/07/2002 9th Report: 17/07/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
5.	<b>Burkina Faso</b>	2	1st Report, October 1998 (combining 1988 - 1999 overdue reports)  2nd Report, August 2004 (combining all overdue reports)	1st Report, May 1999 (25th Ordinary Session)  2nd Report, May 2004 (35th Ordinary Session).	06/07/1984	1st Report: 06/07/1988 2nd Report: 06/07/1990 3rd Report: 06/07/1992 4th Report: 06/07/1994 5th Report: 06/07/1996 6th Report: 06/07/1998 7th Report: 06/07/2001 8th Report: 06/07/2003 9 <sup>th</sup> Report 02/03/2005 10 <sup>th</sup> Report 02/03/2007 11 <sup>th</sup> Report 02/03/2009
6.	<b>Burundi</b>	1	1st Report, March 2000 (combining 1991 - 1999 overdue reports)	1st Report, April/May 2000 (27th Ordinary Session).	28/07/1989	1st Report: 28/07/1991 2nd Report: 28/07/1993 3rd Report: 28/07/1995 4th Report: 28/07/1997 5th Report: 28/07/1999 6th Report: 28/07/2002 7th Report: 28/07/2004 8 <sup>th</sup> Report 02/03/2006 9 <sup>th</sup> Report 02/03/2008

	<b>Cameroon</b>	2	1st Report, October 2001 (combining all overdue reports in 1991) 2nd Report, December 2005 (combining the 7th and 8th reports) 3rd Report,	1st Report, May 2002 (31st Ordinary Session) 2nd Report, October 2006 (39th Ordinary Session). 3rd Report (47th Ordinary Session)	20/06/1989	1st Report: 20/06/1991 2nd Report: 20/06/1993 3rd Report: 20/06/1995 4th Report: 20/06/1997 5th Report: 20/06/1999 6th Report: 20/06/2001 7th Report: 20/06/2003 8 <sup>th</sup> Report 02/03/2005 9 <sup>th</sup> Report 02/03/2007 10 <sup>th</sup> Report 02/03/2009
8.	<b>Cape Verde</b>	1	1st Report, February 1992 (combining all overdue reports since 1991)	1st Report, October 1996 (20th Ordinary Session)	02/06/1987	1st Report: 02/06/1989 2nd Report: 02/06/1991 3rd Report: 02/06/1993 4th Report: 02/06/1995 5th Report: 02/06/1998 6th Report: 02/06/2000 7th Report: 02/06/2002 8th Report: 02/06/2004 9 <sup>th</sup> Report 02/03/2006 10 <sup>th</sup> Report 02/03/2008
9.	<b>Central African Republic</b>	1	1st Report, January 2006 (combining all overdue reports since 1988)	1st Report, May 2006 (39th Ordinary Session).	26/04/1986	1st Report: 26/04/1988 2nd Report: 26/04/1990 3rd Report: 26/04/1992 4th Report: 26/04/1994 5th Report: 26/04/1996 6th Report: 26/04/1998 7th Report: 26/04/2000 8th Report: 26/04/2002 9th Report: 26/04/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
10.	<b>Chad</b>	1	1st Report, August 1997 (combining 1988 - 1999 overdue reports)	1st Report, May 1999 (25th Ordinary Session)	09/10/1986	1st Report: 09/10/1988 2nd Report: 09/10/1990 3rd Report: 09/10/1992 4th Report: 09/10/1994 5th Report: 09/10/1996 6th Report: 09/10/1998 7th Report: 09/10/2001

						8th Report: 09/10/2003 9th Report 02/03/2005 10th Report 02/03/2007 11th Report 02/03/2009
1.	<b>Comoros</b>	-	-	-	01/06/1986	1st Report: 01/06/1988 2nd Report: 01/06/1990 3rd Report: 01/06/1992 4th Report: 01/06/1994 5th Report: 01/06/1996 6th Report: 01/06/1998 7th Report: 01/06/2000 8th Report: 01/06/2002 9th Report: 01/06/2004 10th Report 02/03/2006 11th Report 02/03/2008
2.	<b>Congo (Rep.)</b>	1	1st Report, February 2001 (combining all over due reports since 1989)  2nd Report, 2008	1st Report, April 2001 (29th Ordinary Session)  2nd Report (46th Ordinary Session),	09/12/1982	1st Report: 09/12/1988 2nd Report: 09/12/1990 3rd Report: 09/12/1992 4th Report: 09/12/1994 5th Report: 09/12/1996 6th Report: 09/12/1998 7th Report: 09/12/2000 8th Report: 09/12/2003 9th Report 02/03/2005 10th Report 02/03/2007 11th Report 02/03/2009
3.	<b>Cote D'Ivoire</b>	-	-	-	20/07/1987	1st Report: 20/07/1989 2nd Report: 20/07/1991 3rd Report: 20/07/1993 4th Report: 20/07/1995 5th Report: 20/07/1997 6th Report: 20/07/1999 7th Report: 20/07/2001 8th Report: 20/07/2003 9th Report 02/03/2005 10th Report 02/03/2007 11th Report 02/03/2009
4.	<b>Democratic Republic of Congo</b>	2	1st Report, May 2002 (combining all overdue reports since 1989)	1st Report, November 2003 (34th Ordinary Session).  2nd Report (scheduled for consideration at the 43rd Ordinary Session)	06/01/1992	1st Report: 06/01/1994 2nd Report: 06/01/1996 3rd Report: 06/01/1998 4th Report: 06/01/2000 5th Report: 06/01/2002 6th Report: 06/01/2004

						7 <sup>th</sup> Report 02/03/2006 8 <sup>th</sup> Report 02/03/2008
5.	<b>Djibouti</b>	-	-	-	11/11/1991	1st Report: 11/11/1993 2nd Report: 11/11/1995 3rd Report: 11/11/1997 4th Report: 11/11/1999 5th Report: 11/11/2001 6th Report: 11/11/2003 7 <sup>th</sup> Report 02/03/2005 8 <sup>th</sup> Report 02/03/2007 9 <sup>th</sup> Report 02/03/2009
6.	<b>Egypt</b>	3	1st Report, March 1991  2nd Report, May 2000 (combining all overdue report since 1994)  3rd Report, December 2004	1st Report, March 1992 (11th Ordinary Session)  2nd Report, October 2000 (29th Ordinary Session)  3rd Report, May 2005 (37th Ordinary Session).	20/03/1984	1st Report: 20/03/1988 2nd Report: 20/03/1990 3rd Report: 20/03/1992 4th Report: 20/03/1994 5th Report: 20/03/1996 6th Report: 20/03/1998 7th Report: 20/03/2000 8th Report: 20/03/2002 9th Report: 20/03/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
7.	<b>Equatorial Guinea</b>	-	-	-	07/04/1986	1st Report: 07/04/1988 2nd Report: 07/04/1990 3rd Report: 07/04/1992 4th Report: 07/04/1994 5th Report: 07/04/1996 6th Report: 07/04/1998 7th Report: 07/04/2000 8th Report: 07/04/2002 9th Report: 07/04/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
8.	<b>Ethiopia</b>	1	Initial Report	Initial Report (46th Ordinary Session)	16/06/1998	1st Report: 16/06/2000 2nd Report: 16/06/2002 3rd Report: 16/06/2004 4 <sup>th</sup> Report 02/03/2006 5 <sup>th</sup> Report 02/03/2008
9.	<b>Eritrea</b>	-	-	-	14/01/1999	1st Report: 14/01/2001 2nd Report: 14/01/2003 3rd Report: 14/01/2005

						4 <sup>th</sup> Report 02/03/2007 5 <sup>th</sup> Report 02/03/2009
0.	<b>Gabon</b>	-	-	-	20/02/1986	1st Report: 20/02/1988 2nd Report: 20/02/1990 3rd Report: 20/02/1992 4th Report: 20/02/1994 5th Report: 20/02/1996 6th Report: 20/02/1998 7th Report: 20/02/2000 8th Report: 20/02/2002 9th Report: 20/02/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
1.	<b>The Gambia</b>	2	1st Report, March 1992 2nd Report, October 1994	1st Report, October 1992 (12th Ordinary Session) 2nd Report, October 1994 (16th Ordinary Session)	08/06/1983	1st Report: 08/06/1988 2nd Report: 08/06/1990 3rd Report: 08/06/1992 4th Report: 08/06/1994 5th Report: 08/06/1996 6th Report: 08/06/1998 7th Report: 08/06/2000 8th Report: 08/06/2002 9th Report: 08/06/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
2.	<b>Ghana</b>	2	1st Report, September 1992 2nd Report, March 2000 (combining 1995, 1997 and 1999 overdue reports)	1st Report, December 1993 (14th Ordinary Session) 2nd Report, April 2001 (29th Ordinary Session)	24/01/1989	1st Report: 24/01/1991 2nd Report: 24/01/1993 3rd Report: 24/01/1995 4th Report: 24/01/1997 5th Report: 24/01/1999 6th Report: 24/01/2003 7th Report: 24/01/2005 8 <sup>th</sup> Report 02/03/2007 9 <sup>th</sup> Report 02/03/2009
3.	<b>Guinea (Rep.)</b>	1	1st Report, October 1997 (combining 1988 - 1998 overdue reports)	1st Report, April 1998 (23rd Ordinary Session)	16/02/1982	1st Report: 16/02/1988 2nd Report: 16/02/1990 3rd Report: 16/02/1992 4th Report: 16/02/1994 5th Report: 16/02/1996 6th Report: 16/02/1998 7th Report: 16/02/2000 8th Report: 16/02/2002 9th Report: 20/02/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008

4.	<b>Guinea-Bissau</b>	-	-	-	04/12/1985	1st Report: 04/12/1988 2nd Report: 04/12/1990 3rd Report: 04/12/1992 4th Report: 04/12/1994 5th Report: 04/12/1996 6th Report: 04/12/1998 7th Report: 04/12/2000 8th Report: 04/12/2002 9th Report: 04/12/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
5.	<b>Kenya</b>	1	1st Report, September 2006 (combining all overdue reports)	1st Report, May 2007 (41st Ordinary Session).	23/01/1992	1st Report: 23/01/1994 2nd Report: 23/01/1996 3rd Report: 23/01/1998 4th Report: 23/01/2000 5th Report: 23/01/2002 6th Report: 23/01/2004 7 <sup>th</sup> Report 02/03/2006 8 <sup>th</sup> Report 02/03/2008
6.	<b>Lesotho</b>	1	1st Report, July 2001 (combining all overdue reports from 1994-2000)	1st Report, May 2002 (31st Ordinary Session)	10/02/1992	1st Report: 10/02/1994 2nd Report: 10/02/1996 3rd Report: 10/02/1998 4th Report: 10/02/2000 5th Report: 10/02/2002 6th Report: 10/02/2004 7 <sup>th</sup> Report 02/03/2006 8 <sup>th</sup> Report 02/03/2008
7.	<b>Liberia</b>	-	-	-	04/08/1982	1st Report: 04/08/1988 2nd Report: 04/08/1990 3rd Report: 04/08/1992 4th Report: 04/08/1994 5th Report: 04/08/1996 6th Report: 04/08/1998 7th Report: 04/08/2000 8th Report: 04/08/2002 9th Report: 04/08/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
3.	<b>Libya</b>	3	1st Report, January 1990  2nd Report, March 2000 (combining 1993, 1995 1997 and 1999 overdue reports)  3rd Report, December 2005 (combining all overdue	1st Report, March 1991 (27th Ordinary Session)  2nd Report, May 2000 (27th Ordinary Session).  3rd Report, May 2006 (39th Ordinary Session).	19/07/1986	1st Report: 19/07/1988 2nd Report: 19/07/1990 3rd Report: 19/07/1993 4th Report: 19/07/1995 5th Report: 19/07/1997 6th Report: 19/07/1999

			reports since 2002)			7th Report: 19/07/2002 8th Report: 19/07/2004 9 <sup>th</sup> Report 02/03/2006 10 <sup>th</sup> Report 02/03/2008
9.	<b>Madagascar</b>	1	Initial Report	Initial Report (scheduled for consideration at the 43rd Ordinary Session)	09/03/1992	1st Report: 09/03/1994 2nd Report: 09/03/1996 3rd Report: 09/03/1998 4th Report: 09/03/2000 5th Report: 09/03/2002 6th Report: 09/03/2004 7 <sup>th</sup> Report 02/03/2006 8 <sup>th</sup> Report 02/03/2008
10.	<b>Malawi</b>	-	-	-	17/11/1989	1st Report: 17/11/1991 2nd Report: 17/11/1993 3rd Report: 17/11/1995 4th Report: 17/11/1997 5th Report: 17/11/1999 6th Report: 17/11/2001 7th Report: 17/11/2003 8 <sup>th</sup> Report 02/03/2005 9 <sup>th</sup> Report 02/03/2007 10 <sup>th</sup> Report 02/03/2009
11.	<b>Mali</b>	1	1st Report, May 1999 (combining 1988-1998 overdue reports)	1st Report, November 1999 (26th Ordinary Session)	21/12/1981	1st Report: 21/12/1988 2nd Report: 21/12/1990 3rd Report: 21/12/1992 4th Report: 21/12/1994 5th Report: 21/12/1996 6th Report: 21/12/1998 7th Report: 21/11/2001 8th Report: 21/11/2003 9 <sup>th</sup> Report 02/03/2005 10 <sup>th</sup> Report 02/03/2007 11 <sup>th</sup> Report 02/03/2009
12.	<b>Mauritania</b>	2	1st Report, October 2001 (combining 1988 - 2001 overdue reports)  2nd Report, April 2005	1st Report, May 2002 (31st Ordinary Session)  2nd Report, April 2005 (37th Ordinary Session)	14/06/1986	1st Report: 14/06/1988 2nd Report: 14/06/1990 3rd Report: 14/06/1992 4th Report: 14/06/1994 5th Report: 14/06/1996 6th Report: 14/06/1998 7th Report: 14/06/2000 8th Report: 14/06/2002 9th Report: 14/06/2004 10 <sup>th</sup> Report 02/03/2006

						11 <sup>th</sup> Report 02/03/2008
3.	<b>Mauritius</b>	2	1st Report, November 1994 2nd Report, 2008 (combing 2 - 5 periodic report)	1st Report, October 1996 (20th Ordinary Session). 2nd Report, November 2008 (45th Ordinary Session)	19/06/1992	1st Report: 19/06/1994 2nd Report: 19/06/1996 3rd Report: 19/06/1998 4th Report: 19/06/2000 5th Report: 19/06/2002 6th Report: 19/06/2004 7 <sup>th</sup> Report 02/03/2006 8 <sup>th</sup> Report 02/03/2008
4.	<b>Mozambique</b>	1	1st Report, September 1992 (combining 1991 -1995 overdue reports)	1st Report, April 1996 (19th Ordinary Session)	22/02/1989	1st Report: 30/07/1994 2nd Report: 30/07/1996 3rd Report: 30/07/1998 4th Report: 30/07/2000 5th Report: 30/07/2003 6 <sup>th</sup> Report 02/03/2005 7 <sup>th</sup> Report 02/03/2007 8 <sup>th</sup> Report 02/03/2009
5.	<b>Namibia</b>	2	1st Report, November 1997 (combining 1994 -1998 overdue reports) 2nd Report, May 2000	1st Report, April 1998 (23rd Ordinary Session) 2nd Report, April 2001 (29th Ordinary Session)	30/07/1992	1st Report: 30/07/1994 2nd Report: 30/07/1996 3rd Report: 30/07/1998 4th Report: 30/07/2000 5th Report: 30/07/2003 6 <sup>th</sup> Report 02/03/2005 7 <sup>th</sup> Report 02/03/2007 8 <sup>th</sup> Report 02/03/2009
6.	<b>Niger</b>	1	1st Report, May 2003 (combining all overdue reports since 1988)	1st Report, May 2004 (35th Ordinary Session).	15/07/1986	1st Report: 15/07/1988 2nd Report: 15/07/1990 3rd Report: 15/07/1992 4th Report: 15/07/1994 5th Report: 15/07/1996 6th Report: 15/07/1998 7th Report: 15/07/2000 8th Report: 15/07/2002 9th Report: 15/07/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
7.	<b>Nigeria</b>	3	1st Report, August 1990 (combining 1st - 6th report) 2nd Report, (combining all	1st Report, April 1993 (13th Ordinary Session) 2nd Report, November 2006 (40th Ordinary	22/06/1983	1st Report: 22/06/1988 2nd Report: 22/06/1990 3rd Report: 22/06/1992 4th Report: 22/06/1995 5th Report: 22/06/1997 6th Report: 22/06/1999 7th Report: 22/06/2001 8th Report: 22/06/2003

			overdue reports) 3rd Report	Session). 3rd Report, November 2008 (44th Ordinary Session)		9 <sup>th</sup> Report 02/03/2005 10 <sup>th</sup> Report 02/03/2007 11 <sup>th</sup> Report 02/03/2009
	<b>Rwanda</b>	4	1st Report, August 1990  2nd Report, March 2000 (combining all overdue reports)  3rd Report, June 2004 (combining all overdue reports)  4th Report, June 2007	1st Report, March 1996 (19th Ordinary Session)  2nd Report, May 2000 (27th Ordinary Session)  3rd Report, December 2004 (36th Ordinary Session).  4th Report, November 2007 (42nd Ordinary Session).  5th Report (47th Ordinary Session) :	15/07/1983	1st Report: 15/07/1988 2nd Report: 15/07/1990 3rd Report: 15/07/1993 4th Report: 15/07/1995 5th Report: 15/07/1997 6th Report: 15/07/1999 7th Report: 15/07/2002 8th Report: 15/07/2004 9 <sup>th</sup> Report 02/03/2006 10 <sup>th</sup> Report 02/03/2008
	<b>Saharawi Arab Democratic Republic</b>	1	1st Report, January 2003 (combining all overdue reports since 1988)	1st Report, May 2003 (33rd Ordinary Session)	02/05/1986	1st Report: 02/05/1988 2nd Report: 02/05/1990 3rd Report: 02/05/1992 4th Report: 02/05/1994 5th Report: 02/05/1996 6th Report: 02/05/1998 7th Report: 02/05/2000 8th Report: 02/05/2002 9th Report: 02/05/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
	<b>Sao Tome and Principe</b>	-	-	-	23/05/1986	1st Report: 23/05/1988 2nd Report: 23/05/1990 3rd Report: 23/05/1992

						4th Report: 23/05/ 1994 5th Report: 23/05/1996 6th Report: 23/05/1998 7th Report: 23/05/2000 8th Report: 23/05/2002 9th Report: 23/05/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
1.	Senegal	2	1st Report, April 1992 (combining all overdue reports since 1984)  2nd Report, May 2003 (combining all overdue reports since 1994)	1st Report, October 1992 (12th Ordinary Session)  2nd Report, November 2003, (34th Ordinary Session).	13/08/1982	1st Report: 13/08/1988 2nd Report: 13/08/1990 3rd Report: 13/08/1992 4th Report: 13/08/1994 5th Report: 13/08/1996 6th Report: 13/08/1998 7th Report: 13/08/2000 8th Report: 13/08/2002 9th Report: 13/08/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
2.	Seychelles	2	1st Report, September 1994  2nd Report, June 2004	-  2nd Report, May 2006 (39th Ordinary Session).	13/04/1992	1st Report: 13/04/1994 2nd Report: 13/04/1996 3rd Report: 13/04/1998 4th Report: 13/04/2000 5th Report: 13/04/2002 6th Report: 13/04/2004 7 <sup>th</sup> Report 02/03/2006 8 <sup>th</sup> Report 02/03/2008
	Sierra Leone	-	-	-	21/09/1983	1st Report: 21/09/1988 2nd Report: 21/09/1990 3rd Report: 21/09/1992 4th Report: 21/09/1994 5th Report: 21/09/1996 6th Report: 21/09/1998 7th Report: 21/09/2000 8th Report: 21/09/2002 9th Report: 21/09/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
	Somalia	-	-	-	31/ 07/1985	1st Report: 31/07/1988 2nd Report: 31/07/1990 3rd Report: 31/07/1992 4th Report: 31/07/1994 5th Report: 31/07/1996 6th Report: 31/07/1998

						7th Report: 31/07/2000 8th Report: 31/07/2002 9th Report: 31/07/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
5.	South Africa	2	1st Report, October 1998  2nd Report, May 2005 (combining 3rd and 4th reports)	1st Report, May 1999 (25th Ordinary Session)  2nd Report, December 2005 (38th Ordinary Session).	09/07/1996	1st Report: 09/07/1998 2nd Report: 09/07/2001 3rd Report: 09/07/2003 4 <sup>th</sup> Report 02/03/2005 5 <sup>th</sup> Report 02/03/2007 10 <sup>th</sup> Report 02/03/2009
5.	Sudan	3	1st Report, October 1996 (combining 1988-1996 overdue reports)  2nd Report, April 2003 (combining all overdue reports)  3rd Report	1st Report, April 1997 (21st Ordinary Session)  2nd Report, May 2004 (35th Ordinary Session).  3rd Report, May 2008	18/02/1986	1st Report: 18/02/1988 2nd Report: 18/02/1990 3rd Report: 18/02/1992 4th Report: 18/02/1994 5th Report: 18/02/1996 6th Report: 18/02/1999 7th Report: 18/02/2001 8th Report: 18/02/2003 9th Report: 18/02/2005 10 <sup>th</sup> Report 02/03/2007 11 <sup>th</sup> Report 02/03/2009
7.	Swaziland	1	1st Report, March 2000 (combining 1997-1999 overdue reports)	1st Report, May 2000 (27th Ordinary Session)	15/09/1995	1st Report: 15/09/1997 2nd Report: 15/09/1999 3rd Report: 15/09/2002 4th Report: 15/09/2004
7.	Tanzania	2	1st Report, July 1991  2nd Report	1st Report, March 1992 (11th Ordinary Session)  2nd Report, May 2008 (43rd Ordinary Session)	18/02/1984	1st Report: 18/02/1988 2nd Report: 18/02/1990 3rd Report: 18/02/1992 4th Report: 18/02/1994 5th Report: 18/02/1996 6th Report: 18/02/1998 7th Report: 18/02/2000 8th Report: 18/02/2002 9th Report: 18/02/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
9.	Togo	2	1st Report,	1st Report, March 1993	05/11/1982	1st Report: 05/11/1988 2nd Report: 05/11/1990

			October 1990  2nd Report, April 2001 (combining all overdue reports since 1995)	(13th Ordinary Session)  2nd Report, May 2002 (31st Ordinary Session)		3rd Report: 05/11/1992 4th Report: 05/11/1995 5th Report: 05/11/1997 6th Report: 05/11/1999 7th Report: 05/11/2001 8th Report: 05/11/2004 9 <sup>th</sup> Report 02/03/2006 10 <sup>th</sup> Report 02/03/2008
	Tunisia	3	1st Report, May 1990  2nd Report, October 1995  3rd Report, June 2007	1st Report, March 1991 (9th Ordinary Session)  2nd Report, October 1995 (18th Ordinary Session)  3rd Report, November 2007 (42nd Ordinary Session).	16/03/1983	1st Report: 16/03/1988 2nd Report: 16/03/1990 3rd Report: 16/03/1993 4th Report: 16/03/1995 5th Report: 16/03/1997 6th Report: 16/03/1999 7th Report: 16/03/2001 8th Report: 16/03/2003 9th Report: 16/03/2005 10 <sup>th</sup> Report 02/03/2007 11 <sup>th</sup> Report 02/03/2009
	Uganda	2	1st Report  2nd Report, September 2006  3rd Report, October 2008	1st Report, May 2000 (27th Ordinary Session)  2nd Report, November (40th Ordinary Session).  3rd Report, May 2009 (45th Ordinary Session)	10/05/1986	1st Report: 10/05/1988 2nd Report: 10/05/1990 3rd Report: 10/05/1992 4th Report: 10/05/1994 5th Report: 10/05/1996 6th Report: 10/05/1998 7th Report: 10/05/2000 8th Report: 10/05/2002 9th Report: 10/05/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
	Zambia	1	1st Report, March 2006 (combining all overdue reports since 1986)	1st Report, May 2007 (41st Ordinary Session).	10/ 01/ 1984	1st Report: 10/01/1988 2nd Report: 10/01/1990 3rd Report: 10/01/1992 4th Report: 10/01/1994 5th Report: 10/01/1996 6th Report: 10/01/1998 7th Report: 10/01/2000 8th Report: 10/01/2002

						9th Report: 10/01/2004 10 <sup>th</sup> Report 02/03/2006 11 <sup>th</sup> Report 02/03/2008
	Zimbabwe	3	1st Report, October 1992  2nd Report, March 1996 (combining 1988-1996 overdue reports)  3rd Report, November 2006, (combining all overdue reports)	1st Report, October 1992 (12th Ordinary Session).  2nd Report, April 1997 (21st Ordinary Session).  3rd Report, May 2007 (41st Ordinary Session).	30/ 05/ 1986	1st Report: 30/05/1988 2nd Report: 30/05/1990 3rd Report: 30/05/1992 4th Report: 30/05/1994 5th Report: 30/05/1996 6th Report: 30/05/1999 7th Report: 30/05/2001 8th Report: 30/05/2003 9th Report: 30/05/2005 10 <sup>th</sup> Report 02/03/2007 11 <sup>th</sup> Report 02/03/2009

# Annex II



**LIST OF COUNTRIES WHICH HAVE SIGNED, RATIFIED/ACCEDED TO THE  
AFRICAN UNION CONVENTION ON  
AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS**

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**LISTE DES PAYS QUI ONT SIGNE, RATIFIE/ADHERE CONVENTION DEL  
L'UNION AFRICAINE SUR LA  
CHARTRE AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES**

<b>NO.</b>	<b>COUNTRY/PAYS</b>	<b>DATE OF/DE SIGNATURE</b>	<b>DATE OF/DE RATIFICATION/ ACCESSION</b>	<b>DATE DEPOSITED/ DATE DE DEPOT</b>
1	Algeria	10/04/1986	01/03/1987	20/03/1987
2	Angola	-	02/03/1990	09/10/1990
3	Benin	11/02/2004	20/01/1986	25/02/1986
4	Botswana	-	17/07/1986	22/07/1986
5	Burkina Faso	05/03/1984	06/07/1984	21/09/1984
6	Burundi	-	28/07/1989	30/08/1989
7	Cameroon	23/07/1987	20/06/1989	18/09/1989
8	Central African Rep.	04/02/2003	26/04/1986	27/07/1986
9	Cape Verde	31/03/1986	02/06/1987	06/08/1987
10	Chad	29/05/1986	09/10/1986	11/11/1986
11	Côte d'Ivoire	30/08/2005	06/01/1992	31/03/1992
12	Comoros	07/12/2004	01/06/1986	18/07/1986
13	Congo	27/11/1981	09/12/1982	17/01/1983
14	Djibouti	20/12/1991	11/11/1991	20/12/1991
15	Democratic Rep. of Congo	23/07/1987	20/07/1987	28/07/1987
16	Egypt	16/11/1981	20/03/1984	03/04/1984
17	Equatorial Guinea	18/08/1986	07/04/1986	18/08/1986
18	Eritrea	-	14/01/1999	15/03/1999
19	Ethiopia	-	15/06/1998	22/06/1998
20	Gabon	26/02/1982	20/02/1986	26/06/1986
21	Gambia	11/02/1983	08/06/1983	13/06/1983
22	Ghana	03/07/2004	24/01/1989	01/03/1989
23	Guinea-Bissau	08/03/2005	04/12/1985	06/03/1986
24	Guinea	09/12/1981	16/02/1982	13/05/1982
25	Kenya	-	23/01/1992	10/02/1992
26	Libya	30/05/1985	19/07/1986	26/03/1987
27	Lesotho	07/03/1984	10/02/1992	27/02/1992

28	Liberia	31/01/1983	04/08/1982	29/12/1982
29	Madagascar	-	09/03/1992	19/03/1992
30	Mali	13/11/1981	21/12/1981	22/01/1982
31	Malawi	23/02/1990	17/11/1989	23/02/1990
32	Mozambique	-	22/02/1989	07/03/1990
33	Mauritania	25/02/1982	14/06/1986	26/06/1986
34	Mauritius	27/02/1992	19/06/1992	01/07/1992
35	Namibia	-	30/07/1992	16/09/1992
36	Nigeria	31/08/1982	22/06/1983	22/07/1983
37	Niger	09/07/1986	15/07/1986	21/07/1986
38	Rwanda	11/11/1981	15/07/1983	22/07/1983
39	South Africa	09/07/1996	09/07/1996	09/07/1996
40	Sahrawi Arab Democratic Republic	10/04/1986	02/05/1986	23/05/1986
41	Senegal	23/09/1981	13/08/1982	25/10/1982
42	Seychelles	-	13/04/1992	30/04/1992
43	Sierra Leone	27/08/1981	21/09/1983	27/01/1984
44	Somalia	26/02/1982	31/07/1985	20/03/1986
45	Sao Tome & Principe	-	23/05/1986	28/07/1986
46	Sudan	03/09/1982	18/02/1986	11/03/1986
47	Swaziland	20/12/1991	15/09/1995	09/10/1995
48	Tanzania	31/05/1982	18/02/1984	09/03/1984
49	Togo	26/02/1982	05/11/1982	22/11/1982
50	Tunisia	-	16/03/1983	22/04/1983
51	Uganda	18/08/1986	10/05/1986	27/05/1986
52	Zambia	17/01/1983	10/01/1984	02/02/1984
53	Zimbabwe	20/02/1986	30/05/1986	12/06/1986

# of Countries 53

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# of Ratification 53

# of Deposit 53

**Note:**

- Adopted in Nairobi, Kenya in June 1981.

- Entered into force on 21 October, 1986.

Registered with the United Nations on 10-09-1991, Certificate No. 26363

**Record Count: 53**

DOCUMENTCODE = '0002'

## DECLARATION

I **Asnake Hailemariam Damtew** hereby declare that this dissertation Paper is my own original work and it has not been submitted at any other university.