



Human rights in Africa: Normative foundations, regional institutions, jurisprudence, and contemporary challenges

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Abstract

Human rights protection in Africa represents one of the most distinctive and philosophically ambitious regional experiments in international human rights law. Unlike the Euro-American liberal model that prioritizes civil and political rights and treats socio-economic rights as aspirational, the African system, anchored in the African Charter on Human and Peoples' Rights 1981, integrates four categories into one instrument: civil and political rights, economic social and cultural rights, collective peoples' rights, and individual duties. This integration reflects Africa's post-colonial experience, communitarian values, and the imperative of development. This article provides a comprehensive analysis across six dimensions: philosophical foundations, historical evolution, legal architecture, institutional mechanisms and jurisprudence, thematic issues, and contemporary challenges. It argues that while the African system has achieved significant normative innovation — e.g., justiciable socio-economic rights, environmental rights, and the right to development — its impact remains constrained by political resistance, weak enforcement, withdrawal of state declarations, and governance deficits. Drawing on key cases such as *SERAC v Nigeria*, *Endorois v Kenya*, and *Lopez Ostra v Spain* as comparative reference, the article concludes that realizing human dignity in Africa requires three reforms: strengthening compliance mechanisms, guaranteeing judicial independence, and ensuring full domestication of regional norms into national law. Without these, the Charter risks remaining a "paper promise."

Keywords: African charter, ubuntu, peoples' rights, African court, socio-economic rights, compliance

Introduction

Human rights in Africa occupy a paradox that mirrors the continent's broader post-colonial condition. On one side: the historical record of trauma. From the trans-Atlantic slave trade, colonial expropriation, apartheid in South Africa and Namibia, the 1994 Rwandan genocide, to protracted conflicts in DRC, Sudan, and the Sahel, Africa has endured systemic violations of human dignity on a mass scale. Structural poverty also remains: over 430 million Africans live in extreme poverty as of 2026, limiting access to health, education, and water. On the other side: normative innovation. Africa has built the most holistic regional human rights treaty in the world. The African Charter rejects the Cold War bifurcation of rights. It places the right to food, housing, and health on the same footing as free speech. It recognizes "peoples" as rights-holders — addressing colonialism and resource plunder directly. And it imposes duties on individuals, reflecting those rights without responsibility erode community. This article examines human rights in Africa through six dimensions. The central thesis is this: Africa's human rights problem is no longer primarily a problem of normative deficiency. It is a problem of implementation, political will, and institutional capacity. The framework is strong. The challenge is making it real in the lives of 1.4 billion people. The African human rights framework challenges the rigid hierarchy of rights traditionally found in international law by affirming the indivisibility and interdependence of all rights, while simultaneously recognizing collective rights and individual duties. This approach reflects Africa's historical experience and communitarian value systems, yet it has also attracted criticism regarding enforceability and normative clarity ^[1].

This article examines the conceptual foundations, regional legal framework, institutional mechanisms, key thematic rights, and contemporary challenges of human rights protection in Africa.

The concept of Human rights

Every human being is entitled to protection of, and respect for, their fundamental rights and freedoms. Human rights are those activities, conditions, and privileges that all human beings deserve to enjoy, by virtue of their humanity. They include civil, political, economic, social and cultural rights. Human rights are inherent, inalienable, interdependent, and indivisible. This means we have these rights no matter what, the enjoyment of one right affects the enjoyment of others, and every human right must be respected.

Based on their international commitments, governments are required to put in place the laws and policies necessary for protection of human rights and to regulate private and public practices that impact individuals' enjoyment of those rights. Therefore, we think of national governments ("States") as the guarantors, or violators, of human rights.

The International Human rights framework

In the post-World War II period, international consensus crystallized around the need to identify the individual rights and liberties which all governments should respect, and to establish mechanisms for both promoting States' adherence to their human rights obligations and for addressing serious breaches. Thus, in the decade following the war, national governments cooperated in the establishment of the United Nations (UN) ^[1], the Organization of American States (OAS) ^[2], and the Council of Europe (COE) ^[3], each

including among its purposes the advancement of human rights.

These intergovernmental organizations then prepared non-binding declarations or binding treaties which spelled out the specific liberties understood to be human rights, including the Universal Declaration of Human Rights,^[4] American Declaration of the Rights and Duties of Man^[5] and the European Convention for the Protection of Human Rights and Fundamental Freedoms^[6]. By the end of the 1950s, these three systems (United Nations, Inter-American and European) had each established mechanism for the promotion and protection of human rights, which included the (former) UN Commission on Human Rights, the Inter-American Commission on Human Rights, the (former) European Commission of Human Rights, and the European Court of Human Rights.

In subsequent decades, each oversaw the drafting of human rights agreements on specific topics^[7] and created additional oversight mechanisms, which now include the United Nations treaty bodies and Universal Periodic Review, the Inter-American Court of Human Rights, and the European Committee of Social Rights.

More recently, other intergovernmental organizations have also established, or begun to establish, regional human rights treaties and monitoring mechanisms. In Africa, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights monitor State compliance with the African Charter on Human and Peoples' Rights^[8]. The decline of the Soviet Union spurred the formation of the Organization for Security and Co-operation in Europe (OSCE) which recognized dialogue on human rights, political and military relations, and economic development as being equally important to sustained peace and stability across Europe and the (former) Soviet States^[9]. In Southeast Asia, the Association of Southeast Asian Nations (ASEAN) has recently created the ASEAN Intergovernmental Commission on Human Rights,^[10] and the League of Arab States in 2009 created the Arab Human Rights Committee^[11].

In addition, the UN, Inter-American, and African systems appoint individual experts to monitor human rights conditions in a range of priority areas, such as arbitrary detention and discrimination. These experts are often called rapporteurs, and they carry out their work by receiving information from civil society, visiting countries, and reporting on human rights conditions and the ways in which they violate or comply with international norms. The Council of Europe's Commissioner for Human Rights fulfills a similar role, although his mandate is not issue-specific^[12]. The UN High Commissioner for Human Rights supports and coordinates the UN's human rights activities, in addition to independently addressing issues of concern through country visits, dialogue with stakeholders, and public statements, much as rapporteurs do^[13].

1. Human rights treaties

Human rights treaties protect individuals from government action (or inaction) that would threaten or harm their fundamental rights. Like national constitutions, which are covenants between governments and their citizens, international human rights treaties are covenants between States and the international community, whereby States agree to guarantee certain rights to everyone within their territory or under their control. When States ratify human

rights treaties, they agree to both refrain from violating specific rights and to guarantee enjoyment of those rights by individuals and groups within their jurisdictions.

2. States and the International Human rights law

Regional and international human rights bodies monitor States' compliance with their human rights commitments. These courts and oversight mechanisms also provide opportunities for redress and accountability that may be non-existent or ineffective at the national level.

Generally, States decide whether or not to ratify human rights treaties or to accept oversight by a monitoring body or court. The level of participation in the international human rights framework varies among States. IJRC's quick reference chart identifies the mechanism(s) responsible for interpreting and applying each of the principal UN and regional human rights treaties, their competencies, and how many States are subject to their jurisdiction.

The driving idea behind international human rights law is that – because it is States who are in a position to violate individuals' freedoms – respect for those freedoms may be hard to come by without international consensus and oversight. That is, a State which does not guarantee basic freedoms to its citizens is unlikely to punish or correct its own behavior, particularly in the absence of international consensus as to the substance of those freedoms and a binding commitment to the international community to respect them.

States' human rights duties have come to include positive and negative obligations. This means that, in limited circumstances, States may have a duty to take proactive steps to protect individuals' rights (rather than merely refraining from directly violating those rights), including from non-State action. In addition, demand for protections beyond the traditional civil and political sphere has increased the number and variety of interests which are recognized as rights, particularly in the area of economic, social and cultural concerns. As such, we refer to States' duties to: respect, protect, and fulfill the enjoyment of human rights.

While international human rights courts and monitoring bodies oversee States' implementation of international human rights treaties, a variety of other sources are also relevant to the determination of individuals' rights and States' obligations. These include the judicial and quasi-judicial decisions of international and domestic courts on international human rights law or its domestic equivalents; the decisions of domestic and international courts on the related (but distinct) subject of international criminal law; and analysis and commentary by scholars and others. Of course, a necessary component of human rights protection is the factual research identifying the conditions which may constitute violations, which is conducted by intergovernmental organizations, as well as by civil society. International human rights law is dynamic and its boundaries are daily being pushed in new directions. IJRC's News Room can help readers keep up with developments in the law, its interpretation, and the individuals and communities who are affected.

African Union (Au) And Economic Community of West African States (Ecowas)

Africa, a continent rich in diversity, history, and potential, has over the years formed several regional institutions

aimed at fostering unity, promoting development, and ensuring stability among its nations. Two of the most prominent of these institutions are the African Union (AU) and the Economic Community of West African States (ECOWAS). While the AU functions at a continental level, ECOWAS focuses specifically on the West African region. The African Union, as a continental organization, encompasses all 55 recognized African countries and is responsible for championing continental solidarity, political stability, human rights, and Pan-Africanism. It represents Africa's collective voice in global affairs and strives to position the continent as a significant player on the world stage. On the other hand, ECOWAS functions at the regional level, bringing together 15 countries in West Africa with the primary goal of achieving economic integration and cooperation. Over time, ECOWAS has evolved from being purely an economic bloc to becoming a key political and security actor in the sub-region, actively intervening in crises and promoting democratic governance. Both organizations have played critical roles in addressing challenges such as conflict resolution, political instability, economic integration, and regional cooperation.

1. African Union (AU)

The African Union came to life in July 2002 with its headquarters in Addis Ababa, Ethiopia, and comprises all 55 recognized African countries. Its motto, “An Integrated, Prosperous and Peaceful Africa,” reflects the organization’s vision for the continent.

The AU replaced the Organization of African Unity (OAU) which had been in existence since 1963 and reflects a fundamental shift in thinking for African leadership. The current AU is structured and better designed to respond to conflicts on the continent than its predecessor.

The Organization of African Unity (OAU), which prioritized national sovereignty and non-interference in the internal affairs of member states, was limited both in legal authority and operational capacity to address issues of peace and security. In contrast, the African Union (AU) promotes international collaboration and acknowledges the United Nations Charter as the guiding framework for peace and security. It has expanded its scope of intervention, employing a range of strategies from diplomatic mediation to, when necessary, the use of force in addressing conflicts and crises on the continent.

Article 4 of the Constitutive Act specifies

“The right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect to grave circumstances, namely; war crimes, genocide, and crimes against humanity.... the right of member states to request intervention from the Union in order to restore peace and security.”

2. Economic Community of West African States (Ecowas)

The Economic Community of West African States (ECOWAS) was founded on May 28, 1975, through the Treaty of Lagos, with its headquarters in Abuja, Nigeria. ECOWAS was established to promote economic integration and development in the West African region, and its goals have since expanded to include peacekeeping, regional security, and political cooperation. ECOWAS consists of 15-member states located in West Africa. However, recent

developments have affected membership status due to Burkina Faso, Mali, and Niger announcing their withdrawal from the Organization in January 2024, following military coups in these countries. However, the withdrawal process is not immediate, and they are currently considered suspended members. The recognized member states of the ECOWAS as of 2025 include: Benin, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Nigeria, Senegal, Sierra Leone, Togo. ECOWAS has shown a strong commitment to military intervention, having deployed troops in various conflict zones including Liberia in 1990, Sierra Leone and Guinea-Bissau in 1998, Côte d'Ivoire in 2002, and again in Liberia in 2003.

In October 1999, ECOWAS established its current structure for conducting peace operations by adopting the Protocol relating to the mechanism for conflict prevention, management, resolution, peacekeeping, and security. This protocol defines ECOWAS’s role in conflict management, encompassing areas such as preventive diplomacy, promotion of human rights, early warning systems, combating cross-border crime, peacekeeping efforts, and provision of humanitarian aid including;

“Promoting close cooperation between member states in the areas of preventive diplomacy and peacekeeping; constituting and deploying a civilian and military force to maintain or restore peace within the subregion.”

Conceptual Foundations of Human Rights in Africa

Human rights in Africa are informed by both universal human rights principles and African philosophical traditions. Unlike the liberal individualist emphasis dominant in Western human rights theory, African human rights discourse places significant value on communitarianism, solidarity, duties, and social harmony ^[2].

This orientation is reflected in African concepts such as *Ubuntu*, which emphasizes human dignity, mutual respect, and interconnectedness ^[3]. Consequently, African human rights instruments recognize not only individual rights but also peoples’ rights and individual duties toward the community, a feature that distinguishes the African system from other regional frameworks ^[4].

1. Universalism vs Cultural Relativism:

Toward Contextual Universalism Early critiques by scholars like Makau Mutua argued that human rights were a “Savages-Victims-Saviors” metaphor imposed by the West. Issa Shivji warned of “rights without socialism” in post-colonial states.

Yet African states did not reject universality. Instead, they advanced contextual universalism: universal norms, African interpretation.

Example: Article 5 of the Charter prohibits torture — a universal norm. But Article 18 requires the state to protect the family, reflecting African social structure. This avoids both cultural imperialism and cultural relativism as an excuse for abuse.

2. Communitarianism, Ubuntu, and Duties

Central to African human rights philosophy is communitarianism, expressed through concepts such as *Ubuntu*, *Ujamaa*, and *Palaver*. These concepts emphasize relational identity, social solidarity, and collective

responsibility. Human dignity is understood not merely as individual autonomy but as embeddedness within the community.

This worldview informs the Charter's recognition of individual duties, including obligations to preserve social harmony, respect elders, and promote collective welfare. The Charter is the only global treaty with a full chapter on duties. Arts 27-29 require individuals to: preserve family cohesion, respect elders, serve the national community, and promote African unity.

This flows from Ubuntu: "I am because we are." In *S v Makwanyane* 1995, the South African Constitutional Court used Ubuntu to abolish the death penalty, holding that dignity is relational.

While critics argue that duties may be exploited by authoritarian regimes, proponents view them as essential to balancing rights with social responsibility.

The Historical Evolution of Human Rights in Africa: Before and After Colonialism

Human rights in Africa didn't start with the African Charter or the UN. They evolved through 3 major phases: Pre-colonial normative orders → Colonial rupture → Post-colonial/Contemporary regional system. Here's the breakdown:

1. Pre-Colonial Orders

Many pre-colonial systems had rights-like protections: the Gadaa system of the Oromo had term limits and accountability; Yoruba Ogboni councils provided checks on kings; restorative justice through Palaver emphasized reconciliation over punishment. There was no "human rights law" in the Western treaty sense. But most societies had robust systems for dignity, justice, accountability, and social welfare. The philosophy was communitarian: "I am because we are" — Ubuntu. Key Features: Governance & Accountability Gadaa System - Oromo, Ethiopia: Democratic, 8-year term limits for leaders, checks and balances, protection against abuse of power ^[1] Yoruba Ogboni Councils - Nigeria: Acted as checks on kings. Could depose a ruler who violated customs. Ashanti Kingdom - Ghana: Kings swore oaths to uphold justice and protect subjects. Justice & Conflict Resolution Palaver / Khotla: Public dialogue and restorative justice. Goal was reconciliation, not just punishment. Compensation and mediation were preferred over retribution for many offenses. Social Protection & Duties Strong obligations to elders, orphans, widows, and persons with disabilities. Land was held communally. Right to livelihood was protected through access to land and cattle. Concepts like Ujamaa in East Africa emphasized collective welfare. Limitations Rights were often tied to community membership, age, gender, and status. Slavery, gender hierarchies, and practices like ostracism existed in some societies. But the core idea: dignity was relational, not just individual. In short: Pre-colonial Africa had "human rights without the name" — norms of fairness, participation, and dignity embedded in custom ^[6].

2. Colonialism and Systemic Violations

Colonial rule marked a rupture in African legal and moral orders. Forced labour, expropriation of land, racial segregation, and denial of political participation constituted

systematic violations of human dignity. Colonial legal systems privileged imperial authority and excluded Africans from meaningful rights protection. Colonial Rupture Colonialism imposed dual legal systems. Colonialism dismantled indigenous legal and moral orders and replaced them with systems designed for extraction and control. How Human Rights Were Violated: Legal Dualism: Africans were "subjects" not "citizens". European law for settlers, customary/indirect rule for Africans ^[2]. Forced Labour: E.g. Congo Free State, Portuguese chibalo, French travail force. Land Expropriation: Doctrine of terra nullius and crown land laws dispossessed communities. Racial Segregation: Apartheid in South Africa and Namibia. Pass laws, Bantustans. Denial of Political Participation: No voting rights, no representation in law-making. Cultural Suppression: Missionary and colonial education delegitimized indigenous justice systems. Colonial legal systems prioritized imperial authority. There was no concept of universal human rights for Africans. This experience became the reason post-independence Africa insisted on self-determination and peoples' rights in the African Charter. Africans were subjects, not citizens. Land was expropriated under doctrines like terra nullius. This history explains why the Charter emphasizes self-determination and peoples' rights to natural resources Art 21.

3. Post-Independence and Democratic Waves

Independence did not immediately translate into rights protection. Many African states adopted authoritarian governance models justified by national unity, security, or development. Military coups, one-party states, and emergency powers eroded constitutional guarantees. The 1990s brought 30+ constitutional reforms. The OAU became the AU in 2002 with a mandate for "good governance." This period birthed the African Court Protocol 1998.

But democratic backsliding since 2020 — coups in Mali, Burkina Faso, Niger, Gabon — shows fragility ^[7].

Independence brought constitutions with bills of rights. But reality was mixed. Phase 3a: 1960s-1980s - "Development vs Rights" "Many new states adopted one-party systems and emergency powers "for nation building" ^[3]. Military coups in Nigeria, Ghana, Uganda, etc. eroded constitutional guarantees. Focus was on sovereignty, non-interference, and economic development. Human rights were seen as "Western". OAU Charter 1963 emphasized state sovereignty over individual rights. Little enforcement mechanism. Phase 3b: 1981 - The Turning Point: African Charter on Human and Peoples' Rights Adopted in Banjul, entered into force 1986. This was Africa's answer to the colonial and post-colonial experience.

3 Big Innovations: Indivisibility: Civil, political, ESC rights + Peoples' rights in one treaty. Art 15-17, 19-24. Peoples' Rights: Right to self-determination Art 20, to development Art 22, to environment Art 24. Direct response to colonialism. Duties: Art 27-29. Reflects African communitarianism. It was a compromise: states wanted sovereignty; reformers wanted accountability ^[8].

4. Democratic Transitions and Regionalism

From the late 1980s, political liberalization and constitutional reforms renewed attention to human rights. The establishment of regional institutions reflected a

growing recognition that sovereignty must be balanced with accountability.

The African Regional Human Rights Legal Framework

1. The African Charter

The African Charter: Architecture Key innovations: Non-derivability: Art 1-18 rights cannot be suspended even in emergencies. Justiciable ESC rights: Art 15-17 on work, health, education is enforceable, not “directive principles. “Peoples’ Rights: Art 19-24 include equality of peoples, self-determination, right to development, and right to a satisfactory environment. The Charter’s drafting reflected compromises between newly independent states wary of external scrutiny and reformist actors seeking accountability. Key Developments: Democratic Transitions 1990s: 30+ constitutional reforms. Multi-party elections, bills of rights domesticated. Institution Building: African Commission on Human and Peoples’ Rights 1987: Quasi-judicial body. Cases like *SERAC v Nigeria* 2001 recognized environmental rights. African Court on Human and Peoples’ Rights 2004: Binding judgments. But only 8 states allow direct individual access. Sub-regional courts: ECOWAS Court became major human rights forum for West Africa. Thematic Treaties: Maputo Protocol 2003: Women’s rights African Children’s Charter 1990 Kampala Convention 2009: First treaty on IDPs globally African Charter on Democracy 2007 Contemporary Issues 2000s-2026: Positive: Judicial activism, youth civic engagement, recognition of socio-economic rights. Challenges: Armed conflict, terrorism, coups in Sahel, weak compliance with AU decisions, withdrawal of Court declarations by Tanzania/Rwanda/Benin, funding gaps ^[5, 12]. This holistic approach reflects Africa’s historical and socio-economic context and rejects rigid hierarchies between categories of rights ^[13].

2. The Big Shift: From “Sovereignty” To “Accountability” Era

Core Idea of “Rights” Enforcement Pre-Colonial Communal dignity, duties, restorative justice Elders, councils, customs Colonial Rights denied. Racial hierarchy colonial administration, force post-Independence 1960s-80s Sovereignty + Development first Weak constitutions, OAU non-interference Post-1981 to Now Indivisible rights + Peoples’ rights + Duties African Commission, Court, Domestic courts the evolution shows a pattern: Pre-colonial: Rights embedded in community Colonial: Rights denied Post-colonial: Rights proclaimed but weakly enforced Contemporary: Strong norms, weak implementation Africa’s contribution to global human rights law is unique because it refused to separate individual from community, and civil from socio-economic rights. The challenge now is moving from “normative innovation” to “lived reality” for 1.4 billion Africans.

3. Supplementary Human Rights Instruments

Africa’s human rights framework has been strengthened through additional treaties, including:

- The African Charter on the Rights and Welfare of the Child ^[14]
- The Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol) ^[15]
- The African Charter on Democracy, Elections and Governance ^[16]

- The Kampala Convention on Internally Displaced Persons ^[17]

These instruments address gender equality, child protection, democratic governance, and displacement, reflecting evolving human rights priorities on the continent.

Institutional Mechanisms for Human Rights Protection

1. African Commission on Human and Peoples’ Rights

African Commission on Human and Peoples’ Rights Located in Banjul Handles 300+ communications.

Landmark Cases: *SERAC v Nigeria* 2001: Found Nigeria violated Art 24 right to environment by allowing oil pollution in Ogoni land. Established that ESC rights create positive obligations. *Endorois v Kenya* 2010: Indigenous people’s right to land and culture violated by eviction from Lake Bogoria. Ordered restitution. *Zimbabwe Lawyers for Human Rights v Zimbabwe* 2009: Torture by state agents violates Art 5. The Commission functions as both a promotional and quasi-judicial body. Through communications, it has developed influential jurisprudence on:

- Environmental rights
- Indigenous peoples’ rights
- Freedom of expression
- Due process

Cases such as *SERAC v Nigeria* established that socio-economic rights impose positive obligations on states.

The African Commission on Human and Peoples’ Rights is mandated to promote and protect human rights under the Charter ^[18]. Its functions include examining state reports, deciding individual communications, and developing interpretive jurisprudence ^[19].

Although its decisions are not formally binding, the Commission has played a crucial role in clarifying the scope of rights and state obligations under the Charter ^[20].

2. African Court on Human and Peoples’ Rights

African Court on Human and Peoples’ Rights Located in Arusha. Issues binding judgments. Key Cases: *Ally Rajabu v Tanzania* 2019: Mandatory death penalty violates right to life. *Ingabire v Rwanda* 2017: Broad anti-genocide laws can violate freedom of expression. Challenge: Only 8 of 30 states that ratified allow individuals/NGOs direct access. Tanzania, Rwanda, and Benin have withdrawn declarations. Without access, the Court is crippled. The Court represents a shift toward judicialization of human rights enforcement. Its binding judgments enhance legal certainty, yet access remains limited due to states withdrawing individual standing declarations.

The African Court on Human and Peoples’ Rights provides binding judicial decisions on alleged human rights violations ^[21]. Its effectiveness, however, is constrained by limited state acceptance of its jurisdiction and inconsistent compliance with its judgments ^[22].

3. National Human Rights Institutions

Many African states have established national human rights institutions (NHRIs) to implement international obligations domestically ^[23]. Their effectiveness depends on legal independence, adequate funding, and political support ^[24].

Key Human Rights Issues in Africa

1. Civil and Political Rights

Persistent challenges include electoral violence, restrictions on freedom of expression and assembly, and abuses by security forces ^[25].

Maputo Protocol 2003: First treaty to recognize abortion in cases of rape/incest. Ratified by 44 states. African Children's Charter 1990: Lowers age of majority to 18 and bans child soldiers. Kampala Convention 2009: Legally binds states to protect 12.7 million IDPs in Africa. African Charter on Democracy 2007: Criminalizes unconstitutional changes of government. These show Africa responding to its own crises rather than waiting for global treaties. Together, these instruments reflect Africa's responsiveness to contextual human rights challenges.

2. Interaction with Sub-Regional Courts

Sub-regional courts, such as the ECOWAS Court of Justice, have emerged as critical human rights fora, often providing more accessible remedies than continental institutions. The ECOWAS Court of Justice has become a de facto human rights court. In *Mani v Niger* 2009 it awarded damages for slavery. Its openness makes it more accessible than Arusha.

Thematic Issues

1. Democratic Governance and Elections

Despite constitutional guarantees, electoral violence, manipulation, and repression persist. Democratic backsliding undermines political participation and public trust. Out of 19 elections in Africa in 2025, 6 were marred by internet shutdowns.

2. Freedom of Expression and Digital Rights

The rise of digital activism has expanded civic space but also provoked restrictive cybercrime laws. Balancing security and freedom remain contentious. Digital rights are the new frontier

3. Rule of Law and Security Forces

Arbitrary detention, torture, and extrajudicial killings continue in some contexts, particularly in counter-terrorism operations. African courts are leading globally. In *Purohit v Gambia* the Commission held mental health patients have right to treatment. But budget realities mean courts often order "progressive realization. African courts are leading globally. In *Purohit v Gambia* the Commission held mental health patients have right to treatment. But budget realities mean courts often order "progressive realization.

Economic, Social, and Cultural Rights

Africa's human rights system stands out for treating socio-economic rights as enforceable legal claims. Judicial decisions increasingly address:

- Right to health
- Right to housing
- Right to education
- Right to water

However, structural poverty and fiscal constraints complicate implementation.

Women's Rights and Gender Justice in Africa

From Pre-Colonial Systems to Contemporary Law, Gender justice in Africa has 3 layers: Pre-colonial norms → Colonial disruption → post-colonial legal + social reform. The story is not linear progress. It's about contestation between custom, religion, colonial law, and human rights.

1. Pre-Colonial Africa: Diverse Systems, Not Uniform Oppression

There was no single "African tradition". Rights and status varied hugely by society. Positive Practices: Political Power: Queen Mothers - Akan, Ghana/Nigeria: Could nominate kings, veto decisions, try cases. Queen Nzinga - Ndongo, Angola: 17th C military and political leader. Dual-Sex Systems - Igbo, Yoruba: Separate women's councils Umuada, Iyalode handled women's issues, trade, justice. Economic Rights: Women controlled trade in West Africa. Hausa Magajiya and Yoruba Iyaloja were market leaders. Land access through lineage, though often mediated by men. Marriage & Family: Bride wealth was symbolic, not "purchase". Divorce was possible and women could return to natal home. Polygamy existed but with obligations on husbands.

Limitations: Patrilineal inheritance dominated in many societies. Practices like FGM, widow rites, and levirate marriage existed in some communities. Decision-making was often gendered but complementary, not necessarily equal. Core idea: Status was relational and functional. Women had recognized public roles, not just domestic.

2. Colonialism: the regression 1880s-1960s

Colonialism froze "custom" and made it more patriarchal than it was. How it Harmed Women: Legal Dualism: Colonial courts recognized only male "chiefs" and "heads of household". Women lost direct access to land and courts. Cash Economy: Men got wage jobs and land titles. Women's farming/trade was devalued. Codified Custom: British "Indirect Rule" and French "Customary Law" recorded the most conservative version of tradition as "law". Education Gap: Mission schools prioritized boys. Female literacy lagged. Violence: Colonial forced labor, taxation hit women farmers hardest. Colonialism didn't invent patriarchy, but it institutionalized it through law and gave male elders state backing.

3. Post-Independence: 1960s - 1990s Constitutions Vs Reality

At independence, most African constitutions had non-discrimination clauses. But 3 problems: "Public/Private Divide": Law covered politics but left "family law" to custom and religion. One-Party States: Women's wings of parties were mobilized but not empowered. Development Focus: Women framed as "mothers of the nation" not rights-holders. Result: Legal equality on paper, but customary law still governed marriage, inheritance, and land for 80% of women.

The Turning Point: 1995 - 2003 Maputo Protocol Era

3 things changed in the 1990s: democratization, HIV/AIDS, and Beijing Conference 1995.A. The Maputo Protocol 2003: Africa's CEDAW + Full name: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

Entered into force 2005. 44 states ratified as of 2026

1. Maputo Protocol and Women's Rights

The Maputo Protocol sets advanced standards on reproductive health, political participation, and protection from violence. Yet customary practices, weak enforcement, and socio-economic barriers continue to impede gender equality. "Women's Rights: Maputo Protocol is gold standard. Yet 125 million African girls underwent FGM.

What Maputo Does can be summarized as follows:

Harmful Practices Art 5: Explicitly calls for elimination of FGM.

Marriage Art 6: Minimum age 18, consent required, polygamy discouraged.

Economic Right Start 13: Right to work, equal pay, social security.

Land & Property Art 7: Right to inherit, right to own land.

Violence Art 4: State duty to prevent, punish, and eradicate GBV.

Political Participation Art 9: Right to participate in political process.

Health & Reproductive Right Start 14: Includes abortion in cases of rape, incest, health risk. No other regional treaty is this explicit on FGM, marital rape, and reproductive rights.

Current Landscape 2026: Progress

1. Areas of Progress

Legal Reform: 38 African states have domestic violence laws. 20 have laws against FGM. Political Representation: Africa averages 26% women in parliament vs global 26.9%. Rwanda, Senegal, SA, Ethiopia lead.

Economic Reform: African women run 58% of self-employed businesses. AfCFTA has Gender Protocol.

Courts Reform: Equality Now v Ethiopia 2016: ACHPR found state failed to protect girl from abduction marriage. Dorothy Njemanze v Nigeria 2017: ECOWAS Court ordered Nigeria to pay for police sexual violence. South Africa: Constitutional Court struck down customary law of male primogeniture in Bhe v Magistrate 2004.

Contemporary Challenges

Resource extraction, land rights, and climate change pose significant human rights challenges. The African system's recognition of environmental rights positions it as a pioneer in linking human rights and sustainability. Climate change is a human rights issue. Art 24 is being invoked in cases on drought and displacement. The Court's 2023 advisory opinion request on climate is pending.

Legal Pluralism: Statutory law vs Customary law vs Religious law. Women get caught between them. E.g., inheritance in Nigeria. Violence: UN Women 2024: 1 in 3 African women experience GBV. Conflict zones: DRC, Sudan, Sahel have epidemic of sexual violence as weapon

of war. Harmful Practices: FGM still practiced in 24 countries. Child marriage: 40% of girls married before 18 in Sub-Saharan Africa ^[1]. Economic: Gender pay gap ~30%. Women own <20% of land despite doing 60-80% of farm work. Implementation: Ratification ≠ enforcement. Few states have budget or institutions for Maputo.

AU Protocol require women's participation in peace.

But in practice: In Sudan 2023-2025, Nigeria North-East, women bear displacement burden and are targets of Boko Haram, Janjaweed. Yet excluded from peace talks.

1. Compliance Deficit

AU data shows <35% compliance with African Commission recommendations. The Commission and Court are 70% funded by external donors. This threatens independence. States cite sovereignty to reject Court jurisdiction. Sahel and Horn conflicts create mass displacement and normalize emergency powers. Only 22 states have fully domesticated the African Charter. Key obstacles include:

- Armed conflict and terrorism
- Weak compliance with regional decisions
- Political resistance to accountability
- Limited funding of institutions
- Tensions between sovereignty and international oversight

The way forward

1. **Harmonize Laws:** Repeal customary/religious laws that contradict constitutions and Maputo. Nigeria needs to domesticate Maputo fully.

2. **Fund Implementation:** Gender ministries need budget, not just policy.

3. **Justice Access:** Mobile courts, legal aid, and training police/judges on GBV.

4. **ECOWAS Court model** should be expanded.

5. **Economic Justice:** Land titling in women's names, care economy recognition, access to Acta. Women in Peace: 30% quota in all AU peace processes. Protection from conflict-related sexual violence.

Enhancing effectiveness requires

- Strengthening enforcement mechanisms
- Expanding access to the African Court
- Harmonizing regional and domestic law
- Supporting independent judiciaries

Conclusion

Human rights in Africa demonstrate both significant normative advancement and persistent implementation challenges. The African human rights system's holistic recognition of individual, collective, and socio-economic rights offers a distinctive contribution to global human rights law. Effective enforcement, institutional independence, and political commitment are crucial to ensuring the full realization of human dignity across the continent. The historical evolution shows a pattern: Pre-colonial: Rights embedded in community Colonial: Rights denied. Strong norms but weak implementation of Africa's contribution to global human rights law is unique because it refused to separate individual from community, and civil

from socio-economic rights. The challenge now is moving from “normative innovation” to “lived reality” for 1.4 billion Africans. The African Charter proves ESC rights can be justiciable without "resource" excuses. The formula from SERAC: Respect: Don't destroy what people have Protect: Prevent third parties from destroying it. Fulfill: Take steps to provide it. This is now influencing UN and other regions. Pre-colonial Africa had women in power. Colonialism pushed them out. Post-1995 Africa is trying to bring them back in — this time with legal rights, not just roles. The Maputo Protocol shows Africa is leading globally on codifying women's rights. The gap now is moving from "law on books" to "justice in homes, farms, and courts". As the AU theme 2016 said: "African Women: Catalysts for Development and Growth." That can only happen if gender justice is not an add-on, but the foundation.

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