

**TAKING A CRITICAL LOOK AT CONFLICT RESOLUTION AND HUMAN RIGHTS FROM THE
ORGANISATION OF AFRICAN UNITY TO THE AFRICAN UNION**

**A DISSERTATION SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF PRETORIA, IN
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HUMAN RIGHTS AND DEMOCRATISATION IN AFRICA**

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DECLARATION

I **Edmund Amarkwei Foley**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged.

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DEDICATION

To

John and Monica at the 27th milestone,

Jesse, John (jnr) and Bridget.

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To the Blessed Trinity, the author and finisher of my faith and who give me the courage to declare, 'I can do all things through Christ who strengthens me', all praise and thanksgiving to your most holy Name.

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
AEC	African Economic Community
AMIB	African Mission in Burundi
AMIS	African Union Mission in Sudan
APRM	African Peer Review Mechanism
AU	African Union
AUPSC	Peace and Security Council of the African Union
CAT	Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIJ	<i>Association Internationale des Juriste Democratres, Commission Internationale des Juristes</i>
CMCA	Commission of Mediation, Conciliation and Arbitration
CNEI	National Independent Electoral Commission
CCPR	Covenant on Civil and Political Rights
CESCR	Covenant on Economic, Social and Cultural Rights

CRC	Convention on the Rights of the Child
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
FMLN	<i>Farabundo Marti para la Liberacion Nacional</i>
ICJ	International Court of Justice
IPA	International Peace Academy
MCPMR	Mechanism for Conflict Prevention, Management and Resolution
MFDC	<i>Mouvement des Forces Democratique de la Casamance</i>
MIOC	Observer Mission in Comoros
MNW	Convention on the Protection of the Rights of All Migrant Workers and their Families
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental Organisation
NMOG	Military Observer Group
OAU	Organisation of African Unity
OIF	International Organisation of Francophonie and France
OMIB	Observer Mission in Burundi
OMIC	Observer Mission in Comoros
RHADD0	<i>Rencontre Africaine Pour la Defence des Droits de l'Hommes</i>

RPF	Rwandese Patriotic Front
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMIR	United Nations Assistance Mission In Rwanda
UNDP	United Nations Development Program
UNOB	United Nations Operation in Burundi

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background

One of the challenges that Africa has faced since gaining political independence is the prevalence of conflicts. Conflicts have not only retarded the political, economic and social development of the continent, they have also undermined the respect for and development of human rights. At the 29th Ordinary Session of the Organisation of African Unity (OAU) held in Cairo in 1993, the Summit succinctly captured the effects of conflict on Africa in the 'Declaration ... Establishing within the OAU, a Mechanism for Conflict Prevention, Management and Resolution' (the Cairo Declaration) as follows:

No single internal factor has contributed more to the present socio-economic problems in the Continent than the scourge of conflicts in and among our countries. They 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 displaced persons, deprived of their means of livelihood, human dignity and hope. Conflicts have gobbled-up scarce resources, and undermined the ability of our countries to address the many compelling needs of our people.¹

Human rights violations have been a major source of conflicts in Africa.² Discrimination, disregard for the rule of law, electoral malpractices, dictatorial regimes, suppression of popular participation in the affairs of government and impunity are but a few of the factors that violate human rights and lead to conflicts in Africa. The perpetration of gruesome acts of sexual violence against women and girls in the conflicts in Sierra Leone, Liberia, Rwanda, the Democratic Republic of Congo (DRC) and the Sudan bear testimony to the impact of conflict on human rights and vice versa. Conflicts also undermine the right to peace and security in particular, which is guaranteed by article 23 of the African Charter on Human and Peoples' Rights (ACHPR).³ The concept of human security now covers all aspects of human life.⁴

In view of the effects of conflict on human rights, any attempt at resolving them must take into account the protection of human rights, rather than just the cessation of hostilities and negotiation of peace agreements. Though these measures have been successful in some conflicts, more often than not the protection of human rights is not given the due prominence in conflict resolution.

With the attainment of independence by African states arose the need for internal cohesion, following the arbitrary division and merging of pre-colonial states by the Berlin Conference of 1884 to 1885.⁵ The process of nation building by the

¹ AHG/DECL.3 (XXIX) para 9. <<http://ww.africa-union.org/home/Welcome.htm>> (accessed on 14th September 2004).

² GW Mugwanya (2003) *Human Rights in Africa: enhancing human rights through the African Regional Human Rights System* 180 and 224.

³ OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). <<http://www.africa-union.org/home/Welcome.htm>> (accessed on 15th September, 2004).

⁴ UNDP, *Human Development Report 1994: New Dimensions in Human Security* 22. <<http://hdr.undp.org/reports/global/1994/en>> (accessed on 14th September, 2004).

⁵ M Ndulo 'The Democratization Process and Structural Adjustment in Africa' (2003) 10 *Indiana Journal of Global Studies* 315 at 319.

independence leaders was flawed from the beginning by two factors.⁶ First, the immediate post-colonial state structure was a European construct that was not structured to foster effective popular participation in government. Secondly, the nationalist leaders, who had fought for independence along with the peasantry and workers, became the beneficiaries in the end. They had been educated in the world of the colonists and identified themselves with European concepts of nationalism. Thus the nation-state that developed in Africa did not serve the interest of Africans. The stage was thus set for some of the internal conflicts that have rocked many African states till today.

Alongside the struggle for independence in Africa was the development of the OAU.⁷ In spite of the ideological differences on regional integration that existed between the founding members, the OAU was established in 1963 under the unifying ideology of Pan-Africanism. Among the aims of the OAU were the defence of the sovereignty, integrity and independence of member states and the eradication of all forms of colonialism from Africa.⁸ Thus, the OAU's agenda for human rights was arguably limited to securing the right for self-determination and the rights of individuals to participate in their own government and the eradication of colonialism and apartheid.⁹ Closely linked to the above aims – under the principles of the OAU – was 'non-interference in the internal affairs of all Member States', 'respect for the sovereign integrity of each State and for its inalienable right to independent existence' and 'peaceful settlement of disputes by negotiation, mediation, conciliation, or arbitration'.¹⁰ To promote a strong continental union, the OAU thought it wise to strictly preserve the existing colonial boundaries and pursue a policy of non-interference in the domestic affairs of its member.¹¹ The OAU won credit for its stance on the preservation of colonial boundaries in that it significantly reduced the likelihood of numerous boundary disputes.¹²

Conflict resolution was given prominence by the OAU, when the Charter established as one of the four principal organs, the Commission of Mediation, Conciliation and Arbitration (CMCA).¹³ The Protocol of the Commission of Mediation, Conciliation and Arbitration was therefore adopted in Cairo on 21st July 1964. Although the procedures for conflict resolution under the Protocol were flexible, the CMCA lacked a preventive mandate and was confined to inter-state conflicts.¹⁴ Gutto argues that

⁶ WD Nabudere 'African Unity in Historical Perspective' in E Maloka (ed) (2000) *A United States of Africa?* 9 at 13.

⁷ N Patel 'Conflict Resolution through Regional Organisations in Africa' in Maloka (n 6 above) 354.

⁸ 'OAU Charter' art 2(1) <<http://www.africa-union.org/home/Welcome.htm>> (accessed on 14th September 2004).

⁹ Mugwanya (n 2 above) 174 to 175.

¹⁰ (n 8 above) arts 3(2), (3) and (4) respectively.

¹¹ Patel (n 7 above) 355.

¹² A Adedeji 'Comprehending African Conflicts' in A Adedeji (ed) (1999) *Comprehending and Mastering African Conflicts: The search for sustainable peace and good governance* 3 at 8.

¹³ (n 8 above) art 7(4) and 19.

¹⁴ SBO Gutto 'The New Mechanism of the Organization of African Unity for Conflict Prevention, Management and Resolution, and the Controversial Concept of Humanitarian Intervention in International Law' (1996) 113 *South African Law Journal* 315 at 317.

the focus on inter-state conflicts was much in line with international law then.¹⁵ Internal conflicts and their consequent human rights abuses were largely confined to the realm of 'internal matters', in which the OAU would not interfere.

Two reasons can be assigned for the OAU's inability to deal with internal conflicts. First, the OAU did not consider human rights (which are affected as a result of conflict) a priority.¹⁶ Naldi argues that as compared to the Council of Europe, the OAU did not state human rights as one of its primary objectives.¹⁷ He however adds that the OAU did not discount human rights altogether, since one of its purposes was 'to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights'.¹⁸ Second, the OAU stuck fanatically to the principle of non-interference leading to a culture of silence in the face of gross human rights abuses occurring in most member states and also to a tacit acquiescence in such violations.¹⁹

Reeling under pressure from the international community to take active steps to address its dismal human rights record, the OAU adopted the ACHPR on 27th June 1981 at the 18th Assembly of Heads of State and Government in Nairobi, Kenya. The entry into force of the ACHPR 21st October 1986 marked a new beginning for the recognition of human rights in Africa. In accordance with article 30 of the ACHPR, an 11-member African Commission on Human and Peoples' Rights (the African Commission) tasked to promote and protect human and peoples' rights was elected by the Assembly of Heads of State Government was inaugurated on 2nd November 1987. In spite of the numerous challenges hampering its work, the African Commission has braved all odds to improve the commitment of African states to respect, protect, promote and fulfil human rights in Africa. Although conflicts have negatively affected human rights, the Commission was not actively and effectively engaged by the OAU in any of its efforts at addressing conflicts.

In 1993, the OAU established the Mechanism for Conflict Prevention, Management and Resolution (MCPMR). The MCPMR was unable to deal effectively with the teething conflicts and their effects, till the Peace and Security Council of the African Union (AUPSC) replaced it. The AUPSC has broader mandate than the MCPMR to take measures to resolve prevent,

¹⁵ As above. In my view Gutto's argument can be justified on the ground that international law then still held on to the principles of sovereignty and other principles such as humanitarian intervention had not gained prominence yet.

¹⁶ G Naldi 'Future Trends in Human Rights in Africa: the increased role of the OAU?' in M Evans and R Murray (2002) *The African Charter on Human and Peoples' Rights: the system in practice, 1986 – 2000* 1. See also, CFJ Doebler 'A Complex Ambiguity: The relationship between the African Commission on Human and Peoples' Rights and other African Union initiatives affecting respect for human rights' (2003) 13 *Transnational Law and Contemporary Problems* 7 at 9, 10; J Akokpari 'Policing and Preventing Human Rights Abuses in Africa: The OAU, the AU and the NEPAD Peer Review' (2004) 32 *International Journal of Legal Information* 461 at 462, 463.

¹⁷ Naldi (as above).

¹⁸ (n 8 above) Art 2(1)(e).

¹⁹ NJ Udombana 'Can The Leopard Change Its Spots? The African Union Treaty and Human Rights' (2002) 17 *American University International Law Review* 1177 at 1212. The author notes that the killing of President William Tolbert of Liberia and 13 former Ministers in his government in 1980 and the killing of three former Heads of State and a number of senior military officers in Ghana a year later, prompted the OAU Council of Ministers to appeal to the Liberian Leader, Samuel Doe to exercise restraint. The Council, however, affirmed the "right of any member state to change its government in any way it sees fit."

manage and resolve conflicts. For the first time also, provision has been made for the African Commission to play a direct role in conflict resolution in Africa. Article 19 of the 'Protocol Relating to the Establishment of the Peace and Security Council of the African Union' (AUPSC Protocol) requires the AUPSC to seek close co-operation with the African Commission in all matters relevant to its mandate and further requires the Commission to bring to the attention of the Council information on any matter relevant to the Council's mandate.

1.2 Statement of the problem

The OAU, in spite of its commitments to human rights, failed to develop its institutions for conflict resolution and thus address the problem of massive and grave human rights violations that occurred as a result of conflicts. The OAU failed to actively engage the African Commission, which was established to promote and protect human rights, in any addressing any of the conflicts in Africa. The OAU also failed to take action on the reports of the African Commission, in which the Commission had highlighted cases of massive and grave violations of human rights occasioned from conflicts. Consequently, most of the conflicts in Africa have not been fully resolved and there are still instances of sporadic outbreaks of violent conflicts with fatal consequences.

The African Union (AU) improves upon the commitment of the OAU to human rights and conflict resolution by incorporating human rights norms into its Constitutive Act and the establishment of the AUPSC. However the AU is yet to demonstrate its real commitment to human rights and conflict resolution particularly in taking action on reports of violations of human rights occurring as a result of conflicts.

1.3 Hypothesis

In addressing the above problem, this paper adopts the hypothesis that in the light of the impact of human rights violations on conflicts in Africa, the pursuit of human rights protection as an integral part of conflict resolution stands a better chance of providing lasting solutions to the current conflicts on the continent.

1.4 Research questions

Flowing from the above hypothesis, this paper answers the following questions:

- a) How does the impact of human rights ensure effective conflict resolution?
- b) What factors accounted for the OAU's failure to recognise human rights as a critical element in the effective resolution of conflicts in Africa?
- c) What lessons can be drawn from the OAU's experience to prevent the AU repeating the past?
- d) How does the AU improve upon the OAU in integrating human rights and conflict resolution?

1.5 Objectives of the study

The birth of the AU signifies a new direction for the continent, yet the threat to peace and security posed by conflicts continues to undermine the meaningful development of Africa. The primary objective of this study is to present the issue of human rights violations and conflicts as an intertwined problem of Africa and highlight the neglect of human rights in conflict resolution in Africa, which led to the OAU's failure to find lasting solutions to many of the conflicts in Africa. The second objective of this study is to draw lessons from the OAU's experience for the benefit of the AU and make recommendations aimed at preventing a repeat of the past, since the AU is intended to be a marked departure from the OAU.

1.6 Relevance of the topic

At a time when regional integration has been given a boost with the transition from the OAU to the AU, there is a lot of hope that the AU will be the panacea to Africa's marginalisation and negative image within the international community. The New Partnership for Africa's Development (NEPAD)²⁰ and the African Peer Review Mechanism (APRM)²¹ are indicative of the boldness with which Africa wants to break free from poverty, under-development, bad governance, persistent violation of human rights and conflicts. In spite of all these laudable efforts, the continent is still plagued with conflicts. The growing international concern for the situation in the Darfur Region of Sudan and the DRC indicates the threat of conflict to any meaningful development. The Rwandan genocide of 1994 still serves as a reference point for critics in assessing Africa's regional institutional capacity to deal with its conflicts. It is my view that there is no better time to revisit the issue of protecting human rights and resolving conflicts resolution than the present.

1.7 Literature survey

The human rights dimensions of conflict and its resolution in Africa still have uncarpeted sections especially with the establishment of new institutions under the AU, yet a lot has been written on the OAU which offers a useful background against the prospects and challenges of the new institutions, particularly the AUPSC can be assessed. The works of Bell²² and Lutz *et al*²³ discuss in great detail, the relationship between human rights and conflict resolution in general but Bell's discussion focuses on the relationship between human rights and conflict resolution in the peace processes for example in Ireland, Israel-Palestine and South Africa. In similar vein to the work of these two authors is Adedeji²⁴ who puts forward the hypothesis that the cessation of hostilities, peace agreements and national elections are just useful markers in the conflict

²⁰ Adopted at the 37th Summit of the OAU, Lusaka, Zambia in July 2001.

²¹ AHG/235 (XXXVIII) Annex II, adopted at the 38th Ordinary Session of the OAU, Durban, South Africa in July 2002.

²² C Bell (2000) *Peace Agreements and Human Rights*

²³ EL Lutz, *et al*, 'Human Rights and Conflict Resolution from Practitioners' Perspectives' (2003) 27 *The Fletcher Forum of World Affairs* 173. <<http://www.fletcher.tufts.edu/chrcr/publications.shtml>> (accessed on 1st October 2004).

²⁴ See generally, Adedeji (ed) (n 12 above).

resolution continuum. He argues that a firm comprehension of conflicts is key to sustainable peace in Africa. The works of Naldi²⁵, Mugwanya²⁶ and Kindiki²⁷ discuss extensively the OAU and its institutions, highlighting their successes and failures. Meyers²⁸ provides a comprehensive analysis of conflicts that occurred during the early years of the OAU and the attempts it made at resolving them. With specific reference to the MCPMR, Muyangwa and Vogt²⁹ have made a useful assessment of the mechanism and provided useful case studies of the intervention of the OAU, through the MCPMR in conflicts. Gutto's³⁰ analysis of the MCPMR is also useful for understanding the context in which the MCPMR developed and how that affected its performance.

These and other supporting literature used in this study mainly discuss conflict resolution and the protection of human rights in Africa and other parts of the world as two different fields. Thus one finds a discussion on human rights in Africa as the focus of one text and conflict resolution as another. The point of departure of this study is to harmonise the separate discussion and analysis of conflict resolution and human rights and bring the spotlight on Africa, specifically on the OAU and AU. By so doing, this study highlights the problems of human rights violations in Africa, the shortcomings of conflict resolution mechanisms and institutions in Africa and presents a holistic view on protecting human rights and finding lasting solutions to conflicts on the continent.

1.8 Limitations of the study

The issue of conflict and human rights in the context of the institutional framework of the OAU and the AU is admittedly a broad subject to attempt to cover fully in this study. The conflicts experienced in Africa have been varied but this study is limited largely to violent or armed conflicts, which result in the worst human rights abuses. Although, sub-regional organisations on the continent have played varied roles in conflict resolution, the study will not examine their efforts in as much detail as those taken at the continental level under the auspices of the OAU/AU.

²⁵ GJ Naldi (1999) *The Organisation of African Unity: An Analysis of its Role*

²⁶ Mugwanya (n 2 above).

²⁷ K Kindiki, (2002) 'Humanitarian Intervention in Africa: The Role of Intergovernmental Organisation', Unpublished LLD Thesis, Centre for Human Rights, University of Pretoria. See chapter 4 generally.

²⁸ DB Meyers 'Intraregional Conflict Management by the Organization of African Unity' (1974) 28 *International Organisations* No. 3 345 at 350. <<http://www.jstor.org/>> (accessed on 13th October 2004).

²⁹ M Muyangwa and MA Vogt 'An Assessment of the OAU Mechanism for Conflict Prevention, Management and Resolution 1993 – 2000' <<http://www.ipacademy.org/Publications/Reports/Africa/PublRepoAfriAssessPrint.htm>> (accessed on 5th October 2004).

³⁰ Gutto (n14 above).

1.9 Overview of chapters

This thesis is composed of five chapters. This first chapter provides a general introduction to the thesis and outlines its structure. Chapter two looks at the relationship between human rights and conflict resolution and examines some of the tensions that exist between the two fields in terms of their normative standards, objectives and strategies. The third chapter then looks at the mechanisms for conflict resolution in Africa under the OAU, namely the CMCA and the MCPMR, their successes and failures and the lessons that can be drawn from their performance and also discusses the role of the African Commission in conflict resolution. Chapter discusses the AUPSC, its structure, powers, organisation and performance so far. Chapter five covers the conclusions and recommendations of the study.

CHAPTER TWO

THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND CONFLICT RESOLUTION

2.1 Introduction

This chapter takes a look at the relationship between human rights and conflict resolution. The first chapter of this study mentions some of the effects of conflict on human rights. That discussion is carried further in this chapter to cover the interaction between human rights and conflict resolution and how the two fields impact on each other in terms of their standards, goals and points of divergence and tension.

2.2 Human rights and conflict resolution: points of convergence and divergence

In the event of a conflict, particularly violent ones, there is often of a response from both human rights institutions and conflict resolution mechanisms, either jointly or separately seeking to find a solution. In the short term, all of them attempt to prevent the escalation of violence, and condemn and advocate an end to the violence and killings. In the long term, they seek to rebuild a society founded on the respect for human rights and institutionalise non-violent means of addressing future conflicts.³¹ In reaching these goals human rights institutions and conflict resolution mechanisms employ different strategies based on their normative backgrounds and perspectives of a particular conflict with the result that their approaches to a solution may be contradictory or mutually exclusive.³² This section looks at some of the points of convergence and tensions between human rights and conflict resolution in terms of their normative standards and objectives.

2.2.1 International normative standards of human rights

The toll of human suffering and gravity of human rights abuses experienced as a result of the two major world wars and the formation of the United Nations (UN) marked a turning point in the development of normative standards for human rights.³³ In the preamble of the UN Charter,³⁴ the founding members aspired, among others, to 'save succeeding generations from the scourge of war ... and to reaffirm faith in fundamental human rights'.³⁵

³¹ Lutz, *et al* (n 23 above) 173.

³² As above.

³³ Mugwanya (n 2 above) 16. The author also notes that international law, prior to the formation of the UN recognised some form of international human rights protection including state responsibility for injury to aliens, humanitarian intervention and the protection of minorities, however, the establishment of the UN represented a 'qualitative leap' in the internationalisation of human rights protection and a recognition of the individual as a subject of international legal protection against human rights violations. See also, HJ Steiner and P Alston (2000) *International Law In Context: Law, Politics, Morals* 137.

³⁴ 'Charter of the United Nations' reproduced in HJ Steiner and P Alston (n 33 above) 1356.

³⁵ As above, para 1.

The UN set out in its principles and purposes to maintain international peace and security and collectively take effective steps to remove threats to peace, suppress any forms of aggression and to settle by peaceful means and in accordance with principles of justice and international law, any international disputes.³⁶

Although the Charter itself does not spell out human rights provisions, it has nevertheless served as the context in which many international human rights instruments have evolved, beginning with the Universal Declaration of Human Rights (UDHR)³⁷, adopted by the UN General Assembly on 10th December 1948. The Declaration presents in one document both civil and political rights on the one hand and economic, social and cultural rights on the other. The UDHR has become an international rule of custom, binding on states in accordance with article 38 of the Statute of the International Court of Justice (ICJ).³⁸ It has been incorporated in the constitutions of many states and serves as a source of inspiration to judges in domestic and international tribunals.

Almost three decades after the adoption of the UDHR, two principal covenants, which expanded the rights stipulated in the UDHR and added new ones, entered into force. These were the Covenant on Civil and Political Rights (CCPR)³⁹ and its two Optional Protocols and the Covenant on Economic, Social and Cultural Rights (CESCR).⁴⁰ Both instruments place obligations on states to respect and ensure the rights contained in them to all persons within their territory and subject to their jurisdiction.⁴¹

Both instruments provide for an enforcement mechanism namely, the Human Rights Committee under the CCPR and the Committee on Economic, Social and Cultural Rights under the CESCR. These two institutions ensure the compliance of states parties to the Conventions through the consideration of reports submitted by states and an inter-state complaints procedure under the CCPR. The First Optional Protocol to the CCPR however provides for an individual complaints procedure.

Other human rights treaties, dealing with specific rights include: the Convention Relating to the Status of Refugees (1954), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) (1969), monitored by the Committee on the Elimination of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979) and its Optional Protocol (2000), monitored by the Committee on the Elimination of Discrimination of

³⁶ (n 34 above) art 1(1).

³⁷ G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

³⁸ G Alfredsson and A Eide (1999) *The Universal Declaration of Human Rights: A common standard of achievement* xxvii.

³⁹ G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force on 23rd March 1976.

⁴⁰ G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force on 3rd January 1976.

⁴¹ See arts 2 and 2 of the ICCPR and ICESCR respectively.

Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1987) and its Optional Protocol (opened for signature on 4th February, 2003 and yet to enter into force), monitored by the Committee against Torture; the Convention on the Rights of the Child (CRC) (1990) and its 2 Optional Protocols on the Sale of Children, Child Prostitution and Pornography (2002) and on the Rights of the Child on the involvement of children in armed conflict (2002), respectively, monitored by the Committee on the Rights of the Child; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC) (adopted by General Assembly on 18th December, 1990) and monitored by the Committee on Migrant Workers.

In addition to these documents, there is a plethora of Declarations, Principles, Recommendations and Guidelines⁴² that guide the member states of the UN in their conduct concerning the respect, protection, promotion and fulfilment of human rights.

2.2.2 Normative standards of human rights in Africa

In Africa, the primary human rights norm-setting instrument is the ACHPR. The ACPHR is hailed as the first human rights instrument to have incorporated first, second and third generation rights in one document.⁴³ It also provides for duties alongside the rights it protects. In accordance with article 30 of the ACHPR, the African Commission was established on 2nd November 1987 'to promote human and peoples' rights and ensure their protection in Africa'.⁴⁴ Mugwanya⁴⁵ notes that the ACHPR also takes inspiration from the UDHR when it clearly makes reference to universal human rights norms in its Preamble and in articles 60 and 61. Further article 60 and 61 require the Commission to draw inspiration from international law on human and peoples' rights, among others, as provided in the UN Charter, the UDHR and other human rights instruments adopted by and under the auspices of the UN and the OAU.

Under article 62, the ACHPR requires states to submit reports biennially to the Commission on the legislative and other measures they have taken towards the realisation of the rights recognised and guaranteed by the ACHPR as well an interstate and individual communications procedure under articles 47 and 55 respectively. In 1998 the OAU adopted a Protocol to the ACPHR on the Establishment of an African Court on Human and Peoples' Rights to complement the African Commission in the protection and enforcement of human and peoples' rights. The Protocol entered into force on 25th January 2004.

⁴² See generally, 'Office of the United Nations High Commissioner for Human Rights' <<http://www.ohchr.org/english/law>> (accessed on 8th October, 2004).

⁴³ C Heyns 'The African Human Rights System: the African Charter' (2004) 108 *Penn State Law Review* 679 at 685 to 693; M Mutua 'The African Human Rights System: A Critical Evaluation' <http://www.hdr.undp.org/docs/publications/background_papers/MUTUA.PDF> (accessed on 8th October, 2004) 5.

⁴⁴ See art 30 of ACHPR.

⁴⁵ Mugwanya (n 2 above) 190.

The ACHPR is complemented by a number of instruments and declarations that guarantee human rights, namely: the OAU Convention Governing Specific Aspects of Refugee Problems in Africa (1969); the Culture Charter of Africa (1976); the African Charter on the Rights and Welfare of the African Child (1990); the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (not yet in force); and the Grand Bay (Mauritius) Declaration and Plan of Action (1999). The Constitutive Act of the AU also incorporates, as part of its objectives and principles, the promotion and the protection of human rights.⁴⁶ The NEPAD will also assess the development of human rights in member states through the APRM in the broader context of sustainable development and good governance.⁴⁷

These international and African regional human rights norms and standards set out in the instruments mentioned above provide the launch pad for human rights institutions and advocates to qualify and quantify the level of human rights abuses occasioned as a result of conflicts. These standards may also be used to seek the commitment of parties to a conflict to put an end to violence and human suffering and negotiate peace.

2.2.3 Principles of conflict resolution

Conflict resolution cannot boast of a codified and elaborate set of normative standards in comparison to the field of human rights. There is still argument over certain key concepts such as 'peace' itself and the relationship of peace to justice.⁴⁸ Lutz *et al*⁴⁹ however argue that there is an implicit set of principles that guide any conflict resolution efforts. The first of these principles is participation. The authors argue that the most effective negotiation and decision-making processes are those that actively engage the principal stakeholders who have a prime interest in the outcome. The fundamental aim of any conflict resolution effort is therefore to bring the feuding parties and relevant stakeholders into some *ad hoc* or institutionalised forum where their input will be considered. This process, however, is easier said than done, and Bell⁵⁰ reinforces this point when she notes for example in the context of pre-negotiation agreements, that:

[p]arties move from violent to less violent forms of addressing conflict when they perceive that they can potentially gain more at the table than they can away from it. However, often, from the point of moving towards the negotiating table, the process is one of 'trial and error' for each actor, and the process is characterized by stops and starts, progress and breakdown.

The second principle is inclusion. Inclusion though similar to participation, differs in terms of the fact that it considers *who* participates rather than *how* the participation is directed. Thus, the authors argue that in resolving a conflict, it is better to

⁴⁶ See arts 3 (e) to (h) and 4 (h) to (p) of the Constitutive Act. <<http://www.africa-union.org/home/Welcome.htm>> (accessed on 15th September, 2004).

⁴⁷ Heyns (n 43 above) 684.

⁴⁸ J Sunders 'Bridging Human Rights and Conflict Resolution: A Dialogue Between Critical Communities. Report on a July 16 – 17 2001, Carnegie Council Workshop' 1 <<http://www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/161>> (accessed on 25th September, 2004).

⁴⁹ (n 23 above) 177.

⁵⁰ Bell (n 22 above) 21.

include as many stakeholders as possible, including elements that may prove to be disruptive of the process, for the reason that to ignore them would 'be a greater incentive to undermining any agreement that is reached.'⁵¹

The third principle is empowerment. This principle considers the unequal bargaining positions that parties to a conflict may bring to the negotiating table ranging from a lack of experience to resources. The mediators in the conflict therefore have to be mindful of such disparities and may incorporate teaching, training and coaching to maximise the effectiveness of the parties to reach a settlement and also provide a basis for genuine negotiations to proceed.

The fourth principle is cultural sensitivity. Here Lutz *et al* note that most cultures have their own mechanisms for handling conflicts and for that matter the adoption of culturally familiar practices and solutions will thrive long after the mediators have departed. Knowledge of such methods will be useful not only to resolve the conflicts but also to develop such indigenous mechanisms.

The fifth principle is equity. This principle requires the mediator to treat all parties to the conflict with equal respect, giving equal attention and time to each side in spite of the imbalance in power and bargaining positions. To respect and give equal concern to the contributions made by each side to the negotiation makes 'the forum more suitable to constructive discussion and problem solving.'⁵²

2.3 Human rights and conflict resolution: shared objectives and dilemmas

The short-term objective of both conflict resolution mechanisms and human rights institution is to end the violence and the attendant loss of human life and property. Human rights institutions begin to sound warnings of potentially violent conflicts and their attendant human rights violations to governments and urge them to end the violations and punish the perpetrators. In the long term, human rights institutions seek to build or assist in building a society where a culture of respect for human rights is deeply ingrained in its members.⁵³

In the short term, conflict resolution mechanisms aim at getting the parties to reach a settlement and end violence. In the long term, they seek to improve relations between the disputing parties 'to achieve greater inter-personal and institutional capacity to resolve or de-escalate future conflict and prevent it from becoming violent.'⁵⁴

⁵¹ (n 49 above).

⁵² As above.

⁵³ (n 23 above) 179.

⁵⁴ As above.

Both human rights institutions and conflict resolution mechanism face a common dilemma of balancing their short and long-term goals. For conflict ‘resolvers’, the encouragement of a quick resolution that simply ends violence without addressing the structural causes of the conflict is only a recipe for a future conflict.⁵⁵ However, a step-by-step approach, trying to identify the causes of the conflict and solving other structural problems may only claim more lives in the meantime. Human rights institutions on the other hand are often met with the dilemma of focussing on drawing immediate attention to ongoing human rights abuses without addressing their underlying causes. Their recommendations calling for solutions to the immediate problems, vis-à-vis the need to identify lasting solutions, have been described as seemingly ‘superficial, perfunctory and unrealistic’.⁵⁶

2.4 Recurring tensions

In spite of their common objectives and challenges, which may call for collaboration between human rights and conflict resolution, there is an ongoing debate that there is an inherent tension between the two fields, which should justify their separation. Saunders⁵⁷ notes two comments by a human rights activist and a conflict resolution expert respectively, that summarise the tensions between these two fields. The human rights activist is quoted as saying that:

The two communities have different parents. The human rights community believes that people are bad and need laws because there will always be war, while the conflict resolution community believes that people are good and that there is (sic) ideal world without war

The conflict resolution expert on the other hand notes that:

[W]atchdog-type reporting by human rights organizations makes work more difficult for conflict resolution organizations, which are trying to hold onto some threads of positive inter-ethnic relations.

Human rights advocates employ fact-finding and reports on human rights abuses to highlight the negative effects of conflicts on human life, using international human rights instruments as a basis to call for action to end violations and the punishment of perpetrators. This approach however can have unintended consequences and become a source of criticism of their conflict resolution efforts. Lutz *et al* refer to a Human Rights Watch (HRW) researcher, Jerema Rone who recalled that he worked on and released a report on the *Farabundo Marti para la Liberacion Nacional* (FMLN’s) abductions and killings in El Salvador at a time when the parties to the conflict were going into negotiations. He was accused of ‘being biased and trying to harm their cause’, when he was not even aware of the negotiations.⁵⁸

⁵⁵ TA Toure ‘Mastering African Conflicts’ in Adedeji (ed) (n 12 above) 23.

⁵⁶ L Minear (2002) *The Humanitarian Enterprise: Dilemmas and Discoveries* quoted in Lutz *et al* (n 23 above) 184.

⁵⁷ Saunders (n 48 above).

⁵⁸ Lutz *et al* (n 23 above) 188.

An anonymous writer⁵⁹ severely criticised the international human rights community for prolonging the war in the Former Yugoslavia by their insistence on requirements of justice in the proposed settlements. He castigated human rights advocates for rejecting pragmatic deals, which, with hindsight, were better than what was eventually reached. The writer concludes by saying that ‘thousands of people are dead who should have been alive – because moralists were in the quest of the perfect peace’.⁶⁰

Human rights advocates on the other hand have clashed with conflict mediators over issues such as amnesties. The conflict resolution community generally perceive the pursuit of peace as a priority and for that matter may strategically avoid the human rights record of the parties.⁶¹ As a result, Saunders notes, the human rights community criticises peace agreements that fail to address the conduct of armed groups and security officials, which are necessary for any post-conflict reconstruction efforts to create a society, based on the rule of law and responsibility for criminal conduct.⁶²

2.5 Conclusion

The purpose of outlining the above norms, principles, shared goals and tensions is not to judge which field has a better approach because in practice, human rights institutions and conflict resolution mechanisms employ each other’s norms, principles and methods at various stages in dealing with a conflict.⁶³ Within the UN system for example, there has been a shift towards a ‘pro-rights approach’ in conflict resolution. The global body has therefore called for a movement towards employing strategies that emphasise the input of human rights within the context of the UN Charter, the bedrock of contemporary human rights norms. The Brahimi Commission noted thus, in its Report:⁶⁴

Impartiality for the United Nations operations must therefore mean adherence to the principles of the Charter: where one party to a peace agreement clearly and incontrovertibly is violating its terms, continued equal treatment of all parties by the United Nations can in the best case result in ineffectiveness and in the worst may, amount to complicity with evil.

Human rights and conflict resolution therefore can be described as two sides of the same coin and are mutually reinforcing. No conflict can meaningfully be resolved without the collaboration of the two fields, either in normative standards and principles or institutions.

⁵⁹ Anonymous, ‘Human Rights in Peace Negotiations’ (1996) 18 *Human Rights Quarterly* 249 to 259. <http://muse.jhu.edu/journals/human_rights_quarterly> (accessed on 9th October 2004).

⁶⁰ As above 258.

⁶¹ Saunders (n 48 above) .

⁶² As above.

⁶³ See generally, Lutz *et al.* (n 23 above).

⁶⁴ ‘Report of the Panel on United Nations Peace Operations’ A/55/305 – S2000/809 ix <<http://www.un.org/Docs/sc/reports/2001/sgrep01.htm>> (accessed on 9th October, 2004).

CHAPTER THREE

CONFLICT RESOLUTION AND HUMAN RIGHTS UNDER THE OAU

3.1 Introduction

This chapter assesses the conflict resolution mechanisms that were created under the OAU. Here we will look at the circumstances leading to their establishment, their mandates and objectives and how they resolved the conflicts during their existence. The role of the African Commission in dealing with conflicts is also assessed in this chapter. Although it is not a conflict resolution mechanism, the justification for discussing the role of the Commission is because it is part of the human rights enforcement mechanism and thus it is centrally relevant to show how it has been utilised in dealing with African conflicts.

3.2 The CMCA

One of the principles of the OAU enshrined in its Charter was the 'peaceful settlement of disputes by negotiation, mediation, conciliation or arbitration'.⁶⁵ The Charter therefore provided that one of the principal organs of the OAU should be a Commission of Mediation, Conciliation and Arbitration (CMCA).⁶⁶ Under article 19 of the Charter, member states of the OAU pledged to 'settle all disputes among themselves' and in fulfilment of that pledge, provided in the article that the CMCA shall be established by a separate Protocol to the OAU Charter. The Assembly of Heads of State and Government approved the Draft Protocol of the CMCA and Government at its First Ordinary Session held in Cairo, Egypt (then the United Arab Republic) in July 1964, upon the recommendation of the Council of Ministers.⁶⁷

The CMCA was made up of 21 elected individuals with its first membership elected at the Summit of the OAU in Algiers in 1968.⁶⁸ However the CMCA soon became a white elephant as no disputes were referred to it. Instead the OAU and its individual member states resorted to other means of dispute settlement, notably *ad hoc* commissions, usually composed of Heads of State,⁶⁹ diplomacy, good offices and the ICJ, until the OAU had to plead with its members to refer their disputes to

⁶⁵ Art 3(4) (n 8 above).

⁶⁶ Art 7(4) (n 8 above).

⁶⁷ See AHG/Res. 2 (I) and CM/Res 42 (III) respectively. <<http://www.africa-union.org/home/Welcome.htm>> (accessed on 4th October, 2004).

⁶⁸ Kindiki (n 27 above) 222.

⁶⁹ Mugwanya (n 2 above) 180.

the CMCA for settlement.⁷⁰ The status of the CMCA as a permanent institution was revoked in 1970 at the OAU Summit in Addis Ababa.⁷¹

The CMCA also failed because of the limitation of its mandate to interstate conflicts, coupled with the OAU's insistence on the principles of state sovereignty and non-interference in the internal affairs of member states.⁷² The mandate of the CMCA was further limited by the fact that it lacked the authority to require disputing parties to appear before it and had no powers to enforce its decisions.⁷³

The OAU also lacked experience in resolving internal conflicts. The OAU was saddled with a Charter that highly restricted intervention of any kind to address internal conflicts, the absence of the relevant institutions and the lack of resources and thus had no opportunity to gain experience. The failure of the OAU to resolve the conflict in Chad in 1980 is a clear example of its inexperience.⁷⁴ The civil war in Chad had been raging since the 1960s but the OAU only created an *ad hoc* committee to resolve the conflict in 1977.⁷⁵ By the 1980s, the war had worsened prompting the OAU to launch a multinational peacekeeping operation to oversee the ceasefire agreement and the political transition process that the parties had agreed to earlier on.⁷⁶ The mission however failed due to poor planning and financing, an unclear mandate and the late deployment of peacekeepers, by which time the ceasefire had broken down. The mission had to be withdrawn and the war continued.⁷⁷ In addition, divisions in the then Chadian government resulted in a lack of consensus on the command structure, functions, status and role of the peacekeeping force.⁷⁸ Although the efforts to restore peace in Chad proved unsuccessful, the OAU's intervention was a bold attempt to break away from the shackles of its Charter.

The CMCA therefore did not live long to make any real impact on conflict resolution in Africa, let alone protect human rights, which were severely affected by the internal conflicts that plagued the continent.

⁷⁰ M Muyangwa and MA Vogt 'An Assessment of the OAU Mechanism for Conflict Prevention, Management and Resolution 1993 – 2000' <<http://www.ipacademy.org/Publications/Reports/Africa/PublRepoAfriAssessPrint.htm>> (accessed on 5th October 2004).

⁷¹ Kindiki (n 27 above) 222.

⁷² Naldi (n 25 above) 6; C Welch 'The O.A.U. and Human Rights: Towards a New Definition' (1981) *The Journal of Modern African Studies* Vol. No. 3 401 to 402. Available at <<http://www.jstor.org/>> (accessed on 14th October 2004).

⁷³ Meyers (n 28 above) 350.

⁷⁴ Muyangwa and Vogt (n 70 above) section 1.2 (iii).

⁷⁵ Patel (n 7 above) 361.

⁷⁶ Muyangwa and Vogt (n 70 above).

⁷⁷ As above.

⁷⁸ Patel (n 75 above).

3.3 Conflict resolution by the OAU prior to 1993

Following the early signs of ineffectiveness of the CMCA in the first decade of the OAU's existence up to 1993, conflict resolution was pursued by the OAU through *ad hoc* commissions, good offices and diplomatic efforts. In spite of the numerous inter-state disputes that plagued the OAU, the number of internal conflicts that occurred within this period produced massive violations of human rights and intense human suffering and outstripped interstate conflicts. However, there was no institutionalised means of resolving disputes and ensuring the protection of human rights until the establishment of the MCPMR in 1993. The *ad hoc* measures largely proved to be inconsistent and ineffective as the OAU itself played double standards with its principles of upholding human rights in general, yet limited its commitment in practice to the realisation of the right to self-determination and the struggle against apartheid. The Rwanda-Burundi and Biafran conflicts are used here to illustrate the ineffectiveness of the OAU's *ad hoc* approaches.

3.3.1 The Rwanda – Burundi Conflict⁷⁹

Ethnic tensions between the majority Hutu and minority Tutsi led to the massacre of Tutsi in Rwanda. Many Tutsi fled to Burundi where the Tutsi were in the majority. Rwanda appealed to the UN to intervene stating that the Tutsi refugees were being armed by Burundian elements and were staging cross-border raids on Rwanda. The UN responded by sending an observer mission, which concluded that the refugees were receiving support from various sources and made no attempts at settlement. In 1964, Rwandan forces crossed the border into Burundi in pursuit of raiders, prompting Burundi to seek the intervention of the OAU by calling for an extraordinary meeting of the OAU Council of Ministers but his call was unheeded. An OAU Special Commission on Refugee Problems however recommended that refugees be settled as far as possible from the border but Burundi did not have the resources to do this.

In 1966, the OAU requested President Mobutu Sese Seko of Zaire (now DRC) to intervene and mediate even though he had been unsuccessful on a previous occasion. Mobutu managed to get the leaders of the two countries to agree to a settlement concerning the control of the refugees, some of who were disarmed by Zairean troops. There was a period of peace until 1972 when Burundian forces killed about one million Hutu. Rwanda took the matter to the UN General Assembly and condemned Burundi for the ethnically motivated killings. Burundi responded by attacking Rwanda for not confining the matter to the OAU and for interfering in the internal affairs of Burundi.⁸⁰ At the OAU level Rwanda raised the issue at the OAU Council of Ministers meeting in Rabat, Morocco in 1972.⁸¹ At the 1973 Summit of the OAU, Burundi used the forum to accuse Rwanda of subversion by harbouring persons who were attacking the Burundian government. The OAU set up a commission to mediate but before the committee could act, a coup d'état in Rwanda brought General Juvenal Habyarimana

⁷⁹ Meyers (n 28 above) 358 359. This section is largely taken from Meyer's account of the conflict and the OAU's intervention.

⁸⁰ As above.

⁸¹ Mugwanya (n 2 above) 182.

to power. Burundi withdrew its complaint from the OAU but fighting between the forces of the two countries continued along their borders.

3.3.2 The Biafran War⁸²

In 1967, following the systematic massacre of Ibos in the north of Nigeria, the Ibo-dominated eastern region of Nigeria seceded from the Federal Republic and declared the state of Biafra. Nigeria was plunged into a civil war from 1967 to 1970 in which an estimated three million people lost their lives.⁸³ Quite characteristic of the involvement of external powers in the conflicts of Africa, the Nigerian Government received military support from the United Kingdom and the then Soviet Union, whereas the Biafrans received support from France and possibly China, Israel, Portugal and South Africa.⁸⁴

Faced with the growing intensity of the war, negative publicity and the involvement of external elements, the OAU was compelled to take steps to address the conflict in Nigeria. The 1967 OAU Summit attempted a resolution by setting up a six-member mediation team of Heads of State. The OAU however sidestepped the contentious issue of self-determination being sought by Biafra and supported a settlement that would preserve the unity of Nigeria by limiting the mandate of the mediation time to maintaining Nigeria's territorial sovereignty. This logically drew opposition from the leaders of Biafra yet the OAU reiterated its position at the 1968 and 1969 Summits.

The mediation team could not get the parties to reach an agreement. The fighting split the OAU itself over the right to self-determination, with the result that four member states of the OAU continued to recognise Biafra. The war continued till the Nigerian Government crushed the secessionists with military force.

3.4 The MCPMR

3.4.1 Background

The end of the Cold War began a transformation of the international order. Africa inherited a legacy of conflicts – mostly intrastate ones – having been the location of proxy wars fought by the super powers during the Cold War.⁸⁵ The onset of globalisation around this time and the consequent disinterest of the West in Africa deepened the continent's economic marginalisation.⁸⁶ These two developments increased the rate of violent conflicts in Africa. The OAU was thus compelled to reconsider its position in the new world order as well as address the threatening security situation on the continent caused by

⁸² This account of the Biafran War and the OAU's response is also taken from Meyers' account. See (n 28 above) 364 365.

⁸³ Adedeji (n 12 above).

⁸⁴ Meyers (n 28 above) 365.

⁸⁵ Muyangwa and Vogt (n 70 above) section 2.1.

⁸⁶ Kindiki (n 27 above) 228 229.

the numerous internal conflicts.⁸⁷ At their 26th Ordinary Session held in Addis Ababa from 9th to 11th July 1990, the African leaders unanimously adopted the 'Declaration on the Political and Socio-Economic Situation in Africa and the Fundamental Changes Taking Place in the World'.⁸⁸

In the Declaration, the OAU acknowledged the rapid changes taking place in the world, recognising the global trend towards regional integration and economic blocs and noted the implications for Africa. The Declaration also took note of the debilitating conditions of structural adjustment programmes of the international financial institutions and the debt burden. In response to these challenges, the leaders pledged themselves to reversing the trend by a concerted effort to strengthen economic co-operation and democratisation to face the emerging decade and the long-term future. In paragraph 11 of the Declaration the leaders pledged to work together to peacefully and speedily resolve all conflicts on the continent.

Subsequent to the OAU Summit in 1990, a series of consultations were made towards the development of a framework for conflict resolution in Africa. The Africa Leadership Forum held the first of such consultations in Kampala when it convened a Conference on Security, Stability, Development and Cooperation in 1991.⁸⁹ The recommendations of the Conference were captured in the 'Kampala Document'⁹⁰, issued at the end of the Conference. The Document noted that that the concept of security goes beyond military considerations to include the right to live in peace with access to the basic necessities of life and the enjoyment of fundamental human rights. In paragraphs 8 and 9, the Document identified, among others, the denial of the right of participation in one's government, denial of personal liberties, abuse of religion and excessive military expenditure, mismanagement of public funds and affairs as some of the causes of insecurity in Africa. The conference therefore called for the development of a new security framework for Africa that will be founded on a mechanism for mediation, conciliation and arbitration including a continental peacekeeping machinery, confidence building measures, non-aggression pacts, establishment of an African Elders' Council for Peace and the lowering of military expenditures.⁹¹

The Kampala conference was followed by two other seminars organised by the International Peace Academy (IPA), a New York-based NGO and the OAU in 1992 and 1993. Both consultations built upon the Kampala Conference and stressed the need for the development of an institutional framework for the resolution of conflicts in Africa.

In 1992, at the 28th Ordinary Session of the OAU held in Dakar, the Summit endorsed the report of the Secretary-General in which he had proposed the establishment of a mechanism for conflict prevention, management and resolution.⁹² The

⁸⁷ Muyangwa and Vogt (n 85 above).

⁸⁸ AHG/Decl.1. (XXVI) <<http://www.africa-union.org/home/Welcome>> (accessed on 18th October 2004).

⁸⁹ Muyangwa and Vogt (n 85 above).

⁹⁰ Available at <<http://www.africaaction.org/african-initiatives/kampall.htm>> (accessed on 18th October 2004).

⁹¹ Muyangwa and Vogt (n 85 above).

Secretary-General was critical in his report of the OAU's *ad hoc approach* to conflict resolution arguing that they had been ineffective for the greater part. He therefore called for an urgent need to develop a new security agenda and institutional framework for resolving conflicts. Among other proposals, he called for the creation of an African Security Council within the OAU, the expansion of the responsibilities of the Bureau of the Assembly to deal with interstate and intrastate conflicts at diplomatic and political levels, the judicial settlement of disputes by the Court of Justice within the African Economic Community (AEC) and the designation of units within the armed forces of member states for an African Peacekeeping Force.⁹³

Although the recommendations of the Secretary-General were opposed by some leaders as being too radical⁹⁴ and expressed concern for their state sovereignty, they nevertheless accepted in principle that there was the need for reform in the OAU's conflict resolution mechanisms and accepted the Secretary-General's proposals. The MCPMR was presented to the OAU Summit in Cairo in 1993 in the Cairo Declaration,⁹⁵ which was adopted by all member states but the Sudan and Eritrea.

3.4.2 Objectives of the MCPMR

MCPMR had three main objectives⁹⁶, namely:

- The anticipation and prevention of conflicts;
- The undertaking of peace-making and peace-building functions in circumstances where conflicts have occurred, including the deployment of civilian and military missions of observation and monitoring of a limited scope and duration; and
- The undertaking of peace-making and peace-building activities in post-conflict situations.

In setting out these objectives, the Assembly stressed the need for prompt and decisive action to avert any conflicts and in the event they occurred, to prevent them from degenerating into full-blown conflicts with disastrous consequences. With this emphasis on preventive action, the OAU stood a better chance of avoiding the cost of complex and resource-demanding peacekeeping operations, which the organisation could not afford.⁹⁷ The Cairo Declaration also provided that where the

⁹² Kindiki (n 27 above) 230.

⁹³ Kindiki (n 27 above) 231.

⁹⁴ As above.

⁹⁵ (n 1 above).

⁹⁶ (n 1 above) 15.

⁹⁷ As above.

resolution of a conflict required collective international intervention, the OAU will have recourse to the UN for assistance in accordance with the principles of the UN Charter.⁹⁸

In the performance of its functions and the meeting of its objectives, the MCPMR was to be guided by the principles of the OAU particularly non-interference in the internal affairs of member states, the right of members to their state sovereignty and territorial integrity, the sanctity of colonial boundaries and the peaceful settlement of disputes. The MCPMR would also function on the basis and cooperation of parties to a conflict.⁹⁹

3.4.3 Structure of the MCPMR

The MCPMR was composed of two bodies, the Central Organ and the Secretary-General and the OAU Secretariat constituting Conflict Management Division (renamed the Conflict Management Centre).¹⁰⁰

a) The Central Organ

The Central Organ was composed of 16 member states elected from the Bureau of the Assembly of Heads of State and Government, taking into account regional representation and rotation. They served a term of one year. To ensure continuity, the states of the outgoing and incoming Chairman of the OAU shall be members of the Central Organ. The Central Organ assumed overall responsibility for the direction and co-ordination of the activities of the mechanism.¹⁰¹

The Central Organ functioned at three levels of Heads of State, Ministers and Ambassadors or duly authorised representatives respectively. Where necessary, it was mandated to seek the participation of other members of the OAU, particularly neighbouring countries.¹⁰² Its proceedings were to be governed by Rules of Procedure of the Assembly of Heads of State and Government. The Central Organ met once a year at the Heads of State level, twice at the Ministerial level and once a month at the level of Ambassadors and duly authorised representatives and was to be guided by the principle of consensus in its deliberations. The Central Organ reported on its activities to the Assembly.¹⁰³

⁹⁸ Para 16.

⁹⁹ Para 14.

¹⁰⁰ Para 17.

¹⁰¹ Para 18

¹⁰² Para 19.

¹⁰³ Para 20.

b) The Secretary-General and the Conflict Management Centre

Paragraph 22 of the Cairo Declaration made the Secretary-General of the OAU, the main operational arm of the Central Organ. Under the authority of the Central Organ, the Secretary-General, in consultation with the parties to the conflict, took all appropriate steps to prevent, manage and resolve conflicts, relying on the human and material resources of the OAU Secretariat. Pursuant to this, the Assembly recommended in the same paragraph that the institutional capacity of the Secretariat be broadened to accommodate this new task. The Conflict Management Centre was therefore established within the Political Affairs Division of the Secretariat to assist the Secretary-General in the development of strategies to prevent, manage and resolve conflicts.¹⁰⁴

The Conflict Management Centre was tasked with the building and maintenance of a database on current and potential conflicts in Africa; development and presentation of policy options to the Secretary-General on the best way to deal with conflicts and assisting in the presentation of such options to the Assembly; analysis and long-term research into the root causes of conflict and their implications for prevention and peace-building efforts; and the support and management of civilian and military observer missions as well as the co-ordination of regional training programmes for peacekeeping operations.¹⁰⁵ Two units, namely the Early Warning System Unit and the Field Operations Unit were established within the Conflict Management Centre, to assist the MCPMR.

The Peace Fund was created under paragraph 23 to assist the OAU's conflict resolution efforts. The Fund was composed of appropriations from the OAU's regular budget, voluntary contributions from member states and other sources within and outside Africa, the latter with the consent of the Central Organ. The Central Organ approved disbursements from the Special Fund.

The Cairo Declaration also mandated the MCPMR to seek close cooperation with neighbouring countries, sub-regional organisations the UN and other international organisations in resolving conflicts, peacemaking and peacekeeping.

3.4.4 Assessment of the MCPMR

When the MCPMR was created in 1993, the spectre of conflicts was rather grim. The continent was faced with 5.2 million refugees and 13 million internally displaced persons¹⁰⁶ Conflicts were dying or emerging in Angola, Somalia, Liberia, Central African Republic, the DRC, Guinea-Bissau, Sudan, Sierra Leone, Rwanda, Burundi, Comoros, Lesotho and the Eritrea-Ethiopia conflict¹⁰⁷ The complexities of these conflicts and their consequences challenged the MCPMR to apply different

¹⁰⁴ Muyangwa and Vogt (n 70 above) section 2.2.

¹⁰⁵ As above.

¹⁰⁶ Muyangwa and Vogt (n 70 above) section 3.

strategies to resolve them. This assessment looks at some of the cases in which the MCPMR intervened against the background of the dynamics of the conflicts themselves, the OAU's philosophy of conflict resolution and the role of the international community.

a) Rwanda

The Rwandan genocide of 1994 will go down in history as one of the darkest moments of Africa. The long-standing conflict between the Hutu majority and Tutsi minority reached a climax with the systematic execution of an estimated 800,000 people between April and June 1994 in Rwanda by government forces and the *Interahamwe*, the militant youth wing of the ruling Hutu majority government.

The skirmishes that led to the genocide began with the invasion of northern Rwanda by the Rwandese Patriotic Front (RPF), a rebel group of Tutsis in exile in Uganda.¹⁰⁸ The OAU launched a mediation effort, which culminated in the signing of a ceasefire agreement and the acceptance of a 55-member OAU observer force, the Military Observer Group (NMOG) to oversee the ceasefire.

The peace negotiations continued with the Arusha peace talks in Tanzania. The Arusha Peace Accord was signed in August 1993 under which the parties agreed to the integration of the RPF into the national army of Rwanda and the presence of a neutral international force to provide security and oversee the establishment of a transitional government, the demobilisation of the RPF and the creation of a new army and the conduct of new national elections. Pursuant to this the UN Security Council deployed a 2500-member peacekeeping force, the United Nations Assistance Mission In Rwanda (UNAMIR) in October 1993. NMOG was integrated into UNAMIR because of the OAU's inability to maintain the force.

With tensions mounting in the early part of 1994, Rwanda degenerated into a bloodbath following the death of its President, Juvenal Habyarimana and Burundian President, Cyprian Ntayamira in a plane crash on 6th April 1994 on their return from Arusha after signing another portion of the Peace Accords. The following months saw the indiscriminate rape and massacre of Tutsis and moderate Hutus. The OAU continually urged the Security Council to intervene to save civilians from the killings. With the experience of the failed peacekeeping mission in Somalia still fresh in its mind and the conflict in the Balkans, the Security Council was slow in reacting and even reduced the force strength of UNAMIR when 10 Belgian peacekeepers were killed. The OAU was willing to contribute troops but lacked the funds and logistics to deploy them. The troop deployment was delayed till it was carried out five months later. By then, the RPF had taken over the country and ended the genocide.

¹⁰⁷ As above.

¹⁰⁸ Muyangwa and Vogt (n 70 above). The case studies discussed here are largely taken from the assessment of the MCPMR conducted by the authors.

b) Burundi

Following the death of the President Ntayamira, who was a Hutu, Burundi was engulfed in crisis. The OAU Secretary-General undertook a number of visits to Burundi to seek a solution to the conflict. The OAU deployed a 55-member Observer Mission to Burundi (OMIB) after the UN had refused to send a peacekeeping mission to that country. Muyangwa and Vogt note that though OMIB was limited in size, it managed to abate the crisis in Burundi. In 1997, the OAU sent an African Women's Solidarity Mission to encourage the participation of women in the peace process.

The MCPMR was also engaged in the regional efforts to resolve the conflict and supported the mediation by the late former President of Tanzania Julius Nyerere, which began in 1995. Following the coup by Pierre Buyoya in 1996, the OAU withdrew OMIB following the deteriorating security situation. The coup was condemned by the Burundi's neighbours who agreed to impose sanctions on the state and pledged to find solutions to the conflict. The Central Organ of the MCPMR endorsed these decisions.

In 1998 Buyoya undertook to launch a national dialogue on peace. The OAU applauded his efforts and encouraged a revival of the Arusha peace process under Nyerere. They were resumed in June 1998 but were stalled upon the illness and subsequent death of Nyerere. Former President of South Africa Nelson Mandela took over the mediation. In spite of these efforts and the successes chalked along the way, Burundi was still engulfed in conflict and the OAU continued to seek solutions.¹⁰⁹ The MCPMR, under the AU took some measures to resolve the conflict but these are discussed in chapter four of this study.

c) The Comoros

The conflict in the Comoros began in 1997 when separatists on Anjouan and Moheli, two of the four islands that make up the Comoros declared independence. The government sent troops to maintain order but this resulted in the death of forty people. The then President of the Comoros requested the assistance of the OAU, UN and the Arab League. The OAU's response was to send an envoy, Pierre Yere. He made a diplomatic attempt to get the parties to enter into an inter-island dialogue to develop a framework for addressing their differences. These diplomatic efforts largely failed and the Central Organ authorised the deployment of a 24-member Observer Mission in the Comoros (OMIC). OMIC was able to work on all the islands but Anjouan, which refused it entry. The conflict worsened with the island holding a referendum and drafting a constitution in 1998. The OAU tried again to get a peaceful settlement underway but the Anjouan separatists remained adamant. OMIC was withdrawn in October 1999 when violence against Anjouanese citizens resulted in a coup. The approach adopted by the Central Organ was to try all means to reach a peaceful settlement and preserve the territorial integrity of the Comoros. The recent steps taken by the MCPMR in the Comoros conflict are discussed in chapter four of this study as well under the AU.

¹⁰⁹ Muyangwa and Vogt (n 106 above).

d) Other interventions

In addition to these interventions, the MCPMR mediated in conflicts in Somalia, Angola and the DRC. It also observed elections in a number of countries including South Africa. It also supported ECOWAS in its intervention efforts in Liberia and Sierra Leone. The MCPMR also mediated in the dispute between Nigeria and Cameroon over the Bakassi Peninsula and in the conflict between Ethiopia and Eritrea.¹¹⁰

In spite of these efforts, most of the countries in which the MCPMR intervened are still plagued by conflict. The DRC is still involved in a conflict that is not only internal but has involved six of her neighbours, namely Rwanda, Uganda, Chad, Angola, Namibia and Zimbabwe.¹¹¹ Liberia and Burundi are still unstable. There still remains a lot to be seen in terms of real peace in these countries.

The MCPMR failed to anticipate and prevent any potential conflict situation and found itself largely confined to dealing with conflicts that were going out of hand or had done so already. Though the MCPMR took steps towards the establishment of the Early Warning system, very little was achieved in this direction.¹¹² Inadequate staff also hampered the work of the Mechanism. Muyangwa and Vogt note that in 1997, the Conflict Management Centre had fourteen staff. This was wholly inadequate to collect and analyse information on conflicts in Africa. The staff requirements could not be improved due to lack of funds as well.

The Central Organ itself was also an undermining factor for the MCPMR. Soon after its establishment, a number of summit meetings could not take place because of the inability to find a quorum, since many Heads of State could not travel to Addis Ababa with the frequency that the meetings of the Central Organ required. This meant that decisions could not be taken swiftly and effectively. This problem was however solved with the vesting of decision-making at the ambassadorial level. Since the ambassadors are based in Addis Ababa, they could meet at short notice and at less cost, which increased the efficiency of the Mechanism.

Lastly, financial constraints also affected contributions to the Peace Fund. The finances of the OAU itself had been a source of worry to the organisation. In 1997/98, it was owed \$50.6 million by its members resulting in the imposition of sanctions on 8 member states who were in arrears.¹¹³ By May 2000, only 22 countries had paid up their arrears for 1999 but the arrears still stood at \$48.8 million. This state of affairs affected the 10% allocation of the OAU budget to the Peace Fund. The

¹¹⁰ Naldi (n 25 above) 33.

¹¹¹ MB Mangu 'The Conflict in the Democratic Republic of Congo and the protection of human rights under the African Charter' (2003) 3 *African Human Rights Law Journal* No. 2 235 at 242.

¹¹² Muyangwa and Vogt (n 70 above) section 5.3 (i).

¹¹³ Muyangwa and Vogt (n 70 above) section 5.2.

MCPMR spent approximately \$7.2 million on OMIB for the two years that the mission was in Burundi and spent a further \$1.5 million on diplomatic efforts in Comoros, Congo, Gabon, Liberia, Mozambique, Rwanda, Sierra Leone, Somalia and Togo.¹¹⁴

3.5 The African Commission on Human and Peoples' Rights and conflict resolution

Since its establishment, the African Commission has carried out a series of activities relevant to its mandate under the ACHPR with a view to promoting and protecting human and peoples' rights in Africa. Through its decisions on individual communications submitted to it, the Commission has expanded the scope of the ACHPR to accommodate rights that were hitherto, omitted from the ACHPR.¹¹⁵ The Commission has also carried out a number of promotional activities on human rights throughout the continent and has actively engaged NGOs in its work by granting observer status to a number of them to appear before the Commission and assist in its work.¹¹⁶ It has also appointed, from among the Commissioners, Special Rapporteurs on 'Extrajudicial, Summary and Arbitrary Executions', 'Prisons and Conditions of Detention in Africa' and on 'The Rights of Women in Africa.'¹¹⁷

Though the African Commission is not a conflict resolution mechanism in the strict sense, its mandate and activities under the ACHPR have brought it within the scope of addressing conflicts and situations of massive violations of human rights occasioned by conflict. Stated briefly, the functions of the Commission regarding the promotion of human rights include, the collection and dissemination of information, the undertaking of research and the organisation of educational programmes on human and peoples' rights; the formulation of principles and rules aimed at solving legal problems relating to human and peoples' rights which may serve as a foundation for the formulation of legislation in African countries; cooperation with other international organisations on human and peoples' rights; protection of human and peoples' rights as provided for under the ACHPR; and the interpretation of the ACHPR.¹¹⁸

In terms of its protective mandate, under article 55 of the ACHPR the Commission may receive communications other than those from states, provided they are in accordance with the provisions of article 56. Article 58 requires the Commission to bring to the attention of the Assembly of Heads of State and Government, special cases that reveal the existence of serious or massive violations of human and peoples' rights, which have been found by the Commission through its deliberations on a

¹¹⁴ As above.

¹¹⁵ See for example *Communication 155/96 The Economic and Social Rights Action Center and Center for Economic and Social Rights v Nigeria* (15th Annual Activity Report 2000 - 2001) 31, paras 59 to 67, where the Commission found that the rights to shelter or housing and food, were implicitly provided for in the ACHPR within the context of the right to life, property, family and health, which were explicitly provided for. <http://www.achpr.org/english/_info/index_activity_en.html> (accessed on 20th October 2004).

¹¹⁶ See generally, V Dankwa 'The Promotional Role of the African Commission on Human and Peoples' Rights' in M Evans and R Murray (eds) (2002) *The African Charter on Human and Peoples' Rights: The System in Practice, 1986 - 2000* 335 to 352. See also in the same book, A Motala 'Non-governmental organisations in the African system' 246 to 279.

¹¹⁷ See generally, M Evans and R Murray, 'The Special Rapporteurs in the African System' in M Evans and R Murray (as above) 280 to 304.

¹¹⁸ Art 45 of ACHPR.

communication. The Assembly may then request an in-depth study of these cases and a factual report with findings and recommendations

3.5.1 The African Commission's role in conflict resolution

The Commission in the course of its work has taken part in conflict resolution efforts of the OAU as well as stated its position on various cases of gross violations of human rights in conflict-ridden countries, in relation to which the Commission has adopted resolutions condemning serious and massive violations of human rights in the Rwanda¹¹⁹, Nigeria¹²⁰ The Gambia¹²¹, Sudan¹²², Liberia,¹²³ and Burundi.¹²⁴ The Special Rapporteur on Extra judicial, Summary or Arbitrary Executions, Dr. Hatem Ben Salem, continually reported massive violations of human rights in these countries and in the DRC, Comoros, and Sierra Leone.¹²⁵ All these countries have experienced terrible conflicts and some of the killings that the Special Rapporteur noted in his report occurred as a result of these conflicts. In addition to the above, the Commission has also adopted resolutions supporting the peace processes in the DRC, Somalia, Guinea Bissau and Burundi¹²⁶

The Commission has also made some direct efforts at resolving conflicts particularly in the conflict over the Casamance Province of Senegal.¹²⁷ In a communication submitted by an NGO, *Rencontre Africaine Pour la Defense des Droits de l'Homme (RADDHO)* against Senegal to the Commission in 1992, the complainant described situations of grave and massive violations of human rights following clashes between the Senegalese Army and the rebels of the *Mouvement des Forces Democratique de la Casamance (MFDC)* at Kaguitt in Casamance. The Casamance province had been engaged in a conflict with Senegal over the right to self-determination.

¹¹⁹ 'Resolution on the Situation in Rwanda' 15th Ordinary Session (18th – 27th April 1994); 'Resolution on Rwanda' 16th Ordinary Session (25th October – 5th November 1994). Both sessions were held in Banjul, The Gambia.

¹²⁰ 'Resolution on Nigeria' 16th Ordinary Session; 'Resolution on Nigeria' 17th Ordinary Session (13th – 22nd March 1995), Lome, Togo.

¹²¹ 'Resolution on The Gambia' 16th Ordinary Session (25th October – 5th November 1994), Banjul, The Gambia; 'Resolution on The Gambia' 17th Ordinary Session (13th – 22nd March 1995), Lome, Togo.

¹²² 'Resolution on Sudan' 17th Ordinary Session (13th – 22nd March 1995), Lome, Togo.

¹²³ 'Resolution on Liberia' 19th Ordinary Session (26th March – 4th April 1996), Ouagadougou, Burkina Faso.

¹²⁴ 'Resolution on Burundi' 19th Ordinary Session (26th March – 4th April 1996), Ouagadougou, Burkina Faso.

¹²⁵ See 10th Annual Activity Report (1996 – 1997) Annex IV; 11th Annual Activity Report (1997 – 1998) 8 9; 12th Activity Report (1998 – 1999) 7; and 13th Annual Activity Report (1999 – 2000) 6.

¹²⁶ 'Resolution on the Peace Process in the Democratic Republic of Congo' and the 'Resolution on Peace Process and National Reconciliation in Somalia', 13th Annual Activity Report (1999 – 2000) 48 and 51 respectively; 'Resolution on the Peace Process in Guinea Bissau' 12th Activity Report (1998 – 1999) Annex IV 36; and 'Resolution on Compliance and Immediate Implementation of the Arusha Peace Agreement for Burundi' 14th Annual Activity Report (2000 – 2001) Annex IV 17 18.

¹²⁷ 'Report on the Mission of Good Offices to Senegal of the African Commission on Human and Peoples' Rights (1 – 7 June 1996)' 10th Annual Activity Report (1996 – 1997) Annex VIII 29 to 26.

The Commission subsequently sent a three-member mission of good offices to Senegal to attempt an amicable settlement of the conflict. At the end of its fact-finding mission and consultations with the parties, the Commission urged the Government of Senegal to facilitate the resolution of the conflict by lifting its restrictions on the right of movement of Fr. Diamacoune, one of the leaders of the Casamance separatists. It also called on the Government to free all political prisoners detained as a result of the conflict, assist all refugees and displaced persons to return home by guaranteeing their safety and prosecute those involved in the summary executions as a result of the conflict. The mission also called on the separatists to ensure that their leaders based in Europe and elsewhere would return to Senegal where their safety would be guaranteed, to accept that all future negotiations will take place in Africa and finally that they will work towards presenting a coherent statement of their case.¹²⁸ Following the signing of a peace agreement between President Abdoulaye Wade and Casamance leader, Fr. Diamacoune in 2001, ending about 22 years of conflict, peace is slowly returning to the province.¹²⁹

In a few of its decisions on communications, the Commission has condemned states that commit grave violations of human rights against their citizens. For example, in *Communication 27/89, 46/91, 49/91, 93/99 Organisation Mondiale Contre La Torture and Association Internationale des Juristes Democrates, Commission Internationale des Juristes (C.I.J.), Union Inter africaine des Droits de l'Homme v Rwanda*,¹³⁰ the Commission found that the expulsion of refugees and the massacre of thousands of them along ethnic lines as a result of the conflict in Rwanda and Burundi, constituted grave and massive violations of human rights.

In the cases referred to above and in other situations, the African Commission has played quite a significant role in dealing with conflicts in Africa. Unfortunately, the Commission's efforts were unable to move the OAU into swift and decisive action. It will be thought that article 58 of the African Charter would have been effectively utilised by the Assembly to take immediate action on situations of massive violations of human and peoples' rights that had been identified in the Commission's annual reports. The trend on the part of the Assembly has been to express its satisfaction with the report and encouraged the Commission to continue with its work, without any critical assessment of the report and the issues of grave human rights concerns raised in them.¹³¹

The Commission has also not been effectively engaged by the OAU in any individual or collaborative efforts with other institutions of the organisation in dealing with conflicts. It is undeniable that human rights abuses have been a major cause of conflicts in Africa, yet it is striking to note that the Commission was never engaged in any upfront efforts at conflict resolution. While it is proper to argue that the Commission does not have a mandate to resolve conflicts, the dynamism it has displayed in admitting cases involving massive violations of human rights and ruling on them necessitates its direct

¹²⁸ As above 35.

¹²⁹ 'Developments in post-conflict southern Senegal' *afrolNews*, 14th April 2004 <<http://www.afrol.com/articles/12077>> (accessed on 30th October 2004).

¹³⁰ 10th Activity Report (1996 –1997) Annex X 49 to 52.

¹³¹ Heyns (n 43 above) 695.

involvement in any efforts at preventing, managing and resolving conflicts as well as in post-conflict reconstruction. This was largely missing under the OAU.

3.6 Conclusion

With the benefit of the OAU's experience in conflict resolution and the protection of human rights, a few lessons may be drawn in conclusion. Indeed the OAU began with a laudable objective of resolving conflicts peacefully and did achieve some success particularly in the area of inter-state conflicts particularly in the border disputes between Algeria and Morocco and Mali and Upper Volta (now Burkina Faso).¹³² What the OAU did not foresee were the possible ethnic and secessionist conflicts that would arise from preserving the colonial boundaries. Although the opportunity arose in cases such as Rwanda, Burundi, Nigeria and the Sudan, the OAU did not take the chance to rethink its principle strictly upholding territorial integrity. Far from suggesting a redrawing of boundaries in Africa, this study suggests that the AU should acknowledge the concerns of ethnic groups engaged in conflict, validate their fears and move towards a resolution, rather than stick to preserving territorial integrity as happened in the case of Biafra. Adopting such a posture might give an impression of partiality on the part of the AU.

Secondly, the experience of the CMCA demonstrates that the OAU never gave its conflict resolution institution a chance to develop. Conflict resolution is a complicated task involving a lot of resources and time. Where results are not being obtained in the short-term, a move to scrap the organisation or restructure it may not be a wise option. At best, allowing the CMCA to have built its profile over the years, rather than resort to *ad hoc* measures would have earned it the necessary experience to resolve many of the conflicts in Africa today. Although the *ad hoc* measures have been successful in mediation efforts of leaders such as Julius Nyerere in the conflict in Burundi, Togo's intervention in the conflict between Cameroon and Nigeria over the Bakassi Peninsula and Rwanda in the border dispute between Eritrea and Ethiopia,¹³³ unforeseen contingencies such as the death of Nyerere in the course of his mediation in Burundi may be a setback for the process if the parties have built a certain amount of trust in the mediator.

Finally, the failure of the OAU to take action on the reports of the African Commission proved to be contributing factor to fuelling conflicts in Africa. With no enforcement powers of its own, the Commission could only rely on the Assembly of the OAU to take action on its recommendations. Yet with the 'rubber-stamping' attitude of the Assembly, many governments engaged in conflicts internally continued to turn a blind eye to the Commission's findings. The OAU was restricted in this direction by its principle of non-interference in domestic matters of its members and the lack of political will to condemn its members. It is therefore not strange to conclude that it did not engage the Commission to investigate cases of human rights violations in conflict-ridden countries when the opportunity existed under article 58 of the ACHPR.

¹³² Muyangwa and Vogt (n 70 above) section 1.2.

¹³³ Naldi (n 25 above) 14.

CHAPTER FOUR

CONFLICT RESOLUTION AND HUMAN RIGHTS UNDER THE AU

4.1 Introduction

This chapter assesses the AU and the commitments it has made to human rights and conflict resolution in Africa. The AU makes references to human rights in its Constitutive Act and incorporates the continental human rights institutions into its framework. The AU has also established the AUPSC to resolve conflicts. Among others, this chapter looks at how much has changed with the transformation from the OAU to the AU in terms of conflict resolution and human rights.

4.2 The Constitutive Act of the AU and human rights

With the rapid changes in the world at the beginning of the 1990s, African leaders soon realised that the OAU was no longer in a position to meet the challenges of the times and the future. An Extraordinary Session of the OAU in Sirte, Libya in 2000 adopted a Declaration calling for the establishment of an African Union to accelerate the process of regional integration and economic development of the continent and to meet the demands of globalisation. Earlier on in 1991, the OAU had adopted the Treaty Establishing the African Economic Community (the Abuja Treaty),¹³⁴ to speed up the process of economic integration. The Treaty provided for a number of institutions such as the Pan-African Parliament, the Economic and Social Commission, the Court of Justice, the Secretariat and the Specialised Technical Committees. The OAU therefore operated under its Charter and the Abuja Treaty till the need arose to have an institution that would combine the political institution of the OAU and the economic framework of the Abuja Treaty.¹³⁵

The OAU Summit in Lome adopted the Constitutive Act of the AU on 11th July 2000 and by March 2001 all members of the OAU had signed the Constitutive Act. The Constitutive Act came into effect on 26th May 2001.¹³⁶ The AU was finally launched in Durban, South Africa on 10th July 2002 at the 1st Assembly of the Heads of State of the AU.

The Constitutive Act is a marked departure from the OAU Charter in respect of human rights. In paragraph 9 of the Preamble the AU states its determination to 'promote and protect human and peoples' rights, consolidate democratic culture, and to ensure good governance and the rule of law'. Parts of the AU's objectives are to:

encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights; ... promote, peace, security and stability on the continent, promote democratic principles and institutions, popular participation and

¹³⁴ Adopted in Abuja, Nigeria on 3rd June 1991 and entered into force on 12th May 1994. <<http://www.africa.union.org/home/Welcome.htm>> (accessed on 20th October 2004).

¹³⁵ Kindiki (n 27 above) 218.

¹³⁶ Article 28 of the Constitutive Act provides that the Act will enter into force 30 days after the deposit of the instruments of ratification of two-thirds of the member states of the OAU. Nigeria deposited its instrument of ratification on 26th April 2001.

good governance; ... promote and protect human and peoples' rights in accordance with the African Charter ... and other relevant human rights instruments.¹³⁷

Article 4 sets out the principles of the AU and provides for 'the right of the Union to intervene in a member State, pursuant to a decision of the Assembly in grave circumstances, namely: war crimes, genocide and crimes against humanity.'¹³⁸ The rest of article 4 in summary, provide for the right of members to live in peace and security, right to intervention by the AU promotion of gender equality, respect for human rights, condemnation of impunity, terrorism, subversive activities and the condemnation and rejection of unconstitutional changes of government.¹³⁹ Article 30 therefore bars any unconstitutional government from participating in the affairs of the AU. Among the principles, the AU maintained the respect for the sovereign integrity of member states and the respect for the borders inherited at independence, the peaceful resolution of disputes and the non-interference in the internal affairs of one member state by another.¹⁴⁰

Article 5 lists the 8 organs of the Union, namely: The Assembly of the Union; the Executive Council; The Pan-African Parliament; the Court of Justice; the Commission; the Permanent Representatives Committee; the Specialised Technical Committees; the Economic, Social and Cultural Council; and the Financial Institutions. The Specialised Technical Committees are listed under article 14, and the Financial Institutions are listed under article 19.

It is striking to note that in spite of its copious commitments to human rights and conflict resolution, the AU did not provide for any human rights institution or conflict resolution mechanism as one of its Organs or even a Specialised Technical Committee. This 'anomaly' was remedied in the case of the MCPMR when at the Lusaka Summit in July 2001 the AU adopted a declaration incorporating the MCPMR as an organ of the AU and requested the Secretary-General to undertake a 'review of the structures, procedures and working methods of the Central Organ including the possibility of changing its name.'¹⁴¹ The African Commission and the African Committee of Experts on the Rights of the Child were however not included. The fate of the two institutions hung in the balance for about a year and became the subject of debate.¹⁴² They were subsequently incorporated into 'the framework of the African Union'¹⁴³ by a decision of the Assembly at the AU Summit in Durban, South Africa in July 2002. The incorporation of these two human rights institutions and the MCPMR was done in accordance with articles 5(2) and 9(2) of the Constitutive Act, which authorise the Assembly to create new organs.

¹³⁷ Art 3(e) to (h).

¹³⁸ Art 4(h).

¹³⁹ Art 4 (i) to (p).

¹⁴⁰ Art 4 (a), (b), (e) and (g).

¹⁴¹ 'Decision on the Implementation of the Sirte Summit Decision on the African Union' AHG/Dec.1 (XXXVII) para 8.

¹⁴² Kindiki (n 27 above) 244.

¹⁴³ 'Decision on the Interim Period' ASS/AU Dec. 1 (I) para 2 (xi).

This development not only gave an indication of the real commitment of the AU to giving content to its vision of effective human rights protection and conflict resolution, it also raised a legal problem over the interpretation of article 5(2).¹⁴⁴ A literal reading of article 5(2) would suggest that the AU could not have been said to 'create' new institutions in the MCPMR, the African Commission and the African Committee of Experts on the Rights of the Child. Since they already existed under the OAU and therefore could not be said to be new, Kindiki argues that the two human rights institutions should have been incorporated under article 3(h) of the Constitutive Act, which provides that the AU will 'promote and protect human rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments.'¹⁴⁵

4.3 The AUPSC

4.3.1 Background

The Lusaka Summit of 2001 that incorporated the MCPMR into the AU recommended a review of its entire framework including a possible change of name. As part of the reforms, the AUPSC Protocol was adopted at the 1st Ordinary Session of the Assembly in Durban, South Africa on 9th July 2002. The AUPSC is composed of a regional collective security and early warning response mechanism. The AUPSC has broader powers to initiate and coordinate activities aimed at the prevention of conflicts and the resolution of ongoing ones. Key functions pertaining to this are the initiation of peace-making operations including peacekeeping, peace enforcement and humanitarian intervention. The AUPSC would also seek close cooperation with a number of regional and sub-regional institutions, especially the conflict resolution mechanisms of the latter. It was also to seek close cooperation among others with the African Commission on Human and Peoples' Rights.¹⁴⁶ The AUPSC Protocol entered into force on 22nd December 2003 and the AUPSC itself formally inaugurated on 25th May 2004.

4.3.2 Establishment, Structure, Objectives and Membership

Article 2(1) of the AUPSC Protocol provides that the Council is established pursuant to article 5(2) of the Constitutive Act to serve as a collective security and early warning mechanism 'to facilitate the timely and efficient response to conflicts and crisis situations in Africa.' To ensure the achievement of this aim, article 2(2) of the AUPSC Protocol provides that the Council shall be supported by the Commission, the Panel of the Wise, a Continental Early Warning Mechanism, an African Standby Force and a Special Fund.

A summary of the objectives of the AUPSC¹⁴⁷ under article 3 are mainly the promotion of peace and stability in Africa, anticipation and prevention of conflicts, peace-building and post-conflict reconstruction activities, combating terrorism,

¹⁴⁴ For a fuller discussion of the legal issues, see Kindiki (n 27 above) 244 to 246.

¹⁴⁵ As above 245.

¹⁴⁶ Art 19 of the AUPSC Protocol.

development of a common continental defence policy and the promotion of democracy, good governance, the rule of law and respect for human rights and international humanitarian law.

Article 4 in brief, provides that the AUPSC shall be guided by the principles in the Constitutive Act, the Charter of the UN and the UDHR particularly, the peaceful settlement of disputes, early response to crisis situations to prevent their escalation into conflicts; respect for the rule of law, sanctity of human life, fundamental human rights and non-interference in domestic affairs of states and the respect for state sovereignty and the right of the AU to intervene in respect of grave circumstances of war crimes, genocide and crimes against humanity.

Under article 5(1), the AUPSC is composed of fifteen member states, taking into account regional balance, ten of whom serve a term of two years and the remaining five, a term of three years. Member states have to meet certain requirements under article 5 (2) to be eligible for membership of the AUPSC. In summary, these include a commitment to upholding the principles of the Union, contribution to peace efforts on the continent, contribution to the Peace Fund created under the Protocol, capacity to carry out responsibilities entailed in membership and the respect for constitutional governance, the rule of law and human rights. Article 5(4) empowers the Assembly to periodically review the membership of the AUPSC to determine the extent to which they meet the requirements of article 5 (2). The current membership of the AUPSC is made up of Gabon (Central), Ethiopia (East), Algeria (North), South Africa (South) and Nigeria (West), serving a three-year term and Cameroon and Congo (Central), Kenya and The Sudan (East), Libya (North), Lesotho and Mozambique (South) and Ghana, Senegal and Togo (West) serving a two-year term.¹⁴⁸ It is interesting to note that the membership includes countries such as The Sudan, which are currently embroiled in a conflict that has genocidal ramifications and Togo which has a deplorable human rights record as well as the continent's current longest serving dictator. It remains to be seen whether the AU will initiate a review to remove these members who, in my view, do not meet the criteria in article 5 (2).

4.3.3 Functions and Powers

The AUPSC has seven main functions, namely:

- a) promotion of peace, security and stability in Africa;
- b) early warning and preventive diplomacy;
- c) peace-making, including the use of good offices, mediation, conciliation and enquiry;
- d) peace support operations and intervention, pursuant to article 4 (h) and (j) of the Constitutive Act;
- e) peace-building and post-conflict reconstruction;
- f) humanitarian action and disaster management; and
- g) any other functions as may be decided by the Assembly.¹⁴⁹

¹⁴⁷ Art 3.

¹⁴⁸ M Sebelebele 'Africa's peace, security body' <http://www.safrika.info/ess_info/sa_glance/constitution/au-peacesecurity.htm> (accessed on 30th October 2004).

¹⁴⁹ Art 6

Article 7 provides the Council with a wide range of powers that cover the whole gamut of conflict anticipation, prevention, management, resolution and post-conflict reconstruction. In so doing the AUPSC is empowered to cooperate with sub-regional conflict mechanisms in Africa and with the UN. Significant among its powers is the power to impose sanctions on states where unconstitutional changes of government have taken place.¹⁵⁰

4.3.4 Organisation

Like the MCPMR, the AUPSC meets at three levels namely at the level of Permanent Representatives, Ministers and Heads of State and Government¹⁵¹ The AUPSC meets at the headquarters of the AU in Addis Ababa and is represented there as well to ensure continuity in its work. The Chair of the AUPSC is rotated among its members in alphabetical order on a monthly basis.¹⁵² Each member of the AUPSC has one vote and though the Council is guided by the principle of consensus in decision-making, adopts all decisions on procedural matters by a simple majority while decisions on all other matters are by a two-thirds majority vote of all members voting.¹⁵³ The AUPSC devised its own rules of procedure, subject to the consideration and approval of the AU Assembly.¹⁵⁴

With regard to potential and full-blown conflicts, the AUPSC also has the discretion to act on its own initiative or through its Chairperson and/or the Chairperson of the AU Commission, with the Panel of the Wise, or with or without the Regional Mechanisms.¹⁵⁵

The AUPSC Protocol also defines a role for the Chairperson of the Commission, including requiring him to bring to the attention of the AUPSC or the Panel of the Wise, any matter that in his or her opinion may threaten peace, security and stability on the continent.¹⁵⁶

The AUPSC is also assisted by the Panel of the Wise,¹⁵⁷ made up of five highly respected African personalities from diverse backgrounds who have made substantial contributions to peace and security development in Africa. They are to support the AUPSC particularly in the area of conflict prevention, and are to be selected by the Chairperson of the Commission in

¹⁵⁰ Art 7(1)(g).

¹⁵¹ Art 8(2) and (3).

¹⁵² Art 8(6)

¹⁵³ Art 8(12) and (13).

¹⁵⁴ Art 8(14).

¹⁵⁵ Art 9.

¹⁵⁶ Art 10.

¹⁵⁷ Art 11.

consultation with the member states concerned taking into account regional balance.¹⁵⁸ The Panel of the Wise serve for 3 years and are mainly an advisory body to the AUPSC on issues relevant to promoting and maintaining peace in Africa.¹⁵⁹

The other supporting institution of the AUPSC is the Continental Early Warning System.¹⁶⁰ This system consists of an observation and monitoring centre known as the 'Situation Room' to be located in the Conflict Management Directorate of the AU and observation and monitoring units in the regional mechanisms, with links to the Situation Room.¹⁶¹ The early warning system will mainly be responsible for data collection on potential conflicts and advise the AUPSC on the best course of action. There shall also be an African Standby Force for deployment on peace missions.¹⁶² It shall have both civilian and military components, composed of stand by contingents from member states for 'rapid deployment at appropriate notice.'¹⁶³ The AUPSC Protocol also establishes a Peace Fund made up financial appropriations from the AU's regular budget, arrears of contributions, voluntary contributions from member states and sources outside Africa, from the private sector and civil society, individuals and through fund-raising activities.¹⁶⁴

Lastly, the AUPSC is required to seek close cooperation with the Regional Mechanisms for Conflict Prevention, Management and Resolution, the UN and other international organisations, the Pan-African Parliament, the African Commission on Human and Peoples' Rights and Civil Society Organisations.¹⁶⁵

4.4 Assessment of the AUPSC

Since the entry into force of the AUPSC Protocol and the subsequent inauguration of its members, it has settled down to acquainting itself with the conflicts raging on the continent. The AUPSC has been taking active steps in the conflict and peace processes in Liberia, Burundi, Comoros, DRC and the Sudan, to mention a few.

4.4.1 Burundi

On 28th of August 2000, the warring factions and the government of Burundi signed the Arusha Peace and Reconciliation Agreement under which they agreed to form a transitional government for a period of 36 months. The Central Organ of the

¹⁵⁸ Art 11(2).

¹⁵⁹ Art 11(2) and (3).

¹⁶⁰ Art 12

¹⁶¹ Art 12(2)(a) and (b).

¹⁶² Art 13(1).

¹⁶³ As above.

¹⁶⁴ Art 21.

¹⁶⁵ Arts 16 to 20.

MCPMR, meeting at the Ambassadorial level at the 91st Ordinary Session in Addis Ababa on 2nd April 2003, adopted a decision¹⁶⁶ to deploy the African Mission in Burundi (AMIB) for one year subject to renewal and pending the deployment of a UN peacekeeping force, the United Nations Operation in Burundi (UNOB) to be deployed pursuant to Security Council Resolution 1545(2004) of 21st March 2004. AMIB was formally handed over the peacekeeping operation to UNOB on 1st June 2004 and has since come under the control of the UN.¹⁶⁷ The peace and reconciliation process is however being undermined by one of the factions, PALIPEHUTU-FNL led by Agathon Rwasa, which has refused to join the process¹⁶⁸ and has been engaged in fighting with Burundian government forces and the CNDD-FDD Nkurunziza, one of the factions, in the Kabezi and Mutambu districts of Burundi where about 30,000 people are displaced.

4.4.2 The Comoros

Similarly, in the case of the Comoros, on 20th December 2003, the feuding islands signed the Agreement on the Transitional Process to complete the electoral processes for the assemblies of the autonomous islands and of the whole of the Comoros before the end of April 2004. A Follow-Up Committee, under the supervision of the AU, approved the electoral calendar drawn by the National Independent Electoral Commission of the Comoros. To further assist the transitional process, the Central Organ approved the deployment of an AU Observer Mission (MIOC) for a period of four months. The elections were held on 14th and 21st March 2004. The AU sent election observers from South Africa, Kenya, Mauritius, Madagascar and Tanzania.

Under the agreement of 20th December 2003, the parties agreed to the establishment of a Validation Committee to validate the results of the elections. The Committee was composed of four representatives from the Comoros and four representatives from the AU, UN, the Arab League and the International Organisation of Francophonie and France (OIF). The UN however did not send a representative and was represented by the AU. The elections were carried out successfully, in spite of organisational problems that led to the double invalidation of Domoni, a district of Anjouan. The Ministry of Interior of Anjouan seized the electoral material before the National Independent Electoral Commission (CNEI) was able to hold a partial election to remedy the situation. This action was condemned by the Validation Committee, which urged the Anjouanese authorities to cooperate for a successful election. After the partial election, the Comorian representatives on the Validation Committee resigned in protest citing violations in the validation process and held the Chairman of the Committee, Maître Abraham Zinzindohoue, responsible and demanded his replacement from the Follow-up Committee and a resolution of the litigation from the previous elections.¹⁶⁹ At the time of writing it is not know yet what steps the AU has taken next.

¹⁶⁶ 'Central Organ/MEC/AMB/Comm. (XCI)' referred to in para 1 of the 'Communiqué of the Peace and Security Council' PSC/PR/Communiqué (II) 25th March 2004. <<http://www.africa-union.org/home/Welcome.htm>> (accessed on 30th October 2004).

¹⁶⁷ 'Report of the Chairperson on the Situation in Burundi' PSC/MIN/4 (XII) 'Peace and Security Council, 12th Meeting 4th July 2004, Addis Ababa para 19. <<http://www.africa-union.org/home/Welcome.htm>> (accessed on 30th October 2004).

¹⁶⁸ As above, paras 1 and 18.

4.4.3 Côte d'Ivoire

The fragile peace process in Côte d'Ivoire faced a set back on 8th March 2004 when violence by 'the Young Patriots', a youth group loyal to President Laurent Gbagbo attacked magistrates at the installation ceremony of the first President of the Court of Appeal and the Acting President of the Tribunal of Abidjan.¹⁷⁰ The attack was condemned by seven of the parties to the Linas-Marcoussis Agreement of January 2003 who agreed to carry out a demonstration. During this period also there were rumours of a coup d'etat planned for 4th April 2004 that led President Gbagbo to issue a decree on 11th March 2004, banning all demonstrations until the end of April.¹⁷¹

On the day of the planned demonstration, the law enforcement agencies of Côte d'Ivoire sealed off the *Palais de la Republique*, venue for the demonstration. The attempted demonstration resulted in the death of 37 people but this figure was disputed by the opposition which claimed a death toll of 350 to 500.¹⁷² The violence that occurred on 25th to 27th March led to serious tensions between the parties in Côte d'Ivoire.

As part of measures to resolve the impasse and get the parties to implement the Linas-Marcoussis Agreement, the Chairperson of the AU Commission, in his report recommended that the African Commission should join an International Commission of Enquiry to be established to takes steps end impunity and promote human rights.¹⁷³

4.4.4 The Sudan

Currently, the Council is grappling with the crisis in the Darfur Region of the Sudan, where the Janjaweed militia, believed to be sponsored by the Sudanese Government are carrying out acts of genocide against black Sudanese¹⁷⁴. The conflict that broke out about 18 months ago has claimed over 70,000 lives with more than one million displaced.¹⁷⁵ Pursuant to its decision taken at the 17th meeting held on 20th October 2004, to strengthen the African Union Mission in Sudan (AMIS), the

¹⁶⁹ These recent developments in the Comoros are taken from the 'Report of the Chairperson on the Situation in the Comoros' PSC/PR/3 (VI) Peace and Security Council, 6th Session 29th April 2004, Addis Ababa <<http://www.africa-union.org/home/Welcome.htm>> (accessed on 30th October 2004).

¹⁷⁰ 'Report of the Chairperson of the Commission on the Situation in Côte d'Ivoire' PSC/PR/3 (V) Peace and Security Council, 5th Session, 13th April 2004, para 10.

¹⁷¹ As above, para 11 and 12.

¹⁷² Para 15.

¹⁷³ Para 40.

¹⁷⁴ Lindijer, K 'Analysis: Reining in the Militia' *BBC News, UK Edition* 5th August 2004 <<http://news.bbc.co.uk/1/hi/world/africa/3540126.stm>> (accessed on 21st October 2004).

¹⁷⁵ 'Go ahead for more Darfur Troops' *BBC News, UK Edition* 21st October 2004 <<http://news.bbc.co.uk/2/hi/africa/3761120.stm>> (accessed on 21st October 2004).

AUPSC deployed fifty military personnel from Nigeria, with more troop deployments expected in the coming days.¹⁷⁶ The AU is expected to bring the strength of AMIS from about 400 to 3000 by early November 2004.¹⁷⁷

With the deteriorating humanitarian situation, the AUPSC took positive steps to involve the African Commission in the Darfur conflict when on 25th May 2004 it requested the Commission to investigate the human rights situation in Darfur.¹⁷⁸ At its 35th Ordinary Session, held from 21st May to 4th June 2004, the Commission decided to send a Fact-Finding Mission to Darfur. The Mission carried out its work from 8th to 18th July 2004 and its report is yet to be considered and adopted by the AUPSC.¹⁷⁹ To complement the efforts of the Commission, the Chairperson of the AUPSC appealed to President Al Bashir of the Sudan to take urgent provisional measures to protect women from rape and violence, provide security for internally-displaced persons and ensure their safe return to their homes, ensure the supply of humanitarian assistance and the deployment of human rights observers.¹⁸⁰

4.5 Conclusion

The AUPSC is a welcome initiative of the AU to give real content to its peace and security agenda for the continent. The Protocol however makes some bold initiatives such as the imposition of sanctions and the authorisation of humanitarian interventions. The political record of the OAU, showed a penchant for lofty and idealistic goals in declarations and treaties yet did little on the ground. The involvement of the African Commission in the conflicts in Darfur and later in Côte d'Ivoire is a bold indication of the AU's commitment, recognising the important role of human rights protection as an integral part of conflict resolution.

On the contrary, the AUPSC has been unable to anticipate and prevent sporadic outbreaks of violence such as the recent killing of at least 156 Congolese Tutsi refugees at a Gatumba camp in Burundi by a Hutu rebel group.¹⁸¹ In this wise, it is suggested that the AUPSC should complete modalities for establishing its Early Warning System as soon as possible to avert such horrific consequences. The Hutu-Tutsi conflict also demonstrates the need for the AUPSC to tackle the root causes of some of Africa's conflicts rather than limiting itself to the cessation of hostilities. Addressing the root causes will pave the way for identifying lasting solutions.

¹⁷⁶ 'The African Union deploys more troops in Darfur as part of its efforts to strengthen AMIS' AU Press Release No. 098/2004, issued on 28th October 2004.

¹⁷⁷ (n 171 above).

¹⁷⁸ 'Report of the Chairperson on the Situation in Darfur, the Sudan' PSC/PR/2 (XVII) Peace and Security Council, 17th Meeting, 20th October 2004, para 57.

¹⁷⁹ As above.

¹⁸⁰ (n 178 above).

¹⁸¹ 'Tutsis Massacred in Burundi Camp' *BBC News, UK Edition* 14th August 2004 <<http://news.bbc.co.uk/1/hi/world/africa/3564358.stm>> (accessed on 21st October 2004).

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

This study has sought to highlight the problems of conflicts, particularly violent and internal conflicts and their effects on human rights and the general well being of Africans. To achieve this, the study proceeded on the hypothetical basis that human rights was a key factor in the development and the resolution of conflicts in Africa and concluded that the cooperation of the two fields is necessary to the effective resolution of conflicts.

The OAU was its own enemy in its inability to deal with the massive violations of human rights occasioned by conflicts when it stuck to its myopic view of human rights and also failed to utilise the CMCA. The MCPMR represented a bold by the OAU to rethink its strategies in conflict resolution but the Mechanism failed in the area of preventing conflicts as well as finding lasting solutions to ongoing ones. Though the OAU had the benefit of the African Commission, which had taken some bold initiatives in highlighting massive violations of human rights and even made attempts to resolve some conflicts, the Commission was not engaged directly by the OAU in its conflict resolution efforts.

The AU makes a more concerted effort at putting human rights and conflict resolution on its agenda by making clear references to promoting and protecting human rights and resolving conflicts through efforts such as humanitarian intervention and the condemnation of unconstitutional changes in government in its Constitutive Act. The AU has also made moved beyond the OAU by engaging the African Commission in its conflict resolution efforts.

5.2 Recommendations

In view of the above conclusions and the lessons drawn in the conclusion to chapter three of this study, the following recommendations are made:

- a) To strengthen the African Commission in supporting conflict resolution by the AUPSC, A Special Rapporteur on Conflict in Africa should be appointed from the Commission to coordinate investigation into human rights violations during conflicts. To further maintain close collaboration between the Commission and the AUPSC, a liaison office should be established by the AU within the African Commission to coordinate the activities of the Commission and the AUPSC;
- b) The Economic, Social and Cultural Council of the AU should be given the mandate to carry out studies into the root causes of conflicts in Africa by the Peace and Security Council to determine issues of tribal differences, colonial boundaries and marginalisation of particular groups of people in various nations that have the potential to result in conflicts;

- c) Finally, the AUPSC should complete modalities for the establishment of its Continental Early Warning System to timeously anticipate and prevent potential conflicts from developing into full-blown ones.

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