Trésor Muhindo Makunya, Olum Lornah Afoyomungu, Ruddy Fualefeh Morfaw Azanu and Davina Murden. "Selected developments in human rights and democratisation in Africa during 2020." (2021) 5 *Global Campus Human Rights Journal* 185-216
http://dx.doi.org/10.25330/1366

Selected developments in human rights and democratisation in Africa during 2020

Trésor Muhindo Makunya,* Olum Lornah Afoyomungu,** Ruddy Fualefeh Morfaw Azanu and Davina Murden*******

Abstract: *The unexpected outbreak of the coronavirus pandemic (COVID-19) has had a significant impact on democracy, constitutionalism and human rights in Africa. Many executive and legislative officials used the pandemic as a powerful excuse to postpone elections without making significant efforts to seek consensus among affected stakeholders as required by human rights instruments. This descent towards tokenistic constitutionalism has gone hand in hand with two types of unconstitutional changes of government, namely the coup d'état in Mali and third-termism in Côte d'Ivoire and Guinea, which together show how the commitment to constitutionalism remains elusive in many countries. Meanwhile, the African Union human rights bodies swiftly devised alternative means to hold their sessions online as it became clear that physical meetings were not possible. The African Commission and the African Court made significant progress in fulfilling their mandates in 2020, for example by revising their rules of procedure to include cutting-edge issues and adopting soft law instruments. These instruments provided significant guidance to state parties in order for their COVID-19 related measures and actions to comply with the African Charter. This article highlights developments in human rights and democratisation in Africa during 2020. The article begins with a discussion of two forms of unconstitutional change of government sanctioned by the African Democracy Charter, before turning to trends in the postponement of elections in many African countries and their implications on constitutionalism. The article then discusses developments within the African Commission and the African Court. The article concludes by arguing that, while the African Commission and the African Court made significant efforts to find innovative ways to fulfil their human rights mandates amid the pandemic, a number of African countries descended into symbolic democracy and constitutionalism.*

Key words: *Unconstitutional change of government; COVID-19; democracy; constitutionalism; African Commission on Human and Peoples' Rights; African Court on Human and Peoples' Rights; African Union; elections; Rules of Procedure*

* LLD LLM (Pretoria); Postdoctoral Fellow and Publications Coordinator, Centre for Human Rights, University of Pretoria; tresormakunyamuhindo@gmail.com
** Doctoral Candidate; LLM (Pretoria); afoyomungu2012@gmail.com
*** LLM (Pretoria), LLM (Buea); Research Intern, African Commission on Human and Peoples' Rights; ruddymorfaw7@gmail.com
**** Doctoral Candidate; MPhil (Pretoria); davinamurden@gmail.com

1. Introduction

The outbreak of the coronavirus pandemic (COVID-19) caused significant disruption to many aspects of social, economic, cultural, and political life in Africa in 2020, including democracy, constitutionalism and human rights. To combat the spread of COVID-19 infections, many African countries were forced to implement travel bans and containment measures, and to allocate budgets to combat the virus, which had a significant impact on the exercise of fundamental rights and freedoms. Twenty-five African countries were to hold elections — local, presidential, national legislative, constitutional referendum (EISA 2021) — but it soon became clear that in many countries the chances of holding elections were becoming slim due to the serious health risk to citizens. In the same year, the African Union's human rights organs, particularly the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court), were to hold their ordinary and extraordinary sessions but could not physically meet due to the pandemic. Some countries decided to hold elections whilst others were forced to postpone them. Equally, the African Commission and the African Court moved to holding sessions online. There have been many other developments in democracy and human rights, both positive and negative, that are not necessarily linked to the pandemic.

This article reviews selected human rights and democratisation developments in Africa in 2020. The article is structured as follows. The next section discusses democratic crises in Africa through a specific examination of the unconstitutional removal of the government in Mali and the unconstitutional retention of government power through third term syndrome (Lumumba-Kasongo 2007, 125–133) in Côte d'Ivoire and Guinea. Section 3 examines the regression of constitutionalism in countries where executive officials have postponed elections using COVID-19 as a powerful excuse without seeking consensus with other stakeholders. Section 4 examines developments within the African Commission and the African Court, noting progress on the adoption of new Rules of Procedure by the Commission and the Court, the adoption of several other soft law instruments by the Commission, and the swearing-in of new commissioners. With respect to the African Court, the section examines the continuing trend of states withdrawing their Declarations made under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol), and some of the decisions adopted by the Court in 2020. In conclusion, this article argues that whilst the African Commission and the African Court made significant efforts to devise innovative ways in which they could perform their human rights mandates amid the pandemic, a number of African countries descended into symbolic democracy and constitutionalism sometimes using the COVID-19 as an excuse.

2. Democratic crises through unconstitutional change of government

Despite the commitment by the African Union member states to silence the guns on the continent by 2020, conflicts and political instability did not stop in 2020. Since political instability or constitutional and democracy crises have generated several conflicts in Africa (African Union 2022, para 6), one way to ensure the guns are silenced and to maintain peace, security, and stability is to protect democracy and constitutionalism: for example, by making it clear that the military does not take over power and that presidents vacate their office at the end of their constitutional term. However, this is far from the reality. In 2020, the military staged a coup d'état in Mali against the democratically elected president, thereby jeopardising peace, security and stability in a country and a region that are torn by various forms of violent extremism, terrorism and ethnic strife (Dakano, Koné, and Sangaré 2018). The year 2020 also saw the persistence of third-termism — which refers to the phenomenon of altering or removing presidential term limits to allow an incumbent president to seek a third or unlimited terms of office — in Côte d'Ivoire and Guinea. The moves by the military in Mali and incumbents in Côte d'Ivoire and Guinea seem to contradict the very purpose of the African Union normative frameworks aimed at combatting the unconstitutional changes of government that were a pervasive phenomenon in the Cold War and pre-2000 Africa (Makinda and Okumu 2007, 77; McGowan and Johnson 1986, 24). The two cases represent, on the one hand, the unconstitutional "removal" of a democratically elected government and, on the other, the unconstitutional "retention" of governmental power (Abebe and Fombad 2021, 65), as the discussion below demonstrates.

2.1 Unconstitutional "removal" of government: the military coup d'état in Mali

The African Development Bank released a report in 2012 indicating that more than 200 military coups had been staged in Africa since the 1960s. Of those, 45% had been successful (Ben Barka and Ncube 2012). The coup d'état in Mali was spearheaded by military officers who overthrew the democratically elected government of President Ibrahim Boubacar Keita whose term was set to end in 2023. On 18 August 2020, the army launched a mutiny and started arresting and detaining government officials in the capital. They then surrounded the President's private residence where he was with the prime minister and fired shots in the air (Al Jazeera 2020). It is perhaps in response to situations such as these that several normative standards have been established by the African Union to reduce the likelihood of coups d'état in Africa particularly because its predecessor, the Organisation of African Unity, failed to prevent and discourage coups d'état (Viljoen 2012, 156–161). Today, the African Union Constitutive Act, the African Charter on Democracy, Elections, and Governance (ratified by Mali

in 2013), and the 2000 Lomé Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government reiterate the firm determination of the AU and its member states including Mali to condemn and reject unconstitutional changes of governments.

Mali seems to have a tragic history of coups d'état which has cast a spell on the country's democratic progress. From 1960 to date, Mali has known four military coups — in 1968, 1991, 2012 and 2020 (Ndeye Khady 2020). In 2021, a supposed fifth coup was staged against the civilian President of Transition (Paquette 2021). In 2020, a delegation from the ECOWAS led by former Nigerian President, Goodluck Jonathan, demanded that the coup leaders establish an "immediate return to constitutional order". The bloc also enforced a suspension on Mali from its decision-making institutions in accordance with Article 45(2) of the ECOWAS Democracy and Good Governance Protocol, and the African Union Peace and Security Council (PSC Report 2020) shut the border and stopped financial flows with the country (Al Jazeera 2020). A new transitional legislative body was then formed to lead the country back to civilian rule. The Transitional Council will be the body responsible for voting on reforms and legislative amendments during a transitional period that is to last for eighteen months before elections are held (Prentice 2020).

In the meantime, Mali adopted the Transition Charter on 1 October 2020 to supplement the Malian Constitution of 1992 during the transition period (Transition Charter 2020). The Charter sets down the governance of the transition period, values, and principles for conducting the transition. The powers of transitional bodies, including the transitional president, the National Transitional Council and the transitional government, during the transitional period, are provided for. The Charter further lays down the "missions of the transition" which include political and institutional reform, the restoration and strengthening of defence and security, the promotion of good governance, the adoption of a stability pact and the organisation of general elections (Bonny 2020). The Charter enshrines most principles of constitutionalism, rule of law and good governance. In its preamble, the Transition Charter refers and pledges commitment to the democratic values and principles enshrined in the African Democracy Charter and the ECOWAS Democracy and Good Governance Protocol. This is a commendable development in theory. However, it is difficult to expect that African militaries can implement constitutionalism and democracy principles. In May 2021, the military staged a "coup" against the civilian transitional president whom they coerced to resign under the pretext that he violated the Transitional Charter, and replaced him with his vice-president from the military junta that staged the coup against Keita in 2020. Mali's Constitutional Court surprisingly legitimised the military takeover by arguing that the resignation of the transitional president created the vacancy in the presidency and paved the way for his

replacement by the vice president (Cour constitutionnelle du Mali 2021). The Constitutional Court may have missed the opportunity to uphold constitutionalism — by clarifying that the military should stay out of politics — as did constitutional jurisdictions in Côte d'Ivoire and Guinea with regard to third-termism, as discussed below.

2.2 Unconstitutional "retention" of governmental power: the persistent trend towards third-termism in Côte d'Ivoire and Guinea

In 2020, two presidents successfully attempted to maintain their grip on power by running for and securing a third presidential term. President Alassane Ouattara of Côte d'Ivoire and President Alpha Condé of Guinea were barred by their respective constitutions from seeking an additional term, but managed to use different constitutional means to topple term limit provisions (Abebe 2020a). The two cases are a mere continuation of the tendency of most African presidents to refuse to abide by the presidential term limit provisions that have been widely enshrined in many post-1990 African constitutions to ensure peaceful alternation of power (Prempeh 2007, 471). The third-term agendas in Côte d'Ivoire and Guinea were concretised through similar means: arguing that the entry into force of a new constitution sets the presidential term back to zero, thus enabling presidents to run for additional terms. Before examining these two cases in detail, it is pertinent to note that there was an encouraging trend for some African presidents to leave power in 2020.

President Mahamadou Issoufou of Niger stood down after two successful presidential terms, paving the way for the first peaceful alternation of power in Niger (Hoije 2020). The volatile political and military situations in Niger might indicate that attempting to amend the constitution and venture into third-termism would have plunged the country into instability and violence, and possibly a coup. In fact, his predecessor Mamadou Tandja was removed from power in 2010 through a military coup, after he had amended the constitution to remain in office (Trithart 2013, 116). The move taken by Issoufou remains a progressive step towards strengthening the peaceful alternation of power. President Nkurunziza of Burundi also stood down in 2020 and was replaced by President Nshimirimana of his National Council for the Defense of Democracy – Forces for the Defense of Democracy political party, after securing a controversial third term in 2015 backed by a Constitutional Court ruling (Adjolohoun 2017, 276). Nkurunziza's bid for a third term left the country in total social, political and economic decay.

The President of Malawi, Arthur Peter Mutharika, also agreed to leave office after losing to Lazarus Chakwera in 2020. President Mutharika, despite having attacked the judiciary for nullifying his re-election in

2019 (Nyawa *et al* 2020, 210), can be applauded for refusing to emulate presidents such as Yahya Jammeh (the Gambia) and Laurent Gbagbo (Côte d'Ivoire), who refused to step down from power despite proclamations that they had not won their elections (Abebe and Fombad 2021, 67–68). Malawi stands out among three other countries with positive democratic developments in 2020. In Malawi the incumbent president was replaced by an opposition candidate, following rulings by the High Court and the Supreme Court that were firm on election irregularities — in contrast to the widespread culture in African judicial systems of upholding election results in favour of the incumbent, regardless of the extent of election irregularities (Kabaa and Fombad 2021, 361–362). In Niger and Burundi, the hand-picked successor, who belonged to the departing president's political party, won the election. Nevertheless, these positive developments were exceptional.

In Guinea and Côte d'Ivoire, the two presidents came to power in 2010 and managed to be re-elected in 2015 for an additional term to end in 2020. However, in November 2016 a new constitution was promulgated in Côte d'Ivoire, to replace the 2000 constitution based on which Ouattara had been elected for two consecutive terms. In March 2020, Ouattara announced that he would step down to "transfer power to a younger generation". Many observers saw in Ouattara's decision to stand down from power a progressive step towards promoting peaceful alternation of power in Côte d'Ivoire (Coulibaly 2020). His commitment to leaving power culminated in the selection of the then Prime Minister Amadou Gon Coulibaly as presidential candidate for the ruling party. However, things took a turn for the worse when the handpicked successor died. This prompted President Ouattara to reverse his decision and announce that he would be running for a "third term" to preserve peace and stability in the country. Unlike this example, where the incumbent demonstrated some willingness to step down and choose one of his own to succeed him, Alpha Condé in Guinea took a different route. Condé requested the Minister of Justice to draft a new constitution which, among other provisions, would increase from five to six years the duration of the presidential term. In Côte d'Ivoire and Guinea, amid contestations by opposition parties and civil society groups, incumbents argued that fundamental changes brought with the entry into force of new constitutions meant that the counter of term limits was brought to zero. When elections were held in Côte d'Ivoire and Guinea, both presidents eventually secured an additional presidential term — with a landslide victory of 94% in Côte d'Ivoire, but also 53% in Guinea (amid allegations of voter rigging and human rights violations).

Ouattara and Condé used apex Constitutional Courts to legitimise their third-term agenda as the constitutions of both countries give these courts the power to decide on the validity of presidential candidacies and to review the constitutionality of laws. The Constitutional Council of Côte

d'Ivoire played two important roles. It confirmed the ineligibility of some opposition candidates, notably former President Laurent Gbagbo and the then President of the National Assembly Guillaume Soro (Constitutional Council 2020, 23–26, paras 39–40), who were sentenced to twenty years in prison and removed from the voter roll. The Constitutional Council also confirmed the constitutional validity of Ouattara's "third term" because the new constitution does not explicitly prohibit those who served two terms under the previous constitution from running again (page 35). This suggests that the drafters of the constitution had in mind that the new constitution would reset presidential term limits, otherwise they would have specified the retroactive effect of presidential term limits, as was demanded by the entire political and academic communities at the time. The Constitutional Council considered the entry into force of a new constitution as the birth of a new social contract because it created new norms and institutions relating to the executive, the legislature, and the judiciary. However, despite the technical argument, it is clear that President Ouattara had already accomplished two five-year terms in office. Since the purpose of presidential term limits is to ensure that individuals who have completed the number of terms provided in the constitution are replaced by others, it seemed disingenuous to use a constitutional reform argument to support an extension of power. In doing so, the Ivorian Constitutional Council learned from the Constitutional Council of Senegal, which made a similar argument in 2012 to allow President Abdoulaye Wade to seek an additional term (Abebe 2020b).

In Guinea, the Constitutional Court refrained from reviewing the substantive provisions of the constitutional amendment Bill that had the effect of extending the presidential term. The Court argued that it could simply review whether the procedure leading to the adoption of the constitutional amendment Bill was consistent with the constitution. It could not prevent individuals such as the President of the Republic, who is constitutionally empowered to propose a constitutional amendment bill, from doing so (Constitutional Court of Guinea 2020). The "descent towards symbolic constitutionalism", as evidenced by the passive attitudes of constitutional jurisdictions in Guinea and Côte d'Ivoire, appears to reverse the gains made by most African countries during the post-1990 wave of democratisation, which were aimed at effectively limiting executive power and combatting "imperial presidencies" (Okoth-Ogendo 1993, 74–75). In the wake of the COVID-19 pandemic, significant doubts have also been raised about the ability of post-1990 constitutional reforms to effectively protect against the misuse of emergency powers to violate fundamental rights, such as the right to vote. In the next section, we demonstrate how the absence of constitutional provisions governing the possible postponement of elections due to public health emergencies enabled executive and legislative officials to postpone elections and extend their terms in some African countries.

3 The postponement of elections in 2020 and its impact on democracy and constitutionalism

Twenty-five African countries were poised for presidential, municipal and legislative elections or referendums in 2020. These included Burkina Faso, Benin, Burundi, Central African Republic, Cote d'Ivoire, Ethiopia, Guinea, Ghana, Malawi, Niger, Seychelles, Somalia, Tanzania, and Togo. Two trends may be identified, viz., countries that organised elections despite public health challenges mounted by the COVID-19 pandemic, and those that used the pandemic as an excuse to extend the term of executive officials and members of parliamentary assemblies. Elections in Niger took place in December 2020, but there were problems with high registration fees and the screening of political candidates. During the same month, Central African Republic had its presidential elections which led to a high number of casualties. Burkina Faso held its elections in November 2020 but they were heavily affected by the presence of violent extremist groups of the Sahel region that prevented many citizens from voting. Ghana's elections of 2020 were considered problematic due to low voting percentage.

The manipulation of domestic constitutions by African leaders has over the years become a strategy for consolidating personal power. As leadership mandates drew closer to their end in 2020, the margin of excuse seemed to grow even wider as most politicians could easily raise the alibi of COVID-19 to postpone elections that threatened their political positions. In 2020 four African countries had their elections postponed. This involved presidential and parliamentary/legislative elections in Ethiopia, Somalia, Gabon and Chad.

In Ethiopia parliamentary elections set for 29 August 2020 were indefinitely postponed due to the COVID-19 pandemic. This came on the heels of a decision passed by the electoral board, with the approval of Parliament and key opposition parties (Asplund 2021). The postponement had the consequence of perpetually securing the present parliament amidst growing frustration among voters about the decision (Schwikowski 2020). It also raised profound bitterness among some opposition parties who had been anticipating the first democratic elections in over fifteen years (Kiruga 2020). The instigation of resentment from the opposition arose from the fact that the leadership term of the ruling party was due to end by 30 September 2020, and the government seemed to provide inadequate and dissatisfying options for addressing the challenge that the pandemic posed to the elections. These options involved either "dissolving parliament; declaring a state of emergency; changing the laws" or "seeking constitutional interpretations" from the Parliament (Kiruga 2020). Settling on the option of adopting "novel" constitutional interpretations bore significant consequences for the rule of law, governance and democracy, sparking up civil protests and internet shutdown responses — the latter of

which has become a typical characteristic of African governments during election periods (Nyarko and Makunya 2018, 156–157; Nyokabi et al. 2019, 147–172). The challenge for the Ethiopian government, as for most African governments at the time, would have involved two key issues: on the one hand, the question of having adequate resources to push forward with elections in such a delicate health environment; and, on the other, the question of whether after spending on COVID-19 needs there would be enough finance left to subsequently conduct the elections (Kiruga 2020). While a global pandemic may have been compelling enough (with over 500 cases already confirmed in Ethiopia at the time), in this case the Constitution of Ethiopia made no provision for the postponement of elections on such grounds (Kiruga 2020).

The African Charter on Democracy, Elections and Governance (African Democracy Charter), under Articles 3 and 17, re-echoes the position of the International Covenant on Civil and Political Rights (ICCPR), emphasising the need to consolidate a culture of democratic political transformation through regular elections which are free, fair, and independent. Derogations from or limitations to the exercise of rights related to this process are only permissible under exceptional circumstances, taking into consideration the distinct characteristics of the situation. According to the United Nations Centre for Human Rights,

> [p]ostponement of scheduled elections necessitated by public emergency may be permitted in certain limited circumstances, but only if and to the extent strictly required by the exigencies of the situation. Any such exigencies must comply with all the rigid international standards for such derogations and must not threaten democracy itself (Relief Web 2020

Although the challenges of the current pandemic could have thus been valid enough, it remains important to consider the trend of electoral manoeuvring in Africa where the political landscape remains fragile, resulting in recurrent skirmishes. Ethiopia was no exception. Yet, it would have been impossible to expect that African constitutions had anticipated the rise of a global pandemic that would forestall the electoral process (Fombad and Abdulrauf 2020, 377).

This situation has been similar to that of Somalia and the postponement of its presidential elections from December 2020 up until about August 2021. The Chairperson of Somalia's National Independent Electoral Commission announced in June 2020 that elections were postponed due to COVID-19 and other existing problems such as political differences, insecurity, and flooding (Maruf 2020). This was a decision that received international acclamation and support, particularly from the United Nations (UN), European Union (EU), the African Union Mission to Somalia

(AMISOM), the United States and Britain, in consideration of the region's struggle with terrorism (Guled 2020). However, the interpretation was not the same by opposition parties, who saw the postponement of elections as an unconstitutional attempt by the president to remain in power — even more so, given the fact that the country's Constitution had made no specific provisions for postponing elections on such grounds. Consequently, the current President of Somalia, Mohamed Abdullahi Farmaajo, whose presidential four-year term was to end in February 2021 (Article 60(1) of Somalia's 2012 Constitution), was still in office as at December 2021. As of May 2021, the 2020 legislative and parliamentary elections have also not yet been conducted, and have already been postponed twice due to strong disagreements between the central government and federal states, the former's mandate now having expired (Hairsine 2021).

Gabon and Chad were no exceptions to the scourge of postponing elections by using the COVID-19 pandemic as an excuse. In Gabon, partial legislative elections slated for April 2020 were postponed to January 2021 due to COVID-19. Gabon's presidential leadership has over several years mostly taken a dynastic turn with the Bongo family largely connected to the presidency, an attitude which has been decried by the UN (Olivier 2020). The current president Ali Bongo Ondimba has been in the seat since 2009 after succeeding his father who ruled for over forty years. In January 2021, Ali Bongo and his party finally won a majority of seats in the senatorial elections; and presidential elections are only anticipated for 2023. Chad also had its presidential elections postponed, from October 2020 to April 2021. Like the other countries, this postponement was due to COVID-19 challenges. Since 1996, Chad has consistently conducted presidential elections, although they have never resulted in any power change, with President Idriss Déby Itno in the seat from 1990 until his assassination in April 2021 (Freedom House 2020). In 2018, a presidential term limit was constitutionally instituted providing a mandate of six years, renewable once; but, despite criticism from the opposition, Idriss Déby's supporters insisted that the change did not apply retroactively, hence allowing him to run for a sixth and seventh term (Freedom House 2020). It came as no surprise that President Idriss Déby won another term in 2021, extending his thirty-year rule (France 24 2021). Unfortunately, a few days after this (on 19 April) President Idriss Deby died in a military clash with terrorist groups only to be replaced by his son.

The foregoing seems to suggest that the quality of electoral democracy in 2020 was dubious. The unexpected COVID-19 outbreak encouraged the authoritarian impulse of several African regimes. A survey by the Mo Ibrahim Foundation (2021, 26) in five West African countries indicates that 58% of citizens believe that COVID-19 served to "increase power and authority" of political leaders. Some countries took the pandemic as an opportunity to undermine an already fragile democracy by preventing

individuals from effectively exercising the very basic entitlement one can have in a democratic regime, the right to vote. This seems not to be a surprise. Despite the return to democracy in the early 1990s, some African leaders had tried to circumvent the democratic gains by removing the little checks that were imposed on their powers and hardening political competition so that it became difficult for the political opposition to win. Most African countries preferred a legislative as opposed to a constitutional response to the management of COVID-19 emergency, because a resort to constitutional mechanisms reduces the likelihood of power abuse. In Central African Republic, the Constitutional Court rejected a constitutional amendment proposal which, under the pretext that the disruptions caused by COVID-19 constituted an exceptional circumstance warranting the postponement of elections, would have prolonged presidential and parliamentary term limits (Vohito 2020). The Court significantly guaranteed the right to vote and prevented the adoption of a non-consensual constitutional amendment, which could have tipped the country into violence and instability.

4. Recent developments at the regional bodies for human rights

In this section, we examine human rights developments within the African Commission on Human and Peoples' Rights (African Commission) and the African Court on Human and Peoples' Rights (African Court).

4.1. The African Commission on Human and Peoples' Rights

4.1.1. Advancing human rights through standard-setting

Three major developments are discussed in this section: the adoption of new Rules of Procedure; the adoption of General Comment No. 6 to clarify the protection of women's right to property in case of separation, divorce, and annulment; and the adoption of a string of statements to clarify the protection of a number of rights during COVID-19.

A Janus-faced approach to the independence and autonomy of the African Commission

The revision and adoption of new Rules of Procedure (RoP) by the African Commission was a litmus test for the ability of the premier continental human rights body to strengthen its autonomy from the political organs of the African Union, given the growing threats to its independence, particularly from the African Union Executive Council (Zewudie 2018, 295–320). The African Commission adopted its first RoP in 1988 (Final Communiqué 1988, para 7). The Rules were revised in 1995 (Final Communiqué 1995, para 25), in 2010 (Final Communiqué 2010, para 42), and again in 2020 (Final Communiqué 2020, para 8). It

was expected that the African Commission would use the opportunity of revising its Rules in 2020 to strengthen its relationship with the African Court regarding the referral of cases. The 2010 RoP were adopted at a time when the African Court had not yet handed down any decision on the merits. In this section, we examine some innovations brought about by the 2020 RoP including those related to the African Commission's independence and its relationship with the African Court. In the context of more and more states withdrawing their declarations under Article 34(6) of the African Court's Protocol — which, as discussed below, allow individuals and non-governmental organisations to directly approach the African Court (Adjolohoun 2020, 6–18) — indirect access to the African Court through the African Commission remains vital.

Rule 3 clarifies the status of the African Commission within the African Union institutional framework. This is an improvement on the 2010 RoP, which poorly safeguarded the autonomy of the Commission and its mandate to protect human rights (Nabaneh 2020, 2). Drawing on Articles 30 and 45 of the African Charter, Rule 3 reiterates the autonomy and the human rights mandate of the Commission but goes further to show that the African Commission is "an organ of the African Union". In addition to interpreting the African Charter in contentious and advisory procedures, the Commission reaffirms its competence to interpret "its own decisions", adopt its Rules of Procedure, "ensure the efficient and technical organisation and operation of the Secretariat", and perform other tasks which the African Union Assembly may request. As one commentator argues, "Rule 3(4) is a significant provision given the recent controversy over interferences with the Commission's decision-making powers by the AU political bodies and the subsequent directives for these decisions to be altered to reflect the leanings of the political organs" (Nabaneh 2020, 2). Rule 11 indicates that members of the African Commission have to abide by the principles and code of conduct stipulated in the RoP, including those related to "recusal and confidentiality" and "relevant" provisions of the African Union Staff Rules and Regulations, the African Union Code of Ethics and Conduct and the African Union Harassment Policy. The Rule strengthens the independence and autonomy of Commissioners by giving precedence to the African Commission RoP over the AU rules and regulations in the event of any conflict. The Commission now has control over the determination of the date of its sessions. Contrary to Rule 26(2) of the 2010 RoPs, Rules 28(2) and 29(3) of 2020 abrogate the consultation between the African Commission Chairperson and the African Union Commission Chairperson in determining the date of ordinary and extra-ordinary sessions respectively. The new RoP also ensure that session proceedings are live streamed and a final communiqué is adopted for the public at the end of the session. Live transmission is a timely response to the disruption that may be caused by exceptional circumstances such as the COVID-19 pandemic. It can prevent sessions being postponed due to

difficulties in bringing together Commissioners and participants, such as the imposition of travel bans. It also encourages the organisation of virtual sessions by the Commission (as was the case with the 66th Ordinary and the 28th Extra-Ordinary Sessions), as well as broad participation by the public and non-governmental organisations.

A few other innovations and retrogressions may be noted. Rule 27(1) increases the number of sessions from two to four to cover the increasing workload of the Commission. States that wish to host the African Commission sessions must guarantee "the unfettered participation of all individuals attending the session", to pre-empt instances where the participation of some civil society organisations was denied by host countries as was the case during the 38th forum of non-governmental organisations that preceded the 64th Session of the Commission in Egypt (Nabaneh 2020, 3). Further, Rule 63 replicates the content of Rule 59 of the 2010 RoP by subjecting the publication of the report to consideration by the African Union Executive Council. This means that the African Union political bodies may still require the African Commission to remove some parts of the report, or the names of certain states, or to delay the publication of certain merit decisions (Biegon 2018, 7). It is clear from the foregoing that, through the 2020 RoP, the African Commission adopted a Janus-faced approach to its independence and autonomy, by reinforcing its independence in areas such as the convening of sessions and its status, but surrendering it when it comes to issues such as the publication of activity reports (Nabaneh 2020, 8–9).

In the view of a number of observers, the 2020 Rules make it very unlikely that cases will be referred to the African Court (Nabaneh 2021, 7; Amnesty International 2020, 20). This is largely because the new rules take a minimalist approach to the seizure of the African Court by the Commission, re-echoing some reluctance by the latter to refer a number of cases to the African Court. In the 2010 Rules, Rule 118 provided four scenarios under which the African Commission could approach the Court. Despite the numerous potential avenues for referral by the Commission to the Court under Rule 118, only three cases, one of which was struck out on admissibility, were referred to the African Court. According to Rule 130(1) of the 2020 RoP, a referral may take place before the consideration of the admissibility of a communication by the African Commission. While this seems to suggest that the African Commission cannot refer a case in which it has decided on the admissibility and merits, it is our view that the 2020 Rules cannot change article 5(1)(a) of the African Court Protocol. This provision gives an unqualified right to the African Commission to submit cases to the Court — including cases decided on the admissibility and the merits. The Rules of Procedure can clarify the provisions of the Protocol, but cannot amend the Protocol's clear wording.

Further, a referral is subject to the condition that the state against which the communication is brought must have ratified the African Court's Protocol. This is a sound legal obstacle. Before the advent of the 2020 Rules, the Commission could only refer communications against states that ratified the African Court Protocol. Frans Viljoen rightly argues that this has been a serious impediment to the referral of cases because most countries against which the African Commission formulated recommendations between 2010 and 2016 had not ratified the African Court Protocol (Viljoen 2018, 77). Rule 130(2) provides that the complainant must consent to the decision by the African Commission to refer the case to the African Court. However, the form of this consent is not elucidated; nor is it clear when the African Commission should seek such a consent. It can be seen that the 2020 RoP widen the discretion of the African Commission to refer cases to the African Court.

A boost for women's rights in Africa: the General Comment on Equitable Sharing of Matrimonial Property

At its 27th Extra-Ordinary Session, which concluded on 4 March 2020 in Banjul, the African Commission adopted a ground-breaking General Comment clarifying the meaning and content of Article 7(d) of the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol). The African Commission, under Resolution 401 of 2018, decided to draft this General Comment to enhance women's rights to property and to clarify state obligations thereof, especially because the misinterpretation of the notion of "equitable share" adversely affects women during divorce, separation and annulment of marriage. Article 7(d) provides that "in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage". However, the language of Article 7(d) is not straightforward and can lower the protection of women. Vague and ambiguous concepts include "equitable sharing" and "joint property deriving from the marriage", which must be construed in a manner that considers the historical and socio-cultural marginalisation that women continue to experience (General Comment No. 6 2020, para 40). This General Comment gives first hand "interpretation on the property rights of women in marriage, particularly at times of separation, divorce or annulment of a marriage" (General Comment No. 6 2020, para 11).

The 26-page General Comment is made up of 63 paragraphs, which are divided into four main parts and preceded by a preface. The adoption of the General Comment was preceded by meaningful consultation with government and non-governmental institutions in order to increase its legitimacy (Adeola, Viljoen, and Makunya 2021, 139). The first part of the document relates to its objective and scope, and clarifies issues such as the disproportionate effect of divorce on men and women and the way

oppressive laws, customs, and traditions regarding access to land do not foster women's rights. In its second part, the General Comment provides a legal and contextual background to marriages and property rights regimes in Africa. This part covers questions related to the socio-legal factors impeding women from fully exercising their rights to property, the types of marriage recognised under African national legislation and the Maputo Protocol, and the way that the implementation of existing legal norms, despite being gender-neutral, still places women at a disadvantage. The two subsequent parts contain the gist of the document. Part Three provides the normative framework. It emphasises the relationship between Article 7(d) and other rights, and re-interprets the notion of "equitable sharing" and "joint property deriving from the marriage". It significantly highlights the importance of considering both the monetary and non-monetary contributions of women, and describes women's protection in instances of divorce within plural legal systems. Part Four explains state obligations as they emerge from Article 7(d) through the four-fold obligations to respect, protect, promote and fulfil women's rights. The General Comment derives these obligations from the African Charter (broadly) and the Maputo Protocol (specifically).

Many features of the General Comment elucidate its relevant contribution to the African human rights corpus. First, substantive equality is foregrounded as the overarching normative framework through which Article 7(d) and state obligations must be understood and evaluated, notably because of its ability to ensure that "the relevant government interventions respond to the historical, social, religious, political and economic conditions that affect the exercise and enjoyment of rights by individuals as part of communities to which they belong" (General Comment No. 6 2020, para 40). Substantive equality offers greater protection to women than formal/procedural equality, which tends to overlook the power dynamics and the economic/cultural marginalisation of women which often impede their ability to provide monetary contributions in marriage (para 42). Second, based on the substantive equality framework, the notion of "equitable sharing" is interpreted to mean that an equal amount of property should be given to men and women in case of separation, divorce, or annulment of marriage. This emphasises the fact that women enjoy unequal property rights and that their contributions, especially non-monetary, are often disregarded or undervalued. Third, the General Comment underscores the relevance of considering women's non-monetary contributions to marriage, including their efforts in developing communal land, house chores and labour, child care, and women's reproductive roles. These contributions are mostly viewed as lacking economic value (General Comment No. 6 2020, para 2). Fourth, the document interprets Article 7(d) in conjunction with rights such as equality and non-discrimination, right to property, and the right to equality in marriage. In this vein, prohibition of discrimination is reiterated especially against the most vulnerable women — women with

disabilities, older women, widows, and particularly women who did not give birth — who may be regarded as having provided no contribution (para 54). Last, the General Comment recalls the states' obligation to raise awareness and build capacity in order to encourage the transformation of retrogressive practices, customs, and attitudes that generally hinder the full exercise of women's rights. The relevance of extra-legal measures as an antidote to women's rights violations is buttressed by the fact that some women's rights are controversial in many communities (Viljoen 2012, 258–259), and that it may be illusory to expect that simply adopting legislative and administrative measures can bring about the necessary transformation. The African Commission and interested civil society organisations can assess the level of compliance and help states realise their obligations, using such reporting mechanisms as those under Article 26(1) of the Maputo Protocol and Article 62 of the African Charter which fosters a constructive dialogue (paras 62–63).

Setting normative standards for the exercise of human rights during COVID-19

The African Commission reacted swiftly, through its standard-setting power and established guidance, to minimise the likelihood of human rights violations amid the COVID-19 pandemic. The lack of an appropriate legal framework to deal with large-scale pandemics such as COVID-19, and the fact that measures adopted by the states might infringe on the exercise of several fundamental rights, prompted the Commission to intervene and provide normative guidance. Resolution 449 on Human and Peoples' Rights as central pillar of successful response to COVID-19 and recovery from its socio-political impact (7 August 2020) lays down guiding principles to prevent states from undermining human rights while they counter the spread of COVID-19 and address the challenges it has posed. It recognises the multifaceted impact of the pandemic on all the rights protected by the African Charter but singles out specific rights that will be more severely affected than others. The Resolution provides detailed guidance on the rights to health and life, the obligation to ensure that COVID-19 measures are reached through participatory mechanisms, the necessity of observing fair trials and guaranteeing courts' independence, and the prohibition of discrimination. The Resolution discourages undue restrictions on the rights to freedom of assembly and association, and "the manipulation of presidential term limits", as they can lead to political instability and violent conflict. States are clearly not the only entities on which obligations are imposed by the Charter. The Resolution recalls the duties of "individuals, the private sector, community leaders, media and religious institutions" to support anti-COVID-19 efforts.

The African Commission also made a statement on elections during COVID-19 in Africa, and released a press statement on: the impact of COVID-19 on economic, social, and cultural rights in Africa; the human rights of mine workers and mining-affected communities; the protection of human rights defenders during the COVID-19 pandemic; and the violation of women's rights during this period. The African Commission also made sure that the rights of specific other categories of people such as indigenous populations and prisoners are protected. It was unequivocal about the importance of access to the internet in responding to the pandemic, and of the prohibition of excessive use of force by the police during COVID-19. The pandemic revealed that the digital divides between urban and rural areas and between men and women were wide and not conducive to preventing the spread of the virus via information sharing. The increasing use of state security forces — the army and police — to enforce lockdown measures including curfews and stay-at-home saw an upsurge in police brutality which led to the violation of the right to life and other rights.

Most of these guidelines clarified the meaning, nature and scope of human rights during the pandemic, and the extent to which state responses should not violate the essential content of rights. For example, the African Commission noted the tension that can exist between public health measures and the right to free and fair elections, especially when states postpone elections (African Commission Statement 2020). The value of the guidelines provided by the African Commission cannot be gainsaid. The Country-Rapporteur on Burundi recalled the obligation of Burundi to ensure that election campaigns were organised in a way that complied with physical distancing measures to reduce the spread of the virus in accordance with Article 16 of the African Charter on the right to physical and mental health. This obligation does not entail rendering election campaigns impossible since they constitute an integral part of the democratic process and a means through which individuals participate freely in their country's government as per Article 13 of the African Charter (African Commission 2020).

The guidelines on elections further indicate the way the right to free and fair elections can be respected in pre-election, election and post-election periods. It also defines legal and institutional mechanisms through which the right can be better complied with. For example, arbitrary adjustments of electoral calendars should be avoided by member states, which should prioritise consultation and consensus in instances when they believe that postponing elections is the best solution. The African Commission tacitly demonstrated that states could temporarily derogate from the right to vote granted under the African Charter, if an "objective assessment of public health officials including representatives of the World Health Organization" demonstrated that elections could not be held. It is clear that, similarly to national constitutions, the African Charter had not envisaged that the

exercise of certain rights might be disrupted by a public health emergency. Interestingly, the African Commission suggests a vast array of alternative voting means that can protect both the right to vote and the lives and health of citizens, such as online voting, voting by mail, early voting, and voting by proxy. It is difficult to predict whether or not these mechanisms, if implemented, would have opened the door to contested elections or provided opportunities for incumbents to rig elections. Aside from the statement that COVID-19 measures should not be used to violate the right to vote, the African Commission has not indicated what should be done to ensure that alternative voting systems do not open a Pandora's box of electoral malpractice and irregularities on a continent with no shortage of electoral violence. In any case, the practical experience of countries that have held elections during COVID-19 shows that most have favoured physical distancing measures during polls but have had difficulty containing crowds during political campaigns.

4.1.2. Institutional developments and recent trends

The African Commission is composed of eleven members who are all elected by the AU Assembly. Taking into consideration gender equality and geographical representation, members of the Commission are elected to serve a six-year term and are eligible for re-election. In 2020, three commissioners' terms came to an end. They were replaced by four new commissioners, one of whom unfortunately passed away in March (International Justice Resource Center 2020b). The number of female Commissioners remained at six, as against five male Commissioners. However, the Chairperson and Vice-Chairperson of the African Commission in 2020 were both men, suggesting a regression from the advances in female representation in the Bureau of the Commission. Between 2003 and 2019, Commissioners had consistently elected a female chairperson, and had elected an all-female Bureau on three occasions (2007–2009, 2011–2013, and 2015–2017). Prior to 1997, when Vera Duarte (Cape Verde) was elected as the first female vice-chairperson (Final Communiqué 1997, para 4), the Bureau of the African Commission was always male. In 2003, Salamata Sawadogo became the first female Chairperson (Final Communiqué 2003, para 9). By 2020, the Commission has had six male chairpersons — one of whom has been elected three times — and seven female chairpersons, one of whom has been elected twice. It has had twelve male vice-chairpersons — two of whom were acting vice-chairpersons — while only six female commissioners have been vice-chairpersons. It is clear that the African Commission has strived to have a more gender-balanced Bureau in the last two decades of its existence than in the first decade of its existence.

Be that as it may, according to Amnesty International, the election of the four Commissioners who took office in 2020 was faced with some challenges, including "the lack of enough candidates to allow for a meaningful genuine,

competitive and merit-based election that would potentially result in the best possible composition for the regional body" (Amnesty International 2020, 14). The four new members were chosen from among ten candidates. Amnesty International also notes that the process of nomination of national members at the domestic level is not primarily based on merit and often lacks transparency and openness (Amnesty International 2020, 15). During the 28th Extra-Ordinary Session, the African Commission allocated countries and special mechanisms to the newly elected members.

At the 27th Extra-Ordinary session, the African Commission considered forty-six communications; eight on seizure, thirty-three on admissibility, three on merits, one request for withdrawal of a communication, and one request for review of a merits decision. Resolutions were also adopted on six issues, namely: on the post-election crisis in the Republic of Guinea-Bissau; on the Extension of the Deadline for the submitting draft study on the situation in Africa's sacred sites and territories; on the need to develop a study on the situation of African Human Rights Defenders in exile; on the need to develop guidelines for shadow reporting; on the need to develop norms on the obligations of states to regulate private actors involved in the provision of social services; and on the need to prepare a study on the use of force by law enforcement officials in Africa (Final Communiqué 2020, paras 13–15).

4.2. The African Court on Human and Peoples' Rights

4.2.1. Normative developments: the revision of the Court's Rules of Procedures

At its 58th Ordinary Session in 2020, the African Court adopted new Rules of Procedure to replace the 2010 Rules of Procedure (Rules of Court 2020). The revised Rules were adopted on 1 September 2020 and entered into force on 25 September 2020. They aimed to enhance the effectiveness of the Court by facilitating access to it, improving the management of cases, and ensuring better implementation of its decisions (Odum 2020). Article 33 of the African Court Protocol empowers the Court to draft its own Rules. The Rules introduce a number of elements to the operation of the Court which are worthy of consideration.

One of the significant provisions introduced in the new Rules deals with judgment in default. Under Rule 55 of the previous Rules, whenever a party failed to defend their case the Court had the power to make a default judgment upon application by the other party. Rule 63 of the new Rules provides an option for the defaulting party to apply for the Court to set aside a default judgment upon good cause provided that it is filed within one year of the default judgment, after due notice to the other party (Odum 2020). The African Court delivered its first default judgment

in the Saif Al-Islam Gaddafi case (African Commission v Libya 2016). In that case, Libya failed to comply with the Court's orders for provisional measures and refused to participate in the proceedings. This was after the Court extended the time within which Libya could file a response. However, Libya continued to ignore the Court's orders, thus compelling the Court to apply its powers under Rule 55 of the previous Rules. As at December 2021, the Court had not applied Rule 63 of the new Rules of Procedure.

Additionally, the new Rules omit the possibility for outgoing judges to continue "to sit until the completion of all stages of any case in which the Court has met for an oral hearing prior to the date of replacement" (Rule 2(2) of the 2010 African Court Rules). This came on the heels of the African Union Executive Council injunction that this rule be removed since it unlawfully extended the term of judges (Amnesty International 2020, 14). The Rules further introduced elements around the transfer of cases to the African Commission pursuant to Rule 38(2), allowing electronic means of submission of cases under Rule 40(5). Rule 41 introduces, among others, a new requirement for a comprehensive list of the contents of applications. Rule 44 of the new Rules extends the time limit within which parties may file their pleadings.

4.2.2. Benin and Côte d'Ivoire withdrawal from the African Court's optional jurisdiction

The African Court Protocol limits direct access of individuals to its jurisdiction unless state parties make room for direct access. Individual access is enshrined in Article 34(6) which provides that "at the time of the ratification of this Protocol or any time thereafter, the state shall make a declaration accepting the competence of the court to receive petitions under article 5(3) of this Protocol. The Court shall not receive any petition under Article 5(3) involving a state party which has not made such a declaration". Article 5(3) pertains to the power of the African Court to allow individuals and non-governmental organisations that have observer status with the African Commission to directly bring petitions before it. Other means of bringing petitions before the African Court include petitions brought by state parties and referral of cases from the African Commission to the Court (Article 5). However, because African states rarely petition human rights bodies against each other — in fact, the African Commission has only received three inter-state complaints since its inception in 1986 (Viljoen 2021) — and because the African Commission is reluctant to refer cases to the African Court (it has only done so on three occasions), Article 34(6) appears to be the sole recourse available to victims of human rights violations, even if it is not effective. When states withdraw their Article 34(6) Declaration, they reduce the likelihood of cases being brought against them before the African Court. Since the

establishment of the Court in 2006, this direct access has proven to be the Court's most significant source of cases and has consequently given victims the opportunity to have their cases of violation of human rights heard at a regional level (De Silva 2019). Based on the Court's reported statistics, of the 238 applications it had received as of September 2019, individuals had made 223 of them and NGOs had made twelve.

In the space of four years from 2016 to 2020, four of the ten states that had recognised the jurisdiction of the African Court on Human and Peoples' Rights to receive cases directly from individuals and NGOs withdrew their declarations made under article 34(6) of the Court Protocol (Makunya 2021, 1235). Benin and Côte d'Ivoire are the third and fourth states to withdraw a declaration under the African Court Protocol, leaving only six states that allow individuals and NGOs to directly submit complaints to the African Court. Currently, of the thirty-one member states of the African Court, only six accept the competence of the Court according to article 34(6), pursuant to which individuals and NGOs can directly file cases to the African Court. These are Burkina Faso, Ghana, Malawi, Mali, Tunisia and The Gambia.

Benin accused the Court of "being a source of real legal and judicial insecurity" (International Justice Resource Center 2020a). Its withdrawal follows a number of provisional measures adopted against Benin between November 2018 and April 2020, most of which involved opposition political leaders. One of these was the Court's order for provisional measures in Sebastien Germain Ajavon v Republic of Benin (Application No. 013/2017). The Minister's notice of withdrawal referred to the order for provisional measures that was issued in Ghaby Kodeih v The Republic of Benin (Application No.008/2020), in which the Court directed Benin to suspend the transfer of the property deed to the creditor of the domestic court judgment in the Kodeih matter, as well as any measure of dispossession of the applicant. In the Côte d'Ivoire example, the country withdrew from the African Court's jurisdiction one week after the Court made a provisional measures ruling in Guillaume Kigbafori Soro & Others v Republic of Côte d'Ivoire (the Guillaume Soro case) (International Justice Resource Center 2020a). In March 2020, the applicant and nineteen others alleged that their rights had been violated. Soro, a former President of the Ivorian National Assembly, alleged that an arrest warrant was issued by the Ivorian authorities as part of criminal proceedings for a number of offences. Upon request by the applicants, the Court ordered Côte d'Ivoire to implement provisional measures: namely, to stay the execution of the arrest warrant against Guillaume Kigbafori Soro, and to report to the Court within thirty days from the date of receipt on the implementation of the interim measures. In withdrawing the declaration of the jurisdiction of the Court, Côte d'Ivoire cited reasons including the claim that the Court's provisional measures not only undermine the state's sovereignty, and "the

authority and functioning of justice, but are also likely to cause serious disruption to the legal order and undermine the foundations of the rule of law by creating genuine legal authority" (Africanews 2020).

These withdrawals have been said to present a crisis in the African human rights system considering the fact that there is limited access to the African Court for individuals and NGOs, when states, which are the largest violators of individuals' rights, have to expressly make a declaration accepting jurisdiction of the Court. According to Adjolohoun, the African Court faces a crisis that is both jurisdictional and existential in nature, because the current state of affairs of the Court has a critical impact on both the scope of intervention of the Court and its authority and legitimacy. The Court system has also been critiqued as being prone to crisis due to the lack of appeal or meaningful review system. Article 28(2) of the African Court protocol provides that judgments of the Court are final. Other shortcomings prompting the crisis of the African Court include the problematic timing of adjudication, the inconsistent assessment of evidence, the inconsistent and incomplete judicial restraint in respect of admissibility, "strategy-blind" provisional orders, and ruling by imperium rather than substantiated reasoning (Adjolohoun 2020, 21–31).

4.2.3. Jurisprudential developments

The African Court exercises contentious and advisory jurisdictions. The contentious jurisdiction of the African Court is enshrined under article 3 of the African Court Protocol. In 2020, the Court delivered fifty-five decisions, which include twenty judgments, twenty-two rulings on provisional measures, five orders for re-opening pleadings, two orders on striking out applications, two orders on request for intervention, one advisory opinion and one order for joinder of cases (African Court Activity Report 2021, para 13, page 4). This is commendable progress considering the disruptions caused by the COVID-19 pandemic (Makunya 2021, 1231). The Court embraced the disruptions by conducting hearings and delivering judgments online. The advisory opinion jurisdiction of the African Court is provided for under article 4(1) of the African Court Protocol. It states that any OAU (now AU) Member State or any of its organs, or any African organisation recognised by the OAU, may request the Court to provide an opinion on any legal matter relating to the African Charter or any other relevant human rights instruments, provided such a matter is not related to a matter being examined by the Commission. Unlike the contentious jurisdiction, the advisory jurisdiction of the African Court has not been frequently used despite its potential to provide normative clarifications of certain provisions of human rights treaties applicable in Africa. The 2020 Activity Report of the African Court shows that the Court has received 300 cases in contentious matters and fourteen requests for advisory opinion, and it has delivered 106 rulings and judgments and finalised twelve

requests for advisory opinion. In the following paragraphs, we specifically discuss the advisory opinion delivered by the Court in 2020. It is the second opinion in which the Court declares it has personal jurisdiction to deliver an advisory opinion, following a series of rulings where the Court rejected nine requests for advisory opinions submitted by non-governmental organisations (Makunya and Bitagirwa Salomon 2020, 9–41). Other factors which prompt us to highlight the contribution of this advisory opinion to the African human rights system, are: the nature of questions submitted to the Court, the importance of its opinion in the furtherance of rights of marginalised groups, and the interactions the Court has had with non-governmental organisations as amicus curiae.

Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments Applicable in Africa (Vagrancy Opinion).

This request for an advisory opinion was filed by the Pan African Lawyers Union (PALU) on 11 May 2018 and the opinion was issued seventeen months later. It is the twelfth request submitted before the Court since its inception — two were pending at time of writing — and the second in which the Court has found that it had personal jurisdiction to deliver an advisory opinion. The Court was requested to clarify whether vagrancy laws and by-laws were consistent with the African Charter, the African Children's Charter and the Maputo Protocol. These three African Union human rights treaties have thus far been ratified by fifty-four, forty-nine and forty-two African countries respectively (Request No. 001/2018 – Vagrancy Opinion, para 34). If vagrancy laws and by-laws, most of which are relics of colonialism, were found to be in violation of certain rights provided for under the African Charter, the African Children's Charter or the Maputo Protocol, PALU asked the Court to clarify whether member states had the obligation to "repeal or amend" them, and what would be the nature of such obligations.

Seven non-governmental human rights organisations operating on the African continent were granted standing to submit their amicus curiae briefs (Request No. 001/2018 – Vagrancy Opinion, para 12). These submissions highlighted various ways in which vagrancy laws infringe on human rights. Burkina Faso and the African Commission submitted their observations. The African Commission requested the Court to consider the 2017 Principles on Decriminalisation of Petty Offences in Africa which the Commission had adopted in response to existing vagrancy laws and by-laws. The African Commission called on states to "decriminalise petty offences", as they perpetuate discrimination based on "social origin, social status or fortune" of individuals and criminalise their "life-sustaining activities" (African Commission 2017, para 2).

In the Vagrancy Opinion, the Court found that vagrancy laws and by-laws punish the underprivileged for using public spaces to eke out a living, thus exacerbating the precarious socio-economic conditions of such persons. Although states pledged under the Charter to protect rights such as those to non-discrimination and equality, to dignity, to liberty, to fair trial, to freedom of movement and to the protection of family, vagrancy laws make the exercise of these rights illusory. The Court also found that the forced relocation from places of residence and the arrest and detention of children in the enforcement of vagrancy laws amount to violations of the rights of children. The Court subsequently considered the compatibility of vagrancy laws with the Maputo Protocol and indicated that the fact that laws permit the arrest of women without a warrant disproportionately affects them. Most of these women cannot afford bail fees thus risking longer detention periods. Article 24 of the Maputo Protocol explicitly speaks to the need for adequate protection of poor women and women from marginalised groups. The Court concluded by declaring that state parties have a positive obligation to repeal and amend vagrancy laws to comply with the African Charter, the Children's Rights Charter and the Maputo Protocol.

This advisory opinion provides several lessons on the ability of the Court's advisory jurisdiction to enhance human rights protection in Africa through the clarification of the nature and scope of human rights standards. First, the non-binding nature of advisory opinions does not deprive them of their ability to influence the behaviour of states and to induce law reforms at the domestic level. Although the Court noted the existence of vagrancy laws in some African countries, states such as Zimbabwe, Rwanda, Mozambique, Lesotho, Kenya, Cape Verde and Angola have taken progressive steps in repealing most of their vagrancy laws. Burkina Faso highlighted in its observations that vagrancy in the Burkinabè Penal Code was decriminalised in 2018 (Request No. 001/2018 – Vagrancy Opinion, para 145). In legal traditions where adjudication is generally seen as an important source of law-making, courts can champion the process of repealing vagrancy laws when approached by litigants. The High Court of Malawi in Mayeso Gwanda v The State has set the tone by ruling that being declared rogue and vagabond violated human rights and the constitution (Request No. 001/2018 – Vagrancy Opinion, para 62). A similar move had already been taken by the Economic Community of West African States Court in Dorothy Njemanze and Others v Federal Republic of Nigeria (Request No. 001/2018 – Vagrancy Opinion, paras 61–62). The Court's opinion, the African Commission's 2017 Principles, the emerging national and regional jurisprudence and some best practices from other African countries may perhaps assist countries that still maintain vagrancy laws, and courts that defer significantly to the "legislature (whether national, provincial or municipal) to decide what should be legal" (Killander 2019, 91), in changing their perspectives on the criminalisation of vagrancy.

Second, the quality of arguments submitted by amicus curiae, by elucidating the impact of vagrancy laws on women and children in particular, shows how non-governmental organisations continue to play an important role in enhancing human rights protection in Africa during both contentious and advisory matters (Makunya 2021, 1236–1238). The Centre for Human Rights (University of Pretoria) has often been requested to submit amicus curiae briefs to the African Court (Request No. 001/2018 – Vagrancy Opinion, para 9). This highlights the proactive role the Court can take in order to seek and receive reasoned opinions from organisations with extensive experience in human rights issues on the continent. In the Vagrancy Opinion, the Centre for Human Rights and the Dullah Omar Institute for Constitutional Law Governance and Human Rights (University of Western Cape) emphasised both the need for individuals to be agents of their own development, and the disproportionate impact of poverty on women who are forced to resort to "street trading". They demonstrated how "poor women are (…) more likely to be arrested under vagrancy laws because their attempts to earn a living often put them in conflict with the law" (Request No. 001/2018 – Vagrancy Opinion, para 133).

Third, the approach taken by the African Court in construing the right to fair trial shows clearly how it can protect aspects of rights not explicitly provided in the African Charter. The protection against self-incrimination is one such aspect of fair trial that the Court found was violated through vagrancy legislation (Request No. 001/2018 – Vagrancy Opinion, para 90). Fourth, the advisory opinion demonstrated how the African Court has developed over the years a human rights jurisprudence on which it can rely. There is also an effort to resort to some soft-law instruments developed by the African Commission and the African Committee of Experts on the Rights and Welfare of the Child. This is a commendable dialogue among African Union human rights bodies, and it may start to indicate that cross-fertilisation of human rights ideas is taking place among them. The African Court has already demonstrated its willingness to rely on the African Commission's cases in interpreting admissibility-related conundrums and substantive rights. However, each human rights body must keep abreast of recent normative developments in other bodies in order for this much appreciated dialogue to be meaningful and relevant. The Vagrancy Opinion demonstrates how the African Court failed to consider the African Commission's recently developed General Comment No. 5 when interpreting Article 12(1) on the right to freedom of movement and choice of residence, which the PALU alleged to be violated by vagrancy laws and by-laws. The African Court relied on General Comment No. 27 on freedom of movement, developed by the UN Human Rights Committee, which, in addition to being old, does not specifically aim to address challenges to free movement and the choice of residence in Africa as does the African Commission's General Comment No. 5 (Adeola, Viljoen, and Makunya 2021, 131–151).

Lastly, while the advisory procedure is generally seen as a multilateral process, only one African state, namely Burkina Faso, submitted its views on the validity of vagrancy laws and by-laws. This is not new in the African Court's practice of advisory procedure. In the Request for advisory opinion by Rencontre Africain pour la défense des droits de l'homme, only Kenya submitted its observations (Request No. 002/2014, para 18), while no state submitted observations in the Request for Advisory opinion by the Centre for Human Rights of the University of Pretoria and Four Others (Request No. 001/2016), or the Request for advisory opinion by l'Association africaine de défense des droits de l'homme (Request No. 002/2016). A paltry two states submitted their observations to the Court in the Request for advisory opinion by the Centre for Human Rights of the University of Pretoria and the Coalition of African Lesbians (Request No. 002/2015, para 15). However, in the earliest request for advisory opinion, the Request for advisory opinion by the African Committee of Experts on the Rights and Welfare of the Child (also the first in which the Court declared it had personal jurisdiction), the Court received comments from three states (Request No. 002/2013, para 26), while six states submitted their observations in the Request for advisory opinion by Socio-Economic Rights and Accountability Project (SERAP) (Request No. 001/2013, para 24). Rule 83 of the African Court Rules of Procedure enjoins the Registry to publish the request on the Court's website and "transmit copies to and invite observations from" African Union member states, the African Commission, interested African Union organs and "any other relevant entities" including non-governmental organisations. The participation of states in the advisory procedure can enhance the legitimacy of the Court's arguments and dispel some of the beliefs that many African Union member states may hold that this process, and the African Union's human rights bodies in general, are simply being used by non-governmental organisations to advance their own agendas.

5 Conclusion

The COVID-19 pandemic affected democracy and human rights on the African continent in many ways. Nation states and the African Union human rights organs quickly found innovative ways to overcome the disruption caused by the pandemic. Serious challenges posed by the pandemic have arisen in the organisation of elections. Executive and legislative leaders in some countries took advantage of the pandemic to postpone elections, with the direct consequence of extending their term of office. This was the case in countries such as Chad, Somalia, Ethiopia, and Gabon. While the African Commission has not ruled out the possibility of postponing elections in order to safeguard the health of citizens and reduce the spread of the virus, it has asked member states only to make such decisions after an objective assessment by public health officials assisted by the World Health Organization. It is important to note that

such actions must abide by the African Democracy Charter, which under Article 10 requires consensus among relevant stakeholders. However, it did not take long for countries such as Somalia and Ethiopia to postpone elections without consulting the relevant stakeholders. The Constitutional Court of the Central African Republic rejected attempts by the executive and legislative branches to extend presidential and parliamentary terms through an "unconstitutional" constitutional amendment, setting a positive precedent in a region where incumbents are increasingly resorting to constitutional courts to secure additional terms.

It is worth noting that the descent into symbolic democracy was not caused by the COVID-19 pandemic alone. The discussion of two types of unconstitutional change of government — the removal of a democratically elected government in Mali (2020 coup d'état), and the retention of constitutional power in Côte d'Ivoire and Guinea (third termism) — showed how the commitment to constitutionalism and peaceful alternation of power remains elusive in some countries. Coups d'état are the worst attacks on democracy and constitutionalism. They violate the right of citizens to democratically choose their representatives and to freely participate in government. They also militarise the presidency and key state institutions. These are some of the post-colonial ills that African constitutions and human rights and governance instruments have attempted to prevent by entrenching the basic principles of constitutionalism to check and balance executive powers, the abuse of which has led to conflicts and instability.

African human rights bodies in 2020 have made significant progress in standard-setting, and in the interpretation of the provisions of the African Charter and its normative protocols that cumulatively strengthen human rights protection at the regional level. Positive developments include the adoption of new rules of procedure that address cutting-edge issues such as the organisation of sessions online, and enhance the overall effectiveness of the African Commission and the African Court. The African Commission has sought to strengthen its autonomy and independence from the political organs of the African Union in areas such as the scheduling of sessions, but the publication of its activity report remains subject to consideration by the AU Executive Council. Other positive developments include the swearing-in and induction of four new members of the African Commission, and the clarification of the normative content of Article 7(d) of the Maputo Protocol, which will potentially increase the protection of women's property rights in cases of separation, divorce, and annulment of marriage. The African Court, despite its efforts to develop relevant norms through decisions on individual petitions, remains dogged by the ghost of the withdrawal of Article 34(6) declarations, which have so far been the main channel through which cases reach its docket.

References

Abebe, Adem Kassie. 2020a. "Africa's attempts to abandon practice of presidents for life suffer another setback." *The Conversation,* August 16, 2020. Link

Abebe, Adem Kassie. 2020b. "Côte d'Ivoire: Ouattara's bid for 3rd term opens up a can of worms." *The Africa Report,* July 23, 2020. Link

Abebe, Adem Kassie, and Charles Manga Fombad. 2021. "The African Union and the advancement of democracy: The problem of unconstitutional retention of governmental power." In *Democracy, elections, and constitutionalism in Africa,* edited by Charles Manga Fombad and Nico Steytler. United Kingdom: Oxford University Press.

Adeola, Romola, Frans Viljoen, and Trésor Muhindo Makunya. 2021. "A commentary on the African Commission's General Comment on the Right to Freedom of Movement and Residence under Article 12(1) of the African Charter on Human and Peoples' Rights." *Journal of African Law* 65: 139.

Adjolohoun, Sègnonna Horace. 2017. "'Made in Courts' democracies? Constitutional adjudication and politics in African constitutionalism." In *Constitutional adjudication in Africa*, edited by Charles Manga Fombad. United Kingdom: Oxford University Press.

Adjolohoun, Sègnonna Horace. 2020. "A crisis of design and judicial practice? Curbing state disengagement from the African Court on Human and Peoples' Rights." *African Human Rights Law Journal* 20: 1–40.

African Commission. 2017. African Commission on Human and Peoples' Rights, Principles on the Decriminalisation of Petty Offences in Africa.

African Commission. 2020. "Communiqué de presse sur la tenue au Burundi des élections générales dans le contexte de prévalence de la Pandémie Coronavirus." Link

African Commission Statement. 2020. Statement of the African Commission on Human and Peoples' Rights on Elections in Africa during the COVID-19 Pandemic. Link

African Commission v Libya. 2016. African Commission on Human and Peoples' Rights v Libya (merits) (2016) 1 AfCLR 153.

African Court Activity Report. 2021. Activity Report of the African Court on Human and Peoples' Rights — 1 January–31 December 2020. Link

African Court Protocol. 2004. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights. Link

African Union. 2022. Solemn Declaration on a Common African Defence and Security Policy. Link

Africanews. 2020. "Ivory Coast withdraws from African Human Rights and Peoples Court." *Africanews,* 30 April, 2020. Link

Al Jazeera. 2020. "Mali coup leaders, ECOWAS fail to reach agreement on transition." *Al Jazeera,* 24 August, 2020. Link

Amnesty International. 2020. "The state of African regional human rights bodies and mechanisms 2019–2020." Link

Asplund, Erik. 2021. "Global overview of COVID-19: Impact on elections." *International Institute for Democracy and Electoral Assistance* (accessed 30 March, 2021). Link

Ben Barka, Habiba and Mthuli Ncube. 2012. "Political fragility in Africa: Are military coups d'état a never-ending phenomenon?" *African Development Bank: Chief Economist Complex*. Link

Biegon, Japhet. 2018. "Diffusing tension, building trust: Proposals on guiding principles applicable during consideration of the activity reports of the African Commission on Human and Peoples' Rights." *Global Campus Policy Briefs*. Link

Bonny, Aurore. 2020. "18 month transition period adopted in Mali." *Anadolu Agency,* 13 September, 2020. Link

Constitutional Council. 2020. Décision No. CI-2020-EP-009/14-09/CC/SG du 14 septembre 2020 portant publication de la liste définitive des candidats à l'élection du Président de la république du 31 octobre 2020.

Constitutional Court of Guinea. 2020. Arrêt No. AC 014 du 11 Juin 2020.

Coulibaly, Loucoumane. 2020. "Ivory Coast's Ouattara says he won't run for re-election." *Reuters,* 5 March, 2020. Link

Cour constitutionnelle du Mali. 2021. Arrêt No. 2021-02/CC/Vacance du 28 Mai 2021, Articles 2 & 3.

Dakano, Baba, Hassane Koné, and Boubacar Sangaré. 2018. "Can dialogue with violent extremist groups help bring stability to Mali?" Link

De Silva, Nicole. 2019. "Individual and NGO access to the African Court on Human and Peoples' Rights: The latest blow from Tanzania." *Blog of the European Journal of International law*, 16 December, 2019. Link

EISA. 2021. "2020 African election calendar." Link

Final Communique. 1988. Final Communique of the 2nd Ordinary Session of the African Commission on Human and Peoples' Rights, Senegal. Link

Final Communique. 1995. Final Communiqué of the 18th Ordinary Session of the African Commission on Human and Peoples' Rights, Cape Verde. Link

Final Communiqué. 1997. Final Communiqué of the 22nd Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul. Link

Final Communiqué. 2003. Final Communiqué of the 34th Ordinary Session of the African Commission on Human and Peoples' Rights, The Gambia. Link

Final Communique. 2010. Final Communique of the 47th Ordinary Session of the African Commission on Human and Peoples' Rights, The Gambia. Link

Final Communiqué. 2019. Final Communiqué of the 65th Ordinary Session of the African Commission on Human and Peoples' Rights, The Gambia. Link

Final Communiqué. 2020. Final Communiqué of the 27th Extraordinary Session of the African Commission on Human and Peoples' Rights, The Gambia. Link

Fombad, Charles Manga, and Lukman Adebisi Abdulrauf. 2020. "Comparative overview of the constitutional framework for controlling the exercise of emergency powers in Africa." *African Human Rights Law Journal* 20: 377.

France 24. 2021. "Chad's President Idriss Deby re-elected for sixth term with 79.3% vote." *France 24*, 19 April, 2021. Link

Freedom House. 2020. "Freedom in the world 2020: Chad." (accessed 29 March 2021). Link

General Comment No. 6. 2020. General Comment No. 6 on the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol): the Right to Property during Separation, Divorce or Annulment of Marriage (Article 7(D)). Link

Ghaby Kodeih and Nabih Kodeih v Republic of Benin Application No.008/2020.

Guled, Abdi. 2020. "Somalia to delay elections by 13 months, says official." *ABC News*, 29 June, 2020. Link

Hairsine, K. 2021. "Somalia holds Emergency talks over Election Crisis." *Deutsche Welle*, 2 February, 2021. Link

Hoije, Katarina. 2020. "Niger begins first democratic transition as Issoufou departs." *Bloomberg*, 27 December, 2020 Link

International Justice Resource Center. 2020a. "Benin and Côte d'Ivoire to withdraw individual access to African Court." Link

International Justice Resource Center. 2020b. "Four members join African Commission on human and peoples' rights." Link

Jebra Kambole v The United Republic of Tanzania Application No. 018/2018.

Kabaa, O'Brien, and Charles Manga Fombad. 2021. "Adjudication of disputed presidential elections in Africa." in *Democracy, elections, and constitutionalism in Africa,* edited by Charles Manga Fombad and Nico Steytler, 361–362. United Kingdom: Oxford University Press.

Killander, Magnus. 2019. "Criminalising homelessness and survival strategies through municipal by-laws: colonial legacy and constitutionality." *South African Journal on Human Rights* 35, no. 1: 70–93.

Kiruga, Morris. 2020. "Ethiopia: Indefinite postponement of polls raising political tempers." *The Africa Report,* 25 May, 2020. Link

Lumumba-Kasongo, Tukumbi. 2007. "Africa's third-term syndrome: a trend toward authoritarianism or a unique form of democracy." *Georgetown Journal of International Affairs* 8, no. 1: 125.

Makinda, Samuel M., and F. Wafula Okumu. 2007. *The African Union: Challenges of Globalization, Security, and Governance.* London: Routledge.

Makunya, Trésor, and Zigashane Bitagirwa Salomon. 2020. "La compétence consultative de la Cour africaine des droits de l'homme et des peuples: entre restrictions organiques et limitations matérielles." In *Droit international des droits de l'homme, justice transitionnelle et droit international pénal*, edited by E. Bakama Bope and S. Makaya Kiela, 9–41. Editions CAD.

Makunya, Trésor Muhindo. 2021. "Decisions of the African Court on Human and Peoples' Rights during 2020: Trends and lessons". *African Human Rights Law Journal* 21, no. 2: 1230–1264.

Maruf, Harun. 2020. "Somali elections won't take place on schedule." *VOA,* 28 June, 2020. Link

McGowan, Pat and Thomas H. Johnson. 1986. "Sixty coups in thirty years — further evidence regarding African military coups d'etat." *The Journal of Modern African Studies* 24: 539.

Mo Ibrahim Foundation. 2021. "COVID-19 in Africa, one year on: Impact and prospects. Key findings." Link

Nabaneh, Satang. 2020. "Maintaining the independence of the African Commission on Human and Peoples' Rights: A commentary on the Rules of Procedure, 2020." Technical Report, Coalition for the Independence of the African Commission. Link

Nabaneh, Satang. 2021. "2020 in review: A focus on the African Commission on Human and Peoples' Rights." Link

Ndeye Khady, Lo. 2020. "De Moussa Traoré à Assimi Goita: quatre coups d'Etat qui ont changé l'histoire du Mali." *BBC Afrique,* 23 August, 2020. Link

Nyarko, Michael Gyan, and Trésor Makunya. 2018. "Selected developments in human rights and democratisation during 2017: Sub-Saharan Africa." *Global Campus Human Rights Journal* 2: 156–157.

Nyawa, Joshua, Chisomo Nyemba, Deborah Nyokabi, Ian Mathenge, and Thomas White. 2020. "Selected developments in human rights and democratisation in sub-Saharan Africa during 2019." *Global Campus Human Rights Journal* 4: 210.

Nyokabi, Deborah Mburu, Naa Diallo, Nozizwe Ntesang, Thomas White and Tomiwa Ilori. 2019. "The right to development and internet shutdowns: Assessing the role of information and communication technology in democratic government in Africa." *Global Campus Human Rights Journal* 3: 147–172.

Odum, Usani Nicholas. 2020. "The revised Rules of the African Court 2020: Towards a more effective African Court." *African Legal Information Institute.* Link

Okoth-Ogendo, H. W. O. 1993. "Constitutions without constitutionalism: Reflections on an African political paradox." In *Constitutionalism and democracy: transitions in the contemporary world,* edited by Douglas Greenberg, Stanley Katz, Melanie Beth Oliviero, and Steven Wheatley. New York: Oxford University Press.

Olivier, Mathieu. 2020. "Gabon: Great upheaval in the opposition with a view to 2023." 15 December, 2020. Link

Paquette, Danielle. 2021. "Military officer who toppled two presidents in Mali is in charge of the country, aide says." *The Washington Post,* 27 May, 2021. Link

Prempeh, H. Kwasi. 2007. "Africa's 'constitutionalism revival': false start or new dawn?" *International Journal of Constitutional Law* 5, no. 3: 471.

Prentice, Alessandra. 2020. "Mali coup figure named head of transition council." *Reuters,* 5 December, 2020. Link

PSC Report. 2020. "Reality check: The AU's limited ability to respond to crises." Link

Relief Web. 2020. "COVID-19 and elections in sub-Saharan Africa: What risks for democracy and human rights?" 15 May, 2020. Link

Request No. 001/2013. Request for advisory opinion by Socio-Economic Rights and Accountability Project (SERAP) (2017).

Request No. 002/2013. 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 (2014).

Request No. 002/2014. Request for advisory opinion by Rencontre Africain pour la défense des droits de l'homme (2017).

Request No. 002/2015. Request for advisory opinion by the Centre for Human Rights of the University of Pretoria and the Coalition of African Lesbians (2017).

Request No. 001/2016. Request for advisory opinion by the Centre for Human Rights of the University of Pretoria and Four Others (2017).

Request No. 002/2016. Request for advisory opinion by l'Association africaine de défense des droits de l'homme (2017).

Request No. 001/2018 – Vagrancy Opinion. Request for advisory opinion by the Pan African Lawyers Union (PALU) on the compatibility of vagrancy laws with the African Charter on Human and Peoples' Rights and other human rights instruments applicable in Africa (2020).

Rules of Court. 2020. Rules of the African Court on Human and Peoples' Rights. 2020. Link

Schwikowski, Martina. 2020. "Crisis looms in Ethiopia as elections are postponed." *Deutsche Welle*, 16 June, 2020. Link

Sebastien Germain Ajavon v Republic of Benin Application No. 013/2017.

Status list of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (accessed 14 April 2021). Link

Suy Bi Gohore Emile & Others v Republic of Côte d'Ivoire Application No. 044/2019.

Transition Charter 2020 of the Republic of Mali.

Trithart, Albert. 2013. "Democratic coups? Regional responses to the constitutional crises in Honduras and Niger." *Journal of Public and International Affairs,* 116.

Viljoen, Frans. 2012. *International Human Rights Law in Africa.* 2nd ed. Oxford University Press, USA.

Viljoen, Frans. 2018. "Understanding and overcoming challenges in accessing the African Court on Human and Peoples' Rights." *International and Comparative Law Quarterly* 67.

Viljoen, Frans. 2021. "A procedure likely to remain rare in the African system: An introduction to the inter-state communications under the African Human Rights System." *Völkerrechtsblog,* 27 April, 2021. Link

Vohito, Sonia. 2020. "COVID-19 and unamendable limits on duration of presidential and legislative terms in the Central African Republic." *ConstitutionNet*, 22 June, 2020. Link

Zewudie, Tilahun Adamu. 2018. "Human rights in the African Union decision-making processes: An empirical analysis of states' reaction to the Activity Reports of the African Commission on Human and Peoples' Rights." *African Human Rights Yearbook* 2, 295–320.