

Editorial introduction: Compliance with regional human rights – Focus on East and West Africa¹

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The African human rights system constitutes non-binding and binding decision-making organs of the African Union (AU). These AU organs include, the African Commission on Human and Peoples' Rights (African Commission), the African Committee on the Rights and Welfare of the Child (Children's Committee) and the African Court on Human and Peoples' Rights (African Court). Sometimes, as was the case in *SERAC*, these AU organs act as appeal structures for decisions from the judicial arms of the Regional Economic Communities (RECs).² The RECs are groups of countries in sub regions for the purposes of achieving greater economic integration, peace and stability in their region.³ They are described as the building blocks of the AU and are also central to the strategy for implementing regional human rights standards in Africa.

In this special issue, the contributions take stock of the implementation of some of the key human rights decisions from the judicial arms of the RECs and from the three organs of the AU, indicated above. The RECs considered in this issue include, the Economic Community of West African States (ECOWAS) and the East African Community (EAC). This limitation is based on the track record of these RECs in making progressive human rights based decisions that are

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- 2 *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* Communication 155/96 ACHPR (2002) https://achpr.org/public/Document/file/English/achpr30_155_96_eng.pdf (last accessed: 2021-03-24).
- 3 Africa has eight RECs, these include: the Arab Maghreb Union (AMU/UMA), the Economic Community of West African States (ECOWAS), the East African Community (EAC), the Intergovernmental Authority on Development (IGAD), the Southern African Development Community (SADC), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of Central African States (ECCAS), and the Community of Sahel-Saharan States (CENSAD).

critical to the AU's human rights and peace strategy. Further, this special issue discusses the implementation of some of the key decisions of the African Commission, the Children's Committee and the African Court.

These are remarkable decisions which were well received by the communities concerned and other communities with similar issues (but which were not party to the cases). For instance, *Endorois*⁴ and *Ogiek*⁵ have been celebrated as a victory for indigenous peoples across Africa. Importantly, *Endorois* is the first case in which the African Commission made a decision concerning the violations of the land and security of tenure rights of an indigenous community. And, *Ogiek* is the first case the African Commission referred to the African Court. The discussions in this special issue build from the decision in *Endorois*, and consider the related decision in *Ogiek*⁶ and the decision in the *Nubian Community* case.⁷ The *Nubian Community* case is twofold, as it is the first communication brought by the same organisation, on behalf of the same community but submitted to two different organs of the AU (the African Commission and the Children's Committee). The *Nubian children's* case principally deals with the issue of statelessness, citizenship and related upshot on different substantial children's rights protected in the Children's Charter.⁸ Another leading case considered in this issue is the *ADPF* case.⁹ The *ADPF* case has been lauded for reinforcing the protection of women's rights in Mali and for resetting the minimum age of marriage, for the girl child, to 18 years. The decision has been celebrated within the sub-region and the Continent as a victory and strong empowering legal decision for girls, adolescent girls and women in Africa.

The overall objective of this special issue, is to discuss the challenges and opportunities for implementation of regional human rights

4 *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* Communication 276/2005, ACHPR (2010); see "The Endorois case" *ESCR-Net* (2018-06-05) <https://www.escr-net.org/news/2018/endorois-case> (last accessed: 2021-03-23).

5 *African Commission on Human and Peoples' Rights v Republic of Kenya*, Application 006/2012, ACTHPR (2017) (*Ogiek*); see Roesch "The Ogiek case of the African Court on Human and Peoples' Rights: Not so much news after all?" *EJIL: Talk!* (2017-06-16) <https://www.ejiltalk.org/the-ogiek-case-of-the-african-court-on-human-and-peoples-rights-not-so-much-news-after-all/> (last accessed: 2021-03-23).

6 *Ogiek*.

7 *The Nubian Community in Kenya vs The Republic of Kenya* Communication 317/2006 ACHPR (2015); see "Nubian Community in Kenya v Kenya" *Open Society Justice Initiative* <https://www.justiceinitiative.org/litigation/nubian-community-kenya-v-kenya> (last accessed: 2021-03-23).

8 *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative on Behalf of Children of Nubian Descent in Kenya v The Government of Kenya* Communication 002/2009 ACHPR (2011).

9 *Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v Mali* Application 046/2016 ACTHPR (2018) <https://en.african-court.org/images/Cases/Judgment/APDFVsMaliJudgement.pdf> (last accessed: 2021-03-23).

standards in East and West Africa. Specifically, the focus of this issue seeks to address the following key issues:

- 1 Contribution of regional and sub-regional mechanisms in East and West Africa to the development of international human rights standards, including the development of regional and sub-regional jurisprudence;
- 2 Contribution of regional and sub-regional mechanisms in Africa to the implementation of human rights standards at national levels, including synergies and cross-institutional dialogues between and among institutional bodies, at various levels; and
- 3 Contribution of relevant stakeholders at regional and sub-regional levels to the implementation of human rights standards in Africa.

This special issue contains six articles. The first article is a study which examines the extent to which EAC member states have implemented and complied with the human rights decisions of the EACJ. The second article is a study which assesses the implementation framework of the decisions of the African Court. The third article examines the jurisprudence of the African Court and analyses the extent to which the Court ensures state compliance and accountability to women's rights in Africa. The fourth article reflects and tracks the level at which the state of Kenya has complied with the recommendations from the African Commission and the African Children's Committee in relation to the Nubians. The fifth article explores the journey traversed by the EACJ in developing the human rights jurisprudence as well as the successes and challenges of this voyage. The last article analyses the legal framework on the implementation of decisions of the ECOWAS Court and the mechanisms developed to oversee this process.