# International Criminal Law/International Human Rights Law – Summaries

## A Comparative Look at Implementing Human Rights Commission Laws

1993 – UN General Assembly endorsed the Paris Principles, in an effort to establish national human rights commissions in many countries around the world. These commissions share the common goal of seeking to address human rights violations and educating the public about human rights at a national level.

An ideal national HR commission should:

* Be independent of the government, as in it should be financially independent to the greatest extent possible, so as to ensure a non-biased functioning, over which the government has little to no control;
* Make sure its members are responsive to the public and also held accountable for their practices within the commission;
* Be diverse so as to reflect the plurality of society;
* Have a broad mandate and meaningful powers to monitor Human Rights compliance by the government effectively.

Human Rights Commissions **=/=** Human Rights Ombudsmen

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| Human Rights Commissions | Human Rights Ombudsmen |
| * Independent organizations designed to guarantee the fair and effective application of national human rights laws | * Generally fully independent of the government |
| * **Receive**, process and investigate allegations of human rights abuses | * Have the power to receive complaints and investigate abuses of HR |
| * Tend to pursue acts committed by **both private individuals/official persons** |
| * Provide arbitrations and conciliation services, where appropriate | * Tend to focus on preventing and investigating abuses committed by public or official persons against citizens – they are more of a watchdog of the government |
| * May provide education or training to increase awareness of pressing HR issues |
| * Often review and critique national HR legislation and policy | * Generally empowered to investigate possible HR abuses **even absent** the filing of a specific complaint |
| * They are limited in their choice of officers and their sources of funding in order to guarantee their independence |  |

They are two relatively comparable institutions whose models are examined in order to draw inspiration for the establishment and implementation of other national Human Rights Commissions.

The Paris Principles (1993)

The United Nations has always been devoted to emphasizing the responsibility of its member states in the promotion and protection of their citizens’ HR. In fact, it was the UN Economic and Social Council that suggested the creation of national human rights institutions to assist the UN Human Rights Commission (replaced by the UN Human Rights Council in 2006) in its functions at a national level.

1991 – the UN Center for HR convened a workshop to update and review existing information regarding international HR institutions. The purpose of the workshop was to discuss and compare various models in existence at the time and to encourage the development of new institutions in countries where they had not yet been established.

In addition to sharing information and discussing the efficacies and challenges if the arrangements set in place at the time, participants (which included state actors, non-state actors and national and international organizations) put together a set of recommendations regarding the composition, role, status and functions of national HR institutions around the world. This set of recommendations would later on be endorsed by the UN Human Rights Commission and the UN General Assembly, thus originating the Paris Principles.

The Paris Principles provide a foundation for the establishment of national HR institutions, while still allowing sufficient flexibility for states to design the institution for their particular context. They emphasize that a human rights institution should have the competence to promote and protect human rights, and that its mandate should be as broad as possible, as well as stable. According to the Paris Principles, a HR institution should have the following responsibilities:

* **Submission** to the government, Parliament, or any other competent authority **of recommendations, proposals and reports** on any matter involving the promotion and protection of human rights;
* **Proposals for how to address human rights violations** in particular parts of the country. This may include assessments of the government’s response to the violations;
* **Promotion of harmonization** between national legislation and practices with international HR instruments and norms;
* **Encouragement of ratification of international human rights instruments**, as well as their implementation;
* **Contribution to reports** submitted by the State to UN bodies on HR issues;
* **Co-operation with the UN as well as other** international, regional and national **institutions** that are competent in the areas of protection and promotion of HR;
* **Assistance in the formulation of research and education programs** and execution of these programs in educational institutions;
* **Increasing public awareness of HR** by publication of the efforts of the HR institution.

Other suggestions:

* HR institutions should reflect in their composition the pluralism in society;
* A commission should communicate ad co-operate with a broad range of social and political groups and institutions, including NGOs, judicial institutions, professional bodies, government departments and HR academics and practitioners;
* The commission’s funding should not be controlled by the government, in order to carry out their functions without becoming subject to government control;
* HR commissions ought to address public opinion and publish their opinions and recommendations;
* They should try and consult with other institutions (i.e., non-governmental organizations) involved in the performance of similar functions to facilitate collaborative efforts in the protection and promotion of HR;
* HR institutions should have the mandate to hear individual complaints regarding alleged HR violations (in case the institution is not mandated to receive individual complaints, it may refer them to the relevant competent authority);
* They should set in place efforts to resolve matters amicably, such as through conciliation, or by issuing binding decisions.

Best Practices of Human Rights Commissions

A number of factors contribute to greater effectiveness of national human rights commissions:

* National Human Rights commissions must **be independent of the government in order to work effectively** (in the Russian Federation, for example, we can see the negative effects of a highly intrusive Government: pluralism among members of the President’s HR Commission has been hampered because almost all of its Commissioners are government officials);
* National Human Rights commissions **are more likely to be successful when they have a diverse membership**: when members come from **different backgrounds** and are **drawn from civil society**/when commissions **consult regularly with civil society**, their relationships can be stronger and their interactions more consistent with individuals or groups who are marginalized or threatened (both the Human Rights Commissions of Kenya and Sierra Leone select commissioners through a public nominations process, during which candidates are screened by a gender-balanced selection panel comprising one representative from the government, one from the opposition and one from civil society);
* Commissioners should **have fixed terms of service** and **rotate out on a regular basis** (for example, the UN suggests a fixed term of at least 5 years + the possibility of re-appointment for one additional term of the same length);
* Effective commissions should **enjoy widespread public legitimacy**, **have open organizational structured** and **be accessible to the general public** (just like the Ugandan HR Commission, whose mandate requires it to monitor and report on compliance with international treaties by publishing an annual (updated) report);
* National Human Rights commissions should **have a broad mandate and a broad jurisdiction** so as to enable them to deal effectively with all HR (in the case of Liberia, a narrow mandate and lack of monitoring authority frustrated the work of a national HR institution);
* A commission’s **power to monitor compliance** with national and international HR laws is also vital (the Danish Institute for HR is empowered to hear and deal with complaints of discrimination on grounds of race or ethnic origin, for example);
* A state should set forth a **long-term national HR action plan** for its commission (for example, a 10 or 20 year plan for future progress), which should also include steps to develop relationships with international and regional HR organizations;
* A commission’s viability is dependent on having **adequate budgetary resources** and **the ability to draw funding from multiple sources**: in addition, it’s important for institutions to have the **explicit power to ensure funding** **and to accept funding**, all the while ensuring that **funding does not compromise the commission’s impartiality and independence**;
* Finally, **internal and external mechanisms for review** are critical to the legitimacy of HR commissions (HR commission should be externally evaluated on how effectively they implement their goals and fulfil their mandate, for example).

## Putting in Place Processes and Mechanisms to Prevent and Eradicate Enforced Disappearances around the World

UN Working Group on Enforced or Involuntary Disappearances:

* Established in 1980 by the Commission on Human Rights;
* The 1992 Declaration on the Protection of All Persons from Enforced Disappearances elaborated on the mandate of the Working Group;
* Following the Declaration, the Working Group made a number of recommendations on how to improve the protection identified in the Declaration;
* It is the first thematic mechanism to have been set up within the framework of the United Nations Human Rights system to deal with a specific global human rights violation;
* Holds 3 sessions a year;
* Along with the working group, the Human Rights Committee, the Committee of Enforced Disappearance, and the Committee on Torture all have a role to play in the field of disappearances;
* By 2013, the working group had been seizes with around 54000 individual cases of enforced disappearance, having only resolved approximately 10000 of those cases.

**Today enforced disappearances are a global issue emerging around the world**

* Enforced disappearances are not a crime of the past, seeing as they are a phenomenon that continues to affect all regions of the world.
* Not only are enforced disappearances still a rampant practice in this day and age, impunity for this crime also prevails globally.
* Despite their best efforts, NGOs, states, regional human rights systems, the UN and others have failed to put halt to the on-going and large-scale practice of enforced disappearance.
* The first half of the first decade of the 21st century saw a resurgence of this unlawful practice: in a post-9/11 landscape, the “war on terror” reinvigorated the practice of secret detention as a means to counter terrorism, having involved some 60 countries, many of which were democratic states, despite the popular belief that such crimes only occur in non-democratic and authoritarian states. Moreover, the “war on terror” was responsible for the emergence of new patterns and problems in the area of enforced disappearances.
* The US has been directly responsible for enforced disappearances through: a) the use of extraordinary rendition, “black sites” or secret prisons; and b) improper registration of detainees in conflict zones (such detainees have also been taken to the Guantanamo Bay detention centre, transferred to secret CIA detention centres, and unlawfully transferred to secret detention venues in other countries.
* The UN Working Group on Arbitrary Detention issued a report on how the detainees at the Guantanamo Bay were being held arbitrarily in violation of international law.
* It’s safe to say enforced disappearances, arbitrary detention, and summary executions are closely related, seeing as one can only determine which one of these violations were committed once confronted with the actual facts of what happened (which are many times omitted from the public for an extended period of time).
* Thousands of people disappear each year, although for various reasons many cases are not reported to the international mechanisms and sometimes, not even noted domestically.
* While enforced disappearance is seen by many as a crime of the past, it continues unceasing and a lot more need to be done to stop the practice.

**What is an enforced disappearance?**

* Enforced disappearance typically involves the arrest or detention of an individual, usually a perceived or actual political opponent, by members of a state-sponsored military group. The individual is then either killed and his body secretly disposed of, or the government authorities deny of any knowledge of the victim’s arrest, whereabouts or condition.
* It is, by its very nature, a crime shrouded in secrecy: State authorities will often deny that the individuals are being held in their custody, or the authorities may block access to information by labelling it “classified” in the interest of state security. The mystery that surrounds this practice explains why perpetrator can usually not be held accountable.
* This crime is made up of four elements:

1. the individual is deprived of his or her liberty
2. by state forces, or with the support or consent of the state
3. which denies or refuses to acknowledge the fate or whereabouts of the individual
4. which, in turn, places the individual outside the protection of the law.

* The disappearance may legally “continue” for a period or even indefinitely, so long as the state refuses to acknowledge his or her detention or reveal his or her fate, thus withholding information regarding their fate and whereabouts.

**They appear and reappear where the situation on the ground permits.** One should never forget the context in which these crimes take place: many governments use enforced disappearances as an integral part of a systematic campaign of state terror against their own citizenry.

* Enforced disappearances often occur during political unrest and often form part of state policy: they are often perpetrated to spread general fear, terror, intimidation and uncertainty throughout the society in question. In other words, they are used as a tool in order to coerce the citizens of a state and to deter those who may be inclined to speak out against, or criticise, those in power. The act is, in itself, a form of social repression, as fear of the unknown will deter any person from acting in a way that may be interpreted as opposing the ruling regime. Dissent, in the forms of political opposition and resistance movements, is thus suppressed.
* The crime targets, not only the individuals themselves, but also their families, seeing as the families are terrorised by uncertainty and not knowing whether or not their loved one is dead or alive.
* Even though it’s vitally important that states investigate and prosecute those responsible for causing enforced disappearances, many perpetrators are never brought to the book and enjoy impunity: many of the acts are carried out secretly, so facts do not become known and perpetrators cannot be held accountable. Additionally, impunity is often perpetuated by immunity or amnesty laws. As a result, in many regions the perpetrators continue to hold powerful positions, preventing the truth from coming out and denying victims a remedy.
* The historical background of this practice is a testament to how authoritarian/repressive regimes and periods of conflict constitute fertile ground for the use of enforced disappearance: in Nazi Germany, Hitler’s “Night and Fog Decree” openly called for deportation and explicitly restricted information about those deported; enforced disappearances became a rampant and systematic state practice in Latin America from the late 1960s until early 1980s with Governments employing the abduction or arrest of people in an effort to extract information from them, through the means of torture; following the cold war, disappearances occurred in Azerbaijan, Georgia, Tajikistan, and the former Yugoslavia.

**Enforced disappearance as a violation of human rights and international la**w

* An enforced disappearance is recognised as an international crime and a wrongful act by international customary law, treaties, and jurisprudence.
* The prohibition of enforced disappearance and the corresponding obligation to investigate and punish those responsible has attained the status of ius cogens.
* Because of its continuous and multi-offensive nature, enforced disappearance constitutes per se a violation of numerous human rights: it deprives individuals of some of their most fundamental natural rights such as the right to liberty, due process, and the right to life.
* Acts of enforced disappearances are also prohibited under international instruments, such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).
* All rights are affected, including:
* Human rights embodied in the Universal Declaration of Human Rights, as well as regional human rights treaties, such as the European Convention on Human Rights, the American Convention on Human Rights, the African Charter on Human and Peoples’ Rights, and the Arab Charter on Human Rights;
* Civil and political rights, like those in the International Covenant on Civil and Political Rights (ICCPR);
* economic, social and cultural rights - if the family’s main source of income has been disappeared it is often left in a desperate socio-economic situation where many rights embodied in the International Covenant on Economic, Social and Cultural Rights are violated.;
* the right to liberty;
* the right to be legally recognised as a person;
* the right to security;
* the right to be free from intimidation and fear;
* the rights to, and of, the family.
* Despite constituting a violation of other rights contained in numerous conventions, treaties and international customary norms, none of these contained a specific provision on the right not to disappear and there was no specific international instrument that specifically prohibited enforced disappearance.
* The 1992 non-binding UN Declaration fir the Protection of all Persons Against Enforced Disappearances, states that: “Any act of enforced disappearance is an offense to human dignity…[It is a] flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.”.
* In 1999, the UN General Assembly adopted a Resolution that expressed concerns over States’ compliance with the Declaration: the General Assembly believed that further steps would have to be taken to ensure that nations adhere to the Declaration.
* The International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the Human Rights Council and the General Assembly in 2006: the Convention demands that a member state shall “ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation” and that reparation “covers material and moral damages and, where appropriate, other forms of reparation such as: (a) restitution; (b) rehabilitation; (c) satisfaction, including restoration of dignity and reputation; (d) guarantees of non-repetition”.
* Additionally, perpetrators and the state or state authorities which organise, acquiesce in, or tolerate such disappearances are also deemed liable under civil law.
* In terms of international law, where there is a widespread practice of enforced disappearance, this can constitute a crime against humanity: article 7.1 of the Rome Statute of the International Criminal Court includes enforced disappearance as a crime against humanity when it is committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack; the preambles to both the Declaration and the Inter-American Convention provide that the systematic practice of enforced disappearance is “of the nature of a crime against humanity”.
* States have the duty to prosecute the perpetrators of enforced disappearances.

Enforced disappearances will continue to be a problem as instability and emergency situations emerge as an endemic world problem.

**Prevention is one of the keys to eradicating enforced disappearance and demands greater emphasis, especially at the domestic level: it is states that bear the major responsibility to deal with enforced disappearances.**

* There are many actors with a role to play in preventing disappearances: the international community; the UN and its various organs (+ the ICC, the International Committee of the Red Cross, the International Commission on Missing Persons); regional, sub-regional and domestic institutions including national human rights institutions; NGOs and the civil society in general; and, most importantly, states.
* **The international community –** it should have a much greater commitment and provide resources to deal with enforced disappearances wherever they occur; it should tackle these practices as a specific, individual issue; it ought to place a much greater pressure on societies where disappearances are taking place to establish independent and credible mechanisms to deal with these crimes.
* **Civil society, including NGOs at all levels –** an engaged and effective civil society is a very useful role player in a society where human rights violations have occurred; it is beneficial in ensuring the accountability of the state and state institutions; it can act as a check and balance on state power, and is therefore critical to the effectiveness of the democracy; NGOs in regions and countries where disappearances have occurred are in need of funding, much like the International Coalition Against Enforced Disappearances, the Asian Federation Against Disappearances, amongst many others; when it comes to Africa, it has the most pressing need for support as there is no regional or sub-regional organisation, and few local NGOs.
* **International, regional and sub-regional institutions –** they ought to be assisted themselves to play a greater role; some, such as the ICC, should prosecute cases of enforced disappearance more frequently and send a clear and strong message that disappearances will not be tolerated; if the African Court on Justice and Human Rights is given criminal jurisdiction it should become a complementary institution to the ICC, rather than an opposing one, and it should also pursue African leaders who commit serious offences, subsequently becoming a major player in the fight against impunity; other institutions such as the UN Human Rights Committee, the working group and the UN Committee on Enforced Disappearance could play a greater role if they had more resources and additional staffing (also, these mechanisms depend on state cooperation which in places where massive violations have occurred is often in short supply, even though the Human Rights Council urges states to cooperate with the working group, respect the Declaration, and prevent enforced disappearances – the promotion of state compliance with human rights obligations is of utmost importance); greater cooperation between institutions is needed as well, as is a greater collaboration between these and civil society institutions.
* **States –** they are responsible for carrying out the most important role in preventing and eradicating the epidemic practice of enforced disappearances; the primary duty to deal with enforced disappearances falls on the state. Why?

1. Because the state is invariably responsible for the disappearance – disappearances occur on their territories, and thus states are in the best position to investigate and deal with them;

2. States are best placed to put mechanisms and processes in place to prevent enforced disappearances – they must not only address the prevention of the crime, they must also address the wider issues relating to its prevention (I.e., the political environment that fosters the practice/political issues that allowed the disappearances to occur). States must, therefore, deal with conflict and violence.

States themselves should also work towards enforcing state compliance with prohibitions against enforced disappearances – much more needs to be done to limit states from enacting legislation which allows them easily to derogate from their duty to protect human rights.

**The need for political will at the domestic level to deal effectively with enforced disappearance**

Domestic courts should also play a bigger role in prosecuting those responsible for perpetrating enforced disappearances and in fighting impunity – while domestic criminal justice systems need the resources and support to carry out such prosecutions, what is most lacking is the domestic political will to enforce these norms. Capacity building (such as training prosecutors, investigators, and judges to proceed with such cases) can assist, but more needs to be done by way of providing incentives for states to carry out such processes, and sanctions where they fail to do so. States can and should be held accountable for their failure to do what they have committed and are duty bound to do.

**Ratifying and implementing international treaties**

States should also be encouraged to ratify and implement various international and regional treaties, most notably the ICCPR and the CAT. By ratifying treaties, states indicate their commitment to the treaty concerned, and undertake an effort to comply with the treaty, by putting mechanisms in place domestically.

**Constitutionalising the right to protection against enforced disappearances**

Signature of or accession to a treaty is only a first step in addressing enforced disappearances. In fact, on their own membership of treaties do little to impact on the human rights situation on the ground in the country concerned. To comply with the international obligation to not permit enforced disappearances, states need to incorporate the right not to be disappeared in their constitutions.

**Putting in place a comprehensive and adequate legislative framework**

To deal with disappearances and prevent them from occurring, states need to put in place policies and a legislative framework which will address the problem. A law on missing or disappeared persons ought to be adopted in countries where such cases have occurred. This law should aim to improve the tracing process for people who have disappeared, to define who are disappeared or missing persons, to set up a central record data base to centralise available information, and to realise the social and other rights of family members of missing persons.

**Prohibiting secret places of detention**

In all states, secret detention should be explicitly prohibited, along with all other forms of unofficial detention.

**Establishing a national preventive mechanism**

States can enhance the protection of their citizens from enforced disappearance by establishing a national preventative mechanism. A preventive mechanism is a group given the task of ensuring that individuals are protected from human rights violations. It can take many forms: national human rights commissions, ombudsmen, and public defender’s offices, NGOs, independent inspectors, judicial offices, and community-based independent visitors,… The mandate of the preventive mechanism must be wide and its powers extensive.

**Protecting the rights of those who are detained or placed in custody**

Safeguards for persons deprived of their liberty should be fully respected. The law should contain penalties for officials who do not comply with obligations to maintain up to date registers and who refuse to disclose relevant information to relatives or others seeking to find a person.

**Human rights education**

Human rights education processes are critically necessary in states around the world. These campaigns allow people to know their rights and to play a part in ensuring that human rights are respected. Public education initiatives that raise awareness of enforced disappearance and educate individuals on the rights of detained people should also be encouraged, if not supported, by the government.

**Establishing an institution to search for disappeared people**

In a state where there have been enforced disappearances, establishing a designated institution to investigate disappearances has many advantages - having a specific institution skilled and tasked to deal with disappearances, or more widely those who have gone missing, can play a vital role in assisting families to establish the fate and whereabouts of their relatives who have been disappeared.

**Control and oversight of the security forces and laws governing their conduct**

To reduce the risk of enforced disappearance, states must ensure that all officials are adequately trained. The goal of training state officials ought to be to prevent them from becoming involved in the practice. Training must include prevention and how effectively to investigate complaints.

Steps need to be taken to ensure civilian oversight over the security services. Necessary measures must be put into place to allow complaints against individuals to be handled effectively and independently. In addition, any action by the intelligence services should be governed by law, which in turn, should be in conformity with international norms.

**Providing reparations to victims**

The issue of reparations fulfils at least three functions, most importantly, reparations enable victims to cope with the financial loss they have suffered; secondly, they allow for official acknowledgment of the past; and, finally, reparations deter future perpetrators from committing similar violations. Reparation can encompass a variety of concepts including damages, redress, and restitution. Generally, however, few victims receive reparations, even though there are international rights in this regard. It is again at domestic level where victims ought to be able to obtain redress.

**Dealing with impunity**

Impunity for crimes committed by state agents or under the cover of the state, not only entails the failure to punish the persons responsible for those crimes. An inseparable component of such impunity is the failure to carry out any investigation, the cover-up, and even the falsification of the facts to protect the persons responsible. The discovery of the truth (aka, the responsibility of independent persons) contributes to creating a collective conscience as to the need to prevent a repetition of similar acts. It shows those who are capable of such acts that even though they may escape justice, they are not immune from being publicly recognised as the persons responsible for very grave attacks against other human beings.

## An Enduring Concept for Security Council Reform

**The New Security Council (according to Klaus Schlichtmann):**

* UN Security Council reform has been lingering over the years, since it was first seriously considered in the 1990s, after the collapse of the Soviet Union.

1. In January 1992 newly elected UN Secretary-General Boutros Boutros-Ghali called a Security Council Summit meeting, where fifteen heads of state for the first time after the end of the Cold War reconfirmed their “commitment to collective security” and resolved to strengthen the United Nations, and for that purpose reform the Security Council (The UN Charter review process anticipated in Article 109, which had a similar aim, had never materialized in the early years of the Organization as originally anticipated, due to the Cold War!).
2. In 1993, the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council was established: reform proposals had to be in accordance with the conditions of more “equitable representation on and increase in the membership of the Security Council”.
3. On October 24, 1995, on the occasion of the 50th anniversary of the United Nations, the General Assembly unanimously declared the UNSC “should inter alia be expanded and its working methods continue to be reviewed in a way that will further strengthen its capacity and effectiveness, enhance its representative character, and improve its working efficiency and transparency.” However, there has been no agreement so far.

But must the UNSC expand by increasing the number of individual nation-state members, or could “increase in the membership of the Security Council” also be taken to mean an increase in the number of states—like those joined in the EU—and the number of people represented?

* The UNSC must be restructured, to include a prominent member of the Global South.
* To achieve what’s considered the most important step in the path towards fully attaining the “Right of Peoples to Peace”, in other words, to ensure that the System of Collective Security is put into effect, the composition of the Security Council needs to be only changed slightly, by reducing the two European seats to one and admitting a prominent member from the unrepresented Global South, i.e. India.
* Klaus Schlichtmann suggests changes targeting the UNSC’s very own composition whilst maintaining the Permanent Five (P5 members), instead of enlarging the Security Council by adding new permanent and non-permanent members.
* Increasing the number of permanent members would make the Security Council not only less effective, but also prevent the realization of a fundamental purpose of the United Nations, i.e. the transition from an armed to an unarmed peace;
* The composition of the Council should be reshuffled and expanded by giving a seat to a prominent member of the Global South, i.e. India, and replacing the seats of France and Britain with a single European representation. While there would be no increase or change in the number of permanent and non-permanent members, the result will be a dramatic increase in the numbers of people represented by the Permanent Five;
* These changes could be seen as merely procedural, thus avoiding the demanding, long and frustrating reform process that the expansion of the Security Council (as in the increase of the number of permanent members) might entail. By maintaining the number 5, the effective operation of the consensus principle required for the maintenance of international peace and security during the transition is ensured.
* The new permanent members should immediately take up their responsibilities to formulate “plans for the establishment of a system for the regulation of armaments” (Article 26, in connection with Article 47, UN Charter), with a view to achieving UN-controlled “general and complete disarmament”, and embark on the transition to a positive peace, based on law, instead of military power sustained by competing nation-states.
* The *transition*: the Charter incorporated into international law an entirely new concept, i.e. the “transitional period”, based on the idea that - just like it was theorized by Alfred Hermann - after war had ended it was necessary not to return to an armed peace (a context of latent war) that merely perpetuates international anarchy but to an organized state subject to the rule of law. The transitional period would serve as, according to Quincy Wright, some sort of period of reconstruction, whose aim wasn’t to restore an earlier situation (like the “peace” that preceded and produced the hostilities) but to build a more adequate world order, i.e., sustainable and perpetual peace. This has remained on paper only, though.
* Because it is required for the transition from an armed to an unarmed peace the consensus principle must be upheld. There is no other way to achieve disarmament and a stable peace etc. Additionally, the provisions in the UN Charter, which have not yet been implemented, vital to maintaining international peace and security, must be put into operation.
* The veto power, which became a tool of power politics during the Cold War is the reverse side of the consensus principle: this will work only if the UN Security Council has no more than five permanent members. Apart from the fact that the number five is important for the effective functioning of their decision-making process, this arrangement ensures that the P5 will not war among themselves.
* Nevertheless to trigger the process of the transition, UN Member states (other than the P5, who bear responsibility under the Charter to guarantee safe passage during the transition) must begin, one by one, to delegate “Security Sovereignty” to the Council, so that the permanent members will be able to effectively assure an organized transition.
* The UN should obtain a monopoly of power and operate an international police force to enforce international law and order and monitor disarmament, thus arising as a powerful and persuasive system capable of replacing the institution of war.
* The UN has no sovereignty of its own, but, in order to work as an effectively functioning security system (essential in achieving Collective Security), member states must “confer on the Security Council primary responsibility for the maintenance of international peace and security” (Article 24, UN Charter). So far, however, UN member states have not conferred onto the Security Council primary responsibility for the maintenance of international peace and security in the sense of a sovereignty “handover”/transfer.
* Moreover, the UNSC must not be above the law: it needs principles of law to guide it.
* SO, in order to give effect to the System of Collective Security:

1. One must stop pretending there is already one in place, while nation-states continue to maintain individual militaries – it’s counterproductive, and ultimately leads to war.
2. National lawmakers must pass legislation, giving the Security Council 1) a much wanted code of conduct and 2) the power to be able to act promptly and effectively in order to maintain international peace and security, by delegating sovereign powers to it (along with making available to the Security Council, under Article 43, “armed forces, assistance, and facilities.”

* Consistent with the international law concept of the transition period the Transitional Security Arrangements provide for—besides the P5—co-opting “other Members of the United Nations with a view to … joint action” (Article 106) during the passage from the present state of an armed to an unarmed peace: for example, countries like Germany, Japan and other troop-contributing countries.

**The Question of National Sovereignty**

* A stable international order requires Political leaders to come to an understanding that to maintain the present “status quo is a recipe for disaster.” Furthermore to bring about peaceful change we have “to reinvent the concept of sovereignty for the twenty-first century.” (Dominique Moisi)
* Nation states are reluctant to give up any part of their national sovereignty for fear of becoming vulnerable and appearing weak; but it’s a question of empowering the UN and not debilitating state members.
* Many share (and have shared) the sentiment that without an effective surrender of sovereignty OR restriction of nation state sovereignty, the UN will not be able to set in place the System of Collective Security needed to achieve sustainable, perpetual, unarmed peace:
* Professor Sarvepalli Radhakrishnan: “The United Nations is the first step towards the creation of an authoritative world order. It has not got the power to enforce the rule of law ... Military solutions to political problems are good for nothing.”
* Diplomat Ahmed E.H. Jaffer: “The evils of the sovereign state and its incapacity to maintain peace are increasingly felt… (…) it has been made amply clear that one of the greatest impediments to real political and economic cooperation between the states is the sovereignty of states and that the remedy for the sufferings of mankind lies in curtailing and limiting that sovereignty.”
* Robert Strausz-Hupe, founding member of the U.S. Foreign Policy Research Institute: “The peoples of the world need to be told that a more effective United Nations comes at a price and that this price is the delegation of national sovereignty; in the beginning, not all of it, but as the process continues, more and more of it.”
* Chinese President Hu Jintao stressed the necessity to “strengthen Collective Security Mechanism[s]” and “improve the Council’s efficiency so as to respond to threats more effectively,” as well as “improve the Council's decision making by giving greater expression to democratic principles.”
* However, the rapidly changing security environment and continuing reluctance of the European nations to agree to limitations of their national sovereignty in favor of the international rule of law, poses obvious dangers.
* Limitation of national sovereignty with regards to the right to go to war addresses the root cause of the problem. If war is to be abolished:

1. Nation states must delegate sovereign powers to the United Nations Security Council, to give the United Nations proper executive powers;
2. The international community is duty-bound to give the Council a basic law;
3. A higher number of constitutions should aim at outlawing war and limiting national sovereignty, for the purpose of international cooperation and peace, following in the footsteps of the Japanese Constitution’s Article 9.

As long as individual, divergent national and regional military establishments prevail, the UN will not be able to effectively maintain international peace and security in the twenty-first century.

**India as the Ideal “New” Permanent Member**

* Giving India a permanent seat in the Security Council would not only positively affect the regional environment, but also strengthen the global framework for peace and security, as well as help achieve general and comprehensive disarmament under strict international control, while bringing together more than half of the world’s population represented by the P5 alone.
* Since (1) Europe is overrepresented, and (2) the Global South is not represented at all, the aim must be to obtain a single European (EU) representation (combining France and the UK in one single seat) and place a capable and experienced representative of the Global South, i.e. India, in the vacant seat.
* The Charter revision to accommodate India and reduce the two European seats to a single representation could very well be dealt with as a procedural matter under Article 27 paragraph 2 of the Charter.
* The necessary UNSC reform may be accomplished within the scope of the UN Charter, and with little change either in the text of the Charter or the composition of the Security Council. Yet the results would be decisive.
* Since 2005 India’s bid to become a UNSC permanent member also has also gained the support of China. As France and Britain will most likely agree to a single European representation only, if the UN System of Collective Security is put into effect, China, too, ideally would under the same condition agree to an Indian permanent representation.
* Seeing as, India is the world’s most populous democracy, comprising almost one sixth of the world population + considering its Muslim population, no better country to increase representation.
* India, allegedly possessing the world’s third largest army and the fifth-largest navy in terms of personnel, is a major “troop-contributing country” to the United Nations.
* Cooperation between India and other Asian countries, such as China and Japan, on issues of disarmament, monitoring, and the abolition of war will have a positive impact on the region, and the world.
* Cooperation with Pakistan and other neighbors could facilitate the implementation of a practical policy of peace and disarmament in the area and beyond.
* India could greatly advance her aspirations and cause, if she would take such responsibility upon herself, for the sake of world peace, as a permanent representation in the UNSC would entail.

In conclusion, the transition would only be complete once warlessness had been achieved:

* As it is, still, the present state of “warlessness simply means the indefinite postponement of a nuclear war”.
* “In a generic sense the term ‘warlessness’” should refer to a “world situation in which disarmament has been achieved, decisions of the International Court of Justice are enforceable, an international police force has been established effectively, and the veto has been abolished in the Security Council”.

## Abortion Law Around the World: Progress and Pushback

There is a **global trend toward the liberalization of abortion laws** driven by women’s rights, public health, and human rights advocates:

* The wave of liberalization of abortion laws responded to **public health evidence** and, more recently, **human rights arguments**: this trend reﬂects a) the **recognition of women’s access to legal abortion services as a matter of women’s rights** and **self-determination** and b) an **understanding of the dire public health implications of criminalizing abortion**.
* This movement towards liberalization was met with ideologically and religiously motivated backlash, which resorts to misrepresentations and avoidance of public health evidence.

A look into abortion law’s historical background:

* Although abortion is a medical procedure, it has historically been addressed in penal codes and characterized as a crime.
* Abortion laws were liberalized using legal means, at first by amending criminal bans to specify certain circumstances in which there is no legal penalty for abortion. That was the case for countries in the ﬁrst wave of liberalization, in Central and Eastern Europe, which saw the introduction of speciﬁc circumstances in which abortion carried no criminal sanction.
* Liberalization of abortion laws also is achieved through the replacement of penal code provisions by public health codes, court decisions and other regulations and laws addressing the provision of reproductive health care. For example, Spain enacted a law on sexual and reproductive health that eliminated a penal code provision punishing women for illegally procuring abortions and recognized their right to abortion without restrictions as to reason during certain gestational limits and thereafter on speciﬁc grounds.
* Active campaigning from the women’s rights, public health, and human rights ﬁelds has played a considerable role in prompting law reform.
* Nonetheless, in response to this trend, legal strategies to introduce barriers that impede access to legal abortion services are emerging in response to this trend. These barriers stigmatize and demean women and compromise their health. An increasingly global and coordinated movement—which pronatalist and religious concerns have fueled in direct response to the worldwide trend toward abortion law liberalization—has instigated such strategies.

Strategies to restrict abortion access:

* They are specifically focused on introducing procedural barriers, through law or policy, that limit the availability of abortion services.
* Such barriers include:
* mandatory waiting periods
* biased counseling requirements
* third-party consent and notiﬁcation requirements
* limitations on the range of abortion options (e.g., restrictions on medical abortion, including speciﬁc bans on misoprostol)
* limitations on abortion funding
* the unregulated practice of conscientious objection of health care providers and others: the right to refuse to perform services because of moral or religious objections is governed by national laws that vary in the scope of limits of conscientious objection and that invite differing interpretations; unregulated conscientious objection is, however, experiencing a resurgence in countries where opposition to recent liberalization is strong (e.g., Colombia) and where there are attempts to reverse the legalization of abortion (e.g., Poland).
* Procedural barriers can delay care and hinder access to safe services, which in turn demean women as competent decision-makers and increase health risks:
* mandatory waiting periods compromise women’s health by delaying care and women’s ability to access safe and legal abortion services – risks associated with abortion are small, unlike waiting periods, which cause greater numbers of women to delay the procedure until the second trimester of pregnancy, when the risk of complications rises geometrically;
* the coercive nature of biased counseling requirements providing medically inaccurate information could lead women to make decisions that jeopardize both their physical and mental health.
* These barriers are being introduced primarily in countries with liberal abortion laws, including the United States and Central and Eastern Europe countries.

Public health evidence and human rights guarantees provide a compelling rationale for challenging abortion bans and these restrictions:

* The World Health Organization has identiﬁed unsafe abortion as a serious public health problem since 1967. World Health Organization evidence shows that when faced with an unplanned pregnancy and irrespective of legal conditions, women all over the world are highly likely to have an induced abortion.
* Legal restrictions that limit the grounds on which a woman may terminate a pregnancy increase the percentage of unlawful and unsafe procedures.
* The maternal mortality ratio per 100000 live births owing to unsafe abortion is generally higher in countries with major restrictions and lower in countries where abortion is available without restrictions as to reason or under broad conditions. Thus, the public health impact of unsafe abortion is directly linked to its legal status.
* Where abortion is prohibited, public health and safety regulations for its provision cannot exist; thus the training and licensing of health providers is limited.
* In countries that permit abortion only on narrow legal grounds, information about legal services is often unavailable. Consequently, some women presume that they are not entitled to a legal abortion although this may not be the case. Health providers may also lack training in safe abortion procedures, have insufﬁcient information to be able to act within the law, or be reluctant to interpret legal grounds.
* Excessive restrictions also stigmatize women seeking abortions and discriminate against those who lack the knowledge and understanding of legal grounds for abortion and vulnerable groups, such as poor and rural women and girls.

On these and other grounds, the United Nations special rapporteur on the right to health has characterized the criminalization of abortion as incompatible with the right to the highest attainable standard of health.

Thus, evidence of the public health implications of excessive legal restrictions on abortion cannot be ignored.

However, those who seek to maintain or introduce restrictive legal regimes for abortion contest the public health evidence that supports the case for lifting excessive legal restrictions on abortion. Such efforts either deliberately avoid the facts or rely on debunked public health evidence to motivate ideology-driven agendas:

* In the United States, for example, several states have mandated counseling for women seeking abortion services and required them to receive information about purported negative mental health consequences of abortion or a link between abortion and increased risk of breast cancer in an attempt to coerce women to continue unwanted pregnancies.

These efforts overlook, or ignore authoritative studies that debunk the myth of a connection between having an abortion and increased mental health risks and disprove any link between abortion and an increased risk of breast cancer.

* The argument that forcing women to carry pregnancies to term will reverse trends of demographic decline also seems to support restrictions on women’s access to abortion in countries such as Russia.

But there is no evidence of a connection between restrictions on access to abortion and increased birth rates. Women who wish to terminate their pregnancies will seek this service whether it is legal or not. When abortion services are highly restricted, women are often forced to procure unsafe abortions, which may jeopardize their health and lives.

Nonetheless, not only does evidence clearly illustrate the negative public health impact of excessive abortion restrictions, but it also supports the case for abortion law liberalization:

* Evidence from Nepal, where revisions to the country’s legal code in 2002 granted women the right to terminate a pregnancy up to 12 weeks without restriction as to reason and later on speciﬁc grounds, suggests that liberalization has contributed to a decline in complications from unsafe abortion.
* Following the liberalization of Romania’s abortion law in 1989, maternal mortality dramatically decreased.
* In the United States, in the years following the Roe v. Wade decision, maternal mortality signiﬁcantly declined as a result of the decrease in unsafe abortions, clearly demonstrating the public health impact of Roe v. Wade’s implementation.
* The technical advancement of medical abortion, particularly through the use of misoprostol, has been a revolutionary development in reducing rates of abortion-related morbidity and mortality.

Despite a recent tendency to tighten the grip on abortion law, through the introduction of new limitations, international standards on the protection of women’s reproductive rights and their application to abortion have developed considerably.

## Is the African Union’s Position on Non-Indifference Making a Difference?: The Implementation of the Responsibility to Protect (R2P) in Africa in Theory and Practice

Has the African Union’s policy of non-indifference made a difference on the continent when it comes to issues concerning peace and security and the promotion and protection of human rights?

**Genocide, crimes against humanity, war crimes, and numerous other civil and political rights violations are associated with various conflicts on the African continent**

* Africans have suffered severely as a result of human rights violations all over the continent and they still do, despite improvements in the processes to prevent and deal with such problems.
* The 1990s alone saw 160 million Africans living in nations experiencing civil war – the predominant form of conflict during that period – with three million individuals killed in the violence.
* The suffering persists in places: while there were some positive developments in the years at the beginning of the twenty-first century, more recently there has been a decline in the human rights situation on the continent.
* at the beginning of the new century the number of violent conflicts, and the number of gross human rights violations dropped;
* more recently it has been found that many of the earlier human rights problems have returned as well as a number of new ones:

1. allegations of massive crimes against humanity in Eritrea
2. ongoing genocide and crimes against humanity in Sudan
3. numerous human rights violations occurring as a result of the conflict in South Sudan
4. xenophobic violence in South Africa
5. various types of conflict and abuse in Burundi, Central African Republic, the Democratic Republic of the Congo, Egypt, Mali and Libya
6. **insurgency groups**, including Al-Shabaab and **Boko Haram** have committed numerous violations in places such as **Nigeria, Kenya and Somalia**.

* In some situations the conflict has continued for decades.
* In some places states continue to be antidemocratic and wreak massive havoc on their societies.
* In the wake of 9/11 in the USA a number of states have used the threat of terrorism to become even more draconian and install greater surveillance measures and limit further press and individual freedom of expression.
* Even in nations that have been relatively peaceful, poverty and socioeconomic deprivation has rendered daily life threatening to the prospects of many.
* There has been an on-going deterioration of political freedoms, human rights and a decline of respect for democratic principles, with twice as many countries showing democratic decay, versus those that have improved their situations.

**What are humanitarian intervention (HI) and the responsibility to protect (R2P)?**

* Traditionally state sovereignty meant that the domestic affairs of a state remained the responsibility of that state alone. There has however been a reconceptualization of sovereignty by many that now means that sovereignty is no longer as sacrosanct as it was in the past, thus allowing the interference of external forces.
* R2P was created to try and reduce the enormous number of casualties of conflict and to see a decline in the huge number of human rights violations that are committed.
* The Responsibility to Protect (R2P) was developed to counter the challenges the world faced. It was widely expected to become the doctrine that would ensure that states would not be able to perpetrate such acts again.
* The last few years have shown that the political context within which the doctrine has to operate has severely limited its operation: a tremendous reluctance to accept R2P by some (particularly those states, whose human rights records have long been subject to criticism) poses a huge obstacle.
* R2P reflected the urgent need to deal with the atrocities, however in reality the arsenal to deal with them in a punitive way remains limited.
* Prior to the establishment of the International Criminal Tribunals for Rwanda and that for the former Yugoslavia in 1993: there were no international courts to prosecute those guilty of committing serious international crimes. Impunity reigned supreme in many parts of the world.
* The coming into existence of the ad hoc international tribunals in the 1990s, because of the commitment of the international community in the post-cold war era, to supposedly deal with such events, was the “first pioneering example of the enforcement of international criminal justice.” (Kamatali)
* Even though with the creation of ad hoc instruments, genocide, along with other crimes, were still seen by some as crimes that existed in theory, rather than practice, seeing as no institutions existed to prosecute such crimes outside the domestic context, which rarely happened, other than at some of the hybrid tribunals that were established in places such as Timor-Leste and Sierra Leone.
* This deficit was remedied when the International Criminal Court (ICC), which came into force in 2002, became operational as a human rights enforcer.
* Nowadays, however, the ICC’s role particularly in Africa, is under attack because: a) it only has African cases; and b) it is argued that the ICC is under the direction of the Security Council, which has members who will not subject themselves to the Court. Additionally, it is argued that the Security Council and the Court have not been willing to engage with the AU on matters concerning the indictments of African heads of state.
* R2P consists of:
* the responsibility to prevent - to tackle the causes of conflict and other human-created crises;
* the responsibility to react: to take appropriate action where there are compelling circumstances, including coercive steps such as sanctions or even military intervention as a last resort where there are reasonable prospects of success, taking due regard of the issue of proportionality;
* responsibility to rebuild.
* The connection of R2P to humanitarian intervention is very clear: reaction has to also mean humanitarian intervention when there are massive atrocities being committed. To exclude reaction, particularly humanitarian intervention, means that a major tool, and the real reason for R2P, is being excluded, with probable dire consequences for cases where large numbers of atrocities are occurring.
* For it to have meaning, R2P cannot be downgraded or limited, in an effort to have it be more widely accepted: it has to be about using all of its pillars, including prevention, rebuilding and reaction when the circumstances so require.

**The shift from the OUA to the AU**

* A change in regional integration on the continent has arguably heralded a shift in approach when it comes to dealing with conflicts and human rights situations across the continent.
* The Organisation of African Unity (OAU), which was dissolved in 2001, had little impact in tackling human rights violations on the continent.
* The OAU was particularly blamed for having a very limited role. Part of the reason for the inaction, and the reason for policy of indifference or non-interference by the OAU was blamed on the organisation comprising heads of states, who were themselves responsible for many human rights abuses.
* The dissolution of the OAU and move towards the African Union (AU) saw several changes in orientation on issues concerning indifference and intervention: this shift was born of a belief that the UN Security Council and broader international community did not sufficiently attend to African needs, and part of the growing push towards African solutions for African problems.
* While the AU was meant to move away from the OAU’s protection of African heads of government, this continues to be the de facto situation in places, with leaders in Sudan, Zimbabwe, Ethiopia, Rwanda, and elsewhere, still being courted despite atrocious human rights records.

**The response of the African Union to human rights violations**

* The AU has been, at least at the level of principle, been determined to move away from the principle of non-interference to more readily tackle human rights abuses.
* Its creation reflects a normative shift in respect of the regional organisation’s position on human rights violations in Africa: it is the only regional organisation to have overtly recognised the right to intervene in a member nation on humanitarian or human rights grounds.
* The African Union approach to HI and R2P - the Constitutive Act of the AU:
* *mandates*, in **article 4(o)**, respect for the sanctity of human life, and *stands against* impunity, political assassination, and acts of terrorism and subversive activities;
* *provides,* in **article 4(m),** that members should respect democratic principles, human rights, the rule of law, good governance;
* *establishes*, in **article 4(l),** a commitment to gender equality;
* *provides*, in article 4(n),that it must promote social justice to ensure balanced economic development;
* *condemns*, in **article 4(p)**, unconstitutional changes of governments flowing from the Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government in 2000*;*
* *attempts,* in **article 4(d)**, to promote peace and security by *calling* for a common defence policy in Africa and the peaceful resolution of African conflicts through means decided upon by the assembly;
* *permits*, in **article 4(j)**, request of intervention for the purpose of the restoration of peace and security;
* *may authorize* action in or against a member state, in terms of **article 4(h)** when it believes that “grave circumstances” such as war crimes, genocide and crimes against humanity exist.

The AU has thus incorporated the responsibility to protect into its Constitutive Act, by allowing AU member states to intervene in the sovereign affairs of other member states under particular conditions.

* In theory at least, African countries have shown a preparedness to collectively respond to grave circumstances.
* The AU has further demonstrated a commitment to protection through the creation of various institutional mechanisms:
* the Continental Early Warning System (CEWS),
* the African Standby Force,
* the Panel of the Wise,
* and the Peace and Security Council (PSC).

The creation of these institutions demonstrates one form of action taken toward realising the responsibility to protect given that the creation of strong institutions for its enforcement is central.

* These institutions are the grounding authority for intervention and protection, together with Africa’s Standby Force (ASF) and the adoption of the AU Policy on Post-Conflict Reconstruction and Development.
* The ASF has the capacity to enhance the AU’s R2P capability.
* However, funding is a critical problem.
* Plus, the political will to deploy the ASF where it is needed remains to be seen.

**The AU and R2P in Practice**

* Today, the African Union has many tools to prevent violence or human rights atrocities on the continent. However translating that into practical results has not always occurred.
* While the AU has improved its capacity to protect and prevent serious human rights violations it does always carry out those functions, and where it does, it does not always do so very effectively.
* It often relies on dialogue and diplomacy over much harder and costlier processes.
* It is often reluctant to put forces on the ground and when it does it often puts advisors and monitors rather that troops with very wide mandates to take action to protect civilians. The reason for this is at times a lack of resources, but it is also often a question of political will. It is also at times a reluctance to truly see that state sovereignty gives way to human protection.
* The R2P principle has not always been consistently applied. It has been applied in some situations, but on many occasions it has not been used:
* In May 2003, South Africa, Ethiopia and Mozambique sent troops to Burundi without UN Security Council resolution.
* In 2004, however, the Security Council commended the AU’s role, but did not ratify the intervention: the SC’s acclaim = implied endorsement.
* There have been a few of these types of interventions; where troops are put on the ground without the authorisation of the state concerned. But these types of interventions have generally been few and far between.
* A different type of intervention occurred when Mauritania’s membership in the AU was suspended in 2005 after President Maaouiya Ould was deposed in a coup.
* The AU also suspended Guinea as well as Madagascar and Niger after a coup.
* It took similar action in 2013 when Egyptian President Morsi was removed from office.
* While the AU was not always unswerving in its resolve in its early years in dealing with such cases, it has become more consistent in dealing with such cases.
* The AU’s peacekeeping roles have not always been successful and have not always achieved positive results even if the missions continue for long periods of time. The failings that have occurred in certain regional missions for peace and stability have led to questions about the AU’s capacity and commitment to meet the human rights protection objectives it has set for itself.

**Challenges facing the battle against human rights violations in Africa**

* In Africa there are many regional and sub-regional institutions that can play a role in mitigating the human rights issues on the continent. Some of these human rights mechanisms are under attack and one of them, the SADC tribunal, has lost its human rights complaint process as a result of its robustness.
* Could the AU’s partnership with the UN and others to deal with a variety of issues on the continent be a sign that it lacks the capacity to do so on its own?
* Resources remain an issue, but it is necessary to ask whether it is a shortage of resources or whether it is a lack of prioritising resources to such areas that is the problem?
* While the AU has the tools to implement R2P it often fails to deploy what is needed to deal with the issues that arise across the length and breadth of the continent. It does not always deal with R2P in its full meaning i.e. the responsibility to prevent, react and rebuild. It does make statements, it mediates, it acts against coups, it monitors, as well as a range of other activities, but it does not always take sufficient decisive action to prevent atrocities, or to deal with them after they have occurred.
* A much greater role for the AU in promoting accountability could play a deterrent role to prevent human rights abuses on the scale that occurs today.
* The process to give the African Court of Justice and Human Rights criminal jurisdiction, while seemingly a step in the right direction, is fraught with problems: the intention that it replaces the ICC as the criminal court for the African region, will most likely reduce the deterrent effect of international criminal justice. This is the case, for a range of reasons, including the fact that this Court will not be able to prosecute African heads of state. If many African states unsign the Rome Statute, and leave the ICC, African victims will lose an important institution
* No doubt reform is needed, particularly of the Security Council and the veto system. However, it is unjust to allow victims to suffer, and allow perpetrators to escape liability because of it. The fact that some countries do not want to join the ICC, and the drafters of the Rome Statute gave powers to the Security Council, which are now seen to be unfair, and that powerful states have not joined the Court thus permitting them to escape scrutiny, while being able, at times, to pull the strings of the Court, should not be reasons to gut the Court.
* African countries and the AU should rather be moving to reform the ICC and the international governance system, rather than allowing African perpetrators to escape their day in court. Undermining the ICC, and moving to destroy it, challenges the AU’s commitment to indifference and its stated intent of dealing with Africa’s conflict and human rights challenges.

## The Role of the International Criminal Court in Reducing Massive Human Rights Violations Such as Enforced Disappearances in Africa

In spite of the improvement of the human rights situation on the African continent, many States remain institutionally weak and severely challenged in their ability to promote security and prosperity for their peoples.

According to an Amnesty International 2008 report, human rights violations continue to be a persistent problem in Africa:

* economic and social rights are illusory for millions of people;
* internal violent conﬂicts accompanied by gross human rights abuses including unlawful killings, torture, and rape are on-going in several countries;
* some states do not tolerate dissent and many of them restrict freedom of expression or are reluctant to cooperate with international human rights institutions.

In face of this persistently bleak human rights scenario, the ICC has a vital role to play in Africa, especially concerning enforced disappearances.

Its role on the continent is, however, controversial:

* the court is currently only adjudicating cases from Africa – for example, it is currently addressing a number of ‘situations’ or cases in Uganda, the Democratic Republic of the Congo (DRC), the Central African Republic (CAR), Kenya, and Sudan: for some, the fact that only African states have been targeted in itself is indicative of bias.
* the African Union has vocally opposed the Court many times before, by taking a number of decisions on the role of the ICC - the Al-Bashir case comes to mind, seeing as in 2010, the African Union called on the Security Council to suspend the indictment against the President of Sudan for twelve months (even though the ICC has jurisdiction in the case of Sudan, despite it not being a party to the Rome Statute, in light of a UNSC referral).

**The ICC ought to integrate restorative justice and transitional justice approaches to the work it does**

* The ICC can play a part in restorative or transitional justice. The Rome Statute foresees that there are times that a case ought not to be brought to the Court even if all of the requirements are met.
* Article 53(1)(c): there are clearly factors that determine if a case can be successfully brought to the Court outside of simply considering whether a crime has occurred. This certainly shows that the prosecutor – and, by extension, the ICC – has room to take into account matters beyond prosecutorial issues.
* Some argue that the ICC’s role in fighting human rights violations goes beyond prosecutions: it ought to expand its role into restorative and transitional justice paradigms. In doing so, the ICC would fulﬁl its educative and informative, as well as prosecutorial, functions.
* What methods can be developed in an effort to materialize the ICC’s commitment to restorative or transitional justice?
* partnerships with law schools, associations of lawyers, national human rights institutions, and other relevant organisations to develop human rights teaching and learning;
* partnerships with other institutions at the international, regional, and sub-regional levels;
* harmonisation of the role of international and regional laws and institutions, by ensuring, for example, a greater respect for the African Charter and the institutions of the African Union, such as the African Commission and the African Court on Human and People’s Rights, which would also emphasising the critical role that African institutions do play and could play;
* developing the notion that there can be other processes operating alongside prosecutorial justice, including truth, reconciliation, reparations, non-repetitions, etc;
* promoting knowledge about other international, regional, sub-regional, and even domestic mechanisms that could be applied to provide relief for victims. The ICC could put greater pressure on the domestic system to spread awareness of these UN mechanisms, such as Special Procedures, for example;
* promoting programmes that develop understandings, sensitivities, and interest in such matters as the new norm: the responsibility to protect;
* working with a range of partners around the world to develop training and skills for legal and other professionals. More specifically, working with and assisting domestic judicial structures and local bar associations to provide skills trainings;
* holding seminars and running programmes to assist those working domestically to be better equipped to deal with matters such as, for example, legislative drafting (as in, drafting legislation that defines and criminalises an enforced disappearance as a separate and autonomous criminal offence);
* support skills training in the areas of international human rights and humanitarian law.

In what ways is this added dimension to the ICC’s role useful in combating HR violations?

* for one, it’s mainly applicable to crimes that fall within the ICC’s mandate but are frequently not prosecuted, such as enforced disappearances;
* it is important in ensuring that the number of crimes is reduced over time: if the changes are implemented in a uniﬁed and strategic manner, the reduction of crime could be dramatic;
* at the same time, such changes could reduce impunity for these crimes, which has been a major problem in the past;
* in addition, it would amp up another part of the ICC’s role, which is the prevention of crimes (just like it’s stated in its preamble, the ICC was established “to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes”).

The Preamble to the Rome Statute further notes that the ICC was established ‘for the sake of present and future generations’, implying that the role of the Court is to affect future conduct: if the ICC were to embrace these goals as direct objectives, it could beneﬁt from a much larger impact.

By helping to develop an understanding of the need for restorative or transitional justice, the Court can play a role in promoting peace and stability in the longer term.

However, the ICC should arguably not involve itself directly in the design or implementation of these processes: for example, the ICC could assist in processes to achieve justice, truth, reparations, and reconciliation, which should be developed and applied together. If they are successfully combined into an overall strategy they will be able to ensure that impunity is avoided, victims will have their dignity restored, and non-repetition of the violations that occurred might be assured.

Moreover, the ICC can contribute, for example, to the process of truth discovery by sharing and making information accessible to domestic actors. This would be particularly feasible when the Court has decided not to prosecute cases in that country or the information it has collected is not needed in the cases it is initiating. It should also make previously unavailable information accessible once the cases are concluded. Providing full access to information will be a major boon for the process of uncovering the truth of what occurred within a state.

**The role the Court can play in reducing Human Rights violations**

* The ICC can set standards for how to deal with human rights violations.
* It must be remembered that a case is only admissible to the ICC when ‘the State is unwilling or unable genuinely to carry out the investigation or prosecution’ itself – thus, complementarity is a key feature of the ICC regime, which is different from the ad hoc tribunals that had primary jurisdiction;
* Some criticise the Court, because they believe that it is states that ought to have free discretion to decide whether, who, and when to prosecute. For others, the ICC is anti-African and has a clear bias in the cases it undertakes/it seems to be gunning for African countries only: more needs to be done, however, to paint the picture that most of the places where the ICC has issued indictments are highly polarised, divided, and conﬂict-ridden societies. Out of the forty-eight genocides and ‘politicides’ that occurred worldwide between 1945 and 1995, twenty took place in Africa. This not to say ethnic conﬂict is only an African phenomenon – it threatens the stability of many continents. But by far, the majority of crimes under the Court’s jurisdiction have occurred where the Court has issued indictments.
* Yet, the Court needs to be visible in many more places. It needs to show that it has been analysing situations in other parts of the world including Asia, Latin America, and northern Europe to determine whether it has jurisdiction to open cases in those places. Obviously, opening an investigation in a non-African country would certainly help to reduce these charges and perceptions of bias, but not entirely, as they are so deeply entrenched. Although it is going to be difﬁcult to overcome these perceptions in the short term, it is the Court’s actions over the long term that will determine the extent to which these perceptions remain widely held or not.

**The extent of the role that the ICC plays, or indeed could play, is only partly dependent on what the Court does. It is also crucially determined by what others do.**

* The role of the state is paramount: the ICC can only play a supporting role but for the ICC to be effective on the ground, state cooperation is crucial.
* It is at the state level that the majority of cases can and should be prosecuted.
* Given the Court’s complementary jurisdiction, at the domestic level the state concerned would have to decide on the sequencing of the various restorative justice or transitional justice processes it intends to implement, i.e. whether to have trials or a truth commission ﬁrst.
* As far as disappearances are concerned, the role of states in investigating cases of enforced disappearances is essential in determining the fate or whereabouts of disappeared persons: governments around the world need to take all possible measures to address cases of enforced disappearances regardless of when the disappearance occurred, who the victims were, or who the perpetrators are. States should therefore bring all those responsible for these crimes to justice by refraining from any act of intimidation or reprisals against those persons who contribute to the eradication of this crime and by ﬁghting impunity wherever it exists.

**But while state cooperation with the ICC is important, so is the problem (at least in perception) of state co-option of the ICC**

* Some believe that the ICC has, at times, done the bidding of certain states, and that some governments have used the ICC to wage their political battles: in this regard the ICC should be careful in the way it acts/ when and where it appears with states, so as to ensure that these perceptions are not perpetuated.
* To ensure the ICC independence, separation from states is just as important as cooperation with said states.

**The ICC must also get cooperation from other institutions besides states**

* The ICC needs the support of institutions such as the African Union in order to allow the Court to function optimally: this will be difﬁcult to achieve without steps to show that cases in other parts of the world are being vigorously investigated.
* In order to play a strong educative role in the promotion and protection of human rights, the ICC ought to collaborate with other institutions at the international, regional, sub-regional, and domestic levels.

**Other tools ought to be used in conjunction with trials**

* Methods to achieve truth, reconciliation, and reparations must be developed where gross human rights abuses have occurred.
* When amnesty is used it should not be as a means to give every perpetrator amnesty without criteria and without getting anything in return. At the least there must be a public, open, and transparent process in which perpetrators apply for amnesty and tell the truth about what they did in exchange for amnesty. In this way at least truth is learnt and not sacriﬁced.

**Justice is an important component, but there are different types of justice, including restorative or transitional justice**

* But retributive justice also has to occur, otherwise the only victor is impunity.
* The Court can set the standard for retributive justice: but it can also have a critical role beyond simply prosecuting the few it can.
* The ICC can also foster an understanding of human rights and humanitarian law: its outreach programmes could be a major preventative tool and could help to ensure that there is a greater awareness of what international law expects in the domestic setting.
* The Court could also assist in fostering human rights cultures in the countries where it operates.
* The ICC programme would also be likely to have more of an effect and be seen as a more legitimate institution if it operated in partnership with other institutions at the international, regional, sub-regional, and domestic levels. It should also develop partnerships with civil society actors.

**Justice must be applicable to all those who have committed offences, otherwise the potential for sustainable peace will be at risk**

* Justice cannot be left to international institutions alone. Trials, especially of senior ofﬁcials, also have to occur at the national level.
* More pressure and more methods of persuasion ought to be used to make states hold those responsible for such acts to account.
* But at the same time, human rights institutions ought to be promoted at the local level: institutions and systems that develop and sustain human rights cultures ought to be created and supported (development aid + other assistance) – for example, in the specific case of Africa, a regional netork of NGOS, along with NGOs that spend more time devoted to the cause of enforced disappearances in Africa (especially researching their occurrence), could have a dramatic effect on reducing the number of enforced disappearances that occur there. But for such a network to come to fruition, funding has to be provided and other constraints that stifle its establishment must be lifted.

The number of atrocities around the world can be reduced by the sustained effort of a number of role players. The ICC is well placed to be part of an initiative to make a dramatic impact on the human rights situation around the world. It will, however, need additional resources to achieve these goals. The occurrence of gross human rights violations can be reduced if there is more knowledge about their extent and their impact, as well as what steps can be taken when they occur, how human rights violations cases can be reported, and what steps can be taken to get redress.

## Pathways to Security Council Reform

**UN Member State Groupings within the Security Council Reform Debate**

* Arab Group: represents the Arab League at the UN when it comes to security council reform;
* Group of Four (G4): consists of Brazil, Germany, India, and Japan. The G4 model consists of expansion in both categories of membership and reform of the working methods;
* L69: consists of 42 developing countries from Africa, Latin America and the Caribbean, Asia and the Pacific, who are united by a common cause – to achieve, lasting and comprehensive reform of the UN Security Council. Its stance on reform is that veto rights should be extended to new permanent seats + there should be a non-permanent seat for small island developing states across all regions;
* Organisation on Islamic Cooperation (OIC): they do not speak in the IGN as a group, but hold a position in the negotiation text in regards to “adequate representation” of Islamic Ummah on the Council. Its focus is mainly on ensuring that regional groups have a greater role in determining their representation on the Council;
* Uniting for Consensus (UfC): it is said to contain 12 key countries: Argentina, Canada, Colombia, Costa Rica, Italy, Malta, Mexico, Pakistan, Republic of Korea, San Marino, Spain, and Turkey. China and Indonesia participate in expert level meetings of UfC. It supports new non-permanent seats and/or longer-term and renewable seats, redistributed by region. It is the only group with a proposal that does not include expansion in the permanent category of membership;
* The P5: The five permanent members of the Security Council are divided on the issue of Security Council reform: thus, they are informally referred to as P3 (China, Russia and the US) and the P2 (France and the UK). France and the UK have more progressive positions on UNSC reform than other P5 members: France and the UK hold a shared position, seeing as they support expansion in both categories of membership as well as supporting intermediate models with longer term seats and a review to convert those seats into permanent ones;
* Accountability, Coherence and Transparency (ACT): this group does not speak in IGN meetings as a group and wishes to remain outside of the process of comprehensive Security Council reform. However, ACT has become the key group on working methods reform since it emerged. It consists of 22 small and mid-sized countries, and is currently coordinated by Switzerland: Austria, Chile, Costa Rica, Estonia, Finland, Gabon, Hungary, Ireland, Jordan, Liechtenstein, Maldives, New Zealand, Norway, Papua New Guinea, Peru, Portugal, Saudi Arabia, Slovenia, Sweden, Switzerland, Tanzania (observer), and Uruguay;
* African Group: represented by Sierra Leone on behalf of C-10. It’s united by its common position, the “Ezulwini Consensus” and Sirte Declaration. Ezulwini proposes at least two new permanent seats for Africa with all prerogatives and privileges enjoyed by other permanent members, and five non-permanent seats on the Security Council, with candidates to be decided by the African Union and elected by the General Assembly. The African group is known to have internal divisions that have kept the group from moving beyond or building upon the Ezulwini consensus. While their regional collaboration has given them the power of a strong collective voice, individual countries within the group and the group itself are weighed down by the obligation to remain united among its 54 member countries. Any changes in position would have to be agreed upon by all, and tensions arise when certain countries appear too close with other groupings or are viewed as straying from the consensus positions;
* BENL: Belgium and the Netherlands generally speak as a group in IGN meetings, are active in reform discussions, and are informally referred to as BENL. Their position holds preference for G4’s model of expansion in both categories of membership;
* CARICOM: has become more active in recent years on the issue of Security Council reform. In addition to emphasizing seats for SIDS, CARICOM continues to urge the membership to take into account under represented regions such as Africa, Asia, Latin America, and the Caribbean. CARICOM (and L69) appear to be seeking convergences with the African position by calling for seats for Africa and the extension of veto power to new permanent members.
* Eastern European Group: group of states eligible for non-permanent membership of the Security Council. Holds a position that existing regional groups should be maintained and it requests at least one additional non-permanent seat for the Eastern European group if non-permanent membership is expanded;
* The Gulf Cooperation Council (GCC): spoke on UNSC reform for the first time as a group after Saudi Arabia rejected its Security Council seat;
* Pacific Small Island Developing States (Pacific SIDS): includes 12 countries represented by Papua New Guinea. Pacific SIDS call for allocation “within the existing group structures” for SIDS;
* European Union (EU): does not have a unified position on UNSC reform. EU member state positions on Security Council reform vary greatly, but attempts to behave in a more unified manner at the UN and Security Council could influence more cooperation within the group, which could affect reform progress.

Without any reform, the Security Council may lose legitimacy, other multilateral institutions may gain relevance, and decentralization of international peace and security could result.

How to strengthen the Security Council and maintain its relevance

Better coordination and unity within regional organizations can help improve the work of Council members from those regions.

Expansion of the council, whether in the permanent or a new category of membership, will allow member states elected for those seats to shift focus from time-consuming, expensive election campaigns at the UN, and better focus on and contribute to the work of the Council.

**Increasing international pressure for Security Council reform**

* In 2015, the Council’s abysmal performance in the Syrian crisis – which carried on over to 2016 – was particularly important in fuelling the mounting pressure for reform. But in what ways has the Syrian conflict put an added pressure on reform? The conflict in Syria and discord in the Security Council on the situation resulted in a chain of events:
* In 2011-2012, vetoes from Russia and China blocked UNSC action in Syria three times;
* In September 2013, the use of chemical weapons in Syria raised concerns as to whether the Security Council would be able to agree on a response;
* In October 2013, after the Council had reached an agreement on Syria, French Foreign Minister Laurent Fabius published a New York Times Op-Ed, which expressed frustration over the Council’s two-year paralysis over Syria and put forward a proposal for limiting use of the veto (“the French proposal” to limit use of the veto);
* Weeks later, Saudi Arabia rejected a non-permanent seat on the Council. Saudi Arabia described its decision as a response to the UN’s failure to address conflicts in the Middle East, specifically Syria and Palestine and used this decision as an excuse to call for reform (Saudi Arabia’s rejection of a non-permanent seat)
* In March 2014, Russia wielded its veto to block a Security Council response to its own actions in Ukraine, thus amplifying criticisms of the Council’s veto practices.

Current events have fueled member states’ mounting frustration over the lack of progress on Security Council reform since a working group was set up to address the issue over two decades.

* Most member states, at least in their public positions, express an interest in reforming the Security Council. Even member states with the most conservative approaches articulate two sentiments in common: first, frustration that the process is not moving more quickly (if it is perceived to be moving at all), and second: skepticism that any real change will come at least in the short term. That pessimism in fact exacerbates the inertia of the reform process, contributing to a vicious cycle in which frustration is unable to be transformed into a motivator for action. Without the necessary political will from member states, reform remains out of reach.
* Yet major obstacles to reform remain: three of the five permanent members of the Council (China, Russia and the US) are opposed or at least skeptical towards any significant changes to the institution in the near future; there is still a lack of common vision for change amongst the various coalitions and regional groups involved in the debate in New York; a concerted push for reform by the “G4” aspirants for new permanent Council seats (Brazil, Germany, India and Japan) in 2011 did not result in a vote as it failed to elicit the required support of two-thirds majority in the General Assembly; non-African member state groupings have not successfully managed to coordinate with Africa enough to gain full support of the African group on any joint model of or approach to reform, although some convergence has occurred in recent years - Africa is the heavyweight in Security Council reform discussions (its countries that are represented make up 42% of the 129 votes needed to pass a General Assembly resolution) and a lack of African unity (or of a firm Common African Position) on the issue of reform poses yet another obstacle that delays progress.
* In its analysis, the New York University’s Center on International Cooperation (CIC) argues that advocates for reform can break through some of the current deadlocks if they are willing to (i) **invest in public diplomacy over the importance of a revitalized Security Council**; (ii) **tie their calls for reform to addressing key concerns** such as the use of Council vetoes in mass atrocity situations; and (iii) **pay greater attention to the dynamics of discussions on Council reform beyond New York**, giving particular attention to **regional diplomatic dynamics** in Africa, Europe, and other areas.

## Freedom in the World

In 2015 the world was hit by a crisis which fueled xenophobic sentiment in a global dimension, even democratic states. It contributed to a decline in global freedom.

The Syrian civil war has been the main struggle which threatens an open society for many reasons: the misery and exponential growth of the death has led to millions of refugees nowadays to Europe. This inspired terrorist groups to sneak in as well, which forces new security measures.

Syria represents the biggest challenge in order to achieve peace and stability, in years. However, the democratic countries haven’t been a huge influence because they have fundamental democratic principles being threatened in their own countries.

It emerged a debate among the members states of the European Union. Initially, some member states had a welcoming attitude while others refused to accept refugees. Such hostility grew specially after the most recent terrorist attacks by the Islamic state.

Freedom in the world has recorded a decline in each of the past ten years, in which some cases I feel obligated to pronounce:

* China’s economic growth due to the cost of human rights and political repression;
* The rise of Hugo Chávez in Venezuela and of other antidemocratic populist leaders in Latin America
* Corruption in aspiring democracies such as Nigeria and Brazil.
* New censorship mechanisms were created by China, Russia and the Islamic state in order to suppress dissent in settings including Thailand, Ethiopia and turkey.

In many countries, the economic setbacks are brought on by corruption or foreign blunders. Russia dealt with low oil prices at the time she was already weakened by the international sanctions over its invasion of Ukraine.

Venezuela experienced an economic freefall due to slumping oil revenues, years of corruption and bad management. With the elections closer than ever, Maduro, brought even more repression and rising of criminal violence. Venezuela also showed the potential of election to correct a country’s course. The public frustration saw an opportunity to give the Nicola’s government an opposition throw a coalition of two/thirds in the National Assembly.

**Renewal through elections:**

The most democratic institution is, the ballot box. It proved that change was entirely possible. In Nigeria, Africa’s most populous country and largest economy, citizens were tired of corruption and insecurity, so rejected the president and elected Muhammadu. Muhammadu has begun to fulfill pledges to address the country’s massive corruption problem and made a campaign against the terrorist group Boko Haram.

Obviously, there’s no way to guarantee that electoral victories in societies with fragile institutions will lead to stability and peace, but people retained faith in the democratic process even after so many difficulties. Civil war and authoritarian rule in Sri Lanka, economic collapse and political repression in Venezuela, economic setback and unaccountable government in Argentina. These voters were available to listen to candidates express about the rule of law, freedom of speech and the right to be free of corruption.

**Regime Security over public safety:**

Many conflicts began because permanent dictators have put their own interests and security above the well-being of their people.

Saudi Arabia increased the number of executions to its highest level in 20 years. Tried to cover up its failure to safeguard participants in the annual Hajj pilgrimage after a man killed more than 2400 people. Showed an indifference toward protecting innocent lives, by sacrificing people safety for regime security, these governments alienate their citizens, wasted public resources, weaken the institutions that are necessary for sustainable political and economic developments.

**Struggling with term limits and terrorism**

Democratic setbacks and violence triggered by African leaders’ manipulation of term limits were offset by successful elections and peaceful transfers of power. However, nations across the Saheliam belt from Mali to Kenya continued to suffer with threats from Islamism terrorists.

A deadly terrorist attack on a luxury hotel in Bamako triggered a state of emergency in Mali, and the government uses this incident to restrict citizen’s basic freedoms. However, in other regions the fight continued against Boko Haram. Another attack by Somalia’s Shabbab militant group which killed nearly 150 people at a University in northeastern Kenya, the government included in its terrorism campaign: extrajudicial killings and disappearances, censorship on nongovernmental organizations and critical media.

Ethiopia used the war on terrorism to justify killings on protests against forced displacements in the Oromia regions, as well as repressions of political opponents, journalists and activists.

In 195 countries assessed, only 86 are free and 59 are partly free.

**Religious nationalism linked to political tensions:**

Specifically in Asian Countries, there was a connection in between strained political institutions and religious nationalism or extremism.

In India, the government failed to control a rise in anti-Muslim violence appearing to encourage religious divisions for political gains.

In Bangladesh, as the major political parties continued their arguments, the Islamism militants attacked on foreigners and Shiites.

In Malaysia, as the ruling party was concerned about a major corruption scandal, at the same time, authorities enforced the conservative dress codes and persecute LGBT people.

**Migrant Crisis**

The migration crisis in Europe put pressure on EU’s fundamental principles of liberty, solidarity and respect for human rights. The massive amount of people that came into Europe exposed areas of weakness among institutional capacity but also it questions the ability of EU’s to maintain high democratic standards in a time of rising populism.

The European Union’s attempts to distribute responsibility of refugees across the union met some resistance, particularly from Central and Eastern Europe. These countries’ not so solidary behavior (despite their own histories of repression and mass dislocation) represented a huge blow to the European project.

**Little progress in Cuba**

*1-The incumbent leaders in the region made clear their intention to remain in power.* Nicolas Maduro overwhelming defeat in Venezuela’s parliamentary elections didn’t stop him from packing the supreme court and threat to refuse to carry out decisions of the new legislative majority. In Ecuador, the president moved forward with a proposal to eliminate term limits and seek a fourth term in 2017. Nicaragua abolished term limits in 2014, similar plans were inder Bolivia.

2-Regional heads of state were contaminated by corruption scandals and an inability to stop violent crime. In Brazil, a crash in commodities prices, put the president faced with impeachment efforts because of the national oil company scandal. Chile’s President was seriously weakened by a corruption case that implicated her son.

Little progress was made toward democratic reform in Cuba, despite the resumption of diplomatic relations with the US. There was an expansion of rights for religious believers and private business owners, more Cubans being able to travel abroad. Meanwhile, the political system remained closed except to communist parties, and the freedom of speech was also restricted

**False stability (Euroasia)**

While elections made possible to recover from ill-governed countries, several Eurasian states served as exhibitions of the unfettered power of longtime incumbents. Slumping economies and security threats linked to foreign conflicts influenced these states to fortify themselves against any remaining opposition. In Azerbaijan, the legislative election was followed by intense suppression of civil rights, which results in a hollow victory with most opposition groups boycotting the vote. The President took many decisions completely against democracy: barring foreign journalists and imposing restrictions on international relations which led some to suspend their missions.

## Human Rights Watch: World Report

Fear stood behind of big human rights developments. Fear of being killed in Syria drove millions from their homes, this influx of people led many governments to close the gates. Shameless demonizing of refugees has become an increasingly assertive politics of intolerance. These trends threatened human rights because there’s a rollback of rights by governments in the face of refugee flow and at the same time, a particularly growing number of authoritarian governments are restricting civil society, particularly the civic groups who speak about those governments conduct. The western governments threatening to curtail rights include many of the strongest traditional allies of the human rights cause.

The uncontrolled and chaotic refugee flow had sparked a deep concern in Europe, fearing that attackers from ISIS may have entered Europe with the refugees. EU’s reaction was clearly enforced with border restrictions and by promising 3 billion to Turkey if it curtails the flow.   
Despite having ratified the conventions to protect refugee rights and despite Europeans having historically benefited from refugee protection as they fled Nazism and Communism, the EU always tries to push responsibilities to others.

Refugees are seen as a possible terrorist threat, which distracts from the real problem. Radicalization is complex but it’s related to the social exclusion of immigrant communities, such as discrimination. It only takes a few people, to foster political violence. Instead of attending a calm attitude, public discourse is filled with hatred and fear of Muslims. This speech is absolutely wrong because Muslims are part of every community and should not face discrimination. Hating an entire community for the wrong actions of a few doesn’t prevent terrorism, it’s preciously these alienating responses which ignites more recruits to ISIS.

Tarring all Muslims risks discouraging them to dissuade others from such violence or to report those who might be planning to use it. Discarding Rights of a certain religious profile harms those people while distancing them from counterterrorism efforts. The smart counterterrorism policy is the rights-respecting one.

**Protecting immigrants**

European policy has been to leave refugees with little choice but to risk their lives at sea for a chance at asylum. With boats arriving at various Greek islands is difficult to stop a would-be terrorist from slipping in. The best alternative would be to increase refugee resettlement visas from places of first refuge such as Lebanon or Pakistan.

The United Nations refugee agency could increase its capacity to screen refugees and refer them to resettlement countries. In the other hand, refugees would not urge to enter the gates knowing that it wouldn’t close. Greater capacity to process refugees in countries of first asylum would facilitate resettlement in the countries beyond Europe that should be doing more, such as Russia and Gulf states.

A more orderly process with all the EU countries living up to their pledges to accept asylum seekers would permit more effective screening while providing a safer route as an incentive for asylum seekers to participate.

Europe is not alone in adopting a counterproductive approach to refugees, especially those from Syria. In the US, some officials and politicians have been denouncing Syrian refugees as a security threat even though they have gone through an intensive two-year screening process, involving numerous interviews. Of all people entering the US, refugees are the most heavily vetted. Governors in the US tried to bar Syrian refugees, blocking Muslims non-citizens from entering the country. Canada offered a different initial response, personally greeting the first planeload of refugees at the airport.

**Mass Surveillance vs smart responses to terrorism**

The US and Europe have used the terrorist threat as an opportunity to seek greater law enforcements powers, including mass surveillance.

Two independent oversight bodies with access to classified information concluded that such metadata had not been essential to foiling a single terrorist plot, despite the enormous invasion of privacy involved in scooping up these often-intimate details of modern life.

Some European officials appear to be tempted to increase mass surveillance. France adopted a new intelligence law that bolstered mass surveillance powers. François Hollande promised to add 8.500 more law enforcement officers to pursue leads instead of simply accumulating more mass data without the means to follow up.

**Civil society empowered by social media**

A vigorous civil society helps to ensure that governments serve their people because their voices influence governments and it helps to guarantee countless steps to pursue their vision of the common good. When leaders are interested in advancing themselves, obviously they lose interest in an empowered public which is able to rectify government malfeasance or incompetence. Authoritarian rulers have learned to manipulate elections to ensure their political longevity, so they are now working between elections to prevent an empowered public from impending their authoritarian aims.

Nowadays, the rise of social media means that people can bypass traditional media and speak to large numbers without a journalist intermediary which has enhanced civil society’s ability to be heard and to demand change. However, the governments try to reinforce their official propaganda through social media, still, the public is able to broadcast its concerns challenging the government. Corruption or indifference are at risk when a more connected and organized society is in function.

**Autocrats’ Reaction**

Autocrats are fighting back, refining their techniques. The most common tool are efforts to deprive civic groups of their right to seek funding abroad when domestic sources are unavailable, smothering civil society with vague regulations.

**Reasons for covering up**

Efforts to suppress civil society are often led by governments that have something to hide. There are failures of governance that officials would prefer not to be discussed, a misconduct. Restricting civil society is about avoiding accountability, so by that, the topic that governments choose to suppress is a good indicator of their fears.

China and Russia made a pact in which they promised rapid economic growth and enhanced personal opportunity for strict limits on political participation. However, the lack of public scrutiny has led to poor economic policies.

To repress civil society, officials attempt to evade the threat of prosecution or other consequences of illegal activities, others have acted when election or term limits threaten their continuation in power. Devices surge to restrict civil society by violence, arbitrary arrests, restrict the right to seek foreign funding and imposing oppressive regulations.

**The rationalization of restrictions**

The nationalist rhetoric emerges to justify the restricting access to foreign donors: how is it that foreigners are legitimated to interfere in internal affairs of other states. Yet the same governments promote foreign investments and trade deals.

Some governments justify restricting on foreign contributions to civic groups as necessary to fight terrorism. But since terrorist groups can as easily set up businesses as voluntary organizations to finance their crimes, the differential treatment reveals other concerns.

Efforts to restrict civil society’s access to foreign donors is not about transparency but it is about avoiding organized oversight of governance. An effort to block their citizens’ rights to freedom of expression and association.

**The regulation not so ordinary**

These rules have the advantage of seeming ordinary, apolitical, yet autocrats seek to undermine the very independence of civic groups. These efforts to restrict civic groups to government views of the public good is a misconception of the role of civil society. People should pursue their own conception of public good, subject only to limitations preventing harming others. A government will meet the need of its people if they are free to debate what those are and how best to pursue them.

That not only violates the rights of those who want to join with others to make their voices heard and the government is more likely to serve the private interests of its leaders and their most powerful allies.

**Homophobia**

Some repressive governments claim that LGBT people are alien to their culture, an imposition from the West. But no Western country is “exporting” gays or lesbians; they have always been in every country, with their visibility largely a product of the extent of local repression. The only imposition going on is the local government imposing dominant views about gender and sexuality on a vulnerable minority. Like broader attacks on civil society, attacks on LGBT groups tend to be most intense when governments are most intent on changing the subject.

**Closed societies**

The most severe autocrats do not settle for limiting civil society, they dismantle it altogether. In countries such as North Korea, Rwanda and Eritrea, there is on independent civil society to speak of. Commentaries on government are out of the question, or are a recipe for prison.

As the global community becomes more connected, because travelling and communicating became easier, human rights issues are increasing in a variety of states. Atrocities in Syria or Afghanistan spark refugee crises in Europe. Europe’s response affects the ability to build societies that respect people of different cultures, religion and sexual orientation. The Internet and especially social media challenges governments to be accountable for their governance. Change is always a threat, whether to a community with memories of greater homogeneity, a nation confronting increased insecurity, or a dictator clinging to power.

The aim is to ensure communities respect all their members, nations that secure the best strategy for their defense, governments that serve their people, the wisdom enshrined in international human rights law provides indispensable guidance.

**Reducing the number of children that go missing as a result of migration and refugee flows and putting in place the means to find them:**

Who cannot be found as a result of conflict migration, human rights violations, trafficking, organized crimes or disasters is a matter of profound concern however it’s not included in the international agenda. It came to international attention once children gone missing after arriving to Europe. This issue not only emerges about the migration crisis that we live nowadays, but it’s relevant for a variety of reasons. Many children disappear voluntarily, as a result of problems that they have, at home for example. However, it’s the involuntary cases that can have international consequences. Still does not have the legal frameworks of processes to successfully locate these people.

There are now processes to begin tracking and collecting data on migrants most likely because of the massive increase in the flow of refugees and migrants into Europe.

As Missing migrants it’s not only a European problem, the missing people is not only a problem of migration. The international organization for migration estimates that at least 60000 migrants died on migration routes between 96’ and 2016.

A great uncertainty exists about how many people go missing while migration. People go missing on migration routes for many reasons. Often the families want to report but have nowhere to do so or simply do not want to bring attention to the person missing’s circumstances.

It is difficult to determine the real number of missing people for many reasons: travelling in secret, little is known about them and their circumstances, which results in invisibility. Bodies may be found but often they cannot be identified, because migrants often don’t carry documentation. The lack of data influenced IOM to create Missing Migrants Project designed to track deaths during migration and maintains a publicly accessible online database.

Many children go missing while migrating into Europe, but specially once arrived. The UNICEF estimates that nearly 100000 unaccompanied children, or children separated from their families sought asylum in 2015. Children who travels unaccompanied are more vulnerable to kidnapping. They are sexually abused and exploited because of their dependency on whoever took them. The threats are many: rape, sexual violations, forced labor, assaults or death. The Organization for Security and Cooperation in Europe noted that children migrating from conflicts areas are the most vulnerable population. Fear is a problem, which disable the registration. They fear the consequences of being visible which has massive consequences for them as crime reporting by them remains low and when children go missing, relatives often prefer to think that they went somewhere voluntarily.

What has to be altered is the misconception that all the secrecy is needed. The problem can be addressed by making migrants feel welcome and conscious that would not be caught and deported to their countries of origin, but provide them security. The fear environment leads to apprehension by those who may seek state assistance. Children who ought to be provided a shelter are kept in detention because of a lack of places of safety for them.

Children are separated from the family for long periods of time which contributed for them not to register. Their vulnerability rises by these conditions. Children avoidance of the system increases the risk of them going missing. Therefore, some aspects should be changed: police should focus on attending refugees and migrants needs, doing so will help to build bridges, especially in the most vulnerable group: women and children, alone or unaccompanied. Other mechanisms can be adopted to result in an easier and safer migration process.

Much more needs to be done to set up processes to help those who go missing and their families. Identifying those people whose bodies are found.

The conflicts in the world relocate millions of families who become vulnerable while doing so, so more needs to be done to ensure that they do not go missing. In the international level, it’s needed more mechanisms and processes to deal with missing persons in general, and to ensure that data is collected and coordinated.

## The Role of the Special Rapporteurs of the United Nations Human Rights Council in the Development and Promotion of International Human Rights Norms

It has been acknowledged that the institution of UN special rapporteurs for human rights known as the special procedures have played an important role over a long period of time in promoting and protecting human rights in some of the most difficult circumstances and challenging issues. They have done so through not only monitoring and fact finding but they also provide standards. They enable the elaboration, interpretation and implementation of international human law and brought the human rights work of the UN to the ordinary men and women around the globe.

However, the institution of special rapporteurs itself seems to be coming under pressure not only from outside but also from inside the UN system. There are fears that some states or groupings of states may try to abolish the country special rapporteurs and undermine the significance of certain special rapporteurs especially those holding mandates relating to certain core civil and political rights by imposing additional restrictions on their freedom of action.

The importance of the special rapporteur system appears evident, yet there is no consensus on good or best practice in the way that mandates should be carried out or the extent or limits of the responsibilities of governments to assist special rapporteurs.

1. The relationship between the council and the special rapporteurs both defines the -nature of the roles the special rapporteurs and conditions their effectiveness in promoting the protection of human rights and developing international ‘soft-law’ norms. The relationship is defined in the mandate of the special rapporteur, and the flexible nature has allowed special rapporteurs to respond to changing needs in specific problem areas. At the same time, the code of conduct for special rapporteurs adopted by the Human Rights Council suggests an attempt to restrict the activities of the special procedures. The ICC does not have the resources to undertake effective fact-finding missions, therefore it should be able to rely on the fact-finding missions of special rapporteurs, with implications for the conduct of the role. The argument is for a greater co-ordination of the efforts of UN institutions concerned with the protection of the human person.
2. The effectiveness of the special rapporteurs in carrying out their functions. The issue focus on the authority and legitimacy of the role, which provides individual actors a key function in the promotion of human rights in the international system. The most important criteria is the independence of the mandate-holder, however, special rapporteurs cannot act without being bind to relevant international law norms or the promotion of human rights.
3. 1. There is a need for transparency and the elaboration of objective criteria in the selection of special rapporteurs. Selection should be undertaken on the basis of the expertise and experience of candidates
4. The relationship between the Human Rights Council and special rapporteurs is of crucial importance to the effective execution of the role and responsibilities of special rapporteurs. The participants accepted that the council is by definition a ‘political’ body, it is necessary for the Human Rights Council and special rapporteurs to frame their relationship in a way that does not undermine the possibility of promoting the promotion of human rights.
5. The importance of proper funding and administrative support for special rapporteurs
6. Special rapporteurs are accountable for their actions, but expressed concern that any new or reformed mechanisms of accountability should not undermine the independence of special rapporteurs or their ability to promote human rights
7. Special rapporteurs provide a voice for victims of human rights abuses, who have few opportunities to be heard in the international system
8. The independence of the role is central to the effectiveness of the special rapporteur schemes. Engagement with states is essential for the carrying out of the relevant functions (in terms of access to information and particular places), the relationship with the state should not undermine the ability of the rapporteur to provide an objective judgement of the situation
9. The production of accurate reports with clear recommendations is an important element in the role of special rapporteurs. Special rapporteurs should allow the state to see a report before it is made public in order to correct any factual errors and provide a considered response to recommendations
10. ‘Follow-up’ mechanisms are also important, which are pursued by Universal Periodic Review in this regard and the involvement of the special rapporteurs in such a review
11. The importance of engagement at the national level and with domestic political actors (including the government and opposition).
12. **Special rapporteurs should be guided by the provisions of general or customary international law (binding on all states)**
13. Special rapporteurs evaluate the actions of states against international law standards. There is a requirement to ensure as far as possible the factual accuracy of any information and allow the government the opportunity to present its understanding of the situation
14. **The positive role that special rapporteurs play in the codification and elaboration of existing international law norms.**

## United Nations Special Procedures

The Special Procedures of the Human Rights Council are independent human rights experts which report and advise on human rights from either a thematic or a country-specific perspective. The system of Special Procedures is a central element of the United Nations human rights and attends to: civil, cultural, economic, political, and social rights. Their independence, impartiality and flexibility enable the Special Procedures to play a critical role in promoting and protecting human rights. The experts deal with situations wherever they occur in the world, including in the context of crises and emergencies. They interact with human rights defenders and potential victims of human rights violations. With the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR), Special Procedures are able to visit certain countries sending communications to States and others. Develop international human rights standards, raise public awareness and provide advice and support for technical cooperation. Special Procedures report annually to the Human Rights Council.

To enhance protection and promotion, Special Procedures engage with a wide range of interlocutors: Governments, international and regional human rights bodies, United Nations entities, national human rights institutions, businesses and civil society, including nongovernmental organizations and academic institutions. Special Rapporteurs, Independent Experts and Working Groups serve with independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith. They are not United Nations staff members and do not receive financial remuneration. The Office provides fact-finding, policy, legal and methodological expertise, research and analysis, documentation, and assists with logistical and administrative matters.

**Contributions**

Special Procedures contribute to the progressive development of international human rights law, through studies, consultations and the elaboration of guidelines in a variety of specific areas. For example, the Working Group on arbitrary detention concluded deliberations on the definition and scope of arbitrary deprivation of liberty under customary international law. The deliberations clarified the scope and content of the prohibition of arbitrary deprivation of liberty as a jus cogens norm under international law. The Working Group on the use of mercenaries highlighted on a regional basis the gaps in national legislation regulating private military security companies to support its view that there is a need for a binding international instrument. The Special Rapporteur on trafficking in persons, especially women and children Ms. Joy Ngozi Ezeilo, developed a guidance tool to help operationalize the right to effective remedies for trafficked victims based on existing international human rights law and standards. A series of regional and global consultations conducted to gather comments and suggestions on the “Draft Basic Principles on the right to effective remedies for trafficked persons”. This case raised fundamental issues about the duty of States under international law to investigate allegations of secret detention, torture and rendition taking place on their territory and about the way in which such investigations should be conducted when the state’s interest in national security is at stake.

The 2013 Annual report of the Special Rapporteur on freedom of religion or belief to the Human Rights Council focused on freedom of religion of persons belonging to religious minorities. The report attempts to clarify the different concepts of persons belonging to religious minorities and presents the international instruments available to protect their rights. The report also gives an overview of the patterns of typical violation of the rights of persons belonging to religious minorities in their freedom of religion or belief with illustrations of cases taken from country visits, communications and/or press releases.

**The Coordination Committee** worked to enhance cooperation with States and intergovernmental bodies such as the Human Rights Council and the General Assembly through regular meetings with the President of the Council and Member States, participating in the work of the Council, such as special sessions or urgent debates. The Coordination Committee also took initiatives to increase awareness about the work and expertise of special procedures within and outside the United Nations and ensure better integration of special procedures’ inputs into human. The Coordination Committee of Special Procedures made itself available, through its internal advisory procedure on practices and working methods, as well as informally, to all those who wished to bring issues to its attention in relation to working methods and the implementation of the Code of Conduct. The Coordination Committee also intervened to defend the independence and integrity of mandate holders, for example when mandate holders were the subject of unacceptable personal attacks in the course of the exercise of their mandates.

**Reprisals against persons cooperating with the UN Special procedures** continued to pay particular attention to allegations of reprisals and intimidation against those who cooperate with the UN in the field of human rights, in particular with special procedures. The Coordination Committee also facilitated a joint statement of mandate holders on the occasion of the Human Rights Day, which stressed that Special Procedures’ work relies on interaction with civil society, national human rights institutions, individuals working on the ground, victims of human rights violations and that they are seriously concerned that some of those with whom they engage become victims of intimidation and reprisals. Special procedures therefore called on all States to cooperate with them and ensure that all other stakeholders can do so without fear of intimidation or reprisals.

**Communications**

Most Special Procedures intervene directly with Governments through communications on specific allegations of human rights violations. These communications can relate to a human rights violation that has already occurred, ongoing or which has a high risk of taking place. Communications may be sent in relation to individuals or groups of individuals, focus on domestic legislation, policies, programs or other measures affecting individuals or groups in a particular country. In general, a letter is sent to the concerned State or in some cases to third parties, such as international organizations or multinational corporations, requesting information on the allegation and calling for preventive or investigative action. The decision to intervene is at the discretion of the special procedure and depends on criteria established by the mandate. These criteria include the reliability of the source and the credibility of information. Communications must not be politically motivated, contain abusive language or be based solely on media reports. Further information is frequently requested from individuals, groups or organizations that submit information to the Special Procedures. Communications usually take the form of either urgent appeals (UA) or letters of allegation (AL). Urgent appeals are used to communicate information about violations that involve loss of life, life-threatening situations or imminent or on-going damage of a grave nature. The intention is to ensure that relevant State authorities are informed as quickly as possible of the circumstances so that they can intervene.

Letters of allegation are used to communicate information about violations that are alleged to have occurred or are not urgent, and whose impact on the alleged victim(s) can no longer be changed through immediate intervention.

During visits, the experts assess, from the point of view of their mandates, the general human rights situation, as well as the specific institutional framework. They meet with national authorities, including members of the judiciary and parliamentarians, of human rights institutions, non-governmental organizations, civil society organizations and victims of human rights violations, the United Nations and other inter-governmental agencies and the media. After their visits, mandate-holders submit a report to the Human Rights Council, which contains their findings and recommendations.

If a Government has repeatedly failed to provide a substantive response to communications, Special Procedures issue public statements or hold a press conference, either individually or jointly.

## A Critique of the Decision of the African Commission on Human and Peoples’ Rights Permitting the Demolition of the SADC Tribunal: Politics *versus* Economics and Human Rights

There are allegations of crimes against humanity in Eritrea, genocide in Sudan, various types of human rights abuse as a result of the conflict in South Sudan, xenophobic violence in South Africa, various types of violence in Burundi, Central African Republic, the Democratic Republic of the Congo, Egypt, Mali and Libya, and violations being committed by insurgency groups, including Al-Shabaab, Boko Haram and others in places like Nigeria, Kenya and Somalia.

Issues concerning accountability for gross human rights abuse are still very controversial. Many see that as still a lack of commitment by the African Union and African leaders to deal with these matters in any consistent way. The spat between the AU and the International Criminal Court (ICC) on the role and function of the Court in Africa gives content to those who argue that pledges by the AU and others are empty promises. However, the fact that only African cases are before the International Criminal Court gives tremendous strength to those anti ICC. It has fueled tremendous criticism and major controversies about whether the Court is an imperialist institution based against Africans, while Western powers and leaders there escape scrutiny and accountability. The fact that the ICC has indicted two sitting heads of state, from Sudan and Kenya, has increased further criticism that has been levelled against the Court.

The defense of human rights in Africa has grown significantly over the last few decades in part due to the Organization of African Unity (OAU) to the African Union (AU), with its various human rights and peace structures. The OAU was criticized because of its weak position in relation to African leaders. Certainly, the AU’s Peace and Security Council is an important development to enhance collective security in Africa, through conflict prevention, peace-keeping, peacemaking and peace-building efforts. However, while there are older structures such as the African Commission on Human and Peoples’ Rights, newer processes and institutions such as the New Partnership for Africa’s Development (NEPAD) and the African Peer Review Mechanism, in addition to the African Court on Human and Peoples’ Rights, are important parts of the arsenal to play a protectionist and promotional role on human rights matters. A critical issue in the development of a human rights system in Africa is the development of regional economic communities with human rights protection processes.

The Southern African Development Community (SADC) Tribunal was decimated between 2010 and 2012, when its individual and group complaint procedures were removed to make it into a body that can only hear state complaints. This is not only a human rights matter as the SADC tribunal also allowed those offended on other grounds, such as for economic reasons, to have a further forum to litigate their claims when the courts in the country concerned would not come to their rescue. Like other sub-regional blocs, the SADC had been developing its ability to prevent and manage conflict.

As with other sub-regions in Africa human rights abuses abound. For this reason, the SADC has, at least in the past, shown some willingness to deal with human rights matters. The SADC’s direct human rights role began when the Tribunal was established. The SADC Tribunal was established with 10 judges, 5 of whom are regular judges, the others being part-time. In the five years until 2010, the Tribunal was very active. It attended 30 cases and decided 24 of them in which the initiative came from individuals. The Tribunal was extremely robust in its work. It even found against the SADC itself on a number of occasions. This is an important issue from the standpoint of whether such an institution can be sued or not. The African Court has decided that the AU cannot be sued. The SADC Tribunal, however, decided that such cases were admissible. The finding by the Tribunal against the SADC in favour of the SADC employees seemed to be an important nail in the coffin for the Tribunal. By then other SADC organs and member states were unhappy about the role the Tribunal was playing.

It was Zimbabwe that became active in a campaign to limit the Tribunal because it was offended by multiple findings by the Tribunal. The way that the SADC regarded these cases must be seen in the fact that decisions of the Tribunal were not enforced, especially against Zimbabwe. Zimbabwe, however, specifically refused to enforce the SADC Tribunal decisions and a Zimbabwe court agreed that the SADC Tribunal’s decisions should not be enforced in that country. The SADC itself did not enforce the judgments of the Tribunal, despite a specific request to do so in a decision of the Tribunal reporting the refusal of Zimbabwe to enforce its decisions.

It was the South African courts, on a number of occasions, including the Supreme Court of Appeal and the Constitutional Court that were willing to enforce the SADC Tribunal’s decisions. The decisions of the South African courts, however, were a major stumbling block for the SADC which was unhappy with the role of the Tribunal and intent not to enforce its decisions.

Zimbabwe was able to get the other countries in the region to support it in its efforts to see the role of the Tribunal end. Because of numerous findings by the Tribunal against it on the matter of white farmer land expropriation, it was able to gather support from the other countries in the region. Zimbabwean Government has managed to create a consensus about weakening the rule of law among SADC governments. SADC’s commitment to supporting the rule of law has been seriously undermined by the decision to terminate the Tribunal’s human rights jurisdiction.

The 2014 SADC Tribunal Protocol has been signed by nine states. Ten member states need to sign it before the Protocol comes into force. When it comes into force it will reduce the jurisdiction of the Tribunal to matters only concerning disputes between the member states. Thus, individuals and NGOs will no longer bring cases to the Tribunal.

Procedurally, the ending of the strong role of the Tribunal was never raised by countries before it occurred. People of the region woke up one day to find that the SADC had suspended the Tribunal and had made it unworkable by deciding not to renew the appointment of the judges. Two years later, the SADC decided, again without consultation, to change the jurisdiction of the Tribunal so that it would only be able to deal with state complaints.

**The African Commission’s decision reviewing the SADC process to limit the Tribunal’s Jurisdiction**

Various attempts have been made to get the SADC to review its decisions concerning the Tribunal. Civil society across the SADC region has been active in this regard but without success. The SADC has turned its back on any attempts to deal with the situation. For that reason, some of the complainants, who had cases before the SADC Tribunal, approached the African Commission for relief. They wanted the decision of the SADC with respect to the removal of the complaint procedures from the Tribunal examined both from a procedural and a substantive point of view.

**The development of the African regional human rights system**

The African Charter of Human and Peoples’ Rights (ACHPR) was opened for signature in 1981 and entered into force on 1986. Under the African Union there are several institutions to protect and promote human rights which include the African Commission on Human and Peoples’ Rights, the African Court on Justice and Human Rights and the African Committee on the Rights and the Welfare of the Child which began operating in 1999. The African Commission on Human and People’s Rights was established as a quasi-judicial body mandated to protect and promote human and peoples’ rights in Africa. It consists of eleven members, the candidates are nominated by States Parties and are elected for a six-year period which is renewable.

**The decision of the ACHPR with respect to the SADC Tribunal**

The process to modify the jurisdiction of the SADC Tribunal was challenged at the African Commission on Human and Peoples’ Rights by some Zimbabwean farmers who had cases before the SADC Tribunal. The ACHPR ruled that it ‘does not find any Charter obligation on the respondent states to guarantee the independence, competence and institutional integrity of the SADC Tribunal. The decision of the ACHPR runs to 48 pages, of which only four pages discuss the merits of the case.

Conclusions are reached on the merits with almost no reasoning. Almost no case law is cited, and almost no other instrument is examined to determine how the African Charter ought to be interpreted in these circumstances.

Many of the issues raised, and the sections of the African Charter they are meant to deal with, are left out of the decision. Critically, the significance of removing an important human rights tool for individuals and others in the southern part of Africa is not touched on. This is a decision which reaches a conclusion in the absence of context and in the absence of comparative and international research. The importance and significance for more than 250 million people from the sub-region should have meant that more ought to have been put into its outcome. The outcome is only justifiable on the basis of a narrow reading of a very small number of provisions of the Charter. The decision relies on no other instruments.

In its decision, the ACHPR states that it decided to hear the case against the 14 named states, as all 14 are States Parties to the African Charter. The Commission states in its decision, that it could not consider the matter against the Heads of State or the Council of Ministers of the SADC because it has no jurisdiction over intergovernmental institutions or their organs. No reasoning for this finding is provided in this case.

The ability to sue the AU has also been an issue in cases decided by the African Court. The majority of the Court, while finding that the African Union had legal personality, nevertheless found that the AU could not be sued because no right to do so is found in the Constitutive Act or in the African Charter.

However, in the SADC case the finding that the SADC is not subject to the jurisdiction of the Commission or Court seems to be based on a misapplication of the reading of the Charter because the Charter needs to be read in a purposive way. It needs to be considered the Article 66 of the Charter which holds that ‘Special protocols or agreements may, if necessary, supplement the provisions of the present Charter.’

The SADC and the AU have agreed to and adopted the Protocol on Relations Between the African Union and the Regional Economic Communities (AU/RECS Protocol). Article 5(1)(b) requires that the RECs take the necessary steps to align their programs, policies and strategies with those of the AU. This should have been taken into account by the Commission to bring the SADC within their purview, as determined by Article 66 of the African Charter. This provision empowers the African Commission to ‘interpret all the provisions of the present Charter at the request of a State Party, an institution of the OAU, or an African Organization recognized by the OAU. Further to this, Article 66 should have been read together with article 45(3) of the Charter. Article 45(3) provides that one of the functions of the African requires that the RECs take the necessary steps to align their programs, policies and strategies with those of the AU.

As noted above, and because of the acceptance by the SADC and the AU of the Protocol on Relations Between the African Union and the Regional Economic Communities, the provisions of Article 45(3) are met. Article 3(1) of the SADC provides that the ‘SADC shall be an international organization, and shall have legal personality with capacity and power to enter into contract, acquire, own or dispose of movable or immovable property and to sue and be sued. If an international organization has standing, which is the case because of Article 66, then international law accepts that it can be sued. Thus, the provisions of the African Charter could have been used as a means to allow the SADC to have been a party to the case and to enable the review of its actions with respect to the Tribunal.

Additionally, the Commission also has the jurisdiction to ‘formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples’ rights and fundamental freedoms upon which African governments may base their legislations. The Commission could have read this provision so as to allow it to determine the necessary rules and principles that enhance the legal rules concerning human rights. It could have been enhanced by laying down principles, such as the necessity of consultation before the taking away of access to a remedial action. The Commission could have established principles and rules about the need to progressively realize rights, and not regress them. While the Complainants in the SADC case requested that the Commission refer the case to the African Court of Human and Peoples’ Rights, the Commission decided not to do so ‘because it does not meet the requirements for referral as provided for in the Commission’s Rules of Procedure.

The issue of approaching the Court is a critical one as the Court has a wider jurisdictional basis than the Commission has. The Court can also review complaints on the basis of violations of any instrument that a state has ratified. This issue will be returned to as the Commission is supposed to only be able to review complaints based on violations of the Charter but it is permitted by Article 60 to ‘draw inspiration’ from other international instruments in the process of its determining violations of the Charter.

Issues concerning the SADC process as an irrational and arbitrary exercise of executive power by the SADC for which no valid rationale existed, and that what the SADC did was done in bad faith were ignored by the Commission. The Preamble of the African Charter provides that ‘freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples’. At a minimum, the use of the term ‘justice’ would have allowed all the issues raised by the complainants as far as the process followed by the SADC against the Tribunal to have been addressed.

The ACHPR finds that Article 7(1)(a) of the African Charter (the right to have access to the courts clause) imposes no obligation on the member states of the SADC to ensure access to the SADC Tribunal. It finds that the right only applies to national courts and therefore that no violation of the Article had occurred. It states that ‘the primary obligation undertaken by State Parties in article 7(1)(a) of the Charter is to ensure access to national courts. The Commission has consistently interpreted article 7 of the Charter as imposing an obligation on State Parties to ensure the right to a fair trial at the national level.’ This is the full extent of the interpretation of the section. Nothing is done to interpret the words or the meaning of the words.

*Article 26 of the Charter provides that State Parties shall have the duty to guarantee the independence of the courts. Article 1 of the UN Basic Principles on the Independence of the Judiciary states that ‘the independence of the Judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of judiciary.’ Article 11 states that ‘the term of office of judges, their independence, security (…) shall be adequately secured by law.’ Article 18 provides that ‘Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that render them unfit to discharge their duties.’ Article 30 of the International Bar Association (IBA)’s Minimum Standards of Judicial Independence also guarantees that, ‘A Judge shall not be subject to removal unless, by reason of a criminal act or through gross or repeated neglect or physical or mental incapacity, he has shown himself manifestly unfit to hold the position of judge’ and article 1(b) states that, ‘Personal independence means that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control.’*

An African instrument that would also have been helpful would have been the African Commission’s own 2003 Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa. Another useful instrument that could have been applied is the African Commission’s own Resolution on the Role of Lawyers and Judges in the Integration of the Charter and the Enhancement of the Commission’s Work in National and Sub-Regional Systems. In this document the Commission provides how the African Charter and itself can be integrated into the work of national but also critically sub-regional systems. It makes clear that the African Charter has a key role to play in the development of human rights in the region.

International institutions do not sign and ratify instruments however, they adhere to international law, especially those that have customary international law status. They apply international standards that are seen to be universal, such as independence of the judiciary, the rule of law, access to courts, etc.

The Commission could have and should have reviewed a range of other instruments and decisions to help in its determination.

**Conclusion**

While there has been growth as far as these systems are concerned, the steps that the SADC took against its Tribunal were regressive for the protection of human rights.

The fact that no one came to the defense of the Tribunal means that other institutions will learn the lesson of what it means to be too strong and too forceful. Declawing the SADC Tribunal not only affects the people of the southern part of Africa, but affects all Africans and African institutions, including the Commission itself.

Human rights institutions should be defending each other, and not assisting in the process to limit the role and effectiveness of other similar institutions. The destruction of a major part of the work of the SADC Tribunal has also economic consequences, because the SADC region is one where investments are not as secure as they were when the SADC Tribunal was an available forum for redress.

## Prisons in Africa: An Evaluation from a Human Rights Perspective

Those who are incarcerated in African prisons face years of confinement in dirty quarters, with insufficient food allocations, inadequate hygiene, and little or no clothing. While these conditions are not uniform throughout the continent, their prevalence raises concern and needs to be addressed through prison reform and attention to human rights. Meanwhile, the barriers can have numerous faces: state secrecy, weak civil society and lack of public interest. This results in unreliable data on African prisons. The ignorance as to prison conditions fuels the neglect and abuse of Africa’s incarcerated. It is necessary to investigate African prisons and have information about the issues affecting the continent’s penal system. Prisons throughout Africa fail to meet the minimum of human rights requirements. Africa is a result of profound diversity, with 53 countries. Overcrowding and poor conditions within prisons, the failure to protect the rights of pre-trial detainees, the untapped potential of alternative sentencing and the unfulfilled mandate of rehabilitation are some of the conditions which lead to a poor governance in African Prisons.

**The African prison: another legacy of colonialism**

To understand the current state of African prisons it is essential to cast an eye toward the past and to consider the development of penal institutions throughout the continent. Incarceration as punishment was known to Africa only after the Europeans arrived. Pretrial detention was common but wrongdoing was rectified by compensation instead of incarceration. There were two exceptions to this characterization.

First, prisons were used in connection with the Atlantic Slave Trade. Second, Southern African started to rely on prisons much earlier than the rest of the continent. Africa’s earliest experience with incarceration wasn’t with a rehabilitation or reintegration of criminals perspective. Those who had minor offenses would be a source of cheap labor.

European settlers looked upon African people as savages who were unable to be “civilized” Additionally, while European prisons phased out torture in the late 1800s, colonial prisons increasingly relied upon the practice as a means of suppressing indigenous peoples and reinforcing racism. Torture and capital punishment were legitimized by the characterization of Africans as uncivilized, infantile, and savage. Despite the connection of prison brutality to the racist and colonial policies of the late 1800s, penal oppression persists at an alarming rate. Moreover, attendant issues such as underdevelopment, dependence on foreign aid, political oppression, and human degradation continue to plague the continent. Incarceration was brought to the continent from Europe as a means by which to subjugate and punish those who resisted colonial authority.

**Pre-trial detention**

A large proportion of the prison population in African states is comprised of individuals awaiting trial and conviction. Pretrial detention in and of itself does not constitute a violation of human rights, provided that it takes place under the proper conditions, for a short time, and as a last resort. Waits are longest in Central and West African nations and such detention is usually arbitrary, extensive, and under terrible conditions. The poor are disproportionately detained if their counterparts is wealthy because they cannot afford the counsel or bribes necessary to secure early release. Prisons feel the burden of high detention rates.

Such reform has been proposed by the African Commission on Human and Peoples’ Rights, which has issued several documents containing guidelines for effective pretrial hearings. While such documents hold the promise of “good practices” to come, much more needs to be done to alleviate the arbitrary, disparate, and inhumane treatment of pretrial detainees in Africa.

**African prisons conditions: overcrowded and under-resourced**

African prisons have been at or above capacity nearly since their inception. Given the many challenges facing postcolonial Africa, it is little wonder that prisons have been left off the endless development to-do lists of many postcolonial governments.

The physical conditions in which such populations are maintained languish in disrepair. The buildings are old, poorly ventilated, with inadequate sewage systems which facilitates the spread of diseases. Prisoners often lack space to sleep, hygiene is poor, and food and clothing are inadequate. Such decay and deprivation overburdened prison staff, that has found it difficult to supervise or provide higher standards of sanitation and nutrition.

**Overcrowding: the causes**

The shortage of police and judges has been credited with the surging prison population. These personnel shortages have led to the increase in pre-trial detainees and remand prisoners who comprise the vast majority of many African nations’ prison populations.

**Overcrowding: the consequences**

Crowded cells where inmates sleep in shifts, guards who smuggle weapons, drugs and alcohol to paramilitary inmate gangs. HIV/ AIDS-related deaths in prison have risen exponentially in the past decade. Confined and crowded living quarters also lead to sexual assault and suicide. While many African prisons do not suffer from such extreme violence and health problems, the presence of these trends in any prisons raises concern. There is no excuse for the inhumane conditions in which African prisoners dwell, the circumstances must be placed in context of the overall deprivation present throughout the continent.

With poverty being the norm for far too many Africans, it is unsurprising that poor living conditions continue behind prison walls. Yet the African Commission on Human and Peoples’ Rights persists in its condemnation of the state of African prisons: The conditions of prisons and prisoners in many African countries are afflicted by severe inadequacies including high congestion, poor physical, health, and sanitary conditions, inadequate recreational, vocational and rehabilitation programs, restricted contact with the outside world, and large percentages of persons awaiting trial. In addition to disease, African prisoners also suffer disproportionately from abnormal deaths.

**Solutions**

In addition to the lack of judicial recourse for abuses resulting from overcrowding, there has been an absence of policy response to the problem. Despite the grave consequences of overcrowding in African prisons, prison capacity has not increased nor have prisons been renovated or privatized as they have in North America and Europe.

At the regional level, in 1996 and 2002 the Kampala Declaration on Prison Conditions in Africa and the Ouagadougou Declaration on Accelerating Penal and Prison Reform in Africa were both adopted respectively. Both instruments strive to improve the conditions of African prisons. At the international level, the Council of Europe adopted the European Prison Rules in 2006. While the rules do not bind African states, they provide useful guidance in developing transparent and consistent prison policy. However, even if the African Union were to adopt similar guidelines, insufficient resources and instability plague the implementation of any proposed reform.

**Women and children in African prisons**

Women and children in African prisons have been largely ignored by academics as well as penal policymakers. These vulnerable populations are particularly marginalized within an already substandard living environment. While some inroads are being made within the European, North American, and Australian penal systems to better accommodate women and children, the issue receives little to no attention in Africa.

Women in African prisons are overwhelmingly poor and uneducated. They are frequently incarcerated for crimes such as murder and attempted murder, infanticide, abortion, and theft. Sexism is apparent in the criminalization of conducts. Once in prison, discrimination against women persists. They are often denied access to vocational and recreational programs. Prisons often lack appropriate supplies to accommodate menstruating women. Where women are incarcerated with men, they remain vulnerable to physical and psychological abuse from male prisoners. While some prison systems provide separate facilities for the incarceration of women, in most countries, women are imprisoned in the same facilities as men. Even in cases where women are incarcerated separately, these facilities experience violence and abuse. Women prisoners are particularly vulnerable to sexual abuse by prison guards.

Fortunately, the plight of female prisoners is being addressed in the move for regional penal reform. However, the declaration merely calls for “particular attention” and “proper treatment” of women’s “special needs”. Such vague aspirations reflect a lack of political will and gender awareness towards the reform of African prisons for all of those behind bars.

**Children**

Children arrive in prison by two distinct routes in Africa: they are either born to incarcerated women or they have been sentenced on account of their own allegedly criminal conduct. Often their crimes include such minor offenses as vagrancy, not carrying proper identification, begging, and being beyond a parent’s control. For these slight infractions, children can be detained pending trial during the most formative years of their development. As is true for women, most African prison system lack the resources to house children separately from the adult male population which lead to disastrous consequences. First, children must compete with adults for scarce resources such as food. Second, given that African prisons fail to meet even the most basic minimum standards for adults, they fall short of meeting international standards for juvenile detention.

**Rehabilitation**

Rehabilitation is a difficult end point for many African prisons to achieve, in large part, due to lack of resources. Overcrowding and under-funding hamper the implementation of effective rehabilitation schemes. While rehabilitation remains the goal of many penal policymakers in Africa, lack of political will impedes its ultimate realization.

Rehabilitation is part of many regional instruments aimed at improving prison conditions throughout Africa. For example, the 2002 Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa calls for the promotion of rehabilitation and reintegration of former offenders. The Declaration’s accompanying Plan of Action also specified measures that governments and NGOs could take to increase the effectiveness of rehabilitation of offenders and pretrial detainees. Legislation in several African nations has also sought to promote the human rights of prisoners. However, these measures fail to address rehabilitation, focusing on overcrowding, lack of personnel and training, and minimum standards for prisons.

While rehabilitation and reintegration programs are new to Africa, positive developments to date evince some success meriting increased support to such initiatives.

**Prison resources and governance**

The conditions described above result in part of a scarcity of resources and good governance, being the first one the most significant challenge facing African prisons today. On a continent of so many social needs, protection of prisoners is far from the top of many priority lists. Moreover, there is an opinion in which prison is a locus for detention as opposed to rehabilitation and reintegration. Resource scarcity leads to deprivation of prisoners. Good prison governance is difficult to define and measure, partly because there has been very little research on identifying good practice in Africa, particularly in the areas of administration. The rise of crime in Africa, the drop in resources, and the belief that imprisonment is a form of discipline have all conspired to render prison conditions outright atrocious in some nations. The shortage of well-trained staff also hinders the governance of African prisons. Staff shortages can inflame already stressed prison staff. Incompetent staff can worsen the situation. When prisons lack sufficient staff, prisoners must be confined to their cells, thus exacerbating the problems associated with the overcrowding described above.

Good governance is essential to maintaining public health baselines within African prisons. Increased staff and more efficient methods are needed to ensure waste disposal, better food, increased rations, and adequate measures to fight the spread of disease, especially HIV/AIDS. Public health educators are needed to teach prisoners how to avoid contracting HIV, condoms must be provided, and HIV-positive prisoners must receive adequate health care.

The above instruments stress the importance of effective prison administration and competent prison leadership. Prison leadership colors the entire prison system while efficient management is crucial to ensuring a smoothly run facility. Unfortunately, many African prison administrations are subordinated to the police or military, which can engender authoritarian structures and harsh disciplinary policies. Decentralized prison management can also compromise prison management, particularly in the absence of a national prison authority.

Several strategies towards protecting prisoners’ rights have been deployed throughout the continent including national trends towards alternative sentencing, regional attempts at oversight, and policy commitments to reform:

* The most common form of alternative sentencing is one in which those guilty of minor offenses are sentenced to terms of community service rather than prison. Obviously, this practice would reduce the overcrowding of African prisons. Yet, alternative sentencing still requires oversight and administration. As a result, fines and compensation have also been proposed as alternative sentences to incarceration. It’s necessary to include the harmonization of various interests among groups such as the media, political parties, victims, criminals, and the population at large, particularly when sentences forego jail time.
* To be sure, alternative sentencing is no continental-cure all to the woes that beset African prisons. However, with the contributions of international organizations, NGOs, governments, and individuals, barriers to the practice can be overcome and alternative sentencing might become an important part in mitigating prison overcrowding.

**The African Commission on Human and Peoples’ Rights**

The African Commission on Human and Peoples’ Rights, which since 2002 has operated under the auspices of the African Union, has played a significant role in improving prison conditions throughout Africa. One method by which the Commission has contributed to the betterment of prisoners’ lives has been through the investigation and adjudication of rights violations. The Commission has also investigated African prison conditions through the appointment of various special rapporteurs, the establishment of working groups, and the adjudication of individual cases. The Commission also queries governments and drafts resolutions on prison conditions throughout the continent.

International and regional human rights instruments play a large role in the work of the Commission and its subsidiary organs in the course of their work on African prison conditions. For example, the Commission has made use of the UN Standard Minimum Rules for the Treatment of Prisoners, the International Covenant on Civil and Political Rights, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the African Charter on the Rights and Welfare of the Child, and the Protocol on the Rights of Women.

The Commission strives to emphasize individual state accountability to care for prisoners and guarantee the minimal standard of prisoners’ rights.

The Commission has, however, adopted several resolutions on the standards of prisons in Africa, including the Resolution on the Adoption of the Ouagadougou Declaration and Plan of Action on Accelerating Prison and Penal Reform in Africa. Both of these instruments contain recommendations on reducing overcrowding, making prisons in Africa more self sufficient, promoting rehabilitation and reintegration programs, making prison administrations more accountable for their actions, promoting the African Charter on Human and Peoples’ Rights, and supporting the development of a Charter on the Basic Rights of Prisoners from the UN.

The Commission has laid the foundations for the respect of prisoners’ rights, they simply must be deployed more efficiently.

**Special Rapporteur on Prisons and Conditions of Detention in Africa**

As mentioned earlier, the African Commission on Human and Peoples’ Rights has appointed several special rapporteurs whose work touches upon the rights of prisoners, none more so than the Special Rapporteur on Prisons and Conditions of Detention (SRP), who was appointed in 1996. This appointment was made pursuant to Article 45(1)(a) of the African Charter of Human and Peoples’ Rights, which permits the Commission to investigate and promote human rights on the continent. The Commission can fulfill this mandate under any appropriate method according to Article 46 of the Charter. The benefit of appointing the SRP pursuant to Article 45(1)(a) is that this article is associated with the Commission’s promotion function, which is conducted in public. The SRP inspects and reports on prison conditions in order to protect the rights of those held therein. The SRP researches prison conditions, communicates with African governments regarding the state of their penal systems, entertains individual complaints about prison conditions, and reports to the Commission on a yearly basis. The SRP also proposes solutions to challenges facing African prisons. Lastly, the SRP also trains law enforcement personnel, police, prison guards and administrators, and lawyers to improve prison conditions.

However, a number of barriers have constrained its scope. First, the SRP is strapped by under-funding and double-billing as a Commissioner. As a result, it can only visit a fraction of African states. Secondly, the SRP is also constrained in the number of visits because such trips require the consent of the receiving state. However, if the SRP is going to reach its full potential as a human rights institution, more African states need to accommodate requests for visits.

Despite these challenges, the SRP has achieved some success in its short existence. First, its mere creation has raised the profile of prisoners’ rights in the Commission’s agenda. Secondly, even though the number of the SRP’s visits has not been as large as possible, approximately 250 places of detention have been examined in the last decade. This is a start on the road to more visits. Thirdly, the SRP has shed light on previously-ignored issues. For example, Vera Chirwa opposed capital punishment. The current SRP, Mumba Malila has spoken out against corporal punishment. Still, the SRP can be strengthened by undertaking several measures, such as increasing financial resources, increasing communication between NGOs and other international organizations, increasing communication between the SRP and visited countries, better integrating the SRP into the Commission, and improving the structure and legality of the SRP’s mandate.

**Reforming African Prisons**

Nonetheless, positive gains have been made to achieve change in Africa’s penal and criminal justice systems. This has been partly facilitated by international aid. In 2002 alone, donors provided US $ 110 million to African countries to conduct justice sector reform. As a result of this prioritization and funding, several African states have made some strides in alleviating overcrowding.

South Africa has reduced the prison sentences to six months. Kenya is experimenting with alternative sentencing by committing petty offenders to community service rather than incarceration. Kenyan prisons have also undertaken early release initiatives to mitigate overcrowding and are expanding health clinics to improve prisoner health. Uganda’s Community Service Act permits the use of community service instead of incarceration for certain offenses. Parallel legislation is pending in Mali and Niger. Angola recently opened a women’s unit in one prison. Reform has been slower to arrive in North Africa though the UN Human Rights Committee noted several positive steps, including those in Morocco. In addition to law reform and monitoring, some countries have increased prisoner support. Prisons in Sierra Leone have seen improved conditions as a result of a reconstruction and rehabilitation program funded by the UN Development Program. African correctional ministers recently demonstrated their commitment to alleviating prison overcrowding by forming the Conference of Eastern, Southern, and Central African (CESCA). CESCA seeks to fill a gap in coordination and cooperation between African prison systems.

**Conclusion**

African prisoners continue to suffer violence, disease, death, and humiliation as a result of being heaped into cells with no regard to capacity. Increasing rates of imprisonment and lengths of sentences only exacerbate this phenomenon. Overcrowding threatens not only prisoners but the public at large and, as a result, the issue must be addressed more urgently and thoroughly than it has been to date. Yet, in the face of numerous challenges such as resource scarcity, several African nations persist in reforming their prison systems by reducing prison populations and promoting prisoners’ rights. Indeed, a mindset of reform and rights is sweeping African prison systems. Good intentions alone, however, will not be enough. Immediate change is needed on the ground level. The only question that remains is how to implement the policies that have thus far been pronounced