

Selected developments in human rights and democratisation during 2016: Sub-Saharan Africa

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Abstract: *This brief overview of selected developments in human rights and democratisation in sub-Saharan Africa during 2016 paints an uneven picture of progress, stagnation and retrogression at the global, regional and national levels. The contribution discusses elections held in 2016 and pertinent jurisprudence on elections and electoral management bodies during the year; accountability for mass atrocities; LGBTI rights; women's rights; and protests and internet shutdowns. As far as elections were concerned, many were free and fair and led to democratic changes of government, while others were manipulated by incumbents to maintain their stay in power. In terms of jurisprudence in support of democracy, the African Court delivered an important judgment against Côte d'Ivoire on the need to ensure the fair composition of electoral management bodies. With regard to accountability for mass atrocities, the African Union's onslaught against the International Criminal Court started yielding results, with Burundi, The Gambia and South Africa withdrawing their membership of the ICC, even though The Gambia and South Africa have subsequently revoked their withdrawals. On a positive note, the Extraordinary African Chambers convicted and sentenced former Chad dictator, Hissène Habré, to life imprisonment for atrocities committed between 1982 and 1990. With regard to LGBTI rights, even though the national executive continues to be an impediment, national courts are increasingly taking on the mantle of protecting LGBTI rights, especially in respect of the right to freedom of association and assembly. While the realisation of women's rights continues to face significant challenges at the national level, the AU showed encouraging signs of its commitment to gender equality, especially in a decision by the AU Assembly to only elect female judges to the African Court in order to ensure the gender balance of the Court. As far as protests are concerned, many states used internet shutdowns as a means of silencing dissent, especially during elections and protests that infringed on rights such as freedom of association, expression and assembly, in addition to substantial financial consequences.*

Key words: human rights; democratisation; sub-Saharan Africa; elections; LGBTI; gender; women's rights; internet shutdowns; accountability

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1 Introduction

This article provides a brief overview of selected developments in human rights and democratisation in sub-Saharan Africa during 2016. The issues discussed relate to developments at the global, regional and national levels. The review covers five main thematic areas, namely, democracy; accountability for mass atrocities; lesbian, gay, bisexual, transgender and intersex (LGBTI) rights; women's rights; and protests and internet shutdowns. This article is by no means a comprehensive review of developments relating to democratisation and human rights across sub-Saharan Africa. While it aims to provide an analytical review of some of the most important legal and political developments across sub-Saharan Africa, it also, to a limited extent, contains descriptions of violations that occurred during the year under review.

2 Democracy

2.1 National elections

The year 2016 may be described as the year of African elections. Africa's electoral calendar for 2016 included elections in as many as 30 countries, including the semi-autonomous region of Zanzibar (EISA 2016). Of these, 18 were scheduled presidential elections (ISS 2016). Presidential elections were scheduled to be held in Benin, Chad, Cape Verde, Central African Republic, Comoros, Republic of Congo, Democratic Republic of the Congo (DRC), Djibouti, Equatorial Guinea, Gabon, The Gambia, Ghana, Niger, São Tomé and Príncipe, Somalia, Uganda, Zambia and the semi-autonomous region of Zanzibar (EISA 2016). All the scheduled elections were held with the exception of the DRC.

'A review of the electoral events ... [of the] year highlights the manipulation, intimidation and contestation that mar democratisation processes in the continent', even though a few of these elections were conducted in a transparent, free and fair manner (ISS 2016). In many instances, elections were used only as tools for long-serving regimes to enhance their legitimacy rather than to allow for genuine contests to democratically select leadership. These were usually achieved through incumbent rigging of elections or systematically weakening opposition parties through repression and using state resources to gain patronage and consequently an unfair advantage over opposition parties (ISS 2016). A salient example is Equatorial Guinea, where incumbent President Teodoro Obiang Nguema received 99,2 per cent of the votes cast to win another seven-year term (Nguema has been in power since 1975). In Djibouti, the incumbent Omar Guelleh, who has been in power since 1999, received 87 per cent of the votes to win another term of office after term limits were revoked in 2010 (ISS 2016).

The elections in Uganda were characterised by the usual tactic of the incumbent National Revolutionary Movement (NRM) government's intimidation of the main opposition leader, Dr Kizza Besigye, of the Forum for Democratic Change (FDC) through numerous arrests and the disruption of public campaigns and protests under the guise of maintaining public order. The electoral process was further marred by delays in delivering polling material, which led to a delay of almost four

hours in the opening of polling stations in mainly opposition strongholds. In the end, the incumbent Yoweri Museveni of NRM was declared winner with 60,62 per cent of the valid votes cast as compared to the FDC's Dr Kissa Besigye's 35,61 per cent (Electoral Commission of Uganda 2016).

Presidential elections in the Democratic Republic of the Congo (DRC) to determine the successor of Joseph Kabila, whose term was coming to an end on 19 December 2016, was scheduled for 27 November 2016 but was rescheduled to April 2018. This move was viewed by opposition parties as an attempt by the incumbent President to remain in power beyond the constitutionally-allowed term, and possibly to give him the opportunity to manipulate a constitutional amendment to extend his term of office (Sow 2016; Aljazeera 2016). This announcement was greeted by protests which were violently quelled by law enforcement officials, leading to the death of between 17 (official government figure) and 50 (account of opposition groups and the UN) people (Sow 2016; Aljazeera 2016; Burke 2016). A dialogue brokered by the African Union (AU) brought in a less-known opposition leader, Samy Badibanga, as Prime Minister in a power-sharing arrangement, with the main opposition party, Rassemblement, boycotting the dialogue. The situation in the DRC is particularly disturbing as these elections presented the opportunity for a peaceful and democratic change of government for the first time. However, this opportunity to consolidate democracy and the rule of law in the DRC seems to have been sacrificed at the altar of political greed on the part of the incumbent President.

In The Gambia, '[t]he period leading to the 1 December 2016 presidential election was characterised by deep political and security tensions, resulting from the face-off between government and opposition parties' (Odigie 2017). Protests for political reforms by the main opposition United Democratic Party (UDP) between 14 and 16 April 2016 led to several arrests, including that of the leader of the UDP, Ousainou Darboe. Three people, including Solo Sandeng, the youth leader of the UDP, allegedly died in custody. Adama Barrow became leader of the UDP subsequent to the detention of Ousainou Darboe.

An Economic Community of West African States (ECOWAS) pre-election fact-finding mission identified as challenges that could hamper free and fair elections in The Gambia the denial of state media to the opposition; the intimidation and arrest of opposition leaders; and a lack of press freedom. ECOWAS, therefore, declined to send election observers for the second consecutive time, citing the lack of a political environment conducive to guaranteeing free and fair elections (Odigie 2016; BBC News 2016). It therefore, came as a surprise when on 2 December 2016 the opposition coalition candidate, Adama Barrow, was declared the winner of the elections by the Independent Electoral Commission. 'An even greater shock was the spontaneous acceptance of defeat by Jammeh who, based on his track record of unpredictability, surprised his most ardent critics by conceding election defeat' (Odigie 2016). However, Jammeh a week later withdrew his concession and challenged the electoral results citing irregularities. He subsequently resorted to declaring a state of emergency in a bid to exercise his emergency powers to retain power. An attempt to use the Supreme Court to stifle the electoral results proved futile since there was no properly-constituted Supreme Court to adjudicate on the petition challenging the elections. Jammeh had dismissed two judges of

the Supreme Court and had failed to appoint replacements for more than a year, leaving the Court without quorum (Jahateh & Jawo 2016).

The Authority of Heads of State and Government of ECOWAS (Authority) condemned these machinations and urged Jammeh to accept the result of the polls. It also undertook to take all necessary measures to strictly enforce the results of the elections. The Authority further requested the AU and United Nations (UN) to support its decision and assist in the mediation of the situation, including the provision of technical assistance (ECOWAS 2016). Both the AU and the UN Security Council, who decried attempts to circumvent the election results, supported the ECOWAS position. The AU specifically declared that it would stop recognising Jammeh as President of The Gambia if he refused to hand over power. In the end, it took the strong will of ECOWAS, which vowed to enforce the elections results including the threat of use of force as a last resort, with the support of the AU and UN Security Council to get Jammeh to hand over power and go into exile in Equatorial Guinea on 21 January 2017.

The Gambian election impasse illustrates the important role regional economic communities can play in enhancing democracy and respect for human rights in Africa. ECOWAS has during the past decade shown a renewed commitment towards entrenching democracy and zero tolerance for election manipulations by incumbents in accordance with its Protocol on Democracy and Good Governance. In a similar situation in 2010, when Laurent Gbagbo attempted to hold onto power in Côte d'Ivoire after losing elections to the opposition's Alassane Ouattara, ECOWAS rejected the manipulations and refused to accept the idea of a power-sharing government, which was floated by the AU. With the backing of the UN and France, ECOWAS removed Gbagbo through military intervention (Penar 2016). This consistency in upholding the results of free and fair elections is to be encouraged if the democratisation project in Africa is to make progress.

One important lesson which can be learned from the ECOWAS response in The Gambia is the coherence with which intervention was co-ordinated with the AU and the UN Security Council. While ECOWAS took the lead role in the intervention, it all along called on the support of the AU and the UN Security Council. This coherent and co-ordinated support from the three entities, with a consistent message, was crucial in the success of the intervention. This collaboration between ECOWAS, the AU and the UN must be encouraged and emulated by other regional economic communities (Odigie 2017). Such collaboration has the potential to provide additional international support for intervention, including the mobilisation of relevant UN assets, if necessary (Penar 2016).

Zambia's 2016 elections are discussed in much detail here because of the many lessons it bodes both for the conduct of elections and the settlement of electoral disputes by the judiciary. The polls covered the election of the President, parliamentarians, mayors and a referendum on the Bill of Rights. The referendum was important as, among others, it was aimed at including additional provision on civil and political rights and new provisions on justiciable economic, social and cultural rights (Lumina 2016). The elections were marred by an abuse of incumbency, with the ruling government closing down the only opposition newspaper – *The Post* – blocking many campaign attempts by the opposition United Party for

National Development (UPND) through the courts and the use of party cadres (Resnick 2016). Violent clashes between the supporters of various political parties forced the electoral commission to suspend electoral campaigns in the affected areas for ten days (EISA Election Observer Mission 2016). Opposition parties also complained that the Public Order Act was regularly used by the police to restrict their rallies, especially in instances where the incumbent President was holding election-related activities in the same district or province (SADC Election Observation Mission 2016). The elections were concluded with mixed results.

While the majority of the voters supported the adoption of the reforms proposed by the referendum, the referendum failed as less than 50 per cent (44,44 per cent) of eligible voters actually voted in the referendum, even though the general voter turnout was 56,45 per cent. The failure of the referendum has been attributed to, among others, 'concerns relating to the framing of the referendum question, the timing of the referendum and the lack of awareness of the proposed changes among the general public' (Lumina 2016). The question put to the electorate was: 'Do you agree to the amendment to the Constitution to enhance the Bill of Rights contained in Part III of the Constitution of Zambia and to repeal and replace Article 79 of the Constitution of Zambia?' This question conflated two issues: the amendment of the Bill of Rights and the amendment of the amendment clause of the Constitution (Lumina 2016). One commentator warned that a failure to simplify the referendum question would lead to a failure of the referendum (Open Zambia 2016), which warning the ruling government ignored. Civil society had also warned that more time was needed to sensitise the electorate about the implications of the referendum, but this was also ignored by the government. The limited time for sensitisation deprived the electorates of the right to be sufficiently informed about the complexities relating to the referendum, which may have led many of them to abstain from voting in the referendum (Lumina 2016).

For an important referendum such as the one under discussion, which would have enhanced the constitutional protection of human rights, it was perhaps imperative that the referendum should have been held independent of the general elections. 'Referendums tend to be successful in circumstances where there is bi-partisan support for proposed changes' (Lumina 2016), especially in situations where there are almost equally-divided views on the issues at stake. Combining the referendum with the general elections essentially meant that the political divisions associated with the general elections became transposed on the referendum, with many viewing 'the entire constitutional reform process as a project of the ruling Patriotic Front (PF) rather than a national project' (Lumina 2016). A successful referendum to incorporate these important human rights provisions in the Constitution will require bi-partisan support, sufficient voter education and the simplification of the relevant questions.

As noted above, unlike the referendum, the general election received a voter turnout of 56,45 per cent, with the incumbent Edgar Lungu of the PF receiving 50,35 per cent of the votes, compared to 47,67 per cent of the opposition UPND's Hakainde Hichilema, according to the electoral commission. Consequently, Edgar Lungu was declared President-elect. The results were challenged by the UPND, which alleged collusion between the electoral commission and the PF (BBC 2016). Hakainde Hichilema subsequently approached the Constitutional Court to challenge

the election results and the declaration of Edgar Lungu as President-elect.¹ New Constitutional amendments introduced in January 2016 require that the petition challenging the presidential elections be filed within seven days of the declaration of results, and the Constitutional Court is required to 'hear an election petition filed ... within fourteen days of the filing of the petition'(art 101(5) Constitution). The amendment, following Kenya's example, was aimed at rectifying the situation where petitions had taken many months or even years to adjudicate, leading to legal uncertainties or even prejudicing the Court's mind in favour of the incumbent who would usually continue in office until the finalisation of the petition (Owiso 2016). The amendment was to provide legal certainty which was imperative because, under the new amendments, the President-elect could be sworn in only after the petition had completely been disposed of by the Court.

The petition was filed on 19 August 2016, which meant that the Court had to give its judgment on 2 September 2016 if a strict literal interpretation of article 101(5) was to be adopted. This strict timing, coupled with the unrealistic provisions of the Rules of the Constitutional Court, put the Court in an awkward position. 'The rules require the respondent to file an answer to the petition within 5 days of service and the petitioner to reply within [5] days of being served with the answer.' This is followed by the discovery of documents and status conference which must be completed before the commencement of the hearing. 'These preliminary processes, even if rushed, consume a better part of, if not the entire, 14 days' (Owiso 2016). Unfortunately, both the petitioners and the Court seem to have been oblivious of these Rules. Consequently, by the time the preliminary processes were completed, it was already 2 September 2016 – the last of the 14 days. Had the Court been proactive enough to anticipate this potential challenge, it could have overruled its Rules in favour of the supremacy of the Constitution and abridged the timelines to ensure sufficient time for hearing and judgment (Owiso 2016).

This challenge seemed to have dawned on the Court only when the respondents on 2 September 2016 raised an objection to continuing the proceedings beyond that day. The Court adjourned to 5 September 2016 to consider the objection of the respondents. In a rather strange turn of events, when the Court returned on 5 September 2016, 'Judge Sitali ... announced that three of the five judges have met over the weekend and have decided to reverse the unanimous decision' (Centre for Human Rights 2016). The new ruling by the three judges was to the effect that the 14 days prescribed for hearing the petition had lapsed on 2 September 2016, and consequently struck out the petition. The sequence of events raised the suspicion that extra-judicial pressure may have influenced the decision of the three judges.

There are several ways in which the Court could have resolved this petition without allowing itself to face this controversy and disrepute. First, the Constitution only requires the Court to 'hear' the case in 14 days. Given the high political stakes, this could have generously been interpreted to mean that the Court was only required to commence hearing the application within the stipulated 14-day period, which would

1 *Hakainde Hichilema & Another v Edgar Lungu & 2 Others.*

have given it ample time to continue the hearing and deliver a judgment once both parties had presented their case. In order not to overly prolong the case, given that the constitutional amendment was aimed at ensuring the speedy disposal of the petition, it would be imperative that the Court would impose firm timelines to ensure the speedy adjudication of the case. This would have ensured that substantive justice was done rather than relying on a technicality to defeat the ends of justice, as was argued in the opinion of the dissenting judges (Owiso 2016).

In the alternative, if the Court was so minded to stick to a strict interpretation of the 14-day 'hearing' rule, the Court had two options. First, it could have interpreted 14 days to mean '14 working days', which would exclude weekends and public holidays. This would have given the Court up to 8 September 2016 to consider the merits of the case and deliver judgment on the substance (Owiso 2016). In the instance that the Court would consider 14 days to include weekends and public holidays, it was imperative for the Court to at least warn the parties and their lawyers that it would deliver its judgment on the fourteenth day, failing which it would dismiss the case for want of prosecution. This would perhaps have prompted the petitioners to apply for an abridgment of time for the filing of pleadings in order to ensure sufficient time for the hearing and judgment. Even without an application for abridgment by the petitioners, it is submitted that the Court had an obligation to judicially manage the proceedings in such a manner as to would enable it to deliver judgment within the stipulated period. This is exactly what the Supreme Court of Kenya did in the case of *Raila Odinga v Independent Electoral and Boundaries Commission*,² when it ruled that the petitioners were not expected to file a reply to the respondents' answer to his petition, in the interests of time (Owiso 2016).

The point that strongly comes to fore from this case is that election petitions are not only legal disputes, but also political disputes that could have repercussions for peace and stability. Consequently, in as much as it is important to ensure that presidential election petitions are speedily dealt with, it is equally important that the judiciary is given ample time to effectively consider the opposing claims and deliver well-reasoned judgments. Rushing the judiciary may result in an underdeveloped consideration of issues and, hence decisions, or even perhaps the tendency for courts to simply confirm the declared results since they do not have sufficient time to make well-informed decisions.

However, it was not all despondency for the electoral calendar of 2016 as a number of free and fair elections were recorded. Benin's Yayi Boni stepped down after his two terms and handed power over to Patrice Talon who was elected President in March 2016. São Tomé and Príncipe's Manuel Pinto da Costa, who served as President from 1975-1991 and 2011-2016, was defeated by former Prime Minister Evaristo Carvalho after the former, who obtained only about 24 per cent of the votes in the first round of voting, boycotted the run-off elections (ISS 2016).

In Ghana, authorities intimated the possibility of an internet shutdown during elections. However, this idea was soon dispelled because of public criticism of the attempt to shroud the electoral process in secrecy and mar

2 Supreme Court of Kenya 2013.

an electoral process that has earned the commendation of all over the past two decades. This marked another sign of maturity of the Ghanaian democratic process and the willingness of successive administrations to conduct free, fair and transparent elections.

In another mark of democratic maturity, the incumbent President of Ghana, John Dramani Mahama, who was seeking re-election, promptly conceded defeat when the Electoral Commission of Ghana announced the main opposition's candidate, Nana Akufo Addo, as the winner of the 7 December elections. The setting up of a joint transition team, made up of members of the outgoing government and the newly-elected government, to peacefully and seamlessly hand over the administration of the state, followed a few days later. Ghana once again proved itself worthy of being described as a beacon of hope for democracy in Africa.

2.2 Local elections in South Africa

While national elections (presidential and parliamentary) usually take the centre stage of discourse on democratisation in Africa, local (municipal) elections also provide an important avenue of ensuring that democratic governance and accountability are brought closer to grassroots level. In this regard, we turn our attention to the municipal elections in South Africa. South African municipal elections led to the ruling African National Congress (ANC) losing in the three biggest cities of Cape Town, Johannesburg and Pretoria and other major cities to the biggest opposition party, the Democratic Alliance (DA). This is further evidence of the dwindling electoral fortune of the famed ANC which led South Africa out of apartheid into democratic governance in 1994. Growing dissatisfaction with slow economic growth, the non-delivery of essential socio-economic services and an increase in youth unemployment has led to growing disaffection for the ruling ANC, especially among the urban middle class and the youth. If the current trend continues, some commentators argue that the 2019 general elections may prove very challenging for the ANC. While this state of affairs clearly is detrimental to the ANC, the growth of opposition parties with its consequent effect on increasing political competition between the parties arguably is good for the democratisation process in South Africa. This has the potential of increasing accountability of the ruling party and improving service delivery, given that there is now the real threat of the ANC losing control of the national government to an opposition party in the near future.

2.3 Electoral management bodies

As discussed above, elections are fundamental to democratic governance. However, electoral processes would only be deemed fair and results accepted if conducted by a fair and impartial electoral management body (EMB). In this regard, the African Court on Human and Peoples' Rights (African Court) was called upon to make a pronouncement on the importance of having a balanced representation of various interests in the constitution of an EMB, especially where representatives of political parties constitute the EMB. The Court dealt with this issue in the case of *Actions Pour la Protection des Droits de L'homme (APDH) v Republic of Côte d'Ivoire* (African Court 2016). The applicant in this case had challenged the composition of the Independent Electoral Commission (IEC) which comprised, among others, representatives of the President; the president of

the National Assembly; the Minister in charge of Territorial Administration; and the Minister of Economy and Finance, as 'creating unequal treatment in the form of over-representation in the favour of the President' (Nyarko & Jegede 2017). According to the applicant, this was in violation of the respondent's obligation to establish an independent and impartial EMB and the right to equality and equal protection of the law contrary to provisions of the African Charter on Human and Peoples' Rights (articles 3 and 13(1) and (2)); the African Charter on Democracy, Elections and Governance (articles 10(3) and 17(1)); the ECOWAS Democracy Protocol (article 3); the Universal Declaration of Human Rights (article 1); and the International Covenant on Civil and Political Rights (ICCPR) (article 26). The African Court held that, although international law does not prescribe any exact characteristics of an independent and impartial EMB, an EMB would 'be deemed independent if "it has administrative and financial autonomy; and offers sufficient guarantees of its members' independence and impartiality"' (Nyarko & Jegede 2017). Consequently, the Court held that 'the imbalance in representation in favour of the ruling coalition amounted to a violation of its obligation to establish an independent and impartial electoral management body', which also affects the right to freely participate in public affairs and the right to equal protection of the law. The respondent state was ordered to amend its laws to conform with the relevant international instruments accordingly (African Court 2017; Nyarko & Jegede 2017).

The judgment in this case is important for a number of reasons, two of which are highlighted here. First, it offered the Court the opportunity to pronounce itself on what constitutes a 'human right instrument' in terms of article 3(1) of the Court's Protocol. This became necessary as the Court had to satisfy itself whether the African Charter on Democracy, Elections and Governance and ECOWAS Democracy Protocol qualified as 'human rights instruments' in terms of article 3(1) of the Court's Protocol. The Court reasoned that in order to ascertain whether a treaty is a human rights instrument, recourse has to be had to the purpose for which it was adopted. A treaty, therefore, would qualify as a human rights instrument if it contains 'express enunciation of the subjective rights of individuals or groups of individuals, or ... mandatory obligations on state parties for the consequent enjoyment of the said rights'. Consequently, the Court held that these two instruments were human rights instruments since they place an obligation on member states to establish an independent and impartial EMB, which is essential to the enjoyment of the right to freely participate in the governance of one's country, either directly or through elected representatives guaranteed in the African Charter on Human and Peoples' Rights. This 'broad and inclusive interpretation' on what constitutes a human rights instrument and the Court's willingness to accept the two instruments as human rights instruments, even when they only indirectly protect other fundamental human rights, 'marks a positive improvement in the Court's jurisprudence'. This provides the complainants with the opportunity to rely on as many instruments as possible to give a broader meaning to the relevant human rights they seek to protect (Windridge 2017).

This judgment is an important reminder that African states need to establish impartial and independent EMBs if free and fair elections are to be achieved. This is an important step towards the struggle for

democratisation on the continent. It can only be hoped that this case will serve as a precedent to other African states to ensure that their EMBs are established in accordance with internationally-recognised principles of independence and impartiality.

3 Accountability for mass atrocities

Accountability for massive violations in sub-Saharan Africa remains a challenge. While high-intensity conflicts and wars in Africa have been on the decline since 2015, political violence appears to be on the increase with a resulting increase in civilian targeting, usually by state forces or militias (Aucoin 2017). In the majority of instances these violations occur with impunity, as victims are left without redress. AU efforts to set up a continental court with criminal jurisdiction to prosecute perpetrators of the most egregious violations of international law did not make much progress as the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol), adopted in 2014, has by the end of 2016 still remained unratified by member states of the AU.

Notwithstanding this situation, the AU has continued its onslaught for the collective withdrawal of African member states from the International Criminal Court (ICC) and, pending such withdrawal, non-co-operation with the ICC concerning warrants issued for the arrest of Sudanese President Omar Al-Bashir (Nyarko & Jegede). This call yielded some results as South Africa (Nichols 2016), The Gambia (Withnall 2016) and Burundi (HRW 2016) withdrew their ratification of the ICC Statute. Burundi's withdrawal appears to have been triggered when the UN Human Rights Council passed a resolution to establish a commission of enquiry to investigate the human rights violations committed since violence broke out in April 2015, to identify the perpetrators and to make recommendations on how to hold them accountable (HRW 2016). The Gambia has subsequently re-joined the ICC, following the defeat of former strongman Yaya Jammeh and the installation of Adam Barrow as President in January 2017 (Klepper 2017). South Africa has also revoked its withdrawal following a finding by the Pretoria High Court that the withdrawal was unconstitutional as it had not been preceded by the approval of parliament (*Democratic Alliance v Minister of International Relations and Co-operation & Others (Council for the Advancement of the South African Constitution Intervening 2016)*).

Another issue of concern regarding accountability for massive human rights violations relates to Rwanda's withdrawal of its declaration allowing individuals and non-governmental organisations (NGOs) direct access to the African Court. Rwanda's principal reason for withdrawing from direct access to the African Court was that the Court had granted audience to an individual who had been convicted of serious crimes (genocide) by domestic courts (Centre for Human Rights 2016). As the African Court later confirmed, states generally have the discretion to withdraw from a treaty or revoke a declaration provided the right procedures are adhered to, unless the relevant treaty expressly proscribes withdrawal or the treaty reasonably so implies (*Ingabire Victoire Umuhoza v Republic of Rwanda*). As has been observed elsewhere,

what is disturbing about Rwanda's withdrawal is the reason given as justification. Rwanda's justification assumes that there are categories of persons who should not be able to have access to the Court because of crimes they are alleged to have committed. This kind of reasoning not only is wrong as it is discriminatory, but also fundamentally goes against the very mandate of the Court, which is to ensure access to justice in the protection of human rights irrespective of the designation of the person(s) seizing its jurisdiction. Rwanda's withdrawal and subsequent refusal to participate in further proceedings also undermine efforts to strengthen African institutions to ensure accountability for human rights violations, and cast further doubt on the commitment of African states to ensure the effectiveness of African human rights institutions. Rwanda's actions further set a bad precedent for member states to withdraw their declaration whenever they disagree with the Court on any matter. This has the potential to weaken the Court and may possibly lead to self-censure by the Court in order not to get involved in confrontations with member states (Nyarko & Jegede 2017).

Perhaps more importantly, Rwanda's actions coupled with the hesitation with which member states have made declarations allowing individual access to the Court (by the end of 2016 only seven member states have allowed direct access by individuals and NGOs) speaks to the lack of political will on the part of African states to ensure that victims of human rights violations have access to a remedy. In addition to the reluctance of member states to ratify the Protocol establishing the criminal chamber of the African Court (no member state has ratified it), this should remind supporters of the 'collective withdrawal' by African states from the ICC of the accountability vacuum that would be created if states withdrew.

The most outstanding positive event concerning accountability for massive violations during 2016 relates to the conviction and sentencing of the former Chadian dictator, Hissène Habré, by the Extraordinary African Chambers (EAC) for crimes committed between 1982 and 1990 when he was President. The EAC was established in 2012 through an agreement between the AU and Senegal to try Habré and his accomplices after several failed attempts by Chadian, Senegalese and Belgian courts to prosecute Habré for these crimes (Nyarko & Jegede 2017). A commission of inquiry, established in 1990 by the Chadian government after the overthrow of Habré, determined that the regime had been responsible for mass atrocities including 'more than 40 000 victims, more than 80 000 orphans, more than 30 000 widows, more than 200 000 people left with no moral or material support as a result of this repression' (Kritz 1995; Adjovi 2013; Nyarko & Jegede 2017). The jurisdiction of the EAC covers war crimes, genocide, crimes against humanity, and torture committed by the Habré regime between 1982 and 1990, and any individual who participated in the commission of the crimes (EAC Statute 2012). Even though the EAC was established by an agreement between Senegal and the AU, it was embedded in the Senegalese judiciary rather than as an independent international organisation akin to the International Criminal Tribunal for Rwanda (ICTR) or the Special Court of Sierra Leone.

Habré was charged with war crimes, crimes against humanity and torture. The EAC convicted Habré of 'crimes against humanity of rape, sexual slavery, murder, summary execution, kidnapping followed by enforced disappearance, torture and inhumane acts' and 'war crimes of murder, torture, inhumane treatment and unlawful confinement committed against prisoners of war' (*Ministère Public v Hisséin Habré* 2016; Pérez-León-Acevedo 2016). The EAC sentenced Habré to life

imprisonment and awarded reparations of USD \$33,880 to each victim of rape and sexual violence; USD \$25,410 to each victim of arbitrary detention, torture and prisoners of war; and USD \$16,935 to each indirect victim (Amnesty International 2017). Habré immediately appealed his conviction to the Appeal's Chamber of the EAC, which overturned the rape conviction but confirmed all the other convictions, including the life sentence, in its appeal ruling of 27 April 2017 (Amnesty International 2017). Habré's trial and conviction are an 'an important and promising example of zero tolerance to impunity in Africa and also bring justice to victims of serious human rights violations constitutive of international crimes' (Pérez-León-Acevedo 2016).

The Habré trial has set a number of important milestones in international criminal justice. It marks the first time the head of state of a country has been successfully tried and convicted by the domestic courts of another state for serious human rights violations, reinforcing 'the principles of subsidiarity of international tribunals and the complementarity between national courts and international tribunals' (Pérez-León-Acevedo 2016). It is also the first time courts of an African country have exercised universal jurisdiction over crimes committed in another country. Further, this was 'the first time the AU has been involved in the establishment of an internationalised criminal court to successfully investigate, prosecute and convict perpetrators of serious human rights violations' (Nyarko & Jegede 2017; Pérez-León-Acevedo 2016). The Habré case is an important reminder that accountability is achievable if sustained pressure is brought to bear on the relevant authorities.

4 LGBTI rights

The rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people remained a thorny topic in Africa during 2016. While no new legislation was adopted by an African state criminalising LGBTI rights, most African states continued to oppose the protection of the rights of LGBTI people. The most notable aspect of this opposition during 2016 concerns the adoption of the resolution appointing the Independent Expert for protection against violence and discrimination based on sexual orientation and gender identity (SOGI), which was not supported by the affirmative vote of any African state. Even though the resolution was passed and Vitit Muntarbhorn was appointed as the Independent Expert, the African Group subsequently petitioned for the suspension of the mandate, claiming that the appointment of the Independent Expert on SOGI rights was an 'attempt to focus on certain persons on the grounds of their sexual interests and behaviours, while ignoring that intolerance and discrimination regrettably exist in various parts of the world, be it on the basis of colour, race, sex or religion, to mention only a few' (African Group 2016). The African Group also claimed that attention was being given to SOGI rights 'to the detriment of issues of paramount importance such as the right to development and the racism agenda' (African Group 2016). The claims of the African Group contained many inaccuracies, some of which are briefly highlighted below.

It is trite that the UN system of special procedures consisting of working groups, special rapporteurs and independent experts cover a broad range of thematic and country-specific mandates – usually targeted

at vulnerable groups and countries at risk of massive human rights violations. There are currently 44 thematic and 12 country-specific mandates, several of which cover the issues raised by the African Group. Notably, the mandate of Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance was established in 1993 (UN Commission on Human Rights 1993), while that of the Special Rapporteur on the Right to Development was established in 2016 (Human Rights Council 2016). These are issues which the African Group claimed were being neglected.

In addition, the resolution gave the Independent Expert a narrow mandate to focus on 'violence and discrimination against persons on the basis of their sexual orientation or gender identity' (Human Rights Council 2016) and not a general mandate to promote SOGI rights *per se*. The right to non-discrimination is enshrined in all UN human rights instruments and, therefore, cannot be said to be a new right or a matter that should even raise controversy. Indeed, the obligation on states to protect the right to life of LGBTI persons has been echoed by the UN General Assembly in several resolutions (UN General Assembly 2014; UN General Assembly 2012; UN General Assembly 2010; UN General Assembly 2008; UN General Assembly 2006; UN General Assembly 2004; UN General Assembly 2002). Even in countries where same-sex sexual activity or relations are criminalised, it cannot reasonably be argued that LGBTI persons, even if suspected or accused of contravening the criminal laws, should not be protected against violence. Indeed, the Human Rights Committee has proclaimed in General Comments, communications and Concluding Observations that corporal punishment of any prisoner amounts to cruel, inhuman and degrading treatment or punishment (Human Rights Committee 1992; Human Rights Committee 2004). It stands to reason that if convicted persons cannot be subjected to violence (corporal punishment) as a form of punishment, then suspects or accused persons should similarly be protected against all acts of violence, irrespective of their sexual orientation. The idea that protecting LGBTI persons against violence and discrimination would bring about division clearly is untenable as states have an obligation to protect all persons within their jurisdiction against these human rights violations.

One should also not lose sight of the fact that the AU's primary human rights institution, the African Commission on Human and Peoples' Rights (African Commission), which exercises oversight jurisdiction over all the members of the African Group with respect to the realisation of human rights, passed a resolution in 2014 condemning violence against persons based on their real or perceived sexual orientation or gender identity (African Commission 2014). The resolution further urge member states 'to end all acts of violence and abuse, whether committed by state or non-state actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence' committed against persons on the basis of their real or perceived sexual orientation or gender identity (African Commission 2014). This is the very purpose for which the Independent Expert on SOGI rights was appointed. It is, thus, at best inaccurate that the Human Rights Council was campaigning for a new agenda on SOGI rights, which is within the exclusive jurisdiction of states.

The most notable disappointment in this impasse was South Africa, the perceived pioneers of constitutional protection for LGBTI rights on the

continent, which country appears to have eschewed on its commitment to the protection of LGBTI rights. South Africa has previously been instrumental in the struggle for LGBTI rights at the international level, spearheading the passage of the first Human Rights Council resolution for the protection of LGBTI rights in 2011 – South Africa and Mauritius are the only African countries that supported the resolution (Jordaan 2017; Nepaul 2016). South Africa supported a similar effort in 2014, at which the Human Rights Council mandated the Office of the High Commissioner for Human Rights to conduct a study on violence and discrimination based on sexual orientation and gender identity, citing its constitutional obligation to reduce discrimination and violence against LGBTI persons (Benjoy 2016; Human Rights Council 2014). Therefore, it is disappointing that South Africa abstained from voting on the Human Rights Council resolution that authorised the appointment of an Independent Expert on SOGI rights, requesting further discussion on the legality of the mandate (Alvelius, Oksman & Patanen 2016). South Africa missed an opportunity of putting human rights at the core of its foreign policy.

At the domestic level, the South African Human Rights Commission hosted the first regional seminar on Violence and Discrimination against Persons Based on Sexual Orientation, Gender Identity and Expression' in collaboration with the South African government and civil society in March 2016 (Lawyers for Human Rights 2016). Importantly, the Deputy Minister of Justice expressly encouraged other African countries to put an end to the discrimination and violence inflicted on the LGBTI community (Jeffrey 2016). The seminar also culminated in the adoption of the Ekurhuleni Declaration, which addresses issues such as violence and discrimination, health and psychosocial support, legal support and secondary victimisation within the criminal justice system. This event stands in direct contrast to South Africa's posturing before the Human Rights Council and represents an increased willingness by the government to engage in discussions related to the protection of SOGI rights.

On another positive note, the full bench of the Court of Appeal of Botswana on 16 March 2016 delivered its judgment in *Attorney General v Thuto Rammoge & 19 Others (LEGABIBO case)* upholding the 2014 decision of the High Court of Botswana (*Thuto Rammoge & 19 Others v The Attorney-General of Botswana 2014*), which ordered the government to register the organisation known as Lesbian, Gays and Bisexuals of Botswana (LEGABIBO) as a society in accordance with the Societies Act (Southern Africa Litigation Centre 2016). The registration had been refused on grounds that the Constitution did not recognise homosexuals and that the objects of the organisation were incompatible with peace, welfare and good order in Botswana. The High Court ruled that 'there was nothing inherently unlawful in lobbying or advocating for legislative reform to decriminalise same-sex sexual conduct' since lobbying and advocacy are protected by freedom of expression and freedom of association, 'and neither was this incompatible with peace, welfare, and good order' (*LEGABIBO case*). Consequently, the High Court held that the refusal to register LEGABIBO was in violation of freedom of expression and freedom of association, and ordered that LEGABIBO be registered (Legal Grounds III 2017). The Attorney-General appealed to the Court of Appeal, the apex court of Botswana, against this judgment. The Court of Appeal confirmed the decision of the High Court, holding that the refusal

to register LEGABIBO was irrational and unconstitutional as it infringed on the rights to freedom of association and assembly.

The decision of the Court is significant for many reasons, some of which are briefly highlighted. In a region usually characterised by homophobia and violence against LGBTI persons, it is important that the Court recognised that

[m]embers of the gay, lesbian and transgender community, although no doubt a small minority, and unacceptable to some on religious or other grounds, form part of the rich diversity of any nation and are fully entitled in Botswana, as in any other progressive state, to the constitutional protection of their dignity (*LEGABIBO* case).

This emphasises ‘the state’s duty to uphold basic rights and to ensure dignity, tolerance and acceptance for marginalised and unpopular groups’ (Esterhuizen 2016). It is also important that the Court recognised that it is not a crime to be a homosexual, in a country where same-sex intercourse is criminalised. This is an important distinction in separating the sexual orientation or gender identity of individuals from the sexual act.

It is particularly important that the Court recognised that LGBTI persons and their allies have the right to associate and advocate law reform, including the decriminalisation of same-sex intercourse. The *LEGABIBO* judgment adds to the steadily-growing number of cases on the African continent that uphold the rights of LGBTI persons to dignity, freedom of expression, association and assembly (see *Eric Gitari v Non-Governmental Organisations Co-ordination Board & 4 Others* 2015). The judgment provides significant impetus for the advancement of the right of LGBTI persons in Africa, and illustrates the importance of an independent judiciary in the protection of vulnerable groups in society (Esterhuizen 2016).

Finally, the judgment is ‘particularly important because it lays down an important precedent, by a respected apex court, whose reasoned judgment can be cited by advocates and organisations elsewhere on the African continent’ and could ‘potentially opens the way for the registration of similar NGOs in other countries’ (Centre for Human Rights (2b) 2016).

5 Women’s rights

The AU named 2016 the African Year of Human Rights with a particular focus on women’s rights. The year 2016, therefore, was an important year for women’s rights in Africa because, in addition to the AU declaration, it also marked the first year of the implementation of the 2030 Sustainable Development Goals which have significant implications for women’s rights. One would have expected that member states would, in keeping with this and their obligations under various AU human rights treaties, including the African Charter and its Protocol on the Rights of Women in Africa (African Women’s Protocol), adopt relevant legislation and programmes to give effect to women’s equality and other relevant women’s rights issues. However, reality did not reflect this optimistic view. Conflict and political violence in Burundi, Mali, Somalia, Central African Republic, South Sudan, Somalia, Northern Nigeria and the Eastern DRC continued to expose women and girls to, among others, sexual violence, human trafficking and slavery (Lwabukuna 2016).

In March 2016, the Nigerian Senate was presented with an opportunity to enact legislation on gender equality through the introduction of the Gender and Equal Opportunities Bill. The Bill sought to eliminate discrimination and violence against women and to protect women's equality in politics and public life, education, employment and inheritance, among others (Bagenal 2016; Guilbert 2016). However, the Bill was rejected by a majority of the members of the male-dominated Senate (only seven out of the 109 members of the Senate are women), who mostly cited religion and culture as the basis of their opposition. Following strong criticism from civil society and the general public, a revised version of the Bill, with less liberal provisions, was reintroduced in June 2016. The new Bill, for example, removes (a) the rights of women to confer their citizenship on their children; (b) their rights to acquire property during marriage; and (c) the mandatory minimum age of marriage, which had been set at 18 years in the previous Bill (Ogbonna 2016). The rejection of the Bill is a setback to Nigeria's efforts to meet its obligations under various human rights instruments, most notably the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the African Women's Protocol and the Agenda 2030 Sustainable Development Goals (SDGs). The rejection of the Bill also highlights the continued influence of patriarchy on the lives of women and, consequently, the necessity to ensure that more women participate in public life, especially on issues that directly affect their lives. This reinforces the need for the adoption of gender equality laws that provide important safeguards for affirmative action to ensure that women increasingly are equally represented in all spheres of public decision-making fora, including national legislatures.

In South Africa, many women reported that the Department of Home Affairs had changed their maiden surnames to their husbands' surnames without their consent. This had caused difficulties to women as the names on their identification cards or passports did not match the official government records after the unauthorised amendments. In some instances, this led to some women being denied access to their bank accounts and other services (Falaga 2016). The assumption that women must necessarily take the surnames of their husbands, even where they have expressly indicated otherwise, is a flagrant abuse of women's rights to autonomy and dignity, and evidences the continuous treatment of women as minors that are incapable of making relevant decisions for themselves. It took a public outcry and threats of court action for the Department of Home Affairs to reverse the unauthorised changes and to confirm that it was training its staff to 'ensure that staff biases and prejudice were eliminated in the capturing of information on the National Population Register' (*Africadaily* 2016).

On a positive note, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) facilitated the amicable settlement of a claim instituted by the Institute for Human Rights and Development in Africa (IHRDA) against Malawi concerning childhood, which was defined by article 23 of the Malawian Constitution as comprising anyone below the age of 16 (*Institute for Human Rights and Development in Africa (IHRDA) v The Republic of Malawi (IHRDA case)*). IHRDA complained that this provision was in breach of the African Charter on the Rights and Welfare of the Child (African Children's Charter), which defines a child as anyone below 18 years (article 2) and

requires member states to adopt legislative and other measures to give effect to this obligation (article 1). The complainant further argued that this amounted to discrimination against children between 16 and 18 years who are left without protection, contrary to article 3 of the African Children's Charter (IHRDA case 2016). In a swift show of its commitment to protecting the rights of children, the Malawian authorities entered into an amicable settlement agreement with the IHRDA, which was subsequently adopted by the African Children's Committee. Malawi has subsequently amended the relevant constitutional provision to increase the age of childhood from 16 to 18 years (Nyarko & Jegede 2017) and increased the aged of marriage from 15 (with parental consent) to 18 years for both boys and girls (Girls Not Brides 2017; UN Women 2017) to make the Constitution compliant with the African Children's Charter. While this decision is an important win for children's rights in Malawi, generally, and, arguably, in Africa because of its jurisprudential effects, it is a particular important win for the rights of the girl child. The problem of child marriage remains a huge challenge in many African countries and disproportionately affects girls. Malawi has one of the highest rates of child marriage in the world, with about 46 per cent of girls married before they turn 18 (Girls Not Brides 2017). While socio-cultural and economic factors may be the biggest factors influencing the endurance of child marriage on the continent, the existence of legal provisions such as this, which allows children to legally become adults earlier, emboldens the performance of child marriages, as it legally enables children to get married, therefore leaving law enforcement and advocacy groups with little recourse. The removal of legal barriers and the harmonisation of domestic laws with international treaty obligations, therefore, are an important step in the fight against child marriage, which in many ways violates the rights of the girl child.

In another case before the African Children's Committee with important implications for the rights of women, the African Centre of Justice and Peace Studies (ACPJS) and People's Legal Aid Centre (PLACE) challenged the decision of Sudan to revoke the citizenship of a young Sudanese woman who had been born to a Sudanese mother and a South Sudanese father (*African Centre of Justice and Peace Studies (ACJPS) and People's Legal Aid Centre (PLACE) v The Government of Republic of Sudan*). The sole basis for the revocation of citizenship was that her surname indicated that her father was from South Sudan. Sudan's Nationality Act of 1994 (as amended in 2006 and 2011) allows Sudanese men to automatically pass on their citizenship to their children at birth (sections 4(1)(b) and 4(2)), but children born to Sudanese women have to apply for citizenship (section 4(3)). This is despite the fact that the country's interim Constitution of 2005 provides that 'every person born to a Sudanese mother or father shall have an inalienable right to enjoy Sudanese nationality and citizenship' (UNHCR 2014). This clearly amounts to discrimination against women regarding the ability to transfer their citizenship to their children on an equal basis with men, in addition to violating the rights of children to nationality. The Committee ruled the case admissible, but is yet to render its decision on the merits of the case. It is reasonable to expect that the Committee's decision will be in favour of the complainants, given the blatant nature of this discriminatory practice. What would be interesting to see is the extent to which the Committee will interpret the extent of the

state's obligations under the relevant provisions of the African Children's Charter.

Another important win for women's rights on the continent relates to the appointment of judges to the African Court on Human and Peoples' Rights. Even though there were four vacancies to be filled at the 27th ordinary session of the AU Assembly, only two judges – both women (Judges Ntyam Ondo Mengue from Cameroon and Marie Thérèse Mukamulisa from Rwanda) – were elected to the Court. Elections for the two other vacancies were postponed to the 28th session of the AU in January 2017, 'to ensure that only female candidates from the northern and southern regions of the AU were nominated for election' (Nyarko & Jegede 2017). Consequently, in January 2017, the AU Assembly elected two more female judges – Tujilane Rose Chizumila from Malawi and Bensaoula Chafika from Algeria – to fill the remaining vacancies on the African Court (African Court 2017).

This follows an earlier development where the AU deployed an 'all-woman' election observation team to monitor the parliamentary elections of Seychelles in September 2016. This was 'in line with the African Union's commemoration of the African Year of Human Rights with a Special Focus on the Rights of Women' (African Union 2016). The African Court now has a total number of five female judges on the bench as against six male judges. A balanced representation of women on the apex judicial body of the continent is important in drumming home the message that women have equal competencies to men when given the opportunities to excel, on a continent where patriarchal attitudes usually restrict women's participation in public life. It also provides an important avenue to ensure that women's voices and viewpoints are heard and taken into account when important decisions concerning human rights are made on the continent. International courts such as the African Court further enhance their normative legitimacy when their membership is composed of a balanced representation of sexes since representation is an important democratic value (Grossman 2012).

6 Protests, internet shutdowns and access to information

On 1 July 2016, Nigeria co-sponsored a Human Rights Council Resolution on the promotion, protection and enjoyment of human rights on the internet (UN Watch 2016). Among other things, this resolution seeks to 'promote and facilitate ... development of media and information and communication facilities and technologies in all countries'. Particularly, the resolution '[c]ondemns unequivocally measures [by governments] to intentionally prevent or disrupt access to or dissemination of information online in violation of international human rights law and calls on all states to refrain from and cease such measures'. This was followed in November by a resolution of the African Commission on a similar topic and particularly relating to internet shutdowns during elections (African Commission 2016).

Access to the internet has not only become an avenue for accessing information and expressing opinion, but also an important tool for democratic discourses. In recent years, the internet has become an important tool in the organisation of protests and strike actions aimed at

putting pressure on repressive regimes for the broadening of democratic spaces. This perhaps was more prominently seen during the Arab Spring, but also in recent times, in Ethiopia, Cameroon, Burkina Faso, Gabon and the DRC. Irrespective of various global and regional interventions, some governments continued to resort to restrictions on access to various social media tools and, in some cases, complete internet shutdowns to silence dissent. In Uganda, Gabon and The Gambia, various social media tools were restricted during elections, while in Ethiopia, Cameroon and the DRC restrictions on social media and, at some points, complete shutdowns of internet access were used, presumably as a means of controlling protests and cutting off ease of mobilisation using the internet.

States have usually contended that this restriction is necessary in some instances 'to quell public protests, violence and misinformation' (Mukeredzi 2016). While these may well be legitimate reasons for restricting internet access, states have in practice mostly used this as a means of quelling dissent rather than as a genuine measure of ensuring public order or safety. Restrictions to internet access violates several human rights, including the freedoms of expression, information and association, and stifles deliberations around important issues. Additionally, it has the potential to be used a means of concealing mass atrocities committed by government agents, making it difficult to document and hold perpetrators accountable.

Not only is the restriction of internet access a violation of human rights and an impediment to democratic discourse, it also has huge financial implications. Research has shown that restricting access to the internet costs many African economies millions of dollars (West 2016). African countries, therefore, should as far as possible refrain from restricting access to the internet, except in the extreme circumstances where there is genuine concern for public order or safety. Restrictions to internet access, thus, should be regulated by legislation that provides for judicial oversight over such executive actions that have the potential of restricting human rights. The internet has become an indispensable part of the lives of many people, and governments, therefore, should feel obligated to improve access rather than restricting it.

7 Conclusion

The landscape of democracy and human rights in sub-Saharan Africa during 2016 presents an uneven spectrum of progress, stagnation and retrogression. The democratisation project has made progress in many countries: Benin, Ghana, São Tomé and Príncipe and South Africa present a representative sample of these countries. After many years of stagnation, The Gambia arguably has set itself up on the path of democratic progress. In the middle of the spectrum are many states that continued to stagnate, with long-serving incumbents manipulating elections to extend their stay in power. Djibouti, the DRC, Equatorial Guinea and Uganda fall into this category. At the other end of the spectrum are states such as Zambia, which appear to have moved from decades of democratic progress into a period of retrogression.

In terms of developments in the African human rights system in support of democracy, the African Court delivered an important decision against

Côte d'Ivoire on the right to political participation and, in particular, the fair composition of electoral management bodies. It is hoped that this decision will influence the manner in which electoral management bodies are composed, not only in Côte d'Ivoire, but across the continent.

As far as accountability for mass atrocities is concerned, the AU's continued onslaught against the ICC started yielding results, with Burundi, The Gambia and South Africa withdrawing their membership of the ICC, even though The Gambia and South Africa have subsequently revoked their withdrawals. This, in addition to Rwanda's withdrawal of its declaration to the African Court's Protocol allowing direct access for individuals and NGOs, highlights the challenges to redress for human rights violations. However, on a positive note, the conviction and sentencing of former Chad dictator Hissène Habré presents hope that there still is a chance for accountability even decades after the commission of mass atrocities.

Even though national executives continue to be an impediment, national courts appear to be increasingly taking on the mantle of protection the rights of LGBTI people, especially in respect of the freedoms of association and assembly.

While the realisation of women's rights continues to face significant challenges at the national level, the AU showed encouraging signs of its commitment to gender equality. This was demonstrated by the deliberate decision of the AU Assembly to only elect female judges to the African Court in order to ensure gender balance on the Court.

Many states have used internet shutdown as a means of silencing dissent, especially during elections and protests. In addition to negatively affecting the rights to freedom of expression, information and association, internet shutdowns have also proven to have substantial financial consequences that could potentially negatively affect the realisation of economic, social and cultural rights. Consequently, states should only restrict access to the internet in extreme situations and, in any event, subject to judicial oversight to ensure that human rights are not negatively affected.

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