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AFRICAN COURT OF HUMAN AND PEOPLE'S RIGHTS

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Introduction

The African Court of Human and Peoples' Rights (ACHPR) was established by the **Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights** (the Court Protocol) which entered into force in 2004. It is based in Arusha, Tanzania and has been in a position to receive cases since 2008 although it has to date issued only a few decisions and one judgment.

The ACHPR has jurisdiction to consider all cases and disputes referred to it concerning the **African Charter on Human and Peoples' Rights** (the African Charter), the Court Protocol and any other relevant human rights instrument ratified by the state(s) concerned.

It also has an advisory jurisdiction and may issue, at the request of a Member State of the African Union, any of the organs of the African Union, or any African organisation recognised by the African Union, an opinion on any legal matter relating to the Charter or any other relevant human rights instrument, provided that the subject matter of the opinion is not related to a matter being examined by the African Commission on Human and Peoples' Rights (the Commission).

There are 26 states parties to the Court Protocol.

Access to the ACHPR

In certain circumstances, cases may be submitted to the ACHPR by states and African Intergovernmental Organisations. However, this guide will deal only with access to the ACHPR for individuals and NGOs.

The Court Protocol allows individuals and NGOs with observer status before the Commission to complain that a state which is a party to the Court Protocol has violated the African Charter or another relevant human rights instrument which it has ratified.

However, it is important to note that this right of individual petition only applies where the state concerned has made a declaration accepting the competence of the ACHPR to receive such a complaint. At the time of writing, only five states (Burkina Faso, Ghana, Malawi, Mali and Tanzania) have made such a declaration.

Individuals and NGOs alleging violations by other states parties to the Court Protocol must apply to the Commission, which has the power to refer such complaints (called 'communications') to the ACHPR in certain circumstances.

Firstly, if, having made a decision on an individual communication, the Commission considers that a state party to the Court Protocol is unwilling to comply with its recommendations on the matter, the Commission may refer the communication to the ACHPR.

Secondly, if the Commission has made a recommendation for Provisional Measures (i.e. interim measures protecting human rights while a communication is considered) and the state concerned has failed to implement those measures, the Commission may refer the communication to the ACHPR.

The Commission may submit a communication to the ACHPR if a situation comes to its attention which in its view involves serious or massive violations of human rights. In this type of case there is no requirement that the Commission must first examine the situation.

Finally, if it considers it necessary to do so the Commission may refer a communication to the ACHPR at any time during its examination of the complaint.

Proceedings before the ACHPR

Proceedings before the ACHPR are governed by the Rules of Court.¹

To commence proceedings against a state which has made a declaration recognising the Court's competence to receive individual communications, the applicant must file in the Court Registry a signed copy of the application containing a summary of the facts of the case and of the evidence to be adduced. The application must be in one of the official languages of the Court.² The application must also:

- Contain clear particulars of the applicant and the party or parties against whom the complaint is brought;
- Specify the alleged violation;
- Contain evidence of the exhaustion of local remedies or of the inordinate delay of such remedies;
- Specify the orders or injunctions sought;
- Make a request for reparation if sought (details of the amount sought and any evidence supporting the application may be submitted subsequently in accordance with the Court's directions).

The Registry will acknowledge receipt and transmit the application to the President of the Court and the state party against whom the complaint is made. The state respondent then has 60 days to respond (this deadline may be extended by the ACHPR if necessary). The ACHPR will proceed to consider a case and give judgment even if one of the parties does not appear before it or fails to defend the case, provided that it is satisfied that it has jurisdiction, that the case is well-founded in fact and law and that the other party has had due notice.

¹ Available online at <http://www.african-court.org/en/documents-and-legal-instruments/basic-documents/>

² These are the same languages as the working languages of the African Union, i.e. "African languages, Arabic, English, French and Portuguese" (see rule 18 of the Rules of Court and Article 25 of the Constitutive Act of the AU).

The ACHPR will conduct a preliminary examination of the application to ascertain whether it has jurisdiction over the complaint and whether the complaint is admissible. It has the power to dismiss an unmeritorious application without a hearing, although it must give reasons for its decision. The ACHPR may seek the Commission's views on admissibility and may decide to consider a case or transfer it to the Commission.

Hearings will generally take place in public and parties are entitled to be represented by a legal representative of their choice. Free legal representation may be provided where the interests of justice require it. The Rules of Court contain detailed provisions about the conduct of written and oral proceedings.

Decisions of the ACHPR are binding on the parties. The ACHPR has the power to order specific remedies, including compensation.

African Court of Justice and Human Rights

The Court of Justice of the African Union was established by the AU's Constitutive Act. In 2003, the AU adopted the **Protocol of the Court of Justice of the African Union** defining the statute composition and functions of the Court of Justice.

However, both this Protocol and the ACHPR Court Protocol were superseded in 2008 when the AU adopted the **Protocol on the Statute of the African Court of Justice and Human Rights**. This provides for a merged court with two chambers, namely a General Affairs Section and a Human Rights Section.

The Human Rights Section shall have jurisdiction over the interpretation and application of the African Charter, the **Charter on the Rights and Welfare of the Child**, the **Protocol to the African Charter on Human and Peoples' Rights on**

the Rights of Women in Africa and any other human rights instrument ratified by the parties. Individuals and NGOs accredited to the AU or its organs will be able to submit complaints to the court provided that the state concerned has made a declaration recognising the court's competence to receive such complaints.

The Protocol on the Statute of the African Court of Justice and Human Rights must be ratified by 15 states in order to come into force. To date it has been ratified by only three states.³

³ See <http://www.africa-union.org/root/au/Documents/Treaties/treaties.htm>