

African Charter on Human and Peoples' Rights

Introduction

The African Charter on Human and Peoples' Rights¹ is an African regional human rights instrument adopted by the Organization of African Unity (OAU), now the African Union (AU).² Following several years of lobbying by the media, church groups, intergovernmental and nongovernmental organizations for the establishment of a human rights protection system, the Assembly of Heads of State and Government of the OAU adopted a resolution in July 1979 to form a committee of experts to draft an African Charter on Human and Peoples' Rights. The OAU adopted the Charter on 7 June, 1981 and it entered into force on 21 October 1986.³

¹ The African Charter on Human and Peoples' Rights will be referred to as the African Charter or Charter.

² See article 3(h) of the Constitutive Act of the African Union. At its first meeting in Durban, South Africa, 9–10 July 2002 the African Union decided that the African Commission on Human and Peoples' Rights established by the African Charter on Human and Peoples' Rights shall operate within the framework of the African Union, para. 2(xi) of Decision ASS/AU/Dec. 1(I).

³ If otherwise not referenced the information included in this fact sheet can be found in the African Charter on Human and Peoples' Rights or on the website of the African Commission on Human and Peoples' Rights www.achpr.org.



The African Charter on Human and Peoples' Rights

The Charter in general

The African Charter on Human and Peoples' Rights covers both civil and political rights as well as economic, social and cultural rights. The Charter, furthermore, not only includes rights for individuals but also for peoples. In addition, it also imposes duties, which is unique in international human rights instruments. The Charter's individual rights and freedoms (civil, cultural, economic, political and social) include rights to: non-discrimination (article 2); liberty and security of person (article 6); fair trial (article 7); receive, express and disseminate information and opinions (article 9); property (article 14); and education (article 17). Furthermore, States parties have an obligation to protect and assist the family (article 18). The peoples' rights enshrined in the African Charter ensure inter alia that all peoples: are equal (article 19); may freely dispose of their wealth and natural resources (article 21); and have the right to a general satisfactory environment favourable to their development (article 24). The duties of the individual included in the Charter require that: an individual's rights and freedoms are only exercised with due regard to the rights of others (article 27); an individual serves their national community by placing their physical and intellectual abilities at its service (article 29); an individual works to the best of their abilities and competence and





pays taxes imposed by law in the interests of the society; and an individual preserves and strengthens social and national solidarity (article 29).

The following two sections consider those obligations in the Charter which are directly and indirectly linked to the right to health. While reading these sections, keep in mind the introduction to this folder discussing the linkages between the implementation of various human rights and the specific right to health.

Direct linkages to health

The right to health in the African Charter is enshrined in article 16 and reads as follows: '(1) Every individual shall have the right to enjoy the best attainable state of physical and mental health. (2) States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.' The Charter also contains other provisions which are directly linked to health

such as the right to be free from the exploitation and degradation of man, particularly slavery, slave trade, torture, and cruel, inhuman or degrading punishment and treatment (article 5) or the obligation of States parties to care for the physical and moral health of the family (article 18) and ensure the protection of the rights of women, children and the disabled (article 18).

Indirect linkages to health

The fulfilment of the right to health is, furthermore, linked to the protection and implementation of other provisions in the African Charter which may have direct or indirect implications on a person's enjoyment of the right to health. These provisions include: the right to non-discrimination (article 2); the right to life (article 4); the freedom of conscience, profession and religion (article 8); the right to receive, express and disseminate information (article 9); the right to free association (article 10); the right to assemble freely with others (article 11); freedom of movement and residence (article 12); the right to work (article 15); and the right to education (article 17). In ensuring peoples' rights, States parties may also fulfil the individual's right to health, by respecting that all peoples are equal (article 20), and by ensuring that all peoples: are allowed to freely dispose of their wealth and natural resources (article 21); have the right to their economic, social and cultural development (article 22); have the right to national and international peace and security (article 23); and have the right to a general satisfactory environment (article 24).

The African Commission on Human and Peoples' Rights

The Commission in general

The African Commission on Human and Peoples' Rights was established under article 30 with the mandate to: promote human and peoples' rights; protect human and peoples' rights; and interpret the provisions of the Charter (article 45). The Commission examines reports, which States parties have undertaken to submit (article 62), on the legislative or other measures that States parties have taken to give effect to the rights and freedoms enshrined in the Charter and on the progress made with regard to the enjoyment of these rights. Having considered the report, the Commission may address general observations to the State concerned as it deems necessary. The Commission may also transmit the general observations and the State party's report and comments to the Assembly of Heads of State and Government of the AU. The Commission may, in addition, consider individual communications (article 55) alleging that a State party to the Charter has violated one or more of the rights guaranteed therein. Following article 46, the Commission may resort to any form of investigation it deems appropriate. Having considered such a complaint, the Commission issues a decision known as a recommendation. Furthermore, a State party may, if it considers that another State party is not fulfilling its obligations under the Charter, either draw this to the other

State party's attention or bring the matter to the attention of the Commission; this is known as an inter-state communication (articles 47–49 and 52). The members of the Commission, furthermore, perform various promotional activities to advance the understanding and knowledge of the Charter within States parties (article 45). Moreover, the Commission has so-called “special mechanisms”, currently six, which refer to those Special Rapporteurs appointed by the Commission to investigate human rights situations of particular concern.

How can the Commission help in ensuring the right to health?

One of the primary objectives of the reporting system is to establish a framework for constructive dialogue between the Commission and the States parties. Consequently, while a State party is reporting on, among other provisions, the right to health, the Commission may highlight a State party's shortcomings in implementing this right, but also for other directly or indirectly health-related rights. The Commission may also indicate how the State party should go about correcting these shortcomings. If an individual believes that his or her right to health, as well as other rights which may have a direct or indirect impact on the right to health, has been violated then a communication may be

submitted to the Commission. If the communication is considered admissible, and after the Commission has reached a decision on the communication, a recommendation will be issued to the State party in question. The Commission's promotional activities may be a means to highlight States parties' obligations in relation to the right to health and other related rights. The Special Rapporteurs are currently considering the following issues: prisons and prison conditions in Africa; women's rights; freedom of expression in Africa; the situation of human rights defenders; refugees, asylum seekers and internally displaced persons in Africa; and extra-judicial, summary and arbitrary executions. Almost all of these issues directly or indirectly have implications on an individual's enjoyment of his or her right to health. The use of the Special Rapporteurs can therefore raise the issue of the right to health for specific groups or the health implications within the particular topic considered.

Additional African instruments dealing with the right to health

Under the African Charter on Human and Peoples' Rights two optional protocols have been adopted, the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an



African Court on Human and Peoples' Rights which was adopted on 9 June 1998,⁴ and entered into force on 25 January 2004, and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa which was adopted on 13 September 2000,⁵ and entered into force on 25 November 2005. This latter Protocol specifically protects the right to health in article 14 (health and reproductive rights). It also prohibits violence against women, including sexual violence, discrimination and harmful practices.⁶ Another African instrument which also enshrines the right to health is the African Charter on the Rights and Welfare of the Child, adopted under the auspices of the then

⁴ OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

⁵ OAU Doc. CAB/LEG/66.6.

⁶ See article 1 for definition of discrimination against women, harmful practices and violence against women. See further the following health related articles: 2 (elimination of discrimination against women); 3 (right to dignity); 4 (rights to life, integrity and security of person); 5 (elimination of harmful practices); 11 (protection of women in armed conflicts); 12 (right to education and training); 13 (economic and social welfare rights); 15 (right to food security); 16 (right to adequate housing); 18 (right to a healthy and sustainable environment); 22 (special protection of elderly women); 23 (special protection of women with disabilities); and 24 (special protection of women in distress).



OAU which expressly defines the right to health in article 14 and lists specific measures that States parties must take to implement the right to health for African children. The Charter in addition protects other rights which may directly or indirectly impact a child's enjoyment of the right to health.⁷

Eastern Mediterranean Region ratifications

The countries of the Eastern Mediterranean Region that have ratified the Charter are Egypt, Libyan Arab Jamahiriya, Somalia, Sudan and Tunisia. The total number of States parties to the African Charter on Human and Peoples' Rights is 53 (as of January 2005).⁸ Note that this is an African regional instrument, and some of the Member States of the WHO Eastern Mediterranean Region will accordingly not have been eligible to sign or ratify the Charter.

⁷ See e.g. articles 3 (non-discrimination); 13 (handicapped children); 15 (child labour); 16 (protection against child abuse and torture); 18 (protection of the family); 21 (protection against harmful social and cultural practices); 23 (refugee children); 27 (sexual exploitation); and 28 (drug abuse).

⁸ Ratifications and signatures the African Charter on Human and Peoples' Rights can be found at: www1.umn.edu/humanrts/instree/ratz1afchr.htm and www.achpr.org/english/doc_target/documentation.html?../ratifications/ratification_charter_en.pdf

