

Statement by the Centre for Human Rights, University of Pretoria, to the 56th ordinary session of the African Commission on Human and Peoples' Rights, Banjul, The Gambia, 22 April 2015

In this statement, the human rights situation in three countries is addressed: the country from which I come (South Africa); the country in respect of which a Centre report was launched earlier at the session (Eritrea); and the country where we all find ourselves (The Gambia).

South Africa: The African Commission should call for accountability for and a comprehensive approach to xenophobic violence in South Africa, and request authorization to conduct and in fact undertake a mission to South Africa

Like all fellow Africans, I am distressed and appalled by the recent outburst of xenophobic violence in South Africa. As a South African, I am saddened and ashamed of the acts of fellow South Africans, perpetrated against fellow Africans. More pertinently, I am concerned about the lack of a comprehensive and systematic approach by the South African government to effectively deal with this issue.

As we all know, this is part of a series of events. Following similar incidents in 2008, the African Commission, at its 43th session in Ezulwini, Swaziland, adopted a resolution condemning the attacks (the Commission condemned “the attacks and violence perpetrated against migrants in various townships in South Africa”) called for accountability of those responsible (the Commission “called on the South African government to investigate and prosecute those responsible for the attacks, and to institute further measures to ensure the protection of foreign migrants in South Africa, and their property”) and also urged the South African government to authorize a visit of the Special Rapporteur on Asylum Seekers and Refugees to visit the country (the Commission “had sought authorization for the Special Rapporteur to conduct a fact finding mission on the situation of migrants in that country”).

What we know is that the mission did not take place, and that there was very little accountability for the perpetrators of this violence.

Against this background, the Centre for Human Rights calls on the Commission to express its renewed concern about the recurrence of xenophobic violence in South Africa, and the pattern of failed accountability for xenophobic crimes, and calls on the Commission to undertake a high level mission to South Africa, comprising for example the Chairperson, the Special Rapporteur on Refugees, Asylum Seekers, IDPs and Migrants, the Chair of the Working Group on Economic, Social and Cultural Rights, and the Commissioner responsible for South Africa, to engage with the government on the development of a comprehensive, sustainable and effective strategy to prevent the recurrence of such violence.

In addition, we call on the South African government to do all it can to ensure accountability for those responsible for the violence; and to agree and facilitate a visit by the African Commission to the country.

- [Download the open letter to the African Commission \(signed 128 by various civil society organisations, including the Centre for Human Rights\)](#)

The Gambia: The African Commission should call for the relocation of its seat due to lack of progress on human rights situation in Gambia

It should be recalled that the Gambian government in 2009 openly and explicitly threatened the safety and security of civil society representatives intending to attend the Commission's session in Banjul. The Commission reacted by a resolution, calling on the President to withdraw the threats and to guarantee the security of participants in the upcoming session scheduled to take place in the Gambia. (Resolution on the Deteriorating Human Rights Situation in The Gambia, adopted at the Commission's 7th extraordinary session, Dakar, Senegal, 11 October 2009). In what amounts to an ultimatum, the Commission requested the AU to consider relocating the Commission's seat if the human rights situation in The Gambia did not improve. (The relevant wording of the resolution requests the AU to 'consider relocating the Secretariat of the African Commission in the event that the human rights situation in the Republic of The Gambia does not improve'.) After the President gave some guarantees to ensure the safety and security of NGOs, the session eventually took place in Banjul. However, the human rights situation in the Gambia has not subsequently improved.

This fact is exemplified by a visit to the country in November 2014 by the UN Special Rapporteurs on Torture and Extrajudicial Summary or Arbitrary Executions. Although the government agreed to the visit, it was met with the government's unwillingness to grant freedom of movement and inquiry to all areas of detention facilities. The Special Rapporteur on Torture found a constant fear of reporting any human rights abuses due to reprisals, lack of a substantive redress, a mistrust of the police force as well as the Indemnity Act of 2001, which provides the President with nearly unfettered powers that perpetuates a culture of impunity and deters victims from seeking redress for violations including torture.

A clear example of the above occurred on 30 December 2014, when following an attempted coup d'état in which at least four "insurgents" were killed. Between December 2014 and January 2015, 25 individuals were being detained incommunicado, with their whereabouts unknown and the likelihood that they were being detained in unofficial places of detention with a great risk of being tortured. Most of the persons detained were relatives of those suspected of being involved in the failed coup. Although some have been released, other family members have not been heard from in almost three months.

Another example that was found by the Special Rapporteur was the National Intelligence Agency ("NIA"), which is responsible for conducting covert investigations, collecting intelligence and protecting state security. By way of testimonies, it was discovered that the NIA would hold persons for many days and weeks under inhumane conditions with severe and routine torture regimes, before being handed over to the police and brought before a judge. Additionally, acts of torture would be most prevalent when the NIA would detain individuals in unofficial places before handing them over to the police for the formal process of detention,

A further example is the "Bulldozer" Unit which is made of several law enforcement units and whose aim is to quash civil disturbances and intimidate civil society using excessive force to deter public demonstrations. Together with the "Bulldozer" Unit is the "Jungullars", a parliamentary force, which is associated with arbitrary arrests, detention, torture, enforced disappearances and extrajudicial killings against persons considered to be opposed to the regime, journalists and ordinary civilians. The method used to conduct

torture and assassinations by this unit is the use of machetes, ropes, nails, needles and syringes injected into the victim's body. Despite the recurring torture inflicted on individuals, it was noted that there is an absence of routine medical examinations by qualified forensic medical doctors at the police investigation stage, by way of a court order or upon admission to prison.

The death penalty is a further matter of grave concern, as expressed in the report by the UN Special Rapporteur on Extrajudicial Executions. In 2012, nine prisoners (eight men and one woman) were executed by firing squad. Following the attempted coup, on 30 March 2015, a military court handed down death sentences to three treason accused after a one-day trial held in secret, without the accused being effectively represented.

Against this background, the Centre for Human Rights urges the African Commission to follow up with the AU its 2009 request to 'consider relocating the Secretariat of the African Commission in the event that the human rights situation in the Republic of The Gambia does not improve'. The Commission should also clearly and strongly highlight this issue in its next activity report, and through its Chairperson, seriously engage on this issue with the Executive Council of the AU.

Eritrea: Commission should call on AU political organs to move the seat of the Commission from The Gambia, due to the persistent human rights violations in that country

Since the arrest and incommunicado detention by the Eritrean government of 11 high-ranking officials, and 18 journalists in 2001, the Commission has taken numerous measures to ensure their release. Responding to communications arising from the Crackdown, the Commission in 2003 found Eritrea in violation of the Charter, in respect of the 11 politicians, and recommended that the detainees be freed. It issued a similar finding and recommendation in 2007, in respect of the 18 journalists. It adopted resolutions in 2009 and 2011, expressing regret at the state's non-compliance and again urged the state to comply. The Special Rapporteur Adv Tlakula also recalled that the Commission, through her mandate, has directed three urgent appeals to the government of Eritrea.

Today, fourteen years later, their fate remains unknown. Some may have died; those still living have been held incommunicado, most likely in containers in the desert.

The Centre for Human Rights therefore called on the Commission to urge the AU political organs to exert concerted pressure on Eritrea to comply. As it seems that the legal processes are not yielding any results, it is now time to involve the political organs of the AU. In line with its approach to the explicit non-compliance by Botswana with the its decision in the Good case, the Commission should, in its next activity report, urge the AU Assembly to take appropriate measures, as allowed for under article 23(2) of the AU Constitutive Act, to exert further political pressure on Eritrea to comply with the Commission's numerous decisions and resolutions pertaining to these detainees