

State Compliance with the Recommendations/Decisions of the African Commission and the African Court on Human and Peoples' Rights: A Critical Appraisal

Dr. Kwebe Augustine Nkwiyyir¹, Dr. Akwe Ngole Ray Junior² & Mr. Fritz Lifoko Mokake³

¹ Lecturer, University of Buea, Cameroon

² Magistrate and a Lecturer in Law, Cameroon

³ PhD Student, Faculty of Laws and Political Science, University of Buea, Cameroon

Correspondence: Dr. Kwebe Augustine Nkwiyyir, Lecturer, University of Buea, Cameroon.

doi:10.63593/LE.2788-7049.2025.12.001

Abstract

This study critically examines state compliance with the recommendations of the African Commission and the decisions of the African Court on Human and Peoples' Rights, drawing on the Translational Legal Process Theory to analyze how legal norms are interpreted, internalized, and implemented within domestic contexts. The study assesses the binding nature of these decisions, identifies challenges that hinder implementation, and evaluates the practical effectiveness of the African human rights system. Employing a doctrinal research methodology, the study analyzes relevant treaties, protocols, case law, and scholarly literature to understand the factors influencing compliance. Findings reveal that compliance remains inconsistent and often partial, primarily due to political resistance, limited acceptance of the Court's jurisdiction, weak regional enforcement mechanisms, domestic legal constraints, and reluctance to implement remedial measures. The study concludes that legal bindingness alone is insufficient to guarantee compliance, emphasizing the importance of political will, domestic incorporation of judgments, and robust monitoring mechanisms. Recommendations include reaffirming state acceptance of the Court's jurisdiction, strengthening African Union oversight, domesticating Court decisions, implementing capacity-building programs for officials, and fostering collaboration between the Commission and the Court. This study contributes to the discourse on human rights enforcement in Africa and provides practical strategies to enhance state accountability and the effectiveness of regional human rights institutions.

Keywords: African Commission, African Court, critical appraisal, recommendations/decisions, and state compliance

1. Introduction

The African human rights system, as codified in the African Charter on Human and Peoples' Rights (hereinafter "African Charter" or "Banjul Charter"), represents one of the most ambitious and normatively unique regional frameworks for the promotion and protection of human rights in the Global South. Adopted on 27th June 1981 in Nairobi and entering into force on 21 October 1986, the Charter marked a historic transition in Africa's postcolonial legal order, inaugurating a *corpus juris* that affirmed both individual entitlements and collective rights, while simultaneously imposing duties on individuals.¹ The document departed from the Eurocentric template of human rights instruments by embedding within its normative fabric rights to self-determination,

¹ Article 1-29 of the African Charter on Human and Peoples' Rights 1981.

development, and solidarity—a reflection of Africa's anti-colonial struggles and the aspiration to deconstruct the judicial legacies of subjugation.¹

Central to the operation of the Charter is the African Commission on Human Rights, established under Article 30, with the principal mandate to “promote human and peoples’ rights and to ensure their protection in Africa.” Its functions include receiving communications (individual and inter-state) under Article 47-59, engaging in fact-finding missions, and formulating recommendations to states to ensure compliance with Charter obligations.² The legal nature of these recommendations is quasi-judicial: they do not constitute binding judgments but carry significant persuasive authority in shaping state practice, articulating interpretive standards and crystallizing soft law norms.³ Cases such as *Communication 245/02: Zimbabwe Human Rights NGO Forum v. Zimbabwe (2006)*⁴ exemplify how the Commission’s pronouncements, though non-binding, have contributed to the gradual evolution of African human rights jurisprudence by clarifying state obligations under Article 1 and 7 of the Charter.

Nevertheless, the non-coercive character of the Commission’s recommendations soon exposed a compliance deficit, with many states disregarding or selectively implementing its findings. This structural weakness necessitated the establishment of a judicial organ with binding adjudicatory authority. Thus, the 1998 Protocol to the African Charter on the Establishment of the African Court on Human and Peoples’ Rights (hereinafter “Court Protocol”) created the African Court on Human and Peoples’ Rights (AfCHPR), which entered into force in 2004. Under Article 30 of the Protocol,⁵ the Court’s judgments are legally binding upon states parties, thereby transforming the African system from a recommendatory mechanism to an enforceable judicial regime.⁶

The African Court’s jurisprudence demonstrates a bold interpretive posture that gives substantive force to the Charter. For instance, in *African Commission on Human and Peoples’ Rights v. Libya (2011)*,⁷ the Court held Libya accountable for gross violations of Article 6 and 7 of the Charter, emphasizing the state’s obligations under international human rights law. Similarly, in *Tanganyika Law Society and Legal and Human Rights Centre v. Tanzania (2013)*,⁸ the Court invalidated restrictions on independent candidacy as incompatible with Article 13 (right to participate freely in government), underscoring its role as a guardian of political rights. These decisions signify the normative shift from mere recommendations to binding pronouncements, thus enhancing the African human rights architecture’s legal robustness.

At the doctrinal level, therefore, the African Charter’s recommendations and the African Court’s decisions represent two complementary enforcement modalities: one relying on the persuasive force of the soft law and the other on the compulsory authority of hard law. This dialectic between recommendatory guidance and binding adjudication underscores the African system’s hybrid nature, reflective of the continent’s political realities and its cautious approach to balancing state sovereignty with supranational accountability.⁹

2. Conceptual Clarifications

This section clarifies the key concepts underpinning this study, namely state compliance, recommendations/decisions, the African Commission on Human and Peoples’ Rights, the African Court on Human and Peoples’ Rights, and critical appraisal, in order to ensure conceptual precision and analytical coherence. By defining these terms within the context of the African human rights system, the study establishes a clear framework for examining state behavior and institutional effectiveness.

2.1 State Compliance

State compliance refers to the extent to which a State accepts, implements, and gives effect to its legal

¹ Mutual Makau Wa. (1995). The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties. *Virginia Journal of International Law*, 35, pp. 339-380, p. 350.

² Article 47-59 of the African Charter on Human and Peoples’ Rights 1981.

³ Viljoen Frans. (2012). *International Human Rights Law in Africa*, 2nd Edition. Oxford: Oxford University Press, 375.

⁴ *Communication 245/02: Zimbabwe Human Rights NGO Forum v. Zimbabwe* (Communication 245/02, African Commission, 2006).

⁵ Article 30 of the 1998 Protocol to the African Charter on Human and Peoples’ Rights.

⁶ *Ibid.*

⁷ *African Commission on Human and Peoples’ Rights v. Libya* (Application 004/2011, AfCHPR, Judgment of 15 March 2013).

⁸ *Tanganyika Law Society and Legal and Human Rights Centre v. Tanzania* (Applications 009/2011, 011/2011, AfCHPR, Judgment of 14 June 2013).

⁹ Ebobrah Solomon. (2008). Towards a Positive Application of Complementarity in the African Human Rights System: Issues of Functions and Relations. *African Human Rights Law Journal*, 8, pp. 93-118, p. 95.

obligations arising from international or regional legal instruments, decisions, or recommendations. Within the African human rights system, it specifically concerns how African States observe, execute, or adhere to the recommendations of the African Commission on Human and Peoples' Rights and the decisions of the African Court on Human and Peoples' Rights.¹ State compliance goes beyond formal acceptance or rhetorical commitment; it entails practical and effective action by the State, including legislative reforms, policy adjustments, judicial enforcement, or other remedial measures required to address human rights violations.² The principle of *pacta sunt servanda* under the Vienna Convention on the Law of Treaties (1969) obliges States to perform their treaty obligations in good faith, forming the legal basis for compliance.³ Effective state compliance is crucial for the credibility, authority, and effectiveness of the African human rights protection mechanisms, whereas persistent non-compliance undermines the protection of rights and the enforcement mandate of the African Commission and Court.⁴

2.2 Recommendations/Decisions

Recommendations/Decisions refer to the authoritative findings, pronouncements, and remedial directives issued by the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights in the exercise of their mandates under the African Charter on Human and Peoples' Rights. Recommendations of the African Commission are generally non-judicial outcomes arising from communications, state reporting procedures, or thematic investigations, and although not formally binding, they carry significant normative and persuasive authority and impose a moral and political obligation on States to comply in good faith.⁵ In contrast, decisions of the African Court are judicial and legally binding on States that have accepted the Court's jurisdiction, requiring concrete measures such as restitution, compensation, legislative reform, or other forms of reparation to remedy established violations.⁶ Together, recommendations and decisions constitute the primary enforcement outputs of the African human rights system and are central to assessing the effectiveness of regional human rights protection and state accountability.

2.3 African Commission on Human and Peoples' Rights (ACHPR)

The African Commission on Human and Peoples' Rights (ACHPR) is a treaty-based, quasi-judicial supervisory body established pursuant to Article 30 of the African Charter on Human and Peoples' Rights, mandated to ensure the promotion, protection, and interpretation of the rights guaranteed under the Charter. Although the Charter does not provide an explicit statutory definition of the Commission, Articles 45–59 outline its functions, procedures, and powers, including the examination of state reports, consideration of individual and inter-state communications, undertaking of fact-finding missions, and formulation of recommendations addressed to States Parties.⁷

Scholarly commentary characterizes the ACHPR as a non-judicial or quasi-judicial body whose authority lies primarily in its interpretative competence and moral persuasion rather than binding adjudication.⁸ Murray⁹ further describes the Commission as the cornerstone monitoring mechanism of the African human rights system, emphasizing its role in norm development and accountability through constructive dialogue with States. While its recommendations lack formal binding force, they carry significant legal and political weight and are increasingly relied upon by domestic courts, regional bodies, and the African Court in interpreting Charter obligations.¹⁰

2.4 African Court on Human and Peoples' Rights (AfCHPR)

¹ Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.

² Shelton, D. (2000). *Commitment and compliance: The role of non-binding norms in the international legal system*. Oxford University Press.

³ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331.

⁴ *Ibid.*

⁵ Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.

⁶ Alter, K. J., Gathii, J. T., & Helfer, L. R. (2016). Backlash against international courts in West, East and Southern Africa: Causes and consequences. *European Journal of International Law*, 27(2), 293–328. <https://doi.org/10.1093/ejil/chw019>

⁷ African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 1520 U.N.T.S. 217.

⁸ Heyns, C., & Killander, M. (2016). *Compendium of key human rights documents of the African Union* (6th ed.). Pretoria University Law Press.

⁹ Murray, R. (2004). *The African Commission on Human and Peoples' Rights and international law*. Hart Publishing.

¹⁰ Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.

The African Court on Human and Peoples' Rights (AfCHPR) is a judicial organ of the African Union established under 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 to complement and reinforce the protective mandate of the African Commission. Although the Protocol does not provide an express statutory definition of the Court, Articles 2–4 and 27–31 delineate its jurisdiction, contentious and advisory functions, and remedial powers, including the authority to issue binding judgments and order appropriate remedies where violations of the African Charter or other relevant human rights instruments are established.¹

Academic commentators describe the African Court as a fully judicial and binding enforcement mechanism within the African human rights system, distinguished from the Commission by the legal finality of its decisions.² Gathii³ characterizes the Court as a critical institution for strengthening judicialization and accountability in Africa, though its effectiveness is contingent upon States' acceptance of its jurisdiction and willingness to implement its judgments. In a nutshell, the Court's authority and legitimacy depend largely on state compliance, as resistance or withdrawal by States significantly undermines its enforcement capacity.

2.5 Critical Appraisal

Critical appraisal refers to a systematic, analytical, and evaluative examination of legal rules, institutions, or practices, aimed at assessing their effectiveness, coherence, limitations, and practical impact, rather than merely describing them. In legal scholarship, critical appraisal involves interrogating both the normative framework (law as written) and its operational reality (law as applied), with particular attention to gaps between legal obligations and actual outcomes.⁴ It requires the identification of strengths and weaknesses, consideration of contextual factors such as political will and institutional capacity, and the proposal of reasoned reforms or improvements.

Within international and regional human rights law, critical appraisal is commonly used to evaluate the performance of enforcement mechanisms and state behavior, including the extent to which institutional mandates translate into effective protection on the ground.⁵ As Hutchinson and Duncan (2012)⁶ explain, critical legal analysis goes beyond doctrinal exposition by questioning assumptions, exposing structural deficiencies, and assessing whether legal regimes achieve their stated objectives. In the context of the African human rights system, a critical appraisal therefore entails evaluating how effectively the recommendations of the African Commission and the decisions of the African Court secure meaningful state compliance and advance human and peoples' rights in practice.

3. Methodology

This study adopts a qualitative research methodology which is doctrinal in nature. Qualitative research methodology is primarily exploratory that is, it is used to gain an understanding of underlying reasons, opinions and motivations.⁷ This form of research makes use of non-statistical data, that is, it produces findings not arrived at by means of statistical procedures or other means of quantification and also, it attempts to understand behavior and institutions by getting to know the persons involved and other values, rituals, lives, beliefs, and emotions.

The reason the researcher used qualitative research methodology is because it enables the researcher to provide rigorous exposition, analysis, evaluation of state compliance with the recommendations of the African Commission and the decisions of the African Court on Human and Peoples Rights.

Primary and secondary sources of data have been used in this research. Primary sources of legal information⁸ are the sources which provide the information in its original form and they contain a wealth of first-hand and

¹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

² *Ibid.*

³ Gathii, J. T. (2011). *African regional trade agreements as legal regimes*. Cambridge University Press.

⁴ McCrudden, C. (2006). Legal research and the social sciences. *Law Quarterly Review*, 122, 632–650.

⁵ *Ibid.*

⁶ Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, 17(1), 83–119.

⁷ Susan E. Defranzo, (n.d.). What is the Difference Between Qualitative and Quantitative Research? Available online at: www.surveymonkey.com (Accessed on June 10th, 2024).

⁸ Primary sources of legal information are original, authoritative materials that establish or interpret laws. These sources are typically considered most reliable and are used as the foundation for legal research.

in-depth information on a particular point.¹ Primary sources are first-hand documents that provide direct evidence on your topic.² In legal research, primary sources includes: treaties, international conventions, United Nations documents, decisions of international courts (e.g., ICC, ICJ) for International Sources; Constitutions, Statutes (laws passed by legislatures), regulations (administrative laws), Court decisions (judicial precedents), government reports for national source. This study has used the African Charter on Human and Peoples Rights and the 1998 Protocol to the African Charter on Human Rights as the key primary sources in this study and a host others. Secondary sources are interpretations and evaluations of primary sources.³ Secondary sources are not evidence, but rather commentary on and discussion of evidence; secondary sources of information furnish the information derived from primary sources for example, they include: legal commentaries, scholarly articles, textbooks, law reviews, journals, legal dictionaries, textbooks, treatises, commentaries on statutes, abstracts, bibliographies, dictionaries, encyclopedias, review, just to mention but few. This research has used these sources in this study.

4. Theoretical Framework

This study is anchored in Transnational Legal Process Theory, as articulated by Harold Hongju Koh, to analyze State compliance with the recommendations of the African Commission on Human and Peoples' Rights and the decisions of the African Court on Human and Peoples' Rights.⁴

Transnational Legal Process Theory explains compliance with international law not as a function of coercion or sanctions, but as a dynamic and iterative process through which international norms are gradually internalized into domestic legal and political systems. According to Koh, this process operates through three interrelated stages: interaction, interpretation, and internalization.⁵ Repeated engagement between States and international institutions leads to the reinterpretation of obligations and, eventually, their incorporation into domestic law and practice.

This theory is particularly suitable for the African human rights system, which lacks coercive enforcement mechanisms and relies heavily on domestic implementation of regional decisions. While the African Commission issues non-binding recommendations and the African Court delivers legally binding judgments, the effectiveness of both bodies ultimately depends on the willingness and capacity of States to internalize these norms within their national legal orders. The prevalence of partial, delayed, and selective compliance among African States is therefore better explained as a failure of internalization rather than outright rejection of international obligations.

Transnational Legal Process Theory also accounts for the critical role played by domestic courts, legislatures, executive authorities, national human rights institutions, and society organizations in facilitating or obstructing compliance.

Where these actors engage constructively with regional jurisprudence, international norms are more likely to be absorbed into domestic practice. Conversely, where political resistance, weak institutions, or restricted civic space prevail, the internalization process is disrupted, resulting in non-compliance. By adopting Transnational Legal Process Theory, this study is able to critically appraise State compliance with African human rights decisions as a structural and process-oriented phenomenon, rather than a purely legal or political failure. The theory thus provides an appropriate and coherent analytical framework for assessing the effectiveness, limitations, and future prospects of the African human rights enforcement regime.

5. The Legal Framework for Recommendations/Decisions of the African Commission and the African Court on Human and Peoples' Rights

The legal framework for recommendations and decisions under the African Charter on Human and Peoples' Rights (Banjul Charter) is grounded in the Charter itself, the institutional mechanisms it created, and subsequent Protocols it created, and jurisprudence. The African human rights architecture is founded upon a dual yet complementary system: the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights. While the Commission dispenses recommendations through quasi-judicial lens, the Court renders binding judgments through a robust judicial mechanism. This bifurcated structure reflects the continent's aspiration to uphold human rights through both normative influence and enforceable adjudication. What follows is an exploration of the legal grounding for Commission-made recommendations and Court-issued

¹ Phillips Mary T. (2018). *Legal Research: A Guide for Law Students*. Carolina: Carolina Academic Press, p. 125.

² *Ibid.*

³ Modern Language Association. (2016). *Modern Language Association Handbook*. New York: Modern Language Association, p. 30.

⁴ Koh, H. H. (1998). Bringing international law home. *Houston Law Review*, 35, 623–681.

⁵ Koh, H. H. (1997). Why do nations obey international law? *Yale Law Journal*, 106(8), 2599–2659.

decisions, their jurisprudential weight, and the institutional synergies that strive to bridge moral persuasion with binding adjudication.

Article 30-45 of the African Charter on Human and Peoples' Rights 1981

Article 30 provides that:

"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."¹

Article 30 is the constitutive legal provision that creates the African Commission on Human and Peoples' Rights (ACHPR). Without this provision, there would be no institutional machinery for the enforcement and promotion of the Charter. It thus represents the institutional backbone of the African human rights system. The provision reflects the duality of functions of the Commission: promotion of rights (educative, advocacy, sensitization, advisory roles); and protection of rights (quasi-judicial functions, examination of communications, state reporting, issuance of recommendations). Therefore, by enshrining the Commission in a treaty, the Charter ensures that the Commission enjoys legal personality and treaty-based legitimacy, making it binding on state parties.

Article 45 makes provision of the functions of the Commission:

The functions of the Commission shall be:

- 1) To promote Human and Peoples Rights and in particular:
 - a. 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.
 - b. To formulate or lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
 - c. Cooperate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
- 2) Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.
- 3) Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.
- 4) Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.²

Article 45 of the Banjul Charter delineates the multifaceted mandate of the African Commission on Human and Peoples' Rights, vesting it with promotional, protective, and interpretive functions.³ Amongst the most notable powers exercised under this provision is the issuance of recommendations, which, although not clothed with the force of binding judgments, have acquired significant normative authority within the African human rights system.

These recommendations arise primarily from the Commission's protective mandate, exercised in the examination of state reports, communications, or thematic studies. They are typically directed to member states and take the form of calls for legislative reforms, administrative restructuring, cessation of ongoing violations, or reparative measures for victims. While the Charter itself does not confer binding legal effect upon them, their persuasive weight is reinforced by the moral authority of the Commission and the expectation that states, having ratified the Charter, will demonstrate good faith compliance with its spirit and letter.

It has been observed that the soft-law character of these recommendations constitutes both strength and a limitation. On one hand, their non-coercive nature fosters dialogue, encourages gradual internationalization of human rights norms, and reduces the likelihood of adversarial standoffs between the Commission and states. On the other hand, the absence of enforceability mechanisms often leaves compliance at the mercy of political will, resulting in selective adherence and persistent impunity in certain jurisdictions.

¹ Article 30 of the African Charter on Human and Peoples' Rights 1981.

² Article 45(4) of the African Charter on Human and Peoples' Rights 1981.

³ *Ibid.*

Nevertheless, recommendations pursuant to article 45 of the Banjul Charter have played a pivotal role in the progressive development of African human rights jurisprudence. They have influenced domestic reforms, informed the interpretative practices of the African Court on Human and Peoples' Rights, and contributed to shaping continental standards on issues like freedom of expression, the rights of indigenous peoples, and the abolition of the death penalty. More importantly, they embody the principle of constructive engagement between the Commission and member states, fostering accountability while respecting the sovereignty of states.

Article 1, 3, 27, and 28 of the Protocol to the African Charter on the Establishment of the African Court 1998

Article 1 of the Protocol makes provision for the Establishment of the Court.

"There shall be established within the Organization of African Unity an African Court on Human and Peoples' Rights (hereinafter referred to as 'the Court'), the organization, jurisdiction and functioning of which shall be governed by the present Protocol."¹

This provision essentially creates the African Court on Human and Peoples' Rights, complementing the protective mandate of the African Commission established under the Banjul Charter.

Article 3 of the Protocol makes provision on the jurisdiction of the Court.

- 1) *The jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned.*
- 2) *In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.²*

Article 3(1-2) of the Protocol makes provision for the jurisdiction of the Court. This means however that, the Court only has power to handle cases brought under within the ambit of the afore-stated provisions.

Article 27(1-2) and article 28(1-7) makes provision of findings and judgments of the Court.

Article 27:

- 1) *If the Court finds that there has been violation of a human or peoples' right, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation.*
- 2) *In cases of extreme gravity and urgency, and when necessary to avoid irreparable harm to persons, the Court shall adopt such provisional measures as it deems necessary.³*

Article 28 makes provision on judgment.

- 1) *The Court shall render its judgment within ninety (90) days of having completed its deliberations.*
- 2) *The judgment of the Court decided by majority shall be final and not subject to appeal.*
- 3) *Without prejudice to sub-article 2 above, the Court may review its decision in the light of new evidence under conditions to be set out in the Rules of Procedure.*
- 4) *The Court may interpret its own decision.*
- 5) *The judgment of the court shall be read in open court, due notice having been given to the parties.*
- 6) *Reasons shall be given for the judgment of the court.*
- 7) *If the judgment of the Court does not represent, in whole or in part, the unanimous decision of the judges, any judge shall be entitled to deliver a separate or dissenting opinion.⁴*

Article 28 of the Protocol to the African Charter establishing the African Court on Human and Peoples' Rights provides that the judgments of the Court are final and binding. This means parties to a case are under a legal obligation to comply with the Court's decisions, and no further appeal is permitted.

6. An Overview of the Recommendations of the African Charter on Human and Peoples' Rights

¹ Article 1 of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

² Article 3(1-2) of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

³ Article 27(1-2) of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

⁴ Article 28(1-7) of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.

The African Charter on Human and Peoples' Rights stands as a pivotal framework for safeguarding dignity and justice across the continent. Its recommendations issued principally through the African Commission, function as authoritative interpretative guides that refine state obligations and illuminate the contours of human rights protection. Though not strictly binding, these recommendations possess significant normative weight, shaping state practice and fortifying Africa's evolving human rights jurisprudence.

6.1 Types of Recommendations Issued by the Commission

The African Commission on Human and Peoples' Rights, established under the African Charter of 1981, performs a tripartite role promotion, protection, and interpretation of human and peoples' rights across the continent.¹ A central feature of this mandate lies in its power to issue recommendations, which operate as authoritative interpretative tools guiding States Parties in the implementation of Charter obligations. Though not legally binding in a strict judicial sense, these recommendations carry persuasive normative weight, influencing state behavior, informing jurisprudence, and enriching the continental human rights framework. They are articulated through distinct mechanisms, including communications, periodic state reports, fact-finding missions, and thematic studies, each giving rise to a typology of recommendations.

a) Admissibility and Merits Communications Recommendations

Under article 55-59 of the African Charter,² the Commission examines communications alleging human rights violations, deciding admissibility and, if admissible, merits. Based on its findings, it issues recommendations such as urging investigations, compensation, legal reforms, or policy changes, and can propose friendly settlements or provisional measures to prevent irreparable harm.³

b) Concluding Observations from Periodic State Reports

Pursuant to article 62 of the Charter, States must submit periodic reports on measures taken to implement Charter rights.⁴ The Commission reviews these, issues including observations, and offers recommendation addressing positive developments, gaps, or non-compliance, guiding legislative, institutional, or policy reforms. The Commission adopted guidelines in its 3rd Ordinary Session (1988) to standardize report form and substance. In a nutshell, recommendations from periodic state reports arise from the examination of state reports under Article 62 of the Charter. These recommendations guide states on legislative, institutional, and policy reforms needed to enhance compliance.

c) Recommendations from Fact-Finding, Investigative, and Promotional Missions

The Commission may conduct promotional or fact-finding missions to States facing allegations of serious or widespread rights violations.⁵ Such missions yield detailed recommendations for remedial actions, legal reforms, accountability, and reconciliation. The Commission deploys mechanisms including fact-finding missions, country visits, and then formulates recommendations based on findings.⁶ Rule 83 of the African Commission on Human and Peoples' Rights, Rules of Procedure (adopted 2020, replacing 2010 rules), requires the preparation of mission reports, which contain findings and recommendations transmitted to the concerned State and later made public. This class of recommendation is conducted in response to allegations of serious or massive human rights violations, and they contain practical measures for ending abuses, ensuring accountability, and promoting reconciliation.

d) Thematic Recommendations, General Comments, and Normative Guidelines

Developed through studies, resolutions, and thematic reports on specific rights (example, Freedom of expression, rights of women, indigenous peoples). Through these mechanisms such as special rapporteurs, working groups, and committees, the Commission issues thematic recommendations, general comments, and guidelines on human rights issues like women's rights, freedom of expression, indigenous populations, and torture. These provide authoritative interpretations and normative clarity. The Charter authorizes the Commission to "draw inspiration from international law... and consider subsidiary measures... general principles... legal precedents

¹ Article 45 of the African Charter on Human and Peoples' Rights 1981.

² Article 55-59 of the Banjul Charter 1981.

³ Rules 119-120 of the African Commission on Human and Peoples' Rights, Rules of Procedure (adopted 2020, replacing 2010 rules).

⁴ Article 62 of the African Charter on Human and Peoples' Rights 1981.

⁵ Article 45(1)(a)-(c) of the Banjul Charter 1981, mandates the Commission to "promote human peoples' rights," "collect documents, undertake studies and research," and "cooperate with other African and international institutions concerned with the promotion and protection of human rights."

⁶ Rule 81 of the African Commission on Human and Peoples' Rights, Rules of Procedure (adopted 2020, replacing 2010 rules).

and doctrine” under article 60-61 of the African Charter on Human and Peoples’ Rights.¹

e) Institutional and Procedural Recommendations

The Commission often issues internal or institutional recommendations, addressed to itself or State Parties for improving the functioning, transparency, and effectiveness of the human rights system (example, enhancing reporting systems, integrating Charter provisions into domestic law, strengthening human rights training).²

6.2 Procedure for Adopting Recommendations

The procedure for adopting recommendations under the African Charter on Human and Peoples’ Rights begins with the reception of communications, reports, or information before the African Commission on Human and Peoples’ Rights (ACHPR). These may arise from individual or NGO communications alleging violations of the Charter,³ periodic state reports submitted under Article 62, or through fact-finding and promotional missions conducted by the Commission and its special mechanisms.

Once a matter is seized, the African Commission considers it during its sessions. In relation to communications, the Commission examines both admissibility under Article 56 of the Charter and merits of the case. For state reports, the procedure involves an interactive dialogue between the Commission and the reporting State, aimed at evaluating the extent of compliance with Charter obligations. Fact-finding or promotional missions, in turn, lead to the preparation of draft findings. In each scenario, the Commission formulates draft recommendations addressing the issues at stake.

The recommendations are formally adopted by the Commissioners present and voting in private deliberations. These recommendations may take several forms, including findings of violations accompanied by proposed remedies such as compensation, legislative reforms, or institutional changes. They may also be expressed as general comments, guidelines, or resolutions intended to provide interpretive or normative guidance on the Charter’s provisions.

Following adoption, the recommendations are communicated to the concerned State Party and subsequently incorporated into the Commission’s Activity Report pursuant to Article 54 of the Charter.⁴ This Activity Report is transmitted through the African Union (AU) Executive Council to the Assembly of Heads of State and Government, which has the authority to consider and adopt the report. At this stage, States sometimes raise objections or enter reservations to certain recommendations.⁵

Once the AU Assembly adopts the Activity Report, the recommendations acquire formal recognition as pronouncements of the African Commission. Although they are not legally binding in the same manner as judgments of the African Court on Human and Peoples’ Rights, they carry considerable persuasive, moral, and political authority. Implementation is expected in good faith, and the Commission engages in follow-up through its state reporting procedure, promotional visits, and ongoing dialogue with States.

6.3 Legal Character and Authority of Recommendations

The legal character and authority of recommendations under the African human rights system derives primarily from the African Charter on Human and Peoples’ Rights of 1981 (“Banjul Charter”). Article 45 of the Charter vests the African Commission on Human and Peoples’ Rights with the mandate to “formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms” and “to make recommendations to Governments.”⁶

Likewise, Article 58 empowers the Commission, in serious or massive violations, to draw the attention of the Assembly of Heads of State and Government of the African Union and to make appropriate recommendations.⁷ Furthermore, Articles 55–59 govern the communications procedure, through which the Commission receives complaints from states or individuals and, after examining admissibility and merits, issues recommendations to the state concerned (see *Communication 155/96, Social and Economic Rights Action Center (SERAC) and Another v. Nigeria*).⁸ The Rules of Procedure of the African Commission (2020, Part II, Rules 79–112) also

¹ Article 60-61 of the African Charter on Human and Peoples’ Rights 1981.

² Traceable under Article 45-46 of the African Charter on Human and Peoples’ Rights 1981.

³ Article 55-59 of the African Charter on Human and Peoples’ Rights 1981.

⁴ Article 54 of the Banjul Charter 1981.

⁵ *Ibid.*

⁶ Article 45 of the African Charter on Human and Peoples’ Rights 1981.

⁷ Article 58 of the African Charter on Human and Peoples’ Rights 1981.

⁸ Communication 155/96, Social and Economic Rights Action Center (SERAC) and Another v. Nigeria) 2001.

regulate the formulation and transmission of recommendations, reinforcing their legal character as measures expressly provided for under treaty-based authority. In addition, recommendations often flow from promotional missions, fact-finding missions, and investigative missions, which are expressly envisaged under Articles 45(1)(a), 46, and 62 of the Charter,¹ as well as Part III of the Commission's Rules of Procedure.

In terms of authority, recommendations are formally non-binding since the Charter does not grant the Commission judicial powers comparable to the African Court on Human and Peoples' Rights. The African Court, established by the 1998 Protocol to the African Charter, issues binding judgments under Article 30 of the Protocol,² which clearly obliges states to comply. By contrast, the Charter and the Commission's constitutive instruments stop short of imposing such legal obligation in respect of recommendations. However, recommendations retain significant interpretative authority as they represent the Commission's official interpretation of the Charter, which states are treaty-bound to respect under Article 1 of the Charter.³ The African Union Executive Council has also on several occasions adopted decisions calling on member states to comply with Commission recommendations (see e.g., AU Executive Council Decisions EX.CL/Dec.101 (V) and EX.CL/Dec.310 (IX)), thereby strengthening their political authority.⁴

Moreover, recommendations acquire practical weight through the state reporting system under Articles 62–64 of the Charter,⁵ where the Commission engages states in constructive dialogue and follows up on compliance. Their persuasive force is also recognized by national courts and regional institutions; for example, Nigerian courts have cited the Commission's reasoning in domestic human rights adjudication. At a broader level, the Commission's recommendations contribute to the development of soft law within international human rights, shaping customary interpretations and guiding judicial decisions of the African Court and UN treaty bodies. Thus, even if not formally enforceable, the combination of treaty-based authority, political endorsement by AU organs, and moral legitimacy gives recommendations a quasi-legal character that exerts continuing influence on state practice and the evolution of human rights norms in Africa.

6.4 Challenges to the Effectiveness of Recommendations Issued by the African Commission

The effectiveness of the recommendations issued by the African Commission on Human and Peoples' Rights has been persistently challenged by both structural weaknesses within the African Charter system and domestic obstacles in member states. A primary challenge lies in the non-binding legal character of the Commission's recommendations. Unlike judgments of the African Court, the Charter provisions (Articles 45–59)⁶ empower the Commission to consider communications and make recommendations but do not expressly establish their binding force. This "quasi-judicial" or soft-law status, as noted by scholars such as Rachel Murray⁷ and Frans Viljoen,⁸ has meant that many states treat recommendations as advisory rather than obligatory, thereby undermining compliance. The problem is compounded by the weakness of follow-up and monitoring mechanisms. The Commission has historically lacked robust procedures for systematically supervising whether states have implemented its recommendations. Although Article 62 of the African Charter⁹ requires periodic reports from states on legislative and other measures taken to give effect to rights, many states either delay or fail to submit such reports. As a result, recommendations risk remaining on paper without effective monitoring or accountability. Even the recent efforts to strengthen follow-up through revised Rules of Procedure have not fully resolved this gap. Another significant obstacle is the Commission's dependence on the political organs of the African Union. Because the Commission lacks its own enforcement arm, it relies on the AU Assembly or Executive Council to take political measures that could compel compliance. In practice, however, these bodies often prefer consensus and non-confrontation, rarely censuring states for non-implementation of recommendations. This dependence greatly dilutes the Commission's authority and reinforces the perception that its recommendations are politically negotiable rather than legally enforceable.

¹ Articles 45(1)(a), 46, and 62 of the 1981 Banjul Charter.

² Article 30 of the 1998 Protocol to the African Charter on Human and Peoples' Rights 1981.

³ Articles 1 of the Banjul Charter 1981.

⁴ *Ibid.*

⁵ Article 62–64 of the 1981 Banjul Charter 1981.

⁶ Article 45–59 of the African Charter on Human and Peoples' Rights 1981.

⁷ Rachel Murray. (2000). *The African Commission on Human and Peoples' Rights and International Law*. Oxford: Hart Publishing, p. 24.

⁸ Frans Viljoen. (2007). State Compliance with the Recommendations of the African Commission on Human and Peoples Rights. *American Journal of International Law*, 101, pp. 1–34, p. 25.

⁹ Article 62 of the Banjul Charter 1981.

At the domestic level, constitutional and legal barriers further inhibit effectiveness. Many African states, particularly those with dualist legal systems such as Nigeria, require treaties and related obligations to be incorporated into national law through legislation before they can be enforced domestically. In such contexts, recommendations of the Commission are rarely given effect unless parliament enacts enabling measures. This legal hurdle is exacerbated by political resistance and sovereignty concerns. Governments often perceive Commission recommendations as interference in sensitive domestic matters, especially in cases that implicate state security, governance structures, or minority rights. The landmark case of *SERAC v. Nigeria*,¹ in which the Commission recommended extensive remedial measures concerning the Ogoni people, illustrates how states may simply refuse to act on findings that challenge entrenched political and economic interests. Even when political will exists, resource and capacity constraints can impede implementation. Some recommendations require substantial financial resources, institutional reforms, or technical expertise that are not readily available in many member states.² This reflects the broader “managerial” perspective on compliance, articulated by Abram and Antonia Chayes,³ which stresses that non-compliance often stems from capacity deficits rather than deliberate defiance. In practice, however, the lack of resources translates into delayed, partial, or inadequate implementation of Commission recommendations.⁴

Another critical but less visible challenge is the lack of awareness and domestic dissemination of recommendations. Often, Commission findings are not widely circulated within national legal systems, meaning that courts, parliaments, and civil society remain unaware of the recommendations directed at their states. Without domestic visibility, recommendations fail to generate the necessary political and social pressure for implementation. Reports by scholars and civil society groups such as “Watch Africa” underscore that awareness gaps weaken local accountability and advocacy efforts.

Finally, the Commission suffers from a lack of coercive remedies for non-compliance. Unlike the African Court, which can at least report persistent non-compliance to the AU Assembly under Article 30 of its Protocol,⁵ the Commission has no clear enforcement tools. Its recommendations rely essentially on persuasion, reporting, and the goodwill of states. Consequently, states that are unwilling to comply face little to no tangible consequence, reinforcing a pattern of selective or non-implementation.

In sum, the effectiveness of recommendations under the African Charter is undermined by a combination of structural, political, and practical challenges. The absence of binding force, weak follow-up mechanisms, reliance on AU political bodies, constitutional barriers, lack of political will, resource constraints, poor dissemination, and the absence of coercive remedies together erode their impact. Addressing these challenges requires both systemic reforms such as: strengthening monitoring and granting clearer binding authority and domestic measures, including legal incorporation, enhanced awareness, and stronger political commitment. Without such reforms, the Commission’s recommendations risk remaining largely aspirational rather than transformative in practice.

7. An Overview of the Decisions of the African Charter on Human and Peoples’ Rights

The decisions issued under the African Charter on Human and Peoples’ Rights constitute the principal interpretative and enforcement mechanisms for the protection of human rights within the African regional system. These decisions emerge primarily from the African Commission on Human and Peoples’ Rights and, more recently, the African Court on Human and Peoples’ Rights, both of which are mandated to interpret the Charter, determine alleged violations, and provide authoritative guidance on states’ obligations. Through communications, advisory opinions, and judgments, these bodies have progressively clarified the substantive content of civil, political, economic, social, and cultural rights, as well as collective peoples’ rights, while addressing persistent challenges such as state responsibility remedies, and compliance. An overview of these decisions therefore provides a foundation for understanding how the Charter has evolved from a normative instrument into a practical framework shaping human rights standards and accountability across Africa.

7.1 Jurisdiction of the Court

The jurisdiction of the African Court on Human and Peoples’ Rights (AfCHPR) is defined in the 1998 Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the Court, which came into force

¹ Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, Communication No. 155/96, African Commission on Human and Peoples’ Rights, 30th Ordinary Session, Banjul, The Gambia, October 2001.

² *Ibid.*

³ Chayes Abram *et al.* (1993). On Compliance. *Journal of International Organization*, 47, pp. 175-205, p. 187.

⁴ *Ibid.*

⁵ Article 30 of the 1998 Protocol to the Banjul Charter 1981.

in 2004. Its scope covers contentious, advisory, and remedial jurisdiction. To understand its mandate more clearly, its competence can be analyzed under the dimensions of content jurisdiction (*ratione materiae*), personal jurisdiction (*ratione personae*), temporal jurisdiction (*ratione temporis*), and territorial jurisdiction (*ratione loci*).

7.1.1 Content Jurisdiction (*Ratione Materiae*)

The material jurisdiction of the Court is articulated in Article 3(1) of the Protocol,¹ which grants the Court competence “in all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant human rights instrument ratified by the States concerned.” This broad provision distinguishes the African Court from its European and Inter-American counterparts by allowing it to interpret not only the African Charter but also other human rights treaties ratified by African states, such as the ICCPR, CEDAW, or the African Charter on the Rights and Welfare of the Child. As Frans Viljoen² notes, this provision creates a “unique and expansive jurisdictional reach” that potentially enhances the Court’s authority in developing cross-cutting human rights jurisprudence. The Court has used this competence in cases such as *African Commission on Human and Peoples’ Rights v. Libya* (2011),³ where it applied both the Charter and other relevant treaties.

7.1.2 Personal Jurisdiction (*Ratione Personae*)

The personal jurisdiction of the Court concerns the entities entitled to bring cases before it. Under Article 5 of the Protocol,⁴ the Court may receive cases from the African Commission, state parties to the Protocol, and African intergovernmental organizations. More significantly, Article 5(3) provides that individuals and NGOs with observer status before the Commission may directly access the Court, but only if the respondent state has deposited the optional declaration under Article 34(6) of the Protocol.⁵ In practice, this provision has limited access, since fewer than ten states have made the declaration and some like Tanzania, Rwanda, and Benin later withdrew it after adverse judgments. Rachel Murray⁶ observes that the restrictive nature of Article 34(6) has significantly undermined the accessibility of the Court, leaving many potential victims dependent on the Commission or states to submit cases. This differentiates the African Court from the European Court of Human Rights, where individuals have automatic access.

7.1.3 Temporal Jurisdiction (*Ratione Temporis*)

The Court’s temporal jurisdiction is determined by the date on which the Protocol entered into force for the state concerned, and the date when the relevant human rights treaty was ratified by that state. A state cannot be held accountable for violations occurring before it ratified the Protocol or the relevant instrument, unless the violations are continuing in nature. This principle has been affirmed in cases such as *Alex Thomas v. Tanzania* (2015),⁷ where the Court clarified that while it could not review events predating Tanzania’s ratification of the Protocol, it could examine continuing violations that persisted after ratification. Viljoen⁸ highlights that this approach is consistent with international law principles governing *ratione temporis* jurisdiction.

7.1.4 Territorial Jurisdiction (*Ratione Loci*)

The territorial jurisdiction of the Court extends to violations committed within the territory of any state party to the Protocol, provided that the state has ratified the relevant instrument. However, the Court has also considered cases with extraterritorial implications, particularly where a state exercises jurisdiction or effective control outside its borders. For example, in *African Commission on Human and Peoples’ Rights v. Libya* (2011),⁹ the Court examined Libya’s actions against individuals irrespective of their location, underscoring that the decisive

¹ Article 3(1) of the 1998 Protocol to the Banjul Charter 1981.

² *Ibid.*

³ *African Commission on Human Rights v. Great Socialist Peoples’ Libyan Arab Jamahiriya*, Application No. 004/2011, Judgment of 3 June 2016 (African Court on Human and Peoples’ Rights).

⁴ Article 5 of the 1998 Protocol to the Banjul Charter 1981.

⁵ Article 5(3) of the 1998 Protocol to the Banjul Charter 1981.

⁶ *Ibid.*

⁷ *Alex Thomas v. United Republic of Tanzania*, Application No. 005/2013, Judgment of 20 November 2015, African Court on Human and Peoples’ Rights.

⁸ *Ibid.*

⁹ *African Commission on Human Rights v. Great Socialist Peoples’ Libyan Arab Jamahiriya*, Application No. 004/2011, Judgment of 3 June 2016 (African Court on Human and Peoples’ Rights).

factor is the exercise of jurisdiction by the state. As Murray¹ explains, this reflects the Court's willingness to adopt a flexible understanding of territorial jurisdiction in line with broader international human rights jurisprudence.

In summary, the African Court on Human and Peoples' Rights exercises jurisdiction under four dimensions. Its content jurisdiction (Article 3) is expansive, covering the African Charter and other relevant human rights treaties ratified by states. Its personal jurisdiction (Article 5 and 34(6)) is more restrictive, with direct access for individuals and NGOs heavily curtailed. Its temporal jurisdiction limits cases to violations occurring after ratification of the Protocol or relevant treaty, unless they are continuing violations. Finally, its territorial jurisdiction extends to all violations within the territory of state parties, and in certain cases, to situations where states exercise extraterritorial jurisdiction. Scholars such as Rachel Murray and Frans Viljoen underline that while the Court has broad material competence, its effectiveness has been undermined by restricted personal access and inconsistent state compliance. Nonetheless, the Court remains a pivotal institution in advancing human rights protection in Africa.

7.2 Nature and Binding Force of Decisions

The decisions of the African Court on Human and Peoples' Rights are judicial in nature and legally binding on States that have ratified the Protocol establishing the Court and accepted its jurisdiction. Article 30 of the Protocol expressly obliges States Parties to comply with the Court's judgments in any case to which they are parties, thereby conferring enforceable legal authority on its decisions.² In contrast, the findings and recommendations of the African Commission on Human and Peoples' Rights are quasi-judicial and non-binding, as the Commission primarily exercises a supervisory and interpretative mandate under the African Charter rather than adjudicatory powers.³ Nonetheless, the Commission's recommendations possess considerable normative and persuasive value, contributing to the interpretation of Charter obligations and influencing State conduct. Despite the formal distinction in binding force, scholarly analysis indicates that the practical effectiveness of both the Court's judgments and the Commission's recommendations largely depends on State cooperation, political will, and domestic implementation mechanisms, with persistent non-compliance undermining the authority and credibility of the African human rights system.⁴

7.3 Challenges of State Compliance with the Decisions of the African Court on Human and Peoples' Rights

Despite the legally binding nature of its judgments, state compliance with the decisions of the African Court on Human and Peoples' Rights remains inconsistent and fraught with challenges. One of the foremost obstacles is the limited acceptance of the Court's jurisdiction, particularly the withdrawal or non-deposit of the Article 34(6) declaration, which allows individuals and NGOs direct access to the Court. States such as Rwanda, Tanzania, Benin, and Côte d'Ivoire have withdrawn their declarations following adverse judgments, significantly constraining the Court's reach and undermining its authority.⁵

A second major challenge is the lack of effective enforcement mechanisms at the regional level. While Article 30 of the Court's Protocol obliges States to comply with judgments, the Court lacks coercive powers to ensure execution. Compliance monitoring is largely entrusted to the Executive Council of the African Union, a political body whose responses are often weakened by diplomatic considerations and solidarity among States.⁶ As a result, implementation frequently depends on the goodwill and political will of the respondent State.

Domestic legal and institutional constraints further impede compliance. In several jurisdictions, including Tanzania and Kenya, challenges arise from the absence of clear domestic procedures for incorporating and enforcing international court judgments, as well as conflicts between domestic law and the Court's rulings.⁷ Weak judicial independence, limited awareness of the Court's authority, and bureaucratic inertia also contribute to delays or partial implementation of judgments.

Financial and remedial obligations imposed by the Court present additional difficulties. Orders requiring

¹ *Ibid.*

² African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 1520 U.N.T.S. 217.

³ *Ibid.*

⁴ *Ibid.*

⁵ Alter, K. J., Gathii, J. T., & Helfer, L. R. (2016). Backlash against international courts in West, East and Southern Africa: Causes and consequences. *European Journal of International Law*, 27(2), 293–328. <https://doi.org/10.1093/ejil/chw019>

⁶ Murray, R. (2019). The African Court on Human and Peoples' Rights. In R. Murray & D. Long (Eds.), *The implementation of human rights judgments* (pp. 141–160). Cambridge University Press.

⁷ Gathii, J. T. (2011). *African regional trade agreements as legal regimes*. Cambridge University Press.

compensation, legislative reform, or institutional restructuring are often met with resistance due to budgetary constraints or political sensitivity, particularly where compliance may expose systemic human rights failures. For instance, prolonged delays in implementing reparations ordered against Burkina Faso and Tanzania illustrate the reluctance of States to fully execute remedial measures with far-reaching implications.¹ Collectively, these challenges demonstrate that legal bindingness alone is insufficient to secure compliance. The effectiveness of the African Court ultimately depends on strengthened political commitment by States, enhanced domestic implementation mechanisms, and more robust follow-up procedures within the African Union framework.

8. A Critical Appraisal of State Compliance to Recommendations and Decisions

State compliance with the recommendations of the African Commission on Human and Peoples' Rights and the judgments of the African Court on Human and Peoples' Rights remains uneven and generally weak. This section critically examines the structural causes of non-compliance, illustrated with practical examples from State practice.

8.1 Deficit of Political Will and Sovereignty Resistance

A major reason for non-compliance is the absence of political will, particularly where decisions threaten State authority or expose political actors to accountability. A notable example is *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, where the African Commission found violations relating to torture and unlawful detention and recommended legislative reform and compensation.² Despite the clarity of these recommendations, Zimbabwe failed to fully implement them, citing internal political and security considerations. This case demonstrates how States often subordinate human rights obligations to domestic political priorities. Similarly, in *Media Rights Agenda v. Nigeria*, the Commission recommended repeal of repressive military decrees restricting freedom of expression. Although Nigeria later transitioned to civilian rule, full legislative alignment with the Commission's recommendations was slow and selective, highlighting how sovereignty concerns and regime interests delay compliance.³

8.2 Weak Enforcement and Follow-Up Mechanisms

The African Commission lacks coercive powers, and the African Court depends on political organs of the African Union for enforcement. This institutional weakness emboldens States to ignore decisions with minimal consequences. For instance, in *Jawara v. The Gambia*, the African Commission found multiple violations and issued remedial recommendations. For several years, The Gambia failed to implement the recommendations until a change in political leadership occurred. Compliance, therefore, resulted from political transition rather than institutional enforcement.⁴

In relation to the African Court, Tanganyika Law Society and Reverend Christopher Mtikila v. *Tanzania* illustrates this problem. The Court ordered Tanzania to amend its constitutional framework to allow independent political candidates. Tanzania acknowledged the judgment but delayed constitutional reform and later withdrew its Article 34(6) declaration, effectively insulating itself from further individual petitions.⁵

8.3 Inadequate Domestic Incorporation of Regional Decisions

Many States operate dualist legal systems where international decisions do not have automatic domestic effect. In *Konaté v. Burkina Faso*, the African Court ordered Burkina Faso to amend its criminal defamation laws. Burkina Faso is often cited as a positive example because it partially complied by revising its legislation. However, the delay in implementation and the limited scope of reforms underscore how domestication processes can slow or dilute compliance.⁶

Conversely, in *African Commission on Human and Peoples' Rights v. Kenya (Ogiek case)*, although Kenya publicly accepted the Court's judgment recognizing the Ogiek community's land rights, domestic implementation-particularly restitution and compensation-has been slow, reflecting the difficulty of translating

¹ *Ibid.*

² African Commission on Human and Peoples' Rights. (2006). *Zimbabwe Human Rights NGO Forum v. Zimbabwe* (Comm. No. 245/02).

³ Viljoen, F. (2007). State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1994–2004. *American Journal of International Law*, 101(1), 1.

⁴ Murray, R. (2022). *The African Charter on Human and Peoples' Rights: A commentary* (2nd ed.). Oxford University Press.

⁵ Alter, K. J., Gathii, J. T., & Helfer, L. R. (2016). Backlash against international courts in West, East and Southern Africa. *European Journal of International Law*, 27(2), 293–328. <https://doi.org/10.1093/ejil/chw019>

⁶ Killander, M. (2016). The role of domestic courts in the enforcement of decisions of the African Court on Human and Peoples' Rights. *African Human Rights Law Journal*, 16(1), 1–28.

regional decisions into enforceable domestic action.¹

8.4 Institutional Capacity and Administration Constraints

Even where States express willingness to comply, institutional weakness and lack of resources hinder implementation. In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International v. Kenya (Endorois case)*, the African Commission recommended restitution of ancestral land and compensation. While Kenya took some consultative steps, full restitution and benefit-sharing mechanisms were not implemented for years due to administrative complexity and inter-ministerial coordination failures.² This example highlights how structural remedies such as land reform or community compensation require administrative capacity that many States lack.

8.5 Retreat from the Jurisdiction of the African Court

State withdrawal from the Court's jurisdiction represents a significant compliance challenge. Tanzania, Rwanda, Côte d'Ivoire, and Benin withdrew their Article 34(6) declarations following adverse judgments. Rwanda's withdrawal occurred after the Court ordered it to allow a retrial in *Ingabire Victoire Umuhohoza v. Rwanda*.³ These withdrawals significantly curtailed individual access to justice and weakened the Court's authority.⁴ Such actions demonstrate that some States prefer jurisdictional exit over substantive compliance.

8.6 Weak Domestic Pressure and Civil Society Constraints

Compliance is strongly influenced by the presence of active civil society and independent institutions. In *SERAC and CESR v. Nigeria*,⁵ the African Commission's landmark decision on environmental and socio-economic rights gained international recognition, yet implementation remained limited for years due to weak domestic enforcement and repression of civil society actors during military rule. Progress only emerged after sustained NGO advocacy and international pressure.⁶ This case illustrates how, in the absence of domestic pressure, even groundbreaking decisions may remain largely declaratory.

8.7 Critical Synthesis

These practical examples confirm that non-compliance with the recommendations and decisions of the African Commission and the African Court is systemic rather than exceptional. Political resistance, weak enforcement mechanisms, limited domestication, institutional incapacity, jurisdictional retreat, and constrained civic space collectively undermine implementation. While a few States demonstrate partial or progressive compliance, the prevailing pattern reveals a gap between normative commitment and practical execution.

9. Findings

The study finds that compliance by States with the decisions of the African Court on Human and Peoples' Rights is generally low and inconsistent, notwithstanding the binding nature of the Court's judgments. Implementation of decisions is frequently partial or delayed, reflecting a persistent gap between legal obligation and practical enforcement.

It further found out that limited acceptance of the Court's jurisdiction, particularly through the withdrawal of the Article 34(6) declaration by several States, significantly undermines compliance and access to justice. This trend illustrates a pattern of political resistance to adverse judicial outcomes.

The findings also reveal that weak regional enforcement and follow-up mechanisms within the African Union contribute substantially to non-compliance. Oversight by political organs lacks coercive capacity, allowing States to disregard judgments without immediate consequences.

Additionally, the study finds that domestic legal and institutional constraints, including the absence of implementing legislation and conflicting national laws, impede the execution of the Court's decisions in many jurisdictions.

¹ African Court on Human and Peoples' Rights. (2017). *African Commission on Human and Peoples' Rights v. Kenya (Ogiek case)*.

² African Commission on Human and Peoples' Rights. (2010). *Centre for Minority Rights Development (Kenya) and Minority Rights Group International v. Kenya* (Comm. No. 276/03).

³ *Ingabire Victoire Umuhohoza v. Republic of Rwanda*, ApplicationNo. 003/2014, African Court on Human and Peoples' Rights [2018] AfCHPR 73 (7 December 2018).

⁴ *Ibid.*

⁵ Social and Economic Rights Action Center (SERAC) & Centre for Economic and Social Rights v. Nigeria, Communication No. 155/96, African Commission on Human and Peoples' Rights [2001] ACHPR 35 (27 October 2001)

⁶ *Ibid.*

Finally, it is found that orders requiring financial compensation or structural reform face the highest levels of resistance, as States tend to comply more readily with declaratory relief than with remedial measures involving political or economic costs.

10. Conclusion

This study has critically examined state compliance with the recommendations of the African Commission and the decisions of the African Court on Human and Peoples' Rights, with particular emphasis on the binding force, implementation challenges, and practical effectiveness of the African human rights system. The analysis demonstrates that, despite the formal legal authority of the African Court's judgments and the normative significance of the Commission's recommendations, state compliance remains largely inconsistent and inadequate.

The study concludes that the principal obstacles to compliance stem from political resistance, limited acceptance of the Court's jurisdiction, weak enforcement and follow-up mechanisms within the African Union, and domestic legal and institutional constraints. The withdrawal of Article 34(6) declarations by several States underscores a broader tension between state sovereignty and supranational judicial oversight, revealing a reluctance by States to subject themselves fully to binding regional adjudication.

Furthermore, the conclusion affirms that legal bindingness alone is insufficient to ensure effective implementation. Compliance is significantly influenced by political will, domestic incorporation of international obligations, and the availability of institutional mechanisms capable of translating regional judgments into national practice. Where judgments require financial compensation or structural reforms, resistance is particularly pronounced, resulting in delayed or selective compliance.

Ultimately, the study concludes that strengthening state compliance within the African human rights system requires not only legal obligation but also enhanced political commitment, improved domestic implementation frameworks, and more robust monitoring mechanisms at the regional level. Without these complementary measures, the transformative potential of the African Commission and the African Court in protecting human and peoples' rights will remain constrained.

11. Recommendations

11.1 Reaffirmation and Expansion of Court Jurisdiction

African States should maintain and expand acceptance of the African Court's jurisdiction, particularly through the Article 34(6) declaration, which allows individuals and NGOs direct access. Sustained engagement strengthens accountability, ensures broader access to justice, and prevents selective compliance, as demonstrated by withdrawals in States such as Tanzania and Rwanda.

11.2 Strengthening Regional Monitoring and Enforcement

The African Union should enhance oversight of Court judgments and Commission recommendations through clear compliance timelines, periodic reporting, and accountability measures for non-compliance. Effective monitoring would transform judgments from symbolic pronouncements into enforceable obligations, increasing the credibility of the African human rights system.

11.3 Domestication of Court Decisions

States should integrate African Court judgments into domestic law and judicial practice, ensuring that decisions have practical effect within national jurisdictions. Domestication reduces conflicts between international and national law and empowers domestic courts to enforce human rights protections directly.

11.4 Capacity-Building and Awareness Programs

Judges, legislators, and public officials should be trained on the binding nature of Court decisions and the normative value of Commission recommendations. Increased awareness fosters institutional compliance, reduces resistance, and strengthens the culture of respect for regional human rights obligations.

11.5 Enhanced Collaboration Between the Commission and the Court

The African Commission and African Court should coordinate follow-up, monitoring, and reporting mechanisms, ensuring timely implementation of recommendations and judgments. Collaboration reduces duplication, reinforces the authority of both institutions, and maximizes the practical impact of the African human rights system.

References

Alter, K. J., Gathii, J. T., & Helfer, L. R. (2016). Backlash against international courts in West, East and Southern Africa: Causes and consequences. *European Journal of International Law*, 27(2), 293–328. <https://doi.org/10.1093/ejil/chw019>

Chayes Abram *et al.* (1993). On Compliance. *Journal of International Organization*, 47, pp. 175-205, p. 187.

Ebobrah Solomon. (2008). Towards a Positive Application of Complementarity in the African Human Rights System: Issues of Functions and Relations. *African Human Rights Law Journal*, 8, pp. 93-118, p. 95.

Frans Viljoen. (2007). State Compliance with the Recommendations of the African Commission on Human and Peoples Rights. *American Journal of International Law*, 101, pp. 1-34, p. 25.

Gathii, J. T. (2011). *African regional trade agreements as legal regimes*. Cambridge University Press.

Heyns, C., & Killander, M. (2016). *Compendium of key human rights documents of the African Union* (6th ed.). Pretoria University Law Press.

Hutchinson, T., & Duncan, N. (2012). Defining and describing what we do: Doctrinal legal research. *Deakin Law Review*, 17(1), 83-119.

Killander, M. (2016). The role of domestic courts in the enforcement of decisions of the African Court on Human and Peoples' Rights. *African Human Rights Law Journal*, 16(1), 1-28.

Koh, H. H. (1997). Why do nations obey international law? *Yale Law Journal*, 106(8), 2599-2659.

Koh, H. H. (1998). Bringing international law home. *Houston Law Review*, 35, 623-681.

McCradden, C. (2006). Legal research and the social sciences. *Law Quarterly Review*, 122, 632-650.

Modern Language Association. (2016). *Modern Language Association Handbook*. New York: Modern Language Association, p. 30.

Murray, R. (2004). *The African Commission on Human and Peoples' Rights and international law*. Hart Publishing.

Murray, R. (2019). The African Court on Human and Peoples' Rights. In R. Murray & D. Long (Eds.), *The implementation of human rights judgments* (pp. 141-160). Cambridge University Press.

Murray, R. (2022). *The African Charter on Human and Peoples' Rights: A commentary* (2nd ed.). Oxford University Press.

Mutual Makau Wa. (1995). The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties. *Virginia Journal of International Law*, 35, pp. 339-380, p. 350.

Phillips Mary T. (2018). *Legal Research: A Guide for Law Students*. Carolina: Carolina Academic Press, p. 125.

Rachel Murray. (2000). *The African Commission on Human and Peoples' Rights and International Law*. Oxford: Hart Publishing, p. 24.

Shelton, D. (2000). *Commitment and compliance: The role of non-binding norms in the international legal system*. Oxford University Press.

Susan E. Defranzo, (n.d.). What is the Difference Between Qualitative and Quantitative Research? Available online at: www.snaresurveys.com (Accessed on June 10th, 2024).

Viljoen Frans. (2012). *International Human Rights Law in Africa*, 2nd Edition. Oxford: Oxford University Press, 375.

Viljoen, F. (2007). State compliance with the recommendations of the African Commission on Human and Peoples' Rights, 1994-2004. *American Journal of International Law*, 101(1), 1.

Viljoen, F. (2012). *International human rights law in Africa* (2nd ed.). Oxford University Press.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).