



United Nations
Educational, Scientific and
Cultural Organization

ZENTRUM ZUR FÖRDERUNG DER PROMOTION OF
MENSCHENRECHTE HUMAN RIGHTS
IN GEMEINDEN AT THE LOCAL AND
UND REGIONEN REGIONAL LEVELS

Under the auspices of UNESCO

The African Human Rights System and Local Governance

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7 December 2020

Outline

- Major African HRs Instruments;
- Institutional Framework;
- Implementation of principles and standards: National;
- Implementation of principles and standards: Local;
- The African Charter on Local Governance;

Major African Human Rights Instruments



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- African Charter on Human and Peoples' Rights, 1981/1986 [all African States except Morocco]
- African Charter on Democracy, Elections and Governance, 2007/12 [34/55]
- OAU Convention Governing Specific Aspects of Refugees in Africa , 1969 [46/55]
- African Charter on the Rights and the Welfare of the Child (ACRWC), 1990/1999 [49/55]
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003/2005 [42/55], Maputo, Mozambique;

Major HRs Instruments (cc'd)

- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009/2012 [31/55]
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons in Africa, January 31, 2016 [0/55; 5 signatures]
- Protocol to the African Charter on Human And Peoples' Rights on the Rights of Persons with Disabilities in Africa, 2018 [nothing]
- Protocol to the African Charter on Human And Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 1998/2004 [30/55; 7 Declarations; Withdrawals]
- Other instruments from international human rights, the Charter of the UNs, the UDHR, etc;

Major HRs Instruments (cc'd)

- Summary of Content of Instruments
 - Human and Peoples' Rights;
 - Democracy, Elections, and Governance;
 - Refugees in Africa;
 - The Rights and the Welfare of the Child;
 - The Rights of Women in Africa;
 - Internally Displaced Persons;
 - The Rights of Older Persons in Africa;
 - The Rights of Persons with Disabilities in Africa;

African Charter on Human and Peoples' Rights

- The pillar of the African human rights system;
- All 54 African States, except Morocco;
- Civil, political, economic, social and cultural rights;
- Individual and collective rights;
- Peoples' rights;
- Universality and indivisibility and interdependence;

Review of the Charter

- First part deals with rights and duties;
- **General Obligations of States:**
 - SPs/MS: Recognition and Undertaking to adopt legislative or other measures to give effect to the rights, duties and freedoms;
 - All members either incorporation, transformation, domestication, etc and implementation;
- **Non-discrimination;**
- **Equality** before the law and equal protection of the law;

Unique Features

- **Duties of Individuals**
 - African contribution;
 - Objected initially;
- **Peoples' Rights**
 - Collective or group rights;
 - The most controversial;
 - The Charter gives no definition to the term **people**: but in practice constructed broadly and can mean: people of a state, cultural/linguistic community, indigenous communities, minorities, etc;
- **Self-determination:**
 - Independence, self-government, local government, etc (but secession is not included);
- **The Right to Development**
 - Participate, contribute, and enjoy;

Unique Features (cc'd)

- **Civil and political rights**
 - Jurisprudence of the **ACmHPR** be consulted
- **Economic, social and cultural rights**
 - No express statement about the **progressive approach** in international hrs law (ICESCR);
 - Justiciability;
- **Margin of appreciation**
 - The level of discretion national organs (all organs?) have in implementing their international obligations;
 - ‘A measure of diversity in interpretation’;

Institutions of the AU System

- **The principal human rights institutions**
 - African Commission on Human and Peoples' Rights;
 - African Court on Human and Peoples' Rights;
 - The Committee of Experts on the Rights and Welfare of the Child;
- **The African Commission on Human and Peoples Rights (established by the African Charter),**
 - **Composed of 11 members;**
 - **Mandate and functioning: Promotion and protection of human and peoples' rights ;**
- **Approaches of monitoring:**
 - **State reporting,**
 - **Individual communications and**
 - **Inter-state communications;**

- **The African Court on Human and Peoples Rights**
 - ‘Complement the protective mandate’ of the ACmHPR, with the power to provide **adjudication and advisory opinion**;
- Two options to appear before the ACTHPR.
 - By ratification of the Protocol: ACmHPR, States, and African Intergovernmental Organizations (IOs) may institute cases.
 - By an optional declaration: non-governmental organizations (NGOs) with observer status before the ACmHPR and individuals have the option to appear.
 - The ACTHPR is empowered to order any remedy, including **reparation and provisional measures**.
 - States parties are obliged to comply with its judgments.
 - The ACTHPR reports cases of non-compliance by states to policy organs;

International Criminal Jurisdiction of the Court

- Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 2014 [0/54]
 - International criminal jurisdiction: office of prosecutor; defence office; and the ICL Section of the Court;
- The International Criminal Law Section of the Court shall have three (3) Chambers: a Pre-Trial Chamber, a Trial Chamber and an Appellate Chamber.
- Fourteen (14) crimes: Genocide, Crimes against Humanity, War Crimes (these are recognized internationally), Crime of Unconstitutional Change of Government, Piracy, Terrorism, Mercenarism, Corruption, Money Laundering, Trafficking in Persons, Trafficking in Drugs, Trafficking in Hazardous Wastes, Illicit Exploitation of Natural Resources, and the Crime of Aggression.

Implementation, Compliance and Enforcement: National

- Obligations of states under international law, including human rights law;
- Taking legislative, judicial, and other measures nationally;
- They are the ones reviewed before regional organs;
- Exhaustion of local (national) remedies rule;
- You may not have standing before regional organs;
- Still the regional might be weak (governments refusing compliance, for example);
- Resistance to regional monitoring and oversight (we need to work on this more);
- By appeal or cassation (from sub-national organs), often;

Implementation, Compliance and Enforcement: Local

- In reality implementation is local;
- Respect, protect, and fulfill in real terms are about local authorities;
 - Local courts;
 - Local police;
 - Local service providers;
 - Etc;

The African Charter on Values and Principles of Decentralization, Local Governance and Development (2014)

- **Only 6 Ratifications (not yet entered into force);**
- **Among Objectives of the Charter relevant here:**
 - Promotion of decentralisation, local governance and local development;
 - Promotion of local local governance and local democracy as cornerstones of decentralisation;
 - Promotion of resource mobilisation and local economic development with the view to eradicating poverty;
 - Promotion of the core values and principles of decentralisation, local governance and local development;
 - Promotion of the association and cooperation of local governments at the local, national, regional and continental levels; and
 - Promotion of civil society, private sector and people participation in decentralisation, local governance and local development

Core Values

- a) Community – based participation and inclusiveness
- b) Solidarity
- c) Respect for human and peoples' rights
- d) Diversity and tolerance
- e) Justice, equality and equity
- f) Integrity
- g) Civic responsibility and citizenship
- h) Transparency and accountability
- i) Responsiveness

Principles

- **Local Governance;**
- **Subsidiarity;**
- **Resource Mobilisation and Local Economic; Development;**
- **Diversity and Differentiation;**
- **Legality;**
- **Inclusion, Equity and Equality;**
- **Shared Responsibility and Complementarity;**
- **Participation;**
- **Representation;**
- **Transparency, Accountability and Ethical Behaviour;**
- **Mainstreaming Gender, Youth and Disability;**
- **Efficiency;**
- **Solidarity, Cooperation and Partnership**

- **Article 15 Mainstreaming Gender, Youth and Disability**
- 1. Local governments or local authorities shall integrate gender, youth and disability issues in the overall process of formulating policy, planning for development and providing services, as well as in implementing, monitoring and evaluating development programmes and projects.
- 2. Local governments or local authorities shall promote and ensure the equal and effective participation of women, youth and people with disability in public life, leadership and management positions on all matters relating to local governance and local development.
- 3. Local governments or local authorities shall promote and increase participation of women, youth and people with disability in all matters relating to local governance and local development.