

ORIGINAL ARTICLE

INTERNATIONAL LAW AND PRACTICE

The relevance of the African regional human rights system in the urban age

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Abstract

In an attempt to reassert the relevance of international human rights law in contemporary urban contexts, this article considers the extent to which the provisions of the African Charter on Human and Peoples' Rights lend themselves to fruitful application in African cities, appropriation by African cities and the development of rights to African cities. The article ultimately argues that, despite the rural inclinations of its drafting context, certain textual shortcomings and the existence of major political hurdles to its effective implementation, the African Charter, as interpreted and applied by the African Commission and African Court on Human and Peoples' Rights, is well-placed for the regional human rights system's adaptation to the urban age.

Keywords: African Charter on Human and Peoples' Rights; African Commission on Human and Peoples' Rights; African Court on Human and Peoples' Rights; international human rights law; urbanization

1. Introduction

International human rights law is increasingly said to be facing a legitimacy crisis, sparked by its seeming out-of-touch-ness, redundancy and ineffectiveness in current volatile and turbulent times.¹ One of the driving forces behind this legitimacy crisis has been urbanization, which has not only disrupted many of international human rights law's latent assumptions (of relatively discrete, stable, homogenous and self-sufficient communities which share understandings of and commitment to certain 'universal' values) but has called into question the sustainability of several of its core organizing principles (such as state sovereignty, verticality, and individualism) and

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¹See S. A. Dersso, 'The Future of Human Rights and the African Human Rights System', (2022) 40(1) *Nordic Journal of Human Rights* 28, at 28–9; B. M. Oomen, 'Introduction: The Promises and Challenges of Human Rights Cities', in B. M. Oomen, M. F. Davis and M. Grigolo (eds.), *Global Urban Justice: The Rise of Human Rights Cities* (2016), 1, at 3–4; B. Oomen and M. Baumgärtel, 'Frontier Cities: The Rise of Local Authorities as an Opportunity for International Human Rights Law', (2018) 29(2) *European Journal of International Law* 607, at 614, 625.

categorizations (such as the separability of civil and political rights and economic, social and cultural rights, and of individual and collective rights).²

Our world's rapid and seemingly inexorable urbanization brings with it crises, challenges, and opportunities that, in the words of the United Nations, require 'an urban paradigm shift . . . that will readdress the way we plan, finance, develop, govern and manage cities'.³ Lest it fall by the wayside in this paradigm shift, international human rights law's fitness for and potential contributions to justice in the urban age requires closer scrutiny.

Accordingly, while interested in the place of cities in international human rights law,⁴ this article concerns itself primarily with the renewed possibility of a place for international human rights law in cities. The article considers this particularly in relation to African cities, which have come to epitomize many of urbanization's most pressing challenges: acute and chronic poverty, endless sprawl, environmental destruction, violence, displacement, and vulnerability to disaster.⁵ Across its multiple contexts and diversities, the African continent has further long embodied some of the most tenacious challenges to the universality and legitimacy of international human rights norms, which were conceived with minimal input from African states, and have been accused of assuming the universality of a liberal-individualist 'Western' cultural worldview and of conveniently overlooking and/or underplaying the structural injustices associated with the lingering aftereffects of slavery, colonialism, extractivism, and capitalist imperialism.⁶ Many of Africa's cities display the visible physical scars of these injustices.

Since the mid-1980s, Africa has had its own regional system of human rights protection, centring around the (then) Organization of African Unity's African Charter on Human and Peoples' Rights (1981/1986) (the ACHPR or the African Charter). Touted as distinct for its 'attempt to append an African "fingerprint" on the human rights discourse',⁷ the African Charter and its subsequent supplementary treaties (such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003/2005) (the Women's Rights Protocol)) are operationalized through a combination of reporting and complaints mechanisms administered and adjudicated by the African Commission on Human

²See N. Angel-Cabo and L. Sotomayor, 'Seeing Human Rights Like a City: The Prospects and Perils of the "Urban Turn"', in M. F. Davis, M. Kjaerum and A. Lyons (eds.), *Research Handbook on Human Rights and Poverty* (2021), 264, at 273; R. Hirschl, *City, State: Constitutionalism and the Megacity* (2020), at 9–10; S. P. Marks and K. A. Modrowski with W. Lichem, *Human Rights Cities: Civic Engagement for Societal Development* (2008), at 32; M. Pieterse, 'Urbanizing Human Rights Law: Cities, Local Governance and Corporate Power', (2022) 23(9) *German Law Journal* 1212, at 1214.

³United Nations, New Urban Agenda, G.A. Res. 71/256*, Ann. (2016), para. 15.

⁴On which see, for instance, H. P. Aust, 'Shining Cities on the Hill? The Global City, Climate Change, and International Law', (2015) 26(1) *European Journal of International Law* 255; H. P. Aust and J. M. Nijman, 'The Emerging Roles of Cities in International Law – Introductory Remarks on Practice, Scholarship and the Handbook', in H. P. Aust and J. E. Nijman (eds.), *Research Handbook on International Law and Cities* (2021), 1; G. Nesi, 'The Shifting Status of Cities in International Law? A Review, Several Questions and a Straight Answer', (2020) 30 *Italian Yearbook of International Law* 17; C. Swiney, 'The Urbanization of International Law and International Relations: The Rising Soft Power of Cities in Global Governance', (2020) 41(2) *Michigan Journal of International Law* 227, at 244–60.

⁵See P. D. Ocheje, "'In the Public Interest": Forced Evictions, Land Rights and Human Development in Africa', (2007) 51(2) *Journal of African Law* 173, at 174–5; D. Resnick, 'In the Shadow of the City: Africa's Urban Poor in Opposition Strongholds', (2011) 49(1) *Journal of Modern African Studies* 141, at 141–2.

⁶See Angel-Cabo and Sotomayor, *supra* note 2, at 276; M. Maxwell, 'African Approaches to International Law: A Communitarian Ethic as a Cultural Critique of the Western Understanding of the Human Rights Corpus', in F. Viljoen, H. Sipalla and F. Adegalu (eds.), *Exploring African Approaches to International Law: Essays in Honour of Kéba Mbaye* (2022), 145; M. wa Mutua, 'The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties', (1994) 35 *Virginia Journal of International Law* 339, at 341, 355–6; J. Seekings, 'The Vernacularisation of Global Rights Discourses and Social Protection in Regional African Arena', (2021) 21(2) *Global Social Policy* 215, at 216–18.

⁷D. M. Chirwa, 'African Regional Human Rights System: The Promise of Recent Jurisprudence on Social Rights', in M. Langford (ed.), *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law* (2008), 323, after Mutua, *ibid.* See also Seekings, *ibid.*, at 219.

and People's Rights (the African Commission)⁸ and, in recent years, supplemented by the jurisdiction of the African Court on Human and Peoples' Rights (the African Court).⁹

The serious institutional challenges and shortcomings of the African regional human rights system, which has been plagued by structural deficiencies, resource shortages, and particularly worrying enforcement/implementation problems associated primarily with lack of political buy-in, pushback and non-compliance among member states, are well documented.¹⁰ As obvious threats to the relevance, operation, and clout of the system in most African cities, these challenges and shortcomings animate the discussion here, but do not themselves form part of its focus. Instead, my interest here is in the ability of the norms at the system's centre to respond to the political and socio-economic challenges of the urban age. To this end, I focus on the content of the rights guaranteed by the ACHPR, both in their textual formulation, and in the ways in which they have been interpreted, applied, and vindicated by the African Commission and the African Court.

By way of further framing this study, Section 2 below connects theoretical perspectives on different ways in which cities are positioned in relation to international human rights norms, with observations on trends in African urbanization and rights-based constitutionalism in the roughly 40 years since the ACHPR was drafted, as well as on some of the more common socio-economic and political challenges faced by residents and local (municipal) governments in cities across the continent. Section 3 then provides an overview of the key features of the ACHPR and an introduction to the rights contained therein, with an eye to identifying features that may be well- or poorly suited to meeting the challenges of contemporary urban Africa and to advancing rights to the African city. A more in-depth look at the interpretation of some of these provisions in the decisions and pronouncements of the African Commission and the African Court follows in Section 4, before Section 5 offers some concluding reflections.

Overall, the article argues that, while the ACHPR's predilections may have been overtaken by urbanization on the continent it serves, several of its features – notably, its embrace of the interdependence between civil and political rights and economic social and cultural rights, and its enumeration of group rights pertaining to self-determination, the environment, and development – make it a potentially useful vehicle for advancing rights in, of and to African cities. Moreover, while there has thus far been a lamentable dearth of urban context evident from the opinions and judgments of the ACHPR's interpretative bodies, it is argued that their overall approach to the interpretation and enforcement of rights in the African Charter enables it to adapt and respond to the challenges of the urban age.

2. Urbanization, urban governance, and urban rights in Africa

It is regularly observed that more than half of the world's people currently live in cities, and that this figure is expected to increase to over two-thirds of the global population by 2050.¹¹ While the momentum of urbanization in Africa has somewhat lagged that in other continents (so that, when the ACHPR was drafted in 1981, most African countries' populations were still predominantly rural),¹² it is now the fastest-urbanizing region of the world, with studies estimating a more than

⁸Established and functioning under Arts. 30–59 of the ACHPR.

⁹Established and functioning under the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998/2004).

¹⁰See, for instance, L. Chenwi, 'Rights Enforcement in the African Human Rights Court: Restrictiveness, Progressivity and Resistance', 2020 *African Yearbook of International Humanitarian Law* 15, at 19–22; Chirwa, *supra* note 7, at 334–6; Dersso, *supra* note 1, at 37–43; M. Faix and A. Jamali, 'Is the African Court on Human and Peoples' Rights in an Existential Crisis?', (2022) 40(1) *Netherlands Quarterly of Human Rights* 56.

¹¹See H. Ritchie and M. Roser, 'Urbanisation', *Our World in Data*, 2018, available at www.ourworldindata.org/urbanisation; United Nations, *supra* note 3, at 2.

¹²See Mutua, *supra* note 6, at 343; Ritchie and Roser, *ibid.*

2000 per cent increase of urban population across the continent having occurred between 1950 and 2015,¹³ and projecting for the continent a further billion new urban inhabitants by 2050.¹⁴

Apart from economically-driven rural-urban migration often manifesting in informal settlement, urbanization in African countries typically occurs also through both the envelopment of erstwhile rural villages by urban sprawl and the *in situ* densification of formerly rural communities.¹⁵ Much of this proceeds in unplanned fashion, meaning that many de facto urban areas in Africa lack essential urban infrastructure and are logistically and economically dysfunctional.¹⁶ There is further significant urban development, and expansion-related displacement of erstwhile peripheral or rural communities, especially in areas of industrial development.¹⁷ Relatedly, it has been estimated that more than half of the African urban population live in slum conditions, with this figure being as high as 90 per cent in the worst cases (such as in Sudan, South Sudan and the Central African Republic).¹⁸ Yet, urbanization continues to hold the promise of socio-economic upliftment, with African cities' inhabitants typically being far better off, in terms of access to essential services, livelihood opportunities and infrastructure, than their rural counterparts.¹⁹

According to its strategic vision document *Agenda 2063: The Africa We Want*, the African Union's aspiration for 'a prosperous Africa based on inclusive growth' includes a commitment to achieve an Africa where:

cities and other settlements are hubs of cultural and economic activities, with modernized infrastructure, and people have access to affordable and decent housing including housing finance together with all the basic necessities of life such as water, sanitation, energy, public transport and ICT.²⁰

Realizing this vision, it has been argued, would require both a system of 'functional multilevel governance' which empowers urban local governments through legally-backed devolution of power, authority and resources, and the creation of a participatory 'culture of rights and social justice that manages inevitable competition for space, markets and services'.²¹ Similarly, the United Nations' *New Urban Agenda* affirms that fulfilment of its entwined global visions of sustainable and inclusive urban economies, environmental sustainability and 'leaving no-one behind'²² hinges simultaneously on 'strengthening urban governments, with sound institutions and mechanisms that empower and include urban stakeholders',²³ 'stronger coordination and cooperation among national, subnational and local governments',²⁴ and ensuring equal enjoyment of all fundamental rights enshrined by the Universal Declaration of Human Rights.²⁵

Indeed, as urbanization gained pace across Africa during the 1980s, it was accompanied by two interrelated trends in African states' domestic constitutional systems: the devolution of state power to subnational (often local, urban-based) governments and an embrace of democratic,

¹³P. Heinrigs, 'Africapolis: Understanding the Dynamics of Urbanization in Africa', (2020) 22 *Field Action Science Reports* 18, at 18, 23. See also generally OECD, *Africa's Urbanisation Dynamics 2022: The Economic Power of Africa's Cities* (2022).

¹⁴A. Cartwright et al., 'Developing Prosperous and Inclusive Cities in Africa - National Urban Policies to the Rescue?', (2018) *Coalition for Urban Transitions Working Paper*, available at www.coalitionforurbantransitions.org, at 5.

¹⁵See Heinrigs, *supra* note 13, at 22.

¹⁶See S. V. Lall, J. V. Henderson and A. J. Venables, *Africa's Cities: Opening Doors to the World* (2017), at 10, 16, 26, 28, 26.

¹⁷See T. Lawanson, D. Odekunle and I. O. Albert, 'Urban Development and the Right to the City in Lagos, Nigeria', in I. O. Albert and T. Lawanson (eds.), *Urban Crisis and Management in Africa* (2019), 295; Ocheje, *supra* note 5, at 177, 192.

¹⁸See Ritchie and Roser, *supra* note 11. See also Ocheje, *supra* note 5, at 174.

¹⁹See OECD, *supra* note 13.

²⁰African Union, *Agenda 2063: The Africa We Want* (2015), para. 10.

²¹See Cartwright et al., *supra* note 14, at 3. See also 1–2, 12–14.

²²See United Nations, *supra* note 3, paras. 11, 14.

²³*Ibid.*, para. 15c. See also paras. 15b, 21, 90.

²⁴*Ibid.*, para. 87. See also paras. 15b, 29.

²⁵*Ibid.*, para. 12.

rights-based constitutionalism.²⁶ With certain exceptions, however, these two structural trends were seldom substantively linked within constitutional systems, and both were pursued rather haphazardly and unevenly. In particular, while most national constitutions passed in Africa after 1980 expressed commitment to the devolution of state power, few constitutional systems meaningfully followed through on this undertaking, and local governments in many African states remain only partially empowered, and poorly resourced, to govern autonomously.²⁷ Even in states where the legal or constitutional backing for autonomous urban governance exists, its follow-through in practice has been frequently bedevilled by lack of political will, acute skills- and resource shortages at local government level, and subversive manifestations of party-political schisms between national governments and newly elected, opposition-party-led urban municipalities.²⁸

Recognizing that ‘regional bodies may play a crucial role in protecting local government from unwarranted political interference’,²⁹ and responding to the collective lobbying efforts of urban local governments across the continent,³⁰ the African Union adopted the African Charter on the Values and Principles of Decentralization, Local Government and Local Development (the Decentralization Charter) in 2014. Expressing commitment to respect for the human and peoples’ rights contained in the ACHPR,³¹ the Decentralization Charter aims to ‘promote the values and principles of decentralization, local governance and local development in Africa as a means for improving the livelihood of all peoples on the continent’.³² It requires of member states to commit themselves to legislatively recognizing local government and bestowing it with requisite legal power to manage its administration and finances and to fulfil its functions,³³ as well as to creating ‘enabling conditions for decision-making, policy and programme initiation, adoption and implementation’ at local government level³⁴ and to ‘enabling conditions for cooperation and coordination’ between different spheres of government.³⁵

While lauding the Decentralization Charter for its elaborate provisions on participatory governance³⁶ and its emphasis on intergovernmental co-operation, commentators have lamented the instrument’s relatively timid and cautious embrace of local autonomy.³⁷ Moreover, such autonomy as is reflected in the Charter is only superficially connected to the rights in the

²⁶See C. M. Fombad, ‘Constitutional Entrenchment of Decentralization in Africa: An Overview of Trends and Tendencies’, (2018) 62(2) *Journal of African Law* 175, at 175–6; M. Pieterse, ‘Devolution, Urban Autonomy and Local Governance in the Cities of the SADC’, (2020) 28(4) *African Journal of International and Comparative Law* 612, at 617; Resnick, *supra* note 5, at 143.

²⁷See Y. Fessha and C. Kirkby, ‘A Critical Survey of Subnational Autonomy in African States’, (2008) 38(2) *Publius: Journal of Federalism* 248; Fombad, *ibid.*; C. M. Fombad, ‘Regional and Continental Frameworks for Decentralisation in Africa: The African Charter on Decentralisation’, in C. M. Fombad and N. Steytler (eds.), *Decentralisation and Constitutionalism in Africa* (2019), 70, at 74–80; Pieterse, *ibid.*

²⁸See C. M. Bosire, ‘Local Government and Human Rights: Building Institutional Links for the Effective Protection and Realisation of Human Rights in Africa’, (2011) 11(1) *African Human Rights Law Journal* 147, at 155; Cartwright et al., *supra* note 14, at 5; Pieterse, *supra* note 26, at 615, 618, 622, 633–4; Resnick, *supra* note 5, at 142–56; D. Resnick, ‘Urban Governance and Service Delivery in African Cities: The Role of Politics and Policies’, (2014) 32(S1) *Development Policy Review* S3.

²⁹See Bosire, *ibid.*, at 155.

³⁰The African chapter of global city network United Cities and Local Government actively lobbied the African Union for a treaty enhancing the autonomy of local government across member states. See Bosire, *ibid.*, at 164–8; Fombad, *supra* note 27, at 82.

³¹2014 African Charter on the Values and Principles of Decentralization, Local Government and Local Development, Preamble, Art. 4.

³²*Ibid.*, Preamble.

³³*Ibid.*, Arts. 5, 16.5.

³⁴*Ibid.*, Art. 6.

³⁵*Ibid.*, Art. 6.2 See also Art. 7.

³⁶*Ibid.*, Art. 12.

³⁷For critical discussion of the Decentralization Charter along these lines see T. C. Chigwata and M. Ziswa, ‘Entrenching Decentralisation in Africa: A Review of the African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development’, (2018) 10 *Hague Journal of Rule of Law* 295; Fombad, *supra* note 27, at 85–95.

ACHPR, hence presenting a wasted opportunity in galvanizing devolved local government powers towards protection, promotion and fulfilment of human rights. Perhaps reflecting a lack of national government commitment to such autonomy across the continent, the Decentralization Charter has moreover not received sufficient ratifications to come into operation.

As to human rights, domestic constitutions adopted or amended across Africa since the late 1980s increasingly contained justiciable Bills of Rights, and these commonly included not only civil and political rights but also economic, social, and cultural rights.³⁸ However, rights-based accountability is not uncommonly undermined by institutional weaknesses in several of the continent's constitutions, especially when it comes to socio-economic rights,³⁹ while domestic rights-regimes sometimes remain disconcertingly repressive of political freedoms⁴⁰ and extend inadequate protection to societal out-groups (such as sex workers, homeless persons, refugees, and LGBTI persons).⁴¹ As is the case in international human rights law, there further appears to be little explicit direct elaboration of the particular human rights-related powers and responsibilities of local governments, much as these tend to be positioned as responsible for the implementation of policies geared towards realizing socio-economic rights.⁴² Both in relation to the content and the reach of human rights, and to the status and role of urban local governments in Africa, therefore, there clearly remains a role to be played by international and regional human rights instruments and institutions.⁴³

The global literature on urban rights typically position cities in relation to human rights in three closely inter-related ways:⁴⁴ First, there is the notion of rights *in* the city, centring around the particular role of local governments in implementing human rights and seeking to clarify and enhance the accountability of urban municipalities towards their residents and civil society, in relation to compliance with domestic, regional or international human rights norms.⁴⁵ Secondly, the notion of rights *of* the city refers to the ways in which urban local governments themselves might resort to (especially regional and international) human rights norms in attempts to overcome some of the drawbacks of their (typically weak and precarious) constitutional standing, to boost their clout and strengthen their claims for resources in intergovernmental relations, and to increase their regulatory capacity over residents, corporate actors and other stakeholders in urban governance.⁴⁶ Thirdly, rights *to* the city refer to the evolution in domestic and

³⁸See C. M. Fombad, 'Constitutional Reforms and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects', (2011) 59(4) *Buffalo Law Review* 1007, at 1012–20; J. C. Mubangizi, 'The Constitutional Protection of Socio-economic Rights in Selected African Countries: A Comparative Evaluation', (2006) 2(1) *African Journal of Legal Studies* 1.

³⁹See Fombad, *ibid.*, at 1020–34.

⁴⁰*Ibid.*, at 1031–2.

⁴¹See Izugbara et al., 'Regional Legal and Policy Instruments for Addressing LGBT Exclusion in Africa', (2020) 28(1) *Sexual and Reproductive Health Matters* 99, at 100–1; W. Holness, 'Decriminalising Vagrancy Offences in Africa Beyond the African Court's Advisory Opinion: Quo Vadis?', (2021) *African Human Rights Yearbook* 377, at 382.

⁴²See Bosire, *supra* note 28, at 156; Pieterse, *supra* note 26, at 619; Pieterse, *supra* note 2, at 1214–17; Swiney, *supra* note 4, at 233–5.

⁴³See Bosire, *supra* note 28, at 155–7; Izugbara et al., *supra* note 41, at 104–5.

⁴⁴The typology that follows is crisply explicated by E. G. Chueca, 'Human Rights in the City and the Right to the City: Two Different Paradigms Confronting Urbanisation', in Oomen, Davis and Grigolo, *supra* note 1, at 103–20. It is also employed, for instance, by the United Nations Human Rights Council (UNHRC)'s *Role of Local Government in the Promotion and Protection of Human Rights: Final Report of the Human Rights Council Advisory Committee* (2015), paras. 42–50.

⁴⁵See Chueca, *ibid.*, at 103; E. Durmus, 'A Typology of Local Governments' Engagement with Human Rights: Legal Pluralist Contributions to International Law and Human Rights', (2020) 38(1) *Netherlands Quarterly of Human Rights* 30, at 37; M. Grigolo, *The Human Rights City: New York, San Francisco, Barcelona* (2019), at 4; UNHRC, *ibid.*, at 49.

⁴⁶See Chueca, *supra* note 44, at 107–8; Durmus, *ibid.*, at 43–51; Grigolo, *ibid.*, at 16–21; M. Grigolo, 'Local Governments and Human Rights: Some Critical Reflections', (2017) 49(1) *Columbia Human Rights Law Review* 67; Hirschl, *supra* note 2, at 151; Oomen, *supra* note 1, at 7; Oomen and Baumgärtel, *supra* note 1, at 614, 627; Swiney, *supra* note 4, at 244–60. This includes the activities of so-called 'human rights cities' – see Chueca, *supra* note 44, at 103–4; Grigolo, *ibid.*, at 5, 189; B. Oomen and E. Van der Berg, 'Human Rights Cities: Urban Actors as Pragmatic Idealistic Human Rights Users', (2014) 8(2) *Human Rights & International Legal Discourse* 160; UNHRC, *supra* note 44, at 42–43.

international human rights discourse of new rights unique to the urban condition. Prime among these are rights associated with Henri Lefebvre's notion of the 'right to the city', which refers to urban inhabitants' right to inhabit, appropriate, participate in, and produce urban space that serves their needs.⁴⁷

The charge that currently codified international human rights norms are out of touch with contemporary urban realities may at once be understood as a challenge to the limited direct accountability of urban local governments under international human rights law, a call for international human rights systems to be more open to articulations of human rights by local governments as collective representatives of urban communities and a lament that currently codified international human rights norms fail to capture the urgent interests of marginalized urban dwellers, as represented by the banner of the right to the city.⁴⁸ These shortfalls seemingly require a response in tandem: if urban local governments were simultaneously more empowered and willing to 'localize' human rights norms and assert rights in and on behalf of urban communities, and if they were more readily held accountable for meeting their human rights obligations, international human rights norms would, through their use in and by the city, over time acquire more 'urban' content that would move them normatively closer to the right to the city. At the same time, if existing human rights norms were rendered capable of acquiring content that corresponds to interests inherent in the right to the city, their relevance and enforceability in the city, and the possibilities of their mainstreaming and collective assertion by local government, would increase.⁴⁹

Accordingly, the discussion that follows considers the openness of the human rights norms codified in the ACHPR, both in their textual formulation and in the approach to their interpretation by the relevant institutions, to reflecting urban concerns corresponding to the right to the city. At the same time, the discussion is attentive to how the relevant rights and jurisprudence position African urban local governments as human rights actors and duty-bearers.

3. Human rights, peoples' rights, and duties in the city: The normative content of the ACHPR

The preamble of the ACHPR states that 'reflection' on its 'concept of human and peoples' rights' should be 'inspired' and 'characterized' by 'the virtues of [its states parties'] historical tradition and the values of African civilization'. The African Charter is further unambiguously committed to addressing the main cross-continental political challenge of its time, the eradication of various lingering manifestations of colonialism and redressing their harmful effects.⁵⁰ Content-wise, the ACHPR departed from its European and Inter-American counterparts in its clear textual embrace of the interdependence and indivisibility of civil and political and economic, social and cultural rights; its inclusion of group or 'peoples' rights (which included the very first

⁴⁷See T. Coggin and M. Pieterse, 'Rights and the City: An Exploration of Socio-Economic Rights and the City', (2012) 23 *Urban Forum* 257, at 261–4; Chueca, *supra* note 44, at 103–4, 116–20; M. F. Davis, 'Finding International Law "Close to Home": The Case of Human Rights Cities', in Aust and Nijman, *supra* note 4, at 229–30; Grigolo, *ibid.*, at 92, 96; Grigolo, *supra* note 45, at 6; Oomen, *supra* note 1, at 5–6. The United Nations *New Urban Agenda* (*supra* note 3, at 11) associates the 'right to the city' with claims for urban justice and inclusion.

⁴⁸See Aust, *supra* note 4, at 277; Durmus, *supra* note 45, at 36; Hirschl, *supra* note 2, at 175, 202; P. S. Jones and G. Gachichi, 'Decolonising Human Rights: The Rise of Nairobi's Social Justice Centres', in J. Nijman et al. (eds.), *Urban Politics of Human Rights* (2022), 163, at 163–6, 180; Pieterse, *supra* note 2, at 1214–15; Seekings, *supra* note 6, at 216–17.

⁴⁹See Aust, *supra* note 4, at 273–4; Aust and Nijman, *supra* note 4, at 6–7, 11; Davis, *supra* note 47, at 237–9; Durmus, *supra* note 45, at 43–4, 52–3; G. E. Frug and D. J. Barron, 'International Local Government Law', (2006) 38(1) *The Urban Lawyer* 1, at 2; Grigolo, *supra* note 45, at 6, 18, 21; Oomen, *supra* note 1, at 3–6, 12–13; Oomen and Baumgärtel, *supra* note 1, at 614–16, 625; Oomen and Van der Berg, *supra* note 46, at 162; B. Oomen et al., 'General Introduction: Urban Politics of Human Rights', in Nijman et al. (eds.), *ibid.*, 1, at 9–11; Pieterse, *supra* note 2, at 1223–4; M. Pieterse, 'Resisting Marginalisation in the World Class City: Eking Out a Legal Right to Public Presence in the City of Cape Town', in Nijman et al., *ibid.*, 187–204; Swiney, *supra* note 4, at 243.

⁵⁰See the ACHPR's Preamble as well as Arts. 19, 20, 21.

instances of environmental rights and the right to development being enshrined in international/regional human rights instruments); its emphasis on family and family values; and its inclusion of individual and collective duties alongside rights.⁵¹ These features were said to represent an (albeit perhaps somewhat watered down⁵²) African worldview of interconnected human beings operating in a communalist (rather than predominantly individualist) paradigm and being committed to socio-economic wellbeing alongside individual thriving.⁵³

Given the rural character of 'traditional' (especially pre-colonial) African civilization and the fact that, at the time of its drafting, the ACHPR spoke to a still predominantly rural and underdeveloped continent,⁵⁴ how relevant are the rights and duties it holds forth to the challenges experienced in today's post-colonial African cities?

3.1 Interdependent civil, political, and socio-economic rights

In its first chapter, the ACHPR enshrines a fairly elaborate suite of stock-standard civil and political rights, including several rights (such as the rights to non-discrimination (Article 2), equal treatment and protection of the law (Article 3), life and dignity (Article 4), liberty and security of the person (Article 6), free practice of religion (Article 8), freedom of information (Article 9), freedom of association (Article 10), freedom of assembly (Article 11), freedom of movement and residence and to seek asylum (Article 12), and rights to political participation (Article 13(1)) that may, even in their conventional framing, be regarded as particularly relevant to current contested urban societies, and that could thus be open for invocation in contemporary urban contexts.

Viewed in tandem, these provisions enable the right to the city by guaranteeing a secure foothold of urban inhabitation and enabling the political dimensions of participation in the city.⁵⁵ They are supplemented in this regard by two fairly unusual political rights, the right of every citizen to 'equal access to the public service of his country' (Article 13(2)) and of every individual to 'access . . . public property and services in strict equality of all persons before the law' (Article 13(3)). Given that urban out-groups are often denied the benefits of the right to the city precisely by being restricted in their use of public space and amenities,⁵⁶ these provisions' embodiment of claims for equal presence in public space and equal public citizenship are especially significant.

Concerns have, however, been raised about the 'claw-back clauses' contained in many of the civil and political rights in the ACHPR, in terms of which the rights to liberty and security of the person as well as freedoms of expression, association, assembly, and movement, may be significantly limited, perhaps even negated, by domestic law.⁵⁷ This could prove stifling of rights in the city, especially when it comes to individual and collective performances of political opposition.

⁵¹See D. M. Chirwa and L. Chenwi, 'The Protection of Economic, Social and Cultural Rights in Africa', in D. M. Chirwa and L. Chenwi (eds.), *The Protection of Economic, Social and Cultural Rights in Africa* (2016), 3, at 6; Dersso, *supra* note 1, at 30; P. De Vos, 'A New Beginning? The Enforcement of Social, Economic and Cultural Rights under the African Charter on Human and Peoples' Rights', (2004) 8(1) *Law, Democracy & Development* 1, at 4–5; J. B. C. Rodriguez, 'The African Regional Human and Peoples' Rights System: 40 Years of Progress and Challenges', (2021) 18(3) *Brazilian Journal of International Law* 232, at 235; F. Viljoen, 'Africa's Contribution to the Development of International Human Rights and Humanitarian Law', (2001) 1(1) *African Human Rights Law Journal* 18, at 19–22, 38.

⁵²See Seekings, *supra* note 6, at 220–1, 229.

⁵³See Chirwa, *supra* note 7, at 323, 327; Maxwell, *supra* note 6, at 159–63; Mutua, *supra* note 6, at 341, 363, 368, 377, 380; M. Pieterse, "'Traditional' African Jurisprudence", in C. Roederer and D. Moellendorf (eds.), *Jurisprudence* (2004), 438, at 456–9; Viljoen, *supra* note 51, at 20.

⁵⁴See Mutua, *supra* note 6, at 343, 355–6.

⁵⁵On the relevance of these rights for the Lefebvrian concept of the right to the city see Coggin and Pieterse, *supra* note 47; E. Fernandes, 'Constructing the "Right to the City" in Brazil', (2007) 16(2) *Social & Legal Studies* 201, at 207–8.

⁵⁶See Jones and Gachichi, *supra* note 48, at 166; Oomen et al., *supra* note 49, at 6; Pieterse, *supra* note 49, at 200.

⁵⁷See, e.g., Arts. 6, 9(2), 10, 11, 12(1), 12(2), 12(4), 13(1) of the ACHPR and concerns expressed by, for instance, De Vos, *supra* note 51, at 6; Rodriguez, *supra* note 51, at 235.

Moreover, the ACHPR's elevation of (a seemingly fairly moralistic and perhaps heteronormative notion of) the family as 'natural unit and basis of society . . . which is the custodian of morals and traditional values recognised by the community' (Article 18) appears to be inimical to the duties of mutual respect and tolerance for difference expressed elsewhere in the African Charter,⁵⁸ particularly when it comes to women and children's rights⁵⁹ and the potential suppression of urban out-groups such as undocumented migrants, drug users, and LGBTI persons. The rights of the latter group, especially, are particularly controversial in many contemporary African societies where homosexuality is criminalized and where, despite the colonial roots of this oppression, expressions of same-sex desire are not uncommonly depicted as an 'un-African' (and, coincidentally, predominantly 'urban' and 'modern') affront to family values.⁶⁰ In this respect, it is further lamented that the ACHPR's right to non-discrimination in Article 2 does not include sexual orientation in its list of status grounds upon which discrimination is prohibited,⁶¹ although the open-ended formulation of the rights to equality and dignity in Articles 3 and 4 of the Charter may potentially allow for more progressive and inclusive interpretations.⁶²

The civil and political rights in the African Charter are supplemented by socio-economic rights to 'work under equitable and satisfactory conditions, and [to] receive equal pay for equal work' (Article 15), to 'enjoy the highest attainable state of physical and mental health' including a right to health-protection and to 'medical attention when . . . sick' (Article 16), and to education and cultural life (Article 17). While not explicitly related to urban conditions in the text of the Charter, these rights (which, incidentally, are guaranteed without reference to the standard international-law qualifications of progressive realization and the limits of available state resources⁶³) are of obvious relevance to urban dwellers.⁶⁴

However, several socio-economic rights that are as crucially important to the urban context, most notably the rights to housing, water, food, and essential urban services, are glaringly absent from the ACHPR.⁶⁵ While these lacunae may potentially be counteracted through Article 60 of the African Charter's commendable determination that its interpretative bodies may 'draw inspiration from international law on human and peoples' rights' including the various human rights treaties of the United Nations,⁶⁶ which means that interests associated with the un-enumerated rights may be inferred into the interpretation of other provisions of the ACHPR at least to the extent that they are enshrined in other human rights treaties, on the face of it they risk seriously undermining the ACHPR's relevance to many contemporary urban rights-struggles.

This said, the mere presence of enforceable socio-economic rights in the Charter, alongside its preamble's affirmation that the satisfaction of these rights is a 'guarantee for the enjoyment of civil and political rights', enhances the instrument's resonance with contemporary African urban

⁵⁸See Rodriguez, *ibid.*, at 236.

⁵⁹Perhaps in recognition of this, Art. 18(3), directly after spelling out states' duty to protect the family, obliges them to 'ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions'. The African Union has also since promulgated treaties focused specifically on elaborating women and children's rights, such as the Women's Rights Protocol and the 1990 African Charter on the Rights and Welfare of the Child. See Rodriguez, *ibid.*, at 236–7.

⁶⁰See A. M. Ibrahim, 'LGBT Rights in Africa and the Discursive Role of International Human Rights Law', (2015) 15(2) *African Human Rights Law Journal* 263, at 266–8, 271; Izugbara et al., *supra* note 41, at 101; A. Tucker, 'Geographies of Sexualities in Sub-Saharan Africa: Positioning and Critically Engaging with International Human Rights and Related Ascendant Discourses', (2020) 44(4) *Progress in Human Geography* 683.

⁶¹See Izugbara et al., *ibid.*, at 108.

⁶²*Ibid.*, at 104–5.

⁶³See De Vos, *supra* note 51, at 16.

⁶⁴See generally Coggin and Pieterse, *supra* note 47.

⁶⁵See M. Ssenyonjo, 'The Protection of Economic, Social and Cultural Rights under the African Charter', in Chirwa and Chenwi (eds.), *supra* note 51, at 93. The right to housing is by far afforded the most attention of all rights in the United Nations' *New Urban Agenda*, *supra* note 3, for example – see paras. 13–14, 31–35, 50, 54, 69, 88, 98–99, 106–108.

⁶⁶See De Vos, *supra* note 51, at 12, 18.

realities and its potential to advance the right to the city. Placing socio-economic rights at the disposal of urban social movements not only lends legitimacy to their urban rights struggles but also allows interests associated with these struggles over time to permeate the jurisprudence of the institutions charged with vindicating these rights.⁶⁷

This potential is further boosted by the manner in which the ACHPR formulates the right to property, which is (perhaps not coincidentally) textually wedged between the civil and political and socio-economic rights. An individualist or libertarian framing of the right to property is considered to be inimical to the right to the city, which instead emphasizes the social and communitarian use value of property, especially urban land.⁶⁸ But by instead determining that the right to property ‘may only be encroached upon in the interest of public need or in the general interest of the community’, Article 14 of the African Charter not only precludes the use of individual property rights to resist measures and campaigns for urban inclusion but also paves the way for an array of national and local government measures aimed at vindicating property’s social function,⁶⁹ for instance by encumbering urban land with obligations to put it to productive and communally beneficial use.⁷⁰

3.2 Peoples’ rights and duties

In addition to the array of individual rights discussed above, the ACHPR guarantees a number of collective group rights to be enjoyed by so-called ‘peoples’, including a right to equal respect and equal rights (Article 19), a right to existence, self-determination and freedom from colonial or other forms of domination (Article 20), a right to freely dispose of wealth and natural resources (Article 21), a right to ‘economic, social and cultural development’ (Article 22), a right to peace and security (Article 23), and a right to a ‘general satisfactory environment favourable to their development’ (Article 25).

These ‘solidarity’ rights (as they are sometimes termed) might be particularly open to appropriation in a variety of urban contexts, albeit dependent on the meaning that is awarded to the notion of ‘peoples’. For instance, if ‘peoples’ is understood also to encompass geographic communities (such as the residents of a neighbourhood, village, town or city), then peoples’ rights may serve to mediate potentially pernicious forces of urbanization by offering means of resistance (and possibilities for accountability and justice) to erstwhile rural communities enveloped by urban sprawl or threatened with displacement by urban or industrial development.⁷¹ Equally, peoples’ rights may have a role to play in mediating the pressures that urbanization and development place on the natural environment (especially in an era of climate crisis), in adjudicating the increasingly urban dimensions of armed conflict, in addressing tenacious neo-colonial practices of extractivism finding expression in the urban form of many African cities, and in exerting accountability for the many health and environmental hazards prevalent in urban environments.⁷² On the other hand, concerns have been expressed that the somewhat ambiguous formulation of the rights to

⁶⁷See Angel-Cabo and Sotomayor, *supra* note 2, at 275–6; Coggin and Pieterse, *supra* note 47, at 261–2; Frug and Barron, *supra* note 49, at 33–5; Pieterse, *supra* note 2, at 1223.

⁶⁸See Fernandes, *supra* note 55 at 213, 217; N. Pindell, ‘Finding a Right to the City: Exploring Property and Community in Brazil and in the United States’, (2006) 39(2) *Vanderbilt Journal of Transnational Law* 435.

⁶⁹See also Ssenyonjo, *supra* note 65, at 99–103.

⁷⁰On the social function of property and possibilities for its legal concretization see, for instance, T. Coggin, ‘“They’re Not Making Land Anymore: A Reading of the Social Function of Property in Adonisi”, (2021) 138(4) *South African Law Journal* 697, at 705–12; S. R. Foster and D. Bonilla, ‘The Social Function of Property: A Comparative Law Perspective’, (2011) 80 *Fordham Law Review* 101, at 102–6.

⁷¹See Lawanson, Odekunle and Albert, *supra* note 17, at 297; Ocheje, *supra* note 5.

⁷²See E. Boshoff, ‘Rethinking the Premises Underlying the Right to Development in African Human Rights Jurisprudence’, (2022) 31(1) *Review of European, Comparative and International Environmental Law* 27, at 27–8; M. Addaney, E. Boshoff and M. G. Nyarko, ‘Protection of Environmental Assets in Urban Africa: Regional and Sub-Regional Human Rights and Practical Environmental Protection Mechanisms’, (2018) 24(2) *Australian Journal of Human Rights* 182, at 190–3.

development and the environment in the ACHPR might render them prone to interpretations that advance a growth-fixated understanding of their content, which may be inimical to the attempts of both urban and rural residents to counter some of the more destructive forces associated with urbanization.⁷³

Directly following on its enumeration of peoples' rights, the second chapter of the ACHPR commences with a list of duties borne by individuals towards their families, communities, other members of society and the state. Said to be another instance of the Charter's view of individuals as socially embedded and interconnected,⁷⁴ these duties may provide a useful doctrinal starting point for reconciling tensions between the various individual and collective entitlements inherent to seemingly competing exercises of the right to the city.⁷⁵ In particular, Article 28 of the African Charter's determination that 'every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance' seems tailor-made for the hyper-diversity of urban life and may provide a basis for justifying a variety of state attempts at fostering harmonious urban communities of strangers.⁷⁶ The notion of duties might further be a useful basis for beginning to think about the 'horizontal' human rights obligations of the many non-state actors involved in urban development or governance in cities across Africa.⁷⁷

4. Developing rights *in, to and of* African cities? Adjudicating the ACHPR

While the ACHPR is a creature of the early 1980s, its enforcement bodies' norm-generating activities only gained steam from the early 2000s onwards.⁷⁸ The African Commission's early findings were initially confidential and upon eventual publication proved to be rather normatively sparse until around 2000, after which the Commission's norm-setting activities became more pronounced and its opinions begun to contain more elaborate reasoning.⁷⁹ The African Court, meanwhile, handed down its first procedural judgment in 2009,⁸⁰ with its first judgment on the merits of a case coming only in 2013.⁸¹

Both the African Commission and the African Court have thus far predominantly adjudicated matters pertaining to the vindication of civil and political rights, in particular the right to a fair trial.⁸² While gradually increasing, the jurisprudence on socio-economic rights, peoples' rights and individual or collective duties contained in the ACHPR has thus far been lamentably scant.⁸³ In particular, several of the rights in the ACHPR identified above as holding particular potential

⁷³See Boshoff, *ibid.*, at 27–8.

⁷⁴See Maxwell, *supra* note 6, at 161–3; Viljoen, *supra* note 51, at 20.

⁷⁵On the need for such balancing and reconciliation see M. Pieterse, *Rights-based Litigation, Urban Governance and Social Justice in South Africa: The Right to Joburg* (2017), 5–6, 207.

⁷⁶The idea of membership of an interconnected but distant urban community of strangers based on extreme difference, mutual respect, and tolerance, has most famously been developed by I. M. Young, *Justice and the Politics of Difference* (1990), at 226–56. On the need to reconceptualize liberty-focused rights-regimes accordingly see N. Barak and A. de Shalit, 'Urbanizing Political Concepts for Analyzing Politics in the City', in Aust and Nijman (eds.), *supra* note 4, at 334–5, 339.

⁷⁷As observed more generally by Chirwa, *supra* note 7, at 327; see De Vos, *supra* note 51, at 22; Maxwell, *supra* note 6, at 170–2.

⁷⁸For an overview of the institutional context and norm-generating activities of the African Commission and African Court see generally M. Ssenyonjo, 'Responding to Human Rights Violations in Africa: Assessing the Role of the African Commission and Court on Human and People's Rights (1987–2018)', (2018) 7(1) *International Human Rights Law Review* 1.

⁷⁹See Ssenyonjo, *supra* note 65, at 97–8.

⁸⁰In *Yogombaye v. Senegal*, Application 001/2008, Judgment of 15 December 2009, [2009] AfCHPR, 4.

⁸¹In *Tanganyika Law Society & Legal Human Rights Centre v. United Republic of Tanzania; Mtikila v. United Republic of Tanzania*, Applications 009/2011; 011/2011, Judgment on Merits of 14 June 2013.

⁸²Observed also by Chenwi, *supra* note 10, at 28; Rodriguez, *supra* note 51, at 248.

⁸³Observed also by Seekings, *supra* note 6, at 221; Ssenyonjo, *supra* note 65, at 95–6; Ssenyonjo, *supra* note 78, at 40.

for invocation in urban contexts (notably, the right of equal access to public property and services, and the individual duty to maintain relations conducive to mutual respect and tolerance) have not been adjudicated at all. Moreover, very few judgments or opinions have perceptibly addressed urban contexts or the rights of vulnerable urban out-groups,⁸⁴ while local governments, urban and otherwise, have also seldom featured prominently, either as bearers of rights or of duties.⁸⁵

But this is not to say that the jurisprudence of the African Commission and the African Court has been of little relevance to urban contexts. Both bodies have become known for displaying an open-minded and permissive interpretative approach to the ACHPR, which have rendered its provisions responsive to a variety of challenges experienced in contemporary urban Africa. In particular, both bodies have been praised for their comprehensive approach to adjudication (in that they typically consider each aspect of an allegation that state law or conduct infringes numerous rights in the ACHPR, rather than to focus their decisions only on the most obvious or overarching alleged violations),⁸⁶ their broad, permissive, and progressive interpretation of the rights in the ACHPR,⁸⁷ their liberal use of the interpretative freedom under Article 60 of the ACHPR to consider provisions from other international human rights treaties,⁸⁸ and their generous embrace of the notion that rights are interdependent and indivisible.⁸⁹

In conjunction, these interpretative approaches have seen the African Court and Commission interpret diverse rights in tandem, incorporating values associated with the protection of one right into their understanding of others, and reading rights that are textually absent from the ACHPR into its existing provisions.⁹⁰ So, for instance, has the African Commission read the non-enumerated right to housing into its understanding of the ACHPR's provisions on the rights to property and family life,⁹¹ a textually absent guarantee against mass eviction into the rights to freedom of residence, family life and property⁹² and un-enumerated rights to housing, food, and water into the right to health,⁹³ while the African Court has found that the eviction of an indigenous community from their land infringes the right to property in Article 14 of the ACHPR.⁹⁴

Combined with a similarly permissive interpretative approach to the group rights to development and a healthy and development-conducive environment,⁹⁵ this multi-layered understanding of rights-violations as impacting different combinations of enumerated and un-enumerated human and peoples' rights has not only compensated for the socio-economic rights lacunae in the

⁸⁴Bemoaned in relation to the needs of urban refugees by M. Addaney, 'A Step Forward in the Protection of Urban Refugees: The Legal Protection of the Rights of Urban Refugees in Uganda', (2017) 17(2) *African Human Rights Law Journal* 218, and in relation to the needs of urban informal workers by Seekings, *supra* note 6, at 223, 226.

⁸⁵See Bosire, *supra* note 28, at 159, 161.

⁸⁶See Chirwa, *supra* note 7, at 324.

⁸⁷See Ssenyonjo, *supra* note 78, at 26.

⁸⁸See De Vos, *supra* note 51, at 12, 18; Rodriguez, *supra* note 51, at 240, 246.

⁸⁹See De Vos, *ibid.*, at 1, 8, 23.

⁹⁰See Ssenyonjo, *supra* note 65, at 102–3, 117–18; Ssenyonjo, *supra* note 78, at 11.

⁹¹In *Social and Economic Rights Action Centre (SERAC) v. Nigeria*, Communication 155/96, (2001) AHRLR 60 (ACHPR 2001), paras. 60–61. See also African Commission on Human and Peoples' Rights, *Resolution 73: Pretoria Declaration on Economic, Social and Cultural Rights*, (2004), para. 5.

⁹²See *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v. Sudan*, Communications 279/03, 296/05, (2009) ACHPR 100 (27 May 2009), paras. 186–190, 205.

⁹³See *Free Legal Assistance Group v. Zaire*, Communications 25/89, 47/90, 56/91 and 100/93, 2000 AHRLR 74 (ACHPR 1995), para. 47 (State's failure to provide safe drinking water infringes the right to health in Art. 16 of the ACHPR); *SERAC v. Nigeria*, *supra* note 91, paras. 64–65; *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v. Sudan*, *supra* note 92, para. 212 (killing of livestock and poisoning of drinking water infringes the right to health in Art. 16 of the ACHPR) as well as African Commission on Human and Peoples' Rights, *supra* note 91, para 7. Rights to food security and equal access to housing are further contained in the Women's Rights Protocol – see Arts. 15–16.

⁹⁴In *African Commission on Human and Peoples' Rights v. Kenya*, Application 006/2012, Judgment on Merits of 26 May 2017, para. 131.

⁹⁵See Boshoff, *supra* note 72, at 28–32.

Charter (by simply locating the interests associated with textually absent rights such as the right to housing within textually present rights)⁹⁶ but also presents an ideal interpretative platform for the jurisprudential development of contingent, conglomerate, and contextual rights such as the right to the city, which can be understood as an interrelated ‘package’ of rights⁹⁷ that ‘requires us to transcend traditional liberal conceptions of rights as discrete legal rules to be predictably invoked against public transgressions thereof and instead requires . . . context-specific and ongoing balancing of competing rights claims’.⁹⁸ As such, the African Commission and African Court’s approach has allowed for the confluence of rights *to* the city and rights *in* the city, as well as for a rights-based approach to assessing the broader impact of forces of urbanization.

4.1 Interdependent rights and duties in the face of urbanization

The African Commission’s progressive stance towards the interdependence of rights and obligations is perhaps most evident from its opinion in *Social and Economic Rights Action Centre (SERAC) v. Nigeria*, which has been termed the ‘linchpin’ of the Commission’s economic and social rights jurisprudence.⁹⁹ The case was emblematic of the forcible submission of communities to the interests of industrial development and urbanization. It involved a challenge on behalf of erstwhile rural Nigerian communities ravaged and displaced by the activities of oil company Shell, which was acting with the backing and support of the Nigerian state. The African Commission’s exposition of the facts of the case tells of local villages and communities excluded from decisions about the economic exploitation of their lands and then side-lined, dispersed, and displaced through brutal military interventions to make room for commercial oil exploitation from which they shared no benefits, and which in turn caused cataclysmic environmental damage to the soil, water, and air that previously sustained their lives and livelihoods.¹⁰⁰

The African Commission found that Nigeria had violated a conglomeration of rights in the ACHPR, in that it had been ‘facilitating the destruction of Ogoniland’ through its tolerance as well as its active enabling and support of Shell’s activities.¹⁰¹ This amounted to a failure to comply with the obligations to respect and protect the rights, the latter of which was understood to also entail an obligation to protect communities ‘from damaging acts that may be perpetrated by private parties’.¹⁰² Throughout, the Commission’s opinion also speaks of violations of the rights by Shell as a private corporation,¹⁰³ thereby becoming one of the first and most widely celebrated instances of explicit articulations of ‘horizontal’ accountability for corporate human rights infringements in international human rights law.¹⁰⁴

As to the content of the rights that had been infringed, the African Commission found that, while states had a right to engage in developmental activities,¹⁰⁵ this had to be exercised with due regard to local communities’ closely interrelated rights to health (understood as imposing an obligation to refrain from health-harming activities) and the environment (understood as requiring states to take reasonable measures aimed at preventing pollution and securing ecologically sustainable development).¹⁰⁶ Read together with the local communities’ right to freely dispose

⁹⁶See De Vos, *supra* note 51, at 23.

⁹⁷See Coggin and Pieterse, *supra* note 47, at 261–4.

⁹⁸Pieterse, *supra* note 75, at 6.

⁹⁹See Chirwa, *supra* note 7, at 324.

¹⁰⁰See *SERAC v. Nigeria*, *supra* note 91, paras. 1–9.

¹⁰¹*Ibid.*, paras. 58, 61–62.

¹⁰²*Ibid.*, para. 57.

¹⁰³See especially *ibid.*, paras. 67, 69.

¹⁰⁴See De Vos, *supra* note 51, at 22; Ssenyonjo, *supra* note 78, at 11.

¹⁰⁵See *SERAC v. Nigeria*, *supra* note 91, para. 54.

¹⁰⁶*Ibid.*, paras. 52, 54.

of their wealth and natural resources,¹⁰⁷ these rights were further held to imply an obligation to respect individuals' and communities' current access to natural resources 'for the purpose of rights-related needs'.¹⁰⁸ Moreover, the forced eviction and displacement of the communities was found to infringe their rights to life, health, family life, and property,¹⁰⁹ since it caused community members 'physical, psychological and emotional distress', entailed 'losses of means to economic sustenance' and served to 'increase [their] impoverishment ... break up families and increase existing levels of homelessness'.¹¹⁰ The destruction of communities' food sources and water supply, both directly through military and industrial activities and indirectly through their environmental knock-on effects, was further found to infringe the rights to life, dignity, health, and development.¹¹¹

The simultaneous vindication of socio-economic, political and peoples' rights in the *SERAC* case provides concrete illustration of the interdependence of rights. More importantly, it shows that right-to-the-city interests, including those more readily associated with rights that are textually absent from the ACHPR (such as rights to housing, water, and food), may be advanced through a conglomerate reading of different rights in the Charter.¹¹² Its joint reading of rights and duties in the ACHPR further allowed the Commission to advance these interests against a mix of national and local, state- and non-state actors, as is not uncommonly implicated in cases where rights are threatened in the course of relational urban governance arrangements.¹¹³ The African Commission further empowered communities in relation to overarching forces of urbanization by implying that, as part of their right to development, peoples have a right to be accommodated and consulted as to the terms of their urbanization. Indeed, following the Commission's approach in *SERAC*, other Nigerian communities resident in urban peripheries have reportedly invoked the decision, as well as the relevant provisions of the ACHPR, in opposing their wholesale displacement in the name of urban redevelopment projects.¹¹⁴

4.2 A right to urban development?

Beyond the *SERAC* decision, the African Commission's interpretation of the right to development as encompassing rights of local communities to participate in decisions about their development, to be 'provided for' in the development process and not to be displaced through development, in cases such as *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on Behalf of Endorois Welfare Council*,¹¹⁵ might provide further opportunities for the expression of communal rights to the city. This potential is further enhanced by the African Court's combination, in *African Commission on Human and Peoples Rights v. Kenya*, of this understanding of the right to development with a communal understanding of the right to property. The Court interpreted the right to property in Article 14 of the ACHPR as encompassing communal entitlements to possession, occupation, and utilization of land,¹¹⁶ thereby

¹⁰⁷*Ibid.*, paras. 56, 58.

¹⁰⁸*Ibid.*, para. 45.

¹⁰⁹*Ibid.*, paras. 60–62.

¹¹⁰*Ibid.*, para. 63.

¹¹¹*Ibid.*, paras. 64–67.

¹¹²On the African Commission's understanding of the different rights involved in the *SERAC* case and their interrelationship see Addaney, Boshoff and Nyarko, *supra* note 72, at 189–90; Boshoff, *supra* note 72, at 32; De Vos, *supra* note 51, at 23.

¹¹³See Pieterse, *supra* note 2, at 1217–20.

¹¹⁴See Lawanson, Odekunle and Albert, *supra* note 17, at 297 as well as note 120 and accompanying text, *infra*.

¹¹⁵Communication 276/2003, (2009) AHRLR 75 (25 November 2009), paras. 217, 228, 291, 298 (*Endorois*). See also *African Commission on Human and Peoples Rights v. Kenya*, *supra* note 94, paras. 210–211. For discussion see Boshoff, *supra* note 72, at 30–2; Chenwi, *supra* note 10, at 31–2.

¹¹⁶See *African Commission on Human and Peoples Rights v. Kenya*, *supra* note 94, paras. 123, 127–128.

echoing the notion of appropriation of the social function of the city often invoked in literature on the right to the city.¹¹⁷

Both the *Endorois* case and *African Commission on Human and Peoples Rights v. Kenya* centred on the plight of rural communities facing displacement, respectively as a result of decisions to convert their ancestral lands into game reserves and protected areas. Perhaps as a result of this context, these decisions have defined the notion of ‘peoples’ to refer particularly to indigenous (rural) peoples with a ‘common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities and affinities’,¹¹⁸ hence potentially excluding full application of the right to development from cases involving less closely-knit urban communities. But their findings on the right to development clearly hold important ‘urban ramifications’,¹¹⁹ as is illustrated by the judgment of the Community Court of Justice of the Economic Community of West African States (ECOWAS) in *Socio-Economic Rights and Accountability Project v. Nigeria*, which held that the state-aided displacement of thousands of peripheral urban dwellers to enable urban regeneration and re-development violated several rights in the ACHPR, including the right to development.¹²⁰

The potential of the right to development and other peoples’ rights in the ACHPR to function as vehicles for the rights of cities was illustrated by the case of *Gunme v. Cameroon*,¹²¹ where it was argued that the right to development had been infringed through deliberate under-investment by the (Francophone) national Cameroonian government in Anglophone towns. It was claimed that towns in Anglophone regions of Cameroon were being starved of financial, infrastructure, and social investment, as was allegedly evidenced by major development projects such as an international oil pipeline, an oil refinery, as well as social infrastructure investments such as new schools and teacher training colleges, either deliberately being located predominantly in or, in the case of a deep-sea port, being relocated to towns in Francophone regions.¹²² While the African Commission did not consider all these allegations to have been successfully proven and ultimately concluded that the right to development had not been violated,¹²³ it did find that ‘the relocation of business enterprises and location of economic projects to Francophone Cameroon, which generated negative effects on the economic life of Southern Cameroon’¹²⁴ amounted to an infringement of the peoples’ right to equal respect and rights, under Article 19 of the ACHPR.¹²⁵

English-speaking people of Southern Cameroon were held to constitute a ‘people’,¹²⁶ with the African Commission seemingly extending its prior understanding of the term (as developed in the *Endorois* and *African Commission on Human and Peoples Rights v. Kenya* decisions) by adding that the notion of ‘peoples’ in the ACHPR referred more to the collective nature of certain rights in the Charter than to the groups that would qualify for their protection.¹²⁷ Much as the relevant city governments were not themselves party to the *Gunme* application, this finding, together with the Commission’s recommendation that the national government had to locate development projects ‘equitably’ throughout the country, including to Anglophone regions,¹²⁸ has somewhat opened up

¹¹⁷See generally Pindell, *supra* note 68.

¹¹⁸See *Endorois*, *supra* note 115, para. 151. See also *African Commission on Human and Peoples Rights v. Kenya*, *supra* note 94, para. 208; *Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v. Sudan*, *supra* note 92, para. 224.

¹¹⁹See Addaney, Boshoff and Nyarko, *supra* note 72, at 192–3.

¹²⁰*Socio-Economic Rights and Accountability Project v. Nigeria*, Judgment No. ECW/CJ/JUD/16/14 of 10 June 2014. For discussion of this judgment in the context of the right to the city see Lawson, Odekunle and Albert, *supra* note 17.

¹²¹*Gunme v. Cameroon*, Communication 266/2003, (2009) AHRLR 9 (27 May 2009).

¹²²*Ibid.*, paras. 9–10.

¹²³*Ibid.*, paras. 10, 206.

¹²⁴*Ibid.*, para. 162.

¹²⁵*Ibid.*, paras. 161–162.

¹²⁶*Ibid.*, paras. 178–179.

¹²⁷*Ibid.*, paras. 171–176.

¹²⁸*Ibid.*, para. 215.1.IV.

the communal rights in the Charter for urban appropriation, for instance by local (city) governments keen to safeguard the legal and financial bedrocks of their autonomy in the context of divided political authority between national and local spheres. The *Gunme* decision further echoed the African Commission's earlier finding in *Katangese Peoples' Congress v. Zaire*¹²⁹ that 'local government' might be one way through which states could give expression to peoples' right to self-determination under Article 20 of the ACHPR while maintaining their sovereignty and territorial integrity,¹³⁰ thereby providing further potential grounding for future claims to rights of the city.¹³¹

4.3 Urban inclusiveness and the right to the city

There have been some tentative indications in the jurisprudence of the African Commission that the open-ended and 'inclusive' phrasing of the rights to equality and dignity in Articles 3 and 5 of the ACHPR might serve to protect urban out-groups. For instance, while the African Commission was severely criticized for pandering to political pressure from member states to revoke the observer status of the Coalition for African Lesbians,¹³² it has indicated, both in an obiter remark in *Zimbabwe Human Rights NGO Forum v. Zimbabwe*¹³³ and in its *Resolution on Protection of Violence and Other Human Rights Violations Against Persons on the Basis of their Real or Imputed Sexual Orientation*,¹³⁴ that it views the rights of equality, non-discrimination, and dignity in Articles 2, 3, and 5 of the ACHPR as operating also to protect LGBTI persons. There have been further instances of national courts across the continent referring to provisions in the ACHPR as justification for extending rights to this vulnerable community.¹³⁵

But by far the most powerful affirmation of the rights of urban out-groups, both *in* and *to* African cities, came in the African Court's recent *Advisory Opinion* on the compatibility of vagrancy laws with the ACHPR.¹³⁶ The Court was requested by the Pan African Lawyers Union to pronounce on the validity of both national laws and local government bylaws in several African states, that criminalize vagrancy, loitering, panhandling, begging, informal trade, homelessness and other instances of 'purposeless' (inevitably urban) public visibility, and presence.¹³⁷ A hangover from the colonial era, these (usually municipal) offences are typically employed across African cities in efforts to police the everyday activities and livelihood strategies of urban 'undesirables' and, in more extreme manifestations, to clear the streets of their presence.¹³⁸

In support of its finding that such laws typically targeted individuals' status and way of life rather than their conduct, and as such were generally incompatible with the rights to equality and non-discrimination in Articles 2 and 3 of the ACHPR,¹³⁹ the African Court stated:

¹²⁹*Katangese Peoples' Congress v. Zaire*, Communication 75/92, 2000 AHRLR 72 (ACHPR 1995), (22 March 1995).

¹³⁰See *Gunme*, *supra* note 121, para. 188, referring to *Katangese Peoples' Congress*, *ibid.*, para. 4.

¹³¹See also Bosire, *supra* note 28, at 160–1.

¹³²See Dersso, *supra* note 1, at 12–14; Ibrahim, *supra* note 60, at 273–5.

¹³³*Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Communication 245/02, (2006) AHRLR 128, (25 May 2006), para 169. For discussion see Izugbara et al., *supra* note 41, at 106.

¹³⁴Resolution 275 (2014). See Ibrahim, *supra* note 60, at 277–8.

¹³⁵See B. R. Dinokopila, 'The Decriminalisation of Homosexuality in Botswana', (2022) *Journal of Homosexuality* (online first); Izugbara et al., *supra* note 41, at 105–8.

¹³⁶*Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the Compatibility of Vagrancy Laws with the African Charter on Human and Peoples' Rights and Other Human Rights Instruments in Africa*, No. 001/2018, 4 December 2020, African Court on Human and Peoples' Rights (*Advisory Opinion*).

¹³⁷According to the African Court, such laws and bylaws exist in at least 18 member states of the African Union. *Ibid.*, para. 60.

¹³⁸As remarked in *ibid.*, paras. 42, 54. See further M. Killander, 'Criminalising Homelessness and Survival Strategies through Municipal Bylaws: Colonial Legacy and Constitutionality', (2019) 35(1) *South African Journal on Human Rights* 70.

¹³⁹See *Advisory Opinion*, *supra* note 136, paras. 73–75.

vagrancy laws, effectively, punish the poor and underprivileged, including but not limited to the homeless, the disabled, the gender non-conforming, sex workers, hawkers, street vendors and individuals who otherwise use such public spaces to earn a living. Notably, however, individuals under such difficult circumstances are already challenged in enjoying their other rights, including more specifically their socio-economic rights. Vagrancy laws, therefore, serve to exacerbate their situation by further depriving them of their right to be treated equally before the law.¹⁴⁰

The African Court proceeded to find that, in derogatorily labelling people as ‘vagrants’, ‘vagabonds’, ‘idle’, ‘disorderly’, and so on, the laws perpetuated colonially-rooted stigmatization of persons and, as such, violated the right to dignity in Article 5 of the ACHPR, also by ‘unlawfully interfering with their efforts to maintain or build a decent life or to enjoy a lifestyle they pursue’.¹⁴¹

Given that the vagrancy laws generally targeted poor and underprivileged persons, the African Court was of the opinion that they further did not display a rational connection to a legitimate government purpose and that they could therefore not be justified in terms of any of the ‘claw-back’ clauses in the ACHPR.¹⁴² Accordingly, the vagrancy laws were, both in their content and their implementation, held to also infringe the rights to security of the person, a fair trial, freedom of movement and family life,¹⁴³ as well as various rights guaranteed in the African Charter on the Rights and Welfare of the Child and the Women’s Rights Protocol.¹⁴⁴

The African Court concluded that, given the extensive rights-violations inherent to most vagrancy laws, all African Union member states had a positive obligation to review the vagrancy and related offences contained in their national and regional laws, as well as all the municipal by-laws in their territory, for compatibility with the ACHPR. Member states accordingly had to amend and repeal relevant laws to bring them into conformity with the *Advisory Opinion*.¹⁴⁵

Broadly welcomed by commentators,¹⁴⁶ the *Advisory Opinion* presents the African human rights system’s most unequivocal indication that municipal laws can also fall foul of the ACHPR,¹⁴⁷ thereby enhancing rights-based accountability of urban governance instruments and processes, as well as the enjoyment of rights in the city. It further explicitly recognizes the unique vulnerability of a great range of urban out-groups that do not fit neatly within the list of prohibited grounds of discrimination contained in Article 2 of the ACHPR, and locates the harm done by vagrancy offences in their restriction of these out-groups’ public presence, survival strategies and everyday life in the city. By both broadening the reach of the rights in the ACHPR and extending their protection to also cover physical productions of urban space in this manner, the *Advisory Opinion* allows crucial elements of the right to the city to infiltrate the ACHPR.¹⁴⁸

5. Conclusion

Having just been ravaged by the Covid-19 pandemic and increasingly feeling the brunt of the global climate crisis, cities in Africa face urgent and formidable challenges. Itself experiencing

¹⁴⁰*Ibid.*, para. 70.

¹⁴¹*Ibid.*, para. 80. See also para. 79.

¹⁴²*Ibid.*, para. 82.

¹⁴³*Ibid.*, paras. 86–107.

¹⁴⁴*Ibid.*, paras. 108–140.

¹⁴⁵*Ibid.*, paras. 153–155.

¹⁴⁶See, for instance, Chenwi, *supra* note 10, at 26, and generally Holness, *supra* note 41.

¹⁴⁷The only prior acknowledgement along these lines came in *Endorois*, *supra* note 115, paras. 89 and 105, that local county councils shared in the responsibility to protect the rights in the ACHPR. See Bosire, *supra* note 28, at 161.

¹⁴⁸Two of the ways in which the right to the city departs from ‘conventional’ human rights is in its extension to urban residents on the basis of their presence in the city rather than their membership of particular status groups, and in the fact that it is enacted through physical appropriations and productions of urban space. See Coggin and Pieterse, *supra* note 47, at 259–60; Pieterse, *supra* note 75, at 6; M. Purcell, ‘Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant’, (2002) 58 *GeoJournal* 99, at 102.

a broader legitimacy crisis rendered particularly visible by the socio-economic effects of Covid-19 and climate catastrophe,¹⁴⁹ international human rights law needs to reassert its relevance in meeting these challenges of urban inclusiveness, safety, resilience, and sustainability.

This article has shown that, despite the rural inclinations of its drafting context, certain textual shortcomings, and the existence of major political hurdles to its effective implementation, the ACHPR as normative backbone of the African regional human rights system remains relevant to, and fit for the challenges of the current era of urbanization. This is, in the first instance, because of the open-ended formulation of its equality and dignity rights, its inclusion of socio-economic rights alongside civil and political rights, and its entrenchment of a range of group rights and duties that not only resonate with collective African values but also appear particularly capable of application in the context of structural forces associated with urbanization.¹⁵⁰ More importantly, it is due to the progressive interpretative approaches adopted by the African Commission and African Court on Human and Peoples' Rights, which have read the ACHPR as operating in harmony with other international human rights treaties, have embraced the interdependence and indivisibility of civil and political and social, economic and cultural rights, have frequently vindicated different groupings and intersections of individual and collective rights in particular factual contexts, have acknowledged the rights-related obligations of local government and have displayed a willingness to extend both the reach and content of the rights to contemporary urban contexts.

While the ACHPR shares other international human rights instruments' lamentable lack of engagement with the rights-related obligations and needs of urban local government, the article has further argued that the textual content of the rights to development and self-determination in the African Charter, alongside its interpretative bodies' gradual shift towards a more flexible understanding of the notion of 'peoples', can serve African cities well in their attempts to enhance their autonomy to govern in pursuit of the achievement of human and peoples' rights and to resist rights-destructive subversive tactics from differently politically inclined national governments. But the potential of African city governments as human rights actors that localize the content of rights in the ACHPR¹⁵¹ will remain stunted unless the rights can be more concretely linked to the devolution of state power. In this regard, the African Union's willingness to engage with collective organizations of African cities over their potential contributions to the urbanization of rights, as represented, for instance, by the adoption of the Decentralization Charter,¹⁵² is welcomed.

Enjoyment of rights *in* and *to* African cities can similarly be enhanced by greater acknowledgment of the special role of urban local governments in protecting and fulfilling rights, as well as by greater willingness of human rights-focused non-governmental organizations across the continent to bring cases with urban dimensions,¹⁵³ as was recently done in the case of the African Court's *Advisory Opinion* on vagrancy offences. That opinion, meanwhile, is emblematic of the African Court and African Commission's willingness to extend the ambit and reach of individual rights in the ACHPR beyond their strict textual formulations, and to apply them as awarding protection also to the livelihood activities and productions of urban space by different urban residents, including urban outcasts. This willingness, more than anything else, bodes well for the future relevance of the African Human Rights system in the urban age.

¹⁴⁹See Dersso, *supra* note 1, at 32–3, 36.

¹⁵⁰*Ibid.*, at 30; see Oomen, *supra* note 1, at 5–6, 13.

¹⁵¹See Aust and Nijman, *supra* note 4, at 6; Durmus, *supra* note 45, at 37; Oomen et al., *supra* note 49, at 9.

¹⁵²See Bosire, *supra* note 28, at 166–8.

¹⁵³*Ibid.*, at 168–70.