

§ 4 African human rights law

I. The African Union and human rights

- strong focus on conflict resolution, peace and security but h.r. protection and promotion also one of the AU's objectives (art. 3 lit. h AU Constitutive Act)
- various AU institutions concerned with h.r. protection

II. The African Charter on Human and Peoples' Rights (Banjul Charta)

- signed 1981, in force since 1986
- strongly influenced by the *African concept of human rights*: includes collective rights of the peoples and duties of the individual, stresses the importance of the community
- requires elimination of all forms of foreign economic exploitation

1) The guaranteed rights

- civil and political rights; some central elements of the rule of law anchored as human rights (art. 7); *right to asylum* (art. 12(3))
- economic, social and cultural rights (art. 13 et seq.)
- rights of women under Protocol on the Rights of Women in Africa (2003)
- collective rights of the peoples
 - equality of all peoples (art. 19)
 - rights to existence, self-determination, development, peace and security, free disposal of natural resources etc. (art. 20 et seq.)

2) The control mechanisms

- state reporting procedure (art. 62)
- interstate complaints (art. 47 et seq.)
- opinions of the ACtHPR (art. 4 ACtHPR Protocol)
- *individual complaints* (art. 56 et seq.)
 - first petition before the Commission, then consideration and recommendations by the Commission (cf. art. 45(1) lit. a, 56), then submission of the case to the Court by the Commission, a state or an African intergovernmental organisation (art. 5 ACtHPR Prot.)
 - or direct submission to the Court by an NGO with observer status at the Commission or by the citizen (optional, accepted presently by 8 states) (cf. art. 5(3), 34(6) ACtHPR Prot.)
 - then decision by the court (art. 28 ACtHPR Protocol)

III. The African Commission on Human and Peoples' Rights

- a treaty body created by the ACHPR with seat in Banjul (Gambia)
 - legal basis: art. 30 ff. ACHPR
- 11 members with a 6 years term
- mission: to promote human and peoples' rights and ensure their protection in Africa (art. 30, 45)
 - in particular to interpret ACHPR provisions on request (art. 45(3)), to consider communications from states and others on h.r. violations and give recommendations (art. 47 et seq.) and to submit cases before the ACtHPR (art. 5(1) lit. a ACtHPR Prot.)
- has established special sub-institutions such as special rapporteurs, committees or working groups for different fields of human rights

IV. The African Court of Human and Peoples' Rights (ACtHPR)

- an international court (and Banjul Charta treaty body) with seat in Arusha, whose decisions are legally binding
 - legal basis: Protocol on the Establishment of the African Court on Human and Peoples' Rights (ACtHPR Prot.)
 - jurisdiction only for those states which have ratified the Protocol
 - 11 judges from any AU member states elected for a 6 years term
 - has delivered *155 judgements and 133 orders* (until 02.2022)
- cases can be submitted by the Commission, the states (no submission so far) and African governmental organisations, and also by NGOs and citizens (optional, in 2023 accepted by 8 states)
- Court can adopt provisional measures (art. 27(2) ACtHPR Prot.)
- in case of a violation of rights, Court *can order remedial action* or compensation (art. 27(1) ACtHPR Prot.)
- no mechanism to enforce the execution of the judgements but execution monitored by the AU Council of Ministers (art. 29(2) ACtHPR Prot.)
- in 2020 crisis after 4 states have withdrawn from accepting direct individual complaints

V. African human rights treaties on special subjects

- OAU-Convention Governing the Specific Aspects of Refugee Rights in Africa of 1969
- African Charter on the Rights and Welfare of the Child (ACRW) of (1990)
 - treaty body: African Committee of Experts on the Rights and Welfare of the Child
- African Charter on Democracy, Elections and Governance (2007)
 - provides for advisory service and assistance of the African Union Commission
 - provides for African Union sanctions in case of case of unconstitutional changes of government (art. 23 et seq.)