

KUMULIKA
THE AFRICAN
COMMISSION
ON HUMAN AND
PEOPLES' RIGHTS:
25TH ANNIVERSARY



ISHR

INTERNATIONAL SERVICE
FOR HUMAN RIGHTS



The International Service for Human Rights (ISHR) is an independent, international NGO which promotes and protects human rights by supporting human rights defenders and strengthening human rights standards and systems. We achieve this through a strategic combination of research, advocacy, monitoring, coordination and capacity building.

Founded in 1984, and with offices in Geneva and New York, ISHR has a proven track record in achieving human rights change, such as facilitating global civil society input into the Vienna Declaration and Program of Action (1993), leading the development of the UN Declaration on Human Rights Defenders (1999), contributing to the establishment of the UN Human Rights Council (2006), and catalyzing and coordinating the adoption of the Yogyakarta Principles on human rights and sexual orientation and gender identity (2007).

In recent years, ISHR has also played a leading role in putting the issue of reprisals against human rights defenders on the international agenda and contributing to the development of national, regional and international mechanisms to better protect human rights defenders from intimidation and attacks.

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EXECUTIVE SUMMARY

The African Commission on Human and Peoples' Rights (ACHPR) celebrated its 25th Anniversary in 2012. This provided a useful opportunity to assess the work of the Commission, its strengths as well as its weaknesses. Discussions and meetings were held to provide recommendations and ideas on how to help the Commission evolve in the future.

This edition of Kumulika provides an overview of the discussions that took place and the proposals that emerged following the 25th Anniversary. It also focuses on the outcome of the October NGO Forum prior to the Commission's 52nd session.

Regional mechanisms play a key role in the protection and promotion of human rights, and complement the work of United Nations worldwide. Twenty years ago the Vienna Declaration and Plan of Action (VDPA) recognized the importance of these mechanisms, encouraging their development.¹ Over the past two decades regional bodies such as the ACHPR have flourished and become a reference point for victims seeking redress or protection.

The effectiveness and responsiveness of these regional bodies depends on the way in which Human Rights Defenders (HRDs) engage proactively and strategically with these bodies. The International Service for Human Rights works precisely to inform HRDs about the opportunities that exist within these mechanisms to further their own advocacy efforts. Kumulika is more than an information tool for defenders. It is produced to guide defenders in their advocacy at the ACHPR. We welcome HRDs feedback on this publication in order to improve its content and make it more useful and tailored to your needs.

We hope that this edition will inspire African defenders to continue to engage with the ACHPR, shaping it to become a stronger body for human rights on the continent.

Clément Voule

Manager
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¹ 37. "...The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist."

THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS: 25TH ANNIVERSARY

THE NGO FORUM (5TH – 7TH OCTOBER 2012) AND THE 52ND ORDINARY SESSION OF AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (9TH – 22ND OCTOBER 2012)

The October 2012 session of the African Commission on Human and Peoples' Rights (ACHPR, or 'the African Commission'), held in Yamoussoukro, Cote d'Ivoire, dedicated half its meeting time to celebrating its 25th Anniversary. Here we report upon discussions held at the ACHPR and the preceding NGO Forum. We reflect upon the Commission's ways of working and record some of the key recommendations made, in a bid that these can be further explored and implemented.

During the three day NGO Forum, the need to re-evaluate the purpose and working of the Forum became increasingly evident. A number of members expressed their discontent regarding the agenda setting process and transparency in the process to elect the Forum Steering Committee.¹ These members held separate meetings, and presented the Forum with a statement making very concrete recommendations to the Steering Committee and the Secretariat of the ACHPR.²

The role of the NGO Forum vis-à-vis the Commission, and how NGOs should organize themselves before the wider African system have been voiced for some time, without clear resolve shown by the Steering Committee to channel and address these questions. The ACDHR external evaluation of the NGO Forum, carried out in 2007, recommended that an evaluation take place every three years.³ This recommendation seems all the more relevant given the frustrations expressed by Forum members.

The value of a space for NGOs to come together ahead of the ACHPR was reiterated by members of the Forum, as well as speakers during panel discussions held during the ACHPR session on the relationship between

this mechanism and NGOs. The importance of setting aside time to analyse concerns collectively was highlighted. Why else would national human rights institutions (NHRIs) speak of doing the same?⁴

The Executive Director of the African Centre for Democracy and Human Rights Studies (ACDHRS) made her traditional statement during the ACHPR Opening Ceremony 'on behalf of all my colleagues of the Forum of NGOs'.⁵ However, it was unclear to what extent the statement represented the feeling of the Forum.⁶

In her statement, Ms Forster referred to the NGO Forum Declaration submitted to the ACHPR.⁷ Rather than submit 'numerous resolutions' and contrary to previous years, it presented 'one declaration highlighting the various issues that we as the NGO Forum believe to be critical'. These echoed previous NGO Forum recommendations made on several thematic and country issues.⁸ However, during the ACHPR session, there was no direct reference to any of these recommendations by Commissioners.

ACHPR ORDINARY SESSION (9-22 OCTOBER 2012):

The African Commission was established in 1987 following the adoption of the African Charter six years earlier. The first week of the ACHPR October 2012 session focused on a series of panel discussions exploring the Commission's ways of working, and its relationship with stakeholders over the last 25 years; and made recommendations on how to ensure its future effectiveness.⁹

The relationship between the Commission and the State parties was at the heart of the debate. The Chair of the Commission noted that ratification of the African Charter was voluntary, and parties were required to implement its terms. The ACHPR will continue to strive to implement its mandate, noted the Chair, but State parties need 'to live up to their commitments and obligations under the Charter and, by implication, the decisions and recommendations of the Commission'.¹⁰ The Commission highlighted the difficulty of being the child of the African Union, but not supported by sufficient funds or evident political will by its members.¹¹

STATE PRESENCE AND NHRI PARTICIPATION: PROGRESS!

For the first time, a Liberian State delegation was present at the session. Liberia noted that it had had technical problems in reporting, was apologetic for being late in submitting a report and indicated it would be ready to report at the next session.¹²

It was the first time the Malawi national human rights institution (NHRI) had attended a Commission Ordinary session. Malawi has never submitted a report, but it is hoped the report will be ready for the next ACHPR session. The NHRI noted that NGOs have been involved in the production of the report.

According to the ACHPR final communiqué, 27 (out of 53) State Parties were represented at the session. The Kenyan NHRI expressed concern that the Kenyan State was absent, and asked the Commission to help in encouraging it to attend. Sudan, Lesotho, Ethiopia, Niger, South Africa and Liberia regularly intervened during the panel discussions, and during the presentation of Commissioners' activity reports.

ACHIEVEMENTS:

Several panellists and contributors spoke of the achievements of the ACHPR. It was suggested that through establishing and developing its mandate and work on cases over 25 years, the Commission has played a key role in ensuring 'that

human rights are a constitutive objective of States is a success of the ACHPR'.¹³ The Executive Director of the Network of African NHRIs noted that the increase in the numbers of NHRIs in Africa could be attributed to a Commission recommendation for the same.¹⁴ At the end of the first day, the Chair of the Commission, Commissioner Atoki said that at times there had been 'fist fights' between the ACHPR and the States - with the latter frequently stating that they were being accused- but that '... the continent is making progress, albeit slowly' and that 'we may have divergent visions, but we need to continue'.

Achievements were highlighted, but challenges still remain great. In her Opening Ceremony statement, Ms Forster said The Forum 'while pleased with the progress made by the African Commission notes that serious challenges with the potential to affect its effectiveness persist'.

Many of the challenges identified during the session were similar to those identified during discussions to mark the 30th anniversary of the African Charter (during the ACHPR 50th Ordinary Session). It is unclear if the recommendations in that meeting were recorded or acted upon by relevant stakeholders. The agenda for the private session of the 52nd Session doesn't include specific mention of discussion of recommendations made to the Commission during the public session. The final communiqué from the 52nd Ordinary Session is limited in scope and does not contain a record of all recommendations made during the sessions.

The Recommendations that follow, unless otherwise indicated, were made during individual panel and dialogue sessions of the ACHPR October sessions, and in some cases recall the fact that the recommendations have been voiced previously, often many times over. Hence the need for someone to take them seriously and take action!

CHALLENGES FACED BY THE ACHPR, AND RECOMMENDATIONS

ISSUE 1: LACK OF FINANCIAL AND HUMAN RESOURCES:

A lack of financial and human resources undermines the work of the Commission: a sentiment voiced repeatedly during the reporting by Special Rapporteurs and Chairs of working groups.

The performance of the Commission is highly reliant on the efficiency of the Secretariat, and in turn the Secretariat is reliant on the resources made available to it. Without a strong Secretariat the work of the Commission is undermined. Insufficient staff within the Secretariat diminishes its capacity to support the State reporting system - such as by sending States reminders on reports; and examining reports ahead of the ACHPR - and in building good relationships with officials in State parties more generally. The Chair of the Commission noted that she receives no support to carry out her activities, instead using her private office staff to assist with ACHPR work. Commissioners, she noted, are sick of all the work and 'doing it for the love of Africa.'

With Commissioners carrying responsibilities for multiple mandates, and members of Committees working part time, the capacity for work and the 'smooth functioning of the mechanism' are affected.¹⁵ In addition, the dispersal of members of working groups makes meeting difficult.

RAISING FUNDS FOR THE ACHPR:

Raising funds for the Commission has traditionally fallen to the Secretary and Chairperson. It was noted during discussions that without an awareness of the importance of funds for the ACHPR within the General Secretariat of the African Union Commission, ACHPR draft budgets tend to get cut, leaving the Commission insufficiently funded. Past successes in securing funds from the AU seem to have been informed by lobbying Permanent representatives of Member States.

Several mandates noted that whilst the Commission may not receive the required support from the institution that founded it, progress is made in different areas due to partnership from NGOs and external States. Norway and Germany were both cited by the Special Rapporteur on Human Rights Defenders in Africa, for example. However, even this can create problems, as partners frequently offer one year contracts, which undermines the institutional memory of the mechanism. In addition, making up the shortfall through approaching external funders is something AU members frequently criticise.

The Chair of Working Group on Economic, Social and Cultural Rights noted that the search for resources 'is becoming wearisome and undermines our dignity as African officials'.¹⁶

Recommendations:

- The Secretariat and Commissioners should establish direct relationships with Heads of State and Foreign Ministers
- Make the Chair of the ACHPR a full time position (in line with the Chair of the African Court). This would require an amendment to the African Charter.¹⁷
- Ensure greater material and financial support from the AU to the ACHPR. There was some discussion during the session about creating a 'voluntary fund' (from States) so that the ACHPR can work independently of other income streams.
- The AU should employ the full number of legal advisors promised to the Secretariat. There had been improvement recently through an AU decision to increase the number of legal officers, although not all posts have yet been filled.

ISSUE 2: LACK OF INSTITUTIONAL CLARITY:

Under the African Charter, the Secretary General of the African Union appoints the Secretary of the ACHPR (and staff and services) and the AU cover the costs. The Chair of the Commission noted that the Commission faces challenges dealing with staff that it has no control over - even in questions of poor performance - and that it had alerted the AU to these questions. Furthermore, States and NHRIs noted the lack of clarity within the Secretariat about who does what and whom to contact; and that Secretariat support was the key to ensure a good flow of information between stakeholders.¹⁸ Algeria cross-referenced the UN system where there is on-going contact between the Secretariat (the Office of the High Commissioner for Human Rights) and the State representatives.

Recommendations:

- Place recruitment of the Secretary in the hands of the ACHPR (as is the case in the African Court). This would solidify the relationship between the Commission and the Secretariat.
- Recruit more French-speaking staff to the Secretariat. A call was made to French speaking countries to support this. A similar call was made to Arabic and Lusophone countries to support multi-lingual staff.

In regard to the Secretariat, a group of Gambian human rights defenders drew up a letter calling for AU member States to take 'urgent action' regarding the location of the ACHPR Secretariat.¹⁹ They note that in light of 'the ongoing widespread and systematic human rights violations' in the country, The Gambia should no longer have the 'privilege' of hosting the ACHPR.

ISSUE 3: LACK OF COOPERATION BY STATE PARTIES:

State parties do not respond to communications or requests for visits. There was some suggestion that for some states, this is a matter of lack of capacity rather than lack of political will.

ISSUE 4: LACK OF IMPLEMENTATION OF COMMISSION RECOMMENDATIONS AND DECISIONS:

Non-compliance by state parties to ACHPR non-binding decisions and recommendations has been a continuing problem. This is an issue experienced, at varying degrees, by all regional and international human rights mechanisms, reliant as they are on the cooperation of States to implement and comply. Non-compliance erodes the credibility of the Commission.

So, what would encourage compliance?

- Whether the African Charter has been domesticated - an absence of specific enabling legislation (through which decisions by human rights bodies are given legal status) undermines implementation.
- NGOs encouraging the follow-up of decisions, as well as submitting communications.
- Follow up by the Commission itself. Commissioners themselves noted that the submission of state reports and the implementation of decisions and recommendations should be referred to during promotional visits too. It was suggested that follow-up will also increase interaction with states, and as such, increase the likelihood of compliance. The fulfilment of the ACHPR's protective mandate relies upon using promotional opportunities to their maximum. The protective and promotional sides of the ACHPR mandate are closely related.

Though there is no enforcement mechanism within the Commission, the Commission's new 2010 Rules of Procedure outlines steps the ACHPR can take to encourage follow up. It was clear that these steps are not followed systematically.²⁰

Current practice:

In the Special Rapporteur on Human Rights Defender's activity report for this session, no reference was made to individual communications or the response of the relevant State.²¹ In the reporting for the 51st session, no explicit reference is made to communications from the past that had not received an adequate, or indeed, any response from the State. No reference is made to specific follow up to cases highlighted in Tunisia, following the joint mechanism trip to Tunisia in September 2012. It will have to be seen if reference is made in either Rapporteurs' reports to their respective mechanisms next year.²² The Special Rapporteur on Freedom of Expression was explicit in calling for implementation, and referencing the fact that she would continue to do so systematically in her activity reports and at other opportunities.

Using opportunities with the African Union to press for implementation:

The Commission is required to provide the AU Assembly of Heads of State and Governance with a report each year. Past reports have included reference to the Status of State reporting.²³ Whilst reporting can produce a delay in the 'approval' of Commission recommendations and decisions, it can also provide opportunities that may currently be untapped.²⁴ For example, is there scope to encourage the Assembly of Heads of State and Government's Executive Council to intervene on questions of non-compliance of ACHPR recommendations and decisions? In the Protocol of the African Court, for example, the Executive Council monitors the execution of the Court's judgements on behalf of the Assembly of Heads of State and Government. Court reports to the Assembly include details of non-compliance by States. Commission reports go straight to the Assembly, leading to a less direct follow up. Is a change necessary particularly in regard to the Commission's protective mandate?²⁵

Recommendations to ACHPR on monitoring compliance and encouraging implementation:

- Include in activity reports details of follow-up efforts made by the ACHPR, something not done systematically despite being part of their own rules of procedure. Ultimately the overall mandate – related to both protection and promotion - should encourage the establishment of democratic governance, and should facilitate greater compliance.
- Make recommendations available! Currently, not all of the recommendations are available on the website, including those noted as 'available' with an apparent link. It is difficult to assess the value of concluding recommendations and to press for their implementation if they are not accessible.
- The ACHPR should make the most of opportunities to lobby the African Union on human rights, alongside AU meetings, for example. The Commission should facilitate institutional exchanges between the AU and other organs with a human rights mandate.
- Evaluate the degree to which Commissioners have integrated monitoring activities into their work, as expressed in Rule 112.

A step forward:

One of the ACHPR session outcomes was that the mandate of the Working Group on Communications was expanded beyond its former largely advisory role. It will now coordinate follow-up decisions of the Commission regarding Communications; collect information on the status of implementation of the Commission's decisions; and present a consolidated Report on the status of implementation of the Commission's decisions on Communications at each Ordinary Session, in line with Rule 112 (7) of its Rules of Procedure.²⁶

ISSUE 5: LACK OF COMMUNICATIONS REACHING THE ACHPR:

In 25 years the ACHPR has received 420 communications – most of which were submitted by NGOs²⁷ - with some 190 considered on the merits.

Why are so few cases brought before the Commission?

During the presentation of the first activity report of the Working Group on Communications (established in 2011 during the 50th Ordinary Session) the Chair of the group noted challenges faced as non-submission of cases; the lack of an enforcement mechanism; and insufficient staff. A lack of legal experts in the Secretariat impacts the Commission's ability to do its work adversely.

Other contributors noted that there was:

- A lack of clarity amongst NGOs on the process to follow in submitting cases.
- A lack of familiarity amongst lawyers of the African Charter and the Commission's jurisprudence.

An NGO member suggested that the reason that there are few cases being brought to the Commission is two-fold. Firstly people don't understand ESCR in terms of rights, but as a question of provision or gifting by the State. It was also suggested that in the case of failed states people are not persuaded that approaching the ACHPR will result in any change at national level or in their personal circumstances.

Recommendations:

- Increase the numbers of cases reaching the ACHPR to make governments more mindful of human rights.
- Continue to provide trainings to lawyers and other stakeholders about the Charter and Commission's jurisprudence.
- There was a reminder that the ACHPR can refer cases of non-implementation to Court.²⁸

Specific case and recommendations:

The Kenyan NHRI noted that in the case of the Endorois, they were awaiting the implementation of the ACHPR 2009 decision.²⁹ The NHRI Commissioner noted that the people would not get a better decision in another body, nor did they wish to see their case referred to the Court.

Recommendation: The NHRI Commissioner urged the working group 'to use their good offices' to press the Kenyan government to implement the decision.

ISSUE 6: LACK OF PROCEDURAL CLARITY:

Several speakers voiced criticism about the manner in which cases are handled. One speaker asked for clearer criteria for the acceptance of communications. It was also suggested that the Commission needed to be more flexible and understanding about the exhaustion of local remedies. Local remedies are not always available, or, notably, effective.

Questions were asked about the motivation behind the African Charter Article 56 (3) - where it is stated that 'disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity'; and to what extent this article has informed ACHPR action. The South African Litigation Centre asked for clarity on the procedure for cases to be referred from the Commission to the Court where there is non-compliance with decisions of the Commission; and then the role of the Commission in such circumstances.

ISSUE 7: ENGAGING WITH THE COMMISSION IS 'A FRUITLESS EXERCISE'

Zimbabwe noted that States feel that engaging with the Commission regarding decisions is essentially a 'fruitless exercise'. The State suggested that the Working Group on Communications needs to find a way to enforce decisions, and participants need help to find a way forward. Somewhat taken aback, the ACHPR Chair, noted that this was a refreshing intervention coming from a State party, and that that ACHPR would welcome any suggestions.

One NGO speaker asked, what the point of a 3-5 year wait was if there is no result forthcoming.

On a more positive note, Interights thanked the ACHPR for starting to deal with the backlog of cases, but noted that support to the Working Group on Communications was crucial to enable it to really deal with the situation.³⁰

In its final communiqué, the ACHPR noted that it had considered 80 communications. 64 were deferred to the 53rd Ordinary Session, for reasons including 'time constraints and lack of response from one or both parties.'

Specific cases:

Both the Special Rapporteur on Women's Rights in Africa and NGO speakers noted the lack of cases before the Commission on the rights of women and the need to increase jurisprudence to protect women.³¹ The many barriers to women accessing justice at the national level – including a lack of legal aid - informs women's ability to seek redress at the regional level. Given that the Charter provides for appropriate access to justice, NGOs requested that the Commission - through the Special Rapporteur on Women - look at the barriers preventing women having access to justice.³²

Aside from a lack of political will, technical capacity and funds, NGOs noted that one of the main obstacles to ratification of the Maputo Protocol were 'reservations'.³³ For example, Libya and Sudan were cited as having reservations on Article 14 which relates to health and reproductive rights.

The lack of information about the state of ratification was noted as an obstacle to better civil society support of the mandate. South Africa called for the mandate to look at levels of ratification and implementation of the Protocol, and reference to the Protocol by regional mechanisms (including ECOWAS), with an eye to the 20th anniversary of the Protocol in 2013. In addition, South Africa suggested that there is a need funds to debunk myths about Protocol - including Article 14.

ISSUE 8: LACK OF CLARITY AROUND THE ROLE OF NHRIS:

The Kenya NHRI spoke of need for a 'candid assessment' of the relationship between NHRIs and the ACHPR. Discussion centred on the nature of the relationship between NHRIs and the ACHPR, and the rights and responsibilities of the former. The resolution granting NHRIs observer status with the Commission notes that status will be granted to NHRIs conforming to the Paris Principles. Questions were asked, however, as to whether the ACHPR used similar accreditation methods to the International Coordinating Committee of NHRIs (ICC).

Whilst the resolution regarding the status of NHRIs and the Commission is entitled 'observer status' it goes on to speak of the affiliation of NHRIs to the ACHPR. The reference in the Commission's rules of procedure as to the 'affiliated status' of NHRIs seems to have created some confusion about the content of their role. The rights and responsibilities of NHRIs detailed in the resolution suggest a higher degree of rights than NGOs with observer status are afforded, whose participation in session is in accordance with the permission of the ACHPR Chair. However, in practice NHRI cooperation takes the form of statements during the Ordinary Sessions, in a similar way to NGOs.

Few NHRIs attend the sessions or submitted reports to the Commission.

Recommendations:

- The process of granting affiliate status to NHRIs and the content of that status needs clarification. This includes NHRIs' obligation to report on their activities, which includes assisting the ACHPR in the promotion and protection of human rights at national level.³⁴
- It was suggested by the Malawi NHRI that the ACHPR needs a specific mechanism for engagement with NHRIs.
- Should NHRIs organise a forum similar to the NGO Forum?

In regard to the role of NHRIs, Musa Gassama of OHCHR, referred to a recent workshop held on the role of NHRIs on reporting processes to the African regional human rights mechanisms, in which it was noted that:

- The role of NHRIs support to the ACHPR should be expanded upon and the Resolution on Granting Observer Status to NHRIs (1998) be revised.³⁵
- The ACHPR should amend State reporting guidelines to insist that States indicate the degree of NHRI involvement in the definition of State reports.

The Kenya NHRI noted that ACHPR's presence needed to be felt by NHRIs as a vital strategic partnership. If the Commission was not getting support from the State – NHRIs should be involved!

This was the final intervention for Lawrence Mute, ending his term as Commissioner at the Kenyan NHRI. He described the fight for human rights in Africa, as a 'marathon', in which all had played a role, and must continue to do so. The Chair noted his 'excellence' in interventions.

ISSUE 9: LACK OF CLARITY IN RELATIONSHIP WITH NGOS

Musa Gassama remarked that the important role played by NGOs in the functioning of African human rights mechanisms, including the ACHPR, has been acknowledged in key instruments.³⁶

It was noted that the ACHPR has promoted the legitimate role of civil society in engaging in human rights work – including engaging with the ACHPR itself – through its approach to granting observer status.³⁷ Observer status had been granted to NGOs which were not recognised as legitimate actors by their States – as in the case of the Collectif des familles des Disparu(e)s en Algérie in 2008. This has caused the Commission to clash with some States.³⁸

The value of the role of CSO partners in supporting the ACHPR in developing its human rights response was attested to by Commissioners throughout the session. It was clear, however, that the relationship between the ACHPR and the NGO Forum in particular needs to be reassessed.

In regard to the NGO Forum, Mr Gassama noted that civil society shouldn't take its space for granted, and that the NGO Forum is working in 'turbulent waters', and needs to keep focused and be careful how to maintain its work. He noted that it was time for a new evaluation of the Forum, and that part of the challenge for the NGO Forum – which once challenged military dictators – was to define how to work in the 'democratic' system.

Recommendations:

- The NGO Forum needs to be more resilient, but flexible at the same time. It needs to include issues that are considered taboo in its range of concerns.³⁹
- The NGO Forum needs to ask the ACHPR if the information it is providing the Commission in terms of resolutions and recommendations is valuable. If the aim is to improve and inform the ACHPR agenda, resolutions must be paid attention to.
- NGOs need more training on how-to engage with the ACHPR and drafting resolutions that can assist the ACHPR.
- NGOs should be more selective in the issues brought to the ACHPR's attention, encouraging greater attendance at public sessions of the ACHPR and more coordinated approaches with other NGOs, for example by joint statements.⁴⁰
- In her report, the Special Rapporteur on the Rights of Women, stated that NGOs 'should be encouraged to participate massively in the meetings of the Commission', seeing this, amongst other things, as a means to publicise the work and mandate of the ACHPR.

OTHER THEMATIC ISSUES UNDER DISCUSSION AT THIS OCTOBER SESSION OF THE ACHPR:

THE COMMISSION DEVELOPING SOFT LAW:

Several initiatives were reported on or proposed regarding the development of ACHPR soft law, including protocols, declarations and guidelines.

In response to NGO calls – including the Global Campaign for Pretrial Justice – the ACHPR passed the ‘Resolution on the need to Develop Guidelines on Conditions of Police Custody and Pretrial Detention in Africa.’ This authorises the Special Rapporteur on Prisons and Conditions of Detention to take the initiative forward, and calls upon State parties, civil society and other stakeholders to collaborate in the process of developing the Guidelines. Whilst several instruments contain relevant standards and best practice, it was noted that drawing them together into one set of guidelines, would be extremely useful. The Rapporteur will report on progress in April, 2013.

Calls were made for the development of principles, guidelines and tools on:

- Access to legal aid, in line with the work of the UN Congress on Crime Prevention and Criminal Justice.
- Part 3 of the Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa (considered the least articulated part of the Guidelines with opportunities for development).
- The development of a Protocol to the Charter on the abolition of the death penalty (a call made by the Working Group on the abolition of the death penalty in Africa)

There was also a call for clarification of some terms used. It was suggested that further elaboration was needed on the meaning of ‘indigenous peoples’, for example.

Tools developed by the ACHPR are largely unknown. There is a need for mobilisation to disseminate existing tools effectively. The Chair of the Working Group on Economic, Social and Cultural Rights noted that State parties need to translate and disseminate key documents, including the Nairobi Guidelines.⁴¹

States frequently delay moving bills through Parliament to give effect to standards developed by the Commission. Commissioners indicated that the NGOs’ role to press for implementation, as well as contribute to the original development of tools, was critical.

The Special Rapporteur on Freedom of Expression made the point that even though soft law – including the Declaration on Freedom of Expression is non-binding, States should have the political will to look beyond that fact.

STRENGTHENING THE MECHANISM:

The NGO Article 19 suggested closer association between the Special Rapporteur on Prisons and Conditions of Detention, and the Committee on HIV,⁴² to make the full complexity of the nature of violations experienced, and the inter linkages between rights areas more visible.

This recalled the call made by NGOs at the 49th Session for the Commission to reflect upon the experience of marginalised groups in their reporting, and for Commissioners to work together to draw out the connections between rights areas. Commissioner Alapini -Gansou mentioned her experience of compound discrimination, particularly for women, when she reported as Chair of the Committee on HIV. In addition, the Special Rapporteur on Freedom of Expression and Access to Information noted her interest in working alongside the Special Rapporteur on the Rights of Women, and the Special Rapporteur on Human Rights Defenders, on a campaign on women human rights defenders.⁴³ However, there were few references made by Commissioners to intersectionality. It is of note that the majority of the mandates of the Special Mechanisms of the African Commission don’t include reference to integrating gender into their work.⁴⁴

In terms of the Commission providing more comprehensive human rights coverage – if funds were no obstacle – at the 49th ACHPR session NGOs called for the creation of new mandates – such as the NGO Forum call for a Working Group on Enforced Disappearances; the Minority Rights call for a Working Group on Minorities, and the call by the Legal Resources Centre for a special mechanism to investigate the plight of the people of South Africa and across the continent who are subjects of unelected leaders who cannot be held accountable in terms of their country’s legislation.

The Special Rapporteur on Human Rights Defenders noted that the mandate of Special Rapporteur on Extra Judicial Executions is ‘in a coma’.⁴⁵ Following the resignation of the first and only mandate holder in 2001, the ACHPR indicated its intention to appoint another mandate holder; but this has yet to happen.⁴⁶

STRENGTHENING PARTNERSHIPS AND RELATIONSHIPS:

NGOS ENGAGING MORE FULLY:

- Civil society was encouraged to become more alert to opportunities to inform the work of AU bodies that engage with the ACHPR – such as the Summits of the AU where ACHPR annual reports are considered and adopted. In addition, it was suggested that by encouraging better cooperation and coordination between international and regional human rights mechanisms, the implementation of the African Charter could be advanced. NGOs should look to how to encourage the relationship between NHRIs and the ACHPR as a means of effecting human rights change at the national level.

THE ACHPR AND THE UNITED NATIONS:

Several initiatives aimed at strengthening the relationship between mechanisms were highlighted:

- Speakers noted that one of the primary objectives of establishing the OHCHR Regional Office in Addis Ababa in 2002, was to strengthen the relationship between the OHCHR and AU including those relations to bodies with human rights mandates, such as the ACHPR. It was noted that further initiatives to develop cooperation between UN and African human rights mechanisms (including the Special Procedures) would be useful. These could take the form of an institutionalised exchange of information and good practices, and exploring the similarities between the systems’ reporting and complaints procedures.⁴⁷
- The January 2012 Addis Ababa roadmap is the first to outline modalities to improve collaboration between UN human rights Special Procedures and the African Union for the promotion and protection of human rights in Africa. The roadmap establishes a joint working group of the UN Human Rights Council (HRC) and the ACHPR special procedures. Professor Christof Heyns, UN Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions, and Chairperson of the HRC- Commission Joint Working Group, noted during the opening ceremony that mandate holders of the two institutions had since undertaken several joint activities and issued joint press releases, as well as a fact-finding mission to Tunisia.

- Individual Rapporteurs highlighted work with the UN system. The Special Rapporteur on human rights defenders highlighted the joint visits she made with her UN counterpart to Togo in 2008, and more recently to Tunisia in 2012 in the first joint mission to the region between the human rights systems since the Arab Spring.⁴⁸ The Special Rapporteur on Torture noted his mandate's interest in strengthening its work with the UN sub-Committee on Torture.
- NGOs also noted that the ACHPR is a body that can press states about their international human rights commitments, as well as the African Charter. For example, the Community Law Centre at the University of Western Cape, called on the ACHPR to engage with States to ratify the Optional Protocol on ICESCR.

ACHPR AND THE AFRICAN COURT:

Acknowledging its growing relationship with the African Court,⁴⁹ at this session the ACHPR passed a Resolution on the Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.⁵⁰ In the resolution the ACHPR noted its concern that 26 countries have ratified the Court Protocol, while only 5 have made the Declaration that permits relevant NGOs with observer status before the Commission and individuals to institute cases directly before it. The ACHPR urged States to ratify the Court Protocol and make the Declaration.

In the session on the ACHPR and jurisprudence, speakers noted the importance of the ACHPR's role in interpreting the Charter thereby enabling States to understand better the extent of their obligations, and rights-holders the scope of their rights. Discussion centred on how to navigate the relationship between universality and regional peculiarities. Panelists noted how ACHPR decisions have been guided by borrowed elements from Inter-American and European systems, and posed the question as to what this meant for the emergence of an African system for the protection of human rights, which, in turn, informs international protections mechanisms. Several panellists said the African system needed to work with an eye on its own continental context, but underlined – maybe unsurprisingly – the work of the regional systems overall in working toward the realisation of the Universal Declaration of Human Rights. Several contributors mentioned the need to 'indigenise' the Charter, interpreting it in light of African culture and values, rather than an 'uncritical' reliance on outside sources.

PRESENTATION OF ACTIVITY REPORTS:

The development of the ACHPR's subsidiary mechanisms was outlined in the Commissioners' individual activity reports.⁵⁴ In these reports relevant international legal framework was referenced, along with an overview of the work done under each mandate.

PRESENTATION SECTION I: SPECIAL RAPPORTEUR ON HUMAN RIGHTS DEFENDERS IN AFRICA:

The Rapporteur highlighted achievements of the mandate, including:

- Developing an effective strategy with human rights defenders' networks. Without an office within the ACHPR Secretariat, it is difficult to develop effective work monitoring human rights developments. The objective of the strategy with networks is in part to locate this work. Algeria highlighted that the approach adopted, is 'bringing the mandate to life'.
- As a means of maintaining communication with stakeholders, the Rapporteur produces 'The Rapporteur's Newsletter', currently in its 7th edition. The current edition focuses on the right of HRDs to peaceful assembly in Africa.

Recommendations:

- Though recognising that regional human bodies have found each other's interpretations persuasive, and that regional bodies meet periodically to discuss - amongst other things - case management and jurisprudence, it would be useful to have more exchanges amongst regional courts, encouraging greater dialogue on key cases.⁵¹
- Sudan suggested that Islamic jurisprudence be part of the interpretation of the Charter, thus enriching the output of the ACHPR.

THE WIDER AFRICAN HUMAN RIGHTS SYSTEM:

It was suggested that the ACHPR could increase pressure on States to ratify treaties and comply with their human rights obligations, by strengthening its engagement with other African Union bodies. The Special Rapporteur on the Rights of Women, for example, noted interest in strengthening her partnership with the AU Gender Directorate, and the Gender Centre in ECOWAS.

Whilst the Special Rapporteur on Freedom of Expression found her role as the focal point between the Commission and the African Peer Review Mechanism, coordinating and enhancing cooperation between the two institutions, she had not reported on any recent advances that might inform reporting processes at the ACHPR.⁵²

THE HUMAN RIGHTS STRATEGY FOR AFRICA:

During her intervention, Hannah Forster noted the AU's work of 'ensuring that the Human Rights Strategy for Africa is at the heart of the African Governance Architecture'. The strategy (2012-2016) aims to build synergies between the various organs and institutions within the African human rights system, as well as specifically lead to the effective implementation of human rights instruments and decisions.⁵³ She described the increased role of civil society in consultative processes as 'exemplary' and 'commendable'. Other voices suggested that the role of civil society in the strategy was little defined. There was little if any reference made by ACHPR participants to the Strategy, which suggests only a small sense of involvement and ownership of the strategy by civil society.

Communications:

Since 2004 the mandate has received 264 communications, primarily focused on civil and political rights. Only 2% of these communications have received responses from the relevant States. Tunisia was cited as one of the only countries that has always responded.⁵⁵

Planned activities as part of the 2012 – 2014 Activity Plan include:

- Finalising the study on Freedom of Association and Assembly in Africa.⁵⁶
- Evaluating the protection of human rights defenders by following-up on communications sent to States Parties, and creating a 'warning mechanism for cases of human rights violations' of defenders.
- Submitting a report to the ACHPR on the situation of women human defenders.

In line with the Special Rapporteur's expressed strategy to work with networks, an advisory group, comprised of female human rights defenders, members of sub-regional human rights networks, and members of the Women Human Rights Defenders International Coalition to work on the report was created.⁵⁷ The resolution passed by the Commission calls for a study on 'the situation of women human rights defenders in Africa, the laws governing them and discriminatory practices aimed at restricting their role in promoting and protecting human rights on the continent'.⁵⁸ A report of the study will be presented to the Commission by October 2013.

Accessibility of information:

Neither the Special Rapporteur's 2012- 2014 activity plan nor copies of her newsletter are readily accessible on either her website or the ACHPR one. This undermines the promotional function of these documents.

NGO interventions:

The West African HRD Network (WAHRDN/ ROADDH) expressed concern that Human rights defenders in those countries where the take-over of government has been illegal, is when the Special Rapporteur is needed the most. It is at these times that investigatory missions are essential.

PRESENTATION SECTION 2: SPECIAL RAPPORTEUR ON THE RIGHTS OF WOMEN IN AFRICA:**Challenges include:**

- Despite the adoption of the Guidelines for State reporting under the Maputo Protocol in 2009, no State Party has reported on legislative and other measures adopted in relation to the Protocol, in its periodic report. This has been regularly noted by the Special Rapporteur as an obstacle to effective monitoring of implementation of the Protocol.

Solutions:

- State parties have to implement provisions of the Protocol, in particular by harmonizing domestic laws and enacting new laws to replace those that discriminate against women.
- The Special Rapporteur said that the establishment of a working group to strengthen the mandate of the Special Rapporteur, tasked, amongst other things, to conduct concrete studies on reproductive health barriers in Africa, work with experts and propose best practices and appropriate strategies to better protect the lives of women and 'resolve reproduction – related complications' was now an 'urgent' matter.
- In its final communique notes ACHPR adoption of a General Comment on Article 14(1) (d) and (e) of the Maputo Protocol which relate to health and reproductive rights.

PRESENTATION SECTION 3: SPECIAL RAPPORTEUR ON FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION:

The Special Rapporteur on Freedom of Expression and Access to Information noted that the barebones of Article 9 of the African Charter has been fleshed out in the development of the Declaration on Principles of Freedom of Expression.⁵⁹ Over the years, mandate holders have worked to publicise Article 9 and its mechanism to activists, and to mobilise people. This and the Rapporteur's engagement with States provided the 'muscle' to the system.⁶⁰

Achievements-highlights include:

- Work on the draft Model Law on Access to Information in Africa. Since this project started, the numbers of countries with Access to Information laws has doubled to 10.
- Starting the Project to decriminalise defamation and libel laws in Africa.

Recommendations:

- The Special Rapporteur noted the need for the ACHPR to look at Freedom of Expression and the internet.

PRESENTATION SECTION 4: COMMITTEE ON THE PROTECTION OF THE RIGHTS OF PEOPLE LIVING WITH HIV (PLHIV) AND THOSE AT RISK, VULNERABLE TO AND AFFECTED BY HIV:

During the activity reporting, Commissioner Alapini-Gansou noted that in its first years the Committee had worked to get human rights issues related to HIV / AIDs more visible within the Commission's working as a whole. Part of this required increasing awareness around HIV / AIDs as a human rights issue, as well as a medical issue. The Chair of the Committee noted that it had been a 'bold' step by the Commission to establish the committee, recognising the broadest spectrum of rights, including those of the most vulnerable groups in society who lack human rights protections.

PRESENTATION SECTION 5: WORKING GROUP ON THE RIGHTS OF OLDER PERSONS AND PEOPLE WITH DISABILITIES:

The Group is working on Draft protocol on the rights of persons with disabilities, with the link between poverty, disability and human rights violations, at the fore. The Protocol on the Rights of Older Persons was adopted by the Commission during its private session. It is not currently available on the website.

The work of the other sub- mechanisms was also covered in the presentation of activity reports.

PRESENTATION SECTION 6: STATE REPORTING IN GENERAL:

In regard to prior consideration of state reports, there is no explanation on the website as to the lack of concluding observations for Sudan or Angola, both of whom reported at the 51st session. However, copies of the State reports are available on its website, providing a rather one-sided narrative.

Challenges with State reporting:

- Whilst the ACHPR provides information on 'State Reporting Procedure'⁶¹ there is little, if any, guidance on the best approach for preparing and structuring the report.
- 'Following submission of the report, there is little dialogue between the State parties and Commission'. Concluding observations are rarely followed up by the ACHPR.
- With State reports commonly unavailable ahead of session, civil society has been scuppered in its efforts to challenge the State narrative. Recent inclusion of state reports on the website has helped, with the Cote d'Ivoire report available ahead of time.

Way forward?

One of the challenges of State reporting is timeliness, accordingly the issue of reporting to the ACHPR under the African Periodic Review Mechanism must be addressed.

PRESENTATION SECTION 7: STATE REPORTING: COTE D'IVOIRE

During the Opening Ceremony, President Ouattara acknowledged the decade of Cote d'Ivoire's absence from ACHPR meetings. Hosting the ACHPR session was indicative of the Cote d'Ivoire's desire to establish its position in the international community. He noted the 'appalling situation of human rights' during the first decade of the 21st century had its origin in the absence of a genuine policy for protecting human rights, and a culture of impunity.⁶² He stated his commitment to submitting reports to UN mechanisms, and collaboration with the ACHPR.

COTE D'IVOIRE INITIAL AND COMBINED PERIODIC REPORT (1994 – 2012)

The large state delegation present, headed by the Minister for Human Rights and Public Freedoms, M. Coulibaly Gnenema Mamadou explained that much statistical data had been destroyed during 'the violence', and that this had formed the development of the report. He called upon the AU and its institutions, including the ACHPR, to assist Cote d'Ivoire on the road to human rights. The Minister noted, 'We want to provide you with information so you can provide us with the best recommendations.'

Highlights of the report:

- On transitional justice, the Minister noted that 'there is no one model of reconciliation as there is no one model of local conflict', and that reconciliation is a process. Through hearings and commissions, a 'common understanding' of the conflict reaching back to the mid- 1990s would be reached. Civil society members are involved in the reconciliation process and the Truth and Reconciliation Commission.

- The report said that freedom of expression was respected in the country – although not ‘the freedom to go overboard’ - as was the right to peaceful assembly. The only reason for rescheduling a demonstration would be if there weren’t enough resources to police it effectively.
- In regard to women’s rights, the State representative noted that it is not useful to introduce a law that will not be applied in practice. Women do not want to be on an equal footing, something he described as ‘cultural’.

In his Opening Ceremony speech The President of the Republic Ouattara, chose to highlight recent reform of the NHRI in Cote d'Ivoire, to bring the body in line with the Paris Principles.⁶³

In terms of visits from Commissioners, the State delegate noted that it had written to the ACHPR to express approval of ‘friendly’ visits. However, the openness of the State should be evident given the presence of the ACHPR in the country.

The delegation suggested to the Commission that it dedicate time to reflect on strengthening judicial systems.⁶⁴

The Commissioners’ questioning of Cote d’Ivoire:

The Commissioners welcomed the fact that the representative hadn’t presented a ‘utopian state’, and had acknowledged challenges. The State was given twelve hours to prepare responses to the tens of the questions put to them by Commissioners.

As yet no concluding recommendations are publically available.

NGO accounts:

There is no space for NGO interventions following the State report. In addition, without a standard item 4 in the session agenda, space for NGOs to comment on Cote d'Ivoire was limited. However, experienced NGOs discussed country-related concerns under other items, such as the presentation of Commissioners’ activity reports. FIACAT challenged Cote d'Ivoire noting that torture was not a crime in the country’s Criminal Code. This leads to impunity for torturers and should be redressed.

THE CHARACTER AND ‘EXPERIENCE’ OF THIS PARTICULAR ACHPR SESSION I.E. OCTOBER 2012

I / THE COMMISSION SHOWING ITS TEETH?

Throughout the session Commissioners, and in particular the Chair, were clear and firm in their dealings with States, whilst frequently emphasising the evolutionary and conversational nature of ACHPR–State dealings in regard to the protection of rights.

In relation to the lack of implementation of ACHPR decisions, Atoki noted that when a State party puts in writing that it is not obliged to implement the decisions of the ACHPR, this is a ‘gross undermining of the mandate’. Whilst not naming the State directly, she made clear who she was referring to – Botswana - by noting that the State had had a member as Chair of the ACHPR, and was now currently attending sessions.

Exchange between Ethiopia – Commission during the presentation of Special Rapporteur on human rights defender’s activity report.

‘As long as we have a dialogue of the deaf, it is hard to move ahead.’

Special Rapporteur on Human Rights Defenders in Africa

As another example, in a bid to hold States accountable, the Special Rapporteur on Women named all State parties present at the session who had yet to ratify the Maputo Protocol.

Following a couple of NGO statements regarding unwarranted restrictions on civil society in Ethiopia⁶⁵ and in the context of a recent ACHPR resolution on Ethiopia⁶⁶, the Ethiopian representative embarked upon a long monologue. He questioned the ACHPR’s decision to pass a resolution now, when the CSO law it referred to had been promulgated in 2009. He questioned what he considered favouritism shown by the ACHPR toward NGOs and questioned the basis for ACHPR’s concerns about ‘secret detention centres.’ He noted that the State resolution borrowed a great deal from a previous NGO Forum resolution and indicated they would start a formal procedure of objection. ‘This is not a naming and shaming forum’, he said, and ‘we don’t have to be here.’

The Special Rapporteur on human rights defenders noted that the State had to participate in an on-going process of dialogue. The reality for the Commission, she noted, was that when a State didn’t respond to a communication, the Commission had no information to counter allegations: ‘If we don’t get reassurance, we need to continue.’ Furthermore, she noted that until 2009, Ethiopia had not submitted a single report to the ACHPR. With ongoing engagement - with the requisite involvement of relevant stakeholders - ‘you can make progress in your country’. However, it is of note that, along with several other States, Ethiopia hasn’t submitted a further report, despite a to do so every two years.⁶⁷

In support of her colleague, Chairperson Atoki noted, ‘The ACHPR doesn’t rubber-stamp resolutions from NGOs. The AU has appointed very professional commissioners here; we know how to work, we shouldn’t be denigrated to that level. We will continue to carry out our mandate to promote and protect human rights... States may not like our actions, but we hope to gain support from States’.

A couple of days later Ethiopia presented a much more conciliatory line, noting that it respected the ACHPR and was eager to work with it.⁶⁸ Ethiopia noted that they had been expecting the Special Rapporteur on Freedom of Expression to visit, but she hadn’t. It still noted that it had reservations about the ACHPR resolution on Ethiopia, and had substantive reasons for this. The Chair recognised this and said ‘thanks for these reaffirmations’.

DURING THE SESSIONS, COMMISSIONERS ENCOURAGED THE SENSE THAT THE ACHPR SHOULD BE SEEN AS A SPACE FOR CONVERSATION, AND FOR DEFINING THE NEXT STEPS TO ADVANCE HUMAN RIGHTS:

1/ Following an intervention by Amnesty International on prison conditions in Chad, Commissioner Khalfallah directed himself to the Chadian State representative, requesting that they permit the Commission to visit to cross check the AI report on prison conditions.

2/ The Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons, Mrs Maya Sahlí-Fadel, in an exchange with the Sudanese delegate, framed her recommendations in the form of suggestions - 'could Sudan enact the bill aimed at ratifying the 2009 Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa - could you do this?'

3/ The Special Rapporteur on Women urged States that it is better to ratify the Maputo Protocol with reservations than not to ratify at all. Begin somewhere... one step at a time.

4/ The Special Rapporteur on Freedom of Expression commended Liberia for signing the Table Mountain Declaration and asked the delegation to pass on the ACHPR's appreciation to the President for all her initiatives.

BUT there was also incoherence in the practice of the ACHPR: The representative from Malawi NHRI noted, in an intervention that acknowledged Cote d'Ivoire's generosity in organising a morning visit for all delegates to textile villages, that Commissioners were wearing textiles bought there that had been (visibly) produced by children. Child labour is a grave problem, and the struggle to end it is not assisted by the ACHPR, acting in ways outside the hours of its session, in ways that deny rights violations.

2/ COMMISSION SESSION WORKING:

- The Commission has become better at starting sessions on time but the reporting schedule by the Special Rapporteurs changed considerably. Presumably as activity reports were still being finalised leading once more to problems for NGOs.
- The agenda for the sessions celebrating the anniversary of the Commission, the nature of speakers, and the format for interventions left NGOs without a definite role, even if the spirit of reflection and learning during those sessions was important.
- As in previous sessions, there was a suggestion by a State party – this time from Algeria - that the ACHPR may need to draft an ethics code to regulate how the Commissioners and Special Rapporteurs work. This was not taken up widely as a call by States.

Accessibility of information enabling participation:

- Once again documents were not available in good time on the website, thereby preventing NGOs and other stakeholders from preparing adequately. Relevant documents were not available in all AU official languages.
- There were comments from several States that receiving the Special Rapporteurs' activity reports ahead of time would enable States to engage in discussion more fully.⁶⁹ Prior circulation could avoid some of the frustration expressed by the Special Rapporteur on Human Rights Defenders, who asked States and NGOs, for example, to provide further responses to her suggested initiatives, including the early warning mechanism.
- Algeria highlighted a bias towards English speakers, with no working documents available for Arabic speakers. The current need 'to beg' for documents is 'unacceptable'.
- As has occurred in previous sessions, the Kenya NHRI called for presentations from speakers to be produced in braille. The ACHPR cited financial constraints.
 - One panellist noted the lack of any Lusophone Commissioners, and called for States to be mindful of the need for diversity amongst Commissioners.

- Whilst the new ACHPR website and the Case Law Analyser provide far more information than was previously available, the information provided on the website is frequently incomplete. This doesn't help the ACHPR's position – announced by the Special Rapporteur on the WG on Communications - that such information is available to States. Nor does it help NGOs assist the ACHPR in pressing for implementation of these recommendations with their States.⁷⁰
- During the different commemorative sessions, recommendations were made. The final communiqué does not reference these in detail, and it is unclear how these will be further considered and acted upon.
- For several civil society individuals and groups, this was their first time in attending a Commission session. Several said it would be beneficial if an information pack providing greater detail about how the sessions are run, and how civil society can engage was provided.⁷¹

3/ NGO EXPERIENCE AT THE ACHPR:

Reprisals:

During the presentation of her activity report, the Special Rapporteur on Human Rights Defenders referred to the experience of a Sudanese woman defender who reported having been intimidated during the session. The Rapporteur expressed concern about the woman defender's welfare when she headed home. The Sudanese representative explained that he had given responses during the session he was invited to, but had not harassed the defender. There is no reference to this case in the Commission's final communiqué.

The Special Rapporteur on Human Rights Defenders noted that the mechanism continues to receive cases of reprisals at ACHPR.⁷² In its statement, ISHR called on the ACHPR to follow up on its resolution at the 51st session related to reprisals by instituting a formal mechanism for reporting and follow-up. In its Declaration to the African Commission, the NGO Forum made a similar call.

Calls for 'codes of conduct':

As in previous sessions of the ACHPR, States called for codes of conduct. During the panel held on the ACHPR and its partners, Algeria noted that NGOs needed to demonstrate 'exemplary behaviour... which shows they have the right to expose human rights violations'. Rather unhelpfully the Special Rapporteur on human rights defenders echoed this during her reporting session noting that NGOs should comply with 'the ethics and code of conduct for defenders'.

Creating an inclusive environment:

- It was the first time in four years that the ACHPR held a regular session outside Banjul. It was the first time it has met in Cote d'Ivoire (Yamoussoukro). The rationale for having the ACHPR sessions held in different locations includes enabling participation from different States across the continent, for which regular travel to Banjul is costly. The visibility given to the ACHPR by holding sessions in different locations, as is frequently the case with Extraordinary Sessions, should contribute to its overall promotional work.
- The request was made, as in previous sessions, for a 'disability inclusive' session, with sign language and documentation in an accessible format.

Observer status:

- NGO granted observer status during the session, bringing the number to 447 in total, were:
 - 1) AIDS and Rights Alliance for Southern Africa (ARASA);
 - 2) HIAS Refugee Trust of Kenya;
 - 3) African Union for the Blind;
 - 4) The Royal Commonwealth Society for the Blind (Sight Savers);
 - 5) Transformation Resource Center;
 - 6) The West African Bar Association (WABA);
 - 7) African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV);
 - 8) Confédération syndicale Internationale – Afrique (CSI-A);
 - 9) Femina international;
 - 10) Collectif des Associations Contre l'Impunité Au Togo;
 - 11) Positive Generation; and
 - 12) CRADLE, The Children Foundation

The celebration expressed by NGOs and their colleagues as they were granted

observer status, was a mark of the importance NGOs place in engaging with the ACHPR.

There was no reference made by any participants to past, rejected applications such as that of the Coalition of African Lesbians, or the reasons for rejections.⁷³

Lesotho thanked the ACHPR for granting observer status to the Transformation Resource Centre (Lesotho) and noted that it appreciates the work of defenders and has a commitment to working with them.⁷⁴

The ACHPR sent 'a clarion call' to NGOs reminding them of their responsibility to present reports on their activities. A somewhat veiled threat was made related to NGOs, where one of the Commissioners noted that the Commission 'can also take necessary decisions to mark the twenty fifth anniversary.'

PARALLEL AND SIDE EVENTS INCLUDED:

1/ Launch of the activities to mark 10 year anniversary of the Declaration of the Principles on Freedom of Expression in Africa, and the launch of the Pan-African Campaign for the Decriminalisation of Expression (convenors: Article 19: Centre for Human Rights, Pretoria, ACHPR)

In the Campaign, activities will include researching the impact of the effect of libel and decriminalisation laws; identification of other stakeholders who might be involved in advocacy and litigation, and seeing how the Special Rapporteur can provide technical assistance to individuals who take cases to court. The Special Rapporteur sees the value in bringing these initiatives together under the auspices of the Rapporteurship.

2/ Police and Human Rights in Africa: Launch of the 1st Newsletter of Commissioner Kagawa. (Convenors: APCOF, ACHPR, Danish Institute for Human Rights)

Building on prior conversations at the ACHPR on a set of guidelines on policing and pre-trial detention for possible adoption by the ACHPR.

3/ The Use and Application of Soft Law. Lessons Learnt from 25 Years of the African Commission on Human and People's Rights. (Convenors: the Global Campaign for Pretrial Justice; African Policing Civilian Oversight Forum; PRAWA; ACDHRS).

4/ Promoting a rights-based approach to police arrest and detention. (Convenors: the Global Campaign for Pretrial Justice; African Policing Civilian Oversight Forum; PRAWA; ACDHRS).

5/ Progress on the Campaign for the African Platform on Access to Information. (Convenors: The African Platform on Access to Information.)

6/ Celebration of World Day Against the Death Penalty (Convenors: Fiacat, FIDH, EIPR, World Coalition Against the Death Penalty, ACHPR, Penal Reform International)

7/ Sexual Violence in Africa During Conflicts and Social Upheaval. (Convenors: Strategic Initiative for Women in the Horn of Africa; Nasra Institute, Iniskoy Peace and Development Organisation, Arry Institute for Peace). Panelists spoke of rape and sexual violence in Somalia; sexual violence by state actors during Egypt's political transformation; sexual violence in Sudan; sexual violence against men in DRC and Northern Uganda.

8/ Launch of the Report ' Libya: The Hounding of Migrants Must Stop' (joint report FIDH, Justice Without Borders for Migrants (JWBM), Migreurop.)

9/ Conversation between the Special Rapporteur on Human Rights Defenders and Women Human Rights Defenders and those working on women's rights and gender issues.

The regular conversation between the Special Rapporteur on Human Rights Defenders and defenders usually held during the NGO Forum, was held in the first week of the Commission's session. The focus was the upcoming report by the Special Rapporteur on the situation of women human rights defenders in Af-

rica. The meeting was convened by several organisations and networks working across the continent (footnote: the West African HRD Network; the East and Horn of Africa HRD Network, Hurisa (for Southern African), Nasra for Feminist Studies (for Northern Africa), the Coalition of African Lesbians; and Associação Justiça Paz e Democracia (AJPD), for Lusophone Africa.

During this conversation, participants highlighted the importance of including the experience of a wide range of women defenders, including both those working at community level and within NGOs. Ensuring that the relationship between the identity of a woman defender; the context in which she works, and the nature of the violation was also highlighted as a key issue to draw out. In addition, including the experience of women defenders working on a range of human rights issues, including those related to sexual orientation and gender identity was highlighted. Women defenders present also noted that in contexts where human rights work is difficult, encouraging fellow women defenders to provide input for the report will itself face challenges.

END PIECES:

The ACHPR adopted the following resolutions:

- Resolution on the Expansion of the Mandate of the Working Group on Communications and Modifying its Composition;
- Resolution on the Expansion of the Mandate of the Working Group on the Death Penalty in Africa;
- Resolution on the Extension of the Deadline for the Study on Freedom of Association in Africa; (extends scope of study to include freedom of assembly, extends term for work by a year; report of the study now to be submitted for the consideration of the ACHPR October 2013)
- Resolution on the need to Develop Guidelines on Conditions of Police Custody and Pre-trial Detention in Africa;
- Resolution on the need for a Study on the Situation of Women Human Rights Defenders in Africa;
- Resolution on the Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights; and
- Resolution on the Right to Adequate Housing and Protection from Forced Evictions.

The ACHPR examined and adopted the Reports of missions to the Central African Republic, and the Sahrawi Arab Democratic Republic. Next Extraordinary Session of the ACHPR: 18-25 February 2013, Banjul, The Gambia.

Next Ordinary Session of the ACHPR: 53rd 9-23 April 2013, location to be confirmed.

There is no public information as yet which States are due to report at the next session.

¹The NGO Forum Steering Committee comprises representatives from the 5 sub-regional human rights defenders networks in the continent, and a representative of the 'diaspora'.

²There was almost no mention of these recommendations in later, public statements made in name of the NGO Forum - the Declaration of the NGO Forum to the African Commission, or the statement made by Ms Forster at the ACHPR Session Opening Ceremony.

³For more on the reflections on the purpose and effectiveness of the NGO Forum, see ISHR 'Report of the NGO Forum and the 48th Ordinary Session of the African Commission on Human and Peoples' Rights': <http://www.ishr.ch/african-commission/previous-sessions>

⁴Recommendation made during Item 6, 'Cooperation and Relationship of the African Commission with its Partners'.

⁵<http://www.acdhrs.org/2012/10/>

⁶Later in ACHPR sessions, the Chair of the Working Group on ESCR, Commissioner Khalfallah suggested that the African Centre should remain as the Coordinator but not represent all NGOs.

⁷Declaration of the NGO Forum to the African Commission, 8 October 2012: <http://www.acdhrs.org/2012/10/declaration-of-the-ngo-forum-to-the-african-commission/>

⁸Declaration of the NGO Forum to the African Commission: <http://www.acdhrs.org/2012/10/declaration-of-the-ngo-forum-to-the-african-commission/>

⁹ACHPR 52nd Ordinary Session agenda: http://www.achpr.org/files/sessions/52nd/info/agenda/session_agenda_eng.pdf

¹⁰Address during Opening Ceremony, as reported in Final Communiqué

¹¹The ACHPR was established under the Organisation of African Unity, the predecessor of the African Union.

¹²Liberia ratified the African Charter on Human and People's Rights in 1982 but has never submitted a periodic report. It has 15 reports overdue.

¹³Dr. Chidi Odinkalu during the panel discussion on 'The relationship between the African Commission and other African Union bodies.'

¹⁴Reference to the 'Resolution on the Granting of Observer Status to National Human Rights Institutions in Africa' 1998, which notes that Article 26 of the Charter should be understood to include State party role in encouraging and promoting the establishment of National Institutions, in line with Article 26 of the African Charter.

¹⁵In report of the Chair of the Committee for the Prevention of Torture in Africa

¹⁶Commissioner Khalfallah's activity report

¹⁷Suggestion made, for example, by Algeria.

¹⁸Point made, for example, by Kenya National Commission on Human Rights (KNCHR).

¹⁹African Civil Society Call for the relocation of the African Commission on Human and Peoples' Rights headquarters from The Gambia', 8 October 2012 <http://www.acdhrs.org/wp-content/uploads/2012/10/OS52-letter-relocation-Commission.pdf>

²⁰ACHPR Rules of Procedure: http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf

²¹As there were in the report for the 51st session and before that the 48th

²²UN Special Rapporteur on Human Rights Defenders in March 2013, and Special Rapporteur on Human Rights Defenders in Africa in April 2013.

²³For example, see 31st Activity report: http://www.achpr.org/files/activity-reports/31/achpr50_actrep31_2011_eng.pdf

²⁴In 2011, the AU rejected the Commission's activity report as some States did not agree with decisions made in regard to individual communications.

²⁵The Commission's own rules of procedure already outline a few pressure points: e.g. article 112 (8) notes: 'The Commission shall draw the attention of the Sub-Committee of the Permanent Representatives Committee and the Executive Council on the Implementation of the Decisions of the African Union, to any situations of non-compliance with the Commission's decisions.'

²⁶Resolution on the Expansion of the Working Group on Communications and Modifying its Composition: <http://www.achpr.org/sessions/52nd/resolutions/255/>

²⁷This is a procedure allowed for in the rules of procedures of the ACHPR but not those of the African Court on Human and People's Rights (unless a State has made a Declaration according to Article 34 of the Protocol to the African Charter on the Establishment of the Court).

²⁸ACHPR Rules of Procedure, Rule 118 'Seizure of the Court'.

²⁹<http://caselaw.ihrcd.org/doc/276.03/>

³⁰Interights statement to the African Commission regarding Protective Measures <http://www.interights.org/document/213/index.html>

³¹The Case Law Analyser includes seven cases which relate to sexual violence, sexual and reproductive health, and discrimination on the grounds of sex.

³²Including Alliances for Africa

³³Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women (Maputo Protocol).

³⁴Statement on behalf of West African NHRIs. For 'Resolution on the Granting of Observer Status to National Human Rights Institutions in Africa': <http://www.achpr.org/sessions/24th/resolutions/31/>

³⁵NANHRI Workshop for African NHRIs on reporting processes to the African regional human rights mechanisms, 16-17 April 2012.

³⁶These instruments include the Grand Bay Declaration 1999 article 17, and the Kigali Declaration of 2003, article 28

³⁷NGOs were granted observer status from the very start of the ACHPR, with new criteria for granting such status, adopted in 1999.

³⁸See: http://www.algerie-disparus.org/cfda1/Newsletter/Documents/EN/Lettreinfo-29_2008-en.pdf

³⁹Musa Gassama speaking on the panel on 'The relationship between the African Commission and its Partners.'

⁴⁰Commissioner Khalfallah suggested that whilst the ACHPR tries to take note of NGO Forum resolutions, there are too many.

⁴¹The Principles and Guidelines on the implementation of Economic, Social and Cultural Rights in the African Charter.

⁴²Committee for the Prevention of Torture in Africa, and the Committee on the Protection of the Rights of People Living With HIV (PLHIV) and Those at Risk/Vulnerable to and Affected by HIV.

⁴³This suggestion was made at a side event on the 10th anniversary of the Declaration of the Principles on Freedom of Expression in Africa.

⁴⁴The Declaration of the NGO Forum to the African Commission includes a call for mandates to 'incorporate women's rights in their specific mandates'.

⁴⁵Special Rapporteur on Human Rights Defenders in Africa's Activity Report for 52nd Session.

⁴⁶For background information on the Mandate of the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions of the African Commission on Human and Peoples' Rights, see: <http://www.achpr.org/mechanisms/extra-judicial-summary-or-arbitrary-execution/about/>

⁴⁷For more on the OHCHR office, mandate and work plan: <http://eastafrica.ohchr.org/mandate&programme.htm>

⁴⁸See ACHPR press statement on mission to Tunisia, October 2012: <http://www.achpr.org/press/2012/09/d134/>

⁴⁹In the Opening Ceremony the President of the African Court noted that the ACHPR and the Court have continued to build their relationship (as established in the Court Protocol) including during several joint meetings.

⁵⁰For a copy of the text, see: <http://www.achpr.org/sessions/52nd/resolutions/226/>

⁵¹Professor Dinah Shelton, Manatt/Ahn Professor of Law at George Washington University Law School.

⁵²ACHPR/Res 168 (XLVIII) 2010: Resolution on the Cooperation between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism

⁵³Human Rights Strategy for Africa (2012 – 2016): <http://auc.au.int/en/dp/pa/sites/default/files/HRSA-Final-table%20%28EN%29%5B3%5D.pdf>

⁵⁴For copies of Commissioners' activity reports go to: <http://www.achpr.org/sessions/52nd/>

⁵⁵During the State interventions, Algeria noted that it always responds to communications.

⁵⁶The minutes of the first meeting of the Working Group: May 2012, <http://www.achpr.org/mechanisms/human-rights-defenders/final-communique-seminar-2012/>

⁵⁷Women Human Rights Defenders International Coalition : <http://www.defendingwomen-defendingrights.org/>

⁵⁸<http://www.achpr.org/sessions/52nd/resolutions/230/>

⁵⁹Article 9: 1. Every individual shall have the right to receive information. 2. Every individual shall have the right to express and disseminate his opinions within the law.

⁶⁰Professor Viljoen, Director of Centre for Human Rights, University of Pretoria during side event for 'Launch of the activities of the 10 year anniversary of the Declaration of the Principles of Freedom of Expression in Africa, and the Pan- African Campaign for the Decriminalisation of Expression.'

⁶¹See: <http://www.achpr.org/states/reporting-procedure/>

⁶²The ACHPR did give some attention to the human rights situation in the country, issuing four press statements since 2007.

⁶³Loi No 2012-1133 du 13 Décembre 2013 portant création, attribution organisation et fonctionnement de la Commission National des Droits de l'Homme de la Côte d'Ivoire

⁶⁴The Declaration of the NGO Forum to the African Commission also contains a call for the Commission to 'continue supporting institutional reform in countries going through a transition.'

⁶⁵Statements made by East and Horn of Africa Human Rights Defenders Project (EHAHRDP) and Amnesty International.

⁶⁶218 Resolution on the Human Rights Situation in the Democratic Republic of Ethiopia, 2 May 2012

⁶⁷African Charter article 62: 'Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter...'

⁶⁸During the presentation of the activity report of the Special Rapporteur on Freedom of Expression

⁶⁹Algeria made this comment during the presentation of the Special Rapporteur on Human Rights Defenders' activity report.

⁷⁰It is of note though, that the agenda, final communique, State reports were available in the four languages. It is a website in development, and does inform users about its limitations. (<http://www.achpr.org/info/>)

⁷¹For a basic guide on engaging at the ACHPR, see ISHR 'Roadmap to the African Commission on Human and Peoples' Rights', <http://www.ishr.ch/african-commission/road-map-to-the-achpr>

⁷²State delegate intimidates or badmouths NGOs. See references in ISHR 'Kumulika' reports. Zimbabwe, 49th session; Ethiopia at the 50th; Burundi 51st.

⁷³For more on this, see 'ISHR Report on the NGO Forum and 48th Ordinary Session'

<http://www.ishr.ch/african-commission-reports/kumulika-analytical-reports-on-the-commission>

⁷⁴During reporting by the Special Rapporteur on Human Rights Defenders.

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