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Human rights developments in the African Union during 2010 and 2011

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Summary

This article considers human rights developments in the African Union (AU) during 2010 and 2011; two years that saw the work of the leading human rights institution on the African continent, the African Commission on Human and Peoples' Rights (African Commission), stagnate, in particular in its work on individual communications. Despite increased resources, the Commission and its Secretariat have been unable to increase the visibility and impact of its work. This situation was exacerbated by the interference with the work of the Commission by the political organs of the AU, most prominently by refusing to publish the Activity Report of the Commission. This delayed the publication of the 29th Activity Report by a year. The African Court on Human and Peoples' Rights is off to a slow start, spending much time and resources on trying to convince states to ratify the Protocol and make the declaration allowing individuals and NGOs to submit cases to the Court. The article also covers developments in the African Committee on the Rights and Welfare of the Child, which for the first time adopted a decision on a communication, the African Peer Review Mechanism and the AU policy organs.

1 Introduction

The year 2011 celebrated 30 years since the African Charter on Human and Peoples' Rights (African Charter) was adopted, 25 years

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since its entry into force and ten years since the entry into force of the Constitutive Act of the African Union (AU), which set out the promotion and protection of human rights as one of the objectives of the continental organisation that replaced the Organisation of African Unity (OAU). In 2011 the AU adopted a declaration on shared values which included a commitment to human rights.

Despite the regional institutional framework which had been established, Africa faces many challenges in ensuring the protection of the human rights of everyone living on the continent. Much remains to move from rhetoric to reality. The article considers human rights developments in the AU during 2010 and 2011. The focus is on the work of the African Commission on Human and Peoples' Rights (African Commission). The article considers the work of the African Court on Human and Peoples' Rights, the African Committee on the Rights and Welfare of the Child, the African Peer Review Mechanism and the role of the AU policy organs in promoting and protecting human rights.

2 African Commission on Human and Peoples' Rights

2.1 Composition

In July 2010 the AU Assembly appointed Lucy Asuagbor from Cameroon as member of the African Commission for a period of three years.[1] She replaced Commissioner Angela Melo. At the AU Summit in July 2011, Maya Sahli Fadel (from Algeria) and Med Kaggwa (from Uganda) were elected to six-year terms on the Commission, while Pacifique Manirakiza (from Burundi) was elected to a four-year term[2] to complete the mandate of Commissioner Mohamed Fayek (from Egypt), who was elected for a six-year term in 2009,[3] but who chose not to complete his term. Commissioners Reine Alapini-Gansou (from Benin) and Pansy Tlakula (from South Africa) were re-elected for six-year terms.

At its session in October 2011, the African Commission elected Commissioner Dupe Atoki as Chairperson and Commissioner Zainabo Sylvie Kayitesi as Vice-Chairperson for a period of two years.

At the end of 2011 the Commission was composed of seven women and four men. The Commission had three members from West Africa (Benin, Mali and Nigeria); three from East Africa (Burundi, Rwanda and Uganda); one from Central Africa (Cameroon); two from Southern Africa (Mauritius and South Africa); and two from North Africa (Algeria and Tunisia). The commissioners are composed of a mix of legal practitioners (Alapini-Gansou, Atoki and Maiga); judges (Asuagbor, Kayitesi and Yeung);an NGO leader (Khalfallah); academics (Manirakiza

1 Assembly/AU/Dec.313(XV).

2 Assembly/AU/Dec.378(XVII).

3 Assembly/AU/Dec.244(XIII).

and Sahli Fadel); a head of a national human rights institution (Kaggwa); and a head of an electoral commission (Tlakula).

2.2 Sessions

The African Commission held three sessions totalling 40 days in 2010 (8th extraordinary session (22 February to 3 March); 47th ordinary session (12 to 26 May); and 48th ordinary session (10 to 24 November)); and four sessions totalling 42 days in 2011(9th extraordinary session (23 February to 3 March); 49th ordinary session (28 April to 12 May 2011); 50th ordinary session (24 October to 5 November 2011); and 10th extraordinary session (12-16 December)).

All the sessions were held in Banjul, The Gambia, where the Secretariat of the Commission is located. To hold sessions outside of Banjul would be good for the Commission's visibility. The Commission should also reflect on moving its headquarters from Banjul, considering the serious human rights violations in The Gambia, including threats against the Commission itself.[4]

2.3 Resources

The African Commission was allocated US $2 968 874 from the AU budget for 2010 which, together with donor contributions of US $1 960 978, meant a total budget of close to US $5 million for 2010.[5] The Commission was allocated US $3 624 600 from the AU budget for 2011 which, together with donor contributions of US $4 318 289, meant a total budget of close to US $8 million for 2011.[6] This funding level is relatively similar to the Inter-American Commission on Human Rights which in 2011 received US $4,3 million from the Organization of American States and US $5,1 million from donors.[7] However, the Inter-American Commission is arguably much more productive. For example, the African Commission receives less than one per cent of the more than 1 500 petitions that the Inter-American Commission receives in a year.

The African Commission is still suffering from understaffing, in particular with regard to legal officers. Some of the blame for this situation falls on the administrative processes of the human resources department of the AU Commission which is responsible for recruitment. However, it is clear that the African Commission cannot, as in the past, blame a lack of performance on a lack of resources.

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4 F Viljoen *International human rights law in Africa* (2012) 293.

5 EX.CL/Dec.600(XVIII).

6 EX.CL/Dec.600(XVIII).

7 http://www.oas.org/en/iachr/mandate/financial_resources.asp (accessed 3 April 2012).

2.4 Rules of Procedure

The African Commission adopted new Rules of Procedure (RoP) in 2010. The new RoP replaced the 2008 interim RoP. A welcome addition is the incorporation of the provision on the incompatibility of membership of the Commission with certain government offices.[8] The Commission now has the possibility to declare vacant a seat of a commissioner who takes up such an office.[9]

The RoP include promising provisions on visibility, although there is a contradiction between the promise of transparency and an overemphasis on confidentiality, stemming from article 59 of the African Charter. The RoP provide that the report of each session should be published on the Commission's website after the report has been approved by the Commission.[10] This would be one way to navigate around the requirement that the Activity Report of the Commission must be considered by the AU Assembly before it is published.[11] However, Rule 61 provides that '[r]eports, decisions, session documents and all other official documents' should only be published as part of the report submitted to the AU Assembly, while state reports only should be published on the website directly when they are received. This goes far beyond what is required under article 59 of the African Charter.[12]

The RoP provides that the African Commission, or its bureau when the Commission is not in session, shall forward information about serious or massive human rights violations requiring urgent action to avoid irreparable harm, to the Chairperson of the AU Assembly, the Peace and Security Council, the Executive Council and the Chairperson of the AU Commission.[13] The Commission or its special mechanisms may also act in such circumstances, including by issuing urgent appeals.[14] When the Commission's attention is drawn to serious or massive human rights violations through a communication, the Commission may also refer the case to the African Court on Human and Peoples' Rights (African Court) if the state where the violations took place has ratified the Protocol establishing the Court.[15]

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8 RoP Rule 7. This corresponds to the *note verbale* sent by the AU Commission calling for states to nominate members to the Commission. See Viljoen (n 4 above) 290-291.

9 RoP Rule 7(3).

10 RoP Rules 37(3)& 38.

11 Art 59 African Charter; RoP Rule 59.

12 M Killander 'Confidentiality v publicity – Interpreting article 59 of the African Charter on Human and Peoples' Rights' (2006) 6 *African Human Rights Law Journal* 572-581.

13 RoP Rules 79, 80& 84.

14 RoP Rule 80(2).

15 RoP Rule 84(2).

The Commission has rarely made use of this provision. In 2010 the Commission referred the situation of religious clashes in Jos, Nigeria, to the Peace and Security Council.[16] As discussed below, the Commission has used the provision on referring a case of massive violations to the African Court on one occasion, in a case dealing with Libya.

Other provisions of the RoP are discussed below under the various monitoring methods used by the African Commission.

2.5 State reporting

Every state party to the African Charter is expected to submit reports to the African Commission every two years on measures taken to implement the Charter. During the 48thsession, the Commission considered the combined 8th, 9th and 10th periodic reports of the Democratic Republic of the Congo (DRC).[17] The Commission adopted its concluding observations on the reports at the same session. The periodic reports of Burkina Faso, Libya, Namibia and Uganda were considered during the 49th session.[18] The African Commission adopted concluding observations on Namibia at the same session, while the adoption of the concluding observations on Burkina Faso and Libya was deferred because of time constraints. The adoption of the concluding observations on Uganda was deferred since the Ugandan delegation had failed to respond to the questions posed by the Commission during the examination of the report.[19] The concluding observations on Burkina Faso and Uganda were adopted at the 50th session.

At the 50th session, the African Commission considered the periodic reports of Nigeria, Togo and Burundi.[20] It adopted concluding observations on Nigeria and deferred consideration of the concluding observations on Togo and Burundi to the next session, pending additional information from the two states.

According to the Commission's Rules of Procedure, concluding observations should be included in the Activity Report.[21] So far no concluding observations have been included in the Activity Reports and the information provided on the website is not complete.

Many states are long overdue with their reports and some have never submitted a report despite having been party to the African Charter for many years. As of May 2011, 12 countries had never submitted reports to the Commission.[22]

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16 30th Activity Report para 258.

17 29th Activity Report, para 174.

18 30th Activity Report, para 217.

19 30th Activity Report, para 219.

20 31st Activity Report, para 12.

21 RoP Rule 77(3).

22 Comoros, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Gabon, Guinea Bissau, Liberia, Malawi, São Tomé and Principe, Sierra Leone, Somalia. 31st Activity Report, Annexure.

2.6 Status of human and peoples' rights on the continent

In January 2011, the AU Executive Council called upon the African Commission to include in its future reports a report on the status of human and peoples' rights in Africa.[23] These reports should address positive developments, causes of concern and the measures taken by the African Commission in relation to human rights issues on the continent.

The Commission adopted the first such status report at its 9th extraordinary session.[24] As a positive development, the Commission referred to the many elections that were conducted around the continent in 2010. It mentioned the referendum in South Sudan which created the new state of South Sudan as a significant exercise of the right to self-determination. Further positive developments included the adoption of the first African law on indigenous peoples by the Republic of the Congo, a law on the rights of persons with disabilities in Uganda and a law on the rights of older persons in Mauritius. The adaptation of the educational system in Namibia to the mobile lifestyle of indigenous communities, and the adoption of community service as an alternative to imprisonment in Zimbabwe and Lagos State of Nigeria were commended by the Commission. The Commission also took note of the ratification by African states of international and regional human rights instruments. It commended Burkina Faso, Ghana, Malawi, Mali and Tanzania for having made declarations allowing direct access for individuals and non-governmental organisations (NGOs) with observer status before the Commission to the African Court.

The African Commission expressed concern at reports of arbitrary arrest, arbitrary detention, torture, ill-treatment, harassment, the assassination of journalists, human rights defenders and others, as well as overcrowding and malnutrition in prisons. The Commission also expressed concern at reports relating to discrimination, marginalisation, prejudices, stereotyping and exclusion from political participation of vulnerable groups such as women, indigenous populations, people living with HIV/AIDS, and sexual minorities, as well as growing religious intolerance in some states. The Commission similarly noted that not all state parties had established national human rights institutions (NHRIs) and that not all existing NHRIs comply with the Paris Principles. In addition, many of the existing NHRIs are under-resourced.

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23 Executive Council Decision EX.CL/Dec.639 (XVIII), adopted during the 18th ordinary session of the Council, in Addis Ababa, Ethiopia, from 27 to 28 January 2011, para 2.

24 30th Activity Report of the African Commission, paras 245 *et seq*. The information included here is based on this report.

The African Commission adopted the second report on the situation of human and peoples' rights on the continent at its 50th session.[25] In this report, the Commission noted the adoption of laws, such as the Freedom of Information Act in Nigeria, the Children's Protection and Welfare Act in Lesotho and institutions such as the National Observer of Places of Deprivation of Liberty in Senegal, the Child Protection Unit within the South African Police Service, and the Burundi National Human Rights Commission. The Commission also referred to the elections conducted during the period covered. It commended the improvement in the representation of women in parliaments, ministries and other decision-making positions in Algeria and a constitutional amendment which guarantees the right to equality of men and women. The African Commission commended the inclusion of provisions prohibiting torture in the training manual of the Ugandan military and the commutation of death sentences in accordance with judgments of Ugandan courts. The Commission also commended the adoption of the law relating to the protection of persons with disabilities in Burkina Faso.

On the negative side, the Commission referred to the widespread arrest and arbitrary detention of civilians, journalists and human rights defenders. It also referred to the conflict and famine in Somalia which had resulted in massive refugee influx to Kenya. The Commission noted with concern reports of extra-judicial killings and persecution of African migrant workers in Libya, as well as the killing of innocent civilians during the Libyan conflict. The Commission also criticised the low number of ratifications of the Protocol establishing the African Court and the fact that only five states had made declarations allowing individuals and NGOs with observer status direct access to the Court.

The status of human and peoples' rights reports may be useful in providing an overview of current developments based on the activities undertaken by the Commission. Although concise and informative, they should not be produced to the detriment of other important functions of the Commission, such as the communications procedure.

2.7 Resolutions and other documents adopted by the African Commission

One way through which the Commission discharges its promotional and protective mandates is the adoption of resolutions. The resolutions can be thematic or country-specific. Accordingly, the Commission adopted several resolutions on a variety of issues in

25 31st Activity Report of the African Commission, para 24 *et seq.*

2010 and 2011: 11 at the 48th session;[26] six at the 49th session;[27] seven at the 9th extraordinary session;[28] and six at the 50th session.[29] The details of some of the most important thematic resolutions are discussed below.

In the Resolution on Elections in Africa (2010), the African Commission deplored the recurrence of election-related violence and human rights violations. It called upon states to create conditions conducive to the conduct of free, fair and credible elections and urged states to provide equitable access to state-controlled media and resources to opposition parties. The Commission also called

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26 29th Activity Report, para 197. These resolutions include (i) Resolution on Elections in Africa; (ii) Resolution on Repealing Criminal Defamation Laws in Africa; (iii) Resolution on the Co-operation between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism; (iv) Resolution on the Deteriorating Situation of Indigenous People/Communities in Some Parts of Africa; (v) Resolution to Increase Members of the Working Group on Older Persons and People with Disabilities in Africa; (vi) Resolution on the Appointment of a Special Rapporteur on Human Rights Defenders in Africa; (vii) Resolution on the Appointment of Members of the Committee on the Protection of the Rights of People Living with HIV(PLHIV) and those at Risk, Vulnerable to and Affected by HIV; (viii) Resolution on the Ratification of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights; (ix) Resolution on Crimes committed against Women in the Democratic Republic of Congo (DRC); (x) Resolution on Securing the Effective Realisation of Access to Information in Africa; and (xi) Resolution to Increase the Membership of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

27 30th Activity Report, para 233. These resolutions include (i) Resolution on the Appointment of the Special Rapporteur on Refugees, Asylum Seekers, Internally-Displaced Persons and Migrants in Africa; (ii) Resolution on the Rights of Indigenous Women in Africa; (iii) Resolution on the Appointment of Members of the Research Team on the Study of Freedom of Association in Africa; (iv) Resolution on the Safety of Journalists and Media Practitioners in Africa; (v) Resolution on the Renewal and Extension of the Mandate of the Advisory Committee on Budgetary and Staff Matters; and (vi) Resolution on the Nomination of Expert Members to the Working Group on the Rights of Older Persons and People with Disabilities in Africa.

28 31st Activity Report, para 22. These resolutions include (i) Resolution on the Human Rights Situation in the Great Socialist People's Libyan Arab Jamahiriya; (ii) Resolution on the Human Rights Situation in the Republic of Tunisia; (iii) Resolution on the Human Rights Situation in the Arab Republic of Egypt; (iv) Resolution on the Human Rights Situation in the People's Democratic Republic of Algeria; (v) Resolution on the Human Rights Situation in the Republic of Côte d'Ivoire; (vi) Resolution on the Electoral Process and Participative Governance in the Republic of Benin; and (vii) Resolution on the Electoral Process and Participative Governance in the Federal Republic of Nigeria.

29 The Commission adopted resolutions relating to the renewal and reconstitution of its Special Mechanisms; membership of its Advisory Committee on Budgetary and Staff Matters and extending its mandate; Resolution Establishing a Working Group on Communications and Appointment of Members; Resolution on the General Human Rights Situation in Africa; Resolution on the Situation of Human Rights Defenders in Africa; and a Resolution on Indigenous Peoples' Rights in the Context of the World Heritage Convention and Designation of Lake Bogoria as a World Heritage Site.

on states to ensure the protection of journalists, human rights defenders, election observers and monitors, before, during and after elections. It further reiterated its call on states to ratify the African Charter on Elections, Democracy and Governance. This Resolution is a clear improvement over the Resolution on Elections in Africa (2008), which did not expressly address the issue of equitable access to state-owned media and the protection of election observers and monitors.

In the Resolution on Repealing Criminal Defamation Laws in Africa (2010), the African Commission called on states to repeal or revise criminal defamation or insult laws in line with the freedom of expression guarantee in the African Charter. It urged journalists and media practitioners to respect the principles of ethical journalism and standards in gathering, reporting, and interpreting accurate information.

In the Resolution on Securing the Effective Realisation of Access to Information in Africa, the Commission took cognisance of the absence of access to information laws in Africa. Currently, only seven African countries have comprehensive access to information legislation, namely, Angola, Ethiopia, Liberia, Nigeria, South Africa, Uganda and Zimbabwe. The Commission tasked the Special Rapporteur on Freedom of Expression and Access to Information to develop a model law on access to information in Africa. In accordance with the Resolution, a draft model law has been prepared.[30] In collaboration with civil society organisations (CSOs), the Special Rapporteur has organised several workshops in South, West and East Africa with a view to discussing the draft.

To reinforce the 2004 Resolution on Human Rights Defenders in Africa and in cognisance of the frequent attacks on human rights defenders, the African Commission adopted the Resolution on the Situation of Human Rights Defenders in Africa (2011). In this Resolution, the Commission called upon states to recognise the role of human rights defenders in the promotion and protection of rights and freedoms. It similarly encouraged states to adopt specific legislation on the protection of human rights defenders to protect them against violence and reprisal. It is unfortunate that the Resolution does not address the issue of access to funds, including from foreign sources, of human rights defenders in Africa as some countries, including Egypt and Ethiopia, have legislation that makes it illegal for human rights advocates to receive funds from foreign sources.

At the 50th ordinary session, the African Commission launched the Principles on the Implementation of Economic, Social and Cultural Rights in the African Charter and the Guidelines on Reporting by

30 In collaboration with the Special Rapporteur, the Centre for Human Rights co-ordinates the drafting of the law. The Draft Model Law is available at http://www.chr.up.ac.za/index.php/comments.html (accessed 27 April 2012).

State Parties on Economic, Social and Cultural Rights under the African Charter. The Principles clarify the nature of obligations that socio-economic rights entail. The Reporting Guidelines are intended to ensure that states provide sufficient detail in their periodic reports about the status of socio-economic rights in their jurisdictions.

2.8 Promotional missions

Members of the African Commission undertook promotional missions to Algeria (December 2010), Cameroon (February 2011), DRC (April 2011), Central African Republic (June 2011), Niger (July 2011) and Kenya (October 2011). Promotional visits are important as they provide opportunities for dialogue to members of the Commission with governments, CSOs and other stakeholders on the human rights situation in the concerned state.

In a positive development, the visit to Cameroon served as a follow-up and evaluation of the implementation of recommendations made by the African Commission during the visit of the Special Rapporteur on Human Rights Defenders in 2006, and implementation of concluding observations made during the consideration of Cameroon's periodic report presented at the 47th ordinary session of the Commission. The visit to the DRC also served to follow up on the concluding observations adopted by the Commission. The use of promotional visits as mechanisms of follow up on recommendations is an important beginning, given that one of the main challenges the Commission faces is the failure of states to comply with its recommendations, resolutions and concluding observations.

Promotional missions are conducted at the request of the Commission or at the invitation of a state.[31] The missions include the relevant special mechanisms such as Special Rapporteurs, working groups or committees. With regard to a proposed mission to Sierra Leone, which was intended to include all the special mechanisms of the Commission, the government chose only to invite the Special Rapporteur on Prisons. As the Commission felt this was too limited, it decided not to conduct a mission.[32] However, the special mechanisms sometimes undertake missions without other commissioners. For example, the Special Rapporteur on Prisons and Other Places of Detention visited Nigeria and Tunisia.

Mission reports should be prepared within 30 days with an additional 30 days for the participants to provide input to the draft report prepared by the Secretariat, whereafter it should be adopted by the Commission. The adopted report should be sent to the state for its comments. After 60 days, the report should be published with the

31 29th Activity Report, annex II, para 9 (Cameroon), 15 (DRC).

32 29th Activity Report para 92.

comments of the state attached.[33] Whether the mission reports should be published separately or be included in the activity report is unclear. In practice, mission reports have neither been included in the Activity Reports nor published on the Commission's website.[34]

No protection missions were undertaken in 2010 and 2011.

2.9 Communications

At its 8th extraordinary session, the African Commission adopted its decision on Communication 373/09, *Interights and Another v Mauritania*.[35] In the communication, Interights, the Institute for Human Rights and Development in Africa and *Association mauritanienne des droits de l'homme* requested a review of the Commission's decision in Communication 242/2001, in which the Commission held that the prohibition of a political party violated freedom of association.[36] The request for review was submitted in September 2004, following the decision of the African Commission adopted in June 2004.

The complainants argued that the Commission had failed to address all the allegations made in Communication 242/2001. The Commission acknowledged that it had failed to pronounce itself on the allegations with regard to articles 1, 2 and 14 of the African Charter.[37] The Commission held that the complainants had not shown how the victim had been discriminated against and that there was therefore no violation of article 2 of the Charter. The Commission held that Mauritania had violated the right to property in article 14 of the African Charter, since it had not shown that the confiscation was in accordance with law and for the public interest. The Commission also held that any finding of a violation of the Charter constituted a violation of the obligation to recognise the rights in the African Charter as set out in article 1.

The complainants further argued that the Commission had not been impartial, since one of the members of the Commission in 2004 was a national of Mauritania and participated in the deliberations. The Commission noted that, according to its records, the Mauritanian commissioner did not participate in the deliberations on Communication 242/2001. The complainants had therefore not shown that the Commission had not been impartial in its decision.

At its 47th ordinary session, the African Commission decided two cases, one on admissibility and one on the merits.

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33 RoP Rule 60.

34 However, it should be noted that the African Commission launched an improved website in May 2012 which includes some mission reports.

35 The communication number is 373/09, even though the request for review was submitted in 2004.

36 *Interights & Others v Mauritania* (2004) AHRLR 87 (ACHPR 2004).

37 Para 38.

The Commission held that Communication 333/2006, *Southern Africa Human Rights NGO Network and Others v Tanzania*, was inadmissible. The complainants argued that a judgment of the Court of Appeal of Tanzania delivered in 1995, which held that the death penalty was permissible, violated article 4 of the African Charter. The Commission declared the communication inadmissible since the complainants had not explained why it had taken them more than ten years after the judgment of the Court of Appeal to submit the case to the Commission. The communication therefore did not comply with article 56(6) of the African Charter, which provides that '[c]ommunications ... shall be considered if they are submitted within a reasonable period from the time local remedies are exhausted'. Why it took the Commission, for its part, three and a half years and 15 pages to reach the conclusion that the communication was inadmissible is not clear.

Communication 313/05, *Good v Botswana*, dealt with the deportation in 2005 of Professor Good, an Australian citizen, who had lived legally in Botswana for 15 years. His deportation followed an article critical of the presidential succession in Botswana. According to Botswana law, the President could decide on deportation without giving any reasons and such a decision was not reviewable by the courts. The African Commission held that the lack of possibility of review violated the right of access to court in article 7(1) of the African Charter and the right to deportation proceedings in accordance with the law as provided in article 12(4) of the Charter. The Commission further held that '[t]he expulsion of a non-national legally resident in a country, for simply expressing their views ... is a flagrant violation of article 9(2) of the Charter'. The Commission further held that to only give Professor Good 56 hours to leave the country, which forced him to leave his 17 year-old daughter behind, violated the right to family life as provided in article 18 of the African Charter. The decision is in line with the Commission's established case law with regard to deportation.

In order to avoid being held accountable, Botswana, to its discredit, challenged the existence and competence of the African Commission to deal with the case. Botswana argued that the reference to the OAU in the African Charter meant that the African Commission no longer existed after the dissolution of the OAU and the creation of the AU. Hardly surprisingly, the African Commission held that the termination of a treaty other than the African Charter could not affect the existence of the African Commission.

At its 48th ordinary session, the African Commission declared two communications inadmissible. Communication 305/05, *Article 19 and Others v Zimbabwe*, involved the compliance of the radio broadcasting regulatory regime of Zimbabwe with several provisions of the African Charter. The Commission held that communications should be submitted within a reasonable time unless there is 'a good and compelling reason' for the delay. In this particular case, a delay of two years after the exhaustion of local remedies was considered

unreasonable. The complainants submitted that the delay was intended to 'wait and see' whether the judgment of the Supreme Court, which partly ruled in their favour, would be implemented. The Commission rejected this submission on the ground that the communication was in relation to the provisions of the broadcasting law that were declared constitutional by the Supreme Court and not those which were declared unconstitutional. There was therefore no need to wait for the implementation of the judgment. The Communication was thus inadmissible.

Communication 338/07, *Socio-Economic Rights and Accountability Project (SERAP) v Nigeria*, was declared inadmissible because of a lack of exhaustion of local remedies as the complainant, according to the Commission, had only made 'generalised statements about the unavailability of local remedies'.[38] The complainant has had another communication declared inadmissible on the same grounds before the Commission,[39] but has been a successful litigant before the ECOWAS Community Court of Justice which does not require the exhaustion of local remedies.

Two communications were declared inadmissible at the 9th extraordinary session.[40]

Communication 306/05, *Muzerengwa and 110 Others v Zimbabwe*, dealt with forced eviction. It was declared inadmissible by the Commission for non-exhaustion of local remedies because the complainants had only raised procedural issues before the local courts.[41]

Communication 361/08, *Zitha v Mozambique*,[42] concerned the disappearance of the complainant's father in 1975, long before the African Charter was adopted and ratified by Mozambique. The Commission held that the concept of 'continuous violations can be applied to acts of disappearances, which can be qualified as a violation that occurs and continues over time, until it ceases, that is, until the missing person is no longer disappeared'.[43] Due to the continued nature of enforced disappearances, the Commission had temporal jurisdiction. The communication was, however, rejected on the ground that local remedies had not been exhausted.[44] The Commission

38 Para 66.

39 *Socio-Economic Rights and Accountability Project v Nigeria* (2008) AHRLR 108 (ACHPR 2008).

40 Communication 306/05,*Muzerengwa &110 Others v Zimbabwe*. The case concerned eviction from land without the provision of alternative land.

41 Para 73.

42 Communication 361/08, *Zitha v Mozambique.*

43 Paras 93 & 94.

44 RoP Rule 108(1).

also held that the communication had not been submitted within a reasonable time.[45]

At the 9th extraordinary session, the Commission also decided one communication on the merits: Communication 334/06, *Egyptian Initiative for Personal Rights and Interights v Egypt*, However, the decision has not been attached to the Activity Report.[46] In the case, the Commission held that Egypt had violated the right to fair trial and the prohibition against torture in a case where three persons were sentenced to death for terrorism.[47]

All in all, the Commission in two years decided two cases on the merits (of which one has not been published) and declared four cases inadmissible. This is a deplorable record, considering the resources that have been put at the disposal of the Commission.

The oldest pending communication was submitted to the African Commission in 2002, while five communications that have not yet been decided were submitted in 2003.[48] The main reason given for the deferral of communications is the lack of response from the respondent state. This should not be a relevant reason for deferral of communications for many years in light of the Commission's jurisprudence that, in the absence of a response from the government, there is a presumption that what the complainant had submitted is correct.[49] The Rules of Procedure provide that after seizure of a complaint, the complainant has two months to develop arguments on admissibility, whereafter the state has two months to respond.[50] The complainant then has one month to respond to the issues raised by the state,[51] after which the Commission may hold a hearing and make a decision on admissibility. When a complaint has been declared admissible, the complainant has 60 days to submit arguments on the merits, whereafter the state has 60 days to respond.[52] The complainant then has 30 days to respond to the issues raised by the state.[53] Thus, if no hearings are held, the

45 RoP Rule 108(2).

46 The Commission noted in the 30th Activity Report (para 239) that the decision would be included in the next Activity Report. However, it was not attached to the 31st Activity Report..This delay of publication of decisions is unfortunate, but unfortunately not unusual. Eg, the decision in *Sudan Human Rights Organisation & Another v Sudan* (2009) AHRLR 153 (ACHPR 2009), which was adopted at the Commission's session in May 2009, was only published in the 28th Activity Report adopted by the Assembly in July 2010.

47 The decision has been published by Interights on its website, see http://www.interights.org/files/195/ Taba%20Judgment.pdf (accessed 18 May 2012).

48 2004 (7), 2005 (4), 2006 (13), 2007 (17), 2008 (6), 2009 (15), 2010 (5).

49 See eg *Free Legal Assistance Group & Others v Zaire* (2000) AHRLR 74 (ACHPR 1995).

50 RoP Rule 105.

51 RoP Rule 105(3).

52 RoP Rule 108(1).

53 RoP Rule 108(2).

Commission should have the material necessary for a decision within 10 months from seizure.

Considering the relatively low number of communications received, the African Commission should have been able to handle its workload more efficiently.

The Rules of Procedure provide that the African Commission 'may solicit or accept' interventions by others than the complainant and the respondent state, so-called *amicus curiae* briefs.[54] The utility of this provision might be limited in view of the fact that the Commission has interpreted article 59(1) of the African Charter to require that no information about communications may be published before the final decision is included in the Activity Reports, which is published only after being considered by the AU Assembly. The Commission should at least, as it has occasionally done, publish the names of all pending cases in the Activity Report. Potential *amici curiae* can then identify the cases the Commission has been seized of. They can then contact the complainant/s to get information on the subject matter of the case and decide whether they wish to submit *amicus curiae* briefs.

The 2010 Rules provide that decisions on the merits shall not be transmitted to the parties until publication is authorised by the Assembly through the adoption of the Activity Report.[55] This is a change from the provision in the 2008 interim Rules of Procedure, which provided that the decision should be transmitted to the parties with a note that they should keep the decision confidential until the adoption of the Activity Report.[56] This provision only breeds further unnecessary delay in implementing the decisions of the Commission.

If a violation is found, the state should provide information to the Commission on how it has implemented the decision within 180 days of having been informed of the decision.[57]

3 African Court on Human and Peoples' Rights

3.1 Composition

Four new members of the African Court were elected at the AU Summit in July 2010: Augustino SL Ramadhani from Tanzania; Duncan Tambala from Malawi; Elsie Nwanwuri Thompson from Nigeria; and Sylvain Ore from Côte d'Ivoire. Judge Fatsah Ouguergouz from Algeria was re-elected as a member of the Court. These judges were appointed

54 RoP Rules 85 & 99(16).

55 RoP Rule 110(3).

56 RoP (2008) Rule 113(4).

57 RoP Rule 112(2).

for six-year terms, with the exception of Mr Ore, who was appointed for a four-year term.[58]

3.2 Resources

The African Court was allocated US $6 169 591from the AU budget for 2010 and secured US $1 769 784 from partners for the same period.[59] Its budget for 2011 was thus close to US $8 million. The Court was allocated US $6 478 071 from the AU budget for 2011 and secured US $2 911 544 from partners for the same period.[60] Its budget for 2011 was thus close to US $9,4 million. This can be contrasted to the Inter-American Court of Human Rights which had a budget of almost US $4 million in 2011, of which half was received from the OAS.[61]

The financial resources allocated to the African Court are clearly excessive in relation to its current workload and output. The African Court, whose workload principally consists of the communication procedure, received more money from the AU than the African Commission whose activities include not only the communications procedure, but also, for example, the consideration of state reports and promotional missions. Even in terms of communications, the African Commission received more communications than the Court. The Commission clearly has a higher workload than the Court. It should accordingly receive more money from the AU than the Court.

3.3 Cases

In a speech to the November 2010 session of the African Commission, the President of the African Court, Judge Gerard Niyungeko indicated[62]

> that the foremost challenge of the African Court is its inability to hear cases due to the small number of countries that have ratified the Protocol Establishing the Court, as well as the small number of states parties which have made the Declaration allowing individuals and NGOs to submit cases directly to the Court.

By the end of 2011, only five states had made declarations to the Court allowing for direct access to individuals and NGOs with observer stratus before the Commission: Burkina Faso, Malawi, Mali, Tanzania and Ghana. By the end of 2011, two cases had been submitted against

58 Assembly/AU/Dec.315(XV).

59 EX.CL/Dec.524(XVI)

60 EX.CL/Dec.600(XVIII).

61 Inter-American Court of Human Rights, Annual Report 2011 68.

62 Report of the 48th ordinary session of the African Commission on Human and Peoples' Rights para 22.

Tanzania,[63] one against Malawi[64] and one against Burkina Faso.[65] The Court has declared a number of cases inadmissible because they were either submitted against states not party to the Protocol or states which have not made the declaration allowing for direct access.[66]

By the end of 2011, the African Commission had only referred one case to the African Court – against Libya.[67] This case was referred to the Court in terms of the provision in the Commission's Rules of Procedure in relation to referral of cases of massive human rights violations in states party to the Court Protocol. The Court issued its first order for provisional measures in which it called on Libya to 'refrain from any action that would result in loss of life or violation of physical integrity of persons'.[68] Interestingly, the African Commission did not request an order for a provisional measure. The Court decided to issue the provisional measure of its own volition.[69]

At its November 2010 session, the African Commission tasked the Secretariat with identifying cases which could be referred to the Court and report to the Commission at the next session.[70] As of the end of 2011, the Commission had only referred the case against Libya to the Court.

The African Court seems set to work under its current legal framework for the foreseeable future. The Protocol on the African Court of Justice has entered into force, but the Court is unlikely to be established pending the entry into force of the Protocol on the Statute of the African Court of Justice and Human Rights which merges the African Court of Justice and the African Court on Human and Peoples' Rights. The AU Assembly in July 2010 asked the AU Commission to finalise a study on the implications of giving the African Court criminal jurisdiction over international crimes such as genocide, crimes against humanity and war crimes and report to the AU Summit in January

63 These cases have been merged by the Court. See Applications 9/2011 & 11/2011, *The Tanganyika Law Society and the Legal and Human Rights Centre and Reverend Christopher Mtikila v the United Republic of Tanzania*. The case involves the right of individuals to stand for elections as independent candidates.

64 Application 3/2011, *Mkandawire v Malawi*.

65 Application 13/2011, *Beneficiaries of the Late Norbert Zongo – Abdoulaye Nikiema, Ernest Zongo, Blaise Ilboudo and Burkinabe Human and Peoples' Rights Movement v Burkina Faso*.

66 http://www.african-court.org (accessed 30 April 2012).

67 Application 4/2011, *African Commission on Human and Peoples' Rights v Libya*.

68 Order for provisional measures on Application 004/2011, http://www.african-court.org/en/cases/judgments-and-orders/ (accessed 5 March 2012). See J Oder 'The African Court on Human and Peoples' Rights' order in respect of the situation in Libya: A watershed in the regional protection of human rights?' (2011) 11 *African Human Rights Law Journal* 495.

69 Oder (n 65 above) 499.

70 Report of the 48th ordinary session of the African Commission on Human and Peoples' Rights para 251.

2011.[71] The AU had not taken any final decision with regard to this issue by the end of 2011.

4 African Committee on the Rights and Welfare of the Child

4.1 Composition and sessions

The African Committee on the Rights and Welfare of the Child (African Children's Committee) is the principal regional human rights organ for the promotion and protection of the human rights of children in Africa, based primarily on the Protocol to the African Charter on Human and Peoples' Rights on the Rights and Welfare of the Child. As of the end of 2011, 46 out of 54 African Union member states had ratified the Protocol.

The Children's Committee has 11 members. During 2010 and 2011, seven new members were appointed to the Committee – six in July 2010 and one in January 2011. The Committee is the only organ that is empowered to receive communications based on a treaty that exclusively deals with the rights of children. The UN Committee on the Rights of the Child (CRC Committee) does not yet have similar powers. The main functions of the Children's Committee include receiving and considering complaints of violations (communications), state reports, and conducting investigative missions.

The African Children's Committee held its 15th and 16th ordinary sessions in 2010 and its 17th and 18th ordinary sessions in 2011. The 18th session was the first to be held outside Ethiopia, where the Secretariat of the Committee is based in the Department of Social Affairs of the AU Commission. The 18th session was hosted by Algeria.

At its 16th session, the Children's Committee adopted its Plan of Action for 2010 to 2014. The Committee also established a joint Committee with CRC with a view to exchange information and integrate the works of the two committees.[72]

The practice of organising a meeting to bring together civil society organisations prior to the sessions of the African Commission has been replicated in relation to the sessions of the Committee. The report of the NGO Forum and recommendations are normally presented before the Committee.

4.2 State reports

The African Children's Committee considered the periodic report of Uganda during its 15th session. A high-level delegation, headed by

71 Decision on the abuse of the principle of universal jurisdiction, Assembly/AU/Dec.292(XV).

72 Activity Report of the 16th session of the Committee, paras 45-48.

Minister of State for Youth and Children Affairs of Uganda, attended the session. The consideration of the periodic report of Rwanda was postponed since Rwanda had not sent a delegation. The report of Rwanda was finally considered at the 16th session, where the Rwandan delegation was headed by the Minister of Gender and the Family. Togo presented its report at the 17th session.[73] The delegation from Togo was led by the Minister for Social Action and National Solidarity. At the request of the representative of Cameroon, the consideration of Cameroon's report was deferred to the next session. The periodic report of Cameroon was presented to the Children's Committee during its 18th session by the Minister of Social Affairs of Cameroon. The Committee also considered the country report of Niger, which was presented by the Minister of Social Development and Protection of Women and Children. At the same session, the Ambassador of Senegal in Algeria presented the first report of Senegal to the Committee. The delegations, with the exception of that of Senegal, were at a high level.

4.3 Communications

As of December 2011, the African Children's Committee had received only two communications. The first communication, dealing with children affected by the LRA conflict in Northern Uganda, was submitted to the Committee in 2005.[74] The communication was declared admissible at the 17th session in 2010 and the parties made oral submissions on the merits at the 18th session.

The Committee adopted its first ever decision on the merits of a communication at the 17th session. The communication was submitted by the Institute for Human Rights and Development in Africa and the Open Society Justice Initiative[75] and alleged the denial of the right to registration and nationality of children of Nubian descent in Kenya. The case was heard in the absence of a representative of the government of Kenya. The Children's Committee proceeded to consider the merits of the case as the government of Kenya had failed to respond to the Committee.[76] The decision is an encouraging move and should facilitate the speedy disposal of communications. It will also hopefully encourage states to respond to the requests of the Committee, or face the consequences of hearing the case in their absence.

The children of Nubian descent were denied citizenship because their parents were not recognised by the Kenyan government as citizens

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73 Activity Report of the 17th session of the Committee, para 39.

74 *Centre for Human Rights v Uganda*.

75 Communication 2/2009, *Institute for Human Rights and Development in Africa (IHRDA) and Open Society Justice Initiative (on behalf of children of Nubian descent in Kenya) v The Government of Kenya* (22 March 2011).

76 Activity Report of the 17th session of the Committee, para 35.

of Kenya as they did not have any place which they could call their homeland (the Nubians originated from Sudan and were brought to and settled in Kenya by the British during the colonial period). Because the parents often do not have identification documents, the children could not be registered at birth. Even when the children were registered, birth registration did not serve to prove citizenship. This had led to the statelessness of many children of Nubian origin. The Children's Committee held that the practice of failing to register Nubian children constituted a violation of article 6(2) of the African Children's Charter, which imposes a duty to register children immediately after birth. The Committee concluded that, although not all Nubian children are stateless, a significant number of them were indeed rendered stateless because of the practice of refusal to register them. This constituted a violation of article 6(4) of the African Children's Charter. The Committee also concluded that the different treatment of children of Nubian descent by the Kenyan government constituted discrimination contrary to article 3 of the African Children's Charter. The Committee recommended to Kenya to ensure that children of Nubian origin who did not have Kenyan nationality or are otherwise stateless are granted such nationality and proof of such nationality. It also recommended that Kenya should take the necessary measures to ensure that the birth registration system does not lead to discrimination against children of Nubian origin.

In accordance with its Rules of Procedure, the African Children's Committee has appointed one of its members to follow up on the implementation of the decision in the Nubian children case which was decided during the 17th session. The Committee requested Kenya to report within six months on the measures it has taken to implement the decision.

5 African Peer Review Mechanism

The African Peer Review Mechanism (APRM) is a voluntary process which has a mandate covering political, economic and corporate governance and socio-economic development. The review is based on self-assessment and input from a country review mission constituted of African experts under the supervision of a Panel of Eminent Persons. By the end of 2011, 30 states had signed up to the APRM.[77] Fifteen states have completed the review process and 12 country review reports and programmes of action have been published, the latest in May 2009.

77 http://www.uneca.org/aprm/CountriesStatus.asp (accessed 4 April 2012).

The country review mission to Zambia took place in February 2011.[78] Sierra Leone submitted its self-assessment report in November 2010[79] and the country review mission visited the country in May and June 2011.[80] The country review reports had not been discussed by the APRM Forum by the end of 2011.[81] Kenya, one of the first countries to be reviewed, was the first state to receive a second country review mission in July 2011.[82] Djibouti and Tanzania conducted their self-assessments in 2010 and 2011. Twelve states that have signed up to the APRM have not started the process.[83]

Human rights feature quite prominently in the review which leads to concrete time-bound national programmes of action to rectify identified shortcomings. Among the members of the APRM Panel of Eminent Persons is a former member of the African Commission, Julienne Ondziel Gnelenga. Despite this, co-operation between the APRM and the African Commission has been lacking.

At its November 2010 session, the African Commission adopted a Resolution on the Co-operation between the African Commission on Human and Peoples' Rights and the African Peer Review Mechanism. This followed the participation of the African Commission's Special Rapporteur on Freedom of Expression, Pansy Tlakula, in a workshop organised by the NGO, Article 19, on how to strengthen issues on freedom of expression in the APRM review. In the resolution, Commissioner Tlakula was appointed as a focal point to co-ordinate and enhance co-operation between the African Commission and the APRM.

6 African Union political organs

At the Summit in January 2011, the Executive Council decided not to authorise the publication of the 29th Activity Report of the African Commission. The Council called on the Commission to 'engage

78 'Zambia: APRM launched', *Zambian Chronicle* 9 February 2011, http://www.afrimap.org/newsarticle.php?id=2831 (accessed 4 April 2012). See also http://aprm-au.org/knowledge-network/zambia (accessed 4 April 2012). The Zambian self-assessment report is available online: http://www.scribd.com/Zambian-Economist/d/51493595-Zambia-APRM-Country-Self-Assessment (accessed 4 April 2012).

79 http://aprm-au.org/knowledge-network/sierra-leone (accessed 4 April 2012).

80 'President Koroma presents at African Peer Review Mechanism (APRM)' 1 February 2012,http://www.sierraexpressmedia.com/archives/34593 (accessed 4 April 2012).

81 'Governance: The Zambia Report will not be discussed at the Malabo Summit', http://www.iag-agi.org/spip/Governance-Zambia-Evaluation.html (accessed 4 April 2012).

82 http://www.nepadkenya.org/aprm.html (accessed 4 April 2012).

83 Angola, Cameroon, Liberia, Republic of Congo, Egypt, Gabon, Malawi, Mauritania, São Tomé and Principe, Senegal, Sudan and Togo.

concerned member states' with regard to verification of facts in the report and incorporate responses of states in order to have a balanced view.[84] At the Summit in July 2011, the Executive Council decided to defer consideration of the 29th and 30th Activity Reports to the next session.[85] The 29th to 31st Activity Reports were finally adopted at the Summit in January 2012. While it is good that states pay attention to the Commission's work, they are clearly too defensive and happy to use the anachronistic provision on confidentiality in article 59 of the African Charter to their benefit. The Commission could do more to guard its turf and not too easily give in to pressure from states.

In January 2010, the AU Assembly adopted a 'Decision on the prevention of unconstitutional changes of government and strengthening the capacity of the African Union to manage such situations'.[86] The Decision considered the 'need for a comprehensive approach to the issue of unconstitutional changes of government based on zero tolerance for *coups d'état* but also for violations of democratic standards, the persistence and reoccurrence of which could result in unconstitutional changes'. The Assembly decided that

> [i]n cases of unconstitutional changes of government, in addition to the suspension of the country concerned, the following measures shall apply: (a) non-participation of the perpetrators of the unconstitutional change in the elections held to restore constitutional order; (b) implementation of sanctions against any member state that is proved to have instigated or supported an unconstitutional change in another state; (c) implementation by the Assembly of other sanctions, including punitive economic sanctions.

Sanctions were used in 2010 and 2011 to induce the transfer to democratic government with regard to Côte d'Ivoire,[87] Guinea, Madagascar[88] and Niger,[89] with mixed results.[90]

At the July 2010 Summit, the Assembly reiterated its position that AU member states shall not co-operate with the arrest and surrender of President Al-Bashir of Sudan who has been charged with genocide and crimes against humanity by the International Criminal Court (ICC). The Assembly also rejected the request by the ICC to open a liaison office in Addis Ababa. The position of the AU in relation to the ICC is

84 EX.CL/Dec.639(XVIII).

85 EX.CL/Dec.666(XIX).

86 Assembly/AU/Dec.269(XIV) Rev.1.

87 http://www.reuters.com/article/2011/04/21/us-ivorycoast-idUSTRE73014Z20110421 (accessed 4 April 2012).

88 http://www.voanews.com/english/news/africa/African-Union-Sanctions-Madagascars-Leaders-88262607.html (accessed 4 April 2012).

89 http://www.polity.org.za/article/institutionalising-the-au-sanctions-2010-03-18 (accessed 4 April 2012).

90 See generally K Magliveras 'The sanctions system of the African Union: Part success, part failure' http://aegean.academia.edu/KonstantinosMagliveras/Papers/1159844/THE_SANCTIONING_SYSTEM_OF_THE_AFRICAN_UNION_PART_SUCCESS_PART_FAILURE(accessed 4 April 2012).

regrettable in the light of the fact that 30 African states have ratified the Statute establishing the ICC and are obliged to co-operate with the Court. During 2010 and 2011, President Al-Bashir visited a number of African states which have ratified the ICC Statute and which were thus under an obligation to surrender him to the ICC.

The Assembly at its summits reiterated the call to give criminal jurisdiction to the African Court. A draft protocol was prepared by a consultant and discussed by legal experts of member states, but had by the end of 2011 not yet been adopted by the AU.

At the July 2010 Summit, the Assembly adopted a 'Decision on the promotion of co-operation, dialogue and respect for diversity in the field of human rights'. The Assembly noted 'the importance of respecting regional, cultural and religious value systems as well as particularities in considering human rights issues'. The Assembly further rejected the approach that 'social matters, including private individual conduct' should fall within the ambit of human rights. In an apparent contradiction, the Assembly undertook to support an agenda for the Human Rights Council 'addressing issues of importance for Africa, including fighting racism, racial discrimination, xenophobia and related intolerance, in all their forms'.[91] At the July 2011 Summit, the Assembly endorsed a proposal by Burkina Faso for a UN General Assembly resolution condemning female genital mutilation as a gross violation of human rights.[92] As noted in the decision, this is in line with the Protocol to the African Charter on the Rights of Women in Africa.[93] To leave 'social matters' out of human rights would be a serious setback, in particular for women's rights which are often violated in the private sphere.

The theme of the January 2011 Summit was 'Towards greater unity and integration through shared values'. These shared values include, according to the Assembly, democratic practices, good governance, the rule of law and the protection of human rights.[94] Clearly, many African states are not in reality subscribing to these values and, in a sinister twist, the President of Equatorial Guinea, a country which is hardly known for good governance, was elected Chairperson of the AU Assembly at the Summit. At the January 2011 Summit, the Assembly adopted the African Charter on Values and Principles of Public Service and Administration.

A human rights strategy for Africa was developed by the AU Commission's Department of Political Affairs as 'a guiding framework for collective action by the AU, RECs [regional economic communities]

91 Assembly/AU/Dec.328(XV).

92 Assembly/AU/Dec.383(XVII).

93 See also Assembly/AU/ Dec.355(XVI) para 7 where the Assembly calls on states to ratify the Protocol and fully implement its provisions.

94 Assembly/AU/ Decl.1(XVI).

and member states'.[95] The 11-page strategy identifies a lack of co-ordination, limited capacity, insufficient implementation and limited awareness as challenges to the African human rights system.[96] The strategy and the 2012-2016 action plan attached to it do not provide much guidance as to how these challenges will be addressed.

7 Conclusion

The African Commission can no longer blame its ineffectiveness on a lack of resources. Clearly, the main problem lies with the Secretariat and its leadership, but also with the Commission itself which should reform the way in which the sessions of the Commission are conducted. The Commission met for 82 days during the two years of the review, but has very little to show for it, in particular when it comes to handling communications. More can also be done with regard to visibility, in particular the examination of countries, for example through the state reporting procedure. Recordings of public sessions, in particular the examination of state reports, should be broadcast on the website of the Commission and co-operation sought with broadcasters in the countries under review to relay the broadcast on FM radio.

The African Court must work to establish its relevance. Civil society organisations must also take the opportunity to make use of the Court with regard to the five countries that have made declarations providing for individual and NGO direct access. Other possible avenues are to insist that the Commission refer cases regarding massive violations in states which have ratified the Protocol to the Court, as happened in the case of Libya. Another possibility is requests for advisory opinions.

The African Committee on the Rights and Welfare of the Child adopted its first decision on a communication but, like the African Commission, lacks in visibility.

The political organs of the AU have provided more resources to the human rights bodies than in the past, but have been less supportive of human rights in other decisions, in particular in relation to not allowing the publication of the Activity Report of the Commission. Imposing sanctions with regard to undemocratic change of government is a positive step, but should be extended to the full range of undemocratic practices as well as massive human rights violations and the clear failure to comply with decisions of the human rights bodies established by the AU member states.

There was still much to do to improve the human rights situation in Africa as the continent entered 2012, the year that has been declared by the AU as the year of shared values, values which include human rights.

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95 http://au.int/en/dp/pa/content/human-rights-strategy-africa (accessed 4 April 2012).

96 Para 23.