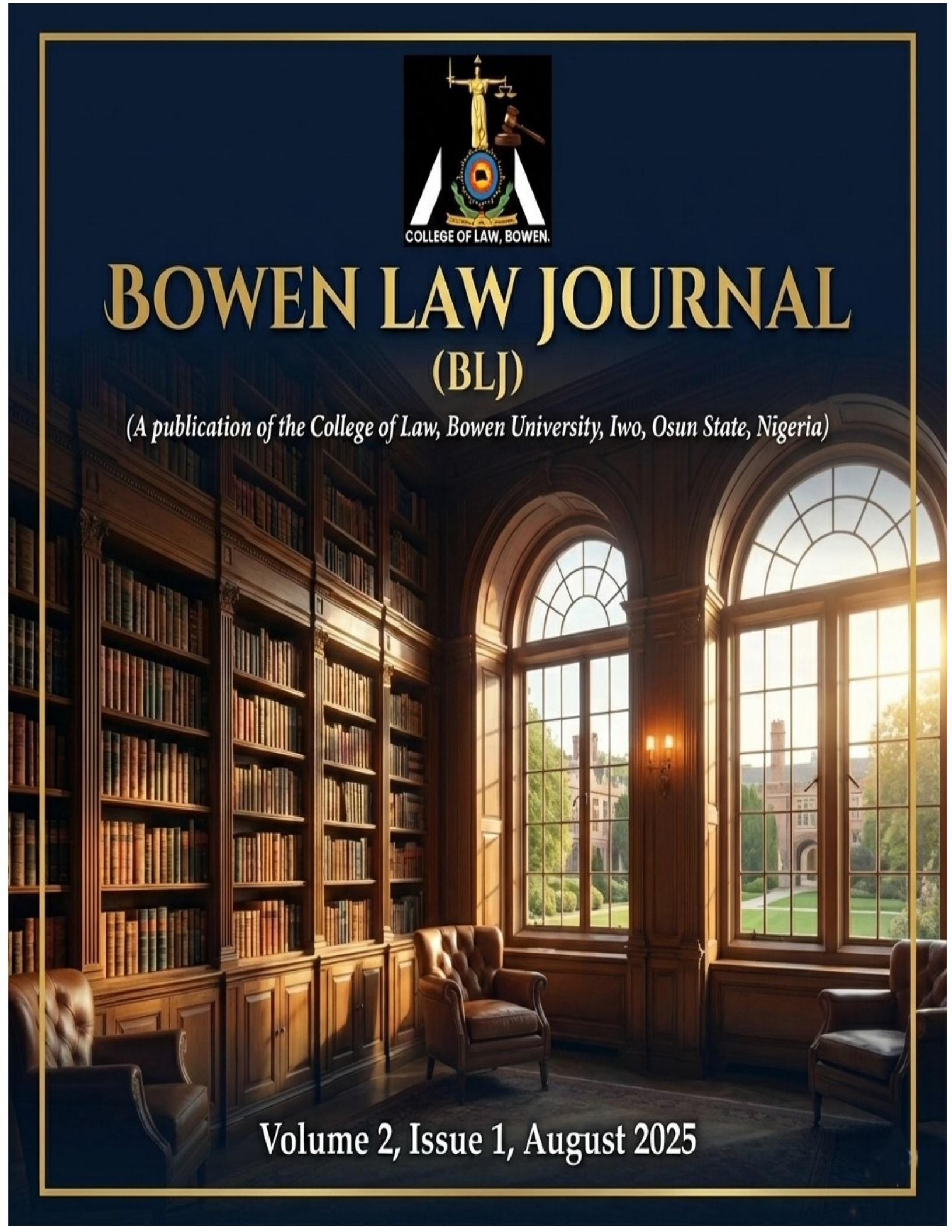
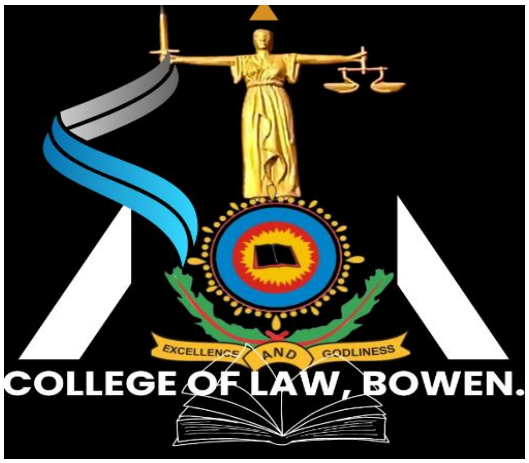

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Editorial

BOWEN LAW JOURNAL

College of Law, Bowen University, Iwo, Osun State, Nigeria.

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This edition of *Bowen Law Journal* is not only a resuscitation of the publication but its first online edition. It is appearing at a time that the world has become a global village, interconnected and observable by technological means. The journal, the content of which is peer reviewed, is therefore purposed for global impact through the projection of the dignified visibility of its contributors.

The journal accepts contributions on all areas of the law as is apparent from the present contents that span the areas of criminal law and criminology, human rights, employment law, law and medicine, security, peace, and tourism as well as business law generally, including taxation.

The thematic coverage of this journal accommodates impactful and scholarly contributions towards the advancement of the knowledge of law and its application in society. Significantly, the journal is interested in contributions that ensure that law addresses the intricacies of human relations and dealings as well as order in the world we live in.

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2. The standard British citation method should be adopted.
3. Articles must be accompanied by an abstract not exceeding 250 words.
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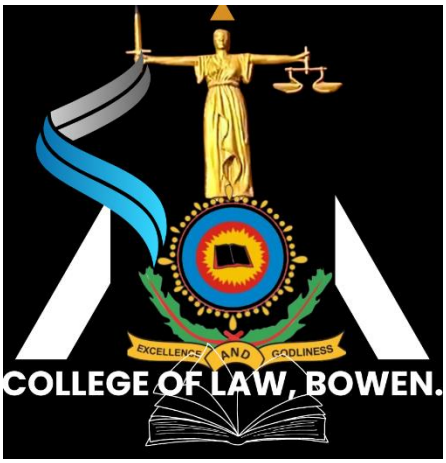
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Regional Protection of Human Rights in Africa: Sick or Dead?

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Abstract

The African Commission on Fundamental Human Rights (FHR) is in control of citizen's rights organisations in the black man's regional states. As a result of the body's rulings guiding governments to implement their Charter obligations, domestic laws have been impacted. Member states of regional organisations have endeavoured to establish regional conventions, commissions, and tribunals to maintain these values since the United Nations (UN) General Assembly approved a resolution ensuring fundamental rights of every human in 1948. Some of African nations have incorporated human rights instruments into their own legal systems, allowing them to put these safeguards into action. At first, governments in Latin America and Europe legitimised human rights protections within separate regional frameworks. Efforts to establish human rights safeguards on a regional level have lagged behind in Africa and Asia. To ensure that regional human rights tribunals fulfil their commitments to impartiality and fairness, this article will examine why African regional human rights bodies have failed thus far and provide solutions for how they can win over the continent's inhabitants.

Keywords: Human Rights, Banjul Charter, African Commission, Communication, Sovereignty

Introduction:

A broad examination of regional human rights norms reveals notable differences in the institutionalization and execution of rights of people across various regions. Obviously, the Europe and Latin America stand out for their relatively advanced legalization and enforcement mechanisms, whereas Africa and Asia exhibit comparatively lower levels of institutionalization. These regional differences reflect historical, political, and socio-economic contexts that have shaped creation of people's rights, norms and enforcement systems put in place from different parts of the world.

Europe has the most institutionalized and legally binding human rights mechanisms, with a significant body of literature detailing various human rights instruments. Many people believe that the European human rights setting is the best all over the world. A number of agreements and treaties including the ECHR and the EU Charter of Fundamental Human Rights, provide the groundwork for this. A well-developed prosecution strategy, the European Court of Human Rights (ECHR) lets individuals sue member states for alleged human rights breaches. A great deal of scholarly and policy discourse has focused on human rights in Europe, which is supported by the region's robust legal and institutional structure.

Human rights standards and enforcement procedures has been in existence for a very long time in Latin America, even though the region is not as institutionalised legally as Europe. Both the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR) have been instrumental in ensuring that states face consequences when they violate human rights. Despite persisting obstacles including political instability and inadequate rule of law in many nations, Latin America continues engaging with human rights issues, as seen by the expanding volume of literature on the topic. But Latin American academics and politicians are more concerned with human rights at the states and continental levels than with international human rights systems, especially those of developing nations, especially those in Africa and so called third world countries.

Prosecution and institutionalization of the Fundamental Human Rights (FHR), conversely, are major obstacles in Africa. Although human rights protection is laid forth by the African Court on Human Rights (ACHR) and the African Charter on Human Rights (ACHR) sometimes regarded as Banjul Charter, overall, the execution falls short of expectations. The region faces challenges in protecting citizen's fundamental rights as a result of civil and political unrest, authoritarian regimes, and a lack of proper prosecution strategies. Compared to Europe and Latin America, Africa has less developed legal and institutional frameworks, and human rights violations often go unpunished due to weak judicial systems and limited regional enforcement capabilities.

Asia presents a unique case, as it lacks a comprehensive regional human rights system similar to those in Europe, Latin America, and Africa. Instead, human rights protection is primarily addressed at the national level, with significant variations between countries. Some nations, such as Japan and South Korea, have relatively strong domestic human rights protections, while others, particularly those with authoritarian governments, have weaker enforcement systems. The Southeast Asian Association Nations made some efforts to encourage fundamental rights of humans through the association's declarations known as ASEAN human rights declaration, but these efforts remain largely non-binding and lack robust enforcement mechanisms. The focus on national rather than provincial or regional slants to human rights reflects diverse political and cultural landscapes of Asia, making regional consensus on human rights norms more challenging.

Overall, the institutionalization of human rights varies significantly across regions. Europe and Latin America have made the most progress in developing legal frameworks and enforcement mechanisms, whereas Africa and Asia face more significant challenges. While Europe has the most legalized enforcement systems, Latin America continues to expand its human rights literature and institutional frameworks. Africa, on the other hand, struggles with weak enforcement, and Asia remains largely focused on national rather than regional human rights initiatives. These differences highlight how regional circumstances significantly plays a role in determining how human rights laws are developed, protected and enforced for proper prosecution.

Thus, this paper delves into the evolution of fundamental rights of citizens, its instruments in the continent of Africa and how those rights were shaped by several factors like cultural factors, domestic circumstances, and international pressures, showing that human rights protection mechanisms are shaped by a combination of the two. Africa has failed miserably in its attempts to protect human rights on a regional level, in contrast to other continents like Latin America and Europe, theses two continents boast of progressive democracies withe strong regional organisations that do a better job of this.

Evolution of Human Rights Courts in Africa Countries

The notable foundation for what is now known as the League of African Unity (OAU) was established in the year 1963. While OAU agreement did not specifically mention human rights preservation, it did encourage member nations to "have regard" for the Universal Declaration of Human Rights (UDHR) as a means of promoting international cooperation. Protection of rights of citizens was definitely not one of the objectives and aims of the OAU's founding states.[566] "In its charter, Organisation of African Unity (OAU) as it is then called, firmly stated its commitment to protecting national sovereignty, ending colonialism, strengthening national solidarity, and promoting international collaboration and development among its member states. It wasn't until 1981, when the African Charter on Human Rights (ACHR), often referred to as the Banjul Charter, was ratified, that human rights principles were finally integrated into the OAU framework".[567]

Banjul Agreement encompasses numerous rights within its framework, yet it also exhibits several notable deficiencies. Part 1, Chapter II's articulation of "duties" is the Banjul Charter's first and foremost flaw. Article 27 stipulates that every individual has "duties towards his immediate family members and society where he or she belongs, the State, i.e. the country of residence and some other constitutionally established and recognized communities as well as the international community" as listed below. Each citizen has a responsibility to "serve his national community by dedicating his physical and cognitive capacities to its service" and to avoid "compromising the security of the State," as outlined in article 29, which provides further details about these obligations."[568]

The second shortcoming of the agreement was the absence of a non-derogation clause, that should ensure that certain rights and privileges remains inviolable under whatever circumstances. The Charter of agreement indeed incorporates an exclusionary provision that

[566] E. Kannyo, *The Banjul Charter on Human and People's Rights: Genesis and political background*. In Human Rights and Development in Africa, E. Claude, Welch, Jr. and I. Ronald I. Meltzer (eds.) (New York: State University of New York), pp. 128–151, 2019.

[567] O. Olusola, and S. Amadu. *The OAU and Human Rights: Prospects for the 1980s and beyond*. Human Rights Quarterly, 8(1), 89–103, 2020.

[568] M. Mutua, *The African Human Rights Court: A two-legged stool?* Human Rights Quarterly, 21(2), 342–363, 1999.

safeguards considerable array of guaranteed entitlements. However, it regrettably includes several justifications that permit the derogation of certain rights.

Third, it incorporates several "claw-back" clauses that allow for additional exceptions and limitations to the proclaimed human rights. These clauses impose conditions on the adherence to the values outlined in the agreements under specific conditions. For instance, "No person's freedom can be taken away from them unless certain conditions are met and as established by law beforehand."[569] While numerous nations in Africa have historically enacted oppressive laws that curtail human rights, this clause effectively diminishes the significance of such guarantees. "No individual may, in accordance with law, be subjected to dealings that limit the exercise of the freedom," states the 8th Article, with similar restrictions on the unfettered practices of several religious rituals. In a bid to ensure that there is peace and harmony, national governments frequently take a very strict stance. The freedom to gather is also limited. " Any exercise of this right must adhere to the requirements set out by law, particularly those that are designed to safeguard the safety of our country, our well-being, our morals, and the rights and freedoms of others."

"The lack of "progressive realization" terminology in the Charter is a positive aspect; as a result, everyone is required to immediately act to make sure their rights are enforced.[570] Consequently, nations are unable to rationalize ongoing violations by citing a gradual incorporation of human rights safeguards. Moreover, a more optimistic perspectives are presented by the gravity of the threat posed by violation of momentum as well as achievements of a more democratized Africa Continent".[571]

To effectively advocate before the Commission. Numerous obstacles must be navigated. These obstacles encompass the Commission's incapacity to proceed until every local remedy has been fully utilized. It additionally encompasses the constraints on the language that may be employed in petitions. Communications must refrain from being disparaging or insulting towards a state.[572] The Commission acknowledges, nonetheless, that in certain instances, local remedies may be lacking, insufficient, or ineffective. In instances where such conditions prevail, the Commission may opt to accept the communication irrespective of the attempts made at local remedies. In instances of grave and extensive transgressions, local remedies may be overlooked.[573] "The absence of additional enforcement for its recommendations is notable, especially when these recommendations remain undisclosed, thereby precluding the possibility of public scrutiny and pressure". Instead of protecting individual rights, "Massive violations" and upholding state relations are the primary responsibilities of the Commission.[574]

The Commission takes its time even after acknowledging a petition. If the complainant and the violation are unable to reach a peaceful agreement within three months of beginning the dialogue, then..., the Commission shall intervene in an effort to facilitate a "amicable solution." A further limitation is that, in every instance, the authors of the communication are unable to maintain anonymity, even when disclosing the identity of the complainant poses a risk to their

[569] Article 6, African Charter.
[570] C.A. Odinkalu, Analysis of paralysis or paralysis by analysis? Implementing economic, social and cultural rights under the African Charter on Human and Peoples' Rights. Human Rights Quarterly, 23(2), 327–369, 2001.
[571] T. Buergenthal, *International Human Rights in a Nutshell* (2nd ed.) St Paul, MN: West Publishing Co., 1999.
[572] Article 56, African Charter.
[573] *ibid,* Odinkalu
[574] *Ibid,* Ojo and Sesay

safety. The Commission is required to conduct an exhaustive investigation, then report back to the Heads of State with a set of recommendations for the relevant parties.

An important problem has been brought to light upon the discovery that the charter is inadequate in human rights protection, as numerous violations have been perpetrated by various African governments. The measures implemented in pursuit of that objective are outlined as follows:

i. The African Commission on Human Rights Protection

"When it came to seeking justice for human rights violations, the only entity that existed was the African Commission on Human Rights," the statement read. A unified forum to handle the many disagreements and wars that broke out on the African continent between nations and between citizens and their governments was lacking. The most imperative of the numerous rulings issued by the African Commission in matters concerning purported breaches of human and peoples' rights was the landmark case of SERAC & Another v. Nigeria. This case dealt with the allegations of rights violations associated with development in the unstable Niger Delta region, and the African Commission aimed to establish its significance in this correspondence[575].

An important regional human rights body that oversees the implementation of human rights across the African continent is the African Commission on Human Rights. Although it has a vast mandate, the Commission struggles to ensure that states adhere to its recommendations, particularly when it concerns non-compliant states. Human rights breaches in African countries are one of the most common things the Commission can do. Statements, resolutions, and recommendations are frequently issued by it to urge state actors to maintain the responsibilities laid down in the Banjul Charter—another name for the African Charter on Human Rights. It actively monitors, investigates, and reports on abuses. The Commission is quick to point out infractions, but it lacks formal enforcement measures and faces pushback from some nations, so it can't do much to ensure compliance. Political maneuverings, lax rule of law, and an unorganized mechanism for enforcing state accountability frequently impede the efficacy of its endeavors.

The communications procedure is an important part of the protective mandate of the Commission's since it provides a quasi-judicial process through which individuals, NGOs, and other groups can file complaints against State Parties that they believe have violated human rights. The Commission follows this process when it investigates allegations, evaluates petitions, and makes recommendations to governments that it finds to be in infringement on the African Charter. While this procedure does provide victims with a method to seek redress, states are under no legal obligation to do so because the Commission has the power to actually implement its findings. Some governments selectively follow the Commission's recommendations, while others choose to ignore them entirely, casting doubt on the system's overall effectiveness.

In accordance with the African Charter, the Commission is primarily responsible for the following: Promoting basic human and civil rights entails conducting research, running public awareness campaigns, organizing seminars and conferences, and pressuring states to enact policies and laws that are consistent with human rights standards. Collaborating with a range of partners, including civil society organizations, the Commission aims to strengthen human rights advocacy on a continental level. Receiving and reviewing complaints is the responsibility of the Commission on human rights abuses, conducting investigations into those abuses, and

[575] Communication No. 155/2001 *SERAC & Another v Nigeria* (2001), 15th Annual Activity Report: 2000–2002.

making recommendations to the states. It checks in with governments on a regular basis to see if they're living up to their Charter commitments, sends out fact-finding missions, and reviews official reports. Lacking robust enforcement mechanisms, the Commission's role is mostly advisory rather than legally enforceable. To help states understand and execute the African Charter, the Commission offers authoritative interpretations of its provisions, outlining their scope and significance. In order to clarify the Charter and make sure its provisions are interpreted consistently in varied political and legal situations; this function is vital.

Furthermore, the association of the heads of AU countries has shouldered the body with additional responsibilities, which it must fulfil. Some of these duties may include providing advice to African Union institutions on issues that pertains to citizen's rights, responding to new human rights concerns as they arise, and helping to create legal instruments to improve Africa's human rights (HR) framework.

The African Commission on HR has a wide-ranging goal, but it faces serious structural and institutional obstacles. Among these are insufficient manpower and funding, political meddling, and the absence of legally enforceable powers to prosecute the commission's rulings. The objective of establishing the ACHR was to fortify the enforcement of human rights through the courts. However, the Court is not without its flaws, such as the low ratification rates and lack of respect of certain state to its rulings. Finally, the effectiveness of the ACHR in ensuring adherence to citizen's rights standards is still an important concern. To fully realize the rights as stipulated in the African Charter, it is essential to strengthen the Commission's authority, improve state cooperation, and enhance enforcement mechanisms.[576]

In accordance with its dictates (to protect fundamental human rights) of its people, the Commission, scrutinizes complaints through the communication procedure. Upon thorough examination of the complaint and the facts gathered from both parties, the Commission will render a decision concerning the potential violation of any provisions within the Charter or its associated instruments. The ultimate determinations made by the Commission are referred to as "recommendations." These do not constitute binding judgments. Consequently, the recommendations frequently lack enforcement by the States that have been condemned, as they do not possess legal binding authority on State Parties since the African Commission's authority is quasi-judicial.

Due to severe constraints, the Commission has resorted to sending institutional letters to non-compliant nations in an effort to enforce its rulings and remind them of their responsibilities under Article 1, which stipulates the following:

"… in accordance with the privileges, obligations, and guarantees included within this Charter and execute them through the use of legislation and other means".

Furthermore, it is required to report on the activities taken to implement its decision to the Assembly of Heads of State and Government of the African Union (AHSGAU) by a number of specified dates.[577] In addition, within the given timeframes, it is essential to inform the AHSGAU of the measures taken to implement its resolution.[578] Regardless of the Assembly's

[576] Article 45 African Charter.

[577] Rule 112 of the African Commission's Rules of Procedure of the African Commission (2010) <http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en> pdf.

[578] Article 58.

involvement, the condemned states are only urged to implement the suggestions.[579] It is clear that there are no steps or strategies put in place to safeguard that the Commission's recommendations are implemented, even with the involvement of the Assessment.

It is clear that the States Parties that are being condemned are only being urged to follow the suggestions.

What follows is an outline of the African Commission's shortcomings in protecting rights which is as follows:

a. The duration of the reviews is extended due to the considerable interval permitted between the acknowledgement of the message and the assessment of its acceptability.
b. b. The Commission is showing a growing tendency to condemn human rights violations on the continent; nonetheless, it is facing difficulties in protecting Charter rights from States that violate them.
c. An crucial embodiment of the Commission's safeguarding mandate is the communications procedure. To make sure that State Parties respect the rights in the Charter, the Commission is supposed to use this quasi-judicial process. The process is lengthy, and states often reverse themselves on judgements made about communications. Even though the resolves issued by the Commission on Communications may exhibit a forward-thinking approach regarding the safeguarding of human rights, their impact frequently diminishes due to the lack of enforcement by the States that have been criticized.
d. The emphasis placed by commissioners on settlements, often at the cost of efficiency, is particularly concerning given the pressing nature of the cases presented to them.
e. The examination of communications exhibits considerable variability, frequently extending over a duration of two to eight years. For example, the complaint filed by Diakite occurred in 1992, with the subsequent decision being issued in 2000[580]
f. The decisions of the Commission are purely recommendations to the States parties; they are not legally binding as States were not being held accountable for their execution by any means.

Deficiencies observed within the African Commission, especially with regards to the protection of peoples' rights, have raised significant concerns about the ongoing relevance of this regional entity, affecting not only the State-victims but also the individuals impacted and various non-governmental organizations.

The sluggishness and absence of definitive resolutions, coupled with the inadequate comprehension of the procedures by States, NGOs, and individuals, undoubtedly account for the comparatively little or lack of interaction directed to the Commission, and consequently, the modest tally of adjudicated decisions[581] The insufficient enforcement of the African Commission's decisions has prompted scholars to advocate for the creation of a legally binding entity to ensure adherence to the Commission's findings[582] It is noteworthy that even to date, the lack of enforcement remains unresolved.

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[579] According to NB Pityana's commentary in the 4th issue of the African Human Rights Law Journal, "Reflections on the African Court on Human and Peoples' Rights," the Assembly lacks the authority to compel Member States to adhere to its mandate. (2004) 6 at <http://www.ahrlj.up.ac.za/pityana-n-b>.

[580] *Diakite v. Gabon*, Decision, 73/92 (ACmHPR, Apr., 1994)

[581] *The African Court on Human and Peoples' Rights towards the African Court of Justice and Human Rights*, International Federation for Human Rights – FIDH, https://www.fidh.org/IMG/pdf/african_court_guide. pdf p.27 (Accessed on 5th January, 2022).

[582] Viljoen F. Louw L., *The Status of the Findings of the African Commission: From Moral Persuasion to Legal Obligation* 48, Journal of African Law 1, 10, 18, 2004,

ii. The African Court on Human Rights

The Togo Constitutive Act of the African Union, passed in 2000 in Lome, the capital of Togo, was a watershed moment in the fight for democracy, fairness, equality before the law, and effective leadership. A human rights matter or one concerning the interpretation or application of an African Union treaty or Act would be heard and decided upon by the African Court of Justice, as stated in the institution's Constitutive Act. Since the adoption of the Constitutive Act of the African Union, Africa has been building a complex institutional framework to guarantee justice for states within the union and for victims of human and peoples' rights violations[583].

Established in 1998, the African Court on Human Rights came into full functioning in the year 2009 when the Protocol took effect in January 2004. The role of the Court is to bolster the African's protective mandate by providing additional resources.[584] It is the intention of this Court to address the deficiencies that have been identified within the African Commission, including its insufficient institutional framework, inadequate funding, decisions that do not have binding repercussions, and the failure to execute them.[585] The African Charter on Human Rights is one example of an international human rights charter that requires ratifying states to fulfil certain duties. The responsibility for ensuring that these obligations are met lies with the Court. Human rights violations can be reported to the Court or, under some circumstances, the African Commission on Human and Peoples' Rights by individuals or non-governmental organisations (NGOs).

The main reason for founding the Court was to strengthen and improve Africa's system for protecting human rights. This court came into being with the adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1950 and the establishment of the European Court of Human Rights. A global framework to safeguard human rights was the Court's primary objective, rather than permitting national authorities to use the concept of sovereignty as an excuse to cover up human rights crimes that occurred within their own country.[586]

As stated in the preamble of the Court's Protocol, the African Court on Human and Peoples' Rights is obligated to supplement and enhance the efforts of the African Commission on Human and Peoples' Rights, which has been ongoing since its establishment in 1987. According to Article 2 of the Protocol, the Court must also perform the following:

"*enhance the safeguarding task assigned to the African Commission on Human and Peoples' Rights... by the African Charter on Peoples' Rights*."

The African Court on Peoples' Rights is responsible for a variety of tasks, such as:

a. After a party has made a decision, a re-valuation may be done by the court if more information becomes available. The submission must be within six months from the date of the party's knowledge of the evidence by the party summiting the request.[587] Unless the Court orders differently, this motion for review will not prevent the decision from going into effect.

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[583] All 53 AU member states have ratified the Constitutive Act repealing the 40-year-old OAU Charter and replacing it with the AU. <www.african-union.org> Accessed 12th August, 2022.

[584] Article 2 Court Protocol Liwanga R.C. *From Commitment to Compliance: Enforceability of Remedial Orders of African HR Bodies,* 41 Brooklyn Journal of Int'l Law 1 (2015) 115, 116 (on the Court's powers and jurisdiction).

[585] *Ibid.*

[586] n.6

[587] Article 67 of the Rules of Court.

b. In a diplomatic capacity, the Court operates. This is accomplished by the Court by mediating a settlement to the complaint that is acceptable to both parties.[588]
c. Requests for opinions and advice legally on matters pertaining to African Charter or any other applicable human rights instrument can be made by any African Union Member State, an organ of the African Union (such as the Assembly of Heads of State and Government, the Parliament, or the Economic, Social and Cultural Council), or an organisation recognised by the African Union to the Court., instance, ECOWAS, is one example of a regional economic community. The UN Declaration on the Rights of nationals was formally adopted in June 2006 by the United Nations Commission on Human Rights. However, the African group voiced concerns about the wording of several articles in the Declaration, which delayed the adoption of the International Federation for Human Rights by the United Nations General Assembly that year[589]. As a result, the African Union heads of state reiterated their intention to delay the text's adoption while they solicit the Commission's opinion on possible changes. The Commission provided a detailed legal opinion on the terms of the Declaration during the 2007 Summit conference in Addis Ababa, Ethiopia, which addressed the concerns of the African Group. The Protocol also grants the African Court the authority to render advisory opinions.
d. The Court interprets and revises its own decisions. This type of request can be made by any party to the case up to twelve months after the verdict was made.[590] The other parties to the case are invited to provide their observations when the Court receives a request for interpretation. The same judges who considered the case's merits also go at the application. Unless the Court decides differently, the request for interpretation will not cause a delay in the decision's execution.
e. The parties to a disagreement are encouraged to try to work out their differences amicably by the court. With this power, the court can find a way to make peace that satisfies the demands of both sides of the conflict. For example, before the court hands down its ruling, a state may revoke a discriminating law if it is asked to do so by the court.[591]
f. This function highlights the two competing jurisdictions of the Court: first, it can be asked to rule on any regarding human rights provisions in the Charter or other ratified documents by the State in question; and second, it can arbitrate on petitions presented by individuals claiming human rights violations as documented in the charter or ratified documents by the State in question. In an effort to mediate a peaceful resolution, the court will step in.[592]

However, regarding compliance, the Court seems to have achieved minimal progress compared to the African Commission. Therefore, it is still unclear if establishing a new court would bring about the required improvements.

Relationships between African Commission (AC) and African Court on Human Rights (ACHR)

According to the preamble of the protocol, it is the duty of the African Court on Human Rights to strengthen, advance then foster the goals of the African Commission. Substantiating the ACHR, Article 2 specifically according to the protocol states that, the Court is to bolster the safeguarding function of the ACHR.

a. Interim rules of procedure established by both the Court and the Commission demonstrate the mutually beneficial nature of their partnerships. Most importantly, the

[588] Article 9 of the Protocol.
[589] Section 4 of the Protocol to African Court on Human and Peoples' Rights
[590] Article 28 (4) of the Protocol and Article 66 of the Rules of Court
[591] *Association for the Defense of Human Rights v. Djibouti, Communication* 133/94.
[592] Article 3.1 of the Protocol

African Commission has the authority to petition the Court to address any violation of the rights granted by the African Charter by a State that has signed the Protocol.[593] With this authority, the African Commission can take matters from NGOs and individuals without Court access and direct them to the Court in the hopes that the Court will then take them up on their requests. As stated in Article 34(6) of the Protocol, this can be done in situations where the state in question has not indicated that it permits NGOs and individuals to file direct appeals with the Court. Only Mali and Burkina Faso have given their approval for this recommendation thus far.

b. Any non-governmental organizations (NGOs) that are not parties to the African Commission on Human and Peoples' Rights cannot directly petition the Court unless the complaining state has made the declaration required by Article 34(6) of the Procedure.[594]
c. Beyond that, when the Court asks for it, the Commission should provide an opinion before determining the admissibility of a complaint as quickly as practicable. The Court has the discretion to remand a matter to the Commission for additional review of the admissibility of the complaint at any time prior to making a final decision.[595] Although it may seek an advisory opinion, the Commission ultimately decides on all matters before the Court. The Court can't do its job or accomplish its goal until the connection between it and the Commission is defined.

After being passed by the OAU on June 27, 1981, and coming into force on October 21, 1986, the African Charter on Human and People's Rights is promoted and overseen by the African Commission and the African Court on Human Rights. The Commission is situated in Banjul, Gambia, whereas the Court is situated in Arusha, Tanzania.[596]

iii. African Court of Justice and Human Rights

The AU Assembly decided to merge the African Court of Human and Peoples' Rights with the Court of Justice in July 2004, at a session in Addis Ababa, Ethiopia, and again in July 2005 in Sirte, Libya, in order to consolidate resources for a single continental court. The merging was mainly driven by the fact that the two courts had overlapping jurisdictions, despite their separate purposes and missions. The two institutions shared common ground in their jurisdictions, with the ACHR focusing on human rights disputes and the ACHJ addressing state disputes. This intersection revealed potential areas of shared jurisdiction, indicating that the two were not in.[597] Human rights issues, including the ability of citizens of one member state to freely travel to another member state's territory, were under the purview of the two courts.[598]

Judicial process governs the Court, and all States Parties must adhere to its rulings.[599] The African Union Executive Council oversees the implementation of the judgments by the relevant States, possessing the authority to make final and binding decisions regarding State Parties[600]

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[593] Part I. Chapter V Interim Rules of Procedure of the Commission.
[594] Part I, Chapter V.
[595] *Ibid,* Article 6.3
[596] The African Commission and African Court for Human Rights, The Practical Guide to Humanitarian Law, <https://guide-humanitarian-law.org/content/article/3/the-african-commission-and-african-court-for-human-rights> p.20 (Accessed on 18th January, 2022).
[597] Hansungule M, *African Court and the African Commission on Human and Peoples' Rights*; in Anton Bösl and Joseph Diescho (eds.), *Human Rights in Africa: Legal Perspectives on their Protection and Promotion*, Konrad Adenauer Stiftung, Windhoek, p. 235, 2009.
[598] *ibid*
[599] Article 43(6) of the Merger Protocol
[600] Article 46

According to Article 23(2) of the Constitutive Act and Articles 46(4)-(5), it is the Assembly's duty to impose sanctions on the State party that has failed to comply. Unfortunately, states continued political hesitancy to address the problem of non-compliance is shown by the insufficient ratification of the merger protocol. This means that the African Court of Justice faces the same structural problems that its forebears had. The current African Court of Justice and Human Rights (ACJHR) was founded in the year 2008 through an amalgamation of the African Court of Justice and the African Court on Human Rights. The Commission and the Court could investigate human rights breaches brought to their attention by Member States or individuals' complaints or correspondence up until 2008.

Anyone, including State Parties, individuals, and NGOs, has the right to submit communications to the African Commission for Human Rights. There are a number of admissibility requirements that the communications must meet. Only states that have voluntarily recognised the African Court of Justice and Human Rights' authority can be the targets of complaints filed by individuals NGOs. The African Commission on Human and Peoples' Rights, on its own behalf or as an intervenor in a case before it, or on behalf of a citizen or intergovernmental organisation in Africa, or any State party in the region, may bring its complaints about the Court's authority to this court.[601]

Members of the public, NGOs, and state parties are all welcome to address the African Commission on Human and People's Rights with their comments. The communications must fulfil many standards in order to be admissible. Individuals or NGOs can only file complaints against states that have willingly acknowledged the authority of the African Court of Justice and Human Rights. Any State party in the region, an African individual, an international organisation, or the ACHR may petition this court to challenge the jurisdiction of the Court.[602]

Challenges of the African Human Rights System

In light of the formation of significant judicial human rights bodies in Africa, such as the African Commission on Human and Peoples' Rights, the African Court on Human and Peoples' Rights and the African Court of Justice and Human Rights, the continent remains entrenched in a struggle against pervasive human rights abuses. These institutions were established to advance and safeguard human rights, elucidate legal provisions and offer redress for victims. Nonetheless, the efficacy of these measures has been significantly constrained by insufficient enforcement mechanisms, lack of state collaboration and political meddling. "A number of African governments exhibit a tendency to selectively adhere to rulings or disregard them entirely, thereby compromising the legitimacy of these judicial institutions". The hesitance exhibited by various states to endorse essential protocols, including the provision that permits individuals and NGOs direct access to the Court, significantly undermines the integrity of the system. Consequently, the absence of accountability endures, prompting victims to seek recourse through international institutions such as the International Criminal Court (ICC) in their pursuit of justice. In the absence of more robust commitments from African nations, the prevalence of human rights violations is likely to persist, notwithstanding the presence of these legal frameworks.

In Africa, infringements have been increasing and the ineffective nature of judicial bodies has exacerbated human rights violations due to institutional shortcomings in enforceability. While these entities possess the authority to compel a State-violator to halt human rights

[601] African Human Rights System, International Justice Resource Center, https://ijrcenter.org/regional/african/ (Accessed on 20th January, 2022)
[602] *ibid*

infringements, initiate legal action against those implicated in such violations, remedy the harm inflicted upon victims and implement additional measures to uphold human rights,[603] however, the bodies lack coercive power to enforce their decisions. The African Court on human rights rely on the willingness of the Member States to enforce their remedial orders.[604]

It is important to observe that, notwithstanding the commitments made by Member States to uphold human rights and adhere to judicial rulings, the implementation of the few judgments issued remains largely unfulfilled by the states in question. Forst posits that the majority of decisions are either partially implemented or entirely unimplemented.[605] Because of this, many victims of human rights abuses wind up having to resort to taking their cases to supranational courts such as the International Criminal Court, the International Criminal Tribunal for Rwanda, the International Court of Justice, or other internationalized or hybrid criminal tribunals rather than relying on the African courts on human rights, which are essentially toothless bulldogs.

i. Eroding Relevance of the African Court on Human Rights

The limitation of the Court is one of the factors that are responsible for the irrelevance of the decisions of the African Court on human rights and this is evident in the implementation of article 62 which provides that:

The present Charter recognizes and guarantees certain rights and freedoms, and each state party is obligated to report on the legislative or other actions taken to implement these rights and freedoms every two years from the date the Charter comes into force.

Because it does not have the authority to make legally enforceable decisions against state parties that have breached the Charter's provisions, the African Commission is obligated to provide reports but cannot force governments to do so. No judgment against a state party can be legally enforced by the Assembly alone. All it can do is decide whether or not to let their infractions be published.[606] Instead of the Commission, the politically-motivated Assembly—which includes the actual perpetrators—has been bestowed with this authority.[607] So far, no international body has been established under the African Charter with the authority to impose binding decisions on states that have disobeyed its requirements. Whereas the European Convention on Human Rights provides victims of human rights violations with proper remedies including monetary compensation, the African Charter does not. Because the African Charter does not adequately safeguard and compensate victims of human rights violations in Africa, those victims have no choice but to seek redress through supranational courts like the International Criminal Court (ICC), the International Court of Justice (ICJ), etc. Because

[603] Asadho and Madam O. Disu v. Democratic Republic of Congo, Communication 274/03 and 282/03, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], 89 (Nov. 5, 2013), Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, Communication 379/09, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], 142 (Mar. 12, 2014), Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt, Communication 334/06, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], 233 (Mar. 3, 2011), <http://www.achpr.org/files/sessions /9theo/Communications/334.06_/achpreos9_334_06_eng>. Pdf Accessed on 15 January, 2025.

[604] L. Gerald, V. Neuman, *Bi-Level Remedies for Human Rights Violations*, 55 Harv. Int'l L. J. 323, 325, 2014.

[605] D. Forst, The Execution of Judgments of the European Court: Limits and Ways Ahead, 7 Vienna J. Int'l Const. L., Feb. 2013, at 1, available at https://www.icljournal.com/ download/pdf, Accessed on 14 January, 2025.

[606] Article 59 ACHPR.

[607] Ex-Commissioner Moleleki Mokama in C. Odinkalu, Interview with Moleleki Mokama, Interights, cited in Murray, op. cit., 414, 2020.

Africa's judiciary is not impartial and is susceptible to political manipulation by certain African governments, efforts to seek restitution via national courts have also been unsuccessful. Therefore, while granting relief against national governments, African judges use great caution.

ii. Modes of Instituting Complaints against a Member State

In order for the African Court to decide on human rights claims brought under the African Charter, three distinct channels are outlined in Article 5 of the Protocol to the African Charter on Human and Peoples' Rights, which deals with the establishment of the African Court. The African Commission, Member States, individuals, and NGOs are among the many groups that can utilise these avenues to seek justice and hold those responsible for human rights violations to account.

Primary Path: The African Commission can submit complaints on behalf of an individual (Article 5(1)(a)). By Article 5(1)(a) of the Protocol establishes the African Commission on Human and Peoples' Rights as the primary body authorised to bring complaints on behalf of persons asserting breaches of the African Charter before the African Court for the purpose of adjudication. This procedure acts as a crucial protection for individuals and groups who may lack the legal capacity or means to directly approach the Court, guaranteeing that human rights violations are remedied even when direct individual complaints are limited. The Commission, functioning as a quasi-judicial entity, examines purported infractions and decides whether to advance cases to the Court, especially when states have failed to offer sufficient remedies at the national level.

Second Avenue: Actions Initiated by Member States (Article 5(1)(b) and 5(1)(d)) The alternative method for case submission to the African Court is accessible to member countries of the AU, as specified in Article 5(1)(b) and 5(1)(d) of the Protocol. This approach allows states to submit cases under two separate conditions:

Interstate Grievances (Article 5(1)(b)): According to Article 5(1)(b), an AU Member State is entitled to initiate a lawsuit against another state that is a signatory to the African Court Protocol. This clause permits states to pursue judicial resolution of issues concerning purported infringements of the African Charter by another state. Such situations may occur when one state perceives that another Member State is perpetrating systemic human rights violations or neglecting its Charter responsibilities. Despite the theoretical existence of this mechanism, its application has been rare owing to political factors and the hesitance of African nations to confront each other in the Court.

Claims Pertaining to Nationals of the Claimant State (Article 5(1)(d)): Article 5(1)(d) permits a state to initiate a claim before the African Court on behalf of one of its own nationals whose rights have been infringed by another state. This clause offers a diplomatic and legal mechanism for states to safeguard their citizens against human rights violations in foreign jurisdictions. In this instance, the state functions as an intermediary, championing the rights of its nationals and pursuing redress through the Court. Nonetheless, akin to interstate claims, this technique is hardly employed due to political sensitivities and apprehensions regarding state sovereignty.

Third Avenue: Unrestricted Access for Individuals and NGOs (Article 5(3)). The third and most direct approach for pursuing justice via the African Court is outlined in Article 5(3), permitting an individual and (NGOs) the right to present claims directly to the Court in instances where a state has infringed upon their rights as delineated in the African Charter. This provision is crucial as it offers victims of human rights breaches a direct means to pursue legal remedies without depending on intermediaries like the African Commission or their own governments.

This privilege is somewhat restricted by Article 34(6) of the Protocol, which stipulates that individuals and NGOs may only initiate proceedings against a state if that state has issued a specific declaration acknowledging the Court's jurisdiction to adjudicate such complaints. In the absence of this proclamation, the Court lacks the authority to consider complaints brought by individuals or NGOs against that state. This constraint severely impedes access to justice, since numerous African nations have abstained from issuing the requisite declaration, thus shielding themselves from direct legal confrontations with their own population or human rights entities. Consequently, citizens in numerous nations cannot directly access the Court, so constraining the efficacy of the legal apparatus in remedying human rights violations at the continental level.

Complaints mechanisms serve to afford individuals, and occasionally organizations, the opportunity to engage with procedures overseen by an authority tasked with addressing allegations of mistreatment and human rights violations. Their function is to furnish a layer of administrative protection that complements the judicial remedies that should remain accessible at both domestic and supranational levels[608]

International Comparison with Other Regions

The term "enforcement" refers to a coercive approach to monitoring sanctions imposed by the Human Rights Courts and all members. Since African human rights bodies do not have the power to issue binding decisions against state parties that have violated the Charter, they cannot force states to submit their reports. Once the African Commission has decided on a case's merits, it is solely responsible for making recommendations to the Assembly of Heads of State and Government of the African Union.[609] The Assembly itself cannot make binding decisions against state parties. It can only decide to permit publication of their violations.[610] This power is conferred not on the African Commission but on the Assembly, which is a political body that consists of the very guilty parties.[611] Therefore, the African Charter has no international institution that can make binding decisions against states that have violated the provisions of the Charter. The victims of the violation of human rights cannot get any adequate remedy (such as monetary compensation) under the African Charter as it is the case with the European Convention on Human Rights.

This noticeable lack of enforcement of the decisions of the African Courts on human rights as stated above is responsible for the creation of one court of human rights after the other in the search for a body that will effectively enforce the decisions of the human right court on the erring States. It is noteworthy, that the lack of enforcement remains unresolved to date.

In Africa, human rights treaties function as international agreements that possess distinct characteristics, fostering a heightened interaction between national and international spheres. While states exhibit a lack of uniformity in their implementation of these treaties, they may choose various models influenced by a multitude of factors related to the historical, political and legal culture of each nation.

The successful safeguarding of human rights on a global scale necessitates that the execution of international human rights treaties be regarded as a responsibility shared by all national

[608] United National General Assembly, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, A/RES/43/173, 76th plenary meeting, 9 December 1988. See Principle 33, para 4.

[609] Article 58 ACHPR.
[610] *ibid*.
[611] *ibid*.

authorities, with a particular emphasis placed on the role of domestic courts. The State legislature is required to enact a new law, while the administration must take decisive action to uphold the principles of human rights. This entails a thorough review of the alignment between domestic legislation and international treaties, as well as a proactive engagement with the authorities granted by these human rights agreements. When domestic courts encounter cases that involve conflicts between domestic law and international human rights treaties, it is imperative that they employ a harmonising interpretation. This entails interpreting domestic legislation in a manner that aligns it with the provisions of International Law.

Enforcement and Compliance Issues

Considering the multitude of rulings delivered by the human rights Courts in Africa, these institutions have not only affirmed their status as the foremost human rights authorities across the two continents but have also offered direction to Member States regarding the nature of their responsibilities under the relevant legal frameworks. Consequently, the domestic legislations of the Member States have been subject to certain amendments or rectifications.[612]

The findings of human rights courts in Africa are progressively shaping the interpretations of national laws by domestic courts. Noteworthy instances include the Constitutional Court of Benin, which, in various rulings, not only cited the African Charter but also implemented it directly. The Supreme Court of Lesotho additionally drew upon the African Charter in conjunction with various other international human rights treaties.[613]

The Africa Charter's complaints mechanism provides an important avenue for recourse to complainants who could not find redress at the national courts. The finding of the Commission assisted in garnering international awareness and solidarity, as was the case in Nigeria during the regime of General Sanni Abacha,[614] when Ken Saro Wiwa and the eight Ogoni activists were executed.

While the human rights courts in Africa have contributed positively, especially regarding the interpretation of the African Charter, the influence of the African Court on Human Rights has not matched that of its European equivalent on the Member States. The judicial systems in Africa fail to offer a substantive solution for the infringement of human rights. The recommendations presented are purely advisory in nature and do not impose any binding obligations on the Member States. The case of Ken Saro-Wiwa exemplifies this, as he was sentenced to death in Nigeria alongside eight Ogoni activists. The appeal made by the African Commission for their release went unheeded[615] This demonstrates the lack of authority and diminishing power of the Commission in carrying out its protective function.

The Impacts of Regional Human Rights Court on Member States: The impact of the African Court on Human and Peoples' Rights on its Member States has been characterised by a pattern of selectivism, frequently shaped by political expediency rather than a sincere dedication to the principles of human rights. A number of African governments have either disregarded the Court's rulings or complied selectively when it serves their interests, thereby undermining the authority and effectiveness of the Court. The irregular compliance undermines the regional human rights framework and cultivates a skepticism regarding its capacity to provide justice. Consequently, numerous discontented Africans,

[612] Christof, Heyns & Frans, Viljoen, *The Impact of the United Nations Human Rights Treaties on the Domestic Level*, (2001 *23 Hum. Rts. Q*. 483 <https://scholar.google.com/scholar_ lookup?>

[613] *Molefi Ts'epe v The Independent Electoral Commission*.

[614] *Int'l PEN (on Behalf of Saro–Wiwa) v Nigeria*, Comm. Nos. 137/94

[615] *ibid*

finding themselves unable to obtain justice through national or regional avenues, are increasingly seeking recourse through supra-national judicial entities such as the International Court of Justice (ICJ) and the International Criminal Court (ICC), both situated in The Hague. The institutions in question are presently encumbered by a plethora of human rights grievances from African individuals and organisations that have, regrettably, found local remedies to be ineffective.

In Europe for instance, the ability to petition on an individual basis is the backbone of Europe's human rights protection system. So far, progress in protecting fundamental rights within the domestic systems of the Member States has been ensured by the individual's direct access to an international organ competent to examine his or her complaint of a violation of one of the rights and freedoms recognised in the European Convention. The right to petition the court directly has far-reaching effects on both the applicant and the domestic position; it would be tragic if the European system were to alter in a way that would limit or diminish these benefits in order to eliminate the backlog, given the importance of these rights and this has impacted positively on the European States. In Turkey and some European States, it is clear that there has been a shift towards better guaranteeing and providing protection even on domestic level. In some of these States, the protection of fundamental rights is for everyone, not just individual applicants.

African governments on the other hand must transcend mere symbolic gestures and implement tangible measures to enhance adherence to the Court's rulings. Authentic political commitment is essential to transform the protection of human rights from mere rhetoric into a tangible reality. Enhancing the credibility of the African Court would diminish dependence on international courts, thereby cultivating a more resilient and autonomous human rights framework across the African continent.

The African Charter has had a substantial impact on normative issues, particularly with regard to some thematic resolutions which served as both defined rights and benchmark for the evolution of domestic legislation in some African States:

Abolition of Death Penalty in Benin: Supporting the movement to abolish the death penalty in Africa, the Charter called on States to impose a moratorium on capital punishment by urging governments to put a stop to death sentence and supported the African movement to do away with it. One notable example where it has been implemented is the Benin Constitutional Court. The Benin court has cited and even directly applied the African Charter in a number of instances.

Freedom of Expression in Nigeria: Normative concerns have been significantly influenced by the Charter. In particular, the "Principles of Freedom of Expression" and the "Principles and Guidelines on the Right to a Fair Trial" were topical resolutions that helped define rights and set standards for how domestic laws should develop. In several African nations, the Charter constitutes a fundamental component of national law, owing to the existing constitutional framework. Nigeria, for example, has formally incorporated the Charter into its domestic legal framework via enacted legislation.[616] In numerous cases, the conclusions drawn by the Commission was pivotal in fostering global awareness and unity, exemplified by the situation in Nigeria under the Abacha regime. The influence of the Charter and the findings of the African Commission on national courts in Nigeria has been progressively notable, aiding in the interpretation of national laws.

[616] African Charter (Ratification and Enforcement) Act, Chapter A9, Laws of the Federation of Nigeria (LFN) 2004

Right to Land in Kenya: In the 1970s, the Endorois, a semi-nomadic pastoralist tribe in Kenya's Rift Valley, were forcibly removed from their traditional lands around Lake Bogoria in order to make way for a national park. After failing to resolve the issue at the national level, the Endorois were helped by the Minority Rights Group to submit a case with the African Commission in 2003. Inadequate preservation of the Endorois' traditional way of life and the lack of consultation or compensation for the forced displacement was examined in the case. It claimed that the Endorois were discriminated against, had their property taken from them, were denied access to their land's natural resources, had their religious and cultural practices perverted, and were subjected to development.

According to the African Commission's finding, it was illegal to force the Endorois to leave their ancestral grounds. The Endorois people's ancestral land rights were not recognised or protected by the Kenyan government, according to the African Commission. In addition, it did not provide sufficient compensation or other grazing land following their eviction, did not help with the return of their land, and similarly kept the community out of development initiatives that were relevant to them.[617]

A deep national conversation about indigenous peoples' integration into Kenya began with the Endorois verdict. By reaching out to state parties, we hope to bring attention to the importance of human rights and to support current national measures to reform laws and institutions and improve people's lives. While acting as Special Rapporteurs, commissioners also communicate with states to resolve claims related to their duty. In addition, the ruling in the Endorois case confirms that anyone can ask Parliament to consider any issue under its purview, including new laws, changes to existing laws, or repeal of existing laws. All proposed laws must pass through various committees before being adopted or approved by the president.[618]

Political Participation of Women in Lesotho: Lesotho women's political engagement and the African Commission's ruling [619] had an impact on the case law of African regional and national courts as well as on the decisions of national courts. For example, the South African Development Community Tribunal's regional courts followed it in their rulings.[620] and even the International Court of Justice".[621]

As a very important human rights body in Africa, the African Commission has guided Member States on the nature of their obligations under the Charter and, through its interpretations, shaped national laws to be consistent with the African Charter.

Recommendations for Reforms: In its Member States, the African Court has had an impact on human and peoples' rights, but this has been marked by a pattern of selective adherence, driven more by political expediency than a genuine commitment to human rights ideals. The legitimacy and efficacy of the Court have been undermined because some African governments have either ignored or selectively obeyed the Court's decisions when it suits their interests. There is growing mistrust in the regional human rights framework and its ability to provide justice as a result of the inconsistent compliance.

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[617] Ctr. for Minority Rights Dev. v Kenya, Comm. 276/2003, 27th ACHPR AAR Annex (Jun 2009 - Nov 2009)

[618] Kenya Law Reform Commission, A Guide to the Legislative Process in Kenya (2015), <http://www.klrc.go.ke/index.php/reports-and-publications/562-a-guide-to-the-legislative-process-in-kenya>, p. 31.

[619] *Ts'epe v Independent Electoral Commission and Others* No. 11/05 CC 135/05.

[620] *Campbell v. Zimbabwe*, Judgment, Case No. SADCT: 2/07 (SADC, Dec. 13, 2007)

[621] *Diallo (Republic of Guinea v Democratic Republic of the Congo)* ICJ GL No 103, [2012] ICJ Rep 324, ICGJ 435 (ICJ 2012), 19th June 2012, International Court of Justice [ICJ]

As a result, many angry Africans are turning to supranational judicial bodies like the ICJ and the ICC in The Hague for representation after failing to get justice through domestic or regional channels. The relevant institutions are currently swamped with human rights complaints lodged by African individuals and groups that have, unfortunately, exhausted all local remedies.

The African governments must do more than just talk the talk when it comes to ensuring that the Court's decisions are followed. To turn human rights protection from empty words into meaningful action, genuine political will is necessary. Building a stronger and more independent human rights framework on the African continent might be achieved by bolstering the credibility of the African Court, which would reduce reliance on international tribunals.

Conclusion: Due to a plethora of structural barriers, international efforts to protect human rights in Africa are still far from effective. Inadequate enforcement mechanisms, political meddling, and inconsistent compliance by states are some of the issues that the African human rights system faces, despite its established legal structure and institutions. The aforementioned deficiencies have profoundly eroded public trust in the capacity of regional courts to administer justice effectively.

Consequently, a significant number of Africans have become disenchanted with the judicial system, viewing it as inadequate in delivering substantial protection and remedy for human rights infringements. The inability of African courts to ensure state accountability has engendered a sense of skepticism, prompting victims to pursue justice through external entities such as the International Criminal Court (ICC) and the International Court of Justice (ICJ). Without a sincere dedication from African governments to fortify these institutions and uphold their resolutions, the regional human rights framework will persist in facing challenges related to its legitimacy and the confidence of the public.