

## Editorial

### Marking 20 years of the *AHRLJ*

In 2020, the *African Human Rights Law Journal* (*AHRLJ* or *Journal*) celebrates 20 years since it first was published. The *AHRLJ* is the only peer-reviewed journal focused on human rights-related topics of relevance to Africa, Africans and scholars of Africa.

It is a time for celebration. Since 2001, two issues of the *AHRLJ* have appeared every year. Initially published by Juta, in Cape Town, South Africa, in 2013 it became as an open-access journal published by the Pretoria University Law Press (PULP). PULP is a non-profit open-access publisher focused on advancing African scholarship.

The *AHRLJ* contains peer-reviewed articles and 'recent developments', discussing the latest court decisions and legal developments in the African Union (AU) and regional economic communities. It contains brief discussions of recently-published books. With a total of 517 contributions in 40 issues (436 articles and 81 'recent developments'; not counting 'book reviews'), on average the *AHRLJ* contains around 13 contributions per issue. The *AHRLJ* is accredited with the International Bibliography of the Social Sciences (IBSS) and the South African Department of Higher Education, Science and Innovation, and appears in a number of open access portals, including AfricanLii, the Directory of Open Access Journals and SciELO.

Over the 20 years of its existence, many significant articles appeared in the *AHRLJ*. According to Google Scholar the most-cited articles that have appeared in the *Journal* over this period are

(i) T Metz 'Ubuntu as a moral theory and human rights in South Africa' (2011) 11 *African Human Rights Law Journal* 532-559 (with 273 citations); (ii) D Cornell and K van Marle 'Exploring ubuntu: Tentative reflections' (2005) 5 *African Human Rights Law Journal* 195-220 (with 97 citations); (iii) S Tamale 'Exploring the contours of African sexualities: Religion, law and power' (2014) 14 *African Human Rights Law Journal* 150-177 (with 85 citations); K Kindiki 'The normative and institutional framework of the African Union relating to the protection of human rights and the maintenance of international peace and security: A critical appraisal' (2003) 3 *African Human Rights Law Journal* 97-117 (with 59 citations); and T Kaime 'The Convention on the Rights of the Child and the cultural legitimacy of children's rights in Africa: Some reflections' (2005) 5 *African Human Rights Law Journal* 221-238 (with 54 citations).

This occasion allows some perspective on the role that the *Journal* has played over the past 20 years. It is fair to say that the *AHRLJ* contributed towards strengthening indigenous African scholarship, in general, and human rights-related themes, specifically. Before the *Journal* there was no academic 'outlet' devoted to human rights in the broader African context. Both in quantity and in quality the *Journal* has left its mark on the landscape of scholarly journals.

The *AHRLJ* has provided a forum for African voices, including those that needed to be 'fine-tuned'. Different from many other peer-reviewed journals, the *AHRLJ* has seen it as its responsibility to nurture emerging but not yet fully-flourishing talent. This approach allowed younger and emerging scholars to be guided to sharpen their skills and find their scholarly voices.

The *AHRLJ* has evolved in tandem with the African regional human rights system, in a dialogic relationship characterised by constructive criticism. When the *Journal* was first published in 2001, the Protocol on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol) was not yet in force. Over the years the *Journal* tracked the evolution of the African Court on Human and Peoples' Rights (African Court) from a faltering start, through a phase when it increasingly expressed itself in an emerging jurisprudence, to the current situation of push-back by states signalled by the withdrawal by four states of their acceptance of the Court's direct individual access jurisdiction. The same is largely true for the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee). It was in 2001 that the AU elected the first members of this Committee. It first met in 2002, and its first decade or so was lackluster. The Committee examined its first state report only in November 2008, and decided its first communication in

March 2011. Articles by authors such as Mezmur and Sloth-Nielsen, who also served as members of the Committee, and Lloyd, placed the spotlight on the work of the Committee. Initially, these articles primarily served to describe and provide information that otherwise was largely inaccessible, but over time they increasingly provided a critical gaze and contributed to the constructive evolution of the Committee's exercise of its mandate. By 2011 the African Commission on Human and Peoples' Rights (African Commission) was already quite well established, but it also underwent significant growth over the subsequent 20-year period. Numerous articles in the *Journal* trace and analyse aspects of this evolution.

Contributions in the *Journal* also cover most of the AU human rights treaties and soft law standards. A number of issues contain a 'special focus' section dealing with a thematic issue of particular relevance or concern, such as the focus on the Protocol to the African Charter on the Rights of Women (2006 no 1); '30 years of the African Charter' (2011 no 2); and 'sexual and reproductive rights and the African Women's Protocol' (2014 no 2).

The scope of the *Journal* extends beyond the supranational dimension of human rights. Over the years many contributions explored aspects of the domestic human rights situation in countries such as the Democratic Republic of the Congo, Eswatini, Ethiopia, Lesotho, Malawi, Mauritius, Nigeria, South Africa, Tanzania, Uganda and Zimbabwe. From time to time the specific focus sections also veered towards domestic human rights protection. See for instance the focus on 20 years of the South African Constitution (2014 no 2); on 'adolescent sexual and reproductive rights in the African region' (2017 no 2); on 'the rule of law in sub-Saharan Africa' (2018 no 1); and on 'dignity taking and dignity restorations' (2018 no 2).

### **Acknowledgment, appreciation and thanks**

A journal not only consists of pages in print; it is the result of people's initiative, dedication, hard work, talent and time.

The founding editors of the *AHRLJ* are Christof Heyns, Annelize Nienaber and Frans Viljoen. Christof stood down in 2009. Annelize's role, over the entire period, in ensuring felicitous language use deserves special mention. Frans remains the editor-in-chief. Tshepo Madlingozi joined the editorial team in 2008, and served until 2019. Magnus Killander became an editor in 2009, after many years of assisting the editorial team. Solomon Ebobrah joined as editor in 2011. In 2020 Usang Maria Assim joined the editorial team. For the

'special focus' sections, the editorial team collaborated with 'guest editors' who largely took responsibility for the editorial process and content of these sections.

Even if the *Journal* succeeded because of teamwork, two individuals have to be singled out: the PULP Manager, Lizette Hermann, and the *Journal* Manager, Isabeau de Meyer. Lizette's professionalism is without bounds, her tireless dedication and unflappable attitude makes her a treasured and stalwart member of the *Journal* team. The *Journal* has been extremely privileged to have Isabeau as editorial manager. Schooled in law and languages, Isabeau proved to be a perfect fit for this position. She has been the *Journal's* spine. As we know, a book's spine is the vertical edge connecting the pages. Without a spine a book or a journal physically falls apart. In a human being the spine encloses the spinal cord and provides support for the thorax and abdomen. Isabeau has been the backbone of the *Journal* team, bringing the energy, commitment and attention to detail that made the uninterrupted publication of the *Journal* possible, and guaranteed the quality control of its content.

The editors also thank the members of the international editorial board who, through their association with the *Journal*, endowed it with added luster and credibility. Last, but not least, a warm 'thank you' to the student assistants, many of whom were master's and doctoral candidates at the Centre.

### **This issue**

Marking the special 20-year juncture, this also is a very special issue of the *Journal*. The *Journal* consists of three sections.

The first is a special focus section that assesses the implications of the COVID-19 pandemic regulations for human rights and the rule of law in Eastern and Southern Africa. Professor Charles Manga Fombad is the editor of this part of the journal. In a separate editorial, he sets out the context and overriding themes that are included. This section contains ten articles. The *Journal* thanks Professor Fombad for his meticulous control of the editorial processes of this part of the *Journal*. He was assisted by Tresor Makunya and Lukman Abdulrauf. We also thank and acknowledge the Konrad Adenauer Stiftung's Rule of Law for Sub-Saharan Africa division for its support of the conference at which drafts of the articles that are published here were presented, and for its support of this publication.

The second part contains another special focus section. It deals with children's rights under the theme 'The African Children's Charter at 30: reflections on its past and future contribution to the rights of children in Africa'. It contains an editorial by Dr Nkatha Murungi and four articles. This special focus section is the first in a two-part special focus on children's rights. The remainder of the articles will appear in the first issue of the *Journal* in 2021.

The third part of this issue contains articles on a variety of topics, in line with the usual approach of the *Journal*.

Two of these articles deal with aspects of the judgments of the African Court. Jonas ponders the important question of the domestic effect of the African Court's judgments, not only in respect of the respondent state in a particular case, but also as far as other state parties to the African Court Protocol are concerned. Kombo analyses one of the Court's judgments (APDF and IHRDA v Mali), and criticises the Court's superficial engagement with the vexing issue of derogation from rights. The omission of an explicit derogation clause has long been a matter of contention in academic scholarship. In Kombo's view, the Court allowed to pass by an opportunity to provide more clarity on this issue. The compatibility of the declaration of a 'state of emergency' has been propelled into focus during COVID-19. Adopting Resolution 447 on upholding human rights during situations of emergency and in other exceptional circumstances (ACHPR/Res 447 (LXVI) 2020), the African Commission earlier this year tasked its Focal Point on Human Rights in Conflict Situations in Africa to 'develop a normative framework in the form of Guidelines on adhering to human and peoples' rights standards under the African Charter when declaring states of emergency or disaster', taking account of the relevant Protocols to the African Charter and standards of the African Commission.

Although the *Journal* focuses on the African human rights system, it welcomes contributions comparing aspects of African human rights with other regions, in particular the European and Inter-American human rights systems. Drawing on a comparison between Africa and Europe, Heikkilä and Mustaniemi-Laakso explore vulnerability as a human rights variable.

Three contributing authors, all from countries in the Southern African Development Community, focus on aspects related to human rights and democracy at the national level. 'Nyane and Maqakachane argue for a progressive approach to standing in public interest cases in Lesotho. Nyathi and Ncube examine human rights and rule of

law implications of the 2017 military *coup* in Zimbabwe. Mahadew provides a critical assessment of the Children's Bill of Mauritius.

Our sincere appreciation and thanks go to all who have been involved in making the *AHRLJ* the quality and well-regarded journal it has become since its establishment in 2001, especially the anonymous reviewers. For this particular issue, we extend our genuine gratitude to our anonymous reviewers who so generously gave of their time, expertise and insights: Adem Abebe; Deji Adekunle; Akinola Akintayo; Victor Ayeni; Ashwanee Budoo; Christian-Aimé Chofor Che; Ebenezer Durojaye; Alex Ekeke; Dayo Fagbemi; Charles Fombad; Ademola Jegede; Ilze Grobbelaar-Du Plessis; Sharon Hofisi; Abdi Jibril; Lloyd Kuveya; Emma Lubaale; Monica Mayrhofer; Admark Moyo; Susan Mutambasere; Michael Nyarko; Rita Ozoemena; Christa Rautenbach; Itumeleng Shale; and Nsongurua Udombana.