



PRESS STATEMENT

CENTRE URGES IMPLEMENTATION OF SHUMA CASE; AND CALLS ON AFRICAN COMMISSION TO REASSERT ITS OWN INDEPENDENCE *58th ordinary session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia*

7 April 2016

Resolution 275

We commend the Commission for adopting Resolution 275 (aimed at the protection against violence and related human rights violations based on real or perceived sexual orientation and gender identity), and for participating in a joint dialogue, on 3 November 2015, with members of the Inter-American Commission and United Nations (UN) on possible forms of collaboration to attain the objectives of the resolution. We urge the Commission to take action in line with the recommendations contained in the joint report, including exchange of staff and information and learning from with the Inter-American Commission's Special Rapporteurship on the rights of lesbian, gays, bisexuals and transsexual persons.

Violence against persons based on their sexual orientation or gender identity continues across Africa. In a striking example, in February 2016, a Nigerian man, Akkinifesi, was killed in a public lynching, reportedly based on his sexual orientation. In addressing incidents like these, States should be guided by the terms of Resolution 275, to diligently investigate and bring to justice the perpetrators of such crimes. Against this background, we call on the Nigeria (and in particular Ondu State) and Nigerian Human Rights Commission to investigate and bring perpetrators of the February incident to justice, and on both to publicly condemn violence by non-state actors based on sexual orientation.

Non-implementation

The African Commission performs its role of addressing the manifold human rights violations on the African continent through its complaints procedure. In this year of commemorating 30 years since the entry into force of the African Charter, we celebrate the Commission's many significant interpretive and operational gains. However, the challenge lies in the effective implementation of its findings and

recommendations. Some of the most poignant instances of non-implementation relate to Eritrea, Egypt, Ethiopia and Zimbabwe.

Even if Eritrea released some prisoners detainees in the recent past, the complainants in two Communications, concerning the arrest and indefinite detention of 11 former government officials (in the *Zegveld* case)¹ and 18 journalists (in the *Article 19* case)² have – since their arrest and detention in 2001– not been seen. The Commission has raised its concern about the non-implementation, in two subsequent resolutions,³ but the non-implementation persists. The Commission should refer this persistent inaction to the AU political organs.

In the Commission directed an urgent appeal to Egypt not to execute pending the finalization of a communication before the Commission. However, Egypt disregarded the African Commission's precautionary measures issued.⁴

In response to a recent precautionary measure in respect of Ethiopia, the State provided a response to the state, not on the substance of the request, but in order to “contest the issuance of the Provisional Measures”. The Commission is currently constructively engaged with the Government of Ethiopia on the matter.⁵

As Centre, we are in particular concerned with the case of Gabriel Shumba, one of the Centre's alumni. In a case submitted by him in 2004, and decided in 2012, the Commission found that Zimbabwe had violated article 5 of the Charter by engaging in torturing Gabriel, and recommended that compensation be paid, and that those responsible be brought to justice. To date, the government of Zimbabwe has not given effect to these remedial demands. At its session, the Commission noted

¹ Communication 250/02 : Liesbeth Zegveld and Mussie Ephrem v Eritrea. The Commission found Eritrea in violation of articles 2, 6, 7(1) and 9(2) of the African Charter; and urged Eritrea to order the immediate release of the 11 detainees, namely, Petros Solomon, Ogebraha, Haile Woldetensae, Mahmud Ahmed Sheriffo, Berhane Ghebre Eghzabiher, Astier Feshation, Saleh Kekya, Hamid Himid, Estifanos Seyoum, Germano Nati, and Beraki Ghebre Selassie; and further recommends that Eritrea compensates the above-mentioned persons.

² Article 19 v Eritrea.

³ 2005 resolution (addressed to the Government to comply with the recommendation of the former for the release of the detainees; and condemns the continued detention of the former cabinet ministers, government officials, members of Parliament, journalists, media practitioners and others for many years; states that it is concerned especially about the continued detention incommunicado without trial of at least 18 journalists in Eritrea since September 2001.)

⁴ para 35. The following countries responded to the Letters of Urgent Appeal within the reporting period: ... Egypt – the Government provided information regarding the procedural and legal guarantees available to persons sentenced to death in Egypt, the progress of the case against Mahmood Hassan Abdel Naby in the Egyptian Judiciary, including the appeal and other processes available to him; the Government also confirmed that Mahmood Hassan Abdel Naby was hanged on 07 March 2015 (25 March 2015). 38th Activity Report of African Commission: para 33: The Commission notes with concern that despite the Provisional Measures issued with regards to Communication 512/15: Mahmoud Hassan Ramadan Abdel-Naby and 57 Others v. Egypt and transmitted on 16 February 2015, requesting the Government authorities to stay the execution of Mahmoud Hassan Abdel-Naby, he was executed on 07 March 2015, and this is also notwithstanding the fact that the matter was and still is pending before the Commission.

⁵ 38th activity report of Commission: para 32: The Commission did receive a response from Ethiopia regarding the Provisional Measures issued with respect to Communication 507/15: Andargachew Tsege and Yemsrach Hailemariam (Represented by Reprive and REDRESS) v. Ethiopia. However, the response did not indicate the measures taken to implement the Provisional Measures; but rather contested the issuance of the Provisional Measures. The Commission is currently constructively engaged with the Government of Ethiopia on the matter.

that and resolved to consider the issue at its “upcoming session”.⁶ This has not yet taken place. We therefore urge the Commission, at promptly as possible, to re-engage with the government towards securing speedy implementation, and – if necessary -- to hold a hearing to resolve the issue.

Placed in a broader frame, the Commission is urged to rigorously follow its Rules of Procedure and to develop an effective system of overseeing the process of State implementation.

Threats to the Commission’s independence and autonomy

We note with concern the systematic erosion, over the last few years, of the Commission’s independent functioning. These efforts started with matters of a more procedural nature, but have now proceeded to address issues of a more substantive nature. These developments risk undermining the Commission’s ability to effectively execute its mandate of promoting and protecting the rights of all Africa’s people.

In January 2015, the Executive Council requested the Commission to “expunge” two decisions against Rwanda – concluded on the merits of communications – from its activity report, until the State had been offered an “oral hearing”.⁷ Looking at the final version of the relevant (37th) activity report, the Commission obliged,⁸ despite the fact that Rwanda was given an opportunity to submit its arguments according to the Commission’s established practice. To date, these two decisions - Communications 426/12 and 392/10 – have not reappeared in any activity report.

In June 2015, the Executive Council requested the Commission to withdraw the observer status it (the Commission) had granted to the Coalition of African Lesbians (CAL), and to revise its guidelines for granting observer Status to NGOs, contained in Resolution, to better take account of “fundamental African values, identity and good traditions”.⁹ In fact, the Executive Council went further in its request, in that it to asked the Commission to “withdraw the observer status granted to NGOs who may attempt to impose values contrary to the African values”, seemingly going beyond the granting of observer status to CAL, specifically.

On the same occasion, apparently reacting to the inclusion of five precautionary measures, and seven urgent appeals in the Commission’s activity report,¹⁰ the Executive Council requested the Commission to “consider reviewing its rules of procedure, in particular, provisions in relation to

⁶ 37th Activity Report Commission (para 21): “During the reporting period, the Commission received a request for an Oral Hearing from the Complainant in Communication 288/2004 - Gabriel Shumba v Zimbabwe, regarding implementation of the Commission’s decision and recommendations. The request was made within the framework of Rule 112 of the Rules of Procedure of the Commission, and will also be considered during the Commission’s upcoming Session.”

⁷ AU Doc EX.CL.Dec 864, January 2015, para 7-9: “INVITES the ACHPR to provide the Member States concerned by certain paragraphs of the report and the communications therein for such amendments as are deemed necessary and justified; As regards communications 426/12 and 392/10 concerning the Government of Rwanda, Council REQUESTS that the cases in question be expunged from the report of the African Commission for the period June-December 2014 until Rwanda is offered the opportunity of oral hearing on the two cases, as requested through various correspondence to the ACHPR; AUTHORIZES the publication of the 37th Activity Report of the ACHPR”.

⁸ 37th activity report African Commission: Footnote 3: The 2 Communications considered on the merits have not been authorized for publication on the basis of the referenced Executive Council Decision.

⁹ AU Doc EX.CL.Dec , June 2015, para 7: “REQUESTS the ACHPR to take into account the fundamental African values, identity and good traditions, and to withdraw the observer status granted to NGOs who may attempt to impose values contrary to the African values; in this regard, REQUESTS the ACHPR to review its criteria for granting Observer Status to NGOs and to withdraw the observer status granted to the Organization called CAL, in line with those African Values”.

¹⁰ Para 34:.

provisional measures and letters of urgent appeals in consistence with the African Charter on Human and Peoples' Rights; and to take the appropriate measure to avoid interference by NGOs and other third parties in its activities".¹¹

In January 2016, the Executive Council added to its request for a review of the guidelines for granting observer status a call to the Commission to review also the criteria for "representation before the ACHPR by non-African individuals and groups".¹²

Separately and cumulatively, these "requests" constitute a concerted attempt by the political organs of the African Union to replace the Commission's interpretation of the African Charter and its mandate with its own. This approach threatens the independence and autonomy of the Commission, and attempts to blur the lines between the quasi-judicial role of the Commission and the political role of the AU organs -- and thus the principle of the "rule of law". The essence of the human rights system, of which the Charter and Commission are important pivots, is to ensure independent oversight by human rights experts of the human rights of African people in member states. The whole of the AU project centres around the 'people' of the continent. A people-centred AU should operate in a way that advances the interest of Africa's peoples, including the effective protection of their rights under the Charter.

The guidelines for granting observer status and principles guiding representation before the Commission, as they stand, are informed by and based on the African Charter, and the principles, arising from the Charter, of access to justice and fair trial rights, including the right to be represented by counsel of one's choice. We therefore urge the Commission, in any response it may formulate, to be steadfast about its own independence and reaffirm itself as the autonomous interpreter of the African Charter.

¹¹ Ibid para 12 .

¹² AU Doc EX.CL.Dec.902, January 2016, para 7: "CALLS UPON the ACHPR to review the criteria for granting observer status to NGOs as well as representation before the ACHPR by non-African individuals and groups and to report at the July 2016 Summit".