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The Enforcement of Human Rights Under the 1981 African Charter on Human and Peoples' Rights (The Banjul Charter)

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Abstract

The reinforcement of human rights ensures stronger protection mechanisms and accountability for violations. It also enhances compliance with legal frameworks, fostering dignity, justice, and equality for all. The article examines the enforcement of human rights under the 1981 African Charter on Human and Peoples' Rights (Banjul Charter). The study uses a qualitative research methodology, employing primary data sources principally from the African Charter on Human and Peoples' Rights 1981, the 1998 Protocol to the African Charter on Human and Peoples' Rights, the 1948 Universal Declaration of Human Rights and a plethora of others. Secondary data comes from journal articles, newspapers, textbooks, internet sources, and reports. This study is anchored by the natural law theory, and the triple-pronged theory. The finding in this study reveals that regardless of the marginal success in the enforcement human rights under the Banjul Charter by key enforcement institutions like the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, more effort is needed as most states have been reluctant and lukewarm in complying with the provisions of the Charter. And as a corollary, it is incumbent to strengthen AU-oversight of state compliance, enhance domestication of Charter obligations in national law, protect or restore direct access under Article 34(6) of the Protocol, the need for a replacement of claw-back clauses with non-derogatory clauses, and the need to strengthen the reporting system.

Keywords: enforcement, human rights, and Banjul charter

1. Introduction

Ancient people did not have the same modern-day conception of universal human rights[1]. The true forerunner of human rights discourse was the concept of natural rights which appeared as part of the medieval natural tradition that became prominent rights, the European Enlightenment. From this foundation, the modern human rights arguments emerged over the latter half of the 20th century[2]. The 17th century English philosopher John Locke discussed natural rights in his work, identifying them as being "life, liberty, and estate (property)", and argued that such fundamental rights could be surrendered in the social contract. By 1689 in Britain, the English Bill of Rights and the Scottish claim of Rights each made illegal a range of oppressive governmental actions.[3]

The foundations of the International Committee of the Red Cross, the 1846 Lieber Code and the first of the

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[1] Freeman, M., (2002). *Human rights: An interdisciplinary approach*. Harvard University Press, pp. 15–17.

[2] Moyn, S., (2010). *The last utopia: Human rights in history*. Harvard University Press, p. 8.

[3] "Britain unwritten constitution "*British library*, *Retrieved 27* November 2015." The key landmark is the Bill of Rights (1689), which established the supremacy of parliament over the crown …providing for the regular meeting of parliament, free elections to the commons, free speech in parliamentary debates, and some basic human rights, most famously freedom from cruel or unusual punishment".

Geneva conventions in 1864 laid the foundations of International humanitarian law, to be further developed by the two World Wars. Between the First and the Second World War, the League of Nations was established in 1919 at the negotiations over the Treaty of Versailles following the end of the First World War. The League's goals included disarmament, preventing war through collective security, settling disputes between countries through negotiations, diplomacy and improving global welfare. Enshrined in the Charter was a mandate to promote many of the rights which were later included in the Universal Declaration of Human Rights (UDHR) 1948. The League of Nations had the mandate to support many of the former colonies of the Western European colonial powers during their transition from colony to independent states. Established as an agency of the League of Nations, and now part of the United Nations, the International Labor Organization also has a mandate to promote and safeguard certain of the rights later included in the UDHR.

After the Second World War, the UN brought human rights firmly into the sphere and realm of international law in its own constituent document, the UN charter,[1] in 1945[2]. The purpose of the UN included in Article 1(3), the protection and encouragement of human rights and fundamental freedoms. Under Article 55 and 56, member states are committed to 'joint and separate action' to create 'conditions of stability and well-being' across the world, including the promotion of 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'. Thus, from 1945, it was clear that human rights could no longer be characterized as a domestic issue, hidden by the veil of state sovereignty. Since 1945, the UN has been instrumental in the process of standard setting, that is, creating treaties and other documents that set out universally recognized human rights. Most famously of course, it adopted the Universal Declaration on Human Rights ('UDHR') in December 10th 1948[3], following up (through years later) with a series of treaties protecting various human rights.

The Universal Declaration on Human Rights (UDHR) is a non-binding declaration adopted by the United Nations General Assembly[4] in 1948, partly in response to the barbarism of the Second World War. The Declaration was the first international legal effort to limit the behavior of states and press upon them the duties of their citizens following the model of right duty duality. Although the UDHR is a non-binding resolution, it is now considered to be a central component of international customary law which may be invoked under appropriate circumstances by state judiciaries and other judiciaries. Human rights treaties drastically came into the scene. In 1966, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the nations, between them making the rights contained in the UDHR binding on all states.[5] However, they came into force only in 1976, when they were ratified by a sufficient number of states (despite achieving the ICCPR, a covenant including no economic or social rights, the US only ratified the ICCPR in 1992).[6] The ICESCR commits 155 state parties to work towards the granting of economic, social, and cultural rights (ESCR) to individuals. Since then, numerous other treaties (pieces of legislation) have been offered at the international level. They are generally known as human rights instruments. Some of the significant are: Convention on the Prevention and Punishment of the Crime of Genocide (adopted 1948, entry into force: 1951), Convention on the Elimination of All Forms of Racial Discrimination (CERD) adopted in 1966, entry into force: 1969, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) entry into force: 1981, United Nations Convention Against Torture (CAT) adopted 1984, entry into force: 1984, Convention on the Right of the Child (CRC) adopted in 1989, entry into force: 1989, International Convention on the Protection of the Right of All migrant workers and Members of their families (ICRMW) adopted in 1990, Rome Statute of the International Criminal Court (ICC) entry into force: 2002.

Another major development in the 20th century regarding human rights is the evolution of regional human rights. Regional human rights consist principally of the African, the European, Arab region, South East Asia, and the Inter-American human rights system with key human rights instruments like: African Charter on Human and Peoples' Rights; the European Convention on Human Rights, Arab Charter on Human Rights, ASEAN Human Rights Declaration, and American Convention on Human Rights[7].

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[1] Charter of the United Nations, UNTS, 24 October 1945 ('UN charter').

[2] Human rights were largely unprotected by international law prior to the second world war, with exception arising for example in the context of international humanitarian law and the rights of aliens.

[3] (10) GA Res 217(111) of 10 December 1948, UN Doc A/810 at 71 (1948) ('UDHR').

[4] (A/Res/217, 10 December 1948 at Palais de Chaillot, Paris).

[5] This does not include the Vatican, which also recognized as an independent state, is not a member of the UN.

[6] *Ibid.*

[7] *Ibid.*

2. Conceptual Clarifications

This section shall address key concepts related to this study. Each of the concepts shall be examined in seriatim.

2.1 Human Rights

The Black's law dictionary defines human rights as "The freedoms, immunities, and benefits that, according to modern values (esp. at an international level), all human beings should be able to claim as a matter right in the society in which they live."[1]

According to Tijani, "Human rights are rights that are to be inherent in human beings solely on account of their being human."[2]

To Amartya Sen, "the notion of human right builds on our shared humanity. These rights are not derived from the citizenship of any nation, but are presumed to be claimed or entitlements of every human being. They differ, therefore, from constitutionally created rights guaranteed for specific people."[3]

Jack Donelly, "human rights are, literally, the rights we have simply because we are human. They are equal rights: one either is or is not a human being, and thus has exactly the same human rights as every other human being. They are inalienable rights: one cannot stop being a human being, and therefore cannot lose one's human rights, no matter how horribly one is treated. Human rights are also universal rights, held by every human being, everywhere."[4]

2.2 Enforcement

According to the Black's dictionary, enforcement is defined as, "the act or process of compelling compliance with a law, mandate, command, decree, or agreement."[5]

Enforcement refers to the act of ensuring compliance with laws, rules, regulations, or court orders. It involves putting laws or rules into effect and taking actions to prevent or respond to non-compliance. Enforcement can be carried out by various authorities, such as law enforcement agencies, regulatory bodies, or courts.

3. Methodology

This research adopts a qualitative research methodology which is doctrinal in nature. Doctrinal research method is research into the law and legal concepts. Sources of data for the research include both primary and secondary sources. The primary source of materials are case law and treaties such as the UN charter, and principally from the African Charter on Human and Peoples' Rights and the 1998 Protocol to the Charter. The secondary source of materials include: law text books, encyclopedia, journals, newspapers, articles, information from the internet and reports from both local and international news sources. Relevant literatures were also consulted from libraries appropriate in enabling and fine-tuning the researcher's study.

The reason why the researcher has chosen qualitative research methodology[6] is because it enables the researcher to provide rigorous exposition, analysis, evaluation of legal policies in the enforcement of human rights under the 1981 African Charter on Human and Peoples' Rights. A qualitative research methodology has been used because qualitative and doctrinal research are the most appropriate in legal research where the goal of the work is to analyze cases and legal text and to this study, so as to have an in-depth insight on the human rights enforcement in the both systems.

4. Theoretical Framework

This study is underpinned by two theories, the triple-pronged theory and the natural law theory.

4.1 The Triple Pronged Theory

This is a broad international human rights concept that analysis human rights from a tripartite perspective. For all human rights personnel, there is need to emphasize here that this is a long established concept or principle of international human rights law which apply to all states. Scholars have asserted the triple pronged nature of

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[1] *Black's Law Dictionary*, 8th edition, p. 2167.

[2] Legal Research & Resource Development, (1999). *Human rights, democracy and development in Nigeria* (Vol. 1). Lagos, Nigeria: Legal Research & Resource Development, p. 68.

[3] Amartya Asen, (2010). *The Idea of Justice*. Penguin UK: Harvard University Press, p. 179.

[4] Donnelly, J., (n.d.). Human rights and human welfare. *Online Journal Academic Literature Review, 5*, 58–72, p. 65.

[5] *Black's Law Dictionary*, 9th Edition, 2009.

[6] The analytical characteristics of qualitative research methodology involves: thematic analysis (identifies patterns and themes); interpretative (the researcher interprets data in context); iterative (analysis refines and revises throughout the study); and coding and categorization (organizes data into meaningful units).

states' human rights obligations: making the duties to respect, protect and fulfill human rights.[1]

With the obligation to respect, this level of obligation requires the state to refrain from any measure that may deprive individuals of the enjoyment of their right by their own efforts.

With the obligation to protect, this level of obligation requires the state to prevent violations of human rights by third parties. The obligation to protect is normally taken to be a central function of states, which have to prevent irreparable harm from being inflicted upon members of the society. This requires states:

- to prevent violations of rights by any individual or non-state actor;
- to avoid and eliminate incentives to violates rights by third parties; and
- to provide access to legal remedies when violations have occurred in order to prevent further deprivations.

With the obligation to fulfill, this level of obligation requires the state to take measures to ensure, for persons within its jurisdiction, opportunities to obtain satisfaction of the basic needs as recognized in human rights instruments, which cannot be secured by personal efforts.

Although this is the key state obligation in relation to economic, social and cultural rights, the duty to fulfill also arise in respect to civil and political rights. It is clear that enforcing, for instance, the prohibition of torture (which requires, for example, the police training and preventive measures), the right to a fair trial (requires investments in courts and judges), the right to legal assistance, entails considerable cost.

The above analysis demonstrates that there is little difference in the nature of state obligations in regards to different human rights. The three levels of obligations encompass both civil and political rights and economic, social and cultural rights, blurring the perceived distinction between them.[2] This tripartite analysis was originally developed by Henry Shue,[3] and was affirmed by the Maastricht Guidelines on the violation of Economic, social and cultural rights[4] in 1997 as representing the contemporary status of international law. According to the Maastricht Guidelines, a breach by a state of any element of the tripartite duties will be violation of that state's obligations under international human rights law.

This theory is linked to this work because it calls on states to enforce human rights which they often tend to violate leading to court actions before the various regional courts. The study therefore resonates with this theory and adds impetus to its fulfillment by states and non-state actors alike.

4.2 The Natural Law Theory

There are two "natural law" theories about two things: a natural law theory of morality, or what's right and wrong, and a natural law theory of positive law, or what is legal and illegal.

Natural law theory of morality summarily posits that the good for us human beings is happiness, the living of a flourishing life. Happiness or flourishing consists in the fulfillment of our distinctive nature, what we "by nature" do best. Secondly, even things which are not man-made (e.g. plants, rocks, planets, and people) have purposes or functions, and the "good" for anything is the realization of its purpose or function. And finally, natural law is the set of truths about morality and justice; they are rules that we must follow in order to lead a good or flourishing life. We can know what these principles are by means of unaided human reason. [The natural law theory of morality rejects ethical subjectivism ("right and wrong are all a matter of opinion") and affirms ethical objectivism ("some moral opinions are more valid, reasonable, or likely to be true than others")]. Immoral acts violate natural law. Hence, immoral behavior is "unnatural" (in the sense of "contrary to our function," not "nowhere to be found in the natural world"), whereas virtuous behavior is "natural". For example, lying is unnatural, Aquinas holds, because the function of speech is to communicate to others what is in our minds. When we use words to mislead others, we are using them contrary to their proper function.

Natural law theory of law summarily posits that legal systems have a function-to secure justice. Grossly unjust

[1] McBeth, A., (2006). Breaching the vacuum: A consolation of the role of international human rights law in the operatives of the International Financial Institutions. *The International Journal of Human Rights, 10*, p. 389.

[2] Available online at: www.humanrights.is>definitions-a... (last visited on 21/02/20)

[3] Henry Shue, *Basic Rights subsistence, Affluence and US Foreign Policy,* (Princeton: Princeton University press, 1980), p. 80. Shue developed the concept of the tripartite obligations while the respect, protect and fulfill technology was first used by Absjorn Eide as special rapporteur on the right to food for the committee on Economic, Social and Cultural Rights in his report. *The right to food. UN document no E/CN.4/sub.2/1987/23,7 July 1987.*

[4] Maastricht Guidelines, (1998). The Maastricht Guidelines on the violation of economic, social and cultural rights. *Human Rights Quarterly, 20*, p. 691.

laws (e.g., "white people may own Black people as slaves", "women may not own property or vote") are not really laws at all, but a perversion of law or mere violence. As St. Augustine put *it lex injustia non est lex*. Aquinas's way of stating this point: positive law has as its purpose the common good of the community. Any positive law which conflicts/is inconsistent with either natural or divine law is not really law at all. Hence, not only is there no moral obligation to obey it, but there is no legal obligation to obey it either. Augustine, Aquinas and Martin Luther king are supporters of this view[1].

The natural law theory, notably with natural law theory of law, is connected to this study in that it accepts that the existence of legal systems for example as in this study being the ECHR and ACHPR, have a function to secure justice and those provisions provided in such instrument needs to be respected thus falling in line with the enforcement human rights with regards to the fact that it does not conflicts with either natural or divine law as the case may be.

5. African Charter on Human and Peoples' Rights: An Overview

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. It emerged under the aegis of the Organization of African Unity (since replaced by the African Union) which, at its 1979 Assembly of Heads of States and Government, adopted a resolution calling for the creation of a committee of experts to draft a continent-wide human rights instrument, similar to those that already existed in Europe (European Convention on Human Rights) and the Americas (American Convention on Human Rights). This committee was duly set up and it produced a draft that was unanimously approved at the OAU's 18th Assembly held in June 1981, in Nairobi, Kenya. Pursuant to its Article 63 (where it was to "come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority" of the OAU's member states), the African Charter on Human and Peoples' Rights came into force on 21 October 1986 in honor of which 21 October was declared "African Human Rights Day"[2]. The Charter followed the footsteps of the European and Inter-American systems by creating a regional human rights system for Africa. The Charter shares many features with other regional instruments, has notable unique characteristics concerning the norms it recognizes and also its supervisory mechanism.[3] The preamble commits to the elimination of Zionism, which it compares with colonialism and apartheid, caused South Africa to qualify its 1996 accession with the reservation that the charter fall in line with the UN's resolutions "regarding the characterization of Zionism".[4] As of 2019, 53 states have ratified the charter.

A Protocol to the Charter was subsequently adopted in 1998 whereby an African Court on Human and Peoples' Rights was created.[5] The Protocol came into force on 25th January 2004.

6. Institutions of the African Charter on Human and Peoples' Rights

Through the African Charter on Human and Peoples' Rights as the main human rights treaty in Africa, it has been acknowledged that a framework is needed in order to ensure that human rights are upheld. Various organs or institutions of the African Charter on Human and Peoples' Rights are responsible for the protection and strict compliance of human rights in the Africa amongst which we have: the African Court on Human and Peoples' Rights and African Commission on Human and Peoples' Rights.

6.1 The African Court of Human and Peoples' Rights

The African Court of Human and Peoples' Rights is a continental court established by African countries to ensure protection of human and peoples' rights in Africa. It complements and reinforces the functions of the African Commission on Human and Peoples' Rights. The court was established by virtue of Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights (the protocol), which was adopted by member states of the then Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998. The Protocol into came into force on 25 January 2004 after it was ratified by more than 15 countries.

The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights (the Charter), the protocol and any other relevant human rights instrument ratified by the states concerned. Specifically, the Court has two types of

[1] *Ibid.*

[2] *Ibid.*

[3] Heyns, C., (2005). *The essentials of human rights*. Pretoria: Pretoria University Press, p. 25.

[4] *Ibid.*

[5] Article 1 of the Protocol to the African Charter on Human and Peoples' Right 1998.

jurisdiction: contentious and advisory.

The Court is composed of eleven Judges, nationals of member states of the African Union. The first Judges of the court were elected in January 2006, in Khartoum, Sudan. They were sworn in before the Assembly of Heads of State and Government of the African Union on 2 July 2006, in Banjul, the Gambia. The Judges of the Court are elected, after nomination by their respective states, in their individual capacities from amongst African jurists of proven integrity and of recognized practical, judicial or academic competence and experience in the field of human rights. The judges are elected for a six-year or four-year term renewable once. The Judges of the court elect a president and vice-president of the court amongst themselves who serve a two-year term. They can be re-elected only once. The president of the court resides and works on a full-time basis at the seat of the Court, while the other ten judges work on a part-time basis. In the accomplishment of his duties, the President is assisted by a Registrar who performs registry, managerial and administrative functions of the court.

The court officially started its operations in Addis Ababa, Ethiopia in November 2006. In August 2007, it moved its seat to Arusha, the United Republic of Tanzania, where the government has provided it with temporary premises pending the construction of a permanent structure. Between 2006 and 2008, the court dealt principally with operational and administrative issues, including the development of the structure of the Court's registry, preparation of its budget and drafting of its Interim Rules of Procedure. In 2008, during the court's Ninth Ordinary Session, judges of the court provisionally adopted the Interim Rules of the court pending consultation with the African Commission on Human and Peoples' Rights, based in Banjul, Gambia in order to harmonize their rules to achieve the purpose of the provisions of the Protocol establishing the court, which requires that the two institutions must harmonize their respective Rules so as to achieve the intended complementarity between the African Court on Human and Peoples' Rights and the African Commission on Human and Peoples' Rights. This harmonization was completed in April 2010, and the court adopted its final Rules of Court. According to Article 5 of the Protocol and Rule 33, the court may receive complaints/ or applications submitted to it either by the African Commission of Human and Peoples' Rights or state parties to the Protocol or African Intergovernmental Organizations. Non-Governmental Organizations with observer status before the African Commission on Human and Peoples' Rights and individuals from states which have made a Declaration accepting the jurisdiction of the court can institute cases directly before the court. As of January 2019, only nine countries have made such declarations.

The court delivered its first judgment in 2009 following an application dated 11th August 2008 in *MIchelot Yogogombaye V. The Republic of Senegal*. As at January 2016, the court received 74 applications and finalized 25 cases. Currently the court has five pending cases on its table to examine including requests for advisory opinion.[1]

6.2 African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights was established on the basis of Article 30 of the African Charter on Human and Peoples' Rights[2] with its mandate according Article 45 of the African Charter on Human and Peoples' Rights[3] being to: promote Human and Peoples' Rights[4] and in particular-to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments[5], to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which Africa Government may base their legislation[6], to co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights[7]; to ensure the protection of Human and Peoples' Rights under conditions laid down by the present charter[8]; to interpret all the provisions of the present charter at the request of a state party, an

[1] *Ibid.*

[2] Article 30 of the African Charter on Human and Peoples' Right: "An African Commission on Human and Peoples' Rights, hereinafter called 'the commission', shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa."

[3] Article 45 of the African Charter on Human and Peoples' Rights.

[4] Article 45(1)(a) of the Banjul Charter 1981.

[5] Article 45(1) of the Banjul Charter 1981.

[6] Article 45(1)(b) of the Banjul Charter 1981.

[7] Article 45(1)(c) of the Banjul Charter 1981.

[8] Article 45(2) of the Banjul Charter 1981.

institution of the OAU or an African organization recognized by the OAU[1]; to perform other tasks entrusted to it by the Assembly of Heads of States and Government[2].

The commission came into existence with the coming into force on 21 October 1986, of the African Charter (adopted by the OAU on 27 June 1981). Although its authority rests on its own treaty, the African Charter, the Commission reports to the Assembly of Heads of State and Government of the African Union (formerly the Organization of African Unity). The Commission meets twice a year: usually in March or April and in October or November. One of these meetings is usually in Banjul, where the Commission's secretariat is located; the other may be in any African state.

The Commission has several special mechanisms in the form of special rapporteurs, working groups and committees that investigate and report on specific human rights issues, such as freedom of expression, women's rights, indigenous population and torture. Each mechanism prepares and presents a report on its activities to the Commission at every ordinary session. The African Commission on Human Rights relies on a network of non-governmental organizations (NGOs) that are required to submit reports to the commission every two years. The commission has granted 514 NGOs with observer status.[3] The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.[4]

7. The Procedure and Practice of the Enforcement of Human Rights by the African Charter on Human Peoples' Rights

The regional African human rights system is based on the African Charter on Human and Peoples' Rights (the African or Banjul charter).[5] Several reasons have been advanced why only a Commission, and not a Court, was provided for the in the African Charter in 1981 as the body responsible for monitoring compliance of state parties with the Charter. On the other hand, there is perhaps the more idealistic explanation that the traditional way of solving disputes in Africa is through mediation and conciliation, not through the adversarial, "win to lose" mechanism of a court. On the other hand, there is the view that the member states of the OAU were jealous of their newly founded sovereignty. The notion of human rights court be taken up by the OAU 13years after the adoption of the African Charter when in 1994, the Assembly adopted a resolution requesting the Secretary General of the OAU to convene a Meeting of Experts to consider the establishment of an African court on Human and Peoples' Rights. Ostensibly, the concept of human rights was accepted in Africa in the early 1990s for the decision to be taken to give more "teeth" to the African human rights system, in the form of a court. The Protocol on the African court on Human and Peoples' Rights was adopted in Addis Ababa, Ethiopia in 1998 and the Protocol entered into force in January 2004 and by February 2006 had received 22 ratifications. The African Human Rights Court came in to complement the protective mandate of the Commission under charter.[6]

7.1 Complaint Procedure

Both states and individuals may bring complaints to the African Commission alleging violations of the African Charter by state parties. The individual complaint procedure is used much more frequently than the inter-state mechanism of the African Charter, although not as one would have expected on a continent with the kind of human rights problems that Africa has. This could to some extent be attributed to a lack of awareness about the system but even where there is awareness about the system, but where there is awareness, there is often not much faith that the system can make a difference. According to a recent study on the compliance of states with the findings of the commission there has been full compliance in 14 cases, seven cases of situational compliance (through change of government) and unclear compliance in four cases.[7] Viljoen and Louw[8] finds that: "In the analysis of cases of full and clear non-compliance, it appears that the mostly important factors are political, rather than legal. The nature of the case, the elaborateness of reasoning or the type of remedy required seems to have little bearing on the likelihood of adherence by states. The only factor of relevance that relates to the treaty

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[1] Article 45(3) of the Banjul Charter 1981.

[2] Article 45(4) of the Banjul Charter 1981.

[3] *Ibid.*

[4] Article 50 of the Banjul Charter 1981.

[5] *Ibid.*

[6] Heyns, C., & Killander, M., (2010). *The African human rights system*. Pretoria: Pretoria University Press, pp. 23–25.

[7] *Ibid.*

[8] Viljoen, F., & Louw, L., (2007). An assessment of state compliance with the recommendations issued by the African Commission on Human and Peoples' Rights between 1993 and 2003. Cambridge: Cambridge University Press, p. 34.

body itself is follow-up activities undertaken by the Commission". As with other complaints systems, the African Charter poses certain admissibility criteria before the Commission may entertain complaints. These criteria include the requirement of exhausting local remedies as provided for in Article 50 of the African Charter on Human and Peoples' Rights. The Commission may be approached only once the matter has been pursued in the highest country in question, without success, or a reasonable prospect of success.[1]

7.2 Individual Complaint Procedure

Individual complaint procedure is one of the ways by which parties can make complaints of human rights violation. Under this procedure, it is an individual person who makes the complaint against the state.[2] Individual complaint procedure is provided for by a number of international and regional human rights instruments and it has come to be seen as a workable procedure compared to the others that are available. Where states have failed to make complaints of human violation against other member states in a treaty, convention or charter and further due to failure by states to produce state reports or late reporting, individual complaints becomes or tends to be a real and a more workable procedure for the protection of human rights. This procedure theoretically may seem to be a real workable procedure and a proper one for the protection of human rights but however, much of its success depends solely on the implementation provisions.[3]

The Banjul Charter under Article 55[4] mandates the Commission to receive communications other than those of the states. This broad mandate has developed into the practice of accepting communications from individuals and Non-Governmental Organizations (NGOs).[5] In handling individual complaints, the African Commission first tries to reach a friendly settlement. This practice flowed Article 52[6] of the Banjul Charter dealing with inter-state complaints and declaring that in an inter-state mechanism, a friendly settlement should precede adjudication of the same. The African Commission proceeds to checking the communication for admissibility and decides the merits of the case once the friendly settlement attempt fails.[7] Article 56[8] of the Banjul Charter enumerates those admissibility requirements. When dealing with the mandate of the case, the mandate of the African Commission is very weak.[9] The ultimate power of the African Commission is limited to making a recommendation to the Assembly of the Heads of States and Government and it does not have any credible enforcement mechanism.[10] There are other issues that hamper the use of the individual complaints, one of which is the reservation that states have put or in other cases, the states have not become party to the protocol that allows individual complaints to be brought against it.[11] A human rights court is primarily a forum for protecting citizens against the state and other state agencies.[12]

7.3 Inter-State Complaint Procedure

The African system recognizes an inter-state complaint mechanism.[13] Under the Banjul Charter, the inter-state complaint mechanism, is a mandatory procedure. Once a state becomes a state party to the Banjul charter, it is bound by the inter-state complaint mechanism. The Banjul charter provides two different ways of making an

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[1] *Ibid.*

[2] Shelton, D., (2008). *Regional protection of human rights*. Oxford: Oxford University Press, p. 19.

[3] *Ibid.*

[4] Article 55 of the Banjul Charter.

[5] *Ibid.*

[6] Article 55 of the Banjul Charter.

[7] Odinkalu, C. A., & Christensen, C., (1998). The African Commission on Human and Peoples' Rights: The development of its non-state communication procedures. Lagos: Lagos University Press, pp. 235–249.

[8] Article 56 of the Banjul Charter gives the following as admissibility grounds: disclosure of author's identity, compatibility of the communication with the provisions of the charter, use if insulting language against the respondent state, its institution or the African Union, exclusive dependence (reliance)on media for the alleged violation, exhaustion of domestic remedies, submission of the communication with a reasonable time after final decision of the domestic organs, and cases not dealt with and settled before.

[9] Ankumah, E., (1996). *The African Commission on Human and Peoples' Rights: Practice and procedures*. Maastricht: Kluwer Law International Press, p. 74.

[10] Viljoen, F., (2004). *A human rights court for Africa and Africans*. Cambridge: Cambridge University Press, p. 15.

[11] Mugwaya, G. W., (2003). *Human rights in Africa: Enhancing human rights through the African regional human rights system*. Uganda: Transnational Publishers, p. 164.

[12] Mutua, M., (1999). The African Human Rights Court: A two-legged stool. *Human Rights Quarterly, 21*(2), p. 336.

[13] *Ibid.*

inter-state application. The first way gives the state the option of directly communicating with the state alleged to have violated rights before going to the African Commission with the complaint.[1] Under this system, a state has a three-month period during which it must seek a diplomatic solution to the problem. The second option is that a state can bring the case directly to the African Commission without the need to exhaust the first option.[2] Once a member state decides to bring an inter-state complaint against another member state, rules begin to apply and states must meet certain criteria and one of such criteria relates to the exhaustion of domestic remedies, although exhaustion of domestic remedies does not apply in cases that involve a vast violation of human rights, this notwithstanding, is an exception to the first option as provided in Article 47 and 48 of the Banjul charter. To this effect, Article 50 of the Banjul Charter makes provision for both the first option and the exception.[3]

There has been a challenge with the extension of the Banjul Charter to the domestic courts as most individual states have to domesticate the charter in order to apply in the local Courts. Other individual states, mostly from the Franco-phone states have the reciprocity principle that prevents the Charter from being applicable until all the Anglo-phone states have made it applicable in domestic law.[4] Given the widespread violation of rights and abuse of power in the region, the inter-state complaint mechanism should be used more frequently.

7.4 Procedure for Seizing the Court

While the individual complaints procedure before the commission is straightforward, legal representation is becoming a necessity as the jurisprudence of the commission is also becoming more and more sophisticated. An international human rights lawyer is likely to be better equipped to take a case to the commission. Technical issues are likely to arise when it comes to the admissibility test under Article 56 of the charter, especially where local remedies have not been exhausted, and the procedure has been prolonged or where no effective local remedies are available. A lawyer is also better positioned in the drafting of heads of arguments which has become the practice for human rights NGOs submitting communications before the commission.[5] Complainants wishing to represent themselves in the proceedings may make use of the Guidelines for the submission of communications (Submission Guidelines) developed by the commission to assist complainants bringing communications before it.[6]

According to the Submission Guidelines, communication should include the following: the complainant's personal details; the government accused of the violation; the facts constituting the violation; the urgency of the case; the provision of the charter alleged to have been violated; names and titles of government authorities who committed the alleged violation; witnesses to the violation; domestic legal remedies not yet pursued and the reasons why they have not been pursued; and other international for a which have considered the same complaint.[7]

Bringing communications before the Commission differs from litigating before a national court. On the one hand, litigating at the national level involves the determination by a domestic court or tribunal of whether or not the national law in the form of legislation or the constitution has been contravened. On the other hand, complaints to the commission fall under international law. It is important to note that international law not only governs relations between states, but it also protects human rights, thereby according individual human beings independent status and standing before international bodies such as the commission. Communications before the commission must be limited to violations of international human rights standards. The charter is the yardstick for testing whether or not there has been a violation of an international standard within the African human rights system. The Submission Guidelines assist complainants in distinguishing the two main categories of the rights covered in the charter, namely individual rights and peoples' rights. It also highlights the specific articles of these in the Charter.[8] Adhering to these guidelines assists the legal officers of the Secretariat of the commission (the

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[1] Banjul Charter Article 47 and 48.

[2] Banjul Charter Article 49.

[3] Article 50 of the Banjul Charter provides thus: "The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged."

[4] Orlin, T. S., (1990). Human rights development in Africa: The Banjul Conference of the African Association of Human Rights. p. 12.

[5] Gumedze, S., (2003). Bringing communications before the African Commission on Human and Peoples' Rights. *African Human Rights Law Journal*, pp. 122–124.

[6] See "Guidelines on the submission of communications", Information Sheet No 2 of the African Commission on Human and Peoples' Rights. These Guidelines may also be used by NGOs assisting victims of human rights violations.

[7] *Ibid.*

[8] *Ibid.*

secretariat) to process the communications to be considered by the commission without delay. The commission developed extensive Processing Guidelines for the processing of communications by the Secretariat. The legal officers of the Secretariat use these Processing Guidelines, which provide for the handling of communications by the Secretariat from their reception up to the drafting of decisions. It would therefore be advisable for complaints to acquaint themselves with these Processing Guidelines to better understand the complaints procedure before the commission.

After having been listed and transferred to the commissions, the commissioner concerned, otherwise known as the rapporteur, is required to make a recommendation on whether or not the commission may be seized of a communication. This process may be referred to as the seizure procedure. Article 55(2) of the charter provides that a communication may only be considered if a simple majority of the members of the Commission so decide. This Article is complemented by rule 102(1) of the Rules of Procedure, which provides that the Secretariat shall transmit to the commission communications submitted to it for consideration by the commission in accordance with the charter. The seizure procedure takes place in a closed session. This is in accordance with Rule 106 of the Rules of Procedure, which provides that the examination of communications by the Commission or its subsidiary bodies should be conducted in private. During the seizure procedure, no oral arguments are required from the parties to the communications.[1]

In order for the commission to be seized with a communication, the communication must allege a prima facie violation of the provisions of the charter. After a communication has been approved seizure, the complainant and the respondent state are duly informed. It must be noted that the allegation of a prima facie violation of the provisions of the Charter must be in respect of a member state of the African Union that has ratified or acceded to the charter.[2] African Union itself cannot be a respondent in any proceedings before the commission. The normal procedure is that the seizure procedure and the admissibility procedure are undertaken during separate sessions of the commission. These sessions need not to be successive. In communication 97/93*, Modise v. Botswana* (2) the commission decided to be seized of the communication at its 13th session and declared it admissible at its 17th session. However, in communication 204/97, Mouvement Burkinabe des Droits de l'Homme et des Peuples v. Burkina Faso, the commission was seized of the communication at its 23rd session and declared it admissible at its 24th session.[3] It is therefore not surprising that the Commission lists the seizure procedure separately from the admissibility procedure. After the seizure procedure and during the intersession, the Secretariat normally sends *a note verbale* to the respondent state informing it of the Commission's decision on seizure, calling for its reaction to the admissibility of the communication. Similar letters are also sent to complainants or their representatives. This procedure conforms to Article 57[4] of the Charter and Rule 112 of the Rules of Procedure, which provide that prior to any substantive consideration, all communications shall be brought to the knowledge of the of the state concerned by the chairperson of the commission. Normally, this exercise is undertaken by the Secretariat of the Commission. From the litigation practice before the commission, it may be deduced that seizure procedure is not a substantive consideration within the meaning of Article 57 of the Charter and Rule 112 of the Rules of Procedure. It is only after the seizure procedure that the attention of the respondent state is drawn to the communication before the commission.

8. Effectiveness of the Enforcement of Human Rights Under the African Charter on Human and Peoples' Rights

The enforcement of the African Charter on Human and Peoples' Rights (Banjul Charter) constitutes a pivotal issue in the jurisprudence of human rights on the continent. The Banjul Charter's enforcement architecture is principally vested in the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, which exercise quasi-judicial and judicial mandates respectively in monitoring state compliance, adjudicating violations, and providing remedies.

8.1 Institutional Framework and Jurisprudence

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[1] *Ibid.*

[2] Communications which have been against non-African Union states which have not been considered by the commission include Communication 20/88, Austrian Committee Against Torture v Morocco, Communication 2/88, Ihebereme v United States of America, Communication 3/88, Centre for the independence of judges and lawyers v Yugoslavia and Communication 38/90, Wesley Parish v Indonesia. Morocco is an African country, but it withdrew from the then Organisation of African Unity (OAU) in 1984 after the OAU had recognized the Sahrawi Arab Democratic Republic (Western Sahara). The withdrawal of Morocco from the OAU was effective from November 1985.

[3] In this communication, the Commission declared the communication admissible despite the fact that both parties expressed desire to settle the dispute amicably and requested the Commission's assistance to that effect.

[4] Article 57 of the Banjul Charter 1981.

The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981, established a pioneering institutional framework for human rights protection in Africa. Central to this framework are the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. The Commission serves a quasi-judicial role, tasked with promoting and protecting human rights through mechanisms such as considering state party's reports, conducting fact-finding missions, and issuing recommendations. The Court, established later, complements the Commission by offering judicial recourse for individuals and NGOs, provided states have made the necessary declarations under Article 34(6)[1] of the Protocol establishing the Court. Together, these institutions aim to ensure the effective implementation of the Charter's provisions across the continent.

Article 34 of the Protocol [Ratification] stipulates that "at the time of ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a State which has not made such a declaration." Article 5(3) states as follows: "The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of this Protocol."

The terms of jurisprudence, both the Commission and the Court have contributed significantly to the development of human rights law in Africa. The Commission has issued numerous decisions, often drawing on international human rights standards, to address violations and provide guidance to states. However, its decisions are generally non-binding, which can limit their impact. The Court, on the other hand, issues binding judgments on states that have accepted its jurisdiction, thereby enhancing the enforceability of its decision. Despite this, challenges remain, including limited access to the Court due to the requirement for states to make the Article 34(6) declaration,[2] and issues related to the implementation of its rulings. Nevertheless, the jurisprudence of both bodies has played a crucial role in advancing human rights norms and standards within the African context.

From a jurisprudential point of view, the African human rights system has also developed a growing body of progressive jurisprudence that has advanced human rights norms globally for example: expansion of justiciable rights-in *SERAC v. Nigeria (2000)*,[3] the African Commission recognized the right to a healthy environment and held Nigeria accountable for oil exploitation in Ogoni land. This case expanded socio-economic and environmental rights globally. Another milestone is about the right to fair and due process. In the *African Commission v. Libya (2011)*[4] case, the African Court ordered Libya to release political prisoners and ensure fair trial rights. Another success as seen in the 2010 case of *Endorois v. Kenya (2010)*,[5] is the recognition of indigenous peoples' rights. The afore-stated case, the Commission affirmed indigenous peoples' rights to land, culture, and development, influencing global indigenous rights jurisprudence. The abolition of death penalty and arbitrary detention as seen in 2004 case of *Interights & Others v. Mauritania (2004)*[6] and later court rulings, the system has emphasized the prohibition of arbitrary detention, torture, and the need for moratoriums on the death penalty. And also, the advancement of gender rights. Through jurisprudence and reliance on the Maputo Protocol (2003), the system has addressed gender-based violence, women's political participation, and reproductive rights. In summary, the institutional framework has ensured the establishment of effective organs (Commission, Court, ACERWC), sub-regional linkages, and civil society participation. The jurisprudence has progressively shaped rights recognition (socio-economic, environmental, indigenous, gender) and provided binding remedies that hold states accountable.

8.2 Compliance Challenges

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[1] Article 34 of the Protocol [Ratification] stipulates that "at the time of ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under Article 5(3) of this Protocol. The Court shall not receive any petition under article 5(3) involving a State which has not made such a declaration." Article 5(3) states as follows: "The Court may entitle relevant Non-Governmental Organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of this Protocol."

[2] *Ibid.*

[3] SERAC and CESR v. Nigeria (Communication No. 155/96, 2001).

[4] African Commission on Human and Peoples' Rights v. Libya, Application No. 004/2011, Judgment of 3rd June 2016, African Court on Human and Peoples' Rights.

[5] Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya, Communication No. 276/2003, African Commission on Human and Peoples' Rights, 2010.

[6] Interights, IHRDA and Association Mauritanianne des Droits de L'Homme v. Mauritania, Communication 242/2001, 262/2002 & 266/2003, African Commission on Human and Peoples' Rights, 36th Ordinary Session, November 2004.

The African human rights system through the African Commission, the African Court, and the Committee of Experts, has produced some landmark decisions, but compliance by states remains one of its greatest challenges. One of the major challenges in this context is lack of binding enforcement powers (Commission). The African Commission on Human and Peoples' Rights only issues recommendations; its decisions are not binding. Many states treat them as advisory opinions, ignoring follow-up. For example, in *SERAC v. Nigeria (2001)*, the Commission ordered environmental clean-up and compensation for Ogoni people, but Nigeria never implemented it.

The second challenge in this context is with the issue of limited jurisdiction and access to the Court. In this regard, only the African Court on Human and Peoples' Rights can issue binding judgments. However, few states have made the Article 34(6) declaration allowing individuals and NGOs direct access to the Court (as of 2025, less than 10). Several states, for example, Rwanda, Tanzania, Benin, Cote d'Ivoire have withdrawn their declaration, weakening access and as a corollary, this severely limits victims' ability to enforce rights.

Political resistance and sovereignty concerns tops as the third major compliance challenge. Many governments see regional judgments as interference in domestic affairs. Kenya, for example, has resisted full implementation of the 2010 Endorois decision and the 2017 Ogiek decision despite repeated calls by the Commission and the Court. Libya on the other hand, ignored orders given in *African Commission v. Libya (2016[1])* to guarantee Saif al-Islam Gaddafi a fair trial.

Weak domestic mechanisms for enforcement. Unlike Europe (ECHR) or the Americas (IACtHR), there is no direct enforcement mechanism at the AU level. Implementation relies on political pressure through: AU Assembly of Heads of State and Government, and state reporting procedures. But these are often undermined by political alliances and solidarity among states.

Retaliation against the system and lack of awareness and resources. Some states retaliate by withdrawing jurisdiction or ignoring judgments. For example, Tanzania withdrew individual access after a series of unfavorable rulings on electoral laws and fair trial rights as a corollary, this creates a culture of selective compliance. On the other hand, many victims, communities, and even national courts are unaware of African human rights decisions. Limited funding for follow-up mechanisms within the African Commission and the Court means monitoring compliance is weak. Socio-political and conflict-related barriers. In countries facing armed conflict, authoritarian rule, or instability (for example, Libya, Sudan, Cameroon…), compliance is even less realistic.

8.3 Legal Force of Decisions

The effectiveness of the African human rights system is closely tied to the legal force of decisions issued by its organs. The African Commission on Human and Peoples' Rights (ACHPR) issues recommendations under Article 55-59 of the African Charter (1981),[2] which are not legally binding but serve as authoritative interpretations of the Charter.[3] Compliance depends largely on political will, and studies shows that it has been minimal.[4]

In contrast, the African Court on Human and Peoples' Rights (AfCHPR) delivers binding judgments under Article 27 and 30 of the Protocol (1998).[5] These judgments carry *res judicata* effect and must be complied with by states.[6]

Similarly, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) issues findings under Articles 45-45 of the Children's Charter (1990).[7] Like the African Commission, these are recommendatory and rely on political pressure for implementation.[8] However, political instability and weak

[1] Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. Kenya, Communication No. 276/2003, African Commission on Human and Peoples' Rights, 2010.

[2] African Charter on Human and Peoples' Rights (1981), Article 1, 45, 55-59.

[3] Murray Richard, *The African Commission on Human and Peoples' Rights and International Law*, (Oxford: Hart Publishing, 2002), p.78

[4] Frans Viljoen *et al*, "State Compliance with the Recommendations of the African Commission on Human and Peoples' Rights, 1994-2004," *American Journal of International Law*, vol. 101, p.12

[5] Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights (1998), Article 27, 29-31.

[6] Ouguergouz, F., (2003). *The African Charter on Human and Peoples' Rights*. The Hague: Martinus Nijhoff, p. 431.

[7] African Charter on the Rights and Welfare of the Child (1990), Articles 44-45.

[8] *Ibid.*

enforcement mechanisms sometimes limit practical compliance, as seen in *African Commission v. Libya (2016)*.[1]

In summary, the system operates under a dual regime: non-binding recommendations from the Commission and ACERWC, and binding judgments from the Court. The effectiveness of the system is therefore constrained by state compliance, political will, and institutional enforcement capacity.

8.4 Access to Justice

Access to justice is a fundamental determinant of the effectiveness of any human rights system. In the African regional framework, it refers to the ability of individuals, communities, and civil society organizations to bring complaints before the African Commission, African Court, or the African Committee of Experts on the Rights and Welfare of the Child, and to obtain remedies for violations of rights guaranteed under the Charter or related instruments.

Under the African Charter on Human and Peoples' Rights (1981), individuals, NGOs, or groups may submit communications alleging violations of the Charter to the African Commission according to article 55.[2] Article 56 makes provision for admissibility criteria for communications, including exhaustion of local unless these are unavailable or ineffective.[3] The Commission may make recommendations, promote amicable settlements, and conduct investigations.[4]

Under the Protocol on the Establishment of the African Court on Human and Peoples' Rights (1998), individuals and NGOs may directly access the Court if the state has made a declaration under article 34(6) accepting individual or NGO access pursuant to article 5(3) of the Protocol.[5] The Court can only hear cases concerning violations of the African Charter or other human rights instruments ratified by the state.[6] Article 27(1) provides the Court with the power to order reparations, compensations, and other remedies, reinforcing access to justice as effective legal redress.

Article 44 of the African Charter on the Rights and Welfare of the Child (1990) provides that, children or their representatives can submit communications alleging violations to the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). Pursuant article 45,[7] the Committee can make recommendations to states, though these are not legally binding, emphasizing political and moral pressure as part of access to justice.

Despite statutory provisions, many victims face practical barriers, including lack of knowledge about the system, geographic distance from courts, language barriers, and lack of resources for litigation.[8] Richard Murray notes that the African Commission's reliance on NGOs and civil society actors is both a strength and limitation: it facilitates submissions but can exclude marginalized individuals lacking organizational support.[9] Ebobrah argues that while the African Court is legally binding, the requirement for states to make declarations under Article 34(6) restricts direct access for many individuals, undermining the principle of universal access to justice.[10]

In summary, access to justice in the African human rights system exists in dual forms: quasi-judicial recommendations (ACHPR and ACERWC) and binding judicial remedies (AfCHPR). Its effectiveness depends on:

a. State willingness to recognize and comply with complaints.
b. Availability of resources and legal representation for victims.
c. Awareness of procedural avenues among communities.

While progress has been made, significant barriers remain for marginalized and vulnerable groups, highlighting

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[1] *Ibid.*

[2] African Charter on Human and Peoples' Rights (1981), Article 55.

[3] African Charter on Human and Peoples' Rights (1981), Article 56.

[4] African Charter on Human and Peoples' Rights (1981), Article 60.

[5] Protocol on the Establishment of the African Court on Human and Peoples' Rights (1998), Article 5(3).

[6] Protocol on the Establishment of the African Court on Human and Peoples' Rights (1998), Article 6.

[7] African Charter on the Rights and Welfare of the Child (1990), Article 45.

[8] *Ibid.*

[9] Murray, R., (2002). *The African Commission on Human and Peoples' Rights and international law*. Oxford: Oxford University Press, p. 95.

[10] Ebobrah, S. T., (2010). Towards a positive application of complementarity in the African human rights system. *African Human Rights Law Journal, 10*, p. 355.

the need for enhanced outreach, state ratification of the Court's Protocol, and capacity-building initiatives.

8.5 Domestic Integration

Domestic integration refers to the extent to which African states incorporate the African Charter into national law, ensuring that rights enshrined in the Charter are justiciable and enforceable in domestic courts. Effective enforcement of human rights depends significantly on how states translate their continental obligations into national legal frameworks.

Article 1 of the African Charter on Human and Peoples' Rights (1981) obligates Member States to "recognize the rights, duties and freedoms enshrined in this Charter and undertake to adopt legislative or other measures to give effect to them."[1] This creates a direct duty for domestic integration. Article 2 of the African Charter on Human and Peoples' Rights (1981) stipulates that "every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind,"[2] reinforcing non-discrimination in domestic enforcement. Article 26 of the African Charter on Human and Peoples' Rights (1981) requires states to guarantee the independence of the courts and judicial remedies, a critical link to effective domestic enforcement.

Integration allows the African Commission's recommendations and the African Court's judgments to be applied directly in domestic courts, making rights practically enforceable. Where integration is weak, victims must rely solely on regional bodies, which, as discussed, face compliance challenges. The doctrine incorporation versus transformation is key. With the doctrine of incorporation, the Charter is directly applicable in domestic courts (for example, Burkina Faso, Benin, Cameroon, and a host of others). The doctrine of transformation on the other hand requires legislative enactment for domestic applicability (example, Nigeria) which may delay enforcement.

Domestic integration makes the Charter more effective where it is properly embedded in national constitutions and legislation. However, its effectiveness remains uneven across Africa, as implementation depends on: the monist or dualist orientation of the state, the independence and capacity of national judiciaries, and the political will of governments to enforce regional norms. Thus, while integration has improved access to remedies in some states, effectiveness remains inconsistent, limiting the overall enforcement of human rights under the African Charter.

8.6 Normative and Jurisprudential Strength

Normative strength refers to the legal framework and standard established in the African Charter on Human and Peoples' Rights (Banjul Charter) and related protocols. The Charter is celebrated for its comprehensiveness, recognizing not only civil and political rights but also socio-economic, cultural, and collective rights (example peoples' rights and duties). This normative innovation sets it apart from other regional systems.[3]

However, its effectiveness is sometimes weakened by broad and vague provisions that allow states wide discretion. For instance, rights are often limited "within the law," which permits restrictive domestic legislation. Normative strength is also undermined by the lack of binding supremacy of the Charter in many domestic systems, since incorporation depends on national constitutions and judicial willingness.

9. Findings

The finding in this study reveals that regardless of the marginal success in the enforcement human rights under the Banjul Charter by key enforcement institutions like the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, more effort is needed as most states have been reluctant and lukewarm in complying with the provisions of the Charter. And as a corollary, it is incumbent to strengthen AU-oversight of state compliance, enhance domestication of Charter obligations in national law, protect or restore direct access under Article 34(6) of the Protocol, the need for a replacement of claw-back clauses with non-derogatory clauses, and the need to strengthen the reporting system.

10. Conclusion

This research paper makes a review of the enforcement of human rights under the African Charter on Human and Peoples' Rights. The finding of the study shows that regardless of the marginal success in the enforcement human rights under the Banjul Charter by key enforcement institutions like the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights, more effort is needed as most states have been reluctant and lukewarm in complying with the provisions of the Charter. And as a corollary, it is incumbent to strengthen AU-oversight of state compliance, enhance domestication of Charter obligations in

[1] Article 1 of the African Charter on Human and Peoples' 1981.

[2] Article 2 of the African Charter on Human and Peoples' 1981.

[3] *Ibid.*

national law, protect or restore direct access under Article 34(6) of the Protocol, the need for a replacement of claw-back clauses with non-derogatory clauses, and the need to strengthen the reporting system.

Based on implications however, the findings of this study can guide the African Charter Commission on Human Rights, the African Court on Human and Peoples' Rights, and the African Union in general to ensure proper enforcement of human rights and to put in measures geared at persuading states to comply unequivocally to the provisions of the Banjul Charter. Based on some of the challenges pointed out in this study, there is a cogent need to put in punitive measures in case of non-compliance, reinforcement of the reporting system, the establishment of walking and feasible relationship between the Commission and the Court as key enforcement institutions, and a need direct access under Article 34(6) of the Protocol as aforementioned.

In examining and analyzing the enforcement of human rights under the African Charter on Human and Peoples' Rights, there were equally some challenges encountered in accessing relevant materials for the meticulous development of this research. There were, however, challenges in accessing some online materials like e-books, journal articles, recent edition(s) of the Black's Law dictionary and host of others.

However, these limitations or challenges did not affect the overall quality of the work because a good number of relevant textbooks were purchased and used, open access journals made available a good number of useful materials and also, online text books assisted a lot in the realization of this work.

11. Recommendations

A plethora of recommendations have advanced which are geared at enhancing the enforcement of human rights under the African Charter on Human and Peoples' Rights (Banjul Charter) 1981. Each of these recommendations shall be examined respectively.

11.1 Strengthen AU-Level Political Oversight of State Compliance

Strengthening AU-level political oversight of state compliance means enhancing the African Union's ability to monitor, evaluate, and enforce adherence to treaties, norms, and decisions that member states have agreed upon. Presently, the AU often struggles with weak compliance mechanism, largely due to state sovereignty concerns, limited enforcement tools, political will deficits. Strengthening oversight could involve: empowering AU organs (to grant the African Commission and the African Court more authority to monitor compliance and to require states to report regularly on implementation), and to strengthen peace and security sanctioning states that fail to uphold AU norms, such as those in human rights, democracy, or security cooperation; institutionalized compliance monitoring, link compliance to incentives and sanctions, civil society and regional Court engagement, and political will and leadership (to strengthen the role of the AU Assembly of Heads of State and Government to review compliance reports and adopt binding decisions on enforcement.)

11.2 Enhance Domestication of Charter Obligations in National Law

Enhancing the domestication of Charter obligation in national under the African Charter on Human and Peoples' Rights means ensuring that the rights and duties enshrined in the Charter are effectively incorporated into the domestic legal systems of the African states, so that they can be invoked and enforced before national courts and institutions. At present, many states ratified the Charter but has failed to reflect its provisions in their constitutions, statutes, or judicial practice. Strengthening domestication involves: constitutional entrenchment, legislative harmonization, institutional mechanisms, judicial empowerment, civic and political engagement, and regional and AU-level support.

11.3 Protect or Restore Direct Access Under Article 34(6)

Protecting or restoring direct access under Article 34(4) of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights is central to strengthening the effectiveness of the African human rights system. Article 34(6) of the Protocol (1998) provides that individuals and NGOs with observer status before the African Commission on Human and Peoples' Rights can bring cases directly before the African Court, only if the concerned State has deposited a special declaration accepting such jurisdiction. Sad enough, out of 34 ratifications, only a few states initially made this declaration (example, Burkina Faso, Mali, Ghana, Tanzania, Benin, Cote d'Ivoire). However, since 2016, several states (notably Rwanda, Tanzania, Benin, and Cote d'Ivoire) withdrew their declarations drastically, thus, limiting direct access.

Protecting and restoring direct access is critical for making the African Court a people's court rather than just a state-to-state tribunal. Without this, the promise of the Court risks being symbolic, as individuals (the main victims of violations) lose the ability to seek remedies directly.

11.4 Replacement of Claw-Back Clauses with Non-Derogatory Clauses

The existence of the claw-back clauses in the African Charter on Human and Peoples' Rights is a serious impediment to human rights enforcement in the African system. Those provisions of the charter containing the

clause often reads thus: for example, Article 12.1 of the Charter which makes provision for 'freedom of movement and residence within one's state' has a right has a claw-back clause which reads as "provided it abides by law". This right of movement can be restricted by the state on the basis of certain emergences that may hamper public order, peace and the health of the community and a good example is the case of the COVID-19 — a disease which caused states to restrict movement so as limit the spread of the Covid-19 disease. But the challenge with the claw-back clause is that such provisions have been manipulated upon most especially by government officials in order to suit or fulfill their selfish aims and ambitions. There is need for a reformation of such a clause, making provisions that reflect such a clause clear, well spelled out so as to avoid manipulations by government officials and Heads of States.

The absence of the non-derogation clause in the Banjul charter is a call for concern. The law requires states to limit or restrict citizens of certain rights in times of certain emergencies for example, the outbreak of the current Corona-virus restricted citizens of several human rights for example the right to free movement and the right of association was restricted for purposes of ensuring or protecting people from the spread of the disease but there are certain rights that irrespective of the emergency citizens need not to be restricted or deprived of. The Banjul charter has failed to make provision of such a clause thus giving room for manipulation violation of human rights notably by government officials.

Therefore, the introduction of non-derogation clause into the African Charter on Human and Peoples' Rights will handle issues related or concerning the interpretation of the Charter hence, not leaving in context any word which seems ambiguous. It will also make a clear demarcation of rights that can be waived and those that cannot be waived irrespective of the circumstance or emergency.

Negation of the claw-back clauses in the African Charter on Human and Peoples' Rights will stop most states from using the clause as a tool for political repression both on individuals or group of people who tend to challenge government policies on legal grounds.

11.5 Strengthening of the Reporting System

The reporting system in the African system is very weak and ineffective. States are very nonchalant about observance of human rights within their respective states. There is need for reinforcement of the whole system and need for the establishment of punitive measures be it financially or deprivation of certain privileges. If the reporting system continues to be weak as it is the case presently, then human rights in the region of Africa has no future. The African Commission seems to lack punitive measures that can compel states to submit reports about the state of human rights in their respective states. More so, compelling measures need to be put in place as the case may be so as the ensure that states respond positively to such obligation.

It is believed strongly that, if the reporting system is reinforced, states will submit their reports faithfully without any duress from the Commission most especially if punitive and compelling measures are put in place. Punitive measures for example that goes as far as demanding that states should pay to the Commission certain huge sums of money as fines and to an extent, deprivation of certain opportunities or privileges like granting such states only an observer status during ordinary and extra-ordinary sessions wherein with such a status, they are denied the right to participate in such meetings but rather just to discern or observe.

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