

A GUIDE TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS



AMNESTY INTERNATIONAL

Amnesty International is a worldwide movement of people who campaign for internationally recognized human rights to be respected and protected.

Our vision is of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards, including the African Charter on Human and Peoples' Rights.

In pursuit of this vision Amnesty International's mission is to undertake research and action focused on preventing and ending grave abuses of these rights.

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Amnesty International has more than 2.2 million members and supporters in over 150 countries and territories in every region of the world. It is funded largely by its worldwide membership and public donations. No funds are sought or accepted from governments for Amnesty International's work investigating and campaigning against human rights violations.

Amnesty International members around the world have been campaigning for the past 46 years for an end to human rights violations in every country in Africa, and have many local groups and sections working in the continent.

Amnesty International was in the first group of non-governmental organizations to be granted observer status with the African Commission on Human and Peoples' Rights. It also has a collaborative working relationship with the African Union.

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THE AFRICAN
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Abbreviations used in this report

African Commission (the Commission):

African Commission on Human and Peoples' Rights

African Charter (the Charter):

African Charter on Human and Peoples' Rights

AU: African Union

NGO: non-governmental organization

OAU: Organization of African Unity

1. INTRODUCTION

Human rights advocates and NGOs in Africa can enhance their work to hold governments to account by collaborating with the African Commission on Human and Peoples' Rights. The African Commission is the main regional human rights body in Africa and its decisions, recommendations and resolutions can lend authority to NGOs' campaigning and advocacy work. The participation of NGOs is key to the success of the African Commission's efforts to promote and protect human rights. NGOs' knowledge and understanding make them a vital source of information for the Commission and their engagement on the ground means they are uniquely placed to promote the Commission's work.

This Guide to the African Commission is intended to help NGOs in Africa and other human rights defenders to access the African Commission in support of their work.

The African Commission was established under the African Charter on Human and Peoples' Rights to promote human rights and ensure their protection throughout Africa. All 53 African Union member states have agreed to be bound by the African Charter. The African Commission, established in July 1987, is responsible for monitoring the implementation of the Charter. The far-reaching human rights mandate of the Commission provides opportunities for human rights advocacy not only nationally but also regionally.

The African Charter sees NGOs playing an important role in the effective functioning of the African human rights system, in particular the promotional and protective work of the African Commission. The mandate of the African Commission, as set out in the African Charter, includes: "encourage national and local institutions concerned with human and peoples' rights" and "co-operate with other African and international institutions concerned with the promotion and protection" of those rights.

The unrivalled experience of NGOs working in Africa, with their regular contacts and direct knowledge of the situation on the ground, make them

indispensable partners in providing information to the African Commission. NGOs which have been granted observer status by the African Commission can also participate in discussions at the Commission's public sessions, broadening the perspective and information base of debates. Another important way in which NGOs enhance the protection of human rights in Africa is by submitting individual cases to the African Commission. The African Commission has made some important decisions as a result of complaints on behalf of individuals. The African Court on Human and Peoples' Rights has recently been established and once it becomes operational it will complement the work of the Commission, including by considering individual cases of human rights violations.

Despite the increase in the number of NGOs in Africa, and the growing jurisprudence of the African Commission, the Commission remains under-utilized by national and regional NGOs. Many do not know how they can cooperate with the African Commission, as there is little practical information available for NGOs on how to use the African Commission other than some guidelines adopted by the Commission and a few academic studies. This Guide aims to fill the gap and to foster greater participation by NGOs and human rights defenders in the work of the African Commission. The Guide offers a step-by-step explanation of how the African Commission operates and how NGOs and activists can access and use the Commission to advance their human rights work.

This Guide is a companion to the *Guide to the African Charter on Human and Peoples' Rights* (AI Index: IOR 63/005/2006), which explains in simple terms the rights and freedoms guaranteed by the African Charter.



2. WHAT IS THE AFRICAN COMMISSION?

Mandate

Membership

The role of NGOs

The African Commission is a body of 11 independent human rights experts which monitors states' compliance with the African Charter.

Its Secretariat is based in Banjul, Gambia, and its working languages are Arabic, English and French. The Commission of the African Union (a different body from the African Commission on Human and Peoples' Rights) is responsible for meeting the costs of the African Commission's operations, including the provision of staff, financial resources and services. Unfortunately the Commission of the African Union has failed to provide adequate funding for the work of the African Commission. As a result, the African Commission continues to rely on external support for its staffing requirements and finances, but this has proved inadequate for the African Commission's increasing workload.

Mandate

The African Commission is charged, under the African Charter, with three major functions:

- ▶ the promotion of human and peoples' rights
- ▶ the protection of human and peoples' rights
- ▶ the interpretation of the African Charter

In addition the African Commission may be required to perform other tasks entrusted to it by the Assembly of Heads of State and Government of the African Union.

Since its establishment in 1987, the African Commission has taken many positive initiatives towards fulfilling these areas of its mandate.

Currently the African Commission's promotional activities include:

- ▶ undertaking promotional visits to raise awareness of the African Charter and the work of the African Commission and to urge states to implement their human rights obligations under the African Charter
- ▶ developing recommendations, principles and guidelines aimed at enhancing respect for and protection of human rights
- ▶ undertaking studies, organizing seminars and developing materials to promote human rights

The protective activities of the African Commission include:

- ▶ consideration of states' periodic reports on the measures they have taken to implement the African Charter
- ▶ fact-finding missions to assess compliance with obligations, document violations and make recommendations to the state concerned
- ▶ examination of complaints from states alleging that another state has violated the African Charter
- ▶ examination of complaints from individuals and NGOs alleging a violation of the African Charter

Membership

The African Commission's 11 members are nominated by states parties to the African Charter. Each state party to the Charter can nominate up to two candidates. The Commissioners are then elected in a secret ballot by the AU Assembly. These independent experts are chosen "from among African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights" and serve in their personal capacity. Members come from a wide variety of geographic, legal, social and cultural backgrounds, but no more than one national of the same state may serve on the Commission.

Commissioners serve six-year terms in their personal capacity and are eligible for re-election. The tenure is, however, staggered; the tenure of the first eight Commissioners terminated after two years and that of three others at the end of four years. For example, of five Commissioners elected in 2007, four will serve for six years and one for two years.

For information on and contact details for current members of the African Commission, NGOs should consult the Commission's website at www.achpr.org.

For the African Commission to work effectively to promote and protect human rights in Africa, it is essential that its members are independent, impartial and competent. All states parties should therefore nominate at least one candidate for election, and they should ensure that the nomination process is open and transparent. Amnesty International has expressed concern over the perceived lack of independence and impartiality of some of the members of the African Commission, which could impinge on the effectiveness and credibility of the African Commission.

Amnesty International has developed criteria for the nomination and election of members of the African Commission, which may be used by NGOs campaigning to ensure that states nominate and vote only for candidates who meet the highest standards of independence, impartiality and competence. (See *Criteria for the nomination and election of members of the African Commission on Human and Peoples' Rights*, AI Index: IOR 63/002/2007). States should advertise the nomination process widely, encourage applications from women and ensure that civil society is involved at all stages. African Union member states should vote only for independent, impartial and competent candidates who collectively reflect a broad range of expertise, the different legal systems in Africa and gender equality. States should not nominate or vote for candidates who hold any paid or unpaid position within executive or administrative branches of government that could compromise their independence and impartiality.

The role of NGOs

The African Charter explicitly recognizes, in Article 55, the important role to be played by NGOs. NGO engagement is crucial to the African Commission's promotional and protective work, both as a source of information and to serve as a partnership in the wider efforts to promote and protect human rights in Africa. Equally, the African Commission can strengthen African NGOs' ability to hold their governments accountable for human rights violations.

The participation of NGOs in the work of the African Commission is long-standing. NGOs were actively involved in the drafting process of the African Charter, and they continue to contribute positively to the work of the Commission. The African

Commission has developed procedures and working methods to allow NGOs to take part in its activities.

NGOs with observer status with the African Commission may participate, without a vote, in the discussions during the public sessions of the Commission. NGOs may also submit individual complaints alleging a violation of the African Charter for consideration by the Commission.

Information on the African Commission

The African Commission website, www.achpr.org, provides information on the work of the Commission, forthcoming events (including sessions), press releases, and documents adopted by the Commission, including resolutions and guidelines.

NGOs may also find documents by the African Commission on the University of Pretoria Centre for Human Rights website at: www.chr.up.ac.za/hr_docs/themes/theme02.html and the University of Minnesota Human Rights Library at: www1.umn.edu/humanrts/

How to contact the Secretariat of the African Commission

Address: Dr. Mary Maboreke (Secretary)
Kairaba Avenue, P.O. Box 673 Banjul, The Gambia
Tel: (220) 4392 962 Fax (220) 4390 764
Email: achpr@achpr.org

How to contact members of the African Commission

An up-to-date list of contact details for the Commissioners is usually available on the African Commission website (see About us/Members). NGOs may write to members of the Commission at any time to provide information relevant to their work.



3. SESSIONS OF THE AFRICAN COMMISSION

Oral statements

Written information

Meeting the Commissioners

NGO Forum

Reports from states

Resolutions and decisions of the African
Commission

Developing principles and
guidelines

The African Commission normally holds two ordinary sessions each year, in May and November. The Chairperson of the Commission may call extraordinary sessions in consultation with other members of the Commission. Ordinary sessions usually take place in Banjul, Gambia, but other African countries may also host them.

The agenda of the ordinary sessions of the African Commission is fairly standard. The first week is public and is dedicated to the consideration of states parties' reports; the presentation of activity reports from the Commission and its special rapporteurs; and thematic discussions, including a general item on the human rights situation in Africa where many country situations are raised. The second week is generally dedicated to items of the agenda to be considered in private sessions. These include the consideration of individual communications.

The ordinary sessions of the African Commission are a key opportunity for NGOs to raise their priorities with Commissioners, provide written or oral information on the human rights situation in a country that is a state party to the African Charter, or participate in hearings on individual complaints.

To find out when and where the next session of the African Commission will take place, NGOs should consult the Commission's website or contact its Secretariat. The provisional agenda for the session is usually available on the website or from the Secretariat one month in advance. An invitation to all participants is usually posted on the Commission website approximately four weeks ahead of the session, and is normally sent out to NGOs whose contact details are on the Commission's mailing list.

For NGOs to attend the public sessions of the African Commission and participate in discussions, they require observer status. However, NGOs do not need observer status to file a complaint (see section 6), and experience shows that the Commission does encourage NGOs without observer status to attend its public sessions. As of May 2006, 344 NGOs working in the field of human rights had been granted observer status by the Commission.

How to obtain observer status

Any NGO working in the field of human rights can apply for observer status with the African Commission. To do so NGOs have to meet certain criteria and have to submit an application with the relevant documentation.

In particular NGOs need to provide information to the African Commission Secretariat about:

- ▶ how their objectives and activities reflect the fundamental principles of the African Charter
- ▶ their work in the field of human rights
- ▶ their financial resources

NGO applications should include: the NGO's statutes; proof of its legal existence; a list of its members; its constituent organs; its sources of funding; its most recent financial statement; and a statement on its activities. Applications received at least three months in advance of a session of the African Commission are normally considered at that session.

NGOs enjoying observer status are expected to present reports on their activities to the African Commission every two years.

For further information on obtaining observer status, NGOs should consult the African Commission website, in particular: "Criteria for the granting of and for maintaining observer status with the African Commission on Human and Peoples' Rights" at: www.achpr.org/english/_info/observer_en.html, or contact the Commission Secretariat.

NGOs with observer status with the African Commission can participate in the public meetings during the ordinary sessions, and in the discussions under most agenda items. NGOs normally need to obtain accreditation to the relevant session of the Commission by filling out a registration form. This is available on the African Commission website ahead of the session, and from the Secretariat at the opening of the session.

Public sessions are normally held between 9am and 6pm each day. Sessions are not normally held on Friday afternoons or Sunday mornings.

States, national human rights institutions and intergovernmental organizations, as well as NGOs participate in public sessions by taking the floor under the different agenda items. Participants are allowed to make one intervention per agenda item and the following speaking order applies:

1. State representatives
2. Intergovernmental organizations
3. National human rights institutions
4. NGOs

Interpretation is available in Arabic, French and English.

While the agenda normally remains unchanged once it has been adopted at the beginning of each session, the order in which the agenda items are considered and the time allocated to each agenda item varies. Often items are left open for late intervention, which means that it is difficult to predict when a particular agenda item will be considered. It is important that NGO representatives follow closely the public session and are present in the room throughout in order to make sure they are available and ready when it is their turn to speak.

Oral statements

Oral statements provide an opportunity for NGOs to draw the attention of the African Commission to matters of concern. Normally most agenda items during public sessions are open to statements by NGOs (as well as representatives of member states, national human rights institutions and other international organizations). Two notable exceptions are the consideration of states parties' reports on their compliance with the African Charter and the consideration of applications for observer status.

One recurring agenda item in which NGOs normally participate is the Human Rights situation in Africa. This is broad enough to allow all NGOs working on human rights in Africa the opportunity to speak. Another recurrent agenda item under which NGOs normally take the floor is the presentation of reports from rapporteurs or working groups. This agenda item is important as NGOs can tailor their interventions to the relevant human rights issue, theme or group, while also covering country issues if they wish.

NGOs are allowed to deliver one statement under each agenda item, and the time allocated normally varies between three and five minutes.

It is useful if NGOs bring printed copies of their oral statements. They may be able to:

- ▶ distribute copies to Commissioners, NGOs and other participants
- ▶ display them on tables normally available outside the plenary room
- ▶ give copies to the Secretariat for inclusion in the final pack of documents normally provided, upon request, by the Secretariat to all participants

It is advisable to have the oral statement translated if possible into all the working languages of the African Commission (Arabic, French and English).

At the beginning of the session, NGOs should register their requests to intervene with the Secretariat. They should indicate the name of the

organization and the agenda item(s) under which they wish to take the floor, so that the Secretariat can draw up the list of speakers for the session.

Amnesty International regularly delivers oral statements during African Commission sessions. Sometimes these are on specific country situations or thematic issues. Sometimes they present assessments of the Commission's work and suggested improvements to its working methods. NGOs can consult them on Amnesty International's website at www.amnesty.org.

Written information

African Commission sessions provide an ideal opportunity for NGOs to share their information with members of the Commission. Reports, documents, press releases or promotional materials can be handed directly to a relevant Commission member or distributed through the Secretariat. Specific areas for displaying these materials are normally available throughout public sessions, for use by all participants.

Meeting the Commissioners

NGOs can approach African Commission members during the breaks in sessions. Although Commissioners are often very busy they are normally able to find the time to meet briefly with most NGOs wishing to do so. This is an opportunity not only for NGOs to introduce themselves to the Commission members, but also for them to raise matters of particular concern.

NGO Forum

Ahead of each session of the African Commission, some of the participating NGOs meet in what is known as the Forum for the participation of NGOs in the African Commission on Human and Peoples' Rights, also known as the NGO Forum. The NGO Forum has been organized since 2000 by the African Centre for Democracy and Human Rights Studies (ACDHRS), a human rights organization based in Banjul, Gambia.

The NGO Forum normally takes place during the three days preceding each ordinary session of the African Commission, in the place where the session is scheduled to take place, and often in the same venue. The Forum gives NGOs a platform to share information, debate and formulate resolutions and co-ordinate strategies for addressing human rights issues and problems in Africa which the African Commission should tackle.

During the Forum, NGOs have the opportunity to discuss issues of concern to them and to propose resolutions and co-operate with other NGOs in their preparation. These may then be adopted by the NGO Forum in plenary meetings. Commissioners often participate in some of the debates at the Forum. The outcome of the Forum is publicly presented to the African Commission at its opening session, and the Forum submits proposed resolutions for the Commission to consider or adopt.

The NGO Forum provides a key opportunity to exchange information among NGOs and develop or strengthen partnerships or networks.

For further information on the NGO Forum, NGOs should contact the African Centre for Democracy and Human Rights Studies (see their website at www.acdhrs.org).

Reports from states

One of the main functions of the African Commission is to monitor states parties' implementation of their human rights obligations set out in the African Charter (Article 62). States parties are required to submit every two years a report on legal and other measures they have taken to implement the African Charter. Reports are submitted to the African Commission and then are considered during the public sessions of the Commission. Two or three state reports are normally considered at each session.

The consideration of state reports takes the form of an interaction between the African Commission and the state delegation presenting the report. Initially the delegation speaks to the report it has submitted to the Commission, highlighting its key aspects. Reports normally emphasize both the positive steps the government has taken to implement the African Charter and the limitations it has faced in this context. After this presentation, the Commissioners raise questions and issues of particular concern with the



delegation. These may be based on the report submitted by the state or on other information available to the Commission.

One of the Commissioners is designated as rapporteur and is responsible for asking most questions put to the state delegation, although all Commissioners are free to raise concerns. The state is then expected to provide preliminary answers to the African Commission's questions. It can supplement these preliminary answers later by submitting written information to the Commission. After the dialogue with the delegation during the session, the Commission will draft, in private session, and transmit to the government its concluding observations on the steps it is expected to take to further fulfil its duty to implement the African Charter.

Amnesty International Benin launching its Stop Violence Against Women campaign in Porto-Novo, Benin, March 2004.

NGOs, and in particular national NGOs, have a fundamental role to play in supporting the African Commission's monitoring function throughout the whole reporting process.

Encouraging the state party to submit periodic reports in full and on time

The African Charter requires states to submit a report on the measures they have taken to implement the African Charter every two years. Many states in Africa currently fail to submit their periodic reports on time, and to date there are still 15 African states that have not yet submitted any reports to the African Commission. For further information on the current status of submission of reports NGOs should consult the African Commission website.

If a state is failing to fulfil its reporting obligations, national NGOs can play a key role in encouraging the government to draft and submit a periodic report.

Preparing a written submission for African Commission members

Once a state has submitted its report, NGOs can submit written information to the African Commission ahead of its consideration of the report. NGOs may focus on one area of human rights, or they may cover more than one of the human rights areas under the African Charter. NGO reports of this type are known as "shadow reports" or "parallel reports". Often they emphasize discrepancies between the information in the state report and that submitted by NGOs. However, NGO reports vary in their nature and function, and may include concrete recommendations to the government concerned.

Copies of a state party's report which is due to be considered are normally available on the African Commission's website or from the Secretariat. It is useful for NGOs to familiarize themselves with the report, not only to get a sense of their government's priorities in the field of human rights, but also to supplement existing information.

The provision of information by NGOs is a crucial aspect of the consideration of state party report by the Commissioners. In order for them to have a fruitful exchange with the government, they need to base their questioning on information from a broad range of sources. If the African Commission decides to raise certain issues during the public session this places considerable pressure on the government to review its current practice or legislation.

It is advisable for NGOs to submit information well in advance of the session at which the relevant state party report will be considered.

Attending the session

While NGOs are not allowed to participate in the discussion during the consideration of states parties' reports by the African Commission, being present in the room constitutes a unique opportunity for NGOs to monitor the work of the Commission, understand whether their issues have been taken up and to listen to government responses to questions first-hand. All NGOs with observer status and accredited to the ordinary session can listen to the consideration of the states parties' reports by the Commission. Attending the session may also provide the opportunity for NGOs to meet Commission members in the margins of the session and raise their concerns ahead of the consideration of the state party report.

Following up on implementation of African Commission recommendations

Following the consideration of the state party report by the African Commission, the Commission issues what are known as "concluding observations". This document normally reflects the positive steps taken by the government concerned as well as shortcomings and recommendations to the government for future action. As the official outcome of the reporting process, "concluding observations" can be extremely valuable for NGOs to use in their campaigning activities. They lend authority to the NGO's work while publicizing and raising awareness of the work of the Commission.

Amnesty International has welcomed the African Commission's practice of adopting concluding observations. However, it is not clear whether these documents are formally public or not. Unlike the UN treaty bodies (such as the Human Rights Committee), which publish their concluding observations shortly after the end of each session, the African Commission has not yet made its concluding observations easily available. This constitutes a significant problem for NGOs wishing to make use of the outcome of this process in their campaigning work. Amnesty International and other NGOs have for some time been calling for concluding observations to be published, in line with the long established practice of other treaty monitoring bodies.

While continuing to call for the African Commission to make these key documents publicly available immediately after each session, NGOs may, in the meantime, request copies of concluding observations directly from the Secretariat. National NGOs in particular have a key role to play in the follow-up to concluding observations and in monitoring states' compliance with the Commission's recommendations.

Resolutions and decisions of the African Commission

The second half of each ordinary session of the African Commission is normally devoted to private meetings in which the Commission examines communications (complaints) about alleged human rights violations (see section 6) and adopts its reports, decisions and resolutions.

After each session the African Commission publishes a final communiqué summarizing the discussion. It prepares and publishes a twice-yearly report on its activities, which includes the text of the resolutions and decisions on

complaints adopted by the Commission. Most final communiqués and activity reports are available on the African Commission website.

The resolutions adopted by the African Commission may focus on thematic issues, country situations or procedural matters. They may establish a special rapporteur or a working group on a specific issue, or make recommendations to other African Union bodies (see below). Through resolutions, the African Commission may decide to undertake a fact-finding mission to a given country, carry out a study or develop principles or guidelines.

Developing principles and guidelines

The African Commission has developed many principles and guidelines which represent an authoritative interpretation of the obligations of states parties under the African Charter. These include:

- ▶ The Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman and Degrading treatment and Punishment in Africa (Robben Island Guidelines, 2002)
- ▶ The Declaration of Principles on Freedom of Expression in Africa (2002)
- ▶ The Principles and Guidelines on the Right to Fair Trial and Assistance in Africa (2003)
- ▶ Resolution on the Respect for and the Strengthening of the Independence of the Judiciary (1996)
- ▶ Resolution Urging the State to Envisage a Moratorium on Death Penalty (1999)
- ▶ Declaration of the Pretoria Seminar on Economic, Social and Cultural Rights in Africa (2004)

These standards can be used by NGOs in their lobbying and advocacy work with governments, as all African states are expected to abide by them.

For resolutions, NGOs should consult the African Commission website at www.achpr.org.

The African Union

The African Union came into being on 26 May 2001, replacing the Organization of African Unity.

Its objectives include achieving African unity, encouraging international co-operation and achieving a better life for the peoples of Africa. Its founding treaty, the Constitutive Act of the African Union, expresses member states' determination to promote and protect human and peoples' rights, consolidate democratic institutions and culture and ensure good governance and the rule of law in accordance with the African Charter and other relevant human rights instruments.

The bodies of the African Union include:

The Assembly

Composed of heads of state and government or their accredited representatives. The Assembly of Heads of State and Government is the ruling body of the African Union.

The Executive Council

Composed of Ministers or authorities designated by the governments of member states. The Executive Council is responsible to the Assembly.

The Commission (of the African Union)

Composed of the Chairperson, the Deputy Chairperson, eight other Commissioners and staff members.

The Permanent Representatives' Committee

Composed of Permanent Representatives of member states accredited to the African Union. The Permanent Representatives' Committee is charged with preparing the work of the Executive Council.

Peace and Security Council

In July 2001, in Lusaka, a decision was made to create a Peace and Security Council within the African Union, with the aim of promoting peace, security and stability in Africa. The Protocol establishing the Peace and Security Council is in the process of ratification.

Pan-African Parliament

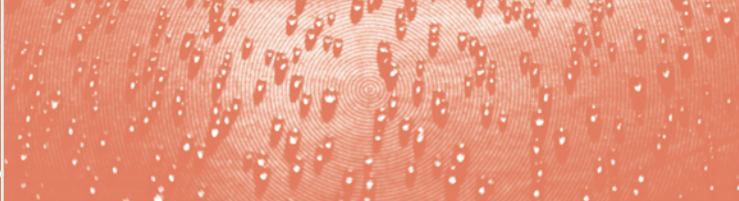
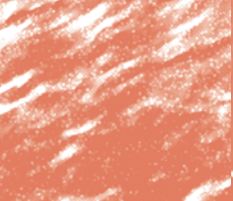
A Pan-African Parliament to ensure the full participation of African peoples in governance, development and economic integration is to be created. The Protocol establishing the Pan-African Parliament is in the process of ratification.

Economic, Social and Cultural Council

The Economic, Social and Cultural Council is an advisory body composed of various social and professional groups from African Union member states.

Further information on the African Union is available at: www.africa-union.org

NGOs can also consult Amnesty International documents on the African Union at www.amnesty.org





4. ACTIVITIES BETWEEN SESSIONS

Promotional missions

Fact-finding missions

While the African Commission's sessions are the culmination of many of its activities, it continues to work between sessions. Its activities undertaken between sessions include promotional or fact-finding missions to African countries, organizing or participating in studies and seminars, and participating in international, regional or national meetings and activities relevant to human rights.

NGOs may contact the members of the African Commission at any time between sessions to give them information or material they think may be of use to the work of the Commission.

Information about promotional and fact-finding missions undertaken by the African Commission can be found in the Commission's activity reports.

Promotional missions

Commissioners undertake promotional country visits and meet government officials, NGOs and members of the public. During such visits they raise awareness of the African Charter and the work of the African Commission and urge the state to take steps to implement its human rights obligations.

NGOs can encourage the African Commission to visit countries where they believe such a visit would be particularly useful. They may provide background information about the human rights situation in a given country and suggest relevant NGOs that it would be useful for the Commissioners to meet. Promotional visits undertaken recently by the Commission include missions to Burundi, Rwanda, Mali, Cameroon, Uganda, Swaziland and Burkina Faso.

Fact-finding missions

The African Commission “may resort to any appropriate method of investigation” (Article 46, African Charter) in discharging its duties and it has interpreted this provision to include on-site fact-finding missions to African countries. It has visited several countries to investigate reports of human rights violations, including, recently, Sudan, Togo and Zimbabwe. These visits, which differ from the promotional visits mentioned above, allow the Commission to document violations and make recommendations to the state concerned. Reports of such visits are made public, although sometimes long after the visit.

These investigations are critical to the African Commission gaining first-hand knowledge about the human rights situation in a country. An African Commission visit to a particular country can only take place upon invitation by the government, although the Commission can solicit such an invitation. The itinerary of such visits can vary considerably although the Commission normally tries to meet government representatives and relevant ministries, police authorities, the national human rights institution and some NGOs and seeks to visit places of detention. NGOs can encourage the Commission to undertake an investigation in a specific country or to address particular issues within a country.

Due to budgetary constraints, Commissioners have sometimes been unable to carry out scheduled country missions. As with other areas of the African Commission’s work, the lack of sufficient funding by the AU constitutes a serious impediment to key activities.

Once the decision to undertake a fact-finding mission has been made public, NGOs, especially national NGOs, can play an important role in providing information to the African Commission in preparation for its mission. The type of information provided may include suggestions of places to visit or issues to investigate, details of local NGOs working in human rights

or other relevant contacts, broad human rights patterns and situations, or details of specific cases of alleged human rights violations. Information from NGOs working in the country or with particular expertise can be invaluable. It may otherwise be unavailable to the Commission, and may be important to the assessment of the human rights situation.

Details of up-coming country visits, whether promotional or fact-finding, are usually found on the African Commission website, normally including information about which Commissioners will undertake the visit. NGOs may contact the Commissioners directly to provide them with material.

Following a visit to an African country, the African Commission adopts a mission report in a private meeting during the ordinary session. Once adopted, mission reports are public documents and are sometimes posted on the African Commission website. Although this practice is still sporadic, it is increasing with recent improvements made to the African Commission's website. Amnesty International hopes that this practice will continue and become more systematic, with mission reports being posted on the website shortly after their adoption.

Mission reports can be valuable sources of information and advocacy tools for NGOs. Mission reports contain useful information and normally also contain recommendations by the Commissioners to the country concerned. These authoritative recommendations can be used by NGOs in their advocacy work. In this context NGOs working in the country can play a key role in following up the African Commission's recommendations. They can use these recommendations to support their own work, disseminate them locally and internationally and monitor what steps the government is taking to comply with them.

5. SPECIAL RAPPORTEURS AND WORKING GROUPS

The Special Rapporteur on Human Rights
Defenders in Africa

The African Commission has appointed some of its members as special rapporteurs or members of working groups on thematic issues. The purpose of these special mechanisms is to give special attention to specific human rights issues or particular groups.

Special rapporteurs have been established to address these continent-wide thematic issues:

- ▶ Freedom of expression
- ▶ Human rights defenders
- ▶ Prisons and conditions of detention
- ▶ Refugees and internally displaced people
- ▶ Rights of women
- ▶ Summary, arbitrary and extrajudicial executions

Commissioners also participate in working groups that monitor and investigate various issues including the following:

- ▶ Working Group on Indigenous Populations/Communities in Africa
- ▶ Working Group on the Robben Island Guidelines

The African Commission also has other working groups, such as the Working Group on Specific Issues Related to the work of the African Commission, the Working Group on Economic, Social and Cultural Rights and the Working Group on the Death Penalty in Africa, which are developing guidelines and principles in these areas.

Most special mechanisms undertake promotion and protection activities, which include country visits (by invitation from the state concerned), and report back to the African Commission.

Commissioners nominated as special rapporteurs are mandated to serve as focal points for human rights promotion and protection relating to a

specific issue or group. Special rapporteurs may therefore seek information on specific issues of relevance to their work and may undertake promotional or fact-finding missions to African countries. They prepare reports for the Commission, including recommendations to governments on specific issues. Special rapporteurs may issue press releases on matters of particular concern to them and some also send letters directly to governments concerning allegations of human rights violations.

Working groups are normally composed of one or two members of the African Commission as well as other independent experts nominated by the Commission. Some working groups serve a similar function to the special rapporteurs – and are therefore more open to direct NGO interaction – while other working groups serve more specific functions such as developing guidelines and principles.

For further details of the mandate of each special mechanism, which Commissioners are serving and related information, NGOs should consult the

African Commission website. The Commission's website contains a separate webpage for each of the special mechanisms. Here NGOs may find the resolution establishing the special mechanism, background information on its mandate, inter-sessional activity reports, reports from country missions, relevant resolutions, regional and international instruments and press statements.

At each ordinary session of the African Commission, the Commissioners report on their activities, including their activities as special rapporteurs or members of working groups. These activity reports often contain details of up-coming plans, such as planned country missions.

NGOs co-operate with the special mechanisms in various ways. NGOs may:

- ▶ **Provide information** to the special mechanisms at any time, including research reports, press releases, cases of alleged human rights violations and studies.
- ▶ **Submit cases** of alleged human rights violations to the special rapporteurs, who may decide to take up such cases directly with the relevant government. This process, which involves asking the government to respond to the allegations, potentially has considerable impact, both through direct government action and indirect international pressure. At times the special rapporteurs may issue a press release on specific cases of human rights violations.
- ▶ **Request country visits** by a specific mechanism or in relation to a particular issue.
- ▶ **Lobby governments to accept country visits** by the African Commission's special mechanisms.
- ▶ **Provide country briefings** ahead of country missions by the special mechanisms. These may include details of relevant contacts or places to visit as well as background information. Details of up-coming missions by the special mechanisms are sometimes available on the African Commission website.

- ▶ **Raise awareness** about country visits with local NGOs, media and relevant stakeholders.
- ▶ **Follow up on recommendations** made by the special mechanisms, by monitoring and encouraging government compliance with the recommendations.
- ▶ **Invite the special mechanisms to take part in studies, conferences, seminars and workshops.** Special mechanisms often undertake joint projects with NGOs working in relevant areas.

The Special Rapporteur on Human Rights Defenders in Africa

This special mechanism of the African Commission is of particular relevance to human rights NGOs and civil society working in Africa, as it is directly concerned with the protection of their right to defend human rights. In particular the Special Rapporteur on Human Rights Defenders in Africa is mandated:

- ▶ to seek, receive, examine and to act upon information on the situation of human rights defenders in Africa
- ▶ to submit reports at every ordinary session of the African Commission
- ▶ to co-operate and engage in dialogue with member states, national human rights institutions, relevant intergovernmental bodies, international and regional mechanisms of protection of human rights defenders, human rights defenders and other stake-holders
- ▶ to develop and recommend effective strategies to better protect human rights defenders and to follow up on recommendations
- ▶ to raise awareness of and promote the implementation of the UN Declaration on Human Rights Defenders in Africa

Any NGO facing obstacles in pursuing human rights work, whether threats against their members, arbitrary arrest, torture or ill-treatment or undue interference by their own government, could inform the Special Rapporteur on Human rights Defenders in Africa. The Special Rapporteur may decide to bring the alleged violation to the attention of the African Commission, the relevant government or the international community as a whole. The information provided by NGOs may take the form of individual cases or broader patterns of violations of the right to defend human rights.

NGOs may send information directly to the Commissioner acting as Special Rapporteur on Human Rights Defenders in Africa or through the Secretariat of the African Commission.

6. EXAMINATION OF COMPLAINTS

Complaints from states

Complaints from individuals or NGOs

Complaints from states

The African Commission may review complaints by any state party alleging that another has violated the African Charter. The complaining state would normally submit its complaint first to the other state. If the issue is not settled to the satisfaction of both states within three months, either state may submit the matter directly to the Commission. Alternatively, the state making the complaint may submit the matter directly to the Commission. If an amicable solution cannot be reached, the Commission prepares a report stating the facts, its findings and any recommendations it wishes to make. These are sent to the states concerned and to the AU Assembly.

To date only one inter-state communication has been submitted to the African Commission, filed by the Democratic Republic of Congo against Burundi, Rwanda and Uganda (Communication 227/ 1999 – Democratic Republic of Congo v. Burundi, Rwanda, Uganda).

Complaints from individuals or NGOs

More common than complaints from states are complaints from individuals, groups of individuals and NGOs that there has been a violation of the African Charter. The author of the complaint does not have to be the victim of the violation.

The African Commission examines the complaint, including by hearing the parties concerned, in private. The decisions adopted are contained in the Commission's activity report.

How to submit a complaint

NGOs can send complaints alleging that there has been a violation of the African Charter to:

Address: The Secretary
 African Commission on Human and Peoples' Rights
 Karaiba Avenue
 P.O. Box 673
 Banjul, Gambia

Telephone: (220) 4392962
Fax: (220) 4390764
E-mail: achr@achpr.org

Admissibility

To take a case to the African Commission, NGOs must argue that a right protected in one or more of the articles of the African Charter has been violated by something the government has done, or failed to do.

The African Commission determines by a majority vote which communications to consider.

Complaints must satisfy seven requirements:

1. The complaint must indicate who is writing it. If the author is an individual, the complaint should indicate the person's name, address, age and profession. The author must be identified, even if they do not want their name or organization to be known to the government of the

state in question. The African Commission will protect the anonymity of the author if requested to do so by the author.

2. The complaint must not be incompatible with the OAU Charter, the Constitutive Act of the AU or the African Charter. It must allege a violation by a state party of a right or duty guaranteed by the African Charter which took place after the African Charter became legally binding on that state.
3. The complaint must not be written in disparaging or insulting language. It should simply state the facts and indicate how they constitute a violation of a right or duty protected by the African Charter.
4. The complaint must not be based exclusively on information gathered from media reports. Part of it must be based on other sources such as personal knowledge, statements of witnesses or government documents (such as court decisions or official gazettes).
5. Before agreeing to hear a case, the African Commission requires that all “local remedies” be exhausted. This usually means that the complainant has to have received a negative answer from the highest court or authority in their country. In some cases, however, the Commission may hear a case which is stalled by inaction, if there is no sign that the domestic courts or authorities will move on it. The complaint should indicate which national remedies have been tried and the results. If the remedy is discretionary – such as the right to seek pardon or commutation of a prison or death sentence – the Commission might decide that the remedy does not have to have been used. If the national remedy is likely to be futile, the Commission may well decide that it need not be used.
6. The complaint must be submitted promptly after national remedies have been exhausted. (The Commission has shown flexibility in interpreting the word “promptly”, but complaints should be brought to the Commission as soon as possible after domestic remedies have been exhausted.)
7. The complaint must not deal with cases that have been settled by the states involved in accordance with the principles of the UN Charter, the

OAU Charter, the Constitutive Act of the AU or the African Charter. Complaints should not be about cases that have been or are being considered by another treaty monitoring body such as the UN Human Rights Committee.

The Secretary of the African Commission registers the complaint when it is received. Before each session, the registered complaints are sent by the Secretary to the members of the Commission.

The states concerned are given the chance to comment on the complaint. The African Commission then decides by a simple majority whether the complaint satisfies the seven requirements outlined above and therefore should be considered.

If the African Commission decides that the complaint is inadmissible, it will promptly tell the complaint's author and the state concerned. It may reconsider this decision if the author writes again and demonstrates that the grounds for deciding that the complaint was inadmissible no longer exist.

Merits

If the African Commission decides that the complaint is admissible, the Commission informs the author and the state and asks them to submit their comments on the merits of the case. Comments are to be submitted before the ordinary session of the African Commission at which the case will be considered.

The state must send a reply to the African Commission within four months. This reply must explain the issues and indicate, if possible, any steps it has taken to remedy the situation. If a state fails to reply within this timeframe, the Commission will act on the evidence before it.

The African Commission sends a copy of all statements and explanations submitted by the state to the author of the complaint, who may submit additional information and observations within a time limit fixed by the Commission.

The African Commission considers the merits of the complaint in the light of all information submitted in writing by the author of the complaint and the state.

Both parties are invited to attend the session to present their case, although the hearing will take place even if only one party is present. During the session the parties may present written information to the Commission and both the state and the individual or NGO bringing the case are allowed to make oral presentations before the Commission.

The consideration of complaints by the African Commission can be a lengthy process, although the Commission may decide to take provisional measures to avoid irreparable damage to the victim of the alleged violation. Examples of interim/provisional measures include requesting a government not to execute individuals or calling on a government to avoid inflicting irreparable harm to a victim. The adoption of provisional measures does not, however, imply a decision on the substance of the complaint.

Decisions and recommendations

After careful consideration of all information provided by both sides, the African Commission may decide whether or not there has been a violation of the African Charter.

The African Commission's final decisions are called recommendations. They normally reflect its views on admissibility, an interpretation of the relevant provisions of the African Charter, a decision on whether the facts as

presented amount to a violation of the African Charter, and the actions required to be taken by the state party, when a violation is found.

However, although the African Commission can condemn human rights violations, and make recommendations to remedy the situation, the Commission's recommendations and statements are not, strictly speaking, legally binding. This is because the Commission was not set up as a court of human rights. The African Court on Human and Peoples' Rights has recently been established to complement the work of the African Commission and to make legally binding pronouncements. Although the African Commission cannot enforce its recommendations, states are expected to comply with its decisions, consistent with their good faith obligations.

The African Commission submits its observations and decisions as part of its activity report to the AU Assembly, which may authorize the Commission to publish its observations.

The African Commission's decisions may not be legally binding, but they carry significant authority. For NGOs, having a case endorsed by an official body such as the African Commission enhances credibility enormously. Such recognition can transform the seriousness with which an issue is taken in a country. It can also open new possibilities for NGOs to build coalitions, fundraise and expand. Often, the outcomes of cases taken to the African Commission help with local advocacy.

NGOs have a key role to play in publicizing the African Commission's activity report and decisions and in advocating for and monitoring the implementation of the Commission's decisions.

The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights was established by a Protocol to the African Charter adopted in 1998 which entered into force in January 2004. At the AU Summit in Khartoum, Sudan, in January 2006, the AU finally elected the 11 judges of the Court and located its seat in Tanzania.

Once fully operational, the African Court will provide a regional remedy for victims of human rights violations by African governments that have ratified the Protocol. The Court will complement and reinforce the work of the African Commission. It will consider cases of human rights violations brought by the Commission, by states and, if a state party accepts such jurisdiction, directly by victims themselves or their representatives, including NGOs.

Unlike the African Commission, the African Court possesses the authority to issue binding and enforceable decisions on cases brought before it. This means that the state will be obliged to act to remedy the human rights violation, in accordance with the judgement, including by paying compensation to the victim.

7. FURTHER INFORMATION

Websites

Academic publications

Amnesty International reports

Websites

African Commission on Human and Peoples' Rights: www.achpr.org

African Union: www.africa-union.org

Amnesty International: www.amnesty.org

The African Commission on Human and Peoples' Rights Information Sheets:

Information Sheet 1: Establishment:

www.achpr.org/english/information_sheets/ACHPR%20inf.%20sheet%20no.1.doc

Information Sheet 2: Guidelines on the submission of communications:

www.achpr.org/english/information_sheets/ACHPR%20inf.%20sheet%20no.2.doc

Information Sheet 3: Communication procedure:

www.achpr.org/english/information_sheets/ACHPR%20inf.%20sheet%20no.3.doc

Centre for Human Rights, University of Pretoria: www.chr.up.ac.za/

University of Minnesota Human Rights Library: www1.umn.edu/humanrts/

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Amnesty International reports

Oral Statements to the 41st Ordinary Session of the African Commission on Human and Peoples' Rights (AI Index: IOR 63/004/2007)

Criteria for the nomination and election of members of the African Commission on Human and Peoples' Rights (AI Index: IOR 63/002/2007)

A Guide to the African Charter on Human and Peoples' Rights (AI Index: IOR 63/005/2006)

Strengthening the African Commission on Human and Peoples' Rights must be a top priority: Amnesty International's recommendations to the African Union Colloquium on the African Charter on Human and Peoples' Rights (AI Index: IOR 63/002/2006)

Towards the Promotion and Protection of the Rights of Human Rights Defenders in Africa: Amnesty International's recommendations to the Focal Point on Human Rights Defenders of the African Commission on Human and Peoples' Rights (AI Index: IOR 63/004/2004)

The Protocol on the Rights of Women in Africa: Strengthening the promotion and protection of women's human rights in Africa (AI Index: IOR 63/005/2004)

Time to Commit to Human Rights Promotion and Protection in Africa: Amnesty International's recommendations to the 2nd AU Ministerial Conference on Human Rights (AI index: IOR 63/001/2003)

African Court on Human and Peoples' Rights: An Opportunity to Strengthen Human Rights Protection in Africa (AI Index: IOR 63/001/2002)

African Union: A New Opportunity for the Promotion and Protection of Human Rights in Africa (AI Index: IOR 63/002/2002)

Credibility in Question: proposals for improving the efficiency and effectiveness of the African Commission on Human and Peoples' Rights (AI Index: IOR 63/02/98)

Organization of African Unity: The African Charter on the Rights and Welfare of the Child (AI Index: IOR 63/06/98)

African Commission on Human and Peoples' Rights: The role of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (AI Index: IOR 63/05/97)



8. COMPLAINTS BEFORE THE AFRICAN COMMISSION: EXAMPLES

AMNESTY INTERNATIONAL AND OTHERS V. SUDAN, 48/90, 50/91, 52/91, 89/93 (1999)

These complaints relate to the situation prevailing in Sudan between 1989 and 1993. Two separate communications submitted by Amnesty International and Comité Loosli Bachelard deal with arbitrary arrests and detentions that took place following the coup of 30 July 1989 in Sudan. Both organizations alleged that hundreds of detainees were held without charge or trial and were tortured. The allegations were based on information from a wide variety of sources including interviews with eyewitnesses. It was further alleged that certain legislation removed the jurisdiction of ordinary courts in cases of detention without trial. According to the complainants, “political prisoners are kept in secret detention centres known as ‘ghost houses’”.

The complainants also alleged that there was widespread torture and ill-treatment in prisons and “ghost houses” in Sudan. Acts of torture included soaking detainees with cold water, severe overcrowding and mock executions. These allegations were supported by doctors’ testimonies and personal accounts of victims, among others.

The complaints alleged that individuals had been extrajudicially executed, and that death penalty legislation allowed for executions without the right of appeal to a higher court, or to legal representation in new trials.

The Sudanese government denied responsibility, claiming that “over 90 per cent of the alleged violations took place in areas under the control of the Sudanese People’s Liberation Army (SPLA), led by John Garang.” The government also claimed that all the people allegedly in detention had been released.

The African Commission sent a mission to Sudan to verify the facts contained in the complaints.

The African Commission declared the complaints admissible because “the seriousness of the human rights situation in Sudan and the great numbers of people involved render [domestic] remedies unavailable”. According to the Commission, “while states may face difficult situations the Charter does not contain a general provision permitting states to derogate from their responsibilities in times of emergency, especially for what is generally referred to as non-derogable rights.” The Commission commended the adoption of a new Constitution and the repeal of emergency laws which seriously undermined the rights guaranteed in the African Charter. However, the Commission stated that “these new changes have no effect on the past violations, which it is required, by virtue of its mandate to protect and promote human rights, to rule upon.” The Commission then held that “even if these are not all the work of forces of the government, the government has a responsibility to protect all people residing under its jurisdiction.” The Commission found violations of articles 2, 4, 5, 6, 7, 8, 9, 10 and 26 of the African Charter, and asked the government of Sudan to put an end to human rights abuses mentioned in the communications.

ARAB ORGANISATION FOR HUMAN RIGHTS

V.

EGYPT, 244/2001 (2003)

The Arab Organisation for Human Rights (AOHR), petitioned the African Commission following the trial and conviction by the Supreme Security Court of Egypt in May 2001 of Professor Saadeddin Ibrahim, Director and Chair of the Board of Directors of the Ibn Khaldun Center for Development Studies, and treasurer of Hay'at Da'am al-Nakhibat (Association for the Support of

Women Voters, known in Egypt as the Hoda Association), together with 27 others. They were all working either as permanent employees or project associates of the two organizations and 10 of them were tried in absentia.

The complainant claimed that the government of Egypt had violated the pre-trial and trial rights, freedom of expression, rights to appeal, and rights to effective domestic remedies of the accused. However, before the communication was heard the Court of Cassation in Egypt acquitted Professor Saadeddin Ibrahim.

CENTER FOR ECONOMIC AND SOCIAL RIGHTS AND SOCIAL AND ECONOMIC RIGHTS ACTION CENTER (SERAC)

V.

NIGERIA, 155/96 (2001)

In 1996 the Center for Economic and Social Rights and the Social and Economic Rights Action Center (SERAC) alleged that the military government of Nigeria had caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People as a result of its direct involvement in oil production through the state oil company, the Nigerian National Petroleum Company (NNPC), the majority shareholder in a consortium with Shell Petroleum Development Corporation (SPDC).

The complaint alleged that the oil consortium had exploited oil reserves in Ogoniland with no regard for the health or environment of the local communities, dispersing toxic wastes into the environment and local waterways in violation of applicable international environmental standards. The complaint alleged that the Nigerian government had condoned and



facilitated these violations by placing the legal and military powers of the state at the disposal of the oil consortium and that the Ogoni communities had not been involved in decisions affecting the development of Ogoniland.

The complaint further alleged that Nigerian security forces had attacked, burned and destroyed several Ogoni villages and homes under the pretext of dislodging officials and supporters of the Movement for the Survival of Ogoni People (MOSOP). The government had failed to investigate these attacks, let alone punish the perpetrators. The Nigerian government had also destroyed and threatened Ogoni food sources through poisoning soil and water, destroying crops and killing farm animals. The security forces had created a state of fear that made it impossible for many Ogoni villagers to return to their fields and animals. The destruction of farmland, rivers, crops and animals created malnutrition among certain Ogoni communities.

The African Commission found the Federal Republic of Nigeria in violation of Articles 2 (take steps to realize the rights), 4 (right to life), 14 (right to property), 16 (right to health), 18(1) (protection of the family), 21

(right to free disposal of wealth and natural resources) and 24 (right to a satisfactory environment) of the African Charter.

The African Commission appealed to the government of the Federal Republic of Nigeria to protect the environment, health and livelihood of the people of Ogoniland by:

- ▶ stopping all attacks on Ogoni communities and leaders and permitting free access to the territory;
- ▶ investigating the alleged violations and prosecuting those responsible;
- ▶ ensuring adequate compensation to victims of human rights violations, including assistance to victims of government-sponsored raids, and a comprehensive clean-up of lands and rivers damaged by oil operations;
- ▶ ensuring appropriate environmental and social impact assessments before any future oil development and effective and independent oversight bodies for the petroleum industry;
- ▶ and providing information on health and environmental risks and access to regulatory and decision-making bodies to communities likely to be affected by oil operations.

The African Commission called on the government of Nigeria to keep it apprised of developments.

This case was significant because it recognized the responsibility of the government to protect its citizens from violations committed by non-state actors. It also fleshed out the obligations imposed on states by Articles 16, 24 and 21 of the African Charter.

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The African Commission on Human and Peoples' Rights is the main regional human rights body in Africa. This booklet provides practical advice on how to access and work with the African Commission.

Human rights advocates and non-governmental organizations are key to the success of the African Commission's efforts to promote and protect human rights. Their knowledge and understanding make them a vital source of information for the Commission and their engagement on the ground means they are uniquely placed to promote the Commission's work. Equally, the African Commission's decisions, recommendations and resolutions lend authority to the human rights campaigning and advocacy of non-governmental organizations.



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