
AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

As the African Commission marks its 25th anniversary, civil society asks how best to support and engage with the mechanism



©Hexodus

The African Commission on Human and Peoples' Rights (the African Commission) dedicated the first week of its biannual ordinary session to marking its 25th anniversary. A series of panel discussions focused on different aspects of the Commission's work, noting achievements and re-stating the challenges it faces. These sessions provided an important space for reflection and recommendations, but limited time for direct engagement on specific human rights issues of the day, particularly by civil society participants. During the session and preceding NGO Forum, questions were asked about how NGOs could best organise themselves and most usefully engage with the Commission to help maximise its impact in promoting and protecting human rights.

The sessions dedicated to the African Commission's anniversary focused on the relationships between the mechanism and its stakeholders, including States, other African Union bodies, the Secretariat, and civil society. Amongst the noted achievements of the Commission was said to be ensuring that 'human rights are a constitutive objective of the States.'¹ The Executive Director of the Network of African National Human Rights Institutions (NANHRI) said the increase in the number of national human rights institutions (NHRIs) in the continent could be attributed to an African Commission's recommendation for the same. However, during the sessions and the activity reporting by Commissioners, many challenges faced by the mechanism were also highlighted.

CHALLENGES FACED BY THE AFRICAN COMMISSION

The performance of the Commission is reliant on the efficacy of the Secretariat, and the Secretariat is dependent on the resources made available to it. In their activity reports, Commissioners pointed to insufficient staffing (in particular legal officers) and a lack of resources to fund mandate holders' activities. The Chair noted that she receives no support to carry out her work, instead using private office staff to assist her. The Chair of the Working Group on Economic, Social and Cultural Rights said the search for resources 'is becoming wearisome and undermines our dignity as African officials.'

The relatively few communications received by the mechanism was highlighted, with civil society's lack of familiarity with the Charter, the Commission's jurisprudence and the process for submitting communications cited as the key reasons. An NGO representative suggested a more fundamental reason, noting that the lack of implementation of decisions dissuaded people from considering the African Commission as a route likely to result in change at the national level or in personal circumstances. Zimbabwe echoed this, noting that the lack of effective enforcement mechanisms – as with some other regional and international human rights mechanisms – rendered the Commission's communications procedure 'a fruitless exercise'. The delegate suggested the Working Group on Communications needed to find a way to enforce decisions. The Commission's Chairperson noted this was a refreshing intervention coming from a State representative, and said the Commission would

1 Chidi Odinkalu, Open Society Justice Initiative.

welcome suggestions to improve the effectiveness of the procedure. She added that when a State puts in writing that it is not obliged to implement the decisions of the Commission this is a 'gross undermining of the mandate'.²

To increase implementation, Commissioners were urged to report in their six-monthly activity reports on follow-up actions taken, in accordance with their own rules of procedure.³ The Commission resolved to expand the mandate of the Working Group on Communications, beyond its formerly largely advisory role, to one of carrying out concrete activities related to the follow up of decisions.⁴ The Commission was also encouraged to lobby the African Union more directly on questions of human rights. In addition, it was noted that the lack of ratification of key instruments continued to produce obstacles to advancing human rights. It was suggested by South Africa, for example, that ahead of the 20th anniversary of the Maputo Protocol in 2013, the Special Rapporteur on the Rights of Women should encourage a study on levels of ratification and implementation of the Protocol. It was said funds should be dedicated to debunking myths around the Protocol, including on Article 14, regarding which several States uphold reservations.

Many of the challenges identified were similar to those recognised during discussions to mark the 30th anniversary of the African Charter (during the Commission's 50th ordinary session). It is unclear if recommendations made then were recorded or acted upon by relevant stakeholders. The final communiqué from the 52nd ordinary session is limited in scope and does not contain a record of all recommendations made during the discussion sessions.

THE ROLE OF NGOS AND NHRIS

The importance of the role played by NGOs in the functioning of African human rights mechanisms, confirmed in several regional instruments, was frequently cited by panelists. However, the means by which they might support and influence the Commission in the future needs to be reassessed. During the NGO Forum, which is an important civil society meeting always held immediately prior to the Commission's session, frustrations around the purpose and functioning of the Forum were expressed. Questions about the role of the NGO Forum in relation to the Commission have been voiced for some time, and without clear resolve shown by the NGO

Steering Committee to channel and address these.⁵ The frustration amongst NGOs became even more evident, when a sizeable group of participants decided to hold separate meetings alongside the planned NGO Forum sessions.

The question of the purpose and functioning of the NGO Forum continued to be discussed during panel discussions at the African Commission's session on the relationship between the mechanism and NGOs. One panelist recommended NGOs consider whether resolutions and recommendations provided to the Commission are valuable.⁶ It was suggested that NGOs need to decide how best to organise themselves before the African Commission and the wider African human rights system. Furthermore, the need for the NGO Forum to be more selective in the issues it brings to the attention of the Commission was emphasised.

Whilst African NHRIs were represented through the NANHRI, few were represented by individual delegates. The NANHRI called for more systematic engagement between NHRIs and the African Commission, in line with the Commission's resolution on granting observer status to African NHRIs created in conformity with the international norms and standards.⁷ The suggestion was made that NHRIs should hold a forum, similar to that of NGOs, prior to the Commission's ordinary sessions.

BARRIERS TO THE COMMISSION'S EFFECTIVENESS

Access to relevant information is key to facilitating the role of civil society in supporting and critically engaging with the African Commission. However, the opportunity for NGOs to play a more constructive role at the Commission, such as by advocating for follow up of the Commission's decisions and recommendations, is still undermined by the inaccessibility of key documentation. Concluding recommendations made to States are often unavailable on the Commission's website, even where they are said to be published.⁸

Some State and civil society representatives criticised the fact that documents were not made available in good time on the website, thus limiting their engagement in discussion. Algeria highlighted a bias towards English speakers, noting there were no working documents for Arabic speakers. The delegation said the current need 'to beg' for documents was 'inacceptable'. Whilst the new African Commission website and the Case Law Analyser provide more information than was previously available, the website information

2 This was an implied reference to a recent communication by Botswana.

3 See Rule 112, 'Follow up on the recommendations of the Commission', *Rules of Procedure of the African Commission on Human and Peoples' Rights*, at <http://bit.ly/VFKTj3>.

4 Resolution on the Expansion of the Working Group on Communications and Modifying its Composition, available at <http://bit.ly/UYyksc>.

5 The NGO Forum Steering Committee is made up of representatives from all the sub-regional human rights networks across the continent, and a representative of the 'diaspora'. For more reflections on the purpose and effectiveness of the NGO Forum, see ISHR's *Report of the NGO Forum and the 48th Ordinary Session of the African Commission on Human and Peoples' Rights*: <http://bit.ly/fLJcll>.

6 Musa Gassama, Office of the High Commissioner for Human Rights.

7 See <http://bit.ly/Xhe8Q9>.

8 This includes the recent recommendations made to Côte d'Ivoire.

is often incomplete.⁹ This doesn't assist the Commission or partners in holding States to account, nor does it assist the Commission's own efforts around access to information.¹⁰

OTHER HIGHLIGHTS

Emphasis was placed on the African Commission working more closely with other organs and bodies within the African human rights system and beyond. The closer collaboration between UN Special Procedures and the African Commission, articulated in the January 2012 Addis Ababa roadmap, has led to a joint Human Rights Council – Commission Working Group, and other joint activities between mandate holders of the two institutions.¹¹ However, little direct reference was made at the session to the newly approved Human Rights Strategy for Africa.¹² During one of the panel discussions at the NGO Forum, several contributors said the role of NGOs in the Human Rights Strategy was not sufficiently articulated, and few had had a role in its elaboration.

Commissioners took a firm line with State representatives in regard to their engagement with the Commission. As a 'child' of the African Union, it was said that in order for the African Commission to play the role it had been assigned States must comply with its decisions and recommendations.¹³ However, Commissioners also promoted the idea of progress starting as a conversation between parties to define steps to advance human rights. The Special Rapporteur on women, for example, said it was better for States to ratify the Maputo Protocol with reservations rather than not to ratify at all.

In its first review, Côte d'Ivoire told the Commission it was keen to provide the mechanism with information so the Commission could provide the State with the most helpful recommendations. The delegation highlighted recent reforms in the country, including strengthening of the national human rights institution.¹⁴ The Commissioners' questioning was detailed, and the Chair of the Commission welcomed the State's acknowledgement of the many challenges it faces with respect to human rights. As NGOs are unable to intervene following State reports, and without the usual agenda item on the 'Human Rights Situation in Africa' (item 4), which

was supplanted by some of the celebratory sessions, NGO statements on Côte d'Ivoire were limited.

However, during the NGO Forum, a dedicated panel discussion was held on the human rights situation in Côte d'Ivoire. This panel was attended by Côte d'Ivoire human rights defenders and Commissioners of the African Commission. The NGO Forum endorsed the recommendations presented by human rights defenders, which were submitted to the African Commission. Many of these concerns were raised during the Commission's review of Côte d'Ivoire.

This African Commission's session saw several 'firsts', such as holding the meeting in Côte d'Ivoire, which was the first time an ordinary session has been held outside of The Gambia in four years.¹⁵ Liberia attended for the first time, promising it would be ready to report at the next session.¹⁶ The NHRI of Malawi, also attending for the first time, said it was encouraging Malawi to submit its first report, and this had been promised by the State for the 53rd session.

In her activity report, the Commission's Special Rapporteur on Human Rights Defenders noted she continues to receive information on reprisals. Commissioners expressed concern about cases of intimidation reported to have taken place at the session itself. It is hoped the Commission will build on its resolve to demand appropriate State responses to reprisals, for example, as demonstrated in its 50th session resolution creating specific reporting mechanisms.¹⁷

25 YEARS OF DEVELOPMENT

The development of the African Commission's subsidiary mechanisms was described through the Commissioners' individual activity reports, where the history of their mandates and activities was outlined. The Special Rapporteur on Freedom of Expression and Access to Information noted how the barebones of Article 9 of the *African Charter on Human and Peoples' Rights*¹⁸ has been fleshed out in the development of the Commission's *Declaration on Principles of Freedom of Expression*.¹⁹ Over the years, mandate holders have worked to make Article 9 and the Declaration better known by activists. Together with the Special Rapporteur's engagement with States, these tools provide greater strength to the African

9 The African Human Rights Case law Analyser provides access to decisions of the African Commission, in English and French. See <http://caselaw.ihlda.org>.

10 See below on the work of the Special Rapporteur on Freedom of Expression and Access to Information.

11 For example, through the issuance of joint press releases and undertaking of joint fact finding missions to countries.

12 See <http://bit.ly/Vb4wfh>.

13 The African Commission was established under the African Union's predecessor, the Organisation of African Unity.

14 Côte d'Ivoire adopted a law in December 2012 creating a new national human rights institution in compliance with the Paris Principles. At the time of writing, the commissioners of the institution were in the process of being appointed. Five of them will come from civil society organisations.

15 The African Commission last met for an ordinary session outside of The Gambia during its 44th session, held in Nigeria in 2008.

16 According to the African Commission's Final Communiqué, 27 State parties attended the session. See <http://bit.ly/XxZw1u>.

17 Resolution on Human Rights Defenders in Africa at the 50th session of the African Commission.

18 Article 9 says: 1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

19 Declaration on Principles of Freedom of Expression in Africa: <http://bit.ly/WM4fKo>.

human rights system.²⁰ The Rapporteur said she saw the value in bringing several initiatives – including the campaign to raise awareness of Article 9 and the Declaration – together under the auspices of her Rapporteurship. In terms of concrete outputs, the Special Rapporteur and partners have been working on a draft model law on Access to Information in Africa. It was reported that in the time this project has been progressing, the number of countries with such laws has doubled to ten.

The Special Rapporteur on Human Rights Defenders announced her upcoming report will be on the situation of women human rights defenders in Africa. This was later confirmed in one of the seven resolutions passed by the Commission.²¹ In line with the Special Rapporteur's expressed strategy to work with human rights defenders' networks, she has created an advisory group to work with her on the report. The group comprises of women human rights defenders who are members of sub-regional human rights networks and/or of the Women Human Rights Defenders International Coalition.²² ■

20 Professor Viljoen, Director of Centre for Human Rights, University of Pretoria, during a side event on 'Launch of the activities of the 10 year anniversary of the Declaration of the Principles of Freedom of Expression in Africa, and the Pan- African Campaign for the Decriminalisation of Expression.'

21 Resolution at the 52nd session of the African Commission: *Resolution on the need for a Study on the Situation of Women Human Rights Defenders in Africa*. For the Commission's resolutions at this session, see www.achpr.org/sessions/52nd.

22 Women Human Rights Defenders International Coalition : www.defendingwomen-defendingrights.org.