

Progress at the 53rd Ordinary Session of the African Commission is hindered by a lack of State reporting

26.04.2013

The 53rd Ordinary Session of the African Commission on Human and People's Rights has closed with some positive developments, including initiatives advancing the interpretation of African human rights instruments. With no interactive dialogue between a State and the Commission, however, one of the central objectives of an Ordinary session - to hold States publically to account for their human rights records - was not met.

Whilst the Sahrawi Arab Democratic Republic report 2002- 2012 was available online in Arabic ahead of the session, the interactive dialogue was postponed. No official reason was given for this, although there were suggestions that it was due to a lack of translation. A report submitted is, nevertheless, an improvement on a total lack of reporting by eleven State parties. Whilst the reporting process should be one centred on encouragement and constructive dialogue, with certain flexibility where States are unable to report in exceptional circumstances, ultimately State parties cannot be allowed to avoid their responsibility altogether. As the Commission provides many human rights defenders with one of the only available opportunities to engage in such a process, the Commission needs to rethink how to ensure regular and predictable State reporting, and to be bolder in the use of its power to review States in their absence.

During the Opening Ceremony of the Commission session, the Chair was firm in her condemnation of reprisals against those that cooperate with the mechanism. However, NGO calls for the Commission to establish a mechanism to report and coordinate follow up to cases of reprisals appear not to have been discussed by the Commission during its private session. With known cases of human rights defenders staying away from the Commission session due to having experienced reprisals during the previous session and afterwards, the Commission needs to step up its response.

The three-day NGO Forum that precedes Commission's ordinary sessions aims to bring human rights concerns to the attention of the Commission in a bid to increase the protection and promotion of rights through the mechanism. Long standing concerns and calls to the Commission were reflected in a series of country-focused and thematic resolutions. Several NGO initiatives pressed the Commission on areas it has not traditionally engaged on, in a bid to use the mechanism to extend and confirm the application of human rights perspectives. One of the three resolutions passed by the Commission - none of which are yet published - focuses on the illicit capital flight from Africa. The other two resolutions focus on transitional justice in Africa, and the right to nationality.

In what was lauded as an 'innovation' by the Chair, this session saw the Commission develop a model law on access to information and a General Comment on Article 14 (1) (d) and (e) of the African Charter. The driving role of NGOs in the process, including through the provision of expert advice, was acknowledged by Commissioners. The Special Rapporteur on Human Rights Defenders in Africa, in speaking of her upcoming report on the situation of women human rights defenders in Africa, indicated another area where the Commission will be breaking new ground.

With the presence of the UN Special Rapporteur on Eritrea, and Eritrean human rights defenders in exile, the human rights situation in this country received some attention both at the NGO Forum and at the Commission session. Whilst the request of the UN Special Rapporteur to visit the country continues to be denied by the Eritrean State, an ad hoc meeting was held between the parties during the Commission; and the Commission reported that several of its members met with the Eritrean delegation at their request, during the Commission's private session. Combined efforts between the international and regional human rights mechanisms bore some fruit, but it has yet to be seen, for example, if the Special Rapporteur's current visit to neighbouring countries to meet with Eritreans that have fled the country, will prompt the Eritrean State to extend her an invitation.

The Commission announced its intention to send a fact-finding mission to Mali in early June 2013, at a time when the observer mission to Mali continues, headed by Commissioner Alapini-Gansou, as part of the African

Union's (AU) response to the situation. The role the Commission might play in AU responses to conflict within the continent was part of an NGO line of enquiry during the Forum. Commission reflections and recommendations on the situation in Mali, and on its role more broadly, are eagerly awaited.

Once again, the NGO Forum called upon the Commission to condemn discrimination and violence against people in Africa on the basis of their real or perceived sexual orientation, and to call on States to investigate and prosecute perpetrators. The Commission did not respond directly to this Forum call. However, the Chair of the Commission, in a video address to the International Conference on Human Rights, Sexual Orientation and Gender Identity, noted that the African Commission 'denounces violence committed against individuals based on their sexual orientation as part of its mandate to protect individuals from all forms of violence.'

At the end of the public session, Ms Dupe Atoki announced she will not stand again as Commissioner, which brings her term as Chairperson to an end. The timing and process for the nomination of a new Chair, and of several other Commissioners whose terms are up, has yet to be made known public.

The next Ordinary Session of the Commission from 22 October - 5 November 2013, will be held once again in Banjul, The Gambia.

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