



Overview

The African human rights system is composed of several human rights treaties—or agreements between the African Union member states—and the mechanisms that monitor compliance with these treaties.

African Regional Human Rights Treaties

African Charter on Human and Peoples' Rights (Banjul Charter)

- The Banjul Charter protects both **civil and political rights** and **economic, social, and cultural rights**.
- It also recognizes **people's rights**, such as the right to development and self-determination.
- The Banjul Charter guarantees that all individuals are entitled to the protected rights and freedoms on an **equal basis and without discrimination**, including on the basis of **sex** or “**other status**,” which has been interpreted to include disability (*Art. 2*).¹
- The Banjul Charter also provides **special protection to both women and persons with disabilities** (*Art. 18*).

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)

- The Maputo Protocol complements the African Charter by providing an explicit **definition of discrimination against women** and addressing **traditional values and practices** that can impede gender equality, including **forced marriage** and **female genital mutilation**.
- The Maputo Protocol was the first human rights agreement to explicitly protect a **right to sexual and reproductive health** (*Art. 14*).
- Besides general provisions that apply to all women and girls, the Maputo Protocol addresses **special protection of women with disabilities**, requiring state parties to facilitate their **access to employment, vocational training, and participation** and to ensure that women with disabilities are free from violence, **sexual abuse and discrimination** (*Art. 23*).

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (Disability Protocol)

- The Disability Protocol, the newest human rights treaty in the African system, is still awaiting enough ratifications to enter into force. Once 15 states ratify this protocol, it will be binding on those states that have ratified it.
- The Disability Protocol was developed in line with the **U.N. Convention on the Rights of Persons with Disabilities**. It **prohibits discrimination** against persons with disabilities on all grounds (*Art. 5*), including **denial of reasonable accommodations** (*Art. 1*), and recognizes their **full legal capacity** (*Art. 7*).
- The Disability Protocol addresses **harmful practices** such as witchcraft, abandonment, concealment, ritual killings or the association of disability with omens, that infringe on the rights of persons with disabilities (*Art. 11*).
- The Disability Protocol also recognizes **intersectional forms of discrimination** and includes separate articles specifically addressing rights of **women** (*Art. 27*), **children** (*Art. 28*), **youth** (*Art. 29*) and **older persons with disabilities** (*Art. 30*). It provides that women with disabilities should be ensured **full participation in society**, “protected” from **sexual and gender-based violence**, and guaranteed **sexual and reproductive rights**. It also requires **integration of gender perspectives** into all policies, legislation and programs.

African Regional Human Rights Treaties, continued

African Charter on the Rights and Welfare of the Child (ACRWC)

- The ACRWC requires state parties to ensure children's rights to **survival and development** (Art. 5), **education** (Art. 11), **health** (Art. 14), **family protection** (Art. 18), among others, and to fulfill obligations to **protect children from abuse** (Art. 16), **exploitation** (Art. 27), **armed conflicts** (Art. 22) as well as **harmful social and cultural practices** (e.g. child marriage) (Art. 21).
- The ACRWC also calls on states to ensure "special measures of protection" of children with disabilities in terms of physical accessibility and access to training and recreation (Art. 13).

African Regional Human Rights Mechanisms

African Union

African Union (AU, formerly the Organisation of African Unity (OAU)) is a union of African countries that promotes integration and development of the countries and people across the continent. One of the AU's objectives is to promote and protect human and peoples' rights.

The AU currently has 55 member states. The Assembly of Heads of States and Governments adopts human rights treaties and protocols. For each document to be legally binding in a member state, the state needs to sign and ratify it, according to its domestic legal procedures for entering into an international agreement.

The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (African Commission) ensures compliance with and effective implementation of the Banjul Charter and the supplementary protocols, including the Maputo Protocol and, when it goes into effect, the Disability Protocol. The African Commission is composed of eleven members serving in their personal and independent capacity and not as representatives of their countries or governments. The African Commission holds two ordinary sessions each year and holds extraordinary sessions as necessary. The main functions of the African Commission include:

- Interpret the provisions of the Banjul Charter and the supplementary protocols through issuing **General Comments, Thematic Resolutions, Guidelines or Principles**. All General Comments adopted so far to the Charter and the Maputo Protocol have made special reference to women and people with disabilities.

Example of General Comments

General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

53. It is crucial to ensure availability, accessibility, acceptability and good quality reproductive health care, including family planning / contraception and safe abortion for women. State parties should ensure services that are comprehensive, integrated, rights-based, sensitive to the reality of women in all contexts, and adapted to women living with disabilities and the youth, free from any coercion, discrimination and violence.

54. They should integrate and/or link family planning/contraception and safe abortion services funded by public resources to other services relating to reproductive health, primary health care, HIV and other sexually transmitted infections.

- Review **State Reports** to monitor compliance with states' human rights obligations and issue **Concluding Observations**. States are required to submit a report to the African Commission every two years on the measures they have taken to implement the Banjul Charter and any additional protocols the state has ratified. The African Commission will review the report and adopt concluding observations that acknowledge the progress made, express concern about possible human rights violations, and offer recommendations to improve compliance.

Example of Concluding Observations

Concluding Observations and Recommendations on the Initial and Combined Periodic Report of the Republic of Malawi on the Implementation of the African Charter on Human and Peoples' Rights (1995 – 2013)

IV. Areas of Concern

69. The existence of customary discriminatory practices such as patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life, as well as traditional beliefs resulting in acts of torture and violence against elderly women on account of suspicion of practicing witchcraft;

V. Recommendations to the Government of the Republic of Malawi

102. Adopt a comprehensive strategy to modify or eliminate negative cultural practices and stereotypes which are harmful to and discriminate against women, and to promote women's full enjoyment of their human rights[.]

- Hear **Individual Complaints** (or **Communications**). NGOs and individuals can file individual complaints alleging violations of the rights protected in the Banjul Charter, as well as the Maputo Protocol, and when it comes into effect, the Disability Protocol. The African Commission will examine the facts and review arguments of parties to determine whether there has been a violation and, if so, will recommend what the state must do to remedy the victim.

In the context of individual complaints, the African Commission can:

- facilitate **friendly settlements** (negotiations between the victim and the state to reach an agreement);
- call on the state to take **Provisional Measures**, while the case is pending before the African Commission, to **prevent irreparable harm to the victim or victims** of the alleged violation; and
- make a determination to treat the complaint as an Emergency, where there is evidence of **serious or massive violations of human and peoples' rights** or of a situation that presents the **danger of irreparable harm**. In such cases, the Commission may issue **Urgent Appeals** to communicate time-sensitive information requesting state authorities to take urgent interventions.

Example of Individual Complaints

Purohit and Moore v. The Gambia (Communication. No. 241/01 (2003))

This case concerns the detention of people with mental disabilities in psychiatric hospitals. Mental health advocates, on behalf of patients detained in a psychiatric unit of a hospital and future mental health patients, complained that the Lunatics Detention Act (LDA) of the Republic of The Gambia, allows for automatic and indefinite institutionalization of any person described as a "lunatic" without due process. The African Commission found that the state party has violated the rights of people with mental disabilities to equality and non-discrimination, dignity, fair trial, liberty and health, all of which are protected in the Banjul Charter.

African Regional Human Rights Mechanisms, continued

The African Commission on Human and Peoples' Rights, continued

- Conduct **missions** in African Union (AU) member states to investigate and disseminate information. The African Commission conducts two types of missions:
 - **Protective missions**, which typically include **on-site visits**, for example to investigate specific facts relating to a pending individual complaint or allegations of **massive and serious human rights violations**; and
 - **Promotional missions**, undertaken by the African Commission or its Special Mechanisms to sensitize States about the role of the Banjul Charter, encourage states to ratify the Banjul Charter or other human rights instruments, or to persuade non-reporting states to comply with their reporting obligations.

Special Mechanisms

Subsidiary special mechanisms, including **Special Rapporteurs, Committees, and Working Groups**, are mandated by the African Commission to:

- collect information and research on specific human rights issues;
- investigate human rights violations through fact-finding missions; and
- develop recommendations and strategies, engage in dialogues with states and raise awareness of human rights.

The Special Rapporteurs and Committees focus on monitoring and awareness-raising, while the Working Groups are tasked to develop principles, guidelines or strategies on certain issues. These mechanisms report to the African Commission during its sessions.

Examples of Special Mechanisms Concerning Women and Girls with Disabilities

The **Special Rapporteur on Rights of Women** works with States to ensure compliance with the Protocol to the African Charter on Human and Peoples' rights on the Rights of Women in Africa.

The **Working Group on Rights of Older Persons and People with Disabilities** is charged with clarifying and defining the rights of older persons and people with disabilities, including by developing, e.g., the Disability Protocol.

African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

The ACERWC promotes and protects the rights of children by monitoring implementation of the ACRWC. It is currently the only regional treaty body worldwide focused on children's rights. The primary functions include:

- **collecting information** on the situation of children and **making recommendations** to states where necessary;
- **establishing principles** for protecting the rights of African children; and
- **interpreting and monitoring compliance** with the ACRWC.

Similar to but independent from the African Commission, the ACERWC performs several functions to achieve its mandate, including **holding regular sessions, monitoring State Reports**, and hearing **Individual Communications**.

The African Court on Human and Peoples' Rights (African Court)

The African Court is a continental court established by African countries to ensure the protection of human and peoples' rights in Africa. The African Court may:

- **Hear cases and disputes** concerning the interpretation and application of the Banjul Charter, the ACRWC, and any other human rights instruments ratified by the state concerned. After deciding a case on the merits, the African Court will make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.
- **Facilitate friendly (or amicable) settlements** between parties and can adopt **provisional measures** in cases of emergency, like the African Commission.
- Issue **advisory opinions** on legal matters relating to the treaties that it monitors, upon request by the AU or its organs, member states of the AU, and any African organization recognized by the AU (a special status granted by the AU).

Civil Society Engagement with the African Human Rights System

Civil society plays an important role in the African human rights system by providing essential information to the regional human rights mechanisms discussed above to ensure that the system is responsive to the human rights situation on the ground, including for women and girls with disabilities.

The African system is complex and offers multiple forums and opportunities for civil society to engage with. While the process to engage with different bodies can be similar, it is important to check with those bodies separately regarding their requirements for civil society engagement. Advocates can also use these instruments and mechanisms in complementary ways to strengthen the efficacy of their advocacy strategies.

Participation in African Commission/ACERWC Sessions

Civil society can participate in the African Commission and the ACERWC sessions by **proposing agenda items, attending sessions and making statements** (where NGOs have Observer Status), advocating and networking at the **NGO Forum/CSO forum** held before the sessions, and organizing **side events**. Information about sessions of the African Commission can be found at: <http://www.achpr.org/sessions/>, while information for the ACERWC can be found at <http://www.acerwc.org/session-reports/>.

Participating in the State Reporting Process

Any person or group may submit a **Shadow Report** to the African Commission (called a **Complimentary Report** when submitted to the ACERWC) to provide alternative perspectives on the human rights situation in a given country. State reporting information before the **African Commission** can be found at <http://www.achpr.org/states/>. State reporting information before for the **ACERWC** can be found at <http://www.acerwc.org/>.

Engaging with Special Mechanisms and African Commission Missions

Civil society can actively communicate with the Special Mechanisms and the Commissioners of the African Commission by providing independent information in person or in writing on specific human rights topics, as well as encouraging recommendations and reports on the situation of women and girls with disabilities regarding the rights of women and girls with disabilities. Additional information can be found at <http://www.achpr.org/mechanisms/>.

Civil Society Engagement with the African Human Rights System, continued

Requesting an Advisory Opinion from the African Court

NGOs with observer status before the African Commission can request **advisory opinions** from the African Court. Since advisory opinions are interpretations of international law, rather than judgments on an individual case, they apply equally to all states that have ratified the relevant treaty. As a result, advisory opinions can be a powerful tool for clarifying what states must do to protect the rights of women and girls with disabilities.

Bringing Individual Complaints to African Regional Human Rights Bodies

Civil society can bring individual complaints before the African Commission, the ACERWC and the African Court. Each body has its own criteria and procedures for accepting and hearing a complaint. For example:

- Any individual or NGO can bring a complaint before the African Commission.
- The ACERWC can only hear complaints initiated by individuals (including children) or NGOs legally recognized in AU member states.
- Only NGOs or individuals with observer status before the African Commission can initiate cases directly with the African Court, and even then, only if the state in question has recognized the jurisdiction of the Court to accept cases from individuals and NGOs.

When it appears from a complaint that there exist **serious or massive violations of human or peoples' rights**, or a situation that presents the **danger of irreparable harm**, the person or organization that brought the complaint can ask for **Provisional Measures** to prevent irreparable harm to the victim or victims of the alleged violation.

When a communication is under consideration, NGOs can submit **amicus curiae briefs**. Amicus curiae briefs are written submissions by an individual or organization who is not a party to a case but who would like to offer additional information or legal analysis to help inform the body considering a case.

NGOs with Observer Status

Some engagement opportunities are only reserved for NGOs with observer status, including:

- proposing agenda items to and speaking in African Commission/ACERWC's public sessions,
- attending closed meetings during the sessions of the African Commission and the ACERWC, and
- bringing individual cases directly to the African Court, where a state has recognized the Court's authority to do so (for NGOs with observer status with the African Commission).

NGOs can apply for observer status before the African Commission and/or the ACERWC to better advocate for the rights of women and girls with disabilities. Observer status is granted separately for each mechanism.

Deciding on an Advocacy Strategy

Several questions can help advocates identify what advocacy opportunities are available to them and which forums and actions would be most strategic:

- What human rights documents has the country in question ratified?
- Does the country recognize the competency of any of the African human rights bodies to hear individual complaints?
- Which mechanism(s) can best address the issue you are working on, given the benefits and challenges for different mechanisms? The African Court has the broadest jurisdiction to hear complaints about all human rights instruments, but only a few AU member states allow the Court to accept cases directly from NGOs with observer status. Any individuals and NGOs can submit complaints to the African Commission.

- Are there any upcoming opportunities for engagement, such as sessions or a country review? It is helpful to examine the calendars of different mechanisms to prepare in advance. With this information in mind, NGOs can engage multi-level and multi-forum advocacy as opportunities arise, on their own or in partnership or coalition with other organizations.
- Are there other groups or organizations with whom you can work? Working in coalition can bring together various areas of expertise and skill sets. In addition, joint submission and other collective advocacy can amplify the voices of an organization and increase the quality and credibility of the information provided. However, on the other hand, space constraints may limit the opportunity to focus on the most important issues for you or your organization when working in coalition.
- Do you have a media strategy in place to help raise public awareness of the issue on which you are working? Effective media engagement can put pressure on or mobilize key decision-makers around an issue.

Additional Resources

Main African Human Rights Bodies:

- African Union, <https://au.int/en>
- African Commission on Human and People's Rights, <http://www.achpr.org/>
- African Court on Human and People's Rights, <http://en.african-court.org/>
- African Committee of Experts on the Rights and Welfare of the Child, <http://www.acerwc.org/>
- Special Rapporteur on Rights of Women, <http://www.achpr.org/mechanisms/rights-of-women/>
- Working Group on Rights of Older Persons and People with Disabilities, <http://www.achpr.org/mechanisms/older-disabled/>

Treaties and Additional Key Documents:

- Status of ratifications for human rights documents by AU member states: <https://au.int/en/treaties>.
- Regional human rights documents including treaties, general comments and resolutions: <http://www.achpr.org/instruments/>

Information about Engaging with African Human Rights bodies:

- State reporting information before the African Commission: <http://www.achpr.org/states/>
By clicking on the name of a specific country on this webpage, one has access to state reports submitted by state parties, concluding observations issued by the Commission, decisions on individual complaints against the state, and mission reports about the state.
- Complimentary Report guidelines for the ACERWC: http://www.acerwc.org/download/guidelines_for_civil_societies_organisations_eng/?wpdmdl=10089
- Information about and Guidelines on submitting a Communication to the African Commission: <http://www.achpr.org/communications/procedure/>; <http://www.achpr.org/communications/guidelines/>
- Guidelines on submitting a Communication to the ACERWC: <http://www.acerwc.org/submit-a-communication/>

Additional Resources, continued

Additional Guides and Resources:

- International Justice Resource Center, Advocacy before the African Human Rights System: A Manual for Attorneys and Advocates: <http://www.ijrcenter.org/wp-content/uploads/2016/11/Advocacy-before-the-African-Human-Rights-System.pdf>.

This manual provides a detailed introduction to the African human rights system, including how NGOs can apply for observer status, how to bring individual communications to the African Commission and the African Court.

- Save the Children and Plan, Advancing Children’s Rights: A Guide for Civil Society Organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child (2nd Edition), https://www.crin.org/en/docs/Advancing_Children_Rights_2nd_Edition.pdf.

This manual provides a detailed introduction to the ACERWC including how NGOs can apply for observer status and engage with the Committee.

- Equality Now, A Guide to Using the Protocol on the Rights of Women in Africa for Legal Action, https://d3n8a8pro7vhmx.cloudfront.net/equalitynow/pages/303/attachments/original/1527598602/Manual_on_Protocol_on_Women_Rights_in_Africa_EN.pdf?1527598602.

This manual provides a detailed introduction to the Maputo Protocol and how to this protocol at domestic and regional levels, including how to submit complaints to the African Commission and the African Court, as well as strategies to promote the Maputo Protocol through ratification campaigns, awareness raising and training etc.

Cases:

- Case Law Analyser: <http://caselaw.ihrda.org/>
This is a free collection of the human rights decisions of African regional mechanisms. It offers regional legal documents as well as case law in English, French and Portuguese. The decisions are categorized by adjudicating bodies, keywords (issues), countries and articles of instruments that are relevant.

¹ The African Commission uses a “non-exhaustive list of grounds of discrimination” in one of its general comments and explicitly include the ground of disability. See General Comment No. 4 on the African Charter on Human and Peoples’ Rights: The Right to Redress for Victims of Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment (Article 5), ¶ 20, http://www.achpr.org/files/instruments/general-comment-right-to-redress/achpr_general_comment_no.4_english.pdf.



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