

# Mass expulsion of foreign nationals: A ‘special violation of human rights’ — Communication 292/2004 Institute for Human Rights and Development in Africa v Republic of Angola

Gina Bekker\*

Lecturer, School of Law, University of Ulster, Northern Ireland

## Summary

*This discussion deals with the decision by the African Commission on Human and Peoples’ Rights in Communication 292/2004 Institute for Human Rights and Development in Africa v Republic of Angola. Whilst not the first decision by the African Commission touching on the issue of the mass expulsion of non-nationals by state parties to the African Charter on Human and Peoples’ Rights, it is one of the most comprehensive and progressive decisions in this regard, particularly in terms of its recommendations. However, in the absence of a demonstrable willingness on the part of the African Commission to follow up on its recommendations and a means by which to measure actual compliance, it is argued that the jurisprudential gains of this decision are likely to be short-lived.*

## 1 Introduction

The treatment of foreign nationals by state parties to the African Charter on Human and Peoples’ Rights (African Charter) has in recent years received increasing attention by the African Commission on Human and Peoples’ Rights (African Commission). This is demonstrated by the appointment in 2004 of a Special Rapporteur on the Rights of

---

\* BLC, LLB, LLM (Pretoria), LLM (Notre Dame); g.bekker@ulster.ac.uk

Refugees, Asylum Seekers and Internationally Displaced Persons (IDPs) and the extension of the mandate to include issues of migration more generally. This is further illustrated by the adoption of resolutions, such as the one in 2008, condemning the treatment of non-nationals in South Africa.<sup>1</sup> Coupled with these moves, there has also been an emergence of a burgeoning jurisprudence in relation to the treatment of both refugees as well as migrants, particularly with regard to the expulsion of these groups from the territory of state parties to the African Charter. The first case to deal with the issue, *Organisation Mondiale Contre la Torture and Others v Rwanda*,<sup>2</sup> related to the expulsion of Burundian refugees from Rwanda, with the African Commission finding violations *inter alia* of articles 2, 7(1) and 12 of the African Charter.<sup>3</sup> At the same session, the Commission held in *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia*,<sup>4</sup> that the detention and subsequent deportation of 517 West Africans from Zambia violated articles 2, 7(1)(a) and 12(5) of the African Charter. Violations of articles 2, 7(1)(a), 12(4) to (5), 14 and 18 of the African Charter were also found in *Union Interafricaine des Droits de l'Homme and Others v Angola*,<sup>5</sup> where mass expulsions of West Africans from Angola had taken place. Similarly, in *African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v Guinea*,<sup>6</sup> it was held that a speech by the Guinean President urging the arrest, search and confinement of Sierra Leonean refugees to refugee camps, causing thousands to flee their homes — leaving many with no other choice but to return to Sierra Leone, with others being forcibly returned to their home country by the authorities — also violated a number of African Charter provisions as well as the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.<sup>7</sup>

<sup>1</sup> See Resolution on the Special Rapporteur on Refugees, Asylum Seekers and IDPs, ACHPR/Res 72 (XXXVI). On the extension of the mandate of the Special Rapporteur, see ACHPR/Res 95(XXXIX)06. With regard to the situation in South Africa, see Resolution on the Situation of Migrants in South Africa, ACHPR/Res (XXXXIII) 08.

<sup>2</sup> (2000) AHRLR 282 (ACHPR 1996).

<sup>3</sup> Of the four communications, which were grouped together by the African Commission, it was Communication 27/89, submitted on behalf of *Organisation Mondiale contre la Torture and Association Internationale des Juristes Démocrates*, which dealt specifically with the treatment of non-nationals. In this case, four individuals, Bonaventure Mbonuabucya, Baudouin Ntatundi, Vincent Sinarairaye and Shadrack Nkuzwenimana, all Burundian nationals who had been granted refugee status in Rwanda, were expelled from the latter country, ostensibly on security grounds. The Commission, in finding a violation of article 12(5), the prohibition against mass expulsions, held that '[t]here is ample evidence in this communication that groups of Burundian refugees have been expelled on the basis of their nationality ...' and, as such, the prohibition had been violated.

<sup>4</sup> (2000) AHRLR 321 (ACHPR 1996).

<sup>5</sup> (2000) AHRLR 18 (ACHPR 1997).

<sup>6</sup> (2004) AHRLR 57 (ACHPR 2004).

<sup>7</sup> Violations of arts 2, 4, 5, 12(5) & 14 of the African Charter were found, as well as art 4 of the OAU Convention Governing the Specific Aspects of Refugees in Africa.

Common to most of the aforementioned cases is the emphasis by the African Commission on the special nature of the violations where mass expulsions were found to have occurred.<sup>8</sup> Thus, the Commission expressed the view in *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia*<sup>9</sup> that 'the drafters of the Charter believed that mass expulsion presented a special threat to human rights'.<sup>10</sup> In *Union Inter-africaine des Droits de l'Homme and Others v Angola*,<sup>11</sup> it further held that mass expulsions 'constitute a special violation of human rights'.<sup>12</sup> The rationale for this categorisation is apparent in the latter decision, with the African Commission noting that '[t]his type of deportation calls into question a whole series of rights recognised and guaranteed in the Charter ...'<sup>13</sup> Implicit in these decisions, therefore, is an acknowledgment that the prohibition against mass expulsions is a right upon which a number of other rights are predicated.

## 2 The case of *Institute for Human Rights and Development in Africa v Republic of Angola*

The case of *Institute for Human Rights and Development in Africa v Republic of Angola*<sup>14</sup> relates to a complaint filed on behalf of Mr Esmaila Connateh and 13 other Gambians, averring 'the capricious arrest and deportation, in violation of their human and peoples' rights, of the said Gambians who were alleged to have been legally residing and working in Angola'.<sup>15</sup> These actions were alleged to have taken place in accordance with *Operação Brilhante* — a governmental campaign conducted between March and May 2004, which led to an

<sup>8</sup> Art 12(5) of the African Charter, art 4 of Protocol 4 to the European Convention on Human Rights and art 22(9) of the American Convention all contain an express prohibition against the collective expulsion of non-nationals.

<sup>9</sup> n 4 above.

<sup>10</sup> See para 20 of the decision. This portion of the decision was also quoted with approval in the case of *African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v Guinea* (n 6 above) para 69.

<sup>11</sup> n 5 above.

<sup>12</sup> See para 16.

<sup>13</sup> See para 17. The African Commission then went on to detail examples of rights that are affected by expulsions, noting in this regard that the rights to property, work, education and family were all affected by such measures. Though not a case of mass expulsion, the case of *Amnesty International v Zambia* (2000) AHRLR 325 (ACHPR 1999) para 52, also illustrates the special nature of forcible expulsion, with the African Commission noting in this regard that '[b]y forcibly expelling the two victims from Zambia, the state has violated their right to enjoyment of all the rights enshrined in the African Charter'.

<sup>14</sup> Communication 292/2004 23rd and 24th Activity Report of the African Commission on Human and Peoples' Rights, Annex II.

<sup>15</sup> See para 2.

estimated 126 247 foreign nationals being deported from Angola.<sup>16</sup> In their petition, the complainants advanced a number of grounds as constituting violations of their rights. These included conditions of detention amounting to cruel, inhuman or degrading punishment and treatment; violations of due process rights; violations of the rights to property, work, equal treatment before the law and non-discrimination as well as a violation of provisions in the African Charter prohibiting the mass expulsion of foreign nationals. As the government of Angola failed to respond to these allegations, the African Commission, in accordance with its own Rules of Procedure as well as previous jurisprudence in this regard, proceeded to consider the communication on the basis of the complainants' submission as well as other information at its disposal.<sup>17</sup>

## 2.1 Conditions of detention

The complainants alleged that the conditions under which foreign nationals were detained at three separate facilities violated article 5 of the African Charter, which provides as follows:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

In particular, they contended that the conditions under which they were detained were inhumane as the facilities were 'overcrowded and

<sup>16</sup> Para 3.

<sup>17</sup> See para 34 of the decision. Also see Rule 119(4) of the African Commission's Rules of Procedure which provides as follows: 'State parties from whom explanations or statements are sought within specified times shall be informed that if they fail to comply within those times the Commission will act on the evidence before it'. With regard to the African Commission's jurisprudence, see *Free Legal Assistance Group & Others v Zaire* (2000) AHRLR 74 (ACHPR 1995) para 40; *Commission Nationale des Droits de l'Homme et des Libertés v Chad* (2000) AHRLR 66 (ACHPR 1995) para 25; *Media Rights Agenda & Others v Nigeria* (2000) AHRLR 200 (ACHPR 1998) para 86; *Constitutional Rights Project v Nigeria (1)* (2000) AHRLR 241 (ACHPR 1999) para 14; *Aminu v Nigeria* (2000) AHRLR 258 (ACHPR 2000) para 25; and *Centre for Free Speech v Nigeria* (2000) AHRLR 250 (ACHPR 1999) para 18, where the principle was laid out that 'where allegations of human rights abuses go uncontested by the government concerned, especially after repeated notification, the Commission must decide on the facts provided by the complainant and treat those facts as given'. Also see *Union Interafricaine des Droits de l'Homme & Others v Angola* (n 5 above), where the African Commission notes at para 10 that '... in view of the defendant state's refusal to cooperate with the Commission, the latter can only give more weight to the accusations made by the complainants and this on the basis of the evidence furnished by them'. The Commission has also held that the failure to respond to specific allegations may lead to a negative inferences being drawn — see eg para 101 of *International Pen & Others (on behalf of Saro-Wiwa) v Nigeria* (2000) AHRLR 212 (ACHPR 1998), that 'where no substantive information is forthcoming from the government concerned, the Commission will decide on the facts alleged by the complainant' (see *Abubakar v Ghana* (2000) AHRLR 124 (ACHPR 1996) para 10).

unsanitary'.<sup>18</sup> In this regard, it was alleged that the detention centre at Kisangili, which previously had been used to house animals, was not fit for the purpose as in converting the premises the authorities had failed to take into account the new function the buildings were to serve.<sup>19</sup> Detainees at the detention centre in Saurimo were alleged to have been exposed to the elements, as the centre was said to have no roof or walls.<sup>20</sup> At the Cafunfu detention centre, bathroom facilities were purported to consist of only two buckets for over 500 detainees, located in the same room in which all detainees ate and slept.<sup>21</sup> It was asserted, more generally, that the guards beat the Gambians and extorted money from them, that food was not provided regularly nor was medical attention readily available and that transportation between detention centres was conducted in overcrowded conditions.<sup>22</sup> In addition it was also alleged that the lack of information in relation to the reasons and duration of their detention amounted to 'mental trauma'.<sup>23</sup> Having regard to all the above, the African Commission held that the conditions of detention amounted to inhuman and degrading treatment, which it indicated, with reference to previous case law, was to be interpreted so as to give the widest possible protection against physical as well as mental abuse.<sup>24</sup>

## 2.2 Absence of due process

The complainants alleged that the authorities had failed to produce arrest warrants or 'any other document relating to the charges under which the arrests were being carried out'.<sup>25</sup> The African Commission therefore found Angola to have violated the prohibition against arbitrary arrest contained in article 6 of the African Charter. Related to this, the Commission also found a violation of article 7(1)(a) of the Charter, which provides that 'every individual shall have the right to have his cause heard', comprising 'the right to an appeal to competent national organs against acts violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force', as

---

<sup>18</sup> Para 50.

<sup>19</sup> As above.

<sup>20</sup> Para 51.

<sup>21</sup> As above.

<sup>22</sup> As above.

<sup>23</sup> Para 50.

<sup>24</sup> See para 52. In the same paragraph, the African Commission, referencing the case of *Amnesty International & Others v Sudan* (2000) AHRLR 297 (ACHPR 1999), went on to list the following as examples of abuse amounting to cruel, inhuman and degrading treatment: 'denial of contact with family and refusing to inform the family of where the individual is being held; conditions of overcrowded prisons and beatings; and other forms of physical torture, such as deprivation of light, insufficient food and lack of access to medicine or medical care'.

<sup>25</sup> Para 55.

the complainants had not been afforded the opportunity to challenge their arrest and subsequent deportation.<sup>26</sup>

The general requirements relating to procedural fairness contained in articles 6 and 7, article 12(4) of the African Charter are as follows:

A non-national legally admitted in a territory of a state party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law.

The complainants alleged that at no point prior to deportation were they taken before a court of law.<sup>27</sup> Furthermore, they also claimed that when they presented documents entitling them to legally reside in Angola, these were either confiscated or destroyed.<sup>28</sup> Whereas the African Commission took great pains to emphasise that, although African states may expel non-nationals from their territory, it noted that such expulsions had to take place in accordance with the African Charter's requirements of due process.<sup>29</sup> As this had not occurred in the instant case, the African Commission held Angola to be in violation of article 12(4) of the African Charter.<sup>30</sup>

### 2.3 The right to property and work

In addition to alleging that the state had failed to allow them an opportunity to challenge their deportation, the complainants further alleged that they had been denied an opportunity to make appropriate arrangements to transport or dispose of their belongings.<sup>31</sup> Whilst recognising that the right to property in the African Charter is not absolute, the African Commission noted that the failure of the state to produce evidence which would indicate that its actions were 'necessitated either by public need or community interest' and the failure to provide for adequate compensation as 'determined by an impartial tribunal of competent jurisdiction', meant that it was in violation of article 14 of the Charter.<sup>32</sup>

In this respect, the complainants also averred that they were in possession of official documentation allowing them to stay and work legally in Angola and that they had paid for permits to continue working in

<sup>26</sup> See paras 58-60.

<sup>27</sup> Para 62.

<sup>28</sup> As above.

<sup>29</sup> Para 63.

<sup>30</sup> Para 65.

<sup>31</sup> Para 72.

<sup>32</sup> Para 73. Art 14 of the African Charter provides as follows: 'The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.'

the mines, in spite of which they had been deported.<sup>33</sup> The African Commission held this to violate article 15 of the African Charter, thus confirming that all individuals, nationals as well as non-nationals, have the 'right to work under equitable and satisfactory conditions' and are entitled to receive 'equal pay for equal work'.<sup>34</sup>

## 2.4 Equal protection of the law and non-discrimination

Article 3(2) of the African Charter provides that '[e]very individual shall be entitled to equal protection of the law'. The complainants argued that this right had been violated by the actions of mass arrest, detention and expulsion of the Gambians from Angola.<sup>35</sup> The African Commission in turn held that, in order for a successful claim to be established, a complainant would have to show either that 'the respondent state had not given the victims the same treatment it accorded to the others', or that it had 'accorded favourable treatment to others in the same position as the victims'.<sup>36</sup> As the complainants were unable to demonstrate the extent to which they had been treated differently from 'other nationals arrested and detained under the same conditions', the Commission found no violation on this count.<sup>37</sup> It did, however, in keeping with previous case law, find a violation of the non-discrimination provision of the African Charter contained in article 2, which provides that the Charter rights are to be enjoyed by all without discrimination, as the various measures taken by the authorities were clearly aimed at foreigners or non-nationals.<sup>38</sup>

## 2.5 Prohibition against mass expulsion

Article 12(5) of the African Charter expressly prohibits the mass expulsion of non-nationals, defined in terms which focus on the discriminatory nature of the measures, as 'that which is aimed at national, racial, ethnic or religious groups'.<sup>39</sup> This can be contrasted with the

---

<sup>33</sup> Para 74.

<sup>34</sup> See para 76.

<sup>35</sup> Para 45.

<sup>36</sup> See para 47.

<sup>37</sup> Para 48.

<sup>38</sup> See para 82. With regard to prior case law on this issue, see notes 2, 4, 5 & 6 above.

<sup>39</sup> It is clear from this that mass expulsions are defined not in terms of the number of individuals affected, but rather by who is targeted. Notably absent from the definition are categories specifically enumerated in relation to art 2 of the African Charter, such as sex, political opinion, social or other status. Thus, it would appear that a decision to expel, eg, non-national women or homosexuals from the territory of a party to the African Charter, whilst likely to constitute a violation of the non-discrimination provision of the Charter, would not qualify *prima facie* as a mass expulsion for the purposes of art 12(5) of the Charter.

position adopted first by the European Commission of Human Rights<sup>40</sup> and later by the European Court of Human Rights, which underscores, instead, the arbitrariness of such expulsions. Thus, the European Court has held that collective expulsions are ‘any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group’.<sup>41</sup> The emphasis therefore is not on the targeting or singling out of groups for expulsion, but rather on the procedural requirement that there was an objective and reasonable review of the individual case. Whilst neither the Inter-American Commission on Human Rights or Court on Human Rights has explicitly given content to the notion of the prohibition against the collective expulsions of aliens, as set out in article 22(9) of the American Convention on Human Rights, the Inter-American Commission emphasised in its 1991 Annual Report in relation to the expulsion of Haitians from the Dominican Republic, the need to ‘consider the individual situation of persons accused of violating immigration law and to grant them the right to present their defence in the framework of a formal hearing’.<sup>42</sup>

In signalling a move away from the formal requirements of the African Charter, which characterises mass expulsions as involving the targeting of individuals for reasons of nationality, race, ethnic or religious affiliations, the African Commission held in *Institute for Human Rights and Development in Africa v Republic of Angola* that article 12(5) had been violated in spite of the fact that the victims had not been singled out and discriminated against specifically on the basis of their nationality as Gambians or their racial, ethnic or religious affiliation, but rather because they formed part of a broader group of non-nationals from

<sup>40</sup> See *Henning Becker v Denmark* (Application 7011/75) <http://www.unhcr.org/refworld/docid/3ae6b7058.html> (accessed 1 February 2009).

<sup>41</sup> See *Andric v Sweden* (Application 45917/99) para 1 <http://www.unhcr.org/refworld/docid/3ae6b7048.html> (accessed 1 February 2009). Also see the subsequent case of *Čonka v Belgium* (Application 51564/99) <http://www.unhcr.org/refworld/docid/3e71fd4.html> (accessed 1 February 2009), in which the Court reaffirmed this decision and went further in stating that, even in instances where the measure of expulsion is taken on the basis of reasonable and objective examination of the particular case of each individual alien of the group, this does not mean that ‘... the background to the execution of the expulsion orders plays no further role in determining whether there has been compliance with article 4 of Protocol No 4’ (ie the prohibition against collective expulsion) (para 59).

<sup>42</sup> See ch V of the Annual Report of the Inter-American Commission on Human Rights 1991, OEA/Ser L/V/II 81, Doc 6 Rev 1, 14 February 1992 <http://www.cidh.oas.org/annualrep/91eng/TOC.htm>. (accessed 1 February 2009). The Inter-American Commission ruled the case of *Benito Tide Méndez Antonio Sensión, Andrea Alezi, Janty Fils-Aime, William Medina Ferreras, Rafaelito Pérez Charles, Berson Gelim et al v Dominican Republic*, Report 68/05, Petition 12.271 <http://www.cidh.oas.org/annualrep/2005eng/DominicanRep.12271eng.htm> (accessed 1 February 2009) admissible and found that it was competent to examine the complaint in relation to alleged violations *inter alia* of art 22 of the American Convention.

West and Central African countries.<sup>43</sup> This has important implications for future cases, as it potentially paves the way for the possibility of categories not specifically mentioned in article 12(5) from being afforded protection in terms of this provision.<sup>44</sup> The African Commission further held that the fact that the arrests and deportations took place over a period of several months did not negate the '*en masse* element of the expulsions'.<sup>45</sup> This too is important, as it emphasises the fact that deportations need not take place within a single defined time-frame in order for article 12(5) to be engaged. Thus, governments cannot escape culpability for mass expulsions by simply deporting individuals forming part of a group of non-nationals over an extended period of time.

Although not calling into question the rights of governments to regulate the entry, exit and stay of foreign nationals, the African Commission emphasised in this case that 'a state's right to expel individuals is not absolute and it is subject to certain restraints'.<sup>46</sup> These restraints include a 'bar against discrimination based on national origin' as well as procedural safeguards that would allow affected individuals to 'challenge the order or decision to expel them before competent authorities, or have their cases reviewed, and have access to legal counsel, among others'. These safeguards, the Commission noted, ensure that individuals receive equal protection of the law, prohibit arbitrary interference with their lives and further ensures that individuals are not sent back, deported or expelled to countries or places they are likely to suffer from torture, inhuman or degrading treatment, or death.<sup>47</sup> The latter requirement has particular resonance in a world where terror suspects are routinely rendered to countries where they are likely to be subjected to torture, inhuman or degrading treatment and is the first express acknowledgment by the Commission that article 12(5) extends to prohibit expulsions in cases where there is a risk of torture.

---

<sup>43</sup> Para 69. It was similarly held in *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* (n 4 above) that there had been a violation of art 12(5), in spite of the Zambian authorities arguing that the expulsions were not discriminatory because 'nationals of several West African countries and other foreign countries were all subject to the same treatment' (see para 24 of this decision).

<sup>44</sup> n 39 above. This is also borne out by the African Commission's decision in *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* (n 4 above) para 22, where the Commission emphasises that art 2 imposes an obligation 'to secure the rights protected in the Charter to all persons within their jurisdiction, nationals or non-nationals'.

<sup>45</sup> Para 69.

<sup>46</sup> Para 79.

<sup>47</sup> See paras 79 & 84.

## 2.6 Recommendations

Subsequent to the landmark decision in *Malawi African Association and Others v Mauritania*,<sup>48</sup> the African Commission's recommendations in general have tended to be more comprehensive.<sup>49</sup> This is also reflected in the decision of *Institute for Human Rights and Development in Africa v Republic of Angola*, which for the first time requires a government found to have violated the prohibition against mass expulsions to take very detailed and specific action to remedy such violations.<sup>50</sup> These recommendations include requiring that the authorities ensure non-discrimination on the basis of race, colour, descent, national, ethnic origin or any other status, in relation to immigration policies, measures and legislation, having particular regard to 'the vulnerability of women, children and asylum seekers'. In relation to detention, the recommendations insist that the government take measures to ensure the provision of a 'proper medical examination and medical treatment and care' as well as the regular supervision or monitoring of places of detention by qualified and experienced persons or organisations. In relation to the latter, it was additionally recommended that representatives of the African Commission, relevant international organisations, the International Committee of the Red Cross, non-governmental organisations (NGOs), concerned consulates and others be given access to detainees and places of detention. Moreover, it was suggested that mechanisms be put in place allowing all detained persons access to effective complaint procedures as well as procedural safeguards to ensure that they are given effective access to competent authorities involved in overseeing prisons and matters of detention. It was further recommended that a commission of inquiry be established 'to investigate the circumstances under which the victims were expelled and ensure the payment of adequate compensation of all those whose rights were violated in the process'. Importantly, it was recommended that safeguards be instituted 'to ensure that individuals are not deported or expelled

<sup>48</sup> (2000) AHRLR 149 (ACHPR 2000).

<sup>49</sup> Prior to this decision, the African Commission's recommendations were more often than not limited to a formulaic finding that the respondent state was in violation of specific provisions of the African Charter.

<sup>50</sup> These detailed recommendations are to be found in para 87 of this decision. The African Commission made simple declaratory findings in the cases of *Organisation Mondiale Contre la Torture & Others v Rwanda* (n 2 above) and *Rencontre Africaine pour la Défense des Droits de l'Homme v Zambia* (n 4 above) and made only limited recommendations in the two other cases in which violations of the prohibition against mass expulsions had been found. Thus, in one case, it merely urged both the respondent government and complainants to 'draw all the legal consequences arising from the present decision' and in the other recommended the establishment of a joint Commission 'to assess the losses by various victims with a view to compensation' (see *Inter Union Interafricaine des Droits de l'Homme & Others v Angola* (n 5 above) and *African Institute for Human Rights and Development (on behalf of Sierra Leonean refugees in Guinea) v Guinea* (n 6 above), respectively).

to countries where they might face torture or their lives could be at risk'. In the final instance, the government of Angola was requested to institute human rights training programmes for 'law enforcement agencies and relevant civil servants dealing with matters involving non-nationals on non-discrimination, due process, and the rights of detainees ...'

Whereas the African Commission's recommendations have, as has already been noted, become increasingly comprehensive and far-reaching in nature, compliance with these decisions has lagged behind significantly. Thus, the Commission noted in 1998 that, at that point, only one state had complied with its decisions and a study examining compliance with the Commission's decisions between 1987 and mid-2003 recorded full compliance in only six cases.<sup>51</sup> In response to this dismal situation, the African Commission began to request that states report back to it — either in its periodic state party reports,<sup>52</sup> or within a specified period of time.<sup>53</sup> The failure of governments to comply with these measures appears to have resulted in the adoption by the Commission in 2006 of a Resolution on the Importance of the Implementation of the Recommendations of the African Commission on Human and Peoples' Rights by State Parties.<sup>54</sup> This document requests that states found in violation of the provisions of the African Charter 'indicate the measures taken and/or the obstacles in implementing the recommendations of the African Commission within a maximum period of ninety (90) days starting from the date of notification of the recommendations', and further provides that the Commission is to 'submit at every session of the Executive Council a report on the situation of the compliance with its recommendations by the state parties (annexed to its Annual Activity Report)'. To date, no such report has been submitted to the African Commission. This can perhaps be ascribed to the absence of a formal mechanism to monitor compliance, as well as a willingness on the part of the Commission to engage with states on this issue.

<sup>51</sup> See Non-Compliance of States Parties to Adopted Recommendations of the African Commission: A Legal Approach, 24th ordinary session, Banjul, 22-31 October 1998, DOC/OS/50b(XXIV) para 5 and F Viljoen & L Louw 'State compliance with the recommendations of the African Commission on Human and Peoples' Rights 1994-2004' (2007) 1 *American Journal of International Law* 1, in particular 8-11.

<sup>52</sup> *Legal Resources Foundation v Zambia* (2001) AHRLR 84 (ACHPR 2001); *241/2001 Purohit & Another v The Gambia* (2003) AHRLR 96 (ACHPR 2003); and *Interights & Others (on behalf of Bosch) v Botswana* (2003) AHRLR 55 (ACHPR 2003).

<sup>53</sup> *Lawyers for Human Rights v Swaziland* (2005) AHRLR 66 (ACHPR 2005).

<sup>54</sup> See ACHPR/Res 97(XXXX)06.

### **3 Conclusion**

The African Commission's broadening of the categories recognised in terms of article 12(5), the recognition of the principle of not returning individuals to countries where they might potentially face torture and the broad range of recommendations contained in this decision are particularly commendable, but the fact that the Commission simply required that 'the Republic of Angola report back to it, at a later stage', rather than reiterate its position taken in the 2006 Resolution, is of grave concern. Not only does this recommendation represent a clear regression with regard to the implementation of the African Commission's recommendations, but the absence of a formal mechanism to monitor compliance means that any gains made by one of the most progressive judgments in relation to the treatment of non-nationals in Africa to date are likely to amount to naught.