

KUMULIKA
THE AFRICAN
COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS:
54TH ORDINARY SESSION



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS



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

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

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

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AUTHORS

Eleanor Openshaw, Clement Nyaletsossi Voule

EDITORS

Will Fihn Ramsay, Olivia Starrenburg

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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 54th Ordinary Session of the African Commission, from 22 October to 5 November 2013, was marked by the

change of the Commission's bureau and the swearing in of one new commissioner.

The session was preceded by the three-day NGO Forum, from 18 to 20 October. 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

A SNAPSHOT OF KEY DEVELOPMENTS

More than 300 human rights defenders gathered at The NGO Forum to share evidence and testimony regarding human rights violations and abuses, and to discuss means to address such violations, including through engagement with the African Commission.

Sub-regional human rights defenders networks provided a snapshot of the human rights situation across the continent. The situation for human rights defenders in The Gambia was given particular attention, with concerns voiced once again about the coherence of locating the African Commission's secretariat in a country where human rights are so flagrantly disrespected. A side event hosted by Article 19 and the Rencontre Africaine pour la defense des Droits de L'Homme (RADDHO) continued this focus, where restrictions on the Internet were highlighted as evidence of yet further closure of the space for human rights defenders to work.¹

With elections coming up in Mali, Guinea and Togo, the protection of human rights defenders was a grave concern. The political and social flux during electoral periods has been acknowledged as an environment of increased risk for human rights defenders.²

The Forum highlighted the devastating impact on civil society of several draft bills – in particular the draft 'anti homosexuality' bill in Nigeria, and the 'Public Order Management Bill' in Uganda.

Violations against human rights defenders in the Sahrawi Arab Republic were highlighted, with a call made for an independent Commission to be established to investigate. In addition, the State was urged to be present at the Commission's next Ordinary Session to participate in a dialogue on its second periodic report. The State submitted the report to the Commission in March 2013 but has so far not addressed it at the Commission.

One activist reflected that the sub-regional representatives had spoken of the human rights situation as one of 'anarchy rather than democracy'. They highlighted the plague of violence against women in the Democratic Republic of the Congo (DRC), and acknowledged that 'women of the DRC hardly attend these sessions, so it is left to us to raise their voices'.

At this session of the NGO Forum, defenders raised the issue of the proliferation of small arms in the Central African Republic and called on the African Commission to take action to address the problem. Drawing the Commission's attention to issues of concern is one of the main purposes of the NGO Forum, and it has had many successes in this regard – for example, in the Commission's response to illicit flight of capital.³

Throughout the NGO Forum, the violations and abuses faced by human rights defenders were at the heart of discussion. The lack of physical and legal protections for human rights defenders, together with the criminalisation and stigmatisation of their work across the continent, was a significant theme.

Activists shared evidence of gross violations against human rights defenders, including torture and ill treatment, arbitrary arrest and detention (including incommunicado detention), enforced disappearances and even death. They gave examples of the use or misuse of laws, malicious prosecutions, unfair trials and judicial harassment to criminalise the legitimate work of defenders, including journalists.

Article 19 East Africa⁴ shared disturbing examples of the recent killing of journalists in Somalia, Kenya, Uganda and Tanzania. Through these testimonies it is clear that the legal protection of the right to freedom of expression is precarious in many States, with counter-terrorism laws, criminal defamation provisions, and laws relating to interception of communications all deployed to silence journalists and other human rights defenders.

HUMAN RIGHTS ISSUES UNDER THE MICROSCOPE

Human rights of migrants

The African Commission and African Union were criticised for not making any public statements on the drowning of migrants travelling to Europe at Lampedusa. These deaths, and the phenomenon of Africans leaving the continent for the hope of a better life in Europe, were referred to repeatedly. Defenders discussed the lack of basic rights on the continent that push people to such extremes.

The NGO Forum passed a resolution on the situation of refugees, asylum seekers and migrants in Africa, calling on African and European States to take action to ensure respect for the rights of these groups.

Numerous attempts were made by NGOs to encourage States, particularly the African Group, to organise a Special Session on the issue at the UN Human Rights Council. However, no such decision has yet been taken by States.⁵

Human rights of persons with disability

The appointment of a registered blind man, Laurence Mute, to the Commission is seen as a major development in placing disability rights at the heart of the Commission's concerns. A panel at the NGO Forum dedicated to disability rights noted signs of a positive shift for persons with disability, from being considered objects to

subjects of rights. It is hoped that the Continental Plan of Action for the African Decade of Persons with Disabilities, recently extended to 2019, will continue to have a positive effect.⁶

In a positive development for disability discourse, the panel included a speaker from the Pan African Network – a psycho-social network. She placed mental health in a human rights context, emphasising both the causes and consequences of poor mental health, including a marginalisation within the disability community itself.

The lack of an African disability protocol was criticised. The NGO Forum called on the African Commission to involve and consult widely with persons with disabilities in the development and drafting of the protocol.⁷ The panel called on the African Union to create a commission on disability, similar to the one it has established focusing on the rights of the child.

Torture

A panel discussion on torture-prevention focused on the implementation of instruments such as the *Optional Protocol to the Convention Against Torture*. Activists highlighted the need for the African Commission, and its Committee for the Prevention of Torture in Africa, to work more closely with national human rights institutions and national prevention mechanisms to implement the Optional Protocol. They also called for national mechanisms for the prevention of torture to be more quickly established, and for national human rights institutions (NHRIs) and these mechanisms to work closely together.

Human rights defenders and extractive industries

In 2009, the African Commission on Human and Peoples' Rights established a working group on Extractive Industries, Environment and Human Rights in Africa.⁸ Since its inception, the Working Group has regularly cooperated with civil society to gather information and analyse the impact of extractive industries on human rights in the continent.

Panel discussions on the issue of extractive industries took place during the NGO Forum. The first, on illicit capital flight from Africa, was organised in response to a request by the African Commission that the Working Group carry out a study on the impact of illicit capital flight on human rights. The event gathered NGOs, States, NHRIs and the Commissioners and highlighted a link between illicit capital flight and the resources (or lack thereof) available for States to enforce their human rights obligations.

The second panel discussion addressed the issue of free, prior and informed consent of communities where extractive industries begin operations. The Working Group advised that it was working with a number of specialised NGOs on a guide about community-based approaches to consent, within the framework of the African Charter. Discussions at the NGO Forum also focused on the risks encountered by defenders working on human rights in the context of extractive industries. Chacha Murumba⁹ from Tanzania shared his testimony of being threatened with judicial action by Barrick Gold Corporation, and receiving death threats for his work exposing the environmental impact of the company.

Mr Murumba's story is not unique. It is all too common for environmental and other activists working to expose the negative impact of extractive industries to suffer reprisals. In its February 2014 report on the impact of mining on human rights in Uganda, Human Rights Watch found that 'the government's increased focus on seeking foreign investment has been marked by increased hostility to civil society working on environmental, land, and corruption issues.' The report documents a range of attacks against NGOs, such

as the Uganda Land Alliance, and concludes that 'NGOs seeking to educate the public about the value of their land, community processes, and compensation rights face a variety of problems from government officials, including threats of deregistration, accusations of sabotaging government programmes, and arrest.'¹⁰

In a resolution adopted at the Forum, the Commission was called on to adopt a resolution to 'emphasise the essential role and function for citizens and civil society to monitor extractive industries, hold their governments accountable, and report on these issues to the African Commission'.¹¹ The Commission was also called on to adopt a resolution that recognises and responds to the particular support and protection needs of certain defenders working on extractive industries.¹²

OPERATIONAL QUESTIONS AT THE NGO FORUM

How the NGO Forum is run

The Forum Steering Committee announced the forthcoming circulation of: a draft NGO Forum Guide; a document on the role of the Steering Committee and Forum Secretariat; and a guide to elections of Steering Committee members. Some of these documents are scheduled to be discussed and adopted at the next NGO Forum in Angola, and will be sent to the participants prior to the Forum.¹³

ISHR's procedural recommendations to the NGO Forum included: the need to ensure gender-balance in panel discussions, since many of the panels constituted only male speakers; and the need to ensure the number of speakers on each panel is more limited, since some of the panels were too large and therefore allowed very little time for discussion with participants.

Finally, whilst there is the occasional panel that dissects different strategies for engaging with the African Commission, these tend to focus on the communications procedure only. ISHR recommended there be more sharing of experiences of strategic engagement with the Commission, which could provide insights as to how the Forum might have a greater influence.

NGO Reporting to the African Commission¹⁴

In response to a low level of reporting amongst NGOs, the Centre for Human Rights in Pretoria and the African Centre for Democracy and Human Rights have been developing draft guidelines to assist NGOs when submitting their required bi-annual activity reports to the African Commission. A separate set of guidelines is also being developed for NHRIs.

NGO FORUM RESOLUTIONS

Enabling and protecting the work of human rights defenders was a key concern of many of the resolutions adopted by the NGO Forum.¹⁵ For example, in its resolution on Egypt, the NGO Forum expressed concern for 'the increasing level of sexual violence against female protesters over the past two years, including at least 181 cases of rape and sexual assault... between June 30 and July 3, 2013'. The resolution reminds States of their obligations to protect the right to freedom of assembly under Article 11 of the African Charter. A resolution on freedom of expression and access to information in Africa¹⁶ called for more civil society involvement in scrutinising draft African Union instruments, such as the *Draft African Union Convention on the Establishment of a Legal Framework for Cyber*

Security in Africa,¹⁷ to guard against undue restrictions being placed on freedom of expression.

In its resolution on People with Disabilities, the Forum called on the African Commission to pass a resolution protecting disability rights defenders.

The International Criminal Court in Africa

In an NGO Forum resolution on the fight against impunity for serious crimes, the African Commission was urged to pass a resolution calling on all member States to support the International Criminal Court (ICC) as necessary. The Commission is also requested to call on States to adopt adequate protective measures, and to take all necessary measures to prevent further threats and intimidation against victims, witnesses and those supporting them in bringing cases to the ICC, including human rights defenders.

A representative of the Office of the Prosecutor of the ICC attended the Commission's 54th session. The controversy around the suggested withdrawal of African countries from the Rome Statute was the subject of animated discussions during the NGO Forum.

This polemic dates back to the decision of the former Prosecutor to issue an arrest warrant against President Al Bashir of Sudan for crimes of genocide, war crimes and crimes against humanity in Darfur.¹⁸ The African Union responded by requesting the Security Council suspend the arrest warrant, but the request was ignored.

A number of African leaders have since contested the action of the ICC, accusing it of exceeding its mandate and targeting African leaders, whilst ignoring other situations. This was further fueled when the Prosecutor brought charges of crimes against humanity against the President of Kenya, Uhuru Kenyatta, and his Vice-President William Ruto.

The situation led to a discussion in the African Union Extraordinary Summit, in October 2013, in which the *en bloc* withdrawal of African countries from the Rome Statute was suggested. Although the decision of *en bloc* withdrawal was not taken due to diverging views on the continent, the Summit adopted a decision requesting the ICC to refer its cases against President Kenyatta and his deputy back to Kenya.¹⁹

During his opening statement at the NGO Forum, Dr Salah, representing the African Union's Political Affairs Commissioner, summarised the debate by noting that a majority of situations considered by the ICC are in Africa. He expressed the African Union's disappointment that some members of the Security Council, which has the authority to refer situations to the ICC, are not parties to the Rome Statute.

While the majority of cases dealt with by the ICC are cases concerning African countries, the reality is that, for many of these, African State parties triggered the ICC's action, as was the case in Ivory Coast, DRC and Uganda. Two remaining cases were referred by the Security Council: Sudan and Libya, and a third was initiated by the prosecutor: Kenya.

Some participants pointed out that the real question should not be whether the ICC is targeting Africa, but whether crimes against humanity and other crimes have been committed in Africa in total impunity. As long as the ICC has jurisdiction, it should be able to prosecute crimes wherever they are committed. Victims on African soil demand the ICC's action to address decades of abuse and impunity. The real controversy is not that the ICC is focused on Africa, but that it is inactive in other situations, such as Palestine and Syria, and that it refrained from taking up cases involving UK troops in Iraq.

Follow up of Commission resolutions

Certain NGO Forum resolutions were directed specifically at urging the Commission to better follow up on its own resolutions and decisions.²⁰ These important calls included to:

- Create a road map on the follow-up of communications and recommendations to States;
- Conduct a constructive dialogue between the Commission and different departments of governments, including a role for civil society;
- Develop strategies for implementation, such as NGO coalitions,²¹ and networks that provide legal assistance to individuals for follow-up, as well as for bringing communications;
- Request States to establish an access point within their governments so the Commission has a way to communicate to one institution and monitor the implementation through this particular department;
- Hold hearings on implementation in cases where there is no progress.

These calls feed into the work of the Commission Working Group on Specific Issues Relevant to the Work of the Commission, reconstituted at the African Commission's April session.

The Forum also highlighted to the Commission its role in ensuring appropriate reparation is given to victims of human rights abuses, calling on the Commission to formally set out its 'position on the right to reparation for victims of violations of the African Charter' and to provide 'guidance to State parties on the effective implementation of the right to reparation'.²² Whilst the Commission has previously referred to the right to reparation in its resolutions,²³ its pronouncements have been few and infrequent.

The NGO Forum reminded the Commission of its 2006 Resolution on the Importance of the Implementation of the Recommendations of the African Commission on Human and Peoples' Rights by States Parties.²⁴ The resolution calls on States to provide information on measures taken to implement the Commission's decisions, and obstacles experienced, within 90 days of the notification of the recommendations.

The Forum called on the African Commission to make 'greater use of... separate hearings on reparation and implementation... in particular in the context of serious and massive violations, to ensure that the needs of victims and the nature of reparation they require is considered.' In the same resolution, the NGO Forum requested that the Commission call on States 'to appoint a focal point for implementation of its decisions.'

The example of Cameroon, which had successfully implemented a decision of the Commission, including providing reparation, was referred to by an NGO at the African Commission session. The NGO noted that this showed implementation was simply a matter of political will.

The African Commission's response to the NGO Forum

The African Commission adopted a resolution on the Kenya Endorois Decision²⁵ - demonstrating an appetite to press for implementation of its own decisions. In what is thought to be the first such resolution, the Commission called on Kenya to implement the decision handed down by the Commission.

Reminding the State of its non-compliance in reporting on steps towards implementation of the Endorois decision, the Commission called on Kenya to comply with its obligations under the Charter, and to provide the Commission with a comprehensive report, including a road map for implementation.

The NGO Forum resolution called on the Commission to appoint a rapporteur to engage with Kenya on this case. Whilst the Commission hasn't followed this path, its resolution increases pressure on Kenya to implement the Commission's decision. Granting observer status to the Endorois Welfare Council at the Commission's session in

October 2013 may be another signal of its determination to see a fair outcome in regard to its original decision.

There was no other direct correlation between NGO Forum resolutions and those of the African Commission at this session. However, the Commission did pass a resolution on the prevention of attacks and discrimination against persons with albinism. This responded to previous civil society pressure, including through NGO Forum resolutions, which had led to the Human Rights Council Resolution 23/13²⁶

DEVELOPMENTS AT THE AFRICAN COMMISSION

STATE REPORTING

Gabon and Cameroon scrutinised by Commissioners

Two State parties to the African Charter on Human and Peoples' Rights presented their reports to the African Commission: Gabon and Cameroon. This was an improvement on the Commission's 53rd session, when no State was present. Gabon submitted its initial and combined periodic report for 1986-2012, while Cameroon presented its third periodic report covering the 2008-2012 period.

For the second session in a row, the Sahrawi Arab Democratic Republic failed to show up to present its report, as did Mozambique. No public explanation was given by the African Commission for these countries' absences.

Common issues raised during the reviews of Cameroon and Gabon included women's participation in public and political decision making structures, the use of natural resources and its effects on communities, the environment for human rights activism, legal protections and enforcement of human rights through the law, and children's rights and human rights education.

In the case of Cameroon, concerns for the safety of lesbian, gay, bisexual and transgender (LGBT) rights defenders was raised, in the context of the recent killing of gay activist Eric Ohena Lembembe.²⁷ The government responded by denying the existence of homophobia in the country and said LGBT persons have the same access to basic rights as any citizen.

Regarding human rights defenders more broadly, the government failed to acknowledge the specific risks and protection needs of defenders. It argued that there is no reason to accord special rights to defenders and that they should enjoy the rights of any citizen. The government also rejected the African Commission's call for a decriminalisation of defamation. The State argued that such measures were necessary to protect individuals from defamation and intrusion in their privacy by journalists.

Concerning the death penalty, Cameroon argued that public opinion still favours keeping the death penalty, and that there have not been any executions since 1987.

The commissioner who leads the Commission's work on Cameroon expressed concern about Cameroon's approach to the protection

of human rights defenders, including those working on LGBT rights. The Rapporteur was also dissatisfied by Cameroon's arguments supporting the maintenance of the death penalty.

The concluding observations of the reviews of both countries were adopted during the Commission's 15th extraordinary session, held in Banjul, The Gambia, from 7 to 15 March. Once finalised, the content of these concluding observations will be available at www.achpr.org/sessions/54th.

REPORTS BY THE SPECIAL PROCEDURES OF THE AFRICAN COMMISSION

The 11 special rapporteurs, working groups and committees presented their activity reports and analysed the situation of human rights in the context of each of their mandates.²⁸

The Special Rapporteur on Human Rights Defenders in Africa updated the Commission on the status of her report on women human rights defenders, and on the Freedom of Association and Peaceful Assembly study carried out by a group set up by the Commission. Both reports are scheduled for adoption in 2014.²⁹

She analysed the situation of human rights defenders during the intersession period, which she stated remains of concern. 'Despite all the efforts to sensitise States on the importance of their work, the human rights defenders continue to face major challenges. These challenges relate, among other things, to the quasi-systematic ignorance of their right to expression, to assemble, to their freedom of movement,' she said.³⁰ The Rapporteur called on States to refrain from all practices contributing to the violation of the rights of human rights defenders.

For further information on the Special Rapporteur's report please see: www.achpr.org/sessions/54th/.

RESOLUTIONS ON SPECIAL MECHANISMS AND MANDATES

The African Commission reconstituted, renewed or extended mandates on a series of Special Mechanisms, and nominated mandate-holders, including:

- Commissioner Alapini Gansou was confirmed as the Special Rapporteur on Human Rights Defenders in Africa.
- Commissioner Soyata Maiga was confirmed as the Special Rapporteur on the Rights of Women in Africa.

- Commissioner Pansy Tlakula was confirmed as the Special Rapporteur on Freedom of Expression and Access to Information in Africa.

All of these mandates were extended for a further two years. For a full list of adopted resolutions see: www.achpr.org/files/sessions/54th/info/communique54/achpr54_fincom_2013_eng.pdf.

THEMATIC ISSUES

Defenders working on issues of sexual orientation and gender identity

A report entitled *Violence based on perceived or real sexual orientation and gender identity in Africa* was launched at the NGO Forum by the Coalition of African Lesbians (CAL) and African Men for Sexual Health and Rights (AMSHeR). The report documents widespread violence, attacks and discrimination against people on the grounds of sexual orientation or gender identity, often perpetrated with impunity. The report does not argue that sexual minorities deserve special protection, but that they are entitled to the rights all other citizens have – the right to security, liberty, life, dignity, and a fair trial.

In welcoming the report, Commissioner Khafallah made an important distinction between the imperative to defend all people from discrimination and violence, and any personal views people may have regarding non-normative sexual and gender identities. He underlined the importance of the Commission speaking out against violence and defending human rights, particularly for those who cannot attain accountability at national levels. The two Commissioners present, Mr Khafallah and Mr Kaggwa, accepted copies of the report.

The situation for defenders working on lesbian, gay, bisexual and transgender issues was highlighted in each of the reports documenting violations across the continent. The recent murder of human rights defender Eric Ohena Lembembe, Executive Director of CAMFAIDS,³¹ was highlighted by the Central African Defenders Network.

The NGO Forum called on the Commission to condemn violence and other human rights violations against people on the basis of their imputed or real sexual orientation and gender identity. It also urged States to end impunity for such violations, whether perpetrated by State or non-State actors, by ensuring proper investigation and prosecution through the establishment of judicial procedures responsive to the needs of victims. The basic human rights principle of condemning violence and discrimination against any individual recalls the Human Rights Council's June 2011 resolution³² on sexual orientation and gender identity. In its final communiqué, the Commission did not take up this call.

The Special Rapporteur on Human Rights Defenders in Africa has since issued a press release on the implications of the Same Sex Marriage [Prohibition] Act 2013 on human rights defenders in Nigeria.³³

Women human rights defenders and the Maputo Protocol

The 10th Anniversary of the Maputo Protocol (*the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*) provided an occasion for assessing States' commitments to women's rights, as demonstrated by their degree of implementation of the Protocol.

The Maputo Protocol is acknowledged worldwide as a key women's rights instrument. However, as the International Federation of Women Lawyers (FIDA) Nigeria noted in its statement to the

Commission, 'not much has really changed in terms of concrete improvement in the lives and wellbeing of women and girls in Africa.' However, participants reflected on the lack of awareness and understanding of the Protocol by States and individuals, and that the Protocol is rarely mentioned in State reports to the Commission. At the Forum and the Commission session, NGOs and Commissioners decried the fact that 26 States have yet to ratify the Protocol.

For the first time at the Forum an Iman spoke on the issue of eradication of female genital mutilation (FGM). He said he saw it as the duty of religious leaders to work with others to eradicate FGM, which he considered had no basis in Islam. Floating the idea of an African Congress on the role of traditional leaders in eradicating FGM, the Iman noted the importance of the involvement of the Commission.

Has the Maputo Protocol made any difference in women's lives?

Commissioner Maiga said tradition and religion are frequently used as justifications for the violations of the rights of women, and that women sometimes hold onto their traditions because States don't inform them about their options. 'We need to change our communities – this is our work as women human rights defenders,' she said, and cited the UN *Convention on the Elimination of Discrimination against Women*, Article 5.

The sensitisation of traditional leaders – those that manage land disputes and divorce – was highlighted by Commissioner Maiga.

At the NGO Forum, specific recommendations were made to encourage implementation of the Protocol. General recommendations included the popularisation of the Protocol; the domestication of the Protocol; 'push for progressive jurisprudence on women's rights'; and the dissemination of guidelines to encourage States to report on the implementation of the Protocol.

In addition, the Forum called for:

- The African Commission to develop general comments on the Protocol, to provide States with greater detail on the nature of their obligations, in a bid to increase implementation. The first General Comment, on Article 14.1.d.e, was developed by the Commission at the 54th Session.
- Regional economic communities such as the Economic Community of West African States (ECOWAS) and the East African Community (EAC) to use the Maputo Protocol as a framework for drafting policies, making and implementing their decisions to ensure women's rights are respected.
- The African Commission's Special Rapporteur on Women's Rights, along with NGO partners, to sensitise member States on areas of the Protocol that may be misunderstood and act as a barrier to ratification, popularisation and domestication. These include provisions on marriage, land, inheritance, sexual and reproductive health, and the right to safe abortion.
- The African Commission to encourage States to increase the visibility of regional-level decisions at the national and community levels. This would increase women's awareness of their rights and empower them to demand them.
- The African Commission to hold States to account for decisions made at the domestic level that do not comply with the terms of the Protocol.

Why has ratification stalled?

With ratification having stalled at just 36 countries, strategies for advancing the Maputo Protocol's adoption and implementation by

States were discussed. Some of the effective strategies highlighted by activists included:

- Creation of a coalition (now 43 members across Africa) working to push for ratification.
- Targeted campaigns. The launch of the AU Women's Decade 2010-2020 was acknowledged as having provided a focus for women's groups to rally around and push for ratification. The role of women's groups in persuading Kenya to ratify the Protocol in 2010 was also highlighted.
- Lobbying at the African Union and working with its Gender Directorate.
- Referencing the Solemn Declaration on Gender under which all African States undertake to sign and ratify the Maputo Protocol.³⁴
- Strategic litigation. The role of national courts in ensuring positive change occurs in the lives of women was highlighted, as was the need to train lawyers and judges in the provisions of the Protocol.
- Linking advocacy work at international, regional and national levels in a bid to strengthen the respect of women's rights.
- Pushing for the Protocol's implementation to be a cross-departmental project, so not only government gender ministries are involved.
- Civil society should encourage States to follow the Guidelines for State Reporting under the Protocol to the Charter on the Rights of Women in Africa. This would help address the problem that States rarely report on the Maputo Protocol in their periodic reports to the Commission. Reporting to the African Union Commission on their implementation of the Solemn Declaration on Gender is also patchy.
- Disaggregation of data to ensure the experience of different types of women, such as disabled women, is highlighted.

The problems of restrictions to women's engagement in public life was addressed at the Commission's opening ceremony by the Minister of Human Rights of Burkina Faso, Ms Julie Somda-Nigna, who spoke on behalf of African member States. Ms Somda-Nigna noted the attacks and hostility faced by women when they claim public space and demand rights for all. Emphasising the crucial role played by women in peace and security, democratic processes and human rights, she called upon all those present to increase efforts to acknowledge the important role of women human rights defenders and to promote and protect their work.

At the same time as the African Commission session was running, negotiations were being held at the UN General Assembly's Third Committee in New York on the first resolution on women human rights defenders. This is an indication of growing awareness of the situation faced by women defenders, and of State responsibilities to ensure women defenders can work without fear or hindrance.

The Commission considered the report on the situation of women human rights defenders, produced by the Special Rapporteur on Human Rights Defenders in Africa. The report will be considered for final adoption at the Commission's next Ordinary Session, in April 2014.

The Commission passed a resolution on women's right to land and productive resources,³⁵ which brings within one text several

interconnected articles of the Maputo Protocol, as well as human rights concerns covered in other instruments. These include ensuring the rights of widows to inheritance; a focus on the need for sustained public sensitisation campaigns, with particular focus on community and religious leaders, to alter socio-cultural patterns that discriminate against women; and the need to integrate women's right to land and property into national HIV/AIDS control strategies.

Women defenders were recognised during the inaugural Pan African Human Rights Defenders Awards held at the NGO Forum. The overall winner was Iman Baba Leigh of The Gambia for his work on the eradication of FGM. The award also served to highlight the work of all those working on behalf of women's rights, and of the impact of their work. It was also an acknowledgement of the threats faced by human rights defenders in The Gambia. Iman Baba Leigh himself is currently in exile due to threats received as a result of his work. His award was accepted on his behalf by the Executive Director of the Gambia Committee on Traditional Practices.

The Gambia's human rights record incompatible with hosting of the African Commission

There are increasing concerns that The Gambia is not a suitable country to host the Commission's sessions. Threats made by The Gambia's head of state against human rights defenders in September 2009 has changed the environment in which activists operate and put them at greater risk.³⁶

The ongoing threats against defenders and journalists compelled 38 African organisations to write a letter to the chair of the African Commission in March 2013, raising their concerns and requesting the removal of the Commission secretariat from The Gambia. The organisations also mentioned their readiness to boycott the 53rd session if it was held in The Gambia.³⁷

In her reply, the chair took note of the organisations' concerns, but said the decision on where the Commission's headquarters are situated 'is the prerogative of the Heads of State and Government of the African Union'. The chair of the Commission implored the organisations to renounce their boycott of the 53rd session.

A side event was organised by Rencontre Africaine pour les Droits de l'Homme (RADDHO) and Article 19 during the NGO Forum preceding the 53rd session to further discuss the situation in The Gambia and the need for the Commission to do more to press Gambian authorities to respect civil society space and ensure an enabling environment for the work of human rights defenders.

During the 54th session, RADDHO and Article 19 also made a joint statement during the public session to raise the Commission's awareness of the continuous threats against defenders and journalists in the Gambia.³⁸ The Commission's inability to persuade the Gambian government to improve the human rights situation in the country, despite the adoption of numerous resolutions, calls for action by the African Union at the highest level, and NGO advocacy should be directed to achieving this.

Towards a strengthening of NHRI participation

Compared to previous sessions, there was a greater number of NHRIs that made statements this time around, with representations from the NHRIs of Rwanda, Algeria, Malawi, Uganda, and Tanzania.

There were also more than 40 NHRI delegates present at the session. The high number was due to a consultative meeting on the role of NHRIs, organised by the Network of African NHRIs and

held from 20 - 22 October in Banjul. Participants of the meeting agreed on the need for NHRIs to develop their relationship with and effective contribution to the work of the African Commission. They made a decision to establish a platform for discussion on how to improve the relationship between NHRIs and the Commission. The Network of African NHRIs is responsible for developing and implementing this discussion, in collaboration with its members.

OTHER DEVELOPMENTS TO HIGHLIGHT

The African Commission's leadership role in human rights observer missions

Commissioner Alapini Gansou led an African Commission fact-finding mission to Mali in June 2013. During the opening session of the NGO Forum, Dr Salah Hammad, human rights expert of the Department of Political Affairs of the African Union, said reports the AU had received suggested the presence of the observers had led to a decrease in incidences of human rights violations. Dr Salah announced the start of an observer mission to the Central African Republic and invited members of the NGO Forum to support that effort. This mission will be headed by Commissioner Kafala, who leads the African Commission's work on that country.

Increasingly the African Commission takes part in African Union country missions to address human rights crises, with a view to contributing to their resolution or prevention. Most recently, Commissioner Pacifique Manirakiza was appointed as one of the members of the African Union Commission of Inquiry on South Sudan.

Appointment of a new Chair and Bureau

A new Bureau of the Commission was elected on 22 October 2013. Former Vice-Commissioner Kayitesi Zainabo Sylvie was elected Chairperson, with Commissioner Béchir Khalfallah elected as Vice-Chairperson. This current Bureau will serve will for two years.³⁹

Along with the re-election of several Commissioners, a new Commissioner, Lawrence Murugu Mute was elected.

NGO applications for observer status

The Commission granted observer status to the following NGOs:

- The Human Rights Centre Uganda
- PINGO's Forum
- Women's Legal Centre
- The Global Initiative for Economic, Social and Cultural Rights
- Sustainable Development Institute
- Prison Fellowship Nigeria
- Natural Justice
- Avocats Sans Frontières
- Ngo Playdoo
- Bureau International Catholique de l'Enfance
- Association burundaise pour la protection des Droits humains et des personnes détenues.

Next session

The 55th Ordinary Session of the African Commission will be held in April 2014 in Angola, while the Republic of Niger offered to host the Commission's 56th session, which will take place October.

- ¹ For more on this see: Article 19, 'The Gambia, New Internet Law Furthers Crackdown on Free Expression,' www.article19.org/resources.php/resource/37152/en/the-gambia--new-internet-law-furthers-government-crackdown-on-free-expression.
- ² www.achpr.org/sessions/48th/resolutions/174/ - free and fair election in Africa, www.achpr.org/sessions/13th-ao/resolutions/232/, www.achpr.org/sessions/44th/resolutions/133/.
- ³ www.achpr.org/sessions/53rd/resolutions/236/.
- ⁴ www.article19.org/resources.php/resource/37408/en/gambia-nine-years-of-impunity-for-killing-of-journalist.
- ⁵ For example, Human Rights Watch, 'Call for a Special Session of the Human Rights Council on the Human Rights of Migrants at Sea', October 2013. www.hrw.org/news/2013/10/14/call-special-session-un-human-rights-council-human-rights-migrants-sea.
- ⁶ The Continental Plan of Action for the African Decade of Persons with Disabilities 1999 – 2009. http://sa.au.int/en/sites/default/files/Disability_Decade%20Plan%20of%20Action%20-Final.pdf.
- ⁷ NGO Forum Resolution Tres 001/10/2013 'People with Disabilities'.
- ⁸ www.achpr.org/sessions/46th/resolutions/148/.
- ⁹ Executive Director of Foundation HELP, Foundation HELP is a Tanzanian NGO that works to support marginalised communities in selected regions of the country through sustainable and integrated development.
- ¹⁰ "How Can We Survive Here?": The Impact of Mining on Human Rights in Karamoja, Uganda, Human Rights Watch, <http://www.hrw.org/node/122714>
- ¹¹ Resolution TREC/002/10/2013 - Extractive Industries, The Environment and Human Rights Violations.
- ¹² Resolution TREC/001/10/2013 - Human Rights Defenders in Africa.
- ¹³ The Steering Committee mandate, Guide for participants to the NGO Forum, and Criteria for the elections of Steering Committee members.
- ¹⁴ 'Comments invited on Draft Guidelines for Reporting by NGOs and NHRIs', Centre for Human Rights www.l.chr.up.ac.za/index.php/centre-news-2013/1232-comments-invited-on-draft-guidelines-for-reporting-by-ngos-and-nhris-.html.
- ¹⁵ www.ishr.ch/sites/default/files/documents/ngo_forum_resolutions_and_recommendations_oct_2013.pdf.
- ¹⁶ Resolution TREC/003/10/2013.
- ¹⁷ Draft African Union Convention on the Establishment of a Legal Framework for Cyber Security in Africa. <http://au.int/en/cyberlegislation>.
- ¹⁸ See International Criminal Court, Warrant of Arrest for Omar Hassan Ahmed Al Bashir, pp. 6-7, available at <http://www.icc-cpi.int/iccdocs/doc/doc639078.pdf>.
- ¹⁹ [http://summits.au.int/en/sites/default/files/Assembly%20AU%20Dec%20474-489%20\(XXI\)%20_E.pdf](http://summits.au.int/en/sites/default/files/Assembly%20AU%20Dec%20474-489%20(XXI)%20_E.pdf) p.14.
- ²⁰ Resolution TREC/006/10/2013: 'Follow- Up of Resolution and Decisions by the African Commission'.
- ²¹ For example, as was done for the African Court in the founding of the Coalition for an Effective African Court on Human and Peoples' Rights (African Court Coalition). This network of NGOs and independent NHRIs advocates to help ensure the African Court operates effectively and independently. See www.africancourtcoalition.org.
- ²² Resolution TRES/004/10/2013: 'Resolution on the right to reparation and implementation of the Commission's Decisions'.
- ²³ #111: 'Resolution on the Right to a Remedy and Reparation for Women and Girls Victims of Sexual Violence'.
- ²⁴ Resolution 97: www.achpr.org/sessions/40th/resolutions/97/.
- ²⁵ 276 /2003: Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of Endorois Welfare Council) v. the Republic of Kenya.
- ²⁶ Human Rights Council Resolution 23/13: 'Attacks against persons with albinism'. Available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session23/Pages/ResDecStat.aspx.
- ²⁷ www.theguardian.com/world/2013/jul/18/cameroon-gay-rights-activist-killed
- ²⁸ Special Rapporteur on the Rights of Women in Africa; Special Rapporteur on Freedom of Expression and Access to Information in Africa; Special Rapporteur on Human Rights Defenders in Africa; Special Rapporteur on Prisons and Conditions of Detention in Africa; Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa; Chairperson of the Working Group on the Rights of Older Persons and People with Disabilities in Africa; Chairperson of the Working Group on Indigenous Populations/Communities in Africa; Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa; Chairperson of the Working Group on Economic, Social and Cultural Rights in Africa; Chairperson of the Working Group on the Death Penalty, Extra-judicial, Summary or Arbitrary Killings in Africa; and Chairperson of the Committee on the Protection of the Rights of People Living with HIV and those at Risk, Vulnerable to and Affected by HIV.
- ²⁹ The report on the situation of women human rights defenders in Africa was adopted during the Commission's extraordinary session in Banjul in March 2014, while the study on Freedom of Association and Peaceful Assembly will be submitted to the Commission at its ordinary session in April-May 2014.
- ³⁰ www.achpr.org/sessions/54th/intersession-activity-reports/human-rights-defenders/.
- ³¹ Fondation Camerounaise pour le Sida.
- ³² http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/17/L.9/Rev.1
- ³³ Special Rapporteur on Human Rights Defenders in Africa, Press Release on Implication of the Same Sex Marriage [Prohibition] Act 2013 on Human Rights Defenders in Nigeria, 5 February 2014. Available at www.achpr.org/press/2014/02/d190/.
- ³⁴ 'Undertake to sign and ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa by the end of 2004 and to support the launching of public campaigns aimed at ensuring its entry into force by 2005 and usher in an era of domesticating and implementing the Protocol as well as other national, regional and international instruments on gender equality by all States Parties.'
- ³⁵ www.achpr.org/sessions/54th/resolutions/262.
- ³⁶ www.irinnews.org/report/86285/gambia-african-leaders-must-stand-up-to-jammeh-say-lawyers.
- ³⁷ <http://dailynews.gm/africa/gambia/article/protest-against-holding-sessions-of-the-african-commission-on-human-and-peoples-rights-achpr-in-the>.
- ³⁸ [www.article19.org/resources.php/resource/37309/fr/d/claration-publique-de-la-rencontre-africaine-pour-la-d@claration-publique-de-la-rencontre-africaine-pour-la-d@fense-des-droits-de-l'homme-\(raddho\)-et-article-19](http://www.article19.org/resources.php/resource/37309/fr/d/claration-publique-de-la-rencontre-africaine-pour-la-d@claration-publique-de-la-rencontre-africaine-pour-la-d@fense-des-droits-de-l'homme-(raddho)-et-article-19).
- ³⁹ Rule 12, Rules of Procedure.

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or contact us:

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GENEVA OFFICE

Rue de Varembe 1, 5th floor
P.O. Box 16
CH-1211 Geneva 20 CIC
Switzerland

NEW YORK OFFICE

777 UN Plaza, 8th floor
New York, NY 10017
USA

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