

African Human Rights System

There are currently three consolidated regional human rights systems in the world – European, Inter-American and African. Those systems have been crucial to advance the right to food for indigenous peoples, women and children, framing people’s struggles in regional human rights standards.

Introduction

The African human rights system includes the treaties, principles, and independent organs of the African Union (AU) that promote and protect human rights throughout the continent. The three primary organs of this system are the African Commission on Human and Peoples’ Rights (African Commission)¹, the African Court on Human and Peoples’ Rights (African Court)², and the African Committee of Experts on the Rights and Welfare of the Child (Child Rights Committee)³, created under the auspices of the AU. While each body has a distinct mandate, both the African Commission and African Court can decide individual complaints against States, hold public hearings, and request immediate action by States when an individual or other subject of a pending complaint is at risk of irreparable harm. The Child Rights Committee receives and considers individual complaints of alleged violations of the African Charter on the Rights and Welfare of the Child. Both the African Commission and Child Rights Committee also monitor the protection of human rights across the continent and States’ implementation of their human rights obligations.

African Commission on Human and Peoples’ Rights

The African Commission was established on 2 November 1987 under the article 30 of the African Charter on Human and Peoples’ Rights (African Charter) and is headquartered in Banjul, the Gambia. Composed by 11 commissioners, the African Commission holds at least two Ordinary Sessions a year. The Chairperson of the Africa Commission may also convene Extraordinary Sessions at the request of a majority of Commissioners or of the Chairperson of the AU Commission (AU Secretariat). The African Commission is responsible for promoting and protecting human and peoples’ rights in Africa. In doing so the African Commission can interpret the African Charter, has established special mechanisms (special rapporteurs, committees and working groups), receives individual complaints, examines State reports and conduct fact-finding missions.

As part of the individual complaints system, the African Commission hears communications submitted by States, individuals, and non-governmental organizations (NGOs) on alleged human rights violations. In cases where the alleged victim faces an urgent threat of harm, the Commission may also issue provisional measures. Provisional measures are requests issued to the State by the

¹ Africa Commission on Human and Peoples’ Rights, <http://www.achpr.org/>

² African Court on Human and Peoples’ Rights, <http://www.african-court.org/en/>

³ African Committee of Experts on the Rights and Welfare of the Child, <http://www.acerwc.org/>

Commission while litigation is still pending, usually in situations where there is an immediate threat of irreparable harm. In case the Commission ultimately determines that a violation of human or peoples' rights has occurred, it will issue recommendations to the State on ways to take remedial action. In addition, following consideration of the State reports, the Commission issues Concluding Observations that contain recommendations for the State to achieve further compliance with the Charter.

African Court on Human and Peoples' Rights

The African Court is the judicial organ of the African system for the protection of human rights and has its seat in Arusha, Tanzania. The African Court was established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (Protocol Establishing the African Court, or Protocol). Adopted in 1998, the Protocol came into force in 2004 after ratification by 15 States. The Court began operations in 2006, following the election of its first 11 judges, and began considering cases in 2008. The Court holds four Ordinary Sessions a year. The President of the Court may also convene Extraordinary Sessions upon his or her own initiative or at the request of a majority of the Members of the Court. The African Court has two types of jurisdiction: advisory and contentious. Advisory jurisdiction involves the Court issuing an opinion on specific legal questions that relate to the African Charter or any other "relevant" human rights instrument. The African Court issues advisory opinions as long as the issue is not already being considered by the African Commission. The Court's contentious jurisdiction enables it to decide legal disputes submitted to it by opposing parties. If the Court finds that human rights violations have taken place, it will issue orders to the State to remedy the violation. These orders may include the payment of fair compensation or reparation. In addition to final orders, the Court may adopt provisional measures at the request of the Commission, a party to a case, or on its own initiative. Provisional measures are reserved for cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons.

The African Court does not accept communications directly from individuals or NGOs unless the State has specifically accepted the Court's jurisdiction to hear such cases. Instead, the primary entities able to submit cases to the Court are the Commission itself, States parties to the Protocol, and African intergovernmental organizations. Individuals and NGOs that have observer status before the African Commission may submit cases if the State concerned has made a declaration under Article 34(6) of the Protocol accepting the Court's competence. In addition, individuals or organizations that do not represent or advise either side in a case can submit an amicus curiae brief to the Court in order to assist it in analyzing a particular issue and reaching a decision. The African Court's judgments are binding on States.

African Committee of Experts on the Rights and Welfare of the Child

The Committee of Experts on the Rights and Welfare of the Child is composed by 11 individuals and is established by the Article 32 of the African Charter on the Rights and Welfare of the Child (Children's Charter). The Child Rights Committee promotes the rights contained in the Children's

Charter by collecting and documenting information, formulating standards for protecting the rights of African children, and working with other African, international, and regional organizations concerned with promoting children's rights. The Committee receives and considers individual complaints of violations of the Children's Charter by States parties; after considering a complaint, the Committee expresses its opinion as to whether a violation has taken place. According to the article 45 of the Children's Charter, the Committee may, resort to any appropriate method of investigating any matter falling within the ambit of the Charter, request from the State Parties any information relevant to the implementation of the Charter and may also resort to any appropriate method of investigating the measures the State Party has adopted to implement the Charter. In addition, the Committee shall submit to each Ordinary Session of the Assembly of Heads of State and Government every two years, a report on its activities and on any communication made under Article 44 of this Charter. The Child Rights Committee also monitors States' efforts to implement the Children's Charter. At the request of a State party, an AU institution, or institution or person recognized by the AU, the Committee will interpret the provisions of the Children's Charter. Lastly, the Committee carries out functions assigned to it by the AU Assembly, the Secretary-General of the AU, and any other organization of the AU or the United Nations. The Child Rights Committee is based at the African Union Headquarters in Addis Ababa, Ethiopia.

Written Communications to Special Mechanisms

The African Commission has established special mechanisms⁴ to help it carry out its mandate of promoting and protecting human and peoples' rights in Africa. These special mechanisms include special rapporteurs, committees, and working groups. Special mechanisms typically work on thematic human rights issues. The African Commission has mandated its special mechanisms to engage in consultations and collaboration with non-governmental entities when carrying out their protection and promotion functions.

Challenges

State compliance with reporting requirements remains an issue. When States do submit their reports, they often do not engage adequately, or at all, with NGOs and civil society during the drafting process. States often do not comply with the African Commission's recommendations so that, even where victims obtain a favorable judgment, they do not receive the remedy awarded to them. In addition, States still manifest the unwillingness to make a declaration under Article 34(6) of the Protocol Establishing the African Court to allow individuals and NGOs with observer status to bring claims which limits the submission of cases to the Court. Finally, the fact that the African Human Rights system only collaborates with NGOs with observer status limits the participation of social movements which normally do not have the observer status. The reason is that the social movements are often spaces used by people to claim and propose solutions that concern their lives and these spaces usually are not legally registered under the laws in countries, and thus are not eligible to request the observer status before the African Commission.

⁴ ACHPR, <http://www.achpr.org/mechanisms/>



