

Editorial

This issue consists of 14 contributions on human rights that are of concern to Africa, generally, and nine articles that together form a 'Special focus' on implementation of decisions by the African Commission on Human and Peoples' Rights (African Commission), specifically. The 'Special focus' is edited by editor-in-chief, Frans Viljoen, together with guest editors, Foluso Adegalu and Zainab Olaitan.

Enigmatic entry into force of two African Union human rights treaties

The second edition of the *Journal* is published at the end of a year in which two substantive protocols to the African Charter on Human and Peoples' Rights (African Charter) entered into force. The first is the 2018 Protocol to the African Charter on the Rights of Persons with Disabilities in Africa (African Disability Protocol). The Protocol entered into force on 3 May 2024, 30 days after the fifteenth state party to the African Charter had ratified it. By the end of 2024, *at least* 15 state parties to the African Charter have either ratified or acceded to this Protocol. The second is the 2016 Protocol to the African Charter on the Rights of Older Persons in Africa (Older Persons Protocol), which entered into force on 6 November 2024. By the end of 2024, *at least* 15 state parties to the Charter have either ratified or acceded to the Older Persons Protocol.

It might strike an observant reader as rather inexact to indicate that, as 2024 draws to a close, 'at least' 15 states have become party to these Protocols. Why do we not reflect the current status of ratifications with more accuracy? This information surely should be available in the public domain, on the website of the African Union (AU)? As the AU is the official depositary for ratifications, it should have the latest updated information instantly at its disposal when an instrument of ratification is deposited. However, as anyone very well knows who over the last years has sought to inform themselves

of the ratification status of any AU treaty, the official AU website is not consistently updated. As we write this editorial, the website indicates that the information pertaining to these two Protocols was last updated on 19 September 2023 which, calculated from the time of writing, is more than 14 months ago. Based on this update, ten states had become party to the African Disability Protocol, and 12 to the Older Persons Protocol. From gleaning the information available to them on the website, Africans – and other observers – would have no idea that these treaties have in fact entered into force.

To be sure, the snail's pace with which the official source of this important information is updated is the same for most of the treaties on the website. See, for example, the ratification status of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, which was last updated on 20 May 2019. While media reports indicate that Angola became the first state to become party to this Protocol, the website still shows '0' state parties. In the human rights domain, the lack of continuously-updated information makes it impossible for African citizens to have an accurate picture of what obligations their states have undertaken and, as a consequence, what rights they are entitled to claim. Not knowing the accurate and up-to-date status of ratifications makes a mockery of campaigns for ratification to ensure the entry into force of these treaties. Why should those at the forefront of these campaigns have to learn about the milestone of 15 ratifications being reached only when a photo is posted on someone's Facebook page, or by way of a public announcement at a session of the African Commission?

Even if there are challenges within the AU bureaucracy, these challenges cannot explain the extent to which the AU's practice reflects disdain for its citizens' rights to have access to the most basic information about the obligations their states have undertaken. This state of affairs also undermines any claim that the AU is or aspires to be people-centred.

While normative stagnation has set in as far as the United Nations (UN) human rights system is concerned, this has not been the case in Africa. The AU has in the last decade maintained its reputation as an active norm entrepreneur by adopting four substantive Protocols to the African Charter. In addition to the two treaties mentioned above, the Protocol on the Rights of Citizens to Social Protection and Social Security was adopted in 2022; and the most recent, the Protocol to the African Charter Relating to the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, was adopted earlier this year. Available information shows that these two further Protocols to the African Charter are not yet in force.

AHRLJ@25 in 2025

In 2025 the *African Human Rights Law Journal* will turn 25. To mark this landmark moment, we will aim to bring together scholars to reflect on contemporary human rights issues of relevance to Africa. In this regard, the *Journal* plans a conference in June 2025, to dissect and discuss the four most recent Protocols to the African Charter, including the recently entered-into-force Disability and Older Persons Protocols.

This issue

The regular part of this issue of the *Journal* contains 12 articles and a case discussion (under 'Recent developments'). The issue also contains a 'Special Focus' section, devoted to the implementation of the decisions of the African Commission. It has its own editorial, which follows below, at the start of the 'Special Focus' section.

In the first contribution, Mavedzenge explores the features of a reparations framework to address the enslavement and colonisation of the African people. This exploration appears as we move into the year 2025, which the AU has declared the 'Year of Reparations' under the theme 'Reparations, Restoration, and Renaissance', with a focus on historical injustices (slavery, colonialism, apartheid); economic exploitation (resource extraction, unequal trade practices); cultural heritage and knowledge appropriation; health disparities and medical experimentation; and education and cultural exchange programmes. In another contribution, Abebe tackles the contentious topic of rendition, in the process drawing attention to the extraterritorial reach of the African human rights system.

Reiss and Tabengwa use the image of a tug-of-war to describe the contestations around the rights of sexual and gender minorities in Africa, as it played out over the last decade or so within the African human rights architecture, particularly the African Commission. This article discusses Resolution 275 which calls on states to refrain from, prevent and effectively investigate and ensure accountability for acts of violence based on anyone's actual or perceived sexual orientation or gender identity. This landmark soft law instrument was adopted by the Commission in 2014. The year 2024, therefore, marked ten years since it became an instrument of protection, sensitisation and advocacy.

Having entered into force in 1990, the African Charter on the Rights and Welfare of the Child (African Children's Charter) in 2024

marks 25 years of being in force. In her contribution, Quan shares her understanding of the right to education under the African Children's Charter. Lasseko-Phooko's contribution draws attention to a feature of collaboration between the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) and the African Commission, namely, the adoption of joint General Comments. In particular, she shines a light on the Joint General Comment on Female Genital Mutilation by the two treaty bodies, and provides a feminist perspective on adult women's consent to female genital mutilation.

A number of country-specific articles examine aspects of contemporary human rights concerns in five African countries (Nigeria, South Africa, South Sudan, Kenya and Uganda). In respect of Nigeria, Adejumo explores changing narratives on legal restrictions on abortion, and Oyeyemi looks closely into the right of children to be heard, while drawing lessons from South Africa. Focusing on South Africa, Osman examines the recognition of communities and partnership agreements under the South African Traditional and Khoi-San Leadership Act, and Muwanga and Korsten take a consumer protection perspective on the right to food. Deng's discussion of the deportation of James Dak by the Kenyatta government in 2016 implicates two countries, namely, South Sudan and Kenya, and considers the extent to which these countries have violated international refugee law. The final two articles concern Uganda: Agaba analyses refugee laws and policies as applied to women and girls in Kampala, and Mubangizi considers the implications for human rights of Uganda's 'unrelenting' criminalisation of consensual same-sex relations.

In the 'Recent developments' section, Moyo discusses the case of *Kawenda v Minister of Justice, Legal and Parliamentary Affairs*, decided by the Zimbabwean Constitutional Court in 20 May 2022. The case deals with sexual consent laws and the child's right to freedom from sexual exploitation. In this case discussion Moyo also discusses more broadly the issue of child sexual abuse.

New co-editors

As from this issue, the editorial team is enriched by two new co-editors, Dr Evelyne Asaala, a senior lecturer at the University of Nairobi, and Elsabe Boshoff, a doctoral candidate at the Norwegian Centre for Human Rights, University of Oslo, Norway.

Editors

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