



Annex to the ABC of Human Rights for Development Cooperation

The African Human Rights System

Introduction

Human rights are protected at the global, regional and national level. While the human rights protection system of the United Nations (UN) seeks to provide protection at the global level, regional organisations have devised mechanisms to address human rights concerns and particularities at the regional level. The UN actively supports these regional processes and stresses their complementary character.

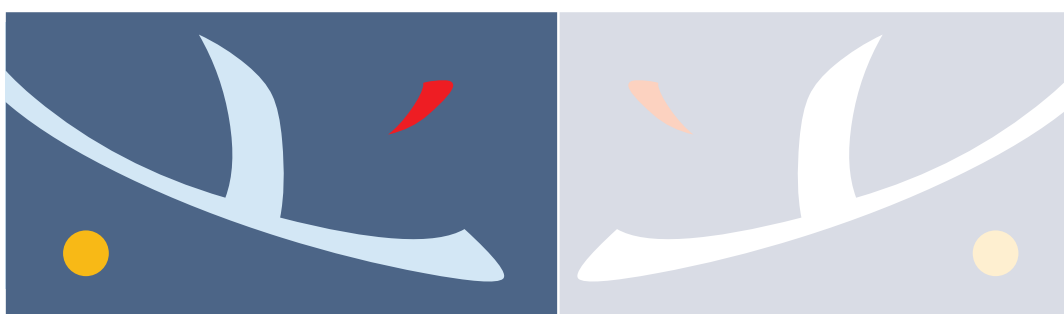
As an annex to the e-info-tool [The ABC of Human Rights for Development Cooperation](#) (2016, PDF, 241 KB), which explains the international human rights system, this publication outlines the basic features of the African human rights system. For other regional systems please see

- The Inter-American Human Rights System – in [English](#) (PDF, 326 KB) and [Spanish](#) (PDF, 315 KB)
- The European Human Rights system – in [English](#) (PDF, 225 KB)

This publication seeks to encourage development practitioners to draw on the African human rights system in their engagement with partners, for instance in policy dialogue and programming. To this end, each section is followed by suggestions on the relevance for development cooperation as well as specific resources. German development cooperation considers the African human rights system to be of critical importance and has [supported the African Court on Human and Peoples' Rights since its establishment in 2008](#) (PDF, 289 KB).

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1. Core African Human Rights Instruments

Human rights origins in Africa

It has been claimed by both African and Western commentators that human rights are a concept that has been imported to the African continent. The Manden Charter and the Timbuktu manuscripts provide evidence to the contrary.

The Manden Charter

The Manden Charter was proclaimed in the early 13th century in Kouroukan Fuga, a territory in today's Mali, which makes it one of the oldest human rights texts in the world. It advocates some of the most fundamental rights and freedoms such as social peace among diverse ethnic and cultural groups, the inviolability of the human being, education, food security, freedom of expression and trade and the abolition of slavery. The Charter was declared a [UNESCO Intangible Cultural Heritage of Humanity](#) in 2009.

Human rights in the Timbuktu manuscripts

Some of the Timbuktu manuscripts date back to the 13th century when the city of Timbuktu, located in today's Mali, was a centre for trade and Islamic learning. They cover African and Islamic history and thought in the fields of, inter alia, medicine, science and poetry. A manuscript of the 17th century that has attracted [international media attention](#) describes human rights such as of the unborn child as well as the rights of mothers and their unconditional protection by society.

African Charter on Human and Peoples' Rights – 'Banjul' Charter

In 1981 the predecessor of the African Union (AU), the Organization of African Unity (OAU), adopted the [African Charter on Human and Peoples' Rights](#) (Banjul Charter) (PDF, 66 KB, not barrier-free). The Banjul Charter integrates civil and political rights and social, economic and cultural rights in one treaty, unlike the two human rights covenants at the international level, the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, both from 1966. In addition, as its title indicates, the African Charter on Human and Peoples' Rights stipulates group rights such as the right to self-determination, the right to freely dispose of wealth and natural resources, the right to a general satisfactory environment, and the right to economic, social and cultural development. All AU member states have ratified the Charter except for South Sudan, which ratified the Charter in 2013, but yet needs to deposit the instruments of ratification for its consent to be bound by the treaty to be fully established. The Banjul Charter establishes the African Commission on Human and Peoples' Rights with the objective to promote, protect and

interpret the content of the Charter (see below). The Commission stresses the complementarity of the African human rights system with the international human rights system.

Scope of rights under the Banjul Charter

[Social and Economic Rights Action Center v Nigeria \('Ogoni-land Case'\)](#) is considered a landmark case as it states the Commission's opinion that universal socio-economic rights not explicitly recognised in the Banjul Charter should be regarded as implicitly included. For example, the right to adequate food, not explicitly mentioned in the Banjul Charter, is to be read into the right to dignity, the right to life and the right to development.

Interplay between the universal and regional human rights system – the Banjul Commission's view

In [Purohit and Moore v The Gambia](#), the Commission clarified that it draws on its own jurisprudence and, as provided by Articles 60 and 61 of the Charter, on appropriate and relevant international and regional human rights instruments, principles and standards including the 1993 Vienna Declaration and Programme of Action as well as General Comments of UN treaty bodies.

African Child Charter 1990 and African Youth Charter 2006

The [African Charter on the Rights and Welfare of the Child of 1990](#) (Child Charter) seeks to ensure the human rights of persons below the age of eighteen. As the [UN Convention on the Rights of the Child](#), it covers the entire spectrum of civil, political, economic, cultural and social rights. It also takes into account issues of particular regional relevance. For example, the Child Charter contains a direct prohibition to recruit children below the age of 18 years; it provides special rights for children living under Apartheid and regimes practicing racial, ethnic, religious or other forms of discrimination; and it sets the minimum age of marriage at 18 years. The Child Charter has the second highest rate of ratification after the Banjul Charter. However, seven out of 54 AU member states, including states with high numbers of child soldiers like the Democratic Republic of Congo and Somalia, have not yet ratified it. In 2006, the AU complemented the Child Charter with the [African Youth Charter](#) (PDF, 246 KB, not barrier-free) which promotes and protects the human rights of persons between 15 and 35 years.

Maputo Protocol 2003

The [Maputo Protocol](#) of 2003 was adopted after intensive lobbying of a number of [African women's organisations](#). The Protocol requires states to take measures against discrimination and violence against women, prohibits harmful traditional practices such as female genital mutilation and obliges states to take measures

in order to prevent these practices. Women's minimum age of marriage is set at 18 and equal rights for both sexes are stipulated in relation to political participation, property, the right to inheritance, marriage, divorce, family planning and reproductive health.

Democracy Charter 2007 and related instruments

The [African Charter on Democracy, Elections and Governance](#) (Democracy Charter) of 2007 came into force in 2012. One of the objectives of the Democracy Charter is to promote adherence to the 'principle of democracy and respect for human rights' (Article 2). The Democracy Charter acknowledges the link between human rights and democracy, in particular with regard to civil and political rights. It introduces new enforcement mechanisms: State Parties have to report biannually to the AU Commission on their progress in the implementation of the Charter (Article 49); the AU Commission can send a monitoring commission to observe elections (Article 18); and the AU can impose sanctions on State Parties that violate the Charter (Article 46).

Core African human rights instruments (in order of adoption) and number of ratifications (from AU website as of April 2016)	
Convention Governing the Specific Aspects of Refugee Problems in Africa (1969)	45
African Charter on Human and Peoples' Rights (Banjul Charter) (1981)	53
African Charter on the Rights and Welfare of the Child (1990)	47
Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998)	30
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) (Maputo Protocol)	37
African Union Convention on Preventing and Combating Corruption (2003)	37
African Youth Charter (2006)	36
African Charter on Democracy, Elections and Governance (2007)	24

Resources

- African Union, [Treaties, Conventions, Protocols & Charters with status lists](#)
- African Commission, [ratification maps and tables](#)
- German Institute for Human Rights, [FAQ: Do regional human rights treaties contradict the universality of human rights?](#)

- Pan African Lawyers Union, [Guide to Complementarity within the African Human Rights System](#) (PDF, 5.9 MB, not barrier-free)
- Frans Viljoen, [An Introduction to the Protocol of the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (PDF, 356 KB, not barrier-free)
- OHCHR (2012), [Human Rights Indicators – A Guide to Measurement and Implementation](#)

In 2011, the AU also adopted a [Human Rights Strategy for Africa](#) (PDF, 207 KB, not barrier-free). While not formally binding, the strategy represents the guiding framework for the AU Commission's Department of Political Affairs to strengthen the African human rights system by enhancing coordination among the AU, regional economic communities, human rights institutions and member states. The strategy does, therefore, not create new obligations, but constitutes an action plan, which outlines activities to be undertaken by relevant human rights stakeholders at the regional and national level. One of these is an assessment of the capacity needs of the various institutions comprising the African human rights system, scheduled for 2013, but not published yet.

Relevance for Development Cooperation

Human rights are a guiding principle for German development cooperation. The human rights-based approach of the German Ministry for Economic Cooperation and Development (BMZ) is outlined in the strategy paper '[Human Rights in German Development Policy](#)' (2011, PDF, 485 KB) and requires that German development cooperation systematically contributes to the realization of human rights standards and principles.

- **Political dialogue:** A country's ratification of human rights treaties, including regional treaties, reflects political intention and legal commitment. If a country has not yet signed or ratified regional human rights treaties and optional protocols, political dialogue can help encourage signature and/or ratification as well as the acceptance of the jurisdiction of regional human rights mechanisms (e.g. the African Court, see below).
- **Programme Design and Implementation:** Human rights-based development cooperation requires that programmes support partners in putting their human rights commitments into practice. At the design stage, a country's long-standing human rights obligations as well as recent ratification of certain treaties can be used to identify areas of collaboration. Human rights standards can also be used to formulate indicators to monitor and evaluate progress of programmes (see indicator tables in OHCHR 2012).
- **Donor coordination:** Regional human rights instruments – just as international ones – are also a useful common framework for efforts of bi- and multilateral partners to harmonize their development programmes and projects.

2. Monitoring and Enforcement Mechanisms

The institutions that monitor and enforce African human rights treaties are the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child (Child Committee). The Court is expected to merge with the African Court of Justice to the African Court of Justice and Human Rights, once the respective protocol has been ratified by a sufficient number of states.

The African Commission (the 'Banjul Commission')

The African Commission is based in Banjul (The Gambia). It took up its work in 1987 and consists of 11 members who are appointed by the AU assembly for a six year renewable term. The Commission meets twice a year for sessions of up to 10 days and can hold extraordinary sessions if deemed necessary. Prior to the sessions of the Commission, an NGO Forum takes place.

The mandate of the Banjul Commission comprises:

- **Promotion** of human and peoples' rights through sensitisation, public mobilisation and information dissemination, e.g. via conferences and missions,
- **Protection** of human and peoples' rights through its communication procedure, friendly settlement of disputes, state reporting, urgent appeals and its special mechanisms such as rapporteurs and working groups,
- **Interpretation** of the Charter upon the request by a state party, organs of the AU or individuals or on its own initiative.

Below, the different procedures of the Commission are explained – some are designed to deal with *country situations*: state-reporting, inter-state and individual communication procedures. Others, such as working groups and special rapporteurs, seek to advance *thematic questions*. Resolutions can deal with topics or country situations and seek to clarify and highlight pertinent human rights issues.

State-Reporting Procedure

Every two years, state parties to the Banjul Charter are required to submit a report to the Commission on their progress in complying with the Charter. NGOs can submit parallel reports and can seek observer status. In 2001, the African Commission started to issue concluding observations on the country reports it considers.

Resources

- African Commission, [State Reports, Concluding Observations](#)
- Centre for Human Rights at the University of Pretoria, some [parallel reports](#) by civil society
- International Service for Human Rights, [Road map for civil](#)

[society engagement – State reporting procedure of the African Commission on Human and Peoples' Rights](#)

- African Commission, [list of NGOs with observer status](#) (by name or country)

Inter-state communication procedure

Under the inter-state communication procedure, a state can draw the attention of another state to alleged human rights violations of the other state with the aim to resolve the issue. If the issue has not been settled bilaterally within three months, the matter can be submitted to the Commission. Alternatively, the matter can be referred to the Commission immediately. Once the Commission has been involved, it examines the case and prepares a report stating the facts, findings, conclusions and recommendations for the states concerned and for the attention of the AU Assembly of Heads of State and Government.

The only inter-state communication so far: DRC vs Rwanda, Burundi and Uganda

In 2003, the Democratic Republic of Congo launched a successful complaint against its neighbouring states Burundi, Rwanda, and Uganda for grave and massive violations of human and peoples' rights committed by their armed forces in Congolese provinces. [The Commission found a violation of the Charter](#), urged the states concerned to withdraw their troops and recommended the payment of reparations.

Individual communication procedure

Individuals, groups of individuals or organisations can also submit a complaint to the Commission relating to human and peoples' rights grounded in the Banjul Charter. If the Commission admits a case, it tries to achieve a friendly settlement. Where no such settlement is reached, the Commission decides on the merits of the case and issues recommendations.

The individual communication procedure is confidential. The final decision is only published if the AU Assembly of Heads of State and Government agrees to do so. There has been some debate as to whether the Commission's findings are binding since no explicit norm exists to this effect. Since 2010, following a [resolution](#) in 2006, the Commission's Rules of Procedure therefore outline a detailed follow-up procedure (Rule 112): Within 180 days of being informed of the Commission's decision, the State in question needs to inform the Commission of any action to implement the decision. One commissioner acts as rapporteur to monitor the follow-up and the Commission includes information on follow-up activities in its activity reports. If states fail to comply with the recommendations, the AU can decide on sanctions on the basis of the [AU Constitutive Act](#) (Article 23(2)).

In case of a 'series of serious or massive violations of human and peoples' rights', the Commission, according to Article 58, shall draw the attention of the Assembly of Heads of State and Gov-

ernment to the case, which may then request the Commission to undertake an in-depth study and issue findings and recommendations (see also Rules of Procedure Rule 84). The Commission clarified in *Jawara v The Gambia* (PDF, 61 KB, not barrier-free) that individual complaints can be considered without amounting to such grave violations, as the opposite had been claimed by the state in question.

Resources

- African Commission, [Rules of Procedure](#) (2010, PDF, 726 KB, not barrier-free)
- African Commission, [Communications Procedure](#)
- African Commission, [Guidelines for the Submission of Communications](#)
- African Commission, [Decisions on Communications](#), by country, article and outcome
- African Commission, search for [Activity Reports](#)
- University of Minnesota Human Rights Library, [List of Decisions on Communications](#)
- [African Human Rights Case Law Analyser](#), in English, French and Portuguese
- SOMO and Natural Justice, [The African Commission on Human and Peoples' Rights](#) (PDF 3.2 MB, not barrier-free) (guidance on how to file a complaint)
- International Service for Human Rights, [Website on the African Commission](#) with News and Updates

Special Mechanisms:

Working Groups and Special Rapporteurs

The Banjul Commission has established working groups and special rapporteurs on a range of topics. The mandate of these special mechanisms is to analyse laws, policies and practices, undertake country missions, carry out research and submit reports to develop and recommend strategies to advance the topic of their respective mandate. To this end, they engage with governments as well as non-state actors proactively.

Every commissioner is a member of one or more working groups or acts as a special rapporteur. Working Groups cover topics such as extractive industries, HIV/AIDS, older persons, persons with disabilities or indigenous peoples. Special rapporteurs address issues including human rights defenders, the rights of women, prisons and conditions of detention or freedom of expression.

Resources

- African Commission, [Special Mechanisms](#) and key documents (e.g. mission reports, activity reports, statements, press releases)
- University of Pretoria Centre for Human Rights, [A Guide to the General Comments on Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) (PDF, 4.54 MB, not barrier-free)

What have special mechanisms achieved? Examples

- The [Working Group on Indigenous Populations and Communities](#), for example, together with the International Labour Organisation, published a research report on the rights of Indigenous Peoples in 24 African countries in 2009 which laid the foundations for the recognition of indigenous peoples' rights in Africa.
- The [Special Rapporteur on Prisons and Conditions of Detention](#) conducted fact-finding missions to several countries and held consultations to draft the Commission's [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#) (2014).
- At the initiative of the [Special Rapporteur on the Rights of Women in Africa](#), the Commission has adopted General Comments on provisions in the Maputo Protocol, namely on [women's right to self-protection and to be protected from HIV infection](#) (2012) and on [women's right to health, including sexual and reproductive health](#) (2014).
- Under the auspices of the [Special Rapporteur on Human Rights Defenders](#), a Study Group on Freedom of Association in Africa undertook research on laws and practices regarding freedom of assembly and association in Africa and published their findings and recommendations in a report (2015, PDF, 1.9 MB, not barrier-free).

Resolutions

The Commission adopts thematic and country-specific resolutions. Thematic resolutions elaborate in greater detail specific human rights issues or a particular substantive right in the Charter and have a function similar to that of the general comments issued by the UN treaty bodies. Country-specific resolutions address pertinent human rights concerns in member states.

Selected Resolutions of the African Commission (on themes and countries)

- [Prevention of Torture](#) – The Robben Island Guidelines
- [Fair Trial and Legal Assistance in Africa](#)
- [Sexual Orientation or Gender Identity](#)
- [The Right to Water](#)
- [Women's Right to Land and Productive Resources](#)
- Human rights abuses in [Egypt](#)
- Sexual violence against women in the Democratic Republic of [Congo](#)
- Xenophobic attacks in [South Africa](#)

Resource

- African Commission, resolutions [by session or keyword or document type](#)

Relevance for Development Cooperation

- **Political Dialogue:** Concluding observations, decisions on communications (recommendations) and country resolutions by the Commission as well as mission reports and statements by special rapporteurs and working groups provide an overview of a country's current human rights challenges. In addition, information on the implementation of the Commission's decisions by the concerned state (which can be found in the Commission's Activity Reports) can help assess the political will to act on human rights commitments. All those documents can thus be useful to prepare discussions on implementation bottlenecks and on areas of cooperation.
- **Programme Design and Implementation:** The same documents can be used to analyse the context of a specific country, identify areas for technical support and design capacity development interventions. Moreover, thematic resolutions as well as reports from special rapporteurs and working groups contain regionally relevant information and guidance on topics such as water, housing, natural resources or women's rights to land and productive resources and can therefore inform the design, implementation and monitoring of programmes in these areas.

The Child Committee

The African [Committee of Experts on the Rights and Welfare of the Child](#) was established in 2001 and has eleven members. The mandate of the Child Committee includes the promotion, protection and interpretation of the [Child Charter](#). To implement its mandate, the Child Committee can carry out direct investigations by using any appropriate measure. The Committee also receives state reports from States parties on the implementation of the Child Charter in a three-year cycle and drafts concluding observations in response. The Committee interprets the Child Charter through general comments. It adopted its first general comment on the topic of children of imprisoned parents in 2013 and a second one on the issue of birth registration, name and nationality and prevention of statelessness. The Committee can also receive communications by any individual, including a child, or by a group or NGO recognised by the AU, a member state or the UN. So far, the Child Committee has decided on two communications (see below). Implementation of the Committee's findings on communications by states and follow-up by the Committee are not described comprehensively in the Committee's rules and guidelines. However, the Committee indicates in its Guidelines for Communications that it intends to appoint a member to oversee the implementation of each decision. In addition, in the case against Kenya, the Committee gave the state six months to report on implementation; in the case against Senegal, it made reference to a provision in its revised Communication Guidelines, which indicates that this reporting requirement has now become a formal rule.

The Case of Kenyan Children of Nubian Descent

In 2011, in its first decision on a communication, [the Committee found](#) (PDF, 617 KB, not barrier-free) that Kenya violated the rights of children of Nubian descent by holding up a discriminatory birth registration system, which hampered access to Kenyan citizenship and therefore often left Nubian children stateless.

The Case of the Talibés Children in Senegal

In 2014, the [Committee published its second finding](#) (PDF, 7.5 MB, not barrier-free) on the conditions of some 100,000 children called Talibés who, while attending Qur'anic schools in Senegal, are required to beg on the streets. The Committee held that it was not enough for the state to argue that laws existed that made 'forcing a child to beg' a criminal offence. It recommended that the state implement very specific measures such as taking the concerned children 'back from the streets' and ensuring their physical and psychological well-being as well as training law enforcement officers and social workers on children's rights.

Relevance for development cooperation

The reference documents of the Child Committee can be used in the same way as those of the African Commission:

- **Political Dialogue:** Concluding observations shed light on the overall human rights situation in a country. Similarly, (non-)compliance with the decisions on communications of the Child Committee reflects a country's commitment to accountability and implementation. Both kinds of documents can thus be used in political dialogue and to analyse the country context when designing cooperation programmes.
- **Programme Design and Implementation:** The Committee's general comments will continue to address regionally relevant topics which can be used to inform the design, implementation and monitoring of relevant national or regional programmes. The Committee's decisions on communications can also provide useful programming guidance, e.g. in the above-mentioned cases in relation to review of birth registration systems or capacity development of law enforcement officers and social workers.

Resources

- Child Committee, [Rules of Procedure](#)
- African Union, Child Committee [procedural guidelines](#)
- Child Committee, [State Reports and Concluding Observations](#)
- Child Committee, [General Comments](#)
- Thoko Kaime, [The African Charter on the Rights of the Child: A socio-legal perspective](#) (PDF, 1.34 MB, not barrier-free)
- Sloth-Nielson/Mezmun, 'Children's Rights Litigation in the African Region: Lessons From the Communications Procedure under the ACRWC' in '[Litigating the Rights of the Child: The UN Convention on the Rights of the Child](#)'

The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights complements and reinforces the protective mandate of the Commission, in particular the Commission's individual communication procedure. It was established by the 1998 Protocol on the Establishment of the African Court on Human and Peoples' Rights (Court Protocol) (PDF, 20 KB, not barrier-free) and began its work in 2006. The Court is composed of eleven judges who are nominated by their states and elected by the AU Assembly of Heads of State and Government. By April 2016, 30 African states had ratified (PDF, 15 KB, not barrier-free) the Court Protocol and therefore accepted the Court's jurisdiction. The Court decides on cases and disputes concerning the interpretation and application of the Banjul Charter or any other relevant international, regional or sub-regional human rights instrument ratified by the states concerned. The Court can issue legally binding decisions (adjudicatory jurisdiction) or non-binding legal opinions (advisory jurisdiction).

Legally binding decisions (adjudicatory jurisdiction)

The Court can accept submissions from the African Commission, AU member states, the AU and other African intergovernmental organisations, individuals, and NGOs, which have observer status before the African Commission. As of April 2016, the Court had received a total of 59 submissions and nine requests for advisory opinion. It is important to note that NGOs and individuals can file cases directly before the Court only if the state concerned has issued a declaration accepting the Court's competence to receive cases from individuals (Article 5 (3) in conjunction with Article 34 (6)) Court Protocol. So far, only seven countries have issued this declaration: Benin, Burkina Faso (PDF, 672 KB, not barrier-free), Ivory Coast (PDF, 267 KB, not barrier-free), Ghana (PDF, 396 KB, not barrier-free), Malawi (PDF, 274 KB, not barrier-free), Mali and Tanzania (PDF, 109 KB, not barrier-free). Rwanda withdrew its 2013 declaration in 2016. In ten of the cases mentioned above, the Court found that it lacked jurisdiction because the defendant state had not yet accepted the Court's competence.

Once the Court has issued a judgment, the state concerned has to comply with it and guarantee its implementation. Implementation is monitored by the AU Council of Ministers (Executive Council) on behalf of the AU Assembly (Article 29 (2) Court Protocol, Article 64 (2) of the Rules of the Court) (PDF, 146 KB, not barrier-free). The Council of Ministers has already issued decisions 'urging' member states to report on the implementation of the Court's decisions, e.g. in its 25th Ordinary Session. In addition, the Court reports on non-compliance in its annual reports to the Assembly of the AU which can reinforce the Council of Ministers' monitoring role. The court seems to take its role to monitor states' compliance very seriously and is ready to voice its concerns: In one instance, the Court stated in its activity report: *'The failure [...] not to comply with the Order of the Court,*

threatens the very foundation of the existence of the Court as a judicial arm of the African Union. It erodes public confidence in our judicial system and mobilizes negative public perception about the ability of the Court to protect human rights on the continent. Furthermore, such non-compliance by any Member State has a tendency to put into question the credible utility of the judicial system created by the AU for the enforcement of the African Charter on Human and Peoples' Rights.' (Annual Activity Report of the African Court for the Year 2013).

Closing the Court's protection gap for individuals and NGOs

The requirement for a state declaration can lead to protection gaps for individuals from countries whose cases the Court cannot hear. These gaps can be partially overcome when the African Commission refers cases to the Court (Article 5 (1) Court Protocol). If a case is referred by the Commission, the country concerned only needs to have ratified the Court Protocol, an optional declaration is not required in this situation. So far, the Banjul Commission has referred three cases to the Court.

Demonstration of political will: African Commission v. Libya

In 2011, the African Commission submitted its first case to the Court. It dealt with serious and massive violations of human rights by Libya. Within three weeks and without a specific request from the Commission to this effect, the Court ordered provisional measures against Libya (PDF, 2.8 MB, not barrier-free), demanding the state to immediately refrain from any action that would result in loss of life or violation of physical integrity of persons. The case shows the willingness of the Court to respond swiftly. Given the situation in Libya in March 2011, the effects of the Court's decision were rather limited. Nevertheless, the prompt condemnation, by an African institution, of human rights violations was considered an important political signal, including by civil society networks in the region. The case was eventually closed for procedural reasons.

Interplay between the universal and various regional human rights systems – the African Court's view

In 2013, the Court decided in Mtikila v. Tanzania (PDF, 3.3 MB, not barrier-free) that the Tanzanian electoral law violated the Banjul Charter in as far as it prohibited independent candidates to run in presidential, parliamentary and local government elections. It ordered the state to take 'constitutional, legislative and all other necessary measures [...] to remedy the violations found'. Particularly noteworthy is the fact that the Court's judgment is not only based on the Banjul Charter but also draws on findings of other regional human rights mechanisms such as the Inter-American and the European Court of Human Rights and 'draws inspiration from' the Human Rights Committee's interpretation of the International Covenant on Civil and Political Rights.

Cases decided on merits

Mtikila v. Tanzania (2013) was the [first case](#) that was not dismissed for admissibility or jurisdiction issues but was decided on merits, in other words: on the content of the questions raised. The case has thus been considered pioneering in the [region](#) and [beyond](#). Since then, the Court has decided more cases on merits, for instance [Burkinabe Human and Peoples' Rights Movement and others v. Burkina Faso](#) (2011, PDF, 2.7 MB, not barrier-free) which dealt with the assassination of an investigative journalist and which is the first case in which [reparations were granted](#). [Lohé Issa Konaté v. Burkina Faso](#) (2014, PDF, 2.3 MB, not barrier-free) addressed the freedom of expression of a journalist who had been prosecuted for defamation and is expected to influence related rulings of African regional courts. The Court's 2015 decision on [Alex Thomas v. United Republic of Tanzania](#) (PDF, 674 KB, not barrier-free) is also considered a landmark judgment as it interprets the right to a fair trial in Africa and explicitly refers to the Banjul Commission's Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (see above).

Non-binding legal opinions (advisory jurisdiction)

The Court can also provide opinions on legal matters relating to the Banjul Charter or to any other relevant human rights instrument, provided that the African Commission is not examining the matter. Three categories of entities can claim standing before the Court and request advisory opinions: AU member states, the AU or its organs and African organisations recognised by the AU. Since other provisions of the Court Protocol use the terms 'African intergovernmental organisations' and 'NGOs with observer status before the commission', the question arises: When does organisations qualify as 'African organisation recognised by the AU'? It has been suggested by experts to consider an organisation recognised when it has been granted observer status with the Commission or any other regional intergovernmental organisation such as SADC, EAC, COMESA and ECOWAS. The Court has yet to confirm this interpretation. In any case, it is important to note that the group of possible applicants is broader than that of any other international court allowing for advisory opinions.

The Court fosters regional debate on human rights issues

In 2012, the NGO The Socio-Economic Rights and Accountability Project (SERAP) [requested](#) (PDF, 391 KB, not barrier-free) the Court to 'consider the effects of corruption on the poverty level in Nigeria, and whether the rising and systemic poverty violates specific human rights under the African Charter on Human and Peoples' Rights'. While [the Court ordered](#) (PDF, 391 KB, not barrier-free) to strike out the request for not specifying the exact norms it sought an opinion on, it led to a discussion of the issue by the national media (see [here](#)).

Relevance for development cooperation

- **Political Dialogue:** A state's commitment to human rights does not end with the ratification of conventions. Rather, commitment is tested when it comes to implementation and compliance. The willingness of states to submit themselves to the adjudicatory jurisdiction of the African Court also in cases of complaints by individuals and civil society organisations (CSOs) is therefore an important signal. As such, the submission of the relevant declaration allowing access for individuals and CSOs can be encouraged in political dialogue. Compliance with subsequent decisions of the Court – as with communications of the Commission – can also be raised with partners.
- **Programme Design and Implementation:** The Court's decisions, whether legally binding or advisory, can provide useful background information when analysing the political or social context of a country. In addition, they can help identify priority programme interventions.

Resources

- African Court, [Protocol on the Establishment of the Court](#) (PDF, 20 KB, not barrier-free)
- African Court, [Rules of the Court](#) (PDF, 146 KB, not barrier-free)
- African Court, [list of all cases; finalized cases; pending cases; advisory opinions](#)
- African Court, [activity reports](#)
- African Union, [Reports of the Executive Council](#), can contain information on member states' compliance
- [Livestream of Court's Sessions and Rulings](#)
- [Documentary on African Court on Human and Peoples' Rights](#)
- [African Human Rights Case Law Analyser](#), in English, French and Portuguese

The future: The African Court of Justice and Human Rights

The African Court of Justice and Human Rights will merge with the African Court on Human and Peoples' Rights and thus become the main judicial organ of the AU. The 2008 Protocol which establishes the Court requires ratifications from fifteen countries to enter into force ([Merger Protocol I](#)). So far, five countries have ratified (see status list [here](#)). In addition to submissions from the African Commission and State Parties, the new Court can also accept submissions from African National Human Rights Institutions and the African Committee of Experts on the Rights and Welfare of the Child. However, the system of an optional declaration remains: Individuals and NGOs will only be able to access the court directly if their states have issued the respective declaration.

In 2009, the AU Assembly initiated a process to consider the expansion of the Court's jurisdiction to trying individuals for, inter alia, genocide, war crimes and crimes against humanity.

The AU Assembly adopted the [Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights](#) (Merger Protocol II) at the 23rd AU Summit in June 2014. It is now open for ratification. If this second protocol comes into force, the Court will comprise three chambers: a General Affairs Section, a Human Rights and Peoples' Rights Section and an International Criminal Law Section. The International Criminal Law Section would be able to prosecute severe crimes committed by individuals (Art. 28A Merger Protocol II) and companies (Art. 46C Merger Protocol II). With the inclusion of crimes such as piracy, terrorism and corruption, the Court's jurisdiction would go beyond that of the International Criminal Court (ICC) and may close accountability gaps at the national level. The Merger Protocol does not address the relationship of the new Court with the ICC. During the drafting process, concerns were voiced regarding a broad provision on immunities (for 'senior state officials'). However, the formulation was not significantly improved – it remains broad and seriously risks undermining the new Court (Art. 46A Merger Protocol II).

Resources

- [Protocol on the Statute of the African Court of Justice and Human Rights](#) (Merger Protocol I), 2008
- AU Executive Council, [Report of the Specialized Technical Committee on Justice and Legal Affairs](#) (2014, PDF, 15 MB, not barrier-free), includes decisions on and amended text of the Merger Protocol II (para 21ff, Annex 5)
- AU Assembly, [Decisions, Declaration and Resolution of its 23rd Ordinary Session](#), includes adoption of Merger Protocol II, June 2014
- Pan African Lawyers Union: [History of Criminal Justice in Africa](#) (PDF, 615 KB, not barrier-free)
- Carsten Stahn, Expanding the Jurisdiction of the African Court, in: [The Law and Practice of the International Criminal Court](#)

Relevance for development cooperation

- **Political Dialogue:** Political dialogue can help demonstrate how important it is to establish a regional African justice system that, in addition to holding states accountable for human rights violations, also allows the prosecution of individuals and companies for severe international crimes. Since this pan-African court will set minimum legal standards, it can also have positive effects on the development of national justice systems in the long term. Political dialogue should specifically be used to encourage partners to submit the declaration accepting the court's jurisdiction for individual communications and to express concerns regarding the immunity clause in the Merger Protocol.
- **Programme Design and Implementation:** Should a merged Court be established, German development cooperation could consider supporting the development of its structures, building on the existing cooperation on the African Court on Human and Peoples' Rights.

3. Sub-Regional and Special Courts

As part of regional and sub-regional economic integration in Africa, several regional economic communities have developed on the continent. For many of those, judicial bodies have been established, some of which allow for individual access. The courts in the Economic Community of West African States (ECOWAS), the East African Community (EAC) and previously, the Southern African Development Community (SADC) have been at the forefront of the development towards human rights-related adjudication, with the ECOWAS Court being the only court that has an explicit mandate to address human rights issues beyond the application and implementation of its founding treaty. The Court of Justice of the Common Market for Eastern and Southern Africa (COMESA) can deal with 'fundamental freedoms' referenced in the preamble of the COMESA treaty but has not done so yet. Other courts focus on arbitration of disputes in economic and political matters, e.g. the Court of Justice of the Economic and Monetary Community of Central Africa (CEMAC), the Court of Justice of the Economic and Monetary Union of West Africa (UEMOA) and the Common Court of Justice and Arbitration (CCJA) of the Organization for the Harmonization of Business Law in Africa (OHADA).

ECOWAS Court of Justice

The [ECOWAS Court of Justice](#) can receive cases of alleged human rights violations in any ECOWAS Member State based on the ECOWAS Treaties and the Banjul Charter. Since 2005, citizens from ECOWAS States have direct and immediate access to the Court. While cases are only admissible if they have not been instituted at another international court, the exhaustion of domestic remedies is not a requirement. NGOs can file claims on behalf of individuals and groups of individuals. It is therefore easier for individuals to access the ECOWAS Court than the African Court. Judgments are without appeal and binding on all parties. Article 24(3) of the [Supplementary Protocol of the Court](#) (PDF, 64 KB, not barrier-free) mandates each Member State to appoint a national authority to be responsible for the enforcement of the Court's decisions. However, only a few countries have done so.

Hadidjatou Karaou v Niger

In 2008, the ECOWAS Court of Justice [acknowledged](#) that the applicant was a victim of slavery in a private household and held the state of Niger responsible on grounds of inactivity and omission since its administrative and judicial authorities did not protect individuals from human rights violations of non-state actors. The applicant was awarded damages.

SERAP v Nigeria and Universal Basic Education Commission

In 2010, [the Court held](#) (PDF, 69 KB, not barrier-free) that the right to education under the Banjul Charter is an enforceable right.

Saidykiian v The Gambia

In 2010, the [ECOWAS Court of Justice declared](#) (PDF, 7.5 MB, not barrier-free) that the arbitrary arrest of a journalist without trial and the torture inflicted on him were illegal and that The Gambia had violated Articles 5, 6, and 7 of the Banjul Charter, including the applicant's right to dignity, a fair hearing and personal liberty. The applicant was awarded damages.

Resources

- ECOWAS Court, [Basic Documents of the Court](#)
- ECOWAS Court, [List of Decided Cases](#)

SADC Tribunal

The former SADC Tribunal did not have an explicit human rights competence, but used to accept human rights cases on the basis of the mention of 'human rights' in the SADC Treaty and its interpretation of its Protocol. In August 2012, the SADC Summit [suspended](#) this practice by instructing the Tribunal not to accept any new cases, announced a review of its role, function and terms of reference and [agreed](#) (PDF, 123 KB, not barrier-free) to set up a new protocol on the tribunal, which would limit its mandate to disputes between member states. The background to this decision was the case *Campell v Zimbabwe* in which the state concerned challenged the legal basis of the Tribunal (see below). The civil society Coalition for an effective SADC tribunal is building support and working towards the reinstatement of the SADC tribunal.

Campell and Others v Zimbabwe

In this case, the applicants challenged the expropriation of their land. In its decision in 2008, [the tribunal held](#) that the state discriminated against the applicants on the basis of their race and ordered the state to pay fair compensation. Zimbabwe challenged the legal basis of the Tribunal, arguing that the respective Protocol on the Tribunal had never entered into force. Subsequently, SADC suspended the Tribunal. This suspension was [countered by the legal community and civil society](#) (PDF, 402 KB, not barrier-free) arguing that the SADC Summit acted *ultra vires*, i.e. 'without any authority to act on a subject or outside or beyond the scope of powers of bodies'. The decision was also challenged by the son-in-law of Mike Campell before the African Commission in March 2012. The Commission, [in its decision](#) (PDF, 305 KB, not barrier-free), found that the suspension of the SADC tribunal did not violate the Banjul Charter as the Charter only contained state obligations to ensure access to national courts.

Resources

- [SADC Treaty](#)
- [SADC Protocol on Tribunal](#)

East African Court of Justice

Citizens from member states of the EAC can access the East African Court of Justice on human rights matters only to the extent that the EAC Treaty contains references to human rights. However, the [EAC Treaty](#) (Article 27 (2) as amended) envisages the extension of the Court's jurisdiction to cover human rights matters explicitly. So far, a protocol to this effect has not been drafted.

Burundian Journalists Union v. Burundi

In May 2015, the Court supported the applicants' claim that some provisions of the Burundi Press Law, such as those obligating journalists to reveal their sources before the authorities in certain situations, violated the right to freedom of expression and thus Burundi's obligation under the human and peoples' rights standards in the EAC Treaty. [The Court ordered](#) (PDF, 823 KB, not barrier-free) Burundi to take measures, without delay, to implement the judgment.

Admission of *Amicus Curiae*

A person who is not party to a case can intervene as *amicus curiae* if they have an interest in the case and the Court is satisfied that the application is justified (Art. 36 (2)(e) and (4) EAC Court Rules of Procedure). In a very visible case against the Ugandan Anti-Homosexuality Act, several applications for *amicus curiae* were made but only one was accepted: The Court [ruled against](#) (PDF, 542 KB, not barrier-free) the application of a Rwandan NGO arguing it could not have an interest in a case that would have no effect in its country and of another organisation arguing its personal interest in the subject matter precluded its independence. It eventually granted *amicus curiae* status to UNAIDS. Other cases where *amicus curiae* applications have been granted include a case on the right to a fair trial ([Avocats Sans Frontier v. Mbugua Mureithi Wa Nyambura and the Attorney Generals of Uganda and of Kenya](#)) (PDF, 182 KB, not barrier-free) and a case related to questions of freedom of expression ([Forum pour Renforcement de la Société Civile & others v. Burundian Journalists' Union and the Attorney General of Burundi](#)) (PDF, 290 KB, not barrier-free).

Resources

- [EAC Treaty](#)
- EAC Court, [Rules of Procedure](#)
- EAC Court, [Court Decisions](#)
- Open Society Foundations, Case Digests: [Human Rights Decisions of the East African Court of Justice Court](#) (PDF, 345 KB, not barrier-free)

Juliane Osterhaus,
juliane.osterhaus@giz.de

Extraordinary African Chambers in Senegal to try Hissène Habré

Perhaps as a precursor to the Criminal Law Section of a future African Court, the African Union agreed with Senegal to establish the Extraordinary African Chambers in Senegal for the trial against Hissène Habré. The court has since sentenced the former Chadian leader to life imprisonment for crimes against humanity, war crimes and torture. This represents the first time that a court of one African country prosecutes the former ruler of another country for alleged human rights crimes.

Resources

- [Agreement](#) between Government of the Republic of Senegal and the African Union (PDF, 5.3 MB, not barrier-free)
- Human Rights Watch, [Q&A: The Case of Hissène Habré before the Extraordinary African Chambers in Senegal](#)

4. Further reading

- Network of African National Human Rights Institutions (NANHRI), [members](#) by country
- Office of the United Nations High Commissioner for Human Rights, [field presences](#)
- University of Minnesota, [African Human Rights Resource Centre](#)
- University of Pretoria Centre for Human Rights, [African Human Rights Law Reports](#)
- University of Pretoria Centre for Human Rights, [African Human Rights Law Journal](#)
- ESCR-Net, [case law database](#)
- WorldCourts, [international case law database](#)
- Pan African Lawyers Union (PALU), [Cases and African Law Database](#)
- Pan African Lawyers Union, [Matrix of African Intergovernmental Courts and Tribunals](#) (PDF, 298 KB, not barrier-free)
- International Service for Human Rights, the monthly [Human Rights Monitor](#) includes a section on the African human rights system
- The [African Court Monitor](#), a regional NGO providing an online presence for news, comment and debate on the Court
- Frans Viljoen (2012), [International Human Rights Law in Africa](#), Second Edition
- Getahun Atey Kassa (2015), [The African Regional Human Rights System](#) (PDF, 941 KB, not barrier-free)

Published by Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
 Bonn and Eschborn, Germany

Cross-sectoral programme
 'Realising Human Rights in Development Cooperation'
 Friedrich-Ebert-Allee 36
 53113 Bonn, Germany
 T +49 (0)228 4460 - 3435
 F +49 (0)228 4460 - 80 34 35

sv-menschenrechte@giz.de
www.giz.de

Layout Ira Olaleye
 As at December 2015

GIZ is responsible for the content of this publication.

In cooperation with German Institute for Human Rights
 Zimmerstraße 26/27
 10969 Berlin, Germany

On behalf of Federal Ministry for Economic Cooperation and Development (BMZ)

Division Human rights; freedom of religion; gender equality; culture and development; inclusion of persons with disabilities

Addresses of the BMZ offices

BMZ Bonn Dahlmannstraße 4 53113 Bonn, Germany T +49 (0)228 99 535 - 0 F +49 (0)228 99 535 - 3500	BMZ Berlin Stresemannstraße 94 10963 Berlin, Germany T +49 (0)30 18 535 - 0 F +49 (0)30 18 535 - 2501
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poststelle@bmz.bund.de
www.bmz.de