

International Religious Freedom Advocacy
A Guide to Organizations, Law, and NGOs

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AFRICAN UNION

The African Union (AU) is the youngest of the region systems—its founding agreement, the Constitutive Act of the African Union, was approved in 2000 and entered into force in 2001. Comprising fifty-three member states, it represents all of the countries of the African continent both north and south of the Sahara Desert (except Morocco), and it is headquartered in Addis Ababa, Ethiopia. The AU is, however, the successor organization to the Organization of African Unity (OAU) and can therefore trace its origins back to 1963 and the passing of the Charter of the Organization of African Unity.

African Union members

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Republic of the Congo, Côte d'Ivoire, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Western Sahara (SADR), São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zimbabwe

To understand the AU, one must first understand the history of the Organization of African Unity. The OAU was originally focused on ending apartheid and colonial control on the continent. The founding charter made only passing mention of human rights, pledging its members to have “due regard” for the Universal Declaration, and contained no mention of religious freedom. As the OAU matured, concerns were raised about a perceived double standard, where the OAU would criticize nonmembers but would be silent on the human rights abuses committed by its own. Consequently, the OAU worked through the 1960s and 1970s to create specific human rights commitments for all members, which resulted in the African Charter on Human and Peoples’ Rights in 1981.

The African Charter concretized basic human rights and religious freedom, and also established the African Commission on Human and Peoples' Rights. These reforms led to further discussions in the 1990s about how to improve the ability of African countries, working in unison, to promote fundamental freedoms, peace, and security. This culminated in the 1999 Sirte Declaration in which OAU members agreed to create a new pan-African organization. The Constitutive Act of the African Union followed in 2000 and entered into force in 2001, thus establishing the African Union.

The transition from the Organization of African Unity to the AU is ongoing and, as of this writing, is not complete. While the agreement establishing the AU does increase the importance of human rights, the AU still retains as key objectives other issues such as defending the sovereignty, territorial integrity, and independence of its members; working to build partnerships between governments and civil society; and focusing on integrating the continent economically and socially. Time will tell whether the AU will improve continental respect for human rights protection over the former OAU.

Nongovernmental Involvement

NGOs can play an important role in the work of the African Union. "Observer status" is required for those groups wishing to engage the African Commission on Human and Peoples' Rights. The same status is also required for those groups petitioning the African Court of Human and Peoples' Rights. The requirements for observer status are straightforward, and NGOs must send their request and supporting documentation to the Secretariat of the African Commission.

Chapter 1

All organisations applying for observer status with the African Commission shall consequently:

- Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the OAU Charter and in the African Charter on Human and Peoples' Rights;
- Be organisations working in the field of human rights
- Declare their financial resources

To this effect, such an Organisation shall be requested to provide:

- A written application addressed to the Secretariat stating its intentions, at least three months prior to the Ordinary Session of the Commission which shall decide on the application, in order to give the Secretariat sufficient time in which to process the said application.

- Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement, as well as a statement on its activities.
- The statement of activities shall cover the past and present activities of the Organisation, its plan of action and any other information that may help to determine the identity of the organisation, its purpose and objectives, as well as its field of activities.
- No application for Observer Status shall be put forward for examination by the Commission without having been previously processed by the Secretariat.
- The Commission's Bureau shall designate a rapporteur to examine the dossiers. The Commission's decision shall be notified without delay to the applicant NGO.

Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human Rights with the African Commission on Human and Peoples' Rights

RELIGIOUS FREEDOM COMMITMENTS

The Constitutive Act of the African Union does not speak specifically to religious freedom but does contain stronger references and commitments to human rights than does the original OAU Charter. Article 3 of the Constitutive Act speaks to the objectives of the AU. Subarticle (e) takes “due account” of the Universal Declaration, and Subarticle (h) goes further by establishing as objectives the promotion and protection of “human and peoples’ rights in accordance with the African Charter” and other human rights instruments. Article 4, outlining the AU’s principles, further bolsters this commitment by declaring that the AU will function in accordance with “respect for democratic principles, human rights, the rule of law and good governance.”

The previously mentioned African Charter on Human and Peoples’ Rights represents the principal document for the continent concerning human rights, as all fifty-three AU members have ratified it. Sometimes labeled as the Banjul Charter, a reference to where it was adopted in 1981, the Charter entered into force in 1986. The Charter is distinctive, as in addition to covering basic civil and political rights, it addresses economic rights and places a large emphasis on the role of the community in development and security. It also speaks to the duties of individuals to the community.

Considering the far-reaching nature of the document, the Article 8 religious freedom provision is surprisingly limited. While speaking to the right to practice religion freely, it does not follow the more specific language found

in other international documents. It also is silent about the question of changing one's religion. Other relevant articles concerning religious freedom are Article 9(2), which supports religious speech by guaranteeing the "right to express and disseminate" one's opinions, and Article 2, which prohibits religious discrimination.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

African Charter on Human and Peoples' Rights

THE ASSEMBLY, THE EXECUTIVE COUNCIL, AND THE
PERMANENT REPRESENTATIVES COMMITTEE

Policymakers

The three main organs of the African Union have been constituted and have begun working—the Assembly, the Executive Council, and the Permanent Representatives Committee. The Assembly leads the AU and is composed of heads of state. Acting as the "supreme organ," the Assembly establishes the decisions of the Union and monitors the implementation of those policies by member states. The Assembly meets once a year and is led by the Chairman, a head of state elected by his peers for a one-year term of office. In January 2007, President John Kufuor of Ghana was elected Chairman in a contentious race against President Omar Hasan Ahmad al-Bashir of Sudan. President al-Bashir lost due to Sudan's poor human rights record and inaction in quelling the violence in Darfur. In electing President Kufuor, the AU signaled that human rights abuses will not be ignored, as was common with the former OAU.

The Assembly is supported by all the foreign ministers sitting in the Executive Council, which meets twice a year. The Executive Council oversees implementation of Assembly decisions and may make its own decisions on issues of mutual concern. Notably, human rights are not an enumerated area in which the Executive Council can act. Preparing the work of the Executive Council is the Permanent Representatives Committee, where accredited ambassadors discuss the daily work of the AU.

Advocacy Actions

Of these forums, the best for engagement is the Permanent Representatives Committee, where advocates can raise issues of concern with ambassadors. Advocates should also forward issues of concern to the AU Chairman, requesting his intervention. NGO participation at the annual Assembly meetings varies, depending in part on the visa policies of the host country each year regarding the entrance of foreign NGOs. However, even if NGOs are allowed to attend, the level of their inclusion is limited.

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AFRICAN UNION COMMISSION*Policymakers*

The African Union Commission functions somewhat like the European Commission—it is led by a Chairperson and supported by eight Commissioners responsible for separate departments focusing on different issue portfolios. It also serves as the secretariat for the organization, addressing the day-to-day administrative needs. The Chairman and Commissioners are appointed by the Assembly. The Commission represents the AU and defends its policies, while also developing strategic plans for the Executive Council to consider.

The Department of Political Affairs covers human rights, as well as democracy promotion, refugee issues, and external AU relations. Since 2003, the current Commissioner for Political Affairs has been Julia Dolly Joiner, a high-ranking government official from The Gambia.

ADVOCACY ACTIONS

The African Union Commission plays an important role in the running of the organization and can raise concerns about religious freedom violations with member states. Advocates should make the Commissioner for Political Affairs and the Commission Chairperson aware of violations of religious freedom and ask for their intervention. Advocates should also work to arrange meetings with victims when the Commissioner visits a country of concern.

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AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Monitoring Body and Complaint Recourse Mechanism

The African Commission on Human and Peoples' Rights (ACHPR) was established under the African Charter for Human and Peoples' Rights, and so opened its doors in 1987 after the Charter entered into force. The headquarters of the ACHPR are located in Banjul, The Gambia. The ACHPR is composed of eleven Commissioners acting in their individual capacities who serve renewable six-year terms. One of the Commissioners serving as Chairman oversees the two ten-day meetings held in the spring and fall. Observer status allows NGOs to participate in the two annual meetings.

Monitoring Process

The African Charter authorizes the ACHPR to promote and protect human rights and 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” (Article 45). Contracting parties to the African Charter are also obligated to submit reports to the Commission on their compliance, to which the ACHPR will respond following evaluation. The ACHPR will work with NGOs and civil society during this process and accept information and suggested recommendations for country improvement. However, state compliance is poor.

Complaint Admissibility

The ACHPR is specifically authorized to receive complaints and to conduct investigations through its communication procedure, which is a quasi-judicial procedure through which individuals, groups of individuals, and nongovernmental organizations can formally submit allegations of human rights violations. States may also submit complaints to the ACHPR concerning violations of the Charter by other member countries, but this is rarely done. To be considered, the complaint must meet the admissibility requirements and a majority of the Commissioners must agree to review it. To be admissible, the communication must conform to the following criteria:

- it must not be anonymous (although the complainant can request anonymity);
- it must concern violations of rights falling under the African Charter;
- it must demonstrate the exhaustion of all domestic remedies;
- it must be submitted in a reasonable time after exhaustion.

Complaint Procedure

Petitioners will receive an initial confirmation of receipt, but offending governments will not be notified until the ACHPR decides affirmatively to review the claims. For petitions under review, the ACHPR will first attempt to find an amicable solution between the parties. If that is not possible, the ACHPR will request information from offending governments in response to the allegations and additional arguments from the petitioner. These can be in writing, or either party can make oral presentations.

Remedies

After considering the information, the ACHPR will issue nonbinding recommendations with its findings to both parties and forward its recommendations to the annual meeting of heads of state at the Assembly. Notably, if the Assembly approves, then the states are legally bound to the recommendations. The recommendations are initially private, but they can be made public if the government in question does not object.

The African Charter did not give the ACHPR a follow-up or enforcement mechanism to ensure compliance. From 1987 to 2003, the ACHPR completed 122 complaints through its communications procedure—sixty-three were declared inadmissible, five were settled amicably, two were cleared, eight were withdrawn, and forty-four countries were found to be in violation. As the ACHPR is not able to track compliance, an independent study found that of the forty-four countries out of compliance, only six fully implemented the ACHPR's recommendations.

If the ACHPR finds that a “series of serious or massive violations of human and peoples’ rights” has transpired, it shall immediately bring these findings to the attention of the Assembly. The Assembly has the option to approve or reject the findings by a majority vote. There have been instances in which member countries have gathered enough votes to block a report from obtaining Assembly approval. In addition, the Assembly can request that the ACHPR conduct an “in-depth study of these cases and make a factual report”¹ and submit its recommendations to the Assembly for consideration. For emergency situations in which the life of a victim is in danger, the ACHPR can invoke provisional measures requesting the offending government to delay any action until its review is complete.

Advocacy Actions

The oldest human rights body in the African system, the African Commission on Human and Peoples’ Rights has much experience in assisting victims of human rights abuse. Therefore, despite the poor compliance rate with its recommendations, advocates should utilize the ACHPR's communication procedure, if they have the resources to stay actively engaged throughout the various levels of review and provide documentation and legal arguments. Advocates should also provide information to the ACHPR regarding religious freedom violations, as well as draft reports critiquing country submissions on their compliance with the African Charter.

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AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Complaint Recourse Mechanism

The AU is developing a continental court, the African Court on Human and Peoples' Rights, in response to the poor compliance to the ACHPR complaint process. When the African Charter was originally under discussion, the drafters did not believe Africa was ready for a supranational court like those found in Europe or the Americas. It was not until 1998 that the OAU approved a protocol to the African Charter to establish the Court to reinforce and supplement the human rights work of the ACHPR. The protocol entered into force in 2005.

While twenty-one countries have agreed to the Court's jurisdiction, the Court is still developing, as its statute has not been promulgated. In addition, in 2004, the AU determined the Court should be merged with the African Court of Justice (which has not entered into force). However, until that court comes into being, the African Court on Human and Peoples' Rights will continue to develop its own structure and standards.

Countries under Court jurisdiction

Algeria, Burkina Faso, Burundi, Côte d'Ivoire, the Comoros, Gabon, The Gambia, Ghana, Kenya, Lesotho, Libya, Mali, Mauritius, Mozambique, Niger, Nigeria, Rwanda, Senegal, South Africa, Togo, and Uganda

The Court will be seated in Arusha, Tanzania. Unfortunately, this will create an expensive logistical challenge for its sister body, the ACHPR, headquartered on the opposite side of the continent. The Assembly elected the Court's first panel of eleven judges in 2006. Judges can only be nominated by countries party to the protocol, and judges will work independently and

autonomously. They serve a six-year term and may only be reelected once. The Court elects its own President for a two-year term.

There are several remarkable features to the Court. First, its jurisdiction is very broad—it covers the African Charter and the protocol, as well as “any other relevant Human Rights instrument ratified by the States concerned.”²² The Court will therefore be able to interpret any UN treaty that a country is a party to, regardless of whether that particular treaty has any judicial mechanism. The Court will in effect serve as a judicial arm of the UN, improving the implementation of those treaties beyond their application elsewhere in the world.

Second, member states and AU organs may ask for advisory opinions. The protocol also provides this same ability to any organization recognized by the AU. Nongovernmental organizations with observer status could therefore request the Court to review problematic laws, policies, actions, or draft legislation in countries that have ratified the protocol.

Lastly, individuals and NGOs have standing to make complaints directly to the Court. However, for this to be possible, a country ratifying the protocol must specifically accept the Court’s competence to receive these types of cases. The Court therefore falls short of the European Court of Human Rights, where individuals automatically have this right, but exceeds the Inter-American Court of Human Rights, where individual cases can only be brought by the Inter-American Commission on Human Rights on behalf of a victim.

Complaint Admissibility

For the Court to accept a complaint from a non-state actor residing in a country over which it has jurisdiction, it must first make a determination on the admissibility of the case. The ACHPR will be asked to give an opinion, and the Court will use the same admissibility criteria established by the African Charter and used by the ACHPR. The petition must meet the following criteria:

- it must not be anonymous (although the complainant can request anonymity);
- it must concern violations of rights falling under the African Charter;
- it must demonstrate the exhaustion of all domestic remedies;
- it must be submitted in a reasonable time after exhaustion.

The Court can either accept the case or transfer it to the ACHPR for review. The Court may also issue provisional measures in emergency situations threatening the life of an individual.

Complaint Procedure

For accepted cases, the Court will first try to find an amicable settlement. If no settlement is possible, a public court proceeding will begin, during which representatives of the alleged victim and offending government will make their arguments. The exact details of the process will be clarified once its rules of procedure are established.

Remedies

If the Court finds violations of human rights, it will “make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.”³ Its decisions will be read publicly in court and sent to all AU members and the African Union Commission. The Executive Council will be responsible for monitoring the implementation of a decision.

Advocacy Actions

If it lives up to its statute and if it can avoid the compliance problems plaguing the ACHPR, the African Court could become a highly valuable tool for religious freedom advocacy. Once operational, advocates should submit complaints to the Court regarding situations of religious freedom violations in countries agreeing to the Court’s jurisdiction and allowing individual complaints. Advocates should also be aware of other international conventions that member countries have ratified and consider bringing complaints under those provisions, if they exceed the protections of the African Charter. Court advisory opinions requested by advocacy groups with observer status could also be useful in combating problematic laws and policies limiting religious freedom.

CONTACT INFORMATION

No information is available as of this writing.

PAN-AFRICAN PARLIAMENT

Policymakers

The Pan-African Parliament, also known as the African Parliament, was created by the Constitutive Act of the African Union, along with the other organs of the AU. It is the legislative body of the AU and is seated in Midrand, South Africa. Its first session was in 2004, and it will operate under

limited modalities for its first five years. During this initial period, the 265 parliamentary representatives will be selected by the legislatures of each AU member state. Eventually, these representatives will be directly elected in their home countries. In addition, during the inaugural five-year period, the parliament will only have oversight, advisory, and consultative powers. In 2009, the African Parliament is scheduled to obtain full legislative powers.

One of the stated goals of the African Parliament is to “promote the principles of human rights and democracy in Africa.”⁴ It is also envisioned that civil society groups will be very involved as partners in its oversight and legislative functions. The African Parliament has ten standing committees, one of which is the Committee on Justice and Human Rights. The African Parliament is led by a president, currently Dr. Amb. Gertrude I. Mongella from Tanzania.

Advocacy Actions

Advocates should not ignore the promising potential of the Pan-African Parliament in offering additional advocacy routes to pursue. Advocates should approach parliamentarians representing countries with problematic records concerning religious freedom, as well as provide information to sympathetic delegations, making them aware of the violations occurring elsewhere. Advocates should also provide information to the Committee on Justice and Human Rights, as well as to the President of the African Parliament, and request their intervention.

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