



Civil Society Access to International Oversight Bodies

African Commission on Human and Peoples' Rights



International Justice Resource Center

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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.



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