



## **ORAL STATEMENT BY AMNESTY INTERNATIONAL**

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**59<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights, Banjul, Gambia**

### **Agenda Item 3: Human Rights Dialogue**

Amnesty International welcomes this opportunity to contribute to this timely and important dialogue. This dialogue presents an opportunity for reflection on how the continent may begin to move more rapidly towards a true human rights culture; from rhetoric or symbolic gestures to concrete actions. In advance of the 27<sup>th</sup> AU Summit held in July in Kigali, Rwanda, under the theme 'African year human rights with a particular focus on women's rights', Amnesty International outlined seven priority recommendations for African leaders and the continent as a whole. Three of these recommendations touched on the very subject of the present human rights dialogue and concerned the work of regional human rights treaty bodies. In this statement, the organization wishes to reiterate these three recommendations.

#### **Ratification of human rights treaties**

As the continent celebrates the 30<sup>th</sup> anniversary of the coming into force of the African Charter on Human and Peoples' Rights, it is heartening to recall that the Charter received universal ratification when South Sudan deposited its instrument of accession in May this year. Yet, the universal ratification of the Charter is an exception rather than the rule. The majority of regional human rights treaties are yet to be ratified by a huge proportion of African states. Consider, for example, the Protocol on the Rights of Women in Africa (Maputo Protocol). Despite repeated calls, including by the AU Assembly and the African Commission on Human and Peoples' Rights, the Maputo Protocol has not received universal ratification 13 years after its adoption. As at the end of September 2016, 17 African states are yet to ratify the Protocol.

Amnesty International believes that this year presents a unique opportunity for the AU and member states to build on gains achieved towards the realization of the rights of women in Africa. We call on those states that have not ratified the Maputo Protocol to do so without further delay. This is a call that the AU and the African Commission has repeatedly made and member states should heed the call once and for all.

The Protocol on the Establishment of the African Court on Human and Peoples' Rights is another important regional treaty that is yet to be ratified by all African states close to two decades after its adoption. Only 30 AU member states have ratified the Protocol. Under Article 5(3) of the Protocol, NGOs and individuals are entitled to directly lodge cases before the African Court but only in respect of states that have made the declaration stipulated in Article 34(6). Out of the 30 states that have ratified the Protocol, only seven states have made a declaration under Article 34(6). This means that citizens of 47 African countries are unable to directly access the Court. Rwanda made the declaration in January 2013 but purportedly withdrew it in February this year. Rwanda's action is a huge setback for the protection of human rights in the country and undermines efforts to strengthen the Court. The withdrawal sets a bad precedent and sends a wrong message to state parties that are yet to make the declaration.



As the African Court celebrates the 10<sup>th</sup> anniversary of its establishment, Amnesty International calls on:

- the 24 AU member states that are yet to ratify the Court Protocol to do so as a matter of urgency. We urge these 24 states to commit to immediately commence the relevant domestic process that will see their respective instruments of ratification deposited with the AU Commission Chairperson before or during the 28th AU Summit in Addis Ababa, Ethiopia. At the time of ratification, these states should also make the declaration contemplated in Article 34(6).
- the 23 states which have ratified the Court Protocol but are yet to make the declaration to do so before the end of the year.

### **Implementation of decisions of regional human rights treaty bodies**

Ratification of regional human rights treaties is an important first step in the realization of human rights. Beyond ratification, states must cooperate and comply with the decisions and recommendations of the supervisory mechanisms. In the context, it is a matter of grave concern that the general disposition of states is to disregard decisions and resolutions of the regional human rights treaty bodies.

Since its establishment, the African Commission has decided hundreds of cases and found states to be in violation of the Charter in a good percentage of them. However, recommendations directed to states have been generally ignored. Research on the rate of compliance with recommendations issued by the African Commission in cases decided between 1993 and 2004 found full compliance in 14% of the cases only. Preliminary evidence shows that the rate of compliance has not improved in any meaningful way since 2004. In January 2013, the African Commission lamented that:

*Member States generally do not comply with the decisions of the Commission or implement its recommendations. They also do not respect provisional measures issued by the Commission to prevent irreparable harm to victims.*

In 2014, the African Commission requested all states against whom a finding of violations has been made to provide information to it regarding steps taken to implement its decisions and recommendations. In its activity reports, The African Commission is also increasingly bringing cases of non-compliance to the attention of the AU Executive Council. It reported Botswana to the Executive Council in January 2013 for openly refusing to comply with a decision of the Commission in which the country was found to have violated the African Charter. In January 2014, the Commission notified the Executive Council that Ethiopia had failed to respect an order for provisional measures. In June 2015, the Commission brought to the attention of the Executive Council that Egypt had failed to stay an execution despite the fact that the Commission had requested the country to do so. In all of these cases, the Executive Council has not taken any action whatsoever.

Some countries, such as Eritrea and Gambia, have failed to comply with decisions or resolutions issued by the African Commission for years on end. Eritrea is yet to comply with the decisions of the African Commission in Communication No. 250/2002 (*Zegveld and Another v Eritrea*) and No. 275/2003 (*Article 19 v Eritrea*) delivered in 2003 and 2007 respectively. In these two decisions, the African Commission recommended the release of government officials, opposition leaders and journalists detained, without trial, since 2001. Between 2009 and 2015, the African Commission has issued three country-



specific resolutions on the human rights situation in the Gambia. The Commission has also issued numerous press releases and sent urgent appeals to the Gambian government raising concern about the human rights situation in the country. The calls on these resolutions have consistently fallen on deaf ears. As such, none of the recommendations have been complied with.

Ten years ago, the African Court was inaugurated to complement the protective mandate of the African Commission. As at the end of June 2016, the Court had received 101 cases and finalized 27 of these and transferred four to the African Commission. Like the African Commission, the Court is increasingly confronted with non-compliance with its decisions. For instance, despite repeated reminders from the Court and the AU Executive Council, Libya has failed to comply with an order issued in respect of a matter against it. Tanzania has also not fully complied with a decision of the Court issued about three years ago.

Amnesty International believes that a fitting celebration of the year of human rights will be incomplete unless states rededicate themselves to complying with the obligations enshrined in the regional human rights treaties. In order to set states towards the path of compliance, the organization recommends that:

- all states parties against whom a violation of the African Charter has been found should submit information to the Executive Council and the African Commission within the next six months indicating the steps they have taken to implement the recommendations of the African Commission or the orders of the African Court as the case may be;
- the African Commission should refer Eritrea and Gambia to the AU Executive Council for the persistent failure to comply with its decisions and resolutions; and
- the AU Executive Council should review, at every ordinary session, member states' compliance with the decisions, resolutions and judgments of the regional human rights institutions.

### **Synergy and coordination in response to conflict situations**

Conflict and crisis has plagued the African continent for decades. At the beginning of this year, the AU was engaged in efforts to address security concerns of conflict situations in Burundi, Central African Republic, Libya, Mali, Nigeria, South Sudan, Sudan, Somalia, amongst other countries. As we come closer to the end of the year, the security situation in many of these countries has either deteriorated or not significantly improved. Recent developments in Ethiopia and Sudan are particularly worrying.

In Ethiopia, there have been almost continuous protests in parts of Ethiopia since November 2015. The protests in Oromia region, were initially triggered by plans to extend the capital, Addis Ababa, into Oromia, but have since evolved to other demands. Protests in the Amhara region began in August 2016 against arbitrary detention, and calling for self-determination. The Ethiopian security forces have consistently used excessive, including lethal force, to disperse the protests. Over 600 protesters in Oromia, and 200 in Amhara have been killed as a result. Hundreds of political activists, human rights defenders, journalists and protesters have been arrested. At least 200 have been charged under the Anti-Terrorism Proclamation, and their trials are ongoing.

Tensions in Oromia escalated in recent weeks, following a stampede during Irrecha, an Oromo holiday festival that resulted in the deaths of at least 55 people. The government of



Ethiopia has severely restricted internet access, and declared a state of emergency on 09 October 2016 in response to the situation. The state of emergency imposes broad restrictions on a variety of human rights, some of which are non-derogable. State security agents have also arrested many political activists, human rights monitors, protesters and journalists. Many have been charged for incitement for violence, some on the basis that third parties overheard them criticizing the government.

Amnesty International considers that the sustained protests in Ethiopia are being driven by underlying human rights grievances that remain unresolved to date. The organization is concerned that further crack-downs by the authorities will only serve to escalate the situation. The government can avoid further human rights violations by constructively engaging with, and addressing the underlying human rights concerns that are fuelling the civil unrest. Amnesty International, therefore, urges the Ethiopian Government to seize the opportunity to address the protesters' human rights grievances and re-commit to respect, protect and fulfil its human rights obligations. Specifically, the organization recommends that the Ethiopian Government:

- stops using unnecessary and excessive force against protesters;
- refrains from arresting and charging people who are exercising their freedoms of expression and peaceful assembly;
- allows independent monitors to document the situation; and
- make good on its promises for reform, by ensuring that the legal, institutional and policy framework is brought fully in conformity with its international human rights obligations.

In Sudan, a recent report by Amnesty International documents the repeated use of what are believed to be chemical weapons against civilians, including very young children, by Sudanese government forces in Darfur over the past eight months. Using satellite imagery, interviews and expert analysis of dozens of images showing babies and young children with terrible injuries, the investigation carried out by Amnesty International indicates that at least 30 likely chemical attacks have taken place in the Jebel Marra area of Darfur since January 2016. The most recent attack was reported on 9 September 2016. Based on testimony from caregivers and survivors, Amnesty International estimates that between 200 and 250 people may have died as a result of exposure to the chemical weapons agents, with many – or most – being children.

Amnesty International shared its evidence related to chemical weapons with two chemical weapons experts both of whom conclude that the clinical signs and symptoms of many of the victims are most consistent with their being exposed to a chemical substance capable of causing blisters (vesicles) and similar lesions, which fall under the class of chemical-warfare agents called vesicants or blister agents.

The organization calls on the African Commission to:

- issue a public statement expressing concern over repeated reports of commission of war crimes in Darfur, including indiscriminate attacks and direct targeting of civilians as well as the possible repeated use of chemical weapons against civilians in Jebel Marra;
- pursuant to its protective mandate, urgently request the government of Sudan to carry out a fact-finding visit and conduct investigations into the repeated reports



of violations of international humanitarian and human rights law and publicly report its findings;

- Pursuant to Article 58(3) of the African Charter, draw the crimes under international law being committed in Sudan to the attention of the AU Assembly and the AU Peace and Security Council.

The developments in Ethiopia and Sudan are emblematic of the intricate link between human rights and conflict in Africa. The continent has seen a number of instances where violent conflicts have led to gross violations but also result from persistent denial of human rights over a period of time. Yet, AU's responses to structural human rights causes or gross violations that emerge out of conflicts have been slow, inconsistent and reactive rather than as part of a comprehensive and consistent strategy. In addition, there are coordination gaps between the AU Peace and Security Council and the regional human rights institutions. Article 19 of the Protocol Relating to the Establishment of the PSC specifically provides that the PSC shall seek close cooperation with the African Commission. As the primary human rights body on the continent, the African Commission also has the mandate, such as enshrined under Article 58 of the African Charter, to contribute significantly towards dealing with human rights violations leading to or resulting from conflicts. In effect, the provisions of Article 19 of the PSC Protocol and Article 58 of the African Charter envisage a robust and two-way relationship.

In practice, the interaction between the PSC and the African Commission has been limited and remains *ad hoc*. Similarly, coordination between the PSC and the African Committee of Experts on the Rights of the Child has been limited to interactions during the annual open sessions of the PSC on children and armed conflict.

The AU is left with less than four years to realise its aspiration to 'silence all guns' on the continent by 2020. Amnesty International believes that it is now more urgent than ever to translate this commitment into tangible and concrete actions to ensure effective response to underlying structural causes of conflict and gross human rights violations being committed in the context of conflicts. Accordingly, the organisation calls on:

- the PSC to ensure effective avenues for regular engagement with the regional human rights institutions and specifically the African Commission and the African Committee of Experts on the Rights of the Child including by assessing its working methods and clarifying the modalities of implementing Articles 19 of the PSC Protocol; and
- the African Commission on Human and Peoples' Rights to make full use of its mandate and its Special Mechanisms, including effective exercise of its duty to bring the existence of "a series of serious or massive violations of human rights" to the attention of the AU Assembly and develop effective follow-up mechanisms to ensure the implementation of its recommendations by member states and relevant organs of the AU.