

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

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ABSTRACT

The African Commission on Human and Peoples' Rights stands as a cornerstone of human rights protection in Africa. This chapter examines the Commission's evolution, structure, and function within the broader context of human rights in Africa. We trace the historical roots of human rights abuses on the continent, highlighting the exploitation and deprivation endured during colonial times, and the establishment of the Organization of African Unity (OAU) in 1963 as a response to these injustices. We then analyse the adoption of the African Charter on Human and Peoples' Rights (Banjul Charter) in 1981, a landmark document that solidified the commitment to protecting human rights in Africa. Furthermore, the chapter delves into the structure and composition of the African Commission, established in 1987 as a quasi-judicial body tasked with monitoring the implementation of the Charter. We examine the Commission's unique position as a *sui generis* entity, operating between the Charter's aspirations and the realities of Africa's political landscape. We explore its key functions: reporting, communication, and promotional activities. The reporting procedure involves reviewing reports submitted by African states on their human rights records, while the communication procedure handles complaints alleging human rights violations. We also examine the Commission's promotional activities, which aim to raise awareness of human rights and promote the implementation of the Charter. Finally, the chapter explores the Commission's strengths and weaknesses, acknowledging its challenges in fulfilling its mandate. These challenges include limited resources, a lack of awareness of the Charter and its procedures, a lack of political will on the part of some African states, and insufficient enforcement mechanisms. The chapter concludes by discussing the Commission's potential for advancing human rights in Africa, emphasizing the need for greater support from African states, international organizations, and civil society.

KEYWORDS

African Commission on Human and Peoples' Rights, African Charter on Human and Peoples' Rights, human rights, African Union

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1. Introduction

Human rights abuses have historically been widespread in Africa, taking forms of slavery, apartheid, (neo)colonialism and multifaceted (severe) poverty. During colonial times, Africa's resources and people were exploited primarily for the benefit of external powers, leading to severe deprivation of resources, capabilities, choices, security and power, which plunged the continent into poverty.¹ In response, the Organisation of African Unity (OAU) was established in 1963, as African state leaders worked diligently to maintain their newly won independence. Although the OAU Charter briefly mentioned human rights, it was only 18 years later, after numerous fundamental rights violations, that the African Charter on Human and Peoples' Rights, known as the Banjul Charter, was adopted by the OAU's policy-making body.² Therefore, its primary objective was the eradication of colonialism in African governments, despite reiterating allegiance to the United Nations (UN) Charter³ and the Universal Declaration of Human Rights (UDHR)⁴ in its preamble. This necessitated the establishment of a regional framework to uphold, protect and fulfil human rights.⁵ Therefore, the Banjul Charter,⁶ approved by the Assembly of Heads of State and Governments of the OAU in Nairobi, Kenya, on 26 June 1981, constituted this framework to protect and advance human rights across Africa.⁷ The Charter came into effect on 21 October 1986.⁸ After achieving its primary mission of freeing Africa from colonialism and apartheid, the OAU was eventually replaced by the African Union (AU) in 2001. The newly established Union pledged to 'promote and protect human and peoples' rights in accordance with the African Charter and other relevant human rights instruments'.⁹

The Charter filled a critical gap in the promotion and defence of human rights on the continent by striving to harmonise international norms with African customs and values.¹⁰ As the primary tool for human rights advancement and protection in

1 Ssenyonjo, 2018, pp. 2–4.

2 Welch, 1992, pp. 44–45.

3 Charter of the United Nations, United Nations, San Francisco, October 24, 1945. [Online]. Available at: <https://treaties.un.org/doc/publication/ctc/uncharter.pdf> (Accessed: 12 July 2024).

4 Universal Declaration of Human Rights, United Nations, Paris, December 10, 1948. [Online]. Available at: https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf (Accessed: 12 July 2024).

5 Ssenyonjo, 2018, pp. 2–4.

6 African Charter on Human and Peoples' Rights, OAU, June 01, 1981. [Online]. Available at: https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf (Accessed: 12 July 2024) (hereinafter: African Charter on Human and Peoples' Rights).

7 Odinkalu, 1998, pp. 359–360.

8 Ssenyonjo, 2018, pp. 2–4.

9 Ibid.

10 Abioye, 2014, p. 82.

Africa,¹¹ it represented the beginning of a coordinated effort across the continent, despite its provisions often being less robust compared to those of Western Europe and several American nations.^{12,13} Overseen by the AU, the African regional human rights system became a part of the ‘pan-continental human rights system’, including several human rights treaties.¹⁴ However, the Charter could not be effective without a proper institutional framework. Therefore, the African Commission on Human and Peoples’ Rights (ACmHPR), a quasi-judicial entity,¹⁵ was established in 1987, as the main body overseeing and defending these rights under the Charter.^{16,17} Despite being described as an organisation under construction, caught between the Charter’s aspirations and Africa’s harsh realities, it has moved slowly amid significant deference to the AU’s political apparatus.^{18,19} Notably, the establishment of a human rights Commission in Africa, with its main office in Banjul, The Gambia,²⁰ given these limitations, remains significant, albeit challenged in effectiveness.²¹

However, the chosen type of institution was surprising. In 1979, when the OAU decided to establish a regional human rights body, it opted for a Commission over

11 Gumedze, 2003, pp. 118–119.

12 The African human rights system shows certain weaknesses. Unlike the European and American Conventions, the African Charter lacks a general derogation clause for emergencies, making its standards less clear. Its focus on duties and collective rights, though rooted in African traditions, often lacks enforcement and legal clarity, especially for socio-economic rights. While the European Court is permanent and issues binding judgments, with strong follow-up through the Committee of Ministers, the African Commission issues non-binding recommendations, with no similar oversight. The Inter-American system offers stronger interim measures and better tools for ensuring state compliance. These gaps reflect design choices and broader political and financial limitations. See more in: Viljoen, 2012; Murray, 2019.

13 Welch, 1992, pp. 44–45.

14 Gumedze, 2003, pp. 118–119.

15 Bekker, 2013, pp. 500–501; P. Ambrose, 1995, p. 81; Murungu, 2010, p. 67; Killander, 2013, p. 383.

16 Gumedze, 2003, pp. 118–119.

17 Onoria, 2003, pp. 1–3.

18 This political deference appears in several ways. The Commission must submit its recommendations to the AU Assembly of Heads of State and Government, which decides whether to act on them. For example, in its 2015 decision on the Endorois community’s land rights in Kenya, the Commission found serious violations; however, the AU delayed action for years. Similarly, in 2018, the AU Executive Council controversially asked the Commission to revoke the observer status of the Coalition of African Lesbians, widely seen as political interference. These cases highlight how political considerations block or dilute the Commission’s work, limiting its authority and independence. See more in: Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, African Commission on Human and Peoples’ Rights. Available at: <https://achpr.au.int/en/decisions-communications/centre-minority-rights-development-kenya-and-minority-rights-group-27603>. Amnesty International, African Union: End discrimination against African LGBTI activists, 27 July 2018. [Online]. Available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/ACT3011392019ENGLISH.pdf> (Accessed: 12 July 2024).

19 Hansungule, 2004, pp. 5–6.

20 Ssenyonjo, 2018, p. 5.

21 Welch, 1992, pp. 44–45.

a Court. This choice has been linked to an African preference for conciliation over adjudication, though no official justification was provided by the OAU or its representatives.²² While the original drafting of the Charter involved discussions about establishing a court to ‘judge crimes against humanity and violations of human rights’, this idea was considered premature. Nevertheless, this notion was later actualised through an additional protocol to the Charter, leading to the establishment of the African Court on Human and Peoples’ Rights (ACtHR), which began hearing cases in 2007. Until the Court became operational,²³ the Commission was the sole institution tasked with monitoring the Charter’s implementation. With the Court’s establishment, the Commission was required to clarify precisely how the Court would complement its responsibilities, ensuring a comprehensive and coordinated approach to human rights protection in Africa.²⁴ However, the Court’s role²⁵ will be the subject of the next chapter, while here the focus will be on the Commission’s composition, appointment and vacancy process, its scope of competencies and role in protecting human rights, including the supervision mandate, protective mandate and promotional activities.

2. Composition, Appointment and Vacancy of the Commission

The ACmHPR, the monitoring body of the African Charter,²⁶ consists of 11 members, selected from distinguished African individuals known for their exemplary moral character, integrity, impartiality and expertise in human and people’s rights, particularly valuing legal experience.²⁷ Commissioners are nominated by state parties to the African Charter; however, they are elected by the AU Assembly of Heads of State and Government. They are expected to serve in their individual capacity on a part-time basis,²⁸ guided by human rights principles rather than political agendas.²⁹ According to Article 31(1) of the Charter,³⁰ the selection of Commission members must be based

22 Odinkalu, 1998, pp. 360–364.

23 Naldi, 2014, pp. 367–368.

24 Murray, 2019, pp. 598–600.

25 To give a fuller picture of the African human rights system, it is important to briefly note the African Commission’s relationship with the African Court. The two bodies work together – the Commission handles promotion, protection and quasi-judicial tasks, while the Court issues binding judgments. Under Article 5(1)(a) of the Court’s Protocol, the Commission can refer cases, especially when states ignore its recommendations or a legal ruling is needed. As Elsheikh (2002) notes, this dual structure works best with good coordination, with the Commission as the starting point and the Court as the final step. While this chapter focuses on the Commission, its link to the Court is essential. See more in: Elsheikh, 2002, pp. 252–271.

26 See more in: Viljoen, 2012, pp. 289–299.

27 See more in: Revised Rules of Procedure of the African Commission on Human and Peoples’ Rights, 1996, p. 981.

28 Ssenyonjo, 2018, pp. 5–6; Odinkalu, 1998, pp. 365–369; Wiseberg, 1994, p. 35.

29 Badawi El-Sheikh, 1989, pp. 273–275.

30 Art. 31(1) of the African Charter on Human and Peoples’ Rights.

on their expertise in human and peoples' rights and legal background,³¹ underscoring the high standards required by the Charter.³² Though nominated by states, members are elected by the AU Assembly as per Article 33 and serve six-year terms, as stipulated in Article 36. These members are expected to be impartial and serve in a personal capacity, not as government representatives, as highlighted in Article 31.³³

Furthermore, the Commission mandates specific capabilities for its members. Before the 2007 Commission elections, Amnesty International emphasised the need for an open, transparent and widely publicised national nomination process, inclusive of diverse groups, including civil society. Transparency should be maintained through public discourse of candidate lists and their compliance with the Charter guidelines, along with the reasons for the AU's decisions.³⁴ Unfortunately, these recommendations are not widely implemented by several states, which need to ensure high morality, reputation, rights expertise, legal background and impartiality, along with considerations of nationality, regional diversity, language and gender balance.³⁵ Furthermore, the process of nominating Commissioners at the national level is minimally documented, leaving the selection criteria by states for AU nominations unclear. The available data suggests a limited candidate pool. The AU Commission advises that regions propose more candidates than the number of open positions and develop systems to ensure this. However, national processes, except in Zambia, are reportedly neither transparent nor inclusive, with little equivalency for nominees to those eligible for top judicial roles.^{36,37}

Additionally, Article 33 specifies that elections for members are conducted by secret ballot, with Article 36 ensuring that the terms of initial members do not coincide, avoiding a completely new Commission. While states that are not party to the Charter cannot nominate, they may elect Commissioners, reflecting a practice seen in other systems. Elections have traditionally occurred at the OAU and AU summer summits, with the Executive Council selecting and deciding on Commissioners for Assembly endorsement and appointment.³⁸ Moreover, the Commission holds two

31 Badawi El-Sheikh, 1989, pp. 273–275.

32 Abioye, 2014, p. 84.

33 Ambrose, 1995, pp. 81–83.

34 Murray, 2019, p. 600.

35 See more about the suggestions that have not been considered by the States: Murray, 2019, pp. 600–604.

36 The opaque and exclusive nomination process casts doubt on the Commission's independence and legitimacy. When Commissioners seem politically appointed or not properly vetted by civil society, it undermines trust in their impartiality, especially in cases against powerful states. The Commission needs to be seen as an independent rights body, not just an AU arm. As Dinokopila (2010) points out, government influence over nominations can weaken Commissioners' independence and make the Commission less willing to challenge Member States. See more in: Dinokopila, 2010, pp. 37–38.z

37 Murray, 2019, pp. 598–609.

38 Ibid, pp. 598–609.

ordinary sessions annually, with its Secretariat³⁹ based in Banjul, The Gambia. The Commissioners elect a Chairperson and Vice-Chairperson from among themselves.⁴⁰ Their work is supported by 15 special mechanisms, such as special rapporteurs and working groups.⁴¹ All the members, including elected officials, may seek re-election.⁴² They are required to publicly pledge to perform their duties with impartiality and fidelity.⁴³ The Rules of Procedure establish precedence based on seniority following the Chairperson and Vice-Chairperson. Resignation procedures allow members to resign by writing to the Chair, with the process taking effect three months from submission.⁴⁴

3. Scope of Competences

The African Commission is not a supranational court or a political agency of the AU. It functions as a quasi-judicial body, characterised by the legal essence of the African Charter's provisions, alongside its independent status and the autonomy of its members.⁴⁵ Nevertheless, it maintains a close relationship with the Assembly of Heads of State and the Government of the AU, which inherently has political dimensions. This unique position makes the Commission a *sui generis* entity, necessitating that it carries out its responsibilities with finesse and assertiveness.⁴⁶

According to Article 45 of the Charter, the Commission is tasked with the promotion, protection and interpretation of human rights. It convenes twice annually for regular sessions, which can last up to two weeks.⁴⁷ The key functions of the Commission include:

39 According to the Rules of Procedure of the African Commission on Human and Peoples' Rights, 2020, African Commission on Human and Peoples' Rights, 27th Extra-Ordinary Session held in Banjul (The Gambia), 19 February to 04 March 2020. [Online]. Available at: <https://achpr.au.int/sites/default/files/files/2021-04/rulesofprocedure2020eng1.pdf>. Rule 20: 'The Secretariat of the Commission is composed of the Secretary and the Commission's professional, technical and administrative staff'.

40 According to the Rules of Procedure, a Chairperson and a Vice-Chairperson compose the Bureau of the Commission, which performs the functions set forth in the African Charter and in these Rules of Procedure.

41 Manrique Gil and Bandone and Calvieri, 2013, p. 5.

42 Umozurike, 1983, pp. 907-908.

43 Badawi El-Sheikh, 1989, pp. 273-275.

44 Murray, 2019, pp. 598-609.

45 The Commission's quasi-judicial nature comes from its role in handling complaints about Charter violations. It assesses facts, applies legal standards and issues reasoned recommendations, often guided by its Rules of Procedure and international human rights norms. However, unlike a court, its decisions are not legally binding or directly enforceable. This mix of legal reasoning and non-binding outcomes places the Commission somewhere between a tribunal and an advisory body.

46 Badawi El-Sheikh, 1989, p. 283.

47 Wiseberg, 1994, pp. 35-36.

1. Promoting human rights through research on issues specifically affecting Africa in the realm of human and peoples' rights, disseminating information and collaborating with other African and international organisations devoted to promoting and protecting these rights.⁴⁸
2. Interpreting the provisions of the African Charter at the request of a state party, an AU institution or an African organisation recognised by the AU. The Commission has undertaken these interpretations in various instances, including resolutions on trafficking, education and slavery.⁴⁹ For instance, in its 2018 Resolution on the Protection of African Migrants and Asylum Seekers, it interpreted the rights to dignity (Article 5) and non-discrimination (Article 2) to cover issues of xenophobic violence and arbitrary detention.⁵⁰ Similarly, its 2016 Resolution on the Right to Education in Africa broadened the meaning of Article 17 by highlighting states' duties to ensure that education is accessible, adaptable and acceptable, particularly for marginalised groups.⁵¹ In its 2012 mission report on Mauritania, the Commission interpreted the Charter's ban on slavery (Article 5) to include modern forms, such as hereditary servitude and forced marriage.⁵² These show how the Commission uses interpretation to expand the Charter's protections and adapt its norms to contemporary human rights challenges.
3. Handling inter-state communications, where one state files a complaint concerning human rights violations allegedly committed by another state.
4. Examining regular reports submitted by states on how they implement the African Charter domestically, including its Protocol on the Rights of Women, and subsequently adopting concluding observations.⁵³
5. Reviewing complaints submitted by individuals and non-governmental organisations (NGOs), as long as these meet the criteria for admissibility, without necessitating that the complainant be a victim or related to a victim.⁵⁴

48 Ssenyonjo, 2018, pp. 6–7.

49 Abioye, 2014, p. 95.

50 Resolution on the Protection of African Migrants and Asylum Seekers, African Commission on Human and Peoples' Rights, ACHPR/Res.398(LXIII)2018, 13 November 2018. [Online]. Available at: <https://achpr.au.int/en/adopted-resolutions>. (Accessed: 12 July 2024).

51 Resolution on the Right to Education in Africa, African Commission on Human and Peoples' Rights, ACHPR/Res.357(LIX)2016 (4 November 2016). [Online]. Available at: <https://achpr.au.int/en/adopted-resolutions>. (Accessed: 12 July 2024).

52 African Commission on Human and Peoples' Rights, *Report of the African Commission on Human and Peoples' Rights on the Mission to Mauritania*, 2012. [Online]. Available at <https://achpr.au.int/en/node/537> (Accessed: 12 July 2024).

53 Mujuzi, 2012, pp. 89–91.

54 Ssenyonjo, 2018, pp. 6–7; Abioye, 2014, pp. 84–85.

Additionally, the Commission performs tasks delegated by the Assembly of Heads of State and Government.⁵⁵ These activities align with the Commission's overarching goals of safeguarding, promoting and elucidating human rights across the continent.⁵⁶ Furthermore, it is tasked with gathering documents, conducting studies and research on African challenges regarding these rights, organising seminars, symposia and conferences, distributing information and encouraging involvement from national and local institutions concerned with human and peoples' rights.⁵⁷ It can offer opinions or recommendations to governments, despite a lack of clear guidelines on how and when to provide these recommendations.⁵⁸ In executing its functions, the Commission can employ any suitable investigative techniques, including obtaining insights from the Secretary-General of the OAU or other knowledgeable individuals.⁵⁹ It holds broad powers under the African Charter, notably helpful in swiftly addressing urgent matters, such as extrajudicial killings. Article 46 grants the Commission further authority, allowing it to utilise any appropriate investigative methods in its operations.^{60,61}

To clarify the procedure, during its second session, the Commission adopted its rules,⁶² effectively translating the African Charter's provision into an operational framework. These rules cover the organisation of the Commission's work, the conduct of its business, the publication of its documents and the participation of representatives from states, national liberation movements and intergovernmental and NGOs in its sessions.⁶³

55 Ambrose, 1995, pp. 81–83.

56 Abioye, 2014, p. 85.

57 Umozurike, 1983, pp. 907–908.

58 Hansungule, 2004, p. 6.

59 Essien, 2000, p. 95.

60 The Commission's wide investigative powers, such as fact-finding missions, urgent appeals and on-site visits, are strong in theory, yet limited in impact due to the lack of binding enforcement. Their effectiveness often depends on political will. For example, in its 2012 report on Mauritania, the Commission exposed systemic slavery and made strong recommendations; however, without follow-up mechanisms, compliance remained uncertain. Even urgent provisional measures lack legal force. This highlights a core paradox: the Commission has meaningful procedural tools, yet little power to ensure implementation. See more in the African Charter on Human and Peoples' Rights; Rules of Procedure of the African Commission on Human and Peoples' Rights; African Commission on Human and Peoples' Rights, Report of the African Commission on Human and Peoples' Rights on the Mission to Mauritania. Banjul, 2012. [Online]. Available at: <https://achpr.au.int/en/node/537>. (Accessed: 12 July 2024).

61 Wiseberg, 1994, pp. 36–38.

62 See the amended version of the rules as follows: Rules of Procedure of the African Commission on Human and Peoples' Rights, 2020, African Commission on Human and Peoples' Rights, 27th Extra-Ordinary Session held in Banjul (The Gambia), 19 February to 04 March, 2020. [Online]. Available at: <https://achpr.au.int/sites/default/files/files/2021-04/rulesofprocedure2020eng1.pdf> (Accessed: 12 July 2024).

63 Badawi El-Sheikh, 1989, p. 276.

3.1. The Role in Protecting Human Rights

The African Charter outlines two main procedures or measures to ensure that human rights are upheld and protected: the reporting procedure and the communication (or complaints) procedure. Through the reporting procedure, the Commission receives reports from states parties to the Charter. This process verifies whether each state has adopted administrative, legislative and other measures to implement the Charter's provisions. The communication or complaints procedure is utilised when there are allegations of violations of protected rights, seeking to address and remedy these violations.⁶⁴ The overall role of reviewing these communications and making recommendations to the Assembly of Heads of State and Government of the AU is referred to as the Commission's protection mandate. Additionally, the protection of human and peoples' rights includes a promotional element. By making recommendations regarding violations, the Commission indirectly promotes these rights.⁶⁵ To further elucidate the Commission's multifaceted mandate, subsequent sections will provide an in-depth analysis of its three principal roles: the reporting procedure, the communications mechanism and promotional activities.

3.1.1. Reporting Procedure: Supervision Mandate

According to Article 62 of the African Charter, each state party is required to submit a report every two years, detailing the legislative or other measures implemented to uphold the rights guaranteed by the African Charter.⁶⁶ The Commission examines these reports, engages in a 'constructive dialogue' with the state representatives and, since 2001, has adopted concluding observations.⁶⁷ However, the Charter does not explicitly empower the Commission to review these reports. Nonetheless, in 1988, the Assembly of Heads of State and Government of the OAU authorised the Commission to receive, examine and make relevant observations on the reports submitted by state parties, effectively establishing the Commission as the supervisory body for the Charter. By reviewing these periodic reports, it monitors state behaviour, subjecting them to public scrutiny and encouraging compliance with international standards. Government representatives are required to present their reports to the Commission and address any questions posed by its members.⁶⁸

Therefore, the reporting procedure of the Charter, as governed by the Commission's rules, is closely modelled after the UN Covenant on Civil and Political Rights.⁶⁹ This process seeks to establish a dialogue with state parties, assisting them in meeting their obligations through this interaction and 'general observations' provided by the

64 Badawi El-Sheikh, 1989, p. 280.

65 Gumedze, 2003, pp. 120–121.

66 Article 62 of the African Charter of Human and Peoples' Rights.

67 Essien, 2000, p. 98; Ssenyonjo, 2018, pp. 29–30.

68 Wiseberg, 1994, pp. 36–38.

69 International Covenant on Civil and Political Rights, General Assembly resolution 2200A (XXI), 16 December 1966. [Online]. Available at: <https://www.ohchr.org/sites/default/files/ccpr.pdf> (Accessed: 12 July 2024).

Commission. It took some time for the Commission to develop guidelines for state parties to consider when preparing and submitting their reports.⁷⁰ However, the reporting by state parties has been largely ineffective within the African human rights framework. Several states are overdue in their submissions, and those that do report often do so inconsistently and without attention to detail. The Commission attempted to remedy the backlog by offering an amnesty to any state that submits at least one report, waiving past missed reports. This approach, which is not supported by Article 62, given its specific reporting requirements, may further demotivate those states that are genuinely trying to meet their obligations on time. The reporting process is plagued by poor-quality submissions, as preparation guidelines are frequently ignored. Furthermore, unlike the UN system, there are no mechanisms for follow-up, feedback or observations to assist states in understanding their deficiencies and improving subsequent reports.⁷¹

3.1.2. *Communications: Protective Mandate*

The protective mandate of the Commission is outlined in Article 45(2) of the African Charter, which empowers the Commission to ‘ensure the protection of human and people’s rights under the conditions laid down by the present Charter’.⁷² Since its inception in 1987, the African Commission has received over 500 communications under Article 55 of the Charter from individuals, civil society organisations and others alleging rights violations. If deemed admissible, the Commission assesses the merits of the case and, where violations are established, recommends actions for the state to remedy these breaches.⁷³ Over the years, the Commission has cultivated a substantial and uniquely African body of human rights jurisprudence, particularly in clarifying the economic, social and cultural rights within the Charter.^{74,75} Given the wide-ranging rights covered by the Charter, it is uncommon to encounter a complaint about

70 Badawi El-Sheikh, 1989, pp. 280–281.

71 Hansungule, 2009, pp. 255–256.

72 Art. 45(2) of the African Charter of Human and Peoples’ Rights.

73 Murray, 2019, pp. 2–4.

74 Some key cases highlight the Commission’s growing influence. In the Endorois case (Comm. 276/03), it found that Kenya violated several Charter rights concerning property, culture, natural resources and development, marking a major step for indigenous rights in Africa. In *Purohit and Moore v. The Gambia* (Comm. 241/01), the Commission ruled that detaining people with mental disabilities without legal safeguards breached their rights to health and dignity. In *Free Legal Assistance Group v. Zaire* (Comm. 25/89 et al.), it held that arbitrary detention and lack of fair trials violated the Charter. These decisions show how the Commission has progressively shaped socio-economic rights and moved beyond narrow legal interpretations. See more in: African Commission on Human and Peoples’ Rights. Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya, Communications 276/03, 283/03, 299/05, 301/05. Decided February 2010.; African Commission on Human and Peoples’ Rights. *Purohit and Moore v. The Gambia*, Communication 241/01. Decided 29 May 2003.; African Commission on Human and Peoples’ Rights. *Free Legal Assistance Group v. Zaire*, Communications 25/89, 47/90, 56/91, 100/93. Decided October 1995.

75 Ssenyonjo, 2015, pp. 157–160.

a right not encompassed by its provisions.⁷⁶ Even though some rights, such as privacy and personality, are absent from the Charter, it remains a comprehensive document, addressing a wide spectrum of individual and collective human rights. However, the Commission's Secretariat has occasionally dismissed complaints without forwarding them to Commissioners to establish a *prima facie* case for investigation, such as in instances where the accused state is not a party to the Charter.⁷⁷ Despite these gaps, the Commission has made efforts to fill them through its Special Procedures, especially through special rapporteurs, working groups and soft law instruments. For example, its Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa offer privacy protections in court settings, even though the Charter does not explicitly guarantee this right.⁷⁸ Working Groups, like the one on Specific Issues Related to the Commission's Work,⁷⁹ have sparked discussions on rights not named in the Charter, using Articles 60 and 61 to draw on other international standards.⁸⁰ These interpretive efforts bridge legal silences and allow the Commission's case law to evolve.

Under this mandate, any individual, not limited to citizens, within a state party to the Charter can file a complaint with the Commission if they believe their rights, as specified in the Charter, have been violated.⁸¹ The Charter facilitates the exercise of this protective function through inter-state communications and the 'other communications' procedure. Article 47 authorises the Commission to receive communications from state parties, provided these communications adhere to the stipulated conditions within the Charter.⁸² Consequently, communications can originate from either state or non-state actors, contributing to the body of jurisprudence developed by the Commission.⁸³ Individuals and NGOs, within and outside Africa, are eligible to submit complaints, and several have done so over the years. The volume of complaints often correlates with a state's political climate; for instance, during Nigeria's era of military

76 Hansungule, 2009, pp. 259–260.

77 Ibid.

78 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, The African Commission on Human and Peoples' Rights, May 29, 2003. [Online]. Available at: <https://achpr.au.int/en/node/879> (Accessed: 12 July 2024).

79 See more at: Working Group on Specific Issues Related to the work of the African Commission. [Online]. Available at: <https://achpr.au.int/en/mechanisms/working-group-specific-issues-related-work-african-commission> (Accessed: 12 July 2024).

80 Arts. 60 and 61 of the African Charter provide the Commission with interpretive tools that go beyond the text of the Charter. Art. 60 allows the Commission to draw on a wide range of international sources, including African human rights instruments, the UN and OAU Charters, the UDHR and other relevant documents adopted by UN bodies or African states, to guide its work. Art. 61 complements this by identifying additional, subsidiary sources that the Commission may use, such as other international treaties recognised by OAU Member States, African practices consistent with human rights standards, customary international law, general legal principles recognised by African states and authoritative legal scholarship and case law. Together, these articles empower the Commission to interpret rights dynamically and contextually, even in areas where the Charter is silent.

81 Ibid.

82 Essien, 2000, p. 102.

83 Abioye, 2014, pp. 87–88.

rule, it dominated the communication docket, and Zimbabwe was prominently featured. Although no complaints have come from legal entities, such as corporations, such occurrences are not entirely out of the question.⁸⁴

3.1.2.1. Who Can File Communications?

As mentioned, the ACmHPR is empowered to handle communications from states and individuals. Since its inception, the Commission has handled numerous individual and a few inter-state communications.⁸⁵ However, the Charter does not specifically identify who may submit a communication to the Commission. Article 56 mentions communications related to human and peoples' rights discussed in Article 55; however, it does not specify who can bring them. Article 55 addresses communications other than those from state parties, while the Rules of Procedure do not expand on this point. Article 56(1) requires the communications to identify their 'author', yet does not define the possible authors. Rule 104 of the Rules of Procedure mentioned 'his/her communication', implying that the complainant can be an individual, specifically a human being.⁸⁶ Previously, the Commission's Rules of Procedure complemented Article 55 by indicating who might file a complaint, suggesting that anyone can submit a communication to the Commission. In practice, the Commission accepts communications from any individual or organisation, with most submissions from NGOs, both African and international, on behalf of specific individuals when addressing serious or widespread human and peoples' rights violations.⁸⁷ Therefore, notably, aside from individuals, any NGO, regardless of having observer status before the Commission, can be deemed an 'individual' for the purposes of litigation. NGOs submit communications on behalf of people; however, they can file complaints for their alleged rights violations in Africa.⁸⁸

Communications differ based on whether they originate from states or non-state entities. For state communications, one state accusing another of a Charter breach must inform the alleged violator in writing while sending copies to the Secretary-General and the Commission's Chairman. If unresolved after three months, either state can bring the matter to the Commission. The accusing state may directly submit the issue to the Commission, which must verify that local remedies were exhausted unless delays would unduly persist. The concerned states can present written or oral submissions to the Commission. After reviewing submissions and attempting all feasible means to achieve an amicable solution, the Commission sends a report with recommendations to the concerned state and the OAU Assembly, including an annual report of its activities to each Ordinary Session of the Assembly.⁸⁹

84 Hansungule, 2009, pp. 259–260.

85 Mujuzi, 2019, p. 27.

86 Gumedze, 2003, pp. 121–122.

87 Essien, pp. 105–106.

88 Gumedze, 2003, p. 122.

89 Umozurike, 1983, pp. 907–908.

For communications from non-state entities, the Commission can receive submissions from NGOs and individuals.⁹⁰ Before an individual communication is deemed admissible, the complainant must exhaust all local or domestic remedies,⁹¹ as stipulated by Article 56(5) of the Charter. This provision states that individual communications are only admissible if they are submitted after exhausting local remedies unless those procedures are unduly prolonged.⁹² To prevent misuse, the Charter requires that such communications avoid language insulting to a state, its institutions or the OAU and not rely solely on mass media information. Whether the Commission considers these complaints is decided by a majority of its members. If a communication reveals a special case involving serious or massive human and peoples' rights violations, the Commission should alert the Assembly, potentially leading to an in-depth Commission study, with a report and recommendations. In emergency cases, the Commission refers the matter to the Assembly's Chairman, who may request a thorough investigation. The Commission operates confidentially until the Assembly decides otherwise, except for reports considered by the Assembly or factual reports whose publication is directed by the Assembly.⁹³

3.1.2.2. The Seizure Procedure, Admissibility and Recommendations

According to Article 55(1) of the Charter, once a communication is submitted to the Commission, the Secretariat compiles a list and distributes it to the Commission members. This list is prepared ahead of each session of the Assembly of Heads of State and Governments.⁹⁴ After being included on this list and distributed to the commissioners, the commissioner assigned to the case, known as the rapporteur, must recommend whether the Commission should take up the communication. This stage is referred to as the 'seizure procedure'. As outlined in Article 55(2), a communication can only move forward if a majority of Commission members agree to consider it. For the Commission to proceed, it must present a *prima facie* case, suggesting a violation of the Charter's provisions. Once a communication is approved for consideration, the complainant and the state are notified accordingly.⁹⁵

90 Ibid.

91 The African Commission has taken a flexible approach to the exhaustion of local remedies under Article 56(5), recognising that strict enforcement could unfairly block access in weak legal systems. In *Free Legal Assistance Group v. Zaire* (Comm. 25/89), it waived the requirement due to prolonged detention without trial. In *Jawara v. The Gambia* (Comm. 147/95-149/96), it found that ineffective domestic remedies need not be pursued. These cases show the Commission's effort to balance procedure with access to justice, avoiding technicalities that would deny real protection. See more in: African Commission on Human and Peoples' Rights. *Free Legal Assistance Group v. Zaire*, Communication 25/89. Decided October 1995.; African Commission on Human and Peoples' Rights. *Jawara v. The Gambia*, Communications 147/95-149/96. Decided May 2000.

92 Mujuzi, 2019, p. 27.

93 Umozurike, 1983, pp. 907-908.

94 Gumedze, 2003, pp. 125-126.

95 Ibid, pp. 126-127.

Once a list of communications is compiled and approved for review under Article 55(2) of the Charter, the Commission must determine if the communications meet the admissibility criteria set forth in Article 56.⁹⁶ Seven conditions must be fulfilled for a complaint to be considered:

1. The complainant must clearly identify themselves, even if anonymity is requested.
2. The complaint must align with the principles of both the OAU Charter and the African Charter.
3. It must avoid using disparaging or insulting language.
4. The complainant cannot rely solely on information from media reports.
5. All domestic legal remedies must be exhausted before the complaint is filed.
6. The complaint must be submitted within a reasonable timeframe.
7. The complaint should not involve cases already settled or being examined by another treaty-monitoring body.

After the Commission verifies that these conditions are met, both the complainant and the concerned state are notified that the case will proceed.⁹⁷ Regarding the requirement of exhausting local remedies, the Commission has interpreted it flexibly. It has accepted a communication as admissible in situations where the broad scope of alleged violations and the general conditions in the country make it impractical to seek recourse through domestic courts.⁹⁸ Consequently, the rationale for giving domestic legal systems the first opportunity to address human rights violations is vital, which reflects an established principle of international law embedded in various human rights treaties and jurisprudence of international and regional bodies. Under the African Charter, this rule applies to communications by state parties and 'other communications', primarily submitted by individuals and NGOs, as outlined in Articles 47 and 55.⁹⁹

Once the Secretariat informs the complainant and the state, the state must provide a written statement explaining the issue and any actions taken within three months. These responses are communicated to the complainant via the Secretariat. The complainant can provide additional information within a timeframe set by the Commission. The Secretariat further notifies the state that failure to respond within the designated time will result in the Commission proceeding based on available evidence. The Commission informs both parties of the hearing date through its Chairperson and the Secretariat forwards the admissibility decision and relevant documents to the involved state party, notifying the complainant.¹⁰⁰

96 Ibid, pp. 126–127.

97 Ambrose, 1995, pp. 81–83.

98 Essien, 2000, pp. 106–107.

99 Onoria, 2003, pp. 1–3.

100 Gumedze, 2003, p. 136.

The merits of the communication involves evaluating the substantive issues presented. A separate session is dedicated to this review, distinct from those assessing seizure and admissibility. The Secretariat prepares a draft decision on the merits based on the facts presented. As highlighted, presenting a communication to the African Commission involves applying international law principles.¹⁰¹ Once a decision on the merits is reached, the Commission forwards its recommendations to the Assembly of Heads of State and Government.¹⁰² These recommendations can range in detail and complexity, from simple directives to ensure compliance with international obligations to detailed actions, such as forming inquiry commissions, releasing individuals, compensating victims and amending legislation.¹⁰³

However, the actual implementation of these recommendations by states remains uncertain, as systematic follow-up by the African Commission has not yet been established. Some information is available, publicly (through annual reports or civil society organisation statements) and privately; however, there is no consistent policy on which information should remain confidential.¹⁰⁴ Therefore, even though the Commission was originally intended as a body to promote human rights, it does not have the authority to award damages, restitution or reparations, nor can it formally condemn a state. Instead, it issues recommendations. Consequently, Member States often disregard the Commission's recommendations and decisions.¹⁰⁵ Nevertheless, there is limited documentation in academic literature or policy papers about what happens to the African Commission's decisions after publication, either at the national or regional level. While some notable research has attempted to track decision implementation, the literature tends to be general, pointing to issues, such as poor human rights records in African states, the lack of political will, low literacy rates, insufficient human rights education and other factors affecting successful implementation.¹⁰⁶

3.1.3. Promotional Activities

The Commission's promotional mandate, as outlined in Article 45(1) of the Charter, involves disseminating information and raising public awareness about human rights issues to enhance respect for and recognition of the rights enshrined in the Charter.¹⁰⁷ It undertakes various activities, such as collecting documents, conducting studies and research on African issues related to human and peoples' rights and organising seminars, symposia and conferences. It works to spread information and support national and local institutions focused on human and people's rights. In certain situations, it provides opinions or recommendations to the governments. Additionally, it

101 Ibid, pp. 141–142.

102 Ibid, p. 144.

103 Murray, 2019, pp. 2–4.

104 Ibid, pp. 2–4.

105 Hansungule, 2004, pp. 7–8.

106 Murray, Mottershaw, pp. 350–353.

107 Art. 45(1) of the African Charter on Human and Peoples' Rights.

develops principles and rules to resolve legal issues concerning human and people's rights and fundamental freedoms, which African governments can use as a foundation for their legislation. The Commission collaborates with other African and international institutions dedicated to promoting and protecting human and people's rights.¹⁰⁸ Its quasi-legislative activities include encouraging African states to ratify the African Charter and international human rights instruments and incorporate Charter obligations into their domestic legal systems. Cooperation efforts extend to interactions with relevant international, regional and African organisations, including governmental and non-governmental entities, and involvement in the periodic reports of states.¹⁰⁹ Furthermore, the Commission assigns individual Commissioners to different geographic regions, focusing on the countries within the region where the Commissioner resides or is a national. These Commissioners are responsible for organising promotional activities in their designated countries.¹¹⁰

However, although the Commission actively pursues its promotional mandate across Africa, it is important to recognise that a significant portion of the population lives in rural and underdeveloped areas. These communities are often the most in need of human rights protection and the empowerment that comes from understanding their rights.¹¹¹ Therefore, the primary goal of the promotional activities is to increase public awareness of the Charter's existence and engage individuals, groups, organisations and states in actively implementing its provisions.¹¹² Notably, the Commission's promotional mandate is vast and it is only beginning to address it. Across the continent, significant ignorance remains about the concept of rights, necessitating considerable effort and resources to close this gap.¹¹³

4. Conclusion

Although there has been notable progress in creating human rights instruments within the African system, it is widely recognised that these instruments require active enforcement.¹¹⁴ Both the African Commission and Charter emphasise peaceful resolutions, though an analysis of the political environment during drafting challenges this preference as inherently 'African'. Therefore, it is likely that weakening the enforcement mechanisms was a compromise to satisfy leaders who were not fully committed to democracy, human rights and the rule of law.¹¹⁵

108 Essien, 2000, p. 96.

109 Badawi El-Sheikh, 1989, p. 278.

110 Abioye, 2014, p. 85.

111 *Ibid.*, pp. 86–87.

112 Badawi El-Sheikh, 1989, pp. 278–280.

113 Nmehielle, 2004, p. 10.

114 *Ibid.*, 2004, p. 9.

115 Viljoen, 2019, p. 206.

However, over the past decades, the African Commission has evolved in the organisation and execution of its duties under the African Charter. This includes promoting and protecting human rights, interpreting the Charter and undertaking additional tasks assigned by its regional government body, initially the OAU and now the AU.¹¹⁶ Nevertheless, despite having the option of seeking legal recourse through the Commission, the continent continues to suffer from widespread human rights violations. A significant part of this issue stems from the general lack of awareness about the complaint procedures. Additionally, a strong human rights culture is absent across much of the continent, particularly at the government level.¹¹⁷ Even though the Charter did mandate the Commission to ‘ensure the protection of human and people’s rights’, it imposes conditions that significantly limit individuals’ ability to access the Commission. The state-centric nature of the Charter raises questions about its commitment to safeguarding individual rights, now and in the future.¹¹⁸

By creating effective practice methods, the Commission could harness its powers to address these limitations. Regular evaluations would be crucial to fine-tune this process. The initial focus should be on resolving the financial, administrative and technical challenges. At a deeper level, it should consider Africa’s specific human rights issues and priorities, which would supply a guiding framework for its activities. Additionally, the Commission should maintain ongoing communication with entities, such as the AU, the UN and other global human rights organisations.¹¹⁹ Therefore, submitting communications to the Commission is a constructive step towards stronger protection of human rights in Africa. Nevertheless, internationally, the Assembly of Heads of State and Government of the AU must establish a robust system to enforce the Commission’s rulings. Without this, the litigation process may prove ineffective.

Ensuring human rights in Africa depends on the Commission being a vigorous and innovative body and relies on support from the African states, intergovernmental organisations, national human rights bodies and civil society. An efficient Secretariat is vital for the Commission to carry out its responsibilities, as outlined in the Charter.¹²⁰ Though Africa experiences severe and large-scale human rights violations, the Commission has seldom declared governments responsible for serious breaches. Consequently, the Commission has insufficiently provided reparations to victims of such violations, often avoiding accountability by referring cases elsewhere.¹²¹ Furthermore, confidentiality requirements restrict public access to and understanding of the Commission’s work, further hampering its effectiveness.¹²² For the communications procedure to effectively remedy victims’ violations, the Commission must shift its overall approach, as the lack of enforcement and follow-up on its decisions

116 Ibid., 2004, p. 9.

117 Gumedze, 2003, pp. 147–148.

118 Hansungule, 2004, pp. 5–6.

119 Badawi El-Sheikh, 1989, pp. 281–282.

120 Gumedze, 2003, pp. 147–148.

121 Bekker, 2013, p. 523.

122 Hansungule, 2004, pp. 5–6.

undermines its authority. Relying on states violating the Charter to report their compliance has proven ineffective.¹²³

An important turning point in the process of achieving human rights realisation on the African continent was the establishment of the ACmHPR. However, strong barriers stand in its way, such as insufficient funding, a lack of public awareness and a lack of enforcement. Nonetheless, there is no denying the Commission's capacity to advance equality and justice throughout Africa. By straightening its current structure and resolving its flaws, the Commission may transform into a force for good, protecting the rights of every African. To assist the Commission in carrying out its work, the AU, African nations and international human rights actors must pledge their assistance.

123 Bekker, 2013, p. 524.

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