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Theme :

**"The protection of fundamental rights in Cameroon and sub-Saharan
Africa"**

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DEVELOPMENT OF THE PRESENTATION

INTRODUCTION

According to *Article 1 of the Charter of Mandé or Manden of 1222* , " *all life is life* ." This Charter is said to have been solemnly proclaimed by Sundiata Keita, founder of the Mali Empire who lived from 1190 to 1255 , on the day of his enthronement as Emperor of Mali at the end of 1236 , hence its other name, the Charter of Kouroukan. Fougá , or, in the Malinke language , ***Manden Kalikan*** . It is the transcription of an oral tradition . No written record of it exists prior to the 1960s, and its authenticity is questioned by several researchers. texts of the Charter exist; the one whose article is cited here dates back to 1222 and comes from the work carried out from the 1970s onwards by Wa Kamissoko and Youssouf Tata Cissé , Malian anthropologists , and was inscribed in 2009 by UNESCO on the list of Intangible Cultural Heritage of Humanity .

According to **Article 1 of the Universal Declaration of Human Rights of 10 December 1948**, «*all human beings are born free and equal in dignity and rights (...)* ».

These two articles sufficiently demonstrate the importance of the rights inherent in the human person, whoever they may be and wherever they may be.

The question of fundamental rights has been central to humanity's self-perception since the dawn of human society. As such, it constitutes one of the major concerns of philosophy, the mother of the sciences. It is a mobilizing theme of this century. Yet, it is not a new reality, for it is also an age-old question that led to the limitation of power in monarchies, particularly in Europe between the 17th and 18th centuries, the latter being known as the "Age of Enlightenment."

A- CLARIFICATION OF CONCEPTS

The terms to be clarified here are two in number: ***Human rights*** and ***fundamental rights*** .

1- Human Rights

The concept of human rights belongs more *to the "world of philosophy."* In this sense, It *"indicates what should be"*.

These rights are presented as *inalienable and sacred* . They are said to be rights of the individual grasped in their universal and abstract essence. From a philosophical perspective, they presuppose that *"there are a number of rights inherent in human nature ."* In this sense, they are conceived as prior to and superior to positive law. **Thus, they can be understood as prerogatives or rights inherent or consubstantial to the human person, recognized and guaranteed by law.**

In this sense, it is " *natural rights* " of man (see Declaration of the Rights of Man and of the Citizen of August 26, 1789) that the law (national and international) recognizes and protects .

2- Fundamental rights

The concept of "*fundamental rights* ", meanwhile, first appeared in German law through the 1949 Constitution. It was received in French jurisprudence through the decision of the Constitutional Council of *July 16, 1971, rendered in the so-called "freedom of association" case* .

Fundamental rights are (human) rights that constitutional and international orders recognize for individuals, therefore for men, in their relations with state authorities.

They are above ***Public freedoms*** are defined by law, which limits their scope of protection. However, while public freedoms are regulated by law, they are generally enshrined in the Constitution and international instruments, thus becoming fundamental ***rights*** or ***freedoms***.

B- THE CLASSIFICATION OF FUNDAMENTAL RIGHTS

Fundamental rights can be classified horizontally and vertically.

1-Horizontal classification

To understand fundamental human rights horizontally, we can consider two criteria : that relating to ***these rights themselves*** , and that relating to ***the subject(s) of said rights*** .

a) Taking into account the rights themselves

The classification based on rights taken or considered in themselves concerns their *importance* , their *intrinsic nature* and their *positive or negative character* .

- The importance of the rights considered

The criterion of the importance of the rights considered would lead to making the distinction between *fundamental* and *non-fundamental* human rights is important. Indeed, certain legal instruments incorporate this differentiating criterion through the concept of the *core of human rights* . This is the case, for example, with Article 15, paragraph 2, of the 1950 European Convention on Human Rights. Thus, these legal instruments attempt to bring human rights law closer to humanitarian law, as expressed in the 1949 Geneva Convention of the Red Cross.

Such a rapprochement has not always had lasting effects, although it was an achievement of the 1970s. Moreover, is it appropriate or suitable to distinguish between fundamental and non-fundamental rights within human rights, if indeed these rights are inherent to the individual ?

This question leads us to consider, in particular, the relationship between the right to life and the right to work, the right to housing, or the right to health. Do these rights have the same value or importance? Is the right to life, for example, a fundamental right? fundamental and the Others (the right to work, to health, to housing) not fundamental? The question is worth its philosophical and legal weight when we know that in dignity, or the idea of dignity, there is the idea of rights.

The criterion of the importance of rights has, to a certain extent, its justification, but if we take into account the idea of human dignity, which is the foundation and even the purpose of human rights, it must necessarily be qualified. What about the criterion relating to the intrinsic nature of the rights in question?

- Intrinsic nature rights considered

The criterion of intrinsic nature refers to the deep nature of Fundamental rights. It makes the classic distinction between, on the one hand, civil and political rights , and , on the other, economic, social and

cultural rights. Moreover, the two covenants of 1966 enshrined this distinction.

It follows from this consideration that civil and political rights are not of the same nature as economic, social, and cultural rights. This is all the more true given that the International Covenant on Civil and Political Rights established a mechanism for the protection of rights through the Human Rights Committee, which can receive communications from both states and individuals, whereas the International Covenant on Economic, Social, and Cultural Rights did not provide for such a mechanism. *It was much later, in 2008 (Resolution A/RES/117 of 10 December 2008), that an Optional Protocol* to this Covenant was adopted. established a competent Committee to receive individual, group and state communications. It was opened for signature in 2009 and entered into force on 5 May 2013. However, it remains true that the key human rights issues are, in both cases, the same.

- The positive or negative nature of rights

The criterion that opposes negative rights and positive *rights* suggests that there would be, on the one hand, rights which generate ***negative obligations*** (*abstention of the State from persecuting, prohibiting or torturing*) , and, on the other hand, rights which generate ***positive obligations*** (*intervention of the State to take active measures*) .

Regarding the first category (negative rights), it is accepted that these are rights enforceable against the State. These are rights whose exercise implies abstention on the part of the State. Examples: freedom of movement, freedom of expression, freedom of religion .

As for the second category (Positive rights), these are rights that can be claimed from the State or society and whose realization is only possible through State intervention. Examples include the right to work, education, housing, etc.

To also understand fundamental human rights on a horizontal level, there is the consideration *of the subjects of said rights*.

b) Taking into account the issues of fundamental rights

The criterion of the subjects of fundamental rights makes it possible to determine their holders, and, consequently, to distinguish ***individual rights collective*** rights .

Individual rights are the rights of the individual which are exercised, in principle, individually, but which can also be exercised collectively, like the freedom of assembly, demonstration or association.

As for ***collective rights***, these are rights exercised collectively or by the community, such as the right to development or the right of peoples to self-determination. However, the boundary between these two categories of rights is often difficult to establish, particularly regarding their exercise. What about the vertical classification of fundamental rights?

2- Vertical classification

The vertical classification of rights has been a pressing and recurring issue ever since human rights emerged within international bodies and through certain written declarations, particularly from the Enlightenment onward, as natural rights. At that time, these were primarily individual rights of a civil and political nature. However, other rights were gradually proclaimed, such as economic, social, and cultural rights, driven by socialist countries, and it became clear that human beings have other needs that must be met. This led to demands for the recognition of yet other rights. It is in light of this situation that so-called third-generation rights were proclaimed.

From a vertical perspective, therefore, we will distinguish the ***rights of the first generation***, which are called attribute rights or freedoms. (**liberty**), ***second generation rights***, or rights of entitlement (**equality**), and ***third generation rights***, described as rights of solidarity (**fraternity**).

a) The rights of the first generation

First-generation rights are rights that imply the State's abstention. They are enforceable against the State. They are considered inherent rights or freedoms because they are intrinsically linked to human beings. Their enforceability against the State stems from the fact that the State must not take measures that could obstruct, limit, or prohibit their exercise. This would mean that the State would be responsible for their non-execution. For example, the State must ensure that a person's physical integrity is not violated; it must not hinder a person's exercise of their freedom of thought or expression.

These rights are, essentially, civil and political rights. They can be found in

the Universal Declaration of Human Rights of 1948, in one of the international covenants of 1966, namely the International Covenant on Civil and Political Rights; in the African Charter on Human and Peoples' Rights, the Inter-American Convention on Human Rights of 1969, and the European Convention of 1950.

Although these rights are the first to be proclaimed, they are not, in principle, above other human rights, particularly second-generation rights.

b) Second generation rights

Second-generation rights are enforceable rights because they are owed to the State and therefore imply its intervention. Unlike first-generation rights, which are based on *the idea of liberty*, second-generation rights are based on *the idea of equality*. This is because their realization is only plausible and possible if human beings are treated equally. Examples include the right to health, the right to work, and the right to housing (see **Guimdo Bernard Raymond, "The Right to Housing in Cameroon: Shadow and Light of a Human Right in a Developing Country," in Cahier No. 1 of the Catholic University of Central Africa**, UCAC Press, 1996, pp. 187-200).

Second-generation rights consist of economic, social, and cultural rights. They are enshrined in the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the 1981 African Charter on Human and Peoples' Rights, and, to some extent, in the European Social Charter. The 1950 European Convention on Human Rights did not include such rights. What about third-generation rights?

c)- Third generation rights

Third-generation rights imply the idea of *solidarity* or *fraternity*.

Humanity in general, and the individual in particular, should certainly enjoy inherent rights, have rights enforceable against the State, but also benefit from solidarity and therefore fraternity, a cardinal value that must be at the heart of inter-societal, inter-state, and inter-individual relations. It is precisely for this reason that some authors have felt compelled to rely on existing realities and legal texts to support the existence of such rights. However, it is not possible today to definitively list these rights of solidarity or third-generation rights. In this regard, we can cite some rights that are considered as such: the right to development, the right to a healthy environment, the right to peace, the right to property, the right to the common heritage of humanity, the right to communication, the right of peoples to self-determination...

The debate surrounding their recognition as human rights has been intense, as the African Charter on Human and Peoples' Rights, which primarily enshrines them, does not explicitly state this. One might then ask whether they are collective or individual rights. More incisively, one might ask whether they are human rights or the rights of peoples. It is for this reason, and many others, that these rights have been the subject of strong contestation as human rights, notably by some French legal scholars (in this case, Robert Pelloux and Jean Rivero).

In any case, we are dealing today with fundamental rights both by their nature and their legal recognition, hence their protection.

If **protection** can be understood as *preventing* an infringement of a legally enshrined right or situation, or *punishing* a reprehensible or prohibited act that has violated that right or situation, the question that can then be asked with regard to fundamental rights, particularly in Cameroon and sub-Saharan Africa, is: *how can their protection be understood?*

In light of current law or its application, **the protection of fundamental rights in Cameroon and sub-Saharan Africa can be approached in a layered and distinct, yet complementary, manner**. Indeed, it is *primarily and essentially national (I) and complementarily and/or contingently international (II)*.

I- THE PRIMARY AND ESSENTIALLY NATIONAL PROTECTION OF FUNDAMENTAL RIGHTS WITHIN AFRICAN STATES SOUTH OF THE SAHARA

The protection of fundamental rights in Cameroon and sub-Saharan Africa is a fundamental and essential national principle in that it is generally exhausted within the internal state order by taking the form of a dual articulation: **non-judicial protection and judicial protection**.

A- NON-JURISDICTIONAL PROTECTION OF FUNDAMENTAL RIGHTS

In Cameroon and sub-Saharan Africa, the non-judicial protection of fundamental rights is ensured by **the executive branch of the State, its agencies, and national human rights institutions**, such as the **Human Rights Commission of Cameroon (CDHC)**.

1/The protection of fundamental rights through active administration

Examples include **the labour inspectorate** and the **administrative**

authorities empowered to receive administrative appeals .

- *The labor inspectorate*

Labor law stipulates that there can be no jurisdictional settlement in the event of individual labor disputes unless one of the parties (the employee or the employer) has first contacted the labor inspectorate for conciliation.

Moreover, it is through this non-judicial mechanism that the ***right to work*** —the right to have and retain employment—is protected. The parties often believe that a bad settlement is preferable to a good lawsuit whose verdict takes too long to arrive. This means that the conciliation facilitated by the labor inspector between an employer and employee is a crucial means of preserving workers' rights, particularly their right to work.

- *The administrative authorities*

Administrative authorities (President of the Republic, Prime Minister, Minister, Governor, Prefect, Regional President and Mayor, for example) manage state or decentralized administrative structures and the staff under their authority , and apply the laws and regulations of the Republic.

The exercise of this set of administrative missions can generate conflict situations. When these occur, the citizen, individual or agent must, if they intend to file a dispute or claim before the administrative judge, first contact the authority responsible for the action or the harm suffered in order to encourage them to find an administrative solution .

This appeal serves three purposes: first, it informs the administration of the existence of a dispute; second, it allows for conciliation between the administration and the individual; and finally, it justifies bringing the matter before the administrative court. This is why it is said to **establish the legal basis for the dispute** .

2/The protection of fundamental rights by National Human Rights Institutions: the case of the Human Rights Commission of Cameroon (CDHC)

- ***The so-called Paris Principles***, adopted by the United Nations General Assembly ***in 1993***, are the basis for the creation of national human rights institutions in sub-Saharan African states.

The case to be examined here is **the Human Rights Commission of Cameroon (CDHC)**.

- The powers of the CDHC

The Commission has a threefold mission: the **promotion** and protection of **human rights and freedoms** , as well as the **prevention of torture** in all places of deprivation of liberty.

In its capacity as a human rights **protection officer** , the Commission contributes to strengthening the rule of law and combating impunity for human rights violations. It does so in several ways, including through:

- the processing of requests and complaints relating to allegations of human rights violations;
- self-referral of facts brought to its attention which are likely to constitute serious, recurring or systematic violations of human rights;
- monitoring the human rights situation;
- opinions and advice on human rights.

To fulfill its mission of protecting human rights, the Commission may request the competent authorities to carry out any searches and demand the presentation of any documents or evidence in accordance with applicable legislation .

As the National Prevention of Torture Mechanism (NPTM) , the Commission conducts regular visits to all places of deprivation of liberty; engages in constructive dialogue with the authorities responsible for the administration and management of places of deprivation of liberty or any other authority and participates in monitoring the implementation of the observations made by the United Nations Subcommittee on the Prevention of Torture (**see Article 8 of Law No. 2019/014**).

As part of its mission to prevent torture , the Commission regularly conducts unannounced or notified visits to prisons and any other places of deprivation of liberty; conducts private interviews, with or without witnesses, with persons deprived of their liberty, or any person or entity it deems appropriate; makes recommendations to the competent authorities to improve the treatment and situation of persons deprived of their liberty and to prevent torture; makes observations, at the request of the Government, on existing legislation or draft laws on the prevention of torture; participates in monitoring the implementation of observations made by the Subcommittee on the Prevention of Torture, foreign

National Mechanisms for the Prevention of Torture and other national, regional and international mechanisms for the prevention of torture.

- The referral and actions of the CDHC

The Commission may be seized ex officio (*cf. case of the nine missing women of Bépanda and case of the murder of a 06 year old girl by the followers of Ma'alah in Douala*) or by any natural or legal person, by means of a written or oral request; in this case, a report is drawn up and must contain the identity and address of the applicant and briefly describe the alleged violation.

Referrals to and proceedings before the Commission are free of charge. The Commission may call upon any expertise necessary to carry out its missions. As part of its activities, the Commission deliberates and prepares reports.

The actions taken by this body are of a varied nature. Some are decision-making (**deliberations**), while others are non-decision-making (**opinions, recommendations and reports**).

The reports, which may be *annual*, *special* or *thematic* (**see Article 40.1 of Law No. 2019/014**), are documents in which the Commission provides an update on its activities in promoting and protecting human rights, as well as those related to the prevention of torture, and formulates recommendations and other proposals.

The deliberations and recommendations as well as the opinions and reports of the Commission are made public at the initiative of its President, with the exception of the recommendations and opinions made following visits to places of deprivation of liberty which are addressed exclusively to the competent authorities.

B- JUDICIAL PROTECTION OF FUNDAMENTAL RIGHTS

This is a diversified protection, both organically and materially. Indeed, there are numerous jurisdictions, one of which... An essential mission is precisely to punish cases of violation of rights and freedoms .

These jurisdictions have a constitutional basis and are organized or structured by the legislature. We can thus distinguish, on the one hand, **the courts constitutional** or special **courts** , and, on the other hand, **ordinary courts**.

1/The protection of fundamental rights by constitutional courts

- The protection of fundamental rights in electoral matters

This protection is involved or can be involved first in **pre-electoral disputes**, in particular those concerning the *convening of the electoral body* (as in the case of Senegal regarding the convening of the electoral body for the 2024 presidential election), those *concerning candidacy* (acceptance and refusal of candidacies and eligibility of candidates for parliamentary and presidential elections (as in the case of Cameroon for the October 2025 presidential election), and then in **post-electoral disputes**, in particular those concerning the conduct, the counting and the results of said elections.

- The protection of fundamental rights outside of electoral matters

In sub-Saharan Africa, this protection is provided or can be provided in two scenarios:

First scenario : this is the *indirect protection* of fundamental rights through the review of the constitutionality of laws by constitutional courts (case of Cameroon) :

2nd scenario : this is the *direct protection* of fundamental rights through direct control by constitutional courts of acts which infringe fundamental rights: regulatory acts and individual acts of maintaining public order or depriving people of their freedoms (case of Benin) :

2/The protection of fundamental rights by ordinary courts

- Protection by the judicial courts : cases of torture: *TGI, Mfoundi , judgment no. 176/ crim . of June 21, 1998; TGI, Mfoundi , judgment no. 195/ crim . of June 26, 1998 ; TGI, Haut- Nkam , judgment of February 27, 2002; TGI, Mfoundi , judgment no. 318/ crim . of August 26, 2003 ; TGI, Fako , judgment of October 24, 2005; CA, Adamaoua, judgment of January 27, 2005; CA, Nord, judgment of February 4, 2005).*

- Protection by administrative courts: these courts are, or may be, seized of cases involving violations by administrative authorities or bodies of fundamental rights enshrined in the constitution, the protection of which falls directly under their jurisdiction. Nothing prohibits this, in fact, unless a substantive law acts as a barrier between the courts and the constitution. Thus, in electoral matters, the Cameroonian administrative judge has had to define the **right to vote** (*see Supreme Court/Administrative Court, Judgment No. 59 of July 18, 1996, EPALE Roger and Supreme Court/Administrative Court, Judgment No. 60, NGUEYONG Moussa*). Along the same lines, the judge has been attentive to the **freedom of movement**, as well as to the **physical and moral integrity** of citizens (*see Judgment No. 98/CFJ/CAY, January 27, 1970, OBAM ETEME*

Joseph and Judgment No. 12/Supreme Court/Administrative Court, January 28, 1982, Dame BINAM née NGO NJOM fidèle). It does the same for **freedom of conscience and religion** (cf. *Order No. 02/PCA/CS, October 26, 1994, Presbyterian Church of Cameroon EPC v. State of Cameroon*).

II-SUPPLEMENTARY AND/OR CONTINGENCY PROTECTION INTERNATIONAL OF FUNDAMENTAL RIGHTS WITHIN THE AFRICAN STATES SOUTH OF THE SAHARA

The protection of fundamental rights in Cameroon and sub-Saharan Africa also takes place at the international level, both regionally in Africa and universally within the UN system. However, it is largely complementary, even contingent.

A- REGIONAL PROTECTION OF FUNDAMENTAL RIGHTS WITHIN AFRICAN STATES SOUTH OF THE SAHARA

To promote and protect rights and freedoms in Africa, the African Charter on Human and Peoples' Rights (ACHPR) established the African Commission on Human and Peoples' Rights. To complement and strengthen the work of this Commission, a Protocol to the Charter, adopted in Ouagadougou, Burkina Faso, in 1998, created the African Court on Human and Peoples' Rights. It is therefore necessary to examine, on the one hand, the system for the protection of fundamental rights established by the Charter, and on the other hand, the system for the protection of these rights enshrined in the Protocol to the Charter.

1/The protection system established by the African Charter on Human and Peoples' Rights

The African Commission's mission to protect fundamental human rights consists of examining *communications* or Complaints from States Parties to the African Charter on Human and Peoples' Rights, and other *communications or complaints* from natural or legal persons. This protection mission is carried out according to *a specific procedure* and is subject to *certain conditions of acceptability and admissibility of the communications*.

a) The procedure for reviewing communications

The procedure for reviewing communications consists of *six steps* :

- the complaint is addressed to the Secretary of the Commission, whose headquarters are in Banjul (Gambia);
- The Secretary forwards the complaint to the Commission, which decides whether it is acceptable and admissible;
- If the complaint is deemed admissible, the Commission brings it to the

attention of the State concerned before any substantive examination;

- When examining complaints, the Commission draws inspiration not only from the principles set out in the Charter, but also from recognized human rights principles, in particular those set out in international legal instruments;
- The Commission does not make binding decisions; it does not have the authority to do so;
- The Commission's conclusions and recommendations must be communicated to the Conference of Heads of State and Government of the African Union for validation and authorization for publication.

What about the examination of the acceptability and admissibility of communications or complaints made by States or other complainants for violations of the rights enshrined in the African Charter?

b) The acceptability and admissibility of communications

The Commission had to establish a number of conditions for the acceptability of communications or complaints, prior to examining their admissibility.

- The acceptability of communications

The acceptability of communications falls under the purview of the Commission's Rapporteur.

So :

- Only communications implicating a member state of the African Union can be accepted. Thus, a communication submitted against the USA was declared unacceptable;
- A communication containing manifestly false information about the complainant cannot be accepted. Thus, a communication in which the complainant was declared unacceptable was deemed inadmissible. claimed ***that he was a Field Marshal in the Nigerian army***, whereas ***the highest rank in that army is that of General*** ;
- A communication is also unacceptable if its examination clearly suggests that the complainant is not mentally stable. For example, a communication from a Cameroonian man who claimed he was being persecuted everywhere he went by the Cameroonian government was declared unacceptable. The Commission considered these statements to show that the complainant was not mentally stable (see ***Amuh v. Cameroon, communication no. 106/93 of December 1993***).

- Also unacceptable is any communication that deliberately fails to refer to the African Charter on Human and Peoples' Rights.

When the communication is declared acceptable, the Commission decides on its admissibility.

- *The admissibility of communications*

It may happen that the Commission, before ruling on admissibility, suggests provisional measures if it finds that a communication relates to an urgent situation likely to cause irreproachable harm to the alleged victim (See *case Kem Saro-Wiwa v. Nigeria, of 31 December 1998*).

The Commission may also contact the State concerned for the adoption of provisional measures, if it finds that one or more petitions reveal the existence of serious and massive human rights violations.

seven conditions for the admissibility of communications :

- The author must state their identity, even if they wish to remain anonymous;
- the request must be compatible with the African Charter on Human and Peoples' Rights and the Constitutive Act of the African Union.
- the communication must not contain terms that are outrageous or insulting to the State in question, its institutions or the African Union;
- the communication must be subsequent to the exhaustion of internal remedies, if any, unless it is manifest to the Commission that the internal remedies procedure is abnormally presented;
- the communication must be introduced within a reasonable period running from the exhaustion of internal remedies or from the date chosen by the Commission as the start of the period for its referral;
- the request must not concern cases which have been settled in accordance with the provisions of the Charter of the United Nations, or those of the Constitutive Act of the AU, or the provisions of the African Charter on Human and Peoples' Rights (*See communication no. 69/92 Amnesty International v. Tunisia*) ;
- Communication should not be limited to gathering news disseminated solely through mass media.

The Commission bases its admissibility decision on the interpretation of these seven conditions and by reference to its Rules of Procedure, after which it proceeds to the substantive examination of the communications.

c) The substantive examination of communications

When the admissibility of the communication is accepted, the Commission notifies the parties and informs them of the date on which the communication will be examined on its merits. As part of this examination, it may send missions to conduct investigations in the States concerned. It may also, if the complaint raises an urgent situation, invite the State concerned to submit a provisional report on the implementation of the provisions of the Charter that appear to have been violated.

Once the Commission has adopted a substantive resolution, it can make recommendations to the Assembly of Heads of State and Government of the African Union. If authorized by the Assembly, it can publicize human rights violations committed by the States Parties in question. However, it is not empowered to implement its recommendations against States that violate the Charter.

The Commission has been able to respond effectively, at times, to its mandate to protect the rights guaranteed by the ACHPR, both in matters of civil and political rights litigation, and in matters of economic, social and cultural rights litigation, and solidarity rights.

The Commission's mission being to examine the compatibility of national laws and practices with the African Charter on Human and Peoples' Rights (ACHPR) and other international human rights instruments, it has undertaken significant work that has led to the development of several principles that can be considered case law, which can validly inform the work of the African Court on Human and Peoples' Rights. Moreover, its jurisprudence is rich and sufficiently nuanced to lend itself to rapid systematization.

Faced with the shortcomings of a number of African states, the Commission gradually developed a body of case law favorable to *the invocability* and *enforceability* against all African states of fundamental international human rights standards, which they eventually accepted. It was to strengthen this case law and the Commission's work that a complementary system for the protection of human and peoples' rights was established in 1998 by the Ouagadougou Protocol.

2/The protection system established by the Protocol to the Charter

The Protocol to the Charter adopted in 1998 in Ouagadougou, Burkina Faso, and which entered into force on 25 January 2004, established an African Court of Human and Peoples' Rights. Its first judges were appointed in January 2006.

Called upon to complement and strengthen the human rights protection

mission entrusted to the African Commission by the Charter, the Court is vested with a dual competence: an *advisory competence* and a *contentious competence*. It is the latter that will be examined.

The Court has two types of contentious jurisdiction: it rules on the *admissibility of applications* and *examines them* according to the rules defined by the Protocol. And the judgments it renders have *an authority* specified by the Protocol.

a) The types of contentious jurisdiction of the Court

The Court has *personal jurisdiction* and *subject-matter jurisdiction*.

-Personal competence

This skill is twofold: *mandatory* and *optional*.

The Court's compulsory jurisdiction is relative to the status of those who may bring a case before it: these include the African Commission on Human and Peoples' Rights, the State party concerned, the State party whose national is a victim of the human rights violation, and African intergovernmental organizations for matters falling within their competence. The Court may also be seized by a State party acting as an intervening third party.

The Court's optional jurisdiction relates to individual applications or those submitted by NGOs with observer status at the African Commission on Human and Peoples' Rights. The Court can only consider these applications if the State concerned has previously recognized the Court's *jurisdiction to receive them*.

- Material competence

This jurisdiction covers cases relating to the interpretation and application of the African Charter on Human and Peoples' Rights, the Protocol to the Charter, and any human rights instrument ratified by the States concerned. When the Court recognizes its subject-matter jurisdiction, it rules on the *admissibility* of the complaint and, where appropriate, proceeds with its *investigation*.

b) - The admissibility and processing of complaints

It is appropriate to consider, on the one hand, the admissibility of the requests, and, on the other hand, their examination by the Court.

- Admissibility

The Court rules on the admissibility of applications taking into account the provisions of the Charter which set out the conditions for the admissibility of communications addressed to the Commission. Apart from this requirement, it remains free to examine an application or to refer it back to the Commission.

Before ruling directly on individual applications or those submitted by NGOs with observer status to the Commission, the Court may request the Commission's opinion, which it must provide as soon as possible. The Court may attempt to settle cases submitted to it amicably.

- The instruction

Procedurally, the Court conducts an adversarial examination of applications. The States concerned must then provide all the necessary facilities for the efficient conduct of the case. The Court receives all the evidence it deems appropriate and on which it bases its decisions.

The Court's hearings are ***public***, but it may decide to hold them in camera. Every party has the right to be represented by legal counsel of their choice; representation or legal aid may be provided free of charge where the interests of justice so require. Witnesses may be heard. The Court may order provisional measures during the proceedings in cases of extreme gravity or urgency, and when it is necessary to prevent irreparable harm to individuals. Finally, what about the ***pronouncement and authority*** of the Court's judgments?

c) The pronouncement and authority of the Court's judgments

At the end of the investigation, ***the Court issues a judgment***. This judgment is reasoned. In the event of a human rights violation, it orders all appropriate measures to remedy the situation, including the payment of compensation or the granting of reparations.

The Court's judgments are final. However, it may interpret and review them if evidence comes to light that was not known to it when it rendered its decision. ***Their enforcement is conditional*** upon their ***service*** on the ***parties concerned*** and to the ***Council of Ministers of the African Union***, which is responsible for monitoring its implementation on behalf of the Assembly of Heads of State and Government of the African Union. ***This implementation is essentially voluntary***.

Ultimately, the African Court's resolution of fundamental rights disputes should contribute to strengthening the protection of human dignity in Africa. Since its establishment, the Court has issued increasingly significant decisions regarding the protection of fundamental rights.

Examples of such cases include:

- *Michelot Yogogombaye v. Republic of Senegal*, application no. 001/2008, **judgment of 15 December 2009** ;
- *Tanganyika Law Society and The Legal and human Rights Centre and Reverend Christopher Mtikila v. United Republic of Tanzania*, applications nos. 009/2011 and 011/2011, **judgment of 14 June 2013**.
- *Norbert Zongo , Abdoulaye Nikiema Dit. Ablasse , Ernest Zongo and Blaise Lloundo and the Burkinabé Movement for Human and Peoples' Rights v. Burkina Faso*, Application No. 013/2011, (Preliminary Objections), **Decision of 21 June 2013**.
- *Norbert Zongo , Abdoulaye Nikiema Dit. Ablasse , Ernest Zongo and Blaise Lloundo and the Burkinabé Movement for Human and Peoples' Rights v. Burkina Faso*, Application No. 013/2011, **Judgment of 28 March 2014**.

Alongside or in addition to the regional African protection of fundamental rights at the level of African states south of the Sahara, there exists the universal protection of said rights (See Bernard -**Raymond Guimdo D.**, “**Practice of human rights litigation and emergency procedures**”, in *Protection of human rights in Africa* , edited by Jean Didier Boukongou , Presses de l'Université catholique d'Afrique centrale, 2007, pp.189-195).

B- UNIVERSAL PROTECTION OF FUNDAMENTAL RIGHTS WITHIN SUB-SAHARAN AFRICAN STATES

In the universal order, mechanisms and systems also exist to protect fundamental rights. These mechanisms concern not only sub-Saharan African states, but also all member states of the United Nations system. Of course, these mechanisms can only be implemented after all domestic remedies within the states have been exhausted and if the complainant has not appealed to another international human rights body, such as the African Commission or the African Court on Human and Peoples' Rights.

In general, there are two systems for the protection of fundamental rights, in this order:

 the reporting system;

 the complaints system.

1/The system for the protection of fundamental rights in reports

The reporting system was initially established by the International Covenant on Economic, Social and Cultural Rights of 16 December 1966 to protect these rights. This Covenant established a Committee of 18 experts tasked with examining reports submitted by States Parties to the Covenant. These reports were then discussed within the Committee with representatives of the States Parties. Following these discussions, the Committee formulated general recommendations, which it then submitted to the United Nations Economic and Social Council.

The possibility for an individual to lodge a complaint with the Committee on Economic, Social and Cultural Rights for violations of these rights was therefore not provided for in this Covenant. This possibility, which was nevertheless provided for in other legal instruments, now exists in the Optional Protocol to the Covenant. This is the complaints-based protection system.

2/The system for protecting fundamental rights through complaints

The system of protection based on complaints concerns the civil and political rights enshrined in the International Covenant on Civil and Political Rights of 16 December 1966. However, it is also provided for by other international conventions.

a) The system established by the International Covenant on Civil and Political Rights

Under the terms of the International Covenant on Civil and Political Rights and its Optional Protocol, States Parties recognize that the Human Rights Committee established by the Covenant has the competence to receive and consider communications from States and individuals who claim to be victims of a violation of their rights by States Parties to the Covenant.

Communications from individuals are examined by the Committee in closed session and remain confidential, as do other Committee documents. For example, between *1977 and 1988*, the Committee received *333 communications* involving *28 States*.

Also during this period, in *76 of the 88 cases* for which the Committee had completed its work and issued its conclusions, it was established that there had been a violation by States of the rights enshrined in the Covenant.

In light of the above, it is appropriate to examine the admissibility, the substance of the communications, the publication of emergency measures by the Committee, and, finally, the authority and publicity of the decisions rendered by this body.

- The admissibility of the communication by the Committee

The communication addressed to the Committee must not be anonymous. Likewise, it must originate from one or more individuals under the jurisdiction of a State party to the Optional Protocol to the Covenant.

Normally, the communication must be sent by the individual claiming to be a victim of a violation by the State party of the rights recognized by the Covenant. However, if it appears that the alleged victim is unable to submit the communication themselves, the Committee may agree to consider one submitted by another person. This person must then demonstrate their authority to act on behalf of the victim. Thus, a third party who has no apparent connection with the victim cannot submit a communication on their behalf.

The communication must be consistent with the provisions of the Covenant. Furthermore, it cannot be accepted if the same matter is already under consideration by another international investigative or settlement body. Finally, all possible domestic remedies must have been exhausted.

Before deciding whether a complaint is admissible, the Committee may request the alleged victim or the State Party concerned to submit additional information or observations in writing. If the State responds at this stage, the complainant receives a copy for comment. If the complaint is sent to the complainant for further information and is subsequently deemed inadmissible, no further documents are transmitted to the State concerned.

The Committee may decide not to pursue a communication without notifying its decision in writing. This is the case when the author withdraws their complaint or if they indicate in some way that they do not wish to continue the matter. What about the substance of the communication?

- The substance of the communication examined by the Committee

After declaring a communication admissible, the Committee requests the State concerned to provide explanations or clarifications regarding the problem

and to indicate whether it has taken measures to remedy it. The State has six months to respond. The complainant may then comment on this response, after which the Committee formulates its conclusions, which it communicates to the State and the author of the communication.

In the name of equality of arms, the Committee respects the equality between the parties throughout the proceedings; therefore, each party has the opportunity to comment on the arguments of the other. It may happen that, before issuing its final decision, the Committee takes *urgent provisional measures* .

- The urgent measures issued by the Committee

It may happen that the alleged victim of a rights violation needs protection before the Committee formulates its conclusions. Thus, the Committee has sometimes had to, without prejudging the merits of the communication, communicate its provisional opinion to certain States concerned. (For example, in a case under consideration, the Committee informed the State concerned that the alleged victim, " *having sought refuge in country X, should not be returned or expelled to country Y.* " In another case, the Committee, expressing its concerns about the state of health of an alleged victim, requested the government concerned to have the victim examined urgently by a competent medical authority and also requested a copy of the medical report.)

In other cases, the Committee decides to ask the State concerned not to carry out a capital execution while a related complaint is under examination before it.

The Committee has a duty to examine all written information submitted to it by the parties to a dispute. For the Committee, the burden of proof does not rest solely with the complainant. It has ruled as such in several cases concerning the right to life, torture or ill-treatment, arbitrary arrests, or disappearances. What is the scope of the Committee's decisions?

- The scope of the Committee's " decisions "

The Committee's actions do not have the force of res judicata , but rather the force of *established facts* . They are binding on the parties, particularly States, only because the Committee, having established a violation of the rights enshrined in the Covenant, calls upon those States to respect their commitments arising from their ratification of the Covenant. While a complaint is being examined by the Committee, the procedure remains strictly confidential. However, its conclusions, whether they concern findings on complaints deemed admissible and duly examined on their merits, or findings of inadmissibility, are always made public.

Generally, it takes 10 months to 1 year for a decision on the admissibility of a communication to be made, and 1 to 2 years for the Committee's conclusions to be made public. In total, the review process takes 2 to 3 years to complete.

There are other complaint-based protection systems within the United Nations system.

b) Other systems for the protection of fundamental rights based on complaints

Within the United Nations system, there are other specific legal instruments that recognize the right of individuals claiming to be victims of human rights violations to file complaints with the bodies established for this purpose. These include, among others, the Optional Protocol (10 December 2008) to the International Covenant on Economic, Social and Cultural Rights of 1966, the International Convention on the Elimination of All Forms of Racial Discrimination of December 1965, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 1984.

So :

- Since 2008 (Resolution A/RES/117 of 10 December 2008), an *Optional Protocol to the ICESCR* has established a Committee competent to receive individual, group and State communications. It was opened for signature in 2009 and entered into force on 5 May 2013.

- Under the *International Convention on the Elimination of All Forms of Racial Discrimination*, a Committee on the Elimination of Racial Discrimination was established, composed of 18 members, competent to receive complaints from individuals or groups of individuals who believe that their rights guaranteed by the Convention have been violated by a State party to this Convention and which has recognized the competence of the said Committee.

- The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* also established a 10-member Committee against Torture, which can receive complaints from individuals against their State, a party to the Convention and which has accepted the competence of the Committee.

CONCLUSION

Ultimately, the protection of fundamental rights in Cameroon and sub-Saharan Africa relies on a complex set of mechanisms established at both the

national and international levels. *While this protection is enshrined and implemented, it remains improvable* in order to ensure the effective and efficient submission of these states to the rule of law and, consequently, to respect for human dignity.

Thank you for your kind attention!

Bari, November 28, 2025

Pr Bernard-Raymond GUIMDO DONGMO