

# AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

47<sup>th</sup> ordinary session and the preceding NGO Forum



Commissioner Soyata Maiga, ACHPR Special Rapporteur on Women's Rights in Africa.

The three-day NGO Forum provides an opportunity for analysis of key human rights issues across the African continent. It provides space for civil society to reflect upon how to maximise its influence on governmental and inter-governmental processes, including at the African Commission on Human and Peoples' Rights (ACHPR). It aims to highlight the need for the protection of human rights defenders, and to press for State implementation of relevant human rights obligations. The 47<sup>th</sup> session of the ACHPR exposed some continuing challenges to participation of non-governmental organisations (NGOs). However, NGOs were able to make effective contributions that influenced key ACHPR debates and resolutions.<sup>1</sup>

Hosted by the African Centre for Democracy and Human Rights Studies, the NGO Forum, held from 8 to 10 May in Banjul, the Gambia, was well attended, with more than 164 representatives from 30 African countries and 21 participants from Europe, the United States, and Latin America. This reflected the general growth in the number of participants over the last years. The Forum also included representation from national human rights institutions (NHRIs), and several ACHPR Commissioners who participated in thematic working groups.

## NGO PARTICIPATION

Ensuring the voice of NGOs is carried from the Forum, and elsewhere, to the ear of the ACHPR, continues to be a challenge. For the third session running the ACHPR failed to grant observer status to the Coalition of African Lesbians (CAL). This despite an unequivocal call from the NGO Forum for accreditation of NGOs representing all human rights struggles. The granting of observer status is the first step for active NGO participation at the ACHPR. NGOs seeking such status must have objectives and activities in line with the fundamental principles and objectives of the *African Charter on Human and Peoples' Rights*.<sup>2</sup> Such principles and objectives include the promotion of gender equality, respect for human rights and the promotion of social justice.

During its session the ACHPR focused on many of the challenges faced by lesbian, gay, bisexual, transgender and intersex people and those who defend their rights across the continent. The ACHPR has been developing a draft paper on sexual orientation to guide it on these issues. However, once again it failed to finalise and adopt the draft paper. The Commission may do well to keep in mind that having organisations such as CAL accredited might be of assistance to it as it considers how to challenge all discrimination based on sexual orientation and gender identity.<sup>3</sup> This would also be in line with the ACHPR regarding observers engaging in regular consultations with the Commission on all matters of common interest.

<sup>1</sup> For analytical reports on the sessions of the African Commission and further information on the NGO Forum see: <http://bit.ly/cIBMsU>. Information on the ACHPR is available in French at [www.ishr.ch/section-francophone](http://www.ishr.ch/section-francophone).

<sup>2</sup> Resolution on the criteria for granting and enjoying observer status to non-governmental organisations working in the field of human rights with the African Commission on Human and Peoples' Rights, available at <http://bit.ly/9VausB>.

<sup>3</sup> Resolution on the cooperation between the African Commission on Human and Peoples' Rights and NGOs having observer status with the Commission. Chapter III includes 'Organisations enjoying observer status shall undertake to establish close relations of co-operation with the African Commission and to engage in regular consultations with it on all matters of common interest'.

Despite continuing challenges to effective NGO participation in the ACHPR's work, the impact of NGO contributions is evident. 'Without alternative reports or information presented by NGOs, a large number of questions would not be examined,' stated Commissioner Maiga, ACHPR Special Rapporteur on Women's Rights in Africa. Several ACHPR Commissioners have also acknowledged the importance of NGO contributions for the examination of Rwanda's State report.

NGO Forum resolutions to the ACHPR are one way of communicating the most pressing concerns of participants to the Commissioners, with the aim of informing the content of resolutions the ACHPR itself approves. As expressed in the statement at the opening of the ACHPR session, 'The intention of naming is not to shame but a call to action in order to address potentially deteriorating observance of human rights'.<sup>4</sup>

### Ongoing challenges for NGOs

Sustaining NGO presence throughout the ACHPR sessions is a challenge, particularly for those with limited financial or human resources. After the third day of the ACHPR session, for example, only a few NGOs were still present to take part in the examination of State reports and intervene during the presentation of special procedures' thematic reports. Given the key role played by civil society actors in ACHPR deliberations, as acknowledged by Commissioners, maximising NGO participation is critical.

The NGO Forum has urged the ACHPR to ensure that it is 'disability friendly' including through the provision of Braille version documentation, the use of sign language, and the improved physical accessibility of ACHPR meeting rooms. The NGO recommendation further urges the ACHPR to consult and involve people with disabilities in its work, particularly in addressing disability rights.

## KEY OUTCOMES AND DISCUSSIONS

The ACHPR issued four resolutions at the conclusion of its session.<sup>5</sup>

### New Committee on persons living with HIV

It establishes a Committee on the Protection of Persons Living with HIV and Those at Risk to address that issue. The ACHPR has invited nominations of independent experts to serve on the committee from African Union (AU) member States, NHRIs, NGOs, and other interested individuals and institutions by 31 August 2010.<sup>6</sup>

### Freedom of expression

The ACHPR adopted a resolution on the 'Deteriorating Situation of Freedom of Expression and Access to Information in Africa'. Amongst other things, it urges AU Member States

to adopt legislation that promotes and protects the rights to freedom of expression and access to information.

The NGO Forum resolution on freedom of expression raises concern about the experience of journalists and of restrictions on freedom of the press in Cameroon, Eritrea, Somalia, Tunisia, Uganda, and Zimbabwe. It calls on States '...to bring to an end the fear of journalists to be killed, tortured, injured, kidnapped and being held hostage, especially in conflict areas'. This call recognises the fact that the essential role of human rights defenders in pressing for the respect of international standards at domestic level depends upon their ability to operate without hindrance.

### Resolution on elections in Africa

The ACHPR resolution on 2010 elections in Africa revealed some shared concerns with the NGO Forum, which also adopted recommendations on this topic.<sup>7</sup> Both the ACHPR and the NGO Forum reiterated the need for States to ratify the *African Charter on Democracy, Elections and Governance* and ensure its implementation without delay.

The resolution noted the recurrent nature of election-related violence and other human rights violations in Africa. Furthermore, it called on States to ensure the protection from intimidation and other human rights abuses of journalists, human rights defenders, election observers and monitors, before, during, and after the elections. Concern about the protection of human rights defenders was also expressed in resolutions emerging from the NGO Forum, and in NGO contributions to the examination of State reports. The heightened risk to human rights defenders during election periods is also an issue highlighted in the latest report of the UN Special Rapporteur on the situation of human rights defenders to the Human Rights Council.<sup>8</sup>

### Human rights defenders

In his report to the ACHPR, the Special Rapporteur on human rights defenders in Africa indicated that amongst the many challenges human rights defenders face across the continent, freedom of association remains one of the most pressing. As such, his office is in the process of drawing up terms of reference for a study on freedom of association. The study is being undertaken to follow up on an ACHPR resolution that found that violations of the freedom of association of human rights defenders 'put democratic values at risk in our African societies'. The Special Rapporteur expressed himself committed to involving human rights defenders in the drafting of the study.

A workshop held at the NGO Forum organised by ISHR highlighted many other obstacles to the work of human rights defenders including cumbersome procedures for the

4 <http://bit.ly/8YFgro>.

5 For full texts of all ACHPR resolutions, see <http://bit.ly/duxUEG>.

6 <http://bit.ly/9lmuCD>.

7 For full texts of all the resolutions adopted by the NGO Forum, see <http://bit.ly/bl82Ep>.

8 A/HRC/13/2, available at <http://bit.ly/cJaEqy>.

registration of associations, and legal obligations on the media to reveal their sources. NGO country resolutions, in particular one focusing on Ethiopia, underlined the difficulties faced by human rights defenders in carrying out their work. Despite the international legal framework and the regional mechanisms put in place to monitor the implementation of these standards, the risks faced by human rights defenders in carrying out their work continue to be high.

### Women's human rights

The anniversaries of two key international instruments – UN Security Council Resolution 1325, and the *Convention on the Elimination of all form of Discrimination against Women (CEDAW)* – prompted the NGO Forum and ACHPR to reflect upon the continuing huge discrepancy between these commitments and the reality of women's lives.<sup>9</sup> An NGO Forum recommendation called for the organisation of a regional forum on the implementation of Resolution 1325.<sup>10</sup> Additionally, the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* was the focus of much attention.<sup>11</sup> The importance of universal ratification of the Protocol as a means of giving vital momentum to efforts towards gender equality, and to give substance to the AU's upcoming African Women's Decade, was noted by the NGO Forum in its statement to the ACHPR. Aimed at targeting specific problems and challenges faced by women in Africa and to eradicate systemic and systematic discrimination, the Protocol includes articles underlining State responsibility to ensure equality between women and men at 'all levels of development and implementation of States' policies and development programmes'. The Rwandan women of the Batwa echoed the need for implementation of this article in their call to the Government during the examination of the State report.

This session saw the launching of the Guidelines for State Reporting under the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*. The adoption of these guidelines reflects the need to improve the quality of State reports, including by providing disaggregated data. The Commissioners have frequently noted that this is lacking in State reports. The Guidelines also make clear reference to the need for involvement of civil society, in particular individuals and organisations working on gender issues, in the preparation of the report. The Special Rapporteur on the rights of women noted that women's lack of knowledge of their own rights was a key challenge. She also noted some positive steps by States, including Zimbabwe's ratification of the Protocol and Rwanda's commitment to disseminate the recommendations of the Committee on the Elimination of Discrimination against Women.

9 UN Security Council Resolution 1325 was adopted in 2000; CEDAW was adopted 30 years ago.

10 TREC/005/05/2010. For all NGO Forum recommendations and resolutions, see <http://bit.ly/9OLOhB>.

11 <http://bit.ly/drlON0>.

The ACHPR also adopted a resolution on 'the Protection and Prevention of Women and Child Trafficking and Sexual Exploitation in South Africa During the 2010 World Cup'.

### Regional meeting on women human rights defenders in Africa

The need to highlight and address the particular challenges faced by women human rights defenders to ensure their protection was the spur for the international campaign on women human rights defenders launched in 2005. The campaign brought together activists from human rights organisations, women's groups, and those working with a particular focus on the human rights of lesbian, gay, bisexual, transgender, and intersex persons. The centerpiece of the campaign was a consultation with women human rights defenders from across the world. This was preceded by regional consultations, including one held in Dakar, to support the engagement of African women human rights defenders in the campaign. A further regional consultation, organised by ISHR, will be held from 3 to 5 November 2010. With the presence of the UN Special Rapporteur on human rights defenders and other international and regional mechanisms, this consultation will provide the opportunity for women human rights defenders from across the continent to share experiences and analyses and to draw up joint advocacy and campaign strategies. For more information about the campaign, see: [www.defendingwomen-defendingrights.org](http://www.defendingwomen-defendingrights.org).

### STATE REPORTING: THE DRC AGAIN FAILS TO SHOW UP

The Democratic Republic of Congo (DRC) for the third time failed to send a representative to appear before the ACHPR for the examination of the State report. This prompted NGOs to petition the ACHPR about the consequences of this lack of cooperation. They pressed the ACHPR to inform the DRC that its report would be considered at the next session with or without its attendance. This recalls the ACHPR's own State reporting procedure which provides the State with two notifications for attendance after which the Commission will go ahead with the examination of the State's report.<sup>12</sup> The NGOs insisted that the DRC update the State report with the input of civil society prior to attending the next session. The readiness of civil society groups to engage with national human rights issues through the ACHPR reporting system contrasts with the State's failure to do so. It was disappointing that the ACHPR's statement on the session's outcomes made no mention of the DRC's failure to appear nor took up the NGOs' recommendations.

The ACHPR also considered and adopted concluding observations on Cameroon, Rwanda, Botswana, and Ethiopia. ■

12 Information about the ACHPR State reporting procedure is available at <http://bit.ly/aXaTZT>.