

« *Lawyers for Lawyers* »

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TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 10 : THE AFRICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS

➤ *Preliminary reminder on the African Union*

The African Union (AU) is an organisation of African states created in 2000 in Durban (South Africa). It replaced the Organisation of African Unity (OAU) in 2002. Its institutions (Commission, Pan-African Parliament and the Peace and Security Council) were set up in July 2003 at the Maputo Summit (Mozambique). Its aims are to work for the promotion of democracy, human rights and development throughout **Africa**, as illustrated by the New Partnership for Africa's Development (NEPAD) programme, which stipulates that peace and democracy are essential prerequisites for sustainable development.

➤ *Legal instruments relating to human rights*

The principal legal instrument with regard to the protection of human rights is the African Charter on Human and People's Rights, 1981.

Several instruments were added to the Charter to protect certain categories of persons : examples are the African Charter on the Rights and Welfare of the Child of 1990, and the Protocol to the African Charter on the Rights of Women of 1993. Indeed the African Charter, made only one reference to the universal instruments on the rights of children and woman, and consequently did not offer any guarantees adapted to African woman and children.

However, in 1988, a Protocol to the African Charter on the creation of an African Court on Human and People's Rights was signed to provide the African system for the protection of human rights with a jurisdictional body.

Finally, this system also includes an instrument for the protection of refugee rights, with the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, of 1974.



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➤ *The African Commission on Human and People's Rights*

This is the body instituted by the Charter.

- **Mandate**

The Commission has a mandate in three areas : the promotion of human and people's rights, the protection of human and people's rights, and the interpretation of the Charter.

- *Promotion work (art. 45.1 of the Charter)*

This work is carried out through :

- Studies, research and training on issues in the area of human rights in Africa, and on the Charter. The Commission has not developed many activities in this area.
- The adoption of recommendations to African States in order that they take measures aimed at ensuring the promotion of the Charter. The Commission has made several resolutions in this regard, on education on human rights, for example, or integration of the provisions of the Charter.
- The adoption of declarations aimed at rendering effective rights guaranteed by the Charter, comprising precise measures to be implemented. Such as, for example, the Declaration on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Directives).
- Cooperation with other African or international institutions for the protection of human rights (United Nations High Commissioner for Refugees, for example).

- *Protection work*

This work is carried out through :

- The examination of periodic reports submitted by States (art. 62 of the Charter). This examination provides it with a system of questions and answers between the State and the Commission. However, the Commission does not have the power to make final observations or recommendations.
- The examination of inter-state communications (art.47-53 of the Charter): communication submitted by a State Party against another State Party, whenever it considers that the other State has violated the rights enshrined in the Charter. The role of the Commission is to assist States in reaching a friendly settlement. If no friendly solution can be found, the Commission draws up a report relating the facts and conclusions.
- The examination of communications submitted by NGOs or individuals (art. 55 of the Charter, cf *below* for the procedure).
- Special mechanisms: The Commission appoints special rapporteurs for specific issues : prisons, women, freedom of expression, human rights defenders, etc.

- *Consultative work*

Article 45 of the Charter entrusts the Commission with the task of interpreting the provisions of the Charter at the request of a State Party, an institution of the African Union or an organisation recognised by the African Union.

- **Procedure before the Commission**

- *Who can refer a case before the African Commission on Human and People's Rights ?*

Other than States Parties (state communications), the following may file a complaint with the Commission :

- Any person who is the victim of a violation of human rights guaranteed by the African Charter on Human and People's Rights) or any persons representing the victim).
- An organisation complaining of a serious or large-scale situation concerning a violation of the rights set out in the Charter.

- *What are the conditions of admissibility for petitions ?*

- Exhaustion of domestic remedies.
- The case must not be pending before another international court.

- *What measures can the Commission take ?*

If the Commission concludes that a violation has taken place, it sends a recommendation to the State in question.

In certain cases, it may also order protective measures.

- *What is the scope of the final recommendations of the Commission ?*

They are not legally binding for States in question. However, if a final recommendation of the Commission is included in the annual activity report of the Commission, it may become legally binding for the State concerned.

By its decisions on the merits, the Commission has developed a sort of « case law » which helps in strengthening the system for the protection of human and people's rights implemented by the Charter.

- *Development of the procedure*

Referral → initial examination (clarification, observations) → decision on admissibility.

- If inadmissible → the Commission informs the originator of the complaint and the State.

- If admissible → the Commission informs the originator of the complaint and the State → the State provides explanations and indicates the measures taken to remedy the situation + the originator of the complaint provides information and additional observations → Examination on the merits → Final decisions (the Commission notifies its findings and issues recommendations, where applicable) → the Commission informs the originator of the complaint + communicates its decision to the State in question + to the Conference of Heads of State and Governments → once approved by the Conference, the decision is published in the annual report.

➤ ***The African Court on Human and People's Rights***

The Protocol establishing the African Court on Human and People's Rights became effective on 25 January 2004.¹ The first judges of the Court were elected on 22 January 2006.

- **Mandate**

The Court is assigned litigation and consultative functions aimed at complementing the protection functions which the African Charter on Human and People's Rights has conferred to the Commission.

- *Litigation function*

¹ 24 of the 53 States Parties to the Convention ratified the Protocol establishing the Court: South Africa, Algeria, Burkina Faso, Burundi, Union of the Comores, Côte d'Ivoire, Gabon, Gambia, Ghana, Kenya, Lesotho, Libya, Mali, Mauritius, Mauritania, Mozambique, Niger, Nigeria, Uganda, Rwanda, Senegal, Tanzania, Togo, Tunisia.

The Court has jurisdiction to deal with all cases and all disputes which are referred to it concerning the interpretation and application of the Charter, the Protocol of the Court and any other relevant instrument relating to human rights and ratified by the States in question.

- *Consultative function*

At the request of a Member State of the African Union, any body of the Union or an organisation recognised by the African Union, the Court may give an opinion on any legal question concerning the Charter or any other relevant instrument relating to human rights, with the proviso that the subject of the consultative opinion doesn't relate only to a petition pending before the African Commission on Human and People's Rights.

- **Procedure before the Court**

- *Who can refer a case to the African Court on Human and People's Rights ?*

- The African Commission on Human and People's Rights,
- States Parties to the Protocol,
- African inter-governmental organisations,
- Individuals or NGOs with the observer status to the African Commission, following exhaustion of domestic remedies, if the State in question grants authorisation in this regard by making a declaration under article 34 (6) of the Protocol.

- *What is the role of victims in the procedure before the Court ?*

Victims who directly refer the case before the Court acquire the status of party to the case.

They thus have the right to submit evidence in support of the alleged facts before the Court and have the right to be informed of and refute any evidence put forward by the State in question. The victim takes part in hearings through his or her legal counsel. They may also call witnesses.

- *What is the scope of the decisions of the Court ?*

The decisions of the African Court have legally binding effect. The Court has not yet delivered a decision.

- *Development of the procedure*

Referral → examination of admissibility (the Court may request the opinion of the Commission) → decision on admissibility.

→ Referral of case before the Commission,

→ or examination on the merits of the case,

- attempt at friendly settlement ,

- or examination of the case in the presence of both parties → final and binding judgement.

Website of the African Commission on Human and People's Rights :

http://www.achpr.org/english/info/news_en.html

Guidelines for submission of communications :

http://www.achpr.org/english/info/guidelines_communications_en.html

Examination procedure for communications :

http://www.achpr.org/english/info/communications_procedure_en.html

Web site of the African Court on Human and People's Rights : <http://www.african-court.org/en/home/>

Guidelines for lodging a complaint :

<http://www.african-court.org/en/court/mandate/lodging-complaints/>

Sources :

- Aforementioned links.
- Mutoy MUBIALA, *Le système régional africain de protection des Droits de l'Homme*, Bruylant, 2005.
- 10 key points for understanding and using the African Court on Human Rights, IFHR.

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