

The African Human Rights System

Introduction

Human rights are protected at the global, regional and national level. Regional organisations like the African Union have devised protection mechanisms to address regional human rights concerns and particularities. The UN actively supports these regional processes and stresses their complementarity to global human rights protection.

This publication outlines the basic features of the African human rights system, seeking to inform development practitioners about the African regional instruments and mechanisms for the protection of human rights and about key actors who promote human rights by using these mechanisms.

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1. Core African Human Rights Instruments

African Charter on Human and Peoples' Rights / Banjul Charter

In 1981, the predecessor organization of the African Union (AU) adopted the **African Charter on Human and Peoples' Rights (Banjul Charter)**. The Charter guarantees civil and political rights as well as social, economic, and cultural rights. It also stipulates a right to a "satisfactory environment" and other group rights, among them the right to freely dispose of wealth and natural resources, and the right to economic, social, and cultural development. All AU member states have ratified the Banjul Charter. The Charter established the **African Commission on Human and Peoples' Rights**, which is tasked to promote, protect and interpret the Charter (see below).

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Protocols to the African Charter on Human and Peoples' Rights

There are several Protocols to the African Charter. One establishes the **African Court on Human and Peoples' Rights** (see below). A second one, known as the **Maputo Protocol**, requires states to take measures against discrimination and violence against women, prohibits harmful traditional practices such as FGM and obliges states to take measures in order to prevent these practices. Women's minimum age of marriage is set at 18 and equal rights of women are stipulated in relation to political participation, property, the right to inheritance, marriage, divorce, family planning and reproductive health. 42 African states have ratified it.

Not yet in force, with six state parties by mid-2022, is the **Protocol on the Rights of Older Persons** (2016), and the **Protocol on the Rights of Persons with Disabilities** (2018), which had three state parties by mid-2022. Both protocols establish i.a. the right of non-discrimination, equal access and social security for the respective group, and oblige states to undertake the respective measures to guarantee these rights, including the right to be free from harmful practices.

African Child Rights Charter

The **African Charter on the Rights and Welfare of the Child** seeks to ensure the human rights of persons below the age of eighteen. As the **UN Convention on the Rights of the Child**, it covers the entire spectrum of civil, political, economic, cultural, and social rights. The Child Charter contains a prohibition to recruit children below the age of 18 for military service and sets the minimum age of marriage at 18 years. 49 out of 55 AU member states have ratified it. It is monitored by a Committee of Experts (see below).

The **African Youth Charter** promotes and protects the human rights of persons between 15 and 35 years, 39 states have ratified as of mid-2022. Among others, it requires states to develop a comprehensive youth policy, and support macroeconomic policies that create jobs for young men and women. As with respect to the Protocol on the Rights of Older Persons, there is no equivalent to the African Youth Charter in the international human rights protection system: it is a specific regional instrument. There is no specific monitoring mechanism for this Charter.

Relevance for development cooperation

German development cooperation has long supported the institutional development of the African human rights protection system.

Regional human rights treaty obligations are a good point of reference for dialogue about human rights at the policy level and for integrating the human rights-based approach in development programmes. Ending FGM and child marriage, for example, are firmly anchored in the African treaties mentioned above; as are equal rights for women. How the mentioned human rights instruments have made their marks on African constitutional and legal development in many countries, is frequently addressed in academic writing (for instance in the **African Human Rights Law Journal** issued by the University of Pretoria Centre for Human Rights) which may be useful for legal reform programmes.

2. Monitoring and Enforcement Mechanisms

There are three institutions for human rights protection which are mandated to work complementary to each other: These are the African Commission on Human and Peoples' Rights (African or Banjul Commission), the African Committee of Experts on the Rights and Welfare of the Child (Child Rights Committee) and lastly, the African Court and Human and Peoples' Rights. A long planned merger of the latter with the (never established) African Court of Justice has not found sufficient state parties to ratify the respective treaty, the **Statute of the African Court of Justice and Human Rights**. In general, support of African States for solid and widely accessible human rights protection mechanisms has not increased during the past decade.



The African Commission (the Banjul Commission)

The African Commission is based in Banjul, the Gambia. Its 11 elected members are called Commissioners and are nominated by States' parties and appointed by the AU assembly for a six year renewable term. The Commission has the mandate to protect and promote human rights, and to interpret the Banjul Charter. It has several instruments at its disposal to do so, among them a communication procedure, a state reporting procedure, and special mechanisms such as rapporteurs and working groups. The Commission has **structured relationships with non-governmental organizations and National Human Rights Institutions**.

Individual communication procedure

Individuals, groups of individuals or organisations can submit complaints to the Commission. If the Commission admits a case, it tries to achieve an amicable settlement. Where no such settlement is reached, the Commission decides on the merits of the case and issues recommendations to states to remedy a violation if it finds one. **Rules of Procedure** detail the follow-up procedure for the Commissions' recommendations, since it has no other mechanism to enforce them. As in comparable procedures under UN human rights treaties, complainants need to show that they have done everything to exhaust domestic remedies before they can turn to the African Commission, and the complaint procedure is not particularly swift.

Usage of the procedure is uneven: there are more than fifteen complaints each against a small number of states (Cameroon, Congo, Egypt, Nigeria, DR Congo and Zimbabwe), and rather fewer complaints by individuals from the majority of states.

State-Reporting Procedure

Every two years, state parties to the Banjul Charter are **required to submit a report** to the Commission on their progress in complying with the Charter. However, **most states do not report**. **National Human Rights Institutions** and NGOs may submit parallel reports and **more than 500 have observer status**. As a result of the reporting procedure, the Commission issues recommendations to the state parties on how to improve implementation of the Charter (called Concluding Observations). As in the state reporting under UN treaties, the Concluding Observations are not binding on State parties and the Commission has no means to enforce them.

Special Mechanisms: Working Groups and Special Rapporteurs

The Banjul Commission has established **several working groups and special rapporteurs** to develop and recommend strategies to advance human rights. They analyse laws, policies and practices, and undertake country missions. Every commissioner is a member of one or more working groups or acts as a special rapporteur. They thus carry the weight of the African Commission when they, for example, criticize a country for failure to protect from sexual violence in the context of elections as they did for the 2022 elections in Kenya, or lack of investigations into the murder of human rights defenders, as in the DR Congo in 2021.

African Child Committee

The **Committee of Experts on the Rights and Welfare of the Child** is based in Maseru, Lesotho. It is composed of 11 elected experts who monitor and interpret the **Child Rights Charter**. It also considers State Party Reports (due every three years) and can receive complaints by individuals but so far not raise them to the African Court. The Committee interprets the Child Rights Charter by issuing **General Comments**, among them one on sexual exploitation of children (2021). A General Comment on FGM was under way in mid-2022.

Unlike the Committee established under the UN Convention on the Rights of the Child, the African Child Committee is mandated to conduct studies among state parties; its **last study covered how children's rights were affected by the COVID-19 pandemic**. While there is an **individual communications procedure**, allowing children to bring complaints under the Charter, very few made use of it to date. In 2021, it ruled on the admissibility of an individual complaint from a Sudanese girl who faced criminal charges for adultery after she alleged to have been raped. In 2017, the Committee ruled that Mauritania has violated many of its obligations under the Child Charter in relation to two brothers who were formerly child slaves. The Committee called for the provision of individual remedies for the two child victims and asked that Mauritania should make comprehensive changes to national policy to eliminate slavery and slavery-like practices.

Relevance for development cooperation

Development cooperation can draw on what the different human rights monitoring bodies produce, particularly the General Comments to inform the human rights-based approach for programmes, or the reports of the Special Rapporteurs/Working Groups. Development cooperation can also support the active participation of states and/or NGOs and National Human Rights Institutions in the reporting procedures as well as fact-finding missions or research of the special mechanisms or the Child Rights Committee.

The African Court on Human and Peoples' Rights

The **African Court on Human and Peoples' Rights** complements and reinforces the protective mandate of the Commission. The Court is composed of eleven judges who are nominated by their states and elected by the AU Assembly of Heads of State and Government. They can issue legally binding decisions or non-binding legal opinions.

The court was established by the 1998 **Protocol on the Establishment of the African Court on Human and Peoples' Rights**, ratified by 33 states. 12 of those have originally accepted the competence of the Court to hear cases brought to it directly by individuals and NGOs (**Art. 34 (6) of the Protocol**), Rwanda, Tanzania, Benin and Cote d'Ivoire have in the meantime withdrawn this declaration. In the absence of such a declaration, an application to the court must be submitted to the Banjul Commission first, which may then – after preliminary examination – decide to refer the case to the court. Despite these limitations, **more than 300 individuals and NGOs have turned to the court**. While there are procedures for follow-up that states comply with the courts' judgments, the **court's activity reports** regularly report on the lack of implementation.

The court can also be addressed for non-binding, advisory opinions and has issued 15 at the time of writing. One recent opinion relates to holding elections under the circumstances of the COVID-19 pandemic where the court holds that the “right of citizens to participate freely in the conduct of their country's public affairs cannot be taken away, even in an emergency situation ...”.

There have been attempts to overhaul the court, and, for example, add jurisdiction on international criminal law. However, the respective legal instruments (Malabo Protocol) have not been ratified by a sufficient number of states.

Resources

- African Court, **activity reports** and **law reports**
- Institute for Human Rights and Development in Africa, **African Human Rights Case Law Analyser**
- African Legal Information Institute (AILL), **Human Rights Law Index**
- **The ACtHPR Monitor**, Independent news, comment and debate on the African Court on Human and Peoples' Rights
- **Pan-African Lawyers Union**, with news on current cases before and judgements of the African Court



3. Sub-Regional and Special Courts

As part of regional and sub-regional economic integration in Africa, several regional economic communities have developed on the continent. For many of those, judicial bodies have been established, some of which allow for individual access. The courts in the Economic Community of West African States (ECOWAS), the East African Community (EAC) and, until 2012, the Southern African Development Community (SADC) have been at the forefront of the development towards human rights related adjudication, with the ECOWAS Court being the only court that has an explicit mandate to address human rights issues beyond the application and implementation of its founding treaty.

ECOWAS Court of Justice

The **ECOWAS Court of Justice** can receive cases of alleged human rights violations in any ECOWAS Member State based on the ECOWAS Treaties and the Banjul Charter. Citizens from ECOWAS States have direct and immediate access to the Court. The court has issued **190 decisions** since 2015. Recent rulings against Nigeria, for example, include the order to **repeal parts of its 2015 Cyber Crime law** and to **pay damages to the family of a victim who died in government custody** and whose death was never investigated. While each Member State should appoint a national authority to be responsible for the enforcement of the Court's decisions, only a few countries have done so.

East African Court of Justice

The **East African Court of Justice** was established under the treaty establishing the East African Community. Member states are the DR Congo, Tanzania, Kenya, Burundi, Rwanda, South Sudan, and Uganda. Its court of first instance **has issued around 200 rulings since 2006**. The treaty contains explicit and implicit references to human rights, i.a. to those guaranteed in the African Charter, and to common environment and natural resources management. In March 2022, the Court heard a case against the **governments of Tanzania and Uganda seeking to stop the East African Crude Oil Pipeline**, the ruling is pending. Plaintiffs allege that the governments agreed to build the pipeline without proper environmental, social, human rights, and climate impact assessments. In other cases, the Court declared national legislations in violation of the EAC treaty, and null and void, **thus taking on an important role to unify legislation in the Community**.

4. Further reading

- Network of African National Human Rights Institutions (**NANHRI**); NANHRI runs a database on the African human rights system and NHRI engagement with it.
- ESCR-Net, **case law database**
- International Service for Human Rights, the monthly **Human Rights Monitor** includes a section on developments at the African Commission.
- James Otieno-Odek (2017), **Judicial Enforcement and Implementation of EAC Law**

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