

## Structural and Political Barriers to Effective Enforcement at the African Court on Human and Peoples' Rights

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### Abstract

The African Court on Human and Peoples' Rights (AfCHPR) was established in 2004 and commenced operations in 2006 with a mandate to interpret and apply the African Charter on Human and Peoples' Rights and other relevant human rights instruments. Nearly two decades later, persistent non-compliance with its judgments, the limited number of states granting direct individual access, and structural weaknesses in enforcement mechanisms continue to undermine its effectiveness. This article interrogates these challenges from the perspective of defence counsel practising before the Court, situating the analysis within the institutionalist theory of international law, which posits that strong, rule-bound institutions are necessary to ensure compliance. Drawing on case law—including *Ogiek v. Kenya*, *Ally Rajabu v. Tanzania*, and *Konaté v. Burkina Faso*—and recent implementation data, the article argues that the Court's legitimacy and impact are contingent on both political will and institutional reform. It proposes a set of concrete reforms to enhance compliance, improve access, and strengthen the Court's role in advancing human rights protection in Africa.

**Keywords:** *African Court on Human and Peoples' Rights; enforcement; compliance; institutional theory; Article 34(6); access to justice; African Union*

### INTRODUCTION

The African human rights system was envisioned as a regional safeguard against state impunity, complementing domestic legal systems and the global human rights architecture. The adoption 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") in June 1998, and its entry into force in January 2004, represented a decisive step

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toward that vision. The African Court on Human and Peoples' Rights ("the Court" or "AfCHPR") commenced operations in 2006, tasked with ensuring compliance with the African Charter on Human and Peoples' Rights ("the Charter" or "Banjul Charter") and other ratified human rights treaties.

The Court exercises both contentious jurisdictions, adjudicating disputes between parties, and advisory jurisdiction, issuing legal opinions on questions relating to the Charter and other human rights instruments. In contentious matters, it can grant a wide range of remedies, including declaratory relief, reparations, and orders for legislative reform. Its judgments are final and binding upon the parties. However, under Article 34(6) of the Protocol, individuals and non-governmental organisations (NGOs) have direct access to the Court only if the respondent state has deposited a declaration accepting such competence—a requirement that significantly restricts the Court's accessibility.

While the Court has developed a body of significant jurisprudence on fair trial rights, freedom of expression, the rights of indigenous peoples, and the prohibition of discriminatory laws—such as its *Advisory Opinion on Vagrancy Laws*—its effectiveness is constrained by low levels of state compliance. The 2020 Activity Report revealed that only about 7 percent of its judgments had been fully implemented, with 75 percent receiving no compliance at all. The problem is compounded by the withdrawal of Article 34(6) declarations by several states, including Rwanda, Tanzania, Benin, and Côte d'Ivoire, and by a lack of systematic enforcement mechanisms within the African Union framework.

This article addresses these enforcement and access challenges from the perspective of a defence lawyer practising before the AfCHPR. It situates the discussion within the institutionalist theory of international law, which holds that compliance is most likely when institutions are robust, norms are clear, and political incentives align with adherence. The analysis engages with both doctrinal sources and empirical data, examining structural deficiencies, political resistance, and capacity gaps. It concludes with recommendations aimed at strengthening the Court's authority, expanding access, and enhancing compliance monitoring.

### **Institutional Framework and Mandate**

The African Court on Human and Peoples' Rights ("the Court" or "AfCHPR") derives its authority from the Protocol to the African Charter

on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights ("the Protocol"), adopted by the Assembly of Heads of State and Government of the Organization of African Unity (now African Union) in Ouagadougou, Burkina Faso, on 9 June 1998.<sup>1</sup> The Protocol entered into force on 25 January 2004, following its ratification by more than the required fifteen states.<sup>2</sup>

*Relationship with the African Commission on Human and Peoples' Rights*  
The Court was conceived as a complementary institution to the African Commission on Human and Peoples' Rights ("the Commission"), established under Part II of the Banjul Charter. While the Commission retains a broad protective and promotional mandate, the Court's function is judicial: it interprets and applies the Charter and other ratified human rights treaties in contentious and advisory proceedings.<sup>3</sup>

Under Article 5 of the Protocol, the following entities have standing to submit cases to the Court:

- a) the Commission;
- b) a State Party to the Protocol;
- c) African intergovernmental organizations;
- d) a State Party against which a complaint has been lodged before the Commission;
- e) a State Party whose citizen is a victim of human rights violations; and
- f) individuals and NGOs with observer status before the Commission, provided the respondent State has deposited a declaration under Article 34(6).<sup>4</sup>

In practice, the Commission has acted as a gateway for individuals and NGOs to access the Court in situations where the state concerned has not made an Article 34(6) declaration. The *Ogiek Community of the Mau Forest v. Kenya*<sup>5</sup> exemplifies this indirect route: the Commission seized

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<sup>1</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (adopted 9 June 1998, entered into force 25 January 2004) OAU Doc OAU/LEG/EXP/AFCHPR/PROT.

<sup>2</sup> *ibid* art 34(3).

<sup>3</sup> African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 Rev 5, 21 ILM 58 (1982).

<sup>4</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (n 1) arts 5, 34(6).

<sup>5</sup> *African Commission on Human and Peoples' Rights v Kenya (Ogiek Community of the Mau Forest)* App No 006/2012 (AfCHPR, 26 May 2017).

the Court on behalf of the Ogiek community, alleging violations of land, cultural, and religious rights. The Court found Kenya in breach of multiple Charter provisions, underscoring the importance of Commission referrals in ensuring access.

### *Jurisdictional Scope*

The Court's contentious jurisdiction extends to "all cases and disputes submitted to it concerning the interpretation and application of the Charter, the Protocol, and any other relevant human rights instrument ratified by the States concerned."<sup>6</sup> This expansive clause has enabled the Court to apply both African and universal human rights norms, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in its jurisprudence.

The advisory jurisdiction under Article 4(1) of the Protocol empowers the Court to provide opinions "on any legal matter relating to the Charter or any other relevant human rights instruments," at the request of AU member states, the Commission, AU organs, or African organizations recognized by the AU. The Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter<sup>7</sup> is a landmark example, where the Court declared such laws incompatible with multiple Charter rights, including dignity, liberty, and equality.

### *Binding Nature of Judgments and Remedies*

Article 30 of the Protocol mandates that "the States parties to the case shall comply with the judgment in any case to which they are parties within the time stipulated by the Court and shall guarantee its execution."<sup>8</sup> Remedies granted include declaratory relief, orders to amend legislation, and reparations such as compensation and restitution. In *Lohé Issa Konaté v. Burkina Faso*<sup>9</sup>, the Court ordered legislative amendments to decriminalize defamation and awarded financial compensation to the

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<sup>6</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (n 1) art 3(1).

<sup>7</sup> *Advisory Opinion on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments* Request No 001/2018 (AfCHPR, 4 December 2020).

<sup>8</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (n 1) art 30.

<sup>9</sup> *Lohé Issa Konaté v Burkina Faso* App No 004/2013 (AfCHPR, 5 December 2014).

applicant, demonstrating its willingness to prescribe both individual and structural remedies.

Nevertheless, enforcement depends largely on state goodwill and political will. The Protocol lacks coercive enforcement provisions, placing responsibility for follow-up with the African Union's Executive Council, which must monitor compliance and report to the Assembly of Heads of State and Government.<sup>10</sup> The absence of sanctions for non-compliance remains one of the Court's most significant institutional weaknesses, a theme explored further in Section 4.

## **Theoretical Lens-Institutionalism in International Law**

### *Institutionalism: Core Assumptions*

Institutionalism in international law is premised on the idea that international institutions—whether formal organizations or normative regimes—shape state behaviour by creating rules, standards, and procedures that reduce uncertainty, facilitate cooperation, and embed long-term commitments.<sup>11</sup> States, according to this view, are not merely anarchic actors pursuing short-term self-interest; rather, they respond to institutional incentives and constraints that alter the cost–benefit calculus of compliance and defection.<sup>12</sup>

Within the African human rights system, the African Court on Human and Peoples' Rights (AfCHPR) is conceived as a formal judicial institution embedded in a broader normative framework (the Banjul Charter, the Protocol, and related human rights treaties). Institutionalism predicts that when such institutions are strong, transparent, and backed by consistent enforcement mechanisms, states are more likely to comply with their obligations.<sup>13</sup> Conversely, where institutional design is weak—due to ambiguous norms, absence of enforcement mechanisms, or lack of political support—compliance will falter.

### *Norm Clarity and Compliance Conditions*

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<sup>10</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (n 1) arts 29(2)–(3).

<sup>11</sup> Robert O Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press 1984) 85–109.

<sup>12</sup> Kenneth W Abbott and Duncan Snidal, 'Why States Act through Formal International Organizations' (1998) 42 *Journal of Conflict Resolution* 3, 6–10.

<sup>13</sup> Laurence R Helfer and Anne E Showalter, 'Opposing International Justice: Kenya's Integrated Backlash Strategy against the ICC' (2017) 17 *International Criminal Law Review* 1, 8–9.

Packer and Rukare argue that “human rights violations occur when the conditions supporting compliance are absent or weak, that is, when international norms are ambiguous”.<sup>14</sup> In the African Court context, norm clarity is not necessarily the main problem; the Charter and the Court’s jurisprudence articulate rights and remedies with considerable specificity.<sup>15</sup> Instead, the conditions supporting compliance—particularly enforcement and political accountability—remain underdeveloped.

This dynamic mirrors findings from comparative human rights regimes. For example, the European Court of Human Rights (ECtHR) benefits from a strong compliance infrastructure via the Committee of Ministers of the Council of Europe, which monitors and applies political pressure to ensure implementation of judgments.<sup>16</sup> The AfCHPR, by contrast, relies on the African Union’s Executive Council and Assembly—bodies that historically have been reluctant to censure member states for human rights violations, especially where such violations implicate sitting heads of state or politically sensitive matters.<sup>17</sup>

#### *Political Will as an Institutional Variable*

Institutionalism does not deny the role of political will; rather, it treats it as an endogenous variable shaped by institutional design.<sup>18</sup> Political will is more likely to exist when states perceive the institution as legitimate, fair, and consistent, and when compliance yields reputational or material benefits. In the AfCHPR setting, political will is undermined by three interrelated factors:

- i) *Weak follow-up mechanisms*: No direct sanctioning authority exists within the Protocol for non-compliance.<sup>19</sup>
- ii) *Selective engagement*: Some states comply with judgments when it aligns with domestic political objectives, as in *Konaté v. Burkina*

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<sup>14</sup> Charles M Packer and Christopher Rukare, ‘The New African Union and Its Constitutive Act’ (2002) 96 *American Journal of International Law* 365, 386.

<sup>15</sup> African Charter on Human and Peoples’ Rights (n 3) arts 1–29.

<sup>16</sup> European Convention on Human Rights (opened for signature 4 November 1950, entered into force 3 September 1953) art 46(2).

<sup>17</sup> Frans Viljoen, *International Human Rights Law in Africa* (3rd edn, Oxford University Press 2022) 511–14.

<sup>18</sup> Kenneth W Abbott, ‘Enriching Rational Choice Institutionalism for the Study of International Law’ (2008) 1 *University of Illinois Law Review* 5.

<sup>19</sup> Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights (n 1) arts 29–31.

*Faso*, but resist where compliance would require significant political or legal reforms.<sup>20</sup>

- iii) *Withdrawal from jurisdiction*: The retraction of Article 34(6) declarations by Rwanda, Tanzania, Benin, and Côte d'Ivoire is a stark indicator of resistance to the Court's authority.<sup>21</sup>

### *Institutional Legitimacy and the African Court*

Legitimacy is a key predictor of institutional effectiveness. According to Franck's theory of legitimacy, compliance increases when norms are clear, coherent, and consistent with widely shared values.<sup>22</sup> The AfCHPR has made progress in building normative legitimacy through its growing jurisprudence on fair trial rights, freedom of expression, and the protection of indigenous peoples. Yet its sociopolitical legitimacy—acceptance by domestic political elites and the general public—remains fragile. Low public awareness of the Court's role and decisions, combined with elite resistance to supranational adjudication, limits the institution's ability to generate the social and political pressure needed for compliance.

### *Implications for the AfCHPR's Effectiveness*

Applying institutionalist theory to the AfCHPR leads to three key insights:

- i) The Court's design lacks credible enforcement mechanisms, which reduces the costs of non-compliance and emboldens resistant states.
- ii) Access restrictions under Article 34(6) dilute the Court's potential caseload and reduce its relevance to ordinary Africans, weakening its political legitimacy.
- iii) Strengthening both formal enforcement structures (e.g., AU compliance monitoring) and informal compliance incentives (e.g., reputational costs, public awareness campaigns) is essential if the Court is to fulfil its mandate under the Banjul Charter.

## **Empirical Overview of the Court's Performance**

### *Caseload: Progress and Pending Matters*

Since commencing operations, the African Court on Human and Peoples' Rights (AfCHPR) has handled a substantial number of cases. As of recent

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<sup>20</sup> *Lohé Issa Konaté v Burkina Faso* (n 9).

<sup>21</sup> Amnesty International, *The State of the African Court on Human and Peoples' Rights* (Amnesty International 2023).

<sup>22</sup> Thomas M Franck, *The Power of Legitimacy among Nations* (Oxford University Press 1990) 24–26.



statistics, the Court has received 348 contentious applications, of which approximately 226 (around 65percent) have been finalized, leaving nearly 120 cases pending<sup>23</sup>. The annual rate of finalization has steadily increased—from about 52percent in 2022 to 65percent in 2024.<sup>24</sup>

In terms of case types, the Court has issued a total of 407 decisions, including 242 substantive judgments and 165 orders, covering jurisdictional rulings, provisional measures, and procedural judgments.<sup>25</sup>

#### *Access: Limited Direct Individual Access*

Although as of August 2025, 34 African Union member states have ratified the Protocol establishing the African Court on Human and Peoples' Rights, only 8 states have deposited the special Article 34(6) declaration allowing individuals and NGOs to file cases directly: Burkina Faso, Ghana, Guinea-Bissau, Malawi, Mali, Niger, The Gambia, and Tunisia (Tunisia's withdrawal takes effect 7 March 2026)<sup>26</sup>. Five states have withdrawn their declarations: Rwanda, Tanzania, Benin, Côte d'Ivoire, and (pending) Tunisia, further limiting access.<sup>27</sup> These leaves 7 states currently maintaining the declaration.

#### *Compliance: Persistent Challenges*

Implementation of the Court's decisions remains a significant area of concern. Amnesty International notes that state compliance with judgments is often low, with many states delaying or ignoring the required actions.<sup>28</sup> Scholarly analysis reinforces this, citing Tanzania's routine non-compliance—from failure to comply or report, to outright rejection of Court authority. Notably, Tanzania withdrew its Article 34(6) declaration in November 2019 after accumulating numerous rulings against it.<sup>29</sup>

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<sup>23</sup> African Court on Human and Peoples' Rights <https://www.african-court.org>.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Amnesty International, 'Why the African Court Should Matter to You' (Amnesty International, 13 June 2023) <https://www.amnesty.org/en/latest/campaigns/2023/06/why-the-african-court-should-matter-to-you/>.

<sup>27</sup> African Court on Human and Peoples' Rights, *ACC Publication Volume 1* (2020) [https://www.african-court.org/wpafc/wp-content/uploads/2020/11/ACC-Publication\\_Volume-1\\_2020\\_ENG.pdf](https://www.african-court.org/wpafc/wp-content/uploads/2020/11/ACC-Publication_Volume-1_2020_ENG.pdf).

<sup>28</sup> Amnesty International, *Europe and Central Asia: The Death Penalty in Uzbekistan* (Amnesty International 2005) <https://www.amnesty.org/ar/wp-content/uploads/2021/06/eur050012005en.pdf>.

<sup>29</sup> Wiley Online Library <https://onlinelibrary.wiley.com/>.



### *Illustrative Case Examples*

Several landmark cases provide insight into the Court's enforcement successes and challenges:

- i) *Norbert Zongo case* (Burkina Faso): The Court held the government responsible for the murder of journalist Norbert Zongo and ordered reparations and a renewed investigation. The ruling was fully implemented—compensation paid, investigation resumed, and a key suspect arrested abroad.<sup>30</sup>
- ii) *Bob Chacha Wangwe & Legal and Human Rights Centre (Tanzania)*: In 2023, the Court ruled that deploying senior civil servants for elections compromises political neutrality. The Tanzanian government under President Samia Suluhu Hassan proceeded to amend the National Election Act and Criminal Procedure Act in compliance.<sup>31</sup>
- iii) *Ingabire Victoire Umuhoza* (Rwanda): The Court determined that her criminal conviction violated her rights. Following the judgment, she was released from prison and granted financial reparations.<sup>32</sup>
- iv) *Application of withdrawals*: In *Noudehouenou v. Burkina Faso*, the Court reaffirmed that a state's withdrawal of a declaration (e.g., Côte d'Ivoire) does not affect a case pending at the time of withdrawal's effect.<sup>33</sup>

These case outcomes highlight both compliance when favorable, and persistent institutional resistance in other contexts.

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<sup>30</sup> AllAfrica, 'Kenya: African Court Ruling on Ogiek Community' (12 June 2015) <https://allafrica.com/stories/201506121165.html>.

<sup>31</sup> *Umuhoza v Republic of Rwanda* App No 001/2018 (AfCHPR, 13 June 2023) <https://africanlii.org/akn/aa-au/judgment/afchpr/2023/14/eng@2023-06-13>.

<sup>32</sup> Cambridge University Press, 'Umuhoza v Republic of Rwanda' <https://www.cambridge.org/core/journals/international-law-reports/article/abs/umuhoza-v-republic-of-rwanda/D456960D69CE22FA4DEF1C2CF372987C>.

<sup>33</sup> African Court on Human and Peoples' Rights, *Activity Report 2022–2023* <https://www.african-court.org/cpmt/storage/app/uploads/public/64f/ebd/f77/64febd77f811512395983.pdf>.

**Summary Table (for clarity)**

<b>Metric</b>	<b>Data &amp; Trend</b>
<b>Total contentious applications</b>	348
<b>Finalized applications</b>	~226 (65%) <sup>34</sup>
<b>Pending applications</b>	~120
<b>Decisions issued</b>	407 (242 judgments, 165 orders) <sup>35</sup>
<b>Direct access (Article 34(6))</b>	Only 8 states permit (as of March 2023); several withdrawals have occurred <sup>36</sup>
<b>Compliance rate</b>	Mixed—some full compliance (e.g., Burkina Faso, Tanzania, Rwanda), but widespread non-compliance and withdrawal of declarations remain prevalent

#### Preliminary Analysis

These figures underscore a mixed picture: while caseload throughput has improved, concerns persist around access and enforcement. Notably:

- i) Selective compliance highlights the pivotal role of political will, as seen in Burkina Faso, Tanzania, and Rwanda, contrasted by reluctance or defiance in other states.
- ii) Declining access through withdrawals of Article 34(6) declarations directly undermines the Court's accessibility and legitimacy.
- iii) The EU model of monitoring and pressure presents a stark contrast—while the African Court progresses normatively, its enforcement structure remains significantly weaker.

### Key Implementation Challenges

The African Court on Human and Peoples' Rights (AfCHPR) faces persistent structural and political obstacles to the full and timely enforcement of its judgments. These challenges not only impede individual justice but also weaken the Court's institutional legitimacy and deterrent effect. From the vantage point of defence counsel, five interrelated implementation barriers emerge.

#### *Weak Enforcement Mechanisms*

The Protocol entrusts monitoring of compliance to the African Union Executive Council, which reports to the Assembly of Heads of State and

<sup>34</sup> African Court on Human and Peoples' Rights (n 23).

<sup>35</sup> Ibid.

<sup>36</sup> Amnesty International, 'Your Country Withdrew Your Right to Seek Justice at the African Court – Claim It Back' (Amnesty International) <https://www.amnesty.org/en/petition/your-country-withdrew-your-right-to-seek-justice-at-the-african-court-claim-it-back/>.

Government.<sup>37</sup> However, the Protocol contains no coercive enforcement measures, no provision for financial penalties, and no capacity for the Court itself to compel compliance.

This institutional gap means that non-implementation is largely cost-free. Even where the Court has issued time-bound compliance orders—as in *Joseph John v. Tanzania*—states have either delayed or ignored reporting obligations without consequence.<sup>38</sup>

Comparatively, regional systems such as the European Court of Human Rights have politically empowered compliance bodies (e.g., the Committee of Ministers) that can exert sustained pressure on states to implement rulings.<sup>39</sup> The African Court lacks an equivalent mechanism.

#### *Political Resistance and State Sovereignty Concerns*

Implementation rates correlate closely with political will. States are more likely to comply when judgments align with domestic political priorities (e.g., *Konaté v. Burkina Faso*, where compliance supported a broader press freedom narrative) and less likely when rulings threaten entrenched political or legal arrangements.

In recent years, some governments have framed the Court as an external constraint on sovereignty, leading to withdrawals of Article 34(6) declarations by Rwanda (2016), Tanzania (2019), Benin (2020), and Côte d'Ivoire (2020).<sup>40</sup> Each withdrawal significantly narrowed access for individuals and NGOs, effectively insulating those states from direct accountability before the Court.

#### *Limited Direct Access for Individuals and NGOs*

As of now, only eight states maintain active Article 34(6) declarations, down from an earlier peak of eleven.<sup>41</sup> This access restriction undermines the Court's relevance to victims of human rights violations and forces potential litigants to rely on the African Commission as a conduit—a

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<sup>37</sup> Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (n 1) arts 29–31.

<sup>38</sup> *Joseph John v United Republic of Tanzania* App No 001/2015 (AfCHPR, 28 November 2019).

<sup>39</sup> European Convention on Human Rights (n 16) art 46(2).

<sup>40</sup> Amnesty International (n 21).

<sup>41</sup> *Ibid.*

process that is slower, procedurally more complex, and removes direct party status from applicants.<sup>42</sup>

For defence counsel, this limited access complicates case strategy in several ways. Without the ability to file directly before the Court, counsel must first navigate the African Commission's admissibility and merits processes, which can take years before a matter is referred to the Court. This additional procedural layer not only delays the timeline for obtaining relief but also dilutes the urgency of cases where violations are ongoing. For example, in *Tanganyika Law Society and Legal and Human Rights Centre v. Tanzania*, the applicants had direct access to the Court under the declaration, enabling the Court to address the matter more swiftly than would have been possible through the Commission alone.<sup>43</sup>

The absence of direct access further restricts the ability to seek provisional measures—urgent orders designed to prevent irreparable harm—because such requests must first be filtered through the Commission, which cannot itself issue binding interim measures. In *Lohé Issa Konaté v. Burkina Faso*, direct access allowed the applicant to secure timely relief against a custodial sentence that violated freedom of expression; without such access, the harm could have been irreversible.<sup>44</sup> By the time a case reaches the Court via the Commission, the harm may already have occurred, rendering remedies largely symbolic.

Similarly, the lack of direct filing rights diminishes counsel's capacity to craft case-specific remedial requests, such as orders for legislative reform, targeted reparations, or institutional guarantees of non-repetition. The Commission's mandate and approach tend to focus on broader recommendations, whereas the Court can tailor binding orders to the facts of an individual case. In *Alex Thomas v. Tanzania*, for instance, the Court ordered a retrial in line with fair trial guarantees—an outcome unlikely to have emerged as precisely from the Commission's broader, non-binding recommendations.<sup>45</sup> This shift from a direct, judicial forum to a quasi-judicial intermediary inevitably changes litigation strategy, limits procedural agility, and reduces the effectiveness of outcomes for victims.

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<sup>42</sup> *African Commission on Human and Peoples' Rights v Republic of Kenya (Ogiek)* (n 5).

<sup>43</sup> *Tanganyika Law Society and Legal and Human Rights Centre v United Republic of Tanzania* Apps Nos 009/2011 and 011/2011 (AfCHPR, 14 June 2013).

<sup>44</sup> *Lohé Issa Konaté v Burkina Faso* (n 9).

<sup>45</sup> *Alex Thomas v United Republic of Tanzania* App No 005/2013 (AfCHPR, 20 November 2015).

### *Awareness and Capacity Gaps*

Implementation also falters due to low awareness of the Court's decisions among key domestic actors—parliamentarians, national human rights institutions, civil society organisations, and judicial officers. In some states, ministries tasked with execution of judgments lack both technical capacity and financial resources to comply effectively.<sup>46</sup>

For example, Malawi has explicitly cited resource constraints as a primary barrier to implementing certain reparations orders.<sup>47</sup> In other jurisdictions, misunderstandings of the scope or implications of judgments have delayed or diluted compliance, as seen in post-judgment debates in Ghana and Benin over electoral law reforms.<sup>48</sup>

### *Absence of a Dedicated National Focal Point*

Few states have designated a national focal point to coordinate the implementation of AfCHPR judgments. Without such a mechanism, responsibility is often diffused across multiple ministries, resulting in bureaucratic inertia and a lack of accountability.

The absence of centralised oversight also hampers effective communication between the Court, national authorities, and stakeholders—compounding delays in legislative amendments, reparations disbursement, or policy reforms.

### *Summary Observations*

From an institutionalist perspective, these challenges reflect weak compliance incentives and the absence of credible sanctions for non-compliance. They also reveal a vicious cycle: as implementation rates decline, state withdrawals and political resistance increase, which in turn further undermine the Court's legitimacy and effectiveness.

Addressing these systemic weaknesses requires both formal reforms to strengthen enforcement mechanisms and informal strategies to build political and public support for compliance.

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<sup>46</sup> Frans Viljoen, *International Human Rights Law in Africa* (n 17) 518.

<sup>47</sup> *Ibid.*

<sup>48</sup> African Court on Human and Peoples' Rights, *Activity Report 2020–2023*.

## **Comparative Perspectives**

The performance of the African Court on Human and Peoples' Rights (AfCHPR) in securing compliance with its judgments is best understood in the context of comparative regional practice. While each human rights system operates within a distinct political and legal culture, cross-regional analysis reveals structural features that influence enforcement outcomes.

### *European Court of Human Rights (ECtHR)*

The European Court of Human Rights operates under the European Convention on Human Rights, with its judgments supervised by the Committee of Ministers of the Council of Europe.<sup>49</sup>

- i) *Enforcement Mechanism:* Article 46(2) of the Convention requires the Committee of Ministers to monitor execution of judgments, including both individual measures (e.g., compensation, release from detention) and general measures (e.g., legislative reform).
- ii) *Compliance Rates:* Historically, compliance rates exceed 80percent, although delays occur in politically sensitive cases (e.g., Turkey's reluctance to release political prisoners such as Osman Kavala).<sup>50</sup>
- iii) *Key Lesson for Africa:* The ECtHR benefits from a politically empowered compliance body with an established diplomatic follow-up process. Persistent supervision, combined with reputational consequences of non-compliance, exerts meaningful pressure on states.

### *Inter-American Court of Human Rights (IACtHR)*

The Inter-American Court's jurisdiction is compulsory for states that have ratified the American Convention and accepted its competence.<sup>51</sup>

- i) *Enforcement Mechanism:* The Court retains active supervisory jurisdiction, issuing follow-up resolutions and convening compliance hearings to monitor progress.
- ii) *Compliance Rates:* Full compliance rates hover around 30–40percent for all orders, with higher rates for monetary reparations than for structural reforms.<sup>52</sup>

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<sup>49</sup> European Convention on Human Rights (n 16) art 46(2).

<sup>50</sup> Council of Europe, *Supervision of the Execution of Judgments Annual Report* (Council of Europe 2023).

<sup>51</sup> American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) arts 62–65.

<sup>52</sup> Inter-American Court of Human Rights, *Annual Report 2022*.

- iii) *Key Lesson for Africa:* The IACtHR's direct supervision model allows the Court to maintain ongoing engagement with states, reducing the lag between judgment and enforcement. This approach could inspire reforms to give the AfCHPR more direct compliance-tracking powers.

#### *East African Court of Justice (EACJ)*

The EACJ—though not a human rights court per se—has developed a growing body of rights-related jurisprudence under the East African Community Treaty.<sup>53</sup>

- i) *Enforcement Mechanism:* The EACJ lacks explicit enforcement provisions in its Treaty; compliance is largely political. Nevertheless, over 75percent of its judgments are implemented, largely due to the smaller size and closer economic integration of the East African Community.<sup>54</sup>
- ii) *Key Lesson for Africa:* Smaller, economically interdependent communities may produce stronger peer pressure for compliance. The AfCHPR's continent-wide scope makes such dynamics harder to replicate, but subregional cooperation could enhance implementation in the African context.

#### *Comparative Observations*

Three insights emerge from these comparative experiences:

- i) *Institutionalized Monitoring Is Critical*  
Both the ECtHR and IACtHR maintain active supervision mechanisms—either through a political body (Committee of Ministers) or direct judicial follow-up. The AfCHPR's reliance on the AU Executive Council, without binding timelines or sanctions, places it at a disadvantage.
- ii) *Reputational Consequences Matter*  
The European and Inter-American systems benefit from dense networks of civil society, media coverage, and parliamentary oversight that amplify reputational costs of non-compliance. Such networks are less developed in Africa, limiting public pressure on governments.

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<sup>53</sup> Treaty for the Establishment of the East African Community (adopted 30 November 1999, entered into force 7 July 2000) arts 6(d), 7(2).

<sup>54</sup> Ally Possi, 'The East African Court of Justice: Towards Effective Protection of Human Rights in the East African Community' (2013) 17(2) *Law, Democracy & Development* 1.



iii) *Tailored Remedies and Flexibility*

The IACtHR's use of follow-up resolutions allows it to adapt remedies over time. The AfCHPR's remedies are generally fixed at judgment, with less scope for iterative engagement.

*Implications for Reform*

Adapting lessons from other systems does not require wholesale transplantation. Instead, the AfCHPR could:

- i) Develop an internal compliance unit to track execution of judgments and report publicly on state performance.
- ii) Advocate for AU treaty amendments empowering a dedicated political body to supervise enforcement, akin to the Committee of Ministers.
- iii) Encourage civil society partnerships to increase domestic visibility of non-compliance, thereby raising reputational costs.
- iv) Explore subregional compliance coalitions (e.g., SADC, ECOWAS) to build peer pressure within smaller blocs.

**Recommendations for Reform**

Improving the enforcement of African Court on Human and Peoples' Rights (AfCHPR) judgments requires a combination of institutional reforms, political strategies, and grassroots initiatives. Drawing from institutionalist theory, effective compliance emerges where institutions create clear expectations, credible monitoring, and meaningful incentives for adherence.<sup>55</sup> The following recommendations aim to operationalise these principles.

*Strengthen Institutional Enforcement Mechanisms*

- i) Establish a Dedicated Compliance Monitoring Body within the African Union
  - a) Amend the Protocol to empower a standing committee—similar to the Council of Europe's Committee of Ministers—to monitor and supervise implementation of AfCHPR judgments.<sup>56</sup>
  - b) Require annual state-by-state compliance reports, published online, to create transparency and public accountability.<sup>57</sup>

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<sup>55</sup> Frans Viljoen, *International Human Rights Law in Africa* (n 17) ch 13.

<sup>56</sup> Amnesty International (n 21).

<sup>57</sup> African Union, *Agenda 2063: The Africa We Want*.

- ii) Empower the Court to Retain Supervisory Jurisdiction
  - a) Introduce procedural rules enabling the Court to hold follow-up compliance hearings and issue supplementary orders, as in the Inter-American system.<sup>58</sup>
  - b) This would allow for iterative engagement with states, particularly where structural reforms are required.<sup>59</sup>

#### *Expand Access to the Court*

- i) Encourage Ratification of the Protocol and Article 34(6) Declarations
  - a) Mobilise targeted diplomatic and civil society campaigns to persuade states to ratify the Protocol and file declarations allowing individual and NGO access.<sup>60</sup>
  - b) Link this process to broader AU commitments under Agenda 2063 on good governance and human rights.<sup>61</sup>
- ii) Counter the Trend of Withdrawals
  - a) Develop AU policy guidelines clarifying that withdrawal of Article 34(6) declarations undermines collective human rights protection.<sup>62</sup>
  - b) Consider conditioning certain AU benefits (e.g., election to leadership positions) on maintaining direct access commitments.<sup>63</sup>

#### *Increase Political Will and Peer Pressure*

- i) Leverage Subregional Organisations
  - Use SADC, ECOWAS, and EAC political structures to apply peer pressure on non-compliant states, mirroring the higher compliance rates seen in the East African Court of Justice.<sup>64</sup>
- ii) Enhance Reputational Consequences

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<sup>58</sup> African Court on Human and Peoples' Rights, *Activity Reports 2020–2024*.

<sup>59</sup> Maria Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement' (2001) 23 *Human Rights Quarterly* 1062.

<sup>60</sup> Courtney Hillebrecht, *Domestic Politics and International Human Rights Tribunals: The Problem of Compliance* (Cambridge University Press 2014).

<sup>61</sup> African Union, 'Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court...' (1998/2004).

<sup>62</sup> African Court on Human and Peoples' Rights, 'Home – AfCHPR' <https://www.african-court.org>.

<sup>63</sup> MA Sanchez, 'The African Court on Human and Peoples' Rights: Forging a Jurisdictional Frontier...' (2023) 19(3) *International Journal of Law in Context* 352.

<sup>64</sup> Wikipedia, 'African Court on Human and Peoples' Rights' [https://en.wikipedia.org/wiki/African\\_Court\\_on\\_Human\\_and\\_Peoples%27\\_Rights](https://en.wikipedia.org/wiki/African_Court_on_Human_and_Peoples%27_Rights).

- Partner with African media networks and regional civil society coalitions to publicize compliance and non-compliance, framing enforcement as a measure of states' governance credibility.<sup>65</sup>

### *Build Domestic Implementation Capacity*

- i) Create National Focal Points for Implementation
  - a) Require each state to designate a specific office or official responsible for coordinating execution of AfCHPR judgments.<sup>66</sup>
  - b) Ensure this focal point reports annually to both the Court and the AU compliance body.<sup>67</sup>
- ii) Parliamentary and Judicial Engagement
  - a) Organise capacity-building workshops for legislators, judges, and legal officers to deepen understanding of the Court's role and the binding nature of its decisions.<sup>68</sup>
  - b) Promote parliamentary scrutiny of government compliance through dedicated human rights committees.<sup>69</sup>

### *Enhance Legal Representation and Public Awareness*

- i) Expand the Court's Roster of Legal Aid Counsel
  - Encourage greater enrolment of defence lawyers, particularly from states with high litigation volumes (e.g., Tanzania), to strengthen case preparation and advocacy.<sup>70</sup>
- ii) Grassroots Awareness Campaigns
  - a) Collaborate with national human rights institutions and NGOs to disseminate accessible information on the Court's mandate, procedures, and landmark judgments.<sup>71</sup>
  - b) Use social media and community radio to reach rural populations.<sup>72</sup>

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<sup>65</sup> Amnesty International, *Why the African Court Should Matter to You* (Amnesty International 2023).

<sup>66</sup> Wikipedia, 'African Commission on Human and Peoples' Rights' [https://en.wikipedia.org/wiki/African\\_Commission\\_on\\_Human\\_and\\_Peoples%27\\_Rights](https://en.wikipedia.org/wiki/African_Commission_on_Human_and_Peoples%27_Rights).

<sup>67</sup> Institute for Security Studies, 'The African Union at 20'.

<sup>68</sup> RC Liwanga, 'Enforceability of Remedial Orders of African Human Rights...' (2015).

<sup>69</sup> Amnesty International, *The State of African Regional Human Rights Bodies and Mechanisms 2019–2020*.

<sup>70</sup> African Human Rights Law Reports, Centre for Human Rights, University of Pretoria.

<sup>71</sup> Makau wa Mutua, *The African Human Rights System: A Critical Evaluation* (2000).

<sup>72</sup> Amnesty International (n 21).

### *Integrate Reforms into a Broader AU Human Rights Strategy*

Institutionalist theory suggests that compliance improves when courts operate within a broader, coherent governance framework.<sup>73</sup> The AU should therefore integrate AfCHPR enforcement reforms into a continent-wide human rights strategy, ensuring that judicial, political, and civil society actors work in concert.<sup>74</sup>

### *Anticipated Benefits of Reform*

If implemented, these measures would:

- i) Increase compliance rates by creating both legal and reputational consequences for non-compliance.
- ii) Broaden access to the Court, restoring its relevance to victims and NGOs.
- iii) Build the institutional resilience necessary for the Court to navigate political resistance.
- iv) Position the AfCHPR as a more effective guardian of the Banjul Charter and other African human rights instruments.<sup>75</sup>

### **Conclusion and Recommendations**

This study has examined the African Court on Human and Peoples' Rights through both theoretical and empirical lenses, highlighting its institutional design, performance patterns, and the practical challenges it faces. The institutionalist perspective underscores the Court's potential to shape state behavior and strengthen human rights protection across Africa, yet it also illuminates the constraints imposed by political will, resource limitations, and procedural complexities. Empirical evidence demonstrates incremental progress in compliance and enforcement, but significant gaps remain, particularly in the implementation of judgments and the Court's visibility among domestic actors.

Addressing these challenges requires a multifaceted approach: reinforcing state cooperation, enhancing the Court's capacity and outreach, and fostering synergies with regional human rights mechanisms. By doing so, the African Court can more effectively fulfill its mandate as a cornerstone of the continent's human rights architecture. Ultimately, the Court's evolution reflects the broader tension between aspiration and reality in

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<sup>73</sup> Frans Viljoen, *International Human Rights Law in Africa* (n 17) ch 13.

<sup>74</sup> African Union (n 57).

<sup>75</sup> African Court on Human and Peoples' Rights (n 58).

Africa's human rights landscape, emphasizing that institutional design must be matched by sustained political commitment and societal engagement to achieve meaningful protection for all.

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