

Information note #7a

Have your voice heard at African Commission level



March to commemorate Africa Human Rights Day, October 2006, Banjul, The Gambia.
Photo: Valérie Couillard.

The role of the African Commission and the mechanisms available to NGOs

NGOs have a voice which is important and must be heard. NGOs have the ability to contribute to the work of the African Commission on Human and Peoples' Rights (the African Commission or the Commission) as well as to the work of other bodies within the African system with responsibility for promoting and protecting human rights. At the African Commission level, there are various ways in which defenders of indigenous women's rights can get involved. As such, NGOs can assist in advancing the effective implementation of indigenous women's rights.

POWERS OF THE AFRICAN COMMISSION

Article 45 (African Charter on Human and Peoples' Rights)

The functions of the Commission shall be:

- 1.** To promote Human and Peoples' Rights and in particular:
 - a** to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and, should the case arise, give its views or make recommendations to governments.
 - b** to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislations.
 - c** to co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
- 2.** Ensure the protection of human and peoples' rights under the conditions laid down by the present Charter.
- 3.** Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African organization recognized by the OAU.
- 4.** Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

Civil society organisations can take action at African Commission level to contribute to its work within its mandates of (1) protection and (2) promotion of human rights.

The role of protection

In the context of protection, the role of the African Commission is to protect the rights guaranteed by the African Charter on Human and Peoples' Rights (the African Charter) and its complementary instruments such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Protocol or the Women's Protocol). The principal feature of this role is the communications (complaints) mechanism, which is explained in a separate factsheet (Information note #9). This mechanism enables individuals, NGOs and groups of individuals which believe that their rights, or those of others, have been, or are being violated to petition (complain) about these violations to the Commission. From now on, this role will be undertaken in tandem with the recently inaugurated African Court on Human and Peoples' Rights.

Within the framework of the communications mechanism, the Commission may take provisional measures (temporary measures) if considered necessary to avoid irreparable damage being done to the victim who alleges violation(s) of his or her rights and whose communication is currently under consideration. For example, in the case of a person facing the death sentence, the Commission can request that the State in question defer the execution of the sentence until the communication has been considered.

It is also possible for the Commission to issue urgent appeals. Such appeals usually take the form of letters to Heads of State and Ministers in charge of justice and human rights in the countries in question. In response to requests by civil society, the Commission assesses the situation and if necessary issues an urgent appeal. The aim of this procedure is to prevent or minimise harm.

The role of promotion

Several other actions are possible at African Commission level through its promotional role. Firstly, the Commission studies periodic reports from State parties to the African Charter. There are several ways in which civil society organisations can participate in this mechanism, which include submitting an alternative NGO report to the Commission and by distributing it widely to relevant networks. It is also possible to recommend a list of questions which the Commission can put to the State during examination of its periodic report.

Secondly, NGOs can work in partnership with the Commission through gaining and using observer status. An organisation with observer status is permitted to make oral interventions to the Commission during its public sessions and to provide information through biannual NGO reports on the human rights situation in countries in which they are involved.

Thirdly, the mechanism of promotional and fact-finding visits (or country visits) offers a further platform for action. One option is to submit reports on the human rights situation in a specific country and recommend topics for consideration, which can frame the work of the Commission in the context of its mission. A second option is to meet members of the Commission during their visits, and a third option is to provide logistical support, if possible, for organising consultation activities with civil society during a mission. Lastly, in addition to these mechanisms, the Commission en-

hances its work through the NGO Forum, which is held prior to its sessions. The aim of the Forum is to co-ordinate the actions of African civil society and suggest strategies for contributing to the work of the Commission.

1) Mechanism for examining States' periodic reports

Periodic reports are prepared by the States and contain information on the human rights situation and the measures taken to implement the provisions of the African Charter in their respective countries. Article 62 of the African Charter stipulates that States must submit reports to the Commission every two years and provide information on legislative or other measures adopted to give effect to the rights and freedoms recognised in the Charter. However, in practice, very few African States fulfil their obligations in this respect. A significant number have never submitted a report, while others register serious delays in submitting reports.

At each of its ordinary sessions, the Commission studies, on average, between one and three State reports in public session. A dialogue is then held between members of the Commission and State representatives attending the session for the consideration of their reports. The examination of the report proceeds as follows: State representatives speak first. They have an hour in which to present their written report, which they have submitted in advance. After this, members of the Commission comment on the report, set out their preliminary causes for concern, and request clarifications from the State representatives. States representatives are then called upon for an immediate oral response, followed up with a full response in writing. After this public session, and consideration of the State's written responses to the preliminary causes for concern cited in the public session, the Commission drafts its Concluding Observations. These are based on the original written report, the State representative's public presentation, and the written responses provided by the State.

Concluding Observations are legal standards, formulated by the Commission, which include recommendations to States. Alternative reports may inform these recommendations. Recommendations can be used in advocacy work at the national level for the recognition and implementation of rights.

NGO participation in the mechanism for examining States' periodic reports is crucial to the Commission. It is also a first-rate platform for drawing attention to the human rights situation of indigenous women and for requesting the support of the Commission in guiding States through the effective implementation of human and peoples' rights. Furthermore, States have a duty to consult civil society in preparing their reports. The Commission also requests the States to provide an account of the NGOs' contribution in the compilation of their reports. However, these reports remain State reports. They are compiled by representatives of the State and present the government's perspective



Indigenous woman from the community of Ntekowho who attended a community sensitization visit by UOBDU on land rights and education, November 2010, Kisoro District, Uganda.
Photo: United Organisation for Batwa Development in Uganda (UOBDU).

of the situation. The NGOs' perspective is, however, extremely important to the African Commission as it represents the view of civil society organisations which work closely with the peoples whose rights are at issue.

Alternative reports thus provide an excellent means for NGOs to communicate additional information within the State reports mechanism. Alternative reports make it possible to:

- Highlight the situation of indigenous women in particular States;
- Counter-balance the information presented by a State in its report;
- Highlight the information which a State may have omitted or failed to mention;
- Suggest specific questions for Commissioners to ask the State;
- Contribute to the Concluding Observations to be adopted by the Commission following examination of a periodic report;
- Formally communicate concerns to the Commission and to the government.

Tips on compiling alternative reports are presented in a separate information note (Information note #8).

Participation in person at the session

NGOs that have the opportunity to participate in a public session of the Commission during which their alternative report is examined, are also advised to:

- Meet members of the Commission prior to the examination of the State's report and provide them with a summary of the key points of the alternative report, together with a list of suggested topics for them to address during their public discussions with State representatives;
- Submit the alternative report directly to the members of the State delegation and discuss the content with them;
- Attend the public sessions at which the State report in question is to be examined and take note of any significant points which are highlighted, the questions put to the State, and its position with regard to the concerns raised.

Impact of periodic reports

One of the reasons that prompted the African Commission to give consideration to the rights of indigenous peoples and indigenous women was the fact that some NGOs had been submitting alternative reports revealing the situation of indigenous peoples in certain States. By way of example, Uganda's periodic reports for 2006 and 2009 contained no mention of the indigenous Batwa peoples. Thanks to the alternative reports submitted jointly by the United Organisation for Batwa Development in Uganda, Forest Peoples Programme, and the International Work Group for Indigenous Affairs, the Commissioners asked several questions about the situation of the indigenous Batwa in Uganda. In its Concluding Observations, the Commission recommended the recognition of the Batwa people as indigenous people, as well as the specific protection of their human rights.

2) Working in partnership with the Commission by means of observer status

It is not necessary to have observer status in order to share information with the Commission, attend public sessions or lodge communications (complaints). However, gaining observer status is a formal procedure by which the Commission recognises the credibility of an organisation and affirms its role as a working partner with the Commission. This status confers several advantages for NGOs in their relations with the African Commission. In particular, it enables NGOs to make oral interventions before the Commission.

NGOs with observer status are also invited to submit reports on their activities every two years. These keep the Commission informed of the human rights situation and the implementation of the African Charter. To date, over 400 organisations have been granted observer status before the African Commission. However, very few organisations representing indigenous women have requested this status.

Organisations can take steps to obtain observer status before the Commission. Further information about the criteria for granting observer status can be obtained by consulting the Resolution on the criteria for granting and enjoying observer status to non-governmental organisations working in the field of human rights with the African Commission on Human and Peoples' Rights, available at: http://www.achpr.org/english/_info/observer_en.html

3) Mechanism for promotional and fact-finding visits

As part of their promotional mandate, members of the Commission carry out promotional visits to member States of the African Union. During these visits, the Commissioner responsible for the State in question organises meetings and discussions at the national level with various actors involved in the field of human rights. These include members of the government, civil society organisations, academic institutions and other individuals, organisations and international agencies working to promote a human rights culture in the country. The objective is to engage these stakeholders in a constructive dialogue on ways to strengthen respect for human rights in the country.

It is important that indigenous women, peoples, and their organisations take part in these missions by arranging to meet the Commissioner responsible for the mission and by providing him or her with the most detailed information possible on the human rights situation of indigenous women and peoples in the country so that these issues can be fully considered and discussed during the visit. It is advisable to contact the Commission Secretariat to find out if a promotional mission is planned in the near future for a specific country.

Questions concerning indigenous peoples have been raised during recent missions. For example, during the mission to Botswana in February 2005, the expulsion of the indigenous Basarwa community from the Central Kalahari Nature Reserve was brought to the attention of the Commission delegation. As the matter was before the national courts at the time, the delegation judged that



Bagyeli woman, Kilombo, Cameroon, February 2010. Photo: Centre for Environment and Development (CED).

it was inappropriate to discuss the details. Nevertheless, in its mission report, which was subsequently adopted by the Commission, the delegation made the following statement:

*"The government should engage the indigenous Basarwa communities in further dialogue and explore ways of communicating with them. Assistance given to them should be accompanied with training and support mechanisms, uplift their social wellbeing without prejudicing their culture and traditions".
(Available at: http://www.achpr.org/english/Mission_reports/Botswana/mission%20report_Botswana.pdf)*

4) Participating in the NGO Forum

Every year, the NGO Forum precedes the two ordinary sessions of the Commission which generally take place in May and November. This Forum is organised by the African Centre for Democracy and Human Rights Studies (www.acdhrs.org) which is based in The Gambia. NGOs with observer status can take part in the Forum. It provides an excellent opportunity to meet and discuss questions relating to human rights and strategies for promoting their respect and implementation. During the three days of the Forum, participants have the opportunity to attend presentations by experts; to debate various issues relating to human rights; to

POSSIBLE ACTIONS WITHIN THE FRAMEWORK OF THE AFRICAN COMMISSION PROMOTIONAL MANDATE

Mechanisms of the Commission and other forums	Actions	Possible results	Follow up
Examination of States' periodic reports during the Commission's public sessions (Article 62, African Charter)	Submission of alternative report to the African Commission	Adoption by the Commission of Concluding Observations, including specific recommendations relating to questions raised in the report	Dissemination of content of Concluding Observations among networks and to the government Dialogue with the government for implementation of the Concluding Observations
	Submission of a proposed list of questions for the Commission to ask State representatives during examination of the periodic report	Public dialogue between Commissioners and State representatives on the basis of the proposed questions Public position of the government in response to questions raised	Analysis of the State's responses and the Commission's recommendations
	Submission of the alternative report to the country delegation	Dialogue with members of the delegation and sharing of information included in the report	Continued dialogue with the government through follow-up meetings, information sessions, seminars, etc.
Working in partnership: the Commission and NGOs with observer status	Oral intervention during public sessions	Commission takes account of concerns which have been voiced in its work	Dissemination of the declaration/oral intervention among networks and to the government

take part in drafting resolutions to be presented to the Commission; and to forge links with other organisations with similar objectives.

Numerous resolutions adopted by the Commissioners are often strongly inspired by resolutions drafted by NGO representatives and presented to one or more of the Commissioners. Indigenous women's organisations should not forget this avenue. While resolutions are not binding on States, they have, nevertheless, a moral political force. Resolutions constitute tools which can be used by civil society actors in their awareness-raising activities

and advocacy among civil society itself and among governments. Examples of resolutions adopted by the Commission are available at the following link:
http://www.achpr.org/english/_info/index_resolutions_en.html

Mechanisms of the Commission and other forums	Actions	Possible results	Follow up
Promotional and fact-finding missions made by the Commission to member States of the African Union	<p>Submission of reports on the human rights situation in the country based on reliable information</p> <p>Suggestions of topics of concern to the Commission</p> <p>Communicate availability to meet the members and prepare a presentation of the situation, with documentary support, for the attention of the Commission members</p> <p>Logistical support for organising consultation activities with civil society</p>	<p>The implementation of the rights guaranteed by the African Charter is presented to and taken into consideration by the Commission</p> <p>Information session with members of the Commission delegation during their mission and consideration of information submitted</p> <p>For example: coordinating with NGOs, organising a meeting in a strategic location accessible to all</p>	<p>After the visit: follow up with additional reports to members of the Commission, if necessary</p> <p>After the visit: follow up with additional reports to members of the Commission, if necessary</p> <p>After the visit: follow up with additional reports to members of the Commission, if necessary</p>
NGO Forum	<p>Participation</p>	<p>Submission of draft resolutions based on work carried out and research</p> <p>Adoption of a resolution by the Commission</p> <p>Strengthening of the partner and coalition networks</p>	<p>Advocacy at the Commission for the adoption of resolutions</p> <p>Dissemination of the resolution within networks and advocacy for its implementation before the government</p> <p>Communication with partners and establishment of working relationships</p>

Notes



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