



Dismantling Jurisdictional Barriers: Empowering Direct Access to the African Court on Human and Peoples' Rights

**Uche Nnawulezi,¹ Jacques Kabano,¹
Obinna Nnanna Okereke²**

¹ *University of Lay Adventists of Kigali, Kigali, Rwanda*

² *Federal University Wukari, Taraba State, Nigeria*



Corresponding Author — Uche Nnawulezi

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Abstract: Although the African Court on Human and Peoples' Rights marks a formal legal milestone, the regional human rights framework remains deeply constrained because Art. 34(6) of its Protocol narrowly limits direct individual access. The voluntary nature of the direct access declaration compounded by State pushback, selective withdrawals, and institutional inertia within the African Commission's referral framework generates structural jurisdictional obstacles that effectively exclude individual litigants and non-governmental organizations from accessing legal remedies. The paper critically analyze how jurisdictional limitations under Art. 5 and Art. 34(6) stifle public interest litigation. The paper employs a doctrinal legal methodology, conducting a rigorous exegesis through the systematic analysis of primary and secondary sources. Consequently, the core questions are: what specific State ratification patterns and Art. 34(6) declarations currently impedes individual and non-governmental organizations access to the African Court on Human and Peoples' Rights? How can institutional frameworks be redesigned to protect applicants and local actors from State retaliation after filing a case? What structural lessons can the African Court learn from the European Court of Human Rights and the Inter-American Court of Human Rights regarding standing and direct petitions? What precise

legal amendments to the protocol establishing the Court are required to make direct individual access universal and mandatory for all State parties? These core questions serve as the foundational axis of this paper, dictating the trajectory of the analysis. The paper finds that Art. 34(6) create a bottleneck, leading to severe under-utilization with only a handful of ratifying States and subsequent strategic State withdrawals. It concludes that optional direct access under Art. 34(6) of the African Court Protocol severely fragments regional justice, requiring mandatory institutional referral rules and universal State ratification to transition from a symbolic tribunal to an effective human rights remedy.

Keywords: Dismantling Jurisdictional Barriers; Empowering Direct Access; AfCHPR; Public Interest Litigation; Article 34(6) Declarations

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I. Introduction

Over the years, the persistent increase in human rights violations in the African region prompted the emergence of African Court on Human and Peoples' Rights (AfCHPR).¹ Through instrumentalities of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (Protocol), AfCHPR emerged as Continental Court (Yakaré-Oulé et al., 2019). It was endowed with the powers to complement the protective human rights mandate, roles and functions of the African Charter on Human and Peoples' Rights.² It is the African Charter on Human and Peoples' Rights (African Charter), which is regarded as a core global human rights body, empowers to protect and promotes human rights in Africa that gave rise to the establishments of the African Commission. It has statutory powers to address quasi-judicial rulings arising from communications brought before it. In a comparative analysis between African Commission and African Court, the results shows that the later makes binding judicial judgments on issues of human rights nature, while the former is noted as a mere quasi-judicial in function.

Article 16 of the Protocol on the Statute of the African Court of Justice and Human Rights provides that the Court shall have two sections: the General Affairs Section and the Human Rights Section, along with Sections on Human Rights (Naldi and White, 2010, pp. 324–343). As the name suggests, the latter hears issues bordering on Human and Peoples' rights, while the former assumes jurisdictions on other related matters. In light of this development, Rule 34(1) of the Rules of Court of the African Court on Human and Peoples' Rights (the Court's Rules of Procedure) provides that an application must specify, among other matters, the alleged violation and the evidence supporting the application. The two sections are obliged to make referrals to the joint sessions of

¹ Organization of African Unity (OAU), Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights dated 10 June 1998, adopted by the Assembly of Heads of States and Government of OAU in Ouagadougou, Burkina Faso. Upon the deposit of the 15th instrument of ratification in 2003, the Protocol entered into force on 25 January 2004.

² African Year Book, 2020.

the African Court.³ Being identical in functions and roles, their merging as one session does not create any difficulty in operation.

Procedurally, issues surrounding the African Court are wide and varied in respect to source of power, structure, roles and functions, and operational modus. The findings of the paper shows that one of the intriguing procedural characteristics of the African Court is access to justice especially as it relates to persons and non-governmental organizations (NGOs). Based on this, Article 5 of the Protocol sets out the rules governing access to the African Court. The paper further observed that, under Art. 5(1) of the Protocol, certain bodies have the right to bring actions before the Court, notably the African Commission, Member States, and African intergovernmental agencies and organizations. Under Art. 5(3) of the Protocol, individuals and NGOs with observer status before the African Commission may institute proceedings before the African Court, subject to the requirements of Art. 34(6) of the Protocol (Murray, 2019, p. 970).

Nevertheless, Article 34(6) in this sense mandates Member States to make or request Declarations on acceptance of the competences and powers of the African Court in receiving cases or matters vide Art. 5(3) of the Protocol. In practice, these provisions have been criticized as circumferential and limitative as only eight African States are in compliance with the above declaration assenting to African Court's jurisdictions. This limited acceptance has contributed to the low number of cases before the Court and may indicate States' dissatisfaction with aspects of the Court's operational framework.⁴ More concerningly, four

³ *Ekollo Moundi Alexandre v. Federal Republic of Nigeria Republic of Cameroon*, 23 September 2011, African Court on Human and Peoples' Rights, Para. 21–22. Available at: <https://www.african-court.org/cpmt/details-case/0082011> [Accessed 29.02.2025]. Note that an opinion was raised that referrals must be occasioned by reasonable criteria.

⁴ Burkina Faso ratified the African Charter on 14 July 1999 and deposited their declaration on 28 July 1998; Malawi ratified on 9 September 2008 and deposited their declaration on 9 October 2008; Ghana ratified on 9 February 2011 and deposited declaration on 10 March 2011; Tunisia ratified declaration on 2 June 2017; Gambia ratified on 23 October 2021 and deposited declaration on 3 February, 2020; Niger ratified on 28 October 2021 and deposited declaration on 7 April 2022, Guinea Bissau ratified it on 14 October 2021 and deposited declaration on 2 November 2021.

States have withdrawn their previously deposited declarations accepting the African Court's jurisdiction.⁵

The limited access created by these provisions means that, under the prevailing circumstances, only eight of the fifty-four States that are parties to the Protocol have accepted the Court's jurisdiction over cases brought by individuals and NGOs. As jurisdiction is the lifeblood of any matter before a court, this prevailing circumstance constitutes a significant obstacle to the effective delivery of justice. In this sense, it may be argued that a continental court of human rights should not face barriers that hinder access to justice, as justice must be accessible to all. Therefore, the paper's assessment of these statutory impediments considers the full implications of Art. 34(6) of the Protocol for the establishment and operation of the African Court, particularly its restrictive access framework, its limited effectiveness, and its apparent inconsistency with the enforcement of human rights across the region. This justification appears viable, yet precipitates critical questions, specifically: what specific State ratification patterns and Art. 34(6) declarations currently impede individual and non-governmental organizations access to the African Court on Human and Peoples' Rights? How can institutional frameworks be redesigned to protect applicants and local actors from State retaliation after filing a case? What structural lessons can the African Court learn from the European Court on Human Rights and the Inter-American Court of Human Rights regarding standing and direct petitions? What precise legal amendments to the protocol establishing the Court are required to make direct individual access universal and mandatory for all State parties? Resolving these fundamental questions operationalizes the primary framework of this paper.

⁵ Rwanda ratified the African Charter on 22 January 2013, deposited declaration on 6 February 2013 and withdrew on 23 February 2016; Tanzania ratified the Charter on 9 March 2021, deposited declaration on 29 March 2010, and withdrew on 14 November 2019; Cote d'Ivoire ratified the Charter on 19 June 2013, deposited declaration on 23 July 2013 and withdrew on 20 April 2020; Benin Ratified on 22 May 2014, deposited declaration on 8 February 2016 and withdrew on 24 March 2020.

II. *Locus Standi* of NGO's and Individuals on Direct Access to African Court

The powers and jurisdiction of African Court complements with the protectiveness of human rights mandates as contained in the African Commission. This assertion implies that the former reinforces, validates, and builds upon the objectives of the Charter. To this end, their complimentary status coexists independently, but on a mutual relationship (Hopkins, 2002). Under Art. 7 of the Protocol, the paper finds that the African Court is empowered to interpret and apply the provisions of the African Charter, as well as any other relevant international human rights instruments ratified by the Member States concerned. Explicating the foregoing, the African Court has double jurisdictional powers: an advisory and contentious ones.⁶

The former provides legal opinions on the interpretative or implementation status of human rights obligations. The opinions could be requested by an African Union (AU) Signatory Members, their Agencies, or Regional Agencies having institutional recognitions. It must be emphasized that the contentious jurisdictions of the regional Court touch all matters and violations of human rights as contained in the African Charter or any matter related to human rights instruments approved by Signatory Members. The Court's contentious jurisdiction is subject to two requirements: first, the State concerned must have ratified the Protocol; second, under Art. 34(6), it must have deposited a special declaration accepting the Court's jurisdiction.

On the above ratification, the Protocol states:

During the period of approval of the Protocol or some other time prescribed, an intending contracting party is obliged to declare its intentions to accept the Court's competencies to receive cases provided in Art. 5(3) of the Protocol. In this case, Court shall decline acceptance of petitions contained in Art. 5(3) that involves member States that have not made such a Declaration⁷ (Sceats, 2009; Rachovista, 2018).

⁶ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), Art. 3-4.

⁷ African Court Protocol, Art. 34(6).

Under these provisions, the Protocol empowers the African Court to hear cases brought by the Commission, State Parties, and African intergovernmental organizations, among others. Member States may also enable individuals and NGOs with observer status before the Commission to bring alleged human rights violations directly before the African Court. This may be done by depositing the declaration at the time of ratifying the Protocol or at any later date. At present, out of the 55 African nations, 54 countries have signed the African Court Protocol thereby consenting to its jurisdiction (Del Rivero Del Rivero and Sánchez Calcáneo, 2024). Thus, 12 Member States have made the declarations in line with Art. 34(6) of the Protocol (Adjobohoun, 2020). Unfortunately, four States — Tanzania, Rwanda, Cote d'Ivoire, and Benin — have withdrawn their declarations.⁸ This has reduced the number of States to eight who still allow individuals and NGOs to bring matters before the African Court. In recent years, fewer States have deposited declarations than have withdrawn them. Consequently, these withdrawals have weakened the human rights protection framework of the African Court system.

Compared with other regional human rights courts, such as the Inter-American Court of Human Rights⁹ and European Court of Human Rights,¹⁰ the African Court has a more restrictive framework of access to justice. The Organization of American States established the Inter-American Court of Human Rights similar to the African Court. The Inter-American Court of Human Rights is the judicial organ of the Inter-American Human Rights System. The Inter-American Commission of Human Rights is established under Art. 106 of the Charter of the Organization of American States. The African Court has a broader substantive mandate than the Inter-American Court of Human Rights, which may hear cases only against Organization of American States (OAS) Member States that have accepted its contentious jurisdiction.

⁸ This creates an unhealthy situation as many African States have ratified the African Court Protocol, while only eight countries NGOs and individuals are able to have direct access to it.

⁹ Inter-American Court of Human Rights website. Available at: <https://www.corteidh.or.cr/index.cfm?lang=en> [20.02.2025].

¹⁰ Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and 14, European Treaty Series — No. 5, Rome, 4XL 1950, Art. 19.

Such cases must ordinarily be submitted to the Court through the Inter-American Commission on Human Rights. Accordingly, Member States and the Commission are entitled to refer contentious cases to the Court for adjudication. On the contrary, the restrictive clause in Art. 34(6) of the Protocol does not exist in the Inter-American Court of Human Rights.

Likewise, the European Court of Human Rights was established under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court is mandated to ensure the observance of the engagement carried out by the High Contracting Parties of the Convention and the Protocol.¹¹ Its jurisdiction concerns all issues relating to the interpretation and application of the Protocol and Convention. The European Convention gives power to any High Contracting Party to refer to the Court any infraction of the provisions of the Convention and any infraction of the provisions of the Convention and Protocol by any High Contracting Parties.¹² In line with international practice, the Convention provides that the Court may deal with the cases after all domestic remedies have been exhausted. However, unlike the African Court, it does not require Contracting States to deposit a separate declaration accepting the Court's jurisdiction. In order not to hinder access to justice, the European Court provides that High Contracting Parties must undertake not to hinder effective exercise of the rights of individuals and NGOs direct access to the Court.¹³ To this end, the jurisprudence of the Inter-American Court of Human Rights and European Court of Human Rights have speedier and unhindered access to justice than the African Court.

¹¹ Convention for the Protection of Human Rights and Fundamental Freedoms. Art. 33.

¹² Convention for the Protection of Human Rights and Fundamental Freedoms. Art. 34.

¹³ Convention for the Protection of Human Rights and Fundamental Freedoms. Article 34 specifically provides that the Court may receive applications from any person, Non-Governmental Organization or group of individuals claiming to be the victim of a violation by one Contracting Party of the rights set forth in the Convention or Protocol thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.

III. The Impact of Deposit of Declaration before the African Court

According to the African Commission, a declaration constitutes a State Party's express consent to the African Court's jurisdiction over applications brought by individuals and NGOs with observer status before the Commission. Depositing a declaration entails formally submitting it to the appropriate authority. This optional mechanism applies specifically to such applications under Art. 34(6) of the Protocol. Although a State may withdraw its declaration, the legal effect and timing of any withdrawal are governed by the applicable rules and the Court's jurisprudence.¹⁴ The provision clearly states that a declaration may be made at the time of ratifying the Protocol or at any later date. However, it is compulsory on the Court to refuse the hearing of cases without such declarations. On the other hand, the Protocol provides that "The Court may entitle relevant Non-governmental Organization (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with Art. 34(6) of this Protocol."¹⁵

Thus, the parties cannot appear before the Court without the fulfillment or compliance with Art. 34(6) of the Protocol. To this end, the countries that have ratified the Protocol are fifty-four in number out of the fifty-five Member States of the African Charter. However, only twenty-four have ratified the Protocol. Furthermore, out of the twelve countries that have made declarations acceding to the jurisdiction of the African Court, four had withdrawn their declarations (African Court Coalition Discussions, 2002). Many countries gave their declaration in non-English Language.¹⁶ States, including those that subsequently withdrew their declarations, expressly accepted the African

¹⁴ African Court Protocol, Art. 34(6). See Gino J. Nadia and Konstantin's D. Magliveras, *The African Court of Justice and Human Rights. A Judicial Curate's Egg* [2012] (9) *International Organization Law Review* 406. Compare, Nsongurua Udombana, *An African Human Rights Court and an African Union Court! A Needful Quality or a Needless Duplication?* [2002–2003](28) (3) *Brooklyn Journal of International Law* 811–870.

¹⁵ African Court Protocol, Art. 5(3).

¹⁶ Countries such as Burkina Faso, Guinea Bissau, Tunisia, Niger, Mali, Cote d'Ivoire, and Ethiopia.

Court's jurisdiction through declarations issued in their respective national languages.¹⁷ It is therefore important to examine some of these declarations.

Gambia made a declaration of the recognition in conformity with Art. 34(6) of the Protocol establishing African Court:

WHEREAS, the Government of the Republic of Gambia did sign the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights on the 9 June 1998.

AND WHEREAS, the National Assembly of the Republic of the Gambia by Resolution dated 30 June 1999 ratified the said Protocol.

NOW THEREFORE, the Government of the Republic of Gambia makes the declaration pursuant to Art. 34(6) of the Protocol accepting the competence of the Court to receive cases under Art. 5(3) of the said Protocol.¹⁸

The above declaration is succinct. It traced the country's signatory to the Protocol to the African Charter and its ratification in 1999. Though, the declaration was made in 2018, the date of its taking effect is left to the African Court to decide. The heading did not bear the country's letter head or logo, but the wordings explained the source which is Gambia and was signed by the Minister for Foreign Affairs.

Similar to Gambia's declaration, Ghana's declaration stated that the country had ratified the Protocol establishing the African Court and the Protocol to the African Charter. Ghana accepted the competence of the African Court in 2011, seven years earlier than Gambia. Unlike Gambia's declaration, Ghana's declaration was signed by the Minister of Foreign Affairs and Regional Integration. The date on which it would take effect was left to the discretion of the African Court. Several other States have made similar declarations. Malawi's instrument was not expressly titled *a declaration* and did not bear the national logo; instead, it was styled as an "Instrument of Ratification." Although it did not specify the year in which Malawi ratified the Protocol establishing

¹⁷ See the Declarations to the Protocol to the African Charter establishing the African Court made by Rwanda, Tanzania, Cote d'Ivoire and Benin.

¹⁸ It was dated 23 October 2018 and signed by the President H.E. Mr. Adama Barrow.

the African Court, it was signed by the President in 2008.¹⁹ Rwanda accepted the Court's jurisdiction in 2013 but withdrew its declaration three years later.²⁰

Article 34(6) of the Protocol establishing the African Court enables individuals and NGOs with observer status before the African Commission to bring cases directly before the Court, provided that the respondent State has deposited the required declaration accepting that jurisdiction. To achieve the foregoing, Member States must first file or deposit the required declaration accepting the jurisdiction of the Court. When not done, no NGO or individuals can bring a matter directly before the Court. They become null and void due to lack of jurisdiction.²¹ Jurisdiction is the ground norm of a case and when lacking, the Court has no option than to strike out the matter. Under Art. 34(6) of the Protocol, it is compulsory to recognize the jurisdiction of the African Court. It is imperative to note that the Member States reserves the right to withdraw the declaration at any time. Accordingly, depositing a declaration signifies a State's consent to, and acceptance of, the Court's jurisdiction. The minimal number of declarations by Member States in Africa is a pointer to the phobia of the Court's overwhelming judicial powers on the Sovereign States. Moreover, the prevalence of human rights violations across Africa may help explain why some Member States are reluctant to deposit declarations accepting the Court's jurisdiction.

Nevertheless, Article 34(6) of the Protocol establishing the African Court may hinder the development of human rights protection through judicial processes in Africa, as it restricts rather than expands direct access to the Court. An African country that has violated the rights of

¹⁹ The Declaration is two paged, dated 9 September 2008 and signed by Dr. Bingu Mutharika, the President. It is one of the oldest declarations deposited in the African Continent.

²⁰ Rwanda's declaration, though was later withdrawn, was one of the best drafted in Africa. It was dated 24 February 2016 and signed by the Minister, Louise Mushikowabo.

²¹ In case *Femi Falana v. African Commission on Human and Peoples' Rights* (on Jurisdiction) (2015) 1 AfCHPR for Nigeria to comply with Article 34(6) of the African Court Protocol to deposit declaration was upheld. Hence, the Court lacks jurisdiction. See *Michelot Yogogombaye v. The Republic of Senegal*, Application No. 001/2008.

its citizen may not be inclined to give a declaration to be tried. The fact that only eight States have deposited declarations accepting the African Court's jurisdiction over cases brought by individuals and NGOs supports this conclusion.

IV. Implication of the Withdrawal of Declaration Made in line with Article 34(6) of the Protocol to the African Charter

The withdrawals of four countries, Tanzania, Benin, Cote d'Ivoire and Rwanda of their already deposited declarations to the African Court signals a continental dissatisfaction with the workings of the Human Rights Court. The minimal number of States that have assented to the optional contentious jurisdiction of the African Court and the swift withdrawals of Art. 34(6) declarations are interpretative of the above assertion. The implication is rife and negative. The four countries that made withdrawals are examined hereunder.

A. Rwanda

The first withdrawal of declaration deposit before the African Court was made by Rwanda in 2016. Three years after submission to the jurisdiction of the African Court, it revoke the declaration recognizing the Court's powers to entertain matters brought by individuals and NGOs in line with Art. 34(6) of the Protocol (Kwibuki, 2017).²² The withdrawal was thought to be politically motivated as it was done three days before the Court's hearing in *Ingabire Victoria Umuhuza v. Rwanda*.²³ In this

²² Rwanda's Withdrawal of its Special Declaration to the African Court: Setback for the Protection of Human Rights. Available at: <https://www.fidh.org/en/regions/Africa/rwanda/joint-civil-statement-on-rwanda-s-withdrawal-of-its-articles> accessed; Rwanda Withdraws Access to African Court for Individuals and NGOs' International Justice Resource Centre Available at: <https://ijrcenter.org/2016/03/14/rwanda-withdrawal-access-to-african-court-for-individual-and-ngos/> [Accessed 24.06.2020]; See *Unmuhoza v. Rwanda* (003/2014 (2018) AfCHPR 21; Human Rights Watch. Rwanda: Events of 2017 (2018). Available at: <https://www.hrw.org/world-report/2018/country-chapter> [Accessed 14.03.2025].

²³ *Ingabire Victoria Umuhuza v. Republic of Rwanda*, Application No. 003/2014, Judgment on Merits of 24 November 2017, [2017] AfCHPR 21.

case, the applicant, a Rwandan political opposition figure, alleged that her right to a fair trial and freedom of expression had been severely violated during domestic criminal proceedings that led to her long-term imprisonment for political speech and state security offenses. Historically, Ingabire was a political juggernaut exiled for years until her return in 2010 to run for the Presidential office. Her activities did not go well with the Government who identified her ethically biased, regionally sentimental, divisive and pro genocide propagandist. Her open political lectures through her opposition group at the Genocide Memorial Center in Kigali triggered her trial, which led to her being sentenced to eight years imprisonment by the Rwandan High Court. On appeal, the Supreme Court of Rwanda increased the term to addition of seven years since this appeal subsequently met with prosecution's appeal as well.

Though the Ministry of Justice of Rwanda refuted the position that the country's withdrawal from the optional jurisdiction of the African Court has no nexus to the Ingabire's case, which they alleged was a coincidence, the stance of the Rwandan's Minister of Foreign Affairs in the withdrawal letter links both as connected.²⁴ The stand that convict gaining audience in a guise of human rights defence before the African Court against her country was odious asserts the linkage.

Although no conclusion can be certainly asserted here, the timing of the withdrawal created a correlation to the political motivated ill wind against Individuals' audiences before the African Court. In this case, the African Court ruled on its first withdrawal of the deposited

²⁴ The withdrawal dated 24 February 2016 is worded thus:

Considering that a Genocide convict is a fugitive from justice has, pursuant to the above-mentioned Declaration, secured a right to be heard by the Honourable Court, ultimately gaining a platform for-re-invention and sanitization, in the guise of defending the human rights of the Rwanda Citizens.

Considering that the Republic of Rwanda. In making the 22 January 2013 Declaration never envisaged that the kind of person described above would ever seek and be granted a platform on the basis of the said Declaration.

Considering that Rwanda has set up strong legal and judicial institutions entrusted with and capable of resolving any injustice and human rights issues.

Now therefore, the Republic of Rwanda, in exercise of its sovereign prerogative, withdraws the Declaration it made on the 22 January 2013 accepting the jurisdiction of the African Court on Human and Peoples' Rights to receive cases under Art. 5(3) of the Protocol and shall make it afresh after a comprehensive review.

declaration as provided under the Art. 34(6) of the Protocol. It is trite that Rwandan withdrawal optional declaration to the contentious jurisdiction of the African Court obviously impedes individuals and NGOs of their rights to prosecute matters against the country. That notwithstanding, the Protocol's stand is that the withdrawal must not be immediate but with due adequate and reasonable notice given. This triggered the finding in Ingabire's case that the said withdrawal failing the requirement of twelve months' notice does not affect validity of pending cases.

B. Tanzania

On 21 November 2019, Tanzania served notice of withdrawal of the declaration made under Art. 34(6) of the Protocol establishing African Court. This decision was muted during the administration of the late President John Magufuli who died in 2021. The African Union was notified by letter dated 21 November 2019. Before the withdrawal, Tanzania had close ties with the Union being host to the Courts Headquarters and have submitted several cases to it. Unlike Rwanda's withdrawal notice, which expressly stated its concerns regarding the African Court, Tanzania's notice provided only vague reasons for the withdrawal. It reads as follows: "The Government of the United Republic of Tanzania has decided to withdraw the declaration it made on the 9 March 2010, under Art. 34(6) of the Protocol on the Establishment of an African Court on Human and Peoples' Rights for review."

This decision has been reached after the Declaration has been implemented contrary to the reservations submitted by the United Republic of Tanzania when making its Declaration. Therefore, this serves as an official Notice of withdrawal by the United Republic of Tanzania.²⁵

²⁵ The withdrawal was signed by Prof. Palamagamba J.A.M. Kabudi, Minister for Foreign Affairs and East African Cooperation on 14 November 2019. The copy to African Union Commission is worded thus:

Ref: No. CHARD 133/738/01/2.

The permanent Mission of the United Republic of Tanzania to the African Union presents its compliments to the African Union Commission, Office of the Secretary General, and wishes to forward herein enclosed the United Republic of Tanzania's Notice of Withdrawal of the Declaration made under Art. 34(6) of the Protocol of the

The foregoing did not directly disclose affinity with the legion of decided cases. The meaning of contrary implementation of the reservations are not clear by the above withdrawal.

C. Benin Republic

Benin, a West African Country, is a signatory of the African Court Protocol signed in August 2014 and made its Declaration to the jurisdiction of the African Court on 8 February 2016.²⁶ Unlike Tanzania, Benin's notice of intention of withdrawal from Art. 34(6) Declaration was signed by the Minister of Justice and Legislation dated 28 April 2020. It was specific in the reasons adduced for the action. Apart from references made to the country's acronym with the African Courts rulings in Rwandan and Tanzania's cases, it made mention of its country's litany cases. It made references to African Court ruling in such cases it lacked jurisdiction to adjudicate upon. In this regard, the paper finds that the African Court's ruling in *Sébastien Germain Marie Aïkou Ajavon v. Republic of Benin*,²⁷ which directed Benin to suspend its 2020 electoral process, may have contributed to Benin's decision to withdraw its declaration. The application was brought by Ajavon, a political opponent of the then President who had previously lived in exile. In this case, the applicant, an exiled Beninese businessman and political figure, petitioned the Court following domestic criminal convictions asset seizures. The Court intervened by issuing an order requiring Benin to stay

African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, signed by H.E. Prof. Palamagamba J.A.M. Kabudi, Minister for Foreign Affairs and East African Cooperation on 14 November, 2019.

The Permanent Mission of the United Republic of Tanzania to the African Union avails this opportunity to renew to the African Union Commission, office of the Secretary General the assurances of its highest consideration.

²⁶ It was signed on 8 February 2016 by the Minister of Foreign Affairs, Aurelien A. Agbenonci. See Government de la Republique du Benin (2020), *Retrait du Benin de la CADHP — Declaration du ministre de le justice et de la Legislation*, <https://www.gouv.bi/635/retrait-benin-cadhp---declaration-ministre.Justice-legislation> [Accessed 01.03.2025].

²⁷ *Sebastian Germain Marie Eikou Ajavon v. Republic of Benin*, Application No. 013/2017, Order of Provisional Measures of 17 April 2020, AfCHPR.

its national constitutional municipal actions and postpone its scheduled 2020 local elections, a move the government viewed as a direct violation of its state sovereignty.

D. Cote D'Ivoire

The decision of withdrawal from the Declaration made as contained in Art. 34(6) of the African Court Protocol came the same day Benin announced theirs on 28 April 2020. The Country ratified the African Court Protocol in March 2005 and made its withdrawal of the already deposited declaration assenting to the jurisdiction of the African Court in July 2013. A combination of dissatisfactions with the African Court's decisions in *Actions Pour La Protection des Droits de L'Homme v. Cote d'Ivoire*²⁸ where civil groups successfully argued that the state's independent electoral commission was structurally imbalanced and unconstitutional, leading the Court to order the government to reform its electoral statutes and *Guillaume Kigbafori Suro and Others v. Cote d'Ivoire*²⁹ where the Court ordered the state to halt an international arrest warrant and domestic prosecution against a former Prime Minister and junta leader. In the former, the African Court ordered Cote d'Ivoire to amend its electoral laws, while in the latter the State was ordered to stay execution on the arrest and detention procedures against Guillaume. The withdrawal occurred one week after the Court issued the above order in favor of the applicant, a former junta leader who had been convicted in absentia and sentenced to 20 years' imprisonment. Cote d'Ivoire's reason for the withdrawal centers on the African Court's judgment that impeded and erode its sovereignty and national judicial process.

It is important to note that, under Art. 34(6) of the Protocol, the deposit of a declaration constitutes a State's acceptance of the Court's jurisdiction over applications brought by individuals and NGOs with observer status before the African Commission. Although the declara-

²⁸ *Actions Pour la Protection des Droits de L'Homme (APDH) v. Republic of Cote d'Ivoire*, Application No. 001/2014, Judgment of 18 November 2016, AfCHPR.

²⁹ *Guillaume Kigbafori Soro and Others v. Republic of Cote d'Ivoire*, Application No. 012/2020, Order of Provisional Measures of 22 May 2020, AfCHPR.

tion is optional for States, it is a mandatory prerequisite for such direct access to the Court. The Protocol also prescribes the categories of cases within the Court's jurisdiction. The declaration of acceptance of the Court is facultative unilateral engagements (Daly and Wubush, 2018).³⁰ Thus, it creates an obligation upon the States making same also to renege or withdraw. Strictly speaking, it cannot be revoked arbitrary as the terms therein are binding. Hence, adequate and reasonable notice are required to do so. Moreover, the reason for such withdrawal must be stated.

It has been ruled by the International Court of Justice that the withdrawal of such declarations requires reasonable time for it to take effect.³¹ It is trite to note that withdrawal of optional declaration as evidenced by the Protocol establishing the African Court does not contemplate the denunciation of the African Charter itself.³² The African Charter does not contemplate denunciation clause. Hence, the withdrawal is not a denunciation of the Protocol in its entirety. To this end, the withdrawal makes the membership of States stand as a mere formality in compliance with the ratification of the Protocol to the African Charter with no intention of allowing the Court to have jurisdiction on direct access. To this end, Tanzania, Rwanda, Cote d'Ivoire and Benin have refuted the court's direct jurisdiction to its sovereign territory by submitting withdrawal of declarations. The worst is Tanzania that hosts the Headquarters of the African Court.

³⁰ The Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), jurisdiction and admissibility, judgment dated 26 November 1984, ICJ Collection 1984, 418, Para. 59; Fisheries Jurisdiction cases (Spain v. Canada) Jurisdiction of the Court, Judgment of 4 December 1998, ICJ Collection 1998. 456, Para. 54.

³¹ Compare Vienna Convention, Art. 56(2) which prescribed 12 months duration.

³² Three Conventions adopted by African States in the Field of Human Rights that contain denunciation clauses are: the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969 (Art. 13), the African Union Convention on Preventing and Combating Corruption of July 2013 (Art. 26) and the Convention for Protection and Assistance of Internally Displaced Persons in Africa of 23 October 2009 (Art. 19). In contrast, the African Charter on the Rights and Welfare of the Child of 1 July 1990, the Protocol to the African Charter on the Rights of Woman in Africa of 1 July 2003, and the Africa Charter on Democracy, Elections and Governance of 30 January 2007 did not have such clauses.

A grave implication of the withdrawals of Member States declarations as contained in Art. 34(6) of the Protocol is that it is a gear to the famishing functional powers of African Court. The Court is to complement with the role along with the powers of African Commission in the protection of fundamental rights across the continent. The effectiveness and efficiency of the Court is eroded with such denials of individuals and NGOs direct access to the African Court due to withdrawals of declarations already deposited.

V. Challenges to the Applications of Article 34(6) of the Protocol to the African Charter on Direct Access to the African Court

Unarguably, African Court are faced with several challenges amongst the International Human Rights Courts. Among other regional Tribunals, it has the largest conglomeration of countries and population within its jurisdiction. However, the long history of violations of human rights stands as a clog to the operation of the Court. This is because Art. 34(6) of the Protocol creating the Court enjoined State parties to deposit declaration of submission to its jurisdiction as it relates to direct access by NGOs and individuals. This provision vis a vis its practicability in gun shot on the legs of human rights development, as it is broad light negation of access to justice. Some African countries withdrew the declarations they had previously made due to their apprehension about the foregoing procedure and their irritation at the Court's rulings, which they claimed violated state sovereignty. This requirement may make States cautious about accepting the Court's jurisdiction. The resulting challenges are discussed below:

V.1. Challenges of the Locus Standing of NGOs and Persons Direct Access to African Court

Notwithstanding the overwhelming contributions of NGOs and aggrieved individuals in the success stories of human rights enforcement of the African Commission in recent years, their lack of direct access to the African Court has been a bitter experience. For NGOs with ob-

server status with African Commission and individuals to have direct access with the Court under Art. 5(3) of the Protocol, State Parties are enjoined mandatorily make a declaration consenting to the jurisdiction of the Court in line with Art. 34(6) of the Protocol. Regrettably, African States that are full of human rights breaches, may not want to accent to such declaration that would allow individuals sue them directly.³³ The provision is restrictive in nature as it stifles public interest litigation and promotions of issues of human rights violations. The effect of this is that in case no declaration was deposited by a Member State, NGOs and individuals are left with the options of submitting their complaints first to the African Commission. To this end, Art. 34(6) cripples the growth of the volume of matters that come to the court or likely to come in future.

In July 2024, the African Court received up to 316 cases from individuals which failed due to lack of jurisdiction. The importance of direct access to the African Court through individuals could be explained by checking the data of cases brought before the court. Hence, it could be concluded that lack of direct access to the African Court cripples the regional human rights system, since the statistics of the cases before the African Court shows that there are more cases of direct access of individuals.³⁴ It is on record that out of 342 contentious matters handled by the African Court, 316 came from individuals, 22 from NGOs and 3 from the African Commission, and one from a State Party.³⁵ Thus, it is clear that direct access of individuals and NGOs to African Court is requisite for the effective and good applications of human rights system in the continent. The denial of the above strangulates the court's mission and functionality.

³³ *Matter of Ingabire Victarie Umuhoza v. Republic of Rwanda*, AfCHPR, Application 003/2014, and Individual Opinion of Judge Fatsah Ouguergouz at p. 10, Para. 35.

³⁴ For the analysis, see <https://www.african-court.org/cpmt/statistics> [Accessed 02.03.2025]. See Apollin Kougue Zouapet, From "Puzzling" to Comprehensible and Efficient Reform Proposals to the African Human Rights Framework Through a "System" Lens [2023] (23) *African Human Rights Journal*, 1–5.

³⁵ Note that on 18 July 2024, only *Democratic Republic of the Congo v. Republic of Rwanda*, AfCHPR, App. 007/2023, has been received by the Court from a State Party.

V.2. Lack of Political Will of African Governments in support of the African Court

After many years of coming into force by the African Court Protocol, questions are rife on whether the African leaders are truly inclined to give approval and submit to the jurisdiction of the court. Many Member States have not deposited the compulsory declaration to allow their nationals and NGOs quick access to the Court to scintillate their rights. More concerning is the increasing number of Member States withdrawing declarations that they had previously deposited with the Court. This action pushes the functionality of the Court to bleak. To this end, the direct access to the court as well as withdrawals of declarations could be looked as pointers to denial of the human rights of the people. It obviously threatens court's inherent powers to maintain people's human rights. On this note, failed States vis-a-vis bad leadership and governance dread the powers of the African Court.

V.3. Withdrawal of Declarations Made to the African Court by Member States

Some African States have expressed concern that direct access to the African Court for individuals and NGOs may encroach on their sovereignty. Many State Parties have exercised their rights to withdraw declarations giving individuals and NGOs quick accessibility to institute actions against them, the reason being that such declarations are optional and can be withdrawn at any time with effect from 12 months duration. However, it must not be politically motivated. This is evident in the Rwandan withdrawal reason and motive in 2013 that is alleged to have been triggered by the decision of the African Court in *Ingabire Victoire Umuhoza v. Republic of Rwanda* (Viljoen, 2012). Rwanda was indicted by the Court on the imprisonment of the applicant for genocide which the later contested to be unfairly carried out. Worst is the withdrawal of Tanzania that hosts the Court's headquarters. The withdrawal of the country's declaration was attributed to the many judgments against the State it termed unjust. The same is attributable to Rwanda and Cote d'Ivoire's withdrawals of their declaration to the Af-

rican Court. Strictly speaking, since the creation of the Court in 2006, the direct access to the Court remains a good source to the Court's procedural jurisdiction. It has adverse effects, as it has left only eight declarations by Member States.

On case-by-case analysis, Tanzania through the case of *Ghati Mwita v. Tanzania*³⁶ in 2020, the African Court ruled that the withdrawal of declaration was valid. In this case, an individual applicant sued Tanzania over arbitrary deprivation of property and lack of fair domestic judicial remedy. The Court used this opportunity to reaffirm its procedural jurisprudence, holding that while Tanzania's withdrawal of its Art. 34(6) declaration was fully valid, it could not apply retroactively to strip the Court of jurisdiction over cases already filed before the official notice took effect. Benin's ruling came through the interim measure ruling in *Houngue Eric Noudehouenou v. Benin*,³⁷ where an applicant sought emergency provisional orders to protect political assembly rights. The Court reiterated that pending processes remain protected despite an active declaration withdrawal phase, while Cote d'Ivoire was through the ruling in *Sur Bi Gohore Emile and Others v. Cote d'Ivoire*³⁸ in 2020.

The African Court has developed a consistent body of jurisprudence on the withdrawal of Art. 34(6) declarations, beginning with its decision in *Ingabire v. Rwanda*. The Court ruled in Para. 59 of the case that Rwanda's revocation under the African Charter and International Law is legal and valid. The same is applicable to other cases of notice of withdrawals. A perusal at the reasons for the withdrawals portend dissatisfaction with the rulings or judgments of the Court as it concerns the sovereignty of the State. For example, Rwanda's withdrawal notice expressed concern that the Court had heard an application brought by an individual whom it described as a fugitive and a genocide suspect. Such withdrawals may undermine the Court's effectiveness in enforcing human rights, particularly by restricting access to its jurisdiction.

³⁶ *Ghati Mwita v. United Republic of Tanzania*, Application No. 012/2019, Judgment on Jurisdiction of 2020, AfCHPR.

³⁷ *Houngue Eric Noudehouenou v. Republic of Benin*, Application No. 003/2020, Order on Provisional Measures of 5 May 2020, AfCHPR, Para. 4–5.

³⁸ *Suy Bi Gohore Emile and Others v. Republic of Cote d'Ivoire*, Application No. 044/2019, Judgment of 15 July 2020, AfCHPR, Para. 66–67.

V.4. African Court Commission's Weak Referrals to the African Court

African Court was established as a judicial body with binding decisions to complement the roles and functions of African Commission on Human Rights. The poor deposit of declarations and the withdrawals of some countries of such declarations made to assent the direct jurisdiction of the African Court, is injurious to human rights promotion in Africa. Moreover, although indirect access through the African Commission may serve as an alternative, it can be a less direct and potentially less effective route to justice. More concerning, the Commission lacks prosecutorial powers and has made relatively few referrals of human rights cases to the African Court, further limiting access to justice (Kah and Mbom, 2024) due to the fact that the decisions of the African Commission lack enforceability and most of its quasi-judicial rulings are neglected by Member States. Moreover, the Commission's limited resources to monitor and follow up on its decisions are evident. These constraints significantly hinder the effective development of the African human rights system.

V.5. Negative Implications to Victims of Human Rights Infractions

Courts that lack accessibility can no longer represent the last resort for victims of human rights intimidation. The withdrawal of declarations frustrates the opportunities of NGOs and individuals to table their human rights grievances before African Human Rights Court on a direct means. The above destroys the jurisdiction of such cases before the Court. Taking the hint that withdrawals of declarations take effect from one year, its concomitant signal to other Nations with deposit of declaration is regressive to human rights fights of the African Court.³⁹ Thus, other indirect and long bearing processes of Court filings exist. Such process of going through the African Commission is requisite. The four countries that withdrew their declarations are still parties to

³⁹ Note that mis-governance in leadership propels withdrawals of declaration to Art. 34(6) of the African Court Protocol.

the African Court Protocol, as such withdrawals are not denunciations. Matters can still be filed against them in other Tribunals. To this end, the African Commission can handle matters relating to them in respect of violations of human rights. However, countries where poverty holds way, such judicial bodies may be too far from the victim's country and cost effective high.

VI. Conclusion

An exhaustive analysis of "Dismantling Jurisdictional Barriers: Empowering Direct Access to the African Court on Human and Peoples' Rights" crystalizes into key strategic findings. Most notably, the paper reveals that indirect access via the African Commission on Human and Peoples' Rights fails because the Commission rarely exercises its power to refer individual communications to court. It is evident that Art. 34(6) declarations create a bottleneck, leading to severe under-utilization with only a handful of ratifying States and subsequent strategic State withdrawals. The analysis reveals that minimal number of Signatory States that have made such declarations is clear indication of the non-challancy of African leaders to the submission to the jurisdiction of the Court on a direct access. While some argued that there is an alternative of going through the African Commission's referral, but the fact remains that such alternative procedures are herculean and difficult as it is an indirect means of access. The paper further highlights that practice have shown that this procedure is under-utilized due to its long process and procedure. The findings also reveal that the negative trend of the withdrawals by four countries portends disinterestedness to abide by the provisions of the Protocol especially when such judgment affects State sovereignty. Also, the study shows that withdrawal of States from the Protocol on Direct Access to the African Court amounts to several restrictions to the Court's ability to address cases of human rights violations as well as limiting its general workloads. Further findings of the paper reveal that indirect access could serve as a better alternative procedures as direct access appears unfriendly following several withdrawals by State Parties. In conclusion, the paper contributes significantly to the discourse on dismantling jurisdictional barriers to

direct access to the African Court on Human and Peoples' Rights, and maintained that optional direct access under Art. 34(6) of the African Court Protocol severely fragments regional justice, requiring mandatory institutional referral rules and universal State ratification to transition from a symbolic tribunal to an effective human rights remedy. The paper urges policy makers and stakeholders to cooperatively dismantle jurisdictional obstacles and establish sustainable, direct access to the African Court on Human and Peoples' Rights.

Recommendations

1. African Nations should brace up to promote and respect regional institutions and their procedures.
2. The deposit or withdrawal of Art. 34(6) of the Protocol should not be propelled by political motives by African member states.
3. The direct access to the African Court should be made open by deleting Art. 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
4. In alternative, though the Declaration as contained in Art. 34(6) of the African Court Protocol is optional, rigorous process on the practice of withdrawal should be put in place as a condition to the African States.
5. More advocacy and sensitization are needed to enhance the efficiency of the African Court in order to cushion the low turnout of cases.

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Information about the Authors

Uche Nnawulezi, Assistant Professor, University of Lay Adventists of Kigali, Kigali, Rwanda

uche.augustus@unilak.ac.rw (Corresponding Author)

ORCID: 0000-0003-2718-3946

Jacques Kabano, PhD, Lecturer at the Faculty of Law, University of Lay Adventists of Kigali, Kigali, Rwanda

ORCID: 0000-0002-0248-9204

Obinna Nnanna Okereke, PhD, Faculty of Law, Federal University Wukari, Taraba State, Nigeria

obinnaokereke@yahoo.com

ORCID: 0000-0001-5900-7192

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