

Recent developments

Human rights developments in the African Union during 2014

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Summary

The year 2014 saw the adoption by the AU Assembly of a protocol providing the African Court with jurisdiction over international crimes, and a revised protocol on the Pan-African Parliament providing it with power to adopt 'model legislation'. With regard to implementation, the Ebola epidemic in West Africa affected the effective functioning of, in particular, the African Commission. However, despite this and other challenges, the African Commission adopted important normative instruments, such as a resolution on the basis of sexual orientation or gender identity, responded to violations through urgent appeals and press releases, and engaged with states through missions and the state reporting procedure. The Commission also adopted some interesting jurisprudence in the period under review. The African Children's Rights Committee consolidated its position as the main regional body for the protection of children's rights in Africa. The African Court received an increasing number of cases and handed down two judgments on merits and an advisory opinion.

Key words: *African Union; African Commission on Human and Peoples' Rights; African Court on Human and Peoples' Rights; African Committee of Experts on the Rights and Welfare of the Child; African Peer Review Mechanism*

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1 Introduction

This article considers the work of the African Commission on Human and Peoples' Rights (African Commission), the African Court on Human and Peoples' Rights (African Court), the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) and the African Peer Review Mechanism (APRM) in 2014. The article also considers the new protocols and other instruments adopted by the African Union (AU) Assembly, in particular the Protocol providing the African Court with jurisdiction over international crimes. The aim is to identify the achievements and challenges of the main regional human rights institutions in promoting and protecting human rights on the African continent during 2014.

2 African Commission on Human and Peoples' Rights

2.1 Composition

No terms expired in 2014, therefore the composition of the African Commission remained unaltered, consisting of six women and five men, with Commissioner Kayitesi (Rwanda) as Chairperson and Commissioner Khalfallah (Tunisia) as Vice-Chairperson.

2.2 Sessions

The African Commission held three sessions, the 55th ordinary session and two extraordinary sessions, totalling 33 days, compared to 42 days in 2013.¹ The lower number of meeting days was a direct result of the Ebola epidemic in West Africa which caused the 56th ordinary session, scheduled to take place in October, to be postponed until 2015.

The Commission had urged²

member states, especially those that have not yet done so, to consider hosting one of the future sessions of the Commission – not only to lessen the burden on the Commission's gracious host country, The Gambia, but also to benefit from partnering with the Commission in this most worthy exercise.

In 2014 the response by member states to such a call was positive. Two of the sessions were held outside the Commission's headquarters in Banjul, The Gambia. The April-May session was held in Angola and the extraordinary session in July in Rwanda. Niger was meant to have

1 15th extraordinary session, 7-14 March, Banjul, The Gambia; 55th ordinary session, 28 April to 12 May, Luanda, Angola; 16th extraordinary session, 20-29 July, Kigali, Rwanda. The third joint meeting of the Commission and the Court was held from 16-19 July in Kigali.

2 36th Activity Report (2014) para 17. The Executive Council reiterated this call.

hosted the ordinary session in October, but this session was cancelled due to the Ebola epidemic.

The African Commission's sessions provide a forum for both the Commission and non-governmental organisations (NGOs) to engage with states on their human rights practices. Representatives of 26 states attended the 55th ordinary session in Angola in April and May, including South Sudan, which is yet to ratify the African Charter on Human and Peoples' Rights (African Charter). Of these states, 21 made statements before the Commission.³

2.3 Resources

Resource constraints have been a key challenge to the African Commission. In seeking to address particularly the staff shortage, the AU Commission in 2014 recruited legal officers for the Commission's Secretariat in Banjul.⁴ However, the staff complement of the Commission was still not at the level approved by the AU in 2009. The Commission has some legal officers on contracts sponsored by donor agencies. Some member states have long felt that this provides donor agencies with too much control over the Commission's agenda and findings. The Executive Council in 2014 decided to 'increase the budgetary allocation of the ACHPR to prevent the dependency of such a sensitive and important AU organ on partner funds for the performance of its functions'.⁵ The extent to which this will in practice change the situation remains to be seen, as the Executive Council has for many years concluded that the Commission should be provided with sufficient resources in its decision on the Commission's Activity Report. The Commission continues to depend extensively on donor-funded staff. For example, the German financing of three legal experts to assist with reducing the Commission's backlog of individual communications continued in 2014.⁶

While the staff situation at the Secretariat improved somewhat in 2014, there are other serious shortcomings with regard to the functioning of the Secretariat, some of which are linked to its location in Banjul, The Gambia. The African Commission noted in its Activity Report covering the second half of 2014:⁷

Communication with the Commission and its Secretariat remains a huge challenge, posing a major impediment to the Commission's effective discharge of its mandate. Telephone landlines do not work and the office

3 36th Activity Report paras 8-9.

4 36th Activity Report 15.

5 Decision on the 36th Activity Report of the African Commission on Human and Peoples' Rights, Doc.EX.CL/856(XXV) para 10.

6 'Strengthening the capacities of the African Commission on Human and Peoples' Rights, Gambia', http://www.gfa-group.de/Strengthening_the_capacities_of_the_African_Commission_on_Human_and_Peoples_Rights_3700505.html (accessed 6 November 2015).

7 37th Activity Report para 46. AUC refers to the African Union Commission in Addis Ababa.

has to rely on a form of cordless phone system locally referred to as Jamano, which is not as efficient as fixed landlines and does not support office extensions; the fax is not working; internet connectivity continues to be a major problem for the Commission; even the Microsoft Outlook installed by the AUC Headquarters to link all AU organs and offices is erratic at best, despite the huge efforts deployed by the AUC in this regard; sending and receiving documents by e-mail is extremely difficult and sometimes impossible – indeed, both member states and other stakeholders have expressed frustration regarding the difficulties of transmitting documents to the Commission.

The logistical problems faced by the Commission's Secretariat in Banjul and the lack of easy access to Banjul from other parts of the African continent add to the reasons for relocating the Secretariat from Banjul. This is linked to the dismal human rights record of The Gambia under President Jammeh.⁸

2.4 State reporting

State parties to the African Charter should every two years submit a report to the African Commission, setting out the steps taken to give effect to the provisions in the African Charter and, if they have ratified it, the Protocol on the Rights of Women in Africa (African Women's Protocol). In practice, states report less frequently. This is not necessarily a problem, considering that the Commission has a backlog of state reports to consider. More problematic is the fact that a few states have never reported at all, despite having ratified the African Charter decades ago. Six states have never submitted a report,⁹ while 13 states have not submitted a report for a decade or longer.¹⁰

Djibouti in 2014 submitted its initial and combined periodic reports for the period 1993 to 2013. Niger submitted its second and combined report for 2003 to 2014 and Ethiopia submitted its fifth and sixth periodic report covering 2008-2013. Closest to the prescribed two-year interval was Nigeria's fifth periodic report covering 2011 to 2014, submitted in July 2014.

The state report of Liberia, submitted in November 2012, was considered by the African Commission at its April-May session in 2014. The second reports of Mozambique, submitted in February 2013, and the Sahrawi Arab Democratic Republic, submitted in March 2013, were considered by the Commission at the same session. The delegations presenting the reports were generally of a high level; in the case of all the reports presented in 2014, led by the ministers of

8 See F Viljoen 'A call to shift the seat: The Gambia is not a suitable seat for the African Commission on Human and Peoples' Rights', 27 May 2013, africlaw.com; K Jeffang 'Calls for relocation of African Commission Secretariat away from Banjul amid Gambia's continued poor human rights record', *Foroyaa* newspaper, 24 April 2015, <http://www.foroyaa.gm/archives/4889> (accessed 6 November 2015).

9 Comoros, Equatorial Guinea, Eritrea, Guinea-Bissau, São Tomé and Príncipe, Somalia.

10 Cape Verde, Chad, Egypt, The Gambia, Ghana, Guinea, Lesotho, Mali, Mauritania, Seychelles, South Africa, Swaziland and Zambia.

justice.¹¹ However, despite the high level of the delegations, the adoption of concluding observations was deferred 'to allow the member states to provide additional information requested by the Commission'.¹² In 2014, the Commission adopted concluding observations on the state reports of Cameroon¹³ and Gabon,¹⁴ both considered by the Commission in 2013.

By December 2014, ten state reports were pending before the Commission. These were the reports of Malawi, Nigeria, Senegal, Sierra Leone, Uganda, Niger, Ethiopia, Djibouti, Kenya and Zimbabwe. The cancellation of the second ordinary session due to the Ebola epidemic and the higher than usual submission of state reports caused the Commission to enter 2015 with a significant backlog of state reports to consider.

2.5 Resolutions, guidelines and General Comments

In 2014, the African Commission adopted a total of 29 resolutions, compared to 34 in 2013.¹⁵ Resolutions included the renewal of mandates of special procedures. The Commission also mandated studies on the effect of climate change¹⁶ and the impact of armed conflict on women and children,¹⁷ the human rights situation of people living with HIV¹⁸ and child marriage.¹⁹

The Commission adopted country-specific resolutions with regard to the Central African Republic, the Democratic Republic of Congo, Egypt, Nigeria, Sahrawi Arab Democratic Republic, Somalia, South Sudan and Swaziland. Thematic resolutions included:

- the Resolution on the Right to Peaceful Demonstration;
- the Resolution on the Protection Against Violence and Other Human Rights Violations Against Persons on the Basis of Their Real or Imputed Sexual Orientation or Gender Identity;
- the Resolution on Climate Change in Africa;
- the Resolution on the Situation of Women and Children in Armed Conflict;
- the Resolution on Terrorist Acts in Africa;
- the Resolution on Elections in Africa in 2014;
- the Resolution on the Drafting of a Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality in Africa; and

11 36th Activity Report para 18.

12 36th Activity Report para 19.

13 http://www.achpr.org/files/sessions/54th/conc-obs/3-2008-2011/concluding_observations_cameroon_eng.pdf.

14 http://www.achpr.org/files/sessions/54th/conc-obs/1-1986-2012/concluding_observations_gabon_eng.pdf.

15 See 36th and 37th Activity Reports of the African Commission; 34th and 35th Activity Reports of the African Commission.

16 Resolution on Climate Change in Africa, adopted at the 55th ordinary session, 28 April to 12 May 2014.

17 Resolution on the Situation of Women and Children in Armed Conflict.

18 Resolution on the Need to Conduct a Study on HIV, the Law and Human Rights.

19 Resolution on the Need to Conduct a Study on Child Marriage in Africa, adopted at the 16th extraordinary session, 20 to 29 July 2014.

- the Resolution on the UN World Conference on Indigenous Peoples.

The Commission adopted the Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa and Principles and Guidelines on Human Rights and Countering Terrorism. The Commission also adopted two General Comments on article 14 of the African Women's Protocol (health and reproductive rights).

The Resolution on Violence on the Basis of Sexual Orientation or Gender Identity is particularly noteworthy as this is the first time that the Commission as a whole has taken a clear stance on the protection of this vulnerable group. The Preamble of the Resolution refers to the prohibition of discrimination in article 2 of the African Charter, the equal protection of the law in article 3 and the rights to life, physical integrity and prohibition of torture and ill-treatment in articles 4 and 5 of the Charter. While not explicitly calling for the decriminalisation of homosexual acts, a position that would be difficult to get a majority for in the Commission, the Resolution condemns 'murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity'. The Resolution is a bold step by the Commission in a context where many African leaders are at the forefront of discrimination based on sexual orientation and gender identity.

2.6 Missions and conferences

As part of their promotional or protective mandate, commissioners, accompanied by legal personnel from the Secretariat, undertake missions to some AU countries. Promotional visits provide the African Commission with the opportunity to interact with government officials of the target state (as well as civil society organisations) on the steps taken to give effect to the provisions of the African Charter. The Commission conducted promotional missions to Gabon and Zambia in January 2014.²⁰ In its 37th Activity Report, the Commission noted that it had not been able to undertake any further promotional missions due to a lack of response from member states and the Ebola epidemic.²¹ However, individual Special Rapporteurs undertook missions.²²

The Commission embarked on a fact-finding mission to the Central African Republic (CAR) from 10 to 14 September. During the fact-finding mission, the Commission's delegation gathered evidence on cases involving serious violations of human rights that have occurred in the country.²³

20 36th Activity Report para 32.

21 37th Activity Report para 10.

22 See eg Mission of the Special Rapporteur on Freedom of Expression and Access to Information in Africa to Mozambique, Ghana, Swaziland and SADC Secretariat, 37th Activity Report, para 33.

23 37th Activity Report paras 12-13.

In July 2014, the Commission organised a Continental Conference on the Abolition of the Death Penalty. The conference expressed 'deep concern about the continued application of the death penalty in a number of African states'.²⁴

2.7 Urgent appeals and press releases

As part of its protective mandate, the Commission sent Letters of Urgent Appeal (LUA) to member states, including Ethiopia (arbitrary arrest and detention); Sudan (corporal punishment and the death penalty); Egypt (death penalty); Nigeria (death penalty); Burundi (extra-judicial executions, arbitrary detention); the Democratic Republic of Congo (DRC) (arbitrary detention); Mauritania (arbitrary detention); and The Gambia (arbitrary detention).²⁵

Only two states, Egypt and The Gambia, responded to the Commission's appeals.²⁶ In its response, Egypt sought to justify the application of the death sentence in the state by setting out the legislative and procedural safeguards provided by law in such situations. However, it denied any knowledge of the case of 10 persons sentenced to death and requested the Commission to provide supplementary information. The urgent appeal sent to The Gambia related to the case of Mr Manneh, a journalist allegedly held in *incommunicado* detention since 2006. As on many previous occasions, The Gambia denied any knowledge of the whereabouts of Mr Manneh.²⁷

The Commission issued press releases on the human rights situation in the Kidal region in Mali,²⁸ in Central African Republic,²⁹ Nigeria,³⁰ and with regard to executions in Somalia.³¹

There is increasing collaboration between special procedures of the African Commission and those of the United Nations (UN) human rights system. This is in line with the Road Map of the dialogue between special procedures and mandate holders of the UN Human

24 Declaration of the Continental Conference on the Abolition of the Death Penalty in Africa (Cotonou Declaration), <http://www.achpr.org/news/2014/07/d150> (accessed 4 November 2015).

25 37th Activity Report para 14.

26 37th Activity Report para 15.

27 As above.

28 Press release on the human rights situation in the Kidal region in Mali, 22 May 2014, <http://www.achpr.org/press/2014/05/d205/> (accessed 12 October 2015).

29 Press release on the human rights situation in the Central African Republic, 8 May 2014, <http://www.achpr.org/press/2014/05/d203/> (accessed 12 October 2015).

30 Press release on the human rights situation in the Federal Republic of Nigeria, 10 May 2014, <http://www.achpr.org/press/2014/05/d202/> (accessed 12 October 2015).

31 Press statement on the execution of three persons by firing squad in the Federal Republic of Somalia, 25 March 2014, <http://www.achpr.org/press/2014/04/d199/> (accessed 12 October 2015).

Rights Council and the African Commission on Human and Peoples' Rights, adopted in Addis Ababa in January 2012.³²

The Chairperson of the Working Group on the Death Penalty and Extra-Judicial, Summary or Arbitrary Killings in Africa, together with nine UN special procedures mandate holders, called 'on the Egyptian authorities to bring its legal system into compliance with international and regional standards so as to ensure long-term justice and contribute to reconciliation efforts in Egypt'.³³ The call followed the imposition of hundreds of death sentences after trials 'that seriously violated international standards'.

The Commission's Special Rapporteur on Human Rights Defenders and Special Rapporteur on Freedom of Expression and Access to Information issued a joint press release with the UN Special Rapporteur on Human Rights Defenders expressing concern over human rights defenders in Egypt being sentenced to imprisonment for participating in a peaceful demonstration.³⁴ The two African Special Rapporteurs had in March 2014 issued a joint press release on the arrest of an editor and a human rights lawyer in Swaziland.³⁵

The Special Rapporteur on Human Rights Defenders also issued press releases expressing concern with regard to arbitrary detention in Niger,³⁶ abduction in the DRC;³⁷ the forced closure of a Sudanese NGO;³⁸ a proposed Bill regulating CSO funding in Nigeria;³⁹ and the

32 http://www.ohchr.org/Documents/HRBodies/SP/SP_UNHRC_ACHPRRoad%20Map.pdf (accessed 12 October 2015).

33 'Egypt: Justice and reconciliation increasingly failing after second wave of mass death sentences', 15 May 2014, <http://www.achpr.org/press/2014/05/d204/> (accessed 12 October 2015).

34 Joint press release on the verdict against Sanaa Seif, Yara Sallam and 21 other co-accused in Egypt, <http://www.achpr.org/press/2014/11/d233/> (accessed 12 October 2015). See also 'Press release by the Special Rapporteur on human rights defenders on the conviction of 25 Egyptian activists on 11 June 2014', 20 June 2014, <http://www.achpr.org/press/2014/06/http://www.achpr.org/press/2014/06/d212/d213/> (accessed 12 October 2015); 'Press release on the arrest and detention of human rights defenders in Egypt', 24 June 2014.

35 Press release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa and the Special Rapporteur on Human Rights Defenders in Africa on the arrest of Mr Thulani Rudolf Maseko and Mr Bheki Makhubu, 27 March 2014, <http://www.achpr.org/press/2014/03/d197/> (accessed 12 October 2015).

36 Press release on the arrest and detention of Ali Idrissa and ten other human rights defenders in Niger, 11 August 2014, <http://www.achpr.org/press/2014/08/d220/> (accessed 12 October 2015).

37 Press release on the abduction of Médiatrice Rizikiand and Angélique Navura, human rights defenders in the Democratic Republic of Congo, 11 August 2014, <http://www.achpr.org/press/2014/08/d221/> (accessed 12 October 2015).

38 Press release on the closure of the Salmah Women's Centre in Khartoum, Sudan, 30 June 2014, <http://www.achpr.org/press/2014/07/d215/> (accessed 12 October 2015).

39 Press release on implications of the implications of the proposed Act Regulation of Foreign Aid to Civil Society Organisations on the work of human rights defenders in the Federal Republic of Nigeria, 30 June 2014, <http://www.achpr.org/press/2014/07/d214/> (accessed 12 October 2015).

repression of human rights defenders in Djibouti⁴⁰ and Benin.⁴¹

The Special Rapporteurs' press releases on the implications of the Anti-Homosexuality Act of Uganda⁴² and the Same-Sex Marriage (Prohibition) Act of Nigeria⁴³ go further than the Resolution adopted by the African Commission on violence against persons based on their sexual orientation or gender identity, by condemning not only violence, but also discrimination and violations of privacy.

The Special Rapporteur on Freedom of Expression and Access to Information issued a press release relating to the imprisonment of three Al-Jazeera journalists in Egypt.⁴⁴ The Chairperson of the Working Group on the rights of older persons and people with disabilities in Africa issued a statement on the murder of a woman with albinism in Tanzania.⁴⁵ The Chairperson of the Working Group on the death penalty and extra-judicial killings in Africa issued a press release calling on Kenya to conduct independent investigations into terrorist attacks in Kenya and possible extra-judicial executions of three named persons.⁴⁶ The Special Rapporteur on the Rights of Women in Africa in a press release welcomed the sentencing of three police officers for the rape of a young girl.⁴⁷

40 Statement on the situation of human rights defenders in Djibouti, 22 January 2014, <http://www.achpr.org/press/2014/01/d186/> (accessed 12 October 2015).

41 Press release on the situation of human rights defenders in Benin, 7 January 2014, <http://www.achpr.org/press/2014/01/d184/> (accessed 12 October 2015).

42 Press release on the implications of the anti-homosexuality Act on the work of human rights defenders in the Republic of Uganda, 10 March 2014, <http://www.achpr.org/press/2014/03/d196/> (accessed 12 October 2015).

43 Press release on the implication of the Same Sex Marriage [Prohibition] Act 2013 on human rights defenders in Africa, 5 February 2014, <http://www.achpr.org/press/2014/02/d190/> (accessed 12 October 2015).

44 Press release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the arrest and imprisonment of Peter Greste, Mohamed Fahmy and Baher Mohamed, 25 June 2014, <http://www.achpr.org/press/2014/06/d209/> (accessed 12 October 2015).

45 Statement by the Chairperson of the Working Group on the Rights of Older Persons and People with Disabilities in Africa on the murder of Munghu Lugata, a 40 year-old woman with albinism in North Western Tanzania on 12 May 2014, 26 May 2014, <http://www.achpr.org/press/2014/05/d206/> (accessed 12 October 2015).

46 Press release on the killing of innocent Kenyan citizens by suspected Al Shabab militia and Sheikh Abubakr Shariff, Ibrahim 'Rogo' Omar and Aboud Rogo Mohammed, 10 April 2014, <http://www.achpr.org/press/2014/04/d201/> (accessed 12 October 2015).

47 Press release by the Special Rapporteur on the Rights of Women in Africa on sentencing of three police officers for rape committed in September 2012 in Tunisia, Tunisia, 7 April 2014, <http://www.achpr.org/press/2014/04/d200/> (accessed 12 October 2015).

2.8 Communications

The African Commission was seized of 13 new communications in 2014⁴⁸ and decided not to be seized of two.⁴⁹ Despite its name, the complaint in Communication 464/14, *Kenyatta and Ruto (represented by Innocent Project Africa) v Kenya*, was submitted by Innocent Project Africa without the explicit consent of the persons it purported to represent, the President and Vice-President of Kenya. There is no victim requirement in the African Charter and the Commission has in its case law accepted the *actio popularis*.⁵⁰ However, in the *Kenyatta* case, the Commission held that ‘for a complaint of this nature, consent of the victims should have been sought and signatures of the victims placed on the complaint prior to its submission to the Secretariat’.⁵¹ It is unlikely that the President and Vice-President of Kenya would have wanted to litigate against their own country and, therefore, the Commission decided not to be seized of the communication rather than to take it to the admissibility stage, where the state would have been requested to make submissions.

The other cases where communications were not seized related to cases submitted against the one AU member state which has not yet ratified the African Charter, South Sudan. The Commission declined to be seized of one communication pending further information from the complainant.⁵² A request to review the decision of non-seizure in a case against South Sudan was deferred at the 16th extraordinary session pending further information.⁵³

The African Commission issued provisional measures in *Eskinder Nega and Reeyot Alemu v Ethiopia*.⁵⁴ The case concerned the arbitrary arrest and continued imprisonment of journalists since 2011 under the country’s Anti-Terrorism Proclamation. The Commission also issued provisional measures in four communications submitted against Burundi.⁵⁵ As opposed to the practice of the Inter-American Commission on Human Rights, the African Commission does not make its decisions on provisional measures publicly available.

48 460/13, *Mboia Campira v Mozambique*; 461/13, *Nega and Alemu v Ethiopia*; 462/13, *Virassamy v Mauritius*; 463/14, *Atigan-Ameti v Togo*; 466/14, *Individuals killed and injured in the 2011 cabinet offices clashes v Egypt*; 467/14, *529 persons sentenced to death v Egypt*; 471/14 *Ibrahim & Others v Sudan*; 472/14, *Habonarugira v Burundi*; 473/14, *Ndikuriyo v Burundi*; 474/14, *Ndimumahoro v Burundi*; 475/14, *Ndayishimiye v Burundi*; 476/14 *El-Baghdad v Sudan*; 477/14, *Von Abo v Zimbabwe* The Commission also relisted Communications 391/10, *Gassim & Others v Sudan*; 394/11, *EIPR, HRW and Interights v Libya*.

49 464/14, *Kenyatta and Ruto v Kenya*; 465/14, *Sannoh v South Sudan*.

50 See eg *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) para 49.

51 Para 21.

52 468/14, *Miamingi v South Sudan and Uganda*.

53 465/14, *Sannoh v South Sudan*.

54 36th Activity Report para 22.

55 37th Activity Report para 20.

A request for review of an inadmissibility decision was denied.⁵⁶ One communication was struck off the roll for lack of diligent prosecution.⁵⁷

Four communications were declared inadmissible.⁵⁸ A case against Swaziland was declared inadmissible since it was submitted to the Commission close to three years after the exhaustion of local remedies which the Commission, in line with its recent jurisprudence, found to be not 'within reasonable time' under article 56(6) of the African Charter.⁵⁹ The communication of *Asemie v Lesotho*, dealing with the deportation of a long-term Ethiopian resident in Lesotho, was declared inadmissible for failure to exhaust local remedies.⁶⁰

The complainant in *Al-Asad v Djibouti*⁶¹ was a Yemeni citizen who had lived in Tanzania since 1985 until he was apprehended by unknown men in December 2003 and taken in a small aircraft to an unknown destination several hours away, where he was subjected to ill-treatment. In its analysis on admissibility, the African Commission noted that '[a] complainant can establish the sufficient connection by proving that he or she was under the territorial jurisdiction or effective control or authority of the respondent state when the alleged violation occurred'.⁶² Mr Al-Asad relied on *habeas corpus* proceedings before the High Court of Tanzania to establish that he had been held in Djibouti. The Commission noted that it would normally defer to facts determined by national courts, but that this was not possible in the case at hand since Djibouti did not participate in the Tanzanian proceedings and had disputed the facts alleged before the Commission by Mr Al-Asad.⁶³ The Commission, therefore, had to conduct its own investigation. Based on the record of the *habeas corpus* proceedings and other evidence presented by Mr Al-Asad, the Commission held that he had 'not conclusively established his presence in the respondent state's territory'⁶⁴ and that the communication, therefore, was inadmissible.

56 260/02, *Bakweri Land Claims Committee v Cameroon*.

57 390/10, *Aboubakar v Cameroon*.

58 Three of these decision are discussed here. The fourth inadmissibility decision, Communication 366/09, *Kamoun v Tunisia*, had not been published by the Commission at the time of writing.

59 414/12, *Lawyers for Human Rights (Swaziland) v Swaziland*.

60 435/12, *Asemie v Lesotho*.

61 383/10.

62 Para 136.

63 Para 150.

64 Para 176.

The African Commission declared 22 communications admissible in 2014.⁶⁵ Communication 377/09, *Monakali v South Africa*, was brought by the residents of an informal settlement facing eviction. The applicants won against the municipality in the High Court but lost in the Supreme Court of Appeal. The South African Constitutional Court decided not to hear the case. The Commission declared the case admissible as domestic remedies had been exhausted. The Commission decided not to refer the case to the African Court, as requested by the applicants. Instead, it invited the parties to consider an amicable settlement in light of the political will displayed by the respondent state in its many submissions.⁶⁶

Communication 425/12, *Legal Defence and Assistance Project (on behalf of Subaru) v Nigeria*, dealt with an alleged robber who was detained without trial for three years. The Commission held that detention for three years without being brought to trial amounted to an undue delay and, as such, local remedies were non-existent and the communication was admissible.⁶⁷ In light of its general practice of only publishing an admissibility decision as part of the merits decision, it is not quite clear why the Commission published the admissibility decision in this case since it clearly stated that it intended to proceed to the merits. However, the Commission should consider publishing admissibility decisions as they are decided, as this would make it easier for those interested in a particular issue to submit *amicus* briefs on the merits of cases as allowed for under the Commission's Rules of Procedure.

The Commission decided five cases on the merits in 2014.⁶⁸ Two of these cases, both against Rwanda,⁶⁹ are not discussed here since they have not been published by the Commission, following a decision by the AU Executive Council in January 2015 that the reference to these cases in the 37th Activity Report of the Commission be removed and Rwanda be provided with the opportunity of an oral hearing on the two cases. The Commission amended its Activity Report.⁷⁰ This is part

65 318/06, *Open Society Justice Initiative v Côte d'Ivoire*; 314/2007, *Equality Now and Ethiopian Women Lawyers Association v Ethiopia*; 344/07, *Interights v Egypt*; 385/10, *ICJ (Kenya) v Kenya*; 388/10, *Nitoranya v Burundi*; 396/11, *El Sharkawi v Egypt*; 393/10, *Institute for Human Rights and Development in Africa and Accountability in Development v DRC*; 324 & 325/06, *OMCT and LIZADEEL v DRC*; 346/07, *Mouvement du 17 Mai v DRC*; 415/12, *Etonde Ekoto v Cameroon*; 416/12, *Atangana Mebara v Cameroon*; 431/12, *Kwayelo v Uganda*; 443/12, *Issa v Sudan*; 332/06, *CEMIRIDE v Kenya*; 406/11, *Law Society of Swaziland v Swaziland*; 430/12, *Shumba & Others v Zimbabwe*; 454/13, *Nde Ningo v Cameroon*; 428/12, *Isaak v Eritrea*; 423/12, *Mack-Kit and Moukoko v Cameroon*; 425/12, *Legal Defence and Assistance Project v Nigeria*; 377/09, *Monakali v South Africa*; 444/13, *Masuku v Swaziland*.

66 Para 102.

67 Para 45.

68 It should also be noted that a number of earlier merits decisions were only published by the Commission in 2014.

69 392/10, *Theogene Muhayeyezu v Rwanda* and 426/12, *Agnes Uwimana-Nkusi and Saidati Mukakibibi (represented by Medial Legal Defence Initiative) v Rwanda*.

70 Both the original and the revised versions of the Activity Report are available on the Commission's website, <http://www.achpr.org>.

of a disturbing trend going back some years, when the AU Executive Council, prompted by a dissatisfied member state, had intervened to address the concerns of member states against the supposedly autonomous African Commission.⁷¹

In Communication 379/09, *Elgak, Hummeida and Suliman v Sudan*, three journalists alleged arbitrary detention and torture by the Sudan's National Intelligence and Security Service (NISS) in November 2008. The complainants alleged that they had been accused of supporting investigations into mass atrocities conducted by the International Criminal Court (ICC). Sudan was found to have violated the African Charter by freezing assets and unlawfully closing the Khartoum Centre for Human Rights and Environmental Development (KCHRED).

Communication 287/04, *Titanju v Cameroon*, dealt with 18 persons in detention in Cameroon, members of the Southern Cameroons' National Council (SCNC). They were arrested in 1997 for alleged secessionist activities. The Commission held that Cameroon had violated the African Charter and called on Cameroon to immediately release those SCNC members remaining in detention, to provide compensation for torture, ill-treatment and arbitrary detention, to punish those responsible for torture and inhuman treatment, to assure a better understanding of relevant international and national law among law enforcement agencies and places of detention and to revise national legislation.

The African Commission held in Communication 322/06, *Tsikata v Ghana*, that Ghana had violated the duty to guarantee the independence of courts under article 26 of the African Charter. The Commission held:⁷²

The mere fact that appointments to the judiciary are done by the executive does not engage the breach of the duty to guarantee the independence of courts. However when an appointment is made in contemplation of a specific case which would be lodged by the appointing authority or its agent to the court to which such an appointment is made, the appearance of independence of such a court is seriously impaired. In such a case, the ordinary citizen, and the complainant in this communication, would reasonably view the appointment as a targeted measure to secure an anticipated outcome.

The African Commission convened the 15th extraordinary session in March 2014 and the 16th extraordinary session in July 2014 to address the mounting number of communications. Yet, since the 56th session had been adjourned and, subsequently, further communications could not be examined, 87 communications were pending as of the end of 2014,⁷³ of which many awaited final determination on the merits. Clearly, the lack of meeting time due to

71 See for early examples of interference, M Killander 'Confidentiality v publicity – Interpreting article 59 of the African Charter on Human and Peoples' Rights' (2006) 6 *African Human Rights Law Journal* 572-581.

72 Para 158.

73 37th Activity Report para 19.

the cancellation of the second ordinary session negatively affected the Commission's attempt to effectively address the backlog in communications despite additional Secretariat staff having been made available to address the backlog.

In its January 2014 decision on the 35th Activity Report, the Executive Council called on 'member states to implement decisions and recommendations of the ACHPR, respond to urgent appeals from the ACHPR, and to comply with provisional measures issued by the ACHPR'.⁷⁴ This call was repeated *verbatim* in the decision on the 36th Activity Report in June 2014 to which the Council added a request to member states to provide the Commission 'with information regarding implementation of decisions and recommendations of the ACHPR'.⁷⁵

3 African Court on Human and Peoples' Rights

3.1 Composition

The AU Assembly in June 2014 appointed three new judges for a six-year term. These were Mrs Solomy Balungi Bossa from Uganda; Mr Rfaaa Ben Achour from Tunisia; and Mr Angelo Vasco Matusse from Mozambique. The new judges replaced the judges from Togo, Ghana and South Africa. Justice Ramadhani (Tanzania) became the new president of the Court, while Justice Thompson (Nigeria) was elected vice-president.

3.2 Cases

In March 2014 the Court delivered four judgments. In Application 001/2013, *Urban Mkandawire v Malawi: Application for Review of Judgment and Application for Interpretation of Judgment*, the Court held that the application could not be entertained since such interpretation could only be sought for the purpose of implementing a judgment. Two applications against Tanzania were also struck out. Application 001/2012, *Frank D Omary & Others v Tanzania*, and Application 003/2012, *Peter Joseph Chacha v Tanzania*, were declared inadmissible for non-exhaustion of domestic remedies. The first application concerned the failure of the Tanzanian government to pay the pension and benefits of a group of ex-employees of the East African Community (EAC) following the dissolution of the then EAC in 1984. The second case concerned the unlawful arrest, detention and imprisonment of the complainant.

74 Decision on the 35th Activity Report of the African Commission on Human and Peoples' Rights, Doc.EX.CL/824(XXIV), EX.CL/Dec.804(XXIV) para 4.

75 Decision on the 36th Activity Report of the African Commission on Human and Peoples' Rights, Doc.EX.CL/856(XXV), EX.CL/Dec.841(XXV) para 5.

The Court also handed down judgment in Application 013/2011, *Beneficiaries of late Norbert Zongo & Others v Burkina Faso*.⁷⁶ The case dealt with the killing of an investigating journalist and his companions in 1998. Their burnt corpses were found in a car. The applicants averred that since the murder of the victims, the state had failed to render justice to the victims and their families. The Court held that the state had failed to act with due diligence in arresting, detaining and trying the perpetrators in violation of article 7 of the African Charter. Arguably, the judgment could have been clearer in setting out what the due diligence standard would be in a case like this, since the state had investigated but discontinued the investigation due to a lack of evidence. The Court also held that the failure to conduct an effective investigation intimidated other journalists and, therefore, violated the right to freedom of expression in the African Charter and the ECOWAS Treaty. A minority opinion held that there was no violation of the right freedom of expression. Curiously, the official English translation of the judgment amended the reasoning of the majority to align with the minority opinion.⁷⁷

The Court also delivered a reparations judgment in relation to *Mtikila v Tanzania*, where the Court had held in its 2013 merits judgment that Mr Mtikila's rights had been violated as he was not allowed to stand as an independent candidate in elections. The Court held that Mr Mtikila had not provided evidence linking the facts of the case to any damage suffered by him and, therefore, declined to award him damages.⁷⁸

Judgment in Application 004/2013, *Lohé Issa Konaté v Burkina Faso*, was handed down in December 2014. The case concerned the imprisonment of a journalist for 12 months for publishing three articles about alleged corruption. The publication of the newspaper in which the articles were published was suspended for six months. The applicant averred that the jail term and the court costs he suffered were in breach of his right to freedom of expression. The Court concurred with the applicant and held that the sentences handed down by the domestic courts were disproportionate to the aim pursued by the domestic legislation.⁷⁹ The Court further decided that, since the state was responsible for the conduct of domestic courts, the

76 *In the matter of beneficiaries of late Norbert Zongo, Abdoulaye Nikiema alias Ablassé, Ernest Zongo and Blaise Ilboudo & the Burkinabé Human and Peoples' Rights Movement v Burkina Faso*, Application 013/2011, judgment of 28 March 2014.

77 Compare paras 186 and 187 of the English and French versions of the judgment.

78 Application 011 of 2011, ruling on reparations, 30 June 2014.

79 African Court (15 December 2014) 'African Court on Human and Peoples' Rights rules in favour of Burkina Faso journalist in defamation application', <http://www.african-court.org/en/index.php/news/latest-news/569-african-court-on-human-and-peoples-rights-rules-in-favour-of-burkina-faso-journalist-in-defamation-application> (accessed 12 October 2015).

former was to be blamed for failing to comply with the provisions of the African Charter⁸⁰ and the ECOWAS Treaty.⁸¹ The Court consequently ordered the state to amend its legislation.

On 27 and 28 November 2014, the African Commission for the first time appeared before the African Court to argue an application it had submitted concerning the eviction of indigenous people. The case earlier came before the Commission as Communication 381/09, *Centre for Minority Rights Development – Kenya and Minority Rights Group International (on behalf of the Ogiek Community of the Mau Forest) v Kenya*.⁸² On 12 July 2012, in light of the failure of the respondent state to comply with the provisional measures issued, the Commission referred the matter to the Court. In the hearing of Application 006/2012, *African Commission on Human and Peoples' Rights v Kenya*, the Commission averred that the state had committed numerous violations against the Ogiek, including forced eviction from the Mau forest, which had served as their ancestral home. The state argued that local remedies had not been exhausted by the Ogiek community. Judgment in the case is pending.

The African Court adopted an advisory opinion in a case brought by the African Committee of Experts on the Rights and Welfare of the Child.⁸³ The Court held that the African Children's Rights Committee did not have standing to submit contentious cases to the Court as it was not among the organs listed in the Court Protocol. The fact that the Committee did not exist at the time the Court Protocol was adopted did not sway the Court not to take a literalist approach to the interpretation of the 1998 Protocol establishing the Court. It is noteworthy that the three states that responded to the Court's request for comments on the issue under consideration, including Kenya and Senegal, that have had cases against them decided by the Committee, all thought that the Committee should have standing to bring cases to the Court.

In its decision on the Activity Report of the Court, in January 2014 the Council requested the Court to propose a reporting mechanism for consideration of situations of non-compliance.⁸⁴ In its July 2014 decision on the Activity Report of the Court, the Council noted that Libya had not responded to all the measures indicated in the Court's

80 See art 9.

81 Art 66(2).

82 Press release on the upcoming public hearing of application 006/2012 – African Commission on Human and Peoples' Rights v The Republic of Kenya, from 27 to 28 November 2014, in Addis Ababa, Ethiopia', <http://www.achpr.org/press/2014/11/d235/> (accessed 12 October 2015).

83 In the matter of request for advisory opinion by the African Committee of Experts on the Rights and Welfare of the Child on the standing of the African Committee of Experts on the Rights and Welfare of the Child before the African Court on Human and Peoples' Rights, Request 002/2013, advisory opinion, 5 December 2014.

84 Decision on the 2013 Activity Report of the African Court on Human and Peoples' Rights, Doc EX.CL/825(XXIV), EX.CL/Dec.806(XXIV) para 9.

order of provisional measures and urged Libya to inform the Court of the measures taken to comply with the order. The Council further urged states that had not acceded to the Protocol or made an article 34(6) declaration to do so before January 2016.⁸⁵

4 African Committee of Experts on the Rights and Welfare of the Child

4.1 Composition

The composition of the 11-member Committee remained unchanged in 2014. In its original formulation, article 37 of the African Charter on the Rights and Welfare of the Child (African Children's Charter) provided that members of the African Children's Committee may only serve a non-renewable term of five years. The AU Assembly in June 2014 decided to amend the Children's Charter to allow for the re-election of members of the Committee.⁸⁶ The amendment was done in anticipation of the terms of six members of the Committee coming to an end in July 2015. In December 2014, the Committee elected Sidikou Aissatou Alassane Moulaye as Chairperson for one year, with the former Chairperson, Benyam Dawit Mezmur, as first Vice-Chairperson.⁸⁷

4.2 Sessions

The African Children's Committee held two ordinary sessions and one extraordinary session in 2014, totalling 19 days of meeting time.⁸⁸ As with the African Commission, a forum bringing together civil society organisations is held prior to the sessions of the Committee. Noticeably, the CSO Forum preceding the 23rd session was held in Dakar, Senegal, and not in Addis Ababa, Ethiopia, where the Secretariat of the Committee is based and where all the 2014 sessions were held.

The 23rd session included a panel discussion on ending child marriage in Africa. This discussion formed part of an AU campaign launched in 2014 to end child marriage. The Committee chose as the 2015 theme of the Day of the African Child 'Accelerating our collective efforts to end child marriage in Africa'.⁸⁹ At the

85 Decision on the mid-term activity report of the African Court on Human and Peoples' Rights, Doc. EX.CL/857(XXV), EX.CL/Dec.,842(XXV).

86 Decision on the report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), Assembly/AU/Draft/Dec.528(XXIII).

87 24th session report para 9.

88 9-16 April (Addis Ababa); 7-11 October (Addis Ababa); 1-6 December (Addis Ababa).

89 Para 101.

extraordinary session, the Committee appointed Dr Fatima Sebaa as Special Rapporteur on Child Marriage.⁹⁰

At the 23rd session, the Committee adopted revised Rules of Procedure and decided to send these to the AU legal counsel 'for clearance'.⁹¹ It is unclear why the rules would need to be cleared by the legal counsel as the Committee is an autonomous institution.

4.3 State reporting

At the 23rd session, the African Children's Committee adopted Guidelines on the Form and Content of Periodic State Party Reports.⁹²

The Committee at its 23rd session in April 2014 considered the initial state party report of Liberia.⁹³ The initial report of Ethiopia was considered at the 1st first extraordinary session in October 2014. The presentation of the report by the Minister of Women, Children and Youth Affairs was followed by a presentation by the 15 year-old President of the Addis Ababa Child Model Parliament.⁹⁴ The initial report of Guinea was presented by Guinea's permanent representative to the AU, who explained that the minister in charge of children's issues could not attend due to her involvement in the national response to the Ebola epidemic.⁹⁵ Kenya's first periodic report was presented by the Principal Secretary in the Ministry of Labour and Social Security Services.⁹⁶ Mozambique's report was presented by the permanent representative to the AU.⁹⁷ South Africa's initial report was presented by the Deputy Minister of Social Development.⁹⁸

The Children's Committee allocated two days to a discussion of what is to be included in the concluding observations on the state reports.⁹⁹ The concluding observations on the reports of Ethiopia, Guinea, Kenya, Mozambique and South Africa were adopted at the 24th session in December.¹⁰⁰

4.4 General Comments

At the 24th session, the African Children's Committee discussed the process for the adoption of General Comments and agreed that it was necessary to have a consistent approach (set out in detailed guidelines), to have a consistent budget for the development of each

90 Para 80.

91 Para 96.

92 Para 100.

93 23rd Session of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) 09-16 April 2014 Addis-Ababa, Ethiopia, ACERWC/RPT (XXIII), paras 56-60.

94 Paras 3-18.

95 Paras 19-32.

96 Paras 33-43.

97 Paras 44-58.

98 Paras 59-77.

99 Para 78.

100 Para 73.

General Comment and to consult member states to ensure ownership.¹⁰¹ The Committee is in the process of developing a General Comment on article 31 of the African Children's Charter dealing with the responsibility of the child.¹⁰²

4.5 Missions

At the 24th session, the African Children's Committee adopted the report of the Committee's advocacy mission to South Sudan. Committee member Julia Sloth-Nielsen highlighted some of the lessons of the mission, namely,¹⁰³

the significance to liaise with AU officers and organs on the field; the need to recognise the expensive cost of field works and to take action on it; the importance of having an advance preparation by the Secretariat on the ground before the actual mission takes place; the importance of asking the right question to UN agencies, and international NGOs working on the ground.

4.4 Communications and investigations

At the 1st extraordinary session, the African Children's Committee adopted the harmonised communication guidelines.¹⁰⁴

The report of the Committee's 23rd session notes that '[t]he Committee considered the compliant [*sic*] and closely studied the submitted facts and heard oral arguments from both sides; based on this the Committee made a decision on the communication'.¹⁰⁵ The transparency with regard to other parts of its work is clearly absent with regard to communications. As is the case with the African Commission, delayed publication of the decision on communications by the African Children's Committee is a serious concern.

In the case against Senegal, the Committee found that the state of Senegal was responsible for the ill-treatment of children (*talibés*) attending religious schools, including forced begging.¹⁰⁶ The Committee provided extensive remedies aimed at rehabilitating children as well as at preventing future violations.

At the 23rd session, the Committee appointed one of its members as Rapporteur on the violations of the rights of children with albinism in Tanzania, following a request received by the Committee to investigate the situation.¹⁰⁷ An investigation mission was planned for 2015.¹⁰⁸

101 Para 54.

102 Para 87.

103 Para 64.

104 Para 79.

105 Para 90.

106 003/12 – *Centre for Human Rights and Rencontre Africaine pour la Défense des Droits de l'Homme v Senegal*, April 2014.

107 Para 91.

108 24th session para 60.

5 African Peer Review Mechanism

In June 2014, the AU Assembly decided that the APRM 'shall be an autonomous entity within the AU system'.¹⁰⁹ This means that the APRM will no longer be linked to the NEPAD structures.

By the end of 2014, 34 states had signed up for the APRM, but the review process continued at a very slow pace.¹¹⁰ Only 17 country review reports have been published, the latest being the one on Tanzania dated January 2013, and so far no state has concluded the second review.

6 African Union organs and human rights

A significant development in 2014 was the adoption in June of five new legal instruments by the AU Assembly, including the Protocol on the Statute of the African Court of Justice and Human and Peoples' Rights.¹¹¹ When it finally enters into force after having received the necessary ratifications, the Protocol will expand the jurisdiction of the African Court to not only consider applications with respect to state responsibility for human rights violations and inter-state disputes, but to decide on individual criminal responsibility for the crimes set out in the Protocol.

The Protocol covers not only the traditional international crimes of genocide, crimes against humanity and war crimes, but also the unconstitutional change of government, piracy, terrorism, mercenarism, corruption, money laundering, trafficking in persons, trafficking in drugs, trafficking in hazardous wastes, illicit exploitation of natural resources and the crime of aggression. A controversial aspect included at a late stage in the Protocol was the immunity of serving heads of state and senior government officials.¹¹²

Despite the limitation provided by the immunity provision, the Court will clearly have much to do when the Protocol enters into force. However, it is questionable whether this will happen soon as the interest of states to actually be bound by the Protocol is probably lower than their interest in adopting it.

109 Decision on the integration of the APRM into the African Union, Assembly/AU/Draft/Dec.527(XXIII).

110 Equatorial Guinea was the 34th country to join the APRM in January 2014, 'Equatorial Guinea signs up for APRM', 29 January 2014, <http://www.panapress.com/Ethiopia-AU--Equatorial-Guinea-signs-up-for-APRM--13-895418-18-lang1-index.html> (accessed 12 October 2015).

111 Assembly/AU/8(XXIII)'Assembly/AU/Dec.529(XXIII).

112 Article 46A *bis*. African Union (10 July 2014) 'Media Advisory: Press Conference on the AU Summit Decision on the Protocol on African Court of Human and Peoples Rights', <http://legal.au.int/en/sites/default/files/Media%20Advisory%20-%20AU%20Legal%20Counsel%20addresses%20Protocol%20on%20African%20court%20on%20Human%20and%20Peoples%20rights%20-%20July%2010%202014.pdf> (accessed 11 March 2015).

The other treaties adopted by the AU Assembly in June 2014 are the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development; the African Union Convention on Cross-Border Co-operation; the Protocol on the Establishment of the African Monetary Fund; and the Protocol to the Constitutive Act of the African Union relating to the Pan-African Parliament. The revised Pan-African Parliament (PAP) Protocol provides for PAP to adopt model laws on topics suggested by the AU Assembly. The model law system is clearly less ambitious than the harmonisation of laws taking place under community acts of some regional economic communities, such as the East African Community (EAC) and the Economic Community of West African States (ECOWAS).¹¹³

In June 2014, AU Assembly adopted the Malabo Declaration on Accelerated Growth and Transformation for Shared Prosperity and Improved Livelihoods. The Declaration is a recommitment by the AU to the Comprehensive Africa Agriculture Development Programme (CAADP), as well as to the continent's agricultural transformation and food security agenda 2015-2025.¹¹⁴ The NEPAD Heads of State and Governmental Orientation Committee adopted the NEPAD Programme on Agriculture Climate Change which was subsequently endorsed by the AU Assembly in 2014.¹¹⁵ The programme aims at facilitating the establishment of an African Climate-Smart Agriculture Co-ordination Platform which seeks to boost the operations of smallholder farmers.

The AU Commission of Inquiry on South Sudan submitted an interim report to the AU in June 2014.

7 Conclusion

The fragile nature of any progress made towards the realisation of human rights was illustrated by the Ebola epidemic in West Africa, which also constituted a serious setback for the states most affected: Guinea, Liberia and Sierra Leone. The epidemic also had implications for the effective functioning of the regional African human rights bodies, in particular the African Commission, which cancelled its second ordinary session in 2014 due to the epidemic.

Despite the disruption caused by the Ebola epidemic, the Commission adopted a number of important resolutions, guidelines and general comments, made a dent in the backlog of individual

113 M Killander 'Legal harmonisation in Africa: Taking stock and moving forward' (2012) 47 *The International Spectator* 83-96.

114 NEPAD Newsletter (November 2014) 'Building infrastructure to spur intra-African trade and tourism' English edition, http://www.nepad.org/sites/default/files/newsletter/2014/12/newsletter_november_2014_pdf_11641.pdf (accessed 10 March 2014) 10-11.

115 Assembly/AU/9(XXIII).

communications and for the first time appeared before the African Court. The bold step, in the African context, of adopting a resolution on violence on the basis of sexual orientation and gender identity is particularly noteworthy.

The African Court handed down two significant judgments on accountability for extra-judicial executions and limits on criminal libel. While the lack of countries allowing for direct access constrains the number of cases before the Court, it still has a number of cases on the roll, and interesting jurisprudence may be expected to emerge from the Court in the coming years. The advisory jurisdiction of the Court also has potential, but the Court's literal approach to the issue of standing of the African Committee of Experts on the Rights and Welfare of the Child to bring cases to the Court was disappointing.

The lack of political will of state parties to comply with decisions of the human rights-monitoring bodies continues to be a cause for concern. In many instances, there is not even any engagement by the states. For instance, in cases where the Commission sent letters of appeal, most states failed to respond to such requests. The self-interest of the ruling elite is also evident in the immunity provision in the new Protocol providing criminal jurisdiction to the African Court. The Executive Council decision to remove the decisions against Rwanda from the African Commission's report is also disconcerting.

On a positive note, an increasing number of states are submitting state reports to the African Commission and the African Children's Committee. The high level of delegations at the African Commission implies a will by some member states to participate in a meaningful interactive dialogue. However, the lack of follow-up on concluding observations and the lack of engagement of states with the provisions of the African Women's Protocol remain a concern.