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## The Role of Regional Human Rights Instruments in the Protection and Promotion of Human Rights

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### Abstract

Many States in Africa, the Americas, and Europe have accepted binding regional human rights obligations and international monitoring in addition to the United Nations Charter-Based system of human rights protection, which is applicable to all States, and the United Nations Treaty-Based system, which is only applicable to States parties. In the context of this paper, regional human rights regimes are seen as nested sub-regimes of international human rights practice that are comparatively coherent on their own. The European Convention on Human Rights and Fundamental Freedoms (1950), the Inter-American Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981) are the three regional human rights documents that are examined. This paper scrutinizes the circumstances leading to the establishment of the regional human rights enforcement mechanisms, the nature and scope of rights and guarantees, and safeguarding procedures under these instruments. It, in fact, examines whether the enforcement mechanisms are, consistent with State sovereignty, and whether they are gradually enhancing the promotion of fundamental human rights and freedoms.

**Keywords:** United Nations, Human Rights, Regional Human Rights Instruments, Protocols, States Parties

## Introduction

Many States in Africa, the Americas, and Europe have taken on binding human rights obligations at the regional level and have accepted international monitoring in addition to the United Nations Charter-Based System of Human Rights Protection, which is applicable to all States, and the United Nations Treaty-Based System, which is only applicable to States Parties (Arora, 2006: 98; Baasch, 2021: 112; Rattan & Rattan, 2021: 322-323). There is currently no regional human rights agreement or oversight mechanism in place in the Asia-Pacific area (Rehman, Shahid & Foster, 2021: 188). Numerous human rights professionals in Asia continue to seek—or just daydream—the establishment of a regional human rights court or commission as a means of awarding reparations in cases when national courts and institutions are unable or unwilling to administer justice. Since the 1960s, a number of groups have made many attempts to create regional and sub-regional systems throughout Asia. Human rights organizations inside the United Nations have been the main force behind these initiatives (Chiam, 2017: 128-148; Rehman, Shahid & Foster, 2021: 190-202).

There are several advantages to regional human rights promotion mechanisms. First, governments have a tremendous incentive to protect and promote human rights in their territory since serious violations of these rights might lead to hostilities and generate instability in neighboring nations. Moreover, governments may find it easier to agree on the specifics of rights and to provide a regional court actual enforcement authority because countries in the same area usually have similar cultural traditions and political histories (Adeola, Nyarko, Okeowo & Viljoen, 2020: 64–67). The UN has long advocated for the establishment of regional human rights treaties, commissioners, and tribunals. However, it is crucial that regional mechanisms work in tandem with the U.N. human rights system and do not conflict with the commitments that governments made when they ratified the foundational international human rights treaties (Benyera, 2020: 98; Kannowski & Steiner, 2021: 113).

There are currently international and regional instruments protecting human rights, which contribute to proving their universality (Benyera, 2020: 133). Victor Rattan and Joseph Rattan believe that in addition to the UN's universally applicable human rights framework, certain regional institutions

have created human rights instruments expressly for the nations in their region (2021: 388-389). These include the European Convention on Human Rights and Fundamental Freedoms developed by the Council of Europe, 1950, the Inter-American Convention on Human Rights, developed by the Inter-American Commission on Human Rights, 1969, and the African Charter on Human and Peoples' Rights developed by the Organization of African Unity, 1981.

This paper asks the reader to consider the extent to which the manifestations of any supranational mechanism would be consistent with accepted ideas of state sovereignty, given its critical importance in the efficient implementation of the State's commitments. This paper also aims to make the reader aware of how much more important international commitments are than national defenses. This paper addresses the topic in three steps: first, it describes the conditions that led to the adoption; second, it considers the range of rights and guarantees that are being considered; and third, it describes the safeguarding processes at the outset of the examination. Keeping it informative to the reader, this paper with simplicity and ongoing thought flow discusses the important components of each of the regional human rights agreements. In the context of the European Convention on Human Rights and Fundamental Freedoms, 1950, noteworthy issues for the reader are: (i) the complaint-making procedure for an individual to the Commission. It is more of a history, as this report dutifully notes, because the Commission is no longer involved. This document gives a comprehensive overview of the rights and explains why the Convention and its protocols are distinct from any other regional endeavor by listing the convention's scope and all of its protocols in detail. This paper's attempt to analyze the extent of the rights and freedoms granted and the State's authority to impose restrictions is one of its intriguing aspects; it offers carefully considered case laws in support of this assertion. This paper examines the American endeavor of 1969 in detail and demonstrates how the American Commission made a substantial contribution to the fulfillment of human rights in the American context even before such an instrumental reality. This paper offers a thorough understanding of the important aspects of rights protected and the institutional features by drawing on comparable lines of thematic discussion to the European Convention. A notable endeavor in this respect that merits special

attention is the thorough examination of the Commission's role and responsibilities as well as the process for each complaint method in this document. The graphic description relating to the role and contribution of the Organization of American States Special Rapporteur provides a profound and thought-provoking understanding to the reader as to how the institution over a period of its functioning not only gained credibility for its existence, but even legitimized its contribution. Examining at length the institutional characteristics of the Inter-American Court, this paper provides a holistic overview, prompting a reader further to examine each of the meritorious contributions. The third important component of this exhaustive analysis is the regional effort at the African level. This paper raises the reader's understanding to a new level of examination by facilitating as to why the African Charter is being seen as the manifestation of the aspirations of peoples' rights unlike the two earlier instruments. Terming the recognition of individual and collective rights as an important breakthrough in the development of the regional human rights instruments, this paper provides another comparative perspective of the institutional similarities, leaving the reader to examine the intricacies in this regard. The attempt made in this paper to present the African endeavor as a cutting-edge endeavor is notable since it not only identifies the African Commission's qualities but also its inherent limits. This presentation presents the African Community's impending reality, viewing the adoption of the African Charter as a difficult and intimidating undertaking. As a result, even if the regional human rights instruments have helped to effectively realize the regional relevance, as this paper concisely summarizes, the reader is left with more questions than answers.

### **European Human Rights Treaties and Their Implementation**

The Council of Europe approved the European Convention on Human Rights (European Convention) in 1950, and it came into force on September 3, 1953. The European Convention, which sought to further the fulfillment of fundamental freedoms and human rights while preserving the Council of Europe's objectives, was based on the 1948 Universal Declaration of Human Rights. Accordingly, certain of the rights listed in the Universal Declaration of Human Rights can only be enforced in part through the European Convention (Odello & Cavandoli, 2014: 155; Prajapat, 2020: 245). Three organizations were given this authority under the European Convention: (i)

The European Commission of Human Rights, established in 1954; (ii) The European Court of Human Rights, established in 1959; and (iii) The Committee of Ministers of the Council of Europe, which is made up of the member states' ministers of foreign affairs or their representatives. Other Contracting States or individual applicants, such as individuals, groups of individuals, or non-governmental organizations, may file complaints against Contracting States.

The admissibility of the complaints is determined by the preliminary inquiry conducted by the Commission. Upon acceptance of an application, the Commission becomes accessible to the involved parties with the aim of mediating a just and equitable resolution. In the event that a settlement cannot be reached, a report detailing the facts and providing an assessment of the case's feasibility is produced. The Committee of Ministers receives the report after that. Following the transmission of the report to the Committee of Ministers, the Commission and/or any Contracting State implicated has three months to bring the case before the Court for a final and binding ruling if the respondent State has accepted the Court's obligatory jurisdiction. The right to state one's case before the court belongs to no one. In cases where the Court was not involved, the Committee of Ministers assessed whether the Convention had been violated and provided the victim with "just satisfaction" if required. The Committee of Ministers was responsible for supervising the application of the Court's decisions. All claims are now immediately directed to the European Court of Human Rights in Strasbourg, France, due to the acceptance of Protocol No. 11 to the Convention, which entered into effect on 1 November 1998. This is the first permanent human rights court to have a full-time bench. The Additional Protocols Nos. 1, 4, 6, and 7 have resulted in a gradual expansion of the rights guaranteed by the Convention (Ahmed & Israel, 2006: 776-800).

The High Contracting Parties "shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of the Convention," as intended by Article I of the Convention. Stated differently, this implies that they will offer "an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity" to anybody whose rights and freedoms, as protected by the European Convention, have been violated. The following civil and

political rights are guaranteed by the European Convention: (i) the right to life (Article 2); (ii) the prohibition of torture, inhuman or degrading treatment or punishment (Article 3); (iii) the prohibition of slavery, servitude, and forced or compulsory labor (Article 4); (iv) the right to liberty and security (Article 5); (v) the right to a fair trial (Article 6); (vi) the prohibition of ex post facto laws (Article 7); (vii) the right to privacy and family life (Art. 8); (viii) the right to freedom of thought, conscience, and religion (Article 9); (ix) the right to freedom of expression (Article 10); (x) the right to freedom of assembly and association (Article 11); (xi) the right to marry and start a family (Article 12); (xii) the right to an effective remedy in case of violation of any right under this Convention (Art. 13); and, (xiii) prohibition of discrimination (Art. 14).

The European Convention Protocols may be generally classified into two groups: those that modify the Convention's operations and those that expand the scope of rights covered by the Convention. The content of the rights has not altered despite the Convention being amended several times through Protocols; rather, these modifications have primarily affected the internal operations of the Convention (Weissbrodt & Fitzpatrick, 2021: 567–568). One characteristic of the European Convention is the institutional cohesiveness of the Convention machinery, which was preserved only by the ratification of the Protocols by all parties. Under specific and defined circumstances, States Parties may restrict the enjoyment of the rights outlined in the European Convention (Boyle & Melissa, 2001: 328–330; Grob, 2005: 429–432). But these limitations have to be: (i) applied "in accordance with the law," (ii) made "provided for by law," or (iii) "prescribed by law"; (iv) aside from Article 1 of Protocol No. 1, they also have to be "necessary in a democratic society" for the specific purposes listed in the various articles, like, for example, the protection of public health and morals, public safety, or the prevention of disorder or crime, or the defense of others' rights and freedoms (legitimate explanations differ depending on the right protected).

The term "necessity" has several meanings within the declarations of the European Convention on Human Rights (ECHR), particularly in relation to the clauses pertaining to restrictions. In the case of freedom of expression, for example, "it is for the national authorities to make the initial assessment of the reality of the pressing social need implied by the notion of 'necessity'";

however, the final decision regarding whether any measure complies with the terms of the Convention belongs to the Court, whose jurisdiction "covers not only the basic legislation but also the decision applying it, even one given by an independent court." Therefore, the "aim" and "necessity" of the disputed measure are included in the oversight. Regarding the freedom of expression, for example, the Court has often said that it is required "to pay the utmost attention to the principles characterizing a 'democratic society'" when carrying out its supervisory powers. Consequently, the Court has to determine whether the justifications offered by the national authorities to support the need for the interference with the exercise of the relevant right "are relevant and sufficient."

In other instances, it has stressed that Article 8(2)'s exceptions to the right to privacy must be "interpreted narrowly" and that their necessity must be "convincingly demonstrated." It is insufficient to argue that the interference in question is innocuous or even potentially beneficial in order to prevent it from interfering with a democratic society's ability to operate (Suarez, 2007: 50–55).

All claims of violations of the freedoms and rights protected by the Convention and its Protocols are brought directly to the European Court of Human Rights, which is tasked with "ensuring the observance of the engagements undertaken by the High Contracting Parties" (Article 19) with the entry of the restructured control machinery after November 1, 1998. According to Article 20, the Court is permanent and has the same number of judges as the Contracting Parties. According to Article 27, the Court may convene in grand chambers with seventeen justices, chambers of seven judges, or committees of three judges. Apart from being competent to receive and examine inter-State complaints (Art. 33), the Court "may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto" (Art. 34). The "High Contracting Parties undertake not to hinder in any way the effective exercise of this right" (Art. 35).

Unless the Court determines otherwise in "exceptional circumstances," hearings before the Court are open to the public (Art. 40). Any party to the case may, under extraordinary circumstances, ask that the matter be referred to a Grand Chamber within three months of the decision date. If the request



is granted, the Grand Chamber will render a final decision in order to resolve the matter (Art. 43). Otherwise, the Chamber's decision will be final three months following the judgment if no request for reference to the Grand Chamber has been made by the parties, when the request for referral has been denied, or when the parties explicitly state that they do not intend to make one (Art. 44). The High Contracting Parties "undertake to abide by the final judgment of the Court in any case to which they are parties"; the execution of the final judgment is supervised by the Committee of Ministers of the Council of Europe (Art. 46).

## **The Inter-American Convention on Human Rights, 1969**

### **Scope of the Rights**

The Inter-American Convention on Human Rights, 1969 (hereafter referred to as the "American Convention") guarantees a plethora of civil and political rights (Roermund, 1997: 367-368; MacCormick, 1997: 344). In addition, the "American Convention" mandates that the States Parties "undertake to adopt measures, both internally and through international co-operation, with a view to achieving progressively, through legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires" (Article 11). As the title of the paper indicates, it is more concerned with the "Progressive development" of these rights than with their immediate enforcement through judicial means. However, with the entry into force of the Additional Protocol to the Convention in relation to the Economic, Social and Cultural Rights, these rights have been given a more detailed legal definition, although the "full observance" thereof is still to be achieved "progressively." The Additional Protocol recognizes a number of important economic, social and cultural rights (Bowett, 2011: 651; Antkowiak & Gonza, 2017: 122).

### **Undertakings of the States Parties**

The States Parties to the "American Convention" promise to uphold the freedoms and rights guaranteed by the treaty and to guarantee that everyone under their authority may freely and fully exercise those freedoms without facing discrimination on the basis of specific listed grounds (Art. 1, Protocol I). As a result, the States Parties to the American Convention have a legal

obligation to "ensure" and "respect," which has several dimensions and touches on every aspect of the State system, including the specific behavior of the Governments. Therefore, the States Parties are required by law to "ensure" the freedoms and rights outlined in the American Convention on Human Rights. This means that they must prevent, look into, and punish violations of human rights, as well as, if feasible, restore the rights that were infringed upon and pay damages as justified.

### **Permissible Limitations on the Exercise of Rights**

The right to manifest one's religion and beliefs (Art. 12); the right to freedom of expression (Art. 13); the right to freedom of assembly and association (Arts. 15 and 16); and the right to freedom of movement and residence, including the right to leave any country, including one's own (Art. 22), may all be subject to restrictions if necessary for the protection of public safety, health, morals, (public) order, national security, or other factors (the legitimate reasons vary depending on the right protected). In addition, the law may, on certain specified grounds, "regulate the exercise of the rights and opportunities" linked to the right to participate in government (Art. 23).

Article 30 of the American Convention stipulates that limitations on the exercise of rights granted therein "may not be applied except in accordance with the laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established." Other limitation provisions also stipulate that the limitations imposed must be prescribed by law, established by law, imposed in conformity with the law, or pursuant to law. Thus, it is "essential that State actions affecting basic rights be surrounded by a set of guarantees designed to ensure that the inviolable attributes of the individual not be impaired, rather than being left to the discretion of the government." Hence, the most important of these guarantees is that restrictions to basic rights only be established by a law passed by the Legislature in accordance with the Constitution (Antkowiak & Gonza, 2017: 166).

### **The Competence of the Implementation Mechanisms**

As previously mentioned, there are two components to the inter-American system for the protection of human rights: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights for those States Parties having accepted its jurisdiction.

On July 18, 1978, the American Convention on Human Rights, 1969—also referred to as the Pact of San José, Costa Rica—went into effect. The Convention strengthened the Inter-American Commission on Human Rights (IACHR), which since 1960 operated as “an autonomous entity of the Organization of American States” (Bisset, 2020: 119). Along with the Inter-American Court of Human Rights, it gained competence as a treaty body to handle issues pertaining to the States Parties to the Convention carrying out their responsibilities (Art. 13). The American Convention on Human Rights and the Charter of the Organization of American States (OAS) include the Commission's mandate, which is carried out by the organization with its main office in Washington, D.C. The Commission represents all of the Member States of the OAS. It has seven members who act independently, without representing any particular country (Art. 34).

The members of the Commission are chosen by the OAS General Assembly. The Commission convenes in both regular and extraordinary sessions on a regular basis throughout the year. In addition to completing its assigned tasks, the Executive Secretariat provides administrative and legal support to the Commission in carrying out its duties. The Inter-American human rights framework was established with the passage of the American Declaration of the Rights and Duties of Man in Bogotá, Colombia in April 1948. The Commission held its first meeting in 1960 after it was founded in 1959. By 1961, the Commission was conducting site visits to assess a nation's overall human rights condition or look into particular cases. In relation to its visits for the observation of the general human rights situation of a country, the Commission enjoys the power to publish special country reports.

The seven commissioners make up the Commission's leading officers. The OAS General Assembly chooses the commissioners for four-year terms, with the option to run for reelection once, for a total of eight years. They represent "all the member countries of the Organization" (Article 43) in their individual capacity and are not seen as representing their own country. They also need to be "persons of high moral character and recognized competence in the field of human rights" (Article 42). Although two citizens of the same Member State may not serve as commissioners at the same time, commissioners are not allowed to debate matters pertaining to their home countries.

The Commission's main responsibilities are to defend and promote respect for human rights. To this effect, the Commission: a) receives, analyzes, and investigates individual petitions that allege human rights violations, b) observes the general human rights situation in the Member States and publishes special reports regarding the situation in a specific State, when it considers it appropriate, c) carries out on-site visits to countries to engage in a more in-depth analysis of the general situation and to investigate a specific situation, usually resulting in the preparation of a report regarding the human rights situation observed, and publication which is sent to the General Assembly, d) stimulates public consciousness regarding human rights in the Americas. To achieve this, conducts research and publishes studies on a variety of subjects, such as: steps to be taken to ensure the judiciary's greater independence; the activities of irregular armed groups; the status of women's and minors' human rights; and the human rights of indigenous peoples, e) organizes and conducts conferences, seminars, and meetings with representatives of governments, academic institutions, non-governmental organizations, etc. to spread knowledge and increase awareness regarding issues relating to the inter-American human rights system, f) suggests to the Member States of the OAS the adoption of measures which would contribute to the protection of human rights; g) requests States to adopt specific "precautionary measures" to prevent serious and irreversible harm to human rights in urgent cases. The Commission may also request that the Court order "provisional measures" in urgent cases which involve danger to persons, even where a case has not yet been submitted to the Court, h) submits cases to the Inter-American Court and appears before the Court in the litigation of cases, and i) importantly, the Commission also requests advisory opinions from the Inter-American Court regarding questions of interpretation of the American Convention.

A petition claiming violations of the rights guaranteed by the American Convention and/or the American Declaration may be filed to the Commission by any individual, group of individuals, or non-governmental organization. On behalf of the petitioner or a third party, the petition may be filed in any of the OAS's four official languages (Art. 44). Inter-state complaints, however, need a specific declaration (Art. 45) from the complaining State confirming the Commission's jurisdiction to examine communications filed against

another State Party that has made the same declaration. The Commission may take up certain cases if it is asserted that a member state of the Organization of American States is responsible for the purported human rights violation. For States that have not signed the agreement, the Commission applies the American Declaration; for States that have, it uses the Convention to decide complaints. Naturally, the Commission is allowed to look into petitions alleging violations of human rights committed by State agents. However, the Commission may also take on cases where it is claimed that a State did not act to prevent a violation of human rights or did not carry out sufficient follow-up following a violation, including the victim's compensation as well as the investigation and punishment of those responsible. The applications that are filed with the Commission have to show that the victim has tried every home remedy available. If domestic remedies have not been exhausted, it must be demonstrated that the victim attempted to do so but was unable to do so for one of the following reasons: 1) inadequate due process was not provided by the remedies; 2) effective access to the remedies was denied; or 3) the decision regarding the remedies was made too slowly. The petition must be submitted within six months following the final decision in the domestic matter, if all available remedies have been exhausted. If domestic remedies have not yet been used up, the petition must be submitted within a reasonable period of time after the events that are being complained of. Additional basic formal conditions specified in the Convention and the Commission's Rules of Procedure must also be met by the petition (Art. 46). This implies that the Commission may decide there has been no infringement or that the petition is still inadmissible, ending the proceedings before delving into the merits (Art. 47). A formal decision to that effect, generally publicized, and must be issued by the Commission if it determines that a matter is inadmissible.

The relevant portions of the petition are forwarded to the Government along with a request for necessary data when a case is launched and given a number. All parties are requested to provide feedback on each other's replies as the case is being processed. In addition, the Commission has the authority to visit the scene, undertake independent investigations, and ask the parties for particular information. During the case processing procedure, the Commission may also convene a hearing when the parties are invited to appear and submit their factual and legal defenses. If the parties want it, the

Commission will nearly always offer to help them negotiate an amicable solution. When the parties have completed the basic back-and-forth of briefs, and when the Commission decides that it has sufficient information, the processing of a case is completed.

After that, the Commission writes a report summarizing its conclusions and offering broad suggestions to the State in issue. This report contains confidential data. The State is given a deadline by the Commission to address the matter and follow its recommendations. When this period granted to the State ends, the Commission will have two options. The Commission may prepare a second report, which is essentially the same as the first and generally include recommendations and conclusions. This time around, the State is again given a grace period to resolve the matter and follow any recommendations offered by the Commission. The Convention grants the Commission the ability to publish its findings before the end of the second term allotted to the State, albeit this is not often the case. The Inter-American Court is another option available to the Commission for an appeal. If it wishes to do so, it must submit a petition to the Court within three months of the day it handed the State in question its initial report. A copy of the preliminary report from the Commission will be included with the Court application. Every court session will have participation from the Commission.

The States Parties, "which shall not be at liberty to publish it," will receive a report from the Commission that "draws up a report setting forth the facts and stating its conclusions" if a solution cannot be achieved (Art. 50). The Commission may "set forth its opinion and conclusions concerning the question submitted for its consideration" and, in the event that the State in question fails to take "adequate measures," may ultimately decide to publish its report if, after a prescribed period, the matter has not been resolved or submitted to the Court (Art. 61). The Commission has the authority to hear petitions claiming violations of the American Declaration on the Rights and Duties of Man from OAS Member States that have not signed the American Convention on Human Rights. The Commission's ability to ask the Inter-American Court of Human Rights for advisory opinions is another intriguing feature of its authority (Art. 64).

In order to keep an eye on OAS Member States' adherence to the American Convention on Human Rights with regard to freedom of speech, the Commission established the Special Rapporteur on Freedom of speech of the Organization of American States (OAS) in 1997. As a result, the Special Rapporteur examines cases, including requests for "precautionary measures" from OAS Member States to safeguard journalists and others who are threatened or run the risk of suffering irreversible harm, as well as complaints of free expression violations that the Commission has received (Bens, 2020: 161-162). When there has been a significant infringement on someone's right to free speech, the Special Rapporteur notifies the authorities of the material it has gathered, releases a public statement, and offers suggestions for restoring that right. In other situations, the Special Rapporteur gets in touch with government representatives directly to ask for further details or to ask them to take action to undo the harm that has been done. The Special Rapporteur also offers recommendations to OAS Member States to change laws and regulations that infringe free speech rights protected under the Convention. The Special Rapporteur participates in education, training, and other activities to encourage local journalists and human rights defenders and advance the right to freedom of speech. He also conducts fact-finding trips to investigate complaints of breaches in OAS Member States. Every year, the Rapporteur releases a report detailing the state of press and expression freedom in each of the Americas' countries.

In 1997, the Commission created the Special Rapporteurship on Migrant Workers and Their Families in response to a particular request made by the General Assembly of the Organization of American States (OAS). The establishment of the Special Rapporteurship demonstrates the concern that member states of the Organization for Economic Cooperation and Development (OAS) have for the situation of a group that is particularly vulnerable to human rights breaches due to unique vulnerabilities. The Special Rapporteurship's purview was limited by the Commission to migrant workers and their families residing in non-national nations (Casla, 2019: 102–103). In order to reaffirm its commitment to making sure that women's rights are fully recognized and upheld in every Member State, the Commission created its Rapporteurship on the Rights of Women in 1994 (Reilly, 2019: 367). Although equality is legally guaranteed by each Member State's



constitution, the Commission's analysis of national legislative frameworks and practices has progressively shown the persistence of gender-based discrimination. Consequently, the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights contain broad obligations regarding equality and nondiscrimination. As such, the Rapporteurship was created with the initial mandate to assess the degree to which Member State laws and practices that impact women's rights adhere to these obligations (Bisset, 2020: 203; Chandrashekhar, 2020: 54-55).

Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women states that the issue of violence against women - which is itself a manifestation of gender-based discrimination - demands special attention from the Commission and its Rapporteurship. Through the publication of thematic studies, support for the development of new jurisprudence in this area within the individual case system, and on-site visits and country reports to investigate broader issues affecting the rights of women in specific countries of the region, the Rapporteurship has been instrumental in the Commission's work to protect women's rights (Adami & Plesch, 2021: 56-57).

According to the American Convention on Human Rights, the General Assembly of the Organization will elect seven members of the Inter-American Court on Human Rights in their individual capacities. These members must be individuals of high moral character and acknowledged experts in the field of human rights. The Member States will propose candidates for the court to consider. A maximum of three candidates, nationals of the states making the suggestions or of any other OAS Member State, may be proposed by each of those nations. At least one of the three candidates on a slate must be a citizen of a nation other than the one putting out the proposal. The Court's members are chosen to serve four-year terms and are only eligible for one term renewal. Seven judges, each chosen in their own right, make up the Court (Art. 52). San José, Costa Rica, is home to the Secretariat. The process before the Commission needs to be finished before the Court may consider a matter (Bisset, 2020: 342). The Court "shall adopt such provisional measures as it deems pertinent" in "cases of extreme gravity and urgency," and it may actually do so with regard to matters that have not yet been presented to it upon request from the Commission (Art. 63(2)). States Parties



agree to abide by the conditions of the court's rulings "in any case to which they are parties," and the court's decisions are final (Article 67). In contrast to the processes under the Convention, the enforcement mechanism under the Additional Protocol for Economic, Social, and Cultural Rights requires the States Parties only to "submit periodic reports on the progressive measures they have taken to ensure due respect for the rights set forth" (Article 19 (1)). The Protocol allows for the application of the complaints procedure before the Commission and Court only in relation to the rights to organize and join trade unions and to an education (Article 8(a)); furthermore, only in situations where the alleged violation is "directly attributable" to a State Party (Article 19 (6)). In their separate yearly reports, the Commission and the Court outline the various cases that they have each handled (Adami, 2020: 66).

The rights to life, liberty, personal security, equality, and a fair trial are among those that Andrew Arnould, Karl Decken, and Michael Susi have emphasized as being protected by the Inter-American Court on Human Rights; these rights also include the following: (i) the right to life, liberty, personal security, equality, and a fair trial; (ii) the right to life, personal integrity, circulation, residence, and special protection of children in the family; (iii) the right to life, to a fair trial, and to information about consular protection; (iii) the right to a fair trial and to judicial protection; (iv) the right to a fair trial and of asylum; (v) the right to a fair trial and to the protection of the Family; (vi) Right to Personal Integrity, to a Fair Trial, to Privacy, to Property, to Judicial Protection, Freedom of Conscience and Religion and of Association; (vii) Right to Personal Liberty and to Information on Consular Protection; (viii) Right to Personal Liberty, to a Fair Trial, and to Information on Consular Protection; (ix) Right to Personal Liberty, to a Fair Trial, to Movement and Residence and to Judicial Protection; (x) Right to Liberty and Protection from Arbitrary Arrest; (xi) Right to Equality and to Non-Discrimination; (xi) Right to Residence and Movement; (xii) Right to Residence and Movement and to Due Process of Law; (xiii) Right to a Nationality; (xiv) Right to Nationality and to Education; and, (xv) Right to Equality and to Non-Discrimination (2020: 685-687). The Additional Protocol to the American Convention on Human Rights in Relation to Economic, Social, and Cultural Rights, popularly known as the Protocol of San Salvador, was ratified by the OAS General Assembly in 1988. States

Parties agree under the terms of this Protocol to take steps toward the progressive realization of all rights implied in the economic, social, educational, scientific, and cultural standards outlined in the OAS Charter as amended by the Buenos Aires Protocol, both domestically and through international cooperation. The Protocol went into effect on November 16, 1999.

### **The African Charter on Human and Peoples' Rights, 1981**

A new phase in the African human rights movement began with the passage of the African Charter on Human and Peoples' Rights (the "African Charter") in 1981, which came into effect on October 21, 1986 (Adjami, 2002: 103-105). Despite the impact of the Universal Declaration of Human Rights, 1948 and the two International Covenants on human rights specifically on Civil and Political Rights, 1966 and Social, Economic and Cultural Rights, 1966 and the then existing regional human rights treaties, i.e. European Convention on Human Rights and Fundamental Freedoms, 1950 and the Inter-American Convention on Human Rights 1969, the 'African Charter' reflects a high degree of specificity due in particular to the African conception of the term "right" and the place it accords to the responsibilities of human beings. A comprehensive range of rights, including economic, social, cultural, and civil and political rights, are enumerated in the "African Charter." The African Commission on Human and Peoples' Rights was to be established as a monitoring body under the "African Charter" in order "to promote human and peoples' rights and ensure their protection in Africa" (Article 30). The ACHPR was established because of the need for stronger domestic and regional guarantees for the protection of human rights, which was made possible by the advancement of democracy in several African states (such as Namibia, Malawi, Benin, South Africa, Tanzania, Mali, and Nigeria) and the African Commission's dismal performance in this regard in the second half of the 1990s. The "African Charter" Protocol on the establishment of an African Court of Human Rights was adopted in 1998, however the protocol on women's rights in Africa is still being worked on. More than half of the countries on the continent have accepted the African Union Protocol on the Rights of Women. The African Commission on Human and Peoples' Rights (the "African Commission") is carrying out this work with help from the Office of the United Nations High Commissioner for Human Rights (UNHCHR).

The States Parties to the 'African Charter' "shall recognize the rights, duties and freedoms enshrined therein and shall undertake to adopt legislative or other measures to give effect to them". The African Charter also considers the States Parties' obligation to ensure, through instruction, publications, and education, the respect of the freedoms and rights outlined in the current African Charter, and to ensure that these rights and freedoms, along with the duties and obligations that go along with them, are understood (Art. 25) and the States Parties shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the Charter (Art. 26). Thus, when taken as a whole, these two obligations emphasize the States Parties' level of accountability as well as the belief that successful human rights protection depends on knowledge, education, and the fair administration of justice. Not to mention, certain clauses in the African Charter state that the States Parties must protect particular rights (Benyera, 2020: 98).

Unlike the other regional human rights accords previously mentioned, the African Charter incorporates civil and political rights as well as economic, social, and cultural rights into a single text (Benyera, 2020: 122). Additionally, it affirms all peoples' collective or community rights (Benyera, 2020: 123). It is noteworthy that the African Charter, when read as a whole, demonstrates significant progress in the area of personal accountability under Articles 27, 28, and 29 (Benyera, 2020: 128; Bisset, 2020: 288-290).

The 'African Charter' does not provide the States Parties any derogation powers in case of a national emergency. The 'African Commission' has interpreted this omission to imply that the African Charter forbids deviations (Bisset, 2020: 295). The 'African Charter' is particularly distinctive in that it protects the rights of whole peoples as well as those of individual people. The "African Charter" also emphasizes each person's responsibilities to other individuals and other organizations. While several provisions of the "African Charter" provide for limitations on the exercise of the rights bestowed, there are never any exemptions from the obligations established by this agreement.

The African Charter has its own thoughts to reach the goal. To do that the Charter devotes to these mechanisms destined for implementation.

**(a) The African Commission**

Eleven people, each acting in their own capacity, make up the "African Commission" (Art. 31). Its dual roles are to: (i) advance human and peoples' rights; and (ii) safeguard these rights (Article 30), which includes the right to receive communications from other sources as well as from States. As to the function of promoting human and peoples' rights, it is incumbent on the part of the 'African Commission', in the first place, in particular to (a) collect documents; (b) undertake studies and researches on issues and problems specifically relating to the African continent; (c) organize conferences; (d) encourage domestic human rights institutions; and importantly (e) "should the case arise, give its views or make recommendations to Governments". On the other hand, it should also entail and demonstrate its contribution to the "formulation and laying down of principles and rules that are aimed at solving legal problems relating to human and peoples' rights". Working with other African and international organizations concerned with the promotion and defense of these rights is the "African Commission's" final and most significant duty.

A State Party may notify another State Party of the African Charter in writing if it believes that State Party has violated any of the charter's provisions (Art. 47). The State to which the message is intended should furnish a written explanation within three months of the letter's receipt. If the matter has not been settled via bilateral negotiations or by any other peaceful method to the satisfaction of the two State Parties concerned, any State may bring it to the attention of the "African Commission" (Art. 48). Notwithstanding these terms, a State Party may, in accordance with Article 49, send an issue directly to the 'African Commission'. Nevertheless, "unless the procedure of achieving these remedies would be unduly prolonged," the "African Commission" may handle the problems once all domestic remedies have been exhausted in the particular case (Art. 50). Before the "African Commission," the relevant States may be represented and provide written and spoken remarks. The "African Commission" will prepare a report "stating the facts and its findings" and forward it to the Assembly of Heads of State and Government (the "Assembly") and the concerned States once it has all the information needed and "after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights" (Art. 52).

The aforementioned "Assembly" may receive "such recommendations as it deems useful" from the "African Commission" upon receipt of its report (Art. 53). The "African Charter" only requires that, prior to each meeting of the "African Commission," its secretary compile a list of all communications (apart from those from States Parties) and send it to the Commission's members, who then specify which communications the Commission should take into consideration (Article 55 (1)). It does not specifically state whether the "African Commission" is qualified to handle individual complaints.

As Art. 56 envisaged, following criteria shall be fulfilled before the Commission can consider the case namely (1) the communication must indicate the author; (2) it must be compatible with the African Charter on Human and Peoples' Rights; (3) it must not be written "in disparaging or insulting language"; (4) it must not be "based exclusively on news disseminated through the mass media"; (5) it must be submitted only after all domestic remedies have been exhausted, "unless it is obvious that this procedure is unduly prolonged"; (6) it must be submitted "within a reasonable period from the time local remedies are exhausted"; and, finally (7) the communications must not "deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations", the Charter of the OAU or the African Charter on Human and Peoples' Rights. Persons or groups of persons are prohibited from appearing in person before the Commission under the Charter. A message must be brought to the attention of the State in question before it is given any serious consideration (Art. 57). Subsequently, "when it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases"; the latter may then request the Commission "to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations" (Art. 58). Last but not least, the Charter outlines a process for emergency situations that must be reported by the Commission to the Assembly Chairman, "who may request an in-depth study."

In addition, according to Article 62 of the Charter, State Parties are required to provide "a report on the legislative or other measures taken with

a view to giving effect to" the Charter's provisions every two years. The African Commission on Human and Peoples' Rights has examined these periodic reports in public sessions notwithstanding the absence of an express mechanism for doing so in the Charter (Bisset, 2020: 305). Therefore, the African Commission on Human and Peoples' Rights is specifically authorized to: (i) advance human rights through document collection, research projects, information dissemination, recommendations, rule and principle formulation, and collaboration with other organizations; (ii) guarantee the preservation of human and peoples' rights through the receipt of (a) inter-State communications; (b) communications other than those from the States Parties; and (c) periodic reports from the State Parties.

The African Charter created the African Commission as the sole body responsible for ensuring that State Parties are adhering to the obligations imposed by the Charter. The Commission was in charge of four distinct tasks: interpreting the Charter; reviewing State Party reports; protecting the public, including handling complaints; and conducting promotional activities. Although the Charter assigns the Commission a broad promotional function, it does not provide sufficient protections. In actuality, there are no legal remedies in the Charter or the Commission. This is understandable given that, in 1981—the year the Organization of African Unity adopted the African Charter—virtually no African state—aside from the Gambia, Senegal, and Botswana—could even claim to have a formal democracy or a system in place to monitor and encourage state adherence to the Commission's rulings (Addaney & Jegede, 2020: 106).

### **(b) African Court of Human and Peoples' Rights**

African jurists convened in Lagos, Nigeria in 1961, and after concluding that a human rights charter accompanied by a court was imperative, they put up the notion of an African Court on Human and Peoples' Rights. The concept for continental human rights institutions was first offered at this conference (Odinkalu, 2003: 20-26). A commission tasked with advancing and ensuring the protection of human rights took the role of a court when the Assembly of Heads of State signed the African Charter on Human and Peoples' Rights in 1981. The African Court on Human and Peoples' Rights was thought to be a way to overcome the Commission's advisory body constraints, as the charter's limited consultative powers still restrict the Commission's working procedures.

In light of this, academics and human rights NGOs launched vigorous initiatives to establish an African Court on Human and Peoples' Rights. To "ponder in conjunction with the African Commission on Human and Peoples' Rights over the means to enhance the efficiency of the Commission in considering particularly the establishment of an African Court on Human and Peoples' Rights," the OAU Assembly of Heads of State and Governments asked its Secretary General to call a meeting of government experts in 1994 (Chandrashekhar, 2020: 68). A paper about the creation of an African Human Rights Court was created in September 1995 by the OAU Secretariat's expert meeting, which was held in Cape Town, South Africa, in cooperation with the African Commission and the International Commission of Jurists. After many sessions, the OAU Conference of Ministers of Justice/Attorneys General agreed on a draft protocol in December 1997. The Organization of African Unity Assembly of Heads of State and Governments adopted this on June 10, 1998, establishing the African Court in Ouagadougou, Burkina Faso. The primary objective of the establishment of the African Human Rights Court was to enhance and supplement the protective role of the African Commission on Human and Peoples' Rights. After receiving the 15th instrument of ratification from the Comoros on December 25, 2004, the convention creating the African Court entered into force on January 25, 2005.

Of the three regional human rights judicial organizations, the African Court on Human and Peoples' Rights (sometimes known as the "African Court") is the newest. Although it was envisioned by the African Charter on Human and Peoples' Rights, which was finished in 1981, its structure was not established until a 1998 protocol for its construction was published by the Organization of African Unity (OAU). In the case of Africa, the creation of a regional judicial body to guarantee the implementation of the fundamental agreement is more of an afterthought than in the European and Inter-American systems for the protection of human rights, where the ECHR and the IACHPR are essential components of the system *ab initio*. The Member States were 'firmly convinced' that the African Commission on Human and Peoples' Rights' responsibilities needed to be supplemented and strengthened in order to fulfill the objectives of the African Charter on Human and Peoples' Rights, which is why an agreement could be reached, according to the preamble of the Protocol for the establishment of an African Court.



Some of the traits that set the African Court apart from its American and European counterparts as well as from all other judicial organizations can also be attributed to this growing need for more potent human rights protection (Aka, 2017: 78–82). Article 3 of the Protocol expressly stipulates that any instrument, including international human rights treaties, approved by the State Party in issue may serve as the foundation for proceedings brought before the Court. The Protocol provides an optional jurisdiction for disputes brought by private parties or non-governmental organizations that are observers. The State that is the subject of the complaint must have first acknowledged such competence at the time of ratification or at any later time in order for the African Court to have the authority to hear cases from these distinct entities. The African Court cannot consider petitions against States that have not agreed to grant that form of competence by the Court. Nonetheless, the Court may also draw legal authority from any applicable human rights treaties that the relevant State has acknowledged, in addition to the African Charter (Art. 7).

The African Court shows a glaring and praiseworthy concern for the reputations of NGOs and for the rights of individuals. As long as the State in issue made a statement at the time of ratifying the Protocol or thereafter accepted the jurisdiction of the Court to hear such matters, any African nongovernmental organization that has been recognized by the Organization of African Unity (OAU) may obtain an advisory opinion. Organs of the OAU and Member States may also solicit advisory views (Adami, 2020: 111). Again, according to Nweke (2020: 118), this provision has the potential to progressively enhance the African Court's promotional role. There may have been a turning point in African human rights enforcement with the establishment of the African Court on Human and People's Rights. In fact the recent several decades to the occurrences of large-scale instances of mass crimes like genocide give birth to construction of an International Criminal Tribunal to confront the cruelest non-international armed conflict (Kannowski & Steiner, 2021: 156).

## Conclusion

The importance of regional international human rights instruments in the defense and advancement of human rights is unparalleled, given the considerable and huge influence that the treaties have had on the



modifications of the laws of several countries. Additionally, because so many States have ratified, acceded to, or adhered to them, they may be necessary for judges, prosecutors, and attorneys to employ in carrying out their professional duties. This makes them increasingly important for their job. Judges and attorneys can find valuable guidance and information from this case-law regarding the administration of justice and treatment of individuals deprived of their liberty, among other areas where many of the provisions of the regional treaties (including the protocols) have been interpreted extensively.

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