KONRAD
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A POLICY PAPER ON THE PROCEDURES UNDER DOMESTIC AND REGIONAL LEGALFRAMEWORKS TO TAKE HUMAN RIGHTSCASES TO REGIONAL TREATY BODIES

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ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples Rights
AComHPR	African Commission on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
ACtHPR	African Court on Human and Peoples' Rights
AU	African Union
CCI	Council of Constitutional Inquiry
COMESA	Common Market for Eastern and Southern Africa
EAC	East African Community
EACJ	East African Court of Justice
ECOWAS	Economic Community of West African Countries
ECtHR	European Court of Human Rights
EWLA	Ethiopia Women Lawyers' Association
FDRE	Federal Democratic Republic of Ethiopia
HoF	House of Federation
IAComHR	Inter American Commission of Human Rights
IACtHR	Inter American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICPs	Individual Communication Procedures
LHR	Lawyers for Human Rights
NGOs	Non-Governmental Organizations

OAU	Organization of African Unity
REC	Regional Economic Communities
SADC	Southern African Development Community
UK	United Kingdom
UN	United Nation

EXECUTIVE SUMMARY

There are several treaty bodies in Africa which are either directly entrusted with the responsibility to monitor human rights treaties or occasionally adjudicate on human rights issues as part of their task to implement sub-regional economic community laws. As part of their treaty monitoring and adjudication tasks, the regional and sub-regional treaty bodies review complaints from individuals and NGOs. Understanding the importance of Individual Communication Procedures (ICPs) in providing individuals with a means to vindicate their rights, Lawyers for Human Rights (LHR), an Ethiopian local Civil Society Organization established to promote human rights, in cooperation with Konrad Adenauer Stiftung (KAS), commissioned the preparation of this policy paper in order to explore the procedures for taking complaints before regional and sub-regional treaty bodies and identify challenges and prospects.

The Policy Paper assessed procedural considerations related to jurisdiction, standing and admissibility requirements that affect the availability and effectiveness of access to ICPs before regional and sub-regional treaty bodies. The ratification status of the concerned State vis-à-vis the instrument that created the treaty body is one of the primary aspects that determine the availability of an ICP. However, it is observed that even those ICPs that are available, should be properly utilized for individuals to benefit from the procedures. Against this background, this policy paper argues that improving access to regional and sub-regional human rights treaty monitoring and adjudicatory bodies for Ethiopian citizens requires overcoming several challenges which in turn demand interventions at multiple levels.

Key Issues

- Ethiopia is a member to the African Charter on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child and the COMESA Treaty. As a result, the ICPs before the African Commission on Human and Peoples' Rights (AComHPR), the African Committee of Experts on the Rights and

Welfare of the Child (ACERWC) and the COMESA Court of Justice are accessible for Ethiopians. These ICPs that are available appear to have been either underutilized or unutilized and require more work to improve the situation on the part of human rights NGOs that work in the field.

- Only just about a dozen of individual communications that concern Ethiopia have so far been reviewed by the AComHPR. While more than half a dozen of them were considered inadmissible because they were filed before Ethiopia became a party to the Banjul Charter, some of the few that have been filed after Ethiopia became a party were considered inadmissible because of lack of exhaustion of local remedies. Improving national constitutional and human rights litigation would go a long way in improving access to the AComHPR as that would help to address the rather common ground of inadmissibility before the African Commission, i.e., non-exhaustion of local remedies.
- Though Ethiopia has been a member of the ACRWC since 2002, the ACRWC monitoring body never reviewed individual communications from Ethiopia. LHR and similar human rights NGOs should work to improve this dismal record.
- The Ethiopian government has not yet ratified the Protocol Establishing the ACtHPR and is not a member of the East African Community (EAC). As such, the African Court on Human and Peoples' Rights and the Court of Justice for the EAC are not available for individual communications. Considering the Court's broad material jurisdiction, Ethiopia's non-ratification of the Protocol Establishing the African Court is a key gap in the availability of ICPs for Ethiopians. Since direct access by individuals and NGOs to the individual communication procedure of the ACtHPR requires making a separate declaration by States in addition to ratification of the Protocol, individuals and NGOs who wish to file a case before the Court are kept two big steps away from it. To overcome these barriers, NGOs like LHR shall engage in multilevel and multi-forum advocacy work encouraging ratification coordinating their efforts with other NGOs and the sensitization efforts of the relevant treaty bodies.

INTRODUCTION

In the African Human Rights System, treaty bodies that are relevant to human rights monitoring are found both at continental and sub-regional level. At the continental level, the African Commission on Human and Peoples' Rights (AComHPR), the African Court on Human Peoples' Rights (ACtHPR), and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) are the major treaty bodies. These treaty bodies have mandates to assess States' compliance with human rights standards, including by deciding on individual complaints on human rights violations. At sub-regional level, some Regional Economic Communities (RECs) have also been playing important role in the African Human Rights System through the courts established under their auspices.[1]

Availability of access for individuals or NGOs representing individuals and groups to the above regional and sub regional treaty bodies depend on several factors. One of the important factors is the ratification status of the concerned State vis-à-vis the instrument that created the treaty body.[2] In addition, effective access to already available Individual Communication Procedures (ICPs) also requires overcoming procedural hurdles such as exhaustion of local remedies. Accessing regional and sub-regional treaty bodies from Ethiopia is marred by challenges related to non-ratification of key instruments and non-utilization or underutilization of available ICPs.

Against this background, the aim of this policy paper is to elaborate the procedures governing access to individual communication procedures both at regional and sub

[1] There are several Regional Economic Communities in Africa. These include: They are the Arab Maghreb Union (UMA); Common Market for Eastern and Southern Africa (COMESA); Community of Sahel-Saharan States (CEN-SAD); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD) and Southern African Development Community (SADC).

[2] Jurisdiction to assess individual communications in many treaty bodies at the UN level require either ratification optional protocols designed to create an individual communications procedure or separate declaration by states expressly accepting that kind of jurisdiction. There are Optional Protocols to the ICCPR, ICESCR, and the Convention on the Elimination of all forms of Discrimination against Women that create individual communications. In other treaties there are provisions in the main treaties that require a separate declaration to the individual communication mandate of the relevant treaty bodies. See for example Article 14 of the Convention on Elimination of All forms of Racial Discrimination; Article 22 of the Convention Against Torture; Article 77 of the Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

regional level in Africa as well as identify the factors and legal procedures affecting access to these treaty bodies at domestic level in Ethiopia. The assessment on the regional and domestic legal and policy framework is intended to identify gaps and challenges at both levels and recommend the way forward with a view to improve access to individual communication procedures. With this aim in mind, excluding this introduction and the section about objectives and methodology, this policy paper is organized in three sections. Section one deals with the issue of access to individual communication procedures in Africa from the perspective of the regional treaties and treaty bodies. Section two, on its part, deals with the issue of availability and procedures governing accessibility of the regional and sub-regional treaty bodies from the perspective of Ethiopia. Building on the challenges and gaps identified in section one and two, the final section presents some concluding remarks and points the way forward.

OBJECTIVES AND METHODOLOGY

This policy paper is part of the effort of Lawyers for Human Rights (LHR) within the context of its project on Enforcement of Human Rights in Ethiopia that it is implementing with the support of Konrad Adenauer Stiftung (KAS). As part of the broader project, LHR wanted to conduct a policy paper on the procedures under the Ethiopian legal and constitutional frameworks to take cases to regional and sub-regional human rights treaty bodies. Achieving the above main objective requires assessing issues that can be broadly grouped in two categories:

A. Assessing the existing African regional and sub-regional legal and institutional framework. This further requires:
    - Identifying the major regional and sub-regional human rights treaty bodies in Africa and explain their importance;
    - Analyze the existing procedures for taking human rights cases to regional and sub-regional human rights treaty bodies and assess how the rules regarding exhaustion of remedies is interpreted before these bodies;
    - Identifying the existing challenges and gaps with regard to access to these treaty bodies.

B. Assessing the Ethiopian policy, legal and institutional framework regarding taking individual communications requires addressing the following issues:
   - Briefly explain all currently available avenues for Ethiopians to take cases to international, regional and sub-regional treaty bodies.
   - Analyze the application of the exhaustion of local remedies rule in light of the decisions of the AComHPR that considered communications against Ethiopia inadmissible for failing to exhaust local remedies
   - Explore the exiting legal and institutional challenges and recommend solutions.

In alignment with the above stated objectives, this policy paper is prepared using qualitative methods. The primary method used for the collection and analysis of information is document reviews. Accordingly, an in-depth review of regional and sub-regional treaties, practice of the relevant treaty bodies relevant to Ethiopia, and other secondary sources have been made. The document review also comprised the review of relevant Ethiopian laws and academic literature. It is based on this document reviews that the analysis is conducted, and attempt is made to identify gaps and possible remedies for the problems identified both at domestic and regional level. This is complemented by few interviews with local NGOs that are engaged in human rights advocacy.

1. INDIVIDUAL COMMUNICATIONS BEFORE REGIONAL AND SUB-REGIONAL TREATY BODIES IN AFRICA

There are several treaty bodies in Africa both at continental and sub-regional level. Their mandate to review individual communications is very important as it helps victims get remedies for human rights violations. Accessing these individual communication mechanisms is not however easy considering applicants need to fulfil several procedural requirements.

1.1. Treaty Bodies in Africa

1.1.1. Regional Treaty Bodies

At the continental level, the African Commission on Human and Peoples' Rights (AComHPR), the African Court on Human Peoples' Rights (ACtHPR), and the African

Committee of Experts on the Rights and Welfare of the Child (ACERWC) are the major treaty bodies. The African Commission on Human and Peoples' Rights is established by the African Charter on Human and Peoples' Rights. Since the African Charter is ratified by 54 African States, the Commission monitors the implementation of the Charter in all these States.

Article 45 of the Charter gave to the Commission promotional, protection and interpretation mandates. Accordingly, for the promotion of human and peoples' rights the Commission carries out sensitization, public mobilization, and information dissemination tasks through seminars, symposia, conferences and missions. In order to discharge its mandate with regard to protection of human rights the Commission review state reporting and review individual and inter-state communications and pursue friendly settlement of disputes. The Commission is also mandated to interpret the provisions of the African Charter if requested by a State Party, organs of the African Union or individuals.

The other treaty body at continental level is the African Court on Human and Peoples' Rights. The Court was established through the Protocol on the Establishment of an African Court on Human and Peoples' Rights which was adopted on 9 June 1998 and entered into force on 25 January 2004. The Court which was intended to complement the protective mandate of the African Commission can pass decisions which are final and binding on State Parties to the Protocol. The Court became operational in 2006.

As of December 2021, the Protocol establishing the Court has been ratified by 32 African States. However, only 8 have accepted the jurisdiction of the Court to receive cases directly from individuals and NGOs. The Protocol is not yet ratified by Ethiopia.

The Court's broad material jurisdiction to review cases based on both AU human rights treaties and other universal treaties that are ratified by the concerned State give applicants the chance to rely on a broad array of human rights treaties to build their cases. However, the fact that the Protocol establishing the Court is not yet ratified by more than 20 African States including Ethiopia and that only few countries have made declarations to allow individuals and NGOs a direct access to the Court are challenges that need to be overcome.

In addition to the Commission and the Court, the African Committee of Experts on the Rights and Welfare of the Child is another regional treaty body that operates at continental level. This Committee draws its mandate from the African Charter on the Rights and Welfare of the Child which was adopted in 1990 and came into force in 1999. This Charter has so far been ratified by 50 members of the AU including Ethiopia.

According to Article 42 of the Charter the Committee has several mandates that includes promotion and protection; monitoring implementation; and interpretation of the provisions of the Charter. In order to discharge its mandate, the Committee may receive communications from any person, group or non-governmental organizations recognized by the OAU/AU, a member state, or the UN relating to any matter covered by the Charter.

1.1.2. Sub-Regional Treaty Bodies

Apart from the above stated regional human rights treaty bodies, over the years, some Regional Economic Communities (RECs) have also played a role in the African Human Rights System through the courts established under their auspices.[3] While responding to private party applications, certain African REC Courts have handed down rulings to protect basic human rights leading to the development of a body of REC-based human rights law. Since the RECs do not have their own Bill of Rights, this has been done through the interpretation of certain provisions of the founding REC Treaties and the meaning ascribed to “Community Law”.[4]

One of such RECs Courts is the **ECOWAS Community Court of Justice**. This Court operates in the Economic Community of West African States (ECOWAS) that is made up of 15 States that are located in the Western African region. ECOWAS Court of Justice is mandated to resolve disputes related to the Community’s treaty, Protocol and Conventions. This Court has the mandate to entertain individual complaints of human

[3] There are several Regional Economic Communities in Africa. These include: They are the Arab Maghreb Union (UMA); Common Market for Eastern and Southern Africa (COMESA); Community of Sahel-Saharan States (CEN-SAD); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD) and Southern African Development Community (SADC).

[4] Gerhard Erasmus, Do the Regional Economic Communities protect basic Human Rights?, (2020), https://www.tralac.org/blog/article/14809-do-the-regional-economic-communities-protect-basic-human-rights.html

rights violations. The Court's jurisdiction to determine human rights cases that occur in any member State is found express support under the Supplementary Protocol A/SP. 1/ 01/05[5] and Protocol A/SP1/12/01.[6] Given its location, Ethiopia is not a member of this REC.

The other REC tribunal in Africa is the **SADC Tribunal**. This tribunal operates in the Southern African Development Community (SADC) which is composed of 16 Member States.[7] The SADC Tribunal was established under the SADC Treaty. Until it was suspended with a view to establish a tribunal with a mandate to interpret disputes between States arising under Community law[8], the Tribunal had competence to hear individual complaints of alleged human rights violations. This human rights related jurisdiction was a result of the Tribunal's decision that it has a jurisdiction to hear human rights complaints.

However, Member States of SADC did not like the Court's involvement on human rights issues. As a sign of a state backlash against its involvement in human rights issues, member States decided to suspend its function and introduced a new Protocol that limit's the tribunal's role to just to dealing inter-State complaints.

The other sub regional REC Court is **the East African Court of Justice**. The East African Court of Justice was established under Article 9 of the Treaty that established the East African Community.[9] The Court is tasked with interpreting and enforcing the Treaty. Over the years, the EACJ has developed the competence to hear individual communications on alleged human rights violations despite lack of explicit jurisdiction on the issue.

[5] Supplementary Protocol A/SP.1/01/05 Amending the Preamble and articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and Article 4 Paragraph1 of the English Version of the Said Protocol (adopted 19 January 2005), available at http://www.courtecowas.org/site2012/pdf_files/supplementary_protocol.pdf.

[6] Protocol A/SP1/12/01 on Democracy and Good Governance – Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (adopted 21 December 2001), art. 39, available at http://www.comm.ecowas.int/sec/en/protocoles/Protocol%20on%20goodgovernance-and-democracy-rev-5EN.pdf.

[7] These States are Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesetho, Madagascar, Malawi, Mauritius, Mozambique, Nambia, Seychelles, South Africa, Tanzania, Zambia and Zimbabwe.

[8] Regarding the suspension of the SADC Tribunal see in general Michelo Hansungule, "The Suspension of the SADC Tribunal", *Strategic Review for Southern Africa*, Vol. 35, No. 1, 2013.

[9] The East African Community (EAC) is a regional organization which has 6 partner States. These States are the Republics of Burundi, Kenya, Rwanda South Sudan, Tanzania, and Uganda.

Ethiopia is not a party to this REC, and as such, access to this court is restricted because of this non-ratification status.

The COMESA Court of Justice is another REC Court in Africa. This is the Court of the Common Market for Eastern and Southern Africa (COMESA). Currently COMESA has 21 Members including Ethiopia. The Treaty establishing COMESA refers to the issue of "recognition, promotion and protection of human rights" though its main objective is the promotion of regional integration through trade and investment.

The COMESA Court of Justice was established in 1984 with a view to ensure adherence to law in the interpretation of the treaty establishing the REC. COMESA member States, the Secretary General, individuals and NGOs may bring cases before the court. However, before approaching the Court applicants need to exhaust local remedies. Though the potential is still there, the COMESA Court of Justice is so far not known for entertaining human rights issues.[10]

1.2. Importance of Regional and Sub-Regional Communication Procedures

Individual Communication Procedures (ICPs) have several benefits. First, the adjudication of individual cases before ICPs provide the opportunity for international human rights norms that otherwise are general and abstract to be given concrete meaning and put into practical effect. Human rights provisions are usually designed in a general and brief way that it is only when they are applied to real-life situations that the general standards contained in human rights treaties find their most direct application.[11]

The various universal and regional human rights treaty bodies recommend various types of remedies and reparations to redress human rights violations. In the case of gross violations of human rights and humanitarian law, the UN Basic Principles provide that, remedies for gross violations of human rights law include the victim's right to: equal and effective access to justice; adequate, effective and prompt reparation for harm suffered;

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[10] See in general Gathii, James Thuo, The COMESA Court of Justice (2018). published in THE LEGITIMACY OF INTERNATIONAL TRADE COURTS AND TRIBUNALS, R. Howse, H. Ruiz-Fabri, G. Ulfstein, and M. Zang (eds.), Cambridge University Press, (2018), Available at SSRN: https://ssrn.com/abstract=3314213

[11] https://www.ohchr.org/en/hrbodies/tbpetitions/Pages/IndividualCommunications.aspx

and access to relevant information concerning violations and reparation mechanisms The remedies needed in a particular case depend on the nature of the case. While some remedies are only related to the victim, others are more general in that they suggest amendment of legislations and other administrative measures. Such measures are helpful to prevent more violations and guarantee non-repetition.

Third, individual communication procedures have a rather indirect yet very important benefit in terms of developing the interpretation of regional human rights standards. Treaty bodies with a broad material jurisdiction like the African Human Rights Court have also the opportunity to interpret the implementation of universal treaties as applied to African States. While most of the above advantages are generally applicable to Individual Communication Procedures including those available at the UN level, the regional treaty bodies offer additional advantage of being geographically more accessible.

1.3. Procedural Requirements in Individual Communication Procedures

Accessing regional and sub-regional communication procedures requires the fulfillment of certain procedural requirements. Issues related to jurisdiction, standing and admissibility requirements are key aspects of the procedural considerations to access regional and sub regional treaty bodies.

I. Jurisdiction

The first important requirement in accessing regional and sub-regional communication procedures has to do with the competence of the treaty body. The competence of a treaty body to review individual communications is related to the concerned State's ratification status of the relevant treaty or existence of a separate declaration accepting the jurisdiction of the treaty body. Jurisdiction also has temporal aspects as violations that could be challenged before the treaty body should occur after the ratification of the treaty/protocol or the declaration accepting the competence of the treaty body. Usually, treaty bodies review the implementation of the treaty they monitor. That implies their material jurisdiction extends to the violations of the treaty they monitor. However, this is not always the case as some treaty bodies have a broad material jurisdiction. A very notable example in this regard is the African Court of Human and Peoples' Rights that

have a rather broad material jurisdiction being entitled to review violations of all treaties the concerned State is a party. (See Article 3 of the Protocol Establishing the African Court of Human and Peoples' Rights)

II. Standing

Standing refers to the ability of a party to bring cases before a particular body. In the case of individual communications, the question relates to who can bring cases before the treaty body. The rules regarding standing vary from one treaty body to the other. But in general, the African regional treaty bodies have flexible rules on Standing.

The African Commission applies rather broad and flexible rules on standing. Indeed, the African Charter on Human and Peoples' Rights does not have provisions on *locus standi* of the parties. However, the Commission has, through its practice and jurisprudence adopted the *actio popularis* principle allowing interested individuals and NGOs acting on behalf of victims of abuses to file a Communication, for its consideration. Accordingly, in addition to victims, non-victim individuals, groups and NGOs constantly submit Communications to the Commission.[12]

Similarly, according to Article 5 of the Protocol Establishing the ACtHPR, the African Commission, certain African States and African Intergovernmental Organizations can access the Court. Petitions filed by individuals and NGOs with observer status before the Commission are acceptable subject to a separate declaration made under Article 34(6) of the Protocol. If a State did not accept the right of individuals and NGOs to directly file a petition to the Court by making a declaration to that effect under Article 34(6) of the Protocol, individuals and NGOs could still try to access the Court indirectly via a petition filed to the African Commission. However, this indirect path is only possible for States that ratify the Protocol.[13]

[12] The reasoning behind the Commission's broad approach towards the issue of standing could be found in the history of the case *Odjouoriby Cossi Paul v. Benin*, Communication no. 199/97, para 14; see also Morten Peschardt Padersen, Standing and the African Commission on Human and Peoples' Rights, *African Human Rights Law Journa*l, Vol. 6 (2016), p. 411

[13] On the question of standing before the African Court, see in general, FIDH, *Practical Guide The African Court on Human and Peoples' Rights: Towards the African Court of Justice and Human Rights*, 2010, pp. 69-78

Access to the African Committee on the Rights and Welfare of the Child is also subject to more flexible rules. According to Article 44 of the African Children's Charter and the Revised Guidelines for Communication of the Committee, several persons are entitled to submit communications to the Committee either on their own behalf or on behalf of third parties. Accordingly, individuals or groups of natural or legal persons including children; any State Party to the Children's Charter, intergovernmental or non-governmental organizations recognized by AU or Member States; any specialized organ or agency of the AU or UN and national human right institutions have standing before the Committee.

Unlike the regional human rights treaty bodies, some sub-regional REC courts have stricter standing rules. This emanates from the fact that the REC courts deal with community rules at sub-regional level. For example, according to Article 30 of the EACJ Rules of Procedures, any legal or natural person who is a resident in a partner State has standing to bring cases before the EACJ. In the case of the ECOWAS Community Court of Justice, according to Article 10 of the Revised ECOWAS Treaty member states, the executive secretary, the Council of Ministers, Community Institutions, individuals, corporate bodies, staff of any community institution and national courts of ECOWAS member States have standing before the Court.

III. Admissibility requirements

Communications that allege *prima facie* violation of the relevant treaties and have been properly submitted fulfilling the various formal requirements are first assessed based on various admissibility criteria. Regional human rights treaty bodies have more or less similar admissibility criteria. These criteria are based on Article 56 of the African Charter on Human and Peoples' Rights which provide seven requirements of admissibility. These requirements are:

- **Indicating the authors**

Under Article 56(1), the Charter requires communications to include name and address and if the applicant is not the victim, the relationship with the victim including on what grounds the complainant is representing the victim.

- **Compatibility with the Constitutive Act of the AU and the African Charter**

Under Article 56(2), the communication needs to explicitly and clearly discuss the specific violation of rights guaranteed under the African Charter.

- **Non-insulting language**

According to Article 56(3), the language of the communication should not be aimed at undermining the integrity and status of the institution by using insulting language. For example, in *Ligue camerounaise des droits de l'Homme v. Cameroon*, (Communication 65/92), the African Commission declared that the case was inadmissible because of the use of expressions such as "regime of torture" and "barbaric government". Irrespective of the gravity of the alleged violations, insulting and disparaging language makes a communication inadmissible.

- **Evidence other than simply news sources**

Under Article 56(4), the communication is required not to be based exclusively on news disseminated through the mass media. The evidence must be asserted at this stage though it is presented later.

- **Exhaustion of local remedies**

Under Article 56(5) the communication should be submitted to the Commission after local remedies are exhausted.

- **Timeliness**

Under Article 56(6), the communication should be submitted within a reasonable period after local remedies are exhausted.

- **Requirement regarding duplication of procedures**

The matter that is being submitted to the Commission should not have been settled or being entertained by another international mechanism similar to the African Commission on Human and Peoples' Rights.

According to Article 6 of the Protocol Establishing the African Court on Human and Peoples' Rights, the above admissibility requirements also apply to the African Court on Human and Peoples' Rights. Indeed, under the same provision, the Court can also request the opinion of the Commission on admissibility issues. (Article 6(1))

In the case of the African Committee on the Rights and Welfare of the Child the detailed admissibility requirements are provided in the Revised Guidelines for Consideration of Communications and Monitoring Implementation of Decisions by the ACERWC. Here again, the admissibility requirements are very much similar to the ones provided under Article 56 of the African Charter. (See Section IX, Procedure on Admissibility)

The admissibility requirements before the sub-regional RECs courts are different from those that are used at regional level. For example, in order to access the East African Court of Justice Article 30(2) of the EAC Treaty requires that references should be filed with the EACJ within two months of the alleged violation. This two-month time frame is very narrow and difficult to comply with. On the other hand, unlike the regional bodies, there is no requirement that all domestic remedies must be exhausted first in order to access the EACJ.

Admissibility requirements before the ECOWAS Court are not as strict as the above. An important requirement is that the cases brought are not pending before another court of similar status. Though the ECOWAS Court does not require exhaustion of local remedies, it does not hear matters that have been determined on merits by domestic courts as it does not hold appellate jurisdiction over domestic courts.

1.4. Exhaustion of Local Remedies

Meaning and purpose of the rule

As one of the main stumbling blocks for individual communications not to advance to the merits stage, exhaustion of local remedies deserves a separate discussion. The rule regarding exhaustion of local remedies has its origins in traditional international law in inter-state cases concerning diplomatic protection. Writing in 1948 Jessup described the rule as being a corollary to the rule that an alien is subject to the local law. Based on this rule, claimants should be required to first resort to the local courts in order to avoid overburdening the international tribunals.[14]

[14] Philip C. Jessup, *A Modern Law of Nations: An Introduction*, The Macmillan Company, New York, 1948, p. 111.

Though it has originally emerged in the field of diplomatic protection, the rule on exhaustion of remedies has expanded to other areas including the field of human rights. Various human rights treaties include provisions on exhaustion of local remedies. In this regard, Article 41 of the ICCPR, Article 5(2) of its additional protocol, Article 35(1) of the European Convention on Human Rights and Article 46(1) of the American Convention on Human Rights and Article 56 of the African Charter on Human and Peoples' Rights can be mentioned as examples.

The principle of exhaustion of local remedies in international human rights treaties serves several purposes. First, the rule is justified based on the traditional logic regarding the sovereignty of member states. Accordingly, before proceedings are brought before an international body, the State concerned must have had the opportunity to remedy matters through its own legal system. This helps to notify the State about its failure and provide it with an opportunity to rectify the violation before escalating the matter by taking it before international bodies. Second, the rule prevents a situation where international treaty bodies would become forum of first instance for matters that may have effective domestic remedy. Third, the rule is also intended to prevent the international bodies being overloaded by applications from individuals.[15]

The rule on exhaustion of local remedies is also related with the principle of subsidiarity. The principle of subsidiarity implies that the primary responsibility for protecting human rights lies with states. The objective of the principle is to encourage applicants to try the national authorities before coming to an international body. Even if the case finally ends up in being examined by international bodies, the international body will obviously benefit from the decisions and the analysis at domestic level.[16]

In *Anuak Justice Council v. Ethiopia* the AComHPR explained how exhaustion of remedies reinforces subsidiarity arguing that "an international tribunal, including the Commission, should be prevented from playing the role of a court of first instance". The

[15] Tamás Kende, Distant Cousins: The Exhaustion of Local Remedies in Customary International Law and in the European Human Rights Contexts, *ELTE Law Journal*, Vol. 2, 2020, p. 135

[16] *Burden v. UK*, Application No. 13378/05, ECtHR, GC, 29 April 2008, para 42.

Commission further observed that "local remedies are normally quicker, cheaper and more effective than international ones".[17]

Exceptions to the rule on exhaustion of local remedies

Despite its importance, the exhaustion of local remedies is not an absolute rule. For the rule to be a basis for inadmissibility, the domestic remedies should indeed be available, effective, adequate and sufficient.

A remedy is considered available if it can be pursued by the applicant without impediments. Both legal and practical impediments can be obstacles making a remedy unavailable. The existence of a remedy in theory is not sufficient. It should also be available in practice and should be accessible. For example, in circumstances where the applicant cannot turn to the judiciary of his country because of generalized fear for his life (or even to his relatives) local remedies would be considered unavailable to him.

A remedy is considered effective when it exists within the domestic legal system and offers a reasonable prospect of success. If it is established that the exhaustion of a particular local remedy is futile and not helpful, there is no need to exhaust this remedy. Treaty bodies consider that the burden of proof to show a certain local remedy is available and effective lies on the State claiming non-exhaustion.[18]

A remedy is considered to be adequate and sufficient when it is capable of redressing the alleged harm in the case involved. The remedy should be able to provide redress to the applicant for it to be sufficient. The adequacy of the remedy is in a way dependent on the redress the applicant is seeking.

What the above discussion makes clear is that the local remedies rule is not absolute and is subject to certain exceptions/limitations. Indeed, some of these exceptions are explicitly indicated in some of the human rights treaties. For example, Article 56(5) of the African Charter on Human and Peoples' Rights that deals with exhaustion of local remedies include two exceptions. Under the provision, communications are expected to be sent to the Commission "after exhausting local remedies, **if any,** unless it is obvious that this

[17] *Anuak Justice Council v. Ethiopia*, Communication No. 295/05, AComHPR, 2006, para 48
[18] See for example, *Johnston v. Ireland*, ECtHR, 1986, para 44-46

procedure is **unduly prolonged**." (Emphasis added) As can be understood from the text of the provision, the local remedy should be available and should not be subject to undue delay.

The invocation of the exception to the rule requiring that remedies under domestic law should be exhausted is related with the protection of the right to effective remedies and due process in the country concerned.[19] The African Commission on Human and Peoples' Rights consider that the exceptions to the rule provided for in Article 56(5) must invariably be linked to the determination of possible violations of certain rights enshrined in the African Charter, such as the right to a fair trial enshrined under Article 7 of the African Charter.[20]

1.5. Challenges of the Individual Communication Procedures

Challenges Emanating from States

Despite their unique normative nature, human rights treaties, like all types of treaties, are based on state consent. As a result, the whole universal and regional human rights system cannot operate without the cooperation of states. Accordingly, several challenges to the African human rights system emanate from States. The first challenge that affects the operation and effectiveness of a proposed or already operating human rights mechanism relates to ratification. On the one hand, for an instrument that establish a treaty monitoring or adjudicatory body to be operational, it requires ratification by a certain number of States. Some of the proposed institutional changes in the African system such as the establishment of the African Court of Justice and Human Rights are not yet operational due to lack of ratification.

Even after an instrument come to force, States that do not ratify it won't fall within the monitoring and adjudicatory mandate of its monitoring body. When separate declarations are required to accept certain jurisdictions of the treaty body, this will further serve as an

[19] See Article 46(2) the American Convention on Human Rights; See also the Case of *Velásquez Rodríguez v. Hunduras*, para 91
[20] *Haregewoin G/Selassie v. Ethiopia*, para 111

obstacle to access the treaty body. This is particularly the case with the AComHPR with regard to direct application from individuals and NGOs.

Another challenge that emanates from States has to do with the backlash that come from States which are unhappy about the decision of the treaty body. The way SADC members tried to limit the jurisdiction of the SADC Tribunal to entertain individual cases by limiting its jurisdiction to inter-state cases by introducing an additional protocol could be a very good example for this.

Another African Human rights body that has been affected by States' backlash is the ACtHPR. This backlash should be seen in light of the already limited access individuals and NGOs have to the African Court on Human and Peoples' Rights. First, a State which is already a party to the African Charter on Human and Peoples' Rights should in addition ratify the Protocol Establishing the African Court on Human and Peoples to accept the Court's jurisdiction to consider complaints from States, intergovernmental organizations and the African Commission. To date, among the 52 African States that signed the protocol, 30 states has ratified the Protocol.

Second, access to the Court for individuals and NGOs is subject to another layer of declaration in addition to the ratification of the Protocol. This involves the making of additional written declaration by States allowing individuals and NGOs direct access to the Court. (Article 5(3) and 34(6) of the Protocol) Over the years, only limited number of States have made these kinds of declarations. These States are Benin, Brukina Faso, Cote D'ivoire, Ghana, Malawi, Mali, Rwanda, Tanzania, the Gambia and Tunisia. However, from among these few states, some of them have withdrawn these declarations in recent years denying individuals and NGOs direct access to the Court. Accordingly, Rwanda (24 Feb 2016), Tanzania (14 Nov 2019), Benin (24 March 2020) and Cote D'Ivoire (28 April 2020) have withdrawn their respective declarations.

Challenges on the side of civil society

Taking cases before individual communication procedures and overall effective engagement with human rights treaty bodies requires individual applicants or advocates and NGOs that represent them to have a clear understanding of the human rights

obligations of a particular state. It also requires the ability to identify the relevant judicial decisions and other general instruments such as general comments and concluding observations that help interpret those obligations and be familiar with both the opportunities for success and potential challenges.

Civil societies' lack of awareness and inexperience with African Human Rights instruments, the various treaty bodies and their jurisprudence, and the individual complaints process is a big challenge. Some treaty and adjudicatory bodies are not familiar to many Africans. For example, the overall lack of awareness about the African Court and the lack of knowledge on how to access the court has led to a high number of submissions on which the court simply lacks jurisdiction to hear.

Challenges and Constraints in the Treaty Bodies

Human rights treaty monitoring and adjudicatory bodies face a lot of challenges and constraints. One of the challenges many treaty bodies face in discharging their obligations relates to resource and time constraints. In particular, the resource that would be made available to the secretariat of the treaty body, the body that assist the members of the treaty body is very essential.

In the case of the African Commission on Human and Peoples' Rights the sufficiency of resources made available to the Secretariat has been a source of concern. When the resources for the Secretariat are insufficient then the efficacy of the treaty body is greatly affected.[21]

In addition to resource constraints, treaty bodies also face time constraints. In particular, when the treaty bodies only gather for few sessions in a year, the time constraint would be a visible problem. In fact, even for permanent human rights courts such as the European Court of Human Rights, case load has for years been one of the biggest challenges. Repeated institutional reforms in the European system were intended to help the court with the case load problem.

[21] African Human Rights System Manual, p. 26

2. ETHIOPIA IN THE DOCK: TAKING INDIVIDUAL COMMUNICATIONS FROM ETHIOPIA

2.1. Ethiopia's General Reluctance to Accept Individual Communication Procedures

Ethiopia has a formidable record when it comes to adopting and ratifying international human rights instruments. At universal level, it is one of the founding members of the UN and is one of the countries which participated in the adoption of the Universal Declaration of Human Rights (UDHR). Ethiopia acceded to the International Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of all forms of Discrimination against Women in 1976 and 1981 respectively.[22] In the 1990s, Ethiopia further ratified the Convention on the Rights of the Child (in 1991), the International Covenant on Civil and Political Rights (in 1993), the International Covenant on Economic, Social and Cultural Rights (in 1993) and the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment (in 1994).[23] Ethiopia has also ratified the Convention on the Rights of Persons with Disabilities in 2010.[24]

At continental level, Ethiopia, a founding member and the Seat of the OAU/AU, has ratified several regional human rights treaties such as African Charter on Human and Peoples' Rights (in 1998)[25], the African Charter on the Rights and Welfare of the Child (in 2002)[26], and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (in 2018).[27]

Despite having a formidable record in terms of ratifying human rights treaties, Ethiopia has been reluctant in accepting the jurisdiction of treaty bodies to entertain individual

[22] The ratification status of Ethiopia regarding UN human rights treaties is available at [https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN]
[23] Ibid
[24] Ibid
[25] See https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf
[26] See https://au.int/sites/default/files/treaties/36804-sl-AFRICAN%20CHARTER%20ON%20THE%20RIGHTS%20AND%20WELFARE%20OF%20THE%20CHILD.pdf
[27] See https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf

communications. For example, Ethiopia did not ratify the first Optional Protocol to the International Covenant on Civil and Political Rights; the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; the Optional protocol to the International Covenant on Economic, Social and Cultural Rights; the Optional Protocol to the Convention on the Rights of the Child; and the Optional protocol to the Convention on the Rights of Persons with Disabilities.[28] It has not also accepted the individual complaints procedure under Article 22 of the Convention against Torture.[29] Similarly, Ethiopia has not yet ratified the Protocol Establishing the African Court of Human and Peoples' Rights.[30]

At sub-regional level the problem relates to Ethiopia's non-membership to key REC in the East African region. Since Ethiopia is not a member of the East African Economic Community,[31] Ethiopian citizens and residents do not have access to the East African Court of Justice.[32] Though Ethiopia is a member of the Common Market for Eastern and Southern Africa (COMESA)[33], the COMESA Court of Justice is not known for entertaining human rights issues.[34] In general, it is fair to say that, individuals in Ethiopia do not have plenty of access to file complaints before international, regional and sub-regional adjudicatory bodies. However, there are still some regional available avenues for individuals and groups in Ethiopia to take cases before regional and sub regional bodies.

[28] See the UN Treaty Bodies Database available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=59&Lang=EN
[29] Ibid
[30] Though Ethiopia signed the Protocol in 1998, it has not so far ratified it. The ratification status for the Protocol can be accessed at: https://au.int/sites/default/files/treaties/36393-sl-protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_estab.pdf
[31] The East African Community (EAC) has 6 Partner States that are: the Republics of Burundi, Kenya, Rwanda, South Sudan, the United Republic of Tanzania, and the Republic of Uganda. See https://www.eac.int/overview-of-eac
[32] James Gathii, "Mission Creep or a Search for Relevance: The East African Court of Justice's Human Rights Strategy", *Duke Journal of Comparative & International Law*, Vol. 24, (2013)
[33] See https://www.comesa.int/members/
[34] See in general Gathii, James Thuo, The COMESA Court of Justice (2018). published in THE LEGITIMACY OF INTERNATIONAL TRADE COURTS AND TRIBUNALS, R. Howse, H. Ruiz-Fabri, G. Ulfstein, and M. Zang (eds.), Cambridge University Press, 2018, Available at SSRN: https://ssrn.com/abstract=3314213

2.2. Currently Available Avenues

From among the three major regional human rights treaty bodies, individuals and NGOs in Ethiopia have access to the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child. However, so far, only a relatively small number of individual communications from Ethiopia have succeeded in being reviewed by the African Commission on Human and Peoples' Rights.

Most of the earlier communications that have been filed before the Commission alleging violation of the African Charter were considered inadmissible because Ethiopia was not a party to the Charter. Based on the information that is found on the website of the African Commission on Human and Peoples' Rights around 7 communications were considered inadmissible in 1988 and 1989 due to this reason. This shows how non-ratification of a particular treaty serves as a bar for individuals and NGOs from accessing human rights treaty monitoring and adjudicatory bodies.

Even after Ethiopia joined the African Charter, most of the communications that were filed before the African Commission alleging violations by Ethiopia were not able to get decisions on merits for several reasons. *Interights v. Ethiopia* & *Interights v. Eritrea*, the first communication against Ethiopia that the African Commission on Human and Peoples' Rights dealt with after the country ratified the Charter came in the context of the Ethio-Eritrean war and concerned the expulsion of Ethiopians of Eritrean origin. Eritrea was also accused of similar violations. These communications were finally suspended because the issues addressed in the communications were expected to be addressed by the Ethio-Eritrean Claim's Commission. The AComHPR considered the Claim's Commission as fulfilling the requirements of Article 56(7) of the African Charter.

A couple of other communications against Ethiopia were considered inadmissible for failure to exhaust remedies. For example, *Anuak Justice Council v. Ethiopia*, Communication No. 299/05, 2006; *Interights v. Ethiopia*, Communication No. 272 GTK/2009, 2011; and *Human Rights Council and others v. Ethiopia*, Communication No. 445/13, 2005 were considered inadmissible for failure to exhaust local remedies. Only *Haregewoin Gebre-Selassie and IHRDA v. Ethiopia*, Communication No. 301/05, 2011 and *Equality Now and EWLA v. FDRE*, Comm. No. 341/2007, 2016 have got decisions

on their merits. Considering the small number of communications that made it to the African Commission, it is difficult to say that the communications procedure is properly utilized.

When it comes to the ACERWC a relatively small number of decisions on communications on has been so far made on countries such as Uganda, Kenya, Senegal, Malawi, Sudan, Cameroon, Mauritania, Egypt, Tanzania, and South Africa. The Committee has not so far given a decision on a communication regarding Ethiopia. The dismal record is all the more surprising considering the Committee has been based in Addis Ababa.

2.3. Exhaustion of Local Remedies in Ethiopia

The operation of the rule regarding exhaustion of local remedies presupposes the availability and effectiveness of remedies at national level. It is therefore important to briefly review the locally available remedies in Ethiopia. The starting point for this analysis could be Article 37 of the FDRE Constitution. This provision recognized the right of everyone to bring a justiciable matter to and obtain a decision or judgment by a court of law or any other competent body with a judicial power.

In a way that mirrors the Federal structure it established, the Constitution vested judicial powers in both Federal and State courts. Federal and State courts have their own areas of exclusive jurisdiction and share some concurrent jurisdiction. At Federal level, supreme judicial authority is vested in the Federal Supreme Court. However, the Constitution entitled the House of Peoples' Representative to establish Federal High Courts and First Instance Courts as it deems it necessary. (Article 78(2), FDRE Constitution) At regional level, States shall establish State Supreme, High and First Instance Courts. (Article 78(3), FDRE Constitution) State Supreme and High Courts, in addition to their jurisdiction on state matters, the exercise the jurisdiction of Federal High and First instance Courts by delegation. Accordingly, "State Supreme Courts shall have the highest and final judicial power over State matters. They shall also exercise the jurisdiction of the Federal High Court." (Article 80(2)) Similarly, State High Courts shall, in addition to State jurisdiction, exercise the jurisdiction of the Federal First-Instance Court. (Article 80(4)) understandably, decisions rendered by State High Courts exercising the jurisdiction of the

Federal First-Instance Court are appealable to the State Supreme Court. (Article 80(5)) Similarly, decisions rendered by State Supreme Courts on Federal matters are appealable to the Federal Supreme Court." (Article 80 (6))

The Federal Supreme Court has a power of cassation over any final court decision with a basic error of law. (Article 80(3)(a)) Similarly, State Supreme Courts have power of cassation over final Court decisions which contain basic error of law. (Article 80(3)(b))

The general provisions provided in the Constitution are elaborated in in laws that determine the jurisdictional competence of Federal and State courts. The jurisdictional competence of Federal Courts is stipulated in Proclamation No. 1234/2021. Regionals States also have their own proclamations which define the powers and functions of courts.[35] Article 3 of Proclamation NO. 1234/2021 deserves a special mention as it appears to be relevant to human rights cases. According to this provision, Federal Courts have jurisdiction over cases arising under the Constitution, Federal Laws and International Treaties accepted and ratified by Ethiopia. In apparent attempt to indicate the role of Courts in implementing the Constitutional provisions on human rights, Proclamation No. 1234/2021 require Federal courts to "interpret and observe the provisions of the Constitution pursuant to Article 9(2) and 13(1) of the Constitution." This is an important provision considering there has been a common confusion regarding the role of courts in interpreting and observing the constitution. Depending on the nature of the issue, individuals and NGOs seeking to exhaust local remedies need to pay attention to the rules indicated in the Constitution and the above-mentioned laws regarding jurisdictional competence of Ethiopian courts.

Looking into the various cases from Ethiopia which were considered inadmissible for lack of exhaustion of local remedies by the African Commission on Human and Peoples' Rights can provide some lessons. For example, *Anuak Justice Council v. Ethiopia* where no attempt was made to pursue local remedies, the complainant's argument that pursuing local remedies in Ethiopia would be futile was rejected by the Commission.[36] In *Interights*

[35] See for example, Proclamation No. 216/2018, A Proclamation to Redefine the Structure, Powers and Functions of the Oromia Regional State Courts Proclamation, 2018.
[36] *Anuak Justice Council v. Ethiopia*, para 53

(On behalf of Gizaw Kebede and Kebede Tadesse) v. Ethiopia (2011) where local remedies were attempted but were not pursued to the end, the Commission held that the Complainant should have appealed in the available domestic venues before coming to the Commission and considered the case inadmissible. In another landmark case, the *Human Rights Council and others v. Ethiopia* (2015), the AfComHPR considered whether the applicant should have challenged the constitutionality of the decision before the House of Federation. In connection to this the Commission assessed whether the House of Federation and the Council of Constitutional Inquiry which are entrusted with the responsibility of interpreting the Constitution could be considered judicial organs for the purpose of exhaustion of local remedies. After analyzing the issue in light of the Ethiopian legal system, the Commission concluded that the fact that the House of Federation is not a Court does not obviate its suitability to handle constitutional review as a remedy. The Commission further noted: it "is satisfied that a constitutional review is clearly a legal action that may lead to the redress of the complainant grievances at the domestic level, and in this regard, it is designed for vindication of rights".[37]

The position of the Commission might have been understandable considering the issues raised in the communication appeared suitable for constitutional challenge. However, both in this case and some of the previous cases considered inadmissible because of non-exhaustion of local remedies, the Commission appeared to follow a rather strict approach when it comes to cases that are filed against Ethiopia. This is problematic considering the Commission did not conduct in-depth analyses on the political context, the rule of the Ethiopian judiciary in adjudicating serious human rights abuses and the HoF as a political body. The Commission's analysis in *the Human Rights Council and others v. Ethiopia* also appears to have incidentally supported a position that views Ethiopian courts as having no role in interpreting the Constitution, an issue which has for years been a subject of controversy among Ethiopian constitutional scholars.[38]

It is therefore important to challenge the Commission's approach in future communications so that its rather strict decisions do not continue to be settled law on the

[37] *Human Rights Council and others v. Ethiopia* (2015), para 68
[38] Mulu Beyene Kidanemariam, Assessing the Ethiopian House of Federation in light of the Exhaustion of Local Remedies Rule under the African Charter, 2020, p. 16

issue of exhaustion of local remedies in Ethiopia. One possible strategy in this regard could be to deliberately select cases that show the prolonged nature and ineffectiveness of the domestic remedies and file them before the Commission. The Commission should be encouraged to take inspiration from its own case law that appeared to adopt a rather liberal approach on the issue. A case in point could be what the Commission said in *Bakweri Land Claims Committee v. Cameroon*:

> *The exhaustion of local remedies requirement under Article 56.5 of the African Charter should be interpreted liberally so as not to close the door on those who have made at least a modest attempt to exhaust local remedies. Under this Article, all the African Commission wishes to hear from the Complainant is that it has approached either local or national judicial bodies.*[39]

Parallel to efforts that aim to change the Commission's rather strict approach on the issue, additional strategic and innovative approaches should be adopted to overcome challenges emanating from the exhaustion of local remedies rule at domestic level. Federal Court's Proclamation No. 1234/2021 seem to have provided a good opening for that. In particular, Article 11(3) of the Proclamation that entitles "any person who has vested interest or sufficient reason" to "institute a suit before the Federal High Court to protect the rights of his own or others" can help NGOs to engage in human rights litigation relatively easily. Similarly, the Federal Administrative Procedure Proclamation No. 1183/2020 that entitles "any interested person" to "file a petition requesting a judicial review of a directive" can be another area human rights NGOs need to explore to advance domestic human rights litigation.

Efforts are also needed to change the rather common perception in Ethiopia that understands Courts as having a limited role in interpreting and implementing human rights norms. The change of perception require a combined effort from NGOs and human rights lawyers that frequently need to take human rights cases to courts and from judges who need to engage in a level of judicial activism to improve the unhelpful general perception.

[39] Communication 260/02 - *Bakweri Land Claims Committee v Cameroon*, para. 55

2.4. Existing Legal and Institutional Challenges

The discussion so far has made it clear that non-ratification of relevant instruments and underutilization or non-utilization of available ICPs are serious challenges in Ethiopia. Interviews with leaders of some local NGOs have indicated that lack of expertise, knowledge and experience[40] as well as resource limitations and lack of commitment[41] could be reasons for the underutilization and non-utilization of available avenues. The impact of the previous CSOs law is also considered to have been limiting to NGOs in many respects including in this field.[42]

Apart from lack of awareness lack of sufficient promotion and sensitization work on some ICPs such as the ACERWC and a perception that it may not give solutions seem to have contributed for the absence of individual communications from Ethiopia despite the Committee's seat has for long been in the country.[43] The exhaustion of local remedies rule especially the need to go all the way to the House of Federation which has a prolonged waiting time to entertain cases and seem to have not given priority to human rights issues is also raised as an additional challenge. In this regard, from the perspective of NGOs, the issue of standing at domestic courts has been a source of a problem.[44] Some recently introduced laws such as the Federal Advocacy Service Licensing and Administration Proclamation No. 1249/2021 that make it possible for NGOs that provide pro bono advocacy services to protect the public interest and rights to have a Federal Special Advocacy License are very important in solving some of these problems.

[40] Interview with Mr. Dan Yirga, Executive Director of the Ethiopian Human Rights Council, written reply via email, 19 May 2022.
[41] Interview with Mr. Mesud Gebeyehu, Executive Director of the Consortium of Ethiopian Human Rights Institutions, 27 May 2022.
[42] Interview with Mr. Dan Yirga, Executive Director of the Ethiopian Human Rights Council, written reply via email, 19 May 2022; Interview with Mr. Mesud Gebeyehu, Executive Director of the Consortium of Ethiopian Human Rights Institutions, 27 May 2022.
[43] Interview with Mr. Dan Yirga, Executive Director of the Ethiopian Human Rights Council, written reply via email, 19 May 2022;
[44] Interview with Mr. Mesud Gebeyehu, Executive Director of the Consortium of Ethiopian Human Rights Institutions,

3. CONCLUDING REMARKS AND THE WAY FORWARD

Improving access to regional and sub-reginal human rights treaty monitoring and adjudicatory bodies for Ethiopian citizens requires overcoming multiple challenges which in turn demand interventions at multiple levels. Both in terms of identifying the challenges and addressing them, it is important to make distinction between those ICPs that are already available but underutilized for various reasons and those that are not yet available in Ethiopia.

Improving access to available but underutilized or unutilized mechanisms

Currently, ICP procedures before two regional treaty bodies, namely the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child, are available for applications from Ethiopia. However, as the analysis in this paper revealed, both procedures are either underutilized or unutilized.

For example, only just about a dozen of individual communications brought against Ethiopia have so far been reviewed by the African Commission. While more than half of them were considered inadmissible because they were filed before Ethiopia became a party to the Banjul Charter, some of the few that have been filed after Ethiopia became a party were considered inadmissible because of lack of exhaustion of local remedies. The situation before the African Committee of Experts on the Rights and Welfare of the Child is even more dismal. Though Ethiopia has been a member of the ACRWC since 2002, the ACRWC monitoring body never reviewed individual communications from Ethiopia.

When it comes to the available yet underutilized mechanisms, Civil Society Organizations such as LHR in coordination with other NGOs and the relevant treaty bodies need to engage in several intervention works to improve access.

- Popularizing communication procedures
  Making the general public to be familiar with the existence and procedures of these treaty monitoring bodies could contribute positively to their visibility and accessibility. These could include:
  -Preparing publications (newsletters, books, papers, emails) etc focusing on regional ICPs.

-Developing website resource centers focusing on ICPs.

-Preparing radio or television legal information shows

- Improving national constitutional and human rights litigation

  This requires overcoming several challenges related to lack of awareness, resources and commitment. The required interventions include:

  -Providing sensitization workshops on regional and sub-regional ICPs.

  -Networking and sharing experience with local and international NGOs with experience in the ICPs.

  -Identifying and making use of laws and procedures that help to reduce the challenges emanating from the local exhaustion rule.

Creating access to unavailable individual Communication Procedures

Non-ratification on the part of Ethiopia of the relevant instruments that establish some of the regional and sub-regional bodies is the reason what makes these bodies unavailable for applicants against Ethiopia. A notable gap in this area is Ethiopian government's reluctance to ratify the Protocol Establishing the African Court on Human and Peoples' Rights. In order to change the situation both civil society and the Ethiopian government shall take some important steps.

On the part of civil society, changing the situation requires engaging in a coordinated multilevel and multiforum advocacy. LHR and similar NGOs shall:

- Sensitize the public about the existence and benefits of the regional ICPs as that could be useful in the advocacy process.
- Encourage and lobby national authorities to ratify the Protocol Establishing the ACtHPR. To this end identifying and engaging individuals or institutions who are convinced about the relevance of ratifying the Protocol within the Parliament, the Ministry of Foreign Affairs, the Ministry of Justice or National Human Rights Institutions can be helpful in the advocacy work.
- Coordinate their advocacy with local and international NGOs with similar goals the sensitization activities of the ACtHPR that the court has been doing in various countries as part of its non-judicial activities.

- Enhance your capacity and plan ahead to use every advocacy opportunity at continental level during periodic state reports, Commission sessions, NGO forum etc. Apply and get an observer status before the AComHPR as that helps for visibility and for effectively using advocacy opportunities at regional level.
- Develop and implement effective media strategy to raise public awareness on the issue in a way that helps put pressure on and mobilize key decision makers around the issue.

On the part of the Ethiopian government, policy makers shall recognize that the general reluctance to join regional institutions such as the ACtHPR does not reflect Ethiopia's position as a seat of AU and its pioneering place in establishing continental institutions. Recognizing the subsidiary role of regional treaty monitoring and adjudicatory bodies will only help to strengthen the interpretation and implementation of human rights norms by domestic institutions without replacing and substituting the role of the latter.

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- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 13 September 2000, entered into force 25 November 2005)
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- Revised Treaty of the Economic Community of West African States (adopted 24 July 1993, entered into force 23 August 1995)
- Treaty of the Southern African Development Community (adopted 17 August 1992)
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