
ORIGINALARTICLE

The Inter-State Complaint under the African Charter on Human and People's Rights: a Lesson from the European Regional System**Adoga-Ikong J. Adams¹, Edidiong Jacob Udo, Aboh², Pascal Bekonfe³**

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Abstract

Like every other regional system, the African Charter on Human and People's Rights have set up an inter-state complaint procedure where individual(s) states or even organizations can report any violation of human rights meted on him or it as the case may be. In doing this, a body is put in place to implement the provisions of the charter on human rights. This body which is known as the African Commission is responsible for the compliant member of states, individuals and even organizations. How much has the commission performed in the implementation of these rights? Are they some lacunae that needed to fill? What is the way forwards? There are indeed lacunae in the implementation of the rights under the African Charter among which are: one, the inability of the individual claiming violation of his rights to present a complaint against his own or another state, two the fact that the Charter does not set a time limit at which the aggrieved party can approach the commission for redress. Under the European Regional System, the above problems have been taken care of by the convention. Here the provision of Article 25 of the Convention allows an individual to present a complaint against his state or even another state for investigation. This is one of the laudable achievements of the European Regional System. This work, therefore, sought a suggestion for the emulation of the European Regional System.

Keywords: African Charter, Human Right, People Rights, European Regional System.

INTRODUCTION

From the pre-colonial to the post-colonial era, Africans has been bedeviled with human rights violation with such practices (Ellah 2014; Ellah & Otor 2014; Egbe & Okoi 2017). Thus, as far back as the 1960s, United Nations organized a series of conferences in Africa to discuss with African countries and organizations, not under the

control of the government, on how best human rights could be protected and promoted in their individual countries that had attained independence eagerly condemned human rights abuses in the countries (Undiyaundeye 2011; Offiong 2011).

In 1961, African jurists under the auspices of the International Commission of Jurists (ICJ) met in Lagos, Nigeria, and agreed to the need for a Human Rights Charter with a court to which individuals and nations could have recourse (Ouguergouz 2003; Inyang & Adoga-Ikong 2017; Adoga-Ikong, 2019). However, it was not until 1979 at the Organization of African Unity (OAU) now African Union (AU) summit in Monrovia that the Assembly of Heads of States and governments decided that a regional charter and commission for Africa be established on human rights (Wapmuk 2009).

This work seeks, therefore, to examine the inter-state complaint procedure under the African Charter on Human and People's Rights, and compare this with other regional systems especially the European regional system and see where there are problems, and make recommendations.

THE GENERAL RIGHTS AND DUTIES IN THE AFRICAN CHARTER

The rights and duties contained in the African Charter may be broken into broad categories.

1. Individual rights – These are rights belonging to a person as a human being. They are the rights he has because he is a human being. There are;
2. Rights to life, right not to be tortured or detained unlawfully, right to justice and fair trial, right to religion or belief and right to association, etc.
3. Right of people – The rights of people includes: the right to be governed under a good economy, the right to be paid for work done, and the right to promote the positive aspect of their culture and tradition (Amao 2012).
4. Duties of the state: The government of every member state must protect the well-being and interest of its people. The state should protect the law and grant justice to all (Winks 2011).

THE AFRICAN COMMISSION

One of the bodies responsible and ensuring the implementation of the provisions of the charter is the African Commission on Human and People's Rights is the African Commission (Viljoen & Louw 2007). The African Commission is a body formed by the African Union (AU) for the settlement of conflicts arising from the breaches of human rights by its member nations. It was established in July 1987 by the then (OAU) General Assembly (Odinkalu 2013).

The commission is saddled with the responsibility amongst the following:

1. Ensuring the protection of rights and duties in the African Charter by both government and individuals.
2. Promoting human rights through education.

3. Development of rules which best protect human rights.
4. Giving a decision on what the charter provides for when there is a dispute.
5. Looking at complainants made.
6. Looking into and solving complainants made by one state/country.
7. Looking into complaints made by a person or group of persons against a member state or complaints by an organisation or organisations against the government on abuse of human rights (Nmehielle 2003).

THE ROLE OF PROCEDURES OF AFRICAN COMMISSION

The commission must receive complaints from both individuals, organisations, and state parties on any act of violation of human rights. As the commission receives the complaints, it is her duty to carry out investigations (Sarkin 2011). In another and broader way, who may lay a complaint, maybe an individual or organisation or even a state, and a person acting on behalf of a victim can lay a complaint.

Complaints between member states – where a state party to the charter complains to the African commission that another member state has violated the Charter, the state or country complaining should submit its complaint to the other member state or country against whom the complaint is made. Before bringing a complaint to the commission the two states should try and resolve the problem among themselves within 3 months. If the issue is not settled within the 3 months, through bilateral negotiation or by any other peaceful procedure either member state of the country shall have the right to submit the complaint to the commission (Murray & Mottershaw 2014).

The commission can only deal with the complaint submitted to it after making sure that all existing local remedies have been exhausted. All relevant information on the matter should be submitted to the commission while the state concerned may be represented before it to pass on further written or oral information. The commission shall then report its findings and recommendations to both states concerned as well as to the Assembly of Heads of States and Government (Elsheikh, 2002). Complaints between individual(s), organisation(s), and state – The secretary of the commission shall make a list of communication other than those between member states and pass it on to each of the members of the commission, who will vote on whether or not there is a need to look into the complaint before them. The vote is by simple majority. If the vote is passed, the communication shall be brought to the knowledge of the state concerned and the commission shall draw the attention of the Assembly of Heads of States and Government. The report shall be published after it has been considered by the Assembly (Murray 2000).

In cases of urgency, the complaint should be brought immediately to the attention of the chairman and the secretariat of the commission, giving reasons why the complaint needs to be treated as urgent. The commission may inform the state/country concerned of its views on taking provisional measures before making its final views known to the

General Attorney of African Heads of States and Government. The country or state against which the complaint has been made must reply to the complaint within 3 months of receiving it. The reply is sent to both the secretariat of the African Commission and to the person who made the complaint, who may submit information on the reply, to the commission to look into.

Admissibility of a Complaint by the Commission

A rapporteur is usually appointed by the commission to consider the complaint. Once the commission is seized of the matter, it will inform the parties that it will decide on admissibility at its next session, usually in 6 months' time. The commission may resort to any appropriate method of investigation (Yoshinaka *et al.*, 2010), it may hear from the Secretary-General of the African Union or any other person capable of enlightening.

It is pertinent to say here that there are limitations as to the originators of a petition under the charter. The petitioner must not necessarily be a victim of human rights violations to be eligible to petition the commission. In the same vein, the author must not necessarily be a citizen of the state he or she is petitioning or against whom the complaint is made. But the communication must be against a state party to the charter. A petition or communication will be thrown out or inadmissible if instituted against a non-state party, or non-African state. The commission is bound to decline jurisdiction if the admissibility of such complaint will conflict with the African Union provisions on territorial integrity or sovereignty of the state. In the case of *Karvah v. Liberia*, the communication was based on the lack of discipline in Liberia Security Police and the immorality of the Liberian people and the national security risk caused by American financial experts. The commission held that it was not able to ascertain that the communication contained allegations amounting to any violation of the provisions within the Charter. Finally, Article 56(3) provides that the communications must not be insulting, not written in a disparaging way against the state party, its institutions, or even against the African Union.

Special Cases

Article 58(1) makes provision for special cases where one or more communications reveal the existence of a series of massive violations of human rights. If the commission decides that one or more communications relate to special cases which reveal the existence of a series of serious or massive violations of human rights, the commission can bring these special cases to the attention of the Heads of State and Government of the countries which are party to the African Charter. The commission may then be required to carry out an in-depth study of those special cases and draw up a report and recommendations.

INTER-STATE COMPLAINT PROCEDURE UNDER THE EUROPEAN REGIONAL SYSTEM

The European Regional System is arguably the most developed among the various human rights systems in the world. The European Convention for the protection of Human Rights and Fundamental Freedom (ECHR) entered into force in 1953. The institutional bodies created for the enforcement of the European Convention on Human Rights comprised the European Commission on Human Rights, the European Court on Human Rights, and the Committee of Ministers.

1. Inter-state applications – The ECHR does not have a state reporting procedure. The inter-state procedure allows a contracting state party to refer to alleged breaches of the rights contained in the convention (or the protocol) to the court by another state party. In inter-state cases, the only applicable admissibility requirements are *ratione materiae*, *ratione personae*, *ratione loci*, *ratione temporis*, exhaustion of domestic remedies, and six months rule. There is no limitation of the rule that substantially that same matter has already been examined, and contains no relevant information, nor is there the application of the rules of manifestly ill-founded or abusive or politically motivated or abuse of the rights of the petitioner (Prebensen, 2009).

There is no requirement of nationality or whether particular interests are at stake. The principle of reciprocity does not apply, therefore the state would not be barred from complaining under an article because it has entered a reservation to the provision or has not ratified the allegedly broken provision of the protocols. It is equally irrelevant whether one state or its government has not been recognised by the other.

2. Individual complaints – The petitioner under Article 34 must claim to be directly affected or there must be a significant risk of being directly affected. It is insufficient to establish a mere possibility, suspicion conjuncture, or future risk. In *Open Door Counseling and Dublin Well Women v. Ireland*, which concerned a Supreme Court injunction against the provision of information by applicant companies concerning abortion facilities outside Ireland, the commission and the court were of the view that as a victim they belonged to a class of women of childbearing age and could be regarded as victims as they belonged to a class or women which are directly affected.

Although, there remains the possibility of being classified as an indirect victim, e.g. the widow of a person killed by terrorists and close family friends or members. This is under Articles 2 and 3 where the meaning of indirect victims are those prejudiced by violations or have personal interests. Before an individual can bring a petition, all domestic remedies must have been exhausted according to the generally recognised rules of international law and must have been submitted within six months from the date on which the final decision was taken.

The European Court – Under Article 44 of the Charter, a complaint can be referred to court. Reference may only be made by the commission, the state against whom the complaint was made, or whose citizen has made the complaint (Douglas-

Scott, 2011). Applicants may be natural persons (whether citizens or not) corporations, or organisations, or interest groups, but in all cases, the applicant must be a victim, no action can be brought in on behalf of others.

ISSUES IN PERSPECTIVE

One of the issues that are a lesson from the European regional system is that of the optional protocol as provided for under Article 25 of the Convention. This allows an individual claiming violation of his rights to present a complaint against his own or another state convention for investigation. This is not the case under the African Charter. Secondly, though the two (2) systems provide for the matters or violation of rights to be first exhausted by domestic remedies, while the European system has a time limit of six (6) months, the African Charter provides for a time limit of only three (3) months. Thirdly, the European system is well organized in the aspect of individual complaints. This is in the aspect of *Ratione personae*, *Ratione materiae*, *Ratione loci*. This is not applicable in the African Charter.

CONCLUSION

Although, both the African Charter and the European equivalent regional system have achieved a lot in the area of the inter-state complaint procedure. Despite the challenges encountered by these bodies there have been resounding successes or breakthrough in the enforcement of human rights even though they have limitations in enforcement because of non-interference with the sovereign powers of the municipal governments.

It is discovered that the European Convention on Human Rights is working well on the ground that the Convention was drafted as a lowest common denominator of rights observance within Western Europe, and so its standards were set at a deliberately modest level so as to encourage compliance and avoidance of clashes with contracting states jealous of their sovereignty. Again, the substantive rights in the convention are rights recognised impliedly or expressly among European states. It is our view that the African Union should toe the part of the European Union and the municipal governments should be encouraged strongly to respect human and peoples' rights in and among African states.

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