
AFRICAN HUMAN RIGHTS LAW JOURNAL

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Editorial

Indexing

Since its first issue appeared in 2000, the *African Human Rights Law Journal* has made great strides. The editors take pride in noting that the *Journal* is now indexed in SCOPUS; the International Bibliography of Social Sciences (IBSS); the Directory of Open Access Journals (DOAJ); the Scientific Electronic Library Online (SCIELO); and is accredited by the South African Department of Higher Education and Training (DHET).

Context

This issue of the *African Human Rights Law Journal* is published just after the African Union (AU) Assembly, on 6 February 2022, has adopted a fourth substantive protocol to the African Charter on Human and Peoples' Rights (African Charter), the Protocol to the African Charter on the Rights of Citizens to Social Protection and Social Security (African Social Security Protocol). Earlier, in 2003, the Assembly adopted the Protocol to the African Charter on the Rights of Women (African Women's Protocol); in 2016 the Assembly adopted the Protocol to the African Charter on the Rights of Older Persons in Africa (African Older Persons Protocol), and in 2018 it adopted the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa (African Disability Protocol). Each of these Protocols requires 15 ratifications to ensure its entry into force. The African Women's Protocol reached this milestone and by July 2022 it had been ratified or acceded to by 42 states. By July 2022 the threshold target of 15 ratifying states had not been reached in respect of any of the other three treaties. The Older Persons Protocol received six ratifications, and the Disability Rights Protocol, three (see a graphic representation of status of ratification at <https://www.chr.up.ac.za/dru-news/3089-centre-hosts-high-level-meeting-for-heads-of-missions-in-preatoria-to-encourage-ratification-of-three-au>

instruments). No record of ratification of the Social Security Protocol is available. A fourth protocol to the Charter – indeed chronologically the first to be adopted – the 1998 Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights, entered into force in 2004, and by July 2022 had been ratified by 33 state parties to the African Charter.

To draw further attention to the need for ratification of the African Older Persons Protocol, the African Disability Protocol and the African Social Security Protocol, the *Journal* invites contributions on aspects of these protocols for potential publication in future issues.

Contents overview

This issue of the *Journal* accounts for the human rights implications of a landmark continental treaty, the African Continental Free Trade Agreement (AfCFTA). The AU Assembly adopted the AfCFTA on 21 March 2018, and it entered into force on 30 May 2019. So far, 43 countries on the continent have become party to the Agreement. Magliveras and Naldi trace the historical evolution of the treaty from the adoption of the African Charter in 1981 to the adoption in 2018 of the Protocol to the African Economic Community (AEC) Treaty on the free movement of persons. Against this background, the authors consider the free movement of people in Africa as a human and as an economic right.

Kruger and Abdool Karim consider the responsiveness of the AfCFTA to diet-related non-communicable diseases. They call for a human-rights based approach to trade law, and make an argument for the protection of diets as part of the rights to food and health.

The issue deals with two matters of relevance to Africa as a whole, namely, refugee protection and elections. Of the 55 AU member states, 46 have established national human rights institutions (NHRIs). John-Langba examines the potential and actual role of NHRIs in advancing the refugee protection regime with reference to the United Nations High Commissioner for Refugees and the Global Compacts on Refugees and Migration.

Three articles deal with aspects of elections on the continent. Simiyu addresses the false news threat in African elections, in light of authoritarian regimes adopting practices to suppress critical voices and reduce the transparency and integrity of electoral processes. Calling for a human rights-based approach to addressing the scourge of false news, the article compares and contrasts measures adopted

during elections in South Africa (2019 and 2021) and Tanzania (2020). In his contribution Mudau takes stock of how voter education was achieved during the COVID-19 pandemic in Africa through the use of technology. Mwanga examines laws and practices relating to parliamentary elections in Tanzania and their implications for the right to vote. Mwanga concludes that Tanzania's electoral laws and practices reduce citizens to the role of rubber stamps. The article recalls the decision of the African Court on Human and Peoples' Rights (in *Tanganyika Law Society and the Legal and Human Rights Centre v Tanzania; Christopher R Mtikila v Tanzania*) which ordered Tanzania to implement constitutional, legislative and other measures necessary to undo the constitutional and legislative prohibition on independent candidates in elections. Mwanga notes that, to date, Tanzanian authorities have not given effect to the Court's order.

The last four contributions focus on the domestic level. Two contributions deal with aspects of human rights law in Ghana. Korankye-Sakyi, Faakye and Atupare provide reflections on the justiciability of the right to universal basic education in Ghana, taking into account the use of the concepts 'feasibility' and 'resource availability' in the Constitution. Tufuor examines the tension between the 'due process' or 'crime control' models in Ghana, with reference to the limits to the right to silence in criminal proceedings and its associated privilege against self-incrimination. Adar discusses the use of strategic litigation to provide redress for gross human rights abuses during sexual and gender-based violence in Kenya's 2007-2008 post-election period. Masekese adopts a human rights-based approach to implementing Target 11.6 of Sustainable Development Goal 11 in Zimbabwe, which requires local authorities to reduce 'the adverse per capita environmental impact of cities, including by paying special attention to the quality of air and waste management'. The author investigates the implications of the constitutional right to a healthy environment guaranteed under the 2018 Constitution of Zimbabwe for the efforts of local authorities to reduce this adverse impact.

Recent developments

Decisions in two recently-decided cases are discussed in this section. The first is the Lesotho High Court's 2020 decision in *Lesotho Medical Association v Minister of Health*, in which the Court held that the failure by the Ministry of Health to provide personal protective clothing to health workers was a violation of the right to life. This decision prompted 'Nyane to examine the interface between the right to life and the right to health under the law of Lesotho. The

second is the 2021 decision of the Ugandan Constitutional Court in *United Organisation for Batwa Development in Uganda v Attorney-General*. In discussing the decision, Paterson considers the adequacy of affirmative action redress to address the plight of the Batwa indigenous peoples in Uganda.

Appreciation

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 those acting as anonymous reviewers.

We extend our genuine gratitude to our anonymous reviewers who so generously gave of their time, expertise and insights for this particular issue,: Nahaja Adam; Kwadwo Appiagyei-Atua; Evelyn Asaala; Ashwanee Budoo; Annelie de Man; Cristiano D'Orsi; Bonolo Dinokopila; Ebenezer Durojaye; Elvis Fokala; Jonathan Kabre; Ronald Kagungulu; Selemani Kinyunyu; Trésor Makunya; Michelle Maziwisa; Kasey McCall Smith; Godfrey Musila; Perekeme Mutu; Robert Nanimba; Ntandokayise Ndlovu; Tom Nyanduga; Michael Nyarko; Godwin Odo and Ithumeleng Shale.