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African human rights system in crisis? Causes and effects of the withdrawal of the declarations that allow individuals and NGOs to submit communications to the African Court on Human and Peoples' Rights

¿El sistema africano de derechos humanos en crisis? Causas y efectos del retiro de las declaraciones que autorizan a individuos y ongs para presentar peticiones ante la Corte Africana de Derechos Humanos y de los Pueblos

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Abstract

Between November 2020 and April 2021, three African states consummated the withdrawals of their declarations that allowed individuals and NGOs to submit cases to the African Court on Human and Peoples' Rights in response to politically sensitive rulings. With these withdrawals, only six out of 31 state parties to the African Court Protocol fully remain subject the Court's jurisdiction. Giving the relevance of this issue for the consolidation and future of the African Court, the present article addresses the context in which the withdrawals took place and their implications for the protection of human rights in Africa.

Key words

African Court, recognition of jurisdiction, human rights, international tribunals.

Resumen

Entre noviembre de 2020 y abril de 2021, tres estados africanos consumaron el retiro de sus declaraciones que permitían a individuos y ONG remitir comunicaciones ante la Corte Africana de Derechos Humanos y de los Pueblos en respuesta a sentencias políticamente delicadas. Con estos retiros, solamente seis de 31 estados parte del Protocolo de la Corte Africana se mantienen completamente sujetos a la jurisdicción de la Corte. Tomando en consideración la relevancia de este tema para la consolidación y el futuro de la Corte Africana, el presente artículo aborda el contexto en que los retiros tuvieron lugar y sus implicaciones para la protección de los derechos humanos en África.

Palabras clave

Corte Africana, reconocimiento de jurisdicción, derechos humanos, tribunales internacionales.

b) Benin, c). Côte d´lvoire. V. Response of the African Court. VI. Implications. 1. Implications for the victims of human rights violations. 2. Implications for the African Court. 3. Implications for the African Human Rights System. VII. Experiences from other tribunals. VIII Conclusions. References.

I. Introduction

The African Court on Human and Peoples' Rights (African Court) is the judicial organ of the African Human Rights System, and the youngest of the three existing regional human rights tribunals in the world together with the European Court of Human Rights (ECHR) and the Inter-American Court of Human Rights (IACHR). The African Court is the result of a decades long process of institutionalization of the human rights protection in Africa started by the then Organization of African Unity, now the African Union (AU). According to the Preamble 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) adopted in 1998, the African Court was conceived to "complement and reinforce" the protective functions of the -already existent at the time- African Commission on Human and People's Rights (African Commission). The Court's mission is to ensure the respect for and compliance with African Charter on Human and Peoples' Rights (African Charter) and all human rights treaties ratified by African states through its judicial decisions. The African Court, the African Commission, and the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) constitute the core human rights bodies of the African Human Rights System. The first judges of the African Court were elected by the AU General Assembly in 2006 and it was formally installed in the so-called Genève of Africa, the northern city of Arusha, Tanzania.

The challenges and characteristics of the African Court are unique among international human rights tribunals for many reasons. It has the largest number of countries and population under its mandate among all regional tribunals. Africa is also a vast, resource rich, multicultural, multilinguistic, and complex continent. Furthermore, Africa's recent past is shaped by the European colonialism

and exploitation, the scars of many -still ongoing- armed conflicts, poverty, deep inequalities, and limited financial resources. Therefore, the implementation of African human rights instruments represents a difficult endeavour for all actors involved. Despite these challenges the African Court has managed to gradually improve its response to the matters submitted to it and to consolidate its place in the international arena.

The first judgment of the African Court was pronounced in 2009 in a case against Senegal. Since then, particularly from 2015, the number of cases handled and concluded by the Court has increased rapidly. By July 2021, the Court had finalized a total of 104 contentious cases and 10 advisory opinions. Most of the Court's case-law consists of cases related to violations arising from domestic judicial procedures. However, the Court has also issued judgments on an increasing variety of topics including political rights, freedom of expression, and women and child rights. Similarly, the African Court has implemented several initiatives aimed at improving its work such as the creation of the Legal Aid Scheme for unrepresented applicants who lack professional legal assistance throughout the cases before the Court.

Despite its gradual consolidation and increasing role, or probably as a consequence thereof, the Court faces a growing resistance from some states to abide by the Court's scrutiny under arguments of state sovereignty and the principle of non-intervention. In only five months, from December 2019 to April 2020, Tanzania, Benin, and Côte d'Ivoire notified their decision to withdraw from the African Court's jurisdiction to entertain cases submitted by individuals and NGOs. These decisions took effect one year after, that is between late 2020 and early 2021. The decisions seemingly coincide with some sensitive cases being handled by the Court against those states. Giving the relevance of this phenomenon for the consolidation and future of the African Court, the present article addresses the context in which the withdrawals took place and their implications for the system of protection of human rights in Africa.

1. Methodology

This article is methodologically designed as a non-doctrinal study since it employs both legal and multidisciplinary approaches (McConville & Chui, 2007;

5). In that order of ideas, this article makes use of a combination of legal and international relations methods as means to contextualize the legal framework of the African Human Rights System, the diluted relationship of the African Court with certain AU member states, and the resulting consequences of their distancing on the protection of human rights in Africa. For the legal component, the article follows a *lege lata* approach, meaning that it limits to explain the existing rules applicable to access (and withdraw) from the jurisdiction of the African Court and how those provisions have been interpreted by the Court in its case-law. Additionally, the article resorts to discourse analysis to interpret the language of official communications and to deduce the motives behind the withdrawals from the continental human rights tribunal.

With regards to the sources, the article uses a combination of legal and non-legal resources. On the one hand, to explain the African Court's powers and jurisdiction, it relies on the sources laid down in Art. 38 of the Statute of the International Court of Justice including *inter alia* treaty-law, judicial decisions, and scholarly work, which is regarded as the most exhaustive list of sources of international law (Thirlway, 2014; 6). On the other hand, for the assessment of the causes and effects of the withdrawals, the article resorts to both quantitative and qualitative data such as communications from state representatives, NGOs and media reports, and African Court's official statistics specifically in relation to its caseload.

II. Access to the court and withdrawals

As other international tribunals, the African Court has a dual jurisdiction: an advisory and a contentious jurisdiction (African Union, 1998: arts. 3-4). Its advisory jurisdiction is aimed at providing legal opinions on how to interpret or implement human rights obligations (African Union, 1998: art. 4.1). An advisory opinion can only be requested by an AU member state, the AU or its organs, or African organizations recognized by the AU (African Union, 1998; art. 4.1).

The contentious jurisdiction of the Court extends to all cases and disputes concerning alleged violations of rights enshrined in the African Charter or any

other relevant human rights treaty ratified by the concerned African state (African Union, 1998: art. 3.1). Access to the contentious jurisdiction of the African Court is, however, more complex than that of its sister regional human rights tribunals in Europe and the Americas. The contentious jurisdiction comprises on the one hand an ipso iure jurisdiction upon ratification of the African Court Protocol. On the other hand, an optional contentious jurisdiction following the deposit of a special declaration by a state party pursuant to Article 34(6) of the African Court Protocol (African Union, 1998). Under the ipso iure jurisdiction, every state party to the African Court Protocol automatically authorizes the Court to handle cases submitted by the African Commission, other state parties, or African intergovernmental organizations (African Union, 1998: arts. 5.1 & 5.2). Through the optional contentious jurisdiction, states may also allow individuals and NGOs (with observer status before the African Commission) to refer alleged violations directly to the African Court (African Union, 1998: art. 5.3). These optional declarations may be notified at the time of ratification of the African Court Protocol or anytime thereafter.

To the present date, 31 African states out of 55 AU member states have ratified the African Court Protocol and automatically recognized the ipso iure jurisdiction of the Court, whereas only 10 states have ever made the Article 34(6) declaration. Regrettably, from these 10 states, four have already withdrawn their declarations namely Rwanda, Tanzania, Benin, and Côte d'Ivoire. Thus, only six African states still allow individuals and NGOs to institute cases to the African Court.[1] In fact, in the past five years there have been more withdrawals than new deposits of declarations from African states. Although, strictly speaking it is possible to affirm that the withdrawal of the declarations does not constitute the withdrawal from the African Court since the concerning states remain subject to its ipso iure contentious jurisdiction, in practice the number cases initiated through communications from individuals and NGOs constitute the vast majority of the caseload of the Court and the main source of its jurisprudence. Therefore, the withdrawals substantially reduce the chances for individuals to access the Court. Not surprisingly, the withdrawals have been followed by strong criticism by international NGOs and human rights defenders inside and outside Africa for its human rights implications.

1 The six States are: Burkina Faso, The Gambia, Ghana, Mali, Malawi and Tunisia

This phenomenon has even prompted questions on whether the African Court is facing a crisis (Adjolohoun, 2020).

III. Are the recent withdrawals part of a broader context?

1. International Criminal Court and Courts of Africa's Sub-Regional Economic Communities

In recent years, different African states and even the AU have been involved in disputes with international tribunals. From the International Criminal Court (ICC) to sub-regional courts, and more recently with the African Court, several African nations have attempted or succeeded to withdraw, limit, or suspend international courts. Among them, the confrontation between the AU and the ICC resulting from the issuance of arrest warrants against incumbent African heads of state is perhaps the best known of the disputes. The tensions escalated to the point that South Africa, Gambia, and Burundi notified their withdrawals from the ICC in 2016 (United Nations, n.d.). These withdrawals were followed by the threat of a massive African withdrawal from the ICC (Clarke, Knottnerus & De Volder, 2016; 1). Presently, South Africa, and Gambia have rescinded their withdrawals and no additional African state has withdrawn since them, making Burundi the only African nation to leave the Hague-based tribunal.

Similarly, the sub-regional courts of the Africa's regional economic communities have been the target of backlashes. In East Africa, Kenya attempted to dismantle the East African Court of Justice (EACJ) in response to a decision issued in 2006 challenging the election of the candidates proposed by the Kenyan government to sit in the East African Community (EAC) Legislative Assembly (Alter, Gathii & Helfer, 2016; 301-302). Other EAC member states did not receive Kenya's intentions sympathetically and blocked its efforts, though in the interest of the regional integration opted for restructuring the EACJ in ways that significantly limited the Court's powers (Alter et al., 2016; 302-304). In Southern Africa, the fate of the Southern African Development Community (SADC) Tribunal was marked by the reaction of Zimbabwe as result of the controversial case of *Campbell and Others v. Zimbabwe* (Alter et al., 2016; 307). The case is concerned with a lawsuit

lodged by a landowner challenging the seizure of his farm as part of Zimbabwean post-colonial land redistribution policies. Steamed from the case, Zimbabwe's campaign against the SADC Court began with blocking the appointment of new judges of the Court what led to its *de facto* suspension, and subsequently persuaded other states to negotiate a new Court with a jurisdiction limited to inter-state disputes (Southern African Development Community, 2012; para. 24). In West Africa, Gambia proposed the members of the Economic Community of West African States (ECOWAS) to strip the competence of the ECOWAS Court over human rights complaints following two cases on allegations of torture against journalists filed in 2007 (Alter et al., 2016; 297). However, contrary to the experiences with other sub-regional courts, Gambia's proposal failed to convince ECOWAS member states and the basic document of the ECOWAS Court remains unchanged.

2. African Court

The recent withdrawals of Tanzania, Benin, and Côte d'Ivoire make the African Court the newest target of African states animosity. Nevertheless, sings of dissatisfaction with the regional Court can be traced even before its own creation. Since the drafting of the African Charter, African states showed their lack of will to fully give up their sovereignty in hands of an international human rights tribunal (Plagis & Riemer, 2020). Consequently, the resulting version of the Charter did not consider any judicial organ to oversee the implementation thereof. The only organ created through the African Charter was a quasi-judicial body, the African Commission. It was not until 1998 when the AU adopted a Protocol to the African Charter that created the African Court which entered into force in 2004.

Furthermore, despite its short existence, the African Court has been subject of a couple attempts of reform. Firstly, and only two years since its creation, the AU adopted the Protocol on the Establishment of the African Court of Justice and Human Rights in 2008 (2008 Protocol). This Protocol was supposed to merge both the jurisdiction of the African Court of Human and Peoples' Rights (already operational at the time) and of an envisaged Court of Justice of the African Union (equivalent to the International Court of Justice for Africa). Nevertheless, the 2008 Protocol did not enter into force and it was replaced six years later by

the 2014 Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (2014 Protocol on Amendments) which was aimed at enlarging the jurisdiction of the African Court even more. The projected super African Court under the new Protocol shall retain its current human rights jurisdiction, and adds a general international law jurisdiction and an international criminal law chamber. Neither protocol, however, has materialized since they have not met the necessary number of ratifications.

In sum, the attempted and unfinished reforms, the initial exclusion of the African Court from the African Human Rights System, the reduced number of African States that have accepted the optional contentious jurisdiction of the African Court, and more recently, the withdrawals of the Article 34(6) declarations, could be interpreted as signs of an historical dissatisfaction with the regional human rights tribunal.

IV. The withdrawals

1. The first withdrawal: Rwanda

In 2016, Rwanda became the first country to announce its decision to revoke the declaration recognizing the African Court's jurisdiction to entertain cases submitted by individuals and NGOs, only three years after it deposited the same declaration. The fact that it was Rwanda resonated due to its recent history of mass human rights atrocities during the genocide back in 1994. The announcement occurred three days before a hearing in the *Ingabire Victoire Umuhoza v Rwanda* at the African Court. Ms. Victoire Ingabire was an active Rwandese politician living in exile. She decided to return to Rwanda in 2010 to create an opposition movement and run for the presidential elections (International Justice Resource Center, 2016). Ms. Ingabire was later arrested on charges of spreading genocide ideology, complicity of terrorism, sectarianism, and divisionism, following a public speaking about reconciliation and ethnic violence at the Genocide Memorial Centre in Kigali (International Justice Resource Center, 2016). She was initially sentenced to eight years in prison by a Rwandan Court, yet in 2013 the Supreme Court of Rwanda added seven more years to its sentence (Human Rights Watch, 2016).

The Ministry of Justice of Rwanda at the time denied that the decision to withdraw from the African Court's optional jurisdiction was related to the *Ingabire Victoire Umuhoza* case and labelled it as a coincidence (Radio France Internationale, 2016). However, in a subsequent statement the Rwandese Minister of Foreign Affairs expressed that "a Genocide convict who is fugitive from justice has, pursuant to the […] Declaration, secured a right to be heard by the [African] Court, ultimately gaining a platform for re-invention and sanitization, in the guise of defending the human rights" (Republic of Rwanda Ministry of Foreign Affairs and Cooperation, 2016). The timing and background of the Rwandese withdrawal seem to confirm, what other scholars suggest, that the decision was triggered by a highly sensitive domestic political context within Rwanda (Windridge, 2018). In this way, the African Court was confronted with the first withdrawal of the special declaration under Article 34(6) of the African Court Protocol.

2. Cascade of withdrawals: Tanzania, Benin, and Côte d'Ivoire

In only five months, from November 2019 to April 2020, three more African states, namely Tanzania, Benin, and Côte d'Ivoire, informed their intent to revoke their declarations recognizing the jurisdiction of the African Court. Their withdrawals represent the second, third and fourth of their kind following that of Rwanda back in 2016. Similar to the Rwandese precedent, their withdrawals become effective after one year of their notification. Therefore, at the time of the present article, Tanzania, Benin, and Côte d'Ivoire are no longer subject to the African Court for all those cases submitted by individuals and NGOs concerning alleged violations of human rights.

a) Tanzania

Historically, Tanzania is the state with the closest ties with the African Court. It hosts the Court's headquarters and two of its nationals have served as judges including Hon. Justice Augustino S.L. Ramadhani, former President of the Court, and Justice Imani Aboud, recently elected President of the Court until 2023. It is also the country with the largest number of cases before the Tribunal. The East African nation accounts nearly 40 percent of the total finalized cases of the African Court. For these reasons, Tanzania's notice of withdrawal probably represents the

most unexpected and symbolic loss among the recent withdrawals from the African Court.

The notice was signed by the Tanzanian Minister of Foreign Affairs and East African Cooperation on 14 November 2019 and notified to the AU on 21 November 2019 (Amnesty International, 2019). The announcement follows years of Court judgments on Tanzania, predominantly on due process in criminal proceedings. However, neither the notice nor subsequent messages from Tanzanian authorities provide any clear connection between the decision and any specific case. By the time it occurred, the withdrawals could have been incited by the judgment in the case *Ally Rajabu and Others v Tanzania* which holds that the mandatory imposition of death penalty for murder convictions violates the rights to fair trial and to life (International Justice Resource Center, 2019; Ally Rajabu and Others v Tanzania, 2019: para. 114). For other authors, however, there might be no specific case or judgment behind the decision, but that Tanzania has simply "reached litigation fatigue" because of the amount of international litigation before the African Court and the burden of implementing all the rulings against it (Adjolohoun, 2020).

The decision was signed during the administration of President John Magufuli who suddenly died in early 2021 and who was replaced by the then Vice President Samia Suluhu Hassan. Presently, there is some speculation on whether the incumbent administration is considering reversing the 2019 withdrawal in light of some declarations from the recently appointed cabinet (Anami, 2021). However, no official communication has been issued in that regard. Then, Tanzania's withdrawal remains in force.

b) Benin

The Minister of Justice and Legislation of Benin announced the withdrawal of the Article 34(6) Declaration through a communication on 28 April 2020 (Gouvernement de la République du Bénin, 2020). In the statement, the Minister accused that for several years some decisions rendered by the African Court "have raised concerns due to serious incongruities to the point of driving Tanzania, host country, and Rwanda, to disengage from the individual and NGOs submission mechanism" (Gouvernement de la République du Bénin, 2020). In its notice,

Benin largely referred to the interim measures decisions of February 2020 issued by the Court in the matters of *Ghaby Kodeih v Benin* and *Ghaby Kodeih & Nabih Kodeih v Benin* related to the seizure procedure on a building in which according to the State the African Court totally lack competence. Nevertheless, for Amnesty International (2020), the real motivations behind Benin's withdrawal originated from the case *Sebastien Germain Marie Eïkoue Ajavon v Benin*. The NGO points out that the announcement of withdrawal took place only one week after the Court adopted a decision in the concerned case (Amnesty International, 2020). Sebastien Ajavon is an exile political opponent to Benin's current President (International Justice Resource Center, 2020). The applicant, Mr. Ajavon was sentenced in Benin for drug trafficking what makes him ineligible for elected positions (International Justice Resource Center, 2020). Mr. Ajavon has alleged his prosecution is politically motivated in order to impede him to participate in the 2020 municipal election in Benin, so he requested the African Court to halt the elections (International Justice Resource Center, 2020). On 17 April 2020, the African Court issued interim measures in the *Sebastien Germain Marie Eïkoue Ajavon* case (2020: para. VII-4) ordering Benin to postpone the elections until the Court issued a final decision on the merits as requested by the Applicant.

Interestingly, Benin is among the states that most recently deposited their declarations under Article 34(6). The West African nation became party to the African Court Protocol in August 2014 and notified its declaration recognizing the Court's optional contentious jurisdiction on 8 February 2016.

c) Côte d'Ivoire

A few days later, it became publicly known that another African nation, Côte d'Ivoire, decided to revoke its Declaration under 34(6) of the African Court Protocol on a cabinet meeting held on 28 April 2020, the same day Benin was announcing its own withdrawal. The Ivorian dissatisfaction with the regional tribunal has increased since the ruling of November 2016 in the case *Actions pour la Protection des Droits de l'Homme v Côte d'Ivoire* in which the Court ordered the State to amend its electoral laws. The withdrawal, however, seems to coincide with a different case. The Ivorian notice came just one week after the African Court ordered Côte d'Ivoire to stay the execution of the arrest and detention warrants against Guillaume Soro

in the Order for Provisional Measures in the case of *Guillaume Kigbafori Soro and others v Côte d'Ivoire* (2020: paras. 42). Mr. Soro is a former rebel leader and a presidential hopeful in the West African nation who was tried in absentia and recently sentenced to 20 years in jail (Aboa, 2020). In a similar context as that of Ajavon in Benin, Soro's recent sentence will impede him to participate in the coming elections (Gujral, 2020). In a press conference, the Ivorian spokesperson accused the African Court "confers a certain criminal immunity on someone who wants to be a candidate in the next elections" (Africa News, 2020). By referring to the State's sovereignty, the spokesperson added that Côte d'Ivoire has "well-functioning courts, [its] justice is impartial, [so Côte d'Ivoire] cannot accept that [its] jurisdictions are weakened because of this adherence to this protocol of recognition of jurisdiction" (Africa News, 2020).

Côte d'Ivoire ratified the African Court Protocol in March 2003 and notified its declaration until July 2013. Therefore, it took Côte d'Ivoire approximately 10 years to make its declaration and only seven to withdraw it.

V. Response of the African Court

The stance of the African Court with regards to revocations of Article 34(6) declarations was firstly established in the decision on admissibility of 5 September 2016 in the case *Ingabire Victorie Umuhoza* (para. 59) following Rwanda's notice of withdrawal. The African Court concluded -after a brief analysis- that Rwanda's revocation was valid under the African Charter and international law. Thereinafter, this position has been reiterated by the Court in a series of recent judgments and interim measures involving the withdrawals of Tanzania, Benin, and Côte d'Ivoire.

The withdrawal of Tanzania was validated by the African Court in the provisional measures ruling in the matter of *Ghati Mwita v. Tanzania* of 9 April 2020. The Court recalling on the *Ingabire Victorie Umuhoza* case concluded that Tanzania's instrument of withdrawal was going to be effective on 22 November 2020 (Ghati Mwita v. Tanzania, 2020: paras. 4-5). Benin's withdrawal was analysed by the African Court in the twin interim measures decisions in the matter of *Houngue Eric Noudehouenou v. Benin* of 5 and 6 May 2020. In similar terms, the human

rights tribunal validated Benin's decision to revoke its declaration and, following the same 12 months rule, established that Benin's withdrawal was effective on 25 March 2021 (Houngue Eric Noudehouenou v. Benin, 2020a: paras. 4-5; Houngue Eric Noudehouenou v. Benin, 2020b, paras. 4-5). More recently, the African Court studied Côte d'Ivoire's withdrawal in the judgment of 15 July 2020 in the case of *Suy Bi Gohore Emile and Others v. Côte d'Ivoire*. The Court did not deviate from its previous decisions and recalling on the *Ingabire Victorie Umuhoza* case deemed the Ivorian withdrawal valid (Suy Bi Gohore Emile and Others v. Côte d'Ivoire, 2020: paras. 66-67).

VI. Implications

1. Implications for the victims of human rights violations

International justice represents the last resort for victims of human rights violations. Through the withdrawal of Article 34(6) Declaration, African states hinder the opportunity of individuals under their jurisdiction to find relief at the highest regional body for the protection of human rights in Africa. Considering that revocation of Article 34(6) declarations is effective after one year since its notification, at the time of the present article the withdrawals of Tanzania, Benin, and Côte d'Ivoire have officially consummated. This implies that NGOs and individuals in these three African states can no longer lodge cases before the Court involving violations that occur after November 2020 in the case of Tanzania, and April 2021 in relation to Benin, and Côte d'Ivoire.

In light of the above, the withdrawals have a clear regressive impact on all victims of human rights abuses who seek relief at the African Court. Notwithstanding that there are other international alternatives for victims within Africa and at the international level, the African Court constitutes the only judicial organ with a specific mandate on human rights available in Africa.

Fortunately, Tanzania, Benin, and Côte d'Ivoire will not totally elude the possibility to be brought before other international judicial or quasi-judicial bodies for their human rights violations. The three African states are still party to the African Court

Protocol. Therefore, they will remain subject to the Court's ipso iure jurisdiction in relation to cases submitted by the African Commission, African intergovernmental organizations, and other states. Moreover, they will also remain subject to the African Commission which can handle communications against Tanzania, Benin, and Côte d'Ivoire as state parties to the African Charter. Similarly, the three states recognize the competence of the ACERWC to receive and consider individual communications regarding breaches to the African Charter on the Rights and Welfare of the Child. Furthermore, individuals may still seek relief to human rights violations at the tribunals of the regional economic communities with an extended human rights mandate to which Tanzania, Benin, and Côte d'Ivoire belong. Tanzania is subject to the East African Court of Justice, whereas Benin, and Côte d'Ivoire are subject to the jurisdiction of the Court of Justice of the Economic Community of West African States.

At the universal level, individuals from Tanzania, Benin, and Côte d'Ivoire will still resort to several UN treaty body communication procedures. Tanzania is subject to the communication procedure of the Committee on the Elimination of Discrimination against Women (CEDAW) and the Committee on the Rights of Persons with Disabilities (CRPD). Côte d'Ivoire for its part has accepted the competence of the Human Rights Committee (HRC) and the CEDAW. Whereas Benin is among the African states with the largest number of ratified UN human rights instruments. So far, Benin has accepted the competence of four treaty bodies, namely the HRC, the CEDAW, the CRPD, and the Committee on the Rights of the Child.

2. Implications for the African Court

From 2008 to 2014 the Court received a total of 32 applications, less than five per year. On the contrary, from 2015 the average number of applications grew to 46 per year. Notably, to date 299 applications have been submitted by individuals, 21 by NGOs, and only 3 by the African Commission. This illustrates that a total 320 applications, which accounts for 99 percent of the total caseload of the Court, have been submitted by individuals and NGOs relying on the Article 34(6) declarations. Furthermore, the number of cases related to Tanzania, Benin, and Côte d'Ivoire represent two thirds of the cases of the Court. Tanzania alone accounts for almost

a half of the total number of cases before the Court. Consequently, the recent withdrawals of the declarations allowing individuals and NGOs to submit cases to the African Court come at a time the Court is increasing and diversifying its jurisprudence. The withdrawals of Tanzania, Benin, and Côte d'Ivoire represent a major flashback for the relatively young African Court which is in the crossroads of its consolidation.

3. Implications for the African Human Rights System

Although individuals can still rely on the African Commission, this situation poses an additional pressure to the already saturated quasi-judicial body. Besides its communication procedure, the African Commission is also responsible for a reporting system and several special mechanisms such as special rapporteurs, committees, and working groups. It is precisely thanks to the Article 34(6) Declaration which allows NGOs and individuals to submit cases directly to the African Court without exhausting a procedure before the African Commission as it occurs in the Inter-American Human Rights System, how the number of communications and workload of the African Commission and the African Court find certain balance. Now that the withdrawals have consummated, individuals and NGOs will very likely turn to the African Commission to which Tanzania, Benin, and Côte d'Ivoire remain subject to its competence. Presently, whereas the number of communications before the Commission concerning these states remain low, they are among the states with the highest number of matters before the Court. This can potentially change and oversaturate the African Commission by transforming it in the instance of last resort within the African Human Rights System for individuals in these three African states.

In a broader perspective the sole distancing between state parties and the Court has a deleterious impact on the consolidation of the African Human Rights System as a whole. The moves from Tanzania, Benin, and Côte d'Ivoire remind us that the youngest regional human rights system still faces strong resistance. The recent withdrawals of Article 34(6) Declaration do not represent the first of their kind, and under this unfortunate scenario, the possibility that other African states decide to follow the same route after any dissatisfaction with a Court's ruling cannot be

ignored. How many more withdrawals can the Court resist? Withdrawals seem contradictory to the AU's Pan-African vision and paradoxical in a region which aspires to create its own continental judiciary through the transformation of the current African Court into the African Court of Justice and Human and Peoples' Rights.

VII. Experiences from other tribunals

It is not the first time an international human rights tribunal is confronted with the dilemma of states attempting to withdraw from their jurisdiction. Both the ECHR and the IACHR have dealt with states' rebellions which seek to elude sensitive or inconvenient judgments.

The first precedent of a withdrawal from a human rights tribunal occurred in 1969 when the Greece's Military Junta notified its decision to abandon the jurisdiction of the ECHR (Tyagi, 2009; 159-16). Greece's decision, however, did not last long as the democratic government following the military regime re-joined the European system just after five years in 1974. Since then, the ECHR has not experienced any new attempt of withdrawal.

In the Americas, four states have attempted or successfully withdrawn from the IACHR. The first withdrawal occurred in 1998 when the government of Trinidad and Tobago decided to denounce the American Convention on Human Rights in response to a series of resolutions from the Inter-American Commission of Human Rights thwarting death sentences that violated the right to due process (Pasqualucci, 2003; 116). Despite this decision, Trinidad and Tobago could not avoid being sentenced by the IACHR in the case of *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago* given that the denunciation occurred after the facts of the case. Nevertheless, the withdrawal of Trinidad and Tobago is different to those from Tanzania, Benin, and *Côte* d'*Ivoire* because the African states did not denounce the African Charter but limited to withdraw from the African Court's optional contentious jurisdiction. Hence, whereas the three African states remain partially subject to the African Court, Trinidad and Tobago has totally abandon the IACHR.

Peru during the regime of Fujimori became the second state to announce its decision to distance itself from the Inter-American system. In 1999 the Peruvian government notified the immediate revocation of its declaration recognizing the IACHR jurisdiction (Constitutional Court v. Peru, 1999: para. 27). Fortunately, the Peruvian standoff ended together with Fujimori's regime. The following interim administration annulled the withdrawal and the Peruvian attempted withdrawal turned out to be a false retreat (Burgorgue-Larsen & Úbeda de Torres, 2011; 16).

In 2008 following the release of the judgment in the *Case of Apitz Barbera et al. ("First Court of Administrative Disputes")*, the Government of Venezuela filed a case before its Supreme Court questioning the constitutionality of the IACHR's ruling and the feasibility of its implementation (Salgado Ledesma, 2012; 243). The Venezuelan Supreme Court seconded the government and even recommended its Government to denounce the American Convention. In 2012 Venezuela withdrew from the American Convention becoming the second state in the Americas to fully withdraw from the IACHR (Salgado Ledesma, 2012; 243).

In 2014, the Dominican Republic became in last blow to the IACHR. Like previous states, the Dominican withdrawal occurred amid a highly contested case being handled by the IACHR. Less than one month since the IACHR notified its ruling in the *Case of Expelled Dominicans and Haitians v. Dominican Republic*, the Dominican Constitutional Tribunal rendered a judgment declaring that the instrument of recognition of the IACHR's jurisdiction was given in contravention of the Dominican Constitution (Calcáneo Sánchez, 2015: p. 2). Since then, the Dominican Republic has simply ignored all notifications and requirements from the IACHR including those related to the abovementioned case (Nadege Dorzema y Otros v. República Dominicana, 2019; Niñas Yean y Bosico y Personas Dominicanas y Haitianas Expulsadas v. República Dominicana, 2019). Although the Dominican Republic has not officially notified its withdrawal from the IACHR, some statements from the Dominican government confirms this decision (Caminero, 2014).

Experiences from other regional human rights systems demonstrate that backlashes against international human rights tribunals are not an exclusive phenomenon of the African Court. States from Europe and the Americas have also challenged

and rebelled against the international scrutiny of their human rights records. The fundamental difference between the experiences from other regions and Africa is, however, that the withdrawals from the declaration recognizing the African Court's optional jurisdiction represent nearly one half of the states that have ever made such declaration. Therefore, contrary to the experiences in other regions, the African Court is proportionally the most targeted international human rights tribunal in a short time.

VIII. Conclusions

The recent withdrawals of the declarations that allow individuals and NGOs to submit cases to the African Court highlight the subsisting opposition the youngest regional human rights tribunal faces. The recent withdrawals in response to rulings related to sensitive issues within the African states suggest there is an historical resistance to fully abide to the scrutiny of their human rights records. This phenomenon was well illustrated more than four decades ago by Liberia's President William Tolbert and Chairperson of the OAU in 1979 who said in its opening speech to the OAU Summit that "the principle of non-interference had become an excuse for our silence over inhuman actions committed by Africans against Africans" (in African Union Directorate of Information & Communication, 2021).

In five years, the African Court, the only international human rights tribunal with no attempts of withdrawal, turned into the Court with more withdrawals consummated surpassing the IACHR. Its seems that what Úbeda De Torres (2011; 8) once wrote about the Inter-American human rights system is now equally applicable to the African system:

> The main reason for the difference between th[e Inter-American] system and the European one, however, lies in the fact that the American states are not ready to make court control fully operational. For them, State sovereignty clearly prevails and this highlights the weaknesses of the Court, which is obliged to recognize it.

Even if stricto sensu the withdrawals do not fully disengage states from the African Court's ipso iure jurisdiction as long as they continue to be party to the African Court Protocol, in practical terms the possibility for a state that has withdrawn the Article

34(6) Declaration to be tried by the African Court is statistically very limited. As it was illustrated above, historically 99 percent of all matters before the African Court have initiated through a communication submitted based on these declarations. The present article has also emphasized that the effects of the withdrawals do not only circumscribed to the victims of human rights abuses, but they also extend to the Court and the African Human Rights system. Considering that the cases against Tanzania, Benin, and Côte d'Ivoire represent the majority of the total cases of the Court, their withdrawal will have an impact on its jurisprudential development and positioning.

Similarly, as states hamper access to the African Court, victims of human rights violations seeking justice may turn to other international human rights organizations still available inside and outside Africa. This situation may saturate other human rights bodies such as the African Commission and UN treaty bodies. Particularly, the withdrawals could potentially break the balance between the African Court and the African Commission which were created as complementary between each other.

Fortunately, the experiences from the European and Inter-American human rights systems show that many withdrawals have been temporary. The examples of Greece and Peru demonstrate that future administrations within the states may annul previous withdrawals. However, the coordinated efforts of human rights defenders and organizations are essential to this end. Similarly, the effective international lobbying at the regional AU organs could also contribute to make states resume their commitments vis-à-vis the African Court and all the individuals under their jurisdiction.

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