

Unity of purpose remains a

A call for a more supranational African Union to better protect



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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 African Union (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 depend on states entrusting significant competences to continental institutions and accepting that the regional organisation become less "intergovernmental" and more "supranational". An "intergovernmental" organisation is a loose association of states that don't transfer much sovereignty to joint institutions, while a "supranational" organisation or 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 pulled closer to and are coaxed into adhering to a set of common minimum shared values, and have to accept adherence to multilateral positions.

The history of the evolution of the OAU into the AU represents a gradual move from a fully "intergovernmental" to a more "supranational" institution. When it was founded, the OAU was the product of failed attempts to achieve African unity. The reasons why the OAU was born and functioned as an inter-governmental (rather than a supranational) organisation aren't hard to find.

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



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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 thoroughly 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 chairperson 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, all OAU member states accepted that their

internal human rights laws and practices may be subjected to the external 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 actual practice of irregular reporting and lack of implementation of decisions has not lived up to the rhetorical promises of a more supranational regional body.

Soon after the AU had been launched, a significant step was taken to make it more supranational when a continental court started operating under its auspices. By accepting the jurisdiction of the African Human Rights Court, states unequivocally accepted that they have to abide by the decisions of a continental court. 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 that are most likely to be brought before the court (such as Angola, Cameroon, Eritrea, Ethiopia, Sudan and Zimbabwe).

An innovation often lauded as a true supranational feature of the AU is the right of the AU Assembly to intervene in a member state without that state's consent if serious human rights violations, amounting to genocide, war crimes or crimes against humanity, are occurring on the territory of that

challenge

human rights in Africa



state. It is significant 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 clear contradiction of the principle of non-interference doesn't withstand closer scrutiny. This is so because the AU is not under an obligation, but has a mere discretion, to intervene in these situations. Notwithstanding the fact that the required threshold triggering this discretion has been met in at least, the case of the crimes against humanity in the Darfur region of Sudan and war crimes in the DRC, the AU didn't act in these situations under its competence to intervene to save the lives of civilian populations.

The AU Assembly's potentially far-reaching competence to impose sanctions on member states that don't comply with AU decisions and policies has been used in respect of unconstitutional changes of the government. While such condemnation underlines the importance of continental constitutionalism, it may also be viewed with cynicism if one considers that many of the present leaders who have come into power by the same means, now insist on benefiting from the AU's involvement.

This brief overview shows that state sovereignty still stands anchored in the African soil. Attempts to uproot this edifice have done little more than shake a few fruits from the tree. While these fallen fruits represent some important advances in the continental system for human rights protection, African integration serving the goals of human rights and good governance will be accomplished only if individual states submit reports to and implement decisions of the

ELUSIVE DREAM: For 50 years African unity of mind and purpose has eluded decision-makers. A radical shift in approach will be required.

African Commission, and accept the jurisdiction of the African Human Rights Court; and if the AU decides to intervene to protect civilian lives and impose sanctions on states that disregard AU decisions and policies.

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