

# GUIDE TO THE African human rights system

This *Guide to the African human rights system* has been conceived as an accessible and informative introduction to the human rights system established under the auspices of the African Union (AU). This *Guide* provides an overview of developments related to the African Charter on Human and Peoples' Rights, its supervisory body, the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights, as well as the African Charter on the Rights and Welfare of the Child and its supervisory body, the African Committee of Experts on the Rights and Welfare of the Child. This version of the *Guide* is launched on 27 June 1981, commemorating the date, 40 years earlier, on which the African Charter was adopted. The year 2021 also marks 15 years since the African Court became operational.

The *Guide* aims to both chart the most salient historical developments and provide an accessible introduction to the African human rights system, and is continuously revised. It has been prepared by the Centre for Human Rights, Faculty of Law, University of Pretoria, in collaboration with the African Commission. Two earlier versions of the *Guide* appeared in 2011 and 2017.

The Centre for Human Rights, which in 2021 celebrates 35 years since its establishment in 1986, is both an academic department and a non-governmental organisation (NGO). It enjoys observer status with the African Commission. The Centre presents academic programmes and engages in research, advocacy and training on human rights, with a specific focus on Africa. Its flagship programmes are the Master's in Human Rights and Democratisation in Africa and the African Human Rights Moot Court Competition. For more information on the Centre for Human Rights, visit [www.chr.up.ac.za](http://www.chr.up.ac.za)

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GUIDE TO THE African human rights system



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1981 – 2021

Celebrating 40 years since the adoption of the  
African Charter on Human and Peoples' Rights  
1981 – 2021

PULP

# GUIDE TO THE AFRICAN HUMAN RIGHTS SYSTEM

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African Charter on Human and Peoples' Rights  
1981 - 2021*



Pretoria University Law Press  
PULP  
2021

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# List of abbreviations

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ACHPR	African Commission on Human and Peoples' Rights
AHRLR	African Human Rights Law Report
AHSG	Assembly of Heads of State and Government
AIDS	acquired immune deficiency syndrome
AU	African Union
CAL	Coalition for African Lesbians
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
ECOWAS	Economic Community of West African States
FGM	female genital mutilation
HIV	Human Immunodeficiency Virus
IDP	internally displaced persons
LDA	Lunatic Detention Act
LGBTI	lesbian, gay, bisexual, transgender and intersex
NGOs	non-governmental organisations
NHRI	national human rights institution
OAU	Organisation of African Unity
PLHIV	persons living with HIV
SADC	Southern Africa Development Community
SERAC	Social and Economic Rights Action Centre
UN	United Nations

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# A cause for celebration

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The year 2021 is one of celebration, despite the difficult circumstances brought about by the COVID-19 pandemic.

In 2021, it is 40 years since the Assembly of Heads of State and Government of the Organisation of African Unity (OAU) adopted the African Charter on Human and Peoples' Rights on 27 June 1981, in Nairobi, Kenya.

The adoption of the African Charter represents a drastic curtailment of the principle of 'non-interference in the domestic affairs', which was a pillar of the 1963 OAU Charter. Most commentators regard the drafting and adoption of the African Charter as Africa's response to the human rights abuses of the mid to late 1970s in Uganda, Equatorial Guinea, and the Central African Empire – and the reluctance of the OAU to criticise the leaders of these states or intervene in any other way. The incumbent heads of state in those three countries all lost power in 1979. At the same time, the 'second wave of democratisation' reached African shores, exemplified by Ghana (where the military in 1979 agreed to 'full democratization') and by Nigeria (where President Obasanjo in 1979 handed power to a democratically elected government, a setting in motion a process that culminated in the adoption of the 1979 Constitution). Against this background, African leaders put in place the Charter as a bulwark against the recurrence of such atrocities, and as a means to ensure that there would 'never again' be OAU inaction in the face of serious human rights violations in its member states.

While the Charter was adopted 40 years ago, in 2021 we also mark 35 years since its entry into force. It took just over five years for a simple majority of OAU member states to become party to and be bound under the African Charter. Today, with only one African Union member state outside the fold, the African Charter is the continent's most widely ratified treaty. The Charter's entry into force on 21 October 1986 is arguably an even more significant milestone, as it draws our attention to the unfulfilled promise of state

parties to give effect to the provisions of the Charter in their domestic law and practices.

The African Court on Human and Peoples' Rights also marks a momentous moment in its growth. Fifteen years has expired since the first Judges were elected in 2006, and the Court started operating. Since then, the Court has developed a robust case-law.

For us at the Centre for Human Rights, the year has an additional significance, as we celebrate 35 years of our existence. In many ways, the Centre has evolved hand in hand with the African regional human rights system. Over these years, we have been privileged to engage with and play a role in various aspects related to the three institutions making up the system. The Centre enjoys observer status with the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child. It has been supporting aspects of the mandate of special mechanisms of the African Commission, in particular the Special Rapporteur on the Rights of Women in Africa (through the development of reporting guidelines under the Protocol to the African Charter on the Rights of Women in Africa, and General Comments) and the Special Rapporteur on the Right to Freedom of Expression and Access to Information in Africa (through the development of the Model Law on Access to Information in Africa).

Since 1992, the Centre for Human Rights organises the African Human Rights Moot Court Competition in partnership with a host university, in a different African country each year. Teams of students argue a hypothetical case before benches of law lecturers and human rights experts as if they were before the real African Court on Human and Peoples' Rights. This year marks the 30 years of this Competition.

This *Guide* is an example of our interest and abiding faith in the value of human rights at the regional level in Africa. It also signals our appreciation for the collaborative relationship we have enjoyed with these three institutions. We trust it will be a tool for greater awareness, appreciation and use of the African human rights system.

This is the third iteration of this *Guide*, which first appeared on the occasion of the 30-year celebration of the adoption of the Charter, in 2011, now 10 years ago. Another edition appeared in 2017. This updated, revised and expanded of the *Guide* has been made possible by the contributions of Trésor Makunya Muhindo,

Publications Coordinator at the Centre, and the students on the Master's in Human Rights and Democratisation in Africa programme (Olum Lornah Afoyomungu, Ruddy Fualefeh Morfaw Azanu and Davina Murden). The Centre acknowledges their contributions, together with those who contributed to the previous editions.

Lizette Herman, Publications Manager at PULP, was responsible for the attractive and functional layout.

*Frans Viljoen*

Director, Centre for Human Rights, University of Pretoria  
Pretoria, 27 June 2021

**The year 2021 is an important historical milestone in the African human rights system as it marks the 40th anniversary of the adoption of the African Charter and the 15th anniversary of the operationalisation of the African Court on Human and Peoples' Rights.**

**Commentaries on African Court, Commissions and Committee decisions can be found in the *African Human Rights Year Book*, the latest volume (Volume 4) has been published in 2020. All the volumes can be accessed at <https://www.ahry.up.ac.za>**





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# A The African Charter on Human and Peoples' Rights and further standards

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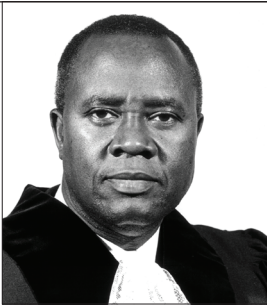
## History

The idea of drafting a document establishing a human rights protection mechanism in Africa was first conceived in the early 1960s. At the first Congress of African Jurists, held in Lagos, Nigeria, in 1961, the delegates adopted a declaration (referred to as the 'Law of Lagos') calling on African governments to adopt an African treaty on human rights with a court and a commission. However, at the time African governments did not take serious steps to put this idea into practice.

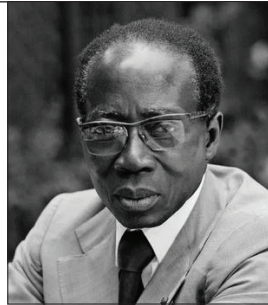
The 1963 Charter establishing the Organisation of African Unity (OAU) imposed no explicit obligation on member states for the protection of human rights. The OAU's founding Charter only required states parties to have due regard for human rights as set out in the Universal Declaration of Human Rights in their international relations. In spite of the absence of a clear human rights mandate, the OAU took bold steps to address a number of human rights issues such as decolonisation, racial discrimination, environmental protection and refugee problems. However, the continental organisation ignored the massive human rights abuses perpetuated by some authoritarian African leaders against their own citizens. This was due largely to the OAU's prioritisation of socio-economic development, and its strict adherence to the principles of territorial integrity, state sovereignty and non-interference in the internal affairs of member states.

At the first Conference of Francophone African Jurists held in Dakar, Senegal, in 1967, participants again revived the idea of the Law of Lagos on the need for regional protection of human rights in Africa. In the Dakar Declaration, adopted after the Conference, the participants asked the International Commission of Jurists to consider, in consultation with other relevant African organisations, the possibility of creating a regional human rights mechanism in Africa.

The United Nations (UN) also facilitated a series of seminars and conferences in a number of African countries. The UN Human Rights Commission set up an ad hoc working group and adopted a resolution calling on the UN Secretary-General to provide the necessary assistance for the creation of a regional human rights system in Africa. However, these attempts to get African states to consent to the adoption of a regional human rights treaty failed. Participants at one of the conferences decided to set up a follow-up committee mandated to carry out visits to African heads of state and other relevant authorities on the need for an African regional human rights system. Subsequent to the committee's visit to Senegal, the then president of Senegal, Léopold Sédar Senghor, promised to table a proposition before the OAU Assembly of Heads of States and Government at its next session. In 1979, meeting in Monrovia, Liberia, the Assembly unanimously requested the OAU Secretary-General to convene a committee of experts to draft a regional human rights instrument for Africa, similar to the European and Inter-American human rights conventions.



Kéba M'baye  
(1924-2007)



Léopold Sédar Senghor  
(1906-2001)

A conference of twenty African experts presided over by Judge Kéba M'baye (left) was organised in 1979 in Dakar, Senegal. The work of the Expert Committee was greatly influenced by the opening address of the host president, President Senghor (right), who enjoined the Committee to draw inspiration from African values and tradition and also to focus on the real needs of Africans, the right to development and the duties of individuals. In the midst of a polarised Africa, with some heads of states accustomed to autocratic practices which would be undermined by a human rights treaty, President Senghor's support was timely in promoting the drafting and eventually the adoption of the African Charter.

After deliberations at the Dakar Conference for about 10 days, the Committee prepared an initial draft of the Charter. As a result of the hostility of certain African governments to regional human rights protection in Africa, a conference of plenipotentiaries scheduled for Ethiopia to adopt the draft charter could not take place. This period was the most dramatic in the history of the drafting of the Charter. The Charter project was clearly under threat. Amidst this strained atmosphere and at the invitation of the OAU Secretary-General, the President of The Gambia convened two Ministerial Conferences in Banjul, The Gambia, where the draft Charter was completed and subsequently submitted to the OAU Assembly. It is for this historic role of The Gambia that the African Charter is referred to as the 'Banjul Charter'.

The OAU Assembly finally adopted the Banjul Charter on 27 June 1981, in Nairobi, Kenya. After ratifications by an absolute majority of member states of the OAU, the Charter came into force on 21 October 1986. Of all OAU/AU treaties, African Charter is one of the most widely ratified treaties. By 1999, the African Charter had been ratified by all the member states of the OAU. Africa's newest state, South Sudan, deposited its instrument of ratification in 2016. As at June 2021, only Morocco had not become a party to the African Charter. By the time it withdrew from the OAU in 1984, Morocco had not become a state party. Since its readmission to the AU in 2017, it has not become a party to the Charter, largely due to its contestation of the right to self-determination of the people of the Sahrawi Arab Democratic Republic (Western Sahara).

## State parties to the African Charter



(The 54 states that are party to the African Charter are indicated in purple)

## Important dates

- 27 June 1981 Adoption of the Charter in Nairobi, Kenya
- 21 October 1981 First ratification of the African Charter (Mali)
- 21 October 1986 Charter came into force
- 2 November 1987 Establishment of the Commission
- 2 November 1987 First ordinary session of the Commission starts
- 28 April 1988 First resolution adopted, on the headquarters of the Commission
- 28 April 1988 First Activity Report of Commission adopted
- 12 June 1989 Inauguration of Commission's headquarters in Banjul, the Gambia
- 21 October 1989 Commission adopts 21 October as 'African Human Rights Day'
- 3-14 June 1989 First extra-ordinary session of the Commission
- 10 June 1998 Adoption of the Protocol on the African Human Rights Court
- 11 July 2003 Adoption of the Maputo Protocol
- 25 January 2004 African Court Protocol entered into force
- 25 November 2005 Maputo Protocol entered into force
- 2 July 2006 First Judges of the African Court are sworn in
- November 2006 Court officially started its operations in Addis Ababa
- 14 June 2013 First merits decision by the African Court (*Reverend Christopher R. Mtikila v Tanzania*)
- 31 January 2016 Adoption of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons
- 29 January 2018 Adoption of the Protocol to the African Charter on Human and People's Rights on the Rights of Persons with Disabilities in Africa

## Main features of the African Charter

The Charter has the following unique features:

- The Charter recognises the indivisibility of all rights: All ‘generations’ of rights are recognised. Socio-economic rights are justiciable.

‘Clearly, collective rights, environmental rights and economic and social rights are essential elements of human rights in Africa. The African Commission will apply any of the diverse rights contained in the African Charter. It welcomes this opportunity to make clear that there is no right in the African Charter that cannot be made effective.’ (*SERAC v Nigeria*, para 68)

- No derogations are allowed.

‘[T]he African Charter does not contain a derogation clause. Therefore the limitations on the rights and freedoms enshrined in the Charter cannot be justified by emergencies and special circumstances. The only legitimate reasons for limitations to the rights and freedoms of the Charter are found in article 27(2).’ (*Media Rights Agenda v Nigeria*, paras 68 & 69)

- The Charter recognises peoples’ rights such as the peoples’ rights to development, free disposal of natural resources, and self-determination.

‘The African Commission wishes to emphasise that the Charter recognises the rights of peoples.’ (*Endorois case*, para 155)

- The Charter imposes duties on both states and individuals.

‘The enjoyment of rights and freedom also implies the performance of duties on the part of everyone.’ (Preamble of the African Charter)

- The Charter explicitly details the rights of ‘peoples’ from articles 19 to 24.

‘All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another’ (Article 19 of the Charter).

## Supplementary standards: The Maputo Protocol

Article 66 of the Charter allows state parties to the Charter to make special protocols or agreements where necessary to supplement the provisions of the Charter. A number of protocols and conventions have been adopted to supplement the substance of the Charter.

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) was adopted in Maputo, Mozambique, on 11 July 2003 and entered into force on 25 November 2005. It was inspired by a recognised need to ameliorate the inadequate protection afforded to women by the African Charter on Human and Peoples' Rights. While the African Charter guarantees non-discrimination on the basis of sex, equality before the law, and the elimination of discrimination against women, it does not articulate specific violations of women's rights which result from discrimination.

The Maputo Protocol is comprehensive with its inclusion of civil and political rights, economic, social and cultural rights, group rights and, for the first time in an international treaty, sexual and reproductive rights. It also contains innovative provisions that advance women's rights further than any existing legally binding international treaty. For example, the legal prohibition of female genital mutilation is prescribed as well as the authorisation of abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus. Furthermore, the Protocol is the first international human rights treaty to explicitly refer to HIV/AIDS, in this case, in the context of sexual and reproductive health rights. Other provisions address violence against women, harmful traditional practices, child marriage, polygamy, inheritance, economic empowerment, women's political participation, education, and women in armed conflict. Notably, the Maputo Protocol recognises that certain women suffer multiple forms of discrimination and accordingly, separate provisions for widows, older women, and women with disabilities are included.



**42 States had ratified the  
Maputo Protocol as at June 2021**



(The 42 states that are party to the Maputo Protocol are indicated in purple)

## The Older Persons Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa was adopted on 31 January 2016. The rationale behind the adoption of the Older Persons Protocol was an increase in number of old people and a decrease in care and support given to the poor in Africa.

The Protocol complements norms on the protection of older persons already laid down under the African Charter, specifically article 18(4), which requires that older persons be given protection that takes into consideration their 'physical or moral needs'. It also aligns with several African Union instruments, for example the AU Policy Framework and Plan of Action on Ageing (2002) that foresaw the relevance to ensure that older persons are not discriminated against, that states adopt specific legislation to guarantee their protection and that older persons freely associate among themselves to advance their interests. The Older Persons Protocol is thus the culmination of continental efforts aimed at improving the living conditions of older persons who are exposed to several ignominious practices and treatment that are detrimental to their health, safety and total blossoming.

Under article 3 of the Protocol, state parties accept to eliminate discrimination against older persons. Discrimination can come in different including stereotypes, stigmatisation, exclusion from work opportunities, social protection and access to health services in line with their physical and moral needs. While the Protocol guarantees other rights that older persons could exercise using other legal instruments, for example access to justice and equal protection before the law (article 4), numerous provisions address older persons' specific hurdles. Article 5 obligates states to take measures so that older persons can make decisions on their well-being without undue interference; proscribe harmful practices against older persons (article 8) and that residential care is optional and affordable (article 11). Even though Africa is considered as one of the youngest continents in the world, the Protocol shows that Africa is taking the rights of older persons very seriously.

## Status of ratification

As of June 2021, only a paltry two ratifications – from Benin and Lesotho – have been recorded, while the number of countries that signed the Protocol stands at 17. A total of 15 ratifications is required to ensure the entry into force of the Protocol.

## Only two countries have ratified the Older Persons Protocol



(The 2 states that are party to the Older Persons' Protocol are indicated in purple)

## The African Disability Rights Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa was adopted during the 30th Ordinary Session of the African Union Assembly held in Ethiopia on 29 January 2018. The drafting of the Protocol is informed by the need to accord special legal protection to the persons with disabilities who increasingly face discrimination in Africa. The idea of the Protocol was triggered by the dire standard of living of persons with disabilities in Africa which often lead to consequences such as poverty, illiteracy and health issues.

The main features of the Protocol are respect and dignity, full participation, equality of opportunities for persons with disabilities, equality of men and women and prioritising the interests of children. Like any other person, those who suffer from physical or mental disabilities are entitled to life, liberty, security, protection from harmful situations as mentioned in article 12 of the Disability Rights Protocol. The Protocol also includes special provision for those who are considered as vulnerable and disabled. For instance, article 27 of the Protocol clearly mentions that women with disabilities are protected from sexual and gender-based violence. Another feature of the Protocol is the importance given to the disabled children who face discrimination. The Disability Rights Protocol helps us understand the situation of persons with disabilities in Africa, and provides a solution to many of their problems. It represents the key that unlocks persons with disabilities from their marginalised and discriminated reality and promote maximum inclusion for them in society. It understands the history in Africa and tries as much as possible to eliminate discriminations faced by disabled ones, while respecting the international norms.

### Status of ratification

So far, no African state has ratified the Protocol. This may signal the low commitment by African countries to improving the fate of most vulnerable among us as the Protocol contains ground-breaking standards that can improve the protection of persons with disabilities.

## Other supplementary standards

The AU/OAU has adopted a number of treaties relevant to the promotion and protection of human rights in Africa. These instruments include:

1969	OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
1999	Convention on the Prevention and Combating of Terrorism
2000	Constitutive Act of the AU
2001	Protocol on the Pan-African Parliament
2002	Protocol on the Peace and Security Council
2003	Convention on the Conservation of Nature and Natural Resources
2003	Convention on the Prevention and Combating Corruption
2006	African Youth Charter
2007	African Charter on Democracy, Elections and Governance
2009	African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention)

The AU, as well as the African Commission, has also adopted various declarations and resolutions relevant to the understanding and advancement of the African Charter provisions.

## Impact of the African Charter and supplementary standards on domestic human rights in Africa

The African Commission has established itself firmly as the primary human rights body on the African continent. Through its progressive interpretation of the Charter, the Commission has given guidance to states about the content of their obligations under the Charter, and its provisions have inspired domestic legislation.

In a number of countries, the Charter is an integral part of national law by virtue of the constitutional system in place. The 1990 Benin Constitution explicitly recognises the constitutional status of

rights under the African Charter. This status has been instrumental in the protection of human rights specifically by the Constitutional Court which has often relied on the African Charter. The right to be tried within reasonable time, despite not directly provided by the Benin Constitution, has been protected by the Constitutional Court using the African Charter. Nigeria has explicitly made the Charter part of domestic law through domesticating legislation.

The normative impact of the Charter has been significant. In its thematic resolutions, the Commission clarified the scope of rights and provided a yardstick for the development of domestic law, in particular in the 'Principles and Guidelines on the Right to a Fair Trial' and the 'Principles of Freedom of Expression'. It urged states to adopt a moratorium on the death penalty, thus supporting the trend towards abolition in Africa. The principle that indigenous peoples are rights-holders under the Charter was clearly established. In its Advisory Opinion on the United Nations Declaration on the Rights of Indigenous Peoples, the Commission addressed the concerns of African states about this Declaration, and thus contributed to its eventual adoption by most African states. Through its active participation in the adoption of the Women's Protocol, the Commission provided clarity about the rights of women in the African context, and provided invaluable guidance to African states. The African Commission also adopted the Model Law on Access to Information in Africa in April 2013, which guided numerous African states to adopt access to information legislation.

The sessions of the Commission provide an important space for the articulation of issues that are neglected or silenced domestically. More and more, NGOs and NHRIs benefit from interactions at these sessions, and are informed, strengthened and better equipped to perform their functions. Engagement with the African human rights system shapes the agenda of these role players.

Even if the findings and concluding observations of the Commission are not formally binding, states take serious note of them. The *Endorois* decision, for example, led to an intensive national dialogue about the accommodation of indigenous communities in Kenya.

The missions undertaken to state parties sensitise and support continuing efforts at the national level to improve human rights and inspire legal or institutional reform. Commissioners acting as Special Rapporteurs also engage with states in order to address allegations

falling within the domain of the Special Rapporteurs.

The Charter's complaints mechanism provides an important avenue for recourse to complainants who could not find redress at the national level. The Commission's findings have in a number of instances been implemented. In many instances, the finding of the Commission assisted in garnering international awareness and solidarity, as was the case in Nigeria during the Abacha regime.

National courts are increasingly influenced by and use the Charter and the Commission's findings to assist them in interpreting national law. Prominent examples are the Constitutional Court of Benin, which, as stated earlier, in numerous cases made reference to the African Charter, and in some applied it directly. The Constitutional Court of South Africa applied the African Charter in *New Nation Movement NPC and Others v President of the Republic of South Africa and Others* to buttress the protection of the right to free association. The Court of Appeal of Lesotho relied on the African Charter together with other international human rights treaties in *Molefi Ts'epe v The Independent Electoral Commission*.

The findings of the Commission also reverberated in the jurisprudence of national courts outside Africa, in the judgments of regional courts (such as the case of *Campbell v Zimbabwe*, decided by the SADC Tribunal), and even the International Court of Justice (for example, in the case of *Diallo (Republic of Guinea v Democratic Republic of the Congo)*).

For more information on the Commission's impact, see

Victor Ayeni *The impact of the African Charter and the Maputo Protocol in selected African states* (2016) Pretoria: Pretoria University Law Press (PULP).

The Maputo Protocol has inspired legislative changes in numerous state parties, in particular in respect of abortion and gender-based violence.

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# **B** The African Commission on Human and Peoples' Rights

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## **Establishment**

The African Charter established the African Commission on Human and Peoples' Rights. The Commission was inaugurated on 2 November 1987 in Addis Ababa, Ethiopia. The Commission's Secretariat is located in Banjul, The Gambia.

## **Composition**

The Commission consists of 11 members elected by the AU Assembly from experts nominated by the state parties to the Charter. The Assembly considers equitable geographical and gender representation in electing the members of the Commission. Members of the Commission are elected for a six-year term and are eligible for re-election.

Once elected, the Commissioners serve in their personal capacity and not as representatives of their respective countries. Previously, some members of the Commission held high political offices at the national level, which affected the Commission's independence. The AU Commission in April 2005 issued a *note verbale* to member states prescribing guidelines for nomination of members to the Commission which excluded senior civil servants and diplomatic representatives.

## **Bureau**

The Commission elects its Chairperson and Vice-Chairperson as the Bureau of the Commission. They are elected for a term of two years and are eligible for re-election once. The Bureau coordinates the activities of the Commission and supervises and assesses the work of the Commission's Secretariat. The Bureau is also empowered to take decisions on matters of emergency between the sessions of the Commission. It is however obligated to present a report on the situation to members at the next session of the Commission.



With no provision in the Charter governing gender representation in the composition of the Commission, initially the membership of the Commission was all male. The first female Commissioner, Vera Duarte Martins (Cape Verde), was elected only in 1993 and became the first female Vice-Chairperson in 1997. By November 2011, women made up a majority of members. Commissioner Salamata Sawadogo was elected as the first female Chairperson in 2003. The Bureau of the African Commission (2019-2021) is currently all male. The Commission has so far had six male chairpersons and seven female chairpersons. It has had 12 male vice-chairpersons – two of whom were acting vice-chairpersons – while only six female commissioners have been vice-chairpersons. It is clear that the African Commission has strived to have a more gender-balanced Bureau in the last two decades of its existence than in the first decade of its existence.

## Secretariat

The Chairperson of the AU Commission appoints the Secretary of the African Commission and support staff necessary for the effective discharge of the Commission's mandate. The Secretariat provides administrative, technical and logistical support to the Commission.

## Mandate

Article 45 of the Charter sets out the mandate of the Commission.

- Promotion of human and peoples' rights  
The Commission carries out sensitisation, public mobilisation and information dissemination through seminars, symposia, conferences and missions.
- Protection of human and peoples' rights  
The Commission ensures protection of human and peoples' rights through its communication procedure, friendly settlement of disputes, state reporting (including consideration of NGOs' shadow reports), urgent appeals and other activities of special rapporteurs and working groups and missions.
- Interpretation of the Charter  
The Commission is mandated to interpret the provisions of the Charter upon a request by a state party, organs of the AU or individuals. However, no organ of the AU has referred any case of interpretation of the Charter to the Commission. The Commission adopted an Advisory Opinion only once in an explicit way, with the 'Advisory Opinion on the United Nations Declaration on the Rights

of Indigenous Peoples' (adopted at its 41st Ordinary Session, May 2007). In this Advisory Opinion, the Commission concluded that the rights enshrined in the UNDRIP were consistent with the African Charter and the Commission's jurisprudence. The interpretive mandate is largely integrated into the Commission's promotional and protective mandate.

## Rules of Procedure

The detailed activities and procedures of the Commission are regulated by its Rules of Procedure. The Commission adopted its first Rules of Procedure in 1988, which were amended in 1995. With the advent of the African Court on Human and Peoples' Rights, the Commission adopted new Rules of Procedure, which entered into force on 18 August 2010. On 4 March 2020, the Commission adopted new Rules of Procedure:

Rule 3 of the Rules of Procedure establishes the autonomy of the Commission and its competencies to interpret the Charter.

Members of the Commission have the obligation to respect the principles of confidentiality (Rule 11).

Rule 63 provides that although the content of its Activity Report shall be determined by the Commission, written concerns of state parties would be annexed in the published version of the reports.

A focal point department will be assigned by the Commission to state parties for interaction (Rule 69).

Rule 99 provides that in case of massive violations of human rights, the matter should be referred not only to the Assembly, but also to the Peace and Security Council of the African Union, in line with article 19 of the Protocol on the Peace and Security Council.

## Members

### **Current Commissioners (as at February 2021)**

#### **Chairperson**

Solomon Ayele Dersso (2019 - ) Ethiopia

#### **Vice-Chairperson**

Rémy Ngoy Lumbu (2017 - ) Democratic Republic of Congo

#### **Commissioners**

Jamesina Essie L King (2015 - ) Sierra Leone

Maya Sahli Fadel (2011 - ) Algeria

Zainabo Sylvie Kayitesi (2007 - ) Rwanda

Marie Louise Abomo (2020 - ) Cameroon

Mudford Zachariah Mwandenga (2020 - ) Zambia

Alexia Amesbury (2020 - ) Seychelles

Hatem Essaiem (2017 - ) Tunisia

Maria Teresa Manuela (2017 - ) Angola

Ndiamé Gaye (2020 - ) Senegal (passed away in March 2021)

#### **Former members of the Commission**

Yeung Kam John Sik Yuen (2007 - 2019) Mauritius

Lucy Asuagbor (2010 - 2020) Cameroon

Med Kaggwa (2011 - 2017) Uganda

Reine Alapini-Gansou (2005 - 2017) Benin

Lawrence Murugu Mute (2013 - 2020) Kenya

Faith Pansy Tlakula (2011 - 2017) South Africa

Soyata Maiga (2007 - 2020) Mali

Pacifique Manirakiza (2011 - 2015) Burundi

Mohamed Bechir Khalfallah (2009 - 2015) Tunisia

Mohamed Fayek (2009 - 2011) Egypt

Catherine Dupe Atoki (2007 - 2015) Nigeria

Mumba Malila (2005 - 2015) Zambia

Musa Ngary Bitaye (2005 - 2013) The Gambia

Sanji Mmasenomo Monageng (2003 - 2013) Botswana

Bahame Tom M Nyanduga (2003 - 2009) Tanzania

Mohamed AO Babana (2003 - 2007) Mauritania

Angela Melo (2001 - 2015) Mozambique

Salimata Sawadogo (2001 - 2009) Burkina Faso

Yaser Sid Ahmed El-Hassan (2001 - 2009) Sudan

Jainaba Johm (1999 - 2007) The Gambia

Andrew R Chigovera (1999 - 2007) Zimbabwe

Vera M Chirwa (1999 - 2005) Malawi

Florence Butegwa (1999 - 2001) Uganda

Nyameko Barney Pityana (1997 - 2003) South Africa

Kamel Rezzag-Bara (1995 - 2011) Algeria

Julienne Ondziel-Gnelenga (1995 - 2001) Congo

Victor Oware Dankwa (1993 - 2005) Ghana

Vera De Melo D Martins (1993 - 2000) Cape Verde

Atsu Kofi Amega (1993 - 1999) Togo

Mohammed H Ben Salem (1992 - 2003) Tunisia

Ibrahim Ali B El-Sheikh (1987 - 2011) Egypt

Isaac Nguema (1987 - 2001) Gabon

Youssoupha Ndiaye (1987 - 2001) Senegal

Alioune Mahmoud B Beye (1987 - 1998) Mali

U Oji Umzurike (1989 - 1997) Nigeria

Robert Habesh Kisanga (1987 - 1997) Tanzania  
Sourahata B S Janneh (1987 - 1995) The Gambia  
Chama LC Mubanga-Chipoya (1987 - 1993) Zambia  
Moleleki D Mokama (1987 - 1993) Botswana  
Alexis Gabou (1987 - 1993) Congo  
Ali Mahoud Bouhedma (1987 - 1993) Libya  
Grace S Ibingira (1987 - 1989) Uganda

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## Sessions

As at June 2021, the Commission had held 68 ordinary sessions and 32 extraordinary sessions.

### Ordinary sessions

The Commission has held two ordinary sessions per year. Over time, the duration of the sessions increased from around 10 to 21 days. The first part of an ordinary session is open to the public, and the second part is closed.

### Extraordinary sessions

The Commission may hold extraordinary sessions. Extraordinary sessions are convened by the Chairperson of the Commission upon a request by the AUC Chairperson or a majority of the members of the Commission. Over time, two ordinary sessions have routinely been held per year.

## Agenda

The agenda of an ordinary session is usually first drawn by the Commission's Secretariat in consultation with the Bureau of the Commission. Apart from the items proposed at the previous session, the Chairperson, members of the Commission, state parties, AU organs, NHRIs, NGOs and any specialized institution of the UN may

suggest additional items for inclusion in the agenda. However, the Bureau of the Commission has the final say on which items finally make it to the provisional agenda.

## Activity reports

The Commission submits to every Ordinary Session of the AU Assembly a report of its activities during sessions and inter-sessions. The Executive Council considers the report on behalf of the Assembly. The Report is presented by the Chairperson of the Commission or their representative. The Commission may publish information about its protective activities (communications and protective missions) only after the report has been adopted and its publication has been authorised by the Executive Council, acting on behalf of the Assembly. Prior to the adoption of the Activity Report by the AU Assembly, the Commission usually issues a communiqué immediately after the session.

## Ordinary sessions and Activity Reports of the Commission since 1987

Session	Date	Host country	Activity Report
1st	2 November 1987	Ethiopia	1st
2nd	8 - 13 February 1988	Senegal	1st
3rd	18 - 28 April 1988	Gabon	2nd
4th	17 - 26 October 1988	Egypt	2nd
5th	3 - 14 April 1989	Libya	2nd
6th	23 Oct - 4 Nov 1989	The Gambia	3rd
7th	18 - 28 April 1990	The Gambia	3rd
8th	8 - 21 October 1990	The Gambia	4th
9th	18 - 25 March 1991	Nigeria	4th
10th	8 - 15 October 1991	The Gambia	5th
11th	2 - 9 March 1992	Tunisia	5th
12th	12 - 21 October 1992	The Gambia	6th
13th	29 March - 7 April 1993	The Gambia	6th
14th	1 - 10 December 1993	Ethiopia	7th
15th	18 - 27 April 1994	The Gambia	7th
16th	25 Oct - 3 Nov 1994	The Gambia	8th

17th	13 - 22 March 1995	Togo	8th
18th	2 - 11 October 1995	Cape Verde	9th
19th	26 March - 4 April 1996	Burkina Faso	9th
20th	21 - 31 October 1996	Mauritius	10th
21st	15 - 24 April 1997	Mauritania	10th
22nd	2 - 11 November 1997	The Gambia	11th
23rd	20 - 29 April 1998	The Gambia	11th
24th	22 - 31 October 1998	The Gambia	12th
25th	26 April - 5 May 1999	Burundi	12th
26th	1 - 15 November 1999	Rwanda	13th
27th	27 April - 11 May 2000	Algeria	13th
28th	23 Oct - 6 Nov 2000	Benin	14th
29th	23 April - 7 May 2001	Libya	14th
30th	13 - 27 October 2001	The Gambia	15th
31st	2 - 16 May 2002	South Africa	15th
32nd	17 - 23 October 2002	The Gambia	16th
33rd	15 - 29 May 2003	Niger	16th
34th	6 - 20 November 2003	The Gambia	17th
35th	21 May - 4 June 2004	The Gambia	17th
36th	23 Nov - 7 Dec 2004	Senegal	18th
37th	27 April - 11 May 2005	The Gambia	18th
38th	21 Nov - 5 Dec 2005	The Gambia	19th
39th	11 - 25 May 2006	The Gambia	20th
40th	15 - 29 November 2006	The Gambia	21st
41st	16 - 30 May 2007	Ghana	22nd
42nd	15 - 28 November 2007	Rep of Congo	23rd
43rd	7 - 22 May 2008	Swaziland	24th
44th	10 - 24 November 2008	Nigeria	25th
45th	13 - 27 May 2009	The Gambia	26th
46th	11 - 25 November 2009	The Gambia	27th
47th	12 - 26 May 2010	The Gambia	28th
48th	10 - 24 November 2010	The Gambia	27th
49th	28 April - 12 May 2011	The Gambia	30th
50th	24 Oct - 5 Nov 2011	The Gambia	31st
51st	18 April - 2 May 2012	The Gambia	32nd
52nd	9 - 22 October 2012	Côte d'Ivoire	33rd

53rd	9 - 22 April 2013	The Gambia	34th
54th	22 October - 5 November 2013	The Gambia	35th
55th	28 April - 12 May 2014	Angola	36th
56th	21 April - 7 May 2015	The Gambia	38th
57th	4 - 18 November 2015	The Gambia	39th
58th	6 - 20 April 2016	The Gambia	40th
59th	21 October - 4 November 2016	The Gambia	41st
60th	8 - 22 May 2017	Niger	42nd
61st	1 - 15 November 2017	The Gambia	43rd
62nd	25 April - 9 May 2018	Mauritania	44th
63rd	24 October - 13 November 2018	The Gambia	45th
64th	24 April - 14 May 2019	Egypt	46th
65th	21 October - 10 November 2019	The Gambia	47th
66th	13 July - 7 August 2020	The Gambia	48th & 49th
67th	13 November - 3 December 2020	The Gambia	48th & 49th
68th	14 April - 4 May 2021	The Gambia	-

### Extraordinary sessions of the Commission

Extr. Sess.	Date	Host country	Activity Report
1st	13 - 14 June 1989	The Gambia	2nd
2nd	18 - 19 December 1995	Uganda	9th
3rd	18 - 19 September 2004	South Africa	18th
4th	17 - 23 February 2008	The Gambia	24th
5th	21 - 29 July 2008	The Gambia	25th
6th	30 March - 3 April 2009	The Gambia	26th
7th	5 - 12 October 2009	Senegal	27th
8th	22 Feb - 3 March 2010	The Gambia	28th
9th	23 Feb - 3 March 2011	The Gambia	30th
10th	12 - 16 December 2011	The Gambia	31st
11th	21 February - 1 March 2012	The Gambia	32nd
12th	30 July - 4 August 2012	Algeria	33rd
13th	18 - 25 February 2013	The Gambia	34th

14th	20 - 24 July 2013	Kenya	35th
15th	7 - 14 March 2014	The Gambia	36th
16th	20 - 29 July 2014	Rwanda	37th
17th	19 - 28 February 2015	The Gambia	38th
18th	29 July - 7 August 2015	Kenya	39th
19th	16 - 25 February 2016	The Gambia	40th
20th	9 - 18 June 2016	The Gambia	41st
21st	23 February - 4 March 2017	The Gambia	42nd
22nd	29 July - 7 August 2017	Senegal	43rd
23rd	13 - 22 February 2018	The Gambia	44th
24th	30 July - 8 August 2018	The Gambia	45th
25th	19 February - 5 March 2019	The Gambia	46th
26th	16 - 30 July 2019	The Gambia	47th
27th	19 February- 4 March 2020	The Gambia	48th & 49th
28th	29 June - 1 July 2020	The Gambia	48th & 49th
29th	2 - 5 October 2020	The Gambia	48th & 49th
30th	11 - 19 December 2020	The Gambia	48th & 49th
31st	19 - 25 February 2021	The Gambia	-
32nd	12 May 2021	The Gambia	-

## Communications

Communications (complaints) are one of the mechanisms employed by the Commission to ensure compliance of states with the human rights enshrined in the Charter. The Commission may receive complaints from states against another state (inter-state complaints) under articles 48 and 49 of the Charter. So far, the Commission has only finalised one inter-state communication. The Commission also considers communications by individuals and NGOs against one or more states (individual complaints) on alleged violations of human rights in accordance with its mandate and 55 of the African Charter. By March 2021, 547 individual communications have been received since the Commission was established in 1987.



## Inter-state communication

The first and only inter-state communication that the Commission has finalised was decided on the merits in 2003:

***DRC v Burundi, Rwanda and Uganda*  
(2004) AHRLR 19 (ACHPR 2003)**

This communication was filed by the Democratic Republic of Congo (DRC) against the Republics of Burundi, Rwanda and Uganda. DRC alleged that Burundi, Rwanda and Uganda (respondent states) had committed grave violations of human and peoples' rights in the Congolese provinces through the activities of rebel groups which the applicant alleged were supported by the respondent states.

Drawing inspiration from general principles of international law as well as the UN Charter and resolutions of the UN General Assembly, the Commission stated that the actions of the respondent states in occupying the territories of the complainant state violated the rights of the Congolese people to self-determination and constituted a threat to national and international peace and security.

The Commission stated that the acts of barbarism displayed by the respondent states in the complainant's territories constitute an affront to 'the noble virtues' of African tradition. The Commission further found that by taking charge of several natural resource producing areas of the complainant's territory, the respondent states had deprived the Congolese people of their rights to freely dispose of their natural resources. The Commission therefore concluded that the respondent states were in violation of several provisions of the African Charter and urged them to take measures to abide by their obligations under the UN Charter, the OAU Charter and the African Charter and to further pay adequate reparations to the victims of the violations.

The Commission found admissible another inter-state case, *Djibouti v Eritrea*; its decision on the merits is pending.

## Who may bring an individual communication?

Any individual or NGO may bring a communication before the Commission. The Charter is silent on the issue of standing and the Rules of Procedure of the Commission does not provide for a victim

requirement. A communication may be submitted by the victim(s) or anyone on their behalf. An individual or NGO submitting a communication on behalf of another need not obtain the express consent of the victim. The NGO also does not have to enjoy an observer status with the Commission. The individual or NGO need not be a citizen or be registered in the state against which the communication is made.

## **Against whom can a communication be brought?**

A communication can only be brought against a state that has ratified the African Charter.

## **Legal aid**

The Commission may on its own motion or after a request by the author of a communication facilitate access to free legal aid to the author of a communication. In arriving at this decision, the Commission must be convinced that the author has no sufficient means to meet all or part of the cost of the communication and that a legal aid is essential to ensure equality of parties and for the proper discharge of the Commission's duties.

## **Admissibility criteria (article 56 of the Charter)**

Before the Commission declares any communication admissible by, it must comply with all the following requirements:

- Communications must indicate their author(s).
- Communication must be compatible with the AU Constitutive Act and the African Charter.
- Communication must not be written in disparaging or insulting language.
- Communication must not be based exclusively on media reports.
- Domestic remedies must have been exhausted unless the domestic procedure has been unduly prolonged.
- Communication must be submitted within a reasonable time after exhausting local remedies.
- The issues raised in the communication must not have been settled under other AU or UN procedures.

## Exhaustion of local remedies

Exhaustion of domestic remedy is the most important requirement for admissibility of cases before the African Commission and other international human rights bodies. This is because of the subsidiarity of international adjudicatory system. The rationale for the requirement of exhausting domestic remedy are to notify the government of the violation, thereby affording the state an opportunity to remedy the violation and to give domestic courts a chance to decide on the case.

Only remedies of a judicial nature that are available, effective and sufficient to redress the wrong are required to be exhausted. A remedy is available if it is readily accessible without any impediments; it is effective when it offers some likelihood of success; and it is sufficient when it is capable of redressing the wrong.

A complainant however need not to exhaust local remedies where the complaints fall into any of the following categories:

- If the victims are indigent (*Purohit v The Gambia*).
- If the complaints involve serious or massive violations (*Free Legal Assistance Group v Zaire*).
- If domestic legislation ousts the jurisdiction of national courts (*Media Rights Agenda v Nigeria*).
- If the rights claimed are not guaranteed by domestic laws (*SERAC v Nigeria*).
- If it is physically dangerous for the complainant to return to the erring state in order to exhaust local remedy (*Jawara v The Gambia*; *Abubarkar v Ghana*).
- If the complaint involves an ‘impractical number’ of potential plaintiffs (*African Institute for Human Rights and Development v Guinea*).
- If the procedure for obtaining domestic remedy will be unduly prolonged (article 56(5) of the African Charter).
- If it is simply illogical to require exhaustion of local remedy.

## Communication procedure

<p>Registration of communication at the Secretariat of the Commission</p>	<ul style="list-style-type: none"> <li>• Submission of communication</li> <li>• Allocation of file number</li> <li>• Acknowledgment of communication by the Secretariat</li> </ul>
<p>Seizure of communication by individuals and non-governmental organisations (Rule 115)</p>	<ul style="list-style-type: none"> <li>• Indicate the name, nationality and signature of the person filing it; or the name and signature of non-governmental entity's legal representative(s)</li> <li>• The complainant should indicate if they wish to remain anonymous</li> <li>• Corresponding addresses</li> <li>• An account of the act or situation complained of (place, date and nature of the alleged violations)</li> <li>• Indicate the name of the victim if they are different from the complainant</li> <li>• Indicate any public authority that has taken cognisance of the fact or situation alleged</li> <li>• Name of state alleged to be responsible for the violation</li> </ul>
<p>The state party concerned is notified of the communication.</p>	
<p>Invitation for comments from state party and author of communication (within three months).</p>	
<p>Commission makes a decision on admissibility.</p>	
<p>If communication is admissible, parties are requested to send their observations on the merits.</p>	
<p>If parties are willing, the Commission appoints a rapporteur for amicable resolution of the complaint.</p>	
<p>If amicable resolution could not be attained, the Commission decides the communication on the merits.</p>	
<p>The Commission makes its final recommendations to the state.</p>	
<p>If the Commission has found a violation, the Secretariat sends follow-up letter(s) enquiring about the implementation of the recommendations.</p>	

## Provisional measures

Once a communication has been admitted, the Commission may direct the state concerned to take one or more provisional measures pending the finalisation of the communication. Provisional measures are necessary to prevent irreparable damage being done to the victim of an alleged violation. If a state fails to comply with a request by the Commission for the adoption of provisional measures after

the period specified, the Commission under Rule 130 of its 2020 Rules of Procedure may refer the communication to the African Court.

## **Amicable settlement**

The Rules of Procedure of the Commission require it to promote amicable settlement of disputes between parties. Before a settlement is reached, the terms must be acceptable to both parties. The settlement must comply with human rights principles.

## **Findings and recommendations**

If the Commission finds a violation, the Commission may simply declare that the state is in violation. In some cases, the Commission has included in its findings far-reaching recommendations. For instance, it may recommend that the state should take necessary measures to comply with the Charter including payment of compensation to the victim(s).

## **Follow-up on Commission's recommendations**

The Commission procedure to follow-up on the implementation of its decisions on the merits was set out in the 2010 Rules of Procedure and updated in the 2020 Rules of Procedure

The 2020 Rules of Procedure of the African Commission came into force on 2 June 2020.

According to the press release by the African Commission, the new Rules were passed in a bid to 'ensure a more efficient and effective execution by the African Commission of its mandate under the African Charter.' The new Rules of Procedure introduce new elements in terms of:

- The mandate and status of the African Commission. The Rule 3 reiterates the autonomous nature of the African Commission and its mandates to interpret the African Charter and its own decisions and to ensure the operation of its Secretariat.
- The role of national human rights institutions. Rule 79 aims to enhance the role of National Human Rights Institutions (NHRIs) in follow up on recommendations of the Commission. It provides that the Concluding Observations on State Reports would be transmitted to the NHRI(s) in addition to the government.

- Sessions of the Commission: Rule 28 provides for the Commission to hold four sessions a year, thereby bringing the Rules in line with the current practice.
- The communications procedure of the African Commission. Under Rule 116, complainants are required to submit their admissibility and Merits submissions together, within 60 days from receipt of the seizure decision. The state would similarly be provided with 60 days to respond on admissibility and merits, where after the Complainant would have the opportunity to submit a rejoinder.

## Some landmark decisions of the Commission

- ***SERAC v Nigeria (2001) AHRLR 60 (ACHPR 2001)***

In this case, the government of Nigeria through its state-owned oil corporation, Nigeria National Petroleum Corporation (NNPC) and a multinational company, Shell Petroleum Development Corporation, was alleged to have caused severe environmental degradation to the Ogoni people. The land and water sources were contaminated as a result of oil exploration, thereby making farming and fishing (the two basic means of livelihood of the Ogoni) impossible. The complainant also alleged that Nigerian government condoned the violations because despite several petitions, the government failed to ask the oil companies to conduct environmental or social impact studies of its activities.

'Governments have a duty to respect their citizens, not only through appropriate legislation and enforcement, but also by protecting them from damaging acts that may be perpetrated by private parties.' (*SERAC case, para 57*)

The communities were also not consulted before the companies began operation. Security forces were unleashed to attack, burn and destroy their villages, homes and farmlands whenever they tried to protest. The complainants alleged that these activities of the Nigerian government violated the rights of the Ogoni people to enjoy the best attainable state of physical and mental health, clean environment, property, natural resources and adequate housing.

'The right to food is inseparably linked to the dignity of human beings and is therefore essential for the enjoyment and fulfilment of such other rights as health, education, work and political participation ... The minimum core of the right to food requires that ... government should not destroy or contaminate food sources.' (SERAC case, para 65)

The Commission found the Nigerian government in violation of the Charter. It appealed to the government to stop attacks on Ogoni communities, ensure adequate compensation for victims of the violations and also to undertake appropriate environmental and social impact assessments for future oil development.

- **Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya (2009) AHRLR 75 (ACHPR 2009)**

In this case, the Kenyan government forcibly removed the Endorois people, an indigenous community, from their ancestral lands around the Lake Bogoria area of Kenya without proper consultation or compensation. As a result, the Endorois people could not access their religious sites located in the Bogoria Lake region. The complainants alleged that this violated the African Charter.

In this ground-breaking decision, the Commission pronounced on the right to development under the African Charter. The Charter is the only international binding human rights instrument to recognize this right. The Commission also elaborated on the rights of indigenous people in Africa.

'The right to development is a two-pronged test ... it is useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the right to development

... it is not simply the state providing, for example, housing for individuals or peoples, development is instead about providing people with the ability to choose where to live.' (Endorois case, paras 277 & 288)

The Commission found that the culture, religion and traditional way of life of the Endorois are intimately intertwined with their ancestral lands. It found the government of Kenya to be in violation and urged the government to allow the Endorois community unrestricted access to Lake Bogoria and the surrounding sites for religious and cultural rights to pay adequate compensation to the community for all loss

suffered, to pay royalties to the Endorois from existing economic activities, and to report to the Commission on implementation of these recommendations.

• ***Jawara v Gambia (2000) AHRLR 107 (ACHPR)***

In this communication, the Commission explored in detail article 56 of the African Charter which lays down the rules for admissibility of communications. The communication was brought by the former President of The Gambia (Sir Dawda Kairaba Jawara) who had been ousted in a military coup. The communication was brought against the military government of The Gambia and alleged various violations of the African Charter. The communication alleged blatant abuse of power by the respondent state as well as disregard for due process of the law through the respondent state's indiscriminate and arbitrary arrest, detention and extra-judicial executions of former officials and sympathisers of the complainant's government. The communication further alleged that the respondent's state through the introduction of decrees had ousted the jurisdiction of the courts as well as blatantly disregarding the judiciary. The respondent challenged admissibility of the communication on the ground that it did not comply with two of the admissibility criteria under article 56 of the Charter.

In its decision, the Commission stated that it would be futile to exhaust local remedies if conditions make it impossible to exhaust such remedies. In assessing whether an individual has exhausted local reliefs in respect of a violation suffered, three things must be considered which are availability, effectiveness and efficiency of the remedies. The remedy is available if it can be pursued without hindrance, it is effective if there is a prospect of succeeding and it is sufficient if it can redress the grievance adequately. The Commission concluded that the situation in The Gambia at the time prevented exhaustion of local remedies. The Commission further noted that the fact that parts of the communication were based on media report does not render it inadmissible.

'Remedies the availability of which is not evident cannot be invoked by the state to the detriment of the complainant.' (*Jawara case*, para 34)

Dealing with the merits, the Commission stated that by suspending the Bill of Rights of the Gambian Constitution, the military regime had violated the rights enshrined in the Charter protected under the Constitution. Most importantly, the Commission stated that the



military regime through the coup d'état had violated the right of the Gambian people to self-determination by denying them the right to freely choose their government. The Commission found the government in violation and urged it to bring its laws into conformity with the Charter provisions.

• ***Purohit and Another v The Gambia (2003) AHRLR 96 (ACHPR 2003)***

In this communication, the Commission addressed among other issues the right to health and treatment of persons with mental incapability. The communication was brought by the complainants on behalf of patients detained at the Psychiatric Unit of the Royal Victoria Hospital in The Gambia. The communication alleged that the provisions of the Lunatics Detention Act (LDA) was inadequate in that it failed to define who a 'lunatic' is and it did not prescribe requirements to guarantee safeguard of rights during diagnosis and detention of patients. The communication further alleged that the conditions of detention were unfavourable and violated the rights of patients. The complainants stated that the system did not provide for any independent examination of administration at the Unit or the facilities available. The Act did not make any provision for legal aid of inmates in addition to the fact that it was silent as to compensation for patients in the event of violation of their rights. The communication also alleged that patients were being denied their rights to vote.

In its decision, the Commission emphasised that human dignity is an inherent right which must be respected at all times irrespective of the mental capability of a person and persons with mental disability have the right to a decent life just like all others. Such persons must not be denied their right to healthcare which is necessary for their survival in society and they should be accorded special treatment to enable them to attain the highest level of health. The state must make provisions to enable persons wrongfully detained and whose rights have been violated to access legal aid and seek redress.

'Human dignity is an inherent basic right to which all human beings, regardless of their mental capabilities or disabilities as the case may be, are entitled to without discrimination.' (*Purohit* case, para 57)

The Commission stated that the right to health is vital for the enjoyment of all other rights and includes the right to access health care facilities and health services without discrimination. The

Commission further noted that states have the duty to ensure that mental health patients be accorded with special treatment by virtue of their condition. The state also has an obligation to take ‘concrete and targeted steps’ to ensure the full realisation of the right to health. The Commission found that the government was in violation of the Charter and urged it to repeal the LDA and to provide adequate medical as well as material care for mental health patients.

- **Open Society Justice Initiative v Côte d’Ivoire (Communication 318/06)**

The complaint was filed by the Open Society Justice Initiative against Côte d’Ivoire. In the complaint, it was alleged that the introduction of the concept of ‘ivoirité’ by President Henri Konan Bédié meant that Ivorian nationality could only be obtained by persons born in Côte d’Ivoire from two Ivorian parents. This policy affected 30 per cent of the population, including those born in Côte d’Ivoire and who had grown up and lived in the country all their life. This led to socio-political exclusion through a ban on access to land, voting and holding of public office. According to the complainant, the discriminatory laws led to the denial of the right to nationality, and in many instances to statelessness or to the risk of statelessness, thus preventing the recognition of the legal status of thousands of Ivorians, loss of employment opportunities, and violation of the right to property.

In adopting the definition of being stateless as defined in article 1 of the 1954 Convention on the Status of Stateless Persons, the Commission concluded that there is an obligation of the State on whose territory persons claim to have been born to grant them nationality, unless the state cannot prove that the person in question has already acquired or is eligible to another nationality. The Commission underscored the fact that nationality stands for both a de facto and a de jure notion and that one must adopt a socio-political lens in understanding it. It further stated that nationality, in its legal aspect, means ‘a legal affiliation of a person to the population constituting a State or yet still the quality of a person who belongs to a State due to political and legal links.’

The Commission was of the view that unreasonable legal provisions for the acquisition of nationality were arbitrary and therefore not consistent with the right to nationality guaranteed by article 5 of the Charter. The Commission also considered that some of the rights protected by the Charter have a supreme and dependent relationship with the right to dignity. It further stated

that being an undocumented immigrant is perceived as the most degrading form of legal, political and social identification. The Commission concluded that the laws and deeds of the state violated the provisions of article 5 of the Charter on the right to the dignity of the human person. Violations of the right to development, right to work, non-discrimination and equality were found to have been committed by the respondent state.

- ***Institute for Human Rights and Development and Others v Democratic Republic of Congo, Communication 393/10 (2016)***

This case brought before the African Commission by three African non-governmental organisations on behalf of more than seven individuals and families raised serious violations of rights guaranteed by the African Charter. The violations were committed in the context of military operations. The Armed Forces of the Democratic Republic of Congo (FARDC) allegedly committed arbitrary arrests, looting, torture, inhuman and degrading treatment, massacres and extrajudicial killings during armed confrontations with a rebel group in Kilwa. Interestingly, the petitioners claimed that Anvil Mining, an Australian transnational mining company operating in Kilwa, encouraged these violations by assisting the national army in dislodging the rebel group.

In its decision, the Commission found that the DRC had failed to ensure that its agents, the national army and the multinational company, respected the Charter. Indeed, the Charter obliges states to adopt appropriate measures to ensure the protection of individuals against violations committed by non-state actors. These measures, as the Commission found, would include those taken by the state to sanction the multinational company and its military, but also to ensure that victims of human rights violations are compensated. The fact that multinational companies are not parties to the African Charter may have prompted the Commission not to state explicitly that Anvil Mining had violated several rights under the Charter. However, the Commission reiterated its earlier position that companies involved in the extractive industries are obliged to respect the rights of local people in the course of their activities. This clearly prohibits companies from engaging directly in activities that violate the rights of local communities and from doing so indirectly by supporting or encouraging those who violate those rights.

There is not yet an international legal instrument that imposes explicit human rights obligations on companies. While the process

of developing such a treaty is underway at the global level, the Commission's clarifications clearly add to the body of non-binding norms that increasingly call for business conduct that is consistent with core human rights standards. The Commission also addressed the relevant aspects of the right to development that the petitioners claimed was violated by the state. The right to development is one of the key innovations of the African Charter. Although it is generally associated with the notion of 'the people', which is at the heart of the African Charter, the Commission indicated that the right to development can also be exercised individually. This dual 'individual' and 'collective' aspect of the right to development in article 22 encompasses aspects of economic and cultural development. In this case, the Commission found that the right to economic development of the people of Kilwa had been violated by the destruction of personal and community infrastructure such as schools and health centres which generated income for individuals or were used for the public good. The cultural aspect of the right to development was also violated when people were buried in mass graves, deprived of dignified burials, and their families were unable to perform their cultural rituals as recognised in the DRC.

- **Kevin Mgwanga Gunme and Others v Cameroon (Communication 266/03)**

This communication was brought by 14 individuals on behalf of the people of Southern Cameroon against Cameroon. The complaint alleged violations tracing back to the period after Cameroonian independence. Because Southern Cameroon was a UN Trust Territory administered by the British separately from the Francophone part of Cameroon, it was offered "two alternatives" during the 1961 UN plebiscite. That is, a choice to join Nigeria or Cameroon and they voted for the latter. The complainants allege that this denied them a third alternative which is the right to independence, statehood and self-determination. They alleged further that human rights of Southern Cameroonians had been systematically violated by the respondent state, including arbitrary arrests, detentions, torture, punishment, maiming and killings of persons who have advocated for the self-determination of Southern Cameroon.

In its decision, the Commission found that Cameroon had failed to address the concerns of Southern Cameroonians' businesses under the Treaty for the Harmonisation of Business Law in Africa (OHADA), which requires articles of associations of companies to be in English. This amounted to a violation of article 2 of the African

Charter. The Commission further found that the respondent state violated the right to life, inviolability of the human being, and the integrity of the person. The right to torture, cruel, inhuman and degrading punishment and treatment was also found to be violated.

The Commission however refrained from adjudicating on the 1961 UN plebiscite on events that took place between the October 1961 and 1972 because they predated the entry into force of the Charter. While the Commission was hesitant to define the concept of 'peoples', it stated that peoples' rights are equally important as individual rights and must be given protection. Therefore, it concluded that the people of Southern Cameroon could legitimately claim to be a "people" because they manifest numerous characteristics and affinities, including a common history, linguistic tradition.

The Commission found that the African Charter cannot be invoked by a complainant to threaten the sovereignty and territorial integrity of a State Party. It therefore stated that in order to amount to violations of the right to self-determination under the African Charter, there must be 'concrete evidence of violations of human rights to the point that the territorial integrity of the state party should be called to question, coupled with the denial of the people, their right to participate in the government as guaranteed by article 13(1)'. The Commission further held that for a complainant to invoke a violation of the right to self-determination successfully, they must satisfy the two conditions under Article 20(2), namely, oppression and domination.

## State reporting

State reporting is one of the means of gauging states compliance with their obligations under the Charter. Article 62 of the Charter requires states to submit periodic report to the Commission. To give effect to that article of the Charter, the Commission in October 1988 adopted a general guideline on the form and content of state reporting. In 1998, more concise Guidelines to Periodic Reporting were also issued.

Article 26 of Women's Protocol also requires states parties to the Protocol to include in their periodic report to the Commission pursuant to article 62 of the Charter a report on legislative and other measures they have taken to implement the provisions of the Protocol. The report of states parties to both the Charter and

the Women's Protocol must therefore consist of two parts, the first part (Part A) relating to the Charter and the second (Part B) to the Protocol. In 2009, the African Commission adopted the Guidelines for Reporting on the Women's Protocol and in 2010 Guidelines for Reporting on Economic, Social and Cultural Rights.

Part C of the Cameroon state report provides the implementation of the rights contained in the African Union Convention on the Protection and Assistance to Internally Displaced Persons in Africa (Kampala Convention):

- Cameroon has undertaken legislative measures to ensure civil protection of the population. These include, among others, Law No. 96/12 of 5 August 1996 to lay down a framework law on environmental management in Cameroon, Law No. 86/16 of 6 December 1986 to lay down the general reorganization of Civil Protection in Cameroon.
- In terms of funds allocated to the management of displaced persons, the government of Cameroon raised about 3,587,786,25 Euros through national solidarity efforts to go towards the State budget.
- Cameroon has also taken steps to prevent internal displacement through the promotion of a favourable environment for the practice of human activities on the territory, the government has also established alert mechanisms to enable local entities to detect both natural and human risks. A National Emergency Operations Centre was set up in Yaoundé to act as an alternative storage base for the National Centre.
- Cameroon has undertaken specific measures in the prevention of internal displacement through, for instance, the anticipation of climate change-related displacements, the government has implemented legislative and institutional measures to address climate-change related environmental impacts in a sustainable manner.

State reporting procedure serves as a forum for constructive dialogue. It enables the Commission to monitor implementation of the Charter and identify challenges impeding the realisation of the objects of the Charter. States are able to take stock of their achievements and failures in the light of the Charter.

The Charter requires states to submit two types of report: initial reports and periodic reports. Initial reports are required to be submitted by states two years after ratification or accession to the Charter. Periodic reports are required to be submitted every two years after the initial report.

## Contents of a state report on the African Charter

A state report submitted by a state party to the Charter must address the following:

- Measures taken to give effect to the provisions of the Charter
- Progress made so far
- Challenges affecting the implementation of the Charter and the relevant supplementary instruments

States are required to report under the African Union Convention on the Protection and Assistance to Internally Displaced Persons in Africa (article 14(4) of the Kampala Convention). States that have ratified the African Charter and Maputo Protocol must therefore submit a three-part report, each part dealing with one of the treaties. So far only Cameroon has done so.

States should also address implementation of the provisions of the Maputo Protocol if ratified in line with the Commission's guidelines for state reporting under the Maputo Protocol.

## Value of state reporting on the Maputo Protocol

- State reporting enables the Commission to carry out its oversight function of monitoring the implementation of the Protocol.
- State reports make room for the state party to indicate, in addition to the measures taken to implement the Protocol, the factors and difficulties impeding the effective implementation of the Protocol.
- The reporting process enables the Commission to collect information on common experiences from states on women rights in Africa.
- After consideration of these reports, the African Commission issues Concluding Observations and recommendations which the State Parties are expected to act on to improve the exercise and enjoyment of women rights.
- State reporting provides a means through which the African Commission can get a reliable and impartial picture of the human rights situation in a country.
- State reporting assists the African Commission in its constructive engagement and dialogue with states parties upon consideration of reports.

## Some measures and mechanisms adopted by states

In giving effect to rights provided under the Maputo Protocol, Malawi indicated in its periodic report of May 2015 to March 2019 that it

took the following measures:

- The Gender Equality Act was passed to criminalise sexual harassment and if found guilty, the perpetrator shall serve up to five (5) years imprisonment and a fine.
- At a policy level, a National Plan of Action to Combat Gender-Based Violence in Malawi (2014 – 2020) was adopted.
- Malawi established one stop centres aimed at assisting victims of Gender Based Violence by providing counselling, medical and psycho-social needs.
- There was a conviction in 2016 for indulging in harmful practices contrary to section 5 of the Gender Equality Act.

In its initial report under the Maputo Protocol (2015), South Africa indicated that it took the following measures:

- As regards the right to life, integrity and security of the person, the government has adopted a legislative framework aimed at combating, preventing, eliminating and eradicating all forms of violence against women. These include the Criminal Procedure Act, 1997; the Domestic Violence Act, 1998 which aims to provide protection against domestic violence by broadening the scope of what constitutes domestic relationships and domestic violent actions; and the Protection from Harassment Act, 2011, which seeks to provide victims of harassment in order to put into effect the right of all people in South Africa to be free from all forms of violence from either public or private sources.
- In a bid to promote the right to education and training, South Africa adopted the National Education Policy Act, 1996 and the South African Schools Act, 1996 to promote access to education for all. The South African Schools Act, 1996 also made schooling compulsory for children from the year in which the child turns seven to 15 years.
- The government response involves a plan to restructure the health care system through strengthening the fight against HIV and Tuberculosis and other non-communicable diseases, regulating costs to make health care affordable to all.
- The government is also working towards improving the access to and use of contraceptives by women. Against this backdrop, the updated National Contraception and Fertility Planning Policy and Service Delivery Guidelines were approved by the National Health Council during 2012/13.

The following measures were taken by the DRC to give effect to rights provided under the Maputo Protocol:

- In line with the protection and promotion of economic and social rights, the government of DRC has passed a number of legislations to ensure the protection of the rights of women for example the Law No. 015/2002 of 16 October, 2002 on the Labour Code which contains relevant provisions for the protection of women in employment.
- Other legislative measures are the Decree Law of 1961 which was



amended to introduce a general social security regime.

- DRC has adopted policies and programmes for the implementation of legislative and administrative measures to promote the well-being of women like; the National Gender Policy, National Policy for Employment and Vocational Training, 2015, National Youth Policy, National Population Policy, and National Plan of Action to Combat the Worst Forms of Child Labour, 2011, among others.
- As regards provision of reproductive health services, including the reduction of maternal mortality, the government of DRC, through the Ministry of Health established a National Reproductive Health Programme tasked to implement the National Policy of the DRC on reproductive health.

## Challenges of state reporting

In respect of the African Commission

- Non-responsiveness of States. There is no penalty/motivation for countries to submit state reports. Six state parties to the African Charter have never submitted state reports to the African Commission.
- Though the mechanism of state reporting allows the Commission to exercise its monitoring mandate, sometimes state parties are reluctant to deliver information requested to enable the Commission effectively carry out its duties. Often, the Commission has to reiterate its request for additional information and clarification from states.
- The Commission also faces functional constraints in terms of lack of sufficient authority to enforce its concluding observations and recommendations as these are non-binding. States can choose not to implement these if there is inadequate political will.

With respect to state parties:

- States lack institutional and financial resources to implement recommendations from concluding observations to be included in a state report. Lack of coordination within government ministries means that implementation of some recommendations may take a while before actualisation since some states require consultation with various ministries before a law is abolished.
- In making some recommendations and concluding remarks, the Commission rarely takes into account the political difficulties and period of time that may be required.

## Procedure for state reporting

Submission and consideration of state reports pass through the following stages:

States report to the Secretariat of the African Commission.

The Secretariat uploads the report on the Commission's website, indicating when the report will be considered.

Copies of the report are circulated to commissioners and relevant NGOs.

Interested stakeholders wishing to contribute to the examination of the report submit their contributions including shadow reports to the Commission's Secretariat at least 60 days prior to the date fixed for the examination of the report.

The Secretariat may invite specific institutions to submit information relating to the Report.

The Secretariat prepares questions based on the report

Communication of questions to all commissioners.

The Commission communicates questions to the reporting state (accompanied by a letter requesting the attendance of state's representatives).

The Commission examines state report in open session, as scheduled: presentation of report by state representative, questioning by commissioners, answers to questions by state delegation (sometimes supplemented by subsequent written responses), summation and conclusion by the chairperson of the Commission

The Commission then adopts Concluding Observations (in closed session).

## Concluding Observations

In 2001, the Commission started to adopt concluding observations after examination of state reports. Concluding observations touch on both positive and negative aspects that have emerged through the examination of the report. The concluding observations specify the steps which the state should adopt to remedy identified shortcomings.

### **Extracts of the concluding observations on the First Periodic Report of the Republic of South Africa (issued at the 38th session of the Commission in 2005):**

'The African Commission recommends that the Government of South Africa should:

28. Ensure that the provisions of the African Charter are widely known and understood by adults and children alike, in both rural and urban areas.

29. Consider lifting the reservation made on Article 6(d) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

35. Make the declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of An African Court on Human and Peoples' Rights.

38. Inform the African Commission, in its next Periodic Report, of the steps it has taken to address the areas of concern, as well as how it has implemented the recommendations in this Concluding Observations.'

## Follow-up

It is the duty of the Commissioners as part of their promotional mandate to ensure follow-up on the recommendations arising from the Concluding Observations. The Commission also transmits to the AU Assembly its Concluding Observations accompanied with copies of states reports submitted to it as well as the reactions of the reporting states to questions posed during the examination of the report.

When the representatives of a given states are unable to provide satisfactory answer in respect of one or more questions posed to them by the Commission during the consideration of their report, the Commission writes a follow up letter to the state concerned requesting additional information in respect of such question(s).

The 2020 Rules of Procedure of the African Commission on Human and Peoples' Rights set out follow-up procedures of the implementation of Concluding Observations under Rule 83:

- The Commission shall specify the issues that require particular attention on the part of the State Party in the Concluding Observations.
- The date of the presentation of the next Periodic Report by the State Party shall also be included in the Concluding Observations.
- Members of the Commission have the mandate to ensure the follow-up on the implementation of the recommendations from the Concluding Observations within the framework of their promotion activities to the State Parties concerned.
- Members may request or take into account contributions by interested parties or invited institutions, on the extent to which those recommendations have been implemented.
- The Commission may reference any Concluding Observations in its Activity Reports to the Assembly.

## Examination without state representation

In case a state fails to send any representatives, the Commission may after two notifications to the state proceed with the examination of the report and forward its observations to that state.

## Non-submission of report

It is the duty of the Secretary to inform the Commission of non-submission of reports by state parties. A reminder is sent to any state concerned every three months and a list of non-reporting states is

usually attached to Commission's Activity Reports.

## **Non-governmental organisations (NGOs) and the African Commission**

The Commission has a very robust relationship with NGOs. Article 45(1) of the Charter requires the Commission to cooperate with other African and international institutions concerned with the promotion of and protection of human and peoples' rights. Starting in 1988, the Commission has been granting observer status to NGOs. In 1999, the Commission adopted a resolution on the criteria for granting observer status to NGOs. In 2016, Resolution 361 on the Criteria for Granting and Maintaining Observer Status to Non-Governmental Organizations working on Human and Peoples' Rights in Africa was adopted to establish the competence and determine the mandate of the Commission as provided under article 45 of the African Charter.

As of June 2021, a total of 535 NGOs had been granted observer status by the Commission.

NGOs play a prominent role in the activities of the Commission. They draw the attention of the Commission to violations of the Charter, bring communications on behalf of individuals, monitor states' compliance with the Charter, and help to increase awareness about the Commission's activities by organizing conferences and other activities. NGOs participate in the Commission's public sessions and engage with the reporting procedure by submitting shadow reports and popularising concluding observations. NGOs having observer status with the Commission may take the floor during the Commission's public sessions. They are also required to submit a report of their activities every two years.

NGOs' engagement with the Commission is coordinated and spearheaded by the NGO Forum, which is held before every session of the Commission to deliberate and produce reports on thematic and regional situations in Africa. The NGO Forum, organised by the Banjul-based African Centre for Democracy and Human Rights Studies, serves as a medium through which NGOs acquaint themselves with the Commission's activities. The NGO pre-session report is usually considered by the Commissioners during the opening ceremony of the session.

**Criteria for granting NGO observer status:**

To be accorded observer status, an NGO has to meet the following criteria:

- (i) The objectives of the NGO must be in consonance with the principles of the Constitutive Act of the AU and the African Charter.
- (ii) The NGO must be working in the field of human rights.
- (iii) Written application to the Secretariat which must be accompanied by:
  - Proof of legal existence, list of members, constituent organs and source of funding;
  - Declaration of financial resources;
  - Last financial statement;
  - Statement of activities.

## National human rights institutions (NHRIs) and the African Commission

NHRIs are statutory bodies established by governments in Africa and charged with the responsibility of promoting and protecting human rights institutions in their respective countries. The establishment and operations of this institution must conform to the UN Principles relating to the Status and Functioning of National Institution for the Protection and Promotion of Human Rights, otherwise called the 'Paris Principles'.

The relationship between the Commission and NHRIs began in 1998 when the Commission adopted the resolution on the Granting of Affiliate Status to NHRIs. The resolution provides for the criteria for the grant of affiliate status to NHRIs.

**Criteria for granting affiliate status:**

To be granted affiliate status, the prospect NHRIs must fulfil the following requirements:

- It must be a national institution of a state party to the Charter.
- It must be duly established by law.
- It should conform to the 'Paris Principles'.
- It must formally apply to the Commission for affiliate status.

The basis of the relationship between the Commission and NHRIs is traceable to articles 26 and 45(1)(c) of the African Charter. The granting of affiliate status to NHRIs has promoted mutual cooperation

between the Commission and NHRIs. Although the rights and obligations of affiliated NHRIs are similar in some respects to those of NGOs granted observer status, NHRIs are also required to assist the Commission in the promotion of the human rights at the country level. For instance, NHRIs have encouraged their countries to ratify human rights treaties. They have also played and continue to play a significant role in enhancing the protective and promotional activities of the Commission. Their contributions include raising awareness of the Commission's activities. NHRIs affiliated to the Commission are entitled to attend and participate in the Commission's public sessions. As with NGOs, they are required to submit a report on their activities to the Commission every two years. Rule 79 of the African Commission Rules of Procedure provides that concluding observations on state reports would be transmitted to the NHRI(s) in addition to the government.

As of June 2021, the Commission had granted affiliate status to 30 National Human Rights Institutions. The list of NHRIs affiliated to the Commission is available at <https://www.achpr.org/sessions/info?id=367>

## Special mechanisms of the Commission

The Commission has over the years established special mechanisms comprising special rapporteurs and working groups. While it does not have the explicit competence to establish these mechanisms, its power to do so can be inferred from its broad promotional mandate (in article 45 of the Charter) and its mandate to use any appropriate method of investigation to carrying out its responsibilities (under article 46 of the Charter). Special mechanisms investigate human rights violations, research human rights issues and undertake promotional activities through country visits. Their reports form the basis of some of the Commission's resolutions. Special rapporteurs are appointed from among the members of the Commission, while working groups include members of the Commission together with independent experts.

## Special mechanisms under the African human rights system

- 1996 • Special Rapporteur on Prisoners, Conditions of Detention and Policing in Africa
- 1999 • Special Rapporteur on Rights of Women
- 2000 • Working Group on Indigenous Populations/Communities in Africa
- 2004 • Special Rapporteur on Freedom of Expression and Access to Information
  - Special Rapporteur on Human Rights Defenders
  - Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons
  - Committee for the Prevention of Torture in Africa
  - Working Group on Economic, Social and Cultural Rights
- 2005 • Working Group on Death Penalty and Extra-judicial, Summary of Arbitrary Killings in Africa
- 2007 • Working Group on Rights of Older Persons and People with Disabilities
- 2009 • Working Group on Extractive Industries, Environment and Human Rights Violations
- 2010 • Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV

## Challenges of the special mechanism

- The Commissioners double as Special Rapporteurs. This added responsibility lays claim to the Commissioners' limited time, undermining their ability to attend to all aspects of their mandate.
- Resources are insufficient to undertake all required activities.
- State consent is required for visits, but is often not given.

## Missions undertaken by the Commission

The primary mandate of the Commission is to enhance the promotion and protection of human rights in Africa and to ensure that member states comply with their obligations undertaken under the Charter. The Commission also draws up terms of reference for each promotional mission.

The Commission has undertaken two categories of mission



since its establishment. These are and promotional and protective missions. Special Rapporteurs also undertake missions focusing on human rights violations within their mandates.

- Promotional ('advocacy') missions

Promotional visits or missions are undertaken by the Commission or its special mechanisms to sensitise states about the role of the African Charter, encourage states which have not ratified relevant human rights instrument to ratify them or to persuade non-reporting states to comply with their reporting obligations. For the purpose of promotional visits, the 54 state parties to the African Charter are distributed among the Commissioners. Promotion missions have been conducted to a majority of African states.

- Protective missions ('on-site'/'fact-finding' missions or 'commissions of inquiry')

An on-site mission is usually undertaken to a state against which a number of communications have been submitted and where consent from the state has been obtained to undertake the visit. The purpose of such a mission usually is to explore avenue for amicable settlement or to investigate specific facts relating to the communications. The Commission may also undertake fact-finding missions whenever there is an allegation of a general nature or widespread reports of human rights violations against a state party. Fact-finding missions do not require any prior communication to have been submitted to the Commission before the mission is undertaken. A 'commission of inquiry' may entail a combination of fact-finding and on-site visits.

The Commission conducted its first fact-finding mission to Senegal in 1996, following allegations of massive human rights violations at Kaguitt, Casamance, involving Senegal's army and rebels in Casamance. The Commission has subsequently conducted a number of protective missions in Africa, particularly to states where there have been persistent allegations of gross human rights violations such as Sudan and Nigeria. In 1997, the Commission undertook a mission to Nigeria to assess the situation of the 'Ogoni 19' (a group of Niger Delta activists detained in connection with Ken Saro-Wiwa) who were detained for challenging the environmental degradation and non-development of their region. In 2004, the Commission undertook a fact-finding mission (as well as an on-site visit) to the Darfur region of Sudan to verify allegations of human rights violations and international crimes, and recommend solutions for addressing the situation.

After days of conducting site visits and interviews, the mission established that 'there was a pattern of gross human rights abuses' committed by all parties to the armed conflict including the government, and made its recommendations. Similar missions have been conducted in Mali, Mauritania, Saharawi Arab Democratic Republic and Zimbabwe.

## **Obligations of states during a protection mission**

State parties must:

- Refrain from taking reprisal action against persons or entities that furnished the mission with information, testimony or evidence
- Guarantee free movement of members of the mission including any necessary internal authorisation
- Provide the mission with any information or document which the mission considers necessary in order to prepare its report
- Take steps to protect members of the mission.

## **Role of civil society during missions**

Civil society facilitates the Commission's decision to undertake missions by raising concerns on gross human rights violations. They usually accompany the Commission during visits and are known for playing the role of interlocutors.

## **Resolutions, guidelines and General Comments**

Article 45 of the Charter empowers the Commission to 'formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights.' Pursuant to this provision, the Commission adopts resolutions to address diverse human rights issues. These resolutions could generally be classified into three: thematic, country-specific and administrative resolutions.

## Thematic resolutions, guidelines, general comments and model law

A thematic resolution elaborates in greater detail specific human right themes or a particular substantive right covered in the Charter. It defines the states' obligations in respect of the particular right and describes the standard set by the Charter. The Commission has passed hundreds of thematic resolutions, sometimes referred to as guidelines, covering a wide range of themes including the death penalty, indigenous peoples' rights, the situation of women and children, socio-economic rights, HIV/AIDS, COVID-19 pandemic, electoral processes, good governance, prisons, freedom of association, and the right to a fair trial. The Commission has adopted six General Comments, for example on articles of the Maputo Protocol and on the right to life. It also adopted numerous guidelines, which are more expansive than resolutions and General Comments, and a Model Law on access to information in Africa.

**Resolution 449 on Human and Peoples' Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impacts:** The Commission calls on States Parties to ensure, in respect to the right to health and life under Articles 16 and 4 of the African Charter, that: They prioritize the use of measured public health measures including mandatory wearing of masks, installing hand washing/sanitizing stalls in public places, disinfecting public spaces, holding of gatherings in an open space, observing social distancing when engaging in economic activities; Special measures are taken to protect those most vulnerable to suffer most from contracting COVID-19 such as older persons and persons with underlying health conditions including by educating members of their family, care facilities and neighbours, on insulating such groups of people from physical proximity from people active in social and economic life of the public (7 August 2020).

**Resolution 470 on the Protection of Refugees, Asylum Seekers and Migrants** in the fight against the COVID-19 pandemic in Africa: The Commission reminds States of their treaty obligations and the commitments they have made by embracing the standards and policies of the African Union relating to the protection of asylum seekers, refugees and migrants on the continent, in particular the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa and the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention); Condemns all violations of rights to which asylum seekers, refugees and migrants have been directly or indirectly subjected in the context of the management of the COVID-19 pandemic in States Parties to the African Charter and its Protocols.

**Resolution on the status of women in Africa** (adopted in 2005) The Commission through this resolution called on member states to: ratify and domesticate the Protocol to the Africa Charter on the Rights of Women in Africa, increase women's participation in peace keeping operation, implement affirmative actions, and respect their commitments under CEDAW and the Beijing Platform of Action.

## Country-specific resolutions

Country resolutions address pertinent human rights concerns in member states. This genre of resolution has proven very useful whenever there are widespread violations in a member state but no individual has submitted any communications to the Commission in respect of those violations. The Commission has passed specific resolutions to address the human rights situation in Sudan, Uganda, Zimbabwe, Ethiopia, Eritrea, Somalia, Kenya, DRC, Côte d'Ivoire, Comoros, Libya, Tunisia, Guinea Bissau, Liberia, Burundi, Rwanda and many other countries.

**Resolution on the human rights situation in The Gambia**  
(adopted in 2008)

This resolution was passed as a result of what the Commission called 'the deteriorating human rights' situation in The Gambia. The resolution condemned the unlawful arrests, unfair trials, torture and extrajudicial executions of alleged coup plotters, journalists and human rights defenders. The Commission called for the immediate release by The Gambian government of all political prisoners and, requested Gambia to investigate the allegations of extrajudicial executions and torture in detention. It also called on the Gambian government to implement the ECOWAS Court judgment of 8 June 2008 dealing with human rights violations in the country.

**Resolution 469 on the situation in the Federal Democratic Republic of Ethiopia** (adopted in 2020)

In addition to condemning the use of force by the Federal Government in the Tigray region, the Commission called upon the country to ensure the protection of human rights of all Ethiopians, especially in the Tigray region in accordance with the regional and international human rights instruments ratified by Ethiopia. The government was encouraged to conduct prompt, impartial and effective investigations into the loss of life of civilians and other human rights violations committed during the armed conflict, hold the perpetrators accountable and provide appropriate and adequate reparations to the victims and their families.

## **Administrative resolutions**

Administrative resolutions deal with the Commission's procedures, internal mechanisms and relationship between the Commission and other organs of the AU, intergovernmental organisations, NHRIs and NGOs. Some of the Commission's administrative resolutions include resolutions on the appointment and mandate of special rapporteurs and working groups, resolutions on the criteria for grant of observer status to NGOs and affiliate status to NHRIs, and the resolution on the protection of the name, acronym and logo of the Commission.

# Successes and challenges of the African Commission

## Successes of the Commission

- **Interpretative advances**

The Commission has interpreted not only the civil and political rights provisions of the Charter but also the more unusual rights contained in the Charter such as the right to protection of language, right to national and international peace and security, protection of family life, right to development, right to existence and self-determination. The Commission through the doctrine of 'implied rights' interpreted the right to life and health to include also the right to food. The Commission also implied the right to housing from the right to property and protection of the family.

'Although the right to housing or shelter is not explicitly provided for under the African Charter, the corollary of the combination of the provisions protecting the right to ... health, the right to property, and the protection accorded to the family forbids wanton destruction of shelter because when housing is destroyed, property, health and family life are adversely affected ... [T]he combined effect of articles 14, 16 and 18 reads into the Charter a right to shelter or housing.' (*SERAC v Nigeria*, para 60)

- **Advancement of women's rights**

The Commission has taken steps to advance women's rights in Africa. Aside from its most notable achievement in this respect, the adoption of the Women's Protocol, it has passed resolutions on the following specific women's rights issues: the status of Women in Africa (2005); women and girl victims of sexual violence (2007); and maternal mortality in Africa (2008).

The appointment of a Special Rapporteur on the Rights of Women in Africa, in 1998, has contributed significantly to these advancements and the mandate-holder continues to promote implementation of the Women's Protocol and serve as the Commission's focal point for the promotion and protection of women's rights in Africa.

- **Robust relationship with NGOs and NHRIs**

The Commission has a healthy relationship with NGOs and NHRIs. NGOs make statements and interventions during public sessions

of the Commission and are represented on the working groups established by the Commission.

- Promotion of the right of indigenous peoples

The Commission has been in the fore-front of the promotion of the rights of indigenous peoples in Africa. The Commission has made notable pronouncements on indigenous peoples' rights prominent among which is the Endorois case. The Commission also established a working group on Indigenous populations and communities in Africa. The report of the working group has been adopted by the Commission.

'The African Commission is ... aware that indigenous peoples have, due to past and ongoing processes, become marginalised in their own country and they need recognition and protection of their basic human rights and fundamental freedoms.' (*Endorois case*, para 148)

- Generous standing rule before the Commission

Any individual or NGO may bring a communication before the Commission. The author of the communication does not have to be the victim of the alleged violation.

'Article 56(1) of the Charter demands that any persons submitting communications to the Commission relating to human rights must reveal their identity. They do not necessarily have to be victims of such violations or members of their families.' (*Malawi African Association v Mauritania*, para 78)

The Commission interpreted the 'claw back clauses' in the Charter progressively.

'According to article 9(2) of the Charter, dissemination of opinions may be restricted by law. This does not mean that national law can set aside the right to express and disseminate one's opinions; this would make the protection of the right to express one's opinions ineffective. To allow national law to have precedent over the international law of the Charter would defeat the purpose of the rights and freedoms enshrined in the Charter. International human rights standards must always prevail over contradictory national law. Any limitation on the rights of the Charter must be in conformity with the provisions of the Charter.' (*Media Rights Agenda and Others v Nigeria*, para 66)

## Challenges of the Commission

### • **Commission and Secretariat-related challenges**

The time-lag between submission of complaints and final decision by the Commission is lengthy. This affects the impact of its decisions. In spite of the backlog of communications with the Commission, the Commission has not demonstrated much enthusiasm in making referrals to the Court. The Commission also delays in the adoption of reports of Special Rapporteurs. The Commission lacks a follow-up mechanism to monitor compliance of its recommendations.

A prominent challenge facing the Commission is finding a proper balance between the exercise of its promotional and protective mandates.

Political interference and lack of independence of the Commission. On 8 August 2018, the Commission withdrew the Coalition of African Lesbians' (CAL) observer status following a decision by the African Union Executive Council that called on the Commission to consider "African values" when reviewing applications for observer status.

### • **States-related challenges**

Many states lag behind with their obligation to submit state reports under the Charter, thus depriving the Commission of a regular opportunity for reviewing the state's human rights record. States have generally lacked political will to comply with the recommendations of the Commission.

### • **AU-related challenges**

The AU political organs provide insufficient support to the



Commission and sometimes stall the work of the Commission for example by preventing the publication of its Activity Reports. There is also a serious lack of coordination between AU organs or bodies with a human rights-related mandate, though the AU is trying to address this through the African Governance Architecture (AGA).

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# C The African Court on Human and Peoples' Rights

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## Establishment

The African Court on Human and Peoples' Rights (African Court) was established through a Protocol to the African Charter. The Protocol on the Establishment of an African Court on Human and Peoples' Rights (Court Protocol) was adopted in Ouagadougou, Burkina Faso, on 9 June 1998 and entered into force on 25 January 2004. The Court was established in order to complement the protective mandate of the Commission. Its decisions are final and binding on state parties to the Protocol.

## Rules of Procedure

The Court's activities and procedures are regulated by its Rules of Procedure. The first (and interim) rules were established in 2008 following a harmonization with the rules of the Commission. The rules were subsequently replaced in 2010, until the 58th ordinary session of the Court in 2020, when the new Rules of Procedure were adopted to replace the former, with the aim of enhancing the Court's efficacy and effectiveness.

## Composition

The Court consists of 11 Judges elected by the AU Assembly from a list of candidates nominated by member states of the AU. The Judges are elected in their personal capacity but no two serving judges shall be nationals of the same state. Due consideration is also given to gender and geographical representation. The Judges are elected for a period of six years and are eligible for re-election only once. Only the President of the Court holds office on full time basis. The other 10 Judges work part-time. The 2020 Rules of Court also introduces a new set called the 'Dean of Judges', which it defines as 'the longest serving Judge of the Court who is not a member of the Bureau'. The first judges of the Court were sworn in on 1 July 2006. The seat of the Court is Arusha, Tanzania.

## The Bureau

The Bureau consists of the President and Vice President each with a mandate of a two-year term renewable once. Article 10(2) of the newly amended Court Rules of 2020 introduces a gender parity consideration to the composition of the Bureau. In June 2021, Judge Aboud was elected as the Court's second female President.

## The Registry

It consists of a Registrar and Deputy Registrar, and any other staff which the Court may require for the effective functioning of the that body. In balancing regional backgrounds, legal traditions and language, Rule 16(2) of the 2020 amended Court rules also introduces language, regional and gender parity considerations in the selection of members of the Registry.

## Members

### ***Current judges (June 2021)***

#### **Bureau of the Court President of the Court**

Imani Daud Aboud (2018 - ) Tanzania

#### **Vice President**

Blaise Tchikaya (2018 - ) Republic of Congo

#### **Other Judges**

Ben Kioko (2012 - ) Kenya

Justice Rafaâ Ben Achour (2014 - ) Tunisia

Lady Justice Ntyam Ondo Mengue (2016 - ) Cameroon

Lady Justice Marie Thérèse Mukamulisa (2016 - ) Rwanda

Lady Justice Tujilane Rose Chizumila (2017 - ) Malawi

Lady Justice Bensaoula Chafika (2017 - ) Algeria

Lady Justice Stella Isibhakhomen Anukam (2018 - ) Nigeria

Justice Dumisa Buhle Ntsebeza (June 2021 - ) South Africa

Justice Sacko Modibo (June 2021 - ) Mali

#### **Former judges**

Justice Gérard Niyungeko (2006 - 2012) Burundi

Justice El Hadji Guissé (2006 - 2012) Senegal

Justice Solomy Balungi Bossa (2014 - 2020) Uganda

Justice Augustino S. L. Ramadhani (2010 - 2017) Tanzania

Justice Elsie Nwanwuri Thompson (2010 - 2016) Nigeria

Justice Fatsah Ouguerouz (2006 - 2016) Algeria

Justice Duncan Tambala (2010 - 2016) Malawi

Justice Sophia A. B. Akuffo (2006 - 2014) Ghana

Justice Jean Mutsinzi (2006 - 2012) Rwanda

Justice Bernard Makgabo Ngoepe (2006 - 2013) South Africa

George W Kanyeihamba (2006 - 2008) Uganda  
Jean Emile Somda (2006 - 2008) Burkina Faso  
Kelello Justina Mafoso-Guni (2006 - 2010) Lesotho  
Hamdi Faraj Fanoush (2006 - 2010) Libya  
Githu Muigai (2008 - 2009) Kenya  
Joseph N Mulenga (2008 - 2012) Uganda  
Kimelabalou Aba (2013 - 2014) Togo  
Sylvain Ore (2016 - June 2021) Côte d'Ivoire  
Justice Ângelo Vasco Matusse (2014 - June 2021) Mozambique

At the 34th African Union (AU) Heads of State and Government Ordinary Summit in February 2021, two new Judges were elected (Justice Dumisa Buhle Ntsebeza SC from South Africa and Justice Sacko Modibo from Mali). They replaced Justice Sylvain Oré and Justice Ângelo Vasco Matusse as from June 2021 when they took office at the 61st ordinary session of the Court.

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**For more information on the activities of the Court, contact:**

The African Court on Human and Peoples' Rights  
Mwalimu Julius Nyerere Conservation Centre  
Dodoma Road  
P.O.Box 6274 Arusha, Tanzania  
Tel: (255) 27 2970430  
Fax: (220) 441 05 04  
E-mail: [registrar@african-court.org](mailto:registrar@african-court.org) Website: [www.african-court.org](http://www.african-court.org)

## Sessions

The Court holds both ordinary and extraordinary sessions. As of February 2021, it has held 60 ordinary sessions and 10 extraordinary sessions. All Court sessions take place at the Seat of the Court, or in one of the AU member states if the Court decides, or virtually in exceptional circumstances.

### Ordinary sessions

Ordinary sessions are held four times each year with a duration of at least four weeks, and the date for each session is determined by the Court during its presiding sitting, or by the President in consultation with other Judges.

## Extraordinary sessions

The Court may hold extraordinary sessions. Extraordinary sessions are convened by the President of the Court of his own accord or upon a request by a majority of the Judges.

## Virtual sessions

With the challenges of the global COVID-19 pandemic, the possibility of virtual sessions were reinforced by Rule 89 and 90 of the 2020 Court Rules.

On 4 May 2020, during the ongoing COVID-19 pandemic, the Judges of the Court held a virtual meeting to determine measures to be put in place during the pandemic period, for the smooth running of the Court and safety of its personnel. Following a decision during that meeting, the 57th ordinary Session was held virtually.

## Jurisdiction

### Contentious jurisdiction

- Personal jurisdiction

The Court's jurisdiction applies only to states that have ratified the Court's Protocol. The Court may entertain cases and disputes concerning the interpretation and application of the African Charter, the Court's Protocol and any other human rights treaty ratified by the state concerned.

Individuals and NGOs can submit cases to the Court directly only against state parties that have made an article 34(6) declaration. The Court has personal jurisdiction over these applicants.

- Material jurisdiction

The Court has jurisdiction over AU human rights treaties, as well as other human rights treaties ratified by the state concerned. In the exercise of such material jurisdiction, the Court's approach has not been consistent. On the one hand, as in the *Mtikila* case, the Court, having considered the alleged violations under the relevant provisions of the African Charter, does not deem it necessary to consider the application of other treaties (*Mtikila v Tanzania*, para 123). On the other hand, as seen in the *Zongo* case, the Court

found a violation of the right to freedom of expression under article 19 of the International Covenant on Civil and Political Rights (ICCPR). In *Mango v Tanzania*, the Court found a violation of rights under the African Charter, and the Universal Declaration of Human Rights (Universal Declaration) on the basis that it forms part of customary international law, but held that it has no jurisdiction on issues concerning domestic law or international treaties to which the respondent state party is not bound by.

- Temporal jurisdiction

The temporal jurisdiction of the Court starts at the time the Court's Protocol entered into force in respect of a particular state, except in cases of continuing violations. In *Mtikila v Tanzania*, the Court found the respondent liable because at the time of the alleged violation, Tanzania had ratified the African Charter and was duty bound by its provisions. It also held that the barring of independent candidates which was the conduct complained against was a continuous act which subsisted until the coming into force of the Court's Protocol. In *African Commission on Human and Peoples' Rights v Kenya*, the Court held that it had jurisdiction even though the African Charter had not entered into force at the start of the violations. This it held on the grounds that it constituted an issue of 'continuous violation' of the indigenous rights of the Ogiek people of the Mau forest of Kenya.

## Advisory jurisdiction

The Court may also render advisory opinion on any matter within its jurisdiction. The advisory opinion of the Court may be requested by the AU, member states of the AU, AU organs and 'any African organisation recognised by the AU' (article 4(1) of the Court Protocol).

In the *Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws* (2020), the Court in its consideration of whether vagrancy laws were compatible with the African Charter found that these laws punish the underprivileged for using public spaces to earn a living thus exacerbating the socio-economic conditions of such persons by violating their rights under these laws. The Court also considered the compatibility of vagrancy laws with the Children's Rights Charter and found that the forced relocation from places of residence and the arrest and detention of children in the enforcement of vagrancy laws amounts

to a violation of the rights of children. The Court further considered the compatibility of vagrancy laws to the Maputo Protocol and made declarations that in as far as these laws permit the arrest of women without a warrant disproportionately affects them as in most cases they cannot pay bail fees thus risking longer detention periods which violates article 24 of the Maputo Protocol.

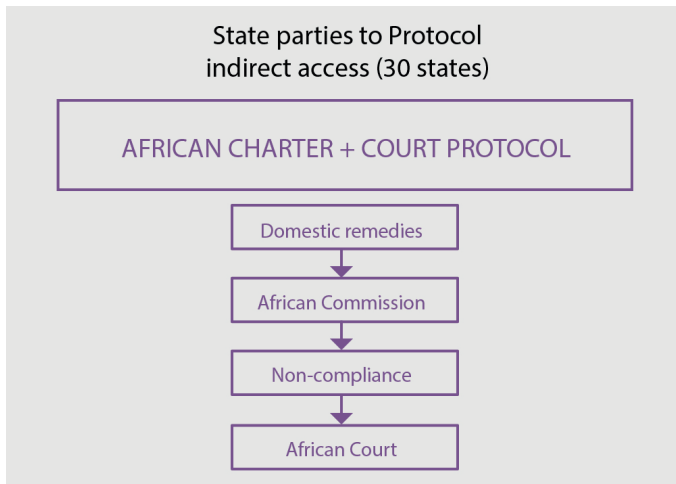
In the *Request for Advisory Opinion by the African Committee of Experts on the Rights and Welfare of the Child (2014)*, the Court held that the Committee had jurisdiction to make advisory requests, but not to bring any contentious matters before it.

In the *Request for Advisory Opinion by the Centre for Human Rights, University of Pretoria and the Coalition of African Lesbians (Advisory Opinion) (2017)*, the Court held that it had no jurisdiction to give advisory opinion to NGOs not recognised by the AU. Although the Centre for Human Rights enjoys observer status with the African Commission, and the CAL was a registered organisation in South Africa, the Court held that they did not fall under the definition of article 4(1) of the Protocol establishing the Court, on parties that could submit advisory requests to the Court.

## Access to the Court

Individuals and NGOs may approach the Court indirectly, by first submitting a communication to the African Commission. This applies to all states that have ratified the Court Protocol. The Commission is entitled to submit the case to the Court. If the Commission concluded the case on its merits, finding a violation against a state party to the Protocol, it may refer the case to the Court if the state fails to comply with the Commission's findings.

## Indirect access to the Court



The following entities are competent to submit cases to the Court: the African Commission, state parties to the Court Protocol and African inter-governmental organisations.

## Direct access to the Court

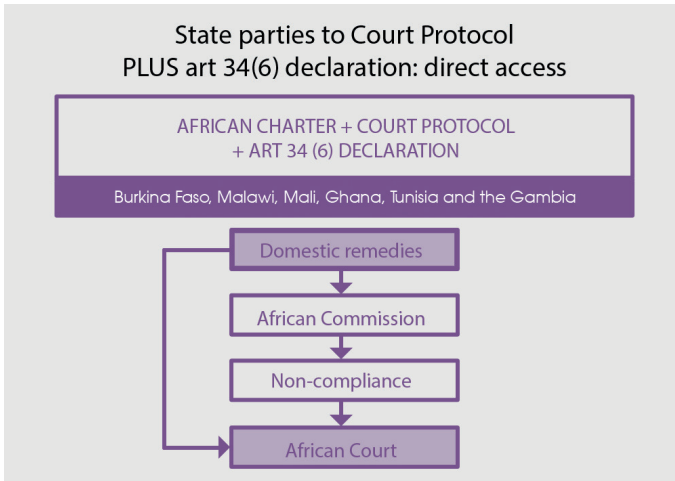
NGOs with observer status before the Commission and individuals may submit cases directly to the Court, if the state has made a declaration under article 34(6) of the Protocol establishing the Court are.

State Parties to the Court Protocol who have made a declaration under article 34(6) granting direct individual access to the Court: Burkina Faso, Malawi, Mali, Ghana, Tunisia and the Gambia.

The following state parties withdrew their declarations:

- Tanzania: 14 November 2019
- Rwanda: 24 February 2016
- Benin: 24 March 2020
- Côte d'Ivoire: 28 April 2020





### Applications by respondent state parties that have accepted direct access (June 2021)

<b>Respondent</b>	<b>Records</b>
Republic of Benin	35
Republic of Burkina Faso	8
Republic of Gambia	5
Republic of Ghana	4
Republic of Rwanda	16
Republic of Tunisia	6
Republic of Mali	28
Republic of Malawi	4
Republic of Ivory Coast	36
United Republic of Tanzania	156
<b>Total</b>	<b>316</b>

### Relationship between the Court and the Commission

The relationship between the Court and the Commission is governed by the Protocol establishing the Court. This instrument set out the relationship of the Court with the Commission as follows:

- The Court complements the protective mandate of the Commission.

- The Court may transfer a matter to the Commission of which it is seized. In matters brought before the Court, Rule 36(4) of the 2020 provides that the Court may also ask the Commission to conduct fact-finding or in situ investigations where the Commission is not a party to the case. This helps to reduce the workload of the Court as well as guarantee a level of independence of the Court in investigations.
- The Commission may of its own accord submit a communication to the Court in respect of massive violations of human rights. See for example the case of *African Commission on Human and Peoples' Rights v Libya* (2011) 1 AfCLR 17, on the request for provisional measures in relation to massive human rights violations in Libya. Also, *African Commission on Human and Peoples' Rights v Kenya* (2013) 1 AfCLR 193
- The Commission may, at any stage of the consideration of a communication, seize the Court with the examination of a communication.
- The Commission can submit communications to the Court on grounds of failure or unwillingness of a state to comply with its decisions or provisional measures.
- The Court may request the opinion of the Commission when deciding on issues of admissibility.
- The Court can give advisory opinion upon request by the Commission.
- In drawing up its own rules, the Court is required to consult with the Commission as appropriate.

## Provisional measures ordered against Libya

In response to numerous allegations of human rights violations in Libya, during early 2011, the African Commission for the first time referred a case to the African Human Rights Court. The Court ordered provisional measures, to which Libya had to respond in 15 days.

'Whereas, in the opinion of the Court, there is therefore a situation of extreme gravity and urgency, as well as a risk of irreparable harm to persons who are the subject of the application, in particular, in relation to the rights to life and to physical integrity or persons as guaranteed in the Charter ... For these reasons, The Court, unanimously orders [that] Libya must immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the Charter or of other international human rights instruments to which it is a party.' (*African Commission v Libya*, paras 22 & 25)

## Admissibility criteria for cases brought by individual or NGOs

In respect of cases brought by NGOs and individuals, article 34(6) of the Court Protocol provides for the state party concerned to have previously made a declaration acceding the competence of the Court to receive cases from NGOs and individuals. This stands as the prerequisite for establishing personal jurisdiction of the Court over the relevant matters. Its article 6 requires the Court to apply the conditions for admissibility as established in article 56 of the AU Charter, which include exhaustion of local remedies, reasonableness of time and evidence-based allegations.

### Non-exhaustion of local remedies

In *Diakité Couple v Mali*, the Court held that it had no jurisdiction to entertain the case due to lack of exhaustion of local remedies, given that the police had not sufficiently investigated the case. On similar grounds, the Court also stroke out the case of *Mulindahabi v Rwanda*.

### Other relevant amendments under the Rules of Court 2020

The 2020 New Rules of Court have made some commendable adjustments to proceedings which are worth mentioning. Under Rule 40(5), an applicant who is unable to file the original copy of his application at the Registry can submit certified, scanned or electronic copies. They must however ensure to submit the originals before the day set by the court for hearing. By Rule 40(7), the Registry is allowed to notify the party of any missing content in the file, and thus request relevant clarification.

Where a matter had been brought against a state, the respondent state previously had 60 days to reply, while there was no specific duration period provided for the applicant to submit a counter response. Now under the new court rules, Rule 44 extends the duration to 90 days for the respondent state, and allocates 45 days for the Applicant to respond. The Court may only grant a further extension under based on peculiar circumstances of the case. Rules 46 and 47 further provide that pleadings will be deemed to have closed if after the 45-day period Applicant fails to submit

any counter response. This helps to create more certainty and assist the Court in its functions, given that the old Rules were silent on this and as such the Court often had to send several reminders to parties before closing Pleadings. Where Pleadings have closed, any further amendments by parties may only be done upon the Court's approval and with good reason.

For the purpose of properly administering justice, Rule 63 now allows parties who have received a Default Judgment to be able to apply for the judgment to be set aside, provided they file such request within one year of the Judgment and also provide good reason.

One of the most commendable amendments in the Rules is the introduction of the Pilot-Judgment Procedure, under Rule 66. It is defined in the rules as 'a judgment of the Court that deals with a group of similar cases which arise from identical causes of action or problems of a systematic or structural nature'. It involves cases where a number of different complaints revealing systemic or structural abuses have been filed against the same Respondent(s). The Registrar is required to bring such a report before the Court and the latter decides on a Pilot-Judgment Procedure after seeking the consent of the parties. The matter is then treated as a priority and the Court may therefore proceed to dispense with the need to separately hear each individual case against the Respondent(s) in question. In determining the pilot judgment, the Court is allowed to adopt an amicable settlement between the parties. Where this fails, or where the Respondent State fails to respect the operative provisions of the pilot judgment then the Court will resume the independent determination of each of the cases which had been adjourned, as if no judgment had been passed.

## **Selected decisions on the merits**

The African Court has determined some cases on the merit since its operations in 2006. The decisions on the merit are highlighted below:

- ***Mtikila v Tanzania* (14 June 2013)**

The applicants in this case claimed that certain sections of the Constitution of Tanzania barring independent candidates from running for elective positions violated citizens' freedom of association, the right against discrimination, and the right to participate in the

public and governmental affairs of the country. The Court found that there was a violation of the rights guaranteed under articles 2, 3, 10 and 13(1) of the African Charter.

- **Zongo and Others v Burkina Faso (28 March 2014)**

In the Zongo case, the applicants alleged that Burkina Faso failed to investigate and prosecute those responsible for the death of Norbert Zongo and three others, on account of their journalistic investigations, and that this unduly exposed journalists to the risk of working under fear and intimidation. The African Court found that the state's failure to investigate and prosecute the culprits constituted a violation of the freedom of expression as well as the right to have a person's cause to be heard by competent national courts under articles 7 and 9 of the African Charter (read together with article 66(2)(c) of the Revised ECOWAS Treaty).

- **Konaté v Burkina Faso (5 December 2014)**

In the Konaté case, the applicant was prosecuted for defamation under Burkinabé law, sentenced to a term of imprisonment, and ordered to pay a huge fine, damages and costs, following two articles implicating the public prosecutor that he published in the print media. In its judgment, the Court found that the custodial sentence on defamation under the respondent's criminal laws was a disproportionate interference with the exercise of the applicant's freedom of expression, and therefore amounted to a violation of the African Charter, the ICCPR and the Revised ECOWAS Treaty.

- **Thomas v Tanzania (20 November 2015)**

In this case, the applicant was tried and convicted in his absence by the High Court of Tanzania, while he was hospitalised for a chronic ailment. The Court of Appeal confirmed his conviction and his attempt to seek a judicial review proved abortive. The African Court found that the applicant's right to have his cause heard, which includes that right to defend himself, had been violated.

- **Onyango v Tanzania (18 March 2016)**

In the Onyango case, the applicants claimed that their prolonged detention and delayed trial was a violation of their right to fair hearing within a reasonable time. The Court held that the respondent was in breach of article 7(1)(d) of the African Charter, which guarantees the right to be tried within a reasonable time.

- **Abubakari v Tanzania (3 June 2016)**

The applicant had been convicted of the offence of armed robbery and was serving a 30-year sentence. He claimed that at the time of

his arrest and prosecution, he was neither afforded the opportunity and facilities to adequately defend himself. The Court found that the state had violated article 7 of the African Charter. The Court also found that the trial court's improper consideration of the applicant's defence that the prosecutor had a conflict of interest with the victim of the alleged offence, his defence of alibi as well as his conviction on the basis of the inconsistent testimony of a lone witness without any identification parade, was equally a violation of article 7 of the Charter.

## Other cases on thematic issues

- **Jurisdiction (Withdrawal)**

*Ingabire Victoire Umuhoza v Rwanda* (3 June 2016)

In this case, the respondent (Rwanda) argued that the Court had no jurisdiction to decide over the withdrawal of its declaration (under article 34(6) of the Court's Protocol, allowing individuals and NGOs direct access to lodge complaints) once it had been deposited with the Commission. It further argued that as a result, the Court could not continue to hear the matter on its merits. In determining whether the respondent had such a right of withdrawal and the effects this would have on the parties to the proceedings, the Court held that it had jurisdiction over all matters relating to the Court Protocol by virtue of article 3(1) and (2) of the Protocol, including the question of withdrawal. It also held that in order to ensure "judicial security by preventing abrupt suspension of rights which impacts on [third parties]", withdrawals can only take effect after a year.

- **Death Penalty**

Although the Court does not find the use of the death penalty by states to be an innate wrong, it has nevertheless employed a strict stance to its use, and has overturned domestic court judgments that failed to meet the relevant criteria. In *Ally Rajabu and Others v Tanzania*, the Court followed the reasoning of the Commission in previous cases such as *Interights and Others (on behalf of Bosch) v Botswana*, and *International Pen and Others (Ken Saro-Wiwa) v Nigeria* where the requirement for the imposition of the death penalty was said to constitute: the presence of a statutory provision, imposition by a competent court, and the respect of due process. In the *Ally Rajabu* case, the Court held that the mandatory imposition of the death penalty for the crime of murder under article 197 of Tanzania's Penal Code, constituted a violation of the applicants'

inviolable right to life under article 4 of the African Charter. This was in the reasoning that the penal provision imposes an 'automatic' and 'mechanical' duty for the courts. It does not give an accused the chance to provide any 'mitigating evidence', nor does it give the courts the chance to apply the law based on the merits of each case. The Court therefore considered this an arbitrary disregard of the right to life and to fair trial.

In many other cases involving the death penalty, the Court has passed provisional measures requiring the state concerned to suspend domestic sentence until the Court has determined the matter on the merits, in order to prevent irreparable harm.

- ***Cruel, inhuman or degrading treatment***

*Nguza v Tanzania* (23 March 2018)

In this case, the applicants had been charged, convicted and sentenced on account of rape and unnatural offences. They brought a claim alleging an unfair and flawed trial procedure including their right to freedom from cruel, inhuman and degrading treatment. Although the Court held that evidence of domestic procedural irregularities had not been sufficiently furnished by the applicants, there was however proof of the applicants being prevented from reviewing the statement of witnesses as well as witness cross-examination. It further found that there was a violation of the right under the African Charter, by the Respondent's failure to test him for his alleged impotence as an alibi under the specific allegation.

- ***Equal protection before the law***

*Evarist v Tanzania* (21 September 2018)

The applicant had been convicted and sentenced to 30 years imprisonment for rape and was alleging defects in criminal proceedings including adequate legal representation in terms of legal assistance. The Court found a violation of his right under article 7(1)(c) of the African Charter, indicating that 'free legal aid is a right intrinsic to the right to a fair trial'.

- ***Withdrawal of nationality***

*Anudo v Tanzania* (22 March 2018)

Here, the Applicant who was born in Tanzania, had his Tanzanian nationality withdrawn and he was expelled to Kenya. Kenya in turn expelled him back to Tanzania but he unfortunately could not gain entrance and therefore had to remain in the 'no man's land' (Sirari) at the Kenya-Tanzania border. The Court found that the Applicant

had been arbitrarily expelled from Tanzania and that there was a violation of his right to nationality under article 15(2) of the Universal Declaration of Human Rights.

## Statistics on African Court case law

Year	Applications Received	Orders Issued	Judgments/ Rulings
2020	48	34	26
2019	66	33	28
2018	33	4	17
2017	37	4	8
2016	59	23	8
2015	33	2	3
2014	3	1	6
2013	7	5	6
2012	7	0	4
2011	14	2	9
2008	1	0	0
<b>Total</b>	<b>310</b>	<b>108</b>	<b>115</b>
<b>Grand Total</b>	<b>533</b>		

All details on relevant cases may also be obtained in the African Court Law Reports. So far two volumes have been published: Volume 1 (2006-2016) and Volume 2 (2017-2018).



# Successes and Challenges of the African Court

## Successes

The African Court has been highly instrumental in forging a human rights narrative on the continent. Since its inception, the Court has been able to address more than 300 applications, demonstrating its acceptability and general approachability. It has over the years led jurisprudential reasoning around issues like the death penalty and right to life, freedom of speech, the rights of indigenous communities and the right to environment and development. These have on many occasions had the effect of overturning the decisions of several domestic courts and granting a fresh or more extensive interpretation to certain rights, as well as inspiring change in domestic normative and procedural frameworks.

In the cases of *Norbert Zongo and Others v Burkina Faso*, and *Lohé Issa Konaté v Bokina Faso*, for example, the Court ascribed a higher duty on public officials in respecting the right to freedom of expression for journalists. Following these cases, Burkina Faso introduced amendments to its laws on defamation, and restructured judicial processes to improve the credibility of the findings and rulings of its domestic courts. Courts in Kenya and Lesotho have also occasionally cited the reasoning of the African Court raised in the *Konaté* case.

With the amendments of the Court Rules in 2020, this helps to further make the work of the Court more efficient, and highlights the interest of the Court in making constant progress with contemporary needs and needs of potential litigants. This makes the Court more approachable. The situation is even more highlighted in its engagements in virtual sessions (as exercised during the COVID-19 pandemic) where it still endeavoured to determine cases and deliver judgments to litigants.

The broadness of the Court's jurisdiction also makes it quite relevant as a regional adjudicative body. Its ability to enter into amicable settlements, make pilot judgments (under Rule 66 of the 2020 Court Rules) as well as its broad advisory jurisdiction enables it to build on legal jurisprudence and develop wide patterns for the protection of human rights within the continent.

The independence of the judges also enhances the Court's success, since although nominations come from member states, selection nevertheless is by ballot/elections. Judges also are not allowed to sit in matters that involve their state of origin, and members of the legislature or executive organ of member states cannot be members of the Court concurrently.

## Challenges

Not all AU member states are party to the Court Protocol (only 30 ratifications as of June 2021), and there is continually slow progress in ratifications. As a result, complaints from such countries can only end at the Commission.

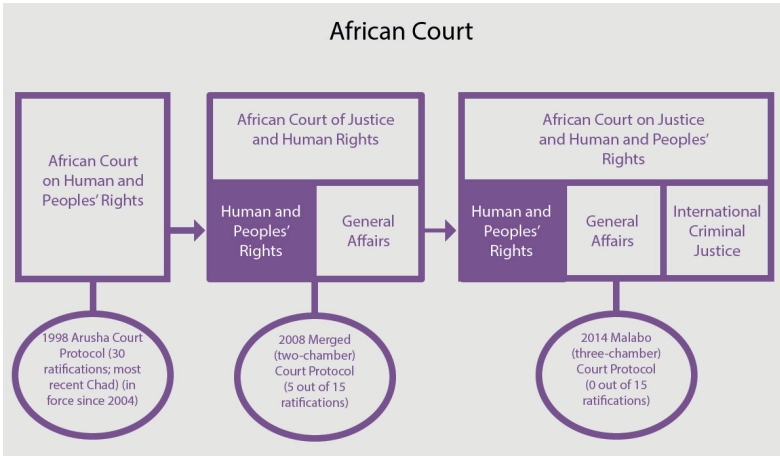
Very few member states also have made declarations under article 34(6) of the Court Protocol allowing direct access for individuals and NGOs. Some member states are even withdrawing their declarations, as already examined earlier, claiming that this privilege is being undermined, and used in disregard of the initial intention of its creation. Some like Benin even called for a reform of the Court system. All this as a result, limits the possibilities of accessing the Courts, and limits the role of the Court as a reliable judicial body within the region.

There is also lack of awareness about the Court within the African continent, and there are still misperceptions that the Court does not constitute one of the judicial bodies within the framework of the AU.

Only the President of the Court works on full time basis while the other judges are employed in their home countries and only work part time with the Court. This means they address Court cases only during the few times in a year when the Court is in session. This tends to slow down some of the functioning of the Court for the expedient determination of cases.

## Future of the African Court

The African Court may, sometime in the future, evolve into a two-chambered court (with the addition of a section dealing with general inter-state disputes) or into a three-chambered court (with the further addition of a section dealing with individual and corporate criminal responsibility for international and transnational crimes).



By June 2021, only eight states have ratified the African Court of Justice and Human Rights Protocol.

At the same date, the Malabo Protocol has not been ratified by any state.

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# **D** The African Charter on the Rights and Welfare of the Child

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The African Charter on the Rights and Welfare of the Child (African Children's Charter) is an essential standard of the African human rights system. The Charter was inspired by several regional concerns germane to the continent of Africa and which were not covered by the African Charter of 1981. Of particular significance were issues around child trafficking, use of child soldiers in armed conflicts, harmful cultural and traditional practices as well as several other localised anti-human rights practices within the domain of many African countries. These issues, having not been adequately articulated by the African Charter and existing international and regional bill of rights, highlighted the need for a context-driven and context-specific norm for the promotion and protection of the rights and welfare of the African Child.

Also, the African Children's Charter established the African Committee of Experts on the Rights and Welfare of the Child (Committee) within the OAU to promote and protect the rights stipulated in the African Children's Charter. This guide therefore presents an overview of the African Children's Charter as well as highlights the activities of the Committee, its working mechanism, achievements as well as its impact on children's right in Africa.

## **History of the African Children's Charter**

The African Children's Charter was adopted on 11 July 1990, nine years after the adoption of the African Charter. The African Charter and other human rights instruments at the time did not elaborate on children's rights. Rather, reference to children's rights was only to a limited extent and within the context of women's rights. For instance, article 18(3) of the African Charter states that '[t]he state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declaration and conventions.' No other provision of the African Charter specifically addresses the peculiar human rights issues confronting the African child.

The UN led the way for the development of international instruments on the rights of the child. It adopted the 1959 Declaration on the Rights of the Child. African states subsequently adopted the Declaration on the Rights and Welfare of the African Child (Declaration) in 1979. The Declaration recognized the 'need to take all appropriate measures to promote and protect the rights and welfare of the African child.'

On 20 November 1989, the UN Convention on the Rights of the Child (CRC) was adopted. The CRC entered into force on 2 September 1990 as the first international treaty articulating the civil, political, social, economic and cultural rights of children. With its 196 state parties as of 21 October 2016, the CRC is the most widely ratified human rights treaty in history. Most African states ratified the CRC at the early stage of its entry into force. The CRC, however, did not address certain African problems such as children living under apartheid, sexual abuse of the girl child, child soldiers, child marriage, child refugees and harmful traditional practices. Consequently, there was a continental demand for a separate regional instrument on children's right, which would reflect specific African concerns. A Working Group of African experts on the rights and welfare of the child was formed in 1979 to draft the African Children's Charter.

The African Children's Charter incorporates the universal values of the CRC while grounding its conceptions within the African cultural context. Specifically, the Charter takes into consideration Africa's cultural heritage, historical background, and the values of African civilization. The adoption of the African Children's Charter is in line with the UN's recognition of regional engagements in the areas of human rights. The UN General Assembly has reiterated in resolution 45/167 that 'regional arrangements for the promotion and protection of human rights may make a major contribution to the effective enjoyment of human rights.' As such, the CRC and the African Children's Charter are not contradictory but rather complementary.

The African Children's Charter serves as the first regional treaty which applies the CRC within the African context. Since the adoption of the African Children's Charter in 1990, 47 member states of the AU have ratified it (as of June 2021).



(The 47 states that are party to the African Children's Charter are indicated in purple)

## Important dates

- 1 July 1990 Adoption of the African Children's Charter in Addis Ababa, Ethiopia
- 13 February 1992 First ratification of the African Children's Charter (Seychelles)
- 29 November 1999 The African Children's Charter came into force
- 11 July 2001 First 11 members of the Committee were elected
- 29 April - 2 May 2002 First ordinary session of the Committee
- 22 March 2011 First decision of the Committee in the case of the *Children of Nubian Descent in Kenya*

## **Unique features of the African Children's Charter**

The Charter offers better protective standards for children than the CRC in an attempt to address certain African challenges. Some of its unique features are highlighted:

### **Cultural context**

The Charter clarifies in its preamble that African cultural heritage, historical background and the values of the African civilization are reflected in the concept of the rights and welfare of the child.

### **Definition of a child (article 2)**

A child simply means 'every human being under 18'. Unlike the CRC, there are no limitations, conditions or exceptions to the definition of a child. Rather, the definition helps to widen the beneficiaries of protection to the greatest possible extent.

### **Best interests of the child (article 4)**

The best interest of the child is 'the' primary consideration by which to measure all actions, laws and policies affecting children. Differently from the CRC stipulation that the best interest of the child is 'a' primary consideration, the African Children's Charter definitively clarifies the standard of assessment of all issues pertaining the right and welfare of the child.

### **Name and nationality (article 6)**

Every child has the right to a name from the time of his or her birth as well as the right to acquire a nationality. Similarly, every child is entitled to be registered immediately after birth. States are enjoined to ensure under their constitutions that children acquire their nationality when they have been born in a particular state and no other state grants nationality.

'[A]lthough states maintain the sovereign right to regulate nationality, in the African Committee's view, state discretion must be and is indeed limited by international human rights standards, in this particular case the Charter, as well as customary international law and general principles of law that protects individuals against arbitrary state actions. In particular, states are limited in their discretion to grant nationality by their obligations to guarantee equal protection and to prevent, avoid, and reduce statelessness.' (*Children of Nubian Descent in Kenya case*, para 48)

## **Protection against harmful social and cultural practices (article 21)**

The African Children's Charter obliges states to take all necessary measure to eliminate harmful social and cultural practices affecting the dignity, welfare, normal growth and development of the child. The Charter also prohibits child marriage and seeks to specify the minimum age of marriage to be 18 years in domestic legislation.

'The Committee recommends the state party to raise the awareness of the population about giving up socio-cultural practices or other behaviors which are harmful to the rights and welfare of the child. The Committee also recommends the multiplication of day-care centers for early childhood in zones where girls are forced to stay at home to look after the younger children.' (Concluding Observation sent to Uganda by the Committee (2010), pp 2 - 3)

## **Child soldiers (article 22)**

No child should take a direct part in hostilities or be recruited into the armed forces. The issue of the involvement of children in armed conflict is of grave concern to Africa and the Charter offers stricter standards than other international standards. For example, the Optional Protocol on the Involvement of Children in Armed Conflict permits the voluntary employment of children between the ages of 16 and 18, but this is not the case under the Charter.



## **Refugee children (article 23)**

A child who is seeking refugee status or who is considered a refugee is entitled to receive appropriate protection and humanitarian assistance. While the CRC makes stipulations on refugee children across the borders, the Charter extends the scope of refugee children to cover internally displaced children (IDP). The causes for IDPs are all-inclusive.

## **Protection against apartheid and discrimination (article 26)**

The highest priority should be attributed to the special needs of children living under discriminatory regimes and those in states subject to military destabilisation and material assistance should be provided to such children. By explicitly making reference to children affected by racially discriminatory regimes, the Charter directly confronts some of the most relevant issues like inequality and lack of access to quality education affecting children in Africa.

## **Duties of the child (article 31)**

African children are assigned duties to work for the cohesion of the family, to respect their parents, superiors and elders at all times and assist in times of need, to serve the national community through their physical and intellectual abilities, and to preserve and strengthen African cultural values. These responsibilities however are subject to the age and ability of each child.

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# **E** The African Committee of Experts on the Rights and Welfare of the Child

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## **Establishment**

Subsequent to the entry into force of the Charter on 29 November 1999, the Committee was constituted when its first 11 members were elected on 11 July 2001 during the 37th session of the Assembly of Heads of State and Government in Lusaka, Zambia.

## **Composition**

The Committee is a group of individuals of high moral standing, integrity, impartiality and competence in matters concerning the rights and welfare of the child. The members of the Committee are nominated by state parties and elected by the AU Assembly of Heads of States and Government. Once elected, the members serve in their personal capacity. Previously under article 37(1) of the Charter, the members were elected for a term of five years and could not be re-elected. However, by virtue of AU General Assembly decision (Assembly/AU/Dec.548(XXIV), article 37(1) has been amended and Committee members may now be 're-elected only once'.

## **Bureau**

The Committee elects from among its members, a Chairperson, three Vice-Chairpersons, a Rapporteur and a Deputy Rapporteur. They are elected for a term of two years and are eligible for re-election.

## **Secretariat**

The Chairperson of the African Union appoints a Secretary for the Committee. The secretariat is responsible for assisting the Committee. Its members serve as intermediary for all communications concerning the Committee and custodian of the archives of the Committee. On 21 December 2020, the Secretariat of the Committee moved to Maseru (Lesotho), pursuant to the decision of the AU Executive

Council. Since its establishment, the Committee has been based in Addis Ababa. The office of the Committee was officially inaugurated on 16 June 2021.

### **Mandate of the Committee**

Article 42 of the Charter sets out the mandate of the Committee.

- Promotion and protection of the rights enshrined in the Charter. The Committee collects and documents information, assesses the situation on Africa's problems in relation to children's rights, organizes meetings, encourages national and local institutions and, where necessary, gives its views and makes recommendations to government. The Committee formulates corresponding principles and rules, and cooperates with other African, international and regional institutions and organisations.
- Monitoring the implementation and ensuring the protection of the rights enshrined in the Charter.
- Interpretation of the provisions of the Charter at the request of a state party, an institution of the AU or any other person or institution recognised by the AU.
- Performance of other tasks entrusted by the Assembly of Heads of State and Government.

## **Rules of Procedure**

The activities and procedures of the Committee are regulated by its Rules of Procedure. The Committee discussed a draft Rules of Procedure at its inaugural meeting in 2002. The document was later revised and the final version of 2003 governs the conduct of activities of the Committee.

## **Members of the Committee**

### **Committee members (as at June 2021)**

#### **Chairperson**

Joseph Ndayisenga – Burundi (2019 - 2021)  
(Special Rapporteur on Children on the Move)

#### **Second Vice-Chairperson**

Sidikou Aissatou Alassane Moulaye – Niger (June 2018 - June 2023)  
(Special Rapporteur on Child Participation)

## **Rapporteur**

Hermine Gatsing Kembo – Cameroon (January 2019 - January 2024)

(Special Rapporteur on Parental and Child Responsibilities)

Anne Musiwa - Zimbabwe (March 2021 - March 2026)

## **Other Committee members**

(Special Rapporteur on Health, Welfare and Development)

Aboubekrine El Jera - Mauritania (March 2021 - March 2026)

(Special Rapporteur on Violence against Children)

Aver Gavar - Nigeria (July 2015 - July 2020)

(Special Rapporteur on Children in Conflict with the Law)

Theophane Nikyema - Burkina Faso (March 2021 - March 2026)

(Special Rapporteur on Children and Armed Conflict)

Robert Doya Nanima – Uganda (March 2021 – March 2026)

(Special Rapporteur on the Right to Name, Birth Registration, and Nationality)

Karoonawtee Chooramun – Mauritius (March 2021 - March 2026)

(Special Rapporteur on Education)

Moushira Khattab - Egypt (June 2018 - June 2023)

(Special Rapporteur on Children in Vulnerable Situations)

Wilson Almeida Adão (March 2021 - March 2026)

## **Former members of the Committee**

Dawlat Hassan (2006 - 2011) Egypt

Fatima Delladj-Sebba (2010 - 2015) Algeria

Amal Muhammad Al-Hengari (2010 - 2015) Libya

Azza Ashmawy (2013 - 2018) Egypt

Dirius Dialé Dore (2001 - 2003) Guinea

Dior Fall Sow (2001 - 2005) Senegal

Jean-Baptiste Zoungrana (2003 - 2008) Burkina Faso

Peter Ebigbo (2003 - 2008) Nigeria

Nakpa Polo (2003 - 2008) Togo

Suzanne Aho-Assouma (2013 - 2018) Togo

Seynabou Ndiaye Diakhaté (2003 - 2008) Senegal

Marie Chantal Koffi Appoh (2005 - 2010) Côte d'Ivoire

Moussa Sissoko (2005 - 2010) Mali

Cyprien Adébayo Yanclo (2007 - 2013) Benin

Agnès Kabore Ouattara (2007 - 2013) Burkina Faso

Maryam Uwais (2007 - 2013) Nigeria

Joyce Aluoch (2001 - 2005) Kenya

Rebecca Mirembe Nyanyintono (2001 - 2003) Uganda

Stratton Nsanzabaanwa (2001 - 2005) Rwanda

Assefa Bequele (2003 - 2008) Ethiopia

Martha Koome (2005 - 2010) Kenya

Felicité Muhimpundu (2010 - 2015) Rwanda

Rudolph Soh (2001 - 2005) Cameroon

Nanitom Motoyam (2001 - 2005) Chad

Julia Sloth Nielsen (2011 - 2016) South Africa

Karabo Karabo Mohau (2001 - 2003) Lesotho

Louis Pierre Robert Ahnee (2001 - 2005) Mauritius

Lulu Tshiwula (2001 - 2005) South Africa

Mamosebi T. Pholo (2005 - 2010) Lesotho

Boipelo Lucia Seithlamo (2005 - 2010) Botswana

Andrianirainy Rasamoely (2007 - 2012) Madagascar

Alfas M Chitakunye (2010 - 2015) Zimbabwe

Julius Clement Mashamba - Tanzania (July 2015 - July 2020)  
Dikere Marie Christine Bocoum – Cote d'Ivoire (July 2015 - July 2020)  
Goitseone Nanikie Nkwe - Botswana (July 2015 - July 2020)  
Maria Mapani-Kawimbe - Zambia (July 2015 - July 2020)  
Benyam Dawit Mezmur – Ethiopia (July 2015 - July 2020)

## Sessions of the Committee

The Committee's periodic meetings are known as 'sessions' under its Rules of Procedure. Each session is held for a period not exceeding two weeks. The Committee has two types of sessions: ordinary sessions and extraordinary sessions. The Committee held its inaugural meeting on 29 April 2002.

### Ordinary session

The Committee holds its ordinary sessions biannually. Ordinary sessions of the Committee are a platform for performing its mandates. At such sessions, the Committee undertakes a number of very important activities, such as:

- convene closed sessions to consider communications, observer status applications, the report of the special rapporteur, the report of consultant(s), the concept paper on the annual celebration of the day of the African child, elect a new Bureau and other internal matters
- receive presentations from partners such as UN bodies, international and local NGOs
- give briefings and updates on specific issues, thematic studies, investigative missions, and outcomes of meetings with other AU bodies
- consideration of state party reports
- presentation of its general comments on the provisions of the African Children's Charter
- adoption of the Committee's draft activity report

As of June 2021, the Committee had held 37 ordinary sessions and one extraordinary session.

### Extraordinary sessions

Extraordinary sessions of the Committee are convened by the Chairperson if the Committee so decides. When the Committee is not in session, the Chairperson may convene extraordinary sessions

of the Committee in consultation with the Bureau. The Chairperson of the Committee can also convene extraordinary sessions:

- At the written request of a simple majority of the members of the Committee;
- At the written request of a state party to the Children’s Charter.

The Committee has had just one extraordinary session, which was held in Addis Ababa from 7 to 11 October 2014, at which it considered the state reports of Ethiopia, Guinea, Kenya, Mozambique and South Africa.

The Committee has to submit to the Assembly of the Union through the Executive Council, every year, its reports on the activities undertaken in the implementation of the Children’s Charter and any other such reports as appropriate.

### Ordinary sessions of the Committee since 2001

Session	Date	Host country
1st	29 April - 3 May 2002	Ethiopia
2nd	17 - 21 February 2003	Ethiopia
3rd	10 - 14 November 2003	Ethiopia
4th	24 - 29 May 2004	Ethiopia
5th	8 - 12 November 2004	Ethiopia
6th	13 - 17 June 2005	Ethiopia
7th	19 - 21 December 2005	Ethiopia
8th	27 November - 1 December 2006	Ethiopia
9th	29 - 31 May 2007	Ethiopia
10th	2 - 5 May 2008	Egypt
11th	26 - 28 May 2008	Ethiopia
12th	3 - 5 November 2008	Ethiopia
13th	20 - 22 April 2009	Ethiopia
14th	16 - 19 November 2009	Ethiopia
15th	15 - 19 March 2010	Ethiopia
16th	9 - 12 November 2010	Ethiopia
17th	22 - 25 March 2011	Ethiopia
18th	27 November - 1 December 2011	Algeria
19th	26 - 30 March 2012	Ethiopia
20th	12 - 16 November 2012	Ethiopia

21st	15 - 19 April 2013	Ethiopia
22nd	4 - 8 November 2013	Ethiopia
23rd	9 - 16 April 2014	Ethiopia
24th	1 - 6 December 2014	Ethiopia
25th	20 - 24 April 2015	Ethiopia
26th	1 - 19 November 2015	Ethiopia
27th	2 - 6 May 2016	Ethiopia
28th	21 October - 1 November 2016	Banjul
29th	2 - 9 May 2017	Maseru, Lesotho
30th	6 - 16 December 2017	Khartoum, Sudan
31st	4 - 24 May 2018	Mali*
32nd	12 - 20 November 2018	Ethiopia
33rd	18 - 28 March 2019	Ethiopia
34th	25 November - 5 December 2019	Egypt
35th	31 August - 8 September 2020	Virtual
36th	23 November - 4 December 2020	Virtual
37th	15 March - 26 March 2021	Virtual

## Extraordinary session of the Committee

Extraordinary session	Date	Host country
1st	7 - 11 October 2014	Ethiopia

## Communications and decisions

In ensuring that there is protection of children's rights by member states, the Committee may receive communications (complaints), from any person, group or non-governmental organisation (NGO) recognised by the OAU/AU, a member state, or the United Nations relating to any matter covered by the Charter. Every communication to the Committee must contain the name and address of the author and must be treated in confidence. So far, the Committee has received four communications against state parties and has given its decision on three of them.

## Legal aid

The Committee may, either at the request of the complainant or on its own initiative, facilitate access to free legal assistance to the complainant in the interest of justice and within its available resources. Free legal aid shall only be facilitated where the Committee is convinced that:

- It is essential for the proper discharge of the Committee's duties, and to ensure equality of the parties before it; and
- The complainant has no sufficient means to meet all or part of the costs involved.

## Jurisdiction of the Committee

The Committee's jurisdiction is determined by the child's age at the time of the alleged violation. When a communication has been initiated by the Committee but is not concluded before the child's 18th birthday, the Committee retains the jurisdiction to continue to deal with the communication.

## Admissibility criteria (section 9(1) of the Revised Communications Guidelines 2014)

For a communication to be admissible it must meet the following requirements:

- The communication is compatible with the provisions of the Constitutive Act of the AU and the African Children's Charter.
- The communication is not exclusively based on information circulated by the media or is manifestly groundless.
- The communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the AU and principles of the UN Charter.
- The communication is submitted after having exhausted available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective.
- The communication is presented within a reasonable period after exhaustion of local remedies at the national level.
- The communication does not contain any disparaging or insulting language.



## Communication procedure

A communication addressed to the Committee is submitted to the Secretariat which carries out a preliminary review and processes the communication as follows:

- The Secretariat receives the communication, assign a title and number, register it, record the date of receipt of the communication itself and acknowledge receipt to the complainant within 21 days of the date of receipt.
- The Secretary ensures that communications submitted to the Committee meet the requirements of form and content provided under section 2 of the Communications Guidelines.
- Where the communication does not meet the requirements of form and content provided under section II of Communications Guidelines, the Secretariat requests that the complainant or his/her representative comply with the rules and furnish information within 30 days of the request.
- Where the Secretariat has any doubt as to whether the requirements for a communication have been met, it consults the chairperson.
- Where the Secretary is satisfied that the formalities are met, it transmits the communication to the Committee.

## Provisional measures

The Committee receives communications which reveal a situation of urgency, serious or massive violations of the African Children's Charter and the likelihood of irreparable harm to a child or children in violation of the African Children's Charter. If the Committee considers that one or more of the abovementioned grounds are in the communication, it may, either on its own initiative or at the request of a party to the proceedings, request the state party concerned to adopt provisional measures to prevent grave or irreparable harm to the victim or victims of the violations as soon as possible.

## Amicable settlement

Parties to a communication may settle their dispute amicably any time before the Committee's decision on the merits. In all cases of an amicable settlement, the terms of settlement reached must be based on respect for the rights and welfare of the child recognized by the African Children's Charter and other applicable instruments.

Any amicable settlement reached outside the auspices of the Committee shall be reported to the Committee which shall conclude the consideration of the communication. The Committee may, having regard to its mandate under the African Children's Charter, decide to proceed with the consideration of the communication notwithstanding the notice of such amicable settlement.

The first amicable settlement by the Committee was done in 2016 in the case of *Institute for Human Rights and Development in Africa v Government of Malawi* (2016). The applicant contended that the provision in the Malawian Constitution defining a child to be persons below 16 years, instead of 'below 18' as in article 2 of the African Children's Charter, constituted a right violation. As part of the settlement process reached, the Malawian government agreed to take steps to make the relevant changes to its Constitution and to ensure that in the interim all person in this category enjoy the accruing rights under the Charter provision. It also agreed to submit regular progress reports on the situation, to which it had submitted four periodic reports as of 2018.

## Findings and recommendations

A state party to a communication in which the Committee has found that there has been a violation of any of the articles of the African Children's Charter must report to the Committee all measures taken to implement the decision of the Committee within 180 days from the date of receipt of the Committee's decision.

## Follow up on the Committee's recommendations

The Committee appoints a rapporteur for each communication for the purpose of monitoring the implementation of the Committee's decision by the state party concerned.

## Decisions

- ***Senegalese Talibés v The Republic of Senegal***

In 2012, a communication was submitted to the Committee in respect of about 100 000 talibés children in Senegal who were sent to Quranic schools known as daaras to receive religious education. It was established that their religious instructors, known as marabouts, force them to beg in the streets and that this practice has existed

since the 1980s.

The Committee found that Senegal was in violation of article 11 of the African Children's Charter due to its failure to provide free and compulsory education to all children - one of the primary reasons that the talibés were sent by their parents to the daaras.

According to the decision 'the government must enforce its own laws to protect talibés from this abuse and ensure that the education received in daaras equips these children with a rounded education and does not allow forced begging'.

- ***Institute for Human Rights and Development in Africa and the Open Society Justice Initiative (on behalf of children of Nubian Descent in Kenya) v Kenya***

In this case, the applicants alleged that Kenya violated the right to a nationality and registration of children with Nubian descent in Kenya. They claimed that during the colonial era, Nubians had been forcibly moved from their homeland in what is today central Sudan and conscripted into the colonial British army in Kenya. It was also claimed that while the Nubians' request to be returned back to their original abode was rejected by the colonial administration, the British failed to confer British citizenship on them in Kenya before Kenya's independence. For a long time after independence, the issue of the Nubians' nationality was never addressed, and since they had no ancestral land in Kenya, they claimed that the Kenya government treated them as 'aliens'. The resulting issue therefore was that many parents with Nubian descendants in Kenya have difficulty in registering the birth of their children.

The Committee held that 'there is a strong and direct link between birth registration and nationality. This link is further reinforced by the fact that both rights are provided for in the same Article under the African Children's Charter' (para 42). The Committee also held that it was not in the best interest of the child that the state required Nubian children to wait to turn 18 years of age before they could apply for Kenyan citizenship. The Committee found multiple violations of the African Children's Charter and recommended that the Government of Kenya take all necessary legislative, administrative, and other measures in order to ensure that children of Nubian descent in Kenya, that are otherwise stateless, can acquire a Kenyan nationality and the proof of such a nationality at birth.

- ***Hansungule and Others (on behalf of children in Northern Uganda) v Uganda***

This case relates to the situation of insurrection and instability that prevailed in Northern Uganda for some twenty years between 1986 and 2006. During this time, the government of Uganda had to deal with the activities of the Lord's Resistance Army (LRA), including the abduction of thousands of children.

The Committee found that 'effective implementation of laws with due diligence is part of States parties obligation under the Charter' and that by failing to specifically legislate for the banning of the recruitment of children into the armed forces, Uganda had not complied with its obligations under article 1(1) of the African Children's Charter. The Committee found that in the period 2001 to 2005, children were conscripted into and used in the Ugandan Defence Force contrary to article 22(2) of the African Children's Charter, which does not allow for the voluntary recruitment of children into the armed forces of a state.

- ***Institute for Human Rights and Development in Africa (IHRDA) v Malawi (Communication 4/Com/001/2014)***

A communication brought on behalf of all Malawian children challenged article 23 of the Malawian Constitution on the ground that it defined a child as any person under the age of 16 years. The complainant submitted that the provision contravened article 2 of the African Children's Charter, which defines a child as a person below the age of 18 years of age. The complainant also alleged that the provision was incompatible with article 1 (obligations of state parties) and article 3 (non-discrimination) of the Children's Charter as it excluded Malawian children between the ages of 16 and 18 years from the protection accorded to them under the African Children's Charter. They argued that the rights to a name and nationality; the right to know and be raised by their parents; the right to protection from exploitation or any treatment, work or punishment that is, or is likely to be, hazardous, interfere with their education, or be harmful to their health or to their physical, mental or spiritual or social development would be violated by the provision.

The case was not heard as to its substance because the parties had submitted a request for an amicable settlement. The request for amicable settlement was granted by the Committee in line with section 13 of the Revised Communication Guidelines, which permits the parties to a communication to resort to settling their dispute amicably any time before the Committee decides on the merits of the

communication. After having deliberated on the details of the terms and conditions of the amicable settlement agreement, the Committee decided to adopt the amicable settlement while it continued to be seized of the communication. The Malawian government committed 'to do everything within its power to amend its Constitution and all other relevant laws be in compliance with article 2 of the African Charter on the Rights and Welfare of the Child by 31 December 2018', and to report periodically to the Committee on 'the progress it has made to implement this Agreement'.

Malawi has since amended its Constitution to increase the age of majority as 18 years. Malawi also filed its fourth progress report to the Committee on implementation of the settlement agreement, disclosing that Malawi had organised a workshop on the harmonisation of laws on the definition of a child from 14-15 December 2017, and that Malawi was looking forward to the review of its initial and combined report on the African Children's Charter later that month.

## General Comments

Under its interpretive mandate, the Committee has competence to issue authoritative interpretations of the Charter, in order to clarify its meaning and scope, as well as explain the corresponding obligations of state parties under the African Children's Charter. The Committee exercises this mandate through its sporadic issuance of 'General Comments', which are normative tools used by treaty bodies to elaborate on the substantive meaning and scope of treaty provisions, as well as provide a detailed clarification of procedural concerns regarding human rights treaties.

So far, the Committee has issued five General Comments. It recently adopted a joint general comment with the African Commission on ending child marriage. Other general comments include a general comment on article 31 of the African Children's Charter on the Responsibilities of the Child; a General Comment on article 30 related to children of imprisoned parents and on article 6 on birth registration, name and nationality, and prevention of statelessness

- *General Comment No. 1 (article 30 of the African Charter on the Rights and Welfare of the Child) on 'Children of Incarcerated and imprisoned Parents and Primary Caregivers' 2013 (GC 1) which*

*deals with children of imprisoned parents*

The primary goal of GC 1 is to facilitate understanding of article 30 of the African Children's Charter and to give practical guidelines on its full implementation. According to the Committee, article 30 applies to not only mothers but also to fathers and primary caregivers who may be foster parents or family members essentially because many children in Africa are orphaned or alienated from their parents but may still require the safeguard enshrined in article 30.

The Committee also produced a short guide to General Comment 1 to simplify its use and understanding. The short guide can be found at: [www.acerwc.org/general-comments/](http://www.acerwc.org/general-comments/).

- *General Comment on article 6 of the African Charter on the Rights and Welfare of the Child: 'Right to birth registration, name and nationality' (GC 2) deals with the issue of birth registration, name and nationality, and the prevention of statelessness in children*

The Committee makes an extensive espousal of the three interlinked rights enshrined in article 6(1), (2) and (3), namely: the right to a name, the right to birth registration, and the right to a nationality. It also clarifies state obligations with regard to the implementation of the right to a nationality (article 6(4)). The purpose of this general comment is to give the meaning and scope of these rights and explain the corresponding obligations of the state parties to the Charter for their implementation. This General Comment is addressed to all stakeholders who play a role in the implementation of the African Children's Charter and especially the rights embedded in article 6. This includes agencies of state parties – parliaments and judiciaries, civil society organisations, academics, legal practitioners, and civil registry authorities. Its main objectives are to explicate principles contained in the rights provided for under article 6 and to give the above stakeholders guidance on its implementation in a practical sense.

- *General Comment on Article 31 of the African Charter on the Rights and Welfare of the Child: 'Responsibilities of the child' (2017)*

Article 31 of the African Children's Charter innovates by imposing responsibilities on the child who, in the African context, holds rights and bears responsibilities towards the family and the community. This provision thus carries forward the spirit of the African Charter in terms of duties and rights, but may potentially undermine the protection of children's rights, particularly if the state and other duty bearers believe that children should assert their rights

by demonstrating compliance with their responsibilities. The General Comment is therefore timely in ensuring that children's responsibilities do not overshadow the exercise of their rights and that they are interpreted in a way that respects the spirit of children's rights – 'the promotion and protection of the legitimate rights and welfare interests of children'. The General Comment, for example, clarifies the fundamental principles guiding the interpretation of Article 31 and emphasises the importance of not isolating Article 31 from other guarantees, including the prohibition of harmful and exploitative practices.

- *Joint General Comment of the African Commission on Human and Peoples' Rights and the African Committee on the Rights and Welfare of the Child on Ending Child Marriage (2017)*

The scourge of child marriage required a joint interpretive response from the African Commission and the African Children's Committee, as authoritative interpreters of the Maputo Protocol and the African Children's Charter, all of which firmly prohibit child marriage. The General Comment therefore refers to article 6(b) of the Maputo Protocol and article 21(2) of the African Children's Charter. Child marriage affects girls at a higher rate than boys. It also negatively affects children with disabilities, migrant children, refugee children, and children living in headed households. This joint effort to clarify state obligations to prevent child marriage builds on many other African Union initiatives to combat child marriage in Africa.

- *General Comment on Article 22 of the African Charter on the Rights and Welfare of the Child: 'Children in situations of conflict' (September 2020)*

The Committee clarifies the content of article 22, which aims to ensure that children are protected during conflict on the basis of the relevant rules of international human rights law (IHRL) and international humanitarian law (IHL). The General Comment makes clear how the norms of IHRL and IHL in conflict situations should contribute to the improvement of the conditions of children. They are part of a normative system that enhances the protection of children in conflict situations and must be applied in a manner consistent with the fundamental human rights principles protecting children, including the best interests of the child, the right to participation of children, non-discrimination, and the right to life, survival and development. The General Comment goes into great detail regarding the normative content of article 22 of the African Children's Charter and the situations in which it applies, namely international and non-international armed conflicts, tensions and strife. The General

Comment also clarifies the role of relevant stakeholders, specifically national human rights institutions, regional economic communities and regional mechanisms, the media, the private sector, and non-state armed groups, in improving the situation of children affected by conflict.

## State reporting

The reporting process is an avenue for monitoring compliance of states with their children’s rights obligations. Upon ratification of the Children’s Charter, each state party undertakes to submit reports on the measures it has adopted to give effect to the provisions of the Charter and on the progress made in the enjoyment of the rights guaranteed under the Charter (article 43). The process of preparing a report for submission to the Committee offers an important occasion for conducting a comprehensive review of the various measures undertaken to harmonise national law and policy with the Charter and to monitor progress made in the enjoyment of the rights guaranteed in the Charter. Similarly, the process encourages and facilitates popular participation, national self-analysis and public scrutiny of government policies and programs, private sector practices and generally the practices of all sectors of society towards children.

The Committee is empowered to receive and examine reports submitted by state parties on the measures they have adopted which give effect to the provisions of this Charter and on the progress made in the enjoyment of these rights. Article 43 of the Charter thus require state parties to submit an “Initial Report” within two years of the entry into force of the Charter, and thereafter a “Periodic Report” every three years. A state party which has submitted a comprehensive first report to the Committee does not need to repeat the basic information previously provided in its subsequent reports submitted in accordance with article 43(3).

## Content of reports

In accordance with article 43(2) of the Charter, a state report submitted to the Committee must address the following issues:

- Contain sufficient information on the implementation of the Charter within the state party and indicate factors and difficulties, if any, affecting the fulfillment of the obligations contained in the



Charter.

- The information provided by the state party regarding the implementation of each provision should make specific reference to the previous concluding observations and recommendations of the Committee and include details on how the recommendations have been implemented or addressed in practice.
- Where a previous recommendation has not been implemented or addressed, the state party should explain the reason for non-implementation and provide details on how and within what period the recommendation will be complied with.
- The information provided by the state party regarding the implementation of each provision should include statistical information and data disaggregated according to relevant criteria including age, sex, and disability.
- The state party should highlight and comment on important changes that have occurred over the reporting period.
- Statistics should be submitted as a separate annex to the periodic report.

## **Format of reports**

- The report should be presented in a concise and structured manner. A simple and free flowing language should be adopted.
- The periodic report should not exceed 80 pages or 35 000 words. This page and/or word limit do not apply to documents (for example, legal texts) attached to the report.
- It is recommended that the report is accompanied by copies of the relevant provisions of the principal legislative, judicial, administrative and other texts referred to in the report, where these are available in a working language of the AU.
- The report should indicate the meaning of all abbreviations used in it, especially when referring to laws, national institutions, organizations, et cetera, that are not likely to be readily understood outside the state party.
- The report should be submitted in one of the official languages of the AU.

## **The state reporting process**

The Committee has a simplified process of state reporting, which may be summarised as follows:

- State party submits report to the Committee.
- A Rapporteur is appointed from among Committee members to

examine the situation of children's rights in relations to the state party report.

- Civil society organisations are also invited to submit complementary reports to the Committee, if any.
- A Committee pre-session Working Group is constituted to examine and identify issues for discussion with the State Party during the ordinary session.
- The plenary session (public) is held where the state party orally and summarily presents its already submitted report. Immediately after that, the Committee discusses the report with the State party.
- The Committee produces its Concluding Observations and recommendations which should be implemented by the State Party.

## Concluding Observations

At the end of the reporting process, the Committee issues recommendations and observations to the government of the reporting state party on the implementation of the African Children's Charter. The Committee highlights principal areas of concern in terms of rights in the African Children's Charter and thereafter makes concluding observations and general comments. The Committee's observations and recommendations are determined in a closed session.

***Recommendations and observations sent to the Government of the Republic of Uganda by the African Committee of Experts on the Rights and Welfare of the Child on the Initial Implementation Report of the African Charter on the Rights and Welfare of the Child (published in November 2010)***

At the conclusion of the review of the Report, the Committee is honored to send to the Government of the Republic of Uganda the following Observations and Recommendations:

Article 2: Definition of child

For a better protection of the child, the Committee recommends to the state party the harmonization of these texts with the definition of the child as stated in the African Charter on the Rights and Welfare of the Child.

Article 6: Name and nationality

The Committee recommends the state party to ensure that registration of children at birth is mandatory and free. The Committee also urges the Government to raise the awareness of local authorities and populations about the future consequences of the non-registration of children on the civil status registry.

#### Article 15: Child labour

The Committee recommends to the state party to carry out a campaign of awareness raising taking into account employers, trade unions, NGOs, parents and other stakeholders on detrimental effects of child labor.

The Committee further recommends to the State party to use the media for information and awareness raising campaigns and to bring its support to institutions and organisations fighting against the phenomenon of child labor.

#### Article 22: Armed conflicts

The Committee observes that the report does not provide enough data on the status of child soldiers in Uganda. It recommends consequently that more information should be mentioned in the next reports.

#### Article 28: Drug abuse

The Committee observes that the report does not consider the appropriate measures taken to protect children against the illegal use of drugs and recommends that the situation of abuse of illicit substances and drugs by children as well as the data and arrangements taken to block this scourge be mentioned in the next reports.

Full texts of the Committee's Conclusion Observations are available at: <http://www.acerwc.org/concluding-observations/>

## Investigation missions

The framework governing the Committee's investigation missions is the Guidelines on the Conduct of Investigations. Under the Guidelines, an investigation mission is a mission of a team of the Committee to a state party to the Charter to gather information on the situation of the rights and welfare of the child in the state party (article 1). The Committee has power to receive communications from any person or a group or a state relating to any matter, and resort to any appropriate method of investigating any matter falling within the ambit of the Children's Charter (articles 44 and 45). Therefore, the Committee may exercise its discretion to investigate a state party where there are reported allegations of violations of children's rights. Such investigative visits are essential to gaining first-hand knowledge of purported violations and make recommendations to the state concerned.

Upon conclusion of the investigative mission, the Committee compiles a report which is submitted to the Executive Council and adopted by the AU Assembly. The report can only be published after having been adopted by the AU Assembly. The Committee

also has a follow-up procedure which requires the state party visited to present a written reply on any measures taken in light of the recommendations made in the mission report.

## Aim

The aim of the Committee's investigation missions is to seek and collect accurate and reliable information on any issue arising from the Charter in order to:

- assess the general situation of the rights of the child in a country;
- clarify the facts and establish the responsibility of individuals and the state towards children who are victims of violations and their families, and
- promote and support the implementation of the rights and welfare of the child by the various administrative, legal and legislative institutions of the country, in conformity with the Charter (article 2 of the Guidelines).

## Type

According to article 3 of the Guidelines, the Committee may undertake two types of investigative missions:

- investigations on any matter referred to the Committee
- investigations initiated by the Committee

## Investigation missions were undertaken by the Committee to:

### • **Northern Uganda**

The Committee carried out an investigation mission to Northern Uganda in August 2005 to assess the situation of children in the conflict in that country. The Committee presented its report to the AU Executive Council, the Permanent Representatives Committee and the Assembly.

### • **South Sudan**

The Committee undertook a field visit to South Sudan from 3 to 9 August 2014, where it had several meetings with government officials, UN agencies, international and local CSOs.

### • **Central African Republic**

Between 15 and 20 December 2014, the Committee was in Central African Republic to appraise itself of the impact of the armed conflict

in that country on children. The mission highlighted the strengths as well as resource limitation for the prevention and resolution of the several issues confronting children affected by armed conflicts.

### **Tanzania**

In August 2015, the Committee conducted an investigation mission on the situation of children with albinism in temporary holding shelters in Tanzania. A local NGO, Under The Same Sun (UTSS) prompted the investigation by drawing the Committee's attention to the alarming conditions of children with albinism in Tanzania. The Committee published the report of its investigation in March 2016.

Reports of investigation missions by the Committee are available at: <http://www.acerwc.org/investigation/missions-reports/>

## **Civil society organisations (CSOs) and the Committee**

CSOs support the Committee's activities. The Committee grants observer status to CSOs. CSOs with observer status and other CSOs working on children's rights have started to organise CSOs Forums preceding the Committee's sessions. The first CSO Forum preceding the session of the Committee was held from 17 to 19 April 2009.

In assessing state reports, the Committee could obtain complementary information from CSOs which have observer status with the Committee. The Committee examines the objectiveness of state reports with the assistance of complementary reports from CSOs. For this purpose, the Committee has developed guidelines for CSOs to complement state reports.

## **NHRIs and the Committee**

Unlike the African Commission, there is no formal engagement between the Committee and NHRIs. However, there is nothing preventing members of a state's NHRI from being part of a state party's delegation to the Committee's session.

Successes and challenges of the African Children's Charter and the Committee

## The Day of the African Child

The Day of the African Child (DAC) is celebrated on 16 June each year. It was adopted by the Organization of African Unity in 1991 and continued by the AU. The DAC provides an occasion for governments, international institutions, and communities to renew their on-going commitments towards improving the plight of children by organising activities aimed at inclusivity. The DAC was established in memory of over 100 school children who were massacred in Soweto, South Africa by the Apartheid government for demanding their right to quality education and to be taught in their own language on 16 June 1976. The events of every year are organized by the Committee to promote children's rights. In 2016, the theme is 'Conflict and crisis in Africa: Protecting all children's rights.'

### Day of the African Child themes since 2002

- 2021 30 years after the adoption of the Charter: accelerate implementation of Agenda 2040 for an Africa fit for children
- 2020 Access to a Child-Friendly Justice System in Africa
- 2019 Humanitarian Action in Africa: Children's Rights First
- 2018 Leave No Child Behind for Africa's Development
- 2017 The 2030 Agenda for Sustainable Development for Children in Africa: Accelerating Protection, Empowerment and Equal Opportunity
- 2016 Conflict and Crisis in Africa: Protecting all Children's rights
- 2015 Eliminating harmful social and cultural practices affecting children: Our collective responsibility
- 2014 A child-friendly, quality, free and compulsory education for all
- 2013 Eliminating harmful social and cultural practices affecting children: Our collective responsibility
- 2012 The rights of children with disabilities: The duty to protect, respect,
- 2011 All together for children on the street
- 2010 Planning and budgeting for the wellbeing of the child: A collective
- 2009 Africa fit for Children: Call for accelerated action towards their
- 2008 Right to participate: Let children be seen and heard

- 2007 Combatting child trafficking
- 2006 Right to protection: Stop violence against children
- 2005 An African orphan – Our collective responsibility
- 2004 The African child and the family
- 2003 Right to registration at birth
- 2002 Popularisation of the African Charter on the Rights and Welfare of the Child

## Strengthening institutional structures

The Committee has also continuously worked on strengthening its institutional structures. Working with a small Secretariat, the Committee has been able to develop:

- Rules of Procedure (2003), which are currently being revised
- Guidelines for Initial Reports of States Parties (2003)
- Guidelines for the Consideration of Communications provided for in article 44 of the Charter (2014)
- Guidelines for the Conduct of Investigations by the Committee (2006)
- Guidelines for the Criteria for Granting Observer Status in the Committee on Non-Governmental Organizations (NGOs) and Associations (2006)

## The impact of the African Children’s Charter on domestic human rights in Africa

### Definition of a child

Some of the law reform efforts in Africa reflect the impact of the African Children’s Charter on standard-setting exercises at the national level. The constitutions of South Africa and the Democratic Republic of Congo, the Child’s Rights Act of Nigeria and that of Kenya all follow the Children’s Charter’s definition of a child.

### The best interests of the child

Some African countries have taken on board ‘the primary consideration’ phrasing of the principle, for instance, the Constitution of Ethiopia, the Child’s Rights Act of Nigeria, and the Children’s

Protection and Welfare Act of Lesotho. In addition, even though Somaliland is not a party to the Children's Charter, its Juvenile Justice Law 2007 also echoes the same principle with similar wording.

### **Harmful cultural practices**

Some countries of Africa have proscribed harmful traditional practices which included female genital mutilation. For instance, the Children's Act of South Africa and that of Kenya, and the Constitution of Uganda and DRC. Madagascar passed the Law on Marriages Act to provide for legislation proscribing early marriage, as well as Kenya, and the Constitution of DRC.

### **The duties of the child**

There are instances of legislation that incorporate the duties of children. The South African Children's Act in article 16, entrenched that 'every child has responsibilities appropriate to the child's age and ability towards his or her family, community and the state'. The clause 40 of the Constitution of the DRC similarly provides that 'children have a duty to assist their parents', and article 16 of the Constitution of Guinea conveys the same message.



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