

CONCLUSION

As this volume illustrates, civil society generally, and NGOs in particular, have played and continue to play an important role in ensuring the optimal effectiveness and success of the African regional human rights system and its aim to prohibit and prevent torture and other ill-treatment in Africa.

Academic engagement has been insufficient, however. No comprehensive text regarding this topic has been published. It is necessary that universities and research institutions prioritise these issues in their activities, and thereby contribute to awareness-raising and creative solutions.

Where possible, NGOs must include torture and other ill-treatment of detainees and prisoners in their domestic programmes. It is ultimately through the work of NGOs that the provisions of the Charter are converted into concrete and effective guarantees.

Regarding engagement at the regional level, NGOs are advised to pursue more actively the following strategies:

Standard-setting: NGOs play a crucial promotional and lobbying role in ensuring that the normative framework evolves to address human rights needs as they arise. NGOs have already contributed to the normative expansion of the Charter. Consideration should be given to the possibility of drafting a set of binding norms on torture to supplement the substantive content of the Charter and the non-binding Guidelines adopted by the Commission.

Observer status: NGOs that have not yet done so should consider applying for observer status with the African Commission. Keeping informed of developments and being present at Commission sessions provide NGOs with an opportunity to impact the work of the Commission, to engage with States and to raise awareness about these issues in public sessions.

State reporting: NGOs should monitor State compliance with reporting obligations under Article 62 of the Charter, and should spearhead debate on the potential of these reports. When a report is prepared, NGOs should attempt to become involved in its drafting. If excluded from the drafting process, or if crucial issues are silenced in the report, NGOs should collaborate to produce ‘shadow’ or parallel reports and

submit them to the Commission. Commissioners should be lobbied before the examination of reports to ensure that pertinent questions are raised. When ‘concluding observations’ are issued, NGOs should obtain copies and integrate them into their programmes of action. When a State submits a later report, these ‘concluding observations’ should serve as starting points to measure progress. When a State does not report at all, this fact, together with the importance of the state reporting procedure, should become a matter of public debate.

Individual complaints (‘communications’): NGOs should provide legal assistance to victims of torture and other ill-treatment at the domestic level. If domestic remedies fail or are inaccessible, NGOs should submit individual communications to the African Commission. The complaints procedure provides a means to focus international attention on human rights violations in a State by allowing for a finding of an independent body, the African Commission. Such a finding serves both as an impartial assessment and as a potential source of remedy. With the advent of the African Human Rights Court, the possibility of approaching the Court should also be explored.

The African Charter allows for wide standing before the African Commission: both individuals and NGOs may submit cases on their own behalf, but also on behalf of another person, even without that person’s express authorisation.

When a complaint has been submitted, it first proceeds through the admissibility phase. The main requirement is that the complainant must have exhausted local remedies at the national level. However, adopting a progressive approach, the Commission has quite often exempted complainants from attempting to obtain remedies before national courts, such as in a situation of massive or serious violations of human rights in the respondent State. Nevertheless, when NGOs are involved in the submission of complaints, they must provide as much information as possible about what remedies have been exhausted domestically, or explain fully why these remedies have not been used.

If a communication has been declared admissible, it proceeds to the second phase, during which the merits are considered. The Commission then decides whether a violation has occurred. As of this writing, most of the communications alleging torture and ill-treatment have revealed

serious human rights violations, particularly during detention. Article 5 of the Charter forms the clearest substantive basis for a complaint regarding torture or other ill-treatment. Other findings of violations have related to forms of punishment or non-compliance with fair trial guarantees.

If a violation is found, the Commission may proceed to a third phase, during which it considers an appropriate remedy.

NGO involvement with communications does not end after a favourable finding has been made. Because the Commission's recommendations are not formally legally binding on States, some efforts are often required to ensure that States give effect to the recommended remedies. This process, sometimes referred to as "follow-up" (or "implementation"), frequently plays itself out in the political, rather than the legal, arena. Social mobilisation and mass participation may strengthen the hand of an NGO trying to convince a State to comply with a recommendation that entails some economic or political cost to the government.

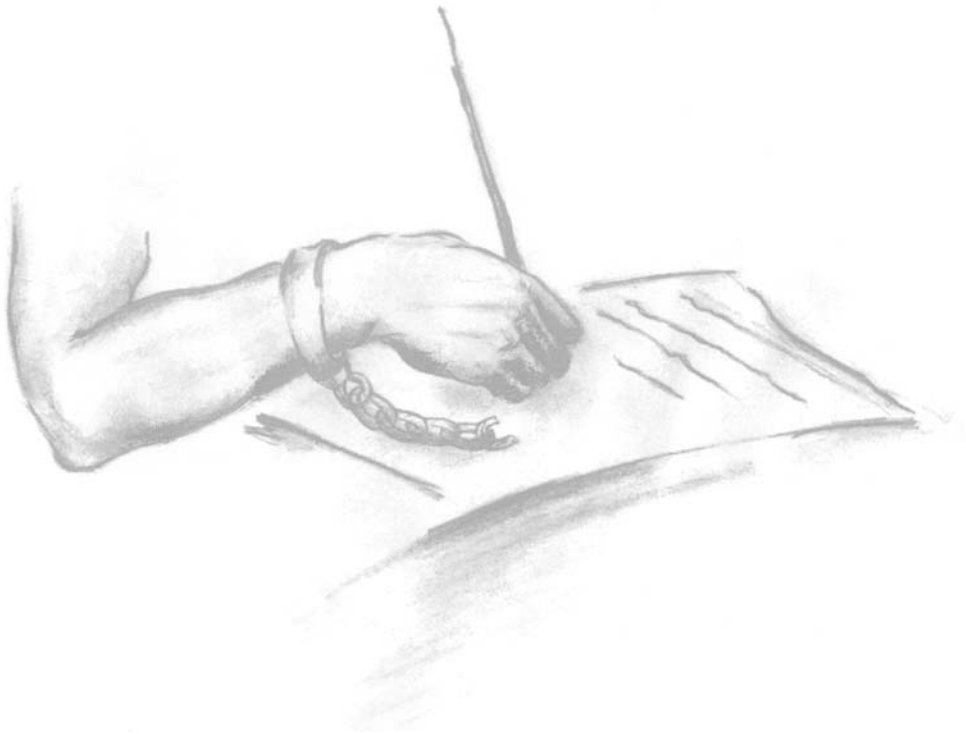
It is anticipated that the decisions of the African Human Rights Court will be more effectively implemented, given that the Court's findings will be unequivocally binding on States that have accepted the Court Protocol.

Special mechanisms: The Commission has set up two special mechanisms that are of particular relevance: the Special Rapporteur on Prisons and Conditions of Detention in Africa, and the Follow-up Committee to ensure the effective implementation of the Robben Island Guidelines. NGOs should engage with these mechanisms by providing them with information when they undertake visits or studies.

Promotional activities: The Commission has always emphasised that its eleven members cannot alone shoulder the responsibility of promoting the Charter and the importance of the issues highlighted here. NGOs should supplement their domestic promotional activities (such as translation of regional norms into indigenous languages, for instance) by supporting the Commission's efforts, when possibilities arise.

The magnitude of the task should not invite despair, but should encourage NGOs to forge collaboration with each other and with other important role players such as media institutions, academic and research centres and national human rights institutions.

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