

**AN EXAMINATION OF HUMAN RIGHTS PROTECTION IN AFRICA: WHAT ROLE FOR THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS?\***

**Abstract**

*The journey towards the effective realisation of human rights through a judicial institution was marred by resistance as well as negotiations, thus leaving several questions relating to the enjoyment of the regional normative rights enshrined in the African Charter on Human and Peoples' Rights. The agitation for a regional human rights system on a par with those established in Europe and the Americas, which started in the 1960s, has over time resulted in the establishment of two courts, the African Court on Human and Peoples' Rights in 1998 and the African Court of Justice and Human Rights in 2008. Whereas, with the establishment of these courts, the dream of a regional human rights court for Africa has become a reality, yet it cannot be said that African human protection through the court is able to consider a greater variety of human rights cases to reflect the gross human rights abuses visible on the continent. This paper examines the role of the African Court on Human and Peoples' Rights in the advancement of human and peoples' rights by looking at its structural architecture and jurisprudence to ascertain its structural and normative deficiencies. This paper concludes that based on the institutional and procedural deficiencies that impact the effectiveness of the court, much improvement is necessary for the court to become effective in advancing individual enjoyment of human and peoples' rights.*

**Keywords:** African Charter, African Charter Court Protocol, African Court, Enforcement. Human Rights

**1. Introduction**

The discourse about human rights violations in Africa has been a recurring theme among stakeholders in Africa because the rights of millions of persons are being violated regularly by state and non-state actors. Human rights abuse such as sexual and gender-based violence, discriminations, death on a massive scale, destruction of property, attacks on the right to freedom of expression, peaceful assembly and association, enforced disappearances, arbitrary arrests and detentions of opponents, human rights defenders, activists, journalists and critics are daily encounters of millions of Africans in the continent.<sup>1</sup> A culture of impunity continues to embolden perpetrators of these abuses in Africa because the member states of the African Union (AU) have refused to place a high premium on human rights despite its universality and acceptance through the widespread ratification of the regional African Charter on Human and Peoples' Rights.<sup>2</sup>

Human rights discourse has not only become a huge concern in Africa, but a remarkable interest aimed at protecting and promoting universal respect for the rights of every individual in the region. The African Court on Human and Peoples' Rights (African Court) entered into force on 25 January 2004 after meeting the 15-member states' ratification requirement.<sup>3</sup> The African Court is based in Arusha, Tanzania and with the inauguration of the first eleven judges on 2<sup>nd</sup> July 2006, the African Court had its first session from 2<sup>nd</sup> July to 5<sup>th</sup> July 2006, in Banjul, Gambia. The drafting of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights 1998 (African Court Protocol), was inspired by the established international courts under the European and Inter-American Conventions as well as the Statute of the International Court of Justice.<sup>4</sup> The implication, therefore, is that one would expect the Court to adopt standards concerning access, composition and jurisdiction that enhance effective human rights enforcement, given that the African Court is the youngest of the existing regional human rights courts-the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR). Nonetheless, since this time, the African Court has evolved to become an essential mechanism in African Charter enforcement, although it seems vulnerable when compared to its European and American counterparts.<sup>5</sup>

Respect for human rights across the region is an obligation to all African nations, and with the establishment of the African Court, Africa has succeeded in having a court to serve as its judicial organ of the African human rights system. The reality of the African Court is the result of efforts over some decades to institutionalise the human rights discourse, which started under

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<sup>1</sup>Amnesty International, Africa Regional Overview, (2024) available at > <https://www.amnesty.org/en/location/africa/report-africa/>< accessed 10<sup>th</sup> August 2025

<sup>2</sup> The African Charter on Human and Peoples' Rights (African Charter) has been ratified by fifty-four (54) African Union (AU) Member States. The latest AU Member State to become a Party to the African Charter is the Republic of South Sudan, having ratified the Charter on 23 October 2013. To access the full status list of signatures, ratifications, depositions and reservations to the African Charter. See, African Commission on Human and Peoples' Rights, 'State Parties to the African Charter', available at > <https://achpr.au.int/en/states>< accessed 10<sup>th</sup> August 2025.

<sup>3</sup> Presently, 34 countries have ratified the Court Protocol, whereas 9 countries allow individuals and NGOs to directly petition the African Court, namely: Burkina Faso (1998), Malawi (2008), Mali (2010), Tanzania (2010), Ghana (2011), Cote d'Ivoire (2013), Benin (2016), Tunisia (2017) and Gambia (2018). Rwanda had previously deposited a declaration in conformity with Article 34 (6) in 2013 but subsequently withdrew with effect from March 2017; See African Union List of Countries that have ratified the 1998 Protocol as at August 2024, available at > <https://africancourtcoalition.org/ratification-declaration/>< accessed 10 August 2025. It is noteworthy that as of December 2024, 34 AU member states have ratified the 1998 Protocol, whereas 8 countries have deposited Article 34(6) declaration, and 4 countries that had earlier deposited had withdrawn Article 34(6) declaration and these are Rwanda (2016), Tanzania (2019) and Benin (2020) and Cote d'Ivoire (2020).

<sup>4</sup> Explanatory Notes to the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, 1, (6-12 September 1995), Cape Town South Africa.

<sup>5</sup> Tom Daly and Micha Wiebusch, 'The African Court on Human and Peoples' Rights: Mapping Resistance against a Young Court' (2018) 14 (2) *International Journal of Law in Context*, 294.

the then Organisation of African Unity, now the AU. According to the African Court Protocol, the African Court was conceived to complement and reinforce the protective functions of the African Commission on Human and Peoples' Rights (African Commission).<sup>6</sup> Hence, its mission is to ensure the compliance and respect of the African Charter and other human rights treaties ratified by African States through its judicial interpretations and decisions. Hence, the African Court is explicitly mandated to consider human rights violations covered by human rights instruments ratified by AU member states under Article 3 of the African Court Protocol. Article 3 recaps the mandate of the court and explores the routes the African Court could adopt in carrying out this mandate as it relates to the interpretation of this mandate. Despite these, continental debates concerning the appropriate role of the African Court in the African region are still intensified by stakeholders.<sup>7</sup>

## **2. The African Court in perspective**

The Court Protocol is considered a unique phenomenon in international law. Unlike in Europe where the Convention grants to individuals,<sup>8</sup> whose rights are denied or violated, direct access to the court competent to access the behaviour of national governments towards the compliance of human rights,<sup>9</sup> the Court Protocol requires state parties under Article 5 (3) to make a declaration in accordance with Article 34 (6) before individuals and NGOs with observer status can have direct access to the court.<sup>10</sup> This feature of the African Court excludes it from being a living mechanism capable of responding to the numerous human rights challenges of the continent because it has created a fundamental obstacle to redress the human rights denials and violations that are spread throughout the region. Such a characteristic of the African Court is unique among other regional judicial institutions, as well as limiting, given that Africa is a multicultural and multilingual continent. Despite this limiting characteristic of the African Court, it has managed to gradually improve its response to the cases submitted to it on a variety of rights.<sup>11</sup> Additionally, the African Court has implemented initiatives aimed at improving its work mandate, such as the creation of the Legal Aid Scheme for applicants who lack professional legal assistance.<sup>12</sup>

The African Court can receive cases and hear them on its merits from individuals where the country has adhered to Article 34 (6), cases filed by State Parties to the Court Protocol, NGOs with observer status with the African Commission, and the African Commission, which also shares the responsibility of interpreting and applying the African Charter. The African Court decisions are binding on state parties and are enforceable. That is, state parties are bound to implement them within the time frame indicated by the African Court. Unfortunately, the AU Executive Council tasked to monitor the implementation on behalf of the Heads of States and Governments, which cannot be said to be optimally active in this regard. Whereas it cannot be opined that the decisions of the African Court are not implemented,<sup>13</sup> many African countries have overtime, viewed some of these decisions as being against their political ideology, leading to the withdrawal of Article 34 (6) of the Court Protocol.<sup>14</sup>

The African countries' attitude towards the African Court and its assumed power to provide redress to human rights victims on the continent has not changed. The premise deduced from the widespread human rights violations in the continent during the 1980s became more prominent given the absence of a judicial arm of enforcement in the regional human rights system when the African Charter was adopted.<sup>15</sup> Based on these observations and in contrast with the European and American human rights

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<sup>6</sup> Article 5 (1) (a), 6 (1) and (3), 8 and 33 of the Court Protocol. See also, Preamble to the African Court Protocol. The African Court Protocol was adopted in 1998.

<sup>7</sup> Tunisia Press, President of African Court on Human and Peoples' Rights urges African States to join Court, available at ><https://www.tap.info.tn/en/Portal-Top-Slide-EN/10801657-president-of->< accessed 29 April 2024.

<sup>8</sup> European Convention Protocols 11 and 14 grants the European Court the exclusive jurisdiction to receive individual applications and to declare the breach of international obligations.

<sup>9</sup> Alina Cherviatsova, 'The European Court of Human Rights: Bringing Together Legal Systems' (2012) 5 (1) *Baltic Journal of Law and Politics*, 99

<sup>10</sup> Article 5(3) of the Court Protocol which makes reference to Article 34(6)

<sup>11</sup> As of July 2025, the African Court has received 375 contentious cases of which 255 has been finalized, 9 reviews which are finalized, 6 interpretations of which 5 are finalized, and 16 advisory opinions of which 15 are finalized. The African Court has 276 judgements and 179 Orders. See, the African Court on Human and Peoples' Rights Cases, available at > <https://www.african-court.org/cpmt/statistic>< accessed 10<sup>th</sup> August 2025.

<sup>12</sup> José Alberto Del Rivero Del Rivero and Alfonso Calcáneo Sánchez, 'African Human Rights System in Crisis? Causes and Effects of the Withdrawal of the Declarations that Allow Individuals and NGOS to Submit Communications to the African Court on Human and Peoples' Rights' (2024) 9 (27) *Derecho glob. Estud. sobre derecho justicia*, 191.

<sup>13</sup> For instance, in 2023, the African Court's ruling in *Bob Chacha Wangwe and the Legal and Human Rights Centre v. Tanzania*, that senior civil servants in Tanzania could not be deployed to organize national elections given the threat this pose to political neutrality and citizens' rights to free and fair elections. The Tanzanian government under President Samia Hassan has agreed to amend the National Election Act and the Criminal Procedure Act. Also, in 2018, the African Court ruled that the criminal conviction and imprisonment of opposition leader Ingabire Victoire Umuhoza in Rwanda was a violation of her freedom of expression for stating that the crimes against humanity committed during the Rwandan genocide were perpetrated against Hutus as well as Tutsis has been implemented through her release from prison later that year.

<sup>14</sup> The following countries have withdrawn their Article 34(6) of the Court Protocol between 2016 and 2021.

<sup>15</sup> Christof Heyns, 'The African Human Rights System: In Need of Reform' (2001) 2 *African Human Rights Journal*, 155; Fatsah Onguergouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (n 6 above) 791; Hastings Okoth-Ogendo, 'Human and Peoples' Rights: What Point Is Africa Trying to Make?' In R. Cohen Hyden, and W. Nagen, (eds), *Human Rights and Governance in Africa*, (University Press of Florida, 1993) 76; Jean Boukongou, 'The Appeal of the African System for Protecting Human Rights' (2006) 6 *African Human Rights Law Journal*, 269; Oji Umozuruike, 'The African Charter on Human and Peoples' Rights' (n 7 above); Edward Kannyo, *Human Rights in Africa: Problems and Prospects* (1980) A report prepared for the International League for Human Rights (Human rights working paper) 15; Nsongurua Udombana, 'Can a Leopard can its spots? The African Union Treaty and Human Rights' (2002) 17 *Australian University Law Review*, 1177; Makau Mutua, 'The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties' (1995) 35 *Virginia Journal of Int. Law*, 339.

systems, the African human rights system was adjudged the least developed, least efficient, most distinctive and the most controversial regional human rights instrument.<sup>16</sup> Whether this argument is correct in contemporary times cannot only be measured with the success number of cases adjudicated by the African Court, but with other parameters such as access, structure, sitting pattern and jurisdiction, which in reality strike across as non-achievement of the long dream of a human rights court for Africa. Inopportunately, in mid-2008, African leaders voted to establish an African Court of Justice and Human Rights to serve as the main judicial organ of the African Union (AU). The Court will have two sections, one of which will be devoted exclusively to human rights matters. To date, the legal agreement establishing the African Court of Justice and Human Rights is still open for signature and ratification<sup>17</sup> by African states. Ordinarily, the court is expected to give the continent a permanent court with wider jurisdiction<sup>18</sup> and will wind down the African Court, which has been hearing cases in the interim period. Arguably, this may not be ready soon, given the attitude of the African leaders to issues concerning the regional court and human rights redress, as also emphasised in the position on not allowing direct access to individuals and NGOs as with the African Court Protocol.<sup>19</sup>

The most controversial feature of both courts remains the difficulty of bringing cases by individuals and NGOs. As a consequence, individuals and NGOs can only bring cases to the court after the State against which the complaints are made has deposited a special declaration accepting the competence of the court to hear cases brought through this route. Hence, accessing the court shall remain difficult for most victims of human rights abuses.<sup>20</sup> That notwithstanding, the African Court consists of 11 judges, and it sits four times a year in two-week Ordinary Sessions and may also sit in Extraordinary Sessions. This implies that Africa adopted a part-time sitting arrangement, thereby making it the only regional Court that sits on a part-time basis.<sup>21</sup> The consequence of adopting a part-time sitting arrangement is the potential to affect the quality and quantity of the Court's output. In addition, such preferred sitting arrangements when all other existing courts enjoy a full-time sitting arrangement are indicative of how the AU member states view the African Court. It can be argued that this arrangement would not guarantee the timeframe needed to carry out its contentious and advisory mandate optimally. A first-hand impact of this sitting arrangement was encountered in the three-year delay experienced in arriving at the African Court's first judgment in *Micholet Yogogombaye v Senegal*.<sup>22</sup>

### **3. The African Court mandate and jurisdiction**

The drafting of this Court Protocol was inspired by the established international courts under the European and Inter-American Conventions as well as the Statute of the International Court of Justice.<sup>23</sup> The implication, therefore, is that the African Court would ordinarily adopt standards concerning access, composition, mandate and jurisdiction that enhance effective human rights enforcement. The African Court Protocol has an unequivocal provision on jurisdiction which extends to all cases and disputes submitted to it concerning the interpretation and application of the African Charter, its protocol and any other relevant human rights instruments ratified by the state concerned.<sup>24</sup> This broad mandate, the African Court potentially has a greater influence over the implementing bodies of regional and international human rights treaties, such as the International Covenant on Civil and Political Rights.<sup>25</sup> It simply means that the African Court jurisdiction extends beyond applying and interpreting just the African Charter. The mandate of the African Court under Article 3 of the Court Protocol is a unique mandate that is not matched by the other regional counterparts. Arguably, such broad jurisdiction is intended to ensure proper engagement with the African Court regarding the protection and interpretation of African rights and freedoms, unlike the American and European systems, where the drafters bestowed a mandate to apply only the human rights regional treaties in their decision-making via binding judgments.

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<sup>16</sup> Henry Steiner, Philip Alston and Ryan Goodman, *International Human Rights in Context: Law, Politics and Morals* (3<sup>rd</sup> edn, Oxford University Press, 2008) 1063.

<sup>17</sup> The Court presently has 33 signatures and 8 ratifications. The Court Protocol and the Statute shall enter into force thirty (30) days after the deposit of the instruments of ratification by fifteen (15) Member States.

<sup>18</sup> Such jurisdiction shall include cases of war crimes, trafficking people and/or drugs, genocide, crimes against humanity, terrorism, and piracy.

<sup>19</sup> Article 29 and 30 of the Protocol on the Statute of the African Court of Justice and Human Rights.

<sup>20</sup> Yakare-Oule (Nani) Jansen Reventlow and Rosa Curling, 'The Unique Jurisdiction of the African Court on Human and Peoples' Rights: Protection of Human Rights Beyond the African Charter' (2019) 33 (2) *Emory International Law Review*, 203

<sup>21</sup> For example, following the amalgamation of the Court and Commission in 1998, the European Court started sitting on a full-time basis. It is noteworthy that the President of the African Court works on a full-time basis. See Article 15 of the Court Protocol. The Assembly may change this sitting arrangement as it may deem appropriate. See article 15 (4) of the Court Protocol.

<sup>22</sup> App. No. 1/2008. The Court in this case declined jurisdiction citing Article 34(6) of the 1998 Protocol. That notwithstanding, the Court on December 15, 2009, three years after the selection of the first set of judges, gave its first judgment.

<sup>23</sup> Explanatory Notes to the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, 1, (6-12 September 1995), Cape Town South Africa.

<sup>24</sup> Article 3 of the 1998 Protocol.

<sup>25</sup> The African Court in *Konate v Bukina Faso*, No. 004/2013, found that the Respondent State violated its obligations concerning the right to freedom of expression under not only the Charter, but also the ICCPR, and revised ECOWAS treaty. Also, in *African Commission v Libya*, No. 002/2013, the African Court in its judgment referred to various provisions of the ICCPR alongside the African Charter.

Further, although the African Court Protocol entrusted the court with advisory,<sup>26</sup> arbitral<sup>27</sup> and contentious<sup>28</sup> jurisdiction, the advisory duties of the Court empower it to give opinions at the request of a member state, the Organisation of African Unity (OAU), now African Union and any of its organs, or any African organisation recognised by the OAU, on any matter relating to the protection of human rights and relevant human rights instruments.<sup>29</sup> This function is not peculiar to the African system; however, the difference is that under the European system, only the Committee of Ministers can request an advisory opinion,<sup>30</sup> whereas the American system grants just the Member States and the organs of the Organisation of American States the power to ask for an opinion.<sup>31</sup> The substantive provisions on which the African Court human rights jurisprudence is based are limited to the arbitral and contentious jurisdiction, which involves adjudication of cases and disputes submitted by states, as well as individuals and NGOs of state parties that have deposited Article 34 (6) of the Court Protocol. It goes beyond giving an opinion at the request of state parties to rendering binding decisions on parties involved. At the outset, the Court illustrated this position in *Michelot Yogogombaye v Senegal*<sup>32</sup> when it accepted that though there were violations of other international human rights instruments such as the UDHR and the International Covenant on Civil and Political Rights (ICCPR), it lacked jurisdiction to entertain this case because the respondent state had not made a declaration allowing individuals and NGOs to bring claims under article 34(6) of the Court Protocol. The thought in this decision may not seem to be coercive because it laid the foundation that the Court would never entertain cases where the respondent states fail to make an Article 34(6) declaration.

The very fact of the contentious jurisdiction of the African Court creates a dual function similar to other regional human rights instruments.<sup>33</sup> In considering the admissibility requirement regarding exhaustion of local remedies, the Court in *Norbert Zongo and others v Burkina Faso*<sup>34</sup> ruled that the respondent state failed to take appropriate action to ensure that the rights of the applicants are respected. Such dual function requires the African Court to ascertain the extent to which the African Charter provision has been applied by state parties and how state parties interpret these rights. Within the African human rights system, this power of the African Court cannot be considered unique because the African Commission has the same jurisdiction, though its decisions are not binding on the parties.

#### **4. Access to the African Court**

Providing substantive human rights protection has always been the central aim of the regional human rights system, and this has been showcased by the drafters of the African Charter through the assembling of enforceable rights with implementation mechanisms. The primary objective of the African Charter is broader than solely to provide a right to access to the court. Conversely, the African Court Protocol took a different approach from the African Charter on the issue of access. Access is crucial to human rights protection as well as the jurisdiction of the Court. As with the European and the Inter-American systems, the African Court has a dual jurisdiction. Its advisory jurisdiction allows it to provide legal opinions on how to interpret or implement human rights obligations when requested by an AU member state, the AU or its organs, or an African organisation recognised by the AU. On the other hand, the contentious jurisdiction of the African Court extends to all cases and disputes concerning alleged violations of rights in the African Charter or any other relevant human rights treaty ratified by the concerned African state. Yet, access to the contentious jurisdiction of the African Court is more complex than the European counterpart.

The contentious jurisdiction requires, firstly, the ratification of the African Court Protocol.<sup>35</sup> This prerequisite requirement relating to access portrays a restriction to the protection of the Court because of the poor ratification history of human rights treaties, as well as Court Protocols and Statute in Africa. In other words, a state may intentionally avoid the jurisdiction of the Court by choosing not to ratify the Court Protocol, especially in the absence of regional or international pressure to ratify such a treaty. Secondly, the contentious jurisdiction of the African Court requires a deposit of a special declaration by a state party pursuant to Article 34 (6) of the African Court Protocol. Through this special declaration, state parties may allow individuals and NGOs with observer status before the African Commission to refer cases of alleged violations of human rights directly to the African Court.<sup>36</sup> This special declaration may be deposited at the time of ratification of the African Court Protocol or anytime thereafter. Though individual and NGO access is not automatic even after their country has ratified the Court Protocol, they may indirectly approach the Court by instituting complaints before the Commission, hoping the Commission will refer the matter to the Court in any case of non-compliance of the Commission's findings by the state party.<sup>37</sup> Conversely, unlimited access to the African Court is granted to the African Commission, state parties, and intergovernmental organisations.<sup>38</sup>

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<sup>26</sup> Article 4 of the 1998 Protocol.

<sup>27</sup> Article 9 of the 1998 Protocol. The arbitral jurisdiction of the Court empowers it to amicably settle cases and disputes brought before it by parties.

<sup>28</sup> Article 3 (1) of the 1998 Protocol.

<sup>29</sup> Out of the 13 advisory opinions submitted to the Court since its operation in 2006, 12 have been finalised with one pending as at April 2019.

<sup>30</sup> Article 47 (1) of ECHR.

<sup>31</sup> Article 64 (1) of the American Convention.

<sup>32</sup> App. No. 001/2008.

<sup>33</sup> Article 32 of ECHR and article 62 of Inter-American Convention.

<sup>34</sup> App. 013/2011

<sup>35</sup> As of February 2019, only 30 African states have ratified the Court Protocol.

<sup>36</sup> Article 5 (3) of the African Court Protocol.

<sup>37</sup> Article 6 of the Court Protocol, Rule 118 and 120 of the Rules of Procedure of the African Commission. Notably, the Court has transferred 4 cases to the Commission.

<sup>38</sup> Article 5 of the Court Protocol and Rule 33 of the Rules of African Court.

## **OBODO: An Examination of Human Rights Protection in Africa: What Role for the African Court on Human and Peoples' Rights?**

Frankly, a system can deliver substantive justice to individuals in a direct or indirect manner. The difference is immaterial if the court is optimally regarded as an institution that is meant to deliver justice in individual cases and raise the level of human rights protection in the member states by contributing to substantive justice indirectly.<sup>39</sup> Whereas the drafters of the African Charter showed absolute commitment to the enjoyment of human rights in a democratic system devoid of totalitarianism on the continent, the African Court Protocol seemed not to envisage having the protection of individual rights at the forefront of their concerns. This is not surprising, as the individual right to directly access the African Court was achievable when special declarations were deposited by member states. Arguably, Africa's position on access to the African Court is a true reflection of African leaders' reluctance to have an accountable and effective regional judicial system.<sup>40</sup> The AU member states vaguely established a regional court with clauses that limit state party accountability by limiting individual access to the court. This compromises free and absolute access to the African Court, thereby having an impact on victims of human rights abuses.<sup>41</sup>

Article 34 (6) of the Court Protocol impacts uniform access and jurisdiction for individuals whose countries have ratified the African Court Protocol. This provision reduces the extent to which individuals and NGOs can seek direct justice from the African Court. While it is submitted that the purpose of Article 34 (6) cannot optimally advance the complementary mandate of the Court, it presents an opportunity for state parties to avoid accountability. Regrettably, Rwanda, Tanzania, Benin and Côte d'Ivoire have withdrawn their declarations, leaving only eight countries<sup>42</sup> as those that have deposited the Article 34(6) declaration out of the thirty-four countries that have ratified the African Court Protocol. In the past six years, there have been more withdrawals than new deposits of Article 34 (6) declaration from AU member states. These withdrawals substantially reduce the chances of individuals and NGOs bringing matters before the African Court, which constitutes most of the caseload of the African Court and the main source of its jurisprudence. The logic of the foregoing is that cases instituted against non-compliant countries such as Nigeria,<sup>43</sup> Senegal,<sup>44</sup> Algeria,<sup>45</sup> South Africa,<sup>46</sup> and Tunisia<sup>47</sup> will be declared inadmissible by the Court.

The numerous cases submitted by individuals and NGOs have provided the opportunity to make appropriate orders in line with articles 9 and 27 of the Court Protocol. Indeed, individual cases have resulted in some landmark decisions where the Court has ordered states to amend their domestic laws and constitutions to reflect the true intent and content of the African Charter.<sup>48</sup> For instance, in *Tanganyika Law Society and Legal and Human Rights Centre and Reverend Christopher R. Mtikila v United Republic of Tanzania*, the complainants alleged that the Eight Constitutional Amendment Act of 1992 which requires candidates to elective positions to be sponsored by a political party conflicted with the constitution of Tanzania and were therefore null and void for barring independent candidates from contesting. The Court, however, found a violation of the right to non-discrimination, equal rights before the law, freedom of association, and the right to participate freely in government. The Court, therefore, ordered the respondent state to take constitutional, legislative and other measures necessary to remedy violated the articles of the African Charter and ordered the applicant to file for reparations.<sup>49</sup> Nevertheless, individuals and NGOs have remained the highest beneficiaries of the African Court in terms of access, while the Court continues to assert its mandate through its decisions similar to State Supreme Courts.<sup>50</sup> This is because final decisions of the Court impact on the domestic laws of member states.

Access to the African Court is central to realising effective human rights. In particular, it ensures remedies are accorded to victims while the laws are interpreted to form part of case laws. As captured by the Nigerian Supreme Court in *Attorney General of Kaduna State v Hassan*, 'he who cannot reach the court cannot talk of justice from the courts'.<sup>51</sup> However, the African Court is not the only regional court that bars individuals' direct access.<sup>52</sup> For instance, the American system permits only state parties and the Inter-American Commission to submit cases directly to the Inter-American Court.<sup>53</sup> Conversely, article 34 of the ECHR

<sup>39</sup> Janneke Gerards and Lize Glas, 'Access to Justice in the European Convention on Human Rights System' (2017) 35 (1) *Netherlands Quarterly of Human Rights*, 11.

<sup>40</sup> Ibrahim Ali Badawi El-Sheikh, 'Draft Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights: Introductory Note' (1997) 9 *African Journal of International and Comparative Law*, 943.

<sup>41</sup> Timothy Yerima, 'Comparative Evaluation of the Challenges of African Regional Human Rights Courts' (2011) 4 (2) *Journal of Politics and Law*, 120; Nsongurua Udombana, 'Towards the African Court on Human and Peoples' Rights: Better later than never' (2014) 3 (2) *Yale Human Rights and Development Journal*, 45.

<sup>42</sup> Burkina Faso, The Gambia, Ghana, Guinea-Bissau, Mali, Malawi, Niger and Tunisia.

<sup>43</sup> App. 8/2011, *Ekollo v Cameroon and Nigeria*.

<sup>44</sup> *Michelot Yogogombaye v Senegal*, App. 001/2008.

<sup>45</sup> App. 2/2011, *Soufianne Ababou v Algeria*.

<sup>46</sup> App. 4/2012, *Emmanual Uko and others v South Africa*.

<sup>47</sup> App. 7/2012, *Baghdadi Ali Mahmoudi v Tunisia*. This decision was made before Tunisia made the declaration under article 34 (6) of the Court Protocol.

<sup>48</sup> See the judgments in the following cases: *Lohe Issa Konate v Burkina Faso* (2015); *Rev. Christopher R. Mtikila v Tanzania* (2013); *Action pour la protection des Droits de l'Homme (APDH) v Cote d'Ivoire* (2014).

<sup>49</sup> App. Nos. 009 and 011/2011, and judgment on merit delivered 14 June 2013.

<sup>50</sup> For instance, of the 34 cases that were decided by the Court at its 44<sup>th</sup> Ordinary Session March 6-24, 2017, 29 of them are connected with individuals.

<sup>51</sup> (1985) Nigerian Weekly Law Report, Part 8, 483.

<sup>52</sup> Article 44 of the American Convention requires individuals to institute complaints through the Inter-American Commission.

<sup>53</sup> Article 61 of the American Convention on Human Rights.

allows the individual access to the European Court on Human Rights (ECtHR) if they meet the requirement under article 35 (3) ECHR.<sup>54</sup>

### **5. Case transfer relationship between the African Court and the African Commission**

International justice represents the last resort for victims of human rights abuses, and the withdrawal of Article 34 (6) of the African Court Protocol hinders the opportunity of individuals and NGOs under their jurisdiction to find relief at the highest regional court.<sup>55</sup> The relationship between the African Charter institutions set out in the African Commission<sup>56</sup> includes the power of the African Commission to transfer cases of massive human rights violations and non-compliance with its orders to the African Court. These provisions have the potential to enhance the working relationship between the two institutions, at least on paper.<sup>57</sup> Though it is most unlikely in practice that member states will bring many cases against each other, the expectation, as it is visible under the Inter-American system would have been a situation where the African Commission refer the vast majority of the cases to the African Court. This is far from reality as the African Commission has referred only three cases to the African Court.<sup>58</sup> The African Commission seem not to have built a strong working relationship with the African Court. Also, where an individual or NGO institute a claim at the African Court under article 5 (3) of the Court Protocol, the Court must first rule on its admissibility based on article 56 of the African Charter. The admissibility criteria are so important because they determine both the African Court's jurisdiction and the steps to be taken concerning cases before it. For instance, the Court may assume jurisdiction and go ahead to consider the case or transfer it to the African Commission.<sup>59</sup> Though this gives the African Court the power to transfer cases to the African Commission where it lacks jurisdiction, the number of cases declared inadmissible without such referral indicates the African Court's insignificant use of the article 6 provision to enhance human rights protection. At present, the African Court has transferred four cases to the African Commission, while the African Commission has demonstrated this relationship by transferring three cases to the African Court, including *African Commission v Libya*<sup>60</sup> and *African Commission v Kenya*.<sup>61</sup> Aptly, this case transfer numbers are insignificant and illustrate the perceived lack of a good working relationship.

### **6. Remediating the human rights violations under the African Court**

The African Court may be first and foremost looked at as an institution providing effective remedies in cases of human rights violations. By so doing, the African Court would fill a gap that emerges between the national courts and the protection of human rights under the African human rights system. On the one hand, the position of the African Court is strengthened by the fact that its mandate and jurisdiction empower it to consider other human rights treaties ratified by the concerned AU member state, but on the other hand, the African Court is doing away with the local remedies rule through its interpretation of these regional human rights treaties. Thus, where the African Court finds a violation of the African Charter and proceeds to make a decision on its finding, it has the power to grant remedies in line with Article 27 of the Court Protocol.<sup>62</sup> The African Court can order provisional measures where a violation is found or in circumstances where necessary to avoid irreparable harm to persons.<sup>63</sup> For instance, the Court applied provisional measures in *African Commission on Human and Peoples' Rights v Republic of Libya*.<sup>64</sup> In this case, the African Commission alleged that not only has the respondent state refused to comply with its decision but that the victim, Saif Al-Islam Gaddafi, is faced with the imminent threat of the death penalty, following a long period of arbitrary detention without access to a lawyer. This case further demonstrates the positive impact of the relationship between the two institutions and the need for the Commission to swiftly invoke its unlimited access to the African Court against non-compliant state parties. In its ruling, the African Court held that Libya violated the African Charter and ordered it to terminate the illegal criminal proceeding against the victim before the domestic court and allow the victim access to a lawyer without delay.<sup>65</sup> The essence of this order is to preserve or stop a state from further committing human rights violations, while the African Court goes ahead to adjudicate on the application before it.

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<sup>54</sup> This article provides that the admissibility criteria for individual application to include incompatibility with the provisions of the ECHR, if the application is anonymous, substantially the same with a matter that has been submitted to another procedure for investigation, or where the applicant has not suffered a significant disadvantage. See also, Andrew Williams, 'The European Convention on Human Rights, the EU and the UK: Confronting a Heresy' (2013) 24 (4) *European Journal of International Law*, 1157; Francesco Seatzu, 'The Experience of the European Court of Human Rights with the European Convention on Human Rights and Biomedicine' (2015) 31 (81) *Utrecht Journal of International and European Law*, 5.

<sup>55</sup> Of the 372 Applications brought before the African Court, 22 were brought by individuals, 22 were brought by NGOs, 3 were brought by the African Commission, and 1 by member states of the AU. See, African Court on Human and Peoples' Rights Cases, available at > <https://www.african-court.org/cpmt/statistic> accessed 20<sup>th</sup> August 2025.

<sup>56</sup> Articles 2 and 6 of the Court Protocol, Rule 29 of Rules of Procedure of the Court and Part IV of the Rules of Procedure of the Commission 2010.

<sup>57</sup> See also, Part IV, Rule and Procedures of the African Commission 2010.

<sup>58</sup> The African Commission has brought three cases to the African Court. See, African Court on Human and Peoples' Rights Cases, available at > <https://www.african-court.org/cpmt/statistic> accessed 20<sup>th</sup> August 2025.

<sup>59</sup> Article 6 of the Court Protocol.

<sup>60</sup> App. 002/2013.

<sup>61</sup> App. 006/2012.

<sup>62</sup> Instances of such remedies include compensation or reparation.

<sup>63</sup> The provision of provisional measures is similar to article 63 (2) of the Inter-American Human Rights Convention which empowers the Court to order this remedy in cases of extreme gravity and urgency in order to avoid irreparable harm to persons.

<sup>64</sup> App. No. 002/2013.

<sup>65</sup> *Ibid*, para 97. It is noteworthy to mention that Libya did not comply with this decision.

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It is noteworthy that the remedial authority of the African Court is similar to the ECtHR and the American Court.<sup>66</sup> However, under the European system, the decision of the Court becomes final in accordance with Article 44 (2). On the other hand, the position under the African Court is that its decision shall be final, binding on state parties, and not subject to any appeal.<sup>67</sup> Though the African Court guarantees the availability of binding and final remedies for victims, it reinvigorates voluntary compliance despite Article 30 despite mandating the Executive Council of Ministers to monitor the execution of the Court's judgment on behalf of the Assembly.<sup>68</sup> While a similar text is evident in the ECHR<sup>69</sup> and Inter-American human rights,<sup>70</sup> the African Charter provision did not go further on what the Court could do if the Executive Council of Ministers fails to carry out its duty. While this needs to be addressed, it has arguably contributed to poor compliance by state parties.<sup>71</sup> Hence, the AU should ensure that the Executive Council of Ministers carries out its duty, or create a new body that may focus on monitoring compliance with African Court decisions.

Another way the drafters of the African Court Protocol initiated to ensure compliance with the court decisions is by submitting a report to the Assembly specifying the cases in which a state party has not complied with the Court's judgment.<sup>72</sup> Article 31 of the African Court Protocol acts as a robust shaming mechanism to strengthen the authority of the African Court.<sup>73</sup> Whether this provision is intended to merely notify the Assembly to act against non-complying state parties, it is noteworthy that there is neither any record of the AU Assembly acting on the annual reports of the Court to demand state party compliance nor evidence of the use of sanctions against non-complying state parties to the Court decisions. The AU Assembly has failed to compel effective compliance despite having the power to impose sanctions or take other measures of a political or economic nature against erring AU member states.<sup>74</sup>

### **7. Conclusion**

This paper confirms that Africa's institutional framework for promoting human rights protection is far from being complete. It sets out the issues hindering the role of the African Court in the protection of human rights in the region. Its main argument was to show the value of unhindered human rights protection using a regional court system. The worth of a regional court designed to enhance human rights protection must ultimately be evaluated by its ability to make a difference for victims and potential victims. The reality is that the pattern of ratification of the African Court Protocol and the withdrawals from the special declarations by some AU member states, the African Court will continue to be very distant from the lives of African people, which may be just what many African governments intend. Such withdrawals represent a flashback for the African Court, which is at the crossroads of its consolidation. It has further been demonstrated that the African Court's journey is still in progress because it has a role to fulfil in terms of offering an effective protection and remedy to the victims of human rights violations and strengthening the commitment of the African Charter state parties. At present, the African Court cannot be seen as a unifier of different legal systems/cultures across the African continent as it is with the European Court. It is sad to note, however, that mere ratification of human rights treaties does not end human rights violations. Therefore, the success of the African Court will depend on whether it can win the trust of African Charter state parties, as it is for them to decide whether to ratify the African Court Protocol or deposit a special declaration under Article 34 (6).

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<sup>66</sup> Article 63 of the Inter-American Human Rights Convention and article 41 of the ECHR.

<sup>67</sup> Articles 28 (1) and (2), 29 and 30 of the Court Protocol; Rules 59 and 61 of the Rules of Court. However, such decision may be reviewed by the Court in the light of new evidences- article 28 (3) of the Court Protocol.

<sup>68</sup> Articles 29 (2) and 30 of the Court Protocol; Rule 64 of the Rules of Court. The concept of involving an AU organ to monitor execution is not alien when compared with article 58 of the African Charter.

<sup>69</sup> Article 46 (1) of ECHR.

<sup>70</sup> Article 68 (1) of the Inter-American Human Rights Convention.

<sup>71</sup> Activity Report of the African Court, available at > [http://en.african-court.org/images/Activity%20Reports/AfCHPR\\_Activity\\_Report\\_2016\\_E.pdf](http://en.african-court.org/images/Activity%20Reports/AfCHPR_Activity_Report_2016_E.pdf) accessed 15 March 2024. However, as of March 2024, no mission has been undertaken by the Council of Ministers to ascertain reasons for non-compliance with Court decisions.

<sup>72</sup> Article 31 of the Court Protocol.

<sup>73</sup> Nsongurua Udombana, 'Towards the African Court on Human and Peoples' Rights: Better later than never' (2014) 3 (2) *Yale Human Rights and Development Journal*, 45.

<sup>74</sup> Article 23 (2) of the Constitutive Act empowers the AU Assembly to impose sanctions where necessary.