

**TWENTY YEARS AFTER: TAKING STOCK OF
THE IMPLEMENTATION AND ENFORCEMENT
OF THE AFRICAN CHARTER ON HUMAN AND
PEOPLES RIGHTS**

Presentation by

DR. SALIM AHMED SALIM

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It gives me great pleasure to join you at this seminar, which is part of celebrating the 40th anniversary of the Faculty of Law at the University of Dar es Salaam. Besides the significance of the theme that the Organizers have chosen to underlie the reflections that will take place during these celebrations, the very attainment of 40 years of the Faculty of Law is, indeed, a major milestone, not only for the remarkable progress that this University has achieved, but also in the promotion of justice and rigorous scholarship in the Continent of Africa as a whole.

This Faculty has served as the foundation for the subsequent emergence of the University of Dar es Salaam and it has continued to make its contribution to the reputation and acclaim that this institution has acquired over the years. Furthermore, the lawyers who have walked through the corridors of the Faculty of Law of the University of Dar es Salaam, and who have served and are still serving in the various Legal Chambers and Houses of Justice throughout our Continent are making their mark in advancing the African agenda. I wish to congratulate all students, graduates, and

staff of the Faculty who have been part of this impressive history.

Your reflections on the African Charter on Human and Peoples Rights are made particularly timely by two important developments in the Continent. In the first place, the decision to transform our Continental Organization, the OAU, into an elevated and more revitalized framework of integration – the African Union – calls for a critical re-examination of the various components of the Continental agenda, with a view to reinvigorating the way forward. The promotion of human and peoples rights is an issue of pertinent concern in this endeavour.

Secondly, the struggle for the whole gamut of rights has reached a critical point in our Continent. The people of Africa, in the domain of the civil society – are increasingly assuming their rightful role in propagating for their rights. Almost on a daily basis we hear, in different parts of our Continent, the dynamic power of the people manifesting itself in registering a stance on issues of basic rights. This recrudescence of the civil society in our Continent is a positive development that needs to be encouraged and bolstered towards the higher ideals of the society as a whole, while at the same time, maintaining peace, security and stability within our nations.

Therefore, the deliberations of your seminar will have relevance beyond the participants in this celebration.

You have asked me to share with you my views on the **Implementation and Enforcement of the African Charter on Human and Peoples Rights – Twenty After**. I presume this assignment is connected more with my previous responsibilities as the Secretary General of our Continental Organization, rather than my current capacity as the Chairman of Mwalimu Nyerere Foundation. In this respect, I intend to address the subject on the basis of my experience during the past 21 years as a member of the Government of United Republic of Tanzania and also as derived from the three terms I served as the Secretary General of the OAU.

Allow me to be historical as I set my bearings and perhaps underline the context within which the African Charter on Human and Peoples Rights evolved.

It should be noted that the essence and spirit of the African Charter derive from the very objectives of the independence struggle, particularly the resolve to regain the dignity and integrity of the African people and for every individual to have an equal opportunity in the determination of the destiny of their society. It was this ideal that the Founding Fathers of our Continental Organization enshrined

in the Charter of the Organization of African Unity, paying due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.

You may also recall that the specific context within which this laudable instrument – the African Charter – was promulgated. It was the decade of the 1970s in which that the paradigm that steered development strategies focused on the basic needs of the people and the necessity to provide an appropriate environment for the power of the people to exert itself. Consistent with this paradigm, at a Continental level, was the adoption of the Lagos Plan of Action in 1980, and later in 1989, here in Tanzania, at Arusha, the Charter on Popular Participation was adopted, and the establishment of economic communities such as the PTA, ECOWAS, and SADCC was being initiated. This was an era of optimism, determination and self-actualisation at every level.

Unfortunately, the optimism was not borne out by the immediate trend of events. The 1980s, often dubbed as the “Lost Decade” did not provide a conducive environment for the thriving of the spirit embedded in the African Charter on Human and Peoples’ Rights and many of the other promulgations of that time. This is the period characterized by an acute economic crisis. It was a period frequented by violent change of governments and some of the worst forms of

dictatorships. The dominant form of governance was through one party systems or military rule. And even where the Bill of Rights was included in the Constitutions, oftentimes it was not justiciable. Namibia and Zimbabwe were still under colonial oppression and the apartheid regime in South Africa persisted with its impunity.

In taking stock of the implementation and enforcement of the African Charter on Human and Peoples Rights, this starting point has to be acknowledged. As we look back to the 1980s, it is only fair to say that the circumstances within which the Charter was launched, were rather grim and desolate. When the Charter was being adopted, our Continent was going through the worst trauma in the post-independence history. The African Charter on Human and Peoples Rights provided a beacon of hope in this desperate situation.

In a very ironic way, the events leading to the fall of the Berlin wall in 1989 and the major geopolitical changes that followed had their own significant impact in the history of democracy, rule of law and respect of human rights in Africa. It was clear to me at the time soon after being installed as the Secretary General of the OAU in 1989 that these changes called for a collective continental assessment and response. Following, a proposal that I made to the policy organs of the OAU, the Summit adopted the 1990 Declaration on the

political and social economic situation in Africa and the fundamental changes taking place in the world, by which the Heads of State and Government committed their States to greater democratisation, free and fair elections, popular participation of the people in the processes of governance and respect for human rights as a *sine qua non* for development.

It is encouraging to note the momentous achievements that have been attained since the 1980s. The indignity associated with colonialism and apartheid has now been eradicated. The people of Africa have re-acquired their most fundamental right of independence and self-determination. The dismantling of the apartheid regime in South Africa and the establishment of a new democratic dispensation in that country has closed one of the worst chapters of oppression and humiliation in our Continent.

Despite its emergence within the most dismal socio-economic and political conditions, the Charter is one Convention in the history of the OAU that has achieved universal ratification by being acceded by all the 53 Member States, which form the Organization. This is a major achievement, particularly in the commitment it underlines for a collective enforcement of the fundamental rights of the African people.

It is remarkable too, that the Charter has been adopted by the large majority contracting states as part of their domestic laws. As a result, African citizenry have the right to have their rights under the African Charter enforced on their own national courts. At this juncture, I applaud the efforts of some of our national courts for having made a distinctive contribution to the development of human rights jurisprudence in Africa. Similarly, by bringing the Africa Charter into municipal contexts, many African countries have established national human rights commissions and ombudsman- type institutions with the main purposes of monitoring human rights performance of governments.

Throughout its life, the Charter has not remained static. Other human rights instruments have extended the rights guaranteed. I am thinking in particular, the African Charter on the Rights and Welfare of the Child adopted by the 26th Ordinary Session of the Assembly of Heads of State and Government of the OAU in July 1990 around the same time of the adoption of the Declaration on Fundamental Changes; the Protocol on the African Charter on the Establishment of African Court on Human and Peoples Rights, adopted in 1998 and the OAU Convention on the Prevention and Combating of Terrorism adopted in 1999.

Similarly, at its 34th Ordinary Session of the Assembly of Heads of State and Government held in Ouagadougou, Burkina Faso in June 1998, the OAU Assembly expressed its determination to combat corruption and impunity. In pursuing this endeavour, governments' experts met in Addis Ababa last November to formulate an African Convention on Combating Corruption. And within the respective Member States of the OAU there is an increasing awareness, and in some cases practical steps are being taken, to eradicate this scourge.

Some of you might also have been in Addis Ababa in November 2001 attending the Experts meeting on the Draft OAU Protocol to the African Charter on Human and Peoples Rights Relating to the Rights of Women – a very important component in the struggle for the dignity and worth of our people.

I hope I am not creating an impression that at the Continental level, the only approach to promoting the respect for human and peoples' rights is through the adoption of Conventions and proclamations of declarations. There is a new ethos emerging in the Continent arising from the collective commitment represented by these conventions and decisions. For example, African Leaders adopted a decision at the OAU Summit held in Algiers, which condemned unconstitutional

changes of Government. Later, at their meeting in Lome, Togo, in July 2000, they adopted concrete measures to be applied against such culprits. Indeed, this decision has sent a stern warning to would be coup-makers about their predicament if they opted through that route.

It has not been uncommon in recent times for African leaders within a collective framework to raise concern about developments that are considered to be negative in a given member State. About two years ago, ten African Heads of State and Government, flew into Abidjan and held discussion with the then Head of the Military Government, General Gaie as well as with the leaders of the opposition on a potentially explosive situation in that country that was triggered by violations of basic rights. Similarly, only some two weeks ago, among the issues discussed by the SADC Summit that was held in Blantyre, Malawi was the internal situation in Zimbabwe. Indeed, all this is a far departure from the early days when at the guise of non-interference in the internal affairs of Member States, such involvement was considered unacceptable while basic human rights were being violated with impunity.

Notwithstanding those encouraging developments, more efforts are still needed in improving the human rights situation in the Continent, particularly as perceived within the

vision of the African Charter on Human and Peoples Rights. In many parts of our Continent, people are not enjoying the full range of civil and political liberties. Either the rights are denied or impediments are being imposed that circumscribe their full enjoyment. This situation has either triggered violent conflict or it has been compounded by the prevalence of such conflicts in some parts of the Continent.

Such violence has caused loss of lives, suffering and destruction of property. Millions of African are living in humiliating conditions as refugees or displaced people. We have all been appalled by the brutality directed against hundreds of thousands of innocent citizens, the wanton destruction of property and livelihoods, the murders of men, women and children, the rape and humiliation of women; the utter disregard for those rights and principles the African Charter holds so dear.

Similarly, the full enjoyment of social and economic rights has been hampered not only by the challenging phenomenon of poverty that continues to afflict many of our nations, but also by unfounded prejudices and ignorance. The stigma often directed to people living with HIV/AIDS, the scourge of xenophobia which seems to prevail in some of our societies, and the discrimination based on gender, ethnicity,

regionalism or religion are some of the vices that continue to haunt us and which do not have any rational basis.

The Rwanda genocide of 1994 serves as an indictment to all of us as Africans and as members of the global community. The annihilation of hundreds of thousands of Africans by the hands of their fellow citizens, thirteen years after the adoption of the African Charter on Peoples and Human Rights was a telling verdict of how ill - prepared the Continent is in guaranteeing the rights of its people. Even after the Continental Organization instituted a panel of eminent personalities to look into the events that led to that tragedy with a view to ensuring that it should not happen again, I am not yet certain that sufficient measures are being taken in the Continent to prevent a recurrence of a similar phenomenon.

Twenty years since the adoption of the African Charter and 13 years since its entry into force, Africa is still facing many serious threats to human rights. Certainly, there are several reasons for this record. But the main problem has been that only a few of the human rights principles have been fully operationalized and applied. We know that the treaties in themselves will not end human rights violations. Implementation is the key and it remains elusive in many cases.

There is no doubt that the African Commission on Human and Peoples Rights – a treaty monitoring body to ensure the realization of the Charter aims and objectives - has yet to establish itself as a forceful influence in the quest to human rights in Africa. Budgetary constraints and the absence of human rights culture in many African states, play a significant role in this regard. I should like to recall at this juncture, the adoption in Ouagadougou, Burkina Faso, by the 34th ordinary session of the Assembly of Heads of State and Government of the OAU of a Protocol to the African Charter on the establishment of African Court on Human and Peoples' Rights this protocol is intended to complement the protective mandate of the commission on Human and Peoples Rights. The operationalisation of an African Human Rights Court will therefore reinforce the collective determination of our countries to enhance the observance of Human Rights. It is my hope that the African Court will not be beset by the same limitations pertaining to Human and Financial Resources that have hampered the effectiveness of the African Commission. In the meantime priority must be given to the ratification of the protocol which regrettably to-date has only been ratified by five countries.

One serious shortcoming of the protection of human rights is lack of awareness by the general populace of its rights and the process for vindicating those rights. To some people,

the business of conventional politics is a distant thing, which seems to have nothing to do with them. There is a need to educate our people about their fundamental rights. In this respect, the role and activity of institutions like yours are loaded with considerable importance. They are particularly important because, by giving people the confidence to claim their rights and challenge the status quo, when their rights are violated they will contribute greatly to the development of human rights in Africa. Of course, education by itself is not enough; a culture of enforceable basic human rights needs to be developed.

I remain optimistic. The adoption of the Sirte Declaration on 9 September 1999 and the decision to establish an African Union (AU) reflect a commitment by African leaders to create a new framework in order to face the challenges that confront the continent at the dawn of the 21st century. The Constitutive Act embraces the principles of democratic participation, good governance and promotion and protection of human rights. It further moves Africans from a strict interpretation of non-interference clause. It commits the Union to intervene into a member state in cases of grave circumstances such as; war crimes, genocide and crimes against humanity. The Act has been signed by all Member States of the OAU, thus demonstrating the political commitment of African people to the objectives of the African Union.

In the recent years, there is an emerging commitment of African Governments to work with civil society, particularly NGOs rooted in the reality of the African continent in order to strengthen the solidarity and cohesion among the African people as well as to create conditions for the participation in the activities of the governments. It is in the same vein that, in June 2001 the first ever OAU-African Civil Society Organisations Conference was convened in Addis Ababa on theme building partnerships for promoting peace and development in Africa. While we are gratified with this development, we need to be aware that a full harnessing of this initiative however would call for the creation of favourable conditions which would enable civil society organisations to full apply their energy, skills and creativity to the advancement of peace and human rights protection.

However, we cannot take the future for granted. Persistent, hard work must continue. The practical realisation of the human and peoples rights is the challenge that we must take up if our current efforts at forging a united Africa are to bear fruits. This is a daunting challenge, but one that we must face squarely if we are to rid our continent of the present plague of internecine fratricidal wars. We must ourselves, show a readiness to take the initiative in defining African problems and defining African solutions to those problems.

This means that we must be prepared quite early in terms of resolving conflicts, addressing problems of HIV/AIDS, poverty and debts crisis. In doing so, we can move ahead towards a united and peaceful Africa dedicated to the advancement of all our peoples and their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of humankind.

It is perhaps important for us to recognize that whilst it is possible to design and focus on regional mechanism for protection of human rights, the situations of human rights protection are intrinsically linked with the actual national scenario in the state parties to the African Charter. In this respect, our governments need the institutional capacity to provide effective services and maintain a sound-enabling environment for the protection of human rights. The achievement of accountability, participation, and effective institutions is not easy. They require a considerable range of technical expertise, skills and commitment of resources in addition to the political will and commitment. There is no off-the-shelf approach which suits all needs. Each country has its own requirements which must be accommodated. A development of a comprehensive legal framework which enshrines essential freedoms, the protection of human rights and the legitimacy of government through the consent of the people, offers the most certain way of establishing these

conditions. The establishment and strengthening of independent national human rights institutions should also be envisaged.

We should also take into account the role of civil society, particularly NGOs in promoting human rights in the continent. NGOs are our eyes and ears on the ground and the voice of our conscience. It is vital that we all give a hearing to and listen to that voice. By supporting the work of local NGOs, we can contribute significantly to a heightened awareness within Africa countries of human rights.

Let me also stress the importance of human rights education. Civic education should foster respect for law, justice and democracy. It should encourage concern for the common good as well as independence of thought. And it should generate a sense of society based on shared fundamental values. However human rights education by itself is not enough, I, believe it is also essential that a cultural evolution should develop amongst Africans. A culture of enforceable basic human rights should generate tolerance and respect for the individuality of others. Success for any member of the OAU is when difference flourishes in an atmosphere of mutual tolerance and respect. These values grow out of a belief in the moral worth of each and every individual - a belief which is not the property of one nation, or people, or

civilisation, but of many; and is best given effect by laws of nation states which incorporate into their domestic laws the African Charter and which are governed under the rule of law.

I would like also to suggest that Africans own undeniable responsibility for human rights situations should be linked, with equal force and conviction, to the responsibility of the inequitable and unjust relations within the international order, on the part of the more affluent members of the International Community. That the mobilisation for democracy in internal organisations be matched with greater democracy in the system of international relations currently based, more than ever before in human history, on the law, the truth and the interests of the most powerful and the least numerous.

I would like before concluding, to reiterate that as we take stock of the implementation and enforcement of human and peoples rights in the past two decades, it is important to go beyond the focus on the relationship between the state on one hand, and either individuals or communities on the other. The experience of the past two decades directs attention to another dimension that also gravely impinges on human rights in Africa. This concerns a whole host of factors that are non-coercive and non-state related, which emanate from the environment and sometimes from our daily interactions as

individuals. In terms of numbers, it is possible to say that the devastation in terms of undermining human rights meted by these factors has been more in some places than the traditional institutional violations. We have also to re-examine our relations as individuals and communities with a view to promoting a culture of mutual tolerance and accommodation. Africa is a mosaic of cultures, traditions, races, ethnies, colours and religions. We must not only recognize this rich diversity but also use it as a source of strength.

I believe very strongly and have not hesitated to make the point that African did not fight for independence and shed blood in the process to replace one oppressor for another. The fight for independence was about human dignity and the right to determine our own destiny. Indeed Africans who suffered from thousands of years of all kinds of indignities ranging from slavery to racism and colonialism should be in the forefront in the fight for human rights. Africa has given the world the values that underline the core of human dignity, human rights and democracy. This why it pains me to observe the cruelty and brutality that man as visited on his fellow man in some part of our continent. The examples of Rwanda, Somalia, Burundi, Mozambique, Sierra Leone and Southern Sudan testify to this. I have already argued in this presentation the most basic fundamental right is the right to life. We must go back to the basics. We need to search within

ourselves and start to earnestly believe and abide with the positive age-old values that decreed respect for life, human dignity and human rights.

I thank you for your attention.

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