

# Editorial: Volume 16 No 1 2016

This issue appears in a year during which human rights enjoy particular prominence globally, in Africa and at the domestic level.

In the United Nations (UN) system, a landmark has been reached: 50 years have passed since the adoption on 16 December 1966 of the two pillars of the UN human rights treaty architecture - the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. It is also 15 years since the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance was held in Durban, South Africa (where the Durban Declaration and Programme of Action was adopted).

Marking 30 years since the entry into force of the African Charter on Human and Peoples' Rights (African Charter), on 21 October 1986, the year 2016 is being celebrated as the African Union (AU) Year of Human Rights. Ten years have also passed since the African Court on Human and Peoples' Rights (African Court) started functioning.

At the domestic level in Africa, South Africa joins the circle of celebrations as well: It looks back at the adoption on 8 May 1996 of its current Constitution (the Constitution of the Republic of South Africa, 1996). Located in South Africa, as part of the Faculty of Law at the University of Pretoria, the Centre for Human Rights, where this Journal is edited and administered, similarly marks a milestone. It is 30 years since its establishment, in May 1986.

Articles in this issue cover a wide range of topics. The common denominator between these contributions is that they all locate their thematic concerns firmly in African soil.

The first three articles in this issue critically analyse elements of the African regional human rights system. Enabulele zooms in on the question of the hierarchy between regional human rights treaties and national constitutions. Earlier this year, in April, the Russian Constitutional Court ruled that it was 'impossible' to domestically implement a decision of the European Court of Human Rights because that decision (*Anchugoc and Gladkov v Russia*, European Court of Human Rights, 4 July 2013) conflicted with the Russian Constitution. The Russian Constitutional Court's decision is based on a legislative amendment, which granted Russia's highest court the competence to assess the compatibility with the Russian Constitution of a European Court decision. Whatever the competence of any domestic court, it seems to us that an express refusal to give domestic effect to

the European Court's decisions would conflict with article 27 of the Vienna Convention on the Law of Treaties. This provision contains the abiding and simple position that domestic law cannot be invoked to trump treaty obligations.

The second article, by Ndahinda, takes a close look at an aspect of the jurisprudence of the African Commission that has so far received mostly uncritical praise - the interpretation of indigenous peoples' rights. While the Commission's Endorois decision is a jurisprudential landmark, the notion of indigeneity ('indigeneness') remains controversial in Africa, and in need of further reflection and scrutiny.

In the third article, Jegede deals with the intersectionality between indigeneity and internal displacement, thereby bringing into play another AU human rights treaty, the AU Convention for the Protection and Assistance of Internally-Displaced Persons (also referred to as the 'IDP' or 'Kampala' Convention).

The subsequent two contributions focus on the human rights implications of two global frameworks - the International Criminal Court (ICC) (by Schwartz) and a UN soft law instrument, the UN Guiding Principles on Internal Displacement (by Adeola).

Turning to the domestic level, the next four articles (by Chirwa, Rautenbach, Namakula and Mpanga) deal with various aspects of human rights in a number of African states, mostly applying a comparative methodology.

Two more conceptual contributions complete the line-up of articles. Rafudeen provides some reflections on the nature of human rights; Spies argues for the use of amicus curiae briefs in litigation on a domain where African customary law and human rights may be in conflict.

The 'Recent Developments' section sheds light on judgments by the highest courts in two Southern African countries in which the judiciary has for some time now been an important bulwark against executive excesses: in Swaziland and Zimbabwe.

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