

# ‘Kumulika’ A Spotlight on Human Rights in Africa

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Developments at the NGO Forum & 49th Session of the  
African Commission on Human and Peoples’ Rights

## Introduction

This report highlights developments at the 49<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR) (28 April to 12 May 2011), and the NGO Forum that preceded it (25 to 27 April).

The NGO Forum brought together 200 representatives from over 30 African countries, including 25 from Europe, the USA and Asia. Several issues and themes came to the fore during the meetings, including:

- The rights of disabled people
- Intersectionality and the interconnectedness of human rights struggles
- Developments in North Africa and their impact for the defence of rights.

However, there was no one particular issue around that NGOs rallied around at the ACHPR to the extent they did in November 2010 regarding observer status for the Coalition of African Lesbians (CAL).

## The Rights of Disabled People

As a sign of the Forum's increasing understanding of disability as a human rights issue, and in response to a specific call made in November,<sup>1</sup> the NGO Forum held a panel on the rights of people with disabilities. The panel provided the Forum an opportunity to hear from defenders of the rights of persons with disabilities, and to give visibility to an otherwise 'invisible' issue. Frustration about the lack of improvement for the rights of disabled people in the 30 years of the African Charter motivated discussion of the options to better secure these rights. One issue was the form that the international law regime should take to respond to the experiences of people with disability in Africa. How can concerns regarding cultural perceptions in Africa be adequately addressed - such as perceived links between mental and other disabilities and witchcraft? The proposed African Disabilities Protocol was discussed at length, with discussions continuing at a side event at the ACHPR. Throughout these debates the importance that all initiatives be developed with the participation of disabled people was highlighted.<sup>2</sup>

With sign language available for the first time at the Forum, the meeting space was still not fully accessible to all. One panelist had to address participants from the floor. Her colleagues noted that as a matter of dignity, they would not carry a colleague up the stairs to the podium. The recommendation approved at the Forum included a call to the ACHPR and NGO Forum to hold meetings that are 'disability friendly'.<sup>3</sup>

This initiative taken by activists working on disability rights mirrored actions by those working on rights associated with sexual orientation and gender identity. It shows that the NGO Forum provides a space for the development of a deeper understanding of the human rights issues that are frequently marginalised. By starting his intervention in Swahili, one panelist illustrated to the Forum the fact that many other voices beyond the Forum still need to be heard.

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<sup>1</sup> TRES/002/11/2010, Resolution on Persons with Disabilities.

<sup>2</sup> Paper delivered by Professor Frans Viljeon.

<sup>3</sup> Recommendation on the Rights of Persons with Disabilities: RESC/002/04/2011.

## **‘There are Connections in our Struggles’<sup>4</sup>**

During this Forum, intersectionality <sup>5</sup>and the interrelatedness of human rights issues was frequently referred to, as was the potential for human rights defenders to be supportive of the experiences and work of others through their own work. One example given was that in working with indigenous people, it is important to be concerned about the human rights of minority groups in the indigenous community. The risk of NGOs contributing to ‘exclusions’ through their work, even inadvertently, was highlighted. For example, by failing to reference the experiences of disabled women in a report on women’s access to justice, there is a risk of negating the importance of certain experiences. Reflecting these discussions, the NGO Forum resolution advises the ACHPR ‘to call on States to provide information on women with disabilities in their periodic reports’.

by The special group on women took notice of these connections and these were later reflected in the NGO Forum resolution on women, which asks the ACHPR ‘to make the question of sexual orientation a question of the rights of women’. <sup>6</sup> Taking appropriate and effective action to address a human rights situation requires an understanding of the intersections between different experiences. Civil society assisted the ACHPR in understanding these connections, which led one participant, to note the need for the ACHPR to give CAL observer status, in the context of the Working Group on the Protection of Persons Living with HIV and Those at Risk, Vulnerable to and Affected by HIV in Africa.

‘The NGO forum is a powerful space. We need to stand together. The pain of oppression and damage is the same, even if we face different human rights issues.’  
*Participant at NGO Forum*

## **Sexual Orientation and Gender Identity**

From the first NGO Forum CAL attended in 2006, to the first panel held on the issue in 2009, the human rights issues related to sexual orientation and gender identity (SOGI) have gained increased recognition at the Forum. CAL noted it was ‘appreciative’ of the response of fellow human rights defenders at the last session of the ACHPR and expressed hope the spirit of solidarity would continue. In a message underlying the interconnectedness of human rights struggles, a CAL representative said they would continue to attend the Forum ‘to learn, inform and collaborate in promoting human rights’, and as long as human rights violations continue to occur, regardless of the group targeted. . Whilst one participant said they felt the Forum was a safe space, there were continued attempts to stigmatise LGBTI participants in informal spaces. Having echoed the overall message of solidarity at the Forum, another participant said ‘We are not here to beg. We don’t have to justify. We are human. We shall be protected and fully.’

The point was made that human rights defenders need to work with the ACHPR on promoting and protecting human rights. We need to document more and ‘feed the system with information’ so that commissioners have to accept that violations are occurring.

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<sup>4</sup> Participant at the NGO Forum.

<sup>5</sup> Intersectionality is the understanding that individuals can experience multiple and simultaneous levels of discrimination related to the characteristics of their identity - such as gender, race, disability, class, sexual orientation or gender identity, and that these discriminations produce a unique and distinct experience from any one form of discrimination standing alone.

<sup>6</sup> NGO Forum resolution: TREC/004/04/2011.

There was a call for an official response from the ACHPR on CAL's application for observer status. With Burkina Faso having now signed the 'special declaration' on civil society access to the African Court, there is an opportunity for human rights defenders in the country to use the court as a means of challenging the ACHPR's decisions with regard to observer status.<sup>7</sup>

## **Developments in North Africa and their Impact**

During the NGO Forum and the ACHPR session, the role of human rights defenders in effecting change and providing ongoing monitoring of human rights situations was made evident. A representative of the Cairo Institute of Human Rights Studies spoke of the period as a 'hopeful and difficult time' in which 'monumental changes' were likely. Old paradigms that suggested authoritarianism and stability in North Africa were conjoined had been exploded.<sup>8</sup> During the NGO Forum panel discussion on 'Uprisings in Northern Africa: Challenges and Lessons Learnt for Human Rights Defenders', it was noted that in the case of Tunisia, the revolution blurred the line between the population at large and human rights defenders in particular.

The example of this civil society action was directed by one speaker towards other participants at the Forum: 'We are all working toward the same thing with the same aspirations. The walls of States vibrate as we communicate. Communicate, communicate and send the message!'

Joint action by NGOs at the Human Rights Council, and in particular the 'silence is not an option' campaign showed the resolve of participating NGOs as well as the potency of joint initiatives.<sup>9</sup>

For more on the ACHPR response to developments in North Africa, see below page 9.

## **Issues on Other Regions**

Issues of concern in other regions were highlighted by regional Steering Committee representatives. In the East and Horn of Africa, the emergence of South Sudan as a new state was noted. The murder of David Kato in January 2011 underlined the need for the ACHPR to reverse the decision on CAL's observer status. The degree of post electoral violence in the west of Africa was highlighted, as well as the ongoing lack of freedom of expression, and the burden of tradition and custom upon human rights defenders who are accused of being 'too free, Western and rebellious'.<sup>10</sup> Issues in the south of Africa included the 'infrastructure of violence' in Zimbabwe, the experiences of Swazi and Angolan activists arrested for calling for democracy.<sup>11</sup> The challenges faced by LGBTI activists operating in countries with laws prohibiting sodomy, and the harassment of the head of the Malawi national human rights institution were also cited.

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<sup>7</sup> Under the Protocol establishing the African Court NGOs and individuals can only bring cases before African Court if the State concerned has signed the 'special declaration' accepting the competence of the Court to receive these cases.

<sup>8</sup> 49th Session of the ACHPR, Cairo Institute for Human Rights Studies, Oral Intervention under Item 4.

<sup>9</sup> 'Silence is not an option' campaign: <http://bit.ly/gZaWeP>.

<sup>10</sup> Chair of the West African Human Rights Defenders Network.

<sup>11</sup> Executive Director of Hurisa.

## **Other NGO Forum Panel Sessions**

### **ELECTIONS AND VIOLENCE: 'EMERGING ISSUES: ELECTIONS AND INSTABILITY IN AFRICA; HUMAN RIGHTS CHALLENGES AND THE WAY FORWARD'**

The violence that surrounds many elections is a perennial issue of concern at the NGO Forum. It was suggested that, since elections are frequently used as a means to legitimise dictatorships, there is a need to think of other ways of empowering people, with the recent events in the north of Africa (e.g. Tunisia, Egypt and Libya) providing examples. The NGO Forum noted that, while the national institutions that are mandated to regulate elections have problems, a credible regional body to supervise elections was needed.<sup>12</sup> The Forum called on African States to accelerate the ratification of the African Charter on Democracy, Elections and Governance.

### **ENFORCED DISAPPEARANCES IN AFRICA**

Discussions during this session focused upon the need for prevention and redress, and to press for ratification by African States of the International Convention on the Protection of All Persons from Enforced Disappearances.<sup>13</sup> The resulting NGO resolution called for the establishment of an ACHPR working group to address the issue of enforced disappearance.

### **OVERVIEW FROM THE WORLD SOCIAL FORUM: AFRICAN CONSENSUS**

This panel session discussed an initiative started at the World Social Forum in Dakar. Whilst the outcome of the panel discussion was presented as a consensus, the panel did not include any women, and the initiative did not seem to be familiar to many of those in attendance. The NGO Forum issued a Declaration related to the Consensus.<sup>14</sup>

In his capacity as Chairperson of the Working Group on economic, social and cultural rights (the Working Group), Commissioner Khafallah noted how the ACHPR plans to bring African civil society together to brainstorm the problems the continent faces in translating economic potential into long term development.

### **'BRINGING THE ABSOLUTE PROHIBITION OF TORTURE IN AFRICA TO LIFE'**

The Chairperson of the Committee for the Prevention of Torture in Africa encouraged human rights defenders to use a two-pronged approach that documents cases of torture and, at the same time, sensitises States about the need to criminalise the practice. The case of the DRC was cited, where a law criminalising torture was passed in July 2011. The Commissioner noted that none of the States approached by the Committee in 2010 regarding country visits had responded.

The new ACHPR bi-annual newsletter 'Africa Torture Watch' is aimed at popularising the work of the ACHPR and increasing the understanding of how to combat torture.<sup>15</sup>

**Other panel discussions included** one on HIV/AIDS and human rights, and one on women and housing rights.

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<sup>12</sup> NGO Forum resolution : TRES/008/04/2011.

<sup>13</sup> Currently there are six African States that have ratified the Convention.

<sup>14</sup> See NGO Forum Declaration DEC/002/04/2011.

<sup>15</sup> Africa Torture Watch: <http://bit.ly/oEzmbT> .

## **SUGGESTIONS MADE BY PARTICIPANTS FOR THE NEXT NGO FORUM:**

- To pressure States on individual cases; at the next Forum there should be photos and documented evidence of human rights defenders assassinated during the period, and clear signs of civil society mobilisation around these cases.
- To enable communication through the creation of an electronic mailing list on the NGO Forum, where fellow human rights defenders can communicate intersession and show solidarity with each other.
- The establishment of a special interest group on 'reporting and human rights' that may be of interest to journalists and advocates.
- Following the questioning of prayers being held at the start of the last NGO Forum, this session simply commenced with a minute silence. It was recommended this practice be continued in future sessions.

## **Relationship between the Forum and the ACHPR**

The importance of the relationship between the ACHPR and the NGO Forum was underlined by the Chair of the ACHPR, who noted that in contrast to a few years back, Commissioners now prioritise attending the Forum.<sup>16</sup> He said the Commissioners see the NGO Forum's value in providing the ACHPR with visibility and recognition.

The participation of Commissioners is immensely valuable as a means of informing the ACHPR of NGO concerns and to provide NGOs with opportunities to engage with Commissioners. The role of Commissioners in simply listening to human rights defenders' concerns and analysis rather than taking a more active role could be further encouraged during the discussions of special groups.

The means by which the NGO Forum can best cooperate with the Commission is still unresolved. A Statement given in the name of the NGO Forum at the opening ceremony of the ACHPR spoke of the ACHPR as a 'great institution' but didn't reflect any of the frustrations previously voiced by human rights defenders regarding the ACHPR functioning.<sup>17</sup> A participant at the NGO Forum said it is not clear to what degree the Statement reflects the outcome of the Forum and its agreed strategy of engagement. For example, the statement made to the ACHPR notes that 'the Forum applauds the resounding success of the January Summit with its apt theme Shared Values and would like to congratulate the Department of Political Affairs of the African Union Commission for effectively leading the formulation and discussion process of the development of a human rights strategy for Africa'. However, the NGO Forum did not discuss this strategy at any length.

During the previous NGO Forum in November 2010, several participants pressed for the Forum to reconsider how to better strengthen its role in cooperating and critically engaging with the ACHPR. Several questions arose to focus debate and suggestions on how to make the NGO Forum more effective.<sup>18</sup> There was no reference to the need for

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<sup>16</sup> Chair of ACHPR during the NGO Forum closing ceremony.

<sup>17</sup> 'Statement on behalf of participants of the Forum of NGOs at the official opening of the 49<sup>th</sup> ordinary session of the ACHPR'. For overview of concerns and frustrations expressed see: prior report pg 16.

<sup>18</sup> See ISHR 'Report of the NGO Forum (3-5 November 2010) and the 48<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (10 – 24 November 2010), pgs 9 and 10.

evaluation<sup>19</sup> or to changing the format or focus of the NGO Forum by members of the Steering Committee either at this NGO Forum or in the preceding inter-session period.

During this NGO Forum as in previous sessions, the selection of topics for panel discussions and selection of speakers and facilitators prompted some debate. Whereas the Steering Committee plays a vital role in encouraging suggestions for panel discussions and shaping the overall agenda for the Forum, the repeated presence of Steering Committee members on panels, either as speakers or Chair people, was questioned. Considering who can best speak to the topic should take precedence over providing people with a platform. The topic of some panel discussions appeared to try to accommodate the interests and concerns of different groups, causing some discussions to lack focus and, as such, to reach no particular outcome. One member of the Steering Committee acknowledged the frustration regarding the choice of panels and panelists, and noted that suggestions for discussions need to be submitted to the NGO Forum Secretariat at least eight weeks before the session agenda is set.

### **The Special Rapporteur on Human Rights Defenders in Africa**

During the NGO Forum, the Special Rapporteur participated in a workshop with human rights defenders to discuss the functioning of the mandate and future endeavours.

#### **VISIBILITY**

The Special Rapporteur invited defenders to visit the mandate's new French and English website.<sup>20</sup> Whilst the website already features news on past visits, it does not yet provide news on upcoming plans. Participants underlined importance of information on schedule of visits to enable them to gather information in a timely way and to engage effectively with the visit.

The Rapporteur will be reviving the mandate's newsletter, and invites articles from human rights defenders regarding various issues. The newsletter will be released prior to 50<sup>th</sup> ordinary session of the ACHPR.

#### **COUNTRY VISITS**

Given that participants from many countries showed interest in a visit from the Special Rapporteur, she indicated that she would submit requests to all countries proposed and more. A Gambian human rights defender requested the Special Rapporteur make on an official visit to the country prior to the next ACHPR session, as a means of presenting a more accurate picture of the human rights situation there, than the one offered by State officials on a regular basis at the opening of the ACHPR session.

#### **INFORMAL VISITS**

It was noted that informal visits to a country at the invitation of civil society actors can be an effective way of encouraging the State to agree to a formal visit. In addition, in the event that a formal visit is arranged, prior meetings with civil society actors can improve the outcome. .

In terms of making the most of any visit by a Special Rapporteur, Mrs. Asuagbor encouraged the use of technology that may enable communication with human rights

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<sup>19</sup> One of the recommendations of an evaluation carried out in 2007 was that the Forum be evaluated every three years.

<sup>20</sup> <http://bit.ly/oPTpLr>.

defenders in remote areas. She also underlined the importance of organising a press conference at the beginning and end of each visit to enhance the visibility of the mandate. She expressed interest in meeting with anyone who could provide useful information, including families of victims and those in the diaspora.

### **JOINT MISSIONS: A NEW ACHPR TACTIC?**

From 1- 9 April 2011, seven Commissioners participated in a joint promotional visit to the DRC<sup>21</sup>. Such a visit provides civil society with access to multiple Rapporteurs at one time, a useful strategy given that it can be uncertain when a State will permit the visit of another Rapporteur. This may also encourage a better understanding of the cross cutting nature of certain mandates. The situation of human rights defenders should be a concern of all Commissioners during promotional visits contributing to the ACHPR capacity to be decisive and unequivocal on the issue.

Continuing with the focus on joint visits with other mechanisms to raise visibility of an issue, the ACHPR Special Rapporteur on human rights defenders put out a call for resources to support a joint visit with the UN Special Rapporteur on human rights defenders.

A promotional visit with the inclusion of the UN Special Rapporteur on human rights defenders encourages the idea that the situation of human rights defenders is a cross cutting issue - a point regularly made by NGOs during ACHPR sessions.

## **RESEARCH**

### **Study on Freedom of Association in Africa**

A resolution later approved by the ACHPR nominated eight organisations and networks to conduct, a study on the laws governing freedom of association in Africa, under the supervision of the ACHPR Special Rapporteur on human rights defenders, and to submit it to the ACHPR before May 2012.<sup>22</sup> These organisations and networks are:

- African Centre for Democracy and Human Rights Studies
- Cairo Institute for Human Rights Studies
- Central Africa Human Rights Defenders Network
- East and Horn of Africa Human Rights Defenders Project
- Hurisa
- Institute for Human Rights and Development in Africa

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<sup>21</sup> The delegation consisted of the Chairperson of the African Commission, the Special Rapporteur for the Rights of Women in Africa, the Special Rapporteur for Prisons and Conditions of Detention in Africa, the Chairperson of the Committee against Torture, the Special Rapporteur for Human Rights Defenders, the Chairperson of the Working Group on ECOSOC; and the Chairperson of the Working Group on the Death Penalty.

<sup>22</sup> ACHPR/Res.179 (XLIX) 2011.



- International Service for Human Rights
- West Africa Human Rights Defenders Network.

The Special Rapporteur expressed plans to produce her next report with a focus on women human rights defenders, for the May 2012 session of the ACHPR.<sup>23</sup>

### **Making the Mandate More Effective**

‘How can the mandate function so that it becomes a mechanism to turn to, where real action is taken, so we know a human rights defender’s life is safe?’<sup>24</sup> Suggestions included the Special Rapporteur working more closely with networks to increase protection of activists, including when individuals need to leave a country for security reasons, and working to sensitise States to the need to offer refuge to human rights defenders where necessary.

Mrs Asuagor noted that Special Rapporteurs need to act within the limits of their mandates. ‘If you don’t think the mandate provides for what you need, you need to lobby to get the mandate changed.’

## **PRESENTATION OF ACTIVITY REPORT AT THE SESSION OF THE ACHPR<sup>25</sup>**

### **Issues Highlighted**

- The promotional visit to Cameroon, February 2011 was to evaluate the implementation of recommendations made by the ACHPR Special Rapporteur on human rights defenders in 2006, and the concluding recommendations made following Cameroon’s periodic report during 47th session ACHPR. It is not clear when the recommendations from the Special Rapporteur will become available. Cameroon noted its pleasure at having received a visit from the Special Rapporteur and welcomed her concluding recommendations. It renewed its willingness to work with the ACHPR at all times.
- A draft bill on the status of human rights defenders in the DRC. The Special Rapporteur noted<sup>26</sup> that she was awaiting news on whether this bill had passed into law.<sup>27</sup> The articulation of the principles outlined in the Declaration into domestic legislation is a common call by the ACHPR and NGOs alike. The risk of dilution of protections enumerated in the UN Declaration on Human Rights Defenders remains a concern.
- A small number of States including Egypt, Tunisia and Zimbabwe indicated that the Special Rapporteur’s communications for the recent period had not reached the State party. The suggestion was made for the Special Rapporteur to direct communications to the Minister of Justice and Ministry of Foreign Affairs.

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<sup>23</sup> The mandate includes presenting a report at each ordinary session of the African Commission, on the situation of human rights defenders in Africa.

<sup>24</sup> A participant at the workshop.

<sup>25</sup> ACHPR /49/OS/ 1036. In addition to being the Special Rapporteur on human rights defenders, Mrs. Asuagbor is responsible for human rights promotion in Benin, Guinea Bissau and Rwanda.

<sup>26</sup> Activity report : ACHPR/49/OS/1036.

<sup>27</sup> At the time of writing, the legislation was being discussed in parliament and defenders were involved in advocacy to pressure the parliament to adopt the law.

## **ACHPR and North Africa**

### **BACKGROUND TO THE ORDINARY SESSION**

During its 9<sup>th</sup> Extra-Ordinary Session held in Banjul, 23 February to 3 March 2011, the ACHPR focused upon the human rights situations in Algeria, Benin, Côte d'Ivoire, Libya, Egypt, and Tunisia, issuing resolutions on the latter two.<sup>28</sup> The ACHPR also issued a resolution on Libya expressing concern about 'serious and massive human rights violations'.<sup>29</sup> It called the Libyan authorities to immediately stop the violations and called the international community and the African Union to take all the necessary 'political and legal' measures. It then moved swiftly to file a complaint at the African Court (see below, page 16).

### **STATE INTERVENTIONS**

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' said the Government was committed to reviewing the State's position on all international and regional human rights treaties currently not signed or ratified, whilst 'adhering to cherished traditions and values'. The degree of change foretold by this statement, particularly with regard to the rights of for women, will depend in part on the ongoing engagement of human rights defenders.

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 recent decisions regarding ratification of several international conventions and the Rome Statute of the International Criminal Court; and its deliberations on lifting reservations to the UN Convention on the Elimination of Discrimination against Women. At the ACHPR session Tunisia extended a standing invitation to the ACHPR, the Office of the High Commissioner for Human Rights (OHCHR) and the International Committee of the Red Cross (ICRC) to visit the country.

### **ONGOING MONITORING ROLE OF NGOS**

In its resolution on the situation of human rights in North African countries in transition, the NGO Forum highlighted continuing human rights violations that have taken place since the beginning of the transition period in Egypt, and 'resumption of serious human rights violations in Tunisia'.<sup>30</sup> During the ACHPR session, NGOs highlighted the fragility of the transition phase in Egypt, noting that some restrictions on fundamental freedoms were still evident, such as the blocking of websites. The Cairo Institute for Human Rights Studies and the African Centre for Justice and Peace Studies urged the ACHPR Special Rapporteurs on freedom of expression, human rights defenders, and torture 'to request visits to Tunisia and Egypt to provide their expert advice and recommendations to aid the transition to democracy'.<sup>31</sup>

Members at the NGO Forum called on the ACHPR to adopt a resolution on Libya, condemning 'the escalation of human rights abuses in Libya' and deploring the failure of the Libyan authorities to comply with the order of the African Court. Such a resolution was

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<sup>28</sup> Resolution on the Human Rights Situation in the Arab Republic of Egypt (ACHPR/RES.179(EXT.OS/IX)2011).

<sup>29</sup> ACHPR 181 EXTR.OS(IX) 2001.

<sup>30</sup> CRES/005/04/2011.

<sup>31</sup> 49<sup>th</sup> Session of the ACHPR, Cairo Institute for Human Rights Studies, Oral Intervention under Item 4.

not adopted. Whilst the Commissioners did refer to the order during the periodic review of Libya, it made no further public statement. Its press statement on the human rights situation in North Africa (see below) hasn't been followed up by further public statements.

## **HUMAN RIGHTS – CONFLICT NEXUS**

The Cairo Institute for Human Rights Studies and the African Centre for Justice and Peace Studies, in their statement to the ACHPR regarding the uprisings in Africa during 2011, said: 'what seems sudden is in fact the logical consequence of the terrible erosion of human rights over the preceding years'. The ACHPR makes explicit these connections in its resolution on the Human Rights Situation in the Arab Republic of Egypt noting that 'the principles of democracy, of good governance, transparency and respect for human rights' are 'essential elements for the prevention of conflict and the establishment of representative governments.'<sup>32</sup>

## **POSITIVE CONTAGION AND CLAMPDOWN**

Several NGOs drew attention to the clampdown experienced by human rights defenders expressing support or being encouraged by events in North Africa. The East and Horn of Africa Human Rights Defenders Project (EHAHRP) referred to the arrest of a journalist in Ethiopia on 11 February 2011, after he published an article referring favourably to the protests in Egypt and the rights of Ethiopians to demonstrate peacefully and be protected by the State. The crackdown on demonstrations in Sudan 'sparked by the protests that have recently taken place in North Africa' was also cited.<sup>33</sup>

In addition, examples were provided at the NGO Forum of restrictions on the defense of rights even where human rights defenders had not explicitly referenced North African revolutions. One such case occurred in Burundi, where a march was planned to take place on 8 April 2011 to demand justice in the case of murdered human rights defender Ernest Manirumva; permission to hold the demonstration was denied by the authorities.<sup>34</sup>

## **POSITIONING DEVELOPMENTS IN AFRICA WITHIN A BROADER CONTEXT**

### **NGO Forum session on the Human Rights Council**

It was noted that national NGO advocacy initiatives, along with those of partners in Geneva, had contributed to the strong UN response to some critical human rights situations in Africa. A country- focused resolution in Tunisia and a Special Session on Libya, for example, showed the potential for both UN and regional bodies to respond.<sup>35</sup> A member of the West African Human Rights Defender's Network noted that in the case of Cote d'Ivoire NGO pressure had contributed to a resolution (endorsing recommendations from Economic Community of West African States and the African Union), which led to the establishment of a Commission of Inquiry. The member of the network emphasised that, despite the selectivity evident in the UN response to human rights situations, recent developments show what is possible, and that NGOs need to find the best strategies to use human rights mechanisms and coordinate work between local activists and those in key advocacy spaces.

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<sup>32</sup> ACHPR /RES.179(EXT.OS/IX)2011.

<sup>33</sup> East and Horn of Africa Human Rights Defenders' Network statement, 28 April 2011.

<sup>34</sup> Example given by human rights defenders participating in NGO Forum.

<sup>35</sup> For more on these and other developments see ISHR: 'The response of human rights mechanisms to civil society demands for change'. <http://www.ishr.ch/quarterly>.

## **Periodic Reports**

The reporting process allowed for an initial 20 minute presentation by the State party (on a report previously submitted and made public via the ACHPR website). The relevant Commissioner responsible for human rights promotion in that country has 20 minutes to dialogue with the State party, followed by the other Commissioners who have 10 minutes each. The process concluded with responses by the State party, for 30 minutes.

During this session Burkina Faso, Libya, Namibia, and Uganda reported.

## **Common Issues across Reviews**

### **LACK OF DOMESTICATION OF INTERNATIONAL TREATIES TO WHICH STATES ARE PARTY, OR RATIFICATION OF REGIONAL STANDARDS**

For example, Uganda's failure to ratify the African Charter on Democracy, Elections and Governance.

### **CONCERN ABOUT NATIONAL LEGISLATION RESTRICTIVE TO FUNDAMENTAL FREEDOMS**

In regard to Namibia's Public Gathering Proclamation which states that 'organisers of public gatherings, election campaigns, religious gatherings, celebrations and other demonstrations need to inform the police and be given permission prior to such an event', the Special Rapporteur on human rights defenders indicated that requiring this authorisation should be the exception rather than the rule.

### **CREDIBILITY OF NATIONAL HUMAN RIGHTS INSTITUTIONS AND ELECTORAL COMMISSIONS**

The Special Rapporteur on human rights defenders asked about the autonomy and independence of the electoral commission of Namibia, as a cornerstone in an entire process of transparency and safeguards.

### **QUALITY OF REPORTS:**

Reports are submitted to highlight 'legislative and other measures [States] have adopted to give effect to the Charter'.<sup>36</sup> Commissioners frequently indicate how gaps in the reports submitted undermine their capacity to fully understand the human rights situation in a country or establish a 'constructive dialogue' with the State and advise them.<sup>37</sup>

### **GAPS**

Namibia indicated that the Guidelines on the Maputo Protocol are problematic and difficult to follow, and as such no reference to implementation of the provisions was included in the report.

Commissioner Yeung noted that the ACHPR role was inoperable without relevant information, and pressed the Libyan representative for more details on separation of power and the nomination of judges.

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<sup>36</sup> Article 62, African Charter on Human and Peoples' Rights.

<sup>37</sup> ACHPR State Reporting Procedure: <http://bit.ly/aXaTZT>.

## **LACK OF REFERENCE IN REPORTS TO IMPLEMENTATION RECOMMENDATIONS MADE BY ACHPR**

Commissioners noted that whilst Namibia had indicated developments in regard to recommendations made by the Working Group on Indigenous Populations /Communities in Africa (2005), the country's periodic report made no reference to recommendations made by the ACHPR in the 2<sup>nd</sup> Periodic Report.

Commissioners also noted a lack of direct references to recommendations made in previous reporting cycles in the Ugandan report, as well as a failure by the State to respond to the report of the Working Group on Indigenous Populations/Communities in Africa (2006).

In the Libyan report there was no reference made to indigenous people, despite a visit in 2005 by the Working Group on Indigenous People. The Commissioners recalled the recommendations of the Working Group.

## **LACK OF REFERENCE TO DEFENSE OF RIGHTS OR IMPLEMENTATION OF THE UN DECLARATION ON HUMAN RIGHTS DEFENDERS (THE DECLARATION)**

In the case of Namibia, the Special Rapporteur on human rights defenders noted there were no specific measures in place in the country to protect human rights defenders in line with the Declaration. The State representative asked for a copy of the Declaration. The Special Rapporteur on human rights defenders asked Uganda what legislative and administrative measures had been taken to fulfil provisions of the Declaration Process.

The Vice Chair of the ACHPR noted a 'preference' that State parties respond to questions in person rather than submit written responses. The challenges of regular reporting were alluded to by Uganda's request that the period of reporting be extended from two to three years. Uganda made reference to the African Peer Review Mechanism (APRM) Programme of Action and the Government's commitment to its implementation. The connections between these two processes are rarely cited.

## **LAWS CRIMINALISING TORTURE AT THE HEART OF ACHPR CONCERNS**

Commissioner Atoki expressed concern about the delays in the passage of Uganda's 'Prevention of Torture Bill', noting the risk of impunity in key cases. The ACHPR has repeatedly placed the enactment of national law criminalising torture at the heart of its engagement with States.

### **State Reports**

#### **The Burkina Faso report (ACHPR/49/OS /1040) covered the period 2003 – 2009.**

The Special Rapporteur on human rights defenders expressed concerns that a law approved in May 2008 on 'the suppression of acts of vandalism committed during demonstrations in the public highway' could be misused to deter peaceful demonstrators.

The State report contained a section on its obligation to promote awareness for the Charter – not commonly covered in State reports.

**Namibia presented one document covering its 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> reporting periods (ACHPR/49/OS/1042).**

–The Commissioners welcomed the level of access to information in Namibia even though Namibia has no specific legislation enshrining the right of citizens to access or gather information. Concerns were expressed about a proposed ‘Media Act’, and requests were made for the details of this legislation to be made public.

**Uganda presented its 4<sup>th</sup> periodic report (ACHPR/49/OS/1043).**

Whilst the State report did contain references to ‘challenges faced by Uganda in implementing the Charter’ and acknowledged the spirit and purpose of a periodic reporting process, the statements lacked substance. One challenge identified by the State was that of ‘getting the civil society to fully participate in compiling periodic reports’.

Uganda noted its ratification of the Protocol to the ‘African Charter on Human and Peoples’ Rights on the Rights of Women in Africa’ on 22 July 2010, having been a signatory since 2004. The State party said its ‘Prevention of Female Genital Mutilation (FGM) Act was a positive development.’<sup>38</sup> Commissioner Soyata Maiga noted that policy and practice need to adapt to the law, and asked about sensitisation programmes to fulfill the terms of the law on FGM.

**Human Rights Defenders:** The State’s report on key rights associated with the defense of rights was quite brief, generally focusing on the relevant constitutional guarantees. The Special Rapporteur on human rights defenders asked whether Article 10 of the Ugandan Constitution allowed for an unfettered freedom of association, with no prior authorisation required to register an organisation. The State report noted the Constitutional Court of Uganda finding that a section of the Police Act, on the power to regulate assemblies and processions and to require such demonstrations to be authorised, was an infringement of the Constitution. The Special Rapporteur on human rights defenders welcomed this decision.

The Special Rapporteur asked about the steps taken to find the perpetrator and achieve justice in the case ‘alleged murder of David Kato’. The sense amongst NGOs following the intervention was that not enough had been done to contextualise the killing or highlight concerns about the safety of activists, particularly LGBT activists; nor to provide assurances of their protection and the promotion of their work. The Special Rapporteur asked whether there were any human rights defenders in Uganda currently in detention or on trial.

With the draft ‘Anti-homosexuality Bill’ in mind, the Vice Chair of the ACHPR asked whether the State was responding to the international trend to decrease rather than increase numbers of crimes punishable by death.

**Libya: Keeping the Review Process Relevant**

The review of Libya, scheduled as part of the periodic review process which Libya has consistently engaged with, presented Commissioners with the difficulty of considering a report on a situation radically different to the current state of civil war.<sup>39</sup> As noted by the Chair, the situation in Libya spoke to the challenge of ‘how to deal with human drama in giving effect to people’s rights’. Commissioners tried to retain a focus on the situation presented in the report, whilst mindful of the impact of the critical nature of the current situation. They accepted the State’s ability to carry out its human rights obligations was

<sup>38</sup> Which had been prompted by the January 2011 Constitutional Court case declaring female genital mutilation to be unconstitutional.

<sup>39</sup> Libya submitted ACHPR/49/OS/1041 as part of its 5<sup>th</sup> periodic review by the ACHPR.

affected by civil war and the UN supported intervention. They questioned the State regarding implementation of obligations in the short and long term. In the short term, was the government in a position to guarantee respect and enable populations to access humanitarian aid? In the longer term, they noted the need for legislative and administrative reform and questioned the State on its plans.

Expressing concern that in response to the civil war the State would move further from international practice, Commissioners asked about measures taken to carry out the Commission recommendations on the moratorium against the death penalty, and sought reassurance that the current situation would not see an increase in the numbers of executions. The State noted that 'the eventual abolition [of the death penalty] remains the aim of the Jamhiriya society'.<sup>40</sup>

There was no questioning of the presence of a representative of the Gaddafi regime at the session. This was in stark contrast to the 17<sup>th</sup> Session of the Human Rights Council where several member States expressed opposition to their (sole) representation, mindful of the legitimacy granted to the authority represented.<sup>41</sup>

After noting that economic, social and cultural rights seemed to have been effectively suspended in the country, 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 State Response**

Libya challenged the ACHPR and those present to 'rise up to their moral responsibilities' and raise their voices against NATO aggression. Libya stated that it had made many sacrifices to ensure the liberty of Africa and that the 'aggression' by NATO against the people of Libya, an expression of 'new colonialism' was the most important issue to address. Commissioner Maiga 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.

Libya requested that the Commission send a field mission to Libya urgently to see the reality on the ground. The Commission asked when the State might receive a fact finding mission.

## **Concluding points on periodic reports**

### **STATE ENGAGEMENT WITH NGOS IN PREPARING REPORTS**

Uganda: The State report notes that the document was prepared 'in close cooperation with the Uganda NHRI and some NGOs operating in Uganda'. Burkina Faso indicated that its State report had been submitted to a 'validation workshop', which according to the report brought together 'all the actors working on human rights issues'. The Namibian report noted that it had been prepared by the Ministry of Justice based on information from government ministries and 'reports from relevant NGOs'.

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<sup>40</sup> ACHPR/49/OS/1041, pg 10.

<sup>41</sup> See ISHR article: <http://bit.ly/qzYfPm>.

During the reviews, the Commissioners reminded the three States of the need to give details on which NGOs had been involved in drafting of the State reports, such as through including a list of the involved NGOs as an attachment to the relevant reports. This suggests that Commissioners require evidence to support claims of NGO involvement.

Following Namibia's periodic review, the Vice Chair said he looked forward to receiving written answers to outstanding questions 'at some point'. Whilst it is likely to be the job of the ACHPR Secretariat to work with States in providing information to Commissioners, a more specific and public deadline would also provide NGOs with more leverage when pressing States to comply. The fact that the General Guidelines relating to the form and content of the report are difficult to come by (they are not available on the website, for example), means role of NGOs in pressing States to provide the required information is crucial for the facilitation of dialogue and to make evident the real human rights situation in each country.

### **COMMISSION ADOPTION OF CONCLUDING OBSERVATIONS**

The ACHPR adopted concluding observations on the periodic report of Namibia, but deferred adoption of the concluding observations on Libya and Burkina Faso. In addition the ACHPR noted it could not adopt the concluding observations on Uganda as the delegation had been unable to provide any verbal responses to the Commissioners' questions during the session itself. It was of concern to NGOs that a State should be permitted to provide written responses only, undermining the dimension of accountability involved in a public review. There is nothing on the ACHPR website to indicate whether written responses have indeed been submitted by Uganda.

### **STATUS OF SUBMISSION OF STATE PERIODIC REPORTS TO THE ACHPR**

There are 12 countries that have never submitted a report to the ACHPR, including Equatorial Guinea whose President was elected Chairperson of the AU at the start of the year. Nigeria has submitted its 4th periodic report<sup>42</sup> and is likely to be reviewed at the 50<sup>th</sup> ordinary session of the ACHPR.

### **Brief look at other States Interventions**

Tanzania noted that its 'Persons with Disabilities Act 2010' is now in place – as noted during the ACHPR session in May 2010. It also flagged two further developments: the tabling of a bill related to the review of the Constitution, and the start of a process of drafting a 'National Human Rights Action Plan'.

Nigeria highlighted the signing into law of the 'National Human Rights Commission (Amendment) Act' a few weeks before the ACHPR session in March 2011. According to the delegate, the law strengthens the independence of the NHRI. The NHRI currently has a 'B' accreditation status with the International Coordinating Committee, which means it is not considered fully in compliance with the Paris Principles.<sup>43</sup>

Ethiopia highlighted the opening of six branch offices of the Ethiopian Human Rights Commission in various regions.

In the DRC, the periodic reporting in November 2010 noted the visit of Special Procedures mandates and expressed interest in receiving other Special Rapporteurs. It

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<sup>42</sup> Report available at <http://bit.ly/oOGSnV>.

<sup>43</sup> Principles related to the Status of National Institutions (Paris Principles). <http://bit.ly/aaLzVS>.



reiterated its commitment to implementing recommendations from the review of November 2010, and progress will be reported on at next review in the near future.<sup>44</sup>

## The African Court decision

In what was called a ‘pioneering decision’<sup>45</sup> and ‘... a key moment for the protection of human rights in Africa’<sup>46</sup> the recent referral of the case of Libya by the ACHPR to the African Court on Human and Peoples’ Rights (the African Court) caused great interest amongst NGOs, and was referenced by the ACHPR during the review of Libya.

## PROCESS

With the newly established rules of procedure<sup>47</sup> defining the relationship between the African Court and the ACHPR, including terms for the referral of cases, a group of NGOs (Egyptian Initiative for Personal Rights, Human Rights Watch and Interrights) initiated a case against Libya at the ACHPR. The ACHPR issued a statement on 25 February 2011 expressing concern about ‘the serious and massive violations’ taking place in the country. In response to numerous complaints received against Libya<sup>48</sup> the ACHPR concluded that there had been ‘serious and widespread’ violations of human rights in the country, and for the first time submitted a case to the African Court.<sup>49</sup> The Court issued provisional measures against Libya, instructing them to ‘immediately refrain from any action that would result in loss of life or violation of physical integrity of persons, which could be a breach of the provisions of the [African Charter on Human and Peoples’ Rights] or of other international human rights instruments to which it is a party’.

One of the elements cited in the African Court’s decision to order provisional measures was the response of ‘international organisations, both universal and regional’ to which Libya is a member. The ruling cites the opinion of the African Union’s Peace and Security Council, the Secretary General of the Arab League, and the UN Security Council Resolution 1970.<sup>50</sup>

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 African Court.<sup>51</sup> The African Court is empowered to order provisional measures ‘in cases of extreme gravity and

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<sup>44</sup> In accordance with Article 62 of the African Charter, States parties should submit a report every two years.

<sup>45</sup> ‘Libya: African Rights Court Issues First Ruling Against a State. Libya Ordered Immediately to End Threats to Life, People’s Security’, Egyptian Initiative for Personal Rights, 31 March 2011.

<sup>46</sup> Clive Baldwin, senior adviser at Human Rights Watch (quoted in EIPR press statement).

<sup>47</sup> Rules of Procedure of the African Commission on Human and Peoples’ Rights, revised and entered into force, August 2010.

<sup>48</sup> During its 9<sup>th</sup> Extra-Ordinary Session held in Banjul, The Gambia, from 23 February to 3 March 2011.

<sup>49</sup> The African Union established the African Court to ‘take final and binding decisions on human rights violations perpetrated by AU Member States’.

<sup>50</sup> In the matter of African Commission on Human and Peoples’ Rights v Great Socialist People’s Libyan Arab Jamahiriya. Application No. 004/2011. Order for Provisional Measures.

<sup>51</sup> The case was passed from the Commission to the Court in line with Rule 118 (3) of the Rules of Procedure of the Commission, and pursuant to Rule 84 (2) of the same rule.

urgency and when it is necessary to avoid irreparable harm to persons' and 'which it deems necessary to adopt in the interests of the parties or of justice'.<sup>52</sup>

During the periodic review, the delegate of Libya noted the State was prepared to cooperate with the African Court and implement the provisional measures, saying it was 'working transparently and objectively with a mechanism we respect'. However during the session, the Coalition for an Effective African Court on Human and Peoples' Rights noted that Libya had not taken measures to comply with the order.

## **IMPLICATIONS AND IMPACT**

This development was seen as a shift in terms of access to the African Court, albeit indirect in the case of NGOs, and particularly important as the ACHPR has unlimited access to the Court.

The impact of the African Court order will ultimately depend on its implementation. The ruling sets a precedent and a challenge to the African Union<sup>53</sup> to effect the implementation of rulings from the African Court. If the AU fails to do so, efforts to create a credible human rights system for the continent will be undermined.

It remains to be seen whether the political changes within the region might provide real possibilities for change within the human rights mechanisms. At the time in which the terms of operation of the African Court were being defined, Egypt and Tunisia are reported to have played a key role in orchestrating the denial of automatic standing to individual victims of human rights abuses and NGOs before the Court.<sup>54</sup> This was supported by a large number of other African States. Having the special declaration re-considered may not be a natural priority for Egypt and Tunisia, nor for NGOs engaging in reform in those countries, but it does create some interesting possibilities. During ACHPR session, the Human Rights Institute of South Africa called for the 'special declaration' clause 34 (6) of the Protocol establishing the African Court to be removed. Whilst this may continue to be for a longer term goal, for now the focus may remain on encouraging the ACHPR to refer cases to the African Court, whilst pressing States to ratify the Protocol and sign the special declaration.

The NGO Forum continued to express concern at the slow pace of ratification of the protocol and declaration by States. Concerns were compounded by the AU drive to include international crimes in the jurisdiction of the African Court, which some participants thought may slow the pace of ratification even further.<sup>55</sup>

## **ONGOING NGO DEMANDS**

The NGO Forum urged the ACHPR to strengthen further collaboration between the African Court and the Coalition for an Effective African Court (a Coalition bringing together NGOs and NHRIs) in recognition of civil society's role in making the Court 'work'. Building on the precedent set by the Commission's referral of the case to the Court, the NGO Forum called on the ACHPR to encourage the African Committee of Experts on the

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<sup>52</sup> Under Article 27 (2) of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, and Rule 51 of the Court Rules.

<sup>53</sup> The AU's Executive Council is responsible for monitoring the implementation of the rulings of the Court.

<sup>54</sup> 'Africa's New Human Rights Court: Whistling in the Wind,' Sonya Sceats, Chatham House, International Law March 2009.

<sup>55</sup> TRES/007/04/2011.

Welfare and Rights to Children to submit cases to the court, and encourage NGOs to continue filing communications before the ACHPR.<sup>56</sup> This resolution clearly noted the ongoing role of civil society in creating the conditions in which the African Court would be able to operate effectively, including through pressing States to ratify the Protocol. The resolution appeared to call the ACHPR to state this too.

The African Court and the development of rules of procedure within the Commission had been areas of focus during the November ACHPR session. The referral of the Libyan case, and NGO involvement in its referral, are examples of developments in the overall regional human rights system that the President of the Court has signaled.

- Pressing for the use of the advisory capacity of the African Court, which will itself be a means of promoting the Court.
- Building relations with judiciary and quasi –judicial bodies for dialogue on how to harmonise case law with other non-legal approaches to advance human rights.
- Working closely with the African Court to sensitise populations to the role and potential of the Court, including in regard to its advisory opinions and in raising funds for this purpose.

## CONCLUSION

In her speech during the opening ceremony, Mrs Julia Dolly Joiner, Commissioner for Political Affairs African Union Commission, noted that ‘collectivism is no substitute for the sovereign responsibility of State. Regional organisations must not arrogate to themselves the prerogative to export or impose values and practices.’ This she related to the principle of ‘responsibility to protect’, which she suggested ‘from an African perspective is about effective preventive action, based on the principle of ‘sovereignty as a responsibility’ not “humanitarian intervention”, which ultimately ends up in violence, hostilities and military intervention’.

This reference to imposition of foreign values and practices was redolent of the discussions around providing observer status to a SOGI rights organisation.

The review of Libya during the ACHPR was one component of a regional and international response to the situation in the country.

The ACHPR directed the Secretariat to further research and propose criteria for referral of cases to the African Court, for the Commission’s consideration during the next Extra-Ordinary Session.<sup>57</sup>

## Functioning of the ACHPR

The Chair of the ACHPR once again noted that despite calls to other countries it was the Gambia that continued to offer to host the session.

Delays in starting sessions continued, with consequent impact upon NGO engagement.

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<sup>56</sup> *Ibid.*

<sup>57</sup> Final Communiqué, paragraph 37.

The State reaction to NGO intervention varied from acknowledgement by the Tunisian delegate thanking NGOs for their solidarity with the Tunisian people, to the Zimbabwean delegate who noted in his oral statement that 'NGOs have nothing to contribute and work tirelessly to divide Zimbabwean society'.

During the review of Libya, the Commissioner with responsibility for Libya spent most of her time engaging with the State delegate on general human rights issues as opposed to specific questioning regarding the rights of women, one of her other mandates. This was despite an extended section of the report focusing on women's rights. The capacity of Commissioners to cover multiple mandates effectively is therefore brought into question.

## **ACCESS TO INFORMATION**

In the spirit of access to information and in a bid to establish inclusive practice, an NGO working on the human rights of people with disability submitted a copy of its statement to the ACHPR in braille.

During the November session, NGOs had expressed frustration at a lack of information regarding ACHPR agendas and daily programmes. The ACHPR website came in to criticism for its failure to contain regularly updated information that would enable NGOs to engage with ACHPR sessions and recommendations.

## **ACHPR WEBSITE**

There have been definite improvements in terms of access to some information emanating from the ACHPR session.<sup>58</sup>

Whilst the Working Group on Indigenous Populations/Communities had stated in November that the development of pages on the working group had been planned for the inter session period, this has not yet happened.

It is reported that a new look ACHPR website will be ready for launch at the 50<sup>th</sup> Session.

## **UPDATE ON THE AFRICAN HUMAN RIGHTS CASE LAW ANALYSER**

Introduced the 48<sup>th</sup> Session, the African Human Rights Case Law Analyser is currently being updated to make it more comprehensive, user-friendly and accessible, including with sections in multiple languages. A link with the Inter-American system will hopefully be possible once a caselaw analyser on that system has been developed. Huridocs, which is working on both the ACHPR website and African Human Rights Case Law Analyser, reports that it is working with disability rights activists to ensure both resources are friendly for people with eyesight disability.

## **DELAYS TO ACHPR PROCEEDINGS**

Frequent delays in the proceedings of the ACHPR have continued to be a cause for frustration to NGOs, as in the November session. Delays have an adverse impact on opportunities for NGO engagement. However, there was less frustration felt in this session by NGOs regarding time restrictions when making statements; which had received criticism last November.

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<sup>58</sup> <http://bit.ly/mVEcFv>.

## **FOLLOW UP TO CALLS FROM PREVIOUS NOVEMBER ACHPR SESSION (Examples)**

NGO request to Special Rapporteur on the Rights of Women in Africa to visit the DRC to look into atrocities perpetrated against women.

***Has this happened?*** Yes! A joint promotional visit to the DRC took place in April 2011, in which several Commissioners participated (see above).

NGO call for Special Rapporteur on Freedom of Expression to send fact finding mission to Algeria.

***Has this happened?*** There is no record of the ACHPR requesting Algeria for such a mission.

## **NGO ENGAGEMENT WITH ACHPR**

Linking the international and the regional: Inspired by successes surrounding suspension of Libya's membership to the Human Rights Council, human rights NGOs from across Africa called upon their governments to withhold their votes from Syria's candidacy to the Human Rights Council, and used the 49<sup>th</sup> session of the ACHPR to push for this. The tactic made use of regional human rights mechanism to inform developments in other parts of the overall human rights framework.<sup>59</sup>

**South Africa** noted its 'effort to combat unfair discrimination on the basis of sexual orientation and promoting and protecting the rights of women in South Africa and the African continent'. Human rights defenders bore this statement in mind while working to guide the South Africa initiated UN resolution on 'human rights, sexual orientation and gender identity' towards a more positive conclusion.<sup>60</sup>

## **Influence and Impact of NGO Forum on ACHPR**

### **LIST NGO FORUM RESOLUTIONS**

#### **Country specific resolutions:**

- CRES /001/04/2011: Resolution on the situation of human rights defenders in Burundi.
- CRES/ 002/04/2011: Resolution on the situation of human rights defenders in Djibouti.
- CRES/003/04/2011: Resolution of the situation in the Ivory Coast.
- CRES /004/04/2011: Resolution on the escalation of human rights abuses in the Great Socialist People's Libyan Arab Jamahiriya.
- CRES/005/04/2011: Resolution on the situation of human rights in North African countries in transition.
- CRES/006/04/2011: Resolution on Swaziland.

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<sup>59</sup> Syria later withdrew its candidacy on May 11.

<sup>60</sup> For more on this see ISHR news piece: <http://bit.ly/qKMwMO>.

It is unclear what the NGO Forum position is regarding demands made to the ACHPR previously, including the November 2010 country resolutions on Angola, the DRC, Guinea, Mozambique, Sudan, and Zimbabwe.

#### **Thematic Resolutions:**

- TRES/ 001/04/2011: Resolution on the Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to and Affected by HIV.
- TRES/002/04/2011: Resolution on Discrimination based on Sexual Orientation and Gender Identity in Africa.
- TRES/003/04/2011: Resolution on Enforced Disappearances.
- TRES/004/04/2011: Resolution on Progressive Implementation of Economic, Social and Cultural Rights in Africa.
- TRES/005/04/2011: Resolution on Refugees, Internally Displaced people and Migrants.
- TRES/006 /04/2011: Resolution on Reprisals against Human Rights Defenders.
- TRES/007/04/2011: Resolution on the African Court.
- TRES/008/04/2011: Resolution on the Question of Elections in Africa.

#### **Declarations:**

- DEC/001/04/2011: Declaration on the Situation of Human Rights Defenders in the North of Africa.
- DEC/002/04/2011: Declaration of Support to the 'African Consensus'.

#### **Recommendations:**

- TREC /001/04/2011: Recommendation on Children's Rights.
- TREC /002/04/2011: Recommendation on the Rights of Persons with Disabilities.
- TREC /003/04/2011: Recommendation on Freedom of Expression.
- TREC/004/04/2011: Recommendation on the Rights of Women in Africa.
- TREC /005/04/2011: Recommendations on Prevention and Prohibition of Torture and other Inhuman and Degrading Treatment or Punishment; and Prison and Conditions of Detention in Africa

#### **ANALYSIS OF NGO FORUM RESOLUTIONS:**

Several of the country resolutions contain very specific demands of the relevant States. It will be interesting to see how the Steering Committee, for example, might encourage individual and coordinated NGO follow up to these calls in the inter-session period.

This Forum's resolution on SOGI stepped up the call to the ACHPR regarding the safeguarding of the rights of all people, in particular 'people whose sexual orientation and

gender identity render them more vulnerable'. It called for the ACHPR to 'create a mechanism to address human rights violations based on sexual orientation and gender identity', and requested the ACHPR to mandate the Special Procedures on human rights defenders, rights of women, and freedom of expression, 'to coordinate a Special Committee to investigate, document and report' on violations against LGBTI people.

The NGO Forum called on the ACHPR 'to establish a monitoring function to examine cases of reprisals reported in relation to cooperation with the Commission'.<sup>61</sup> This picked up on the specific focus given to reprisals during the November session. The ACHPR has yet to approve a specific resolution on reprisals.

### **To what degree did NGO resolutions influence the ACHPR?**

The NGO Forum resolution on **freedom of expression** calls upon the ACHPR 'to enhance its mechanisms to protect the right to freedom of expression and access to information, in light of the non-implementation of past resolutions made by the Commission'.<sup>62</sup> It also calls on the ACHPR 'to put in place strong and effective measures that bring to an end continued violations against free expression and access to information in Africa. 'It is unclear what additions to existing mechanisms the NGO Forum may have in mind, beyond urging member States to uphold their obligations under the African Charter and other international and regional mechanisms, for example through the implementation of the principles enshrined in the ACHPR 2002 'Declaration of Principles on Freedom of Expression in Africa'.<sup>63</sup> Both the NGO Forum and the ACHPR highlight, in their respective resolutions, State party obligations to protect journalists and other media practitioners.

The April 2011 NGO Forum resolution failed to make reference to the implementation of specific calls made in the November 2010 NGO Forum resolution on freedom of expression and protection of journalists; for example, that the African Union should adopt a resolution 'on the safety and protection of African journalists' at their next summit. In addition the resolution called upon the ACHPR to convene a high level panel on freedom of expression and protection of journalists. Neither of these calls are referred to in the April 2011 resolution at all.<sup>64</sup>

Various NGOs requested follow up be provided by Commissioners on earlier ACHPR resolutions on North Africa, including feedback on recent ACHPR visits to Egypt and Tunisia. The public statements of the ACHPR have so far failed to provide this information.

What remains unclear is how the NGO Forum will maintain the balance of the resolutions it produces, between visibility and inclusivity in terms of coverage of issues, and the objective to effectively influence the ACHPR.

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<sup>61</sup> TRES/006/04/2011.

<sup>62</sup> TREC/003/04/2011.

<sup>63</sup> See Chapter III of the African Charter for Procedures of the Commission, and recently revised 'Rules of Procedure of the African Commission on Human and Peoples' Rights', August 2010.

<sup>64</sup> NGO Forum resolution: TRES/003/11/2010.

### List of ACHPR resolutions:

- Resolution on the Safety of Journalists and Media Practitioners in Africa
- Resolution on the Appointment of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa
- Resolution on the Rights of Indigenous Women in Africa
- Resolution on the Appointment of Members for a Study Group on Freedom of Association in Africa
- Resolution on the Renewal and Extension of the Mandate of The Advisory Committee on Budgetary and Staff Matters
- Resolution on the Nomination of Expert Members to the Working Group on the Rights of Older Persons and People with Disabilities in Africa.<sup>65</sup>

There were no follow up resolutions to the country focused ones issued during the 9<sup>th</sup> Extra-Ordinary Session. Four of the six resolutions focused on technical questions relating to changes in mandate holders, and additional members to working groups.

### Calls by NGOs to ACHPR included:

**Legal Resources Centre** made a statement regarding South African legislation, saying 'traditional leaders have come to wield extensive governance powers over their communities'. The NGO requested the ACHPR 'create a special mechanism to investigate the plight of the people of South Africa and across the continent, who continue to be subjects of unelected leaders who cannot be held accountable in terms of their country's legislation'.

**NANHRI** (Network of African National Human Rights Institutions) noted that NHRIs are under pressure from their States citing the example of the Chairperson of the Malawian NHR I warned by the Malawian Minister of Internal Affairs to stop criticising the government. This case was noted by other NGOs including the Open Society Initiative for Southern Africa (OSISA). NANHRI noted recent legislation in Burundi establishing the Burundi Human Rights Commission, taking the number of NHRIs in Africa (16/40 fully compliant with Paris Principles)<sup>66</sup> to 40. Minority Rights Group International delivered a statement on behalf of minority communities in Africa calling on the ACHPR to establish a working group on minority issues.

Building on the link between good governance and human rights, the Community Law Centre called on the ACHPR 'to take leadership forging and enhancing collaboration and linkages with the relevant institutions dealing with governance, democracy and human rights.' A key recommendation was the appointment of a Special Rapporteur for governance and human rights to make specific recommendations on how good governance for human rights can be achieved.

North South 21 reiterated its call made at the prior ACHPR session by asking what efforts had been made to follow up to the November 2009 recommendations of the resolution on climate change,<sup>67</sup> noting the human rights impact of climate change continues.

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<sup>65</sup> ACHPR Adopted resolutions: <http://bit.ly/kHm7qV>.

<sup>66</sup> Accreditation status as of December 2010. <http://bit.ly/p8clnT> ; Members of Network of African NHRIs: <http://bit.ly/ruZvRp>.

<sup>67</sup> ACHPR/res153(XLVI)09.



In the spirit of access to information, one NGO submitted its statement in braille.

## Outcomes of ACHPR

Given the ongoing limitations experienced by the ACHPR and its Secretariat, partly due to limited resources, it would be interesting to know what progress has been made in regard to recent decisions of the Executive Council of the African Union. These decisions aimed to strengthen human resources capacity of the ACHPR through the recruitment of '33 more staff over a period of five years, from 2010 to 2014', and the implementation of 'the approved new structure of the Secretariat of the African Commission.'<sup>68</sup>

## OBSERVER STATUS

Observer status at the ACHPR was granted to all 10 NGOs that applied, bringing the total number of NGOs accredited to 428. The 10 were Zimbabwe Women Lawyers Association, Southern African Litigation Centre, IPAS Africa Alliance, Dignity International, Action Internationale Pour la Paix et le développement dans la Région des grands Lacs, Réseau des Défenseur des Droits de L'Homme en Afrique Centrale, Defender International, Ogiek Peoples' Development Project, Liguï Togolaise des Droits de L'Homme, and Right to Information Initiative.

## Commissioners' Activity Reports

### For the period between the 48th and 49th Sessions

Following the last ACHPR session, several Commissioners and staff of the Secretariat attended a retreat on 'Abortion and Reducing Maternal Mortality in Africa – A Human Rights Approach'.<sup>69</sup> The event was referred to in several reports.

**Madame Reine Alapini Gansou:** Chairperson ACHPR. *Activity report (ACHPR?<sup>70</sup>)*. Responsible for human rights promotion in Cameroon, Cape Verde, DRC, Mali, Togo, and Tunisia

The Chair of the ACHPR recommends considering 'the permanent presence at headquarters, of the Commissioners, or at least of the Bureau', to be able to address emergencies.

**Mr. Mumba Malila:** Vice Chairperson ACHPR; Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations. *Activity report (ACHPR/49/OS/1044)*. Responsible for human rights promotion in Kenya, Malawi, Mozambique, Uganda, and Tanzania.

Notes that although the Working Group on Extractive Industries, Environment and Human Rights Violations was established in November 2009, it has yet to hold its inaugural meeting due to limited resources. As member of the Working Group on the Death Penalty in Africa, Mr Malila notes that the Working Group met in March to finalise its document 'The Study on the Question of the Death Penalty in Africa' for presentation to the ACHPR

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<sup>68</sup> Referred to in 49<sup>th</sup> Session resolution renewing and extending the mandate of the Advisory Committee on Budgetary and Staff Matters, ACHPR/Res.181(XLIX)2011, and the 2009 resolution establishing the Committee ACHPR/Res142(XXXXV)09.

<sup>69</sup> Concern about the high rates of maternal mortality in the case of indigenous women, preventable by 'proper health care facilities' was included in ACHPR/Res.183 (XLIX) 2011.

<sup>70</sup> Report not numbered on the website.

at 49<sup>th</sup> Session. The Final Communiqué noted that the ACHPR decided to refer the document back to the Working Group on the Death Penalty for amendments.

As a member of the Committee for the Protection of the Rights of People Living with HIV (PLHIV) and those at Risk, Vulnerable to and Affected by HIV) he notes that expert members of the Committee and Commissioners met in January 2011 to map out an agenda for Committee.

**Commissioner Pansy Tlakula:** Special Rapporteur on Freedom of Expression and Access to Information in Africa. *Activity report (ACHPR/49/OS/1036)*. Responsible for human rights promotion in The Gambia, Lesotho, Namibia, Swaziland, and Zambia.

Commissioner Tlakula was absent, so her report was read by a colleague.

Following a further experts' meeting, the draft Model Law on Access to Information is now open for public consultation at: [www.achpr.org](http://www.achpr.org)

Reports on advances made by specific countries in regard to freedom of expression noted that in the case of Ghana delays in drafting a bill 'guaranteeing the right to access to information held by public bodies' had been delayed due to unavailability of funds for law makers to hold consultations on the legislation in every region of the country. Funds have now been identified for a more limited consultation than originally envisaged.

Her report ends with an outline of the challenges faced by the mandate and calls to States, including in relation to the need to abide by soft and hard law, with the Declaration of Principles on Freedom of Expression in Africa' given as an example.

**Commissioner Zainabou Sylvie Kayitesi:** Chairperson Working Group on the Death Penalty. *Activity report (ACHPR/49/OS)*. Responsible for human rights promotion in Algeria, Burkina Faso, Burundi, and Cote d'Ivoire.

**Commissioner Musa N. Bitaye:** Commissioner. *Activity report (ACHPR /49/OS)*; Chairperson of the Working Group on Indigenous Populations/Communities in Africa. *Activity report (ACHPR / 49/OS/1036)*; Responsible for human rights promotion in Ghana, Mauritius, Nigeria, Sierra Leone, and Zimbabwe.

The Working Group on Indigenous Populations / Communities in Africa has made repeated requests to the Government of Tanzania to be invited to undertake a promotional mission to the country. The Government's response to the ACHPR's concern about the situation of the Masai Pastoralists in Northern Tanzania contrasted with continued reports of a deteriorating human situation.

Reference is made in the Working Group's report to a lack of response from the Republic of Rwanda to a communication sent to them by the mandate, regarding the situation of the Batwa people. Following engagement by the Working Group in the process of the adoption of a draft law, one was passed into law in February 2011 – The Law for the Promotion and Protection of the Rights of Indigenous Populations. This was cited by the mandate as an 'exemplary law'.

The Working Group has continued to translate the report 'Indigenous Peoples in Africa: the Forgotten Peoples' into other languages including Maa and Kirundi. Its planned activities for the inter-sessional period include a range of activities to raise awareness of the activities of the Working Group.

The 'Manual for Indigenous Peoples' Rights Advocates on how to use the African Commission and Court on Human and Peoples' Rights', which was due to be made available at the ACHPR's 49<sup>th</sup> Session, is noted as to be finalised in the period prior to the 50<sup>th</sup> Session.

In his role as Commissioner, Mr Bitaye highlighted the lack of staff, particularly legal officers, available to the work of the ACHPR, which leads to the capacity of the ACHPR being 'seriously compromised'. Decisions on budgets for all AU organs has led to a limit on increased spending for the ACHPR as a result of which 'the Commission had to cut down on many of its proposed budgeted activities for 2011'.

**Commissioner Soyata Maiga:** Special Rapporteur on the Rights of Women. *Activity report (ACHPR/49/OS/992)*; Responsible for human rights promotion in Angola, Gabon, Republic of Congo, Niger, and Libya.

Following focus on implementation of UN Security Council *Resolution 1325* at the NGO Forum in November, the Special Rapporteur participated in a workshop on drafting of Mali's National Action Plan for the implementation of the Resolution.

In addition she held a meeting with the head of UN Women on the objectives of the new agency created in July 2010. The Special Rapporteur notes she is pleased by the 'vision shared with UN-Women' and hopes the agency will provide support to the Decade of the African Women 2010-2020 in terms of human and financial resources.

**Commissioner Mohammed Khalfallah:** Chairperson of the Working Group on Economic, Social and Cultural Rights, *Activity report (ACHPR/49/OS)*. Responsible for human rights promotion in Chad, Central African Republic, Guinea Conakry, Mauritania, Sahrawi Arab Democratic Republic, and Senegal.

The Working Group on Economic, Social and Cultural Rights is finalising the guidelines on economic, social and cultural rights for State Parties to consider when preparing periodic reports. No date for completion has been given.

**Commissioner Yeung Kam John Yeung Sik Yuen:** Chairperson of the Working Group on the Rights of Older Persons and People with Disabilities in Africa, *Activity report (ACHPR /49/OS/1051)*. Responsible for human rights promotion in Comoros, Djibouti, Madagascar, Sao Tome and Principe, and Seychelles.

The draft Protocol on the Rights of Older Persons has been reviewed in both English and French versions. No dates have been given for finalisation by the Working Group and ACHPR before being sent to the African Union.

The Working Group made a call for candidates to join the group. Three further members were nominated during the 49<sup>th</sup> Session of the ACHPR, for a period of two years effective as of May 2011.<sup>71</sup>

**Commissioner Dupe Atoki.** *Activity Report (ACHPR /49/OS/1046)*; Special Rapporteur on Prisons and Conditions of Detention in Africa, *Activity report (ACHPR /49/OS/1053)*. Responsible for human rights promotion in Egypt, Ethiopia, Equatorial Guinea, Liberia, and Sudan.

Whilst noting that 'considerable efforts have been made to reform prisons in Africa' the efforts remain 'largely inadequate'.

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<sup>71</sup> For names see ACHPR /Res.182 (XLIX) 2011.

## Changes in Commissioners' Roles

Following Commissioner Mohamed Fayek's resignation, Commissioner Kayitesi is appointed Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa for 2 years from May 2011.<sup>72</sup> The ACHPR will reassign the majority of his former mandates at its next session.

With the renewal of the mandate of the Advisory Committee on Budgetary and Staff Matters, existing members of the Committee are reconfirmed, and Commissioner Maiga has been appointed as a member.<sup>73</sup>

## List of AU Member States attending ACHPR session:

According to the official list of participants 23 State parties sent representatives to participate in the session.<sup>74</sup>

## Side events included

- 'Put an end to impunity for violations against human rights defenders': OMCT and FIDH.
- 'Structuring Disability Rights in Africa': OSISA and the Secretariat of the African Decade of Persons with Disabilities.
- 'Progressive abolition of the death penalty in Africa': FIACAT, the Foundation for Human Rights Initiative, and Penal Reform International.

## Links to reports and resolutions

ACHPR secretariat email contact: [au-banjul@africa-union.org](mailto:au-banjul@africa-union.org)

State and Commissioners' reports: <http://bit.ly/mVEcFv>

ACHPR resolutions <http://bit.ly/kHm7qV>

NGO resolutions <http://bit.ly/qZQxSy>

## Upcoming sessions

The Extra-Ordinary Session that had been scheduled for 6 – 9 August 2011 in Kigali, Rwanda was postponed

50th Ordinary Session: 24 October – 7 November 2011, Banjul, The Gambia. It was planned that this would be preceded by a two-day colloquium from 22 – 23 October 2011, to mark the 30th Anniversary of the African Charter.

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<sup>72</sup> ACHPR/Res.180 (XLIX) 2011.

<sup>73</sup> *Ibid.*

<sup>74</sup> <http://bit.ly/qqdIZA>.