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CRIS 2008 165-110 EuropeAid/126412/C/ACT/Multi

TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 11: THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

The African Charter on Human and People's Rights (also called "Banjul Charter") was drawn up within the framework of the Organisation of African Unity (OAU, which became the African Union in 2002). This multilateral convention was adopted on 27 June 1981 in Nairobi (Kenya), at the 18th OAU Conference. It became effective on 21 October 1986 and was ratified by 53 African states¹

This original instrument, comprising 68 articles and divided into three parts (Rights and Duties, Safeguard Measures, General Provisions), takes into consideration the universality of human rights while being based on African culture. Thus, the preamble affirms the necessity to take into account in the concept of human rights the « historical traditions and values of African civilisation ».

- **Civil and political rights, and economic, social and cultural rights**

The other major distinctive feature of the African Charter is that it makes no distinction between civil and political rights and economic, social and cultural rights. The indivisibility of these rights is recognised.

- **Individual rights and collective rights**

Although the Charter sets out individual rights which are traditionally found in all human rights conventions (right to non-discrimination in the enjoyment of the rights contained in the Charter (art. 1), the right to life and physical and moral integrity (art. 4), the right to respect for human dignity (art. 5), the right to freedom and security (art. 6), the right to a fair trial (art. 7) etc.), it however gives priority attention to the rights of peoples (the right of peoples to equality) (art. 19), the right to self-determination (art. 20), and the right to free disposal

¹ South Africa, Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Union of the Comoros, Republic of the Congo, Côte d'Ivoire, Djibouti, Egypt, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Equatorial Guinea, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritius, Mauritania, Mozambique, Namibia, Niger, Nigeria, Uganda, Rwanda, Saharawi Arab Democratic Republic, Sao Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, Sudan, Tanzania, Chad, Togo, Tunisia, Zaire (Democratic Republic of the Congo), Zambia, Zimbabwe.



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of wealth and natural resources (art. 21). The institution of these rights is expressed in particular by the refusal of any foreign domination.

The African Charter breaks new ground in relation to other regional and universal legal instruments for the protection of human rights by recognising « People » as the holders and beneficiaries of « third generation » rights, such as the right to development, peace and a satisfactory environment (art. 22 - 24).

As the formulation of individual rights is rather imprecise from a technical standpoint, the scope of the Charter is principally dependent upon the work of the African Commission and the African Court, whose case law will have an integrative and interpretative function which will enable much greater clarity and justiciability with regard to the rights duties set out.

- **Rights and duties**

The consequence of this concept in which the individual is considered as a person in, by and for the group, is the existence within the Charter of the duties of the individual towards his or her family, the State, the national community and other people (art. 27 and 28). This placing of emphasis on the duties of the individual is very much in contrast with the western individualist concept and corresponds well with the African tradition, which advocates an inter-dependence between the individual and the group. Thus, article 29.7 of the Charter enshrines the respect for tradition, and its preservation becomes a duty for the individual.

- **Obligations of States Parties**

Under article 25 of the Charter, States have a duty to promote and ensure, through learning, education and dissemination, respect for the rights and freedoms contained in this Charter, as well as to take measures with a view to ensuring that these freedoms and rights are understood in the same way as corresponding obligations and duties.

Article 26 of the Charter requires States to guarantee an independent judicial administration, to enable them to ensure effective protection of human rights.

- **Exceptions**

The Charter does not make any provision to allow States to depart from their obligations in the event of a state of emergency, or in the event of public danger. The absence of any derogation clause has been interpreted by the African Commission on Human and People's Rights as allowing for no exceptions. *ACHPR, National Commission on Human Rights and Freedoms v. Chad, No, 74/92, decision taken at the 18th ordinary session, October, 1995, para. 2².*

- **Restriction of rights**

Within the framework of the exercise of certain rights, the Charter provides for the possibility of restrictions, under certain conditions, specifically set out or by reference to national law. This is the case, for example, with article 10, which enshrines freedom of association, subject to it conforming to rules laid down by law. The limits which make it possible to invoke them are thus imprecise.

Sources :

- African Charter on Human and Peoples' Rights.

- *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Office of the High Commissioner for Human Rights, International Bar Association, 2003.

Last updated: 1st October 2010

² <http://www1.umn.edu/humanrts/africa/comcases/74-92.html>