

African courts' decisions regarding Freedom of Expression in Africa

28 March, 2014

The African Court on Human and Peoples' Rights delivered a first far-reaching decision regarding freedom of speech in March 2014, in the case brought to the court on behalf of Norbert Zongo. Mr Zongo, an investigative journalist and editor of *L'Indépendant* in Burkina Faso, was killed in 1998. At the time of his assassination he was investigating the murder of the driver of the brother of the president of Burkina Faso. For years, Mr Zongo's family sought justice for his murder.

The state handled the first trial and found no one guilty of the killings, leading the family to take the case to the African Court in 2011 in order to seek redress. First, it was argued that the African Court, only fully established in 2004, could not hear a case about a killing that occurred in 1998. The court threw out this objection, ruling that the failure to diligently look for and find the killers, was a continuing one which had not yet ended. In November 2013, nearly two years after the case was originally filed and almost 15 years after Mr Zongo was killed, his family finally had the opportunity for the first time to put their appeal for justice before an independent, regional court.

In its judgment, the African Court ruled that the government had violated the right to freedom of expression by refusing to investigate the case diligently and to prosecute those responsible for the crime. The African Court also held that the killing of a journalist was a method of intimidation that should not be allowed anywhere.

10 June, 2014

The ECOWAS Court of Justice delivered a judgment on freedom of expression, and in particular the issue of impunity in June 2014, in the case brought to the court on behalf of Deyda Hydara. Mr Hydara, founder of the independent newspaper *The Point* and president of the Gambia Press Union (GPU), was shot dead by unidentified assailants as he drove home from his office in the capital, Banjul, on December 16, 2004. He led advocacy efforts against legislative restrictions on press freedom in The Gambia. He had received multiple death threats in the months leading up to his death in 2004. After Mr Hydara's murder, the state opened an investigation which was closed in less than a month. No arrests were made and no one was held responsible for the murder.

In 2014, the ECOWAS ruled that the government had failed to properly investigate Mr Hydara's assassination, and ordered the Gambian government to pay \$50,000 to his family. Two other victims of similar human rights abuses, or their surviving family members, have taken cases to

the ECOWAS. In 2008, the court ordered the government to release journalist Ebrima Manneh immediately, who forcibly disappeared in 2006, and to pay 100,000 USD in compensation. In 2010, the court ordered the Gambian government to pay 200,000 USD in damages, in compensation of the arbitrarily detained and tortured journalist Musa Saidu Khan in 2006.

5 December, 2014

The African Court on Human and Peoples' Rights delivered a judgment on press freedom in Africa at the end of 2014, in the case brought to the court on behalf of Issa Lohé Konaté. He was editor of the Burkina Faso weekly *L'Ouragan* newspaper, and was arrested, tried and convicted in 2012 of defaming Burkinabé State Prosecutor, Placide Nikiéma, after he accused the prosecutor of corruption in two news articles. Mr Konaté was sentenced to 12 months in prison and fined 4,000,000 CFA francs (6,800 USD).

In June 2013, Mr Konaté applied to the African Court to seek justice and alleged a violation of Article 9 of the African Charter on Human and Peoples' Rights, Article 19 of the International Covenant on Civil and Political Rights and Art. 66 of the ECOWAS revised treaty. He was represented before the Court by Nani Jansen, who was the Legal Director of Media Legal Defence Initiative, John Jones QC and Steven Finizio, and later supported by several NGOs. Finally, the African Court ordered Mr Konaté's release and ruled that Burkina Faso has to change its criminal defamation laws. In its judgment, the African Court ruled that imprisonment for defamation violates the right to freedom of expression while criminal defamation laws should only be used in limited circumstances.