



Engagement with the African human rights mechanisms

An overview for protection actors

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Introduction

This overview is intended to be a resource for Protection Clusters and other protection actors with an interest in engaging with the African Human Rights mechanisms. The African human rights system has been established by the African Union, a continental organization with 55 members. The main regional human rights instrument is the African Charter on Human and Peoples' Rights, which recognizes collective rights as linked to individual rights, socio-economic rights and the rights to self-determination and does not allow for derogations.¹

The African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights, also known as the “Banjul Commission”, was established in 1986 by the African Charter on Human and Peoples' Rights and consists of 11 members elected by the AU Assembly from experts nominated by the state parties to the Charter. The Commission meets twice a year in ordinary sessions. It sits in Banjul, the Gambia. The ACHPR is mandated to:

- Carry out sensitization, public mobilization and information dissemination on the protection of human rights through seminars, symposia, conferences and missions.
- Ensure protection of human and peoples' rights through its communication procedure, friendly settlement of disputes, state reporting (including consideration of NGOs' shadow reports), urgent appeals and other activities of special rapporteurs and working groups and missions;
- Interpret the provisions of the Charter upon a request by a state party, organs of the AU or individuals.

The Commission can exercise its jurisdiction over all States that have ratified the African Charter on Human and Peoples' Rights. All AU Member States, except for Morocco, have ratified the Charter.

How does the ACHPR protect human rights?

State reports: One of the most effective means by which the Commission can ensure the promotion and protection of human and peoples' rights is through the State reporting procedure. According to article 62 of the Charter, States parties submit an initial report two years after the Charter entered into force, and then periodic reports, due every two years, detailing the legislative and other measures taken by that State to give effect to the African Charter. The 42 States that have ratified the **Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, known as the Maputo Protocol, have also an obligation to submit a report on the implementation of the rights enshrined in the Protocol.** The report must have a Part A that reports on the rights in the African Charter and then a Part B that deals with the rights in the Maputo Protocol. Similarly, States that have ratified the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (the Kampala Convention) must report on the measures they have taken to give effect to it whenever they present their reports under article 62 of the African Charter.² National Human Rights Institutions (NHRIs), Civil Society Organizations (CSOs) and Non-governmental organizations (NGOs) can contribute to the examination of the periodic reports and submit their contributions, including shadow reports, to the Commission's Secretary at least 60 days prior to the date fixed for the examination of the report. These contributions provide the Commission with a complete and more accurate picture of the state of implementation of human rights provisions. The State reporting procedure has several advantages: it provides the opportunity to establish a dialogue between the Commission, States parties and CSOs. It further provides tools for civil society to monitor the implementation of the African Charter at national levels and it allows information to be shared amongst states themselves and amongst CSOs.

¹ <https://www.achpr.org/mfoac>

² For more information for CSOs on the Kampala Convention, please see: Training Manual for Civil Society Organizations on the Kampala Convention and its Model Law developed by the Norwegian Refugee Council and available here: https://www.globalprotectioncluster.org/wp-content/uploads/Training_Manual_CS0_KampalaConvention_April2019-1.pdf

Individual complaints: The African Commission is mandated to receive and consider complaints alleging human rights violations by State Parties to the African Charter. These complaints are known as communications which can either be inter-state communications (submitted by one or more States against another one or more States) or individual communications submitted by an individual, group of individuals or an organization (CSO and NGO) against a State or group of States. The communications pass through a process that culminates in a decision adopted by the Commission, which is also known as Recommendation. Communications can have several advantages: they represent an opportunity for victims of human rights violations to seek remedies and they provide the Commission with the opportunity to interpret the provisions of the Charter and set standards.

Special mechanisms: The African Commission has three kinds of Special Mechanisms which respond to specific human rights concerns: the working groups, the committees and the Special Rapporteurs. The commission establishes the mandate and the terms of reference for each special mechanism. At each ordinary session, each special mechanism presents a report on its work

- **Working groups:** Working groups are primarily mandated to develop guidelines on the protection of specific rights. Those guidelines may later serve as the basis for draft conventions and protocols. These working groups are on: indigenous peoples/communities in Africa; on Economic, Social and Cultural Rights in Africa; on the death penalty; on specific issues relevant to the work of the African Commission; on the rights of Older Persons and People with disabilities, and on extractive industries and human rights violations in Africa. Working groups can also conduct fact-finding missions;
- **Committees:** There is a Committee for the Prevention of Torture to promote the implementation of the Robben Island Guidelines for the prohibition and prevention of torture in Africa; a Committee on the Protection of the Rights of People Living with HIV; and a Study Group on Freedom of Association.
- **Special Rapporteurs:** the Special Rapporteurs, who are individual Commissioners holding a specific mandate to advance human rights in a specific thematic area. They also seek and receive information relevant to the thematic area from stakeholders including governments as well as CSOs and NGOs. The Special Rapporteurs' mandates cover: Extra-judicial, Summary or Arbitrary Execution; Freedom of Expression and Access to Information; Human Rights Defenders; Prisons and Conditions of Detention; Refugees, Asylum Seekers, Migrants and Internally Displaced Persons; and Rights of Women in Africa.

For the work of protection actors in the field, the mandate of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa, established in 2004, is of particular relevance. The SR is mandated to:

- Seek, receive, examine, and act upon the situation of refugees, asylum seekers and internally displaced persons in Africa;
- Undertake studies, research and other related activities to examine appropriate ways to enhance the protection of refugees, asylum seekers, and internally displaced persons;
- Undertake fact-finding missions, investigations, and visits to refugee camps and camps for internally displaced persons;
- Assist Member States of the African Union to develop appropriate policies, regulations and laws for the effective protection of refugees, asylum seekers, and internally displaced persons;
- Cooperate and engage in dialogue with Member States, National Human Rights Institutions, relevant intergovernmental and non-governmental bodies, international and regional mechanisms;
- Develop and recommend effective strategies to better protect rights;
- Raise awareness and promote the implementation of the UN Convention on Refugees of 1951 as well as the OAU Convention Governing the Specific Aspects of Refugees Problems in Africa; and
- Submit reports at every ordinary session of the African Commission on the situation of refugees, asylum seekers and internally displaced persons in Africa.

How can you engage with the ACHPR?

Non-exhaustive examples of engagement:				
Organize joint activities/statements to raise awareness on particular protection issues affecting people in displacement	Submit information to the SR on refugees, asylum seekers, internally displaced persons and migrants in Africa on issues affecting the rights of internally displaced persons	Support and promote the use of different procedures and mechanisms available within the ACHPR to address violations of people in displacement	Use decisions/recommendations by the ACHPR to strengthen advocacy messages with duty-bearers in the country	Undertake joint studies/research on the rights of people in displacement

The African Court on Human and Peoples' Rights

The [African Court on Human and Peoples' Rights](#) was established as a legal entity in 1998 by the [Protocol to the African Charter on Human and Peoples' Rights](#), which entered into force in 2004 and it is ratified by 33 States³ of the AU. It is composed of 11 judges and sits in Arusha, Tanzania. While the African Commission has jurisdiction over a State automatically once the State ratifies the African Charter, the African Court acquires jurisdiction over a State only if it has ratified the Protocol. The Court was established to complement and reinforce the functions of the Commission. Its objective is to enhance the protective mandate of the Commission by strengthening the human rights protection system in Africa and ensuring respect for and compliance with the African Charter, as well as other international human rights instruments, through judicial decisions.

How does the African Court on Human and Peoples' Rights protect human rights?

To implement its human rights mandate, the African Court on Human Rights can exercise a contentious jurisdiction and an advisory jurisdiction. Under its contentious jurisdiction, as set out by article 3 of the Protocol, the African Court can adjudicate cases and disputes concerning the interpretation and application of the African Charter, the Protocol of the African Court and other relevant human rights instruments, including the Kampala Convention. Its decisions are legally binding. Under article 4, the Court is given an advisory jurisdiction, meaning that the Court has competence to issue an opinion on any legal matter touching on the Charter or any other relevant human rights instrument, provided that the subject matter of the opinion is not related to a matter being examined by the Commission.

Individual complaints: Under its contentious jurisdiction, the African Court can receive complaints from individuals and NGOs, either directly or indirectly. However, there are significant requirements to submit a complaint, which make the opportunity to seize the Court challenging and drastically limit the number of cases that can be submitted to the Court. NGOs can submit a complaint alleging human rights violations directly to the African Court only if they are registered with [observer status](#) before the Commission. Moreover, for individuals and NGOs to submit a case directly to the Court, the State against which the complaint is brought must have made a specific declaration under [article 34\(6\)](#) of the Protocol. As of April 2022, only 8 States⁴ have accepted the competence of the Court according to its Art. 34 (6). NGOs and UN entities can also submit complaints indirectly through the ACHPR, which decides whether to refer the case to the Court or not. The advantage of the indirect route is that organizations do not need to have the observer status with the Commission to initiate communications before the African Commission that could result in a case before the African Court.

³ Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Cote d'Ivoire, Comoros, Congo, Gabon, Gambia, Ghana, Guinea-Bissau, Kenya, Libya, Lesotho, Mali, Malawi, Madagascar, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Sahrawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia, Uganda, and Republic of Congo.

⁴ Burkina Faso, Gambia, Ghana, Guinea-Bissau, Mali, Malawi, Niger and Tunisia

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

The [African Charter on the Rights and Welfare of the Child](#) (ACRWC) established the [African Committee of Experts on the Rights and Welfare of the Child](#). It comprises of 11 members and meets twice a year in ordinary sessions of 10 days maximum. It sits in Addis Ababa, Ethiopia. The ACERWC is mandated to promote and protect the rights enshrined in the African Charter on the Rights and Welfare of the Child, monitor its implementation and interpret its provisions.

How does the ACERWC protect human rights?

State reports: Similarly to the ACPHR, the Committee ensures that the rights in the ACRWC are respected through a reporting procedure, where States parties to the ACRWC have an obligation to submit an initial report within two years of ratification, and then periodic reports which focus on the implementation of the rights enshrined in the ACRWC every three years. Upon reviewing of the reports, the Committee issues [concluding observations](#) and provides recommendations to the State on implementation of the ACRWC, in many cases including recommendations related to stateless, refugee, asylum-seeking and/or internally displaced children. In line with the Committee's Guidelines for States, their reports should include information on measures taken to:

- Provide access for children to procedures for determining refugee status, taking into account the special needs and rights of children;
- Provide protection and humanitarian assistance to refugee children, children seeking asylum and internally displaced children, including measures to facilitate family tracing and reunification and other protection measures for unaccompanied and separate children; and,
- Cooperate with existing international organizations which protect and assist refugees, asylum seekers and internally displaced persons.

Investigations: The Committee can also conduct [investigative missions](#) when alleged violations of children's rights have been reported in a State Party. Such investigations may be at the Committee's initiative, or upon any matter referred to the Committee. Previous investigations have been conducted in Mozambique, Ethiopia, Zimbabwe and Guinea. The Committee developed detailed [guidelines on the conduct of investigations](#).

Communications: Article 44 of the ACRWC mandates the Committee to receive and address any complaint alleging the violation of the rights of the child or any act or omission that is or may be prejudicial to the rights of the child. Anybody, including children themselves, can bring a communication. The Committee allows for communications to be made by an individual, a group and civil society organizations as long as they are recognized by an AU Member State, the AU or the UN.

Special mechanisms The Committee has appointed [10 Special Rapporteurs on thematic areas](#). The roles and responsibilities of the Rapporteurs include, among others, setting standards and developing strategies to better promote and protect children's rights, conducting missions and undertaking various studies as well as cooperating and engaging in dialogue with Member States, NHRIs, international and regional mechanisms, UN Agencies and CSOs. In particular, the Special Rapporteur on Children on the Move, appointed in 2017, is mandated to collect and receive information on the situation of migrant and displaced children and identify the main legislative and policy gaps in the protection of asylum seeker, refugee and displaced children in State Parties.

How can you engage with the ACERWC?

Non-exhaustive examples of engagement:

Provide the ACERWC with briefs on the situation of displaced children on countries whose state party reports will be considered by the Committee.

Disseminate the ACERWC's general comments and decisions on communications to advance the policy and legal frameworks at national and regional levels on children in displacement.

African Human Rights Mechanisms: Individual Complaints Procedures

	Requirements	Advantages	Disadvantages
African Commission on Human Rights and People's Rights (Banjul Commission)	<ul style="list-style-type: none"> The respondent State must have ratified the Charter (all African states except Morocco) Exhaustion of all available domestic legal remedies, unless the domestic procedure is unavailable or has been unduly prolonged Standing: communication must not be based exclusively on news from the media Communication must be submitted within a reasonable time from the date of exhaustion of domestic legal remedies Communication must not deal with a matter which has already been settled by some other international human rights body Complaints can be submitted by any ordinary citizen, group, NGO or State party to the African Charter 	<ul style="list-style-type: none"> No obligation to be represented by a legal professional No obligation for the complainant or their legal representative to travel to the Commission's session In practice, alleging a single violation of human rights is enough for the Commission to consider the communication The Commission has the powers to adopt provisional measures in cases of emergency Complainants can request to remain anonymous Can raise awareness of an issue nationally or internationally and put pressure on the State concerned Can result in a settlement between the parties Provides a channel for individuals, groups and NGOs to access the African Court 	<ul style="list-style-type: none"> No legal assistance offered by the Commission, but may help in obtaining legal aid under certain circumstances⁵ Recommendations made by the Commission are not legally binding There are no procedures that can compel implementation of the Commission's recommendations or provisional measures Judicial-type remedies such as injunctions or monetary damages cannot be enforced if the State refuses to comply Not a good option for urgent situations where rapid remedies or legislative changes are needed (cases take between four to eight years on average)
African Court on Human and Peoples' Right (ACHPR)	<ul style="list-style-type: none"> Same requirements as a communication to the Banjul Commission Matters may be brought before the court by: <ul style="list-style-type: none"> The Banjul Commission A State party which has brought or is subject to a claim before the Banjul Commission A State party whose citizen is a victim of human rights violation African Intergovernmental Organisations Individuals and NGOs can file complaints to the court directly or indirectly <ol style="list-style-type: none"> Indirectly: Through a communication to the Banjul Commission. The Commission will then decide whether to refer the case to the Court. Complaints can be filed against States that have ratified the Charter AND the Court Protocol. Directly: Through a communication to the Court. For NGOs, only those with observer status before the Commission⁶ may submit communications directly. Communications can only be filed against States that have ratified the Charter, Court Protocol AND have made a declaration under article 34(6) of the Protocol accepting the competence of the Court to receive cases brought by non-state actors (Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tanzania) 	<ul style="list-style-type: none"> No filing fees to pay Legal aid services offered Adversarial proceedings allowing the parties to make written and oral submissions, present evidence and call witnesses. Decisions that contain detailed legal reasoning and legally binding judgments and orders, rather than being limited to making recommendations. The Court can order provisional measures in urgent situations to avoid irreparable harm to a person Effective and efficient handling of urgent cases Good prospects for enforcement of orders and judgments 	<ul style="list-style-type: none"> Article 34(6) Court Protocol is a severe limitation on the jurisdiction of the court as it limits the number of states against which cases may directly be brought before the court. For States that have not made a declaration under article 34(6), cases may only be brought by individuals and NGOs through the Banjul Commission, which is less efficient. Only the 30 States that have ratified the Court Protocol can ultimately fall under the jurisdiction of the court.

⁵ [A Guide to the African Human Rights System](#), Pretoria University Law Press (2016). See p. 19.

⁶ Observer status is granted by the Commission upon application by an interested organisation which meets the [criteria](#) set by the Commission. As of August 2021, UNHCR has not been granted observer status by the Commission. See the [list of NGOs which have been granted observer status](#).

<p>African Committee of Experts on the Rights and Welfare of the Child (ACERWC)</p>	<ul style="list-style-type: none"> • Any person, group or NGO <u>recognized by</u> the African Union, a Member State or the United Nations can submit a communication • Communications must be brought against a State party to the Charter on the Rights and Welfare of the Child • Standing: communication must not be based exclusively on news from the media • Communication must be compatible with the provisions of the Constitutive Act of the AU and the African Children's Charter • compatible with the provisions of the Constitutive Act of the AU and the African Children's Charter • Must not raise matters already settled or pending before another international body or procedure of the AU or the UN • Exhaustion of all available domestic legal remedies, unless the domestic procedure is unavailable or has been unduly prolonged • Must not contain any disparaging or insulting language • Must be presented within a reasonable period of time after domestic remedies were exhausted or the attempts to exhaust domestic remedies were frustrated. 	<ul style="list-style-type: none"> • In cases of urgency, the Committee can order provisional measures • Committee can conduct a hearing to allow parties to make oral arguments if it considers necessary to do so • Committee can receive amicus curiae briefs from organisations 	<ul style="list-style-type: none"> • The Committee, unlike the Banjul Commission, does not have standing to bring a matter under the contentious jurisdiction of the African Court. It can only request an advisory opinion from the Court. Organisations wishing that a case involving rights of the child end up before the Court must submit their complaint to the Court directly, if possible, or to the Banjul Commission. • Communication cannot be filed anonymously
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