

Africa: Successes of African Human Rights Court Undermined By Resistance



Lucas Barasa / Nation Media Group (<https://www.thecitizen.co.tz/tanzania/news/african-courts-on-human-and-peoples-rights-president-justice-slyvain-ore-centre-during-training-for-senior-editors-and-journalists-at-10-years/>)
 African Court on Human and Peoples' Rights President Justice Sylvain Ore, centre, during training for senior editors and journalists at Ibadan, Nigeria, in 2016.

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ANALYSIS

By Lilian Chenwi

The African Court on Human and Peoples' Rights (African Human Rights Court [↗](#)) holds great promise in protecting human rights. But it operates amid resistance by states and this threatens its effectiveness and very existence.

The idea of a regional human rights court surfaced at the 1961 African Conference on the Rule of Law [↗](#) held in Lagos, Nigeria. It urged African governments to create "a court of appropriate jurisdiction" that would be "available for all persons under the jurisdiction." half decades later, an operational regional court became reality.

The court is the African Union's judicial arm, and sits in Arusha, Tanzania. It is one of three regional human rights courts in the world: the European Court of Human Rights [↗](#) and the Inter-American Court of Human Rights [↗](#). They play an important role in protecting human rights.

The African court was established in terms of a protocol [↗](#) adopted in 1998. It began operating 15 years ago in 2006. In this time, it has provided a platform for judicial scrutiny of their domestic laws and executive actions that have an impact on human rights.

The court entertains cases of alleged violations of human rights stated in the African Charter on Human and Peoples' Rights and other instruments that have been ratified by the state concerned. Its remedies include payment of fair compensation or reparations.

concerned state.

The court can also give opinions which are "advisory" in nature but carry significant legal authority because it is an apex reque
Cases can only be brought against states that are party to the court's protocol. States that are party to the protocol, the Afri
Rights [↗](#) and African intergovernmental organisations can bring cases to the court directly. NGOs with observer status at th
access the court directly if the relevant state party permits them to do so. Otherwise, individuals and NGOs can only access
their case to the court.

Requests for advisory opinions can be submitted by the African Union or its members or organs, or African organisations th
But, sadly, the African Human Rights Court's success in protecting human rights and upholding the rule of law is undermine
as far back as the early years of the court's establishment.

Striking a blow for human rights

Despite current restrictions on direct access to the court, it has lived up to its promise in most cases. It has issued some pre
remedies, including substantial reparations.

For example, it found, in response to a request brought by the Pan African Lawyers Union [↗](#) that vagrancy laws, which ma
their statute books, were incompatible with African human rights standards [↗](#). That's because the laws criminalise poverty,
has called on states to review and amend or repeal such laws.

The court has also required states to uphold rights and principles of fairness, transparency and inclusiveness in elections d
should not use the postponement of elections to "unduly" prolong elected officials' term of office.

In contentious cases, the court has enforced various rights such as fair trial rights, the right to property as well as the right t
association, freedom of expression and non-discrimination.

It has made it clear in a case against Kenya, for example, that environmental conservation and development policies cannc
indigenous communities [↗](#). It has also shown, in a case involving a Tanzanian individual, that it will not defer to states on di

The court has enforced marriage and inheritance rights [↗](#) in a case against Mali, highlighting the rights of women and girls.

In a case involving Tanzanians who had been sentenced to death, it affirmed states' obligation to remove mandatory death

It has also set a precedent for non-criminalisation of defamation [↗](#), in a case involving a journalist in Burkina Faso.

Constraints

Only 31 of 55 African Union member states (including Western Sahara) have ratified the court's protocol [↗](#). Only six states
Mali, and Tunisia - permit individuals and NGOs direct access to the court.

As stated by the African Commission [↗](#):

Non-ratification of the Court Protocol and reluctance of States to make the Declaration impede the protection of human righ

In addition, some countries have withdrawn their permission for individuals and NGOs to access the court, following advers
Tanzania, Benin and Côte d'Ivoire [↗](#).

By so doing, the states are not only challenging the court's authority, but preventing it from considering future claims from ir

The court is concerned [↗](#) that, should the withdrawals trend continue, millions of citizens will be deprived of the right to just

Also, the nomination of judges in the early years was met with resistance [↗](#).

States have further failed to ensure that the court has enough human and financial resources to function effectively.

These patterns of resistance "might be seen as hindering development of the Court's authority". [↗](#)



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Compliance crisis

The court has a serious non-compliance crisis. About 75% of states do not comply with its decisions, and there are no built-in orders indicate that states that fail to pay reparation amounts within a stipulated timeframe will pay interest on arrears. Only a few states have complied with the court's judgments.

Some states, such as Tanzania, have complied with only some aspects of decisions, and ignored other aspects [↗](#).

The court is concerned [↗](#) that resistance to its decisions threatens not just "the effective discharge of its mandate, but its very existence."

Future sustainability

The very poor level of compliance has limited the potential impact of the court's decisions at the domestic level. It is crucial to turn the court's commitment to human rights on paper into practice.

It is important for the court to stay the course. Retrogression, for fear of risking further exits, is not an option when it comes to the court's mandate.