

**THE ROLE OF AFRICAN UNION (A.U.) IN PROMOTING  
PEACE AND SECURITY IN AFRICA**

**BY**

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**SEPTEMBER, 2007**

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(LLM/LAW/35855/2002/2003)**

**A THESIS SUBMITTED TO THE POSTGRADUATE SCHOOL,  
AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILMENT  
FOR THE AWARD OF MASTER DEGREE IN LAW**

**DEPARTMENT OF PUBLIC LAW  
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**SEPTEMBER, 2007**

## DECLARATION

I declare that the work in this thesis entitled: **The Role of African Union (A.U) in Promoting Peace and Security in Africa** has been performed by me in the Department of Public Law under the supervision of Professor Muhammed Tawfiq Ladan. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at any University.

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**CERTIFICATION**

This thesis entitled: **THE ROLE OF AFRICAN UNION (A.U) IN PROMOTING PEACE AND SECURITY IN AFRICA** by Mr. Ajegena, John Angibi meets the regulations governing the award of the degree of Master of Law of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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## **DEDICATION**

To millions of African people who lost their lives as result of poverty, economic depravation, political crisis, HIV/AIDS, hunger, human rights abuse, environmental degradation and other social and natural disasters caused by war and conflicts.

## **ACKNOWLEDGMENT**

It is with deep sense of gratitude and appreciation that I acknowledge the guidance, help, comments and encouragement offered to me by many people in the course of this work. I am particularly indebted to my major supervisor, Prof. Muhammed Tawfiq Ladan for his encouragement, critical comments and suggestions which afforded me the opportunity to carry on with this work. I am also grateful to Dr. Bashir Yusuf Ibrahim, a member of the supervisory committee for his advice and useful suggestions during the write up.

I acknowledge with thanks the encouragement and help I received from family friends at different locations during the course of this study, whose names are numerous and I prefer not to mention them here.

The encouragement I received from my wife, Theresa contributed in no small way to the success of this work. I also thank my children, Patience, Akpaho, Faith, Ashe, Joy and David for all their prayers to the success of the study.

Over and above all I am profoundly grateful to the Almighty God, my Maker, Redeemer, to whom I belong. He is worthy of praise both now and forever.

## ABSTRACT

Since the transformation of the Organization of African Unity (OAU) to African Union (A.U.) various measures were adopted by the newly formed organization to promote peace and security in the African continent, apart from the efforts of the United Nations (UN) whose primary purpose is to promote peace and security all over the world. The role of the newly formed African Union has been expanded to include issue of human right promotion, conflict management, promotion of good governance and the issue of unconstitutional change of government. This is the first time in the history of the Organization of African Unity (OAU) that the issue of “exclusive domain” has been removed from the Charter of the OAU and by including in the new Constitutive Act of the AU the right of the Union to intervene in the internal affairs of a member country where there is arm conflict. Various specialize agencies were created in the new AU Act including African Charter on Human and Peoples’ Rights and the African Human Right Commission, the African Human Right Court, all in a bid to provide peace and security in the continent. The reason why African Union is promoting peace and security in the continent is simple: peace and security is a desirable societal objective as opposed to war and conflicts and to mark a departure from the traditional one-level belief by the International Community that African countries are more conflictual in nature. The end of the Cold War has altered the international strategic environment and forced a radical revision of the global power structure disrupting the natural harmony amongst people and replaced them with hostile ideologies. African States were products of colonial designs. Their economies operated in a system of global transactions that seems biased against them. After independent, erstwhile colonial masters continued to influence direction by providing aids, advice and models of development, which at the end of it not

beneficial. Lack of unity, good governance and a strong economic base has made Africans have a significant share of responsibility for its failure. By late 1980s a continent touted as a “continent of promise” in the independence decade of the 1960s was fast becoming a “global basket case.” All through the 1960s and the first half of the subsequent decade, Africa was perceived as having more opportunities than Asia or Latin America but lack basic social structure. The reverse turned out to be the case as the story of African development was marked more by human and natural tragedies combined with remarkable failure of socio-economic and political management, vast population increase, declining food production rates, debts overhang, unemployment, bad governance, lack of good health facilities and accelerated poverty all contributed to lack of peace and security in Africa. African Leaders and some commentators on African Affairs agreed that some of the provisions of the OAU Charter were major barriers to the promotion of peace and security in Africa. Therefore in September, 1999 in Sirte, Libya, African leaders agreed that the OAU is due for review and by July 10, 2002 in Durban South Africa, the formal launching of the African Union took place to replace it with the former OAU. The idea was not only to change the negative perception of the continent as a continent of conflicts and wars but a holistic approach to promote peace and security.

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## LIST OF ABBREVIATIONS

OAU	-	Organization of African Unity
AU	-	African Union
OECD	-	Organization for Economic Co-operation and Development
ALF	-	African Leadership Forum
UN	-	United Nations
ECOWAS	-	Economic Community of West African States
SADC	-	Southern African Development Community
IGAD	-	Inter-Governmental Authority on Development
PSC	-	Peace and Security Council of African Union
CSSDCA	-	Conference on Security, Stability, Development and Cooperation in Africa
ECOMOG	-	ECOWAS Monitory Group
HIV/AIDS	-	Human Immune Virus and Acquired Immune Deficiency Syndrome
FAO	-	Food and Agricultural Organization
IMF	-	International Monetary Fund
NEPAD	-	New Partnership for African Development
MDGs	-	Millennium Development Goals
ODA	-	Overseas Development Agency
GNP	-	Gross National Product
USA	-	United States of America
PRM	-	Peer Review Mechanisms
UNTSO	-	United Nations Truce Supervisory Organization
UNEF	-	United Nations Emergency Force
ICJ	-	International Court of Justice
ICC	-	International Criminal Court
AEC	-	African Economic Community
OAS	-	Organization of American States
CSO	-	Civil Society Organizations
CISSA	-	Committee of Intelligence and Security Services of Africa
GATT	-	General Agreement on Trade and Tariffs
DRC	-	Democratic Republic of Congo
EU	-	European Union
NATCOM	-	Moratorium on Small Arms and Light Weapons
ICESCR	-	International Covenant on Economic, Social and Cultural Rights
ICCPR	-	International Covenant on Civil and Political Rights
UDHR	-	Universal Declaration of Human Rights
ECOSOC	-	Economic and Social Council
CHR	-	Commission on Human Rights
UNHCR	-	United Nations High Commissioner for Refugees
IRO	-	International Refugee Organization
NGO	-	Non-Governmental Organizations
RUF	-	Revolutionary United Front

## CHAPTER ONE

### 1.1 INTROUCTION

In May 1963, the Organization of African Unity (OAU) was established in Addis Ababa, Ethiopia by the then 37 independent African nations to promote unity and development, defend the sovereignty and territorial integrity of members, eradicate all forms of colonialism; promote international co-operation and co-ordinate members' economic, diplomatic, educational, health, welfare, scientific and defense policies.<sup>1</sup> The OAU was at that time, the most significant result of Pan-Africanism. The organization mediated several border and internal disputes and was instrumental in bringing about majority rule and the end of apartheid in South Africa, which in 1994 became the 53<sup>rd</sup> nation to be admitted to the organization.<sup>2</sup> It should be noted that national independence pre-dominate discussion by members' states during the early stage of the formation of OAU over continental unity. For the majority, the OAU was created to defend rather than to abolish member states.

More than 43 years have passed since the Organization of African Unity came into existence no appreciable progress has been made in the area of peace and security because <sup>1</sup>Africa continent is still ravage by wars, conflicts, economic and social problems that are threatening the continent.

The Assembly of Head of States and Government of the Organization of African Unity (OAU) recently adopted the Constitutive Act of the African Union (AU) to replace the Charter of the Organization of African Unity. This was done

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1. Available at [www.cc.columbia.edu/cu/cup/](http://www.cc.columbia.edu/cu/cup/). Organization of African Unity – Encyclopedia website, page 1.
  2. Ibid.

during its thirty-sixth Ordinary Session held in Lome Togo, from July 10<sup>th</sup> to July 12<sup>th</sup>, 2000. The formal launching of the AU took place in Durban, South Africa from July 9<sup>th</sup> to 10<sup>th</sup>, 2002 which also coincided with the First Ordinary Session of the Assembly of the Union. In the Durban Declaration, the Assembly paid tribute to the OAU as a pioneer, a liberator, a unifier, an organizer and a soul of the African continent and to the founding leaders of the OAU for their tenacious, resilience and commitment to African Unity and for standing firm in the face of the decisive manipulations of the detractors of Africa and fighting for the integrity of Africa and the human dignity of all the people of the continent.

The OAU Charter was certainly overdue for a review as it had the feeble compromises of the late 1950s and 1960s which had consequently become an outdated instrument bearing very little likeness to today's reality. According to the founding members of the Organization, the transformation of OAU to AU will provide a new and dynamic forum for addressing the needs of Africa. The difference between AU and OAU, they argued, is that AU will be people-oriented, it will encourage people participation; has special focus on gender issues; and most importantly the principle of non-intervention has been reversed to allow member states intervene in other member-state affairs where there are gross violations of human rights. In the new AU Charter, nine (9) Principal Organs were created instead of four (4) provided in the previous OAU Charter with wider objectives and provisions to protect human rights, address economic policy of the continent and also development strategies. There were other modalities that have been worked out to transit with the change, which include; Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) and the New Partnership for African Development (NEPAD) which is to be seen as an

“engine” needed by the AU to enable it move and be a much more effective Organization.<sup>3</sup>

<sup>2</sup> The Constitutive Act of the AU and various text writers and commentators has expressed their opinions as to the role AU is supposed to play in promoting peace and security in the continent. The proposed thesis intends to review these various opinions to see how far it has gone and whether the continental body has achieved tremendous progress in the promotion of peace and security by the AU member states as compared to what was obtained during the OAU Charter.

## **1.2 STATEMENT OF THE PROBLEM**

The major problems confronting the African continent today is lack of clear political and economic ideology by our leaders in addressing the many ills of the continent. The periods from 1963-1979 were one of crises and political turmoil in Africa. In many parts of the continent, there occurred boundary disputes which reflected the unhappy legacy of colonialism, political instability expressed in secessions, the grim battle for the total liberation of the dependent territories. There has been little progress in the real enjoyment of fundamental rights and freedoms of Africans despite the numerous treaties, resolutions and declarations executed by the OAU in recent memory. Africa still faces serious challenges in its efforts toward the realization of human rights for all due to impunity, lack of respect of the electoral process, poverty and under development, globalization, neglect of economic, social and cultural rights. It is under statement to say that the challenges facing Africa are daunting. In an era when advancement in

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3. Summary Report: Regional Conference for African Parliamentarians on Recent Strategic Development Initiatives in Africa, held in Accra, Ghana from 18-20 April, 2002, edited by Ayodele Aderinwale and Published by African Leadership Forum, Ota Ogun State and World Bank Institute, p. 5.

technology is providing the world with tremendous opportunity for development and improvement in the quality of life for mankind, the African continent is still grappling with wars and conflicts, lack of adequate health care, HIV/AIDS pandemic, poverty, political instability, environmental degradation, high unemployment and brain-drain and refugee problem, deteriorating economic and living standard of the people and lack of agricultural development and other social infrastructure. Many thousands of African men, women and children are killed every year in regional wars. These wars are often encouraged by regimes that give weapons and refuge to rebel groups fighting in neighbouring countries. The cycle of attack and escalation is reckless it is destructive and need to be stopped.

Human rights records of most African states are nothing to write home about. The authoritarian and dictatorial regimes of these leaders make it difficult for them to condemn the actions of other African leaders who violate human rights. African tyrants have no right to continue to oppress their people, even if they do it within the confines of their borders. The African Union is looking tirelessly in putting Africa on the part of economic recovery.

### **1.3 AIMS AND OBJECTIVES OF THE STUDY**

The objectives of the study, amongst others, are:-

1. To review the Constitutive Act of the AU as a whole and to see what are its organs and their roles in promoting peace and security in the continent.
2. To determine the challenges presently confronting the continent.
3. To explore steps or machineries that are available in the Constitutive Act of the AU and other international and regional legal instruments by

which members states will adopt to address the problems of peace and security in the continent.

4. To examine, since the attainment of independence by the African States from their colonial masters, how has the notion of sovereignty affect the role of AU in promoting peace and security in the continent.
5. To make suggestions to our African governments, international community and civil society organizations on how best to restore peace and security to all the trouble spots of African States and for enduring peace and security as well as the promotion of human rights in the continent.

#### **1.4 <sup>3</sup>SIGNIFICANCE OF THE STUDY**

The Role of African Union in Promoting Peace and Security in Africa is significant because of the numerous challenges confronting African continent today. These challenges are either general or specific. The general issues have to do with the inability to have proper democratic structures in place. The continent is still bedeviled with despots who do not want to relinquish power to a new generation while the democratic process is abused. Closely linked to this also were effects of military coups and military rule in the African continent which terminate legitimately and democratically elected government. The result is the infringement of fundamental rights of the citizens through the use of decree to rule.

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4. As Obasanjo Heads African Union. New Nigerian Newspaper Editorial of 11 Aug., 2004, p.8

On the other hand, the specific challenges confronting the continent are the internal strife that threatened to tear some countries apart, thereby worsening the humanitarian crisis on the continent. As at now Sudan leads other major war-torn African countries including Liberia, Uganda, Cote d'Ivoire, Democratic Republic of Congo, Sierra Leone, Burundi with thousands of civilians killed, women raped. Reports have it that in these regions alone about 50 villagers have been sacked and million headed to border camps and an estimated two million people in need of medicine and food; leading the United Nations to described the situation as the world's worst humanitarian crisis.<sup>4</sup>

Today, Africa is afflicted by a growing number of intra-state conflicts of apparently racial, religious and ethnic derivation. A growing number of civilians as opposed to armies and security forces are becoming involved in this violence, often for no obvious or clearly articulated political reason.<sup>4</sup> Ethnic and racial cleansing combined with acute religious extremism, intolerance or pure criminality suggests a growing social crisis in the international system.

The instances of turmoil are the local and particular manifestations of a common crisis of individual and group identity in the context of deepening social inequality and fragmentation. In Africa, we see at the heart of the continent a swathe of wars stretching from Eritrea to the northern borders of Namibia. This phenomenon constitutes so grave a threat as to prompt some keen observers to speculate that what we are witnessing is the end of a state.<sup>5</sup>

The health of African also depends on the defeat of hunger. Forty million Africans are now at risk of starvation as result of frequent wars and draught. They

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5. Richard Cornwell. Looking Towards an Unknown Future. African forum, Published by ALF and World Bank Institute, Vol. 4, Nos 2&3, Aug. 2000.

face severe food shortage or lack of drinking water. Africa is one part of the world that is beset by the scourge of illicit small arms and light weapons. There is no gainsaying that such civil wars and violent unrest in Africa have worsened the internal security situations of the political entities on the continent and hampered the ability of their government. The significance of the study further revealed that states with more than one linguistic group (multi-nation states) have faced more internal strife, as well as wars that are inspired by religion. While most European states were founded as <sup>5</sup>nation-states, most African states were founded as multi-nation states due to colonial history.<sup>6</sup> This make the goal of unity even more difficult to achieve as the ethnic and religious rivalry and constant border conflicts are one of the biggest challenges to A.U.

In Africa, 340 million people, or half the population live on less than one US dollar per day. The mortality rate of children under 5 years of age is 140 per 1000 and life expectancy at birth is only 54 years. Only 58 per cent of the population has access to safe water. The rate of illiteracy for people over 15 years is 41 per cent.

Peace and security are elusive terms in the context of Africa, a continent that lacks pan-African machinery. Since the establishment of OAU before it was transformed to AU, the organization remained powerless to prevent its member states from waging war.

Despite numerous efforts put forward to resolve armed conflicts in Africa, and increasing success in recent years, durable peace remains an elusive goal on the continent. The resistance of conflict in Africa poses major challenges not only to all Africans but the UN in particular. Building durable peace in Africa requires

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6. Charles Ikedikwasoeze. Obasanjo's Renewed Mandate as AU Chairman. New Nigerian Newspaper of 31 March, 2005, p. 16.

both good governance and sustainable development; such as political, economic and social conditions which are needed to prevent recurrences of tensions, chaos, respect for human rights and the rule of law.

Surely, there is a new dawn on the Africa horizon. Political liberalization, well-focused and pragmatic economic policies, and macro-economic stabilization are increasingly becoming shared values, particularly at political leadership level. Already, Africa is showing overall economic growth for the first time in more than a decade. There is a renewed sense of hope and determination as stability is being re-discovered, investment is returning to many African countries even though the challenges are however still enormous.

## **1.5 JUSTIFICATION OF THE STUDY**

Civil Societies in Africa are playing an increasing role, especially in the lives of African peoples at every level on the social, cultural and political levels and even in the democratization of the daily lives of the people in general. It is therefore imperative to involve civil society due to the fragmentation of African states and its poverty level which has been created by decades of bad governance. The crisis are more reflected due to the weaknesses and even in the ineptitude of the OAU and its member states to come out with coherent preposition aimed at solving the continent's problems. The world is moving towards a pluralist dynamic in search for solutions to the several complex questions which have been brought to the fore by the evolution of world civilizations. There is also the declining role of the state to meet the aspirations of the citizens and therefore, it is the role of the civil societies to serve as a symbol

of stronger aspiration of the citizens to participate in state matters with determination in the shaping of their destiny.

The justification of this study is to further analyse the reason behind the introduction of New Partnership for African Development (NEPAD) by African Union. According to initiators of the programme, NEPAD is aimed at <sup>6</sup>reversing decades of socio-economic and political decay, eradicating abject poverty, consistent with the UN's Millennium Development Goals (MDGs), in the areas of health care, education, achieving sustainable growth and development. The question is: what is and how effective is the response capacity of the African Union in putting this to reality?

In 1991, African Leadership Forum (ALF) convened a conference in Uganda to fashion out modalities on how to improve peace and security in Africa. It was the outcome of that meeting that a Working Document was prepared called The Kampala Document.<sup>7</sup> The Kampala Document has made a major contributions to the efforts in improving the conceptual framework within which peace and development can be sustained in Africa. Peace is only possible when the principle of security under girds the social order. Security is the core element which makes for stability and along with other elements, presents stability as a pre-requisite for development.

Despite the fact that African leaders have signed, ratified/acceded to a number of Conventions, Treaties, Protocols and Charters, especially those that have direct bearing to conflicts management, peace and security continue to elude the continent. This study will therefore impart to the readers the efforts

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7. Amos Sawyer: Towards a Framework for Sustainable Stability, African Forum Journal, Vol. 4, Nos 2&3. Published by ALF, Ota, Ogun State, Nigeria, Aug. 2000, p.68

African Union is making in addressing all the ills facing the continent today.

This study will also analyse the various institutions of the AU, especially those dealing with economic and human rights development and proffer solutions on how to address any possible conflicts if any.

The indebt analysis of this study will also reveal to the readers the reason behind the transformation of OAU to AU, which according to commentators and analysts will provide excellent opportunity for socio-economic regeneration and liberation of the continent. Collectively, the initiatives represent the expression of the will of the people in the pursuit of the realization of their core values and removing obstacles to human security, tackling the problem of poverty, and putting in place the right policies and structures to ensure equitable growth.

## **1.6 SCOPE AND METHODOLOGY**

This study will cover the whole of Africa continent. Both the OAU and the Constitutive Act of the AU will receive attention in this study and will be examined to see what roles and mechanisms are available in these instruments in addressing peace and security in the continent. Conflicts resolution is about activities that seek to discover identity and resolve the underlying root causes of such conflicts. African leaders have realized the need to promote peace in the continent and in doing this they have also agreed to accelerate political and socio-economic integration through partnership with other International Organizations which is a necessary ingredient for sustainable development of the African economy. For peace to reign in the continent, African leaders need to clearly define the norms and standards in dealing with manifestation and control of

conflicts. The relationship between the United Nations and African Union in promoting peace and security in Africa will also be covered in this study.

The main thrust of this thesis will be to identify various laws contained in International instruments like the AU and the UN Charter, the roles play by various regional organizations in Africa in promoting peace and security, such as the Economic Community of West African States (ECOWAS), Southern African Development Community (SADC) and Inter-Governmental Authority on Development (IGAD). This study will also consider the possible effects of the AU Treaty on the existing and future African regional human rights institutions, such as the African Commission on Human and Peoples Rights, the proposed African Human Rights Court, AU Court of Justice, Peace and Security Council of AU.

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## **1.7 LITERATURE REVIEW**

About 3.4 millions of people have died in the African continent over the years as result of violent conflicts, civil wars, diseases, environmental degradation, bad governance, religious crises and the large-scale refugee problems in the continent.

Shedrack Best (1998)<sup>8</sup>, in his examination of the Under-developed state of Peace and Conflict studies in Africa opined that the search for peace has been one of the primary pre-occupation of mankind. However, the study of peace and conflict is a recent phenomenon in Africa in the field of social sciences and academic circle generally as compared to developed world. Because of this, the concept of peace and conflict is still greeted with obscurity, caution, confusion,

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<sup>8</sup> Shedrack Best.. The Underdeveloped State of Peace and Conflict Studies in Nigeria. African Peace Review: A Journal of Centre for Peace Research and Conflict Resolution, Vol. 2 No.1, April, 1998, pp. 1-15.

backwardness and even rejected in most of Africa. It is this backwardness that calls for a rethink of the way African statesmen and scholars are approaching the field of conflict and peace studies, especially in the light of the proliferation of armed conflict and other forms of social upheaval in Africa in the post cold-war era, which has led to huge humanitarian suffering. Even though peace and conflict studies are underdeveloped in Africa, the trend needs to be reversed and taken to wider issues considering the rising pattern of armed conflicts in the African continent.

<sup>8</sup>Similarly, Jimmi Adisa (1998)<sup>9</sup> looked at the African security needs in a new world order and highlighted that the end of the Cold War, which was sealed by the demise of the Soviet Union has altered the international strategic environment and forced a radical revision of the global power structure. The effects of these are monumental, leading to new alignments in global power formations and giving birth to a different era in diplomatic history. The arrival of a new world order (presumably western concept) in which “the rule of law supplanted the rule of the jungle” and the natural harmony among the people only intermittently disrupted by the “evil men” or hostile ideologies.

Africans in particular were initially enthusiastic about the possibilities associated with the changing international order but due to superpower rivalry, exacerbated and escalated domestic conflicts in many parts of the African continent, notably, Angola, Mozambique, Namibia, South Africa, Chad, Ethiopia, Somalia, Liberia, Sierra Leone, etc which has placed pressure on African states to take sides as a condition for economic, political and/or military assistance.

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9 Jimmi Adisa. African Security Needs in a New World Order. African Peace Review: A Journal of Centre for Peace Research and Conflict Resolution, Vol. 2 No.2, October, 1998, pp. 1-17.

Various factors associated to conflicts in Africa, amongst, which are; crises of marginalization, issue of lack of good governance, human rights abuses, economic underdevelopment, rising wave of domestic conflicts, turmoil and armed confrontation all associated with the forces unleashed by global changes at a point in time which African states had lost the capacity to cope.

<sup>9</sup>Celestine Bassey (2001)<sup>10</sup> examined some critical Western perception of peace and security in Africa and agreed that the emerging condition of profound social crisis generated by structural deformities of the African social environment such as the food crises, deplorable mass poverty, decimating diseases, pervasive illiteracy, technological backwardness, prostrate external dependence and mounting foreign debts combined with post-cold war system transformation has engendered a “paradigmatic shift” on the western perception of African security. This perception in turn greatly affects peace and security of the African states. Similarly, any western policy focus on African security is base largely on abstract geopolitical conditions and invariably anchored to virulent ideological and hegemonic rivalry between the two dominant formations of NATO and Warsaw Pact who are the primary determinants of African security issues and the key to its resolution.

Any discourse on security must necessarily identify the source, nature and type of threat as well as the management capability and policy options to deal with them. This in turn raises the problem of domestic coping mechanism: that is, the context of the national security policy of a given country, comprising the decision context, regime type, and the relationship between state and society

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10 Celestine O. Bassey. Some Critical Observations on Western Perception of Peace and Security in Africa. *African Peace Review: A Journal of Centre for Peace Research and Conflict Resolution*, Vol. 3 No.1, April, 2001, pp. 36-57.

including that of civil-military relations. This also dominates the mode of discussion and interpretation of African security. There are two possible factors affecting peace and security in Africa: the first is the existence of external threats which are violent, hostile, or military in form. These external threats are in the type of external aggression, espionage, hostile reconnaissance, sabotage, subversion, annoyance and inimical influences exercised by adversaries. The second cause is the coercive behavioural power of the super power nations on the developing countries. Under this approach, the patterns of conflict, escalation of strategic interactions, breakpoints and containment of violent conflicts are primarily from the perspective of the super and middle powers, which have pervasive effect on the understanding of national security.

<sup>10</sup>Onoja (1989)<sup>11</sup> in his assessment of peace-making as an Instrument for the Maintenance of International peace and security highlighted several International legal mechanisms by which United Nations adopt in resolving international conflicts. One of these mechanisms is through mediation, which is one of the provisions in the Charter of the United Nations. Under this method, respectable international personalities, elder statesmen and people are employed to use their good offices to try and resolve such conflicts. This means is adopted to bring hostile parties to agreement when other diplomatic

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11 Lawrence Onoja. Peace-keeping and International Security in a Changing World. Printed and Published by Mono Expressions Ltd., Jos, Plateau State, 1989, p. 123.

measures fail. Other method adopted through mediation is peace building, which is a mechanism for ensuring continued existence of peace and order after resolution of international conflict either through preventive diplomacy, peace-making or peace-keeping.

The second method is through peace-keeping which has received greater attention in the Charter of the United Nations. It is an instrument for the maintenance of international peace and security. The means adopted is through multilateral diplomacy usually carried out by the United Nations Security Council's Permanent Members and non-permanent members, other regional bodies and judicial process, through the International Court of Justice. The United Nations' Charter emphasized the need to resolve international conflict through peaceful means in order to avoid the scourge of war.

Key factors which are affecting collective security by the United Nations in maintaining international peace and security are the debt burden which has made it impossible for under-developed countries invest in the economic sector that are likely to generate more resources for job creation. Secondly, the global environmental pollution that has devastating effects on the lives of millions of people. Thirdly, the threat posed by armament has global phenomenon that threatened the lives of mankind. Therefore, the

problem of collective security is vital to international communities for peaceful living of mankind. <sup>11</sup>

Goodrich (1974)<sup>12</sup> examined the different approaches the United Nations has adopted over the years in the maintenance of peace and security. First, the United Nations reframed itself from the use of threat or force against the territorial integrity or political independence of any state. Second, members of the UN agreed to settle their international disputes by peaceful means so as not to endanger international peace and security. Thirdly, the use of enforcement measures, which is the last resort to be adopted by the UN in order to maintain peace and security are employed. Fourth, members of the UN agreed to regulate its national armament as an important feature for maintaining peace and security. Finally, the use of multilateral diplomacy in resolving disputes is vital in achieving peaceful adjustment of unsatisfactory situations. In this respect, the responsibility of maintaining international peace and security rest on the Security Council of the United Nations. <sup>12</sup>

Under basic principles of peace keeping, factors, such as the competence of the UN to authorize peace-keeping operations, the consent of the parties involve in the conflict to allow peace-keeping operations and the need to be neutral by the peace-keepers are all important in order to enable peace keeping operations operate without difficulties.

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12 Goodrich, L.M. The United Nations in a Changing World. Columbia University Press, N.Y., 1974, pp. 109-110.

Malu (2004)<sup>13</sup> while examining the responsibility for International War Crimes, peace and security in the West African Sub-region said that the aim of peace-keeping operation is to prevent the commission of war crimes in time of hostilities and in this respect, the U.N Security Council has the responsibility world-wide in peace-keeping operation. Efforts by regional organizations, such as the African Union in contributing its personnel and resources to the UN peace-keeping operations are therefore regarded as supplementary. Crimes committed in large-scale during armed conflicts are treated according to international rules established by the International Community and to prosecute those who are the perpetrators accused of such crimes. In this way, International Tribunals were established for this purpose; which include International Criminal Court and the International War Crimes or Special Courts.<sup>13</sup>

Blay, F.W.A. and A. Janneh (2002)<sup>14</sup> in their separate welcome addresses to the Regional Conference for African Parliamentarians examined poverty, squalor, diseases especially HIV/AIDS, violent conflicts, environmental degradation, high unemployment, brain-drain, debt burden, high level of corruption are the factors posing serious challenge to African development. Amos Sawyer (2000)<sup>15</sup> on his part identified good governance, rule of law and human rights institutions as basis towards a framework for sustainable stability.

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- 13 Malu, S.V.L. Responsibility for International War Crimes, Peace and Security in the West African Sub-Region. Paper presented at the Nigerian Bar Association Conference held at Abuja, 25<sup>th</sup> August, 2004, p. 6.
- 14 Freddie F.W.A. Blay, et. al. Welcome Address to the Regional Conference for African Parliamentarians on Recent Strategic Development Initiatives in Africa, held in Accra, Ghana from 18-20 April, 2002. Edited by Ayodele Aderinwale and Published by African Leadership Forum (ALF) Ota-Ogun State Nigeria and the World Bank, pp. 21- 30.
- 15 Amos Sawyer. Toward a Framework for Sustainable Stability. African Forum Journal, Vol. 4, Nos 2&3 August, 2000. Published by African Leadership Forum Ota-Ogun State, Nigeria, pp. 54-64.

While Amoo (1997)<sup>16</sup> identified the human needs theory as the main challenge to ethnicity and conflicts in Africa.

The United Nations Secretary General, Kofi Annan (2001)<sup>17</sup> at an address to the A.U Summit in Lusaka challenged African leaders to live up to expectation and that their decision to transform OAU to AU require tremendous leadership courage and willingness to depart from the ways of the past and do for Africa what the European Union has done for Europe. <sup>14</sup>

Alihu Mahama (2002)<sup>18</sup> highlighted various strategies which the African Union has adopted to change the negative perception of Africa. The launching of the New Partnership for African Development (NEPAD) and the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) is therefore no surprise and renewed efforts by African leaders in promoting peace, security, stability and sustainable development in the continent.

Amadu Sesay (2001)<sup>19</sup> emphasized that human rights have been and remain one of the most fundamental and dominant issues in the contemporary international system and politics. According to the learned Professor, we cannot have peace, or an atmosphere in which peace could grow, unless we recognized the rights of individual human beings.....their importance, dignity and agreed that was the basic thing that had to be accepted throughout the world.

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- 16 Sam G. Amoo. *The Challenge of Ethnicity and Conflicts in Africa. The Need for a New Paradigm.* Published by UNDP Emergency Division, 1997. Book Reviewed by Napoleon Abdulai in *African Forum Journal*, Vol. 4 Nos 2&3 August, 2000, pp. 81-82.
- 17 Address by the UN Secretary General, Kofi Anna to the OAU meeting in Lusaka, 9<sup>th</sup> July, 2003. Available at <http://www.un.org/News/press/doc/2001/sgsm7888.doc.htm>, pp. 1-3.
- 18 Alihu Mohama. Opening Statement to the Regional Conference for African Parliamentarians on Recent Strategic Development Initiatives in Africa, held in Accra, Ghana from 18-20 April, 2002. Edited by Ayodele Aderinwale and Published by African Leadership Forum (ALF) Ota-Ogun State Nigeria and the World Bank, p. 38.
- 19 Amodu Sesay. Human Rights and the Maintenance of International Peace and Security in Africa. *African Peace Review. A Journal of Centre for Peace Research and Conflict Resolution*, Vol. 3, No. 1, April, 2001, p. 18.

Therefore, human rights are linked to peace and security. The human rights record of most states in Africa both during the Cold-War and the Post Cold-War era were very appalling as there were gross violations of fundamental rights in the continent.

Udombana (2002)<sup>20</sup> agreed that human rights provisions in the Constitutive Act of the African Union are more elaborate than what was contained in the former Organization of African Unity. Despite the rich provisions of human rights in the Act, the Universal Declaration of Human Rights and the Charter of the United Nations in the field of human rights, there are still reported cases of human rights violation in Africa, especially in countries where armed conflicts prevail, e.g. Liberia, Sierra Leone, Sudan, Burundi, Chad, Democratic Republic of Congo, etc. All this gives cause for some concern; for it means, in the final analysis, that African leaders are not genuinely concerned with the cause and course of human rights in Africa. They do so only for convenience, as a means to an end, not as an end in itself. <sup>15</sup>

Amnesty International in its Public Statement<sup>21</sup> of 28<sup>th</sup> January, 2005 posted to its website accused African Union leaders that are delaying the establishment of an effective African Court on Human and Peoples' Rights and appealed to states that have not ratified human rights treaties to do so without delay.

Information released in the A.U website (2001-2002)<sup>22</sup> identified steps African Heads of state have taken in establishing some Institutions that will deal with human rights related issues. Such institutions established so far include the

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20 Nsongurua J. Udombana. Can the Leopard Change its Spots? The African Union Treaty and Human Rights. Published by Am. U. International Law Review, 2002, pp. 1177-1261.

21 See Amnesty International Public Statement of 28 January 2005, available at <http://www.amnesty.org/>, pp.1-3.

African Human Rights Commission and its Protocol establishing the African Court on Human and Peoples' Rights, the Peace and Security Council of A.U, the African Charter on the Rights and Welfare of the Child, African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the AU Convention Governing the Specific Aspects of Refugee Problems in Africa.

Okechukwu Emeh (2004)<sup>23</sup> while analyzing the effects of "Small arms and Africa's Security Dilemma" identified proliferation of illicit trade in small arms and light weapons as one of the greatest threats to peace, stability and security in Africa. This has led to increase in wide range of crimes and violence creating fear, impunity and insecurity.<sup>16</sup>

Ladan (1999)<sup>24</sup> highlighted the significant impact of human rights in the field of international law and its evolution and remarkable features development in international law since 1945 and informed his audience the contributions of international and regional human rights instruments to peace and security. On the other hand Professor Ayua, et.al. (2001)<sup>25</sup> identified various strategies for human rights promotion and protection for effective discharge of governments while Ciroma, et. al. (2001)<sup>26</sup> gave a critical appraisal of the effectiveness of international and regional human rights enforcement mechanism in promoting peace and security.

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22 See various documents and speeches posted to OAU websites from 2001-2002.

23 Okechukwu Emeh. Small Arms and Africa's Security Dilemma. New Nigerian Newspapers of 6 October, 2004, p. 8.

24 M.T. Ladan. Introduction to International Human Rights and Humanitarian Laws. Published and Printed by ABU Press Ltd., Zaria, Kaduna State, 1999, p. 47.

25 A. Ayua. Strategies for Human Rights Promotion and Protection for Effective Discharge of Government's Human Rights Obligations. In Law, Human Rights and the Administration of Justice in Nigeria. (M.T. Ladan Ed.). Essays in honour of Hon. Justice M.L. Uwais, ABU Press Ltd., Zaria, Nigeria. 2004, p. 131.

## **1.8 ORGANIZATIONAL LAYOUT**

This study is divided into five (5) Chapters as follows:-

### **CHAPTER ONE**

This is an introductory part of the thesis which deals generally on the statement of the problem which the thesis is all about, aims and objectives of the study, its significance in highlighting problems of peace and security in the African continent, justification, scope and methodology used in the study, literature review and organizational layout of the thesis.

### **CHAPTER TWO**

Chapter Two deals with perspective on peace, security, conflicts and development in Africa, the clarification of key terms, such as; peace, security and African Union, its historical development of the practices and policy frameworks for African perspectives on peace, security and conflict will be discussed.

### **CHAPTER THREE**

This Chapter will focus mainly on the Promotion of Peace and Security in Africa, law and practices. The International and Regional Legal frameworks for the promotion of peace and security in Africa, the role of the Organization of African Unity (OAU) and the new African Union (AU) in promoting peace and

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26 Isah Hayatu Ciroma. Critical Appraisal of the Effectiveness of International and Regional Human Rights Enforcement Mechanism in Nigeria. In Law, Human Rights and the Administration of Justice in Nigeria. (M.T. Ladan Ed.). Essays in honour of Hon. Justice M.L. Uwais, ABU Press Ltd., Zaria, Nigeria. 2004, p. 131.

security in Africa, issues, problems, challenges and prospects will be discussed. Other sub-regional organizations in Africa in promoting peace and security will also be analyzed here.

#### **CHAPTER FOUR**

Chapter Four will focus on the Protection of Human and Peoples' Rights under the Constitutive Act of the AU, the legal instruments for the promotion and protection of human rights in Africa, the relationship between human rights, peace and security, and issues, problems, challenges and prospects in human rights promotion and protection in Africa and its impact on peace and security will receive attention in this chapter.

#### **CHAPTER FIVE**

This is the concluding part of the thesis. It is the summary of the thesis and the conclusion drawn thereof. The writer will also make recommendations based upon his research work, with the hope that such recommendations will stimulate the Assembly of Heads of States of the AU in its efforts in promoting peace and security in the continent.

**<sup>18</sup>CHAPTER TWO****PERSPECTIVES ON PEACE, SECURITY, CONFLICTS  
AND DEVELOPMENT IN AFRICA****2.1 INTRODUCTION**

The objectives of this Chapter is to provide conceptual clarification of key terms, such as; peace, security, African Union and to provide analysis or overview of the historical development of the practices and policy frameworks for African perspectives on peace, security and conflict and the root factors responsible for lack of peace, security, stability and development in Africa.

Since the evolution of man, conflicts occur in every levels of our life but in Africa such has reached unprecedented dimension due largely to the nature in which the continent was colonized by the super-power, which result to numerous conflicts confronting the continent today. When African States started getting their independent, new alliances started emerging in order to protect what they perceived to be threats to their peace and security, especially hostile neighbours. Therefore new regional alliances, e.g Brazzaville, Casablanca and Monrovia were formed in the early 50s to promote peace and security. This is what “inspired” the African leaders, in forming the continental body, the OAU in 1963 and were determined to promote peace, security and stability as a pre-requisite for the implementation of development and integration agenda of the African continent.<sup>1</sup>

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<sup>18</sup> See the Preamble to the Organization of African Unity (OAU) Charter, 1963

The most extreme break down of governance is war. Africa has experienced more violent conflict than any other continent in the last four decades, which is the biggest single obstacle to development. Some renowned scholars and philosophers like Karl Max (1818-1883) and Robert Park believed and postulated the notion that conflict and wars are vital components of international politics. They reasoned that through wars, means could be provided to resolve dispute between nations and within societies. For this reason, they argued that conflicts are not only necessary but inevitable.

This line of reasoning is not difficult to follow as it may lie within our living memory to pinpoint conflicts and wars that devastated once boisterous and peaceful societies like Rwandan (1994), Liberia, Sierra Leone, Mozambique, Angola, Sudan, Somalia, etc leaving millions of people dead and millions to the refugee camps. Most of the wars that are caused in the continent were as result of bad leadership that resulted to conflicts.

One of the functions of the newly formed African Union (AU) is the management of conflicts, war and other emergency situations and the restoration of peace. The effects of wars and conflicts have brought about death and human suffering, engendered hate and divided nations and families. Conflicts have forced millions of our people into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope. Conflicts have gobbled-up scarce resources, and undermined the ability of the continent address the many compelling needs of the people.<sup>2</sup>

## 2.2 CLARIFICATION OF KEY TERMS

### 2.2.1 Peace

<sup>19</sup>The search for peace has been one of the primary pre-occupation of mankind. Shedrack<sup>3</sup> opined that peace research is an old term of human objective and as a social process, the academic study of peace has come too late compared with other fields of academic endeavour. In Africa, peace and conflict studies as an academic field is still grossly underdeveloped and in the extreme and not much attention is given to its study. Most peace and conflict analysts rarely define peace reference is often made to the means and process of achieving peace and to the features of peace. The primary objective of every society is security, prosperity, freedom and justice.

Peace can be used to imply a state of calm and tranquility in all of nature. St. Augustine is one Philosopher that has positively affected the definition of the concept of peace. According to him peace is dealt with at different levels: peace between God and man, civil peace, peace between man and man, peace in the family. Even though this definition is employed more particular, it is relevant in the study of peace today. There is a

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2 Declaration of the Assembly of Heads of State and Government on the Establishment within the OAU of a Mechanism for Conflict Prevention Management and Resolution, para. 9, OAU Doc. AHG/Decl. 3 XXIX (1993) called the Cairo Declaration.

3 Shedrack, G.B. The underdeveloped state of peace and conflict studies in Africa. African Peace Review. A Journal of Centre for Peace Research and Conflict Resolution, Vol. 2 No. 1, April, 1998, pp.1.

tendency to associate peace with everything good and positive, given that peace is a product of social relationships, there is a sense in which disorder, violence and war may lead to peace and indeed the objective of any war is to achieve peace. Peace like conflict which is closely related to, has two basic dimensions, one positive and the other negative. The positive dimension conveys the idea of “free co-operation among people for aims that include security, justice and freedom.” The negative aspect of peace entails the absence of war or conflict. There cannot be peace in the atmosphere of chaos. Peace is a process, a goal, and a means to a goal. In working for peace, individuals get involved in the process of peace making. Peace, when achieved has to be sustained with work.

At the OAU Summit in Algiers, 1999, African Leaders pledged to make the year 2000 the “year of peace” in Africa. Six years after this declaration, conflict in Africa has been seen as inevitable. From Burundi to Sierra Leone to Angola to the Sudan and Western Sahara there is persistent conflicts and crises of governance and security that threaten to derail the hopes for an African Union of peace and prosperity. The root of these conflicts are often tied to misguided leadership, ethnic and racial differences which are exploited by leaders who are unwilling or unable to put the people’s interest first but exploits such for destructive ends. The result of these conflicts is refugee flows which overpower the resources of these states, delaying the flow of aid and investments.

The major impediments to peace include pervasive poverty, unemployment, ethnic and religious conflicts, lack of effective health care system, imbalances in global trade and non attainment of the Millennium Development Goals (MDGs). Other factors is the issue of political conflicts, which

occur as result of dispute over election or issue of despondency of elected leadership trying to dominate the politics, which in the long run lead to dictatorship, violation of human rights and the rule of law.

Normally, the parties involved in conflict embark upon mutually destructive process of increasing the level of coercion or violence in the threats or actions they direct against each other by committing resources to the conflict. In this way, they adopt a variety of ways in achieving their objectives by intensifying an existing strategy or employing the same strategy in different geographical localities, where the adversary may prove more vulnerable.

<sup>20</sup>One of the objectives by which the Peace and Security Council of the African Union<sup>4</sup> was established is to “promote peace, security and stability in Africa, in order to guarantee the protection and preservation of life and property, the well-being of the African people and their environment, as well as the creation of conditions conducive to sustainable development”. African economic crisis needs to be tackled more concertedly through the re-inventions of the state as an active development agent that can creatively use public resources and policies to improve the level of infrastructure, human capital and the social sector.

<sup>21</sup> The Kampala Document<sup>5</sup> has made a major contribution to the efforts to improve the conceptual framework within which peace and development can be sustained in Africa. Peace is only possible when the principle of security under girds the social order. Security is the core element which makes for stability and along with other elements, presents stability as a pre-requisite for development.

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4 See Article 3(a) of the Peace and Security Council of African Union

5 Amos Sawyer: Towards a Fraemwork for Sustainable Stability. African Forum Journal Vol.4, Nos 2&4. Published by African Leadership Forum, Ota, Ogun State Nigeria, Aug. 2000, p.54.

The document identified four elements called “Four Calabashes” – security, stability, development and co-operation, which constitute one of the clearest strategic formulation designed to drive the process of sustainable peace and development in Africa. Peace provides the environment necessary for investment and sustainable growth.

Peace is only possible where there is good governance which promotes a belief in the humanity of all human beings and a commitment, acceptance of their diversity as part of the richness of human endowments. The African Charter on Human and Peoples’ Rights and few other documents are good for the promotion of peace and security in the continent. There can be no peace without justice and the fundamentals of peace must be built upon strengthened pillars of justice, economic and political indicia. The Protocol that established the Peace and Security Council of A.U acknowledges in its Preamble, that “The development of strong democratic institutions and culture, observance of human rights and the rule of law, as well as the implementation of post-conflict recovery programmes and sustainable development of policies are essential for the promotion of collective security, durable peace and stability.”

Africa is home to 34 countries of the world’s 49 least developed countries and 80% of the world’s HIV/AIDS population. About half the continent populations earn less than one US Dollar a day. Africa constitutes only 10% of the world population, yet it produces 25% of the world’s refugees and internally displaced persons. Consequently, scarce resources, which should be used for socio-economic developments have had to be expended on feeding and catering for these millions of Africans.

Peace building is very important and this is recognized by the Peace and Security Council where institutional capacity for peace-building is created to assist in the restoration of the rule of law, establishment and development of democratic institutions and the preparation, organization and supervision of elections in the concerned member state.

Peace is considered not the absence of conflict but a particular relationship between conflict and cooperation where conflict is channeled into non violent outlets. Although peace under law has always been an unattainable ideal, peace without law is imaginable. In the present dangerous age, mankind needs peace and needs it desperately. One of the ways to strengthen peace is to improve the institutions and processes of making peace more effective.

Peace and Security Council of the African Union is also playing major role in arresting humanitarian crises in the event of conflicts or natural disasters in the continent in order to restore life to normalcy. This, it is doing through the African Standby Force.

### **2.2.2 Security**

The Charter of the United Nations has conferred on the Security Council primary responsibility for the maintenance of international peace and security, as well as the provisions for peace-keeping operations in any part of the world where there is outbreak of wars and hostilities. Despite efforts made by the UN at the international level to prevent escalation of security problems as a result of the First and Second World Wars which millions of people lost their lives, war continues to be a scourge which rears its ugly head in virtually all continents of the world, thereby posing security problem. Onoja<sup>6</sup> observed that the concept of

security has acquired the strength of an ideology which is prone to multiple interpretations. In the name of security deadly weapons are manufactured, acquired, stocked, put at alert by nations states at the cost of food, clothing<sup>22</sup> and shelter.<sup>7</sup> Security indicates an era of concern rather than a precise condition, hence it requires a thorough theoretical analysis in order to identify the boundaries of its application. The security of any nation lies not solely or even primarily in its military capability but equally in developing relatively stable patterns of economic and political growth.

Security is virtually identical with safety and it signifies absence of or protection from physical danger. In the international discourse, there is what is called “national security” and “states security.” During the Cold War era, the meaning of security was attached essentially to military capability of a state to deter military attack from any enemy. According to Adisa<sup>8</sup> in analysing the security of African countries in the 1990s, it has been a period of despair not simply because of the economic shocks associated with changing global realities but the crisis and wave of conflicts erupting in the continent. To take the continent out of the present predicament, there is the need of African leaders define their security needs base on freedom from want and freedom from fear to conform to the international perception which has come to be identical with welfare, welfare of the individual, the community or people which is the corner stone of the modern welfare state.<sup>9</sup> This initiative demand that the Charter of the Organization of African Unity must be reviewed to include pragmatic approach on how to deal with security issues.

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<sup>6</sup> Lawrence Onoja. *Collective Security Under the United Nations System*. Printed and Published by Mono Expression Ltd., Jos, Plateau State, p. 21.

<sup>7</sup> Op. cited., p.22.

A major part of the total activity of the African Union in the security field has taken the form of developing general principles, rules and procedures. This is done through the General Assembly of the African Union and the Peace and Security Council of the African Union. One of the functions of the General Assembly of <sup>23</sup>the Africa Union in security matter is the power to give directives to the Executive Council on the management of conflicts, war and other emergency situations and the restoration of peace.<sup>10</sup> On the other hand, the Peace and Security Council of the African Union is given wide range of functions in matters connected to peace and security.<sup>11</sup>

The solemn declaration on the Conference on Security, Stability, Development and Cooperation in Africa (CSSDCA) was the response to the Kampala Document<sup>12</sup> that had proposed the launching of a Conference on security, stability, development and cooperation in Africa, in May, 1991, adopted by OAU in Lome in July, 2000, which recognizes a lack between security, stability, development and cooperation to deal with Africa's problem. Africa has only one option: to rise to the challenge to tackle the inter-related problems of security, stability, development and cooperation.

At the time the Organization of African Unity (OAU) was established in 1963, no serious security attention was given as to how to address such issues of wars, conflict and problem of good governance when they occur. The

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8 Jinmi Adisa. African Security Needs in a New World Order. African Peace Review. A Journal for Centre for Peace Research and Conflict Resolution, Vol. 2 No. 1. Oct., 1998 p. 9.

9 Prof. Amadu Sesay. Human Rights and the Maintenance of International Peace and Security in Africa. African Peace Review. A Journal for Centre for Peace Research and Conflict Resolution, Vol. 3 No. 1, 2001, p. 21.

10 Article 9(g) of the Constitutive Act of A.U.

11 Articles 3 and 4 of the Protocol establishing Peace and Security Council of A.U.

12 Regional Conference for African Parliamentarians on Recent Strategic Development Initiatives in Africa, held in Accra, Ghana from 18-20 April, 2002 as Edited by Ayodele Aderinwale, Published by African Leadership Forum, Ota Ogun State, Nigeria and World Bank Institute, p.132.

attention of the founding fathers were directed more on how to address issues of border disputes and the fight against colonialism, the maintenance of sovereignty of members states against interference.

The food crises of African states have added to the security problems. Forty million Africans are now at the risk of starvation as result of frequent wars that has forced so many people to flee their homes and become refugees in other lands, which has forced some countries to use the scarce resources they have to prosecute these wars and fight the refugees problems. The result of this is that other developmental projects that need to be addressed are abandoned. The health problems and AIDS which have already affected nearly 30 million Africans is a matter of great concern. The disease has afflicted some poorest African states like Somalia, Uganda, Kenya who are struggling with their scarce resources to feed their already stricken people affected by wars but had to content with the deadly disease.

Attaining stability requires a system of governance in which all segments of society feel a sense of security and share the confidence that their needs can be met and aspirations pursued within the structure of governance. Most of the structures of governance in the continent are so centralized in the hands of the executive of the state that it has become impossible to make any meaningful impact on the lives of the governed. The result is dictatorship of system of governance on whom power has been entrusted and the result of which lead to crises of governance, strives, conflicts and wars. Aids development from developed countries can only flow to Africa in the atmosphere of peace and security and in the absence of which no meaningful development can be achieved.

It now needs very little proof from research to show that authoritarian rule and various forms of dictatorship have not helped to encourage development in Africa. If anything, they have been responsible for Africa's underdevelopment and economic stagnation. Because of the importance security play in the flow of capital, participation of multinational companies in the development of our economy, one of the objectives of the new African Union is to promote peace, security and stability in the continent through <sup>24</sup>peaceful resolutions of conflicts and co-existence of member states and their right to live in peace and security.<sup>13</sup>

Political crisis and armed conflict in many countries of Africa have exacerbated the poor social and economic conditions that characterize the lives of most Africans. In 2000 alone, armed conflict prevailed in at least six countries and more than 15 others were directly affected including Liberia and parts of Democratic Republic of Congo.<sup>14</sup> The easy access to and illicit trade in small arms, which have accompanied the armed conflicts raging in parts of the continent, pose dangers and threats to security for every nation and citizen of the continent.

The impact of illicit proliferation, circulation and trafficking of small arms and light weapons is threatening peace and security in Africa and undermining efforts to improve the living standards of the peoples. Concerned about this development, the OAU Ministerial Conference held in Bamako, Mali, from 30<sup>th</sup> November to 1<sup>st</sup> December, 2000 adopted a declaration on the Common African Position on the illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.<sup>15</sup>

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13 See Articles 3<sup>(f)</sup>, 4(e) and (i) of AU Charter

14 Abdoulie Janneh: Keynote Address at the Regional Conference for African Parliamentarian (supra), note 12, op. cit.

15 See the Preamble to the Protocol establishing the Peace and Security Council of A.U.

To improve security situation in the African continent, the Peace and Security Council of the African Union has been empowered through the Chairperson of the Commission to address the many problems of security implications facing the continent.<sup>16</sup>

<sup>25</sup>It is the responsibility of the United Nations Security Council to maintain peace and security world-wide but where they fail to act, sub-regional organizations are obliged to fill the vacuum. The Africa Union and other sub-regional organizations in Africa are committing their efforts and resources in promoting peace and security in the continent. The African Union and its sub-regional organizations have undertaken various peace-keeping operations in the continent, such as Rwanda, Somalia, Sudan and the Democratic Republic of Congo, While ECOMOG under the auspices of ECOWAS had undertaken various peace-keeping operations in Liberia, Sierra Leone, Cote d'Ivoire and Togo. The International Community has gone a little further by accepting the responsibility to prosecute those who were accused of war crimes by creating the International Criminal Court and the International War Crimes Tribunal or Special Courts, one of which is currently sitting in Sierra Leone.<sup>17</sup>

Acts of terrorism is also causing serious security threat to the continent, which is due to severe conditions of poverty, depravation and injustices experienced by large sections of the African population. In order to reduce this

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16 See Art. 7(I) (a-r) of the Peace and Security Council of A.U. Also see Art. 10(1)(2) and (3) of the PSC of AU.

17 The Special Court for Sierra Leone is established by the agreement between the United States and Government of Sierra Leone pursuant to Resolution 1315(2000) of the Security Council. It is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leone law committed in the territory of Sierra Leone since 30 November, 1996.

tendency in the African continent, the 35<sup>th</sup> Assembly of the Heads of States  
and Government of the Organization of African Unity (OAU)

in July 1999 in Algiers adopted a Convention on the Prevention and Combating of Terrorism, which entered into force on 6<sup>th</sup> December, 2002. The Inter-Governmental Authority on Development (IGAD) at the initiative of the Government of Sudan in its 9<sup>th</sup> Summit held in Khartoum in January, 2002 adopted a Draft Implementation Plan to Counter Terrorism in the IGAD region to act collectively to preserve peace and stability in that region.

### **2.2.3 African Union**

In July 9 and 10, 2002, in Durban, South Africa, African Leaders took a decisive step by the formal launching of the African Union to replace the Organization of African Unity (OAU). The way and manner by which members' state of the Organization ratified the Treaty indicated their commitment to regional integration and beyond this to a united African continent. Although the Constitutive Act of the AU deals with various aspects of Africa's political economy as well as social and cultural matters, it remained to be said whether the change in nomenclature brought about any greater improvement in peace and security in the continent. What is threatening the security situation of the African states most, apart from wars and conflicts is the poor social and health care delivery system coupled with poor economy system. In Africa, 340 million people or half the population lives on less than one US Dollar per day. The mortality rate of children under five years of age is 140 per 1000 and life expectancy at birth is only 54 years. Only 58 per cent of the population has access to safe drinking water. The rate of illiteracy for people over 15 is 41 per cent.<sup>18</sup>

Thousands of African will die from preventable diseases, such as malaria, tuberculoses, AIDS/HIV which is further being exacerbated by conflicts and poverty. The African Union is therefore committed to the creation of enabling environments for sustainable economic development and the attainment and maintenance of peace and security. The new AU Treaty contained more innovative provisions than the OAU <sup>26</sup>Charter. The functions of the AU Assembly has been widened in order to give directives to the Executive Council on the management of conflicts, wars and other related emergency situations and the restoration of peace.<sup>19</sup>

The primary objectives by which African Union was founded to replace the defunct Organization of African Unity (OAU) is to accelerate the eradication of poverty and inequality in Africa; to place African countries, both individually and collectively, on a path of sustainable growth and development by the launching of the New Partnership for African Development (NEPAD); to halt the marginalization of Africa in the globalization process and to promote the empowerment and economic integration of women.

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<sup>18</sup> New Partnership for African Development (NEPAD) (OAU/NEPAD Doc., 2001), para.4. Also quoted by Nsongura J. Udombana, *Can the Leopard Change its Spots? The African Union Treaty and Human Rights*. *Am. U. Int'l L. Review*, pp. 1184-1185.

<sup>19</sup> Article 9(g) of the AU Charter

The transformation of the Organization of African Unity (OAU) to the African Union (AU) is a manifestation of an urgent desire to forge a more strategic common identification and political unity in Africa. It is also a product of popular belief that the continent is in dire need of structurally efficient and effective organization than the former OAU. The AU is an attempt at mainstreaming the continent's economic and development vision into political activities.

The major challenges confronting the vision of AU in achieving its objectives are in the area of security, stability, development and peace. The most extreme breakdown of governance is war. Africa has experienced more violent conflict than any other continent in the last four decades. Conflicts have gobbled-up scarce resources and undermined the ability of our countries to address the many compelling needs of the people. Such conflicts are direct result of bad governance and lack of democratic structure, where elections have been organized, they have been largely rigged, or when not blatantly rigged, the results have been hopelessly falsified. Even when elections are successfully held and regimes legitimately established as a result of such elections, the new incumbent have tremendous power to themselves and would want to lengthen their stay in power either by ignoring the rules of the game, or creating new ones that seek to re-establish the old authoritarian order. Such regimes pay less attention to development and concentrate more on how to maintain political power by stifling political dissent and spending public resources on project of political rather than economic value.

The effect of political crises in the African continent has brought about death and human sufferings, engendered hate and divided nations and families. These

conflicts have forced millions of people into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope. <sup>1</sup>

Article 4 of the Constitutive Act of the African Union provides wide range principles by which the Union will operate to address these challenges. The AU Act provides for “the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”<sup>20</sup> African leaders are possibly being hunted by their past failure to intervene in such “grave circumstances,” because of the principle of “non-intervention” as contained in the old OAU Charter – and the Rwanda genocide episode.

The A.U Act also gives member states the right “to request intervention from the Union in order to restore peace and security.” The establishment of the Peace and Security Council (PSC) of the AU will also help in conflict management by assisting member state that are involved in conflicts in the consolidation of peace agreements, reconstruction of social institutions that were affected during the war, implementation of disarmaments, demobilization and reintegration programmes, resettlements of refugees and internally displaced persons affected by wars.<sup>21</sup>

<sup>2</sup> In sum, A.U. is committed to the promotion and protection of human rights, the consolidation of democratic institutions and culture, the promotion of good governance and the rule of law. These are essential elements that can contribute to stable governments and conflict prevention, in the absence of these, development is impossible.

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<sup>20</sup> see Article 4(h) of the A.U Charter

<sup>21</sup> See Article 14930 of the Peace and Security Council of the Au

### 2.3 THE HISTORICAL DEVELOPMENT OF THE PRACTICES AND POLICY FRAMEWORKS FOR AFRICAN PERSPECTIVES ON PEACE, SECURITY AND CONFLICT

The founding of the Organization of African Unity (OAU) in May, 1963 ended the rivalry among short-lived African regional organizations best known by the cities in which they were established – Brazzaville, Casablanca and Monrovia. The purpose for which these regional organizations were formed was to promote economic and security co-operation amongst its members state despite severe differences among its members on a wide range of issues. Because of the security concern threatening the African continent after independent, these regional organizations were dismantled in favour of a single continental body – that will speak with one voice concerning all issues affecting the continent. The establishment of OAU in May, 1963 was, therefore, address such potential problems as internal disruptions, border disputes, allegations of subversion by neighbouring states, threats of extra-regional aggression, and the need for collective action against the remaining colonial holdings.<sup>22</sup> Articles 2 and 3 of the OAU Charter, which <sup>1</sup>defined its goals and the principles by which its members will adhere to make it clear that the OAU was intended to assist members both in the peaceful settlement of intra-regional conflict and in defense against extra-regional aggressors.

During its formative years as regional organization to promote peace and security, there were renewed interests in regional conflict management, even though the high costs in peace-keeping operations accrued to the United Nations, which is more of importance in promoting consideration of regionalism as an alternative to unilateral action by the major powers. The United States therefore regarded the

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22 Yassin El-Ayouty. *The OAU After Ten Years – Comparative Perspectives*, Praeger Publishers, NY 1975, p. 118.

establishment of OAU with particular important as a regional organization that will work in partnership with the United Nations in promoting peace and security.

According to President Nixon of United States, he said:

“It is no longer natural or possible..... to argue that security or development around the globe is primarily America’s concern. The defense and progress of other countries must be first their responsibility and second, a regional responsibility.”<sup>23</sup>

Such interest makes this an auspicious time to analyze the historical development of the practices and policy frame works for Africa perspectives in promoting peace, security and conflict in Africa.

<sup>1</sup> Most of the scholarly research concerning the activities of the OAU when it was established as a regional organization focused its attention mainly in peaceful settlement of conflicts among members state. Article 2 of the OAU Charter states that among the purposes for which members formed the organization was “to defend their sovereignty, their territorial integrity and independence” therefore, most efforts were geared towards “co-operation for defense and security” rather than conflicts management. This provision as contained in the OAU Charter for security co-operation was very weak and inexplicit considering the differences exhibited by the various members of the OAU and the possibility of interference of one African state in the internal affairs of another.

Another problem that confronted the OAU was its specialized institutions that are charged with security concerns which the Charter said nothing concerning their roles and functions. Despite a proposal by Ghana for a Common Defense System with an African High Command to ensure stability and security for Africa was rejected by

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23 President Richard Nixon: US Foreign Policy for the 1970’s: Building for Peace, A report to the Congress by Richard Nixon, President of the US, 25 February, 1971, p.14.

many OAU members state. Many states were satisfied with their existing defense arrangements; others simply rejected any compromise of their sovereignty.

There were limited collective responses against external aggression by the OAU, for example, when in 1967 Israeli troops occupied substantial territory belonging to Egypt, OAU failed to initiate collective action on behalf of Egypt, saying that they did not consider the conflict an African concern. The only support was a declaration that African states would continue to work through the United Nations to ensure the evacuation of foreign military forces from the Egyptian territory.<sup>24</sup>

<sup>1</sup> The seizure of Bukavu by mercenaries in Congo in 1967 and the Portuguese invasion of Conakry in Guinea 1968 did not receive much attention by OAU member states there was very limited response from the OAU. Members of OAU were unwilling or unable to back their words with deeds. Despite their agreements to send military and financial assistance to such member states that were affected by external aggression, there was no evidence that such assistance has been rendered. Impatient with this unwillingness by the OAU to act, a few African states have to entered into bilateral military agreements with super power nations, e.g USSR, China, Germany, etc for assistance.

The initial constraints in which the Organization of African Unity had to face in term of collective security defense is lack of substantial military resources and the logistic capabilities to transport men and weapons to neighbours who may be in need. The low-level of African technological development and the continued exploitation of the continent by the super power nations has put the OAU in a very disadvantaged position in reacting to external aggression and conflict within a member state of the organization.

For these reasons, the OAU members have not been successful at the beginning in instituting collective security co-operation. Although this perception has changed and with more military resources available in Africa and the globalization in technology, it nevertheless seems likely that major progress will be made towards extensive security co-operation amongst members of the OAU. In recent years conflicts in Africa have resulted in war crimes, genocide and crimes against humanity as witnessed in Rwanda, Somalia, Sierra Leone, Burundi, Liberia and Sudan. The OAU has done little or nothing to stop the carnage. The only way it has addressed the situation is through declarations, decisions and peace talks that often fail to bring peace. Despite the efforts of the OAU in sending observers' mission and peace-keeping operations to these war-torn countries during the past decade, today, more than a dozen conflicts still ravage the continent, a clear indication that current methods do not tackle the problems. It is therefore no surprise to see a renewed efforts by African leaders in promoting various initiatives that will ensure security, stability and sustainable development, noting further that what has hampered African development in the past (and even at present) is conflicts, wars, lack of economic development, hunger due to inadequate exploitation of the rich agricultural natural resources in the continent, poor health facilities and HIV/AIDS pandemic, therefore, African leader, through the AU initiated wide range decisions that will take the continent away from its present predicaments to greater heights. The first leg of such initiatives was the launching of Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA), while the second leg was the launching of the New Partnership for Africa Development (NEPAD) to renew socio-economic development in Africa. The third leg was the review of the Charter establishing OAU and transforming it to African Union.

Therefore, in 1990, the African Leadership Forum, in collaboration with the Organization for Economic Co-operation and Development (OECD) convened a high-level experts meeting in Paris, France on the implications of the current events and development in Eastern Europe on Africa which proposed the launching of a Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) in May 1991. This was adopted by OAU in Lome July, 2000 and the adoption of a Framework Decision on Unconstitutional changes of Government, prescribing specific measures and sanctions which must be applied against member states that violate the principles of democracy, the rule of law and good governance in order to promote peace and security in the continent.

In 1998, the Protocol on the Establishment of the African Court on Human and Peoples Rights was adopted to complement the 1981 African Charter on Human and Peoples' Rights. Both instruments are important for ensuring the promotion, protection and observance of human rights as an integral part of the wider objective of promoting Collective Security for durable peace and sustainable development.

The transformation of the Organization of African Unity (OAU) to African Union (AU) is a manifestation of an urgent desire to forge a more strategic common identification and political unity in Africa. The establishment of specialized agencies within the AU (such as the Court of Justice, the Pan African Parliament, the Economic, Social and Cultural Council, its Financial Institutions and the Peace and Security Council) all aimed at promoting peace and security in the African continent.

#### **2.4 THE ROOT CAUSES FOR LACK OF PEACE, SECURITY, STABILITY AND DEVELOPMENT IN AFRICA**

Without a thorough scientific analysis of the root causes of conflicts in Africa, the 21<sup>st</sup> century would be as bloody as the previous century. In the last century alone,

more than 8 million Africans were killed as a result of conflicts. Such conflicts, according to UNICEF, between 1980-1988 in Angola and Mozambique were also responsible for the deaths of more than 858,000 children alone. The lessons from peace agreements and accords in the last century have not been encouraging, to say the least.<sup>25</sup> The Former OAU Secretary General Salim Ahmed Salim also commenting on the non-implementation of agreement by OAU has this to say: “Many of the initiatives that require sustainable action often remain at the level of decisions and declarations that are not followed.”<sup>26</sup>

There were various OAU peace making processes in Africa’s oldest Republic, Liberia (1990-97), Somalia in 1991, Angola (1992-99) which failed to bring peace and security. The systematic failure of these peace agreements could be as result of the <sup>1</sup>facilitators or mediators not having rigorous analysis of the root causes of the conflicts they were mediating in or the parties to the conflicts are normally exhorted in the name of “African Unity” to sign the accords, which often do not worth the papers they are written on.

**Another challenge confronting Africa stability is the effect of drought and locust infestation of agricultural products in the continent. The 2004 drought and locust infestation has aggravating effect on food production in parts of Burkina Faso, Chad, Mali and Northern Senegal report FAO.<sup>27</sup> The price of millet, which is a staple food for people living within the Northern Sahara continue to climb while the condition of live stock production are deteriorating due to scare pasture and water resources. The movement of animals in search of water and food has caused local conflicts. Report from Mali’s Kidal Region<sup>28</sup> indicates that one-third of children under the age of three are**

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25 S.G. Amoo. The Challenges to Ethnicity and Conflicts in Africa. The need for a new Paradigm, UNDP Emergency Division, 1 977, p.58.

26 See OAU web site:<http://www.oau-oua.org/Lusaka/Documents.htm>, 18 July 2001

27 See Thisday Newspaper of 17 May, 2005, p. 34

suffering from severe malnutrition. In Niger, 3.5 million people in around 3,000 villages risk food shortages.

<sup>1</sup>Africa is a region incorporating 53 countries, peace and stability in the region will be achieved when and only when there is genuine democracy in each country. For peace and development in Africa gain new momentum, sufficient political will is required from both Africa and the International Community. Africa must demonstrate the will to reply upon political rather than military responses to problems, take good governance seriously and enact and adhere to reforms needed to promote economic growth. The international community must summon the political will to intervene where it can have impact and invest where resources are needed.

Attaining stability requires a system of governance in which all segments of society feel a sense of security and share the confidence that their needs can be met and aspirations pursued within the structures and processes of that system of governance.

For a broader and more considered perspective on the root causes of conflicts in Africa, one must analyse the critical view that in addition to food and shelter, the fundamental issues of identity, security, recognition, participation and autonomy are critical to avoiding conflicts. Conflict arises from ignoring or suppressing such needs. Sources of conflicts in Africa are located in fundamental human needs for group identity, security, recognition, participation and autonomy as well as in the circumstances, policies and institutions of political and economic systems that attempt to deny or suppress such basic needs.

Without some fulfillment of the needs of groups with regards to security, participation in government and so forth, the quality of governance, institutions and

policies would be low, hence crises and conflicts. By expanding and putting more emphasis on the “Human needs theory” or the inclusive paradigm, Africa can do away with negative conflicts.

Other factors responsible for conflicts in the continent are the external manipulation of African economy by International Financial Institutions, e.g The World Bank and IMF. Most of the policies of these financial institutions are forced down on the third world countries, including Africa for implementations which have no direct bearing in uplifting the standard of living of the African poor masses. Most African countries accept these policies from the International Financial Institutions for implementation for obvious reasons, the desire to borrow money from these institutions and finance their economy, the result of this lead to crises of the economy and consequently abject poverty.

Africa’s non-productive political elite also contribute to lack of peace, security, stability and development in the continent. Most African political leaders do not want to relinquish their power and will do every thing to clinch to that power; the result is political conflicts and violence from dispute of election results that lead to scores of deaths, internally displaced persons and refugees problem. The erosion of rule of law, freedom of expression all contribute immensely as the root causes for lack of peace and security in the continent.

In very recent years, the African Commission on Human and Peoples Rights has been seized with complaints of torture, degrading and inhuman treatments in some part of the continent. At the heart of the abuses alleged in the different communications is the question of the domination of one section of the population by another.<sup>29</sup>

<sup>1</sup>The recent Darfur crisis in Sudan is a challenge to peace efforts by the African Union in restoring peace and stability to that region. Despite series of peace meetings

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See Malai Africa Association et al. v. Mauritania. Communication 54/81

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See Resolution on Human Rights Situation in Africa. Thirteenth Annual Activity Report of the ACHPR Par. 1, OAU/222(XXXVI) Annex IV (1999-2000). Also Communication 48/90, 50/91 and 83/98 IHRR (2000) hereinafter called Sudan cases).

held by the A.U to find lasting solution to the crises and the UN resolutions to stop the carnage proved abortive. In one of the United Nations Special Rapporteur report released indicates that there are thousands of other executions of prisoners and some refugees in that country, which the government has done nothing to stop it.<sup>30</sup>

**The Heads of State and Government of the Organization of African Unity (OAU) met in Lagos, Nigeria in April, 1980 and laid down a Plan of Action for the Economic Development of Africa applicable in the ensuing 20 years.<sup>31</sup> This was the manifestation of the common will of the Heads of Government of the OAU Regional Body tackle challenges confronting the African continent in order to compete favourably with the developed countries.**

**To reduce poverty in the continent, African leaders recently, through the Constitutive Act of the AU launched a programme called NEPAD to tackle poverty. The principles and initiatives in which NEPAD was founded are:**

- **Serve as a means of consolidating the pride of Africa's people in their own humanity;**
- **To address the continued marginalisation of Africa from the globalization process and the social exclusion of the vast majority of its peoples which constitute a serious threat to global stability;**
- **To bring to attention of the International Community how Africa has made and continues to make a significant contribution to the prosperity of the global community;**
- **To renew resolve and deal with conflicts and to restore peace, stability and democracy.<sup>32</sup>**

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The Lagos Plan of Action for the Economic Development of Africa, 1980-2000, adopted by the Heads of Government of the OAU. Published by the International Institute for Labour Studies, Switzerland, p. iii.

The priorities of NEPAD would therefore be in the following areas:-

- **Conflicts prevention, management and resolutions;**
- **Political and economic governance, including capacity building and peer review mechanism;**
- **Market access – promotion of Intra-African Trade and increased access to markets of industrialised countries;**
- **<sup>1</sup>Development of Agriculture;**
- **Human Resource Development – eradication of communicable diseases (HIV/AIDS, Malaria and Tuberculosis), education and establishment of regional centers of excellence and poverty reduction;**
- **Provision of key infrastructure to facilitate sub-regional and continental integration;**
- **Increased capital flows form Overseas Development Agency (ODA) reforms, debt reduction and foreign direct investment.<sup>33</sup>**

Eradicating poverty is regarded as the most important goal of human development. Indeed, it is now widely believed that of its core, development must be about improvement of human well-being, removal of hunger, disease and productive employment for all. A nation's first goal must be to end poverty and satisfy the priority needs of all its citizenry in a way that will not jeopardize the opportunity for the future generations to attain the same objective. While poverty is ravaging the economy of most African countries at a terrific speed as result of conflicts and wars, diseases like AIDS/HIV, progress towards curtailing the menace is moving rather slowly. Unless poverty reduction efforts are intensified with great commitment, transparency and

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32 Wiseman Nkuhlu: New Partnership for Africa's Development: The Principles, the Goals and the Expectation. Paper presented at the Regional Conference for African parliamentarian (supra), pp. 44-45.

33 Ibid.

determination both at the national and international arena, it is unlikely that the MGD target will be met.

One of the major factors militating against the Millennium Development Goals (MDGs) is the debt issue which African countries owed the International Financial Institutions. Nigeria alone owes over \$35 Billion. Progress towards significantly reducing poverty and achieving the MDGs has been hampered by debt burden which some of the African countries are currently carrying. Other factors are gender inequality and inadequate capacity, as well as insufficient public investments, internal and external resource mobilization that hinder job creation.

The effect of huge external debts and debt servicing costs negative impact on the development of numerous African countries. A human world where people can live in security and dignity, free from the encumbrances of poverty and despair, African leaders are struggling to come out of this dream to make her people happy.

Development requires investment capital, however, since little economic surplus was generated within Africa governments took the decision to borrow from the West in order to kick-start their economies. By the 1990s, Africa was crippled by its debts crisis. From 1974 to 1994, Sub-Saharan Africa's total indebtedness had increased from the equivalent of 15% to 90% of its GNP. Just paying the interest on these loans had a debilitating effect on local economies. The service on the US\$221 Billion continent-wide debt cost Africa the equivalent of 21% of its export income each year with so much capital being drained from the continent, further development was almost impossible.<sup>34</sup>

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34 Alex Thomson. An Introduction to African Politics. The African Debt Crises. Routledge Publishers, London, P.171.

Wealthy nations are targeting their assistance more selectively to African countries. The Bush Administration has pledged US\$10 Billion to the “Millennium Challenge Accounts” towards free-market economies like Benin, <sup>1</sup>Burkina Faso, Cameroon, Ghana, Mali, Mozambique, Senegal, Tanzania and Uganda, among others. The United Kingdom’s Africa budget will increase from US\$632 Million in 2002 to US\$1,000 million by 2006. France is, too, providing more aid to the Franco-phone countries. But higher capital inflows, as envisaged by NEPAD supporters, may not materialize since Africa carries a relatively low priority in international agendas. The IMF expects total foreign capital inflows, both official and private, of US\$23 billion dollars annually over 2000-2003, while the World Bank’s estimations (US 12 billion dollars per year) are extremely modest.<sup>35</sup>

While African leaders are calling for the cancellation of her debts, the United States (US) President, George W. Bush gave conditions for the cancellation of Africa debts and debts relieves. The issue of good governance and democratization of the African continent formed the first condition. According to the US President, debt relief or cancellation should only be given to such countries that are willing to implement reforms of their economy. The issue of corruption must also be addressed by African governments to attract the attention of international community grant to them debt relief or cancellation. It is disheartening to hear of some African heads of state who illegally embezzled their country money only to stash them outside their country, namely, Swiss Bank instead of using such amount develop their economy.

The most cherish news now is that more than half of the continent’s debts have been cancelled by the IMF, World Bank and other International Financial Institutions. The initiatives of G8 countries in their recently concluded meeting in July, 2005 in

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35 Moin A. Siddiqi. Blue Print for Africa’s Renaissance (supra).

Gleneagles in Scotland to assist Africa in their development strategies and to grant more aids to the continent is a welcome development and it also show how serious they are in turning the vision of a strong and prosperous Africa into a reality.

Since the adoption of the Lagos Plan of Action by the OAU members' state, African continent is yet to witness any appreciable impact in terms of development. Poverty is the greatest tragedy of the African people which is caused mainly as result of breakdown of governance as result of wars. Africa has experienced more violent conflict than any other continent in the last four decades which is still the biggest single obstacle to development. The most effective way to tackle conflict in order to save both lives and money is to build the capacity of African states and societies to prevent and manage conflict. It calls for the improvement and management of government incomes from natural resources and international agreements on how to control the conflict resources which fuel or fund hostilities. This means controlling trade in small arms. From Burundi to Sierra Leone to Angola to the Sudan and Western Sahara, there are persistent conflicts and crisis of governance and security that threaten to derail the hopes of African Union for peace and stability.

**There are, therefore, various mechanisms by which African leaders can adopt in maintaining progress in the continent regarding security, stability, development and co-operation. The first is through the adoption of regional agreements as part of their national laws. If this done, regional agreements will be monitored using existing instruments that are adopted to follow up and monitor national laws passed by their parliaments or the proposed African Court of Justice can be used by an aggrieved party to address violation of such agreements. The second is the Peer Review Mechanisms (PRM) established under all the initiatives, the proposed Pan-African Parliament which should monitor the effective implementation of regional legislation vigorously.**

An inclusive solution to the multifaceted conflicts in Africa includes decentralization of democratic structures that will motivate citizens to actions and development for peace. Decentralization would not only satisfy fundamental needs for group identity, security, autonomy and participation but also lay the foundation for the evolution of a democratic culture in the state through self-education for a new system of pluralistic society.

<sup>1</sup> The World Conference on Human Rights re-affirms the right to development, as a Universal and inalienable right and an integral part of fundamental human right.<sup>36</sup> Therefore, the efforts being taken by the AU in the implementation of women's rights, poverty eradication, preventive and curative development, and special initiatives to support African development, are crucial areas in which the United Nations should provide leadership and focus action.

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<sup>36</sup> See the World Conference on Human Rights (June 1993), the Vienna Declaration.

## CHAPTER THREE

# PROMOTING PEACE AND SECURITY IN AFRICA: LAW AND PRACTICE

### 3.1 INTRODUCTION

The aims and objectives of this Chapter is to highlight International and Regional legal frameworks for the promotion of peace and security in Africa, review the roles of Organization of African Unity (OAU) in promoting peace and security in Africa before its transformation to African Union (AU); issues, challenges and prospects affecting the organization will be examined. The roles of other sub-regional organizations within the continent and efforts being made to complement that of AU in promoting peace and security will also be examined.

Despite the numerous treaties, resolutions and declarations executed by the OAU in recent past, Africa still faces serious challenges in its efforts towards the promotion of peace and security due mainly to conflicts that result to humanitarian crises, poverty, underdevelopment and diseases such as AIDS/HIV pandemic despite efforts in the past and the present by African leaders to address the persistence causes of conflicts and tackle economic and health problems of the continent.

It was not until July 2001, the idea of African Union (A.U) was initiated in Lusaka, Zambia by the Heads of the African Assembly of the OAU, 37 years after the Cairo meeting of July 1964 and agreed that the transformation of the Organization of African Unity (OAU) to African Union (AU) will be a historic one but then will require leadership courage and willingness to depart from the ways of the past, if it is to do for Africa what the European Union has done for Europe. It can be said that the A.U was

inspired by the European Union and styled on other global continental bodies in Asia and America.

### 3.2 INTERNATIONAL AND REGIONAL LEGAL FRAMEWORKS FOR THE PROMOTION OF PEACE AND SECURITY IN AFRICA

#### 3.2.1 United Nations Charter as International Legal Frameworks for the Promotion of Peace and Security in Africa

**The League of Nations was established following the carnage of the 1<sup>st</sup> World War but failed in its primary purpose to promote peace and security all over the world and to prevent future wars after the Second World War. The representatives of the allied nations met in San Francisco to draft and sign the Charter of the United Nations and the new organization became a reality in October, 1945. The United Nations is essentially an association of independent states co-operating for the achievement of certain common purposes, which include the promotion of peace and security.**

**The Charter establishing the UN provided for a multipurpose organization and maintenance of international peace and security was listed as its first purpose, the development of friendly relations, the achievement of international co-operation in dealing with economic and social problems, the promotion of respect for human rights and fundamental freedom, the economic, social and political development of underdeveloped territories are all recognized objectives of the organization. These objectives are related to the maintenance of international peace and security.<sup>1</sup>**

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<sup>1</sup> L.M. Goodrich. The United Nations in a Changing World, Colombia University Press, 1974, p.11.

To guide the organization and its members in the pursuit of its purpose, the Charter set forth certain principles. Some of these relate to the maintenance of international peace and security and these were the ones regarded as the most <sup>1</sup>important at San Francisco. One of the principles was that “all members shall settle their international disputes by peaceful means in such a manner that international peace, security and justice are not endangered.” Complementing this principle is the requirement that “all members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”<sup>2</sup> According to Article 2 paragraph 6 of the UN Charter, states which are not members of the United Nations act in accordance with these principles so far as may be necessary for the maintenance of international peace and security.

To achieve its purpose and objectives, the UN established six Principal Organs and some subsidiary organs that will promote peace, security and social and economic development. The six Principal Organs are the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council, the International Court of Justice and the Secretariat with the Security Council being assigned the responsibility of maintaining peace and security all over the world.

Member states are committed to the principle that the individual has certain basic rights which must be respected and that the United Nations has important responsibility in this respect. This recognition finds expression in numerous provisions of the Charter.<sup>3</sup> In this respect, improving the economic

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2 Ibid, p. 13, also see Art. 2, Para. 4 of the UN Charter

and social, well-being of the people are paramount to the United Nations and this can be found in the numerous programs and declarations adopted by the General Assembly for assisting underdeveloped countries. <sup>1</sup>

The Charter provides for enforcement measures to be taken under certain circumstances where there is threat to peace and security in any territory of the world. This is an exception to the principle of non-intervention in a member state of the UN. The first exception to this principle is where the UN Security Council authorized intervention where there is threat to peace, a breach of peace or act of aggression exists and what measures are to be taken once the determination is made. The second exception is for the protection of the lives and property of nationals, which the United Kingdom, USA, France and Belgium have asserted such power. Under such exception, Britain was able to intervene in Iran, 1957, France and Britain also intervened in Egypt 1956 and the Belgian intervention in Congo 1960. Israel intervened in Uganda 1976.

The third exception is intervention based on humanitarian ground. It was the basis of this that ECOMOG intervened in Liberia 1990, which was supported by the UN Resolution 788 of 19 November, 1992. The right to enforce a Treaty under International Law also formed legal basis and exception under the UN Charter and such formed the basis of Turkish intervention in Cyprus in 1974. Intervention in support of democracy and fight against terrorism form yet another exception where Reagan used such basis to intervene in Grenada in 1980, Panama in 1989, while G.W. Bush intervened in Afghanistan, 2001 and 2002 and Iraq in 2003 to fight acts of terrorisms.

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3 Articles 1(3), 13, 55 and 76 of the UN Charter

Since the establishment of the UN, it has undertaken wide range peace-keeping operations all over the world in a bid to promote peace and security. The first was the UN Truce Supervisory Organization (UNTSO) in the Middle East in 1948 to partition Palestine<sup>4</sup> which was unsuccessful and later led to the establishment of UN Emergency Force (UNEF) in 1956. This situation was also extended to the Republic of Congo in 1960 following the collapse of its internal security arrangements. The UN has also participated in a number of peace-keeping operations in Africa, such as Democratic Republic of Congo, Rwanda, Sudan, Liberia, Sierra Leone and many other countries in Africa in a bid to promote peace and security.

The United Nations has importance in the world today as the expression of common values and interests of the people of the world despite their political and ideological divisions, there are certain common purposes and principles which have wide popular appeal and acceptance. Members of the UN accept the desirability of settling disputes peacefully and in conformity with the principles of justice and international law and of avoiding the use of force except for Charter purposes. <sup>1</sup>

It should therefore be noted that other Regional Organizations, such as the Organization of African Unity (OAU) that was set up after the creation of the United Nations was linked to the Charter of the UN, adopting its provisions relating to Africa's reality in promoting peace and security in the continent. It should be noted further that most of the actions taken by the OAU in relation to peace and security were linked to the Charter of the UN and the OAU has relied mainly on the UN in promoting peace-keeping operations in Africa. Most of the

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<sup>4</sup> See the General Assembly Resolution 181A(II) of November 29, 1947.

early UN peace-keeping operations in Africa were in the regions of Congo, Somalia, Uganda and Sudan and of recent, Liberia and Sierra Leone. All these efforts by the UN in promoting peace and security in the continent have yielded little success in preventing conflicts and wars. African leaders have realized the potential danger these conflicts and wars are causing the continent, especially in term of development and the improvement of social infrastructure that will uplift the standard of living of the people. Therefore, through the African Union, efforts are being made to address these issues.

### **3.2.2 The Charter of the Universal Declaration of Human Rights as International Legal Framework for the Promotion of Peace and Security in Africa**

In December 1948, the United Nations General Assembly proclaimed the Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to promote respect for their rights and freedoms and to secure their universal and effective recognition, observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction. The Universal Declaration of Human Rights deal not only with civil and political rights but with social and economic rights as well. It asserts that “..... All human beings are born free and equal in dignity and rights” and that every one is entitled to all the rights and freedoms set forth in the Declaration without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

One of the most publicized achievements of the United Nations in its early years was the drafting of the Genocide Convention and its Resolution 96(1) of

**December 11, 1946 condemning genocide as a crime under international law.**

**It declared genocide to be:**

**“a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.”**

**Subsequently, the General Assembly approved the Convention on the Prevention and Punishment of Crime of Genocide and by re-affirming its declaration that genocide was a crime under International Law and classified the following acts as genocide:**

**“any part of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:**

- (a) killing a member of the group;**
- (b) causing serious bodily or mental harm to members of the group;**
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;**
- (d) imposing measures intended to preventing births within the group;**
- (e) forcibly transferring children of the group to another group.”**

**The United Nations clearly performs a useful service in assembly and making available information regarding the status of human rights throughout the world. This information, though incomplete because of the unwillingness of**

some governments to co-operate, is valuable for governments seeking to improve their domestic legislation, administrative and judicial practices. In many instances, failure to give adequate protection to human rights is due, in part at least, to the inadequacy of administrative and judicial procedures, not to mention technical deficiencies in their statutory law.

Since the Universal Declaration of Human Rights, the Organization of African Unity (OAU) has included the provisions in its Charter for implementation and observance by all its members. African Heads of States and Government consequently incorporated the provisions dealing with human rights protection in their national constitution in conformity to OAU and Universal Declaration of Human Rights Charters.

Human Rights provisions are significant for the promotion of peace and security in Africa because no sure foundation of lasting peace and security can be laid which does not rest on the voluntary association of free peoples. Only so far as the rights and dignity of all men are respected and protected, only as far as men have free access to information, assurance of free speech and free assembly, freedom from discrimination on grounds of race, sex, language, or religion and other fundamental rights and freedoms, will men insist upon the right to live at peace, to compose such differences as they may have by peaceful methods, and to be guided by reason and good will rather than driven by prejudice and resentment. A state that disregards the human rights of its people on a large scale is more likely to be a disturber of international peace than one that respects them.

### 3.2.3 The International Court of Justice (ICJ), The International Criminal Court and other UN Bodies as International Legal Frameworks for the Promotion of Peace and Security in Africa

**The people of Sub-Saharan African have experienced untold physical and mental anguish, resultant from catastrophic and tragic war crimes and terrible human rights abuses, while Liberia, Sierra Leone witnessed the emergence of hardened and pitiless rebels, with a deep resolve for mass murder and total anarchy. Responsibility and accountability for these war crimes are the crucial issues facing Africa today, in quest for conflict resolution. There can be no peace without justice in any of its inherent forms. It is time for war crime perpetrators realize that the long arm of the law can reach them wherever they are.**

**It has been the tradition in Africa for leaders, regardless of the crimes they may have committed find themselves in exile. Rebels often with little political support have often fought their way to power through violence means. The Special Court's Statute itself provides that neither amnesty nor a suspect's official capacity is a bar to prosecution in respect of war crimes committed during war crimes.**

**<sup>1</sup>The United Nation Security Council has, in its numerous resolutions, expressly affirmed the need to bring to justice those who violate international humanitarian and human rights law<sup>5</sup> and the UN General Assembly has rejected the use of amnesty laws for serious violations of human rights.<sup>6</sup> In addressing these issues, the UN General Assembly established the Rome Statute of the International Criminal Court in July 17, 1998; the Convention Against Torture**

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5 See UN Security Council Resolution SC/Prst/1998/18 and SC/Prst/1999/6

6 See UN General Assembly Resolutions GA/Res/44/162 and GA/Res.147/133

and other Cruel, Inhuman or Degrading Treatment or Punishment was adopted on 10<sup>th</sup> December, 1984 and entered into force on the 26<sup>th</sup> June, 1987; the establishment of UN Special Tribunals for Yugoslavia and Rwanda of 1992 and 1994 and the UN Special Court on Sierra Leone and the Geneva Convention Relative to the <sup>1</sup>Protection of Civilian Persons in Time of War (Geneva Convention) August 12, 1949 and its additional Protocol Relating to the Protection of Victims of International Armed Conflicts (Protocol) of June 8, 1977, The Nuremberg Principles of 1950 and the Draft Code of Crimes Against the Peace and Security of Mankind of 1996 all have consolidated the strong trend against impunity for perpetrators of international crimes.

Pinochet case<sup>7</sup>, therefore, is a contemporary illustration of the growing tension between the international principle of sovereign equality and the quest for universal justice.

Over the past decade, the Yugoslav and Rwanda Tribunals and other United Nations (UN) bodies have consolidated the strong trend against impunity for perpetrators of international crimes. This is the message that comes through the prosecutions of such former heads of states and senior government officials such as Tadic, Kunarac, Akeyesu, Musema, Kayishema and Slobodan Milosevic for the crimes they committed against humanity in their countries.

The Geneva Convention has a Universal jurisdiction for extra-territorial crimes which allow a state-party to the Convention prosecute anyone within its jurisdiction even though the person who committed the alleged crime is outside its jurisdiction.

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<sup>7</sup> See Regina v. Bartle, *Ex parte Pinochet* (1998) 3 WLR 1456 (H.L.) (Pinochet One) and Regina v. Bowstreet Magistrate, *Ex parte Pinochet* (1999) 2 WLR 827 (H.L.) (Pinochet Two).

**The Protocol establishing the Peace and Security Council of the African Union acknowledges, in its Preamble, that “the development of strong democratic institutions and culture, observance of human rights and the rule of law, as well as the implementation of post conflict recovery programmes and sustainable development policies, are essential for the promotion of collective security, durable peace and stability, as well as for the prevention of conflicts.”**

**Human rights must prevail over human wrongs and international law must prevail over international crime. State sovereignty must not derail the forward movement towards punishing impunity; national power and privilege must take account of international needs.**

**The current international legal framework, which seeks to deny any individual immunity for international crimes whenever and whatever capacity they were committed, coupled with the assertion of universal jurisdiction over them, is a concrete achievement of international law in promoting peace and security in Africa despite attempts by some African states to reinvent the wheel of its progress and implementation. The international community, including civil societies in Africa must not backslide in its crusade against impunity in Africa.**

#### **3.2.4 Regional Legal Frameworks for the Promotion of Peace and Security in Africa**

**The Charter of the United Nations, Chapter VII of which is devoted to “Regional Arrangements”, contains nothing which precludes the existence of regional arrangements and indeed provides encouragement for them, especially in so far as they are likely to contribute to the pacific settlement of “local disputes”. This opens the way for regional action in the field of human rights for the promotion of peace and security.**

The establishment of the Organization of African Unity (OAU) in May 1963 was therefore regarded as a regional organization and intended to promote the unity and solidarity of the African states and act as a collective voice for the continent. According to the Charter of the OAU, its objectives include: defending the sovereignty and territorial integrity of members, eradicate all forms of colonialism; promote international co-operation; and co-ordinate members economic, diplomatic, educational, health, welfare, scientific and defense policies. These, all geared towards promotion of peace and security for the continent.

Since the entry into force of the Abuja Treaty establishing the African Economic Community (AEC) in May 1994, then OAU has been operating on the basis of two legal instruments. For this reason the OAU is often regarded as the OAU/AEC. As early as 1979, it became evident and accepted that a Committee on the Review of the Charter of OAU be established in order to streamline the organization to gear it more accurately for the challenges of a changing world. This effort did not materialize until July, 2000 when the African Union was formed to replace the OAU. The creation of African Union brings Nkrumah's dream of a common African currency, foreign policy, defense structure and economic programme closer to reality. In general, the African Union objectives are different and more comprehensive than those of the OAU.

The establishment of the Peace and Security Council under the African Union will greatly assist in peace-building and management in the overall objectives of A.U in promoting peace and security in the continent.

Other Regional Legal Framework for the promotion of peace and security in Africa is the establishment of the African Commission on Human and

**Peoples' Rights to ensure the promotion and protection of human rights, freedom and justice. The subsequent establishment of the African Human Rights Court to operate within the mandate of the AU is further seized with matter of interpretation arising from the application or implementation of the AU Charter.**

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### **3.3 THE ROLE OF OAU IN PROMOTING PEACE AND SECURITY IN AFRICA: ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS**

The end of the cold war between the Soviet Union and the capitalist United States gave rise to much optimism that the world was entering a new era; a period that would bring a peace dividend, an era when conflicts that had been promoted by the cold war environment would be resolved peacefully at the "peace table". However, the euphoria was short lived. For Africa specifically, the end of the cold war compounded the continent's security dilemma in several important ways. First, the African continent was in 1992 declared the most violent, and in 1993, it accounted for 11 out of 26 major wars in the world.<sup>8</sup> Another significant feature of post modern conflicts in Africa is that they are mainly within states, and are often the results of many years of oppression and human rights transgressions by leaders. The new conflicts are characterized by the heavy involvement of children who were very young to take up arms. This point was stressed by Ethiopian President, Meles Zenawi thus:

"...It would be virtually impossible for Africa to get rid of the scourge of conflict unless its economic situation is changed for the better. On the other hand, the prevailing instability in many parts of Africa and on-going conflicts themselves have become major obstacles to the economic rehabilitation of the continent."<sup>9</sup>

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8 Prof. Amadu Sesay. Human Rights and the maintenance of International Peace and Security in Africa. African Peace Review. A Journal of Centre for Peace and Conflict Resolution, Vol. 3 No.1, 2001, p. 21.

And according to OAU former Secretary General, Salim Ahmed Salim, “many times we have looked around for the OAU to intervene constructively in a conflict only to find that it is not there, and when present, to realize that it is not adequately equipped to be decisively helpful.”

Between the 1950s and the 1960s when most African states got their independent from colonial rule, Africans initiated efforts to deal with African problems based on African perspectives and to represent themselves. From <sup>1</sup>then on, new thinking and attitudes started to emerge. May, 1963 witnessed the signing of the Charter of the Organization of African Unity by 37 independent African nations at that time, to promote unity and development; defend the sovereignty and territorial integrity of members; eradicate all forms of colonialism; promote international co-operation; and co-ordinate members’ economic, diplomatic, educational, health, welfare, scientific and defense policies<sup>10</sup> of the organization. The periods 1963-1979 were one of crises and political turmoil in Africa. In many parts of the continent, there occurred boundary disputes which reflected the unhappy legacy of colonialism, political instability expressed in secessions, the grim battle for the total liberation of the dependent territories in Southern Africa and the unending Arab-Israeli conflicts.<sup>11</sup>

The establishment of OAU as a regional body in 1963 indeed created a framework of unity for Africa and the desire to do away with “block-politics.” Indeed, many African leaders realized that the division within their ranks was dangerous enough; it helped to heighten their jealousies, suspicious and chauvinisms. This trend can be seen from the debates of the Council of Ministers and of the Assembly of Heads of

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9 See Prof. Amadu Sesay, op. cited note 8, p. 31.

10 See Organization of African Unity Website: <http://www.answers.com/main/ntquery;jsessionid=277u9gogtngd/>

11 S.A. Agbi. The OAU and African Diplomacy 1963-1979. Impact Publishers Nig. Ltd., Ibadan, 1986. p.1.

State and Governments meeting held in Cairo, 14-21 July, 1964 for the formation of African Union Government that was rejected.<sup>12</sup>

<sup>1</sup>To many delegates at the meeting, the formation of a Union Government was too early when the OAU has not been fully established and the goals setting the organization have not been realized. To others, the idea will mean to surrender their sovereignty in favour of a Union Government, when the political independent which many African countries won in the early 1960s could not be followed by economic and technological development. African countries are weak and poor, and heavily dependent on the industrialized European countries for their basic needs.

This position of weakness was further compounded by the existence of many unliberated countries in Southern Africa at that time.<sup>13</sup> This, the <sup>2</sup>independence of some African countries in the early 1960s was regarded as incomplete as long as there were some African states whose economy was dominated by foreign control and exploitation. The newly independent African countries realized these problems which posed a big challenge to African Unity and their dependence to the industrialized world for foreign aids and political intervention, a new pattern of relationship was necessary. The need to restore the dignity of the African was sharply realized and unity was not only to be preached but had to be actualized. To the founding fathers of the OAU, they realized the effect of division of Africa into blocs which will cause and therefore initiated moves in 1962 towards the formation of a single organization in Africa. This effort brought fruit in May, 1963 when the OAU emerged as an expression of the latent political cohesiveness of the African society and a deepening sense of the African identity.<sup>14</sup> This is not to suggest that the existence of the OAU has succeeded in

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12 See Generally Yassin El-Ayouty. *The OAU After 10 Years, Comparative Perspectives*. Praeger Publishers, Nigeria. Pp.7-21.

13 Ibid, note 3, p.2

wiping out all differences among African states, but it has considerably reduced whatever differences that might have existed before the creation of the organization.

According to Emperor Haile Selassie:

**“What we require is a single African organization through**

which Africa’s single voice may be studied and resolved. We need an organization which will facilitate acceptable solutions to disputes among Africans and promote the study and adoption of measures for common defense and programmes, co-operation in the economic and social field.”<sup>15</sup>

<sup>1</sup> Indeed, the aims and purposes of the OAU as contained in Article II of the Charter reflected these hopes and aspirations.<sup>16</sup> The prospects of achieving the aims set out in Article II were good, if only African countries were prepared to co-ordinate their general policies, especially in the areas of political, diplomacy, economics, culture, science and technology, defense and security. Also, the founding fathers believed that disputes among African countries should be settled peacefully by negotiation, mediation, conciliation or arbitration and that they should devote their energies to the total emancipation of African countries which were yet to gain their independence and advised African countries not to align themselves with either of the two-super-powers, for such an alignment would severely restrict the organization’s freedom of action in international politics.

The basic question that readily comes to mind is how far has the OAU succeeded in achieving its aims and purposes in promoting peace and security in Africa before its transformation to African Union. A comprehensive analysis of the performance of the OAU in the political, economic, technological and defense fields would be necessary to provide an answer to this question.

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14 Ibid

15 Proceedings of the Conference of the Heads of States and Government, Addis Ababa, May, 1963, Vol.I

16 Ibid, note 3, p.2

Article 2 of the Charter of Organization of African Unity states that amongst other purposes for which the members formed the organization were; “to defend the sovereignty, territorial integrity and independence.” In order to bring this about, the Heads of State agreed that “co-operation for defense and security” was necessary. Such provisions for collective defense, the only ones found within the Charter, are weak and inexplicit when compared with those of other regional organizations like the Organization of America States (OAS) and the Arab League. According to Article 5 of the Arab League, it stipulates:

“It is forbidden to have recourse to force in order to settle conflicts which may arise among member states of the League. Should a dispute arise between two such states, in no way concerning the independence, the sovereignty or the territorial integrity of these states, and if the parties to the conflict request the Council of the League to settle the dispute, the Council’s decision shall be binding and executory.”

The analysis of the above indicates that settlement of dispute between members’ state of OAU is by diplomatic negotiations under the auspices of a Commission.

In conformity with the principle stated in Article 52 of the United Nations Charter, which provides that members entering into regional organizations shall make every effort to achieve pacific settlement of local disputes through such regional organizations before referring them to the Security Council of the United Nations, the Organization of African Unity (OAU) has repeatedly stated that African conflicts should be solved purely within African framework. This was expression of concern by member of the Organization at the 1964 meeting in Addis Ababa on threat of interference by extra-regional actors in the internal affairs of members’ states. As long as majority of African leaders still enjoy good relationships with their former colonial actors and were dependent upon them for defense, extra-African aggression was considered unlikely.<sup>17</sup>

To check acrimony and division among its members, the OAU established a Defense Commission,<sup>18</sup> one of the five specialized commissions responsible to the council of ministers, which the Charter said nothing about its purpose or responsibilities, deliberately leaving these to be worked out at some future time. Despite several meetings of the Commission to work out security issues, did not receive the support of the African Defense Ministers. It was agreed only that the Commission would 'serve as an 'organ of consultation, preparation and recommendation for the collective and/or self-defense of the member states against any act or threat of aggression.<sup>19</sup>

From 1963 to 1999 and before the transformation of OAU to AU, the following factors were identified as an impediment to the role of OAU in promoting peace and security in Africa. Lack of mutual trust and shared interest, the low level of African military resources, and the continued availability of extra-regional sources of assistance have all contributed to the extremely limited co-operation manifested among OAU members on issues related to peace and security in the continent. Since the establishment of OAU from the period under review (1963-1990) or thereabout, it remains extremely difficult to identify any reasonable contribution made to assist members that have been the victims of aggression or to increase security of the African States against future attacks. Among the reasons for the lack of military co-operation at that time has been the general shortage of resources available to most African states. Most African armies at the time were small and particularly deficient in logistic capabilities, especially on air transport. This, in itself make interstate co-operation difficult.

On the political and economic problem facing the continent, African leaders realized that the fate of the continent, its path to development and greatness can only be shaped by the people of Africa. After about two decades of wars, violent conflicts, political instability and economic crisis that engulfed most part of the continent, it is now obvious that development will continue to elude Africa unless urgent and dramatic steps are taken to redirect actions and resources. Since independence and after the formation of OAU in 1963, no concrete steps were taken by African leaders to re-integrate the continent economy for sustainable development and promotion of unity

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17 Ibid, note 3, p. 120

18 Ibid

19 OAU Review, Vol.1, May, 1964, p. 6.

among its members. The structure of African economy is that of dependency. It produces commodities it does not need and depend on others for the production of its own needs. For centuries, Africa, especially the Sub-Saharan Africa has been a source of cheap labour and raw materials. Africa leaders and people would require creative imagination, determination, discipline, dedication and commitment to be able to tackle the prevalent poverty.

Though the founding fathers of OAU did not set out to create a super-state, it established a regional organization based on consensus and co-operation. The OAU, unlike the League of Nations, did not enshrine the notion of collective security in its Charter as a major step in the promotion of peace and security in the continent. It was designed to facilitate peaceful settlement of disputes among members' states and to assist dependent territories in the task of achieving their independence. Although the 'one great African Community of nations' has not been built, the OAU has consistently sought to maintain peace and security in Africa. The aim of the founding fathers was to ensure that the African inter-state system reframe from adventurous and aggressive foreign policies.

Another area where the Charter of OAU was silent is the issue of civil war which it did not address. The wars in Congo and Nigeria in the 1960s were regarded by the OAU as internal affairs of the states involved. It was therefore, easy for OAU to refrain from mediating in such conflicts because the Charter enjoins members not to interfere in the internal affairs of member states.

However, in the last few years, OAU has adopted landmark decisions aimed at promoting the political stability and economic development of the continent. In the realm of stability, the African Charter for popular participation in development and the Declaration on the political and socio-economic situation in Africa, and the

fundamental changes taking place in the world, were adopted in 1990. Three years later, in Cairo, Egypt, a declaration establishing the Mechanism for Conflict Prevention, Management and Resolution was adopted, to forge within the OAU, a new institutional dynamism for the prevention, management and resolution of conflicts.

In July, 1997, during the OAU Summit in Harare, Head of States of the Organization took a collective stand against unconstitutional changes of government in the continent. This was reinforced at the Lome Summit of July, 2000, with the adoption of a framework Decision on Unconstitutional Changes of Government, prescribing specific measures and sanctions which must be applied against member states that violate the principles of democracy, the rule of law and good governance.

In 1998, the Protocol on the Establishment of the African Court on Human and Peoples Rights was adopted to complement the 1981 African Charter on Human and Peoples' Rights. Both instruments were important for ensuring the promotion, protection and observance of human rights as an integral part of the wider objectives of promoting collective security, durable peace and sustainable development.

In the area of development and co-operation the Lagos Plan of Action and the Final Act of Lagos were adopted in 1980, to provide a blue print for addressing Africa's socio-economic problems. In 1991 and 1995, respectively, the Abuja Treaty establishing African Economic Community and the Cairo Agenda<sup>1</sup> for re-launching the Economic and Social Development of Africa were adopted.<sup>20</sup> These instruments

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20 J.K. Shinkaiye. African Parliamentarians and the CSSDCA/NEPAD: Mechanism for Engagement and Input. Regional Conference for African Parliamentarian on Recent Strategic Development Initiative in Africa, held in Accra, Ghana, 18-20 April, 2002, P.88.

21 yodele Aderinwale (supra), pp. 52-53

22 Ibid

attempted to chart a definite route for achieving Africa's economic integration within a specific time frame.

All done, it cannot be said that the OAU has become superfluous, even in spite of African countries' membership of other International Organizations like the United Nations and the Commonwealth. Indeed, the OAU – its machinery, the rationale that lay behind it, the rules and procedure it engendered – all have constituted an essential ingredient of African peace since 1963.

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#### **3.4 THE ROLE OF AFRICAN UNION (A.U) IN PROMOTING PEACE AND SECURITY: ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS**

The journey leading to the creation of the African Union began in 1999, through the Sirte Declaration of September 9, 1999.<sup>21</sup> Following this declaration, a decision establishing the African Union, based on the unanimous will of member states was adopted by the 5<sup>th</sup> Extra-ordinary OAU/AEC Summit held in Sirte, Libya from 1<sup>st</sup> to 2<sup>nd</sup> March, 2001. In the decision, Heads of State and Government specified that the legal requirements for the Union would have been completed upon deposit of the 36<sup>th</sup> instrument of ratification of the Constitutive Act of the Union.<sup>22</sup>

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The Summit reconfirmed that the Constitutive Act will enter into force thirty days after the deposit of the instruments of ratification by two-third of the member states of the OAU. It was furthermore decided that the 37<sup>th</sup> OAU/AEC Summit to be held in Lusaka from 9 to 11 July, 2001 will take the necessary decision pertaining to the transformation of the OAU into the African Union, and the preparation of necessary draft protocol relating to the Organs and Institutions of the Union.

South Africa deposited its instrument of ratification of the Constitutive Act of the African Union on 23<sup>rd</sup> April, 2001 with the OAU General <sup>1</sup>Secretariat and became the 35<sup>th</sup> Member-state to do so. On 26<sup>th</sup> April, 2001 Nigeria became the 36<sup>th</sup> Member State to deposit its instrument of ratification.<sup>23</sup> This concluded the two-third requirement and the Act entered into force on 26<sup>th</sup> of May, 2001.

The pace at which member states ratified the Treaty establishing the A.U was a record-setting event considering the continent's history of a general lack of enthusiasm in ratifying multilateral treaties. The entry into force of the Act within so short a period of time was seen as an expression of the political commitment of our leaders to regional integration and beyond this, to a united Africa in order to promote peace and security in the continent. It is a further manifestation of an urgent desire to forge a more strategic common identification and political unity in Africa. It is also a product of popular belief that the continent is in dire need of a structurally efficient and effective organization than the former OAU and to sharpen the continent's economic and development's vision. As a unification project, it is modeled after the European Union, which will require tremendous resources and skills to power its associated institutions.<sup>24</sup> It is a further desire and commitment of the African leaders to:-

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23 Ibid. See generally Nsongurua J. Udombana. Can the Leopard Change its Spots? The African Union and Human Rights (supra) p. 1179

- promote transparency and accountability;
- Relieve African people of the burden and weight of poverty;
- <sup>1</sup>A desire to promote sustainable development in an atmosphere of peace and stability;
- A recognition that human security is the bedrock of development and progress;
- An opportunity to re-construct the political landscape of Africa; and finally;
- A strategic response to the challenges of globalization and unfavourable market environment.

<sup>2</sup>The questions, however remain: Can African leaders live up to the demand of these initiatives? How do we ensure that these initiatives would not go the way of previous initiatives? How do we ensure that African leaders will comply with what they have committed themselves to do? These fears were also expressed by the former Secretary General of OAU, Salim Ahmed Salim when he said:

“Many of the initiatives that require sustainable action often remain at the level of decisions and declarations that are not followed up.”<sup>25</sup>

As part of the transformation process, it was envisaged that a one- year transition period would be observed before the AU eventually takes over from OAU. However, the main challenges that have been identified confronting Africa sustainable development are: wars and violent conflicts, lack of adequate health care and HIV/AIDS pandemic, corruption, human rights violation, huge debts over hanging the

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24 Opening Statement by Alihu Mahama, Vice President of the Republic of Ghana at the Regional Conf. For African Parliamentarian on Recent Strategic Development Initiatives in Africa (supra) p. 38.

25 Available at OAU website at <http://www.oau.oua.org/Lusaka/Documents.htm>

African continent and lack of good governance to manage the scarce resources for the betterment of African people.

**Africa constitutes only 10% of the world population, yet it produces 25% of the world's refugees and internally displaced persons as result of wars and conflicts. Therefore, the scarce resources, which should be used for socio-economic developments have had to be expended on feeding and catering for those millions of Africans refugees.**

**These wars and conflicts are the direct result of some African leaders who lack the essential leadership qualities; like honesty, compassion, loyalty and vision which has fructified into terrorist leadership that presides with organized greed over an impoverished citizenry, ravaged and enslaved in their own nations. These men exhibited the most scandalous form of authoritarianism by converting armed forces and police into organs of state terrorism against perceived opposition leaving in their wake fears, blood and misery. Self-serving men like Hastings Kamuzu Banda ruled Malawi for 30 years, Idi Amin Dada of Uganda, Emperor Bokassa of Central African Republic, Mobutu Sese Seko of Zaire, Late President Eyadema of Togo who ruled Togo with iron-fist, Omar Bongo of Gabon and Paul Biya of Cameroon. The barbaric carnage in Rwanda, Somalia, Sierra Leone, <sup>1</sup>Burundi, Liberia, Democratic Republic of Congo and Sudan have posed so many challenges to AU in conflict management.**

**Africa has yet to achieve a true democracy that will guarantee sustainable development in the continent.<sup>26</sup> The unanointed African messiahs – Muammar Qaddafi of Libya, Arap Moi of Kenya, Robert Mugabe of Zimbabwe, Gnassingbe Eyadema of**

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26 A substantial percentage of African countries are still one-party system and frequent intervention in politics by the military.

27 Abdoulie Janneh. Keynote Address at Regional Conf. For African Parliamentarians on Recent Strategic Development (supra), p. 30.

blessed memory of Togo, Paul Biya of Cameroon in their desperation to consolidate and cling on to power have become wholly addicted to the rule of force and the abuse of law.

Another fundamental challenge for Africa is poverty eradication. Africa is poor, ultimately because its economy has not grown as result of extreme breakdown of governance due to wars and conflicts. The structure of African economy is therefore, that of dependency, which will require creative imagination, determination, discipline, dedication and commitment to be able to tackle the prevalent poverty. Growth will also require a massive investment in infrastructure to break down the internal barriers that hold Africa back.

In the area of health care, the task looks intimidating for African leaders. HIV/AIDS virus kills 1.5 million citizens every year in Africa, and has reduced life expectancy in some countries like Zimbabwe by as low as twenty years, 28 million live with the virus. Malaria kills even more people and reduces gross national product across the continent by 1% every year.<sup>27</sup>

<sup>1</sup>Corruption and debt over-hang are another factor challenging the AU security efforts. The total debt overhang for Africa countries represents 124% of the aggregated gross national output across the continent. To service this debt, African governments spend six times as much as they spend on education. The irony is that while efforts are made to service the debt in order to avoid sanctions, millions of school age children miss the opportunity to go to school due to inadequate investment in infrastructure and personnel in the sector.<sup>28</sup>

The principle that all member states of the AU shall enjoy sovereign equality, have equal rights and duties and are equal members of the organization notwithstanding differences of economic, social, political or other nature, even though sovereignty shall not be an obstacle to the maintenance of peace or the protection of human dignity.

Violations of human rights during time of war or conflicts are now matter of international concern and no state is allowed to hide under the principle of sovereignty and violate human rights. States can no longer claim that human rights are matter within its exclusive domestic jurisdiction as against principle of <sup>2</sup>Article 2(7) of the UN Charter. The incorporation of this principle into the AU will go a long way in assisting the Union control frequent conflicts in the continent.

When the OAU was created there was no viable machinery provided in the Charter for maintaining peace and security in the African continent. In its efforts

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28 Ibid.

to <sup>1</sup>resolve conflicts between its member states, there was half-hearted recourse in the Charter to conciliation and arbitration procedure,<sup>29</sup> which unfortunately never proved productive for security arrangements since it was not created to perform that role. As for the prevention of wars, the continental body has had no positive results, be it in Chad, Angola, the Great Lakes Region, the Horn of Africa and so forth.

Conflicts prevention calls for a co-operation approach to facilitate peaceful solutions to disputes and that preventive strategies should be developed so that action can be initiated at the earliest possible stage of a conflict cycle. In that way, actions can be most effective and large scale operations ideally avoided. Investing in conflict prevention offers the potential for multiple returns for national development over the long term. If the OAU at that time were more responsive to conflict management, the genocides such as that perpetrated in Rwanda were prevented from happening.

In terms of objectives, governance and administrative structure and responsibilities, the African Union is different and more comprehensive than the OAU. The AU will absorb almost all the major institutions, policies organ, protocol, legislations, programmes and projects of the OAU. The Regional Economic Communities are expected to play prominent roles in the overall realization of the objectives of the Union as shown in Article 3(1) of the Act. Article 4(a) of the Act also upholds the sovereign equality and independence of its 53 member states and aim to promote peace, security and solidarity on the African continent.

The Constitutive Act of the A.U provides for a multipurpose organization while the maintenance of peace and security are listed as some of the purposes of the organization, the development of friendly relations, the importance of co-operation in

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<sup>29</sup> See Article III(4) of OAU Charter. In July 1964, the Assembly of Heads of State and Government of OAU approved a Protocol for the Establishment of a Commission for Mediation, Conciliation and Arbitration.

dealing with economic and social problems, the promotion of respect for human rights and fundamental freedoms, and the economic, social, and political development of its member states are all recognized by the African Union. In a sense, these objectives are related to the maintenance of peace and security but they also constitute goals which require appropriate action by the members and the organs for which the Charter provides, even though the action in question may not be closely related to the maintenance of peace and security in any realistic sense. Consequently, AU is not only a peace and security organization but also one committed to the promotion of peoples' welfare and the fuller realization of their potentialities.

The A.U is people-centred, it encourages people-participation, has special focus on gender issues, and most importantly, the principle of non-intervention has been reversed as member states can intervene in other member states affairs under the new arrangement.

Since the coming to effect of A.U, a wide range of decisions were taken by the leaders in the establishment of Peace and Security Council (PSC) of the Union, the African Charter on Human and Peoples' Rights (ACHPR) and the Rights of Women in Africa, the Protocol establishing the Court of Justice of the African Union and African Union Convention on Preventing and Combating Corruption were also established.

The African Union is looking tirelessly in putting Africa on the part of economic recovery by launching the New Partnership for Africa Development (NEPAD). NEPAD aims at strengthening partnership between reforming African governments and the world's richest countries. It is also a political initiative to put development back on the center stage of the African political agenda. According to the initiators of NEPAD<sup>30</sup> they are eager to put Africa on the "radar screen" of global investors through corrective

measures<sup>1</sup> for over-coming the perception of Africa as a “high-risk” continent, with regard to security of property rights, regulatory framework and markets. Africa must compete aggressively for a larger slice of global capital flows, not just official aids.

The New Partnership for Africa Development (NEPAD) has three core aims for the 53 member-countries: eradicating abject poverty, consistent with the UN’s Millennium Development Goals (MDGs), in areas of health care and education; achieving sustainable growth/development like in South East Asian countries; and stopping the marginalisation of Africa by promoting regional and global economic integration by envisaging Africa as a productive co-partner in the world economy.<sup>31</sup>

It is therefore obvious that there are enormous pressures on Africa and its leaders to initiate a process capable of marrying the emerging paradigms, with a more progressive political attitude and institutional framework that will increase the capacity of the continent to make appreciable progress and move in tandem with the rest of the world. What Africa has witnessed since the year 2000 can therefore be viewed as a pragmatic response and shift towards the new paradigms and thus building the continent on a tripod of security, stability and development.

The below-average human rights records of most African rulers, past and present, make it difficult for Africans to repose any confidence in this new conception, or, more appropriately, contraption. Any poor performance will constitute great threat to the survival of the newly conceived body. The change from OAU to AU implies a paradigm shift toward a more progressive human rights culture in Africa. African tyrants have no right to continue to oppress their people, even if they do it within the

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30 The Plan’s Chief Architects were: Presidents Thabo Mbeki (South Africa), Olusegun Obasanjo (Nigeria), Abdoulaye Wade (Senegal) and Abdelaziz Bouteflika (Algeria)

31 Moin A. Siddiqi. Blue Print for Africa’s Renaissance. New Nigerian Newspaper, 16 June, 2004, P.13, Courtesy Africa Review Magazin.

confines of their borders. These borders are not sacrosanct and they lose their usefulness when they shield tyrants from external accountability. All these pose challenges to the civil society whose activities must pressurize the A.U to ensure that human rights are given due consideration by all the organs of the Union.

**In its role in promoting peace and security in Africa, the Heads of State and Government of AU formerly launched the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA). The CSSDCA will function under the Pan-African Parliament and will work closely with NEPAD. The CSSDCA, NEPAD and African Union are the tripod of stability and development in Africa. The Union remains Africa's main and overall political institution with all its organs as envisaged in the Act establishing the Union, while NEPAD will promote policy programmes and directions for the organs of the Union, especially the Executive Council and the Specialized Committees of the Union. The CSSDCA on the other hand will have the responsibility of providing a monitoring, evaluation and report-back mechanism on the various policies, programmes and commitments executed by the various organs of the Union.<sup>32</sup>**

**Another approach in the peace process in the continent is the prohibition of the use of force or threat to use force among member states of the Union when <sup>1</sup>there is a dispute among them.<sup>33</sup> In this regard, member states shall respect the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities.<sup>34</sup> The AU Treaty requires that there shall be peaceful resolution of conflicts among member states of the Union through such appropriate means as may be decided upon by the Assembly.<sup>35</sup>**

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32 Regional Conference on Parliamentarian (Supra), p.134.

33 Article 4(f) of AU Charter

34 Ibid, 4(10) AU Charter

35 Ibid 4(e) AU Charter

Nevertheless, it does not provide any complete assurance that peaceful settlement of conflicts will be achieved. The term “through appropriate means” look ambiguous. The proposed African Court of Justice, which is one of the organs of the Union is yet to be properly established. The wide spread of conflicts in Sudan posed yet another challenge to the efforts of AU in maintaining peace and security in the continent.

The Peace and Security Council (PSC) of the AU which was established in South Africa in July, 2002 is expected to play a prominent role in maintaining peace and security in the continent. Despite its wide range of objectives in the Protocol of the PSC, there are other innovations to be adopted in restoring peace and security in the continent.

These include:-

- (i) The setting up of the Panel of the Wise which shall be composed of five highly respected African personalities from various segments of society who have made outstanding contributions to the cause of peace and development in the continent.<sup>36</sup>
- (ii) <sup>1</sup>There shall be Continental Early Warning System to facilitate the anticipation and prevention of conflicts, an observation and monitoring center, Conflict Management Directorate and to collaborate with the UN, its agencies and other relevant international organizations, research centers, academic institutions and NGOs to facilitate the effective functioning of the Early Warning System.<sup>37</sup>
- (iii) The establishment of African Standby Force<sup>38</sup> which will be responsible for the deployment of peace support missions and intervention pursuant to Article 4(h) and (j) of the Constitutive Act. The Standby Force will intervene in a member state in respect of grave circumstances or at the request of a member state in

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36 Article 11(2) of PSC of AU

37 Article 12 of PSC of AU

38 Article 13 of PSC of AU

39 Article 13(3) of PSC of AU

order to restore peace and security in accordance to Article 4(h) and (j) of the Constitutive Act.<sup>39</sup>

In the fulfillment of its mandate in the promotion and maintenance of peace, security and stability in Africa, the Peace and Security Council shall co-operate and work closely with the United Nations Security Council, which has the primary responsibility for the maintenance of peace, security and stability in Africa, in keeping with the provisions of Chapter VIII of the UN Charter.<sup>40</sup>

Certainly, if missions to war-torn African countries were to be the yard stick for assessing the OAU/AU efforts in maintaining peace and security in the continent, then it has performed wonderfully well. The OAU in the past-decade <sup>1</sup>sent observer mission to Burundi from 1993-1996; the Comoros from 1997-1999; Ethiopia and Eritrea in 2000 and the Group of Neutral Investigators who went to the Democratic Republic of Congo in 1999 to maintain the Lusaka Peace <sup>2</sup>Accord.<sup>41</sup> Currently, the AU has sent its force to the Sudan to maintain peace keeping operation in that region. The other sub-regional organizations in the continent are contributing tremendously in the peace process in the various sub-region organizations, such as, the ECOWAS has played a major role in peace keeping and peace enforcement operations in Liberia and the dislodgement of rebel attacks in Cote d'Ivoire and recently, its efforts in restoring democracy in Togo are all commendable.

All these efforts have put Africa in a new horizon of political liberalization, well-focused and pragmatic economic policies and macro-economic stabilization which are becoming shared values, particularly at the political leadership level. There is a renewed sense of hope and determination as stability is being rediscovered, investment is returning

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40 Article 17(1) of the PSC of AU

41 Jakkie Cilliers. Commentary Towards the African Union. 10 AFRICAN Security Review (2001) at pp.3-4

**to many parts of the continent. There are indications too that the United States, Great Britain and members of G8 who have recently concluded its meeting in Gleneagles Scotland in July, 2005 have cancelled some African debts.**

**The Commission for Africa put in place by Tony Blair of Britain to assist African states through the AU is welcome developments that will assist the continent tackle the many challenges facing the continent.**

Article 5(1) of the Act establishing the AU further specifies the various organs through which it would carry out its functions in promoting peace and security in the continent. These organs include: The Assembly of the Union, the Executive Council, the Pan-African Parliament, the Court of Justice, the Commission, The Permanent Representative Committee, the Specialized Technical Committee, the Economic, Social and Cultural Council and the Financial Institutions. These are the new initiatives in the Constitutive Act establishing the African Union which are geared towards the promotion of peace and security in the continent.

### 3.5 THE ROLE OF THE PRINCIPAL ORGANS OF AFRICAN UNION IN PROMOTING PEACE AND SECURITY: ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS

The African Union along with its principal organs provide the machinery to help find solutions to disputes or problems and to deal with virtually any matter of concern to humanity. The A.U does not legislate like a national parliament but within the Assembly representatives of all members of the Union – large or small, rich or poor, with different political or <sup>1</sup>ideological view and social systems have a voice and vote in shaping the policies of the continent.

In order to carry out the purposes for which the A.U was established, the Act provides for the establishment of nine (9) Principal Organs unlike the four (4) Principal Organs in the former OAU.<sup>42</sup> The Principal Organs of A.U comprises: The Assembly of the Union, The Executive Council, The Pan-African Parliament; The Court of Justice; The Commission; The Permanent Representatives Committee; The

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<sup>42</sup> Article VII of OAU which named: The Assembly of Heads of State and Government, the Council of Ministers, The General Secretariat and The Commission of Mediation, Conciliation and Arbitration as its Organs

Specialized Technical Committees; The Economic, Social and Cultural Council; and the Financial Institutions.

The adoption of the Constitutive Act of the A.U was seen as the first step in an ongoing process to streamline and rationalize the existing organizational framework of the continent and it is by doing that the African Union will be relevant to the demands of the 21<sup>st</sup> Century which will achieve the ultimate goal of a complete African Unity. The authors of the Charter were also guided by the principle of functional effectiveness of the organization that is why the structure of the A.U was based loosely on that of the European Union (EU). The African Union upholds the sovereign equality and independence of its 53 member state and aims to promote peace, security and solidarity on the African continent. This was considered <sup>1</sup>to be particularly necessary in light of the decision to dispense with the rule of unanimity which the OAU was founded.

### 3.5.1 **The Role of the Assembly of the Union<sup>43</sup> In Promoting Peace and Security**

This is made up of all the Heads of State of member states of the Union and is the most important decision-making body of the Union. The Assembly meets once a year and elect a Chairperson for the Union. Decisions are made by consensus or two-thirds majority. The Assembly has the function of deciding on common policies for the Union, considers applications for membership, adopts the budget and directs the process of conflict resolution and it appoints the judges for the Court of Justice.

The principal limitations upon these powers in promoting peace and security, other than those imposed by the domestic jurisdiction principle, were that in the field of

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43 Articles 5(a) and 6 to 9 of the AU Act

management of conflicts, war and other emergency situations and the restoration of peace, such matters are referred to the Executive Council of the Union instead of the Peace and Security Council which suppose to have the primary responsibility in this respect. However, since the transformation of OAU to AU the heads of states and government of the Assembly have adopted wide range of measures in promoting peace and security in Africa. Through the recommendation of the Peace and Security Council of the Union, the Assembly approved peace keeping operations in the Darfur region of Sudan, intervention in the political crises in Togo and brought to the attention of the International Community the famine in Niger Republic which would have claimed many lives. Through its resolutions, it condemned the unconstitutional changes of government in Equatorial Guinea and ensured that such resolutions are actually enforced and implemented.

### **3.5.2 The Role of the Executive Council<sup>44</sup> of the African Union in Promoting Peace and Security**

<sup>1</sup>

The Executive Council formed the second principal organ of the Union, which is made up of the Ministers of Foreign Affairs of member states and is accountable to the Assembly. The Council decides on matters such as foreign trade, social security, food, agriculture <sup>2</sup>and communication. The Council prepares material for the Assembly to discuss and approve. Other functions of the Executive Council includes: environmental protection, humanitarian action and disaster response and relief; education, culture, health, science and technology.

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44 Articles 5(b) and 10 to 13 of the AU Charter

The major challenges facing the Executive Council of the AU today is how to address some of the environmental degradation of the continent, refugees' problems and disaster response mechanism, effects of hunger which is the result of wars, conflicts and desertification encroachment, especially in the sub-saharan Africa. AIDS/HIV and child mortality rate as result of poor health facilities have posed a great challenge to the continent. Wide range efforts have been taken by the continental body in providing health facilities and the organization of World Conference on AIDS/HIV which have received international attention to address this issue.

### **3.5.3 The Role of the Permanent Representative Committee<sup>45</sup> of the African Union in Promoting Peace and Security**

This is another organ of the A.U, which is composed of ambassadors to the A.U. Their functions include preparing the work of the Executive Council and acting on the Executive Council's instructions. It has the power to set up sub-committees or working groups as it may deem necessary. In the area of promoting peace and security, this organ of the African Union is yet to play a significant role in this respect.

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### **3.5.4 The Role of the Commission<sup>46</sup> of the African Union in Promoting Peace and Security**

This forms the Secretariat of the African Union and is made up of a Chairman, a Deputy and eight Commissioners and other supporting staff for the smooth functioning of the Commission. The Commission deals with administrative issues and implements

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45 Articles 5(f) and 21 of A.U. Charter

46 Articles 5(e) and 20 of A.U. Charter

47 Articles 5(g) and 14 to 16 of A.U. Charter

the decisions of the Union. It is responsible for the co-ordination of A.U activities and meetings. Applications for membership are made to the Commission.

### **3.5.5 The Specialized Technical Committee<sup>47</sup> of the African Union in Promoting Peace and Security**

This formed the fifth principal organ of the Union. It deal with monetary and financial issues, the rural economy, trade, immigration, industry and science and technology. They are responsible for the implementation of projects and programmes of the Union. Amongst the Specialized Technical Committees are: (i) The Committee on Rural Economy and Agricultural Matters (ii) The Committee on Monetary and <sup>1</sup>Financial Affairs (iii) The Committee on Trade, Customs and Immigration (iv) The Committee on Industry, Science and Technology, Energy, Natural Resources and Environment (v) The Committee on Transport, Communications and Tourism (vi) The Committee on Health, Labour and Social Affairs and (vii) The Committee on Education, Culture and Human Resources.

The Assembly shall, whenever it deemed appropriate, restructure the existing Committees or establish other Committees. The Specialised Technical Committees are composed of Ministers or Senior Officials responsible for Sectors falling within their respective areas of competence. Each committee shall within its field of competence is expected to perform the following functions:<sup>48</sup>

- (i) Prepare projects and programmes of the Union and submit it to the Executive Council;

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48 Article 15 of A.U. Charter

- (ii) Ensure the supervision, follow-up and the evaluation of the implementation of decisions taken by the organs of the Union;
- (iii) Ensure the co-ordination and harmonization of projects and programmes of the Union;
- (iv) <sup>1</sup>Submit to the Executive Council either on its own initiative or at the request of the Executive Council, reports and recommendations on the implementation of the provisions of the Act; and
- (v) Carry out any other functions assigned to it for the purpose of ensuring the implementation of the provisions of the Act.

<sup>2</sup>Subject to any directives given by the Executive Council, each committee shall meet as often as necessary and shall prepare its rules of procedure and submit them to the Executive Council for approval.<sup>49</sup>

### **3.5.6 The Pan-African Parliament of the African Union in Promoting Peace and Security**

This is another organ of the A.U.<sup>50</sup> which tries to ensure full participation of African peoples in the development and economic integration of the continent. The Parliament consist of elected representatives nominated from the five regions of Africa.<sup>51</sup> It is a Civil Society base. The composition, powers, functions and organization of this parliament shall be defined in a protocol relating thereto. It is expected that the African Parliament will play representative and oversight roles that parliaments do at the national level through non-governmental organizations (NGOs).

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49 Article 16 of A.U. Charter

50 Article 5(c) of the A.U. Charter

51 This comprises of West Africa, North Africa, East Africa, Central and Southern Africa

52 See Regional Conference for African Parliamentarian on Recent Strategic Development Initiatives in Africa (supra), p. 81

Moreover, there are other regional and sub-regional networks of parliamentarians focused on various activities and issues.<sup>52</sup> For example, the following:

- (i) The African Parliamentary Union with its Headquarters in Abidjan.
- (ii) The Federation of African Women's Peace Network whose membership includes several African Women Parliamentarians;
- (iii) L'Assemblée Parlementaire de la Francophonie with Headquarters in Addis Ababa;
- (iv) Parliamentarians for Peace in the Great Lakes (AMANI) with Headquarters in Nairobi.

All these Networks are in the process of implementing the New Partnership for Africa Development (NEPAD) and the Committee on Security, Sustainable Development and Cooperation for Africa (CSSDCA) agenda.

The Pan-African Parliament has a great role to play in redefining the destiny of the continent and its relationship with the rest of the world. The evolution of OAU to AU by African leaders is further reiterated by the key roles they are expected to play in Africa's development history. It is a time of liberalization of political space in the continent; a time of recovery and fragile economic growth; a time when African leaders have decided to combat Africa's problem in a collective and concerted manner and a time when new analysis of Africa's development situation presents a way forward. The Pan-African Parliament is therefore expected to play its crucial role in the achievement of these objectives through its Peer Review Mechanisms (PRM).

### 3.5.7 The Court of Justice of the African Union in Promoting Peace and Security

This was established as a principal organ of the African Union.<sup>53</sup> The Court will rule on human rights abuses in Africa in terms of a legal statute or framework.<sup>54</sup> The proposed court will be seized with matters of interpretation arising from the application or implementation of the Act. Pending its establishment, such matters shall be submitted to the Assembly of the A.U which shall decide by a two-thirds majority.

While the AU Court of Justice has jurisdiction to resolve disputes between member states that have ratified the Court's Protocol, the African Court is empowered to hear cases challenging violations of the civil and political rights as well as economic, social and cultural rights guaranteed under the African Charter on Human and Peoples' Rights (African Charter) and other relevant human rights instruments.<sup>55</sup>

There is great deal of confusion at the moment among the A.U member-states with regard to the nature and scope of the future of A.U Court. Is the AU Court of Justice established to replace the African Human Rights Court or a different Court entirely of its own? This explains the initial reluctance of member states in ratifying the Protocol on the Human Rights Court. What will be the relationship between the AU Court and the Human Rights Court? Is there no real possibility of jurisdictional conflicts between the two courts, particularly as the A.U Treaty also contains human rights provisions? Will both courts not give conflicting interpretations to the provisions of relevant human rights instruments invoked before each court, thereby thwarting,

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53 see Article 5(d) of the A.U Charter

54 Article 18(2) of A.U Charter stipulates that the Statute, composition, functions of the Court will be defined by a Protocol thereto.

55 Public Statement by Amnesty International on the relationship between ACHPR and AU Court of Justice, News Service No. 022, 28 January, 2005

rather than developing human rights jurisprudence?<sup>56</sup> Or is the A.U Court of Justice established to be independent from the functions of African Court on Human Rights, which will <sup>1</sup>serve as a Tribunal for the final settlement of disputes submitted to it by the parties and also act in an advisory capacity to the General Assembly of the A.U.

During its 2<sup>nd</sup> Ordinary Session in July, 2003 in Maputo, the AU Assembly decided that the African Human Rights Court shall remain a separate and distinct institution from the Court of Justice of the African Union. However, the Assembly at its 3<sup>rd</sup> Ordinary Session in July, 2004 in Addis Ababa reversed this decision, when it decided that the African Court on Human and Peoples' Rights and the Court of Justice should be integrated into one Court. This decision has now resulted in a Draft Protocol merging the two courts.<sup>57</sup> However, according to the Protocol, in the event of inconsistency relating to the Protocol of the African Human Rights Court and the Protocol of the AU Court of Justice, the latter shall take precedence. This provision <sup>2</sup>might be interpreted in the future to restrict or undermine the authority and principles of the African Human Rights Court as well as the African Charter.

### **3.5.8 The Financial Institutions<sup>58</sup> of the African Union in Promoting Peace and Security**

The three financial institutions which will serve as a Principal Organ of the AU are the African Central Bank; the African Monetary Fund and the African Investment Bank.<sup>59</sup> As at today, the Protocols relating to the establishment of these financial institutions is yet to be set up, which would have gone a long way in complementing

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<sup>56</sup> See these views in Nsongurua J. Udombana (supra) pp. 1245-1246.

<sup>57</sup> Articles 5(1)(g) and 14 to 16 of A.U Charter

the efforts of African Development Bank, NEPAD and other specialized agencies of the AU in tackling poverty reduction, economic and sustainable development in the African continent.

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### **3.5.9 The Economic, Social and Cultural Council<sup>60</sup> of the African Union in Promoting Peace and Security**

The Economic, Social and Cultural Council formed the ninth Principal Organ of the A.U. This Council performs an advisory functions and is composed of professionals and civic representatives.<sup>61</sup> The functions, powers, composition and organization of the Economic, Social and Cultural Council shall be determined by the Assembly.

If the African leaders are serious in stemming the continent from poverty through economic development, then there is the need to properly spelt out what role(s) the Economic, Social and Cultural Council will play in pushing the continent ahead in its economic development. The independent of the council from manipulation of the Assembly is also very important in carrying out its objectives.

To combat poverty, there is the need to attract larger inflows of capital into the continent through foreign investments and the activities of ECOSOC but however are lacking. As for the African Union, there is an urgent need to define and sequence the operation of its various institutions because the skills, the huge financial and human

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58 Article 5(i) of the A.U Charter

59 Article 19 of A.U Charter

60 The Lagos Plan of Action for the Economic Development of Africa, 1980-2000, adopted by the Heads of Government of the OAU. Published by the International Institute for Labour Studies, Switzerland, p.iii.

61 Article 22 of A.U Charter

resources required for its successful take off are not available now. The logical steps that need to be taken are: which of the proposed organs that will take off first and why? What in fact should be the initial focus of the Union? For example, if the emphasis is going to be on economic integration, then the ECOSOC, the Specialized Committees, and the Financial Institutions as well as relationship with the Regional Economic Communities (RECs) would take precedence over and above others in terms of administrative and resource commitments. What role would NEPAD play under this scenario? The input of the Civil Society Organizations (CSOs) to the design and operation of ECOSOC also become very critical within this roadmap. If, however, the initial emphasis of the AU would be on democracy and good governance, then the priority institutions will include the Pan-African Parliament and the Court of Justice. Issues relating to the relationship between these institutions and the operation of the African Commission on Human and Peoples' Rights and also the existing regional parliaments will need clarifications and adequate definition. In the same vein, existing mechanisms on peace and security both at regional and continental level will need a critical analysis and better configuration and arrangement if the initial emphasis of the Union will be on peace and security.

### 3.6 <sup>1</sup>THE ROLE OF AFRICAN UNION IN COLLECTIVE SECURITY DEFENSE: ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS

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62. The journey for the formation of OAU started in April, 1958 when some independent African States met in Accra, Ghana to discuss the possibility of forming a Union Government that will speak with one voice in the cause of peace for Africa. Source: Louis B. Sohn: Basic Documents of African Regional Organizations, Vol. 1, edition, Published by Oceana Publications, Inc. NY., 1971, p. xi.

63. Yassin El-Ayouty. The OAU after 10 years – Comparative perspective (supra), p.118

At the OAU founding Conference,<sup>62</sup> the participating Heads of State and Governments showed considerable awareness regarding the various security concerns with which an inclusive African regional organization would have to concern itself. Consideration was given to such potential problems as internal disruptions, border disputes, allegations of subversion by neighboring states, threats of extra-regional aggression, and the need for collective action against the colonial holdings.<sup>63</sup> Articles 2 and 3 of the OAU Charter which defined the OAU's goals and the principles by which its members will adhere to, make it clear that the OAU was intended to assist members both in the peaceful settlement of intra-regional conflict and in defense against extra-regional aggressors.<sup>64</sup> In recent years there has been renewed conflicts in the African continent which has cost great financial and human resources both to the African Union and the United Nations in maintaining peace in the continent.

Article 2 of the OAU Charter states that among the purposes for which the members formed the organization was "to defend their sovereignty, their territorial integrity and independence." Such provisions for collective defense, the only one found in the OAU Charter, was weak and inexplicit when compared with those found in the Constitutive Act of African Union. According to the Act,<sup>65</sup> to achieve greater unity and solidarity between the African<sup>1</sup> countries, there is the need to defend the sovereignty, territorial integrity and independence of its member states so as to promote and defend African common positions on issues of interest to the continent and its peoples.

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64. Article 3(b) of the AU Act

65. see Articles 3 and 4 of AU Act

66. May 1963 when the OAU was formerly established

During the drafting of the OAU Charter, no greater role was given to the organization as to what it supposed to play in collective security defense by its member states. This was due, probably to the considerable differences in outlook and questions of defense that they exhibited. At the Addis Ababa meeting,<sup>66</sup> there was considerable expression of concern with the possible interference in the internal affairs of members' states than the threat of interference by extra-regional actors. Most African Heads of State enjoyed good relationship with their former colonial masters and were dependent upon it for their defense and were concerned more to interference in the internal affairs of another state than the principle of collective security defense.

Similarly, the OAU Charter said very little about specialized institutions for security concerns. The proposal for Common Defense System with an African High Command<sup>67</sup> to ensure stability and security of Africa and that of Ethiopian Draft Charter<sup>68</sup> for a Defense Board composed of each member's Chief of Staff and empowered to make recommendations to the Assembly of Heads of State received little support and was resisted by most heads of state fearing that such <sup>1</sup>idea will mean sharing their military information and felt satisfied with their existing defense arrangements. The only specialized defense structure that was established by the OAU then was a Defense Commission, responsible to the Council of Minister which the Charter said nothing further about its purpose or responsibilities. Even proposals put forward by the Commission for permanent structures to the African Defense Ministers received little support. It only agreed that the Commission would serve as an "organ of consultation,

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67. Kwame Nkrumah: A Union Government for a United Africa, Addis Ababa Summit, 1963 (Addis Ababa, Ethiopia): Publication and Foreign Language Press Dept. Min. of Information, 1963, p. 47.

68. See generally Yassin El-Ayouty (supra) P. 120.

69. Ibid.

preparation and recommendation for the collective and or self-defense against any act or threat of aggression.<sup>69</sup>

In February, 1965, the Defence Commission of the OAU recommended the establishment of an African Defense Organization (ADC) that would be entirely voluntary and will not compromise national sovereignty and states that chose to participate could designate forces for the ADC service. These forces would only be called upon at the request of a member state, with the approval of the donor state and the Council of Ministers.<sup>70</sup> These recommendations again were rejected by both the Council of Ministers and the Assembly of Heads of State and Government. These have been the attitude of the organization, coupled with the poor funding by members which affected their role in collective security defense policy. The transformation of OAU to AU, is therefore, a welcome development which is perceived by many observers that it will receive greater attention of <sup>1</sup>funding to pursue continental agenda that will serve for popular participation and encouragement and willingness to depart from the ways of the past.

Under the new AU Act, greater roles are given to the Union for collective security defense of the continent. The principle of non-intervention in the internal affairs of a member state of the organization was reviewed,<sup>71</sup> to allow the Union intervene in another member state upon authorization by the Assembly. For collective security defense policy, the AU Act created various organs, such as, The Pan-African Parliament, the African Court of Justice, The Peace and Security Council of the Union and other bodies like

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70. Ibid, p. 121. See also John Woronoff – Organising African Unity (Metchen, N.J.: Scarecrow Press 1970), pp 559-560.

71. Article 4(h) of the AU Charter

**NEPAD, CSSDCA, The Committee of Intelligence and Security Services of Africa (CISSA) which will serve as an early warning mechanism for the AU about possible theatres of conflicts in Africa so that the problems could be nipped in the bud.**

**Lack of mutual trust and shared interests, the low level of African military resources and the continued availability of extra-regional sources of assistance have all contributed to the extremely limited co-operation manifested among OAU members on issues related to collective security defense. Today, by the transformation of OAU to AU and with expand mandate of the AU to deal with conflicts in Africa, there has been tremendous achievements in collective security defense. The management of political crisis in Liberia, Sierra Leone, Togo, Sudan, Rwanda, the foiling of mercenary activities in Equatorial Guinea and Kongo are some of the few achievements in collective security defense by the African Union.**

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### **3.7 PEACE KEEPING OPERATIONS BEFORE AND AFTER THE TRANSFORMATION OF OAU TO AU: ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS**

**Peace-keeping operations have invariably been undertaken, not for the purpose of influencing the conduct of states by coercive methods but rather to assist in the implementation of agreements already reached and incidental thereto, to perform such functions as observe, report and assist in the settlement of minor differences and perform local police functions and in general to do those things that are thought to contribute to the ultimate goal of peaceful settlement or adjustment.**

When the Organization of African Unity (OAU) was established no special arrangement was made in respect of peace keeping.<sup>72</sup> In the circumstances, there was some half-hearted recourse in the Charter to conciliation and arbitration procedures, which unfortunately have never proved productive. The problem where AU has found himself today was due to the faulty arrangement in the OAU Charter in the past on how the organization will maintain peace-keeping operation in conflict or war-torn zones of the continent. Most of the efforts of the OAU then were that of resolutions witnessed in the Congo in 1964 where the OAU adopted a resolution<sup>73</sup> refusing to accept Tshombe's request for military assistance through the OAU from certain African countries. The resolution also appealed for the withdrawal of mercenaries, requested for a cease fire and established a nine-state Congo Conciliation Commission. However, when the OAU Ministers met the following year, they were so deeply divided over the question of the<sup>1</sup>legitimacy of the OAU intervention in the Congo.<sup>74</sup> Even where the OAU considered itself competent to deal with such issue, it decided to ask for the assistance of the UN Security Council, which may not even come immediately.

Another problem associated with peace keeping operations in Africa is the understanding by members of the Organization of Africa Unity that there should be no interference in the internal affairs of member state. The principle of non-intervention was viewed as an impediment to peace keeping operation in Africa. The OAU has not taken significant steps in peace keeping operation mainly due to lack of its organizational capabilities, financial resources and military strength.

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73. United Nations Peace-keeping: Legal Essays, edited by A. Cassese 1978, Siglhoff and Noordhoff Alphen and Rijn – The Netherlands, p. 112. Also see Dr. M.T.Ladan. Peace-keeping in Africa Revisited: Emerging Patterns and Challenges, Lecture Notes, Faculty of Law, ABU, Zaria, 2004, p.2.

74. Ibid, note 71.

When assessing existing systems for the maintenance of peace keeping operation, one comes to an inevitable conclusion that regional arrangements seem to be the most suitable institutions for the settlement of disputes in the developing regions. The issues to be resolved in these regions are often so complicated that the decentralization of the machinery for the maintenance of peace keeping produces the best results.

Peace keeping operation has evolved in practice so that, by and large, peace keeping operations are created and deployed on an ad hoc basis by member states of the organization to such conflicts region. This characteristic is central to the concept of peace keeping. In sum, there seems to be three benchmarks for a peace keeping force. One is the political will of the peace keeping authority to authorize such an exercise. Under the present arrangement in the Constitutive Act of the African Union, there shall be established the African Standby Force under the Peace and Security Council<sup>75</sup> which shall organize peace keeping operation to any part of the continent pursuant to Article 4(h) and (j) of the Constitutive Act of the AU. The second is an agreement by the host country to make it work. Article 13(17)(b) of the Peace and Security Council stipulate that “member states shall commit themselves to make available to the Union all forms of assistance and support required for the promotion and maintenance of peace, security and stability on the continent, including rights of passage through their territories.” Article 4(j) of the Constitutive Act of the AU allows a member state to request intervention from the Union in order to restore peace and security. By these provisions, it means, therefore, that the host state have entered a contractual agreement with the African Union to allow its force enter their territory to maintain peace and security.

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75. See Article 13(1) to (5) of the PSC

The mechanism of peace keeping operation is the existence of an integrated military force capable of carrying out the intended operation. Article 13(17)(a) of the Peace and Security Council also stipulate that “troop contributing countries shall immediately, upon request by the Commission, following authorization of the PSC or the Assembly, release the standby contingents with the necessary equipment for the operations envisaged under Article 9(3) of the present Protocol,” and Article 13(13) allow the Commission train civilian and military personnel of national standby contingents at both operational and technical levels. Training on International Humanitarian Law and International Human Rights Law, with particular emphasis on the rights of women and children, shall be an integral part of the training of such personnel. Under this arrangement the Commission of the PSC is further envisaged to standardize its training doctrines, manuals and programmes that will fully integrate the standby force of the PSC.

Peace keeping operation may be used in a number of ways; they may be mere presence of policemen or policewomen who maintain order and protect citizens when government authority is weak, or they may be interposition forces who separate warring factions and bring stalemate that leads to reconciliation or they may be fighting forces who assist government under attack by playing an active collective security role.

In peace keeping operation, it is required that the organization sending troops to maintain peace and security during conflict should not interfere in such conflict and abstain from any hostilities against a belligerent, otherwise the operation would inevitably acquire some aspects of a coercive nature. Their goal is to restore peace without any interference in the conflict in favour of one of the parties and without using force. For a neutral state to provide unit for a peace keeping operation it is essential that the mandate

of the force keeps clearly within limits. It is the neutrality of the operation itself which offers it the possibility of participating, if this neutrality is not ensured, the neutral state run the risk of getting involved in the conflict, which would contravene its status of neutrality.

The only instances where peace keepers are allowed to use force in peace keeping operation is during self-defence or the instrument authorizing the operation allow the use of force by coercive method to maintain peace and security. Under International law, the right of self-defence presupposes the existence of imminent exceptional circumstances which do not permit any other solution than the use of weapons. It has usually been upheld that self-defence embraces not only the protection of life and limb but also of the freedom of movement necessary for the accomplishment of the mission of the force.

### 3.8 THE ROLE OF SUB-REGIONAL ORGANIZATIONS IN AFRICA IN PROMOTING PEACE AND SECURITY: ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS

Most of the countries within the sub-regions of Africa have experienced extreme breakdown of governance in Africa due to violent conflicts. The uncontrolled proliferation of arms and weapons has turned to conflicts on the continent instead of a feasible option of non-violent struggle. This is evident in the spiraling armed revolts and political conflagration in the turbulent Great Lakes Region, which have wreaked havoc through massacres, displacement of civilians, political and socio-economic chaos and devastation and high cost of peace keeping operations. The same can be said of the ongoing conflicts in Sudan, Ethiopia, Somalia, Central African Republic, Chad, Uganda, Cote d'Ivoire, Algeria, Congo-Brazzavile and a host of others.<sup>76</sup> These have worsened the internal security situations of the continent and hampered the ability of the governments

**to restore peace and security and reinforce state control. The prevailing war and conflicts in trouble spots of Africa have brought untold physical and mental anguish, resultant from catastrophic and tragic war crimes, and terrible human rights abuses.** <sup>1</sup>

**The resistance of conflicts in African continent poses a major challenge not only to the continent but also to the rest of the world. Of the 32 peace keeping operations launched since 1989 by the UN, almost half of this number took place in Africa.**

**From the disappointing record, some would conclude that the AU is on its way to much the same fate as the OAU, while others will conclude that the failure of OAU in the field of peace and security and the present trends of international relations indicate the likely declining importance of OAU in maintaining peace and security.**

**The roles being play by sub-regional organizations, e.g The Economic Community of West African States (ECOWAS), the Inter-Governmental Authority on Development (IGAD) and the Southern African Development Community (SADC) are all geared towards maintaining peace and Security. Though AU was created as an apex Regional Organization in Africa, whose primary role is the promotion of peace and security in the continent, lacks tangible security measures, thus, the sub-regional organizations within the various region of the continent supplement the efforts of AU in ensuring peace and security.**

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### **3.8.1 The Role of ECOWAS in Promoting Peace and Security: Issues, Problems, Challenges and Prospects**

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76 Okechukwu Emeh, Jnr. Small Arms and Africa Security Dilemma, New Nigerian Newspapers of 6 October, 2004, p.8.

77 This include: Benin Republic, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

The Economic Community of West African States (ECOWAS) was founded by a Treaty on 28 May, 1975 to advance regional economic integration in West Africa. It comprises the 16 West African States.<sup>77</sup> The main organs are: The Secretariat, which is hosted by Nigeria, a Ministerial Council, and the Authority of <sup>1</sup>Head of States and Governments – the highest policy and decision-making organ of the Community which meets at least once annually.<sup>78</sup>

At its creation, ECOWAS was mostly, if not exclusively, seen as a regional zone of preference allowed under Article XXIV of the General Agreement on Tariffs and Trade (GATT). The onset of the Liberia conflict at the beginning of the decade of the 1990s appears to have triggered a re-think of this narrow perception of ECOWAS and an expansion of its mandate to actively include human rights and the preservation of regional peace and security.<sup>79</sup> The change in context and mind-sets was aptly captured in the report of the Committee of Eminent Persons<sup>80</sup> which undertook the review of the 1975 Treaty:

**“Efforts towards the establishment of an economic community embracing all the states of the West African region were initiated in the early sixties, not long after most of the countries had emerged from colonial domination into independence and statehood. In this formative state, the natural inclination of the countries was in the direction of consolidating their independence ....enhancing national sovereignty. Additionally, interstate relations in the region were generally plagued by deep suspicion and political and ideological differences.... Perceptions about national sovereignty and the principle of non-interference in the internal affairs of the state are now undergoing gradual transformation..... More and more countries are now opening their internal political processes, including the subjections of general elections to international observation in order to earn legitimacy for their governments.”<sup>81</sup>**

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78 M.T. Ladan. Economic and Human Rights Framework under the ECOWAS Treaty: An appraisal. Lecture Notes, Faculty of Law, ABU, Zaria, 2004.

79 Ibid.

80 The Committee was headed by Gen. Yakubu Gowon (Rtd) of Nigeria

81. Ibid. See also the Economic Community of West African States, Review of the ECOWAS Treaty Final Report by the Committee of Eminent Persons, 57-58 (1992).

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The outbreak of war in Liberia forced members of ECOWAS to revised its Treaty by recommending a shift from its exclusive focus on government to government, to involving the people, NGOs and private sector and also recommended the expansion of ECOWAS Principal Organs.

The most fundamental change in the revised Treaty is Article 4 which stipulate that maintenance of regional peace, stability and security through the promotion of good neighborliness, peaceful settlement of disputes among member states, recognition, promotion and protection of human and peoples rights in accordance with the provision of the African Charter on Human and Peoples' Rights, accountability, economic and social justice and popular participation in development, promotion and consolidation of democratic system of governance in such members state.

Because of the conflict that later resulted to war in Liberia, ECOWAS, in August, 1990, deployed a plurinational cease-fire Monitoring Group called ECOMOG, comprising military contingents contributed by respective member states of ECOWAS, at the invitation of the then government of Samuel Doe to restore peace.<sup>82</sup>

<sup>2</sup>The involvement of ECOWAS intervention in Liberia was as result of such internal armed conflict, which completely went out of hand and constituted severe political, social and economic problems to the neighboring countries and the entire sub-region which ECOWAS was able to take up the challenge and accept the invitation to intervened.<sup>83</sup> The initial intervention by ECOWAS was for peace keeping which it belief

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82. Ibid, note 91. See the Protocol on Non-Aggression (April 22, 1978) and the Protocol Relating to Mutual Assistance on Defence (May 29, 1981).

that a collective action would make for easier and peaceful resolution of the crisis. Some of the peace plan by ECOWAS was for the cessation of hostilities by the parties involved in the conflict; introduction of ECOMOG force to separate the parties and maintain peace and security and the introduction of an Interim Government to replace Samuel Doe.

At inception, ECOMOG was designed like any UN peace keeping force but with small variations. The variations were that the troop contributing countries were those who felt willing and able to do so, unlike what applies to the UN peace keeping force. In addition, command of the force was initially not given to the nation with the largest troop and equipment contribution. Furthermore, most of the contributing states had differing military practices and doctrines, so it was <sup>1</sup>a miracle that they were able to display some level of cohesion both in command and action. ECOMOG was initially mandated to keep peace, it became necessary to establish the peace first before it was changed to peace enforcement following the capture and death of Samuel Doe.<sup>84</sup> ECOMOG proved to be a very important instrument for peace in Liberia and Sierra Leone and for that reason has been the natural recourse by ECOWAS in crisis situations in the region. As a result, ECOWAS has reacted and ameliorated the situations in Guinea Bissau and Cote d'Ivoire and recently in Togo.

The revision of ECOWAS Treaty in 1992 to include human rights and the promotion of peace and security underline the fact of the sub-regional organization supplement the efforts of AU in peace and security in the continent.

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83. Lt. Gen. S.V.I. Malu (Rtd). Responsibility for International War Crimes, Peace and Security in the West African Sub-Region. Paper presented at the Annual Conf. Of the NBA held in ABUJA, 22-27 Aug., 2004, p.3.

84. Ibid.

### 3.8.2 The Role of Southern African Development Community (SADC) In Promoting Peace and Security: Issues, Problems, Challenges and Prospects

**The first Southern African Development Community meeting was held at Arusha, Tanzania in July, 1979 to harmonise development plans and to reduce the regions economic dependence of South Africa.<sup>85</sup> On 17 August, 1972, the 12-member countries of SADCC signed a Treaty establishing the South African Development Community (SADC), which replaced SADCC.<sup>86</sup> The Treaty was ratified by all the member states in December 1993 and came into effect in October, 1994.**

**In November, 1994, SADC Ministers of Defence, meeting in Arusha, Tanzania, approved the establishment of a regional rapid-deployment peace keeping force which would be used to contain regional conflicts or civil unrest in <sup>1</sup>member states. In June 1996, the head of states of SADC, meeting in Gaborone, Botswana, inaugurated a new organ on politics, defence and security which was expected to enhance co-ordination of national policies and activities in those areas. In promoting peace and security in the SADC member state, South Africa and Botswana in September 1998 sent troops numbering 1,000 to Lesotho to quell unrest within some ranks of the military in its attempt to oust the government of Prime Minister Pakalitha Masisili.<sup>87</sup>**

**In conclusion, it can be said that SADC is playing a prominent role in promoting peace and security within its sub-region, thereby, also complementing the efforts of AU in promoting peace and security in the continent.**

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85. M.T. Ladan. Peace keeping in Africa Revisited Emerging Patterns and Challenges (supra), p. 12

86. Members of the SADC are: Angola, Botswana, Lesotho, Malawi, Mouritius, Mozambique, Namibia, South Africa, Swazilan, Tanzania, Zambia and Zimbabwe.

87. Ibid, note 97.

### 3.8.3 The Role of Inter-Governmental Authority (IGAD) in Promoting Peace and Security: Issues, Problems, Challenges and Prospects

**IGAD was initially formed as a development agency but gradually graduated into a political platform. It comprises of Seven East African States of Kenya, Djibouti, Ethiopia, Eritrea, Uganda, Sudan and Somalia. Considering the volatile nature of conflicts within the Northern Sahara zone of the African continent, IGAD has plaid tremendous role in trying to resolve civil war in Sudan where the government and John Garang rebels have been at war since 1983, its peace keeping efforts in respect of the civil strife in Somalia which has been without a central government since 1991 are all commendable, despite the fact that it has been a trail of failure. The current crisis in Darfur region of Sudan where the AU Peace Keeping Operation is currently supervising is a great concern, not only to the AU but the whole international community.**

**Apart from these initiatives where member states of IGAD have engaged themselves, they have taken another step further to counter terrorism at both the individual and at collective levels. At the initiative of the Government of Sudan this issue was discussed by the 9<sup>th</sup> IGAD Summit held in Khartoum in January, 2002 and resolved that there is the need to hold IGAD Conference on the Prevention and Combating of Terrorism, and which was held in Addis Ababa from 24-27 June, 2003. At the continental level IGAD member states actively participated in the adoption of the Convention on the Prevention and Combating of Terrorism by the 35<sup>th</sup> Assembly of Heads of State and Governments of the OAU in Algiers in July, 1999 which entered into force on 6 December, 2002. IGAD member states also played an active role in the development and finalization of the Plan of Action of the African Union High Level Intergovernmental**

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**meeting on the Prevention and Combating of Terrorism in Africa, in Algiers from 11-14 September 2002.**

**Terrorism is a violent form of transnational crime that exploits the limits of the territorial jurisdiction of states, porous borders and the existence of informal and illegal trade and financing networks. Eradicating terrorism requires a firm commitment and joint action by member states to pursue common objectives. These include: measures to establish a regional approach to counter terrorism within a broader international strategy; the financing of terrorism, enhancing of operational capacity to counter illegal cross border movement, capacity to record and share information, ensuring the protection of human rights, educational programmes to enhance public support and implementation measures.**

**The concerted response reflected in this Implementation Plan is situated within the context of the provisions contained in the Agreement establishing the**

**Inter-Governmental Authority on Development (IGAD), in particular, Article 18A that reflects their commitment to act collectively to preserve peace, security and stability and to take collective measures to eliminate threats to regional co-operation, peace and stability.**

**IGAD's vital role in the global struggle against terrorism and its international legal obligations in terms of the United Nations Security Council Resolution 1373 and other relevant resolutions by African Heads of State and Government will go a long way in promoting peace, security and sustainable development in the continent.**

### **3.9 THE EFFECTS OF WARS WITHIN THE AFRICAN CONTINENT: ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS**

**The Kampala Document<sup>88</sup> which African leaders adopted has made a major contribution to the efforts to improve the conceptual framework within which peace and development can be sustained in Africa. Security is the core element<sup>94</sup> which makes for stability, and along with other elements, presents stability as a pre-requisite for development. The Document's identification and demonstration of the interdependence among what it calls the "Four Calabashes" of Security, Stability, Development and Co-operation constitutes one of the clearest strategic framework designed to drive the process of sustainable peace and development in Africa.<sup>89</sup>**

**At an age when technological development is increasingly opening up more and more avenues for the development and realization of human potential, when globalization has become a catchword for the new kind of human interaction, most of Africa is still riddled with violent conflicts, secessionist wars, ethnic and religious conflicts that defer**

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88. The 1991 Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA) held in Kampala, Uganda, 1991.

89. Amos Sawyer: *Toward a Framework for Sustainable Stability* (supra), p. 54

solutions. The creative energy of young Africans that could foster rapid development of the continent has been unleashed as a destructive agent. Naturally, the consequences of these problems are instability and insecurity with their chains of associated calamities. Africa constitutes only 10% of the world's population, yet it produces 25% of the world's refugees and internally displaced persons. Consequently, scarce resources, which should be used for socio-economic development has had to be expended on funding and catering for these millions of Africans.

Most of the African children below the age of 18 years are being conscripted into the army to prosecute unlawful civil war thereby contravening the African Charter on the Rights and Welfare of the Child,<sup>90</sup> and the International<sup>95</sup> Convention on the Right of the Child. As result of frequent and incessant conflicts within the Sub-Saharan region of Africa, about forty-two (42) million boys and girls of school age are not even enrolled in schools. If Africa is to meet its full potential, these children must have the chance to study and learn.<sup>91</sup> The effect of these violent conflicts on the African continent is hunger which requires more than emergency measures. Forty million Africans are now at risk of starvation and are facing severe food shortages because most of their farmland which they could have cultivated have been abandoned as result of conflicts.

The two decades of civil war in Casamance region of Senegal has brought trauma to the people of the region as many people were displaced and killed in the civil war. Apart from the refugee problems, a lot of people are worried about landmines that were buried on the ground during the civil war. Families coming back from neighbouring countries

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90. See Article 22(2) African Charter on the Right and Welfare of the Child, which stipulates that states parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child. Who is a Child under ACRWC, see Article 2 of the Charter.

91. See New Nigerian Newspaper of 10 August, 2004, p. 18.

now face problems rehabilitating their children into the already over-stretched school system which suffered serious neglect in the conflict.<sup>92</sup>

The people of the Sub-Saharan Africa are not left out in this madness as they have experienced untold physical and mental anguish, resultant from catastrophic and tragic war crimes, and terrible human rights abuses. In this region alone 13 million people have died as result of AIDS/HIV since the disease was discovered and 26 million Africans are said to be living with the virus. The maternal and child mortality rates have increased and one out of 13 mothers have chance of dying during pregnancy or child birth.<sup>93</sup>

<sup>96</sup>It is sad to note that most of the African countries that are prone to conflicts are spending billions of dollars every year in their budget in order to finance these wars instead of directing such amount to social services like health care and education. In the West African Sub-region, conflicts are a tale of horror, beyond human reasoning. The war in Liberia, witnessed the emergence of hardened and pitiless rebels, with a deep resolve for mass murder and total anarchy which has spread to Sierra Leone and Cote d'Ivoire. The motive of these rebels, of course, is power, riches and control of the diamonds field.

These crises are the responsibility of each and every African leader. No war leaves the neighbouring countries untouched. Indeed, it may imperil their stability and prosperity. What often begins as an internal dispute over power and resources can quickly engulf an entire region, causing refugee flows and delaying further the flow of aid and investments.<sup>94</sup>

Bringing these conflicts to an end requires that we acknowledge two central truths: that they imperil the peace of all of Africa and that they are in great measure the result of misguided leadership which is unwilling or unable to put the people's interest first. The

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92. See Thisday Newspaper Article of 17 May, 2005, p. 34

93. Ibid.

period 1970s and 1980s represent for Africa a period of disillusion, agony, misery and failure. Conflicts in Africa have resulted in war crimes, genocide and crimes against humanity which Article 4(h) of the AU Charter allow the Union intervene where such a situation occur in any part of the continent. Example of some of the barbaric carnage that were witnessed in the continent were in Rwanda, Somalia, Sierra Leone, Liberia, Burundi and the <sup>97</sup>Democratic Republic of Congo (DRC) and recently Sudan is taking his turn which has posed a serious challenge to AU to intervene in order to stop the carnage. The only way it has addressed the issue was through a handful of pious declarations, decisions and peace talks that often fail to bring peace to these regions because warring parties have no desire to listen to the voice of reason.

The Rwanda genocide undoubtedly remains a deplorable example of the international community's disinterest in the African continent because the OAU/AU failed to decelerate the slide towards genocide and to halt the mass killings.<sup>95</sup> The reason for not condemning such massive crimes has supposedly been a desire not to intervene in the internal affairs of a member-state, in accordance with the Charters of the OAU and the United Nations.<sup>96</sup> But within the OAU and UN Charters, there are ample provisions within the two international instruments that allow these organization intervene to prevent further spread of such conflicts and the protection of human rights. Even though, these were provisions both within the OAU and UN Charters that prohibit intervention in the internal affairs of member state, customary rule of international law is permissible where such intervention is based on humanitarian ground, in the preservation of human rights.

Since the outbreak of hostilities in Sudan, the UN Security Council has taken a wide range measures against the government of President Omar Hassan El-Bashir to halt the

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94. See UN Secretary General, Kofi Annan Address to the OAU meeting in Lusaka, 9 July, 2001. Available at <http://www.un.org/News/press/doc/2001/sgsm7888.doc.htm>.

crisis in that region and prosecute the Janjaweed Militiamen accused of ethnic cleansing in the Western Sudan region of Darfur or face <sup>98</sup> unspecified sanctions, peace and stability is becoming elusive to the people of Sudan. The Peace and Security Council of the African Union is even helpless in handling such crisis in the continent.

These and other socio-economic challenges stand against African people in the realization of the Millennium Development Goals (MDGs).

### 3.10 THE IMPACT OF VIOLENT CRIMES, ILLEGAL WEAPONS ON PEACE AND SECURITY IN AFRICA: ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS

Violent crimes are one of the greatest threats to security, peace and stability in the African continent today. This occurs as a result of political crisis and armed conflict which have exacerbated the poor social and economic conditions that characterized the lives of most Africans. From 1995 to 2000 alone, armed conflict prevailed in at least six (6) countries in Africa; Liberia, Sierra Leone, Cote d'Ivoire, Democratic Republic of Congo, Uganda and Rwanda and more than 15 others were directly affected by the conflict.<sup>97</sup> The situation prevailing in Sudan currently remind us that we have to work harder to end the destructive rage of armed conflict. The easy access to illicit trade in small arms accompanied armed conflicts in parts of Africa and pose dangers and threats to security for every citizen of the continent. After about two decades of wars, violent conflicts, political instability coupled with economic crisis that engulfed the African continent, it is obvious that development will continue to elude Africa unless urgent and dramatic steps are taken to redirect actions and resources.

<sup>99</sup>Other source of violent crimes being perpetrated in some parts of the Africa continent has been traced to fundamental human needs for group identity, security,

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95. Nsongurua J. Udombana. Can the Leopard Change its Spots? The AU Treaty and Human Rights (supra), p. 1224.

96. Ibid.

recognition, lack of participation and autonomy as well as in some circumstances, policies and institutions of political and economic systems that attempt to deny or suppress such basic needs of the people. When these needs are denied the people, the mode or method by which to attract attention of government to their needs is to resort to conflict and violence.

Government can address such situation by fulfilling the needs of the people or groups and by expanding and putting more emphasis on the human needs theory or the inclusive paradigm in order to do away with negative conflicts.

Besides civil wars and armed insurgencies that have come with human tragedy and tormenting grief, the easy availability of small arms and light weapons has indirectly contributed to the escalation of crime and violence in some parts of the African continent which is prompting a climate of fear, impunity and insecurity.

Experts put the number of infantry or military style weapons in circulation around the world in the region of 500 million, while tens of million of civilian-style rifles, pistols and revolvers are in the hands of private citizens.<sup>98</sup> About 300 companies in over 50 countries world wide are producing small arms and light weapons and their accessories<sup>99</sup> which eventually found their way in the hands of insurgents or rebels, returnee soldiers from international peace-keeping operation like the former ECOMOG soldiers and army deserters.

<sup>100</sup>The illicit small arms and light weapons that have become a problem in Africa today can be traceable to the Cold War years when both the US and the USSR provided

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97 Nsongurua J. Udombana. Can the Leopard Change its Spots? The AU Treaty and Human Rights (supra), p. 1224.

98 Okechukwu Emeh. Small arms and Africa's Security Dilemma, New Nigerian Newspapers of 6 October, 2004, p.8.

99. Ibid.

support to authoritarian regimes perceived as friendly on the continent. Such support has been translated into the unregulated supply of small arms and light weapons to such regimes. In the post cold war Africa, however, the control of proliferation in small arms and light weapons has turned into armed conflicts in the continent. The armed conflict witnessed in the Great Lake Region, notably, Rwanda, <sup>101</sup>Burundi and Democratic Republic of Congo have wreaked havoc through massacres, displacement of civilian, political and socio-economic chaos and devastation and high cost of peace-keeping. The same can be said on the ongoing conflicts and mayhem that are sustained and exacerbated by availability of small arms and light weapons in Ethiopia, Somalia, Sudan, Central African Republic, Chad, Uganda, Cote d'Ivoire, Algeria, Congo-Brazzavile, Liberia and a host of others.<sup>100</sup>

These conflicts have worsened the internal security situations and political entities in the continent thereby hampering the ability of the governments to restore peace and security. The weapons from the armed rebellion in Sudan, Somalia, Burundi and Rwanda have serious security problem to neighbouring countries in the Horn of Africa and the Great Lake Region. In Uganda, more arms and ammunition are found in the hands of various guerilla movements as well as the people of Karamoja who are traditionally known for their gun culture and bloody cattle rustling. The bloody clashes in recent years between the pastoral tribes of Marakwet, Pokat and Turkama people of Kenya were attributable to excessive accumulation of small arms and light weapons from the strife-torn Ethiopia, Somalia, Sudan and Uganda. This trend was also witnessed in South Africa Sub-region, Liberia, Cote d'Ivoire, Sierra Leone, Togo and Senegal has taken their turn.

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100. Ibid, note 96

Thankfully, both the African Union and the International Community have put in place wide-range of programmes to check the menace of small arms and light weapons.

Such programmes include:-

- (i) United Nations Arms Destruction Day of every 1<sup>st</sup> September. This day is normally mark all over the world and to destroy all illegal weapons that have been seized from either soldiers that were returning from peace-keeping operations or armed bandits, rebels and through trans-border trade.
- (ii) The 1997 United Nations Report of the Panel of Government Experts on small arms and light weapons, which laid the groundwork for a balanced supply and demand approach to fighting proliferation of small arms;
- (iii) The European Union (EU) Small Arms Regime of June, 1997, which is aimed at preventing and combating illicit trafficking in small arms and light weapons;
- (iv) The EU Code of Conduct on Arms Exports of June, 1998, seeks to foster co-operation amongst members state on granting or denial of arms export licenses;
- (v) The July 2001 Programme of Actions of the UN Conference on Illicit Weapons. The programme aimed at putting laws to regulate administrative procedures to control export and transit of such offensive weapons.

Africa is not left behind in the drive to curb proliferation of illicit small arms and light weapons on the continent, taken into consideration their participation in international peace-keeping and defense policy of member states. Such initiatives are in both Regional and Sub-regional levels which include:-

- (i) Moratorium on the Importation, Exportation and Manufacture of small arms and light weapons of the Economic Community of West African States (ECOWAS) of 31 October 1998, which the Code of Conduct of 1999 committed the member states to establish National Committee on Implementation of

- ECOWAS Moratorium on Small Arms and Light Weapons (NATCOM) to tackle the menace of arms proliferation;**
- (ii) The Nairobi Declaration of March 2000 by 10 countries from the Great Lakes Region and the Horn of Africa, which was an attempt to form a regional partnership between governments, multi-lateral agencies and civil society groups in the campaign against the flow of illicit small arms and light weapons;**
  - (iii) The Bamako Declaration adopted by the defunct organization of African Unity (OAU) in 2000 with a view to developing an African common position on the illicit proliferation, circulation and trafficking of small arms and light weapons.**
  - (iv) The Protocol on the Control of Fire Arms, Ammunition and Other Related materials which was signed in 2001 by member states of the Southern African Development Communities (SADC) which is aimed at preventing and controlling illicit trade of weapons in Southern Africa area.**

**Other initiative put in place by the AU is the establishment of Pan-African Parliament which is aimed at ensuring the full participation of African peoples in the development and economic integration of the continent. The organization of regular conferences on Security, Stability, Development and Co-operation in Africa for African Parliamentarian will go a long way in checking conflicts, wars and violent crimes in the continent.**

**The efforts of regional bodies in Africa in the area of disarmament provided a benchmark for building effective security community that would be devoid of violence and security on the continent is commendable. However, in doing this, there is the need for greater co-operation among the various institutions of the AU charged in promoting peace and security in the continent. These include the Peace and Security Council of the AU, the African Court of Justice and the African Court on Human and People Rights. There is the**

**need for greater border surveillance and enhance border co-operation between security forces and training of their personnel for capacity building in the area of arms detection will be welcomed. The efforts of the African Union in creating a Committee of Intelligence and Security Service of Africa (CISSA) which is to function under the office of the AU Commission Chairperson is another step that will encourage co-operation amongst African countries in checking trans-border crime and trafficking in children and drugs.**

**The issue of illegal weapons in small arms, which has posed a serious challenge to the AU in maintaining peace and security in the continent will greatly minimized if Africa leaders will respect rule of law, create good political atmosphere for stability, peace, conflict management, social justice and economic empowerment of the people.**

## CHAPTER FOUR

### THE PROTECTION OF HUMAN AND PEOPLES' RIGHTS UNDER THE CONSTITUTIVE ACT OF THE AFRICAN UNION (AU)

#### 4.1 INTRODUCTION

<sup>102</sup> The objectives of this Chapter is to highlight human rights institutions, both internationally and under the African Union for the promotion and protection of human rights in Africa, legal instruments for the promotion and protection of human rights in Africa, the inter-relationship between human rights, peace and security. The challenges facing human rights institutions in Africa in promoting peace and security will also be discussed in this Chapter.

Since the Universal Declaration of Human Rights in 1948, its development has not remained static, however, the development and protection of human rights in international law has generally been subsequent to the United Nations Charter on Human and Peoples' Rights. The evolution of the international human rights law has been one of the most remarkable features of the development of international law since 1945. Whereas progress has so far been made mainly through treaties, the customary international law of human rights is in the process of evolution too.<sup>1</sup> Under customary international law, states cannot relegate their responsibilities and falls back on its exclusive domestic jurisdiction or its reserve domain on issues relating to protection of human rights. Their internal affairs are constantly under <sup>103</sup>surveillance by International Human Rights Institutions to ensure their protection.<sup>2</sup> The amazing development of

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1 M.T. Ladan. Introduction to International Human Rights and Humanitarian Laws. Published and Printed by ABU Press Ltd., Zaria, Kaduna State, Nigeria, 1999, p.47.

2 U.O. Umozurike. Human Rights and Democracy in the 21<sup>st</sup> Century – The African Challenges: In Law, Human Rights and the Administration of Justice in Nigeria (edited by M.T. Ladan). Essays in Honour of Hon. Justice M.L. Uwais. ABU Press Ltd., Zaria. P. 42.

human rights law in the second half of the twentieth century was a response to emerging global situations and the international community including the UN started to develop ways of restraining states from the violation of human rights. It is trite law that international customary law is binding on all states regardless of their consent. The aftermath of the Second World War brought to focus need to protect the right of man against unnecessary violation especially during arm-conflicts and Article 2(7) of UN Charter relating to Human and Peoples' Rights removed issues of human rights from exclusive domestic jurisdiction to international concern.

Apart from the numerous treaties on human rights to which states are parties, there are various human rights institutions which were created to re-enforce the protection of the rights of all individual against arbitrary violation. There are various international and regional institutions established for this purpose which include:- The United Nations Commission on Human Rights, The European Commission of Human Rights, The Inter-American Commission on Human Rights and the African Commission on Human and Peoples Rights, the African Court of Justice and the Peace and Security Council of the African Union. The creation of the Organization of African Unity (OAU) in 1963 did not give more attention to issues of human rights until 1979 when the Protocol on the African Charter on Human and Peoples' Rights was made and was adopted in Banjul in 1981.

#### **4.2 LEGAL INSTRUMENTS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS IN AFRICA: ANALYSIS**

Since establishment of the United Nations and subsequent Universal Declaration on Human Rights, various legal instruments were developed to protect human rights violation. The development of human rights in Africa was subsequent to the United Nations Charter on Human and Peoples' Rights, European and American Charter on

Human Rights. There are various legal instruments both internationally and regionally for the promotion and protection of human rights in Africa.

#### **4.2.1 International Legal Instruments for the Promotion and Protection of Human Rights in Africa**

Since the end of the Second World War the International Community, under the auspices of the United Nations, has engaged in an extensive exercise of human rights standard-setting in an attempt to create a legal framework for their effective promotion and protection. In general such standards have been set by developing multilateral treaties which create legally binding obligations upon member states. Parallel to this activity the international community, through the U.N, has adopted numerous instruments for the promotion and protection of human rights that fall into the category of so-called 'soft' law".<sup>3</sup>

<sup>104</sup> The Universal Declaration of Human Rights which proclaims that all nations shall strive to secure the universal and effective recognition and observance of human rights, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction,<sup>4</sup> is the first comprehensive human rights instruments to be proclaimed by a universal international organization. It went further to divide human rights into two categories which include: civil and political rights, while the second category deals with economic, social and cultural rights.

<sup>105</sup> Human rights as stipulated under the first category include: the right to life, liberty, and security of person; freedom from slavery and torture; equality before the law; protection against arbitrary arrest, detention or exile; the right to a fair trial; the right to

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3 M.T. Ladan: Introduction to International Human Rights and Humanitarian Law. ABU Press Ltd., Zaria, Kaduna State, 1999, p.40

4 See the Preamble of Universal Declaration of Human Rights of 1948.

5 Ibid, note 1, p.52.

own property; political participation; the right to marriage; the fundamental freedom of thought, conscience and religion, opinion and expression; freedom of peaceful assembly and association; and the right to take part in the government of one's country. The second category relates to the following: right to work, equal pay for equal work; the right to form and join trade unions; the right to an adequate standard of living; the right to education; and the right to participate freely in cultural life.

Because of the important of these rights as declared in the Universal Declaration of Human Rights, the United Nations General Assembly on the 16<sup>th</sup> December, 1966 adopted two covenants – The International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) and an optional Protocol to the ICCPR, allowing for complaints to be made by individuals on violations of their rights embodied in the Covenant.<sup>5</sup>

The promotion and protection of human rights are matter of concern to international community as the rights of humans do not depend on an individual's nationality and so the protection of these rights cannot be limited to the jurisdiction of anyone state that is why state specifically provides for their protection in their national constitutions.

There are a large number of conventions, declarations and recommendations adopted by the UN General Assembly for the promotion and protection of human rights in Africa. Even though the declarations and <sup>106</sup>recommendations apply to all members states of the UN but do not have the same legal force as the conventions, which are legally binding upon states that have become parties to them.

The Convention on the Prevention and Punishment of the Crime of Genocide, which was adopted by the UN Assembly in December 1948 came into force in 1951 and

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6 Ibid, p. 54. By 31 May, 1996, 121 States were parties to the Convention

was ratified by approximately 120 states.<sup>6</sup> Provision is made in Article 6 of the Conventions, for persons charged committing genocide to be tried either by a competent tribunal in the state where the act was committed or by an international tribunal which has been accepted as competent by state parties to the convention. This following the setting up of the Nuremberg Principles of 1950, the Statutes establishing the International Criminal Tribunal for Rwanda, 1994 and Yugoslavia, 1992, the Draft Code of Crimes Against the Peace and Security of Mankind of 1996, the Rome Statute of the International Criminal Court (ICC) of 1998 and the establishment of a Special Military Tribunal for the Sierra Leone in October, 2000 were subsequent to the UN Convention on the Prevention and Punishment of the Crime of Genocide to try all those involved in committing war crimes during the Rwanda genocide and the Liberia/Sierra Leone Conflicts.

Another international instrument relating to the promotion and protection of human rights in Africa is the International Convention on the Elimination of all Forms of Racial Discrimination which came into force in 1969 and has been ratified by more than 150 states who are parties to the Convention. The purpose of this instrument is not only to eliminate and prevent all forms of discrimination, but also to promote equal opportunity and treatment to all and not that base on "race, colour, descent, or national or ethnic origin." The UN Assembly, in adopting this convention, is telling the international community that racial discrimination is that which disturbs international peace and security and any form of racial discrimination practiced by a State constitutes a violation of international law for which the state is accountable to other states in accordance with the rule of international responsibility. The Convention also has the feature of equating apartheid the same criminal status as genocide and this paved the way for the liberation of many colonial holdings in Africa that consequently led to their independent.

<sup>107</sup> Other international instruments that promote and protect human rights in Africa are the convention on the Elimination of All Forms of Discrimination Against Women, which was adopted by the UN General Assembly on the 18<sup>th</sup> December, 1979 and entered into force on 2<sup>nd</sup> September, 1981 and by 1998 there were about 161 states parties to the Convention.<sup>7</sup> The Convention on the Rights of the Child came into force on 2<sup>nd</sup> September, 1990 after it was adopted in November, 1989 by the UN General Assembly. Other international instruments that relate to the promotion and protection of human rights in Africa include: Convention relating to the Status of Refugees, which are all aimed at promoting and protecting human rights world-wide (including Africa) during armed conflicts.

#### **4.2.2 Regional Instruments for the Promotion and Protection of Human Rights in Africa**

The Organization of African Unity (OAU) at the time it was established directed its focus to the right of self-determination than the promotion of human rights. This can simply be explained by the fact that by the time the organization was established in 1963 only few of the African countries got their independent from their colonial masters and most of their efforts at that time were focused upon the right of peoples to self-determination and the struggle against racial discrimination. It was only in July 1979 that serious efforts were undertaken by the OAU to establish formal instruments for the promotion and protection of human rights.

The concern by the founding fathers of the OAU on issue of self-determination can be viewed from two perspectives, first, Article 1(1) of the Human Rights Covenants guaranteed this and the Universal Declaration of Human Rights as contained in the

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<sup>7</sup> Ibid, p. 55

Charter of the UN. Secondly, the African leaders at that time were more committed to the full integration of the OAU member states and consolidation of their hard won independent. According to this view, there can be no question of human rights for those who belong to a people that is subjugated and which is refused the right to be itself, after all, the right of people to self-determination is recognized as a right and forms a part of international law. Therefore, the African countries played but a minute part at the initial stage in the preparation of the Universal Declaration of Human Rights.

The purposes assigned to the OAU by its member states contained only reference to human rights, in its Preamble in form of a mention to the Universal Declaration of human rights. According to Article II(c), one of the purposes of the Organization shall be “to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.” Paragraph (b) of the same Article provides that the purpose of the Organization was to co-ordinate and intensify their co-operation and efforts to achieve a better life for the peoples of Africa, while paragraph (d) on the other hand outlaws colonialism. It can be clearly seen that co-operation amongst the member states of the OAU is essential and the protection of human rights, therefore, does not impose on the organization an obligation because it is a principle guaranteed by the UN Charter and set forth in the Universal Declaration of Human Rights.

<sup>108</sup>The principles of sovereignty, respect for the borders existing on achievements of independence and non-interference in the internal affairs of members' states as contained in the OAU lend towards the jurisdiction of state not bound by international law which turn to impede the protection of human rights. The extend of the internal

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8 The rules of ICJ, noting that the United Nations is based on the principle of sovereignty and equality amongst its members.

jurisdiction of state, however, depends on the international law and varies according

to its development.<sup>8</sup>

Article 2(7) of the UN

Charter which prohibits interference in the domestic affairs of member states however contained a limitation clause allowing the Security Council determine whether a matter is within a state's domestic jurisdiction or a threat to international peace and security under Part VII of the Charter. Today, the international community no longer allows a state to use sovereignty as a shield for gross violation of human rights.

However, in relation to the promotion of human rights in Africa as a whole recent development has occurred which are of major significance. In addition of achievement of independence by all the African states and the disappearance of several dictatorial regimes in the continent, the Organization of African Unity itself in late 1970s acknowledged the need for comprehensive, institutionalized machinery to give effect to "the firm attachment of the member states of the Organization to the promotion of respect for and protection of Human and Peoples' Rights. For this purpose the Assembly of Heads of State and Governments decided in 1979 to organize a meeting of highly qualified experts to prepare a preliminary draft of an African Charter on Human and Peoples' Rights in Dakar. In that draft the traditional civil, political, economic, social and cultural rights were enumerated while emphasis were given on collective rights such as: the right of peoples to self-determination, the right of colonized or oppressed peoples to free themselves from the bonds of domination by resorting to any means recognized by the international community; and the right to a generally satisfactory environment favourable to their development. After series of deliberations on the draft, it was adopted in June, 1981<sup>9</sup> and came into force in 1986.

In many ways the African Charter on Human and Peoples' Rights is consistent with its predecessors in Europe and the America but go beyond the civil and political

rights covering economic, social and cultural rights as well as a number of collective or peoples' rights.<sup>10</sup>

After the Banjul Charter, the OAU has developed other human rights instruments, such as the African Charter on the Right and Welfare of the Child. In 1979 the meeting of the Assembly of the Organization of African Unity (OAU) adopted a Declaration on the Rights and Welfare of the African Child. The 12 paragraph Declaration provides that member states of the OAU should review their current legal codes and provisions relating to the rights of children; thoroughly examine cultural legacies and practices that are harmful to normal growth and development of the child; formulate and implement programmes in the field of health, nutrition and education as part of national development plans <sup>109</sup>with a view to making these services universally accessible to all children within the shortest possible time, give priority to the most deprived and vulnerable children, paying particular attention to disabled children in the expansion of essential services; and expand day-care facilities with priority to the most needy and economically disadvantaged families. Other provisions of the Declaration relate: to the need or

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9 Karel Vasak: *The International Dimensions of Human Rights* Vol. 2. Greenwood Press, 1982, pp.612-613. Also see OAU doc. CAB/LEG/67/3/Rev.1 (1970), reprinted in *Bulletin of Peace Proposals* (Oslo), Vol. II, No. 4, 1980; and OAU doc. CM/1068 (XXV) (1980).

10 M.T. Ladan, *op. cit.* p. 79.

refugee and displaced children; the importance of planning and management of basic services programmes for children; and the need to preserve and develop African Arts, languages and Culture.<sup>11</sup>

<sup>110</sup> The African Charter on the Rights and Welfare of the Child was finally adopted in 1990 and was ratified and entered into force in November 29<sup>th</sup>, 1999. The Charter reaffirmed the principles as contained in the declaration, conventions and other instruments of the Organization of African Unity and in the United Nations and in particular the United Nations Convention on the Rights of the Child, and the OAU Heads of State and Government's Declaration on the Rights and Welfare of the African Child.<sup>12</sup>

Articles 11 to 14 of the Charter did not only incorporate all the recommendations made by the 1979 OAU Draft declaration but was further expanded to meet with the present reality. Article 22 further encourages state parties to the Charter to undertake the respect and ensure respect for rule of international humanitarian law applicable in armed conflicts which affect the child. In doing this, they shall take all necessary measures in hostilities and refrain in particular, from recruiting children to take part in war. Children affected during armed conflicts should be protected from the civilian population. Article 23 aims at protecting children refugee that are affected during armed conflicts and appropriate measures must be taken to ensure their protection according to international or domestic law.

Article 33 of the Charter established an African Committee of Experts on the Rights and Welfare of the Child which shall be under the Organization of African Unity (OAU) to promote and protect the rights and welfare of the child. The Committee shall

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11 Ibid, note 10, p.613

12 See Preamble to the African Charter on the Rights and Welfare of the Child.

consist of 11 members of high moral standing, integrity, impartiality and who are competent in matters of the rights and welfare of the child. <sup>111</sup>

The Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the present Charter and submit to each Ordinary Session of the Assembly of Heads of State and Government every two years a report on its activities and on any communication made under Article 44 of the Charter.<sup>13</sup>

In order to accord full protection to the rights of African child, states are urged to take all necessary steps in the process of incorporating the provisions of the Charter in their national law. Nigeria has adopted the Rights of the African Charter on Rights of the Child as part of its national law.

The Assembly of Heads of State and Governments of the Organization of African Unity (OAU) meeting in its 31<sup>st</sup> Ordinary Session in Addis Ababa, Ethiopia in June, 1995, endorsed a resolution on the recommendation of the African Commission on Human and Peoples' Rights for a Protocol on the Rights of Women in Africa. Women's rights have been recognized and guaranteed in all international human rights instruments, notably the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and its Optional Protocol, the African Charter on the Rights and Welfare of the Child, and all other international and regional conventions and covenants relating to the rights of women as being inalienable, interdependent and indivisible human rights.

Women's rights and women in general play an essential role in the development of society and this was re-affirmed in the United Nations Plans of Action on the

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13 Article 45 of African Charter on the Rights and Welfare of the Child

Environment and Development in 1992; Human Rights in 1993; Population and Development in 1994 and on Social Development in 1995 and the United Nations Security Council's Resolution 1325 of 2000 which re-affirmed the role play by women in promoting peace and security.

The object of the Protocol on the Rights of Women in Africa is to implement the principle of promoting gender equality as enshrined in the Constitutive Act of the African Union as well as the New Partnership for Africa's Development, relevant Declarations, Resolutions and Decisions, which underline the commitment of the African states to ensure the full participation of African women as equal partners in Africa's development. This was also re-affirmed by Article 2 of the Protocol which enjoined all states parties to the Protocol to combat all forms of discrimination against women through appropriate legislative, institutional and other measures. The African Platform for Action, the Dakar Declaration of 1994 and the Beijing Platform for Action of 1995 call on all member states of the United Nations to give greater attention to the human rights of women in order to eliminate all forms of discrimination and of gender-based violence against women.

The crucial role women play in the preservation of African values based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy is further enshrined in Articles 3, 8, 9 and 10 of the Rights of Women in Africa. Article 11 listed a number of obligations upon which states parties will undertake to ensure respect for the rules of international humanitarian law applicable in armed conflict which affect women.

Another instrument for the promotion and protection of human rights in Africa is the adoption by the Assembly of Heads of State and Government of the OAU in 1969 of the Convention Governing the specific aspects of refugee problems in Africa which

came to force on the 20<sup>th</sup> June, 1974 to address refugee problems in Africa. Article

1 of the OAU Convention states that:

“the term ‘refugee’ shall also apply to every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his(or her) country of origin or nationality, is compelled to leave his (or her) place of habitual residence in order to seek refuge in another place outside his (or her) country of origin or nationality.”

Even the Internally Displaced Persons are covered under the Convention and therefore entitled to human rights protection as they are regarded as fugitives in their own country either due to religious or ethnic conflicts. Most of the factors responsible for refugee problems and internally displaced persons are civil strife and armed conflicts which have taken a heavy toll in African countries during the last few decades. Apart from the massive loss of lives, the region has witnessed the destruction of its physical, economic and social infrastructure, the collapse of civil societies, the break down of family units and the displacement of its people in unprecedented numbers.

<sup>112</sup> In 2003, Chad experienced two massive influxes of Sudanese refugees all numbering 200,000 as result of civil war in Sudan<sup>14</sup>. The United Nation High Commissioner for Refugee statistics also indicate that refugee situation in Eastern Chad is worse than that in the South, which numbered close to 40,000, which has made it gained more attention of the International Community.

The situation in Kenya is not better as 250,000 refugees were registered by the United Nation High Commissioner for Refugees. The result of frequent armed conflicts in neighbouring Somalia, Sudan and Ethiopia have compounded to the security problem in the Sub-Saharan region of Africa.

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14 Winfred S. Almanza Mshelia: Women and Crises of Refugees. New Nigerian Newspapers, 13 January, 2006, p.9

In Nigeria, apart from the refugees from other countries currently staying in the country, about 50,000 victims of ethnic and religious violence are scattered in various parts of the country, described as internally displaced persons.

Apart from these instruments that were made to promote and protect human rights in Africa, African Heads of State and Governments have adopted wide-ranged declarations which are linked to human rights promotion and protection. In this regard, the African Charter for Popular Participation in Development and the Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World, were adopted in 1990; in 1993 a declaration establishing the Mechanism for Conflict Prevention, Management and Resolution, was adopted in Cairo, Egypt to forge within the OAU a new institutional dynamism for the prevention, management and resolution of conflicts.

All these and other International Instruments are the bases of promoting and protecting human rights in Africa.

#### **4.3 INSTITUTIONAL MECHANISMS FOR HUMAN RIGHTS PROMOTION AND PROTECTION IN AFRICA: ANALYSIS OF HISTORICAL DEVELOPMENT AND MANDATE**

At an Extra-Ordinary Summit of the OAU held in Sirte, Libya on 9<sup>th</sup> September, 1999, members of the Organization called for the establishment of an African Union in conformity with the ultimate objectives of the OAU Charter and the provisions of the Treaty establishing the African Economic Community. Following this, the Constitutive Act of the African Union was adopted during the Lomé Summit of the OAU on 11 July 2000. In general, the African Union objectives are different and more comprehensive than those of the OAU because the founding fathers of the OAU and the ‘generations of Pan-Africanists’ focused their attention in promoting unity, solidarity, cohesion and co-

operation among the African peoples and their efforts in liberation struggle against apartheid. In order to meet the challenges facing the African continent, African leaders realized the need to streamline and rationalize the existing organizational framework and make the African Union relevant to the demands of the 21<sup>st</sup> century thereby achieving the ultimate goal of a complete African unity.

The Constitutive Act of the AU was expanded much more than the OAU to include radical policies that will reshape the continent and meet the diversity of the people much more successfully. In this regard, the Constitutive Act of the AU integrates political, economic and human rights priorities both in the Preamble and its substantive provisions. The need for a common vision of a united and strong Africa, to build a partnership between governments and all segments of civil society, particularly, women, youth and the private sector, in order to strengthen solidarity and cohesion among the peoples. The AU Act also acknowledged the scourge of conflicts in Africa, which constitutes a major impediment to the socio-economic development and the need to promote peace, security and stability, which are pre-requisite for the implementation of the development process and integration of Africa agenda. The AU leaders therefore pledged their determination to promote and protect human rights, consolidate democracy, culture and to ensure good governance.

The substantive provisions of the Act are also rich in the promotion and protection of human rights. The objectives and principles by which the OAU was transformed to AU are contained in Articles 3 and 4 of the AU Act. In promoting human rights, the AU leaders emphasized the <sup>113</sup>need to encourage international co-operation, taking due account of the Charter of the United Nations (UN) and the Universal Declaration of Human Rights, in promoting peace, security and stability in Africa.

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15 Article 5(d) of the AU Charter

Regrettably, though, the AU Act did not incorporate the regional human rights instruments instead, most of the human rights provisions are spread in various Articles of the Act and the only mention was the African Court of Justice,<sup>15</sup> as one of the Principal Organs of the AU. In promoting human rights, most of the efforts of the AU Leaders are leaned towards the African Charter on Human and Peoples' Rights, the Peace and Security Council, African Commission on Human and Peoples' Rights, African Charter on the Rights and Welfare of the Child, Charter on Human and Peoples' Rights on the Rights of Women in Africa. The New Partnership for African Development (NEPAD)<sup>16</sup> and the Conference on Security, Stability, Development and Co-operation in Africa (CSSDCA)<sup>17</sup> are all aimed at promoting human rights, democratic governance, rule of law, the creation of enabling environments for sustainable economic development and the attainment and maintenance of peace and security.

Significantly, most African States have ratified several other multilateral and global human rights instruments, such as the International Covenant on Civil and Political Rights; the International Covenant on<sup>14</sup>Economic, Social and Cultural Rights, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Forms of Discrimination Against Women; The International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child.<sup>18</sup>

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16 NEPAD is a New African Initiative, a holistic, comprehensive integrated strategic framework for the socio-economic development of Africa. It provide the vision for Africa, a statement of the problems facing the continent and programme of action to resolve the problems in order to reach the vision. Its primary objective is to eradicate poverty in Africa and place African countries both individually and collectively on the path of sustainable growth and development.

17 SSDCA will provide a framework for monitoring and evaluation and feedback report mechanism on the various policies, programmes and projects executed by the various organs of the Union, including those designed and implemented by NEPAD, through Peer Review Mechanism.

18 See Nsogurua J. Udombana (supra) p. 1190

The Charter of the United Nations, Chapter VII contained elaborate arrangement for the establishment of regional arrangements in the field of human rights to contribute to the settlement of local disputes. By Resolution 22000(XXI) of 19 December 1966, the General Assembly requested the United Nations Commission on Human Rights to study inter alia, the question <sup>115</sup>of the setting up of appropriate regional Institutions for the purpose of discharging certain functions relating to observance of the covenants. Consequently, the Commission on Human Rights by Resolution 6 (XXIII) of 1967 set up an ad hoc group to study the possibility of establishing regional human rights commission within the framework of the United Nations.<sup>19</sup>

In a series of resolutions between 1977 and 1979 the General Assembly appealed to states in areas where regional arrangements in the field of human rights do not yet exist, to consider agreements with a view to the establishment within their respective regions of suitable regional machinery for the promotion and protection of human rights. In July 1979 the 16<sup>th</sup> Ordinary Session of the OAU <sup>116</sup>Assembly of Heads of State and Government called on the OAU Secretary General to organize a meeting of highly qualified experts to prepare a preliminary draft of an African Charter on Human and Peoples' Rights and other bodies to promote and protect human and peoples' rights.<sup>20</sup> Following the Monrovia meeting of September 1979, the African Charter on Human and Peoples' Rights was adopted in June, 1981 and came into force in 1986.

There are various human rights institutions both at the International and Regional levels that are charged with the role of promoting and protecting human rights in Africa. These are; the United Nations' Commission for Human Rights, the African Commission

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19 Karel Vasak: The International Dimension of Human Rights, Vol. 2 (op. cit), pp.451-452

20. Ibid, p. 452

on Human Rights, the African Court of Justice/African Court on Human and Peoples' Rights, The Peace and Security Council of the African Union.

#### **4.3.1 Promoting and Protecting Human Rights in Africa through the United Nations Commission on Human Rights**

One of the purposes which prompted the establishment of the United Nations was the issue of promoting and protecting human rights, which eventually led to Universal Declaration of Human Rights (UDHR) in 1948. It therefore become obligations of members of the UN in promoting respect for and observance of human rights and they do this through Article 55 of the UN Convention on Human Rights, which was established by the Economic and Social Council (ECOSOC) under Article 68 of the UN Charter of 1946.

The Commission on Human Rights (CHR) is the body primarily responsible within the UN in dealing with human rights issues, including receiving of complaints from individuals and organizations alleging violations of human rights. <sup>117</sup>The Commission has received more than 280,000 communications and membership of the Commission is spread among the various UN political bloc.<sup>21</sup>

To give meaning to the protection of human rights, the Commission adopted different forms of strategies in its activities, such as standard-setting, promotional activities, monitoring and enforcement. In investigating allegations of human rights violations, the Commission often appoints Rapporteur in the form of a Special Rapporteur, a Special Representative, a working group, experts, or a special envoy charged with collecting and analyzing information on human rights violations in a particular country. These country rapporteurs subsequently prepare reports to the

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21 The composition of membership of the Commission are: African states – 15; Asian-Pacific states – 13; Latin-America-Caribbean states – 11; East European states – 5 and Western States – 10: Source, M.T. Ladan (supra), pp. 67-68

Commission on Human Rights or to the General Assembly of the UN (if requested).

Usually, the country under investigation will give the rapporteur access, however, there have been instances where access has been denied and rapporteurs have to force to rely on external sources of information such as individuals, groups, organizations and other human rights societies.

During military rule in Nigeria, especially in General Abacha era, African Watch (an International Human Rights Organization) intensified its activities on Nigeria. A mission was sent to Lagos for a week in late February of 1991 to meet with human rights groups, lawyers in human rights work, journalists, academicians and students. Information received from human rights groups were published in their Newsletter concerning prisons conditions in the country.<sup>22</sup>

<sup>118</sup> The purpose of such investigations is to identify and analyse particular issues or practices which contravenes human rights violations. Countries named as violators of human rights were subject of public discussions. This has led to the <sup>119</sup>United Nations taking measures in addressing such issues by imposing limited economic sanctions on the country concern.<sup>23</sup>

Today, the UN Commission on Human Rights has transformed human rights into a major item on the agenda of the international community and has broadened its legal scope and application forcing states to abandoning its domestic jurisdiction on issues of human rights and including the provisions of UN Charter on human rights in its national constitution.

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22 Ajegena, J.A. The Role of Human Rights Organizations in Enhancing the Application of Rule of Law in Nigeria. An LL.B Project submitted to the Faculty of Law, ABU, Zaria, 2000, p.28.

23 In Nigeria, Economic Sanctions were imposed on the country for killing Ken Saro Wiwa, 9 Ogoni Activists and the dictatorial rule of Gen. Sani Abacha. The UN also imposed sanctions in Liberia and Sierra Leone for the civil war in that region and recently the Sudan for human rights violations in the Darfur region.

The United Nations has given great attention to human rights development and protection and in this regard the Commission on Human Rights created several sub-committees working under its jurisdiction in the promotion of human rights.

The Sub-Commission on the Prevention of Discrimination and Protection of Minorities was established in 1947 as a subsidiary organ of the CHR to specifically undertake studies in the light of the Universal Declaration of Human Rights and to make recommendations to the CHR concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, religious and linguistic minorities.<sup>24</sup> To aid in its assignment, the Sub-commission established four different working groups in the performance of its task. These include the working group on communications which receive communications by the UN on the allegations of human rights violation with the purpose of bringing to the attention of the sub-commission of persistence violation of human rights. Other working group is that of slavery which study slave trade practices, force labour and prostitution. The working group on indigenous peoples<sup>120</sup> and minorities study development and problems relating to human rights. The working group on the Administration of Justice and Compensation, devotes its attention to the field of crime and effective remedies.<sup>25</sup>

Another Sub-Commission of the CHR is that of the Status of Women which was established in 1946 by Economic and Social Council (ECOSOC) charged with the responsibilities of promoting women's rights in political, economic, civil, social and educational fields. The Sub-Commission has representative spread to 45 UN member states, which are elected by ECOSOC for a four year term.

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24 See ECOSOC Res. 9(II) of 21 June, 1946

25 See generally M.T. Ladan (supra), p. 73.

The Sub-Commission of the Office of the High Commissioner for Human Rights was established after the World Conference on Human Rights held in Vienna in 1993 with the principal responsibility for the UN human rights activities under the direction and responsibility of the Secretary General. In discharging its responsibilities the High Commissioner operates within the framework of the overall competence, authority and decisions of the General Assembly, ECOSOC and the Commission of Human Rights. It has far reaching mandate in the field of human rights problem and to be actively engaged in efforts to prevent human rights violations around the world and in removing the current obstacles and in particular, meeting the challenges to the full realization of all human rights and in preventing their continues violations.

#### **4.3.2 Promoting Human Rights through the United Nations High Commission for Refugees**

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The World Conference on Human Rights<sup>26</sup> re-affirms that every one, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from prosecution, as well as the right to return to one's own country. In this respect it stresses the importance of the Universal Declaration of Human Rights, the 1951 Convention relating to the status of Refugees, its 1967 Protocol and regional instruments. It also expresses its appreciation to states that continue to admit and host large numbers of refugees in their territories.

One of the factors which the World Conference on Human Rights recognized as the cause of refugees problem is armed conflicts which led to the displacement of people. Various approaches are therefore needed by the international community and in accordance with the UN Charter and other international instrument to address the

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26 The World Conference on Human Rights was held in Vienna June, 1993

global crises of refugees' problem. It is therefore within the mandate of the United Nations High Commissioner for Refugee develop strategies to address the root causes and effects of movements of refugees and other displaced persons, the strengthening of emergency preparedness and response mechanisms, the provision of effective protection and assistance, bearing in mind the special need of women and children in armed conflicts.

In addressing the refugees' problem in the world, the General Assembly of the UN created the office of the High Commissioner for Refugees (UNHCR) in December, 1950 and it came into existence as of 1<sup>st</sup> January, 1951. Prior to the creation of UNHCR in 1950, there was the International Refugee Organization (IRO) which was created in 1947 as a specialized agency of the United Nations to deal comprehensively with every aspect of the refugee problem.

The UNHCR, acting under the authority of the General Assembly, provide international protection to refugees who fall within the scope of its statute and by seeking permanent solutions of refugees' problem. The work of the High Commissioner shall be of an entirely non-political in character and shall be in the <sup>122</sup>area of providing humanitarian and social assistance to all groups and categories of refugees, who, owing to "well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to return to it."<sup>27</sup>

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27 See Article 1A(2) of the 1951 Geneva Convention Relating to the Status of Refugees. This was a response to the plight of persons denied the protection of any government in the aftermath of the Second World War.

The High Commissioner shall provide for the protection of refugees falling under the competence of his office by:

- (a) Promoting the conclusion and ratification of International Conventions for the protection of refugees, supervising their application and proposing amendments thereto;
- (b) Promoting through special agencies with governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;
- (c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
- (d) Promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of states;
- (e) Endeavoring to obtain permission for refugees to transfer their assets and especially those necessary for their resettlement;
- (f) <sup>123</sup>Obtaining from governments information concerning the number and conditions for refugees in their territories and the laws and regulations concerning them.<sup>28</sup>

Today, the UNHCR affords assistance to persons other than the Convention refugee. The number of Convention refugees in the world is 14.5 million including 5 million returnees, 5.4 million internally displaced persons and 3.5 million civilians affected by conflict.<sup>29</sup> African country alone account for about 25% of the world refugees' problem. Such groups were considered to be refugee groups in the light of

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28 Rebecca Wallace: International Human Rights Text and Materials, Published by Sweet & Maxwell Ltd., 1997, p. 355.

29 Ibid, p. 358.

prevailing circumstances, which had precipitated their departure from the country of origin.

The large number of movement of refugee on the African continent during the 1960s and 1990s demanded an alternative to individual determination.

#### 4.3.3 Promoting Human Rights through the African Commission on Human and Peoples' Rights

**The African Commission on Human and Peoples' Rights is a Treaty Monitory Commission. It has promotional and quasi-judicial functions. Its promotional functions is very broad, these include power to undertake studies, convene conferences, initiate publication programme, disseminate information and collaborate with national and local institutions concerned with human and peoples' rights. The Commission's power also includes making its views known, making recommendation to governments and bringing to the attention of individual governments problem areas revealed by its studies.**

The quasi-judicial powers of the African Commission may be divided into two parts; interpretative powers and powers applicable to the resolution of disputes involving alleged action of human rights violations. The interpretative powers of the Commission are extensive; it has the jurisdiction to interpret all the provisions of the present Charter at the request of a state party, an institution of the A.U or African Organization recognized by A.U.

<sup>124</sup> In interpreting the provisions of the Charter and other provisions of Institutions or organization of the A.U, the Commission is empowered to draw inspiration<sup>30</sup> from International law on Human and Peoples' Rights of the UN, AU, the Universal Declaration of Human Rights, African Charter on Human and Peoples' Rights and other instruments adopted by the United Nations and by African countries in the fields of human rights. It does this by determining the principles of law, various other human rights agreements to which the member states of the A.U are parties,<sup>31</sup> together with 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 doctrines.<sup>32</sup>

Article 52 requires the Commission to prepare a report, stating its facts and findings within a reasonable period. This report is forwarded to the state concerned and Assembly of Heads of State and Government of the African Union.<sup>33</sup> What is "reasonable time" is not defined by the Charter. In transmitting its report to the

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30 See Article 60 of the African Commission on Human and Peoples' Rights.

31 Article 61 of the ACHPR

32 Ibid. p. 154

33 Ibid, p. 155

Assembly, the Charter<sup>34</sup> empowered the Commission to make its recommendations as it deems fit. Individual or Non-Governmental Organization (NGOs) are at liberty to submit communication to the Commission. However, certain conditions must be fulfilled before a communication is dealt with by the Commission. This include the recognition of standing for individuals is a mandatory provision of the Charter, others are the authorship, compatibility with the Charter of the OAU and the source of such information.

The Commission since its inception has conducted five missions to the following states parties to the Charter namely; Senegal and Mauritania in June, 1996, Sudan in December 1996 and Nigeria in March 1997.<sup>35</sup> Also countries where the Commission has conducted mission to were Togo, Zimbabwe, Mali, Lesotho and Botswana. Once the Commission had determined that a complaint is admissible and that it meets the requirements<sup>125</sup> established in Article 58(1) of the Charter, it must be referred by the Commission to the Assembly of Heads of State and Governments who decide whether to request the Commission to undertake an in-depth study and make a factual report, accompanied by its findings and recommendations.

#### 4.3.4 Promoting Human Rights through the African Court on Human and Peoples' Rights

The Constitutive Act of the AU provides for the establishment of a Court of Justice as one of its organs.<sup>36</sup> Meanwhile, in June 1998, at Ouagadougou, Burkina Faso, the then OAU Head of States adopted a Protocol to the Banjul Charter on the establishment of the African Human and Peoples' Rights Court. It entered into force in January 2004 following ratification by 15 States. As at now 19 AU member states have ratified the protocol.

Under the Protocol, the AU Assembly shall, among other things, decide on the seat of the Court and elect the judges in order to make the court operational. The proposed court will complement the protective mandate of the African Commission as conferred upon it by the Banjul Charter. Article 2 of the ACHPR stipulates that, "The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights hereinafter referred to as "the Commission."

Article 3 of the Court confers jurisdiction to it which extend to all cases and disputes submitted to it concerning the interpretation and<sup>126</sup> application of the Charter, the Protocol and any other relevant Human Rights instruments ratified by the States concerned. The Court shall also decide whether it has jurisdiction on such disputes or not. The Court will also provide legal opinion on any matter relating to the Charter or any other relevant human rights instruments at the request of a member state of the OAU, the OAU itself, any of its organs or any Africa organization recognized by the OAU, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.<sup>37</sup>

The Court is composed of eleven (11) judges,<sup>38</sup> who are nationals of member states of AU, elected in an individual capacity from among jurists of high moral character and of

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34 Article 53 of ACHPR

35 M.T. Ladan (supra) note 1, p. 81.

36 Article 5(d) AU Act

37 Article 4 of ACHPR

38 Article 11 of the Court

recognized practical, judicial or academic competence and experience in the field of human and peoples' rights. In nominating judges to the Court, due consideration shall be given to adequate gender representation.<sup>39</sup> Judges appointed to the court shall serve for a period of six (6) years and may be re-elected only once.<sup>40</sup> The Court may reach amicable settlement in a case pending before it in accordance with the provisions of the Charter.<sup>41</sup>

The following are entitled to submit cases to the Court.<sup>42</sup> They are:-

- (i) The Commission;
- (ii) The state party, which had lodged a complaint to the Commission;
- (iii) The state party against which the complaint has been lodged at the Commission;
- (iv) <sup>127</sup>The state party whose citizen is a victim of human rights violation;
- (v) African Inter-governmental Organizations; and
- (vi) When a state party has an interest in a case, it may submit a request to the court to be permitted to join.

The Court, in making its findings, discovered that there has been violation of human or peoples' rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.<sup>43</sup> In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.

The Court shall render its judgment within ninety (90) days of having completed its deliberations.<sup>44</sup> However, the Court is allowed to review its decision <sup>128</sup>where there is new evidence under conditions to be set out in the Rules of Procedure. The expenses of the Court, emoluments and allowances for judges and the budget of its registry, shall be determined and borne by the AU, in accordance with criteria laid down by the AU in consultation with the Court.<sup>45</sup>

In the enforcement of international human rights, international politics often come into play, especially where there is lack of enforcement mechanism. In preventing the helplessness of the international mechanisms for the enforcement of human rights violations have pushed the efforts to domestic plain where domestic system will echo and enforce human rights violations. The use of court remained the most popular strategy of human rights enforcement, where the judiciary plays a central role. While some states are not interested in the unhindered protection of human rights, the judiciary may be prevented from being effective in redressing abuses due to poor remuneration of judicial

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39 Article 12 of the Court

40 Article 15 of the Court

41 Article 9 of the Court

42 Article 5 of the Court

43 Article 27 of the Court

44 Article 28 of the Court

45 Article 33 of the Court

staff and types of facilities provided under which they operate. Another obstacle in the domestic jurisdiction in the enforcement of human rights is the restrictive interpretation of the *locus standi*, which has affected challenge of human rights violation.

Added to the above problems in addressing human rights violations is the lack of funding by member states of the Commission and the clear functions between African Commission on Peoples' and Human Rights and the African Court of Justice has created confusion amongst member states of AU. The confusion can be removed if there can be clear demarcation of functions of these two bodies. This will enable states that have not ratified the Protocol do so without delay.

#### 4.3.5 Promoting Human Rights through the Peace and Security Council of African Union

<sup>129</sup> The African Union leaders in their first Ordinary Session held in Durban, South Africa in July 2002, were much concern about the continued prevalence of armed conflicts in Africa and the fact that no single internal factor has contributed more to socio-economic decline on the continent and the suffering of the civilian population than the scourge of conflicts within the states. Therefore, in their resolve to change these negative trends, the Peace and Security Council (PSC) of the African Union was established primarily to promote peace, security and stability in Africa in order to guarantee the protection and preservation of life and property, the well-being of the Africa people and their environment, as well as the creation of conditions conducive to sustainable development.<sup>46</sup>

<sup>130</sup> Though linked to human rights, Article 3(f) of the PSC clearly outlined the objectives of the Council to include promoting and encouraging democratic practices and good governance, protecting and respect for the sanctity of human life and international humanitarian law as part of efforts for preventing conflicts. For there to be good governance, sustainable development, promoting and protection of human rights are necessary.

In promoting human rights, the Peace and Security Council shall seek close co-operation with the African Commission on Human and Peoples' <sup>131</sup>Rights in all matters relevant to its objectives and mandate. The Commission on Human and Peoples' Rights shall bring to the attention of the Peace and Security Council any information relevant to the objectives and mandate of the Council.<sup>47</sup> The Peace and Security Council shall encourage non-governmental organizations, community-based and other civil society organizations, particularly women's organizations, to participate actively in the efforts aimed at promoting peace, security and stability in Africa. When required, such organizations may be invited to address the Peace and Security Council.

There are civil society based organizations that have participated in the great historic movement, which had brought an end to the selfish management of the African society. Today, state agents cannot throw into jail citizens in an arbitrary manner without it provoking the immediate reactions of human rights organizations by demanding freedom of such victims.

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<sup>46</sup> Article 3(a) of the PSC of AU

<sup>47</sup> Article 19 of the PSC

**Civil Society Organizations in Africa have their own share of problems. Most of these organizations are young and depend heavily on external aids for their funding and the continue rivalry between them has slowed their activities. It is important that the Pan-African Parliament, which is one of the main organs of the Union should work closely with the Civil Society Organizations in order to bring speedy development and economic integration of the continent.**

#### **4.3.6 Promoting Human Rights Under the African Court of Justice**

<sup>132</sup>**The Court of Justice of the AU is established under the Constitutive Act of the Union as a Principal Organ<sup>48</sup> and its statute, composition and functions are defined in the Protocol of the Court of Justice of the A.U. While the AU Court of Justice has jurisdiction to resolve disputes between member states that have ratified the Court's Protocol, the African Court is empowered to hear cases challenging violations of the civil and political rights as well as economic, social and cultural rights guaranteed under the African Charter on Human and Peoples' Rights and other relevant human rights instruments.**

<sup>133</sup>**During its 2<sup>nd</sup> Ordinary Session in July 2003 in Maputo, the AU Assembly decided that the African Human Rights Court "shall remain a separate and distinct institution from the Court of Justice of the African Union." However, the Assembly at its 3<sup>rd</sup> Ordinary Session in July 2004 in Addis Ababa reversed this decision, when it decided that "the African Court on Human and Peoples' Rights and the Court of Justice should be integrated into one Court."<sup>49</sup> The Draft Protocol on the merger of the African Human Rights Court and the Court of Justice of the AU has been forwarded to the AU Executive Council for consideration and for subsequent approval by the AU Assembly. As of now, the Protocol of the African Court of Justice has not entered into force because only five (5) member states have ratified this Protocol, while a total of 15 ratifications are required.**

**The new Protocol of the African Court of Justice fails to clarify as to whether the African Human Rights Court will continue to possess its full mandate to provide an effective remedy in respect of violations of individuals human rights under the African Charter on Human and Peoples' Rights (African Charter) and might be used to further delay the establishment of the Court. According to the Protocol, "in the event of inconsistency relating to the Protocol of the African Human Rights Court and the Protocol of the AU Court of Justice, the latter shall take precedence." This provision might be interpreted in the future to restrict or undermine the authority and principles of the African Human Rights Court as well as the African Charter.**

**Moreover, the provision of the Draft Protocol to the effect that "a judge of the (African Human Rights Court) must possess the necessary practical, judicial or academic qualifications required in his or her country for appointment to the highest judicial offices or must be a jurist of recognized competence in the field of human rights" appears to make the requirement for judges to possess competence in the areas of human rights optional by the use of "or". It is feared that the Protocol appears to weaken rather than strengthen the**

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48 Article 5(d) of the AU Charter

49 See Amnesty International Public Statement of 28 January, 2005. Also available at <http://www.amnesty.org/>

independence of the African Human Rights Court by providing that “a recommendation of the Court to suspend or remove a judge shall take effect upon its endorsement by the AU Assembly.” Under the Protocol establishing the <sup>134</sup>African Human Rights Court, the Court would take such a decision, unless the AU Assembly disapproves.<sup>50</sup>

At a time when the human rights of individuals are under great pressure in the region, an independent and effective African Human Rights Court would be an essential mechanism to increase the protection of human rights regionally and nationally. African governments must live up to their commitments and not undermine, prejudice or further delay the establishment of an independent and effective African Human Rights Court. If the Draft Protocol is adopted in its present form without necessary consultations, there could be criticism that the process for the establishment of an African Human Rights Court lacks the appropriate appearance of transparency.

The decision of the African Commission on Human and Peoples’ Rights at its 36<sup>th</sup> Ordinary Session in November 2004 in Dakar to “mandate its Bureau to meet the Chairperson of the AU and the Chairperson of the Commission of the AU in order to draw their kind attention on the necessity to review the decision of the Assembly of Heads of State and Government of the AU on the merger of the African Court of Human and Peoples’ Rights and the African Court of Justice in light of the legal and practical implications of this merger on the effective establishment of the African Court on Human and Peoples’ Rights is welcomed. It is important that the AU assembly and the Executive Council review the Draft Protocol in order to ensure that the fundamental principles, which necessitated the adoption of the Protocol of the African Human Rights Court and the African Charter, are not undermined. Such a review should involve the full participation of Civil Society Organizations, including human rights non-governmental organizations. This consultation is essential for ensuring the establishment of a strong and

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50 Article 19 of ACHPR

**effective African Human Rights Court that is capable of holding states parties accountable to their obligations under the African Charter.**

**Member states that have not yet done so are urged to ratify without delay the Protocol establishing the African Human Rights Court. In addition, all AU member states, including those that have already ratified the protocol should make declarations endorsing the rights of individuals and NGOs to access the African Human Rights Court.**

#### **4.4 THE RELATIONSHIP BETWEEN HUMAN RIGHTS, PEACE AND SECURITY**

International human rights law provides a standard whereby the conduct of each state in regard to human rights can be judged objectively. Under democratic principles, individual had certain legal rights which his government must respect and these have fully been accepted as a body of domestic law and developed into constitutional enactment, by legislation, courts' decisions and administrative agencies for giving effect to these principles. There is no doubt that the principles of good governance, transparency and human rights are essential elements for building representative and stable governments and can contribute to conflict prevention.

**The Organization of African Unity (OAU) was created in 1963 as an instrument of law and order, to promote peace and to save succeeding generations from the scourge of war. The transformed organization to African Union (AU) therefore re-affirmed this position in Articles 3 and 4 to include the promotion and protection of human rights by prohibiting the use of force or threat to use force among member states of the Union in the settlement of disputes. The Constitutive Act of AU, therefore, became an instrument for the implementation of justice for the simple reason that unbearable injustice leads to revolt, conflict and internal war. Concerned by the fact that conflicts have forced millions of people, including women and children into a drifting life as refugees and internally displaced persons, deprived of their means of livelihood, human dignity and hope, the AU established the Peace and Security Council as a collective reaction against the state that aimed at altering the status quo by armed force.<sup>51</sup>**

**The Universal Declaration of Human Rights by the United Nations in 1948 was due to the conviction that people must accord their human rights and fundamental freedoms world wide if international peace, security and justice were to be achieved.<sup>135</sup>**

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51 See Article 7 of the PSC of AU that spelt out the powers of the PSC

52 Article 13 of the PSC

53 Article 3(3) of the PSC

54 Article 15 of the PSC

**The establishment of the Peace and Security Council of AU was aimed to impart positively on human rights, which is an important institution that will promote peace and security in the continent. The African standby force<sup>52</sup> of the PSC was created in order to participate in peace support missions where there is any crisis situation in the continent. To effectively perform their functions, they have a very wide mandate<sup>53</sup> which include humanitarian assistance to alleviate the suffering of civilian population in conflict areas and support efforts to address major natural disasters.<sup>54</sup> The PSC is also empowered to undertake peace building**

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process by assisting in the restoration of the rule of law, establishment and development of democratic institutions and the preparation, organization and supervision of elections in the concerned member state.<sup>55</sup> <sup>136</sup>

Human rights deal not only with civil and political rights but with social and economic rights as well. In the economic field, every one has the right to a standard of living adequate for the health and well-being of himself and of his family. To this end, the AU is determined to take up the challenges that confront the peoples of the continent and to accelerate the process of implementing the Treaty establishing the African Economic Community and promote the socio-economic development of the continent.

Since the establishment of AU, member states of the organization have realized that wars and conflicts negate the principles enshrined in the Charter of the Universal Declaration of Human Rights and therefore seeking for alternative solutions to wars and conflicts in settling disputes. For there to be durable peace, then promotion of human rights is essential.

<sup>137</sup>The establishment of African Court of Justice by the AU is an attempt to try those perpetrating crimes against humanity for human rights must prevail over human wrongs. International law must prevail over international crimes. Outmoded traditions of state sovereignty must not derail the forward movement towards punishing impunity, national power and privilege must take account of international needs. In any events, “crimes” against international law are committed by men, not abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.<sup>56</sup>

Presently, the Special Court established by the United Nations in Sierra Leone has indicted Charles Taylor with war crimes, crimes against humanity, and other serious violations of international humanitarian law for his role in contributing to the deaths, rape and mutilations of thousands of civilians during Sierra Leone’s civil war. The Court, on 7<sup>th</sup> March 2003, issued a warrant for his arrest and an order for his transfer and detention.<sup>57</sup> Taylor at all material times, provided financial support, military training including transport on his Presidential Plane arms, ammunition and other forms of encouragement to the Revolutionary United Front (RUF). <sup>138</sup>

In order to promote peaceful existence of the people all over the world, which is a pre-requisite for development, the UN Security Council has, in its numerous resolutions, expressly affirmed the need to bring to justice those who violate international humanitarian and human rights law<sup>58</sup> and the UN General Assembly has rejected the use of amnesty laws for serious violations of human rights.<sup>59</sup> The Special Court’s Statute itself provides that neither amnesty nor a suspect’s official capacity is a bar to prosecution in respect of war crimes committed during the Sierra Leonean conflict (Article 6(1). This

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55 Article 14 of the PSC

56 Benjamin Ferencz: The trial of Major War Criminals: Proceedings of International Military Tribunal sittings at Nuremberg, Germany (pt.22), 447(1950), see also AJIL, 172, 188(1947).

57 Prosecutor v. Charles G. Taylor (Warrant of Arrest and Order for Transfer and Detention) case No. SCSL 2003 01 1(7/3/2003)

58 See SC/Prest/1998/18 and SC/Prest/1999/6. This was also commented upon by Nsongurua J. Udombana at the Last NB Annual Conference held in Abuja, 22-27 Aug., 2004, p. 16.

59 GA/Res/44/162 and GA/Res/47/133, *ibid.*

follows precedents set by earlier international instruments, including the Nuremberg Principles of 1950, the Statutes establishing the Yugoslav and Rwandan Tribunals of 1992 and 1994 respectively, the Draft Code of Crimes Against the Peace and Security of Mankind of 1996 and the Rome Statute of the International Criminal Court (ICC) of 1998. Each of these instruments make it clear that head of state immunity is no longer a defence to prosecution for international crimes.

It is regrettably that Nigeria has granted asylum to Charles Taylor against international outcry that he be released to face justice for the crimes he committed while he was the President of Liberia. Nigeria has ratified many International Conventions and Treaties dealing with crimes against humanity, such as, the Geneva Convention which allow a state party to prosecute anyone within its jurisdiction, which Nigeria domesticated in 1960; Convention Against Torture and other cruel, Inhuman or Degrading Treatment of Punishment, which Nigeria ratified on 28 July 2001. Nigeria is also a state party to the ICC Statute of 17 July 1998 which she ratified in September 2001. As a member of the Management Committee of Sierra Leone Special Court, it has no justification shielding Taylor from justice.

The relationship between human rights, peace and security is so important that no sure foundation of lasting peace and security can be laid which does not rest on the voluntary association of free peoples. Only so far as the rights and dignity of all men are respected and protected, only so far as men have free access to information, assurance of free speech and free assembly, freedom from discrimination on grounds of race, sex, language, or religion and other fundamental rights and freedoms, will men insist upon the right to live in peace, to compose

such differences as they may have by peaceful methods, and to be guided by reason and good will rather than driven by prejudice and resentment.<sup>60</sup>

**Promoting human rights means promoting peace and security which is important for sustainable development and growth of African economy. One of the objectives of the A.U is to promote peace, security and stability in the continent through respect for human rights.**<sup>139</sup>

**The UN General Assembly resolution<sup>61</sup> condemning genocide is a further boost to human rights, peace and security because genocide is regarded as a denial of the right of existence of entire human groups, right to live as individual human being, which results in great loss of humanity in the form of cultural and other contributions represented by these groups.**

#### 4.5 ISSUES, PROBLEMS, CHALLENGES AND PROSPECTS IN HUMAN RIGHTS PROMOTION AND PROTECTION IN AFRICA AND ITS IMPACT ON PEACE AND SECURITY

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Since the coming into force of the Banjul Charter of African Human and Peoples' Rights, one expects that there will be more positive changes in the human rights records in the continent. The only slight change witnessed was in some African countries that practiced democracy than were under military rule. Nigeria offered a good example. During the period of Military rule in Nigeria and some other African countries, there were great concerns of human rights violation. Human rights record did not even fare better in some African countries that claimed to practice democracy, as there were attacks on political opponents,

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60 Report of the Chairman of US Delegations to the President of the UN General Assembly (1945), p. 110, cited in L.M. Goodrich, *the UN in a Changing World*. Columbia Press, N.Y. 1974, p. 163.

61 See the UN General Assembly Res. 96(1) of Dec. 11, 1946.

primarily carried out by thugs hired by rival candidates, serious human rights abuses by executions, systematic torture and unlawful arrests and detention with active support of state civilians.<sup>62</sup> The OAU acknowledged that a considerable amount of work must be done in the area of development to meet the level of its own expectations and the aspirations of the people.<sup>63</sup>

Throughout the 1990s to the period OAU was transformed to AU, there has been no great improvement on human rights prospects in the continent, making Kayode Eso of Nigeria to observed:

Abuse has changed to the worse....The picture of Rwanda, the old and defunct Mobutu Sese Seko's Zaire, the genocide of Tutsis by the Hutus, the surreptitious support by the Government of Zaire, the genocidal war, the death, the hunger, the mass movement of people in Central Africa, running from a wrath to come, but yet to certain death, the feud and fratricidal killings in Liberia and Sierre Leone..... the gun-totting soldiers who invaded democracy... and elsewhere.<sup>64</sup>

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The African Commission has been seized with complaints of torture, degrading and inhumane treatment, resulting to arbitrary deprivation of life contrary to Article 4 of Banjul Charter.<sup>65</sup>

Human rights activists are not spare from arbitrary detentions in many African countries.<sup>66</sup> Some human rights organizations were barred from functioning in their respective countries like Tunisia where the Ligue Tunisienne de Defense des Droits de l'Homee (LTDH), one of the oldest NGOs in Africa was banned by the government. The

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62 Available at <http://hrw.org/press/2002/07> – Human Rights Watch Report

63 See the Algiers Declaration of OAU.AHG/Dec.(XXXV) of July, 1999

64 This observation was reported by Nsogurua J. Udombana Article (supra), p. 1221.

65 See African Charter on Human and Peoples' Rights

66 Communication 225/98. Huri-Laws v. Nigeria (Nigerian Government harassment, persecution, arrest and detention without trial of human rights activists Olisa Agbakoba and Ogaga Ifowodo) contravened Banjul Charter.

story from Angola, Burkina Faso, Burundi, Nigeria, Cameroon, Central African Republic, Cote d'Ivoire, Sudan and Ethiopia indicate a pattern of growing intolerance on the <sup>142</sup>part of African governments towards human rights activists and continuing attempts to silence them. Human rights do not just fall like manna from heaven they are worth fighting and dying for.

**The major problems and challenges facing the African Union in the promotion and protection of human rights are lack of financial resources, mismanagement of states resources and issue of debt overhang; wars and conflicts, refugees' problem, dictatorial regimes, threat of hunger and lack of health facilities.**

<sup>143</sup>**OAU in the past was not in a position to finance these institutions due to its bleak financial situation to attract better condition of service for qualified technocrats to work in these institutions.<sup>67</sup> The lack of commitment of African rulers to the development of states as result of political and economic mismanagement has manifested itself over the years which result to their failure to adequately finance these institutions, particularly human rights institutions.**

**At the moment, the African Commission on Human and Peoples Rights is suffering from chronic financial incapacities, even though it is the responsibility of member states of AU to fund it. Article 23 of the AU Act stipulates that the Assembly shall determine the appropriate sanctions to be imposed on any member state that defaults in the payment of its contributions to the budget of the Union.**

<sup>144</sup>**Apart from the few assistance the Commission has received so far from the member states of AU it still depend largely for financial support from other international organizations such as, the Danish Center for Human Rights, the Swiss Directorate of Co-operation for Development and Humanitarian Aid, the Government of Netherlands, the Irish Government, the Friedrich Naumann Foundation and the International Commission of Jurists.<sup>68</sup>**

**Commenting on the budgetary constraints of the Commission, a commentator observed:**

**This has forced members of the Commission to give up the idea of organizing promotional activities, such as seminars, visits, and the like in states parties. Financial matters and survival strategies have taken up substantial spaces at the Commissions bi-annual sessions, instead**

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67 Nsogurua J. Udombana (supra), p. 1250.

68 Ibid. p. 1251

69 Ibid, note 68

**of the Commission using those limited periods to deliberate on important aspects of its mandate.<sup>69</sup>**

**Since its establishment the Commission is yet to establish its permanent headquarters and is still operating in a rented flat in the Gambia. The foundation stone for the permanent headquarters was only laid on October 24, 2001, twenty years after the adoption of the Banjul Charter. Though the government of Gambia is funding a larger proportion of the cost of the headquarters it might take some years to complete unless AU collaborates towards its completion.**

**Other institutions of the AU are suffering from similar neglect due to financial crunches of the AU. The OAU in the past has not been able to operate a modest budget of \$40 million, even though its average annual <sup>145</sup>budget was put at \$31 million.<sup>70</sup> More than half of the members' dues are in arrears and are not showing signs of redeeming their image. The increasing arrears of contributions by member states of the AU had seriously undermined the capacity of the Secretariat carry out approved programmes and activities of the Union. At the eve of launching of the AU the continental body was owing a whopping sum of \$54.33 million by 45 out of the 53 member countries with Nigeria, Egypt, Algeria, Ghana topping the list of defaulters in payment of their arrears.**

<sup>146</sup> **During the transformation of OAU to AU which was spearheaded by the Libyan Leader, Muammar Al-Gadafi, he donated US\$1m to the OAU to transform the organization to AU apart from payment of \$4.5 million arrears of seven member states of the OAU.<sup>71</sup> The financial situation of the OAU was so bad that during the transformation of the organization to AU member states authorized the Secretary General to “undertake studies” and identify alternative modalities of funding the activities and programmes of the African Union.**

The failure of African states to meet their financial obligations to the AU is due to variety of reasons, the obvious ones being corruption and mismanagement of resources by the leaders. African leaders have built political structures that are more of economic extractions with no tradition of accountability to the governed. Most of the social services in some part of African countries that are prone to conflicts are virtually in the state of collapse, for example, health, education, good drinking water, environmental degradation and agriculture. In the health sector alone, AIDS/HIV, malaria, tuberculosis

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70 See Jakkie Cilliers. Commentary Towards the African Union. African Security Rev. (2001). Also available at <http://www.jss.co.2a/pubs/ABR/10 No.2>

71 Pan-African News Agency, 7 Sept., 1999 reported that these countries were: Comoros, Guinea-Bissau, Equatorial Guinea, Liberia, Niger, Sao Tome and Principe and Seychelles.

or any of the other infectious diseases are plaguing Africa that require urgent attention for basic health care, safe drinking water and sanitation.

Many dictators in the continent have arisen because the populace had become uninterested and indifferent in fighting for their rights but instead allowed to be used and bought over by the dictators. The international debt situation compels African states to concentrate on the servicing or repayment of these debts at the expense of vital social services such as education and health. The standard of living, therefore, deteriorates while unemployment is on the increase.

Another serious challenge is wars and conflict that has posed great threat to lives and properties. Instead of using the scarce resources build political and economic structures that will bring economic growth and development to the continent, such resources are being diverted to prosecute wars and conflicts. The result is that people are forced to abandon their homes to become refugees in other neighbouring countries. Today, the impact and threat of HIV/AIDS is becoming apparent to the African society and is threatening to rob the continent of its most precious resources – the youth. The total number of Africans living today with this disease is believed to be around 25 million.<sup>72</sup> For Africa to witness growth it must promote human rights, democracy and sustainable development. Even though the G8 countries and other International Financial Institutions have recently granted debt relief to the continent, there are still, more efforts that need to be done by African leaders to push the continent forward.

**What the AU needs to do at the moment is to trim down its existing institutions so as to finance them effectively and efficiently instead of creating new ones to add to those that are already moribund. The existing institutions, including human rights institutions are**

already in danger of total collapse. Professor E.V.O. Dankwa, the former Chairman of the African Commission on Human Rights commented thus:<sup>147</sup>

**Africa is in danger of not being taken seriously. If we cannot support a vital body like the African Commission on Human and Peoples Rights established 14 years ago, how will we be able to create and maintain the many bodies envisaged under the Union? This dismissive attitude will be strengthened by serious breaches of the Banjul Charter.<sup>73</sup>**

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**The greatest challenge facing policy makers in Africa today is that of identifying the pre-requisites for durable peace and development. Various strategies had in the past been adopted to deal with these problems, the fundamental ones being the eradication of poverty and improving the living conditions of the African**

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72 UN Secretary General, Kofi Annan's Address to the OAU Summit in Lusaka, 9 July, 2001. Also available at <http://www.un.org/News/Press/docs/2001/sgsm7884.doc.htm>.

73 E.V.O. Dankwa. Former Chairman of ACHPR presenting his annual report to the 14 Annual Activity of the Commission, 2000-2001 to the 37<sup>th</sup> Ordinary Session of the Assembly of Heads of State and Government of OAU.

people but were poorly implemented. Most of these strategies include Structural Adjustment and Economic Recovery Programmes that were largely dictated by Western Institutions but not able to lift the living standard of the people in the continent significantly from abject poverty. With what is happening around the globe, African countries must be determined to rise up to these challenges and turn round the declining fortunes of the continent and create wealth that will be equitably distributed amongst its people. The days are gone when policies and programmes were forced down on African governments for implementation, in most cases without due cognizance of some peculiarities of our situation.

The agricultural sector, the mainstay of African economy has been abandoned because of incessant conflicts. People have fled their homes, becoming refugees in other lands, which have created problems to African governments with their little resources being used to take care for these refugees. The resultant effects are that other social sectors that could have been developed are abandoned because of the over-stretched of the budgetary allocation leaving African countries to be heavily indebted and to depend largely on aids from international communities. The money borrowed are either diverted or embezzled by those entrusted with the money, leaving the people in misery.

<sup>149</sup> Through the various organs of the AU decisions on policies are being formulated and implemented in other to boost agricultural production, water resources and irrigation, environmental protection, humanitarian action and disaster response and relief.<sup>74</sup> To boost African economy and other social sectors, various specialized committees were established within the framework of the AU.<sup>75</sup> These include:

- (i) Committee on Rural Economy and Agricultural Matters;
- (ii) Committee on Monetary and Financial Affairs;
- (iii) Committee on Trade, Customs and Immigration Matters;
- (iv) Committee on Industry, Science and Technology, Energy, Natural Resources and Environment;
- (v) Committee on Transport, Communication and Tourism;
- (vi) Committee on Health, Labour and Social Affairs; and
- (vii) Committee on Education, Culture and Human Resources.

What African governments need to do further is to promote good health and reproductive rights of women in the continent by implementing Article 14 of the African Charter on Human and Peoples' Rights on the Rights of Women. All the Financial Institutions established under Article 19 of the AU Charter are yet to take off. These are institutions that are vital in social engineering of the African economy through provision of funds for funding of developmental projects.

<sup>150</sup>The best way of promoting and protecting human rights is, indeed, to achieve social justice by adopting necessary and reasonable measures with courage, wisdom, foresight, sense of balance and fair play to all interests concerned.<sup>76</sup> If civil and political rights are to make any meaning or sense to the suffering masses, their claims of social and economic justice like good governance which will alleviate poverty, provide security, maintaining accountability, efficient public sector management, a strong participatory civil society, prison reforms, women's rights and environmental rights must be treated as paramount and primary.<sup>77</sup> There is new attachment of conditionalities to aid programmes by International Financial Institutions, aid polices are tied to good governance, democratization process, human rights performance and addressing issue of corruption that will increase social welfare and justice. It is not sufficient for African Union providing for these rights without ensuring that they are protected.

The International Partnership against AIDS in Africa in conjunction with United Nations and non-governmental organization are bringing African government together in other to build a formidable framework for action. At one of the OAU Summits recently held in Abuja, African countries pledged to increase the share of their budgets devoted to health, especially, the fight against AIDS/HIV.

In addition to enumerating a wide range of traditional civil, political, economic, social and cultural rights, the Constitutive Act of the AU places strong emphasis on collective rights such as: the right of peoples to self-determination, the right to development, the right to national and international peace and security and the right to a generally satisfactory environment favourable to their development.

Significantly, most African States have ratified several other multilateral and global human rights instruments, such as the International Covenant on Civil and Political Rights; the International Covenant on<sup>151</sup> Economic, Social and Cultural Rights, Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Elimination of All Forms of Discrimination Against Women; The International Convention on the

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75 Article 14(1)(a)-(g) of the AU Act.

76 A. Ayua: Strategies for Human Rights Promotion and Protection for Effective Discharge of Government's Human Rights Obligations. In Essays in Honour of Just. M.L. Uwais, 2001. In M.T. Ladan (ed.), ABU Press Ltd., Zaria, p. 131, see note 3.

77 Ibid.

Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child.<sup>78</sup>

**Despite these laudable objectives taken by the African leaders in their quest to promote human rights in the continent, African states still relish and cherish the use of torture as instruments of state policy. From Liberia to Sierra Leone, Guinea to Sudan and many other African states, complain of torture persist. These violent crimes or ethnic cleansing could not have taken place in large scale without direct support by local elite and neighbouring African countries.**

**African leaders confirmed their determination in the Constitutive Act of the AU “to take all necessary measures to strengthen their common institutions and provide them with the necessary powers and resources to enable them discharge their respective mandates effectively.” With this declaration, Africans are ready to depart from the ways of the past, which plunged the former continental body – OAU. However, if African leaders must reject the ways of the past, they must commit themselves to building of structures and institutions that are not only African in name but those that will withstand the task of the 21<sup>st</sup> century.**

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## CHAPTER FIVE

### SUMMARY, RECOMMENDATIONS AND CONCLUSION

#### SUMMARY

The most extreme break down of governance in Africa is war. Africa has experienced more violent conflicts than any continent of the world in the last four decades. The most effective way to tackle conflict is to build the capacity of African states and societies to prevent and manage conflict. That means using aid better to the management of government incomes from natural resources and international agreements on how to control the 'conflict resources' which fuel hostilities. In this respect, African regional organization and the UN can help prevent and resolve conflict when tensions cannot be managed at the national level, through effective early warning, mediation and peacekeeping.

The international community recognizes the importance of international cooperation in support of Africa development. In this respect, the pressure is on African leaders to initiate progressive political attitudes and institutional frameworks that will move the continent in an appreciable progress with the rest of the world. In this regard, decentralization of political process where every segment of the African society will participate is necessary.

In the area of development in Africa today, the picture is mixed. Human Development Report shows that 26 of the 40 countries with the lowest rankings on the human poverty index are in Sub-Saharan Africa. The continent loses most of its highly qualified doctors, engineers and other professionals to the Western World due to lack of viable employment opportunities and in some cases due to political instability. Before the granting of debt relief to some African countries,

debts overhang for the continent represent a disappointing figure of 124% of the aggregate gross national outputs across the continent. While efforts are made to service these debts to avoid sanctions, millions of school age children miss the opportunity to go to school due to inadequate investment in infrastructure and personnel in the sector.

Political crises and armed conflicts in many parts of the continent exacerbated the poor social and economic conditions of the people. In the Sub-Saharan and West African Sub-regions where conflicts are prevalent, a large number of the people have fled their homes and become refugees in other countries, abandoning their agricultural production, which is the main stay of African economy.

In the health sector, the story is alarming. In the continent today, the HIV/AIDS and other deadly diseases have killed more than 1.5 million of the citizens both adult and children. The machinery of government in the health sector is lacking to tackle these deadly diseases.

The transformation of the Organization of African Unity (OAU) to African Union (AU) is a laudable effort that must be supported in order to build the necessary bridge between all the Africans and the continent-wide objectives. A union that has no common objective and norms of behaviour will not assist in the political and social transformation that is required to respond to the pressing needs of the people. In order to break from the past and put the continent on a course towards long-term growth, peace and development, there is the need for the African Union streamlined some of its institutions so as to make them more viable and properly funded in order to assist the continent meet with the global challenges that confront us.

The Millennium Development Declaration provides an opportunity and framework to build international solidarity and mobilize support to address our concerns. It also confirms the global community's readiness to build partnership between developed and developing nations. It emphasized international co-operation for the prevention of conflict, the establishment of conditions of stability and democracy as well as for the key challenges of eradicating poverty and diseases. The global community is committed to enhance resource flows to Africa, by improving aid, trade and debt relationships between Africa and the rest of the world.

Government structures and processes in most African countries posed obstacles to good governance and the maintenance of stability because political power are concentrated in the presidency and as such, most are autocratic. These autocratic authorities become tyrants and have the ambition of amassing wealth at the expense of the masses. Political leadership can catalyze good governance and contribute to stability.

The Universal Declaration of Human Rights and associated covenants guaranteed a range of individual rights which states have an obligation to protect. The International Covenants on Civil and Political Rights (ICCPR), for example, imposes on states the obligation to ensure the equal rights of men and women to enjoy all civil and political rights. The African Charter on Human and Peoples' Rights emphasizes the obligation of African states to ensure respect for the dignity of the human person, equality before the law and equal protection under the law. These and other treaties and covenants have not always and uniformly been observed by African States. In some cases, human rights abuses are products of calculated state policy, and in a few extreme cases, leaders control

private armies or police, prisons and torture chambers. Human rights abuses thus become a source of protection against injustice, oppression of the weak and minorities and against the tyranny of the majority.

The African leaders have taken a bold step by transforming OAU to AU with greater determination and with expand mandate. The new AU is people-centred, it encourages people participation and has special focus on gender issue. The principle of non-intervention has been reversed to allow members' states intervene in other members' states affairs.

The Harare Declaration on the unconstitutional changes of government is another indication of Africa's readiness to address the question of instability, which has been a great impediment to all development efforts. The AU has manifested this effort by restoring the constituted elected governments in Togo, Guinea, Sierra Leone and other parts of Africa countries that were affected by unconstitutional change of government. The successful conduct of election in Liberia where a woman was elected President all learnt credit to A.U efforts.

The AU was at the forefront in appealing to the International Financial Institutions for the cancellation of African debts and demanding an end to global social and economic processes in Africa that perpetuate poverty.

## **RECOMMENDATIONS**

There is a need for expansive human rights education campaigns in African societies in order to raise the level of awareness of such rights. It must be accompanied by strengthening human rights advocacy and in this respect, human rights defenders and advocates must be protected. There is the need for African Commission on Human Rights to work in close collaboration with the United

Nations' High Commission on Human Rights and other relevant entities to ensure the establishment and strengthening of local and national networks to enhance human rights education and advocacy.

The low visibility of the African Commission on Human and Peoples' Rights and the slow pace in establishing the African Court on Human and Peoples' Rights are of concern to civil societies and the international communities. There is need to initiate a comprehensive assessment of the African Commission on Human and Peoples' Rights with a view to ensuring that it is strengthened in the implementation of its mandate.

In order to promote peace and security in Africa, there is the need to allow multiparty systems in the Africa countries to operate in order to allow for tolerance and consensus-building in a participatory political culture. This will reduce autocracy and chaos.

The Conference on Security, Stability, Development, Cooperation in Africa (CSSDCA), the New Partnership for African Development (NEPAD) and the African Union (AU) have provided both the framework and the platform required for the overall development of Africa. However, a number of issues need further attention. For example, the involvement of NEPAD with several activities has made some aspect of its programme to acquire a reputation of duplicating existing mechanisms. NEPAD is basically a socio-economic Recovery Plan for Africa and should be treated as the continent's equivalent of the post second world war Marshal Plan for Europe. Its involvement in peace, security, democratic governance and Peer Review will over shadow and bug down the overall objectives of promoting accelerated economic transformation of Africa. There are

other institutions within the A.U that are better structured to effectively manage such processes.

The A.U as a matter of urgency should establish the African Standby Force envisaged in Article 13 of the Peace and Security Council of the African Union which will participate in peace support missions decided by the Peace and Security Council or intervention authorized by the Assembly of African Union and should also organize regularly peace conferences and seminars of experts in the continent to look into the causes of conflicts and other problems in the continent.

## **CONCLUSION**

It is worthy to note that women's political participation in Africa is increasing. Women members of parliament account for 12.8% of the total number of member of parliaments is in Africa and are taking strong interest in the politics of their respective country such as South Africa, Mozambique, Namibia, Nigeria, Uganda and in Liberia, a woman has been elected President of the country, the first ever in Africa.

The aim of the Union in addressing the issue of peace and security in the continent is admirable, however, it is in the implementation of the goals and objectives of the Act that the system must be known and seen to be active, constructive and unyielding. The mere change of nomenclature – from OAU to AU is not enough. Mere change is not enough growth. Growth is the synthesis of change and continuity in the culture of respect of human rights, reduction in poverty level, address problems of leadership and power struggle in Africa, health and security. Similarly, the access to basic needs such as food security, electricity, water, roads, education will send a message to Africans that the

continent is indeed changing. The 'wind of change' is blowing across Africa, even though change will come, it will be gradual and steady.

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