



The Right to Water under the African Human Rights System: Normative Foundations and Enforcement Challenges

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ABSTRACT

Safe, sufficient water access remains a pressing human rights problem in Africa, where many people lack reliable access to water. This article primarily assesses the extent to which African regional human rights legal instruments enshrine water rights and evaluates how regional human rights bodies promote and enforce them. Therefore, the study explores the extent to which the right to water is entrenched in the African Charter-based framework, and appraises the jurisprudential developments and enforcement challenges affecting its realisation. To achieve these aims, the study utilizes a doctrinal and jurisprudential research approach, which relies on an analysis of primary regional human rights instruments and decisions of the African Commission and the African Court. The study found that although the water right is protected either explicitly or implicitly through the interpretation of related provisions, its enforcement is beset by various reasons.

Keywords: African Regional Human Rights System; Enforcement Mechanisms; Water Rights; Socio-Economic Rights; Water Justice

1. Introduction

Ensuring safe and adequate access to water is an absolute prerequisite for human survival, dignity, and development. Although the water right is not specifically articulated within the ambit of earlier generations of international instruments safeguarding human rights, it has garnered recognition over time as an important human right, by inferring it from the right to life, health, and an adequate standard of living (UN Committee on Economic, Social and Cultural Rights [CESCR], 2003). On the global scale, water rights were first formally recognised by the United Nations' General Assembly in 2010 (UNGA, 2010). In this landmark decision, the Assembly clarified that clean and safe water forms a critical basis for the preservation of life and the exercise of all other rights. In addition, countries have demonstrated their commitment to ensuring water access through international and continental political actions. The incorporation of water in the Sustainable Development Goals is a testament to this commitment (SDG, 2015). The African Union has demonstrated its political commitment to the availability of water and sanitation by including them in its Agenda 2063 and designating 2026 as the Year of Water (African Union Agenda 2063 and 2026 Year of Water Sustainability). Despite the UN's formal recognition of water rights and international and regional political commitments, the realisation of water rights remains challenging. This is particularly true for Africa, where water scarcity, inadequate infrastructure, ecological degradation, and climate change have exacerbated the existing socioeconomic conditions (World Meteorological Organization, 2025). Let alone other African countries, the Republic of South Africa, which is Africa's leading economy, has found the right to water to be one of the most violated rights, along with the rights to food, education, health and social security (South African Human Rights Commission, 2024/2025). Therefore, addressing the current African water state of affairs demands strong regional human rights protection, standards and a strong enforcement mechanism.

Grounded on the above-mentioned situation in Africa, this article examines whether the existing African regional mechanisms for human rights protection provide an adequate legal protection to water rights and if institutional arrangements are in place to enforce them into action. Therefore, the study first examines the legal foundation of water rights in the continental human rights treaties developed by Africa. It then examines the status of the institutional continent's human rights protection, interpretation, and monitoring bodies to implement the water rights and identifies

institutional and operational bottlenecks impeding the enforcement of these rights. Finally, the study wrapped up with succinct conclusions.

2. Conceptual and Theoretical Framework

Human rights laws sustainably acknowledge that Water rights are a basic to human dignity and survival, and broader development goals. Although the International Covenant on Economic, Social and Cultural Rights (hereinafter 'the ICESCR') is mute regarding water rights, the CESCR's General Comment 15 later clarified that water rights are implicitly derived from the covenant's Articles 11 and 12 (CESCR, 2003). In this comment, the Committee has defined the rights as a human entitlement, which is sufficient, safe, acceptable, physically accessible, and affordable for personal and household consumption. These comments, combined with the recognition of the water rights by the UN General Assembly, give the water rights a broad legal basis under international law. These instruments offer a high level of conceptual clarity and underscore the global consensus that water is a human right. However, the fact that both instruments are non-binding may limit their applicability.

The substantive elements articulated under the General Comment No 15 of the CESCR provide critical benchmarks for evaluating state compliance regarding the obligation to ensure water accessibility. "Availability" refers to the uninterrupted and adequate supply of water for consumption, sanitation, hygiene, and related domestic functions. "Accessibility" entails accessibility within physical reach, economic affordability, elimination of inequality, and accessing water-related information. Water should be safe for drinking and within reasonable physical reach of individuals, including the vulnerable. "Quality" entails that water be "safe for drinking, i.e., free from harmful contaminants, and of reasonable colour, odour, and taste" (CESCR, 2003). These elements provide clear frameworks for water rights, and mandates state to safeguard them as much as their available resources allow (ICESCR, 1966).

The other major theoretical debate relates to the derivative and autonomous nature of the water right. The right was customarily viewed as not standalone, but a derivative of other socio-economic rights. However, the General Assembly's recognition and the evolving CESCR comments indicate that the water right is gradually heading towards becoming a standalone right.

The water right exhibits mutual interdependence with all basic human entitlements. Particularly, the water right is inextricably linked to healthy ecology, life, health, and dignity. The absence of water access results in preventable diseases and undermines public health systems. It also undermines basic human dignity. Environmental degradation and water source pollution threaten the quality of water, thereby demonstrating the linkage between human rights protection and ecology.

Enforceability of water right is further influenced by the socio-economic rights justiciability argument. While it is argued that resource constraints negate judicial intervention, recent jurisprudence shows that courts are able to assess minimum core obligations and reasonableness of state responses (Liebenberg, 2010). The minimum core doctrine, which is supported by CESCR (2003), emphasises that states must guarantee essential minimum of rights irrespective of resource constraints, which enhances the practical feasibility of water rights within global and continental human rights regimes.

3. Normative Foundations of the Water Rights in the African Human Rights System

Water right doesn't receive an explicit recognition in the African Charter on Human and Peoples' Rights (hereinafter 'the ACHPR'), though the charter remains an overarching rights instrument. Despite this omission, the normative basis for water rights is traceable to certain substantive articles of the same Charter and to other African regional instruments. According to the African Commission, water rights are implicitly derived from the rights to the highest attainable standard of physical and mental health and to a general satisfactory environment conducive to development under the ACHPR. This argument upholds that the water right is indispensable for enjoying these two rights.

Anchored in the normative framework of the ACHPR, the African Commission on Human and Peoples' Rights (hereinafter 'the African Commission') interpreted the water rights stemming from Articles 16 and 24 of the ACHPR. In *Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria*, the Commission found that the state's failure of averting environmental pollution and water-source contamination represents a breach of the right to healthy and satisfactory environment, as enshrined in the ACHPR. Therefore, these findings demonstrate that the water right is implicitly derived from the ACHPR.

Unlike the ACHPR, an explicit sanitation and water rights are recognized African Charter on the Rights and Welfare of the Child (hereinafter 'the African children's Charter'). Article 14 of the Charter obliges states to ensure that children in Africa get adequate nutrition and have access to safe drinking water. The Charter takes a lead in guaranteeing standalone water rights and acknowledging the heightened risk attached to water-related health problems. However, since the Charter only applies to children, the water rights protected therein cannot be transferred to other sections of society.

The Protocol to the African Charter on the Rights of Women in Africa (hereinafter referred to as 'the Maputo protocol') is another important framework for safeguarding the rights to water and nourishment on the continent. This protocol, under Article 15, entitles women in general and, specifically, vulnerable rural women to access adequate nutrition and clean water (the Maputo Protocol, 2003). The preferential recognition of water rights to women is encouraging, given that African women bear a disproportionate burden in accessing water.

Recourse to interpretative guidance of general comments buttresses the binding normative water rights. Within African jurisdiction, the African Commission's general comments on socio-economic rights elucidate state obligations to provide social services, including water. The same impressive progress in global human rights regimes supported developments in African regional water rights. In particular, the ICESCR and the CESCR's General Comment No. 15 are instrumental in elucidating the scope of water rights and the corresponding obligations of states.

4. Institutional Protection Mechanisms

The existence of institutional mechanisms capable of enforcing the water rights directly guaranteed by various human rights treaties or indirectly derived from them is crucial. The African Commission oversees the state parties' implementation of the rights that are contained in the ACHPR, thereby reviewing the state reports, as well as examining non-state communications such as those by individuals and NGOs (the African Charter, articles 45, 47 and 55). By anchoring these mandates, the Commission has broadened the scope of rights beyond those explicitly recognised therein. The *Social and Economic Rights Action Center (SERAC) and Another v. Nigeria*, presented above, is a typical example. This decision demonstrates the commission's readiness to expand the interpretation of the African Charter to the greatest degree possible, thus ensuring the effective enforcement of rights guaranteed in the African Charter and associated human rights standards. Despite this strength, the commission is hampered by enforcement bottlenecks, as its decisions are merely recommendatory. Therefore, its decisions lack binding legal force and thus rely on the state's cooperation.

The African Court on Human and Peoples' Rights (hereinafter 'the African Court') interprets regional normative instruments and issues decisions with legal force. However, some circumstances force the African Court to accept fewer cases than other continental humanitarian courts. The states' reluctance to ratify the establishment protocol of the court to avoid accountability, and the ratified states' unwillingness to agree on the court's competence to accept individual applications and several supply and cost-related bottlenecks (Frans Viljeon, 2013). Although the Court's case law on water rights remains in an incipient stage of development, it has delivered vital decisions. Its judgment in *African Commission on Human and Peoples' Rights v. Kenya* (the Ogiek case) laid a significant ground for safeguarding water rights on the continent. In this case, the court found a direct nexus between the indigenous peoples' right to ancestral lands, resources and the realisation of their water rights (the African Court, 2017).

An interplay between national courts and regional mechanisms for human rights is central to safeguarding human rights. The African human rights system operates under complementarity tenet, which requires pursuing all available local remedies before seeking recourse at regional mechanisms. The national courts are the primary enforcement organs. Where local law protects socio-economic rights, courts can deal directly with water-related grievances. Regional bodies are supervisory and normative bodies and guide the harmonization of local and regional law.

The National Human Rights Institution (NHRS) are indispensable actor in the human rights advancement. Recognized by the UNGA Paris Principles, the NHRIs contribute towards promoting awareness and monitoring the implementation of state obligations related to social as well as economic entitlements, including water and sanitation. Therefore, serving as an interface between local governments and regional bodies, NHRIs make positive contributions for advancement and enforcement of rights.

5. Jurisprudence on the Water Rights

The water, which was denied direct recognition in the ACHPR, has gained an implicit protection through the progressive interpretation of the treaty's provisions. The role of African regional institutions for human rights protection in the advancement of water rights is noteworthy. In particular, the analysis, decisions and interpretations of the African Court and Commission have been crucial to the emancipation and development of the right.

The case of *Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria* is an instrumental decision in embedding water rights in Africa. The communication concerned severe ecological degradation caused by oil exploitation in the Niger Delta, which seriously compromised the Ogoni peoples' entitlement to health through pollution of land and water sources. In this communication, the commission found that Nigeria had breached the right to live in a sound and healthy environment in contrast to the respondent's obligation under the ACHPR (the African Commission [ACHPR], 2001). The commission particularly argued that Nigeria failed to take proactive preventive safeguards against pollution and safeguard its citizens from corporate malpractices. Although the commission neither found the violation of water rights in favour of the complaints nor articulated a standalone right thereof, its decision is notable as it established a nexus between safe drinking water, human health and environmental protection. More significantly, the Commission upheld that the respondent state bears dual responsibility: to respect rights by abstaining from interfering with them and safeguard individuals from third-party interference with the exercise of social and economic entitlements. Therefore, the findings of the SERAC are regarded as a pioneering milestone for the quasi-judicial review and amenability of the second-generation rights in Africa (Odinkalu, 2004).

Progressive decisions related to water rights have been issued by the African Court in addition to the above developments. The judgment on *the African Commission on Human and Peoples' Rights v. Kenya* formed a vital precedent in this regard (the African Court, 2017). In this case, the court examined whether forced eviction of Ogiek indigenous peoples from their traditional territory, the Mau Forest, constituted the applicant's alleged violation of human rights. Although the gist of the case concerned land, culture, religion, and natural resources, it also involves access to water, as the forced eviction of the homeland undermines their indigenous access to water. The African court

acknowledged indigenous communities' collective rights to natural resources and the intractable linkage between land and the survival of the community. The Ogiek case is a strong example of the AC's willingness to apply the African Charter dynamically in line with the evolution of human rights and evolving needs of the international community.

Apart from these cases, new emerging issues of water-related claims heard by the African Commission and Court reflect an increasing awareness of environmental justice and vindication of socio-economic entitlements. Communications involving issues of forced evictions, pollution, and provision of public services often touch upon issues of water pollution or denial of access. Although these issues are not raised under an explicit heading of "right to water," these disputes increasingly invoke Articles 16 and 24 of the African Charter and defer to interpretative guidelines of international jurisprudence, such as General Comment No. 15 of the Committee on Economic, Social and Cultural Rights (Committee on Economic, Social and Cultural Rights [CESCR], 2003).

Judicial construction of socio-economic rights within the African regional human rights system has moved it toward recognising their enforceability. Traditionally, socio-economic rights were viewed as programmatic and subject to progressive realisation, raising questions of judicial overreach and resource allocation. Nevertheless, the African Commission in SERAC rejected the non-justiciability of socio-economic rights, stating that states have an immediate obligation to protect the minimum standards required (ACHPR, 2001). Moreover, the African Court has been clear that the rights contained in the Charter must be interpreted holistically and in accordance with contemporary human rights norms (AfCHPR, 2017). This approach is consistent with the broader international trend that recognizes minimum core obligations and the justiciability of essential socio-economic rights (CESCR, 2003).

Nonetheless, challenges persist. The majority of these cases are based on derivative arguments that ground water access as a right with reference to other rights. Even as such an approach has helped incrementally, it might undermine clarity and enforcement. The non-explicit codification of water access as a right under the African Charter has further led to interpretive ambiguity. Despite these challenges, it has become clear that the cumulative interpretative framework of the Commission and the Court's landmark decision has led to the gradual development and consolidation of normative principles regarding water access as a fundamental human right. Through purposive interpretation and reference to international law, water has increasingly been affirmed as essential for human dignity, health, and environmental sustainability.

6. Enforcement Challenges

The enforcement of rights guaranteed by the African regional mechanism for human rights is a serious challenge. This could undermine Africa's efforts to establish continental treaties to protect and promote rights such as the water rights. In particular, the implementation of the water right is problematic, given that it is not explicitly enshrined in the continent's human rights treaty, ACHPR, and is inferred by interpretation from other rights. This may negatively impact legal certainty and the development of consistent jurisprudence, particularly when states dispute their obligations.

The fact that the implementation of social and economic rights is inherently resource-intensive and the pervasive resource constraints in Africa may render the enforcement of water rights challenging. Moreover, the gradual realisation of these rights under ICESCR, based on the mobilisation of available resources, may further delay their enforcement. However, the gradual realisation principle doesn't absolve the state from its duty to fulfil the essential minimum of water rights, as enshrined under General Comment 15. However, most African states are facing serious economic constraints in providing access to drinking water. Lack of resources is among the primary excuses advanced by the states for protracted dereliction of the water rights. Even though resource constraints are a legitimate concern, delaying the implementation of an immediate and minimum core obligation concerning the water rights is unacceptable within global international human rights regimes.

Another limiting aspect is state sovereignty and political resistance. The African mechanisms for human rights are based on respecting state sovereignty. In addition, the effectiveness of the regional human rights mechanisms always depends on the cooperation of the States when implementing their decisions. The states' perceptions of the regional mechanism for human rights as excessively overindulging in judicial scrutiny of socio-economic policies may breed the states' reluctance to both African Commissions' resolutions and the African court's rulings (Viljoen, 2012). Political sensitivities surrounding the governance of natural resources, land rights, as well as utilities may create a high level of political resistance.

Another issue that has been an ongoing problem is the absence of robust compliance and implementation mechanisms for quasi-judicial and judicial decisions. Although the decisions of the African Court carry a binding legal force, there are no strong enforcement mechanisms in place to put them into action. For instance, the African Court's dependence on the African Union Assembly to monitor compliance with its decisions demonstrates that there are no strong measures in place (African Court on Human and Peoples' Rights [AfCHPR], 2017). Moreover, there are no binding measures on the recommendations that come from the African Commission, and their implementation depends on the states themselves. In addition, delays in the implementation of the decisions, lack of reparations, and lack of reporting weaken the entire system. Therefore, any advancements that may be made by the jurisprudence may not be reflected in the water access.

The water service privatization and corporate accountability add complexity to this area. In most African countries, water services have been either partially or fully privatized as a result of structural adjustment programs and economic

reforms. While this has been seen as a way to ensure equitable and non-discriminatory delivery of water, it is challenged because it results in high tariffs, thus denying marginalized groups access to water services. However, international human rights instruments recognize that states have to reserve the right to regulate private companies to ensure that the privatization of water does not deprive individuals of their right to water (CESCR, 2003). In *SERAC v. Nigeria*, the African Commission maintained that states are duty-bound to protect individuals from third parties' harmful activities, including corporations. However, this has been complicated due to poor regulations, a lack of oversight capacity, and corruption. In addition, transnational corporations that deal with extractive industries also contribute to water pollution. These challenges, collectively, underscore the deficiencies of the African human rights structure. Notwithstanding the developments in jurisprudence, which underscore an emerging understanding of water as an indispensable precondition for the enjoyment of the right to health, dignity, and the environment, the enforcement gap remains significant. To overcome these challenges, it is necessary to better articulate the normative standards, strengthen institutional follow-up, as well as enhance domestic incorporation of regional norms, as well as state and non-state actor accountability. Otherwise, the transformative promise of the right to water in Africa will remain aspirational rather than actual.

7. Comparative and Regional Perspectives

A comparative analysis of regional systems of human rights would offer invaluable insights for further elucidating how the right to water can be interpreted, enforced, and enhanced in Africa. Although regional systems differ in their textual content and institutional arrangements, both the American and the European protection mechanisms offer valuable jurisprudential and institutional approaches that could be relevant to Africa.

Through progressive interpretation, the Inter-American Court of Human Rights (hereinafter referred to as 'IACtHR') has been enhancing the protection of socio-economic rights, although they are not explicitly guaranteed in the regional human rights Convention. The court interpreted the right to life, personal integrity, property, and a healthy environment, also implicitly encompassing the water right, and thereby addressed the normative gap in the regional convention. In *Yakye Axa Indigenous Community v. Paraguay*, the court determined that the respondent state's failure to ensure the indigenous communities' access to a safe water source and basic conditions of subsistence was a violation of states' positive obligation to protect the right to life (IACtHR, 2005). In *Lhaka Honhat (Our Land) Association v. Argentina*, the Court defined that the water right forms a constitutive element of the right to a healthy environment, while reaffirming the state's positive duty to provide access to natural resources (IACtHR, 2020).

The European regional mechanism for human rights offers another alternative model. The European perspective is unique as the European Convention for Human Rights lacks an explicit provision on socio-economic entitlements, and the European Court for Human Rights (hereinafter referred to as 'ECtHR') is traditionally oriented on civil and political rights adjudication. Nonetheless, the court has inferred water rights through the provisions of rights enshrined in the convention. In *López Ostra v. Spain*, the court found that a grave environmental adulteration of living conditions can violate Article 8 of the Convention (ECtHR, 1994). Though this case is not directly concerning water rights, it indicates that severe environmental degradation that impacts water quality results in a breach of states' responsibility to the environment. Furthermore, the European Social Charter specifically protects socio-economic rights, including health and housing rights, and has been interpreted to include access to essential services (European Committee of Social Rights, 2018).

The African mechanisms for human rights protection should draw lessons from European and American models of regional human rights. Firstly, interpretation is a formidable tool to develop water rights out of express protection provided to related rights. Secondly, the recognition of minimum core obligations can clarify and enhance the effectiveness of provisions. Thirdly, the development of effective remedies and follow-up action can be crucial in translating judicial decisions into action. Finally, the integration of environmental, indigenous, and socio-economic considerations can be a powerful tool in providing more effective support for communities that are particularly vulnerable to water insecurity. By employing comparative approaches sensitive to regional realities, Africa can further entrench water rights in the legal and institutional mechanisms.

8. Strengthening Enforcement and Norm Development

The legal protection and practical enforcement of water rights in the African mechanism demand addressing the identified legal and institutional shortcomings. Therefore, first, to rectify the ACHPR's failure to specifically acknowledge the water rights and derive them from other rights, the regional human rights system should establish self-standing water rights. This will improve the enforcement and remove legal ambiguity that could be used by state actors to delay compliance.

Another important area for development is the expansion of jurisprudential interpretation. The significance of the African human rights bodies' interpretation and protecting socio-economic rights in general and water rights in particular is evidenced in the *SERAC v. Nigeria* case and the *Ogiek* case (African Commission, 2001; AfCHPR, 2017). Further development of jurisprudence that explicitly recognizes water as an autonomous right would help to solidify its normative status. Support for civil society-led strategic litigation, as well as capacity-building for judges and commissioners, would be useful in deepening judicial engagement with water rights.

Improving judicial accessibility to the African Court is also important. Many African people and communities are unable to access justice because of the procedures and costs involved in the process. Improving victims' direct access to the

Court, reducing procedural costs, and simplifying procedures would enhance access to justice, particularly for underprivileged communities, who are most affected by breaches of their right to water resources (Viljoen, 2012). Moreover, local courts should be encouraged to adjudicate water rights by using regional human rights frameworks, enabling the human rights frameworks of Africa to operate collaboratively.

Strengthening mechanisms for monitoring and follow-up is equally important. African states resist implementing the African Commission recommendations or the African court's decisions. For example, the Ogiek case, decided by the African Court in 2017, was not implemented by the Kenyan government, prompting the court to issue a new order in 2025 (AfCtHPR, 2025). Developing strong National Human Rights Institutions (NHRIs) is crucial for monitoring and verifying human rights and for pressuring states to comply with their positive obligations regarding water rights. In addition, publicising state reports on compliance and working with civil society organisations would encourage state action (UNGA, 1993).

Lastly, the enforcement of water rights necessitates integrating them into domestic normative frameworks. Incorporating the right to water into national legislation will provide constitutional protection, thereby facilitating its enforcement and prioritisation. National laws should establish minimum benchmarks for water quality, accessibility, and affordability. It should also establish a regulatory framework for both public and private water service providers. This integration will ensure a balance between regional obligations and domestic law.

9. Conclusion

This article examined the normative frameworks and their corresponding enforcement arrangements, as well as the implementation challenges of water rights within the African regional mechanisms for human rights. Although the African Charter fails to explicitly recognise water as an autonomous right, derivative protections under Articles 16 and 24, together with complementary instruments such as the African Children's Charter and the Maputo Protocol, provide a normative basis for water-related claims. Landmark jurisprudence, including *SERAC v. Nigeria* and the *Ogiek case*, has further reinforced these protections by interpreting socio-economic and environmental entitlements to include access to water. Comparative perspectives within the European and Inter-American regional mechanisms for human rights illustrate lessons to be learned from dynamic interpretation, recognition of minimum core obligations, and integrated environmental-socio-economic approaches. Despite these advances, significant normative and institutional gaps persist. The absence of explicit codification, resource constraints, political resistance, and weak enforcement mechanisms continues to hinder the effective realization of water rights. Privatization and limited corporate accountability exacerbate access disparities, while reliance on derivative interpretation leaves legal protections vulnerable to contestation. Monitoring and follow-up mechanisms are underdeveloped, reducing compliance and limiting tangible improvements in water access. Prospects for water justice in Africa depend on concerted legal, institutional, and policy reforms. Providing the legal recognition to water as a fundamental right, expanding jurisprudential interpretation, enhancing access to the African Court, integrating water rights into national constitutions, and strengthening monitoring and accountability mechanisms are essential steps. By adopting these measures, the African human rights system can translate normative acknowledgement into practical enforcement, ensuring safe and sufficient water access becomes a reality for all, particularly marginalized and vulnerable communities.

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