

CONFERENCE NEWS

WORKSHOP ON NGO PARTICIPATION IN THE AFRICAN COMMISSION

A three-day workshop on NGO participation in the African Commission on Human and People's Rights was held on the eve of the meeting of the Commission which celebrated the tenth anniversary of the African Charter. The meeting was organised by the International Commission of Jurists in co-operation with the African Centre for Democracy and Human Rights and the African Commission itself. Fifty-nine individuals including five members of the African Commission together with representatives of 35 NGOs attended the meeting.

The workshop had three objectives: first, to develop NGO strategies for working on a continental level with each other and with the African Commission; secondly, to promote dialogue between NGOs and the Commission; and thirdly, to provide an opportunity for NGOs to attend and participate in the public sessions of the Commission's meetings.

The following recommendations emanated from the workshop.

RECOMMENDATIONS

Upon concluding its function, the workshop has prepared a list of recommendations to be submitted before this session of the African Commission as well as to African Heads of States. These recommendations are:

1. Composition of the Commission

We note the absence of women commissioners and recommend that an affirmative action policy be adopted in regard to the appointment of women commissioners. The membership of the Commission should not be exclusively confined to lawyers.

2. Independence of the Commission

(i) The Commission should adopt clear guidelines concerning the incompatibility of certain governmental functions with membership of the Commission.

(ii) Authority should be delegated to the Secretariat to carry out important functions during the inter-sessional periods of the Commission.

(iii) No commissioner should be entitled to investigate the human rights conditions in his or her own country.

3. The Secretariat of the Commission

There was a general feeling that the effectiveness of the Commission's Secretariat will reflect on the overall success of the Commission. It was therefore recommended that the Commission take immediate steps to further strengthen the Secretariat.

In particular, we recommend the following:

Press policy

- (1) Secretariat should be required to inform at least five wire services and 15 newspapers including all newspapers in the country where sessions take place of the forthcoming session and what will take place at the session.
- (2) Secretary should develop an active press policy to explain the work of the Commission including soliciting interviews with Commission members and the Secretariat.
- (3) Press release well before the session explaining what will take place; press release after the sessions explaining what happened—both distributed as widely as possible to newspapers, NGOs and African governments.
- (4) Attempt to solicit radio and TV coverage of the public parts of the session.

Notification

- (1) The Secretary with the Commission should develop an order of the day which allocates morning and afternoon sessions to specific topics so Commission members, NGOs, press and others can plan their days effectively.
- (2) The date and location of the session should be established at least one year in advance and notice should be sent to NGOs, press, Commission members and governments as soon as the schedule is established.
- (3) The times when government reports will be considered should be determined no later than the last day of the previous session and this should be communicated to all governments, NGOs and the press at that time.

The Secretariat should make use of all available lists of NGOs in Africa to inform such NGOs of the activities of the African Commission and invite such NGOs to apply for observer status and to participate actively in the work of the Commission by submitting information concerning periodic reports, communications and other information and assistance to the Commission.

Dissemination of documents

- (1) Copies of the state periodic reports should be made available to all Commission members, to all NGOs, observers with standing requests and all NGOs (observers or not) in the country in which it will be considered. These should be made available as soon as they are received without waiting for translations.
- (2) The Secretary should actively seek the assistance of IGOs, foundations, NGOs and others to translate documents.

Response to requests for information

- (1) The Secretary should respond to requests for information no later than 15 days after the receipt of the request and by fax wherever appropriate.
- (2) The Secretariat should develop as soon as possible a fax network to ensure that Commission members can remain in touch between Commission sessions.

General (implementation of decisions)

The Secretariat should implement decisions of Commission members as soon as possible, and where problems exist, should alert all Commission members about the difficulties being encountered.

4. Role of NGOs

Having observer status implies duties for NGOs. The NGOs should provide on a regular basis relevant factual information concerning the human rights situation in their countries which will assist the Commission in its work. The observer status of an NGO may be suspended by the Commission where the NGO fails to make effective contributions to the work of the Commission.

In particular, NGOs should perform the following functions:

- (a) NGOs should become actively involved in the consideration of state reports by preparing comments on such reports.
- (b) NGOs and commissioners responsible for particular areas should maintain constant contact with each other.
- (c) NGOs should be actively involved in the processes of nomination and appointment of commissioners.
- (d) NGOs in observer status with the Commission should create a Co-ordinating Committee whose functions should include the establishment of a voluntary fund to assist African NGOs to maximise their contributions to the work of the Commission.

5. Immunity of Commissioners

Commissioners should enjoy complete diplomatic immunity while engaged in the activities of the Commission, including in their own countries.

6. Procedures of the Commission

- (a) The lengthy and complex procedures regarding communications to the Commission are likely to discourage their effective utilisation and must be revised. The meeting urged the Commission to revise its rules of procedure with a view to making them more flexible and by taking into account the prevailing conditions in the country where the communication emanated from. In case a state fails to respond to the Commission's request for information, the Secretary should send a reminder without waiting for the next session. In the event of failure to respond after a deadline, the Commission should presume the truthfulness of allegations made against the respondent state and proceed accordingly.
- (b) To allow for better functioning of the Commission, the confidentiality of procedures as provided under article 59 of the Charter should be the exception, publicity being the general rule.

7. Role of the Commission

- (a) The interpretation of the Charter should take into account the current evolution of the human rights situation in Africa and must enhance better protection of human rights in Africa.
- (b) Limits of interpretation should be specified to prevent abuse by powerful individuals, groups and states.
- (c) Clawback clauses should be interpreted in accordance with established principles of international law to exclude laws that are inconsistent with the Charter. In particular derogation under national constitutions should be subjected to tests of proportionality and necessity.
- (d) The Commission should consider using its power of interpretation

under article 45(1)(b) to draft guidelines to assist states parties to harmonise their laws with the provisions of the Charter.

(e) The Commission should co-operate closely with NGOs to carry out its promotional functions.

(f) The Commission should appoint working groups to undertake research and studies and to provide legal assistance.

(g) The Commission should establish procedures in order to intervene promptly in emergency situations without the necessity to wait for the annual OAU summit.

(h) The functioning of the Commission should not be limited to its sessions. The Secretariat should be reinforced to allow the Commission to continue to function between sessions.

8. Amendments of the Charter and the rules of procedure

(a) The preambles of the African Charter should be amended to incorporate the duty to eliminate dictatorship in all its forms and to promote democracy in Africa.

(b) Article 59 should specify the measures which the heads of state and governments may adopt to put an end to situations of violation of human rights.

(c) The reference to moral and traditional values contained in the preamble as well as some articles of the Charter should be subject to abrogation or amendment by pointing out that these references concern exclusively moral or traditional values which can help to enhance the enjoyment of human and peoples rights.

9. Relationship between the Commission and the OAU Assembly of Heads of State and Government/The establishment of an African Human Rights Court

(a) Given the problems facing the Commission and the unused potentials within the work of the Commission, it is considered appropriate that the question regarding the establishment of an African Court of Human and People's Rights be deferred.

(b) The Commission should not only report to the Assembly of Heads of State but such report should embody specific decisions and measures that must be taken to implement the decisions. The Commission should not in this regard permit itself to be incapacitated by inaction on the part of the heads of state and government.

(c) Once elected the commissioners should not be answerable to their governments and hence the commissioners have relative autonomy that should be tested in practice while they also test the level of commitment of the actual promotion and protection of human rights of the Assembly of the Heads of State and Government.