

# THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS



Joint NGO workshop at the 46<sup>th</sup> session of the African Commission on Human and Peoples' Rights with the participation of the ACHPR Special Rapporteur on Human Rights Defenders, Ms Reine Alapini-Gansou (center).

INTERNATIONAL SERVICE FOR HUMAN RIGHTS

**T**he African Commission on Human and Peoples' Rights (ACHPR) was established by the African Charter on Human and Peoples' Rights (the African Charter) and is the main regional body with a mandate to promote and protect human rights in Africa. The ACHPR has its headquarters in Banjul, the Gambia and convenes its ordinary sessions twice per year, usually in May and November. The venue of each session rotates among the State parties to the African Charter.

The ACHPR is composed of 11 members who serve in an independent capacity as commissioners and thematic special rapporteurs of the ACHPR. The main functions of the ACHPR are to protect and promote human rights, and to interpret the provisions of the African Charter. States parties to the African Charter are required to submit periodic reports to the ACHPR, which are then examined at its formal sessions through an interactive dialogue with Commissioners.

Each two week session of the ACHPR is preceded by a three-day Forum for the Participation of Non-Governmental Organisations (the NGO Forum), organised by the African Centre for Democracy and Human Rights Studies (ACDHRS) and funded by the UN Office of the High Commissioner for Human Rights (OHCHR), which is well-attended by NGOs from all over Africa.<sup>1</sup>

The 46<sup>th</sup> session of the ACHPR, held in Banjul from 11 to 25 November 2009, was convened amid much speculation that the session might be moved to another African country given the alleged statements made by President Yahya Jammeh in September 2009 threatening the safety of human rights defenders in the Gambia.<sup>2</sup> Amidst rumours of a boycott by a number of NGOs and a resolution<sup>3</sup> passed by the ACHPR at its 7<sup>th</sup> extra-ordinary session in Dakar, Senegal (5-11 October 2009) calling for President Jammeh to withdraw his statements, the session was eventually convened in Banjul, and attended by a smaller but still significant number of NGOs. The controversy was widely discussed among NGOs throughout the Forum, and included suggestions by NGOs to move the secretariat of the ACHPR out of the Gambia.

## NGO Forum

The NGO Forum was held from 7 to 9 November 2010 and was attended by over 100 participants, roughly half the usual amount of attendees, including from national, regional and international NGOs, human rights defenders' networks, and representatives of OHCHR. The NGO Forum provided space for an overview of the situation of human rights and democracy in

<sup>1</sup> ISHR has been attending and actively participating in the NGO Forum as well as the ACHPR as an accredited observer since 2000.

<sup>2</sup> Amnesty International press release. Available at: <http://www.amnesty.org/en/library/info/AFR27/007/2009/en>.

<sup>3</sup> Full text of the resolution can be found at: [http://www.achpr.org/english/\\_info/news\\_en.html](http://www.achpr.org/english/_info/news_en.html).

Africa, followed by regional updates on human rights situations in various sub-regions. Updates from countries of concern included a focus on Guinea Conakry, Kenya, Niger, the Sudan, Zimbabwe and the Gambia. A discussion on human rights defenders included a presentation from Commissioner Reine Alapini-Gansou, Special Rapporteur on human rights defenders in Africa, highlighting the continuing challenges facing defenders on the continent. Special interest working groups allowed NGOs to discuss priority issues in more detail, such as prevention of torture, prisons and penal reform; the situation of refugees, asylum seekers, internally-displaced persons and migrants in Africa; the African Court on Human and Peoples' Rights and the International Criminal Court; indigenous communities; the death penalty; human rights defenders; freedom of expression; situations of women and girls and the African Union Women's Protocol; economic, social and cultural rights; children's rights; rights of gay, lesbian, transgendered, bisexual and inter-sex persons; and election monitoring in Africa. Also of note was mention of the Government of Zimbabwe denying entry to the UN Special Rapporteur on torture, Mr Manfred Nowak, by both Zimbabwean and international NGOs.

The NGO Forum forwarded five country-specific resolutions, seven thematic resolutions and seven recommendations for consideration by the African Commission on Human and Peoples Rights (ACHPR).<sup>4</sup> The 46<sup>th</sup> session of the ACHPR saw the adoption of resolutions on more substantive human rights issues proposed by the NGO Forum than in the past, where there were more procedural resolutions. Four out of 19 NGO resolutions were adopted by the Commission, also an increase on previous years.

#### 46<sup>th</sup> session of the African Commission on Human and Peoples' Rights

The main session of the ACHPR saw the end of term of Mr Bahame Tom Mukirya Nyanduga as a Commissioner and as interim Chair, and the election of a new Chairperson of the ACHPR, Ms Reine Alapini-Gansou, whose mandate as Special Rapporteur on human rights defenders in Africa also came to an end. Two new Commissioners were appointed, Mr Bechir Khalfallah (Tunisia), and Mr Mohamed Fayek (Egypt). Mr Khalfallah took over as the new Special Rapporteur on human rights defenders. Mr Fayek was appointed as the new Special Rapporteur on refugees, asylum seekers and internally displaced persons in Africa, taking over from Mr Nyanduga.

<sup>4</sup> A resolution on the general human rights situation on the African continent highlighted the specific situations in Guinea, Kenya, Eritrea, Somalia, the Sudan, Chad and the Democratic Republic of Congo and called on member States to take legislative and other measures to end impunity for human rights violations in the country. Other resolutions focussed on the impact of climate change on human rights in Africa, the need to conduct a study on the implementation of the right to freedom of association in Africa, and another urging member States to take appropriate measures to monitor the impact of the global financial crises on vulnerable groups like the poor, women, children, refugees and displaced persons, indigenous peoples, the disabled and persons living with HIV/AIDS.

NGOs highlighted the need for these mandates to be implemented with independence by the new Commissioners, taking into account the well-established working methods and commitment of their predecessors. The appointment of the two new Commissioners from North Africa has also ensured equitable representation of all sub-regions of the continent within the ACHPR. During the session a new Bureau was also elected, which, compared to the composition of the previous bureau, better respects gender balance, a concern previously raised by NGOs and which the ACHPR appears to have taken into consideration.

All in all, while there were approximately 100 representatives of the NGO community present at the NGO Forum prior to the ACHPR session, the number dwindled significantly after the opening of the main session of the Commission to less than 50. The lack of investment of NGOs in the main session remains of serious concern, and demonstrates the need for improving NGO participation in this process both in terms of engagement, but also in terms of ensuring the predictability of when country reviews will take place, so as to allow for NGOs to plan their participation.

The main session saw the examination of the State reports of Ethiopia, Botswana and the Republic of Congo (Brazzaville), with a somewhat expected 'no-show' by the delegations of the Democratic Republic of Congo (DRC) and Cameroon. With regards to the DRC, the State has failed to report to the ACHPR on three previous occasions when it has been scheduled to be reviewed, and it remains to be seen whether the DRC will yet appear before the ACHPR, and if not, if it can provide a valid excuse for its persistent absences.

Some of the key questions in relation to the examination of Ethiopia were: the protection of freedom of association given recent legislation restricting foreign funding to human rights NGOs; protection of freedom of expression and the need to repeal criminal defamation laws; and the treatment of pastoralist communities in the country. The country rapporteur ended by stating that the delegation had not answered most questions put to it, and said that deferring its replies to written responses prevented the ACHPR from effectively engaging with the Government.

Key issues in the examination of Botswana were: the discriminatory effect of customary law, which is 'unwritten and subject to variation' on women in the country; reservations to the definition of torture contained in Article 1 of the UN Convention Against Torture; targeting of journalists using defamation laws; concerns in relation to the Media Practitioners Bill; the death penalty; and limitations on freedom of association through restrictive registration procedures.<sup>5</sup>

<sup>5</sup> A regime of declaration is one whereby a group can declare its intention to be an association without waiting for a decision by a regulatory authority, whereas a 'compulsory' regimes is one where an

The examination of the Republic of the Congo (Brazzaville) raised questions regarding plans to operationalise the newly established national human rights institution, including by supplying office space, in order to allow the institution to fulfill its mandate. The Government was also pressed on plans to implement the UN Declaration on Human Rights Defenders and other relevant regional instruments that recognise the right to protect human rights.

Besides the specific concerns that were raised in relation to each review, some of the common issues raised by Commissioners were: the lack or insufficient use of statistics in the State reports allowing Commissioners to measure the progress of implementation; the need for States to better follow reporting guidelines; and the need for civil society to be more involved in the preparation of the State report. Although there have been improvements in the way that States report to the ACHPR, in particular by making these reports reflect the human rights situation in the country more accurately, efforts clearly still need to be made to make these reports fully compliant with the ACHPR reporting requirements.

The ACHPR adopted concluding observations on the Congo but deferred adoption of concluding observations on Botswana and Ethiopia until after receipt of further information from these States.

The ACHPR also adopted resolutions on the establishment of a working group on extractive industries, the environment and human rights violations in Africa; climate change and human rights and the need to study its impact in Africa; the need for a study on freedom of association in Africa; and on the impact of the global financial crisis on the enjoyment of social and economic rights in Africa.<sup>6</sup>

The violation of rights of lesbian, gay, bisexual, transgender and inter-sex persons (LGBTI persons) was also repeatedly raised during the course of the NGO Forum and main session, including with reference to the application of the Coalition of African Lesbians for observer status with the ACHPR, which had been deferred for consideration from the previous session. One of the key challenges at the session was therefore the adoption of the ACHPR's position paper on LGBTI issues, which was again postponed to the 47<sup>th</sup> ACHPR for further consideration. This has had the effect of further delaying the decision of whether to grant observer status to the Coalition of African Lesbians. The inability of the ACHPR to take a principled substantive position on consideration of LGBTI issues has already caused participant LGBTI organisations to question whether there is any real value in their engagement with the ACHPR while this issue remains unresolved. Given

the prevalence of discrimination and violence against sexual minorities in Africa, it remains to be seen whether the ACHPR will take the position of States or NGOs at the 47<sup>th</sup> session in May 2010.

Although the 46<sup>th</sup> session of the ACHPR had a difficult start, it concluded with several positive outcomes and no major incidents with the Government of the Gambia, ending with a final communique on 25 November 2009 that summarised the main outcomes of this session.<sup>7</sup>

### Next developments

The ACHPR was supposed to hold its next ordinary session from 12 to 26 May 2010 in Tunis, Tunisia. However, it now appears that the next session will be held, once more, in Banjul in the Gambia. What seemed like a good opportunity to raise the specific concerns of defenders working in North Africa, and in Tunisia in particular, now appears to have been discarded precisely for this reason. The momentum being generated by civil society in Tunisia and abroad for the proposed session appears to have convinced the Government of Tunisia to withdraw its acceptance to host the 47<sup>th</sup> session of the ACHPR.

The 47<sup>th</sup> session of the ACHPR will examine the situation of human rights in the DRC, Cameroon, Madagascar and Rwanda. The human rights records of these States have presented long-standing concerns for the ACHPR, and the session will provide an opportunity to question these States about the status of implementation of their obligations under the African Charter. The challenge will be how to mobilise civil society to actively participate in these examinations. Again, it remains to be seen whether the delegation from the DRC will actually report to the ACHPR, given its non-appearance at previous sessions. The review of the DRC will be taking place following its review under the universal periodic review (UPR) mechanism of the UN Human Rights Council in February 2010.

The ACHPR position paper on the LGBT rights will once again come up for consideration at the 47<sup>th</sup> session and its consideration will be a decisive moment for the ACHPR and LGBTI rights on the continent.

The ACHPR is also expected to appoint the experts of the working group on the question of extractive industries in Africa and human rights violations, at the next session.

Given that the 47<sup>th</sup> session will be held in Banjul, it will create new opportunities for NGOs to raise their concerns about the deteriorating situation in the Gambia and for the ACHPR to further debate the situation. However, it is unclear what level of NGO participation to expect at the 47<sup>th</sup> session, given their experiences prior to the last session. ■

association can be penalised (with often severe results such as being shut down) for not registering with a formal authority.

<sup>6</sup> For full list, please refer to the final communique available at : [http://www.achpr.org/english/\\_info/news\\_en.html](http://www.achpr.org/english/_info/news_en.html).

<sup>7</sup> Available at: [http://www.achpr.org/english/communiqués/Final%20Communique\\_46\\_OS.pdf](http://www.achpr.org/english/communiqués/Final%20Communique_46_OS.pdf).