

Editorial

The publication of this issue of the *African Human Rights Journal* marks twenty years since the *Journal* first appeared in 2001. It appears at a time of considerable crisis and turmoil.

COVID-19

Since the last issue of the *Journal* that appeared at the end of 2019, the world has been engulfed by the devastating spread of the novel coronavirus, leaving in its wake a large number of deaths, and the disturbing effect of regulations promulgated in response to the pandemic. Although most African states (with the exception of South Africa) have up to mid-2020 been spared the pandemic's most distressing effects, the continent by no means has been left intact.

Each of the three human rights bodies of the African Union (AU) has in its own way responded by accounting for the implications of COVID-19 on its operation, and on its substantive mandate.

The African Court on Human and Peoples' Rights (African Court), for example, held virtual meetings to discuss pressing issues and measures to ensure the continuity of the Court's business; it suspended time limits in response to COVID-19; and it held its 57th ordinary session virtually, the first time it has ever done so. The African Commission on Human and Peoples' Rights (African Commission) also for the first time held its sessions virtually, with its 27th extraordinary session and its 66th ordinary session taking place on virtual platforms. The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) plans to hold its 34th ordinary session at the AU Commission in Addis Ababa later this year.

Of the three bodies the African Commission has – understandably, given the nature and scope of its mandate – been the most active in

its response to COVID-19. It issued its first statement on the human rights aspect of COVID-19 on 24 March 2020, and after that issued numerous statements as a Commission, and in the name of its various special mechanisms. It also on several occasions used one of its most incisive tools, the issuing of urgent appeals, to address concerns requiring immediate action by states. It further directed press releases and other statements to specific states. States targeted in this way include Burundi, Libya, South Africa, Tanzania and Togo. The African Children's Committee formulated a 'Guiding Note on Children's Rights during COVID-19' covering an array of children's rights-adapted measures for states' integration into their COVID-19 response measures. Being dependent on the submission of cases to it, the African Court has not yet had the opportunity to deal with a case related to COVID-19.

Rush to withdraw article 34(6) declarations

A crisis of a different nature arose when, within the space of six months, three states followed Rwanda in withdrawing their declarations under article 34(6) of the Protocol to the African Charter on the Establishment of an African Court (African Court Protocol), accepting the competence of individuals and non-governmental organisations (NGOs) enjoying observer status with the African Commission to submit cases directly to the Court. Rwanda withdrew its declaration on 24 February 2016; Tanzania did so on 21 November 2019; Benin followed on 24 March 2020; and the most recent was Côte d'Ivoire, whose notice of withdrawal was dated 28 April 2020. Since only ten states had ever made this declaration, it means that only six states now allow direct individual access to the Court. Given that by far the majority of cases emanated from the four withdrawing states, the immediate prospects of new cases reaching the Court look bleak. More disconcerting is the possibility of any of the six remaining states following the example of the withdrawing four, and the stifling effect these withdrawals may have on the likelihood of any more states making the article 34(6) declaration, or of any more states ratifying the Court Protocol.

This issue of the *Journal*

In the first three articles of this issue of the *Journal* the authors draw our attention to various aspects related to the African Court. Adjolohoun identifies surface and deep-seated factors that may explain the withdrawal by the four states from the African Court's direct individual access jurisdiction. At a surface level, he shows that each of the states faced adverse judgments related to important socio-

political issues of considerable domestic contention. At a more deep-seated level he argues that more pervasive issues are at play, which he categorises as ‘system design’ issues and as matters related to the Court’s exercise of its mandate (its ‘practice’). While also focusing on the African Court, Waschefort turns his analytical gaze to the Court’s subject-matter jurisdiction and interpretive competence in relation to international humanitarian law. Rodríguez and Álvarez place the Court’s rulings, orders and judgments in two cases concerning Libya in the territorial context of the conflict and instability in Libya and the temporal context following the Arab uprisings. They endeavour to draw lessons from these decisions to assess the consolidation and legitimation of the Court.

The next three contributions deal with issues of continental relevance. Ncube interrogates the Pan-African Parliament’s capacity to promote and protect human rights, in the process drawing scholarly attention to a much-neglected topic. Gravett deals with an issue of emerging interest and concern: the influence of the Chinese model of internet sovereignty in Africa. Twinomugisha examines the use of a rights-based approach, based on the right to health, to effectively address non-communicable diseases in Uganda.

The remaining articles are country-specific. Under the 2013 Constitution of Zimbabwe, judges of the Supreme Court have sat as the Constitutional Court to hear constitutional matters. From March 2020 the Zimbabwean Constitutional Court sits as a separate court in its own right. Mavedzenge takes stock of six years of human rights jurisprudence of the Supreme Court sitting as a Constitutional Court. Makanje considers the resource challenges to protecting vulnerable witnesses in Malawi. Maziwisa and Lenaghan critically examine access to the right to water for people living in rural Limpopo, a province in the northern part of South Africa. Kahn examines the extent to which the right to dignity extends to refugees in South Africa. Arendse deals with the right to basic education, which is enshrined in the South African Constitution (as it is in the constitutions of many other African states). She draws insights from a landmark decision by the South African Constitutional Court, *Governing Body of the Juma Masjid Primary School v Essa NO*, showing its impact on the decisions of other South African courts. Ayalew assesses the limits to freedom of expression on the internet in Ethiopia against the African Charter on Human and Peoples’ Rights.

A recent publication of the Pretoria University Law Press (PULP), the edited volume *Exploring the link between poverty and human*

rights in Africa, brought together by the editors Durojaye and Mirugi-Mukundi, is reviewed by Mathiba.

We extend our genuine gratitude to our anonymous reviewers who so generously gave of their time, expertise and insights: Foluso Adegalu; Daphine Agaba; Victor Ayeni; Gina Bekker; Rutendo Chinomona; Christian Aime Chofor Che; Helene dos Santos; Hlengiwe Dube; Charles Fombad; Lisa Forman; Michaela Hailbronner; Christof Heyns; Tomiwa Ilori; Anton Kok; Dan Kuwali; Sarah Mabeza; Konstantinos Magliveras; Tom Mulisa; Rachel Murray; Mwiza Nkhata; Mkhululi Nyathi; Paul Ogendi; Karabo Ozah; Misha Plagis; Michael Power; Thomas Probert; Solomon Sacco; Ann Skelton; Lee Stone; and Micha Wiebusch.