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Centre for Human Rights  
Faculty of Law

## STATEMENT

### **CENTRE FOR HUMAN RIGHTS CALLS FOR AUTONOMY AND INDEPENDENCE OF THE AFRICAN COMMISSION TO BE REAFFIRMED; AND FOR ACTION ON CAMEROON AND ERITREA**

28 April 2018

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***Statement by the Centre for Human Rights, Faculty of Law, University of Pretoria to the African Commission on Human and Peoples' Rights, at its 62nd ordinary session, Nouakchott, Mauritania, 28 April 2018, on the situation of human rights in Africa***

#### ***Autonomy and independence of the Commission***

The Centre is deeply concerned about the mounting pressure on the African Commission to withdraw the observer status it had granted to the NGO Coalition of African Lesbians (CAL) in 2015. In January this year, the AU Executive Council reiterated its earlier directive to the Commission to withdraw CAL's observer status, and called for a joint retreat of the African Commission and the AU Permanent Representatives' Committee (PRC) be convened to resolve the tension.

We encourage the Commission and the PRC to use the 'joint retreat' as an opportunity to affirm the importance of the Commission's autonomy and independence, and thus, guarantee the Commission's continued ability to ensure accountability for human rights violations across our continent.

What is at stake in the upcoming deliberations is not the fate of any particular NGO, but the **principle** of the Commission's autonomy and independence, and thus, the fate of the Commission itself.

The very reason why African states in 1981 created the Charter was to establish a system of **independent oversight** over the human rights enjoyed by everyone within African states. The role of the African Commission as autonomous interpreter of the African Charter was placed at the core of

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this system. The principle of the rule of law – both at national and at AU level -- requires that executives respect judiciaries' interpretative function. An insistence by the AU political bodies that their **own interpretation of the Charter overrides** that of the Commission, undermines the Commission's autonomy, and subverts the AU's internal rule of law.

The competence of the political bodies to 'consider' the Commission's activity reports should, in light of the purpose of the Charter, and reading the Charter as a whole, be understood as the competence of these bodies to **deliberate upon and discuss** the Commission' report. 'Consideration' of the Commission's reports requires the political bodies to identify and encourage state action *on the basis of the Commission's decisions*, **not to second-guess or replace** the Commission's interpretations of the Charter with their own.

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

### **Cameroon**

The Centre expresses its grave concern about the human rights situation in Cameroon, particularly in the North-West and South-West Regions. Reliable information obtained from a variety of sources, will be made available to the Commission. This information indicates a series of serious and massive violations including

- mass killing
- the large-scale burning of villages,
- the forced evacuation and displacement
- torture and ill treatment of human rights defenders;
- enforced disappearance
- the restriction of access to information.

Despite the recommendations in the Commission's 2009 *Gunme* decision and in two press releases, in 2016 and earlier in 2018, the situation in Cameroon has continued to deteriorate. The time has now patently come to take more concerted action.

We therefore urge the Commission to undertake an on-site fact-finding mission to Cameroon; and to adopt a resolution, to this effect.

Given the anticipated difficulty to obtain state consent, the Commission should consider: (i) acting under article 58 of the Charter, drawing the attention of the AU Assembly to the series of serious or massive violations, and (ii) acting in accordance with article 19 of the AU Protocol establishing the

Peace and Security Council, by providing relevant information to and collaborate with the AU Peace and Security Council.

## **Eritrea**

The Centre welcomes the submission by Eritrea of its state report.

The examination of this report at the present session places the focus on long-standing deficiencies in the rule of law and the severe nature of human rights violations in Eritrea.

It is not the rule of law, but the law of the ruler that prevails in Eritrea -- a country without a functioning Constitution; without a functional Parliament; a country in which all -- but one -- political parties have been banned. Since 2001, hundreds of Eritreans have been arrested and detained without trial. In response, the Commission called 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.

The Centre therefore calls upon the Commission to use the examination of state reports process to draw attention to the dysfunctional rule of law, which permeates all of Eritrean society, and the persistent non-implementation by Eritrea of the Commission's decisions.

## **Finally, in respect of the present session in Mauritania:**

We note with concern the allegations that Mauritanian NGOs are denied access to this session. We call on the Commission to forthwith investigate this matter, by engaging with the government of Mauritania and the relevant individuals and organisations, to establish the facts, and ensure an end to any arbitrary exclusion of persons entitled to attend the present session.

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