

# THE STATE OF AFRICAN REGIONAL HUMAN RIGHTS BODIES AND MECHANISMS

## 2018-2019

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

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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
ACJHR	African Court of Justice and Human Rights
ACtHPR	African Court on Human and Peoples' Rights
AU	African Union
AUC	African Union Commission
CAL	Coalition of African Lesbians
CCJ	Community of Court of Justice
DRC	Democratic Republic of Congo
EAC	East African Community
EACJ	East African Court of Justice
ECHR	European Court of Human Rights
ECOWAS	Economic Community for West African States
HRD	Human Rights Defender
ICT	Information, Communication and Technology
NGOS	Non-Governmental Organizations
NHRI	National Human Rights Institutions
OAU	Organization of African Union
PLHIV	People Living with Human Immunodeficiency Virus
PRC	Permanent Representatives' Committee
RECs	Regional Economic Communities
STC	Specialized Technical Committee
UN	United Nations
UPR	Universal Periodic Review

# FOREWORD

From the global human rights system established under the United Nations (UN) to the regional systems in Africa, the Americas and Europe, a common thread can be seen: political backlash against human rights bodies and mechanisms is becoming the new normal. States are undermining and damaging international and regional human rights bodies from all possible fronts, including from within. They are scaling up their political onslaughts, withdrawing from critical processes, cutting down budgets, and preventing civil society from engaging. They are essentially threatening the very existence of international and regional human rights norms and the mechanisms for their protection.

At the same time, the world is witnessing a growing resilience, resistance and mobilization of people to defend their rights and that of others. With the growing access to information and connectivity, people are finding innovative and powerful ways of standing up for their rights, demanding justice and accountability. This trend is palpable in Africa, from Cape to Cairo, Khartoum to Kinshasa, where mass movements, protests and actions by ordinary people, activists, media and others, often at grave risk to their lives and freedoms, are forcing positive changes and notable reforms.

In these times of turmoil and contestation, the role and relevance of the multilateral regimes for the promotion and protection of human rights, including the African regional human rights bodies and mechanisms, cannot be gainsaid. Once scorned by critics and barely visible, the African regional human rights bodies are growing in maturity, robustness and sophistication, steadily enhancing the normative and institutional framework for the protection of human rights in Africa. Despite the many challenges they face, the role they play is as diverse as it is critical.

Yet, there exists no regular and authoritative assessment of the African regional human rights bodies, in terms of their performance, impact, effectiveness and efficiency. The tradition amongst key stakeholders has been to review their progress mainly when there is an anniversary to mark, such as the recent 30<sup>th</sup> anniversary of the African Commission on Human and Peoples' Rights (ACHPR), the African system's premier regional human rights body, celebrated in 2016.

A few scholars have since 2009 done a commendable job in tracking and describing major developments within the African system. However, these reviews are not necessarily policy-oriented, and are in any event, targeted at a predominantly academic community. In a rapidly changing environment as is definitely the case within the African system, occasional or *ad hoc* reflections and reviews that are tied to specific milestones are invariably narrow in focus, far between and woefully inadequate. What are needed are regular, comprehensive, and predictable audits of the work of the institutional mechanisms that keep a constant tab and shine a steady light on the African system's work, impact, achievements and challenges.

Thus, in order to fill this gap, and more importantly, with a view towards contributing to the policy debate and ongoing reform initiatives, Amnesty International is introducing this report on the state of the African regional human rights bodies and mechanisms. This new report is intended to serve as an annual review of the state and performance of the three regional human rights bodies in Africa: the African Commission on Human and Peoples' Rights (ACHPR); the African Committee of Experts on the Rights and Welfare of the Child (ACERWC); and the African Court on Human and Peoples' Rights (ACtHPR).

The report is inspired by Amnesty International's evolving work in Africa. Amnesty International has a long and rich history working within the African regional human rights system. Just a few months into its existence, on 28 April 1988 in Libreville, Gabon, the ACHPR granted observer status to Amnesty International, making it the very first Non-Governmental Organization (NGO) to be granted this status. It is a status that has allowed the organization to engage with the ACHPR right from the beginning and to witness its evolution over a period spanning more than three decades.

The initial focus of Amnesty International was two-fold. First, the organization sought to support ACHPR's institutional-building process. Second, the organization strived to raise awareness about the African Charter on Human and Peoples' Rights (African Charter) and encourage victims of human rights violations and abuses, and those working on their behalf, to approach the ACHPR for redress. Institutional-building and awareness raising remain key planks of Amnesty International's work within the African human rights system. However, the organization's overall scope of focus has evolved remarkably since the early years, as has the system itself. The organization has expanded the scope of its work to include engaging with the ACERWC and the ACtHPR. Amnesty International also closely follows African Union (AU) developments

relating to human rights and engages with the relevant policy organs with a view to strengthen AU's response to human rights violations and abuses.

Like the recommended comprehensive annual medical check-up for individuals, this inaugural review of the state of African regional human rights bodies and mechanisms, as with the rest that will follow, appraises the health of the African system by comprehensively looking at the functioning, working methods, outputs and impact of the ACHPR, the ACERWC and the ACtHPR. Understanding, tracking and documenting, on annual basis, how these institutions operate, what they achieve in practice, and the struggles they face is critical to the formulation of efforts or initiatives to strengthen the system's response to human rights violations and abuses.

Beginning with this inaugural review, *The State of the African Regional Human Rights Bodies and Mechanisms* will be published every 21 October in commemoration of the coming into entry of the African Charter on this day in 1986. Amnesty International hopes that the regional bodies and all their stakeholders will find the annual review to be a valuable resource. As it comes at a time when critical reform proposals are being considered in the context of the African Union institutional reform process and when the current strategic plans of the ACHPR and the ACERWC are nearing their end, Amnesty International hopes that the two regional human rights bodies will find this inaugural edition particularly relevant. It may be additionally valuable to the ACHPR specifically as it is presently in the process of revising its Rules of Procedure.

***Netsanet Belay***  
*Research and Advocacy Director*

# EXECUTIVE SUMMARY

**“ENCOURAGE the Commission and AU Organs with a human rights mandate to strengthen the African system for the promotion and protection of human and peoples’ rights through wider communication and information sharing, coupled with direct support of Member States, by ensuring the strengthening of human rights institutions and *putting in place all the necessary measures so that success is documented and challenges noted to ensure that there is on-going review of progress in the implementation of adopted human rights instruments.*”**

Operative paragraph 11, AU Assembly Declaration on the theme of the year 2016

The African regional human rights system is comprised of norms and institutions established at the African continental level and operating within the framework of the African Union (AU), the principal continental intergovernmental body. The system is founded on the African Charter on Human and Peoples’ Rights (African Charter), which is supplemented by a range of regional human rights treaties and soft law instruments. Three regional human rights bodies or mechanisms constitute the system’s core institutional framework. These are: the African Commission on Human and Peoples’ Rights (ACHPR); the African Committee of Experts on the Rights and Welfare of the Child (ACERWC); and the African Court on Human and Peoples’ Rights (ACtHPR).

Steadily growing in profile, influence and stature, the African regional human rights system has become a key pillar in the human rights landscape in Africa. Despite facing many challenges, the regional human rights bodies and mechanisms have played and continue to play a critical role in holding states accountable for human rights violations and abuses. They have expanded the normative framework through jurisprudence and standard-setting, a role they continue to play. Yet, the progress they have made and the challenges they face have been rarely documented and analysed. Recent milestones within the system, such as the 10<sup>th</sup> anniversary of the ACtHPR in 2016 and the 30<sup>th</sup> anniversary of the ACHPR in 2017, offered opportunities to review and reflect on achievements and challenges. This report seeks to offer an annual review and analysis of the work and performance of the regional human rights bodies, in line with Amnesty International’s strategic goal to reinforce and strengthen international and regional human rights systems.

The report presents a comprehensive review of the current state and performance of the African regional human rights system in the period between 1 January 2018 and 30 June 2019. It appraises the functioning,



working methods, outputs and impact of the three regional human rights bodies during the reporting period. The report is based on extensive desk research and analysis of key events and developments in the African system during the reporting period. The statistical analysis in the report is based on data retrieved from the activity reports and other relevant reports of the regional bodies. The report also draws upon an incisive analysis of the applicable regional human rights instruments and major recent normative developments.

The analysis of the performance of the regional bodies during the reporting period reveals a mixed picture. The regional bodies registered a relatively impressive record during the reporting period in the execution of their mandates relating to state reporting, standard-setting, and intervening in urgent situations. The ACHPR and the ACERWC examined a total of 19 state party reports. The two bodies intervened in emergency situations, issuing urgent appeals and provisional measures to state parties. They also developed new norms and standards, including the Draft Protocol on the Rights of Citizens to Social Protection and Social Security developed by the ACHPR. However, a statistical analysis of the cases handled and disposed of by the mechanisms during the reporting period discloses that the ACHPR and ACTHPR are struggling to efficiently handle their workloads. As such, case backlog has become a chronic and stubborn problem that has refused to go away. On the other hand, the communications procedure of the ACERWC remained grossly under-utilized. It received only a single new communication during the reporting period, bringing the total number of communications it has received since inception to 11.

Another major finding of the report is that contrary to their colourful pronouncements in AU declarations, states accorded little cooperation to the regional bodies during the reporting period. This lack of cooperation is evident in all the major functions of the regional mechanisms, including in the process of examination of state reports, adjudication of communications or cases, during interventions in urgent situations, and in facilitating country visits. A handful of states submitted their state party reports during the reporting period but after many years of delay. Most of the states that received requests for urgent appeals and provisional measures from the regional mechanisms failed to respond even though these requests concerned cases presenting a danger of irreparable harm. States' compliance with decisions of the regional bodies has been historically low, a trend that did not change during the reporting period. A limited number of states accepted requests from regional mechanisms for country visits but had not facilitated the actual undertaking of the visit as at the end of the reporting period. Indeed, not a single country issued a standing invitation to the ACHPR or the ACERWC during the reporting period.

The lack of states' cooperation during the reporting period was accompanied by cynical and deliberate efforts by states to undermine the independence and autonomy of the regional human rights bodies. In addition to demanding that the ACHPR withdraws the observer status it had granted to the Coalition of African Lesbians (CAL), the AU Executive Council issued a number of directives which had the effect of severely undermining and eroding the independence of the ACHPR. Three of these directives were particularly regressive: the decision to review the interpretative and protective mandate of the ACHPR; the directive to the ACHPR to review its guidelines for granting observer status to NGOs; and the directive to the ACHPR to develop a code of conduct for its members, over and above its Rules of Procedure.

Although the AU has over the years increased their budget allocations, the regional human rights bodies operated during the reporting period on meagre financial resources, with limited number of staff members, and in premises that are inadequate and generally not fit for purpose. Therefore, the performance of the regional human rights mechanisms in the execution of their mandate during the reporting period must be seen in the light of these capacity constraints that they have perennially faced and continued to face during the reporting period. With these challenges, it also means that the regional mechanisms must devise working methods that ensure their productivity is optimal, their use of resources is prudent and cost-effective, and their time management is efficient.

The report makes a series of recommendations to a variety of actors within the African regional human rights system, specifically the regional human rights bodies, the AU Commission Chairperson, the Executive Council, the AU Specialized Technical Committee on Justice and Legal Affairs, and AU member states. It calls upon the ACHPR and the ACTHPR to develop backlog reduction plans with an emphasis on speedy determination of communications or cases and the strict adherence to time limits by parties, especially states. It calls upon the ACHPR to streamline and consolidate its existing multiple state reporting guidelines into a single comprehensive set and to safeguard its independence and autonomy by ensuring its decisions are guided by the spirit and letter of international human rights law. In relation to AU policy organs, Amnesty International calls upon the Executive Council to play, as it should, its role of monitoring states' cooperation and compliance with the decisions of the regional human rights bodies. It also calls upon member states to fully cooperate with the regional human rights bodies and to respect their independence and autonomy.

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# METHODOLOGY

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This report is based on extensive desk research and analysis of key developments and events related to the African regional human rights system from the beginning of January 2018 to the end of June 2019. The term “African regional human rights system” is used in this report to refer to the norms and institutions established at the African continental level and operating within the AU.<sup>1</sup>

Amnesty International conducted a review of a wide array of official documents and reports generated by the regional mechanisms and the relevant AU policy organs. These included activity reports, communiqués, resolutions, press releases, public statements, and meeting reports.

The statistical analysis in this report is specifically based on data retrieved from the following official documents and reports:

- the 44<sup>th</sup>, 45<sup>th</sup> and 46<sup>th</sup> Activity Reports of the ACHPR;<sup>2</sup>
- the Final Communiqués of the 62<sup>nd</sup>, 63<sup>rd</sup> and 64<sup>th</sup> Ordinary Sessions of the ACHPR;<sup>3</sup>
- the Final Communiqués of the 23<sup>rd</sup>, 24<sup>th</sup>, and 25<sup>th</sup> Extra-Ordinary Sessions of the ACHPR;
- the Reports of the 31<sup>st</sup>, 32<sup>nd</sup> and 33<sup>rd</sup> Sessions of the ACERWC;<sup>4</sup>
- the Activity Reports of the ACERWC submitted to the Executive Council in June 2018 and February 2019 respectively; and
- the Activity Report of the ACtHPR for the year 2018 and its Mid-Term Activity Report for 1 January – 30 June 2019.<sup>5</sup>

The report also draws upon an incisive analysis of the applicable regional legal instruments, including the regional human rights treaties and rules of procedure of the regional mechanisms. In its three decades working within the African regional human rights system, Amnesty International has been a regular and active participant in the ordinary sessions of the regional mechanisms, especially the ACHPR. This report has immensely benefited from the organization’s experience and observations during these sessions, including in the most recent sessions held in 2018 and 2019.

As the inaugural edition, this report provides a relatively detailed description of the mandate, working methods and general functioning of the African regional human rights bodies. Subsequent editions of the report will be less detailed on this aspect, focusing instead on only major institutional developments or changes during the reporting period. Future editions of the report will cover a one-year period, running from 1 July to 30 June. This inaugural report covers a longer period of 1.5 years as it establishes the background and benchmark upon which future developments will be evaluated.

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<sup>1</sup> There exist other bodies and mechanisms within the African continent that operate at the sub-regional level as judicial organs of Regional Economic Communities (RECs). Some of these tribunals have either an express or implicit human rights mandate and their dockets of human rights cases are gradually expanding. The two most active and prominent are in this regard the Community Court of Justice (CCJ), established within the Economic Community of West African States (ECOWAS), and the East African Court of Justice (EACJ), established within the East African Community (EAC). Though undoubtedly important to the protection of human rights in Africa, falls outside the scope of this report.

<sup>2</sup> These reports are available at <https://www.achpr.org/> (accessed 28 September 2019).

<sup>3</sup> These reports are available at <https://www.achpr.org/sessions> (accessed 28 September 2019).

<sup>4</sup> These reports are available at <https://www.acerwc.africa/sessions/> (accessed 28 September 2019).

<sup>5</sup> These reports are available at <http://www.african-court.org/en/index.php/publications/activity-reports> (accessed 28 September 2019).

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# BACKGROUND

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## INTRODUCTION

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Regional human rights systems are an integral part of the evermore evolving global human rights architecture. Concerned that they might undermine the universalism of human rights, the United Nations (UN) initially frowned upon and distrusted initiatives to set up regional human rights systems. In December 1977, however, the UN General Assembly signalled a clear change of heart when it adopted a resolution appealing to member states to create regional human rights systems where they did not already exist.<sup>6</sup> The UN has since then actively encouraged and pursued the establishment of regional systems. As a result, and in addition to those that already existed in Europe and the Americas at the time of the 1977 UN appeal, there now exists regional human rights systems in Africa, Asia, Middle East, and the Pacific.<sup>7</sup>

The existing regional systems operate under the auspices of their respective regional intergovernmental organizations. They are at different levels of development and evolution, ranging from the comparatively well-established systems in Africa, Europe and the Americas, to the nascent or fledgling systems in the Middle East, Asia and the Pacific. However, these systems share one common attribute: they all consist of regional human rights instruments and mechanisms. The instruments provide a catalogue of regional norms and standards while the mechanisms monitor state implementation and compliance.

The African regional human rights system is founded on the African Charter on Human and Peoples' Rights (African Charter).<sup>8</sup> It was adopted by the Organization of African Unity (OAU) in 1981. The system functioned within the OAU from its inception to 2002. It now operates within the African Union (AU), the main continental inter-governmental body in Africa. The system has progressively grown in profile, influence and stature.

The African Charter is the system's principal human rights treaty. It has been ratified by all AU member states except for Morocco. Other human rights treaties that are in force and constitute the system's normative framework include the following: the African Charter on the Rights and Welfare of the Child (African Children's Charter);<sup>9</sup> the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol);<sup>10</sup> and the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).<sup>11</sup> The human rights treaties are complemented by a relatively long list of soft

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<sup>6</sup> UN General Assembly Resolution A/RES/32/127 of 16 December 1977.

<sup>7</sup> While the African system neatly covers a geographical continent, the other systems cover countries in more than one continent. The system based on the Arab Charter on Human Rights and operating under the auspices of the Arab League consist of countries in North Africa and Middle East. The system established under the Organization of Islamic States (OIC) comprises of members in four continents. The other major system covers the Asia-Pacific region and is established under the Association of Southeast Asian Nations (ASEAN). For a detailed review of existing regional systems see C Heyns & M Killander 'Universality and the growth of regional systems' in D Shelton (ed) *The Oxford Handbook of International Human Rights Law* (2013) 670.

<sup>8</sup> OAU Doc CAB/LEG/67/3/Rev.5, adopted 27 June 1981, entered into force 21 October 1986.

<sup>9</sup> Adopted 11 July 1990, entered into force 29 November 1999.

<sup>10</sup> Adopted 11 July 2003, entered into force 25 November 2005.

<sup>11</sup> Adopted 23 October 2009, entered into force 6 December 2012.

law instruments that have been generated, over time, by the system's core human rights mechanisms and the relevant AU policy organs.<sup>12</sup>

There are three principal mechanisms or treaty bodies that are charged with monitoring the extent of implementation and compliance with the African system's substantive norms and standards. These are: the African Commission on Human and Peoples' Rights (ACHPR or African Commission), established under the African Charter; the African Committee of Experts on the Rights and Welfare of the Child (ACERWC or African Child Rights Committee), established under the African Children's Charter; and the African Court on Human and Peoples' Rights (ACTHPR or African Court), established under the Protocol to the African Charter on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol).

As they are both quasi-judicial treaty bodies, the ACHPR and the ACERWC have established a set of special mechanisms (rapporteurs, committees and working groups) with the mandate to focus on specific human rights issues and themes. The special mechanisms add onto the scope and sophistication of the system's core institutional framework.

## ONE SYSTEM, THREE MECHANISMS

For more than a decade after its establishment, the ACHPR functioned as the sole regional human rights mechanism in Africa. In 2002, it was joined by the ACERWC, and four years later in 2006, by the ACTHPR. Beginning with the schematic comparison below, this section of the report presents a description of the key aspects of the mandate, structural design and functioning of the three mechanisms.

ACHPR	ACERWC	ACTHPR
<ul style="list-style-type: none"> <li>• INAUGURATED 1987</li> <li>• QUASI-JUDICIAL MECHANISM</li> <li>• MANDATED TO PROMOTE AND PROTECT HUMAN RIGHTS IN AFRICA</li> <li>• DETERMINES COMPLAINTS AND EXAMINES STATE REPORTS</li> <li>• 11 PART-TIME MEMBERS ON RENEWABLE SIX-YEAR TERMS</li> <li>• HOLDS TWO ORDINARY SESSIONS IN A YEAR</li> <li>• BASED IN BANJUL, THE GAMBIA</li> </ul>	<ul style="list-style-type: none"> <li>• INAUGURATED 2002</li> <li>• QUASI-JUDICIAL MECHANISM</li> <li>• MANDATED TO PROMOTE AND PROTECT CHILDREN'S RIGHTS</li> <li>• DETERMINES COMPLAINTS AND EXAMINES STATE REPORTS</li> <li>• 11 PART-TIME MEMBERS ON A FIVE-YEAR TERM, RENEWABLE ONCE</li> <li>• HOLDS TWO ORDINARY SESSIONS IN A YEAR</li> <li>• BASED IN ADDIS ABABA, ETHIOPIA (FOR NOW)</li> </ul>	<ul style="list-style-type: none"> <li>• INAUGURATED 2006</li> <li>• JUDICIAL MECHANISM</li> <li>• MANDATED TO COMPLEMENT THE PROTECTIVE MANDATE OF THE ACHPR</li> <li>• ISSUES JUDGMENTS AND ADVISORY OPINIONS</li> <li>• 11 JUDGES WITH THE PRESIDENT ON PERMANENT BASIS. ALL ON SIX-YEAR TERMS, RENEWABLE ONCE</li> <li>• HOLDS FOUR ORDINARY SESSIONS IN A YEAR</li> <li>• BASED IN ARUSHA, TANZANIA</li> </ul>

<sup>12</sup> The AU has also recently adopted two human rights treaties that are yet to come into force. These are: The Protocol to the African Charter on the Rights of Persons with Disabilities in Africa, adopted 29 January 2018; and the Protocol to the African Charter on the Rights of Older Persons, adopted 31 January 2016.

## AFRICAN COMMISSION (ACHPR)

The ACHPR is a quasi-judicial body established pursuant to Article 30 of the African Charter. Considered the premier human rights treaty body in Africa, its overall mandate is to “promote human and peoples’ rights and ensure their protection in Africa”. The specific functions of the ACHPR include: adjudicating human rights complaints;<sup>13</sup> considering periodic state party reports;<sup>14</sup> investigating allegations of human rights violations;<sup>15</sup> and formulating new norms or standards.<sup>16</sup> All these functions hinge on the ACHPR’s authority to interpret and apply the regional human rights treaties and monitor their implementation by state parties.

The ACHPR’s core functions are in theory categorised as either ‘protective’ (adjudication of complaints) or ‘promotional’ (consideration of state reports and other activities). In practice, this distinction is superficial as the protective and promotional aspects of the ACHPR’s mandate almost always overlap. The ACHPR issues recommendations as the main outcome of its various activities. State parties have an obligation to comply and implement these recommendations as they are based on authoritative interpretation of the African Charter and other relevant human rights treaties which are themselves binding on state parties.

The ACHPR commenced operating when it held its inaugural session in Addis Ababa, Ethiopia, in November 1987. Less than two years later, the seat of the ACHPR was permanently moved to Banjul, The Gambia. The ACHPR is composed of 11 part-time commissioners appointed by the AU Assembly of Heads of State and Government. Candidates for appointment as commissioners are required to be “African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples’ rights”.<sup>17</sup> The African Charter further provides that preference should be given to candidates with legal expertise.<sup>18</sup> With the passing of time, gender representation and regional balance have become the key factors of consideration during the election and appointment of ACHPR commissioners, so much so that some appointment processes have had to be deferred when either of these criterion is not met.<sup>19</sup> The commissioners serve on a personal capacity for six-year terms that may be renewed for as many times as possible.

As provided in the African Charter, the ACHPR is headed by a bureau composed of a chairperson and a vice-chairperson who are elected by the commissioners from amongst themselves.<sup>20</sup> The bureau serves for a two-year term, renewable once. It is responsible for coordinating the activities of the ACHPR, taking decisions on matters of emergency when the ACHPR is not in session, and supervising the work of the ACHPR secretariat. The ACHPR secretariat is headed by a secretary and performs the daily technical and administrative functions of the ACHPR. The detailed functioning of the ACHPR is regulated by a set of Rules of Procedure. The Rules of Procedure currently in force were adopted in 2010. As at the time of writing, however, the ACHPR was in the process of revising those Rules of Procedure.<sup>21</sup>

The ACHPR holds two ordinary sessions in a year, in April/May and October/November. The venue of the ordinary sessions alternates, in so far as is possible, between Banjul and another African city. In recent years, the ACHPR has established a practice of holding two extra-ordinary sessions every year, in February and August. Each ACHPR commissioner is responsible for monitoring the human rights situation in five countries, except for the chairperson who is usually allocated one country less. The commissioners thus serve as country rapporteurs in respect of the countries they have been allocated. Additionally, and as outlined above, the ACHPR has established special mechanisms to focus on specific thematic issues. There are currently 12 ACHPR special mechanisms in the form of special rapporteurs, committees and working groups.

## AFRICAN CHILD RIGHTS COMMITTEE (ACERWC)

The ACERWC is the supervisory body responsible for monitoring state implementation of and compliance with the African Children’s Charter. Like the ACHPR, its mandate has protective and promotional elements.<sup>22</sup>

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<sup>13</sup> African Charter, Articles 47-59.

<sup>14</sup> African Charter, Article 62; Maputo Protocol, Article 26; Kampala Convention, Article 14(4).

<sup>15</sup> African Charter, Article 46.

<sup>16</sup> African Charter, Article 45(b).

<sup>17</sup> African Charter, Article 31(1).

<sup>18</sup> African Charter, Article 31(1).

<sup>19</sup> See for example Decision on the Election of Four (4) Judges of the African Court on Human and Peoples’ Rights, EX.CL/Dec.937(XXIX).

<sup>20</sup> African Charter, Article 42.

<sup>21</sup> On 27 August 2019, the ACHPR invited the public to comment on a draft of a revised set of Rules of Procedure that it had published on its website. See ‘Call for public consultations on the Draft Revised Rules of Procedure of the African Commission on Human and Peoples’ Rights’ available at <https://www.achpr.org/announcement/detail?id=73> (accessed 15 September 2019).

<sup>22</sup> African Children’s Charter, Article 32.

It considers complaints relating to children's rights and examines initial and periodic reports submitted to it by state parties.<sup>23</sup> It also conducts, amongst other activities, investigations, country visits, standard-setting, and studies into specific themes as and when considered relevant.<sup>24</sup>

The ACERWC is composed of 11 part-time members appointed by the AU Assembly for their expertise in "matters of the rights and welfare of the child". They must also be of "high moral standing, integrity, [and] impartiality".<sup>25</sup> As opposed to the ACHPR, preference is not given to individuals with legal expertise in constituting the ACERWC. Along the same line, ACERWC members are appointed for a shorter term of five years, renewable once.<sup>26</sup> The ACERWC members do not represent their countries for they serve on a personal capacity. The first batch of ACERWC members were sworn into office in 2002. The members of the ACERWC elect a bureau composed of the chairperson and three vice chairpersons from amongst themselves. Bureau members serve for a period of two years.

Since its inception in 2002, the ACERWC has operated from the AU premises at its headquarters in Addis Ababa. Following a June 2018 decision of the AU Executive Council,<sup>27</sup> the ACERWC is expected to relocate to Maseru, Lesotho, where its seat will be permanently based. The ordinary sessions of the ACERWC are held twice a year, mainly during the months of March/April and November. Most of the ACERWC sessions have thus far been held at its current seat in Addis Ababa. Under its Rules of Procedure, the ACERWC may establish special mechanisms similar to those of the ACHPR.<sup>28</sup> The ACERWC has so far established 10 special mechanisms. The members of the ACERWC are also country rapporteurs for a select number of countries, specifically four for the chairperson and five for the rest.

SPECIAL MECHANISMS OF THE AFRICAN SYSTEM	
ACHPR	ACERWC
<ul style="list-style-type: none"> <li>• SPECIAL RAPPOREUR ON PRISONS, CONDITIONS OF DETENTION AND POLICING</li> <li>• SPECIAL RAPPOREUR ON THE RIGHTS OF WOMEN</li> <li>• SPECIAL RAPPOREUR ON INDIGENOUS POPULATIONS/COMMUNITIES</li> <li>• SPECIAL RAPPOREUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION</li> <li>• SPECIAL RAPPOREUR ON REFUGEES, ASYLUM SEEKERS, MIGRANTS AND INTERNALLY DISPLACED PERSONS</li> </ul>	<ul style="list-style-type: none"> <li>• SPECIAL RAPPOREUR ON VIOLENCE AGAINST CHILDREN</li> <li>• SPECIAL RAPPOREUR ON CHILDREN AND ARMED CONFLICT</li> <li>• SPECIAL RAPPOREUR ON BIRTH REGISTRATION, NAME AND NATIONALITY</li> <li>• SPECIAL RAPPOREUR ON ENDING CHILD MARRIAGE</li> <li>• SPECIAL RAPPOREUR ON CHILD PARTICIPATION</li> <li>• SPECIAL RAPPOREUR ON CHILDREN IN VULNERABLE SITUATIONS</li> </ul>

<sup>23</sup> African Children's Charter, Articles 43 & 44.

<sup>24</sup> African Children's Charter, Articles 42 & 45.

<sup>25</sup> African Children's Charter, Article 33.

<sup>26</sup> African Children's Charter, Article 37(1).

<sup>27</sup> Decision on the Relocation of the Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), EX.CL/Dec.1010(XXXIII), adopted at the 33<sup>rd</sup> ordinary session of the Executive Council, 28-29 June 2018, Nouakchott, Mauritania.

<sup>28</sup> ACERWC Rules of Procedure, Rules 58-62.

- SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS AND FOCAL POINT ON REPRISALS
- COMMITTEE FOR THE PREVENTION OF TORTURE
- WORKING GROUP ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
- WORKING GROUP ON DEATH PENALTY, EXTRAJUDICIAL, SUMMARY OR ARBITRARY KILLINGS AND ENFORCED DISAPPEARANCES
- WORKING GROUP ON THE RIGHTS OF OLDER PERSONS AND PEOPLE WITH DISABILITIES
- WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS
- COMMITTEE ON THE PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH HIV (PLHIV) AND THOSE AT RISK, VULNERABLE TO AND AFFECTED BY HIV

- SPECIAL RAPPORTEUR ON HEALTH, WELFARE AND DEVELOPMENT
- SPECIAL RAPPORTEUR ON CHILDREN ON THE MOVE
- SPECIAL RAPPORTEUR ON CHILDREN IN CONFLICT WITH THE LAW PARENTAL RESPONSIBILITIES AND CHILD RESPONSIBILITIES
- RAPPORTEUR ON EDUCATION

## AFRICAN COURT (ACtHPR)

The ACtHPR is the judicial complement to the quasi-judicial mandate of the ACHPR. It was established with the specific objective of complementing the communications procedure of the ACHPR.<sup>29</sup> The ACtHPR renders binding judgments that state parties are required to comply with and guarantee their execution.<sup>30</sup> Judgments are a product of the ACtHPR's exercise of its contentious mandate. These are distinctly different from the non-binding advisory opinions which it delivers in execution of its advisory mandate.<sup>31</sup> For both of these mandates, the ACtHPR applies the African Charter as the primary normative yardstick and, in the language of Article 7 of the African Court Protocol, "any other relevant human rights instruments ratified by the states concerned".

The ACtHPR consists of 11 judges appointed by the AU Assembly to serve in their personal capacity for a six-year term, renewable once.<sup>32</sup> The judges elect two of their own to serve as the President and Vice President of the Court. The President serves on a permanent basis and is required to reside at its seat in Arusha, Tanzania.<sup>33</sup> Only "jurists of high moral character and of recognised practical, judicial or academic competence and experience in the field of human and peoples' rights" are qualified to be appointed as judges. In the appointment process, the AU Assembly must additionally consider regional balance and adequate gender representation.<sup>34</sup> The inaugural judges of the ACtHPR were appointed in 2006 but it was

<sup>29</sup> African Court Protocol, Article 2.

<sup>30</sup> African Court Protocol, Article 30.

<sup>31</sup> African Court Protocol, Article 4.

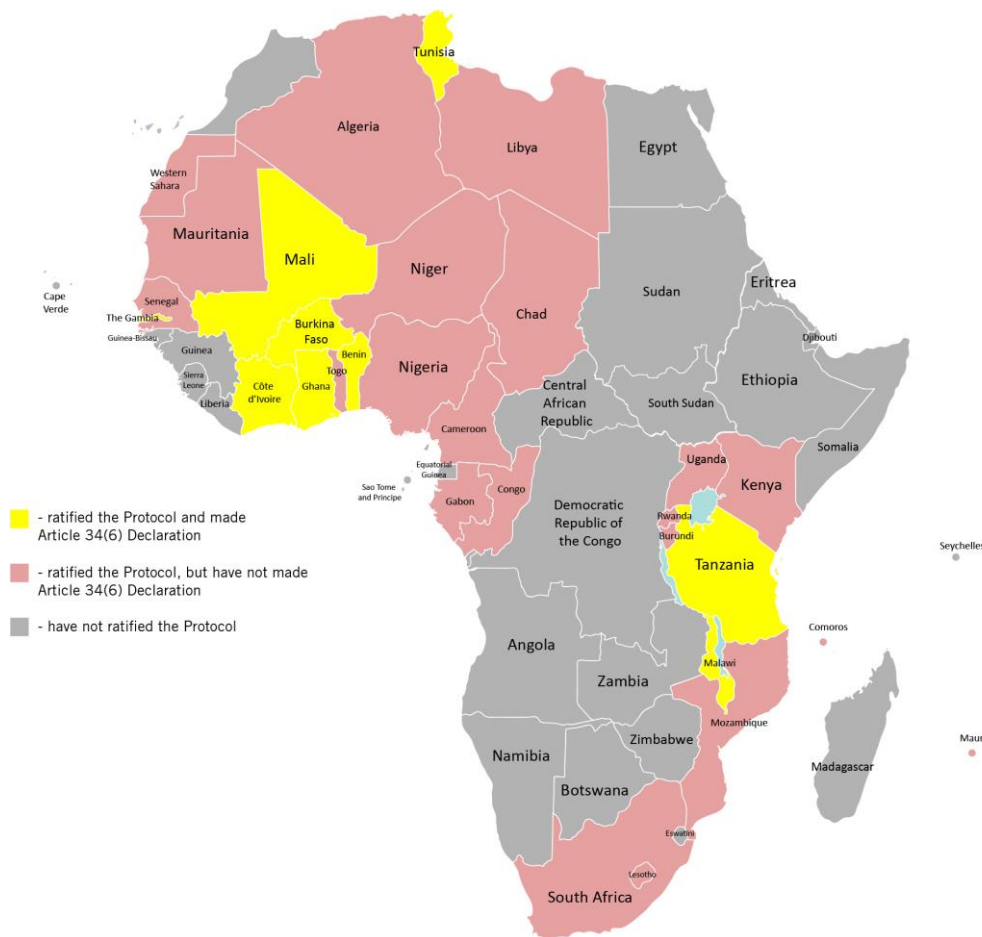
<sup>32</sup> African Court Protocol, Article 11.

<sup>33</sup> African Court Protocol, Article 21.

<sup>34</sup> African Court Protocol, Article 14.

not until December 2009 that the Court delivered its first judgment. In accordance with its Rules of Procedure, the ACtHPR holds four ordinary sessions in a year, each lasting about 15 days.<sup>35</sup> Most of the sessions have thus far been held at the Court's seat in Arusha.

A range of actors may submit cases to the ACtHPR for adjudication: the ACHPR; a state party either as a complainant, respondent or interested party; African intergovernmental organizations; individuals; and NGOs.<sup>36</sup> However, NGOs are allowed to submit cases to the Court only if they have observer status before the ACHPR and both individuals and NGOs are allowed to submit cases directly to the Court only if the state involved has made a declaration allowing them to file cases against it.<sup>37</sup> As at 30 June 2019, only nine of the 30 state parties to the African Court Protocol had made such a declaration. These are: Benin, Burkina Faso, Côte d'Ivoire, the Gambia, Ghana, Malawi, Mali, Tanzania and Tunisia.



Although the ACERWC has the same legal status as the ACHPR, it is not listed under the African Court Protocol as one of the actors that may directly submit cases to the ACtHPR. This anomaly was considered by the ACtHPR in an advisory opinion in which it recommended that “it is highly desirable that the Committee is given direct access to the Court under Article 5(1) of the [African Court] Protocol”.<sup>38</sup> This recommendation is currently under review by the relevant AU policy organs.<sup>39</sup>

The current design of the ACtHPR may fundamentally change in future if the AU 2014 Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo

<sup>35</sup> Rules of Court, Rule 14.

<sup>36</sup> African Court Protocol, Article 5.

<sup>37</sup> African Court Protocol Articles 5(3) & 34(6).

<sup>38</sup> Request for Advisory Opinion by the African Committee of Experts on the Rights and Welfare of the Child on the Standing of the African Committee of Experts on the Rights and Welfare of the Child before the African Court on Human and Peoples' Rights, Request No. 002.2013, Delivered 5 December 2014.

<sup>39</sup> See Decision on the Activity Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), EX-CL/Dec.1043(XXXIV), adopted during the 34<sup>th</sup> Ordinary Session of the AU Executive Council, 7-8 February 2019, Addis Ababa, Ethiopia.



Protocol) receives the requisite number of ratifications for it to come into force.<sup>40</sup> The Malabo Protocol extends the jurisdiction of the yet to be established African Court of Justice and Human Rights (ACJHR) to include crimes under international law as well as transnational crimes. The original plan for the ACJHR, as envisaged in the 2008 Protocol on the Statute of the African Court of Justice and Human Rights (Merger Protocol),<sup>41</sup> was a court with two sections: a general affairs section and a human rights section. The Malabo Protocol introduces a third section: the international criminal law section. Under this new institutional design, the current ACtHPR will be effectively reduced to a chamber or a section within a wider court with a much broader mandate. Amnesty International has raised critical institutional and normative concerns with the design envisaged in the Malabo Protocol.<sup>42</sup>

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<sup>40</sup> The Malabo Protocol was adopted on 27 June 2014 by the 20<sup>th</sup> Ordinary Session of the AU Assembly, held in Malabo, Equatorial Guinea. It requires 15 ratifications to come into force. As of 30 September 2019, it had been signed by 15 states, but it had not yet received any ratification.

<sup>41</sup> Adopted 1 July 2018 in Sharm el Sheikh, Egypt. As of 30 September 2019, it had been ratified by 7 states and signed by 32.

<sup>42</sup> Amnesty International, Malabo Protocol: Legal and institutional implications of the merged and expanded African Court', Index: AFR 01/3063/2016, 22 January 2016.

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# EXECUTION OF MANDATE

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For purposes of accountability, the African regional human rights bodies are required to submit regular reports of their activities to the AU Executive Council via the Permanent Representatives' Committee (PRC).<sup>43</sup> These reports contain a description of the activities undertaken by the regional bodies in the execution of their respective mandates during a defined period. In respect of the reporting period, the regional mechanisms cumulatively submitted to the Executive Council a total of nine activity reports. Amnesty International reviewed these and other relevant reports with a view to evaluating the performance of the regional mechanisms during the reporting period.

The analysis of the performance of the regional bodies during the reporting period reveals a mixed picture. The regional bodies registered a relatively impressive record during the reporting period in the execution of their mandates relating to state reporting, standard-setting, and intervening in urgent situations. The ACHPR and the ACERWC examined a total of 19 state party reports. The two bodies developed new norms and standards, including the Draft Protocol on the Rights of Citizens to Social Protection and Social Security developed by the ACHPR. However, a statistical analysis of the cases handled and disposed of by the mechanisms during the reporting period discloses that the ACHPR and ACTHPR are struggling to efficiently handle their workloads. As such, case backlog has become a chronic and stubborn problem that has refused to go away.

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## DETERMINATION OF COMMUNICATIONS AND CASES

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The complaints or communications procedures of the African regional mechanisms lie at the heart of their human rights protection mandates. With their growing visibility and profile, victims of human rights violations and abuses, or their representatives, are increasingly submitting cases to the regional mechanisms.<sup>44</sup> This has brought into sharp focus the productivity and the speed and efficiency with which the mechanisms consider and conclude the cases in their dockets.

A statistical analysis of the cases handled and disposed of by the mechanisms during the reporting period discloses that the ACHPR and ACTHPR are struggling to efficiently handle their workloads. As such, case backlog has become a chronic and stubborn problem that has refused to go away. The ACERWC's communications procedure has remained under-utilized since its inception. It received only a single new communication during the reporting period, bringing its total number of communications received from its establishment to the end of the reporting period to 11.

### ACHPR: LIKE JOGGING ON THE SPOT

The ACHPR's communications procedure has offered many victims of human violations and abuses in Africa a much-needed avenue for seeking redress at the regional level when their national systems of justice have

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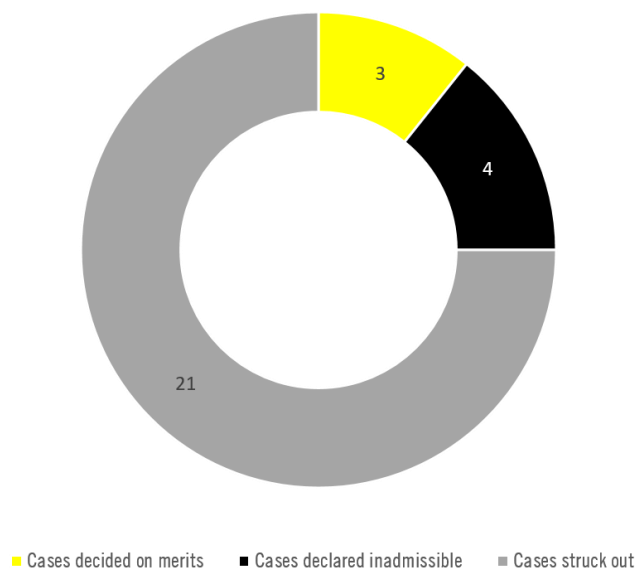
<sup>43</sup> African Charter, Article 54; African Children's Charter, Article 45(2); African Court Protocol, Article 31.

<sup>44</sup> The ACHPR and ACTHPR have noted that the number of cases they are receiving is on the rise. See for example Activity Report of the African Court on Human and Peoples' Rights, 1 January – 31 December 2018, EX.CL/1126(XXXIV), para. 43;

failed.<sup>45</sup> Some of the decisions of the ACHPR emanating from its communications procedure has been ground-breaking and helped to fill gaps and expand the normative reach and scope of the African Charter.<sup>46</sup> However, a chronic challenge facing the communications procedure has been ACHPR's slow pace of determining communications leading to a perennial backlog in its docket. This challenge continued into the reporting period.

Just before the start of the reporting period (November 2017), the ACHPR had a total of 232 communications pending before it,<sup>47</sup> a steep increase of 217% from the pending 73 cases it had about a decade earlier (May 2007).<sup>48</sup> As at the end of the reporting period, the backlog had slightly increased to 240.<sup>49</sup> The ACHPR received a total of 52 new communications during the reporting period, but it only cleared 31 communications from its total docket of cases (comprising of three communications which were decided on the merits, four which were declared inadmissible, three which were withdrawn, and 21 which were struck out).<sup>50</sup> This points to the slow pace of handling communications, resulting in only a few number of communications being cleared out of the ACHPR's docket as compared to those received into the docket.

### ACHPR: FINAL DECISIONS ISSUED BETWEEN JANUARY 2018 AND JUNE 2019



<sup>45</sup> During its 30<sup>th</sup> anniversary celebration held in November 2017, the ACHPR reported that it had received 663 complaints since its inception. At that time, it had processed more than 400, including 100 on the merits. See Opening Statement on the Celebrations of the 30<sup>th</sup> Anniversary of the African Commission on Human and Peoples' Rights by Honourable Commissioner Lawrence Murugu Mute, Vice Chairperson of the African Commission on Human and Peoples' Rights, 2 November 2017, Banjul, the Gambia.

<sup>46</sup> See for example *Socio-Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001); *Centre for Minority Rights Development (Kenya) and Minority Rights Group v Kenya* (2009) AHRLR 75 (ACHPR 2009).

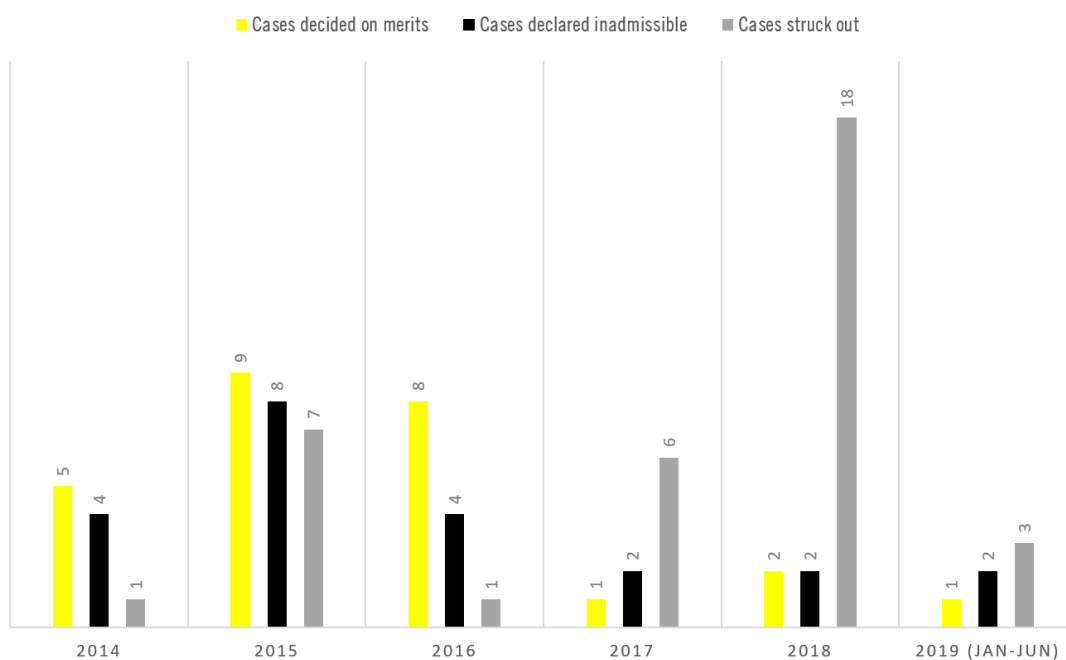
<sup>47</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 23.

<sup>48</sup> 22<sup>nd</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 88.

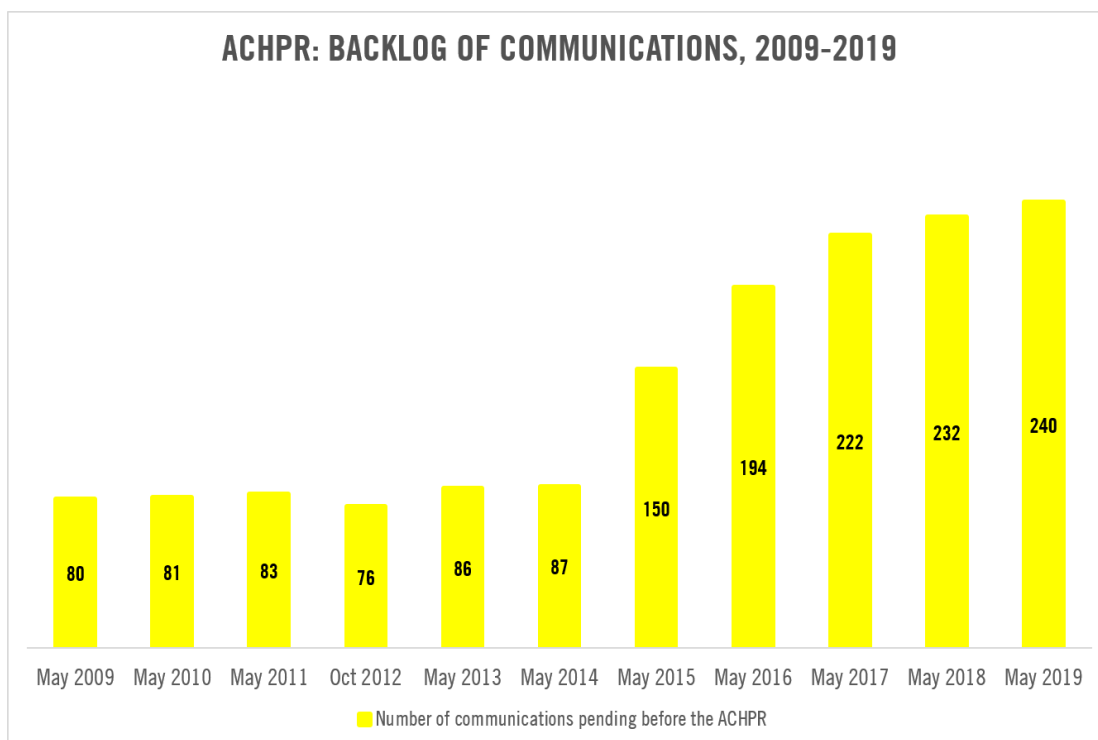
<sup>49</sup> 46<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 25.

<sup>50</sup> 46<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 26;

## ACHPR: FINAL DECISIONS ISSUED 2014 - JUNE 2019



## ACHPR: BACKLOG OF COMMUNICATIONS, 2009-2019



The ACHPR's communications procedure seems to be working at its bare minimum, suggesting that it is like an exercise in jogging on the spot; there is consideration of communications at almost every session of the ACHPR but little to no progress in clearing the backlog.

The ACHPR has for years now acknowledged and attempted to reduce the backlog of cases in its docket.<sup>51</sup> In recent years, it has struck out many communications from its docket because of what it considers a

<sup>51</sup> See for example 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 47.

failure of the applicants to diligently prosecute or pursue the communications. In contrast, the ACHPR has always treated respondent states with too much deference, often postponing the consideration of communications to accommodate delays by respondent states, sometimes on multiple occasions and for long periods of time.<sup>52</sup>

One recently concluded case that demonstrates the ACHPR's discrepancy in how it treats parties is *Open Society Justice Initiative (on behalf of Njawa Noumeni) v Cameroon*.<sup>53</sup> While it accommodated the states' delay of more than two years, the ACHPR was quick to strike out the communication following the complainant's delay of about six months. The ACHPR invited both parties to submit their arguments on admissibility of the communication on 20 March 2008.<sup>54</sup> The complainant submitted his arguments in May 2008.<sup>55</sup> The ACHPR sent repeated reminders to the respondent state but it did not communicate until February 2010, close to two years later, when it requested more time to make its submissions on admissibility.<sup>56</sup> The ACHPR granted this request. In March 2012, the parties were invited to make submissions on the merits of the communication by a deadline of August 2012.<sup>57</sup> The respondent state submitted its arguments in November 2012.<sup>58</sup> By February 2013, and after a single reminder, the complainant had yet to file his submissions, whereupon the ACHPR struck out the communication for lack of diligent prosecution.<sup>59</sup> It later emerged that the delay by the complainant had been caused by the fact that he had not received the relevant correspondence from the ACHPR. The communication was thus reinstated.

Another of ACHPR's approaches in addressing the backlog of communications has been to increase the number of days it meets during a year. In addition to the usual ordinary sessions of about 15 days, the ACHPR has every year since 2008 convened two extra-ordinary sessions of about 10 days each.<sup>60</sup> Initially, consideration of complaints was top of the agenda of the extra-ordinary sessions, if not the primary purpose. However, the passing of time has pushed extra-ordinary sessions to focus on other issues. The list of agenda items during extra-ordinary sessions has accordingly become longer and longer, effectively reducing the time dedicated to consideration of complaints.

The time allocated to consideration of complaints during ordinary sessions has also gradually shrunk. The introduction of panel discussions and the launch of a variety of documents during ordinary sessions often gobble up a considerable amount of time.<sup>61</sup> The result is that the increase in the length of ordinary sessions has not necessarily improved the ACHPR's productivity when it comes to the communications procedure. In January 2018, the AU Executive Council approved the decision of the ACHPR to increase the number of days for its ordinary sessions from 15 to 21 and those of extra-ordinary sessions from 10 to 15.<sup>62</sup> The ACHPR implemented this decision from its 63<sup>rd</sup> ordinary session. It thus met for a total of 93 days during the reporting period.

## ACERWC: GROSSLY UNDER-UTILIZED

The ACERWC's communications procedure has been used sparingly. In the 17 years of its operations, the ACERWC has received a mere 11 communications, the latest of which was submitted to it in early 2019.<sup>63</sup> More than 50% of the total communications were filed in 2015 and 2016.

During the reporting period, the ACERWC finalised three communications. As a result, all communications in the ACERWC's docket stood disposed of as at the close of the reporting period, save for two: a communication filed in 2019,<sup>64</sup> and an earlier one in respect of which the ACERWC was still monitoring a friendly settlement entered between the applicants and the respondent state.<sup>65</sup> The longest time it has taken

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<sup>52</sup> See J Biegon 'Non-participation in the communications procedure of the African Commission on Human and Peoples' Rights' (2014) 2 *African Nazarene University Law Journal* 1.

<sup>53</sup> ACHPR Communication 290/2004.

<sup>54</sup> As above, para. 40.

<sup>55</sup> As above, para. 41.

<sup>56</sup> As above, para. 42.

<sup>57</sup> As above, para. 47.

<sup>58</sup> As above, para. 49.

<sup>59</sup> As above, para. 50.

<sup>60</sup> From its inception to 2007, a period of 20 years, the ACHPR had held a total of 4 extra-ordinary sessions only.

<sup>61</sup> The modern practice of holding panel discussions trace their origin to the 52<sup>nd</sup> ordinary session held in October 2012 when they were held as part of the activities to mark the 25<sup>th</sup> anniversary of the ACHPR. They have now become a standard feature in these sessions

<sup>62</sup> Decision on the African Commission on Human and Peoples' Rights, EX.CL/Dec.995(XXXII), 32<sup>nd</sup> Ordinary Session of the Executive Council, 25-26 January 2018, Addis Ababa, Ethiopia.

<sup>63</sup> Report of the 33<sup>rd</sup> Session of the African Committee of Experts on the Rights and Welfare of the Child, ACERWC/RPT (XXXIII), para. 190.

<sup>64</sup> *Project Expedite Justice et al v Sudan*.

<sup>65</sup> *Institute for Human Rights and Development in Africa v Malawi*, Communication No. 004/Com/001/2014.

the ACERWC to handle a communication from its filing to the rendering of a final decision on merits is 2.9 years.

Several of the ACERWC's decisions on communications have been invariably lauded as ground-breaking in terms of challenging domestic laws and practices violating the rights of children.<sup>66</sup> More importantly, some of its decisions have triggered positive changes at the domestic level. In response to its 2014 decision concerning the plight of child beggars in Senegal,<sup>67</sup> President Macky Sall announced in July 2016 that the use of children as beggars in the streets of Senegal will be stopped immediately, a decision that the ACERWC described as a "first and decisive step" towards curbing child abuse in the country.<sup>68</sup> The ACERWC's 2016 amicable settlement concerning the definition of a child under the Malawian constitution has prompted a legal reform process in the country.<sup>69</sup>

## ACTHPR: FOLLOWING IN FAMILIAR FOOTSTEPS

The ACTHPR was established with the hope that it would overcome most of the challenges that the ACHPR had faced for many years and continues to face. One of these was the challenge of a slow communications procedure of the ACHPR, leading to delays in finalising communications. To ensure speedy determination of cases by the ACTHPR, Article 28(1) of the African Court Protocol provides that it should deliver its judgment within 90 days of concluding its deliberations in a case. But the reality has been starkly different from this vision. Like the ACHPR, the ACTHPR finds itself saddled with a rapidly expanding backlog of cases.

The ACTHPR first provided statistics relating to its case management in its annual report for 2011, during which year it received 14 cases.<sup>70</sup> Seven of these were pending before it at the end of that year.<sup>71</sup> Since then, there has been a constant increase in the number of pending cases before the Court, effectively bringing to naught efforts by the ACTHPR to clear its case backlog. At the end of 2016, the number of pending cases before the ACTHPR had risen to 90,<sup>72</sup> and then to 119 by the end of 2017.<sup>73</sup>

During the reporting period, the ACTHPR issued 25 judgments: 18 on merits, five on admissibility, one on reparations and one order on provisional measures. By the end of June 2019, the total number of cases received by the ACTHPR from its inception had grown to 205 while the backlog of pending cases had equally increased to 143 cases (from 119 at the end of 2017).<sup>74</sup> A total of 15 cases filed four years ago in 2015 constitute the oldest cases in the docket of the ACTHPR.<sup>75</sup>

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<sup>66</sup> See for example 'Ruling by the African Union's children's rights committee represents major step forward in fight to eradicate slavery in Mauritania, rights groups say' available <https://minorityrights.org/2018/01/26/ruling-african-unions-childrens-rights-committee-represents-major-step-forward-fight-eradicate-slavery-mauritania-rights-groups-say/> (accessed 7 October 2019).

<sup>67</sup> *The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense Des Droits de l'homme (Senegal) v Senegal*, ACERWC Communication No. 003/Com/001/2012.

<sup>68</sup> Open Letter from the Chairperson of the African Committee of Experts on the Rights and Welfare of the Child, 26 July 2016, available at

<sup>69</sup> See Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), EX.CL/1091, June 2018, para. 83.

<sup>70</sup> Report of the African Court on Human and Peoples' Rights, EX.CL/718(XX), January 2012, para 9.

<sup>71</sup> Report of the African Court on Human and Peoples' Rights, EX.CL/718(XX), January 2012, para 16.

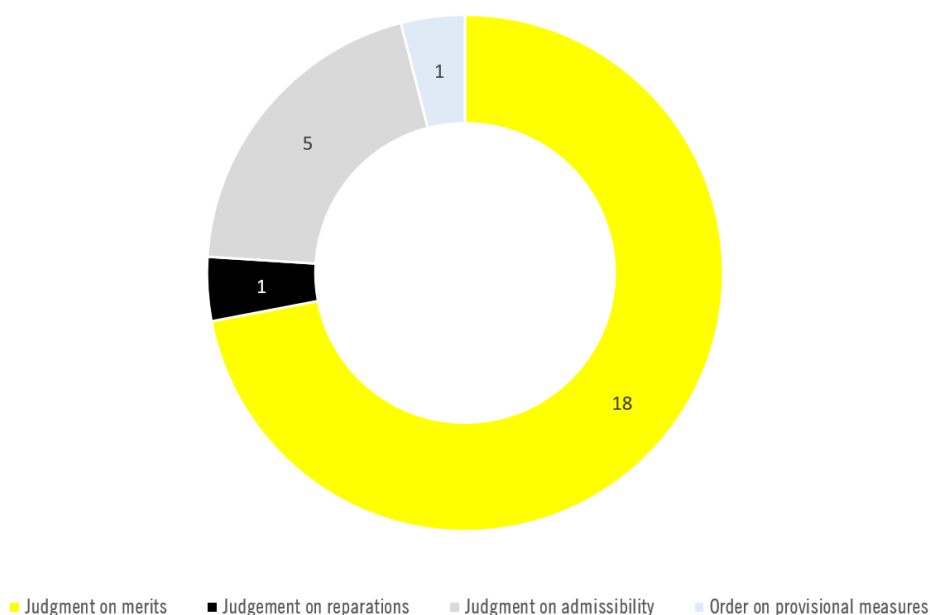
<sup>72</sup> Activity Report of the African Court on Human and Peoples' Rights, 1 January – 31 December 2016, EX.CL/999(XXX), para. 13.

<sup>73</sup> Activity Report of the African Court on Human and Peoples' Rights, 1 January – 31 December 2017, EX.CL/1057(XXXII), para. 14.

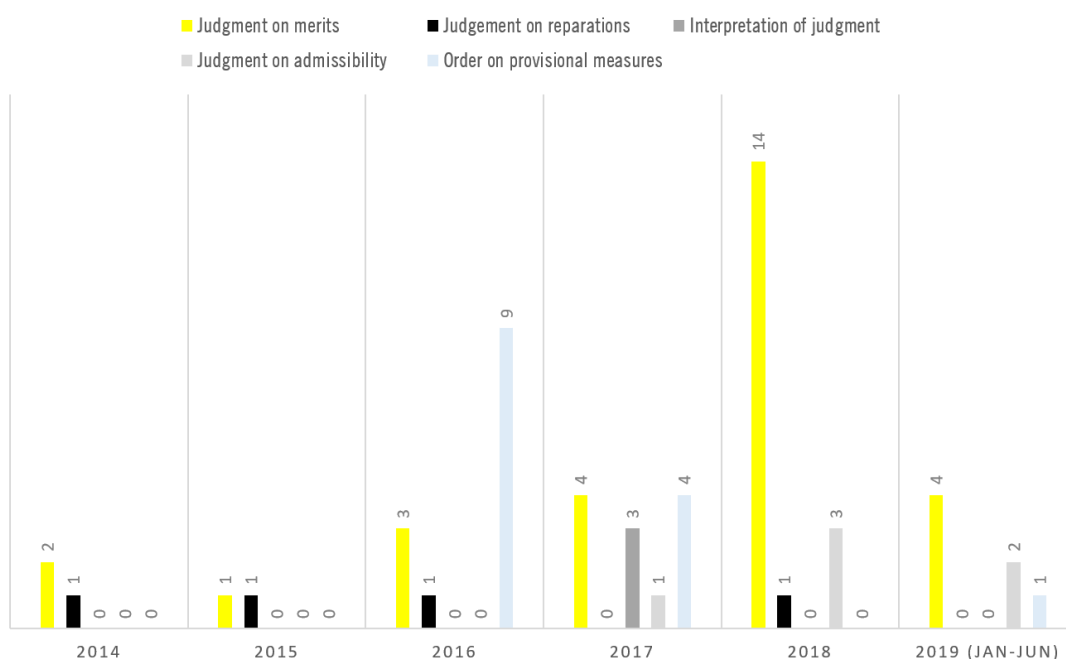
<sup>74</sup> Mid-Term Activity Report of the African Court on Human and Peoples' Rights, 1 January – 30 June 2019, EX.CL/1163(XXXV), para 10.

<sup>75</sup> The list of pending cases is available at <http://www.african-court.org/en/index.php/cases/2016-10-17-16-18-21#pending-cases> (accessed 10 October 2019).

## ACtHPR: DECISIONS ISSUED BETWEEN JANUARY 2018 AND JUNE 2019



## ACtHPR: FINAL DECISIONS ISSUED 2014 - JUNE 2019



Most of the cases in the docket of the ACtHPR have been filed against Tanzania. A huge number of these cases concern alleged violations of the right to fair trial filed by individuals serving prison terms in Tanzania. They point to a structural or systemic problem within the Tanzanian judicial system. These cases also raise the question of how the ACtHPR should deal with repetitive cases raising identical issues within a state party. Under Article 58(1) of the African Charter, the ACHPR may refer a country to the AU Assembly if it receives

such repetitive cases against it. The AU Assembly may then order for an in-depth study to be undertaken. The ACTHPR does not have a similar course of action.

To deal with repetitive cases, the European Court of Human Rights (ECHR) has developed the Pilot-Judgment Procedure. Under this procedure, the ECHR selects a case or cases from the pool of repetitive cases for priority adjudication. In the resultant judgment, referred to as a pilot judgment, the ECHR will craft a solution that is applicable to all the other repetitive cases and that offers clear directions to the state party concerned on how to address the structural issue lying at the root of the repetitive cases.<sup>76</sup> The ACTHPR should consider studying the experience of the ECHR in relation to repetitive cases and determine if an approach similar to the ECHR's pilot judgment procedure could be applicable to its own repetitive cases.

## EXAMINATION OF STATE PARTY REPORTS

State parties to the African Charter and the Maputo Protocol are required to submit biennial reports to the ACHPR describing the extent to which they have given effect to the provisions of the two treaties.<sup>77</sup> State parties have a similar reporting obligation under the African Children's Charter, but they are required to submit the initial report to the ACERWC within two years of ratifying the treaty and every three years thereafter.<sup>78</sup> States are aided in the preparation of the reports by sets of guidelines prepared by the two regional mechanisms. The reports are orally presented by state representatives and reviewed in public during ordinary sessions. The final outcome of the reporting procedure is a set of "concluding observations" in which the regional body outlines its assessment of the extent to which the concerned state has implemented the regional human rights treaty in question. The concluding observations usually contain a list of positive aspects, challenges, concerns and recommendations of the treaty body.

The ACHPR and the ACERWC examined a total of 19 state party reports during the reporting period.

### REPORTS REVIEWED BY THE ACHPR, 1 JAN 2018 – 30 JUNE 2019

COUNTRY	REPORT	REVIEW	CONCLUDING OBSERVATIONS
Angola	6th Periodic Report (2011-2016)	63rd session	Adopted
Botswana	2nd and 3rd Periodic Report (2011-2015)	63rd session	Adopted
Egypt	9th – 17th Periodic Report (2001-2017)	64th session	Pending
Eritrea	Initial Report (1999-2016)	62nd session	Adopted
The Gambia	4th – 15th Periodic Report (1995-2018)	64th session	Pending
Lesotho	2nd – 8th Periodic Report	64th session	Pending
Nigeria	6th Periodic Report (2015-2016)	62nd session	Pending

<sup>76</sup> See ECHR Pilot Judgment Procedure available at [https://www.echr.coe.int/Documents/Pilot\\_judgment\\_procedure\\_ENG.pdf](https://www.echr.coe.int/Documents/Pilot_judgment_procedure_ENG.pdf) (accessed 10 October 2019).

<sup>77</sup> African Charter, Article 62; Maputo Protocol, Article 26.

<sup>78</sup> African Children's Charter, Article 43.



Togo	6th, 7th and 8th Periodic Report (2011-2016)	63rd session	Pending
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## REPORTS REVIEWED BY THE ACERWC, 1 JAN 2018 – 30 JUNE 2019

COUNTRY	REPORT	REVIEW	CONCLUDING OBSERVATIONS
Benin	Initial Report	33rd session	Adopted
Burkina Faso	1st Periodic Report	31st session	Adopted
Burundi	Initial Report	31st session	Adopted
Eswatini	Initial Report	33rd session	Adopted
Malawi	Initial Report	31st session	Adopted
Nigeria	2nd Periodic Report	33rd session	Adopted
Niger	2nd Periodic Report	31st session	Adopted
Rwanda	2nd Periodic Report	33rd session	Adopted
Senegal	1st Periodic Report	33rd session	Adopted
South Africa	1st Periodic Report	32nd session	Adopted
Zambia	Initial Report	32nd session	Adopted

The ACHPR reviewed the state party reports of Angola, Botswana, Egypt, Eritrea, The Gambia, Lesotho, Nigeria and Togo. All these countries submitted their reports long after they had been due, apart from Nigeria. Botswana's combined second and third periodic report was six years late.<sup>79</sup> Even with this long delay, the report did not present an updated account of the human rights situation in the country as the cut-off year for its contents was 2015. Eritrea's initial report was submitted to the ACHPR 19 years after the country had ratified the African Charter. Nonetheless, the review of the report provided a rare opportunity for the ACHPR to engage with a government that has been traditionally aloof, if not openly hostile to any scrutiny by international human rights bodies.

The ACERWC examined the state party reports of Benin, Burkina Faso, Burundi, Eswatini, Malawi, Nigeria, Niger, Rwanda, Senegal, South Africa, and Zambia.

<sup>79</sup> Botswana's 1<sup>st</sup> Periodic Report was examined by the ACHPR in November 2009.

## NAVIGATING THROUGH A MAZE: PROLIFERATION OF ACHPR STATE REPORTING GUIDELINES

State reporting guidelines are intended to give clarity and direction on what information states should include in state party reports. They allow for uniformity in the structure of reports and a common predictable yardstick for their review. Yet, the several sets of guidelines adopted by the ACHPR in recent years have the potential of undermining their intent and purpose.

The main state reporting guidelines – Guidelines for National Periodic Reports – were adopted in 1989. A separate set of guidelines relating to reporting under the Maputo Protocol was adopted in 2010. In addition to these two, there are three other sets of guidelines on specific articles of the African Charter: (a) State Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter (Tunis Reporting Guidelines); (b) Indicative Questions to State Parties in Respect of Article 5 of the African Charter; and (c) State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and the Environment.

If the trend of adopting additional guidelines for specific provisions of the African Charter continues, a complex maze will be likely created. The upshot will be confusion rather than clarity in the reporting procedure. Indeed, the existing sets of guidelines are already believed to bring uncertainty and confusion to the reporting process.<sup>80</sup> The state of play may get even more complex when two newly adopted regional treaties – the Protocol on the Rights of Older Persons and the Protocol on the Rights of Persons with Disabilities in Africa – come into force, potentially triggering the formulation of additional guidelines. Amnesty International recommends that the ACHPR should consider streamlining or consolidating its existing multiple guidelines into a single comprehensive set.

As at the time of writing, the ACHPR had adopted the concluding observations on the state party reports of Angola, Botswana and Eritrea.<sup>81</sup> The ACERWC had adopted the concluding observations of all the state party reports it reviewed during the reporting period.

## STANDARD-SETTING

The African regional human rights bodies have historically played a critical role in the expansion of the norms and standards of the African regional human rights system. In addition to initiating the formulation of new regional human rights treaties, such as the recently adopted Protocol on the Rights of Persons with Disabilities in Africa and the Protocol on the Rights of Older Persons in Africa, the ACHPR has breathed life and given concrete content to the provisions of the African Charter by adopting soft law instruments such as general comments, guidelines, principles and resolutions.<sup>82</sup> The ACERWC has equally unpacked the provisions of the African Children's Charter by way of soft law instruments. The ACHPR and the ACERWC continued with their standard-setting streak during the reporting period.

The major normative development during the reporting period was the adoption by the ACHPR of the Draft Protocol to the African Charter on the Rights of Citizens to Social Protection and Social Security.<sup>83</sup> The drafting of this Protocol was motivated by the need to fill a gap in the African Charter which does not explicitly provide for the right to social security. As at the close of the reporting period, the Draft Protocol had yet to be considered by the relevant AU policy organs.

<sup>80</sup> Statement by the Centre for Human Rights, Faculty of Law, University of Pretoria, to the African Commission on Human and Peoples' Rights, at its 55<sup>th</sup> Ordinary Session, Luanda, Angola, 29 April 2014, on the Situation of Human Rights in Africa.

<sup>81</sup> See Final Communiqué of the 63<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, para. 36; Final Communiqué of the 26<sup>th</sup> Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, 16-30 July 2019, Banjul, The Gambia, para. 7.

<sup>82</sup> For a list of ACHPR soft law instruments see <https://www.achpr.org/resources> (accessed 10 October 2019).

<sup>83</sup> Final Communiqué of the 63<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, the Gambia, 24 October – 13 November 2018, para 36(i).

Another important normative instrument that the ACHPR adopted during the reporting period is the General Comment No. 5 on Article 12(1) of the African Charter, which elaborates upon the content and scope of the right to freedom of movement and residence. It also clarifies the nature of the corresponding state obligations. As at the time of writing, the text of this General Comment was not available on the website of the ACHPR, thus delaying its use and visibility.

During the reporting period, the ACERWC finalised its General Comment No. 5 on State Party Obligations under the African Children's Charter and Systems Strengthening for Child Protection. The General Comment "lays out fully the meaning, scope and import of Article 1 [of the African Children's Charter], which contains the essence of the implementation obligation for member states".<sup>84</sup>

In January 2018, the ACHPR and the ACERWC launched their first ever joint general comment, which focuses on ending child marriage in Africa, a stubborn human rights violation in many African countries.<sup>85</sup> <sup>86</sup> The Joint General Comment describes legislative, institutional and other measures that should be taken by states parties to give effect to the prohibition on child marriage and to protect the rights of those at risk or affected by child marriage. This innovative joint initiative has given the issue of child marriage the attention it deserves.

## THE RED LINE: JOINT GENERAL COMMENT ON ENDING CHILD MARRIAGE

In an impressive demonstration of collaboration, synergy and coordination, the ACHPR and the ACERWC launched their first ever Joint General Comment in January 2018. The joint General Comment focuses on ending child marriage. It contains clear recommendations on the legal reforms, policy development, compliance and promotion measures which are needed to fulfil state parties' obligation to enforce the prohibition of marriage involving any person under the age of 18, as set out in the Maputo Protocol (Article 6) and the African Children's Charter (Article 21). It also provides practical recommendations for tackling some of the root causes of child marriage, including harmful practices and gender discrimination and barriers to education and sexual and reproductive health services and information. These recommendations could be some of the most important measures taken by state parties to combat child marriage.

It is notable that in focusing on 'child marriage' – rather than 'early and forced marriage' – the General Comment draws a red line around the age of 18 as the minimum age of marriage in all circumstances, and without exception. The treaty bodies have taken the view that child marriage can never be in the best interests of a child, and vehemently emphasise the need to rebut such arguments – especially when used in the context of 'dishonour' of pre-marital sex, pregnancy and poverty. At the core, the General Comment reminds state parties that child marriage is both an outcome and driver of gender inequality and discrimination.

The ACHPR and the ACERWC also finalised several studies during the reporting period. The ACERWC finalised and published its Study on Mapping Children on the Move within Africa. The study examines the causes, patterns and the key challenges faced by children on the move within Africa. The ACHPR finalised and published its Study on Transitional Justice in Africa and the Study on Human Rights in Conflict Situations in Africa. The two studies are not only complementary to each other, but they also point to ACHPR's commendable revival and increasing focus on its mandate relating to human rights violations committed in the context of conflicts and crises.<sup>87</sup>

These studies also complement the ACERWC's Continental Study on the Impact of Conflict and Crises on Children in Africa published in October 2016. Read together, the three studies provide a relatively comprehensive picture of the state of play in relation to the prevalence of human rights violations and abuses

<sup>84</sup> General Comment No. 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection, p. 5.

<sup>85</sup> See for example Amnesty International, 'Coerced and denied: Forced marriages and barriers to contraception in Burkina Faso', Index: AFR 60/3851/2016, 26 April 2016.

<sup>86</sup> See for example Amnesty International, 'Coerced and denied: Forced marriages and barriers to contraception in Burkina Faso', Index: AFR 60/3851/2016, 26 April 2016.

<sup>87</sup> See Amnesty International, 'Counting gains, filling gaps: Strengthening African Union's response to human rights violations committed in conflict situations', Index: AFR 01/6047/2017, 20 April 2017.

in conflict and crisis situations, and more importantly, what needs to be done by the ACHPR and the ACERWC to promptly and effectively respond to these violations and abuses.

## **UNCLEAR, *AD HOC* AND INCONSISTENT: ACHPR'S STANDARD-SETTING PROCESS**

The ACHPR has engaged in standard-setting for more than three decades. However, its process of initiating and formulating norms and standards has been unclear, *ad hoc* and inconsistent for most of that period. The ACHPR has not laid down a formal procedure of standard-setting. It has taken different drafting routes for its existing sets of norms and standards, each route depending on the commissioner or special mechanism leading the drafting process and the range of external partners involved. As a result, some drafting processes have been open, transparent and inclusive; others have been opaque, conducted in closed doors by a select and exclusive group of actors.

A new trend has begun to emerge in recent years. Some of the latest drafting processes have been initiated by the adoption of a formal resolution outlining the need for the specific set of norms and standards.<sup>88</sup> The ACHPR has also begun to infuse an element of broader participation in its standard-setting process by inviting the public to comment and provide feedback on draft sets of norms and standards.<sup>89</sup> In certain instances, the ACHPR has also sent drafts directly to state parties for their input. This new trend is encouraging and laudable, but it must be followed by a document clearly laying down the standard procedure. As at the time of writing, the ACHPR was in the process of developing Standard Operating Procedures on Effective Consultation with Stakeholders on Norm Elaboration.<sup>90</sup> This document when finalised and adopted should be made available to all stakeholders, including by posting it on the website of the ACHPR.

The ACHPR has recently adopted procedures for conducting some of its other mandate activities. During the reporting period, it adopted Procedures for the Adoption of Resolutions and Guidelines on the Format of Promotion and Protection Missions of the Commission.<sup>91</sup> As of the time of writing, the ACHPR had also adopted Internal Guidelines on the Organization of Panels during Public Sessions of the Commission.<sup>92</sup> These documents were not available on the website of the ACHPR as at the time of writing. As its stakeholders are involved in its various activities in different ways, the ACHPR should ensure that it publishes and disseminates to the public its procedures for conducting these activities as soon as they are adopted.

As part of its standard-setting function, the ACHPR also adopted a total of 29 resolutions during the reporting period: 16 on the situation of human rights in specific countries, six on thematic issues, and seven on administrative issues. The 16 country-specific resolutions highlighted and expressed concern about the human rights situation in 12 countries: Algeria (1), Benin (1), Burundi (2), Cameroon (2), DRC (2), Guinea Bissau (1), Kenya (1), Libya (1), Mali (1), Somalia (1), Sudan (2), and Togo (1).

The six thematic resolutions focused on the following issues: the question of the scope of the ACHPR's interpretative and protective mandate; protection of migrants; the protection of women human rights defenders in Africa; abolition of the death penalty; climate change; and regulation of private providers of health and educational services.<sup>93</sup> The Resolution on the Interpretative and Protective Mandates seeks to clarify, primarily to state parties, the nature and scope of the ACHPR's mandate areas. The ACHPR adopted

<sup>88</sup> See for example Resolution 407 on the Drafting of a General Comment on Article 12(1) of the African Charter on Human and Peoples' Rights, ACHPR/RES.407(LXIII) 2018.

<sup>89</sup> See for example 'Call for public consultations on the Draft Revised Rules of Procedure of the African Commission on Human and Peoples' Rights', available at <https://www.achpr.org/announcement/detail?id=73> (accessed 10 October 2019).

<sup>90</sup> Final Communiqué of the 26<sup>th</sup> Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, the Gambia, 16-30 July 2019, para. 14.

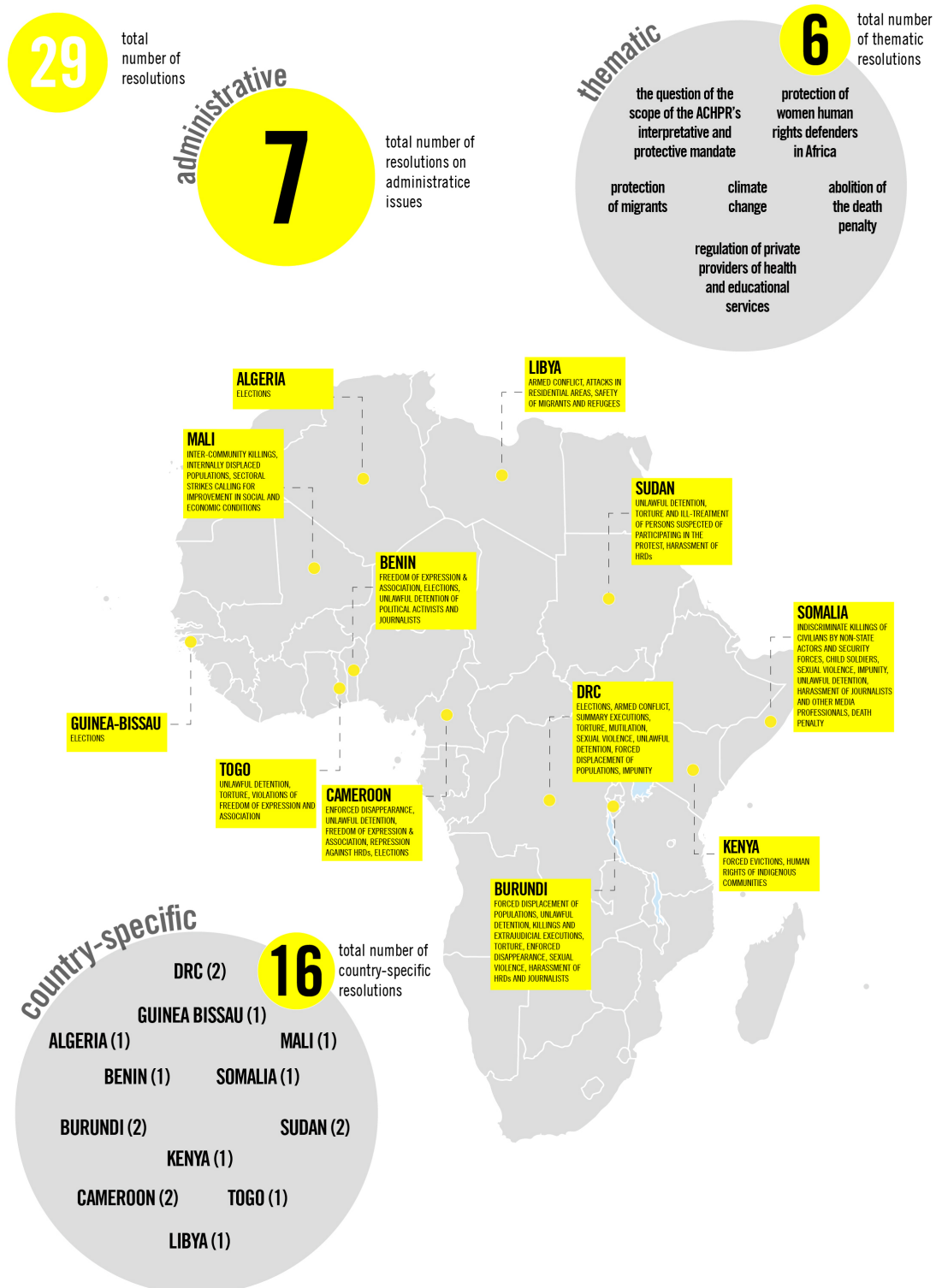
<sup>91</sup> Final Communiqué of the 62<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Nouakchott, Islamic Republic of Mauritania, 25 April to 9 May 2018, para. 35.

<sup>92</sup> Final Communiqué of the 26<sup>th</sup> Extra-Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, the Gambia, 16-30 July 2019, para. 6.

<sup>93</sup> For the texts of the resolutions See <https://www.achpr.org/sessions> (accessed 10 October 2019).

this resolution in response to the AU Executive Council's political backlash against it and after it was heavily criticised for bowing under pressure, leading to its decision to withdraw the observer status of the Coalition of African Lesbians (CAL).<sup>94</sup> The Resolution on the Human Rights Impacts of Extreme Weather in Eastern and Southern Africa adds to the growing calls on states to urgently address climate change. It calls on the AU to declare 2021 “the African Union Year on Climate Change”.

## RESOLUTIONS ADOPTED IN THE REPORTING PERIOD



<sup>94</sup> See the discussion below under the sub-title “Political pressure and backlash” in the next chapter.

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## URGENT APPEALS AND PROVISIONAL MEASURES

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The three regional mechanisms have established procedures for intervening in urgent matters or situations presenting an imminent danger of irreparable harm to the individuals concerned. The ACHPR and ACERWC issue what are termed as Urgent Appeals in matters brought to their attention outside the framework of their respective communications procedures. Similar appeals issued within the context of the communications procedures are referred to as Provisional Measures, a term that also applies to orders of a similar effect issued by the ACtHPR. In contrast to the ACHPR and ACERWC, the ACtHPR can only issue a Provisional Measure upon the application of a party before it; being a court, it cannot act on its own volition.

The ACHPR issued a total of 83 Urgent Appeals and five Provisional Measures during the reporting period. These Urgent Appeals concerned the situation in 28 different countries.<sup>95</sup> Fifty-nine of these appeals, representing 71% of the total appeals, concerned the plight of Human Rights Defenders (HRDs), pointing to the prevalence of attacks, harassment, and unlawful arrest and detention of HRDs in the continent,<sup>96</sup> and to the importance of the ACHPR Special Rapporteur on HRDs and Focal Point on Reprisals. The highest number of Urgent Appeals were sent to the DRC (11) and Egypt (10). Other countries with relatively high number of Urgent Appeals are: Burundi (7), Cameroon (6), Algeria (6), Uganda (5), and Sudan (5).

The ACERWC issued three Urgent Appeals during the reporting period. These were to Cameroon, South Sudan and Tanzania. The Urgent Appeal to South Sudan concerned the use of the death penalty against persons who were children at the time they committed the crime(s) for which they were convicted in South Sudan.<sup>97</sup>

The ACtHPR issued two orders for Provisional Measures during the reporting period. The first order was issued on 7 December 2018 and it directed Benin to stay the execution of an imprisonment sentence pending the determination of the case lodged before it.<sup>98</sup> The second order, issued on 19 February 2019, directed Tanzania to stay the execution of a death penalty sentence.<sup>99</sup>

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<sup>95</sup> These are: Algeria, Angola, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Congo, Democratic Republic of Congo (DRC), Egypt, Eritrea, Eswatini, Equatorial Guinea, Ethiopia, Ghana, Kenya, Liberia, Mauritania, Mozambique, Niger, Nigeria, South Africa, South Sudan, Sudan, Uganda, Tanzania, Togo and Zimbabwe.

<sup>96</sup> See for example Frontline Defenders, *Frontline Defenders Global Analysis 2018* (2019) 13-15.

<sup>97</sup> See ACERWC 'Appeal to the President of South Sudan to end death penalty against children' available at <https://www.acerwc.africa/%20News/appeal-to-the-president-of-south-sudan-to-end-death-penalty-against-children/> (accessed 28 September 2019). See also Amnesty International, *"I told the judge I was 15": The use of the death penalty in South Sudan*, Index: AFR 65/9496/2018, 7 December 2018.

<sup>98</sup> *Sebastien Germain Ajavon v. Benin*, ACtHPR App. No. 013/2017, Order for Provisional Measures, 7 December 2018.

<sup>99</sup> *Tembo Hussein v. Tanzania*, ACtHPR App. No. 001/2018, Order for Provisional Measures, 11 February 2019.

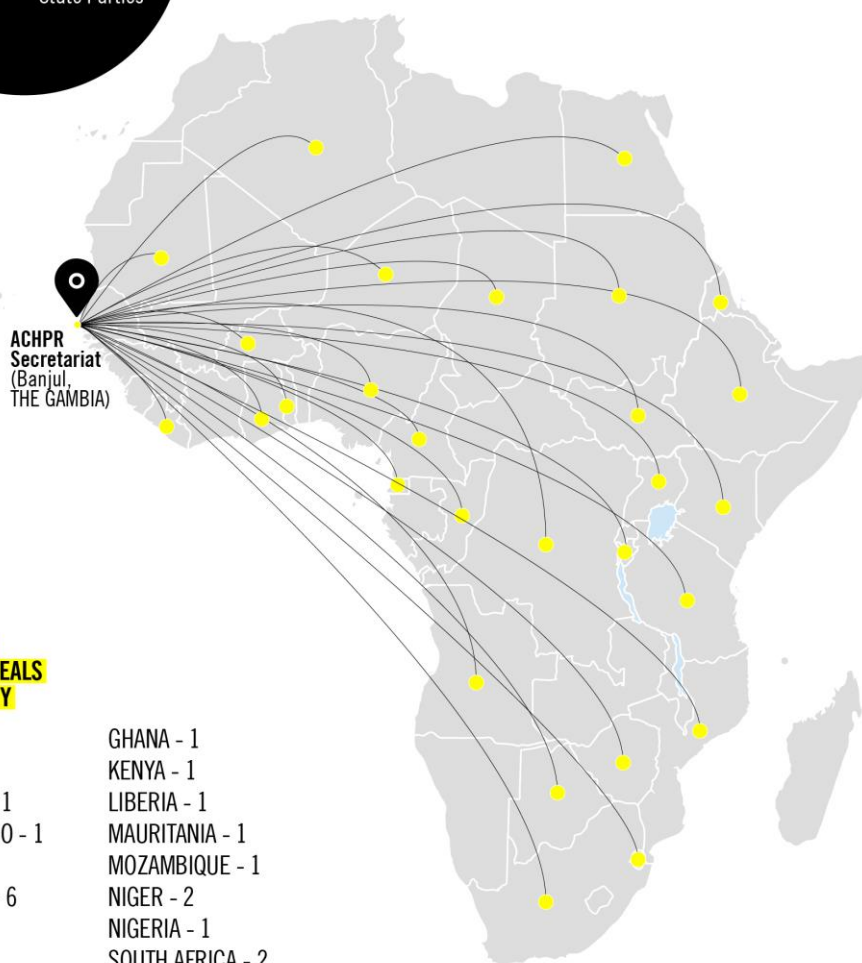
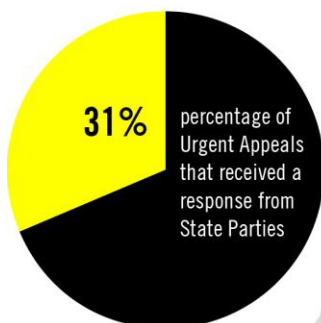
**83** 

Urgent Appeals were sent to State Parties by the ACHPR from November 2017 until November 2018

**26** 

responses to the Urgent Appeals were received by the ACHPR

#### BREAKDOWN OF URGENT APPEALS BY THEME



#### NUMBER OF URGENT APPEALS PER COUNTRY

ALGERIA - 6	GHANA - 1
ANGOLA - 1	KENYA - 1
BOTSWANA - 1	LIBERIA - 1
BURKINA FASO - 1	MAURITANIA - 1
BURUNDI - 7	MOZAMBIQUE - 1
CAMEROON - 6	NIGER - 2
CHAD - 1	NIGERIA - 1
CONGO - 2	SOUTH AFRICA - 2
DRC - 11	SOUTH SUDAN - 1
EGYPT - 10	SUDAN - 5
EQUATORIAL GUINEA - 2	TANZANIA - 3
ERITREA - 2	TOGO - 2
ESWATINI - 2	UGANDA - 5
ETHIOPIA - 1	ZIMBABWE - 4



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# RELATIONSHIP AND ENGAGEMENT WITH KEY STAKEHOLDERS

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**“... the promotion and protection of human rights should be based on the principle of cooperation and genuine dialogue aimed at strengthening the capacity of Member States to comply with their human rights obligations.”**

Operative paragraph 6, Declaration of the AU Assembly on the 2016 Theme of the Year

The African regional mechanisms operate in an environment involving multiple actors, including victims of human rights violations and abuses, state parties, AU policy organs and institutions, National Human Rights Institutions (NHRIs), NGOs, and academic institutions. How the regional mechanisms interact and engage with these players is an important determinant of their functioning and impact. This section of the report reviews the relationship and engagement of the regional mechanisms with the system's key players during the reporting period.

A major finding in this section is that contrary to their colourful pronouncements in AU declarations, state parties accorded little cooperation to the regional bodies during the reporting period. This lack of cooperation is evident in all the major functions of the regional mechanisms, including examination of state reports, adjudication of communications or cases, intervening in urgent situations, and undertaking country visits.

A handful of states submitted their state party reports during the reporting period but did so after many years of delay. Most of the states that received requests to respond to urgent appeals and provisional measures from the regional mechanisms failed to respond even though these requests concerned cases presenting a danger of irreparable harm. States' compliance with decisions of the regional bodies has been historically low, a trend that did not change during the reporting period. A limited number of states accepted requests from regional mechanisms for country visits but they had not facilitated the actual undertaking of the visit as at the end of the reporting period. Indeed, not a single country issued a standing invitation to the ACHPR or the ACERWC during the reporting period.

The lack of cooperation during the reporting period was accompanied by cynical and deliberate efforts by states to undermine the independence and autonomy of the regional human rights bodies. The AU Executive Council specifically undermined the autonomy and independence of the ACHPR by directing it to withdraw the observer status of the Coalition of African Lesbians (CAL).



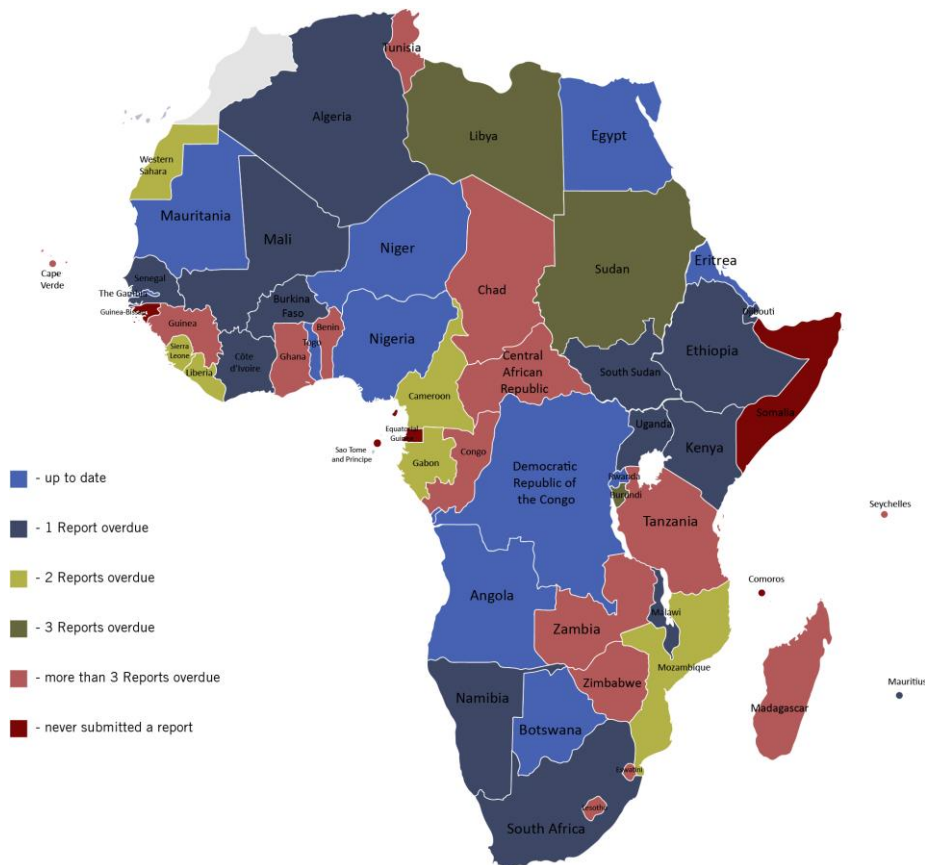
## SUBMISSION OF STATE PARTY REPORTS

Many states are not diligent in submitting their periodic reports to the ACHPR and the ACERWC. They either submit the reports long after they are due or not at all. States are also generally unresponsive to the Urgent Appeals and Provisional Measures of the regional mechanisms.

The latest Activity Report of the ACHPR reveals that the review of eight state party reports during the reporting period slightly increased the number of state parties that are up to date with their reporting obligation.<sup>100</sup> As such, 78% of the state parties to the African Charter were in arrears in submitting their report. Of these, five states have never submitted a report. These are: Comoros, Equatorial Guinea, Guinea Bissau, Sao Tome and Principe and Somalia. A total of 15 state parties have more than three reports overdue while the other 24 state parties have three or less overdue reports.

Under the Maputo Protocol, only 13 state parties are current with the reporting obligation.<sup>101</sup> The rest, constituting 78% of the state parties, are yet to submit their initial report to the ACHPR. Of the 27 state parties to the Kampala Convention, no state has ever filed a report with the ACHPR as required under Article 14(4) of the Convention.<sup>102</sup>

Amnesty International acknowledges that preparation of state party reports could be resource intensive and the multiplicity of reporting obligations to regional and global human rights treaty bodies potentially pose challenges to governments to meet reporting deadlines. As discussed above, Amnesty International also appreciates the possible impact that the multiplicity of ACHPR reporting guidelines could have on the pace of preparing state party reports. However, the failure of African states to honour their obligation under the African Charter and the Maputo Protocol appears to be related more to the lack of political will rather than the shortage of capacity to prepare the reports. In this regard, it is quite telling that all African states submitted without fail their reports under the first cycle of the UN Human Rights Council's Universal Periodic Review (UPR).<sup>103</sup>



<sup>100</sup> 46<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para 21.

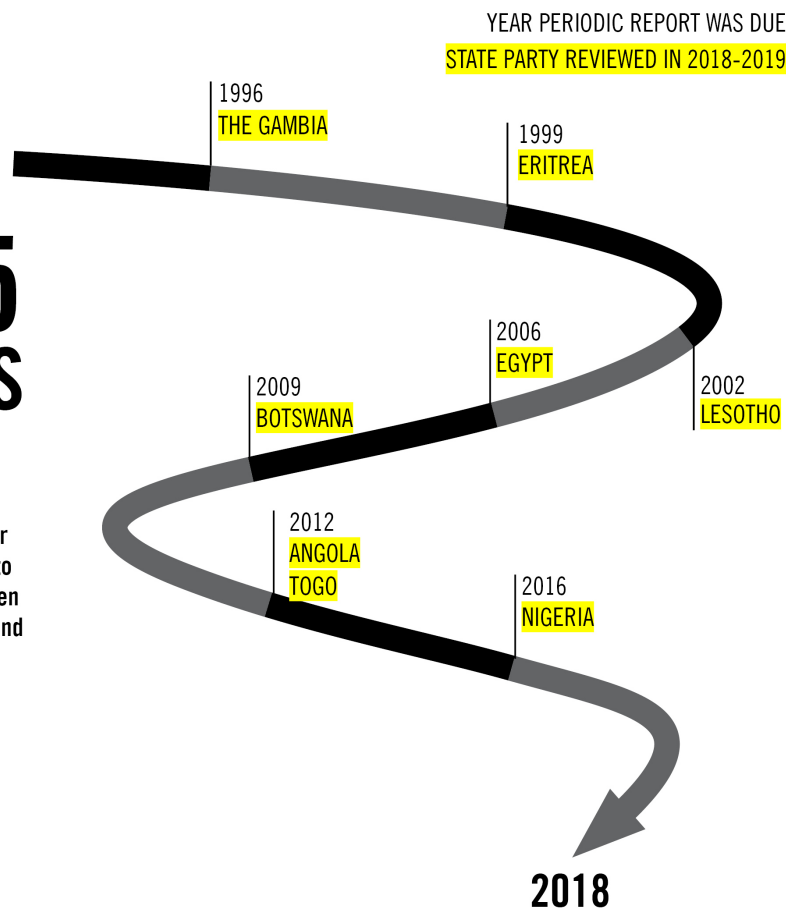
<sup>101</sup> 46<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para 23.

<sup>102</sup> 46<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para 24.

<sup>103</sup> Amnesty International, From rhetoric to action: Seven recommendations to the 27th Summit of the African Union (10-18 July 2016), Index: AFR 01/4407/2016.

# 11.5 YEARS

average number  
of years the state  
parties were late  
in submitting their  
periodic reports to  
the ACHPR between  
December 2018 and  
June 2019



State parties have performed comparatively better in respect of their reporting obligation under the African Children's Charter. As at the close of the reporting period, 39 or 81% of the 48 state parties to the African Charter had submitted their initial reports while eight of them had moved on to submit their periodic reports.<sup>104</sup> This is a relatively good record considering that the African Children's Charter came into force in 1999 and the ACERWC was inaugurated in 2002. State parties may have found reporting under the African Children's Charter to be less rigorous because the state reporting guidelines allow them to use elements of their previous reports to the UN Committee on the Rights of the Child, if any, in drafting of their reports to the ACERWC.<sup>105</sup>

Predictability is a crucial component of any state reporting procedure. It cuts across all aspects of the process, including the cycle of reporting, the structure of state reports, and the structure of the oral presentation and review. The ACHPR has established a practice of publishing a list in its activity reports as well as on its website indicating which countries are in arrears in the submission of their reports, a practice it maintained in the reporting period. However, the ACHPR does not have a publicly available calendar on when the initial or periodic report of each state party is due. The lack of such a calendar has made it difficult for relevant stakeholders to know which state party reports to expect during a specific year.

Engaging with the state reporting procedure has also been complicated by the fact that nearly all the state parties submit their reports many years after they are due, hence distorting the cycle of reporting envisaged in regional human rights treaties, especially under the African Charter and the Maputo Protocol. Furthermore, as witnessed during the reporting period, state parties often submit their periodic reports just a few weeks before the ordinary session in which they will be reviewed. Scheduled reviews are also sometimes cancelled or postponed at short notice.

<sup>104</sup> Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), EX.CL/1091 (XXXIII), June 2018, para 32.

<sup>105</sup> ACERWC Guidelines for Initial Reports of States Parties under the African Charter on the Rights and Welfare of the Child, para. 24.

During the reporting period, three scheduled reviews were abruptly postponed. Togo's combined 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> periodic report under the African Charter was initially listed to be reviewed at the ACHPR's 62<sup>nd</sup> ordinary session held in April/May 2018 in Nouakchott, Mauritania. Several Togolese and other NGOs travelled to Nouakchott to observe the review, only for the ACHPR to postpone it, without notice, at the last minute. The review eventually took place at the 63<sup>rd</sup> session held in Banjul. Under the African Children's Charter, the initial report of Benin and the first periodic report of Nigeria were initially scheduled to be reviewed during the 32<sup>nd</sup> ordinary session of the ACERWC held in November 2018 in Addis Ababa. The two countries did not turn up for the review, compelling the ACERWC to postpone the exercise to its 33<sup>rd</sup> session held in 2019.

It follows that predictability of the review cycle is no longer an element of the reporting procedure. This makes planning and engagement with the procedure cumbersome, especially for civil society.

Amnesty International urges the ACHPR to develop a publicly available calendar indicating when each state party report is due. If it has such a calendar already, it should make it public by posting it on the website. It should then actively call upon state parties to submit their periodic reports in accordance with that calendar.

## RESPONDING TO URGENT APPEALS AND PROVISIONAL MEASURES

Of the 83 Urgent Appeals that the ACHPR sent to state parties during the reporting period, only 26 received a written state reply. This represented a mere 31% of the total Urgent Appeals. In two separate instances concerning Botswana and Uganda, the state replies were signed by the respective heads of state, an indication that the Urgent Appeals were considered at the highest political office in the two countries.

The ACHPR 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.<sup>106</sup> 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. Still, it is noteworthy that in Botswana's reply, the President reiterated the country's long-standing position that it does not intend to abolish the death penalty or observe a moratorium as recommended by the ACHPR.<sup>107</sup>

Amnesty International confirmed that, as at the time of writing, the ACERWC had not received a reply from South Sudan on the Urgent Appeal it had sent to the state.

In respect of the two provisional orders issued by the ACtHPR during the reporting period, the concerned countries – Benin and Tanzania – had not sent a reply to the Court as at the close of the reporting period. The utter silence of the two countries had thus lasted for more than six months as at the close of the reporting period.

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<sup>106</sup> See for example 45<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, pp. 13-17.

<sup>107</sup> 45<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, pp. 15-16.

## COMPLIANCE WITH RECOMMENDATIONS AND JUDGMENTS

**“The ACHPR’s impact as an effective human rights organ of the African Union depends primarily on the support and cooperation it receives from Member States. This includes authorization for its missions and concrete steps by Member States to implement ACHPR decisions and recommendations.”**

Annual Report on the Activities of the African Union and its Organs 2017, Para 75

Despite their repeated promises, states’ compliance with the final decisions of the regional mechanisms, be they the judgments of the ACtHPR or the recommendations of the ACHPR and ACERWC, is equally low. From its inception to 30<sup>th</sup> June 2018, the ACtHPR had issued a total of 28 judgments on merits in which it found the state parties concerned at fault and thus proceeded to issue remedial orders.<sup>108</sup> Yet, only one country (Burkina Faso) had fully complied with the ACtHPR’s judgment as at the close of the reporting period.<sup>109</sup> The other five concerned countries had either partially complied (Tanzania) or not complied at all (Cote d’Ivoire, Kenya, Libya and Rwanda).<sup>110</sup>

### ACTIVATING RULE 112: MONITORING STATE COMPLIANCE WITH ACHPR DECISIONS ON COMMUNICATIONS

The ACHPR did not receive any information, throughout the reporting period, relating to the level of state compliance with recommendations emanating from its communications procedure. The ACHPR expects the concerned states to submit this information to it pursuant to Rule 112 of its Rules of Procedure. Rule 112(2)-(4) provides for specific timelines for submission of the relevant information, but the timelines are generally ignored by states, which are perhaps emboldened by the failure of the ACHPR to scrupulously enforce the timelines.

Only occasionally has the ACHPR reported a country to the relevant AU policy organs for non-compliance as Rule 112(8) envisages.<sup>111</sup> Rule 112(5) and (7) further provides that the ACHPR designated Rapporteur for a specific communication “shall monitor the measures taken by the State Party to give effect to the Commission’s recommendations” and that such a Rapporteur shall present a report of his/her findings during the public phase of each ordinary session. Since the adoption of the Rules of Procedure in 2010, no member of the ACHPR has submitted his/her report on the extent of a state party’s compliance with a decision on communication.

Amnesty International believes that the ACHPR can and should be more assiduous in following up and monitoring the implementation of its decisions. In 2017 and 2018, the ACHPR organized two regional seminars on the implementation of its decisions.<sup>112</sup> These seminars may have been vital in highlighting the importance of implementation. They should now be followed by activating Rule 112 in full. It should by its very actions demonstrate that the timelines provided for in Rule 112 impose procedural obligations and should be taken seriously. It should allocate time during ordinary sessions for members of the ACHPR to publicly present

<sup>108</sup> Mid-Term Activity Report of the African Court on Human and Peoples’ Rights, 1 January – 30 June 2019, para. 23.

<sup>109</sup> Mid-Term Activity Report of the African Court on Human and Peoples’ Rights, 1 January – 30 June 2019, para. 23.

<sup>110</sup> Mid-Term Activity Report of the African Court on Human and Peoples’ Rights, 1 January – 30 June 2019, para. 23.

<sup>111</sup> Combined 32<sup>nd</sup> and 33<sup>rd</sup> Activity Report of the African Commission on Human and Peoples’ Rights, para. 24.

<sup>112</sup> See Report of the Second Regional Seminar on the Implementation of Decisions of the African Commission on Human and Peoples’ Rights, 4-6 September 2018, Zanzibar, Tanzania; Report of the Regional Seminar on the Implementation of Decisions of the African Commission on Human and Peoples’ Rights, 12-15 August 2017, Dakar, Senegal.

their monitoring reports of the extent to which state parties have complied with ACHPR decisions on communications.

Ahead of the 27<sup>th</sup> Summit of the AU Assembly held in July 2016, Amnesty International called upon AU member states to “rededicate themselves to complying with the obligations enshrined in the regional human rights treaties”.<sup>113</sup> The AU members in their Declaration on the Theme of the Year 2016 reiterated their “unflinching determination” to ensure “the full implementation of human and peoples’ rights instruments and relevant national laws and policies as well as *decisions and recommendations made by the AU Organs with a human rights mandate*”.<sup>114</sup> Yet, as the above record of states’ cooperation with the regional mechanisms shows, this determination has not necessarily translated into tangible actions. Amnesty International reiterates its 2016 call to AU members.

## ABDICATING DUTY: EXECUTIVE COUNCIL’S FAILURE TO MONITOR AND ENFORCE COMPLIANCE

Within the AU institutional ecosystem, the Executive Council is responsible for monitoring and enforcing states’ compliance with the decisions of the regional human rights mechanisms. This is a role that the Executive Council has unfortunately abdicated. It has always done nothing beyond the rhetoric of regularly encouraging or urging states to comply with the decisions of the regional human rights mechanisms. More worryingly, the Executive Council has recently taken a number of decisions that undermine the prospects of states complying with the decisions of the regional mechanisms.

In January 2018, the Executive Council, on the recommendation of the Permanent Representatives Committee (PRC), resolved that it would no longer include names of countries that have not complied with the judgments of the ACtHPR in its decisions relating to the Court.<sup>115</sup> It did this despite receiving a clear explanation from the President of the Court that such a practice would not be in keeping with the spirit and letter of Articles 29 and 31 of the African Court Protocol. Article 29 provides that the Executive Council shall monitor the execution of the Court’s judgments while Article 31 provides that the ACtHPR shall submit to each regular session of the AU Assembly a report of its activities, which must “specify, in particular, the cases in which a State has not complied with the Court’s judgment”.

During the reporting period, the ACtHPR finalised a study on a proposed framework for the implementation of its judgments.<sup>116</sup> It prepared this framework at the request of the Executive Council.<sup>117</sup> In February 2019, when the draft framework was submitted to it for consideration and adoption, the Executive Council directed that it be forwarded for review to the AU Specialised Technical Committee (STC) on Justice and Legal Affairs. As at the end of the reporting period, the STC had yet to meet to consider this Framework.

## ACCEPTANCE AND FACILITATION OF COUNTRY VISITS

During the reporting period, the ACHPR requested a total of 27 country visits. These comprised 26 requests for promotional missions and one for a fact-finding mission. About half of the countries (13) responded to the requests, mostly authorizing the visit in principle. In most cases, however, the authorization was not promptly followed with the actual mission. Instead, a lengthy communication process between the ACHPR and the state concerned ensued, the bone of contention being the dates and logistical aspects of the

<sup>113</sup> Amnesty International, *From rhetoric to action: Seven recommendations to the 27<sup>th</sup> Summit of the African Union (10-18 July 2016)*, Index: AFR 01/4407/2016, July 2016.

<sup>114</sup> Declaration by the Assembly on the Theme of the Year 2016, Assembly/AU/Decl.1(XXVII)Rev.1, operative para. 4.

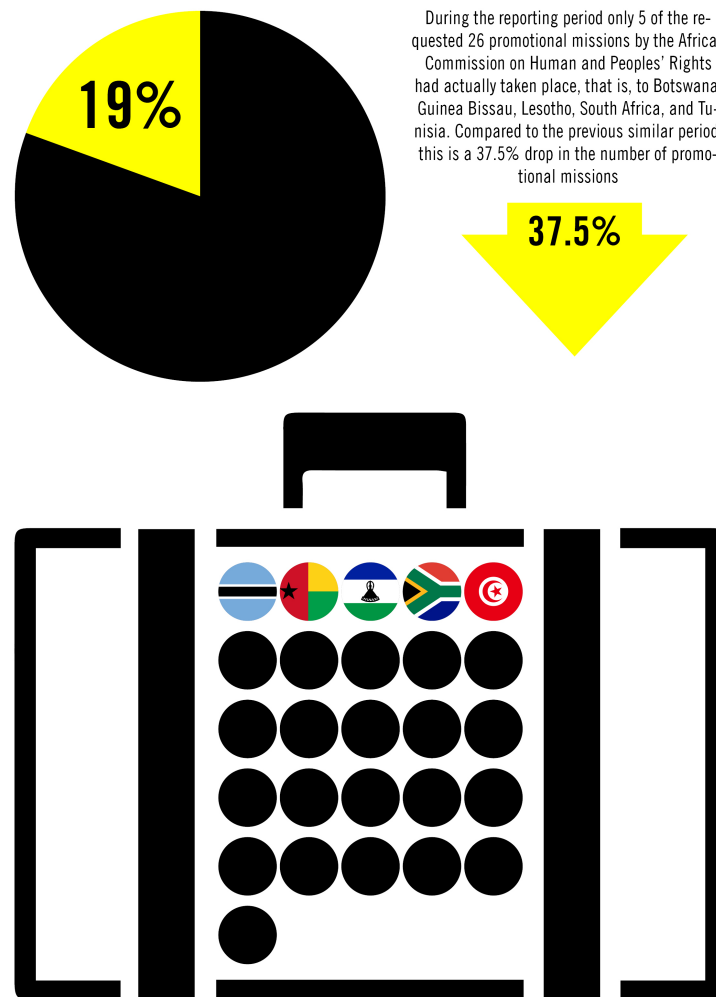
<sup>115</sup> Activity Report of the African Court on Human and Peoples’ Rights, 1 January – 31 December 2018, EX.CL/1126(XXXIV) para. 51.

<sup>116</sup> The Draft Framework for Reporting and Monitoring Execution of the Judgments and Other Decisions of the African Court on Human and Peoples’ Rights is annexed to the Activity Report of the African Court on Human and Peoples’ Rights, 1 January – 31 December 2018, EX.CL/1126(XXIV).

<sup>117</sup> Decision EX.CL/Dec.806(XXIV) of January 2016. See also EX.CL/1012(XXXIII) of June 2018.

mission. In the history of the ACHPR, it is not uncommon for formally authorised missions to be stuck at this stage for months, even years.

At the close of the reporting period, therefore, only five (19%) of the requested 26 promotional missions had actually taken place: to Botswana, Guinea Bissau, Lesotho, South Africa, and Tunisia.<sup>118</sup> Compared to the period between January 2016 and June 2017, this is a 37.5% drop in the number of promotional missions. During the latter period, the ACHPR undertook eight promotional missions.<sup>119</sup> However, the percentage of missions conducted as a proportion of ACHPR requests during that period could not be established for lack of sufficient data. A scheduled mission to Algeria, for which authorization had been granted in 2017, had yet to take place as at the close of the reporting period following a request by the state for the mission to be postponed.



The ACERWC, on the other hand, conducted five country visits during the reporting period. The first of these was an advocacy visit to Somalia,<sup>120</sup> one of the six AU member states that have not ratified or acceded to the African Children's Charter.<sup>121</sup> The visit aimed to encourage Somalia to ratify the treaty. The other three

<sup>118</sup> During the reporting period, the ACHPR also conducted a visit to Nigeria but this was not categorized as a "promotional mission" but as an "advocacy visit".

<sup>119</sup> During this period, the ACHPR conducted promotional missions to Angola, Cote d'Ivoire, DRC, the Gambia, Mauritania, Namibia, Nigeria and Swaziland. The ACHPR also conducted an advocacy visit to Cote d'Ivoire. This data was sourced from the 40<sup>th</sup>, 41<sup>st</sup> and 42<sup>nd</sup> Activity Reports of the ACHPR.

<sup>120</sup> Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), January 2019, paras 14-18.

<sup>121</sup> The other five countries that have not ratified the African Children's Charter are DRC, Morocco, Sahrawi Arab Democratic Republic, South Sudan and Tunisia.

country visits were follow-up missions to Ethiopia, Madagascar and Mozambique to assess the extent to which these countries have implemented the concluding observations and recommendations of the ACERWC following the reviews of their respective state party reports.<sup>122</sup>

As a judicial body, the ACTHPR does not conduct country visits of the nature of ACHPR or ACERWC promotional or fact-finding missions. Instead, it has developed a practice of undertaking sensitization visits to raise awareness about its mandate and work and to encourage state parties that are yet to make the declaration allowing individuals and NGOs to directly access the Court to do so. It continued with this practice into the reporting period during which it undertook three sensitization visits to Sahrawi Arab Democratic Republic, Sierra Leone and Liberia.<sup>123</sup>

## HOSTING SESSIONS OF REGIONAL BODIES

Apart from their permanent seats, the African regional human rights bodies may hold their sessions around the continent. The regional bodies, especially the ACHPR, often encourage member states to offer to host their sessions as this gives them relatively good opportunities to raise awareness about their work and engage with the host state authorities as well as local human rights actors. About half of all the countries in the continent have hosted at least a single session of the ACHPR.<sup>124</sup> The ACERWC has also held its sessions in multiple African cities beside at its current seat in Addis Ababa. These include in Algiers, Bamako, Cairo, and Maseru. Outside of Arusha, the sessions of the ACTHPR have been recently held in Addis Ababa (2017) and Tunis (2018).

The sessions of the regional bodies that have been held outside of their seats have mostly served their intended purpose of awareness-raising and constructive engagement with host countries. However, some countries have used the opportunity to host such sessions as part of their broader efforts to divert attention from their poor human rights record and create a false and misleading impression that they are genuinely and fully cooperating with international human rights bodies. The conduct of two host countries, Egypt and Mauritania, during the reporting period was particularly consistent with an intention to use the sessions of the ACHPR to cover for their poor human rights record.

### ULTERIOR MOTIVE: EGYPT AND MAURITANIA'S OBSTRUCTION OF NGOs' EFFECTIVE PARTICIPATION IN ACHPR SESSIONS

When it hosted the 62<sup>nd</sup> ordinary session of the ACHPR in April/May 2018, Mauritania actively obstructed the participation of specific local HRDs and NGOs. Human rights activists working on the issue of slavery, a practice that Mauritanian authorities insist does not exist,<sup>125</sup> were particularly targeted. Amnesty International confirmed that at least four officials of the Association Mauritanienne des Droits de l'Homme (AMDH), a Nouakchott-based human rights NGO, were denied entry into the session even though they were duly registered as participants.

In respect of the 64<sup>th</sup> ordinary session of the ACHPR that took place in Sharm el Sheikh, Egypt, local independent NGOs chose not to attend for fear of reprisal or retaliation from Egyptian authorities.<sup>126</sup> Many human rights groups from across the continent boycotted the session to protest Egypt's systematic crackdown on local HRDs and after their plea to the ACHPR not to accept Egypt's offer went unheeded.<sup>127</sup> Reports indicate that free and effective participation of those that attended the session was hindered by intimidation, surveillance and restrictions from Egyptian authorities.<sup>128</sup>

<sup>122</sup> Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), January 2019, paras 19-31.

<sup>123</sup> Activity Report of the African Court on Human and Peoples' Rights, 1 January – 31 December 2018, EX.CL/1126(XXXIV), paras 30-37.

<sup>124</sup> The list of host countries is available here <https://www.achpr.org/sessions> (accessed 5 October 2019).

<sup>125</sup> See Amnesty International, "A sword hanging over our heads": The repression of activists speaking out against discrimination and slavery in Mauritania, Index: AFR 38/7812/2018, 22 March 2018.

<sup>126</sup> Human Rights Watch, 'Egypt: African rights session amid dire abuses' available at <https://www.hrw.org/news/2019/04/24/egypt-african-rights-session-amid-dire-abuses> (accessed 9 October 2019).

<sup>127</sup> 'Dear African Commission on Human Rights: Don't provide cover for repressive Egyptian government', available at <https://www.civicus.org/index.php/media-resources/news/3612-dear-african-commission-on-human-rights-don-t-provide-cover-for-repressive-egyptian-government> (accessed 9 October 2019).

<sup>128</sup> 'Intimidation, surveillance, restrictions: African human rights officials describe mistreatment by Egyptian security in Sharm el-Sheikh' available at <https://madamasr.com/en/2019/06/04/feature/politics/intimidation-surveillance-restrictions-african-human-rights-officials-describe-mistreatment-by-egyptian-security-in-sharm-el-sheikh/> (accessed 9 October 2019).



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## POLITICAL PRESSURE AND BACKLASH

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**“The commemoration of the centenary of Nelson Mandela ... affords us the opportunity to renew our commitment to endeavour for the scrupulous respects of [the human rights] texts we have freely adopted. With this conviction, *I reiterate my full support for all Pan-African institutions in charge of human rights issues and encourage them to persevere in their action. Their effectiveness and independence are the surest guarantee of the fulfilment of our human rights aspirations.*”**

Address by H.E. Moussa Faki Mahamat, Chairperson of the Commission of the African Union, during the opening ceremony of the 28 January 2018, p. 15

The independence and autonomy of the regional bodies, especially the ACHPR, came under serious threat during the reporting period, particularly in 2018. The root of the threat is a 2015 AU Executive Council decision directing the ACHPR to withdraw observer status granted to the Coalition of African Lesbians (CAL), a South African-based NGO.<sup>129</sup> Confronted by the real possibility of losing its observer status, CAL and the Centre for Human Rights of the University of Pretoria filed a joint request for an advisory opinion before the ACtHPR in November 2015. The request sought an interpretation of the scope of the supervisory powers of the political organs of the AU vis-à-vis the ACHPR.

With the request pending before the ACtHPR, the ACHPR postponed taking any action on CAL's observer status until the opinion was rendered. In September 2017, however, the ACtHPR ruled that it could not render an opinion on the matter because CAL and the Centre for Human Rights did not have the legal status to file requests for advisory opinions before the Court.<sup>130</sup>

In its 43<sup>rd</sup> Activity Report submitted to the Executive Council in January 2018, the ACHPR explained that it could not withdraw CAL's observer status as it was properly granted and that it is duly mandated under the African Charter to promote and protect the rights of everyone without any form of distinction.<sup>131</sup> This insistence led to a deterioration of the relationship between the ACHPR and the Executive Council which also asserted that CAL's observer status must be withdrawn.<sup>132</sup> A retreat to resolve the stalemate was convened in June 2018 between the ACHPR and the AU Permanent Representatives' Committee (PRC).

The primary outcome of the retreat was, instead, an ultimatum to the ACHPR to withdraw CAL's observer status before 31 December 2018.<sup>133</sup> A number of other decisions taken at the retreat, and later endorsed by the Executive Council, had a similar effect of signalling the erosion of the independence and autonomy of the ACHPR. Three of these were particularly regressive: the decision to review the interpretative and protective mandate of the ACHPR; the directive for the ACHPR to review its guidelines for granting observer status to

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<sup>129</sup> Decision on the 38<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, EX.CL/Dec.887(XXVII), adopted during the 27<sup>th</sup> Ordinary Session of the AU Executive Council, 7-12 June 2015, Johannesburg, South Africa.

<sup>130</sup> Request for Advisory Opinion by the Centre for Human Rights of the University of Pretoria and the Coalition of African Lesbians, ACtHPR No. 002/015, Advisory Opinion, 28 September 2017.

<sup>131</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 51.

<sup>132</sup> Decision on the African Commission on Human and Peoples' Rights, EX.CL/Dec.995(XXII), adopted during the 32<sup>nd</sup> Ordinary Session of the AU Executive Council, 25-26 January 2018, Addis Ababa, Ethiopia.

<sup>133</sup> Decision on the Report of the Joint Retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights, EX.CL/Dec.1015(XXXIII), adopted during the 33<sup>rd</sup> Ordinary Session of the AU Executive Council, Nouakchott, Mauritania.



NGOs; and the directive to the ACHPR to develop a code of conduct for its members, over and above its Rules of Procedure.<sup>134</sup>

## BUCKLING UNDER PRESSURE: ACHPR'S WITHDRAWAL OF CAL'S OBSERVER STATUS

During its 24<sup>th</sup> Extraordinary Session held in Banjul, The Gambia, from 30 July to 8 August, the ACHPR succumbed to political pressure and withdrew CAL's observer status, replacing its own expert decision with that of a political actor. In so doing, the ACHPR may have achieved a pragmatic objective: it averted a further stand-off with the AU Executive Council and diffused the three-year tension between the two institutions.

The decision, however, not only violates the spirit of the African Charter, which establishes the ACHPR as an independent body, and violates the rights of CAL and its members on discriminatory bases, it also sets a dangerous precedent. It has emboldened those AU member states and political actors that are intent on controlling how the ACHPR interprets the African Charter and carries out its substantive mandate. The decision has also left an indelible stain on the dynamic relationship that the ACHPR has fostered and enjoyed with NGOs in the more than 30 years of its operations.

Addressing the ACHPR during its 63<sup>rd</sup> Ordinary Session, Amnesty International expressed disappointment with the decision to withdraw CAL's observer status. The organization called on the ACHPR to "ensure that any future position it takes on its mandate and working methods is informed by a sound interpretation of international human rights law and [is] one that upholds its independence and autonomy".<sup>135</sup>

The ACTHPR also faced some political backlash during the reporting period. During the consideration of its Activity Report by the PRC in January 2018, Rwanda criticised the ACTHPR for continuing to hear cases against the country filed by people it ostensibly considers to be "genocidaires".<sup>136</sup> It is this very complaint that earlier led Rwanda to withdraw in February 2016 its declaration allowing individuals and NGOs direct access to the ACTHPR.<sup>137</sup> Rwanda also argued that the ACTHPR is not independent as it receives funding from foreign donors.<sup>138</sup> This complaint resulted in the Executive Council directing the ACTHPR to "develop a policy on dealing with partners in documented, transparent, accountable and verifiable ways that member states are confident do not interfere with the Court's independence and impartiality".<sup>139</sup>

Unlike the AU Executive Council and the PRC, the Chairperson of the AU Commission (AUC), Moussa Faki Mahamat, showed support for the regional mechanisms during the reporting period. Addressing heads of state and government during the January 2018 AU Summit, the Chairperson emphasised that "the effectiveness and independence of the regional mechanisms are the surest guarantee of the fulfilment of our human rights aspirations".<sup>140</sup> In October 2018, the Chairperson visited the premises of the ACHPR in Banjul, the Gambia. His discussion with the ACHPR Chairperson focused on, amongst other issues, "the administrative, financial and other challenges encountered by the ACHPR and how best to address them, to enable this organ to more effectively discharge its mandate".<sup>141</sup>

<sup>134</sup> See J Biegon 'The rise and rise of political backlash: African Union Executive Council's decision to review the mandate and working methods of the African Commission', available at <https://www.ejiltalk.org/the-rise-and-rise-of-political-backlash-african-union-executive-councils-decision-to-review-the-mandate-and-working-methods-of-the-african-commission/> (accessed 28 September 2019).

<sup>135</sup> Amnesty International, Oral Statement on the Human Rights Situation in Africa at the 63<sup>rd</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, 31 October 2018, Index: AFR 01/9305/2018.

<sup>136</sup> PRC Report, 35<sup>th</sup> Ordinary Session, 22-23 January 2018, Addis Ababa, Ethiopia, PRC/Rpt(XXXV), para. 110.

<sup>137</sup> See [http://www.minijust.gov.rw/fileadmin/Documents/Photo\\_News\\_2016/Clarification2.pdf](http://www.minijust.gov.rw/fileadmin/Documents/Photo_News_2016/Clarification2.pdf) (accessed 28 September 2019).

<sup>138</sup> PRC Report, 35<sup>th</sup> Ordinary Session, 22-23 January 2018, Addis Ababa, Ethiopia, PRC/Rpt(XXXV), para. 110.

<sup>139</sup> Decision on the 2017 Activity Report of the African Court on Human and Peoples' Rights, EX.CL/Dec.994(XXXII)Rev.1, adopted during the 32<sup>nd</sup> Ordinary Session of the AU Executive Council, 25-26 January 2018, Addis Ababa, Ethiopia.

<sup>140</sup> Speech of the Chairperson of the Commission of the African Union, H.E. Moussa Faki Mahamat, 30<sup>th</sup> Ordinary Session of the Assembly of the Union, 28 January 2019, Addis Ababa, Ethiopia, available at [https://au.int/sites/default/files/speeches/33715-sp-eng\\_speech\\_of\\_the\\_auc\\_chairperson\\_at\\_the\\_30\\_summit\\_28\\_01\\_rev\\_3.pdf](https://au.int/sites/default/files/speeches/33715-sp-eng_speech_of_the_auc_chairperson_at_the_30_summit_28_01_rev_3.pdf) (accessed 28 September 2019).

<sup>141</sup> 'Communiqué on the visit of the Chairperson of the Commission of the African Union to the Gambia' available at <https://au.int/en/pressreleases/20181005/communiqu%C3%A9-visite-chairperson-gambie> (accessed 28 September 2019).

# AFRICAN UNION INSTITUTIONAL REFORMS

**“As the African Union engages in institutional reforms, it is important to retain the vital role human rights play in the socio-economic and political development, as well as in regional integration, peace and security.”**

African Court, Mid-Term Activity Report (Jan-June 2019)

In January 2017, the AU embarked on a comprehensive programme of institutional reform when it adopted a set of reform proposals set out by President Paul Kagame of Rwanda.<sup>142</sup> The reforms have come to be popularly known as “Kagame Reforms”.<sup>143</sup> There are five focal areas and objectives of the programme: (a) streamlining of AU’s priorities; (b) institutional realignment, involving restructuring of AU organs and institutions; (c) improving AU’s connection with African citizenry; (d) strengthening AU’s operational effectiveness and efficiency; and (e) and implementing a sustainable financial model for the AU.<sup>144</sup> Two of these focus areas, institutional realignment and operational effectiveness and efficiency, have direct implications for the African regional human rights mechanisms.

At the beginning of the reporting period, there were valid concerns among the regional bodies and their stakeholders when a first draft of a study on AU policy and institutional coherence, prepared as part of the wider reform programme, proposed the merger of all the quasi-judicial bodies of the AU, including the ACHPR and the ACERWC, into a single body to be known as the “AU Institute” and with a much narrower mandate of conducting studies.<sup>145</sup> This proposal was later dropped in the second iteration of the study. Instead, the revised study recommended either that a joint secretariat for the quasi-judicial mechanisms be established or that the ACHPR be “re-organised” to provide secretariat support for all the quasi-judicial bodies.<sup>146</sup>

In the end, no specific reform decisions relating to the regional mechanisms were adopted or implemented during the reporting period. However, the regional mechanisms not only presented their written proposals during the course of 2018 to the AU Institutional Reforms Unit, which is coordinating the programme, but they also held consultation meetings with the Unit.<sup>147</sup>

A summary of the proposals of the ACtHPR are contained in a progress report submitted by the AUC chairperson to the AU Assembly in July 2018. The proposals of the ACHPR and ACERWC were publicly unavailable as at the time of writing. The ACtHPR on its part proposed three main changes.<sup>148</sup> First, the ACtHPR proposed that direct access to the Court for individual and NGOs should be automatic upon a country’s ratification or accession to the African Court Protocol. This access should not be contingent upon states making a separate declaration as envisaged currently under Article 34(6) of the African Court Protocol. Second, the ACtHPR proposed that its judges should work on a full-time basis. Only the President currently serves on such basis. Third, the ACtHPR proposed that a system of chambers should be introduced. The Court currently sits as a full bench in all matters before it, save that the quorum for proceedings to continue is seven judges.<sup>149</sup> Amnesty International fully supports all the proposals by the ACtHPR as these changes will ensure a more inclusive court and allow it to drastically reduce the time it takes for it to conclude cases.

<sup>142</sup> Decision on the Outcome of the Retreat of the Assembly of the African Union on the Institutional Reform of the African Union, Assembly/AU/Dec.635(XXVIII), adopted during the 28<sup>th</sup> Ordinary Session of the AU Assembly, 30-31 January 2017, Addis Ababa, Ethiopia.

<sup>143</sup> See for example “The Kagame Reforms of the AU: Will they Stick?”, available at <https://saiia.org.za/research/the-kagame-reforms-of-the-au-will-they-stick/> (accessed 28 September 2019).

<sup>144</sup> See <https://au.int/en/aureforms/overview> (accessed 28 September 2019).

<sup>145</sup> Policy Coherence between African Union Commission and AU organs: Issues and Options, Draft dated December 2017, p. 24-25.

<sup>146</sup> Policy Coherence between African Union Commission and AU Organs: Issues and Options, Revised Final Draft dated May 2018, p. 60.

<sup>147</sup> See Progress Report of the Chairperson of the Commission on the AU Institutional Reform Pursuant to Assembly Decision Assembly/Dec.635(XXVIII), p. 15. See also Final Communiqué of the 62<sup>nd</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights, para 37; Report of the 32<sup>nd</sup> Session of the African Committee of Experts on the Rights and Welfare of the Child, 12-20 November 2018, Addis Ababa, Ethiopia, para. 126.

<sup>148</sup> Progress Report of the Chairperson of the Commission on the AU Institutional Reform Pursuant to Assembly Decision Assembly/AU/Dec.635(XXVIII), paras. 37.

<sup>149</sup> African Court Protocol, Article 23.

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# CAPACITY TO DISCHARGE MANDATE

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The capacity of the African regional bodies and mechanisms to effectively execute their mandates, as with other regional and global mechanisms, is partially dependent on the levels of resources at their disposal. This section of the report shows that the African regional mechanisms face serious capacity challenges which undermine their ability to effectively discharge their respective mandates. Although the AU has over the years increased their budget allocations, the regional human rights bodies still operate on meagre financial resources, with limited number of staff members, and in premises that are inadequate and generally not fit for purpose.

The performance of the regional human rights mechanisms in the execution of their mandate during the reporting period must be seen in the light of these capacity constraints that they have perennially faced and continued to face during the reporting period. With these challenges, it also means that the regional mechanisms must devise working methods that ensure their productivity is optimal, their use of resources is prudent and cost-effective, and their time management is efficient.

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## FUNDING AND BUDGET

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The African regional human rights mechanisms have long lamented, validly so, about their poor state of funding. They have perennially operated on tight budget lines and accordingly depended on donors and development partners to fill gaps in their operational costs. The relevant AU policy organs often acknowledge the need for adequate funding for the regional mechanisms, if only to supposedly shield the mechanisms from perceived external interference on account of donor funding and support. Most recently in the *Declaration by the Assembly on the Theme of Year 2016*, the Assembly of Heads of State and Government directed the AU Commission to “ensure the independence and integrity of AU organs with human rights mandate by providing adequate financing and shielding them from undue external influence”.<sup>150</sup>

**“Commit ourselves to undertake the necessary measures to respect and guarantee the independence of the ACHPR, as well as to provide it with the necessary human and financial resources, in order to enable it effectively to discharge its functions.”**

Operative paragraph 3, Banjul Declaration on the 25th Anniversary of the African Charter

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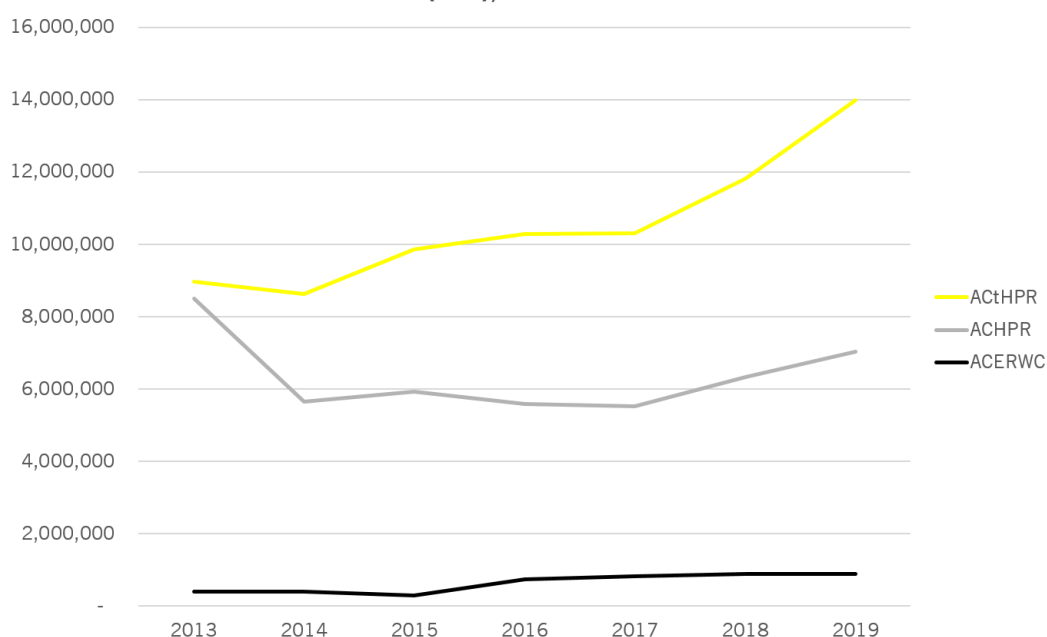
<sup>150</sup> Declaration by the Assembly on the Theme of Year 2016, Assembly/AU/Decl.1(XXVII), operative para 7, adopted during the 27<sup>th</sup> Ordinary Session of the AU Assembly, 17-18 July 2016.

The regional mechanisms have experienced a relatively constant increase in their assessed budget allocations by the AU since their respective establishments. In the last three years, the ACHPR's assessed budget allocation increased from \$5.5 million in 2017 to 7.0 in 2019.

The ACERWC's assessed budget allocation also increased, albeit marginally, from \$0.827 million in 2017 to 0.881 million in 2019. In February 2019, the AU Executive Council decided that the AU will cover 100% of the administrative and operational budget of the ACERWC from January 2020.<sup>151</sup>

The ACTHPR's budget allocation gradually grew from \$10.3 million in 2017 to \$13.9 million in 2019. In January 2018, the AU Executive Council resolved that the AU will cover 100% of the operational and administrative budget of the ACTHPR from January 2019.<sup>152</sup> However, this resolve has not been implemented in practice. The \$13.9 million assessed budget allocation for the ACTHPR in 2019 included some expected funding from development partners amounting to close to \$1 million.

### HISTORICAL FINANCIAL STATUS OF THE AFRICAN UNION TREATY BODIES (USD), 2013-2019



<sup>151</sup> Decision on the Activity Report of the African Committee of Experts on the Rights and Welfare of the Child, EX.CL/Dec.1043(XXXIV).

<sup>152</sup> Decision on the 2017 Activity Report of the African Court on Human and Peoples' Rights, EX.CL/Dec.994 (XXXII) para. 4.

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## HUMAN RESOURCES

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**“The referenced under-resourcing cuts across the whole secretariat.... Indeed, many units either do not have staff at all or are one-person Units ... These constraints mean that staff work at all sorts of odd hours, and that when one staff falls sick or goes on leave the absence is felt across the entire breadth of the operations of the Commission and its Secretariat. Staff are also thus obliged to continue working even when on leave.”**

43rd Activity Report of the ACHPR, paras 41 & 44

**“The ACERWC would like to draw the attention of the Executive Council to the challenges it is facing in undertaking its activities. For the Committee to effectively deliver on its mandate, it requires a strong, well-staffed and competent Secretariat. As the Committee has [sic] now receiving and considering more State Party reports and complaints on violations of children’s rights, the need for strengthening the Secretariat, in terms of human and material resources is very critical.”**

Activity Report of the ACERWC, June 2018, para 39

Another perennial problem that has faced the African regional mechanisms is the lack of adequate human resources. The current structure of the ACHPR secretariat was approved 11 years ago in 2008. According to this structure, the ACHPR is currently supposed to have a total of 46 staff members,<sup>153</sup> an impressive improvement from the staff complement of 13 under the previous approved structure of 2003.<sup>154</sup> The structure came with a recruitment plan that would have seen the ACHPR fill all the staff positions over a period of five years. But this recruitment plan has been frustrated at every turn by constant delays in the recruitment process. Out of the nine posts that were supposed to be recruited in 2010, only five were filled, and only in 2011 and 2012.<sup>155</sup> Another six posts were expected to be filled in 2011, but only one was filled

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<sup>153</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples’ Rights, Annex III(a), p. 1.

<sup>154</sup> Combined 32<sup>nd</sup> and 33<sup>rd</sup> Activity Report of the African Commission on Human and Peoples’ Rights, EX.CL/782(XXII) Rev. 2, Para. 57.

<sup>155</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples’ Rights, Annex III(a), p. 3.

during that year while three other posts were filled in 2012 and 2014.<sup>156</sup> Posts expected to be filled between 2012 and 2014 were either filled after a long delay or have since remained vacant.<sup>157</sup>

The delays in ACHPR's recruitment process is caused primarily by the fact the ACHPR is not in charge of the process. Instead, the AU Commission manages the recruitment process, with representation from the ACHPR. The ACHPR has thus repeatedly requested the AU Executive Council to grant it the autonomy to recruit its own staff.<sup>158</sup>

Due to delays in recruitment, the ACHPR had, as at the end of 2017, a staff deficit of 25 against an approved organizational structure of 46 staff members.<sup>159</sup> The ACHPR's legal unit, which is responsible for handling the substantive aspects of the ACHPR mandate, was particularly understaffed. It had only nine recruited legal officers out of the approved 14 for the unit.<sup>160</sup> The ACHPR particularly lacked legal officers with capacity to work in Arabic and Portuguese.

During the reporting period, the staffing level of the ACHPR first improved slightly, then it worsened as the reporting period came to a close. In January 2018, the AU Executive Council mandate the AU Commission (AUC) to urgently commence the recruitment process for all vacant positions within the ACHPR, and especially for legal officers with capacity to work in Arabic and Portuguese. As at the end of 2018, four vacant positions relating to documentation, administration and ICT had been filled and recruitment for other positions had commenced.<sup>161</sup> By mid-2019, however, two staff members had resigned from their posts and one newly recruited staff had failed to take up the role.<sup>162</sup> More importantly, recruitment interviews that had been scheduled for several positions, including those in the legal unit, had been postponed indefinitely.<sup>163</sup>

In January 2018, the Executive Council directed that the structure of the ACHPR's secretariat should be reviewed with a view to "better align its composition and organogram with the mandate entrusted to it and the expansion in its work over the years".<sup>164</sup> On the basis of records available to it, Amnesty International could not establish the status of this review.

The ACERWC operates with the leanest of staff amongst the regional human rights bodies. As at the close of the reporting period, it had a total of 11 staff members, amongst them four legal researchers.<sup>165</sup> The AU Executive Council has long acknowledged the need to bolster the ACERWC's capacity in terms of human resources. In May 2013, the Executive Council directed the AU Commission to undertake an assessment of the "financing and human resources needed by the Committee with a view to adequately equipping the Committee to discharge its mandate effectively as envisaged in the African [Children's] Charter".<sup>166</sup> It renewed this directive in June 2018 following its decision to relocate the secretariat of the ACERWC to Maseru.<sup>167</sup> On the basis of records available to it, Amnesty International could not establish the status of this review.

The current approved structure of the secretariat of the ACTHPR provides for a staff complement of 90. This structure provides for 10 legal officer positions. As at the close of the reporting period, the ACTHPR staff complement stood at 62, which means that it was operating at a capacity of 69%. The ACTHPR has repeatedly indicated to the AU Executive Council that its staffing level remains low, adversely affecting its smooth functioning.<sup>168</sup> Unlike the ACHPR, the ACTHPR enjoys autonomy in its administrative affairs, including the recruitment of secretariat staff. Article 24 of the African Court Protocol provides in part that "the Court shall appoint its own Registrar and other staff of the registry".

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<sup>156</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples' rights, Annex III(a), p.3.

<sup>157</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples' Rights, Annex III(a), p. 3.

<sup>158</sup> See for example 45<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 55.

<sup>159</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 39.

<sup>160</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 40.

<sup>161</sup> 45<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 53.

<sup>162</sup> 46<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 54.

<sup>163</sup> 46<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 55.

<sup>164</sup> Decision on the African Commission on Human and Peoples' Rights, EX.CL/Dec.995(XXXII) para 10, adopted during the 32<sup>nd</sup> Ordinary Session of the AU Executive Council, 25-26 January 2018, Addis Ababa, Ethiopia.

<sup>165</sup> At the start of January 2019, the number of ACERWC staff members stood at nine. See Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), January 2019, para 36.

<sup>166</sup> Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), EX.CL/Dec.776(XXIII) para 6, adopted during the 23<sup>rd</sup> Ordinary Session of the AU Executive Council, 19-23 May 2013, Addis Ababa, Ethiopia.

<sup>167</sup> Decision on the Report of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), EX.CL/Dec.1017(XXXIII), para 10.

<sup>168</sup> See for example Mid-Term Activity Report of the African Court on Human and Peoples' Rights, 1 January – 30 June 2019, EX.CL/1163, para. 25.

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## PREMISES AND INFRASTRUCTURE

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All the African regional human rights mechanisms operate from premises that are either inadequate in terms of the office space or unsuitable in terms of the location. Pursuant to the host agreement signed with the AU, the mechanisms' host countries are responsible for the provision of adequate and suitable premises.

Since it established its seat in Banjul in 1989, the ACHPR has not had permanent premises of its own. The issue of permanent premises has been on the agenda of the ACHPR and the relevant AU policy organs for more than three decades, but the construction of the premises has yet to begin. The formal process for the construction of the ACHPR's premises began in 1992 but it was only in 2001 that the foundation stone was laid at a selected construction site.<sup>169</sup> Nothing else has happened on this site since then. Therefore, the ACHPR holds its Banjul sessions and meetings in hotel conference halls and rooms which are not only expensive in terms of the hiring cost, but they are also not generally fit for purpose.

The issue of a dedicated building for the ACHPR has received more attention under the new administration in The Gambia. During the 61<sup>st</sup> Ordinary Session of the ACHPR, held in Banjul in November 2017, President Adama Barrow affirmed his government's commitment to construct the ACHPR headquarters.<sup>170</sup> An entire new process for the construction of the premises was set in motion during the reporting period when the Gambian government established a task force to spearhead the construction process. This taskforce prepared a proposal on the design of the headquarters. In February 2019, the Executive Council directed the AU Commission to establish a Support Group for the Gambia which will be tasked with mobilising funds for the construction of the headquarters.<sup>171</sup> This Support Group had not been established as at the close of the reporting period.<sup>172</sup>

The ACERWC still operates from the AU headquarters in Addis Ababa, Ethiopia. It is domiciled within the Department of Social Affairs of the AUC. The initial discussions on the practical aspects of the relocation the seat of the ACERWC to Maseru, Lesotho, commenced during the reporting period.

Like the ACHPR, the ACTHPR does not have permanent premises of its own. For a number of years now, the Court has repeatedly raised the issue of the lack of adequate office space for its operations. Although the architectural designs for the permanent headquarters have been developed by the host government, these was yet to be finalised and mutually agreed upon with the AU Commission as at the end of the reporting period. In January 2018, the Executive Council directed the AU Commission to establish a task force to expedite the finalisation of the designs.<sup>173</sup> As at the close of the reporting period, the designs had yet to be finalised, but the host agreement had committed to construct some more offices at the current ACTHPR's temporary location.<sup>174</sup>

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<sup>169</sup> F Viljoen *International human rights law in Africa* (2012) 293.

<sup>170</sup> 43<sup>rd</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 38.

<sup>171</sup> Decision on the 2018 Activity Report of the African Court on Human and Peoples' Rights, EX.CL/Dec.1044(XXXIV).

<sup>172</sup> 46<sup>th</sup> Activity Report of the African Commission on Human and Peoples' Rights, para. 50.

<sup>173</sup> Decision EX.CL/Dec.994(XXXII).

<sup>174</sup> Mid-Term Activity Report of the African Court on Human and Peoples' Rights, 1 January – 30 June 2019, para. 25.

# RECOMMENDATIONS

## TO THE AFRICAN REGIONAL HUMAN RIGHTS MECHANISMS

### AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Take immediate and urgent measures to reduce the number of pending communications 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 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 to time limits by parties, especially states;
- Activate Rule 112 of its Rules of Procedure regarding following-up and monitoring states' compliance with its recommendations on communications, beginning with strictly enforcing timelines and allocating time during its ordinary sessions for commissioners to present their monitoring reports on the extent to which state parties have complied with its decisions on communications;
- Finalize as a matter of urgency the Standard Operating Procedures on Effective Consultation with Stakeholders on Norm Elaboration, with emphasis on transparency and inclusivity of norm-elaboration being given in the Procedure. Upon finalization and adoption, the Procedure should be published and disseminated to the public;
- Urgently publish and disseminate its various sets of procedures regulating the conduct of its activities, including the Procedures for the Adoption of Resolutions, the Guidelines on the Format of Promotion and Protection Missions of the Commission, and the Internal Guidelines on the Organization of Panels during Public Sessions of the Commission;
- Guard its independence and autonomy by ensuring all its substantive and administrative decisions and actions are guided by the spirit and letter of international human rights law, particularly the African regional human rights treaties;
- Streamline and consolidate its existing multiple state reporting guidelines into a single comprehensive set which may be updated as and when necessary;
- Review its internal working methods, including for its ordinary and extra-ordinary sessions, to ensure that it is effective and efficient in discharging its mandate, including the prompt adoption and publication of concluding observations;
- Develop a publicly available calendar indicating when each state party report is due. If it has such a calendar already, make it public by posting it on the website. It should then actively call upon state parties to submit their periodic reports in accordance with this calendar; and



- Ensure future hosts of its ordinary sessions guarantee free and unfettered access by all stakeholders, especially civil society representatives, and take measures to prevent and address state reprisals arising from participation in its ordinary sessions.

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

- 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 cases in its docket, beginning with developing a backlog reduction plan to be shared with 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 to time limits by parties, especially states;
- Complement its sensitization visits on the ratification of the Protocol on the Establishment of the Court with joint awareness-building activities with its civil society partners; and
- Consider studying the experience of other regional courts, especially the European Court of Human Rights, in addressing repetitive cases with a view to determining if their approaches, with changes if necessary, could be applicable to its own docket of repetitive cases.

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# **TO THE AFRICAN UNION POLICY ORGANS AND INSTITUTIONS**

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## **AFRICAN UNION COMMISSION CHAIRPERSON**

- Call upon the political organs of the AU, and mainly the Executive Council and the Permanent Representative Committee, to refrain from interfering with the independence and autonomy of the African regional human rights mechanisms;
- Establish, as a matter of urgency, the Support Group for the Gambia as required under the AU Executive Council Decision EX.CL/Dec.1044(XXXIV) of February 2019;
- Establish, as a matter of urgency, the taskforce mandated under the AU Executive Council Decision EX.CL/Dec.994(XXXII) of January 2018 to finalize the architectural designs of the permanent headquarters of the African Court on Human and Peoples' Rights and ensure the expeditious construction of the headquarters;
- Ensure any reform proposals relating to the regional human rights treaty bodies are considered in transparent processes involving meaningful consultation with all stakeholders, including civil society;
- Ensure the AU institutional reform process strengthens and guarantees the independence, autonomy, efficiency and effectiveness of regional human rights treaty bodies; and
- Endorse and support the reform proposals put forward by the African Court on Human and Peoples' Rights and consider extending similar reform changes to the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child.

## EXECUTIVE COUNCIL

- 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, resolutions and judgments of the regional human rights mechanisms;
- Reconsider its decision to no longer include the names of countries that have not complied with the judgments of the African Court on Human and Peoples' Rights in its decisions adopting the activity reports of the Court;
- Substantively review, at every ordinary session, member states' cooperation with the regional human rights mechanisms, in particular their responsiveness to urgent appeals, the quality of such responses, and the status of requests sent to them for country visits;
- Honour its commitment to ensure that the regional human rights treaty bodies are adequately funded and staffed; and
- Grant autonomy to the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child to manage their own recruitment processes of their staff.

## 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 on Human and Peoples' Rights and ensure that upholding the spirit and letter of Articles 29 and 31 of the Protocol on the Establishment of an African Court on Human and Peoples' Rights is central to the consideration of the Framework.

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## TO THE AFRICAN UNION MEMBER STATES

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- Respect and protect the independence and autonomy of the regional human rights bodies and mechanisms;
- Issue a standing invitation to the Special Mechanisms of the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child;
- Respond to Urgent Appeals of the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child within five days of receiving such Appeals;
- Fully comply with Provisional Measures issued by 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;
- Ensure free and unfettered access to sessions of the regional human rights treaty bodies and that no participants suffer reprisal because of their participation in these sessions;
- Endorse and support reform proposals aimed at strengthening the regional human rights treaty bodies and ensure their independence, autonomy, efficiency, and effectiveness;
- Member states that are yet to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights to do so as a matter of urgency. At the time of ratification, these states should also make a declaration allowing individuals and NGOs to directly access the African Court on Human and Peoples' Rights; and
- Member states that have ratified the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights but are yet to make the declaration allowing individuals and NGOs to directly access the African Court on Human and Peoples' Rights to do so as a matter of urgency.



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# THE STATE OF AFRICAN REGIONAL HUMAN RIGHTS BODIES AND MECHANISMS

## 2018-2019

The report presents a comprehensive review of the current state and performance of the African regional human rights system in the period between 1 January 2018 and 30 June 2019. It appraises the functioning, working methods, outputs and impact of the African Commission on Human and Peoples' Rights (ACHPR); the African Committee of Experts on the Rights and Welfare of the Child (ACERWC); and the African Court on Human and Peoples' Rights (ACtHPR) during the reporting period.

The regional bodies registered a relatively impressive record during the reporting period in the execution of their mandates relating to state reporting, standard-setting, and intervening in urgent situations. However, the ACHPR and ACtHPR continued struggling to efficiently handle their case backlog, with little progress in addressing this chronic problem. At the same time, states accorded little cooperation to the regional bodies, accompanied by cynical and deliberate efforts by some to undermine the independence and autonomy of the regional human rights bodies. Moreover, although the African Union (AU) has over the years increased their budget allocations, the regional human rights bodies operated during the reporting period on meagre financial resources, with limited number of staff members, and in premises that are inadequate and generally not fit for purpose.

Based on this review, the report makes a series of recommendations to a variety of actors within the African regional human rights system, specifically the regional human rights bodies, the AU Commission Chairperson, the Executive Council, the AU Specialized Technical Committee on Justice and Legal Affairs, and AU member states.

