

KUMULIKA
THE AFRICAN
COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS:
53RD ORDINARY SESSION



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS



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

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

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

CONTENTS

DEVELOPMENTS AT THE NGO FORUM	3
DEVELOPMENTS AT THE AFRICAN COMMISSION	6
OTHER ISSUES: COMMUNICATIONS, COMMISSION RECOMMENDATIONS AND FOLLOW UP, REPRISALS	9
THE RELATIONSHIP BETWEEN THE AFRICAN COMMISSION AND OTHER BODIES	10
COUNTRY FOCUS: ERITREA	11
EMERGING ISSUES AND CHRONIC HUMAN RIGHTS SITUATIONS	11
SEXUAL ORIENTATION AND GENDER IDENTITY	12
HUMAN RIGHTS DEFENDERS URGE THE AFRICAN COMMISSION TO TAKE ACTION	13
STRENGTHENING HUMAN RIGHTS AGENDAS AND SYSTEMS	14
REPORTS OF THE SPECIAL PROCEDURES	15
THE ENVIRONMENT FOR CIVIL SOCIETY PARTICIPATION	16
CHANGE AT THE TOP	17
FURTHER MEETING DATES	17

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

The 53rd Ordinary Session of the African Commission, from 9 to 23 April 2013, gave both cause for optimism about the

relevance and importance of the mechanism, and cause for frustration about working methods that continue to adversely affect its impact.

The session was preceded by the three-day NGO Forum, from 6 to 8 April, which brought together human rights defenders from across the continent and beyond. Held since the mid-1990s, the NGO Forum provides one of the few institutional opportunities for human rights defenders in Africa to debate means to advance a range of human rights concerns. The Forum aims to bring these concerns to the attention of the African Commission and to increase the protection and promotion of rights through the mechanism.

DEVELOPMENTS AT THE NGO FORUM

The NGO Forum agenda combined regular items – such as overviews of the human rights situations in the sub-regions and discussion within special interest groups – with debates on rights issues that had not yet received attention at the Forum. These included discussions on the right to abortion and on the right to water. Litigation in the African human rights system was well covered, in what is becoming a regular focus of discussion. Some changes to methods of work provided a new vitality to the Forum, whilst frustration about Forum practices and impact continued to be voiced.

The NGO Forum's purpose and methods of work have been widely questioned during recent sessions, as participants seek to define ways of engaging more effectively together and with the Commission. These concerns were briefly addressed during the NGO Forum opening ceremony. The Forum Steering Committee emphasised the importance of regular communication between the Forum's participants and the committee, to ensure participants' expectations are met.¹ The Steering Committee highlighted the following developments to improve the way the Forum operates:²

- *Production of 'The Participants' Guide to the NGO Forum':* Acknowledging the need for better guidance to first-timers at the Forum, the Steering Committee is producing this guide. It is expected to be launched at the next session of the Forum, in October 2013.
- *Providing participants with information to better engage at the Forum:* Ahead of the next Forum, participants will be provided with information on how to submit a request to hold a panel, and the criteria used by the Steering Committee to define the overall Forum agenda. It was acknowledged that requests for leading panels are frequently made by international organisations, who may simply have a greater understanding of the process.

At upcoming Forum sessions special interest groups will be provided with a compilation of previous relevant NGO Forum and African Commission resolutions, to ensure participants can constructively engage with calls to action.

- *Recruiting new Steering Committee members:* The criteria for Steering Committee members and selection will be circulated for comment during the October session. To ensure continuity within the Steering Committee, half of the positions within the committee will be up for selection in March 2014 and the other half in October 2014.

Whilst these developments are welcomed and point to the Steering Committee responding to participants' concerns, more could be done to strengthen the functioning of the Forum. The committee

should provide greater clarity about how it is addressing all the recent recommendations made to it regarding its working methods,³ including the one made during the Forum's last external evaluation in 2007: that the Forum should undergo such a review on a three-yearly basis.

'We are almost becoming predictable – can we move the frontiers of debate? Can we take our dreams of the future forward?'⁴

Another point of self-reflection was the real impact of Forum and the responsibilities of participants – human rights defenders – to the populations they serve: 'Poor people are not here. Do we just come for per diems? Are we honest to the African continent?'⁵ Participants were urged to make the Charter better known amongst the population, and to work harder to press for its realisation. Some openly welcomed such calls: 'We should improve and be criticised', noted one panelist during the opening ceremony.⁶

The Chair of the African Commission, who was invited to officially open the Forum, suggested the Forum needed a new strategy for optimising engagement with the Commission. As an example, she proposed the NGO Forum should pass a resolution emphasising the obligation of NGOs in observer status with the Commission to submit activity reports.⁷ She noted this would be a signal that, 'you take your human rights seriously', and would contribute to validating Forum participants as commentators on human rights and as committed to the African Commission as a mechanism for advancing human rights.

INNOVATION AT THE FORUM

This Forum session marked a change in practice. More events were run in parallel. Debates were held on human rights issues not previously discussed there. Furthermore, participants reflected upon their own ways of working. Debates provided opportunities to explore means to engage with the system, and specific issues of concern. On the latter, for example, a Gambian film, 'The Hand of Fate' was shown on the effects of early marriage on the development of young girls. Debates were held on the rights to water, and human rights and the threat of terrorism and organised crime.⁸ A further discussion held on unsafe abortion was an encouraging sign that participants are responding to calls that the Forum engage with issues that are frequently considered taboo.⁹

There were also initiatives that provided an introduction to the Commission and how to interact with it.¹⁰ Litigating before the African Commission was the subject of several events. The Litigants Group provided introductory and advice sessions,¹¹ and a side event entitled 'Victims' right to reparation' looked at developments

under international law, and the identification and application of best practices in the context of the African Commission.¹²

The situation of human rights defenders was the focus of several Forum events. An event hosted by the West African Human Rights Defenders Network focused on the increased risks for defenders during electoral periods, examining the cases of Côte d'Ivoire, Gambia, Guinea and Senegal. The network shared preliminary findings from its upcoming study on legal frameworks guaranteeing the protection of human rights defenders during electoral processes.

OUTCOMES OF THE FORUM

Long-standing concerns and calls to the Commission were reflected in a series of country-focused and thematic resolutions.¹³ The number of resolutions passed was at its highest for at least the past two years. Bearing in mind comments made by Commissioners and others about the Commission's limited capacity to consider a large number of resolutions, the Forum may deem a more selective approach to be more effective.¹⁴

Several resolutions focused on the experience and protection needs of human rights defenders. In its resolution on the 'Right of Human Rights Defenders to Freedom of Association in Africa', the Forum condemned 'the spreading of laws and practices targeting human rights defenders that restrict their capacity to act and criminalize their work'. The Forum reminded States of their obligation to respect and protect the right to freedom of association, 'including those working on issues deemed sensitive, such as the right to free and transparent elections, the right to land and a sound environment, rights related to sexual orientation and gender identity, (and) the fight against impunity or corruption'. The experience of women defenders was also highlighted in the resolution. The Forum called on the Commission to ensure the report of the Study Group on Freedom of Association in Africa be discussed and adopted at the next African Commission session.¹⁵ It also invited the African Commission's Special Rapporteur on Human Rights Defenders to

address her concerns regarding freedom of association to States during 'country visits, through communications and statements.'

Country-focused resolutions from the NGO Forum – on Angola, Eritrea, Kenya, Sudan and Swaziland – called on the Commission to urge States to refrain from, and protect human rights defenders from, acts of intimidation or attack, and to ensure the rights to freedom of expression, association and assembly. Upcoming or recently-completed electoral processes, when the risks faced by human rights defenders can be heightened, were noted in resolutions on Swaziland and Kenya.

Finally, a resolution on 'Women's Rights in Africa' included a call to African States 'to create an enabling environment where women human rights defenders and women participating in political spheres of life are not subjected to arbitrary arrest, judicial harassment or any other form of sexual and other violence'.

There was no specific reference during the NGO Forum to recommendations made by stakeholders to the Commission or to the NGO Forum during the 25th Anniversary of the Commission (October 2012).

These recommendations included the need for the Forum:

- to ask the African Commission if the information the Forum is providing, in terms of resolutions and recommendations, is valuable to it;
- to be more selective in the issues it brings to the attention of the Commission; and
- to encourage a greater number of participants to attend public sessions of the Commission, and define more coordinated advocacy approaches with other NGOs, including through joint statements.¹⁶

If the NGO Forum reflected more transparently and systematically on the recommendations made to it, and tracked the implementation of recommendations made to the Commission more closely, it could play a greater, more legitimate role in calling for accountability from other stakeholders.

INTERVIEW WITH HANNA FORSTER

Executive Director, African Centre for Democracy and Human Rights Studies (ACDHRS)

What inspired the establishment of the NGO Forum?

The NGO Forum was first held in November 1989. It provides much needed visibility to the work of the African Commission and the potential it affords for engagement. Its mandate comes from civil society in Africa and those working on African concerns.

The first call for the Forum came from a group of African human rights defenders, who were attending a training course on the African human rights system. They saw a need for a gathering to provide NGOs with an introduction to the mandate and work of the African Commission, and to provide activists with timely and up-to-date information about human rights situations. They also saw a need to encourage civil society to work together, including in engaging with the Commission.¹

The Forum was also aimed at finding ways to protect those already engaging with the Commission from being targeted for reprisals. At that time of its inception, the environment was hostile to human rights defenders and reprisals were the 'order of the day'. Defenders who attended Commission meetings would often find themselves forbidden from traveling abroad again or that members of their families had been harassed or beaten. In those days, some activists were obliged to travel through neighbouring countries to get to the Commission session, as it was too dangerous to travel directly from their own country.

The African Centre for Democracy and Human Rights Studies (ACDHRS) provided participants with the support they needed – both moral and financial in some instances – to enable them to participate, and as a result, the organisation has, in some instances, suffered the consequences.

How did human rights defenders start to influence the work of the Commission through the NGO Forum?

During the 1990s, we brought victims of human rights violations from Sierra Leone, Senegal and Sudan to share information with colleagues, and indeed with the Commission, on what was happening on the ground. The Commissioners were called upon to visit and investigate the situation in countries before the human rights situation worsened. The voices of witnesses and victims of abuses provided an alternative to government accounts.

Both participants and victims looked to the Commission to provide assistance and redress to those whose human rights had been violated, and to acknowledge that accounts of the situation in some countries were not fictional, but real accounts of what was happening. Human rights violations are real and they are happening to real people. For the Commission to be effective it has to take real action to mitigate violations.

So, we encourage the conversations that take place at the NGO Forum between Commissioners and civil society. It has always been important for Commissioners to be action-oriented, with activists engaging to pressure the Commission move forward.

The Commissioners do not work full-time in their roles, so the information provided to them by NGOs is very valuable for their work. We always invite Commissioners to come to Forum sessions to listen and update themselves. We want the Forum to provide a space where all stakeholders' voices can be heard, and this is being achieved, slowly but surely.

How does the Forum work to influence the Commission?

In addition to developing human rights defenders' networks, through its special interest groups the Forum has put pressure on the Commission to address particular issues. In response, the Commission has established relevant working groups and other mechanisms; the Committee for the Prevention of Torture in Africa being one example. Some of these working groups have included civil society members. In addition, Forum special interest working groups have led to the formation of civil society advocacy initiatives, such as the 'Coalition for the African Court'.

NGO Forum sub-regional focal points were put in place in 2006 – 2007. As not everyone could attend the Forum, these focal points provided a mechanism for diverse voices to be heard. Through sub-regional networks and focal points, victims of violations could learn about what was happening at the level of the African Commission. They could share information and organise consultations and thereby make an impact even if they were not able to be at the session itself.

Encouraging cooperation between national, regional and international systems has also been an objective of the NGO Forum. For example, UN experts have regularly attended the Forum.

What are the challenges the Forum faces, and how would you characterise its successes?

Some of the challenges include the lack of capacity amongst NGOs, and a tendency for some to not work together. The potential of the Forum is also not fully realised when work is not sustained between sessions. Human rights work is never-ending, it continues on and on.

The Forum has grown from 40 participants to over 200 at any one session, and this is reflected in the quality of the discussions and work achieved. In the early days we didn't see many North Africans participating, but now they are visibly participating, attending and contributing to all discussions. Human rights defenders from Asia and Latin America have also attended the NGO Forum to learn about civil society engagement here and have commenced work on engagement with mechanisms in their regions informed by some of the lessons learnt from the African system. Some African civil society organisations have also been invited to participate in other regional NGO forums. I must confess that this peer exchange is a new experience but very heartening!

How would you like to see the NGO Forum develop, including in its relationship with the African human rights mechanisms?

My target for the next phase is the development of human rights contacts at the national level. Currently, in many cases, national level organisations that come to the Forum do not work with each other. While the promotion and development of human

rights norms and standards is important, the problem lies in the lack of implementation at the national level. A lot of work must be done at the national level if we want to see any progress. The development of functional country focal points will therefore be crucial.

We need to keep encouraging dialogue between Commissioners and NGOs, even with State parties, in order for Commissioners to hear what civil society wants, so they can see that civil society has capacity to support and engage with them.

Some of the Commissioners, and even States, think that NGOs are asking and keep asking for too much, but in my opinion NGOs cannot ask for too much. If you see them asking it is because they are not getting what they need to see happen as they promote and protect human rights in Africa. We need to keep talking about cooperation and collaboration.

The results of the collaborative efforts of civil society engagement with the African Commission need to be showcased in order to highlight its benefits and achievements. Thankfully, we have seen the proliferation of civil society forums in recent times and they have become a platform for the civil society voices in governance and human rights, among other fields.

Human rights and democratic principles are values we all share as Africans, and the formation of similar forums – for example around other African Union sessions – enhances the consultation and other civil society engagement processes. We have learnt and support that civil society is trying to put together a forum around the Arab League; and national human rights institutions are planning to create their own forum around the African Commission. These are initiatives we surely welcome and are potential platforms for exchange with civil society.

Anything you'd like to say in conclusion?

The African system is unique – it is one of the few systems that provide space for all stakeholders to engage with each other and directly with it. We need to move away from spaces dominated by government organised non-governmental organisations (GONGOs), thus allowing us to create a space that is available to all stakeholders involved in advocating for the African human rights system. We need to ensure this space is not reduced.

The role of the NGO Forum is much broader than that of the networks of human rights defenders. The Forum aims to provide a sharing space for all groups working on the different aspects of human rights, which one must agree is a very broad. Each group has a unique role to play in the work we are doing. In this age of limited financial support, ACDHRS, as the Secretariat of the Forum, promotes the need to develop specialisations in human rights and democracy, which in turn will increase the need to complement each other rather than compete. The field of human rights is interdisciplinary – requiring lots of different skills and views, which means it is a collective responsibility and that 'all hands must be on deck'.

I feel very humbled to be involved in the NGO Forum – we have come a long way and have been able to establish this platform for civil society participation and collaboration with each other and with the African Commission. I definitely look forward to more innovative ways to enable civil society to be more effective in its work alongside Africa's premier human rights institution, the African Commission, to promote and protect human rights and democracy in Africa.

¹Forum originally known as the 'ICJ Forum' (from November 1989 - October 1999), becoming the 'Forum on the Participation of NGOs in the Work of the African Commission on Human and Peoples' Rights' in 2000.

DEVELOPMENTS AT THE AFRICAN COMMISSION

NO STATE REPORTING

The African Charter requires State parties to submit a periodic report to the Commission every two years. In accordance with its own rules of procedure, the Commission is then required to hold a dialogue with States to establish their compliance with their human rights obligations. However, for the first time, there was no review of a State party scheduled for the Commission's Ordinary Session. No official reason was given for the lack of reporting – despite the periodic report of the Sahrawi Arab Democratic Republic being available ahead of the session.¹⁷

When no interactive dialogue is held between a State and the Commission, a primary objective for the African Commission's Ordinary Sessions – to hold States to account publically for their human rights records – is not met.

The Commission needs to rethink how to ensure regular and predictable State reporting, establishing a schedule and being bolder in the use of its powers to review States in their absence. With 12 State parties never having reported to the Commission and countless others behind in submitting their reports, the Commission needs to take action.¹⁸ The Chair noted that those States failing to report 'are violators of our rules'; and said to State Representatives, 'If you do not report, how do we rate your relevance to the human rights process in this continent?'. Whilst the reporting process should be one centered on encouragement and constructive dialogue, with certain flexibility when States are unable to report in exceptional circumstances, ultimately State parties cannot be allowed to avoid their responsibility altogether. NGO engagement in the process, including in submitting shadow reports, relies on an achievable and predictable schedule for State reporting.

ISHR calls on the African Commission to:

- establish a realistic schedule for State reporting to the Commission on the obligations under the African Charter and relevant protocols; and
- make this schedule public to enable civil society involvement in the process of pressing States to produce the required periodic reports in consultation with relevant actors.

State presence and promises to submit reports

There were 28 State parties represented at the session out of a total of 53, with 24 States making statements.¹⁹ The following States committed themselves to submitting reports in time for the next Ordinary Session: Cameroon: 3rd Periodic Report (2008 – 2011) now available,²⁰ Chad, Ethiopia: promised a combined 5th and 6th report, Liberia, The Gambia, Malawi, Mozambique: initial and combined periodic reports (1999-2010) now available,²¹ Tanzania and Uganda. The report of the Sahrawi Arab Democratic Republic is now also available online in Arabic, English and French.²²

It should be noted that Liberia and Malawi already made the same commitments at previous sessions without reports being forthcoming. The NGO role in encouraging States to live up to commitments to report can be all important.

Both Chad and Tanzania spoke of consultative processes they have held with NGOs to draw up their reports.

A positive development on the African Commission's website is the availability of clearer information regarding reporting and recommendations made to State parties.²³

It was the first time that a representative from the Government of the Gambia stayed beyond the opening ceremony, attending the entire Commission session. The Chair of the Commission acknowledged this and encouraged The Gambia's ongoing engagement. The Gambian Attorney General noted his State's commitment to comply with its reporting obligations under all the regional and international human rights treaties to which it is party. Gambia has not reported to the African Commission since 1994.

Malawi acknowledged that its engagement with the African Commission and human rights system in Africa, had been 'minimal' but considered its attendance at this session to be the beginning of a 'recommitment and re-engagement' with the mechanism. The State delegate expressed the hope that Malawi's initial report to the Commission would be discussed at the 54th Ordinary Session, while noting challenges in preparing the report, including a lack of resources, capacity and institutional strength. An NGO from Malawi thanked the Government of Malawi for establishing a consultative process for writing its report, but expressed concerns about the State's political will to implement recommendations made to it, citing the Universal Periodic Review process as an example.

'INNOVATION'

The Chair of the Commission described the mechanism as 'an innovator' of human rights standards, pointing to the launch of both the Model Law on Access to Information, and General Comments on Article 14 (1)(d) and (e) of the Protocol to the African Charter on Human and Peoples' Rights of Women in Africa (Maputo Protocol). Both of these are firsts for the Commission and have been developed in close collaboration with academics and human rights defenders. In addition, a recent Commission decision and an upcoming report on women human rights defenders point to the fact the Commission is capable of breaking new ground in protecting and promoting rights.

Launch of the Model Law on Access to Information in Africa

The Model Law on Access to Information in Africa was described as an instrument of good governance, guiding legislators into developing detailed legislation. Professor Viljoen, from the Centre of Human Rights in Pretoria spoke of the role of civil society in the development of the model law. Four regional processes had been held during the two-and-a-half year process, and the draft law had been placed on the Commission website for comments from all interested parties.²⁴

The Special Rapporteur on Freedom of Expression noted that the process of developing the model law itself had an impact – leading to a 'noteworthy shift' in the number of countries with access to information laws.²⁵ She noted that she hoped this number would increase and that new laws would be benchmarked against the Commission's Model Law on Access to Information, and cited Rwanda's March 2013 law in this regard.

General Comments on articles of the Maputo Protocol

Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol) relates to health and reproductive rights. Sections (1) (d) and (e) relate specifically to protection against sexually transmitted

infections, including HIV/AIDS. The Special Rapporteur on the Rights of Women in Africa said developing general comments on these sections is an important part of interpreting and articulating provisions of the African Charter and its protocols.

General comments often provide more detail than other soft law instruments, such as the *Guidelines for State Reporting on the Implementation of the Maputo Protocol*. Overall soft law instruments are designed to assist States to understand the extent and meaning of their obligations, and to assist civil society in their efforts to press for their implementation.

As in the case of the process of developing the Model Law on Access to Information, the Special Rapporteur noted that the insights of many had informed the development of the general comments. She expressed the desire of all those involved in the drafting process that the general comments be seen as a milestone and become a 'guiding beacon' to assist people to address vulnerability to HIV infection.

Women human rights defenders

Two other Commission initiatives regarding the protection of women's rights, including those of women human rights defenders, are equally encouraging.

Report of Special Rapporteur

With the Special Rapporteur on Human Rights Defenders' upcoming report on the situation of women human rights defenders, it is hoped the Commission will provide detailed recommendations regarding the challenges faced by, and protection needs of, defenders. ISHR strongly welcomes the initiative by the Special Rapporteur and will play its part in supporting the work of the Commission by disseminating recommendations the Commission may make, and in demanding that member States fulfill their obligations to ensure women defenders across the continent can work without harm or hindrance.²⁶

The Commission's decision on protecting women human rights defenders

An African Commission decision regarding sexual violence against women exercising their rights to participate in public life was announced just ahead of the Commission session. In the case decided by the Commission in 2011, but not approved by the African Union (AU) until January this year, Egypt was found to have failed to protect women from sexual violence during a demonstration in 2005. The Commission found that gender-specific attacks against the women were discriminatory. In their press release on the outcome, the two NGOs²⁷ that brought the case on behalf of the four women attending the demonstration note that the Commission

took into account that 'the attacks were systematic and targeted at women, aiming to "keep women in their place" by denying them space to protest and express their political opinions'.

In the decision, the Commission has urged Egypt to investigate the violations and bring the perpetrators to justice, to amend national laws to bring them in line with the African Charter, and to ratify the Maputo Protocol. In addition, the State is urged to compensate the women for the physical and psychological damage they experienced.

This decision breaks new ground. It is the first time in its history that the Commission has handed down a decision on States' duty to protect women from sexual violence. It is an important indication of the potential of the protective mandate of the Commission, and of the Commission as a forum for cases to be heard at the regional level, where domestic remedies are unavailable or inadequate.²⁸ During the Forum, Equality Now and Interights held a side event on their experience of litigating this case at the Commission.

It should be noted that NGO statements referred to ongoing violations against women participating in protests in Egypt, referring to women 'forcibly removed from (...) protests, stripped and raped, and, in at least one case, knives were used to rape the women'.²⁹

Value of the Commission's work

In reflections on the value of the Commission's work, the Chair of the Commission spoke of the importance of the development of regional instruments to appropriately address the specific nature of regional human rights realities. In her opinion, the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* had fallen below expectations in regard to the African experience, and the Maputo Protocol was tailored to reflect the particular experiences of women across the continent. She noted, for example, that the Maputo Protocol was the first to make the connection between women's rights and HIV, the first to tackle medical abortion, and the first to impose an obligation on States to eliminate female genital mutilation.

'Why are we celebrating, when the UN draws up a general comment every minute?'³⁰ The Chair noted that innovative work of the Commission needed to be celebrated as it was due to the initiative of Commissioners, despite very limited resources. She compared the work of the Commission to the United Nations mechanisms, describing the Commission as combining 'the work of treaty bodies, Special Rapporteurs and the Secretariat all in one'. Appropriately, Commissioners did acknowledge the role of NGOs in providing energy and expertise to drive these projects.

INTERVIEW WITH BAHAA EZZELARAB

Egyptian Initiative for Personal Rights

What is the significance of the African Commission's decision in this case?

This case is important for two reasons. Firstly, it deals with an issue that has not really been on the political or public opinion agenda for a very long time. Sexual violence and harassment against women, in its different forms, was not part of the public debate in Egypt either before the Revolution or directly after it. However, recent developments show that there has been a strong push by organisations and groups to put this issue on the agenda. The decision by the Commission therefore comes at a very important time to support this movement.

The decision exposed a problem we had for a long time – that the State was always either directly part of the violence or had been completely silent on these assaults occurring. It was very important to us to be able to connect the violence that occurred in 2005 against journalists – the case the Commission considered – with other forms of violence that happened after the revolution. It gave an opportunity to present this as a systemic problem and as a problem against which women have been fighting for a long time.

continued overleaf

Secondly, this is the first case in which the Commission has dealt in detail with Article 18(3) of the African Charter, which provides that the State shall ensure the elimination of all forms of discrimination against women and also ensure the protection of the rights of women and children as stipulated in international declarations and conventions. The article guarantees non-discrimination against women in particular. The Commission did a great job.

The Commission confirmed the reparations figure called for during the case. Were you surprised by that outcome?

This was a very positive step and an indication that complainants should set a specific figure when asking for monetary compensation. However, the compensation amount was based on what complainants sought in 2006 and did not account for the inflation between 2006 and 2013. Contrary to the practice followed by other regional courts, the Commission does not enable complainants to reassess the amount of reparation being requested.

What was the State's role in the process and did it engage with the Commission whenever it was required to do so?

It did and was even responsive. The State responded without severe delays, at least for the admissibility part, which was then decided very quickly. During the merits stage however, the State used a number of tricks to delay the case, including questioning the competency of the translator. They did this successfully for over two years before giving up.

The Commission has been criticised by NGOs for not standing firm enough in its engagement with States. In this particular case, was the Commission sufficiently resolute when faced with the attempts by Egypt to delay the process?

From what I heard from lawyers and from what I saw, I would say that the Commission could have been much more resolute dealing with the State. At the end of the day however, from April 2009 until September 2011, it was just the Commission deferring on the decision of the merits, due to a backlog. The decision was deferred for six ordinary sessions.

What was the State's response to the decision?

Absolute silence. We sent a letter to the Ministry of Foreign Affairs requesting a meeting. We gave them the elements of the decision, and told them that the Ministry was part of the Egyptian delegation to the African Union Summit which approved the Commission's activity report (including detailing the Commission decision in this case) which puts an even bigger obligation to comply with it. We got no response.

To your knowledge, was there any real discussion at the African Union level with regard to the Commission decision in this case?

No. At least in the activity reports that were made public, the Commission decisions are not annexed. However, what is said in the meetings is not always what is made public.

When does the time-frame for follow up start in terms of the State's requirement to act? After the Commission decision or the approval of the decision by the African Union?

It starts 180 days after the State receives the decision, which is only issued after the Executive Council approves it.

What is your assessment of the Commission's Working Group on Communications? Is it a positive development and do you think it will assist if Egypt fails to respond?

It will be a huge development if the working group does what it is set up to do. There have been positive developments to the Commission's structure over the past couple of years and I can definitely see the Working Group on Communications playing a strong role and forcing the State to implement the decision. With this decision, we have the compensation, which is definitely neither our, nor the complainants' main concern, but it is a yardstick by which to measure implementation.

In light of your experience with this case, what would be the key pieces of advice you'd give to someone considering submitting a communication to the African Commission?

- Work with complainants who realise they are in it for the long haul. This is not a short term project.
- Keep communicating with the complainants no matter how frustrating this might be for you or the complainants.
- Connect your issue with other issues and other groups to be able to transform the litigation into social action.
- Be fully aware of the amount of work required to prepare the case and take it to the Commission.

In our case, through the work done on evidence collection, we were able to show that the prosecution should have had access to a much more complex and elaborate body of evidence regarding the case, and that the only reason the State failed to investigate, prosecute and punish was a lack of will, not lack of opportunity. As an NGO we managed to do a much better investigative job than the prosecutors.

Why did the complainants choose to submit a communication to the African Commission? Were other avenues unavailable?

The African Commission is the only judicial or semi-judicial entity that Egyptian individuals have access to. It is also the only extra-territorial forum that Egyptians can turn to. Egypt has not ratified the protocol for the African Court, nor has it ratified any of the protocols that enable individual redress through UN committees established in relation to the *International Covenant on Civil and Political Rights* or the *Convention on the Elimination of All Forms of Discrimination Against Women*, for example.

The Commission has some drawbacks though. It is becoming a little bit more rigid in terms of admissibility requirements, which may affect their efforts to become better known and more accessible. There is a requirement that you have to submit your complaint within a reasonable time after the exhaustion of local remedies. Generally, the Commission was much more open in the past. In recent years they have adopted the standards of the Inter-American and European courts of human rights, which impose stringent limitation periods of six months. This completely disregards the fact that you are dealing with a different context in Africa, where a lot of people don't know about the Commission.

OTHER ISSUES

COMMUNICATIONS

In its work to protect the rights and freedoms guaranteed under the African Charter the Commission receives communications from States, and from individuals and organisations alleging violations by a State party of one or more of those rights.³¹

During this session, the Commission Working Group on Communications produced its first report since its mandate was extended to include follow up of decisions, in October 2012. The report noted that the Commission has received 442 communications to date, 361 of which have been finalised, and three of which have been transferred to the African Court. There has been a marked increase in the number of communications considered over the last 12 months in comparison to previous years.

This positive news was tempered by the list of major challenges related to communications, outlined by the Working Group as follows:

- The lack of enforcement of decisions on communications, informed by a lack of political will by States.
- Despite the Commission's new rules of procedure allowing for referral of cases to the African Court, when States fail to comply with Commission decisions, the Court can only consider cases related to States that have ratified the Protocol to the African Charter on the Establishment of the African Court – currently 26 out of 54 Member States.
- The limited number of cases referred to the Court by States, individuals or NGOs.

The Working Group noted that it can only do its job of improving the protective mandate of the Commission through the collaboration of all stakeholders, particularly State parties. It also requested the African Union allocate funds for the activities of the Working Group in the near future.

The Working Group reminded stakeholders that information regarding communications is only made public once the Commission activity report has been approved by the AU. However, any party to a communication can get information (not decisions) from the Commission Secretariat at any time. In giving this detail on the process, the Working Group seemed to acknowledge that in other human rights systems – such as the United Nations – a lack of information has frequently created great frustration for individuals awaiting developments and an outcome in a case. Allied to this, in her activity report, the Chair of the Commission noted that African Commission reports will now be submitted to the Assembly of Heads of States and Government of the African Union at each Summit, rather than annually as was done previously. This would allow for quicker approval of Commission recommendations and decisions.

No States or national human rights institutions (NHRIs) requested to take the floor during the interactive dialogue with the Working Group. Several NGOs noted that the Commission should be proud of its decisions, having made some very clear recommendations. However, they decried the lack of their implementation or clear follow up by the Commission to these recommendations.

IMPLEMENTATION OF COMMISSION RECOMMENDATIONS

During Commission sessions, NGO interventions frequently focus on the lack of implementation of the Commission's decisions and recommendations. The lack of implementation of the 2009

Commission ruling regarding the displacement of the Endorois Community – which is frequently cited as a unique ruling, recognising the rights of indigenous people in Kenya and beyond – was referred to once again by civil society actors.³² The Special Rapporteur on Human Rights Defenders acknowledged States' failure to implement Commission recommendations can make the practice of producing them seem redundant, but repeating recommendations and recalling decisions does serve a purpose.

The NGO Forum urged the Commission to go further than repeating recommendations, and make greater use of its own Rule of Procedure 112 regarding 'follow up on the recommendations of the Commission'. The Forum called on the Commission to appoint a Rapporteur to follow up on two communications relating to Eritrea. In line with the scope given to the Rapporteur to define appropriate action, as laid out in Rule 116 (6),³³ the Forum suggested the Rapporteur schedule a public hearing on the State's non-compliance with the decisions. At such a hearing, the State, complainant and any other relevant actors should be provided with an opportunity to make public statements on the issues of compliance.³⁴ In the Endorois case, the Forum also called on the Commission to assign a Rapporteur to follow up on the implementation of the decision, and encourage the State to initiate meaningful dialogue with the Endorois community.

However, the Commission has not been inactive in protecting communities, through the various means at its disposal, with one example being the Commission's application to the African Court for provisional measures from the Republic of Kenya to protect the Ogiek Community from 'serious and massive violations' of their rights. Whilst the facts of the cases are clearly different, there is a question as to whether the lack of implementation in the Endorois case may have informed the Commission's readiness to refer the Ogiek Community case to the Court. In its decision of 15 March 2013, the Court stated it considered there to be 'a situation of extreme gravity and urgency, as well as a risk of irreparable harm to the Ogiek Community with regard to the violation of their rights guaranteed under the Charter' and ruled in favour of the Commission's application for provisional measures from the Republic of Kenya.³⁵ The Court later announced a sensitisation visit to Kenya in July 2013, aimed at, amongst other things, encouraging the State to make a declaration allowing individuals and NGOs direct access to the Court.³⁶ The protective and promotional sides of the mandates of both the Court and Commission have been evident around these cases. It is unknown though whether the Commission was able to highlight either case with the Kenyan authorities during the Commissioners' stay in Nairobi for the Commission's Extraordinary Session in July 2013.

FOLLOWING UP ON RECOMMENDATIONS MADE TO THE AFRICAN COMMISSION

NGOs have long urged the Commission to fulfill its mandate to protect and promote rights by considering new areas of concern and by improving its ways of working. Key recommendations were made to the Commission during its 25th Anniversary, at the last Ordinary Session in October 2012, and the 50th Ordinary Session where the 30th Anniversary of the African Charter was marked.³⁷ These included several recommendations related to transparency and efficiency in Commission working methods. Reforms would ensure that the Commission could better benefit from the experience and expertise of NGOs. Whilst the Commission deliberated on these recommendations there is, as yet, no road map for their implementation. ISHR called on the Commission to produce a road map for the implementation of the recommendations it accepts and supports, and to provide an explanation for the recommendations it rejects.

It is also clear, however, that without resourcing the Commission is unable to properly undertake the work it has been mandated to do by State parties to the Charter. If States are serious about guaranteeing and respecting human rights, this includes adequately resourcing the human rights mechanisms they created to assist them meet those commitments.

Possibly in response to some of the recommendations made to the Commission in recent sessions, it recently passed a resolution reconstituting its Working Group on Specific Issues Relevant to the Work of the Commission.³⁸

The working group is mandated to:

- deal as a matter of priority with the monitoring and supervision of the development of the Commission's Strategic Plan for the years 2014 – 2017 and the associated resource mobilisation strategy;
- deal with the mechanism and procedure for the follow-up on the recommendations and decisions of the Commission, other than those relating to communications or those provided for under the Commission's Rules of Procedure;
- continue to work together with other stakeholders to deal with the modalities for the establishment of a voluntary fund for human rights in Africa; and
- perform any other tasks which may be entrusted to it by the Commission.

In its final communiqué at this session, as has been done previously, the Commission noted that it had deliberated on the recommendations from the public session of the 52nd Ordinary Session, but no further details were given regarding implementation. Further details on the constitution and work plan of this working group are eagerly awaited.

REPRISALS

For the first time at an opening ceremony of an Ordinary Session, the Chair publically condemned reprisals against those that cooperate with the mechanism. Whilst this was welcome, the Commission did not respond to NGO calls to set up a mechanism to gather information on reprisals and coordinate a Commission response.³⁹

The NGO Forum passed a resolution asking the Commission 'to establish a reporting and follow-up mechanism to receive, document, analyse, report and follow-up on allegations of reprisals and intimidation reported in relation to cooperation with the African Commission and its mechanisms.' Following this, several NGOs held a side-event on reprisals to explore the options for a Commission response.⁴⁰ These initiatives highlight the real concerns of NGOs about the risks of reprisals when engaging the Commission.

The Commission has a responsibility to challenge such attacks as they occur, and a particular opportunity to do so when they occur in relation to the mechanism. This is all the more important given that many defenders engage with the mechanism precisely because space to claim and defend rights at national level is so limited. The Commission has long acknowledged the importance of the contribution of human rights defenders. In its 2011 resolution on human rights defenders in Africa, the Commission drew attention to the raft of violations, including reprisals, experienced by human rights defenders across the continent, and to its concern about the impunity perpetrators frequently enjoy. A 2012 joint press statement with other regional and international mechanisms urged States to prevent and refrain from reprisals.⁴¹

The decision taken by human rights defenders not to attend this session due to their prior experience of reprisals highlights the risks of inaction, both to individuals and to the functioning of the Commission itself.

The lack of protection for human rights defenders across the African continent is frequently highlighted by activists in statements made to the Commission. In line with the March 2013 UN resolution emphasising State obligations to ensure enabling environments for human rights defenders, ISHR called on the African Commission to echo these demands.⁴²

With reprisals against those cooperating with the Commission being just one manifestation of the failure of States to adequately protect individuals in their legitimate human rights engagement, ISHR called the Commission's attention to the increasing phenomenon of the criminalisation of the work of human rights defenders.

The aforementioned March 2013 UN resolution calls on States to ensure that the promotion and protection of human rights is not criminalised. Criminalisation of defenders includes the enactment of laws that restrict or deny the rights of human rights defenders. These include laws restricting NGOs from receiving foreign funding, proposed criminalisation of 'homosexual propaganda', and laws that limit freedoms of expression, association and assembly on discriminatory grounds. In addition, misuse of the judicial process, such as through costly court cases initiated and perpetuated with the purpose of hindering or paralysing their work, are common. Such criminalisation and stigmatisation of human rights defenders facilitate and constitute human rights violations.

ISHR called upon the Commission to urge States to refrain from the criminalisation of human rights defenders, as part of States' obligation to create and sustain an enabling environment for the defence of rights.

THE RELATIONSHIP BETWEEN THE AFRICAN COMMISSION AND OTHER BODIES

THE AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

With the African Court on Human and Peoples' Rights represented at the opening ceremony of the Commission's Ordinary Sessions, a brief overview of developments at the Court and of the relation-

ship between the Commission and the Court are regularly provided. Justice Ore's speech provided few surprises. He spoke of issues that have regularly been highlighted in regard to the Court, namely the low rate of ratification of the Protocol on the Establishment of the Court and of the Special Declaration recognising the jurisdiction of the Court to receive complaints from individuals;⁴³ and the importance of partnering with civil society to promote the work of the Court. As usual, he thanked the Commission for its work promoting the Court, and noted the upcoming establishment of a joint working group⁴⁴ which will consider how to improve cooperation between the Commission and the Court. This could include by issuing future joint publications tackling legal themes and opinions on human rights issues of common interest.

Whilst Rwanda's recent deposition of the Special Declaration was welcomed,⁴⁵ the overall numbers of signatories stands at a dismal six.⁴⁶

Frustration at the fact that individuals' access to the Court is in the hands of States was evident during a panel held on the Court at the NGO Forum. For example, in the case of *Femi Falana v African Union*,⁴⁷ Mr Falana of Nigeria argued that the failure or refusal of Nigeria to make the declaration to accept the competence of the Court denied him access to the Court, resulting in a violation of his right to be free from discrimination, to receive a fair hearing and to equal treatment. He therefore argued that Article 34 (6) of the *Protocol to the African Charter on the Establishment of an African Court* was inconsistent with the provisions of the African Charter itself. In a decision of 7 – 3 the African Court decided it did not have jurisdiction to hear the application.

NATIONAL HUMAN RIGHTS INSTITUTIONS

News of positive developments in regard to the establishment of NHRI was tempered by concerns about maintaining their credibility and independence.

The Gambia spoke of steps taken to establish a NHRI in the country, an initiative acknowledged by the Chair of the Commission.⁴⁸ The Chairperson of the Network of African National Human Rights Institutions (NANHRI) noted the establishment of the Mozambique Human Rights Commission, and the incorporation of the National Council for Human Rights in Egypt into the NANHRI.

The Chairperson highlighted several challenges faced by NHRIs across the continent including 'limited financial resources, lack of political goodwill and severe constraints on their independence and autonomy'. He

called on regional human rights mechanisms and bodies to complement the work of NHRIs when the latter are unable to effectively promote and protect human rights. The Central African Republic, Democratic Republic of Congo and Mali were cited as examples. Furthermore, he noted grave concern about governments dissolving or replacing NHRIs with others that are not compliant with the Paris Principles.⁴⁹

ISHR voiced similar concerns, calling upon the Commission to support the development of A-status NHRIs. ISHR called upon the Commission to ensure it only provides speaking rights at its sessions to NHRIs of the highest caliber, which would encourage the development of the overall human rights system across the continent. ISHR noted that whilst 22 NHRIs are accredited to speak during Commission session, only 15 NHRIs are fully compliant with principles of independence, impartiality and transparency i.e. the Paris Principles. ISHR called upon the Commission to put in place a periodic review of the status of national human rights institutions, allowing for suspension of those that do not meet the grade. This would send a strong message to States of the need for reform.

The Commission granted affiliate status to the national human rights institution of Burundi, bringing the total number of NHRIs with affiliate status with the Commission to 23. There was no specific reference made to previously expressed concerns over the role of NHRIs vis-à-vis the Commission.⁵⁰

Only four NHRIs made statements on the situation of human rights in their countries – those of Algeria, Kenya, Rwanda, and South Africa.⁵¹

In the case of Lesotho, an NGO from the country spoke of the slow pace of establishing a NHRI there, despite the necessary enabling legislation, and NGO representatives called for a specific action plan to advance the initiative.

COUNTRY FOCUS

ERITREA

The human rights situation in Eritrea received attention both during the NGO Forum and informal meetings held around the African Commission session. A small group of Eritrean human rights defenders gave details of the depth and breadth of human rights violations experienced by those living in Eritrea. The NGO Forum passed a resolution calling on the Eritrean Government to engage with regional and international mechanisms, including the UN Special Rapporteur on Eritrea. The Special Rapporteur herself reiterated the call to the Eritrean State to meet with her. The NGO Forum also urged the Commission to establish a public compliance hearing to address the non-compliance by Eritrea in regard to certain communications. These communications relate to the incommunicado detention of at least 18 journalists since September 2001; and the illegal arrest of former Eritrean government officials.

The Eritrean delegate questioned the Commission's engagement with the UN Special Rapporteur on Eritrea, implying the State had been side-lined. However, the Chair of the Commission noted the State had not officially requested to engage in meetings between the UN Special Rapporteur and the Commission. Whilst the request of the Special Rapporteur to visit the country continues to be denied by Eritrea, an ad hoc meeting was held between the parties during the Commission, and the Commission reported that several of its members met with the Eritrean delegation at their

request, during the Commission's private session. Combined efforts between the international and regional human rights mechanisms bore some fruit, but it has yet to be seen, for example, if the Special Rapporteur's current visit to neighbouring countries, to meet with Eritreans who have fled the country, will prompt the Eritrean State to extend her an invitation.⁵²

EMERGING ISSUES AND CHRONIC HUMAN RIGHTS SITUATIONS

The role, or possible role, of the Commission in situations of armed conflict was the focus of a couple of events at the NGO Forum. AU efforts to consolidate early-warning mechanisms and effect timely responses were highlighted. It was suggested, however, that there was a need for better coordination between AU bodies and bodies of regional economic communities, with the protection of civilians placed at the heart when defining strategies in times of conflict. Furthermore, the Commission did not use the tools at its disposal to address 'serious or massive violations of human and peoples' rights', such as by bringing these violations to the attention of the AU Assembly of Heads of State and Government, and the Peace and Security Council, or by referring cases to the African Court. Speakers made connections between the lack of States' compliance with the terms of the African Charter; Commission recommendations and decisions, and the likelihood of conflict. This implied the respect of human rights is central to conflict prevention. The situations in Mali and Sudan were explored in detail.⁵³

THE COMMISSION'S ENGAGEMENT IN MALI

The Commission's engagement in Mali has been unprecedented in terms of its response to an urgent human rights situation. The African Commission sent a fact-finding mission to Mali from 3 to 7 June 2013 in response to the decision contained in the Solemn Declaration on the situation in Mali adopted by the AU Assembly of Heads of State and Government during its 19th Ordinary Session, 15 to 16 July 2012.⁵⁴ The Declaration requested the African Commission 'to open an investigation into the human rights situation in the North of Mali... and to report back with a comprehensive report containing concrete recommendations on measures to be taken'. The fact-finding mission coincided with the ongoing Commission observer mission, headed by Commissioner Alapini-Gansou, as part of the AU response to the situation, i.e. the African-led International Support Mission in Mali (AFISMA). The Commission observer mission is considered a major turning point in the protection mandate of the African Commission; it is the first deployment of civilian observers by the Commission.

The African Commission's Special Rapporteur on Human Rights Defenders, who has been heading the Commission's observer mission, noted that the Commission is becoming increasingly important and visible as a human rights actor in Africa. She noted that the Commission should remain the primary body assessing the human rights situation in the continent. She thanked the Chair for sending a mission to Mali, noting that 'we have to support the voiceless... and those living in the underworld'.

FIDH noted that it had sent observers to Mali to work with existing defender networks, and that the Special Rapporteur would continue to be assisted by defenders from frontline countries, in Chad, Niger and Mali itself.

During the African Commission session, the Royal Society for the Blind called on the Commission to make sure that in its reports on Mali the experience of persons with disability be brought out.

At the end of its fact-finding mission in June, the African Commission noted with concern cases of serious human rights violations committed in Gao, Timbuktu and Kidal. It noted that a detailed mission report, including recommendations, will be submitted to the Assembly of Heads of State and Government of the African Union, in January 2014.⁵⁵ In a resolution issued following its Extraordinary Session, July 2013, the Commission called on the Malian State 'to take the necessary measures to preserve social peace' with an eye to upcoming elections. The Commission also called on Economic Community of West African States, the AU, and the international community to monitor political developments in the country.⁵⁶

SUDAN

The NGO Forum approved a resolution on Sudan calling on the Commission to coordinate with African Union bodies, such as the Peace and Security Council, to define an effective response to the situation in that State. As part of that coordinated response, the NGO Forum urged the Commission 'to carry out an urgent protection mission' to gather information on the human rights situation in different parts of the country. Such calls for proactivity by the Commission demonstrate that NGOs see potential for greater involvement by the Commission in proposing and executing responses and preventative strategies to conflict.

Further Commission reflections and recommendations on its role in conflict situations more broadly are eagerly awaited.

SEXUAL ORIENTATION AND GENDER IDENTITY

During an NGO Forum side event on 'Fighting Violence on the Basis of Sexual Orientation and Gender Identity'⁵⁷ developments at the UN Human Rights Council related to sexual orientation and gender identity were discussed. The debate focused on the Human Rights Council's resolution on this subject,⁵⁸ and how African activists might have their voices and recommendations included as part of the ongoing process. The side event provided 'an opportunity to urge the African Commission to break its silence'⁵⁹ on violations on the basis of real or perceived sexual orientation and gender identity. There was discussion about how a process to advance rights within the UN human rights mechanisms may have an impact on developments within different regions.

Once again, the NGO Forum called on the Commission 'to condemn the increased incidence of discrimination and violence' against individuals in Africa on the basis of their real or perceived sexual orientation and gender identity. It condemned reprisals against human rights defenders, NGOs and civil society organisations working on issues of sexual orientation and gender identity and called on State parties to investigate and prosecute perpetrators. The Commission did not respond directly to the call to action.

There has never been a Commission resolution on rights related to sexual orientation and gender identity, despite the NGO resolutions on this issue spanning several years, and engagement by activists working on these matters attending the Commission sessions for longer still. There have been few references to sexual orientation and sexual minorities by the African Commission, with a first reference by the Commission to sexual orientation in its 2002 decision Zimbabwe Human Rights NGO Forum / Zimbabwe.⁶⁰

However, in its recent General Comment on Article 14 of the Maputo Protocol (see below), the Commission confirmed sexual orientation as one of the possible grounds of prohibited discrimination (along with 'race, sex, sexuality, sexual orientation, age, pregnancy, marital status, HIV status, social and economic status, disability, harmful customary practices and/or religion').⁶¹ In addition, the Chair of the Commission, in a video address to the International Conference on Human Rights, Sexual Orientation and Gender Identity held in Oslo, Norway, noted that the African Commission 'denounces violence committed against individuals based on their sexual orientation, as part of its mandate to protect individuals from all forms of violence'. This is an important public assertion by the Commission. The Commission must continue working consistently for the protection of the rights of all Africans, and facilitate this work by enabling participation at the Commission of human rights defenders working on issues related to sexual orientation and gender identity.

In her report, Ms Tlakula noted that in her capacity as Commissioner she had been in talks on the development of a 'Study on the Rights of [Lesbian, Gay, Bixesual, Transgender, and Intersex] LGBTI Persons in an African Context', which will be funded by the Danish Ministry of Foreign Affairs.⁶²

SOGI ACTIVISM AT THE NGO FORUM

For the first time, the experience of activists working on sexual orientation and gender identity (SOGI) was referenced in the majority of sub-regional overviews at the NGO Forum. A representative of the East and Horn of Africa Human Rights Defenders Network

(EHAHRDN), which has a long-term commitment to supporting SOGI activists, told the Forum, 'you have our solidarity in the struggle you face.'

There has been concern expressed at previous Forum sessions about putting a resolution on sexual orientation and gender identity to a traditional resolution vote. Doing so raises questions as to whether the NGO Forum should put to a vote a resolution that speaks of people's natures and identities. Should it be assumed that as a group of human rights defenders, acceptance of the full spectrum of human rights issues is the starting point for all discussion? Should all resolutions carry a chapeau that speaks of fundamental human rights principles?

Alternatively, specific resolutions provide the opportunity to bring specific concerns of the Forum to the attention of the African Commission, amongst others. It is also a means of the Forum questioning itself and its members on their role as human rights defenders – which includes the acceptance of the universality of human rights. The Forum, in this guise, becomes a crucible for the development of activists in the continent.

Reflecting one of the issues discussed widely at the Forum, the Legal Defence and Assistance Project (LEDAP) expressed concern about the Same Sex Marriage (Prohibition) Bill, at that time before the Nigerian National Assembly.⁶³

HUMAN RIGHTS DEFENDERS URGE THE AFRICAN COMMISSION TO TAKE ACTION

What did the NGO Forum highlight as concerns to the Commission, and did the Forum resolutions inform the African Commission's positions?

Long-standing concerns and calls to the Commission were reflected in a series of country-focused and thematic resolutions. Several NGO initiatives pressed the Commission on areas on which it has not traditionally engaged, in a bid to use the mechanism to extend and confirm the application of human rights perspectives.

The Commission passed four resolutions, on: the illicit capital flight from Africa; transitional justice in Africa; the right to nationality; and the appointment of expert members of the Working Group on Indigenous Populations/Communities in Africa.⁶⁴

At this Forum, defenders called upon the African Commission and other regional and international human rights bodies 'to integrate **terrorism (and) transnational organized crime** in its agenda', recommending that research be carried out on the root causes of the phenomena, and the implications on human rights and democracy in Africa. The Commission did not respond to this call directly.

For the first time the Forum provided a focus on the experience of people with **albinism**. The Commission noted in the debate that albinism has traditionally been seen as an issue related to health and social service provision, but is now emerging as a human rights issue.

The Forum called on the Commission to both recognise the killings of persons with albinism in Africa as 'a crime against humanity' and to carry out a study on the violations faced by this group in Africa. During the Commission session, Chairperson Atoki called violations against persons with albinism to be a 'crisis', but there was no further output.

The issue of **illicit capital flight** from Africa was compellingly brought to the attention of the human rights body in NGO statements during the Commission session itself. The Tax Justice Network asked the Commission whether tax questions, including the issue of tax havens, were not matters of concern to the African Commission. They noted that corruption, including losses from illicit flight of capital, were at the root of many of Africa's problems. The Chair of the Commission thanked the NGO for highlighting the issue as one the African Commission should be concerned about, and for linking it back to the African Charter. The Commission's resolution on the issue 'recognises that illicit capital flight undermines the capacity of State parties to implement the African Charter'. This seemed to acknowledge the relevance of Article 25(5) of the Charter, which NGO Human Rights Development Initiative cited in its statement to the Commission.⁶⁵ The Commission mandated the Working Group on Economic, Social and Cultural Rights in Africa, and the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa to undertake a study on the issue.

That the Commission should address an issue such as illicit capital flight demonstrates its confidence in being able to introduce a human rights perspective to issues not previously considered as human rights issues.

The African Commission tasked Commissioner Pacifique Manirakiza with preparing a study on **transitional justice in Africa**. The study is to have several objectives: determining the Commission's role in implementing the African Union Transitional Justice Policy Framework; analysing opportunities and challenges of the Commission in encouraging and supporting transitional justice processes and mechanisms in Africa; and analysing the possibility for the establishment by the Commission of a special mechanism on transitional justice in Africa. These all respond to NGO Forum calls through their resolution on transitional justice.⁶⁶

A side event entitled 'Towards the establishment of a Special Mechanism on Transitional Justice within the African Commission' was held at the NGO Forum. It was organised by the Centre for the Study of Violence and Reconciliation, Kenya Human Rights Commission and Zimbabwe Lawyers for Human Rights.

Other side events held at the African Commission included:

- *Maastricht Principles on the Extraterritorial Obligations of States in the areas of Economic, Social and Cultural Rights: Their Importance in the African Context*. ETO Consortium.
- *Launch of 'Violations of the Right of NGOs to funding – from harassment to criminalization'*. FIDH and Organisation Mondiale Contre la Torture (OMCT).⁶⁷ *Reflecting on the current developments at the African Court for better access to justice in the Continent*. Coalition for an Effective African Court on Human and Peoples' Rights.
- *On the human rights situation in Angola*. Justice, Peace and Democracy Association (AJPD).

STRENGTHENING HUMAN RIGHTS AGENDAS AND SYSTEMS

CALLS FOR STRUCTURAL DEVELOPMENTS AT THE AFRICAN COMMISSION

Hosting of the African Commission's Secretariat and Ordinary Sessions

The controversial question of The Gambia hosting the African Commission Secretariat was a live issue during the session. The Centre for Human Rights at the University of Pretoria called on the Commission to demand that the issue of the location of the Secretariat be debated within the African Union, and to work to ensure that as many Commission sessions as possible take place in locations other than the Gambia. These concerns and demands were later expanded upon by the Director of the Centre for Human Rights, Professor Viljoen, who noted that 'The Gambia is not only an authoritarian State, but also one of the prime human rights violators on the continent' and also highlighted a 'disconcerting trend' of fewer and fewer Commission sessions being held in other countries.⁶⁸

In 2009, following threats by the President of the Gambia toward human rights defenders, the Commission made clear requests to the AU to consider relocating the Secretariat of the African Commission if the human rights situation in the Republic of The Gambia did not improve.⁶⁹

At this session, the Chair made a call to other States to consider hosting the Commission, and noted that NGOs had a role to play in encouraging States to do so. However, she implied States seemed reluctant to incur the costs of hosting, noting that when the Commission submitted its budget to States for hosting sessions, they often backed out.

During the NGO Forum, the Executive Director of the African Centre for Democracy and Human Rights Studies and convenor of the Forum acknowledged criticism by some participants of the presence of a minister from the Gambian State at the opening ceremony.

However, she noted representatives of States had made a commitment to attend the NGO Forum when held in their respective countries, and said this should be encouraged since it provides a rare opportunity to engage directly with these government officials.

She did note that the Gambia has an even greater responsibility than its peers to allow human rights defenders to conduct their work uninhibited given that it hosts the Commission.

NGO Forum resolution on Kenya calls for a Rapporteur to be appointed.

The resolution called for a rapporteur to be appointed to engage in conversation with Kenya on the Endorois case (see above, page 9). This indicates civil society is making better use of linkages between the different tools and opportunities offered by the Commission.

CREATING AN OVERALL HUMAN RIGHTS SYSTEM IN AFRICA

Several initiatives referred to during the Commission session indicate increased synergies between different bodies in Africa with human rights mandates.

- In her activity report, the Special Rapporteur on Freedom of Expression and Access to Expression in Africa referenced initiatives on freedom of expression promoted by other bodies in the African system - namely the African Union Commission (AUC) and the Pan-African Parliament (PAP). The Special Rapporteur also spoke of how these bodies support and strengthen each other's work – with the Parliament passing a 2012 resolution encouraging AU Member States to adopt the Commission's Model Law on Access to Information.⁷⁰
- The Commission has appointed the Special Rapporteur on Freedom of Expression to be the focal point in strengthening collaboration between the Commission and African Peer Review Mechanism (APRM). The Special Rapporteur noted that including the right to freedom of expression in the peer review mechanism had been recently discussed. She mentioned the UN Plan of Action on the Safety of Journalists and the Issue of Impunity, and how the implementation of this plan will require its integration into the work of these bodies.
- During the opening ceremony, the Chair offered congratulations to the Organisation of African Unity / AU on its 50th Anniversary, and outlined the human rights instruments and mechanisms, including the Commission itself, it had established. She acknowledged the ongoing development of human rights standards, referencing the entry into force of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ('the Kampala Convention') at the end of 2012.
- The Special Rapporteur on the Rights of Women in Africa called upon the Commission to support her engagement in African Union programmes and strategies within the 'African Women's Decade'. This implied a lack of resources to enable the Commission to be the heart of AU strategies, in order to inform these and encourage connection and consolidation of the work across different bodies with human rights mandates. She also reminded States of their responsibilities to report annually on progress made in mainstreaming gender in their policies and programmes, in line with the AU Solemn Declaration on Gender Equality in Africa.⁷¹
- Representatives from the African Union Commission (and the Department of Political Affairs) regularly attend the Commission meeting. However, the Chair of the Commission, Mrs Atoki noted it was the first time someone from the Pan-African Parliament attended the Commission meeting, and that this was a welcome development.
- It was noticeable that developments had been advanced by the African Commission which might most logically have been advanced by other bodies. For example, the draft model law on access to information might have most naturally been placed with the Pan – African Parliament. Is this a sign of the Commission outpacing other bodies?
- Reference to several frameworks developed by the African Union were made by the African Union Commission representative at the opening ceremony.⁷² However, it is of note that the AU Year of Shared Values in Africa in 2012, and the related African Governance Architecture and Platform are rarely referenced by States or civil society representatives. Equally, the AU human rights strategy, aimed at enhancing coordination amongst various stakeholders from the AU, Regional Economic Communities, Courts and Tribunals, NHRIs and wider civil society, is barely mentioned.

MAKING CONNECTIONS INTERNATIONALLY

Through the presence of UN Special Rapporteurs and their representatives at Commission sessions, African States are reminded they are participants in a global human rights system, which they contribute to creating and are held to account by. Synergies between the African human rights system and others were evident during the Commission meeting, as well as in reports of Commissioners' inter-sessional activities.⁷³

REPORTS OF THE SPECIAL PROCEDURES⁷⁵

SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

In her last report during this period of her mandate, Ms Alapini-Gansou said cooperation between her office and States during the preceding six months had been 'poor'. She said there had been a 'lack of cooperation' by several States, which undermined the 'rigorous follow-up of cases and the effective protection of human rights defenders'.⁷⁶

She highlighted her particular focus on freedom of association during the six-month period. This included a consultation with the UN Special Rapporteur on the Rights to Peaceful Assembly and Association about the respect of these rights in the French speaking countries of West and Central Africa. In line with other Commissioners, she spoke of the importance of consolidating cooperation between UN and African Commission Special Procedures.

Information gathered at the consultation will also contribute to the ongoing work of the Commission Study Group on Freedom of Association in Africa. As members of the study group, the Cairo Institute for Human Rights Studies (CIHRS) highlighted concern about legislations restricting the freedom of association and assembly in North Africa.⁷⁷

The Special Rapporteur made no further reference to the idea of developing 'early warning mechanisms' regarding the situation of human rights defenders, as she had proposed at the 52nd session. She did make note of the publication of the 8th edition of her 'Rapporteur's Letter' entitled, 'Defending Human Rights Defenders'.⁷⁸ Furthermore, she noted she would be providing details of correspondence with States in her end of mandate report, during the 54th session

STATE RESPONSES ON HUMAN RIGHTS DEFENDERS AND NGO INTERVENTIONS

During the interactive dialogue with Special Rapporteur on Human Rights Defenders, Algeria stated that: 'there is no persecution of human rights defenders in this space'. The State said it wanted defenders 'to be conscious of their duties...They need to

Two UN Special Rapporteurs attended the session – the Special Rapporteur on the Situation of Human Rights in Eritrea, and the Special Rapporteur on the Human Rights of Migrants. In addition, a representative from the ASEAN Intergovernmental Commission on Human Rights (AICHR) was present and noted the importance of cross regional learning.

The Commission said it had held discussions with Mr Adama Dieng, Special Adviser to the United Nations Secretary General on the Prevention of Genocide, on how to work more closely together.⁷⁴

respond to the law – they can't insult and beat a police officer, and get away with it'.

FIDH directly challenged Algeria on the claim that there is no persecution of defenders in Algeria. Their representative held up a paper, stating, 'I have at least three names here' referring to cases of defenders whose rights had been allegedly violated. FIDH presented a detailed statement on violations faced by defenders, highlighting cases of criminalisation, including restrictive draft and existing laws on NGO registration. The organisation highlighted that almost no Ethiopian NGOs engage at the Commission due to crippling restrictions on foreign funding.⁷⁹ It also noted that Ethiopia hosts the African Union, implying this was inappropriate given the country's human rights record.

The Kenyan Human Rights Commission raised apprehension that the new government in Kenya may not create and sustain an enabling environment for human rights defenders, and noted fears of restricted space for civil society.

The Special Rapporteur concluded the session, powerfully responding to some of the State interventions, by noting: 'human rights defenders are not enemies of the State.'

SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN

The Special Rapporteur on the Rights of Women made her usual call to States to speed up ratification of Maputo Protocol,⁸⁰ and referred to the need to implement UN Security Council Resolution 1325 with the aim of putting an end to violence against women and girls.⁸¹

SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION IN AFRICA

Whilst there has been an increase in the numbers of laws on access to information, the challenge of implementation remains. The Special Rapporteur noted positive developments regarding freedom of expression in Chad, Sudan and Tunisia, where defamation and insult are no longer considered crimes but are now civil matters. She also highlighted the fact that, in recent months, the presidents of both Liberia and Niger had signed the 'Declaration of Table Mountain', which calls for the decriminalisation of defamation and libel.

While there were few, if any, State interventions during the reports of most Special Procedures, in the case of the Special Rapporteur on Freedom of Expression several States took the floor.

Sudan noted that according to its constitution, journalists are required to act in 'a respectful way and respect social and cultural ways for the country'. Eritrea said journalists are frequently funded by foreign NGOs and foreign States, undermining the true freedom of the press. It also said it has every right to defend its own independence. In response to a statement delivered by the East and Horn of Africa Human Rights Defenders Programme (EHAHRDP), the State delegate noted that Western media and Western institutions are campaigning against the government. Ethiopia said NGOs failed to reflect the reality in Ethiopia, where 'everyone has right to freedom of expression'. It said the press is well able to impart new ideas to citizens and to protect the right of citizens to receive 'correct information'.

The Special Rapporteur summarised concerns expressed by NGOs in their statements, as follows:

- That laws relating to freedom of expression must be in line with international standards. The Rapporteur indicated the Commission agreed.
- Concern about the criminalisation of defamation. The Rapporteur noted that the African Commission agrees defamation should be a civil matter; not one the State should get involved in. She said defamation laws were inherited: 'they are not our laws... it is time for us as Africans to look at those laws and reform them'.
- That recommendations made by the African Commission in communications and concluding observations have not been implemented. The Special Rapporteur noted this is a cry first made many years ago, and still highly relevant.

CHAIRPERSON OF THE WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS IN AFRICA

At a side event on extractive industries, a representative of the Commission's Working Group on extractive industries noted the group was currently working on a study on the definition of 'extractive industry', and a study of the status of the impact of extractive industries on social groups. The NGO Forest Peoples' Programme noted the African Commission has a lot to offer, including in enabling conversations. It proposed that the Commission could draft a model law exploring an alternative development model based on human rights.

Commissioner Manirakiza, Chairperson of the Working Group on Extractive Industries, announced the inaugural working group country mission, to Zambia in August 2013. Missions are also planned to Liberia (December 2013) and the DRC (January 2014).

CHAIRPERSON OF THE WORKING GROUP ON THE RIGHTS OF OLDER PERSONS AND PEOPLE WITH DISABILITIES IN AFRICA

The Chairperson called on 'all stakeholders' to press for the Draft Protocol on the Rights of Older Persons, to be adopted by the heads of State and government.⁸²

The Royal Commonwealth Society for the Blind (Sightsavers) called on the Commission to accelerate the conclusion of the process developing the African Protocol on Disability. It is understood that the

African Union Commission is currently considering the Protocol, but that there is no confirmed process for finalising it. The Society also asked Commissioners to include a focus on disability in their reports, to ensure that the all-important intersection between the different identities and circumstances which inform human rights experiences are appropriately reported and addressed.

THE ENVIRONMENT FOR CIVIL SOCIETY PARTICIPATION

There were 453 representatives from African and international NGOs that attended the Commission's Ordinary Session.

CHALLENGES TO THE RIGHT OF HUMAN RIGHTS DEFENDERS TO PARTICIPATE AT THE AFRICAN COMMISSION

Several States made statements that seemed to question the right of defenders to participate in the Commission session.

Tanzania said there were statements made by NGOs, 'whose identities are not clear'. They called on NGOs 'if they are truly patriotic' to work with the government.

Uganda called for references by NGOs to cases of violations against defenders to be pulled from the session record, on the basis that they could not be followed up, which was said to be unfair to the State in question.

Zimbabwe noted that NGO statements made during the session regarding the country were 'lies', and that human rights defenders are citizens who should expect to be held to account by the law.

In response to these State interventions, the Chair noted that the Ordinary Session is open to all accredited NHRIs and NGOs and to all AU member States. All have the freedom to speak and take the floor, as long as language is civil. She also informed NGOs with specific allegations to make that, in addition to making a statement, they should direct these allegations to specific mechanisms so the details can be followed up with States.

It should be remembered that a decision was made by the AU Heads of State, and endorsed by the Chairperson of the African Union Commission, to limit civil society participation during the May 2013 AU Summit in Addis Ababa, Ethiopia.⁸³

Observer status was granted to all eight NGOs that applied, bringing the total number to 445. The new NGOs granted this status were:

- Federation of African Journalists, Senegal
- Endorois Welfare Council, Kenya
- Muslims for Human Rights, Kenya
- The Association for Non-Governmental Organisations (TANGO), The Gambia
- International Federation of Women Lawyers Association, Nigeria
- Independent Medical Unit (IMLU), Kenya
- Soutien aux prisonniers en Côte d'Ivoire (SOPCI), Côte d'Ivoire
- Action pour la Protection des droits de l'homme, Côte d'Ivoire.

As in previous years at both the Forum and African Commission, the Royal Society for the Blind called for materials to be made available in braille so as to make sessions more accessible.

CHANGE AT THE TOP

At the end of the public session, Ms Dupe Atoki announced she will not stand again as Commissioner, which brings her term as Chairperson to an end.

Aside from referencing the innovation shown by the Commission, the Chair did not seek to present any assessment of the state of human rights in Africa, or of the effectiveness of the Commission. She did make a few comments to States however, expressing the hope that States would forgive her for interrupting them during sessions. She said she looked forward to the introduction of a system – similar to that at the UN – where those speaking are cut off when the time for their intervention has finished, rather than the Chair having to do so, which ‘feels uncomfortable’.

She called on States parties to support the Commission budget when it was submitted to them. She noted that the model law project could never have been resourced by the AU funds provided to the Commission, and that the Special Rapporteur on Freedom of Expression had gone out of her way to find funds from multiple sources. Becoming quite emotional, she said the Commission sometimes got ‘insulting language’ from Member States when the Commission asked for money, and added, ‘we are not beggars, do not make us beg’. The model law, for example, was an initiative to help States.

Finally, she called on NGOs to play their part in taking recommendations and the ‘work’ of the Commission back home to make a difference.

FURTHER MEETING DATES

The Commission announced a meeting with the Court from 17 to 19 July 2013, and its 14th Extraordinary Session from 20 to 24 July, both in Nairobi, Kenya.

The next Ordinary Session of the Commission, from 22 October to 5 November 2013, will be held again in Banjul, The Gambia.

Since the end of the Commission's 53rd Ordinary Session there have been changes in the lineup of Commissioners and these will be confirmed at the next Commission session.

- ¹ The NGO Forum Steering Committee is comprised of representatives from all the sub-regions of the continent, and the diaspora and international NGOs, along with the African Centre for Democracy and Human Rights Studies (ACDHRS).
- ² These were the outcomes of the Steering Committee meeting held the day before the start of the NGO Forum.
- ³ These include recommendations made to the Steering Committee by participants; at the recent 25th Anniversary Session of the Commission, October 2012.
- ⁴ An intervention by the Chairperson of the Governing Council, African Centre for Democracy and Human Rights Studies (ACDHRS).
- ⁵ Participant speaking from the floor during the Opening Ceremony.
- ⁶ Professor Mabassa Fall, FIDH.
- ⁷ African Commission Resolution 230 notes that all NGOs with observer status must submit their activity reports to the Commission at least once every two years.
- ⁸ African Centre for Democracy and Human Rights Studies (ACDHRS), United Nations Office for West Africa (UNOWA), African Commission.
- ⁹ Recommendation made to the NGO Forum by Musa Gassama of the United Nations Office of the High Commissioner for Human Rights (OHCHR), during the ACHPR 25th Anniversary discussions held at the 52nd Ordinary Session.
- ¹⁰ Heartland Alliance held a session, as did Conscience International and Civicus.
- ¹¹ This was an NGO response to the concern expressed at the 52nd Ordinary Session that NGOs weren't aware of the process for submitting cases.
- ¹² Redress & Centre for the Study of Violence and Reconciliation (CSV). For more on engaging at the African Commission, see ACJD/Conectas/ISHR Roadmap for Civil Society Engagement: http://www.conectas.org/arquivos/Conectas_Roadmap_AfricanCommission_ENG.pdf.
- ¹³ For country resolution at the NGO Forum, visit http://www.ishr.ch/document-stuff/browse-documents/doc_download/1680-country-resolutions-from-the-ngo-forum-53rd-session. For thematic resolutions, visit http://www.ishr.ch/document-stuff/browse-documents/doc_download/1679-thematic-resolutions-from-the-53rd-session-of-the-ngo-forum.
- ¹⁴ During the 52nd Session, Commissioner Khalfallah noted that the Commission received too many resolutions from the NGO Forum to be able to consider them all effectively. Similarly, Musa Gassama from OHCHR encouraged the NGO Forum to be more selective in the issues it brings to the attention of the Forum. This bears some parallels by the commitment by some States participating in the UN Human Rights Council's Universal Periodic Review Process to limit themselves to two concrete recommendations per country.
- ¹⁵ The Study Group on Freedom of Association was established in 2009 under Resolution 151: <http://www.achpr.org/sessions/46th/resolutions/151/>.
- ¹⁶ Musa Gassama, OHCHR, during the session held on the relationship between the Commission and its partners, during the 25th Anniversary of the Commission, 52nd Ordinary Session of the African Commission.
- ¹⁷ It was suggested that the interactive dialogue was postponed as a result of a lack of translations of the report into other languages.
- ¹⁸ State parties that have never submitted reports to the Commission are Comoros, Djibouti, Equatorial Guinea, Eritrea, Gabon, Guinea Bissau, Liberia, Malawi, Sao Tome and Principe, Sierra Leone, Somalia, and South Sudan.
- ¹⁹ Final Communiqué of the 53rd Ordinary Session of the African Commission.
- ²⁰ Available on the African Commission website: <http://www.achpr.org/>.
- ²¹ Ibid.
- ²² Ibid.
- ²³ <http://www.achpr.org/states/>.
- ²⁴ The process of developing the model law was coordinated by the Centre for Human Rights, University of Pretoria, under the auspices of the Special Rapporteur on Freedom of Expression and Access to Information.
- ²⁵ The number increased from five countries at the start of the process of developing the model law in 2010, to 11 countries in March 2013.
- ²⁶ This report was due to be examined by the Commission during its Extraordinary Session in July 2013, but due to lack of time was passed over to the next Ordinary Session, October 2013.
- ²⁷ The Egyptian Initiative for Personal Rights and Interights.
- ²⁸ For more on the initial coverage of this decision, Egyptian Initiative for Personal Rights and Interights v Egypt (323/2006), see: <http://www.interights.org/eipr-and-interights-v-egypt/index.html>.
- ²⁹ Cairo Institute presentation to the NGO Forum on the situation of human rights and democracy in North Africa.
- ³⁰ The Chair of the Commission, Ms Atoki.
- ³¹ For more on communications see the Commission factsheet: http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf.
- ³² For details of the case see: Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya: <http://caselaw.ihdr.org/doc/276.03/>.
- ³³ African Commission 2010 Rules of Procedure 122 (6): 'The Rapporteur may make such contacts and take such action as may be appropriate to fulfill his/her assignment including recommendations for further action by the Commission as may be necessary.'
- ³⁴ See NGO Forum resolutions CRES/003/04/2013 on Eritrea, and CRES/004/04/2013 on Kenya.
- ³⁵ Application No 006/2012: The African Commission on Human and Peoples' Rights v. The Republic of Kenya. Order of Provisional Measures. http://www.african-court.org/en/images/documents/Orders-Files/ORDER_of_Provisional_Measures_African_Union_v_Kenya.pdf.
- ³⁶ Press release on upcoming sensitization visit: http://www.african-court.org/en/images/documents/Press_Docs/Press_Release_-_Sensitization_Visit_to_Kenya.pdf.
- ³⁷ See ISHR Kumulika: The African Commission on Human and Peoples' Rights: 25th Anniversary http://www.ishr.ch/index.php?option=com_docman&task=doc_download&gid=1609&Itemid=634.
- ³⁸ Resolution on the Reconstitution of the Working Group on Specific Issues Relevant to the Work of the Commission and modifying its mandate and composition. Passed at the African Commission's Extraordinary Session, 19 – 25 February 2013.
- ³⁹ NGO Forum Resolution TRES/05/04/2013: Reprisal and Intimidation against those who seek to cooperate, or who have cooperated with the African human rights mechanisms.
- ⁴⁰ Cairo Institute for Human Rights Studies, East and Horn of Africa Human Rights Defenders Project, ISHR, West African Human Rights Defenders Network.
- ⁴¹ http://www.ishr.ch/document-stuff/browse-documents/doc_download/1421-joint-statement-on-reprisals-from-special-rapporteurs
- ⁴² UN Resolution A/HRC/22/L.13, 15 March 2013.
- ⁴³ Under Article 34.6 of the Protocol on the establishment of the African Court. A total of 26 countries have ratified the Protocol to the African Charter on the establishment of the African Court. Only six of them have already made the special declaration of recognition of the jurisdiction of the Court.
- ⁴⁴ The working group will be made up of three judges and three Commissioners.
- ⁴⁵ February 2013.
- ⁴⁶ Burkina Faso, Ghana, Malawi, Mali, Rwanda, and Tanzania.
- ⁴⁷ Femi Falana V African Union, 2012: http://www.african-court.org/en/images/documents/Press_Docs/Judgment.%20in%20the%20matter%20of%20Femi%20Falana%20v.%20The%20AU.%20Application%20no.%20001.2011.pdf.
- ⁴⁸ Ms. Atoki during the Opening Ceremony of the Ordinary Session.
- ⁴⁹ The Paris Principles, see <http://www.ohchr.org/en/countries/nhri/pages/nhri-main.aspx>.
- ⁵⁰ See ISHR 'Kumulika': The African Commission on Human Rights and Peoples' Rights' http://www.ishr.ch/index.php?option=com_docman&task=doc_download&gid=1609&Itemid=634.
- ⁵¹ Ordinary Session Final Communiqué.
- ⁵² The Special Rapporteur presented her first report, A/HRC/Res/23/21, to the 23rd session of the Human Rights Council, June 2013: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/150/91/PDF/G1315091.pdf?OpenElement>.
- ⁵³ Side event convened by the East and Horn of Africa Human Rights Defenders Network and partners.
- ⁵⁴ Solemn Declaration on the Situation in Mali available at <http://www.peaceau.org/uploads/ahg-decl-mali-16-07-2012-eng.pdf>.
- ⁵⁵ Press release on the African Commission fact-finding mission to the Republic of Mali, 7 June 2013. <http://www.achpr.org/press/2013/06/d163/>.
- ⁵⁶ African Commission Resolution on the Political Situation in the Republic of Mali: <http://www.achpr.org/sessions/14th-eo/resolutions/238/?prn=1>.
- ⁵⁷ Convened by African Men for Sexual Health and Rights (AMSHER).
- ⁵⁸ A/HRC/Res/17/19: available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=18840.

- ⁵⁹ From the event flyer.
- ⁶⁰ 245/02 Zimbabwe NGO Forum V Zimbabwe.
- ⁶¹ General Comments on Article 14 (1) (d) and (e): <http://www.achpr.org/news/2012/11/d65/>.
- ⁶² Activity report of Pansy Tlakula.
- ⁶³ This Bill was passed into law by Nigeria's House of Representatives on 30 May 2013. For ISHR coverage of the draft Nigerian law, see: <http://www.ishr.ch/general-news/1520-draconian-draft-nigerian-law-would-criminalise-lgbt-persons-and-human-rights-defenders>.
- ⁶⁴ For full resolution texts see: <http://www.achpr.org/resolutions/>.
- ⁶⁵ Article 21 (5) of the African Charter: 'State Parties to the present Charter shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources'.
- ⁶⁶ NGO Forum Resolution TRES /008/4/13 on transitional justice.
- ⁶⁷ http://www.omct.org/files/2013/02/22162/obs_annual_report_2013_uk_web.pdf. For their statement to the Commission on the situation of human rights defenders, see: <http://www.omct.org/human-rights-defenders/statements/2013/04/d2227/>.
- ⁶⁸ 'A call to shift the seat: The Gambia is not a suitable seat for the African Commission on Human and Peoples' Rights', 27 May, 2013, *AfricLaw*: <http://africlaw.com/2013/05/27/a-call-to-shift-the-seat-the-gambia-is-not-a-suitable-seat-for-the-african-commission-on-human-and-peoples-rights/>.
- ⁶⁹ 'Resolution on the Deteriorating Human Rights Situation in The Gambia', adopted at the Commission's 7th Extraordinary Session, Dakar, Senegal, 11 October 2009. See at: <http://www.achpr.org/sessions/7th-eo/resolutions/145/>.
- ⁷⁰ Pan-African Parliament resolution on the campaign on 'Press Freedom on Development and Governance: Need for Reform'.
- ⁷¹ African Union Solemn Declaration on Gender Equality in Africa: http://www.afrimap.org/english/images/treaty/AU_GenderSolemnDec04.pdf.
- ⁷² Director of the Department of Political Affairs of the African Union Commission.
- ⁷³ Reference to the Joint Committee UN – African Commission.
- ⁷⁴ Final communiqué of 13th Extraordinary Session: 19 – 25 February 2013. <http://www.achpr.org/sessions/13th-eo/info/communiquee013/>.
- ⁷⁵ For a full list of reports delivered at the session, see the African Commission website at: <http://www.achpr.org/news/2013/04/d82/>.
- ⁷⁶ Should a mandate holder request a renewal of his or her mandate, this is normally agreed to.
- ⁷⁷ Cairo Institute for Human Rights Studies in their statement during the interactive dialogue with the Special Rapporteur.
- ⁷⁸ As with previous examples of this newsletter, unhelpfully, it is not available on the Special Rapporteur's page on the Commission website.
- ⁷⁹ One Ethiopian defender present said civil society in the country was 'on the verge of extinction'.
- ⁸⁰ There have been no further ratifications since 2010, with the number at 28, with 18 signatories.
- ⁸¹ UN Security Council Resolution 1325 on Women and Peace and Security, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1325%282000%29.
- ⁸² The Draft Protocol was finalised by the African Commission at the 52nd Ordinary Session, however, as yet is unavailable on the Commission website.
- ⁸³ Letter to the AUC Chairperson HE Dr. Nkosazana Dlamini-Zuma, 24 May 2013: <http://www.hrw.org/de/node/115841>

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