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U. O. Umozurike

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THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS: SUGGESTIONS FOR MORE EFFECTIVENESS

U. O. UMOZURIKE*

I. INTRODUCTION

The Organization of African Unity (hereinafter "OAU"), renamed the African Union (hereinafter "AU"), is a continental institution that promotes political, economic and cultural cooperation and integration among African states.¹ The Organization created the African Commission on Human and Peoples' Rights, which entered into force under the African Charter on Human and Peoples' Rights of 1981.² The Commission's functions are enumerated in Article 45 of the Charter; the relevant provisions are to promote human rights, protect human rights as laid

* U. Oji Umozurike is a Professor of Law at the Abia State University, Uturu, Nigeria. Professor Umozurike is recognised for his extensive writing on human rights in Africa. From 1995 until 2003, he served as a member of Nigeria's Human Rights Commission. He was also a member of the African Commission on Human and Peoples' Rights from 1989 to 1997 and served as chairperson from 1989 to 1991. He has taught at several institutions including the University of Pretoria in South Africa and the University of Lund in Sweden. Professor Umozurike was Research Professor at the Max-Planck Institute for Law from 1986 to 1987 and is a Barrister-at-Law in Lincon's Inn, London and of the Supreme Court of Nigeria. Professor Umozurike obtained his D.Phil from Oxford University and his LL M and LL B from the University of London.

1. Constitutive Act of the African Union, OAU Doc. CAB/LEG/23.15 (May 26, 2001) (transforming the Organization of African Unity into the African Union).

2. African Charter on Human and People's Rights, June 27, 1981, 21 I.L.M. 58, *entered into force* Oct. 21, 1986 (hereinafter "African Charter"). The African Charter has been ratified by all fifty-three member states of the Organization of African Unity/African Union. Cristof Heyns, *The African Regional Human Rights System: The African Charter*, 108 PENN. ST. L. REV. 679, 683 (2004); U.O.UMOZURIKE, *THE AFRICAN CHARTER* (Martinus Nijhoff Pub. 1997); U.O.Umozurike, *The African Charter on Human and Peoples' Rights*, 77 AM. J. INT'L L. 902, 908 (1983).

down in the Charter, interpret the provisions of the Charter, and carry out other functions assigned to it by the Assembly of Heads of State.³ In carrying out its functions, the Commission shall not only cooperate with other human rights organization, but have regard for the international law of human rights and other treaties, especially those of which African states are parties.⁴

The Secretary-General of the AU is the main link between the Commission and the parent organization, supplying its administrative staff working directly under his supervision.⁵ The Assembly of Heads of State receives the Commission's annual reports,⁶ more specifically called its Activity Reports, and approves its budget.⁷ It elects the eleven members of the Commission who must be independent and versed in matters of human and peoples' rights.⁸ The Commission may draw the Assembly's attention to special cases of serious or massive violations of human rights, while the Assembly may ask for an in-depth study and a factual report.⁹ Besides the annual reports, emergency situations are brought to the attention of the Chairman of the Assembly.¹⁰

One of the peculiarities of the Charter is the inclusion of peoples' rights, not only in the list of rights protected, but in the name of the Charter.¹¹ The African system recognizes not only individual rights, but also attaches importance to the rights of the group as such. Individual rights are framed as protection for individuals against others, especially the government. Group rights emphasize that recognizable groups have rights and that the individual finds the fulfillment of his rights in that of the group. Such rights include the right to self-determination and the right to development.¹²

An avalanche of criticism greeted the Commission from its inception. Some of the criticisms were merited, but others were not, and only re-

3. African Charter, *supra* note 2, 21 I.L.M. 58, at art. 45.

4. *Id.* at arts. 60, 61.

5. *Id.* at art. 41.

6. *Id.* at art. 54.

7. *Id.* at arts. 41, 44.

8. *Id.* art. 31.

9. *Id.* art. 58.

10. *Id.* art. 58(c).

11. *See id.* arts. 19-24.

12. *See* N. B. Pityana, *The Challenge of Culture for Human Rights In Africa*, in *THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS: THE SYSTEM IN PRACTICE, 1986 – 2000*, esp. 231-234 (Malcom D. Evans & Rachael Murray, eds. 2002); Rachel Murray, *Women's Rights and the Organization of African Unity and African Union: The Protocol on the Rights of Women in Africa*, in *INTERNATIONAL LAW: MODERN FEMINIST APPROACHES*, 253 – 272 (Doris Buss & Ambreena Manji, eds. 2005); *see also* U.O.UMOZURIKE, *SELF-DETERMINATION IN INTERNATIONAL LAW* (1972).

vealed the lack of appreciation of the difficulties in interpreting the Charter; these are discussed below under the section on the difficulties of the Commission. One critic regarded the Commission as “a façade, a yoke that African leaders have put around our necks” which deserves to be cast away.¹³ Earlier, some doubted that the Charter, even with the weak provisions for the enforcement of human rights, would be ratified at all.¹⁴ The achievements of the European Human Rights Commission and to a lesser extent, those of the Inter-American Commission on Human Rights, were well known to the international human rights community. The African Commission was expected to follow the trail of the earlier Commissions without critics adequately considering its peculiarities and unique difficulties.

This paper examines some of the problems of the African Commission, and its shortcomings, all of which gave room for the criticism and, more importantly, suggestions for the greater effectiveness of the Commission. The moderate achievements of the Commission are complicated by what appears to be some doubt about its desirability. The European Commission has been abolished and its functions merged with those of the European Court¹⁵ after it had functioned only long enough to develop human rights standards in Europe. The African Commission has existed for twenty years with inadequate resources and personnel. It is not even mentioned in the Constitutional Act of the AU as one of its organs, displaying some doubt about its retention. The Constitutive Act of the African Union 1961 provides for the Court of Justice of the African Union,¹⁶ but this is entirely different from the African Court on Human and Peoples' Rights, which was created under a separate treaty. We shall show that there is a role for the African Commission and that the focus of development in that area for the next decade should be strengthening the Commission in keeping with the advice thoughtfully given by the Senegalese President to “keep constantly in mind our value of civilization and the real needs of Africa.”¹⁷

13. Makau wa Mutua, *The African Human Rights System in a Comparative Perspective: The Need for Urgent Reformation*, 5 LEGAL FORUM 31-35 (1993); see also Richard Gottleman, *The Banjul Charter on Human and Peoples' Rights: A Legal Analysis*, 22 VA. J. INT'L L. 667, 692 (1982); Peter Takirimbudde, *Six Years of the African Charter on Human and Peoples' Rights: An Assessment*, 7/2 LESOTHO L. J. 41, 50-52 (1991); HUMAN RIGHTS AND DEVELOPMENT IN AFRICA (Claude E. Welch, Jr. & Ronald I. Meltzer, eds. 1984).

14. Olusola Ojo & Amadu Sesay, *The OAU and Human Rights: Prospects for the 1980s and Beyond*, 8 HUM. RTS. Q. 89, 101 (1986).

15. Protocol No. 11 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 1, 1988, Eur. T.S. No. 155.

16. Constitutive Act of the African Union, *supra* note 1, at art. 5(1)(d).

17. Address of President Leopold Senghor of Senegal to the Dakar Meeting of Experts Preparing the Draft Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/X.

II. SOME DIFFICULTIES THAT CONFRONTED THE AFRICAN COMMISSION

The Charter provides that the Commission shall report a serious violation of human rights to the Assembly, or to the Chairman when the Assembly is not in session, and either may request an in-depth study of the situation without more.¹⁸ The specific application of this provision, proved problematic, especially in light of Article 59, which directs that measures taken within the provisions of the Charter shall be kept confidential.¹⁹ This requirement, if observed strictly, effectively removes one of the weapons for enforcement of human rights – publicity. While debating its reaction to serious violations of human rights, and hamstrung by the requirement of confidentiality, the Commission appeared, in the eyes of the public, to remain inactive, not even expressing condemnation at alleged acts of human rights violations. Developing procedures for such situations took time to materialize. One of the principles of the OAU was non-interference in the internal affairs of member-states.²⁰ Although this clause really adds nothing new to the Charter of the Organization, it was a principle of international customary law, applicable in all circumstances. Unfortunately, members exaggerated its importance in order to ward off legitimate international concern from violations of human rights in their territories. That was especially the case with the military regimes that proliferated on the continent in the 60s and 70s, including the regimes of Idi Amin of Uganda, Bokassa of Central African Republic and Nguema of Equatorial Guinea. In drafting the Charter, states did not want to give the Commission wide latitude in human rights protection as evidenced from the restricted powers spelled out. The Commission was empowered to investigate complaints and make recommendations for amicable settlement and report its activities to the Assembly of Heads of State and Government.²¹ There were gaps in the Charter that could only be filled by a purposive interpretation, and such interpretation took time to develop. Many Commissioners were more concerned with a literal interpretation of the enabling document than with the flexibility required by Articles 60 and 61 of the Charter.²²

18. African Charter, *supra* note 2, arts. 58, 59.

19. *Id.* at art. 59(1).

20. OAU Charter, art. 3, May 25, 1963.

21. African Charter, *supra* note 2, at ch. 3.

22. African Charter, *supra* note 2, art. 60 (“The Commission shall draw inspiration from international law on Human and Peoples’ Rights, particularly from the provisions of various African instruments on Human and Peoples’ Rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of Human and Peoples’ Rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the

Although the Charter addresses communications from States,²³ there is no clear reference to those communications from non-governmental organizations and individuals. These were merely implied under "Other communications," i.e., communications from non-state parties.²⁴ With one or two exceptions, the complaints that came before the Commission fall under this category. A complaint was filed by Libya against the U.S.A. for stationing troops in Zaire and Chad.²⁵ Despite the clarification that U.S.A. was not a party to the Charter, the Libyan ambassador in Lagos insisted upon filing the complaint. It was dismissed as inadmissible.²⁶ The second complaint filed by a state came much later, and was by the Democratic Republic of the Congo (hereinafter "D.R.C.") against Rwanda, Burundi and Uganda, whose troops invaded and committed gross violations of human rights in the Eastern provinces of D.R.C.²⁷ It follows that the main preoccupation of the Commission has been on the implied application of the Charter. Some Commissioners were prepared to argue that complaints should not be received from entities other than states. The better reasoning later prevailed, but it took some time while interested parties directed justified criticism toward the Commission.

The cases that were first concluded were those that were made by individuals against non-party states or those that disclosed no real violation of human rights.²⁸

United Nations of which the parties to the present Charter are members." See also *Id.* at art. 61 ("The Commission shall also take into consideration, as subsidiary means to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on Human and Peoples' Rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.").

23. *Id.* at arts. 47-54.

24. *Id.* at arts. 55-59.

25. Though the complaint was not recorded, the author, as presiding Chairman at the time, has knowledge of the events.

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27. *Dem. Rep. Congo v. Burundi, Rwanda & Uganda*, African Comm'n on H. & Peoples' R., Commc'n 227/99 adopted at the 33rd Sess., 20th Activity Rep. (not yet reported in Dec. of the African Comm. on H. & Peoples' R.).

28. See *Korvah v. Liber.*, African Comm'n on H. & Peoples' R., Commc'n 1/88 (1988) (alleging corruption and immorality); *Iheanyichukwu Ihebereme v. U.S.*, African Comm'n on H. & Peoples' R., Commc'n 2/88 (alleging unlawful imprisonment and police brutality); *Ctr. for Independence of J. and Lawyers v. Yugo*, African Comm'n on H. & Peoples' R., Commc'n 3/88 (alleging deprivation of right to practice profession); *Coordinating Sec'y of Free Citizens Convention v. Ghana*, African Comm'n on H. & Peoples' R. Commc'n 4/88 (regarding wrongful arrest and detention; Ghana was then not a party to the Charter); *Makoge v. U.S.*, African Comm'n on H. & Peoples' R. Commc'n 5/88 (alleging wrongful activities of the U.S.A. in Africa); *Kodjo Kofi v. Ghana*, African Comm'n on H. & Peoples' R. Commc'n 6/88 (regarding arrest and detention without trial); *Comm. for the Def. of Political Prisoners v. Bahr.*, African Comm'n on H. & Peoples' R. Commc'n 7/88 (regarding false imprisonment and torture); *Int'l Lawyers Comm. on Family Reunification v.*

These and other cases were not reported to the Assembly of Heads of State and Government, and there were no official inquiries. Meanwhile, the human rights community anxiously awaited information on the work of the Commission, and presumed that it was doing nothing. The news from a number of African states disclosed serious violations of human rights, none of which elicited public reaction from the Commission. One interpretation of Article 59 of the Charter was that a report of the Commission could not be published until the Assembly approved its publication.

The case of *Henri Kalenga v. Zambia*²⁹ not only showed the controversy within the Commission but also determined its policy on the content of its activity report regarding protective activities. Decisions were normally taken by consensus although Rule 62 of the Rules of Procedure required a simple majority.³⁰ The facts of the case are as follows: The Zambian Government had detained the complainant for reasons that were not disclosed other than the blanket excuse of state security.³¹ A complaint was sent to the African Commission and duly admitted.³² The commissioner elected from Zambia interceded and achieved an amicable settlement, after which Kalenga was released.³³ The issue that arose was whether the activity report should include an account of the detention and the release.³⁴ Some Commissioners argued that a state that complied with the request of the Commission should not be included in the report to the Assembly, as that would amount to a breach of good faith.³⁵ It was argued that such a state would be embarrassed and feel inhibited to comply in the future, especially since the report might also be published.³⁶ Other Commissioners felt that the true intent was to report the activities of the Commission, including those on human rights protection, to the Assembly. A state would be happy that the Assembly, and the public in general, know about its compliance with the African Charter rather than be embarrassed by the publication. If the procedure was not clearly

Eth., African Comm'n on H. & Peoples' R. Commc'n 6/88 (regarding false imprisonment and torture); Abebe v. Eth., African Comm'n on H. & Peoples' R. Commc'n 10/88 (alleging false imprisonment and deprivation of property). The final decisions are available at <http://www1.umn.edu/humanrts/africa/comcases/allcases.html>. However, the factual details of the cases are unreported.

29. *Henri Kalenga v. Zambia African Comm'n on H. & Peoples' R. Commc'n 11/88*, in COMPILATION OF DECISIONS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS 366 (African Inst. for H.R. & Dev., Banjul).

30. R. P. OF THE AFRICAN COMM'N ON H. & PEOPLES' R. 62 (Oct. 6, 1995).

31. *Kalenga*, *supra* note 29.

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

stated, then Articles 60 and 61 point to best practices followed, as in the European and Inter-American systems.³⁷

The Commission began by meeting for 10 days twice a year. Valuable time was spent trying to reach consensus for its decisions and, as a consequence, insufficient time was spent achieving the Commission's designated objectives,³⁸ and the Commission appeared inactive. This further fueled the criticism. Another obstacle was the lack of legal officers besides the secretary of the Commission. Besides undertaking other responsibilities, the Commissioners originally had to draft the decisions in committees. Currently, there are legal officers in the Commission and it has been possible to improve on the format of the decisions/recommendations, which now include a statement of the facts, applicable laws and the reasons for the decisions.

Having overcome the problem of *locus standi* for non-state entities, the Commission was faced by other hurdles in Article 56 of the Charter. For instance, it was to accept only communications that "[a]re not written in disparaging or insulting language directed against the state concerned and its institutions or to the Organization of African Unity; [and] [a]re not based exclusively on news disseminated through the media...."³⁹

The Commission virtually ignored the civility test for complaints because many authors of communications were usually disgruntled persons or organizations who resented the violation of human rights. The alleged violations were usually expressed in strong terms that could fail the language test, if applied strictly. An inadmissible complaint could be turned down if the language was also foul. Once the Commission overcame the initial delays caused by the different approaches, it paid little regard to that test.

The prohibition of action based solely on the media was a real obstacle for a while because of the difficult issues that arose, i.e., must the Commission wait for a communication from a state, an NGO, or an individual before it intervened? Could the Commission initiate action *proprio motu* based on its own assessment of a situation based on the written or visual media? The media sometimes gave out information about serious violations of human rights, followed by condemnations by foreign governments and international NGOs. The absence of statements from the African Commission gave the impression that the Commission was either

37. *African Charter*, *supra* note 2, at arts. 60, 61.

38. *See generally id.*

39. *Id.* at art. 58(3)-(4).

unaware or uncaring. The real explanation was that a prolonged argument had taken place within the Commission on a line of appropriate action. While some Commissioners gave the relevant provisions a purposive or teleological interpretation to enable it to act, others insisted on a restrictive interpretation that required a communication from outside. The Liberian situation in 1969 provided the opportunity for a way forward. The media was full of gory stories of human rights violations, but there was no complaint from any source, and the Commissioners disagreed sharply on whether to act or wait for a communication from the State to intervene. After protracted deliberations, it was agreed to send a letter to the Government asking for information on the situation and offering the services of the Chairman to help restore normalcy.

Predictably, there was no response, but that precedent facilitated inquiries about subsequent situations of serious or massive violations of human rights. The Commission relied exclusively on evidence gathered from the media and condemned the violations. Similarly, the execution of military officers in Nigeria and in Sudan and the killing of university students in Lumumbashi, Zaire, in the early 1990s, were condemned on the basis of information obtained from the media. The development was good for the image of the Commission, for the public saw it as being alive to human rights violations in Africa and doing something about them. The Commission called the attention of the chairman of the OAU to them, but nothing came out of such reference and there were no specific complaints about them at the time.

Unlike the European (since abolished) and Inter-American Commissions of Human Rights, the African Commission has both protective and promotional responsibilities. Its main protective responsibility is to receive communications on violations of human rights protected by the Charter, communicate them to the states and investigate with a view to reconciling the parties.⁴⁰ The Commission may take oral or written evidence.⁴¹ It then communicates its decisions, which are really recommendations, to the parties, and includes them in its activity report except in emergency situations, when it communicates to the Chairman.⁴² The Commission does not pursue its decisions to ensure that they are carried out but occasionally grants interim measures to avoid irredeemable harm.⁴³

40. *Id.* at Ch.3.

41. *Id.* at art. 51.

42. *Id.* at art. 58.

43. Constitutional Rights Project v. Niger, African Comm'n on H. & Peoples' R., Commc'n 87/93, 8th Activity Report 1994-5, Annex VI, DOCUMENTS OF THE AFRICAN COMMISSION ON

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The promotional responsibilities of the African Commission include the holding of conferences, seminars and symposia on human and peoples' rights, either alone or in collaboration with other organizations. The Commission may formulate principles on which African states may legislate on human and peoples' rights.⁴⁴ For the purpose of promoting human rights, it divided African states among the eleven Commissioners, which they carry out in the inter-session periods and within available resources. The Commissioners work part-time, and only full-time when in session, and only recently were the sessions increased to periods of 14 days.

Since the Commission was not sufficiently funded by its parent organization, some of the Commissioners wanted funds raised from outside the OAU for promotional activities. They considered that the Commission would thus be enabled to function. Some AU members defaulted in their dues to the organization, while a few required external support for their own internal administration. It would be natural therefore to seek external support for the work of the Commission. Others opposed it vehemently, fearing it might compromise its independence and lead to accusations of corruption. The issue produced the usual controversy between those who were anxious to see the Commission actively involved in its work and thus fulfill the high hopes placed on it, and others who were conservative and inclined to give a restrictive interpretation to the charter. A compromise was achieved by referring the matter to the Secretariat for advice which was favourable but with the caveat that the integrity of the Commission must not be compromised. Financial support for the Commission's promotional activities has come from such foreign institutions as the Danish Agency for International Development (DANIDA), Swedish International Development Agency (SIDA) and Raoul Wallenberg Institute for Human Rights and Humanitarian Law, Lund, Sweden. Support for conferences also came from the European Union and the UN Commission for Human Rights (now the UN Council for Human Rights).⁴⁵

III. TOWARDS GREATER EFFECTIVENESS

Having considered the major problems of the Commission especially at its early stages, we can now proffer some remedies.

HUMAN AND PEOPLES' RIGHTS, 391. The 8th Activity report is also available at <http://www1.umn.edu/humanrts/africa/ACHPR1.htm>.

44. *African Charter*, *supra* note 2, at art. 45(1)(b).

45. See African Comm'n on H. & People's R., Final Communique of the 10th Ordinary Session (1991), available at http://www.achpr.org/english/communiqués/communique10_en.html (last visited Apr. 6, 2007).

(a) The division of 52 African states among 11 Commissioners results in each of them having, in some cases, as many as four states, to promote human rights. Since they work part-time, they are unable to work effectively. The European Commission had a member from each member-state and the Inter-American Commission has seven members and promotion is not included in their functions. The size of the African continent and the large number of states require a larger number of commissioners. We suggest that the number should be doubled.

(b) The funding for the Commission should be increased for effective promotion of human rights throughout the continent. If it has not already done so, the African Commission should open a desk for the fundraising outside the AU. The expected sources should be states, international institutions and private sources that are disposed to funding human rights.

(c) The qualifications for Commissioners are stated to be: "African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience."⁴⁶ Although Commissioners are not strictly required to be lawyers, those selected so far have been lawyers. The interpretation of legal documents requires the expertise of lawyers. Although human rights have become interdisciplinary, the job of Commissioners requires lawyers and especially those who have done further work in human rights. They must also have the moral courage to make pronouncements against erring governments, whether their own or foreign.

A Commissioner should therefore be more than just a lawyer; he should, in the words of the Charter, be "competent in matters of human and peoples' rights."⁴⁷

(d) Although he was nominated by a state and elected by states, the essence of serving in his personal capacity emphasizes a detachment from governments, so as to better protect the rights guaranteed. A number of Commissioners have held positions such as ambassadors, attorneys-general and judges. Others were academics and legal practitioners. Civil and political office holders tend to be unduly protective of governments. An ambas-

46. *African Charter*, *supra* note 2, at art. 31(1).

47. *Id.*

sador is trained to defend his state without appearing to be doing so. Judges are known to stick strictly to the limits of the law. In the International Law of Human Rights, both the *lex lata* (the law as it is) and the *lex ferenda* (the law as it ought to be) are very important, and often close. Economic and social rights, which were formerly ignored, are now acknowledged, and the right to a healthy environment is now taken seriously. The law is constantly changing to catch up with changing circumstances. This requires flexibility and the determination to protect human dignity on the part of the Commissioners. The Second Workshop on NGO Participation in the Work of the African Commission, held in 1992, recommended that the holding of official positions, such as ambassador and minister be found incompatible with the office of a Commissioner. We endorse the idea because it enhances the independence of the Commission, and makes it transparent.

(e) Presently, the Commissioners, including the chairman, work part-time. The continuous work of the Commission rests on the officials, whose number has increased slightly. On the other hand, the president of the African Court on Human and Peoples' Rights works full-time and lives at the seat of the court, while the other judges live wherever it is convenient. This arrangement should be extended to the Commission. The President's and Vice-President's availability will improve and expedite the work of the Commission.

(f) The Commission should do more to advertise its work and disseminate its publications. There should be more cooperation with the media, NGOs and institutions of higher learning. Publicity is a potent weapon in the field of human rights, as without it, it is impossible to achieve the full effect from efforts expended. Many of its decisions are not known in the states from which the complaints originate beyond those who are directly affected. Collaboration with those suggested will remedy this shortcoming.

IV. CONCLUSION

The envisaged role of the founding fathers of the African Charter on Human and Peoples' Rights is that the Commission should conciliate and intercede in human rights disputes and effect amicable settlement. A court of law decides on the basis of law that may result in total victory for one party and total defeat for the other. Whether the parties remain

friendly thereafter is not the business of the court. That was the reasoning behind the non-inclusion of the court in the charter originally. African dispute resolution stresses future good relations. Thus a debtor may be forgiven his debt if he cannot pay and if the creditor can afford to forego the amount. A great majority of rural dwellers operate in this way, whatever the influence of imported systems in the urban areas.

The Statute of the African Court on Human and Peoples' Rights has taken effect with the fifteenth ratification, but only one state, Burkina Faso, allows applications from non-state entities. Only the Democratic Republic of the Congo brought a complaint against other states (Uganda, Rwanda and Burundi) for invading its territory following which their troops committed gross violations of human rights.⁴⁸ Just as with the Commission, African states are not likely to be enthusiastic litigants against other states before the African Court. It follows that the dockets of the Court are not likely to be filled with cases, a rather bleak prospect for the court itself. It is not likely to have the opportunity of expounding Jurisprudence to the same extent as the European Court or even the Inter-American Court. It follows that the African Commission on Human and Peoples' Rights will continue to be relevant on human rights at the inter-African level; if only it is properly empowered and funded, and if only the Commissioners cultivate a proactive frame of mind.

48. *Dem. Rep. Congo v. Burundi, Rwanda & Uganda*, *supra* note 27.