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The unique feature of African human right system

Introduction

The African System is the youngest of the three judicial or quasi-judicial **regional** human rights systems, and was created under the auspices of the **African Union** (AU).[1] Like the **Inter-American** System (and the **European** System, as originally designed), it includes a commission and a court with complementary mandates.[2] The African Commission on Human and Peoples' Rights (ACHPR), African Court on Human Peoples' Rights (ACHPR), and African Committee of Experts on the Rights and Welfare of the Child (ACERWC) all assess States' compliance with human rights standards, including by deciding individual complaints of human rights violations. However, the jurisdiction and activities of each body are distinc.[3] a number of organizations and networks exist to provide support and protection to human rights defenders at risk. Their services include: advocacy and awareness-raising; implementing security measures; and relocating the advocate. Some programs and organizations offering representation or other support to human rights defenders who face prosecution, retaliation, or threats against their personal safety include: Amnesty International,[4] the East and Horn of Africa Human Rights Defenders Project,[5] Human Rights First,[6] Institute for Human Rights and Development in Africa,[7] Pan-African Lawyers Union.[8] this paper is intends to explain and analysis distinct feature African charter and other special treaty on human rights, the function and composition of AU organ in African human rights system and other regional body whose mandate is protecting and monitoring human rights.

Distinct feature of African human rights system

At the continental level, the human rights obligations of African States arise primarily from the African Charter on Human and Peoples' Rights. Some treaties such as the recently adopted African Youth Charter[9] and the African Charter on Democracy, Elections and Governance,[10] African charter on the right of child have no equivalent at the global level. The African Charter is the principal treaty of the African human rights system. The African Charter was adopted in 1981, and it entered into force in 1986.[11] Along with the Constitutive Act, it is the most widely ratified instrument within the African system, having been formally accepted by all AU Member States. The African Charter is unique among human rights instruments in part for its inclusion of collective rights ("peoples' rights"), as well as individual rights.[12] The Charter protects economic, social, and cultural rights such as the rights of the family and the right to health, as well as civil and political rights like freedom of expression and fair trial guarantees. The African Charter also emphasizes the duties individuals owe to others. Article 27(1), for example, provides that individuals have duties towards their families, society, the State, other legally recognized communities, and the international community. The Preamble to the African Charter explains that the enjoyment of rights and freedoms "implies the performance of duties on the part of everyone."[13] The Charter permits States parties to limit enjoyment of some rights enshrined in its text when necessary to protect national security, public welfare, or other individuals' rights. The prohibition

[1] International justice resource centre page one
2 international justice resource centre page two
3 ibid
4 , http://www.amnesty.org/en/human-rights-defenders
5 East and Horn of Africa Human Rights Defenders Project
6 , http://www.humanrightsfirst.org/topics
7 http://www.ihrda.org/. 8 See Pan African Lawyers Union, http:
8 http://www.lawyersofafrica.org/.

of discrimination in Article 2 ACHPR differs from those in the UDHR and the ICCPR and ICESCR in that it includes 'ethnic group', and refers to 'fortune' rather than 'property' as an explicit prohibited ground of discrimination. As opposed to other human rights treaties, notably the ICCPR, the Charter does not explicitly allow for the death penalty. In Bosch the Commission referred to one of its resolutions in urging all states 'to take all measures to refrain from exercising the death penalty'.[14]

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Article 5 ACHPR sets out a number of rights treated separately in other international human rights instruments: the right to dignity, recognition of legal status, prohibition of exploitation and degradation, in particular slavery, and the prohibition of torture, cruel, inhuman or degrading punishment and treatment. The right to dignity offers an opportunity for protecting rights not explicitly recognized in the Charter.[15] For example, the right to privacy is not explicitly recognized in the Charter, but could perhaps be recognized as within the right to dignity. The prohibition of arbitrary arrest and detention in Article 6 ACHPR corresponds to Article 9(1) ICCPR. However, the Charter does not explicitly recognize the

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[2]9 http://www.africaunion.org/root/au/Documents/Treaties/Text/African_Youth_Charter
10 AU Doc Assembly Reprinted in Heyns and Killander, above n 2, 108–19.
11 Legal Instruments, http://www.achpr.org/instruments/.
12 African Charters, art. 19
13 African Charters, preamble, arts. 27-29.
14 Interights and Others (on behalf of Bosch) v Botswana (2003) AHRLR 55 (ACHPR 2003) [52].

15 the interpretation of Article 10 of the South African Constitution by the Constitutional Court of South Africa in Dawood v Minister of Home Affairs 2000 (3) SA 936 (CC).
16 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted on 10 September 1969,
17 The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984

procedural safeguards recognized in Article 9(2) to 9(5) ICCPR, such as the right to be promptly informed about the reason for arrest, the right to be brought promptly before a judge, the right to habeas corpus and the right to compensation for unlawful detention. Article 12(3) ACHPR uniquely among international human rights treaties recognizes the right to 'seek and obtain asylum'. This provision should be read together with Article 2(3) of the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, which provides that a person may not be returned to a country where his or her life, physical integrity or liberty might be threatened.[16] It is noteworthy that the African Refugee Convention includes a wider definition of refugee than the UN Convention but that the non-refoulement provision in Article 2(3) is limited to threats to life, physical integrity or liberty. Even with this limitation the protection is wider than in Article 33 of the UN Convention, which only prohibits refoulement when life or freedom is threatened on the basis of discrimination.[17] The African Charter on Democracy, Elections and Governance include the Declaration on Unconstitutional Change of Government.

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Suspension of participation in AU organs is imposed by the African Union for unconstitutional changes of government in accordance with the Declaration on Unconstitutional Change of Government. Article 18(3) ACHPR is unique in that it provides that the state 'shall ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions'. The rights of women and children are further developed in the African Charter on the Rights and Welfare of the Child and the Protocol on the Rights of Women in Africa. In some instances the African Children's Charter gives wider protection than the CRC, for example with regard to child soldiers, child marriages and internally displaced children.[18] there is also African youth charter that

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focus is on participation in decision making, education and skills development, employment and health. The African Youth Charter and the Protocol on the Rights of Women are unique among international treaties in addressing the HIV/AIDS pandemic.[19] One of the ostensibly unique features of the Charter is the recognition of peoples' rights. The Charter sets out the right of all peoples to equality (Article 19 ACHPR), self-determination (Article 20 ACHPR), free disposal of wealth and natural resources (Article 21 ACHPR), economic, social and cultural development (Article 22 ACHPR), peace and security (Article 23 ACHPR) and 'a general satisfactory environment favorable to their development' (Article 24 ACHPR). The difference between the right in the covenants and in the ACHPR is that it is more elaborate in the ACHPR than in the covenant. As the Charter does not include any specific minority protection corresponding to Article 27 ICCPR it is clear that peoples' rights must also be seen to protect the rights of minorities. The UN Human Rights Committee has held that individual communications under the Optional Protocol cannot deal with Article 1 ICCPR.[20] The ACHPR does not have such a limitation and complaints of violations of Articles 19 to 24 ACHPR. The emphasis that the Charter puts on duties is sometimes seen as a distinctive African feature of the Charter. However, duties are also set out in the UDHR and the American Declaration and American Convention.[21] Indeed the interests of society at large play an important role in determining the limitations of rights everywhere.[22]

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Many provisions of the Charter contain 'claw back clauses', for example Article 9(2) ACHPR, which reads '[e]very individual shall have the right to express and disseminate his opinions within the law'. These could be

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[4]18 Viljoen, above n 23, 262
19 Women's Protocol Article 14(1)(d) and (e); Youth Charter Article 16(2)(d)–(h).
20 Lubicon Lake Band v Canada, UN Doc CCPR/C/38/D/167/1984 (26 March 1990).
21 Ouguergouz, above n 4, 58.
22 Viljoen, above n 23, 305.

interpreted as permitting the removal of the protection of the Charter by national law. In monitoring and implementation of African human right there is a body of AU organ and other regional organization which is entrusted to promote and protect human rights in Africa.

Monitoring of human rights implementation is carried out in varying degrees within the states themselves, by sub-regional bodies to which the states belong, and by the various organs and institutions established under the AU. The African Union is a continental union of States organized to promote democracy, rule of law, human rights, peace, and security in Africa.[23] It was established in 2000 through the Constitutive Act of the African Union (Constitutive Act) and replaced the Organization of African Unity (OAU).[24] The Constitutive Act establishes the main organs of the AU. The "supreme organ of the Union" is the Assembly of Heads of State and Government (AU Assembly). The AU Assembly monitors the implementation of the policies and decisions of the Union and ensures compliance with them by all Member States. The AU Assembly can also impose sanctions on Member States that fail to comply with AU decisions, by such means as denying communication pathways with other Member States and taking other political or economic measures.[25] Other AU organs include the Commission of the Union (AU Commission), which serves as the Secretariat of the AU, and the Executive Council, which makes decisions on policies that are of common interest to the AU Member States.[26] the African commissions n human and people's rights Established by Article 30 of the African (Banjul) Charter on Human and Peoples' Rights (African Charter) and headquartered in Banjul Gambia.

[5]23 Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001),
24 ibid

The African Commission on Human and Peoples' Rights is one of the main independent institutions of the AU. The African Commission is responsible for promoting and protecting human and peoples' rights in Africa. The substantive rights monitored by the African Commission can be found in the Constitutive Act of the African Union, the African Charter, and a number of other regional human rights treaties.[27] The African Commission's work is focused in four main areas: interpretation of the African Charter, promoting human rights, protecting human rights, and carrying out other tasks assigned to it by the AU Assembly. The first focus area of the African Commission is the interpretation of the African Charter. The African Commission interprets the African Charter upon request by a State, the AU, or an organization recognized by the AU.[28] The second focus area of the African Commission is to promote human rights.[29] The African Commission promotes human rights in part through the establishment of special mechanisms. Special rapporteurs, committees, and working groups are all types of special mechanisms. The third focus area of the African Commission is to protect human rights.[30] The African Commission protects human rights in a number of ways. First, and perhaps most importantly, it operates an individual complaints system. It also monitors compliance with the African Charter be examining State reports. Lastly, it conducts fact-finding missions in Member States to monitor human rights conditions in those territories. As part of the individual complaints system, the African Commission hears communications submitted by States, individuals, and non-governmental organizations (NGOs) on alleged human rights abuses. The African Commission also monitors State compliance with the Charter by examining periodic State reports. Under Article 62 of the African Charter, Member States must report every two years on the steps they have taken to implement the African Charter.[31]

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25 AU constitutive act arts. 6(2), 9(1)(e), 23(2).
26 Id. at art. 10; African Union, AU in a Nutshell, supra note 21; African Union, Executive Council, http://www.au.int/en/organs/council.

Lastly, the Commission carries out fact-finding and promotional missions to Member States to monitor human rights conditions.

AFRICAN COURT ON HUMANS AND PEOPLES RIGHTS

The African Court on Human and Peoples' Rights is the judicial organ of the African system for the protection of human rights. The African Court sits in Arusha, Tanzania and is an autonomous body of the AU. The African Court was established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights. The African Court has two types of jurisdiction: advisory and contentious. Advisory jurisdiction involves the Court issuing an opinion on specific legal questions that relate to the African Charter or any other "relevant" human rights instrument. The African Court issues advisory opinions as long as the issue is not already being considered by the African Commission.[32] the Court's contentious jurisdiction enables it to decide legal disputes submitted to it by opposing parties. Similar to the African Commission, the African Court hears disputes concerning alleged human rights violations. If the Court finds that human rights violations have taken place, it will issue orders to the State to remedy the violation. the African Court does not accept communications directly from individuals or NGOs unless the State has specifically accepted the Court's jurisdiction to hear such cases. Instead, the primary entities able to submit cases to the Court are the Commission itself, States parties to the Protocol, and African intergovernmental organizations.[33] Individuals and NGOs that have

[6]27 ACHPR at arts. 60, 61.
28 African Charters, art. 45(3).
29 African Charters, art. 45(1).
30 African Charters, art. 45(2).
31 African Charter, art. 62.

observer status before the African Commission may submit cases if the State concerned has made a declaration under Article 34(6) of the Protocol accepting the Court's competence.[34]

The African Court's judgments are binding on States. Pursuant to Article 30 of the Protocol Establishing the African Court, States parties agree to comply with the Court's judgments in any case to which they are a party. When deciding either a contentious case or an advisory opinion, the Court may interpret and apply the African Charter as well as any other relevant regional or international human rights instrument ratified by the State concerned.[35]

Other important features that makes African human rights **system unique** from the rest of the world is existence of different regional economic community whose mandate is protecting and monitoring human rights. In addition to the African Commission and African Court on Human and Peoples' Rights, the African continent is home to several other supranational judicial bodies that play an important role in the protection of individuals and groups' fundamental rights. These regional courts have been established through economic integration agreements, whereby groups of States agree to establish a community with preferential trade standards and other policies to allow them to cooperate and, ideally, enhance the group's economic development and stability.[36] these include the Economic Community of West African States Community Court of

[7]32 Protocols Establishing the African Court, art. 4(1).
33 Id. at art. 5.
34 Id. at arts. 5(3), 34(6); available at http://www.african court.org/en/images

Justice (ECOWAS), the Southern African Development Community Tribunals (SADS), the East African Court of Justice and the Common Market for Eastern and Southern Africa Court of Justice(COMESA).

The ECOWAS Community Court of Justice is the judicial organ of the Economic Community of West African States and is charged with resolving disputes related to the Community's treaty, protocols and conventions. The ECOWAS Community Court of Justice has competence to hear individual complaints of alleged human rights violations. Founded by Treaty of Lagos for the purpose of promoting economic integration across the Western region.[37]

The Court's decisions on human rights matters interpret the African Charter on Human and Peoples' Rights, considered by Article 1(h) of the Protocol on Democracy and Good Governance to contain "constitutional principles shared by all Member States" as legally binding on ECOWAS Member States. Corporations and individuals can submit complaints alleging human rights violations by the Community or Member State actors. There is no domestic exhaustion of remedies requirement. The Southern African Development Community Tribunal was established under the Treaty of the Southern African Development Community (SADC Treaty) in 1992. It also had competence to hear individual complaints of alleged human rights violations. t it has jurisdiction to hear human rights complaints. The COMESA Court of Justice is the judicial organ of a regional economic

[8]35 African court establishment protocol. Art. 7.
36 http://www.ijrcenter .org/regional-communities/
37 Treaty of the Economic Community of West African States (adopted 28 May 1975)

community, the Common Market for Eastern and Southern Africa, and is charged with settling disputes arising under the Treaty Establishing the Common Market for Eastern and Southern Africa. The East African Court of Justice is an international court tasked with resolving disputes between Member States of the East African Community.

Conclusion

The African System is the youngest of the three judicial or quasi-judicial **regional** human rights systems. The African Commission on Human and Peoples' Rights (ACHPR), African Court on Human Peoples' Rights (ACHPR), and African Committee of Experts on the Rights and Welfare of the Child (ACERWC) all assess States' compliance with human rights standards. Instrument within the African system, having been formally accepted by all AU Member States. The African Charter is unique among human rights instruments in part for its inclusion of collective rights as well as individual rights. Its manifestation of African human right system. In addition to African commission on humans and people's rights, African court on human and people's rights there is certain regional community such ECOWAS, EAC, SADC and COMESA to promote and monitor human rights system in Africa.

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