THE STATE OF **AFRICAN** REGIONAL HUMAN RIGHTS BODIES AND MECHANISMS

2019-2020

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

AMNESTY INTERNATIONAL

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GLOSSARY

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
AU	African Union
AUC	African Union Commission
CAL	Coalition of African Lesbians
CAR	Central African Republic
DRC	Democratic Republic of Congo
FGM	Female Genital Mutilation
HRD	Human Rights Defender
ICJ	International Commission of Jurists
MoU	Memorandum of Understanding
NGOs	Non-Governmental Organizations
NHRI	National Human Rights Institutions
OHCHR	Office of the High Commissioner for Human Rights
OLC	Office of the Legal Counsel
PRC	Permanent Representatives' Committee
PSC	Peace and Security Council
STC	Specialized Technical Committee
UN	United Nations
WGEI	Working Group on Extractive Industries, Environment and Human Rights Violations in Africa
ZHRC	Zambia Human Rights Commission

EXECUTIVE SUMMARY

Abysmal cooperation and continued political pressure from states, on the one hand, and minimal progress or stagnation in execution of mandate, on the other hand, broadly describe the state of African regional human rights bodies and mechanisms during the period between 1 July 2019 and 30 June 2020. The activities and performance of the regional bodies during this period were shaped by a combination of internal and external factors, including changes in the composition of expert members elected to serve in the bodies, political onslaught from states, financial and resource constraints, and the outbreak of the COVID-19 pandemic.

This second edition of *The State of African Regional Human Rights Bodies and Mechanisms* report provides a review and analysis of the work and performance of African premier regional human rights treaty bodies: the African Commission on Human and Peoples' Rights (African Commission); the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee); and the African Court on Human and Peoples' Rights (African Court). The report is based on analysis of data and information contained in official documents and reports of the three regional bodies and extensive review of various public outputs, including press releases, meeting or mission reports, normative guidelines, decisions and judgments. Amnesty International also sought additional information and data directly from the respective secretariats of the three bodies and their feedback is accordingly reflected in the report.

A major finding of the report is the chronic lack of cooperation by African states with the three regional human rights bodies, a pattern of lack of political will that is reflected in their indifference and open hostility. This was evident from failures to meet their human rights treaty reporting obligations to refusals to respond to urgent appeals, facilitate country visits and comply with decisions. Only six states, representing 11% of all member states, were up to date in the submission of their periodic reports under Article 62 of the African Charter on Human and Peoples' Rights (African Charter). About half of member states (48%) had three or more overdue periodic reports. Even a larger proportion, 64%, had not yet submitted their initial report under the Maputo Protocol on the Rights of Women in Africa. On a positive note, though, a milestone was achieved in January 2020 when Cameroon submitted to the African Commission its initial report under Article 14(4) of the Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa, becoming the first and only state party to do so.

The situation was even more dire with respect to responding to urgent requests and allowing country visits by the human rights bodies. Only four out of the 14 urgent appeals issued by the African Commission during the reporting period received official state replies. African governments' responses to the Commission's urgent appeals thus reduced from 31% in 2018/2019 to 29% in 2019/2020. Similarly, the African Commission requested a total of 10 country visits, but only three were formally accepted. The African Children's Committee requested six country visits but only two of these materialized. Not a single country issued a standing invitation to the African Commission or the African Children's Committee to conduct country visits. State compliance with the decisions of the regional bodies also remained typically low, a fact that the regional bodies decried in their activity reports submitted to the African Union (AU) policy organs.

The most overt political backlash and open hostility in the reporting period was targeted towards the African Court, threatening to push the Court towards the edge of an existential crisis. In spontaneous reactions to judgments issued by the Court, three state parties (Benin, Côte d'Ivoire and Tanzania) hit back by blocking individuals and NGOs' direct access to the Court. These withdrawals came against the backdrop of growing hostility against Human Rights Defenders (HRDs) and rapidly deteriorating human rights situations in the three countries. With the withdrawals, there are now only six states that allow direct access to the African Court for individuals and NGOs.

States' lack of commitment to the regional human rights system was also found to be evident in many other respects, including in budget allocations. As a collective, AU member states continued to starve the regional bodies of the necessary resources for their operations. Two regional bodies, the African Court and the African Commission, had their budgets reduced, with the latter suffering a steep 14% budget cut. But even more concerning was the fact that no funding at all was allocated to the African Commission's program activities. The entire budget it received was earmarked for operating or recurrent expenditures. The African Children's Committee, on the other hand, received an unprecedented 121% increase in budget allocation in 2020. This was the first time since its inception that the Committee's allocated budget passed the $1 million mark.

The process leading to the election of the four new members of the African Commission also revealed a perennial problem: the lack of enough candidates to allow for meaningful, genuine, competitive and merit-based election. This apparent lack of interest on the part of states to nominate adequate number of candidates for election to the African Commission was not an isolated occurrence. Elections for the three regional bodies have almost always attracted unacceptably low numbers of nominations. Importantly, national nomination processes have often lacked transparency and openness. They have been historically shrouded in secrecy and rarely based on merit.

Insignificant progress in the rate of ratification of core regional human rights treaties was yet another indicator of abysmal states' commitment. With only a paltry five new ratifications recorded during the reporting period, there were still 177 outstanding ratifications required for the core regional human rights treaties to be universally ratified by AU member states. As at the end of the reporting period, the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa had yet to be ratified by even a single AU member state, two years after it was adopted. Similarly, close to five years since the Protocol to the African Charter on the Rights of Older Persons was adopted in January 2016, only two countries had ratified it by close of the reporting period.

The regional human rights bodies did not just contend with states' lack of commitment and support. They also faced the disruptive effects of the COVID-19 pandemic in the latter half of the reporting period (Jan-June 2020). Like other regional and global human rights treaty bodies, the African Commission, the African Children's Committee, and the African Court were compelled to cut-short, postpone, cancel or scale-down most of their operational activities. They did eventually bounce back, moving their activities to online platforms and taking a range of other measures to mitigate disruption.

The regional bodies rose to the occasion in relation to setting out relevant human rights standards for the COVID-19 pandemic response. In Africa, as elsewhere, governments imposed a range of measures to manage the pandemic. These measures almost uniformly led to use of excessive force, arbitrary arrests or detentions, disproportionate limitations on civic space, and blanket denial of the right to seek asylum. Against this backdrop, the African Commission became the first human rights treaty body across the globe to issue a statement on COVID-19 and human rights on 28 February 2020. It continued throughout the reporting period to issue guidelines on how COVID-19 intersects with different rights or issues, how it impacts on specific groups, and what states need to do from a human rights perspective. In a similar vein, the African Children's Committee issued a guidance note on the protection of children during the pandemic.

External factors aside, the regional bodies demonstrated some progress and innovation in ways of working, which sharply contrasted with stagnation and retrogression in some areas. For instance, there were minimal overall changes in the trends relating to determination of communications and cases during 2019/2020 as compared to 2018/2019. The number of cases finalized remained low while that of pending cases continued to be high.

The African Commission seized 17 new communications and finalized a total of 63 from its docket. Decisions on the merits marginally increased from three to four. The number of pending cases in the docket of the African Commission as at the end of the reporting period stood at 211, compared to 240 at the end of the previous reporting period. The African Children's Committee remained grossly under-utilized. It seized a single new communication during the reporting period, bringing to 12 the total number of communications that the Committee has received from inception. Even with its small docket, it did not finalize any decision during the reporting period. There were three communications before the Committee at the end of the reporting period.

The African Court issued a total of 46 decisions during the reporting period. Judgments on the merits reduced slightly from 18 in 2018/2019 to 11 in 2019/2020. Tanzania was the respondent state in the bulk of the judgments on the merits (81%), with most of these relating to the right to fair trial. For the first time, the African Court examined the question of the death penalty and held that laws providing for mandatory death

sentences are a violation of the right to life under the African Charter. In another landmark judgment, the African Court expounded on the right to nationality, holding that although it is not expressly provided in the African Charter, it is a fundamental aspect of the right to dignity.

The number of state party reports examined during the reporting period was unusually low partly because of the disruption caused by the COVID-19 pandemic and the postponement of scheduled sessions. The African Commission examined two reports (Chad and Zimbabwe) while the African Children's Committee examined only one report (Mauritania). The African Commission adopted four different sets of concluding observations during the reporting period, with Amnesty International's analysis showing that it took an overly long period of time, an average of 16.25 months, for these concluding observations to be adopted. A long delay in adopting concluding observations has the ultimate effect of distorting the reporting cycle and potentially encourages state parties to be lax in complying with timelines.

The number of urgent appeals issued by the African Commission reduced drastically from 83 in 2018/2019 to 14 in 2019/2020, representing an 83% drop. On the other hand, the African Court considered 16 applications for provisional measures, with 68% of all such applications concerning Benin. In respect to country visits, the African Commission conducted six, just one more visit compared to 2018/2019. The African Children's Committee conducted two follow-up missions to evaluate implementation of its concluding observations while the African Court carried out two sensitization visits to encourage ratification of the Court Protocol

The reporting period saw some efforts by the regional human rights bodies to improve their working methods and efficiency. The African Commission adopted new Rules of Procedure that sought to simplify and cut down the time needed to consider communications, thus offering a glimpse of hope for relatively expeditious disposal of complaints. The African Children's Committee and the African Court adopted new rules of procedure, but these were published after the cut-off point for this report.

There were also some concerns. Certain provisions of the new Rules of Procedure adopted by the African Commission marked a worrying step backward. For instance, a new provision on referral of cases to the African Court potentially forecloses any real prospects of more cases ever reaching the Court from the Commission. It shatters any legitimate expectations of the African Commission becoming a realistic avenue for accessing the African Court. The African Commission also continued with the trend of not making public all its procedural documents, such as the Procedures for the Adoption of Resolutions and the Guidelines on the Format of Promotion and Protection of Missions.

This report presents several recommendations to the regional human rights bodies and members states. Primarily, Amnesty International calls on the African Commission and the African Court to take immediate measures to reduce the backlog of cases in their respective dockets. The African Commission should also be more proactive in referring cases to the African Court, swift in adopting concluding observations after examination of state party reports, assiduous in monitoring state compliance with its decisions, and more open and transparent in its processes and working methods. The African Children's Committee should on its part undertake sensitization activities across the continent to improve its visibility and access.

The year 2021 will mark 40 years since the adoption of the African Charter – the normative foundation upon which the African system rests. This anniversary offers yet another opportunity for the AU and its member states to renew their commitment to the regional human rights system. But this time round, colourful pronouncements must give way to a genuine resolve to take concrete steps to protect human rights and the regional system. Rhetoric must be replaced with action. States must specifically ratify all the core regional human rights treaties to which they are not yet parties, institute national nomination processes for members to the regional bodies that are open, transparent, impartial and merit-based, refrain from undermining the autonomy and independence of the regional bodies, and fully cooperate and comply with all decisions of the regional bodies.

METHODOLOGY

The *State of African Regional Human Rights Bodies and Mechanisms 2019-2020* provides a review and analysis of the work and performance of African regional human rights treaty bodies during the period between 1 July 2019 and 30 June 2020. The focus of the report is on the functioning, working methods, outputs and impact of the three regional bodies established at the continental level and operating within the institutional framework of the African Union (AU). These are: the African Commission on Human and Peoples' Rights (ACHPR or African Commission); the African Committee of Experts on the Rights and Welfare of the Child (ACERWC or African Children's Committee); and the African Court on Human and Peoples' Rights (ACtHPR or African Court).

The qualitative and statistical analysis in this report is based on data and information contained in official documents and reports of the three regional bodies. The core documents analysed include the following:

- 47th activity report of the African Commission submitted to and adopted by the AU Executive Council in February 2020;
- Final communiqué of the 65th ordinary session of the African Commission;
- Final communiqués of the 26th, 27th and 28th extraordinary sessions of the African Commission;
- Report of the 34th ordinary session of the African Children's Committee;
- Activity report of the African Children's Committee submitted to and adopted by the AU Executive Council in February 2020; and
- Activity report of the African Court for the year 2019 submitted to and adopted by the AU Executive Council in February 2020.

The research also involved in-depth analysis and review of a diverse range of public outputs generated by the regional bodies while executing their respective mandates. These outputs include press releases, meeting or mission reports, normative guidelines, decisions and judgments. Amnesty International also examined decisions and reports of relevant policy organs of the AU. The organization particularly reviewed the decisions of the 33rd ordinary session of the AU Assembly as well as the decisions of the 35th and 36th ordinary sessions of the AU Executive Council.

Amnesty International also sought and received additional information and data directly from the African Children's Committee and the African Court. The organization also consulted with and received insights from the African Commission. Amnesty International is grateful for the cooperation and assistance of the three regional bodies.

The inaugural edition of the *State of African Regional Human Rights Bodies and Mechanisms* was launched in Banjul, The Gambia, on 21 October 2019. It provided a relatively detailed description of the mandate, working methods and general functioning of African regional human rights bodies. It established a background and benchmark upon which future developments in the regional system would be evaluated. This second edition builds on the inaugural report.

INSTITUTIONAL DEVELOPMENTS

This introductory chapter highlights the major institutional developments or changes that took place in the regional system during the reporting period. In this context, two major institutional developments were recorded. First, there were changes in the membership and composition of the African Commission and the African Children's Committee. These were followed by changes in the composition of the bureaux of the two regional bodies as well as the special mechanisms of the African Commission. Second, the African Commission adopted a new set of Rules of Procedure that introduced numerous changes to its practice and working methods. The African Children's Committee and the African Court equally initiated internal processes aimed at revising their working documents, but these had not been completed by the end of the reporting period.[1]

MEMBERSHIP AND COMPOSITION

> **"Our pledge is to discharge the Commission's mandate with the utmost responsibility, dedication and resolve. Our pledge is to be catalysts for ensuring observance of the principles and standards of the African Charter. Our pledge is for ever expanding the scope of protection of the rights and freedoms in African Charter. Our pledge is for upholding the African Charter without fear or favour at all times and in all conditions. Our pledge as members of the Commission [is] to exercise the utmost responsibility and wisdom to ensure that we are not found wanting in responding to the demand for**

[1] As at the time of publishing this report, both the ACERWC and the ACtHPR had completed revising their respective working documents. During its 35th (virtual) ordinary session held from 31 August to 8 September 2020, the ACERWC adopted revised sets of the following working documents: Rules of Procedure; State Party Reporting Guidelines; Complementary Report Guidelines; Guidelines on Observer Status of Non-Governmental Organizations and Associations; Guidelines on Conduct of Investigations; and Guidelines on Communications. The ACtHPR published a revised set of Rules of Court on 28 September 2020.

> **protection of the Charter rights. Our pledge is to do everything for us not to fail in shouldering our responsibilities individually and collectively, to ensure that our actions or inaction does not stand on the way of the Commission exercising its authority and discharging its responsibility for promotion and protection of the rights enshrined in our Charter".**
>
> Commissioner Solomon Dersso, ACHPR Chairperson, Opening statement, ACHPR 28th extraordinary session, 29 June 2020

The composition of African regional human rights bodies, in terms of the number of members and their tenure in office, are largely identical, albeit with slight variations. The African Commission is composed of 11 part-time commissioners who serve in their personal capacity for a six-year term, with no specific limitation on renewals.[2] According to Article 31 of the African Charter on Human and Peoples' Rights (African Charter), candidates for nomination, election and appointment to the African Commission are supposed to be "African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights". Preference is given to candidates with legal knowledge and experience.

The African Children's Committee is equally comprised of 11 part-time members elected on a personal capacity.[3] However, they serve for a slightly shorter term of five years, which can be renewed only once.[4] Article 33 of the African Charter on the Rights and Welfare of the Child (African Children's Charter) provide that qualifications for election as a member of the African Children include expertise in children's rights, high moral standing, integrity and impartiality.

In terms of the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), the African Court consists of 11 judges serving in their personal capacity for a six-year term, renewable once.[5] Candidates for election to the Court must be jurists of high moral character who are recognised for their practical, judicial or academic competence and experience in the field of human rights.[6]

Equitable gender representation and geographical balance is also considered in the election process for the three regional bodies.[7] Any state party may nominate a candidate for consideration as a member of the African Commission or the African Children's Committee. Nominated candidates are then elected by secret ballot conducted by the AU Executive Council. Formal appointment is done by the AU Assembly. However, the AU Assembly delegated its appointing authority to the Executive Council in February 2020.[8]

The tenure of four members of the African Commission who were elected in 2013 expired in June 2019.[9] The election of their replacement was initially scheduled to take place in July 2019 during the 12th extraordinary session of the AU Assembly held in Niamey, Niger. However, the AU Executive Council

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[2] African Charter, Article 31.
[3] African Children's Charter, Article 33(1).
[4] African Children's Charter, Article 37.
[5] African Court Protocol, Article 11.
[6] African Court Protocol, Article 11.
[7] Decision on the modalities on implementation of criteria for equitable geographical and gender representation in the African Union organs, adopted during the 28th ordinary session of the AU Executive Council, 23-28 January 2016, Addis Ababa, Ethiopia, EX.CL/Dec.907(XXVIII)Rev.1.
[8] Decision on delegation of authority for election and appointment of members of AU institutions within the framework of one ordinary summit a year, adopted during the 33rd ordinary session of the AU Assembly, 9-10 February 2020, Addis Ababa, Ethiopia, Assembly/AU/Dec.760(XXXIII).
[9] These are: Lucy Asuagbor (Cameroon); Lawrence Mute (Kenya); Soyata Maiga (Mali); and Yeung Kam John (Mauritius).

postponed the exercise to 2020.[10] During its 36th ordinary session held from 6-7 February 2020, the AU Executive Council thus elected the following four new members to the ACHPR: Marie Louise Abomo, a judge in the Supreme Court of Cameroon; Mudford Zachariah Mwandenga, the chairperson of the Zambia Human Rights Commission (ZHRC); Ndiamé Gaye, a judge of the Court of Appeal of Saint Louis, Senegal; and Alexia Amesbury, a Seychellois human rights lawyer.

The four new members were sworn and inducted into office during the 28th virtual extraordinary session of the African Commission.[11] Their entry retained the African Commission's gender composition of six females and five males. With the new members on board, the African Commission reallocated special mechanism and country responsibilities.

The African Commission also elected a new bureau during the reporting period. In terms of Article 42 of the African Charter, commissioners Solomon Dersso and Rémy Ngoy Lumbu were respectively elected chairperson and vice-chairperson during the 65th ordinary session.[12] The two will remain at the helm of African Commission's leadership for a two-year period that will expire in October 2021. They are both eligible for re-election at the expiry of their term.

[10] Decision on the report on transitional arrangements for the election of members of AU organs within the framework of the one ordinary session of the Assembly of Heads of State and Government of the Union a year, adopted during the 35th ordinary session of the AU Executive Council, 4-5 July 2019, Niamey, Niger, EX.CL/Dec.1059(XXXV) para 5.
[11] Final communiqué of the 28th extraordinary session of the African Commission on Human and Peoples' Rights, virtual session, 29 June – 1 July 2020, https://www.achpr.org/sessions/info?id=325
[12] Final communiqué of the 65th ordinary session of the African Commission on Human and Peoples' Rights, 21 October – 10 November 2019, Banjul, The Gambia, para 3.

REALLOCATION OF SPECIAL MECHANISM AND COUNTRY RESPONSIBILITIES

	Commissioner	Special Mechanism	Country Responsibility
1	**SOLOMON AYELE DERSSO (CHAIRPERSON)**	Chairperson, Working Group on Extractive Industries, Environment and Human Rights Violations in Africa	Kenya Nigeria South Africa South Sudan Tanzania
2	**REMY NGOY LUMBU (VICE CHAIRPERSON)**	Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa	Cameroon Cote d'Ivoire Gabon Mali Togo
3	**KAYITESI ZAINABO SYLVIE**	Special Rapporteur on the Rights of Women in Africa	Algeria Angola Chad Senegal Seychelles
4	**JAMESINA ESSIE L. KING**	Special Rapporteur on Freedom of Expression and Access to Information in Africa	Eritrea Namibia Somalia The Gambia Zimbabwe
5	**ESSAIEM HATEM**	Chairperson, Committee for the Prevention of Torture in Africa (CPTA)	Djibouti Libya Madagascar Mauritius Sudan
6	**MAYA SAHLI-FADEL**	Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa	Benin Burkina Faso Mauritania Niger Tunisia
7	**MARIA TERESA MANUELA**	Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa	Cabo Verde Equatorial Guinea Guinea-Bissau Mozambique Sao Tome & Principe
8	**MARIE LOUISE ABOMO**	Chairperson, Working Group on the Rights of Older Persons and Peoples with Disabilities in Africa	Burundi Comoros Congo-Brazzaville DRC
9	**MUDFORD ZACHARIAH MWANDENGA**	Chairperson, Working Group on Economic, Social and Cultural Rights in Africa	Ethiopia Ghana Liberia Malawi Rwanda
10	**NDIAME GAYE**	Chairperson, Working Group on Death Penalty, Extrajudicial, Summary or Arbitrary Killings and Enforced Disappearances in Africa	CAR Guinea-Conakry Sahrawi Republic Sierra Leone Uganda
11	**ALEXIA GERTRUDE AMESBURY**	Chairperson, Working Group on Indigenous Populations/ Communities in Africa Chairperson, Committee on the Protection of the Rights of Peoples Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV in Africa	Botswana Egypt Eswatini Lesotho Zambia

During its 36th ordinary session, the AU Executive Council also elected one new member of the African Children's Committee. A seat in the Committee fell vacant in March 2019 after one of its members, Mohamed Ould Ahmedoudit H'Meyada of Mauritania, passed on. The AU Executive Council elected Aboubekrine El Jera, also of Mauritania, to fill the vacant seat.[13] He will hold this seat until January 2021, when the tenure of Mohamed Ould Ahmedoudit would have expired.[14] In April 2020, another seat in the African Children's Committee fell vacant following the death of a member, Azza El Ashmawy of Egypt.[15] The Committee thus had one member less as at the end of the reporting period.

Like the African Commission, the African Children's Committee elected a new bureau during the reporting period.[16] During the Committee's 34th session, Joseph Ndayisenga was elected the chairperson while Azza El Ashmawy (now deceased) and Sidikou Aissatou Allasane Moulaye were elected first and second vice-chairperson, respectively. Hermine Kembo Takam Gatsing and Maria Mapani Kawimbe were respectively elected rapporteur and deputy rapporteur. The term of the new bureau commenced in November 2019 and will run for two years, that is, until November 2021.

The composition of the African Court remained unchanged throughout the reporting period. The tenure of four judges expired in June 2020,[17] but they were still validly in office as at the time of publishing this report because they had not been replaced yet.[18] In this context, Rule 2(2) of the 2010 Rules of Court provides that "outgoing Members of the Court shall remain in office until such time as they are replaced". Rule 2(2) further provides that after such members have been replaced, "they shall continue to sit until the completion of all stages of any case in which the Court has met for an oral hearing prior to the date of replacement".

Rule 2(2) and the practice arising out of it became a point of tension between the African Court and the AU Executive Council during the reporting period. The latter's concern was that with this Rule, the African Court had unlawfully arrogated itself the power to extend the contracts of judges who had been duly replaced after the expiry of their term. In two separate decisions issued during its 35th ordinary session in July 2019, the Executive Council ordered the African Court to discontinue the practice,[19] an order that the African Court complied with promptly.[20] The provision on extension of terms of outgoing judges was thus dropped in the new Rules of Court published on 28 September 2020.

LIFTING THE VEIL OF SECRECY AND STRENGTHENING NOMINATIONS AND ELECTIONS TO AFRICAN REGIONAL HUMAN RIGHTS BODIES

The process leading to the election of the four new members of the African Commission was faced with a recurring problem: the lack of enough candidates to allow for a meaningful, genuine, competitive and merit-based election that would potentially result in the best possible composition for the regional body. The postponement of the election from July 2019 to February 2020 became necessary partly because only seven candidates had shown interest in the four available slots. When these candidates were placed in their respective geographical pools, it became clear that only a single candidate had shown interest in the Central Africa seat, another single candidate for the Southern Africa seat, three for the West African seat, and two for the floating or rotating seat. Therefore, the Executive Council decided to reopen the window for nomination of more candidates when it postponed the election in July 2019. But the postponement did not elicit any significantly greater interest. A paltry three more candidates joined the original list: two more for the Central African seat and one more for the

[13] Decision on the election of one (1) male member of the African Committee of Experts on the Rights and Welfare of the Child from the Islamic Republic of Mauritania, adopted during the 36th ordinary session of the AU Executive Council, 6-7 February 2020, Addis Ababa, Ethiopia, EX.CL/Dec.1092(XXXVI).
[14] Article 39 of the African Children's Charter provides that "[i]f a member of the Committee vacates his or her office for any reason other than the normal expiration of a term, the state which nominated that member shall appoint another member from among its nationals to serve for the remainder of the term – subject to the approval of the Assembly".
[15] 'Eulogy to Dr. Azza El Ashmawy', 18 April 2020, https://www.acerwc.africa/Latest%20News/eulogy-to-dr-azza-el-ashmawy/
[16] Report of the 34th session of the African Committee of Experts on the Rights and Welfare of the Child, 25 November – 5 December 2019, Cairo, Egypt, ACERWC/RPT (XXXIII), para 104.
[17] These are: Imani D. Aboud (Tanzania); Rafaa Ben Achour (Tunisia); Angelo Vasco Matusse (Mozambique); and Sylvain Ore (Cote d'Ivoire). All are eligible for re-election, save for Sylvain Ore.
[18] The election and appointment of new judges of the African Court was planned to take place in July 2020 during the 37th ordinary session of the AU Executive Council. However, this session was postponed due to the COVID-19 pandemic.
[19] Decision of the reports of the sub-committees of the Permanent Representatives' Committee (PRC), adopted during the 35th ordinary session of the AU Executive Council, 4-5 July 2019, Niamey, Niger, EX.CL/Dec.1057 (XXXV) para 43(v); Decision on the 2019 mid-term activity report of the African Court on Human and Peoples' Rights, adopted during the 35th ordinary session of the AU Executive Council, 4-5 July 2019, Niamey, Niger, EX.CL/Dec.1064 (XXXV) para 9.
[20] See Activity report of the African Court on Human and Peoples' Rights, 1 January – 31 December 2019, EX.CL/1204 (XXXVI) para 21.

Southern African seat. In the end, therefore, the four new members had to be elected from a list of just 10 candidates.

The apparent lack of interest on the part of member states to nominate adequate number of candidates for the African Commission election was not an isolated occurrence. Elections for the three regional human rights bodies have almost always attracted unacceptably low number of nominations. Like that scheduled for July 2019, many past elections have had to be postponed in order to allow member states to nominate more candidates.[21] To address this problem, the AU Commission (AUC) recommended already in January 2016 that "[a]ll regions should submit more candidates than the existing vacancies."[22]

Further, when states nominate their nationals to regional bodies, the process often lacks transparency and openness. Merit is usually also not a primary consideration, if at all. As a standard procedure, the communication from the AUC inviting member states to nominate candidates to regional bodies advises them that to ensure the independence of these bodies government officials, including ministers, under-secretaries, legal advisers, ministry directors, and diplomatic representatives, are ineligible for nomination. In addition to restating the provisions of regional treaties on qualifications and profile of candidates, the communication also advises member states to ensure broad participation in and transparency of national nomination processes. It specifically asks member states to do the following:

a) encourage the participation of civil society, including judicial and other state bodies, bar associations, academic and human rights organizations and women's groups, in the process of selection of nominees; and

b) employ a transparent and impartial national selection procedure in order to create public trust in the integrity of the nomination process.

Yet, secrecy and largely meritless national nomination processes persist. A 2017 joint study by the Open Society Justice Initiative (OSJI) and the International Commission of Jurists (ICJ) on national processes of nominating individuals to global and regional human rights commissions or courts found that these processes are "largely unknown and shrouded in secrecy."[23]

Amnesty International takes no position in support of, or against, individuals who are nominated by member states to become members of African regional human rights bodies. Instead, it seeks to promote open, transparent and merit-based nominations and elections.[24] The regional bodies should be comprised of individuals with the highest credentials in the field of human rights in the region. As provided in the regional treaties, members of regional bodies should also be individuals with a strong commitment to ethical and moral standards, including independence and impartiality. Competent, independent and impartial members are an essential prerequisite for the regional bodies to perform effectively their role of promoting and protecting human rights in Africa. The quality of individual members serving on the regional bodies has the potential to significantly impact on the overall quality and effectiveness of the regional bodies' work, as well as perceptions of their independence and autonomy.

Amnesty International calls on member states to institute national nomination processes that are open, transparent, impartial, and merit based. Nomination processes should be advertised publicly and widely to ensure that they are open to all potential candidates who meet the set

[21] For example, the establishment of the ACERWC was delayed for about a year due to insufficient number of candidates. The inaugural 11 members were eventually elected in July 2001 from a list of 12 candidates. Similarly, the election for the inaugural judges of the ACtHPR was initially set to take place in June 2004, but it was not until January 2006 that took place. More recently in July 2016, the AU Executive Council postponed the election of two judges of the ACtHPR to January 2017 allow for more nominations. See Decision on the election of four (4) judges of the African Court on Human and Peoples' Rights, adopted during the 29th ordinary session of the AU Executive Council, 13-15 July 2016, Kigali, Rwanda, EX.CL/Dec.937(XXIX).

[22] Modalities on the implementation of the criteria of equitable geographical and gender representation in AU organs and institutions, report presented by the AUC to the 28th ordinary session of the AU Executive Council, 23-28 January 2016, Addis Ababa, Ethiopia, Doc. EX.CL/953(XXVIII), para 34.

[23] Open Society Justice Initiative and International Commission of Jurists, *Strengthening from within: Law and practice in the selection of human rights judges and commissioners* (2017) p 13.

[24] See, for example, Amnesty International, *Criteria for the nomination and election of members of the African Commission on Human and Peoples' Rights*, 1 March 2007 (Index: IOR 63/002/2007).

qualifications. Additionally, member states should actively encourage broad participation, including that of civil society, in the nomination process. They should make public the list of candidates, their curricula vitae, and the criteria for selection. The results of the nomination process and a detailed statement on how the selected nominees meet the requirements contained in the regional treaties should also be published.

The election process conducted by the Executive Council should equally be open, transparent, impartial and merit based. As part of the ongoing institutional reform of the AU, African heads of state and government adopted a new process in November 2018 of electing and appointing senior leaders of the continental body, including the chairperson and deputy chairperson of the AUC.[25] At the heart of the new process is the commitment to ensure transparency and meritocracy. It involves a skills and competency-based assessment by an independent high-level panel. This kind of process should, with necessary changes if need be, cascade down to elections and appointments to all organs and institutions of the AU, including the regional human rights bodies.

RULES OF PROCEDURE

> **"I also wish to invite all stakeholders to rely on the RoPs [Rules of Procedure] along with the African Charter in engaging with the African Commission for a more efficient and effective execution by the Commission of its mandate under the African Charter".[26]**
>
> Commissioner Solomon Dersso, ACHPR Chairperson, 7 July 2020

The three regional human rights bodies are mandated by the respective enabling treaties to adopt their own rules of procedure to guide their meetings, operations and working methods.[27] The African Commission adopted its first iteration of Rules of Procedure in 1988. Updated versions were subsequently adopted in 1995 and 2010. In March 2020, during its 27th extraordinary session, the African Commission adopted the latest version of its Rules of Procedure,[28] which came into force on 2 June 2020. During the 27th extraordinary session, the African Commission also adopted the Standard Operating Procedures on the Special Mechanisms of the African Commission.

The African Children's Committee and the African Court also reviewed their respective rules of procedure, but the final versions of the documents were adopted after the cut-off point for this report.

DRAFTING PROCESS

The process of developing the 2020 Rules of Procedure of the African Commission was initiated in February 2016 when the regional body modified the terms of reference of its Working Group on Specific Issues Relevant to the Work of the Commission.[29] At the time, one of the primary reasons for the revision of the 2010 Rules of Procedure was the need to devise a mechanism for monitoring and following-up member

[25] Decision on the institutional reform, adopted during the 11th extraordinary session of the AU Assembly, 17-18 November 2018, Addis Ababa, Ethiopia, EXT/Assembly/AU/Dec.1(XI).
[26] Press release on publication of new rules of procedure of the African Commission on Human and Peoples' Rights, 2020, https://www.achpr.org/pressrelease/detail?id=518
[27] African Charter, Article 42(2); African Children's Charter, Article 38(1); African Court Protocol, Article 33.
[28] Final communiqué of the 27th extraordinary session of the African Commission on Human and Peoples' Rights, 19 February – 4 March 2020, Banjul, The Gambia, para 8(ii).
[29] Resolution on the modification of the mandate of the Working Group on Specific Issues Relevant to the Work of the Commission, adopted during the 19th extraordinary session of the ACHPR, 16-25 February 2016, Banjul, The Gambia, ACHPR/Res.328(EXT.OS/XIX)2016.

states' implementation of the entire range of decisions issued by the African Commission. For this reason, the Working on Specific Issues was asked to review the 2020 Rules of Procedure "in consultation with the Working Group on communications".[30] In June 2015, about six months before February 2016, the Executive Council had also urged the African Commission to "[c]onsider reviewing its rules of procedure, in particular, provisions in relation to provisional measures and letters of urgent appeals in consistence with the African Charter on Human and Peoples' Rights".[31] This suggestion came in a context of intensifying political backlash against the African Commission's monitoring role of member states' human rights record through the mechanisms of urgent appeals and provisional measures. It is indeed at the same time that the Executive Council instructed the African Commission to withdraw the observer status it had granted to the Coalition of African Lesbians (CAL),[32] an instruction that has become by far the most intrusive form of interference with the independence and autonomy of the African Commission.[33]

The Executive Council piled even more unwarranted political pressure on the African Commission in June 2018. Amongst other worrying demands, the Executive Council asked the African Commission to clarify its legal status in its rules of procedure. The Executive Council also demanded that the African Commission should consult the AU Office of the Legal Counsel (OLC) and "other relevant legal bodies" in the process of revising its rules of procedure.[34]

Against this backdrop, the African Commission finalised and adopted a revised draft of Rules of Procedure in March 2019.[35] It then published the draft on its website and invited comments from stakeholders, including member states and civil society. It additionally and specifically invited comments from member states through notes verbales. While civil society mobilised and commented on the draft through formal submissions to the African Commission, only a single state party did so.[36] Insights from two specific seminars convened by the African Commission to discuss implementation of its decisions were also considered in the drafting process.[37] After reviewing and incorporating comments from stakeholders, the African Commission adopted the final version of the 2020 Rules of Procedure in March 2020.

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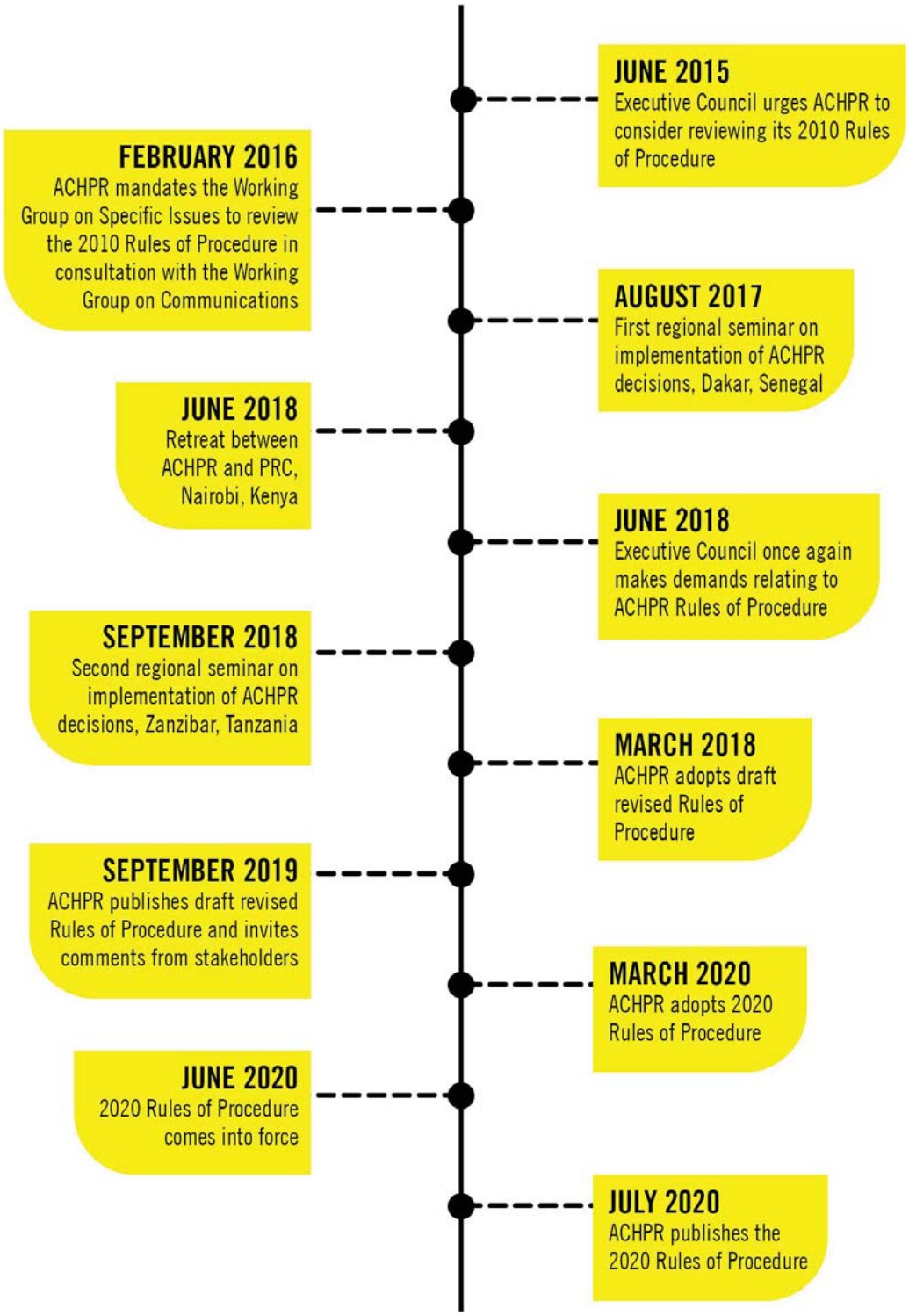
[30] Resolution on the modification of the mandate of the Working Group on Specific Issues Relevant to the Work of the Commission, adopted during the 19th extraordinary session of the ACHPR, 16-25 February 2016, Banjul, the Gambia, ACHPR/Res.328(EXT.OS(XIX)2016.
[31] Decision on the thirty-eighth activity report of the African Commission on Human and Peoples' Rights, adopted during the 27th ordinary session of the AU Executive Council, 7-12 June 2015, Johannesburg, South Africa, EX.CL/Dec.887(XXVII), para 12(ii).
[32] Decision on the thirty-eighth activity report of the African Commission on Human and Peoples' Rights, adopted during the 27th ordinary session of the AU Executive Council, 7-12 June 2015, Johannesburg, South Africa, EX.CL/Dec.887(XXVII), para 7.
[33] See Amnesty International, *The state of African regional human rights bodies and mechanisms 2018-2019* (Index: AFR 01/1155/2019) pp 40-41.
[34] Decision on the report on the joint retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR), adopted during the 33rd ordinary session of the AU Executive Council, 28-29 June 2018, Nouakchott, Mauritania, EX.CL/Dec.1015 (XXXIII), para 8.
[35] Final communiqué of the 25th extraordinary session of the African Commission on Humana and Peoples' Rights, 19 February – 5 March 2019, Banjul, The Gambia, para 8.
[36] 'Press release on publication of new Rules of Procedure of the African Commission on Human and Peoples' Rights 2020, https://www.achpr.org/pressrelease/detail?id=518
[37] The two seminars were held in Dakar, Senegal, from 12-15 August 2017, and in Zanzibar, Tanzania, from 4-6 September 2018.

ACHPR 2020 RULES OF PROCEDURE: DRAFTING TIMELINE AND KEY MOMENTS



SIMPLIFIED AND EFFICIENT COMMUNICATIONS PROCEDURE

The 2020 Rules of Procedure introduce several changes in the working methods of the African Commission. Analysis by Amnesty International reveals that most of the changes seek to ensure that the Commission is more effective and efficient in the discharge of its mandate.[38]

To begin with, Rule 28 increases the number of ordinary sessions of the African Commission from two to four in a year, while Rule 29 retains the possibility of it to hold extraordinary sessions when necessary. The doubling of the number of ordinary sessions is intended to create more time for the Commission to tackle its rapidly expanding workload and to specifically speed up the determination of communications or complaints in its docket.

In this context, the new Rules of Procedure introduce a simple process of seizing communications. Under the old iterations of the Rules of Procedure, the decision on whether to be seized of communications would be determined in a sitting of the African Commission,[39] a practice that unnecessarily lengthened the time and process of considering communications. Under Rule 115 of the 2020 Rules of Procedure, the authority to seize communications on behalf of the African Commission is now granted to the secretariat. However, the African Commission reserves the competence to (re)consider any decision of the secretariat to decline a communication.

Rule 115 also simplifies the criteria for seizure. It shortens the list of information required from complainants when they submit a communication, effectively minimising overlap between information required to determine seizure, on the one hand, and admissibility, on the other. Another important change introduced by the 2020 Rules of Procedure is that complainants would be required to submit written submissions on the admissibility and merits of the communication at once,[40] rather than separately as was the case before. This new procedure significantly cuts down timelines for considering communications. It offers hope for relatively expeditious disposal of communications.

The 2020 Rules of Procedure also contain new provisions that seek to strengthen the African Commission's communications process in other ways. For example, Rules 104-106 provide for a clearer process of admitting interventions by *amicus curiae* and interested parties. Rule 124 provide for the procedure of withdrawing, striking out and relisting of communications.

MONITORING IMPLEMENTATION OF DECISIONS

Rule 125 on monitoring implementation of decisions largely mirrors Rule 112 in the old 2010 Rules of Procedure. However, it contains some important additions. It provides that the African Commission may request National Human Rights Institutions (NHRIs) to inform it of actions taken to monitor or facilitate implementation of its decisions. It also requires the Secretary to forward any information received from a respondent state on implementation of a decision to the complainant for his or her comments. The potential of Rule 125 to catalyse implementation of African Commission decisions lies in its scrupulous implementation in practice. As Amnesty International noted in the inaugural report in respect of Rule 112,[41] the African Commission should be diligent in its monitoring of implementation of its decisions by strictly enforcing timelines and allocating sufficient time during ordinary sessions for reports on implementation to be presented and discussed.

ADDRESSING CONTESTATIONS BY STATES

Several other new provisions seek to clarify aspects of the African Commission's mandate and working methods that have been contested in the past by member states and/or the AU Executive Council. Rule 3, for instance, clarifies that as an autonomous treaty body, the African Commission has the competence to adopt its own rules of procedure, organize and manage the secretariat, and interpret both the African Charter and its own decisions. Rule 63 clarifies that the content of activity reports shall be exclusively determined by the African Commission and any comments or concerns raised by state parties would be annexed to the reports.

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[38] In addition to the adoption of the new Rules of Procedure, the Commission took other measures to improve its efficiency. These included a retreat that brought together members of the Commission and staff of the secretariat. During the retreat, the Commission "agreed to work on proposals for addressing the issues affecting the proper functioning of the Commission" and to "institutionalize an annual retreat". See Final communiqué of the 27th extraordinary session of the African Commission on Human and Peoples' Rights, 19 February – 4 March 2020, Banjul, The Gambia, para 16.

[39] See Rules of Procedure, 2010, Rule 93(5).

[40] Rules of Procedure, 2020, Rule 116.

[41] Amnesty International, *The state of African regional human rights bodies and mechanisms 2018-2019* (Index: AFR 01/1155/2019) p 36.

Rule 94 makes clear that for a Commission member's public opinions to form the basis of his or her recusal from taking part in the examination of a communication, those opinions must be "objectively capable of adversely affecting his or her impartiality with respect to the Communication".[42]

REFERRAL OF COMMUNICATIONS TO THE AFRICAN COURT: A WORRYING STEP BACKWARD

While most new provisions of the 2020 Rules of Procedure are progressive, Rule 130 on referral of communications to the African Court is a worrying step backward. Rule 130 gives operational effect to Article 5(1) of the African Court Protocol, which grants standing to the African Commission to submit cases to the African Court. Under the 2010 Rules of Procedure, the African Commission could refer communications to the African Court in four different scenarios: (a) when a respondent state has manifestly refused to comply with a decision of the African Commission; (b) when a respondent state has not complied with provisional measures issued by the African Commission; (c) when a communication reveals a situation of serious or massive violations of human rights; and (d) at any stage of the examination of a communication if the African Commission deems necessary. Rule 130 in the 2020 Rules of Procedure omits all these scenarios. It now simply specifies that the African Commission may refer cases to the African Court when it has not yet decided on the admissibility of a communication. It is thus unclear under what specific circumstances would the Commission make a referral.

Rule 130 also introduces additional hurdles in the referral process that did not exist in the past. It requires referrals to be made in respect of respondent states that have ratified the African Court Protocol and only after obtaining the consent of the complainant.

The change introduced in Rule 130 reflects a growing and persistent reluctance by the African Commission to refer cases to the African Court. Although the Court has been operational for more than 15 years, the African Commission has referred a paltry three cases to the African Court.[43] Yet, the African Commission still presents the most realistic avenue for accessing the African Court for most victims of human rights violations in Africa. Unlike the African Charter which has received near universal ratification,[44] the African Court Protocol is yet to be ratified by a total of 25 AU member states. Importantly, of the states that have ratified the African Court Protocol, only ten (or 33%) have ever accepted the competence of the Court to directly receive cases from individuals and Non-Governmental Organizations (NGOs). These are: Benin, Burkina Faso, Côte d'Ivoire, The Gambia, Ghana, Malawi, Mali, Rwanda, Tanzania, and Tunisia. Worse still, four of these (Benin, Côte d'Ivoire, Rwanda and Tanzania) have since withdrawn their declaration allowing such direct access.

The narrow approach adopted in Rule 130 potentially forecloses any real prospects of more cases ever been referred to the African Court by the African Commission. Although Article 5(1) of the African Court Protocol is at the heart of the complementarity relationship that the African Commission enjoys with the African Court,[45] the provision may be rendered redundant if it is invoked only sparingly as the case has been or not at all. Amnesty International calls upon the African Commission to revert to the options of referral that were available under the 2010 Rules of Procedure and to take proactive steps to refer cases to the African Court.

SPECIAL MECHANISMS

Rule 25 of the 2020 Rules of Procedure provide for the establishment of special mechanisms of the

[42] This clarification seems to respond to a recent experience in which Egypt applied for a recusal of a member of the African Commission on account of previously made public opinions. The Commission delivered its decision on the application for recusal at its 65th ordinary session but the decision has not yet been made public. See 47th activity report of the African Commission on Human and Peoples' Rights, para 27.
[43] Two of these went to full hearing while one was struck out for lack of diligent prosecution by the ACHPR.
[44] Morocco is the only AU member state that has not yet ratified the African Charter.
[45] Article 2 of the African Court Protocol provides that "[t]he Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights (hereinafter referred to as 'the Commission'), conferred upon it by the African Charter on Human and Peoples' Rights, hereinafter referred to as 'the Charter'.

African Commission.[46] The detailed provisions relating to the functioning of special mechanisms are spelt out in the new Standard Operating Procedures. Paragraph 14 of the Standard Operating Procedures relates to the conduct of special mechanism mandate holders. It requires mandate holders to, *inter alia*, act in an independent capacity, uphold the highest standards of professionalism, and not to use their office for private gain. It also bounds mandate holders not to accept any form of benefit from any governmental or non-governmental entity if doing so would bring into question their integrity or relationship with the entity offering the benefit.

Chapter five of the Standard Operating Procedures (paragraphs 17-24) regulates how mandate holders should address allegations of human rights violations and abuses. It requires them to act on allegations on the basis of "objective and dependable facts based on appropriate evidentiary standards" and only after considering all sources of information that they deem credible and relevant and cross-checking such information to the best extent possible.[47] It also provides that mandate holders should give state parties "appropriate opportunities" to comment on allegations against them, although they should also take measures to protect sources from reprisal.[48]

Chapter five also provides that the text of communications sent to state parties and responses received are confidential, "until such time as they are published in the relevant inter-session reports of Special Mechanisms".[49] However, general information regarding the transmission of a communication to a state party may be announced on the Commission's website. This provision codifies a longstanding practice. However, the terse information provided to the public hinders the extent to which stakeholders may follow up with governments in the context of monitoring or facilitating compliance.

Like the new Rules of Procedure, the Standard Operating Procedures are available on the website of the African Commission. It is commendable that the Commission has made the Standard Operating Procedures available to the public.[50] However, other key documents that lay out the Commission's procedures on other working methods are yet to be published long after they were adopted. For example, the Commission's Procedures for the Adoption of Resolutions and the Guidelines on the Format of Promotion and Protection Missions, both of which were adopted during its 26th extraordinary session in July 2019, are not available to the public more than a year later.

Amnesty International reiterates the call it made in the inaugural report that the ACHPR cultivates a culture of publishing and disseminating all its procedural documents in order to foster openness and transparency and allow its stakeholders the opportunity to be fully informed of how it operates and carries out its mandate.[51] The African Commission should in this context apply, *mutatis mutandis*, the principles it has set out in the 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa.

URGENT APPEALS

Rule 85(2) of the 2020 Rules of Procedure provides that in instances of emergency, the Commission or its special mechanisms may take "appropriate action", including issuing urgent appeals. Additional provisions relating to urgent appeals are contained in the Standard Operating Procedures of the Special Mechanisms. Since the issuance of urgent appeals by the African Commission has often generated much contestation by member states,[52] Paragraphs 26-27 of the Standard Operating Procedures clarify that the purpose of urgent appeals is to address time-sensitive allegations of human rights violations and abuses by requiring state authorities to prevent or stop irreparable harm. Paragraph 28 further stipulates that urgent appeals "shall generally request States to provide a substantive response within a reasonable period of time, and those responses shall be reflected in the activity reports of Special Mechanisms".

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[46] This provision is similar to Rule 23 of the 2010 Rules of Procedure.
[47] Standard Operating Procedures, paras 17-18.
[48] Standard Operating Procedures, paras 18 & 23.
[49] Standard Operating Procedures, para 24.
[50] It is noteworthy that during the reporting period, the African Commission also enhanced its engagement with the public in a bid to improve its visibility and profile. There was visible and significant improvement in the sharing of information through the Commission's social media outlets, including Twitter and Facebook, and publication of op-eds.
[51] Amnesty International, *The state of African regional human rights bodies and mechanisms 2018-2019* (Index: AFR 01/1155/2019) p 28.
[52] See, for example, Egypt's observations on the 46th activity report of the African Commission, 23 August 2019, https://www.achpr.org/public/Document/file/Any/Egypt%20Observation%20on%2046th%20Activity%20Report%20of%20ACHPR_ENG.pdf

EXECUTION OF MANDATE

> **"Ours is a mandate for giving voice to the voiceless, coming to the defence of those who could not find protection at the national level and strengthening the system of protection at the national level to ensure that the space for the enjoyment of human and peoples' rights is expanded. Ours is also a very onerous responsibility of working for realizing the ideals and values underpinning the African Charter enunciated in its preamble, namely freedom, equality, justice and dignity".**
>
> Commissioner Solomon Dersso, ACHPR Chairperson, opening statement, ACHPR 28th extraordinary session, 29 June 2020

The three regional human rights treaty bodies cumulatively convened 10 sessions during the reporting period. The African Court led with five sessions, followed by the African Commission with four. The African Children's Committee held only a single session. The sessions of the three bodies amounted to a total of 142 days of meeting time. The African Court met for 77 days while the African Commission and the African Children's Committee met for 54 and 11 days, respectively. This section of the report examines the work and performance of the regional bodies during and in between the 10 sessions that they held during the reporting period. It covers the regional bodies' execution of their respective mandates relating to determination of communications and cases, examination of state party reports, standard-setting, and responding to urgent cases of human rights violations.

DISRUPTION CAUSED BY THE COVID-19 PANDEMIC

The three regional human rights treaty bodies experienced an unexpected and unprecedented disruption of their work during the reporting period due to the COVID-19 pandemic. The first case of COVID-19 in Africa was reported in Egypt on 14 February 2020. By 30 June, 393,305 people in 54 African countries had contracted the disease and 9879 had died as a result.[53] In the intervening period, nearly all these countries had imposed some form of restrictions on people's movement and other human rights to control the spread of the virus.

[53] Africa CDC, 'Outbreak brief 24: COVID-19 pandemic, 30 June 2020, https://africacdc.org/download/outbreak-brief-24-covid-19-pandemic-30-june-2020/

Like other regional and global human rights treaty bodies affected by the COVID-19 pandemic, the African Commission, the African Children's Committee and the African Court were compelled to cut-short, postpone, cancel or scale-down most of their activities. On 13 March, the AUC announced a suspension of all AU meetings until further notice. In keeping with this guidance, the African Commission postponed its 66th ordinary session that had been slated to take place from 22 April to 12 May. It advised that the session would be held sometime in May/June, subject to "the evolution of the [COVID-19] situation and further guidelines from the AUC".[54] The African Children's Committee also postponed its 35th ordinary session that had been scheduled to take place from 23 March to 2 April.[55]

The African Court discontinued its 56th ordinary session on 20 March, seven days ahead of the time it was initially scheduled to end. The Court also asked "all non-essential staff to work from home and key departments with limited staff to carry out their duties on shift-basis until further notice".[56] By the time the African Court decided to cut-short its 56th session, it had held two hearings, but had yet to examine 20 applications and render six judgements as it had planned.

As at the time of publishing this report, all the three regional bodies had moved their sessions to online platforms and taken a range of other measures to mitigate the disruption wrought by COVID-19 on their work.[57] For example, the African Court suspended the computation of time limits for all cases pending before it, except in relation to provisional measures.[58] It also developed and adopted practice directions to regulate virtual court sessions, electronic filing of pleadings and virtual public hearings.[59]

DETERMINATION OF COMMUNICATIONS AND CASES

There were minimal overall changes in the trends relating to the determination of communications and cases by the three regional human rights bodies during 2019/2020 as compared to 2018/2019. The number of cases finalized remained low while that of pending cases continued to be high.

The African Commission seized 17 new communications and finalized a total of 63 from its docket. Five other communications were declared admissible and proceeded to the merits stage. The African Commission issued provisional measures in three of the new communications it received. More than half of the communications that were finalized (57%) were declared inadmissible for failure to meet one or more of the requirements on admissibility under Article 56 of the African Charter. Of the cases that were declared inadmissible, 30 or 83% arose from a similar set of facts and had been joined for purposes of determination. The number of cases struck-out for lack of diligent prosecution by complainants dropped from 21 in 2018/2019 to four in 2019/2020, representing an 84% drop. Decisions on the merits marginally increased from three to four.

The number of pending cases in the docket of the African Commission as at the end of the reporting period stood at 211, compared to 240 at the end of the previous reporting period. Amnesty International's review of the number of communications tabled for consideration in the last five years (2015-2019) reveals that the African Commission examined an average of 17.5 communications during ordinary sessions and 31.6 during extraordinary sessions. Previously (2010-2014), the African Commission would examine 60.3 communications during ordinary sessions and 22.4 during extraordinary sessions. While it appears that the number of communications examined during ordinary sessions have drastically reduced over the last decade, it is important to note that most decisions tabled during sessions held in the period 2010-2014 would be deferred without detailed consideration. Nevertheless, as Amnesty International noted in the inaugural report,[60] if the African Commission is to significantly reduce the backlog in its docket, more time would need to be dedicated to the examination of communications during its sessions.

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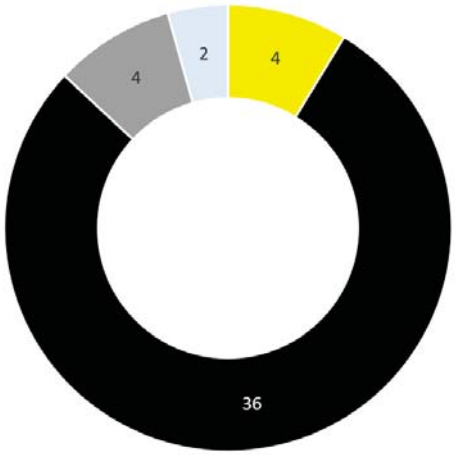
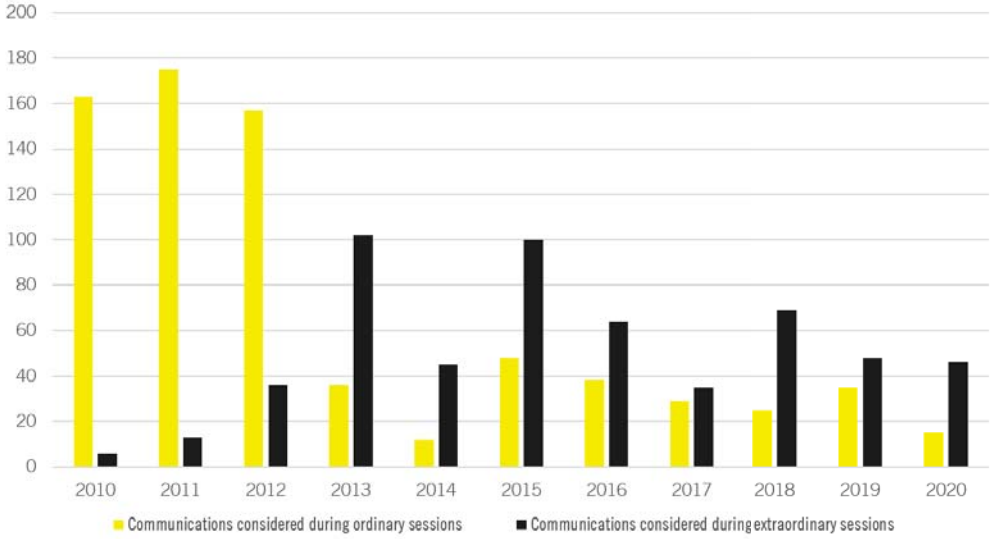
[54] 'Press statement of the African Commission on Human and Peoples' Rights on the postponement of the 66th ordinary session in light of the global coronavirus (COVID-19) pandemic, 17 March 2020, https://www.achpr.org/pressrelease/detail?id=482
[55] '35th ordinary session of ACERWC postponed', https://www.acerwc.africa/35th-ordinary-session-of-acerwc-postponed/
[56] 'African Court suspends its 56th ordinary session because of outbreak of coronavirus', 23 March 2020, http://www.african-court.org/en/index.php/news/press-releases/item/344-african-court-suspends-its-56th-ordinary-session-because-of-outbreak-of-coronavirus
[57] The ACHPR had held the following sessions online: 28th extraordinary session (29 June – 1 July 2020) and 66th ordinary session ordinary session (13 July – 7 August 2020). The ACERWC virtually held its 35th ordinary session from 31 August – 8 September 2020. The ACtHPR held the following sessions online: 57th ordinary session (1 June – 26 June 2020); and 58th ordinary session (31 August – 25 September 2020).
[58] 'Suspension of time limits due to the measures taken in response to COVID-19', 22 May 2020, http://www.african-court.org/en/index.php/news/press-releases/item/349-suspension-of-time-limits-due-to-the-measures-taken-in-response-to-covid-19
[59] Practice directions for virtual sessions in the African Court on Human and Peoples' Rights, 2 June 2020, http://www.african-court.org/en/images/Basic%20Documents/Practice_Directions_for_Virtual_Sessions_EN.pdf
[60] Amnesty International, *The state of African regional human rights bodies and mechanisms 2018-2019* (Index: AFR 01/1155/2019) p 21.

ACHPR: FINAL DECISIONS ISSUED BETWEEN 1 JULY 2019 AND 30 JUNE 2020



Cases decided on merits ■ Cases declared inadmissible ■ Cases struck out ■ Cases withdrawn

NUMBER OF COMMUNICATIONS CONSIDERED DURING THE ACHPR SESSIONS, 2010-2020



On the other hand, the African Children's Committee seized five new communication during the reporting period.[61] One of the new communications challenges Tanzania's policy of expulsion and exclusion from school of pregnant girls.[62] The Committee declared one communication admissible while it struck out one

[61] Information received directly from the African Children's Committee.
[62] 'Centre for Reproductive Rights and Legal and Human Rights Centre file a complaint challenging the expulsion and exclusion of pregnant school girls in Tanzania', https://reproductiverights.org/press-room/complaint-challenging-expulsion-of-pregnant-girls-in-tanzania

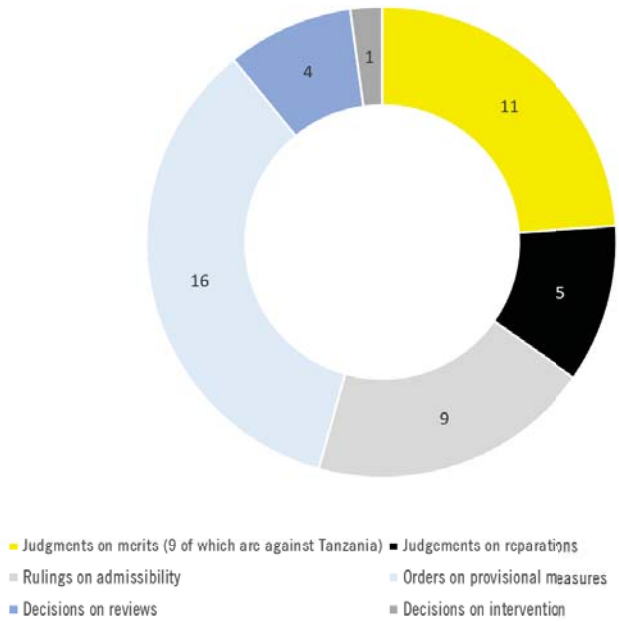
other communication.[63] As the African Children's Committee did not finalize any decision on the merits during the reporting period, the number of pending communications in its docket increased to eight.[64]

According to a tally conducted by Amnesty International, the African Court issued a total of 46 decisions during the reporting period. It considered 16 applications for provisional measures,[65] with 68% of all such applications concerning Benin. Judgments on the merits reduced slightly from 18 in 2018/2019 to 11 in 2019/2020.[66] Tanzania was the respondent state in the bulk of the judgments on the merits (81%), with most of these relating to the right to fair trial. Other rights that were at stake in the judgments on the merits included the right to life, freedom of movement, freedom from slavery, and right to nationality.

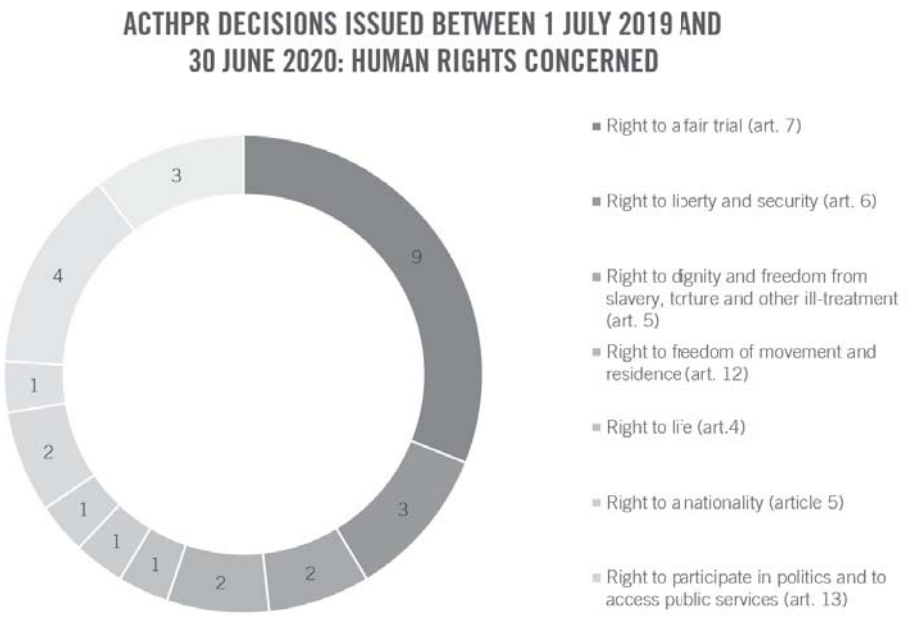
For the first time, the African Court examined the question of the death penalty and held that laws providing for mandatory death sentences are a violation of the right to life (see discussion below). In another landmark judgment,[67] the African Court expounded on the right to nationality, holding that although it is not expressly provided in the African Charter, it is a "fundamental aspect of the dignity of the human person" and hence its arbitrary denial is a violation of Article 5 of the African Charter.[68]

During the reporting period, the Court received 65 new cases while the number of pending cases in its docket increased by a factor of 38.5% from 143 in 2018/2019 to 198 in 2019/2020.[69] The Court is likely to experience a stagnation in the flow of new cases into its docket following the decision taken during the reporting period by Benin, Côte d'Ivoire, and Tanzania to withdraw their declaration allowing individuals and NGOs to file cases directly at the Court.

ACtHPR: DECISIONS ISSUED BETWEEN 1 JULY 2019 AND 30 JUNE 2020



[63] Information received directly from the African Children's Committee.
[64] Three of the pending communications have been joined for purposes of determination as they relate to similar parties and issues.
[65] This figure is based on Amnesty International's count of decisions published by the African Court on its website following its sessions held during the reporting period. In communication sent to the organization, the Court indicated that it had considered 10 applications for provisional measures. However, for purposes of consistency in analysis, the figure relied upon is based on the information sourced from the Court's website.
[66] This figure is based on Amnesty International's count of decisions published by the African Court on its website following its sessions held during the reporting period. In communication sent to Amnesty International, the Court indicated that it had issued two additional judgments on the merits bringing the total to 13. However, for purposes of consistency in analysis, the figure relied upon is based on the information sourced from the Court's website.
[67] *Robert John Penessis v Tanzania*, Application No. 013/2015, Judgment of 28 November 2019.
[68] Article 5 reads, in part, as follows: "Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status".
[69] Information received directly from the African Court.



TOWARDS ABOLITION OF THE DEATH PENALTY IN AFRICA: NEW BOOST FROM THE AFRICAN COURT

On 28 November 2019, the African Court added voice and new impetus towards the abolition of the death penalty in Africa in its judgment in the case of *Ally Rajabu v. Tanzania*.[70] The Court held that Section 197 of the Tanzania Penal Code which provides for mandatory death sentence violates Articles 4 (right to life) and 5 (freedom from torture) of the African Charter. The Court found that the mandatory imposition of the death penalty fails the test of due process and fairness. It does not permit a convicted person to present mitigating factors, applies to accused persons without considering the circumstance in which they committed the offence, removes the discretion of the judicial officer, and does not allow a determination of the proportionality between the facts and the penalty. The Court also found that imposing the death penalty by hanging amounts to torture and cruel, inhuman and degrading treatment because of the inherent suffering involved.

Amnesty International opposes the death penalty in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution.

Significant progress towards abolition of the death penalty has been recorded in Africa in the last four decades. While no African country had abolished the death penalty for all crimes 40 years ago, 20 of them have done so now. Of the remaining countries that retain the death penalty in their laws, 17 are abolitionist in practice; they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out

[70] Application No. 007/2015, Judgment of 28 November 2019.

executions. There are 15 retentionist countries on the continent. In 2019, five of these (Botswana, Egypt, Somalia, South Sudan and Sudan) carried out executions.[71]

The African Commission has for more than two decades steered normative and other regional initiatives aimed at abolishing the death penalty in Africa. In 2015, the African Commission adopted a Draft Protocol on the Abolition of the Death Penalty in Africa, but the process of its consideration by the relevant AU policy organs stalled after the Specialized Technical Committee (STC) on Legal Affairs declined to discuss the Draft, erroneously citing lack of a legal basis to do so. In the aftermath of this setback, the African Commission developed a strategy for the resolution of the delay in the adoption process. It remains unclear, however, to what extent this strategy has been acted upon or followed through.

Amnesty International calls on AU member states that still retain the death penalty in their laws to abolish the death penalty for all crimes. Pending full abolition, they should establish an official moratorium on executions and commute, without delay, all death sentences to terms of imprisonment. Amnesty International also calls on the African Commission to publish its strategy for the resolution of the delay in the adoption process of the Draft Protocol and to work effectively with all relevant organs of the AU to ensure that the draft protocol is successfully adopted.

EXAMINATION OF STATE PARTY REPORTS

The number of state party reports examined during the reporting period was unusually low partly because of the disruption caused by the COVID-19 pandemic and the postponement of scheduled sessions. The African Commission examined two reports (Chad and Zimbabwe) while the African Children's Committee examined one report (Mauritania).[72]

Scheduled examination of four reports (Cameroon, Malawi, Mauritius and Niger) in April/May 2020 failed to take place after the African Commission's 66th ordinary session was postponed and later moved online.[73] Similarly, African Children's Committee's examination of Kenya's state party report that would have taken place in March/April 2020 was postponed to August. As at the time of publishing this report, review of Guinea Bissau's report that was initially scheduled for November/December 2019 had not taken place.

Chad and Zimbabwe's periodic reports were examined in October 2019 during the African Commission's 65th ordinary session. Due to long delays in their submission, Chad's periodic report covered a period of 18 years (1998-2015) while that of Zimbabwe covered 13 years (2007-2019).

The African Commission adopted four different sets of concluding observations during the reporting period. These were in respect of previously reviewed state party reports of Angola, Botswana, Democratic Republic of Congo (DRC) and Nigeria. Amnesty International's analysis shows that it took an average of 16.25 months for the African Commission to adopt the concluding observations in respect of the four state party reports, with that of DRC taking close to two years. As at the time of publishing this report, concluding observations in respect of one state party report (Togo) considered during the 63rd ordinary session in October/November 2018 and three (Egypt, Gambia, Lesotho) considered during the 64th ordinary session in April/May 2019 were yet to be adopted.

As state parties are required to submit their periodic reports every two years, Amnesty International recommends that the African Commission should ensure that it adopts concluding observations as soon as it has reviewed a state party report. A long delay in adopting concluding observations has the ultimate effect of distorting the reporting cycle and potentially encourages state parties to be lax in complying with timelines.

[71] Amnesty International, *Death sentences and executions 2019*, (Index: ACT 50/1847/2020).
[72] The African Children's Committee also received the state party reports of Ethiopia, Guinea, Kenya and Seychelles during the reporting period.
[73] During the virtual 66th ordinary session that took place in July/August 2020, only the report of Mauritius was examined.

STATE PARTY	DATE OF REVIEW OF REPORT	DATE OF ADOPTION OF CONCLUDING OBSERVATIONS	APPROXIMATE TIME INTERVAL (MONTHS)
ANGOLA	April 2018	July 2019	15
BOTSWANA	October 2018	July 2019	9
DRC	November 2017	October 2019	23
NIGERIA	April 2018	October 2019	18
AVERAGE TIME IN MONTHS TAKEN TO ADOPT CONCLUDING OBSERVATIONS			16.25

STANDARD-SETTING

The standard-setting role of the African Commission and the African Children's Committee gained a renewed sense of relevance and urgency during the reporting period as a result of the COVID-19 pandemic. On the continent, as elsewhere, governments responded to the pandemic with a raft of public health emergency measures and restrictions on human rights, including declaration of states of emergency, travel bans, imposition of curfews, prohibition of public gatherings and closure of borders. These measures had an almost uniform effect of leading to use of excessive force, arbitrary arrests or detentions, disproportionate limitations on civic space, and blanket denial of the right to seek asylum. The pandemic also exacerbated pre-existing economic and social inequalities and had a disproportionate impact on marginalised groups, including women, girls, refugees, and Internally Displaced Persons (IDPs). All the while, health and essential workers faced enormous challenges in responding to the pandemic and governments failed to protect them.[74]

Against this backdrop, regional human rights bodies reminded states about their international human rights obligations and issued guidelines to ensure that human rights are at the centre of all responses to the pandemic.

> **"The Special Rapporteur would like to remind States that, despite the declared State of Emergency, there are international human rights principles that guide the use of force and firearms, with emphasis on the principles of legality, necessity, proportionality and accountability. States must ensure that the response of Law Enforcement and Public Security Forces to States of Emergency during the COVID-19 pandemic, is consistent with these principles and**

[74] Amnesty International, *Exposed, silenced, attacked: Failures to protect health and essential workers during the COVID-19 pandemic* (Index: POL 40/2572/2020).

> **do not endanger human life. In the same vein, States are also reminded that the right to life, protection against torture, cruel and degrading treatment are absolute and irrevocable rights, even in a State of Emergency".**
>
> Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, 22 April 2020

On 28 February 2020, the African Commission became the first human rights treaty body across the globe to issue a statement on COVID-19 and human rights.[75] The statement emphasized the imperative of human rights-based preventive measures, access to information, focus on marginalized groups, and proportionality of restrictions. On 24 March, the African Commission issued another statement laying out more comprehensively the general principles that should underpin all responses to COVID-19.[76] By 30 June, it had issued a relatively voluminous set of guidelines on how COVID-19 intersects with different rights or issues, how it impacts on specific groups, and what states need to do from a human rights perspective. Topics covered included holding elections during the pandemic, its impact on economic, social and cultural rights, and access to the internet. Group-specific guidelines focused on the plight of mine workers and mining affected communities, Human Rights Defenders (HRDs), women, indigenous peoples, and prisoners. Some statements were addressed to specific countries, particularly Burundi, South Africa, and Tanzania. The African Commission also engaged other relevant actors, including President Cyril Ramaphosa of South Africa in his capacity as the AU chairperson for 2020.[77]

COVID-19 NORMATIVE GUIDELINES

AFRICAN COMMISSION

- Statement on elections in Africa during the COVID-19 pandemic, 22 July 2020
- Press Release on the impact of the COVID-19 pandemic on economic, social and cultural rights in Africa, 4 June 2020
- Africa: we must act now to avoid a catastrophe, say rights chiefs, 20 May 2020
- Press Release on the holding of general elections in Burundi in the context of the prevalence of the coronavirus Pandemic, 19 May 2020
- Press Statement on the human rights of mine workers and mining affected communities during COVID-19 pandemic in South Africa, 18 May 2020
- Press Release of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa on the protection of human rights defenders during the COVID-19 pandemic, 11 May 2020
- Press Statement on ACHPR letter submitted to the African Union chairperson H.E. President Cyril Ramaphosa on making human rights key pillar of the continental response to COVID-19, 7 May 2020
- Press Release of the Special Rapporteur on the Rights of Women in Africa on violations of women's rights during the COVID-19 pandemic, 6 May 2020

[75] 'Press statement on the coronavirus (COVID-19) crisis, 28 February 2020, https://www.achpr.org/pressrelease/detail?id=480
[76] 'Press statement on human rights based effective response to the novel COVID-19 virus in Africa, 24 March 2020, https://www.achpr.org/pressrelease/detail?id=483
[77] 'Press statement on ACHPR letter submitted to the African Union chairperson H.E. President Cyril Ramaphosa on making human rights key pillar of the continental response to COVID-19',7 May 2020, https://www.achpr.org/pressrelease/detail?id=497

- Press Release on the impact of the COVID-19 virus on indigenous/communities in Africa, 23 April 2020
- Press release of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa on reports of excessive use of force by the police during COVID-19 pandemic, 22 April 2020
- Press Release of the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa on the release of prisoners during the COVID-19 pandemic, 17 April 2020
- Press Release by the Special Rapporteur on Freedom of Expression and Access to Information in Africa on the importance of access to the internet in responding to the COVID-19 pandemic, 8 April 2020
- Press Statement on human rights based effective response to the novel COVID-19 virus in Africa, 24 March 2020
- Press Statement on the coronavirus (Covid-19) crisis, 28 February 2020

AFRICAN CHILDREN'S COMMITTEE

- Guiding Note on children's rights during COVID-19, 8 April 2020

The African Children's Committee issued a general guiding note on children's rights during the pandemic on 8 April 2020.[78] The guiding note urges states to integrate child protection measures in their responses to COVID-19, such as establishing child friendly quarantine procedures as well as adapting information and communication procedures to suit children.

Before the outbreak of COVID-19, the African Commission had adopted three specific normative guidelines: Guidelines on the right to water in Africa; Revised Declaration of Principles on freedom of expression and access to information in Africa; and General Comment on equitable sharing of matrimonial property (Article 7(d) of the Maputo Protocol). In November 2019, the African Commission also issued an Advisory Note to the African Group in Geneva.[79] The Advisory Note sets out principles that should guide the African Group in the ongoing United Nations (UN) process of developing a global binding treaty on business and human rights. The issuance of this Advisory Note marked an important innovation in African Commission's engagement with global developments impacting on the promotion and protection of human rights in Africa.

As part of its standard-setting function, the African Commission also adopted a total of 18 resolutions during the reporting period: five on the situation of human rights in specific countries; eight on different thematic issues; and five on internal administrative matters.[80] The five country-specific resolutions highlighted and expressed concern about the human rights situation in DRC, Ethiopia, Guinea Bissau, Libya, and South Sudan.

During its 27th extraordinary session in February/March 2020, the African Commission commented on the Draft Rules for effective consultation by the ACHPR with stakeholders on norm elaboration.[81] The Rules had not been finalised as at the end of the reporting period.

[78] African Committee of Experts on the Rights and Welfare of the Child, COVID-19 and its implications on children's rights and welfare: Guiding Note to member states of the African Union, https://www.acerwc.africa/wp-content/uploads/2020/04/Guiding-Note-on-Child-Protection-during-COVD-19_English-1.pdf

[79] Advisory Note to the African Group in Geneva on the legally binding instrument to regulate in international human rights law, the activities of transnational corporations and other business enterprises (legally binding instrument), https://www.achpr.org/news/viewdetail?id=206

[80] For the text of the resolutions adopted during the 26th extraordinary session see https://www.achpr.org/sessions/resolutions?id=450. For the text of resolutions adopted during the 27th extraordinary session see https://www.achpr.org/sessions/resolutions?id=465. For the text of resolutions adopted during the 65th ordinary session see https://www.achpr.org/sessions/resolutions?id=456.

[81] Final communiqué of the 27th extraordinary session of the African Commission on Human and Peoples' Rights, 19 February – 4 March 2020, Banjul, The Gambia, para 10.

RESOLUTIONS ADOPTED IN THE REPORTING PERIOD: 1 JULY 2019 - 30 JUNE 2020

18 total number of resolutions

administrative

5 total number of resolutions on administrative issues

thematic

8 total number of thematic resolutions

- FOREIGN AIR STRIKES
- RIGHT TO FOOD
- HUMAN RIGHTS DEFENDERS (2)
- ELECTIONS
- INDIGENOUS LANGUAGES
- USE OF FORCE BY LAW ENFORCEMENT OFFICIALS
- REGULATION OF PRIVATE ACTORS INVOLVED IN PROVISION OF SOCIAL SERVICES

country-specific

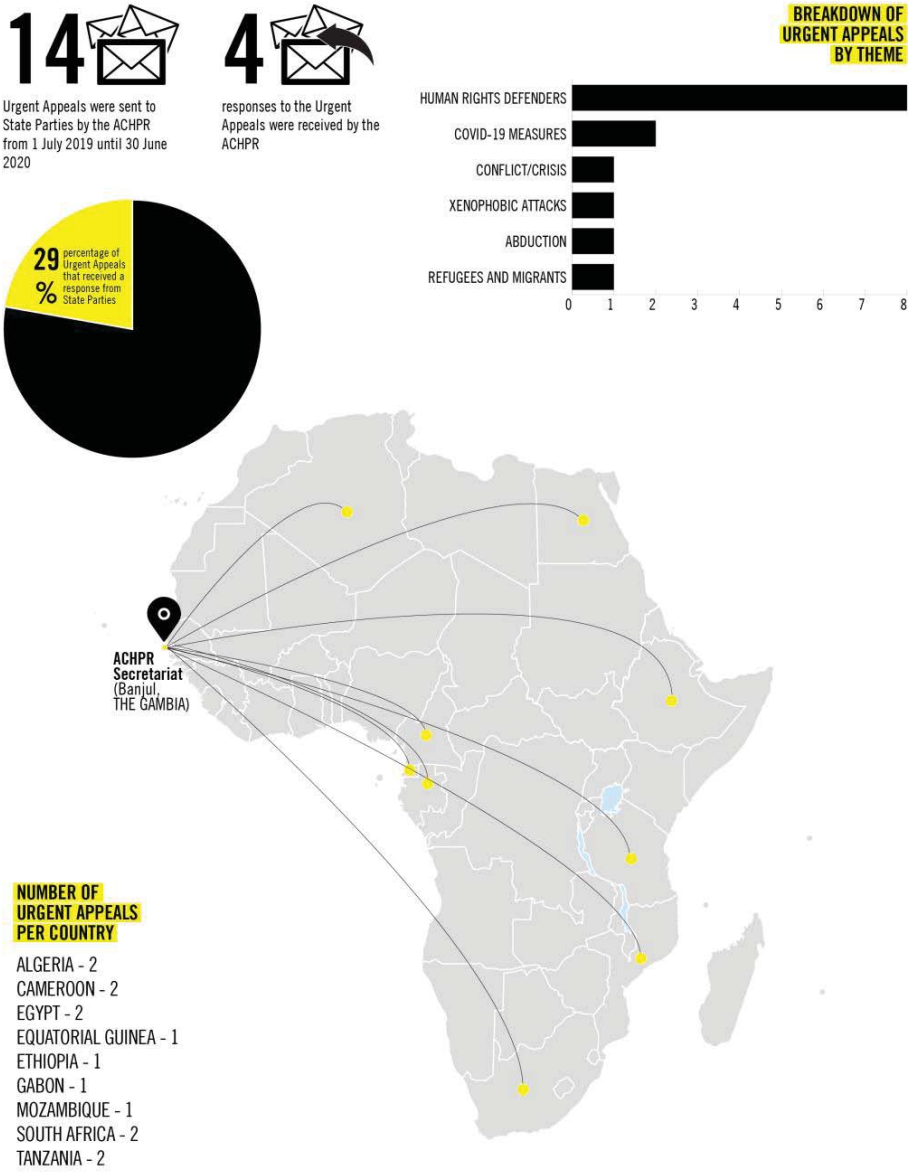
5 total number of country-specific resolutions

- DRC
- ETHIOPIA
- GUINEA BISSAU
- LIBYA
- SOUTH SUDAN

URGENT APPEALS

The number of urgent appeals issued by the African Commission reduced drastically from 83 in 2018/2019 to 14 in 2019/2020, representing an 83% drop. The urgent appeals issued concerned the plight of specific individuals or the general human rights situation in nine countries: Algeria (2), Cameroon (2), Egypt (2), Equatorial Guinea (1), Ethiopia (1), Gabon, Mozambique (1), South Africa (2), and Tanzania (2). Like in 2018/2019, most urgent appeals issued during the reporting period (57%) were interventions on behalf of HRDs by the Commission's Special Rapporteur on HRDs and Focal Point on Reprisals.

The African Children's Committee issued a single urgent appeal during the reporting period. On 27 September 2019, it sent an urgent appeal raising concerns about gaps in the protection of children from forced marriage in a child rights bill that was due to be enacted into law in Mauritius.[82]



[82] 'ACERWC issues a letter of urgent appeal to the Government of the Republic of Mauritius', https://www.acerwc.africa/%20News/acerwc-issues-a-letter-of-urgent-appeal-to-the-government-of-the-republic-of-mauritius/

ENGAGEMENT OF STATES AND RELATIONSHIP WITH OTHER STAKEHOLDERS

The regional bodies operate in an environment involving engagement with multiple actors, including victims of human rights violations and abuses, state parties, AU policy organs and institutions, relevant UN bodies and institutions, NHRIs, NGOs, and academics. How the regional bodies interact and engage with these players is an important determinant of their functioning and impact. One of the most important of these relationships is that with state parties. They bear the ultimate responsibility for implementing the core regional human rights treaties as well as the decisions and standards issued by the regional bodies. States are also responsible for making the regional system adequate for its task.

This section of the report reviews the relationship and engagement of the regional bodies with its key stakeholders during the reporting period. It evaluates the commitment of states to the regional system by looking at their acceptance of regional treaties through ratification, fulfilment of reporting obligations, compliance with decisions, and responsiveness to urgent appeals and requests for country visits. The section also highlights the major developments in the relationship of the regional bodies with other key stakeholders.

RATIFICATION OF REGIONAL TREATIES

> **"Today, on the 11th of July 2020, as the [African Children's] Charter turns 30 years old, the continent has changed in many ways but still remains with age old problems and emerging challenges that hinder the full realization of the rights and welfare of the Child. However, various milestones have been achieved in advancing the rights in the Charter through the work of the ACERWC. To mention but a few; the Charter has been ratified by 49 Member States of the African Union, 40 of**

> **them have reported to the Committee on measures taken to implement the provisions of the Charter; and Agenda 2040 was adopted as an African Union policy document with ten aspirations to be realized to create an Africa fit for children".**
>
> African Children's Committee, Keeping our commitment to the African Child, 11 July 2020

The regional bodies are mandated to supervise the implementation of seven core regional human rights treaties.[83] The African Commission has an expansive mandate as it supervises the implementation of three regional treaties currently in force: the African Charter; the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol); and the AU Convention on for the Protection of Internally Displaced Persons in Africa (Kampala Convention). The mandate of the Commission will extend to the Protocol on the Rights of Older Persons in Africa (Protocol on Older Persons) and the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa (Protocol on Persons with Disabilities) if and when they come into force.

The African Children's Committee exercises supervisory mandate over the African Children's Charter while the African Court has jurisdiction over the African Court Protocol, all the other core regional human rights treaties currently in force, and "any other relevant human rights instrument ratified by the states concerned".[84]

The pace of ratification of regional human rights treaties by AU member states have been historically slow. A total of 385 ratifications are needed for all the core regional human rights treaties to be universally ratified in the region. As at the time of publishing this report, the number of ratifications stood at 208, representing a ratification rate of 54%.[85] There were still 177 outstanding ratifications required for all AU member states to be bound by the core regional human rights treaties.

	REGIONAL HUMAN RIGHTS TREATY	NO. OF RATIFICATIONS	% RATIFICATION RATE	NO. OF STATES YET TO RATIFY	% NON-RATIFICATION RATE
1	**African Charter**	54	98%	1	2%
2	**African Children's Charter**	49	89%	6	11%
3	**African Court Protocol**	30	54%	25	46%
4	**Maputo Protocol**	42	76%	13	24%
5	**Kampala Convention**	31	56%	24	44%
6	**Protocol on Older Persons**	2	3%	53	97%
7	**Protocol on Persons with Disabilities**	0	0%	55	100%

[83] There are other relevant regional treaties, but the regional bodies do not have express supervisory mandate. These include the 1969 OAU Convention Governing the Specific Aspects Refugee Problems in Africa, the 2006 African Youth Charter, and the 2007 African Charter on Democracy, Elections and Governance.
[84] African Court Protocol, Article 3(1).
[85] The data on ratifications used in this report is sourced from and based on AU's official tabulation: https://au.int/en/treaties

REGIONAL HUMAN RIGHTS TREATY	NO. OF RATIFICATIONS	% RATIFICATION RATE	NO. OF STATES YET TO RATIFY	% NON-RATIFICATION RATE
Total/Average%	**208**	**54%**	**177**	**46%**

Five new ratifications were recorded during the reporting period. Equatorial Guinea, Mozambique and Somalia deposited their instruments of ratification in respect of the Kampala Convention.[86] Benin did so in respect of the Protocol on Older Persons.[87] Lastly, Ethiopia ratified the Maputo Protocol.[88] Of the seven core treaties, only the African Charter enjoys near universal ratification, with Morocco being the only country in the continent that is yet to ratify the treaty.[89] The ratification rate of the other regional treaties ranges from 89% in respect of the African Children's Charter to 0% in respect of the Protocol on Persons with Disabilities. The African Charter and the African Children's Charter enjoy higher ratification rates because of their longevity. In this regard, the year 2020 marked the 30th anniversary of the adoption of the African Children's Charter while 2021 will mark the 40th anniversary of the adoption of the African Charter.

> **RE-COMMIT ourselves to expedite the ratification, domestication and implementation of all human and peoples' rights instruments … and call upon the African Union Commission (AUC) to put in place measures and modalities to support Member States to establish the required capacities and processes for monitoring and review of the domestication efforts**
>
> Declaration by the AU Assembly on the theme of the year 2016, July 2016, Kigali, Rwanda

Although five state parties appended their signature to the Protocol on Persons with Disabilities in Africa during the reporting period and brought the total number of signatures to nine,[90] Amnesty International is concerned that the treaty is yet to be ratified by even a single AU member state, two years after it was adopted. Repeated calls by the African Commission for ratification of the treaty has thus far fell on deaf ears.[91] It is equally disappointing that while it is close to five years since the Protocol on Older Persons was adopted in January 2016, only two countries have ratified it (Benin and Lesotho). Amnesty International calls on AU member states to live up to their commitment made during the 27th ordinary session of the AU

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[86] 'List of countries which have signed, ratified/acceded to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)', https://au.int/sites/default/files/treaties/36846-sl-AFRICAN%20UNION%20CONVENTION%20FOR%20THE%20PROTECTION%20AND%20ASSISTANCE%20OF%20INTERNALLY%20DISPLACED%20PERSONS%20IN%20AFRICA%20%28KAMPALA%20CONVENTION%29.pdf

[87] 'List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons', https://au.int/sites/default/files/treaties/36438-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLES%E2%80%99%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20OLDER%20PERSONS.pdf

[88] 'List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa', https://au.int/sites/default/files/treaties/37077-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf

[89] 'List of countries which have signed, ratified/acceded to the African Charter on Human and Peoples' Rights', https://au.int/sites/default/files/treaties/36390-sl-african_charter_on_human_and_peoples_rights_2.pdf

[90] The five states that signed the Protocol are as follows: Angola, Cameroon, Gabon, Mali, and Rwanda. See 'List of countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa', https://au.int/sites/default/files/treaties/36440-sl-PROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLES%E2%80%99%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20PERSONS%20WITH%20DISABILITIES%20IN%20AFRICA.pdf

[91] See for example 'Press release on the panel encouraging ratification of the Protocol on the Rights of Older Persons in Africa and the Protocol on the Rights of Persons with Disabilities in Africa, https://www.achpr.org/pressrelease/detail?id=449

Assembly held in July 2016 to "expedite the ratification, domestication and implementation of all human and peoples' rights instruments".[92]

SUBMISSION OF STATE PARTY REPORTS

Amnesty International's overall assessment of state parties' compliance with their reporting obligations indicates that dismal performance continued during the reporting period. As at 30 June 2020, only six states, representing 11% of all member states, were up to date in the submission to the African Commission of their periodic report under Article 62 of the African Charter. About half of member states (48%) had three or more overdue periodic reports. The number of states that have never complied with Article 62 remained at six. These are: Comoros, Equatorial Guinea, Guinea Bissau, Sao Tome and Principe, Somalia and South Sudan.

The number of state parties that has ever complied with their reporting obligation under the Maputo Protocol increased marginally from 13 in 2018/2019 to 15 in 2019/2020. Of the 42 state parties, 27 or 64% had thus not yet submitted their initial report to the African Commission. A milestone was achieved in January 2020 when Cameroon submitted its initial report under Article 14(4) of the Kampala Convention, becoming the first and only state party to do so.[93]

[92] Declaration by the Assembly on the theme of the year 2016, adopted during the 27th ordinary session of the AU Assembly, 17-18 July 2016, Kigali, Rwanda, Assembly/AU/Decl.1(XXVII) Rev.1, operational para 3.
[93] Single report comprising the 4th, 5th and 6th periodic reports of Cameroon relating to the African Charter on Human and Peoples' Rights and 1st reports relating to the Maputo Protocol and the Kampala Convention, https://www.achpr.org/public/Document/file/English/Cameroon%204th-6th%20Periodic%20Report,%202015-2019-ENG.pdf

RESPONDING TO URGENT APPEALS AND PROVISIONAL MEASURES

Only four out of the 14 urgent appeals issued by the African Commission during the reporting period received official state replies.[94] This means that state responses to the Commission's urgent appeals reduced from 31% in 2018/2019 to 29% in 2019/2020. During the 65th ordinary session, South Africa and Gabon informed the African Commission that the government would be responding to the urgent appeals shortly after the session.[95]

The African Commission traditionally releases neither the urgent appeals nor the state replies to the public, a practice it continued during the reporting period. It instead provides short summaries in its activity reports. It is thus difficult to gauge in any substantive detail the nature, speed and quality of the state replies, in terms of whether they are mere denials without proper substantiation or are outcomes of adequate investigations into the alleged violations.

COMPLIANCE WITH RECOMMENDATIONS AND JUDGMENTS

> **"The level of compliance by State Parties with the Commission's Decisions, Requests for Provisional Measures and Letters of Urgent Appeal is relatively low …".**
>
> 47th Activity Report of the ACHPR, para 32

> **"Monitoring State compliance with the decisions and recommendations of ACERWC is therefore key to the full realization of children's rights. Despite this fact, the ACERWC is facing challenges due to non-implementation of States with its decisions and recommendations".**
>
> Activity Report of the ACERWC, February 2020, para 35.

> **"Compliance with a Court's judgment is essential to the success of any justice system and the proper administration of justice. Non-compliance not only destroys the very *raison***

[94] 47th activity report of the African Commission on Human and Peoples' Rights, para 35.
[95] 47th activity report of the African Commission on Human and Peoples' Rights, para 35.

> ***d'être* of a Court but undermines public confidence in the justice system".**
>
> Activity Report of the ACtHPR, February 2020, para 58

Information and data on the extent to which state parties comply with the decisions of the regional bodies remained scanty if unavailable during the reporting period. Apart from the general statements decrying the low state of compliance with their various decisions, the African Commission and the African Children's Committee did not provide any concrete or statistical data in their activity reports. The African Court, on the other hand, supplied information that revealed no improvement in state compliance with the Court's judgments. Burkina Faso remains the only state party to have ever fully complied with the judgments of the African Court. Tanzania had partially complied with some of the judgments while Côte d'Ivoire had submitted an implementation report to the Court, which was still under review as at the end of the reporting period. The rest of the countries against which judgments had been issued (Benin, Kenya, Libya, and Rwanda) had not complied at all, "with some openly indicating that they will not comply with the orders and judgments of the Court".[96]

In its 47th activity report, the African Commission reported that Cameroon had complied with its decision in the case of *Mbiankeu Geneviève v. Cameroon*,[97] a case that involved a violation of the right to property. The Commission had recommended that the Cameroonian government gives back to the complainant the piece of property that had been taken away from her or she be paid the equivalent in monetary terms. The Commission had also recommended that the complainant be paid damages for the loss suffered. In the Activity Report, the Commission regrettably did not provide any details on the exact nature of Cameroon's compliance with the decision.

During its 34th ordinary session, the African Children's Committee conducted an implementation hearing to review the status of compliance with its decision in the case of *Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yang Ould Salem v Mauritania*.[98] The Committee also received an update on the status of implementation of the amicable settlement in the case of *Institute for Human Rights and Development in Africa (IHRDA) v Malawi*. Of the three regional bodies, the African Children's Committee has commendably set itself apart in terms of establishing a consistent practice of conducting implementation hearings. These hearings are conducted pursuant to the Committee's Guidelines for Implementation of Decisions on Communications.

There was no progress during the reporting period in finalizing the African Court's framework for reporting and monitoring execution of its decisions. In February 2019, the AU Executive Council tasked the STC on Legal Affairs to review the draft framework. When it met in May 2019, the STC did not table the draft for review. Two inquiries sent to the AUC by the African Court in August and October 2019 on when and how the review would be undertaken went unanswered.[99]

ACCEPTANCE AND FACILITATION OF COUNTRY VISITS

The African Commission requested a total of 10 country visits in the form of promotion or advocacy missions during the reporting period.[100] Three of these (Benin, Chad, and Zimbabwe) accepted the request but the missions had not taken place by the end of the reporting period, partly as a result of travel restrictions and border closures triggered by the COVID-19 pandemic. Algeria and Kenya equally agreed to country visits during the reporting period.

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[96] See Activity report of the African Court on Human and Peoples' Rights, 1 January – 31 December 2019, EX.CL/1204 (XXXVI) para 57.
[97] Communication 389/10, Decision of 6 May 2015.
[98] Communication No. 007/Com/003/2015, Decision No. 003/2017, 15 December 2017.
[99] Activity report of the African Court on Human and Peoples' Rights, 1 January – 31 December 2019, EX.CL/1204 (XXXVI) para 20.
[100] The African Commission undertakes promotion or advocacy missions to raise awareness about the African Charter and its protocols, popularize its work, establish contact and engaged with relevant state authorities and assess the general human rights situation in a country. Promotion or advocacy missions are contrasted from protective or fact-finding missions which are undertaken to investigate specific allegations of human rights brought to the attention of the African Commission.

Prior to the outbreak of the pandemic, the African Commission had conducted six country visits, just one more visit compared to 2018/2019. Four of these (Eswatini, Ethiopia, Namibia, Niger) were advocacy visits while two (Mauritius and Sao Tome and Principe) were promotion missions. The mission to Sao Tome and Principe was the first visit by the Commission since the country ratified the African Charter in 1986. A key objective of the mission was to encourage the state party to submit its long overdue initial and periodic reports and participate in the sessions and activities of the African Commission.[101]

The visit to Eswatini was undertaken by the chairperson of the African Commission's Working Group on Economic, Social and Cultural Rights in order to meet with victims of forced eviction and engaged with state authorities on the matter.[102] The advocacy visits to Ethiopia and Niger were undertaken by the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (WGEI). In Ethiopia, discussions on the progress, gaps and challenges in the extractive industry were held with government officials, including the minister of mines and petroleum. The WGEI published a press statement at the end of the visit, which included several recommendations to the Ethiopian government aimed at addressing the identified gaps and challenges.[103] Statements issued at the conclusion of the visits to Mauritius,[104] and Namibia[105] similarly made recommendations on different issues and concerns for the respective states to act upon.

The African Children's Committee conducted country visits to Guinea and Liberia during the reporting period.[106] The visits sought to follow-up and monitor the level of implementation of the Committee's concluding observations issued after the review of the periodic reports of the two state parties. During the reporting period, the Committee also requested country visits to Central African Republic (CAR), DRC, Eritrea, and Namibia. Only Eritrea responded to the request, but a visit to the country did not materialize during the reporting period.

On its part, the African Court undertook 'sensitization visits' to Comoros and Zimbabwe.[107] During the visit to Zimbabwe, President Emmerson Mnangagwa pledged that the country would ratify the African Court Protocol "within the shortest time possible",[108] but this had not yet happened as at the end of the reporting period.

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[101] Press Release on the first promotion mission of the African Commission on Human and Peoples' Rights in the Democratic Republic of Sao Tome and Principe, https://www.achpr.org/fr_pressrelease/detail?id=441

[102] Inter-session activity report of Honourable Commissioner Jamesina Essie L. King, presented during the 65th ordinary session of the African Commission, 21 October – 10 November 2019, Banjul, The Gambia, https://www.achpr.org/public/Document/file/English/ComKing_InterssessionReport_WGESC_65OS_ENG.pdf

[103] Communiqué on the advocacy visit of the Working Group in Africa to the Federal Democratic Republic of Ethiopia, 23 December 2019, https://www.achpr.org/pressrelease/detail?id=471

[104] Press release on the promotion mission of the African Commission on Human and Peoples' Rights in the Republic of Mauritius, 13-17 August 2019, https://www.achpr.org/pressrelease/detail?id=440

[105] Press statement on the advocacy visit to the Republic of Namibia by the Special Rapporteur on Freedom of Expression and Access to Information in Africa, https://www.achpr.org/pressrelease/detail?id=437

[106] Activity report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), submitted to and adopted during the 36th ordinary session of the AU Executive Council, 6-7 February 2020, Addis Ababa, Ethiopia, EX.CL/1209(XXXVI), paras13-16.

[107] The African Court conducts sensitization visits to popularize the African Court Protocol as well as its work. It uses the visits to encourage AU member states that have not yet done so to ratify the African Court Protocol and/or make the declaration allowing individuals and NGOs to directly access the Court.

[108] 'Zimbabwe President assures of his country's ratification of the Protocol on the Establishment of the African Court', 16 August 2019, https://en.african-court.org/index.php/news/press-releases/item/307-zimbabwe-president-assures-of-his-country-s-ratification-of-the-protocol-on-establishment-of-the-african-court

MISSIONS AND COUNTRY VISITS

ACHPR

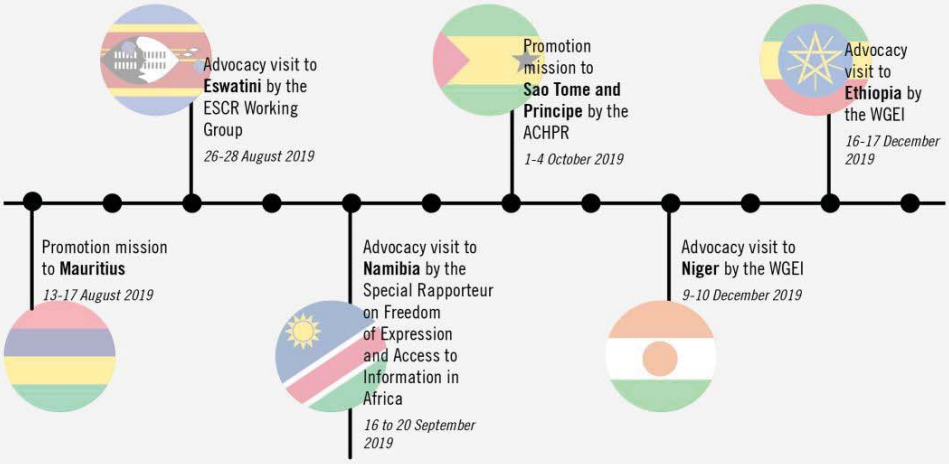
Requests for promotion missions:

- Benin
- Cape Verde
- Chad
- Congo Brazzaville
- Equatorial Guinea
- Eritrea
- Gabon
- Mozambique
- Senegal
- Zimbabwe

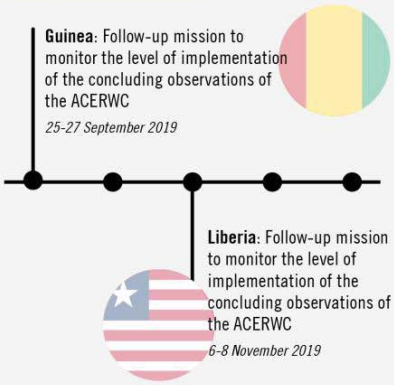
Accepted requests but not undertaken:

- Chad
- Benin
- Kenya
- Zimbabwe
- Algeria

Actual missions undertaken:



ACERWC



ACtHPR

POLITICAL PRESSURE AND BACKLASH

> **"On the decision of both Benin and Côte d'Ivoire to withdraw the Article 34(6) Declaration, the Court expressed concern and deeply regretted the action of the two states. It reiterated its commitment to independence, objectivity and loyalty in the discharge of its mandate".**
>
> African Court, Press statement, 4 May 2020

The intense political pressure and backlash against the African Commission witnessed during 2018/2019 appeared to somehow abate during 2019/2020. However, the African Court suffered hard knocks and setbacks that threatened to push it towards the edge of an existential crisis. In spontaneous reactions to judgments issued by the Court, three state parties (Benin, Côte d'Ivoire and Tanzania) hit back by withdrawing their declaration under Article 34(6) of the African Court Protocol. An Article 34(6) declaration allows individuals and NGOs to directly file cases at the African Court against the state party that has made it.[109] The African Court has held that withdrawal of the declaration becomes operative one year after it has been made and has no effect on pending cases.[110]

On 21 November 2019, Tanzania notified the AU of its decision to withdraw its Article 34(6) declaration that it had made back in March 2010, becoming the second country to take this retrogressive action after Rwanda.[111] Without providing any proof or evidence, Tanzania claimed that the Court had implemented its declaration "contrary to the reservations submitted by the United Republic of Tanzania when making its declaration".[112] The purported reservation had required the Court to entitle NGOs and individuals to access it "once all domestic legal remedies have been exhausted and in adherence to the Constitution of the United Republic of Tanzania". Yet, there is not a single case against Tanzania that the Court did not consider whether admissibility requirements had been met or that valid exceptions were applicable. On the contrary, the African Court has declared inadmissible several cases against Tanzania on account of non-exhaustion of local remedies.[113]

Amnesty International believes that Tanzania's true intention in withdrawing its declaration was to evade accountability by cutting off any further flow of cases against it at the African Court.[114] Most judgments issued by the Court thus far are against Tanzania. Similarly, the country accounts for the largest percentage of cases pending before the African Court. Most of the cases against Tanzania relate to the right to fair trial, and as Amnesty International observed in the inaugural report, they point to a systemic breakdown of the country's criminal justice system.[115]

Tanzania's withdrawal decision also came against the backdrop of growing hostility against HRDs in the country and a rapidly deteriorating human rights situation. Since November 2015, the Tanzanian government has repressed any form of dissent through the enforcement of a raft of draconian laws and the

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[109] Article 34(6) provides as follows: "At the time of the ratification of this Protocol or any time thereafter, the state shall make a declaration accepting the competence of the court to receive petitions under article 5(3) of this Protocol. The Court shall not receive any petition under 5(3) involving a state party which has not made such a declaration". Article 5(3) provides as follows: "The Court may entitle relevant non-governmental organisations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34(6) of this Protocol".

[110] *Ingabire Victoire Umuhoza v Rwanda*, Application 013/2014, Ruling on the Effects of the Withdrawal of the Declaration Under Article 34(6) of the Protocol, 3 June 2016.

[111] Rwanda withdrew its declaration in February 2016.

[112] Notice of withdrawal of the declaration made under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, Dodoma, 14 November 2019 (on file with Amnesty International). See also 'Alarm as Tanzania blocks cases from Africa rights court', https://www.aljazeera.com/news/2019/12/04/alarm-as-tanzania-blocks-cases-from-african-rights-court/

[113] See, for example, *Ramadhan Issa Malengo v Tanzania*, Application No. 030/2015, Ruling (Jurisdiction and Admissibility) of 4 July 2019.

[114] Amnesty International, 'Tanzania: Withdrawal of individual rights to African Court will deepen repression', 2 December 2019, https://www.amnesty.org/en/latest/news/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/

[115] Amnesty International, *The state of African regional human rights bodies and mechanisms 2018-2019* (Index: AFR 01/1155/2019) p 23.

misuse of the criminal justice system to target and harass government critics.[116] A ferocious and sustained crackdown on civil society, media, opposition politicians, researchers, bloggers and HRDs has had a chilling effect on the rights to freedom of expression, association and peaceful assembly.

In March 2020, Benin became the third country to take a decision to withdraw its declaration.[117] It was followed shortly thereafter in April by Côte d'Ivoire. The decision by Benin was apparently triggered by provisional orders issued by the Court in February in two cases concerning the right to property.[118] The provisional order suspended the enforcement of a domestic court judgment for seizure of a property belonging to the applicants in the context of a commercial dispute with a bank. The government claimed that the order undermined its economic interests and political stability.[119]

A previous judgment issued in March 2019 may have also played a role in precipitating Benin's decision. In the case, the Court had found that Benin had violated the right to fair trial of a prominent businessman and opposition politician in a drug trafficking case and ordered the government to annul his imprisonment sentence.[120] In April 2020, after the decision to withdraw had already been made, the same politician obtained provisional orders from the African Court suspending local elections that had been scheduled for May 2020.[121] The Beninese government ignored all orders in the cases brought by the politician.

The decision by the government of Côte d'Ivoire came immediately after the African Court issued provisional measures in a case filed by a former prime minister, Guillaume Soro, together with 19 other Ivorian opposition politicians.[122] The Court ordered the Ivorian government to stay the execution of an international arrest against Soro and to release the rest of the applicants from pre-trial detention on bail terms. In an apparent justification of the decision to withdraw, Côte d'Ivoire claimed that the African Court had issued judgments against it which had infringed on its sovereignty and caused serious disturbance to its legal order.[123]

Although the specific circumstances that led Benin and Côte d'Ivoire to withdraw are different, the decisions of both countries reflect growing domestic repression against dissent. A wave of arbitrary arrests of political activists and journalists together with the repression of peaceful demonstrations reached an alarming level in Benin during the 2019 parliamentary elections.[124] Similarly, the decision of Côte d'Ivoire was made in a pre-election context marked by attacks on opposition politicians and dissenting voices.[125]

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[116] Amnesty International, *The price we pay: Targeted for dissent by the Tanzanian state* (Index: AFR 56/0301/2019); Human Rights Watch, *"As long as I am quiet, I am safe": Threats to independent media and civil society in Tanzania* (2019).
[117] Retrait du Benin de la CADHP Declaration du ministre de la Justice et de la Législation, https://www.gouv.bj/actualite/635/retrait-benin-cadhp---declaration-ministre-justice-legislation/
[118] *Ghaby Kodeih v Benin*, Application 006/2020, Application for Provisional Measures, 28 February 2020; *Ghaby Kodeih and Nabih Kodeih v Benin*, Application No. 008/2020, Order for Provisional Measures, 28 February 2020.
[119] Retrait du Benin de la CADHP Declaration du ministre de la Justice et de la Législation, https://www.gouv.bj/actualite/635/retrait-benin-cadhp---declaration-ministre-justice-legislation/
[120] *Sebastian Germain Ajavon v Benin*, Application No. 013/2019, Judgment (Merits), 29 March 2019.
[121] *Sebastian Germain Ajavon v Benin*, Order for Provisional Measures, 17 April 2020.
[122] *Guillaume Kigbafori Soro and Others v Côte d'Ivoire*, Application No. 012/2020, Order for Provisional Measures, 22 April 2020.
[123] Diplomatie: la Cote d'Ivoire retire la declaration de competence a la cour Africaine de droits de l'homme el des peuples, http://www.gouv.ci/_actualite-article.php?recordID=11086&d=5
[124] Amnesty International, 'Benin: Withdrawal of individuals right to refer cases to the African Court a dangerous setback in the protection of human rights', 24 April 2020, https://www.amnesty.org/en/latest/news/2020/04/benin-le-retrait-aux-individus-du-droit-de-saisir-la-cour-africaine-est-un-recul-dangereux/
[125] Amnesty International, 'Côte d'Ivoire: le retrait aux individus du droit de saisir la Cour africaine est un recul pour les droits humains', 29 Avril 2020, https://www.amnesty.org/fr/latest/news/2020/04/cote-divoire-cour-africaine-est-un-recul-pour-les-droits-humains/

ENGAGEMENT WITH AFRICAN UNION POLICY ORGANS

> **"Underscores the need for the PSC and the ACHPR to maintain and institutionalize close working relationship in pursuit of the interdependent objectives of maintaining peace and security and ensuring the protection of human and peoples' rights in Africa".**
>
> Peace and Security Council (PSC) communiqué, 866th meeting, 8 August 2019, Addis Ababa, Ethiopia

A pivotal moment and major milestone were reached on 8 August 2019 when the African Commission held its first ever consultative meeting with the AU's Peace and Security Council (PSC). The meeting was held pursuant to Article 19 of the PSC Protocol that requires the two bodies to foster a close working relationship in peace and security matters, but which had not been operationalized for more than 15 years.[126] The outcome of the meeting is a communiqué in which the PSC laid out modalities for enhancing and institutionalising its cooperation and relationship with the PSC.[127]

The African Commission also expanded and enhanced its engagement with several other AU organs and institutions. In November 2019, the chairperson of the African Commission and the AU Youth Envoy issued

[126] Amnesty International, *Counting gains, filling gaps: Strengthening African Union's response to human rights violations committed in conflict situations* (Index: AFR 01/6047/2017) pp 58-60.
[127] PSC communiqué, 866th meeting, Addis Ababa, Ethiopia, PSC/PR/Comm.(DCCCLXVI).

a joint statement on protection of women and girls from all forms of violence.[128] In February 2020, the Commission held a meeting with the chairperson of the AUC, Moussa Faki Mahamat. During the meeting, the AUC chairperson reiterated the "importance of the work of the African Commission and the need for enhancing the use and integration of the work of the African Commission into the wider AU policy processes".[129]

On the other hand, the second annual retreat between the African Commission and the Permanent Representatives' Committee (PRC),[130] planned for 28-29 November 2019, did not take place during the reporting period for lack of funding.[131] The first annual retreat held in June 2018 infamously resulted in retrogressive decisions that undermined the independence and autonomy of the African Commission.[132] There was also little progress in relation to the AU-led reform process of the regional bodies. In February 2020, the AU Assembly tasked the AUC chairperson to finalise the review of these bodies, together with that of other organs and institutions of the AU, ahead of its 2021 ordinary session.[133]

PSC COMMUNIQUÉ, 866TH MEETING, 8 AUGUST 2019, ADDIS ABABA, ETHIOPIA

12. In enhancing and institutionalizing its cooperation and collaboration with the ACHPR, in line with Article 19 of its Protocol, the PSC ***decides***:

i. To hold annual joint consultative meetings, between the PSC and the ACHPR, alternately in Addis Ababa and Banjul in rotation;

ii. To receive regular briefings from the ACHPR on human rights related issues on the Continent, whenever the two Organs deems it necessary;

iii. To communicate decisions on peace and security issues with particular focus on human rights, to each other, while ensuring coherence and complementarity in decision-making processes;

iv. To have human rights and peace and security as a standing thematic agenda of the PSC through which identified thematic issues of human rights relating to peace and security will be addressed;

v. To hold regular interaction between the PSC Chairperson and the Chairperson of the ACHPR or the ACHPR focal person on human rights in conflict situations, on issues of common concern, including through the use of the video-teleconferencing;

vi. To undertake joint field missions in conflict or post conflict situations in Africa whenever deemed necessary by the PSC;

vii. To ensure clarity in the mandating of investigation missions to facilitate the work of the ACHPR.

13. ***Decides*** to convene the annual consultative meetings in August each year and in this regard ***agrees*** to hold the next joint consultative meeting in August 2020.

In May 2020, the African Children's Committee participated in the PSC meeting on the impact of the COVID-19 pandemic on children. The PSC urged AU member states to ensure that measures taken to curb the pandemic are child friendly.[134] It also encouraged member states to implement the Committee's Guiding Note on children's rights during COVID-19 and to ratify and domesticate "all the instruments of the African

[128] 'Why assuring women and young girls a life free from violence should be everyone's business all the time', https://www.achpr.org/news/viewdetail?id=207
[129] 'Press statement on the meeting of the chairperson of the Commission with the chairperson of the African Union Commission', https://www.achpr.org/pressrelease/detail?id=474
[130] The PRC is an organ of the AU comprised of all member states' permanent representatives to the AU.
[131] 47th activity report of the African Commission on Human and Peoples' Rights, para 54.
[132] Amnesty International, *The state of African regional human rights bodies and mechanisms 2018-2019* (Index: AFR 01/1155/2019) pp 40-41.
[133] Decision on the institutional reform of the African Union, adopted during the 33rd ordinary session of the AU Assembly, 9-10 February 2020, Addis Ababa, Ethiopia, Assembly/AU/Dec.749(XXXIII) para 5.
[134] PSC communiqué, 924th meeting, Addis Ababa, Ethiopia, PSC/PR/Comm.(CMXXIV)operative para 6.

Union and other international instruments relating to the protection of children, including the African Charter on the Rights and Welfare of the Child".[135]

JOINT ACTIVITIES BETWEEN THE REGIONAL BODIES

In February 2020, the African Commission and the African Children's Committee issued a joint statement calling on the AU Assembly to declare 2021 the AU year on "collective action for effective preparedness for addressing the destructive effects of climate change in Africa".[136] This call was originally made by the African Commission in its May 2019 Resolution on the human rights impacts of extreme weather in Eastern and Southern Africa due to climate change.[137] During the reporting period, the bureaux of the African Commission and the African Court also held their annual joint meeting.[138] During its 34th ordinary session, the African Children's Committee decided to develop a general comment on Female Genital Mutilation (FGM) and requested the African Commission to join the process.[139]

COOPERATION WITH THE UNITED NATIONS

In September 2019 in Geneva, Switzerland, the African Commission signed a Memorandum of Understanding (MoU) with the UN Office of the High Commissioner for Human Rights (OHCHR).[140] The MoU seeks to define areas of cooperation between the African Commission and the OHCHR. It builds on an earlier MoU signed in 2010 as well as the 2012 Addis Ababa Road Map in which the UN and the African Commission special procedures agreed on areas and modalities of collaboration.[141]

The African Commission participated in relevant UN activities, including the May 2020 Africa Dialogue Series organized by the office of the UN Special Advisor on Africa.[142] Other collaborative activities were held jointly between the African Commission and specific UN bodies. The AU-UN human rights dialogue was in this regard convened from 15-16 October 2019 in Banjul, The Gambia. On 20 May 2020, the chairperson of the African Commission and the UN High Commissioner for Human Rights issued a joint public statement on the socio-economic impact of the COVID-19 pandemic in Africa. They called for "equitable access for COVID-19 diagnostics, therapeutics and vaccines" and for creditors of African states to "freeze, restructure or relieve African countries' debt in this challenging time".[143] This was an important statement considering that access to diagnostics, treatments and vaccines is an indispensable part of the right to health which all states have the obligation to uphold.

In this context, Amnesty International has called on wealthier states, such G20 member states, to ensure fair allocation within and between countries of diagnostics, therapeutics and vaccines, bearing in mind that any vaccine must be treated as a common public good to be guided by the public interest, including by increasing availability and affordability via transparency and sharing of innovations.[144] Amnesty International has also called on G20 to cancel all debt repayments due in 2020 and 2021 from at least the poorest 77 countries, and ensuring longer term debt sustainability beyond this date, based on robust human rights impact assessments.

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[135] PSC communiqué, 924th meeting, Addis Ababa, Ethiopia, PSC/PR/Comm.(CMXXIV)operative para 6.
[136] 'Press statement on the occasion of the 33rd Assembly of the Heads of State and Government of the African Union, 8 February 2020, https://www.achpr.org/pressrelease/detail?id=476
[137] ACHPR/Res.417(LXIV) 2019, adopted during the African Commission's 64th ordinary session, 24 April – 14 May 2019, Sharm el Sheikh, Egypt.
[138] 47th activity report of the African Commission on Human and Peoples' Rights, para 8.
[139] Report of the 34th ordinary session of the African Committee of Experts on the Rights and Welfare of the Child, 25 November – 5 December 2019, Cairo, Egypt, ACERWC/RPT (XXXIII), para 156.
[140] Memorandum of understanding between the African Commission on Human and Peoples' Rights (ACHPR) and the Office of the High Commissioner for Human Rights (OHCHR), https://www.achpr.org/news/viewdetail?id=205
[141] Dialogue between special procedures mandate-holders of the UN Human Rights Council and the African Commission on Human and Peoples' Rights, Road Map, 17-18 January 2012, Addis Ababa, Ethiopia, https://www.ohchr.org/Documents/HRBodies/SP/SP_UNHRC_ACHPRRoad%20Map.pdf
[142] 'Statement of Commissioner Solomon Ayele Dersso , (PhD) Chairperson of the African Commission on Human and Peoples' Rights at the Africa Dialogue Series organised by the United Nations Office of the Special Advisor on Africa and the African Union under the theme COVID19 and silencing the guns in Africa: challenges and opportunities', 20-22 May 2020, https://www.achpr.org/pressrelease/detail?id=508
[143] 'Africa: We must act now to avoid a catastrophe, say rights chiefs', https://www.achpr.org/pressrelease/detail?id=505
[144] Amnesty International, COVID-19 response measures: Recommendations to G20 health and finance ministers in the protection of health workers, access to diagnostics, therapeutics or vaccines and to support debt cancellation and financial assistance, September 2020, https://www.amnesty.org/download/Documents/IOR3030002020ENGLISH.pdf

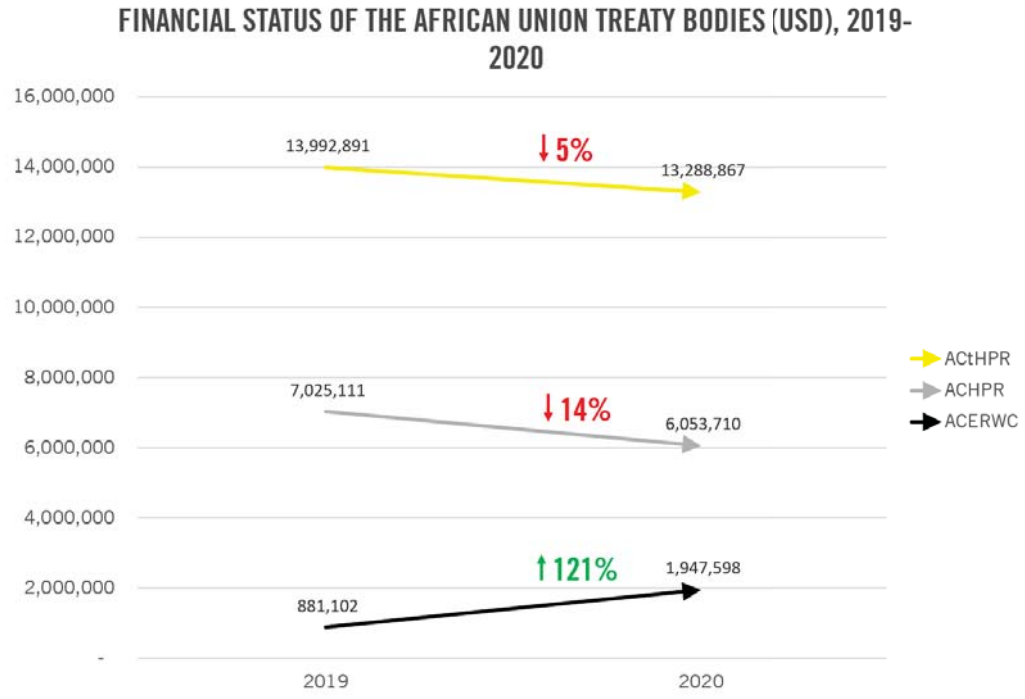
CAPACITY TO DISCHARGE MANDATE

The capacity of the regional bodies to effectively execute their mandates, as with other regional and global mechanisms, is partially dependent on the levels of resources at their disposal. Amnesty International's research shows that the regional bodies continued to face serious capacity challenges during the reporting period. Although the African Children's Committee received an unprecedented increase in budget allocation, the three bodies generally operated on meagre financial resources. They had limited number of secretariat staff and operated out of temporary premises. The performance of the regional bodies must thus be seen in the light of these capacity constraints.

> **"Unfortunately, the means available at our disposal and the capacity of our institution are very limited and the context in which we operate is highly constrained. The weight and nobility of our mandate and enormity of the demand for human rights protection on our continent means that we have to work beyond the call of duty mustering all the energy, time and limited capacity. Even then, we always operate under the shadow of not being able to meet the expectations of many fellow Africans who knock on our doors seeking the delivery of the protection our Charter promised them".**
>
> Commissioner Solomon Dersso, ACHPR Chairperson, Opening statement, ACHPR 28th extraordinary session, 29 June 2020

FUNDING AND BUDGET

The AU assessed budgets for 2020 in respect of the African Commission and the African Court reduced compared to the 2019 financial year.[145] The African Commission suffered a steep loss of 14%. But even more concerning was the fact that no funding at all was allocated to the Commission's program activities. The entire budget that it received was exclusively earmarked for operating or recurrent expenditures. The African Court's budget reduced by 5%. On a positive note, the budget of the African Children's Committee was increased by 121% to stand at $1.9 million. This was the first time since its inception that the Committee's allocated budget passed the $1 million mark.



HUMAN RESOURCES

There were no substantive improvements in the staffing of the three regional bodies during the reporting period. With a staff component of 77, the African Court remained relatively better resourced compared to the African Commission and the African Children's Committee. Several positions at the African Commission remained vacant as interviews to fill them were postponed indefinitely.[146] At the same time, there was no progress in reviewing the structure of the Commission's secretariat as had been directed by the AU Executive Council two years earlier in January 2018 and reiterated in February 2020.[147]

In its 47th activity report, the African Commission recommended that it should be granted functional autonomy to manage the recruitment of its staff.[148] Amnesty International supports this recommendation. If

[145] The data on the budget and funding of the regional bodies is based upon AU Executive Council's Decision on the 2020 African Union budget, adopted during the 35th ordinary session of the Executive Council, 4-5 July 2019, Niamey, Niger, EX.CL/Dec.1069(XXXV). It is important to note that it is not always the case that the regional bodies receive the total assessed budget before the end of the financial year. For example, as at the time of publishing this report, the Court's assessed budget stood at approximately $10.4 million compared to $13.2 million allocated in the July 2019 Executive Council decision.
[146] 47th activity report of the African Commission on Human and Peoples' Rights, para 51.
[147] Decision on the activity report of the African Commission on Human and Peoples' Rights, adopted during the 36th ordinary session of the AU Executive Council, 6-7 February 2020, Addis Ababa, Ethiopia, EX.CL/Dec.1080(XXXVI).
[148] 47th activity report of the African Commission on Human and Peoples' Rights, para 65.

granted such autonomy, the process of filling vacant posts at the African Commission is likely to be more effective and expeditious. More importantly, it will be an important gesture towards enhancing and guaranteeing the overall institutional autonomy and independence of the African Commission.

> **"The need for restructuring of the Secretariat staff is now urgent taking into consideration the decision to relocate the Secretariat and the increased demand for the Committee to protect and promote the Rights of the Child and the need for a harmonized structure across the Organs of AU … For the Committee to effectively deliver on its mandate, it requires a professional, effective, capacitated, well-staffed and competent Secretariat".**
>
> Activity Report of the ACERWC, February 2020, paras 32-33

The African Children's Committee operated with the leanest staff component. By the end of the reporting period, it had a mere 11 staff members: two regular staff members, three on a short-term basis, five on secondment, and a single intern.[149] In a significant stride forward, the AU Assembly in February 2020 approved a new structure of the African Children's Committee in light of its imminent relocation from Addis Ababa to Maseru.[150] Under the new structure, the African Children's Committee will have a staff component of 46, an increase of 411% from its staffing level during the reporting period. Apart from administrative staff, the Committee will have 10 child rights officers, six legal researchers, and two social workers. The Committee will also have one each of the following posts: legal officer, program officer and gender officer.

PREMISES AND INFRASTRUCTURE

There was a mix of progress and stagnation during the reporting period in securing appropriate premises and infrastructure for the regional bodies. In November 2019, the bureau of the African Commission held a meeting with President Adama Barrow of the Gambia during which he indicated that the construction of the Commission's headquarters was a priority for his government.[151] In what would have signalled the beginning of the construction, the AUC chairperson, Mousa Faki Mahamat, had been invited to Banjul to lay the foundation stone in April 2020,[152] but this plan was disrupted by the COVID-19 pandemic. However, Amnesty International is not aware if there was any progress in constituting the Support Group that the AU Executive Council had intended would help the Gambia to mobilize resources for the construction of the Commission's headquarters.[153]

In February 2020, the African Children's Committee signed a host agreement with the Government of Lesotho, a key step towards relocating the Secretariat of the Committee to its permanent seat in Maseru. Amnesty International is not aware if any next steps were taken beyond the signing of the host agreement.

There was no progress during the reporting period in the construction of the permanent headquarters of the African Court. It remained unclear whether the task force established by the Executive Council in January

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[149] Information received directly from the African Children's Committee. See also Activity report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), submitted to and adopted during the 36th ordinary session of the AU Executive Council, 6-7 February 2020, Addis Ababa, Ethiopia, EX.CL/1209(XXXVI), para 31.
[150] Decision on the structures of the African Union Commission, organs and specialized agencies, adopted by the AU Assembly during its 33rd ordinary session, 9-10 February 2020, Addis Ababa, Ethiopia, Assembly/AU/Dec.750(XXXIII).
[151] 47th activity report of the African Commission on Human and Peoples' Rights, para 50.
[152] 'Press statement on the meeting of the chairperson of the Commission with the chairperson of the African Union Commission', 5 February 2020, https://www.achpr.org/pressrelease/detail?id=474
[153] 47th activity report of the African Commission on Human and Peoples' Rights, paras 48-49.

2018 to finalise the architectural designs for the headquarters had been operationalized.[154] However, the Government of Tanzania offered to construct additional rooms in the current temporary premises of the Court,[155] but construction had not yet commenced as at the end of the reporting period.

[154] Decision on the 2017 activity report of the African Court on Human and Peoples' Rights, adopted during the 32nd ordinary session of the AU Executive Council, 25-26 January 2018, Addis Ababa, Ethiopia, EX.CL/Dec.994(XXXII).
[155] [155] Activity report of the African Court on Human and Peoples' Rights, 1 January – 31 December 2019, EX.CL/1204 (XXXVI) paras 53-54.

RECOMMENDATIONS

TO THE AFRICAN REGIONAL HUMAN RIGHTS BODIES AND MECHANISMS

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- In addition to implementing the new simplified process of seizure of communications and submission of pleadings, develop a backlog reduction plan to be shared with all relevant actors, including the public. The backlog reduction plan should put emphasis on individuals' right to have their causes heard within a reasonable time and hence the speedy determination of communications and the strict adherence
- Adopt and publish concluding observations as soon as state party reports have been reviewed;
- Take proactive measures to refer cases to the African Court, beginning with expanding the instances in which it may make referrals under its 2020 Rules of Procedure and drawing a checklist for selecting cases for referral;
- Publish and disseminate all procedures for regulating the conduct of its activities, including the Procedures for the Adoption of Resolutions, the Guidelines on the Format of Promotion and Protection Missions, and the Internal Guidelines on the Organization of Panels during Public Sessions of the Commission;
- Streamline and consolidate its existing multiple state reporting guidelines into a single comprehensive set which may be updated as and when necessary;
- Develop a publicly available calendar indicating when each state party report is due. If it has such a calendar already, make it public by uploading it on the website. It should then proactively call upon state parties to submit their periodic reports in accordance with this calendar; and
- Publish its strategy for the resolution of the delay in the adoption process of the Draft Protocol on the Abolition of the Death Penalty in Africa and work effectively with all relevant organs of the AU to ensure that the Draft Protocol is successfully adopted.

AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

- Continue to undertake sensitization activities across the continent to popularize and increase the use of its communications procedure as an avenue for redressing violations and abuses of children's rights.

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

- Take immediate and urgent measures to reduce the number of pending cases in its docket, beginning with developing a backlog reduction plan to be shared with the relevant actors including the public. The backlog reduction plan should emphasis on individuals' right to have their causes heard within a reasonable time and hence the speedy determination of cases and the strict adherence to time limits by parties, especially states; and
- Continue urging AU member states that have not yet done so to ratify the African Court Protocol and/or make the declaration allowing individuals and NGOs to directly access the African Court.

TO THE AFRICAN UNION POLICY ORGANS AND INSTITUTIONS

EXECUTIVE COUNCIL

- Conduct election processes of members to the regional bodies that are open, transparent, impartial and merit based;
- Grant autonomy to the African Commission and the African Children's Committee to manage the recruitment of their own staff members;
- Honour its commitment to ensure that the regional human rights treaty bodies are adequately funded and staffed; and
- Substantively review, at every ordinary session, member states' compliance with their reporting obligations under the regional human rights treaties as well as with decisions, recommendations and judgments of the regional bodies.

AFRICAN UNION COMMISSION CHAIRPERSON

- Establish, as a matter of urgency, the Support Group for the Gambia as required under the AU Executive Council Decision EX.CL/1044(XXXIV) of February 2019 and intended to assist the Gambia to mobilize the necessary funds for the construction of the African Commission headquarters;
- Operationalize, as a matter of urgency, the taskforce mandated under AU Executive Council Decision EX.CL/Dec.994(XXXII) of January 2018 to finalize the architectural designs of the permanent headquarters of the African and ensure the expeditious construction of the headquarters;
- Endorse and support the recommendation of the African Commission to be granted autonomy to manage the recruitment of its own staff and support the extension of this autonomy to the African Children's Committee; and
- Ensure the AU institutional reform process strengthens and guarantees the independence, autonomy, efficiency and effectiveness of regional human rights treaty bodies.

SPECIALIZED TECHNICAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

- Prioritize the consideration of the Draft Framework for Reporting and Monitoring Execution of Judgments and Other Decisions of the African Court and ensure that the spirit and letter of Articles 29 and 31 of the African Court Protocol is upheld during the consideration.

TO THE AFRICAN UNION MEMBER STATES

- Ratify all the core regional human rights treaties to ensure that they have universal application in the continent;

- Institute national nomination and selection processes for members to the regional bodies that are open, transparent, impartial and merit based. Nomination processes should be advertised publicly and widely to ensure that they are open to all potential candidates who meet the set qualifications;
- Actively encourage broad participation, including that of civil society, in the national nomination and selection processes for members to the regional bodies. They should also make public the list of candidates, their curricula vitae, the criteria for selection, as well as the results of the nomination process;
- Issue a standing invitation for country visits by the African Commission and the African Children's Committee;
- Promptly respond to and fully comply with urgent appeals of the African Commission and the African Children's Committee;
- Promptly respond to and fully comply with provisional measures issued by the regional human rights bodies;
- Fully comply with the decisions of the regional bodies issued after the adjudication of complaints and submit implementation reports within the stipulated timelines;
- Member states that have ratified the African Court Protocol but are yet to make the declaration allowing individuals and NGOs to directly access the African Court to do so as a matter of urgency;
- Member states that have withdrawn their declaration under Article 34(6) of the African Court Protocol, specifically Benin, Côte d'Ivoire, Rwanda and Tanzania, to reconsider their decision and reinstitute the declaration; and
- Abolish the death penalty for all crimes, where abolition has not occurred and pending full abolition, establish an official moratorium on executions with a view to abolishing the death penalty and commute without delay all death sentences to terms of imprisonment.

AMNESTY INTERNATIONAL IS A GLOBAL MOVEMENT FOR HUMAN RIGHTS. WHEN INJUSTICE HAPPENS TO ONE PERSON, IT MATTERS TO US ALL.

CONTACT US

info@amnesty.org

+44 (0)20 7413 5500

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THE STATE OF AFRICAN REGIONAL HUMAN RIGHTS BODIES AND MECHANISMS

2019-2020

The State of African Regional Human Rights Bodies and Mechanisms 2019-2020 presents a comprehensive review of the state and performance of the African regional human rights system in the period between 1 July 2019 and 30 June 2020. It appraises the functioning, working methods, outputs and impact of the African Commission on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child, and the African Court on Human and Peoples' Rights during the reporting period.

Abysmal cooperation and continued political pressure from states, on the one hand, and minimal progress or stagnation in execution of mandate, on the other hand, broadly describe the state of African regional human rights bodies and mechanisms during the reporting period. Their activities and performance during this period were shaped by a combination of internal and external factors, including changes in the composition of expert members elected to serve in the bodies, political onslaught from states, financial and resource constraints, and the outbreak of the COVID-19 pandemic.

The report makes a series of recommendations to a variety of actors within the African regional human rights system, including the African Union and its member states.

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