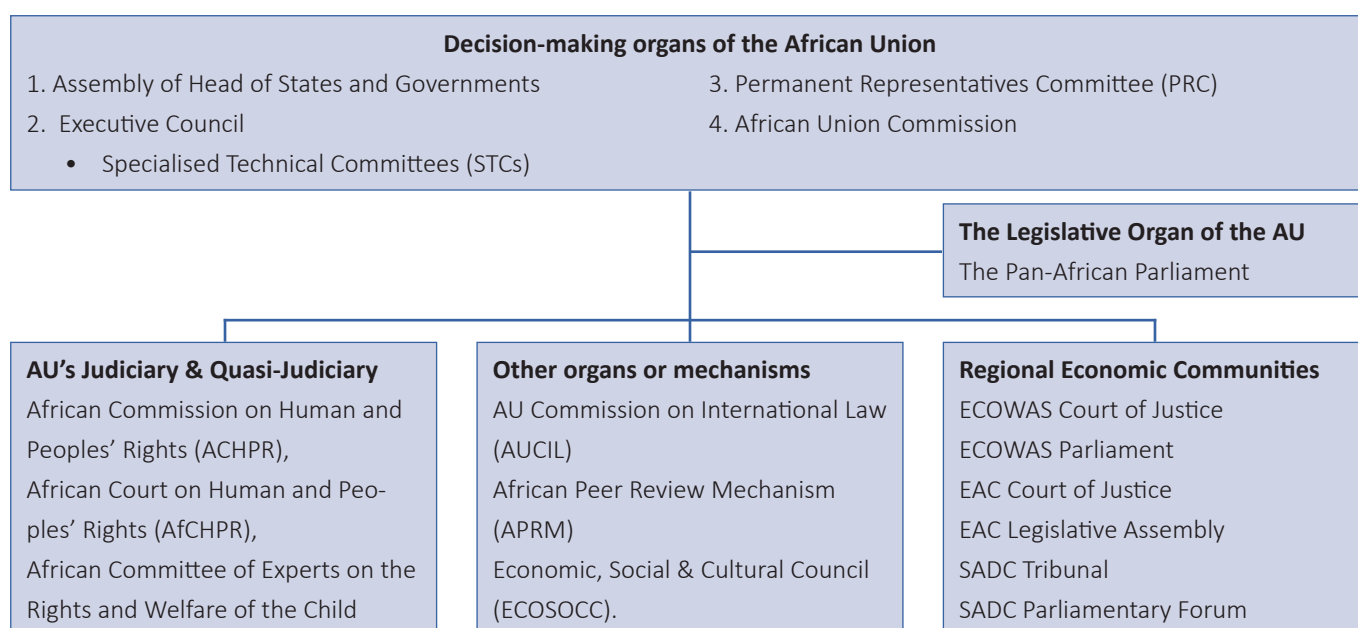




LEVERAGING THE AFRICAN UNION

On the 22nd of September 2021, the [Campaign for the Decriminalisation of Petty Offences in Africa](#), in response to campaign partners’ request, provided training on how to navigate and leverage the African Union in their advocacy efforts. The session offered an overview of the African Union, with a focus on the African Commission and African Court, and advice on practical forms of engagement and case studies.

THE OVERVIEW OF THE AFRICAN UNION



The presentation focused on the different AU judicial, legislative, and executive institutions with whom campaign partners could interact. One of the key objectives of the AU is to promote and protect human and peoples’ rights in compliance with the [African Charter on Human and Peoples’ Rights](#) and other human rights instruments. CSOs engagement needs to be strategic and continuous, depending on the political dynamics and the context within which campaign partners operate.

Civil society engagement with the AU executive and legislative bodies could be either through:

- interacting with the Pan-African Parliament (PAP) via the African Union Commission (AUC), the Permanent Representatives Committee (PRC) and the Executive Council, or
- signing a Memorandum of Understanding (MOU) with the AUC’s Political Affairs Department to be accredited with the AU.

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

(AKA THE COMMISSION OR ACHPR)

Based in The Gambia, the Commission was established in 1986 by the African Charter. There are 11 Commissioners, each serving for a period of 6 years. Campaign partners can engage with the Commission, and directly with Commissioners, especially if they have observer status. Like all international human rights mechanisms, the enforcement by the African Commission of its legal instruments is limited. However, there is real value in engaging with the Commission to promote human rights at the national level because:

- (i) the Commission develops resolutions, principles, guidelines, concluding observations and other legal instruments that give authoritative interpretation to binding human rights obligations, and can be used for national level advocacy, and,
- (ii) by engaging with the Commission, organisations can elevate national-level challenges to the regional level, which brings with them attention and scrutiny that may act as a political pressure point to driving change at the national level.

TIPS FOR SUCCESSFUL ADVOCACY WITH THE COMMISSION

Organisations should:

- Through research, present evidence of the human rights challenge, and how they want the Commission to use its mandate to address it.
- Utilise opportunities provided by state party reporting procedures, such as side events, panel discussions, NGO statements, and shadow reporting, to draw the Commission's attention to both the Campaign's and their own work.
- Contribute to collaborative networks of NGOs and NHRIs that work innovatively to engage in advocacy at the Commission during Ordinary Sessions. This enhances the visibility of Campaign-related issues and can include joint events (side and panel), combined shadow reports, letters, statements, and other engagement opportunities.
- Obtain observer status, which provides a platform for direct engagement with the Commission, including NGO statements.
- Build a rapport with the individual Commissioners and familiarise them with their work.
- Support the Commission in monitoring the extent to which State comply with the Principles by including developments relating to petty offences in NGO shadow reports.

THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Established in 2004, the African Court completes the protection mandate of the African Commission. Its decisions are final and binding because they are neither subject to political confirmation by AU organs nor open to appeal before another judicial body. The Court's mandate is to interpret and ensure the application of the African Charter and Protocol and any other human rights instrument ratified by Member States.

Campaign partners can engage the Court in various ways, including by filing advisory opinions (if they are accredited with the AU) or contentious cases (if their country ratified the Court's protocol); pilot judgments; advocate for access to legal aid for victims in court; the monitoring of cases, decisions, and advisory opinions of the Court by States' parties etc.

TIPS FOR SUCCESSFUL ENGAGEMENT WITH THE COURT

- CSOs need to build a dialogue with States and to be strategic in their choice of cases presented to the Court otherwise States may shut access to the Court.
- Remember that litigation is not the final aim- advocacy and mobilization are crucial to ensure advances and enforcement.
- CSOs need observer status at the AU or a Memorandum of Understanding with the AU to seize the Court. However, amicus curiae interventions have less restrictive criteria, allowing for greater CSO participation.
- Domestic litigation and litigation before regional tribunals such as the East African Court of Justice and ECOWAS Court might be more strategic.

CASE STUDIES OF SUCCESSFUL ADVOCACY

An example of a successful advocacy outcome for the Campaign was the adoption by the Commission of the **Principles on the Decriminalization of Petty Offences in Africa**. The campaign partners worked to promote the issue, and an African Commission response to it, in a three-staged strategy:

- **Research and advocacy:** Partners undertook research to map the scope and consequence of the challenge; organised side events around the Commission's Ordinary Sessions; and engaged directly with the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, calling for a specific Commission intervention: the development of a normative standard to guide State Parties on how to address petty offences.
- **Technical support:** Technical and other resources were then made available by the Campaign to support the Special Rapporteur to draft, consult and finalise the Principles on the Decriminalisation of Petty Offences in Africa.
- **Implementation:** The Campaign is now working to support the Commission and Special Rapporteur to implement the Principles. This includes holding events that raise awareness of the Principles, an annual regional conference (now included in the Special Rapporteur's annual work plan), the development of **Simplified Versions of the Principles** to aid in dissemination, and maintaining an advocacy focus on the issue.

Another example of successful advocacy is from the **Pan African Lawyers Union (PALU)**, which submitted, in 2018, a request for an **Advisory Opinion** to the African Court to determine if States Parties to the African Charter have positive obligations to repeal or amend their vagrancy laws and/or regulations to comply with rights protected by the African Charter, the Charter on the Rights of the Child and the Protocol on the Rights of Women. Seven campaign partner organisations submitted additional written comments in support of the main request, as well as two States (Burkina Faso and Kenya). On 4 December 2020, the Court issued its advisory opinion confirming that African States have an obligation to repeal or amend laws and regulations relating to petty offences.

STRATEGY TO ENGAGE THE COMMISSION ON PETTY OFFENCES



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