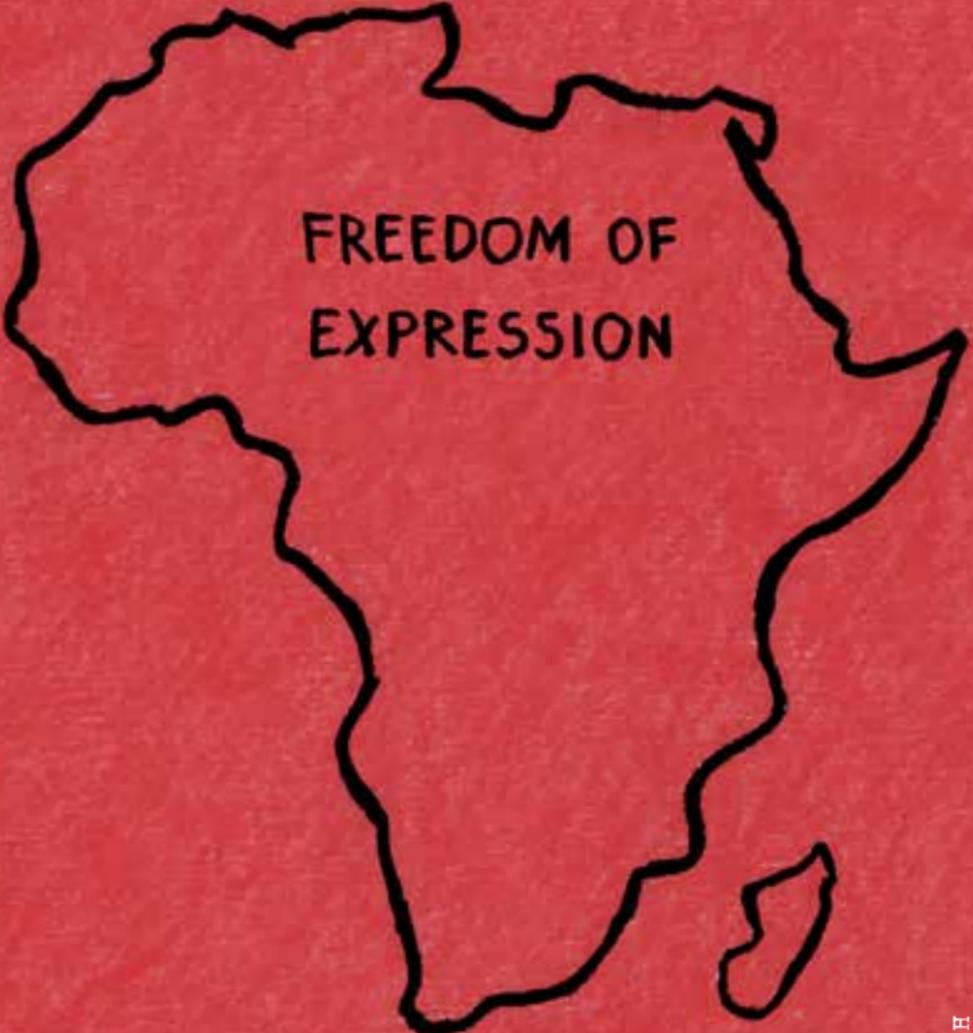


The African Charters

Stories from the Continent



FREEDOM OF
EXPRESSION

Published by:
Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

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)

URL links:
Responsibility for the content of external websites linked in this publication always lies with their respective publishers. GIZ expressly dissociates itself from such content.

GIZ is responsible for the content of this publication.
© 2019



Published by
giz German International
Cooperation

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 >> FREEDOM OF EXPRESSION <<

The African Charter on Human and Peoples Rights

Article 9

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.



Name: Rachid

Age: 44

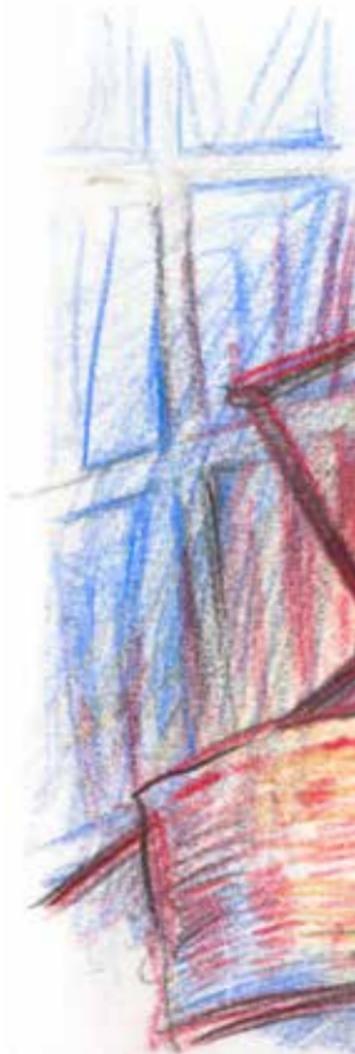
Location: Burkina Faso

Profession: Journalist

For 20 years, I was a journalist with a newspaper in Burkina Faso. We reported mainly on political and societal issues and always tried to reflect and provide transparency on current affairs.

In August 2012, we published several articles alleging corruption involving a well-known state prosecutor.

Our research was thorough and our sources were sound; I had asked straightforward questions and presented my evidence. The prosecutor could, at any time, have issued a counterstatement contradicting my findings.

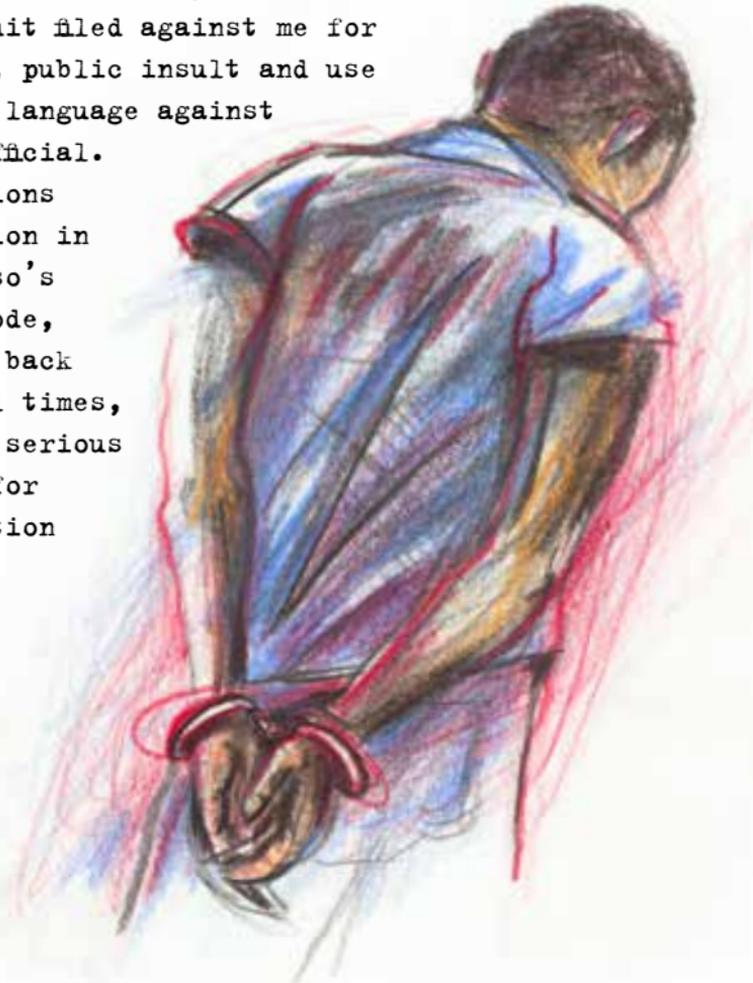




>> I WAS ARRESTED
AFTER THE ARTICLE
WAS PUBLISHED <<

Instead, I was arrested a short time after the article was published and had a lawsuit filed against me for defamation, public insult and use of abusive language against a public official.

The provisions on defamation in Burkina Faso's Criminal Code, which date back to Colonial times, stipulated serious penalties for the defamation of public officials.



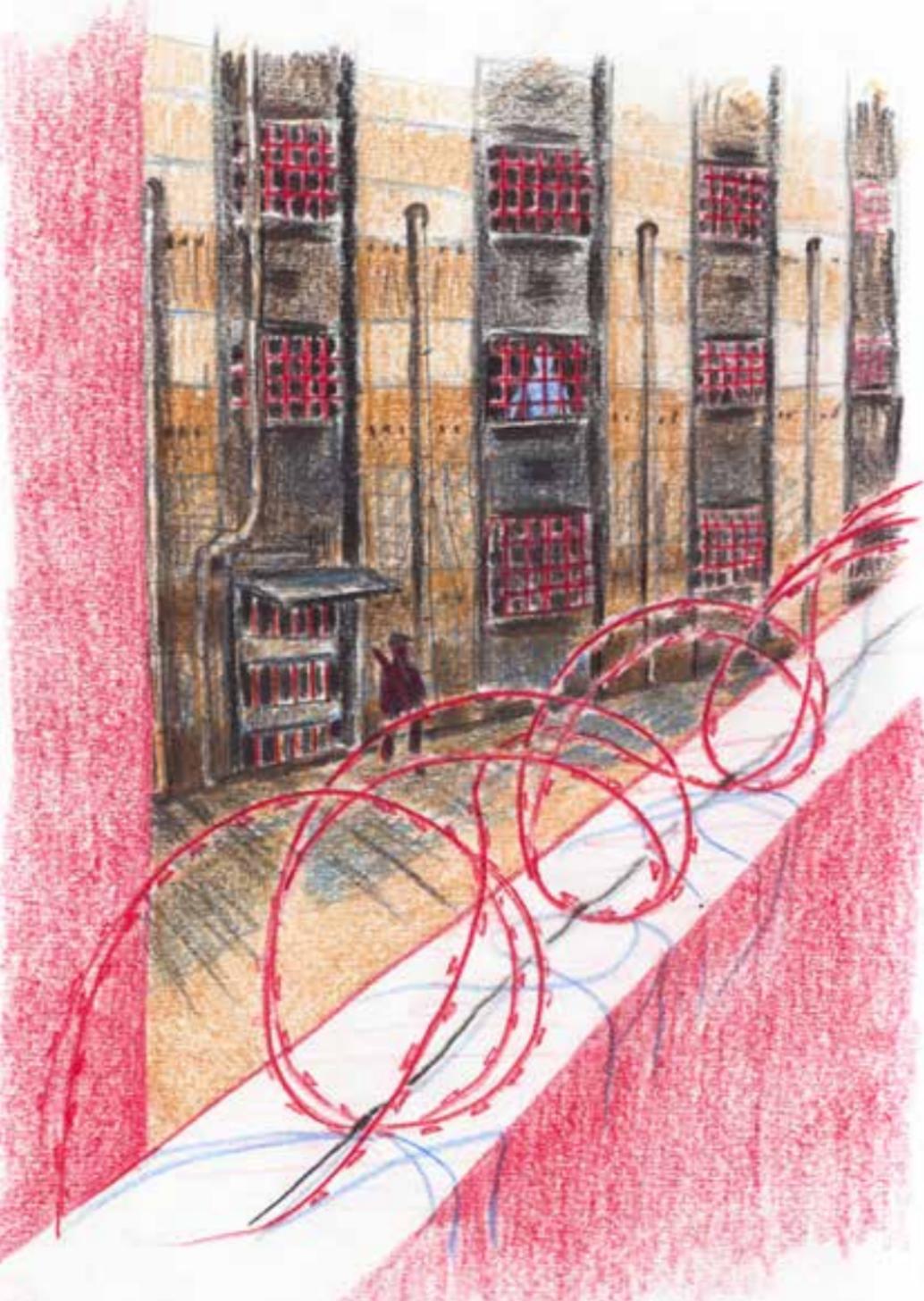


In line with these laws,
I was sentenced by the High
Court of Ouagadougou, the Tribunal
de Grande Instance, to 12-months
imprisonment, and ordered to pay
a fine, as well as damages of
USD 12,000 - a sum equivalent
to 20-times the per capita GDP in
Burkina Faso! Moreover, a six-month
publication ban was imposed on
the newspaper.

>> IT COST MY FAMILY
A LOT OF MONEY
TO SEE ME <<

My year in prison was long and painful. It cost my family a considerable sum of money to come and visit me - both for the journey, but also so that they would be allowed to actually see me. When my health began to deteriorate, my family even had to pay extra for me to be moved to a cell with better ventilation.

I filed an appeal, but without success. My lawyer did his best, but ultimately advised me to apologise to everyone I had mentioned in my article. Unfortunately, my attempts to do so simply offended the officials even more. If you don't speak the language of the authorities, it seems they don't believe you have the right to speak at all.



Luckily, the Committee to Protect Journalists - an independent, non-profit organization that promotes press freedom worldwide, had heard about my case. They put me in touch with a new lawyer through a friend of mine, who regularly visited me in prison.

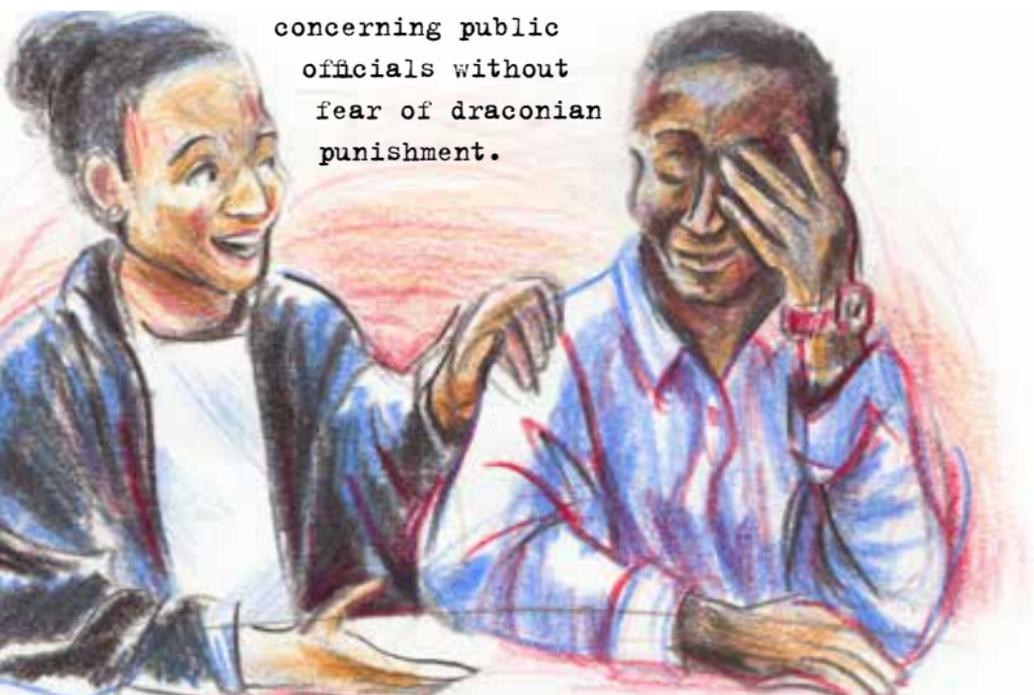
In June 2013, she brought my case to the African Court on Human and Peoples Rights (AfCHPR) located in Arusha, Tanzania, claiming that the penalties imposed against me were excessive and violated my right to free expression. At last, things began to take a turn for the better! The Court held that my right to freedom of expression, as laid down in Art. 9 of the African Charter on Human and Peoples' Rights, had been violated.

The African Charter on Human and Peoples' Rights is an international human rights instrument intended to promote and protect human rights and basic freedoms across the African continent. It sets out standards of

basic human rights to which every citizen is entitled and which the state must uphold. The Court held that the sentence issued by the Burkina Court and the legislation upon which it was based were excessive, disproportionate and outdated.

Furthermore, the laws were not in line with the African Charter. It went on to state that, in a democratic society, people must have the freedom to carry out investigations and to make

statements in the press concerning public officials without fear of draconian punishment.



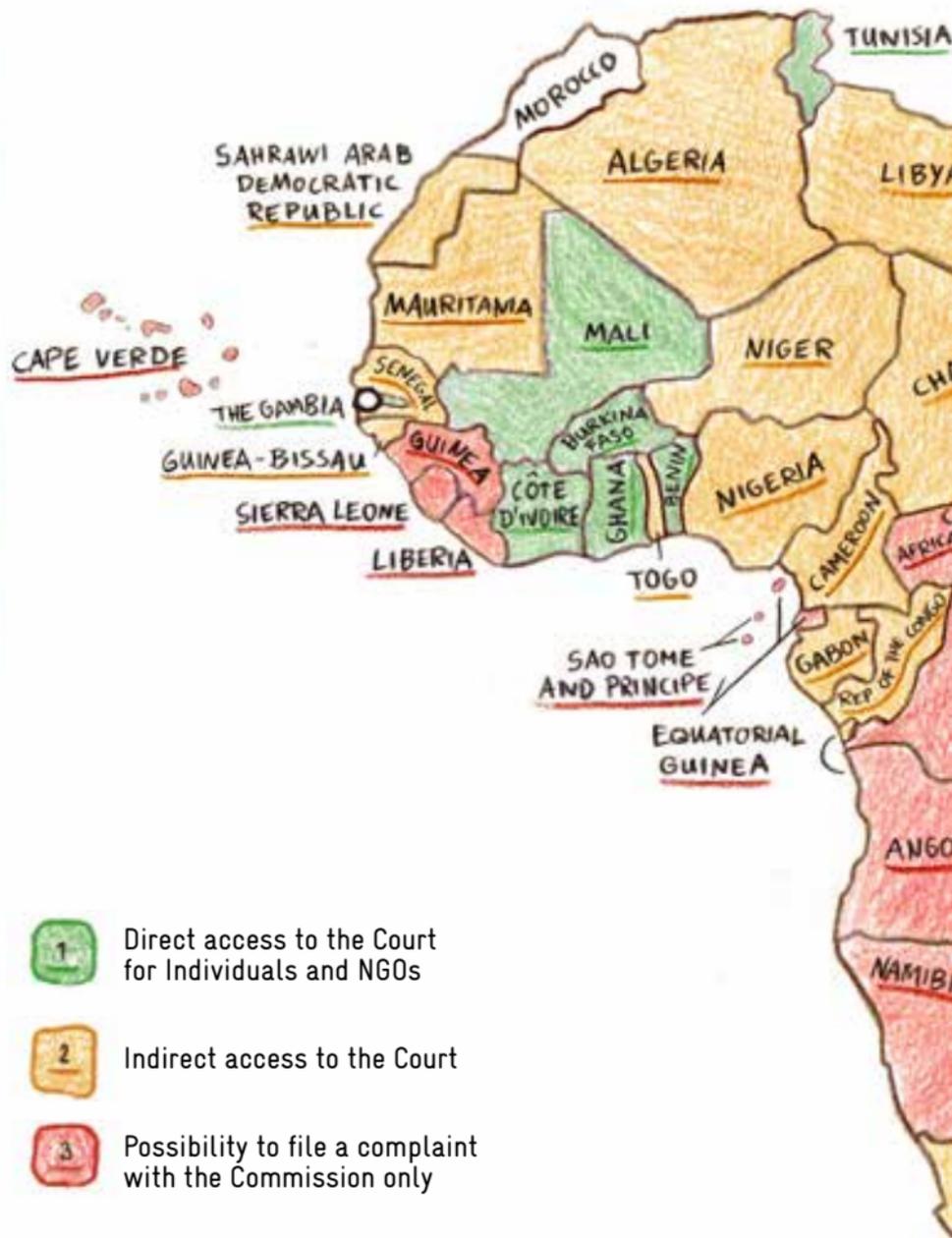




I cried tears of joy and relief as the court delivered its judgement. It felt like a huge weight had been lifted from my shoulders!

The government of Burkina Faso was ordered to abolish its criminal defamation laws to comply with its obligations under the African human rights charter.

Furthermore, in a subsequent decision, I was awarded compensation of around USD 70,000 for the loss of income and the distress suffered as a result of my imprisonment. The government was also instructed to delete my convictions from the criminal record. In addition to my personal success, this judgement has had a positive effect on the lives of many others. Since many African states have similar radical and outdated laws, this landmark decision remains hugely significant for press freedom and the freedom of speech of journalist across the continent.



1 Direct access to the Court for Individuals and NGOs



2 Indirect access to the Court

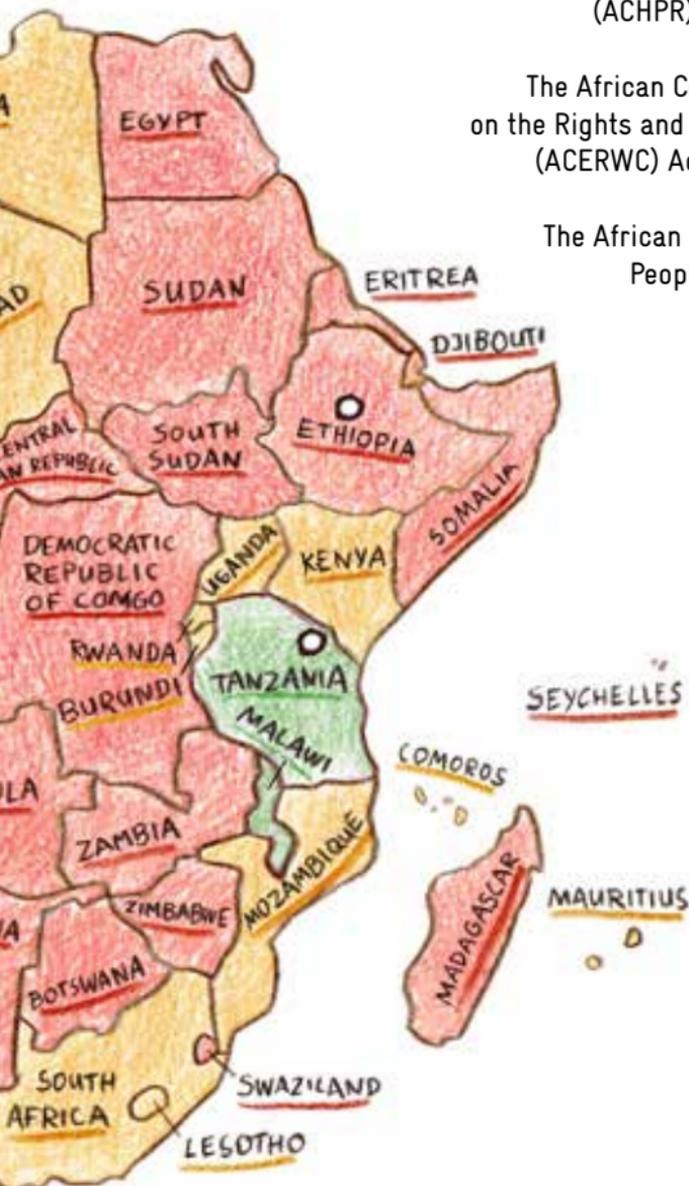


3 Possibility to file a complaint with the Commission only

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. Several other African countries, such as Angola and Uganda, have now responded to the judgement and amended their defamation laws accordingly. In a later judgement, the Constitutional Court of Lesotho referred to the case outlined here and held that the offence of criminal defamation as defined in Lesotho's Criminal Code violated the constitutional protection of freedom of expression.

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)