

# **THE HUMAN RIGHTS SYSTEM UNDER THE AUSPICES OF THE AFRICAN UNION (AU) FOR THE PROTECTION OF WOMEN'S RIGHTS IN AFRICA**

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## **ABSTRACT**

In the bid for the African Union (AU) formerly referred to as the Organization of African Unity (OAU) to protect the fundamental human rights of the people of Africa, the African Regional human Rights system was established to address human rights issues that are peculiar to its people.

The term human rights in the African context connotes freedom, dignity, equality and social justice as foundations in the struggle to assert the core values of human existence. In the recognition of the concept of human rights in Africa, every African country has enshrined human rights in their constitutions; the inter-governmental organization of African States and the African Union regards the realization of human rights as one of its objectives and principles.

This article will describe the human rights structures created on a continental level in Africa and show the extent to which the African regional human rights system has impacted the promotion and protection of the women's rights in Africa through African regional human rights instruments such as the African Charter which subsequently created the African commission, African Court on human rights and the women rights protocol (Maputo protocol). The Community Court of Justice (CCJ) of the Economic Community of West African States (ECOWAS Court) also adjudicates on human rights issues; it is the first human rights body to find violation of the African region's women's rights treaty.

**Keywords:** African Union (AU), African Regional human rights system, African Commission, African Court, Maputo Protocol, the Economic Community of West African States (ECOWAS Court), Africa Charter, the Community Court of Justice (CCJ)

## **INTRODUCTION**

The African regional human Rights system is established under the auspices of the African Union (AU)<sup>i</sup> formerly referred to as the Organization of African Unity (OAU)<sup>ii</sup>. The African Charter of the OAU of 1963 made reference to the concept of human rights<sup>iii</sup>, while the Constitutive Act of the AU of 2001 placed human rights on the agenda of the regional body<sup>iv</sup>. The Regional human rights system constituted instruments for the protection of fundamental human rights of the people of Africa. The instruments includes: The African Charter on Human and Peoples' Rights which was opened for signature in 1981<sup>v</sup> and entered into force in 1986 (African Charter or Charter), which created the African Commission on Human and People's Rights (African Commission or Commission), the African Commission met for the first time in 1987. The protocol to the African Charter on Human Rights on the Establishment of the African Court on Human and Peoples' Right (African Human Rights Court Protocol)<sup>vi</sup> was adopted in 1998 and entered into force in 2004. The formation of the African Regional Human Rights Courts came into being after the protocol to the African Charter on Human and Peoples' Rights was established<sup>vii</sup>. The African Commission was mandated to monitor the compliance of member states with the African Charter to comply with rules of procedures (amended in 1995)<sup>viii</sup> and report guidelines for state reports (amended in 1998)<sup>ix</sup>. The Protocol to the African Charter on Human and Peoples' Rights of Women in Africa was adopted at the African Union Summit held in Maputo in 2003 (The Maputo Protocol)<sup>x</sup>.

## **THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (AFRICAN COMMISSION)**

The African Commission on Human and Peoples' Rights (African Commission) is the primarily the supervisory body whose mandates are mainly protective and promotional<sup>xi</sup>.

Article 45 of the African Charter specifically provides that the Commission has the duty to promote and protect human and peoples' right, interpret the provision of the charter and perform tasks mandated by the African Union (AU). As part of the promotional mandate, the commission examines period reports submitted by member states, go on promotional visits to state parties, create special mechanisms<sup>xii</sup> comprising of special rapporteur and working groups, adoption of resolution, organize seminars and conferences, and establish a sustainable relationship with NGOs and national human rights institutions (NHRIs). While the protective mandate, oblige the Commission to receive complaint from member states, individuals and NGOs<sup>xiii</sup>. By the provision of Article 56 (1) of the Charter, the Commission provided a generous jurisprudence in respect of standing requirement for individual communications<sup>xiv</sup>, rights of indigenous peoples<sup>xv</sup>, the right to environment<sup>xvi</sup>, development, peace and security<sup>xvii</sup> and other substantive rights in the Charter<sup>xviii</sup>.

In 2004, after the adoption of the protocol, the AU general assembly adopted the AU Solemn Declaration on Gender Equality in Africa (AU Solemn Declaration)<sup>xix</sup>. The Solemn Declaration is a non-binding commitment by member states to ensure progress towards the promotion and protection of the rights of women and girls. At the time of the adoption of the AU Solemn Declaration, only three member states had ratified the Maputo Protocol, the Solemn Declaration was used to urge member states to ratify the African Women's Protocol. As a result there was a massive acceleration in the rate of ratification sequent to the adoption of the Solemn Declaration<sup>xx</sup>. All AU member states irrespective of the treaties had ratified and have the obligation to the commitments to fulfilling their promises made under the Solemn Declaration to submit annual reports at the Heads of State and Government about the progress made in the promotion and protection of women's rights<sup>xxi</sup>.

## **AFRICAN CHARTER ON HUMAN RIGHTS AND PEOPLES' RIGHT ON THE RIGHTS OF WOMEN (ACHPR)-AFRICAN CHARTER**

On October 21, 1986 the African Charter on Human and People's Rights (ACHPR) was adopted by the Organization of the African Unity<sup>xxii</sup>. The formation of the African Women's Protocol can be traced back to 1995 when the regional Non-Governmental Organization, Women in Law and Development in Africa (WILDAF)<sup>xxiii</sup>, the African Commission on Human

Rights and People's Rights had a meeting to discuss about the situation of women in Africa. At the meeting it there was a discussion on the ratification of the Bill of Rights<sup>xxiv</sup> and the Convention of all forms of discrimination against women (CEDAW)<sup>xxv</sup> by many African countries. However, despite the ratification issues and discriminatory practices that affect African women have not been effectively addressed. Although, many African States had ratified the African Charter on Human and Peoples' Rights, 1981<sup>xxvi</sup> (African Charter) which prohibits discrimination on the basis of sex, just like the provision in CEDAW, women rights on the continent was still not enforced.

The African Charter consists of 68 articles, divided into three parts which includes rights and duties; measures of safeguard and general provision. The Charter integrates the egalitarian, libertarian and solidarity rights into the instrument as provided in the first- and second-generation rights in the two distinct documents<sup>xxvii</sup> at the international level.

Interestingly, six years of the existence of the African Charter on Human and People's Rights Women Protocol from 1986-1995, no complaint was made by the states or individuals alleging violation of the rights of women of the protocol to the commission or court. It was argued that as an integral part of the system, the Women's protocol is likely to be affected by the same challenges of implementation that have affected the success of the African Charter. As a result, the African Commission set up a working group to work on matters that pertain to African women's legal disenfranchisement. A Special Rapporteur was appointed by the Commission to lead the working group to work on the Rights of African Women whose mandate includes: assist African governments in the development and implementation of their policies of promoting and protecting the rights of women in Africa; encourage and work with Non-Government Organizations (NGOs) in the field of promotion and protection of women's rights and to serve as a link between the Commission and inter-governmental and non-governmental organizations at regional and international levels in order to harmonize the initiatives on the rights of women<sup>xxviii</sup>.

The Special Rapporteur constitutes a small working group which produced the first draft<sup>xxix</sup> of the protocol and they are duly supported by the Organization of the African Unity mandated by the African Commission. The first draft was also supported by NGOs in the continent, government experts and the Women's Unit of the Organization of the African Unity<sup>xxx</sup>. In 2003

the African Union adopted the Protocol to the African Charter on Human and Peoples' Right on the Rights of Women in Africa which is also referred to as the Maputo Women's Protocol in response to the lack of implementation of the African Charter and other International instruments established to address the issue of women<sup>xxxii</sup>. The protocol has been applauded for its innovative approach of covering specific areas that are relevant to women in Africa. The draft was said to be radical than its progenitor and this can be attributed to the Vienna Declaration and Program for Action in 1993<sup>xxxiii</sup>, the United Nations General Assembly Declaration on the Elimination of Violence against Women in 1993<sup>xxxiii</sup> and the Beijing Declaration and Program for Action in 1995<sup>xxxiv</sup>. The drafting process also drew upon sub-regional instruments on women's rights, including the Southern African Development Community (SADC) Declaration on Gender and Development, 1997 which is only binding to AU member states within the SADC region and its Addendum on the Prevention and Eradication of Violence against women and children of 1998.

The African Charter is quite similar to the rights in civil and political rights as recognized in international treaties, these rights have been adopted by the African Commission<sup>xxxv</sup>. The charter recognizes the following rights as individual rights: freedom from discrimination<sup>xxxvi</sup>, equality<sup>xxxvii</sup>, bodily integrity and the right to life<sup>xxxviii</sup>; dignity and prohibition of torture and inhuman treatment<sup>xxxix</sup>; liberty and security<sup>xl</sup>; fair trial<sup>xli</sup>; freedom of conscience<sup>xlii</sup>; information and freedom of expression<sup>xliii</sup>; freedom of association<sup>xliv</sup>; assembly<sup>xlv</sup>; freedom of movement<sup>xlvi</sup>; political participation<sup>xlvii</sup>; and property<sup>xlviii</sup>. These rights are to be fully enjoyed by African women without discrimination on the ground of sex<sup>xliv</sup>. The Charter is the first human right treaty to elaborate on duties of individual<sup>1</sup> unlike the ICCPR, ICESCR and other regional treaties and also obliged the State parties with the duty to prohibit all form of discriminatory practices against women as provided by Article 18 (3) of the charter. As an instrument adopted by the AU, it is the highest AU organ, the Heads of State and Government that its adoption rests and on which member states are sanctioned for non-implementation<sup>li</sup>

## **AFRICAN HUMAN RIGHTS COURT**

In 1998 at Addis Ababa, the African Union General Assembly adopted the African Human Rights Court Protocol<sup>lii</sup> after a resolution requesting the Secretary-General to convene a

meeting of Experts to consider the establishment of an African Court on Human and Peoples' Rights<sup>liii</sup>. The African Court<sup>liv</sup> was mandated to promote human rights as provided by the African Charter on Human and Peoples' Rights and other human rights treaties ratified by member states<sup>lv</sup>. It complements the protective mandate of the African Commission on Human and Peoples' Rights (ACHPR)<sup>lvi</sup>.

The African Court covers all the 55 member states of the AU that are parties to the African Charter<sup>lvii</sup>; however, it can only adjudicate on cases brought before it by state parties who have ratified the African Court constitutive protocol<sup>lviii</sup>. The African Court only receives petition from member states, African inter-governmental<sup>lix</sup> or from ACHPR but cannot accept petition directly from individuals or Non-governmental Organizations (NGOs) except if the State that has ratify the protocol makes a declaration accepting the competence of the African court to receive such cases<sup>lx</sup>.

Article 2 of the Protocol provides that the African Court shall "complement the protective mandate of the African Commission on Human and Peoples' Rights conferred upon it by the African Charter on Human and Peoples' Rights." The court has jurisdiction to hear cases of human rights violations referred from the African Commission<sup>lxi</sup>. The article also provides temporary measures on State obligations to "take corrective and positive action in those areas where discrimination against women in law and fact continues to exist.

The African Court has a similar issue with the Community Court of Justice (CCJ) of which is an increasingly adjudicator of human rights. The CCJ deals with matters that concern member states or Authority of Heads of state and government in ECOWAS to solve dispute among member states and ECOWAS institution on the interpretation and application of ECOWAS treaty<sup>lxii</sup>. The Supplementary Protocol<sup>lxiii</sup> adopted by ECOWAS grants access to individuals to file cases which includes human rights matters before the court provided, they are anonymous and the case is not before another international court<sup>lxiv</sup>. In addition, Article 9 of the 1991 Protocol was amended by ECOWAS to expand the jurisdiction and competence of the court to adjudicate on human rights matters. It is the first human rights body to find violation of the African region's women's rights treaty.

**i. Gender discrimination case in Dorothy Njemanze and 3 Others v Nigeria**

The case of Dorothy Njemanze and 3 others v Nigeria (2017)<sup>lxv</sup> was the first case where a regional court interpreted women's rights contained in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).

In this case, Dorothy Njemanze and three other women which include Edu Oroko, Justina Etim and Amarachi Jessyford were apprehended separated by the Nigerian security agents and agents of the Abuja Environmental Protection Board (AEPB) in Abuja the Federal Capital city of Nigeria on the assumption that they were sex workers. In the bid for AEPB to clean up the environment, AEPB collaborates with members of the Society against Prostitution and Child Labor (SAPCLN); an Abuja based Non Governmental Organization (NGO) who carries out random patrol on the streets of Abuja in search of sex workers. They usually forcibly pick up any woman who is found on the streets at night, labelling them as prostitutes and take them to the detention centers. Many women including the Plaintiffs in this matter were subjected to beatings, sexual assaults, verbal abuses, threats during raid and detained. There was a claim that three of the women had many complaints to the Nigerian authorities like the police and other State institutions. However, neither was any action was taken nor investigation of the allegation or anyone held responsible for violations against the women.

It was held by the court that the treatment meted on the Plaintiff by the AEPB and the security agents constituted gender-based discrimination treatments contrary to the provision of Article 2, 3, and 18(3) of the African Charter, Articles 2 and 8 of the Maputo Protocol, Articles 2, 3, and 15 (1) of CEDAW, Articles 2 (1), 3, and 26 of the International Covenant on Civil and Political Rights, and Articles 2 and 7 of the Universal Declaration of Human Rights. And the failure and refusal of Nigerian authorities to investigate the allegations made against its agents after a formal complaint by the plaintiff constitute the breach of the member states duty the international to promote and protect the rights of women against violation as provided by Articles 2, 3, 4 (1) and (2), 5, 8, and 25 of the Maputo Protocol, Articles 1, 2, 3, 5, and 18(3) of the African Charter, Articles 2, 3, 5(a) and 15 (1) of CEDAW, and other relevant international treaties. The CCJ held that the women experienced cruel, inhumane, and degrading treatment, which violated under Articles 3 and 4 (1) of the Maputo Protocol on the dignity of person and rights to life, integrity, and security of person.

The jurisdiction of the ECOWAS court was questioned, it was held that ECOWAS court has jurisdiction to determine cases of member states in violation of the human rights as provided

by Article 9(4) of the supplementary Protocol<sup>lxvi</sup>. The CCJ awarded six million Naira (approximately US\$16,500) as damages to each of the plaintiff except Edu Oroko whose case happened earlier and had passed the time limit of three years to file a case according to the provision of Article 9 (3) of the Supplementary Protocol, an alleged violation must be brought to the CCJ within three years. CCJ dismissed it as outside the time limit and barred by the statute.

**i. Domestic Violence case in Mary Sunday v Nigeria**

In August 2012, the CCJ presented the facts of the case of Mary Sunday V Nigeria<sup>lxvii</sup> which occurred between the applicant, Mary Sunday and her fiancé Corporal Isaac Gbanwuan who sustained several burns all over her body due to domestic violence. It was reported there was a fight between the applicant and her fiancé who allegedly kicked and dragged her on the floor. In order, for the applicant to escape she ran to her neighbor's kitchen. Out of anger, Isaac broke the neighbor's kitchen door, carried the cooking stove with hot oil on it and poured the contents on Mary. In the process, the cooking stove exploded and caused a great burn on the body of the victim, Mary.

The incidence was reported to the police by the Applicant's family. The police claimed a thorough investigation was conducted in the matter, and the investigation claimed that Mary accidentally poured the oil content on herself while she was attempting to pour it on Isaac. While the applicant was following up her case, an official from the Ministry of Justice informed her that her case has been filed by the police to the court. Unfortunately, the police prosecutor handling the case died and her case file was also missing.

In 2015, Mary was fortunate to be supported by two NGOs who filed her case at the CCJ for justice. In her application, she claims that the failure of the state to conduct a thorough, independent and diligent investigation in the matter and to prosecute the perpetrator-Isaac, was a violation of her human rights to an effective remedy and freedom from gender-based violence and discrimination against women. She also argued that Nigeria violated her right to health by the State's failure to provide adequate medical services, protect her from domestic violence perpetuated by Isaac and the inability of the state to treat her injuries inhibited her rehabilitation, thereby violating her right to work.

Therefore, in this case the ICC found no difficulty in holding the Nigeria government for failing to give an effective remedy for the applicant, thereby violating her rights to access to justice just like in Hadijatou's case. It was clear to the Judges that the fact a police officer is involved



as the perpetrator and he wasn't prosecuted was a failure on the part of the state and more so the Nigerian police did not conduct an investigation to observe the minimum standard is violation of the applicant's rights. And the fact that the applicant's file was missing at the state judiciary constitute a "blatant disregard for the right of access of a litigant to a judge in a court of law<sup>lxviii</sup>." The CCJ therefore held that Mary Sunday, the Applicant be awarded the sum of 15 million Naira (approximately US\$41,500) as compensation for the damages and harm she had suffered against the Federal Republic of Nigeria.

However, the applicant allegation on the ground of gender discrimination was dismissed by the court. The CCJ did not see the link between the failure of the state to investigate Mary's wounds and the endemic tolerance of violence against women in society, which leads to such complaints being treated as a less severe violation by the state.

According to the World Bank, gender-based violence is a global pandemic that affects women in their lifetime. After 35% of world around the world have experience violence either from physical or sexual intimate partner or non-partner sexual violence. The World Bank reported in 2019 that globally, 38% of murders of women are committed by an intimate partner. In Nigeria, an analysis of the 2013 Demographic and Health Survey showed that about one-fourth of Nigerian women had experienced some form of intimate partner violence.

## **CHALLENGES OF THE AFRICAN REGIONAL HUMAN RIGHTS SYSTEM**

The African Regional Human Rights system has its own challenges which have limited its goals of protecting the rights of its members including women's rights. One of the its challenges, is that the African commission interprets the charter in line with international precedents, however the problems in which the charter is expected to address hasn't be fully achieved. In the first place the charter is not well known in Africa and the decisions of the commission are even less known. Some of the problems inherent in the African charter and the African Human Rights Court are way beyond the powers of the commission and court to rectify such problems.

The African Commission is a supervisory body but its mandate to monitor compliance is not clearly provided for. There is a challenge of the commission having authority to consider

ordinary individual mandates and its exact mandate when considering the individual complaint. Article 58 provides a special procedure for individual communication where it involves serious or massive violation. However, the term serious or massive violations are not clearly interpreted, under Article 55 of the charter it provides that the commission consider individual communications even if they do not reveal serious or massive violations<sup>lxx</sup>. Article 58 also provides that the commission draws the attention of the Assembly of Heads of state and government to prima facie situations of serious or massive violation<sup>lxx</sup> while Article 59 (1) provide that all measures taken within the provision of the charter shall be confidential until the Assembly of heads of state and government decides otherwise<sup>lxxi</sup>.

The Commission is also mandated to reports submission by the states on a bi-annual basis. However, it is not clearly stated by the charter, Article 62 provides that state parties are expected to submit reports but it was not clearly stated to whom the reports should be sent to. The guidelines on state reporting on the African charter have been criticized to be too lengthy, ambiguous and unhelpful. It lacks clarity on what is expected of the state parties.

The jurisdiction of the court and source of law in many instances had been questioned in several cases. The Community Court of Justice (CCJ) of the Economic Community of West African States (ECOWAS Court) has adjudicated on human rights matters including women's rights issues. Access to the court by individual and Non Governmental Organization (NGOs) is a major problem as the protocol only grants the commission access to the court while NGOs may be entitled to observer status before the commission and individuals to institute cases directly before it. However, individuals and NGOs may be limited to proceeds on their own volition to past the commission level and take the initiative to secure binding decisions in their favor. Article 3(1) under the heading jurisdiction provides that "the jurisdiction of the court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the states concerned". This provision could be interpreted to means the African court has the jurisdiction to consider cases brought before it under any human rights treaty ratified by the state concerned including the UN treaties and other African human rights treaties. Even sub regional treaty such as the ECOWAS treaty, environmental treaties and those related to mercenaries would become admissible in as such as it has human rights implications. While Article 7 provides that "the Court shall apply the provisions of the Charter and any other relevant human rights

instruments ratified by the states concerned” deals with interpretation and limit the sources of law used by the court as point of reference. Article 60 and 61 grants only the commission to draw interpretation from international jurisprudence and the court with less access to other sources of law for interpretation and references.

Another challenge is the access to the court by individuals and non state actors like NGOs. The protocol only grants the commission and state actors access to the court while by provision of Article 5 (3) the court may entitle NGOs with observer status before the commission and individuals to institute cases directly before it in accordance with Article 34 (6) of the protocol after making declaration<sup>lxxii</sup>. Direct submission of a case by an individual to the court is required by the provision of Article 6 (2) to rule on its admissibility. The admissibility criteria set out in article 56 of the Charter. The Court is consequently not bound by criteria such as the exhaustion of domestic remedies<sup>lxxiii</sup>

In conclusion, human rights in the African context connote freedom, dignity, equality and social justice as foundations in the struggle to assert the core values of human existence. In order to protect the fundamental human rights of Africans, the regional human rights system was constituted by the African Union (AU) primarily for the purpose. The regional human rights system comprises of human rights instruments which includes the African Charter or Charter, which created the African Commission on Human and People’s Rights (African Commission or Commission), the African Human Rights Court Protocol, and the Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa (Maputo protocol) just to mention a few. The African Regional Human Rights has played an immense role in the promotion and protection of African’s Women human rights, however despite its contribution to the development of human rights it has its challenges which needs intervention in order to address the purpose for which it was created for.

The creation of mechanism is a good way to address human rights issues, however the continuous creation of mechanism to address human rights in Africa is not solving the issues but rather creating problems. Stabilizing and focusing on the African Commission to function properly will go a long way in addressing the issues instead of creating numerous mechanisms. The creation of these mechanisms has resulted to mismanagement of resources and lack of focus to make any difference. It is recommended that more effort should focus on the already created mechanism rather than creating new ones.

It is recommended that the Charter be modified given the wordings of the charter are not clear, states could attempt to defend infringements of rights through their national laws with reference to the claw-back clauses in the charter. The claw-back clauses which exclude international supervision should be scrapped in order not to cause further problems. Also, the terms used by the charter sometimes are not well understood, for example in Article 9 (2) where the word “law” was used, the term was interpreted to mean domestic laws. This is evident in the case of *Nigerian Bar Association v Nigeria*, the commission ruled that the term “law” in the claw-back clauses is referred to as international law<sup>lxxiv</sup>.

There is need for a strategic publicity of the work of the African human rights system. All states and civil society should have access to it works, dissemination of information and comply according in order for the system to make impact.

It is also recommended that the court system strength and weaknesses should be properly analysed in order to achieve the purpose for which it was created for. The protection of the rights of women in Africa is highly important for the African Human Rights system to address.

## REFERENCES

1. Karen J. Alter, Laurence R. Helfer and Jacqueline R. McAllister: A new international human rights court for West Africa: the ECOWAS community court of justice. *The American Journal of International Law*, Vol. 107, No. 4 (October 2013), pp.737-779
2. Ayeni Victor Oluwasina, Domestic impact of the African Charter on Human and Peoples’ Rights and the Protocol on the Rights of Women in Africa. A case study of Nigeria.
3. Obaoye, Justina Kehinde, and Li Shouping. "Gender discrimination against Women and discriminatory law in Nigeria." (2021).
4. Heyns, C & Killander, M (Eds) (2010) *Compendium of key human rights documents of the African Union* Pretoria: Pretoria University Law Press.
5. F Viljoen, An introduction to the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa“ (2009) 16 *Washington & Lee Journal of Civil Rights & Social Justice* 17; Preamble, Women’s Protocol

6. Okafor The Africa Human Rights System: Activist forces and international institutions (2007) 593
7. Justina Kehinde Obaoye and Tian Wenli," International Regime on Human Rights System for the protection of Women's Rights" Vol 3 Issue 5, Asian Journal of multidisciplinary Research and Review, 132-154

## ENDNOTES

<sup>i</sup> Constitutive Act of the African Union CAB/LEG/23.15 (May 26, 2001) [hereinafter Constitutive Act]. 6. 47 U.N.T.S. 39 (1963),

<sup>ii</sup> See GINO J. NALDI, THE ORGANIZATION OF AFRICAN UNITY: AN ANALYSIS OF ITS ROLE 109 (1999).

<sup>iii</sup> 47 U.N.T.S. 39 (1963), reprinted in HUMAN RIGHTS LAW IN AFRICA (1998), supra note 2, at 117. The Preamble stated adherence to the principles of the Universal Declaration of Human Rights. The Charter of the OAU was nevertheless a human rights document in the sense that it was aimed at the abolition of colonialism and apartheid.

<sup>iv</sup> The Constitutive Act, in its Preamble, refers to the African struggles for independence and human dignity "by our peoples" and the determination of the Heads of State and Government "to promote and protect human and peoples' rights." According to article 3: the objectives of the Union shall be to . . . (e) encourage international cooperation, taking due account of the Charter of the United Nations and the Universal Declaration of Human Rights;" and to " . (h) promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments. Constitutive Act, supra note 5, at art. 3. It is stated in article 4:

The Union shall function in accordance with the following principles: . . . (g) non-interference by any Member State in the internal affairs of another; (h) the right of the Union to intervene in a Member State pursuant to a decision of the

Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity; ... (l) promotion of gender equality; (m) respect for democratic principles, human rights, the rule of law and good governance; (n) promotion of social justice to ensure balanced economic development; (o) respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities; (p) condemnation and rejection of unconstitutional changes of governments. Id. at art. 4. According to article 23(2): any Member State that fails to comply with the decisions and policies of the Union may be subjected to ... sanctions, such as the denial of transport and communications links with other Member States, and other measures of a political and economic nature to be determined by the Assembly. Id. at art. 23 (2). Article 30 provides: "Governments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union."

Id. at art. 30. For a discussion, see Evarist Baimu, The African Union: Hope for better Protection of Human Rights in Africa?, 1 AFR. HUM. RTS. L.J. 299 (2001). A new set of proposed amendments by the Executive Council of the AU, adopted unanimously in February 2003 by the Assembly, envisages a stronger role for the AU in terms of the restoration of peace and order in member states. See AFRICAN UNION, EXECUTIVE ASSEMBLY 4(I), Ppt(1) (2003). This could potentially be used to undermine human rights.

<sup>v</sup> African Charter on Human and People's Rights OAU/CAB/LEG/67/3/Rev.5 (Org. of African Unity) (1996), reprinted in HUMAN RIGHTS LAW IN AFRICA (1996), supra note 2, at 7 [hereinafter African Charter].

<sup>vi</sup> ORG. OF AFRICAN UNITY, PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE ESTABLISHMENT OF THE AFRICAN COURT OF HUMAN AND PEOPLES' RIGHTS (1) REV. 2 (1998), reprinted in HUMAN RIGHTS LAW IN AFRICA (1999), supra note 2, at 279 [hereinafter AFRICAN HUMAN RIGHTS PROTOCOL].

<sup>vii</sup> AFRICAN COMM'N ON HUMAN & PEOPLES' RIGHTS, RULES OF PROCEDURE ACHPR/RP/XIX, reprinted in HUMAN RIGHTS LAW IN AFRICA (1997), supra note 2, at 11.

<sup>viii</sup>The first and most elaborate set of guidelines was adopted by the Commission in 1988. A second and apparently additional set of guidelines, which is much more concise, was adopted by the Commission in 1998. AFRICAN COMM'N ON HUMAN & PEOPLES' RIGHTS, GUIDELINES FOR STATE REPORTING 05/27 (XXIII) (1998), reprinted in HUMAN RIGHTS LAW IN AFRICA (1998), *supra* note 2, at 125.

<sup>ix</sup> The first and most elaborate set of guidelines was adopted by the Commission in 1988. AFR/COM/HPR. 5 (IV). A second and apparently additional set of guidelines, which is much more concise, was adopted by the Commission in 1998. OAU Doc/05/27 (XXIII).

<sup>x</sup> For the latest version, see AFRICAN UNION, PROTOCOL TO THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS ON THE RIGHTS OF WOMEN CAB/LEG/66.6/Rev. 1. (2003), available at <http://www.African-union.org>. See also Martin Nsibirwa, A Brief Analysis of the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, 1 AFR. HUM. RTS. L.J. 40 (2001).

<sup>xi</sup> Article 45 of the African Charter.

<sup>xii</sup> In 2010, the African Commission adopted the Guidelines for Reporting on the Women's Protocol. The Guideline is reprinted in Heyns & Killander (n 77 above) 206.

<sup>xiii</sup> CA Odinkalu & A Christensen „The African Commission on Human and Peoples Rights: The development of non-state communication procedures“ (1998) 20 Human Rights Quarterly 237-239; arts 47-55, African Charter.

<sup>xiv</sup> Malawi African Association v Mauritania (2000) AHRLR 149 (ACHPR 2000) para 78; World Trade Organization Against Torture (WTOAT) and others v Zaire, (2000) AHRLR 74 (ACHPR 2000).

<sup>xv</sup> Centre for Minority Rights Development (Kenya) and Another v Kenya (Endorois Case) Twenty-seventh Annual Activity Report.

<sup>xvi</sup> Social Economic Right Action Centre (SERAC) and Another v Nigeria (Ogoniland case) (2001) AHRLR 60 (ACHPR 2001) paras 50-52.

<sup>xvii</sup> Democratic Republic of Congo (DRC) v Burundi, Rwanda and Uganda (2004) AHRLR 19 (ACHPR 2003) para 73; Malawi African association and Others v Mauritania (n 67 above) para 139.

<sup>xviii</sup> For a brief overview of the Commission's case law on each of the substantive rights in the Charter, see C Hens & M Killander Compendium of key human rights documents of the African Union 2010 214-216.

<sup>xix</sup> See AU Solemn Declaration on Gender Equality in Africa, in COMPENDIUM OF KEY HUMAN RIGHTS DOCUMENTS OF THE AFRICAN UNION 138 (Christof Heyns & Magnus Killander eds., 2007) available at [http://www.africa-union.org/root/au/Conferences/past/2006/October/WG/SOLEMN\\_DECLARATION\\_ON\\_GENDER\\_EQUALITY\\_IN\\_AFRICA.doc](http://www.africa-union.org/root/au/Conferences/past/2006/October/WG/SOLEMN_DECLARATION_ON_GENDER_EQUALITY_IN_AFRICA.doc) (last visited Nov. 13 2009) (follow: "Solemn Declaration on Gender Equality in Africa" HYPERLINK)(hereinafter AU Solemn Declaration) (on file with Washington and Lee Journal of Civil Rights and Social Justice).

<sup>xx</sup> See *Supra* (listing the names of Countries that have ratified the adoption of the Protocol and the date they did).

<sup>xxi</sup> Implementation of the Solemn Declaration on Gender Equality in Africa, <http://www.africa-union.org/root/au/Conference/past/2006/October/WG/doc.htm>.

<sup>xxii</sup> OC Okafor The Africa Human Rights System: Activist forces and international institutions (2007) 593.

<sup>xxiii</sup> WILDAF, "The African Charter on Human and Peoples' Rights and the additional Protocol on Women's Rights", (1999) WILDAF News 18; R. Murray, "A feminist perspective on the reform of the African human rights system", (2000) 1 African Human Rights Journal 205.

<sup>xxiv</sup> Universal Declaration of Human Rights, 1948 (UDHR) UN GA Res. 217A (III) 1948 arts. 2 and 7; International Covenant on Civil and Political Rights, 1966 (ICCPR) 999 UNTS 171 arts. 2(1), 3, 26; International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) 993 UNTS 3 arts. 2 (2), 3.

<sup>xxv</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW) 1249 UNTS 13.

<sup>xxvi</sup> The African Charter on Human and Peoples' Rights, 1981, OAU Doc. CAB/LEG/67/3 REV. 5. See also Constitutive Act of the African Union, 2000, available at <[www.africa-union.org](http://www.africa-union.org)>, arts. 3(h) and 4(1). A. Lloyd and R. Murray, "Institutions with responsibility for human rights protection under the African Union", (2004) 48 J.A.L. 165, 176–177.

<sup>xxvii</sup> International Covenant on Civil and Political Rights (ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

<sup>xxviii</sup> Draft Terms of Reference for the Special Rapporteur on the Rights of Women in Africa DOC/0S/34c (XXIII) Annex 11, 1996. See also M. Evans and R. Murray, "The Special Rapporteurs in the African system", in M. Evans and R. Murray (eds.), The African Charter on Human and Peoples' Rights: The System in Practice, 1986–2000, Cambridge, 2002, 280, 295.

<sup>xxix</sup> Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, DOC/OS/34c (XXIII) Annex.

<sup>xxx</sup> Discussed in F. Banda, *Women, Law and Human Rights: An African Perspective*, Oxford, 2005, 66–83.

<sup>xxxi</sup> F Viljoen, *An introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (2009) 16 *Washington & Lee Journal of Civil Rights & Social Justice* 17; Preamble, Women's Protocol.

<sup>xxxii</sup> United Nations World Conference on Human Rights: Vienna Declaration and Programme for Action, reproduced in (1993) 32 *International Legal Materials* 1661.

<sup>xxxiii</sup> UN Declaration on the Elimination of Violence against Women, 1993, GA Res. 48/104.

<sup>xxxiv</sup> Beijing Declaration and Programme for Action (15 September, 1995), reproduced in (1996) 35 *International Legal Materials* 404.

<sup>xxxv</sup> For a full discussion, see Christof Heyns, *Civil and Political Rights in the African Charter*, in *THE AFRICAN CHARTER: THE SYSTEM IN PRACTICE*, supra note 15, at 137.

<sup>xxxvi</sup> Article 2 of the African Charter

<sup>xxxvii</sup> Article 3

<sup>xxxviii</sup> Article 4

<sup>xxxix</sup> Article 5

<sup>xl</sup> Article 6

<sup>xli</sup> Article 7

<sup>xlii</sup> Article 8

<sup>xliii</sup> Article 9

<sup>xliv</sup> Article 10

<sup>xlv</sup> Article 11

<sup>xlvi</sup> Article 12

<sup>xlvii</sup> Article 13

<sup>xlviii</sup> Article 14

<sup>lix</sup> Article 2 of the Charter

<sup>1</sup> UO Umzurike *The African Charter on Human and Peoples' Rights* (1997) 64; Mutua (n 57 above) 339; Viljoen (n 19 above) 248.

<sup>li</sup> Article 23 (describing the imposition of sanctions on Member states).

<sup>lii</sup> The documents leading up to the adoption of the African Human Rights Court Protocol are reprinted in *HUMAN RIGHTS LAW IN AFRICA* (1999), supra note 2, at 233-96.

<sup>liii</sup> *ORG. OF AFRICAN UNITY, RESOLUTION 230 (XXX)* (1994), reprinted in *HUMAN RIGHTS LAW IN AFRICA* (1999), supra note 2, at 139.

<sup>liv</sup> Hereafter, African Court Protocol. It was adopted at the 34th ordinary session of the OAU Assembly, held June 8–10, 1998 in Ouagadougou, Burkina Faso, and entered into force on January 25, 2004 upon deposit of 15 ratification instruments. Full text available at the African Union website: <https://au.int/en/treaties/1164>

<sup>lv</sup> Article 3, African Court Protocol.

<sup>lvi</sup> ACHPR) Article 2, African Court Protocol

<sup>lvii</sup> Art 3, African Court Protocol. Note that all member states of the AU except Morocco have ratified the African Charter. For status of ratification: <https://au.int/en/treaties/1164>

<sup>lviii</sup> Art 34, African Court Protocol.

<sup>lix</sup> Art 5 (1), African Court Protocol

<sup>lx</sup> Tanzania, in November 2019, wrote to the African Union of its intention to withdraw its declaration; if all advocacies fail, it will become the second country to do so following Rwanda's withdrawal in 2016. See Afrimechanisms hub (2019, Dec 2) [Tweet]. Retrieved from <https://twitter.com/AfrimechsHub/status/1201572103176302592> Rwanda Ministry of Justice Press Release. Retrieved from [https://minijust.gov.rw/fileadmin/Documents/Photo\\_News\\_2016/Clarification2.pdf](https://minijust.gov.rw/fileadmin/Documents/Photo_News_2016/Clarification2.pdf); Benin and Cote d'Ivoire, in reaction to judgments of the court in March and April, 2020, respectively, has now indicated their intention to withdraw their declaration. See International Justice Resource Centre (2020, May 6). Retrieved from <https://ijrcenter.org/2020/05/06/benin-and-cote-divoire-to-withdraw-individual-access-to-african-court/>. See also Adjolohoun, S. (2020). A crisis of design and judicial practice? Curbing state disengagement from the African Court on Human and Peoples' Rights. *African Human Rights Law Journal*, (20)(1), 1–40. Retrieved from <https://www.ahrjlj.up.ac.za/adjolohoun-s-h> This means that direct access to the African Court will be greatly reduced going forward.

<sup>lxi</sup> See, African Protocol, supra note 182, at art. 5(1). See also, Vincent O. Orlu Nmehielle, *Towards an African Court of Human Rights: Structuring and the Court* 6 *Ann. Surv. Int'l & Comp. L.* 27, 47 (2000).

<sup>lxii</sup> Article 9(2) 1991 Protocol

<sup>lxiii</sup> Supplementary Protocol A/SP.1/01/05. Hereafter the 2005 Protocol.

<sup>lxiv</sup> Art. 10(d) in Art. 4, 2005 Protocol.

<sup>lxv</sup> Dorothy Njemanze & 3 Others v Nigeria ECOWAS Court of Justice (12 October 2017) ECW/CCJ/JUD/08/17. The case was initially filed on 17 September 2014, and was a joint action between the Institute for Human Rights and Development in Africa (IHRDA), Alliances for Africa, the Nigerian Women Trust Fund and the law firm of SPA Ajibade, with support from the Open Society Initiative for West Africa (OSIWA).

<sup>lxvi</sup> Supplementary Protocol A/SP1/01/05 amending the Preamble and arts 1, 2, 9, 22 & 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and art 4 para 1 of the English version of the said Protocol (Supplementary Protocol) (adopted in 2005 and provisionally entered into force upon signature in 2005).

<sup>lxvii</sup> Women Advocates Research and Documentation Center and Institute for Human Rights and Development in Africa (On behalf of Mary Sunday) v The Federal Republic of Nigeria (2018).ECW/CCJ/JUD/11/18. Retrieved from [http://prod.courtecowas.org/wp-content/uploads/2019/02/ECW\\_CCJ\\_JUG\\_11\\_18 .pdf](http://prod.courtecowas.org/wp-content/uploads/2019/02/ECW_CCJ_JUG_11_18.pdf). After this, referred to as Mary Sunday's case.

<sup>lxviii</sup> Mary Sunday's case, the official English translation of the case [Translator: Emmanuel Nkansah] at 10.

<sup>lxix</sup> This was confirmed in Communications 147/95, 149/96, Sir Dawda K Jawara v The Gambia, Thirteenth Annual Activity Report para 42

<sup>lxx</sup> R Murray .Serious or massive violations under the African Charter on Human and Peoples. Rights: A comparison with the Inter-American and European mechanisms (1999) 17 Netherlands Quarterly of Human Rights 109.

<sup>lxxi</sup> See F Viljoen .Overview of the African regional human rights system. in Heyns (n 7 above) 128.

<sup>lxxii</sup> Udombana (n 43 above) 99 observes that the requirement that only NGOs with observer status before the Commission may approach the Court is unduly restrictive.

<sup>lxxiii</sup> The Commission has stated that the local remedies must be available, effective and sufficient. Communications 147/95, 149/96, Sir Dawda K Jawara v The Gambia, Thirteenth Annual Activity Report para 31.

<sup>lxxiv</sup> Communication 101/93, Civil Liberties Organization in respect of the Nigerian Bar Association v Nigeria, Eight Annual Activity Report para 16.