
AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Denial of observer status for NGO a stark example of challenges faced by women human rights defenders



Photo: Luke and Kate Bosman

The 48th Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR) was held in Banjul, The Gambia from 10 to 24 November 2010. During the session, the ACHPR's decision to deny observer status to the Coalition of African Lesbians (CAL) raised critical questions regarding the regional human rights mechanism's relationship to civil society, and how well it is fulfilling its protection mandate.

The controversial decision is inconsistent with the increased focus being given to the particular challenges faced by women human rights defenders (WHRDs), including those committed to advancing women's human rights and sexual rights. The importance of improving visibility for the challenges experienced by WHRDs has been effectively responded to in key regional human rights defenders' gatherings, and was the rationale for an Inter-regional Consultation with WHRDs held prior to the ACHPR. Furthermore, the ACHPR's own practice confirms sexual orientation and gender identity as a human rights issue consistent with the scope of the African Charter on Human and Peoples' Rights (the African Charter). Given this context, the ACHPR's decision to deny observer status to an NGO working to further the human rights of lesbians across the African continent, was all the more troubling.

COLLABORATION BETWEEN NGOS AND THE ACHPR

The NGO Forum, established two decades ago and regularly held in the days before the Ordinary Sessions of the ACHPR, has been a means of developing and consolidating regular communication between human rights defenders and the ACHPR. The developing relationship has been evident in the increasing participation of ACHPR Commissioners at NGO Forum sessions, in the numbers of NGOs attending the ACHPR sessions and, significantly, in the number of NGOs requesting and being granted observer status.

The ACHPR relies on information from civil society actors to fulfill its mandate of promoting and protecting human rights, and ensuring the protection of rights under conditions outlined in the present African Charter.¹ The ACHPR's stated aim of strengthening 'co-operation and partnership with NGOs working in the field of human rights' is achieved in part through granting observer status.² This is a long established practice, with the total number of 'observer' NGOs reaching 418 at the close of the 48th session.

Observer status provides NGO with opportunities to engage with the Commission in several ways. All observers are invited to attend opening and closing sessions of the ACHPR. They also have access to many Commission documents. Observers can attempt to influence the focus of the Commission by requesting issues of particular interest to them be included in the ACHPR's provisional agenda. They may make statements during the Ordinary Sessions, and are provided with the opportunity to respond to questions directed to them by participants. Observers may also be invited to be present at closed sessions dealing

1 African Charter on Human and Peoples' Rights, Article 45 on the Mandate of the Commission at <http://bit.ly/hm5nMy>.

2 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 (established by the ACHPR in 1999). See <http://bit.ly/hm5nMy>.

with issues of particular interest to them. Those with observer status therefore have an enhanced opportunity to urge the ACHPR to consider human rights issues of concern to them.

Access to regional human rights systems can be particularly important for human rights defenders from national contexts where freedom of expression, association and assembly are curtailed. The recognition of a human rights cause is a significant factor in granting observer status. Recognition is also directly connected to protection of activists defending particular human rights, and protection of the population more broadly.³ Such acknowledgement can be of particular importance to those, such as WHRDs, who are vulnerable to attack due to their gender or the focus of their work.

THE IMPORTANCE OF THE WORK OF WHRDs

Providing space for analysis of the specific challenges faced by women human rights defenders, and a means to address them, was the objective of an Inter-Regional Consultation on WHRDs held immediately before the NGO Forum. The consultation was co-organised by ISHR and close partners, and brought together WHRDs from across Africa, as well as Asia and Latin America⁴. Participants shared that many of the challenges they face are rooted in a lack of recognition of the legitimacy of their human rights causes, as well as discrimination, prejudice and stigmatisation at the hands of State and non-state actors.⁵ They noted difficulties they faced in accessing key diplomatic and human rights circles, and getting their human rights causes heard. In light of regional and international standards that have repeatedly recognised women's essential role in development and in the promotion of peace and security, participants emphasised the importance of putting women's full and active participation in society at the heart of African policy concerns.

The timing of the consultation was aimed at providing momentum and shape to discussions amongst human rights defenders and with the ACHPR. The NGO Forum's readiness to focus on the challenges faced by WHRDs and LGBTI activists in particular, has been shown in resolutions over recent years focusing on the rights of LGBTI people.⁶ In its statement to the ACHPR, the NGO Forum raised denial of observer status to CAL as one of its first concerns, particularly in the context of ongoing violations against LGBTI people in many parts of the continent.⁷

3 See HRC Resolution on HRDs HRC/RES/13/13 paragraph 4, for example. Visit <http://bit.ly/fdkBoP>.

4 Inter-Regional Consultation hosted by African Centre for Democracy and Human Rights Studies, Conectas Direitos Humanos, International Service for Human Rights, the East and Horn of Africa Human Rights Defenders Network, the West Africa Human Rights Defenders Network and the Women Human Rights Defenders International Coalition.

5 See The Women's Declaration from the Consultative Workshop on Women Human Rights Defenders in Africa, held from 4 – 6 November 2010 in Banjul, The Gambia.

6 TRES/004/11/2010.

7 Statement on Behalf of Participants of the Forum of NGOs at

The ACHPR did not identify WHRDs as a subject of a particular resolution, but reference to the importance of safeguarding the work of these defenders was brought up by Commissioners, particularly those who attended the WHRDs' consultation. At the ACHPR meeting, the Special Rapporteur on human rights defenders noted he had attended a seminar on WHRDs, the conclusions of which he hoped would inform the development of his upcoming report on WHRDs.⁸ It is hoped this focus will be continued by his successor in the mandate, Commissioner Lucy Asuagbor. The experience of WHRDs is also a key concern at the international level, with the UN Special Rapporteur on human rights defenders choosing to focus her report for the 16th session of the Human Rights Council on this subject.

CONCERNS EXPRESSED BY NGOS ABOUT DENIAL OF OBSERVER STATUS

Some 18 NGOs expressed concern about the denial of observer status to CAL in their statements to the ACHPR, an unprecedented demonstration of collective concern by NGOs in this forum. The irony of denying observer status to CAL in the same year the ACHPR was commemorating 30 years of the African Charter and the start of the African Decade of Women was not lost on many NGO participants.

NGOs' statements highlighted the principles of non-discrimination and equality established internationally and regionally, including in the African Charter, and upheld the ACHPR's own jurisprudence. Others pointed to the ACHPR's track record, both in questioning States regarding violations of sexual orientation and gender identity, and in hearing statements from 'mainstream' human rights organisations on such abuses. NGOs said this indicated the ACHPR is fully aware of sexual orientation and gender identity as a human rights issue and consistent with the scope of the African Charter. Some pointed to the inconsistency in the ACHPR position, given their much welcomed recent step of establishing a Working Group on HIV/AIDs⁹. The Working Group will integrate a gender perspective into its work and provide specific attention to persons from 'vulnerable groups', including women and men having sex with men.

The justification for refusal by the ACHPR, that 'the activities of the said organisation do not promote and protect any of the rights enshrined in the African Charter', was robustly challenged by NGO speakers.¹⁰ NGOs repeatedly expressed

the Official Opening of the 48th Ordinary Session of the African Commission on Human and Peoples' Rights.

8 See 'Rapport d'Activités de la Rapporteuse Spéciale sur les Défenseurs des Droits de l'Homme en Afrique' ACHPR/48/OS/103.

9 Working Group on the Protection of Persons Living with HIV and Those at Risk, Vulnerable to and Affected by HIV in Africa.

10 For requirements of organisations applying for observer status with the African Commission see, 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 (established by the ACHPR 1999) <http://bit.ly/9VausB>.

concern the ACHPR would be seen as retrogressive and lacking in independence, and that the decision 'may be seen as a failure of the ACHPR to be constant and unequivocal in affirming the indivisibility, interdependence and universality of human rights'.¹¹ Fears were expressed the decision was a betrayal of one of the principle pillars of the ACHPR's mandate, 'to protect and promote human rights', and would set a worrying precedent. Furthermore, it was argued the ACHPR's ability to hold States to account for violations would be undermined, when the ACHPR acts apparently arbitrarily.

WHRDS: HIGHLIGHTING ISSUES OF EXCLUSION

WHRDs said exclusion, or risk of exclusion from family or community circles, including religious communities, can be used as a threat against women who take a stand for human rights. These threats were frequently couched in arguments supposedly based on custom, tradition or religious teaching. It was therefore alarming to hear the intervention of the Head of the State delegation of Zimbabwe basing his approval of the denial of observer status on an interpretation of religious text. He described the ACHPR's decision as 'consonant with our customs and culture as Africans', and made references to religious texts that he considered substantiated the decision. In his intervention on the topic, he made no reference to human rights.

THE ACHPR AND PROTECTION OF HRDS

The protection of human rights defenders whilst engaging with the ACHPR was one of the other themes of joint NGO concern, expressed in a statement under item 6b. During their 'right to reply', some States effectively targeted various NGOs without challenge from the Chair. This was seen as an attack on legitimate NGO space, and a failure by the Chair to follow protocols to safeguard NGO participation. Concerns were expressed that such targeting increased the risk of reprisals against NGOs when they returned to their home countries. The ACHPR's role of protection must start with the proceedings at the sessions of the ACHPR.

CONCLUSION

Ongoing documentation and analysis of the violations and abuses experienced by WHRDs continues to be vital to make known their experiences, and define effective means to promote their human rights causes without hindrance. It was recommended that the ACHPR, and in particular the Special Rapporteur on women, carry out research looking at violence against lesbians and bisexual women. Following the experience of the International Gay and Lesbian Human Rights Commission, who were finally granted consultative status by ECOSOC after an experience of repeated deferral,¹² it is hoped

the ACHPR will reconsider its decision and grant observer status to CAL before the 49th Ordinary Session in April 2011.

Statements made during the 48th Ordinary Session of the ACHPR highlighted the importance NGOs place on having an accessible and credible regional human rights mechanism. NGOs play a key part in defending and promoting the ACHPR and the African Charter, and this collaborative and critical role must be encouraged and facilitated.

NGO engagement with the ACHPR

NGOs wanting to engage with the ACHPR can apply for Observer Status to the Secretariat of the Commission. All organisations applying for Observer Status shall:

- Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the Organisation of African Unity Charter and in the African Charter on Human and Peoples' Rights
- Be organisations working in the field of human rights
- Declare their financial resources

NGO applications for Observer Status should include:

- A written application addressed to the Secretariat stating its intentions, at least three months prior to the Ordinary Session of the ACHPR that will decide on the application, in order to give the Secretariat sufficient time in which to process the application
- Its statutes, proof of its legal existence, a list of its members, its constituent organs, its sources of funding, its last financial statement, as well as a statement on its activities
- The statement of activities should cover the past and present activities of the organisation, its plan of action and any other information that may help to determine the identity of the organisation, its purpose and objectives, as well as its field of activities
- No application for Observer Status will be put forward for examination by the ACHPR without having been previously processed by the Secretariat
- The ACHPR's Bureau will designate a rapporteur to examine the dossiers. The ACHPR's decision will be notified without delay to the applicant NGO

For more information visit www.achpr.org/english/_info/observer_en.html ■

¹¹ See <http://bit.ly/eCfi3D> for an ISHR statement to the 48th Session of the ACHPR under item 4.

¹² Characterised as 'a simple act of discrimination' by some State representatives: UK position, supported by other States. *ibid*