

‘Kumulika’

A Spotlight on Human Rights in Africa

Developments at the NGO Forum and the 51st session of the African
Commission on Human and Peoples’ Rights

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Introduction

The 51st ordinary session of the African Commission was held from 18 April to 02 May 2012. All 11 commissioners participated in the session and presented their activity reports. There were 102 State delegates representing 23 States in attendance. This included a delegate from Eritrea after a notable absence at the Commission of many years. African national human rights institutions (NHRIs) were represented by 45 representatives, and 256 individuals represented African and international NGOs.¹ The Commission adopted five resolutions on country situation and seven thematic resolutions.²

Prior to the Commission, the NGO Forum was held from 14 to 16 April 2012. Both the NGO Forum and the Commission session focused their attention on the examinations of Angola and Sudan and on several developing issues in Africa, including women's rights, freedom of association and assembly, and human rights defenders.

The NGO Forum was attended by 200 participants, most from NGOs, with few NHRIs and academia representatives. Five commissioners participated in some sessions, particularly leading special interest groups related to their mandates.

The NGO Forum adopted a number of resolutions and recommendations to put forward to the Commission: 11 thematic resolutions, four thematic recommendations, five country resolutions, a declaration on natural resource management and a letter regarding the human rights situation in Eritrea, and a letter regarding the recommendations of the International Commission of Inquiry on Libya.

NGO Forum

Madame Souhayr Belhassen, President of the FIDH delivered the keynote speech highlighting the human rights situation in Africa. She began by referring to the events in North Africa, where the indignation of citizens had led to the ousting of dictators such as Ben Ali, Mubarak, noting the necessity to now accompany or support the democratic transition in these countries.

Similar reactions had been seen in other regions of the continent, such as in Sudan, Uganda, Swaziland, Malawi. However, their actions had been met with excessive violence, such as torture and arbitrary arrest, as well as a clampdown on freedom of expression, she said.

The aftermath of the military coup in Guinea Bissau, when human rights activists, journalists and political opponents became victims of arbitrary arrests and peaceful assembly, was one incident raised by Madame Belhassen as being in violation of the African Charter.

She also said the African Commission should take action to stop human rights abuses due to conflicts in Northern Mali. Since the 22 March 2012 military coup in Bamako, Northern Mali has suffered in the context of fighting between government forces and the Touareg rebels. War crimes are said to have been committed by the rebels including rape, use of child soldiers, and pillaging of hospitals, schools and aid agencies.³ Ms Souhayr condemned the 'anti-homosexuality' bills under discussion in some African countries, such as Uganda, Nigeria and Liberia. Human rights violations in Sudan were also raised.

¹ www.achpr.org/sessions/51st/info/communique51/

² See a full list of the resolutions at www.achpr.org/sessions/51st/

³ www.hrw.org/news/2012/04/30/mali-war-crimes-northern-rebels

State Reviews

SUDAN

Alternative reports and side events on Sudan

Prior to the examination of Sudan's periodic report by the Commission, two main NGO reports were presented at the NGO Forum and during a side-event at the Commission. The first by the African Centre for Justice and Peace Studies (ACJPs), and the Sudan Democracy First Group and Redress. This report focused on articles 1 and 5⁴ of the *African Charter for Human and Peoples' Rights*. Entitled *Human Rights Violations in the Republic of Sudan*, the second report was submitted by ACJPS, the East and Horn of Africa Human Rights Defenders Project (EHAHRDP), and the Fédération Internationale des Ligues des Droits de l'Homme (FIDH).⁵

The first report exposes the widespread use of torture and ill-treatment in Sudan to suppress opposition, obtain confessions and discriminate against marginalised groups such as Darfurians and Southerners. It lists a number of torture victims, including human rights defenders. As is the case in many other African countries, public peaceful protests by student movements and political activists in Sudan were met with the excessive use of force by police officers on several occasions.

The report also highlights cases of torture and ill-treatment, including extrajudicial killings and rape, related to the conflict in South Kordofan, Blue Nile and Darfur.

In terms of legal framework, Sudanese criminal law does not define torture in line with the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Convention Against Torture). Sexual and gender violence are not defined in the law and there are no adequate protection mechanisms for victims of gender-based violence.

The report ends with a number of recommendations including the fight against impunity by establishing an independent body to investigate all allegations of torture and ill-treatment in line with best practices and the *Istanbul Protocol*. It was also recommended to make torture a criminal offense in conformity with the UN Convention Against Torture.

The second report covered human rights violations and violations of the African Charter that had taken place from 2010 to 2012. The report came about at a time when fighting in the Blue Nile and South Kordofan had intensified, leading to arbitrary arrests and detentions, and indiscriminate aerial bombings. It says the abuses taking place in Blue Nile and South Kordofan have taken place due to the impunity of past abuses. It recalls the International Criminal Court's warrant against Bachir and other governmental officials, which has not yet been implemented. The report points to violations of the rights to freedom of expression, and freedom of association and assembly; also violations of the rights of human rights defenders, including journalists, such as through arbitrary arrests and the prohibition of public events and dissemination of education materials.

The NGO Forum thus recommended to the African Commission that it use its special rapporteurs on freedom of expression, human rights defenders and women's rights to seek

⁴Art 1: The Member States of the Organisation of African Unity, parties to the present Charter shall recognise the rights, duties and freedoms enshrined in the Charter and shall undertake to adopt legislative or other measures to give effect to them. Art 5: Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

⁵ <http://bit.ly/Ro5CzX>

further information by conducting fact-finding missions in Sudan. It was also recommended the Commission to urge Sudan to ratify the *African Charter on Democracy, Elections and Governance* (African Charter on Democracy) and the *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*.

A side event organised by a group of four NGOs¹ highlighted other issues in Sudan, including violence against women in Blue Nile, Nuba Mountains and South Kordofan, abduction, arbitrary arrest, and attacks on schools and hospitals. NGOs explained that conflicts between Sudanese forces and armed opposition in Southern Kordofan and Blue Nile states have caused severe civilian suffering. Panellists exposed abuses affecting Sudanese human rights defenders, the use of excessive force against dissident voices, and targeted killings on the basis of race, religion and origin.

According to the panellists, no independent organisations could work in the region in April 2012, thus depriving assistance to the victims and preventing the flow of independent information.

Ms Zeinab Mohammad Blandia, a Sudanese women's human rights defender and Muslim peacemaker, deplored the silence of the international community on the degrading humanitarian situation and grave human rights violations in South Sudan, such as indiscriminate bombings, and abduction, rape and other forms of sexual violence against women and children.

Mr Osman Hummida expressed concern about the systematic use of rape as a weapon of war. Southern Sudanese civilians are forced to flee to seek refuge in camps for Internally Displaced Persons (IDPs), which are far from being a safe haven themselves, as sexual assault is common place.⁶ Panellists called on the Commission to send a fact-finding mission to investigate allegations of international crimes and the humanitarian catastrophe in South Kordofan and Blue Nile.

Human Rights Watch raised the serious issue of citizenship affecting Southerners living in Sudan. Sudanese authorities announced to Southerners that they should return to South Sudan or be treated as foreigners. Between 500,000 and 700,000 Southerners still live in Sudan, some because they were born there, and others because they have lived there for decades and have no ties with South Sudan. According to the amended law on nationality, Southerners will lose their Sudanese citizenship as the law does not explain how they can acquire citizenship, and many people have already had their citizenship of Sudan revoked. Human Rights Watch called on the African Commission to urge the Sudanese Government to revise its nationality law in conformity with international law, and to avoid any discriminatory treatment.

Review of Sudan by the Commission

In general, NGO concerns were raised by most commissioners during the public examination of Sudan.

Commissioner Catherine Atoki, chairperson of the African Commission and country rapporteur on Sudan, introduced the fourth and fifth periodic reports of Sudan. She recognised the country's efforts to cooperate with the mechanism through regular reporting.

However, she also noted the lack of implementation of former recommendations. Echoing NGO reports to the African Commission, Ms Catherine Atoki raised the issues of torture and ill-treatment, including extrajudicial killings and rape related to the conflict in South Kordofan,

⁶ <http://bit.ly/MibFml>

Blue Nile and Darfur. She requested Sudan's delegation provide more clarity and share any measures taken to end impunity in the country, and solutions to stop the heavy bombings in South Sudan. She also sought clarification on the question of revoking the Sudanese citizenship of southern Sudanese, and urged the Government to comply with international law in relation to citizenship.

Commissioner Pacifique Manirakiza, chair of the Working Group on extractive industries, environment and human rights violations, invited Sudan's delegation to explain if there was transparent management of extractive industries given that wealth from oil is a major cause of internal conflict.

Commissioner Reine Alapini Gansou, Special Rapporteur on human rights defenders, requested the delegation of Sudan to provide more clarification about the harassment of human rights defenders in general, the whereabouts of six human rights defenders that had been arrested, and the whereabouts of youth activists arrested for expressing their right to freedom of assembly and association. Furthermore, Mrs Gansou asked the delegation to inform the Commission about the relationship between NGOs and the Government and how the Government ensures NGOs' security.

Among other problems raised by the Commission were impunity for crimes against humanity, war crimes and genocide. The Commission requested that the delegation specify the number of prosecutions made against those responsible for grave crimes.

Concerns regarding women's rights were also raised, including a lack of women's representation in political institutions, the protection of women in IDPs, the prosecution of perpetrators of sexual violence against women, and the impact of Sharia law on women's rights. The Committee also called on Sudan to ratify the Convention on the Elimination of Discrimination against Women. The delegation of Sudan replied vaguely to some questions and failed to respond to many of them. It praised its own laws, which it claimed protected human rights for all. Regarding women's rights, the delegation said women are fully protected and participate freely in elections. It said Sharia law 'protects all Sudanese citizens'. Sudan's delegation also denied that torture is practiced in the country, and rejected responsibility for child soldiers, accusing the rebels in South Sudan of forcibly recruiting child soldiers.

In closing, Commissioner Atoki deplored the delegation's lack of transparency and cooperation in replying to the Commission's questions, which made issuing concluding observations difficult for the Committee. She emphasised the State's lack of implementation of previous recommendations and the lack of enforcement of existing laws. At the time of writing this report, concluding observations on Sudan had not been yet adopted.

As a response to the escalation of violence between Sudan and South Sudan, the Commission adopted a resolution expressing concerns over the renewed unrest between the two countries⁷ and urging the two States Parties to put an end to the conflict and preserve their citizens' right to peace and security. However, the resolution is weak and does not mention the alarming situation of sexual violence against women. In addition, the Commission has taken no action to establish a fact-finding mission as requested by NGOs.

⁷ <http://bit.ly/LEAAEg>

ANGOLA

Alternative reports on Angola

The Republic of Angola presented its second periodic report to the Commission, covering the period of 1999 to 2012.

Prior to the examination, the Association for Justice, Peace and Democracy (AJPD), an Angolan NGO briefed the participants at the NGO Forum about the main human rights concerns in Angola, including widespread corruption, which is increasing the gap between rich and poor. Despite Angola being rich in natural resources, the majority of the country's population lives in extreme poverty, and many people are victims of illegal eviction and home demolition without due process and compensation.⁸

AJPD explained that the right to freedom of assembly and association is regularly violated, because the Government prevents opposition voices in the media and does not tolerate any form of protest. Peaceful protests by youth organisations, political opposition members or human rights activists are sometimes met with excessive use of force by government officials.

In its extensive report⁹ submitted to the African Commission, Amnesty International exposed violations of the African Charter by Angola, including the failure to cooperate with international bodies such as the United Nations, the African Commission and other civil society organisations. Amnesty International also noted cases of torture and ill-treatment, arbitrary arrest and detention, restrictions to the rights to freedom of expression, and freedom of association and assembly, and forced evictions.

Amnesty International recommends that the African Commission call on the Government of Angola to ratify outstanding treaties, to incorporate the African Charter and other treaties into domestic law, to refrain from violating the rights enshrined in the Charter, and to repeal restrictive laws, such as those providing criminal punishment for alleged defamation of the head of State or other public officials.

Review of Angola by the Commission

The second periodic report of Angola was introduced by Commissioner Soyata Maiga, the Commission's Special Rapporteur on women's rights in Africa and country rapporteur on Angola.

Commissioner Maiga welcomed the report cumulating the second, third, fourth and fifth periodic reports. In her remarks, she reminded the Angolan delegation of the recommendations made after her last visit in 2010, which are still relevant to the current human rights situation.

She said the State report put more emphasis on citizen's duties than citizens' rights, and did not respect the reporting guidelines adopted by the Commission. The report does not contain statistics on education, health and the percentage of women in decision making institutions. In relation to a campaign on universal education led by the Government, she requested the Government to clarify what resources were being used towards this, and how it had helped

⁸ <http://bit.ly/IV1N2m>

⁹ <http://bit.ly/P5F1cE>

to eliminate discrimination against girls in school. The report also does not indicate the guarantee of free medical care for women regarding cervical cancer and caesarean sections.

The Special Rapporteur on human rights defenders expressed her concerns about intimidation, arbitrary arrests and harassment against human rights defenders, and wished to know what measures had been taken by the Government to ensure the security of defenders. The Special Rapporteur was also concerned that the communications she had sent to the Government had never received any response. She also deplored the fact that she has not yet received an official invitation to visit the country, despite having requested such a visit on several occasions.

The Special Rapporteur on extractive industries expressed his concern that the majority of the population lives in extreme poverty despite Angola's rich natural resources of diamonds, oil and iron ore. According to the report on the implementation of the Millennium Development Goals (MDG), in 2005, 68 percent of the Angolan population lives below the poverty line with less than \$1.70 US dollars per day, and 26 percent live in extreme poverty with less than \$0.75 per day. He thus requested that the Angolan delegation elaborate on measures that had been put in place to ensure the benefits of the substantial oil revenues are used for social programmes that will benefit Angola's citizens

The Special Rapporteur on freedom of expression and access to information raised the issue of provisions in the national law imposing some limitations on the exercise of freedom of expression, and requested the Government of Angola to repeal these laws. She informed the State about the existence of the model law on access to information and urged the Government to adopt a national law in order to protect and promote the right of access to information. The Special Rapporteur finally urged Angola to ratify the *African Charter on Democracy and Good Governance* and to consider making a declaration under Article 34(6) of the *Protocol on the Statute of the African Court of Justice and Human Rights*.

In its replies, Angola's delegation said it recognised the gaps in national human rights implementation and is working on correcting this. They promised to ratify all treaties and argued that delays in ratification are due to translation challenges.

On the question related to the harassment of human rights defenders, Angola's delegate responded that there are hundreds of NGOs operating in Angola. The delegate said the work of NGOs is acknowledged by the Government, which has always engaged in dialogue with NGOs.

The Commission did not adopt concluding observations during the 51st session, as Angola planned to send written replies and more statistics on the report.

Developing issues

WOMEN'S RIGHTS IN AFRICA

New initiative to expound the Protocol on Women's Rights

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol) that entered into force in 2005 has been praised for being the first human rights instrument to recognise reproductive rights. It contains the first references to HIV/AIDS in an international treaty, and the first mention of a right to abortion, where a pregnancy is the result of sexual assault, rape, or where it endangers a woman's mental or physical health. It also recognises marital rape as a form of gender-based violence.

However, only 28 countries have ratified the Protocol and implementation by States has been very limited due to existing national and customary laws, as well as traditions in contradiction with the Protocol. The budgetary implications are one of the main obstacles preventing States from implementing the Protocol, as Article 14 requires that State parties take all necessary measures to ensure the health and reproductive rights of women

At the initiative of the Centre for Human Rights, based in Pretoria, a working group on Article 14 of the Protocol was created.¹⁰ The aim of the group is to unpack the provisions contained in the longest article of the Protocol¹¹ to ensure it fulfils its primary mission of protecting women's rights. The working group will produce guidelines on State obligations concerning women's health and reproductive rights, and HIV¹² to encourage States to protect the reproductive rights of African women as set forth in the provisions.

Concrete action needed on sexual violence in Somalia

At an NGO side event on the human rights situation in Somalia¹³ and through various statements under Item 4,¹⁴ NGOs exposed the sexual violence affecting Somali women and girls. The Strategic Initiative for Women in the Horn of Africa (SIHA network) submitted a report to the Commission outlining the violence against women in Sudan, Somalia and Eritrea. The conflict that has raged in Somalia for 22 years has been particularly hard on women who are forced to live as IDPs. 'We have no shelter, no clean water, and now with the rainy season, we will catch diseases,' stated a Somali woman at the side event. She said Somali women, particularly IDPs, face the risk of rape on a daily basis inside and outside Mogadishu. For example, Somali women refugees in Kenya do not know who they can trust. 'They do not know if a man with a gun and uniform walking through the camp at night is a soldier who is there to protect or to rape and abuse'.¹⁵ It was said that many victims also suffered in the knowledge of the impunity of the crimes' perpetrators.

The UN Special Rapporteur on violence against women, Ms Rashida Manjoo visited Somalia from 9 to 16 December 2011 and presented her report during the Human Rights Council's 20th session. It was a missed opportunity that the Special Rapporteur on women in Africa did not carry out a joint mission to Somalia.

Although the Commission has adopted several resolutions on Somalia over the past years, it has failed to take any concrete action on the alarming situation of women. Through its protection mandate, the Commission should take measures to document and report human rights violations in Somalia, and violence against women in particular, in order to develop appropriate responses and interventions. However, it has failed to do so.

ASSEMBLY AND ASSOCIATION UNDER FIRE

Discussions at the NGO Forum and NGO statements under Item 4 exposed the dangerous trend of stifling the right to freedom of assembly and of association throughout Africa. Various interventions sounded alarm bells concerning the worrying trend of shrinking space

¹⁰ <http://bit.ly/MibrLR>

¹¹ <http://bit.ly/NgcJsi>

¹² Article 14 (1) (d) and (e)

¹³ The side event was co-sponsored by East and Horn of Africa Human Rights Defenders Project, the Strategic Initiative for Women in the Horn of Africa (SIHA) and Amnesty International.

¹⁴ Item 4 : Human Rights situation in Africa

¹⁵ Women in the Horn still bending their heads, SIHA report to the 51st session of the ACHPR : <http://bit.ly/Mec0ns>

for civil society to assemble and associate freely, either due to laws restricting the work of NGOs or excessive violence against human rights defenders exercising their right to peaceful protests.

The Charities and Societies Proclamation Law passed in 2009 in **Ethiopia** is said to be one of the most prohibitive in the world. It has already had a significant negative impact on Ethiopian NGOs. Many human rights NGOs have been obliged to close due to funding restrictions; some have had to reduce their staff and others have had to change their mandates to comply with the provisions of the law.¹⁶

Algeria adopted a new law in January 2012 limiting the work of human rights NGOs and imposing NGO funding restrictions.¹⁷ In addition, the law requires existing NGOs to seek new registration, and permits the Government to discretionally deny registration to NGOs whose mandate is 'contrary to national norms and values, public order, good morals, or current legal measures and regulations'.¹⁸

In **Swaziland**, the Suppression of Terrorism Act, the Public Order Act, and the Seditious and Subversive Activities Act undermine the freedom of assembly and association by threatening to prosecute peaceful protestors. The Attorney General recently deregistered the Trade Union Congress of Swaziland.

In **Zimbabwe**, the Public and Security Act (POSA), imposes severe restrictions on the freedom of assembly and has been used abusively by the Government to clamp down NGO gatherings. There have been several cases of prosecution under this law.

While there are no legal restrictions, peaceful protests have also been met with excessive violence by police in Uganda, Malawi, Swaziland, Zimbabwe, and Angola.

NGOs requested that the Commission challenge the legality of the Ethiopian Charities and Societies Proclamation and conduct a continental assessment of African NGO laws in contradiction with the African Charter and other international instruments.

The immediate response from the Commission was the adoption of various resolutions, including:

- A resolution on Swaziland in which the Commission expresses its concern about 'allegations of the violation of the right to freedom of expression, freedom of assembly, and freedom of association which, if true, may affect the conduct of free, fair and credible elections in 2013'¹⁹
- A resolution on Ethiopia condemning the excessive restrictions placed on human rights work by the Charities and Societies Proclamation, and calling upon the Government of Ethiopia to amend the law in accordance with the *UN Declaration on Human Rights Defenders*.²⁰

While the Commission has sent a strong message to governments by adopting such resolutions, it is unclear how it will follow up the implementation of these resolutions, which risk remaining dead letter like many other resolutions adopted in the past.

¹⁶ For more information, see Ethiopia: human rights crippled by restrictive law, available at <http://bit.ly/NdQdy2>

¹⁷ <http://bit.ly/LcOJqR>

¹⁸ <http://bit.ly/LcOJqR>

¹⁹ <http://bit.ly/L5TcqB>

²⁰ <http://bit.ly/MfnVYq>

In response to limitations of freedom of association, the Commission appointed a study group a year ago to analyse laws governing freedom of association and practices that violate freedom of association in Africa.²¹ The study group met in Lome in May 2012 to adopt an action plan and methods of work. It is expected the group will present the preliminary report at the Commission session in October 2012 and the final report in 2013. The report will lay a foundation to be used by the Commission to tackle the issue. It will be interesting to see what measures the Commission will take in order to bring about positive change.

LINKING THE UN AND AFRICAN SYSTEMS

Sexual orientation and gender identity

The NGO Forum took stock of the decisions made at the UN Human Rights Council's 19th session that provided opportunity for further action by the Commission. The Human Rights Institute of South Africa, the West Africa Human Rights Defenders Network, and East and Horn of Africa Human Rights Defenders Project presented the main outcomes of the Council session to the NGO Forum participants.

The panellists highlighted the landmark Human Rights Council panel discussion on sexual orientation and gender identity (SOGI) and encouraged the African Commission to use this experience to take measures to protect SOGI activists in Africa.

As a result, the NGO Forum put forward a resolution acknowledging the positive outcome of the panel discussion in Geneva, and calling on the Commission to adopt a resolution condemning violence against lesbian, gay, bisexual and transgender (LGBT) persons and acknowledging their rights as enshrined in international law.²² The proposed resolution caused some tension among the NGO Forum participants, but was fortunately adopted by vote.

Referencing the UN panel discussion, the Legal Defense and Assistance Project (LEDAP) Nigeria, called on the Commission 'to pass a resolution condemning violence and human rights violations perpetrated by State and non-State actors against individuals on the basis of sexual orientation and gender identity'. Their intervention referenced the rights-based case for such as focus, as well as citing cases across the continent to substantiate the need for such attention by the Commission.

Disappointingly, for the fifth time, the Commission failed to adopt a resolution on LGBT persons, despite the good example set by the Human Rights Council.

Eritrea

Given the worsening human rights situation in Eritrea, 44 States presented a joint statement during the 19th session of the Human Rights Council, expressing their concern and inviting the High Commissioner to brief the Council on the human rights situation in Eritrea at its 20th session.

As follow-up to this development, participants at the NGO Forum signed a letter addressed to ministers of foreign affairs in Africa, calling on the African Union to take urgent action regarding the situation in Eritrea and calling on the Human Rights Council members from Africa to support the appointment of a UN Special Rapporteur on Eritrea.²³ The letter also called on the African Commission to take necessary measures to ensure its own decisions

²¹ <http://bit.ly/NibKan>

²² <http://bit.ly/LEAWuz>

²³ <http://bit.ly/MecppV>

are implemented in Eritrea. However, the Commission has not yet taken any action on Eritrea. A similar letter was addressed to the Council by a number of NGOs on 19 June 2012.²⁴

At its 20th session, the Human Rights Council adopted without a vote a resolution condemning continued widespread and systematic violations of human rights committed by the Eritrean authorities, and appointing a Special Rapporteur on the Situation of Human Rights in Eritrea to report to the Council and to the General Assembly.²⁵ The mandate holder was appointed at the Council's 21st session – Ms Beedwantee Keetharuth, former executive director of IHRDA.

Of the African Commission's 51st session, it is worth noting that the Government of Eritrea was represented at the session after an absence of more than 10 years. The delegate denied there were any violations of human rights in Eritrea and alleged that imprisoned journalists had not been arrested because of their work but for having committed criminal offenses.

Libya

At its 19th session, the Human Rights Council also received the report from the Commission of Inquiry (COI) on Libya. In paragraph 135 of the report, the COI calls upon the African Commission to establish a mechanism to monitor the implementation of the COI recommendations.²⁶ As such, the NGO Forum submitted a letter to the Commission asking for the implementation of the COI request.²⁷ At the time of writing, the Commission had not yet acted in response to this request. It is hoped a decision will soon be taken, as it will offer a good example on how the UN and African human rights systems can complement each other.

Highlights from Special Rapporteurs

SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION

In her report to the Commission, the Special Rapporteur on freedom of expression noted that consultations on the model 'Access to Information Law' in Africa, have started in the east, west, south and central sub-regions of Africa. Defining a model law is part of a process initiated in line with the Commission's *Resolution 167* on 'Securing the Effective Realisation of Access to Information in Africa.' The Special Rapporteur noted the project has encouraged the adoption of access to information laws in four countries, with bills pending in several others. The aim is for the model law to be submitted to the African Commission for the 52nd Ordinary Session, with sensitisation meetings to follow with the African Union organs and institutions, the Pan-African Parliament, the New Partnership for Africa's Development/the African Peer Review Mechanism (NEPAD/APRM), and the Regional Economic Communities. Advocacy visits to countries in the process of adopting the laws will also be held. The Special Rapporteur was enthusiastic about the Economic Community of West African States' (ECOWAS) progress in adopting a regional legal framework for freedom of expression and

²⁴ <http://bit.ly/SgqN9P>

²⁵ <http://bit.ly/NaaxTK>

²⁶ <http://bit.ly/M09khv>

²⁷ <http://bit.ly/Nlo7PU>

the right to information in West Africa, which she said she hoped would supplement national frameworks. Ratifications of the African Charter on Democracy were noted.

The Special Rapporteur on Freedom of Expression and Access to Information continued to collaborate with the rapporteurs of the United Nations, Organization for Security and Co-operation in Europe (OSCE), Organization of American States (OAS) and African Commission, with a joint declaration being issued on freedom of the internet in June 2011.

The mandate holder considered that some progress had been made in regard to areas covered by her mandate, but several challenges remained.

She highlighted:

- The adoption of restrictive media legislation by some State parties;
- The slow pace of adoption of access to information laws by State parties;
- The lack of responses by some State parties to appeals made by the Special Rapporteur and the failure to implement her recommendations;
- Concerns about the safety of journalists across the region; including persistent attacks on journalists in several countries.

The Rapporteur's report also contains information on her engagements with Liberia, the Somali Republic and the Republic of Gambia on the cases of individuals. In reference to the existing *Declaration on Freedom of Expression and Information*,²⁸ the Special Rapporteur noted that her office is looking to encourage a change in the terms of the declaration, to place access to information on a similar footing to freedom of expression i.e. by stating access to information 'is a fundamental and inalienable human right and an indispensable component of democracy'.

SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS

The Commission's Special Rapporteur on Human Rights Defenders noted that, following a visit to Egypt at the invitation of local human rights defenders, she has put in a request to the Government of Egypt to conduct a promotional mission to further assess the situation of defenders.

The Special Rapporteur said she has submitted requests to 12 countries, including Egypt, to conduct promotional visits. Togo has responded positively, and she is in contact with Tunisia and Cote d'Ivoire. However, she is waiting for a response from other States, namely: Angola, Cape Verde, Egypt, Ethiopia, Libya, Mali, Rwanda, Swaziland and Zimbabwe.

The list of communications from the Special Rapporteur to States indicates no State has taken action, except Mauritania which responded to her letter regarding the situation of four human rights defenders.

In her report, the Special Rapporteur highlighted contextual features that are of particular concern for human rights defenders, including legal restrictions placed on their work, and increased vulnerability during periods of presidential and legislative elections. She also noted that engagement by States with her mandate has not been strong, including in providing responses to cases of allegations of human rights violations. She highlighted positive aspects of engaging with States during the period, including a promotional visit to Togo in

²⁸ <http://bit.ly/gkJpoi>

May 2012, and an inter-mechanism joint visit to Tunisia in September 2012 with the participation of the UN Special Rapporteur on human rights defenders.

In this period, her third as Special Rapporteur on Human Rights Defenders, Ms Gansou, indicated that she has developed an action plan for the work of the mandate, which she indicated 'takes into account the requirements of all stakeholders'.

The grave situation for human rights defenders in Ethiopia, whose space to work has been severely restricted by the 2009 'Ethiopian Charities and Societies Proclamation', was highlighted in bleak terms by the Ethiopian NGO Human Rights Council (HRCO). The Special Rapporteur highlighted the case of Ethiopia (and Egypt) in terms of 'highly restrictive laws in relation to access to funding for the activities of human rights defenders' which appear to violate the provisions of the *UN Declaration on Human Rights Defenders*. She called for all States to repeal 'all legal instruments restrictive of the smooth functioning of the activities of human rights defenders'.

For its part HRCO called on the African Commission to investigate the laws in Ethiopia, and to conduct 'a continental assessment of the congruence of African NGO laws and domestic obligations governing freedom of association', amongst other things. Other NGOs including ISHR echoed the call for African Commission's attention on restrictive laws. ISHR recommended the Special Rapporteur on human rights defenders to 'elaborate minimum standards for NGO work regulation' to prevent States from adopting restrictive laws to the NGO work.

In a statement at the session, ISHR called for 'greater commitment' from the African Commission to fighting the problem of reprisals, such as by creating follow up mechanisms to the resolution on reprisals adopted during the Commission's 50th session. ISHR seeks to encourage the Commission to adopt measures towards the implementation of the resolution, such as by recording and responding to cases of reprisals against human rights defenders.

SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN

The Special Rapporteur on the Rights of Women, and those NGOs that made oral interventions, focused in part on the Maputo Protocol, its ratification and practical steps for its implementation. The Special Rapporteur, for example, noted that the State of Equatorial Guinea ratified the Protocol at the Head of States' Summit in Malabo.

Ipas Africa Alliance for Women's Reproductive Rights called for other governments that have not ratified the Protocol to do so immediately and without reservation. It called for those who have ratify the Protocol to implement it, including by reviewing existing legislation to annul restrictive and punitive laws on abortion, in particular. With an eye to monitoring compliance, IPAS further called for the African Commission to include a requirement to report on access to quality reproductive health services, including safe abortion, in periodic reports. Specific national level experience was cited by the Zimbabwe Women Lawyers Association (ZWLA), which noted, for example, the inadequacy of the national judicial system and policies for the protection of women's rights, despite Zimbabwe having ratified the Protocol. ZWLA's recommendations to address this included provisions within the new Constitution ensuring non-discrimination in 'unequivocal and absolute terms'.

Other developments at the Commission

LAUNCH OF THE HUMAN RIGHTS DEFENDERS GUIDE TO THE AFRICAN COMMISSION

In partnership with the Institute for Human Rights and Development in Africa, ISHR produced a manual for human rights defenders retracing the evolution of the African Commission's protection of human rights defenders through communications, urgent appeals, statements and resolutions.

The guide was launched by the Special Rapporteur on Human Rights Defenders during the session, in the presence of defenders, commissioners and State delegates.

OBSERVER STATUS

The Commission granted observer status to five NGOs: World Alliance for Citizen Participation (CIVICUS), Centre Feminin pour la Démocratie et les Droits Humains, Strategic Initiative for Women in the Horn of Africa, African Freedom of Information Centre, and Zimbabwe Election Support Network.

Conclusion

The 51st session of the African Commission ended on 2 May 2012 with a number of resolutions including on:

- The Situation of the North of the Republic Mali;
- The Human Rights Situation in Federal Republic of Nigeria;
- The Human Rights Situation in the Democratic Republic of Ethiopia;
- The Situation Between Sudan and South Sudan;
- The Human Rights Situation in the Kingdom of Swaziland; a resolution on the Unconstitutional Change of Governments;
- The Optional Protocol to the *International Covenant on Economic, Social and Cultural Rights*;
- Attacks Against Journalist and Media Practitioners in Somalia;
- Modification of the Declaration of Principles on Freedom of Expression to include Access to Information, and a request for a Commemoration Day on Freedom of Information;
- Renewal of the Mandate of Expert Members of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa
- The Human Rights-Based Approach to Natural Resources Governance.

The 52nd session of the African Commission will take place in Ivory Coast from 9 to 22 October 2012.