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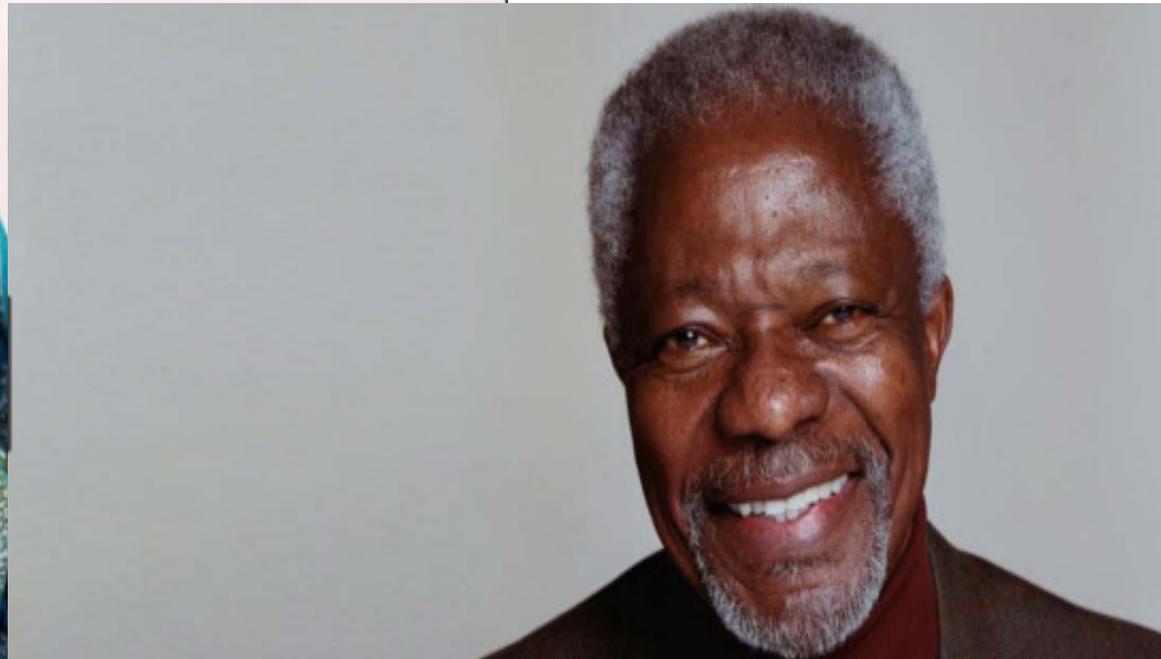
Regional human rights mechanisms and domestic actors

The African system in context

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Universal, regional, national (domestic) – levels of protection?

- ***Universal validity*** – the meaning of “universal” in the Universal Declaration of Human Rights
- ***National protection and implementation*** of human rights: the supremacy of domestic, national ***institutions and actors***: “Human rights begin at home”
 - Institutions, actors and processes (e.g. progressive realisation of economic, social and cultural rights)
- International and ***regional protection*** (and promotion?)

Regional treaty mechanisms and domestic actors?

- Treaty mechanisms – formal, legal systems
 - Strengths – limitations?
 - Relationships to national legal institutions? Complementary? Superior? (Return to this below)
- Who are the actors?
 - Victims – individuals, groups?
 - Lawyers
 - Civil society groups – “benefactors”

Regional systems - general

Regional systems

.....rest mainly on a single treaty, with additional protocols

.....give emphasis to individual complaints procedures and remedies for violations, and

.....their supervisory bodies have ***judicial powers***; make judgments, decisions and award compensation

Three regional human rights treaty systems

- The Council of Europe: The European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Social Charter
 - Other regional European systems: the European Union (extensive system) and the Organization for Security and Cooperation in Europe (minority protection)

- The AU: The African Charter on Human's and People's Rights (1981) with a Court since 2004

- The Organization of American States: The American Convention on Human Rights (1969/1978) with a Court

Regional human rights treaty systems

Why regional systems? Assumptions:

- ***Helps to localise*** international human rights norms and standards:
The assumption of regions as ***epistemic and/or cultural communities***

- Regional systems are better suited to ***identify and handle*** human rights concerns of the region

- Regional human rights mechanisms (e.g. commissions, special rapporteurs, courts) better fit to implement human rights on the ground than international systems

- ***Discuss*** – are these assumptions feasible?

The *complementarity* of regional systems? Diffusion of insight and learning



Regional and national levels – interaction and interrelationships?

Some key concepts

- Human rights – implemented in ***national legal, cultural and political settings***
- The demand for ***exhausting domestic legal remedies***
- The doctrine of ***margin of appreciation***
- The doctrine of legal ***precedence***
- The ***legitimacy*** of regional instruments (courts etc.)

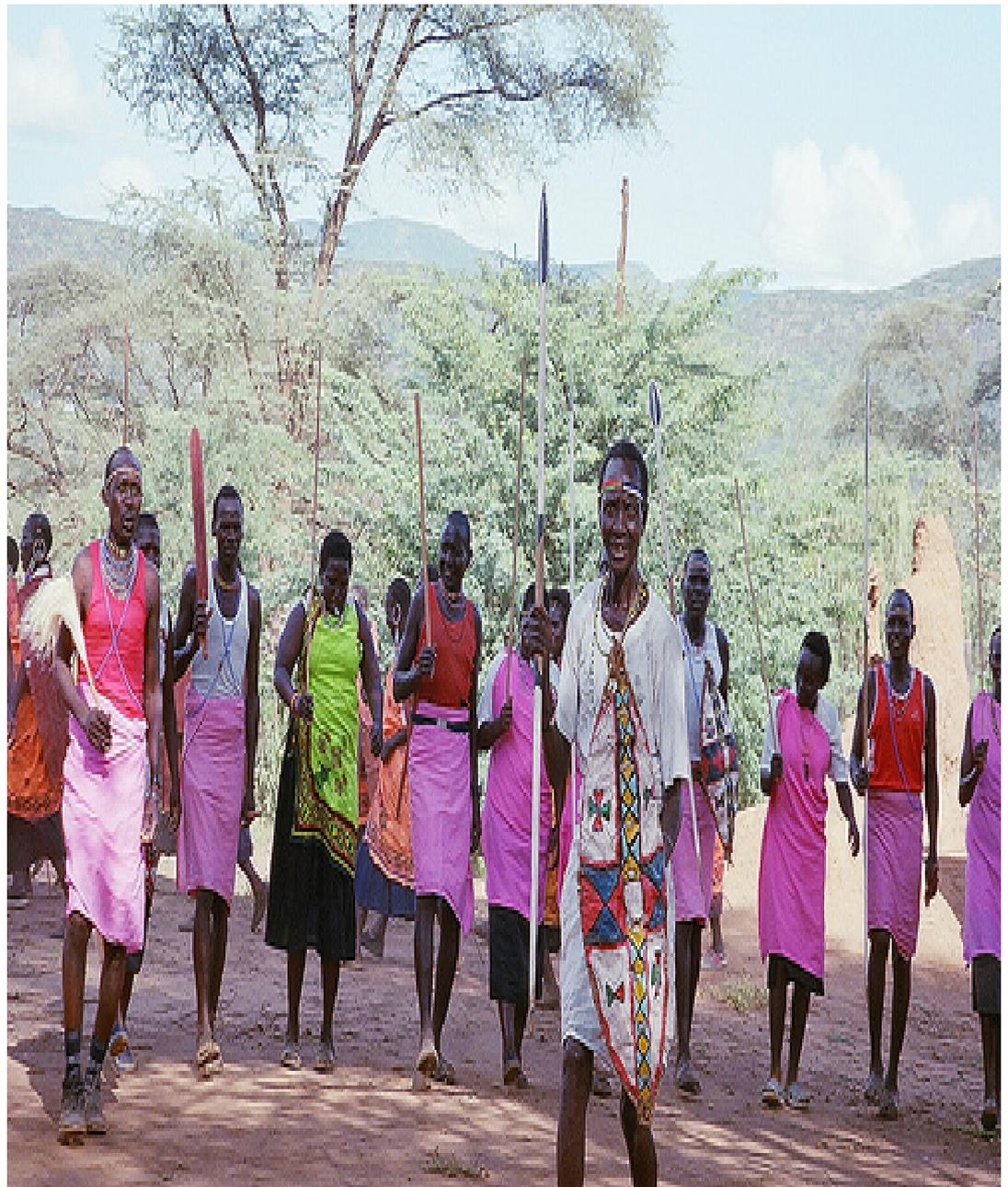
The European Convention for the Protection of HR and Fundamental Freedoms

- Adopted in 1950; entered into force in 1953
- Covers key civil and political rights: rule of law, freedom of speech, freedom of association, non-discrimination, etc.
- European system established as reaction to slowness of the UN system
- Used to have two institutions: Commission and court; now only Court
- Admissibility rules; exhausting domestic remedies
- Inter-state complaints (the Greece and Turkey cases)
- Private petitions
- The case-load, reforms

European Social Charter of 1961/1965: economic and social rights

The Endorois case – on the right to development (Article 22)

- Pastoralist community (60,000 indigenous people)
- Resided in the Lake Bogoria area, Kenya for the past centuries.
- Forcefully eviction between 1973-1979: create Lake Bogoria Game Reserve: relocated in other sites of Rift Valley
- Material and spiritual impact, ancestral land



The African Commission of Human Rights (articles 30-59)

- Established 1986 – worked since 1987 - 11 nationally nominated members elected by AU
- **Promotes and protects** human rights in 54 members states of AU; Morocco rejoined the AU in 2017 as the 55th member, not yet ratified the Charter
- Accepts **complaints** (“communications”) from individuals, groups of individuals, non-governmental organizations, and States
- Considers **periodic country reports** and reports from members of the Commission and its Special Mechanisms
- Considers reports concerning **country visits** (“Special Missions”), dispatched to countries experiencing political or social unrest

The African Court on Human and People's Rights (2004)

- Arusha from 2007 (started work in Addis Abeba in 2006 then moved)
- Regional human rights tribunal with advisory and legal jurisdiction concerning the interpretation and application of the African Charter
- Complements and reinforces the functions of the African Commission
- Jurisdiction to hear cases of human right complaint that concern states that have ratified **the Protocol** of the Charter on the Establishment of an African Court on Human and Peoples' Rights (by February 2018 – 8 states have accepted cases submitted by NGOs and individuals; 30 countries have ratified the protocol)

African Court: Recent statistics

As at 30th August 2017, the Court had received 147 applications and finalized 32 cases

The Court delivered its first judgment in 2009 following an application dated 11 August 2008 by *Michelot Yogogombaye against the Republic of Senegal*

Applications by Individuals – 147

Applications by NGOs – 11

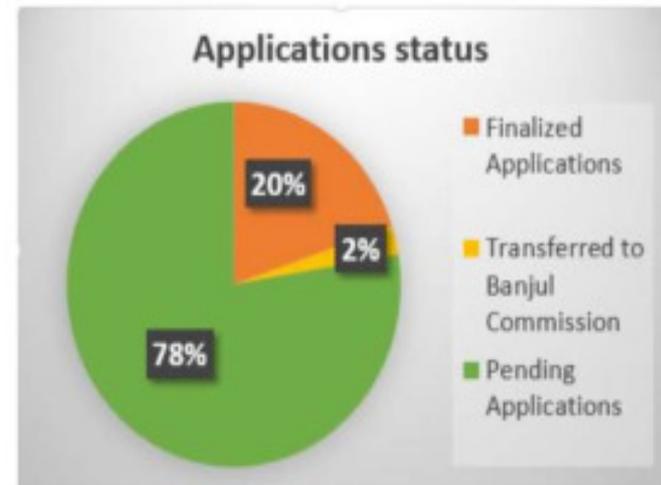
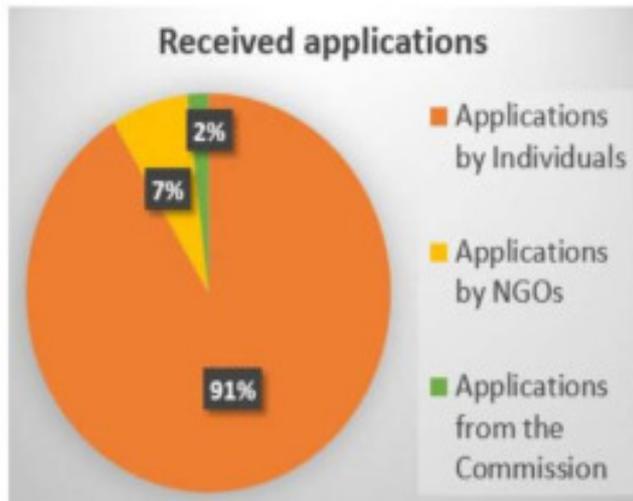
Applications from the Banjul Commission – 3

TOTAL APPLICATIONS RECEIVED: 161

Finalized Applications – 32

Applications transferred to Banjul Commission – 4

Pending Applications – 125



Does it work?

- Types of cases
- Countries
- Violations found
- Does it work – the *Endorois case* and others?
- Requirements for effective human rights litigation by regional courts?