

## Updates on State reviews at the 57th African Commission session

11.12.2015



***(Banjul, The Gambia) During the 57<sup>th</sup> session of African Commission on Human and People's Rights (ACHPR), four State periodic reports were considered: Algeria, Burkina Faso, Kenya and Sierra Leone. ISHR took a keen interest in issues regarding civil society space, human rights defenders (HRDs) as well as reprisals, the extractives sector and freedom of expression and access to information.***

### **Civil Society Space**

#### **Algeria**

Recalling reports from Cairo Institute of recent incidents of peaceful gatherings being violently broken down and followed by arrests and prosecutions, Commissioner Gansou expressed concern that there was no mention on the right to peaceful demonstration by civil society organisations in the country's report. As such, she asked whether there was a mechanism for dialogue between the Government and civil society organisations (CSOs) and if the Government supports CSOs at all.

The country's delegation explained that CSOs are permitted to peacefully demonstrate provided that they declared their intention three days (for minor-scale protests) or eight days (for large-scale protests) before.

'Terrorism continues to threaten people in Algeria and this is why we limit demonstration in the city to avoid infiltration of terrorists in the crowds. The capital is specific and a special case where we have serious restrictions, however other cities have demonstrations in a free manner,' said the head of delegation.

Noting the deteriorating human rights situation in Algeria, the NGO Forum recommended the immediate end to restrictions and harassment of HRDs and called for fair trials for journalists, activists and lawyers.

#### **Burkina Faso**

Commissioner Derrso asked about the role of CSOs and in particular community members in the extractive sector in Burkina Faso. He specifically wanted to understand if a legal regime exists to cater for the consultation with communities living in mining areas. In a follow-up question that echoed similar concerns, Commissioner Gansou asked the delegation if there was any dialogue between the State and CSOs in Burkina Faso.

'The State and CSOs have opportunities to dialogue. For example every year the Ministry of Human Rights has a meeting with CSOs on pertinent issues during that time, the Women's Ministry has a biannual meeting with CSOs and the Unions and farmers meet annually with the Government,' said the delegate from Burkina Faso.

## **Kenya**

Regarding Kenya, Commissioners commended on the vibrant political, civic and media space which had been significantly strengthened. Commissioner Dersso, ACHPR Rapporteur for Kenya cautioned against enacting laws that would erode these positive steps and reduce civil society, media and civic space.

## **Sierra Leone**

After a year and half of fighting Ebola, Sierra Leone was declared Ebola free during the ACHPR. Commissioners understood that for public safety it was important to curb freedom of association. The Government of Sierra Leone was encouraged to start taking active steps to revert to the international best practice to allow CSOs to be free to assemble and associate.

CSOs based in Sierra Leone reported that it is tedious and difficult for them to effectively and efficiently carry out their work, due to the current system used to register organisations in the country. As a result, the Commissioners asked the delegation to look into such concerns and advised the Government to refrain from adopting the current draft NGO Bill that does not meet the international human rights standards.

## **HRDs and reprisals**

### **Algeria**

There have been reports about arrests, harassment and unlawful detainment of HRDs in Algeria. Defenders such as Kamal Eddine Fekhar face constant reprisals constantly in the country. The delegation was asked if they were aware of cases of reprisals and whether the Government is prepared to create a mechanism to help to prevent such incidents.

Commissioner Gansou also raised the issue of forced disappearances in the country. 'We want to know if you are taking measures to address individual cases of forced disappearances,' she said.

In response the Algerian delegation said that their Government has admitted that at least 5,000 people have been disappeared and they are working on resolving the crisis.

### **Burkina Faso**

Burkina Faso is in the process of adopting a law on HRDs. The delegation was asked what measures had been put in place to make the law effective and encouraged the country to take the opportunity to learn from the experience Côte d'Ivoire.

'The promotion and protection of human rights, requires the protection of people defending human rights, this is why the Government has this draft bill which will be submitted shortly to a technical committee that is meant to review it. The bill will then be sent to Council of Ministers,' said the head of delegation.

### **Kenya**

Kenya was commended for having a world-class constitution that upholds and promotes human rights. The delegation was asked if there was any law that protects the rights of HRDs and if not if the Government was ready to adopt such a law.

There have been numerous incidents of attacks against defenders in the LGBTI community in the country. Recently, Kenya's Non-Governmental Organisations Coordination Board denied to register The National Gay and Lesbian Human Rights Commission of Kenya.

'The rights of the LGBTI community are suppressed in Kenya. What is the Government doing to ensure that this community has full access to human rights?' concluded Commissioner Gansou.

## **Sierra Leone**

Sierra Leone was encouraged to ensure that human rights continued to be at the centre of the country's development strategy. During the recent Ebola crisis in the country, defenders such as Ms Mary Conteh and journalists faced reprisals and received death threats for speaking out on human rights and good governance. The country was therefore called to adopt a law that protects HRDs. In addition, the 1965 Public Order Act was criticised for its restrictive nature that limits the work of CSOs. The delegation admitted that the 1965 law was out-dated and explained that it has been tabled for review.

## **Extractive Industries and Human Rights**

In his interaction with all four countries the Chairperson of the Working Group on extractive industries, environment and human rights violations asked state delegations to explain if their countries had laws that regulate the use and redistribution of revenues from the mining sector, that explain the role of communities in the extractive value chain and whether they are privy to policies such as prior and informed consent. He also wanted to know if Environmental Impact Assessments (EIAs) had been institutionalised and if they had necessary funding from the Government to carry out their work.

## **Algeria**

Algeria's delegation explained that colonialisation resulted in a misappropriation of land for the local citizens as they were disposed of their land and property. Since independence the land and anything under ground belongs to the State. They said that the law on compensation for property is vigorous and that the State is making sure to find a solution. Regarding natural resource wealth, it was explained that unemployed Algerian citizens can attend school and visit hospitals free of charge, which is how citizens benefit from the natural resources.

## **Burkina Faso**

'We are happy to report that Burkina Faso is trying to keep up with the international standards in the extractives sector. In July 2015 the Government adopted a [new Mining Code](#), which incorporates the needs of local communities and also establishes a local development mining fund,' said the head of the delegation.

She added that the office of the EIAs has a mandate to take into account most of the concerns raised by the Commissioner. Communities in Burkina Faso are involved in EIAs and they are encouraged to bring questions forward to the Government or directly to the private companies concerned. She said the Government is trying to enhance transparency and to this end they are party to the Kimberly Process.

## **Kenya**

Commissioner Solomon Dersso, commended Kenya on the prompt policy creation and revision for the sector. 'There is however a requirement to involve the public during the extractives value chain,' he cautioned. 'What legislative measures have been put in place to operationalise this requirement?' he asked.

'The extractive sector provides an opportunity for Kenya to reduce its poverty levels,' said a member of the country's delegation. 'Kenya has a National Land Policy... which takes into account the needs of vulnerable and indigenous groups. The Government is required to provide compensation for land that is acquired by the Government for natural resource extraction,' responded the Kenyan delegation.

They explained that there is a land settlement fund that is used to provide compensation for land to communities that are disturbed or relocated. They added that the Government is in the process of developing a Community Land Bill, which addresses the concerns regarding access to land in the country. Guidelines are also being drafted on how to involve communities. Currently, the Environmental Impact Assessment is carried out before extraction begins and this process includes the participation of the communities.

## **Sierra Leone**

Commissioner Dersso expressed concern about the inadequate, and in some cases lack of, opportunities for

communities in the mining sector to air their views at the beginning of the mining value chain in the country. He said [reports](#) had shown a grim picture of the sector and explained the importance of getting the balance right between investment opportunities and promoting human rights in Sierra Leone. He concluded by calling for more revenue transparency in the country saying that if the current laws do not cater for sound revenue management this needed to be addressed urgently.

## **Freedom of expression and access to information**

### **Algeria**

Commissioner Tlakula commended Algeria on its efforts to promote the right to access to information as indicated by the number of newspapers and radio stations in the country. 'The test for limiting right to access to info must be necessary and serve a legitimate purpose. However, the way Algeria limits access to information in most cases is extreme and not in line with best practice. Is there a body or institution in your country that oversees the right to access to information,' she asked the delegation.

She probed whether the country's media regulation authority is a body put in place by law, and if so what measures have been put in place to ensure its independence. In response a member of the delegation explained that 'the ethics council was created to ensure the right to freedom of information. It checks the status of journalists and how they do their work. No one has the monopoly on the press. They can publish freely in the press. However, if people feel attacked they are now entitled to the right to reply,' he said.

### **Kenya**

Kenya was called on by the Commissioners to repeal laws that currently suppress freedom of expression and do not offer journalists adequate protection. In particular, Commissioner Tlakula said the Security Act Law unduly restricts the freedom of expression and asked for an explanation as to why it still exists even after the High Court declared eight clauses of that law as unconstitutional. Lastly, the Kenyan delegation was asked why the process of passing the access to information law was taking very long. In this regard Commissioner Tlakula advised the Government to expedite the process.

## **Commissioners concluding remarks**

Generally the Commissioners thought the countries that were reviewed provided satisfactory responses to the questions and issues raised. Commissioner Maya Sahl-Fadel in charge of Burkina Faso said she was happy the delegation objectively addressed issues. On the other hand, Commissioner Zainabo Sylvie Kayitesi, in charge of Algeria said she needed more substantive answers and expected to see more depth in the written responses that will be submitted on 15 December. States were encouraged to invite the ACHPR for country visits and ensure they celebrated the African Union year of Human Rights in 2016.