

53rd Session of the African Commission on Human and Peoples' Rights

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The African Commission on Human and Peoples' Rights is an expert body established by the African Union to monitor, promote and protect human rights in African States. The 53rd Ordinary session of the Commission was held in Banjul in The Gambia from 9 to 22 April. It was preceded by a three day NGO Forum (5 to 8 April) which brought together human rights defenders from across the continent and beyond. The Forum aims to bring human rights concerns to the attention of the Commission in a bid to increase the protection and promotion of rights through the mechanism.

Key developments

Commission fails to take necessary steps to protect human rights defenders from attacks and reprisals

For the first time at an opening ceremony of the Ordinary session of the Commission, the Chair publically condemned reprisals against those that cooperate with the mechanism. However, NGO calls for the Commission to show greater resolve and establish an effective institutional mechanism to prevent and respond to reprisals against human rights defenders were not heeded.

Reprisals against those engaging with the African Commission have long been reported by individual human rights defenders. The experience and fear of reprisals is deterring human rights defenders from engaging with the mechanism. ISHR is aware of human rights defenders who decided the risk was too high, having been allegedly threatened both during the last Ordinary Session, and upon their return home. With the Commission regularly acknowledging the importance of the contribution of human rights defenders to its work, including at this session, its unwillingness to attend to their protection is discouraging.

Reprisals against those engaging with the Commission are just one example of the broader insecurity experienced by human rights defenders across the continent. The lack of protection for human rights defenders is frequently highlighted by activists during statements made to the Commission. In its 2011 resolution on human rights defenders in Africa, the Commission itself drew attention to the raft of violations experienced by human rights defenders across the continent, as well as the impunity frequently enjoyed by perpetrators of violations - including reprisals. The Commission acknowledged its responsibility and the opportunity it has to challenge attacks against defenders. However, so far its response has remained largely rhetorical and ad-hoc.

Two hundred human rights defenders gathered at the NGO Forum and unanimously passed a resolution calling on the Commission to 'to establish a reporting and follow-up mechanism to receive, document, analyze, report and follow-up on allegations of reprisal and intimidation reported in relation to cooperation with the ACHPR and its mechanisms.' This echoes initiatives within the UN system, where a means to document, report on and follow up on cases of reprisals against those who cooperate with the UN has been set up. Whilst a great deal remains to be done at the UN to effectively prevent and respond to reprisals, it does provide a model for the Commission to consider.

With no particular response from the Commission to the NGO demands, it is unclear what reservations the Commission might have. NGOs have acknowledged the under-resourcing of the Commission's activities, but consider that taking steps to track and follow up on reprisals should not be resource intensive.

NGOs noted that by moving to systematize its response to reprisals, the Commission would show itself to be serious about preventing attacks against human rights defenders with whom it partners. The Commission has a responsibility to do so given that many engage with the mechanism precisely because space to claim and defend rights at the national level is so limited. Ultimately, the Commission should consider an attack against anyone engaging with the African Commission to be an attack against the Commission itself, and act

accordingly.

No State reports presented during the session

A worrying precedent was set during this African Commission Ordinary Session by the lack of any review of a State's human rights record. The African Charter requires State parties to submit a periodic report every two years, and the Commission, in accordance with its own rules of procedure, to hold a dialogue with States to establish their compliance with their human rights obligations. When no interactive dialogue is held between a State party and the Commission a rare opportunity to hold the State to account for its human rights record is wasted.

The Commission gave no official reason for the lack of reporting – despite the periodic report of the Sahrawi Arab Democratic Republic being available on the Commission website ahead of the session.

At this session several States, including Cameroon, Chad, The Gambia and Malawi committed to submitting their periodic reports in time for the next session. A couple of these same States have made the same pledges at previous sessions without reports being forthcoming. Overall 11 State parties never having sent in reports to the Commission, and countless others are behind in submitting their reports.

With no State reporting, all those who rely on the Commission as a means to try to effect human rights change at the national level, are let down.

In its statement under [item 6](#), ISHR suggested the Commission establish a realistic schedule for State reporting to the Commission on their obligations under the African Charter and relevant protocols. This should be made public to enable civil society to hold States to account for the production of reports and to press States where reports are overdue or not forthcoming. In the case of a State's repeated failure to send a delegation to present its report or non-submission of reports, the Commission should consider the State in its absence.

Limited response by African Commission to NGO calls

The NGO Forum, held in the days ahead of the Commission session, provides an opportunity for human rights defenders to debate means to advance a range of human rights concerns, including through the African Commission. At this Forum, NGOs pushed the Commission to introduce a human rights perspective to those issues to which it had not yet paid attention.

The NGO Forum called upon the African Commission and other regional and international human rights bodies 'to integrate terrorism (and) transnational organized crime in its agenda', recommending that research be carried out on the root causes of terrorism and transnational organized crime, and their implications on human rights and democracy in Africa. The Commission did not respond to this call directly. However, it did pass a resolution related to illicit capital flight from Africa, an issue compellingly brought to the attention of the human rights body in NGO statements during the Commission session itself. The resolution asked 'the Working Group on Economic, Social and Cultural Rights in Africa and the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa to undertake an in-depth study on the impact of illicit capital flight on human rights in Africa.'

NGOs have long pushed the Commission to fulfill its mandate to protect and promote rights, by considering both new areas of concern and improving its ways of working. Recommendations made during the 25th Anniversary of the Commission last October included several related to the transparency and efficiency of the ways in which the Commission works. Reforms would maximise the Commission's use of NGO experience and expertise. During its statement under Item 6, ISHR called on the Commission to produce a road map for the implementation of the recommendations it accepts and supports, and provide an explanation when rejecting recommendations. However, whilst the Commission deliberated on these recommendations during its private session, there is as yet no road map for their implementation.

Focus by international and regional mechanisms on Eritrea prompts State response

The human rights situation in Eritrea received some attention during both the NGO Forum and informal meetings held around the African Commission session. Eritrean human rights defenders spoke of the depth and breadth of human rights violations experienced by those living in country, including torture, arbitrary detention, and systematic discrimination against women. In response, the NGO Forum passed a resolution calling on the Eritrean government to engage with regional and international mechanisms, including the UN Special Rapporteur. The UN Special Rapporteur on Eritrea, Ms. Sheila Beedwantee Keetharuth, who attended the African Commission session, further reiterated her call to the Eritrean State to meet with her. This call, allied with NGO demands, prompted a faintly positive response from the Eritrean State. An ad-hoc meeting was held between the Rapporteur and State parties, and the Commission later reported a meeting with the Eritrean delegation at their request. However, the long-sought after request by the Rapporteur to visit the country continues to be denied. The Special Rapporteur will now visit neighbouring countries to hear the evidence of those who have fled from Eritrea, ahead of presenting her first report to the UN Human Rights Council in June.

Other NGO Forum country-specific resolutions - on Angola, Kenya, Sudan and Swaziland - all called upon the Commission to urge States to protect human rights defenders from acts of intimidation or attack. Upcoming or recently completed electoral processes - where the risks faced by human rights defenders can be heightened - were noted in resolutions on Swaziland and Kenya respectively, with calls for respect of rights to fundamental freedoms of expression, association and assembly. Regrettably, the Commission did not make any particular reference to any of these NGO calls, or reflect any particular concerns on these country situations, in its final communiqué.

Commission's response to Mali indicates potential for greater response to conflicts

At the end of the Ordinary session, the Commission announced its intention to send a fact-finding mission to Mali in early June 2013. This comes at a time when the observer mission to Mali, headed by Commissioner Alapini-Gansou, continues as part of the African Union's response to the situation in the country.

The nature of the role the Commission might play in African Union responses to conflict within the continent was part of an NGO line of enquiry during the NGO Forum. The Forum approved a resolution on Sudan calling on the Commission to coordinate with African Union bodies, such as the Peace and Security Council, to define an effective response to the situation in-country. As part of that coordinated response, the NGO Forum urged the Commission 'to carry out an urgent protection mission' to gather information on the human rights situation in different parts of the country. Such calls for proactivity by the Commission speak to the fact that NGOs see potential for the Commission to be far more of a player in terms of proposing and executing responses and preventative strategies to conflict.

Chairperson condemns violence and discrimination on any grounds

The NGO Forum called upon the Commission to condemn discrimination and violence against people on the basis of their real or perceived sexual orientation, and to call on State parties to investigate and prosecute perpetrators of such violations.

The Commission did not respond directly to this call. However, in an important development, the Chair of the Commission in a video address to the Oslo International Conference on Human Rights, Sexual Orientation and Gender Identity - which ran in parallel to the Commission session - affirmed that the African Commission 'denounces violence committed against individuals based on their sexual orientation as part of its mandate to protect individuals from all forms of violence.'

The Chair speaks of the Commission as an 'innovator' in human rights

With the launch of two new Commission documents - [The Model Law on Access of Information in Africa](#), and the General Comments on Article 14 (1) (d) and (e) of the [Protocol](#) to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa - the Chair characterized the Commission as 'an innovator' in the development of human rights standards. Both of these developments in the articulation and interpretation of Charter obligations are firsts for the Commission, and the role of NGOs in providing energy and expertise to the process was acknowledged by relevant Commissioners.

Reflecting another emerging area of focus for the Commission, the Special Rapporteur on Human Rights Defenders in Africa spoke of her report on women human rights defenders, due to be completed by the next Ordinary session in October. It is hoped that through this report, the Commission will provide detailed recommendations regarding the specific protection needs of women human rights defenders in Africa.

ISHR advocacy

ISHR calls for Commission to step up its response to attacks against defenders

ISHR called upon the Commission to show it is serious about ending reprisals against those who cooperate with the mechanism. In a [statement on reprisals](#), ISHR urged the Commission to establish a means for systematically recording, reporting on and following up on cases of reprisals.

Mindful of the fact that reprisals against those cooperating with the Commission are one manifestation of the failure of States to adequately protect individuals in their legitimate human rights engagement, ISHR called the Commission's attention to the increasing phenomenon of the criminalisation of the work of human rights defenders. Criminalisation of defenders includes the enactment of laws that restrict or deny the rights of human rights defenders, as outlined in the UN Declaration on Human Rights Defenders. These include laws restricting NGOs from receiving foreign funding, proposed criminalisation of 'homosexual propaganda', and laws that limit freedoms of expression, association and assembly on discriminatory grounds. The misuse of the judicial process is another example of criminalisation. Costly court cases initiated and perpetuated with the purpose of hindering or paralyzing a defender's work, are known tactics: such criminalisation and stigmatization of human rights defenders facilitate and constitute human rights violations.

ISHR called upon the Commission to urge states to refrain from the criminalisation of human rights defenders, as part of their overall engagement with State parties regarding obligations to create and sustain an enabling environment for the defense of rights.

ISHR welcomes Commission initiative focusing on the situation of women defenders

ISHR welcomed the initiative on women defenders by the Special Rapporteur, and noted that it would play its part in supporting the work of the Commission by disseminating the Commission's recommendations, and demanding that member States fulfill their obligations to ensure women defenders across the continent can work without harm or hindrance.

Commission must improve its ways of working to hold States to account

The Commission must amend its ways of working to enable NGO engagement with the mechanism, with the overall objective of holding States to account for their human rights obligations under the African Charter.

Delays in States submitting periodic reports to the Commission, and a lack of any State reporting whatsoever at this session, make the need for a doable and predictable schedule for reporting even more pressing. NGO engagement in the process - including submitting shadow reports - relies on this.

'Whilst we agree that the reporting process should be centred on constructive dialogue, with certain flexibility where States are unable to report in exceptional circumstances, ultimately the process cannot allow for member States to avoid their responsibility altogether.' said Clement Voulé, ISHR Head of Advocacy at the African Commission. 'With no clear sense of which country is due to report, NGOs are thwarted in their efforts to push their States, or provide the Commission with information in a timely way.'

In a [statement](#), ISHR also reminded the Commission about recommendations made to it during its previous Ordinary Session. Several of these recommendations related to improving the ways the Commission works. The Commission should produce a road map for the implementation of those recommendations it accepts and supports, and provide an explanation in the case of rejecting any recommendations.

With a mind to the challenges faced by the Commission, however, Mr Voulé added that 'without resources, the Commission is thwarted in its efforts to do the work it has been mandated to do by State parties to the

Charter. If States are serious about guaranteeing and respecting human rights, this includes providing adequate resources for the human rights mechanisms they created to assist them to meet those commitments.'

Commission must demand the highest standards in national institutions

To encourage the development of the overall human rights system in the continent, ISHR called upon the Commission to ensure that it only permits national human rights institutions (NHRIs) of the highest caliber to participate at its sessions. ISHR noted that whilst 22 NHRIs are accredited to speak during the Commission session, only 15 NHRIs across the continent are fully compliant with principles of independence, impartiality and transparency (known as the 'Paris Principles'). ISHR called upon the Commission to put in place a [periodic review of the status of NHRIs](#), allowing for suspension of those that don't meet the grade.

'Ensuring that only those NHRIs fully compliant with the Paris Principles are afforded the privileges of accreditation with the Commission will send a strong message to States for the need for reform,' said Mr Voule, ISHR Head of Advocacy at the African Commission.

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