

The free functioning of civil society is crucial to the implementation of human rights. By questioning government actions and their impact on human rights, human rights defenders play a vital role in holding governments accountable for their human rights obligations. Human rights defenders are also key players in the construction of democracy and the rule of law.

The growth of the human rights movement in Africa has seen a corresponding increase, continent-wide, in the repression and harassment of human rights defenders. The case law of the African Commission on Human and Peoples' Rights illustrates the risks with which human rights defenders' work is fraught.

This book retraces the evolution of the African Commission's protection of human rights defenders as evident in its case law, statements, urgent appeals and resolutions. This is the first volume to analyse all the interventions of the Commission on violations committed against all types of human rights defenders, including lawyers, journalists, opposition politicians, pro-democracy activists, relatives of victims and other human rights activists.

This book has been produced with the support of the European Union. The contents of this Guide are the sole responsibility of ISHR and IHRDA, and cannot be regarded as reflecting the views of the project sponsor.



A HUMAN RIGHTS DEFENDERS' GUIDE TO AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

A HUMAN RIGHTS DEFENDERS' GUIDE TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS



A Human Rights Defenders' Guide to the African Commission on Human and Peoples' Rights

© 2012 Institute for Human Rights and Development in Africa (IHRDA) / International Service for Human Rights (ISHR)

ISBN 978-9983-9907-6-8 Print edition (IHRDA)

Material from this publication may be reproduced for training, teaching or other non-commercial purposes as long as ISHR and IHRDA are fully acknowledged. You can also distribute this publication and link to it from your website as long as ISHR and IHRDA are fully acknowledged as the source. No part of this publication may be reproduced for any commercial purpose without the prior express permission of the copyright holders.

This book has been produced with the support of the European Union. The contents of this Guide are the sole responsibility of ISHR and IHRDA, and cannot be regarded as reflecting the views of the project sponsor.

Contributors

Clement Voule
Eleanor Openshaw
Elisabeth Witchel
Helene Boussard
Humphrey Sipalla
Sheila Keetharuth

Layout and Design

Humphrey Sipalla

Published in April 2012 by
Institute for Human Rights and Development in Africa (IHRDA) and International
Service for Human Rights (ISHR)

IHRDA
949 Brusubi Layout,
AU Summit Highway,
P.O. Box 1896,
Banjul, The Gambia.
ihrda@ihrda.org
www.ihrda.org
<http://caselaw.ihrda.org/>
www.facebook.com/IHRDA/
www.twitter.com/IHRDAfrica/
www.linkedin.in.IHRDA/

ISHR
Rue de Varembe 1
CH-1211 Geneva
Switzerland
Tel: +41 22 919 71 00
Fax: +41 22 919 71 25
www.ishr.ch
www.facebook.com/ishr.geneva
www.twitter.com/ISHRglobal
www.youtube.com/ISHRHumanRights

INTERNATIONAL SERVICE FOR HUMAN RIGHTS (ISHR)

ISHR was established in 1984 by members of various non-governmental organisations in Geneva. For close to three decades, it has given human rights defenders from around the world information, training and support. ISHR, as part of its service role, played an important part in the development and adoption of the UN Declaration on Human Rights Defenders (1998).

ISHR works to actively support human rights defenders through a variety of initiatives, including:

- capacity-building workshops to enable human rights defenders to better engage with the relevant international and regional human rights mechanisms;
- providing advice on and facilitating access to these mechanisms;
- promoting the development of regional and sub-regional protection mechanisms;
- disseminating information on developments in the international and regional human rights mechanisms, and opportunities for civil society engagement;
- developing analytical studies on issues related to the work of human rights defenders;
- organising seminars and other events to enable human rights defenders to analyse the dangers and obstacles to their work and find appropriate solutions;
- promoting, supporting and strengthening networks of human rights defenders and NGOs at local, regional and international levels.

INSTITUTE FOR HUMAN RIGHTS AND DEVELOPMENT IN AFRICA (IHRDA)

IHRDA is a pan-African non-governmental organisation that works to promote awareness of human rights in Africa and improve the effectiveness of human rights mechanisms. We envision a continent where all have access to justice, using national, African and international human rights law and mechanisms. Since 1998, IHRDA's work to strengthen human rights protection in Africa can be summarised in three key words:

- defend - advising and representing (*pro bono* legal counsel) victims of human rights abuses in Africa;
- educate - training human rights defenders in Africa on the African human rights system and how to use its mechanisms to seek justice for victims of violations
- inform - and publishing and distributing information on the African human rights system.

Thus, we demonstrate that the use of the African human rights instruments and mechanisms provides an important avenue for securing human rights and reparation. IHRDA holds observer status before the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child.

CONTENTS

Acronyms	7
Preface	9
Introduction	11
Part I: Human Rights Defenders: Definition and Applicable Norms	13
Who is a human rights defender?	15
Are activities of HRDs restricted to universally recognised human rights?	15
What international instruments support the protection of HRDs?	15
International & African instruments addressing protection of HRDs	16
Do human rights defenders have the same rights as others?	16
What are the rights of human rights defenders?	17
Why do human rights defenders need protection?	17
How have threats to human rights defenders evolved?	18
Examples of legislation restricting work of HRDs	18
Is “human rights defender” a universal term?	18
Part II: Protection of Human Rights Defenders by the African Commission	21
What is the African human rights system?	23
What rights are guaranteed by the African Charter?	24
Does the African Charter maintain the same rights guaranteed in the UN Declaration on Human Rights Defenders?	26
How does the African Commission carry out its mandate?	26
Review of states’ progress	27
Promotion of ACHPR	27
Interpretation of ACHPR	27
Protection through the communications procedure	27
Do civil society groups participate in the state reporting procedure?	28
What is the role of special rapporteurs?	29
How does the work of special mechanisms and rapporteurs help HRDs?	30
How does the African Commission act in emergencies to protect HRDs?	31
Provisional measures	32
Urgent appeals	33
How can a HRD utilise special mechanisms and special rapporteurs?	34
How does African Commission’s interpretation of the African Charter impact human rights in Africa?	35
How can HRDs utilise the African Commission’s communications procedure?	36
How does the African Commission treat multiple complaints that appear to be related?	39
What recommendations does the African Commission make if it find a violation of the Charter has occurred?	39
Do states comply with the African Commission recommendations?	39

How does the African Commission follow up on implementation of its decisions?	39
Six-month report back	39
Referral to the African Court	40
What can HRDs do to promote implementation?	40
Shadow reporting	41
Statements before the African Commission and other human rights meetings	41
Submitting memoranda/reports on implementation to the Commission	41
Do human rights defenders risk reprisals for engaging the African Commission and other human rights activities? How has the African Commission responded?	43

Part III: Development of Norms for Human Rights Defenders by the African Commission **45**

What do the decisions of the African Commission mean in terms of protecting and promoting defence of rights?	47
How has the African Commission upheld Article 9 – The right to freedom of expression?	47
How has the African Commission upheld Article 10 – the right to freedom of association?	49
How has the African Commission upheld Article 11 – the right to freedom of assembly?	50
Are there limitations on the rights of HRDs?	51
Can the UN Declaration on HRDs and other international legal frameworks be utilised in the interpretation of the ACHPR?	51

Part IV. Conclusion **53**

What opportunities are there for HRDs to engage in the African human rights system?	53
Communications procedure	53
Review of states' progress	53
Use of interpretations	53
Engaging special rapporteurs	53
Advocacy and public awareness	53
NGO Forum	53
Seek advisory opinions	54
Observer Status	54

Annex I **55**

The Selection	55
The Analysis	55

Keyword Index **103**

ACRONYMS

ACHPR	African Charter on Human and Peoples' Rights
ACmHPR	African Commission on Human and Peoples' Rights
AIID	<i>Association internationale des juristes démocrates</i>
AIPPA	Access to Information and Protection of Privacy Act (Zimbabwe)
AMDH	<i>Association mauritanienne des droits de l'Homme</i>
AMECEA	Association of Member Episcopal Conferences of Eastern Africa
AU	African Union
CIJ	<i>Commission internationale des juristes</i>
CLA	African Human Rights Case law Analyser
CLO	Civil Liberties Organisation
CRP	Constitutional Rights Project
DRC	Democratic Republic of Congo
ECHR	European Court of Human Rights
HRD(s)	Human Rights Defender(s)
IACmHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
NGO	Non-Governmental Organisation
RADDHO	<i>Rencontre africaine pour la defence des droits de l'Homme</i>
SCAPO	Southern Cameroons Peoples' Organisation
SCNC	Southern Cameroons National Council
SR HRDs	Special Rapporteur on Human Rights Defenders
OUA	Organisation of African Unity
OMCT	<i>Organisation mondiale contre la torture</i>
UIDH	<i>Union interafricaine des droits de l'Homme</i>
UFD/EN	<i>Union des forces démocratiques - Ere nouvelle</i>
UN	United Nations
UNGA	United Nations General Assembly

PREFACE

“Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.” Thus declares the first article of the United Nations Declaration on Human Rights Defenders, which as this book shows, finds a ready kin in the African Charter on Human and Peoples’ Rights. Human rights defenders in Africa are facing ever increasing challenges. Indeed, the concept and work of human rights defenders is yet to be sufficiently understood by all stakeholders of human rights. This comes at time when the challenge of democracy and human rights adherence further imposes itself on us across the continent. With the changes in North Africa and the many transformative electoral processes in Africa, the work of human right defenders continues to find greater expression and reap greater fruit for all in Africa. Civil society’s role is growing and becoming more important in monitoring and shaping these processes. A key part of Africa’s democratic development depends on the role that human rights defenders play as watchdogs, capacity builders and interlocutors of the state advocating for citizens’ rights.

It is for this reason that I applaud this timely initiative by the International Service for Human Rights (ISHR) and Institute for Human Rights and Development in Africa (IHRDA). This publication fills a particular information lacuna. It provides analysis on the journey through which the African Commission on Human and Peoples’ Rights has sought to address itself to the work of human rights defenders as integral pillars of its own promotional and protective work. As we celebrate the 25th Anniversary of the African Commission, we must pay tribute to the significant contribution that human rights defenders have made to the development of the institution. We owe many of the successes of African Commission to the hard work, determination and commitment of defenders that have advocated and lobbied passionately for the protection of human rights on our continent. It is for this reason, that the African Commission has a duty to protect defenders and has acted to safeguard their rights. This guide analyses the efforts that the African Commission has undertaken to protect the work of human rights defenders, through its case law, decisions and resolutions.

Since its establishment in June 2004 as a special mechanism of the African Commission, the Special Rapporteur on Human Rights Defenders has, maintained a fruitful collaboration with many committed human rights defenders in Africa. This book celebrates the work of the special mechanism as much as it does the work of these many committed defenders. On their part, from the time of my predecessors, ISHR and IHRDA have continued to collaborate with of the African Commission Special Rapporteur on Human Rights Defenders and this fruitful collaboration is only set to grow with the establishment of the Study Group on Freedom of Association in Africa.

I thank ISHR and IHRDA for their continued commitment. More so, I hope this present work, which I commend and recommend to you all, will serve to strengthen even further the work of the human rights defenders and their protection by the African Commission, towards the full realisation of human rights and dignity in Africa.

Me Reine Alapini-Gansou
African Commission Special Rapporteur on Human Rights Defenders

INTRODUCTION

Human rights defenders play a vital role in developing and safeguarding civil society and the promotion and protection of human rights. Too often, however, their work and individual safety are put in jeopardy through targeted attacks, harassment and repressive legislation. In Africa, since 1998, there has been a marked development and recognition of the importance of human rights defenders, the risks they face for their work, and their need for special protection.

This book is intended as a practical guide for human rights defenders in Africa as to what protections the African Commission on Human and Peoples' Rights (African Commission or Commission) offers and how those protections have evolved over the last two decades. It outlines the rights of human rights defenders as articulated in international instruments and enshrined in the African Charter on Human and Peoples' Rights (ACHPR or Charter). It reviews the special mechanisms developed to further protect and promote human rights and African Commission procedures and practices for examining communications.

Finally, the guide highlights recommendations from the African Commission's 25 years of jurisprudence in complaints of violations against human rights defenders. Though decisions issued by the African Commission may be considered as not legally binding and states often fail to abide by them, they have reinforced and clarified the application of human rights norms to human rights defenders in Africa.□

It is hoped this guide will assist human rights defenders to better understand and promote their rights, as well as seek protection for or redress against violations of those rights within the African human rights system. In particular, the information should be useful to practitioners planning to advocate for rights protection and lodge complaints before the African Commission against governments that fail to honour their commitment to respect the rights of human rights defenders.

PART I:
HUMAN RIGHTS DEFENDERS:
DEFINITION AND APPLICABLE
NORMS

WHO IS A HUMAN RIGHTS DEFENDER?

Anyone, whether individually or as part of a group, actively engaged in the promotion, protection and realisation of human rights and fundamental freedoms, is a human rights defender (HRD) according to the 1998 UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (simply referred to as UN Declaration on HRDs). Activities may include but are not limited to advocacy, awareness, legal action and defence, investigation and dissemination of information. These may be conducted at the national and international levels.

The term human rights defender covers a wide range of vocations. Journalists reporting on corruption and issues crucial to civil discourse, community organisers, and lawyers defending political prisoners, trade unionists, teachers and political activists among others, can all be considered human rights defenders.

ARE ACTIVITIES OF HUMAN RIGHTS DEFENDERS RESTRICTED TO UNIVERSALLY RECOGNISED HUMAN RIGHTS?

International norms define human rights defenders as those who work to realise the rights and freedoms set forth in the Universal Declaration of Human Rights. In addition, Article 7 of the 1998 UN Declaration on Human Rights Defenders adopted by the United Nations General Assembly (UNGA), states: “Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.” Under this principle, individuals and associations campaigning on specific issues or on behalf of victims grouped by themes not named within existing human rights law can be protected under the same international instruments that provide for the protection of human rights defenders.

WHAT INTERNATIONAL INSTRUMENTS SUPPORT THE PROTECTION OF HUMAN RIGHTS DEFENDERS?

The UN Declaration on Human Rights Defenders outlines the fundamental rights and responsibilities of HRDs. The declaration developed by the then United Nations Commission for Human Rights begins by stating: “Everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels.”

Over the years, a number of resolutions have been adopted by the United Nations Human Rights Council and the African Commission for the effective implementation

of the UN Declaration on Human Rights Defenders and better protection of the work and security of human rights defenders.

INTERNATIONAL & AFRICAN INSTRUMENTS ADDRESSING PROTECTION OF HUMAN RIGHTS DEFENDERS

Year	Adopting agency	Title
1986	Adopted by OAU/ Implemented by ACmHPR	African Charter on Human and Peoples' Rights (ACHPR)
1998	United Nations General Assembly (UNGA)	Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (UN Declaration on Human Rights Defenders)
2002	ACmHPR	2002 Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa
2004	ACmH	Resolution on the Protection of Human Rights Defenders in Africa
2009	UNGA	2009 Resolution on Freedom of Association
2010	UNGA	2010 Resolution 13/13 on protection of Human Rights Defenders

DO HUMAN RIGHTS DEFENDERS HAVE THE SAME RIGHTS AS OTHERS?

The UN Declaration on HRDs does not create new rights. The rights of HRDs are rights to which all individuals, groups and communities are entitled. The UN Declaration simply highlights the importance of the work of HRDs and articulates how these rights apply to their work. For example it underlines the right to freedom of association, while giving attention to access to funding by organisations of human rights defenders as one practical application of this right to HRDs. It contains principles and rights based on human rights standards protected in other international instruments. On the other hand, HRDs have an obligation under the UN Declaration to conduct peaceful activities and accept the universality of human rights. That is, a person cannot deny some human rights and claim to be a human rights defender based on his or her activities in support for other human rights.

WHAT ARE THE RIGHTS OF HUMAN RIGHTS DEFENDERS?

The rights of HRDs are understood as those rights that are necessary for any person to conduct activities of promotion and protection of human rights. These would apply even to persons who are not engaged on full time basis or professionally in the promotion of human rights. Of all human rights, three of these are critical for the activities of HRDs:

- the right to free expression;
- the right to free association; and
- the right to free assembly.

The UN Declaration also recognises, among others:

- the right to receive funding (Article 13);
- the right to access international bodies (Article 9, para.4);
- the right to participate in government (Article 8); and
- the right to the lawful exercise of his or her occupation or profession (Article 11).

All other human rights apply equally to HRDs, without specifically protecting their activities. The right to life, the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment, the right to security, the right to a fair trial, the right to property, the right to freedom of movement and the right to work are among these rights.

WHY DO HUMAN RIGHTS DEFENDERS NEED PROTECTION?

In the course of their work, human rights defenders often publicly challenge powerful figures, launch investigations with potentially damaging consequences for governments and non-state actors such as militias, criminal networks or businesses, among others. Through their activism, HRDs also seek unwelcome changes to the status quo. Such work is not free from reprisals. There are documented attacks against HRDs, some violent ones, often carried out with impunity.

In addition to physical assaults, states often abuse of the criminal justice system through unjust prosecutions. What distinguishes violations against human rights defenders from such injustices against other citizens is that they are politically motivated.

Among HRDs, women human rights defenders face specific challenges due to the traditional perception of women and their still low political representation in Africa. The Special Rapporteur on HRDs in Africa is sensitive to the plight of women HRDs on the continent, particularly the role and challenges they face in their activities of promotion and protection of human rights. Campaigners for lesbian, gay, bisexual and transgender and intersex rights have also faced harsh reprisals, including the 2011 fatal beating of a Ugandan activist.

HOW HAVE THREATS TO HUMAN RIGHTS DEFENDERS EVOLVED?

The adoption of new laws restricting the space for human rights activities represents a disturbing trend for HRDs. This is particularly so in Africa where, legislation regulating financial transactions, sweeping security laws, onerous registration procedures for the media and NGOs, and press regulations among other policies, also greatly hamper the work of HRDs.

Examples of legislation restricting work of HRDs

Ethiopia: On 6 January 2009, Ethiopia passed the Charities and Societies Proclamation law, introducing restrictive regulation on registration and particularly financing of NGOs, including creating criminal penalties for foreign funded NGO activities.

Eritrea: In August 2005, Eritrea passed an NGO law that practically threatened to eliminate all civil society in the country. It requires that all donor funds pass through government ministries, allowing funding only if government is incapable of providing that service. Local NGOs are also banned from receiving United Nations or other bilateral agencies' funds.

Zimbabwe: On 18 March 2002, Zimbabwe enacted the Access to Information and Protection of Privacy Act (AIPPA) which created restrictions on the legitimate practice of journalism and led to the closure of an independent media company, Associated Newspapers of Zimbabwe.

The Gambia: The 2002 National Media Commission Act gave the Commission authority to determine all complaints against media practitioners to the exclusion of all other courts. Under the Act, the commission could order a journalist to disclose sources. Following opposition from the media and other groups, the Act was repealed and the Commission dissolved in 2004.

Is "HUMAN RIGHTS DEFENDER" A UNIVERSAL TERM?

Increasingly, the expression of "human rights defenders" has been adopted by international governmental organisations and the appointment of special mechanisms specifically dedicated to their protection shows acceptance of the terminology used, acknowledgement of their important role in safeguarding human rights, and awareness of the risks they face. However, there is continued resistance to the use of and specific protection of human rights defenders as demonstrated in oral statements by some state parties at public sessions of the African Commission. The African Commission itself employs a rather inconsistent practice. While its press releases, urgent appeals and communiqués on various human rights situations or specific threats to individuals since 2008 (See Annex I) regularly use the term, this

is not the case in its decisions on communications. It has only on rare occasions used the term in its jurisprudence. Reference is occasionally made to “human rights activists” or similar terms. Promotion of consistency and harmonisation in the terminology used within African Commission’s case and soft law corpus remains an important challenge for HRDs in Africa.

PART II:
PROTECTION OF HUMAN
RIGHTS DEFENDERS
BY THE AFRICAN COMMISSION

WHAT IS THE AFRICAN HUMAN RIGHTS SYSTEM?

Africa has developed various instruments and bodies to establish and protect human rights on the continent. The African human rights system is the framework of laws (treaties) and structures created to provide human rights protection in Africa. This legal system of African Union human rights treaty law and their corresponding monitoring bodies comprises of six (6) main human rights treaties, namely:

- 1969 OAU Charter Governing Specific Aspects of the Refugee Problem in Africa (entered into force in 1974);
- 1981 African Charter on Human and Peoples' Rights (entered into force in 1986);
- 1990 African Charter on the Rights and Welfare of the Child (entered into force in 1999);
- 1998 Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights (entered into force in 2004);
- 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (entered into force Nov 2005);
- 2008 Protocol on the Statute of the African Court of Justice and Human Rights (yet to enter into force).

Of these six treaties, the African Charter, the African Children's Charter and the African Court Protocol created the three (3) primary treaty monitoring and enforcement bodies of the African human rights system. These are the: African Commission on Human and Peoples' Rights (African Commission), African Committee on the Rights and Welfare of the Child, and the African Court on Human and Peoples' Rights (African Court).

In addition to the AU treaties, the following three sub-regions of Africa have vibrant legal systems and human rights mandated courts to adjudicate cases from their respective sub-regions. These are: Southern African Development Community (SADC) Tribunal, East African Community (EAC) Court of Justice and the Economic Community of West African States (ECOWAS) Community Court of Justice.

The African Charter on Human and Peoples' Rights (ACHPR) is the foundational document of the African human rights system. Its oldest implementation body, the African Commission on Human and Peoples' Rights (African Commission), represents the region's first human rights body. Together they are the foundation and evolution of human rights law and its practice in Africa. This Guide focuses on the ACHPR and the African Commission.

The ACHPR outlines civil and political rights as well as economic, social and cultural rights to which all individuals are entitled. It was first adopted by the Organisation of African Unity (OAU) in 1981 and entered into force in 1986.¹ All African Union

¹ Egypt and Zambia made reservations on their ratification of the Charter; while this is not foreseen by the Charter, it is not prohibited either.

(AU) member states have ratified the ACHPR.²

The African Commission, established in 1987, in addition to overseeing the interpretation of the ACHPR, is charged with the promotion and protection of human rights. The African Commission is headquartered in Banjul, The Gambia.

Throughout the last 25 years the African Commission has developed a body of jurisprudence supporting the work of HRDs. It established special mechanisms, such as the appointment of special rapporteurs for freedom of expression and human rights defenders to promote rights fundamental to the work of HRDs. It issues urgent appeals in favour of HRDs under threat of human rights abuse and decides on communications alleging violations of human rights, some of which involve precisely the work of HRDs. Human rights advocates can engage African Commission in several ways, such as providing recommendations and information to the special rapporteurs and submitting communications to the African Commission for consideration of an alleged violation to the ACHPR. These options are explored in detail later in this guide.

HRDs may also find it useful to draw on the African Commission's decisions, declarations, resolutions and reports when advocating at national level. A number of these resolutions focus on the specific challenges HRDs faced. For example during the 2008 to 2010 period, in various African Commission's resolutions on elections in Africa, emphasis was put on the need for protection of human rights defenders, journalists and observers from acts of intimidation and other threats during elections.

WHAT RIGHTS ARE GUARANTEED BY THE AFRICAN CHARTER?

The ACHPR enshrines fundamental civil and political rights that appear in other human rights instruments. Its articles address discrimination, right to life, equality in justice, freedom of expression, association and assembly and religious freedom, among other rights. The ACHPR also guarantees economic, social and cultural rights as vital to productive lives, and individual and community well being. These include the right to decent work, health and education. Going further than other human rights instruments of the time, the ACHPR also recognises collective or group rights like the rights to a safe environment, international peace and security, self determination, free disposal of natural resources, protection from domination by another people, among others. Adding to its uniqueness, the ACHPR recognises key African values like the centrality of the family, and the balance between rights and duties, which are also imposed on individuals. These 'duties' encompass respect for the rights of others, reasonable limitations but no derogations (as will be discussed below) as well as service to family and nation. Included in the ACHPR are requirements that states parties develop mechanisms and protect human rights, protect families and guarantee the independence of the judiciary.

² The OAU became the African Union (AU) with the adoption of the AU Constitutive Act in the year 2000. Only South Sudan, Africa's newest country, is yet to sign the ACHPR as at March 2012.

The ACHPR is comprised of 68 articles, the first 29 of which provide the substantive rights. 23 of these (2-24) guarantee the specific rights of individuals, groups and communities, while another three feature duties of the individual (27-29). Two further articles cover other state duties (25-26). Below is a brief list:

Article 2	non-discrimination
Article 3	equality before the law, and equal protection of the law
Article 4	right to life
Article 5	freedom from torture
Article 6	liberty and security of person
Article 7	right to fair trial
Article 8	freedom of religion
Article 9	right to receive, express, disseminate information, opinions
Article 10	right of association
Article 11	freedom of assembly
Article 12	freedom of movement
Article 13	right to participate in government
Article 14	rights to property
Article 15	right to health
Article 16	right to education
Article 18	states' obligation to protect and assist the family
Article 19	all peoples are equal and domination of a people by another is prohibited
Article 20:	right to self-determination
Article 21	right to free disposal of wealth and natural resources
Article 22	right to economic, social and cultural development
Article 23	right to national and international security and peace
Article 24	right to a general satisfactory environment
Article 25	duty to promote human rights
Article 26	guarantee the independence of the judiciary
Article 27	duties of individual and valid grounds for limitations
Article 28	duty of respect and non-discrimination
Article 29	duties to community, nation and to promoting African values

DOES THE AFRICAN CHARTER MAINTAIN THE SAME RIGHTS GUARANTEED IN THE UN DECLARATION ON HUMAN RIGHTS DEFENDERS?

The UN Declaration on Human Rights Defenders includes, for the most part, the same rights as already guaranteed in the ACHPR. However, in many of its provisions, the ACHPR's formulation is broad, thus allowing for wider interpretation and application and giving the responsibility to the African Commission to outline these rights and define standards. For example, a comparison of the formulation of the right to free expression and access to information represents a case in point: ACHPR's Article 9, asserts:

- (1) Every individual shall have the right to receive information.
- (2) Every individual shall have the right to express and disseminate his opinions within the law.

The UN Declaration of Human Rights Defenders articulates these rights thus: Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters

Exercising its mandate to "formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation",³ the African Commission adopts soft law to provide further clarity on the extent of rights which the ACHPR guarantee. On freedom of expression, for instance, the African Commission in 2002 adopted the *Declaration of Principles on Freedom of Expression in Africa* which expounds substantially on freedom of expression.

HOW DOES THE AFRICAN COMMISSION CARRY OUT ITS MANDATE?

There are four areas of activities through which the African Commission works to further implementation of the ACHPR:

³ Article 45 (1) (b) of the African Charter. Soft law of the African Commission is also available at <http://caselaw.ihra.org/instrument/>.

Review of states' progress

Every two years, states are required to submit reports to the African Commission on measures taken to give effect to the rights and freedoms enshrined in the ACHPR. This state reporting procedure is considered more as a dialogue in which the state presents its view on the status of the ACHPR's implementation and the African Commission's review. A state report is examined in public during the ordinary session of the African Commission. Prior to this examination, the African Commission publishes the state report in the period before the session to allow civil society a chance to comment and critique the report. The African Commission receives civil society's shadow reports from which it may draw matters to question the state on. After this public review, the African Commission issues 'Concluding Remarks/Observations' to the states concerned. These remarks, together with the state party's report, are transmitted to the AU Assembly of Heads of State and Government and are later published by the African Commission. The Protocol on the Rights of Women in Africa also requires states to report to the African Commission.

Promotion of ACHPR

The African Commission undertakes a wide range of programmes under its promotional mandate. It regularly visits state parties, conducts studies, organises conferences and disseminates information among other educational activities. The African Commission creates special mechanisms, such as working groups and special rapporteurs, to address a specific area of concern. It has also dispatched fact-finding and investigation missions on the ground.

Interpretation of ACHPR

The African Commission can interpret the ACHPR at the request of a state party, an institution of the AU or an African organisation recognised by the AU. Its interpretations are not legally binding decisions, but offer principles and rules to resolve "legal problems relating to human and peoples' rights and fundamental freedoms upon which African countries may base their legislation." The African Commission has adopted resolutions and declarations in the course of exercising its interpretation mandate. This "soft law" has added valuable guidance on some of the ACHPR's more broadly stated articles.

Protection through the communications procedure

The African Commission's communications procedure is its primary mechanism to review and respond to specific allegations that a state has acted in violation of the rights enshrined in the ACHPR, or that a violation may be imminent. Complaints can be submitted by one state against another (which has only ever been used

once as at March 2012) or by non-state entities - NGOs, attorneys, other parties representing victims or victims of human rights violations. The complaints handling procedure is judicial in nature and leads to a definitive declaration of whether or not the ACHPR has been violated.

In cases where the African Commission determines there has been violation of ACHPR rights, the ACHPR mandates it to recommend steps such as reparations or legislative reform, to be implemented by the state against which the allegations are made. In some cases the African Commission may review and issue suggested measures, even when the accused state has failed to respond to a communication. Between 1988 and 2012, the African Commission has received over 400 communications and issued about 200 decisions.

There are additional steps the African Commission may take in response to allegations of forthcoming or ongoing abuse such as an imminent execution. Under its provisional measures, it can issue a request for the state to stay or take no action if there is reason to think the violation in question threatens to cause irreparable damage or prejudice. Under similar circumstances, but where no complaint was filed, the African Commission has sent urgent appeals to relevant government officials, to cease a probable violation against a human rights defender. Provisional measures and urgent appeals are discussed further below.

Further to its own complaints procedure, the African Commission can refer cases to the African Court on Human and Peoples' Rights. Conditions for referral include: cases of serious and massive violations (an example is *Application 004/2011 African Commission v Libya*, on the actions of the Libyan state in February 2011 during the suppression of the revolution that led to the overthrow of Muammar Ghaddafi); non-implementation of decisions or request for provisional measures taken by the African Commission; or at any other stage of the procedure if the Commission deems this necessary.⁴

DO CIVIL SOCIETY GROUPS PARTICIPATE IN THE STATE REPORTING PROCEDURE?

Human rights institutions and local NGOs from the state that has submitted the report are either informed or sent copies of the report, requested to avail to the African Commission, information and/or questions on the human rights situation of the state concerned.⁵

⁴ Rule 118 of the 2010 Rules of Procedure of the African Commission on Human and Peoples' Rights, <http://bit.ly/AEKRLy>.

⁵ African Commission Information Sheet No. 4: State Reporting Procedure: Rules of Procedure (78) provides that "Periodical reports ... submitted by State Parties to the Charter ... shall be documents for general distribution ...".

Before submission to the African Commission, states sometimes invite civil society groups to participate in the preparation of a state report. This NGO participation has become a formal requirement with the Guidelines for State reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. The state is explicitly requested to report to what extent civil society, in particular individuals and organisation working on gender issues, was involved in the preparation of the report. Pressing for more extensive civil society participation requirements would strengthen the ability of HRDs to impact this procedure.

WHAT IS THE ROLE OF SPECIAL RAPPORTEURS?

In response to the risks and violations human rights defenders suffer because of their work, and in order to facilitate more focussed work, the African Commission created special mechanisms, having certain similarities with the UN human rights system, to work on specific areas of concern, including the appointment of Special Rapporteurs in the following areas:

- Human Rights Defenders;
- Freedom of Expression in Africa;
- Rights of Women in Africa;
- Prisons and Conditions of Detention in Africa;
- Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa;
- Summary, Arbitrary and Extra-judicial Executions in Africa.

A Special Rapporteur on Human Rights Defenders in Africa has been in place since 2004 and, among other activities, he or she is mandated to:

- seek out, receive, examine and act upon information concerning the situation of HRDs in Africa;
- present a report, at each African Commission ordinary session on the situation of HRDs in Africa;
- establish cooperation and dialogue with member states, national human rights institutions, intergovernmental organisations, international and regional mechanisms, human rights defenders and other partners; formulate and recommend strategies to further the protection of HRDs and ensure follow-up on these recommendations;
- promote and raise awareness on the implementation of the UN Declaration on HRDs in Africa.

The activities of the Special Rapporteur on HRDs include receiving information about violations against HRDs; publishing urgent appeals and press releases on cases of violations of the rights of HRDs; conducting official missions to evaluate the situation of HRDs in a particular country and making recommendations on how states can implement the UN Declaration on HRDs.⁶

⁶ <http://www.srhrdafrica.org/mandate> Accessed June 30 2010.

In recent years the African Commission Special Rapporteur on HRDs has issued press statements on the release of Daniel Deuzoumbe Passalet, Mauritanian Journalist Hanefi Ould Dedah (2010), enforced disappearances of HRDs in the DRC (2007) and on the assassination of journalist and HRD Serge Masheshé (June 2007), among others.

CASE STUDY BOX: ACHPR SPECIAL RAPPORTEUR CONDEMNS THE KILLING OF DRC HRD FLORIBERT CHEBEYA

Floribert Chebeya, a prominent human rights defender and director of the Congolese NGO “La voix des sans voix” was found dead on 1st June 2010. Chebeya was called to meet the Congolese police chief when he was last seen. The international community reacted swiftly to condemn his killing, demanding an investigation. The ACHPR Special Rapporteur on Human Rights Defenders issued a press release to condemn his assassination, raising concerns about the safety of other human rights defenders in the DRC. In a communication sent to the government, the Special Rapporteur requested an investigation into the matter and a swift prosecution of those responsible for his death. When the African Commission reviewed the human rights situation in Congo in 2009, the Special Rapporteur reiterated her concerns and recommendations that justice be done in the case. The UN Special Rapporteur also reacted together with other relevant UN mandate holders, such as the UN Special Rapporteur on extrajudicial executions. The Congolese authorities initiated an investigation that led to the prosecution and sentencing of several police officers for Chebeya’s killing.

HOW DOES THE WORK OF SPECIAL MECHANISMS AND RAPPORTEURS HELP HUMAN RIGHTS DEFENDERS?

While the appointment of an African Commission Special Rapporteur for Human Rights Defenders is the most relevant for African HRDs, the work of other rapporteurs and African Commission mechanisms often give support to HRDs as well as promote the broad rights which underpin all human rights work. For example, in several instances, the Special Rapporteur for Freedom of Expression in Africa has moved to protect journalists. The Special Rapporteur has issued urgent appeals to heads of the states concerned on the situation of freedom of expression in The Gambia in 2009, on decriminalisation of media offences in Senegal and on harassment and intimidation of journalists in Sierra Leone in 2009, among other actions (see Annex I for details).

The African Commission’s different Special Rapporteurs also collaborate. In June 2007, the Special Rapporteurs on Human Rights Defenders and Freedom of

Expression in Africa issued a joint press release to welcome the lifting of a ban on three Mogadishu radio stations. There are also situations in which the Special Rapporteurs of the African Commission collaborate with UN Special Rapporteurs.

CASE STUDY BOX: UN-AFRICAN COMMISSION JOINT COUNTRY VISIT TO TOGO, 2008

The UN Special Rapporteur on HRD, Margaret Sekaggya, and the African Commission Special Rapporteur on HRD, Reine Alapini-Gansou, conducted a joint country visit to the Republic of Togo from 28 July to 4 August 2008. The experts met with state authorities and a range of human rights defenders during the visit. At the end of the visit they issued a joint communiqué highlighting their main concerns regarding the situation of defenders in the country, while identifying the areas of progress. The Government accepted the recommendations formulated by the rapporteurs without expressing major objections.

The advantage of this kind of visit allows the UN and African Commission to coordinate their engagement with respect to a particular situation. This generates increased pressure on the Government to remedy the problems that both mechanisms identified and agreed should be addressed as a matter of priority.

On other occasions HRDs are mentioned specifically in collegial press releases and communiqués issued. Among these are the 2008 statement on the post election violence in Kenya and a 2009 press release on the deteriorating human rights situation in The Gambia. In the letter to Kenya, the Chair of the Commission urged the government to work with human rights defenders to protect those at risk due to the country outbreak of violence in the country and to allow media to do its work. The appeal to The Gambia specifically expressed concerns for the security of human rights defenders, based on a reported statement from the highest level threatening HRDs. The African further requested the African Union to consider relocating the Banjul-based secretariat of the Commission if threats to HRDs continued. The appeal also demanded investigation into the disappearance and/or killing of two prominent journalists. This practice of explicit recognition of HRDs, the threats they face in the course of their activities and the call for their protection contributes significantly to their safety and recognition of their work.

HOW DOES THE AFRICAN COMMISSION ACT IN EMERGENCIES TO PROTECT HRDs?

The African Commission mainly acts to protect HRDs under threat in emergency situations using two methods: provisional measures and urgent appeals.

PROVISIONAL MEASURES

In cases where the African Commission is satisfied that state action may cause irreparable damage to the complainant, victim or matter put forward in a communication, it may issue provisional measures calling for the state subject of the complaint to desist from action or take immediate temporary actions to remedy a situation. These tend to be undertaken in matters where time is of the essence, such as to prevent the execution of a death sentence, in response to arbitrary arrest and detention or cases of alleged torture, among other violations. They may be used to demand medical care for victims of serious human rights abuses. Provisional measures have also been issued when the state's action threatened the ability of a complaint to be investigated, such as the banning and closure of media organisations. As they are urgent in nature, the Chair and Vice Chair of the Commission are empowered to issue provisional measures during the six-month inter-session period. More so, states are required to report back in 15 days on the implementation of the provisional measures.

To maximise effectiveness, the AU Assembly, AU Commission and AU Peace and Security Council are informed of the provisional measures. This opens up other avenues of advocacy through which HRDs can seek and ensure the urgent protection of HRDs at risk. Provisional measures are provided for in Rule 98 of the Commission's 2010 Rules of Procedure.

Information on provisional measures granted by the Commission is only easily accessible after conclusion of a communication, when the decision is published. This impedes the ability of HRDs to participate in advocacy aiming at the enforcement of the provisional measures. The African Commission would add much needed impetus to the enforcement of provisional measures if these were to be publicised immediately after their being granted, as is the practice of the Inter-American Commission on Human Rights.⁷

Thus far (2012), provisional measures have been granted in the case of:

Execution of the death sentences

- 137/94, 156/96, 161/97 International PEN, Constitutional Rights Project, Civil Liberties Organisation and INTERIGHTS/ Nigeria
- 240/01 Interights et al (on behalf of Mariette Sonjaleen Bosch) / Botswana
- 269/03 Interights (on behalf of Safia Yakubu Husaini et al.) / Nigeria
- 231/99 Avocats Sans Frontières (on behalf of Gaëtan Bwampamye) / Burundi

⁷ In the 'Status of human rights in Africa' document that cover June-December 2011 (<http://bit.ly/GKhwT> Accessed 19 March 2012) in para. 17 (v) the Commission notes having adopted provisional measures on the human rights situation in North Kordofan but does not state under which communication, when it issued the measures and whether they have been respected (given the delay for 15 days to reports for such measures). However, this represents a welcome development of announcing provisional measures.

Banning and closure of media outlets/practitioners

- 290/04 Open Society Justice Initiative (on behalf of Pius Njawe Noumeni) / Cameroon
- 284/03 Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe / Zimbabwe

Arbitrary arrest and detention

- 250/02 Liesbeth Zegveld and Mussie Ephrem / Eritrea
- 256/02 Samuel Kofi Woods II and Kabineh M Ja'neh / Liberia
- 140/94-141/94-145/95 Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda / Nigeria

Massacres and serious and massive violations

- 299/05 Anuak Justice Council / Ethiopia
- 279/03-296/05 Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan
- 133/94 Association pour la défense des droits de l'Homme et des libertés / Djibouti

Closure of universities

- 220/98 Law Office of Ghazi Suleiman / Sudan

Torture and cruel treatment

- 83/92 Jean Y Degli (on behalf of N Bikagni)/Togo

Harassment of human rights defenders

- 276/03 Centre for Minority Rights Development & Minority Rights Group International (on behalf of Endorois Welfare Council) v Kenya (also alienation of ancestral lands)

Removals of judges/magistrates

- 258/02 Miss A / Cameroon;
- 283/03 B / Kenya

Unfair trial

- 322/06 Tsatsu Tsikata / Ghana
- 334/06 Egyptian Initiative for Personal Rights and Interights v Egypt

Deportation to country with likelihood of torture, extrajudicial death

- 239/01 Interights (on behalf of Jose Domingos Sikunda) / Namibia

Deportation/denationalisation

- 212/98 Amnesty International / Zambia

Alienation of ancestral lands

- 260/02 Bakweri Land Claims Committee v Cameroon

URGENT APPEALS

Urgent appeals are similar to provisional measures in that they seek to prevent irreparable damage to a probable victim of human rights violations. However, these differ from provisional measures in that they are issued when the matter is not the subject of a communication. The practice of the African Commission is to send urgent appeals to the relevant government officials, especially heads of state, and then later announce these in press releases.⁸

⁸ Similarly, in the 'Status of human rights in Africa' document that cover June-December 2011

It is noted that more recent collegial African Commission statements on human rights violations fail to maintain this practice. From the African Commission's public pronouncements discussed earlier, although noting violations of the rights to free expression, association, assembly and demonstration among other rights critical to the work of HRDs, 'human rights defenders' are not specifically mentioned nor relevant soft law invoked. These include the December 2010 Statement on the Situation in Côte d'Ivoire, the February 2011 Statement on the human rights situation in North Africa, the October 2011 Communiqué on the abduction of three humanitarian NGO workers from Sahrawi refugee camps, a December 2011 Press Release on the human rights situation in the Democratic Republic of Congo, the February 2012 Statement and Resolution on the human rights situation in Senegal; the February 2012 Resolution and Press Release on the human rights situation in the North of Mali. In particular, the statements on DRC, Senegal, Côte d'Ivoire and the Arab Spring refer to situations of elections and popular demands for democracy involving significant HRD work. The failure to explicitly mention the situation of HRDs and call for their specific protection represents a step back in the consistent protection of HRDs in Africa.

There also exists the need for standardisation of the form of appeal or public pronouncement the African Commission makes outside the formal communications procedure. As seen above, these pronouncements are variously titled "press statement/statement", "statement", "communiqué", "urgent appeal". The 2010 Rules of Procedure of the African Commission do not clarify the different pronouncements and their varying degree of importance, if any. The term "urgent" is used four times in the Rules and only once to refer to "urgent appeals" being actions to be taken in emergency situations. The consistent use of a set standard would go a long way in solidifying the protective effect of these pronouncements for HRDs and their work and should be done without creating an onerous application procedure. The openness with which the African Commission approaches applications for special rapporteurs and the Commission is laudable and arguably the urgent appeal's strongest point.

HOW CAN A HUMAN RIGHTS DEFENDER UTILISE SPECIAL MECHANISMS AND SPECIAL RAPPORTEURS?

The African Commission and its mechanisms remain open to receiving information on human rights developments, both negative and positive for their appropriate response. HRDs can play a role in providing information to the special rapporteurs on a human rights situation or specific violation. HRDs may also wish to provide similar input to the UN Special Rapporteur on Human Rights Defenders. The rapporteurs' press releases also provide strong advocacy material that HRDs can reference or publicise through their own networks when relevant to their work.

(<http://bit.ly/GKhwT> Accessed 19 March 2012) in para. 17 (vi) the Commission notes having sent urgent appeals on various human rights situations giving the example of Libya and Egypt to raise its concerns at alleged violations. While the reporting of urgent appeals sent in the activity report is also a welcome development, an exhaustive listing of such interventions would go a long way to cement their effectiveness.

HOW DOES AFRICAN COMMISSION'S INTERPRETATION OF THE AFRICAN CHARTER IMPACT HUMAN RIGHTS IN AFRICA?

The African Commission has issued several resolutions and declarations in the course of carrying out its mandate to interpret the ACHPR, making up a body of 'soft law'⁹ to expand on the Charter's provisions. There are four key soft law documents which elaborate principles and guidelines regarding prohibition of torture and for freedom of expression, the right to a fair trial, as well as economic, social and cultural rights:

Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Punishment in Africa:

Known as the Robben Island Guidelines, the 2002 soft law expounds on the content of Articles 5 and 6 of the ACHPR. It covers prevention and prohibition of torture and responds to the needs of the victims. States are called upon to take action to prevent torture and other cruel, inhuman or degrading treatment and punishment, and prosecute any perpetrators. States should harmonise national laws with ratified regional and international treaties, put in place procedural safeguards for those deprived of their liberty and during the pre-trial process, as well as independent monitoring mechanisms. The resolution also asks states to encourage and support NGOs and other members of civil society to disseminate information and raise awareness. Victims of torture and other forms of ill-treatment should receive medical and other services, as well as protection if needed. The Robben Island Guidelines mention HRDs specifically (Art. 49).

Declaration of the Principles of Freedom of Expression in Africa:

Adopted in 2002, the declaration addresses more than a dozen areas of concern including attacks against media practitioners, the use of criminal measures on content, broadcast licensing, and protection of sources. It upholds the right of media practitioners to form unions and associations, and promotes media diversity. The declaration goes much further than ACHPR's Article 9 (2) in clarifying what constitutes a violation of freedom of expression and in specifying principles to guarantee access to information. It also specifies that restrictions on the right should serve a legitimate interest and be necessary in a democratic society.

Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa:

Adopted in 2001, the guidelines fortify and supplement the provisions relating to fair trial in the ACHPR. It prescribes the essential elements of a fair hearing, steps to guarantee independence of judicial bodies and judicial officers, asserts the right to effective remedy and stipulates measures to ensure access to lawyers and legal services, including provision of legal aid and legal assistance. Among other items, the document also affirms the importance of guaranteeing the independence of lawyers and calls for protection of their rights to

⁹ See <http://caselaw.ihlda.org/instruments/>

liberty and security so they are able to perform all of their professional functions “without intimidation, hindrance, harassment or improper interference.” It reaffirms basic charter rights for legal practitioners and requires additional support to victims of abuse, including medical and social services.

Principles and Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter on Human and Peoples’ Rights: This 2011 soft law, called the

Nairobi Guidelines, is of great significance to the protection of these oft misunderstood rights. By the very nature, economic, social and cultural rights pose many problems of universal implementation, judicial enforcement and balance of duties between right holders (the populations) and duty bearers. This comprehensive document sets out how these rights are to be understood in Africa and is the product of many years of reports, debates, standard setting in international instruments and decided cases, among others. Issues raised include the nature of state obligations, progressive realisation, minimum core obligations, a prohibition on retrogressive measures, and the need for justiciability (capacity for judicial enforcement) of these rights at national level, non-discrimination and vulnerable groups. The Nairobi Guidelines cover the rights to property, work, health, education, culture, housing, social security, food, water and sanitation and protection of the family. The Nairobi Guidelines were preceded in 2004 by the *Pretoria Declaration on Economic, Social and Cultural Rights*, which provides a less comprehensive treatment of the rights concerned.¹⁰ Civil society’s role in raising awareness, disseminating and advocating for the implementation of these and other agreements is crucial to enhancing their impact for HRDs.

HOW CAN HUMAN RIGHTS DEFENDERS UTILISE THE AFRICAN COMMISSION’S COMMUNICATIONS PROCEDURE?

Articles 47, 49 and 55 allow the African Commission to examine complaints made not only by one state against another state party to the Charter (‘inter-state’ communication) but also those by NGOs, attorneys, any person acting on behalf of victims, or victims of human rights violations (‘other’ communications). Human rights defenders from varying locations, professions and association have taken a central role in bringing complaints under Article 55.

‘Other’ communications must meet seven conjunctive admissibility conditions (Article 56) or the African Commission cannot consider them on the substance of alleged violations by a state party. Given that a significant number of complaints are rejected on these grounds, HRDs should carefully adhere to the terms of admissibility, listed below. As at March 2012, out of 193 decisions, 82 were

¹⁰ See African Human Rights Case Law Analyser, <http://bit.ly/GKknkWC>.

ruled inadmissible. Counting the 14 other files which were closed, eight whose outcomes were 'inconclusive' and another that was rejected at seizure, the total comes to 105 decisions (this figure covers even more communications as some of them include joined communications) – representing a 54.4% failure rate. With more than half the allegations of violations never being determined on merits, it is important that HRDs take necessary steps to learn how to fulfil these admissibility requirements. Further submission guidelines and information are available on the African Commission website.¹¹

ADMISSIBILITY CONDITIONS FOR 'OTHER' COMMUNICATIONS SUBMITTED TO THE AFRICAN COMMISSION'
(1) Must indicate the author, even if the author wants to remain anonymous
(2) Must be compatible with the African Union Constitutive Act and with the ACHPR <ul style="list-style-type: none">• the communication should be brought against a state party to ACHPR. Communications brought against a state that is not party to ACHPR cannot be considered.• must allege violation(s) of one or more ACHPR rights should be brought in respect of violations that occurred after the state's ratification of ACHPR, or where violations began before the state party ratified ACHPR and have continued even after ratification.
(3) Must not be written in insulting language directed against the state or the AU; <ul style="list-style-type: none">• Insulting language will render a communication inadmissible, irrespective of the seriousness of the complaint. However, this rule should not be used to defeat legitimate criticism of public officers and institutions. To be enforced, the state must show "the detrimental effect" of such language.
(4) Must not be based exclusively on news from the media <ul style="list-style-type: none">• Communications based exclusively on news disseminated by the mass media will be inadmissible, though some aspects may be founded on news disseminated through the mass media.

¹ Adapted from *Making Complaints to the African Human Rights System*, IHRDA, Banjul, due 2012.

¹¹ <http://achpr.org/communications/>.

(5) Must have exhausted all available domestic legal remedies

- Local remedies are results of proceedings before national courts to redress violations. To exhaust, one must obtain a judgment of the competent courts in the country, including the highest court. A valid remedy can only be judicial.

The remedies that must be exhausted must be available, effective and sufficient.

- A remedy is “available if the petitioner can pursue it without impediment”ⁱⁱ and only if the applicant can make use of it in the circumstances of his case. For instance immediate carrying out death or corporal punishment sentences renders remedies unavailable.
- A remedy is deemed “effective if it offers a prospect of success”ⁱⁱⁱ e.g. the remedy sought should not be subject to the authority of partial parties. For instance, *ad hoc* military tribunals where judges are officers do not qualify as capable of issuing effective remedies.
- A remedy is “sufficient if it is capable of redressing the complaint”^{iv} If a court is available and effective, the remedy may still be insufficient if it cannot offer an appropriate cure to the injury.

There are two exceptions to the exhaustion of local remedies rule: existence and undue prolongation.

Existence refers to question of whether a remedy is available and accessible within the legal system of the respondent state. For instance, if the remedy sought is prosecution of alleged torturers and torture does not even constitute a crime in that country, then such remedy simply does not exist.

The ACHPR itself grants applicants an exception from exhaustion of any remedies attempted that take too long to be concluded. The African Commission has admitted a communication in which an appeal remained pending for 3 years on the exception of unduly prolonged proceedings.

The African Commission has extended an exception to the rule for serious and massive violations of human rights. In such situations, “the state will be presumed to have notice of the violations within its territory... The pervasiveness of these violations dispenses with the requirement of exhaustion of local remedies, especially where the state took no steps to prevent or stop them”.^v

(6) Must be submitted within a reasonable time from the date of exhaustion of domestic remedies

- Following the models of the European and Inter-American systems, African Commission has determined a six-month period as the reasonable time limit. If a complainant can provide a good and compelling reason for submitting the communication after this time, the African Commission may examine the complaint.

ⁱⁱ 147/95-149/96 *Jawara / Gambia (The)*, para. 32, <http://bit.ly/GSWJFP>.

ⁱⁱⁱ *Ibid.*

^{iv} *Ibid.*

^v 299/05: *Anuak Justice Council / Ethiopia*, para. 60 <http://bit.ly/GVd7Gg> citing 27/89-46/91-49/91-99/93: *OMCT, AIJD, CIJ, UIDH /Rwanda* <http://bit.ly/GKPIEG>.

(7) Must not deal with a matter which has already been settled by some other international human rights body

• This provision specifically refers to the final settlement of the case on the merits and does not include a situation where the case is merely examined without any action taken or pronouncements made on the merits thereof.

HOW DOES THE AFRICAN COMMISSION TREAT MULTIPLE COMPLAINTS THAT APPEAR TO BE RELATED?

When multiple complaints have been filed against one country and they relate to similar facts, or allege a massive violation of human rights or international rights, the African Commission will consolidate these and issue one decision in response to all the related communications.¹²

WHAT RECOMMENDATIONS DOES THE AFRICAN COMMISSION MAKE IF IT FINDS A VIOLATION OF THE CHARTER HAS OCCURRED?

The African Commission issues increasingly detailed and actionable recommendations to states found in violation of the ACHPR, aimed at offering relief for victims and eliminating the causes of the violation. For example, the African Commission has urged countries to bring their laws into conformity with the ACHPR, to compensate victims, to complete investigations, to accelerate judicial proceedings, among other steps.

DO STATES COMPLY WITH THE AFRICAN COMMISSION RECOMMENDATIONS?

The major weakness of the African Commission's communications procedure has been the poor record of state compliance with its recommendations. Some states fail to respond to allegations in the communications proceedings while others may respond, but not substantively. Others may deny the African Commission an opportunity for conducting on-site missions.

HOW DOES THE AFRICAN COMMISSION FOLLOW UP ON IMPLEMENTATION OF ITS DECISIONS?

Six-month report back

The African Commission has attempted to strengthen implementation of its decisions in view of the weak record in this regard. From 2008 (decisions published in the 26-30 Activity Reports¹³), the African Commission has included in its recommendations, a request that the state report within six (6) months on measures it has taken to

¹² See, among others, 27/89-46/91-49/91-99/93: OMCT, AIJD, CIJ, UIDH/Rwanda bit.ly/GKPIEg; 147/95-149/96 Sir Dawda K. Jawara / Gambia (The), <http://bit.ly/GSWJFP>; 54/91-61/91-96/93-98/93-164/97_196/97-210/98 Malawi African Association, Amnesty, Ms Sarr Diop, UIDH and RADDHO, Collectif des veuves et ayants-Droit, AMDH / Mauritania, <http://bit.ly/GJVMnl>.

¹³ A total of 18 decisions were published: 12 on the merits and 6 whose communications ruled inadmissible. See <http://bit.ly/GJcYL2>. Accessed 1 March 2012.

implement the Commission's decision. This has involved five decisions.¹⁴ This practice is however inconsistent as six decisions¹⁵ taken during the same period do not feature the request for a six-month report back. In one 2009 decision, the Commission demanded a report back "within three (3) months".¹⁶

It also remains unclear whether states respect this mechanism. The African Commission has not yet begun to issue public statements of any report backs, nor does it mention any report backs in its activity reports. Thus far, this mechanism seems to have borne minimal results.

Referral to the African Court

The African Court on Human and Peoples' Rights was created by the Protocol to the African Charter on Human and Peoples' Rights for the Establishment of an African Court adopted in 1998, by the Heads of States of the Organisation for African Unity during a summit held in Ouagadougou, Burkina Faso. The first 11 judges of the African Court were sworn into office at the July 2006 summit of the African Union. The Court is established to "complement the protective mandate of African Commission" (Art. 2 of the African Court Protocol). The Protocol's preamble speaks of the state parties' being "firmly convinced that the attainment of the objectives of the African Charter [...] requires the establishment of an African Court to complement and reinforce the functions of the African Commission". As discussed earlier, non-implementation of decisions is a ground on which the Commission can refer a case to the Court. As at March 2012, Rule 118 (1) of the African Commission's Rules of Procedure is yet to be invoked. Its use and effectiveness could be promoted through the petitions complainant HRDs send to the Commission.

WHAT CAN HRDs DO TO PROMOTE IMPLEMENTATION?

Despite the challenge of compliance, decisions by the African Commission convey a strong message of condemnation that HRDs may use in their advocacy. It may also benefit the work of HRDs to publicise and raise public awareness around a set of African Commission's recommendations and campaign on a national, regional and international level for the state's compliance.

¹⁴ 294/04 : Zimbabwe Lawyers for Human Rights & IHRDA / Zimbabwe - 266/03 Kevin Mgwanga Gunme et al / Cameroon; 297/05: Scanlen & Holderness / Zimbabwe; 373/09: INTERIGHTS, IHRDA, Association Mauritanienne des Droits de l'Homme / Mauritania;

¹⁵ These decisions are 281/03: Marcel Wetsh'okonda Koso and others / DRC; of 279/03-296/05: Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) / Sudan; 284/03: Zimbabwe Lawyers for Human Rights & Associated Newspapers of Zimbabwe / Zimbabwe; 313/05: Kenneth Good / Botswana; 272/03: Association of Victims of Post Electoral Violence & INTERIGHTS / Cameroon; 262/02 : Mouvement ivoirien de droits de l'Homme (MIDH) / Cote d'Ivoire. Failure to include an explicit demand for report back is particularly distressing in the case of 279/03-296/05 which affirms serious and massive violations of human rights in Darfur (<http://bit.ly/xxMYIm>).

¹⁶ 276/03: Centre for Minority Rights Development (Kenya) & Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya.

Shadow reporting

As discussed above, under Article 62 of the ACHPR, all African states are required to report to the African Commission every two years on the measures they have taken to promote human rights and ensure their protection. This is an open reporting procedure that requires states to provide detailed information. Civil society input in this reporting procedure is essential and in fact a requirement under the Protocol of Women's Rights. HRDs can use this opportunity to point out positive and negative developments in the implementation of decisions taken against the reporting state for the African Commission to include during its examination.

Statements before the African Commission and other human rights meetings

The public sessions of the African Commission offers NGOs with observer status an opportunity to address the Commission and states on human rights concerns. This forum is an especially valuable platform for raising issues of concern as states in attendance would usually exercise their right of reply to present their position. This immediate feedback clarifies matters and gives ample opportunity for maintaining focus on implementation of decisions and any other human rights concern or situation.

The same can be said of other human rights meetings. HRDs can liaise with partners to ensure common matters of concern on implementation of African Commission decisions are raised at other fora, including the universal peer review at the UN Human Rights Council.

Submitting memoranda/reports on implementation to the Commission

Rule 112 of the 2010 Commission's Rules of Procedure open up interesting possibilities for HRDs to contribute to implementation. Among these include providing information, through reports and memoranda on the status of implementation to the Commission for use by country rapporteurs on promotional missions, among others.

CASE STUDY BOX: AFRICAN COMMISSION'S RECOMMENDATIONS AND FOLLOW UP: MAURITANIA 2000-2012

In 2000, the African Commission issued a landmark omnibus decision, addressing 37 communications filed against Mauritania concerning severe human rights violations perpetrated by the government between 1986 and 1992. The Commission examined, *inter alia*, alleged Charter violations based on an array of atrocities, perpetrated or incited by the government of Mauritania against its citizens and in particular against members of various black ethnic groups. In its decision, the African Commission found the government responsible for grave or massive violations of human rights, including ethnic discrimination, torture, illegal detention, extrajudicial killings and mass expulsions of Black Mauritians (Articles 4 (right to life), 5 (torture, inhuman or degrading treatment or punishment or treatment), 6 ("massive violations," right to liberty and security of person), as well as perpetuation of slavery and related degrading practices (Article 5)). Violations also included harassment, intimidation and violence against journalists and other HRDs and politicians campaigning against racial discrimination.

The African Commission made six concrete recommendations to provide comprehensive redress to the victims concerned:

- 1) investigate the disappearances;
- 2) take diligent measures to replace national identity documents which the authorities destroyed during the events;
- 3) ensure payment of compensatory benefit to the widows and beneficiaries of the victims;
- 4) reinstate the rights and dues of those unfairly dismissed and/or forcibly retired workers;
- 5) assess on and investigate degrading practices;
- 6) ensure effective enforcement of the Ordinance on the abolition of slavery in Mauritania.

Implementation of this omnibus decision is an example of the value of HRDs' continued engagement with the African Commission, concerned governments and other relevant agencies in giving effect to the decisions. Local civil society actors, grouped mainly, but not exclusively, under the umbrella body for human rights NGOs in Mauritania, FONADH (*Forum des organisations nationales des droits de l'Homme en Mauritanie*) and IHRDA/Open Society Justice Initiative had led advocacy for implementation of these recommendations. Statements were read at Commission sessions, reports were prepared, memoranda sent to the African Commission, field trips to remote areas to visit victims and sensitisation workshops that included state and relevant UN agencies. The results over a 12-year period included a voluntary repatriation agreement signed by Senegal, Mauritania and UNHCR, field visits by special rapporteurs, partial implementation, including repatriation of over 20,484 expelled victims (4994 families repatriated to 118 different sites), 144 civil servants reinstated and an increasing willingness on the part of the state to discuss modalities for a fully fledged transitional justice process.

The experience of HRDs in other regions may also offer some lessons:

CASE STUDY BOX: AZERBAIJANI JOURNALIST ENYULLAH FATULLAYEV AND THE EUROPEAN COURT OF HUMAN RIGHTS

In the case of Azerbaijani journalist Enyullah Fatullayev, who was imprisoned for four years on trumped up charges following his investigations into the murder of a colleague, the state refused to comply with the 2010 European Court of Human Rights' (ECHR) determination that Fatullayev should be immediately released and given substantial payment for damages. Members of International Partnership Group for Azerbaijan (IPGA), a group of 20 international and local NGO's concerned about freedom of expression in Azerbaijan, sent delegations to Europe's Committee of Ministers and Parliamentary Assembly of the Council of Europe, pressing for increased pressure on the Azerbaijani government to comply with its regional obligations. Members of the IPGA and other groups campaigned to raise international public awareness of the case, while on a national level, lawyers and activists in Azerbaijan advocated for Fatullayev's release. In May 2011, Fatullayev was freed under a presidential amnesty. While it would have been preferable to see rule of law prevail and the Azerbaijani state adhere to the ECHR decision, Fatullayev's release is widely viewed as a successful example of the combined use of legal and advocacy strategies.

DO HUMAN RIGHTS DEFENDERS RISK REPRISALS FOR ENGAGING THE AFRICAN COMMISSION AND OTHER HUMAN RIGHTS ACTIVITIES? HOW HAS THE AFRICAN COMMISSION RESPONDED?

As is too often the case for human rights practitioners, there exists the danger of reprisals, including harassment, threats and other forms of intimidation, for those who lodge complaints and expose abuses against states. In November 2011, the African Commission issued Resolution 196, which urges "all States to prevent and refrain from all acts of intimidation or reprisal against individuals or groups who seize the African Commission on Human and Peoples' Rights."¹⁷ A draft resolution specifically addressing reprisals is currently under review by the African Commission. Through their urgent appeals, the Special Rapporteur on HRDs and the Special Rapporteur on Freedom of Expression have raised major principles for the protection of HRDs, such as the principle of non reprisal for participation in human rights activities. Human rights defenders, nevertheless, should understand there can be risks associated with communications to the African Commission and related campaigning.

¹⁷ ACHPR/Res.196 (L) 2011: Resolution on Human Rights Defenders in Africa (<http://bit.ly/GJd8Ci>); para 15. See also, 'Joint Statement on Reprisals Against Individuals and Groups Seeking to Cooperate with the United Nations, the African Commission on Human and People's Rights and the Inter-American Commission on Human Rights' 14 March 2012, <http://bit.ly/GKPNtY>. Accessed 18 March 2012.

PART III:
DEVELOPMENT OF NORMS FOR
HUMAN RIGHTS DEFENDERS BY
THE AFRICAN COMMISSION

WHAT DO THE DECISIONS OF THE AFRICAN COMMISSION MEAN IN TERMS OF PROTECTING AND PROMOTING DEFENCE OF RIGHTS?

Over the last 25 years, the African Commission has developed a sizeable jurisprudence directly impacting on HRDs. In total the African Commission has considered upon cases based on freedom of expression (Article 9),¹⁸ 25 cases on freedom of association (Article 10)¹⁹ and 17 cases of freedom of assembly (Article 11).²⁰ All 20 cases involve organisations or some of their staff members persecuted on the basis of their work, either as journalists, lawyers, political actors or as human rights activists.

Taken together, these decisions have served to confirm the vulnerability of HRDs and the need for protection; established and clarified general standards and specific practices for upholding these rights and supported victims by requesting remedy actions.

The African Commission is still to determine several major issues of importance. Not one of the decisions pertaining to HRDs involves non state actors as perpetrators of the violation, nor do they involve women human rights defenders.

In addition the African Commission has established principles on questions that are relevant to all human rights issues in Africa, not just those directly affecting human rights defenders. For example, the African Commission has repeatedly affirmed that the human rights guaranteed by the African Charter are non-derogable – that is, they cannot be forfeited in emergencies or special circumstances.²¹

Its interpretations have also established a principle of proportionality that dictates the punishment of certain crimes should be in proportion to the severity of the crime itself.²² This comes into play in the use of criminal defamation laws or the levying of disproportionately heavy fines, registration fees or excessive damages in civil resolution of defamation cases.

HOW HAS THE AFRICAN COMMISSION UPHELD ARTICLE 9 – THE RIGHT TO FREEDOM OF EXPRESSION?

Article 9 of the ACHPR states that every individual shall have the right to receive information and every individual shall have the right to express and disseminate

¹⁸ See <http://bit.ly/GWvzQ9> Accessed 28 February 2012. Decided cases on merits are lower at 18 cases as the rest, although alleging violations of this right were ruled inadmissible.

¹⁹ See <http://bit.ly/GL3dXI> Accessed 28 February 2012. Decided cases on merits are lower at 15 decisions as the rest, although alleging violations of this right were ruled inadmissible.

²⁰ See <http://bit.ly/GWvNqA> Accessed 28 February 2012. Decided cases on merits are lower at 6 decisions as the rest, although alleging violations of this right were ruled inadmissible.

²¹ 74/92 Commission nationale des droits de l'Homme et des libertés / Chad, para. 21. See African Human Rights Caselaw Analyser, <http://bit.ly/GS3QEw>; See also 140/94-141/94-145/95: Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda / Nigeria, para. 38, 41 <http://bit.ly/GKQ93J> for the earliest assertion of this principle.

²² See CLA <http://bit.ly/GK4qVi>.

his opinions within the law. Over the years, the African Commission has enhanced Article 9 with additional guidelines and jurisprudence that bring its application more in line with international human rights norms.

The African Commission's interpretations and resolutions have reinforced, among other points, not just rights associated with an individual's ability to express critical ideas, but society's rights to receive and access information. It has asserted that impositions on dissemination represent a direct limitation on the right to express oneself freely.²³ Furthermore, access to information is a vital component of freedom of expression and critical to the right to participate in government. The African Commission has maintained that that freedom of expression is "a cornerstone of democracy and means of ensuring the respect for all human rights and freedoms."²⁴ This latter concept has been further developed by the 2011 UN Human Rights Committee: General Comment No.34, which concludes freedom of expression is essential to the protection of all human rights.

The African Commission found violations of the right to freedom of expression took place in three categories: regulation of the press and media, including the use of excessively high fees, seizure of publications and blanket restrictions on freedom of expression; Harassment of individuals on the basis of their political activities, such as intimidation or detention of journalists, and measures taken for security reasons.

CASE STUDY BOX: 93 CRP AND CLO /NIGERIA [12 AAR, 1998-1999] 206

Right to free expression with regards to regulation of the press and media and harassment of individuals on the basis of their political activities

Amidst protests against Nigerian leadership's annulment of elections, the state seized thousands of copies of magazines and proscribed magazines by military decree. It also arrested and detained journalists critical of the elections' annulment.

The African Commission found the state violated Articles 1, 6, 9 and 13 on the basis that no situation justified the wholesale violation of human rights. It also concluded that Nigerian law contains traditional provisions for libel suits and laws made targeting specific publications or legal entity raise the danger of discrimination before the law.

The African Commission recommended that the authorities release all those who were detained for protesting the annulment of the elections and to preserve the traditional functions of court by not curtailing their jurisdiction.

In addition to its recommendations on specific situations, the African Commission has used other mechanisms to promote Article 9. Among other actions, its special rapporteurs for freedom of expression in Africa and HRDs have spoken out against criminalising defamation and libel laws. In 2002 the African Commission issued

²³ Sir Dawda Jawara/The Gambia [13 AAR] para. 65 in Compilation 94-01, p. 118. See also African Human Rights Caselaw Analyser (CLA) <http://bit.ly/GSWJFP> Accessed 13 February 2012.

²⁴ 250/02 Liesbeth Zegveld and Mussie Ephrem / Eritrea, para 59. See also CLA <http://bit.ly/GI8HUS> Accessed 13 February 2012.

the Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa. In addition, the African Commission is also drafting a model law on access to information in Africa that will serve as a guide and minimum standard to states in enacting national laws on the same.²⁵

HOW HAS THE AFRICAN COMMISSION UPHELD ARTICLE 10 – THE RIGHT TO FREEDOM OF ASSOCIATION?

Article 10 of the ACHPR stipulates that every individual shall have the right to free association provided that he abides by the law and that no one may be compelled to join an association. The African Commission's 2009 Resolution on the Right to Freedom of Association is the main instrument of interpretation of the rights to freedom of association. Through these, the African Commission maintains freedom of association "is enunciated as an individual right and it is first and foremost a duty for the state to abstain from interfering with the free formation of associations. There must be a general capacity for citizens to join, without state interference, in associations in order to attain various ends".²⁶

The African Commission adds that in regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.

The African Commission found infringements against Article 10 took place in two main categories: regulation of freedom of association, including the creation of national bar association not independent from the government and the banning or dissolution of political parties (see below case box); harassment of individuals and organisations due to their political activities constitutes the other violations. Actions in the latter category include deportation of politicians, abusive use of criminal law, arbitrary arrest and detention and persecution of NGOs promoting human rights, among other transgressions.

²⁵ Throughout 2011, the African Commission held extensive consultations with states, NGOs and other civil society actors on the drafting of a model law on access to information in Africa and welcomes contributions of HRDs (as at March 2012). See <http://bit.ly/GNjpls>.

²⁶ 101/93, para. 15. See African Human Rights Caselaw Analyser (CLA) <http://bit.ly/GKIJQH> Accessed 13 February 2012.

CASE STUDY BOX: 101/93 CLO (IN RESPECT OF NIGERIAN BAR ASSOCIATION) / NIGERIA

Upholding the right to free association with regard to regulation of associations

This case challenged Nigeria's creation of a new governing body of the Nigerian Bar Association, namely the Body of Benchers. Under the decree, no recourse to the court in relation to the Body of Benchers is possible.

The complaint posited that the regulation of the Nigerian lawyers' freedom of association by a regulatory body dominated by government representatives with wide discretionary power, interferes with the free association of the Nigerian Bar Association is inconsistent with the preamble of the African Charter in conjunction with UN Basic Principles on the Independence of the Judiciary and thereby constitutes a violation of Article 10 of the ACHPR (para.17)

The African Commission found the state's move to regulate the Nigerian Bar Association to be in violation of Articles 6, 7, and 10 of the ACHPR and recommended an annulment of the decree.

HOW HAS THE AFRICAN COMMISSION UPHELD ARTICLE 11 – THE RIGHT TO FREEDOM OF ASSEMBLY?

The right to freedom of assembly is enshrined in Article 11 of the ACHPR which states:

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

The African Commission has found violations of Article 11 in relation to restrictions under national security or emergency regulation; the regulation of association, including such acts as banning political parties from taking part in any political activities and travelling out of the country as well as harassment of individuals through excessive force to enforce law and order and preventing a human rights activist from travelling to discuss human rights with other practitioners.

**CASE STUDY BOX: 228/99 LAW OFFICE OF GHAZI SULEIMAN/SUDAN
UPHOLDING RIGHT TO FREE ASSEMBLY WITH REGARDS TO TRAVEL PROHIBITION**

Sudanese security officials prevented human rights activist Ghazi Suleiman from travelling to Sinnar to attend a gathering with others to discuss human rights by threatening him with arrest.

The African Commission found Sudan had violated Suleiman's right to free assembly, as well as his right to free association and free expression. Restricting a human rights activist's movement violated Articles 6, 9, 10, 11 and 12 of the ACHPR, according to the decision of the African Commission, which recommended the state to amend its existing laws to provide for *de jure* protection of the human rights to freedom of expression, assembly, association and movement.

ARE THERE LIMITATIONS ON THE RIGHTS OF HRDs?

The African Charter emphasises the responsibility of the individual to refrain from encroaching on the rights of others. As the African Commission puts it: "The only legitimate reasons for limitations of the rights and freedoms of the African Charter are found in Article 27(2), that is, that the rights of the Charter "shall be exercised with due regard to the rights of others, collective security, morality and common interest'."²⁷ With regard to freedom of expression, African Commission has acknowledged through the ACHPR and Declaration of the Principles for Freedom of Expression in Africa that the right to freedom of expression has limitations. For example, in the case of journalists, "when they fail in their duty to respect the rights of others, when exercising their right to free expression then their right ceases to be absolute."²⁸ However, it has condemned instances where the state has resorted to excessive measures, or interfered without due cause in the promotion of human rights. It also has supported the view that civil and other remedies should take their course.

CAN THE UN DECLARATION ON HRDs AND OTHER INTERNATIONAL LEGAL FRAMEWORKS BE UTILISED IN THE INTERPRETATION OF THE ACHPR?

The African Commission has drawn from the UN Declaration on Human Rights Defenders in only one case, that of activist Ghazi Suleiman, who was prohibited by Sudanese authorities from travelling to meet with others to discuss human rights. The African Commission cited Article 6 of the UN Declaration on Human Rights Defenders (para.52) in its recommendations that because Suleiman was attempting to exercise the right to freedom of expression for the promotion and protection of human rights "it is of special value to society and deserving of special protection." Greater African Commission utilisation of international legal frameworks and

²⁷ 250/02 Liesbeth Zegveld and Mussie Ephrem / Eritrea, para. 59. <http://bit.ly/GXTYGB> "[...] Nonetheless this right carries with it certain duties and responsibilities and it is for this reason that certain restrictions on freedom of expression are allowed. However, Article 9(2) as well as Principle II(2) of the Declaration of Principles on Freedom of Expression in Africa categorically state that such restrictions have to be provided for by law." See also, 297/05 Scanlen & Holderness / Zimbabwe, para 103. <http://bit.ly/GKm7i8>.

²⁸ 297/05 Scanlen & Holderness / Zimbabwe, para.121, <http://bit.ly/GKm7i8>.

jurisprudence from UN agencies, as well as regional bodies like the Council of Europe and the Inter-American Court of Human Rights would strengthen the protections in Africa for HRDs.

PART IV. CONCLUSION

WHAT OPPORTUNITIES ARE THERE FOR HRDs TO ENGAGE IN THE AFRICAN HUMAN RIGHTS SYSTEM?

As noted in previous sections, there are many ways through which NGOs, advocates, victims and human rights practitioners can feed into the African Commission procedures. These include:

Communications procedure

HRDs can bring a violation of a Charter right committed by a state to the African Commission's attention through the individual communications procedure or seek provisional measures.

Review of states' progress

HRDs can submit reports to contribute to the African Commission's understanding of the human rights situation in a state under review.

Use of interpretations

HRDs at risk or those representing victims or seeking to affect legislative reform should utilise the body of jurisprudence the African Commission has developed over 20 years.

Engaging special rapporteurs

HRDs can communicate with the African Commission's Special Rapporteurs and seek action through the African Commission's special mechanisms.

Advocacy and public awareness

HRDs may find it advantageous to publicise the African Commission's determinations and recommendations as a means to pressure states' towards implementation. In addition, some African and international NGOs can help shape the African Commission agenda through the following avenues:

NGO Forum

The Forum on Participation of NGOs to the session of the African Commission gathers African and international NGOs, Intergovernmental Organisations and African Commission members to a series of workshops prior to ordinary sessions. This offers an important opportunity to forge collective HRD positions on African Commission agenda items and other areas of concern. Resolutions crafted and put forward by the forum may

have the opportunity to be adopted resolutions are submitted the African Commission for recommendation.

Seek advisory opinions

An African NGO recognised by the AU, as well as a state party and an institution of the African Union (AU), can request the African Commission to interpret the provisions of the Charter.²⁹

Observer Status

African and international NGOs working in the field of human rights can apply to the African Commission for observer status. NGOs with observer status may participate in and speak at the public discussions during ordinary sessions; however, they are not permitted to vote in these discussions. NGOs that do not have observer status may attend the ordinary sessions but are not allowed to speak. NGOs with observer status must register to attend specific sessions by filling out registration forms, which are available on the African Commission's website ahead of the ordinary session and from the Secretariat at the opening of the session. NGOs applying for observer status must have "objectives and activities in consonance with the fundamental principles and objectives enunciated in the OAU Charter and the ACHPR".³⁰ However, on occasion the way the African Commission has applied this criterion has been questioned by NGOs as in the case of the denial of observer status to the Coalition of African Lesbians (CAL) in 2010.³¹

The African Commission, Africa's premier human rights body, is a paramount stakeholder in the protection of HRDs on the continent. HRDs make meaningful contribution to the work of the African Commission at all levels, including its protective mandate, through advocacy and communications for determination when Charter rights (their own and on behalf of others) are infringed. It is this mutually reinforcing work that will further enhance the relationship between the African Commission and HRDs.

²⁹ ACHPR art. 45(3), See CLA, <http://bit.ly/GS6lXx>.

³⁰ Resolution on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organisations Working in the Field of Human Rights with the African Commission on Human and Peoples' Rights [<http://bit.ly/GSXLqx>]

³¹ Many NGOs expressed concern at this development. Notably, see ISHR <http://bit.ly/GI97dT>, .; EHAHRDP-Net <http://bit.ly/GJhoON>; Amnesty International <http://bit.ly/GSFrDh>; INTERIGHTS <http://bit.ly/GSvtMr>; FIDH <http://bit.ly/GLAvfL>; OMCT <http://bit.ly/GSFBBA>; Alternatives Cameroon <http://bit.ly/GJEHZz>;

ANNEX I

PROTECTION OF HRDs BY THE AFRICAN COMMISSION: CHALLENGES TO AND ASSERTIONS OF THEIR RIGHTS - 1995-2012

The following annexes presents publicly available information on the actions taken by the African Commission to protect HRDs in Africa. It covers the period 1995-2012 and includes decisions on communications, provisional measures issued under the communications procedure, soft law, resolutions, urgent appeals, press statements and releases. The annexes are presented chronologically to demonstrate the evolution of protections as well as the challenges to the rights most relevant to HRDs over time. It is noted that the annexes collected here are not exhaustive as these are the publicly available documents.

THE SELECTION

Actions are selected for:

- their invocation of African Charter articles 9, 10 and 11 guaranteeing the rights to free expression, free association, free assembly respectively;
- the addressing the situation of HRDs directly;
- other rights like movement and participation in government are included for their close relation to HRD work, while the rights to life, physical integrity, fair trial, freedom of arbitrary detention, torture and ill-treatment also feature as these are the most recurrent manifestations of violations on HRDs and their work.

The selected actions are further categorised in 4 ways that represent the major trends in violations of the above mentioned rights:

- I. Regulation of the media and journalism as a profession, associations, assembly;
- II. Harassment, intimidation, arbitrary arrest and violence against journalists, politicians and other HRDs;
- III. Emergency, security and counter terrorism, *ad hominem* legislation;
- IV. Libel and defamation charges.

THE ANALYSIS

The annexes show a marked and welcome increase in interventions by the African Commission to react to threats to and seek the protection of HRDs and ensure their ability to carry out their legitimate work. This increase is primarily due to the regular use of urgent appeals and press statements to react quickly to allegations of abuse, which the long and tedious communications procedure seemingly remains unable to do.

Whilst not always significant announcements or interventions per se, taken together, the interventions can demonstrate trends of rather serious if not massive human rights violations. For example, the DRC and eastern DRC in particular is cited several times every year between 2007 and 2012, with mid 2007 seeing highest number of violations including torture and killing of HRDs. Indeed, taken together, these interventions build a case for a more focussed response to the threats against HRDs in eastern DRC. Moreover, these interventions serve as an important record of the situation of HRDs in Africa, both positive and negative.

By far, the greatest number of violations come from 'Category II: Harrassment of HRDs' and features deaths, torture, ill treatment, detention, unfair trials and other actions linked to state agents.

The greatest weakness of the actions listed below is follow-up. It is unclear whether state authorities recognise and act as urged by the decisions, provisional measures recolutions, soft law, urgent appeals and press releases. The African Commission could do well to publish follow-up reports both as a way of encouraging any complying states but also keeping pressure on those that do not. In addition, as noted earlier in Part II, the juridical status of urgent appeals and press releases and their inconsistent formulation are causes of concern for effective protection of HRDs.

It is also noted here that the Special Rapporteurs for Freedom of Expression and Access to Information, and Human Rights Defenders regularly chronicle instances of alleged violations against HRDs in their reports as published in the activity report of the African Commission. Particular reference is made here to 'Annexure R' of 29 Activity Report titled "Allegations of human rights violations reported to the Special Rapporteur on Freedom of Expression and Access to Information in Africa referred in paragraph 158" which is an excellent summary of allegations and actions taken thereof. The Annexure however, also lists urgent appeals that were not earlier reported among the Commission's published documentation, further illustrating the need for a clear publication protocol to facilitate HRDs' access to information on the African Commission's work.

1995

101/93

CLO (in respect of Nigerian Bar Association) / Nigeria

RIGHT TO FREE ASSOCIATION

I. REGULATION OF ASSOCIATIONS

Facts

Creation of a new governing body of the Nigerian Bar Association, namely the Body of Benchers. No recourse to the court is possible.

Merits

- The regulation of the Nigerian lawyers' freedom of association by a regulatory body dominated by representatives of the government and with wide discretionary power interferes with the free association of the

Nigerian Bar Association is inconsistent with the preamble of the ACHPR in conjunction with UN Basic Principles on the Independence of the Judiciary and thereby constitutes a violation of Article 10 of ACHPR (para.17).

Findings

- Violation of article 6, 7 and 10 of the ACHPR

Recommendations

- Annulment of the decree.

1999

102/93

CRP and CLO /Nigeria

RIGHT TO FREE EXPRESSION

I. REGULATION OF THE MEDIA AND JOURNALISM AS A PROFESSION

Facts

Seizure of thousands of copies of magazines and proscription of magazines by military decree.

Arrest and detention of journalists protesting the annulment of elections.

Merits

- No situation justifies the wholesale violation of human rights. In fact, general restrictions on rights diminish public confidence in the rule of law and are often counter-productive.(para. 58)
- Given that Nigerian law contains all the traditional provisions for libel suits, laws made to apply to specifically one individual or legal entity a governmental

proscription of a particular publication (*Ad hominem* legislation) raise the acute danger of discrimination and lack of equal treatment before the law guaranteed by Article 2. Violation Article 9 (para. 59)

Findings

- Violation of Articles 1, 6, 9 and 13

Recommendations

Recommendation to release all those who were detained for protesting against the annulment of the elections; and to preserve the traditional functions of the court by not curtailing their jurisdiction.

1999

105/93, 128/94, 130/94, 152/96

Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda, Constitutional Rights Project / Nigeria**RIGHT TO FREE EXPRESSION****I. REGULATION OF THE MEDIA AND JOURNALISM AS A PROFESSION****Facts**

Decreases requiring the registration of newspaper, and prohibiting many of them

Merits

- Registration fees should not be more than necessary to ensure administrative expenses of the registration
- Pre-registration fees should not exceed the amount necessary to secure against penalties or damages against the owner, printer or publisher of the newspaper.
- Excessively high fees are essentially a restriction on the publication of news agenda (para. 55)
- The total discretion and lack of appeal against decision of the registration board, giving government the power to prohibit publication of any newspapers or magazines, invites censorship and seriously endangers the rights of the public to receive information, protected by Article 9(1). Violation of Article 9 (1). (para.57)
- If national law contains all the

traditional provisions for libel suits, so that individuals may defend themselves where the need arises, and if opinions critical of the government do not represent a real danger to national security, for the Government to proscribe a particular application, by name, is disproportionate and uncalled for. Laws made to apply specifically to one individual or legal personality raise the serious danger of discrimination and lacks equal treatment before the law (Article 3). Violation of Article 9(2) (para. 71 and 75).

- People who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether (para. 74).

Findings

- Violation of Articles 6, 9(1), 9(2), 7(1) c,7(2), 14 and 16

Recommendations

- Recommendation to take the necessary steps to bring its law into conformity with ACHPR.

1999

212/98

Amnesty International / Zambia

RIGHT TO FREE EXPRESSION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE
AGAINST JOURNALISTS, POLITICIANS AND OTHER
HRDs**

**III. EMERGENCY, SECURITY AND COUNTER
TERRORISM LEGISLATION**

Facts

Deportation of politicians on the basis of a warrant alleging that by “[their] presence they [were] likely to be a danger to peace and good order in Zambia”.

Merits

• In the case the deportation was politically motivated, it constitutes a violation of Article 9(2) of ACHPR as the two victims were denied the right to freedom of conscience as stipulated in Article 8 of ACHPR.

Findings

• Violation Art.2, 7(1)a, 8, 9(2), 10, 18(1) et 18(2) of ACHPR

Recommendations

• No recommendation

RIGHT TO FREE ASSOCIATION

**II. HARASSMENT OF INDIVIDUALS FOR THEIR
POLITICAL ACTIVITIES**

Facts

Deportation of politicians on the basis of a warrant alleging that by “[their] presence [was] likely to be a danger to peace and good order in Zambia”.

Merits

The fact for the government of Zambia to deport two men denied them the exercise of their right to freedom of association as they could not associate with their colleagues in the United National Independence Party neither participate in their activities. Violation Article 10. (para. 57)

Findings

• Violation of Articles 2, 7(1)a, 8, 9(2), 10, 18(1) and 18(2) of ACHPR

Recommendations

• None

1999

Grand Bay Declaration and Plan of Action
(April 1999)

RIGHT TO FREE EXPRESSION AND ASSOCIATION

**I. 1ST RECOGNITION BY AFRICAN STATES OF UN
DECLARATION ON HRDs**

**II. RECOGNITION OF VALUE OF CIVIL SOCIETY AND MEDIA IN
PROMOTION AND PROTECTION OF HUMAN RIGHTS**

Issued by

1st OAU Ministerial Conference on Human Rights

Points raised

- Considers promotion and protection of human rights as priority for Africa.
- Emphasises respect for human rights is indispensable for peace and security and bedrock of development.
- Recognises contribution of African NGOs to promotion and protection of human rights.
- Recognises 'development and energisation' of civil society as building blocks of an environment conducive to human rights.

Recommendations

- Recognises importance of promoting African civil society and calls on governments to offer them constructive assistance.

- Calls on civil society to harmonise and cooperate with OAU.
- Notes adoption of the UN Declaration on HRDs by the UN Commission on Human Rights as a 'significant turning point' and calls on governments to implement the UN Declaration in Africa.
- Recognises media as a bridge between government and the people and urges governments to 'guarantee a free and independent press' to enable such to promote human rights.
- Appeals to Secretary General of OAU to provide assistance to media in Africa.

2000

140/94, 141/94, 145/95

**Constitutional Rights Project, CLO and
Media Rights Agenda / Nigeria**

RIGHT TO FREE EXPRESSION

**I. REGULATION OF THE MEDIA AND JOURNALISM AS A PROFESSION
III. EMERGENCY, SECURITY AND COUNTER TERRORISM, AD HOMINEM
LEGISLATION**

Facts

Military decree prohibiting newspapers

Merits

• The proscription of specific newspaper by name and the sealing off of their premises, without a hearing at which they could defend themselves, or any accusation of wrongdoing, legal or otherwise, amounts to harassment of the press. Such actions not only have the effect of hindering the directly affected persons in disseminating their opinions, but also pose an immediate risk that journalists and newspapers not yet affected by any of the decrees will subject themselves to self-censorship in order to be allowed to carry on their work. (para. 37). They also pose a serious threat to the public of the right to receive information that is not in accordance with what the government would like the public to know. Article 9 does not seem to permit derogation, no matter what the subject of the information or opinions and no matter the political situation of a country. Violation of Article 9(1)). (para. 38)

• With no concrete evidence that it was done for any reason given in Article 27(2), for the government to proscribe a particular publication, by name, is thus disproportionate and not necessarily. Laws made to apply specifically to one individual or legal personality raise the serious danger of discrimination and lack of equal treatment before the law; guaranteed by Article 3. The proscription of these publications cannot therefore be said to be “within the law”. Violation of Art.9(2) (para.44).

Findings

• Violation of Art.5, 6, 7(1)a, 9(1) et (2)

Recommendations

• Recommendation to take all the necessary steps to comply with its obligations under ACHPR.

2000

147/95, 149/96

Sir Dawda K. Jawara / The Gambia

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Facts

Allegation of arrests, detention, expulsions and intimidation of journalists.

Merits

• The intimidation and arrest or detention of journalists for articles published and questions asked deprives not only the journalists of their right to freely express and disseminate their opinions, but also the public of the right to information (para.65). Violation article 9.

Findings

• Violation Articles 1, 2, 6, 7(1)d, 9(1) and (2), 10(1), 11, 12(1) and (2), 13(1), 20(1) and 26.

Recommendations

• Recommends to bring its laws in conformity with the provisions of ACHPR.

RIGHT TO FREE ASSOCIATION

I. REGULATION OF ASSOCIATIONS ALSO INVOLVES RIGHT TO FREE ASSEMBLY AND MOVEMENT, AND TO PARTICIPATE IN GOVERNMENT

Facts

• Ban on political parties from taking part in any political activities and some of them restricted to travelling out of the country.
• Ban on former Ministers and members of parliament to participate freely in the government of their country.

Merits

• The banning of political parties constitutes a violation of the complainants right to freedom of association guaranteed under Article 10(1) of ACHPR (claw back clause test) (para.68).

Findings

• Violation of Articles 1, 2, 6, 7(1)(d), and 7(2), 9(1) and (2), 10 (1), 11, 12 (2) and (2), 13(1), 20(1), and (26)

Recommendations

• Recommends to bring its laws in conformity with ACHPR.

2000

147/95, 149/96

Sir Dawda K. Jawara / The Gambia

RIGHT TO FREE ASSEMBLY

II. REGULATION OF ASSEMBLY

Facts

- Ban on political parties from taking part in any political activities and some of them restricted to travelling out of the country.
- Ban on former ministers and members of parliament to participate freely in the government of their country.

Merits

- Ban on political parties from taking part in any political activities and some of them restricted to travelling out of the country constitutes an encroachment

on the right to freedom of assembly guaranteed by Article 11 of ACHPR. (para.69).

Findings

- Violation of Articles 1, 2, 6, 7(1)(d), and 7(2), 9(1) and (2), 10 (1), 11, 12 (2) and (2), 13(1), 20(1), and (26)

Recommendation

- Bring its laws in conformity with the provisions of ACHPR.

205/97

Kazeem Aminu / Nigeria

RIGHT TO FREE ASSOCIATION

II. HARASSMENT OF INDIVIDUALS FOR THEIR POLITICAL ACTIVITIES

Facts

Arbitrary arrest and detention of a citizen of Nigeria by the Nigerian security agents as a result of his political activities

Merits

The arbitrary arrest of a political activist as a result of his political belief that manifested itself in his involvement in the agitation for the validation of the annulled elections in Nigeria infringes his right to free association guaranteed under Article 10(1) of ACHPR. (para. 22-23)

Findings

- Violation of Articles 3(2), 4, 5, 6 and 10(1)

Recommendations

- Requests the government of Nigeria to take necessary measures to comply with its obligations under ACHPR.

2000

48/90, 50/91, 52/91, 89/93

**Amnesty Intl, Comité Loosli Bachelard, Lawyers
Committee for Human Rights, AMECEA / Sudan**

RIGHT TO FREE EXPRESSION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE
AGAINST JOURNALISTS, POLITICIANS AND OTHER
HRDs**

**III. EMERGENCY, SECURITY AND COUNTER
TERRORISM LEGISLATION**

Facts

• Arbitrary arrests and detentions and torture of members of opposition groups under a state of emergency. Limits to freedom of the press

Merits

• The restriction of human rights is not a solution to national difficulties: the legitimate exercise of human rights does not pose dangers to a democratic state governed by the rule of law(para.79).
• Any restrictions on rights should be the exception. A blanket restriction on the freedom of expression constitutes a violation of the spirit of Article 9 (2) (para.80).

Findings

• Violation of Articles 2, 4, 5, 6, 7(1)a, c, d, 8, 9, 10 and 26 of ACHPR.

Recommendations

• Recommends to put an end to these violations in order to abide by its obligations under ACHPR.

RIGHT TO FREE ASSOCIATION

I. REGULATION OF ASSOCIATIONS

Facts

• Arbitrary arrests and detentions and torture of members of opposition groups following the coup of July 1989. Limits to freedom of the press.

Merits

• The prohibition to effect without special permission, any assembly for a political purpose in a public or private place constitutes a general prohibition on the right to associate in all places, which is disproportionate to the measures required by the government to maintain public order, security and safety. Violation of Article 10(1) (para 82).

Findings

• Violation of Articles 2, 4, 5, 6, 7.1(a), (c), (d), 8, 9, 10 and 26

Recommendations

• Recommends to put an end to these violations.

2000

54/91, 61/91, 96/93, 98/93, 164/97 to 196/97, 210/98
**Malawi African Association, Amnesty International,
Ms. Sarr Diop, UIDH et RADDHO, Collectif des
veuves et des ayants droits, AMDH / Mauritania**

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

III. EMERGENCY, SECURITY AND COUNTER TERRORISM LEGISLATION

Facts

- Racial discrimination against Black Mauritanian Government employees suspected of belonging to the Black opposition.
- Massive expulsion, due to political activities; identity cards torn up by the authorities during the arrest or expulsion
- Persecution of villagers on racial grounds.

Merits

- A manifesto that provides statistics on racial discrimination and does not contain any incitement to violence is protected under international law (para. 102).

Findings

- Grave or massive violation of human rights; violation of Art. 6, 7(1)a,b,c and d, 9(2), 10(1), 11, 12(1), 14, 16(1), 18(1) and 26.

Recommendations

- Investigate on persons disappeared
- Take diligent measures to replace the national identity documents
- Ensure payment of a compensatory benefit to the widows and beneficiaries of the victims
- Reinstate the rights to due the unduly dismissed and/or forcibly retired workers
- Assess and investigate on degrading practices
- Ensure effective enforcement of the Ordinance on the abolition of slavery in Mauritania.

2000

54/91, 61/91, 96/93, 98/93, 164/97 to 196/97, 210/98
**Malawi African Association, Amnesty International,
Ms. Sarr Diop, UIDH et RADDHO, Collectif des
veuves et des ayants droits, AMDH / Mauritania**

RIGHT TO FREE ASSOCIATION

II. HARASSMENT OF INDIVIDUALS FOR THEIR POLITICAL ACTIVITIES

Facts

- Some presumed supporters of the Ba'ath Arab Socialist Party were imprisoned for belonging to a criminal association.
- Presumed members of the *Forces de Liberation des Mauritaniens* (FLAM) accused of writing or supporting the *Manifeste des negro-mauritaniens opprimés* (para.6) were charged for belonging to a secret movement.

Merits

- Any law on associations should include an objective description that makes it possible to determine the criminal nature of a fact or organisation.
- Violation of Article 10(2).(para. 107)

Findings

- Grave or massive violations of human rights; and in particular on articles 2, 4, 5, 6, 7(1)a, b, c, and d, 9(2), 10(1), 11, 12(1), 14, 16(1), 18(1) and 26.

Recommendations

- Investigate on persons disappeared.
- Take diligent measures to replace the national identity documents.
- Ensure payment of a compensatory benefit to the widows and beneficiaries of the victims.
- Reinstate the rights to due the unduly dismissed and/or forcibly retired workers.
- Assess and investigate on degrading practices.
- Ensure effective enforcement of the Ordinance on the abolition of slavery in Mauritania.

2000

54/91, 61/91, 96/93, 98/93, 164/97 to 196/97, 210/98
**Malawi African Association, Amnesty International,
Ms. Sarr Diop, UIDH et RADDHO, Collectif des
veuves et des ayants droits, AMDH / Mauritania**

RIGHT TO FREE ASSEMBLY

I. RESTRICTIONS UNDER NATIONAL SECURITY OR EMERGENCY REGULATION

Facts

Persons charged with holding unauthorised meetings and pasting and distributing publications that were injurious to the national interest, and of engaging on racial and ethnic propaganda.

Merits

• In absence of element to show that the holding of unauthorised meetings constituted a threat to national security, the safety, health, ethics and rights and freedom of others, the conviction and imprisonment of the 11 persons for a political cause constituted a violation of Article 11 in the cases in question in para. 3 and 11 and 111).

Findings

• Grave or massive violations of human rights as proclaimed in ACHPR; and in particular on articles 2, 4, 5, 6, 7(1)a, b, c, and d, 9(2), 10(1), 11, 12(1), 14, 16(1), 18(1) and 26.

Recommendations

- Investigate on persons disappeared.
- Take diligent measures to replace the national identity documents.
- Ensure payment of a compensatory benefit to the widows and beneficiaries of the victims.
- Reinstate the rights to due the unduly dismissed and/or forcibly retired workers
- Assess and investigate on degrading practices.
- Ensure effective enforcement of the Ordinance on the abolition of slavery in Mauritania.

2001

224/98

Media Rights Agenda / Nigeria

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST

JOURNALISTS, POLITICIANS AND OTHER HRDs

Facts

- Arrest of journalists by armed soldiers at the editorial office.

Merits

- Arrest, trial and conviction by a Special Military Tribunal of a journalist only motivated by his publications constitutes a violation of Article 9 of ACHPR (para. 69).

Findings

- Violation Art.3(2), 5, 6, 7(1)a, b, c, d, 9 and 26.

Recommendations

- Recommends to bring its laws in conformity with the provisions of ACHPR.

225/98

Huri-Laws / Nigeria

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Facts

Harassment and persecutions of the Civil Liberties Organisation by the government security agency.

Merits

- The persecution of the members of an NGO dedicated to the respect of human rights in an attempt to undermine its ability to function in this regard, amount to an infringement of Articles 9 and 10 of ACHPR providing for the rights to freedom of expression and association respectively (para.47).

Findings

- Violation Articles 5, 6, 7(1)(a) and (d), 9, 10(1) and 12(1) and (2) and 14.

Recommendations

- No recommendation

RIGHT TO FREE ASSOCIATION

II. HARASSMENT OF INDIVIDUALS FOR THEIR POLITICAL ACTIVITIES

Facts

- Harassment and persecutions of the Civil Liberties Organisation.

Merits

- The persecution of the employees of a human rights organisation and raids of its offices constitutes an attempt to undermine its ability to function and enlighten the people of their rights. Violation Article 10 (para.47-49).

Findings

- Violation of Articles 5, 6, 7(1)a, and d, 9, 10(1), 12(1) and (2) and 14 of ACHPR.

Recommendations

- None

2001

232/99

John D. Ouko/Kenya

RIGHT TO FREE EXPRESSION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE
AGAINST JOURNALISTS, POLITICIANS AND OTHER
HRDs**

Facts

The complainant was forced to flee the country due to his political opinions, following arbitrary detention

Merits

- The fact for the government to disregard the procedure of the law of defamation and to arrest and detain the complainant without trial and to subject him to a series of inhuman and degrading treatments constitutes a violation of Article 9 of ACHPR (para.28)

Findings

- Violation Art. 5, 6, 9, 10 et 12(1) and (2) of ACHPR.

Recommendations

- Recommends to facilitate the safe return of the Complainant to Kenya, if he so wishes.

RIGHT TO FREE ASSOCIATION

**II. HARASSMENT OF INDIVIDUALS FOR THEIR
POLITICAL ACTIVITIES**

Facts

A students' union leader was forced to flee the country because of his political opinions and student union activities, following arbitrary detention.

Merits

- The "political persecution" of the complainant "has greatly jeopardised his chances of enjoying his right to freedom of association guaranteed under Article 10 of ACHPR". Violation of Article 10 (para.29-31)

Findings

- Violation of Art. 5, 6, 9, 10 and 12(1) and (2)

Recommendations

- Urges the state to facilitate the safe return of the Complainant to Kenya, if he so wishes.

2003

Appointment of ACmHPR Focal Point on Human Rights Defenders

228/99

Law Office of Ghazi Suleiman/Sudan

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Facts

The victim, Mr Ghazi Suleiman, was prohibited from travelling to Sinnar by some security officials who threatened that if he made the trip, he would be arrested.

Merits

- Because the exercise of the right to freedom of expression was directed towards the promotion and protection of human rights “it is of special value to society and deserving of special protection” (UN Declaration on HRDs, Article 6)(para.52).
- In keeping with its important role of promoting democracy in the continent, ACmHPR should also find that a speech that contributes to political debate must be protected (para 53). Violation of Article 9.
- The action and the promotion of human rights are among the most important exercises of human rights and as such should be given substantial protection and that do not allow the state to suspend these rights for frivolous reasons and in a manner that is thus

disproportionate to the interference with the exercise of these fundamental human rights (para.62).

- The disproportionate actions of the government of Sudan against Mr GS is evidenced by the fact that the government has not offered Mr Ghazi Suleiman an alternative means of expressing his support for human rights in each instance. Instead the Respondent State has either prohibited Mr Suleiman from exercising his human rights by issuing threats, or punished him after summary trial, without considering the value of his actions for the protection and promotion of human rights. (para. 63).

Findings

- Violation of Article 6, 9, 10, 11 and 12 of ACHPR

Recommendations

- Recommends amending its existing laws to provide for *de jure* protection of the human rights to freedom of expression, assembly, association and movement.

2003

228/99

Law Office of Ghazi Suleiman/Sudan

RIGHT TO FREE ASSOCIATION

**II. HARASSMENT OF INDIVIDUALS FOR THEIR
POLITICAL ACTIVITIES**

Facts

The alleged victim, Mr Ghazi Suleiman, was prohibited from travelling to Sinnar by some security officials who threatened that if he made the trip, he would be arrested.

Merits

- Preventing a human rights activist from gathering with others to discuss human rights and by punishing him for doing some violates his human rights to freedom of association and assembly which are protected by article 10 and 11 of ACHPR (para.56).

Findings

- Violation of articles 6, 9, 10, 11 and 12 of ACHPR

Recommendations

- Amendment of existing laws to provide for *de jure* protection of the human rights to freedom of expression, assembly, association and movement.

RIGHT TO FREE ASSEMBLY

**III. HARASSMENT OF INDIVIDUALS FOR THEIR
POLITICAL ACTIVITIES**

Facts

The alleged victim, Mr Ghazi Suleiman, was prohibited from traveling to Sinnar by some security officials who threatened that if he made the trip, he would be arrested.

Merits

- Preventing a human rights activist from gathering with others to discuss human rights and by punishing him for doing some violates his human rights to freedom of association and assembly which are protected by Article 10 and 11 of ACHPR (para.56).

Findings

- Violation Articles 6, 9, 10, 11 and 12 of the ACHPR

Recommendations

- Recommendation to amend its existing laws to provide for *de jure* protection of the human rights to freedom of expression, assembly, association and movement.

2004

250/02

Liezbeth Zegveld and Mussie Ephrem / Eritrea

RIGHT TO FREE EXPRESSION**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST
JOURNALISTS, POLITICIANS AND OTHER HRDs****Facts**

Illegal arrest of 11 Eritrean government officials part of the group Peoples' Front for Democracy and Justice (PFDJ). They were charged with the sentence for "crimes against the nation's security and sovereignty" after expressing opinion that were critical of the Eritrean Government policies.

Merits

- Any laws restricting freedom of expression must conform to international human rights norms¹ and not jeopardise the right itself.
- ACHPR does not permit any derogation from its right on the basis of emergencies or special circumstances (para.60).
- If any person expresses or disseminates opinions that are contrary to laws that meet the aforementioned criteria, there

should be due process and all affected persons should be allowed to seek redress in a court of law². Violation of Article 9 (2). (para.61).

Findings

- Violation of Art 2, 6, 7(1) and 9(2)

Recommendations

- Urges the state to order the immediate release of the 11 detainees
- Recommends the state compensate the above-mentioned persons.

¹ 140/94, 141/94, 145/95 Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda/Nigeria.

² 232/99 John Ouko/Kenya.

2004

242/01

Interights, IHRDA, and AMDH / Mauritania

RIGHT TO FREE ASSOCIATION

I. REGULATION OF ASSOCIATIONS

Facts

Dissolution by decree of the main opposition party by the Prime Minister of Mauritania.

Arrest of some members of the party.

Merits

- Authorities has many other sanctions at their disposal to reign in supposed errant behaviour by political party.
- State could have used a large number of measures, as this was a first complaint against the political party, as a way to contain this “grave threat to public order” (para.82).
- The disputed dissolution measures

was “not strictly proportional” to the nature of the breaches and offences committed by the UFD/EN. (violation Article 10(1))(para. 85)

Findings

- Violation of Article 10 (1)

Recommendations

- No recommendation

Resolution on the Protection of Human Rights Defenders in Africa (June 2004)

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

African Commission

Points raised

- Recognises ‘crucial contribution’ of HRDs to promotion of human rights in Africa.
- Expresses Commission’s concern for the persistence of violations and threats against HRDs and their families
- Recognises the UN Declaration on HRDs.

• Recognises the call of the Grand Bay Declaration to state parties to implement the UN Declaration.

• Notes the Kigali Declaration’s recognition of the ‘important role’ of HRDs.

Resolves

• Convert Focal Point on HRDs into Special Rapporteur on HRDs in Africa and appoints Commissioner Jainaba Johm to post.

2005

251/02

Lawyers for Human Rights / Swaziland**RIGHT TO FREE ASSOCIATION****I. REGULATION OF ASSOCIATIONS****Facts**

King's Proclamation to the Nation n.12 of 1973 gives supreme power in the Kingdom to the King and outlaws political parties.

Merits

- A proclamation abolishing and prohibiting the existence and the formation of political parties or organisations of a similar nature constitutes a violation of Article 10 of ACHPR. (para. 34-35)

Findings

- Violation of Articles 1, 7, 10, 11, 13 and 26 of ACHPR

Recommendations

- Recommends that the Proclamation and the decree be brought in conformity with the provisions of ACHPR;
- That the State engages with other stakeholders including members of civil society in the conception and drafting of the New Constitution;
- Swaziland should inform ACmHPR in writing within six months on the measures it has taken to implement the above recommendations.

RIGHT TO FREE ASSEMBLY**II. REGULATION OF ASSEMBLY****Facts**

King's Proclamation gives supreme power in the Kingdom to the King and outlaws political parties.

Merits

- The right to associate cannot be divorced from the right to assemble freely and peacefully. The ban of political parties prohibits the two rights (para.35).

Findings

- Violation of Articles 1, 7, 10, 11, 13 and 26 of ACHPR.

Recommendations

- That the Proclamation and the Decree be brought in conformity with the provisions of the ACHPR;
- That the state engages with other stakeholders including members of civil society in the conception and drafting of the New Constitution;
- Swaziland should inform ACmHPR in writing within six months on the measures it has taken to implement the above recommendations.

2007

Press release on the situation in Guinea

(January 2007)

RIGHT TO FREE EXPRESSION / ASSEMBLY / ASSOCIATION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS,
POLITICIANS AND OTHER HRDs**

Issued by

ACmHPR SR HRDs

Points raised

- Concerned at ongoing harassment of HRDs involved in trade union activities
- Concerned at violent suppression of peaceful demonstration in Conakry on 17 Jan 2007
- Demonstration organised in support of general strike called by trade unions in response to inflation, bad governance, corruption, impunity
- Extremely concerned at violent nature of crowd dispersal including live ammunition that led to at least 100 deaths and many more injured.
- Several radio stations have been closed like Radio Liberté and Radio Familia.
- Concerned at harassment of trade unionists Dr Ibrahima Fofana, Secretary General of *Union syndicale de travailleurs de Guinée* (USTG), Hadja Rabiataou Diallo, Secretary General of *Confédération nationale des travailleurs*

guinéens (CNTG), Yamadou Touré, Secretary General of *Organisation des syndicats libres de Guinée* (ONSLG) and Abdoulaye Baldé, Secretary General of *Union démocratique de travailleurs de Guinée*.

- Offices of above trade unions ransacked by Presidential Guard officers (Red Berets) and over 20 unionists beaten with rifle butts, arrested and detained overnight.
- Some unionists also received death threats in June 2006.
- Concerned such ill treatment is related to their legitimate HRD work.

Appeal

- Guinean authorities to ensure HRDs can carry out their work without fear of reprisals.
- Reminds Guinea of its human rights obligations.
- Special reference to UN HRD Declaration Arts 1, 12.2; ACHPR; Grand Bay and Kigali Declarations; other international human rights instruments.

2007

**Appeal: African Commission's Concern
about the Situation in Guinea** (February 2007)

**RIGHT TO FREE EXPRESSION / ASSOCIATION/
ASSEMBLY**

**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST
JOURNALISTS, POLITICIANS AND OTHER HRDs**

Issued by

African Commission

Appeal Addressed to

President of Guinea

AU Chairperson

ECOWAS Chairperson

Facts

- Brutal police repression
- Violent suppression of mass demonstrations.
- Mass arrests of opposition activists and trade unionists.
- Imposition of martial law restricting right to information and expression, assembly and movement.

- ACmHPR 'deplores' in particular violation of rights to life, and physical integrity, liberty and security of the person.

Appeal

- There are no derogation from ACHPR rights. Rights must be observed even in emergency situations.
- Only dialogue can solve the crisis and invites government to dialogue with opposition and unions.
- Commission calls on ECOWAS to facilitate this dialogue.

2007

**Press release on the detention of Benjamin
Luanda Mitsindo (March 2007)**

RIGHT TO FREE ASSOCIATION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS,
POLITICIANS AND OTHER HRDs**

Issued by

ACmHPR SR HRDs

Points raised

- Profoundly concerned at 50-day detention of B L Mitsindo, lawyer and president of Goma-based NGO *Action pour in Congo pacifique et développé* (ACPD).
- Concerned that harassment is related to his peaceful HRD work.

Facts

- Mitsindo arrested on 18 Jan 2007 without warrant under orders of Gen. John Numbi, DRC Air Force Commander and detained at *Direction de renseignements et de sécurité* in Goma's 8th military region.
- Mitsindo was later detained in private residence of Col. Diur, an unofficial detention centre where he may have been tortured.

- Mitsindo transferred to military intelligence headquarters on 6th March 2007.
- Mitsindo is believed to be suffering from malaria and is denied access to counsel, family and medical care.

Appeal

- Immediate release of Mitsindo
- DRC authorities to guarantee physical and psychological integrity of all HRDs.
- Open independent inquiry into circumstances of arrest of Mitsindo, especially allegations of torture.
- Reminds DRC of its human rights obligations.
- Special reference to ACHPR Arts 1,4, 9; UN HRD Declaration Arts 1, 12.2; Grand Bay and Kigali Declarations; ICCPR and Convention against Torture.

2007

Press release on alleged persecution of human rights defenders in Zimbabwe (March 2007)

RIGHT TO FREE ASSOCIATION / ASSEMBLY

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR SR HRDs

Points raised

- SR concerned at persecution of HRDs during peaceful demonstrations on 11 March 2007
- SR particularly concerned by the killing of Gift Tandare, the youth chair of the National Constitutional Assembly on 11 March 2007 and arrest and detention of 10 student leaders and 2 members of Crisis in Zimbabwe Coalition
- On 11 March 2007 over 70 people were detained including Mike Davies, Madock Chivasa, Lovemore Madhuku and Gladys Hlatsayo which involved police brutality, ill treatment and torture
- On 13 March 2007 Promise Mkwanzani, president of Zimbabwe National Students' Union (ZINASU), Washington Katema, ZINASU coordinator and ZINASU members Zwelithini Viki, Kudakwashe Mapunda, Tellington Kwashira were arrested with Emily Nkhungwa and Roderick

Chirowodza of Crisis in Zimbabwe Coalition and 5 members of Student Christian Movement of Zimbabwe.

- SR concerned police are using Public Order and Security Act to arrest and persecute HRDs and prevent their legitimate work.

Appeal

- Urges Zimbabwe authorities to his physical and psychological integrity of all HRDs and allow their work
- Urges Zimbabwe to order immediate, impartial investigation into Tandare's killing and alleged police brutality and torture, public results and bring authors to justice
- Reminds Zimbabwe of its human rights obligations
- Special reference to ACHPR Arts; UN HRD Declaration Arts; Grand Bay and Kigali Declarations; other international human rights instruments.

2007

**Press release on the harassment of
Jean-Paul Noël Abdi (March 2007)**

RIGHT TO FREE ASSOCIATION

II. HARASSMENT, INTIMIDATION AND VIOLENCE

AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR SR HRDs

Points raised

- Concerned at ongoing harassment of JP Noel Abdi, president of *Ligue djiboutienne des droits humains*
- Abdi arrested on 9 March 2007
- Abdi's passport confiscated after release by First instance court on 15 March 2007, under orders of Lt. Col. Omar H. Hassan at his home
- This prevented him from travelling to Burkina Faso to attend human rights meeting by *Union interafricaine des droits humains*
- Concern that harassment relates to his HRD work, particularly the discovery of a mass grave in Day Village, Tadjourah district who may have been killed by government forces on 1st January 1994

Appeal

- Urges Djibouti authorities to give back Abdi's passport and guarantee his physical and psychological integrity as well as all other HRDs
- Urges guarantee of fair trial for Abdi under ACHPR Art 7
- Reminds Djibouti of its human rights obligations
- Special reference to UN HRD Declaration Arts 1, 12.3; Grand Bay and Kigali Declarations; ICCPR and Convention against Torture.

2007

**Press release on the situation
in the Côte d'Ivoire (June 2007)**

RIGHT TO FREE ASSOCIATION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST
JOURNALISTS, POLITICIANS AND OTHER HRDs**

Issued by

ACmHPR SR HRDs

Points raised

- Concerned at acts of violence against HRDs in Cote d'Ivoire.
- Particular concern for *Ligue ivoirienne des droits de l'Homme* (LIDHO) and *Action pour la protection des droits de l'Homme* (APDH) after attack on 21 May 2007 by members of *Fédération estudiantine et scolaire de Cote d'Ivoire* (FESCI).
- Offices ransacked, office equipment and personal belongings of employees seized. Buildings were also damaged.
- Attacks believed to be reprisals for use of those offices by *Coordination*

nationale des enseignants et chercheurs (CNEC) to coordinate ongoing teachers' strike.

- Police are reported to have done nothing to stop the attack or arrest those responsible.

Appeal

- Urges Ivorian authorities to guarantee freedom of HRDs to do their work and their physical and psychological integrity
- Reminds Cote d'Ivoire of its human rights obligations.
- Special reference to UN HRD Declaration Arts 1, 12.2; ACHPR; Grand Bay and Kigali Declarations; other international human rights instruments.

**Press release on the assassination of the journalist
and human rights defender Serge Maheshe (June 2007)**

RIGHT TO FREE EXPRESSION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST
JOURNALISTS, POLITICIANS AND OTHER HRDs**

Issued by

ACmHPR SR HRDs

Points raised

- Regrets assassination of Serge Maheshe, journalist and HRD on 13 June 2007
- Concerned for security of HRDs, particularly in Kivu
- Maheshe assassination comes 2 years after that of Kabungulu Limbembu
- Investigates of which have been slow, Secretary General of "Heirs of Justice"

Appeal

- DRC authorities to guarantee freedom of HRDs to carry out their work and ensure their physical and psychological integrity
- Reminds DRC of its human rights obligations: special reference to ACHPR Arts 1,4, 9; UN HRD Declaration Arts 1, 12.2; Grand Bay and Kigali Declarations.

2007

Press release on the situation in Zimbabwe

(June 2007)

RIGHT TO FREE EXPRESSION / ASSOCIATION / ASSEMBLY

- I. REGULATION OF THE MEDIA AND JOURNALISM AS A PROFESSION, ASSOCIATIONS**
II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR SR HRDs

Points raised

- Concern at alleged violence and harassment of HRDs in Zimbabwe from Women of Zimbabwe Arise (WOZA) including Jenni Williams and Magodonga Mahlangu, both WOZA leaders.
- 200 WOZA members marched silently through Bulawayo on 6 June 2007.
- March was violently dispersed by police. 5 WOZA members, Rosemary Sibiza, Angeline Karuru, Martha Ncube, Sangeliso Dhlamini and Pretty Moyo, badly beaten, arrested and detained at Bulawayo Central Police Station.
- Williams and Mahlangu subsequently led other WOZA members to station to offer themselves for arrest where more beating occurred.
- On 8 June 2007 Sibiza, Karuru, Ncube, Dhlamini and Moyo were charged under Sec 46 of the Criminal Law (Codification and Reform) but later released without being arraigned before a magistrate.
- On 9 June 2007, Williams and Mahlangu arraigned before a magistrate

charged with “participating in gathering with intent to promote public violence, breaches of peace and bigotry” and were released on \$100,000 bail.

- Kossam Ncube, Zimbabwe Lawyers for Human Rights (ZLHR) member and counsel for WOZA members was physically and verbally abused at police station and denied access to his clients on 6 and 7 June 2007.
- SR HRDs seriously concerned that this harassment aimed at preventing the HRDs from carrying out their legitimate work.

Appeal

- Urges Zimbabwe authorities to guarantee freedom of HRDs to do their work and their physical and psychological integrity.
- Reminds Zimbabwe of its human rights obligations.
- Special reference to UN HRD Declaration Arts 1, 12.2; ACHPR Arts 1, 2, 5, 6, 7, 10.1, 11; Grand Bay and Kigali Declarations; other international human rights instruments.

2007

Press release to welcome the event in Somalia (June 2007)

RIGHT TO FREE EXPRESSION

I. REGULATION OF THE MEDIA AND JOURNALISM AS A PROFESSION

III. EMERGENCY, SECURITY AND COUNTER TERRORISM LEGISLATION

Issued by

ACmHPR SR HRDs

ACmHPR SR Freedom of Expression and Access to Information

Points raised

- Special Rapporteurs welcome decision of Transitional Federal Government (TFG) to lift ban on 3 Mogadishu radio stations.
- On 6 June 2007, Information Minister Madobe Nunow Mohammed ordered closure of Shebelle Media Network, Radio Voice of Holy Quran and Horn Afrik Radio for “creating insecurity, supporting terrorism, violating freedom of expression, misleading the public and becoming anti-government”.
- After appeals and pressure from National Union of Somali Journalists, National Media Council and others, Minister lifted ban on 10 June 2007.

Appeal

- Urge TFG to desist from acts intended to compromise legitimate work of media and HRDs.
- Reminds Somalia of its human rights obligations.
- Special reference to UN HRD Declaration; ACHPR; Grand Bay and Kigali Declarations; other international human rights instruments.
- Reminds Cameroon of its human rights obligations.
- Special reference to UN HRD Declaration Arts 1, 12.2 ; ACHPR Arts 1, 2, 5, 6, 7, 10.1, 11; Grand Bay and Kigali Declarations; other international human rights instruments.

2007

**Press release on assassination of HRD
Floribert Bwana Chuy Bin Kositi (June 2007)**

RIGHT TO FREE ASSOCIATION

**II. HARASSMENT, INTIMIDATION, ARBITRARY ARREST AND VIOLENCE
AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs**

Issued by

ACmHPR SR HRDs

Points raised

- SR regrets assassination of Bin Kositi, provincial secretary of Congolese union for democracy (RCD-Goma) who was found dead on 9 July 2007.
- SR profoundly concerned for safety of HRDs in DRC, especially in Kivu as Bin Kositi's assassination comes a month after that of Serge Maheshe of Radio Okapi on June 13 2007.
- Concerned at new and serious wave of grave violations against HRDs.

Appeal

- Urges DRC to guarantee freedom of HRDs to do their work and ensure their physical and psychological integrity.
- Reminds DRC of its human rights obligations.
- Special reference to ACHPR Arts 1,4, 9; UN HRD Declaration Arts 1, 12.2; Grand Bay and Kigali Declarations.

**Press release on enforced disappearance
of HRDs in DRC (June 2007)**

RIGHT TO FREE ASSOCIATION

**II. HARASSMENT, INTIMIDATION, ARBITRARY ARREST AND
VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs**

Issued by

ACmHPR SR HRDs

Points raised

- SR notes concern at trend of violence against HRDs in DRC
- SR particularly concerned at enforced disappearances of HRDs in Kivu, including harassment, arrest, torture and assassination

Appeal

- Urges DRC to guarantee freedom of HRDs to do their work and ensure their physical and psychological integrity.
- Reminds DRC of its human rights obligations.
- Special reference to ACHPR Arts 1,4, 9; UN HRD Declaration Arts 1, 12.2; Grand Bay and Kigali Declarations.

2008

**Statement on the Violence
in Kenya** (January 2008)

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE

AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

Chair of the ACmHPR

Appeal addressed to

President of Kenya

Chairperson of AU

Opposition leader / presidential
candidate, Raila Odinga

Facts

- ACmHPR 'very concerned' at the outbreak of violence in Kenya leading loss of life and property and mass population displacement.
- Situation has 'deleterious effect' on the human rights situation in Kenya.
- ACmHPR particularly concerned about allegations of rape.

Appeal

- Urges government to work with human rights defenders to protect those at risk.
- Urges government to allow media to do its work.
- Urges government and international community to assist those in need.
- Reminds government that under ACHPR it is ultimately responsible for protecting and promoting human rights. in its territory.

**Press release on situation
on Cameroon** (January 2008)

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION, ARBITRARY ARREST AND

VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR SR HRDs

Points raised

- On 25 February 2008, riots broke out after president announced intention to amend constitution to run for another term
- Riots caused many injuries and many were arrested. Numerous citations and quick trials occurring across Cameroon which may violate fair trial guarantees.

- Trials of onlookers are handled with groups of up to 6 tried simultaneously and hearing not lasting more than 5 minutes each and little presentation of concrete evidence or testimony.
- Media like Magic FM that broadcast debate on 27 February on that was critical of president, had their offices attacked.

- Journalists like Jean Blaise Mvié of “The New Press” was arrested and later released
- SR particularly concerned for Madeleine Afité of *Maison des droits de l’Homme du Cameroun* (MDHC) has received death threats, her car was ransacked on the night of 5-6 March after having denounced human rights violations in local and international media.
- SR concerned at disproportionate use of force and arbitrary arrests.

Appeal

- Calls on Cameroon to guarantee the physical integrity and right to life of HRDs
- End disproportionate use of force, cease massive arrests and ensure fair trials for those arrested
- Guarantee free expression, free press, free movement of journalists and all HRDs
- Bring to justice those responsible for summary and extra-judicial killings.

2008

Press Release at Conclusion of Promotional Mission to Malawi (April 2008)

RIGHT TO FREE EXPRESSION / ASSOCIATION

Issued by

Commissioner responsible for promotional activities in Malawi

Information Concerning HRDs

- Met with human rights defender organisations and other civil society players under Council of Non-Governmental Organisations of Malawi (CONGOMA) whose expressed ‘eye-opening’ concerns and experiences on certain human rights issues.
- Met media institutions under the National Media Institute of Southern Africa (NAMISA) and discussed freedom of expression and information in Malawi
- Discussed police relations with the media with Commissioner of Police Lot Dondzi.

Preliminary Recommendations

- Welcomes efforts towards protection of human rights such as a ‘free and vibrant press’
- Encourages civil society in Malawi to take interest in African Commission activities and what role they can play in it.
- Encourage Malawian NGOs to apply for observer status with the ACmHPR.

2009

284/03

**Zimbabwe Lawyers for Human Rights &
Associated Newspapers of Zimbabwe / Zimbabwe**

RIGHT TO FREE EXPRESSION

I. REGULATION OF THE MEDIA AND JOURNALISM AS A PROFESSION

Facts

- Media law not in conformity with the Constitution
- Newspaper closed for absence of registration. Seizures and arrest of the ANZ officials.

Merits

- The action of the respondent state to stop the complainants from publishing their newspapers, close their business premises and seize their equipment resulted in them and their employees

not being able to express themselves through their regular medium; and to disseminate information. Violation Article 9(2) (para. 179).

Findings

- Violation of Art 9(2), 14 and 15

Recommendations

- Adequate compensation to the complainants.

294/04

**Zimbabwe Lawyers for Human Rights and IHRDA
(on behalf of Andrew Barclay Meldrum)/ Zimbabwe**

RIGHT TO FREE EXPRESSION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS,
POLITICIANS AND OTHER HRDs**

IV. LIBEL AND DEFAMATION CHARGES

Facts

Journalist charged with publishing falsehood, was served with a deportation order.

Merits

- The deportation decided by the Respondent State in order to silence the author of an article constitutes a violation of Article 9 (para.112).

Findings

- Violation of Articles 1, 2, 3, 7, al.1a and b, 9, 12, al.4, et 26.

Recommendations

- Take urgent steps to ensure that court decisions are respected and implemented.
- Rescind the deportation order, the *status quo ante* to be restored.
- Supreme Court should finalise the determination of the application on the denial of accreditation.
- Accreditation to resume the right to practice journalism.
- Report to the African Commission within six months on the implementation of these recommendations.

2009

297/05

Scanlen & Holderness/ Zimbabwe

RIGHT TO FREE EXPRESSION

I. REGULATION OF THE MEDIA AND JOURNALISM AS A PROFESSION

Facts

- Compulsory accreditation of journalists
- Challenge on independence and validity of the accrediting agency.

Merits

- Registration procedures are not in themselves a violation of the right to freedom of expression, provided they are purely technical and administrative in nature and do not involve prohibitive fees, or do not impose onerous conditions (para. 90).
- The regulation of the media should be a matter for self-regulation by journalists themselves through their professional organisations, or associations (para. 90).
- The compulsory accreditation of journalists by a regulatory body whose regulations are drawn up by government cannot claim to be self-regulatory and constitutes a hindrance to the effective enjoyment of the right to freedom of expression (para. 90-92).
- The aims of registration should be for purposes of betterment of the profession rather than its control, since control by its nature infringes the right to express oneself (para. 97).

- The concept of public order in a democratic society demands the greatest amount of information and is perfectly conceivable without the necessity of restricting the practice of journalism. It is the widest possible circulation of news, ideas and opinions as well as the widest access to information by society as a whole that ensures this public order (grounds of public order rejected in the case) (para.109-110).

Findings

- Violation Article 9

Recommendations

- Recommends to repeal Sections 79 and 80 of the Access to Information and Protection of Privacy Act (AIPPA).
- Discriminalise offences relating to accreditation and the practice of journalism.
- Bring AIPPA in line with Article 9 of the African Charter and other principles and international human rights law instruments; and
- Report on implementation of the recommendations within six months of notification thereof.

2009

266/03

Kevin Mgwanga Gunme et al / Cameroon**RIGHT TO FREE ASSOCIATION AND ASSEMBLY,****PARTICIPATION IN GOVERNMENT****II. HARASSMENT OF INDIVIDUALS FOR THEIR POLITICAL****ACTIVITIES****Facts**

Annexation of Southern Cameroon; abolition of federal system of government.

Merits

- No violation

Findings

- No violation Articles 12, 13, 17(1), 20, 21, 22, 23(1) and 24
- Violation of Articles 1, 2, 4, 5, 6, 7(1), 10, 11, 19 and 26

Recommendations

- State enters into constructive dialogue with the Complainants, and in particular, Southern Cameroons National Council (SCNC) and Southern Cameroons Peoples' Organisation (SCAPO) to resolve the constitutional issues, as well as grievances which could threaten national unity; and
- State reforms the Higher Judicial

Council, by ensuring that it is composed of personalities other than the president of the Republic, the Minister for Justice and other members of the Executive branch.

- To the complainants, and SCNC and SCAPO in particular,
 - (i) to transform into political parties
 - (ii) to abandon secessionism and engage in constructive dialogue with the Respondent State on the Constitutional issues and grievances.

- ACmHPR requests the parties to report on the implementation of the aforesaid recommendations within 180 days of the adoption of this decision by the AU Assembly.

2009

266/03

Kevin Mgwanga Gunme et al / Cameroon

RIGHT TO FREE ASSOCIATION / ASSEMBLY

**III. HARASSMENT OF INDIVIDUALS FOR THEIR POLITICAL
ACTIVITIES**

Facts

- Annexation of Southern Cameroon; abolition of federal system of government.
- Arrest and detention of victims for exercising their right to freedom of assembly.

Merits

- ACmHPR does not condone unlawful acts by individuals or organisations to advance political objectives, because such actions or their consequences are likely to violate the ACHPR. It encourages individuals and organisations, when exercising their right to freedom of assembly, to operate within the national legal framework.
- Requirement does not absolve States parties from their duty to guarantee the rights to freedom of assembly, while maintaining law and order.
- Resorting to excessive force to enforce law and order, and to kill people for so doing, violates Article 11 (para. 138).

Findings

- No violation of Articles 12, 13, 17(1), 20, 21, 22, 23(1) and 24
- Violation of Articles 1, 2, 4, 5, 6, 7(1), 10, 11, 19 and 26

Recommendations

- Abolish all discriminatory practices against people of Northwest and Southwest Cameroon, including equal usage of the English language in business transactions.
- Stop the transfer of accused persons from the Anglophone provinces for trial

in the Francophone provinces.

- Ensure that every person facing criminal charges be tried under the language he/she understands. In the alternative, the Respondent State must ensure that interpreters are employed in courts to avoid jeopardising the rights of accused persons;
- Locate national projects, equitably throughout the country, including Northwest and Southwest Cameroon, in accordance with economic viability as well as regional balance;
- Pay compensation to companies in Northwest and Southwest Cameroon, which suffered as a result of discriminatory treatment by banks;
- Enter into constructive dialogue with the Complainants, and in particular, SCNC and SCAPO to resolve the constitutional issues, as well as grievances which could threaten national unity; and
- Reform the Higher Judicial Council, by ensuring that it is composed of personalities other than the president of the Republic, the Minister of Justice and other Members of the Executive Branch.
- Parties to report on the implementation of the recommendations within 180 days of adoption of decision by AU Assembly.

2009

Press Release Welcoming Interim Amendments to the Kenya Communications (Amendment) Act 2009 (2009)

RIGHT TO FREE EXPRESSION

I. REGULATION OF THE MEDIA AND JOURNALISM AS A PROFESSION

III. EMERGENCY, SECURITY AND COUNTER-TERRORISM LEGISLATION

Issued by

Special Rapporteur on Freedom of Expression and Access to Information in Africa

Facts

- Statute (Miscellaneous Amendments) Bill introduced in Parliament to amend provisions of Kenya Communications (Amendment) Act 2009.
- Amendment provides for establishment of a Broadcast Content Advisory Council to manage broadcast content as opposed to the current vesting of those powers in the Minister for Information and Telecommunications.

- Amendment removes current powers of Minister for Internal Security to seize broadcast equipment and close station, intercept telecommunications and postal articles.

Appeal

- Lauds renewed dialogue between government and media leading to these amendments.
- Urges government to ensure speedy passing of these amendments.
- Urges speedy start to comprehensive review of Kenyan media laws in an inclusive process to bring these in conformity with its international obligations.

Press Release on Decision to Suspend 13 International Humanitarian Organisations and Closure of 3 NGOs in Sudan (April 2009)

RIGHT TO FREE ASSOCIATION

II. HARASSMENT OF INDIVIDUALS FOR THEIR POLITICAL ACTIVITIES

Issued by

Special Rapporteur on HRDs

Facts

- 13 international human rights organisations suspended by Sudanese government.
- 3 human rights NGOs also banned:
 - Khartoum Centre for Human Rights and Environmental Development;
 - Amal Center for Treatment of and Rehabilitation of Victims of Torture;
 - Sudan Development Organisation
- HRDs in Sudan 'continuous harassed' by security forces.

- Such actions are a violation of international human rights and humanitarian law and an 'abrogation by Sudan' of its international obligations.

Appeal

- Put an end to threats and harassment of HRDs in Sudan.
- Allow all human rights and humanitarian organisations to operate freely.
- Allow all those expelled to return.

2009

**Press Release on the Proposed Decriminalisation
of Media Offences in Senegal (June 2009)**

RIGHT TO FREE EXPRESSION

**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS,
POLITICIANS AND OTHER HRDs**

IV. LIBEL AND DEFAMATION CHARGES

Issued by

Special Rapporteur on Freedom of Expression and Access to Information in Africa

Facts

- On June 3 2009, a Dakar Magistrate's court found the June 2009 edition of *L'Essentiel* as "insulting the president" and "likely to disturb public order."
- *L'Essentiel* editor Mustapha Sow interrogated and police halt publication of magazine.
- Court seizes and suspends magazine and its distribution.
- On 16 June 2009, Samba Diarra and Seye Diop of *Weekend* magazine convicted jailed and fined for article that accused a politician of dishonesty.

- Such actions are a violation of Senegal's international human rights obligations.

Appeal

- Bring laws in conformity with Declaration on Freedom of Expression in Africa by repealing criminal defamation laws.
- Welcomes reports that Senegal intends to decriminalise press offences
- Welcomes presidential pardon of Malick Seck, editor of *24 Heures* and *Chrono* jailed for "offending the head of state" and defaming a minister.

2009

Press Release on threats, harassment and intimidation [of] journalists in Sierra Leone (June 2009)

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS,

POLITICIANS AND OTHER HRDs

IV. LIBEL AND DEFAMATION CHARGES

Issued by

Special Rapporteur on Freedom of and Access to Information Expression in Africa

Addressed to

President of Sierra Leone

Facts

- Sylvia Blyden, editor of *Awareness Times* charged on May 2009 with publishing false information (article alleged President in extra-marital affair).
- Ms Blyden granted bail in 'excessive amounts'.
- Umaru Sitta Turay of *New People* viciously attacked for 'supporting opposition'.
- No investigation taken despite victim's identifying assailants as press men in the Office of the President and ruling party.

- David Jabatti of *The Exclusive* physically assaulted by ruling party supporters.

Appeal

- Bring media laws in conformity with Declaration on Freedom of Expression in Africa especially repealing criminal defamation laws including Public Order Act of 1960.
- Ensure investigation of attacks and threats against journalists and punishment for perpetrators.
- Ensure victims can access effective remedies.

2009

Press Release on the Situation of Freedom of Expression in The Gambia (July 2009)

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

IV. LIBEL AND DEFAMATION CHARGES

Issued by

Special Rapporteur on Freedom of Expression and Access to Information in Africa

Addressed to

President of The Gambia

Facts

- On 22 May 2009, the President cautioned an outspoken and critical religious leader and any media practitioners reporting his critique with imprisonment.
- Abdul Hamid Adiamoh of *Today* newspaper convicted for publishing false information despite a correction of some details in a subsequent edition. Story related to the sacking of ministers, the Chief Justice and Speaker of Parliament.
- Also the executive of the Gambia Press Union was arrested for publishing a

press statement critical of the president's remarks concerning the death of a prominent journalist, Deyda Hydera. Editors and reporters of *Foroyaa*, *The Point* newspapers also arrested. All were charged with sedition, denied bail or granted on hefty amounts and access to their lawyers and family.

- Such actions are a violation of the international human rights law.

Appeal

- Immediate release of the journalists
- Bring media laws in conformity with the Declaration on Freedom of Expression especially repeal of criminal defamation.
- Officially invite the Special Rapporteur on Freedom of Expression to conduct a promotional mission.

2009

Press Release on the Continuous Violation of Freedom of Expression in Senegal (October 2009)**RIGHT TO FREE EXPRESSION****II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs****IV. LIBEL AND DEFAMATION CHARGES****Issued by**

Special Rapporteur on Freedom of Expression and Access to Information in Africa

Facts

• In September 2009 Papa Samba Sene and Abdou Dia of *L'As* newspaper and *Radio Futurs Médias* arrested and charged with defamation and criminal conspiracy for publishing allegations of corruption by Kaffrine regional government.

• 25 September 2009, *Wal Fadji* broadcast company attacked by mourides for publishing information alleging inappropriate links of their religious leader with the president.

Appeal

• Welcomes steps by Senegal to decriminalise press offences and urges that this process be expedited

• Punish those who attack journalists and media organisations.

276/03

Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) / Kenya**RIGHT TO FREE ASSOCIATION****II. HARASSMENT, INTIMIDATION COMMUNITY ORGANISER****Facts**

• Concerns eviction of the Endorois, an indigenous people in Kenya, from their ancestral lands, no compensation for such eviction, denial of access for grazing and traditional religious practices.

• Endorois Welfare Council denied registration, thus impeding their legitimate representation.

• Chairperson of Endorois Welfare Council harassed for his community organising activities (para.43).

• Endorois community lawyer Juma Kiplenge arrested and accused of

“belonging to an unlawful society” in 1996, for representing them in court (para.18).

• ACmHPR issues provisional measures (para. 32, 43).

Merits

• Non-recognition of Endorois as a community apart impedes their identity

• ACmHPR asserts contested validity of communities self-identifying as ‘indigenous’ and recognises Endorois as such.

• Creating game reserve around Endorois ancestral land (Lake Bogoria

Game Reserve) and restricting their access to it impedes their rights of access to sacred traditional sites and valuable grazing areas.

- Non-payment since 1973 of adequate compensation and royalties for continued use of Endorois ancestral lands has curtailed their enjoyment of economic and social rights.
- Special measures for vulnerable indigenous peoples' is not unlawful discrimination.

Findings

- Recognition of identity of Endorois as a community apart, and their rights to ancestral lands
- Violations of Art 8; Art 14; Art 17; Art 21; Art 22.

Recommendations

- Recognise Endorois rights of ownership to and restitute ancestral land.
- Ensure unrestricted access to Lake Bogoria for community for religious and cultural rites and grazing.
- Pay adequate compensation for loss suffered.
- Pay royalties for use of their lands.
- Register Endorois Welfare Committee.
- Dialogue with community effective implementation.

2009

Press Release of ACmHPR Chair on the Deteriorating Human Rights Situation in The Gambia (October 2009)

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

Acting Chair of ACmHPR

Facts

- Alleged statement of Gambian President on 21 September 2009 allegedly threatening HRDs.
- ACmHPR written to Gambian government to seek security for HRDs
- ACmHPR also adopts a 'Resolution on the Deteriorating Human Rights Situation in The Gambia'.

Appeal

- To AU to intervene immediately to ensure withdrawal of President statement.
- To AU to ensure safety of ACmHPR

Secretariat staff and other HRDs, 'including journalists and participants of upcoming ACmHPR session.

- To AU to consider relocating ACmHPR Secretariat.
- To AU to allocate funds to hold ACmHPR session elsewhere if threat to HRDs continues.
- Gambia to implement recommendations of previous resolutions, especially the November 2008 resolution.
- Investigate disappearance and/or killing of prominent journalists Deyda Hydara and Ebrimah Chief Manneh.

2009

Press Release in Respect to Proposed Nigerian Press Council and the Practice of Journalism Bill 2009 (November 2009)

RIGHT TO FREE EXPRESSION

I. REGULATION OF THE MEDIA AND JOURNALIST PROFESSION

Issued by

Special Rapporteur on Freedom of Expression and Access to Information in Africa

Appeal addressed to

President of Nigeria

Facts

- The Nigerian Press Council and the Practice of Journalism in Nigeria Bill 2009 will repeal the Nigerian Press Council Act of 1992.
- Bill requires members of Nigerian Press and Practice of Journalism Council to swear an oath of secrecy.
- Bill also seeks to establish a National Examination and Accreditation Board for journalists.
- Chair of Council is appointed by the President on recommendation of the Minister for Information and Communications.

- Bill also establishes Media Practitioner Complaints Commission to render the self-regulation ombudsman mechanism ineffective.

- Complaints Commission can impose hefty fines and suspend journalists and media houses.

- Such actions would violate Article 9 of ACHPR and the Declaration on Freedom of Expression in Africa.

Appeal

- Withdrawal or amendment of bill from National Assembly.

2010

Press release on Liberation of Mauritanian journalist Hanefi Ould Dedah (February 2010)

RIGHT TO FREE EXPRESSION

II. HARASSMENT, INTIMIDATION, ARBITRARY ARREST AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR SR HRDs

Points raised

- SR welcomes release of journalist Hanefi Ould Dedah, director of "Taqadoumy" information site.
- SR learnt of Dedah's detention, conviction on charges of offences

against public decency and incitement to revolt among other counts, and sentencing while on mission to Mauritania.

- Dedah granted presidential reprieve on occasion of Mauloud on 26 Feb 2010.

Press release on situation of HRDs in DRC
(September 2010)

RIGHT TO FREE EXPRESSION / ASSOCIATION / ASSEMBLY
II. HARASSMENT, INTIMIDATION, ARBITRARY ARREST AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR SR HRDs

Points raised

- SR concerned at alleged abduction and ill-treatment of HRDs
- Sylvester Bwire Kyah, chair of civil society in Masisi territory was abducted on 24 August 2010 following his drafting and signing of open letter to president.
- Kyah was found on 30 August 2010 30 miles away, weak, badly beaten with rope marks on limbs showing he was tied up
- This follows killings of journalists and other HRDs including Bruno Koko Cirambiza, Didace Namujimbo, Maheshe and Pascal Kabungulu Kibembi HRDs.

- ACmHPR alarmed at impunity, unresolved investigations due to lack of political will.

Appeal

- Calls on DRC to end impunity for perpetrators of crimes against HRDs.
- Calls on DRC to guarantee the physical and mental integrity.
- SR recalls press release in June 2010 on the death of Floribert Chebeya Bahirize and calls for progress reports on the investigations.
- Reminds DRC of its obligation to investigate promptly, thoroughly and impartially the abduction of Kyah and publicly condemn the act, identify authors and bring them to justice.

2010

Statement on the situation in Côte d'Ivoire (December 2010)

RIGHT TO FREE ASSOCIATION

II. HARASSMENT, INTIMIDATION, ARBITRARY ARREST AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR

Information relevant to HRDs

- Concern over resurgence of political tensions and violence.
- Deplores loss of life and physical assault during demonstration on 16 December 2010 in Abidjan and other parts of the country.
- Welcomes measures taken by United Nations and AU on perpetrators of violence against unarmed populations.

Appeal

- Calls for restraint by all parties.
- Appeals to Defence and Security Forces (FDS) and Armed Forces of the New Forces (FAFN) to desist from confrontation.

2011

Press statement on the human rights situation in North Africa (February 2011)

II. HARASSMENT, INTIMIDATION, ARBITRARY ARREST AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR

Points raised

- ACmHPR particularly concerned at the serious and massive violations taking place in Libya, Algeria.
- Condemns use of force in suppression of peaceful protestors.
- ACmHPR also concerned by arbitrary arrests in Algeria, use of force against civilians in Algeria.
- ACmHPR welcomes start of political transition and commends the people of Tunisia and Egypt for their peaceful, courageous and orderly exercise of rights.

Appeal

- Calls on Libya to immediately end violence against protestors and uphold right to free expression, assembly, peaceful protest, security of citizens.
- Calls on Algeria to release all unlawfully arrested persons and cease arbitrary arrest.
- Urges restraint and dialogue from all parties in Egypt and Tunisia considering human and material casualties and continued respect for human rights.

2011

Communiqué on the abduction of three humanitarian NGO workers from Sahrawi Refugee Camps (October 2011)

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR

• Information unusually submitted by member state, Saharawi Arab Democratic Republic.

Points raised

• notes abduction of 3 European humanitarian workers from Saharawi refugee camps on 22 Oct 2011.

• ACmHPR condemns abduction and calls for their immediate release.

• ACmHPR reiterates its support to aid organisations assisting Saharawi peoples.

Resolution on the general human rights situation in Africa (November 2011)

RIGHT TO FREE EXPRESSION / FREE ASSOCIATION / ASSEMBLY

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR

Information relevant to HRDs

• ACmHPR aware of infringements on freedom of assembly, arrest and intimidation of journalists and other HRDs, extra-judicial killings and acts of violence against protestors.

• ACmHPR deeply concerned at situation in Eritrea with arbitrary arrest, protracted detentions.

Appeal

• Urges Malawi to respect obligations under ACHPR and end intimidation and harassment of civil society leaders and HRDs.

• Urges release of Eritrean political dissidents, HRDs, and all persons detained arbitrarily and guarantee fair trial, and freedom of assembly, expression.

• Urges Guinea to fulfil obligations, especially non-discrimination, rights to security, fair trial, free expression, assembly.

• Urges DRC to end impunity and ensure physical and mental integrity of HRDs.

2011

**Press Release on the Human Rights
Situation in DRC** (December 2011)

**II. HARASSMENT, INTIMIDATION AND VIOLENCE
AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs**

Issued by

ACmHPR

Points raised

- ACmHPR deeply concerned at deteriorating human rights situation, atmosphere of insecurity in aftermath of DRC presidential elections on 28 Nov 2011.
- Grave concern at recurrent calls to violence and incitement to ethnic hatred by some politicians.
- ACmHPR strongly condemns intolerance, violence, killings in electoral campaign and after announcement of provisional results.
- Violence has led to internal displacement of thousands while other seek refuge in neighbouring countries.

- Concern over allegations of violence against women, including rape.

- Condemns suspension of some radio stations in violation of Congolese media law.

Appeal

- Immediate end to violence by all parties and a halt to inciteful statements by political leaders.

- Urges DRC authorities to protect women and children.

- Urges government to guarantee security of all citizens.

- Reminds DRC of its human rights obligations with special reference to ACHPR.

- ACmHPR notes that all who violate human rights law will be held accountable.

**Status of human and peoples' rights
in Africa June-December 2011**

(December 2011)

RIGHT TO FREE EXPRESSION / ASSOCIATION / ASSEMBLY

**II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST
JOURNALISTS, POLITICIANS AND OTHER HRDs**

Issued by

ACmHPR

Information involving HRDs

- Allegations of arbitrary arrest/detention, torture, pre-trial detention, harassment, of journalists and other HRDs listed among the 'causes of concern'.
- Continued reluctance by states to make Declaration under Article 34(6)

of the African Court Protocol granting direct access to individuals and NGOs impedes access.

- ACmHPR has adopted provisional measures on the human rights situation in North Kordofan.

- ACmHPR notes having sent urgent appeals, noting those on the human rights situation in Egypt and Libya.

2012

Press release / Resolution on the human rights situation in Senegal (February 2012)

RIGHTS TO FREE EXPRESSION / ASSOCIATION / ASSEMBLY

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST

JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR

Points raised

- ACmHPR deeply concerned at deteriorating human rights situation, atmosphere of insecurity in run-up to Senegal's presidential elections.
- ACmHPR concerned at the serious and repeated threats against peace of civilians, arbitrary arrest, intimidation of opposition leaders in particular.
- Also concerned at threats to right to peaceful demonstration, freedom of opinion, expression, assembly.
- Further concern at the use of force by officers, including live bullets fired at peaceful protestors causing deaths.
- Intolerance and violence in electoral campaign can reverse democracy in Senegal.

Appeal

- Urges government and opposition to put immediate end to violence and initiate dialogue.
- Urges government to guarantee freedom of opinion, expression, assembly and peaceful demonstration, as well as all civil and political rights.
- Urges government to guarantee security of citizens and opposition leaders in particular.
- Guarantee free and transparent elections pursuant to African Charter on Democracy, Elections and Governance; notes ECOWAS Protocol on Democracy and Good Governance.
- Urges immediate and unconditional release of arbitrarily arrested protestors.
- Urges government to ensure all perpetrators of violence are brought to justice.

2012

Joint Statement on reprisals against individuals and groups seeking to cooperate with the UN, ACmHPR, IACmHR (March 2012)

RIGHTS TO FREE EXPRESSION / ASSOCIATION / ASSEMBLY

II. HARASSMENT, INTIMIDATION AND VIOLENCE AGAINST JOURNALISTS, POLITICIANS AND OTHER HRDs

Issued by

ACmHPR SR HRDs

UN SR HRDs

IACmHR SR HRDs

Points raised

- The 3 SR express grave concern at reprisals against HRDs co-operating with the mechanisms by providing information on human rights situation.
- Reprisals take form of smear campaigns, harassment, intimidation, direct threats, physical attacks and killings.
- UN, ACmHPR, IACmHR all have agreements and rules of procedure prohibiting such reprisals.
- The 3 SR seek to safeguard collaboration with HRDs and commit to enhanced monitoring to ensure respect for rules.

- The 3 SR support call by President of UN Human Rights Council to states to end intimidation and reprisals on HRDs.
- Recognise that the effective functioning of the 3 human rights systems “depend entirely” on free and safe cooperation with civil society.

Appeal

- Demand all reprisals to cease immediately.
- Investigations into pending cases be carried out.
- Such actions will prevent further reprisals.

KEYWORD INDEX

A

- access to funding 16
- African Charter 7, 11, 16, 23, 24, 26, 29, 35, 36, 40, 47, 51, 55, 57, 69, 71, 74, 87, 89, 101
- African Children's Charter 23
- African Commission for Human and Peoples' Rights 16
 - 2002 Resolution on the Adoption of the Declaration of Principles on Freedom of Expression in Africa 16
 - 2010 Rules of Procedure. 32
 - Admissibility 37
 - communications 11, 19, 24, 34, 36, 37, 39, 43, 53, 54, 55
 - Declaration of the Principles of Freedom of Expression in Africa 35
 - Principles and Guidelines on the Implementation of Economic Social and Cultural Rights in the African Charter on Human and Peoples' Rights 36
 - minimum core obligations 36
 - Principles and Guidelines on the Right to Fair Trial and Legal Assistance in Africa 35
 - Resolution on the Protection of Human Rights Defenders in Africa 16, 73
 - Robben Island Guidelines 35
 - soft law 19, 26, 34, 35, 36
- African Court 23, 28, 40, 100
- African Court on Human and Peoples' Rights 23, 28, 40
- African Court Protocol 23, 40, 100
- African human rights system 11, 23, 53
- African Union 7, 23, 24, 31, 37, 40, 54
- assassination 30, 80, 83
- attacks 11, 17, 35, 92, 102
 - physical assaults 17
- AU Assembly 32, 88, 89
- AU Commission 32
- AU Peace and Security Council 32

C

- civil and political rights 23, 24, 101
- civil society 11, 28, 29, 35, 49, 60, 74, 85, 97, 99, 102
- communications 11, 19, 24, 34, 36, 37, 39, 43, 53, 54, 55
- Communications procedure 53
- community organisers 15
- corporal punishment 38
- corruption 15, 75, 94
- Côte d'Ivoire 34, 80, 98

Council of Europe 43, 52
criminal justice system 17
criminal networks or businesses 17
cruel, inhuman or degrading treatment and punishment 35

D

Daniel Deuzoumbe Passalet 30
Democratic Republic of Congo 7, 34, 100
disappearance 31, 83, 95

E

East African Community (EAC) 23
economic, social and cultural rights 23, 24, 35, 36
ECOWAS 23, 76, 101
Egypt 23, 34, 98, 100
elections 24, 34, 57, 63, 100, 101
Eritrea 33, 51, 72, 99
Ethiopia 33
extrajudicial killings 42

F

Floribert Chebeya 97
fundamental rights 15, 49

G

Ghazi Suleiman 33, 51, 70, 71

H

Hanefi Ould Dedah 30, 97
human rights defenders 3, 11, 15, 16, 17, 18, 24, 29, 30, 31, 33, 34, 36, 43, 47, 78, 84
 promotion and protection of human rights 11, 17, 24, 51, 60, 70
 protection of human rights defenders 15, 16, 18, 24
 security of human rights defenders 16, 31
 women human rights defenders 17, 47
 work of HRDs 16, 18, 24, 34, 40

I

Inter-American Commission on Human Rights 7, 32
Inter-American Court of Human Rights 52
intimidation 24, 30, 36, 43, 48, 55, 59, 62, 64, 65, 68, 69, 70, 72, 73, 75, 76, 77, 78, 79, 80, 81, 83, 84, 86, 91, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102
investigation 15, 30, 31, 78, 92
investigations 17, 39, 97

J

Journalists 15, 82, 92
jurisprudence 11, 19, 24, 47, 48, 52, 53

K

Kenya 31, 33, 40, 69, 72, 84, 90

L

lawyers 15, 35, 47, 57, 93
legal aid 35
lesbian, gay, bisexual and transgender and intersex rights 17
Libya 28, 34, 98, 100

M

Mali 34
mass expulsions 42
Mauritania 39, 40, 65, 66, 67, 73, 97
militias 17

N

NGO 7, 29, 30, 34, 53, 54, 68, 77, 99
NGO Forum 53
Nigeria 32, 33, 47, 48, 57, 58, 61, 63, 68, 72, 96
non-discrimination 25, 36, 99
non-implementation of decisions 28, 40
non-state actors 17

O

onerous registration procedures 18
Organisation of African Unity 7, 16, 23

P

police 30, 76, 78, 81, 85, 91
prosecution 30, 38
provisional measures 28, 31, 32, 33, 53, 55, 56, 100

R

radio stations 31, 75, 82, 100
reprisals 17, 43, 75, 80, 102
resolutions 15, 24, 35, 48, 54, 55, 95
right to access international bodies 17
right to a fair trial 17, 35
right to free assembly 17, 62

right to free association 17, 49, 63
right to freedom from torture and other cruel, inhuman or degrading treatment or punishment 17
right to freedom of assembly 50, 63, 89
right to freedom of movement 17
right to free expression 17, 26, 51, 98
 press regulations 18
right to participate in government 17, 25, 48
right to property 17
right to receive funding 17
right to security 17
right to the lawful exercise of his or her occupation or profession 17
right to work 17

S

Sahrawi 34, 99
security laws 18
Senegal 30, 34, 91, 94, 101
serious and massive violations 28, 33, 38, 40, 98
Sierra Leone 30, 92
slavery 42, 65, 66, 67
Southern African Development Community (SADC) 23
state reporting 28
 state report 29, 40
Sudan 24, 33, 40, 51, 64, 70, 71, 90

T

The Gambia 2, 24, 30, 31, 48, 62, 63, 93, 95
Togo 33
trade unionists 15, 75, 76

U

UN Declaration on HRDs 15, 16, 29, 51, 60, 73
 effective implementation of the UN Declaration on Human Rights Defenders 15
United Nations Commission for Human Rights 15
United Nations General Assembly 7, 15, 16
 2009 Resolution on Freedom of Association 16
 2010 Resolution 13/13 on protection of Human Rights Defenders 16
United Nations Human Rights Council 15
urgent appeals 18, 24, 29, 30, 31, 33, 34, 43, 55, 56, 100

Z

Zimbabwe 33, 40, 51, 78, 81, 86, 87

