

A hand holding a crumpled white cloth with a piece of paper attached that says "PEACE ??". The background is a black and white photograph of a destroyed city with rubble and smoke.

UNIT 7. THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS AT THE REGIONAL LEVEL: THE WORK OF THE ORGANIZATION OF AFRICAN UNITY AND THE AFRICAN UNION

1. General ideas.
2. The 1981 African Charter on Human and Peoples' Rights and its protocols.
3. Other conventions for the protection of human rights.

1. GENERAL IDEAS



- Organization of African Unity (OAU) 1963-1999
 - Regional IO. 53 member states.
 - The Addis Ababa Charter (Ethiopia) of 25/5/1963.
 - Main objectives of the OAU:
 - To promote unity and solidarity among African states;
 - To coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa;
 - To defend their sovereignty, their territorial integrity and independence;
 - To eradicate all forms of colonialism from Africa; and
 - To promote international cooperation in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights.
- Replaced by the AU (July 2002). 55 member states. Some problems of institutional coherence in the protection system and other problems of the AU: Process of reform of the IO started in 2016.
 - Main objectives of the AU:
 - Achieve greater unity and solidarity among African countries and their peoples;

- Defend the sovereignty, territorial integrity and independence of its member states;
- Accelerate the political and socio-economic integration of the continent;
- Promote and defend African common positions on issues of interest to the continent and its peoples;
- Encourage international cooperation;
- Promote peace, security and stability across the continent;
- Promote democratic principles and institutions, popular participation and good governance;
- Promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human rights instruments;
- Establish the necessary conditions to enable Africa to play its rightful role in the global economy and in international negotiations;
- Promote sustainable economic, social and cultural development as well as the integration of African economies;
- Promote cooperation across all fields of human activity to improve the living standards of African peoples;
- Coordinate and harmonize the policies among existing and future Regional Economic Communities for the gradual attainment of the objectives of the Union;
- Advance the development of the continent by promoting scientific and technological research;

- Work with relevant international partners to eradicate preventable diseases and promote public health on the continent.
 - Ensure the effective participation of women in decision-making, particularly in the political, economic and socio-cultural areas;
 - Develop and promote common policies on trade, defense and foreign relations to ensure the defense of the Continent and strengthen its negotiating positions;
 - Invite and encourage the full participation of the African diaspora, as an important part of our Continent, in building the African Union.
- Principal decision-making bodies: The Assembly of Heads of State and Government, the Executive Council, the Permanent Representatives Committee (PRC), Specialized Technical Committees (STCs), the Peace and Security Council and The African Union Commission.
 - Judicial, legal and HR bodies: African Commission on Human and Peoples' Rights (ACHPR), African Court on Human and Peoples' Rights (AfCHPR), AU Commission on International Law (AUCIL), AU Advisory Board on Corruption (AUABC) and the African Committee of Experts on the Rights and Welfare of the Child.

2. THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS

- The African Charter on Human and Peoples' Rights (ACHPR):
 - Signed in 1/6/1981. In force on 21/10/1986 (55 States Parties).
 - Creation of the African Commission on Human and Peoples' Rights.
 - Civil, political, economic, social and cultural rights of individuals and communities. All rights are absolute and non-derogable.
- Amended by:
 - Protocol to the ACHPR on the Establishment of the African Court on Human and Peoples' Rights, signed on 10/06/1998 (in force: 25/1/2004); 30 States Parties.
 - Protocol to the ACHPR on the Rights of Women in Africa, signed on 1/07/2003 (in force: 25/11/2005); 42 States Parties.
 - Protocol to the ACHPR on the Rights of Older Persons, signed on 31/1/2016 (pending ratification).

2.1. Obligations of the parties

a) General obligations

- Art. 1 and Art. 2 of the Charter (absolute obligations):
 - Recognition of rights, duties and freedoms.
 - Commitment to adopt necessary implementation measures.
 - Non-discrimination (right to equality): nationals and foreigners, although political rights are only recognized for citizens.

b) Specific obligations

- Measures to ensure health and medical assistance in case of illness.
- Assistance to the family, elimination of discrimination against women, protection of women's and children's rights.
- Right to free disposal of natural wealth and resources.
- Elimination of forms of foreign economic exploitation (international monopolies).
- Right to development.
- Prohibition of the use of territories as a base for subversive or terrorist activities.
- Promotion of education on respect for rights.

- Judicial independence and improvement of national institutions.

c) *Women's Rights Protocol*

- Protection of women in armed conflict.
- Protection of elderly women, women with disabilities or in a state of need.
- Adequate reparation in cases of rape.

d) *Protocol on the Rights of the Elderly* (pending)

- Integration of UN principles in favor of the elderly (independence, participation, self-realization, care, dignity) into national legislation.
- Elimination of discrimination and right to accessibility.
- Right to make decisions.
- Social protection and prevention of inhumane or harmful treatment.
- Family care and access to residential care.
- Special protection for elderly women, elderly people with disabilities or those caring for children.
- Protection in times of conflict.
- Access to health, education and recreational activities.

2.2. Recognized Rights

a) Human Rights

i. Civil and political rights

- Equality before the law.
- Right to respect for the dignity of the person and recognition of legal personality.
- Right to freedom and security.
- Right to be judged: particularities of religious tribunals.
- Freedom of conscience, profession and practice of religion.
- Right to information and freedom of expression.
- Freedom of association.
- Freedom of assembly.
- Freedom of movement and residence, right of asylum.
- Right of citizens to participate freely in the conduct of public affairs of their country.
- Right to property.
- Additional Protocol on Women's Rights:
 - Specific rights marriage, separation, divorce and annulment.
 - Access to justice and equality before the law.

- Right to political participation.
- Widowhood and inheritance.
- Additional Protocol on the Rights of the Elderly

ii. Economic, social and cultural rights

- Right to work.
- Right to physical and mental health.
- Right to education.
- Right of elderly and disabled persons to special protection measures.
- Additional Protocol on Women's Rights:
 - Right to education and training for women.
 - Economic rights and social protection.
 - Right to access healthy and adequate food, drinking water.
 - Right to an adequate habitat and positive cultural environment.
 - Right to a healthy environment.
 - Right to sustainable development.
- Additional Protocol on the Rights of the Elderly.

b) Peoples' Rights

- Problems of ownership and justiciability:
 - Equality of peoples.
 - Self-determination (independence, self-government, local government, federation, confederation, unitary state or any other form in accordance with the will of the people while respecting the principles of sovereignty and territorial integrity).
 - Free disposal of natural wealth and resources.
 - Economic, social and cultural development.
 - Right to peace and security.
 - Right to a satisfactory and global environment, conducive to their development.

2.3. Duties

- Generally: responsibilities of the individual towards the family, society, the State and other collectivities, and towards the international community.
- Specifically:
 - Respect and consider fellow human beings without discrimination.
 - Preserve harmonious development of the family.
 - Respect for parents, to feed them and to assist them in case of need.
 - Serve the national community without compromising the security of the State, nationality or residence.

- Reinforce social and national solidarity, national independence and territorial integrity.
- Contribute to national defense.
- Defend the fundamental interests of society.
- Safeguard and reinforce African cultural values.
- Contribute to the promotion and realization of African unity.

2.4. HR Protection Measures

- Institution in charge of ensuring protection of rights and mechanisms to guarantee compliance with State obligations:
 - Charter: African Commission on Human and Peoples' Rights (Art. 30).
 - Protocol 1998: African Court on Human and Peoples' Rights.
- a) *The African Commission on Human and Peoples' Rights*
 - Established: 12/6/1989 in Banjul (Gambia).
 - Composition:
 - 11 members: African personalities of high moral standing, integrity, impartiality and expertise in human and peoples' rights.
 - Elected by the OAU Conference of Heads of State and Government.
 - Organization: Chairperson, Vice-Chairperson and Secretary (appointed by the OAU Secretary).
 - Non-permanent. Ordinary (2/year) and extraordinary sessions.

- African languages, English and French.
- Public meetings and decisions by consensus or simple majority.
- Jurisdiction: Protection of human rights in Africa
 - System of communications:
 - States' communications (Art. 47): State Party vs. another State Party on violation.
 - ❖ Time limit: 3 months from communication for written explanations/information.
 - ❖ Time limit without friendly settlement: submission of the matter to the Commission by means of written notification to the Chairperson and Secretary OAU, and to the State concerned (also directly).
 - ❖ Exhaustion of domestic remedies.
 - ❖ Request for necessary information.
 - ❖ In camera examination.
 - ❖ Issuance of report on facts, conclusions and recommendations.
 - Other communications (Art. 55): individuals and non-governmental organizations against States Parties (*Actio popularis*).
 - ❖ Submitted to the Commission through its Secretary.
 - ❖ Exam and decision by majority.
 - ❖ Private meeting (3-member working groups) and admissibility requirements: exhaustion of domestic remedies.
 - ❖ Communication to State concerned who then will be granted a period of 3 months for allegations.
 - ❖ Report.

- Reporting system: reports to be submitted by States Parties (Art. 62 + Additional Protocol on Women's Rights): Biannual reports on national measures and progress in human rights.

b) The African Court on Human and Peoples' Rights

- Regulation:
 - Protocol to the African Charter, 10/7/1998 (in force, 25/1/2004).
 - Protocol on the Statute of the African Court of Justice, 1/7/2003 (in force, 11/2/2009).
 - Protocol on the Statute of the African Court of Justice and Human Rights, 1/7/2008 (pending ratification).
 - Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, 27/7/2014 (pending ratification).
- Composition: 11 judges, nationals of OAU member states, elected by secret ballot at the OAU Heads of State and Government Conference.
- Organization: President, Vice-President and Secretariat (Secretary and officials).
- Headquarters Arusha (Tanzania).
- In operation: 2/7/2006.
- Jurisdiction: Disputes relating to the interpretation and application of the Charter and Protocols, and other HR instruments.
 - **Contentious procedure:**

- Standing: Commission, State party that has submitted a case to the Commission, State party against which a complaint has been lodged, State party of the victim's nationality, and African intergovernmental organizations. Also, individual or organizational claims directly if permitted by the Court.
- Direct exam or referral to the Commission.
- Binding judgments and execution within a fixed period.
- As of March 2022, only eight (8) of the thirty-two (32) State Parties to the Protocol have deposited the declaration recognizing the competence of the Court to receive cases directly from NGOs and individuals. The eight States are: Burkina Faso, The Gambia, Ghana, Guinea Bissau, Mali, Malawi, Niger and Tunisia.
- **Consultative procedure:** Petitioners: OAU member states, OAU organs or organization recognized by the OAU, on legal questions regarding the Charter, protocols or any human rights instrument.
- New Rules of Procedure into force on 25 September 2020: Introduces enforcement mechanisms to ensure compliance with Court judgments and rulings.

3. OTHER TREATIES REGARDING HR PROTECTION

- African Charter on the Rights and Welfare of the Child, 1/7/1990 (in force, 29/11/1999). Special body for the monitoring of children's rights.
- Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Kampala Convention, 23/10/2009 (in force 6/12/2012).
- OAU Convention Governing the Specific Aspects of the Refugee Problem in Africa, 10/9/1969 (in force, 20/1/1974).
- African Youth Charter, 2/7/2006 (in force 8/8/2009).
- Statute on the Establishment of a Legal Aid Fund for the Human Rights Organs of the African Union, 30/1/2016 (pending ratification).



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