

Editorial

This issue of the *Journal* contains contributions straddling the regional (continental), sub-regional and national layers of human rights promotion and protection in Africa.

These are times of much talk and anxiety around ‘institutional reform’ in the African Union (AU). This ongoing institutional reform process departs from the premise that the AU and its organs are not fully ‘fit for purpose’, and is framed by the 2017 Report by Rwandan President Paul Kagame, ‘The Imperative to Strengthen our Union: Report on the Proposed Recommendations for the Institutional Reform of the African Union’. A major aim of this process is to improve the ability of AU organs and institutions to deliver efficiently on their mandates. Among the issues to be addressed as part of the reform process are the elimination of bureaucratic bottlenecks and inefficiencies that impede service delivery. The overarching aim of the reform is to better position the AU to drive and achieve the vision in Africa’s Agenda 2063 of inclusive economic growth and development.

Five key transformation challenges have been identified to be addressed as part of the review process. The first challenge arises from the the need for the AU to focus on key priority areas that by nature are continental in scope. The second priority area is operational efficiency and effectiveness, which may require a review of the structure and staffing needs of the bodies making up the African human rights architecture. The third area is the need for sustainable financing to reduce over-reliance on development partners. The fourth is the need to review the structure and operations of the AU and ensure institutional alignment for better service delivery. Specific reference is made to the need for assessing the progress to date of the AU’s quasi-judicial and judicial organs. The fifth is the need to connect the AU with the African citizenry, including by establishing women and youth quotas.

While this process has been ongoing for a few years now, very little is known about the details. In our view it is imperative to have broad inclusive and transparent consultations about any concrete proposal that may be put forward. The process has been too protracted to be rushed to a conclusion. The objective of changing the AU into a more people-centred organisation will be achieved only if the process of the change, itself, is people-centred.

The first article in this volume, by Zouapet, fits into this landscape. Zouapet argues that the African human rights framework needs to be re-imagined as a 'system' that is more relevant, coherent, efficient and effective in achieving the goal of promoting and protecting fundamental rights. He makes a number of concrete proposals, among them the potentially controversial suggestion that the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) be amalgamated into the African Commission on Human and Peoples' Rights (African Commission).

Against the background of General Comment 25 adopted by the United Nations Committee on Economic, Social and Cultural Rights, the next article, authored by Shawa, Coomans, Cox and London, argues that the application of the right to enjoy the benefits of scientific progress requires a balancing act between the rights of researchers or scientists and the rights of users of the scientific knowledge they generate. The authors maintain, when applied to health, that the right to enjoy the benefits of scientific progress has the potential to improve access to better prevention, diagnosis and treatment of diseases. Of most relevance to Africa, it is also likely that focus on this right may bring to the forefront neglected diseases.

Moving to the sub-regional level, Bernard interrogates the regional harmonisation of child labour within three African regional economic communities, the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) and the Southern African Development Community (SADC).

Ncame focuses on a recent decision by the International Criminal Court (ICC) emanating from the situation in Côte d'Ivoire involving Simone Gbagbo, the first woman to be charged by the Court. Ncame examines how the ICC has employed the principle of complementarity to find the right balance between the principles of state sovereignty and international criminal justice.

The last five contributions have a narrower national focus.

In the first contribution with a country-specific focus, Coleman, Ako and Kyeremateng deliver an effective and considered criticism of a draft Bill before the Ghanaian Parliament, the Promotion of Proper Human Sexual Rights and Ghanaian Family Values Bill (Anti-LGBTIQ+ Bill). This Bill is part of the 'second wave' of criminalisation of sexual and gender minorities in African states, most prominently in Uganda and Nigeria. Their view is that the Bill is unnecessary and misconceived and, if adopted, would derail the democratic gains Ghana has made over the years. They conclude that the Bill falls short of the minimum threshold for limiting the constitutional rights of persons in Ghana.

The next article, authored by Kachika, looks through the prism of developments in rural Malawi at the tension between community laws and international human rights jurisprudence on the protection of women and girls from harmful practices. Kachika calls for states to prioritise legislative and administrative measures, and to adopt policy and undertake capacity building, training, and awareness raising to ensure that different duty bearers internalise international standards on eliminating harmful practices.

Ecoma undertakes a post-mortem assessment of the #EndSARS protest and police brutality in Nigeria during October 2020, when many Nigerians took to the streets to protest against the illicit and inhumane activities and brazen brutality of the Special Anti-Robbery Squad (SARS), a special unit of the Nigerian police force. The article assesses whether the protest led to a reduction in the level of police brutality. It examines the culture of police brutality, precursors to the protest, the demands by protesters as well as the responses and promises by government, and appraises the extent to which such promises and proposed policy reforms by the federal government have translated into significant and sustainable changes in policing.

In 'Leveraging technology to deliver basic education to children in conflict areas of Northern Nigeria', Mutu argues that the insecurity in Northern Nigeria does not absolve the government of its obligation to enable children to access basic education, and recommends that the government explores leveraging technology as a method of enabling access to basic education to children in the affected areas.

The final contribution is a discussion of a judgment by the Zimbabwean High Court in *Mangwende v Machodo* (2015 ZWHHC 755). The judgment deals with the bride price, specifically with the fact that an unfaithful wife's bride price may be withheld by the husband if he has not already paid it in full or, where it has been paid, he may be refunded in full. However, in the case of the husband

being unfaithful, the wife does not have similar recourse. The author recommends that customary law around the bride price must be developed to meet the constitutional demands of gender equality.

Editors

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