The African system on human and peoples’ rights: Some strategies for reforming its economic, social and cultural rights norms

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THE AFRICAN SYSTEM ON HUMAN AND PEOPLES’ RIGHTS: SOME STRATEGIES FOR REFORMING ITS ECONOMIC, SOCIAL AND CULTURAL RIGHTS NORMS

MORRIS KIWINDA MBONDENYI

ABSTRACT

This article examines the content and substance of the economic, social and cultural rights norms of the African system on human and peoples’ rights with a view to recommending the possible strategies for their reform. Its central thesis is, the economic, social and cultural rights normative framework of the African system is rather weak and therefore needs to be reformed. Towards this end, the article analyses the provisions of the African Charter, Women’s Protocol and Children’s Charter on this category of rights. Thereafter, it explores the weaknesses of the Charter’s provisions and proposes some strategies for their reform.

INTRODUCTION


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2 See the Constitutive Act of the African Union (hereafter the “CAAU”) adopted by the 36th ordinary session of the Assembly of Heads of State and Government, 11 July 2000, Lomé, Togo. Art 3(h) of the CAAU stipulates that the union aims at, among other things, “promoting and protecting human and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights and other relevant human rights instruments.”
norms informing the regional human rights system. These are the African Convention on the Conservation of Nature and Natural Resources and the Bamako Convention on the Ban of the Import into Africa and the Control of Trans-boundary Movement and Management of Hazardous Wastes within Africa.

The African Charter remains the main normative instrument of the system. The Charter is on record as the first major attempt by African leaders to establish regional mechanisms for the implementation of the human rights of Africans. Notewort hy, however, despite the international acclaim that heralded its adoption, the demand for its reform began barely within five years of its existence. Indeed, it is difficult to deny that the density and originality of this document very often goes hand in hand with its equally remarkable technical poverty displayed by, among other things, the imprecise formulation of some of its rights. It has been argued that the Charter’s provisions are as weak as they are because the instrument was birthed in very difficult circumstances and as such, it represents the best that could possibly be achieved at that time. According to ‘the father of the Charter’, Keba M’baye:

The Charter constitutes the actual result which could be attained at the time of its adoption, bearing in mind the great disparity characterising the political and economic situation of Africa. Powerful internal currents simmered away beneath the surface and the Charter bears the stigma of these Animist, Islamic, traditional and Christian currents, to name only some of them. The Charter gathered all these seeds to its breast and created a product which is a result of their cross-fertilisation.

Now that the instrument is in force, it is incumbent upon all stakeholders and role-players to implement it fully. Certainly, the Charter can be improved upon, as it undeniably possesses the crucial tenets of a legal instrument that is capable of protecting human rights. Its improvement, however, calls for innovative methods, such as the promulgation of additional protocols and treaties, amending, or creatively interpreting its inadequate or ‘flawed’ provisions.

The adoption of the Children’s Charter and Women’s Protocol should be hailed as a positive step towards the right direction as far as strengthening of the Charter and the regional human rights system is concerned. Indeed, their promulgation is a living testimony that the Charter, after all, was not intended to be a static instrument. The purpose of this article is therefore to review the economic, social and cultural rights norms of the African Charter, Children’s Charter and Women’s Protocol, in the light of their

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13 Onguergouz The African Charter on Human and Peoples’ Rights, above at note 11 at 797.
strengths, weaknesses and possible strategies for reforming them in order to strengthen the African human rights system. The article commences with a systematic review of the rights under each instrument then proceeds to analyse their shortcomings. Before its conclusion, it proposes some possible strategies for reforming this category of rights under the African human rights system.

A REVIEW OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS NORMS OF THE AFRICAN CHARTER, CHILDREN’S CHARTER AND WOMEN’S PROTOCOL

The African Charter

The African Charter consists of 68 Articles, divided into four chapters, namely, Human and Peoples’ Rights; Duties; Procedure of the Commission; and Applicable Principles. It envisages all the three generations of rights: civil and political rights; economic, social, and cultural rights; and group (peoples’) rights. Two issues must be pointed out with regard to economic, social and cultural rights. The first issue relates to the Charter’s approach to this category of rights and the second, their enforceability under the African human rights system. The Charter’s approach to economic, social and cultural rights is a marked departure from that of other regional human rights systems because it puts this category of rights at par with civil and political rights. Its preamble categorically states that:

…Civil and political rights cannot be disassociated from economic, social and cultural rights in their conception as well as universality and … the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights.14

This partly explains why its drafters deliberately encapsulated all the three generations of human rights in a single instrument, an approach that is different from that of the European and Inter-American human rights systems. The European Convention, which is the main instrument under the European human rights system, does not contain economic, social and cultural rights. Instead, these rights are entrenched in the European Social Charter (ESC)15 and the Organisation for Security and Cooperation in Europe (OSCE).16 In the Americas, the American Declaration of Rights and Duties of Man17 contains elaborate provisions on economic, social and cultural rights which were, however, not recaptured in the American Convention. In 1988, the General Assembly of the Organisation of American States (OAS) eventually adopted a Protocol on Economic, Social and Cultural Rights (the San Salvador Protocol) which reduced into a treaty economic, social and cultural rights recognized under the Inter-American human rights system.18

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17 Res. XXX, 9th International Conference of American States, Bogota, Columbia, 30 March to 2 May 1948, Final Act at 38.
To some authors, the African Charter’s approach purports to give economic, social and cultural rights priority over civil and political rights. Gittleman, for example, fears that giving priority to this category of rights would “undoubtedly grant a state greater latitude to restrict or violate civil and political rights”. 19 This fear, however, reflects the prevalent misunderstanding and suspicion of the nature of economic, social and cultural rights and their place in the human rights paradigm. It must be understood, apart from some isolated controversies over their conceptualisation, there is a degree of consensus that human rights are universal, inalienable, and inherent to every human being in every society. 20 Moreover, all rights are interdependent notwithstanding the fact that different measures may be required to implement them. 21 Arguably, by associating these two categories of human rights, the drafters of the Charter intended to emphasize the importance of economic, social and cultural rights in the human rights discourse. This may be primarily due to the secondary status accorded to this category of rights.

The second issue on the Charter’s economic, social and cultural rights provisions concerns their disputed enforceability. 22 It may be said that the intention of incorporating this genre of rights in the Charter was to give effect to the International Covenant on Economic, Social and Cultural Rights (ICESCR) at the regional level. 23 The Charter’s approach, however, differs from that of the Covenant in that it avoids the use of the incremental language (‘progressive realisation’) and therefore appears to prefer their ‘immediate’ enforcement. It is on this basis that the justiceability of this category of rights is disputed, the main argument being, their enforcement would require vast resources that a majority of African states may not be in a position to afford. This view is, however, blind to the fact that it is impossible to implement all socio-economic rights immediately even when resources are readily available.

The ICESCR attests to this fact by requiring states to “take steps to the maximum of [their] available resources, with a view to progressively achieving the full realisation of the rights …”. 24 Although the UN Committee on Economic, Social and Cultural Rights maintains that some of the obligations are of immediate effect, this does not necessarily mean that states are compelled to do the impracticable. 25 The above argument also ignores the fact that even some civil and political rights require vast resources to enforce, yet they are justiceable. The right to life, for example, imposes an obligation on the state to provide security to its citizens. Nevertheless, although it is impracticable to provide every citizen with a police officer at his or her guard, this right is still enforceable. 26

One would therefore agree with Ankumah that economic, social and cultural rights are enforceable under the Charter, but there is the need for their progressive realisation, taking into consideration the

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20 On this consensus, see the See Vienna Declaration and programme of Action, paras 1 &5.
21 Ibid.
23 Adopted and opened for signature, accession and ratification by General Assembly resolution 2200 A (XXI) of 16 December 1966; entered into force 3 January 1976, in accordance with Article 27.
24 Id at art 2(1).
26 Ibid.
circumstances faced by the states parties.\textsuperscript{27} The position of the African Commission on Human and Peoples’ Rights (hereafter the ‘African Commission’ or ‘Commission’) that the Charter requires immediate implementation of the rights it contains in spite of the difficulty posed by “the present hostile economic circumstances"\textsuperscript{28}, could therefore be misleading. At best, it depicts the Charter as overly ambitious and unrealistic, and at worst, it presents challenges to the implementation of economic, social and cultural rights by states parties.\textsuperscript{29} This brings us to the analysis of the economic, social and cultural rights norms of the Charter.

Article 15 of the Charter guarantees the right to equitable and satisfactory work conditions by categorically stating, “Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.” To some commentators, this provision necessitates the adoption of programmes and other measures to create job opportunities for every person.\textsuperscript{30} This reasoning is misleading because, given the adverse economic situation of most African states, the Charter does not definitely purport to guarantee the right to work \textit{simpliciter}.\textsuperscript{31} Faced with the scarcity of industries and a limited wage system, a majority of Africans either are jobless, or are at best, peasant farmers and petty traders.\textsuperscript{32}

Rather, this provision encourages states parties to adopt measures and programmes that would ensure a favourable working environment. One would think in terms of measures such as fair and equitable wages; the right to promotion where appropriate; the right to follow one’s vocation and to change employment; reasonable working hours; right to paid vacation (leisure and rest); safe working conditions; and non-discrimination of individuals in their place of work.\textsuperscript{33} The enjoyment of this right also precludes sexual harassment at the workplace, a vice that could easily render working conditions un-equitable and unsatisfactory. It is noteworthy, the Charter, unlike Article 7 of both the International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{34} and ICESCR, does not expressly guarantee the right to rest, leisure, limited working hours and paid holidays. Some authors opine that a broad interpretation of the phrase “equitable and satisfactory conditions” would encompass all these aspects.\textsuperscript{35}

The African Commission found a violation of Article 15, among other provisions, in \textit{Annette Pagnoulle (on behalf of Abdoulaye Mazou) v. Cameroon}.\textsuperscript{36} The victim was sentenced to 5 years imprisonment and upon his release on amnesty, the government of Cameroon refused to reinstate him in his position as a magistrate. According to an Amnesty law of 23 April 1992, civil servants who had been

\textsuperscript{27} See Ankumah \textit{The African Commission on Human and Peoples’ Rights}, above at note 10 at 144.

\textsuperscript{28} African Commission on Human and Peoples’ Rights “Presentation of the Third Annual Activity Report by the then Chairman of the Commission, Professor U O Umozurike to the 26\textsuperscript{th} Session of the Assembly of Head of States and Government of the Organization of African Unity, 9-11 July 1990”, \textit{Third Annual Activity Report of the African Commission on Human and Peoples’ Rights} at 201.

\textsuperscript{29} C Odinkalu “Implementing economic, social and cultural rights under the African Charter on Human and Peoples’ Rights” above at note 18 at 196.

\textsuperscript{30} Ankumah \textit{The African Commission on Human and Peoples’ Rights}, above at note 10 at 144.


\textsuperscript{32} Ibid.

\textsuperscript{33} See in this regard, the ICESCR and the European Social Charter, which clearly define the parameters of this right.


\textsuperscript{35} Nmehielle \textit{The African human rights system}, above at note 22 at 125.

granted amnesty in circumstances similar to those of the victim were to be reinstated. The Commission held that by not reinstating Mr. Mazou, the government was in violation of Article 15 because it had prevented him from working as a magistrate while others condemned in similar circumstances were reinstated.\textsuperscript{37} In another decision alleging violations of the Charter by Angola, the Commission called into “question a whole series of rights recognized and guaranteed in the Charter, such as the right […] to work.”\textsuperscript{38} The Commission, however, failed short of concluding that Angola was in violation of Article 15 as alleged by the victims.

Article 16 of the Charter guarantees everyone the enjoyment of the best attainable state of physical and mental health.\textsuperscript{39} As a typical reflection of Article 12 of the ICESCR, the provision contains a statement of the right in its first paragraph and the undertaking by the state in its second paragraph. While this is true of the structure, the same could not possibly be said of the content, since the provisions of the Charter are imprecise on the measures that states parties ought to undertake to guarantee this right. Article 12(2) of the Covenant assigns states the obligation to undertake measures that would ensure the reduction of stillbirth rates and infant mortality. The Covenant also guarantees the right to social security and the right to satisfactory living conditions.\textsuperscript{40} In the absence of such clarity in the Charter, one would presume that the measures contemplated in Article 16(2) include the elimination of epidemics; availing health services to the people through construction of adequate medical facilities; promulgation of appropriate health policies; and provision of free vaccinations, drugs and other healthcare services.\textsuperscript{41} The right should also be taken to preclude the denial of emergency medical treatment to indigent persons.

The African Commission has found the violation of the right to health in at least four occasions. In \textit{Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interafricaine des Droits de l'Homme, Les Temoins de Jehovah v. Zaire}\textsuperscript{42}, it observed that the failure of the government of Zaire to provide the complainants with basic services such as safe drinking water and electricity constituted a violation of this right. It also held that the shortage of medicine was a breach of the duty to protect the health of the people under Article 16 of the Charter.\textsuperscript{43} While it was innovative to link the provision of basic services to the right to health, the Commission’s interpretation in this case was somewhat overbroad. This is because not all basic services can be linked to health.\textsuperscript{44} The Commission’s reasoning would have made more sense had it substantiated the extent to which Zaire’s failure to provide basic services was tantamount

\textsuperscript{37} Id at 56.
\textsuperscript{39} Art 16(1) & (2).
\textsuperscript{40} See Arts 9 and 11 of the ICESCR.
\textsuperscript{41} Umozurike \textit{The African Charter on Human and Peoples’ Rights}, above at note 31 at 65.
\textsuperscript{43} Id at para 47.
\textsuperscript{44} Nmechielle \textit{The African human rights system}, above at note 22 at 127.
to a violation of this right. In another communication where a detainee was denied access to doctors and medical assistance, the Commission held, inter alia:

The responsibility of the government is heightened in cases where the individual is in its custody and therefore someone whose integrity and wellbeing is completely dependent on the activities of the authorities. To deny a detainee access to doctors while his health is deteriorating is a violation of Article 16.

In two other communications, the Commission, in more or less a similar approach to the one above, found a violation of the right to health.

Article 17 of the Charter guarantees the right to education. However, the Charter is silent on the scope and content of this right, thus depriving it the significance and weight it has been offered by other international human rights instruments. The European system, for example, treats this right as a civil and political right, making it more forceful in terms of the obligation imposed on states to enforce it. In the Inter-American system, it qualifies as one of the rights that are subject to the individual complaint procedure under Article 44 of the American Convention. The ICESCR dedicates a number of its provisions to the guaranteeing of this right, thus providing a more detailed approach than the Charter. The deficiency of the Charter is exposed by the overt failure to incorporate fundamental guarantees such as the right to choice of education, which allows parents to decide the kind of education they consider appropriate for their children. The right to choice of education corresponds with the right of parents to have their children educated in conformity with their own religious, cultural, moral and philosophical convictions. In fact, Article 17(2) & (3) appears to suggest that education is pivotal in facilitating the promotion of cultures, morals and traditions of communities.

The African Commission emphasized the importance of the right to education in *Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interafricaine des Droits de l’Homme, Les Temoins de Jehovah v. Zaire*, when it stated that the closure of universities and secondary schools, as

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46 Id at para 88.
48 The Article provides “1. Every individual shall have the right to education. 2. Every individual may freely take part in the cultural life of his community. 3. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the state.”
49 See art 2, First Protocol to the European Convention.
50 Under the ICESCR regime, primary education is free and compulsory to all (art 13(2)(a)), parents have the freedom to choose the education of their children (art 13(3)) and intellectual property is protected (art 15(1)(c)). The Covenant also guarantees the freedom to establish private educational institutions (art 13(4)) and freedom of scientific research and creative activity (art 15(3)).
51 Nmehielle *The African human rights system*, above at note 22 at 130.
52 Ibid.
alleged in the communication, constituted a violation of Article 17. The Commission has also taken the
initiative to strengthen the provisions of Article 17 by defining the scope of the right to education in its
guidelines for state reporting. The guidelines indicate that this right contemplates the guarantee of
primary education, secondary education, post-secondary education, fundamental education, the right to
choice of schools and the principle of free and compulsory education for all.

In order to ensure the effective realization of the right to education, the state must consider all
reasonable educational alternatives. This means that possibilities should be explored to educate people in
the language of their choice, rather than the foreign languages that were bequeathed by the colonial
legacies. Education must also be practicable, equitable and non-discriminative. Therefore, whereas the right
to education gives individuals the freedom to establish and maintain independent educational institutions,
the same should not be used to discriminate people on racial, social status, political or religious grounds.
Such institutions should also not propagate standards that are inferior to those of their counterparts in the
public sector.

Article 18 of the Charter seeks to protect the family, children, women, the aged and the disabled.
Specifically, Article 18(1) & (2) identifies the family as the custodian of the moral and traditional values
recognized by the community, and thereby assigns the state the duty to ensure its physical and moral health.
Like Article 10(1) of the ICESCR, these provisions are not precise on the nature of the state’s duty to the
family. This notwithstanding, the scope of this right may include the guarantee to marry, found a family,
and maintain a family. It may also include the right not to get married without one’s consent and the right
to equality in marriage. In all likelihood, the rationale for incorporating this provision in the Charter was
to ensure the peaceful existence of the family.

In UIDH, FIDH, RADDHO, ONDH and AMDH v. Angola, the African Commission stressed the
significance attached to the protection of the family under the African human rights system, when it
observed that

This type of deportation calls into question a whole series of rights recognized and guaranteed in
the Charter … and results in the violation by the state of its obligations under Article 18, paragraph 1,
which stipulates that ‘the family shall be the natural unit and basis of society. It shall be protected by the state which shall take care of its physical and moral health’. By deporting the victims, thus separating some of them from their families, the Defendant state has violated and violates the letter of this text.

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54 See Old Guidelines for National Periodic Reports, section II (B) (42)—(59).
55 See this observation also in Ouguergouz The African Charter on Human and Peoples’ Rights, above at note 11 at 192.
56 Nmehielle The African human rights system, above at note 22 at 132.
58 Ibid.
Other than promoting its physical and moral health, the Charter does not specify ways in which the state could assist the family. It will be simplistic for a state to casually create a legislative framework then claim to have promoted family rights. For this right to be adequately protected and promoted, states must also strive to create social conditions that would enable families to flourish. For instance, they could initiate special training programmes for families to help create a stable social environment.

Other than guaranteeing family rights, Article 18 also extends protection to women and children. Accordingly, states are required to ensure the elimination of every form of discrimination against women and to ensure the protection of their rights as stipulated in international declarations and conventions. This provision has attracted mixed reactions, especially because it purports to identify women’s rights within the context of family and children’s rights. One view is that Article 18(3) consigns women’s rights to a “legal comma”. The provision has also been said to protect women in the context of the family and that outside this arena they do not have much protection. Moreover, it has been dismissed for failing to address numerous issues that tend to suppress women, among others, female genital mutilation (FGM) and forced marriages.

In spite of these observations, some of which are true, it is now clear that the intention of the drafters of the Charter was not to suppress women’s rights in Africa. This argument is vindicated by the adoption of the Women’s Protocol. The Protocol, whose provisions are discussed elsewhere below, is comprehensive enough to address some of the concerns raised by the critics of Article 18(3) of the Charter. The second part of Article 18(3) guarantees the protection of the rights of child. Children are usually vulnerable and need special support in order to fully enjoy their rights. They need family care and protection from abuse, neglect, forced labour, forced marriages, detention, among other concerns. The inadequacy of the African Charter in addressing Children’s rights may have necessitated the adoption of the Children’s Charter.

With regard to the rights of the aged and disabled, Article 18(4) stipulates that this category of persons shall have the right to special measures of protection in keeping with their physical or moral conditions. Like many other rights in the Charter, the rights of the aged and disabled have not received deserved attention from the African Commission. It is hoped that the protection of this class of people will go beyond providing suitable facilities, food and specialized medical care, to providing them with opportunities to engage in productive activities, commensurate with their abilities and consistent with their vocations or desires.

States should ensure that disabled and old persons have access to public amenities such as buildings and other social infrastructure. This is essential because, most public offices are not designed to

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62 Ibid.
63 Nmehielle The African human rights system, above at note 22 at 137.
facilitate easy access by the disabled, especially those on wheel chairs. Public lavatories and streets in most African towns and cities do not have rumps which may ease the movement of such people. Due to such impediments, disabled and old people are unreasonably restrained from enjoying their rights as guaranteed in the Charter. Particularly, their freedom of movement and association is violated, as they cannot interact freely with other members of the society. The African Commission could explore strategies to facilitate the enjoyment of all the rights contained in the Charter by this category of persons, without necessarily waiting for communications.

The Children’s Charter

The Children’s Charter was the first regional treaty for the promotion and protection of the rights of children. It is divided into a substantive part containing a catalogue of rights and duties64 and a procedural part providing for the establishment and organisation of the Committee on the Rights and Welfare of the Child.65 It guarantees a number of civil, political, economic, social and cultural rights. Like the African Charter, the Children’s Charter does not seem to give civil and political rights pre-eminence over economic, social and cultural rights. Rather, it dispenses with the traditional approach of ‘progressive realisation’ of socio-economic rights and requires their ‘immediate implementation.’ A number of its provisions attest to this fact. For instance, under Article 11(3), the Children’s Charter requires states parties to “take all appropriate measures with a view to achieving the full realisation” of the right to education. Similarly, states parties undertake to pursue “the full implementation” of the right to health and health services entrenched in Article 14 of the Charter. Article 30(1) requires states parties to “…undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law.” Thus, a cursory glance of these provisions would make one to conclude that socio-economic rights under the Children’s Charter are of immediate implementation.

Due to its ‘equal treatment’ of all categories of human rights, the Children’s Charter has been hailed as “the most progressive of the treaties on the rights of the child”,66 This is certainly because the United Nations Convention on the Rights of the Child (UNCRC) clearly distinguishes between socio-economic rights and civil and political rights in terms of their mode of enforcement. Under its Article 4, the Convention provides that “…with regard to economic, social and cultural rights, states parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation …. [emphasis supplied]. This therefore means that the UNCRC does not require the ‘immediate implementation’ of this category of rights since the obligation of states parties is subject to ‘the maximum extent of their available resources’.

Most of the economic, social and cultural rights norms of the Children’s Charter are similar in content and substance to those of the African Charter, although they specifically relate to children.

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64 See the Children’s Charter at part 1.
65 Id at part 2.
Specifically, the Children’s Charter guarantees the right to education; leisure, recreation and cultural activities; health and health services; parental care; and family. It also guarantees protection from harmful social and cultural practices. On the right to education, the Children’s Charter is categorical that education of the child shall be directed to:

(a) the promotion and development of the child’s personality, talents and mental and physical abilities to their fullest potential;
(b) fostering respect for human rights and fundamental freedoms with particular reference to those set out in the provisions of various African instruments on human and peoples’ rights and international human rights declarations and conventions;
(c) the preservation and strengthening of positive African morals, traditional values and cultures;
(d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples’ ethnic, tribal and religious groups;
(e) the preservation of national independence and territorial integrity;
(f) the promotion and achievements of African unity and solidarity;
(g) the development of respect for the environment and natural resources;
(h) the promotion of the child’s understanding of primary health care.

The full realisation of this right requires states parties to take appropriate measures to provide free and compulsory basic education; encourage the development of secondary education in its different forms and to progressively make it free and accessible to all; and to make higher education accessible to all. In the same light, they are expected to undertake measures that would encourage regular attendance at schools and the reduction of drop-out rates; take special measures in respect of female, gifted and disadvantaged children, to ensure equal access to education for all sections of the community.

Unlike the African Charter, the Children’s Charter grants parents and legal guardians the right to choose their children’s schools, which would ensure “the religious and moral education of the child in a manner with the evolving capacities of the child.” The Children’s Charter appears to suggest that the right to education includes “schools’ or parental discipline.” In this regard, Article 11(5) stipulates that:

States parties to the present Charter shall take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

In other words, within the context of the Charter, a child’s right to education does not preclude schools’ or parental discipline. Parental discipline was an integral component of education in many traditional African societies and the Children’s Charter seems to underscore this fact. It is rather strange that this component of

67 Art 11(2)(a)-(h)
68 Art 11(3).
69 Ibid.
70 Art 11(4).
the right to education is now being ignored in many countries. There is an emerging trend where schools’ or parental discipline is being outlawed in some countries. Accordingly, neither parents nor school teachers are allowed to chastise children or undertake any other form of disciplinary measure that may be appropriate to the child’s upbringing. This is not in line with African cultural values, whose tenets have influenced the content of the Charter. Indiscipline in schools, especially among teenage children, is a growing concern in the contemporary African society and states can only ignore it to their own peril.

The Charter also safeguards the girl-child’s right to education by ensuring that she is not expelled from school in the event she falls pregnant. Towards this end, states parties are required to put in place appropriate measures to ensure that girls who become pregnant before completing their education have an opportunity to continue with their education based on their individual ability. While the Charter has laid a good foundation on the right to education, it is now incumbent on states parties to ensure the realisation of all the components of this right. States should, for example, provide incentives to encourage school entrance; regular school attendance and school retention; the purchase of uniforms and schoolbooks, at least for children from poor families; transportation; school meals; payments for extracurricular activities; and the responsibility for building and maintaining schools.

The Children’s Charter also guarantees the right to leisure, recreation and cultural activities. This envisages a child’s right to rest, engage in play and recreational activities appropriate to his or her age, and to participate freely in cultural life and the arts. It is the duty of the state to respect and promote the child’s right to participate in cultural and artistic life. This may be through the provision of equal opportunities for cultural, artistic, recreational and leisure activity. Some countries have annual cultural events and music festivals where schools compete and the best performers awarded. Such activities should be encouraged in order to promote the realisation of this and other related rights.

Article 14 of the Charter guarantees the right to health and health services. Accordingly, every child has the right to enjoy the best attainable state of physical, mental and spiritual health. For this right to be realized, certain measure must be taken:

(a) to reduce infant and child mortality rate;
(b) to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
(c) to ensure the provision of adequate nutrition and safe drinking water;
(d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology;
(e) to ensure appropriate health care for expectant and nursing mothers;
(f) to develop preventive health care and family life education and provision of service;

71 Art 11(6).
73 Art 12(1).
74 Art 12(2).
75 Art 14(1).
76 Art 14(2)(a)-(j).
(g) to integrate basic health service programmes in national development plans;
(h) to ensure that all sectors of the society, in particular, parents, children, community leaders and community workers are informed and supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of domestic and other accidents;
(i) to ensure the meaningful participation of non-governmental organisations, local communities and the beneficiary population in the planning and management of a basic service programme for children;
(j) to support through technical and financial means, the mobilisation of local community resources in the development of primary health care for children.

To ensure that a child grows in an appropriate social setting, the Children’s Charter dedicates a number of provisions to the protection and recognition of family relationships.\(^{77}\) It is within this context that parental care, protection and responsibility are promoted and protected. Article 18(1), which recognizes the family as the natural unit and basis of society, entrusts the state with the protection and support of the family. Hence, the state is obliged to facilitate the establishment and development of the family. States parties are also encouraged to take appropriate steps to ensure equality of rights and responsibilities of spouses with regard to children during marriage and in the event of its dissolution.\(^{78}\) There is the need for legislation to protect children during the subsistence and dissolution of marriages. Such legislation should cater for issues such as child maintenance.\(^{79}\)

It is the intention of the Charter that, whenever possible, every child should reside with his or her parents. However, where separation is unavoidable, it has to be determined by a judicial authority in accordance with the appropriate laws and with due consideration of the best interests of the child.\(^{80}\) Even then, such a child has the right to maintain personal relations and direct contact with both parents on a regular basis.\(^{81}\) Where separation results from the action of a state party, the concerned state ought to inform the child of the whereabouts of the member(s) of his or her family.\(^{82}\)

Concerning the upbringing and development of the child, the Children’s Charter entrusts such responsibilities to parents and ‘other responsible persons’.\(^{83}\) This is essential because parents are important channels through which social and cultural values could be transmitted to the next generation. Parental responsibility is an important human rights concept in the sense that, while it imposes certain duties on parents, it confers certain rights and freedoms on children. The duties include to ensure that the best interests of the child are their basic concern at all times; to secure, within their abilities and financial capacities, conditions of living necessary to the child’s development; and to ensure that domestic discipline

\(^{77}\) See generally Arts 18, 19, 20, 24 & 25.
\(^{78}\) Art 18(2).
\(^{79}\) Art 18(3).
\(^{80}\) Art 19(1).
\(^{81}\) Art 19(2).
\(^{82}\) Art 19(3).
\(^{83}\) Art 20(1).
is administered with humanity and in a manner consistent with the inherent dignity of the child. From the children’s perspective, these duties translate to rights that promote their growth and development.

In acknowledging the relevance and significance of parental responsibility, the Charter requires states parties to assist parents and other persons responsible for the child by providing material assistance and support programmes particularly on nutrition, health, education, clothing and housing. Additionally, states are to assist in child rearing and ensure the development of institutions responsible for providing care to children, and to provide the children of working parents with care services and facilities.

Article 21 of the Charter guarantees children protection against harmful social and cultural practices. Accordingly:

1. States parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
   (a) those customs and practices prejudicial to the health or life of the child; and
   (b) those customs and practices discriminatory to the child on the grounds of sex or other status.
2. Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years and make registration of all marriages in an official registry compulsory.

The term ‘culture’ refers to “customs and beliefs, art, way of life and social organization of a particular society or group” and “beliefs and attitudes about something that people in a particular group or organization share.” According to Article 21, therefore, harmful cultural practices are those that would ordinarily affect the welfare, dignity, normal growth and development of the child. Whereas the concept of ‘growth’ connotes the physical aspects of a child, ‘development’ is a holistic concept referring to the physical, mental, spiritual, psychological and social advancement, aimed at preparing the child for an adult lifestyle.

Generally, African traditional cultural values underscore respect for human dignity. Children are therefore a valuable component of society, entitled to special protection. Whereas this is the general rule in as far as ideals are concerned, there are several exceptions when it comes to reality. It cannot be gainsaid that there are some African cultural practices which militate against the protection of children’s rights. A frequently cited example of such practices is female circumcision, otherwise known as ‘Female Genital Mutilation’ (FGM). It is rather unfortunate that most of the harmful cultural practices are gender-biased,
some of which include female excision, bride burning, female infanticide, sex slavery and servile marriage. These mundane practices are usually discriminative both in their application and in effect.

It has been argued, and correctly so, that some of these practices are too deeply entrenched to be eradicated by a simple legislative process. The situation is even worse in countries where customary law co-exists with statutory law. In countries like Swaziland, for example, civil and criminal courts have the mandate to apply customary law, an approach that may have negative effects on children’s rights. There is the need therefore for a re-evaluation, reformulation and replacement of some of the African cultural values that have a negative impact on children. However, this process must be done in a manner which is neither culturally offensive nor results in the loss of African cultural integrity. Towards this end, states could, for example, undertake extensive educational and training programmes that would sensitize people on human rights generally and children’s rights in particular.

**The Women’s Protocol**

Women’s rights are an integral component of the African human rights system. As already stated, the African Charter was the first normative instrument under the system to provide for the protection and promotion of the rights of women in Africa. The Charter, however, attracted mixed reactions from scholars and women’s rights activists, a majority of them stressing its inadequacy in protecting the rights of women on the continent. Following this disquiet, the Women’s Protocol was promulgated, becoming the first regional human rights treaty to specifically and comprehensively provide for the protection and promotion of women’s rights.

Other than the inadequacy of the Charter’s norms on the rights of women, the promulgation of the Women’s Protocol was motivated by many factors. First, it was borne out of the fact that women’s rights are recognized and guaranteed in several international human rights instruments. Most notable of these instruments are the Universal Declaration of Human Rights (UDHR), ICCPR, ICESCR and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol.

Further, the Protocol’s adoption was in recognition of the fact that women’s rights and the essential role of women in development have been reaffirmed in many United Nations plans of action, including that on Environment and Development (1992), on Human Rights (1993), on Population and Development (1994) and on Social Development (1995). African states did not therefore want to be left

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93 J Sloth-Nielsen & B Mezmur “Surveying the research landscape to promote children’s legal rights in an African context”, above at note 72 at 348.
95 Women’s Protocol at preamble para 5.
out of these global trends touching on women and their rights. Moreover, events within the African Union (AU) circles also inspired the promulgation of the Protocol. For instance, the Constitutive Act of the African Union (hereafter ‘CAAU’ or ‘the Act’) and the New Partnership for Africa’s Development (NEPAD) document embody the promotion of gender equality in their principles. In order to underscore the commitment of African states to ensuring the full participation of African women as equal partners in Africa’s development, it was therefore necessary to reinforce their rights.

Lastly, the promulgation of the Protocol was motivated by the need to recognize the crucial role of women in the preservation of African values, based on the principles of equality, peace, freedom, dignity, justice, solidarity and democracy. Despite the ratification of the African Charter and other international human rights instruments by a majority of African states, African women have continued to be victims of all forms of discrimination and harmful practices. This necessitates not only the condemnation, but also the elimination of any practice that hinders or endangers the normal growth and development of women and girls.

Generally, the Protocol guarantees the promotion and protection of several economic, social and cultural rights, including the right to marriage, education and training, economic and social welfare, health and reproduction, food security, adequate housing, positive cultural context, healthy and sustainable environment and the right to sustainable development. Article 6 guarantees certain marriage-related rights with a view to ensuring equality in marriage between men and women. It provides for the full and free consent of both parties to a marriage, the minimum age of marriage for women, encouragement of monogamous marriages, protection of women in polygamous marriages, matrimonial property and nationality. Additionally, Article 7 guarantees protection to women in the event of separation, divorce and annulment of marriages.

It is rather ironical that, whereas the Women’s Protocol purports to guarantee equality in marriage, it is non-committal on the prohibition of polygamy. Instead, it requires states parties to enact appropriate legislation to guarantee that “monogamy is encouraged as the preferred form of marriage and that the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected.” Clearly, the Protocol departs from the position adopted by the UN Human Rights Committee (HRC), according to which, “equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle … violates the dignity of women … is an inadmissible discrimination against women … [and] should be definitely abolished wherever it continues to exist.” The CEDAW Committee has also maintained:

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100 Para 8.
101 Para 10.
102 Para 12.
103 Para 13.
104 See art 6(a)-(j).
105 Art 6(c).
Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited. The Committee notes with concern that some states parties, whose constitutions guarantee equal rights, permit polygamous marriage in accordance with personal or customary law. This violates the constitutional rights of women, and breaches the provisions of Article 5(a) of the Convention.\textsuperscript{107}

Article 6(c) of the Women’s Protocol cannot therefore be easily reconciled with the principle of non-discrimination and equality between men and women under Article 2.\textsuperscript{108} The drafters ought to have been aware that the encouragement of monogamy does not necessarily mean the prohibition of polygamy. It will equally be gullible for one to attribute the imprecision of this provision to poor drafting because it goes on to urge states to ensure that, “… the rights of women in marriage and family, including in polygamous marital relationships are promoted and protected.” Visibly, the drafters wanted to retain the institution of polygamy, an age-long practice that is prevalent across the continent. Hence, polygamy seems to be permissible under the African human rights system, but only on condition that it does not sabotage the marriage relationship.

The Women’s Protocol also guarantees the right to education and training, of course, within the context of equality and non-discrimination. In this regard, states are to take all appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training.\textsuperscript{109} They are also to eliminate all stereotypes in textbooks, syllabuses and the media, that perpetuate such discrimination.\textsuperscript{110} Gender stereotyping has taken a central stage in depicting women or the girl-child as inferior, while their male counterparts as superior. School textbooks and other educational materials have all along conveyed the impression that certain ‘noble’ professions and careers are a preserve for men. This has played a significant role in entrenching gender-based discrimination and inequality.

The right to education and training also includes the protection of women, especially the girl-child, from all forms of abuse, including sexual harassment in schools and other educational institutions.\textsuperscript{111} Sexual harassment in schools has been one of the major hurdles to equality between boys and girls. In many instances, girls succumb to pressure from their schoolteachers, who at times demand for ‘sexual-favours’ in exchange of good grades. Those who resist such advances are usually ‘punished’ with poor grades, while those who comply sometimes fall pregnant and are expelled from school. Despite the attendant trauma, women and girls who suffer abuses and sexual harassment rarely have access to counselling, rehabilitation services or any other form of redress.


\textsuperscript{108} M Banderin “Recent developments in the African regional human rights system” above at note 94 at 121.

\textsuperscript{109} Art 12(1)(a).

\textsuperscript{110} Art 12(1)(b).

\textsuperscript{111} Art 12(1)(c).
On economic and social welfare rights, the Protocol obliges states parties to adopt and enforce legislative and other measures to guarantee women equal opportunities in work and career advancement. Such measures include the promotion of equality of access to employment;\(^\text{112}\) promotion of the right to equal remuneration for jobs of equal value for women and men;\(^\text{113}\) and ensuring transparency in recruitment, promotion and dismissal of women from the workplace.\(^\text{114}\) While the Protocol guarantees women the right to choose their occupation, it also affords them diverse forms of protection.\(^\text{115}\) The protection relates to the prohibition of exploitation by employers,\(^\text{116}\) social insurance for women working in the informal sector,\(^\text{117}\) introduction of minimum working age,\(^\text{118}\) and adequate and paid pre and post-natal maternity leave in both the private and public sectors.\(^\text{119}\)

On health and reproductive rights of women, states are to promote and protect, among other things, the right to control their fertility;\(^\text{120}\) the right to decide whether to have children, the number of children and the spacing of children;\(^\text{121}\) and the right to choose any method of contraception.\(^\text{122}\) Women also have the right to be protected against sexually transmitted infections, including HIV/AIDS.\(^\text{123}\) Reproductive rights of women also entail the authorisation of medical abortion in cases of sexual assault, rape, incest, as well as where the pregnancy endangers the mental, physical health and life of the mother or the foetus.\(^\text{124}\)

Women also have the right to food security, which encompasses access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food.\(^\text{125}\) They also have the right to adequate housing and to acceptable living conditions in a healthy environment.\(^\text{126}\) The parameters of this right under the Protocol are closely related to those of the right to a healthy and sustainable environment\(^\text{127}\) and the right to sustainable development.\(^\text{128}\) As already emphasized, although the contents of these rights resonate those of similar provisions under the African Charter, the Protocol intends that they be construed from a feminist perspective.

\(^{112}\) Art 13(a).
\(^{113}\) Art 13(b).
\(^{114}\) Art 13(c).
\(^{115}\) For a catalogue of these protections, see generally, Art 13(d)–(m).
\(^{116}\) Art 13(d).
\(^{117}\) Art 13(f).
\(^{118}\) Art 13(g).
\(^{119}\) Art 13(i).
\(^{120}\) Art 14(1)(a).
\(^{121}\) Art 14(1)(b).
\(^{122}\) Art 14(1)(c).
\(^{123}\) Art 14(1)(d).
\(^{124}\) Art 14(2)(c).
\(^{125}\) Art 15(a).
\(^{126}\) Art 16.
\(^{127}\) Art 18.
\(^{128}\) Art 19.
DEFICIENCIES AND POSSIBLE STRATEGIES FOR REFORMS

The African human rights system has largely been criticized as being ineffective, hence causing doubt on its potential to improve the continent’s poor human rights record. Indeed, the preceding discussion has revealed that the system’s economic, social and cultural rights normative framework is weak in many respects. It is within this context that this part discusses the normative deficiencies of the system and proposes the possible strategies for their reform. Since the African Charter is the main substantive instrument under the system, the discussion shall be limited to its economic, social and cultural rights provisions. As stated above, most of the provisions of the Children’s Charter and Women’s Protocol resonate those of the Charter, only that they have been ‘contextualized’ to guarantee the promotion and protection of the rights of children and women.

With this in mind, it is important to point out that the African Charter does not measure up to international standards in its guarantee of certain economic, social and cultural rights. For example, whereas its Article 15 guarantees the right to equitable and satisfactory work conditions, it does not expressly guarantee the right to rest, leisure, limited working hours and paid holidays in the same manner as Articles 7 of both the ICCPR and ICESCR. This right also goes hand-in-hand with other rights, such as the right of workers to go on strike, which have not been included in the Charter.

Further, Article 16 of the Charter, which guarantees the enjoyment of the best attainable state of physical and mental health, is not instructive on the minimum requirements that states should fulfil in order to safeguard this right. The right to health demands more than just receiving medical attention when one is sick. It includes the right to health care services, reproductive health care and the guarantee of emergency medical treatment, which is usually denied in many African states.

The Charter is also shallow in its guarantee of the right to education. As stated earlier, this right embodies a number of essential components, such as access to primary education, secondary education, higher (tertiary) education, and the right to choice of schools. One cannot understand whether the Charter also guarantees individuals the right to establish and maintain independent educational institutions that would further their religious, cultural or other pertinent interests.

Moreover, the Charter does not expressly guarantee certain economic, social and cultural rights, including the right to food, social security and adequate standards of living. These are basic rights which any state is expected to guarantee its citizens. Many African states have been violating these rights with impunity. State funds, which would have been used to safeguard these rights, have always been mismanaged or diverted to private accounts of the ‘powers-that-be,’ leaving many innocent citizens

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131 Nmehielle The African human rights system, above at note 22 at 130.
wallowing in abject poverty. It is therefore very unfortunate that these basic guarantees were not given any attention by the drafters of the Charter.

From the foregoing, it is inevitable to conclude that economic, social and cultural rights have not been fully addressed under the Charter and as such, the relevant substantive provisions need to be reformed. When addressing the question of reforms, at least three approaches may be considered. The first approach would be through interpretive and jurisprudential mechanisms, the second would involve the promulgation of special protocols or agreements as per Article 66 of the Charter, while the third will necessitate the amendment of the ‘inadequate’ provisions.

The first approach is predicated almost entirely on the competence of the African Commission and Court to interpret the Charter in conformity with international standards.132 Articles 60 and 61 of the Charter appear to lend credence to this approach. Specifically, Article 60 provides that

The Commission shall draw inspiration from international law on human and peoples’ rights, particularly from the provisions of various African instruments on human and peoples’ rights, the Charter of the United Nations, the Charter of the Organisation of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples’ rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 61 adds:

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by Member States of the Organization of African Unity, African practices consistent with international norms on human and people’s rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

The above provisions appear to suggest, should the Commission deem the substantive provisions of the Charter to be inadequate or flawed, it could either ‘draw inspiration from international law on human and peoples’ rights’, or ‘take into consideration other general or special international conventions.’ The Commission could therefore give effect to the rights in the Charter according to established international standards. The jurisprudence evolved by the UN human rights bodies or the Inter-American and European human rights mechanisms could be useful in this sense.

Although marked by a slow start characterised by some form of ‘judicial conservatism’, the African Commission has now gathered momentum to evolve a robust body of ‘case-law’ as it interprets the Charter. Some of its pronouncements on economic, social and cultural rights are indeed remarkable. In *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*¹³³ (hereafter the ‘SERAC’ or ‘Ongoni’ case), for example, it underscored the role of the state in providing socio-economic rights to its people. The communication, brought on behalf of the Ongoni people, alleged the violation of a number of rights by the government of Nigeria arising from its involvement in oil production in the area. It was the complainants’ contention that toxic waste was disposed into the local waterways, thereby endangering the health of the local communities. The resulting contamination of water, soil and air had serious short and long-term health impacts on the residents.¹³⁴

Although the right to housing (shelter) is not provided for in the Charter, the Commission found its violation in this case by broadly interpreting Articles 14 (property), 16 (health) and 18 (family rights). It observed that this right obliges the government of Nigeria not to destroy the houses of its citizens and not to obstruct efforts by individuals or communities to rebuild their lost homes.¹³⁵ The right also requires the government to protect its citizens from interference with their right to live in peace.¹³⁶ The Commission also affirmed that the right to housing includes a right to be protected against forced evictions. It concluded that “the conduct of the Nigerian government clearly demonstrates a violation of this right [to housing] enjoyed by the Ongonis as a collective right.”¹³⁷

Using the same approach, the Commission found a violation of the right to food, which is also not expressly guaranteed in the Charter. It interpreted Articles 4 (right to life), 16 (right to health) and 22 (the right of all peoples to their economic, social and cultural development) as encompassing the right to food. Although it did not define its content, the Commission listed some minimum obligations resulting from this right. These include the duty not to destroy or contaminate food resources; not to allow private parties to destroy or contaminate food resources; and not to prevent peoples’ efforts to feed themselves. It therefore found Nigeria to have violated all three of these obligations.¹³⁸

The position taken in the *Ongoni* case shows that the Commission is able and willing to adopt a creative and dynamic approach to interpreting the Charter, for example, by ‘reading-in’ those rights that have not been expressly guaranteed. The case has also demonstrated, under the African human rights system, economic, social and cultural rights are justiciable. The Commission upholds this position by stating that “it will apply any of the diverse rights contained in the African Charter… and there is no right in the African Charter that cannot be made effective.”¹³⁹ This viewpoint is contrary to the popular opinion

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¹³⁴ Para 2.
¹³⁵ Paras 60-62.
¹³⁶ Ibid.
¹³⁷ Para 63.
¹³⁸ Para 64-66.
¹³⁹ Id at para 68.
that this category of rights is unjusticeable, thus distinguishing the *Ongoni* case as a precedent for international and domestic courts on socio-economic and cultural rights.\(^{140}\)

On the second approach to reforming the economic, social and cultural rights norms of the Charter, Article 66 permits the promulgation of special protocols or agreements to supplement the Charter. Following this approach, protocols could be adopted to protect the rights of vulnerable groups such as the aged, disabled and minority communities, thus expounding on Article 18(4) of the Charter. As already shown, the inadequacies of the Charter’s provisions on women and children’s rights have been substantially redressed by the Women’s Protocol and the Children’s Charter.

The third and final approach calls for the amendment of the inadequate provisions of the Charter. Article 68 of the Charter stipulates:

> The present Charter may be amended if a state party makes a written request to that effect to the Secretary General of the Organization of African Unity. The Assembly of Heads of State and Government may only consider the draft amendment after all the state parties have been duly informed of it and the Commission has given its opinion on it at the request of the sponsoring state. The amendment shall be approved by the simple majority of the state parties. It shall come into force for each state which has accepted it in accordance with its constitutional procedure three months after the Secretary General has received notice of the acceptance.

Of the three proposed approaches, amending the Charter could be the most suitable. Indeed, while the Commission and Court are entitled to exercise their competence to interpret the Charter, the interpretations need to find support from the Charter in order to avoid confusion. The jurisprudence evolved by the Commission and the Court may also not be regarded with the same degree of seriousness as the Charter provisions. Further, it may be easier for one to understand the provisions of the Charter than to read through a lengthy precedent, perhaps shrouded in legalese, purporting to interpret the Charter. Again, some of the defects in the Charter may be beyond the powers of the Commission and the Court to rectify, even through creative interpretation.

Amendment of the Charter could take the form of incorporating those economic, social and cultural rights guaranteed by the universal as well as other regional human rights instruments that were omitted or inadequately addressed in the Charter. Variations may of course be permitted but not to the extent that universality of human rights is compromised. It is needless to re-state, the Charter was designed amidst difficulties and complexities, including the dilemma of reconciling universality and cultural relativism. This, however, is by no means an excuse not to give effect to economic, social and cultural rights under the African human rights system.

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CONCLUSION

In spite of the Charter’s ratification by all the AU member states, Africa’s regional human rights system is not only the least developed but also the least effective as compared with its American and European counterparts.\(^1\) The prevailing state of affairs clearly depicts that human rights are still not taken seriously by many African states. From the early 1970s, the continent has been going through tumultuous times characterised by series of egregious violations of human rights. Worst of all, economic, social and cultural rights have not been taken as seriously as civil and political rights in both the agenda of the AU and the activities of the African human rights system. It is sad to note that, by loosely phrasing some of the economic, social and cultural rights provisions, the drafters of the Charter failed to treat this category of rights with deserved importance.

On a more positive note, however, this contribution has elucidated that the economic, social and cultural rights norms of the Charter can be reformed to reflect international standards. Both the African Charter and Commission have sufficient mechanisms for self-correction and adjustment. While it is true that the Commission is still contending with the difficulty arising from the way the Charter was drafted, it should be commended for its creative pronouncements. While this is happening, there is the need for Africans and their governments, as well as human rights organisations within and outside the continent to work together to create a more efficient regional human rights system where all categories of human rights would be fully protected and promoted.