

Myth and Reality of Regional Human Rights Protection Under Comparative Constitutional Law: The African Experience

Abstract

*This paper critically examines the efficacy of regional and international human rights instruments in Africa, with particular focus on the **African Charter on Human and Peoples' Rights (ACHPR)**, the **International Covenant on Civil and Political Rights (ICCPR)**, and the **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**. While these instruments set crucial normative standards, their practical implementation is hampered by persistent **implementation gaps** rooted in weak governance, political interference, and structural deficiencies in legal systems.*

Using a comparative analysis of Nigeria, Malawi, Zimbabwe, South Africa, and Rwanda, the paper highlights how political will, institutional design, and cultural norms shape the enforcement of human rights. Nigeria provides a central case study, illustrating the complexities of implementation under a dualist legal system through cases such as the Ogoni Nine executions and the uneven domestication of the Child's Rights Act. The analysis reveals how structural weaknesses create criminogenic conditions that permit systemic human rights abuses and state-corporate crimes.

*The research concludes that the crisis of human rights protection in Africa reflects not isolated failures but a **systemic problem of governance and law**, where international commitments are repeatedly subordinated to political expediency.*

1. Introduction

The establishment of the United Nations (UN) and the adoption of the Universal Declaration of Human Rights (UDHR, 1948) laid the foundation for the globalization of human rights. The UN Charter's reaffirmation of "faith in fundamental human rights"

marked a transformative moment, requiring states to commit to both joint and separate actions to secure universal respect for human rights¹.

The UDHR provided authoritative expression to the imprecise definitions of rights contained in the UN Charter. Its influence extended to regional frameworks, inspiring the European Convention on Human Rights (1950), the American Convention on Human Rights (1969), and eventually the African Charter on Human and Peoples' Rights (1981)²

Initially, the UN was ambivalent toward regional systems, fearing they might fragment the universality of rights³. Over time, however, regional mechanisms came to be recognized as complementary to the global framework. Scholars argue that shared cultural, historical, and geographic contexts make regional bodies potentially more effective at encouraging compliance⁴.

Despite this recognition, it is essential to critically evaluate the actual efficacy of these regional mechanisms in Africa, where governments often subvert rather than uphold rights. This paper, therefore, argues that while Africa possesses a formal legal framework for rights protection, the gap between normative commitment and actual enforcement renders much of this framework mythical rather than real. Applying a criminological lens, the paper explores how this implementation gap facilitates state crime and systemic human rights abuses.

2. The Efficacy of Regional Human Rights Instruments

Regional and international human rights instruments such as treaties, conventions, and charters form the backbone of global and regional protection of rights. They do more than just set standards: they raise awareness, empower civil society, and give

¹ Lauren, P. G. (2011). *The Evolution of International Human Rights: Visions Seen*.

² Steiner, H., Alston, P., & Goodman, R. (2008). *International Human Rights in Context: Law, Politics, Morals*. Oxford University.

³ Alston, P. (1999). *The United Nations and Human Rights: A Critical Appraisal*. Oxford University Press.

⁴ Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A Commentary*. Oxford University Press; Keller, H., &

Stone Sweet, A. (2008). *A Europe of Rights: The Impact of the ECHR on National Legal Systems*. Oxford University Press.

individuals and organizations legal tools to challenge abuses⁵. Ratification also places states under international scrutiny, which can create both political pressure and reputational costs when governments fail to comply⁶.

The African experience illustrates this dual role well. On the one hand, the existence of instruments such as the **African Charter on Human and Peoples' Rights (ACHPR)** has given activists, courts, and civil society organizations a language and framework for demanding accountability⁷. On the other hand, as scholars have noted, the mere existence of a treaty does not guarantee its enforcement⁸. Implementation depends heavily on domestic factors such as judicial independence, institutional strength, and perhaps most importantly, political will.⁹

In many African countries, governments have ratified human rights instruments not necessarily out of genuine commitment but to gain international legitimacy¹⁰. This dynamic helps explain the persistent implementation gap: rights may be guaranteed in law, yet remain elusive in practice. Nigeria, Zimbabwe, and Malawi, for instance, illustrate how the same treaty can produce radically different results depending on how it is domesticated and enforced within domestic legal systems.

Thus, while regional human rights instruments remain foundational, their true efficacy lies not in their text but in their translation into domestic legal and political practice. Without credible enforcement mechanisms, even the most progressive rights instruments risk being reduced to symbolic statements rather than transformative tools.

3. The African Charter on Human and Peoples' Rights (ACHPR)

⁵ Henkin, L. (1990). *The Age of Rights*. Columbia University Press; Steiner, H., Alston, P., & Goodman, R. (2008).

⁶ Hathaway, O. (2002). Do Human Rights Treaties Make a Difference? *Yale Law Journal*

⁷ Viljoen, F. (2012). *International Human Rights Law in Africa*. Oxford University Press.

⁸ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press

⁹ Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A Commentary*. Oxford University Press.

¹⁰ Hafner-Burton, E. (2012). International Regimes for Human Rights. *Annual Review of Political Science*.

The ACHPR, or Banjul Charter, is widely regarded as Africa's most ambitious regional human rights instrument. Adopted by the Organization of African Unity (OAU) in 1981 and entering into force in 1986, the Charter was a deliberate attempt to construct a human rights framework that reflected African values and historical realities while still aligning with global human rights norms¹¹.

A Distinctive African Contribution

Unlike its European and American counterparts, the ACHPR embodies a holistic and integrated vision of rights. It places civil and political rights (e.g., right to life, fair trial, freedom of expression) alongside economic, social, and cultural rights (e.g., rights to work, health, and education). This indivisibility of rights anticipated later debates in international law about the artificial separation between categories of rights.¹²

Equally distinctive is the Charter's emphasis on collective or "peoples' rights." These include the right to self-determination (Article 20), permanent sovereignty over natural resources (Article 21), and the right to development (Article 22). Such provisions resonate with Africa's colonial history, in which struggles for liberation and economic justice were as central as individual freedoms (Bennett, 1998). The ACHPR is therefore often read as both a rights instrument and a political manifesto for postcolonial emancipation.

Another innovative, though controversial, feature is its inclusion of individual duties (Articles 27–29). These duties to family, society, and the state reflect a communitarian ethic that is deeply rooted in African philosophy, where rights are seen not as absolute but as balanced within webs of responsibility¹³. While some scholars hail this as a uniquely African contribution to human rights discourse, critics argue that

¹¹ Viljoen, F. (2012). *International Human Rights Law in Africa*. Oxford University Press.

¹² Nmehielle, V. O. (2001). *The African Human Rights System: Its Laws, Practice, and Institutions*. Martinus Nijhoff; Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A Commentary*. Oxford University Press

¹³ Wiredu, K. (1996). *Cultural Universals and Particulars: An African Perspective*. Indiana University Press.

governments have sometimes weaponized vague duties to justify restrictions on civil liberties¹⁴.

Institutional Mechanisms

To enforce its provisions, the Charter established two key institutions. The ACHPR, created in 1987, monitors compliance, considers individual complaints, and examines state reports. However, its recommendations are non-binding, which has led some commentators to describe it as “toothless”¹⁵.

Recognizing these weaknesses, the African Court on Human and Peoples’ Rights was established in 2004 to complement the Commission with binding judicial authority. The Court has delivered significant rulings, for instance, *African Commission v. Libya* (2011), which condemned state violence during the Arab Spring, and *Tanganyika Law Society v. Tanzania* (2013), where it struck down restrictions on independent candidates in elections. Notwithstanding, compliance with the Court’s rulings remains inconsistent, as many states either delay or refuse implementation¹⁶.

Achievements and Limitations

The Charter’s jurisprudence has expanded in important directions. In *Social and Economic Rights Action Centre (SERAC) v. Nigeria* (2001), the Commission recognized environmental rights under Article 24, linking them to health, livelihood, and survival. This decision marked a pioneering step in connecting environmental justice with human rights, a theme particularly relevant to Africa’s extractive economies.

Nonetheless, the implementation gap remains the Charter’s most pressing challenge. Almost every African state has ratified it, but domestication and enforcement vary widely. As seen in Nigeria’s partial compliance with SERAC and the Ogoni Nine cases, or Zimbabwe’s weak constitutional incorporation, ratification often remains more

¹⁴ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press.

¹⁵ Heyns, C. (2004). *The African Regional Human Rights System: The African Charter*.

¹⁶ Murray, R., & Long, D. (2015). *The Implementation of the Findings of the African Commission on Human and Peoples’ Rights*. Cambridge University Press.

symbolic than substantive. Political resistance, underfunded institutions, and fragile judicial independence mean that the transformative potential of the Charter has not been fully realized¹⁷.

The African Charter is therefore best understood as both an achievement and a paradox. It embodies a distinctly African vision of rights — holistic, collective, and communitarian, yet its practical effect has been constrained by political realities and weak enforcement. While it provides activists, lawyers, and courts with valuable tools for advocacy, its promise of protection too often remains a myth rather than reality.

4. Implementation of the African Charter on Human and Peoples' Rights (ACHPR)

While the African Charter offers a comprehensive framework for human rights, its effectiveness depends less on its text and more on how states incorporate and apply it domestically. Across Africa, a wide gap exists between formal ratification and practical enforcement, shaped by each country's legal system, political will, and institutional capacity. The experiences of Nigeria, Malawi, and Zimbabwe reveal three contrasting trajectories.

Nigeria: Domestication and Its Contradictions

Nigeria is one of the few African countries to have formally domesticated the Charter through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983. This act gives the Charter the force of law and allows courts to rely directly on its provisions.

In *Chief Gani Fawehinmi v. General Sani Abacha & Ors* (2000), the Supreme Court affirmed that the domesticated Charter had equal status with other national laws, demonstrating its potential as a shield against authoritarian repression.

¹⁷ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press; Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A Commentary*. Oxford University Press.

However, domestication has not guaranteed protection. Political repression and systemic impunity often undermine judicial application of the Charter. As will be seen in the Ogoni Nine case, even domesticated rights can be rendered hollow when political and corporate interests converge.

Malawi: Constitutional Incorporation and Judicial Willingness

Malawi provides a more optimistic example. Following its democratic transition in 1994, the Constitution explicitly integrated international human rights instruments, including the ACHPR, into domestic law. This framework empowers courts to apply regional and international norms without requiring separate legislation.¹⁸

In *Chihana v. The Republic* (1993) and *Chana v. The Republic* (1996), courts relied on the Charter to strike down convictions that violated freedoms of association and expression. These rulings illustrate how Malawi's judiciary, seeking legitimacy in the post-authoritarian era, embraced international human rights standards.¹⁹

Civil society has also reinforced the Charter's relevance, frequently invoking it in advocacy for democratic reforms and gender equality. Compared to Nigeria, where political elites often frustrate implementation, Malawi demonstrates how constitutional openness, judicial independence, and political transition can make the Charter more than symbolic.

Zimbabwe: Ratification Without Implementation

Zimbabwe illustrates the opposite extreme — ratification without meaningful domestic effect. Although a state party to the Charter, Zimbabwe has never enacted enabling legislation to give it binding force domestically. Courts may reference the Charter, but such references remain persuasive rather than enforceable (*Madzimure v. Minister of Justice*, 2015).

¹⁸ Viljoen, F. (2012). *International Human Rights Law in Africa*. Oxford University Press

¹⁹ Kanyongolo, F. (2006). *Malawi Justice Sector and the Rule of Law*. Open Society Institute.

Authoritarian practices further limit impact. Courts operate under executive pressure, and rights-related judgments are routinely ignored.²⁰ For instance, during the violent suppression of protests in 2008 and 2018, the Charter's guarantees of life and assembly provided little actual protection. Here, the Charter functions largely as a symbolic law that is only ratified for international legitimacy but without real effect.

Comparative Insight

Taken together, the trajectories of Nigeria, Malawi, and Zimbabwe underscore a central reality: the effectiveness of the African Charter depends less on ratification than on the interaction of law and politics. Nigeria demonstrates both the promise and pitfalls of domestication, Malawi shows the potential of constitutional incorporation under democratic reform, and Zimbabwe exposes the emptiness of ratification without implementation.

This variation aligns with broader scholarship on treaty enforcement: international human rights norms are most effective where domestic institutions are independent, civil society is vibrant, and political elites are willing to comply²¹. Where these conditions are absent, rights instruments risk becoming myths of protection rather than lived realities.

Case Illustration: The Ogoni Nine and State–Corporate Crime in Nigeria

The contradictions of domestication are starkly illustrated in the Ogoni Nine case (1995). Ken Saro-Wiwa and eight other Ogoni activists opposed environmental devastation in the Niger Delta caused by oil extraction, particularly by Shell, and called for accountability under Nigerian law and the ACHPR.

²⁰ Sachikonye, L. (2011). When a State Turns on Its Citizens: Institutionalized Violence and Political Culture. *Jacana*

²¹ Hafner-Burton, E. (2012). International Regimes for Human Rights. *Annual Review of Political Science*; Hathaway, O. (2002). Do Human Rights Treaties Make a Difference? *Yale Law Journal*.

Despite the Charter's incorporation into domestic law, the activists were tried by a military tribunal that fell far short of international fair trial standards. Their execution, condemned globally, illustrates how political repression and corporate collusion can override formal human rights commitments²².

From a criminological perspective, this case exemplifies state–corporate crime: the convergence of authoritarian state power and corporate interests to suppress dissent and perpetuate systemic harm²³. The Ogoni Nine highlight the limits of treaty domestication in the face of entrenched impunity and economic interests, reminding us that legal frameworks alone cannot safeguard rights without genuine political accountability.

5. Institutional Frameworks and Mechanisms

The African Charter's impact depends not only on legal domestication but also on the strength of National Human Rights Institutions (NHRIs), which bridge the gap between lofty international commitments and the daily realities of citizens. Their effectiveness varies widely across Africa, reflecting differences in political will, resources, and institutional independence²⁴. The experiences of Nigeria, Malawi, and Zimbabwe illustrate this divergence.

Nigeria: A Commission with Potential but Limited Impact

Nigeria's National Human Rights Commission (NHRC), established in 1995, is mandated to investigate violations, promote awareness, and recommend reforms. Over time, it has played a visible role in documenting abuses and invoking the ACHPR.

A striking example came during the **#EndSARS protests** of October 2020, when security forces opened fire on peaceful demonstrators at Lekki Toll Gate, Lagos. The NHRC framed the incident as a violation of the right to life and freedom of assembly

²² Frynas, J. G. (2000). *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village Communities*. LIT Verlag; Obi, C. (2009). *Structuring Transnational Spaces of Oil and Environmental Politics in*

²³ Green, P., & Ward, T. (2004). *State Crime: Governments, Violence and Corruption*. Pluto Press.

²⁴ Carver, R. (2011). *Measuring the Impact and Performance of National Human Rights Institutions* & Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A Commentary*. Oxford University Press.

under Articles 4 and 11 of the ACHPR, feeding its findings into judicial panels of inquiry.²⁵

Yet the Commission's impact was sharply constrained. Its recommendations are not binding, and implementation depends on political goodwill, which is often absent. This limited mandate meant that even in the face of grave violations, accountability was elusive²⁶.

Case Illustration: #EndSARS and State Crime in Contemporary Nigeria

The **#EndSARS movement** marked one of Africa's most significant youth-led human rights struggles. Protesters demanded the disbandment of the Special Anti-Robbery Squad (SARS), notorious for torture, extortion, and extrajudicial killings.

On 20 October 2020, security forces fired on demonstrators at Lekki Toll Gate, killing and injuring scores. This incident violated multiple rights under the ICCPR and ACHPR, including the right to life, freedom from torture, and the right of peaceful assembly.

The NHRC and various judicial panels investigated the killings, but accountability has been minimal, with no senior officials prosecuted. This lapse in action reflects Nigeria's entrenched culture of impunity. From a criminological perspective, #EndSARS exemplifies state crime, a systemic violation committed by state actors with little or no accountability. It also highlights how civil society and digital activism can use human rights language to mobilize global solidarity, even when domestic enforcement is weak.

Malawi: A More Independent and Effective Commission

By contrast, the Malawi Human Rights Commission (MHRC) has been relatively more effective. Established in 1994, it enjoys constitutional independence and operates in a more supportive democratic environment.

The MHRC has invoked the ACHPR in litigation and advocacy. In 2011, it successfully challenged a government ban on street protests, which courts struck down as

²⁵ Amnesty International. (2020). Nigeria: Killing of #EndSARS Protesters

²⁶ Odinkalu, C. (2011). The Future of Human Rights in Africa

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unconstitutional and contrary to the Charter. It has also monitored elections, exposed police abuses, and pressed for stronger protections against gender-based violence²⁷.

Key factors explain its relative success: explicit constitutional recognition of the Charter, judicial independence, and sustained civil society engagement. In Malawi, the Commission functions as a genuine check on executive power rather than a symbolic body.

Zimbabwe: Institutional Weakness under Authoritarian Rule

Zimbabwe's Human Rights Commission (ZHRC), created in 2009, illustrates the opposite extreme. While mandated to promote and protect rights, it suffers from chronic underfunding, political interference, and limited independence²⁸.

The ZHRC has documented abuses, including killings and arbitrary arrests after the 2018 elections, citing the ACHPR. Nevertheless, its findings are routinely ignored, and commissioners have faced harassment themselves²⁹. Civil society has criticized the Commission for avoiding politically sensitive issues such as enforced disappearances and electoral violence.

As a result, the ZHRC risks being reduced to a symbolic institution recording violations without securing remedies.

Comparative Insight

The three cases underscore the political contingencies that determine NHRI effectiveness. Nigeria shows how commissions can expose abuses but remain toothless without binding authority. Malawi demonstrates how independence, judicial support, and civil society partnerships can turn commissions into credible defenders of rights. Zimbabwe, by contrast, reveals how authoritarian politics can hollow out institutions, leaving them as instruments of symbolic compliance.

²⁷ Kanyongolo, F. (2006). Malawi Justice Sector and the Rule of Law. Open Society Institute.

²⁸ Sachikonye, L. (2011). When a State Turns on Its Citizens: Institutionalized Violence and Political Culture. Jacana.

²⁹ Amnesty International. (2019). Zimbabwe: Post-Election Violence and Impunity

Ultimately, the efficacy of NHRIs in implementing the African Charter depends less on their legal mandates than on the political and structural conditions under which they operate³⁰. Where elites resist accountability, even the best-designed commissions risk becoming facades.

6. Practical Application and Challenges

While legal frameworks and institutional bodies provide the infrastructure for human rights protection, much of the practical enforcement of the African Charter depends on civil society organizations (CSOs). These groups translate the Charter into concrete demands, litigate violations, and mobilize communities to resist repression. Their effectiveness, however, varies across political contexts. The experiences of Nigeria, Malawi, and Zimbabwe highlight both the potential and the limits of civil society engagement with the ACHPR.

Nigeria: Strategic Litigation and the Limits of Compliance

In Nigeria, CSOs such as the Socio-Economic Rights and Accountability Project (SERAP) have used the ACHPR as a litigation tool. In 2015, SERAP successfully challenged the government's failure to provide free primary education, invoking Article 17 on the right to education. More recently, SERAP litigated against the 2021 Twitter ban, arguing it violated freedom of expression (Article 9) and access to information. Nigerian courts ruled in its favour, reaffirming the Charter's relevance in the digital era (*SERAP v. Nigeria*, 2022).

Although these victories highlight a persistent challenge: non-compliance. The Nigerian government frequently delays or ignores court orders, reducing judicial successes to symbolic gestures rather than substantive change³¹. From a criminological perspective, this reflects an implementation gap where law exists on paper but is hollowed out by entrenched state impunity.

³⁰ Carver, R. (2011). Measuring the Impact and Performance of National Human Rights Institutions. & Heyns, C., & Viljoen, F. (2001). The Impact of the United Nations Human Rights Treaties on the Domestic Level.

³¹ Odinkalu, C. (2011). The Future of Human Rights in Africa

Case Illustration: The Child Rights Act (2003) and Federal Fragmentation

The challenges of civil society advocacy in Nigeria are further illustrated by the Child Rights Act (CRA) of 2003. Passed to domesticate the CRC and the African Charter on the Rights and Welfare of the Child, the CRA prohibits child marriage, child labour, and harmful practices such as female genital mutilation.

However, because Nigeria is a federal state, the Act only applies automatically in the Federal Capital Territory. For it to have nationwide effect, individual states must enact their own versions. As of 2020, several Northern states had refused to do so, citing cultural and religious objections³².

This fragmentation means children's rights vary dramatically depending on geography, while some enjoy treaty-based protections, others remain exposed to abuse. The CRA thus demonstrates how international commitments can be undermined by domestic political structures, revealing the limits of civil society victories when federalism and cultural resistance block uniform implementation.

Malawi: Grassroots Advocacy and Policy Influence

In Malawi, CSOs such as the Centre for Human Rights and Rehabilitation (CHRR) have leveraged the Charter in both litigation and grassroots mobilization. Campaigns against gender-based violence invoked ACHPR principles to push for a National Action Plan on Gender-Based Violence and the establishment of victim support units within the police service.³³

Unlike in Nigeria, Malawian CSOs benefit from a relatively supportive judiciary and political environment. The Charter functions here not only as a litigation tool but as a normative framework shaping state policy.³⁴ This illustrates how regional instruments can empower CSOs to influence reforms where democratic institutions are responsive.

³² Okogbule, N. S. (2010). *Globalization and Human Rights in Africa*.

³³ Kanyongolo, F. (2006). *Malawi Justice Sector and the Rule of Law*. Open Society Institute.

³⁴ Viljoen, F. (2012). *International Human Rights Law in Africa*. Oxford University Press.

Zimbabwe: Civil Society Under Repression

Zimbabwe presents a starker picture. Organizations such as Zimbabwe Lawyers for Human Rights (ZLHR) have attempted to invoke the Charter in cases challenging unlawful detention and political repression. Yet activists and lawyers frequently face harassment, arbitrary arrest, and surveillance under restrictive laws like the Public Order and Security Act.³⁵

In this repressive context, the ACHPR functions more as a symbolic shield than a legal remedy. It provides CSOs with language to document abuses and appeal for international solidarity, but systematic repression ensures domestic enforcement remains illusory. From a criminological standpoint, this reflects state crime: the state itself becomes the principal violator, weaponizing law as a tool of control rather than protection.³⁶

Comparative Insight

Across these three contexts, the role of CSOs demonstrates both the promise and the limits of the ACHPR. In Nigeria, strategic litigation has expanded the Charter's relevance to new domains such as digital rights, but weak compliance undermines impact. In Malawi, CSOs have leveraged the Charter to shape state policy, showing how rights instruments can be transformative in more open contexts. In Zimbabwe, civil society remains resilient but constrained, using the Charter largely as a normative tool to sustain accountability discourse for the future.

These patterns confirm what scholars have long argued: that civil society is indispensable to human rights enforcement, but its effectiveness depends on political space, judicial independence, and state responsiveness.³⁷ Where these conditions are

³⁵ Sachikonye, L. (2011). *When a State Turns on Its Citizens: Institutionalized Violence and Political Culture*. Jacana

³⁶ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press.

³⁷ Hafner-Burton, E. (2012). International Regimes for Human Rights. *Annual Review of Political Science*.

absent, the ACHPR risks becoming not a shield for citizens but a symbolic gesture of compliance by authoritarian regimes.

7. Challenges in the Implementation of the African Charter

Despite its progressive provisions, ACHPR continues to face persistent implementation challenges across the continent. These obstacles are systemic, rooted in weak institutions, political resistance, and entrenched cultures of impunity. The Nigerian, Malawian, and Zimbabwean experiences reveal three central dynamics: weak enforcement, political interference, and criminological failures.

a. Weak Enforcement and Judicial Limitations

Even where the Charter is domesticated, enforcement is inconsistent. In Nigeria, judicial findings are often ignored by the executive. After the **2020 #EndSARS** protests, the Lagos Judicial Panel of Inquiry recommended compensation and reforms. However, the federal government largely ignored its report, illustrating how quasi-judicial mechanisms can be neutralized by political inertia (Amnesty International, 2020).

In Malawi, courts have been more assertive, as in the 2019 presidential election annulment, which reaffirmed democratic rights. Yet the veiled impeachment threats faced by judges showed how fragile judicial independence remains in politically sensitive cases (Chirwa, 2005).

In Zimbabwe, judicial autonomy is even weaker. In *Madzimore v. Minister of Justice* (2015), courts referenced the Charter, but enforcement was undermined by executive non-compliance. This failure reflects what Hirschl (2004) calls “hollow remedies” — rights acknowledged in principle but denied in practice.

b. Political Interference and Institutional Weaknesses

Political elites routinely undermine institutions responsible for rights protection. In Nigeria, controversial judicial appointments in 2019 raised doubts about courts’

impartiality in rights cases (Odinkalu, 2011). In Malawi, budgetary threats against the judiciary and the Malawi Human Rights Commission (MHRC) have constrained oversight. In Zimbabwe, executive dominance entrenches impunity, allowing state actors to commit abuses without fear of consequence (Sachikonye, 2011).

Such interference turns national human rights institutions (NHRIs) into symbolic rather than substantive actors, eroding their ability to translate the Charter into real protections.

c. Criminological Failures: Impunity, State Crime, and State–Corporate Crime

The most profound obstacle is a culture of impunity that criminologists conceptualize as state crime — violations of rights by state actors under cover of law (Green & Ward, 2004).

- In Nigeria, the violent repression of **#EndSARS** protesters, including extrajudicial killings and torture, exemplifies state crime. Despite inquiries, no senior officials have faced accountability.
- In Zimbabwe, systematic torture and repression of opposition activists reflect a similar pattern of institutionalized state violence.
- Beyond state crime, extractive economies produce state–corporate crimes, where governments collude with corporations to commit or enable abuses. The Ogoni Nine case remains emblematic: Shell’s complicity with Nigeria’s military regime revealed how corporate power and state violence converge to suppress dissent (Frynas, 2000; Obi, 2009).

Comparative Insight

Taken together, these challenges show that the implementation gap is not simply a technical problem of legal domestication but a structural problem of governance. Weak enforcement, political interference, and criminogenic environments mean the ACHPR, while symbolically powerful, often fails to provide substantive protection.

These contradictions are starkly underscored by the Ogoni Nine and the Lekki shootings during #EndSARS. Both reveal how rights violations occur not in the absence of protections but under their shadow, with impunity shielded by political and economic interests.

This reinforces the central critique of African human rights systems: the Charter risks functioning as a myth of protection, where formal commitments coexist with systemic violations (Mutua, 2002; Murray, 2019). Unless institutional independence and accountability are strengthened, the Charter's transformative potential will remain aspirational rather than real.

8. The Efficacy of the International Covenant on Civil and Political Rights (ICCPR) in Africa

The International Covenant on Civil and Political Rights (ICCPR), adopted in 1966 and entering into force in 1976, is one of the cornerstones of the global human rights system. It guarantees fundamental freedoms, including the right to life, liberty, fair trial, freedom of expression, and political participation. Nearly all African states are parties to the Covenant, signalling formal alignment with its standards.

More so, much like the ACHPR, the ICCPR's impact in Africa has been limited by structural weaknesses. Ratification has often served more as a diplomatic gesture than a transformative legal commitment (Hathaway, 2002). Domestic incorporation and enforcement vary widely, depending on constitutional design, judicial independence, and political will (Viljoen, 2012; Murray, 2019).

Adoption and Implementation in Africa

Some African countries have integrated the ICCPR into their constitutional frameworks with notable success. South Africa is a leading example: its post-apartheid Constitution (1996) incorporates a Bill of Rights closely aligned with the ICCPR, and its courts routinely apply international human rights norms.³⁸ The Constitutional Court's decision

³⁸ Cowan, J. (2001). Constitutional Rights and ICCPR in South Africa.

in *Minister of Home Affairs v. Fourie* (2005), which legalized same-sex marriage, reflects this alignment with ICCPR principles of non-discrimination.

By contrast, in countries such as Zimbabwe and Sudan, ICCPR ratification has had little substantive effect. Weak constitutional protections, authoritarian politics, and recurring crises mean that Covenant commitments remain largely symbolic. Eritrea offers a particularly stark case: despite being a party to the ICCPR, it systematically restricts freedoms of expression, association, and religion, while maintaining indefinite national service and widespread arbitrary detention.³⁹

Challenges to Implementation

The obstacles facing the ICCPR in Africa mirror those observed with the ACHPR.

- **Political Instability and Conflict:** In fragile states such as South Sudan and the Democratic Republic of Congo, ongoing conflict makes the enforcement of civil and political rights virtually impossible.
- **Judicial Dependence:** Where judiciaries lack autonomy, ICCPR rights remain hollow. For instance, in Rwanda, courts rarely challenge executive power, limiting the practical impact of Covenant protections.⁴⁰
- **Selective Enforcement:** Even in stronger states, governments often comply selectively, embracing ICCPR obligations in less politically sensitive areas while resisting them when they threaten entrenched interests.

Comparative Parallels with the ACHPR

The African experience with the ICCPR underscores a key comparative insight: global and regional rights instruments face the same structural challenges. Both the ICCPR and the ACHPR:

1. Lack strong supranational enforcement mechanisms.

³⁹ Human Rights Watch. (2019). Eritrea: Human Rights Practices.

⁴⁰ Gathii, J. (2010). The Performance of Africa's International Courts: Using International Litigation for Political, Legal, and Social Change.

2. Depend heavily on domestic incorporation and judicial independence.
3. Are vulnerable to political manipulation, reducing rights to symbolic commitments rather than enforceable guarantees.⁴¹

As a result, the ICCPR in Africa does not offer a corrective to the weaknesses of the African Charter but rather replicates them. This suggests that the problem lies not in the design of particular instruments but in the broader systemic conditions of governance, accountability, and institutional fragility across much of the continent.⁴²

9. Comparative Insight and Case Studies: ICCPR Implementation in Africa

The African experience with the **International Covenant on Civil and Political Rights (ICCPR)** reveals a striking pattern: the same systemic weaknesses that undermine the **African Charter on Human and Peoples' Rights (ACHPR)** also hinder the ICCPR. Both instruments suffer from fragile enforcement, overreliance on domestic institutions, and frequent subordination of rights to political expediency.⁴³

Success Stories: Strong Judiciaries and Democratic Reform

Where domestic courts are independent and constitutional frameworks robust, the ICCPR has had a tangible impact.

- **South Africa** provides perhaps the clearest example. The Constitutional Court has repeatedly invoked international human rights norms in its jurisprudence. In *Minister of Home Affairs v. Fourie* (2005), the Court recognized same-sex marriage, aligning with ICCPR principles of non-discrimination and equality.
- **Kenya**, following the adoption of its 2010 Constitution, has also demonstrated a willingness to enforce ICCPR rights. The Supreme Court's annulment of the

⁴¹ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press. & Hafner-Burton, E. (2012). *International Regimes for Human Rights*. *Annual Review of Political Science*.

⁴² Murray, R., & Long, D. (2015). *The Implementation of the Findings of the African Commission on Human and Peoples' Rights*. Cambridge University Press.

⁴³ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press. & Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A Commentary*. Oxford University Press.

2017 presidential election marked a historic affirmation of political rights and electoral integrity, reflecting the Covenant's guarantees of fair political participation.⁴⁴

- **Botswana** has shown similar commitment in selected areas, with its courts referencing ICCPR standards in rulings on freedom of expression and fair trial rights.⁴⁵

These examples illustrate that institutional design matters: where constitutions explicitly recognize international norms and courts enjoy independence, global treaties can shape domestic legal reality.

Authoritarian Contexts: Hollow Commitments

In contrast, authoritarian states routinely ratify the ICCPR but disregard its obligations.

- **Eritrea** is notorious for its disregard of civil and political rights, despite being a party to the Covenant. Arbitrary detention, indefinite national service, and severe restrictions on freedom of expression and religion reflect a systemic denial of ICCPR guarantees.⁴⁶
- **Sudan**, particularly under Omar al-Bashir, routinely curtailed political freedoms, with widespread torture and repression of dissent. Although the transitional government has since made reforms, authoritarian legacies continue to undermine rights enforcement.⁴⁷
- **Zimbabwe** demonstrates how ICCPR ratification can become a tool of symbolic compliance. Courts occasionally reference the Covenant, but persistent executive interference renders such rulings toothless.⁴⁸

These cases confirm that, in authoritarian contexts, international obligations rarely translate into meaningful protections.

⁴⁴ Mbondenyi, M. (2011). International Human Rights and Their Enforcement in Africa. LawAfrica.

⁴⁵ Viljoen, F. (2012). International Human Rights Law in Africa. Oxford University Press.

⁴⁶ Human Rights Watch. (2019). Eritrea: Human Rights Practices.

⁴⁷ De Waal, A. (2015). The Real Politics of the Horn of Africa: Money, War and the Business of Power. Polity Press.

⁴⁸ Sachikonye, L. (2011). When a State Turns on Its Citizens: Institutionalized Violence and Political Culture. Jacana.

Comparative Insight: ICCPR and ACHPR as Parallel Myths

The parallels between the ICCPR and ACHPR in Africa are revealing:

1. **Weak Enforcement Mechanisms:** Both rely heavily on state cooperation, with no effective supranational enforcement in cases of non-compliance.
2. **Judicial Dependence:** Their efficacy is contingent on judicial independence, which is often absent in authoritarian regimes.
3. **Political Expediency:** Governments routinely ratify these instruments for international legitimacy while ignoring their obligations in practice.⁴⁹

In this sense, the ICCPR does not fill the gaps left by the ACHPR; instead, it replicates them. Both instruments risk functioning as myths of protection, offering symbolic legitimacy while rights abuses persist unchecked.

The Structural Lesson

The ICCPR case studies underscore that Africa's human rights crisis is not the result of poorly drafted treaties but of deeper structural conditions: authoritarian governance, weak institutions, and limited accountability. Without addressing these systemic barriers, global and regional rights frameworks will remain aspirational rather than transformative.⁵⁰

10. The Role of Civil Society and International Pressure

The implementation of the ICCPR in Africa, much like the ACHPR, is not driven by states alone. Civil Society Organizations (CSOs), international advocacy groups, and external monitoring bodies play a crucial role in holding governments accountable.

⁴⁹ Hafner-Burton, E. (2012). International Regimes for Human Rights. *Annual Review of Political Science*. Hathaway, O. (2002). Do Human Rights Treaties Make a Difference? *Yale Law Journal*.

⁵⁰ Murray, R., & Long, D. (2015). *The Implementation of the Findings of the African Commission on Human and Peoples' Rights*. Cambridge University Press.

Their interventions often provide the only meaningful enforcement mechanism where domestic institutions are weak or compromised.

Civil Society Engagement

CSOs across Africa have leveraged the ICCPR to advance rights claims through litigation, advocacy, and grassroots mobilization.

- In **Nigeria**, organizations such as Amnesty International Nigeria and the Socio-Economic Rights and Accountability Project (SERAP) have invoked ICCPR standards to challenge systemic abuses. Their campaigns against police brutality during the **#EndSARS movement** drew heavily on ICCPR protections for life, liberty, and peaceful assembly (Amnesty International, 2020).
- In **Kenya**, CSOs have combined litigation with community-based advocacy. For instance, the Kenya Human Rights Commission has used ICCPR principles to strengthen protections for freedom of expression and association, particularly in the face of restrictive legislation.⁵¹
- In Malawi, grassroots organizations have successfully invoked ICCPR norms to advocate against gender-based violence and to demand greater political accountability. These efforts underscore how international treaties can function as mobilizing tools even in resource-constrained contexts.⁵² Such activism not only pressures governments but also provides courts with opportunities to embed international standards into domestic jurisprudence.

International Pressure

External actors also play a vital role in reinforcing ICCPR commitments.

⁵¹ Mbondenyi, M. (2011). International Human Rights and Their Enforcement in Africa. LawAfrica.

⁵² Kanyongolo, F. (2006). Malawi Justice Sector and the Rule of Law. Open Society Institute.

- The **UN Human Rights Committee**, through its periodic reviews, has consistently highlighted violations and urged African states to align domestic practices with Covenant obligations⁵³.
- The Universal Periodic Review (UPR) mechanism under the UN Human Rights Council has become an important forum for naming and shaming abusive governments. For example, strong international condemnation of Eritrea's detention practices has sustained pressure for reforms, even if compliance remains limited.⁵⁴
- Targeted sanctions and conditional aid have also been used to push governments toward compliance. In Zimbabwe, international condemnation and sanctions following post-election violence in 2008 and 2018 forced some limited concessions, though authoritarian resilience has blunted deeper reforms.⁵⁵

Limits of Civil Society and International Influence

Despite these interventions, both CSOs and international actors face significant constraints. Governments often restrict civic space through laws targeting NGOs, surveillance, or outright repression. In authoritarian states such as Eritrea and Sudan (under al-Bashir), civil society has been severely curtailed, leaving international mechanisms as the only external check — albeit a weak one.

Similarly, international pressure often falters due to geopolitical interests and selectivity. Strategic allies, particularly resource-rich states, may escape robust scrutiny despite systemic abuses. This underscores a persistent critique: that international law is often enforced unevenly, reflecting power dynamics rather than universal principles.⁵⁶

Comparative Insight

⁵³ Joseph, S., & Castan, M. (2013). *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary*. Oxford University Press.

⁵⁴ Human Rights Watch. (2019). *Eritrea: Human Rights Practices*.

⁵⁵ Sachikonye, L. (2011). *When a State Turns on Its Citizens: Institutionalized Violence and Political Culture*. Jacana

⁵⁶ Hafner-Burton, E. (2012). *International Regimes for Human Rights*. *Annual Review of Political Science*.

Civil society and international oversight remain indispensable to the enforcement of the ICCPR in Africa. They provide the normative pressure and symbolic accountability that states often resist internally. Yet, without strong domestic institutions and genuine political will, their impact is often limited to exposing violations rather than securing redress.

As such, CSOs and international actors sustain the language of rights and keep open the possibility of future accountability. However, their influence is at best corrective and temporary; the deeper structural challenge of weak state institutions remains unresolved.⁵⁷

11. The Efficacy of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Africa

Adopted in 1979, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) remains the most comprehensive global treaty on gender equality. Nearly all African states have ratified it, showing a formal commitment to dismantling gender discrimination and advancing women's rights. Though, as with the ICCPR and ACHPR, its effectiveness depends less on ratification and more on political will, cultural contexts, and institutional strength.

Legal and Policy Frameworks

Several African countries have integrated CEDAW into their constitutional and legislative frameworks with notable results. South Africa's 1996 Constitution prohibits gender discrimination and has been backed by robust Constitutional Court jurisprudence.⁵⁸ Kenya's 2010 Constitution expanded protections, particularly in political participation and gender-based violence.⁵⁹

⁵⁷ Mutua, M. (2002). *Human Rights: A Political and Cultural Critique*. University of Pennsylvania Press. & Murray, R. (2019). *The African Charter on Human and Peoples' Rights: A Commentary*. Oxford University Press.

⁵⁸ Albertyn, C., & Goldblatt, B. (1998). Facing the Challenge of Transformation: Difficulties in the Development of an Indigenous Jurisprudence of Equality. *South African Journal on Human Rights*

⁵⁹ FIDA Kenya. (2011). *Kenya's 2010 Constitution and Women's Rights*.

Others have adopted National Action Plans (NAPs) addressing reproductive health, education, and political empowerment. However, many NAPs remain underfunded and weakly monitored.⁶⁰ In fragile states such as Somalia and South Sudan, conflict and governance crises have rendered CEDAW's commitments virtually unenforceable.

Persistent Challenges

Despite legal progress, CEDAW's implementation faces systemic barriers:

- i. **Cultural and Religious Resistance:** Deeply embedded practices such as female genital mutilation (FGM), early marriage, and discriminatory inheritance laws persist. For example, Kenya has outlawed FGM, yet it continues in certain communities due to cultural entrenchment.⁶¹ In Northern Nigeria, early marriage remains prevalent, defended on religious grounds, despite Nigeria's ratification of CEDAW.
- ii. **Economic Inequality:** Structural poverty and unequal access to resources disproportionately affect women. In Uganda, women remain less likely to own land or access credit, undermining CEDAW's empowerment agenda.⁶² Without addressing socio-economic inequality, legal reforms alone have a limited impact.
- iii. **Conflict and Political Instability:** In conflict-affected states, women are disproportionately exposed to violence. In the Democratic Republic of Congo, widespread sexual violence has persisted despite CEDAW commitments.⁶³ Instability often sidelines gender equality, leaving implementation aspirational.

Comparative Implementation

CEDAW's African trajectory reveals striking contrasts:

- i. **Leaders in Gender Equality:** Rwanda, with women holding over 60% of parliamentary seats, exemplifies how constitutional mandates and deliberate

⁶⁰ Tripp, A. M. (2015). *Women and Power in Post-Conflict Africa*. Cambridge University Press.

⁶¹ Shell-Duncan, B. (2008). From Health to Human Rights: Female Genital Cutting and the Politics of Intervention. *American Anthropologist*.

⁶² Tamale, S. (2004). Gender Trauma in Africa: Enhancing Women's Links to Resources. *Journal of African Law*.

⁶³ Human Rights Watch. (2017). *Democratic Republic of Congo: Sexual Violence Report*.

state policy can align with CEDAW obligations⁶⁴. South Africa also stands out for its strong jurisprudence and civil society advocacy.

- ii. **Mixed Progress:** Kenya and Nigeria have introduced significant reforms, such as Kenya's Constitution and Nigeria's Violence Against Persons (Prohibition) Act, 2015, but cultural resistance and weak enforcement continue to blunt their impact.
- iii. **Lagging States:** Somalia, Sudan, and South Sudan highlight how patriarchal norms, weak institutions, and conflict undermine CEDAW's transformative potential.

Case Illustration: Gender Equality and CEDAW in Malawi

A more hopeful example is Malawi's Gender Equality Act (2013), which demonstrates how CEDAW can be a catalyst for domestic reform. The Act criminalized sexual harassment, prohibited harmful practices, and promoted equal access to education and employment.

Civil society organizations, especially women's rights groups, played a central role, framing their advocacy in terms of Malawi's CEDAW obligations.⁶⁵ Political openness following democratic reforms created space for such engagement, enabling CEDAW to move from paper to practice.

Challenges remain, particularly in addressing child marriage and reconciling statutory law with customary practices. Yet the Act illustrates how international treaties can empower civil society and shape national policy, provided there is judicial independence, political support, and grassroots mobilization.

Comparative Insight

CEDAW's African experience highlights a central truth: ratification alone is not sufficient. Legal and policy reforms are necessary but not transformative without

⁶⁴ Powley, E. (2005). Rwanda: Women Hold Up Half the Parliament. UN Chronicle

⁶⁵ Tripp, A. M. (2015). Women and Power in Post-Conflict Africa. Cambridge University Press.

cultural change, socio-economic empowerment, and strong institutions. Where political elites prioritize gender equality, as in Rwanda, South Africa, or Malawi, CEDAW can drive real change. Where cultural resistance and weak governance prevail, it risks becoming another symbolic commitment with limited impact.⁶⁶

From a criminological perspective, the persistence of gender-based discrimination reflects not only cultural barriers but also forms of structural violence and state neglect; conditions where states fail to protect women from harm, thereby enabling systemic inequality.

12. The Nigerian Experience: A Dualist State and Human Rights Implementation

Nigeria represents one of the most instructive African case studies for understanding the challenges of human rights implementation. As a dualist state, international treaties do not automatically have domestic effect unless incorporated into national law by legislation (Section 12(1), 1999 Constitution). This framework creates both opportunities and obstacles for the realization of rights under international instruments such as the ACHPR, the ICCPR, and CEDAW.

Legal Domestication: The African Charter Exception

Nigeria stands out for its early domestication of the African Charter through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, 1983. This gave the Charter direct legal effect and enabled litigants to invoke its provisions before Nigerian courts.

The case of Chief Gani Fawehinmi v. Abacha (2000) confirmed that the domesticated Charter had the force of national law, allowing Nigerians to claim Charter rights

⁶⁶ Hellum, A., Stewart, J., Ali, F., & Tsanga, A. (2007). *Human Rights, Plural Legalities and Gendered Realities: Paths Are Made by Walking*. Weaver Press.

directly. This was a landmark decision that strengthened the judiciary's role in rights protection.⁶⁷

However, the Act also exposed contradictions. Nigerian courts have ruled that domesticated treaties rank as ordinary statutes, meaning they are subordinate to the Constitution. Thus, where a Charter provision conflicts with constitutional provisions, the latter prevails (*Abacha v. Fawehinmi*, 2000). This limits the Charter's transformative potential.

Implementation Gaps: ICCPR and CEDAW

Unlike the ACHPR, neither the **ICCPR** nor **CEDAW** has been domesticated in Nigeria. As a result, while Nigeria is bound internationally, their provisions cannot be directly enforced in domestic courts.

This dualist barrier has weakened gender rights in particular. Despite ratifying CEDAW in 1985, Nigeria has yet to pass a comprehensive enabling law. Attempts such as the Gender and Equal Opportunities Bill have repeatedly stalled in the National Assembly, often on grounds of cultural or religious opposition (Banda, 2005). Consequently, discriminatory practices in marriage, inheritance, and political representation persist despite Nigeria's international obligations.

The Violence Against Persons (Prohibition) Act (2015) marked a significant step toward aligning domestic law with CEDAW principles. However, enforcement remains inconsistent, with uneven application across states due to Nigeria's federal structure.

Political and Structural Constraints

Nigeria's dualist system interacts with structural challenges that undermine rights protection:

- **Judicial Dependence:** While courts occasionally assert independence, as in the annulment of parts of the 2003 Electoral Act for violating constitutional

⁶⁷ Odinkalu, C. (2011). *The Future of Human Rights in Africa*.

rights, they often defer to the executive, especially in politically sensitive cases⁶⁸.

- **Federal Fragmentation:** Because Nigeria's federal structure grants states significant autonomy, implementation of rights legislation varies widely. Some states have refused to domesticate the VAPP Act or Child Rights Act, leaving rights protections uneven across the federation.
- **Entrenched Patriarchy and Religion:** Cultural and religious norms often override international obligations. For example, resistance to gender equality bills is frequently framed as defending "cultural sovereignty" against foreign impositions.⁶⁹

The Paradox of Domestication

Nigeria thus embodies a paradox. On the one hand, it provides a rare African example where the ACHPR has been domesticated and judicially applied. On the other hand, the non-domestication of other treaties, combined with political interference and cultural resistance, means that implementation is fragmented and selective.

As Odinkalu (2011) observes, Nigeria's rights framework often operates as a "myth of enforcement". While courts cite international norms and civil society invokes treaty language, actual compliance by state authorities is sporadic and politically contingent.⁷⁰

13. Malawi's Experience with Human Rights Implementation

Malawi provides a contrasting picture to Nigeria and Zimbabwe, illustrating how constitutional design and democratic transitions can strengthen the implementation of international human rights obligations. After decades of authoritarian rule under Hastings Banda, Malawi transitioned to multiparty democracy in 1994. This

⁶⁸ Oko, O. (2010). The Challenges of Democratic Consolidation in Nigeria. *Fordham International Law Journal*.

⁶⁹ Hellum, A., Stewart, J., Ali, F., & Tsanga, A. (2007). *Human Rights, Plural Legalities and Gendered Realities: Paths Are Made by Walking*. Weaver Press.

⁷⁰ Odinkalu, C. (2011). *The Future of Human Rights in Africa*.

transformation was anchored in a new Constitution (1994) that explicitly incorporated international human rights norms, including the ICCPR, CEDAW, and the ACHPR.

Constitutional Incorporation

Unlike Nigeria's dualist framework, Malawi's Constitution adopts a monist orientation. Section 11(2)(c) directs courts to have regard to international law, while Section 44 guarantees that limitations on rights must be consistent with international human rights standards. This gave treaties like the ICCPR and ACHPR direct domestic relevance without requiring separate enabling legislation.⁷¹

The judiciary has embraced this constitutional mandate. In *Chihana v. The Republic* (1993), the Supreme Court referenced international human rights norms to protect freedom of association. Similarly, in *Attorney General v. Malawi Congress Party* (1997), the Court used international principles to strike down laws restricting opposition parties. These cases illustrate Malawi's judiciary's willingness to integrate international standards into domestic jurisprudence⁷².

Civil Society and Grassroots Engagement

Civil society organizations (CSOs) have also played a critical role in enforcing rights. Groups such as the Centre for Human Rights and Rehabilitation (CHRR) and the Malawi Law Society have invoked the ACHPR and ICCPR in litigation and public advocacy. For example, during the 2011 protests against fuel shortages and governance failures, CSOs framed their demands in terms of rights guaranteed under both the Constitution and international law.

Grassroots mobilization around issues such as women's political representation, reproductive health, and freedom of assembly demonstrates how international human rights language has permeated domestic struggles. This reflects a symbiotic relationship between constitutional openness and civil society activism.

⁷¹ Viljoen, F. (2012). *International Human Rights Law in Africa*. Oxford University Press.

⁷² Chirwa, D. (2005). *Human Rights under the Malawian Constitution*

Gender and CEDAW Implementation

Malawi has also made progress in implementing CEDAW. The Gender Equality Act (2013) domesticated several CEDAW provisions, criminalizing harmful practices such as sexual harassment and mandating equal opportunities in education and employment. The Act was championed by women's rights groups and reflects how international norms can influence domestic policy when aligned with active advocacy.⁷³

However, challenges persist. Early marriage remains widespread despite legislative reforms, with over 40% of girls married before the age of 18.⁷⁴ Customary law, particularly in rural areas, often undermines formal rights, illustrating the tension between legal pluralism and gender equality⁷⁵.

Limitations and Continuing Challenges

Despite these achievements, Malawi faces significant obstacles:

- **Institutional Capacity:** Courts and commissions often lack resources, limiting their ability to enforce decisions.
- **Political Interference:** Although less pronounced than in Nigeria or Zimbabwe, moments of political tension, such as the contested 2019 elections, have revealed executive attempts to intimidate the judiciary.
- **Socioeconomic Constraints:** Poverty and inequality continue to blunt the transformative potential of rights instruments.

14. Zimbabwe's Experience with Human Rights Implementation

Zimbabwe presents one of the starkest examples of the gap between international human rights commitments and domestic enforcement. Despite ratifying core

⁷³ Tripp, A. M. (2015). *Women and Power in Post-Conflict Africa*. Cambridge University Press.

⁷⁴ UNICEF. (2020). *Child Marriage in Malawi*.

⁷⁵ Hellum, A., Stewart, J., Ali, F., & Tsanga, A. (2007). *Human Rights, Plural Legalities and Gendered Realities: Paths Are Made by Walking*. Weaver Press.

instruments such as the ICCPR, CEDAW, and ACHPR, the country's authoritarian political culture, weak institutions, and systematic repression have rendered these treaties largely symbolic.

Ratification Without Domestication

As a dualist state, Zimbabwe requires parliamentary domestication before treaties have domestic effect. While it has ratified numerous conventions, enabling legislation is largely absent. Unlike Nigeria, for example, Zimbabwe has not domesticated the ACHPR, leaving it without direct legal force.

Courts occasionally reference international treaties, but without domestication such references are merely persuasive. This legal limitation significantly weakens the enforceability of rights under instruments such as the ICCPR and CEDAW.⁷⁶

Judicial Weakness and Political Interference

Zimbabwe's judiciary has historically lacked independence, particularly during moments of political crisis. After the 2008 post-election violence, which left widespread killings and torture in its wake, courts failed to enforce ICCPR obligations to protect life and prohibit torture (Articles 6 and 7).

The adoption of the 2013 Constitution introduced a more progressive Bill of Rights aligned with international standards, but enforcement has remained weak. Following the 2018 elections, security forces killed at least six protesters. Although the Mothlante Commission of Inquiry confirmed violations, its recommendations were never implemented, reflecting the entrenched culture of impunity⁷⁷.

CEDAW and Gender Rights

Zimbabwe ratified CEDAW in 1991, but progress on gender equality has been uneven. The Domestic Violence Act (2006) represented a step toward aligning domestic law

⁷⁶ Viljoen, F. (2012). *International Human Rights Law in Africa*. Oxford University Press.

⁷⁷ Amnesty International. (2019). *Zimbabwe: Post-Election Violence and Impunity*.

with CEDAW, but patriarchal norms, weak enforcement, and lack of political will have blunted its impact.

Customary law continues to dominate family and inheritance disputes, often discriminating against women. Widows in rural communities, for example, are frequently dispossessed of property despite CEDAW protections.⁷⁸ Political elites have further resisted broader reforms, portraying gender equality campaigns as “Western impositions”⁷⁹

Civil Society and Repression

Civil society organizations such as Zimbabwe Lawyers for Human Rights (ZLHR) have attempted to invoke the ICCPR and ACHPR in defence of political detainees and in challenging restrictive legislation. Yet these groups themselves face harassment, restrictive registration laws, and arbitrary arrests.

The Public Order and Security Act (POSA) and its successor, the Maintenance of Peace and Order Act (MOPA), have been used to criminalize peaceful assembly, in direct contradiction to ICCPR Article 21. This contradictory practice highlights Zimbabwe’s paradox of symbolic compliance: treaties ratified for international legitimacy but disregarded in practice.

Case Illustration: Zimbabwe’s Post-Election Violence (2008 & 2018)

The limits of Zimbabwe’s commitments are most visible in its recurring post-election violence. Following the disputed 2008 elections, security forces carried out widespread killings, torture, and intimidation against opposition supporters. A similar pattern emerged in 2018, when soldiers shot dead at least six protesters in Harare.

⁷⁸ Hellebrandt, A., Stewart, J., Ali, F., & Tsanga, A. (2007). *Human Rights, Plural Legalities and Gendered Realities: Paths Are Made by Walking*. Weaver Press.

⁷⁹ Banda, F. (2005). *Women, Law and Human Rights: An African Perspective*. Hart Publishing.

Despite clear obligations under the ICCPR and ACHPR, accountability was absent. The Mothlante Commission of Inquiry (2018) confirmed violations, but its recommendations were ignored.⁸⁰

From a criminological perspective, these episodes exemplify state crime, systemic violations of rights carried out by state institutions with impunity. They also reveal the myth of human rights protection under authoritarianism: treaties are ratified for diplomatic legitimacy, but rights protections remain illusory.

15. Comparative Evaluation: Nigeria, Malawi, and Zimbabwe

The experiences of Nigeria, Malawi, and Zimbabwe provide a compact laboratory for understanding why regional and international human rights instruments often fail to deliver protection in practice. Considered together, they reveal not only divergent outcomes but also the structural variables that shape those outcomes.

What the Three Cases Reveal

- i. Formal commitment does not equal adequate protection. All three states have ratified core instruments and participated in international reporting, yet only in Malawi has this engagement consistently translated into enforceable rights. This confirms Mutua's (2002) critique that ratification can serve as a form of symbolic compliance.
- ii. Institutional design matters: Malawi's constitutional incorporation and relative judicial independence create channels for international norms to be domesticated into law and practice. Nigeria's selective domestication and federal fragmentation produce uneven protection, while Zimbabwe's lack of domestication and entrenched executive dominance reduces compliance to symbolism.
- iii. Decisive political will: In moments when elites tolerate accountability, as in Malawi during its democratic transition, legal instruments have real bite.

⁸⁰ Amnesty International. (2019). Zimbabwe: Post-Election Violence and Impunity

Where elites resist or instrumentalize institutions, as in Nigeria's high-profile cases or Zimbabwe's electoral cycles, enforcement collapses.

Finally, civil society and NHRIs act as force multipliers but only where space exists. In Malawi and parts of Nigeria, CSOs and NHRIs have translated treaty obligations into litigation, policy reforms, and public pressure. In Zimbabwe, civic repression neutralizes this pathway.

Core Structural Drivers

From these cases, a set of structural drivers emerges that determines whether treaty commitments translate into lived rights:

- i. **Constitutional and legal incorporation:** monist elements or constitutional directives vs. strict dualism.
- ii. **Judicial independence and capacity:** resources, legitimacy, insulation from politics.
- iii. **Political incentives and elite calculus:** whether compliance or repression serves elite interests.
- iv. **Strength of civil society and media:** ability to litigate, monitor, and mobilize public opinion.
- v. **Independence and resourcing of NHRIs:** mandates, budgets, and freedom from capture.
- vi. **Rule of law ecosystems:** Police professionalism, prosecutorial independence, anti-corruption mechanisms.
- vii. **State–corporate accountability frameworks:** transparency in extractive industries, liability mechanisms, and due diligence standards.

Why Instruments Still Matter

Despite these weaknesses, regional and international instruments are not meaningless. The **ACHPR, ICCPR, and CEDAW** provide normative anchors, litigation tools, reporting mechanisms, and the language of accountability. They create

opportunities that CSOs, courts, and communities can seize when political openings arise. In this sense, they are necessary but not sufficient.

Practical Prescriptions

The comparative analysis suggests several practical directions:

- i. **Constitutional or statutory incorporation** of treaties to give courts direct authority (the Malawi model).
- ii. **Strengthening judicial independence and capacity** through transparent appointments, secure tenure, and training on international norms.
- iii. **Strengthening NHRIs** with secure funding, protection for commissioners, and authority to refer cases to courts or regional bodies.
- iv. **Protecting civic space and supporting CSOs**, especially grassroots legal clinics, monitoring initiatives, and rights education campaigns.
- v. **Building stronger state–corporate accountability mechanisms**, particularly in extractive sectors, to prevent cases like the Ogoni Nine.
- vi. **Leveraging regional mechanisms strategically** by combining African Commission and Court actions with reputational and diplomatic pressure.
- vii. **Linking rights to socio-economic reforms**, since protections gain traction when paired with measures addressing poverty, education, and gender inequality.

16. Conclusion and Policy Recommendations

This study has examined the myth and reality of regional and international human rights protection in Africa through a comparative constitutional law lens. The cases of Nigeria, Malawi, and Zimbabwe demonstrate that while instruments such as the ACHPR, ICCPR, and CEDAW establish comprehensive frameworks, their efficacy depends far less on treaty design than on domestic political, institutional, and social ecosystems.

From a criminological perspective, persistent patterns of state crime, state-corporate collusion, and entrenched impunity explain why rights violations endure despite

ratification. In many contexts, the Charter and related treaties function more as myths of protection: symbolic gestures for international legitimacy, while repression and exclusion persist at home.

Though these instruments are not irrelevant, as they provide normative anchors, litigation tools, and advocacy language that civil society and courts can deploy when political openings arise. The challenge is to transform these tools from symbolic compliance into substantive protection.

Policy Recommendations

To close the gap between myth and reality, reforms must address both legal frameworks and criminological failures. It is therefore recommended that:

- i. **Constitutional and Legislative Reform:** Adopt clauses mandating judicial application of ratified treaties, moving toward monist incorporation.
- ii. **Judicial Strengthening:** Protect judicial independence through transparent appointments, secure tenure, and sustained training on international human rights law.
- iii. **Empower NHRIs:** Provide secure funding, investigative authority, and protection from executive capture, thereby enabling them to function as genuine accountability mechanisms.
- iv. **Protect and Expand Civic Space:** Link aid and diplomatic engagement to protections for CSOs, journalists, and human rights defenders.
- v. **Address State–Corporate Crime:** Enforce corporate accountability frameworks, including human rights due diligence in extractive industries and liability mechanisms in domestic courts.
- vi. **Leverage Regional and International Mechanisms:** Use combined strategies across the African Commission, African Court, and UN bodies to raise reputational and diplomatic costs for recalcitrant states.
- vii. **Link Rights to Socio-Economic Transformation:** Embed rights in anti-poverty, education, health, and gender equality policies to ensure that protections are tangible and relevant.