

Conclusion of the 49th Session of the African Commission on Human and Peoples' Rights

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The 49th Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR) concluded on 12 May 2011 with the adoption of six resolutions by the Commission. The periodic reports from Burkina Faso, Libya, Namibia and Uganda were presented during the session, and Commissioners' activity reports heard. Multiple non-governmental organisation (NGO) statements were delivered on a range of human rights issues, and attention focused on developments within the human rights system that will increase opportunities to hold States accountable for their obligations under the African Charter. The ACHPR session was held in Banjul, The Gambia, as has been the case for the last two years, despite requests to other African Union (AU) member States to host the event.

During the opening ceremony a statement was read on behalf of participants of the [NGO Forum](#), highlighting issues of concern expressed by human rights defenders from across the continent and crystallised in a series of resolutions submitted to the ACHPR for consideration. However, the themes of these resolutions and the recommendations were reflected little in the ACHPR's own resolutions. Four of the ACHPR's resolutions related to mandates and appointments, whilst the other two thematic resolutions focused on the safety of journalists and media practitioners in Africa; and the rights of indigenous women in Africa [\[1\]](#).

ACHPR Special Rapporteur on Human Rights Defenders

The Special Rapporteur on Human Rights Defenders, Ms Lucy Asuagbor, presented her activity report covering the first six months of her term, with reference to her promotional visit to Cameroon in February 2011. In terms of the upcoming period, she noted that Namibia is the only country that has responded favorably to her request for a country visit, and arrangements for the visit are currently being worked out. During a session at the NGO Forum, human rights defenders had recommended several other countries where a visit by the Special Rapporteur would be relevant. Ms Asuagbor said she would submit requests to the relevant States, where she had not done so already.

A future report of the Special Rapporteur on Human Rights Defenders will focus on the situation of women human rights defenders across the continent. The Special Rapporteur referred to her attendance at the presentation of the UN Special Rapporteur on Human Rights Defenders' report to the 16th session of the Human Rights Council - which focused on women human rights defenders and those working on women's rights or gender issues. Ms Asuagbor she had also attended a side event on the subject organised by the Women Human Rights Defenders International Coalition (WHRDIC). The Special Rapporteur referred all to the newly revived [mandate website](#) where information about upcoming activities will be found. She committed herself to uploading activity reports onto the website ahead of ACHPR sessions, to keep stakeholders more regularly informed and to allow for more meaningful engagement with States and NGOs. In addition, she said the 6th mandate newsletter, currently being produced in partnership with ISHR, will be finalised in the next month.

The members of the 'Working Group to study the laws governing freedom of association and practices that violate freedom of association in Africa' were decided by the Commission (the Working Group) [\[2\]](#). The Working Group brings together organisations that currently represent human rights defender constituencies on the steering group of the NGO Forum, and will operate under the supervision of the ACHPR's Special Rapporteur on Human Rights Defenders. The Working Group is instructed to produce the study within a year, but funds to do so remain scarce.

The Special Rapporteur noted that individual communications over the period related to thirty cases involving defenders from nine countries. Her activity report lists cases handled, action taken, and government responses to date [\[3\]](#). In almost every case, the government has yet to respond. Several States responded to the report by referring to what was described as 'a breakdown in communication' with the mandate, not having received the communications she referred to. One State delegate proposed that, in the future, the Special Rapporteur

request an acknowledgement from States of receipt of a communication.

Country reports

The Periodic Reports of Burkina Faso, Libya, Namibia, and Uganda were presented during the session.

Libya dedicated much of the 20 minutes allocated for the initial presentation of their report to outlining what their representatives described as the violation of Libyan sovereignty and human rights violations at the hands of NATO forces. Commissioners' questions brought the State back to its responsibilities for the rights enshrined in the African Charter, independent of the current situation faced in the country. The point was made that emergency laws do not take away from a government's obligation to respect fundamental human rights under international law, or restrict without justification fundamental freedoms central to defending rights. The Libyan delegate's reference to 'Libya's many sacrifices to ensure the liberty of Africa' was addressed by Commissioner Maiga- The Commissioner noted that precisely because of Libya's key position in the AU - including holding the Chairmanship in 2009 - and in the Community of Sahel-Saharan States (Censad), the ACHPR held the State to the highest human rights standards. Commissioner Khafallah's decision not to ask any questions of the Libyan delegate 'out of respect for victims of all the bombings' was greeted with scepticism by many NGO attendees, for whom the limited opportunities to hold States accountable for implementing human rights obligations should be safeguarded and used judiciously by those mandated to do so.

The Libyan delegate requested that Commissioners visit the country and appoint an investigation team. He requested that the ACHPR checks NATO action and shows solidarity with the Libyan people in the current time of crisis. The Vice Chair of the ACHPR ended the session on the Libyan report noting the Commission's 'fervent wish that peace be achieved in Libya'.

The questioning of the State delegate of **Burkina Faso** by the Special Rapporteur on Human Rights Defenders focused on the lack of explicit reference to human rights defenders or specific measures to protect them in accordance with the UN Declaration on Human Rights Defenders. Ms Asuagbor also expressed concern that a law on 'the suppression of acts of vandalism committed during demonstrations in the public highway' not be used to restrict the legitimate activities of defenders.

The Special Rapporteur's questioning of **Namibia** focused on the authorisation required by people or groups desiring to hold a peaceful protest. She said requiring authorisation to protest should be the exception rather than the rule. In regard to **Uganda**, Ms Asuagbor asked about the legislative and administrative measures in place to fulfil the provisions of the AU 2003 Kigali Declaration and the UN Declaration on Human Rights Defenders. She questioned the State delegate about the steps being taken to establish the facts in the case of the alleged murder of David Kato, the subject of a communication with the State and a press statement issued by her office in February 2011.

The Commission adopted **concluding observations** on the periodic report of Namibia, but deferred adoption of the reports on Libya and Burkina Faso. The Commission noted that it also could not adopt of the report on Uganda as the delegation had been unable to provide any verbal responses to the Commissioners' questions during the session itself [4]. It was concerning to several NGOs that a State should be permitted to provide only written responses as this undermines the nature of the public review. A preferable response by the ACHPR would be to deny requests to submit written information in lieu of a public response, to make it clear that States under review have an obligation to provide delegates that are able to respond to possible questions publicly.

Representatives from many States took the floor to deliver statements on different aspects of their human rights obligations, including those countries that have experienced dramatic political upheaval since the last session of the ACHPR. The Egyptian delegate, speaking 'as a representative of the revolution' noted that the Government was committed to reviewing the State position on all international and regional human rights treaties currently not signed or ratified, whilst 'adhering to cherished traditions and values'. The Tunisian delegate spoke of his Government's aim 'to rise above oppression' and do away with 'arbitrary methods'. He referred to the transition Government's decisions regarding ratification of several international conventions and the Rome Statute of the International Criminal Court; and its deliberations on lifting reservations to the

Convention on the Elimination of Discrimination against Women. Tunisia extended a standing invitation to ACHPR, the Office of the High Commissioner for Human Rights (OHCHR) and the International Committee of the Red Cross (ICRC) to visit the country.

Human rights strategy

At the Opening Ceremony of the ACHPR it was noted that the African Union has finalised a draft human rights strategy for Africa, which will be presented at the next African Union Summit. Part of the stated aim of the strategy is to harmonise and coordinate action between regional and national institutions. National human rights institutions called for consultation with civil society actors in the implementation of the strategy.

Civil Society Organisations' engagement

As has been the trend over recent years, the level of NGO engagement during the opening days of the Ordinary Session remained high. In the spirit of access to information, a NGO working on the human rights of people with disability, submitted a copy of its statement to the ACHPR in braille.

Delays in convening and reconvening the sessions in the earliest days caused delays in the agenda, which, once again, meant NGOs that had planned to deliver a statement during a particular agenda item had to leave before the item was addressed. The ACHPR granted observer status to all 10 NGOs that requested it. Whilst a couple of NGOs requested that the ACHPR reconsider its denial of observer status to the Coalition of African Lesbians (CAL) - which had been the focus of much civil society attention during the 48th Session - the ACHPR made no formal reference to this application during the session.

Defining the relationship between the ACHPR and the African Court

The African Court on Human and Peoples Rights (the African Court) order of provisional measures against Libya, following the referral of the case to the Court by the ACHPR, was the focus of much conversation during the session and was referred to during the periodic report of Libya [5]. The newly established rules of procedure, defining the relationship between the African Court and the ACHPR, include terms for referral of cases. Where a situation constitutes one of serious or massive violations of human rights - as in the Libyan case - the ACHPR can submit a case to the African Court. In addition, non-implementation by States of ACHPR recommendations on individual communications can now be followed up by way of the ACHPR referring it to the Court. The step taken by the ACHPR in referring such a case to the Court is seen by many NGOs as a means of civil society having access to the Court where they may otherwise not, i.e. where the relevant State has not signed the Special Declaration enabling direct NGO engagement with the Court.

However, African Court representatives were quick to emphasise that the implementation of Court decisions still remained a key challenge and it was necessary to press for more States to acknowledge the Court's jurisdiction. The Commission, in its turn, has requested that the ACHPR Secretariat further research and propose criteria for referral of cases to the African Court.

In regard to the Court's order of provisional measures, NGOs noted the failure of Libya to comply with the measures to date.

Conclusion

Several reports were considered by the ACHPR in private session, including the Concept Paper on the Death Penalty in Africa which was referred back to the Working Group on the Death Penalty for amendments. Concerns about a lack of opportunity for NGO engagement with the work of the Working Group on Older Persons and People with Disabilities in Africa was expressed at a side event held at the session. Panelists noted that any new regional instrument on the rights of people with disabilities needs to take into account the particularities of the African context and be defined in consultation with disabled people.

The ACHPR reported having received 83 communications with the majority deferred to the next Extra-

Ordinary Session in August 2011, due to what the final communiqué describes as ‘time constraints and lack of response from one or both parties’.

The 50th Ordinary Session of the African Commission will be held from 24 October to 7 November 2011, with the venue still to be decided. It will be preceded by a two day colloquium to mark the 30th anniversary of African Charter, and the regular NGO Forum.

In the coming weeks ISHR will publish a fuller analytical report of proceedings at the ACHPR’s 49th Ordinary Session and the preceding NGO Forum.

[1] 49th Session African Commission on Human and Peoples’ Rights resolutions: <http://bit.ly/kHm7qV>

[2] Resolution on the Appointment for a Study Group on Freedom of Association in Africa. <http://bit.ly/jwnXbF>

[3] ‘Activity Report of Commissioner Lucy Asuagbor as a Commissioner/Special Rapporteur on Human Rights Defenders in Africa (item 7b iv)’ ACHPR/49/OS/1036 <http://bit.ly/lQCnZg>

[4] Final communiqué, Ordinary Session of the African Commission on Human and Peoples’ Rights, Banjul, the Gambia (28 April to 12 May 2011).’ <http://bit.ly/jqpv1i>

[5] African Court on Human and Peoples’ Rights, Press Release: Order for Provisional Measures against Libya. 30/3/11. <http://bit.ly/gJkV2R>