

Selected developments in human rights and democratisation in sub-Saharan Africa during 2019

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Abstract: *This article reviews selected developments in human rights and democratisation in sub-Saharan Africa during 2019. It contextualises the withdrawal of Tanzania from the optional declaration under article 34(6) of the African Court allowing individuals and non-governmental organisations to submit cases directly to the African Court. It notes that while the withdrawal is a painful blow, it is not fatal as the African Commission remains a viable access channel. The authors further commend developments in women's rights in the areas of child marriage, the protection of pregnant school girls, sexual and reproductive health rights and democratisation, but notes that they are piecemeal in nature and more still needs to be done. The article discusses the monumental judgment nullifying presidential elections in Malawi and its implications for democracy, particularly in asserting the independence of the judiciary in Africa. The article also analyses the killings and persecutions of persons with albinism in Malawi and the need for urgent redress. The authors evaluate the mixed developments in LGBTIQ rights juxtaposing the parliamentary successes in Angola, the judicial victory in Botswana, on the one hand, with the judicial setback in Kenya, on the other. The article highlights the fall of Al Bashir's regime in Sudan as a remarkable step towards democratisation in Africa. Finally, the authors screen the drawbacks of violence on human rights and democratisation through the case studies of xenophobia in South Africa, the Anglophone Cameroon crisis, violent extremism in West Africa, and civil strife in Ethiopia, urging for an end to bloodshed in line with the African Union's vision of silencing the guns by 2020.*

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1 Introduction

Agenda 2063 of the African Union (AU) promises an Africa that is 'peaceful, prosperous and integrated' (AU 2015). However, if the events of 2019 are anything to go by, the continent is still a long way from reaching most of these goals. While monumental strides were made in 2019, especially regarding the rights of minorities and the democratisation process, several areas lag behind. Africa faces systematic human rights violations that permeate all the sub-regions. This article reviews select developments in sub-Saharan Africa, and their impact on human rights and democratisation in 2019. It starts with the African Court on Human and Peoples' Rights (African Court) and the mounting backlash the Court faces from its host state, Tanzania. It observes how Tanzania, following Rwanda's lead, withdrew its article 36(4) declaration, terminating direct individual access to the regional court. It also analyses the year's impact on women's rights, highlighting progress made in Zimbabwe, eSwatini, Mozambique and other states to eliminate child marriage, protect pregnant school girls, ensure sexual and reproductive health rights, and enhance women's political participation. Further, the article examines events in Sudan, the country's celebrated revolution, and its delicate transition to civilian rule. The authors also consider developments in Malawi, where the Constitutional Court overturned the 2019 national elections, and where pervasive violence against persons with albinism persists. Later, the article reviews legislative and judicial decisions affecting same-sex relationships, commending their decriminalisation in Angola and Botswana, while denouncing the continued discrimination in Kenya. Subsequently, the authors analyse the resurgence of Afrophobia in South Africa, the persecution of Anglophones in Cameroon crisis, violent extremism in West Africa, and civil strife in Ethiopia. Finally, the article considers the Ebola epidemic in Central Africa, and its implications for the persistent armed conflict.

2 A hostile host country: A reflection on Tanzania's 2019 withdrawal from the direct individual access option to the African Court

2.1 Contextualising the withdrawal

In 2019 the African Court on Human and Peoples' Rights (African Court) received a stinging blow when Tanzania deposited a notice of withdrawal

of the declaration made under article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (African Court Protocol) allowing individuals and non-governmental organisations (NGOs) to submit cases directly to the African Court. State parties to the Court Protocol have to make a separate optional declaration under article 34(6) in addition to ratifying the Court Protocol. By mid-2020 ten African countries (Benin, Burkina Faso, Côte d'Ivoire, The Gambia, Ghana, Malawi, Mali, Rwanda, Tanzania and Tunisia) have made the declaration since the adoption of the Protocol in 1998. Tanzania deposited its notice of withdrawal with the AU on 14 November 2019 (Amnesty International 2019). Tanzania's withdrawal was a huge set-back, particularly in light of the fact that Tanzania hosts the Court in Arusha.

Direct access of individuals and NGOs (cumulatively referred to as 'individual access') is important because, since the creation of the Court in 2006, it has been the main pipeline of the Court's judgments on human rights violations. As of September 2019, out of the 238 applications the Court had received, NGOs had made 12 applications, individuals had made 223 applications, while the African Commission on Human and Peoples' Rights (African Commission) had submitted three applications (De Silva 2019). As such, the Court's effectiveness is greatly hampered by the withdrawal of the direct access option. Tanzania's withdrawal was particularly disheartening as it followed on the heels of Rwanda's withdrawal in 2016. The future does not look bright for the African Court as Benin and Côte d'Ivoire seem to have taken a cue from Rwanda and Tanzania and withdrew from the optional declaration in the first quarter of 2020 (Centre for Human Rights 2020). The successive withdrawals cast considerable doubt on the feasibility of adjudication of human rights violations by the African Court.

A disturbing factor about the withdrawals by Tanzania and other countries is that they seem to be instituted as a form of retaliatory measure to protest dissatisfaction with the Court's decisions. Some scholars are of the view that Tanzania withdrew its optional declaration as a result of the judgment of the African Court in the case of *Ally Rajabu & Others v United Republic of Tanzania* to the effect that the institution of a mandatory death sentence for murder was contrary to the provisions of the African Charter (De Silva 2019). However, another factor informing the decision is that the bulk of the Court's caseload has been against Tanzania, with cases against that country constituting 63 per cent of the Court's pending cases and 43 per cent of the Court's finalised cases (De Silva 2019). At the root of all the recent withdrawals from the Court is the tension between national sovereignty interest and accountability for human rights violations based on international supervision. Sovereignty should not be used as an excuse for evading human rights obligations. The African Court Protocol itself

endeavoured to accommodate political sovereignty by opting for optional instead of compulsory direct access to the Court (Viljoen 2019).

2.2 Impact of the withdrawal

It is important to examine the effect of the withdrawal of the optional declaration by Tanzania. Tanzania ratified the African Court Protocol in 2003 and made the article 34(6) declaration in 2010 (African Union Treaties 2017). The African Court pronounced itself on the effect of a withdrawal from the optional declaration in the case of *Ingabire Victoire Umuhoza v Rwanda*. The Court held that a withdrawal only becomes effective after 12 months and does not impact on cases filed during the 12 month period or cases that have already been pending before the Court (*Ingabire* case paras 67-68). Tanzania, therefore, has the obligation to comply with the Court's orders until all the pending cases are dispensed with. It must continue to be diplomatic in its engagement with the Court and refrain from the approach taken by Rwanda of stopping to cooperate with the Court after depositing its instrument of withdrawal.

The withdrawal of the individual access option by Tanzania and other countries should not be perceived as the end of the road. The journey to hold human rights violations in Africa accountable is not a marathon with a grand finale; rather it is a relay and the baton has now been passed to the African Commission to vigilantly and vigorously utilise its access option to institute cases before the African Court. Ideally, given that the optional direct access declaration is the exception rather than the rule, most cases reaching the Court ought to start as communications before the Commission (Viljoen 2012). The Commission's dismal record of three references is indicative of institutionalised reluctance, which needs to change. Granted, it is not going to be an easy journey as the African Commission has been dealing with a backlash from the African Union Executive Council upon granting observer status to the Coalition for African Lesbians in 2015 (Killander & Nyarko 2018). Nevertheless, it is doable as the Inter-American human rights system illustrates. Although the system does not allow for a direct access option, the Inter-American Commission of Human Rights has submitted numerous cases to the Inter-American Court of Human Rights guaranteeing solid protection of human rights in the region. Additionally, civil society organisations such as the Coalition for an Effective African Court on Human and Peoples' Rights need to engage in campaigns to recruit more members to make the article 34(6) declaration to mitigate the legitimacy gap created by the withdrawing members. South Africa, for instance, comes to mind as it can set an example for the rule of law in its year of the AU Presidency (Centre for Human Rights 2020). Ultimately, AU organs and African leaders must show their commitment to African solutions for African problems and Agenda 2063 of the AU by using diplomatic channels to persuade the

government of Tanzania and other nations in a similar position to reverse their withdrawals.

3 Development in women's rights in Africa in 2019: A case of piecemeal progress

3.1 Policy, jurisprudential and legislative progress on child marriage

In 2019 there were significant developments regarding the rights of women and girls in Africa. These developments include the fight to end the issue of child marriage which for many years has plagued the continent as four in ten girls in sub-Saharan Africa are married before the age of 18 (Maclean 2019). In Tanzania the Supreme Court of Appeal upheld a ruling banning the marriage of young girls and directed the government to raise the legal age of marriage from 15 to 18 years within a year from the date of the judgment (UN Women 2019). In *Attorney General v Rebeca Z Gyumi* the Court of Appeal sitting in Dar es Salaam found sections 13 and 17 of the Law of Marriage Act, Cap 29 to be contrary to the equality clause in article 13 of the Tanzanian Constitution to the extent that they allow a female person to get married at the age of 15 years while a male person can only get married upon attaining the age of 18 years.

Elsewhere, Zimbabwe, the Kingdom of Eswatini, and Mozambique passed legislation outlawing child marriage (Nyamweda & Morna 2019). Legislative measures in the southern hemisphere have been influenced by the Southern African Development Community (SADC) Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage (SADC Parliamentary Forum et al 2018). Additionally, the developments are reverberations of the 2018 decision of the African Court in the case of *Association Pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and the Institute For Human Rights and Development in Africa (IHRDA) v Republic of Mali*, in which it held that the Malian Family Code was a violation of article 6(b) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) and articles 1(3) and 21 of the African Charter on the Rights and Welfare of the Child (African Children's Charter) to the extent that it set the minimum age of marriage at 16 years for girls and 18 years for boys. The developments in the area of child marriage in 2019 herald much hope that the scourge of child marriage will progressively come to an end on the continent. Sustained advocacy is required as many countries in Africa retain legislation that permits child marriage for girls.

3.2 Jurisprudential advances on the non-discrimination of pregnant girls

Elsewhere, the Economic Community of West African States (ECOWAS) Court of Justice continued to illustrate the importance of sub-regional courts in advancing the rights of women and girls on the continent. In its 12 December 2019 judgment in *Suit ECW/CCJ/APP/22/18 – Women Against Violence and Exploitation in Society (WAVES) v The Republic of Sierra Leone* the ECOWAS Court ruled that the practice by Sierra Leone of banning pregnant girls from mainstream schools and establishing separate educational facilities was institutionalised discrimination contrary to the provisions of international and regional human rights law. The decision is monumental in influencing policy development as pregnant school girls on the continent have faced severe reprisals, as has been the case in Tanzania where the government had instituted a policy to expel pregnant girls from school (Human Rights Watch 2020). Women's rights organisations in Africa can build on the jurisprudence to continue securing the right of education and safety for pregnant girls who should not have to negotiate for their humanity.

3.3 Progress in sexual and reproductive health rights

Significant progress was also made in the arena of sexual and reproductive health rights. A significant step towards the decriminalisation of same-sex relations in Botswana, as more fully discussed in part 6 of this article, was a huge win for queer women in the country who are at the helm of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) rights movement in the country. In the area of reproductive rights the High Court of Kenya made a laudable decision in June 2019 in *Petition 266 of 2015: FIDA-Kenya & Others v The Attorney-General*, in which it ruled the withdrawal of safe abortion guidelines and bans on abortion trainings to be arbitrary and unlawful. The Court reaffirmed the constitutional provisions of legal abortion in Kenya when the health and life of the pregnant woman are at risk. Although the Court held that abortion generally remains illegal in Kenya, its progressive interpretation of the right to health to include political, legal and socio-economic circumstances puts Kenya on the road towards the reduction of unsafe abortion-related maternal mortality (Muhumuza 2019).

Another key highlight of 2019 was the 25th International Conference on Population and Development (ICPD25) Nairobi Summit whereby stakeholders, including African governments, committed to ensuring universal access to sexual and reproductive health and rights, accessible and affordable contraceptives, zero preventable maternal deaths and morbidities, and the provision of post-abortion care among other critical commitments (Nairobi Summit on ICPD25 2019). The commitments

need to be monitored to ensure meaningful progress in the arena of sexual and reproductive health rights.

3.4 A snapshot of democratisation milestones for women in Africa

Laudable gains were also made on the democratisation front. In November 2019 Sudan repealed public order laws that restricted the presence of women in public spaces (Amnesty International 2019). The move by the transitional government prevents the arbitrary arrests and beatings of women when exercising their rights to freedom of expression and association. It was a victory for Sudanese women who were a major driving force of the revolution, as discussed elsewhere in this article. However, one needs to celebrate with caution since the victory may turn out to be pyrrhic, as Criminal Law of 1991 still needs further amendment to repeal clauses that are repressive to women in their entirety. It is hoped that the ongoing constitutional review process will deliver comprehensive protection for women. Unfortunately, Sudan is yet to ratify the Convention on the Elimination of Discrimination Against Women (CEDAW) and the African Women's Protocol. The ratification of the two instruments must be prioritised. Additionally, while the representation of women in most African countries remains dismal, South Africa made impressive progress in the May 2019 elections by attaining 46 per cent of women in the House of Assembly and a gender equal cabinet constitution of 50 per cent women (Nyamweda & Morna 2019). The representation gains made by South African women set a good example for countries in Africa where the issue of equitable gender representation has not yet taken root.

3.5 A call for the continental ratification of the African Women's Protocol in commemoration of the Beijing Declaration

The progress made in 2019 was commendable, but it was slow and remains insufficient in securing equal humanity for the women and girls of Africa. Monumental challenges remain on issues such as dual and contradictory legal systems; rampant and under-reported sexual and gender-based violence (SGBV); a lack of access to safe abortion; the resurgence of HIV among young women; teenage pregnancies; the weak protection of LGBTIQ persons; low gender parity in decision-making bodies, and male-dominated economies (Nyamweda & Morna 2019). The year 2019 marked 16 years since the adoption of the African Women's Protocol and it closed the year with 42 ratifications and 49 signatures. Only São Tomé & Príncipe ratified the Protocol in 2019 (African Union Treaties 2019). AU organs and African governments need to commit more resources and political will to redress the gaps and challenges in light of the commemoration of 25 years of the Beijing Declaration in 2020. The best way to do so would be by attaining 100 per cent of the ratification of

the African Women's Protocol by all 54 countries that are state parties to the African Charter.

3.6 Sudan's revolution and struggle for civilian rule

On 11 April 2019, almost 30 years after Omar al-Bashir seized power, the man who did so much to ruin Sudan was himself toppled. His fall marks the culmination of the most sustained civilian protest in Sudan's modern history. It also coincides with a wave of change that has blown away many of Africa's longest-serving rulers, from Algeria to Zimbabwe (Boko 2019). In al-Bashir's place, Sudan's military and a coalition of opposition parties appointed a new prime minister, and on 17 August 2019 concluded a delicate power-sharing deal (Kirby 2019). If honoured, the agreement could pave the way for democratic elections in 2022 and civilian rule.

However, the transitional administration, led by Prime Minister Abdalla Hamdok, faces formidable challenges – especially on the economic front. Even with al-Bashir gone, Sudan's economy worsened in 2019, with citizens facing spiraling inflation, long queues for basic commodities and frequent power outages (Salih 2019). Further, Sudan retained its position on the United States' list of State Sponsors of Terrorism, prohibiting most foreign direct investment into the country. As a result, Sudan's ailing economy was blocked from most sources of funding from the International Monetary Fund (IMF), the World Bank and other financial institutions. Since inflation and shrinking incomes were the main catalysts for al-Bashir's removal, the transitional government needs to rapidly consolidate the economy, in order to retain popular support until the 2022 elections.

Intensifying these problems are the continued armed conflicts in the Blue Nile, Kordofan and Darfur regions that pose further dangers to democratisation. On 4 May 2020 government forces dispersed unarmed protesters in Darfur by firing live bullets and teargas, reportedly killing an 18 year-old and injuring others in the process (Africa Centre for Justice and Peace Studies et al 2019). The troops were members of Sudan's Rapid Support Forces (RSF), a paramilitary group linked to the grave crimes in Darfur, which earned al-Bashir a warrant of arrest from the International Criminal Court (ICC). The RSF's commander, Mohamed Hamdan 'Hemeti', now serves as a member of the Sovereignty Council, and is widely believed to have eclipsed Hamdok to become Sudan's *de facto* leader (Amid 2019). Since al-Bashir's removal, RSF troops have been linked to the destruction of at least 45 villages, and a bloody crackdown in Khartoum that killed almost 100 peaceful protestors in only three days (Salih 2019). If left unchecked, this violence could jeopardise the country's transition towards democracy.

Despite the impact of major setbacks, Sudan spent most of 2019 relatively on course for the long-term goal of civilian rule in 2022. However, the country's economic crisis, which worsened in 2019, and stands to be compounded by the effects of COVID-19 in 2020, means that the transitional government has a difficult task ahead of itself. These economic pressures, coupled with mounting civil tension, mean that Prime Minister Hamdok (and his shadow Hemeti) need to act quickly to meet their high expectations and to safeguard the revolution.

4 Nullification of elections in Malawi and its implications for democracy

On 21 May 2019 Malawi held presidential, parliamentary and local government elections. Seven candidates were vying for the presidency, but the main contenders were Arthur Peter Mutharika, Lazarus McCarthy Chakwera and Saulos Klaus Chilima. Mutharika, the incumbent President, was declared the winner of the presidential elections and sworn in on 27 May 2019 with 38,57 per cent of the vote. He was closely followed by Chakwera with 35,41 per cent and Chilima with 20,24 per cent of the votes (Malawi Electoral Commission 2019). Chakwera and Chilima challenged the election results in court. Their case was certified as a constitutional matter for determination by the three High Court judges sitting as a Constitutional Court. The Constitutional Court annulled the elections and ordered fresh presidential elections within 150 days (Constitutional Court 2019). The annulment of the elections was unprecedented in Malawi. It was only the second time for elections to be annulled in Africa following the annulment in Kenya in 2017 (Nyarko & Makunya 2018: 149). For the reasons explained below, the judgment by the Constitutional Court may be described as a massive win for democracy.

The Court held that voters have a right to vote in elections that are free and fair and that this right is central in a democracy (Constitutional Court 2019: 413-415); further, that the state has a correlative obligation to ensure that the electoral system is credible and the procedures are capable of guaranteeing free and fair elections (Constitutional Court 2019: 413-415). The Court furthermore stated that if elections are marred by irregularities that are widespread, systematic and grave, the results of such elections cannot be trusted as a true reflection of the will of the voters (Constitutional Court 2019: 413-415). The Court noted various irregularities and anomalies in the 2019 presidential elections and ordered a nullification of the elections (Constitutional Court 2019: 416). Relatedly, this judgment served as a moment of introspection into the role of international independent observers as they declared that the election was free and fair despite the glaring irregularities proved in court (Hartley & Mills 2010).

The judgment was also celebrated as a sign of judicial independence. The independence of the judiciary has been cited as an important element of democracy (O'Donnell 2004: 3; Diamond & Morlino 2004: 23). Indeed, the Malawian courts have played a significant role in upholding integrity in electoral processes and have therefore been described as 'a democratic stronghold' (Gloppen & Kanyongolo 2011: 44). Although others have expressed concerns about interference in the effectiveness and independence of the judiciary by the executive (International Bar Association's Human Rights Institute 2012: 43), the Court dispelled such fears in this case by deciding to annul the election of the then head of the executive. Corruption has also been feared as a threat to judicial independence (Kanyongolo 2004: 20). It was indeed reported that, prior to delivery of the judgment, a prominent businessman with ties to the ruling Democratic Progressive Party attempted to bribe the judges (Matonga 2020). The judges refused the bribe and reported it to the Chief Justice who in turn reported it to the Anti-Corruption Bureau (Matonga 2020). The Anti-Corruption Bureau arrested the accused person and he was formally charged with offences under the Corrupt Practices Act. The case is ongoing (Kapalamula 2020). Such integrity on the part of the judges is laudable.

After the judgment had been delivered, Mutharika delivered a speech and used populist rhetoric to rile the people against the judiciary by saying '[l]ike many Malawians ... we consider the judgement as a serious subversion of justice, an attack on our democratic systems and an attempt to undermine the will of the people ... this judgment inaugurates the death of our democracy' (Mutharika 2020). The Electoral Commission and Mutharika lodged an appeal against the judgment to the Supreme Court of Appeal but the appeal was not successful (Supreme Court of Appeal 2020). Fresh elections were held in Malawi on 23 June 2020 amidst a lack of funding (Kayira 2020), frustration of electoral processes by the executive and parliamentarians belonging to the ruling party (Khamula 2020), and attempted interference with the judiciary by the executive which issued a notice sending the Chief Justice on forced leave pending retirement (*The Guardian* 2020). Lazarus Chakwera defeated the incumbent President Mutharika in the fresh elections with 58,57 per cent and was sworn in as President on 28 June 2020 (BBC 2020).

The involvement of civil society in the electoral process was also notable. A vibrant civil society has been recognised as a prerequisite for democracy (Chinsinga 2010: 56). Civil society organised demonstrations spanning over weeks in defence of electoral justice (Pensulo 2020). The organisers of the demonstrations, however, were threatened by the authorities and one of the leaders was attacked with petrol bombs at his residence in what was perceived as an attempt to silence him (Amnesty 2019). President Mutharika, who was also commander-in-chief of the

Malawi Defence Force (MDF), ordered the MDF and Malawi Police Service to stop the demonstrations ‘with all the necessary force’ (Sangala 2019). Despite the threats of violence and destruction of property during some of the demonstrations, the demonstrations continued and the relentlessness of the people was unprecedented. All in all, it can only be hoped that the strides in Malawi point to a wave of judicial independence and strengthening of democratic institutions in Malawi and in Africa.

5 Killings and persecution of persons with albinism in Malawi

In the year 2019 the killing and persecution of persons with albinism (PWAs) continued in Malawi. As at February 2019, the reported cases had risen to 163 from 107 reported in 2017 (Amnesty International 2019). The violation of rights of PWAs in Malawi has been a persistent problem and PWAs have experienced ‘not just higher levels of stigmatisation and discrimination, but also human rights violations of a much higher magnitude, including extreme acts of violence and killings’ (Kapindu 2018: 3). PWAs are attacked as it is believed that their body parts have great powers (Mswela 2017: 115). It is also believed that body parts of PWAs can help politicians win elections; hence the violence tends to increase during election periods (Office of the High Commissioner for Human Rights 2019). The attacks on persons with albinism are not unique to Malawi as they have also been reported in the central, eastern and southern parts of Africa (Thuku 2011).

As the attacks against PWAs continued without any concerted action by the government to stop them, PWAs sought the intervention of the President. A meeting was thus scheduled between PWAs and the President to discuss the concerns and protection of PWAs. However, the President cancelled the meeting. In a desperate attempt to get the President to grant them audience and address issues affecting them, the PWAs organised a peaceful protest (Khamula 2019). However, police officers clobbered the protesters and the president of their association was assaulted by the police and hospitalised (Khamula 2019). Eight PWAs and a journalist were arrested (Khamula 2019). Thirteen PWAs were injured during the protests (Phimbi 2019). There was no justification for the use of excess force on the unarmed protesters, which constituted a further breach of the rights of PWAs to a peaceful protest, dignity and freedom of expression.

Subsequently, the then President Mutharika appointed a commission of inquiry effective on 4 March 2019 to investigate the incidents of violence against PWAs (Kanjere 2019). The commission was tasked with producing a report on 30 April 2019. However, as at 28 March 2020 the commission had not yet produced the report (MBC Online 2020). Therefore, there has been no tangible outcome from the establishment of the commission.

In parallel, on 9 September 2019 the government allocated K1 billion, approximately US \$1 356 852, of the national budget towards the construction of houses for PWAs and the implementation of the National Action Plan on Persons with Albinism in Malawi, 2018-2022 launched in 2018 (Ministry of Finance 2019: 32). However, apart from the distribution of personal security alarms to PWAs by the government (Masina 2019), there have been no reports on what the government has done to implement the plan and the houses have not yet been constructed.

As for the prosecution of perpetrators of violence against PWAs, it has been noted that 'in spite of reforming the Penal Code and Anatomy Act in 2016, the number of attacks in Malawi has not lowered and due to poor law enforcement and judicial capacities, perpetrators are rarely identified, brought to justice, or convicted' (European Parliament 2017). The circumstances do not seem to have changed because although some arrests and convictions have been made, the majority of the crimes remain unresolved. In 2019 the courts imposed the death sentence on four accused persons apparently to deter such acts (Aljazeera 2019). However, there was an unreasonable delay in prosecuting the crimes. For example, the incident implicating the three accused persons who were subsequently sentenced to death occurred in 2015 and took four years to prosecute.

Another problem is that the justice system currently is focused on punishing the offender and not giving psychological or other assistance to the victim. Therefore, apart from the apparent complacency or lack of political will to protect persons with albinism, the justice system needs to be overhauled so that it results in a thorough and speedy resolution of the cases as well as support to the victims. It goes without saying that there is urgency in addressing violations of the rights of PWAs.

6 Right to equality and sexual minorities: Tales from Botswana, Angola and Kenya

The criminalisation of homosexual acts in Angola, Botswana and Kenya is anchored on colonial penal codes. The struggle for the decriminalisation of homosexuality in these three countries has taken several years of street demonstrations, petitions to parliament and court battles. Despite having taken a long time, 2019 seems to be a breakthrough year for the LGBTIQ in Botswana and Angola. However, Kenya missed the opportunity to unchain itself from the colonial penal code.

6.1 Angola: Success along the parliamentary route

Typically, the victories won by African sexual minorities are won in the courts, not the legislature (Ebobrah 2012). Barring a few exceptions the judiciary is more readily approached by LGBTIQ activists, who invoke

constitutional principles to secure a favourable judgment (Singh 2009). In contrast to the courts, the legislature usually is far less accepting of sexual minorities, a pattern broken by Angola on 23 January 2019 which is a memorable day for human rights in Angola. This is the day when the National Assembly voted to do away with the criminalisation of same-sex relations. Angola's old Penal Code (articles 70 and 71) prohibited consensual homosexual acts against 'the order of nature'. Just as in other African states, this law was inherited from Portugal, Angola's colonial master. This Penal Code allowed the unwarranted scrutiny of the private lives of the LGBTIQ community. Unlike the case in the other two countries, the process to repeal these two laws was through the legislature, thereby escaping the counter-majoritarian argument faced by the court.

Parliament correctly appreciated its role, which includes the enactment of laws to protect the minorities and advancing democracy and human rights. Angola stands out as one of the rare instances where an African legislature, at its own initiative, brought the LGBTIQ community under the protection of the law. The new Penal Code is an achievement towards eliminating discrimination based on sexuality in Angola. Although this is a remarkable step, Angola should translate the repeal of the colonial penal code to concrete measures for protecting minorities.

6.2 Botswana: Success along the judicial route

On 11 June 2019 the High Court of Botswana declared the criminalisation of same-sex relations unconstitutional. Botswana, as in the case of other African countries, inherited a colonial penal code that criminalised 'acts against nature' (*Letsweletse Motshidiemang v Attorney-General* [2019] MAHGB-000591-16) (*Legabibo* case)). The *Legabibo* case is an array of human rights hope in Africa. First, the Court recognised that the enumerated grounds prohibiting discrimination were not conclusive, hence acknowledging analogous grounds such as sexuality (*Legabibo* 2019: para 158). Second, the Court correctly recognised indirect discrimination. The Court noted that although the provisions (sections 164 and 165 of the Penal Code) appeared neutral, in effect they were discriminatory. Third, the Court noted that public opinion or morality can never be a justification for limiting a right (paras 186-189). The three reasons established the *Legabibo* moment, a moment promising the actual realisation of human rights.

The *Legabibo* case offers an opportunity for focusing on the rights of LGBTIQ from the peripheral status they have for a long time occupied. For many years the LGBTIQ community has endured systemic and institutionalised discrimination. The departure provided by the Court reinforces the emerging wave of democratisation and respect for LGBTIQ rights. This will assist in realising the LGBTIQ community's much-

tumbled rights such as access to health care and equality of employment opportunities among all sexualities. From many angles, the decision is a promise of a new dawn in Africa. Just as the South African Constitutional Court in 1998 (National Coalition for Gay and Lesbian Equality), the Botswana High Court decried discrimination against the LGBTIQ community. Notwithstanding these achievements, it is disturbing that the Attorney-General decided to lodge a notice of appeal to challenge this decision.

6.3 Kenya: Failure of the judicial route

Although Kenya has one of the most progressive constitutions on the continent, some of its legislations are remnants of the colonial period. One such legislation is section 162 of the Penal Code, which has been described as archaic and colonial legislation. This section criminalises ‘carnal knowledge against order of nature’ which has been used to brutalise the LGBTIQ community through prosecutions. Beyond prosecution this section has been used to bolster state-sponsored homophobia, as exemplified in Criminal Case 207 of 2015, in which the accused persons were arrested on suspicion of engaging in what was described as ‘carnal knowledge against order of nature’. On application from the prosecution, the resident magistrate ordered the accused to be subjected to anal examination. When this decision was challenged at the Court of Appeal, the Court held that ‘the examination was not only unconstitutional but unreasonable, and totally unnecessary’ (*COI & Another v Chief Magistrate Ukunda Law Courts & 4 Others* [2018] eKLR). Comparable to Kenya, in Nigeria 47 men are undergoing a trial before the Lagos Court. They were charged with public displays of affection with members of the same sex. They were arrested in 2018 after they had been found in a hotel room during a raid by the police. The police alleged that they were engaged in a ‘gay initiation party’. The accused persons claimed that they were at a birthday party.

The abuse of section 162 of the Penal Code has given rise to the case of *EG & 7 Others v Attorney-General; DKM & 9 Others* (Interested Parties); *Katiba Institute & Another (amicus curiae)* (*Eric Gitari* case) challenging its constitutionality. The *Eric Gitari* case is a demonstration of the betrayal of LGBTIQ by the Kenyan judiciary. The Court rejected the indirect discrimination caused by section 162 of the Penal Code despite article 27(4) of the Constitution guaranteeing the principle of non-discrimination in broad terms. Section 162 of the Penal Code is worded in similar terms as Botswana and South Africa where the courts have held that the sections were discriminatory. What was more shocking is the convulsion of same-sex marriage with the criminalisation of the LGBTIQ. The court was of the view that since the Constitution allows marriage between opposite sex

that means recognising LGBTIQ persons is in violation of the Constitution (*Eric Gitari*: para 396).

Where does this leave the LGBTIQ community? The Court sanctioned the discrimination against minorities, hence rubber-stamping the culture of marginalising LGBTIQ persons.

While in the year 2019 the sexual minorities rights in Africa made considerable strides, Africa lags behind regarding these rights. The year saw two countries decriminalise consensual same-sex relations which is a positive move towards the respect of the rights of sexual minorities. Kenya missed an opportunity to correct the wrong of state-sponsored homophobia.

7 Xenophobia in South Africa

South Africa has long been one of the most inhospitable environments for African immigrants (Classen 2017). During 2019, an election year, virtually all South Africa's political parties increased their anti-immigrant rhetoric (Chutel 2019). While senior politicians across the political spectrum were responsible for some measure of xenophobic statements, 2019 witnessed a few stand-out cases, well deserving of a mention.

Despite its 'strong' pan-Africanist origins, senior members of the ruling party, the African National Congress (ANC), used their 2019 election campaigns to scapegoat African immigrants for South Africa's soaring unemployment, chart-topping crime rate, and rising drug abuse in urban centres such as Johannesburg and Tshwane (Davis 2019). In June 2019 Gauteng MEC for Community Safety, Faith Mazibuko, remarked: 'We condemn all criminal elements hellbent on undermining the rule of the law in this country and making this country ungovernable. We can't co-govern with criminals, especially foreign nationals who want to turn our country into a lawless Banana Republic' (Bornman 2019). Her views were echoed by former Health Minister, Dr Aaron Motsoaledi, who blamed the country's public health crisis on a wave of immigrants 'overburdening' the system.

However, the problem is systemic – responsibility hardly lies with the ANC alone. The Democratic Alliance (DA), South Africa's liberal majority white-led political party, has also made a major contribution to the rising nationalist sentiment in the country. Its campaign slogan 'All South Africans First' is a pertinent example (Egbejule 2019). While not as severe as Mazibuko's statements, the DA's slogan is strikingly similar to US President Donald Trump's 'America First' one-liner, another highly-effective dog whistle for anti-immigrant attitudes. Even outside of the pressure of the election campaign, many politicians continued their xenophobic rhetoric.

Earlier in 2018 Herman Mashaba asked an immigrant, '[Are we] going to sit back and allow people like you to bring us Ebolas (sic) in the name of small business[?] Health of our people first.' (Bornman 2019).

South Africa's White Paper on International Migration demonstrates that Afrophobic sentiments persist in even the highest rungs of state policy making. The document, approved by the government in March 2017, separates immigrants into 'worthy' and 'unworthy' individuals. Wealthy foreigners, viewed as skilled and financially secure, are welcome to enter the country and are encouraged to stay permanently. Poor and unskilled immigrants, predominantly those from the African continent, will be prevented from entering the country 'even if this is labelled anti-African behaviour,' as the former Minister of Home Affairs, Hlengiwe Mkhize, pointed out (Bendile 2017). South African Afrophobia, then, is not closeted, or unseen; rather it forms deliberate state policy, perpetuated by first-time mayors in local government all the way to sitting ministers in the President's cabinet. This trend continued in 2019, with dangerous effects for the many black, poor immigrants resident in the country.

8 The shrinking civil space: Killing, detention, persecution and torture of journalists, Anglophones and human rights defenders in Cameroon

The year 2019 saw Cameroon intensify attacks on freedom of expression, especially the rights of journalists and opposition leaders to freely express themselves (US Department of State 2020). This interference with the freedom of expression has harmed the realisation of other rights such as free and fair elections in both the presidential and parliamentary elections. Further, the human rights situation in Cameroon is complicated by the double violation of human rights emanating from the separatist groups and the government. However, what has caused the enormous uproar is the inhumane treatment, torture and unlawful killing of journalists and human rights defenders. The crackdowns on journalists, opposition leaders and human rights defenders have shrunk further an already shrunk civil space. Since the controversial winning of the seventh term of Paul Biya in 2018, the government has been keen to silence alternative voices, hence polarising the country. This was compounded by the volatile situation of the Anglophone Cameroonians' fight for independence that raises a serious legitimacy challenge to Biya's government.

The government of Cameroon has marginalised Anglophone Cameroonians in several ways. The state has imposed on Anglophones a Francophone legal system, language and education, thereby erasing their identity (Lunn & Brooke-Holland 2019). This has taken the shape of appointments of French-trained judges, teachers and government administrators. In turn, the Anglophones feel excluded, leading to calls

for self-determination and secession. In response, the Cameroonian government has reacted heavily with the military being accused of extra-judicial killings, enforced disappearances, torture and rape (Willis et al 2019). This conflict has left 1 850 people dead and 530 000 internally-displaced persons as of mid-2019 (International Crisis Group 2019). The Cameroon military was accused of using rape and sexual assault as a weapon of war, which has exacerbated the suffering of women (Young 2019). The latest development in this conflict was the call for dialogue which has led to the release of Anglophone leaders agitating for self-determination. However, the standstill remains with the government maintaining that self-determination is off the table and the Anglophones stating that the only point of dialogue should be self-determination (Aljazeera 2019).

The Cameroonian government is also responsible for enforced disappearances and the killing of journalists (African Freedom of Expression Exchange 2019). The attack on journalists is demonstrated by the arrest and killing of Samuel Ajieka, commonly known as Wazizi (Human Rights Watch 2019). It is alleged that the police arrested Wazizi on 2 August 2019 in Buea, in the south-west region of Cameroon, for allegedly collaborating with separatists (BBC 2020). Wazizi was then transferred to a military base where he was held incommunicado until his death (BBC 2020). For 10 months the Cameroonian government covered up the gruesome killing of Wazizi. For the entire period of his detention Wazizi was not charged with any offence or placed before a court of law, which manifests the unlawfulness of his arrest.

The other front of the attack on freedom of expression is the persecution by the government and kidnapping by the militia. The case of rapper Gaston Serval, commonly known as Valsero, personifies this affront on freedom of expression (PEN 2019). Valsero was arrested on 26 January 2019 during a demonstration organised by the opposition. The government charged Valsero in a military tribunal with insurrection, inciting the public, hostility to the homeland, and rebellion against the state, among others (Russel 2019). The punishment for all these offences is the death penalty, although Cameroon *de facto* is abolitionist (York 2019). After 10 months of detention, the President of Cameroon on 5 October 2019 announced that he would release some opposition leaders, which led to the release of Valsero (Lukong 2019). The police in Cameroon arrested Paul Chouta, a journalist, for criminal defamation, hate speech and false news (Committee to Protect Journalists 2019). This emanated from a complaint made by Calixthe Beyala alleging that Paul had posted a video of Beyala arguing with someone. Paul was denied bail and sent to the maximum security prison awaiting trial. It is believed that the denial of bail and overloading charges is caused by Paul's criticism of the government (Committee to Protect Journalists 2019).

In another case a militia group kidnapped Mary Namondo, a journalist with Radio Bonakanda, a local radio station (Takambou 2019). Mary was released on 5 September 2019 after Eric Tawat, a journalist, had negotiated the release. Similarly, Macmillan Ambe was kidnapped by armed groups after he criticised the call for people not to take their children to school (All Africa 2019).

In sum, in 2019 Cameroon increased the crackdown on journalists and human rights defenders, which is an affront to freedom of expression. This situation has been aggravated by the conflicts arising from the Anglophones' fight for self-determination (Muguoh 2019). Although the government has indicated its willingness to enter into dialogue, the hardline positions from the government and pro-self-determination groups will undermine the dialogue process. This hardline position questions the commitment of the government to end the conflict. Additionally, the dialogue between the government and pro-self-determination groups cannot be successful if freedom of expression is stifled. Currently, the human rights situation in Cameroon is characterised by attacks on human rights defenders and journalists. As demonstrated above, the attacks are emanating from the government and armed groups, which exposes journalists and human rights defenders to two fronts of attacks, thereby further undermining already stifled freedom of expression. Cameroon should not only respect freedom of expression but also create an environment conducive to freedom of expression thriving by providing security for journalists and human rights defenders.

9 Violent extremism and conflict in the West African region: Mass displacement, killings especially of children, and destruction of properties

Children in Mali were among the worst affected by the resurgence of terrorist groups such as al-Qaida, Boko Haram and the Movement for Unity and Jihadist in West Africa (MUJOA). The conflict waged by these groups was exacerbated by the inter-ethnic conflicts that spilled over into its borders creating further instability.

During the first six months of 2019 inter-community conflict in Mali claimed 150 children with around 75 injured (Maclean 2019). The same period saw 600 civilians killed due to ethnic conflicts majorly arising in the Mopti region (Maclean 2019). The death toll for 2019 doubled compared to 300 people killed in 2018, demonstrating that the situation in Mali is worsening (Maclean 2019). There are reports that the Jihadists have intensified the recruitment of children to carry out the attacks. According to *The Guardian*, 2019 was a bad year for the rights of children since the number of children recruited doubled (Maclean 2019). Also, most casualties are civilians who are enduring three fronts of attacks from the

military, ethnic militia and armed groups. The situation in Mali has been aggravated by the combination of ethnic conflict arising from the scramble for water, land and grazing and violent extremism caused by the Jihadists.

One deadly attack occurred in June 2019, when ethnic militias attacked a Dogon village killing 95 people and 19 others disappearing (Aljazeera 2019). This massacre of the Dogon wiped out an entire village together with their animals. Earlier in March 2019 people claiming to be Dogoni had killed 160 members of the Fulani ethnic group (Aljazeera 2019). The killings spread in Yoro where 35 civilians were killed in June 2019 and Gangafani where 38 civilians were killed in the area of the Mopti region (*The Defence Post* 2019). The Islamic State Jihadists killed 49 soldiers in November 2019 (Euronews with Reuters, AFP 2019). Beyond the killings, the attacks have caused the displacement of approximately 202 000 people by July 2019 (Relief web 2019).

As in the case of Mali, Burkina Faso has witnessed an exponential rise of armed Jihadists. It is reported that in 2019 approximately 1,2 million people were in dire need of assistance due to the constant terrorist attacks (Mednick 2019). To demonstrate the killings, on 29 April 2019 armed Jihadists killed a pastor and five faithful, while on 12 May 2019 another church was attacked with the Jihadists killing 6 worshippers (AP News 2019). There also was an attack in Soum province, which claimed 35 civilians, the majority being women (Aljazeera 2019). The first three months of 2019 saw 186 people killed in Burkina Faso (Maslin Nir 2019).

Boko Haram has gained ground in Chad killing and causing mayhem throughout the country. Soldiers and civilians have fallen victim to the deadly attacks of Boko Haram. For instance, on 22 March 2019 Boko Haram killed 30 people in Dangdala and Bouhama in Chad (Ajakaye 2019). In December 2019 Boko Haram Jihadists attacked Kaiga village in Western Chad killing 14 people and kidnapping 13 others. The security agencies have responded heavily, often accused of using excessive force. Similarly, the Jihadists have made sustained attacks in Nigeria, killing members of the security forces, and causing serious damage to property and the livelihood of people. One such example is the attack in Borno state in Nigeria where the Jihadists killed 16 people on 5 October 2019 (GardaWorld 2019). This was later followed by another attack on Christmas Eve, when Jihadists attacked Borno state killing seven people and abducting a girl (AFP 2019). During these attacks the Jihadists steal food and burn houses, thereby not only seriously disturbing people's livelihoods but also threatening the right to life.

The local Jihadist groups have widened their sphere in West Africa, the most affected areas being Burkina Faso, Mali, Niger, Nigeria and Côte d'Ivoire (Benedikter & Ouedraogo 2019). The reaction of these states has been the securitisation of the state with the security agencies being accused

of human rights violations in the process of combating terrorism. In effect, the states' abuses under the guise of counter-terrorism measures have been counter-productive often providing terrorists with an opportunity to exploit the situation by giving messages of solidarity and offering a cause. The counter-terrorism measures have compounded the situation by playing into hands of the terrorist agenda.

West Africa has been hard hit by the terrorist attacks with Burkina Faso, Mali and Niger accounting for 4 000 deaths in 2019 (UN News, 2020). The extremist groups are also expanding their sphere in West Africa from their traditional operating zones of Mali, Niger, Nigeria, Burkina Faso and Chad to Benin, Ghana and Togo (Reliefweb 2019). One of the expansionist missions was seen on 1 May 2019 abducting tourists in Benin (Reliefweb 2019). In addition to lodging attacks on these countries these extremist groups have adopted abduction, especially of women, as a form of violence (UN Press 2019). They take women for forced marriages and labour in addition to using them as sex slaves where they are gang-raped by the extremists (UN Press 2019). This violence against women has gone on unchecked for so long to the extent that it is becoming an embedded feature of the armed conflict (Ecoma Alaga 2019) Therefore, these intensified attacks in West Africa call for urgent intervention to avert further suffering, especially that of women, and the loss of lives.

10 Civil strife in Ethiopia

10.1 Creeping authoritarianism in the wake of the June assassinations

In 2018 Ethiopia's Prime Minister Abiy Ahmed made history as he closed torture sites, clamped down on corruption and struck an historic peace deal with Eritrea (Abbink 2019). However, 2019 also saw Ethiopia's human rights record veer off the path set out Ahmed's first year in office. Authorities spent most of the year reacting to internal strife, starting with a botched putsch by rogue officers in Ethiopia's military.

The incident took place on 22 June 2019, when armed men gunned down Ambachew Mekonnen, President of the Amhara federal region, and a close ally of Abiy's government (Crisis Group 2019). Hours later a bodyguard shot and killed a senior commander in Ethiopia's military. Ethiopian intelligence linked the attacks to an attempted *coup* masterminded by Brigadier-General Asamnew Tsige, the head of Amhara's security forces. Internet lines went dead for ten days after the incident, to buy the military time to root out other collaborators from its ranks (AP 2019).

While the assassination attempts were rapidly suppressed, they lay bare the extent of the country's political crisis. Since taking office in April 2018 Ahmed carried out significant reforms at breakneck speed. This overdue but sudden change upset the *status quo*, opening up a Pandora's box of ethnic tensions (Fabricius, Peter & Knight 2019). The most significant of these has been felt in by the weakened Ethiopian People's Revolutionary Democratic Front (EPRDF), a decade-old ethno-regionalist alliance of four parties that has since the 1990s controlled Ethiopian politics. The assassinations triggered a resurgence of repressive tactics by state officials, which saw old terrorism laws reinvented to stifle dissent.

While Ethiopia's restrictive 2009 Anti-Terrorism Proclamation was rewritten in 2020, the old draft remained in force for 2019, as Parliament debated reforms. The 2009 Proclamation contained overly-broad definitions of terrorist acts. Article 6 of the 2009 Proclamation, dealing with the 'encouragement of terrorism' makes the publication of statements 'likely to be understood as encouraging terrorist acts' punishable by 10 to 20 years in prison. Merely a week after Mekonnen's *coup* Ahmed's government used the 2009 Proclamation to hold dozens of members of the National Movement of Amhara, an ethnonationalist political party, in police custody under the ATP's remand provisions (France24 2019). In the same week a prominent journalist and five associates were arrested under the same provision. They were held in custody for more than two months before being released unconditionally.

10.2 Self-determination and violence in Sidama

Beyond the slight scaling-back of civil liberties, 2019 also saw several developments that impacted on the right of self-determination. In 2018 members of the Sidama ethnic group made a request to the federal government to secede from the Southern Nations, Nationalities and Peoples' Region (SNNPR), the fourth largest region in the country (Matfess 2019). When government failed to meet the constitutionally-mandated deadline for a referendum on 18 July 2019, the activists threatened to move unilaterally and carve out a 'Sidama Regional State' within Ethiopia's borders (International Crisis Group 2019).

The federal government failed to organise a vote within the time limit, sparking major protests in Adassa, the SNNPR's capital. At the end of the violence local police reported a total of 53 deaths, mass displacement, and significant property damage (Kiruga 2019). The region was placed under federal security control, only for another clash to break out between civilians and state forces, which saw 153 civilians lose their lives, with police affecting more than 2 000 arrests (Sidama Human Rights Activists 2020). Eventually, in November 2019 the federal government held the referendum, which proceeded peacefully, with a near universal turnout:

98,52 per cent of voters supported the creation of the new federal region. However, by mid-2020 Ethiopia had still failed to give effect to the self-determination of the Sidama people. While it is still too soon to tell, it is likely that if Ahmed's government fails to meet the Sidamas' high expectations around the new region, the timeline for its establishment, and its meaningful inclusion in Ethiopia's economy, unrest similar to 2019's violence could easily break out.

11 Ebola outbreak amidst armed conflict in the Democratic Republic of Congo

The deadly Ebola virus struck again in the Democratic Republic of the Congo (DRC) for the tenth time claiming lives and causing untold suffering (Reliefweb 2019). This tenth outbreak was the second deadliest outbreak after West Africa 2014-2016 (Reliefweb 2019). This time it was concentrated in North Kivu and Ituri areas of DRC which also faces the scourge of war. What started as an outbreak in August 2018 soon evolved into a public health emergency of international concern on 17 July 2019 (European Centre for Disease Prevention and Control 2020). According to the Ministry of Health of the DRC the total number of cases as at November 2019 was 3 274 with 2 185 deaths (Reliefweb 2019). The situation in DRC was exacerbated by the depleted health systems posing a greater health risk (WHO 2019). The health system in the DRC is characterised by inadequate infrastructure, poor human resources and numerous armed attacks on healthcare providers, which hampered the quick and effective response to Ebola.

The fight against Ebola in the DRC was hampered by the numerous armed attacks. One such attack claimed the life of Dr Richard Mouko from Cameroon who was killed by the militia (VOA 2019). Authorities believed that the reason for the attacks was because the locals thought that the foreigners were bringing Ebola to the DRC (VOA 2019). In another attack, on 28 November 2019, four health workers were killed and five injured. Overall, in 2019 there were more than 300 attacks on health workers causing the death of six people and injuring 70 others (Burke 2019). Apart from the health workers, patients have also been attacked in the course of seeking medical treatment, causing them to shun the health centres (Burke 2019). The sustained attacks caused Doctors Without Borders (MSF) to evacuate their doctors from Eastern DRC after their treatment centres had been attacked by armed groups (Aljazeera 2019). The Ebola situation in the DRC was compounded by the armed conflict, which aided its spread.

12 Conclusion

The year 2019 was replete with moments of both hope and despair for human rights and democratisation in Africa. Hope was resuscitated for girls in Egypt, Tanzania, Zimbabwe, the Kingdom of Eswatini and Mozambique where significant strides were made in the elimination of child marriages. The ECOWAS Court of Justice also upheld the rights of girls by ruling that the practice of banning pregnant girls from mainstream schools was discriminatory. Africa also made progress in upholding LGBTIQ rights as homosexuality was decriminalised in Angola by Parliament and in Botswana by the High Court. On the democratic front, gains were made in Malawi where the Court nullified contested presidential elections.

Africa also recorded some partial gains for human rights and democracy. In Sudan, the law that restricted the presence of women in public spaces was repealed although other laws that violate the rights of women are yet to be repealed. There was modest progress in the ratification of the African Women's Protocol by African countries. Kenya's High Court also reaffirmed the constitutionality of abortion but restricted it to instances where the life of the pregnant woman is at risk. In Kenya the criminalisation of homosexuality was unsuccessfully contested but the attempt signals hope for the future.

Moments of despair in 2019 include the growing suspicion about and resistance to supranational adjudication, in particular that of the International Criminal Court and the African Court by African countries. Violent conflicts and ethnic violence resulting in massive human rights violations also persisted in Mali, Burkina Faso, Ethiopia, Somalia, Sudan and South Sudan. The resurgence of terrorist groups in West Africa led to mass displacement, the killings of especially children and the destruction of properties. Persons with albinism continued to face persecution in Malawi, with no concerted action by the government towards their protection. Cameroon came into the limelight for killings and the detention and torture of journalists, Anglophones and human rights defenders. In South Africa, immigrants were subjected to xenophobic attacks and this was perpetuated by citizens, mayors in local government and even ministers in the President's cabinet. Africa has a huge task ahead to eliminate these ills.

References

- Abbink J 'Ethiopia's successes under Abiy Ahmed constrained by ethnic divisions', available at <https://theglobalobservatory.org/2019/04/ethiopias-successes-abiy-constrained-by-ethnic-divisions/> (last visited 2 July 2020)

- Africa Centre for Justice and Peace Studies, Al-Khatim Adlan Centrre for Enlightenment, Darfur Bar Association Democratic Thought Project and Sudan Nuba Women for Education and Development Association (2019) 'Assessing progress towards civilian-led transitional authority in Sudan Report to African Union Peace and Security Council by Sudanese civil society', available at <http://sudanconsortium.org/wp-content/uploads/2019/05/Sudan-Civil-Society-Shadow-Report-1.pdf> (last visited 12 July 2020)
- African Union Treaties 'List of Countries which have signed, ratified/acceded to the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa' (2019), available at <https://au.int/sites/default/files/treaties/37077-slPROTOCOL%20TO%20THE%20AFRICAN%20CHARTER%20ON%20HUMAN%20AND%20PEOPLE%27S%20RIGHTS%20ON%20THE%20RIGHTS%20OF%20WOMEN%20IN%20AFRICA.pdf> (last visited 20 June 2020)
- African Union Treaties 'List of Countries which Have Signed, Ratified/Acceded to the Protocol to The African Charter On Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights' (2017), available at https://au.int/sites/default/files/treaties/36393-sl-protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_estab.pdf (last visited 12 July 2020)
- Aljazeera 'Doctors treating Ebola flee DR Congo's east amid deadly violence' 5 December 2019, available at <https://www.aljazeera.com/news/2019/12/doctors-treating-ebola-flee-dr-congo-east-deadly-violence-191205013829630.html> (last visited 5 December 2019)
- Aljazeera 'Malawi: 3 sentenced to death over killing of person with albinism' 15 August 2019, available at <https://www.aljazeera.com/news/2019/08/malawi-3-sentenced-death-killing-person-albinism-190815084058460.html> (last visited 24 June 2020)
- Amin M 'Hemedti: From camel herder to Sudan's *de facto* ruler' (2019), available at <https://www.aa.com.tr/en/africa/hemedti-from-camel-herder-to-sudans-de-facto-ruler/1543961> (last visited 12 July 2020)
- Amnesty International "'We are not animals to be hunted or sold": Violence and discrimination against people with albinism in Malawi' (2016), available at <https://www.amnesty.org/en/documents/afr36/4126/2016/en/> (last visited 24 June 2020)
- Amnesty International 'Tanzania: Withdrawal of individual rights to African Court will deepen repression' (2019), available at <https://www.amnesty.org/en/latest/news/2019/12/tanzania-withdrawal-of-individual-rights-to-african-court-will-deepen-repression/#:~:text=The%20Tanzanian%20government%20has%20withdrawn,Rights%2C%20Amnesty%20International%20has%20established.&text=Out%20of%20the%2070%20decisions,40%20percent%2C%20were%20on%20Tanzania> (last visited 17 June 2020)
- Amnesty International 'The criminal justice system is failing persons with albinism' (2019), available at <https://www.amnesty.org/download/Documents/AFR36992202019ENGLISH.pdf> (last visited 24 June 2020)
- Amnesty International UK 'Sudan: Repeal of public order laws a step forward for women's rights' 2019, available at <https://www.amnesty.org.uk/press-releases/sudan-repeal-public-order-laws-step-forward-womens-rights> (last visited 18 June 2020)
- Article 6 Proclamation 652/2009 of 2009, Anti-Terrorism Proclamation
- Boko H 'The 10 African strongmen who left power since 2011' France 24 (2019), available at <https://www.france24.com/en/20190423-timeline-10-african-strong-men-deposed-gaddafi-bashir-mugabe-bouteflika> (last visited 12 July 2020)
- Bornman J 'Alarming surge in xenophobic language' *The Mail & Guardian* 6 August 2019, available at mg.co.za/article/2019-08-06-alarming-surge-in-xenophobic-language/ (last visited 2 July 2020)

- Bornman J 'Masuhara's xenophobic legacy' *The Mail & Guardian* 7 November 2019, available at mg.co.za/article/2019-11-07-00-mashabas-xenophobic-legacy (last visited 2 July 2020)
- Centre for Human Rights Press Statement: Centre for Human Rights expresses concern about Tanzania's withdrawal of access to The African Court by individuals and NGOs' (2019), available at <https://www.chr.up.ac.za/press-statements/1916-press-statement-centre-for-human-rights-expresses-concern-about-tanzania-s-withdrawal-of-access-to-the-african-court-by-individuals-and-ngos> (last visited 18 June 2020)
- Centre for Human Rights Press Statement: Centre for Human Rights expresses concern about the withdrawal of direct individual access to the African Court by Benin and Côte d'Ivoire' (2020), available at <https://www.chr.up.ac.za/press-statements/2073-centre-for-human-rights-expresses-concern-about-the-withdrawal-of-direct-individual-access-to-the-african-court-by-benin-and-cote-d-ivoire> (last visited 18 June 2020)
- Chinsinga B 'A critical stock take of Malawi's 19 May 2009 elections: Processes, outcomes and challenges' (2011) 9 *Journal of African Elections* 54
- Chutel L 'Xenophobic attacks on Africans in South Africa ahead of elections' *Quartz Africa* 2 April 2019, available at qz.com/africa/1585736/xenophobic-attacks-on-africans-in-south-africa-ahead-of-elections/ (last visited 2 July 2020)
- Classen C 'Explaining xenophobia in South Africa' June 2017 Afrobarometer Working Paper 173
- Davis, R '2019 elections: Xenophobia is flaring pre-elections – but it's not only politicians who are to blame' *Daily Maverick* 3 April 2019, available at www.dailymaverick.co.za/article/2019-04-03-xenophobia-is-flaring-pre-elections-but-its-not-only-politicians-who-are-to-blame/#gsc.tab=0 (last visited 2 July 2020)
- De Silva N 'Individual and NGO access to the African Court on Human and Peoples' Rights: The latest blow from Tanzania' EJIL: Talk! (2019), available at <https://www.ejiltalk.org/individual-and-ngo-access-to-the-african-court-on-human-and-peoples-rights-the-latest-blow-from-tanzania/> (last visited 17 June 2020)
- Diamond L & Morlino L 'The quality of democracy: An overview' (2004) 15 *Journal of Democracy* 20
- Ebobrah ST 'Africanising human rights in the 21st century: Gay rights, African values and the dilemma of the African legislator' (2012) 1 *International Human Rights Law Review* 110
- Egbejule E 'South African politicians should shoulder their responsibilities in the anti-migrant crisis' *The Africa Report* 11 September 2019, available at www.theafricareport.com/17131/south-african-politicians-should-shoulder-their-responsibilities-in-the-anti-migrant-crisis/ (last visited 2 July 2020)
- Fabricsius P & Knight T 'Nobel prize: Ethiopian leader Abiy Ahmed is 2019's symbol of peace' *Daily Maverick* 11 October 2019, available at www.dailymaverick.co.za/article/2019-10-11-ethiopian-leader-abi-y-ahmed-is-2019s-symbol-of-peace/ (last visited 2 July 2020)
- France24 'Dozens of Amhara party members arrested after Ethiopia coup attempt, spokesman says' *France24* 27 June 2019, available at www.france24.com/en/20190627-ethiopia-dozens-amhara-state-party-members-arrested-failed-coup-attempt-spokesman (last visited 2 July 2020)
- Gloppen S & Kanyongolo E 'Judicial independence and judicialisation of electoral politics in Malawi and Uganda' in D Chirwa & L Nijzink (eds) *Accountable government in Africa: Perspectives from public law and political studies* (2011) Tokyo: United Nations University Press 43-69
- Goldberg AJ 'The need for a World Court of Human Rights' (1965) 11 *Howard Law Journal* 621

- Hart V 'The contagion of rights: Constitutions as carriers' in P Hanafin & M Williams (eds) *Identity, rights and constitutional transformation* (1999) Aldershot: Ashgate 40.
- Hartley R & Mills G 'Observers played a shameful role in Malawi's tippex election' 4 February 2020, available at <https://www.dailymaverick.co.za/article/2020-02-04-observers-played-a-shameful-role-in-malawis-tippex-election/#gsc.tab=0> (last visited 24 June 2020)
- Human Rights Watch 'Tanzania: World Bank disregarding ban on pregnant schoolgirls' 2020, available at <https://www.hrw.org/news/2020/01/27/tanzania-world-bank-disregarding-ban-pregnant-schoolgirls> (last visited 18 June 2020)
- International Bar Association's Human Rights Institute 'Rule of law in Malawi: The road to recovery' (2012), available at <https://www.ibanet.org/Document/Default.aspx?DocumentUid=C9872074-1DF6-47E7-B2AA-728144009382> (last visited 24 June 2020)
- International Crisis Group 'Restoring calm in Ethiopia after high-profile assassinations' Crisis Group, 25 June 2019, available at www.crisisgroup.org/africa/horn-africa/ethiopia/restoring-calm-ethiopia-after-high-profile-assassinations (last visited 3 July 2020)
- International Crisis Group 'Time for Ethiopia to bargain with Sidama over statehood' Crisis Group, 4 July 2019, available at www.crisisgroup.org/africa/horn-africa/ethiopia/b146-time-ethiopia-bargain-sidama-over-statehood (last visited on 2 July 2020)
- Jason B 'Ebola health workers killed and injured by rebel attack in Congo' 28 November 2019, available at <https://www.theguardian.com/global-development/2019/nov/28/ebola-health-workers-killed-and-injured-by-rebel-attack-in-congo> (last visited 24 June 2020)
- Kanjere P 'Peter Mutharika sets inquiry on persons with albinism attacks' 8 March 2019, available at <https://times.mw/peter-mutharika-sets-inquiry-on-persons-with-albinism-attacks/> (last visited 24 June 2020)
- Kanyongolo E 'State of the judiciary report: Malawi 2003' (2004) available at https://www.ifes.org/sites/default/files/soj_malawi_final.pdf (last visited 24 June 2020)
- Kapalamula A 'Thom Mpinganjira's case back in court June 30' 18 June 2020, available at <https://times.mw/thom-mpinganjiras-case-back-in-court-june-30/> (last visited 24 June 2020)
- Kapindu R 'Challenges and best practices in investigations, prosecutions and sentencing in offences against persons with albinism in Malawi' (2018), available at <https://www.ohchr.org/Documents/Countries/MW/StudyInvestigationsProsecutionCasesMarch2018.pdf> (last visited 24 June 2020)
- Kayira I 'MEC has a deficit of K8.7 billion on its budget', available at <https://www.manaonline.gov.mw/index.php/component/k2/item/14196-mec-has-a-deficit-of-k87-billion-on-its-budget> (last visited 24 June 2020)
- Khamula O 'Parliament ponders court action over rejected electoral reform bills' 23 February 2020, available at <https://www.nyasatimes.com/parliament-ponders-court-action-over-rejected-electoral-reform-bills/> (last visited 24 June 2020)
- Khamula O 'Persons with albinism president in hospital after Malawi police assault' (2019), available at <https://www.nyasatimes.com/persons-with-albinism-president-in-hospital-after-malawi-police-assault/> (last visited 24 June 2020)
- Killander M & Nyarko MG 'Human rights developments in the African Union (January 2017-September 2018)' (2018) 18 *African Human Rights Law Journal* 732
- Kirby J 'Sudan signs power-sharing deal as its former dictator goes to trial' (2019) *Vox*, available at <https://www.vox.com/2019/8/19/20812054/sudan-power-sharing-deal-al-bashir-trial> (last visited 12 July 2020)

- Kuriga M 'The Sidama crisis and escalating demands for statehood challenge Ethiopian Constitution' *The Africa Report*.Com 2 August 2019, available at www.theafricareport.com/15883/the-sidama-crisis-and-escalating-demands-for-statehood-challenge-ethiopian-constitution/ (last visited 2 July 2020)
- Maclean R 'Senior Islamic cleric issues fatwa against child marriage' *The Guardian* 2019, available at <https://www.theguardian.com/global-development/2019/jun/21/senior-islamic-cleric-issues-fatwa-against-child-marriage> (last visited 18 June 2020)
- Malawi Electoral Commission National results (2019), available at <https://www.mec.org.mw/elections/#/> (last visited 24 June 2020)
- Masina L 'Malawi's albinos get personal security alarms but will they help?' 31 December 2019, available at <https://www.voanews.com/africa/malawis-albinos-get-personal-security-alarms-will-they-help#:~:text=LILONGWE%2C%20MALAWI%20%2D%20Malawi%20is%20distributing,body%20parts%20have%20magical%20powers> (last visited 24 June 2020)
- Maslin SN 'Burkina Faso racked by escalating violence' 18 March 2019, available at <https://www.nytimes.com/2019/05/18/world/africa/burkina-faso-violence-extremism.html> (last visited 1 July 2020)
- Matfess H 'Sidama statehood vote throws a wrench in Abiy Ahmed's plans for Ethiopia' *Foreign Policy* 6 December 2019, available at foreignpolicy.com/2019/12/06/referendum-ethnic-sidama-throws-a-wrench-in-abi-ahmed-plans-for-ethiopia/ (last visited 2 July 2020)
- Matonga G 'From ACB statements: How Malawi judges rejected K100m to deliver electoral justice' 28 May 2020, available at <https://www.nyasatimes.com/from-acb-statements-how-malawi-judges-rejected-k100m-to-deliver-electoral-justice/> (last visited 23 June 2020)
- MBC Online 'Atrocities on people with albinism: Commission of inquiry "still doing its work", says Information Minister' 28 March 2020, available at <https://mbc.mw/television/programmes-outlined/item/9289-commission-of-inquiry-on-people-with-albinism-atrocities-still-doing-its-work-information-minister> (last visited 24 June 2020)
- Meseret E 'Internet restored in Ethiopia 10 days after assassinations' *AP NEWS* 2 July 2019, available at <https://apnews.com/2fd7347dc477423ebe9ce4ddfd06379> (last visited 2 July 2020)
- Milligan J 'Protecting disfavoured minorities: Toward institutional realism' (2016) 63 *UCLA Law Review* 894
- Ministry of Finance Budget statement (2019), available at <https://www.finance.gov.mw/index.php/blog/documents/vote?download=48:2019-2020-budget-statement> (last visited 24 June 2020)
- Mswela M 'Violent attacks against persons with albinism in South Africa: A human rights perspective' (2017) 17 *African Human Rights Law Journal* 114
- Muhumuza N 'Extending sexual health and reproductive rights through the Court: Analysis and lessons from FIDA – Kenya & Ors v The Attorney General & Ors High Court Petition No 266 of 2015' *AfricLaw* 2019, available at <https://africlaw.com/2019/10/24/extending-sexual-health-and-reproductive-rights-through-the-court-analysis-and-lessons-from-fida-kenya-ors-v-the-attorney-general-ors-high-court-petition-no-266-of-2015/> (last visited 19 June 2020)
- Mutharika P 'President Peter Mutharika's speech to the nation' (2020), available at https://www.youtube.com/watch?v=aQpJ_L27rZE (last visited 24 June 2020)
- Nairobi Summit on ICPD25, 2019 'Nairobi Statement on ICPD25: Accelerating the promise', available at <https://www.nairobisummiticpd.org/content/icpd25-commitments> (last visited 24 June 2020)
- Nyamweda T & Morna C State of Women in SADC 2019 Report (2019) SADC Gender Protocol Alliance, available at <https://genderlinks.org.za/wp-content/>

- uploads/2019/08/StateOfWomenSADC2019rev2.pdf [(last visited 20 June 2020)]
- Nyarko MG & Makunya T 'Selected developments in human rights and democratisation during 2017: Sub-Saharan Africa' (2018) 2 *Global Campus Human Rights Journal* 147
- O'Donnell G 'Why the rule of law matters in assessing the quality of democracy' (2004) 15 *Journal of Democracy* 32
- Office of the High Commissioner for Human Rights, Malawi 'UN experts urge action over albinism "atrocities" in run-up to elections' (2019), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24149&LangID=E> (last visited 24 June 2020)
- Opting E 'Malawi's High Court orders vote recount' 25 May 2019, available at <https://www.africanews.com/2019/05/25/malawi-s-high-court-orders-vote-recount/> (last visited 24 June 2020)
- Pensulo C "It's the year of mass protests": Malawi awaits crucial election ruling' 30 January 2020, available at <https://africanarguments.org/2020/01/30/year-mass-malawi-protests-election-ruling/> (last visited 24 June 2020)
- Phimbi E 'Govt faults persons with albinism for clash with police: "No room for lawlessness in Malawi"' (2019), available at <https://www.nyasatimes.com/govt-faults-persons-with-albinism-for-clash-with-police-no-room-for-lawlessness-in-malawi/> (last visited 24 June 2020)
- Reliefweb 'DRC Ebola outbreaks: Crisis update' 27 December 2019, available at <https://reliefweb.int/report/democratic-republic-congo/drc-ebola-outbreaks-crisis-update-27-december-2019> (last visited 24 June 2020)
- Reliefweb 'DRC Ebola outbreaks: Crisis update' 5 November 2019, available at <https://reliefweb.int/report/democratic-republic-congo/drc-ebola-outbreaks-crisis-update-5-november-2019> (last visited 24 June 2020)
- SADC Parliamentary Forum 'Girls Not Brides: The Global Partnership to End Child Marriage, and UNFPA East and Southern Africa, 2018. A guide to using the SADC Model Law On Eradicating Child Marriage and Protecting Children Already in Marriage for Parliamentarians, Civil Society Organisations and Youth Advocates', available at <https://esaro.unfpa.org/sites/default/files/pub-pdf/J7288E%20-%20SADC%20Model%20Law%20Toolkit%20final.pdf> (last visited 7 July 2020)
- Salih ZM 'Amid stalemate, Sudanese struggle to cope with economic crisis' (2019), available at www.aljazeera.com/news/2019/07/stalemate-sudanese-struggle-cope-economic-crisis-190712113457847.html (last visited 12 July 2020)
- Sidama Human Rights Activists 'More arrests in Sidama as authorities refuse to hand power to new region' *Ethiopia Insight* 8 May 2020, available at www.ethiopia-insight.com/2020/05/08/more-arrests-in-sidama-as-authorities-refuse-to-hand-power-to-new-region/ (last visited 2 July 2020)
- Singh MP 'Decriminalisation of homosexuality and the constitution' (2009) 2 *NUJS Law Review* 361
- The Guardian* 'Forced retirement of Malawi's chief justice before June election blocked' 16 June 2020, available at <https://www.theguardian.com/global-development/2020/jun/16/forced-retirement-of-malawis-chief-justice-before-june-election-blocked> (last visited 24 June 2020)
- Thuku M 'Myths, discrimination, and the call for special rights for persons with albinism in sub-Saharan Africa' (2011), available at <https://www.underthesamesun.com/content/myths-discrimination-and-call-special-rights-persons-albinism-sub-saharan-africa> (last visited 20 June 2020)
- UN Women 'Fifteen defining moments for women in 2019', available at <https://www.unwomen.org/en/news/stories/2019/12/compilation-2019-defining-moments-for-women> (last visited 19 June 2020)

Viljoen F (2012) *International human rights law in Africa* Oxford University Press

VOA News 'Doctor fighting Ebola outbreak in Congo killed in attack' 19 April 2019, available at <https://www.voanews.com/africa/doctor-fighting-ebola-outbreak-congo-killed-attack> (last visited 24 June 2020)

WHO 'Regional Ebola preparedness overview of needs and requirements (July-December 2019)', available at <https://www.who.int/csr/resources/publications/ebola/regional-preparedness-overview-july-december-2019/en/> (last visited 24 June 2020)