

AU pursuing right path on human rights abuses

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THE CELEBRATION of Africa Day this year marks 50 years since the elusive quest for African unity formally started on May 25 1963, the day on which the Organisation of African Unity (OAU) was inaugurated.

Despite the acceleration of integration that came with the transformation of the OAU into the AU, the AU remains poised between two contradictory imperatives: the strengthening of continental institutions and reinforcing national sovereignty.

As part of these celebrations, much attention has been devoted to the need for economic integration, more intra-African trade and the lifting of travel restrictions.

However, the benefits of a stronger AU for governance and human rights have not been similarly highlighted.

Meaningful economic and political integration both depend on states entrusting significant competencies to continental institutions, and accepting that the regional organisation becomes less "intergovernmental" and more "supranational".

An intergovernmental organisation is a loose association of states that do

not transfer much sovereignty to joint institutions, while a supranational body is one in which states accept that decisions made at the continental level are binding on them in theory and practice.

The EU is an example of an organisation with prominent supranational features.

In a strong supranational organisation, states with a bad human rights record are coaxed into adhering to a set of common minimum shared values, and have to accept adherence to multi-lateral positions.

The history of the evolution of the OAU into the AU represents a gradual move from a fully inter-governmental to a more supranational institution.

The OAU was a product of failed attempts to achieve African unity.

The reasons why it was born and functioned as an inter-governmental (rather than a supranational) organisation are not hard to find.

Emerging from hard-fought anti-colonial struggles, the new political elites were deaf to Kwame Nkrumah's call that Africans accept pan-African statehood in the form of a "United States of Africa".

Instead, independent African states jealously guarded their newly founded

sovereignty and elevated the principle of non-interference in their domestic affairs to an unshakable cornerstone of their relationships with other states.

After it had been embarrassed by the application of the rigid principle of non-interference, which allowed Idi Amin not only to be shielded from criticism, but even to act as OAU chairman during his brutal dictatorship in the 1970s, the OAU in 1981 adopted a common human rights framework.

With the establishment of the African Commission on Human and Peoples' Rights, OAU member states accepted that their internal human rights laws and practices may be subjected to the inspection and criticism of a group of independent experts.

Inspection takes the form of the examination of regular reports and taking decisions on complaints submitted by individuals against states.

However, the practice of irregular reporting and lack of implementation of decisions has not lived up to the rhetorical promises of a more supranational regional body.

After the AU had been launched, a significant step was taken to make it more supranational when a continental court started operating under its aus-

pices. By accepting the jurisdiction of the African Human Rights Court, states unequivocally accepted that they would abide by its decisions.

The main factor hampering the court's potential effect on states is the optional nature of its jurisdiction, which has not been accepted by many of the states most likely to be brought before the court (such as Angola, Cameroon, Eritrea, Ethiopia, Sudan and Zimbabwe).

One of the innovations often lauded as a true supranational feature of the AU is the right of the AU Assembly to intervene in a member state without consent if human rights violations, amounting to genocide, war crimes or crimes against humanity, are occurring.

It is of added significance that the relevant provision applies to all AU member states, without the option of opting out. One's initial impression that the right to intervene constitutes a contradiction of the principle of non-interference does not withstand closer scrutiny.

This is so because the AU is not under an obligation, but has a mere discretion to intervene in these situations.

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