

## REFLECTIONS ON THE FUTURE OF THE AFRICAN HUMAN RIGHTS SYSTEM:

In Celebration of the 30<sup>th</sup> Anniversary of the African Commission  
on Human and Peoples' Rights

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I am indebted to the former Chairperson and Members of the African Commission and Peoples' Rights for the invitation to have the honour of being one of the keynote speakers at the celebration of 30 Years of the African Commission on Human and Peoples' Rights. I thank the Executive Secretary of the Commission, Dr Mary Maboreke for including me in this programme. I also take this opportunity to pay tribute to Advocate Pansy Tlakula, the immediate past Chairperson of the Commission. Having been colleagues with Advocate Tlakula at the South African Commission for Human Rights, we remained in contact, and through her, first and foremost, I have developed a continuing appreciation for the work of the Commission. I regret that it has not been possible to participate more actively in the deliberations of the Commission during this special session. I am in Banjul in part of be part of the Commonwealth Monitoring Mission on the Human Rights situation in this country, ahead of the expected re-admission of The Gambia as a member of the Commonwealth next year.

As previously indicated, I was a member of the Commission during the period 1997-2003 for one term. That was a very rich experience coming as it did during what I regard as the most creative period in the life of the Commission. The Commission was perhaps then emerging from the period of its establishment during the first decade. Expectations were high, and members of the Commission those days were respected senior lawyers and judges from their nations. It was also the era of Pan Africanism, and among Commissioners was to be found ardent proponents of the Pan Africanist ideal. But also among the Commissioners were diplomats and retired politicians who were loyal to their countries and governments but also had expertise in human rights.

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This was the time, it must be remembered, of widespread violations of human rights in much of Africa, and one-party states and Presidents-for-life were the norm. To have established the Commission then at the time it did, was an amazing feat of confidence if you like, or a cynicism about human rights and what the system would portend for African states. And so, the first thing that I believe the Commission did was to lift the spirits of the Continent, raised the levels of confidence in Africa's ability genuinely to attend to the problems associated with human rights in Africa, and to recognize that Africa's place in world affairs, and its potential for development, were tied up with the extent to which the Continent respected the rights of citizens. These men and women who pioneered Africa's system of human rights bore the hopes of the Continent on their shoulders.

In an address whose brief is to focus on the future of the African Commission on Human and Peoples' Rights, it is unavoidable that I explore, however briefly, the features of the denouement of the African human rights system to form the basis of the kind of human rights system that will serve the Africa of the future. I shall briefly explain how I experienced the Commission during the term that I served. I want to point out the highlights of this protective and promotions system. I also want to spend time reflecting on the state of the world, ultimately coming to the conclusion that human rights instruments remain the most constant and reliable feature of protection of citizens and individuals against an egregious state.

II

I have said that expectations were high, but I must also concede that there was also cynicism about the Commission and its ability to hold repressive regimes to account. The skepticism had much to do with the geo-political environment in the Continent at that time. Human rights violations were common and widespread across the Continent. The un-democratic systems appeared to be entrenched, and many Presidents were being elected in sham elections, some were military dictators or turncoat military men who presented themselves as duly elected, but nobody believed it. As a result, the members of the Commission also came under scrutiny as their credentials were examined, as to the extent to which they were not independent of their political masters. There were accusations that

those who were preferred to become members of the Commission were either failed politicians, or some who aspired to become so in their home countries.

In such a climate, the Commission was correct to be seized in the painstaking work of hammering away at setting human rights standards, create an environment where the African treaty body could faithfully undertake its task; understood the barriers, but worked painstakingly to undermine them. There were some flamboyant characters among members of the Commission those days, men and women who loved what they were doing on behalf of the African Continent. The independence of members of the Commission could rightly best be proved through the professional conduct of the affairs of the Commission and in the outlook that members of the commissioners had of their responsibilities. This painstaking work included the establishment of the headquarters, attending to the Rules, Policies and Procedures of the Commission, as well as the principles by which the Commission was to abide. During this time, the Commission was learning from other comparable treaty bodies in Europe and the Americas.

The second decade of the Commission in my opinion was marked by the rising confidence in the Commission characterized by the growing participation in the sessions of the Commission as observers, especially from civil society human rights advocacy organisations and other affiliate bodies. The beginnings of the states presenting their periodic state reports happened during this period, and state parties to the African Charter were sending representatives to the sessions of the Commission. Members of the Commission were making promotional visits to party-states, and each member of the Commission was entrusted with responsibilities as a special rapporteur for a group of states and on some thematic matters. The Commission was also benefiting from interest in its work by academic researchers, students and institutions from around the world.

National human rights institutions were being established during this period as an additional protection and promotion mechanism within states, as independent constitutional or statutory bodies to promote and protect democracy and human rights. These institutions were beginning to have a voice at sessions of the Commission. The Commission itself got to work on giving judicial effect to the Charter and filling in the perceived gaps in its protection

mandate. Hence it was that the Protocols to the Charter were adopted. And so, it was that the Protocol on the Establishment of the African Court on Human and Peoples' Rights, the Protocol on the Rights of Women, the Protocol on the Welfare and Rights of the Child; and other instruments like the Grand Bay Declaration, Principles on Freedom of Expression, and on Fair Trial, among others.

If that middle decade was the high noon for the flourishing of the human rights endeavor in Africa, darker clouds were gathering across the world in the period that followed. Not only was this the period of the ignoble Rwanda Genocide the scale of which deeply affected the African conscience (1994), it was also the era of the Fall of the Berlin Wall that raised the forlorn hope of a unipolar world. Africa had been for far too long the victim of the Cold War. However, there was also renewed conflict in many African states: Sierra Leone and Liberia, the Democratic Republic of Congo, the Great Lakes Region, the Sudan, Cote d'Ivoire. This is the period that witnessed the virtual collapse of states like Somalia and Libya. Later, defeat of apartheid in South Africa was celebrated as the end of the last colony in the Continent. The Arab Spring, especially in Tunisia and Egypt, and conflict in Libya including the death of Muamar Khadafi, somehow seemed to promise the beginnings of a new era. Some coups d'etat made an unwelcome return in countries like Mali, Comores, Madagascar, and the Central African Republic. Latterly we are seeing incumbent heads of state as in Uganda, Rwanda and the DRC seeking and, in case of the DRC without success as yet, but nonetheless seeking to extend their rule beyond what the Constitution provides. This brief sketch of the state of the African Continent in the context of the mandate of the African Commission emphasizes political developments, but in reality, it had more to do as much with governance, as it did with economics and the well-being of the African people. Above all, these developments could mark a phase in the construction of an identity for being an African.

### III

The Charter has three distinguishing features that it was thought established its African character. First, that the Charter protects communal or collective rights. Second, that it has internal derogations, and third, that rights are meant to be viewed and understood alongside responsibilities. These features, it was feared in some circles, would be the basis

for the denial of rights otherwise enshrined in the Charter. For example, the provisos expressed in articles 7,8,9,10 stated as “subject to law” or “subject to law and order” or “provided that he abides by the law” populate and limit the rights otherwise enshrined. The Commission was confronted with this enigma, the effect of which could serve to take away that which has already been given. Equal attention also had to be paid to other articles of the Charter that were conservative in nature and intent as in references to “the family as the custodian of morals and traditional values recognized by the community” in article 18(2). In some circles, there was skepticism about the equation of rights and “duties’ in Chapter 2 of the Charter. The fear was that article 29 in particular could simply justify and entrench oppressive systems that needed to be broken up and create a more progressive social culture in Africa. Africa could thus be held to ransom to reactionary elements who might seek to deny the progressive agenda of the Charter.

In a series of rulings against the military regime in Nigeria, the Commission ruled that limitations against rights had to be interpreted strictly within the meaning of the Charter in such a manner as to enable to enjoyment of the rights enshrined in the Charter rather than to deny them. Likewise, the Commission ruled that national laws should be consistent with the international obligations to which the state has signed. This meant that the military rule that simply set aside the Constitution, or purport to ‘oust’ provisions of the law in an undemocratic manner by reason of military dictat, or undermined the Rule of Law, and substituted legal norms with military rule cannot do so and then claim that the Charter permits such deviance. It also stated that the limitations of rights needed to be proportionate to and necessary for the enjoyment of the right. Among those decisions, the Commission also attacked the tendency by the military regime to set aside aspects of the Constitution, and by so doing, the Commission read the protections of the Constitution into the law<sup>2</sup>. On Sudan, the Commission provided a limitation to the rights to religion in such a

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<sup>2</sup> Constitutional Rights Project v Nigeria (200) AHRLR 191 (ACHPR 1998); Constitutional Rights Project v Nigeria (2000) AHRLR 235 (ACHPR 1999); Constitutional Rights project (in respect of Akamu and Others) v Nigeria (2000) AHRLR 180 (ACHPR 1995); Constitutional Rights project and Others v Nigeria (2000) AHRLR 227 (ACHPR 1999); Media Rights Agenda and Others v Nigeria (2000) AHRLR 200 (ACHPR 1998).

way that *Shari'a* Law was applied to those who abided by the prescripts of the religion<sup>3</sup>. In the Zambia case, whereat the Commission emphasized that the limitation of a rights cannot be used to subvert a right already enjoyed<sup>4</sup>. The Commission thus established a jurisprudence that gives rigour and substance to the rights enshrined in the Charter such as to uphold and ensure the protective mandate of the Charter.

I mention these instances, in my judgment, as ways in which the Commission, in its second decade, advanced its jurisprudence by legal reasoning and by so doing made sure that the Charter was not utilized to undermine its express intent.

I can think of one instance where the Commission took a position that was at variance with international human rights practice was in the Bosch first death communication against Botswana. In that case the Republic of Botswana proceeded with execution in defiance of the provisional measures pronounced by the Commission. Notwithstanding that, in a subsequent final ruling on the matter, the Commission found that as long as the execution was done within the law, no violation of a right could be held against the state. In a subsequent communication<sup>5</sup>, however, the Commission corrected its previous position and went the furthest it could take it thus far falling short of the total declaration of the death penalty as a violation of the right to life. It ruled that the death penalty by hanging was inhumane and was a violation of the Charter. In a detailed General Comment, No. 3 (2015) on the right to life, the Commission came closest to declaring the death penalty a violation of the Charter. Its advisory note is very detailed and seeks to persuade states that have not

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<sup>3</sup> Doebller v Sudan (2003) AHRLR 153 (ACHPR 2003); "... it is fundamentally unjust that religious laws should be applied against non-adherents of the religion. Tribunals that apply only *shari'a* law are thus not competent to judge non-Muslims, and everyone should have the right to be tried by a secular court if they so wish" – Amnesty International and Others v Sudan (2000) AHRLR 297 (ACHPR 1999).

<sup>4</sup> "... no state party to the Charter should avoid its responsibilities by recourse to the limitations and 'claw-back' clauses in the Charter. It was stated, following developments in other jurisdictions, that the Charter cannot be used to justify violations of sections thereof. "The Charter must be interpreted holistically and all clauses must reinforce each other. The purpose or effect of any limitation must also be examined, as the limitation of a right cannot be used to subvert rights already enjoyed...." Legal Resources Foundation v Zambia (2001) AHRLR 84 (ACHPR 2001).

<sup>5</sup> Interights & Ditshwanelo v Botswana [Communication 319/06 (2015)]

yet done so to exercise caution in the application of the death penalty. This note, therefore, highlights matters about the jurisdiction of the Commission that has been raised by Prof Frans Viljoen of Pretoria University, that legal reasoning can at times be very inadequate, and often may be inconsistent with the Commission's own previous rulings, and certainly at variance with established international human rights norms<sup>6</sup>.

I highlight here the advances in the Commission's jurisprudence. This was greatly assisted, I believe, both by the fact that there has been a steady stream of communications submitted to the Commission, and that (offending) states took the Commission seriously enough that cases were vigorously defended, carefully prepared for and argued before the Commission. Credit for this must also be attributed to the vigilance and advocacy of various human rights advocacy groups domestic and international who assisted complainants, and prepared cogent legal instruments for the Commission to consider. The Commission also had good quality professional legal assistance among its legal professionals. Subject to the criticism noted above, that meant that drafts of decisions were well articulated and reasoned, and that all members of the Commission were engaged in each decision that came before the Commission. I recall that at that time, the consideration of communications by the Commission was a very rigorous exercise. On the other hand, this places an obligation on the Commission to manage communications efficiently and expeditiously if trust is to be justified.

The possible mediating role of the Commission in inter-state parties was also recognized (articles 47 – 54 of the Charter). I can think of two such matters that came before the Commission though with mixed results. One was the matter between Ethiopia and neighbouring Eritrea, and the other between the Democratic Republic of Congo and Rwanda. Even where the Commission was not able to bring the conflict to resolution, the fact that the state parties considered the mechanisms of the Charter of sufficient merit to bring matters before it was important for the Continent. This was and remains a viable alternative dispute resolution mechanism which one hopes more states would resort to, rather than resort to conflict.

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<sup>6</sup> *From a cat into a lion? An overview of progress and challenges of the human rights system at the African Commission's 25 Year mark; Law and Democracy*, Vol 17 (2003), 298316.

None of this means that the decisions of the Commission were universally accepted or observed. For one thing, the management of communications still took far too long to resolve. In questions of human rights this was counter-productive because it meant that matters before the Commission could not be dealt with with urgency. In an attempt to deal with this hiatus, especially in cases where time was of the essence, the Commission has at times issued provisional measures against the state, obviously because the state is the holder of power as against a more vulnerable citizen. In the Bosch case, sadly, the Republic of Botswana ignored the Commission's provisional measures and proceeded to execute the complainant! Second, it was often the case that publicity of the decisions of the Commission was stifled by the requirement that the decisions of the Commission were part of the Annual Report that was approved by the Assembly of Heads of State and Government. In theory that meant that if the report was either delayed or not approved, then critical decisions could not be communicated. Finally, there was much debate about the effect of these decisions. Although, gradually, states parties did appear to be taking the Commission and its processes seriously, it must be said that there were instances where decisions were ignored.

This was a major concern for the Commission. This meant that the protective mandate of the Commission had to be viewed holistically with its promotion mandate. For example, members of the commission could communicate with the states, and make enquiries and follow-ups on the decisions affecting such a state. The periodic reporting by state parties was another opportunity to make enquiries about matters that have come before the Commission. This may not be as effective and efficient a measure because far too many states lag behind in their reporting obligations. Invariably, following each reporting by a state party, the Commission issued general comments. Strictly understood, the general comments can be monitored.

#### IV

Two major developments were designed to strengthen the Commission's protective mandate. The adoption of the Protocol on the Establishment of the African Court on Human and Peoples' Rights and the establishment of the African Union were occasions to strengthen the mandate of the Commission. The fact that the Commission did not have the



power to make the decisions of the Commission binding and enforceable meant that there was no consequence to failure to take appropriate steps on the part of steps to implement Commission decisions. Above all, it was reported by the Chairperson of the Commission, that the annual reports of the Commission that served before the Assembly of Heads of State and Government were dealt with in a truncated manner, and seemed to be eliciting at the worst, a yawn! There have been occasions when the states cited in the reports reacted with hostility and sought to use their seat in the Assembly to frustrate the intentions of the Commission. It was necessary that the work of the Commission receive substantial attention at the Assembly, and an occasion to debate matters with the representatives of the Commission was lost.

Adopted in 1998 and came into force in 2004, the African Court on Human and Peoples' Rights was meant to strengthen the protective mandate of the Commission. The protocol also gave the Commission a prime role in presenting and arguing matters before the Court. Justices of the Court have been appointed, the seat of the Court is in Arusha, Rules of Court etc have been in place. The Court is yet to come onto its own. Not surprisingly, it has been slow to take off the mark but it has discharged at least one judgment on the merits so far and has issued a number of provisional measures.

The Constitutive Act of the African Union (2000) came into force in 2002. It gave much hope that human rights had become entrenched into the fabric of the Act in a manner that did not happen to the same extent with the OAU. Human rights are seen as an expression of good governance in Africa. It is stated among the Objectives of the Act to "promote and protect human and peoples' rights in accordance with the African Charter on Human and peoples' Rights, and other relevant human rights instruments", and the principle of respect for human rights and the rule of law is enshrined as among the founding principles of the Act. It can be stated therefore that the Constitutive Act strengthens the African system of human rights, and gives it a status the observance of which is an essential element of the membership of the African Union. It can be argued that any states found to have contravened human rights violate the principles of the Act, and as such would put its membership of the African Union in jeopardy, or may attract sanctions as provided for in article 23 of the Act. In an effort to take serious account of the concerns about the annual

reports of the Commission, it has now become practice that the reports serve at the Council of Ministers where a full discussion and debate are possible. I am yet to hear whether this innovation has improved matters.

To complement the above measures, the African Union has also made further pronouncements that undergird the commitments enshrined in its founding Act. The Kigali Declaration was adopted by the AU Ministerial Conference in May 2003. In that document, the Ministers called upon AU policy organs to undertake measures to strengthen the independence and integrity of the Commission (para 23). In a Declaration to mark the 25th Anniversary of the African Charter on Human and Peoples' Rights in 2006, the Assembly of Heads of State and Government resolved to "commit ourselves to undertake the necessary measures to respect and guarantee the independence of the ACHPR, as well as provide it with the necessary human and financial resources, in order to enable it to effectively discharge its functions. The African Union declared the year 2016 "The African Year of Human Rights with particular Focus on the Rights of Women", the Assembly of Heads of State and Governments called upon the Commission to increase its promotion mandate and raise awareness of human rights across the Continent and assist states that seek to establish its human rights mechanisms. One would therefore assume that all these measures go a long way towards mainstreaming human rights observance across the Continent. In other words, there seems little doubt that there is political will to an unprecedented extent for the observance of human rights. Practical experience, however, does not bear this out. The 2016 Declaration also states that the Commission must advise the African Union about any impediments to the full realization of human rights in Africa. Beyond the annual Activity Reports, I am not aware that the Commission has undertaken a study of this nature. Perhaps it is time that this was done.

V

It would seem fair to say that the situation in the world and across Africa today seems to require much more than a human rights system can contain. We may, for example, make reference to the campaign against putative weapons of mass destruction leading to the Iraq War, or observe with Donald Trump in the United States the inflammatory rhetoric about the use of weapons of mass destruction against North Korea. Across Europe I argue that human rights are on the defensive as ever-narrowing notions of self-determination, and

identity politics affect states like Ukraine, Brexit in the United Kingdom, and now Catalonia in Spain. Secessionist movements are not unheard of in Africa if one has regard to campaigns in Nigeria, Mali, Kenya, among others. In many countries, racial and tribal identities hold sway, as against any nationalistic or universal notions of identity that suggest values and common principles of life.

In Africa, we have seen in the last couple of years, armies of African nationals mainly from this region of West Africa, many of them young, risking the perilous desert conditions of the Sahara, and then perish at sea on the Mediterranean as the cargo of human traffickers. Clearly there must be very compelling reasons for people to undertake such journeys of death. It means that people undertake such journeys of adventure because they risk even more by staying at home and die of hunger and starvation. In the case of Africa, the Arab Spring gave much cause for confidence, as we could see a more assertive civil society, only for that to open the door to another form of militarist regime in Egypt, and in Libya, under the guise of a responsibility to protect of the United Nations, the Libyan Leader was murdered and chaos has reigned in Libya ever since. Libya has become a failed state.

Wars in Africa including some of those dubbed “terrorist” assaults on citizens are defining a different character of rights and protection in Nigeria, Somalia where acclaimed religious groups, have been able to take hostages, undertake bombing missions and cause mayhem. In the Sudan, there is a stalemate about Darfur and questions are being asked about the viability of a united Sudan. Yes, similar questions are being asked about the sovereignty of the DRC, for how long can it resist secession of the East? In other countries, democratic principles are being subverted as is the case in the Democratic Republic of Congo where the President has exceeded his mandate in power, or in more subtle ways, where in countries like Rwanda and Uganda, the incumbent Presidents have managed to have the Constitution amended to allow them to extend their tenure, or in Zimbabwe where an ageing President, it is feared, has abdicated power to his ambitious young wife in an undemocratic manner. It is most likely that chaos will ensue upon his demise in the fullness of time. Even in the young Republic of Southern Sudan conflict has meant that the promise of sovereignty has yet to be enjoyed by the people of South Sudan, instead conflict and the spectre of militarist rule trumps peace, security and prosperity that the people had hoped for. There have been

coups or attempted coups in countries as varied as Mauretania, Madagascar, Mali, Cote d'Ivoire, Burkina Faso, and Central African Republic. Kenya has also experienced or is experiencing various levels of discord or conflict, of late about disputed election results.

With 30 years of the African Charter, and a continuous 70 years of the United Nations multilateral development and human rights systems, we are surely entitled to ask: *quo vadis?* To put it another way, with all the instruments referred to above, and the seeming political will to strike a new future for Africa, the peoples of Africa are experiencing neither peace nor prosperity, not even human dignity or economic and social well-being necessary for being and becoming truly human. It seems clear to me that the system that depended on a few powerful nations considered to be capable of causing conflict among themselves in the world, as the rationale presumably of the Permanent members of the United Nations, in the hope that in conclave they could become a mechanism for a check on each other, no longer functions as intended. Instead, we find that world affairs are affected by stalemate in conflicting interests much like it was during the Cold War. While the world no longer needs a policeman of the world, neither is it feasible for the dominant world powers to be entrusted with the peace and justice in the world, as the Charter of the UN had perceived it. Evidently, at the heart of the challenge that the world faces today, is the absence of leadership. By that I mean moral leadership, a radical transformative leadership able to stand above factional interests. What we are reaping today are leaders with the mantra "Me First" translated as "America First", or in South Africa "My Party First!". In America and Europe, Africa and Asia leaders of world stature are in short supply. It seems that more than ever before, multilateral systems are needed because the world is moving towards more and more narrower forms of nationalisms and perceived national interests. One even fears that leaders are galloping society towards a precipitous cliff without any check or obstruction. Identity politics exclude more than they include. They rely on the use of power and very little about building consensus as widely as possible. Isolationism is not the answer. We live in dangerous times. Maybe we are experiencing a retreat from international norms and standards reminiscent of Europe ahead of the Nazi War in Europe.

I hold the view that when so much is disintegrating, it is just the time when international instruments and multilateral systems must be affirmed. The African Union has to be the hope of Africa. But in order for the AU and Africa to realise that hope, it becomes necessary

that the nations of the Continent be invested in younger leadership, in high morality, idealism and vision, and then honour the instruments that have been established in order to promote the well-being of society.

I remain unconvinced, for example, that the kerfuffle about the International Criminal Court in AU circles is well founded. The Gambia<sup>7</sup> was the first country to withdraw, and so has Burundi. That alone is very telling. It is company that many decent nations should not keep. The ICC will remain necessary to address crimes against humanity, war crimes and genocide. That is to say that the criminal jurisdiction in international law entrenched in the Rome Statute must remain. Recent events in Kenya underline the importance of an institution like the ICC. In this country, reacting to the ruling of the Supreme Court of Kenya that the recently held elections were null and void, a furious President Uhuru Kenyatta threatened that his government would deal with the judges. That was spine chilling. The previous indictment against President Kenyatta and his deputy also arose from events subsequent to the declarations of the results of the elections in that country. When we accept the predilection of African states' failure to undertake and manage any set of elections peacefully and with integrity, and then to pronounce threats against the Courts, as appears to have become the custom in Kenya, and in the absence of anything else, then the ICC remains an instrument necessary for the maintenance of the Rule of Law and social protection in extreme cases and in the absence of recourse in the domestic courts.

I am not opposed in principle to the mooted idea that the ICC be reserved either for extreme cases or as a court of final resort. Neither am I averse to the complaints by some African states about the processes undertaken by the ICC in the execution of matters against leaders in Africa. But that means that domestic courts, and law enforcement agencies, must be equipped to act against powerful politicians. Short of the removal of such leaders that is only a pipe dream. The African Union has adopted a protocol amending the Statute of the African Court on Human and Peoples' Rights (2014). To date no nation has ratified the said amendment. The Amendment seeks to extend the jurisdiction of the African Court to include crimes like genocide, crimes against humanity and war crimes. It also

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<sup>7</sup> As soon as Yahyah Jammeh lost power, the new government of Adama Barrow reinstated The Gambia in the Rome Statute. In South Africa notification by the government had to be reversed because the notice was submitted without parliamentary approval.

includes the “crime” of unconstitutional change of government, terrorism, and various forms of corruption. In thus establishing an international criminal jurisdiction, nonetheless, the amendment entrenches impunity from prosecution against any serving head of state, or “anybody acting or entitled to act in such capacity, or other senior state officials based on their functions during their tenure of office.” I believe that it must be accepted that such would never deal with violations of the rights set out, or it provides a dis-incentive for any head of state to leave office. There is also the view that with such an instrument, it will no longer be necessary for African states or complainants thereof to approach the ICC against violations of human rights. There is also a view that such an African Court could serve as a court of first instance.

In such a world as this, it is tempting to pronounce the death of human rights, or to pen its obituary. That will be a grave mistake (excuse the pun!). Human rights do not on their own create a climate conducive to their observance. It is a climate that honours and observes human rights that assures good governance, human well-being, peace, security and prosperity. Human rights provisions must always be accompanied with appropriate sanctions in the event rights are violated. That is the function of good governance. One is, therefore, left with the notion that the African human rights system has a future notwithstanding the perverse crumbling of an effective nation states in Africa, characterized by conflict, social distance, human rights violations with the resultant instability and conflict. Human rights remain the only answer for Africa. In other words, the question that must be asked is no longer *quo vadis* human rights, but rather what future does the African nation-state have as we know it. Are we about to witness yet another episode of the crumbling of the nation-state, its formation and re-formation according to the whims of the moment? What is the power of the nation-state in the face of powerful dissentient terrorist groups, and where so many states have become rather willing dependencies of their former colonial powers, or subservient to them? It does seem to me that the African Commission on Human and Peoples’ Rights is on course to fulfill its mandate according to the Charter. This challenges the African Commission to seek new and innovative ways of exercising its mandate. The old is no longer good enough.

Banjul, The Gambia, 4 November 2017.