

This issue of the African Human Rights Law Journal appears as an eventful year draws to a close.

The year 2016 was the African Union's 'African Year of Human Rights with a Particular Focus on the Rights of Women' and the year marked 30 years of the African human rights system, in the sense that the core treaty of that system, the African Charter on Human and Peoples' Rights (African Charter), entered into force 30 years ago, on 21 October 1986. Even though many challenges remain, there have been notable advances over these three decades. For one thing, the African Charter enjoys continent-wide acceptance - something the Inter-American system is still some distance away from achieving. The monitoring body of the African Charter, the African Commission on Human and Peoples' Rights (African Commission), has been engaged in significant norm elaboration. Included among the standard-setting supplements are resolutions (for example, those on fair trial rights and freedom of expression) and General Comments (for example, on articles 14(1)(d) and (e) of the Protocol to the African Charter on the Rights of Women in Africa (African Women's Protocol)). The Charter, through the Commission and its special mechanisms, has also inspired laws adopted on access to information and the criminalisation of torture.

This year additionally marked 13 years since the entry into force of the African Women's Protocol. As evidence of its impact, one may cite changes in domestic law and practices, especially in areas such as land ownership, political participation and the criminalisation of harmful practices such as female genital mutilation.

It is also 15 years since the operationalisation of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee). After some initial inertia, the Children's Committee has become a credible champion for children's rights at the supranational level. It has decided only three cases on their merits, but has issued numerous Concluding Observations after examining state reports.

Co-ordination between the AU's human rights organs has been a recurring problem. The fact that in this year, around October 2016, the first joint session was held between the African Children's Committee and the African Commission, and that another such joint meeting is planned for 2017, in itself, is a great gain.

This year also signalled ten years of a functioning African Court on Human and Peoples' Rights (African Court). Although the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol) entered into force already in 2004, it took two more years for the first judges to be elected. The jewels in the crown of the Court's first decade are the eight cases decided on their merits. In each of these cases, the Court found at least one violation of the African Charter: Four were instituted by way of direct individual access against Tanzania (Mtikila v Tanzania; Thomas v Tanzania; Onyango v Tanzania; and Abubakari v Tanzania); two were instituted through the same avenue against Burkina Faso (Zongo v Burkina Faso; and Konaté v Burkina Faso); one reached the Court when a non-governmental organisation (NGO) directly approached the Court (Actions pour la Protection des Droits de l'Homme (APDH) v Côte d'Ivoire); and another was based on a referral by the African Commission after non-compliance with its provisional measure (African Commission (Saif Al-Islam Kadhafi) v Lybia). From the perspective of the dire human rights situation on our continent, eight merits decisions represent a very modest crop of cases. Nevertheless, in comparison to the early beginnings of other regional human rights systems, the record looks much more impressive.

Two cases of potential significance are pending before the Court. The one concerns the competence of NGOs to bring requests for advisory opinions to the Court; the other deals with the powers of the AU Executive Council to direct the African Commission to withdraw its decision to grant observer status to an NGO. The background to the latter case is as follows: When the African Commission reported in 2015 to the AU Executive Council that it had granted observer status to the NGO Coalition of African Lesbians (CAL), the Executive Council directed the Commission not only to withdraw the granting of observer status

to that particular NGO, but also instructed the Commission to amend its Guidelines for Granting Observer Status to NGOs by aligning them to the imperative in the African Charter to protect the family.

The human rights-related celebrations within the AU are set to continue into next year, and the next decade. Since the African Commission was established in 1987, a year after the entry into force of the African Charter, its 30 years of existence round off another '30' in 2017. Also, in June 2016, the AU Assembly meeting in Kigali declared the ensuing ten years the decade of human rights. By adopting the Declaration by the Assembly on the Theme of Year 2016 (Assembly/AU/Decl1(XXVII)Rev1), the Assembly committed itself 'to enhancing efforts aimed at entrenching and reinforcing deeper understanding of the culture of human and peoples' rights, in particular, the rights of women and their promotion and popularisation amongst the African peoples'. The Assembly declared the next ten years as the 'Human and Peoples' Rights Decade in Africa'.

In the Declaration, the Assembly also called on the AUC and AU human rights organs to 'identify modalities for the participation of African research institutes, universities, civil society and the media in promoting the culture of human rights in Africa, including the protection and promotion of the rights of women'. At the Journal we welcome this inclusive approach, and pledge our continued support to be an outlet for critical yet constructive discussions and exchanges on the African human rights system.

We also note that in the same Declaration, the AU Assembly called on the African Commission to 'ensure the independence and integrity of AU organs with a human rights mandate by providing adequate financing and shielding them from undue external influence' (our emphasis). Against a background of a 'push-back' against human rights at the levels of the Executive Council and Assembly, and in the absence of any official AU criticism regarding the withdrawal by Rwanda of its declaration accepting direct access to the Court, the apprehension is that these words may ring hollow and may be exposed as empty rhetoric in years to come. In addition, the region's attachment to the sovereignty of states, generally, and its resistance against supranational judicial oversight, specifically, are displayed by the failure by almost half of the AU membership (24 out of 54) to ratify the Court's Protocol, and the hesitance of those that have become party to the Court Protocol to accept direct individual access to the Court.

This apprehension causes one to view with caution the AU Assembly's invitation (in the same Declaration) to the African Commission and AU human rights organs to take the 'necessary steps' to establish the Pan-African Human Rights Institute (PAHRI), and the call on states to commit to host it.

A wide variety of topics are covered in this issue. Against the background of intensified criticism of the International Criminal Court (ICC), and South Africa's failure to arrest Sudanese President (and ICC accused) Al Bashir, Tladi provides an incisive analysis of the interpretation of international law by the South African Supreme Court of Appeal. Hailbronner adds her voice to the fledgling scholarly African-focused literature on the convergence and divergence between international human rights law and international humanitarian law. Chamberlain draws interesting links between the rights to protest and access to information. Attah criticises Nigeria's anti-terrorism laws for failing to effectively address the Boko Haram scourge in that country. Mujuzi's article examines the admission of evidence unconstitutionally obtained in Namibia. Abduradeen-Mustapha draws on South Africa's experience with children's rights to inform the improved application of the Nigerian Child Rights Act. Swart and Hassan take an innovative, if controversial, comparative view of child marriage and child soldiers. Perez-Leon-Acevedo considers the possibility of triggering article 4(h) of the AU Constitutive Act in two situations in Africa - Darfur (Sudan) and Libya - in light of the Pretoria Principles. Roesch traces the reception and 'implantation' of the principle of free, prior and informed consent into African soil, as a means of curbing land grabbing.

As is the custom, this issue contains a review of human rights developments within the AU during 2015. A recent decision of the Zimbabwean Constitutional Court, dealing with women's equality, is also reviewed.

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