AFRICAN SYSTEM OF HUMAN RIGHTS PROTECTION

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The African Charter

- The Charter contains provisions on both civil and political rights, economic, social and cultural rights, as well as the rights of peoples.
- The Charter created the African Commission on Human and Peoples’ Rights as the monitoring body for the implementation of the Charter.
The African Commission on Human and Peoples’ Rights

- The Commission was set up in 1987 and was headquartered in Banjul, The Gambia. It has eleven members who serve in their personal capacity and not as agents of their countries. The Commission has two ordinary sessions around April and October of each year. It has also started having extraordinary sessions around February and August of each year to consider communications.
Functions of the Commission

The Commission functions in four ways:

• consideration of complaints/communications
• consideration of state reports
• General comments and
• creation of special mechanisms.
Consideration of Communications

- The Commission can entertain communications complaining of allegations of violations of human rights under the Charter from State parties, individuals and non-governmental organizations (NGOs). So far, there has been only one communication from a State party. The Democratic Republic of Congo submitted a communication against Burundi, Rwanda and Uganda alleging grave and massive violations of human and peoples’ rights committed by the armed forces of these three countries in Congolese provinces. On the other hand, the communications procedure has been better utilised by individuals and NGOs.
Consideration of Communications (cont)

• See 393/10 *IHRDA and others v. DRC*: that dealt with State responsibility for actions of its soldiers as well as non-State actors for the extra-judicial killings, indiscriminate attacks on civilians, rapes, torture, looting and destruction of infrastructure that took place in the town of Kilwa in 2004.
The African Court on Human and Peoples’ Rights was created by a Protocol to the African Charter on Human and Peoples’ Rights. The Protocol was adopted in 1998 but came into force in 2004. 29 African States have ratified the Protocol. The Court is based in Arusha, Tanzania and is the principal judicial body charged with human rights enforcement in Africa.

The Court has both advisory and contentious jurisdiction. The Court may render an advisory opinion on any legal matter relating to the Charter or any other relevant human rights instrument at the request of a Member State of the AU, the AU, any of its organs, or any African organization recognized by the AU.
Contentious Jurisdiction

• In its contentious jurisdiction, it can receive cases from States, the Commission and African Inter-governmental organisations. By virtue of articles 5(3) and 34 (6) of the Protocol creating the Court, individuals and NGOs can only submit cases to the Court if the State(s) concerned have made a declaration to the Court accepting the competence of the Court to receive cases from individuals and NGOs. As of now, only nine States have made the declaration; Mali, Malawi, Tanzania, Burkina Faso, Ghana, Benin, Cote d’Ivoire, Tunisia and The Gambia.
Additional Protocols

• In July 2008, the Heads of State and Governments of the AU adopted a new protocol to merge the African Court on Human and Peoples’ Rights with the non-existent African Court of Justice to create a Court to be known as the African Court of Justice and Human Rights. Then in June 2014, the Heads of States and Government adopted yet another protocol giving the Court jurisdiction over certain international crimes. However, none of these two protocols have got the necessary ratifications to bring them into force.
African Charter on the Rights and Welfare of the Child

• The ACRWC came into force in November 1999, and was the first regional and comprehensive treaty on the rights of the child.
ACERWC

• The ACRWC makes provision for the creation of the African Committee of Experts on the Rights and Welfare of the Child. This Committee has the principal responsibility for interpreting the provisions of the ACRWC and of monitoring its implementation.

• Similar to the African Commission on Human and Peoples’ Rights, the Committee also examines State reports and receives communications alleging violations of the ACRWC.
ACERWC Communications

• See the case of Michelo Hunsungule and others (on behalf of children in northern Uganda) v. The Government of Uganda, 2005, No. 001/Com/001/2005
Sub-regional mechanisms for human rights enforcement

Regional Economic Courts in Africa can also take cases on human rights issues.

• The ECOWAS Court has a clear mandate to hear complaints from individuals on allegations of human rights violations. See *Rev. Solomon Mfa and others v. Nigeria*, ECW/CCJ/APP/11/16

• The Eastern African Court of Justice (EACJ) and the SADC Tribunal have an implied jurisdiction to entertain human rights complaints.
Challenges

• Implementation of Decisions
• Accessibility of the mechanisms
• Delays in litigation – takes a lot of time