The contemporary regional human rights regime in Africa is still in an aspirational and experimental phase. It is based on three foundational documents: the African Charter on Human and Peoples’ Rights (1986), the Constitutive Act of the African Union (2001), and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (2005). It is implemented by three existing institutions: the African Commission on Human and Peoples’ Rights (“Commission”) (1986), the African Court on Human and Peoples’ Rights (“ACHPR”) (2004), and the African Court of Justice (“ACJ”) (2009). The ACHPR and ACJ will merge into a single judicial body, the African Court of Justice and Human Rights (“ACJHR”), once the treaty creating it enters into force. Notwithstanding this institutional proliferation, only the African Commission has had actual cases (with the

* All views expressed in this article are those of the author and do not necessarily represent the views of his institutional affiliations.


exception of one inconsequential case at the ACHPR, which was dismissed on clear jurisdictional grounds, and one case whose effect is still unclear). However, the Commission’s power is limited to persuasion as it lacks authority to impose sanctions to enforce its decisions and has therefore been able to secure only weak compliance with its recommendations. Nonetheless, there is a legal infrastructure that has the potential – albeit limited – to help protect human rights in Africa.

A. Institutions

1. African Commission on Human and Peoples’ Rights

The Commission was created under the Charter and began operating in 1987. It consists of eleven members elected by the Assembly of the African Union (“AU”) (before 2001, the Organization of African Unity (“OAU”)) for six-year renewable terms.\(^5\) The Commission has a quorum of seven members and can decide by simple majority, with the Chairman’s vote as the tie-breaker in case of an equal number of votes.\(^6\) It is headquartered in Banjul, Gambia, and meets twice a year for ten to fifteen day sessions in March or April and October or November. It has also granted observer status to over 200 non-governmental organizations, which can monitor its biannual sessions.

The Commission’s mandate is:

1. To promote Human and Peoples’ Rights and in particular:
   
   (a) To collect documents, undertake studies and researches on African problems in the field of human and peoples’ rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples’ rights, and should the case arise, give its views or make recommendations to Governments.

   (b) To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African Governments may base their legislations.

   (c) Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples’ rights.

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\(^4\) See infra section B.2 of this Chapter.

\(^5\) Charter, Arts. 31, 33, 36.

\(^6\) Id. Art. 42.