

UNIT 7: THE PROTECTION OF
HUMAN RIGHTS FROM A
REGIONAL PERSPECTIVE (IV):
THE WORK OF THE
ORGANIZATION OF AFRICAN
UNITY (OAU) AND THE AFRICAN
UNION (AU)

1. General ideas. 2. The African Charter on Human and Peoples' Rights and its Additional Protocols. 3. Other Conventions for the protection of Human Rights.



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1. GENERAL IDEAS



- Organization of African Unity (OAU) 1963-1999
 - Regional IO. 53 Member States.
 - The Addis Ababa Charter (Ethiopia) of 25/5/1963.
 - Main objectives of the OAU:
 - ❖ To promote the unity and solidarity of the African States;
 - ❖ To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;
 - ❖ To defend their sovereignty, their territorial integrity and independence;
 - ❖ To eradicate all forms of colonialism from Africa; and
 - ❖ To promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights.
- Replaced by the AU (July 2002). 55 member states.
 - Main objectives of the AU:
 - ❖ Achieve greater unity and solidarity between African countries and their people;

- ❖ Defend the sovereignty, territorial integrity and independence of its Member States;
- ❖ Accelerate the political and socio-economic integration of the continent;
- ❖ Promote and defend African common positions on issues of interest to the continent and its peoples;
- ❖ Encourage international cooperation
- ❖ Promote peace, security, and stability on the continent;
- ❖ Promote democratic principles and institutions, popular participation and good governance;
- ❖ Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
- ❖ Establish the necessary conditions which enable the continent to play its rightful role in the global economy and in international negotiations;
- ❖ Promote sustainable development at the economic, social and cultural levels as well as the integration of African economies;
- ❖ Promote cooperation in all fields of human activity to raise the living standards of African peoples;

- ❖ Coordinate and harmonise the policies between the existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
 - ❖ Advance the development of the continent by promoting research in all fields, in particular in science and technology
 - ❖ Work with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent.
 - ❖ Ensure the effective participation of women in decision-making, particularly in the political, economic and socio-cultural areas;
 - ❖ Develop and promote common policies on trade, defence and foreign relations to ensure the defence of the Continent and the strengthening of its negotiating positions;
 - ❖ Invite and encourage the full participation of the African Diaspora as an important part of our Continent, in the building of the African Union.
- Principal decision making organs: The Assembly of Heads of State and Government, the Executive Council, the Permanent Representatives Committee (PRC), Specialised Technical Committees (STCs), the Peace and Security Council and The African Union Commission.

- Organs that handle judicial, legal matters and HR issues: African Commission on Human and Peoples' Rights (ACHPR), African Court on Human and Peoples' Rights (AfCHPR), AU Commission on International Law (AUCIL), AU Advisory Board on Corruption (AUABC) and the African Committee of Experts on the Rights and Welfare of the Child.
- Some problems of institutional coherence in the protection system and other problems of the AU: Process of reform of the IO started in 2016.

2. THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

- The African Charter on Human and Peoples' Rights (ACHPR):
 - Signed in 1/6/1981. In force in 21/10/1986 (55 States parties).
 - Creation of the African Commission on Human and Peoples' Rights.
 - Civil and political rights, together with economic, social and cultural rights of the individual and the community. All of them absolute and without the possibility of suspension.
 - Amended by :
 - ❖ Protocol to the ACHPR on the Establishment of an African Court on Human and Peoples' Rights, signed in 10/06/1998 (in force: 25/1/2004)-30 States parties.
 - ❖ Protocol to the ACHPR on the Rights of Women in Africa, signed in 1/07/2003 (in force: 25/11/2005)-42 States parties.
 - ❖ Protocol to the ACHPR on the Rights of Older Persons, signed in 31/1/2016 (pending).

2.1. Obligations of the parties

a) Generic obligations

- Art. 1 and Art. 2 of the Charter (absolute obligation):
 - Recognition of rights, duties and freedoms.
 - Commitment to adopt measures necessary for implementation.
 - Non-discrimination (right to equality): nationals and foreigners, although political rights are only recognized for citizens.

b) Specific obligations

- Measures to ensure health and medical assistance in case of illness.
- Assistance to the family, elimination of discrimination against women, protection of women's and children's rights.
- Right to free disposal of natural wealth and resources.
- Elimination of forms of foreign economic exploitation (international monopolies).
- Right to development.
- Prohibition of the use of territories as a base for subversive or terrorist activities.
- Promote and ensure education in respect for rights.

- Ensuring independence courts and improving national institutions.

c) *Women's Rights Protocol*

- Protection of women in armed conflict.
- Protection of elderly women, women with disabilities or in a state of need.
- Guarantee adequate reparation in cases of rape.

d) *Protocol on the Rights of the Elderly (pending)*

- Incorporation of UN principles in favor of the elderly (independence, participation, self-realization, care, dignity) in national legislation.
- Elimination of discrimination and right to accessibility.
- Right to make decisions.
- Enjoy social protection and avoid inhumane or harmful treatment.
- Encourage family care and access to residential care.
- Special protection for elderly women, elderly people with disabilities, or those caring for children.
- Protection in times of conflict.
- Access to health, education, recreational activities.

2.2. Recognized Rights

a) Human Rights

i. Civil and political rights

- Equality before the law.
- Right to respect for the dignity of the person and recognition of legal personality.
- Right to freedom and security.
- Right to be judged: particularities of religious tribunals.
- Freedom of conscience, profession and practice of religion.
- Right to information and freedom of expression.
- Freedom of association.
- Freedom of assembly.
- Freedom of movement and residence, right of asylum.
- Right of citizens to participate freely in the conduct of public affairs of their country.
- Right to property.
- Additional Protocol Women's Rights:
 - Specific rights marriage, separation, divorce and annulment.
 - Access to justice and equality before the law.

- Right to political participation.
- Widowhood and inheritance.
- Additional Protocol Rights of the Elderly.

ii. Economic, social and cultural rights

- Right to work.
- Right to physical and mental health.
- Right to education.
- Right of elderly and disabled persons to special protection measures.
- Additional Protocol Women's Rights:
 - Right to education and training for women.
 - Economic rights and social protection.
 - Right to access to healthy and adequate food, drinking water.
 - Right to an adequate habitat and positive cultural environment.
 - Right to a healthy environment.
 - Right to sustainable development.
- Additional Protocol Rights of the Elderly.

b) Peoples' Rights

- Peoples? Problems of ownership and justiciability:
 - Equality of Peoples.
 - Self-determination (independence, self-government, local government, federation, confederation, unitary state or any other form in accordance with the will of the people and respectful of the principles of sovereignty and territorial integrity).
 - Free disposal of natural wealth and resources.
 - Economic, social and cultural development.
 - Right to peace and security.
 - Right to a satisfactory and global environment, conducive to their development.

2.3. Duties

- Generically: the individual towards the family and society, towards the State and other collectivities, and towards the International Community.
- List:
 - To respect and consider fellow human beings without discrimination.
 - Duty to preserve harmonious development of the family.

- To respect parents, to feed them and to assist them in case of need.
- Duty to serve the national community and not to compromise security State, nationality or residence.
- Duty to reinforce social and national solidarity, national independence and territorial integrity.
- Contribute to the defense of the country.
- To work for the defense of the fundamental interests of society.
- Duty to ensure the safeguarding and reinforcement of African cultural values.
- Duty to contribute to the promotion and realization of African unity.

2.4. HR Protection Measures

- Institution in charge of ensuring protection of rights and mechanisms to guarantee compliance with State obligations:
 - Charter: African Commission on Human and Peoples' Rights (art. 30).
 - Protocol 1998: African Court on Human and Peoples' Rights.

a) *The African Commission on Human and Peoples' Rights.*

- Functioning: 12/6/1989 in Banjul (Gambia).
- Composition:

- 11 members, African personalities of high moral standing, integrity and impartiality, and competence in human and peoples' rights.
- Elected by the OAU Conference of Heads of State and Government.
- Organization: Chairman, Vice-Chairman and Secretary (appointed by the OAU Secretary).
- Non-permanent. Ordinary (2/year) and extraordinary sessions.
- African languages, English and French.
- Public meetings and decisions by consensus or simple majority.
- Jurisdiction: Protection of human rights in Africa
 - System of Communications:
 - ❖ States' communications (art. 47): State party vs. another State party on violation.
 - ✓ Time limit 3 months from communication for written explanations/information.
 - ✓ Time limit without friendly settlement: Submission of the matter to the Commission by means of written notification to the Chairperson and Secretary OAU, and to the State concerned (also directly).
 - ✓ Exhaustion of domestic remedies.
 - ✓ Request for necessary information.

- ✓ In camera examination.
- ✓ Issuance of report on facts and conclusions, and recommendations.
- ❖ Other communications (art. 55): individuals and non-governmental organizations against States parties (Actio popularis).
 - ✓ Before the Secretary of the Commission, submission to the Commission.
 - ✓ Knowledge by absolute majority.
 - ✓ Private meeting (3-member working groups) and admissibility requirements: exhaustion of domestic remedies.
 - ✓ Knowledge State concerned and period of 3 months allegations.
 - ✓ Report.
- System of Reports: Reports to be submitted by States Parties (Art. 62+Additional Protocol on Women's Rights): Biannual reports on national measures and progress in human rights.

b) *The African Court on Human and Peoples' Rights.*

- Regulation:
 - Protocol to the African Charter, 10/7/1998 (in force, 25/1/2004).
 - Protocol on the Statute of the African Court of Justice, 1/7/2003 (in force, 11/2/2009).

- Protocol on the Statute of the African Court of Justice and Human Rights 1/7/2008 (pending ratification).
- Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, of 27/7/2014 (pending ratification).
- Composition: 11 judges, nationals OAU Member States, elected by secret ballot OAU Heads of State and Government Conference.
- Organization: President, Vice-President and Secretariat (Secretary and officials).
- Headquarters Arusha (Tanzania).
- In operation: 2/7/2006.
- Jurisdiction: Disputes relating to the interpretation and application Charter and Protocols, and other HR instruments.
 - Contentious procedure:
 - ❖ Standing: Commission, State party that has submitted a case to the Commission, State party against which a complaint has been lodged, State party of victim nationality, and African intergovernmental organizations. Also individual or organizational claims directly if permitted by the Court.
 - ❖ Direct knowledge or referral to the Commission.
 - ❖ Binding judgments and execution within a fixed period of time.

- ❖ As of December 2020, only six (6) of the thirty-one (31) State Parties to the Protocol have deposited the declaration recognizing the competence of the Court to receive cases directly from NGOs and individuals. The six States are: Burkina Faso, The Gambia, Ghana, Mali, Malawi and Tunisia.
- Consultative procedure: Petition State OAU, OAU or any organ, or organization recognized by the OAU, on legal question Charter and Protocols, or any human rights instrument.
- New Rules of procedure into force on 25 September 2020: Enforce compliance mechanism with the Judgments and Rulings of the Court.

3. OTHER TREATIES REGARDING HR PROTECTION.

- African Charter on the Rights and Welfare of the Child, 1/7/1990 (in force, 29/11/1999). Special treaty body for the monitoring of the rights.
- Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Kampala Convention, 23/10/2009 (in force 6/12/2012).
- OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa, 10/9/1969 (in force, 20/1/1974).
- African Youth Charter, 2/7/2006 (in force 8/8/2009).
- Statute on the Establishment of a Legal Aid Fund for the Human Rights Organs of the African Union, 30/1/2016 (pending ratification).



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