| Chapter 7 |

Institutional Framework for Human Rights Protection in Africa: The African Court on Human and Peoples' Rights

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ABSTRACT

The African Court on Human and Peoples' Rights (ACtHPR) is an institution of fundamental significance to the African system of human rights protection, established to support and complement the actions of the African Commission on Human and Peoples' Rights (ACHPR). Its emergence is a result of a complex historical and political process dating back to the 1960s and 1970s, at the time of African decolonisation. The process involved the struggle for the independence of African states, the development of anti-colonial movements and a growing awareness of the need to protect human rights on the continent. In response to these challenges, the Organisation of African Unity (OAU), which later became the African Union (AU), were created to play a crucial role in promoting human rights. The African Court was founded by a protocol to the ACHPR to act as a judicial authority protecting human rights, a major addition to the African Commission's actions. The body wields an extensive jurisdiction that includes the interpretation and application of the African Charter and other human rights instruments ratified by African states. Its operation rests on working with the AU; however, its effectiveness is restricted by political and economic challenges faced by African states. Nonetheless, the creation of the African Court was an important step towards a stronger human rights protection on the continent and opened new opportunities for enforcing these rights in the region. Although it plays a key role in promoting human rights, the evaluations of its effectiveness vary. On the one hand, it is seen as an institution capable of fostering the legal awareness and obligations of the African states regarding human rights, while, on the other hand, some critics fear that it may lack sufficient potential to face the challenges of chronic problems afflicting the continent, such as military conflicts, political instability or poverty. Despite these fears, the Court remains the central element of the African system of human rights protection, and its importance to the future of human rights in Africa is bound to grow.

KEYWORDS

African Court on Human and Peoples' Rights, human rights protection, the regional system of human rights protection, international jurisdiction

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1. The Background and the Legal Foundations of the African Court

The African Court on Human and Peoples' Rights (hereafter, the African Court or the Court) is a pivotal institution in the human rights protection system on the African continent, established to strengthen and complement the functions of the African Commission on Human and Peoples' Right (hereafter, the African Commission). It is the most recent fully specialised regional human rights court. Like the earlier courts, such as European (Strasbourg) and American (San José), its formation is indissolubly linked with the existence and operations of a regional intergovernmental organisation. Looking for motivations to exercise this authority, one needs to study the historical developments on the African continent. However, notably, its background is complex and consists of several key stages.

In the 1960s and 1970s, several African states became independent from Western colonial powers. This decolonisation, initiated after World War II, was a turbulent period in the history of the continent, bringing hopes of self-determination and problems of building modern state structures.[1] The states were forced to tackle a range of challenges, such as building state institutions, economic development and the integration of diverse ethnic and social groups into homogeneous nation states.[2] The process varied across regions, often accompanied with military conflicts that complicated the situation. Hence, the new African states realised the need for human rights protection as a foundation of stability and development.[3]

In response, the Organisation of African Unity (OAU) was formed at a conference of African leaders in Addis Ababa (Ethiopia) on 23–25 May 1963[4] to support cooperation among African states, promote continental solidarity and defend the sovereignty and territorial integrity of its members. Human rights promotion was among its priorities, though it initially focussed on political and economic issues.[5] It relied on the OAU Charter,[6] adopted at a time when decolonisation was at its most intense. The document's provisions concern the sovereign equality of states, non-interference with internal affairs, peaceful dispute resolution, the need to eliminate the residues of colonialism, brotherhood, solidarity, etc.[7] The OAU's establishment expressed the aspirations of African nations towards unity and joint struggle against the challenges emerging after the end of the colonial era. Despite recurrent crises, due to the internal diversity of its Member States,[8] the OAU survived until 2001, to be replaced at

1 Cf. more in Cooper, 1996.
2 Cf. more in Evans and Murray, 2002, pp. 15–18.
3 Cf. more in Murray, 2004, pp. 28–32.
4 Cf. more in Sidi Diallo, 1999, pp. 47–56.
5 Cf. more in Viljoen, 2007, pp. 210–215.
6 Charter of the Organization of African Unity, 25 May 1963, Addis Ababa, United Nations Treaty Series, vol. 479, no. 6947. The OAU Charter became effective on 13 September 1964.
7 Murray, 2004, pp. 7 and ff.
8 More on the OAU's role in the process of handling international disputes in Africa, cf. Sidi Diallo, 1999, pp. 47–56.

an African summit in Durban (South Africa) on 9 July 2002 with the African Union[9] (AU), founded by the African Union Constitutional Act,[10] signed in Lomé (Togo) on 11 July 2000.[11]

As the ranks of independent African states grew, the need to create regional mechanisms of human rights protection began to be noted. A range of nongovernmental organisations and social initiatives emerged focussing around these issues. Inspired by European and American systems of human rights protection, the African states collaborated to build some structures of their own, better adapted to local cultural, social and political conditions.[12]

Hence, the African Charter of Human and Peoples' Rights (hereafter, the African Charter) was announced at a conference of the OAU state and government leaders in Banjul (Gambia) on 27 June 1981, effective as of 21 October 1986, and ratified by all the OAU (later AU) Member States. Its authors tried to address the unique African culture and legal philosophy, so that it could become a suitable instrument of satisfying specific African needs and dispelling any doubts.[13] The African Charter encompasses individual civil, political, economic, social and cultural rights, along with group rights and individual and state obligations.

Its creation was partly a result of the pressure the international community exerted on African governments to ensure human rights and partly a desire to create a document that would be the African equivalent to the Universal Declaration of Human Rights[14] of 4 November 1948. Furthermore, the authors were inspired by the Convention for the Protection of Human Rights and Fundamental Freedoms[15] (hereafter, the European Convention) of 4 November 1950, although many commentators and observers regarded it as an innovative document, designed to reflect the history, values and traditions of Africa.[16] Therefore, the treaty highlighted people's rights, human obligations and limitations to human rights.

Following the African Charter, the African Commission was established and began its operation in Addis Ababa (Ethiopia) on 2 November 1987. It is charged with monitoring that the rights under the African Charter are observed, promoting human rights and advising the OAU/AU Member States on related issues. Although its functions are important, the African Commission is not authorised to issue binding judgments, limiting its effectiveness.[17] In line with its mandate, it realises three principal objectives: promoting human and peoples' rights, assuring their protection and

9 Cf. more in Baimu, 2001, p. 312.
10 The Constitutive Act of the African Union, 11 July 2000, the English text is Available at https://au.int/en/Treaties/1157 (Accessed: 15 July 2024).
11 The document became effective on 26 May 2001.
12 Killander, 2010, pp. 95–99.
13 Mubangizi, 2006, p. 148.
14 The Universal Declaration of Human Rights adopted by the UN General Assembly in Paris on 10 December 1948 as resolution no. 217 A (III).
15 The OJ of 1993 No. 61, item 284 as amended.
16 Cf. more in D'Sa, 1985, pp. 72–81.
17 Gumedze, 2011, p. 134.

interpreting the African Charter. The possibility of presenting the African Commission with notices (complaints) from states, individuals or nongovernmental organisations is the major instrument of human and peoples' rights protection. Complaints are directed against one or more states charged with violating human rights.

The idea of setting up a regional human rights court emerged at the African *Conference on the Rule of Law* in Lagos (Nigeria) in 1961. African lawyers called on regional governments to create an authority accessible to everybody under the jurisdiction of the African Charter signatories. The Court finally commenced its operations four and a half decades later. The question of founding the African Court was taken up by the OAU in 1994, 13 years after the adoption of the African Charter, when the Assembly of the OAU Heads of State and Government requested the organisation's General Secretary to convene a meeting of experts that would consider the establishment of a judicial authority. The African Commission additionally drove the acceptance of the proposal to initiate a court that would supplement and strengthen its operations.[18] All commentators agree that the African Commission proved a disappointment.[19]

Given the African Commission's ineptitude, demands to create a judicial body became increasingly vocal. Preparations for the Protocol to the African Charter continued for nearly three years. The milestones were marked with two expert drafts, namely, the Cape Town draft (the Republic of South Africa, compiled in September 1995)[20] and the Nouakchott draft (Mauritania, compiled in April 1997),[21] along with the Addis Ababa draft (Ethiopia, compiled in December 1997), prepared with the participation of particular state representatives.[22] The latter was accepted promptly (in December 1997), though with some minor amendments, by the OAU Ministerial Conference, and submitted to the Assembly of the OAU Heads of State and Government, which approved it (without any in-depth discussions) at its 34th session in Ouagadougou (Burkina Faso) from 8–10 June 1998.[23] The African Court was instituted by force of Article 1 of the Protocol to the African Charter concerning the creation of the African Court on Human and Peoples' Rights (hereafter, the Protocol), which became

18 Cf. more in Naldi and Magliveras 1998, pp. 431–456.

19 Makau, 1999, p. 345.

20 Draft Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights, OAU Doc. OAU/LEG/EXP/AFCHPR/PRO(I) Rev. 1.

21 Draft (Nouakchott) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Drafted by the Second Governmental Legal Experts Meeting on the Establishment of an African Court on Human and Peoples' Rights, 11–14 April 1997, Nouakchott, Mauritania, OAU Doc. OAU/LEG/EXP/AFCHPR/PRO(2).

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

23 Wasiński, 2017, pp. 311–313.

effective on 25 January 2004.[24] The treaty is believed to have been adopted after a protracted lobbying of the scientific community and nongovernmental organisations.[25]

The enforcement of the Protocol did not mean the prompt institution of a new authority with operational capabilities. It was chiefly due to the AU's indecision regarding the relation of the African Court to the AU's Court of Justice.[26] Thus, the African Court was constituted formally, given the AU's organisational and financial difficulties.[27] Hence, a judicial mechanism had not evolved on the African continent for seeking claims for violations of the African Charter, as opposed to the European or Inter-American systems. However, the democratic process in African states improved the standards of human and civic rights protection.[28] The adoption of the Protocol in June 1998 was hailed around Africa, as it was a symbol of political modernity and awoke great hopes. The Protocol instituting the Court was the missing link in the African system of human rights protection. Some representatives of the doctrine hoped that its creation would reinforce in African leaders the awareness of their human rights obligations. However, the opponents believed that the new institution might lack the potential to change the deteriorating situation, especially as economic, political and demographic factors were the prevailing causes of human rights violations on the continent.[29] Considering both arguments, it should be emphasised that the undertaking marked a huge step in promoting human rights in the region. It came as a breakthrough in the development of human rights protection in the region and, although the Court's formation took decades, human rights defenders saw this as the moment the rights truly began to be enforced in Africa.

2. The Procedure of the African Court Judge Selection and the Operation of the Court – The Principles, Structure and Political Conditions

The procedure of electing the African Court judges is laid down in the Protocol and specified in the authority's internal by-laws to assure justice, representativeness and diversity, reflecting the nature of the continent. The nomination and selection of judges is political and not very transparent, including complex national nomination mechanisms. The doctrine claims that the choice of official candidates by the governments is a natural indication of the political hue of international justice and

24 These provisions were expanded by the internal by-laws of the African Court on 2 June 2010, regularly updated to reflect the changing needs and challenges of human rights protection on the continent. The most recent amendment was introduced on 1 September 2020. Cf. African Court on Human and Peoples' Rights, Rules of Court, 1 September 2020 [Online]. Available at: https://www.african-court.org/wpafc/wp-content/uploads/2021/04/Rules-Final-Revised-adopted-Rules-eng-April-2021.pdf (Accessed: 15 July 2024).
25 Cole, 2010, pp. 23–26.
26 Wasiński, 2017, p. 313.
27 Balcerzak, 2008, p. 259.
28 Michałowska, 2008, p. 42.
29 Cf. more in Bekker, 2007, p. 153.

a practical condition for governments to become involved in deciding which of their citizens is adequately qualified and fit for handing down international judgments.[30]

The African Court judges are elected by the Assembly of the OAU/AU Heads of State and Government, with an absolute majority of votes in a secret ballot.[31] The procedure is appropriate, given the number of states party to the African Charter. The selection is made from among candidates presented by states party to the Protocol, providing that a state can submit a maximum of three candidates, two of whom may be the citizens of a given state.[32] The Secretary General of the organisation requires each state party to the Protocol to propose their candidates within 90 days, before compiling the list of candidates in alphabetical order and distributing it among the Member States at least 30 days before the next session of the Assembly of the AU Heads of State and Government.[33]

Although the candidates are appointed by the AU Member States, once they become judges, they no longer represent the states and consider the cases as private individuals. They become Court members and cannot request or rely on instructions from the states that delegated them to become international judges.[34] The African Court's membership is elite,[35] since there are 11 judges,[36] equal to the number of states in the African Commission. Where the Assembly of the AU Heads of State and Government finds it necessary, it may change the number of judges.[37] Neither the Protocol nor the Court's by-laws provides for any chambers, yet the question may come up on the agenda in future, as the Court is overwhelmed with complaints. The judges should be citizens of the Member States. This is expected to help entrench 'the African' composition of the court and contribute to the human rights tradition of the continent. The Protocol sets the minimum number of judges required for the court to sit, while the internal by-laws envisage the option of setting up committees and working groups to facilitate the Court's work. Any recommendations from these groups are presented to the Court for approval.[38]

30 Mahoney, 2008, p. 327.
31 Article 14 Section 1 of the Protocol. The Court judges were first elected in January 2006 in Khartoum (Sudan). They were sworn in before the 7th Assembly of the AU Heads of State and Government in Banjul (Gambia) on 2 July 2006, and the Court officially commenced its operations in Addis Ababa (Ethiopia) in November 2006. Read more on the procedure of judge selection in Sow, 2001, pp. 38–54.
32 Article 12 Section 1 of the Protocol. The Court judges can be appointed by 27 states that have ratified the Protocol, out of 54 AU states. One judge only of a given nationality may be a member of the Court. The judges work part-time, unless the Assembly of the AU Heads of State and Government decides otherwise (Article 15 Section 4 of the Protocol).
33 Article 13 Sections 1 and 2 of the Protocol.
34 Giorgetti, 2016, p. 210.
35 Cf. Przyborowska-Klimczak, 2014, pp. 301–302.
36 Article 11 of the Protocol. The list of judges is available at the Court's official website. [Online]. Available at: https://www.african-court.org/wpafc/current-judges/ (Accessed: 15 July 2024).
37 Article 3 Sections 2 and 3 of the Protocol.
38 Rule 26 Sections and 2 of the African Court's by-laws.

The African solutions do not provide for *ad hoc* judge appointments. This may be because their authors, unlike those of the European and American Conventions on Human Rights,[39] do not allow 'national representation'. The judges do not hear cases involving the state they are citizens of or the state which submitted their candidacy.[40] This provision is crucial to assuring an impartial and objective hearing of cases and prevents any suspicions of partiality or conflicts of interest that could undermine the Court's credibility as an international institution protecting human rights.[41] Such regulations express the Court's broader undertaking to maintain the best standards of international judicial independence. This differs from other courts, where the option of ad hoc judge nominations by states party to a dispute is treated as an instrument which strengthens state sovereignty in international proceedings.[42] This difference in approach may arise from a desire to avoid potential conflicts of interest and preserve the judges' full independence from the states that nominated them.[43] Such a construction minimises the states' impact on the judicial process and ensures that the judges act as independent individuals, not representatives of their states.[44]

In the African Court, the quorum, or the minimum number of judges needed for a valid trial, is seven.[45] The quorum is determined at the beginning of each session.[46] If it is not reached, a session cannot be held, and the hearing is postponed until such time as the requirement is fulfilled. This approach guarantees lawful decisions and relies on a broad judicial consensus. Thus, this principle is essential for ensuring that the Court's decisions are made in a representative manner and involve sufficient numbers of judges to reinforce the legitimacy of verdicts.[47] The requirement of a seven-judge quorum applies to all Court meetings, both ordinary and extraordinary sessions or hearings of particular cases. Such a solution guarantees that the decisions issued by the Court reflect extensive reviews of law and result from collegiate decisions, which is important for the international human rights judiciary. The high quorum is intended to ensure that all the African regions and varied legal systems are represented when decisions are made, an expression of the continent's diversity and a reinforcement of the Court's legitimacy in the eyes of the Member States and the international community.[48]

The African Court is headed by a president[49] and vice-president, elected by and from among the Court judges. The president and vice-president are chosen every two

39 American Convention on Human Rights, San José, 22 November 1969, United Nations Treaty Series, vol. 1144, p. 123.
40 Article 22 of the Protocol.
41 Dersso, 2012, p. 137.
42 Murray, 2004, p. 217.
43 Dersso, 2012, p. 136.
44 Viljoen, 2012, p. 423.
45 Article 23 of the Protocol.
46 Rule 25 of the African Court's by-laws.
47 Viljoen, 2012, p. 425.
48 Dersso, 2012, p. 142.
49 At present, the President of the African Court is Judge Sylvain Oré of the Ivory Coast.

years for a term of six years and may be re-elected only once.[50] Only the president of the Court resides and works full time at the seat of the Court, while the other judges (including the vice-president) work part time.[51]

According to the internal by-laws, if the president or a vice-president is, for any reason, no longer the Court judge before the end of their term, the Court elects their successors for two years. They, too, may be re-elected only once.[52] The functions of the president and their deputies are defined by the internal by-laws,[53] as managing the work and supervising the administration of the Court and promoting its activities and conducting the annual reviews of the judges' performance. No judge may take part in a case where they have already appeared as counsellors, attorneys or representatives of a party, judges on a national or international court, members of an investigation committee or in any other capacity.[54] This regulation is different from other regional human rights courts, whose procedures provide for the representation of such a state by means of an ad hoc judge appointment in another manner.

The African Court convenes regularly to hear cases and make decisions concerning human rights protection on the continent. Its operations are based on a schedule of the ordinary sessions four times a year. Each session normally continues for four weeks and involves hearing day-to-day cases, holding necessary trials and issuing judgments. This is the key to assuring the continuous operations of the authority and an effective and timely hearing of cases.[55] The Court may additionally convene extraordinary sessions as needed. They are arranged *ad hoc*, usually in response to urgent cases that must be considered promptly. These may include the risk of grave human rights violations requiring quick interventions of the Court or cases that may substantially affect the system of human rights protection in Africa.[56] Decisions to call extraordinary sessions are made by the president on consultation with other judges and based on the determination of the urgency of the case. The extraordinary sessions may be longer or shorter than ordinary, depending on the cases' complexity and procedural requirements. Hence, the Court can flexibly respond to dynamic and unpredictable developments on the continent.[57]

Candidates for the African Court judges should be selected from among lawyers enjoying moral authority and holding recognised professional or academic qualifications or necessary experience in human rights, international law or related areas.[58] The Court's membership must reflect the diversity of the continent, varied culturally, legally and politically, which the Court attempts to address by choosing its judges

50 Article 21 Section 1 of the Protocol.
51 Article 21 Section 2 of the Protocol.
52 Rule 13 Section 4 in conjunction with Section 1 of the African Court's by-laws.
53 Rule 14 of the African Court's by-laws.
54 Article 22 of the Protocol.
55 Murray, 2004, p. 214.
56 Dersso, 2012, p. 126.
57 Cf. more in The African Cout, 2010, p. 102.
58 Article 11 Section 1 of the Protocol.

from various regions, such as North Africa, Sub-Saharan and East, West and South Africa.[59] Additionally, the judges should represent a range of legal specialisations.[60] A solution for geographical representation is debated in the doctrine. Its opponents point out that regional rivalry based on different languages, religions, customs and geographies may interfere with this multi-party cooperation. They believe that the states party to the Protocol should not forget the objective of creating a quality institution composed of the ablest men and women, and the issue of geographical representation should not impair the authority.[61] This solution is a novelty, since the criterion is not envisaged by the regulations of the European and American regional human rights courts. Furthermore, the membership should reflect the main legal systems applied in Africa, such as customs law, Islamic law, continental law (chiefly inspired by the French law) and the Anglo-Saxon system. This diversity is crucial for the Court to effectively resolve cases relating to varied legal systems and cultures on the continent.[62]

The Protocol imposes the duty of ensuring 'an appropriate gender representation' in the Court's membership. Female representation in international judicial authorities is seen as a key part of promoting gender equality and strengthening women's equality. In the African context, where women's rights are commonly breached, their presence in the Court's composition is particularly symbolic and practically significant. Although this progressive formula is an improvement on other, comparable authorities, it fails to specify the 'appropriate representation' to be attained or set a minimum number of women in the Court. The internal by-laws are not specific, either. A discretionary element can be noted here, although there is no guarantee that any particular post will necessarily be held by a woman. However, given the maximum number of candidates, the introduction of this principle may prove problematic. In practice, the Assembly of the AU Heads of State and Government tries to make at least a third of the judges female, in line with the organisation's wider-ranging undertakings to promote equal rights. Such a representation influences the way cases concerning the rights of women and other sensitive social groups are considered.

The judges are elected for six years and may be re-elected once to ensure the stability and continuity of the operations. At the end of their first term, judges may seek to have their mandates extended for another six years. Thus, the maximum time in a judge's position is 12 years, in line with several international courts, where the restricted number of terms guarantees independence and avoids potential conflicts of interest.[63] Newly elected judges discharge their duties on the first day of an ordinary session. The mandates of four judges chosen in the first election expire after two

59 The following division was set in the 5 April 2004 memorandum: West Africa – 3 judges, Central Africa – 2 judges, East Africa – 2 judges, South Africa – 2 judges, North Africa – 2 judges.
60 Article 14 Section 2 of the Protocol.
61 See: Padilla, 2002, p. 189.
62 Dersso, 212, p. 120.
63 Murray, 2002, p. 202.

years, and of the remaining four judges, selected at the same time, after four years.[64] To ensure continuity, rotational systems of renewing the judges' composition have been adopted for all the regional human rights courts. This means that, at the first election, the term in office is reduced to a third or a half of a full term. A judge elected to replace a judge whose term has not yet ended holds their office until the end of their predecessor's term. This principle of part-time office applies to all the judges, except the president. However, it may be modified by the Assembly of the AU Heads of State and Government.[65]

Before proceeding to hold their offices, the judges make solemn oaths or declarations.[66] This is of great symbolic and legal significance and emphasises the judges' undertakings to maintain the highest ethical and professional standards. The contents of the oath are laid down by the Court's internal by-laws. It binds the judges to fulfil their functions 'honorably, loyally, impartially, and conscientiously' and keep confidential the cases, during and after their terms. The judges swear that they shall protect the principles of human rights and justice in Africa by acting independently of any political influences or other pressures that could undermine their impartiality. The judges make the oath in an open session soon after their election, as practicable, or, if necessary, at a special public meeting.[67] This adds weight to the oath. The judges undertake to maintain complete neutrality and fairness in their decisions, which is required to maintain public confidence in the Court as an institution of international justice. This is particularly important, since the African Court operates in an environment of high cultural and political diversity, where the independence and impartiality of the judges are essential for its effectiveness.[68]

A judge's function should not be combined with any activities that could interfere with independence and impartiality or breach the office's requirements.[69] The Court's internal by-laws specify prohibited activities, including political, diplomatic or administrative posts and acting as legal advisors to national governments, although the phrase 'in particular' suggests that the catalogue may be longer.[70] The African Court is supported by a Secretariat, which fulfils administrative and technical functions. It keeps documentation, handles correspondence and organises the Court's sessions. It is headed by a Secretary, an official appointed by the Court president and responsible for managing the Secretariat staff. Crucially, the Secretariat supports the Court in decision-making and organisational issues by providing legal and administrative assistance.

The African Court's seat is not designated in the Protocol. It is appointed by the Assembly of the AU Heads of State and Government from among the organisation's

64 Article 15 Section 1 of the Protocol.
65 Article 15 Sections 3 and 4 of the Protocol.
66 Article 16 of the Protocol.
67 Rule 19 of the African Court's by-laws.
68 Murray, 2002, p. 223.
69 Article 18 of the Protocol.
70 Rule 5 of the African Court's by-laws.

Member States. The African Court may sit at another location in the territories of any Member States, provided most judges find it desirable and the chosen state consents. The African Court's seat may be changed by the Assembly on consultation with the authority. Initially, the Court met at Addis Ababa (Ethiopia); however, it moved to Arusha (the United Republic of Tanzania) in August 2007.[71] This is a strategic choice as the city is centrally situated in East Africa. It provides easier access to the AU's Member States and international observers, which highlights the Court's significance in the regional system of human rights protection.[72]

The official languages of the African Union are the Court's languages, too,[73] in line with the multilingual policy promoted by the organisation. Following Article 25 of the Act Constituting AU, Arabic, English, French, Portuguese, Spanish, Swahili and all the other African languages are the official languages of the organisation and its institutions. The multilingual proceedings of the Court are key to assuring fair access to justice for all parties, regardless of their linguistic background. It enables parties, witnesses and other participants to use their everyday languages, which is important for a full understanding of judicial procedures and ensuring fair process.[74] The Court's official languages are specified in its internal by-laws. If necessary, the Court may choose one or more of the official languages to serve as its working language(s). It may permit any individual appearing in court to use any language of their choice if such an individual proves they have insufficient knowledge of the Court's official languages. In the event, the rules and conditions of obtaining an interpreter are determined by the Court.[75] In practice, English and French are most commonly used, owing to their historical and political significance and because they are the most often used official languages in many African states. However, the Court tries to consider other official languages, such as Arabic or Portuguese, especially in cases involving states where they are dominant.

The African Court is financed by the AU, reflecting its status as the main judicial body of the organisation regarding human rights protection. This funding is crucial to its independence, effectiveness and the ability to carry out its mandate of protecting and promoting human rights in Africa. The judges' salaries and the operating costs of the Secretariat are financed out of the organisation's budget. The funding by a regional organisation, that is, the AU, guarantees that the Court acts independently from external influences, including the Member States, potential parties to proceedings before the Court. The African Court prepares an annual draft budget[76] and

71 Cf. The Treaty between the government of the United Republic of Tanzania and the African Union on the seat of the African Court of Human and Peoples' Rights of Arusha, Tanzania [Online]. Available at: http://en.african-court.org/images/Protocol-Host%20Agrtmt/agreement-Tanzania%20and%20AU.pdf (Accessed: 15 August 2024).
72 Viljoen, 2007, p. 414.
73 Article 50 of the Protocol.
74 Murray, 2002, p. 225.
75 Rule 16 of the African Court's by-laws.
76 Article 54 of the Protocol. The 2024 budget of the African Court totalled $ 12.4m.

submits it to the Assembly of the Heads of State and Government via the Executive Board. It involves detailed planning of expenditure to address the Court's operating requirements for the coming year, including the costs of hearings, judges' travels, infrastructure maintenance and staff salaries.[77] The Court's budget is financed by the AU's Member States. Each is bound to contribute to the AU, a part of which is assigned to the funding of the authority. This distributes the financial burden to all the Member States, ensuring stable funding and building a shared responsibility for the body's functioning.[78]

3. The Competences and Jurisdiction of the African Court – A Broad Scope of Human Rights Protection

The African Court discharges judicial and advisory functions by issuing legal opinions, as requested by authorised parties.[79] Regarding the former function, the Court is competent for hearing and resolving any cases and disputes regarding the interpretation and application of the African Charter and the Protocol[80] and applying the provisions of the African Charter and 'any other appropriate human rights instruments ratified by the interested states'.[81] Hence, the African Court's jurisdiction is more extensive than that of the African Commission.

The first two legal foundations – the African Charter and the Protocol – are not surprising, as opposed to the third. The African Court is not forced to restrict itself to the African Charter and may, and should, cite other international human rights agreements. This may comprise any regional and subregional treaties, both bi- and multilateral, and international,[82] for example, the International Labour Organisation or the international humanitarian legislation on military conflicts in the UN framework. This is important since many of those documents have relatively weak implementation mechanisms, especially the judicial ones, which are conducive to their breaches in the African conditions.[83] The African Court's jurisdiction[84] is substantially different from the remaining regional human rights courts or other international institutions deciding on individual rights. They are most often only competent for deciding solely based on a treaty that institutes them, possibly admitting supplementary regulations.[85] However, the Court's objective competence is a major novelty[86] and its creators

77 Dersso, 2012, p. 155.
78 Cf. more Orlu Nmehielle, 2000, pp. 59–60.
79 Cf. Articles 3 and 4 of the Protocol. See also: Eno, 2002, pp. 223–233. More on the advisory opinions in Pasqualucci, 2003, p. 29.
80 Article 3 Section 1 of the Protocol.
81 Article 7 of the Protocol.
82 Udombana, 2000, p. 45.
83 Michałowska, 2008, p. 43.
84 Cf. Eno, 2002, pp. 227–228; Sanchez, 2023, pp. 352–366.
85 Dąbrowska, 2023, p. 103.
86 Cf. Yakaré-Oulé (Nani) Jansen, Curling, 2019, p. 78.

intended to provide the continent's populations with the broadest possible protection of their rights. Nonetheless, the acceptance of the African Court's jurisdiction is voluntary. The states party to the Protocol should accept it by making a unilateral declaration when ratifying the treaty or at a later date.[87]

The Protocol to the African Charter envisages two types of jurisdiction for the African Court – obligatory (automatic) and facultative. Under the former, the African Commission, a state party that has filed a complaint with the African Commission, a state party against which a complaint has been filed with the African Commission, a state party whose citizen is a victim of a human rights violation,[88] an African nongovernmental organisation and other states interested in the case are entitled to submit a complaint to the Court upon filing an appropriate request and being granted permission by the Court.[89] The doctrine believes in presenting a complaint directly to the Court, without it being first considered by the African Commission, an exception compared with other human rights systems. This possibility is available to a state whose citizen is a victim of a human rights violation. However, given the poor performance of such procedures in African states, the possibility seems rather notional. Nonetheless, the one under Article 5 Section 3 of the Protocol seems more accessible, although it may only be triggered after a state has made an appropriate declaration.[90]

Since the subjective competence of active legitimacy has been solved in this manner, the class of those eligible for filing cases with the Court is broad, far wider than other regional systems, encompassing intergovernmental organisations or regional economic communities.[91] The Court's competence for their requests is automatic. As part of the voluntary jurisdiction, private individuals and nongovernmental organisations are authorised to submit their complaints to the Court. A state may consent to extending the African Court's jurisdiction to individual complaints filed directly with it by nongovernmental organisations with an observer status,[92] with African Commission or by private individuals by making statements to the AU's Secretary General when ratifying the Protocol or at a later date.[93] The direct access to the Court for private individuals and nongovernmental organisations is severely limited as it depends on the states where they are based to make suitable declarations

87 Cf. Dąbrowska, 2021, p. 110.
88 This regulation paves the way for the states to submit their complaints directly to the Court if they believe their citizens' rights are violated by other states.
89 Article 5 Section 1 of the Protocol.
90 Kenig-Witkowska, 2001, pp. 112–123.
91 Article 5 Section 1 of the Protocol.
92 The observer's status is equivalent to gaining the right to petition the Court in its proceedings. Cf. the African Commission, The catalogue of nongovernmental organisations with the observer's status [Online]. Available at: www.achpr.org/english/_info/directory_ngo_en.html (Accessed: 15 August 2024).
93 Article 5 Section 3 in conjunction with Article 34 Section 6 and Article 34 Section 7 of the Protocol.

of accepting the authority's jurisdiction.[94] Group eligibility for filing complaints is heavily restricted, too. The African Court does not handle complaints submitted in this way without receiving a statement from the state to which these complaints relate. Hence, the authority deciding the admissibility of a complaint may request an opinion from the African Commission. This goes against the idea of the African Charter that individual and peoples' rights are of fundamental importance. This should be regulated in the Court's internal by-laws.

The extent of the African Court's jurisdiction should be viewed within the socio-political environment of the continent at a time when the memories of recent colonisation were still fresh in many states. This precluded a compromise that would restrict their sovereignty or allow a supranational court to supervise or interfere with their internal jurisdictions. Hence, the requirement of an additional declaration on individual complaints should be treated as a means of inducing states to at least ratify the Protocol. This weakened the authority's capacity for developing its judicial practice and fulfilling the mandate of assuring the protection and promotion of human rights across the continent. Hence, the Member States introduced a two-step system of state affiliation when drafting the Protocol. First is ratifying the Protocol, which allows indirect access to the Court via the African Commission. The second involves a statement under Article 34 Section 6 of the Protocol, granting direct access to the Court.[95]

Since only a minority of the states have ratified the Protocol, the Court does not exercise its jurisdiction in most AU countries. Merely nine out of thirty-two states[96] party to the Protocol (and of the fifty-five Member States) have declared recognising the Court's competences. Only nine states have allowed the Court to decide in individual human rights disputes. Direct access to the African Court for private individuals and nongovernmental organisations is restricted by the requirement of a facultative declaration to be made by an interested state that recognises the body's competence in admitting cases from private individuals and nongovernmental organisations. Since such declarations are voluntary, states may withdraw unilaterally. Most states party to the Protocol have not submitted such declarations. Hence, the African Court is not competent to admit complaints from private individuals and nongovernmental organisations against these states. The restriction of individual access to the Court considerably narrows the more crucial of the two channels of presenting disputes. Out of nearly 130 cases, both closed and pending, merely three (a meagre 2%) did not relate to cases brought by individual parties or nongovernmental organisations. Thus,

94 Cf. Ssenyonjo, 2013, pp. 51–54.

95 As of 1 September 2024, the Protocol was ratified by 32 out of 55 AU Member States. Relevant statements have been made by Benin, Burkina Faso, the Ivory Coast, Gambia, Ghana, Malawi, Mali, Rwanda, Tanzania and Tunisia. None of the five largest AU Member States – Algeria, Egypt, Morocco, Nigeria and South Africa – has presented their statements on direct access to the Court.

96 Benin, Burkina Faso, Ivory Coast, Ghana, Malawi, Mali, Rwanda, Tanzania and Tunisia. Rwanda withdrew its earlier declaration in early 2016. See: Centre for Human Rights, University of Pretoria, 2016.

the prediction that the Court's dispute competence would be used as a pretext to carry on proceedings before the African Commission have not come true.[97]

The African Court is not excluded from cases that the African Commission finds inadmissible. Therefore, a complaint may be submitted to the Court directly, without it being first considered by the African Commission. It is advantageous for states whose citizens have fallen victim to human rights violations. Nonetheless, this option remains theoretical in African states.[98] The Protocol does not stipulate that all cases must be resolved by the African Commission before being presented to the Court. If the African Commission, however, transfers all cases directly to the Court by force of Article 5 Section 1 of the Protocol, without first finding anything, the optional declaration mechanism under Article 34 Section 6 is redundant.

The Court's ratione loci jurisdiction is closely related to the Member States that have ratified the Protocol. This means it can decide cases concerning human rights breaches in these states' territories. Thus, the jurisdiction is limited to the states that have agreed to recognise it by ratifying the Protocol and, regarding individual cases, by making suitable statements recognising the African Court's competence for hearing the complaints of individuals and nongovernmental organisations.[99] Furthermore, the Court may hear cases concerning human rights violations in the territories of states party to the Protocol or connected with such parties' actions outside their territories whose consequences apply to such states.

The effective dates of documents in relation to a given state jointly determine the African Court's temporal jurisdiction.[100] These documents are the African Charter, the Protocol, a treaty whose provisions are alleged to have been breached and the facultative declaration of recognising the African Court's competence for hearing such cases[101] (regarding individual complaints). A case is beyond the African Court's temporal jurisdiction if a violation takes place before any of the foregoing dates. However, relying on the African Commission's experience, the African Court points out that failing this condition in case of a continuing violation does not preclude its competence. Hence, the Court may handle a case where a violation is continuous and continues after the condition of temporal jurisdiction is fulfilled, and where a violation occurred before the condition was met; however, its effects occur after this date.[102] Applicants' rights are protected until such a time as a Member State ratifies the African Charter, yet not the Protocol. Applicants may bring cases of rights violations before the Protocol is ratified, giving them more opportunities. All the Member States

97 Viljoen, 2004, p. 23.
98 Diallo, 2010, pp. 180–181.
99 Naldi, 2002, pp. 90–92.
100 Cf. The African Court's judgment in *Lohe Issa Konate v. Burkina Faso*, complaint No. 004/2013.
101 The judgment in *Actions pour la Protection des Droits de l'Homme v. Ivory Coast* dated 18 November 2016, complaint No. 001/2014, implies that, where the facultative declaration is the basic jurisdiction of the African Court, the Court assumes that it gives rise to legal consequences as of the time it is presented to the custodian, unless the document's contents imply otherwise.
102 The African Court's judgment in *Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo & Burkinable Human and Peoples' Rights Movement v. Burkina Faso* dated 21 June 2013, complaint No. 013/2011.

(except South Sudan) have ratified the African Charter; therefore, this may open the door for complainants from the Member States that have not ratified the Protocol.

Resolving disputes is not the Court's sole function. It is tasked with interpreting and explicating treaties by means of advisory opinions.[103] Requested by a Member State, any of its authorities or any African organisation recognised by the AU, the Court can issue opinions about any legal questions connected to the African Charter or other human rights documents. Hence, the Court's competence for advisory opinions is discretionary. However, the object of an application for such an opinion should not be related to a case considered by the African Commission,[104] and the Court provides reasons for its opinion, with each dissenting judge entitled to submit their separate or contrary opinions.[105]

Compared to other human rights courts, both regional and subregional, the African Court stands out in the broad range of entities authorised to request advisory opinions. As mentioned, a legal query may be directed to the Court by the OAU/the AU Member States, the AU and its authorities and African organisations recognised by the AU.[106] This regulation implies three important points. First, the procedure is open to all AU Member States, irrespective of whether they are parties to the Protocol. Second, the Protocol does not make the AU authority's entitlement to an application dependent on a connection between the objective of its operations and the question asked. Third, African organisations recognised by the AU include both governmental and nongovernmental organisations.

Since the African Commission retains the right to issue advisory opinions,[107] the relationship between the Commission and the Court remains vague in light of the documents and the likely undermining of their positions. The problem can be resolved by harmonising their collaboration on the interpretation of the African Charter and the Protocol to avoid issuing double opinions on the same questions. The Court may issue advisory opinions about human and peoples' rights; therefore, exercising this right remains at its discretion.[108] To better illustrate the practical significance of the Court's advisory competences, let's take advisory opinion No. 001/2020, requested by the Pan African Lawyers Union (PALU)[109] and concerning the fairness and transparency of

103 Article 4 of the Protocol. See more on the issuance of advisory opinions by the African Court in Van Der Mei, 2005, pp. 27–46.
104 Article 4 Section 1 of the Protocol.
105 Article 4 Section 2 of the Protocol.
106 Article 4 Section 1 of the Protocol and Article 68 Section 1 of the African Court's internal by-laws.
107 In light of Article 45 Section 3 of the African Charter, the African Commission's function is to 'interpret any provisions of this Charter at the request of a party state, the Organisation of African Unity institutions or African institutions recognised by the Organisation of African Unity'.
108 Article 4 Section 1 of the Protocol.
109 The African Court, Advisory Opinion on the Compatibility of National Electoral Laws with the African Charter on Democracy, Elections and Governance, *PALU v. AU,* No. 001/2020, dated 4 December 2020, [Online]. Available at: https://www.african-court.org (Accessed: 17 June 2025).

elections in the context of the COVID-19 pandemic. The Court was asked to interpret the duties of the AU Member States regarding the rights to civic participation in government when public health was at risk. The Court pointed out the need to ensure safe voting conditions, the transparency of the electoral process and observing the rule of equal access to political participation. It stressed that any decisions to hold or delay elections must be proportional and based on law and cannot lead to abuses of power. Such opinions, though not binding, serve as reference points for the Member States for establishing their public policies and interpreting human rights under difficult circumstances. The instance of the PALU opinion shows the Court's preventive function and its contribution to the development of African democratic standards.

An advisory opinion can be issued at the request of the AU Member States, the AU authorities and international organisations recognised by the AU. The Court's advisory competences explain and interpret human rights regulations in the regional context to help reinforce legal standards in Africa. The objective scope of the Court's advisory opinions extends to any legal case related to the African Charter or any other human rights instruments, provided the object of an opinion is unrelated to a case handled by the African Commission.[110] This regulation implies that the African Court has the broadest jurisdiction regarding the subject matter. The reference to other instruments, without the condition of their ratification, suggests that the African Court is competent in issuing advisory opinions on non-binding legal acts (e.g., international organisations' resolutions) insofar as their object includes human rights issues.

The advisory opinions issued by the Court are not binding, distinct from judgments in disputed cases. However, they are important in practice as they constitute major interpretative tools that may affect the practice of the Member States and other entities within the African system. The Court's advisory competence plays a key role in developing and consolidating human rights standards on the continent. The African Court, through its advisory opinions, is capable of interpreting the African Charter and other significant legal documents, which influence the Member States' policies and the practice of regional authorities. The issuance of advisory opinions is a preventive instrument that helps resolve potential disputes even before they escalate to an international scale.

Insofar as the solution adumbrated in the Protocol raises no doubts regarding the African Court's judicial competences, it is not clear how the Court is supposed to act when issuing advisory opinions, as it is not specified how many and which states must ratify a given act of international law applicable to a given opinion. Regional African acts of international law, ratified by all the parties to the Protocol, may play a decisive role in the matter. The Court's experience in this respect is a model for the solutions adopted in Africa, although they point to an extensive interpretation of the regulation that addresses all human rights treaties prevailing in one or more states. If a legal act has been interpreted by another authority, the African Court should harmonise that

110 Article 4 Section 1 of the Protocol.

interpretation with its own. This may contribute to the development of international legal practice in this field.[111]

4. Proceedings Before the African Court – A Comprehensive Process of Hearing Cases and Enforcing Judgments

The procedure before the African Court is a complex process, including the acceptance of a complaint and its detailed consideration and the enforcement of judgments. The Court's jurisdiction and its accessibility to individuals fulfilling certain criteria are pivotal. Proceedings before the Court are, in several ways, similar to the actions before general state courts. They consist of written and oral stages followed by the judges' meeting and voting on a verdict, which is read out. Any party to the proceedings is represented by legal counsel of their choice,[112] whose services may be free of charge, if so required by the interests of the judicial system. This is particularly important where parties do not have the means to hire expert legal representatives.

Proceedings commence when a complainant files a written complaint with the Court Secretariat in one of the AU's official languages using an official form. The complaint must be signed by the complainant (or their representative) and its receipt should be confirmed by the Court Secretary.[113] Complainants must present all necessary information, including the facts of their case, the nature of their complaint, the exercise of national appeal remedies and charges or identification of what rights have been breached.[114] Complaints must be filed within a specific time of occurrences, usually after the legal remedies available in the state of the complaint's origin have been exhausted.

A complaint submitted in compliance with Article 5 Sections 1 and 3 of the Protocol is transmitted by the Court Secretary to the president and the remaining judges[115] and to the states against which it is filed, unless not necessary,[116] and to any other parties – private individuals, nongovernmental organisations or institutions – that may become parties to the proceedings. In an individual complaint against a state that has failed to submit the facultative declaration, the African Court strikes the case off its agenda as the *ratione personae* is absent, without notifying the state of the

111 Sidi Diallo, 1999, p. 181.
112 Article 10 Section 2 of the African Charter.
113 Rule 40 Section 1 of the African Court's by-laws. According to Section 24 of the Court's labour regulations, meanwhile, (one copy of) a complaint may be posted, submitted in person or sent via electronic mail, with the original document delivered to the Court Secretariat in the latter case.
114 Rule 41 of the African Court's by-laws and Sections 12–21 of the Court's labour regulations.
115 Rule 42 Section 1 of the African Court's by-laws.
116 Rule 42 Section 3 of the African Court's by-laws.

complaint.[117] All writs received by the Court Secretary are recorded and their copies transmitted to the opposing party.[118]

The respondent has 90 days to answer the charges and submit their arguments related to the Court's jurisdiction connected to the case's admissibility. These timelines may be extended by the Court.[119] Comments on a complaint may be presented by other entities as well – individuals, nongovernmental organisations and interested institutions. Should the Court find no material grounds for considering a complaint, it is rejected and reasons for such a decision are given.[120] At no stage of the proceedings in individual complaints is the representation by a lawyer compulsory. The African Court decides the admissibility considering the conditions set out in Article 56 of the African Charter,[121] all of which must be met. Complaints will be considered if their authors are identified (even if they request to remain anonymous), if they comply with the OAU Charter or the African Charter, are not phrased in offensive or insulating language against a given state and its institutions or the AU, do not rely solely on news spread by mass media, are submitted after local remedies, if any, have been exhausted, unless such a procedure is too protracted, if they are presented within a reasonable time after exhausting local remedies[122] of the date of case registration by the African Commission and do not relate to matters settled by a state concerned in accordance with the UN, the OAU or the African Charter.[123] The African procedure does not require that the complainant must be 'the victim', as is the case under European regulations.[124]

In June 2016, the African Court issued a practical guide on the conditions of complaint admissibility.[125] It was a response to applicants' practical needs and part of the Court's institutional development, intended to reduce the number of formally rejected complaints, improve the quality of submissions and disseminate knowledge about procedural regulations, which directly enhances access to regional human rights protection in Africa. The initiative was designed to improve the Court's efficiency by standardising the procedural practice and supporting potential complainants, particularly private individuals and non-government organisations, with the correct

117 Article 34 Section 6 of the Protocol implies that the Court rejects complaints against states that have failed to submit their declarations. This means that the Court Secretary should notify complainants in writing about the lack of the Court's jurisdiction in these circumstances.
118 Rule 43 Sections 1-2 of the African Court's by-laws.
119 Rule 44 Sections 1-2 of the African Court's by-laws.
120 Rule 48 of the African Court's by-laws.
121 This provision lays down the requirements to be met when notifying the African Commission.
122 Onoria, 2003, p. 24.
123 Similar conditions are listed in Rule 40 of the African Court's by-laws.
124 The European Human Rights Court requires, in line with Article 34 of the European Convention, that complainants be private individuals, non-government organisations or groups of individuals claiming they are victims of violations by a state party to the Convention. Under the African system, however, complaints may be filed by parties who have not been injured directly, which considerably expands the accessibility of the human rights protection mechanism.
125 Admissibility of complaints before the African Court. Practical guide, June 2016.

formulation of their applications. In line with these provisions, regardless of whether a case is presented to the AU Commission or the Court, the admissibility phase is a crucial but hard stage of the proceedings, which may constitute the chief barrier to a successful case settlement.[126] When evaluating the conditions of a complaint's admissibility, the African Court may call upon parties to submit documents and explanations concerning their case.[127] It may request the African Commission's opinion as well on the complaint's admissibility.[128]

Another requirement is that complaints must be filed within a reasonable time after local remedies are exhausted.[129] On admitting a complaint, the Court may hold interviews at which parties advance their arguments. In some cases, it may award temporary remedies to prevent irreversible damage before a final verdict is issued.[130] The procedure of internal remedies is set out in detail in the authority's internal by-laws, according to which the Court orders parties to present adequate information about the implementation of these remedies. In practice, the state parties are expected to comply with any such remedies immediately. For instance, in *Tanganyika Law Society and The Legal and Human Rights Centre v. Tanzania*, the Court ordered proceedings to suspend capital punishment promptly, pointing to the need to protect human rights before the case is decided.[131]

On considering a case, the Court issues its decision based on evidence and parties' arguments, made with a majority of votes from judges present at a meeting.[132] Such a decision may comprise an order to discontinue a violation, pay compensation or other remedies. The Court's decisions are binding on parties to the proceedings. The Court monitors the execution of its decisions by means of parties' periodic reports and possible additional steps if a decision is found not to be carried out properly. The case of *Ogiek v. Kenya*,[133] where the African Court found some breaches of the native population's rights and awarded compensation measures, is an instance of challenges associated with the enforcement of its decisions. Although years have passed; however, compensation payments and full enforcement remain suspended, which highlights the difficulties of enforcing obligations of state parties. The case illustrates the tension between the binding nature of the decisions and the limited mechanisms of enforcing them, a key challenge to the African system of human rights protection. The internal by-laws allow for a decision to be revised if new facts are discovered with a potentially significant effect on a case. A petition to review a case must be filed within six months of such a discovery and supported with evidence of the new

126 Ibid., p. 8.
127 Rule 41 Section 10 of the African Court's by-laws.
128 Article 6 Section 1 of the Protocol.
129 Article 56 Section 6 of the Protocol.
130 Article 27 Section 2 of the Protocol.
131 Tanganyika Law Society and The Legal and Human Rights Centre v. Tanzania, complaint no. 009/2011.
132 Article 28 Section 1 of the Protocol.
133 The African Court's judgment in African Commission on Human and Peoples' Rights v. Republic of Kenya (Ogiek case), dated 26 May 2013, complaint No. 006/2012.

circumstances.[134] The Court does not provide for appealing its decisions to another authority.

5. Future Legal Challenges to the African Court

The African Court, despite its growing importance in human rights protection on the continent, faces major legal challenges that influence its effectiveness and the perception of its role in the AU's structure. The overlapping competences of the Court and the African Commission regarding advisory opinions are a grave problem. Both the authorities have the power to interpret the provisions of the African Charter and other treaty documents. However, the absence of a coordinated mechanism of cooperation and clear limits between their competences poses the risk of duplication or interpretative inconsistency. This may impair the system's transparency and the authority of both institutions. Therefore, a more harmonised model of their cooperation will need to be developed in future.

The problem of enforcing the Court's decisions is another challenge. Despite their binding force, practice shows that the implementation of judgments by the Member States often experiences delays or lack of response. The case of *Ogiek v. Kenya*, where, despite an unambiguous finding, the native population's rights have been violated and having awarded a compensation, the actual execution of the judgment remains incomplete and delayed, is a distinct example. This instance demonstrates the institutional limitations of the system and the need to strengthen the mechanisms of judgment monitoring and enforcement.

The restricted access of individuals to the Court is another systemic challenge. Individual complaints can only be heard concerning states that have presented their declarations by force of Article 34 Section 6 of the Protocol. The declarations are voluntary; however, their absence prevents citizens from effectively seeking their rights at the regional level. Furthermore, some states that had filed such declarations have withdrawn them (e.g., Rwanda), which further limits the Court's jurisdiction in this respect. Actions to standardise individual access to the Court across the continent will have to be taken in future. Some interpretative doubts arise regarding the legitimacy of non-government organisations initiating advisory opinion proceedings. The current absence of clear-cut criteria of what 'recognised by the African Union' means leads to legal uncertainty and may restrict the participation of NGOs operating at local or regional levels. With a view to the prospects of the system, this requirement would need to be more specific to improve transparency and inclusivity. There is a need for a better integration of the Court and parallel subregional courts, such as the Court of the Economic Community of West African States (ECOWAS) or the Court of the East African Economic Community (EACJ). The lack of mechanisms for coordinating decisions may produce inconsistent standards of human rights protection, which weakens

134 Rule 78 of the African Court's by-laws.

the consistency of the entire African legal system. A platform of decision-making and institutional collaboration could enhance the homogeneity and effectiveness of human rights efforts.

6. Conclusion

The African Court was formed as a result of a long historical process to create a regional legal institution supporting human rights protection in Africa. Its establishment was a response to the continent's needs, as it was forced to face several challenges, such as the building of statehood, economic development and ensuring stability after decolonisation. The idea took decades to mature, and the Court's creation was founded on the African Charter. Although it was designed to protect human and peoples' rights, its enforcement was initially limited, since the African Commission, formed on the Charter's basis, was not authorised to issue binding judgments.

The question of creating the Court was addressed seriously in the 1990s, and the final decisions were made in 1998, when the Protocol was signed, which formally constituted the African Court. Its mission was to complement and reinforce the African Commission's activities and directly resolve cases relating to human rights violations on the continent. The Court began its operation in 2004; however, the process of its institutionalisation was complicated and required further organisational actions, *inter alia*, determining the relationship between the Court and other AU authorities. The Court consists of eleven judges elected from among the AU's Member States for six years, who can be re-elected. The judges, though chosen by the states, act independently and cannot be bound by their states' instructions. The quorum requirement and a prohibition of national representation by the judges to ensure the impartiality of their decisions are crucial principles of the Court's operations.

The Court has both judicial and advisory competencies, which means that it can consider complaints concerning human rights violations and issue legal opinions about the interpretation of legal documents. The complaints may be submitted by the African Commission, the state parties and, on meeting certain conditions, private individuals and nongovernmental organisations. However, individual access to the Court is restricted, since many AU Member States have not submitted appropriate declarations recognising the authority's jurisdiction in individual cases.

In procedural terms, the Court's proceedings are similar to court litigations, including written and oral stages followed by the issuance of a decision. The Court may rule on temporary remedies to prevent irreversible damage. Its decisions are binding, and the states must carry them out, which is monitored periodically. Despite considerable challenges, the institution is considered a key part of the African system of human rights protection and an important step towards ensuring justice and promoting human rights on the continent.

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