Civil Society Access to International Oversight Bodies

African Commission on Human and Peoples' Rights

International Justice Resource Center

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African Commission on Human and Peoples' Rights

Published October 2018.

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EXECUTIVE SUMMARY

This report examines civil society engagement with the African Commission on Human and Peoples' Rights (ACHPR), a quasi-judicial body responsible for promoting and protecting human rights in the 54 States parties to the African Charter on Human and Peoples' Rights. The text identifies the ACHPR's rules and practices, as well as the logistical and strategic considerations on the part of civil society, that shape advocates and organizations' participation in the ACHPR's work. It further analyzes whether these factors hinder or facilitate engagement. The primary focus of this report is on the ACHPR's sessions, and on the Forum on the Participation of NGOs (NGO Forum) which ordinarily immediately precedes those sessions.

Civil society's ability to participate in the ACHPR's work brings benefits for victims of human rights abuses, human rights defenders, the continent's inhabitants, and the ACHPR itself. Civil society organizations can provide information, insight, experience, and assistance that the ACHPR and its Secretariat could not otherwise access. Advocacy and engagement with the ACHPR – including through the ACHPR's public discussion of human rights topics, consideration of individual complaints, creation of new standards and guidance for States, and review of States' practices – can be important tools for civil society organizations working to change policies and practices that harmfully impact human rights. Accordingly, the means of civil society engagement with the ACHPR, the limitations or restrictions on that engagement, and the challenges it involves, are all intimately related to the ACHPR's strength and relevance in the protection and promotion of human rights in Africa.

The ACHPR typically convenes three or four times annually, to publicly engage in dialogue with States and civil society and to privately deliberate on the pending cases and reports on its docket. These sessions provide unique opportunities to human rights defenders and other members of civil society. When they satisfy the requirements and can tackle the practical challenges, civil society members can request that the ACHPR include specific topics on its agenda and can make statements at the session, reaching numerous audiences in addition to those present. Informally, the sessions represent a wealth of other advocacy avenues, including "side events" that educate the ACHPR members and civil society attendees, private meetings with ACHPR members or staff, interactions with government representatives, and media coverage. The ACHPR sessions and the NGO Forum, a convening of non-governmental organizations (NGOs), also allow civil society members from across Africa to come together in one place, where in-person interaction can help to strengthen their collaboration and advance their shared interests.

Overview of Barriers

However, civil society members encounter numerous formal and informal challenges to participating in ACHPR sessions and the NGO Forum. Formal barriers are the prerequisites that are established by law or in the institution's written rules or policies, while informal barriers are those unwritten policies and practices or external considerations that affect civil society's engagement.

Notable formal barriers to participation include prior registration, deadlines on the submission of information, visas and other government-imposed travel restrictions, and limited working languages. Additionally, some modes of engagement in the ACHPR sessions are available only to organizations with observer status, an official recognition granted by the ACHPR. For its part, the NGO Forum charges a registration fee to participants, to cover its costs.

The common informal barriers include a lack of access to information, short notice via a visible and accessible announcement or posting of each session's dates and agenda, organizations' own resource constraints, institutional and societal biases against some groups, safety concerns, and highly limited accessibility for persons with disabilities. By deciding which topics are worthy of discussion and, in the case of the NGO Forum, by acting as a sort of intermediary between individual civil society organizations and the ACHPR and an interpreter of civil society's concerns, both fora can act to exclude or weaken the voices from less mainstream organizations or movements.

Good Practices

At the same time, though, both the ACHPR and the NGO Forum exemplify some good practices that reinforce the role and value of civil society in the work of the African human rights system. On the part of the ACHPR, these include opportunities to influence the agenda's content, dedicated time for statements by organizations with observer status on any topic relevant to the human rights situation in Africa, and simultaneous interpretation in the four official African Union languages.

The NGO Forum is open to any organization that wants to participate, creates a unique space for civil society interaction that would not otherwise exist, has won significant institutional recognition and respect from the ACHPR, serves an important capacity building and continuing education role, and facilitates civil society attendance by offering scholarships, pre-clearing NGO Forum attendees with Gambian immigration authorities, and arranging for discounted hotel reservations. When it chooses to do so, the NGO Forum can amplify and legitimate civil society voices and help foster constructive relationships between advocates and ACHPR members.

Access to Information: A Key Barrier

A primary obstacle that civil society faces in engaging with the African Commission both at its sessions and outside its sessions is a lack of transparency and access to accurate and complete information. For instance, the ACHPR website does not consistently include some basic information, such as the biographies and term dates of Commission members or the structure of the Secretariat. The Commission may inconsistently publish some information on its website, for example, leaving some civil society statements and merits decisions unpublished. It may neglect to provide accurate or updated information, as has been the case in the past with the list of organizations with observer status, and with the status of State ratifications of regional treaties. The ACHPR has also neglected to provide other information entirely, such as guidance to civil society for submitting input on a State's review. Finally, oftentimes, the ACHPR publishes information online after the fact, when it is too late to be of use to civil society or other stakeholders; this is the case, for example, when it fails to announce an upcoming country visit.

Costs of In-Person Attendance

Generally, civil society members must attend in person in order to follow or participate in the ACHPR's activities during a session. The ACHPR, and NGO Forum, do not enable remote participation, video conferencing, or live streaming. However, financial resources are an obstacle to fully engaging with the Commission during its sessions, particularly for smaller organizations. The costs of transportation and accommodation can be quite high, partly due to the sheer size of the African continent and the fact that sessions are most often held near the ACHPR headquarters in Banjul, The Gambia, which is not a major transit hub. ACHPR sessions last around 15 days, with about 10 days of that open to the public, and the NGO Forum typically lasts three days; attendance for the full program is a significant investment of time and resources.

Organizations' inability to afford to attend ACHPR sessions widens the information and experience gap for certain smaller organizations, increasing the obstacles they face in engaging with the Commission. Attendance at the sessions and the formation of relationships with other civil society groups that also attend the sessions provides clarification of some of the Commission's opaque processes and facilitates information sharing among organizations. Attendance of the full length of the sessions also provides more opportunity to develop relationships with Commissioners and members of the Commission's Secretariat, as other organizations tend to leave before the end of the session. However, organizations without the resources to attend or to attend the full length of a session miss out on some or all of these opportunities, creating gaps in access to the Commission between organizations.

Personal Relationships, Access, and Priority-Setting

In the context of both the ACHPR sessions and the NGO Forum, the fact that a handful of organizations have established very close relationships with individual commissioners presents both opportunities and challenges. Some ACHPR members have demonstrated remarkable openness to collaborating with some civil society groups, which can help the ACHPR produce outputs that are more informed and useful and advance those groups' advocacy. However, these partnerships also illustrate: 1) the risk that the ACHPR's agenda may be disproportionately influenced by a small group of organizations; 2) the ACHPR's reliance on outside labor and knowledge due to its inadequate resources (a problem that manifests itself in many others ways); 3) that establishing personal relationships with ACHPR members and staff is almost necessary for effective advocacy in the African human rights system; and, 4) newer, smaller, or more controversial organizations face significantly more difficulty in gaining similar traction at the ACHPR.

The Commission has shown bias in its selection of the thematic issues it is willing to address, which presents challenges to civil society's engagement with the ACHPR. Civil society members who participated in this study indicated that the Commission and the NGO Forum have displayed a reluctance to discuss certain topics, including sexual orientation and gender identity; the rights of persons with disabilities; and economic, social, and cultural rights. Controversial or less established issues simply may not make it on to the agenda, or these bodies may respond with hostility to advocates or statements focused on them.

Marginalized and At-Risk Defenders

Relatedly, the ACHPR's independence has, at minimum, appeared to be at risk due to political pressure exerted by States and other African Union organs. This pressure disfavors civil society generally and can add an extra obstacle to engagement for some groups. For example, the AU political organs have continued to pressure the Commission not to recognize the Coalition of African Lesbians' observer status, which allows it to make statements at Commission sessions. The ACHPR seems to show greater deference to States and their representatives, including in some statements and in the seating arrangements at its sessions, underscoring the possibility that the Commission may prioritize governmental and intergovernmental interests, potentially compromising its independence.

Participants in this study also identified safety and accessibility as barriers to engagement with the ACHPR. These are also factors that may tie in to the de facto exclusion of groups that work on particular thematic issues, which contributes to their invisibility. Countries that host the ACHPR sessions have not always respected, let alone guaranteed, civil society participants' rights to personal security or freedom to engage in their work. At the ACHPR and NGO Forum sessions, the publication of photographs of participants has led to difficulties for human rights defenders in the past, but the Commission does not have policies or procedures to address this. Additionally, participants in this study indicated that they have advocated for

discussions on the physical accessibility of the Commission sessions' venue or for different formats for information, such as large print, but with little recognition or progress.

Civil Society Organizing

Due to these challenges, civil society has organized itself into coalitions and other partnerships to leverage limited resources, coordinate strategically, and maximize impact. The NGO Forum, which draws hundreds of participants from across Africa and facilitates coordinated and informed engagement with the ACHPR, is an example of such coordination, as is the Group of Litigants for Strengthening the Protective Mandate of the African Commission (Litigants' Group), a smaller circle of organizations that actively use the ACHPR complaints process. While these arrangements can be highly useful, for example, in sharing information not published online by the ACHPR and amplifying the attention a particular situation can garner, there are drawbacks. Reliance on coalitions and networks often places larger or regional organizations in a position to be gatekeepers for other civil society members' access to information, ability to increase awareness of a thematic issue area, or engagement with the ACHPR.

Contributing to this dynamic among civil society organizations, the NGO Forum has faced obstacles in its effectiveness as a tool for organizing civil society and supporting engagement with the ACHPR due to a lack of responsiveness on the part of its Steering Committee. The Steering Committee does not necessarily represent all civil society organizations' interests, is not democratically chosen by NGO Forum participants, and can contribute to the invisibility of certain issues, such as sexual orientation and gender identity, within civil society deliberations and at the ACHPR sessions.

When interacting with other civil society members at the NGO Forum, some civil society advocates face challenges in ensuring that discussions are productive and concrete. The panels and thematic-based breakout groups are not always able to harness the experience of those with the most expertise or dedication to the particular issues, leading to more general conversations that lack concrete follow-up actions. Additionally, government-backed non-governmental organizations, known as governmental NGOs (GONGOs), take up a significant portion of the time available and disrupt the productivity of discussions. Their disruptions have led to at least one procedural change at the NGO Forum. By organizing side events outside the formal NGO Forum agenda, participants can take part in more focused and in-depth discussions on specific topics; however, sometimes this results in a loss of opportunity to form connections with Commissioners or the Commission's Secretariat.

Recommendations

The final section of this report lists the good practices that facilitate civil society engagement with the ACHPR and the practices that appear to obstruct engagement, and also makes recommendations for improvements by both the ACHPR and civil society. Based on the information contained in this report, the ACHPR could improve civil society access by:

- Adding information to the ACHPR website, including the biographies and terms of members, the structure of the Secretariat, and methods for communicating with the Secretariat;
- Updating the ACHPR website with complete and up-to-date ratifications, decisions, and other information;
- Consistently publishing all merits decisions on communications on the ACHPR website;
- Clarifying and making transparent the means for communicating with ACHPR members, including in their capacity as special rapporteurs or members of working groups;
- Providing timely and accessible public notice of each session's timing, location, and agenda;

- Clarifying, in writing, the requirements for oral statements by NGOs with observer status, in terms of the necessary timing and substance of prior notice to the ACHPR, the maximum length of oral statements, and all opportunities in the agenda for such statements;
- Including in the session agenda notice of which communications, resolutions, and observer status applications will be considered;
- Making all website content and documents available in, at least, the four official languages of the African Union;
- Maintaining ACHPR social media accounts and sharing session information and other news through those mediums;
- Organizing the agenda to better permit civil society to limit and time their attendance, such as by consolidating each agenda item into fewer days or grouping topics by country or theme;
- Allowing virtual participation and video statements at sessions;
- Livestreaming all public portions of ACHPR sessions;
- Reconsidering the optics and unspoken message of giving priority seating and microphone access, and more speaking time, to State and intergovernmental representatives, to the detriment of civil society;
- Refraining from demeaning civil society generally or equating civil society's responsibilities for human rights conditions to States' obligations;
- Clarifying the criteria for granting observer status and remove all political considerations from that decision-making process;
- Avoiding preferential treatment, particularly in formal settings, for some NGOs over others;
- Taking and using participants' photographs only when consent is expressly given, as could be demonstrated through a registration form or a designated color on participants' lanyards;
- Making the recordings of the ACHPR sessions available online;
- Making gender neutral restrooms available;
- Inquiring about needed accommodations for persons with disabilities attending a session and preparing those accommodations ahead of sessions; and,
- Offering materials in large print, audio, and braille format.

ABOUT THIS REPORT

This report is the first in a series examining the rules, policies, and practices that shape civil society organizations' engagement with supranational bodies that play a role in the development or implementation of human rights standards. The goal of this series is to clearly identify and contextualize the ways in which civil society's participation is hindered or helped by both formal and informal requirements, practical considerations, and the nature of the relationships between the various stakeholders. This edition analyzes the African Commission on Human and Peoples' Rights (ACHPR), a quasi-judicial body with jurisdiction over the 54 States parties to the African Charter on Human and Peoples' Rights, and the Forum on the Participation of NGOs in the Ordinary Sessions of the African Commission on Human and Peoples' Rights(NGO Forum).It focuses primarily on civil society members' in-person interactions in these entities' sessions, where participants address the protection and enjoyment of human rights across the continent.

This report draws on desk research, interviews with civil society members, survey responses, and in-person observation carried out primarily between August 2017 and March 2018, including at the 61st Ordinary Session of the African Commission and the preceding NGO Forum, both held in Banjul, The Gambia in 2017. The International Justice Resource Center (IJRC) conducted additional desk research in July and August 2018. The desk research included consulting the resources on the African Commission's website, such as its documents database, activity reports and final communiqués, Rules of Procedure, and database of NGOs with observer status, among other resources; the website of the African Centre for Democracy and Human Rights, which organizes the NGO Forum; and the African Union's online resources, including the AU Executive Council decisions and ratification tables, among other relevant sources. IJRC interviewed seven civil society members and received responses to a survey on engagement with the Commission from 11 civil society members. Three participants in this study both participated in an interview and responded to the survey. Therefore, IJRC heard directly from 14 civil society members in researching this report; these individuals represent 14 distinct civil society organizations working to advance human rights. IJRC also observed the processes, conduct, and conversations at the NGO Forum and 61st Ordinary Session of the ACHPR in October and November 2017.

The work of participants in this study spans several thematic topics and most of the African continent. Participants are staff members with organizations focused on sexual orientation and gender identity and human rights; women's rights; the rights of persons with disabilities; human rights defenders; Indigenous peoples' rights; the rights to freedom of expression, freedom of assembly, and freedom of association; access to justice; prohibition of torture and inhumane treatment; the right to privacy; economic, social, and cultural rights; business and human rights; environmental rights; the right to housing; the right to health; the right to education; children's rights; the rights of refugees and migrants; the right to nationality; prisoners' rights; the right to freedom of religion; and, the right to life. The participants' organizations are based in West Africa, South Africa, East Africa, Europe, and the United States. Eight of the participants work throughout the African continent, two work within one region in Africa, and four work within one country. In order to encourage frank and open communication from participants, and in view of this report's goal of identifying barriers and opportunities that may be relevant to all civil society members, participating individuals and organizations are not identified.

The series of reports that this study belongs to was borne out of a request from a civil society organization that has faced specific barriers when engaging with supranational oversight bodies. That organization

asked IJRC to produce a comparative study across human rights systems and supranational bodies to identify challenges experienced by civil society operating in different fora, to share best practices, and to provide a basis for devising recommended changes in policy or practice to enable civil society's efficient and effective participation at the international level. Forthcoming reports will focus on the Inter-American Commission on Human Rights and the United Nations Human Rights Council.

Eliminating barriers to engagement with supranational bodies will support those bodies' ability to thoroughly and accurately carry out their mandates. Regional and universal oversight bodies benefit from civil society's unique insights, knowledge, recommendations, and ability to help implement their recommendations and decisions. In their work of identifying human rights violations and helping States adhere to their obligations, these bodies depend on civil society to a significant degree, not least because their own resources tend to be highly limited.

Supranational bodies provide spaces and opportunities that are important to civil society's work to advance human rights. Engagement with these bodies helps civil society: identify and clarify States' human rights obligations, obtain independent assessment of governments' human rights records, secure justice and accountability for victims of abuses, increase the visibility or awareness of rights violations, pressure States to implement reforms, secure protection for themselves or others in situations of risk, and shape the local or national conversation around fundamental rights issues.

However, in addition to the difficulties and risks they face in their local or national contexts, civil society members often face various challenges to making their voices heard by supranational bodies. These challenges include logistical considerations, such as the cost and distance of travel; the timing and nature of the information shared by supranational bodies; institutional or societal biases against certain issues or groups; a lack of independence on the part of the supranational body; security concerns; and, inadequate physical or linguistic accessibility. This report examines these barriers, as well as the rules and practices that facilitate engagement, with a view to expanding the civic space at the international level.

ENGAGEMENT WITH THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

The African Commission on Human and Peoples' Rights (ACHPR)is the independent human rights monitoring body responsible for promoting and protecting human rights in the 54 States parties to the African Charter on Human and Peoples' Rights, including by reviewing States' policies and practices and deciding individuals' complaints regarding alleged violations of their human rights.[1] The ACHPR holds two ordinary sessions and at least one extraordinary session per year; these session are most often held at its headquarters in Banjul, The Gambia, but most years at least one session is held in the territory of another State party to the African Charter.

[1] African (Banjul) Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986), 21 ILM 58 (African Charter), art. 45, *available at* http://www.achpr.org/instruments/achpr/.

During its sessions, the ACHPR will engage in the review of States' reports and accompanying alternative reports from civil society regarding national implementation of the African Charter; consider and adopt general comments, guidelines, and resolutions; review individual complaints ("communications") with a view to adopting decisions on them; receive the activity reports of its "special mechanisms" focused on specific rights or populations; grant or deny observer status to organizations with pending applications; hold panel discussions; and receive statements on the human rights situation in Africa, among other activities. In addition to civil society, States parties' representatives, representatives of national human rights institutions (NHRIs), and representatives from intergovernmental organizations may also attend the ACHPR sessions.

Opportunities for Civil Society Engagement

Civil society can engage with the Commission during its sessions in various ways. Formal opportunities include: requesting that a specific topic be included on the agenda of an ACHPR session, presenting written and oral statements for consideration on the human rights situation in Africa, making an oral statement following a panel at an ACHPR session, presenting alternative reports during the Commission's review of a State, and participating in a private hearing concerning a pending communication. Informal opportunities include presenting information – orally or in writing – to the ACHPR or its special mechanisms to inform its work, presenting on a panel convened by the ACHPR, speaking with State representatives and Commissioners informally, and organizing or participating in side events that may include ACHPR members as speakers or participants.

Outside of sessions, civil society members may engage with the ACHPR by presenting a communication; submitting information related to a State's review; informing the ACHPR of situations of concern; requesting or supporting an ACHPR fact-finding visit or promotion mission; and collaborating with, or sitting on, a special mechanism to – for example – develop a report or set of standards.

Formal Requirements for Civil Society Engagement with the ACHPR

Observer Status

Observer status is the formal recognition of individual organizations by the ACHPR. This status is only available to certain types of organizations and is a prerequisite for some forms of participation in the ACHPR's activities. Specifically, observer status is required to make oral statements before the ACHPR during a session and propose additions to the session agenda. This status also entitles organizations to early access of documentation on ACHPR sessions and to participate, when invited, in closed meetings with the ACHPR. Organizations without observer status can still attend sessions, represent victims presenting complaints before the Commission, and submit shadow reports on States' human rights records, among other activities.

For an NGO to acquire observer status, it must meet a series of requirements and provide documents supporting its application. First, the NGO applicant must be a non-governmental organization that works in the human rights field.[2] Second, its objectives and activities must align with the principles and objectives in the African Union Constitutive Act, the preamble of the African Charter, and the Protocol to the African

[2] ACommHPR, *Resolution 361 on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the field of Human and Peoples' Rights in Africa*, 59th Ordinary Session (2016), Ch. I, para. 2, *available at* http://www.achpr.org/sessions/59th/resolutions/361/.

Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).[3] Third, the applicant NGO must also be willing to provide information on its finances and other documents required in the application process.[4]

In order to be considered for observer status, NGOs must submit an application to the Secretariat of the ACHPR at least three months prior to an ordinary session. All applications are first processed by the Secretariat before consideration by a rapporteur appointed by the Commission's Bureau.[5] The application consists of a letter addressed to the Secretariat requesting observer status; a list of Board members and other members of the NGO applicant; the signed and authenticated constitutive statute of the NGO; the certificate of the NGO's legal status granted by the host country; the NGO's sources of funding; the NGO's most recent independently audited financial statement; the NGO's most recent annual activity report; and a strategic plan approved and signed by the members of the NGO and that covers the NGO's objectives, activities, timeline, geographic location of activities, target groups, and strategies for implementation over at least a two-year period.[6] While the application requires a certificate of legal status, in practice, the Commission has granted observer status to organizations that are not legally recognized at the national level.

Once granted observer status, NGOs have additional reporting requirements. According to the ACHPR's resolution on the criteria for obtaining and maintaining observer status, NGOs with observer status must submit activity reports to the Commission every two years.[7] Observer status may be withdrawn or suspended if an NGO does not meet the requirements set by the Commission.[8] In practice, this reporting requirement is not enforced.

The Commission's rules and practices do not limit civil society attendance at ACHPR sessions based on observer status or other requirements.[9] While the Rules of Procedure and other guidance do not explicitly state that organizations without observer status may attend the sessions, it has been the practice that organizations without observer status may also do so. Additionally, the Rules of Procedure expressly state that the Commission sessions shall be public, and allowing organizations without observer status to attend is in keeping with that rule.[10]

However, the lack of a clear, written policy has led to some variances in that procedure at different sessions, particularly those held outside of Banjul. For instance, when the Commission held a session in Angola in 2014 security guards followed attendees and attempted to prevent at least one civil society member from entering and observing the session based on their lack of observer status. The practice of being able to attend sessions without observer status is understood but not explicitly stated in the session's rules of procedure or other documents, although the rules of procedure do specify that the

[3] *Id.*
[4] *Id.* at Ch. I, paras. 2-3.
[5] *Id.* at Ch. I, paras. 4-5.
[6] *Id.* at Ch. I, para. 3.
[7] *Id.* at Ch. III, para. 2.
[8] *Id*. at Ch. IV, paras. 1, 3, *available at* http://www.achpr.org/sessions/59th/resolutions/361/.
[9] *See* Rules of Procedure of the African Commission on Human and Peoples' Rights (approved by the Commission at its 2nd Ordinary Session, held from 2-13 February 1988, and modified at its 18th Ordinary Session, held from 2-11 October 1995, and its 47th Ordinary Session, held from 12-26 May 2010), Rule 25 ("Sessions of the Commission shall be held in public.") [hereinafter ACommHPR, Rules of Procedure (2010)], *available at* http://www.achpr.org/instruments/rules-of-procedure-2010/.
[10] *See id.*

sessions are to be held in public.[11] The lack of clear articulation and transparency on this practice leads to organizations potentially being held back from attending.

Registration

The primary formal requirement for attending an ACHPR session is prior registration. All attendees to a Commission session must identify themselves by registering with the Secretariat two to three weeks prior to the session. The preliminary registration form requires each attendee to provide, at least, their name, organization, address, email, and phone number,[12] and the form may also require information on the attendee's passport number and expiration date, flight information, and arrival and departure dates.[13]In certain cases, the Secretariat forwards the names of the registered participants to the hosting State's authorities to satisfy that State's visa requirements.[14]The preliminary registration form indicates the date by which it must be submitted to the Secretariat, which is typically two to three weeks prior to the session.[15]

NGO representatives attending a Commission session are also presented with a registration form at the site of the session just prior to its start or as it is starting. At the 61st Ordinary Session of the Commission, the on-site registration form asked NGO representatives for their name, position within their organization, disability and accommodations needed, address, telephone number, fax number, and email. The Secretariat of the Commission collected the on-site registration forms.

The Commission also requires civil society members attending the session to obtain an identification badge at the start of the session. At the 61st Ordinary Session, the badge required a picture. The 'Information for Participants' posted on the ACHPR's website before each session indicates that attendees are expected to wear their badge throughout the sessions.[16]

There is no limit to the number of civil society members who may register to participate in an ACHPR session; at least, to date, there has been no indication that a person or group has been denied registration on this basis.

Official Languages & Language Requirements

The working languages of the ACHPR are officially English, French, Portuguese, and Arabic.[17] (In practice, it operates primarily in English and, to a lesser extent, French. The ACHPR generally supplies information, including via its website, in English; not all documents and announcements are provided in French, Portuguese, and Arabic.) Civil society's written submissions and oral statements to the ACHPR should be in one of the working languages, or with a translation or interpretation into one of those languages provided by the civil society member.[18] During sessions, the ACHPR provides translation in the four official languages.

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[11] *See id*.
[12] *See* ACommHPR, 61st Ordinary Session: Preliminary Registration Form, http://www.achpr.org/sessions/61st/info/regform_61os/.
[13] *See, e.g.,* ACommHPR, 62nd Ordinary Session: Preliminary Registration Form, http://www.achpr.org/sessions/62nd_os/info/regform_62os/.
[14] *See id*.
[15] *See id*.
[16] *See id*.
[17] ACommHPR, Rules of Procedure (2010), Rule 36.
[18] *Id.*

Written & Oral Submissions: Deadlines, Prior Notice, & Limitations on Length

Civil society's written and oral statements must adhere to rules and requirements that are sometimes explicit, such as deadlines, but are sometimes vague, including as to the length of an oral or written intervention. These requirements apply to civil society's requests for inclusion of agenda items, oral statements during ACHPR sessions, submission of shadow reports ahead of State reviews, and communications concerning alleged violations of the African Charter.

Agenda Topics

Civil society members with observer status may ask the ACHPR to include a specific topic on a session agenda, by submitting a written request at least 60 days before the relevant ordinary session.[19] The Secretary prepares the agenda for each session in consultation with the Chairperson of the Commission.[20] The Bureau of the Commission, composed of the Chairperson and Vice-Chairperson of the Commission,[21] will consider the request from civil society, and if it is accepted, the Secretary notifies the requesting party within a month.[22]

Oral Statements

To make an oral statement during an ACHPR ordinary session, NGOs with observer status must notify the ACHPR of their intention to make a statement, by writing to the Secretariat in advance of the session "with sufficient lead time" and providing a copy of the statement.[23] In practice, NGOs wishing to make a statement fill out forms supplied by the Secretariat at the registration desk at the ACHPR session and at that time submit three copies of the statement. According to the ACHPR's Resolution on the Granting of Observer Status, the Chairperson of the Commission may authorize civil society members to make statements after receiving a copy of the NGO's written statement from the Secretariat.[24] In practice, typically all NGOs that register a statement at the registration desk and have observer status are able to make their statement before the Commission. Additionally, NGOs can change their statement after registering it by swapping out the previously registered statement for the new one.

The Secretariat does not publicly provide any additional guidance or information to NGOs regarding the process for requesting or securing allotted time to speak at the session. No written rules or policies dictate the substance or organization of the ACHPR's session agendas, nor do they impose any additional limits on the oral statements by NGOs with observer status.

However, the provisional agenda published online ahead of each session generally indicates when NGOs will be permitted to make statements and how much time each speaker may use. In recent years, the agenda has allotted time for NGOs to make three-minute statements in response to activity reports by commissioners and special mechanisms, and five-minute statements on the human rights situation in

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[19] *Id.* at Rules 32(4), 63; ACommHPR, *Resolution 361 on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the field of Human and Peoples' Rights in Africa, supra* note 2, at Ch.2, para. 5.

[20] ACommHPR, Rules of Procedure (2010), Rules 18(f), 32.

[21] ACommHPR, Structure, http://www.achpr.org/about/structure/.

[22] ACommHPR, Rules of Procedure (2010), Rule 32(5).

[23] ACommHPR, *Resolution 361 on the Criteria for Granting and Enjoying Observer Status to Non-Governmental Organizations Working in the field of Human and Peoples' Rights in Africa, supra* note 2, at Ch.2, para. 4.

[24] *Id.*

Africa.[25] For NGO comments made in response to panel discussions, the Chairperson of the Commission has the discretion to authorize an individual to speak or not and to limit the time allotted to them for comments.[26]

Shadow Reports

NGOs, with or without observer status, that wish to submit a shadow report, also known as an alternative report, ahead of a State review, must submit the report at least 60 days before the session during which the Commission will review the State.[27] The Commission has not specified in its Rules of Procedure or other guiding documents a limitation on the length of shadow reports or other requirements regarding formatting or necessary information (beyond the language requirement noted above).

Complaints ("Communications")

Specific requirements apply to the timing and substance of communications alleging specific human rights violations by States parties to the African Charter, although any person or organization may submit such a complaint. For the Commission to review an individual complaint on the merits, the communication must meet the requirements under Article 56 of the African Charter and Rule 93 of the Rules of Procedure, and allege a *prima facie* violation of the African Charter.[28] Article 56 and Rule 93 require that the authors of a complaint identify themselves and provide contact information, indicate whether the complainant desires to remain anonymous before the State, detail the alleged violation and the State allegedly responsible, not use insulting language about the State or the African Union, base their allegations on more than just news disseminated in mass media, previously exhaust domestic remedies unless an exception applies, and submit the communication within a reasonable time from the exhaustion of domestic remedies, and that the complaint has not already been resolved by another supranational body.[29]

The Commission's jurisprudence on a reasonable time to submit a complaint after exhausting domestic remedies has left some uncertainty as to when a complainant must submit their complaint. The Commission determines on a case-by-case basis if a complaint is submitted within a reasonable time and has not established a hard rule.[30] While in some cases the Commission has admitted a complaint that was submitted 16 months after the exhaustion of domestic remedies, it has also rejected a complaint submitted 15 months after the exhaustion of domestic remedies.[31] Advocates advise to submit complaints

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[25] *See, e.g.,* ACommHPR, *57th Ordinary Session of the African Commission on Human and Peoples' Rights (Banjul, The Gambia, 4-11, 18 November 2015) Public Session Agenda* (2015), *available at* http://www.achpr.org/files/sessions/57th/info/draft-agenda/revised_agenda_of_57th_os_public_session.pdf.

[26] ACommHPR, Rules of Procedure (2010), Rules 39, 49.

[27] *Id.* at Rules 74, 75(5).

[28] Commissioner Lucy Asuagbor, *Report of the Chairperson of the Working Group on Communications Presented during the 56th Ordinary Session of the African Commission on Human and Peoples' Rights* (2015), paras. 11-12, *available at* http://www.achpr.org/files/sessions/56th/inter-act-reps/224/56th_session_wgc_report_comm_asuagbor_en.pdf; ACommHPR, Rules of Procedure (2010), Rule 93; African Charter, art. 56.

[29] ACommHPR, Rules of Procedure (2010), Rule 93; African Charter, art. 56.

[30] African Charter, art. 56(6); ACommHPR, *Gabriel Shumba v. Zimbabwe*, Communication No. 288/2004, Merits Decision, 51st Ordinary Session (2012), para. 44, *available at* http://www.achpr.org/communications/decision/288.04/.

[31] *Gabriel Shumba v. Zimbabwe*, 51st Ordinary Session (2012), para. 44; ACommHPR, *Dr. Farouk Mohamed Ibrahim (represented by REDRESS) v. Sudan*, Communication 386/10, Admissibility Decision, 13th Extraordinary Session (2013), para. 77, *available at* http://www.achpr.org/communications/decision/386.10/.

within six months from exhausting domestic remedies, which is in keeping with the rules of the European and Inter-American human rights systems.

The parties to the complaint will continue to submit information to the Commission regarding the pending complaint after the Commission is seized of it. First, the complainant must submit observations on the admissibility of the complaint within two months after the Commission issued notice of its seizure of the complaint, and may do so again within one month after the State submits its own observations on admissibility.[32] Second, the complainant has 60 days after the Commission finds a complaint admissible to submit its arguments and evidence on the merits, and 30 days after the State's submission of arguments to submit a reply.[33]

After the Commission is seized of a complaint, the Commission can at its own initiative, or at the request of one of the parties to the complaint, hold a private hearing on admissibility or on the merits before the Commission at one of its sessions.[34] A request for a hearing must be submitted at least 90 days before the start of the Commission's session.[35]

Travel Requirements

Virtual participation in the ACHPR's sessions and other public activities is not yet a possibility. As a general rule, civil society members who wish to observe, make oral statements, or otherwise participate, must do so in person.

Individuals must secure their own visas or other necessary travel approval to attend or participate in ACHPR sessions, visits, and other interactive functions. The ACHPR provides a generic invitation letter, on its website, for use by non-governmental organizations whose representatives are traveling to attend a session.

The preliminary registration form required by the Commission may facilitate the entry of those individuals wishing to attend the session who live outside of the host country. The Commission has indicated, via its information notes on the sessions, that it must coordinate with the host country, including potentially to forward the list of participants to the hosting State's authorities so that participants may enter the country.[36] The Commission gathers the list of participants from the preliminary registration forms.[37]

Informal Barriers to Civil Society Attendance at ACHPR Sessions

In addition to the formal requirements identified above, participants in this study indicated that they face informal barriers to attending ACHPR sessions. This report distinguishes between barriers to *attendance* and barriers to *participation*, because they are often distinct and because not all civil society members both attend and participate. The primary informal barriers to civil society attendance at ACHPR sessions are: inadequate notice of the agenda; lack of transparency on, and access to information on, processes

[32] ACommHPR, Rules of Procedure (2010), Rule 105.
[33] *Id.* at Rule 108.
[34] ACommHPR, Rules of Procedure (2010), Rule 99.
[35] *Id.* at Rule 99(4).
[36] *See* ACHPR, 62nd Ordinary Session: Information for Participants, http://www.achpr.org/files/sessions/62nd_os/info/information-for-participants/62nd_os_information_note_for_participants_eng.pdf.
[37] *See id.*

and practices; safety concerns; inadequate accommodations for persons with disabilities; and the cost of attendance, obtaining visas, and distance of travel to the Commission.

Timing & Notice

The timeframe in which information on a session is shared and the length of sessions can each affect civil society attendance at ACHPR sessions. These factors also impact other logistical barriers civil society members face in obtaining visas, arranging travel, and funding their travel and accommodation.[38] They can additionally affect civil society members' ability to map out an advocacy plan around the agenda of the African Commission.

In practice, at each ordinary session, the ACHPR decides on the location and dates of its next ordinary session and extraordinary session, if applicable. Those details are published in the final communiqué of the session in which the ACHPR made the decision. Assuming the final communiqué is published within a week or two after the end of the session, the dates and location for an ordinary session are made available around five to six months before that session, and the dates and location of extraordinary sessions are made available around two to three months ahead of that session. For instance, the final communiqué of the 61st Ordinary Session contains the dates and location of the 62nd Ordinary Session, and that of the 23rd Extraordinary Session.[39] However, advocates and other individuals wishing to attend a session must first be aware that these details on dates and location are published in the final communiqués to be able to find that information. Others will only learn of the session details about one month before the session, when the ACHPR publishes them in the "Sessions" section of its website.

The ACHPR's Rules of Procedure require it to send out the provisional agenda 45 days before the start of the session to States parties, the Chairperson of the African Union Commission, and organizations with observer status; "in exceptional cases," it may send the agenda out only 30 days in advance.[40] The ACHPR must make the agenda available on its website at least 15 days before a session.[41]

The Commission's practice has been to publish generic invitations to NGOs with date and location information on a session about one month or more prior to the start of the session,[42] and to publish the provisional agenda for the session within the month leading up to the start of the session. Participants in this study indicated that such late notice of the session's agenda and specific location (if outside The Gambia), complicates their ability to decide whether to attend, arrange their travel, draft any submissions or statements, and make other preparations. Later bookings of hotels and flights also tend to be more expensive.

The duration of ACHPR sessions can also pose a challenge to civil society members. To observe or participate in the full session, civil society must remain in the location of the session – often in Banjul, The Gambia – for nearly three weeks; African Commission sessions typically last 15 days with around 10 days of events open to the public, and many civil society organizations arrive early for the NGO Forum, a coalition meeting, or side events that occur in the few days prior to the start of ordinary sessions.

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[38] *See infra* 'Cost & Distance of Travel' in this chapter.
[39] ACommHPR, *Final Communique of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights* (2017), paras. 59, 60, *available at* http://www.achpr.org/sessions/61st/info/communique61/.
[40] ACommHPR, Rules of Procedure (2010), Rules 33.2, 33.3.
[41] *Id.* at Rule 33.4.
[42] *See* ACommHPR, Invitation to the 61st Ordinary Session, *available at* http://www.achpr.org/files/sessions/61st/info/invit_61_ngos/61_os_invitation_ngos_eng.pdf.

However, remaining at the site of the session for two to three weeks can be expensive and a long time to be away from an office or family. Many advocates do not stay throughout the entire two weeks of the Commission session but remain there only for the first few days. Leaving before the end of the session, however, may result in missed opportunities to engage with Commissioners.[43]

Transparency & Access to Information

A lack of access to complete and accurate information related to sessions is a barrier to civil society members' attendance and, therefore, to their participation. For example, civil society members have brought to the attention of the Commission the lack of materials in Portuguese, in particular. The limited availability of session materials in all the recognized languages is discussed further below.[44]

Additionally, the information on the Commission's website is not always up-to-date and may contain inconsistent information. For instance, prior to the 61st Ordinary Session in November 2017, the ACHPR website said that there were only 477 organizations with observer status, but the final communiqué from that session indicated there had actually been 511 organizations with such status prior to the session.[45]Additionally, while the final communiqué reports the total organizations as 515, the website currently lists the total as 514 organizations.[46]

As an example of how this incomplete information can affect civil society, the Coalition of African Lesbians (CAL) gained their observer status in 2015[47] but, while announced in the final communiqué of the 56th Ordinary Session, was not listed on the website as having status for at least two years, leaving their status unclear, during which time a regional political organ made a statement that the ACHPR should strip CAL of their status and the ACHPR did not respond.[48] In 2018, the ACHPR took the astonishing step of actually stripping CAL's observer status, at the request of the AU Executive Council.[49]

Furthermore, as mentioned above on timing and notice, the Commission publishes session agendas less than a month before the start of the session.[50] As participants in this study indicated, the logistics of planning to attend the sessions can be challenging, and without knowing what will be on the agenda ahead

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[43] *See infra* 'Timing' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions'.
[44] *See infra* 'Translation & Interpretation' *in* Informal Barriers to Civil Society Attendance at ACHPR Sessions.
[45] ACommHPR, *Final Communique of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights, supra* note 39, at para. 41
[46] ACommHPR, Network, http://www.achpr.org/network/.
[47] ACommHPR, *Final Communique of the 56th Ordinary Session of the African Commission on Human and Peoples' Rights* (2015), para. 25, *available at* http://www.achpr.org/files/sessions/56th/info/communique56/56thos_final_communique_en.pdf.
[48] Executive Council of the African Union, *Decision on the Thirty-Eighth Activity Report of the African Commission on Human and Peoples' Rights Doc.EX.CL/921(XXVII),* at EX.CL/Doc. 887(XXVII), para. 7, *in Executive Council Decisions*, EX.CL/Dec. 873-897(XXVII), 27th Ordinary Session, 7-12 June 2015, *available at* https://au.int/sites/default/files/decisions/31762-ex_cl_dec_873_-_898_xxvii_e.pdf; s*ee also* AfCHPR, *Request for Advisory Opinion by the Centre for Human Rights of the University of Pretoria and the Coalition of African Lesbians*, no. 002/2015, 28 September 2017, para. 5, *available at* http://www.african-court.org/en/images/Cases/Judgment/002-2015-African%20Lesbians-%20Advisory%20Opinion-28%20September%202017.pdf.
[49] *See African Commission Bows to Political Pressure, Withdraws NGO's Observer Status*, International Justice Resource Center (28 Aug. 2018), https://ijrcenter.org/2018/08/28/achpr-strips-the-coalition-of-african-lesbians-of-its-observer-status/.
[50] *See supra* 'Timing & Notice' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions.'

of time, civil society members may make travel plans that conflict with key parts of the session or may opt to not attend. Additionally, the agenda, once published, is not detailed.[51]

Further, the ACHPR does not indicate how to contact the ACHPR, or anyone within it, for more information or to request access to certain information. While the ACHPR provides general contact information on its website (that are not specific to any person), it does not provide the contact details for the commissioners, Secretary, or any staff members. It does provide general contact forms on each commissioner's webpage on the ACHPR website. Similarly, the ACHPR has not published an organizational chart or any other information about the composition of the Secretariat. Together with its apparent practice of not acknowledging receipt of, or consistently responding to, emails sent to the general email address, these practices have the effect of making the ACHPR quite opaque.

In addition to its website and the documents posted thereon, the African Commission also has a social media account on Twitter, which it could use to further disseminate and raise awareness of key information on dates, times, and agendas of sessions and share important announcements, outcome documents, and reminders.[52] However, the Commission has not tweeted since 2012. The primary method of disseminating announcements and other information is through its website.

Translation & Interpretation

The Rules of Procedure indicate that the sessions may be conducted in Arabic, English, French, or Portuguese.[53] The Commission, therefore, provides interpretation for Arabic, English, French, and Portuguese.

Not all of the session documents available on the Commission's website in English are available in the other three languages. For instance, the webpage on the 61st Ordinary Session on the English version of the site contains links for the invitation for NGOs, invitation for NHRIs, the preliminary registration form, the information for participants, the provisional agenda for the session, and a media advisory.[54] Of those documents, the 61st Ordinary Session's webpage on the Portuguese version of the site contains only links for the preliminary registration form, the information for participants, and the media advisory.[55] However, the link that purportedly connects to the preliminary registration form does not, in fact, contain the form.[56] The Arabic version of the site contains no information on the 61st Ordinary Session's webpage.[57]

Safety & Privacy Concerns

While none of the participants in this study indicated that safety and privacy concerns personally prevented them from attending a session, participants did report that advocates that they partner with

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[51] *See*, *e.g.*, ACommHPR, *Provisional Agenda of the 61st Ordinary Session* (2017), *available at* http://www.achpr.org/files/sessions/61st/info/draft-agenda/draft_agenda_61os_eng.pdf.

[52] *See also infra* ' Transparency & Access to **Information**' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions'.

[53] ACommHPR, Rules of Procedure (2010), Rule 36(2).

[54] ACommHPR, 61st Ordinary Session: 1- 15 November 2017. Banjul, Gambia, http://www.achpr.org/sessions/61st/.

[55] ACommHPR, 61ª Sessão Ordinária: 1 – 15 novembro 2017. Banjul, Gambia, http://www.achpr.org/pt/sessions/61st/.

[56] ACommHPR, 61ª Sessão Ordinária: Formulário de Inscrição Preliminar, http://www.achpr.org/pt/sessions/61st/info/regform_61os/.

[57] ACommHPR, 61 الدورةالعاديةرقم, http://www.achpr.org/ar/sessions/61st/info/regform_61os/.

faced negative consequences due to media coverage of sessions and that safety is a concern for those individuals. In particular, the cameras that take photos of attendees and speakers and the publication of those photos without permission are of particular concern to certain individuals and can present a barrier to attendance. Moreover, the ACHPR is aware of reprisals against civil society members engaging in its sessions or other work. It has taken steps to condemn and address attacks and acts of intimidation by States and others, but has identified the security of civil society members as a continuing problem.[58]

There are currently no procedures for warning individuals about the media that are used at Commission sessions and no procedures for asking individuals about their preferences for exposure through the media. All attendees to a Commission session must identify themselves by registering with the Secretariat prior to the session without knowing who else might have access to the information or how that information is used. The registration form requires each attendee to provide, at least, their name, organization, address, email, and phone number,[59] and often the form also requires information on the attendee's passport number and expiration date, flight information, and arrival and departure dates.[60]

As mentioned in the section on observer status,[61] there can be inconsistent, and therefore unpredictable, procedures for security at sessions. For instance, when sessions are held in different locations outside of Banjul, the customary practices regarding safety may change. IJRC was told that during the Commission's 55th Ordinary Session in Angola in 2014, the security guards followed certain attendees of the session. Additionally, during the 2018 ACHPR session in Mauritania, Mauritanian civil society advocates who were not on a government approved list were denied entry into the session venue, although the same advocates had registered with the ACHPR to attend the session. To obtain entry, other civil society members had to lobby the Commission on their behalf.

The Commission has taken steps to address reprisals against human rights defenders who engage with the Commission. The Commission expanded the mandate of its Special Rapporteur on Human Rights Defenders in 2014 to include the responsibility to collect information on, document, and address reprisals; provide guidance on the adoption of urgent measures; and present reports on reprisals in the rapporteur's activity reports.[62] Further, in 2017 the Special Rapporteur on Human Rights Defenders in Africa organized the 2nd Colloquium on the Situation of Human Rights Defenders in Africa with the goal of strengthening the protection of human rights defenders on the continent.[63] The Colloquium's attendees, which included human rights defenders and national institutions, among others, produced a declaration that made recommendations to the Commission and the African Union, among other groups.[64]

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[58] *See* ACommHPR, *Mandate of the Special Rapporteur on Human Rights Defenders and Focal Point on Reprisals in Africa: End of Mandate Report* (2017), para. 65, *available at* http://www.achpr.org/files/sessions/61st/inter-act-reps/295/comm_gansou_srhrd_61_act_report_eng.pdf.

[59] *See* ACommHPR, 61st Ordinary Session: Preliminary Registration Form, *supra* note 12.

[60] *See, e.g.,* ACommHPR, 62nd Ordinary Session: Preliminary Registration Form, *supra* note 13.

[61] *See supra* 'Observer Status' *in* 'Formal Requirements for Civil Society Engagement with the ACHPR.'

[62] *See* ACommHPR, *Resolution 273 on Extending the Scope of the Mandate of the Special Rapporteur on Human Rights Defenders in Africa* (2014), *available at* http://www.achpr.org/sessions/55th/resolutions/273/.

[63] *See* ACommHPR, *Intersession Activity Report* (2017), paras. 35-36, *available at* http://www.achpr.org/files/sessions/60th/inter-act-reps/284/60os_inter_session_srhrd_comm_gansou_eng.pdf.

[64] *Cotonou Declaration on strengthening and expanding the protection of all Human Rights Defenders in Africa*, (adopted at the 2nd International Symposium on Human Rights Defenders in Africa – Johannesburg +18, held 27 March to 1 April 2017), *available at* http://www.achpr.org/news/2017/06/d293.

Accessibility for Persons with Disabilities

The physical accessibility of the ACHPR session venue and materials may pose a barrier to attendance for some individuals. When held in Banjul, the ACHPR session venue, the Kairaba Hotel, is the same venue as the NGO Forum. One attendee of the NGO Forum and ACHPR 61st Ordinary Session stated at the NGO Forum the desire to raise the accessibility of the ACHPR session venue with the Commission. While it was agreed to raise the issue in the statement of the NGO Forum to the Commission, it was not reflected in the NGO statement.[65]To enter the space, attendees must take one step up, and to use the handicap bathrooms that are on a lower level than the main space, attendees either have to go down a flight of stairs or go down a driveway adjacent to the venue to access the lower level from the back entrance. There may be other physical barriers throughout a typical day of attendance, as most lunch options are off site.

Additionally, the Commission does not provide materials in accessible formats, including for its materials on sessions. Notably, the Commission does not provide large print, audio, and braille formats.

The Commission, however, does provide a space on its on-site registration form to identify accommodations needed by attendees, although it also goes farther to ask for an identification of disability. At the 61st Session, this line on the registration form read "Disability (specify disability and needs)" with a space following that text.

Cost & Distance of Travel

As a continental human rights body with jurisdiction over 54 States, the ACHPR will be far removed from many countries no matter where it convenes. For instance, when sessions are held in The Gambia, the location of the ACHPR's headquarters, travel for some participants is complicated. The Gambia is a relatively small country, and its airport is not a regional transit hub.[66] For example, air travel from Johannesburg to Banjul is significantly more expensive and lengthier than to many other capital cities on the continent.

Participants in the study indicated that cost and distance of travel are significant barriers to attendance, and related logistics, such as obtaining a visa and necessary vaccinations, can also be a hindrance. Some civil society members reportedly do not attend ACHPR sessions because, in their opinion, the resolutions they are able to secure from the ACHPR are not worth the resources necessary to secure those outcomes.

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[65] *See* ACommHPR, *Statement on Behalf of Participants of the Forum on NGOs at the Official Opening of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights* (2017), *available at* http://www.achpr.org/files/sessions/61st/statements/ngo_statement/statement_on_behalf_of_paticipants_of_the_forum_on_ngos_60os.pdf.

[66] *Compare* Banjul International Airport, Passenger statistics, https://www.banjulairport.com/banjul_airport_passengers.php (last visited May 14, 2018), *with* Casablanca International Airport, Passenger statistics, https://www.aeroportdecasablanca.com/casablanca_airport_passengers.php, *and* Accra International Airport, Passenger statistics, https://www.aeroport-nouakchott.com/nouakchott_airport_passengers.php (finding that in the two-week period of April 29 to May 13, 2018, the Banjul airport had 4,652 passengers arrive in the country and 5,248 passengers leave, while the Casablanca and Accra airports had 132,726 and 36,786 leaving passengers, respectively, and 136,086 and 39,225 arriving passengers, respectively).

Scholarships for a limited number of advocates to attend the NGO Forum and the subsequent ACHPR session, however, have been available in the past and may be in the future depending on funds.[67] In 2017, the European Union, at the prompting of several civil society organizations, provided scholarships for 30 advocates.[68]

Informal Barriers to Civil Society Participation at ACHPR Sessions

Participants in this study indicated that there are several informal barriers to participating in ACHPR sessions. While many civil society members attend the ACHPR sessions without making formal statements or otherwise participating in the Commission processes, NGOs with observer status may do so. Participants in this study indicated that the barriers they face to, as well as the practices that facilitate, engagement with the Commission may arise from the Commission's, civil society's, or State representatives' actions or inaction.

The primary informal barriers to civil society participation at ACHPR sessions are the Commission's lack of transparency and inadequate provision for access to information, biases against certain thematic issue areas and NGOs, a perceived lack of independence, closing space for NGOs, and inadequate notice of the agenda; government-backed NGOs, and the few NGOs that hold the majority of decision-making power for civil society's representation before the Commission; and State representatives' push for a less independent Commission and to limit access to the Commission and its sessions for certain NGOs. The Commission's and civil society's actions can also facilitate civil society members' increased engagement with the Commission, such as the Commissioners' willingness to informally communicate with civil society, and civil society's use of coalitions and networks to draw attention to the advocacy of organizations with limited resources.

Timing

The Commission's sessions get quieter as advocates leave after the first few days, and the remaining advocates are able to accomplish more in their engagement with the Commission later in the session. Discussions during the session tend to be more frank after the first several days, and the Commissioners are more likely to be available to speak with advocates at the end of the session. Therefore, if a civil society member faces logistical and financial barriers to remaining throughout the session,[69] he or she will miss the opportunities available towards the end of the session, including holding conversations with the Commissioners and more opportunity to make comments during panels or other discussions.

Transparency & Access to Information

The lack of transparency and, as a part of that, lack of access to complete information can hinder civil society's ability to use the ACHPR processes as a tool for conducting advocacy. The lack of complete information on a process or status can prevent organizations from making strategic decisions on what to raise before the Commission or during a certain procedure, on what organizations to collaborate with in engaging with the Commission, and what recommendations or issues to raise with States either through Commission processes or outside of the Commission's processes.

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[67] ACDHRS, Application for Support to participate in the Forum of NGOs and the public session of the 60th Ordinary Session of the African Commission on Human and Peoples Rights (African Commission), https://www.acdhrs.org/wp-content/uploads/2017/04/Call-for-Applications-ACHPR-NGO-Forum-.pdf.

[68] *Id.*

[69] *See supra* 'Timing & Notice' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions.'

At the October 2017 NGO Forum, civil society organizations discussed the lack of transparency around the Commission's State review process, which includes a dialogue between the ACHPR and States during the ACHPR sessions.[70] However, the alternative reports from civil society, a record of the dialogue between the State and the Commission, and the ACHPR's concluding observations from the review are not consistently published online. Additionally, the Commission does not always make clear its timeline for adopting concluding observations and does not indicate whether the State received the concluding observations. Further, different pages of the ACHPR's website will contain conflicting information, such as on whether the Commission has adopted concluding observations.[71] Civil society at the October 2017 NGO Forum discussed the need to have confirmation that the State received the ACHPR's concluding observations. Civil society, therefore, faces significant challenges in using the State review process as a tool for engagement in continued advocacy both at subsequent State reviews and in advocacy outside of the ACHPR sessions.

As another example of incomplete information, the civil society statements made during the sessions are inconsistently made available on the Commission's website. The final communiques of the 61st Ordinary Session and the 59th Ordinary Session indicate that 65 NGOs and 35 NGOs, respectively, made statements on the human rights situation in Africa during those sessions, but the documents database on the ACHPR's website does not have any statements posted for the former session and only nine statements posted for the latter session.[72] Further, both communiqués indicate that States parties made statements as well, but those statements are not available on the ACHPR's database.[73] Access to these statements as well as those made by other civil society members may help advocates better coordinate engagement with the Commission and plan responses to past States' statements. Therefore, the inability to access these statements may hinder civil society's full engagement with the Commission.

The ACHPR website also displays inaccurate information on State ratifications of key regional human rights treaties, which can affect civil society's engagement with the State review process, their statements before the Commission, and other methods of engagement with the Commission. For instance, as of March 2018, the Commission's website reported that South Sudan has yet to sign or ratify the African

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[70] *See* ACommHPR, State Reporting Procedure, http://www.achpr.org/states/reporting-procedure/.

[71] For example, while the Commission's final communique from its 60th Ordinary Session indicates that it reviewed and adopted concluding observations on Mauritius pursuant to its 6th, 7th, and 8th periodic reports, the Commission's webpage on Mauritius states that there are no concluding observations yet for those reports. Further, the Commission's database of documents does not contain the concluding observations for those periodic reports on Mauritius. *See* ACommHPR, *Final Communique of the 60th Ordinary Session of the African Commission on Human and Peoples' Rights* (2017), para. 41, *available at* http://www.achpr.org/files/sessions/60th/info/communique60/final_communique_60os_eng.pdf; ACommHPR, Mauritius, http://www.achpr.org/states/mauritius/; ACommHPR, Documents Search, http://www.achpr.org/search/?t=831&sort=_date&q=mauritius.

[72] *See* ACommHPR, *Final Communique of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 39, at para. 38; ACommHPR, *Final Communique of the 59th Ordinary Session of the African Commission on Human and Peoples' Rights* (2016), para. 20, *available at* http://www.achpr.org/files/sessions/59th/info/communique59/final_communique_59os_eng.pdf; ACommHPR, Documents Search, (last visited March 16, 2018), http://www.achpr.org/search/?t=835%7C839&sort=_date.

[73] *See* ACommHPR, *Final Communique of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 39, at para. 35; ACommHPR, *Final Communique of the 59th Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 72, at para. 18; ACommHPR, Documents Search, http://www.achpr.org/search/?t=835%7C839&sort=_date.

Charter on Human and Peoples' Rights, but the African Union's website indicates that South Sudan signed and ratified the treaty in 2013 and deposited its instrument of ratification in 2016.[74]

As mentioned above, the Commission does not use its social media presence fully as it has in the past. Before it ceased tweeting, the Commission used tweets to share press releases, announcements about vacancies on working groups, and invite feedback from civil society.[75] The Commission's tweets at that time also indicate it previously had a Facebook page, which is no longer available. The Commission does have a Flickr account through which it shares photos of its sessions and activities. The publication of photos of human rights defenders in attendance, however, may raise safety concerns for some individuals.[76]

Translation & Interpretation

The Rules of Procedure indicate that the sessions may be conducted in Arabic, English, French, or Portuguese.[77] The Commission, therefore, provides interpretation for Arabic, English, French, and Portuguese.

Accessibility for Persons with Disabilities

Barriers to accessing the venue for persons with disabilities can prevent individuals from fully participating, in addition to being a barrier to attendance.[78] As mentioned above in the section on informal barriers to attendance, the venue of the Commission sessions, often held in Banjul at the Kairaba Hotel, is not always fully accessible for all people with disabilities, and the materials that the Commission provides, including on its sessions, are not also provided in accessible formats, including large print, audio, and braille.[79] The on-site registration form at Commission sessions, however, may include a space to indicate accommodations needed, as was the case at the 61st Ordinary Session of the Commission.[80]

Bias & Threats to Independence

Participants in this study and other civil society members have expressed concern over the Commission's biases and susceptibility to influence from intergovernmental regional organs and States parties. On the latter issue, civil society members have expressed concern that the Commission faces pressure from African Union political organs – primarily the Executive Council – and Members States, generally, to align its practices with their preferences. Civil society has expressed concern that the Commission may be biased against organizations that work on certain thematic issues areas or that are lesser-known or national organizations.

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[74] *See* ACommHPR, Ratification Table: African Charter on Human and Peoples' Rights, http://www.achpr.org/instruments/achpr/ratification/; African Union, OAU/AU Treaties, Conventions, Protocols & Charters, https://au.int/en/treaties.

[75] *See* Twitter, AfricanCommissionHPR: Tweets (@ACHPR), (last visited 25 April 2018), https://twitter.com/ACHPR.

[76] *See infra* 'Safety & Privacy Concerns' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions'.

[77] ACommHPR, Rules of Procedure (2010), Rule 36(2).

[78] *See supra* 'Accessibility for Persons with Disabilities' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions.'

[79] *See supra* 'Accessibility for Persons with Disabilities' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions.'

[80] *See supra* 'Accessibility for Persons with Disabilities' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions.'

Civil society expressed concern over the trend of interference in the ACHPR's affairs by the African Union Executive Council, an intergovernmental body that supports the AU Assembly and creates policies. The Executive Council must approve all of the Commission's activity reports before they are published, and has used this authority to control aspects of the ACHPR's work.[81] For example, in January 2015, the Executive Council asked the African Commission to delete lines in its activity report that referred to a case involving Rwanda and to re-open the case so that Rwanda may make additional arguments.[82]

In 2018, the Executive Council issued decisions that questioned the ACHPR's mandate, its process for granting observer status, its authority in confirming the existence of human rights violations, and its relationships with outside actors.[83] Specifically, its June 2018 decision calls on States parties to reevaluate the ACHPR's jurisdiction to receive and decide complaints of human rights violations, calling for "an analytical review of the interpretative mandate of the ACHPR in the light of a similar mandate exercised by the African Court and the potential for conflicting jurisprudence."[84] The Executive Council requested that the ACHPR present its criteria for granting observer status to the States parties for their review and approval, and suggested those criteria should be the same as the AU's NGO accreditation requirements.[85] The decision also directed the ACHPR to withdraw the observer status previously granted to the Coalition of African Lesbians (CAL), a nongovernmental organization.[86]

The targeting of CAL, and the ACHPR's eventual decision to strip CAL of its observer status, is perhaps the clearest, most alarming example of the threats to the ACHPR's independence from the AU. CAL had been denied observer status after its first application in 2014 and was forced to reapply in 2015, the year in which its status was granted.[87] Although the process of applying for observer status may appear opaque, IJRC has not received information on the Commission initially denying another organization's observer

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[81] African Charter art. 59(3), *available at* http://www.achpr.org/instruments/achpr/; ACommHPR, Rules of Procedure (2010), Rules 110(3)-(4); *see also* ACommHPR, About Sessions, http://www.achpr.org/sessions/about/.

[82] Executive Council of the African Union, *Decision on the Thirty-Seventh Activity Report of the African Commission on Human and Peoples' Rights Doc.EX.CL/887(XXVI),* at EX.CL/Doc. 864, para. 8, *in Executive Council Decisions*, EX.CL/Dec. 851-872(XXVI), 26th Ordinary Session, 23-27 January 2018, *available at* https://au.int/sites/default/files/decisions/9666-ex_cl_dec_851_-_872_xxvi_e.pdf; Executive Council of the African Union, *Decision on the Thirty-Eighth Activity Report of the African Commission on Human and Peoples' Rights Doc.EX.CL/921(XXVII)*, at EX.CL/Doc. 887(XXVII), para. 7, *in Executive Council Decisions*, EX.CL/Dec. 873-897(XXVII), 27th Ordinary Session, 7-12 June 2015, *available at* https://au.int/sites/default/files/decisions/31762-ex_cl_dec_873_-_898_xxvii_e.pdf.

[83] *See* Executive Council of the African Union, *Decision on the Report on the Joint Retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR) Doc.EX.CL/1089(XXXIII) I*, *in* Decisions, EX.CL/Dec.1008-1030(XXXIII), 33rd Ordinary Session, 28-29 June 2018, at EX.CL/Dec.1015(XXXIII), *available at* https://au.int/sites/default/files/decisions/34635-ex_cl_dec_1008_-1030_xxxiii_e.pdf; Executive Council of the African Union, Decision on the African Commission on Human and Peoples' Rights Doc. EX.CL/1058(XXXII), *in* Decisions, EX.CL/Dec.986-1007(XXXII), 32nd Ordinary Session, 25-26 January 2018, at EX.CL/Dec.995(XXXII), paras. 3, 4, *available at* https://au.int/sites/default/files/decisions/33909-ex_cl_decisions_986-1007_e.pdf.

[84] *See* Executive Council of the African Union, *Decision on the Report on the Joint Retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR) Doc.EX.CL/1089(XXXIII) I*, *supra* note 83, at para. 7(iii).

[85] *See id.* at para. 8(iv).

[86] *See id*. at para. 8(vii).

[87] ACommHPR, *Final Communique of the 56th Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 47, at para. 25.

status application. In fact, other civil society organizations obtained observer status without incident during the time CAL's application was pending.

In response to the ACHPR granting CAL observer status, the Executive Council made numerous attempts to reverse that decision, eventually succeeding in 2018. In June 2015, the Executive Council asked the ACHPR to strip CAL's observer status and to consider "African values" when reviewing applications for observer status.[88] In January 2018, the Executive Council expressed "concern on the non-implementation" of its 2015 decision to strip CAL of its observer status and requested the ACHPR to comply with the Executive Council's decision.[89] In June 2018, the Executive Council imposed a deadline, of December 31, 2018, for the ACHPR to withdraw CAL's observer status, and instructed the Commission to revise the criteria for granting observer status, to bring that criteria in line with the African Union's requirements for accreditation with the African Union, and in doing so, to take into consideration "African values and traditions."[90] The African Commission withdrew CAL's observer status in August 2018.[91]

Civil society has also expressed concern that Commissioners are loyal to their home State and represent that State in their work at the Commission instead of working independently. At the 61st Ordinary Session, the Commission Chairperson cut some civil society statements off short, giving them less than the five minutes allotted for each civil society statement. The participants in this study said this was a sign of bias and indicated that they have witnessed similar behavior in the past.

The Secretary of the ACHPR, who oversees the Secretariat, is chosen by the African Union political organs. Participants in this study indicated that they believe the Secretary receives pressure from AU Member States, which comprise the political organs of the AU, and specifically from the Secretary's home State. The current Secretary, Dr. Mary Maboreke, is from Zimbabwe. Participants indicated that they believe the Secretary receives pressure from Zimbabwe to limit statements or advocacy on issues in that State, and they believe that this can influence the Commission when entertaining the statements of advocates from Zimbabwe.

Additionally, civil society expressed concern over perceived Commission bias towards certain thematic issues over others, and the hostility that the Commissioners and the Commission, generally, display to certain groups, particularly those that work on sexual orientation and gender identity issues. For example, at the 61st Ordinary Session, the Commission Chairperson inconsistently added commentary following some statements while remaining silent after others. The Chairperson chided CAL after their statement at the 61st Ordinary Session, saying that CAL should not criticize the Commission and should show respect towards the Commission. CAL's statement raised the issue of the AU Executive Council's interference in the Commission's work and asked the ACHPR to resist political interference. Additionally, participants in

[88] Executive Council of the African Union, *Decision on the Thirty-Seventh Activity Report of the African Commission on Human and Peoples' Rights Doc.EX.CL/887(XXVI), supra* note 82, at EX.CL/Doc. 864, para. 8; Executive Council of the African Union, *Decision on the Thirty-Eighth Activity Report of the African Commission on Human and Peoples' Rights Doc.EX.CL/921(XXVII)*, *supra* note 82, at EX.CL/Doc. 887(XXVII), para. 7.

[89] Executive Council of the African Union, *Decision on the African Commission on Human and Peoples' Rights Doc. EX.CL/1058(XXXII)*, *supra* note 83, at EX.CL/Dec.995(XXXII), para. 3.

[90] *See* Executive Council of the African Union, *Decision on the Report on the Joint Retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR) Doc.EX.CL/1089(XXXIII) I*, *supra* note 83, at para. 8(iv), (vii).

[91] *See African Commission Bows to Political Pressure, Withdraws NGO's Observer Status*, International Justice Resource Center (28 Aug. 2018), https://ijrcenter.org/2018/08/28/achpr-strips-the-coalition-of-african-lesbians-of-its-observer-status/.

this study indicated that the Commission does not provide sufficient time to discuss issues around persons with disabilities and economic, social, and cultural rights, which is a barrier to their engagement with the Commission. Further, on a larger scale, the barriers to empowerment that exist in society are reflected at the Commission and the NGO Forum, despite their rights agenda. In particular, men can dominate discussions at the Commission and silence women.

Further, civil society participants in this study expressed the opinion that national and local organizations are not big enough to engage fully with the African Commission. Civil society has noted that the Commission tends to be biased towards bigger and well-known organizations that operate over a wide geographic area.

Participants in this study stated that the past activities of the Commission demonstrate that civil society must capture the attention of the Commission to push for outcomes on particular issues, and that there is a path to gaining recognition of an issue before the Commission. Participants in this study have found that allies, both on the Commission and in the NGO space, who are willing to make statements on the issue are key to gaining recognition.

For instance, previously the Commission's general attitude towards Indigenous peoples' rights was skeptical; there was a belief that it was a non-issue on the African continent. After one Commissioner attended a meeting in South Africa on Indigenous peoples, he was moved by what he heard at the meeting and brought his interest back to the ACHPR. At the same time, advocates working on Indigenous peoples' rights started making statements before the Commission in support of those rights, and civil society members who were not working on those issues also made statements in a show of support. In time, the Commission developed the Working Group on Indigenous Peoples' Rights[92] that was tasked with investigating whether Indigenous peoples' rights is an issue on the African continent and the rights implicated under the African Charter. The Working Group completed its first report in 2003,[93] which was then adopted by the ACHPR as the framework on the issue of Indigenous peoples' rights in Africa, with later cases referring back to it. After the report, the Working Group was asked to continue its work with a new mandate of promotional sensitization. The Working Group now does country missions and trainings, and it issued a legal opinion stating that the United Nations Declaration on the Rights of Indigenous Peoples complies with the African human rights framework so that the African group at the UN voted in favor of the UN Declaration. Now, Indigenous peoples' rights is raised during State reviews,[94] and jurisprudence on Indigenous peoples' rights in the African system is developing.[95]

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[92] *See* ACommHPR, *Resolution on the Rights of Indigenous Peoples' Communities in Africa* (adopted by the Commission at its 28th Ordinary Session, held from 23 October to 6 November 2000), *available at* http://www.achpr.org/sessions/28th/resolutions/51/.

[93] ACommHPR, *Report of the African Commission's Working Group on Indigenous Populations/Communities* (2003), *available at* http://www.achpr.org/files/special-mechanisms/indigenous-populations/expert_report_on_indigenous_communities.pdf.

[94] *See, e.g.,* ACommHPR, *Concluding Observations and Recommendations on the 8th to 11th Periodic Report of the Republic of Kenya*, 19th Extraordinary Session, 16-25 February 2016, *available at* http://www.achpr.org/states/kenya/reports/8th-11th-2008-2014/.

[95] *See* AfCHPR, *African Commission on Human and Peoples' Rights v. Kenya*, App. No. 006/2012, Judgment of 26 May 2017, *available at* http://en.african-court.org/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples%E2%80%99%20Rights%20v.%20the%20Republic%20of%20Kenya.pdf.

Openness & Inclusiveness

Participants in this study reported mixed opinions on the ACHPR's general attitude toward civil society and its members. Several civil society members indicated that the Commission demonstrates bias and hostility towards certain organizations and advocates, or that the Commission's attitude towards non-governmental organizations more broadly is closed or distant; others, though, indicated that they feel the Commission is generally open to civil society engagement, as demonstrated by the time allotted for civil society statements during sessions. For some civil society members, the Commission's attitude sends the message that NGOs should stop pushing the Commission to do more and refrain from bringing the high number of NGO Forum recommendations as are brought before the Commission now. Others have the impression that Commissioners are not fully listening to civil society statements. During sessions, some members of the ACHPR have publicly admonished civil society members to moderate their views or language, to show greater deference to the ACHPR, and to acknowledge civil society's own flaws or failings.[96]

As mentioned in the above section, it appears that some groups receive comparatively less inclusive treatment at the ACHPR. Commissioners' personal views, as well as the perceived social acceptance of those groups, seem to be factors. For example, a prior member of the ACHPR, Commissioner Mohamed Bechir Khalfallah, referred to homosexuality as a "virus coming from the West." And, as discussed earlier, some organizations working on sexual orientation and gender identity issues have faced barriers to engaging fully with the Commission. While some civil society members have reported an improvement in the ACHPR's receptiveness to groups that had been discouraged or excluded from participating, including groups working on the rights of lesbian, gay, bisexual, transgender, and intersex persons (LGBTI), that hostility is still fresh in advocates' minds and has not entirely disappeared.

While the Commissioners can be relatively open to fostering relationships with civil society members, this often results in only certain civil society members or groups developing and benefiting from those relationships. Civil society's access to the ACHPR outside of the formal session agenda depends, in many instances, on personal relationships or shared history. Bilateral or small meetings between civil society and ACHPR members are arranged using connections and relationships forged with individual commissioners, often through an organization's long-term, frequent participation in ACHPR activities. For example, at the 61st Ordinary Session, side events in which an ACHPR member participated were generally organized by organizations with long track records of relatively mainstream human rights work and personal relationships with individual commissioners. At the end of some commissioners' terms, also at the 61st Ordinary Session, some civil society members referred to the ACHPR members as "friends" or "family" and expressed their "love" for them, such was the closeness of their working relationships.

The physical setup of proceedings during sessions, particularly in the first few days of a session, signals – intentionally or unintentionally – that civil society is of less importance or value than other participants, and places NGOs at a distance from the Commission. For instance, the Secretariat designates seats for States, national human rights institutions (NHRIs), and NGOs, which are arranged in large sections in that order, with States closest to the panel of Commissioners and speakers, followed by NHRIs and then by NGOs. While many microphones are available for State and intergovernmental representatives at their designated tables, civil society members have to stand to speak at one shared microphone at the back of the room when making statements during the session.

[96] *See supra* 'Bias & Threats to Independence' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions.'

ACHPR sessions observe procedural protocols that can seem deferential to figures of authority, States parties representatives, and intergovernmental bodies and their representatives. Speakers tend to begin by addressing the ACHPR members and government representatives present, using their full professional titles and honorifics like "Your Excellency" and "Honorable." Sessions open with the playing of the anthem of the African Union, an intergovernmental body. The sessions' opening ceremonies also typically feature several speakers who represent governmental and intergovernmental bodies, and one representative of civil society. As is typical for other types of statements given during ACHPR sessions, the civil society speaker is given five minutes during the opening ceremony, while governmental and intergovernmental representatives are each allotted between six and 30 minutes. At the 61st Ordinary Session, the Commission was mistakenly referred to by a speaker as an intergovernmental organization, which would be one that comprises Member States rather than independent experts, a slip that hints at the importance the Commission seems to place on States' input, attendance, and engagement over that of civil society members.

In the context of the formality of the opening proceedings, the statements given on the first day of the session, including from the NGO representative, are more likely to focus on positive developments rather than critiques. The NGO representative's written statement often includes additional critiques and thematic issues that were not included in the oral remarks.[97] This may include thematic issues to which the Commission has not always been favorable.

Overall, participants in this study, though, indicated that they generally perceive the Commission as open to civil society attendance and engagement. For some civil society members, the Commissioners are open to civil society approaching them directly to talk about the civil society organizations' current work. Further, participants in this study mentioned that the Commission has allowed for a robust NGO presence; several participants find the Commission making time for civil society statements to be a useful tool to engage with the Commission. The ability of NGOs to attend even without observer status is particularly valuable, and civil society reported that attending sessions provides them with invaluable knowledge that they can apply directly to their work.

Setting the Session Agenda

While the formal opportunity to make requests for agenda items can facilitate civil society engagement,[98]study participants reported that such requests were generally not granted, and that the inability to influence the agenda in practice can present a barrier to engaging with the Commission. Participants indicated that they would prefer to see more time dedicated to civil society statements and to specific thematic issue areas that are not represented in the agenda frequently, such as disability rights. Civil society members did not indicate whether they thought an inability to make successful requests for inclusion of an agenda item was due to bias towards certain issue areas or civil society organizations,[99] or

[97] *Compare* ACommHPR, *Final Communique of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 39, at para. 10, *and* ACommHPR, *Statement on Behalf of the Participants of the Forum on NGOs at the Official Opening of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 65, *with* ACommHPR, *Final Communique of the 59th Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 72, at para. 5, *and* ACommHPR, *Statement on Behalf of Participants of the Forum of NGOs at the Official Opening of the 59th Ordinary Session of African Commission on Human and Peoples' Rights* (2016), *available at* http://www.achpr.org/sessions/59th/.

[98] *See supra* 'Written & Oral Submissions: Deadlines, Prior Notice, & Limitations on Length' *in* 'Formal Requirements for Civil Society Engagement with the ACHPR'.

[99] *See supra* 'Bias & Threats to Independence' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions.'

not. The Commission did decide to extend its ordinary periods of sessions by 6 days and its extraordinary periods of sessions by 5 days "in order to dedicate sufficient time to its work," which could result in more time allocated to civil society statements or certain thematic issues.[100] The increase in time was not reflected in its 23rd Extraordinary Session or its 62nd Ordinary Session in February, and April and May, respectively.[101]

Civil Society Statements

During Commission sessions, civil society may engage in dialogue with the Commissioners, and specifically those that hold positions on special mechanisms, in reference to the special mechanisms' work. As with other public dialogues during the Commission sessions, civil society may request to speak during a dialogue on the work of a special mechanism, such as a report.[102] Civil society's request to speak and the length of time they are provided for their comments are both subject to the discretion of the Chairperson of the Commission.[103] Unlike the statements on the human rights situation in Africa made during time allotted specifically for civil society to make statements before the Commission, statements made by the plenary during panel discussions or State reviews do not require a previously submitted written statement as a prerequisite to speaking.

Other Civil Society Members at ACHPR Sessions

GONGOs

While the presence of government NGOs (GONGOs) – that is organizations that participate in the NGO space but are paid for, or have the backing of, governments –is known to civil society at the NGO Forum and the ACHPR sessions, none of the participants in this study indicated that GONGOs have obstructed their engagement with the ACHPR itself. The participants in this study did note, however, that GONGOs can disrupt civil society's discussions and collaboration during the NGO Forum.[104]

Alliances and Coalitions

Alliances, often formed through coalitions or other networks, can help raise the profile of national or local organizations' advocacy and the advocacy of organizations who work on issue areas that have not received much attention before the Commission. Some civil society members use their organizations' resources and relationships to assist other members of the coalition to which they belong so that those organizations may have an opportunity to interact with State delegates or engage with the Commission. Participants in this study confirmed that they were able to raise the profile of the issue they worked on in the past through the support of other organizations raising that issue in their own statements before the Commission. Assistance in raising the profiles of the work of other organizations can counteract the

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[100] Executive Council of the African Union, *Decision on the African Commission on Human and Peoples' Rights Doc. EX.CL/1058(XXXII),* EX.CL/Dec.995(XXXII), para. 12, *in Executive Council Decisions*, EX.CL/Dec.986-1007(XXXII), 32nd Ordinary Session, 25-26 January 2018, *available at* https://au.int/sites/default/files/decisions/33909-ex_cl_decisions_986-1007_e.pdf.

[101] ACommHPR, 23rd Extraordinary Session: 13-22 February 2018. Banjul, Gambia, http://www.achpr.org/sessions/23rd-eos/; ACommHPR, 62nd Ordinary Session: 25 April – 9 May 2018. Nouakchott, Mauritania, http://www.achpr.org/sessions/62nd_os/.

[102] *See* ACommHPR, Oral intervention on the report of Special Rapporteur on Freedom of Expression and Access to information, http://www.achpr.org/sessions/51st/ngo-statements/15/.

[103] ACommHPR, Rules of Procedure (2010), Rules 39, 49.

[104] *See infra* 'Other Civil Society Members' Obstruction & Facilitation of ' *in* 'Participation in the NGO Forum: Challenges and Opportunities.'

limitations faced by lesser-known organizations or organizations that work on thematic issue areas that face bias in and outside of the Commission, such as sexual orientation and gender identity issues.

Some civil society members' reliance on allies to navigate the Commission sessions and for engagement, however, places control of advocacy strategies in the hands of organizations that are larger, are better-known, do not conduct advocacy, and/or work on thematic issues that the Commission views favorably. In the course of preparing this study, IJRC heard reports of civil society members hesitating or refusing to help civil society groups that requested their assistance in joining discussions between allied organizations on coordinated advocacy before the Commission. Refusal to help an organization may be due to that organization's focus on a niche area or a belief that the organization is not trying to foster relationships with allied organizations, among other reasons.

Additionally, infighting within groups that work on the same thematic issue areas leads to a lack of support for those organizations that do not have observer status, who are then unable to get their statements before the ACHPR when they previously relied on allied organizations to do so.

Representation of NGOs

The NGO representative who makes the official statement on behalf of all NGOs at the start of ACHPR sessions has predominately been the same person for the Commission's history. The official statement from NGOs does not always reflect all NGOs' points of view or issue areas. For instance, the official NGO statement at the 61st Ordinary Session stated that the ACHPR is a "force to reckon with" through the fulfillment of its mandate, including the ACHPR's protection mandate,[105] but several other civil society members have expressed the opinion that the ACHPR has focused too much on its promotional mandate to the detriment of its protective one, making the latter weak and ineffective. If not raised in the NGO statement, civil society must attempt to raise the profile of an issue through coordinated statements made through alliances outside of the NGO Forum or through resolutions submitted to the ACHPR via the NGO Forum, although participants in this study expressed doubt on the effectiveness of resolutions.[106] Both methods are difficult for NGOs to accomplish if the issue area they are working on is not recognized widely by other civil society members and the Commission, or if they are a national or local organization without membership in a coalition or other network.

Some civil society members find that the NGO Forum Steering Committee members are unwilling to criticize the Commission and to push the Commission to improve itself. Recommendations, though, to the Commission on ways to improve engagement with civil society could increase civil society engagement overall or add visibility to those struggling with recognition and engagement, such as when CAL struggled to obtain observer status, was then under threat of losing it, and subsequently was stripped of that status.

States at ACHPR Sessions

States parties advocate within their perceived interests often to the detriment of certain civil society advocates and certain issue areas. For instance, States parties have pushed the Commission not to grant observer status to civil society organizations that are not recognized as organizations within their home States, which the Commission has refused to do, and asked that States be involved in the discussion of whether to grant an organization status. South Africa, the State in which CAL is based, made the latter

[105] ACommHPR, *Statement on Behalf of the Participants of the Forum on NGOs at the Official Opening of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 65.
[106] *See infra* 'Organizing Information to Share with the ACHPR' *in* 'Participation in the NGO Forum: Challenges and Opportunities'.

request at the 61st Ordinary Session. Additionally, States parties have requested that only organizations with observer status are allowed to attend the Commission sessions.

Further, States parties advocate to have more input in the processes of the Commission, including in interpreting States' obligations under the Charter. States have asked to be more involved in drafting general comments and in setting thematic-based priorities for the Commission, among other requests. At the 61st Ordinary Session, for instance, one State representative stated that the Commission should not pay attention to cases involving poverty and health.

Informal Barriers to Engagement Outside of Sessions

Certain practices of the African Commission present barriers to civil society's engagement with the Commission outside of the sessions or in preparation of sessions. The barriers civil society face in engaging with the Commission outside of or ahead of sessions mirror the same barriers faced at ACHPR sessions. Those primary barriers are related to the length of time of procedures, the lack of transparency and access to information key to understanding the Commission's procedures, and issues that arise due to lack of independence and bias.

Timing & Notice

Complaints

The ACHPR's complaint system, like those of other human rights bodies, is not particularly efficient, due in part to the Secretariat being under resourced. Civil society members also expressed that they believe the Secretariat is influenced by States' agendas, and therefore, the Secretary emphasizes the Commission's promotional rather than protective mandate; processing complaints falls under the latter mandate.[107] Pressure from the AU political organs also has the potential to further influence the Secretariat to invest in certain aspects of its mandate over others. Recently, the AU Executive Council requested that the ACHPR "conduct an analytical review of the interpretative mandate of the ACHPR in the light of a similar mandate exercised by the African Court."[108]

Civil society members have expressed that they no longer believe the case system to be fully effective when it can take years, even as much as eight or more, to see a case through the merits phase. As of November 15, 2017, the Commission had 232 cases pending before it.[109]

Special Mechanisms

While special mechanisms may provide space to hold civil society consultations on specific work, meet with civil society during a State visit, or otherwise collaborate with civil society for an event or a report, there are no formal rules governing these interactions between special mechanisms and civil society. For instance, there are no formal rules for when the special mechanism should provide notice on

[107] *See infra* 'Bias & Threats to Independence' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions.'
[108] *See* Executive Council of the African Union, *Decision on the Report on the Joint Retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR) Doc.EX.CL/1089(XXXIII) I*, *in* Decisions, EX.CL/Dec.1008-1030(XXXIII), 33rd Ordinary Session, 28-29 June 2018, at EX.CL/Dec.1015(XXXIII), para. 7(iii), *available at* https://au.int/sites/default/files/decisions/34635-ex_cl_dec_1008_-1030_xxxiii_e.pdf.
[109] ACommHPR, *43rd Activity Report of the African Commission on Human and Peoples' Rights*, para. 23, *available at* http://www.achpr.org/files/activity-reports/43/43rd_activity_report_eng.pdf.

consultations with civil society, and the notice that is given is often late, sometimes on the day of the consultation.[110]

Country Visits

There are no explicit rules governing when the Commission should give notice on a country visit or guidelines on civil society submissions regarding the country visit either to request a meeting with the Commission or to provide information to the Commission.[111] The Commission does, though, meet with civil society during both promotional and protective missions and accepts information and evidence from individuals during its fact-finding missions, which fall under its protective mandate.[112] Notice of the Commission's State visits and dates through press releases on its website, whether under its promotional or protective mandate, are often released only a week to a few days before the mission, with a few exceptions.[113]

Transparency & Access to Information

Use of Social Media & Technology

Before it ceased tweeting, the Commission used tweets to share press releases, announcements about vacancies on working groups, and invite feedback from civil society.[114] The Commission's tweets at that time also indicate it previously had a Facebook page, which is no longer available. The Commission does have a Flickr account through which it shares photos of its sessions and activities.[115] The publication of photos of human rights defenders in attendance, however, may raise safety concerns for some individuals.[116]

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[110] *See, e.g.,* ACommHPR, Press Release: Regional Consultation Meeting on the Zero Draft Principles on the Declassification and Decriminalization of Petty Offences in Africa, Johannesburg, South Africa, 5 to 6 December 2016, 5 December 2016, http://www.achpr.org/press/2016/12/d341/.

[111] *See* ACommHPR, Rules of Procedure (2010), Rules 70, 81-82.

[112] *Id.* at Rule 82(a); ACommHPR, Press Release on the Fact Finding Mission to the Sahrawi Arab Democratic Republic, 17 September 2012 (stating the Commission will meet with government authorities, civil society organizations, aid organizations, individuals, and institutions during its mission), http://www.achpr.org/press/2012/09/d130/; ACommHPR, Press Release on the Promotion Mission to the Kingdom of Swaziland, 3 March 2016 (stating that the Commission will meet with government ministries, civil society organizations, human rights actors, individuals, and institutions), http://www.achpr.org/press/2016/03/d290/.

[113] *See, e.g.,* ACommHPR, Press Release on the Promotion Mission to the Kingdom of Swaziland, 3 March 2016 (announcing a visit to Swaziland to commence four days after the issuance of the press release), http://www.achpr.org/press/2016/03/d290/; ACommHPR, Press Release on the Fact Finding Mission to the Sahrawi Arab Democratic Republic, 17 September 2012 (announcing a visit to the SADR to commence seven days after the press release), http://www.achpr.org/press/2012/09/d130/. *But see*, ACommHPR, Fact-finding Mission to the Republic of Mali, 21 May 2013 (announcing a visit to Mali to commence 13 days after the press release), http://www.achpr.org/press/2013/05/d154/.

[114] *See* Twitter, AfricanCommissionHPR: Tweets (@ACHPR), (last visited 25 April 2018), https://twitter.com/ACHPR.

[115] See Flickr, ACHPR, https://www.flickr.com/photos/69170293@N05/. Note that at its 63rd Ordinary Session, held in October-November 2018 as this text went to print, the ACHPR also provided videos of the public sessions on an unaffiliated YouTube channel (https://www.youtube.com/playlist?list=PLweKhRTMdXMUGvkGPL00VnqnNhUrU6E3I).

[116] *See infra* 'Safety & Privacy Concerns' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions'.

Complaints

The ACHPR's decisions on complaints are not published or made available consistently, and the reason for delays in producing merits opinions is not announced either. Over the last several years, particularly with the 2012 change in the Commission's procedure to attach decisions to its activity reports, the Commission has not provided copies of its merits decisions consistently, but it has relied on the jurisprudence established in unpublished decisions when deciding subsequent complaints. Advocates engaging with the Commission through the case system cannot plan out their arguments and advocacy strategy without access to all of the Commission's jurisprudence. In some cases, even the parties to the case have had to ask for copies of the ACHPR's decision as they were not provided with the ruling. Civil society members also noted that they have to spend time organizing and translating case decisions in their own databases so that they are available to other advocates and the public rather than using that time to strategize advocacy.

Special Mechanisms

While participants in this study indicated that special mechanisms are a useful tool for engaging with the African Commission, participants also noted opacity around the formation of the special mechanisms' composition and difficultly in communicating with rapporteurs. Special mechanisms may hold consultations with civil society and may participate in a civil society-led side event, presenting opportunities for civil society to hold dialogues with Commissioners and to reach a wider audience through the Commission's promotion of those events.

For example, the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa held in February 2017 the second regional meeting on the Zero Draft Principles on the Declassification and Decriminalization of Petty Offenses in Africa.[117] On side events, as an example, the Commission's Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons in Africa participated in October 2016 in a side event and interactive dialogue with civil society that resulted in a comprehensive ACHPR press release summarizing the participants' discussions.[118] The press release, though, was issued nearly three months after the event. Outside of consultations and side events, some civil society members reported that holding conversations with rapporteurs can be difficult due to language barriers and their busy schedules.

Knowing how to engage with special mechanisms or with the Commission's activities outside of its sessions, however, has been a challenge for civil society members. Special mechanisms' notice for consultations is often late, sometimes on the day of the consultation.[119] Additionally, notice of the Commission's State visits and dates are also often released a few days or a day before the mission, if at all.[120] Civil society often must attend Commission sessions to receive information on the Commission's activities, including special mechanisms' activities, that are not available on the website, increasing the

[117] ACommHPR, Second Regional Consultation Meeting on the Zero Draft Principles on the Declassification and Decriminalization of Petty Offences in Africa, 24 February 2017, http://www.achpr.org/news/2017/02/d275.
[118] *See* ACommHPR, Police Compliance with the Rights of Women under the Luanda Guidelines: Principles and Challenges (Side Event), 17 February 2017, http://www.achpr.org/news/2017/02/d274.
[119] *See* ACommHPR, Press Release: Regional Consultation Meeting on the Zero Draft Principles on the Declassification and Decriminalization of Petty Offences in Africa, Johannesburg, South Africa, 5 to 6 December 2016, 5 December 2016, http://www.achpr.org/press/2016/12/d341/. *See also supra* 'Timing & Notice' *in* 'Informal Barriers to Engagement Outside of Sessions'.
[120] *See, e.g.,* ACommHPR, Press Release on the Promotion Mission to the Kingdom of Swaziland, 3 March 2016 (in which the Commission announces a visit to Swaziland to commence four days after the issuance of the press release), http://www.achpr.org/press/2016/03/d290/.

divide between the organizations that have access to that information and those that do not.[121] Civil society reported that without a contact in the Secretariat, it is hard to know who to contact or how to submit work.[122]

Civil society members may sit on a working group of the Commission, but some civil society members have noted that it is unclear how the "independent experts" in a working group, chosen, in part, from civil society, are picked. According to the ACHPR Rules of Procedure, membership on a Special mechanism, is determined by consensus among the Commissioners, or, if that fails, by a vote.[123] One theory, and complaint, that arose from discussions with civil society during this study is that civil society members on working groups are chosen because they are the most visible civil society members, such as members of the NGO Forum's Steering Committee, but not necessarily the ones with the most expertise. In instances when this has occurred, the working group or study group is left without the necessary expertise to conduct the work thoroughly and accurately so that other organizations and advocates have to support their work extensively.

Civil society members have different views on how open the Commission is to engagement, with those without direct access to a special mechanism, through membership on a working group or a close relationship with a rapporteur, reported frustration in attempting to engage the Commission. However, civil society particularly valued membership in a working group or a close relationship with the work of a special mechanism if available to them. Working through a special mechanism can be so productive that civil society no longer feels the need to attend Commission sessions to push for certain advancements.

The lack of clarity around who gets on a working group or study group and around how to engage a special mechanism to support its work, such as to provide technical assistance to a rapporteur, exacerbates the disparity between civil society groups who have access to the Commissioners and who do not. Certain organizations – which may be the ones that are well-known, less controversial, or work at the regional level – receive more attention and support in their advocacy than other groups.

Civil society members who have worked with special mechanisms, though, reported that having civil society members, if chosen for their expertise, involved in working groups facilitates the work of the special mechanisms while not compromising the independence of the Commission since the latter must approve the mechanism's work. However, in the course of this study, civil society members did indicate that there are barriers to special mechanisms' influence on the Commission's agenda. Although, civil society noted that to the extent that a working group can influence the agenda, having civil society members in the group helps influence the Commission to focus on civil society engagement.

State Reviews

Civil society members have also expressed frustration at the lack of clear and readily available guidance on the submission of shadow, or alternative, reports ahead of a State's review before the Commission. Organizations with less experience with engaging the ACHPR may rely on more experienced organizations to pass along the standards for shadow reports, again emphasizing the reliance smaller or local

[121] *See supra* 'Cost & Distance of Travel' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions'; *see also supra* 'Other Civil Society Members at ACHPR Sessions' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions' (describing cost as a barrier to attendance of sessions and how larger and well-known organizations act as gateways to information and engagement with the Commission for other organizations).
[122] *See infra* 'Bias & Threats to Independence' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions.'
[123] ACommHPR, Rules of Procedure (2010), Rule 23(2).

organizations have on allies and coalitions.[124]Civil society members, though, believe that State reviews overall facilitate civil society engagement with the Commission.

Bias & Threats to Independence

According to the civil society members IJRC spoke with, the Commission tends to provide States with leeway in procedures but not civil society members, to favor its promotional mandate over its protective one, and to favor certain civil society organizations over others. On the first point, civil society members raised the fact that States submit reports late, shortly before their State report is due, while civil society must submit reports 60 days ahead of a review. Additionally, civil society members have raised that State reports on implementation of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) do not always adhere to the guidelines on reporting, but the Commission accepts them anyway.

Civil society has also expressed concern that the Commission's apparent bias towards its promotional mandate over its protective one results in further delays in processing complaints. IJRC received reports from civil society that staff within the Secretariat are moved from working on the protective mandate to working on the promotional mandate, slowing down the Commission's issuance of case decisions. Some civil society members have expressed the belief that the Secretary is influenced by Member States' interest and pressure on her to avoid the fulfillment of the protective mandate. The ACHPR Secretariat may also face pressure from AU political organs to invest more in certain mandates than others. The AU Executive Council has directed the ACHPR to "conduct an analytical review of [its] interpretative mandate" as it may, the Executive Council states, overlap with the jurisdiction of the Court.[125] Fewer States are subject to the Court's jurisdiction than to the ACHPR's jurisdiction.[126]

Civil society members have also indicated that advocates need a contact within the Secretariat to be able to push forward their work. Without a contact in the Secretariat, civil society actors find it difficult to get a response from the Secretariat or to get documents submitted to the Secretariat, and, therefore, some civil society without contacts in the Secretariat may rely on those civil society organizations who do possess relationships with Secretariat staff, contributing to the dynamic that certain organizations have more access to the Commission and some control over other organizations' access.[127]

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[124] *See supra* 'Other Civil Society Members at ACHPR Sessions' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions'.

[125] *See* Executive Council of the African Union, *Decision on the Report on the Joint Retreat of the Permanent Representatives' Committee (PRC) and the African Commission on Human and Peoples' Rights (ACHPR) Doc.EX.CL/1089(XXXIII) I*, *in* Decisions, EX.CL/Dec.1008-1030(XXXIII), 33rd Ordinary Session, 28-29 June 2018, at EX.CL/Dec.1015(XXXIII), para. 7(iii), *available at* https://au.int/sites/default/files/decisions/34635-ex_cl_dec_1008_-1030_xxxiii_e.pdf.

[126] There are 30 States parties to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, and only eight States have made the necessary declaration to allow individual complaints against those States to be submitted directly to the Court. There are 54 States parties to the African Charter on Human and Peoples' Rights, and the ACHPR has jurisdiction to hear complaints against all 54 States parties.

[127] *See supra* 'Other Civil Society Members at ACHPR Sessions' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions'.

CIVIL SOCIETY MEETINGS AND COORDINATION

Civil Society Meetings Prior to and During ACHPR Sessions

Civil society convenes immediately before, during, and in between ACHPR Sessions primarily in three ways: a formal NGO Forum, ad hoc side events, and coalition meetings. The African Centre for Democracy and Human Rights (ACDHRS), a non-governmental organization based in The Gambia,[128] runs the NGO Forum. The Forum typically lasts three days, in which time the Forum participants hold panel discussions on topics relevant to the upcoming ACHPR session, hold breakout thematic-based group discussions one afternoon, and vote on resolutions to send to the ACHPR.

The NGO Forum meets before each ordinary session of the ACHPR and aims to foster collaboration between civil society members, and between civil society and the Commission, to promote and protect human rights. Two of the primary methods of communication between the NGO Forum and the ACHPR is the submission of resolutions from the NGO Forum to the Commission for consideration during the latter's sessions, and the NGOs' statement made at the start of the ACHPR session, which is typically made by a member of the NGO Forum's Steering Committee.[129]

The resolution process of the NGO Forum involves recommendations taken from discussions during thematic-based breakout groups at the NGO Forum, panels at the Forum, and from other groups or through other channels that are fed into the drafting committee, which then drafts the resolutions. The resolutions are then read out to the plenary before submission to the ACHPR so that the attendees to the NGO Forum may vote on each resolution. In practice, the resolutions are read out quickly at the end of the day when many attendees have already left.

During the NGO Forum, a book fair is also held in which advocates may lay out materials and updates in their work for other attendees of the NGO Forum or the nearby side events to take or view.

The NGO Forum is typically held in the same venue in which the ACHPR sessions are held and hosts hundreds of civil society representatives. The NGO Forum held ahead of the 61st Ordinary Session of the ACHPR had over 230 representatives in attendance.[130] Accordingly, the NGO Forum accommodates individuals from around the continent and the world and provides interpretation between French and English. To attend the Forum, civil society members are required to submit a registration form and to pay a registration fee of 150 US dollars.[131] Additionally, holding a panel at the Forum requires a fee of 300 US dollars.[132]

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[128] *See* ACDHRS, Home, http://www.acdhrs.org/.
[129] *See* ACDHRS, Informational Brochure November 2015, http://www.acdhrs.org/wp-content/uploads/2014/07/Information-Brochure-November-2015-1.pdf.
[130] *See* ACommHPR, *Statement on Behalf of Participants of the Forum on NGOs at the Official Opening of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 65.
[131] ACDHRS, Information Brochure for NGO Forum October 2017, http://www.acdhrs.org/information-brochure-ngo-forum/.
[132] *Id.*

Side events, alternatively, are shorter meetings involving fewer people and typically focused on one topic, issue, or training at a time. Side events typically host 10 to 30 people, focus on detailed analysis of an issue and concrete next steps, and last for a few hours. Side events may occur during the NGO Forum, during the ACHPR session, or another time before or after the ACHPR session and NGO Forum. When the NGO Forum and the ACHPR session are held in Banjul, side events that occur during the NGO Forum typically occur down a flight of stairs from the NGO Forum's venue. During the NGO Forum held ahead of the 61st Ordinary Sessions of the ACHPR, civil society held side events to discuss concrete implementation of a specific ACHPR resolution, on litigation strategies on specific issues, and to train individuals on understanding and engaging with the African human rights system, among many other side events. While advocates tend to organize side events through channels that are separate from the NGO Forum and ACDHRS, the NGO Forum and ACDHRS will assist in organizing a side event for a fee of 500 US dollars;[133] some NGOs, though, will pay to reserve a block of rooms and allow other organizations to hold side events in those rooms without requiring a contribution to the reservation cost.

Coalition meetings, like side events, will typically have a thematic or procedural focal point and may involve a similar number of people. Coalition meetings, unlike side events, may pick up from conversations and work that continue in between meetings through email discussions or working group projects. While coalitions may hold meetings before, during, or after the ACHPR session, they may also decide to meet at other times throughout the year, as coalitions often have other methods of communication and continuing work. Coalitions can collectively identify and work towards concrete outcomes, such as coordinated statements before the ACHPR or joint letters submitted to the ACHPR. Many advocates are members of multiple coalitions or networks.

For instance, the Litigants' Group for Strengthening the ACHPR Protective Mandate is a coalition of attorneys who engage with the African human rights system. The members of the Litigants' Group communicate via an email list and hold informal meetings prior to or during the Commission sessions. The Litigants' Group members work together to take concrete steps in advancing the ACHPR's protective mandate, such as their joint publication "Filing a Communication before the African Commission on Human and Peoples' Rights: A Complainant's Manual."[134]

Participation in the NGO Forum: Challenges and Opportunities

The NGO Forum is an important vehicle through which civil society members organize and share information with each other and with the ACHPR. The Commission recognizes the outputs of the Forum, such as its resolutions on human rights situations and the NGO statement on the human rights situation more broadly, and the leaders of the Forum, the NGO Steering Committee, have developed relationships with the Commission Secretariat and Commissioners. While the NGO Forum, therefore, facilitates engagement with and access to the Commission and Commissioners, certain practices of the Forum can present barriers to civil society's attendance or effective participation of the Forum itself, which in turn can limit civil society's ability to raise their issues to the Commission through the Forum's channels, such as the resolution process or the NGO statement.

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[133] *Id.*

[134] *See* Alliances for Africa, Cairo Institute for Human Rights Studies, FIDH, HRLS, ICJ Kenya, INTERIGHTS, REDRESS, University of Bristol Human Rights Implementation Centre, & Zimbabwe Lawyers for Human Rights, *Filing a Communication before the African Commission on Human and Peoples' Rights: A Complainant's Manual* (2013), *available at* https://eipr.org/en/file/2673/download?token=khbG4HBQ.

Civil society faces barriers to accessing the NGO Forum or using the Forum effectively due to inadequate notice of the agenda, conflicting events held at the same time as the Forum, inadequate representation of civil society's interests in the Forum leadership, safety and privacy concerns, physical accessibility of the venue, cost, a lack of transparency or access to information, biases against certain thematic issues or NGOs, the participation of government NGOs, and ineffective use of tools for sharing and organizing information.

Leadership & Representation

IJRC heard from civil society members who expressed frustration at the lack of turnover in leadership of the NGO Forum, represented by the Steering Committee. They indicated that there are no procedures for rotating the membership on the Steering Committee or holding elections for positions on the Committee. Participants in this study recognized, though, that the leaders of the NGO Forum who have been in the space from the start of the Forum fought for that space and recognition from the ACHPR, which, they indicated, is commendable and allowed for more open engagement with the Commission; even still, civil society emphasized that the NGO Forum would benefit from a change in leadership.

Without a change in leadership, representation on the Steering Committee does not change and the same people continue to set the agenda of the Forum according to their perceptions of what topics are important. In particular, there is a lack of representation from the LGBTI community. Some civil society members have fought for more diverse representation on the Steering Committee without success.

Safety & Privacy Concerns

As with the safety and privacy concerns surrounding the ACHPR sessions, media used at the NGO Forum poses potential threats to safety. The NGO Forum publishes pictures of human rights defenders in attendance at the Forum. IJRC received reports of attendees of the Forum who have faced negative consequences after having their picture published.

Accessibility

When held in Banjul, the NGO Forum venue, the Kairaba Hotel, is the same venue for the ACHPR sessions. One attendee of the NGO Forum and ACHPR 61st Ordinary Session stated at the NGO Forum a desire to raise the accessibility of the ACHPR session venue with the Commission. While Forum participants agreed to include the issue in the formal Forum statement to the Commission, the statement did not mention accessibility.[135]

To enter the venue, attendees must take one step up, and to use the handicap bathrooms that are on a lower level than the main space, attendees either have to go down a flight of stairs or go down a driveway adjacent to the venue to access the lower level from the back entrance. There may be other physical barriers throughout a typical day of attendance as most lunch options are off site, although there is one restaurant attached to the venue.

Registration

Registration requirements can present obstacles to attendance and participation. To register, civil society members planning to attend must fill out a registration form provided by ACDHRS that asks for their name, gender, language, affiliated organization and its geographic scope, telephone number, email, flight

[135] *See* ACommHPR, *Statement on Behalf of Participants of the Forum on NGOs at the Official Opening of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights*, *supra* note 65.

number, arrival and departure dates, and, in some cases, a copy of the attendee's passport. Additionally, each attendee must pay a registration fee. As of October 2017, this fee was 150 US dollars per person to attend.[136] The cost includes lunch and tea and coffee breaks as well as other expenses, such as interpretation.[137] Any civil society member who wishes to attend the NGO Forum may do so.

The European Union, at the prompting of civil society organizations, have made scholarships to attend the NGO Forum and the subsequent ACHPR session available in the past[138] and may continue to do so depending on sufficient funds. In May 2017, 30 scholarships were available to advocates who previously faced barriers to engaging with the Commission due to financial hardship or inadequate knowledge of the Commission's processes.[139]

Timing

The late notice of the schedule, the inability to influence the agenda, breadth of discussions, logistical concerns for attendance, and the cost of panels and attendance all affect civil society's ability to participate at the NGO Forum. Civil society members noted that the late notice of the agenda and conflicting events is a barrier to their participation at the NGO Forum, and even when a civil society member has a panel at the NGO Forum, there can remain confusion on the scheduled time for the panel, risking that individual missing the panel.

The late notice as well as the general amount of activity around Commission sessions leads to conflicting events. Holding the NGO Forum before the Commission sessions may let civil society attend both without having to cover additional costs of travel and accommodation, but holding the Forum the few days ahead of the sessions leads to conflicting events that may prevent civil society from attending the Forum. For instance, at least one ACHPR working group meets the few days before the ACHPR session. Therefore, the civil society members who are part of the working group are unable to attend and provide their expertise to the NGO Forum.

Setting the Agenda

The participants in this study indicated that arranging the agenda of the NGO Forum is not a transparent process. The Steering Committee sets the agenda of the NGO Forum and groups requests for panels together as they see fit. According to an ACDHRS information note, the Steering Committee identifies "key themes" for each session of the Forum, reflecting particular Commission agenda items or current issues in Africa; the identified themes guide the Steering Committee's choices in setting the agenda and form the basis for inviting requests for panel topics.[140] The Steering Committee gives preference to panel requests that are relevant to a significant number of participants, either geographically or thematically.[141]

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[136] ACDHRS, Information Brochure for NGO Forum October 2017, http://www.acdhrs.org/information-brochure-ngo-forum/.
[137] *Id.*
[138] ACDHRS, Application for Support to participate in the Forum of NGOs and the public session of the 60th Ordinary Session of the African Commission on Human and Peoples Rights (African Commission), https://www.acdhrs.org/wp-content/uploads/2017/04/Call-for-Applications-ACHPR-NGO-Forum-.pdf.
[139] *Id.*
[140] ACDHRS, Information note for participants on the setting of the NGO Forum agenda process, http://www.acdhrs.org/information-note-for-participants-on-panel-requests-and-agenda-setting-process/.
[141] *Id.*

The Committee also tries to balance requests between African NGOs, international NGOs, and human rights bodies or agencies.[142]

A suggestion that arose during the study is for the NGO Forum to plan more focused discussions with those groups who know the issues to encourage concrete participation and follow up. To do so, the topics of panels would be coordinated to address one thematic issue per forum so that only those organizations who work on that issue would find it relevant to attend that session of the NGO Forum, similar to the smaller group of advocates who attend the civil society convening around the African Committee of Experts on the Rights and Welfare of the Child. A thematic focus combined with sharing the agenda well ahead of the NGO Forum would allow for organizations to prepare, attend, and fully engage.

Cost & Logistics

Additionally, civil society noted that cost and logistics can be a barrier to attending and, therefore, participating at the NGO Forum. In addition to the cost of 150 U.S. dollars to register,[143] the cost for travel and accommodations can contribute to financial barriers for, particularly, smaller or national level organizations that may not have as much funding as other organizations. Further, some civil society members noted that the distance required to travel to the Forum can prevent them from attending.[144] Additionally, the cost to hold a panel at the NGO Forum is 300 U.S. dollars,[145] which is more than most groups can afford on their own, barring them from holding a panel unless they are able to hold it in collaboration with others and split the cost.

The ACDHRS and the Steering Committee, however, works to facilitate civil society attendance and participation through arranging the Forum itself as well as assisting in organizing side events, distributing negotiated hotel room rates for attendees' accommodations, and providing visa information to attendees.[146] ACDHRS will assist in organizing a side event but requires a 500 U.S. dollar fee to do so and a filled-out request form.[147] Scholarships are available to some attendees.

Transparency & Biases

Civil society indicated that the process of developing, finalizing, and submitting resolutions from the NGO Forum to the African Commission is opaque. Civil society's response to the resolutions finalized at the NGO Forum ahead of the 61st Ordinary Sessions of the ACHPR indicated confusion and a lack of transparency regarding the process of developing and finalizing resolutions. When the resolutions were read out at the end of the forum, civil society members indicated that they had not heard their proposals for resolutions, and those missing resolutions were not added in. Some civil society members indicated getting a proposed resolution through can require pushing for it for a few years, indicating possible bias within the NGO Forum leadership and the importance of alliances and connections to get issues raised. Additionally, resolutions and other information is submitted to the ACHPR from the NGO Forum, but

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[142] *Id.*

[143] ACDHRS, Information Brochure for NGO Forum October 2017, http://www.acdhrs.org/information-brochure-ngo-forum/.

[144] *See also supra* 'Cost & Distance of Travel' *in* 'Informal Barriers to Civil Society Attendance at ACHPR Sessions'.

[145] ACDHRS, Information Brochure for NGO Forum October 2017.

[146] *Id.*

[147] *Id.*

copies of those resolutions are inconsistently available to the public; the Commission does not post it on their website, and ACDHRS inconsistently does so.[148]

Participants in this study also indicated that there is a history of leadership in the NGO Forum favoring certain thematic topics and types of civil society organizations, similar to the African Commission. The side events, which are less formal civil society convenings that occur outside of the NGO Forum but often simultaneous to its events, were born out of a lack of space at the NGO Forum for organizations to discuss and work on sexual orientation and gender identity (SOGI) issues. Participants in this study indicated that organizations and advocates who work on SOGI issues still feel the NGO Forum is hostile towards them, even though there is acknowledgement that the NGO Forum took a positive step by no longer tolerating attitudes that are openly against organizations that work on SOGI issues. Additionally, advocates indicated that most of the thematic issues discussed at the NGO Forum refer to civil and political rights and leave out economic, social, and cultural rights as well as discussions on certain groups in vulnerable situations. Economic, social, and cultural rights are relegated to side events.

Participants in this study believe that the NGO Forum is not as accessible a space for smaller and local organizations. Some national and local organizations do not have sufficient resources to participate fully in both the ACHPR sessions and the NGO Forum, causing them to miss out on certain discussions and rely on allies and coalitions to have access to certain information. Further, some civil society advocates indicated that the space is not as welcoming to non-legal advocates and can present the same barriers to empowerment as found broadly in society, such as patriarchal norms.

Other Civil Society Members' Obstruction & Facilitation of Collaboration

Civil society participants at the NGO Forum can intentionally or unintentionally disrupt the effectiveness and organization of the space, preventing other civil society members from holding productive conversations or achieving concrete outcomes. Governmental NGOs (GONGOs), that is non-governmental organizations that have the backing of governments and work to serve government interests, and a lack of expertise among the civil society members present can each disrupt the effectiveness of the discussions.

GONGOs

GONGOs regularly attend the NGO Forum and are typically from, participants in this study noted, the countries of Mauritania, Sudan, or the Democratic Republic of the Congo. When the conversation is open to the plenary following a panel or when civil society discusses matters in small groups, civil society members believed to be GONGOs will take up a significant amount of time during the discussion if possible.

The leaders of the NGO Forum have had to modify its procedures to prevent GONGOs' interference in the Forum's work. For instance, IJRC was told that the NGO Forum has had to modify its resolution process. In the past, GONGOs would get up during the resolution process and disrupt the space and procedure by

[148] *Compare* ACDHRS, Adopted Resolutions and Recommendation at the NGOs Forum Preceding the 60th Ordinary Session of the ACHPR and 34th African Human Rights Bookfair, 5 June 2017, http://www.acdhrs.org/2017/06/, *and* ACDHRS, Adopted Resolutions and Recommendations at the NGOs Forum April, 2016, 14 April 2016, http://www.acdhrs.org/2016/04/, *with* ACDHRS, Monthly Archives: November 2016, http://www.acdhrs.org/2016/11/, *and* ACDHRS, Monthly Archives: December 2016, http://www.acdhrs.org/2016/11/ (containing copies of adopted resolutions following the NGO Forums of April 2017 and April 2016, but not containing copies of resolutions following the Forum of October 2016).

screaming and running around until security was called. Currently, while the GONGOs no longer interrupt by screaming and running, they try to insert what they characterize as positive developments into the text of resolutions, and if they do not hear their inputs echoed in the relevant resolutions, they will interrupt the process to insist on them. The individuals who read out the resolutions at the Forum now feel they have to read those resolutions very quickly so that GONGOs will not interrupt. The rest of the civil society members, though, also cannot fully engage with and consider the resolutions when read out so quickly, particularly without being able to read the resolutions simultaneously.

GONGOs also disrupt civil society discussions when attendees at the NGO Forum break out into small thematic-based discussion groups. The length of time GONGOs take up during the breakout groups compromises effectiveness of the group discussion. Their contributions are not useful, and they are not invested or interested in concrete follow-up actions. Therefore, other civil society members are not able to hold in-depth concrete discussions and establish action items. Furthermore, their disruption is spread out among the many breakout groups as certain States have multiple GONGO representatives in attendance.

While some civil society members indicated that they believe there is nothing to be done about the interference of GONGOs, others indicated that there may be guidelines in the future on who may attend the NGO Forum. Despite the presence of GONGOs, participants in this study indicated that overall they do not experience significant barriers to engaging with other civil society members at the NGO Forum or that other civil society members do not deliberately obstruct their advocacy agenda.

Lack of Expertise

In addition to GONGOs disrupting the effectiveness of breakout groups, some advocates with expertise on particular thematic issues no longer attend the entire NGO Forum, depriving the conversations of their institutional and legal knowledge. IJRC was told that organizations that conduct a significant amount of advocacy in the region no longer believe the NGO Forum to be an effective advocacy tool. Additionally, there are competing civil society convenings that some advocates identify as more effective, such as side events and even other breakout groups, which meet simultaneously. Advocates with knowledge on an issue area might not attend a small group discussion if they also work on other issue areas and participate in those breakout groups instead.

The advocates who do participate in the NGO Forum and the thematic-based breakout groups are also sometimes inexperienced newcomers, or not knowledgeable on the particular issue that is at the focus of the discussion, which can hold the conversation back from being a wholly productive one. Participants in this study noted that this can slow down discussions and prevent those discussions from producing concrete outcomes and next steps.

Methods of Sharing Information and Collaboration

There are several platforms at the NGO Forum that are designed for civil society members to be able to share information with each other and to facilitate collaboration among civil society members. The primary platforms the NGO Forum provides for information sharing and collaboration are panel discussions, thematic-based breakout group discussions, the book fair, and its facilitation of networking opportunities with other NGOs.

Panel Discussions

Participants in this study told IJRC that panel discussions at the NGO Forum range in effectiveness and usefulness to civil society. While participants in this study indicated that the goals of panel discussions are for civil society to participate in the discussion, share strategies, encourage others to engage, understand the human rights system, and have information to include in the NGO statement submitted to the African Commission, some civil society members find that the panel discussions are not fulfilling these goals. They suggested that more concrete and focused panels will prove more useful for civil society discussions, strategy development, and creation of concrete action items.

As an example of different levels of engagement with the plenary during panel discussions, at the NGO Forum ahead of the 61st Ordinary Sessions of the African Commission, one panel discussed the effectiveness of the State review process and engaged the plenary in identifying problems and possible recommendations, but other panels did not fully engage the plenary, such as the update on the human rights situations by region in which panelists read out pre-prepared reports. Further, in response to inquiries about missing information at the panel on the human rights situation by region, the panelists told the plenary that the full report is available but neglected to mention where.[149] Additionally, the range of topics from panel to panel and the lack of expertise, sometimes hindered by the cost of panels, in the view of some civil society members, decreases the Forum's overall effectiveness.

Breakout Groups

Participants in this study indicated that the thematic-based breakout groups could be more effective but are also an opportunity to coordinate with other organizations to create regional approaches to issues. In addition to GONGOs' interruptions and competing events that take advocates with expertise away from the groups' discussions,[150] the format of the breakout groups, civil society members found, are unhelpful. The Forum organizers create a list of generic questions that are given to each breakout group to answer, but the questions are not tailored to the particular thematic issues of each group. Civil society indicated that the need to answer those questions is counterproductive to having an in-depth and concrete conversation. Additionally, the breakout groups sometimes face language barriers as they do not have access to interpreters.

Book Fair

The book fair and the NGO Forum broadly provide opportunities to provide informational resources, raise awareness about the advocacy or work any one organization is engaging in, and meet other advocates and coordinate advocacy. The book fair provides a physical space for sharing written materials on organizations, ongoing projects and resources, and upcoming events.

Networking

Additionally, many of the participants in this study indicated that a primary reason for attending the NGO Forum is to network with other advocates who work on the same issues and to check in on the progress on advocacy on those issues. The participants in this study who indicated that they have not attended the NGO Forum, or who have attended significantly fewer Forums than ACHPR sessions, are not part of a

[149] The sub-regional focal points of the NGO Forum did hold a consultation meeting in January 2018 to, among other agenda items, adopt a template for reporting on the sub-regional human rights situations at the Forum. *See* ACDHRS, Consultation with Sub-Regional Focal Points of the NGOs Forum, https://www.acdhrs.org/subregional-consultation/.

[150] *See supra* 'Other Civil Society Members' Obstruction & Facilitation of ' *in* 'Participation in the NGO Forum: Challenges and Opportunities.'

coalition or umbrella organization. Participants who have attended five or more NGO Forums are all members of at least one coalition and regularly attend the Forum despite some of them naming certain grievances they have with the Forum's procedures and effectiveness. Participants indicated that they had adequate spaces in which to network with other organizations in the main venue room, the lobby adjacent to the venue, the hotel lobby, and the restaurant attached to the venue at which lunch is included for NGO Forum participants. The use of these spaces, as opposed to spaces offsite, adds to the visibility and accessibility of attendees for other attendees to find and approach.

Organizing Information to Share with the ACHPR

While the NGO Forum is particularly useful for networking purposes, the Forum also allows civil society to organize information to present to the African Commission; however, participants in this study believe that the process of organizing information can be improved and made more transparent. The two primary methods of conveying information from the NGO Forum to the ACHPR are resolutions and the NGO statement.

As mentioned above, the process of creating and adopting resolutions, which is one of the main methods by which the NGO Forum organizes information to submit to the African Commission, faces challenges due to GONGOs; the limitations the breakout groups face, which propose resolutions; a lack of attendance when the resolutions are read out to the plenary; and an insufficient amount of time spent on resolutions. Additionally, participants in this study find that resolutions do not have significant changes year to year due in part to their inaccessibility; they are not posted consistently online.

Besides the resolutions, the NGO Forum also presents the NGO representative's statement orally the first day of the Commission session and in writing to the Commission. The NGO statement does not necessarily reflect all points of view of the NGO Forum participants due to challenges the NGO Forum faces, such as a lack of representation of different groups in the Steering Committee and competing events during the NGO Forum.[151] The NGO statement made at the 61st Ordinary Session called the Commission's protective mandate "a force to be reckoned with,"[152] but several civil society members believe the Commission is ignoring its protective mandate, leaving it ineffective. When the beliefs and interests of civil society is not raised through the NGO statement or the NGO Forum's resolution process, civil society members must seek out other methods of raising their issues.

Participants in this study disagreed on the usefulness of the NGO Forum as an avenue to influence the ACHPR's work. For some civil society members, the NGO Forum helps them influence ACHPR work and outcomes, such as guidelines. Others, though, indicated that the NGO Forum is not an effective space for developing and taking concrete actions, and that resolutions and the NGO statement are ineffective or not as effective as they could be. Some civil society members believe Commissioners do not take the resolutions seriously.

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[151] *See supra* Leadership & Representation, *in* Participation in the NGO Forum: Challenges and Opportunities; *see also supra* Other Civil Society Members at ACHPR Sessions' *in* 'Informal Barriers to Civil Society Participation at ACHPR Sessions.'

[152] ACommHPR, *Statement on Behalf of the Participants of the Forum on NGOs at the Official Opening of the 61st Ordinary Session of the African Commission on Human and Peoples' Rights, 61st Ordinary Session*, *supra* note 65.

Other Meetings and Events: Challenges and Opportunities

Side events and coalition meetings are less formal and smaller in size and scope than the NGO Forum, which presents both advantages and challenges for civil society organization and coordination. The informality of side events provides for an open format in which organizations with little experience in side events can, within a short period of time, organize and hold an event. Certain groups have provided some structure to side events so that organizations who cannot pay the cost of renting a room and holding an event can still do so; these groups reserve and pay for a block of rooms and then schedule organizations' side events in those rooms. Other side events that are held outside of this system can be costly, particularly if interpreters are used.

The informality of side events come at the cost of established methods of communication with the Commission and recognition by the Commission. Side events do not have a system of developing and submitting resolutions and reports to the Commission and do not organize the NGO statement. However, participants in side events have drafted resolutions that were then submitted to the NGO Forum to subsequently submit to the African Commission. Additionally, members of the Commission's Secretariat or Commissioners will sometimes attend the NGO Forum, potentially providing NGO Forum attendees access to them, but while there are examples of a Commissioner or State representative attending a side event, it is less common.

The size of side events creates a space in which attendees can focus on a narrow issue or goal, such as training attendees on a particular topic. Side events tend to attract advocates who are dedicated to the issue area being discussed, and, therefore, the attendees of the side events can hold in-depth conversations tailored to narrow issues and plan take concrete action after the side event as decided by the attendees. In this way, side events foster coordination and collaboration among advocates. Side events allow for a space in which advocates can hold discussions on issues that do not make it onto the NGO Forum's agenda and allow advocates to raise awareness of issues not widely known or discussed.

Similarly, coalition meetings foster coordination in advocacy approaches. Coalitions can work towards pushing the Commission to adopt protocols or resolutions on certain topics, and they can collectively lobby the Commission. Coalitions can, though, struggle with organization, as members tasked with inter-meeting work may drop work for the coalition in favor of their day-to-day work. The bulk of collective projects then often fall on one or two members of the coalition. Additionally, many advocates are part of several coalitions, possibly increasing their workload. As with the NGO Forum, national organizations are not always able to attend all coalition meetings if always held outside of their home State due to funding restraints, and they may miss out on opportunities for joint advocacy.

Another drawback of both side events and coalition meetings that occur before or during the ACHPR sessions are the competing events and meetings. Side events and coalition meetings often occur at the same time as the NGO Forum and may also occur at the same time as special mechanism meetings or the ACHPR sessions. Notably, the NGO Forum's thematic-based breakout groups typically occur at the same time as side events, requiring advocates to choose between them even though they both, in theory, focus on a narrower issue and cater to more concrete conversations. Some civil society members find that the lack of advanced schedules of all events makes it difficult to schedule side events or panels, so as not to miss important events. While side events compete with the NGO Forum's schedule, they also draw more people, including those who have lost interest in the NGO Forum, to the venue during the time of the NGO Forum. Thus, side events hold an additional value of facilitating networking and collaboration, which

would not be possible without the presence of those organizations in the same venue as other civil society members who are participating in the NGO Forum.

MOVING TOWARD BEST PRACTICES

This study is intended to illuminate which practices facilitate and which practices obstruct civil society's engagement with the African Commission so that civil society can develop recommendations aimed at improving engagement, based on the information in this report and the forthcoming comparative reports on the Inter-American Commission on Human Rights and the United Nations Human Rights Council. Below are two non-exhaustive lists of the practices that appear to facilitate engagement with the Commission and the practices that appear to obstruct that engagement. Both lists take from the concrete practices that IJRC was made aware of while conducting research for this study. Finally, based on these lists and the suggestions of advocates IJRC interviewed in the course of this study, a non-exhaustive list of recommendations is included below as a starting place for civil society's expansion or revision of recommendations made to the Commission or other civil society groups in order to increase engagement and access to the Commission.

Practices that Facilitate Engagement

African Commission on Human and Peoples' Rights

- Recognizing NGOs with observer status despite their host country stripping them of, or refusing to grant, domestic legal status;
- Allowing any NGO, with or without observer status, to attend ACHPR sessions;
- Allowing NGOs with observer status to submit requests for agenda items;
- Allowing any NGO with observer status to make formal statements and written submissions;
- Allowing each NGO to speak on its own behalf and for the same amount of time, rather than requiring consensus among organizations or coalitions, or forcing NGOs to compete for speaking time;
- Providing a generic NGO invitation letter for visa purposes;
- Providing detailed travel information for sessions held outside The Gambia (e.g., 62nd Ordinary Session);
- Holding ordinary sessions during similar time frames each year (i.e., April/May, October/November);
- Planning the dates and location of ordinary sessions several months ahead of those sessions as noted in the previous session's final communiqué;

- Providing simultaneous interpretation during ACHPR sessions in the four official languages of the AU, which are Arabic, English, French, and Portuguese;

- Asking via the on-site registration form if session attendees need accommodations during the session;

- Taking steps to address reprisals against human rights defenders who engage with the Commission through expansion of the Special Rapporteur on Human Rights Defenders' mandate;

- Working with civil society through participation in NGO Forum activities and informal side events, holding consultations with civil society, and allowing membership on working groups; and,

- Providing versions of the ACHPR website in all four official languages of Arabic, French, Portuguese, and English.

Civil Society

- Allowing any NGO to participate in the NGO Forum;

- Supporting the advocacy of partner organizations through alliances or coalitions, and generally supporting coordination, collaboration, and networking through structured meetings;

- Facilitating breakout groups at the NGO Forum on thematic issue areas;

- Facilitating side events by reserving rooms in advance and allowing their use without a fee;

- Holding focused panels, side events, or meetings that have concrete goals and outcomes; and,

- Facilitating resource sharing through the book fair held at the NGO Forum.

Practices that Obstruct Engagement

African Commission on Human and Peoples' Rights

- Requiring a certificate of an NGO's domestic legal status granted by its host country in order to apply for observer status;

- Requiring burdensome materials to apply for observer status, including, notably, a strategic plan that details objectives, activities, timeline, geographic scope, target groups, and strategies, as well as an independently audited financial statement;

- Maintaining the requirement in an official document that NGOs to submit activity reports to the Commission every two years to maintain their observer status with the Commission;

- Taking pictures of human rights defenders without obtaining consent, as could be indicated by registration form and/or color of lanyard;

- Requiring that civil society members make statements in person, rather than providing a virtual option;

- Delaying asking about attendees' required accommodations until the start of a session;

- Neglecting to publicize or make widely known the dates and location of ordinary sessions until about a month before the session, outside of the prior session's final communiqué;

- Publishing the agenda of a session within the month leading up to the session and not earlier;

- Neglecting to publish session information in all of the four official languages, particularly Portuguese and Arabic;

- Publishing inconsistent, incomplete, or inaccurate information on the website regarding, for example, concluding observations on State reviews and the ratification status of treaties;

- Neglecting to provide materials in large print, audio, and braille formats;

- Neglecting to address the pending backlog of merits cases;

- Neglecting to publicly publish all ACHPR merits decisions;

- Neglecting to issue a public notice of State visits prior to a week in advance of the visit, in order to provide civil society sufficient time to prepare and coordinate; and,

- Allowing States to make submissions late and/or without adherence to the guidelines.

African Union Executive Council

- Requiring Executive Council approval to publish activity reports of the ACHPR;

- Asking the Commission to remove information from activity reports; and,

- Asking the Commission to strip organizations of observer status because of the organization's thematic area of focus.

Civil Society

- Blocking other organizations' ability to access the Commission or NGO coalitions through explicit exclusion or the creation of unwelcoming or inaccessible environments;

- Limiting representation of groups in vulnerable positions and advocates who work on underrepresented issue areas in the leadership of the NGO Forum;

- Taking pictures of human rights defenders without obtaining consent, as could be indicated by registration form and/or color of lanyard;

- Neglecting to make accommodations as needed at the venue of the NGO Forum or in the materials about, or produced at, the NGO Forum;

- Neglecting to provide copies of NGO Forum resolutions to civil society members during the voting process to approve them, and after the NGO Forum;

- Disrupting discussions intentionally due to the membership in an organization supported by a State government (GONGO); and,

- Splitting expertise between simultaneous or competing events or meetings.

Recommendations

African Commission on Human and Peoples' Rights

Based on the finding of this report, the African Commission on Human and Peoples' Rights could improve civil society's ability to engage with the Commission by:

- Providing timely and accessible public notice of each session's timing, location, and agenda to provide civil society more time to plan and prepare the substance of their participation, make travel arrangements, seek funding if necessary, coordinate side events and other interactions, and better incorporate their session participation into larger advocacy efforts;

- Providing up-to-date information on the ACHPR's composition, including members' biographies, countries of citizenship, term dates, and assigned rapporteurships or working groups;

- Clarifying and publicizing methods for communicating with the Secretariat, and providing information on the structure of the Secretariat;

- Publishing consistently all merits decisions on communications on ACHPR website;

- Clarifying and making transparent the means for communicating with ACHPR members, including in their capacity as special rapporteurs or members of working groups;

- Clarifying, in writing, the requirements for oral statements by NGOs with observer status, in terms of the necessary timing and substance of prior notice to the ACHPR, the maximum length of oral statements, and all opportunities in the agenda for such statements;

- Including in the session agenda notice of which communications, resolutions, and applications for observer status will be considered during that session;

- Making website content and documents, including the session agendas, available in at least the four official languages of the African Union;

- Maintaining and using social media to more broadly disseminate information and materials, including sessions agendas and other information;

- Grouping the public activities during ACHPR sessions in which civil society can take part so as to reduce the financial and human resources needed to participate in a session, such as allocating several large sections of time to statements on the "Situation of Human Rights in Africa" in the first few days of the session, or organizing allocated time for statements by country, sub-region, or thematic issue so as to allow participants to more strategically time and coordinate their statements, and for a more coherent flow of information;

- Allowing virtual participation and video statements in sessions;

- Provide livestream of all public events during ACHPR sessions;

- Reconsidering the optics and unspoken message of giving priority seating and microphone access, and more speaking time, to State and intergovernmental representatives, to the detriment of civil society;

- Refraining from demeaning civil society generally or equating civil society's responsibilities for human rights conditions to States' obligations;

- Clarifying the criteria for granting observer status and removing all political considerations from that decision-making process;

- Avoiding preferential treatment, particularly in formal settings, such as the gala dinner, for some NGOs over others;

- Taking and using participants' photographs only when consent is given, as could be demonstrated through a registration form or a designated color on participants' lanyards;

- Making the recordings of the ACHPR sessions available online;

- Making gender-neutral restrooms available;

- Inquiring about needed accommodations for persons with disabilities attending a session and preparing those accommodations ahead of the session;

- Offering materials in large print, audio, and braille format;

Civil Society

Civil society may improve access of all civil society advocates to engagement with the Commission and participation in NGO convenings by:

- Providing copies of suggested resolutions for attendees to read and review when the NGO Forum convenes to vote on resolutions, and publishing final versions of approved resolutions;

- Increasing time spent on resolutions at the NGO Forum so that attendees may review and consider resolutions;

- Using the time allotted in the ACHPR session agenda for the NGO statement to highlight issues of particular concern and amplify marginalized voices;

- Inquiring about NGO Forum attendees' needed accommodations and making the necessary arrangements for those accommodations ahead of the NGO Forum;

- Taking pictures of human rights defenders only after obtaining consent, as could be indicated by registration form and/or color of lanyard;

- Diversifying leadership in the Steering Committee of the NGO Forum;

- Making gender neutral restrooms available;

- Inquiring about NGO Forum attendees' needed accommodations and making those accommodations available;

- Coordinating schedules between competing meetings and events so that discussions on the same geographic region or thematic focus do not overlap, including by publishing agendas ahead of time, to that extent that it is possible; and,

- Considering adopting open policies for attendance to coalition meetings, to the extent that it is safe and productive to do so.

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