

KUMULIKA
THE AFRICAN
COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS:
55TH ORDINARY SESSION



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS



The International Service for Human Rights (ISHR) is an independent, non-governmental organisation dedicated to promoting and protecting human rights. We achieve this by supporting human rights defenders, strengthening human rights systems, and leading and participating in coalitions for human rights change.

ISHR has worked with the African Commission on Human and Peoples' Rights for nearly a decade, lobbying and advocating at its Ordinary Sessions and working within its thematic working groups. As a member of the Steering Committee of the NGO Forum, a civil society forum that traditionally precedes the Commission's Ordinary Sessions, ISHR has sought to encourage civil society interaction with the Commission and the wider African and global human rights systems.

ISHR's publication 'Kumulika' analyses developments at the Commission and NGO Forum sessions, for those seeking to build stronger systems for promoting and protecting human rights. The publication focuses particular attention on ISHR's thematic areas of concern: women human rights defenders and defenders of rights associated with sexual orientation and gender identity; defenders working on corporate accountability; human rights defenders in States in transition; and protecting human rights defenders against reprisals.

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The African Commission on Human and Peoples' Rights (the African Commission, or the Commission) was established in 1987 for the protection and promotion of human and peoples' rights and the interpretation of the African Charter on Human and Peoples' Rights (the African Charter). It holds biannual Ordinary Sessions during which States' compliance with the Charter and human rights situations on the continent are reviewed, and reports are provided by the Commission's mechanisms (Special Rapporteurs and working groups). Civil society engagement is critical to the effectiveness of the Commission.

The 55th Ordinary Session of the African Commission, held from 28 April to 12 May 2014 in Luanda, Angola, saw some

outstanding developments, with the adoption of a resolution on sexual orientation and gender identity, and the appointment of a focal point on reprisals, despite strong opposition from many States.

The session was preceded by the three-day NGO Forum, from 24 to 26 April. Held since the mid-1990s, the NGO Forum provides one of the few institutional opportunities for human rights defenders in Africa to debate means to advance a range of human rights issues. The Forum aims to bring these concerns to the attention of the African Commission and to increase the protection and promotion of rights through the mechanism.

DEVELOPMENTS AT THE NGO FORUM

There were around 175 participants at the NGO Forum held prior to the 55th session of the African Commission, a significantly lower number than the 300 plus who engaged at the last session, in October 2013 in the Gambia.

The expense of travelling to and staying in Luanda was one of the key deterrents for human rights defenders. Effectively facilitating participation by civil society organisations needs to be a bottom line criterion for accepting a country as host of a Commission session. While the efforts made by host countries should not be discounted, it is incumbent on the Secretariat to make host countries fully aware of the implications of hosting the Commission and in particular ensure that the arrangements made for visas, registration to the session, and logistical arrangements during the session facilitate rather than impede the important contributions of civil society. With the welcome offer by several countries to host upcoming Commission sessions, the Secretariat should ensure that in the process of confirming the hosting arrangement it begins conversations as early as possible to ensure engagement by civil society organisations. The NGO Forum has proven a useful space for identifying the needs of NGOs at Commission sessions, and therefore ought to be consulted as part of this engagement.

As usual the NGO Forum followed the practice of holding a series of panel discussions combined with smaller special interest discussion groups, over the course of which recommendations and resolutions were developed to put to the Commission at the ensuing session.

The main concerns of the NGO Forum are set out in the sections below, together with how the Commission responded to these concerns.¹

KEY THEMATIC ISSUES AND SUCCESSES

Civil society space

The crackdown on civil society across Africa was a theme that ran through many of the discussions at the NGO Forum. Participants drew attention to increasingly repressive legislation on freedom of expression, both online and offline, and called on the Commission to adopt a resolution on the protection of freedom of expression and privacy online. Although safety online is clearly a great concern for human rights defenders, it does not currently appear to be high up the Commission's agenda, with no attention given to the issue during the session.

The NGO Forum also urged the Commission to implore States to adopt laws protecting freedom of expression and access to information, in conformity with the African Commission's model law on access to information and applicable regional and international standards.

During the Commission's session the Special Rapporteur on freedom of expression and access to information noted that after the rate of States adopting freedom of information laws appeared to stall over the past year, there was sudden progress towards the end of the year with both Sierra Leone and Cote d'Ivoire adopting legislation in October and December 2013, respectively. This brings the total number of countries in Africa with freedom of information laws to 13.² Egypt and Tunisia have begun to draft bills, whilst Ghana's proposed law is going through the adoption process. However, the Special Rapporteur expressed concern about the slow pace of the latter.³

The Special Rapporteur referred to a number of avenues that she is exploring to promote the adoption of laws regarding access to information. One example is the decision of the African Union Commission to develop a plan for mainstreaming the promotion of the model law throughout the work of the Union's Department of Political Affairs. The decision, taken in a meeting with the Special Rapporteur, aims to ensure that encouraging States to utilise the model law is a priority for the Department. Other proposals related to a meeting of the Special Rapporteur with the East African Community⁴ and included encouraging the Council of Ministers to pass resolutions encouraging States to utilise the model law in adopting access to information laws.⁵

The Special Rapporteur emphasised the importance of States drafting and implementing legislation mirroring the content of the model law and called for continuing support from partners and other stakeholders in this process. The interest expressed by the NGO Forum on this issue should form a basis for collaboration with the Special Rapporteur.

NGOs also drew attention to the use of counter-terrorism legislation to restrict freedoms of association, assembly and expression. The point was illustrated during the NGO Forum itself, when six Ethiopian activists - working for an organisation called Zone 9, some of whom were planning on attending the Commission session - were arrested and detained under Ethiopia's Anti-Terrorism Proclamation. This law allows for up to four months detention without charge. The six activists are still being held in the notorious Maekelawi detention centre, the site of many confirmed cases of torture. As of 24 July 2014 the bloggers had been charged under the Anti-Terrorism Proclamation and await trial.⁶

The Commission did not respond directly to this case, although NGOs demanded a resolution on the situation for human rights defenders in Ethiopia, and called attention to the atrocious situation facing activists there, in statements made throughout the session.

The Commission did however adopt a resolution requesting that the Special Rapporteur on human rights defenders prepare guidelines on the fight against terrorism to be presented to the

Commission's next session in October 2014.⁷ The designation of this Rapporteur as drafter reflects the fact that anti-terror legislation has often been used to restrict the activities of defenders, whilst the production of these guidelines present an opportunity to ensure that respect for human rights is central to counter-terrorism efforts. The participation of those who have documented, or suffered, the abuse of anti-terror laws in the production of these guidelines will be vital to ensure their success.

NGOs also called for the African Commission to urge States to put an end to restrictions in law and practice on the right to form an association, and to stop the criminalisation of activities and excessive sanctions against the legitimate exercise of the right to freedom of association and assembly.

Following on from efforts by NGOs in March to persuade the UN Human Rights Council to adopt a resolution on the situation in Egypt, which resulted in a joint statement from 27 States, NGOs also called for the African Commission to adopt a resolution on Egypt at this session. The proposed resolution called for the Egyptian authorities to refrain from the excessive use of force against protestors, uphold the right to a fair trial, and conform to international standards on the right to freedom of assembly and association.

The NGO Forum welcomed the progress made by the African Commission's study group on freedom of association and assembly. This report was adopted by the Commission at this session. The study group is now working on a set of guidelines for States, to be presented at the Commission's next session in October, regarding the implementation of the report's findings.⁸

At its session, the Commission adopted a resolution on peaceful protests that focused in particular on the use of force during protests, and condemned the arbitrary arrest, detention and killing of peaceful demonstrators. However, this addresses only one aspect of a huge range of concerns around the shrinking space for civil society across the continent. Once the guidelines on freedom of association and assembly are finalised they should provide a framework for the Commission to take more action in this area.

Protection of human rights defenders

Participants discussed a number of ways in which the protection of human rights defenders could be improved. Strategies included strengthening human rights defender networks, ensuring that existing protection mechanisms are known and accessible to all, enhancing capacity-building, enhanced psychosocial support, and developing a joint mobilisation strategy, for example through regional fundraising, which in turn will promote networking.

The NGO Forum was identified as an initiative that could have a key role in protection, with calls made for it to encourage NGOs to work together. It was recognised that joint work promotes solidarity and experience sharing amongst NGOs, whilst this enhances the capacity of NGOs to respond effectively to the many threats they face including repressive laws, deregistration of their organisations, and the politicisation of their work. There were calls for the NGO Forum to hold a panel on 'holistic protection measures' at its next meeting.

NGOs called on the African Commission to urge States to adopt legislation protecting human rights defenders and to give effect to international standards for the protection of human rights defenders.

Reprisals

Participants at the NGO Forum expressed great concern at increasing reports of reprisals against those who engage with the Commission.

The NGO Forum recommended that the Commission adopt a resolution urging States to halt reprisals and to ensure a more effective and coordinated response by the Commission. This call was directly picked up by the Commission, who appointed a focal point to coordinate the Commission's response to reprisals.⁹

There was also a call for the Commission to regularly review and follow-up the implementation of its existing resolutions on attacks and reprisals against human rights defenders. At this session the Chair of the Commission followed the good precedent set by some of her predecessors by condemning reprisals and specifically called for States to implement the resolution on reprisals adopted by the Commission in 2011.¹⁰

Extractive industries

The discussion on extractive industries encouraged NGOs to use the Commission's Working Group on extractive industries to report violations of human rights by extractive industries. Upcoming missions by the Working Group will be a good opportunity for NGOs to interact with members and to make submissions on the situation in their particular country. The Working Group currently has missions planned to Liberia, the Democratic Republic of Congo, Tanzania and Cameroon.

NGOs called on the Commission to urge States to protect defenders working on extractive industries, and in particular to urge States to effectively protect the right to free, prior and informed consent, the right to consultation and the right of local communities to a fair and adequate consultation. They also requested Commissioners to urge States to ensure that private military companies working for extractive industries respect human rights.

Women's rights

Women's rights were another key theme discussed at the Forum. Focus was given to land rights and a call made for the Commission to develop a general comment on the Maputo Protocol's article 19(c) on land rights.

The NGO Forum's call followed the adoption of a resolution by the Commission at its last session on women's rights to land and productive resources,¹¹ which responded directly to a prior call from the NGO Forum on this issue.¹²

This follow-up resolution from the NGO Forum marked an effort to clarify the obligations of States with respect to the Maputo Protocol on the issue of women's right to land. While the subject of women's access to land is a priority for the Special Rapporteur on women's rights, Ms Sotoya Maiga, who continues to recommend that States take concrete steps in this regard,¹³ the NGO Forum's call for a general comment was not taken up by the Commission.

However, the Special Rapporteur did refer to her mechanism's new initiative of developing general comments on articles under the Maputo Protocol in order to improve the compliance of States.

The Special Rapporteur also noted that her mechanism is currently working on a draft general comment on article 14(2)¹⁴ on women's access to sexual health services including access to medical abortion in cases of sexual assault, rape, or incest, or where the life of the woman or the foetus is in danger.

Given the focus of both NGOs and the Commission on land rights, article 19(c) on land rights could be an appropriate subsequent general comment.

Violence against women is another priority for the NGO Forum, which adopted a resolution on sexual and gender-based violence. The Commission too focused on this issue, with resolutions on the situation of women and children in armed conflict, and a resolution on sexual violence against women in the Democratic Republic of Congo.

The rights of LGBTI people

The seriously deteriorating situation for lesbian, gay, bisexual, transgender and intersex (LGBTI) people in Africa was a key subject of discussion, particularly the anti-homosexuality legislation enacted in Nigeria and Uganda and the worry that these laws are part of a broader trend across Africa. Amongst other issues discussed was the clampdown on freedom of association that has resulted from these laws, and the closure of some organisations that work on these issues. NGOs also noted that these laws violate a slew of other rights, including the right to be free from torture, the right to health, the right to privacy, and so on.

NGOs feel engagement at the Commission on this issue is extremely worthwhile. As an Africa-specific human rights body the Commission is uniquely placed to promote universal human rights standards and counter arguments that non-discrimination and non-violence on the basis of sexual orientation and gender identity is a western, non-African concept. NGOs working on sexual orientation and gender identity also called on civil society colleagues working on other issues to incorporate advocacy on sexual orientation and gender identity into their work in order to demonstrate that this particular issue falls squarely within universal human rights standards.

NGOs once again joined in calling on the Commission to adopt the resolution on this issue that was drafted by the NGO Forum at its last session in October 2013. This resolution called for the Commission to condemn violence and other human rights violations against people on the basis of their sexual orientation and gender identity.

In response to these calls from civil society, and in what marks a landmark success, the Commission adopted a resolution on 'protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity'. The resolution does not mention specific countries but condemns the increasing violence and violations against persons on the basis of their imputed or real sexual orientation or gender identity. It calls on States to end these acts, by State or by non-State actors, as well as to ensure that human rights defenders can carry out their work in an enabling environment, including when advocating for the rights of sexual minorities.

Key asks from the NGO Forum and the African Commission's response	
CALLS FROM THE NGO FORUM	RESPONSE FROM THE AFRICAN COMMISSION
<ul style="list-style-type: none"> Condemn reprisals and implement the resolution on reprisals adopted by the African Commission in 2011, by developing a process for monitoring and following up on reported cases, and ensuring that States are held accountable. 	<ul style="list-style-type: none"> The Commission adopted a resolution on reprisals that created a focal point on reprisals. This focal point will be responsible for maintaining a database of reprisals suffered by those engaging or attempting to engage with the Commission; also responsible for following up on cases.
<ul style="list-style-type: none"> Adopt the resolution on sexual orientation and gender identity which was submitted by the NGO Forum to the Commission's 54th session, and further adopt a specific resolution condemning the anti-homosexuality law passed in Uganda. 	<ul style="list-style-type: none"> The Commission adopted a resolution on 'protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity'. It calls on States to end violence, whether by State or non-State actors.
<ul style="list-style-type: none"> Urge States to adopt freedom of expression and access to information laws in conformity with the African Commission's model law on access to information and applicable regional and international standards. 	<ul style="list-style-type: none"> No resolution was adopted by the Commission but the Special Rapporteur emphasised that her mandate was pursuing the goal of urging States to adopt access to information laws in conformity with the Commission's model law. She called for support from stakeholders.
<ul style="list-style-type: none"> Adopt a resolution calling on States to enact legislation to protect human rights defenders, and in particular to domesticate existing international instruments protecting human rights defenders. 	<ul style="list-style-type: none"> No resolution was adopted that directly reflected these concerns, but the Commission adopted Guidelines on freedom of association and assembly intended to help both States and civil society understand the application of international standards in these areas.
<ul style="list-style-type: none"> Urge States to protect human rights defenders working to protect the rights of people affected by extractive industries. 	<ul style="list-style-type: none"> No resolution was adopted at this session.

STRATEGY DEVELOPMENT AT THE NGO FORUM

Along with space for discussion of substantive issues, one of the objectives of the forum is to provide a space for strategy development. However, so far this particular objective has not been as well implemented as it could have been.

ISHR has in the past recommended that space be created at the NGO Forum for more experience sharing regarding strategic engagement with the Commission, so that less experienced activists have an opportunity to learn from their more seasoned counterparts. At this session ISHR chaired a panel on strategic engagement in an attempt to provide this space, with lively and

engaged discussion demonstrating a real interest in the subject. The participation of several Commissioners enabled NGOs to gain insight from their perspective about which advocacy strategies work best. Hopefully such a panel can become a regular fixture during the NGO Forum. NGOs said that it would also be helpful to collate the experiences and best practices discussed in order to create a written guide for NGOs.

Another session that touched on strategy was that led by Mr Safir Syed of the UN Office of the High Commissioner for Human Rights. Mr Syed gave an overview of the UN human rights system and encouraged participants to think about how they could incorporate international advocacy into their strategies.

DEVELOPMENTS AT THE AFRICAN COMMISSION

STATE REPORTING

Liberia appears for the first time before the African Commission

For the first time ever Liberia appeared before the African Commission on Human and Peoples' Rights to report on its human rights record. Liberia's report was submitted in 2012, almost 20 years late, having been due to the Commission in 1984. The report therefore covers the period 1982-2012 and sets out the steps Liberia has taken to implement its obligations under the African Charter on Human and Peoples' Rights.

Liberia's inexperience in engaging with international mechanisms showed in the criticism it attracted from many Commissioners for failing to follow the Commission's guidelines on State reporting. The guidelines were developed to enable Commissioners to assess the human rights situation in all States on an equal footing, by setting out what issues the State should address in their reports.

According to Commissioner Maya Sahli Fadel, Liberia's report 'cherry-picked' issues, with some key issues - like the right to health - entirely missing. The lack of data and statistics in the report also made it difficult for Commissioners to grasp the actual situation on the ground. Liberia was strongly recommended to follow the guidelines when it drafts its next report, due in 2016.

Nevertheless, Liberia was praised by some Commissioners for the way in which it participated in the review, for example by sending a high-level delegation that included the acting Minister of Justice. Liberia also demonstrated a willingness to learn from the Commissioners, by issuing an open invitation for them to visit and provide their human rights expertise. Liberia must now make good on this offer by issuing a formal invitation.

Nevertheless, in what is a worrying addition to an emerging pattern regarding LGBTI rights across the continent, Commissioners questioned the State about moves to increase existing penalties for consensual same-sex behaviour and to outlaw same-sex marriage. Commissioner Lawrence Murugu Mute spoke out strongly against arguments that legislation of this kind is a democratic response, emphasising that the 'popular view' can never excuse discrimination and violence and should have no weight when it comes to respect for human rights.

Respect for freedom of expression was another issue at the forefront of Commissioners' minds. In Liberia libel does not automatically carry a prison sentence, but the level at which fines are set acts as a deterrent to freedom of expression. For example, in 2010 Rodney Sieh, editor-in-chief of *Frontpage Africa*, was fined \$1.5 million in a libel case. Mr Sieh was ultimately imprisoned because he was unable to pay the damages.

The Commission's other concerns included restrictions on freedom of association and assembly in Liberia, and a lack of progress in the area of women's rights.

The Commission's concluding observations will contain its recommendations as to how Liberia can move towards implementation of the African Charter on Human and Peoples' Rights. The Liberian government is required to update the Commission on its progress in its next report, which must be submitted in 2016.

The other States reviewed were Mozambique and the Sahrawi Arab Democratic Republic. The attendance of both these States at this session comes after they failed to appear at reviews scheduled for previous sessions (the Sahrawi Democratic Republic had been absent on two previous occasions and Mozambique once).

THEMATIC ISSUES

Reprisals against those who collaborate with the African Commission

The adoption of a resolution creating a focal point on reprisals was a key success of the session. The focal point will be placed within the office of the Special Rapporteur on human rights defenders.¹⁵ The responsibility of the focal point includes gathering information on, and documenting cases of, reprisals against civil society, as well as maintaining a database. The focal point should report on these cases to each ordinary session of the Commission and ensure that they are followed up on. The focal point is also requested to provide guidance to the Commission about the adoption of urgent measures where this would be the appropriate response to specific cases.

It is heartening to see the issue of reprisals taken seriously by the Commission, and to see Commissioners ready to speak out against it. In her first session as Chairperson of the Commission, Ms Kayitesi Zainabo Sylvie followed the good precedent set by previous Chairs by publicly condemning reprisals against people who collaborate with the African system of human rights, and calling upon States

to implement resolution ACHPR/196 (L) 11, adopted at the 50th Ordinary Session of the Commission in 2011. She called on States to avoid all forms of intimidation and reprisal against those who collaborate with the Commission or participate in its sessions.

The Special Rapporteur on human rights defenders, when presenting her report, noted that the effectiveness of human rights bodies, including the Commission, depends upon the information supplied by defenders. It presents a serious obstacle to the Commission's work when human rights defenders are deterred or otherwise prevented from participating in its sessions. The Special Rapporteur mentioned some cases of defenders who do not attend sessions for fear of being attacked as a result, including a Sudanese woman human rights defender, and defenders from Mauritania.

Ms Reine Alapini-Gansou also referred to the case of the six arrested Ethiopian bloggers and three journalists, pointing out that one of the bloggers had participated in the 54th session of the African Commission and had been preparing to participate in the 55th session when he was arrested.

The number of reprisals cases warrants further investigation and monitoring to build a more accurate picture of the extent of reprisals against those cooperating or attempting to cooperate with the African Commission. The creation of a focal point is timely, if not overdue. It is to be hoped that it will channel the Commission's undoubted indignation at reprisals into coordinated and effective action.

Sexual orientation and gender identity

Following through on the concern expressed at the NGO Forum, a larger than usual number of NGOs took the floor during the Commission to condemn discrimination and violence on the basis of sexual orientation and gender identity, reflecting the harsh anti-homosexuality acts given presidential assent earlier this year in Nigeria and Uganda.

NGOs set out a range of violations that these laws have given rise to, including arbitrary arrest of citizens on the basis of their perceived or actual sexual orientation or gender identity, closure and raids of organisations providing services to LGBTI persons, forced evictions by landlords, hate speech in the media, physical attacks against trans people in particular, reduced access to healthcare as providers fear contravening the legislation, and an increase in reported suicide attempts.

NGOs also noted that the legislation has an impact on human rights defenders, leaving LGBTI defenders more vulnerable to attacks from the community, the police and other actors.

Uganda and Nigeria were quick to deny the comments from NGOs. Uganda claimed that there was no proof that any such violations were taking place. It dismissed the NGOs as lacking credibility and claimed that the anti-homosexuality act is in line with international and regional human rights instruments and its own constitution.

Both States also rehashed an argument that popular will, both nationally and globally, is on their side. The fact that 38 out of 54 African States prohibit homosexuality, far from being a source of shame, was touted by Uganda as a sign that its actions are in line with regional trends and opinion. Uganda added that it was currently developing guidelines on implementation of the Act.¹⁶ Nigeria claimed that its same-sex marriage act is an expression of democracy, and that this is valid regardless of what NGOs say. No States spoke out in favour of the rights of LGBTI people to not have to face violence or discrimination on the basis of their sexual orientation or gender identity.

The adoption of the resolution on 'protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity' is nevertheless a great step forwards. It makes clear to African States that this is not a 'western issue' but a universal human rights issue, that States have obligations, and that they will be held accountable to those obligations.

However, the response during the public session was generally weak. For example, the Chairperson of the Commission made a vague response to Uganda's statement, saying that legislation should be adapted to protect the population and should not violate the physical integrity of anyone. The Special Rapporteur on human rights defenders was stronger when, while agreeing that there is no unanimity on this issue, she stated clearly that the popularity of legislation is irrelevant. What is undeniable, she stressed, is that everyone has the right to life, to bodily integrity and to dignity. The Special Rapporteur had previously issued press releases on the anti-same-sex marriage act in Nigeria, and the anti-homosexuality act in Uganda.

As the premier human rights body in Africa, the Commission's voice on this issue is crucial, in particular to counter arguments made by some States that calls for them to ensure non-discrimination on the basis of sexual orientation and gender identity are an imposition of foreign standards. The resolution is a welcome step forwards but Commissioners should ensure that they speak out strongly during public sessions and issue press releases when appropriate.

Human rights defenders

The report of the Special Rapporteur on the situation of human rights defenders in Africa reflected the concerns raised by NGOs about the deteriorating situation on the continent.

Several cases of activists under threat and attack were referred to the Special Rapporteur since the Commission's 54th session in October 2013. In response, she sent letters raising concerns to the Democratic Republic of Congo (four incidents), Somalia, Senegal (one incident each), and Sudan (three incidents). The violations suffered included breaches of privacy, harm to bodily integrity, arbitrary arrest, threats, prohibition of demonstrations and assembly, and judicial harassment.

The Special Rapporteur on freedom of expression and access to information also expressed her alarm at cases of alleged intimidation, harassment, arbitrary arrest and detention of journalists, media practitioners and human rights defenders in some parts of Africa since the last Commission session. She called upon concerned governments to thoroughly investigate the allegations, bring the perpetrators to justice and ensure the safety of journalists, media practitioners and human rights defenders.¹⁷

The Special Rapporteur's call on States to ensure that defenders can carry out their work without restriction or intimidation fell on unreceptive ears. All States that spoke during the debate with the Special Rapporteur on human rights defenders did so to defend restrictions on human rights defenders. Sudan and Algeria emphasised their position that human rights defenders must act within the law. Otherwise, said Sudan, 'we are giving them immunity from civil and criminal law'. Ethiopia responded to comments on its detention of six bloggers and three journalists stating that they were not arrested for exercising their freedom of expression but because they had failed to observe the law of the land. However, as the East and Horn of Africa Human Rights Defenders Project had pointed out, Ethiopian legislation as it relates to human rights defenders is some of the most restrictive in the world, including the Charities and Societies Proclamation and the Anti-Terrorist Act, and is far from compliant with international human rights standards.

Ethiopia attempted to justify the Charities and Societies Proclamation stating that the purpose of the law is to enhance the ability of civil society organisations to contribute to and participate in the country's development. The only limit placed is on foreign organisations, which cannot take part in political activities. This restriction, the State representative argued, is common to many countries.

Eritrea denied that space for journalists to carry out their work was restricted, stating that freedom of expression and opinion was safeguarded in the country. It added, however, that there were subversive acts taking place under the guise of journalism which it would not tolerate, particularly when national security was threatened.

This obfuscation and denial is reflected in a low level of cooperation from States with the Commission's mandate of the Special Rapporteur on human rights defenders. The Rapporteur had sent requests to visit all States featured in her press releases, but not a single one had replied. Instead she faced criticism from some States for issuing those press releases without first consulting the States concerned. Ms Alapini-Gansou was unequivocal in her response that, if releases are to go out in a timely and effective manner, there is no time to debate beforehand.

Women's rights

Although the Maputo Protocol on women's rights is acknowledged worldwide as a key women's rights instrument, ratification and reporting under the Protocol remains low. This limits the ability of the Commission to hold States accountable for the implementation of women's rights.

For those States that have ratified the Protocol, low reporting rates have in the past been attributed to a lack of awareness amongst States about the procedure for reporting under the Maputo Protocol.

At this session a side event was held on the guidelines on State reporting under the Protocol, which were adopted by the Commission in 2009. The key misunderstanding on the part of States was held to be a misperception that the Maputo Protocol required a report to be submitted separately from the periodic report of the State under the African Charter.

In fact, reporting under the Maputo Protocol should be a part of the report under the African Charter. As a result of this misunderstanding women's rights were not being adequately reflected in reporting to the Commission. Nigeria stated that its recently submitted report conforms to this procedure, but to date no other State has correctly followed it.

Of the three States reviewed this session, Liberia and Mozambique have ratified the Protocol, whilst the Sahrawi Arab Democratic Republic has signed it. Neither State included the annex on implementation of the Maputo Protocol.

To date, only 36 African States have ratified the Protocol. Some States who took the floor reflected on obstacles to low ratification rates including its lack of translation into the official languages of the African Union.

Niger attempted to explain its own lack of ratification of the Maputo Protocol by saying that the matrimonial provisions' prioritisation of monogamy was problematic. Commissioner Soyata Maiga, Special Rapporteur on women, was scathing of this attempt to justify poor implementation of human rights standards by appealing to religion and tradition.

The State has a duty, she said, to sensitise and educate people on human rights, whilst she gave many examples of steps that the State could take in that direction. She cited good practises such as conversations with religious leaders and using the power of these traditional communicators for good, ensuring that girls have access to education, and guaranteeing that women have employment.

She also pointed out that the Protocol does take into account the cultural context in Africa. It does not outlaw polygamy, realising that this would reduce the likelihood of States ratifying it, but rather calls for women's rights in such relationships to be fully respected.

Given that Niger has ratified without reservation the UN's *Convention on the Elimination of All Forms of Discrimination against Women*, which takes no account of the 'African context', it should have no excuse not to ratify the Maputo Protocol. Commissioner Maiga noted that the next session of the Commission will be held in Niger and expressed her expectation that by then it will have begun to take steps towards better protection of women's rights.

The event was a useful awareness raising exercise. Algeria, for example, noted that it had not heard of the guidelines before now. However it expressed concern that reporting under the Maputo Protocol would duplicate reporting under the African Charter, which includes reference to women's rights.

As Commissioner Maiga pointed out, however, of the two articles of the Charter that provide a particular opportunity to focus on women's rights - Article 2 and Article 18 - Article 2 on non-discrimination tends to see States raise issues about groups other than women, such as ethnic minorities, religious minorities, and persons with disabilities. Article 18, on protection of the family and vulnerable groups, includes a clause on the elimination of discrimination against women. However this is not adequate to ensure full coverage of women's rights protection. Nigeria, which has recently submitted its report, agreed that the additional annex on women's rights was helpful.

Ratification of, and reporting under, the Maputo Protocol is therefore an essential component of ensuring women's rights receive attention by the Commission and that States can be held accountable. As the side event made clear, even those States that have ratified the Protocol remain unaware of their reporting obligations under it. The guidelines are an important initiative but it is clear that more needs to be done to promote them.

The report on women human rights defenders, produced by the Special Rapporteur on human rights defenders, was adopted at the Commission's 15th extraordinary session.¹⁸ It is currently being finalised for publication and should be available by the next Commission session in October.

THE ENVIRONMENT FOR CIVIL SOCIETY PARTICIPATION

Non-governmental organisations

180 representatives from African and international NGOs attended the Commission's session. The number is significantly lower than the 316 who attended the 54th session and the 453 who attended the 53rd session, both of which were held in the Gambia.

Although NGOs had been putting pressure on the African Commission to hold its sessions more frequently outside of the Gambia, given the dire situation for civil society there, it was also apparent that civil society from Angola did not feel safe participating

in the Commission's sessions. The environment in Angola is not conducive to human rights defenders, nor to expressions of dissent.

The Special Rapporteur on freedom of expression referred to a letter of appeal that she had sent to Angola, regarding violations of the right to demonstrate. The repression of demonstrations is common in this African country, as in many others.¹⁹

The Commission adopted a resolution on the right to peaceful demonstration, which focused in particular on the use of force during protests, and condemned the arbitrary arrest, detention and killing of peaceful demonstrators. It calls on States to immediately release detained demonstrators; to refrain from the disproportionate use of force against demonstrators; to investigate all allegations of violations against demonstrators and ensure perpetrators are held accountable; to protect all peaceful protestors; and to ensure that any legislation governing the exercise of fundamental rights and freedoms fully complies with relevant regional and international human rights standards.²⁰

There was open antagonism between States and NGOs, particularly on the issues of sexual orientation and gender identity, and civil society space. The Chair of the Commission, despite her crucial statement on reprisals, was less strong in defending the space for NGOs at the Commission during the session itself. This in spite of the fact that in her opening statement she drew attention to the important role played by NGOs in allowing the Commission to fulfil its mandate and urged them to continue to support the Commission.²¹

The Special Rapporteur on human rights defenders was stronger in reacting to aggressive criticism from States, both against herself and against NGOs. She defended the right to speak out against governments, pointing out that there is always something more a State can do to fully implement international human rights standards, and that criticism from human rights defenders is therefore appropriate and inevitable.

There were also attempts by some States to prevent NGOs from speaking by claiming that they had not satisfied the conditions for being granted observer status. States have done this in the past by refusing to provide NGOs with written evidence of their official domestic registration or existence, which is necessary in order to apply for observer status. Ms Alapini-Gansou particularly criticised Angola in this regard, but she noted that it is becoming widespread. She stated that the African Commission would grant observer status even without this document in order to ensure NGOs can engage with the Commission.

There is a real need for Commissioners to speak out strongly and consistently for civil society space in the face of these attacks on NGOs, in order to safeguard productive and participatory debate at the Commission.

National human rights institutions

At 18, the number of NHRI representatives who attended the session was reduced compared to recent years, with only four of those - Rwanda, Algeria, Senegal and Nigeria - taking the floor during the Commission's public dialogues.

The last session of the Commission had seen an exceptionally high attendance from NHRI representatives, due to the fact that a consultation was held on the role of NHRIs in the implementation of recommendations, organised by the Network of African NHRIs.

Speaking for the Network at this session, Ms Kagwiria Mbogori, Chairperson of the Kenya National Commission on Human Rights, noted that the aim of this consultation had been to enhance the institutional capacity of African NHRIs to monitor and document human rights violations on the continent, as well as to contribute to the effective implementation of the African Charter. Ms Mbogori pointed to a lack of awareness amongst NHRIs about the Commission and its procedures as a factor hindering their participation in Commission sessions.

The Chair of the Commission stressed the importance of NHRI attendance precisely due to the key role they play in ensuring the implementation of recommendations coming from the Commission with respect to the human rights situations in their countries.

It is disappointing then that the awareness raised through the higher than average NHRI attendance at the previous session did not ensure a good level of attendance and participation at this session.

Strengthening NHRI participation is probably, however, a longer-term process. Ms Mbogori referred to the platform that had been established as a result of last year's consultation, as one which would provide a basis for discussion on how to improve the relationship between NHRIs and the Commission. Ms Mbogori also spoke of the need to develop guidelines for NHRIs on how they should report to the Commission. While mentioning the need to push to ensure that both of these initiatives are implemented and bear fruit, Ms Mbogori did not refer to any concrete steps that had been taken to implement either of these initiatives. The Network is currently entering a new strategic planning period as its 2012-2014 strategic plan comes to an end. It must seize the opportunity to make good its commitments to foster engagement and collaboration with the African human rights mechanisms, specifically the African Commission.²²

OTHER ISSUES

Cooperation between the UN and the African Commission's special procedures

The African Commission is alert to its role as a regional body operating within an international human rights framework, and frequently refers to international human rights standards, calling upon States to ratify them along with regional instruments.

The complementary nature of international and regional human rights standards should be reflected in a close working relationship between international and regional human rights mechanisms. However, to date, the level of cooperation and coordination falls far short of what could potentially be achieved.

In an effort to address this, the African Commission and the UN's Office of the High Commissioner for Human Rights is exploring how the Commission can work more closely with the UN's special procedures. The goal is to increase cooperation between the two sets of experts to enable the African Commission to benefit from the greater capacity of OHCHR to support and organise visits of its special procedures to African countries, while the UN's experts would benefit from the higher level of local expertise of the African Commissioners.

The Addis Ababa Roadmap was developed two years ago to outline ways in which this collaboration and cooperation could be undertaken effectively.

On the sidelines of this session, the UN special procedures and the Commission held a consultation to assess gaps in implementation of the Roadmap and identify concrete steps to move the process forwards.²³

The consultation found relatively limited progress on implementation of the Roadmap. It was pointed out, for example, that in the last two years only one joint mission has been carried out between a UN special rapporteur and the African Commission. This took place when the African Commission's Special Rapporteur on women visited the Central African Republic with the UN's Special Rapporteur on that country.

The lack of joint visits and joint reporting was explained by the African Commission's paltry resources for carrying out such missions. During the Commission session itself the Chair pointed out that the need to get separate authorisations each time Commissioners want to visit a country is a great handicap to the Commission's work. She called on States to issue open invitations for both UN and African rapporteurs to carry out visits. This would make it somewhat easier for joint visits to be planned.

This issue was also discussed later in the session in the context of the review of Mozambique, where the low level of invitations to special rapporteurs to visit the country was raised. Mozambique explained that it received too many requests for visits from both African Commission and UN special procedures, and was forced to turn them down because it lacked the capacity and resources to ensure that the visit could be carried out to the satisfaction of both the State and the special procedure requesting the visit.

Despite the lack of progress on joint visits and reporting, Christof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, pointed out that there have been other examples of cooperation. In particular, Commissioners have participated in conferences and panels at the Human Rights Council, for example, on peaceful protests, women and women human rights defenders, and business and human rights. This ensures that the expertise from the African regional system is fed through to the international level. One way in which this could be developed is to ensure that African Commissioners participate as a matter of course in Human Rights Council debates involving African countries.

Recommendations included in the consultation:

- Increase the visibility of the Roadmap,²⁴ including in AU human rights year, 2016;
- Enhance follow-up to recommendations made by both systems;
- Disseminate information on vacant UN special procedures and African Commission mandates, to solicit the most qualified candidates;
- Enhance civil society involvement in Roadmap implementation;
- UN mandate-holders should invite African Commission special procedures to panel debates in the Human Rights Council;
- Consider African Commissioners for UN Human Rights Council Commissions of Inquiry (and vice-versa);
- Plan ahead efficiently and strategically to ensure joint activities, particularly country visits.

Joint priority thematic areas identified included:

- Peace and security issues;
- Economic, social and cultural rights, including the right to education;
- 2016 African Human Rights year, with a particular focus on women's rights;
- Business and human rights;
- Reprisals.

During the consultation two upcoming opportunities to strengthen collaboration were identified. One of these is the African Regional Forum on business and human rights, convened by the UN's Working Group on business and human rights, to be held in Addis Ababa from 16 to 18 September. The other opportunity is a proposed visit to the Central African Republic by the Commission in September, which could be undertaken jointly with the Human Rights Council's Independent Expert on the Central African Republic.

One of the potentially key action points developed during the consultation was the need to enhance the involvement of civil society organisations in the implementation of the Roadmap. This point complements the NGO Forum's expression of readiness to support effective implementation.

NGO applications for observer status

The Commission granted observer status to twelve NGOs:

- Refugee Consortium of Kenya (Kenya)
- Sonke Gender Justice Network (South Africa)
- WaterLex (Switzerland)
- Tanzania Human Rights Defenders Coalition (Tanzania)
- Reporters Without Borders – Sweden
- Humanitaire Plus (Togo)
- Fondation pour l'étude et la promotion des droits humains en Afrique (Burkina Faso)
- Association Béninoise du Droit de Développement (Benin)
- Organisation Nationale des Victimes du Terrorisme (Algeria)
- Le Cercle pour la défense de l'environnement (DRC)
- Réseau National des ONGs des Droits de l'Homme de la République Démocratique du Congo (DRC)
- Action contre l'impunité pour les droits humains (DRC)

Next session

The 56th ordinary session of the African Commission will be held from 14 to 30 October 2014 in Niamey, Niger. There is no proposed host for the 57th session but Burkina Faso offered to host the 58th session in October 2015.

- ¹ For the full list of resolutions and recommendations adopted by the NGO Forum see <http://www.acdhrs.org/wp-content/uploads/2014/05/55th-NGO-Forum-Summary-Report-Luanda-April-2014.pdf>
- ² 'Cote d'Ivoire adopts access to information law': <http://www.fesmedia-africa.org/what-is-news/media-matters/news/article/cote-divoire-cote-divoire-adopts-access-to-information-law/>
- ³ Inter-session activity report of Commissioner Faith Pansy Tlakula: <http://www.achpr.org/sessions/55th/inter-session-activity-reports/faith-pansy-tlakula/>
- ⁴ The East African Community consists of Burundi, Rwanda, Kenya, Uganda, and Tanzania. The EAC's vision is a prosperous, competitive, stable and politically united East Africa. See the EAC's website here: <http://www.eac.int/index.php>
- ⁵ Inter-session activity report of Commissioner Faith Pansy Tlakula: <http://www.achpr.org/sessions/55th/inter-session-activity-reports/faith-pansy-tlakula/>
- ⁶ For more information see: <http://www.defenddefenders.org/2014/07/ethiopia-zone-9-bloggers-journalists-charged-terrorism/> and <http://www.defenddefenders.org/wp-content/uploads/2014/07/Letter-to-PM-Hailemariam-Desalegn-7.24.14.pdf>
- ⁷ Resolution on the Drafting of Guidelines on Human Rights and the fight against Terrorism: <http://www.achpr.org/sessions/55th/resolutions/274/>
- ⁸ Resolution on the extension of the deadline for the study on freedom of association and assembly in Africa: <http://www.achpr.org/sessions/54th/resolutions/261/>
- ⁹ <http://www.achpr.org/sessions/55th/resolutions/273/>
- ¹⁰ http://www.achpr.org/sessions/55th/speeches/chair_opening-statement/
- ¹¹ Resolution on Women's Right to Land and Productive Resources: <http://www.achpr.org/sessions/54th/resolutions/262/>
- ¹² NGO Forum resolution TRES/008/10/2013 – Women's Land and Property Rights in Africa: <http://www.acdhrs.org/2013/10/>
- ¹³ Inter-session activity report of Commissioner Soyata Maiga: <http://www.achpr.org/sessions/55th/inter-session-activity-reports/soyata-maiga/>
- ¹⁴ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol): http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf
- ¹⁵ Resolution on Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa: <http://www.achpr.org/sessions/55th/resolutions/273/>
- ¹⁶ A few months after the ACHPR's session Uganda's Anti-Homosexuality Act was declared null and void by the country's constitutional court, on the basis of a technicality. For more information see <http://www.hrapf.org/news-events/court-annuls-anti-homosexuality-act-2014>
- ¹⁷ Inter-session activity report of Commissioner Faith Pansy Tlakula: <http://www.achpr.org/sessions/55th/inter-session-activity-reports/faith-pansy-tlakula/>
- ¹⁸ Final communiqué of the 15th extra-ordinary session of the African Commission on Human and Peoples' Rights: http://www.achpr.org/files/sessions/15th-eo/info/communique15eos/achpr15eos_fincom_2014_eng.pdf
- ¹⁹ For more information see: <http://www.bloomberg.com/news/2014-05-28/angolan-police-arrest-protesters-in-luanda-commemorating-purge.html>; <http://www.hrw.org/news/2013/11/26/angola-crackdown-opposition-protest>; <http://allafrica.com/stories/201309200477.html>
- ²⁰ Resolution on the Right to Peaceful Demonstrations: <http://www.achpr.org/sessions/55th/resolutions/281/>
- ²¹ Inter-session activity report of Commissioner Faith Pansy Tlakula: <http://www.achpr.org/sessions/55th/inter-session-activity-reports/faith-pansy-tlakula/>
- ²² Opening Statement of the Network of National Human Rights Institutions (NANHRI): <http://www.achpr.org/sessions/55th/speeches/opening-statement-nanhri/>
- ²³ Consultation between Special Procedures Mandate-Holders of the UN Human Rights Council and the African Commission on Human and Peoples' Rights: http://www.ohchr.org/Documents/HRBodies/SP/OutcomeReviewAARoadmap_EN.doc
- ²⁴ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Engagementwithotherintergovernmentalforums.aspx>

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