

Legal Implications of Judicial Independence on Implementation of Provisions of the African Commission on Human and Peoples' Rights in Nigeria

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ABSTRACT: *In this study, a legal examination of judiciary role in the implementation of human right protection decisions emanating from the African Commission on Human and Peoples' Rights- African Commission (AC) - in Nigeria, was examined. It employs series of intricate factors including the African Charter on Human and Peoples' Rights (ACHPR), the AC and Independence of the Judiciary. The research, which has its roots in historical contexts, highlights the challenges and legal difficulties that the Commission faces in carrying out its decisions. It examines the legal framework dictating the implementation process, drawing parallels between important decisions of the AC and the developmental journey of the Nigerian judicial system. The study looks at the main implementation issues and offers complex viewpoints on the difficulties encountered in accomplishing the goals of the Charter. It acknowledges that the African Commission on Human Rights (ACHPR) has the responsibility to promote and defend human rights throughout the continent of Africa; but, it finds that the ability and desire of national governments and institutions, particularly the judiciary, to carry out its functions determines effectiveness of the decisions. Even though the judiciary holds a position in ensuring implementation, there is setback due to inability to freely act as an independent body. The article gives special attention to the constitutional non-justiciability of socio-economic rights, which amongst others, is a major complication in ensuring adherence. The study recommends strategies to strengthen the network for ensuring compliance with the Commission's decisions.*

KEYWORDS: Human Rights, Regional Instruments, Judicial Independence, Implementation, Nigeria.

INTRODUCTION

It is not new that the judiciary is a key component in representing each nation's position on many foreign philosophies at all times. Nigeria is a state party to the ACHPR. To ensure implementation at the international level, the ACHPR established bodies that would turn its provisions from an ordinary theory to a reality with regards to the rights provided in Part II,

Chapter I of the Act. As a ratified treaty governed by Section 12 of the Nigerian Constitution, Nigeria is expected to implement its principles in its laws by institutions like judiciary. This expectation is not only due to Nigeria being a state party; it is also expected because it is innovative. Among the innovations is that the ACHPR is the first international instrument to incorporate provisions for the protection of people's rights rather than those based on individuality. It is also the first international legal instrument to make the socio-economic right justiciable. It is in fact the first legally binding international instrument with no derogation. Among several other reasons, the state parties are expected to warmly embrace and streamline the development at the local level.

Unfortunately, several challenges still hinder achieving objectives of the Act. The objective of the research is, therefore, to do a critical legal examination of roles of the judiciary in the implementation of human right protection decisions emanating from the AC in Nigeria. It is specifically meant to identify challenges of compliance with the ACHPR by doing an incompatibility test between its provisions, the Chapter II of the 1999 Constitution, the Section 6(6)(c) of the 1999 Constitution and other domestic legislations, and recommend the direction locally and internationally for ensuring compliance by the member states, particularly Nigeria. The methodology employed is essentially doctrinal with the use of primary and secondary materials. The primary materials include the international legal instruments such as the ACHPR; the principal local instrument for the protection and advancement of human rights in Nigeria; the Constitution of the Federal Republic of Nigeria; case laws decided by Nigerian courts and courts from other jurisdictions, as well as historical surveys with age-long and recent articles on the subject matter. Relevant textbooks, journal articles, newspaper and magazine reports, seminar and workshop papers from relevant organizations, served as secondary materials.

Definition of Terms

It is to be noted that definitions as provided here relate to the objectives of the study and are explained in the context they concern in this study.

Autonomy: It is used in place of the word "independence." It refers, in this context, to the judiciary's capacity to make decisions free from fear of outside pressure and to assess the evidence and apply the law in a way that best represents both domestic and global perspectives. It also refers to the judiciary's capacity to manage financing, structure, and internal affairs independently of other government agencies. It is the inability of magistrates and judges to perform their duties free of influence or control of other factors, whether governmental or private.

Decisions: The term relates to the Nigerian Judiciary and the AC. After every evaluation of facts and evidence as provided by parties involved, the result or outcome upon the application of the relevant laws or provision is the decision in this context.

Domestic: This has to do with the national legislations, i.e. promulgations of a state member by her legislative organ and binding only on the state. In other words, they are laws that are not

international, regional or sub-regional as the 1999 Constitution of the Federal Republic of Nigeria.

Human Right: These are the rights that are expressly mentioned in the AC and Chapters II and IV of 1999 Constitution of the Federal Republic of Nigeria's.

Member States: These are the African countries that have ratified the provisions of the ACHPR.

Privies: These are the countries in Africa who are signatories to the African Charter on Human and Peoples' Right Treaty.

Ratification: This is the situation whereby a country agrees that the provisions in the ACHPR be binding on her.

Enforcement: The act of compelling observance of or compliance with a rule, law or obligation.

Implementation: The process of putting a decision or plan into effect or execution.

Reservation: When a country agrees to be bound by the provisions of the ACHPR but does not want to follow certain portion of the provision owing to the reason that it is contrary to her local legislations or policies, and then the country may send back the ratification instrument with the reservation(s).

Establishment and Composition of the African Commission on Human and People's Rights

The African Charter on Human and People's Rights (Banjul Charter) gave rise to the African Commission on Human and People's Rights (African Commission). On June 28, 1981, in Nairobi, Kenya,¹ the Organization of African Unity—now known as the African Union—adopted the Banjul Charter. The adoption was prompted by Africans' desire that the Organization of African Unity's 1963 Charter, which lacked a clear human rights mandate and did not obligate member states to uphold and defend human rights, be adopted.²

In order to create a regional human rights instrument for Africa akin to the European and Inter-American human rights agreements, the OAU Assembly of Heads of State and Governments unanimously asked the OAU Secretary-General to assemble a Committee of experts in 1979. A conference of 20 African experts, presided by Judge Keba M'baye was organized in 1979 in Dakar, Senegal where the first draft of the Charter was prepared. However, the conference of Plenipotentiaries scheduled for Ethiopia to adopt the draft Charter could not take place due to the hostility of some of the governments to regional human rights protection in Africa.³

¹ Pretoria University Law Press, *A Guide to the African Human Rights System*, Business Print Pretoria, 2016 2

² Ibid

³ Ibid

Two Ministerial Conferences were called by the President of the Gambia in Banjul, where the draft Charter was completed and then presented to the OAU Assembly.⁴ The African Commission was created by Article 30 of the Banjul Charter as one of the mechanisms and institutional framework for the implementation of the African Charter on Human and People's right, to promote and protect human rights in Africa. The Commission became operational in October, 1986. The rules and procedure of the Commission are governed by the African Charter and the African Commission's Rules of procedure.⁵

Eleven Commissioners make up the Commission; they are each elected to office in their own right without regard to any particular state.⁶ Article 32 of the African Charter mandates that the 11 Commissioners must be nationals of different member states. Civil servants and diplomatic personnel are not permitted to serve as Commission members in order to guarantee that Commissioners do not represent their nations. Commissioners are subject to reelection after a six-year term of office. In accordance with Article 44 of the Charter and Rule 22 of the Rules of Procedure, they are eligible to receive an allowance and serve on part-time basis.⁷ Members of the Commission are expected to be Africans of the highest reputation known for their high morality, integrity, impartiality and competence in matters of human and people's rights and are elected by secret ballot by the Assembly of Heads of States and Government, from a list of persons nominated by state party to the African Charter.⁸

Of note is that Article 31 of the African Charter and Rule 4 of the Rules of Procedure of the Commission do not require Commissioners to be lawyers or judges. Commissioners only need to be well-mannered and knowledgeable about human and peoples' rights; however, those with previous legal expertise should be given preference. The election of African Commission members takes into account both gender parity and a fair geographic distribution. By the 2016 decision of the Executive Council, there may only be two Commissioners from each of the 5 African regions and at least one of the Commissioners from each region must be female. The eleventh and sole remaining seat in the commission is considered a floating seat.⁹

The secretariat of the African Commission is located in the Gambia's Banjul. The African Union Commission Chairperson appoints the Secretary to lead the Commission following appropriate engagement with the Chairperson of the African Commission on Human and People's Rights.¹⁰ The Commission's secretariat is tasked with the responsibility of providing administrative, technical and logical support to the Commission.

⁴ Ibid

⁵ ACHPR: *Composition & Election Process - Composition of the African Commission on Human And Peoples' Rights* 2020 <https://ijrcenter.org/wp-content/uploads/2020/07/ACHPR-EC-Mini-Guide-clean-1.pdf> accessed 8th December,2023.

⁶ Article 31 African Charter on Human and People's rights.

⁷ ACHPR Op Cit. N.63.

⁸ Article 33 of the African Charter on Human and People's rights.

⁹ ACHPR Op Cit. N. 63.

¹⁰ Rules 20 & 21 of the Rules of the African Commission on Human and People's Right and Article 41 of the African Charter.

Mandates of the African Commission on Human and People's Rights

The four categories of the African Commission's mandates are: promotion of human and people's rights; protection of human and people's rights; interpretation of the charter's provisions; and performance of any other tasks assigned by the Assembly of the Heads of State and Government. The African Commission's mandate is officially listed in Chapter II of the African Charter.

Promotional Mandate of the Commission

According to Article 45 of the African Charter, the Commission's promotion duties also include gathering documents, conducting studies and research on human rights issues in Africa. They also include organizing seminars, symposia, and conferences, disseminating information, supporting national and local human rights institutions, advising governments on issues related to human rights and in appropriate cases, give its view or make recommendations to Governments. They also formulate and lay down principles aimed at resolving legal problems relating to human and people's rights and fundamental freedoms upon which African Governments may base their legislation. They also co-operate with other African and International institutions concerned with the promotion and protection of human and people's rights.

Accordingly, the Commission has performed its promotional duties through publications, press releases, resolutions, missions, conferences, lectures, research, and state reports. Additionally, the Commission had already established a "fairly respectable" documentation center in its secretariat for human rights studies and research.¹¹ Additionally, it has organized a number of conferences, symposiums, and seminars to advance human and peoples' rights throughout the continent.¹²

With regards to organization of symposia, seminars and conferences, the commission has organized the under listed:

1. Seminar on the National Implementation of the African Charter in the Internal Legal Systems in Africa, Banjul, 26-30 October, 1992.
2. Conference on the Journalist and Human Rights in Africa, Tunis, 31 October – 1 November 1992.
3. Seminar on State Reporting for English Speaking Countries, Harare, 23-27 August, 1993.
4. Seminar on State Reporting for Francophone, Arabphone and Lusophone Countries, Tunis, 24-27 May 1994.
5. Seminar on Refugees and Internally Displaced Persons in Africa, Harare, 16-18 February 1994.
6. Seminar on Human Rights Education in South Africa, Durban, 24-27 September 1994.
7. Seminar on Human Rights of the African Women and the African Charter on Human and People's Rights. Lome, 8-9 March 1995.

¹¹ Victor Dankwa, 'The Promotional Role of the African Commission on Human and People's Right' 2002 in Malcom Evans and Rachel Murray (eds)

¹² Treva Braun & Lucy Mulvagh, *The African Human Rights System: A Guide for Indigenous Peoples*, Forest Peoples Programme, 2008

Workshop on Impunity in Africa, Ouagadougou, 22-23 March 1996 *et al*¹³.

All the above were organized in partnership with various international and non-profit organizations. It is common opinion that the Commission still has a long way to go in fulfilling its promotional mandate as the gospel of the African Commission is yet to reach the nooks and crannies of Africa. It has been advocated that more funds should be earmarked for the Commission so the gospel of the Commission would be read in Newspapers, magazines, and other publications in various states and that the African Charter be incorporated into the curriculum of students at all levels of education.¹⁴

In keeping with its promotional function, the African Commission has given countries multiple recommendations and shared its points of view. Periodic Reports and methods for furthering human and people's rights are two of the important recommendations made. Furthermore, the Commission has passed resolutions on a number of nations, such as Burundi, Rwanda, South Africa, Sudan, Nigeria, the Gambia, and Liberia.¹⁵

The Commission has put into effect resolutions targeted at settling legal concerns relevant to human and people's rights as well as defining legal principles and standards, in addition to the resolutions previously mentioned that are unique to individual countries. Examples of these resolutions encompass the establishment of committees on human rights or similar entities at national, regional, or sub-regional levels. Furthermore, there are resolutions addressing the integration of the provisions of the African Charter on Human and People's Rights into the national laws of states, the right to recourses to a fair trial, freedom of expression, and human rights education.¹⁶

State Reporting Mandate

The state reporting system is another essential component of the African Commission's promotional mandate since it gives the Commission a direct, formal debate forum to discuss actions taken to further the realization of human and people's rights as well as a channel for proposing reforms. The bedrock of state reporting is Article 62 of the African Charter, which provides thus:

Each State Party shall undertake to submit every two years, from the date the present Charter comes to force, a report on the legislative or other measures taken with a view of giving effects to the rights and freedoms recognized and guaranteed by the present Charter.

In accordance with the Article 62 of the Protocol, Women's Protocol are also required by the Article to include legislative measures that have been taken toward the implementation of the Protocol in their periodic report to the Commission.

¹³ Udeme Essien, "The African Commission on Human and Peoples' Rights: Eleven Years After", Buffalo Human Rights Law Review Vol. 6. P. 97.

¹⁴ *Ibid* at 98

¹⁵ *Ibid*

¹⁶ *Ibid*

The African Charter requires state parties to submit two reports to the Commission: the initial report and the periodic report. The initial report is to be submitted by state parties within two years of ratification and domestication of the Charter while the periodic as earlier mentioned in this work is to be submitted biennially.

A state report submitted by a state to the Commission must contain measures taken to give effect to the provisions of the Charter; Progress made so far; Challenges affecting the implementation of the Charter; and the relevant supplementary instruments.¹⁷

An African Charter implementation plan that mandates the joint accountability of the African Commission and State Parties is the step reporting system.¹⁸ The state reporting system is a two way system which involves an individual state party to submit its self-assessment on the “legislative or other measure” taken within a two years period towards the promotion and protection of the rights and freedoms given and recognized under the African Charter to the Commission for its comment. The African Commission on the other hand gives a concluding observation.¹⁹

The Commission's final remarks address both the advantages and disadvantages of the state report after careful analysis. The last remark outlines the actions that the state should take to address the flaws that have been found.²⁰

It is important to note that the Commission's state reporting system has not been successful, as six State Parties to the African Charter are said to have failed to submit any state reports to the Commission.²¹ Several states continue to report inconsistently, irregularly, and without following quality standards, even when they are behind schedule. Article 62 of the Charter, which requires biennial state reporting, is clearly at contradiction with this practice. Adding to the situation, the Commission has made things worse by providing states that file reports just once with amnesty, which forgives past defaults. This approach by the Commission towards irregular reporting undoubtedly undermines the morale of states that diligently adhere to the biennial reporting requirement.²²

One additional obstacle to the effectiveness of state reporting is the reluctance of state parties to provide the information needed for the Commission to carry out its mandate. This frequently results in the Commission asking for more details and explanations.²³ The Commission is also constraint as there is no proper mechanism for the implementation of its concluding observation which in reality, serves as best of persuasive influence on state parties.

¹⁷ A guide to the African Human Rights System Op Cit. 60, p. 38.

¹⁸ Philip Amoah Participation of Non-Governmental Organizations in the Work of the African Commission on Human and People's Rights, ICJ Workshop on NGO Participation in the African Commission, Banjul The Gambia, 5-7 October 1991, P. 6.

¹⁹ Ibid

²⁰ A guide to the African Human Rights System Op Cit 60, p. 42.

²¹ Ibid at P. 40.

²² Michelo Hansungule, “*African Courts and the African Commission on Human and People's Right*”, (2007) 2 African Human Rights Law Journal, P. 255-256.

²³ Ibid

Strategies of the African Commission for Implementation of its Mandates

The African Commission has created plans for carrying out its decisions as found in the African Charter over the course of its existence. This involves carrying out the Commission's protection and promotion responsibilities effectively through the use of working groups and special rapporteurs. From the provisions in Articles 45 and 46 of the African Charter, which provide the Commission the ability to use any appropriate investigative technique to carry out its mandate, it is clear that these specific procedures are authorized. As a result, these special mechanisms look into cases of human rights breaches, study human rights-related topics, and visits countries to promote their work. The resulting reports serve as the foundation for the Commission's resolutions.²⁴ Special rapporteurs are appointed from the members of the Commission, while working groups consist of members of the Commission and independent experts.²⁵ The Commission has hitherto created the following mechanisms in fulfillment of its mandate:

- a. Special Rapporteur on Prisoners, Conditions of Detention and Policing in Africa, 1996;
- b. Special Rapporteur on Rights of Women;
- c. Working Group on Indigenous Populations/Communities in Africa;
- d. Special Rapporteur on Freedom of Expression and Access to Information;
- e. Special Rapporteur on Human Rights Defenders;
- f. Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons;
- g. Committee for the Prevention of Torture in Africa;
- h. Working Group on Death Penalty and Extra-Judicial, Summary of Arbitrary Killings in Africa;
- i. Working Group on Rights of Older Persons and People with Disabilities;
- j. Working Group on Extractive Industries, Environment and Human Rights Violations; and
- k. Committees on the Protection of the Rights of People Living with HIV (PLHIV) and Those at Risk, Vulnerable to and Affected by HIV.²⁶

Notably, with the foregoing, the African Commission has developed a range of mechanisms for the purpose of achieving its mandate. The following communication mechanisms shall be hereunder examined.

Communications to the African Commission

The communication method is one of the mechanisms the African Charter provides the African Commission to safeguard and advance human and people's rights. The Commission uses this process to hear complaints about violations of human rights committed by states. Individual or interstate communications can be sent to the Commission.

²⁴ A Guide to the African Human Rights System Op Cit. 60. P. 46

²⁵ Ibid

²⁶ Ibid at p. 47.

Inter-State Communication

Through interstate communication, party states may file complaints of human rights violations against other party states under Articles 48 and 49 of the Charter. Crucially, this complaint avenue is rarely used because, since its founding, the Commission has only been the recipient of three interstate messages, according to the records. The Democratic Republic of Congo (DRC) filed the first communication against the Republics of Burundi, Rwanda and Uganda on the grounds that the respondents had violated the rights of the residents of the Congolese provinces through the actions of rebel groups that were supported by the respondent states.²⁷

The Commission, relying on the well-established principles of international law, the United Nations Charter, African Charter as well as the Resolutions of the United Nations General Assembly held that the acts of the Respondent states in occupying territories of the Complainant state and taking charge of several natural resources violated the right of the Complainant to self-determination and right to freely dispose their natural resources. The Commission further held that same is a threat to international peace and security and ordered the respondent states to measures to abide with their obligations under the United Nations Charter and the African Charter and to further compensate the victims of the violation.²⁸

The second Communication received by the Commission was *Sudan v. South Sudan*.²⁹ The Commission decided that it was not seized of the communication because South Sudan as at then was yet to ratify the Communication. While the last communication received by the Commission between *Djibouti v. Eritrea*³⁰ is currently at the merit stage having scaled the stage of admissibility.³¹

Individual Communication

Since the African Charter is silent on the subject of victim requirements, individuals or Non-Governmental Organizations (NGOs) may bring a communication before the African Commission instead. Before filing a complaint with the Commission, an NGO is not required to get the consent of the alleged victims of human rights violations, nor is it required to hold observer status in order for the NGO's communications to be accepted. Nonetheless, messages must fulfill certain standards in order to be accepted. As contained in Article 56 of the African Charter, communications must indicate its authors; must be compatible with the African Union Constitutive Act and the African Charter; must not be written in disparaging or insulting language; must not be based exclusively on media reports; domestic remedies must be exhausted unless the domestic procedure has been unduly delayed; communication must be submitted within reasonable time of exhausting local remedies; and the issues raised in the communication must not have been settled under other AU or UN procedures.

²⁷ A Guide to the African Human Rights System p. 24

²⁸ Ibid

²⁹ Communication 422/12.

³⁰ Communication 478/14

³¹ Volkerrechtsblog, "An Introduction to Inter-State Communication Under the African Human Rights System" 2021 Available at: <https://voelkerrechtsblog.org/a-procedure-likely-to-remain-rare-in-the-african-system/> accessed 24th November, 2023.

The only admissibility criteria worthy of consideration is exhaustion of domestic remedies before sending a communication to the Commission. Because it is necessary to inform the government of the accused offender state, give it a chance to correct the infringement, and allow the domestic court to have the last say on the matter, this specific admissibility criterion is crucial.

It is however worthy of note that exhaustion of domestic remedy is needed in the following circumstances: if the victims are indigent³²; the complaints involve serious or massive violations³³; domestic legislation oust the jurisdiction of national courts³⁴; the rights claimed are not guaranteed by domestic laws³⁵; it is physically dangerous for the complainant to return to the erring state in order to exhaust local remedy³⁶; the complaint involves an "impractical number" of potential plaintiffs³⁷; and if the procedure for obtaining domestic remedy will be unduly prolonged Article 56(5) of the African Charter.

Legal Framework for Implementation of ACHPR in Nigeria

One of the most important parts of Nigeria's commitment to respecting human rights norms is the legal framework that guides the African Commission's decisions. As a member state of the African Union and a signatory to the ACHPR, Nigeria is bound by the decisions and recommendations of the African Commission based on the relevant international laws and national laws regulating the implementation and enforcement of such decisions.

Treaties and International Obligations

Nigeria's adherence to the ACHPR is the foundation of the international treaties that require it to abide by and uphold the decisions of the African Commission. The Charter, ratified by Nigeria in the year 1983, establishes the African Commission on Human and Peoples' Rights and outlines the human rights obligations that member states, including Nigeria, have undertaken.³⁸

Nigeria has a wide range of international obligations, including the need to uphold and obey African Commission decisions. While the decisions of the African Commission are commonly perceived as "non-binding," recent studies challenge this binary classification and argue for a nuanced approach, considering the evolving nature of international human rights law.³⁹

States' acceptance of the Charter entails them having inherent responsibilities to implement decisions made by the African Commission, rather than just following suggestions. The interpretive authority, or *Res interpretata*, doctrine plays a relevant role, similar to the

³² Purohit and Moore v. The Gambia. Communication No. 241/2001

³³ Free Legal Assistance Group and Others v. Zaire, Comm. No. 25/89, 47/90, 56/91, 100/93

³⁴ Media Rights Agenda and Others v. Nigeria, African Commission on Human and Peoples' Rights, Comm. Nos. 105/93, 128/94, 130/94 and 152/96 (1998)

³⁵ SERAC v. Nigeria Communication 155/96

³⁶ Abubakar v Ghana, Communication no 103/93

³⁷ African Institute for Human Rights and Development v. Guinea Communication 294/02

³⁸ Eghosa Osa Ekhatior, *The Impact of the African Charter on Human and Peoples' Rights on Domestic Law: A Case study of Nigeria*, <https://core.ac.uk/download/pdf/158350272.pdf> accessed 8th December, 2023.

³⁹ A.B Oyebo *Treaty Making and Treaty Implementation in Nigeria: An Appraisal* Bolabay Publications, Ikeja Lagos 2003, p289

European human rights system, where states are bound by the interpretations given to the Charter.⁴⁰

Key instruments that contribute to the legal framework compelling Nigeria's compliance include African Charter on Human and Peoples' Rights (ACHPR); General Principles of International Law; Customary International Law; and *Res Interpretata* Theory.

The African Commission is empowered by the African Charter to interpret its provisions, and the Commission's decisions are legally binding, particularly if they are approved by the Executive Council or the AU Assembly. Although some governments have labeled these decisions as "non-binding," new research challenges the dichotomy of binding vs non-binding and highlights the Commission's interpretive authority.

The "interpretive authority" or *Res interpretata* theory argues that states, including Nigeria, are bound by the interpretations provided by the⁴¹ African Commission. This implies that decisions made by the Commission, even regarding violations occurring in other member states, create obligations for all state parties to the Charter. The key distinction lies between the "decisional content" and the "interpretive content" of the Commission's findings.⁴²

Both the decisional and interpretative elements are deemed binding for the defaulting state. States that are subject to a decision are expected to regard it as binding because the Commission's ability to make decisions is directly derived from the Charter. Essentially, the decisions made by the Commission are an expansion or clarification of the Charter's requirements, which strengthens the legal need for Nigeria and other member nations to comply.⁴³

The argument goes beyond the conventional wisdom that holds that legal duties can only be created by expressly binding documents. It asserts that governments take on responsibilities by ratifying the Charter that transcends the express legal standing of Commission decisions. As a result, Nigeria's adherence to the Charter and the Commission's interpretive authority underpin its duty to carry out the decisions of the African Commission.

The position of international treaties as a legal framework for the implementation and enforcement of the recommendations of the African Commission in Nigeria is influenced by

⁴⁰ Bodnar, A. *Res Interpretata: Legal Effect of the European Court of Human Rights' Judgments for Other States than Those Which Were Party to the Proceedings*. In Y. Haeck, & E. Brems (Eds.), *Human and Civil Liberties in the 21st Century* Dordrecht: Springer, 223-262.

⁴¹ *Res interpretata*, It simply means giving domestic effect to the rest of the members states.

⁴² Zysset, A. *The ECHR and Human Rights Theory: Reconciling the Moral and the Political Conceptions*, 2017 London: Routledge.

⁴³ Ayeni, V. O. *Domestic Impact of the African Charter on Human and Peoples' Rights and the Protocol on the Rights of Women in Africa: A Case Study of Nigeria* 2011, Unpublished LLM Dissertation, Pretoria: University of Pretoria.

the dichotomy between Monism and Dualism, as well as the constitutional and judicial interpretations within the Nigerian legal system.⁴⁴

Nigeria is a Dualist State according to Section 12 of the 1999 Constitution, which requires the domestication of treaties before they can apply within the country. This constitutional provision places treaties on par with other Nigerian statutes, subject to the supremacy of the Nigerian Constitution. However, the interpretation of this provision by Nigerian courts, as exemplified in *General Sanni Abacha v. Gani Fawehinmi*,⁴⁵ stirred controversy. The Supreme Court maintained a position in the Abacha case, asserting that statutes with international flavor possess 'greater vigour and strength'. Some critics argue that international treaties, once entered, retain their international character until expressly repealed or denounced. However, this criticism seems misguided in light of Nigeria's dualist stance, emphasizing the need for domestication.⁴⁶

Also, in *Chief J.E Oshevire v. British Caledonian Airways Ltd*,⁴⁷ the court held that an international agreement embodied in a covenant or treaty is above domestic legislation. However, this decision seemingly overlooks or neglects the domestication requirement stipulated in Section 12 of the Constitution. It is however without doubt that the legal framework for implementing and enforcing African Commission recommendations in Nigeria is intricately tied to the interpretation of constitutional provisions and judicial decisions regarding the status of international treaties.

National Laws and Compliance Mechanisms in Nigeria

Given that the African Commission functions quasi-judicially, its recommendations in communications may carry weight similar to persuasive judgments if endorsed by the court. The legal authority granted to Nigerian courts to enforce their judgments is derived from The Constitution of the Federal Republic of Nigeria 1999 (as amended); The Sheriffs and Civil Process Act Cap S 6 LFN 2004; The Judgment Enforcement Rules; and The Enforcement of Judgment and Service of Process Rules.⁴⁸

The Constitution of the Federal Republic of Nigeria

The Federal Republic of Nigeria's Constitution serves as the grundnorm that all arms of government of Nigeria rely on for authority and legitimacy. Section 6 of the 1999 Constitution created all the superior courts of records. The Nigerian courts are vested with the judicial powers which include enforcement of judgment. Section 6 (6) (a) of the 1999 Constitution provides thus:

⁴⁴ Mohr, H. 'Treaties and the Legal Order' Paper presented at the Graduate Seminar on Legal Research, Policy and Reform at Osgoode Hall Law School, York University, Canada, 1981, p.7

⁴⁵ [2001] 51 WRN 29

⁴⁶ R. F Oppng, *Re-imagining International Law: An Examination of Recent Trends in the Reception of International Law into National Legal Systems in Africa* 2007 Fordham Inter'l L.J. 173

⁴⁷ (1990) NWLR (Pt160) 507

⁴⁸ Amaebi Ibomo Orukari, Enforcement of Judgments and Orders 2023 available at : <https://nji.gov.ng/wp-content/uploads/2023/06/Enforcement-of-Judgments-and-Orders.pdf> accessed on 30th October, 2023.

The judicial powers vested in accordance with the foregoing provisions of this section

(a) Shall extend, notwithstanding to the anything contrary in this Constitution, to all inherent powers and sanctions of a court of law;

Furthermore, judgments from Nigeria's several higher courts of record are enforceable against Nigerian authorities and individuals under Section 287 of the Nigerian Constitution. This Constitutional provision also adopted the common law doctrine of *stare decisis* to the Nigerian legal system.

The Sheriffs and Civil Processes Act

This Act is the most vital legislation that deals with enforcement of judgments in Nigeria. Having passed as an Act of the National Assembly by section 315 Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Act is the principal legislation that regulates services of court processes and enforcement of judgments in Nigeria. The Act provides for the various modes of enforcement of judgment and the procedure for so doing. The Act also contains two basic rules that are vital to the enforcement of judgments and court orders in Nigeria namely: The Judgment (Enforcement) Rules and the Enforcement of Judgment and Service of Process Rules.

The Judgment (Enforcement) Rules

In accordance with Section 94 of the Sheriffs and Civil Processes Act, this Rule outlines the steps that must be taken in order to enforce a decision. It is the main supporting legislation that addresses how different kinds of court rulings are enforced in Nigeria. The Nigerian court process for enforcing interstate and overseas judgments is likewise outlined in the Rules.

The Enforcement of Judgment and Service of Process Rules in Nigeria

This is the rule that addresses court process service and judgment enforcement in Nigeria, as per sections 94 and 11 of the Sheriffs and Civil Processes Act. It is executed specifically with relation to the registration of the judgment certificate in the Nigerian Register of judgment in accordance with Section 105 of the Act. It should be mentioned that the Foreign Judgments (Reciprocal Enforcement) Act addresses the enforcement of foreign judgments. The legal foundation for Nigerian judgment enforcement is provided by the aforementioned legislation.

General Landmark Court Decisions on the Commission Provisions

In this case of *SERAC v Nigeria*⁴⁹, the Nigerian government was accused of seriously polluting the Ogoni people's environment through the operations of its state-owned oil firm, the Nigeria National Petroleum firm (NNPC), in partnership with the international Shell Petroleum Development Corporation. The Ogoni community experienced extensive degradation of their land and water sources due to oil exploration, rendering farming and fishing, which are the primary livelihoods of the Ogoni people, unfeasible. Additionally, the complainant asserted that the Nigerian government tolerated these violations, as, despite numerous appeals, the

⁴⁹ (2001) AHRLR 60 (ACHPR 2001)

government neglected to compel the oil companies to conduct environmental or social impact assessments of their operations.

The Nigerian government was found by the Commission to have violated the Charter. The government was urged to cease attacking Ogoni villages, provide fair compensation to those affected by the infractions, and conduct suitable environmental and social impact assessments before moving forward with any new oil production.⁵⁰

In the case of *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*⁵¹, the Kenyan government forcibly displaced the Endorois people, an indigenous community, from their ancestral lands surrounding Lake Bogoria in Kenya, lacking proper consultation or compensation. Consequently, the Endorois people were deprived of access to their religious sites situated in the Bogoria Lake region. The complainants contended that this action constituted a violation of the African Charter. In this groundbreaking decision, the Commission addressed the right to development as outlined in the African Charter, which uniquely acknowledges this right among international binding human rights instruments. The Commission also provided insights into the rights of indigenous people in Africa.

In the case of *Purohit and Another v The Gambia*⁵², the Commission examined various issues, including the right to health and the treatment of individuals with mental incapability. The communication was initiated by the complainants on behalf of patients detained at the Psychiatric Unit of the Royal Victoria Hospital in The Gambia. The communication asserted that the Lunatics Detention Act (LDA) was deficient, lacking a clear definition of a 'lunatic' and failing to establish requirements to ensure the protection of rights during the diagnosis and detention of patients. The correspondence further argued that the patients' rights were violated and that the confinement conditions were poor. The complainants contended that the Unit's administration and the facilities that were offered were not subjected to an impartial review by the system. The Act was silent on patient restitution for rights abuses and did not address legal help for prisoners. The communication also alleged the denial of patients' voting rights.

The Commission upheld the right to health, encompassing access to healthcare facilities and services without discrimination. It emphasized the need for states to take particular action to guarantee the implementation of the right to health and to give mental health sufferers special treatment. The Commission declared that the LDA should be repealed and that mental health sufferers should receive proper material and medical care after concluding that the government had breached provisions of the Charter.

In *Jawara v Gambia*⁵³, the former president of The Gambia, Sir Dawda Kairaba Jawara, ousted in a military coup, brought allegations against the military government of the Gambia, citing numerous violations of the African Charter. The communication accused the respondent state

⁵⁰ Victor Ayeni, *A Guide to the African Human Rights System*, Business Print Pretoria, 2016 2

⁵¹ (2009) AHRLR 75 (ACHPR 2009)

⁵² (2003) AHRLR 96 (ACHPR 2003)

⁵³ (2000) AHRLR 107 (ACHPR)

of abusing power, disregarding due process, and ousting the jurisdiction of the courts through decrees. The respondent challenged the admissibility, citing non-compliance with Article 56 criteria.

The Commission, emphasizing futility in exhausting local remedies under adverse conditions, considered the availability, effectiveness, and efficiency of remedies. Concluding that the Gambia's situation hindered local remedies, the Commission held that media-based elements did not render the communication inadmissible.⁵⁴

Implementation of the Decisions of the African Commission in Nigeria

In an effort to put the African Commission's recommendations into practice in Nigeria, especially with regard to the African Charter's individual complaints system, the complainant seeks redress from a state party, demanding specific remedies or broader legislative changes to prevent future violations.⁵⁵ The African Commission takes on a quasi-judicial role, interpreting tasks that are comparable in judicial proceedings, even though it is not a judicial body and its recommendations are not legally obligatory.⁵⁶ Since there are no legally mandated consequences for a state's non-compliance with the recommendations, the African Commission lacks a prescribed mechanism for ensuring follow-up with its recommendations. As a result, only modest progress has been made in getting the Nigerian government to comply with the Commission's recommendations.⁵⁷

In the past, the African Commission just found infractions and did not offer remedies; it did not offer solutions in individual communications. It developed the habit of creating suggestions over time, varying from all-encompassing pleas to targeted measures.⁵⁸ In the year 2000, a notable shift occurred when the African Commission made detailed recommendations in the SERAC Communication, setting a potential precedent for future cases. Acknowledging the lack of an implementation mechanism, comprehensive suggestions were formulated and implemented to guarantee state adherence to the African Charter and the attainment of relief for those who had lodged complaints. However, the majority of these suggestions just served to persuade governments to "take the necessary steps" or "draw the necessary legal conclusions" in order to abide by their commitments under the African Charter.⁵⁹

⁵⁴ Victor Ayeni Op. Cit.

⁵⁵ M Tardu *'The protocol to the United Nations Covenant on Civil and Political Rights and the Inter-American system: A study of coexisting petition procedures'* (1976) 70 (4) American Journal of International Law 784

⁵⁶ Ibid

⁵⁷ Morne Van Der Linde, *Considering the Interpretation and Implementation of article 24 of the African Charter on Human and Peoples' Rights in Light of the SERAC Communication*, African Human Rights Law Journal,, <https://www.corteidh.or.cr/tablas/R21586.pdf> accessed 8th December, 2023.

⁵⁸ Ibid

⁵⁹See Communications 140/94, 141/94 & 145/95, Constitutional Rights Project and others v Nigeria, Thirteenth Annual Activity Report and Communications 147/95 & 149/96 Sir Dawda K Jawara v The Gambia, Thirteenth Annual Activity Report.

In the SERAC Communication,⁶⁰ the African Commission found Nigeria in violation of various Charter articles and issued specific recommendations related to environmental protection in Ogoni land. Remarkably, the African Commission expressed interest in seeing its recommendations carried out by requesting updates from the administration regarding the state of relevant institutions. With no inherent follow-up mechanism, NGOs, particularly those initiating communications, have assumed the role of monitoring compliance. The case of SERAC exemplifies such efforts, encompassing strategies like public awareness campaigns, engagement with relevant organizations, and monitoring governmental committees.

However, it is apparent that non-governmental organizations (NGOs), exemplified by entities like SERAC, exhibit inconsistencies in their pursuit of all recommendations, particularly those related to prosecution and compensation. This highlights a critical weakness in the current framework and underscores the necessity for Nigeria and the African regional human rights system to establish a comprehensive follow-up mechanism akin to those that effectively function in the European and Inter-American systems.⁶¹ Developing a process like to the Inter-American system, which includes hearings, information requests, and the release of compliance reports, seems appealing when applied to the African setting.⁶²

The creation of a follow-up mechanism can benefit from the Inter-American system's effective tactics while also taking into account the particular socioeconomic conditions of Africa. The possibility of forming the African Court on Human and Peoples' Rights in conjunction with the African Commission offers a chance to design a framework that adheres to Inter-American system norms.

The Nigerian judiciary has, at times, displayed a willingness to enforce the recommendations of the Commission. On 14th November 2005, a Federal High Court of Nigeria, while relying on the African Commission's recommendation in SERAC v. Nigeria ruled that gas flaring in the Iwerekhan Community of Delta State was a violation of the constitutional guaranteed rights to life and dignity, which include right to "a clean, poison - free, pollution-free, healthy environment.

Nevertheless, despite this encouraging example, there are a number of obstacles that prevent the Nigerian court from consistently implementing the Commission's provisions. The primary one is that the Nigerian judiciary is not totally independent, and political factors can have an impact on judicial decisions. There exist considerable constraints on the independence of the Nigerian judiciary, as political factors can occasionally impact judicial rulings. This may be especially true when judgments force the government to deal with delicate subjects or make big policy adjustments.

⁶⁰ Communication 155/96 : Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria

⁶¹ Morne Op. Cit.

⁶² Ibid

Role of the Courts in the Implementation of ACPHR in Nigeria

The Nigerian courts possess the power to make rulings and judgments requiring the government and other entities to adhere to the Commission's decisions and the entirety of the Charter. The Commission's recommendations may also be implemented and applied to particular instances within the national legal system with the use of the judiciary's interpretive powers. This process requires careful consideration of the context and specific circumstances of each situation. In the case of *SERAC v. Nigeria*, the Supreme Court acknowledged the binding nature of the Charter and decision regarding environmental degradation in the Niger Delta, firmly holding the judiciary's willingness to engage with international human rights principles.

Courts can issue binding judgments and orders compelling the government, public officials, and other actors to comply with the recommendations of the Commission and the provisions of the African Charter and can grant injunctions to prevent the government or other actors from taking actions that would violate the Commission's recommendations or the Charter itself. This can be particularly effective in situations where immediate action is required to protect human rights. Courts can hold individuals and entities in contempt of court for failing to comply with their orders and judgments related to Commission's decisions.

The court's duty to apply Commission decisions and Charter provisions—which the Commission uses—while avoiding violating local legislation is still up for debate, though. The requirement for national courts to interpret Commission's decisions in a manner consistent with domestic laws creates a delicate balancing act. On the one hand, it is obligatory to uphold the sovereignty of the state and ensure legal coherence within the national legal system. On the other hand, it is imperative to ensure that domestic laws do not undermine the fundamental human rights principles enshrined in the Charter.

Role of Nigeria Constitution on Implementation of the ACHPR

There are intricacies surrounding the implementation of decisions made by the AC. Nigeria, as a signatory to the ACHPR, is bound not only by international legal obligations but also by the constitutional framework outlined in Section 12 of the constitution. The expectation is clear—the provisions of the ACHPR should be reflected in the legislative and governance structures of the nation, with the judiciary serving as a key player in this transformative process. This means the focus goes beyond mere ratification of the treaty; it involves practical application of the human rights principles through the various decisions of the African Commission, within the Nigerian legal landscape.

Common Barriers Associated with Implementation of ACHPR

It is notable that there are barriers to the implementation of the precepts of the ACHPR in many member states. While some member states would ratify the instrument and adopt it, some would ratify with reservations and many others with ratification without adoption. In any category, the AC and the other institutions have a mandate in common, which is the advancement of the human and peoples' rights in Africa. Furthermore, every member state has some sort of limitations hampering the full implementation of the decisions of the ACHPR in the states. Peculiar among the limitations are: the domestic provisions/legislations, the policies

of the government, religious belief, the type and system of government, judicial independence and lots more.

Barriers Associated with Implementation of ACHPR in Nigeria

Nigerian judiciary is faced with several challenges on implementation of ACHPR in Nigeria. The major one is judicial independence as affected by different factors discussed below.

Appointment and Removal of Judicial Officers

As previously stated, the president and governor of each state, who constitute the executive arm, appoint the judicial officers of the Federation. The Nigerian Constitution's appointment procedure yields two approaches: the first is by the President or Governor acting on the NJC recommendation and confirmation by Senate or the House of Assembly, respectively while the second method is by the President or Governor acting on the recommendation of the NJC. It is possible to influence the appointment process so that the judicial officers nominated become stooges of the administrative branch. Judicial appointment ironically has become a thing of loyalty and while the executive cannot appoint a person who was not recommended, they can exploit the weakness in the enabling law to thwart the appointment of a person, who though recommended, is not their preference. This was the case in Rivers State when Governor Rotimi Chubuike Amaechi refused to appoint Hon. Justice D. Okocha as Chief Judge of Rivers State.⁶³ The discretion to appoint judicial officers by the executive is a lacuna in the Nigerian body of laws and it has a negative effect on judicial independence and autonomy.

The executive's power to remove judicial officers is an addendum to their appointment. The abuse of power in Nigeria is a persistent issue when it comes to the removal of judges by the executive branch. For instance, In 2019, Justice Walter Onnoghen, the Chief Justice of Nigeria, was purportedly suspended by the President Buhari-led executive in flagrant disregard for procedure stipulated by law (and he later resigned).⁶⁴

Administration of Judicial Oath the last stage in the appointment procedures of a judicial officer in Nigeria is that such an appointee must subscribe to the judicial oath which has often been administered by the President for the Chief Justice of the Federation and Justices of the Supreme Court, President and Justices of the Court of Appeal and heads and Judges of other Federal Courts, among others. The Governor of a state administers such oath on newly appointed Chief Judge and judicial officers of a state. The President or Governor may seize that sacred moment, either in words or demeanour or both, to instill in the psyche of the appointee that his appointment is an act of benevolence conferred by him/her (the President or Governor)

⁶³ Vanguard, *Unending controversy over River's Acting Chief Judge's appointment*, <https://www.vanguardngr.com/2013/09/unending-controversy-over-rivers-acting-chief-judges-appointment/> accessed 25th November, 2023.

⁶⁴ Odigbo, J., & Udalla, E. *Politics of Regime Survival in Nigeria's Fourth Republic (1999–2019)*. In *Anonymous Power* (pp. 419-464). Palgrave Macmillan, Singapore. 2022

The low integrity, greed, corruption and flamboyance of the executive exert so much influence on judicial officers who are also not only members of society but critical stakeholders of the social contract that birthed the country. Thus, corruption is one of the inroads being exploited to frustrate the independence of judicial officers in Nigeria. Corruption in the judiciary manifests through some dishonest judicial officers collecting bribes through their employed agents or by themselves, or through Court Registrars, Lawyers collecting money from clients to settle judicial officers or through the generosity of members of the executive arm⁶⁵. This background therefore, it is very easy for the executive to bait and influence some of these judicial officers to dance to their tunes. It is instructive to note that these issues formed the background that provoked the 'Sting Operation' by the State Security Service (SSS) which culminated in the unproven charges in *FRN v Ofili-Ajumogobia & other or, FRN v Ngwuta, FRN v Okoro and Nganjinwa v FRN*⁶⁶

Funding of Judiciary

The involvement of the Federal and State governments in the budgetary process of the judiciary has negatively affected its independence in Nigeria. Although sections 84(2)(4)(7) and 121(3) of the CFRN 1999 (as amended) grant financial autonomy to the judiciary by stipulating that the recurrent expenditure of judicial officers of the Federation and States shall be a charge upon the Federation or State Consolidated Revenue Fund, and there is no provision for the capital expenditure of the judiciary.⁶⁷ It is therefore a wanton opportunity for the executive arm to exploit to compel the judiciary into subservience.

The Nigerian Constitution has done so well in the security of tenure and remuneration of judicial officers most especially as the remuneration of judicial officers is made a charge on the Federation Consolidated Revenue Fund⁶⁸. However, the security of tenure of judicial officers is threatened by the other conditions of service which are determined by the political class, especially the executive. Thus, a judicial officer who, by law, gives verdict against the executive has his security of office threatened and this is seen in many cases in Nigeria. Also, the salaries, allowances and other social facilities of judicial officers are poor compared to those of the political class (especially the Executive) who earn higher. These, no doubt, have given rise to corruption in the judiciary as most judicial officers now dance to the tunes of the political class who dangles the carrot and stick making the independence of the Judiciary a myth than reality.

⁶⁵ Bazuaye, B., & Oriakhogba, D. *Combating corruption and the role of the judiciary in Nigeria: beyond rhetoric and crassness*. Commonwealth Law Bulletin, 42(1), 125-147. (2016)

⁶⁶ Mrabure, K. O., & Awhefeada, U. V. *Onnoghen's cjn conundrum, exercise of the executive powers of the president and the practice of separation of powers in Nigeria*. Commonwealth Law Bulletin, 2020 46(3), 440-460

⁶⁷ Mohammed, A. A. (2016). *The Challenges of The Doctrine of Separation of Powers Under the 1999 Nigerian Constitution*. PhD Diss., Faculty of Law, University of Abuja

⁶⁸ Ononye, I. U., Oguekwe, U. D., & Oguekwe, A. U. *Independence of The Judiciary: The Nigerian Experience*. Nnamdi Azikiwe University, Awka Journal of Public and Private Law, 2020 10.

Political Interference in Judicial Matters

Executive lawlessness is a cankerworm that has eaten deep into Nigerian democratic fabric and is posing a big challenge to judicial independence or autonomy. Executive lawlessness is an abuse of the executive powers. In Nigeria, executive lawlessness ranges from disobedience to court orders, non-compliance with due process of law and resort to self-help. It is trite that the executive is a body responsible for the implementation or execution of policies, laws and orders. Ironically, this agency tasked with carrying out the constitution is also the one violating its provisions and showing disrespect for judicial rulings. The court per Eso JSC in *Military Governor of Lagos State v. Ojukwu*⁶⁹ stated thus on executive lawlessness:

“It is very a serious matter for anyone to flout a positive order of a Court and proceed to taunt the Court further by seeking a remedy in higher Court while still in contempt of the lower Court. It is more serious when the act of flouting the order of the Court ...is by the executive. Executive lawlessness is tantamount to a deliberate violation of the Constitution... the essence of the rule of law it should never operate under the rule of force or fear.”

Recently, Dasuki and Elzakzaki were granted bail by the court but the executive refused to obey. This means that, to the disadvantage of judicial independence, the executive only submits to court orders that further its joint or several interests.⁷⁰ Considering further, the Executive Approval of Policies of the Judiciary, some policies formulated by the judiciary for effectual delivery of justice are subject to the approval of the President or Governor who is the head of the Executive, before implementation. For instance, the Multi-Door Court by the Rivers State Judiciary was subject to approval of the Governor.⁷¹ This power of approval enables the Executive arm to weigh on the effect(s) of such policies to the Executive and to consider whether or not to approve such policy (ies). This further aids the Executive to interfere on the independence of the judiciary in Nigeria.

The main concerns with the aforementioned restrictions, which affect the Federal Republic of Nigeria as a member state, are the restricting statute and the judiciary's independence. It is noteworthy that the provisions of the ACHPR are to a large extent, socio-economic in nature, they are provided for in the 1999 Constitution of the Federal republic of Nigeria (as amended). They are largely contained in the Chapter II of the constitution and more specifically, within sections 13-24 of the Constitution. This aspect of the constitution is conventionally and constitutionally made non-justiciable. This means that, by the virtue of section 6(6)(c) of the Constitution, matters contained therein in Chapter II are excluded from the jurisdiction of any court in Nigeria. Section 6(6)(c) oust the Courts' jurisdiction to attend to matters of the nature contained in Chapter II of the 1999 Constitution. This section provides as follows:

⁶⁹ (1986) LPELR-3186(SC).

⁷⁰ Taiwo, O. L. (2021). The Sanctity of Rule of Law, National Security and Personal Liberty in Nigeria. *KIU Interdisciplinary Journal of Humanities and Social Sciences*, 2(1), 218-239.

⁷¹ PM News, Rivers: *Wike inaugurates Multi-door Courthouse*, https://pmnewsnigeria.com/2021/10/14/rivers-wike-inaugurates-multi-door-courthouse/#google_vignette accessed 27th November, 2023.

Shall not, except as otherwise provided by this constitution, extend to any issue or question as to any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Derivative Principles of the state policy.⁷²

This is to say that the above provision of the Constitution does not only oust Chapter II of the Constitution, but also, matters of like nature. In the light of this limiting reality as it concerns Nigeria, the hope for implementation of the decision of the ACHPR is mere judicial activism. This comes to play when the court takes on the trick of purposive interpretation of the law and facts before it in a way to reflect the innovations of the ACHPR, and this can only be achieved when the judiciary is independent.

On the other hand, if the provision of Section 6(6)(c) of the Constitution is removed today without addressing the variants around the independence of the judiciary, full implementation would still be in the dream as the court would be seen eagerly sacrificing matters relating to the ACHPR on the altar of court technicalities if found to be against the interests of the Executive Arm of Government.

CONCLUSION

A few facts highlight the African Commission's mission by first identifying the novelties found in the ACHPR's regulations. It mentioned that the Charter is the first legally binding international instrument to recognise the rights of more than one individual- the recognition of collective right and protection thereof. It also established that is the first legally binding international legislation to make the socio-economic rights justiciable and among several other provisions. The research went further to elaborate the functions of the AC as touching on implementing the provisions of the Charter under the general protective and promotional missions. There is establishment of clear relationships among the variables awakening the thought provoking discussions around comparing the ACHPR's provisions for the socio-economic rights on the national and the international scale.

Several general factors are reportedly responsible for limitations of implementation of ACHPR provisions by member states among which is judicial independence as a major factor in Nigeria. Further to this, factors that are responsible for the legal limitations on the implementation of the decisions of the AC were made expoundable and one of such limitations disenabling the implementation of decisions was described as the Constitutional provisions for the non-justiciability of the socio-economic right in the chapter II of the Nigerian Constitution.

Also, emphasis was placed on the scheme of the African Commission, an institution of the African Charter on Human and Peoples' Rights in ensuring the implementation of its decisions by member states. The research further juxtaposes landmark decisions of the African Commission side by side the recent decisions by the Nigerian judiciary (either unanimous or unpopular).

⁷² Constitution of the Federal Republic of Nigeria 1999, Section 6(6)(c).

With all facts presented, examined and examinable, it is safe opinion that the implementation of the decisions of the AC by the member states through the judiciary is a matter more of academic exercise than reality. Taking from the facts presented, the member states still struggle with different self-developed limitations such that presents the implementation of the decisions of the commission only more evasive each time it is considered. The provisions of the ACHPR are still largely a matter of objectives that are not for immediate realization by majority of the parties thereto; and few are completely indifferent to this global legal civilization. Much is yet to be said of the deliberate collapse of the judicial structure that could enable this fundamental shift. The play-out of the different variables, such as the independent judiciary, non-justiciability of the socio-economic rights and national legal and administrative limitations in Africa, has become the major impediments over the time.

The legal obligations stemming from international treaties, coupled with the unique dualist stance of Nigeria, have formed the backbone of the country's commitment to upholding human rights standards as delineated in the ACHPR. Landmark decisions, such as *SERAC v Nigeria* and *Purohit v The Gambia*, serve as compelling illustrations of the African Commission's role in addressing critical human rights issues.

This study emphasized the important role of the Nigerian judiciary in enforcing Commission decisions, shedding light on instances where the judiciary has demonstrated its willingness to engage with international human rights principles, notably in the SERAC case. However, inherent challenges, including judicial independence causing judiciary's susceptibility to political influence, necessitate the need for comprehensive strategies to fortify the implementation process.

Recommendations

The following recommendations are put up to strengthen the implementation of African Commission decisions in Nigeria and promote a strong human rights framework:

- a. Reforms to the legislations to guarantee the judiciary's full autonomy in all areas of their activities in Nigeria.
- b. Protecting the judiciary from undue political interference and ensuring impartiality in the decision-making process.
- c. The Commission establishing thorough follow-up mechanisms.
- d. The Commission should take a bold step further in the direction of placing some level of restrictions to the enjoyment or results of cooperation by states that fail to implement the decisions of the commission.
- e. Non-Governmental Agencies (NGOs) ought to work together with the Commission to create a unified and tenacious strategy that guarantees efficient accountability and follow-up.