

The African Human Rights System

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The term African human rights system has broader reach encompassing as it does the African Court of Human and Peoples' Rights, the main focus of this event here, but also the African Commission on Human and Peoples' Rights as well as the Committee of Experts on the Rights of the Child. Below these first layers, we also find a regionally limited layer: the sub-regional human rights systems including the East African Court of Human Rights (EAC), the Economic Community of West African states (ECOWAS) and the Southern African Development Community (SADC).

Therefore, though the African human rights system is the newest and the youngest of the three regional human rights systems globally, by no means it is the smallest. Since the past decade to today, there is growing jurisprudence from the Committee of Experts on the Rights of the Child; specifically about the rights of the child we hardly find in the Inter-American or even in the European systems, important sources.

Similarly, while the European system abandoned the European Commission, the African human rights system, like its counterpart the Inter-American Human Rights, continue to operate the continental human rights commissions. In the case of the African system of human rights, the African Commission on Hu-

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man and Peoples' Rights—in fact— preceded the African Court of Human and Peoples' Rights, and it is teleologically linked to the former.

In terms of the legislative frameworks, the Committee of Experts on the Rights of the Child has its own legislation: the African Charter on the Rights and Welfare of the Child. Ironically, this 'child specific international legislation' was mooted by the Organisation of African Unity (OAU) simultaneously as the African Charter on Human and Peoples' Rights, which, apart from establishing the African Commission on Human and Peoples' Rights, provides the 'bill of rights' for both the African Court and the African Commission.

Based on article 66 of the African Charter, supplementary legislation has been developed by the African Commission through the African Union in the form of protocols aimed at supplementing the Charter. Principal among these is the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court of Human and Peoples' Rights. As you have heard from this commemorative event here in Costa Rica, this Protocol is the one establishing the African Court of Human and Peoples' Rights and, therefore, adds substantially to the institutional architecture of the African human rights system. I must also mention the 2003 Protocol on the Rights of Women in Africa, which builds substantially towards efforts to ensure women's rights in Africa. Because the president of the African Court and other speakers have spoken at length on the African Court, suffice it for me to say one or two words on the normative framework of the African Charter on Human and Peoples' Rights.

Compared to its counterparts, the European and Inter-American Conventions on Human Rights, the African Charter is a unique instrument in that, while safeguarding keeping to the format of international human rights standards, in a number of respects it simultaneously departs substantially from these standards. For example, the African Charter encapsulates the mainstream human rights standards by guaranteeing a comprehensive list of civil and political rights simultaneously as it guarantees a very attractive list of socio-economic rights. Alongside these

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two groups of rights, the Charter breaks new ground completely and guarantees a list of solidarity rights, otherwise known as 'peoples' rights', which both the Inter-American and European systems have loudly ignored.

Guaranteeing socio-economic rights in the Charter no doubt made the Charter a living instrument, which is not only sensitive to the principle of indivisibility of human rights but also to the practical realities and conditions of people in African countries. Given this reality in international human rights law, and also in view of the situation in Africa, it was automatic that the founders of the African Charter on Human and Peoples' Rights would come up with an instrument that reflected the idea of international human rights simultaneously as it gave practical expression to the African situation.

Relatedly, the African Charter on Human and Peoples' Rights, in keeping with the principle of indivisibility of human rights, decided to afford all the three types or categories of human rights in its instrument, the same means of protection. Consequently, the protection mechanism for the civil and political rights in the Charter applies with equal force to the economic, social and cultural rights. In other words, the drafters of the African Charter disagreed with the drafters of the UN Covenant on Economic, Social and Cultural Rights, who originally denied these rights, the individual right of complaint on the ground they don't respond to the same means of protection as the civil and political rights.

Regarding measures of safeguard, the African Charter and the protocol establishing the African Court provide for the appointment of Commissioners and Judges respectively in each case by the Assembly of Heads of State and Government. This particular issue is controversial in that appointments, particularly selections of candidates in national jurisdictions, are far from transparency.

Some of the Commissioners and Judges appointed have been of questionable character but are nevertheless found suitable by political authorities. There is no citizenry involvement in the identification and selection of candidates, which undermines the confidence of the systems in the eyes of the ordinary public.

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Finally, peoples' rights or solidarity rights are slowly being claimed by victims in Africa, as seen in the cases of the Ogiek indigenous peoples of Kenya, which case was brought to the African Court by the African Commission due to the systematic and serious nature of the violations complained of. The Court has pronounced on this case thereby introducing the earliest jurisprudence on peoples' rights which is likely to have great impact in Africa as a whole. Earlier, the Endorois people, again in Kenya, obtained a landmark ruling in their quest for their ancestral land and resources previously expropriated by Kenya during colonial times. In the case, the African Commission went out of its way to state the law on the right to development hitherto unstated and to find that Kenya was in breach of article 22 of the African Charter by not including the Endorois in the making of decisions which affect them.

In conclusion, the African human rights system though the youngest and therefore the weakest of the three systems, nevertheless, has been steadily growing. The president of the African Court has recounted the many challenges facing the Court, especially institutional such as due to the impact of article 34(5) of the Court protocol requiring State Parties to accept the jurisdiction of the African Court. To entertain individual complaints, nevertheless, the Court is slowly but steadily developing jurisprudence with far reaching implications on the rights of African people. With time, the African Human Rights System is bound to grow into a practical instrument for the application of African victims of human rights violation.