

## A Positive Step on a Rocky Road: Tunisia signs up to the African Court on Human and Peoples' Rights

*As Tunisia becomes the first North African country to allow full access to the African Court of Human and Peoples' Rights, Oliver Windridge, founder of **The ACtHPR Monitor**, discusses the challenges the Court has faced since its inception.*

An air of optimism pervades the African human rights community following the **recent news** that Tunisia has become only the eighth African Union member state to allow individuals and NGOs direct access to the **African Court on Human and Peoples' Rights** (African Court). Based in Arusha, Tanzania, the African Court has jurisdiction to hear alleged violations of the **African Charter on Human and Peoples' Rights** (African Charter) as well as any other international human rights instruments ratified by the member state subject to an application.



Tunisian Foreign Minister H.E Khemaies Jhinaoui (R) & President of the Court, Justice Sylvan Ore, display the Declaration which was signed on 14 April 2017 in Tunis  
Photo Credit: African Court

Confirmation that Tunisia will allow its citizens and civil society to directly access the African Court should be seen a positive step on the African Court's otherwise difficult path to universal access. Indeed, while every African Union member state has ratified the African Charter, only 30 have signed the **Protocol** that creates the African Court. By signing this Protocol an AU member states agrees to the African Court having jurisdiction to hear cases concerning it that have been either transferred by the **African Commission on Human and Peoples' Rights** (African Commission), an AU member state that has lodged a complaint before the African Commission, an AU member state against whom a complaint has been lodged with the African Commission, an AU member state whose citizen is a victim of a human rights violation or an African Intergovernmental Organisation. Crucially however, signing this Protocol does not give individuals or NGOs from that member state access to the African Court. For individuals and NGOs to petition the African Court directly, AU member states must sign the Protocol and then sign an Additional Declaration explicitly giving the African Court jurisdiction to consider applications from individuals and NGOs.

This triple-layer of ratification for individuals and NGOs to access the African Court (African Charter, Additional Protocol and Additional Declaration) has become something of a stumbling point for the African Court. As mentioned above, Tunisia's signature of the Additional Declaration,

brings the number of AU member states that allow direct access for individuals and NGOs to the African Court to eight; a tiny fraction of the AU membership. Put another way, the African Union's flagship human rights court is presently obliged to strike out petitions from individuals and NGOs from 47 of its 55 members.

These access issues were further compounded by Rwanda's **withdrawal of its Additional Declaration** last year. The withdrawal was a first for the African Court, and was particularly challenging given that Rwanda sought to withdraw its Additional Declaration instantaneously; a move seemingly motivated following several applications from individuals convicted of genocide-denial offences, all alleging their trials were in violation of the African Charter. Despite Rwanda's insistence that its withdrawal was instantaneous, the African Court stood firm, finding that while Rwanda was entitled to withdraw its Additional Declaration, a cooling off period of 12 months should apply. The African Court's decision to impose a 12-month cooling off period has been widely considered to be in line with international law for which the African Court should be applauded. However, Rwanda's actions undoubtedly led to a difficult period for the African Court, with concerns of potential ramifications beyond simply Rwanda's withdrawal should others seek to follow suit.

With this rocky year in mind, Tunisia's signature is a welcome positive moment for the African Court. It should also be noted that Tunisia is the first North African member state to sign the Additional Declaration. But while this move ought to be applauded, it remains difficult to ignore the fact that only a small percentage of African Union members have committed fully to the African Court (the other AU member states to have signed the Additional Declaration are Benin, Burkina Faso, Cote D'Ivoire, Ghana, Malawi, Mali and Tanzania). Finding a single reason to explain the hesitancy to fully commit to the African Court is impossible, but what is certain is that without political will across the continent, the African Court will continue to wait to fulfil its mandate as a truly continent-wide human rights court for all Africans.

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**Oliver Windridge** (@acthpr\_monitor) is a British lawyer specialising in international criminal law and international human rights law. He serves on the African Court's List of Counsel (pro bono) and is founder of **The ACtHPR Monitor**, a website and blog dedicated to the African Court.

**The views expressed in this post are those of the author and in no way reflect those of the Africa at LSE blog or the London School of Economics and Political Science.**

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