



## Annex to the ABC of Human Rights for Development Cooperation: The African Human Rights System (The African System)

(Update February 2009)

### Introduction

Apart from the international human rights system of the United Nations (see GTZ 2009, [ABC of Human Rights for Development Cooperation](#)), several regional organisations have developed their own regional human rights systems. These protection mechanisms have been devised in order to strengthen human rights in these regions and to adequately address cultural and regional concerns and particularities. The UN have actively supported these regional processes. Thus regional protection mechanisms constitute an important complement to the protection of human rights at the universal level.

The African human rights system was developed by the Organisation of African Unity (OAU), since 2000 called the [African Union \(AU\)](#). Based in Addis Ababa (Ethiopia), the AU counts [53 member states](#). Its Constitutive Act lists the promotion of peace and stability in the region, sustainable development, and the promotion of human rights among its objectives.

As a complement to the GTZ 'ABC Info-tool', this annex explains the basic features of the African system useful for development practitioners working in the African context. It will also be available in French. The GTZ cross-sectoral project 'Realising Human Rights in Development Cooperation' has created a similar tool for the [Inter-American human rights system](#).

### This e-info-tool consists of four parts and deals with

1. [The core African human rights instruments](#)
2. [African human rights reporting and monitoring mechanisms](#)
3. [Interpretation und operationalisation of human rights](#)
4. [African special mechanisms](#)
5. [Links](#)



## 1. The core African human rights instruments

The basis for the African system is the African Charter on Human and Peoples' Rights of 1981. It contains civil, political, economic, social and cultural rights. Some rights are individual guarantees, while others are phrased as collective rights, such as the right to self-determination; to freely dispose of wealth and natural resources; to a general satisfactory environment and in particular the right to economic, social and cultural development.

### The core African human rights instruments (in chronological order) and the number of ratifying states

[Convention Governing the Specific Aspects of Refugee Problems in Africa](#)

45

[African Charter on Human and Peoples' Rights](#)  
(Banjul Charter)

53

[African Charter on the Rights and Welfare of the Child](#)

44

[Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights](#)

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[Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#)

(Maputo Protocol)

25

[African Union Convention on Preventing and Combating Corruption](#)

28

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In addition to the African Charter, two so-called Optional Protocols have been adopted and ratified by various African states, which are of particular relevance: The [Protocol on the Establishment of the African Court on Human and Peoples' Rights](#) was adopted in 1998. It will be presented in detail in the next chapter. In 2003, the [Protocol on the Rights of Women in Africa \(Maputo Protocol\)](#) was adopted and entered into force in 2005. It stipulates state obligations to take measures against discrimination and violence against women. In particular, it explicitly prohibits harmful cultural practices, such as female genital mutilation (FGM), and obliges states to take protective measures in order to prevent these. It also specifies a woman's minimum age for marriage to be 18. Furthermore, it contains equal rights for both sexes concerning political participation, property, the right to inheritance, marriage, divorce and the rights in the context of family planning and reproductive health.

In 2007, the AU adopted an [African Charter on Democracy, Elections and Governance](#) which requires states to promote democracy, the rule of law and human rights, popular participation through universal suffrage as well as to eliminate all forms of discrimination. It also authorizes the Peace and Security Council of the African Union to impose sanctions in cases of unconstitutional changes of government (Art. 24-26). The Charter has yet to acquire the 15 ratifications necessary to enter into force.

### Relevance for development cooperation

By ratifying these African human rights instruments, African partner countries accept certain legally binding Human Rights obligations that are, or should be, essential guiding principles for their development strategies and priorities.

As expressed in the BMZ (German Ministry for Economic Cooperation and Development) [Development policy action plan on human](#)



[rights, 2008-2010](#), German Development Cooperation will address civil, political, economic, social, and cultural human rights obligations more explicitly and systematically in government negotiations, as well as in current and future projects and programmes. In other words, German development cooperation has pledged to base its work on its own as well as partner countries' international and regional human rights commitments.

States may pay greater attention and feel stronger ownership towards human rights standards that have been developed within their specific regional and cultural context. Increasing the reference to the specific African instruments, which reflect African values, can thus lead to greater acceptance of development strategies and programmes based on these norms. Therefore, African human rights treaties over time bear good prospects to develop into a strong reference framework for cooperation with donors.

If the partner country has not ratified fundamental treaties or Optional Protocols, political dialogue can be an instrument to encourage ratification. In addition to the policy dialogue with the partner country, human rights should also be more systematically utilised as a common framework in the harmonisation efforts of bi- and multilateral donors working in a specific country. Thus, Germany will support a human rights-based approach in the development of Joint Assistance Strategies.

### Resources

- a) African Conventions, Charters and Protocols: [Status of ratification, per treaty](#)
- b) [Online guide](#) to international procedures available in cases of Human Rights violations in Africa
- c) [Brief history](#) of the African Human Rights system

## 2. African human rights reporting and monitoring mechanisms

The two main institutions of the African system are the [African Commission on Human and Peoples' Rights](#) (Commission) and the [African Court on Human and Peoples' Rights](#) (Court). These institutions are in charge of monitoring the compliance of the AU Member States with the African Charter and the other African human rights instruments. In addition, the [African Charter on the Rights and Welfare of the Child](#) has its own treaty body receiving state reports and issuing opinions.

### The Commission

The Commission was established in 1981 and is located in Banjul (The Gambia). It consists of 11 members, who sit for a six year renewable term. The Commission meets twice a year, with sessions usually lasting up to 10 days. The basic functions of the Commission include: promoting human and peoples' rights through studies, seminars, and awareness raising in the member countries and protecting these rights through reporting and complaints procedures and interpreting the human rights anchored in the African Charter. An overview of the activities of the Commission is provided in the [Annual Activity Reports](#) of the Commission. The Commission has three human rights monitoring procedures: the state-reporting procedure, inter-state communication procedure and the individual communication procedure.

### State-reporting procedure

Under the state-reporting procedure, state parties to the African Charter are required to submit a report to the Commission every two years on their advances in complying with the African Charter. NGOs are allowed to submit reports on their own behalf ("alternative reports") and can be granted observer status with the Commission. In 2001, the Commission started to issue [concluding observations](#) with regard to the reports considered.



### Inter-state communication procedure

Under the inter-state communication procedure (Art. 48-49) there are two ways of settling disputes: Either states communicate under the auspices of the Commission and try to reach a peaceful settlement. In case they do not succeed, both states refer the case directly to the Commission. Or states complain directly to the Commission right away. In case the Commission is seized, it examines the case and prepares a report stating the facts, findings, conclusions and recommendations. This report is sent to the states concerned and the Assembly of Heads of State and Government. The inter-state complaints procedure so far has only been used on one occasion by the Democratic Republic of Congo against Burundi, Rwanda and Uganda in 1999.

### Individual communication procedure

In the individual communication procedure states, individuals or organisations on behalf of an individual may submit a complaint to the Secretariat of the Commission. In order for a complaint to be considered by the Commission, the stated violation has to be part of a systematic pattern of gross human rights violations. In practice this condition is not strictly adhered to by the Commission. If the Commission wants to proceed with the case, the AU Assembly of Heads of State or Government are notified. They may then request the Commission to undertake an in-depth study and submit a factual report accompanied by its findings and conclusions. In practice, the Commission tries to achieve a friendly settlement. The final decision of the Commission, the so-called recommendation, is not legally binding on state-parties. The entire procedure is confidential. The final decision is only published by the Commission if the AU Assembly of Heads of State and Government agree.

In the prominent case of [Interight on behalf of Safiya Yakubu Husaini et al / Nigeria](#) (p. 29ff)

in 2003 the complainant alleged that a Shari'a Court in Nigeria had sentenced Safiya Yakubu Husaini and other women to death by stoning on charges of adultery. The complainant criticised Shari'a law, which had been introduced in many Nigerian states, for subjecting Muslims to lower standards of fair trial merely by reason of their faith. This was substantiated by the fact that the death penalty was applied for offences that were not punishable in the same way under the national criminal code. Safiya Yakubu Husaini was acquitted after the Shari'a Courts of Appeal admitted prosecution inconsistencies, consequently the complainant decided to withdraw the case from the Commission. Therefore, the Commission did not pronounce itself on the compatibility of Shari'a law with the African Charter on Human and Peoples' Rights.

### Resources

- a) The [status of submission of state periodic reports to the African Human Rights Commission](#) is available online.
- b) [Rules of Procedure of the African Human Rights Commission](#)
- c) Decisions on the basis of individual complaints that have been made available to the public are annexed to the [Annual Activity Reports](#) of the African Human Rights Commission.
- d) Procedure for [state and individual complaints](#) under the African Charter for Human and Peoples' Rights
- e) [Handbook for submitting individual communications](#) to the African Human Rights Commission

### The Court

In 2003, the Protocol establishing the African Court on Human and Peoples' Rights entered into force. The Court is seated in Arusha, Tanzania, and complements the protective mandate of the African Commission. It has jurisdiction over all cases and disputes



submitted to it concerning the interpretation and application of the Charter and any other relevant human rights instrument ratified by the states concerned. As such the Court has advisory jurisdiction (non-binding legal opinions) as well as adjudicatory jurisdiction (legally binding decisions).

### **Adjudicatory jurisdiction**

Concerning the adjudicatory jurisdiction, there are four categories of complainants that may initiate proceedings: the Commission, states, individuals and NGOs that enjoy observer status before the Commission. NGOs and individuals can institute cases directly before the Court only if the state against which the application is lodged has made a declaration that it accepts the competence of the Court to receive such communications. The judgements of the Court are binding and the states concerned must comply with the judgement and guarantee its execution. The Council of Ministers of the AU monitors its execution.

### **Advisory jurisdiction**

With regard to the advisory jurisdiction, the Court, at the request of a member state of the AU, the AU itself or any African organisation recognised by the AU may provide an opinion on any legal matter relating to the Charter or any relevant other human rights instrument, provided that the subject matter of the opinion is not being examined by the Commission.

Due to its recent establishment, the Court is not yet fully operational. However, as judges have been already selected, it is expected to take up its work shortly.

### **African Court of Justice and Human Rights**

In the future, the [African Court on Human and Peoples' Rights](#) is expected to merge with the [African Court of Justice](#) of the African Union into the new African Court of Justice and Human Rights, which shall be the main judicial organ of the African Union as a whole. This is stipulated in the [Protocol on the](#)

[Statute of the African Court of Justice and Human Rights](#) (2008) which is not yet into force. This protocol, once entered into force, will replace the two protocols establishing the African Court of Human and Peoples' Rights and the Court of Justice of the AU. Key changes are an increase in the number of judges and the division of the Court into two sections: a General Affairs Section and a Human Rights Section composed of 8 judges each. Again, the African Commission on Human and Peoples' Rights and State parties can bring cases to the Court. But next to them, also African National Human Rights Institutions (NHRIs), African Intergovernmental Organizations accredited to the Union or its organs and the African Committee of Experts on the Rights and Welfare of the Child can institute procedures as well. Up to now, there is no provision to grant direct access for individuals and NGOs to the new court.

### **Committee on the Rights and Welfare of the Child**

In 2002, the [Committee on the Rights and Welfare of the Child](#) was established on the basis of Article 32 of the African Charter on the Rights of the Child. It consists of 11 members. States are required to submit reports to the Committee every three years. In addition, it also contains an individual complaints procedure. Any individual, group, or NGO recognised by the AU, by a member state or by the United Nations, may lodge a complaint on any matter covered by the Charter.

### **Resources**

- a) Homepage of the [African Committee of Experts on the Rights and Welfare of the Child](#)
- b) [Rules of Procedure of the Committee on the Rights and Welfare of the Child](#)

### **Relevance for development cooperation**

Development cooperation can encourage states to fulfil their reporting obligations towards the regional human rights



mechanisms and thereby strengthen partner countries' human rights commitments.

The concluding observations, reports and recommendations of the Commission and the findings and advisory opinions issued by the Court – once delivered and made available online - could deliver important information on the human rights situation in African countries and serve as a reference framework for donors and partners alike. Thus, support should be offered to the Commission and the Court as important regional actors.

Information gathered from the regional human rights protection system can be discussed in political dialogue meetings. It is useful to relate the development of country and sector strategies and programming to the opinions and recommendations of the African human rights institutions.

Through human rights, development cooperation strategies are being legitimised by norms that are of core regional relevance. The synergy thus achieved helps to further the Paris Agenda on donor harmonisation and supports ownership by the partner country, since it relates to the partners' own commitments.

The African Human Rights institutions – especially the Commission and the Court - are constantly improving the accessibility of their decisions and reports. Even so, decisions of the Commission as well as the forthcoming judgements of the Court still await to be analysed in a systematic way according to the human rights laid down in the convention. Also, online availability of the valuable resources of the African Human Rights system could be improved. Therefore, apart from basing development programmes and policy dialogue on human rights obligations, German development cooperation could contribute to the promotion of human rights in Africa by actively supporting research and capacity-building in the area of analysis and documentation of the decisions, judgements,

reports and resolutions issued by the African human rights protection system.

### 3. Interpretation and operationalisation of human rights

The decisions of the Commission on individual complaints constitute an important source of interpretation of the African Charter on Human and Peoples' Rights. Thus, the Commission in the case of [The Social and Economic Rights Action Center and Another \(Serac\) v. Nigeria](#) in 1996, held that international social-economic rights that are not explicitly recognised in the Charter should, however, be regarded as implicitly included, for example the right to adequate food has to be read into the right to dignity, the right to life and the right to development, all which are explicitly guaranteed in the Charter. In interpreting the Charter, the Commission also refers to other international and regional instruments, including general comments of the UN treaty-bodies.

The international and the African human rights protection systems do not oppose, but complement each other. The African Charter for Human and Peoples' Rights emphasizes the importance of the international human rights instruments for the interpretation of the African Charter. This was also confirmed by the Commission in another case, [Purohit and Moore v. The Gambia](#), decided in 2001. The Commission declared that, in interpreting and applying the African Charter, it relies on its own jurisprudence, and as provided by Articles 60 and 61 of the African Charter, on appropriate and relevant international and regional human rights instruments, principles and standards, including the 1993 [Vienna Declaration and Programme of Action](#). The Commission also stressed, that despite prevailing poverty and lack of resources to guarantee the human right to health, States Parties are obliged, "to take concrete and targeted steps, while taking full advantage of



their available resources, to ensure that the right to health is fully realised in all its aspects without discrimination of any kind". In validating this obligation for the interpretation of the African Charter, the African Human Rights Commission embodied an important principle of international human rights jurisprudence.

The Commission has issued a number of declarations and principles on various human rights issues, including [freedom of expression](#) and the [right to a fair trial](#).

Furthermore, the Commission has issued [resolutions on certain human rights violations](#) in Africa. First, it has issued resolutions on different topics relevant to development such as: [Economic, Social and Cultural Rights in Africa](#), [participatory governance](#), [HIV/AIDS](#), the [protection of human rights defenders](#) or [elections in Africa](#). Second, it has adopted resolutions on country-specific situations. In 2008, for instance, it adopted resolutions on the human rights situation in Somalia, Gambia, Zimbabwe and the Democratic Republic of Congo. In some cases, the Commission conducts on-site visits for its country reports. Thus it has issued reports on visits, such as to Zimbabwe, Mauritania and Sudan.

#### **Relevance for development cooperation**

The instruments of the African human rights institutions can be useful for development practitioners in defining the targets of the country, sector strategies, and programming. In particular the decisions, declarations and resolutions can provide useful information on the human rights situation in a partner country.

#### **Resources**

- a) [Declarations of the African Commission](#)
- b) [Resolutions adopted by the African Commission on Human Rights and Peoples' Rights](#)
- c) Decisions of the African Commission: by [country](#) (without full text links) and decisions sorted [alphabetically](#) with full text links
- d) Decisions of the African Commission on [ESCR-Net](#) with supporting documentation and comments
- e) [African Human Rights Law Reports](#) of the Centre for Human Rights at the University of Pretoria

#### **4. African special mechanisms**

The Commission has established several working groups:

- [on indigenous populations/communities in Africa](#);
- [on the death penalty](#),
- [on Economic, Social and Cultural Rights in Africa](#) and
- on guidelines and measures for the prohibition and prevention of torture and inhuman punishment in Africa called [the Robben Island Guidelines](#).

Working groups are instituted by the Commission, which also determines their mandate. Their activities include fact-finding missions, human rights education and promotion as well as policy advice to national authorities, institutions and organisations.

The Commission has also appointed several special thematic rapporteurs:

- [on prisons and conditions of detention in Africa](#);
- [on the rights of women in Africa](#);
- [on the position of human rights defenders](#);
- [on refugees, asylum seekers, migrants and internally displaced persons in Africa](#);



- [on freedom of expression in Africa](#), and
- [on extra-judicial, summary and arbitrary executions](#).

The Commission decides on the mandate of the special rapporteurs. In general, their activities include to seek and to receive information on the topic of their mandate, to undertake fact-finding missions, to engage in dialogue with national institutions and to develop and recommend strategies on the topic of their mandate.

### Relevance for development cooperation

The reports by working groups and by the special rapporteurs can constitute an important source of information for development practitioners active in the African region on the status of human rights with regard to the specific topic under review. Their reports – if published and accessible – may also provide an insight into contemporary human rights debates.

### Resources

- a) A small summary of the reports can be found in the [Annual Activity Reports](#).
- b) For detailed information, please see the [list of reports by special rapporteurs](#), which can also be requested via the Secretariat of the Commission.

## 5. Links

- a) The African Union: <http://www.africa-union.org/>
- b) Regional Offices in Africa of the [Office of the United Nations High Commissioner for Human Rights](#)
- c) [African Human Rights Resource Centre](#) of the University of Minnesota

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