

The African Human Rights System

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African Union Constitutive Act: Preamble

- To promote and protect Human and People's Rights,
- Consolidate Democratic Institutions and Culture,
- Ensure Good governance and the Rule of Law

African Union Constitutive Act: Objectives

- Promote Democratic Principles and Institutions, Popular Participation and Good Governance
- Promote and Protect Human and People's Rights in accordance with the African Charter on Human and People's Rights and other relevant instruments

African Union Constitutive Act: Objectives

- Promote Sustainable Development at the Economic, Social and Cultural Levels as well as the integration of African Economies

African Union Constitutive Act: Principles

- Sovereign Equality & Interdependence among Member States of the Union
- Respect of Borders Existing on achievement of independence
- Participation of the African Peoples in the Activities of the Union
- Establishment of a Common Defence Policy for the African Continent

African Union Constitutive Act: Principles

- Peaceful Resolution of Conflicts among Member States of the Union through such appropriate means as may be decided upon by the Assembly
- Prohibition of the use of force or threat to use force among Member States of the Union
- Non-interference in the Internal Affairs of Another

African Union Constitutive Act: Principles

- The Right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity
- Peaceful co-existence of states and right to live in peace and security

African Union Constitutive Act Principles

- The Right of Member States to Request Intervention from the Union in order to restore peace and security
- Promotion of gender equality
- Respect for democratic principles, human rights, the rule of law and good governance

African Union Constitutive Act: Principles

- Promotion of Social Justice to ensure Balanced Economic Development
- Respect for the Sanctity of Human Life, Condemnation and Rejection of Impunity and Political Assassination, Acts of Terrorism and Subversive Activities
- Condemnation and Rejection of Unconstitutional Changes of Governments (Democracy Clause)

African Union Constitutive Act: Suspension

- Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union.

African Charter on Human Rights (Banjul Charter)

- Look at the African Charter: How are rights categorized?
- Civil & Political Rights, Social & Economic Rights.
- Second and Third generation rights are legally enforceable

African Commission

- Collective Rights, Environmental Rights, and Economic and Social Rights are essential elements of human rights in Africa
- States have a duty to respect, protect, fulfill and promote all rights

Concept of "People"

- 1) Entire People of one country
- 2) Group of People within a State who see themselves as distinct
- 3) Indigenous People

Clawback Clauses in the African Charter on Human Rights

- Article 10 Every individual shall have the right to free association provided that he abides by the law (right is subject to the dictates of municipal law)
- African Commission states that international human rights standards must always prevail over contradictory national law
- No derogation clause

African Charter on Human Rights, Limitations on Rights

- Article 27 (2) The Rights of the Charter shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Weighing Legitimacy of Limitation on Right

- Is state interest legitimate?
- Is the limitation strictly proportionate?
- Is the limitation absolutely necessary to obtain advantage?
- The limitation must never render the right illusory

African Charter on Human Rights

- Assigns duties to individuals vis-a-vis the state, other groups, and individuals
- Is it a statist instrument which sacrifices the interest of individuals?

Other Instruments

- African Charter on the Rights and Welfare of the Child (rights and duties of child vis-a-vis family, community and State) Supervisory Body: African Committee of Experts on the Rights and Welfare of the Child can receive communications
- Convention Governing Specific Aspects of Refugee Problems in Africa 1974

AU Convention- IDPs

- Refrain from, prohibit and prevent arbitrary displacement of populations;
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- Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;
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- Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;
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- Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
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- Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons,;
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AU Convention on IDPs

- Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;
- Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
- Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
- Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement;
- Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel;
- Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;
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Protocol on the Rights of Women-

- No specific supervisory body. African Commission may receive State reports and African Court will be able to apply Protocol
- Look at Art 11 Protection of Women in Armed Conflict
- Arts 20 & 21 Widow's Rights

African Commission in Banjul, Gambia

- Public and Private Session
- NGO observers included
- Lack of resources and translation facilities
- Quasi Judicial Function:
 - Inter-State Complaints
 - Individual Complaints (Also Third Parties and NGOs)

African Commission on Human Rights

- Non-Confrontational Mechanism for Human Rights
- Seeks Amicable Resolution and Remedies for Victim
- Lack of transparency and timidity
- Issues provisional measures (but may result in withdrawal of communication)
- Non-binding decisions

African Charter on Human Rights

- Article 1 States have obligation to give effect to the rights, freedoms and duties in the Charters
- Article 2 Non-Discrimination
- Article 62 States submit report every 2 years on legislative and other measures taken to give effect to the African Charter (Delays)

Serious & Massive Violations of Human Rights

- Article 58 of the African Charter on Human Rights, Case concerning serious and massive violations should go to OAU Assembly, but now African Commission reviews all claims and calls for remedy and follow up report by the state

Admissibility

- Ratione Materie
- Ratione Personae (Any individual or NGO, even from non-member country can file communication, does not have to be the victim)
- Ratione Temporis
- Ratione Loci
- Communication must not have already been settled in terms of international law (UN HRC)

Admissibility: Exhaustion of Domestic Remedies

- Unless excessive delay or ineffectiveness of system
- Ousting of judiciary by military/executive decree
- Domestic Remedy not possible because victim has died or is in exile abroad (illogical for him to return)
- Indigence of complainant

Thematic Reporters & Working Group

- Rights of Women,
- Prisons & Detention,
- Human Rights Defenders
- Freedom of Expression
- Refugees & IDPs
- Working Group on Indigenous People

Other African Union Organs that may address Human Rights

- Court of Justice
- Pan African Parliament
- Peace & Security Council

African Court of Human Rights came into being 2006

- Interpret African Charter on Human Rights, Protocol and other human rights instruments ratified by the States Parties
- Contentious, Advisory, and Conciliatory Jurisdiction
- Art. 4 Protocol- Any AU Member State, AU organ, or NGO recognized by AU may request an advisory opinion

African Court of Human Rights

- Art. 34 of Protocol establishing Court, State must make declaration to give individuals standing before the Court (individual or NGO may file directly with the Court and bypass Commission- Only Burkina Faso) Most cases will be filed with the Commission which is to refer case to the Court

African Court of Human Rights: Lodging of Complaint

- African Commission of Human Rights:
Unconditional right of access to the Court
- State Party which has lodged a complaint to the Commission
- State Party against which a complaint has been lodged in the Commission
- State Party whose citizen is a victim of human rights violation

African Court of Human Rights

- Court may enable individuals and NGOs with observer status before the Commission to submit cases directly to the Court
- Court may give Advisory Opinions at the request of the AU or AU organ
- It may not review an issue if it is still being examined by the Commission