

## **Questions / Answers**

### **The Role of NGOs during sessions of the African Commission for Human and Peoples' Rights and the pre-session NGO Forum**

#### **Sessions of the African Commission on Human and Peoples' Rights (ACHPR)**

#### **When was the African Commission on Human and Peoples' Rights (ACHPR) created?**

The ACHPR is a convention-based body. Its mandate, composition and functions are stipulated in Part II of the African Charter for Human and Peoples' Rights (hereafter called African Charter) adopted by the Assembly of African Heads of State in 1981 (See African Charter on Human and Peoples' Rights and state of ratification by the countries on the following Internet link:

[http://www.africa-union.org/root/au/Documents/Treaties/treaties\\_fr.htm](http://www.africa-union.org/root/au/Documents/Treaties/treaties_fr.htm)

The ACHPR became operational in 1987.

Its headquarters is in Banjul, The Gambia.

#### **What is its role?**

The functions of the Commission are to promote and protect human and peoples' rights by.

- studying respect, by the State Parties, of the rights guaranteed by the African Charter and, where necessary, giving its opinion or making recommendations to governments (through communications, resolutions, queries, press releases, etc.);
- collecting documents, undertaking studies and research, organising seminars, symposia and conferences, and disseminating information on human rights in Africa;
- cooperating with other African and international institutions concerned with the promotion and protection of human and peoples' rights.
- interpreting the provisions of the African Charter at the request of a State Party, an institution of the OAU or an African organisation recognised by the OAU.— OAU became the African Union (AU) in 2002.

#### **Who belongs to the ACHPR?**

The ACHPR is composed of 11 commissioners elected by the Assembly of Heads of States and Governments of the African Union (AU) for a 6-year renewable term.

**==> Note:** for the last several years FIDH advocacy has focused on ensuring that anyone working within the States' executive bodies be considered ineligible to serve as a Commissioner. This position has helped to consolidate the independence of the Commissioners over the years.

#### **What are ACHPR working groups and Special Rapporteurs?**

ACHPR working groups have been created, usually composed of two or three commissioners and a few experts (individuals or NGO representatives) to work on specific topics related to human rights protection. These groups, – depending on their mandate, – can publish reports, adopt resolutions, make recommendations to the States, and work on normative instruments.

There are working groups on:

- the death penalty (establishment encouraged especially by FIDH);
- indigenous populations in Africa;
- economic, social and cultural rights;
- Robben Island guidelines on conditions of detention;
- specific questions linked to the work of the ACHPR.

**==> Note:** To make the working groups more effective, FIDH recommends that the Groups meet

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regularly, during the ordinary sessions of the ACHPR and also in between sessions.

Furthermore, certain commission members have special functions within ACHPR and work on the promotion and protection of a specific issues.

There are special rapporteurs on the following topics, for instance:

- the rights of women in Africa;
- prisons and conditions of detention in Africa;
- freedom of expression in Africa;
- human rights defenders in Africa (creation encouraged by FIDH);
- refugees, asylum-seekers and internally displaced persons in Africa;
- arbitrary, summary and extra-judicial executions

The Special Rapporteurs prepare resolutions during the ACHPR sessions, approach the States in the event of arguable human rights violations, disseminate press releases and carry out fact-finding or promotional missions when invited by the States.

#### When and where are the ACHPR sessions held?

The ACHPR holds two sessions a year (May and November). One of the sessions is usually held at the head office in The Gambia. The other is held in a State Party that offers to host a session.

#### Who attends the sessions?

- the 11 Commissioners;
- representatives of the States Parties;
- representatives of national human rights institutions,
- representatives of international organisations, especially the African Union, the *Organisation internationale de la Francophonie*, the United Nations High Commission for Refugees, the International Committee of the Red Cross, etc.
- representatives of non-governmental organisations whether or not they have observer status at ACHPR; See list of NGOs with observer status on the ACHPR website.  
[http://www.achpr.org/english/info/directory\\_ngo\\_en.html](http://www.achpr.org/english/info/directory_ngo_en.html)  
See criteria for granting observer states at ACHPR on the following site:  
[http://www.achpr.org/english/info/observer\\_en.html](http://www.achpr.org/english/info/observer_en.html)

#### What is the order of ACHPR sessions?

The ACHPR first holds **public sessions**:

- The first item that the Commissioners examine is the **situation of human rights in Africa**. The floor is given successively on this point to: the States, the international organisations (AU, OIF, etc.), the national institutions and the NGOs with observer status at the ACHPR;
- Then the Commissioners examine the **reports by the States**.  
In compliance with the provisions of the African Charter (Article 62), each State Party shall periodically (every two years), submit a report to the ACHPR assessing respect for rights set out in the articles of the Charter.  
At each session two or three states usually present their reports. The reports are available before the session on the ACHPR Internet site. After the general introduction by the State, the Commissioners make their remarks and ask questions on the protection of human rights in the country, based on the reports presented by the State and the NGOs. The State then has the opportunity to respond.  
After examining the reports by the States, the ACHPR draws up a report showing the Commissioners'

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observations and recommendations on the respect, protection and promotion of human rights in the country under study. The report is not published and the recommendations are not binding.

**==> Note:** FIDH wants these reports, or at least the recommendations, to be made public since nothing in the African Charter indicates that they should not be. An alternative suggestion is that they be published as a sanction if the recommendations are not implemented within a fixed period of time.

- Thereupon the **ACHPR rapporteurs and working groups present reports on their activities** during the last six months. After the presentation of each report, the NGOs with observer status are allowed to make an oral statement (3 minutes) before the Commissioners. An example: after the report by the Rapporteur on Human Rights Defenders in Africa, the NGOs can speak on the situations of defenders in specific countries.

The ACHPR then holds a **closed, private session** at which it:

- examines and adopts the mission reports (fact-finding and promotional missions);
  - examines the communications;
  - examines administrative and financial issues;
  - adopts resolutions, decisions and recommendations (made public at the end of the sessions);
  - sets the dates and venue for the next session.
- At the end of these sessions, it holds a **press conference**.

**==> Note:** To make ACHPR decisions more effective, FIDH recommends that, together with the NGOs, an internal monitoring mechanism be established and, at each session, report on progress made by the States in implementing ACHPR decisions, resolutions, and on communication

This mechanism's conclusions and recommendations should be incorporated in the ACHPR report to the Conference of Heads of State and Government of the African Union (in compliance with Articles 53 and 54 of the African Charter)

### What can NGOs do during the sessions?

At the ACHPR sessions, the NGOs have several ways to lobby for the protection of human rights in Africa and in their countries:

- NGOs with observer status at ACHPR can **inform the Commissioners of the human rights situation in a country through an oral statement** at a public session, under the item, "general situation of human rights in Africa" and after reports by the working groups and the special rapporteurs. Statements are focused on human rights defenders; freedom of expression; refugees and displaced persons; economic, social and cultural rights; conditions of detention; extra-judicial executions; capital punishment; minority groups, etc.  
Each NGO can speak on as many items as it wants. Statements must give an overview of the human rights violations related to the item under discussion and make recommendations to the States concerned and the ACHPR. This is the time for asking the Commissioners to adopt resolutions on specific violations. The statements usually do not last more than three minutes, i.e. about two pages long.

**==> Note:** the States have the right to respond to NGO statements.

- The NGOs can **recommend adoption of:**
  - "urgent resolutions" on the human rights situation in a given country, e.g. a resolution condemning

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violations of human rights in Darfur;

- "thematic resolutions": on specific rights, e.g. a resolution on respecting human rights when fighting terrorism.

In their oral statements to the ACHPR (see here below) or in discussions with the Commissioners during breaks the NGOs can recommend that the Commissioners adopt these resolutions.

- The NGOs can **inform the Commissioners of the human rights situations in the country whose report is being examined by the ACHPR (the aim is to make recommendations).**

**==> Note: The NGOs are not given floor time when the ACHPR is examining the State's reports.**

This makes it important to lobby/inform the Commissioners outside the meeting room on the human rights situations in the country whose report is being examined by the ACHPR session.

To do this, it can be helpful for the NGO to prepare a list of questions that the Commissioners can ask the State in question (e.g. considering the acts of torture in your country, what is the State doing to prevent and punish such acts, in compliance with Article 5 of the African Charter?).

To be more effective, this list should be based on a more detailed alternative report.

These documents will allow the Commissioners (who are not necessarily completely knowledgeable about the human rights situation in the country being examined) to draw precise answers from the countries' representatives on worrisome situations and, hence, to be able to make recommendations.

**==> Note:** The awareness and information procedure used with commissioners concerning the human rights situation in a state whose report is being examined by ACHPR should be structured more formally into "briefing" sessions, such as those held by experts on UN committees and NGOs prior to scrutiny of State reports.

- NGOs can **deposit communications** (See Article 56 of the African Charter) which are "complaints" regarding violations committed by State Parties against the provisions of the African Charter, e.g. many communications have been used to denounce acts of torture in Mauritania, violations of the right to a fair trial in Nigeria and in Sudan, etc. They cannot be deposited before all local remedies have been exhausted (or have proven to be ineffective). The ACHPR, in several sessions, then examines the admissibility and the basis of the case before adopting recommendations to the States concerned, if appropriate. After filing the communications, the NGOs may be called to private sessions to plead their case before the Commissioners.

**==> Note: Communications can be registered by individuals or by associations.**

Communications must be submitted in writing to the Secretariat of the Commission. It is not necessary to do this in person at the Banjul office or to wait until the Commission holds an ordinary session.

Commission's address:

African Commission for Human and People's Rights (ACHPR)

Avenue Kairaba , P.O. Box 673, Banjul, The Gambia

Tel (220) 4392 962 Fax (220) 4390 764 Email achpr@achpr.org

There are **criteria** on the **admissibility of a communication** (Article 56 of the Charter). To be examined by the ACHPR, communications must:

1. indicate the author(s) name, even if the latter request anonymity;
2. be compatible with the Constitutive Act of the African Union and the African Charter;
3. not be written in disparaging or insulting language directed against the State concerned and its institutions;

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4. not be based exclusively on news disseminated through the mass media;
5. be sent after exhausting local remedies, if any, unless the Commission recognises that the procedure is unduly prolonged;
6. be submitted to the Commission within a reasonable period from the time local remedies are exhausted or after the date set by the Commission to start submitting the case to the court;
7. not deal with cases which have been settled in accordance with the principles of the United Nations Charter, or the constitutive act of the African Union or the provisions of the African Charter.

==> **Note:** Following through on a communication is a rather complex process which requires legal expertise and long-term monitoring. FIDH does this work for its member organisations and partners.

==> **Note:** The Commission's decisions are not binding but, just as for the recommendations, ACHPR decisions and recommendations, the States is requested to follow by what is advocated by the ACHPR.

==> **Note:** The possibility of introducing communications at ACHPR will become increasingly important as the African Court of Human and Peoples' Rights gains clout. If NGOs or individuals are prevented by the State from submitting cases to the Court, they can appeal to the African Commission, which is empowered to submit cases to the Court.

==> **Note:** The internal mechanism, recommended by FIDH, to monitor the implementation of ACHPR decisions should also cover ACHPR recommendations stemming from communications.

- NGOs can **organise side events** (conferences, training sessions, etc.) on specific themes related to the promotion and protection of human rights, e.g. conferences organised by FIDH during the last ACHPR sessions, in particular on abolishing the death penalty and on enforced disappearances. The NGOs can invite Commissioners and representatives of the States to these events.
- NGOs can **meet with the representatives of the States**, the national institutions, the African Union and other international and African organisations to convey their concerns about human rights violations in specific countries and to develop fields of cooperation and action.
- NGOs can **strengthen their network for cooperation with the other NGOs** in attendance.
- NGOs can **disseminate reports** and information to the Commissioners, the NGOs, the international organisations and the national authorities attending the session.

#### What can NGOs do in between sessions?

- inform the Commissioners, especially the Special Rapporteurs, about the human rights situation in their countries. This information can be used in the reports made by the Special Rapporteurs at ACHPR sessions and can be transmitted through the Rapporteurs' press releases on the ACHPR website. An example: in answer to a request from the Observatory for the Protection of Human Rights (a joint FIDH/OMCT programme), the Special Rapporteur on Human Rights Defenders issued press releases on violations of the rights of human rights defenders in Guinea, Djibouti and DRC.
- send communications to the ACHPR on violations, by State Parties, of rights set out in the African Charter.

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- invite the Commissioners to participate in various events to promote and protect human rights. An example: every year FIDH invites the Special Rapporteur on the Human Rights Defenders in Africa to a press conference held when the annual report of the Observatory is published.
- meet with Commissioners who participate in information missions on human rights in certain countries in order to give them alternative information to that provided by the authorities.
- call upon the States to respect ACHPR recommendations stemming from country-specific resolutions, communications, and missions.

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#### **The forum on the participation of NGOs at ACHPR sessions**

#### **Who organises the forum on the participation of NGOs at the ACHPR sessions (the Forum)?**

The Forum is organised by the African Centre for Democracy and Human Rights Studies, an NGO based in Banjul, The Gambia. FIDH is an important partner in preparing the Forum.

#### **When is the Forum held?**

The Forum is held before each ACHPR session, i.e. twice a year, in the country hosting the ACHPR session. It lasts 3 days.

#### **Who participates?**

- More than a hundred independent NGOs.

**==> Note:** The African Centre for Democracy and Human Rights Studies invites certain NGOs to participate in the Forum. FIDH also invites several of its member organisations to all the ACHPR sessions and to the Forum. All NGOs can attend the Forum, at their own expense.

- The Commissioners are also invited to the Forum.

#### **What is the objective of this Forum?**

The objective of the Forum is to prepare the ACHPR sessions:

- by assessing the situation of human rights on the African continent;
- by developing and formulating common strategies for NGOs on certain topics related to human rights, e.g. fighting impunity, women's rights, economic and social rights, etc.;
- by adopting resolutions to propose to the ACHPR.

#### **What is the agenda of the Forum?**

- Day 1. General presentation on human rights in Africa and on the situations in each sub-region (West Africa, East Africa, Southern Africa, Central Africa, North Africa). The rest of the day is devoted to special themes current to human rights.
- Day 2, morning. Discussions on the situation of human rights defenders, the rights of women and/or the fight against impunity in Africa.
- Day 2, afternoon. Special interest groups. Groups are set up on specific subjects such as the death penalty, the fight against impunity, human rights defenders, women's rights, and migration. The main objective of these groups is to propose draft resolutions on these themes, for adoption by the Forum.
- Day 3, morning. Various themes, depending on the current human rights issues.
- Day 3, early afternoon. A drafting committee is set up to collect all the draft resolutions by the NGOs (not only on the themes under study but also on violations of human rights in specific African countries) and polish them up. The resolutions are then validated by the Forum. After being adopted, they are presented to the ACHPR.

#### **What can NGOs do during the Forum?**

The NGOs can take advantage of the presence of the many defenders from around the region to interact on

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especially important themes.

The NGOs can:

- speak on each of the themes (e.g. women's rights) developed during the Forum; (If the NGO is not on the panel presenting the theme, it can ask for the floor after the theme has been introduced.)
- propose and thus lead a special interest group on a given theme or participate in an existing special interest group;
- present draft resolutions (on themes and/or country situations) for adoption by the Forum;
- validate draft resolutions;
- create a side event on a special theme and/or participate in events organised by other NGOs (see below);
- contact Commissioners attending the Forum to start the lobby on the State reports and/or the draft resolutions;
- develop its network with other NGOs in attendance;
- disseminate their reports and information to other NGOs, Commissioners and international organisations in attendance.

#### **What side events are there to the Forum?**

Alongside the Forum, certain NGOs organise meetings and conferences on special themes connected to the promotion and protection of human rights. The Commissioners often participate in these events. The Forum's NGOs are also invited to participate.