



PRESS STATEMENT

THE CENTRE FOR HUMAN RIGHTS CALLS ON AFRICAN UNION MEMBER STATES TO RECOMMIT TO INDEPENDENCE OF AFRICAN COMMISSION

27 October 2018

**During the 63rd ordinary session, held in Banjul, The Gambia, 27 October 2018,
on the situation of human rights in Africa**

What brings us – states, Commission, civil society, and others – here, to the 63rd session of the African Commission on Human and Peoples’ Rights, is our joint pursuit to better protect the rights of Africa’s peoples – in all their diversity. We have just lived through the second year of the AU’s 2016-declared Human and Peoples’ Rights Decade in Africa 2017-2026. However, Africa’s people would be forgiven for feeling perplexed and disappointed, and question the legitimacy of both their states and the African Commission to claim to be protectors of their rights.

AU member states have in the recent past taken extremely contradictory positions. When it declared the Human Rights Decade in June 2016, the AU Assembly pledged its ‘unflinching determination to promote and protect human and people’s rights in Africa and the need for the full implementation of human and peoples’ rights instruments and decisions and recommendations made by the AU Organs with a human rights mandate’.¹ More than that, the Assembly also called on the AU Commission ‘to ensure the independence and integrity of AU organs with human rights mandate by shielding them from undue external influence’.² Regrettably, it turned out that it was not the spectre of ‘undue external influence’ by donors and NGOs, but undue influence from the AU policy organs themselves

¹ Assembly/AU/Decl.1(xxvii)rev.1 para 4.

² Decision on the report on the joint retreat of the Permanent Representatives’ Committee (PRC) and the African Commission on Human and Peoples’ Rights (ACHPR), EX.CL/dec.1015(xxxiii).

(culminating in Decision 1015 by the Executive Council in June 2018) that undermined the independence and integrity of the Commission.

Decision 1015 aims to pull the carpet from under the African Charter system. The reason why these very states in 1981 created the African Charter was to establish a system of independent oversight over the human rights enjoyed by the people of Africa. The African Commission as autonomous interpreter of the African Charter was placed at the core of this system. The principle of the rule of law – both at national and at AU level -- requires that executives respect judiciaries' interpretative function. By insisting that its own interpretation of the Charter overrides that of the Commission, the Executive Council has not only undermined the Commission's autonomy, but also subverted the AU's internal rule of law.

There are many other aspects of Decision 1015 that concern us. One such element is the 'request' to the African Commission to revise its criteria for NGO observer status in line with the guidelines for accreditation to the AU, 'taking into account African values and traditions'.³ Leaving aside, for the moment, the invocation of the nebulous and contested concept of 'African values' as if it has one agreed-upon predetermined meaning, the criteria for AU observer status require that at least *two-thirds of the resources* of an NGO have to come from 'contributions from its members'.⁴ As very few of the NGOs currently enjoying observer status would comply with this requirement, this 'request' seems to be aimed at diminishing the role of civil society in complementing the work of both states and the African Commission.

We plead with AU member states that have their peoples' best interests at heart to recommit themselves to the spirit and commitments set out in the AU human rights treaties and in the declaration of the Human Rights Decade, and to premise their future engagement with the African Commission on the principle of its autonomy and independence.

The African Commission has also left us confused. In its May 2018 decision, reported in 44th Activity Report,⁵ it emphasized that it will deal with the request for withdrawal of observer status in a judicial manner, guided by due process, legality and the African Charter. Regrettably, its response to

³ Para 8(iv)

⁴ para 1(l)(7) of the Guidelines for Observer Status with the AU.

⁵ In its 44th Activity Report, the Commission notes its May 2018 decision that it 'has to abide by and apply due process in order to ensure legality, compliance with the African Charter and its juridical mandate. Accordingly, the Commission will forthwith institute a process for judicially determining the request to withdraw NGO Observer Status from CAL. The Commission will report its final determination on this matter in its next Activity Report' (para 43).

Decision 1015 contradicts this promised approach, in that it based its withdrawal of accreditation on the Executive Council's decisions as such. This implies that it was political pressure, rather than legal persuasion, that informed the Commission's decision.

We implore the Commissioners, individually, to act faithfully to the African Charter, as their oath of office requires, and the Commission, as a whole, to be guided by the rationale for its existence, to better protect the rights of Africa's peoples in all their diversities.

I now briefly turn to two situations of particular concern: Cameroon and Eritrea.

Cameroon

The Commission earlier this year adopted a resolution concerning human rights violations in Cameroon, and decided to undertake 'a general human rights promotion mission to the Republic of Cameroon, in collaboration with the government authorities'.⁶ To date, this has not happened. Instead, the situation continued to deteriorate despite the recommendations in the Commission's 2009 *Gunme* decision and in two earlier press releases, in 2016 and earlier in 2018. The time has now patently come to take more concerted action.

We therefore urge the Commission in its next activity report, to draw the attention of the AU Executive Council and Assembly to the situation in Cameroon, and to provide information at its disposal, and to collaborate with the AU Peace and Security Council, in accordance with article 19 of the AU Protocol establishing the Peace and Security Council, in order to ensure that this fact-finding mission is actually undertaken.

Eritrea

The process towards lasting peace between Ethiopia and Eritrea is indeed a cause for celebration. Regrettably, these events have not been translated into an improved human rights situation in Eritrea. The hundreds of Eritreans who have been arrested and detained without trial since 2001 remain in detention, with their fates remaining unknown. In fact, we have received alarming reports of the *further* incommunicado detention, on 17 September 2018, of the former Minister of International Development and Finance, Mr Berhane Abrehe Kidane, a few days after publishing comments critical of the President. We urge the Commission to prevent any harm to the 73-year old Mr Kidane, whose health is reportedly very fragile.

6 Resolution on the Human Rights Situation in the Republic of Cameroon - ACHPR/Res. 395 (LXII) 2018.

We further urge the Commission to insist that Eritrea gives immediate effect to its decisions for the release of detained political dissidents in *Zegveld & another v Eritrea*, decided in 2003, and for the release of detained journalists, in *Article 19 v Eritrea*, decided 2007. To this day, Eritrea has not implemented any of these recommendations.

We therefore urge the Commission in its next activity report, to draw the attention of the AU Assembly to the persistent non-compliance by Eritrea, with a view to the immediate release of the detainees.

Ratification of Protocol on Rights of Older Persons

By adopting the Protocol to the African Charter on the Rights of Older Persons in 2016, the African Union acknowledged that older persons need particular forms of legal protection. The vulnerability of older persons appears from the following common place examples: crossing a street; need for social protection; widows' vulnerability to abuse when the husband deceased. The assumption that older persons enjoy adequate protection within the family is seriously challenged by the disintegration of the extended family brought about by rampant urbanization, the unbearable care burden of care placed on older women due to AIDS and maternal mortality, and lack of institutional care. Women are disproportionately at risk.

We commend Lesotho for becoming the first state to ratify the Protocol, and encourage it to complete all processes to ensure the deposit of its instrument of ratification. We trust that other states would follow suit, to ensure that the threshold of fifteen states will be reached soon, allowing this Protocol to enter into force. In this regard, we note with anticipation the statement by the South African delegation during this session that the country is in the process of becoming a state party to this Protocol (as well as the Protocol on the Rights of Persons with Disabilities), with a view to completing the process in 2019.

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