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# 15. The African Union two-dimensional solidarity normative agenda: between contestation and cooperation

*John-Mark Iyi*

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## 1. INTRODUCTION

The idea of solidarity is not neither new to Africa nor to African peoples. In fact, it was Obina Okere who once remarked that “African conception of man is not that of an isolated and abstract individual, but an integral member of a group animated by a spirit of solidarity.”<sup>1</sup> International solidarity is widely accepted as an essential value of the international community and a fundamental principle of international law even though there is controversy whether it possesses the binding character that ordinarily defines international legal norms.<sup>2</sup> At its very core, International Solidarity (IS) emphasizes cooperation among states working together to address issues of inequality, injustice, diseases, peace and security, economic, environmental and other common challenges facing mankind in an increasingly interdependent world.<sup>3</sup> The values solidarity espouses are elaborated in major international instruments, including the 1945 UN Charter,<sup>4</sup> the 1948 Universal Declaration of Human Rights (UDHR),<sup>5</sup> the Declaration Concerning Friendly Relations;<sup>6</sup> the Declaration on the Granting of Independence to Colonial Territories and Peoples;<sup>7</sup> the Charter of Economic Rights and Duties of States;<sup>8</sup> the Declaration on the Establishment of a New International Economic Order (NIEO) among others.<sup>9</sup> African States have long viewed solidarity as a principle of international law to be pursued in international relations because solidarity is a core value not only of African peoples, cultures,

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<sup>1</sup> Obinna Okere, “The Protection of Human Rights in Africa and the African Charter on Human and Peoples’ Rights: A Comparative Analysis with the European and American Systems” (1984) 6 *Hum Rts Q* 141, 148.

<sup>2</sup> Ronald St J MacDonald, “Solidarity in the Practice and Discourse of Public International Law” (1996) 8 *Pace Int’l L Rev* 259, 262.

<sup>3</sup> See Markus Tobias Kurtzur and Kirsten Schmalenbach, “Solidarity Among Nations” (2014) 52(1) *Transnational Solidarity – An Interdisciplinary Approach* 68, 69.

<sup>4</sup> For example, see Charter of the United Nations 1945 art 1(3).

<sup>5</sup> For example, see Universal Declaration of Human Rights 1948 arts 22 and 28.

<sup>6</sup> UNGA, *Resolution 2625 (XXV) Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*, UN Doc A/RES/2526 (XXV) (24 October 1970).

<sup>7</sup> UNGA, *Resolution 1514 Declaration on the Granting of Independence to Colonial Countries and Peoples*, UN Doc A/RES/1514 (XV) (14 December 1960).

<sup>8</sup> See UNGA, *Charter of Economic Rights and Duties of States Resolution 3281 (XXIX)*, UN Doc A/3281 (1974), *reprinted in* [1974] UNYB 403; See Preamble, arts 7–9, 18, 24 <[https://legal.un.org/avl/pdf/ha/cerds/cerds\\_ph\\_e.pdf](https://legal.un.org/avl/pdf/ha/cerds/cerds_ph_e.pdf)> accessed 11 December 2023.

<sup>9</sup> UNGA, *Resolution 3201 Declaration Concerning the Establishment of a New International Economic Order*, UN Doc A/RES/3201(S-VI) (1 May 1974).

institutions and societies, but also the foundational principle of the continental body—the Organization of African Unity ((O)AU) now the African Union (AU), but also of mankind.<sup>10</sup>

Various definitions of the concept of solidarity abound, each often shaped by the context in which the concept is being used. However, while some of these definitions vary in certain respects, most possess some identifiable common characteristics and share basic contents such as the notion of reciprocity and cooperation that unites a people across certain divides. For example, Krune and Petersen define solidarity as the “relations and ties in society that bind people together”.<sup>11</sup> To Brunkhorst, “[s]olidarity refers to equally universalisable interests and feelings (for example, ‘moral resentments’), which are the moving power”.<sup>12</sup> As a legal concept, solidarity in Roman law entailed a concrete commitment and obligation among members of the community that imposed “obligation for the whole, cooperative liability” and required all to stand for all in ‘One for all, all for one’. It constitutes a normative framework for inter-state cooperation on a wide range of issues.<sup>13</sup>

Solidarity is not a static state of affairs but a process of ongoing interaction within a cultural and societal framework of meanings, values and norms. Incidentally, almost all of our social actions are symbolic interactions, based upon values, norms and meanings which are embedded in language and in institutions. Solidarity is thus part and parcel of the human condition.<sup>14</sup>

The confirmation of this notion of solidarity that bound together, “unfamiliar people in complementary roles and heterogeneous interests in the medium of abstract law” ... could be described as “... solidarity among strangers.”<sup>15</sup> Although international solidarity has been conceived and interpreted differently by various commentators and users of the concept in diverse contexts,<sup>16</sup> the elements mentioned above are common in contemporary understandings of the term including the definitions adopted by the three Special Rapporteurs on the Right to International Solidarity.<sup>17</sup> As a dynamic concept, the African Continent has been at the van-

<sup>10</sup> OAU, *Sirte Declaration*, OAU Doc EAHG/Draft Decl (IV) Rev 1 (8–9 September 1999) paras 5 and 6 <[www.tralac.org/documents/resources/african-union/4434-au-sirte-declaration-1999/file.html](http://www.tralac.org/documents/resources/african-union/4434-au-sirte-declaration-1999/file.html)> accessed 11 December 2023; see also Preamble to the Constitutive Act of the Africa Union 2000 <[https://au.int/sites/default/files/pages/34873-file-constitutiveact\\_en.pdf](https://au.int/sites/default/files/pages/34873-file-constitutiveact_en.pdf)> accessed 11 December 2023.

<sup>11</sup> See Hauke Brunkhorst, “Democratic Solidarity Between Global Crisis and Cosmopolitan Hope” in Helle Krunke, Hanne Petersen and Ian Manners (eds), *Transnational Solidarity: Concepts, Challenges and Opportunities* (CUP 2020) 42–43.

<sup>12</sup> *ibid.*

<sup>13</sup> Anna Pitrone, “Solidarity in the African System” in Leonardo Pasquali (ed), *Solidarity in International Law: Challenges, Opportunities and the Role of Regional Organisations* (Routledge 2023) 258. See also UNGA, *Resolution 55/2 United Nations Millennium Declaration*, UN Doc A/RES/55/2 (18 September 2000).

<sup>14</sup> Anton Zijderveld, “The Legal and Moral Dimensions of Solidarity” (2006) 35(3) *Rechtsfilosofie en Rechtstheorie* 306, 306.

<sup>15</sup> Brunkhorst (n 11) 43.

<sup>16</sup> Shyami Puvimanasinghe, “International Solidarity in an Interdependent World” in United Nations (ed), *Realizing the Right to Development: Essays in Commemoration of the Declaration on the Right to Development* (United Nations 2013) 179.

<sup>17</sup> See UNHRC, Virginia Dandan, *Report of the Independent Expert on Human Rights and International*, UN Doc A/HRC/35/35 (25 April 2017) Annex art 1 (Draft Declaration on the Right to International Solidarity); UNHRC, Obiora Chinedu Okafor, *Report of the Independent Expert on Human Rights and International Solidarity Revised Draft Declaration on Human Rights and International Solidarity*, UN Doc A/HRC/53/32 (19 June–14 July 2023) Annex.

guard of advocating and advancing solidarity as an imperative both in terms of its underlying normative value,<sup>18</sup> the constitutionalization of those values,<sup>19</sup> the amplification of the rights they confer and the duties they impose,<sup>20</sup> the establishment of the institutional framework for its application and the codification of the processes for its vindication.<sup>21</sup>

There is a broad consensus in the literature that solidarity is a fundamental principle in African societies. In pre-colonial Africa, solidarity was central to intra- and inter-group relations and survival and it is still largely so today in traditional African societies.<sup>22</sup> Within the modern nation-state, commentators have examined how solidarity permeates the constitutions of many African countries;<sup>23</sup> how the various instruments adopted by the (O)AU and regional economic communities are founded on the principle of solidarity.<sup>24</sup> These instruments highlight solidarity as an underlying value across the African regional systems where the Continent has tried to pull together to address common challenges such as the Ebola virus and other pandemics.<sup>25</sup> Pitrone examines the role of solidarity as a fundamental right within the African system focusing on the protection of people from mass atrocities; the Pan-African Parliament, and the African Charter on Human and Peoples' Rights.<sup>26</sup> Rugani underscores the role of solidarity as an organizing principle of intra-state and inter-state cooperation among

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<sup>18</sup> See Tim Murithi, "African Approaches to Building Peace and Social Solidarity" (2006) 6(2) *Afr JCR* 9–34.

<sup>19</sup> See Constitutive Act of the African Union 2000 art 3(a), (e) and (k).

<sup>20</sup> See African Charter on the Rights and Welfare of the Child (ACRWC) art 11(f) which grants the child the right to an education that, amongst other things, is aimed at "the promotion and achievement of African Unity and Solidarity". Similarly, the African Charter on the Rights and Welfare of the Child art 31(c) imposes a duty on the African child "to preserve and strengthen social and national solidarity". These provisions reflect Africa's intergenerational approach to the concept of solidarity underpinned by Africa's philosophical conception of personhood and human existence as consisting in a representative relationship between the dead, living and the unborn. Thus, we see the similarities between the provisions of ACRWC art 31(a)–(f) and the African Charter on Human and Peoples' Rights (ACHPR) 1969. See Tiyajana Maluwa, "Reassessing Aspects of the Contributions of African States to the Development of International Law through African Regional Multilateral Treaties" (2020) 41(2) *Mich JIL* 327, 399. I thank Cecilia Marcelia Baillet for drawing my attention to the intergenerational aspect of the AU's approach to solidarity.

<sup>21</sup> See for example, African Union, "The Africa We Want: Agenda 2063" (2015) paras 22, 59, 66, 74 <<https://au.int/en/agenda2063/overview>> accessed 10 December 2023.

<sup>22</sup> Miyawa Maxwell, "African Approaches to International Law: A Communitarian Ethic as a Cultural Critique of the Western Understanding of the Human Rights Corpus" in Frans Viljoen, Humphrey Sipalla and Foluso Adegalu (eds), *Exploring African Approaches to International Law: Essays in Honour of Kéba Mbaye* (PULP 2022) 158; Sharon A Omotoso and Emmanuel A Layode, "Pan-Africanism and the Place of Africa in Contemporary World Power Politics" in Toyin Falola and Kwame Essien (eds), *Pan-Africanism, and the Politics of African Citizenship and Identity* (Routledge 2014) 193.

<sup>23</sup> See for example, case (CCT 51/06) *MEC for Education: KwaZulu-Natal & Others v Pillay* 2008 1 SA 474 [53], where the South African Constitutional Court, per Langa CJ elaborated the concept of *Ubuntu* in the context of the constitutional right to cultural expression and freedom from discrimination.

<sup>24</sup> See Article 4(b) of the Treaty of the Southern African Development Community (1993) 32(1) ILM 116, 124; Economic Community of West African States, Revised Treaty 1993 art 4(b); The Treaty for the Establishment of the East African Community 2000.

<sup>25</sup> Gabriel Rugani, "Solidarity in ECOWAS, A Sub-Regional African Organisation with Relevant Similarities to the EU" in Leonardo Pasquali (ed), *Solidarity in International Law: Challenges, Opportunities and the Role of Regional Organisations* (Routledge 2022) 295.

<sup>26</sup> Pitrone (n 13).

African peoples and between African States within the framework of African continental and sub-regional organizations.<sup>27</sup> In his analysis of the (O)AU practice, Tiekü draws a connection between Pan-Africanist solidarity that which guided the (O)AU in its practices—never publicly chastising one of its own and the African Union’s contemporary practices.<sup>28</sup> The AU’s Agenda 2063 declares that its articulations are shaped by the history of African solidarity.<sup>29</sup> Luwam Dira examines the extent to which the norm of solidarity influences inter-state behavior and relations among members of the Southern African Development Community (SADC).<sup>30</sup> For her part, Gabriele Rugani examines, in comparison with the EU, how the Economic Community of West African States (ECOWAS) conceptualizes solidarity in its legal and normative regional frameworks and how its members implement regional solidarity within their domestic national contexts in efforts towards greater regional integration of ECOWAS states and citizens.<sup>31</sup> For his part, Obamamoye examines how the AU has attempted to both institutionalize and operationalize the concept of solidarity as a normative vehicle to mobilize resources for peacebuilding measures and reconstruction of post-conflict societies in Africa through the African Solidarity Initiative and the numerous hurdles hampering the effectiveness of the operationalization of solidarity in the AU.<sup>32</sup>

The present contribution begins by accepting the proposition that solidarity is an integral principle of social relation in most African societies just as international solidarity is a foundational principle of the (O)AU and its successor, the AU. However, the normative understandings and contours, the appropriation and invocation of international solidarity by the (O)AU shifted over time as it interacted with international legal norms and multiple external actors manifesting in a two-dimensional internal-external solidarity in (O)AU theory and praxis. In this sense, international solidarity in (O)AU legal and normative frameworks can be conceptualized at two levels having both an internal and external dimension. In its internal dimension, the (O)AU institutionalizes and consolidates international solidarity as a regional organizing principle cross-cutting different aspect of (O)AU affairs. In its external characterization, the (O)AU invoked the principle as a basis upon which certain claims were/are made: (i) to demand redress for economic inequalities amongst states; (ii) justification for demanding reform of the international system to guarantee equal participation and a fair and just international legal order; (iii) as a normative basis for mobilization for redress for historical crimes including slavery, colonialism, and other forms of injustices of particular concern to Africa; (iv) as a moral basis for demanding international action and support in the mitigation of humanitarian disasters and climate change; (v) as a basis for support in key

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<sup>27</sup> Rugani (n 25) 295.

<sup>28</sup> See Thomas Kwasi Tiekü, “Solidarity in Intervention: Emerging Trends in AU’s Interventions in African Crisis” (2009) <<https://www.researchgate.net/publication/237504199>> accessed 20 November 2022.

<sup>29</sup> See The Africa We Want: Agenda 2063 (n 21) Aspiration 2, 4.

<sup>30</sup> Luwam Dira, “Norms of Solidarity and Regionalism: Theorizing State Behavior Among Southern African States” (2016) 24(3) *Mich SILR* 667.

<sup>31</sup> Rugani (n 25) 283–301.

<sup>32</sup> Babatunde F Obamamoye, “Reinvigorating the African Solidarity Initiative for Robust Implementation of the African Union’s Post-Conflict Reconstruction and Development Policy” (*ACCORD*, 8 May 2020) <[www.accord.org.za/conflict-trends/reinvigorating-the-african-solidarity-initiative-for-robust-implementation-of-the-african-unions-post-conflict-reconstruction-and-development-policy/](http://www.accord.org.za/conflict-trends/reinvigorating-the-african-solidarity-initiative-for-robust-implementation-of-the-african-unions-post-conflict-reconstruction-and-development-policy/)> accessed 13 June 2022.

domestic policy areas of common interests such as human rights, democratization and the rule of law. However, the search for international cooperation which underpins this solidarity claim seems to assume a consensus on certain universal values that are valid candidates for international solidarity in different regimes. But this is seldom so. Indeed, many of those values are sometimes contested in (O)AU–UN relationship resulting in tensions that could impede the evolution of the norm in practice and AU’s interaction with the international legal order and actors. This is part of what has made progress so tentative as to be almost negligible and, in some cases, outright counterintuitive (ie vaccine nationalism).<sup>33</sup> In this chapter, except where the context otherwise indicates, reference to the OAU includes the successor AU. As opposed to solidarity *simpliciter* where I use the term international solidarity (IS) to denote solidarity in an international context. This chapter is divided into five sections, including this Introduction. In section two, I examine solidarity as a value in AU normative framework. Sections three and four examine the internal and external dimensions of solidarity in AU theory and praxis respectively. Section V reflects on a few critical issues posed by AU’s normative conception and application of solidarity in international law.

## 2. SOLIDARITY AS A VALUE IN OAU/AU NORMATIVE, LEGAL AND INSTITUTIONAL FRAMEWORKS

### 2.1 Solidarity as a Normative Value in the OAU/AU Normative Framework

To the extent that the (O)AU embodies the values, dreams and aspirations of the peoples of Africa, the point of departure in understanding (O)AU’s normative conception of solidarity requires an understanding of African peoples’ perception of the universe and its elements. Africans have a shared understanding of solidarity. This shared understanding emanates from the concept of *Ubuntu* which is characterized by what Mogobe Ramose described as the pervasive “family atmosphere” and the “philosophical affinity and kinship among and between the indigenous peoples of Africa.”<sup>34</sup> There may be differences as there are bound to be among African peoples and their cultures, but as the basis of a system of social formation, *Ubuntu* as a norm whose essence expresses that “to be a human being is to affirm one’s humanity by recognizing the humanity of others and, on that basis, establish a humane relations with them” is a unifying common denominator.<sup>35</sup> In African thought system, there is an acknowledgement of not only the “‘indivisibility’ but also the mutual dependence of the ‘rational’ and the ‘emotional’ in the perception and reaction to the universe such that there is a pre-eminent position reserved for consensus and harmonious co-existence.”<sup>36</sup> As Ramose puts it “the

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<sup>33</sup> For further discussion on this, see Obijiofor Aginam, “The Globalization of Public Health and Right to Solidarity” in Cecilia M Bailliet (ed), *The Research Handbook on International Solidarity and the Law* (Edward Elgar Publishing 2024) ch 9.

<sup>34</sup> Mogobe B Ramose, “The Philosophy of Ubuntu and Ubuntu as a Philosophy” in PH Coetzee and APJ Roux (eds), *Philosophy from Africa: A Text with Readings* (2nd edn, OUP 2003) 271. For further discussion of the concept of *Ubuntu*, see Sylvia Bawa, “Solidarity Right as Duty and *Ubuntu* Consciousness” in Cecilia M Bailliet (ed), *The Research Handbook on International Solidarity and the Law* (Edward Elgar Publishing 2024) ch 14.

<sup>35</sup> Ramose (n 34) 271.

<sup>36</sup> *ibid* 276.

concrete expression of African thought is the continual quest for consensus aimed to establish harmony.”<sup>37</sup> In the quest for this consensus and harmony, the individual, while important, finds themselves—the pursuit of their wellbeing and the realization of their full potential—within the wellbeing of the collective or group.<sup>38</sup> The personhood of the African is understood in relation to others—the extent to which one demonstrates “generous, hospitable, caring and compassionate” dispositions.<sup>39</sup> This would sometimes require—as international solidarity demands today—that the individual makes a sacrifice for the collective good. This philosophical background is important in understanding why the (O)AU’s conception of international solidarity is very much linked to the African personality which in turn is rooted in the concept of *Ubuntu*. This belief influenced the conception of solidarity by pioneers and generations of Pan-Africanist thinkers both in the diaspora and on the continent such as Edward W Blyden, Marcus Garvey, William Dubois, and Kwame Nkrumah, and has been carried forward through most of (O)AU’s legal and policy frameworks over the years anchored in *Ubuntu* as the normative basis of social compact that embodies African heritage, ethics and values.<sup>40</sup>

## 2.2 Solidarity as a Principle in the (O)AU Legal Framework

From its inception, the OAU and its activities were anchored in solidarity—the ideal of cooperation and shared responsibility underpinned the constitutive instrument of the continental body. Its legal and policy frameworks were suffused with proclamations of African solidarity as a preeminent principle of the organization, and called on the international community to endorse and honor the duties imposed by international solidarity. The Preamble of the OAU Charter illustrates the centrality of solidarity in the African consciousness when it declared that the establishment of the OAU itself was “[i]nspired by a common determination to promote understanding among our peoples and cooperation among our states in response to the aspirations of our peoples for brother-hood and *solidarity*, in a larger unity transcending ethnic and

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<sup>37</sup> *ibid.*

<sup>38</sup> Makau Mutua, “The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties” (1995) 35 *Virg JIL* 339, 363. Ronald St J MacDonald echoes similar views in respect of the international community, when he asserts “[s]olidarity requires an understanding and acceptance by every member of the community that it consciously conceives of its own interests as being inextricable from the interests of the whole.” See MacDonald (n 2) 290.

<sup>39</sup> Murithi (n 18) 17.

<sup>40</sup> Aminah Wallace, “Pan-Africanism and Slave Rebellions: The Interconnections” in Toyin Falola and Kwame Essien (eds), *Pan-Africanism, and the Politics of African Citizenship and Identity* (Routledge 2014) 193. See Mohammed Bedjaoui, “Brief Historical Overview of Steps to African Unity” in AA Yusuf and F Ouguerouz (eds), *The African Union: Legal and Institutional Frameworks: A Manual on the Pan Africanist Organization* (Brill 2012) 10–11; Babatunde Fagbayibo, “Nkrumahism, Agenda 2063, and the Role of Intergovernmental Institutions in Fast-tracking Continental Unity” (2018) 53(4) *J Asian & Afri Stud* 632; The Africa We Want: Agenda 2063 (n 21) Agenda 5. “Pan-Africanism is an ideology and movement that encouraged the solidarity of Africans worldwide. It is based on the belief that unity is vital to economic, social and political progress and aims to ‘unify and uplift’ people of African descent. The ideology asserts that the fates of all African peoples and countries are intertwined. At its core, Pan-Africanism is ‘a belief that African peoples both on the continent and in the diaspora, share not merely a common history, but a common destiny’.” AU Echo Issue 5 (27 January 2013) 1, cited by Hakim Adi, *Pan-Africanism: A History* (Bloomsbury Publishing 2018) 1.

national differences”.<sup>41</sup> Article II(1) of the OAU Charter states that: “[t]he Organization shall have the following purposes:

- (a) *to promote the unity and solidarity of the African States;*
- (b) *to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;*
- (c) to defend their sovereignty, their territorial integrity and independence;
- (d) to eradicate all forms of colonialism from Africa; and
- (e) *to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.*<sup>42</sup>

In the OAU Charter, the idea of solidarity was inherently linked to the nation-state and the conception of solidarity was essentially state-centric, reflecting as it did, the urgent and immediate preoccupation of the post-independent African states who had just emerged from the shackles of colonial domination and were striving to unite and cooperate in defense of the newly won independence and state sovereignty.<sup>43</sup> In this sense, the call for solidarity was often framed by the language of common suffering of African peoples from the transatlantic slave trade through to the struggles for colonial emancipation.<sup>44</sup> This connotation of solidarity is heavily laced in the exposé of two leading African leaders of the time: Kwame Nkrumah of Ghana and Leopold Sedar Senghor of Senegal. Nkrumah stated that the independence of Ghana was meaningless unless it translated to the total emancipation of the entire African Continent, thus setting the tone for African solidarity for the subsequent establishment of the OAU to be primarily dedicated to the total liberation of the continent. This state-centric preoccupation of the OAU not only shaped the OAU’s application of solidarity but it also explains why it was difficult for the OAU to rise above its own commitment to intra-state Pan-African fraternity and chastise the many failures of the post-colonial African state where many regimes routinely committed mass atrocities against their own citizens and failed to deliver socio-economic development to their people.<sup>45</sup> In fact, so ingrained was this consciousness that it was argued that in Africa, “[t]hrough a process of socialization, continental and regional norms of solidarity are internalized to establish the tenets of state behavior among African states. Norms of solidarity create identity of African-ness as a destiny of African states beyond the confines of geographic proximity. Thus, norms of solidarity based on unity and comradeship define ‘African-ness’ as good and lack thereof as something bad.”<sup>46</sup> This idea of African solidarity was defined in relation to external actors and “African-ness” was gauged by a declared commitment to this objective even if this was in some cases merely symbolic. To

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<sup>41</sup> See Charter of the Organization of the African Unity 1963 479 UNTS 6947 Preamble, 70.

<sup>42</sup> *ibid.*

<sup>43</sup> A Kasanda, “Exploring Pan-Africanism’s Theories: from Race-based Solidarity to Political Unity and Beyond” (2016) 28(2) *J Afr Cult Stud* 179, 180. Samuel M Makinda and F Wafula Okumu, *The African Union: Challenges of Globalization, Security and Governance* (Routledge 2008) 23.

<sup>44</sup> Stephanie Doumbe-Bille, “The African Union: Principles and Purposes” in AA Yusuf and F Ouguerouz (eds), *The African Union: Legal and Institutional Frameworks: A Manual on the Pan Africanist Organization* (Brill 2012) 59.

<sup>45</sup> See Nsongurua Udombana, “AU Institutional Capacity to Implement Integration and the Human Security Agenda” in Wafula Okumu and Andrews Attah-Assamoah (eds), *The African Union at 20: African Perspectives on Progress, Challenges and Prospects* (Institute for Security Studies 2023) 76–78.

<sup>46</sup> Dira (n 30) 669–671.

be in solidarity with another was “African” and it was deemed “un-African” not to solidarize with one another.

For his part, Senghor, while rejecting the idea of defining “African-ness” or the African identity and solidarity through the lens of common suffering of slavery and colonialism, points out that what defines African-ness is much more than a shared history of suffering and oppression.<sup>47</sup> It is something stronger. Senghor argued that:

Most of us feel that what brings us close to one another and must unite us is our position as under developed countries, formerly colonized. Nor is that wrong. But we are not the only countries in that position. If that could be said objectively to be whole truth, then African Unity ought one day to dissolve with the disappearance of under-development. I am convinced that what binds us lies deeper; and my conviction is based on scientifically demonstrable facts. What binds us is beyond history: it is rooted in pre-history. It arises from geography, ethnology, and hence from culture. It existed before Christianity and Islam; it is older than all colonization. It is that community of culture which I call African-ness. I would define it as “the sum total of African civilized values: Whether it appears in its Arab-Berber aspect or its African Negro aspect, Africanness always shows the same characteristics of passion in feelings, and vigor in expression. I recognize an African carpet among those of all other continents. It is no mere chance that some mosaic in Bardo Museum resembles some Mali ‘pagne’.”<sup>48</sup>

Senghor defines African-ness as the basis of African unity which is something beyond mere shared experiences. Whereas the common history Africa faced definitely strengthened the bond of oneness and need for unity and solidarity among post-independent African states,<sup>49</sup> it would be problematic as Senghor pointed out to use these shared experiences as the main reason for the norm of solidarity in Africa. It would be inadequate to explain or as constituting elements that define and unites African states. When the AU was established in 2002, it essentially retained the pre-eminence of solidarity in its constitutive document but went further. The Preamble of the AU Constitutive Act declares:

INSPIRED by the noble ideals which guided the founding fathers of our Continental Organization and generations of Pan-Africanists in their determination to promote unity, *solidarity*, cohesion and cooperation among the peoples of Africa and African States;

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<sup>47</sup> *ibid.* Writing in similar context with reference to Southern African States, Dira notes: “Norms of solidarity form and regulate solidarity as logic of appropriateness among African states in general and Southern African states in particular. Alternatively, norms of solidarity are patterns of thought that establish state behavior by formulating concepts of the function and values of Africanness”.

<sup>48</sup> *ibid.*, quoting Leopold Sedar Senghor, President of Senegal, Statement at the 1963 African Summit (23 May 1963), as reproduced in UN ECA, *Celebrating Success: Africa’s Voice Over 50 Years 1963–2013* (Addis Ababa 2013) 85.

<sup>49</sup> In this respect, Maluwa asserts that “[o]ne major task that Pan-Africanism set for itself—reflected in the OAU Charter—was the complete liberation of the continent from colonialism, racism and apartheid. In fact, it was this task that gave rise to the need for unity: the sense of a shared responsibility by the newly emergent thirty-odd African States and a shared history of suffering from the combined experience of the transatlantic slave trade and colonial subjugation, oppression and exploitation”. See Tiyajana Maluwa, “The Transition from the Organization for African Unity to the African Union” in AA Yusuf and F Ouguerouz (eds), *The African Union: Legal and Institutional Frameworks: A Manual on the Pan Africanist Organization* (Brill 2012) 28.



GUIDED by our common vision of a united and strong Africa and by the need to *build a partnership between governments and all segments of civil society*, in particular women, youth and the private sector, in order to strengthen *solidarity* and cohesion among our peoples”<sup>50</sup>

Article 3:

The objectives of the Union shall be to:

(a) achieve *greater unity and solidarity* between the *African countries* and the *peoples of Africa* ...<sup>51</sup>

From the above excerpt, it is clear that the AU retained solidarity not only as an ideal but as a mobilizing normative tool used by preceding generations of Africans but as a principle that should be embraced and advanced.<sup>52</sup> There are three remarkable ways in which the AU advanced the norm of solidarity in Africa through its legal framework which, for purposes of analysis, may be calibrated thus:

First, the AU introduced a solidarity paradigm shift away from the state-centric approach in the OAU Charter. As stated above, while Article II(a) of the OAU Charter states that the objective of the OAU was to “promote the unity and *solidarity of the African States*”, Article 3(a) of the AU Constitutive Act states that the objective of the AU is to “achieve *greater unity and solidarity* between the *African countries* and the *peoples of Africa*.” Whereas the OAU focused on inter-state solidarity, the AU’s approach to the principle of solidarity flowing from the AU Constitutive Act, Preamble and Article 3(a) emphasize solidarity not just between African states but more importantly between African peoples. Unlike Article II(a) of the OAU Charter, Article 3(a) of the AU Constitutive Act distinguishes between solidarity among “African States” and solidarity among “African Peoples”.<sup>53</sup> This paradigm shift, some have argued emanates from the sober reflection undertaken by the OAU in light of the many challenges—poverty, armed conflicts and political instability—that characterize the continent. Perhaps, upon introspection, the AU had to admit that the OAU’s dream of “State Pan-Africanism” which was the rallying call of liberation movements to mobilize solidarity for anti-colonial struggles in Africa “... turned out to be impotent, because the fever of unity and solidarity did not sweep across the various lands and social groups” in the post-colony.<sup>54</sup> The “new” approach to solidarity in the AU Constitutive Act thus suggests a certain realization that there has been some disconnect between the post-colonial African state’s declared solidarity and the African peoples relationship to the concept.<sup>55</sup> It was therefore imperative for both the African state and the people it represents to pull collectively towards greater unity and solidarity in the continent. It is in this sense that a second tier of African solidarity was contemplated to focus on state-peoples solidarity.<sup>56</sup>

The second level of solidarity in the AU Act which derives from Article 3(a) which seeks to promote *solidarity* between the *African countries* and the *peoples of Africa*. This represents

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<sup>50</sup> AU Constitutive Act 2000 Preamble.

<sup>51</sup> *ibid.*

<sup>52</sup> Doumbe-Bille (n 44) 59.

<sup>53</sup> *ibid* 53–75.

<sup>54</sup> *ibid* 59.

<sup>55</sup> *ibid.*

<sup>56</sup> The anti-colonial flames had diminished with the formal end of decolonization and new challenges had emerged requiring new approaches. See Paul Henri-Bischof, “The AU as a Global Actor” in Wafula Okumu and Andrews Attah-Assamoah (eds), *The African Union at 20: African Perspectives on Progress, Challenges and Prospects* (Institute for Security Studies 2023) 297.

a cosmopolitan call for the individual African country to act in solidarity with different African peoples. This seems to suggest that an African country is required to act in solidarity with the peoples (as opposed to the state) in circumstances where there is ostensible a governmental legitimacy deficit. If this proposition is valid, then it would have at least two implications. First, in the context of humanitarian catastrophes for example, this interpretation of solidarity suggests that an African state should provide support to the peoples of the affected African country where they face humanitarian disasters whether from natural phenomenon or mass atrocities at the hands of their own government. As the tension between the Democratic Republic of the Congo (DRC) and Rwanda on the one hand, and between the DRC and Uganda on the other hand demonstrate, such support in the spirit of state-people solidarity will necessarily have to be non-military.<sup>57</sup> A second implication of this state-people solidarity scheme of the AU is that it reinforces the normative basis of the idea of regional responsibility to protect implicit in Article 4(h) of the AU Constitutive Act. The old-fashioned state-state solidarity under the OAU can be said to have given way to state-people solidarity under the AU that demands that one African state should act in solidarity with the peoples of another African state.

A third level of solidarity arguably implicit in Article 3(a) of the AU Constitutive Act is the idea of people-people solidarity among Africans or “African peoples”. Whereas the expression “greater unity and solidarity between the *African countries* and the *peoples of Africa*” could be interpreted to mean each African state acting in solidarity with each other, and vice versa, it is also possible to take a much broader view of this provision to mean inter-peoples solidarity within a state and also inter-group and transnational solidarity among African peoples across national boundaries. This is the very idea of solidarity also inherent in *Ubuntu* linked to our common humanity regardless of national origin implicit in the AOU’s Charter reference to solidarity and brotherhood. It is conceded that in terms of peoples-peoples (intra- and inter-group) solidarity, it is unclear from Article 3(a) whether this is intended to happen at intra-state level or across national boundaries in African countries. However, given the arbitrary nature of the colonial borders that split ethnic groups into different countries and nationalities, it is not only reasonable, in fact, it is inevitable that inter-group solidarity at the macro level would take place across national boundaries. After all, such inter- and intra-group solidarity already takes place on the ground in border communities across the porous borders on the continent with or without the imprimatur of the state. For example, we see this in the ways in which internally displaced people (IDPs) in border communities affected by the ongoing Boko Haram conflict mobilize social capital in cooperation and support of one another across the Nigeria–Niger border, Cameroon–Nigerian border, Nigeria–Chad border, etc.

The AU’s new approach goes beyond a generalized notion of solidarity, at least in theory. Solidarity in the AU Constitutive Act is now centered on the “ideal to ... promote unity, solidarity, cohesion and cooperation among the peoples of Africa and African States; driven by a vision of a united and strong Africa based on partnership between governments and all segments of civil society, in particular women, youth and the private sector, in order to strengthen solidarity and cohesion among our peoples.”<sup>58</sup> Again, we see a deliberate effort to

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<sup>57</sup> For example, Tim Murithi advocates for social solidarity as a peacebuilding strategy that could be employed by the AU to address the perennial problems of armed conflicts on the continent. See Murithi (n 18) 13.

<sup>58</sup> AU Constitutive Act 2000 Preamble.

bring individual Africans as citizens of the continent in closer dialogue and connection with one another not only mediated through state institutions and bureaucracy of regional economic communities and continental organizations but in direct cooperation both as participants, actors, drivers, owners and shapers of the processes of African solidarity.

### **2.3 Towards Greater African and International Solidarity?**

As argued above, the OAU Charter did not prioritize the peoples of Africa in its conception of solidarity. This was ironic because the wars of independence fought on the continent were waged by the peoples. Solidarity was usually directed to other African peoples still under colonial domination rather than the colonial state. Paradoxically, once independence was attained, African solidarity was promptly shifted from the peoples to the new independent African state. This shift explains why the OAU was perceived to be indifferent by African peoples for several decades; the AOU could not prevent conflict and atrocities committed by African leaders in the name of the state which culminated in the overall decline in solidarity among African peoples. This perhaps explains the need for the expanded meaning now given to unity and solidarity under Article 3(a) of the AU Constitutive Act compared to Article II(a) of the OAU Charter. This provision was expanded and given greater emphasis in Article 3(a) of the AU Constitutive Act which provides that the AU sets out to “achieve greater unity and solidarity between the African countries and the peoples of Africa”. This provision can be viewed in two dimensions.

Besides its achievements in the liberation of the continent from colonialism and apartheid, the OAU had underperformed and it was crucial for the successor AU to be more progressive in solidarity as evidence of self-renewal.<sup>59</sup> To achieve this new approach, the AU stepped away from the general indifference and apathy that characterized the OAU’s relationship with African citizens post-independence. We see this in Article 3(a) of the Act which stresses greater unity and solidarity to stem the tide of conflicts and instability on the continent.<sup>60</sup> At least in principle, the AU is now to be guided by the principle of solidarity and will no longer shy away from the challenges facing African peoples regardless of the country in which they are located. I will now briefly consider some specific examples that underscore this expansion of the role of solidarity in the new AU.

In terms of Article 3(i) of its Constitutive Act, the AU is to “establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations”.<sup>61</sup> With a focus on the continent, the AU aims to “promote sustainable development at the economic, social and cultural levels as well as the integration of African economies”.<sup>62</sup> Similarly, Article 3(l) provides that the AU will “coordinate and harmonize the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union”<sup>63</sup> and “advance the development of the continent by promoting research in all fields, in particular in science and technology”.<sup>64</sup> Two superintending

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<sup>59</sup> Doumbe-Bille (n 44) 58–59.

<sup>60</sup> *ibid* 59.

<sup>61</sup> AU Constitutive Act 2000 art 3(i).

<sup>62</sup> *ibid* art 3(j).

<sup>63</sup> *ibid* art 3(l).

<sup>64</sup> *ibid* art 3(m).

provisions then stipulate the overarching solidarity normative framework within which all of these and other AU objectives are to be understood and pursued. Article 3(j) which articulates the intention of the AU to promote sustainable economic, social and cultural development of Africa is linked to the provisions in Article 3(k), (m) and (n). Article 3(k) is predicated on the realization that in order to achieve the objectives laid out in Article 3(j), (m) and (n), and indeed, the entire AU Act, cooperation and solidarity is essential. Hence, Article 3(k) which provides for "... co-operation in all fields of human activity" is central to the objectives of the AU—to improve the living conditions of African peoples.

The AU's approach to social, economic, and cultural development in the AU Act is also linked to the sustainable development goals anchored in international cooperation and solidarity.<sup>65</sup> International cooperation is necessary for the recognition and respect for cultural diversity, protection of the environment, promotion of scientific and technical research and enhancement of the health of the populations as articulated in the AU Constitutive Act. Recent experiences of the COVID-19 pandemic and the way in which vaccine nationalism as opposed to international solidarity quickly took hold in the response by some countries to a global problem arguably justifies the central role allocated by the AU to international solidarity and cooperation in the AU Constitutive Act. The AU rejected the vaccine nationalism adopted by states in the Global North and called for the waiver of intellectual property rights by multinational corporations who had patent to the vaccines so that Africa could access the vaccines for in the spirit of solidarity to tackle the pandemic. However, this call was largely unsuccessful and the AU sees this as just another example of western hypocrisy in terms of solidarity. This heightened idea of solidarity has led some authors to conclude that the AU has elevated the principles of inter-state cooperation and solidarity to the same level as other fundamental principles it inherited from the OAU.<sup>66</sup> In principle, it would appear that the "AU aspires to a new level of regional solidarity above the sovereignty of African States."<sup>67</sup> Surely, greater solidarity among African countries will be of mutual benefit to African countries and peoples.

## 2.4 Human Rights and Solidarity as Norms in (O)AU Legal Frameworks

The ideal of solidarity found in the African Charter on Human and Peoples' Rights (ACHPR) which is regarded as one of the most progressive and comprehensive regional human rights instruments in the world may offer some useful lessons for our current world.<sup>68</sup> The ACHPR establishes the duties of individuals towards the family, the society in which they live as well as the international community. It emphasizes African values and morals and the African traditions and cultural framework that underpin the African human rights architecture while infusing human rights law with socio-economic and cultural rights.<sup>69</sup> By maintaining a delicate balance between rights and duties, the ACHPR infuses "African humanism and its philosophy

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<sup>65</sup> See *ibid* art 3(j).

<sup>66</sup> Doumbe-Bille (n 44) 67.

<sup>67</sup> *ibid*.

<sup>68</sup> See OAU, African Charter on Human and Peoples' Rights (1982) 21 ILM 58, adopted by the Assembly of Heads of States and Government of the OAU on 27 June 1981 CAB/LEG/67/3 rev 5, entered into force on 21 October 1986.

<sup>69</sup> Michelo Hansungule, "The African Charter on Human and Peoples' Rights" in AA Yusuf and F Ouguerouz (eds), *The African Union: Legal and Institutional Frameworks: A Manual on the Pan Africanist Organization* (Brill 2012) 420.

of reciprocity” into Africa’s legislative human rights corpus.<sup>70</sup> This ACHPR approach to human rights was deemed unique in two key respects and did attract criticism in its early days: first, by imposing duties on individuals towards their family, community and the international community, it links the individual’s survival and wellbeing to the survival and wellbeing of the group which in turn depends on group solidarity. Article 27 ACHPR provides that:

1. Every individual shall have duties towards his family and society, the state and other legally recognized communities and the international community.
2. The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.<sup>71</sup>

Second, it is widely accepted that the ACHPR is also unique in the way in which it centers people’s rights as opposed to the individual which is characteristic of the African ideal of *Ubuntu*.<sup>72</sup> As Makua Mutua argues, the African conception of human rights and its emphasis on rights and duties and the indivisible link between those rights and solidarity “stands in stark contrast to the atomistic view of the Western world, which regards individuals as locked in a constant struggle against society for the redemption of their rights”.<sup>73</sup> The (O)AU conception of human rights emanates from the African worldview of which solidarity forms an integral part even if generally regarded to be in contradistinction to the Western conception of human rights which revolves around individual rights and freedoms. For this reason, human rights discourse on this issue was characterized by notions that the ACHPR’s integration of solidarity rights into its human rights framework was flawed. An examination of that debate is outside the scope of this chapter. However, the crux of the debate and how the ideological divide could have been resolved within the human rights discourse has become relevant again by recent developments such as the COVID-19 pandemic which among other global challenges required international solidarity. Sadly, the idea of individual rights and freedoms *versus* the duties of the individual to their fellow human beings and community became battlegrounds on issues like masking mandate which had to be fought in and outside courtrooms in Western countries.<sup>74</sup> This suggests the need for a reappraisal of our idea of human rights and the need to infuse *Ubuntu* and solidarity into contemporary human rights discourse. The Russia–Ukraine conflict and its far-reaching impact on Africa food security is another example. In both cases, the need for solidarity has never been greater and could ideally be addressed within the ambit of Article 21(4) of the ACHPR which states:

Article 21(4): States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity.

Similarly, Article 29(4) imposes a direct duty on the individual to ensure social and national solidarity while Article 27(2) imposes an indirect duty which requires the individual to con-

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<sup>70</sup> Benjamin Elias Winks, “A Covenant of Compassion: African Humanism and the Rights of Solidarity in the African Charter on Human and People’s Rights” (2011)11 *AHLJ* 447, 459.

<sup>71</sup> See ACHPR art 27.

<sup>72</sup> Hansungule (n 69) 420.

<sup>73</sup> Richard N Kiwanuka, “The Meaning of People in the African Charter on Human and Peoples’ Rights” (1982) 82(1) *AJIL* 80, 82.

<sup>74</sup> See Aginam (n 33).

sider how they exercises their rights, bearing in mind, how it could adversely affect other people or the community. In other words, solidarity in exercising one's right is to be conscious of the existence of others and to exercises one's rights in ways that also secures the rights of others and the common good of all and the community.<sup>75</sup>

The ACHPR system synchronizes “[i]ndividual interests to the interest of others”<sup>76</sup> because its normative framework rests on the conviction that “a person forms part of a people, in a relationship of reciprocal rights and duties” which “requires positive assistance to one's fellow human beings,”<sup>77</sup> in effect—cooperation, solidarity or *Ubuntu*. Thus, the solidarity ethos embedded in the ACHPR normative framework commends itself not only to African problems but to a variety of current global challenges. The idea of human rights and the complex processes through which they are vindicated reveals that individual human rights do not exist in a socio-political vacuum but are inextricably linked to individual duties, and peoples' rights.<sup>78</sup> Solidarity with fellow human beings particularly during adversity is an important element of the pre-colonial concept of human rights in African societies.<sup>79</sup> The present call for a moral vision for the world at a time of extreme uncertainty and existential threats to humanity—man-made nuclear annihilation, climate catastrophes, or social upheaval in response to these and other natural phenomena, shows that the world needs this *Ubuntu* “kind of transnational and transcultural moral vision that [...] human rights provide.”<sup>80</sup> The criticism against *Ubuntu* values in some quarters is its apparent preference for communitarian approach to the problems of society. It is argued that this collective approach which is so fundamental to African values and society is incompatible with the more individualist-oriented Western conception of human rights. In this sense, human rights cannot serve as a normative basis for social mobilization around solidarity. However, as Hollenbach argues, a proper and holistic understanding of human rights demonstrates that it offers a comprehensive framework for international solidarity and mobilization or resources to respond to contemporary challenges. This, as he argues, is because “human rights norms support a social or relational understanding of the human person. The UDHR implies that the dignity of the human person can only be protected and enhanced through interaction with others and through active participation in social life.”<sup>81</sup>

It is conceded that African communitarian values have come under severe pressure from westernization, and the norms and cultural practices of a society are in a constant state of evolution, but it will be hasty to conclude that the worldview of a people can be flipped so quickly.<sup>82</sup> It is this “community-oriented notion” or normative value that can be one of Africa's major contributions to the call for international solidarity. The claim here is not to say that

<sup>75</sup> Mutua (n 38) 369–370.

<sup>76</sup> *ibid.*

<sup>77</sup> See Makau Mutua, *Human Rights: A Political and Cultural Critique* (University of Pennsylvania Press 2002) 82. ACHPR art 10(2) states that “[s]ubject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.” The individual has an obligation to work to “preserve and strengthen social and national solidarity, particularly when the latter is threatened.” This provision subjugates individual rights and liberty to the demands of the group by compelling the individual to be in solidarity with the group.

<sup>78</sup> Mutua (n 38) 340–41.

<sup>79</sup> *ibid* 352.

<sup>80</sup> David Hollenbach, “A Relational Understanding of Human Rights: Human Dignity in Social Solidarity” (2022) 71(1) *Emory LJ* 1487, 1488.

<sup>81</sup> *ibid* 1488.

<sup>82</sup> Mutua (n 38) 363.

solidarity as represented by *Ubuntu* can only be found among Africans. On the contrary, although unique in many ways and largely identified as Africa's distinctive characteristic, *Ubuntu* and its emphasis on solidarity may well be found among many other cultures.<sup>83</sup> The significant point is the call for solidarity between human beings on the one hand and between citizens and their states in terms of African worldview and the constitutive, normative, legal and human rights frameworks of the AU, in a sort of vertical and horizontal solidarity relationship. One can extrapolate this. But to be universalizable, it is as yet unclear if solidarity needs to take a more concrete form and assume a defined legal status.<sup>84</sup> Nevertheless, as Senghor points out in relation to "African-ness", solidarity in Africa and indeed the world, will have to be much more than uniting together as individuals and peoples with a shared history as victims of slavery, colonization and apartheid, or other forms of oppression and human rights abuses today. It will probably have to draw on the pre-colonial African conception of rights and worldview in which the individual is not only situated in the center of the community, but in which the needs of the individual is bound to the needs of others. Just like solidarity entails the place of the individual in African social theory—the individual is not oppositional to the community but locates their identity by integration to the group and gives expression to self-dignity through such group membership,<sup>85</sup> nation-states can best realize their full potentials in an interdependent world through solidarity. The significance of *Ubuntu* for achieving international solidarity therefore, means that one does not have to accept that solidarity is an international law principle in order to apply it or respond to its call for action. Solidarity imbued with *Ubuntu* will be able to perform its normative and social functions just as it would serve as a principle of international law.<sup>86</sup> I will now consider some of the ways in which the (O)AU has invoked solidarity.

### 3. INTERNAL DIMENSION OF SOLIDARITY IN (O)AU PRACTICE

In this section, I examine the internal dimension of solidarity.<sup>87</sup> By this, I mean how the AU invokes solidarity in its approach to problems on the continent and in the next section, I shall examine the external aspects—how the AU invokes solidarity in reference to external matters and actors. The aim here is to demonstrate that the AU invokes solidarity differently when addressing issues within the African continent compared to when responding to issues outside Africa.

#### 3.1 Solidarity for African Renaissance

In its internal dimension, the AU seeks to institutionalize and consolidate solidarity as a regional organizing principle cross-cutting different aspects of AU affairs and response

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<sup>83</sup> Hollenbach (n 80) 1488.

<sup>84</sup> See Kostiantyn Gorobets, "Solidarity as a Practical Reason: Grounding the Authority of International Law" (2022) 69 *NILR* 3.

<sup>85</sup> Winks (n 70) 454.

<sup>86</sup> For a discussion of whether it is necessary for solidarity to be recognized as a principle of international law in order to perform its normative function, Gorobets (n 84).

<sup>87</sup> See the analysis in Section 2 and 3. above. See OAU Charter art II, AU Constitutive Act 2000 art 3, ACHPR arts 21–29.

to member states. This understanding of African solidarity is the rallying call for African Renaissance. It is deployed as a normative tool to drive the continental aspiration of an African Renaissance. As pointed out above, in terms of Article 3(k) of the AU Constitutive Act, promoting cooperation in all areas of human endeavors is an objective of the AU with a view to improving the living conditions of Africans. The solidarity element of this Article thus provides the normative framework for cooperation among member states, and the constitutional mandate for AU action in operationalizing solidarity in the continent. It has many aspects and a wide scope of application ranging from providing support to African states eg humanitarian assistance, combating and managing the eradication of pandemics and diseases; to military intervention on the basis of Article 4(h) of the AU Constitutive Act. At the normative level, it is often colloquially invoked as “African Solutions to African Problems” by which is meant that certain problems are unique to the continent and require regional solutions. Solidarity as invoked by the AU in many cases presupposes that it pursues the realization of the rights of African peoples including indigenous groups within African state polities. At a progressive level, the right of African peoples to solidarity can be a powerful tool for mobilization of resources to find lasting solutions to endemic problems such as armed conflict, insecurity, starvation, environmental degradation, drought, disease, poverty and squalor ravaging the continent. For example, the AU continues to appeal to African solidarity in responding to the myriad of conflicts besetting many African countries including Nigeria, Mozambique, the DRC, Mali, Burkina Faso, Somalia, Kenya, Egypt, Sudan and South Sudan, among others. Ironically, the many African states who are members of the AU have been less than charitable in respecting the right to solidarity when invoked by their constituent units or sub-state groups. We see this in the series of violations of the rights of minorities and indigenous peoples in many African countries such as the Ogoni in Nigeria.<sup>88</sup> It is therefore fair to say that the (O) AU is often ambivalent if not outrightly condoning repressive African regimes who repeatedly abuse the human rights of their people and by extension, the spirit of *Ubuntu*.

Another example of AU invoking and operationalizing solidarity in its practice can be seen in the African Solidarity Initiative (ASI).<sup>89</sup> This initiative, tagged “Africa Helping Africa” is supposed to mobilize resources from among Africans for the post-conflict reconstruction of war-torn African states. Curiously, the ASI has more or less collapsed if it ever did get off the ground. The AU has struggled to formalize a practice that is already a part of the cultural milieu of most, if not all African societies as reflected in *Ubuntu*. This suggests that there is still a disconnect between the AU and the African peoples it represents. There is still a general lack of ownership of AU policies, laws, and initiatives, quite often formulated, drafted and driven by elites with little regard to the realities of domestic constituencies who are supposed to be the beneficiaries and for whom these programmes were designed. As with the ASI, there has been little or no local input in the process of its design and implementation. The question that arises from the experience with ASI is why does the AU struggle to operationalize solidar-

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<sup>88</sup> See for example, ESCR Communication No 155/96, *Social and Economic Rights Action Center & the Center for Economic and Social Rights v Nigeria* (27 May 2002), documenting the series of violation of the rights of the Ogoni people by Nigeria and multinational oil corporations; *Kiobel v Royal Dutch Petroleum Co* 569 U.S. 108 (2013).

<sup>89</sup> See OAU, *Declaration on the Launch of the African Solidarity Initiative (ASI), for the Mobilization of Support for Post-Conflict Reconstruction and Development in Africa, adopted at the 19th Ordinary Session of the Assembly of Heads of State and Government*, (Addis Ababa 9–16 July 2012).



ity when it already forms part of the cultural ethos in Africa most African societies? This suggests that there is a certain schism that results from institutional attempts at formalization of social practices like *Ubuntu* by the AU that would require the AU to reconsider how it pursues and operationalizes solidarity at an institutional level on the continent. Similarly, international solidarity as a norm might need to be operationalized differently in Africa.

The AU established the ASI (which one could construe as something akin to the Office of the UN Special Rapporteur on International Solidarity). The assessment of the ASI suggests that solidarity needs to be operationalized through some kind of structure that mobilizes existing African social philosophy and communitarian social structures. This does not have to be formal institutions in character. The formal state institutions may fail in times of adversity, it is often the everyday *Ubuntu* practices in these societies that endure and that make the societies resilient where formal state structures such as ASI fail.

Another example of efforts by the AU to operationalize solidarity at the peoples-peoples level is the creation of the Pan African Parliament. Although there is yet no concrete evidence to suggest that is greater solidarity and unity among African peoples as contemplated by the AU Constitutive Act, the Pan-African Parliament was designed to drive this objective as a way of enhancing closer integration and promoting solidarity among African peoples. In fact, if anything, the tensions and frequent bouts of xenophobia and Afrophobia in South Africa reminds us that whereas solidarity may have been strong during decolonization and anti-apartheid struggles it has not been resilient enough to foster the bond of unity and solidarity among Africans once the common enemy of colonialism and apartheid were defeated. Clearly, the AU's application of the internal dimension of solidarity has not translated from paper to action whether it is solidarity between African peoples and African states or between African peoples themselves, or between African peoples and the African Union itself.

## 4. EXTERNAL DIMENSION OF SOLIDARITY IN AU PRACTICE

### 4.1 Solidarity for Self-Determination of African Peoples

I have attempted to sketch a brief account of the existence of solidarity in African traditional value systems as well as the legal, normative, and human rights frameworks of its regional organizations and how it has been invoked in the continent. In this section, I will briefly examine how solidarity has been invoked by the (O)AU in external engagements. Leaving Pan-Africanism aside for the moment, it is widely accepted that solidarity discourse gained prominence in the context of self-determination during the decolonization process. Former colonies who constitute the vast majority of Third World countries argued that the individualism that characterized the ICCPR and the ICESCR reflected a Eurocentric conception of human rights that did not address the needs of the new states emerging from colonization and the reality of the interdependence of states in the modern world.<sup>90</sup> The developing world therefore advocated for the recognition of solidarity rights which included the right to development, the right to peace, the right to a healthy environment, the right to share in the common heritage

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<sup>90</sup> Petra Minnerop-Röben, Naomi Roht-Arriaza and Sara C Aminzadeh, "Solidarity Rights (Development, Peace, Environment, Humanitarian Assistance)" *Max Planck Encyclopedia of Public International Law* (2018) paras 2–3.

of mankind, etc. These rights originate from the idea of the solidarity of nations—an idea implicit in the United Nations Charter and several other international instruments including the UDHR.<sup>91</sup>

The central objective of the OAU was to foster solidarity and unity for the complete decolonization of Africa. The OAU drew on international solidarity as a norm of international law to make the claims for international support to eradicate colonialism and dismantle apartheid. The series of resolutions sponsored by the African bloc and the G77 states at the UNGA in this period are examples. (see UNGA Resolution on ending all forms of colonialism and the UN Convention declaring apartheid a crime against humanity etc.<sup>92</sup> The principle of self-determination creates both a normative and legal basis for the OAU and member states to provide material and other assistance in solidarity with countries that were still under colonial domination.<sup>93</sup> To this end, Article 20(3) of the ACHPR recognizes the struggles of colonial peoples and their “right to the assistance of the state parties to the present Charter in their liberation struggle.”<sup>94</sup> It calls for continental solidarity and implicitly acknowledges that it is to this solidarity that the struggles against colonialism and apartheid owed its success. In and outside the halls of the UN General Assembly, the African bloc invoked the duty imposed by international solidarity to end colonialism and apartheid on the continent.<sup>95</sup> For example, in a series of UNGA debates, African States relied on international solidarity to push for the condemnation of South Rhodesia, sanctions against the apartheid government in South Africa, international judicial advocacy through the South-West Africa cases etc.<sup>96</sup>

Article 3(e) of the AU Constitutive Act, states that one of the objectives of the AU is to “encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights.” Similar provision is found in Article II(e)

<sup>91</sup> See the UN Charter 1945 Preamble and art 1(3); Universal Declaration of Human Rights 1948 art 22(1). In particular, the ACHPR invoked solidarity to specifically respond to the African condition. For example, Article 20 provides: “1. All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. 2. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community. 3. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.” Article 22 recognizes the right to development and share in the common heritage of mankind. More importantly, Article 23 provides: “(1) All peoples shall have the right to national and international peace and security. *The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States*”; and Article 24 provides that: “[a]ll peoples shall have the right to a general satisfactory environment favorable to their development.”

<sup>92</sup> UNGA UN Doc A/RES/2526 (XXV) (n 6); UNGA, Resolution 3068 (XXVIII) International Convention on the Suppression and Punishment of the Crime of Apartheid UN Doc A/9030 1015 UNTS 243 (1974), in force 18 July 1976.

<sup>93</sup> See ACHPR art 20(3).

<sup>94</sup> Adam Getachew, *Worldmaking after Empire: The Rise and Fall of Self-Determination* (Princeton University Press 2019) 14.

<sup>95</sup> *ibid* 5.

<sup>96</sup> Tiyajani Maluwa, “African State Practice and the Formation of Some Peremptory Norms of General International Law” in Dire Tladi (ed), *Peremptory Norms of General International Law (Jus Cogens): Disquisitions and Disputations* (Brill 2018) 264.

of the OAU Charter. This underscores the faith of the (O)AU in the norm of solidarity and its commitment to function within the global architecture of international solidarity and cooperation established by the UN systems. The use of the term “due” regard indicates how much importance the (O)AU attaches to the UN multilateral framework of international solidarity and more specifically in relation to “the implementation at the regional level of general policies coordinated and harmonised in clearly defined fields”.<sup>97</sup> Article II(e) of the OAU Charter and Article 3(e) of the AU Constitutive Act both reflect the idea of cooperation envisaged by Article 1(3) of the UN Charter in which regional organizations like the (O)AU operate as a “genuine regional centre for the harmonisation of member states to achieve their common objectives.”<sup>98</sup> To this end, Article 13 of the AU Constitutive Act outlines areas of cooperation and in which solidarity may also be invoked by the AU:

However, as we all well know, the struggle continues, not only in South Africa but across the continent: that is, the struggle for the very existence and equality of peoples, for genuine self-determination and sovereignty over our natural resources, for peace, development, and a healthy environment. In many ways, this is the timeless struggle between ‘society’ and ‘the state’. This struggle is far from over, and if it is to succeed, what we will require, above all, is solidarity.”<sup>99</sup>

The OAUAU invokes the principle upon which certain claims are made to demand solidarity from the international community. In this sense, solidarity is closely linked to Pan-Africanism. Pan-Africanism began as a movement whose essence was to regain the damaged racial pride and dignity of peoples of African descent in the Caribbean. This movement subsequently acquired a political dimension and became a powerful instrument of political mobilization for anti-colonial struggles by Black Diaspora and on the African Continent. This conception viewed Pan-Africanism, the unity of African nations, as inherently linked to the connection of the Black Race. In other words, Pan Africanism, African unity, solidarity and the successful decolonization of the African Continent were inseparable. The various struggles of Black People against oppression across the world are linked. The struggle for the emancipation of descendants of former slaves in the US and their demand for equality was connected to the decolonization struggles in the motherland.<sup>100</sup> Solidarity among the various movements and the degree to which they influenced each other may be disputed, however, it is indisputable that they inspired each other and wherever it was possible supported the causes to which they were committed. This can be deduced from the visions of a united Africa, the drive to return to the Motherland, etc. The Pan-African Congresses was the political platform used for this mobilization of solidarity where the right of colonized peoples to self-determination was the goal.<sup>101</sup>

There was disagreement between the two major groups advocating for the creation of a continental organization. This disagreement was both ideological in addition to the nature and form such organization should take. The Casablanca Group were more radical and urgent in their demand and wanted an immediate united Africa based on federal character whereas, the Monrovia Group or progressives were more moderate and wanted a united Africa but one that

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<sup>97</sup> Doumbe-Bille (n 44) 58.

<sup>98</sup> *ibid.*

<sup>99</sup> Winks (n 70) 451.

<sup>100</sup> Getachew (n 94) 6.

<sup>101</sup> Bedjaoui (n 40) 14.

evolved incrementally or a gradual approach.<sup>102</sup> Although the OAU was eventually established in 1963, the differences remain to this day and perhaps, partially explains why everyone shares African unity as an ideal, but actual solidarity between African states and among African peoples after successful decolonization remains elusive. One only needs to recall the wave of xenophobia and Afrophobia that frequently grips South Africa, and more recently Tunisia, and incidences of trading on black Africans as slaves in Libya, to appreciate how elusive the dream of African solidarity actually is in practice.

Another aspect in which the OAU invoked solidarity was international economic relations. In the 1970s, the OAU acting in concert with other Third World countries, invoked solidarity in framing the claim for a New International Economic Order (NIEO) in articulating the needs for the eradication of economic inequalities amongst peoples and among nations.<sup>103</sup> International solidarity was viewed as imposing obligations on the developed nations to provide support for the economic development of states just emerging from colonialism even though the nature of such obligation—moral or legal—was strongly contested.<sup>104</sup> This was linked to the right to development (RTD) and taking international solidarity seriously was thus framed as requiring a fundamental change in the structure of the international economic system to give access and representation to the developing countries to redress the historical injustices of a system of economic relations based on resource extraction and exploitation by the industrial metropole from the colonized periphery.<sup>105</sup> Nevertheless, by drawing on international solidarity to frame its demand for a NIEO, it was possible to mobilize support culminating in the adoption of the UNGA Declaration on the Right to Development.<sup>106</sup> Although it has produced little tangible results, the invocation of solidarity attracted some international sympathy if not concrete support or commitment to Africa's development.<sup>107</sup> It is perhaps one of the most remarkable achievements of the OAU's deployment of solidarity both as a normative tool of engagement and a technique of legal engineering for introducing reforms within the international legal discourse and institutional frameworks of global governance and international economic order. Of course, the divergent views on the RTD as a human right may have proved counter-productive for solidarity from the Global North but it does expose the divergent ways in which the Global North and South construe and invoke solidarity and human rights. The Global North and the human rights system used as a framework for preserving the status quo whereas African States see it as a framework for creating a more just and humane world.<sup>108</sup>

It is a call to international cooperation. Unfortunately, the Global North relied on its laissez faire conception of human rights to undermine the call for international solidarity on

<sup>102</sup> *ibid* 17.

<sup>103</sup> Maluwa (n 20) 371.

<sup>104</sup> See Margot E Salomon, "From NIEO to Now and the Unfinishable Business of Economic Justice" (2013) 62(1) *ICLQ* 31, 36.

<sup>105</sup> See James T Gathi, "Africa and the Radical Origins of the Right to Development" (2020) 1 *TWAIL Rev* 28, 29. See UNGA UN Doc A/RES/3201(S-VI) (n 9) 3 along with UNGA, *Resolution 3202 Programme of Action*, UN Doc A/RES/3202(S-VI) (1 May 1974). For a detailed treatment, see generally, Mohammed Bedjaoui, *Towards a New International Economic Order* (Homes & Meier 1979).

<sup>106</sup> See UNGA, *Resolution 41/128 Declaration on the Right to Development*, UN Doc A/RES/41/128 (4 December 1986).

<sup>107</sup> See Balakrishna Rajagopal, *International Law from Below: Development, Social Movements, and Third World Resistance* (CUP 2003) 208 (referencing earlier sympathetic contributions from Western intellectuals).

<sup>108</sup> Hansungule (n 69) 435.

RTD rejecting the ACHPR approach that limits individual rights through its recognition of “a rights–duties reciprocity” and duties of the individual towards other individuals, the community and the state.

Third, the (O)AU invoked solidarity in formulating its justifications for demanding opportunity for equal participation and an international legal reform for a fair and just international legal order in making its claim for international legal reform and the demand for just, democratic and representative institutions of global governance, specifically, the UN Security Council. The (O)AU’s position is articulated in the Sirte Declaration and the Ezulwini Consensus in which the (O)AU outlined its argument and policy positions on multilateral institutions and the international legal order.<sup>109</sup>

Fourth, solidarity has also been invoked by the (O)AU as a normative basis for demanding redress for historical injustices of particular concern to Africa. For example, the African Commission on Human and People’s Rights, has drawn on the language of solidarity and cooperation to frame its claims for reparations for historical crimes of slavery and the Trans-Atlantic Slave trade and colonialism by drawing on the norms of solidarity.<sup>110</sup>

Fifth, in articulating its claim for climate justice, the AU construes international solidarity as imposing obligations on the industrialized countries who are largely responsible for the environmental harm in their industrialization process and the resulting current climate crisis.<sup>111</sup> Thus obligation demands that developed countries at the very minimum should provide the necessary assistance to Africa to mitigate the impact of climate change. Sixth, The AU has invoked international solidarity to demand international support in its quest to tackle specific challenges of health and biomedical threats including the struggle to eradicate Malaria and the Ebola virus.<sup>112</sup>

Other areas in which the (O)AU has also invoked the norm of solidarity include calls for respect for international rule of law, border controls and migration.<sup>113</sup> For example, the OAU Refugee Convention provides that where a country is incapable of granting asylum to those seeking refuge, such country may solicit assistance from other member states to support it in granting asylum to those seeking refuge “in the spirit of African solidarity and international

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<sup>109</sup> See OAU *Sirte Declaration* (n 10); AU, *Ezulwini Consensus*, OAU Doc Ext/EX.CL/2 (VII) (7–8 March 2005) 6.

<sup>110</sup> See The African Commission on Human and People’s Rights, *Resolution 543 (LXXIII) on Africa’s Reparations Agenda and the Human Rights of Africans in the Diaspora and People of African Descent Worldwide*, Doc ACHPR/Res/543 (LXXIII) (Banjul, The Gambia, 9 November 2022) <<https://achpr.au.int/index.php/en/adopted-resolutions/543-resolution-africas-reparations-agenda-and-human-rights-africans>> accessed 21 July 2023. Historical documents on the early efforts by the OAU to champion the claim for reparations are few, but most authors refer to the Group of Eminent Persons established by the OAU in Abuja on 28 June 1992. See Rhoda E Howard-Hassmann, “Reparations to Africa and the Group of Eminent Persons” (2004) *Cahiers d’études africaines* <<https://journals.openedition.org/etudesafricaines/4543>> accessed 21 July 2023).

<sup>111</sup> See AU, *Decision 764 on the Report of the Committee of African Heads of State and Government on Climate Change (CAHOSCC)*, Doc Assembly/AU/10 (XXXIII) (Addis Ababa 9–10 February 2020) para 12.

<sup>112</sup> See AU, First Meeting of the Specialized Technical Committee on Health, “Population and Drug Control” STC/EXP/HP/III(I) (Addis Ababa 13–17 April 2015).

<sup>113</sup> See AU, *Declaration on the 2019 Theme of The Year on “Refugees, Returnees and Internally Displaced Persons: Towards Durable Solution to Forced Displacement in Africa”*, Doc Assembly/AU/Decl.1 (XXXIII) (Addis Ababa 9–10 February 2020).

cooperation ...”.<sup>114</sup> This invocation of solidarity introduced the idea of “burden-sharing” in asylum and refugee management.<sup>115</sup>

The importance of solidarity as a norm cannot be overemphasized, although we do not always agree on the nature of its legal character or its international legal status. Nevertheless, the lack of consensus on whether solidarity can, and does in fact impose legal duty on states and individuals in certain circumstances does not detract from its value as a fundamental norm that encapsulates our very humanity and gives expression to our identity and dignity in a spirit of mutual respect and understanding appreciating the inextricable binds that we share as members of the human family. Flowing from this conception of solidarity, therefore is the notion that since existence can only find meaning within the context, and in relation to the community to which one belongs and in which one lives in association with others, survival and well-being is bound together with the survival and wellbeing of the broader society in a relationship of cooperation and reciprocity. This is ingrained in the philosophy of *Ubuntu* which has animated the African world view for centuries, underpinned the movement of brotherhood, Pan-Africanism, galvanized the decolonization movement, and today constitutes the fulcrum of the African Renaissance agenda through greater solidarity among African peoples and between African states’ response to the yearnings and aspirations of African citizens.

## 5. CONCLUSIONS

This chapter is not an attempt to evaluate every possible instance in which the (O)AU has invoked or failed to invoke solidarity. The chapter is first an attempt to set out solidarity as an everyday normative value in the social world of the average African and African societies. This emanates from the African world view grounded in the philosophy of *Ubuntu* that conceives of the individual as only having meaning and capable of realizing their full potential within the group or as a collective and vice-versa. I have attempted to sketch out how this world view has influenced the establishment of the continental bodies (O)AU and the ways in which the regional body has leveraged the norm to mobilize its members for common causes, sometimes successfully, (such as decolonization and apartheid), and at other times, unsuccessfully (such as the NIEO and RTD). Nevertheless, the (O)AU believes in the inherent value of the norm and its potential to create a better world for Africans and humanity as demonstrated in the recent invocation of the norm to demand action on climate justice, Ebola and the COVID-19 pandemic and the need for reform of institutions of global governance and the international legal order to eradicate inequality within and between nations and to build a world that responds to the call for international solidarity to tackle the common challenges of humanity. Contrary to the Western conception of rights which emphasizes the independence of the individual from community, the African conception of rights situates the individual right at the heart of his community. In as much as the individual is imbued with rights, those rights carry corresponding duties, and the needs of the individual are tied to the needs of other community members. The search for international cooperation which underpins the solidarity claim seems to assume a consensus on certain universal values that are valid candidates for international solidarity in different regimes. But this is seldom so. Indeed, many of those values are some-

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<sup>114</sup> See OAU Refugee Convention art II(4). See further Maluwa (n 20) 355.

<sup>115</sup> Maluwa (n 20) 355.

times contested in the Global North and South relationship resulting in tensions that could be impeding international cooperation. The African Continent and (O)AU practice suggests that there remain serious concerns with the international legal order and institutions of global governance that have implications for efforts to achieve greater genuine international solidarity, and the ways in which the (O)AU invokes the norm of solidarity in theory and praxis reflect these concerns and the search for compromise should merit more attention in future research.