RIGHTS UNDER ATTACK SERIES

2. THE SOVEREIGNTY PRETEXT

Challenging its use to avoid human rights accountability



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Summary

Part of ISLA's Rights Under Attack series, this legal analysis examines how anti-rights actors invoke state sovereignty to portray human rights scrutiny as foreign interference and shield governmental decisions from accountability. These distortions threaten equality and non-discrimination protections, women's rights and sexual rights. Situating sovereignty within histories of empire, African self-determination and human rights protection, the research examines recurring strategies: portraying treaty interpretation as the invention of rights, invoking culture or religion to evade legal justification, selectively opposing external influence, and restricting access to accountability mechanisms. Uganda provides an illustrative case study of constitutional interpretation, reproductive autonomy and contested external influence. The analysis distinguishes legitimate disagreement over legal interpretation from claims that sovereignty exempts states from applicable obligations. It argues that countering anti-rights lawfare requires identifying the precise distortion, the governing legal standards and the consequences for rights-holders. Sovereignty protects political independence, it does not place public power beyond human rights accountability.

1. Introduction: The right to state sovereignty and the present moment

State sovereignty is a foundational principle of international law, protecting the sovereign equality, political independence and territorial integrity of states. Within the Charter of the United Nations (UN Charter), these protections coexist with commitments to human rights and international cooperation.[1] For African peoples, sovereignty also carries the historical significance of struggles against colonial domination and for self-determination. Its emancipatory promise concerns the freedom of peoples, not simply the authority of governments. That distinction is central to 'The Sovereignty Pretext'. This legal analysis examines how anti-rights actors invoke sovereignty to portray human rights scrutiny as foreign interference and resistance to accountability as defence of the people. Their contrast between a supposedly 'real' right to state sovereignty and 'fictitious' rights allegedly dictated by United Nations (UN) officials constructs a false opposition. It presents protections claimed by women and sexual and gender minorities as threats to national independence, shifting attention from the harm experienced to the supposed illegitimacy of those seeking protection.

The distortion operates through three connected moves. First, it equates sovereignty with the preferences of those exercising state power. Governmental positions on gender, sexuality and reproduction are presented as expressions of a single national identity. People challenging those positions can then be cast as advancing foreign interests rather than asserting rights within their own political communities. This framing obscures the distinction between a people's self-determination and governmental immunity from scrutiny. The African Charter on Human and Peoples' Rights (African Charter) protects self-determination alongside individual equality, dignity and bodily integrity.[2] Women and marginalised communities belong to the peoples in whose name sovereignty is asserted. Second, the narrative turns disagreement about the interpretation of rights into a denial of their legal existence. Calling a protection 'fictitious' bypasses examination of the applicable guarantee, the alleged violation and the state's obligations. It also obscures express African legal commitments. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), for example, protects reproductive rights and expressly provides for medical abortion on specified grounds.[3] Portraying reproductive protections collectively as foreign inventions sidelines both African treaty-making and African women's demands for bodily autonomy. Third, treaty bodies, independent experts and intergovernmental review mechanisms have different mandates and powers. The African Commission on Human and Peoples' Rights (African Commission) is itself an African treaty institution, not a UN body.[4] These distinctions are obscured when the absence of binding judicial force is presented as proof that an interpretation and the right it concerns have no legal significance.

Colonial histories and continuing inequalities in international power require serious scrutiny. Their invocation cannot, however, settle whose interests a particular sovereignty claim serves.

1 Charter of the United Nations (UN Charter) arts 1(2)-(3), 2(1), 2(4), 2(7) and 55-56.

2 African Charter on Human and Peoples' Rights arts 2-5 and 20.

3 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa art 14(1) and (2)(c).

4 African Charter arts 30–31 and 45.

Where demands for reproductive healthcare, protection against violence or access to remedies are recast as foreign threats, sovereignty becomes a means of excluding people from protection. The sovereignty pretext attacks human rights by discrediting their legitimacy and the avenues through which rights-holders seek accountability. This research does not examine violations of state sovereignty. Rather, it analyses how the legal concept of sovereignty itself is being doctrinally distorted. The objective is to demonstrate that contemporary anti-rights actors seek not merely to resist human rights recommendations, but to fundamentally redefine sovereignty in ways that dismantle the interpretive architecture of international human rights law. The legal analysis reaffirms sovereignty as a principle that strengthens, rather than weakens, international accountability and constitutional governance.

2. Sovereignty, empire and the protection of peoples

Sovereignty's significance in Africa cannot be separated from the history of empire. International law developed through an unequal order in which European powers asserted sovereign authority while denying equal standing to colonised peoples. The General Act of the Berlin Conference of 1885 regulated competing imperial claims over African territories without African representation among its signatories. Its provisions concerning the establishment of authority over new coastal possessions illustrate how legal arrangements between recognised powers could facilitate the subordination of other peoples.[5] This history gives objections to external domination enduring force. African struggles for self-determination challenged that exclusion. Independence concerned peoples' freedom to determine their political status and pursue their development, not merely the transfer of governmental power. The Declaration on the Granting of Independence to Colonial Countries and Peoples, adopted by the United Nations General Assembly (UNGA) in 1960, connected liberation from foreign domination with fundamental human rights.[6] Sovereignty and human rights were connected within the legal language of decolonisation, rather than positioned as competing entitlements.

The African Charter reflects this relationship. Its preamble links the elimination of colonialism and other forms of domination with the elimination of discrimination. Its provisions protect peoples' self-determination while requiring states to protect individual rights, including through the elimination of discrimination against women.[7] This framework does not erase tensions between collective authority and individual freedom. It makes those tensions questions of rights and accountability within Africa's own legal order. The sovereignty pretext draws selectively from this history. It invokes resistance to foreign domination while marginalising the people who contest oppression within the state. Where governmental positions are treated as the sole expression of African identity, women and sexual and gender minorities must defend their belonging before their claims receive consideration. The resulting distortion is an appropriation of anti-colonial language. It presents scrutiny of discriminatory state conduct as domination, while obscuring the

5 General Act of the Berlin Conference (signed 26 February 1885) arts 34-35.

6 Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) UN Doc A/RES/1514(XV) paras 1–2.

7 African Charter preamble and arts 1-3, 18(3) and 20.

power exercised over those seeking protection. Recognising this move neither dismisses unequal international power nor assumes that every external intervention is legitimate. It identifies how a claim grounded in liberation can be used to delegitimise rights-holders and obstruct examination of the violations they allege.

3. The content and scope of the right to state sovereignty

State sovereignty encompasses sovereign equality, political independence and the capacity to enter international legal commitments. These attributes operate within a legal order that also recognises human rights obligations. The UN Charter protects sovereign equality and domestic jurisdiction alongside commitments to human rights and international cooperation.[8] The sovereignty pretext separates these interconnected commitments, presenting governmental freedom from scrutiny as sovereignty's defining feature. When states voluntarily ratify or accede to human rights treaties, they exercise sovereign authority to accept legal obligations. African states have done so through participation in instruments including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the African Charter. The applicable commitments depend on each state's treaty participation and any legally effective reservations, they should not be assumed to be identical across the continent.

Under the Vienna Convention on the Law of Treaties (VCLT), treaties in force bind their parties and must be performed in good faith. Internal law ordinarily cannot justify non-performance.[9] Voluntary acceptance does not make subsequent compliance optional. The distortion occurs when scrutiny of an accepted obligation is portrayed as an external demand requiring renewed governmental consent. A state may dispute an interpretation, but that disagreement does not itself extinguish the underlying obligation. Consent must also be described precisely. Ratification of a treaty does not necessarily establish acceptance of every optional complaints procedure, nor does continued participation imply agreement with every supervisory finding. Conversely, treaty consent does not exhaust the sources of international obligation, customary international law and peremptory norms require separate consideration.[10]

Treaty bodies supervise implementation and interpret the guarantees entrusted to them. Their interpretations must be assessed through their mandates and the applicable rules of treaty interpretation, including treaty language, context, object and purpose.[11] They are not equivalent to treaty amendments, and their legal significance cannot be determined merely by whether a government welcomes their conclusions. In *Toonen v Australia*, the Human Rights Committee interpreted the reference to 'sex' in ICCPR arts 2(1) and 26 as including sexual orientation. Its operative finding concerned privacy under art 17, read with art 2(1).[12] This illustrates the

8 UN Charter arts 1(3), 2(1), 2(7) and 55-56.

9 Vienna Convention on the Law of Treaties arts 26-27.

10 VCLT arts 38 and 53.

11 VCLT arts 31-32.

12 Human Rights Committee Toonen v Australia Communication No 488/1992 (31 March 1994) UN Doc CCPR/C/50/D/488/1992 paras 8.7, 9 and 11.

application of existing guarantees to a particular form of discrimination, rather than the creation of a separate treaty by officials. Similarly, CEDAW General Recommendation 24 addresses discriminatory barriers to healthcare and recommends reform of punitive abortion laws, Human Rights Committee General Comment 36 explains obligations concerning abortion access under the right to life.[13] African institutions perform related functions within their respective mandates. The African Commission is an independent expert body established by the African Charter, not a forum in which governments review one another. The African Court on Human and Peoples' Rights (African Court) exercises judicial authority under its founding Protocol, subject to jurisdictional and access requirements.[14] Portraying these institutions as external intrusions obscures African states' role in establishing regional accountability.

The Universal Periodic Review (UPR) provides a different form of scrutiny. Established within the United Nations Human Rights Council (HRC), it is an intergovernmental process through which states review other states' human rights records. Recommendations are made by states, not dictated by UN officials. The state under review indicates which recommendations it supports and which it notes.[15] These recommendations are not judicial orders, however, noting a recommendation does not release a state from an independently applicable obligation addressed by it. The African Peer Review Mechanism (APRM) similarly demonstrates that scrutiny beyond national institutions need not contradict sovereignty. It is a voluntarily joined African arrangement for reviewing governance and supporting improvement through national assessment and peer engagement. It is distinct from treaty supervision and adjudication, and its recommendations should not be presented as binding judgments. Its relevance is that African states have themselves created processes through which governance becomes a matter of shared assessment. The sovereignty pretext obscures this institutional agency when it portrays accountability as inherently alien to African political independence.

The understanding of sovereignty as responsibility further distinguishes protection of the state from protection of governmental discretion. Kofi Annan's account of state and individual sovereignty directed attention to the freedoms of the people whom states serve. The 2005 World Summit Outcome subsequently affirmed the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.[16] African states had already adopted a related commitment. The Constitutive Act of the African Union (AU Constitutive Act) combines sovereign equality and non-interference with the African Union's (AU) right to intervene, pursuant to an Assembly decision, in grave circumstances involving war crimes, genocide and crimes against humanity.[17] This matters, African institutional developments were not simply an adoption of the later UN formulation. These commitments do not authorise unrestricted intervention or make every human rights violation a responsibility-to-protect situation.

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13 Committee on the Elimination of Discrimination against Women 'General Recommendation No 24: Article 12 of the Convention (Women and Health)' (1999) UN Doc A/54/38/Rev.1 ch I paras 14 and 31(c); Human Rights Committee 'General Comment No 36: Article 6 - Right to Life' (3 September 2019) UN Doc CCPR/C/GC/36 para 8.

14 African Charter (note 2 above) arts 30–31 and 45; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights arts 3, 5, 30 and 34(6).

15 UNGA Res 60/251 (15 March 2006) UN Doc A/RES/60/251 para 5(e); HRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1 annex paras 1-4 and 32.

16 K Annan 'Two concepts of sovereignty' *The Economist* (18 September 1999); '2005 World Summit Outcome' UNGA Res 60/1 (16 September 2005) UN Doc A/RES/60/1 paras 138-139.

17 Constitutive Act of the African Union arts 4(a), 4(g)-(h) and 4(m).

Treaty law permits reservations within defined limits. The VCLT excludes reservations prohibited by the treaty, outside its permitted categories, or incompatible with its object and purpose.[18] Reservations cannot be treated as an unrestricted licence to subordinate human rights commitments to religion, culture or domestic political preference. Their wording, permissibility and legal effect require examination. As a result, these distinctions expose what the sovereignty pretext conceals, states participate in different accountability arrangements with different legal consequences. The distortion collapses those differences into a single allegation of foreign command, then uses that allegation to discredit protections claimed by women and marginalised communities. What is placed under attack is both the substance of their rights and the possibility of independently examining whether those rights have been violated. States consent to become treaty parties through ratification, consent to specific obligations through reservation processes, and consent to interpretive evolution through continued participation in treaty body dialogues and regional mechanisms. This multi-layered consent structure reflects the voluntary character of international human rights law and the central role of sovereign choice in creating and maintaining international legal order. To claim that UN officials 'dictate rights' to unwilling states collapses this complex consent architecture into a caricature that serves ideological rather than analytical purposes.

The legal understanding of sovereignty has developed since the establishment of the UN. Classical accounts emphasised exclusive territorial authority and non-intervention. Contemporary international law situates these protections within a legal order that also encompasses treaty obligations, international cooperation and respect for human rights.[19] Sovereignty does not place states outside that order. The interpretive practices of the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the African Commission and the African Court give practical meaning to human rights commitments within their respective mandates. Treaty interpretation requires consideration of the text in its context and in light of the treaty's object and purpose, together with the other elements specified in arts 31–32 of the VCLT. In *Ahmadou Sadio Diallo,* the International Court of Justice (ICJ) recognised the significant interpretive weight of the Human Rights Committee's work while retaining its own responsibility to interpret the treaty.[20] Therefore, accountability operates through differentiated legal authority, rather than an undifferentiated power of 'UN officials' to dictate rights. Properly understood, sovereignty operates through five interrelated principles:

I. States enjoy equal sovereign status within the international legal order.

II. States exercise authority over their domestic institutions subject to their constitutional arrangements and applicable international obligations, including those arising under treaties, customary international law and peremptory norms.

III. States possess the legal capacity to conclude treaties and participate in international organisations. Voluntary ratification is an exercise of that capacity.

18 VCLT arts 19-23.

19 UN Charter arts 1(3), 2(1), 2(7) and 55–56.

20 VCLT arts 31-32; *Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)* (Merits) [2010] ICJ Rep 639 para 66.

IV. States must perform treaties in force in good faith and fulfil the reporting, cooperation and other supervisory obligations applicable to them. Disagreement with a recommendation does not itself extinguish the underlying obligation.

V. Sovereignty coexists with human rights protection. Within the African Charter, peoples' self-determination is protected alongside individual rights and the state's duty to give effect to them. Governmental preferences cannot be treated as exhausting the rights and interests of the people.

These principles establish that sovereignty is neither absolute nor inherently incompatible with international accountability. The sovereignty pretext distorts this relationship by retaining the language of state authority while excluding its legal constraints. In doing so, it portrays scrutiny of alleged violations as an attack on the state, displacing attention from the rights and dignity of those seeking protection.

4. Architecture of protection

Human rights protection depends on institutions through which legal commitments can be interpreted, scrutinised and enforced. Treaty bodies, regional commissions and courts, peer-review mechanisms and independent experts perform different functions within this architecture. The sovereignty pretext obscures those differences, presenting scrutiny beyond national institutions as a single exercise of illegitimate external authority. Its effect is to challenge not only particular findings but the legitimacy of the processes through which rights-holders seek accountability. UN treaty bodies comprise independent experts who supervise implementation of the relevant conventions. Their authority rests on the applicable treaty and institutional arrangements. Through reporting procedures, General Comments or General Recommendations and, where the necessary jurisdiction has been accepted, individual communications, they assess compliance and explain the scope of protected rights.[21] Their outputs do not all have the same legal effect and should not be equated with binding judicial decisions. Equally, the absence of binding judicial force does not make an interpretation legally irrelevant or render the underlying treaty obligation optional. As discussed above, the ICJ's approach in Diallo recognises the weight of expert interpretation without treating it as beyond judicial examination.

The African regional system likewise distinguishes supervision from adjudication. The African Commission promotes and protects rights, considers communications, examines state reports and interprets the African Charter within its mandate. The African Court complements that protective role through judicial decisions binding on the parties, subject to the applicable jurisdictional requirements.[22] These institutions derive their authority from African legal instruments. Describing their scrutiny as foreign interference obscures the regional commitments through which African states established accountability beyond domestic institutions. The UPR and APRM, discussed in Section 3, provide distinct forms of peer review. They should not be conflated with treaty-body findings or court judgments. Nor should UN Special Procedures be treated as another treaty

[21] International Covenant on Civil and Political Rights arts 28 and 40; Optional Protocol to the International Covenant on Civil and Political Rights arts 1–5; Convention on the Elimination of All Forms of Discrimination against Women arts 17–18 and 21.

[22] African Charter arts 30, 45, 55-56 and 62; Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights arts 2-3, 5, 28(2), 30 and 34(6).

court, their independent experts operate under mandates established within the UN human rights system. Country visits require the state's agreement, while other mandated activities include communications concerning alleged violations and thematic reporting.[23]

Institutional criticism is not inherently anti-rights. A state may challenge jurisdiction, contest an interpretation or identify procedural shortcomings. The distortion arises when disagreement is converted into a categorical claim that scrutiny is illegitimate merely because it occurs beyond national institutions, or that rights become 'fictitious' when supervisory bodies apply them to politically contested harms. For women and sexual and gender minorities, these mechanisms can provide avenues to document violations, contest discriminatory laws and pursue accountability where domestic protection is inadequate. Efforts to discredit them have consequences beyond institutional reputation. They can delegitimise complaints, discourage cooperation and weaken pressure for implementation. The sovereignty pretext attacks this architecture by portraying access to protection as an intrusion upon the state, shifting attention away from the violations that make independent scrutiny necessary.

5. Uganda as an illustrative case study of constitutional interpretation and selective external influence

Uganda is examined as an illustrative case study, rather than as representative of Africa's diverse constitutional systems. Its recent litigation concerning reproductive autonomy and divorce permits examination of how constitutional rights, legislative discretion and external intellectual sources interact in judicial reasoning. The selection also allows a concrete assessment of the distinction between transparent participation in constitutional proceedings and reliance on material whose introduction and testing are disputed. The analysis concerns these identifiable mechanisms, it does not assume that an adverse rights judgment necessarily results from foreign influence. Their relevance lies in the reasoning through which rights claims are evaluated and competing accounts of autonomy, family and public authority are legitimised.

In Human Rights Awareness Promotion Forum Uganda v Attorney General, the Constitutional Court considered challenges to abortion offences and the state's failure to enact legislation regulating termination of pregnancy.[24] Article 22(2) of the Constitution of the Republic of Uganda, 1995 (Ugandan Constitution) prohibits termination of the life of an unborn child except as authorised by law. The dispute concerned both the criminal provisions and whether the constitutional framework required Parliament to legislate. The majority dismissed the petitions and treated the legislative power contemplated by art 22(2) as permissive rather than mandatory. The minority opinion offered a contrasting framework grounded in purposive interpretation and a holistic reading of the Constitution. In her dissent, Justice Eva Luswata, with whom Justice Fredrick Egonda-Ntende agreed, considered Article 22(2) alongside Parliament's legislative responsibilities under Article 79(1) and (2). She reasoned that the absence of a law regulating

[23] HRC Res 5/1 (18 June 2007) UN Doc A/HRC/RES/5/1 annex parts I-II; HRC Res 5/2 (18 June 2007) UN Doc A/HRC/RES/5/2 annex arts 11-13.

[24] *Human Rights Awareness Promotion Forum Uganda v Attorney General* [2025] UGCC 24 (14 November 2025); Constitution of the Republic of Uganda, 1995 arts 22(2) and 79.

termination of pregnancy adversely affected the constitutional rights of women and girls and interpreted Article 22(2) as imposing a duty on Parliament to legislate. On this reading, the State's failure to enact the necessary legislation contravened Articles 22(2) and 79(1) and (2).[25] When these provisions are considered alongside constitutional guarantees of life, health, dignity, and equality, a different conclusion emerges. Parliamentary silence on abortion regulation does not reflect constitutional neutrality but creates conditions that jeopardise the very rights the Constitution promises to protect. Without clear statutory guidance, healthcare providers face uncertainty, women encounter arbitrary barriers to necessary medical care, and criminal law provisions inherited from colonial-era penal codes operate to punish rather than protect. The minority connected legislative omission and criminalisation to the rights and circumstances of women and girls.[26] The disagreement demonstrates that reproductive-rights claims arise within Uganda's constitutional order. A feminist reading asks what happens when legislative discretion leaves women bearing the consequences of criminalisation and uncertainty about lawful care. The constitutional question extends beyond institutional competence to the practical protection of life, equality and bodily autonomy. International obligations form part of that assessment, but their scope must be stated accurately. Uganda's reservations concerning arts 14(1)(a) and 14(2)(c) of the Maputo Protocol require consideration of their wording, validity and effect. They do not, by themselves, dispose of obligations arising independently under other applicable instruments.[27]

In *Innocent Ngobi Ndiko v Attorney General,* the Constitutional Court considered whether withdrawal of consent to marriage required its dissolution without proof of matrimonial fault. The Court retained the regulated divorce framework, while also finding discriminatory aspects of the judicial-separation provisions requiring adaptation.[28] The decision should not be characterised as an undifferentiated rejection of equality. Busingye Kabumba's critique identifies the majority's reliance on Scott Yenor, the British firm Holland Family Law and W Bradford Wilcox. He argues that these materials were introduced through judicial research without an opportunity for the parties to address them. His concern is not comparative engagement itself, but the authority accorded to propositions that had not been tested through the proceedings.[29] Kabumba identifies a similar issue in the reproductive-rights judgment, concerning reliance on Bernard Nathanson and the Charlotte Lozier Institute. He contrasts this with Women's Link Worldwide's participation as an admitted friend of the court, through which submissions were available for response. These

[25] Human Rights Awareness and Promotion Forum Uganda v Attorney General; Centre for Health, Human Rights and Development and Others v Attorney General, Constitutional Petitions Nos 25 of 2020 and 10 of 2017 (consolidated), Constitutional Court of Uganda (14 November 2025), dissenting judgment of Eva K. Luswata JCC, paras 156-165; judgment of Fredrick Egonda-Ntende JCC, paras 1-3.

[26] Human Rights Awareness Promotion Forum Uganda (note 28 above), majority and dissenting judgments; Human Rights Awareness and Promotion Forum & Center for Health, Human Rights and Development 'Joint statement on the Constitutional Court judgement in Constitutional Petitions Nos 25 of 2020 & 10 of 2017 on termination of pregnancy in Uganda' https://www.csmmua.org/wp-content/uploads/2026/01/Joint-statement-on-the-constitutional-court-judgement-in-constitutional-Petitions-Nos.-25-of-2020-10-of-2017-on-Termination-of-pregnancy-in-uganda-1.pdf

[27] African Commission on Human and Peoples' Rights Advocacy Framework for Lifting Reservations to the Maputo Protocol (2026), discussion of reservations to art 14 https://achpr.au.int/sites/default/files/files/2026-05/lifting-reservations-maputo-protocol-eng.pdf; VCLT (note 10 above) arts 19-23.

[28] *Innocent Ngobi Ndiko v Attorney General* [2025] UGCC 11 (18 August 2025).

[29] B Kabumba 'Expunging the ghost of Innocent Ngobi Ndiko: An appraisal of the Constitutional Court's decision on "no fault" divorce in Uganda — Part 5' The Observer (1 October 2025) https://observer.ug/viewpoint/expunging-the-ghost-of-innocent-ngobi-ndiko-an-appraisal-of-the-constitutional-courts-decision-on-no-fault-divorce-in-uganda-part-5/.

are attributed criticisms of judicial method, not findings that foreign organisations directed the Court's decisions.30 Comparative learning and participation by organisations from other jurisdictions can enrich adjudication. The relevant questions are whether a source has persuasive authority, whether empirical propositions are adequately supported, whether material contested propositions can be answered, and whether the resulting reasoning remains grounded in the Constitution.

Independent judicial research and foreign participation are not inherently improper. The concern arises where contestable factual or ideological propositions influence constitutional reasoning without adequate scrutiny, or where claims grounded in autonomy and equality are treated primarily as ideological positions rather than examined against constitutional guarantees. This provides a more defensible basis for examining selectivity. Where international human-rights interpretations are dismissed as alien while foreign conservative commentary is accepted without equivalent scrutiny, the distinction requires justification by reference to legal authority, evidential quality and constitutional principle. Foreign provenance alone cannot explain it. Uganda's constitutional provisions on popular sovereignty, constitutional supremacy, equality, fair hearing and the prohibition of a state religion supply domestic standards for that inquiry.[31] The cases do not, without further evidence, establish that the Court rejected human rights obligations expressly on sovereignty grounds. They nevertheless expose a weakness in the wider narrative that rights concerning sexuality, reproduction and family are foreign while restrictive positions are necessarily indigenous.

Documented cooperation between Ugandan political actors and foreign conservative organisations complicates claims that opposition to sexual rights is exclusively indigenous. Human Rights Watch's reporting on the 2023 inter-parliamentary conference in Uganda provides a concrete example of transnational participation. Such evidence supports scrutiny of selective objections to external influence. It does not, without additional evidence, establish that foreign organisations directed a judicial outcome or supplied a particular passage of judicial reasoning.[32] While judicial majorities defer to parliamentary inaction on reproductive rights in the name of constitutional interpretation free from international influence, Uganda's legislative and policy spaces have become penetrated by transnational evangelical movements whose theological and political agendas shape domestic law.[33] American Christian evangelical organisations have cultivated relationships with Ugandan parliamentarians and judges, providing training materials, drafting legislative language, and supplying legal arguments that later surface in judicial opinions and parliamentary debates.[34]

These influences operated without transparency during the drafting and passage of Uganda's Anti-Homosexuality Bills of 2009, 2014, and 2023, where evangelical talking points framed as 'African values' shaped legislative discourse despite their foreign origins. Parliamentary

30 B Kabumba 'The (Americo-Ugandan) "Christian Taliban" and the 1995 Constitution' *The Observer* (26 November 2025) https://observer.ug/viewpoint/the-americo-ugandan-christian-taliban-and-the-1995-constitution/.

31 Ugandan Constitution (note 28 above) arts 1-2, 7, 21 and 28(1).

32 Human Rights Watch *'They're Putting Our Lives at Risk': How Uganda's Anti-LGBT Climate Unleashes Abuse* (2025) 21-22 https://www.hrw.org/report/2025/05/26/theyre-putting-our-lives-risk/how-ugandas-anti-lgbt-climate-unleashes-abuse

33 M Oliver 'Transnational sex politics, conservative Christianity, and antigay activism in Uganda' (2013) 7 Studies in Social Justice 83.

34 Human Rights Watch *'They're Putting Our Lives at Risk': How Uganda's Anti-LGBT Climate Unleashes Abuse* (2025) https://www.hrw.org/report/2025/05/26/theyre-putting-our-lives-risk/how-ugandas-anti-lgbt-climate-unleashes-abuse

testimony featured American evangelical leaders who portrayed homosexuality as a western import requiring legislative response, inverting the actual historical record in which colonial-era sodomy laws constitute the true external imposition. The irony is inescapable. Political actors who condemn the UN, African Commission, or treaty bodies for 'foreign interference' simultaneously welcome and amplify ideological currents originating from foreign religious movements whose interventions lack the transparency, peer review, or accountability mechanisms that characterise legitimate international human rights engagement.

This selective deployment of sovereignty claims reveals their ideological function. The issue is not external influence *per se*, but resistance to norms that challenge patriarchal, heteronormative, and majoritarian power structures. International human rights norms are condemned because they protect bodily autonomy, gender equality, and sexual rights. Transnational conservative movements are welcomed precisely because they reinforce existing hierarchies and provide moral legitimation for discriminatory law. The Ugandan examples bring into view questions that sovereignty rhetoric can conceal, which sources receive legal authority, whose accounts of family and reproduction are accepted, and whether rights-holders can contest the propositions used against them. Neither an adverse judgment nor reliance on foreign material alone establishes anti-rights lawfare. The concern arises where claims of national autonomy are deployed selectively to discredit human rights protections while insulating competing positions from equivalent scrutiny.

6. Typology of distortion: how sovereignty is being attacked

The sovereignty pretext operates by turning recognised features of statehood into arguments against human rights protection. Sovereignty encompasses factual authority, legal status and judgments about political values, it cannot adequately be reduced to freedom from scrutiny.[35] Contemporary debates on women's rights and sexual rights across Africa are increasingly channelled through sovereignty rhetoric that frames international human rights norms as illegitimate external interference. Political leaders, legislators, and allied anti-rights actors assert that recommendations from UN treaty bodies, Special Procedures, and regional mechanisms constitute moral imperialism that imposes foreign values incompatible with African culture, religion, or national identity. This narrative portrays African states as passive recipients of 'dictated rights' while casting UN officials as hostile external forces engaged in cultural domination. The framing has proven politically effective, mobilising anxieties about colonial history and geopolitical inequality to delegitimise rights claims and shield governments from accountability. Understanding the potency of this narrative demands engagement with how sovereignty functions as a legal concept, historical practice and ideological construct.

The sovereignty invoked by anti-rights movements bears little relationship to sovereignty as understood in international law, constitutional theory, or African legal traditions. Instead, it operates as what might be termed 'sovereign-ism', an ideological posture that weaponises national identity and selective histories to resist accountability rather than genuinely expressing sovereign self-determination grounded in constitutionalism and binding international commitments. Anti-rights arguments take the legitimate protection of political independence and extend it into a

[35] JE Núñez 'State sovereignty: Concept and conceptions' (2024) 37 International Journal for the Semiotics of Law 2131, 2138-2141.

claim that accountability beyond national institutions is inherently improper. This bypasses the relevant questions: which obligation applies, what mandate authorises scrutiny, and whether the institution has acted within that mandate. Where an obligation arises under a treaty in force, its performance does not depend on renewed political approval. The VCLT requires good-faith compliance and ordinarily excludes internal law as a justification for non-performance. Sovereignty is distorted when disagreement with scrutiny is presented as sufficient to remove the obligation being examined.

Moreover, absence of an express reference to a particular group or circumstance is treated as conclusive, without examining whether broader guarantees of equality, privacy, dignity or health apply. Describing this process as 'UN officials dictating rights' also obscures differences between institutions and their powers. Treaty interpretation is not treaty amendment. Equally, an interpretation must be justified through the applicable legal framework, it is not immune from criticism. The distortion occurs when its reasoning is dismissed solely because its conclusion is unwelcome or its author operates internationally. As Diallo illustrates, expert interpretation can carry substantial legal weight without binding a court to adopt it. Besides, colonial exclusion from international institutions is historically important. It does not erase subsequent treaty commitments, the creation of African institutions or rights protections within domestic constitutions. The African Charter's preamble and art 60 expressly engage with the Universal Declaration of Human Rights (UDHR). Domestic implementation also varies. The Constitution of Kenya, 2010 makes ratified treaties part of Kenyan law under art 2(6). The Constitution of the Republic of South Africa, 1996 generally requires legislative incorporation, subject to the qualifying exception for self-executing provisions in s 231(4). These arrangements distinguish international obligations from their domestic operation. Neither can accurately be explained as officials simply imposing foreign law.

Anti-rights arguments may present particular understandings of culture, religion or family as a definitive national position against which rights claims must be measured. The distortion lies in treating that asserted position as sufficient to defeat protection, without examining the applicable rights and standards governing restrictions. It also marginalises women and sexual and gender minorities whose experiences and understandings form part of the society concerned. The African Charter contains no derogation clause permitting emergency suspension of its guarantees. This does not make every right absolute, restrictions remain subject to the Charter's requirements, including proportionality and preservation of the substance of the right. Claims of cultural incompatibility cannot replace that assessment. Assertions about historical authenticity also require care. Human Rights Watch traces Uganda's criminalisation of same-sex conduct to British colonial rule.[36] That supports scrutiny of claims that the relevant prohibitions are necessarily indigenous, it does not establish a uniform African history or a single precolonial position on sexuality. Abortion restrictions similarly trace to colonial-era statutes modelled on Victorian morality rather than indigenous African medical practices or traditional approaches to reproductive health. To invoke sovereignty as justification for maintaining these colonial inheritances requires sustained historical amnesia about the actual origins of restrictive laws and the authentic sources of contemporary African constitutionalism.

[36] Human Rights Watch 'They're Putting Our Lives at Risk': How Uganda's Anti-LGBT Climate Unleashes Abuse (2025) https://www.hrw.org/report/2025/05/26/theyre-putting-our-lives-risk/how-ugandas-anti-lgbt-climate-unleashes-abuse

The attack can continue after a finding has been issued. Invoking sovereignty or national values to justify non-implementation converts disagreement about a right into a claimed discretion over compliance. Anti-rights advocacy contributes to this distortion when it presents implementation as capitulation to foreign authority rather than performance of an applicable obligation. The legal status of the finding remains decisive. Under art 30 of the African Court Protocol, states parties undertake to comply with judgments in cases to which they are parties within the stipulated time and to guarantee execution. Treaty-body findings and peer-review recommendations must be assessed according to their own legal frameworks, they should not all be characterised as binding judgments. Nevertheless, their status does not extinguish independently applicable treaty obligations. Discretion over lawful implementation measures must not be confused with discretion to disregard the obligation itself.

Understanding sovereignty's multidimensional character is important in helping to expose how anti-rights actors collapse its complexity into reductive assertions. As Jorge Núñez observes, sovereignty is neither singular nor monolithic but comprises three interrelated dimensions that unfold across time and context, resisting any single exhaustive definition.[37] First, sovereignty manifests in factual capacity, the state's ability to govern territory and populations through effective administration, security apparatus, and institutional infrastructure. Second, it operates in normative legal status, encompassing the obligations and entitlements derived from constitutions, treaty ratifications, and participation in international institutions. Third, sovereignty functions in an axiological dimension, reflecting the values, identity narratives, and ideological commitments that states choose to elevate through law and policy.[38] Anti-rights discourse systematically distorts this multidimensional reality by reducing sovereignty to a single principle, freedom from international scrutiny. This reductive equation treats any external evaluation of domestic human rights practices as a sovereignty violation, regardless of whether such evaluation flows from treaty obligations the state voluntarily assumed, peer-to-peer mechanisms the state helped design, or regional systems the state participated in creating. The distortion operates by conflating three distinct concepts that international law keeps separate: sovereign equality among states in international relations, sovereign authority within domestic jurisdiction, and sovereign immunity from legal obligation. By treating these as synonymous, anti-rights actors construct a sovereignty that exists outside and above law rather than operating through and within legal frameworks.

Anti-rights actors portray interpretive guidance as illegitimate law-making, despite the fact that treaty interpretation constitutes a recognised function of international supervisory bodies. By denying the authority of these institutions, they seek to weaken the legal mechanisms through which voluntarily accepted treaty obligations acquire practical meaning. Their advocacy increasingly targets the procedures through which international accountability operates rather than challenging substantive rights directly. This includes arguments that treaty bodies exceed their mandates, that General Comments possess no interpretive authority, that Special Rapporteurs act without legal legitimacy, and that recommendations issued through the UPR constitute unlawful interference in domestic affairs.

Sovereignty claims can also support restrictions on the organisations and activities through which

[37] J E Núñez 'State sovereignty: Concept and conceptions' (2024) 37 International Journal for the Semiotics of Law 2131-21.

[38] J E Núñez 'State sovereignty: Concept and conceptions' (2024) 37 International Journal for the Semiotics of Law 2131-21.

rights-holders seek accountability. Uganda's Protection of Sovereignty Act 7 of 2026 provides a concrete example requiring scrutiny. Its definitions connect foreign interests with divergence from government policies and include certain ideological advocacy within political activities. It regulates specified policy engagement, registration and foreign funding.[39] The Act also contains significant exclusions in ss 2(4)-(5), and s 9(1)(b) expressly identifies respect for international law and treaty obligations as a foreign-policy principle. It must not be described as prohibiting all foreign-funded advocacy. The central question is whether particular restrictions satisfy Uganda's constitutional and international obligations, including requirements of legality, legitimate purpose, necessity, proportionality and non-discrimination.

These arguments deliberately mischaracterise international institutional design.

Claim to examine	Possible distortion	Consequence to investigate
'The institution is inventing rights'.	Misrepresenting interpretation of an existing obligation as treaty amendment, without examining its reasoning.	Denial of protection or remedies.
'This is exclusively a domestic matter'.	Treating domestic competence as an exemption from applicable obligations.	Shielding legislation or executive action from scrutiny.
'Our culture requires this restriction'.	Substituting assertions of cultural authenticity for legal justification.	Discriminatory exclusion or restricted autonomy.
'Foreign-supported advocacy undermines sovereignty'.	Equating peaceful advocacy or cooperation with unlawful interference.	Restrictions on expression, association and participation.
'These institutions have no authority over us'.	Ignoring a mandate or jurisdiction that legally applies.	Obstruction of complaints, monitoring or implementation.

7. Selectivity and contradictions in anti-rights resistance

The sovereignty invoked by anti-rights actors to resist international human rights accountability operates through selective application that exposes its ideological rather than principled character. Anti-rights actors condemn UN treaty bodies, Special Procedures, and regional human rights mechanisms as illegitimate interference while simultaneously welcoming and amplifying transnational conservative and religious influences that shape domestic law and policy with minimal transparency or democratic accountability. This selective deployment reveals that the concern is not external influence itself but resistance to norms that challenge existing power structures based on gender, sexuality, and reproduction.

Transparent international human rights mechanisms operate through established procedures

[39] Protection of Sovereignty Act ss 1-2, 7-9, 14-23.

with clear mandates, public documentation, and opportunities for state participation. Treaty body concluding observations emerge from constructive dialogue between state delegations and independent experts who review state reports, consider civil society submissions, and apply treaty provisions to assess compliance. Special Rapporteurs conduct country visits only with state consent, prepare reports based on verifiable evidence, and engage with government officials throughout fact-finding processes. The African Commission reviews human rights complaints under the African Charter, and it works alongside the African Court, which has the power to issue final, binding rulings on cases sent to it. These mechanisms embody transparency, peer accountability, and respect for state participation that sovereignty-based critiques ignore. States can respond to treaty body observations, engage Special Rapporteurs during missions, and participate in ACHPR Communications as parties. The entire process operates within legal frameworks that states created through voluntary treaty ratification and institutional design.

By contrast, transnational conservative and religious movements that influence African legislation and policy operate through opaque networks that circumvent democratic oversight. American evangelical organisations have established relationships with African parliamentarians, government officials, and civil society actors through training programmes, funding arrangements, and ideological partnerships that operate outside public scrutiny. These networks have shaped legislative initiatives restricting sexual and gender minority rights, reproductive autonomy, and gender equality across multiple African jurisdictions through model legislation, legal memoranda, and parliamentary testimony that launders foreign ideological content as authentic African values. The influence operates through what might be termed 'sovereignty bypassing', leveraging personal relationships, religious authority, and financial resources to shape domestic law without engaging the transparent institutional processes that characterise legitimate international cooperation. When American evangelical leaders testify before African parliaments about homosexuality or abortion as threats to family and nation, they exercise influence comparable to or exceeding that of UN treaty bodies, yet anti-rights actors embrace rather than resist such interventions. The differential treatment reveals that sovereignty concerns are weaponised selectively against human rights norms while foreign religious and ideological influences receive welcome as cultural reinforcement.

This pattern extends beyond religious movements to encompass economic and security domains where states readily accept external oversight and constraint. African states participate in international trade regimes that impose binding obligations on domestic economic policy, submit to World Trade Organisation dispute resolution that constrains legislative autonomy, and enter bilateral investment treaties that grant foreign investors access to international arbitration against host states. These economic commitments limit sovereign discretion far more substantially than human rights treaty obligations, yet they generate minimal sovereignty-based resistance because they serve elite economic interests rather than threatening existing hierarchies. Similarly, African states cooperate with international security institutions, participate in peacekeeping operations under UN mandates, and accept security assistance from foreign governments that often includes conditions on military aid and intelligence sharing. These security relationships involve direct foreign intervention in domestic affairs through training programs, equipment provision, and operational cooperation that shapes how states exercise a monopoly on legitimate force. Yet such arrangements rarely trigger sovereignty objections comparable to those levelled against human rights recommendations, revealing that sovereignty rhetoric serves as a selective shield rather than consistent principle.

The AU itself operates through institutions that constrain member state sovereignty in service of collective goals. As discussed earlier, its Constitutive Act establishes the right of the Union to intervene in member states in circumstances of genocide, war crimes, and crimes against humanity, explicitly subordinating sovereignty to protection of populations.[40] The existing African Court exercises jurisdiction under its 1998 Protocol over the interpretation and application of the African Charter, that Protocol and other relevant human rights instruments ratified by the states concerned, subject to the applicable jurisdictional requirements.[41] It must be distinguished from the merged African Court of Justice and Human Rights envisaged by the 2008 Protocol and the international criminal jurisdiction proposed through the 2014 Malabo Protocol. The AU's status list dated 22 May 2026 records only one deposited ratification of the Malabo Protocol, by Angola, against the fifteen required for entry into force.

Further, acceptance of a regional human rights instrument does not necessarily give individuals direct access to its court. Under arts 5(3) and 34(6) of the African Court Protocol, direct applications by individuals and relevant non-governmental organisations (NGOs) with observer status before the African Commission depend on an additional declaration by the respondent state. The Commission has a separate capacity to submit cases under art 5(1)(a).[42] Withdrawal of a declaration can restrict future direct access without terminating the state's participation in the Protocol or its substantive human rights obligations. In *Ingabire Victoire Umuhoza v Republic of Rwanda*, the Court recognised the validity of Rwanda's withdrawal but required one year's notice and held that the withdrawal had no legal effect on pending cases.[43] The distinction has practical importance. A Commission referral does not give an individual the same control over initiating proceedings as direct access. The withdrawal of that route can narrow opportunities for independent adjudication, even while treaty commitments formally remain in place. Nevertheless, withdrawal should not automatically be described as unlawful or proof of an anti-rights motive. The sovereignty distortion arises where its effect is misrepresented, for example, as extinguishing continuing obligations, or where scrutiny within the Court's lawful jurisdiction is portrayed as inherently illegitimate.

Other African courts also demonstrate that regional adjudication can give practical effect to rights. In *Registered Trustees of the Socio-Economic Rights and Accountability Project v Federal Republic of Nigeria and Universal Basic Education Commission*, the Economic Community of West African States (ECOWAS) Community Court of Justice reaffirmed the justiciability of education rights under the African Charter and directed Nigeria to cover a funding shortfall so that implementation of the basic education programme would not be impaired.[44] The East African Court of Justice (EACJ) provides a distinct route. In James Katabazi v Secretary General of the East African Community, it held that allegations involving human rights did not prevent it

40 Constitutive Act of the African Union (adopted 11 July 2000, entered into force 26 May 2001) art 4(h).

41 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (adopted 10 June 1998, entered into force 25 January 2004), arts 3, 5 and 34(6).

42 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (note 15 above) arts 5(1)(a), 5(3) and 34(6).

43 *Ingabire Victoire Umuhoza v Republic of Rwanda* Application No 003/2014 (African Court on Human and Peoples' Rights, Ruling on Jurisdiction, 3 June 2016) paras 67-69.

44 Registered Trustees of the Socio-Economic Rights and Accountability Project v Federal Republic of Nigeria and Universal Basic Education Commission Application No ECW/CCJ/APP/12/07, Judgment No ECW/CCJ/JUD/07/10 (ECOWAS Community Court of Justice, 30 November 2010) paras 26, 28 and 31.

from exercising its jurisdiction to interpret and apply the Treaty for the Establishment of the East African Community (EAC Treaty). Its decision addressed interference with a lawful court order as a breach of the Treaty's rule-of-law commitments. This was not an assertion of general human rights jurisdiction.45 Both examples locate accountability within legal arrangements established by African states, while preserving the differences between those arrangements.

This reveals how states can weaken accountability without formally renouncing their human rights commitments. Where a government invokes sovereignty to justify withdrawing direct access, the analysis must examine its stated reasons, the surrounding circumstances and the practical consequences for rights-holders. The availability of a Commission referral does not replace an individual's ability to initiate proceedings directly before the Court. Nevertheless, withdrawal should not automatically be characterised as unlawful or as proof of an anti-rights motive. The sovereignty distortion arises where a government portrays scrutiny within the Court's lawful jurisdiction as inherently illegitimate, claims that withdrawal extinguishes continuing obligations, or misrepresents its effect on pending proceedings. The resulting concern is concrete, individuals and eligible organisations lose an avenue through which they could independently seek judicial protection. These regional courts operate within Africa, staffed by African judges, applying treaty law that African states negotiated and ratified. Their decisions command respect as expressions of African legal integration rather than external interference, demonstrating that sovereignty and accountability coexist within legitimate legal frameworks. Their authority must be assessed by reference to the applicable constitutive instruments, jurisdictional requirements and obligations, rather than dismissed simply because scrutiny occurs beyond national institutions.

The selective invocation of sovereignty thus serves ideological gatekeeping, determining which external influences penetrate domestic legal order based on whether they reinforce or challenge existing power distributions. International human rights norms face sovereignty-based resistance because they protect women's rights and sexual rights that threaten patriarchal and heteronormative systems. Transnational conservative movements find ready access because they provide moral legitimation for discriminatory law and mobilise religious constituencies against rights claims. Economic arrangements escape sovereignty scrutiny because they serve elite interests even when constraining legislative autonomy. Security cooperation proceeds unimpeded because it reinforces state capacity to exercise coercive power. This selectivity exposes sovereignty rhetoric as strategic rather than principled. Were sovereignty genuinely the concern, consistency would demand equal resistance to all external influences, equal scrutiny of all international obligations, and equal protection of domestic autonomy across all policy domains. The actual pattern of selective deployment demonstrates that anti-rights actors invoke sovereignty instrumentally to achieve substantive goals, resisting accountability for gender-based discrimination, maintaining colonial-era moral legislation, and preserving hierarchies that subordinate women, sexual and gender minorities, and other marginalised populations.

Contemporary anti-rights movements increasingly pursue institutional strategies aimed at replacing existing human rights mechanisms with alternative normative frameworks. Rather than openly rejecting international human rights law, they establish parallel institutions, promote

[45] Treaty for the Establishment of the East African Community (signed 30 November 1999, entered into force 7 July 2000) arts 6(d), 7(2) and 27; James Katabazi v Secretary General of the East African Community Reference No 1 of 2007 (East African Court of Justice, 1 November 2007) 15-16.

alternative declarations, and seek reinterpretations of existing treaties that privilege ideological commitments over established legal standards. The Draft African Charter on Family, Sovereignty and Values illustrates this strategy. While invoking sovereignty and African ownership, the Draft Charter selectively omits established African human rights jurisprudence, elevates non-binding political declarations as normative sources, and proposes institutional arrangements that duplicate or undermine existing regional human rights mechanisms.[46] These initiatives seek not to strengthen African sovereignty but to fragment the coherence of the African human rights system and weaken established mechanisms of accountability.

8. Reclaiming sovereignty as responsibility

Countering anti-rights actors lawfare grounded in sovereignty rhetoric demands articulating sovereignty consistently with contemporary constitutional and international obligations within African constitutionalism and international law. Sovereignty is not immunity from accountability but the capacity and obligation to govern in accordance with constitutional commitments and international obligations freely assumed. This reconceptualisation draws from Africa's own legal traditions, where sovereignty was asserted through engagement with rather than rejection of universal human rights principles, and where constitutional frameworks embed international law as integral to the domestic legal order.

The liberation struggles that achieved independence across Africa invoked universal human rights principles to delegitimise colonial domination and assert the right to self-determination. African leaders who crafted post-independence constitutions drew from international human rights instruments while adapting them to address colonial legacies, cultural diversity, and developmental challenges. The Organisation of African Unity's adoption of the African Charter reflected this synthesis, creating a regional human rights instrument that honoured collective rights alongside individual protections, emphasised duties alongside entitlements, and recognised the indivisibility of civil, political, economic, social, and cultural rights.

African constitutionalism thus embeds international human rights law through multiple mechanisms. Many constitutions incorporate international treaties as domestic law upon ratification or grant treaties status equivalent to constitutional provisions. Courts across the continent interpret constitutional rights provisions through reference to international and regional human rights jurisprudence, treating treaty body General Comments, ACHPR Communications decisions, and comparative constitutional practice as persuasive authority. This interpretive approach, termed 'transformative constitutionalism', recognises that constitutional rights must be understood dynamically rather than frozen at the moment of textual adoption.[47]

Sovereignty within this constitutional architecture operates through horizontal and vertical dimensions. Horizontally, sovereignty manifests in relations among states as equals within

[46] Draft African Charter on Family Values and Sovereignty, advanced through the African Inter-Parliamentary Conferences on Family Values and Sovereignty (Entebbe, 2023-2025; Accra, 2026); https://www.the-isla.org/wp-content/uploads/2026/04/LegalAnalysis_CARA_AfricanCharter_ISLA2026.pdf

[47] E Kibet, Eric & C Fombad 'Transformative constitutionalism and the adjudication of constitutional rights in Africa' African Human Rights Law Journal 17.2 (2017): 340-366.

international legal order, with no state possessing inherent authority over others. Vertically, sovereignty operates in the relationship between state and population, where governmental authority derives legitimacy from serving the people rather than dominating them. Constitutional provisions establishing state structure, protecting fundamental rights, and subjecting governmental power to judicial review all express this vertical dimension, creating legal architecture that channels sovereign authority toward legitimate purposes while constraining its exercise against rights violations. International human rights obligations reinforce rather than undermine this vertical sovereignty by establishing external standards against which domestic governance can be assessed. When states ratify treaties protecting equality, dignity, bodily autonomy, and non-discrimination, they accept international scrutiny as a mechanism for strengthening domestic accountability. Treaty body observations, Special Rapporteur reports, and regional mechanisms provide external perspective on whether state practice aligns with constitutional commitments, offering analysis unconstrained by domestic political pressures that might otherwise compromise rights protection.

Popular sovereignty provides a domestic constitutional foundation for this argument. In Uganda, Article 1 locates sovereign authority in the people, while Article 2 subjects public authority to the Constitution. Read with constitutional equality guarantees, these provisions support the conclusion that governmental institutions cannot treat their own preferences, or those of a dominant constituency, as exhausting the people's sovereign will. For feminist lawyering, the practical task is to insist that women and marginalised persons remain participants in, and rights-holders under, the constitutional order. Appeals to sovereignty must be assessed against constitutional protections, rather than accepted as a substitute for that assessment. This external accountability serves sovereignty by enhancing state capacity to fulfil obligations to populations. States gain access to comparative constitutional practice, technical expertise on rights implementation, and international solidarity networks that support governance reform. The UPR process facilitates peer learning, with states sharing experiences addressing common challenges in economic development, security provision, and social transformation while protecting rights. The APRM similarly enables African states to assess governance quality through peer dialogue that respects sovereignty while fostering improvement.

Resistance to international human rights accountability actually weakens rather than protects sovereignty by isolating states from resources, expertise, and partnerships that strengthen governance capacity. When governments reject treaty body recommendations, resist Special Rapporteur visits, or withdraw from regional human rights mechanisms, they forfeit opportunities to access international development assistance conditioned on rights protection, technical cooperation on legal reform, and diplomatic support from states that prioritise human rights in foreign relations. The sovereignty claimed through such resistance becomes sovereignty of isolation rather than engagement, diminishing state capacity rather than enhancing it.

Moreover, sovereignty-based resistance to accountability undermines constitutional governance by signalling that governmental power exists above law rather than under it. When executives invoke sovereignty to resist judicial review of rights violations, or when legislatures claim sovereignty justifies ignoring constitutional protections, they erode the rule of law foundations essential to legitimate governance. Constitutional supremacy means that all governmental action must conform to constitutional constraints, including those derived from international obligations that constitutional provisions incorporate. To invoke sovereignty against such constraints is to

privilege governmental discretion over constitutional commitment, substituting arbitrary power for legal authority. The African Charter's structure illuminates how sovereignty and rights coexist without contradiction. The Charter recognises peoples' right to self-determination in Article 20 while protecting individual rights to life, dignity, equality, and non-discrimination throughout its provisions. Article 27 establishes that individuals have duties to the community, state, and family, creating reciprocal obligations rather than purely individualistic rights frameworks.[48] Article 29 requires individuals to preserve and strengthen African cultural values while respecting others, emphasising cultural dynamism rather than static tradition.[49] This architecture integrates individual autonomy, collective identity, and state sovereignty within a framework that subordinates all to human dignity as a foundational value.

The Charter contains no derogation clause permitting states to suspend rights during emergencies or invoke cultural particularity to justify discrimination. This absence reflects the drafters' deliberate choice to establish rights as unconditional and universal, binding on all member states regardless of domestic circumstances. To claim that women's rights or sexual rights are culturally inappropriate thus contradicts the Charter's own architecture, which treats dignity and equality as transcending cultural variation. The ACHPR has consistently interpreted Charter provisions to prohibit discrimination based on grounds including sexual orientation, applying universal non-discrimination principles to contemporary understanding rather than freezing interpretation at the moment of Charter adoption.[50]

Properly understood, sovereignty protects populations rather than governmental discretion, serves constitutional values rather than political preferences, and operates through law rather than above it. Africa's constitutional traditions, international treaty commitments, and regional human rights systems all reflect this understanding. Defending it against anti-rights distortion is essential not only to protecting marginalised populations but to preserving sovereignty's legitimate meaning as a foundation of constitutional governance accountable to the people it serves.

9. What is lost through distortion

The distortion of sovereignty has consequences extending far beyond individual human rights claims. Once sovereignty is redefined as immunity from international accountability, treaty obligations become politically optional rather than legally binding. The authority of treaty bodies and regional mechanisms is diminished, interpretive coherence is undermined, and the effectiveness of multilateral human rights protection is progressively weakened. The practical consequences of these distortions are illustrated by legislative initiatives such as Uganda's Protection of Sovereignty Act. Broad definitions of 'foreign interests', executive approval requirements for public policy engagement, extensive registration obligations, and restrictions on foreign funding risk narrowing the space available for civil society participation, independent research and international cooperation. Even where prosecutions are infrequent, the cumulative

48 African Charter on Human and Peoples' Rights art 27.

49 African Charter on Human and Peoples' Rights art 29(7).

50 African Commission on Human and Peoples' Rights, Resolution on Protection against Violence and Other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity, ACHPR/Res.275(LV) (12 May 2014).

compliance burden and uncertainty generated by such measures may produce significant chilling effects on the implementation of internationally protected rights. Ultimately, the principal victim is not international law but sovereignty itself. A conception of sovereignty detached from legal obligation ceases to function as a principle of lawful governance and instead becomes a political justification for arbitrary power.

The sovereignty pretext does not legally extinguish human rights obligations. It can, however, weaken their practical protection by discrediting the people who invoke them, the institutions that interpret them and the processes through which violations are addressed. What is lost is the connection between a recognised right and an effective means of securing it. Rights-holders lose recognition as members of the political community. When women's demands for reproductive healthcare or sexual and gender minorities' claims to safety are characterised as foreign agendas, their experiences of harm are displaced by questions about their loyalty or cultural authenticity. National identity is then defined through the exclusion of people who are themselves entitled to equality, dignity and participation.

Access to remedies can narrow without formal renunciation of rights. A state may retain its treaty commitments while restricting a route through which individuals seek enforcement. Withdrawal of a declaration permitting direct applications to the African Court illustrates this distinction. It does not itself terminate substantive obligations, but it can remove an avenue through which individuals and eligible organisations initiate proceedings independently. The loss concerns practical access to adjudication, not simply institutional standing. The conditions for defending rights can deteriorate. Measures governing registration, funding and policy engagement may burden the organisations that document violations, provide legal assistance and support litigation.

The protective purpose of African self-determination is diminished. Sovereignty becomes detached from the plurality of the people and identified with governmental preferences or dominant accounts of culture and family. This obscures the African Charter's protection of both peoples and individuals. A feminist and Pan-African understanding of liberation must remain attentive to domination within states and families, as well as domination from outside. The resulting harm is neither abstract nor confined to international institutions. It concerns whether people can obtain healthcare, challenge discrimination, seek protection from violence and hold public power accountable. The sovereignty pretext places those possibilities at risk by making the legitimacy of protection depend on acceptance by the authorities or dominant constituencies whose conduct is being challenged.

10. Early warning indicators

The sovereignty pretext can be identified before it results in legislation, restricted access to remedies or non-implementation of human rights findings. Several emerging developments indicate the continued expansion of sovereignty-based anti-rights strategies:

I. Delegitimising rights through claims of national identity. Statements describe protections concerning gender, sexuality or reproduction as 'fictitious', foreign or incompatible with national values without addressing their legal basis. Governmental or majority preferences are presented as the sole expression of the people's sovereign will, excluding the voices of those seeking protection;

II. Portraying interpretation as unauthorised law-making. Criticism shifts from identifying a particular interpretive error to asserting that treaty bodies, regional institutions or independent experts have no legitimate role in examining contested rights;

III. Legislative proposals limiting engagement with UN mechanisms;

IV. Increasing claims that treaty bodies manufacture 'new rights';

V. Making implementation conditional on cultural or political approval. Officials or advocates argue that a finding should be disregarded because it conflicts with national culture, religion or sovereignty, without distinguishing binding judgments from other institutional outputs or addressing continuing treaty obligations;

VI. Narrowing access to scrutiny and remedies. Proposals or decisions restrict engagement with supervisory mechanisms, remove avenues for direct complaints, or penalise cooperation with international or regional bodies;

VII. Reclassifying rights advocacy as foreign interference. Legislative proposals, administrative measures or public statements associate lawful advocacy, external funding or international cooperation with disloyalty;

VIII. Strategic use of sovereignty language to delegitimise international monitoring while preserving selective participation in international institutions.

IX. Applying inconsistent standards to external participation. International human rights sources are dismissed because of their origin while external material supporting restrictive positions is accepted without equivalent scrutiny.

X. Promoting alternative standards that weaken existing protection. Proposed declarations, treaties or supervisory bodies retain the language of rights while narrowing who is protected, making guarantees subordinate to contested values, or creating interpretive authority without clear safeguards for consistency with existing obligations. The concern is the proposal's legal content and likely effects, not the creation of a new African instrument in itself.

11. Conclusion

State sovereignty remains a foundational principle of international law. Properly understood, it authorises states to participate voluntarily in a rules-based international order founded upon cooperation, treaty obligations and respect for human dignity. Contemporary anti-rights narratives fundamentally distort this principle by recasting sovereignty as immunity from accountability and portraying international oversight as illegitimate external interference. The attack is directed not simply at particular human rights, but at the legal architecture through which sovereignty and international accountability coexist. Preserving sovereignty requires preserving the institutions, interpretive methodologies and supervisory mechanisms that give effect to treaties freely ratified by sovereign states. Defending this legal architecture is essential to maintaining both international human rights protection and the integrity of sovereignty itself.



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