

Addis Ababa University
Collage of Social Sciences
Centre for African and Oriental Studies

*The AU Human Rights Monitoring Capacity:
in the case of African Peer Review Mechanism*

By Meseret Assefa Gemed

ID: GSR/0501/06

Under Supervision of Prof. Dr. Wani Tombe Lako

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Executive Summary

This thesis assesses the human rights monitoring capacity of the AU and the role APRM can play in it. It argues that, in Africa, historical evidence suggests a continuing pattern of human rights violations have continued by unchecked dictatorial regime. It also seeks to demonstrate that for various reasons, the AU has been weak in monitoring of human rights violations. This attributes to two main reasons. One, the relative dignity and human value enjoyed by African in pre-colonial era became negatively impacted by colonialism as an aspect of foreign intervention in Africa. This impact has remains with the African leaders. The leaders become ruling the continent after colonialism has been characterized as dictators and military leaders which apply similar system of their previous colonial masters in violating human rights. None of the Heads of State and Government was freely and fairly elected. It was virtually the same club of dictators who adopted the African Human rights Charter in 1981.

Second, the African commission and the court are often ineffective because they lack resources and political commitments of member states for the protection of human rights. Even at the level of the assembly of heads of state, the reports of the African Commission do not receive adequate attention or consideration but are often simply adopted without due regard to the issues raised. Hitherto, the African system of human rights has evolved against the experience of colonialism, dictatorships, the failure of administering justice, and reluctance. Africa is still facing the long road to promotion and protection of human rights for all Africans. Yet within this setting the APRM had anticipated as an opportunity to hold African leaders accountable and conceived as it can add value to human rights monitoring capacity of African commission. Hence, this assessment is done in relation to the work that is being done by APRM and the challenges that it has confronted over the years. In assessing the role of the APRM in human rights monitoring, this study discharges the importance of peer review and investigates the challenges facing it in the field of human rights.

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List of Abbreviations

ACHPR	: African Charter on Human and Peoples' Rights
ACP	: African, Caribbean, and Pacific group of States
AfDB	: African Development Bank
AHRLJ	: African Human Rights Law Journal
AHSG	: African Heads of State of Government
AI	: Amnesty International
APR	: African Peer Review
APRM	: African Peer Review Mechanism
ASEAN	: Association of Southeast Asian Nations
AU	: African Union
AUC	: African Union Commission
CAT	: Convention Against Torture
CCPR	: Center for Civil and Political rights
CEDAW	: Committee on the Elimination of Discrimination against Women
CESR	: Center for Economic and Social Rights
CRPD	: Convention on the Rights of Persons with Disabilities
CSO	: Civil Society Organization
ECA	: Economic Commission for Africa
EU	: European Union
G8	: Group of 8
HGS	: Heads of State and Government
HRC	: Human Rights Council
HSGIC	: Heads of State and Government Implementation Committee
HSIC	: Heads of State Implementation Committee
ICC	: International Criminal Court
ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant on Economic, Social and Cultural Rights
ICJ	: International Court of Justice
IHRDA	: Institute for Human Rights and Development in Africa
ILO	: International Labor Organization
MAP	: Millennium Africa recovery Plan
MOU	: Memorandum of Understanding
NAI	: New African Initiative
NEPAD	: New Partnership for Africa's Development
NGO	: Non-Governmental Organizations
NHRIs	: National Human Rights Institutions
OAS	: Organization of American States

OAU	: Organization for African Unity
OECD	: Organization of Economic Cooperation and Development
OHCHR	: Office of the High Commissioner for Human Rights
OPCAT	: Optional Protocol to the Convention against Torture
OSCI	: Objectives, Standards, Criteria and Indicators
PRSP	: Poverty Reduction Strategy Papers
RECs	: Regional Economic Communities
UDHR	: Universal Declaration of Human Rights
UN	: United Nations
UNDP	: United Nation Development Program
UNECA	: United Nations, Economic Commission for Africa
UNHCR	: United Nations High Commissioner for Refugees
UPR	: Universal Periodic Review
WWII	: Second World War

CHAPTER ONE

1. INTRODUCTIONS

1.1. Background of the Study

Over the years many African countries have experienced massive human rights violations. For that reason, as in the others regional human rights systems like organization of American states and Council of Europe; the African inter-governmental institutions, African Union (AU) have adopted regional mechanisms relevant to the prohibition against human rights violation in Africa. The attitudes of this institution to human rights generally and, in particular, to the prohibition against torture, ill-treatment, and crimes against humanity have evolved in the light of regional political values (Viljoen & Odinkalu 2006:20). For instance, AU political organs such as the AU Assembly and Executive Council are in a consensus for ensuring that States Parties comply with the decisions of the African Commission (Garling and Odinkalu 2001:46). Indeed, the Organization of African Unity (OAU) which was established in 1963 has come to play a major role in developing an African Human Rights Charter (Bösl and Diescho 2009:62).

The Charter regards the realization of human rights as one of its objectives and principles and acknowledges both the United Nations Charter and the Universal Declaration of Human Rights (Sengha 2010:3). However, the OAU, as a regional organization and institution did not use its position to engender an atmosphere of respect for human rights on the continent by its member states other than as Africa's liberator from colonial rule (Nmehielle 2003: 413). The helplessness of OAU in human rights monitoring is very noticeable and its mechanisms are criticized many times by their weak governance systems. Member states of the OAU has carried on with gross human rights violations and seemingly ignored the mechanisms established under the Charter without any repercussions from the OAU. Because they perceived that the mechanisms established under the Charter are weak (Nmehielle 2003:414). The OAU Charter can also be blamed as it contained very little references to the concepts of human rights (Mangu 2005:381) and made reference to the protection of human rights governance and the rule of law." (E. Baimu: 2001: 306).

The OAU was pre-occupied with more pressing issue such as unity, non-interference in internal affairs and liberation (OAU Constitutive Act, Preamble Article 2). Practically, the OAU has served as talking shop for African states but has displayed considerable reluctance in intervening in systematic human rights abuses by various regimes in the region (Smith 2005:132). This negligence is partly because of the weakness of its constitutive instrument, the Charter of the OAU, which endorsed the principle of non-intervention in the internal affairs of member states (Charter of OAU). OAU member states like Guinea Republic and Madagascar, for example, interpreted this principle to the letter and used in a manner that discouraged the organization from censoring “errant regimes in the sphere of human rights” (Nmehielle 2003:413). That is what made Keba Mbaye, who is considered as the father of the ACHPR, to state that “African Governments appeared clearly to have sacrificed rights and freedoms for the sake of development and political stability”¹ (Obaid & Atua 1996: 827).

The strong emphasis on sovereignty has backed to the hesitation of Member States to seriously pursue human rights promotion and enforcement. The former OAU’s Chairman Sekou Toure's assertion that the OAU was not "a tribunal which could sit in judgment on any member state's internal affairs," was typical of the Organization's early understanding of its role (Udombana 2000:56). The statement resonates in the practices of many victims of human rights violations in Zaire under Mobutu Sese Seko (1965-1997); Uganda, under Idi Amin (1971-1979) killing 300,000 Ugandans in 1972, became OAU Chairman in 1976; and Milton Obote (1962-1971); under the various military regimes that overran Nigeria from 1966 shortly after independence, in Central African Republic under Bokassa (1966-1976); in Malawi under Kamuzu Banda (1963-1994); in Equatorial Guinea under Nguema (1968-1979), in Rwanda under Juven Habyarimana (1937-1994), in Liberia under Samuel Doe (1980-1990), in Ghana under various military rules culminating in that of Rawlings (1981-2001); under Mengistu H/Mariam of Ethiopia (1974-1987), in Kenya under Arap Moi (1978-2002), and similar experiences in a host of other such

¹ However the developmental government can achieve political stability and economic development with the protection of the human rights simultaneously. The United Nations is increasingly combining efforts to reducing human rights abuses in situations of internal political instability. Special emphasis is placed on ensuring the protection of minorities, strengthening democratic institutions, realizing the right to development and securing universal respect for human rights.

countries. While these African dictators were in power, the OAU turned a blind eye to their brutal regimes.

Hence, there has been a persistent unwillingness among member states to criticize one another in the face of flagrant violation of human rights. Consequently, effective human rights monitoring systems increasingly necessitate to ensure that a commitment to human rights becomes more than simple rhetoric. These need to be aligned with human rights standards as well as with sustained monitoring capacity backing so as to ensure their effective implementation. In recognition of this important imperative concern on the continent has overwhelmed with the adoption of different essential human rights' documents compromises different instruments and mechanism such as African Courts and APRM come to operation on the African continent. Therefore, aimed at giving teeth to African charter's monitoring capacity, the lack of a judicial enforcement mechanism in the charter observed as primary requirement. This pushed the African Union members to adopt African Court on Human and Peoples rights with the ratification by fifteen member states. It was adopted in Ouagadougou, Burkina Faso, on 9 June 1998 and entered into force on 25 January 2004 as a judicial body that delivers binding judgments on compliance with the African Charter (Protocol to the ACHPR).

The Article 6 of the court's protocol says "when deciding on the admissibility of a case instituted under article 5 (3) of this Protocol, may request the opinion of the Commission which shall give it as soon as possible. Article 27 of the Protocol also, permits the Court to order provisional measures, if a case is of "extreme gravity and urgency, and when necessary to avoid irreparable harm (Protocol to the ACHPR)." Thus, the establishment of the court is aimed to complements and reinforces the functions of the African Commission (African Court doc.). However, still the Commission has no impressive track record due to the states have not followed the commission's guideline (Ibrahim, 2012:1). Similarly it has not been all that influential due to most African States are not ratifying the protocol on the African court , owing to the fact that countries can get away without engaging seriously and can ignoring the system altogether without any consequence (Lee, 2012:2).

Consequently, in order to stress the responsibility of member states to materialize human rights promotion and protection, AU adopted African peer Review Mechanism (APRM) on February, 2004. With this pace the African leaders adopt the mechanism with the mandate of expressing support for the African Charter, the African Commission and the Court on Human and Peoples' Rights as important instruments for ensuring the promotion, protection and observance of human rights. As E. Baimu (2002:13) described the creation of the APRM as a political process adds a vital component to the human rights monitoring in Africa. While the African Human Rights Court will provide for a component of judicial suspension, the APRM on the other side of the spectrum has a more political character. This is complimented by the quasi-judicial mechanism of the African Commission, which occupies a place somewhere between the other two mechanisms. Because the creation of the African Commission has remained purely legal and thus had limited success in ensuring human rights protection in Africa.

The APRM acclaimed as it provides a forum where heads of state will make political commitments for the protection of human rights (Ndangiza 2013:12), and likewise its establishment has seen as proliferation of institutions with a human rights mandate (Heyns & Killander 2004:679). So as it was planned to increase a monitoring tools of AU with other African human rights institutions, the role the APRM is playing is requiring attention. Therefore, the extent to which human rights are monitored by the AU Peer Review Mechanism requires organizational assessment for improving the achievements of its objective by identifying issues threatening and challenging the organization to ensure the effective protection and promotion of human rights on the continent.

1.2. Statement of the Problem

Even though human rights are given a relatively prominent position in the various AU instruments and mechanisms, there was a lack of effective monitoring mechanism and willingness on part of members states to enforce and nurture them. The fact that African leaders are pointing fingers at the dictators does not mean they are innocent themselves or that violations of human rights, the dictators are a good cover for all to point to whenever human rights issues were raised in Africa. On account of this cause, *“the continent is plagued by widespread violations of human*

rights, often on a massive scale” (Heyns & Stefiszyn 2006:196). Indeed, the APRM has emphasized as a bold, unique and innovative approach designed and implemented by Africans for Africa (APRM doc.), and it introduced in the wave of the continental transformation (Kumssa & Jones 2004:18). Hitherto, a decade has passed since these undertakings and many chances have offered themselves for the AU to work towards realizing this promise.

So far, the battle for human rights on the African continent is far from being over. For this reason, the assessments of African states compliance with the norms of human rights have drawn attention and the inclusive activities of APRM in rationalizing and harmonizing the evolving and existing human rights mechanisms and structures under the AU necessitate the probe. Having understood the problems existing in monitoring and protecting human rights across Africa, this study has focused on identifying and assessing the ability and capacity of APRM as a mechanism of monitoring human rights.

1.3. Objectives of the study

The study has both general and specific objectives.

1.3.1. General objective

The main objective of the study is to assess the AU human rights monitoring capacity while focusing specially on the work of African Peer Review Mechanism (APRM) across the continent.

1.3.2. Specific objectives

In line with the general objective, the following are the specific objectives of the study:

- To examine the role of AU’ human rights instrument such as African charter, African commission, African Court and African peer review Mechanism in promoting and protecting human rights including the enforcement of the laws that are aimed at, or have the effect of, requiring state parties to protect and respect human rights, and ability to periodically assess the adequacy of such laws and address any gaps;

- To analyze the role and the credibility of APRM as a monitoring mechanism for tracking implementation of AU human rights frameworks;
- To identify issues that should be addressed by the organizational change effort in order to improve human rights strategy of the organization. And to suggest what actions should be taken to address the issues.

1.4. Research Questions

The study was guided by the following research questions.

- What is the nature and contribution of AU on the development and enforcement of human right law by its periodic reviewing process?
- What value will political review of human rights add to the already existing human rights monitoring mechanisms on the continent?
- What has the AU achieved in the remedying of human right violation committed on the continent and what kind of jurisprudence has emerged as a result of AU's human rights work?
- What are the indicators that effective monitoring of human rights promotion and protection are used and planned to be used by African Union in its peer review mechanism?
- What are the appropriate strategies put in place to increase the outreach of AU peer review so as to enhance its efficiency in human rights monitoring across the continent?

1.5. Significance of the Study

The study will primarily help to create awareness for human right research communities and partners about AU efforts towards ensuring effective monitoring of human rights, in particular in relation to the thematic mandates of the AU peer review mechanism. And it presents the achievement done and issue needed to be considered for further improvement of the mission. This can help researchers and policy makers as a reference for further enhancement of the program under taken by the organization by pinpointing area of the concern and why the importance of the

monitoring mechanism is urgent. Also the assessment will be useful for the organization to know its capacity on monitoring human right by its peer review mechanism. Furthermore, there have been concerns that any work by the APRM in relation to human rights monitoring may draw more attention and resources than the African Commission. It is the aim of this study to try and address this concern and illustrates the importance and continued relevance of the APRM. This study may also give insights for researchers who want to make further study on this topic or related studies especially for students' research paper.

1.6. Scope of the Study

A comprehensive assessment of the African Union human rights monitoring capacity would necessarily have to examine in detail each and every provision of the African Charter, African commission, courts, peer review mechanisms and other human rights monitoring instruments. Their contribution to the promotion and protection of human rights should be analyzed accordingly. This study, however, is selective and limits its scope to an examination of general principles that underlie the new institution, APRM, which could add value to the African human rights system in terms of increased protection for human rights. It focuses in depth on understanding of the work of APRM on human rights rather than general work of AU. It will attempt to create a picture of the African union human rights monitoring capacity by its peer review mechanism through giving sources of information from selected experts, and written documents available electronically and in print.

The rationale for this selectivity is that APRM could lead to diversion of attention and resources allocated to the existing human rights institutions and the urgency of accountability underpinned by the peer review is that the essential support for the work of African commission. In an effort to bring an orderly evolution of new human rights institutions, which proposes the creation of a dual African human rights system, hinged on the political orientated Constitutive Act-based human rights regime and the rule-orientated African Charter-based human rights regime (E. Baimu 2001:3).

1.7. Limitation and delimitation of the study

The study is not free from some factors considered as obstacles from beginning to the end. These are:

- Difficulties in getting some important data for the study since some documents are confidential in nature and those that can be accessed are limited in perspective of the state party and peer reports.
- Difficulty in getting those who are respondents to an interview and questionnaire at a needed time and place.

The delimitation of the study fall under accessibility of African ‘case law’² which is not well developed and lack of access of data of victims of human right atrocities and remedies given due to absence of specialized courts or database. Therefore the findings of this study cannot be generalized beyond the subjects interviewed, content analysis of available documents, some limited administered questionnaire and focus group discussions. And additionally, information obtained from the respondents depends on their own perspective and experiences and what they are willing to share.

1.8. Methodology

This study uses an historical approach and wherever possible the conceptual and theoretical frameworks are used to provide essential information to inform the analysis. The paper argues that historical evidence suggests a continuing pattern of human rights monitoring capacity of AU. The study investigates and critically questions the APRM from a human rights perspective. This task consists of evaluating the APRM in its substance and potential in terms of protection and promotion of human rights. Qualitative analysis is followed by analysis of reviewing AU peer

²Case law is defined as reported decisions of appeals courts and other courts which make new interpretations of the law and, therefore, can be cited as precedents.

review document which is considered as major methodological tool. Finally, the outcomes from the analysis has presented in findings, conclusions and recommendations.

1.8.1. Research Design

It investigates the concepts and practices of the institution, and investigates peer review reports and analysis it with the reports of other international human rights organizations. The research is designed to collect, verifies, and synthesizes evidence from the past to establish facts that evaluates the APRM. In addition to these approaches, the study takes a comparative approach in analyzing how the experiences of different types of monitoring mechanisms can help to understand the coordination of a newly established mechanism.

1.8.2. Data Sources and Collection Techniques

A structured approach has used to determine the source of materials for assessment. The paper uses interview, document content analysis, focus group discussion and some limited administered questionnaires. The peer-reviewed literature on ‘human right’ such as the APRM framework documents, which include the Memorandum of Understanding; the Declaration on democracy and Political Governance and the APRM Base Document, have been used as the main source of data. In addition, a search for peer-reviewed journal articles and dissertations has conducted using the online databases in the organization with respect to human right. Also, an interview was held with an African Union Commission workers, also with identified experts and representatives from United Nation Economic Commission for Africa and African development Bank who have been analyzing the mandate of the APRM on human rights. Interviews have been used to fill some gaps in their literature.

1.8.3. Data Analysis and Interpretation

The research methods used in the study is investigating the actual and theoretical framework of the research problem. It intends to present facts about the nature and status of a situation as it exists at the time of the study. The Questionnaire and interviews are analyzed by extracting themes or generalizations from the answers and organizing the answers to present a coherent picture.

CHAPTER TWO

2. THE CONCEPTS OF HUMAN RIGHTS AND ITS DEVELOPMENT IN AFRICA

2.1. The Concepts of Human Rights

The historical developments that have led to the expression "human rights" emerged since the end of World War II and the founding of the United Nations in 1945. During this time, the term "human rights" has replaced earlier expressions such as "natural right" (*lex naturalis*) in classical Greek and Roman thought, "natural law" (*jus naturale*) and the "law of nations" (*jus gentium*) in Roman law and during the Middle Ages, and, since the modern era and the French and American revolutions, the "laws of nature" and the "Rights of Man" (Walters 1995:1). Likewise the philosophy of human rights basically addresses questions about the existence, content, nature, universality, justification, and legal status of human rights. In this regards there are strong claims made on behalf of human rights (for example, that they are universal, or that they exist independently of legal enactment as justified moral norms) frequently provoke skeptical doubts and countering philosophical defenses (Harees 2012:116). Hence, According to the Universal declaration of human rights definitions, human rights is defined as the basic rights and freedoms to which all humans are considered to be entitled, often held to include the rights to life, liberty, equality, and a fair trial, freedom from slavery and torture, and freedom of thought and expression.

In the same way the west has been usually mentioning the human rights by several names and phrases. These include 'fundamental' rights, 'basic' rights, and 'natural' rights or sometimes even 'common' rights (Jaswal 1996:3). Although these phrases do not mean the same thing, they are usually used interchangeably and sometimes rather confusingly. It could, however, be said that 'fundamental' or 'basic' rights are those rights which must not be taken away by any legislation or act of the state and which are often set out in the fundamental law of the country, for example in the bill of rights. In a constitution 'Natural' or 'common' rights, on the other hand, are seen as belonging to all men and women by virtue of their human nature. These are rights which all men and women should share. This perhaps explains why human rights were initially referred to as 'the rights of man' until the 1940s, when Eleanor Roosevelt promoted the use of the expression 'human

rights' after discovering, through her work in the United Nations (UN), that the rights of men were not understood in some parts of the world to include the rights of women (Mubangizi 2004:1).

It has also been, and continues to be, at the center of much heated debate concerning its scope, its validity in different cultural contexts, or the legitimacy of its application to justify infringements on the nation states' sovereignty. There is no debating that the Western origin of modern human rights system, i.e when the UDHR is drafted none of the third world countries were participated. The author of the 'universal human rights in theory and practice', Donnelly, debated as the origination of human rights in the West historical fact with no virtue in it (Goodhart 2003:944). Thus, the debate along the lines of relativity versus universality continues mainly due to the people living in non-Western countries have not contributed to the development of the international human rights legal regime (the human rights corpus). However, there is some common ground as to their point of departure: scholars of different orientations highlight the specific and unique, socio-historically Western background of human rights. Human rights, as they have developed before and after the UDHR, are bound to this background and will, therefore, lead to social friction if forced on societal situations that differ from the socio-historic background of the West (Bösl & Diescho 2009:32).

It is by no means a novelty that Indian, Islamic and Chinese scholars have explored the various cultural codes prevailing in their respective regions in order to establish whether or not such cultures and codes offer arguments that would lead to protected standards of respect and dignity of human beings. The less-explored domain in these attempts is the domain of African cultures, although there are authors in the field of African philosophy who have successfully contributed to the debate. They have focused on indigenous African systems of thought to determine the role of human beings vice versa their communities. Indeed, some scholars of African philosophy who have analysed the structure of African customary law found that it did not follow the methodology applied in modern legal (hard or soft) positivism (Ibid p: 39). One of the prominent examples is Ubuntu system, which Mogobe Ramose's, who was the author of "African philosophy through Ubuntu", explained it to mean "the fundamental ontological and epistemological category in the African thought of the Bantu-speaking people". He explained as it is the indivisible one-ness and whole-ness of ontology and epistemology (Ramose 2002:41).

Ubuntu was the theoretical and normative point of departure for the Court to make use of ethnographic data collected in South African traditional communities, with the purpose of illustrating the traditional African right to life as equal to the demonstration of the right to life derived from the dignity provision in the South African Constitution and international human rights instruments (Bösl & Diescho 2009:37). Similarly the norms of human rights and their dignity had been practiced in most of African's traditions.

2.2. The Philosophical Understanding of Human Rights into Legal Norms

In recent years, as political commitment to human rights has grown, philosophical commitment has waned (Benhabib 2013:33). For example in 1919, countries had established the International Labor Organization (ILO) to oversee treaties protecting workers with respect to their rights, including their health and safety. Concern over the protection of certain minority groups was raised by the League of Nations at the end of the First World War (Koh 1999: 1413). Besides, since 1945, political commitment has been expressed in numerous Charters and Declarations of which the 1948 Universal Declaration of Human Rights Simultaneously, membership of organizations such as Amnesty International has burgeoned, and human rights legislation has increased at both national and international level (Mendus 1995:1). Efforts in the 19th century to prohibit the slave trade and to limit the horrors of war are prime examples.

However, the most important question is what human rights are and what are their sources? The 1948 Universal declaration on human rights is by far the most widely accepted definition of human rights. Indeed, the United Nation has described it in its 1987 publication of human rights: questions and answers: as follows “Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. The same publication states “The denial of human rights and fundamental freedoms not only is an individual and personal tragedy, but also creates conditions

of social and political unrest, sowing the seeds of violence and conflict within and between societies and nations (Jaswal 1996:2).

The first sentence of Universal Declaration of Human Rights states that, respect for human rights and human dignity ‘is the foundation of freedom, justice and peace in the world’. Thus, human rights apply universal to all people without discrimination. Respect for individual rights needs to be upheld at all time, irrespective of circumstances or political system. The rights of any particular individual or group can be restricted only if they threaten to curtail the human rights of other (Ibid). Even though, human rights are violated virtually everywhere, the principle that they should be defended is asserted almost everywhere. ‘Virtually no one actually rejects the principle of defending human rights (Mendus 1995:1). Human rights are norms that help to protect all people everywhere from severe political, legal, and social abuses. Examples of human rights are the right to a fair trial when charged with a crime, the right not to be tortured, and the right to live. These rights exist in morality and in law at the national and international levels (Bhargava 2008: 98).

Also an important benchmark for the changes in the international human rights debate can be found in the conclusions of the Second World Conference on Human Rights (Vienna, 1993). While the First World Conference on Human Rights (Teheran, 1968) established an implicit connection between human rights and poverty (Proclamation of Teheran of 13 May 1968, Arts. 12-19), the Vienna Declaration and Programme of Action made this connection more explicit and articulated the most recent international thinking on human rights. Among other things, the Vienna Declaration and Programme of Action states that the international community must strive for the full realization of the Universal Declaration of Human Rights and provides that ‘all human rights are universal, indivisible, and interdependent and interrelated’ and that human rights must be treated in a fair and equitable manner, on the same footing, and with the same emphasis. The Declaration goes on to state that ‘while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms’ (UN Doc. A/CONF.157/24, Art. 5).

Most recently there are common concepts in international community that support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world. Accordingly, all regional systems of human rights protection derive from the universal system set by the United Nations and the African system is regarded as the youngest (Tomasikova 2013:1). Certainly, the Africa Union had good reason to become implementing international human rights instruments for the opportunities which the UN structure had made available to it and which consequently led to the good position to protect and promote the human rights across the continent. Thus, the United Nations (UN) System, international law and the African Union have certainly all contributed to the establishment of a human rights system in Africa, which has positively and indispensably impacted on the advancement of human rights and of justice. Yet some of the promises made about such rights being guaranteed under global, continental, regional and national legal instruments have remained unfulfilled (Bösl and Diescho 2009:7). In line with this declaration, the African Charter is established as normative instrument for the protection and promotion of human rights in Africa.

African Charter has been applauded as a document which departs from the norms in that it contains civil, political, economic, social and cultural rights. In addition, it provides for “peoples’ rights” and several rights not found in other instruments; and specific “third-generation” or collective rights such as the right to development, the right to a satisfactory environment, the right to peace, and the right of people to dispose of their wealth and natural resources (Keetharuth 2009:4). Such an approach enhances universality and indivisibility, and demonstrates the interdependence attaching to all human rights – at least on paper. It has also been labeled as the “newest, the least developed or effective, the most distinctive and the most controversial of the regional human rights regimes (Ibid). The African Charter places emphasis on people’s rights because African culture is firmly grounded in the age-old traditions of the supremacy of collectivism, sense of belonging to a community, humanism and Ubuntu (Gawanas 2012:9).

Therefore based on this theoretical foundation, it is very help full to discuss different literatures on the legal basis and political functions of human rights institutions. Therefore, the next sections discuss how it has been emerging all over the world including the African continent.

2.2.1. The Establishment of UN Charter and UDHR

Since the United Nations (UN) was established in 1945, world leaders have cooperated to codify human rights in a universally recognized regime of treaties, institutions, and norms (EU doc : Council on Foreign Relation publication, 2013:1). Consequently, on December 10, 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the 56 members³ of the United Nations. The UDHR, commonly referred to as the international Magna Charta⁴, extended the revolution in international law ushered in by the United Nations Charter; namely, that how a government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. A very important article of this declaration was Article 39 which provided that no free person shall be made a prisoner, evicted by unjust means, exiled from the country, or will not be killed or murdered or executed in any way unless such action was permissible by some decisions of the House of Lords or the law of the land and neither anyone shall be deprived of justice (Gurjar 2014: 27). It claims that all rights are interdependent and indivisible. Its Preamble eloquently asserts that: Recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world.

The influence of the UDHR has been substantial. Its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. At its 92nd 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 (Bello 1988: 55). The following year (in June 1993), the World Conference on Human Rights (held in Vienna) 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 (Ibid p:31). The UDHR

³ Out of these 56 UN member countries, from Africa only Ethiopia was granted the memberships mainly due to the fact that only sovereign states can become UN members

⁴ The Magna Carta (originally known as the Charter of Liberties) of 1215, written in iron gall ink on parchment in medieval Latin, using standard abbreviations of the period, authenticated with the Great Seal of King John. The original wax seal was lost over the centuries. This document is held at the British Library and is identified as "British Library Cotton MS Augustus II.106".

first enshrined the notion of universal rights; that human rights apply across the world to all people.

All states are required, in theory, to protect and promote all rights within their own and other countries' jurisdictions. The UN has adopted the universality approach despite some states, regional groups or political blocs viewing human rights from other theoretical perspectives (Griffin, 2008:33). The Universal Declaration of Human Rights Member states of the United Nations pledged to promote respect for the human rights of all. To advance this goal, the UN established a Commission on Human Rights and charged it with the task of drafting a document spelling out the meaning of the fundamental rights and freedoms proclaimed in the Charter (Zsigri 2014:2). The Commission, guided by Eleanor Roosevelt's forceful leadership, captured the world's attention (Moyn 2012:560). In principle, human rights have been accorded preeminence in the UN system. The UN Charter declares. "We the peoples of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom" (Charter of the United Nations: Preamble).

However, despite this proclamation, real politics has often determined the direction of human rights in UN corridors and sometimes obstructed their causes (Gurjar: 2014:10). Nevertheless, the United Nations has been instrumental in developing legally-binding, universal standards in the form of treaties and associated treaty-monitoring bodies. These mechanisms are constantly evolving to better respond to violations. Incidentally there are two parallel arms of the non-judicial protection mechanisms under the UN, namely Charter-based bodies and Treaty bodies. There are some concerns with these separate parallel processes. Charter-Based bodies consist in the United Nations Human Rights Council (UNHRC) and the Special Procedures. The Charter of the United Nations permits it to establish bodies to take note of emerging human rights issues, discuss and debate them, and evolve new standards around them.

The most important of these specifically for human rights, is the Commission on Human Rights. The Commission is made up of representatives of member-states and meets once a year. It provides policy guidelines, studies human rights problems and investigates violations, develops

new international norms, and monitors the observance of human rights around the world. It has the power to criticize a state that violates human rights whether or not they have ratified any of the human rights treaties. Individuals and groups can send information to the Commission on violations of human rights, which they will investigate if it fits into their criteria for complaints (EU parliament doc. 2011:17). The UNHRC previously has taken over the role of the previously named UN Commission on Human Rights. It is arguable that these reforms have undermined human rights protections in some respects. The new Universal Periodic Review procedure has given rise to concerns raised by various critics, in particular the shortcomings identified by UPR Watch. Given the difficulties raised, it is the Special Procedures which may be more effective in dealing with specific human rights violations by State (Ibid).

2.2.2. The Universal Periodic Review (UPR)

General Assembly resolution 60/251 of 15 March 2006, which created the Human Rights Council, mandated the Council to "undertake a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies (UNHR doc. 2004 :4). The State under Review is evaluated against its obligations as contained in the International Bill of Rights, among other things. This trio of covenants and the UDHR is the epitome of the definition of human rights as developed by the UN and thus it would seem appropriate that the member state signatories are judged against this backdrop.

The comprehensive basis of the review in incorporating legally binding and non-legally binding human rights standards emphasizes the indivisibility of human rights and its inter-relatedness with the other two pillars of the United Nations, namely security and development. It has also been highlighted that for the first time, UPR offers the possibility to contrast cultural assertions and determine its players i.e. those that contend that human rights are dependent on the context in which they are applied and therefore, on a respective culture. The opportunity therefore arises to

discuss cultural relativism in an open forum and consider the obstacles that this may pose to accepting the universality of human rights.

2.2.3. The UN and Human Rights Policy

The United Nation's machinery for developing and applying human rights policy has been gathered over the course of several decades. While various organs and agencies of the UN system have been involved in promoting and protecting human rights, the essential activities remain concentrated on two bodies: the first is the Commission of Human Rights (1946-2005) and its successor, the UN Human Rights Council (2006-present). The second one is the Office of the High Commissioner of Human Rights. It oversees major programs in protecting human rights and implementing international rights agreements includes activities, publications and media center (UNHR doc.). At a fundamental level human rights policy extends from international law. There are now nine core international human rights treaties, including the two bedrock Covenants that translate the Universal Declaration of Human Rights into legally binding form and provide an overall framework for human rights. Each of the treaties has at least one committee of independent experts charged to monitor compliance, known generically as "treaty bodies."

All of the core human rights treaties were produced through processes that centrally involved the Commission on Human Rights (or the Council, after 2005). Over the years, the Commission and its successor Council have also established a number of "special procedures" whereby individual experts and working groups are mandated to monitor and respond to serious human rights problems related to specific issues or specific countries. Additionally, in 2007 the Human Rights Council introduced a process of Universal Periodic Review (UPR), whereby the Council considers the human rights performance of all UN member states, on a rotational basis, through peer review. On that occasion the Ban Ki-moon, UN Secretary-General *stressed as: "The Universal Periodic Review "has great potential to promote and protect human rights in the darkest corners of the world. (UN doc.)."*

The work of the UN Human Rights Council, the treaty bodies charged to monitor and implement the core human rights treaties, the special procedures, and the UPR are all supported by the Office

of the UN High Commissioner of Human Rights. HRC resolution 5/1 of 18 June 2007 provides that the UPR should ensure the participation of all relevant stakeholders, including non-governmental organizations and national human rights institutions, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996, as well as any decisions that the Council may take in this regard (OHCHR technical guide doc.). Regarding the mechanism of the Universal Periodic Review, the President stated that the Council adopted the reports of the 57 countries surveyed in 2014 by the Working Group on the UPR. The situation of human rights in 15 African countries, 15 Asian countries, and 10 Latin American countries, 5 countries of Western Europe, six countries of Eastern Europe and three Pacific countries had been reviewed. “Some 5,040 recommendations were accepted with 3,931 simply noted. Since the beginning of the second cycle of the UPR, more than 20,000 recommendations were made with more than 16,000 accepted and less than 4,000 simply noted,” said President of the Human Rights Council, Mr. Ella, adding that all countries examined were represented at least at the ministerial level (UN news center).

2.2.4. United Nations Human Rights Monitoring Mechanisms

At the heart of the United Nations monitoring system are the two types of human rights monitoring mechanisms. The so-called conventional mechanisms refer to the specific committees formally established through the principal international human rights treaties. These "treaty bodies" monitor the implementation of the individual conventions by the States parties. Over the years, the United Nations has also developed an independent and ad hoc system of fact-finding outside the treaty framework, which is referred to as extra-conventional mechanisms or "Special Procedures". Independent experts report in their personal capacity as special rapporteurs or as members of working groups. Treaty Bodies (Conventional Mechanisms) Treaty bodies have been set up for the six core United Nations human rights treaties to monitor States parties' efforts to implement the provisions of the international instruments (NHRI doc.).

Based on the document of UN (UN Doc A/AC.251/8, para 22), the human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Each State party to a treaty has an obligation to take steps to ensure that everyone

in the State can enjoy the rights set out in the treaty. There are ten human rights treaty bodies composed of independent experts of recognized competence in human rights, who are nominated and elected for fixed renewable terms of four years by State parties. Human Rights Committee (CCPR) monitors implementation of the International Covenant on Civil and Political Rights (1966) and its optional protocols; Committee on Economic, Social and Cultural Rights(CESCR) monitors implementation of the International Covenant on Economic, Social and Cultural Rights (1966);Committee on the Elimination of Racial Discrimination(CERD) monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (1965).

Also there are Committee on the Elimination of Discrimination against Women(CEDAW) monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and its optional protocol (1999);Committee against Torture(CAT) monitors implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984);Committee on the Rights of the Child(CRC) monitors implementation of the Convention on the Rights of the Child (1989) and its optional protocols (2000);Committee on Migrant Workers(CMW) monitors implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);Committee on the Rights of Persons with Disabilities(CRPD) monitors implementation of the International Convention on the Rights of Persons with Disabilities (2006);Committee on Enforced Disappearances(CED) monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (2006) (UNHR doc.).

Similarly the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) established pursuant to the Optional Protocol of the Convention against Torture (OPCAT) (2002) visits places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The treaty bodies meet in Geneva, Switzerland. All the treaty bodies receive support from the Human Rights Treaties Division of OHCHR in Geneva.

2.2.5. International Criminal Court

One of the most recent examples of an international desire to engender greater protection of human rights is the International Criminal Court (ICC). It is the first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished (Driscall and Zompetti 2004:30). It set important precedents for an international understanding of crimes against humanity, and was the foundation of a new concept of international law that eventually resulted in the establishment of the International Criminal Court, which was adopted in 1998 and came into force in 2002 (Bösl and Diescho 2009:34). It is designed to be complementary to national criminal jurisdictions. Anyone who commits a crime under the Statute after 2002 can be prosecuted by the Court.

The root establishment of the court has been believed to be as it was started during post-war human rights movement. Not until the world was shocked by the ethnic cleansing in the former Yugoslavia and the genocide in Rwanda could the UN, no longer paralyzed by the Cold War, take action. Nations that had been unwilling to intervene to block the carnage now recognized that some action was essential. For the first time since Nuerenberg, a new international criminal tribunal was quickly put in place on an ad hoc basis by the UN Security Council. Under the impetus of shocked public demand, it became possible for the UN Secretariat to draft the statues for the International Criminal Tribunal for Yugoslavia, which began functioning in 1994. The same time it had taken to agree upon the Charter to the International Military Tribunal at Nuremberg. It led to the speedy creation of a similar ad hoc tribunal to deal with genocide and Crimes against Humanity in Rwanda (Jackson 2004:2).

The ICC's mandate is to prosecute the major proponents and architects of the most serious crimes under international law: genocide, crimes against humanity, war crimes and crimes of aggression. As an increasing number of African states move towards democracy, attempts to impose the ICC's demands for the prosecution of those alleged to be responsible for genocide, crimes against humanity and war crimes are likely to provoke increasing concern among some peace-builders on the continent. (Bösl and Diescho 2009:34). The situations in the Central African Republic, the DRC, Sudan, and Uganda are clearly demanding of international attention in this regard (Ibid, P:

48). It has only been done a couple of times in history, without doubt due to the specific circumstances and the political climate at the time.

2.2.6. National Human Rights Institutions

As The term “national human rights institution” has acquired a specific meaning. While the number and range of “institutions” concerned with human rights is large, and includes religious institutions, trade unions, the mass media, NGOs, government departments, the courts and the legislature, the term “national human rights institution” refers to a body whose specific functions are to promote and protect human rights. While no two institutions are exactly the same, all share some common attributes. They are often administrative in nature. Many also have quasi-judicial powers, such as in resolving disputes, although national human rights institutions are neither courts nor law-making bodies. As a rule, these institutions have ongoing, advisory authority in respect to human rights at the national and/or international level. They do their work either in a general way, through opinions and recommendations, or by considering and resolving complaints submitted by individuals or groups (UN web based doc.).

They act as an important bridge between Government and civil society, and between their country and the UN system. There are currently approximately 110 NHRIs worldwide. Each country can only have one official NHRI (Triggs 2014:10). NHRIs are required to comply with the UN minimum standards for NHRIs, the Principles relating to the status of National Institution for the Promotion and Protection of Human Rights (Paris Principles). NHRIs are usually able to deal with any human rights issue directly involving a public authority. In relation to non-state entities, some national human rights institutions have at least one of the following functions (NHRI doc.):

- 1) addressing grievances or disputes involving certain kinds of company (for instance state-owned enterprises, private companies providing public services, or companies that operate at the federal level);
- 2) addressing only certain types of human rights issue (for instance non-discrimination or labor rights)
- 3) Addressing complaints or disputes raising any human rights issue and involving any company.

Another important function of a human rights commission is systematically to review a government's human rights policy in order to detect shortcomings in human rights observance and to suggest ways of improving. This often includes human rights proofing of draft legislation, or policies. Human rights commissions may also monitor the state's compliance with its own and with international human rights laws and if necessary, recommend changes. According to AUC human rights strategy, NHRIs play an important role in popularization of human rights norms and mechanisms, monitoring state compliance with their obligations, and contribute to the implementation of the decisions of AU organs and institutions and of the RECs. Also other African stakeholders, including civil society organizations shall always be consulted and effectively involved. They play an important role in popularization of human rights norms and mechanisms, monitoring state compliance with their obligations, and contribute to the implementation of the decisions of AU organs and institutions and of the RECs.” (AUC human rights strategy doc. P: 10).

However, according to office of United Nation High Commissioner Report for Human Rights (OHCHR), the NHRIs are often ineffective because they lack resources. Control over their funding should be independent of the government of the day. And it recommends as the governments and legislatures should ensure that NHRIs receive adequate funds to perform all the functions set out in their mandates that should be always true for Africa.

2.3. International and Regional Human Rights Regimes

The world has seen the gradual evolution of regional human rights arrangements. The universal concepts of human rights have been further expanded and expressed in a way that is owned by a specific region. 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. Three world regions, Africa, the Americas and Europe, under their major regional organizations such as the Organization of American States, the European Union, and the African Union (AU) have established their respective regional instruments together with the supporting machinery, such as multilateral commissions and courts (Murdock: 2012: 6). They have integrated human rights into their mandate and established courts to which citizens can

appeal if a nation violates their rights (Cohen: 1996: 34). Similarly, each has a human rights charter for their region, along with associated mechanisms to ensure compliance with the rights to which the states have agreed.

Asia and Pacific both have draft regional charters developed by civil society as part of their advocacy designed to trigger a State-sponsored regional mechanism; however this is yet to come to fruition. It is obvious that regional cooperation originates from shared sociopolitical interests and similar cultural heritage, which are scarcely to be found in Asia. A wide variety of languages, religions, political systems, ethnic compositions, conflicting memories and economic performances hinders cooperation based on mutual interests among states (Shin 2007: 76).

Undoubtedly, a considerable number of statements and documents of the regional meetings demonstrate that Asian states have, in recent years, been trying to address the absence of a regional human rights instrument and to uphold the Vienna Declaration of 1993, which emphasized the fundamental role of the regional arrangements in the promotion and protection of human rights (Vienna Declaration and Plan of Action states doc.). Along with the global trend to adopt a number of subject-specific instruments, ratification of the convention on the rights of the child and the convention on the elimination of all forms of discrimination against women has risen significantly in recent years in Asia. Moreover, states have undertaken activities under the Teheran and Beijing framework for regional cooperation. However, despite numerous multilateral talks in the region, a tangible outcome has not been produced so far. Furthermore, Asia lacks the experience of collective conflict management. In Asia, in fact, the primary concern of many political leaders has been maintaining political stability under state control, and thus, human rights have been on the lower rung of the agenda (Kim 2009:3).

The fact that each regional system has originated from shared interest and demand for establishing a framework for human rights protection. The European system came into being as a natural reaction to a gross human rights violation during WWII and a defense against all forms of totalitarianism (Robertson 1982:81). The Inter-American system was designed to be an ideological framework to make a coalition against communist threats (Ishmael 2001) The Inter-American regional human rights system was thought to be a springboard to defend effective

political democracy in this region. The African system was also created by common interests shared among states: These were safeguarding independence, collective security, territory integrity and promoting solidarity (Mutua 1993:28).

2.3.1. Inter-American Human Rights Mechanisms

The Organization of American States (OAS) was established in 1948 by the Charter of the Organization of American States as the main regional body including North, South and Central America (Sheinin 1995:12). The OAS is responsible for the overall development and oversight of regional human rights standards and mechanisms and it has established bodies for this specific purpose. This human rights system provides recourse to people in the region who have suffered violations by the State and who have been unable to find justice in their own country. A movement toward building a regional regime for protection of human rights is acknowledged in the OAS charter and addressed in the American Convention on Human Rights. The American Convention on Human Rights was adopted in 1969 and entered into force in 1978. It strengthens the regional human rights system by making the Commission more effective, creating a Court, and changing the legal nature of the instruments upon which the system is based.

While many countries have ratified the Convention, fewer have accepted the Inter-American Court on Human Rights, examining communications from one State about alleged violations by another. There have also been protocols to the Convention, available for ratification. In 1948 American Declaration of Rights and Duties of Man launched the inter-American human rights regime even before the UN General Assembly approved the Universal Declaration Of Human Rights, the first in May 1948 the second in december1948 (Herz 2011:62). As well as the Charter of the OAS, the mandate for regional human rights work comes primarily from the American Declaration of the Rights and Duties of Man and the more recent American Convention on Human Rights. The American Declaration of the Rights and Duties of Man adopted in 1948 lays out not just the human rights of individuals but also their corresponding duties to participate respectfully in society. While originally adopted as a declaration and not as a legally binding treaty, the American Declaration is now considered a source of international obligations for OAS member states (Ibid).

In 1978, when the American convention on human rights entered into force, much of the central and North America was ruled by dictatorships of either the right or the left. Of eleven states whose ratifications had brought the convention into force, less than one-half had democratically elected government at that time. The remainder ratified for a variety of political reasons. Important also was the pressure brought to bear by the Carter Administration and the fact that some of these States were convinced that ratification posed no serious risks to them since the system established by the Convention would never be implemented. Effective human rights institutions were not something many governments in the region believed in at the time, but they were not opposed to a little window dressing for propaganda purposes. The attitude of these regimes towards human rights was graphically demonstrated when, shortly after the Convention entered into force, the General Assembly of the Organization of American States failed to adopt a budget for the newly created Inter-American Court of Human Rights. Had it not been for funds provided by Costa Rica, the Court would have been paralyzed even before it began to perform its functions (Pasqualucci 2005: Forward).

Hearings of the Court are public, along with the decisions, although deliberations remain secret. In its advisory role in interpreting the Convention, the Court is available to all States, although in adjudicating cases, the Court has jurisdiction only when the particular State involved has accepted the Court's binding jurisdiction (Denemark 2010: 36). Over time, other instruments have been adopted in the Inter-American region to better protect specific areas of human rights concern. These are the: Inter-American Convention to Prevent and Punish Torture, which entered into force in 1987; the Inter-American Convention on Forced Disappearance of Persons, which entered into force in 1996; and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which entered into force in 1995 (Ibid).

Indeed, Americans especially President Carter of the US promoted human rights in his African policy to the point of cutting US aid to Ethiopia because of violation of human rights and also cutting off aid to Uganda and placing an embargo on the importation of coffee as a sanction against Idi Amin's violations of human rights. In addition, the activities of the UN on human rights and the pressure of non-governmental organization, especially Amnesty International, popularized and strengthened the demand for the respect and promotion of human rights on the

content (Anawaty 1980:63). Chief among other was the emphasis that president Carter placed on human rights in international relations of united states. Particularly on Helsinki Final Act of 1975, signed by the United States, Canada, and 33 European countries, emphasized respect for human rights. Watch committees were subsequently set up to monitor observance and this kept the issue alive in international politics. The stage was thus set both internally and externally for debut of the African charter on Human and peoples' Rights (Ibid).

2.3.2. European Human Rights Mechanisms

The European Union (EU) is the main regional body for Europe and is made up of five main institutions: the European Parliament (elected by the people of the member states); the Council of the European Union (representing the governments of the member states); the European Commission (the general Secretariat of the EU); the Court of Justice (which ensures compliance with the law); and the Court of Auditors (which oversees the EU budget). These are supported by other bodies, including those with a specific mandate related to human rights (EU website). The most important human rights document in the region is the Convention for the Protection of Human Rights and Fundamental Freedoms, which was established by the Council of Europe, entered into force in 1953 and has 45 ratifications. The Convention focused on civil and political rights, but the more recent European Social Charter, which emphasizes on socio-economic rights, accompaniments to it. As well as listing rights, the Convention also sets up a mechanism for confirming that States fulfill their obligations under the Convention (Lanotte, Sarkin & Haeck 2001:8).

The original three bodies (the European Commission of Human Rights, the European Court of Human Rights and the Committee of Ministers of the Council of Europe) have since 1998 been shortened and merged into a single European Court of Human Rights. As well as shortening the length of proceedings, this supported the judicial character of the system by making it fully compulsory and abolishing the Committee of Ministers' adjudicative role (Antonio & Salcedo 2006:369). The European Court of Human Rights has been working under its current format since 1998 and has amassed considerable human rights jurisprudence. Any State that has ratified the Convention or any individual who believes their rights under the Convention have been violated

can lodge a complaint directly with the Court. Final judgments are binding on the country concerned and the Committee of Ministers of the Council of Europe is responsible for supervising whether the State takes adequate measures for the judgment (Ibid:386).

The European Union also engages in dialogues and sometimes opens criticism regarding the human rights situation in other non-member countries. The General Affairs and External Relations Council of the European Commission for instance, has expressed deep concern about human rights violations and media restrictions in Zimbabwe. Guidelines exist for its human rights dialogues with third countries, such as that which has recently started taking place with India. In 2004 for instance, the EU highlighted their intention to engage India on the International Criminal Court, abolition of the death penalty, the Convention against Torture, gender discrimination, child labor, labor rights, Corporate Social Responsibility and religious freedom (European Union doc.).

Also as an example, the Ambassador Maurizio Enrico Serra Permanent Representative of Italy to the United Nations Office in Geneva delivered the European Union's Statement on human rights at the 27th session of the Human Rights Council in Geneva on 16th September 2014. He said the EU is extremely concerned about the further deterioration of the human rights situation in Sudan. By calling as there is continuing conflicts in Darfur, Southern Kordofan and Blue Nile with significant humanitarian and human rights abuses on the civilian population, including indiscriminate aerial bombardments and scorched-earth tactics. They were also concerned about gender-based violence, extrajudicial killing of protesters, continued use of arbitrary detention and torture, restrictions on the media and violations of the right to freedom of religion or belief. The situation is compounded by the general lack of accountability. The gravity of the situation requires a renewed and increased response by this Council; they therefore support the establishment of an effective mechanism to monitor and report on the human rights situation in Sudan (EU document).

The European Union has applied a certain human rights based approach in its development cooperation for a long time. Since about 1980, human rights have played an important role in the EU's relations with developing countries in Africa, the Caribbean and the Pacific (the ACP states), in the framework of the Lomé Conventions (1975- 2000) and the Cotonou Agreement

(2000-2020). Initially, the focus on human rights in the cooperation between the ACP states and the European Union was not uncontroversial. The ACP states regarded it primarily as an unwelcome interference in their domestic affairs, while they criticized European countries for their support of South Africa's apartheid regime and their treatment of foreign workers. During the 1990s, however, the two sides were able to reach agreement on increasingly detailed provisions on the role of human rights in their relations.

There was also more scope for a positive approach to human rights issues, namely support instead of sanctions. In principle, all the EU's external cooperation agreements contain human rights provisions, (Bulterman 2001:28) but the extent to which human rights are actually dealt with in relations with other developing countries varies. The basic principles of EU policy in the field of human rights and development have been set out in a series of policy documents, which reveal that EU development cooperation policy has undergone major changes in relation to content and structure (European commission Annual Report of 2001). As to content, the policy was embedded in the Treaty of Maastricht by means of the addition of a new title on development cooperation, which identifies the promotion of respect for human rights, democracy and the rule of law as one of the key objectives of EU policy in this area.

Similarly the EU considers that the further deterioration of the humanitarian and human rights situation in South Sudan requires an increased response by this Council. They call on all parties to put an end to violence. They raise their concerns at the High Level panel discussion dedicated to this situation. And also, the EU continues to be worried about the deteriorating Human Rights situation in Egypt marked by indiscriminate detentions and disproportionate sentencing – including the death penalty. The EU is equally concerned with reports of torture in detention centers and sexual assaults on female detainees. The EU is further alarmed by the situation of Human Rights Defenders and NGOs. Freedom of expression and freedom of assembly, as enshrined in the Egyptian Constitution, must be effectively safeguarded. We stress the need for democratic, transparent and accountable institutions that protect all people of Egypt and their fundamental rights. The EU underlines the need for a thorough, independent and transparent investigation into the killing of protesters and security forces since 30 June 2013 and the need to bring those responsible to justice.

While taking into account, the serious challenges faced by the country, notably the security environment in the region 4 and at the national level, the EU calls upon the Government of Egypt to fully respect human rights standards, including in the implementation of counter terrorism measures (UNDP doc. 2013). Moreover, The European Union has a duty to promote its values when it works with other countries, institutions, or inter-governmental organizations. This includes promoting the respect of universal and indivisible fundamental rights. For example, as described on (Jennifer L. De Maio 2010:27). The EU is extremely concerned about the further deterioration of the human rights situation in Sudan. There are continuing conflicts in Darfur, Southern Kordofan and Blue Nile with significant humanitarian and human rights abuses on the civilian population, including indiscriminate aerial bombardments and scorched-earth tactics. They were also concerned about gender-based violence, extrajudicial killing of protesters, continued use of arbitrary detention and torture, restrictions on the media and violations of the right to freedom of religion or belief.

2.3.3. Asian Human Rights Mechanisms

Asia has a fragmented human rights protection framework. Human rights mechanisms exist at the sub-regional level, but no umbrella human rights system covers the expanse of the Asia-Pacific. The Asia-Pacific is consequently the only region not to have a comprehensive human rights protection system. A number of intergovernmental organizations in the Asia-Pacific count human rights amongst their priorities. Some have adopted human rights instruments and established human rights bodies; two have established sub-regional human rights mechanisms. This section examines five of these organizations - the Association of Southeast Asian Nations, the League of Arab States, and the Organization of the Islamic Conference, the Pacific Islands Forum, and the South Asian Association for Regional Cooperation. Within this framework the Asia-Pacific region remains the last UN defined region without such a regional human rights mechanism (Eropean parlament doc. 2010:5).

Cultural and political diversity, together with a lack of political will, are the main factors that explain why no such mechanisms have really flourished in this region. What seems more plausible, however, is the hope that sub-regional human rights mechanisms will advance here,

and, in the longer term, contribute to the creation of a regional human rights protection system in the Asia-Pacific area. Consequently, sub-regional mechanisms, like the ASEAN mechanism with the ASEAN Intergovernmental Commission on Human Rights, appear to be the most practicable way of promoting and protecting human rights effectively in the Asia-Pacific region. Still, once again and similar to the Arab system, the developments made have to be assessed critically. In the ASEAN no underlying human rights instrument such as a Declaration or Convention has been developed thus far. Additionally, the predominant emphasis placed on non-interference in internal affairs – with human rights still being considered–in these terms – brings the effectiveness of this system more than into question (Ibid).

Asia's unique characteristics might delay the establishment of the regional human rights system. Asia is a huge region with the world's largest continent and greatest population. It contains more than 60 percent of the world's population. Most Asian states are heterogeneous societies in terms of ethnic and religious composition. Because of these geographic and ethical diversities, cultural relativism has been supported by Asian politicians who oppose Western bias and seek self-determination. However, this argument might be undermined by several facts: first, respect for human dignity cannot be altered according to the surrounding environment; second, cultures are constantly changing and evolving internally; and third, the spread of transnational problems and the growing interdependency of people through an exchange of people and goods in the world make human rights issues into shared concerns (Fitzpatrick 2013: 24).

Proponents of the "Asian values" also argue that collectivism is one of the core Confucian disciplines. Speaking of collectivism, however, the argument that an individual's worth is found only in the group, and that people are content with subordination to the group, originates from misinterpretation of what is described in Confucianism. Such discourse has, rather, provided politicians in Asia with a theoretical foundation to legitimate their authoritarian regime and advocate the importance of Asian solidarity. In fact, efforts have been exerted to promote these ideas, which nonetheless do not represent all values in Asian countries, through deliberate efforts to distinguish Asia from other societies. It seems likely that politically charged debate often drives us away from human rights debate.

2.3.4. League of Arab States Human Rights Mechanisms

The League of Arab States (Arab League) is a regional organization of 22 Arab States. In 2008, the Arab Charter on Human Rights entered into force. The Charter includes a range of cultural, civil, economic, political and social rights. The Charter also provided for the creation of the Arab Human Rights Committee. The Arab Human Rights Committee established in 2009, it consists of seven members drawn from States parties to the Charter. Members are elected by States parties and serve in their personal capacity for four-year terms. The Committee considers periodic reports that are submitted by States parties on the measures that they have taken to give effect to Charter rights. Committee members share concluding observations and make recommendations. The Committee can also ask States parties to supply it with additional information relating to implementation of the Charter. Much of the Committee's early work has been dedicated to confirming its methods of work and rules of procedure (Fitzpatrick 2013:26).

The Arab human rights protection mechanism does not constitute a regional mechanism in the strict sense since the countries concerned are geographically located in both Africa and Asia. Consequently, the system is established on the underlying principles of the distinctive nature, heritage, and unity of Arab nation, strongly linked to Islam as its dominant religion. Even though the adoption of the Arab Charter of Human Rights in 2004 and the establishment of the Arab Committee of Human Rights in 2009 are important steps towards a comprehensive protection and promotion of human rights in the region, these developments have to be assessed with caution. The Charter is in some parts inconsistent with international human rights standards, a step back for human rights protection, and it is doubtful whether the members of the Committee are sufficiently independent to address human rights issues effectively. There is a certain tendency worldwide to consider regional human rights systems as important pillars of international human rights promotion and protection and, thus, there are increasing efforts to strengthen and improve existing ones (European parliament doc. 2010:4-5).

2.3.5. African Human Rights Mechanisms

Compared to other regional systems (Europe and America), the African system for the promotion and protection of human rights is the most recent, having its origins in the early 1980s (Eno 2003). For long period of time most of African countries remains the looser of their humanity and massively exported in the illegitimate triangular trans-Atlantic trade. The industrial revolution which signaled the death of the slave institution also initiated an equal deprivation of humanity in the form of colonialism. The African leaders which come to power after the colonial period were similarly violating human rights in most part of the continent. The unpleasant post-colonial Africa's human rights history has often been the basis for evaluating the human rights future of the continent leading to the thinking that history is always likely to repeat itself in the continent. After independence, many African countries did not apply what they preached against the colonialists in relation to their own peoples, but involved in offensive human rights violations under the not so watchful eyes of the Organization of African Unity (OAU) (Nmehielle 2003:412).

Extensive human rights abuses still occur in several parts of Africa, often under the oversight of the state. Most of such violations can be attributed to political instability, often as a 'side effect' of civil war. Notable countries with reported major violations include, but are not limited to, the Sudan, and Côte d'Ivoire. Reported violations include extrajudicial execution, mutilation, and rape. Therefore, during the 1960s and 1970s the process towards the creation of legal framework for human rights protection and promotion in Africa, began in Lagos, intensified, expressed through a series of conference and seminars. Some of the most important milestones of this process were the UN Human Rights Commission seminar in 1967 pressing for the establishment of African human rights commission. It was come common cause that regional human rights commissions would be meaningful if set up by the members of regions themselves and not imposed from outside (Seriti 1995: African Law review13).

Therefore, the search for new human rights dispensation in Africa goes back to as early as 1961 when African jurists met in Lagos, Nigeria, under the auspices of the international commission of Jurists (ICJ) and proposed the promulgation of a human rights charter for Africa (Kannyo

1996:17). The African conference on the rule of law, as it was called, took steps to carry out the intentions of the ICJ to ensure global adherence to rule of law principle. Here, the conference proclaimed the Law of Lagos” which stated, among other things: that in order to give full effect to the universal declaration of human rights of 1948, this conference invites the African governments to study the probability of adopting an African convection of human rights. Interestingly, the conference also proposed the establishment of an African court of human rights, which proposal was temporarily abandoned during the drafting of the African charter in favour of a more promotional –oriented commission (Nmehielle 2001:70).

The UN human rights commission then advised the UN Secretary-General to organize seminars in the regions where no human rights commission existed with the view to discussing their need. In 1969 another UN seminar was held in Cairo, Egypt, at the close of which the participants, including 19 African states, requested the UN Secretary-General to, inter alia, communicate the report and its recommendations to the OAU Secretary-general members. One of the recommendations was the setting up of a regional commission in Africa that would be fully supported by the OAU member states. The Cairo seminar opened the floodgate for other seminars, meetings and conference in various parts of Africa. These were held in Lusaka, Zambia in 1970; Addis Ababa, Ethiopia in 1971; Yaoundé, Cameroon in 1971 Libreville, Gabon in 1971 and Dar-es-Salam, Tanzania in 1973. Most of these meetings echoed the urgent need for and African human rights commission or some other regional human rights protection mechanism (Ibid).

Then the African political and legal order has always been driven by the need to promote human dignity and protect human rights in Africa. This concern expressed itself in the 1963 Charter of the Organization of African Unity, in the African Charter on Human and Peoples’ Rights adopted in June 1981, in the Constitutive Act of the African Union adopted in Lomé in 2000 and more recently in the African Charter on Democracy, Elections and Governance, 2007(AUC governance doc.). These indicate the distance covered by the African regional political order in the formulation of principles and standards to guarantee human dignity and rights in Africa, and the development of appropriate mechanisms responsible for securing adherence to and enforcement of those principles and standards (AUC governance doc.). Whereas the OAU was an anti-colonial

response, it endorsed the human rights charter with all its deficiencies. Specially, its principle of non-intervention, inadvertently, tends to protect authoritarian leaders who violated citizen rights and protected regimes more than state or citizen (Ayoade 2012:3-4).

The explanation for this hands-off approach is clear. On the one hand, the non-intervention principle of the OAU Charter strongly militates against denunciation of human rights abuses undertaken within the territorial boundaries of a Member State. On the other, and perhaps more importantly, the OAU has historically been led by heads of state who themselves have been responsible for massive human rights abuses. Inter-state condemnation of human rights violations is not likely in such a context. As a result, the OAU has historically been little more than “a mutual admiration club”: Member States were expected to see nothing, hear nothing, and say nothing. The result was apathy and irresponsible silence (Udombana 2000:58).

To sum up, like Europe and America, the efforts by Africans are based on treaties that are elaborated and interpreted by other non-binding documents, such as resolutions, declarations and guidelines. As will be discussed later in the next chapter one by one the most significant treaties that enunciate the African human rights treaties are: the African charter on human and peoples’ rights (hereinafter, African charter); African charter on the rights of and welfare of the child (hereinafter, children’s charter); the protocol to the African charter on human and peoples’ rights establishing the African court on Human and Peoples’ Rights (hereinafter, the protocol to the African court); and the protocol to the African charter on human and peoples’ rights on the rights of women (AWP).

These essential documents serve as common standards to guide African member states on their obligation to protect and promote human rights within their respective jurisdictions. The mechanism for enforcing such human rights obligations various within the institutions established by the African human rights systems as well as among African states. These include: the African Union, the African commission on human and peoples’ rights, African courts on human and peoples’ rights, African Peer review mechanisms and the African committee of experts on the rights and welfare of the child. Indeed, there is a need to deal with the African human rights instruments and their historical development. This paper also exceptionally deals with the

monitoring mechanisms of AU especially after 2005, when the African Union pioneered the principle of humanitarian intervention when a state manifestly fails to protect its populations. This is an obvious extension of the Banjul Declaration for the Protection of Human and Peoples Rights.

The human rights mandate and activities of the AU, which are carried out by a variety of bodies, come from the African Charter on Human and People's Rights. It is based on the principle that sovereignty is a responsibility of states and not a privilege. Sovereignty is therefore deserved by the performance of states and not an automatic property of States. The reaction of the African countries to these principles which they approve has been clumsy and only understandable in the light of their rigid adherence to old fashioned sovereignty and African solidarity. In the glaring cases of Zimbabwe and Sudan, the African countries have neither taken positive actions nor allowed such actions. This form of protection against principle has permitted the continuation of genocide in Darfur.

As the AU continues to adopt human rights instruments and strengthen existing institutions or establish new ones for their implementation, it has enriched the African human rights protection system and provided an enabling environment within which to pursue human rights promotion and protection vigorously. Amongst these mechanisms the African Peer Review Mechanism (APRM) and the African Court has emerging with existing human rights objectives of the organization. Indeed, unlike the OAU, where human rights remained the preserve of the African Commission, the AU has expressly ensured that human rights are mainstreamed throughout its organs, activities and programs. In the next chapter these AU main instruments for human rights promotions and protections will be explained.

CHAPTER THREE

THE ROLE OF THE AFRICAN UNION'S HUMAN RIGHTS INSTRUMENTS

The legal protection of human rights is founded in the West and has been another requirement imposed on African states. When universal declaration of human rights is drafted none of Africans participated in drafting the document. However, this is not purely an issue pertinent to Africa. The most pressing issue that influenced African's human rights system were emanated from the impact of the colonialism and slavery practicing for the long period of time which laid the ground for the arise of autocratic governments (Nmehielle 2001:17)..

Human rights violations occur all too often in Africa, from trafficking to extrajudicial killings (Odinkalu 2014:3). Much of these infringements has observed by prominent human rights leaders such as the Chidi Odinkalu, Open Society Justice Initiative; Innocent Chukwuma, Ford Foundation; as the challenges itself in combatting human rights violations in Africa as it was stemmed from poor political governance arising on the continents. Government efforts at shrinking civil society and the human rights space continue to exacerbate the issue, creating a vicious cycle, which suppresses fundamental freedoms and encourages human rights violations (Leadership Forum Presents 2014:3). This issue had been the most pressing issue among the prominent human rights leaders, civil societies and it was inspired by UN initiative at global level which led to introductions of human rights' instruments on the continent.

However, the instruments are less than effective due to the financial capacity and the willingness or commitments of the member states for their implementation. Based on this view most of the time the western gives the aid for human rights aid based on the result it bears. For example western countries human rights advocates argued most of the time as the ineffectiveness of human rights institutions thus demonstrates that international funds and technical support can be used ineffectively and not carefully implemented. Although continued international support for African human rights institutions is vital, it is crucial that such support not be given unconditionally. Rather, the UN and international donors should carefully evaluate the effectiveness of the entities they support (Tsekos 2002:21).

This chapter explores the outcome of the African human rights system in three main areas. First, it examines the normative, conceptual, and historical aspects of the African Charter and its impact on human rights corpus. Second, it looks at the work of the African Commission in the development of the law of the African Charter, including the difficulties that it has faced. Third, it addresses the norms and structure governing the African Human Rights Court and its potential to fill the spaces left by the African Commission and alleviate some of its weaknesses. Indeed, the historical process of human rights system on Africa will be discussed in the following subsections under the monitoring bodies, African Commission, the African Courts and the work of the APRM will be analyzed and discussed later in the next chapter, as the central study of this paper.

3.1 The Historical Enforcement of Human Rights Laws by African States

From the beginning, although, African leaders are expected to promote and protect human rights at independence, they violated the same with impunity. Sadly, the end of the 1960s was characterized by the negation of the pledge democracy as well as gross violation of human rights with impunity across the continent. Albeit reluctantly, independent African states saw the need for regional mechanisms for the protection and promotion of human rights and the restoration of human dignity on the continent. Arguably, this would have been tenable, given the transition of political governance to indigenous leaders who were better placed to understand and appreciate the problems of their people. This, however, turned out not to be the case. Instead, many of the emerging states adopted constitutions and legal system similar to those of the colonial powers, notwithstanding the fact that they were not in tandem with socio-economic and political set-up of the traditional societies (Umozurike 2008:22).

After liberation Africa has been duly climaxed by the tendencies of gross human rights violations such as arbitrary arrest of citizens; disrespect for the right of habeas corpus; organized and systematic police brutality; detention of government by secret police; mass arrests and detentions; concentration camps; physical and mental torture of prisoners, public executions; and the whole apparatus of violent repression. This has been remained the ongoing situation in Africa. In fact,

human rights violations have taken new forms and status, such as torture, ill-treatment, genocide, war crimes against humanity. As recently as 1994, for example, the continent experienced one of the gravest genocides in its history where approximately 800,000 people were brutally massacred in Rwanda. The situation did not get better even after the Rwandan genocide from which many African states were expected to draw viable lessons. Instead, in the first decade of the twenty-first century, many African states were engulfed in human rights and related crisis.

Countries like Sierra Leone, Sudan, Central Africa and Nigeria for example, experienced a civil war that many people died and others wounded, besides encountering other forms of gross human rights violations. This prompted the UN and the government of Sierra Leone under the Leadership of President Ahmed Tijan Kaba to set up the special court for Sierra Leone in 2002. Additionally, Burundi, the democratic Republic of Congo, The Gambia, Togo, Nigeria, and Liberia have also had a share of trouble in the form of civil wars, political assassinations and other forms of gross human rights violations. Continuously the African leaders have committed themselves to a respect for human rights by ratifying international and continental human rights instruments, and enacting laws and policies aimed at protecting the rights of people and ensuring good governance and accountability.

Although these ratifications of human rights systems which comprehend with the legal and constitutional systems came to Africa as package of grantees, such as, multiparty system of government, independence of the judiciary, respect for the rule of law, and the promotion and protection of human rights, among other are not implemented strictly. Instead these legal and constitutional applications have remained on the paper without fully practiced or they are otherwise used abusively. One writer notes the danger of this in that; “dictatorial African governments are not unknown to establish secrete courts or tribunals, which conduct secret proceedings and pass secret judgments, the outcomes of which are usually predetermined” (Nega and Admasu 2009:51). Hence, being APRM member doesn’t represent their accountability to the rule of laws in the declarations. That means the dictators does not mean they are innocent themselves or that violations of human rights, the dictators are a good cover for all to point to whenever human rights issues were raised in Africa the continent is plagued by widespread violations of human rights.

3.2 The Introduction of Human Rights Systems on the Continent

Post-colonial Africa in the 1960s and early 1970s was notorious for its excesses in human rights violations perpetrated by several leaders in defiance of the rule of law. Military coups in Africa followed one another in countries such as Nigeria, engendering human rights; civil war and uprisings. It was also a time when the Cold War between East and West was at its peak (Keetharuth 2009:167). The African leadership had to reclaim international legitimacy and salvage its image. In 1979, shaken by these perceptions, the OAU Summit in Monrovia, Liberia, appointed a committee of experts to prepare a draft of an African human rights charter.

Hardly any of the African leaders who participated in the negotiation and adoption of the Charter in Nairobi in 1981 could claim a democratic mandate. With a few exceptions such as the late Julius Nyerere of Tanzania, Thomas Sankara of Burkina Faso, Kwame Nkrumah of Ghana and former President Kenneth Kaunda of Zambia, who did not enrich themselves through high political office, most of these rulers were also widely suspected of impoverishing their own peoples through a combination of wrong-headed policies and brazen corruption at a time when the priority of the leadership of the continent was not the protection of the individual but the preservation of their own personal power and influence in the territories inherited from the then recently departed metropolitan colonial powers. The combined legacy of its checkered colonial and post-colonial history continues today to haunt Africa through the unacceptably rampant incidence of mass impoverishment, disease, unemployment, underdevelopment, political instability, conflict, and cyclic, gross, and massive violations of human rights (Odinkalu & Christensen 2001:329-330).

Therefore, before going to the outlining of the stages of development in the drafting and adoption process of the ACHPR, a brief sketch of the underlying reasons leading to the formation of African human rights mechanisms is a question of priority. Scholars proffer different reasons behind such initiative. These initiatives included the Helsinki Final Act of 1975, signed by the United States, Canada and thirty Western and Eastern European Countries, which emphasized respect for human rights, and the emphasis placed thereafter by the former United States president, Jimmy Carter, on human rights in the international relations of the United States. The

Carter administration used human rights as a criterion for allocating economic aid to third world countries. The attempt to make the allocation of such aid conditional on respect for human rights during the renegotiation of the Lome Agreement should be seen in the same light (Nega & Admasu 2009:20).

The process of awareness set in motion and orchestrated by certain non-governmental organizations, including some African ones, as well as many UN initiatives, in fact contributed substantially to the creation of a favorable climate for nurturing the idea of regulating human rights in Africa. Therefore, from the late 1970s onwards, a number of important events define the OAU move to increased attention to human rights (Ibid p: 23). The emphasis by the UN on the need for regional mechanisms to address regional human rights issues in Africa, a growing global awareness of and focus on human rights in the 1970s. The emphasis that President Carter placed on human rights in the international relations of the United States, and the gross human rights abuses in the 1970s under Idi Amin's of Uganda (1971-1979), under Mengistu Haile Mariam of Ethiopia (1974-1987), Macias Nguema's of Equatorial Guinea (1969-1979), and Jean-Bedel Bokassa's of Central African Empire (1966-1979) and the invasion of Ugandan territory by Tanzanian troops in 1979; were key causes which attracted the attention of the OAU Heads of States to the need to protect human rights in Africa (Senyonjo 2012:5).

Other dictators such as Mobutu Sese Seko in Zaïre moved in to exercise unlimited power at the expense of their population's development and welfare, leaving a legacy of human rights violations in their wake (Keetharuth 2009 :5). These violations went on at a time when regional human rights regimes in Europe and America had developed. In this context, the need to establish a regional human rights system in Africa became clearer. Therefore as a land mark development in the OAU's approach to human rights was the adoption of the African Charter on Human and Peoples' Rights was started. Indeed, the African Charter on Human and Peoples Rights resolution was adopted which called on the Secretary General to 'organize as soon as possible a restricted meeting of highly qualified experts to prepare a preliminary draft of an "African Charter on Human and Peoples Rights" (OAU Doc. 1979: Decision 115).

Accordingly, the Secretary-General, at the invitation of Senegal, organized a conference in Dakar in 1979 bringing together about twenty African experts from six States, under the presidency of the then President of the Supreme Court of Senegal, Honorable Judge Kéba Mbaye.“ In the opening address President Senghor urged the experts to draw inspiration from African traditions, keeping in mind the values of civilization, the real needs of Africa, the right to development (embracing economic, social and cultural rights, as well as civil and political rights) and the duties of the individual. The experts produced a draft text of the African Charter (Ibid). A first draft, reflecting the history, values, traditions and economic needs of the continent, was produced by a selected group of jurists from November 28 to 7 December 1979, exhorted by Leopold Sedar Senghor to be inspired by “those of our traditions that are beautiful and positive” while constantly keeping in mind “our values and the real needs of Africa” (Ibid).

The second draft of the Charter was prepared in Banjul, The Gambia, in June 1980 and in January 1981. This is why the document is also known as the Banjul Charter. On 27 June 1981, at its 18th General Assembly Meeting in Nairobi, Kenya, the Heads of State and Government of the OAU adopted the African Charter on Human and Peoples’ Rights. It came into force on 21 October 1986. While all the members of the OAU have adhered to the African Charter, its domestication, hence applicability by national laws still remains an issue. It is left to the discretion of states parties to decide how to give effect to treaties in their national law. The draft was discussed by the OAU Council of Ministers in Banjul on 9 June 1980 and 7-19 January 1981. The draft Charter was submitted to the OAU Assembly of Heads of State and Government, which adopted it in June 1981 without debate. With its coming into force in 1986, human rights were thus officially recognized in the OAU. Significantly, the Charter protected all categories of human rights (civil and political, economic, social and cultural, as well as peoples' rights) without drawing any distinction as to enforcement of these rights. It took more than five years for the African Charter to enter into force on 21 October 1986 following ratification by a simple majority of States.

Even then, the African Commission African Commission, the part-time quasi-judicial body entrusted with the task of interpreting, promoting and protecting the rights protected in the Charter was inaugurated in 1987. However, some of the promises made about such rights being guaranteed under global, continental, regional and national legal instruments have remained unfulfilled (Bösl &

Diescho 2009:2). Then some countries, like Namibia, include provisions defining the role of international law at the national level (Keetharuth 2009:168). South Africa mandates courts to take international law into consideration when interpreting its Bill of Rights. The Preamble to the 1992 Constitution of the Malagasy Republic adopts the African Charter and declares it to be an integral part of its law. Among the ‘dualist countries’, Nigeria has enacted legislation to incorporate the African Charter into its national law.

However, the African Commission holds the view that states are bound by ratification of the Charter, no matter what their system is, and It also held that if a country (in the instant case, Nigeria) wanted to rescind its obligations by withdrawing its ratification, it would have to go through an “international process involving notice” and that it “cannot negate the effects of its ratification of the Charter through domestic action” (Ibid). Moreover, to effectively address the challenges of this new era, African leaders envisioned a newer approach. At the Lusaka Summit which decided to begin the transition to the AU in July 2001, leaders made several references to the AU being loosely based on the European Union model. It was, however, agreed that the AU should be something new, with the emphasis on being an African experience. Whereas the OAU was in principle a political organization that also discussed matters of economic and social concern, the AU should be an organization aimed at economic integration and social development, which should lead to political unity (Wara 2002:2).

This was later on followed by a series of declarations and conventions addressing particular areas and special categories of human rights such as the Protocol establishing the African Court of Human and Peoples’ Rights (the African Court); the 1999 Grand Bay (Mauritius) Declaration and Plan of Action; and charter and protocol on children, women, and youth and so on. Moreover there are other African human rights monitoring instruments such as African Commission, African Court and African peer review mechanism. The African Commission and the African Court monitors State compliance with the African Charter on Human and Peoples’ Rights while the APRM reviews the state commitment to good governance, democracy, human rights. Consequently, the establishment of the these institutions and 2010 resolution adopted by the African Commission on closer collaboration between the Commission and the APRM process were not easy tasks (Bösl and Diescho 2009: 73). Detailed analysis of these general protections under the African charter and other specialized human rights instruments will be in order in the subsequent sections.

3.3 Significances of African Charter on Human and Peoples' Rights

The adoption of the African Charter on Human and Peoples' Rights by OAU was opened a new era to the field of human rights in Africa (Ouguerouz 1993:25). Even though the human rights did not explicitly recognize by OAU as one of its objectives at its adoption of 1963, it was since that time, when the human rights concepts on Africa has started its progress. The OAU, set up in 1963, stood by and watched silently, fettered by its conservative interpretation of national sovereignty and territorial integrity, which was the main argument to explain its inaction, even when massive violations were committed (Keetharuth 2009:5). With parts of Africa still colonized between 1963 and into the early 1990s, much of the OAU's attention had to be devoted to supporting the freedom struggles. The organization has achieved many changes in the development of human rights land scape across the continent in ratifying different international standards document and treaties (Mangu 2007: 314).

The OAU's preoccupation was to stamp out colonialism in all its forms in Africa. It was stressed that human rights protection was the main weapon against the colonial powers in African, and by accepting them wholeheartedly the peoples of Africa got the states were not prepared to allow any organ other than their domestic institutions to deal with matters that touched on the protection of human rights. Also this was the era of the Cold War when the big powers tended to back undemocratic, repressive governments (Wara 2002:2). It became difficult for African states to say human rights were just a domestic concern. Some influential leaders of African, such as Senegalese President, Léopold Sédar Senghor (1960-1980) started the process within the OAU officially for the adoption of Africa's regional human rights instrument. Senghor, on behalf of Senegal, and the representative of Mauritius, supported by Nigeria and Uganda, proposed at the OAU Assembly of Heads of State and Government 1979 that the OAU Assembly adopts a resolution to set in motion the process towards adopting an African human rights instrument(Senyonjo 2011:6).

The adoption of the African Human Rights Charter gave recognition to the great need to give more serious attention to the promotion and protection of human rights in the African continent and to provide some institutional oversight in that regard in the face of the incessant, gross human rights violations that characterized post-colonial African governance. However, early reviews of the

African Human Rights Charter were negative. Gino Naldi, in his contribution to *The African Charter on Human and People's Rights: The System in Practice, 1986-2000* (2002), wrote that it "has largely proved to date to be a false dawn for the promotion and protection of human rights in Africa." The last decade of the African Human Rights System (African System) proved a mixture of these assessments (Nmehielle 2000:1). Normatively, the African Charter is an innovative human rights document.

It substantially departs from the narrow formulations of other regional and universal human rights instruments. It consists of 68 articles and is divided into four chapters: Human and Peoples' Rights; Duties; Procedure of the Commission; and Applicable Principles (African Charter, *supra* note 1). It weaves a tapestry which includes the three "generations" of rights: civil and political rights; economic, social, and cultural rights; and group and peoples' rights. Its most controversial provisions impose duties on individual members of African societies. The Charter links the concepts of human rights, peoples' rights, and duties on individuals.

The problems of the African human rights system, which thus far has been anchored in the African Commission, are well documented. These include the normative weaknesses in the African Charter and the general impotence of its implementing body, the African Commission. But the distinctive contributions of the African Charter to the human rights corpus, which include the concept of duty and the inclusion of the "three generations" of rights in one instrument, have also been articulated and applauded by some scholars. Perhaps the most serious flaw in the African Charter concerns its "claw back" clauses. These clauses permeate the African Charter and permit African states to restrict basic human rights to the maximum extent allowed by domestic law (Mutua 1987:309).

The most notable shortcoming in the African Charter is the imprecise and incomplete formulation of the system of human rights. Due to the political realities prevailing in African countries at the time of drafting the Charter, it was not possible to provide for some of the human rights guarantees in the instrument as they are in equivalent treaties. Most human rights standards in the Charter are couched in the form of 'claw-back' clauses. No doubt, 'claw-back' clauses stand as the lowest point in the Charter. Even though the Commission has somehow found a way around this problem, the fact is that claw-back clauses constitute a significant source of concern. It must be understood that

while the rights regime is not self-sufficient, a lot more can be done to try and minimize opportunities for abuses taking advantage of deliberate inadequacies (Hansungule 2004:13).

As most African Charter rights stand at the moment, there is ample ground for suggesting that States are permitted greater latitude and extraordinary flexibility in trying to identify the extent of their obligations. Even more worrying, claw-back clauses constitute a form of a permit for the already unwilling State to engage in wanton and routine breach of the Charter obligations using the reasons of public utility or national security, etc (Ibid). This is especially significant because most domestic laws in Africa date from the colonial period and are therefore highly repressive and draconian. The post-colonial state, like its predecessor, impermissibly restricts most civil and political rights, particularly those pertaining to political participation, free expression, association and assembly, movement, and conscience. Ironically, it is these same rights that the African Charter further erodes (Mutua 1987 *supra* note 11, at 7).

Generally, the treaty framework and institutional arrangements of the African Charter in particular thus have been beset from inception with doubts about their credibility, efficacy, and relevance to the continent. Some early writers and commentators doubted “whether the Charter will ever come into force.” (Sesay & Ojo 1986:101). Subsequently, some others have questioned whether the African Commission on Human and Peoples’ Rights, the oversight and implementation mechanism created by the Charter, has the “power, resources and willingness” to fulfill its functions. The power of the Commission to consider petitions alleging individual violations of human and peoples’ rights, to provide a remedy for such violations, and to monitor through a public examination of periodic reports state parties’ compliance with Charter obligations have all at different times similarly been called into question. The perception of the African regional system that often is conveyed in much of the available literature is something of a juridical misfit, with a treaty basis that is dangerously inadequate and an institutional mechanism liable, ironically, to be slated as errant when it pushes the envelope of interpretation positively (Odinkalu & Christensen 2001:329-328).

3.4. African commission

The African human rights system is grounded by the African Charter and enforced by the African

Commission. The African Commission was established in 1987, a year after the African Charter entered into force (Art. 30, African Charter doc.). The Commission is vested largely with promotional functions and an ambiguous protective function. Under the Charter, the Commission is charged with three major functions, the Promotion of human and peoples' rights (article 45(1)), Protection of human and peoples' rights (article 45(2)) and Interpretation of the Charter (article 45(3)). The promotional function, which the Charter emphasizes, includes research and dissemination of information through workshops and symposia, the encouragement of national and local human rights institutions, the formulation of principles to address legal problems in human rights, and cooperation with African and international human rights institutions (Ibid Atr. 45(1)). The Commission is empowered to interpret the Charter at the request of a state party, the OAU, or any organization recognized by the OAU Ibid Atr. 45(1)).

In contrast, the provision relating to the protective function is quite terse. It provides, without elaborating, only that the Commission shall "ensure the protection of human and peoples' rights" in the Charter Ibid Atr. 45(1)). The Charter provides for a 'communication procedure', under which states, organizations and individuals may take a complaint to the Commission alleging that a State Party to the Charter that has violated one or more of the rights contained in the Charter. However, communications can only be considered by the Commission if they: indicate their authors, even if the authors wish to remain anonymous to the public; are not written in a language that is insulting or disparaging to the state or the OAU; are not incompatible with the OAU Charter and the African Charter; are not based exclusively on media reports; are sent after the petitioner exhausts local remedies, unless these are obviously unduly prolonged; are submitted within a reasonable time after local remedies are exhausted; do not deal with a matter that has been settled by the states concerned in accordance with international instruments. Thus far the system lacks a credible enforcement mechanism. This is hardly surprising because virtually no African state, with the exceptions of the Gambia, Senegal, and Botswana could even boast of a nominal democracy in 1981, the year that the OAU adopted the African Charter. Hopes by observers of the African Commission that it would robustly construe the Charter to alleviate its weaknesses have largely gone unrealized (Mutua supra note 11, at 7).

3.4.1. Rules of Procedure of the African Commission

The African Charter charges the Commission with three principal functions: examining state

reports (Ibid art. 62), considering communications alleging violations (Ibid art. 47 and 55) and expounding the African Charter (Ibid art. 45(3)). These functions follow the general script of other regional as well as universal human rights bodies. In particular, the Commission seems to have drawn substantially from the procedures and experiences of the UN Human Rights Committee. Article 62 of the Charter requires each State Party to submit a report every two years on the legislative or other measures taken with a view to giving effect to the rights and freedoms guaranteed by the Charter. Its Rules of Procedure provides the process before the Commission, and the Reporting Guidelines, which specify the form and content of state reports, mirror the lessons of other human rights bodies. The Guidelines were supplemented by General Directives, an unpublished document that was sent to foreign ministers of states parties in 1990 (Samb 2009:6). The Directives are just the outline of the Guidelines. According to the rule 75, supra note 45 of the African commission, the African Charter requires that the Commission "cooperate" with African and international NGOs in its work (Art. 45(1) (a) and (c)). Thus the Commission grants human rights NGOs observer status which allows their representatives to participate in the public sessions of the Commission.

The Commission's primary protective function that of considering complaints filed by individual victims as well as nongovernmental organizations (NGOs), has a large potential which thus far has not been realized (Mutua 2008:17). First, the Charter places no restriction as to who may file a communication, an opening that allows any individual, groups, or NGOs, whether or not they are the direct victims of the violation complained of, to lodge a petition (Art. 55, African Charter, supra note 1). However, as Prof. Mutua described, the communications can only be considered by the Commission if they: indicate their authors, even if the authors wish to remain anonymous to the public; are not written in a language that is insulting or disparaging to the state or the OAU; are not incompatible with the OAU Charter and the African Charter; are not be based exclusively on media reports; are sent after the petitioner exhausts local remedies, unless these are obviously unduly prolonged; are submitted within a reasonable time after local remedies are exhausted; do not deal with a matter that has been settled by the states concerned in accordance with international instruments (Ibid art. 56).

According to the Rule 106, Rules of Procedure, supra note 45, Although the Charter does not explicitly require it, communications are considered in private or closed sessions. If the

Commission determines that one or more communications "relate to special cases which reveal the existence of a series of serious or massive violations"(Art. 58(1), African Charter, supra note 1) of human rights, it must draw the attention of the OAU to such a condition and, presumably, conduct an on-site investigation. In the case of an emergency, the Commission must inform the Chair of the OAU and request an in-depth study, which most likely calls for on-site fact-finding (Ibid art. 58(3)). The Commission's power to conduct such investigations is clearly authorized by the Charter which empowers it to "resort to any appropriate method of investigation."(Art. 46, African Charter, supra note 1).

The commissioners, however, had been reluctant until recently to claim these powers. The Commission's formula for considering individual communications closely mirrors that of the UN Human Rights Committee. In a format similar to that of the HRC, the Commission arranges its decisions into sections dealing with facts, argument, admissibility, merits of the case, and the finding. Each of these sections is scant and thin in both substance and reasoning. If you have submitted the same claim to the African Commission on Human and Peoples' Rights, or the African Court on Human and Peoples' Rights, the committees cannot examine your complaint, the aim being to avoid unnecessary duplication at the international level (OHCHR Doc.).

3.5 African Court on Human and Peoples' Rights

In June 1998, the OAU adopted the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.³ The African Human Rights Court is intended to complement (Protocol, supra note 3, article 34.) the African Commission on Human and Peoples' Rights, the body that has exercised continental oversight over human rights since 1987. Until the Protocol comes into force and a Human Rights Court is established, the African Commission on Human and Peoples' Rights remains the sole supervisory organ for the purpose of verifying the implementation of the African Charter on Human and Peoples' Rights. A protocol to the Charter was subsequently adopted in 1998 whereby an African Court on Human and Peoples' Rights was to be created. The protocol came into effect on 25 January 2004. The Protocol suggests that the African Human Rights Court will make the promotion and the protection of human rights within the regional system more effective (preamble, Protocol, supra note 3).

Both the European and the inter-American human rights systems give the belief that a human rights court is necessary, if an essential parts of an effective rule for the protection of human rights. The rational here is that norms proposing state conduct are not expressive unless they are anchored in functioning and effective institutions. In the case of the African regional system, this truism merits special concern because both the norms in the African Charter and the African Commission itself have been regarded as weak and ineffectual. Hence the push for a human rights court commenced an institution that is intended to correct some of the more obvious failures of the African system. But the mere addition of a court, although a significant development, is unlikely by itself to address sufficiently the normative and structural weaknesses that have plagued the African human rights system since its inception. The modern African state is in many respects the colonial in a different guise. most obvious and powerful expressions of the continued African conceptual reliance on European political forms are the African states themselves. The states are direct and uncritical successors of the colonies." The African state has been such an egregious human rights violator that skepticism about its ability to create an effective regional human rights system is appropriate (Mutua 2008:2).

There have been two polar views on the creation of an African human rights court. One view holds that a human rights court must be established as soon as possible to salvage the entire system from its near-total irrelevance and obscurity (Mutua 1998:287). According to this view, the deficiencies of the African system both normative and institutional are so crippling that only an effective human rights court can jump-start the process of its redemption. The court is here seen as a proxy for putting some teeth and bite in the system. The state is the target that must be restrained. The other view is gradualist and sees the work of the African system as primarily promotional and not adjudicative. According to it, the major problem in Africa is the lack of awareness by the general populace of its rights and the processes for vindicating those rights. Proponents argue that the regional system must therefore first educate the public by promoting human rights. The task of protection, which would include a human rights court, is seen here as less urgent (Ankumah 1996:194). Critics argue that a court might be paralyzed by the same problems that have beset the African Commission. They therefore urge that the African Commission be strengthened instead of dissipating scarce resources to create another, possibly impotent institution (Ibid :195).

The African Human Rights Court is an attempt to address some of the weaknesses of the African system. The Court can apply any relevant state-ratified human rights instrument, including UN and regional instruments. Its basic function is protective, and seeks to complement the work of the African Commission, whose work is basically promotional. Although the African Commission's mandate includes state reporting and the consideration of communications, a function which is protective, it is the promotional activities which have been the centerpiece of its operations (Mutua 1998:26).

But commentators agree that both the state reporting and the communications procedures have been disappointing, partly due to the lack of powers and the absence of textual clarity. (Ibid). The consensus among government officials, NGOs, and academics on the need for a human rights court in the African regional system has steadily gained momentum. This realization is indicative of the shortcomings that currently plague the African system. While the push for the court is not a repudiation of the African Commission, it is an acknowledgment of its general ineffectiveness. The hope appears to be that a court will strengthen the regional system and realize its promise. But that will not happen unless the court avoids the pitfalls that have trapped the African Commission.

One serious shortcoming of the African Human Rights Court relates to the limitation of access placed by the Protocol on individuals and NGOs. The court has two types of access, one automatic, and the other optional. The African Commission, states parties, and African intergovernmental organizations enjoy unfettered or "automatic" access to the court once a state ratifies the Protocol (art. 4(1) of the Protocol). First, the court has discretion to grant or deny such access (Ibid art. 5(3)). Secondly, at the time of ratification of the Draft Protocol or thereafter the state must have made a declaration accepting the jurisdiction of the court to hear such cases (Ibid art. 5(3), 34(6)). Critics and proponent similarly argued that it makes little sense to create an institution that duplicates the weaknesses of the African Commission. In the context of the OAU, an organization with scarce financial resources and limited moral clarity and vision, the establishment of a new body should be approached somberly. A human rights court will only be useful if it genuinely seeks to correct the shortcomings of the African system and provides victims of human rights violations with a real and accessible forum to vindicate their basic rights

3.6 African Peer Review Mechanism (APRM)

African Heads of State and Government adopted the APRM – a key component of NEPAD – in Durban, South Africa in July 2002 as a systematic peer learning and self-assessment mechanism based on the NEPAD foundational document, the ‘Declaration on Democracy, Political, Economic and Corporate Governance’. It is a mutually agreed instrument voluntarily acceded to by AU member States as an African self-monitoring mechanism. The APRM ‘is often described as “Africa’s unique and innovative approach to governance” with the objective of improving governance dynamics at the local, national, continental and international levels’. (African Partnership Forum, May 2008.) Since its adoption, the APRM has become the most visible achievement of NEPAD in promoting good governance in Africa.

To understand the origin and evolution of the APRM, one needs to look at both the vision and the institutional framework of the AU. Africa’s new vision of development is embodied in the Constitutive Act (the Act) of the African Union; this Act is the foundation of any initiative regarding the political and socio-economic recovery of the continent and spells out the objectives and principles for Africa’s renewal. (Professor Wiseman Nkuhlu, July 2003). The NEPAD is the programme of action for pursuing the socio-economic objectives of the Act. the APRM was conceived as a mechanism and an instrument that will ensure that the principles, objectives and priorities of the Constitutive Act are incorporated and enforced through the socio-economic developments programmes of the individual countries and regions. (F Pagani, (2002) 1). For cohesion of the vision, the NEPAD’s APRM organs are not that different from those of the AU.

In March 2003, the NEPAD Implementation Committee adopted a document entitled Objectives, Standards, Criteria and Indicators for the African Peer Review Mechanism (OSCI). Between five and nine objectives were set out for each governance area: democracy and political governance, economic governance and management, corporate governance, and socioeconomic development. The Panel further elaborated OSCI in a much longer document known as the Questionnaire, sent to all participating countries. The Questionnaire sets out a number of questions and indicators under each of the objectives as provided for in OSCI (Killander (2008) 3).

The African Peer Review Mechanism process is designed to be open and participatory. All member states of the African Union are free to participate in the African Peer Review Mechanism Process. Currently the countries that voluntarily acceded to the APRM reached 35, with the signature of the MoU by the Côte d'Ivoire being the latest to join in January 2015. Those countries are: Algeria, Angola, Benin, Burkina Faso, Cameroon, Chad, Côte d'Ivoire, Djibouti, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mauritania, Mauritius, Mozambique, Niger, Nigeria, Republic of Congo, Republic of Equatorial Guinea, Rwanda, Sao Tome & Principe, Senegal, Sierra Leone, South Africa, Sudan, Tanzania, Togo, Tunisia, Uganda, and Zambia. However, Of the 35 APRM signatories, only Seventeen (17) of these countries have completed their self-assessment exercise and have been peer-reviewed by the Forum of Heads of State and Government. The countries which completed their peer review are: Ghana, Rwanda, Kenya, South Africa, Algeria, Benin, Uganda, Nigeria, Burkina Faso, Mali, Mozambique, Lesotho, Mauritius, Ethiopia, Sierra Leone, Zambia and Tanzania (Marcelin 20014:12).

Several of these countries joined more than a decade ago, but have not managed to muster the political will, momentum and the funding to complete a review. Since January 2013, there have been no new countries reviewed. The bigger challenge that the APRM system currently faces is driving reviews in member countries that have already acceded, rather than attracting the 19 states not yet part of it to join.

3.6.1 Principle of the African Peer Review Mechanism

As a core guiding principle to the APRM is committed to ensuring that every review exercise carried out under the authority of the mechanism must be technically competent, credible and free of political manipulation (APRM doc.). To ensure that the primary purpose is realized, the participating states on their part committed to adopting appropriate laws, policies and standards, as well as building the necessary human and institutional capacity. They also committed themselves to adopting specific objectives, standards, criteria and indicators for assessing and monitoring progress in key areas on a regular basis in accordance with the African Peer Review Mechanism base document.

3.6.2 APRM Member Countries Adherence to International Human Rights Instruments

According to APRM standards and principles, under each governance area, the country review reports set out the relevant international instruments that the state has ratified and those instruments with ratification still outstanding (Kenya report, *supra* note 1, at 256) regarding this topic it is better to analysis few countries deeds in which APRM doing nothing. African countries, those under review have ratified most of the main international human rights treaties. However, there are some notable exceptions. For example, Rwanda has not ratified the Convention against Torture (CAT) and Kenya and Rwanda have not ratified the first Optional Protocol to the Covenant on Civil and Political Rights (ICCPR) allowing for individual complaints to the Human Rights Committee (Killander 2008:8).

In its response to the report, the Kenyan government tried to explain why it has not ratified certain instruments. For example, the government states that because Kenya is a state party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), it does not need to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (*Ibid*). In fact, the Protocol covers many rights not protected by CEDAW. As to why it has not ratified the optional protocol to CAT, the Kenyan government states that it “outlaws capital sentence” (Concluding Observations of the Human Rights Committee, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, U.N. GOAR, and Hum. Rts. Comm.,).

In truth, the protocol in question does not mention the death penalty, but deals with preventative measures against torture, which is relevant for Kenya considering the concern expressed by the UN Human Rights Committee on the frequent use of torture in police custody in Kenya (U.N. Doc 2005:18). The approach the Panel takes to domestication varies between the reports. The Rwanda Report recommends that the government “adapt and harmonies its domestic laws to be consistent with international commitments, while giving due attention to its own realities” (RWANDA REPORT, *supra* note 62, 84). The Ghana Report recommends that the country incorporate ratified conventions into domestic law (Ghana report, *supra* note 48:13). The Kenya Report does not explicitly suggest incorporation, but recommends that Parliament “pass all laws

reflecting the international norms and standards acceded to by the Government soon after ratification” (Kenya report, *supra* note 1:61)

The lack of compliance with reporting obligations is unfortunate as increased reporting, subsequent concluding observations, and the use of these observations in various contexts, such as the APRM, could lead to a mutually reinforcing system for monitoring compliance with international norms (Alston 2005:801). This would require that the persons involved in the ARPM process take note of the outcomes of the state reporting and communications procedures before the human rights monitoring bodies, and of the findings of the special procedures of the UN and the African Commission on Human and Peoples’ Rights. The findings of national human rights institutions should also form part of this process. Very little evidence of such institutional reinforcement exists in the first three APRM reports. (Killander 2008:9).

All of the countries under review are state parties to the African Charter. Article 62 of the Charter stipulates that periodic state reports on the human rights situation in a country are to be submitted every two years. Of the states under review, at the time of writing, Algeria, Ghana and Uganda owe one report, Ethiopia and South Africa owe two, Nigeria owes five reports and Kenya owes six reports. All of the countries under review, except Ethiopia, (The Legal Affairs Committee of the House of Peoples’ Representatives published a draft document on the establishment of a Human Rights Commission and Office of the Ombudsman in three main local languages and distributed it to the public, but these bodies have still not been formed.) have some form of national institution in place to address human rights issues. Three of the countries – Ghana, South Africa and Uganda – have made provisions for a national human rights institution in their constitutions.

3.7 Conclusions and Remarks

Africa has witnessed human rights violations over the years. The recent period in that long history of abuse is still being carried out under the course of the post-colonial state. But the peoples of Africa, like peoples elsewhere, have never stopped struggling for better environments of life, and especially for more rational and accountable leaders. The popular denial of one party and dictatorial states over the past decade has once again given hope that the predatory impulses of the post-colonial state might be detained. Within states, civil societies have grown during that period and governments are being enforced to review rules and regulations that are offensive to basic human rights.

Under the auspices of the African Union (AU), Africa has a "corpus" of human rights mechanisms, laws and norms, at the center of which lies the African Charter on Human and Peoples' Rights. The Charter was approved in 1981; it was officially adopted in 1986. Since then, it has been adopted by all 53 African States and is widely recognized within Africa, at least theoretically, as setting the standard for human rights protection. Indeed, the promotion and protection of human and peoples' rights in accordance with the African Charter and other relevant human rights instruments is an objective of the Union. The African Charter provides a solid foundation for human rights, though not without inherent weaknesses, to guarantee the protection of these rights. At the continental level, UN, civil societies and human rights advocates have demanded that the African Commission become part of this movement towards change. This is the reflection through which Africans now view the African human rights system.

Additionally, there were several factors contributed to the adoption of the African Charter on human and people's rights. Then with the end of colonial rule as it existed before the 1960s, the end of apartheid in South Africa and the emergence of more democratically replaced governments in Africa, the conditions in Africa have become more favorable for building economic, political and social unity. The United Nations System, international law and the African Union have certainly all contributed to the establishment of a human rights system in Africa, which has positively and indispensably influenced the advancement of human rights and of justice unfulfilled (Bösl & Diescho 2009:2). In this manner, African states might have objected to

imposition on them of a global human rights commission, but as soon as they had a chance to concentrate on that issue, they established a regional one in furtherance of their obligations (Nega & Admasu 2009:20).

While it is perceived by many Africans that the indication of the African Commission was a step in the direction, there are serious doubts that it has been mostly unimpressive. Further, that a regional human rights system values its name need strong institutions to install its rules. The African Human Rights Court is an attempt to justify that undertaking. However, the court is in possibilities to be unfulfilled unless states parties return to the African Charter and strengthen many of its practical functions. Moreover, the court will not fit the expectations of Africans if the AU does not provide it with material and moral support to allow it to function as the independent and significant institution that it should be. Unless these conditions are met, the African Human Rights Court is condemned to remain failed to redeem the troubled African regional system.

CHAPTER FOUR

FINDING AND PRESENTATION

4 The Role of African Peer Review Mechanism in AU's Human Rights System

African Peer Review Mechanism plays some role in AU's human rights system. The most important contribution is the forthright approach aimed at encouraging member states to, among others; carry out self-assessment on their human rights, rule of law and democratic standards including their deficiencies (APRM doc.). It represents an evolutionary by which international norms can be integrated into a national context. This mechanism draws deeply on human rights standards and holds as one of its goals to enhance human rights. Hence, the APRM can play the role of rationalizing and harmonizing the evolving and existing human rights mechanisms and structures.

The process of peer review is premised on the establishment of institutions, structures and systems that are based on AU shared values, codes, norms and standards in human rights, the rule of law and political culture. The APRM is designed to promote three fundamental values of the African Union: Freedom and Human Rights, Participatory Development, and Accountability (McMahon 2013:272). In this way APRM, the governance leading of the AU, will continue to play an important role in promoting human rights and it is a complement to the task of African commission. Indeed, if the opportunity offered by the peer review process is fully utilized, Africa may witness the beginning of a new era in terms of effective political coercion of states into complying with the set standards for human rights. The indicators and benchmarks of APRM in which it evaluates member states includes: upholding of the rule of law, the holding of regular, free and fair elections, the creation of national human rights institutions and the promotion of the existence of a vibrant civil society.

This study shows that, even though its extent differs, in addition to African Peer Review Mechanism there are different human rights monitoring instruments in AU system. These are African Commission on Human and Peoples' Rights, African Court of Justice/African Court of Human Rights and Justice, African Committee of Experts on the Rights and Welfare of the Child,

Pan-African Parliament and Regional Economic Communities.

There are also different organizations which participate during APRM's data collection stage. This study shows that these organizations participate in different degrees during data collection stage. These organizations or bodies are law societies, civil societies, the national human rights institutions and regional economic communities. From these organizations the most effective one for the process of data collection is Civil Society Organizations.

Review Process

According to the various official documents, APRM reviews can be initiated by four major triggers: 1) a base review, when a country officially accedes to the APRM process. 2) Follow up reviews which are meant to be conducted every two-four years; 3) upon a special request by an APRM Member State; and 4) At any moment when early warning signs suggest an impending political, economic or social crisis in an APRM member State. The APRM covers 91 indicators in four governance areas: Democracy and Political Governance; Economic Governance and Management; Corporate Governance; and Socio-Economic Development. The review process includes country self-assessments questionnaire, and on-site visits by expert review teams which consult with government, and private sector and civil society representatives. An expert review team also organizes active plenary discussions and revision of country reports and action plans. (E. R. McMahon et al.12 (2013) 271).

The APRM is a five-stage process:

Stage 1: Background research and draft plan of action

Stage one involves a study of the political, economic and corporate governance and development environment in the country to be reviewed, based principally on up-to-date background documentation prepared by the APRM Secretariat and material provided by national, sub-regional, regional and international institutions. The background document is shared between all partners (i.e. including the country being reviewed) for comment and review. On the basis of the background paper the APR Secretariat prepares an issues paper setting out the main challenges in the APRM areas of review, sharing this with all partners. The APR Panel approves the work plan

and composition of the APR Team. In response, the country to be reviewed will prepare a draft Plan of Action to improve its governance and socio-economic development and submit this to the APR Secretariat.

Stage 2: country visit

Armed with the issues paper and plan of action, this stage sees the APR Team visit the country concerned where it will meet with and brief key stakeholders on “the APRM processes, spirit and guiding principles” and seeks to “build consensus with the stakeholders on the... challenge areas”. These stakeholders include government, officials, parliaments, representatives of political parties, parliamentarians, the business community, representatives of civil society organizations (including the media, academia, trade unions, NGOs), rural communities and representatives of international organisations. “The main focus of the Country Review Visit will be on identifying whether the country’s draft Programme of Action is adequate to address the assessed challenges and, if not, how the country can best be assisted in strengthening its final draft Programme of Action and its capacities to implement it.” Evident from this phase, indeed from the entire process, is the reliance upon official sources of information and interpretation.

Stage 3: Preparation of APR team recommendations

Stage Three is the preparation of the Team’s country review report based on the background documentation and country visit. The report will focus on recommendations that would improve, accelerate and resource the Program of Action through time bound additions to it. The Team’s draft country review report is first discussed with the Government concerned. According to NEPAD these discussions will ensure the accuracy of the information and provide the Government with an opportunity both to react to the Team’s findings and to put forward its own views on the identified shortcomings, including modifying the draft Programme of Action. The responses of the Government will subsequently be appended to the Team’s report.

Stage 4: Internal presentation and discussion of the recommendations

The Fourth Stage begins when the APR Secretariat submits the country report to the APR Panel who submits its recommendations to the APR Forum. The stage concludes with the Chairperson of the APR Forum communicating the decisions of the Forum to the Head of the country concerned. Interestingly enough, the document discussed in Abuja recently has done away with the explicit mention of either support or sanction reflected in the APRM process document approved at the Durban Assembly meeting.

Stage 5: Public release of the APRM report and implementation

During the Fifth and final Stage, and some six months after the conclusion of the previous stage, the final APRM Report is formally and publicly tabled in key regional and sub-regional structures such as the Assembly of the African Union, the Pan-African Parliament and within the relevant sub-regional structures. (Cilliers 2003:3&4).

4.1. Human Rights commitment under APRM

The human rights mandate of the APRM is to be found in the NEPAD Document. In its paragraph 79 entitled ‘Democracy and political governance’ (considered to be the NEPAD human rights component), it reaffirms that ‘development is impossible in the absence of true democracy, respect for human rights, peace and good governance’ and that ‘with the New Partnership for Africa’s Development, Africa undertakes to respect the global standards of democracy...’ The Democracy and Political governance Initiative aims at ‘strengthening the political and administrative framework of participating countries, in line with the principles of democracy, transparency, accountability, integrity, respect for human rights and promotion of the rule of law (Augustin 2004:32).

A great deal of the human rights instruments that compose the NEPAD democracy and political governance agenda are about civil and political rights; that may justify (but insufficiently) the position taken by some scholars. Through these various instruments, African states have reaffirmed their commitments to human rights and agreed to abide by the global concept of democracy. Most of these commitments are related to democratic constitutions providing for a comprehensive bill of rights, political pluralism, free, open and regular elections, open, inclusive and accountable government watched by a vibrant and responsible civil society (Augustin 2004:33&34).

The human rights commitments that the APRM is going to monitor are those endorsed by the AU member states in various instruments and recalled in the preamble of the Durban Declaration. The Durban Declaration itself is rooted in commitments to peace and good governance that African states have made before, and contained in various instruments (charters, decisions, declarations or other plans of action). Accordingly, the human rights provisions considered under the peer review

process are to be found in these various instruments. The Durban Declaration also referred to African states' international obligations in the context of the United Nations.

Both the AU Constitutive Act and the NEPAD Document together with the Durban Declaration make express references to international human rights instruments. The latter makes direct reference the Charter of the UN, the Universal Declaration on Human Rights, the ICCPR and the ICESCR. Special mention was made of the CEDAW and the Beijing Declaration. It was said that these international instruments were 'of particular significance' in the context of the Durban Declaration. Therefore, unfolding the human rights files under the APRM requires a survey of the commitments made by African states to it, the extent to which reference is made to international human rights instruments, and the substance and potential of such commitments to further human rights through the APRM (Augustin 2004: 32). Generally, the review process tries to find out if participating states are fulfilling commitments they made under different regional and African states' international obligation under UN and make recommendations based on the findings.

As mentioned above, the APRM reviews four governance areas: democracy and political governance; economic governance; corporate governance; and socioeconomic development. Human rights are relevant for all the governance areas whether referred to explicitly in the Questionnaire or not. Objective 3 under Democracy and Political Governance in the Questionnaire is entitled "promote and protect economic, social, cultural, civil and political rights, as enshrined in all African and international human rights instruments." The rights of women, children and vulnerable groups such as refugees are dealt with under separate objectives under political governance. Human rights also play an important role in the analysis of the other objectives under political governance: conflict resolution, democracy, separation of powers and anti-corruption measures (Killander 2008:8).

The APRM framework documents states that the respect for human rights is set out as a means to reinforce development and also as an important goal in itself. Moreover APRM alleges that the respect for human rights has to be accorded an importance and urgency of its own entire; one of the tests by which the quality of a democracy is judged is the protection it provides for each individual citizen and for the vulnerable and disadvantaged groups.

APRM does help member states in fostering human rights system and address any gap in the laws meant to protect and respect human rights. As E. Baimu (2002: 307) stated “The mandate of the APRM is to ensure that the policies and practices of participating states conform to the agreed political, economic and corporate governance values, codes and standards contained in the Declaration of Democracy, Political, Economic and Corporate Governance (Declaration on Governance).” This means that the system can influence and mend the human rights system in member states by making sure that the policies and practices of the member states conform to the agreed upon standards. The peer pressure exerted upon a reviewed country by other participating countries pressure and initiates the country to review the protection and respect of human rights under the system already in place under the government so that the agreed upon human rights standards at international, regional and national level are respected. Since the APRM review is conducted periodically, it can help participating states to address the gap and inadequacy in their human rights regime.

The APRM is intended to foster the adoption of policies, standards and practices that will lead to political stability, high economic growth, sustainable development and accelerated regional integration of the African continent. In the words of President Mbeki, one of the NEPAD architects, the provisions of the APRM are aimed at foreseeing problems and working to prevent their spread rather than just censuring and punishing when things go wrong. E. Baimu (2002: 307). So the system under APRM advance the adoption of policies and standards which enables them in foreseeing problems in their human rights system and create enabling environment to curb the problem so that it will not become an epidemic and gross human rights violation by participating states.

4.2. Recognition and credibility of APRM as monitoring mechanism of AU's human rights framework

Currently the countries that voluntarily acceded to the APRM reached 35 which is two third of the number of countries on the continent. When one looks at the number of countries that have already acceded to APRM by signing MoU, it can be said that the recognition and credibility of APRM as a monitoring mechanism has increased. States are becoming members and submitting themselves for peer review. It is known that one area to be review is human rights system and performance in participating countries. Questionnaires distributed to member States have an objective of enabling states to be reviewed on the implementation of AU human rights standards. The submission of states to APRM voluntarily to be reviewed by their peer on human rights issues shows the recognition and credibility of the Mechanism as a monitoring mechanism in the implementation of AU human rights framework.

Reports on the APRM shows that the Mechanism has made some progress. The recent developments in countries that had been reviewed have demonstrated the strength of the Mechanism as an early warning system for emerging issues and potential crisis. For example, the APRM report for Kenya had anticipated potential political unrest before ethnic related violence broke out in 2007; while the South Africa report had warned against xenophobic tensions that erupted in May 2008. Other country reports also highlighted common challenges across the continent. The diagnostic strength of the Mechanism should be made to promising tool to identifying the key areas of intervention and to set priorities for reforms. These reports boost the credibility of the mechanism and show its effectiveness.

4.3 APRM Documents

The references to human rights in APRM documents are in most instances general. Corporate Governance principles of APRM include discussion on labor and environmental rights. Socio-economic rights, though discussed under political governance, are more extensively dealt with under socio-economic development, though rarely using the language of human rights. The creation of a division between human rights, mainly dealt with under political governance, and

socio-economic development of APRM is not in line with current human rights, which sees human rights and socio-economic development (often referred to as human development) as two sides of the same coin (Killander 2008:8). Therefore, no human rights are specifically mentioned in the APRM document. The specific rights referred are equality before the law, freedom to join political parties and trade unions, participation in democratic processes, protection of vulnerable and disadvantaged groups including women, children, and ethnic minorities, and freedom of the press. The importance of strengthening human rights education, human rights institutions, civil society and the AU human rights protection bodies is also highlighted.

Even though human rights are expected to take prominent place in the APRM process, the APRM does not focus on human rights monitoring alone like the African Commission. Thus, Human rights being one of many things to be reviewed may not be adequately and comprehensively covered in APRM country report under taken until now.

4.4 APRM's Human Rights Indicator

At the summit of Abuja, in March 2003, the HSGIC agreed to the standards and indicators that will be in human rights peer reviews. The APRM will use the standards and indicators to attribute the progress that states will be making in human rights protection and promotion (Paragraph 1.8 APRM Objectives and Indicators Document). The indicators and benchmarks established for the APRM are founded on already established human rights and other standards. In this case attention is given to the African inspired standards. The most important standard for Africa is the ACHPR. However besides the ACHPR, the indicators are also based on the Grand Bay (Mauritius) Declaration and Plan of Action for the Protection and Promotion of Human Rights. The standards also go beyond African instruments to include important international treaties such as the Conventions on the Elimination of all Forms of Discrimination against Women, the UN Convention on the Rights of the Child and the Universal Declaration of Human Rights (APRM Objectives and Indicators Document).

The indicators formed along these standards are obviously qualitative as they seek to measure the basic implementation of the rights and the developments that experienced by the people living in

the countries under review. Most of the indicative criteria focus on the effective implementation of human rights standards by member states. The criteria and indicators established for the APRM are very broad as they include not just the content of essential rights but extend to question state action in implementing their duties. Some of the issues that are assessed include the level of ratification and accession to relevant human rights standards by the state. In addition, the mechanism assesses the existing steps taken by states including financial commitments towards confirming the fulfillment of rights in Africa. Of concern to the peer review are other implementing bodies such as courts, electoral commissions and national human rights institutions (APRM Objectives and Indicators Document).

4.5 Relationship between APRM and African Human Rights Commission

The following discussion tries to show the way in which APRM can complement the important role of human rights monitoring that has been played by the African Commission. African Human Rights Commission is considered as the main human rights monitoring body of African Union. The mandate of the African Commission is mainly the protection and promotion of human and peoples' rights in Africa (Article 30 African Charter on Human and Peoples' Rights). From this point of view, the African Commission has the responsibility to interpret the African Charter at the request of a state party, any institution of the AU, or any African institution recognized by the AU. Under the protective mandate, the African Commission has two main responsibilities. The first is receiving as well as looking at communications reported on human rights violations from state parties and individuals.

African Commission has not been functioning at its best. The failure of the African Commission to work at its best has been criticized on the lack of support and political will from AU's member states. This problem had long been identified as one of the drawbacks to making states fully commit themselves to human rights. APRM process can complement this gap in human rights monitoring in Africa since one of its objective is to create space for a political process and dialogue among states to learn from each other, apply peer pressure and develop action plans on human rights promotion and protection among other issues. The Peer review can play a significant role by limiting the power of the state and challenging its abuses of authority;

protecting human rights and strengthening the rule of laws.

The APRM Questionnaires which are distributed to member states assess the normative framework (signing, ratification, & domestication of international and African Codes & Standards); Assessing the implementation of the commitments (outcomes-based) and Monitoring of Progress Reports on implementation of National Plan of Action (NPOA) submitted yearly. The assessment examines legislation, policies, and institutional framework in place to promote human rights among Rights of Women, rights of refugee, Rights of the Children, and Rights of vulnerable groups especially under its theme of Democracy and Political Governance.

To sum up this study shows that there is a general agreement that the APRM has a potential to perform many crucial functions side by side with African human rights Commission in consolidation of human rights and good governance. Consequently, there has been emerging outlook within international human rights organizations and activists as the APRM have a potential to monitoring human rights. They claimed that the APRM can support the important role of human rights monitoring that has been played by the African human rights Commission and these two mechanisms can complement each other and work towards greater realization of human rights in Africa. Hence, the APRM as a political process introduces a missing component to the human rights system in Africa, which has been quasi-judicial in the form of the African Commission.

4.6 The Main Challenges facing APRM's Human Rights Strategy

4.6.1. Funding the Process

Reflections in deciding whether or not to accede are the organizational and financial demands of the process, which required a minimum annual subscription of \$100,000 per country, plus further expenses for conducting the actual review adds significant expenses, depending on the size of the country and the extent of public participation. But many countries have lagged in paying their subscriptions. Beyond this, countries must constrain their often subjected to state capacity to the process, preparing information and organizing consultations, for example. For countries facing with severe developmental challenges, these are important commitments. Meeting these

commitments needs a good political will. The creators of the APRM miscalculated these burdens. The process was originally conceived to be completed in a six to nine-month timeframe, from the hosting of the Country Support Mission to the review by the APR Forum. No country has attained this. If the preliminary sensitization and institution building needed before the process officially starts is factored in, the timeframe is better measured in years.

Despite early hopes that the APRM might open new sources of support from development partners, there is little direct evidence of this having occurred. Rare exceptions exist, such as Ghana's Country Review Report being used in awarding it access to funds from the US Millennium Challenge Account (Gruzd 2014:21). However, as a motivation for accession, this is not convincing. Rather, the fundamental goals of positive governance reform remain the best reasons to do so, which should be recognized.

4.6.2. Evaluating the progress of the Peer Reviews

Seventeen countries have been through the entire process only half of the countries that have signed up for it since 2003. Moreover, despite the APRM's objective of conducting periodic reviews (every five years, after the initial process), no country has yet produced a second review. This makes difficult to evaluate the APRM progress whether it is on right track or not because there is a positive trends of APRM members' accession but the reviewing process shows reluctance of member states to be reviewed by their peers based on agreed time frame.

4.6.3. Ensuring Credibility

The APRM's long-term success rests on its credibility. A central premise of the APRM was that Africa would deal forthrightly with its governance challenges. Doing so would, inevitably, strike at the power relations and even the cultural dynamics of many African countries. The extent to which the APRM has achieved this is unclear. Traditions of openness and civic engagement are foundations upon which strong and credible processes can be built. Open societies can generate correction mechanisms: even where suspicions of manipulation arise, which can be contested. South Africa's process is a good example. During the process, protestations from civil society and analysts led to a greater role for non-governmental groups in its management and in conducting research for its Country Self-Assessment Report.

Some committed already stretched thin with 35 member states, and it is difficult to see how it would be able to accommodate significantly more countries. If anything, the fact that countries have chosen to remain outside the APRM – while the trend in the AU has been for countries (nominally) to endorse all its initiatives – suggests that the APRM reviews are seen as impactful.

4.6.4. Political will

The states may in the same manner widely accept scrutiny under the APRM but continue with their disregard of what is expected of them. The APRM has many challenges from its human rights monitoring perspective. Firstly, the APRM has basis a document and a process that does not have a binding effect at the international level. The basis of the APRM is not that clear and at best, it stands as a product of a declaration. The fact that the APRM is not based on a truly legal binding document can make it a less respectable process with regard to its role in human rights monitoring in the perception of African leaders. Consequently, obligations that flow from it may not be taken seriously. Even though human rights are supposed to take prominent position in the APRM process, the APRM does not focus on human rights monitoring alone like the African Commission. Still there is a risk of African leaders commitment to adequate attention they given to the human rights component of the review.

Human rights being one of many things to be reviewed may not be adequately and comprehensively covered in APRM country report under taken until now. Thirdly, the work of the APRM on human rights has been limited to a severe shortage of resources. In this case the lack of political commitment to human rights protection and monitoring of the AU verified itself in its failure to adequately finance the African commission. Fourthly, there is the fact of bad human rights record of many African leaders has been reflected in the failures of the state leaders to genuinely review each other which in turn has a negative impact on the APRM's role on human rights monitoring. Some of the pioneers of the African Union are dictators and human rights violators such that there is doubt about how much they can do regarding the critical innovation of APRM which, is exerting of peer pressure by states on each other to ensure compliance with human rights standards

4.6.5. Capacity

The other major challenge facing APRM is state's inability to finance the program of actions committed under the APRM implementations. In this regards, the participants of the survey questions were also indicated as the insufficient financial capacity of the APRM member states made a major bottle neck for the implementations the process. Even though the APRM is supported by "development partners" such as African development bank, the ECA, UNDP, Canada and the United Kingdom there were observed that financial resource available for APRM were remain inadequate to cover the process. While the upstream implementation process of the APRM could be funded from donor Trust Funds sources, countries should be encouraged to finance the NPoAs with their own resources as much as possible. However, many member states failed to meet the minimum contribution of \$100,000 (Steven 2009: 1). The APRM Guidelines provide that the 'in-country costs of the APR for a particular country must be borne by the country itself' (APRM doc. par. 21.). So, unlike the UNDP country-led governance assessments in Africa where government contribution to funding is the exception, with the APRM it is the rule. Public consultations and technical research are expensive and time consuming; in the pioneer countries of Ghana, Kenya, Rwanda, Mauritius and South Africa, the self-assessment had an average cost of \$1 million to \$2 million (Herbert & Gruzd 2008:20). However, experience with implementing the APRM-NPoA suggests that countries are becoming just as dependent on external sources to implement the normal development plans.

The donors were provides a financial and technical assistance to a Secretariat-led revision of the APRM Questionnaire. This revision includes a country self-assessment instrument and the development of a monitoring and evaluation framework to oversee and report implementation progress of National Program of Actions. Unfortunately, the APRM self-assessment, initially foreseen for end-2010, was delayed; often, a funding shortfall reflects a lack of political will and can be overcome as the political resolve increases (GRUZD 2014:10). Drawing general conclusions from these funding, just as membership of the APRM is voluntary, starting the self-assessment process is also voluntary, and one might assume that a country willing to initiate it would also be willing to fund it, and that shortfalls and delays are more reflections of lack of political will. Where the APRM is more a public relations exercise than a reflection of genuine

interest in peer review, starving self-assessment activities of cash may have been a deliberate government tactic.

4.7 The costs of NPoAs and Partners of APRM

The APRM national reviews are funded by the Governments concerned, with assistance from a trust fund managed by UNDP to which multilateral and bilateral donors can make voluntary contributions. The 2009 Mutual Review of Development Effectiveness Report published by ECA and the OECD called upon development partners to support the APRM NPoAs through a coordinated effort, by aligning their support for APRM-NPoAs within the context of the Poverty Reduction Strategic Programs. The relative cost of the NPoAs raises issues of the extent to which the APRM would increase the dependency of African countries on donor support, the very idea that APRM was created to decrease. The mobilization of external resources for NPoAs has been taken on individually by APRM States and so far, there is no systematic approach to treat it as a collective effort. ECA and other strategic partners have advocated that the support should be in the form of a regional Trust Fund which would be in accordance with the Paris Declaration, which emphasizes that efforts should be made to ensure that African countries own their development agendas.

The APRM Secretariat is assisted in this work by technical partners, including the African Development Bank, ECA and the United Nations Development Programme (UNDP), which supply information and also participate in the country missions. The APRM is supported by the Regional Bureau for Africa of the United Nations Development Programme (UNDP), the African Development Bank (AfDB) and the United Nations Economic Commission for Africa (ECA), its three Strategic Partners. For example, during 2010 the African Development Bank provided a grant to support the project to revise the APRM tools and processes, while ECA organized workshops on the role of African parliamentarians in APRM (eighth consolidated progress report on implementation and international support: report of the Secretary-General” (A/65/167); these reports are available on the website of the United Nations Office of the Special Adviser on Africa).

Also countries that have signed up for review are supposed to contribute a minimum of \$100,000; some have contributed more, while others are in default. As at the end of 2006, the total financial contributions received from member States stood at \$8.8 million; this was equal to 62 per cent of the total contributions to the Mechanism since it was established, with the remaining 38 per cent coming from bilateral and multilateral development partners (largely the Governments of Canada, Spain and the United Kingdom of Great Britain and Northern Ireland, and UNDP (Annual Report 2006 (APRM Secretariat, 2007). The largest contributions from African States were from Algeria, Nigeria and South Africa, with all other APRM members except for Burkina Faso, Egypt, Ghana, Mali and Mozambique in arrears for their obligations (Annual Report 2010 (APRM Secretariat, 2011).

The bilateral contributions over the period 2003-2010 came from Canada, Germany, Italy, Spain, Switzerland and the United Kingdom, and multilateral contributions from the African Development Bank, UNDP and the European Union.). On 27 June 2002, the G8, meeting in Canada, adopted its Africa Action Plan in which it stated that “the peer-review process will inform our considerations of eligibility for enhanced partnerships. We will not work with governments which disregard the interest and dignity of their people.”(G8 Africa Action Plan 2002:7). The factor that mitigates the influence that comes with external funding is dialogue over content. Countries seeking funding for governance institutions usually enter into dialogue with the donors. At the continental level, a similar opportunity for dialogue is less well known and used, namely the Africa–EU Platform for Dialogue on Governance and Human Rights. Even with the existing resource the program is not easily archived due to the political will of the member states.

4.8 Ownerships issue of APRM

The danger of donors partnering with the APRM comes because of the issue of money and power. Financing can give control and influence; it can also demonstrate political will. Government institutions touch on the core of government and thus are particularly political, and therefore government financing of governance institutions would be ideal. The APRM emphasizes African ownership and gives governments the responsibility to finance country reviews. Providing funds is an expression of credibility, but the APRM itself, must also be credible to attract funding. This means credible institutions at the continental and country level, political will to improve

governance, visionary leaders heading government and the continental institutions, and having safeguards in place that prevent the APRM from being ‘hijacked’ by foreign forces, or from turning into bureaucratic routine or state-driven policy devoid of citizens’ voices and popular participation (UNECA Note 2011:14).

Some are arguing that funding by external partners would compromise the country’s ownership of the self-assessment process (Mbelle 2010:10). On one hand, some are claiming that financing can buy control and influence for donors. One hand, the assertion that donors influenced the outcome of the self-assessment has not been made regarding those countries in which external partners did provide part of the necessary funding. It has negative effects as example, in the case of Zambia, the complaint about donor influence centered on the UNDP’s mobilizing civil society without involving government (Chikwanha 2007:10.). Funding may influence not only content but also process – in this case, the extent of civil society participation or its composition.

On the other hand, what is also notable as an example is that the peer review assessment in Egypt and Nigeria had funding from the government, or states and local governments, respectively, thereby expressing greater ownership of the governance assessment by providing part of the necessary funding. This is an indication that countries’ ‘ownership’ may not be as strong as the donor might wish to believe – confirmations of the common saying ‘don’t look gift horses in the mouth’ Also the APRM assessment in many countries is integrated into a continental framework. Also, a desire to exclude such influence may explain the fact that Ethiopia funded the self-assessment without contributions from donors. This would be in line with Ethiopia’s civil society law, which prohibits external funding of more than 10% for politically active civil society organizations (Law Monitor: Ethiopia’, updated 20 February 2013 report).

But self-funding of the exercise is about exercising responsibility for the country’s development. The self-discipline inherent in mobilizing resources for this activity is evidence of commitment to the process and a chance to demonstrate capacity and ability to address the ailing democratic environment in their countries. Funding shortages experienced by some countries that have gone through the process mirror the deficits experienced in national budgeting processes where, in many instances, information on which to base estimates is very often lacking such that it is

difficult to make forecasts. Another weakness is that traditional government budgets in Africa often fail to link the funds to the actor and to the activity (Chikwanha 2007:9). The budget breakdowns rarely connect all these issues and though this allows for flexibility, the net result is a complete reallocation of funds as demanded by the situation; hence shortfalls become inevitable.

4.9. Conclusion and Remarks

There is no direct way to claim human rights within the framework of the APRM, but it is an innovative instrument that ‘human rights NGOs / CSOs’⁵ can use to make their voice heard. The country review reports for the participating countries may be a valuable background resource for an individual plaintiff claiming a violation of his/her human right. The paper concludes that the APRM holds a strong potential for enhancing human rights monitoring on the African continent, but that a number of tasks need to be taken to fulfill that potential. There is a need of strong commitment and political will for holding African leaders to their promises and helping them implement their visions.

⁵ This requires upgrading and strengthening the action and political participation, knowing that civil society could not actually become strong and flourish if political society, whose function is to manage institutions, was not strengthened.

CHAPTER FIVE

5. CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

Since decolonization, Africa has witnessed gross violations of human rights. Since some of the pioneers of the African Union were dictators and human rights violators, they were covering up human rights issues. It was ironic that virtually none of the leaders, the Heads of States and Governments, were freely and fairly elected. Without exception, they presided over repressive states. As African scholar Makau wa Mutua points out, the post -colonial "African states have largely failed to create viable, free, and prosperous countries. The new African states have failed to inspire loyalty in the citizenry; to produce a political class with integrity and a national interest; to inculcate in the military, the police, and the security forces their proper roles in society; to build a nation from different linguistic and cultural groups; and to fashion economically viable policies. African political leaders, who, lacked a genuine national commitment and sense of obligation, exploit state budgets and power to strengthen their ethnic power bases, enhance personal privileges and thus retain power. Such a strategy ignores the human rights entitlements of common citizens without discrimination.

Despite the political problems outlined above, most African leaders have opted to work within existing state structures and fashion a Pan-African human rights charter that distributes rights and duties between citizens, peoples and the state. It was virtually the same club of dictators who adopted the African Charter in Nairobi, Kenya in 1981. As Mutua (2008: 5&7) said, the problem that bed willed Africa has given birth to the African Human Rights system. This situation has been reflected in the concepts of sovereignty and independence that made the OAU an effective anti-colonial body. However, this was later used to hide the human rights situation by implying political apathy toward the abuse by African States against their own people. The violation of human rights in the form of extrajudicial killing is also common in most African countries. Dictatorial African governments are known by their influence of the courts, which they command to conduct secret

proceedings and pass secret judgments, the outcomes of which are usually known by violating the human rights. With all these issues, some of the organization member states set that the first aim of the African regional human rights system, i.e. African charter, was protecting rights to sustain human development in Africa. And they argued as the peoples should sacrifice their rights for the sake of their own political stability.

Indeed, the African Charter charges the African Commission with three principal functions: examining state reports, considering alleged violations, and monitoring the Charter. Thus there is a need for the African Commission to be one of the institutions that will make significant input in to the development of the report and recommendation by providing information and insights from its many years of experience as a human rights monitoring mechanism. This can only be done if the African Commission is involved in the early stages. Since this can be only if the Commission is involved in the early stages, there is a need to review the current arrangement and give the African Commission (AU) an opportunity to make input in the early stages of the review. However, the commission was unable to flatter the position, mainly, due to the capacity and the political matter of the continent such as the funding of the system, the absence of compliance and supportive political will on the part of state parties. All these reduced the institution to have a very little credibility and reluctance to cooperate with the people of Africa for so long period of time.

As Abbas (2007:11) stated “The main reason why so few complaints have been lodged is because there is a lack of political will on the part of African State or Government to hold one another accountable for violations of fundamental freedoms”. The other criticisms against the African Commission has been that it failed to make use of the media and the media also failed to find its work as worthy of consistent publication. The commission has received petitions only from a limited number of individuals and NGOs. Once the commission reaches a decision on the virtues of a case, it has no effective mechanism to implement its judgment. Consequently, some African states have ignored the commission with impunity. Hence, achieving genuine respect for human rights may constitute the greatest challenge facing Africans is persisting without much improvement.

Theoretically, the luckily happening that as the 'African renaissance' of the new millennium was framed with the self-determined stands of African solutions to African problems, the regional

human rights protection has emerged as new phenomenon of the continent. Because of the shortcoming in human rights achievements under the Charter and Commission, African leaders have decided to begin the process of creating a human rights court, similar to what exists in Europe and the Americas. Indeed, for fulfilling the shortcoming of the commission the protocol to the court that was adopted in 1998 by the OAU Assembly became effective in 2004. In the meantime, the APRM was adopted in 2001 and became effective in 2003.

The protocol authorizes the court to issue appropriate orders to remedy a human rights violation, including the payment of fair compensation or reparation to the injured party (Art. 27). States recognizing the court promise to comply with its judgments (Art. 30), and the OAU Council of Ministers will be charged with monitoring the execution of Court judgments on behalf of the OAU Assembly (Art. 31). Presumably, the Council of Ministers will pressure a non-complying country into honoring a court judgment. Historically, however, the OAU has been extremely reluctant to interfere in the internal matters of member states, even in those that have engaged in gross human rights violations. However, given that organization's inadequate support for its own Human Rights Commission, one must wonder how well it will maintain the court. Because governments will be reluctant to make such declarations, and since no state has ever filed a human rights complaint against another state before the commission, it is unlikely that the court will see much business.

Indeed, it is vital to understand the existing condition to come up with the conclusion of the impact that the African Peer Review Mechanism (APRM) has on human rights promotions and protections in harmonizing and fulfilling the works of these institutions. In the Africa of the old Organization of African Unity, the sovereignty of states was predominant and criticism of countries within the magic circle unacceptable. Today the idea that individual sovereign states should voluntarily submit their governance and economic development practices to judgment by their peers has been accepted by 35 AU's member states. There is widespread acknowledgment that 'development is impossible without true democracy, respect for human rights, peace and good governance'. Most notably, drawing lessons from the past failures of development programmes, African states have agreed through the adoption of the APRM to monitor and help each other in compliance with good governance including human rights. There is a clearly demonstrated political will from African leaders who took the initiatives themselves; these initiatives are widely welcomed by the

international community, especially the G8 and the UN.

The African Peer Review mechanism is regarded as the main tool for the promotion and protection of human rights in Africa and it has been acknowledged as the forum where the African states are committed to public scrutiny and accountability as shown by the various missions and reports issued by the APRM panel. Also, the APRM has the potential to serve as one of the core frameworks for upholding and deepening the shared values of the AU. If properly implemented, it can be a unique achievement for African integration, democracy and human rights. In this regard, the study analyzed the role that the APRM will play in human rights monitoring in Africa.

Both the African Court on Human and Peoples' Rights and the APRM have been facing the same problem as of the African commission's problem that limited its capacity and political commitment to carry out its own tasks. Regarding their operation, the Protocol for the Court provides that actions could be brought before the Court on the basis of any instrument, including international human rights treaties, which are ratified by the state party in question. The APRM process first requires that States sign up to a review process of the governance practices that are used as benchmarks for the review process which indicate a number of key indicators for democracy and political governance, including human rights. Its overall purpose is to improve the governance of African states which includes improvements of their commitment to human rights.

Despite the criticisms leveled against it, APRM could be a very useful tool for human rights promotion and protection in Africa because it has the potential to actually produce change. The main criticism against APRM is that it is voluntary without having any binding effect attached to the Panel findings, that it does not deal exclusively with human rights and that African heads of state will not criticize their peers. Anyhow, as argued earlier in this paper, the APRM has a significant potential in promoting human rights. The independence of the Panel, the requirement to draw up a time bound programme of action to address possible shortcomings revealed by the reviews, the possibility of interventionist or human rights reviews and the opportunities available for civil society involvement (that will guarantee broad participation, ownership and reliability) are some of the positive elements of the APRM. While elsewhere recommendations for APRM's success have been made regarding the rationalisation of its relationships with other AU human rights mechanisms, the suggestions made in this paper rather insist on the necessity to widen and

promote people's participation to the process. Other endeavors would be to apply a human rights approach to development. Subsequently, the following recommendations should be of great help.

5.2 Recommendations

This study does not aim at developing recommendations for individual countries. The assessment is done to outline general trends and detect gaps and obstacles that undermine the performance of the APRM. This paper recommends that the areas to complete the missing matters should be attended and addressed, such as good political governance issues that hold back human rights monitoring capacity. The APRM must supplement and strengthen the existing mechanisms relating to human rights, like the African Commission on Human and Peoples' Rights. There is also the need to strengthen the links between other human rights monitoring instruments and African peer review mechanism. There is need to transfer the theoretical issues on peer review into the realities of Africa and measure how far this mechanism will assist in the protection and monitoring of human rights in Africa. Thus, the APRM process, which involved country self-assessments and external validation by the peers, had led to the recognition of common structural and systemic challenges that confronted most African states, and the need for a collective solution in the four most important areas: operational structural, political will, capacity (financial and human resource) and civil society participations.

5.2.1 Operational Structural

The post-2015 development agenda should have to go beyond poverty reduction to promote "holistic development". The suggestion is emphasizing the plan and policies of human rights reforms in key African institutions, including APRM. The researcher suggests the following points for the institutional change efforts. Supporters of the APRM should reassess their concerns about accession and membership. The focus should be on consolidating the APRM system among those genuinely committed to it, which would produce the governance reform that constitutes the best criteria for accession. The nature of its membership should not be considered as the evaluation of the APRM's progress. The attention should be paid to the result of the peer review and the reflection of accountability within it. APRM countries must demonstrate a clear commitment to the standards the APRM establishes in their own conduct and in holding their

peers to their undertakings and to the APRM's human rights standards. This must be coupled with active and visible support for positive reform initiatives. The APRM's participants should stand out as a 'caucus of excellence' within the AU.

5.2.2 Strengthening APRM' financial Capacities and its credibility

Another issue that needs to be discussed is the feasibility of the holding of open and genuine human rights reviews by African leaders. First of all, one has to acknowledge the fact that peer review is a process and not just an event where African leaders just sit around a table and start discussing the human rights situations in their countries. From the point of how the APRM is going to be conducted, it is apparent that the process shall require substantial budgets and greater financial commitments from the African governments. The issue of funding remains a huge challenge and needs to be adequately addressed by all African states.

At continental level, the APRM's financial and credibility problems must be addressed. The institution need to have adequate resources, in particular to support member countries in conducting their reviews. Directly linked to the functioning of the continental system is the willingness of individual countries to meet their obligations. They need to sustain their financial contributions to the APRM holding errant countries to this would be a valuable step in realizing the APRM's peer guarantee. The commitment demonstrated by voluntary accession would signal a willingness to engage in dialogue around contentious issues, to rectify shortcomings and to learn from peer countries in doing so. For this reason, the APRM made provision for both assistance in reform efforts and sanctions for failing to undertake the commitments in the APRM objectives. If there is no warning on the errant state APRM's effectiveness and credibility would not enhanced.

There is need for the African leaders to build an accountable and participatory government system in which all members of the societies can participate to the common development goal and next they should build mutual trust among themselves and take measures to make the process credible. In the first place, this means that leaders should not interfere with the process for coming with the country reports. Secondly there is a need to have leaders build trust among them one level and at another there has to be trust between African and its development partners such as the G8.

5.2.3 Ensuring Political Commitments to APRM's works

African political leaders' commitment is observed as the main challenge to the achievements of the APRM's human rights goals in particular and the sustainable development of the continent in general. According to the AUC's human rights staff's responses to the survey questions, APRM is facing a main challenge to realize the program of enhancing human rights monitoring capacity mainly due to weak political willingness of member states. They should reflect their willingness in submitting themselves to the examination, judgment and recommendations by other states on how to improve performance in the subject areas of focus. Specially, at the APRM country process level, commitment and political will by the political leadership is important to moving the process ahead, because "if the leadership is not committed, the process will not be robust at the national level" (Asante 2010:18). If the Head of State fully supports the process, the process is more likely to be implemented in a rigorous, open and candid manner at the lower levels. Therefore, the member states should have a clear sense of recommitment to the APRM, and the vital work it has to do in the next decade and beyond.

5.2.4 Enhancing the Support of AU and the Participation of civil Society

Many of the African leaders lack the moral ground to challenge each other's performance as far as human rights protection is concerned. The APRM will only work as a feasible mechanism for human rights monitoring to the extent that the African leaders through the AU will allow it to be. African states need to take action in order to indicate their conviction that genuine respect for human rights in Africa is the only firm foundation on which the AU's mission would be achieved. Some opportunities for change have been opened in some African countries by the creation of the APRM. However, without taking charge of the challenges raised above, the APRM may not add substantial value to the process of human rights monitoring and implementation in Africa.

The African Commission or APRM enjoys a good working relationship with NGOs throughout

the continent and has been on the forefront in making progressive changes to the African human rights system. Thus, there is need for the institution to receive more support from the AU and NGOs in order to strengthen its capacity to execute its mandate. The AU has to show greater commitment beyond what is on paper by properly resourcing the mechanisms that it created such as the African Commission, the Peace and Security Council and APRM. In light of the challenges for peer review on human rights that were pointed out in chapter four is recommended as there is need for civil society to play a great role in the process of peer review especially during the research stage leading to the compilation of the country reports.

Active participation of civil society will ensure that the final reports and recommendations made to the states reflect the reality as much as possible. The peer review's success is premised on the greater involvement of the media. Firstly, the media should report on the various stages of the process, as each country is reviewed. Media reporting on the APRM will raise awareness on the issues at hand and keep people alert and on the lookout on the actions of states as they engage in dialogue and action to implement recommendations.

Hence, simply motivated and well informed citizens can hold the government accountable for its commitments to the agreed democracy and human rights standards. Watchfulness and public vigilance by CSOs, critiques and protests from the citizens can keep the authorities on the right way, i.e. to comply with their commitments. But controlling, reacting, criticizing and assessing public action requires educated and informed citizens who see themselves as partners having common responsibilities. Therefore, it should be the awareness of the people; the extent to which public action meets the needs of the people indicates better states' compliance with their human rights commitments.

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ANNEX: APRM Indicators

1. Democracy and Political Governance

- 1.1. Level of ratification and accession to relevant African and international instruments for conflict prevention, management and resolution
- 1.2. Existence and effectiveness of early warning capacity
- 1.3. Existence of institutions to manage, prevent or resolve conflicts
- 1.4. Level and trends of drug trafficking
- 1.5. Adequacy of express provisions in the constitution
- 1.6. Effectiveness of democracy and law enforcement institutions
- 1.7. Independence and effectiveness of Electoral Commission to ensure fair and free elections.
- 1.8. Adequacy of legal framework for free association and formation of nongovernmental organizations and unions.
- 1.9. Effectiveness of independent media in informing the public and providing freedom of expression.
- 1.10. Public perceptions of and the degree of satisfaction with democracy and political governance.
- 1.11. Congruence of the national Constitution with the Constitutive Act of the African Union
- 1.12. Effectiveness of institutions and processes for implementation, oversight and public awareness of human rights principles and the country's obligations therein
- 1.13. Regularity and quality of country reporting to treaty bodies
- 1.14. Adequacy of budgetary provisions and effectiveness of interdepartmental committees to give effect to the country's international obligations
- 1.15. The overall state of these rights in the country
- 1.16. Security of tenure of the judiciary and its access to resources
- 1.17. An effectively independent judicial services commission to ensure professionalism and integrity with responsibility for the appointment of judges
- 1.18. Inter-party committees within Parliament exercising effective oversight functions over various areas of public interest
- 1.19. Overall assessment of the state of governance in these areas
- 1.20. Mandated reports by the Executive branch of Government to the Country
- 1.21. Provision for public hearings to which public officials can be called to account
- 1.22. A constitutionally mandated public service commission that is effectively structured and resourced
- 1.23. A legal instrument embodying a code of conduct for public office holders
- 1.24. Results of overall assessments or citizen charter reports
- 1.25. Constitutional provision for fighting corruption and effectiveness of institutions carrying out the mandate
- 1.26. Accessibility of the proceedings of Parliament and the reports of its various committees to the public
- 1.27. Requirements for periodic public declaration of assets by public office bearers and senior public officials
- 1.28. Results of overall assessment of corruption in the country
- 1.29. Accession and ratification of the relevant African and international instruments on the rights of women and girls

- 1.30. Effectiveness of constitutional provisions and laws, and institutions protecting and promoting the rights of women
- 1.31. Consequential steps taken to ensure full and meaningful participation of women in all aspects of national life, particularly in political and economic domains
- 1.32. Results of overall assessment of status of women
- 1.33. Effectiveness of constitutional provisions and institutions to advance the rights of the child and young persons
- 1.34. Accession to and ratification of the relevant international instruments on the rights of the child and young persons, and the measures taken to implement them
- 1.35. Consequential steps taken to ensure the realization of the rights of children and young persons
- 1.36. Results of overall assessment of status of children and youth in the country
- 1.37. Adequacy of constitutional provisions on promotion and protection of vulnerable groups and legal and regulatory steps to enforce them
- 1.38. Accession to and ratification of the relevant international instruments on the rights of vulnerable groups, including internally displaced persons and refugees, and the measures taken to implement them
- 1.39. Consequential steps taken to ensure the realization of the rights of vulnerable groups
- 1.40. Enactment and enforcement of legislation to stop human trafficking
- 1.41. Results of overall assessment of status of vulnerable groups communities