



STATEMENT

9 May 2014

**Statement by the Centre for Human Rights, Faculty of Law, University of Pretoria
to the African Commission on Human and Peoples' Rights,
at its 55th ordinary session, Luanda, Angola, 29 April 2014,
on the situation of human rights in Africa**

Eritrea

The Centre for Human Rights asks the African Commission to renew its preoccupation with the persistently alarming human rights situation in Eritrea. Despite the Commission's repeated findings that the incommunicado detention by Eritrea of senior government officials and journalists, since 2001, has violated the African Charter, these detentions continue to today. Despite numerous resolutions deploring Eritrea's non-compliance with the Commission's recommendations to release these detainees, or, at the very least, allow them access to their families and lawyers, these detentions persist.

We therefore urge the Commission, in its next activity report, to explicitly highlight Eritrea's persistent non-compliance and to call on the AU Assembly to suspend Eritrea's membership of the AU, due to its flagrant violation of the basic tenets of the organization, or, at the very least, to impose sanctions against it under article 23 of the AU Constitutive Act.

State reporting

The state reporting procedure, established under article 62 of the African Charter, is one of the main avenues through which the African Commission monitors the situation of human rights in African states. This process is hampered by the lack of a single comprehensive and updated set of guidelines to guide state reporting.

At present, the existence of different general sets of guidelines, of varying length, gives rise to confusion and uncertainty. These guidelines further do not deal with important substantive issues such as indigenous peoples' rights, the rights of older persons, of persons with disabilities, and access to information, which



evolved concomitant to the creation of special mechanisms under the Commission's umbrella, and which have come to form the basis of questions by the Commission during the oral examination of reports.

In addition, there has been a proliferation and continuous evolution of guidelines on particular thematic issues. Separate guidelines have been adopted for reporting on socio-economic rights (the 'Tunis Reporting Guidelines'), which apply to all state parties to the Charter, and for reporting under the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol). Regrettably, no state party to the Maputo Protocol has, since the entry into force of the Maputo Protocol and the adoption of reporting guidelines to this Protocol, submitted an integrated report dealing with the state's obligations under both the Charter and the Maputo Protocol, as required by the guidelines.

The Centre for Human Rights therefore calls on the Commission to embark on a process to streamline and integrate existing state reporting guidelines into one easily accessible, updated and comprehensive set of guidelines. Such a set of guidelines will make it easier for states to submit more complete and comprehensive state reports and will allow the Commission to assess the situation of human rights in African states more effectively and holistically.

Violence on the basis of sexual orientation and gender identity

The Centre congratulates the Special Rapporteur of the African Commission on Human Rights Defenders for adopting a press release expressing concern about the threats posed to human rights defenders as a result of recently adopted legislation stifling free expression and association in Uganda and Nigeria. The most problematic provisions of the relevant legislation relate to advocacy or support for the rights of sexual minorities. These laws not only prohibit consensual same-sex conduct, but also, in excessively overbroad terms, the expressions of homosexual identity, as well as those acting in any way in support of 'homosexuals'.

We call on the Commission as a whole to show its concern for members of sexual minorities, specifically, and human rights defenders, more generally, affected by these laws. The Commission is urged to reiterate that the Charter rights are available, in the Charter's words, to 'every person', and that freedom of expression and association may not be denied merely on the basis of sexual orientation or gender identity. To deny the scope of the Charter's protection to anyone merely on the basis of their sexual orientation or gender identity would fly in the face of article 2 of the Charter, which guarantees that the Charter rights are to be enjoyed by all irrespective of sex or any 'other status', an open-ended term that allows for a very inclusive understanding of non-discrimination encompassing, without any gainsaying, sexual orientation and gender identity.

While Africans face many life threatening and overwhelming human rights atrocities across the continent, the plight of sexual minorities also deserves the Commission's attention. Sexual minorities are often one of the most maligned and marginalized groups in society, excluded from and silenced in the public sphere. It is precisely under such conditions that the added value of a continental human rights body is potentially at its greatest, even though it may be tested to its limits. A matter of deliberate exclusion and victimization, not result of violence between groups, or ideological wars terrorism difficult to deal with, but deliberate and initiative of state organs.

At its previous (54th) session, the African Commission was invited to adopt a resolution condemning the continent-wide trend of violence being perpetrated against sexual minorities (LGBTI communities) by state and non-state actors. The call for such a resolution was supported by a Report on Violence based on real or perceived sexual orientation or gender identity in Africa, which, on the basis of rich empirical data and

illustrative examples, highlights the extent of state involvement in and the pervasiveness of state inaction in response to violence taking the form of arbitrary arrest and detention, physical violence including rape and murder, blackmail, extortion and harassment. The subsequent adoption and entry into force of the laws in Nigeria and Uganda illustrate how repressive legislation cultivate a culture of fear, stigmatization, insecurity and -- ultimately -- violence.

Violence and repressive legislation against sexual minorities has severe implications for the protection of their rights. It creates a culture of silence and denial of sexuality and sexual practices, leading to practices being driven underground, and those most at risk not accessing health care services or fear of stigmatization of reprisal. It is when states foment or turn a blind eye to violence against groups that they are stigmatized as scapegoats in the media, thus leading to further incitement and condoning violence.

The Centre urges the Commission at this session to adopt a resolution urging states to refrain from perpetrating violence against any person merely on the basis of their sexual orientation or gender identity, and to diligently investigate any actions by non-state actors that cause violence to such persons.

Even if sexual minority rights is sensitive issue in Africa, it must be possible for the only continental human rights body to denounces violence committed against individuals based on their sexual orientation as part of its mandate to protect individuals from all forms of violence. In such a resolution, the commission should condemn the on-going violence against persons based on their sexual orientation and gender identity, and call on state parties to conduct thorough investigations of cases of violence based on sexual orientation and gender identity and hold those accountable, whether they are state or non-state actors.

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