
VIVEKANANDA COLLEGE THAKURPUKUR KOLKATA-700063

NAAC ACCREDITED 'A' GRADE

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AFRICAN HUMAN RIGHTS SYSTEM

The African System is the youngest of the three judicial or quasi-judicial regional human rights systems, and was created under the auspices of the African Union (AU). Like the Inter-American System (and the European System, as originally designed), it includes a commission and a court with complementary mandates. The African Commission on Human and Peoples' Rights (ACHPR) and African Court on Human Peoples' Rights (AfCHPR), together with the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), all receive complaints of human rights violations.

African Court on Human and Peoples' Rights

Seat: Arusha, Tanzania Instrument: Protocol to ACHPR Operating Since: 2006

The African Court on Human and Peoples Rights (AfCHPR) is a regional human rights tribunal with advisory and contentious jurisdiction concerning the interpretation and application of the African Charter on Human and Peoples' Rights ("Banjul Charter") and other instruments. Its jurisdiction extends to those States that have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. The AfCHPR decided its first case in December of 2009 and has taken up over several dozen other cases since then.

Complaints against any State that has accepted the Court's jurisdiction may be referred to the Court by: the African Commission on Human and Peoples' Rights, States parties (as respondent or petitioner in a case before the Commission, or on behalf of a individual citizen), and African intergovernmental organizations. As of January 2019, 30 States had accepted the Court's jurisdiction. These States are: Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, and Uganda.

To see the most recent ratification information, visit the African Union's Treaties, Conventions, Protocols & Charters webpage.

The Court also has jurisdiction to hear cases instituted by individuals and non-governmental organizations with observer status before the African Commission, provided that the relevant State has made the necessary declaration under Article 34 of the Protocol to allow these complaints, described in Article 5(3). As of January 2019, **nine States** have accepted the Court's jurisdiction to receive complaints referred by individuals and NGOs; these are: Benin, Burkina Faso, Cote d'Ivoire, the Gambia, Ghana, Malawi, Mali, Tanzania, and Tunisia. Rwanda previously accepted the Court's jurisdiction over individual and group complaints but in February 2016 announced it would withdraw that acceptance. [IJRC] It formally withdrew in March 2016.

The 11 judges of the court are elected for renewable, six-year terms. The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, along with the AfCHPR's Rules of Court, set out the Court's functions and operating procedures.

Additionally, the States of the African Union have adopted two protocols that would replace the AfCHPR with a new African Court of Justice and Human Rights, intended to hear disputes arising under all African

Union instruments, and give that new court jurisdiction to prosecute individuals for serious international crimes. However, neither of the two protocols has been ratified by the required 15 States.

African Commission on Human and Peoples' Rights

Seat: Banjul, The Gambia Instrument: ACHPR Operating Since: 1987

The African Commission on Human and Peoples' Rights (ACHPR) promotes and protects human rights in the 54 Member States of the African Union that have ratified the African Charter on Human and Peoples' Rights. Morocco rejoined the African Union in 2017, becoming its 55th Member State, but has not yet ratified the African Charter. [IJRC]

The Commission accepts complaints ("communications") from individuals, groups of individuals, non-governmental organizations, and States concerning alleged violations of the African Charter on Human and Peoples' Rights.

The ACHPR holds two ordinary sessions a year and may also hold extraordinary sessions upon the request of the Chairperson of the Commission or a majority of Commissioners. During the biannual ordinary sessions, the ACHPR considers periodic reports submitted by States parties, as well as reports from members of the Commission and its Special Mechanisms (rapporteurs, committees, and working groups). The Commission also considers reports concerning country visits ("Special Missions"), which are typically dispatched to countries experiencing political or social unrest.

The African Charter and the Commission's Rules of Procedure establish its composition and procedures.

The African Instruments

The Commission and Court are charged with interpreting and applying a number of regional human rights instruments, which include:

- African Charter on Human and Peoples' Rights ("Banjul Charter")
- African Charter on the Rights and Welfare of the Child
- Protocol to the African Charter on the Rights of Women in Africa
- OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
- African Charter on Democracy, Elections and Governance

They also interpret the principles contained in the following non-treaty documents:

- Guidelines for African Union Electoral Observation and Monitoring Missions
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa
- Pretoria Declaration on Economic, Social and Cultural Rights in Africa
- Declaration on Gender Equality in Africa
- Kigali Declaration, 2003
- Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), 2008
- Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa
- Grand Bay (Mauritius) Declaration and Plan of Action, 1999

African Rapporteurs and Working Groups

The African Commission on Human and Peoples' Rights has established multiple special mechanisms to assist the Commission with the promotion and protection of human rights. The special mechanisms' mandates

extend to all African Union (AU) Member States who are States parties to the African Charter on Human and Peoples' Rights. Fifty-four of 55 AU Member States are States parties to the Charter. The special mechanisms are dedicated to protecting and promoting specific rights or the rights of specific vulnerable groups.

The ACHPR has established various working groups, special rapporteurships, and committees to advance specific thematic areas of work and to guide its functioning. The responsibilities of these special mechanisms include gathering and disseminating information on respect for the human rights of certain vulnerable groups. The special mechanisms use this information to provide States or the Commission with guidance toward effectively securing human rights in Africa.

Each special mechanism has been overseen by one of the Commission's 11 Commissioners, who undertakes his or her duties on a part-time basis. Each individual appointed as Special Rapporteur or as Chairperson to a Working Group or Committee has been a Commissioner, simultaneously serving on the Commission. Commissioners also serve as members of the Working Groups and Committees, alongside non-Commissioner expert members.

The special mechanisms have a duty to provide the Commission with reports on their activities during each Ordinary Session. In turn, the Commission presents annual Activity Reports to the African Union Assembly that contain information gathered from the special mechanisms, summarizing positive developments and areas of concern regarding human rights in Africa.

Principal Functions

As described in greater detail at the links below, each special mechanism has a specific mandate. Generally, special mechanisms may:

- conduct country visits to Member States to investigate the enforcement of human rights;
- make recommendations to Member States to guide them toward the fulfillment of their international obligations;
- lend expertise to the Commission when it is considering communications that concern the special mechanism's mandate;
- submit annual reports to the Commission detailing its activities;
- propose that the Commission send urgent appeals to Member States regarding imminent human rights violations;
- send letters to State officials requesting information regarding human rights violations;
- analyze States' domestic laws and their compliance with international standards;
- engage in promotional activities, including seminars, workshops, and expert meetings; and,
- collaborate with civil society organizations and international human rights bodies.

Creation of Special Mechanisms

The African Commission appoints Special Rapporteurs, Chairpersons, and members of the special mechanisms either by consensus or by a vote. *See* ACommHPR, Rules of Procedure of the African Commission on Human and Peoples' Rights (2010), Rule 23(2). Typically, the ACHPR authorizes a special mechanism for a two-year mandate, which may be renewed through a resolution. Each special mechanism's website contains a list of the resolutions that have authorized the continuing mandate for that mechanism.

Committees, Special Rapporteurs, and Working Groups

The ACHPR has established the following special mechanisms:

- Advisory Committee on Budgetary and Staff Matters

- Committee on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV
- Committee for the Prevention of Torture in Africa
- Committee on Resolutions
- Special Rapporteur on Freedom of Expression and Access to Information
- Special Rapporteur on Human Rights Defenders
- Special Rapporteur on Prisons and Conditions of Detention
- Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons
- Special Rapporteur on Rights of Women
- Working Group on Communications
- Working Group on Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa
- Working Group on Economic, Social and Cultural Rights
- Working Group on Extractive Industries, Environment and Human Rights Violations
- Working Group on Indigenous Populations/Communities in Africa
- Working Group on Rights of Older Persons and People with Disabilities
- Working Group on Specific Issues Related to the Work of the African Commission

Additional Tools for Victims & Advocates

Decisions of the African human rights bodies can be accessed on the websites of the Commission and Court. However, the most effective tool for researching their caselaw is the Institute for Human Rights and Development in Africa's Case Law Analyser.

The Commission's website also includes States' periodic reports and its concluding observations on those reports, as well as the Commission's reports on country visits and other activities.

The NGO Forum supports and coordinates civil society engagement with the African Commission, through twice yearly meetings ahead of the Commission's sessions.

Additional information on engagement with the African Commission and Court can be found in the Commission's *Guide to the African Human Rights System* and *Guidelines for the Submission of Communications*, as well as in the International Service for Human Rights' publications, *Road Map for Civil Society Engagement: State Reporting Procedure of the African Commission on Human and Peoples' Rights* (2011) and *A Human Rights Defenders' Guide to the African Commission on Human and Peoples' Rights* (2012).