

The African Charters

Stories from the Continent



FAIR
TRIAL

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Registered offices
Bonn and Eschborn

GIZ AU Liaison Office
P.O. Box 100009
Addis Ababa, Ethiopia
T +251 115 15 78 65
T +251 114 70 33 55
F +251 114 70 33 25

E info@giz.de
I www.giz.de

Editor:
Karin Pluberg

Story and Design:
Jenny Watkinson

Illustrations:
Leonard Ermel

Translations:
Kristina McVicar (EN), Lucile Danilov, Frédéric Brunet (FR)

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INTRODUCTION

Good governance and respect for human rights are key requirements for peaceful and sustainable growth. As such, these are also one of the main areas of focus for the African Union (AU) and German development cooperation in Africa.

Since 2004, GIZ has on behalf of the German government assisted and supported the African Union with a portfolio of around 20 supra-regional technical cooperation projects designed to help achieve the declared goals of the AU as laid out in its Agenda 2063.

One such project was the establishment by the heads of state and government of the AU of an African Governance Architecture (AGA) in 2010. Its aim is to connect the various African human rights bodies to enable them, together, to better enforce the human rights instruments, charters and conventions of the African Union.

The AGA programme, commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ) and implemented by the GIZ, supports this coordinating function since 2014 with technical and financial support.

The AGA structure connects the African human rights bodies with each other, but also enables the institutions to engage with the citizens of the African continent to explain how they can turn to the respective institutions to exercise their rights.

This booklet illustrates an exemplary individual case where a citizen has successfully turned to one of the human rights organs. It is just one of many stories that the AU's human rights bodies are dealing with.



Hon. Sylvain ORE

President of the African Court on Human and Peoples' Rights

THE AFRICAN CHARTERS STORIES FROM THE CONTINENT

>> FAIR TRIAL <<

The African Charter on Human and Peoples Rights

ARTICLE 6: Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

ARTICLE 7:

1. Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.



Name: Adao

Age: 23

Location: Benguela, Angola

Profession: Farm Worker

The right to a Fair Trial is a general term for all rights relevant within a (criminal) trial. It is recognized internationally as a fundamental human right and countries are required to respect it.

Art. 7 of the African Charter sets out the basic principles for every citizen of the member states to the Charter, such as the right to be defended by a lawyer or to be presumed innocent until proven guilty.

Art. 6 lays down the right to liberty and security for every person as a basic principle. Other fundamental rights such as Art. 3 (equality before the law), Art. 9 (right to receive information) and others set further standards that need to be observed during a trial.

In which situations can a violation of your right to a fair trial occur?

>>NO ONE MAY BE ARRESTED OR DETAINED ARBITRARILY<<

If you are arrested, your personal freedom is restricted. Art. 6 specifically notes that such arrest is only lawful if the reasons for this restriction of your personal freedom are previously laid down by law (mostly in the criminal procedural law of your country).

However, no one may be arrested or detained arbitrarily. This is the case, when the above-mentioned reasons for your detention are not clearly given or explained to you when you are being arrested, for example, the authorities have not shown you any arrest warrant or they do not explain it to you in an understandable manner.

Young Adao is walking home by himself late one night after meeting with friends. Suddenly, a fast approaching police car stops him and without any warning or explanation, an officer takes him into custody. When Adao helplessly screams out he didn't do anything, the officers simply tell him to shut up. They force him into the police car where they take away Adaos personal belongings such as his wallet and phone and he is taken to the police station.



According to most national laws, a detainee is supposed to be released within a timeframe of max. 48 hours, if no further investigation results are presented from the authorities. But Adao is forced to stay there for an undetermined amount of time, without the police presenting any further information or evidence.

If you have been arrested, but no proceeding is initiated against you, you are protected by Art. 7 (1) d) of the Charter which gives everyone the right to be tried within a reasonable time. Even though there is no specific definition about the exact timeframe and might depend on the specific case, the African Court on Human and Peoples Rights has established criteria in its jurisprudence as to when a proceeding is considered taking too long and therefore constitutes a violation of the detainee's rights. The explanation of authorities referring to a high backlog of cases or lacking capacities within the judiciary or police structure is not a sufficient excuse for a lengthy procedure.



After the hearing and trial were delayed for several months during which Adao was kept in custody, his trial at the court of first instance begins. Adao is finally being charged for armed robbery.

Art. 7 (1) c) grants you the right to defense, including the right to be defended by a counsel of your choice. You have to be instructed about your legal remedies available upon arrest by the authorities.

This is particularly important when a person has been charged with a crime and facing a criminal proceeding, i.e. for manslaughter or armed robbery. This stems from the principle of "equality of arms". A person charged with a criminal offence faces the overwhelming power of the state and must be given a fair chance to present a defense.

The court is obliged to inform you about these defense rights even if you haven't made any request. The right to defense includes the right to be assisted by an interpreter in case the proceedings are in a language you do not understand. It is important to note that these rights are guaranteed during the trial and throughout the entire proceeding. i.e. also prior to and during any questioning by an authority in the case.

This does not grant everyone the right to free legal aid; however, you will not have to pay, if you do not have sufficient financial means, at least in some African countries, such as Angola.

During the alleged burglary, the homeowner was killed. Adao is now also being charged for manslaughter. Adao has no education nor financial means to help himself. When his trial begins, the court does not inform him about his right to defense and does not grant him free legal aid. Furthermore, there are 39 languages being spoken in Angola.

Adaos mother tongue is Umbundu, the courts official language is Portuguese. Even though it should, the court does not provide him with an interpreter. Adao does not understand the extension of his case to manslaughter, therefore he cannot defend his case appropriately while facing a severe sentence.





Once a trial has been initiated, Art. 7 of the Charter lays out several aspects of a fair trial. Art. 7 (1) grants you the right to have your cause heard. Initially, this encompasses the right to take part and be present in all proceedings, and to be granted the possibility to present your arguments and evidence that supports your position in court. You also have the right to file a petition before appropriate judicial and quasi-judicial authorities in case you feel that your rights have been violated.


**>>A FAIR TRIAL REQUIRES
THAT ANY JUDGEMENT
MUST BE BASED ON STRONG
AND CREDIBLE EVIDENCE <<**

The right to have your cause heard also includes the right to call witnesses to support your case. The court is even obliged to assist you in bringing witnesses to appear if you have trouble obtaining their attendance. At the same time, the court is required to hear substantial evidence if it is presented with any. Equally, a fair trial requires that any judgement, such as the pronouncement of a sentence in a criminal case or the obligation to pay damages, must be based on strong and credible evidence. If the court fails to base the judgement on convincing evidence and convicts you nevertheless, your rights under the Charter are violated.

Adao admits to having taken part in the robbery, but he did not kill the victim. He tried to tell the officers multiple times, but no one listened. Now that the trial begins, he hopes to be heard. But he finds out that many parts of the proceedings have already taken place without him being present. When he tries to mention the names of his friends who he was with that particular night, no one takes action to actually call in the witnesses. The evidence presented by the prosecution could be linked to basically anyone who was around that area of town that night.







»TOGETHER THEY FILE AN APPEAL TO THE NATIONAL APPELLATE COURT«

The protection of Art. 7 of the Charter does not end with the sentence at the end of a trial. Art. 7 (1) a) grants you the right to an appeal within your national judicial system if you claim your fundamental rights have been violated during that trial.

Adao has been charged based on weak/insufficient evidence. Finally, his family is allowed to visit him and he asks for legal advice in order to support his appeal. His family informs a lawyer from an NGO, i.e. Human Rights Defender or national litigation association, and together they file an appeal to the national Appellate Court.

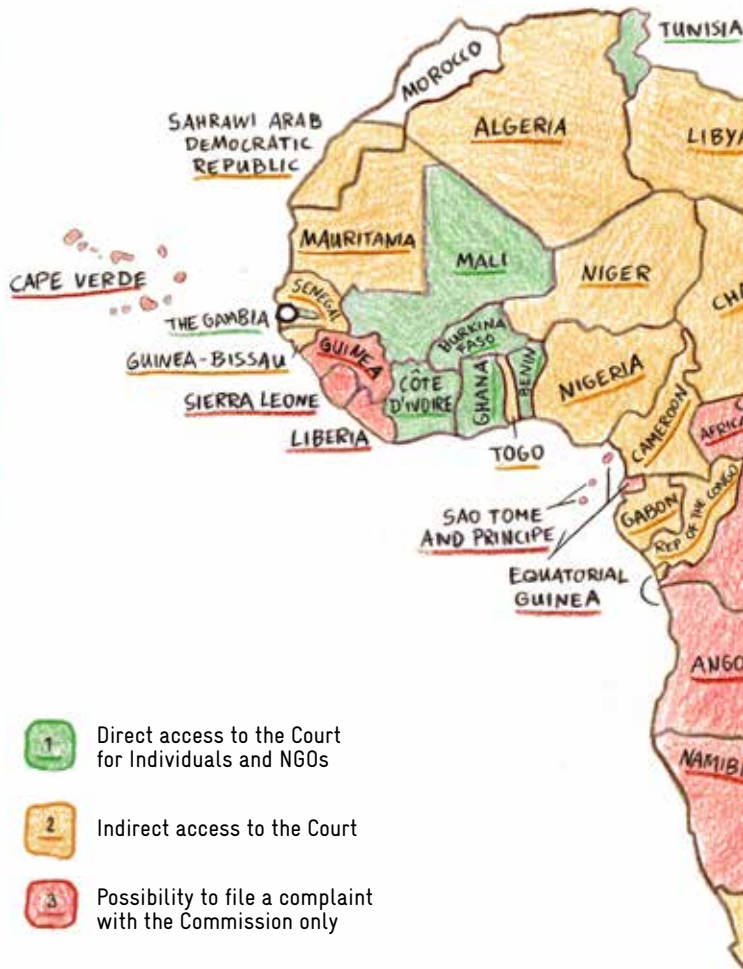
» ADAO FINALLY GETS THE
FAIR TRIAL HE DESERVED
IN THE FIRST PLACE «

Both the African Court and the African Commission on Human and Peoples Rights have on many occasions not only granted monetary compensations for violations of the right to a fair trial, but have also called upon the respective states to take all measures necessary to remedy the violation, this e.g. implies re-opening or re-trying a case on fair grounds.



Due to the appeal, Adao finally gets the fair trial he deserved in the first place. Even though he has done wrong in taking part in the robbery, he is proven innocent in killing the home owner. Since his imprisonment has already taken up months, his sentence is reduced significantly. *





Direct access to the Court for Individuals and NGOs



Indirect access to the Court



Possibility to file a complaint with the Commission only

The African Commission
on Human and Peoples' Rights
(ACHPR) Banjul, The Gambia

The African Committee of Experts
on the Rights and Welfare of the Child
(ACERWC) Addis Ababa, Ethiopia

The African Court on Human and
Peoples' Rights (AfCHPR)
Arusha, Tanzania



HAVE YOUR RIGHTS BEEN VIOLATED? TAKE ACTION!

If you feel that your fundamental rights have been violated by state authorities, you can turn to one of the human rights organs of the African Union tasked with protecting your rights on the African continent (see map above).

Both the African Court on Human and Peoples' Rights ("the Court") and the African Commission on Human and Peoples' Rights ("the Commission") can rule on cases regarding the compliance of a state's actions with the provisions of the African Charter on Human and Peoples' Rights. In matters where children's rights have been violated, the African Committee of Experts on the Rights and Welfare of the Child is the responsible institution you can submit a complaint to.

Out of these organs, the Court is the only one that can issue a binding decision and order a state to provide remedies for violations.



Direct access to the Court: You can submit your case to the Court directly.

Indirect access to the Court: You can submit your case to the Commission, from where it can be referred to the Court. This is possible as your state has accepted the jurisdiction of the Court.

Access to the Commission only: Your State has not accepted the jurisdiction of the Court, but you can file a complaint at the Commission who can then formulate a recommendation regarding your case.

The case summarised here is based on true events. The majority of cases brought to the African Court are related to 'the right to a fair trial'. In its numerous judgements, the African Court concluded that free legal assistance should be provided in trial and appellate proceedings as part of the right to fair trial guaranteed under the African Charter.

Fair trials are important to prevent miscarriages of justice and are an essential part of a just society. In a system based on the rule of law, they shall give the victims confidence that justice will be done and that citizens can trust in judicial authorities.

For more information
how to access the different organs,
please check these websites:

www.achpr.org
www.african-court.org
www.acerwc.africa

www.aga-platform.org
(about the African Governance Architecture)