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## **35<sup>TH</sup>ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

**Submitted in Accordance with  
Article 54 of the African Charter on Human and  
Peoples' Rights**

## I. INTRODUCTION

1. The African Commission on Human and Peoples' Rights (the Commission) has the honour to present to the Assembly of Heads of State and Government of the African Union (the AU Assembly), through the Executive Council, the present Activity Report in accordance with Article 54 of the African Charter on Human and Peoples' Rights (the African Charter).
2. The Report covers the period between **April to October 2013**. It is structured as follows: introduction; activities undertaken by the Commission; State Reporting; Resolutions adopted by the Commission; protection activities; the human rights situation in Africa; promotion missions; finances and administration; implementation of Executive Council decisions and recommendations.

## II. ACTIVITIES OF THE COMMISSION

3. During the period under review, the Commission held the following statutory meetings:

### **Fourth Meeting of the Bureaux of the Commission and the African Court on Human and Peoples' Rights (the African Court), Nairobi, Kenya, 17 July 2013**

4. The Commission and the African Court held the Fourth Meeting of their Bureaux on 17 July 2013. This Meeting, between the two Institutions, explored strategies for enhancing their complementarity, reviewed the progress made so far in the relationship, and also discussed the Agenda of the ensuing Annual Meeting of the two Institutions.

### **Second Annual Meeting between the Commission and the African Court, Nairobi, Kenya, 18 to 19 July 2013**

5. The annual Joint Meeting between the Commission and the African Court took place from 18 to 19 July 2013. Among others, it discussed strategies for facilitating the work of the two Institutions, challenges encountered so far, and the way forward. The Meeting agreed on modalities for facilitating the implementation of each other's mandate, and ensuring a good working relationship between them. The two Institutions agreed to request the African Union (AU) to declare **2016, the African Year of Human Rights**. 2016 marks a watershed on the continental human rights agenda: 2016 will usher in the 35<sup>th</sup> Anniversary of adoption of the African Charter; and the 30<sup>th</sup> anniversary of the coming into force of the African Charter; by 2016, the African Court will be marking 10 years of operation, while the Protocol to the African Charter on Human and Peoples' Rights Establishing the African Court on Human and Peoples' Rights (the Court Protocol) will just have celebrated 10 years of its entry into force on 22 January 2006. It is therefore most befitting that the year 2016 be celebrated and commemorated appropriately in recognition of the giant steps taken by our continental body on the human rights front. Attached to this Activity Report, and also to the Activity Report of the African Court, is a brief *raison d'être* to this effect.

## **The Fourteenth Extra-Ordinary Session (14<sup>th</sup> EOS) Nairobi, Kenya, 20 to 24 July 2013**

6. During the 14<sup>th</sup> EOS which was convened to deal with the backlog of Communications and other outstanding matters, the Commission considered and adopted 6 Resolutions and 21 Communications broken down as follows:
  - (i) 6 on Seizure;
  - (ii) 8 on Admissibility, of which 7 were declared admissible, and 1 inadmissible;
  - (iii) 2 Communications on the Merits.
  - (iv) 2 Communications on Review; and
  - (v) 3 Communications were struck out.

## **54<sup>th</sup> Ordinary Session (54<sup>th</sup> OS) Banjul, The Gambia, 22 October – 5 November 2013**

7. The opening ceremony of the 54<sup>th</sup> OS was presided over by Honourable Commissioner Catherine Dupe Atoki, the outgoing Chairperson of the Commission, while the Session was declared open by the Attorney General and Minister of Justice of the Republic of The Gambia, Honourable Justice Mama Fatima Singhateh.
8. Four (4) Commissioners were sworn in during the 54<sup>th</sup> OS: the newly elected Commissioner, Honourable Commissioner Lawrence Murugu Mute, and the 3 Commissioners who were re-elected during the May 2013 Session of the Assembly of Heads of State and Government of the AU namely, (Honourable Commissioner Yeung Kam John Yeung Sik Yuen; Honourable Commissioner Lucy Asuagbor; and Honourable Commissioner Soyata Maiga)
9. A new Bureau was elected; comprising Honourable Commissioner Kayitesi Zainabo Sylvie as Chairperson of the Commission, and Honourable Commissioner Mohamed Béchir Khalfallah as Vice-Chairperson.
10. The following Members of the Commission attended the Session: Honourable Commissioner Kayitesi Zainabo Sylvie; Honourable Commissioner Mohamed Béchir Khalfallah; Honourable Reine Alapini-Gansou; Honourable Commissioner Med S. K. Kaggwa; Honourable Commissioner Maya Sahli Fadel; Honourable Commissioner Pacifique Manirakiza; Honourable Commissioner Lucy Asuagbor; Honourable Commissioner Soyata Maiga; Honourable Commissioner Yeung Kam John Yeung Sik Yuen; and Honourable Commissioner Lawrence Murugu Mute. Honourable Commissioner Pansy Tlakula was absent with apologies.
11. The following Member States attended the Session: Algeria, Angola, Burkina Faso, Cameroon, Côte d'Ivoire, Djibouti, Equatorial Guinea, Ethiopia, Gabon, The Gambia, Lesotho, Liberia, Mauritania, Niger, Nigeria, Rwanda, Sahrawi Arab Democratic Republic, Senegal, South Africa, Sudan, Togo, Uganda, Zambia and Zimbabwe.
12. Five hundred and sixty (560) delegates participated in the Session. Of these, 132 represented Member States, 7 represented AU Organs, 42 represented National Human Rights Institutions (NHRIs), 14 represented International and Inter-Governmental

Organizations, 316 represented African and International Non-Governmental Organisations (NGOs), while 49 represented Press and other observers.

13. Eleven (11) NGOs were granted Observer Status with the Commission.
14. The Commission considered and adopted the Reports of the Promotion Mission to Chad; the Joint Mission to Tunisia, and the Fact Finding Mission to Mali.
15. The Commission also considered and adopted the following: Report of the Advisory Committee on Budgetary and Staff Matters; Report on the Execution of the Budget; Report of the Working Group on Communications; Template for the Report of the Working Group on Death Penalty, Extra-Judicial, Summary or Arbitrary Killings in Africa; the Communications Audit; and the Report of the Secretary.
16. Deliberations were also held on the following: Report of the Research and Information Mission of the Working Group on Indigenous Populations/Communities in Africa to Tanzania; Report of Women Human Rights Defenders; Report of the Study Group on Freedom of Association in Africa; General Comments on Article 14 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol); and the Paper on Citizenship.

### III. STATE REPORTING

17. As at the 54<sup>th</sup> OS, the status of submission of Periodic Reports by Member States stands as follows:

Status	State Party
Up to date - <b>13</b>	Angola, Cameroon, Cote D'Ivoire, Gabon, Liberia, Malawi, Mozambique, Nigeria, SADR, Senegal, Sierra Leone, The Sudan, and Uganda.
<b>1 Report</b> overdue - <b>8</b>	Botswana, Burkina Faso, Burundi, DRC, Libya, Namibia, Rwanda and Togo.
<b>2 Reports</b> overdue - <b>7</b>	Algeria, Benin, Congo (Brazzaville), Ethiopia, Madagascar, Mauritius, and Tanzania.
<b>3 Reports</b> overdue - <b>6</b>	Central African Republic, Kenya, Seychelles, Tunisia, Zambia and Zimbabwe.
<b>More than 3 Reports</b> overdue - <b>12</b>	Cape Verde, Chad, Egypt, The Gambia, Ghana, Guinea, Lesotho, Mali, Mauritania, Niger, South Africa, and Swaziland.
Never submitted a Report - <b>7</b>	Comoros, Djibouti, Equatorial Guinea, Guinea-Bissau, Sao Tome and Principe, Somalia and Eritrea.
Still to ratify the African Charter	South Sudan

18. The Commission considered the Periodic Reports of Cameroon and Gabon, and deferred the adoption of the Concluding Observations on both Reports to a later date, to allow the Member States to furnish additional information to the Commission.

19. The Commission commends the following Member States for submitting their outstanding Periodic Reports for consideration by the Commission: Liberia, Malawi, Mozambique, Nigeria, SADR, Senegal, Sierra Leone, and Uganda. As conveyed to the respective States, these Reports will be considered in subsequent Sessions of the Commission.
20. In that regard, the Commission seizes this opportunity to inform Member States that the Commission has increased the duration of its Public Sessions to 9 Days, to allow adequate engagement with States in this very important exercise.
21. The Commission uses this opportunity to thank those Member States that have hosted Sessions of the Commission, and extends appreciation to Angola and Niger for offering to host the 55<sup>th</sup> and 56<sup>th</sup> Ordinary Sessions of the Commission, respectively.
22. The Commission also avails itself of this opportunity to exhort other Member States, especially those that have never done so, to consider hosting one of the future Sessions of the Commission – not only to lessen the burden on the Commission’s gracious host country, The Gambia, but also to join the ranks of that family of nations which have reaped the benefits of partnering with the Commission in disseminating information and knowledge about the Commission, its mandate, and its activities.

#### IV. RESOLUTIONS

23. The Commission adopted the following Resolutions during the reporting period:

<b>Session</b>	<b>Resolutions adopted</b>
<b>14<sup>th</sup> EOS</b>	<ul style="list-style-type: none"> <li>✓ Resolution on the 2013 Elections in Africa;</li> <li>✓ Resolution on the Human Rights Situation in the Central African Republic;</li> <li>✓ Resolution on the Human Rights Situation in the Democratic Republic of Congo;</li> <li>✓ Resolution on the Political Situation in the Republic of Mali;</li> <li>✓ Resolution on the Arab Republic of Egypt; and</li> <li>✓ Resolution on the Human Rights Situation in the Republic of Guinea.</li> </ul>
<b>54<sup>th</sup> OS</b>	<p><b>A. Resolutions on the Renewal of the Mandate of Special Mechanisms</b></p> <ul style="list-style-type: none"> <li>✓ Special Rapporteur on Prisons and Conditions of Detention in Africa;</li> <li>✓ Special Rapporteur on the Rights of Women in Africa;</li> <li>✓ Special Rapporteur on Refugees, Asylum Seekers, Displaced Persons and Migrants in Africa;</li> <li>✓ Special Rapporteur on Freedom of Expression and Access to Information in Africa;</li> <li>✓ Special Rapporteur on Human Rights Defenders in Africa;</li> <li>✓ Working Group on Indigenous Populations/Communities;</li> <li>✓ Working Group on Older Persons and Persons with Disabilities;</li> </ul>

	<ul style="list-style-type: none"> <li>✓ Working Group on the Death Penalty, Extra-Judicial, Summary or Arbitrary Executions in Africa;</li> <li>✓ Working Group on Economic and Social Rights;</li> <li>✓ Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;</li> <li>✓ Committee for the Prevention of Torture in Africa;</li> <li>✓ Working Group on Communications;</li> <li>✓ Advisory Committee on Budgetary and Staff Matters.</li> </ul> <p><b>B. Country Resolutions</b></p> <ul style="list-style-type: none"> <li>✓ Resolution Calling on the Republic of Kenya to Implement the Endorois Decision; and</li> <li>✓ Resolution on Extra-Judicial Killings and enforced Disappearances in Mali.</li> </ul> <p><b>C. Thematic Resolutions</b></p> <ul style="list-style-type: none"> <li>✓ Resolution on Police and Human Rights in Africa;</li> <li>✓ Resolution on Involuntary Sterilization and the Protection of Human Rights in Access to HIV Services;</li> <li>✓ Resolution on Women’s Right to Land and Productive Resources;</li> <li>✓ Resolution on the Extension of the Deadline for the Study on Freedom of Association and Assembly in Africa;</li> <li>✓ Resolution on Prevention of Attacks and Discrimination Against Persons with Albinism.</li> </ul>
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**V. PROTECTION ACTIVITIES**

24. 89 Communications are currently before the Commission; they were considered as follows :

**(a) Communications considered**

Session	Communications considered
14 <sup>th</sup> EOS	<p><b>I. <u>Seizure</u></b> <b>Seized:</b></p> <ul style="list-style-type: none"> <li>✓ <b>Communication 444/13</b> - Justice Thomas S. Masuku (Represented by Lawyers for Human Rights (Swaziland) v Swaziland);</li> <li>✓ <b>Communication 445/13</b> - Human Rights Council and Others v Ethiopia;</li> <li>✓ <b>Communication 446/13</b> - Jennifer Williams &amp; Others (Represented by Zimbabwe Lawyers for Human Rights) v Zimbabwe;</li> <li>✓ <b>Communication 451/13-452/13</b> - Nenna Obi, Solomon Adekunle, Godwin Pius, Thankgod Ebhos and All Prisoners on Death Row in Nigeria (Represented by LEDAP and SERAP ) v Nigeria ; and</li> <li>✓ <b>Communication 452/13</b> - Ali Askouri and Abdel-Hakeem Nasr (On behalf of Persons Affected by the Construction of the Merowe and Kajbar Dams) v Sudan.</li> </ul>

	<p><b>II. <u>Admissibility</u></b>  <b>Admissible:</b></p> <ul style="list-style-type: none"> <li>✓ <b>Communication 426/12</b> - Agnes Uwimana-Nkusi and Sadata Mukakibibi v Rwanda;</li> <li>✓ <b>Communication 419/12</b> - The Indigenous Peoples of the Lower Omo (Represented by Survival International Charitable Trust) v Ethiopia;</li> <li>✓ <b>Communication 389/10</b> - Mbiankeu Genevieve v Cameroon;</li> <li>✓ <b>Communication 392/10</b> - Muhayeyezu Théogene v. Rwanda;</li> <li>✓ <b>Communication 408/11</b> - Jose Alidor Kabambi Beya Ushiyi v DRC; and</li> <li>✓ <b>Communication 370/09</b> - Social and Economic Rights Action Centre v Nigeria.</li> </ul> <p><b>Inadmissible:</b>  <b>Communication 413/12</b> - David Mendes (Represented by Centre for Human Rights) v Angola.</p> <p><b>III. <u>Merits</u></b></p> <ul style="list-style-type: none"> <li>✓ <b>Communication 259/02</b>- Groupe de Travail sur les Dossiers Judiciaires Stratégiques v DRC ; and</li> <li>✓ <b>Communication 320/06</b>- Pierre Mamboundou v Gabon.</li> </ul> <p><b>IV. <u>Communication Struck Out for Want of Diligent Prosecution</u></b>  <b>Communication 374/09</b> – Morin Family (Represented by Small Island Institute) v Seychelles</p> <p><b>V. <u>Communications Reviewed</u></b></p> <ul style="list-style-type: none"> <li>✓ <b>Communication 331/06 (R)</b> - Kamanakao Association, Reteng &amp; Minority Rights Group v Botswana; and</li> <li>✓ <b>Communication 375/09 (R)</b> - Priscila Njeri Echaria v v Kenya</li> </ul>
54 <sup>th</sup> OS	<p><b>I. <u>Seizure</u></b></p> <p><b>(a) Seized:</b></p> <ul style="list-style-type: none"> <li>✓ <b>Communication 453/13</b> – Roseline Emma Rasolovoahangy v Madagascar;</li> <li>✓ <b>Communication 454/13</b> – Nde Ningo v Cameroon;</li> <li>✓ <b>Communication 455/13</b> – Abubaker Ahmed Mohamed et al v Ethiopia;</li> <li>✓ <b>Communication 456/13</b> – Emmanuel Joseph Uko v South Africa;</li> <li>✓ <b>Communication 458/13</b> – Peter Odiwuor Ngoge v Kenya; and</li> <li>✓ <b>Communication 459/13</b> – Devendranath Hurman v Mauritius.</li> </ul> <p><b>(b) Not seized</b>  <b>Communication 457/13</b>-Pastor Key Mwandu v DRC</p> <p><b>II. <u>Admissibility</u></b>  <b>Admissible :</b></p> <ul style="list-style-type: none"> <li>✓ <b>Communication 354/07</b> - Mohamed Khairat Al-Shatir and Others v Egypt;</li> <li>✓ <b>Communication 398/11</b> - IHRDA and Congolese Human Rights</li> </ul>

	<p><i>Observatory v Congo;</i></p> <ul style="list-style-type: none"> <li>✓ <b>Communication 401/11</b> - <i>Hawa Abdallah (Represented by African Center for Justice and Peace Studies) v Sudan; and</i></li> <li>✓ <b>Communication 424/12</b> - <i>Samira Ibrahim Mohamed Mahmoud and Rasha Ali Abdel-Rahman (Represented by the Egyptian Initiative for Personal Rights and INTERIGHT) v Egypt.</i></li> </ul> <p><i>Inadmissible:</i> <b>Communication 280/03</b> - <i>Nzuzi Phutuka v DRC.</i></p> <p><b>III. <u>Merits</u></b></p> <ul style="list-style-type: none"> <li>✓ <b>Communication 274/03 &amp; 282/03</b> - <i>INTERIGHTS, ASADHO and Advocate O. Disu v DRC;</i></li> <li>✓ <b>Communication 328/06</b> - <i>Front for the Liberation of the State of Cabinda v Angola;</i></li> <li>✓ <b>Communication 368/09</b> - <i>Abdelhadi Ali Radi and Others v Sudan; and</i></li> <li>✓ <b>Communication 409/12</b> - <i>Luke Munyandu Tembani and Benjamin John Freeth (Represented by Norman Tjombe) v Zimbabwe and 13 Others.</i></li> </ul> <p><b>IV. <u>Oral Hearing</u></b> <b>Communication 383/10:</b> <i>Al-Assad v Djibouti</i></p> <p><b>V. <u>Communication for Re-listing</u></b> <b>Communication 290/04:</b> <i>Open Society Justice Initiative v Cameroon.</i></p> <p><b>VI. <u>Follow-up on Implementation</u></b> <b>Communication 323/06:</b> <i>Egyptian Initiative for Personal Rights and INTERIGHTS v Egypt.</i></p> <p><b>VII. <u>Communication with Request for Change of Name</u></b> <b>Communication 429/12:</b> <i>The Ngambela of Barotseland and Others v Zambia.</i></p> <p><b>VIII. <u>Communication with request for amicable settlement</u></b> <b>Communication 389/10:</b> <i>Mbiankeu Geneviere v Cameroon</i></p>

25. The above tables show that during the 6 months between April and October 2013 alone:

- 11 new Communications were seized;
- 1 Complaint was not seized;
- 12 decisions were adopted at admissibility level -10 were declared admissible, and 2 inadmissible;
- 6 decisions were adopted at merits level;
- 2 Communications were reviewed;
- 1 Communication was re-listed;



- 1 Communication was struck out for lack of diligent prosecution;
- A request for amicable settlement was considered in 1 Communication;
- A request for change of name was considered in 1 Communication; and
- An oral hearing was held in 1 Communication.

26. The Commission also seizes this opportunity to inform the honourable Council of the adoption of **Communication 334/06 - Egyptian Initiative for Personal Rights and Interights v Arab Republic of Egypt** which was adopted by the Commission during its 9<sup>th</sup> Extra-Ordinary Session.

### **(b) Implementation of the Commission's Decisions**

27. With regards to **Communication 419/12 - The Indigenous Peoples of the Lower Omo (Represented by Survival International Charitable Trust) v Ethiopia**, the Commission issued an Order against the State, requesting the latter to adopt Provisional Measures to prevent irreparable harm being caused to the victim of alleged human rights violations; the State has not respected that Order.

## **VII. THE HUMAN RIGHTS SITUATION IN AFRICA**

28. The human rights situation on the continent continues to show both positive developments, as well as issues of concern as follows:

### **(a) Positive developments**

- i) Cameroon's implementation of the Commission's decision in **Communication 272/03 Association of Victims of Post Electoral Violence & INTERIGHTS v Cameroon**, and paying compensation to the victims for the prejudice they suffered during the post-electoral violence of 1992 in the North West Region, headquartered in Bamenda, Cameroon;
- ii) Signature by Cote D'Ivoire of the declaration under Article 34(6) of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (the Court Protocol) on 31 July 2013, making it the 7<sup>th</sup> Member State to make the declaration in addition to Burkina Faso, Ghana, Mali, Malawi, Rwanda, and Tanzania;
- iii) The number of Member States complying with Article 62 of the African Charter and submitting their Periodic Reports to the Commission has increased significantly;
- iv) Increased human rights related interventions at the national level by Member States, such as: Cote Ivoire's adoption of a Bill, in September 2013, to promote and protect the rights of human rights defenders; and Ethiopia's adoption of a three year Human Rights Action Plan for the period 2013-2015 to promote and protect human rights in Ethiopia;
- v) Lesotho's National Disability Policy which recognises that persons with disabilities should have equal access to education, training, employment, health and other aspects of life;

- vi) Increasing recognition of the relevance of regional and international human rights instruments to the national context, as reflected in Nigeria's Gender and Equal Opportunities Bill 2010/13 to domesticate the Maputo Protocol; and Guinea Bissau's accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights on 24 September 2013;
- vii) The decision of the Kenyan High Court on 26 July 2013, which quashed a Government plan to move 55,000 mostly Somali refugees from Nairobi and other cities to camps on the basis that relocation would violate the right of the refugees to dignity, free movement, and would also be tantamount to indirectly forcing them back to Somalia;
- viii) Increased recognition of the need to protect the rights of children in many Member States, for example: South Africa's fight against substance abuse, and its comprehensive National Plan of Action for Children (2012-2017), to guide all Government departments, civil society and other partners on how to address children's issues; Senegal's Plan of Action adopted on 5 June 2013 with a view to eradicate all forms of child labor in Senegal before 2016; Lesotho's campaigns to disseminate the Education (Amendment) Act of 2010 and the new curriculum for schools which include components of human rights issues affecting children; and adoption by the Executive Council of the Federation in Nigeria, of a Draft National Policy on Child Labor on 11 September 2013, to address the challenges faced by over 6 million Nigerian children involved in child labor;
- ix) Efforts by some Member States to promote freedom of expression, press freedom and freedom of information, including Sierra Leone's adoption of a Freedom of Information Law on 29 October 2013; and the Draft Media Law of Somalia of 11 July 2013, which includes proclamations on media freedom and safeguards for transparency in media ownership;
- x) Progress by some Member States in the health sector, such as: measures taken by Nigeria to reduce infant and maternal mortality rate through establishment of primary health-care clinics across Nigeria; the deployment of a greater number of skilled health-care professionals to rural areas, and payment of allowances to pregnant women as incentives to register for ante-natal care; and provision of free medical services to all under 5 years and over 65 years of age in Zimbabwe;
- xi) Significant progress in the area of HIV/AIDS, notably: the reduction of the prevalence of HIV/AIDS in Senegal to 1 %; Angola's National Health Policy on Universal Access to primary healthcare to eradicate mother to child transmission of HIV/AIDS; provision of free HIV testing and counseling services in Zimbabwe; strategies by the Government and CSOs to fight against HIV/AIDS in Uganda; Cameroon's Strategic Plan on HIV/AIDS with the objective to eliminate mother to child transmission by intensifying prevention; and the promulgation of progressive HIV/AIDS-friendly legislative frameworks to protect people living with HIV/AIDS;
- xii) Efforts to improve conditions in prisons and other places of detention and to build the capacity of prison officials in international human rights norms and standards, such as the adoption by Burkina Faso of regulations to combat

torture and strategies to improve conditions of detention in the country; Stepping up of efforts to address gender discrimination and promote the rights of women in many Member States, including public awareness campaigns in Angola to combat domestic violence and promote women's participation in public life; and the Enactment of **Law No. 3/ 2013 of June 2013**, amending the Nationality Code of Senegal to allow women to pass on nationality to children conceived from marriages with non-nationals; and increase in the representation of women in political and decision-making positions in Rwanda;

- xiii) Senegal's launching of a National Family Security Grants Programme to fight against poverty and promote economic, social, and cultural rights; and
- xiv) Holding of peaceful, free and fair presidential and parliamentary elections in Cameroon, Guinea, Madagascar, Mali, Rwanda, Swaziland and Zimbabwe, as well as the adoption of a new Constitution by Zimbabwe in May 2013 which, amongst other things, paved the way for the peaceful elections in July 2013.

### **(b) Areas of concern**

- i) Lack of political will by some Member States to implement the recommendations and decisions of the Commission, to respond to urgent appeals from Members of the Commission, to comply with Provisional Measures issued by the Commission; and delays by Parties to Communications in making submissions to the Commission;
- ii) The continued existence in some Member States of laws that criminalize certain types of speech, which are used to punish legitimate critical self-expression; as well as violence against human rights defenders, journalists and other media practitioners, including torture, ill-treatment, arbitrary arrests and detention, forced disappearances, murder and intimidation;
- iii) Adoption by some Member States of approaches to HIV/AIDs such as forced sterilization of women living with HIV/AIDs and punitive measures which hinder HIV prevention and protection of people living with HIV/AIDs;
- iv) Continuing challenges in the area of corrective justice in some countries, with overcrowding in prisons, poor conditions of detention and rehabilitation facilities; use of incarceration as the first, rather than the last resort regardless of the nature of the crime; not enough use of alternative sentences such as community services; poor treatment of juveniles, use of torture and lack of independent policing oversight mechanisms where individuals can report police misconduct and abuse of police powers and get redress;
- v) Only 26 Member States have ratified the Court Protocol, while only 7 have made the declaration under Article 34(6) allowing individuals and NGOs direct access to the African Court;
- vi) Acts of terrorism, sectarian violence and civil conflicts in some Member States, resulting in mass internal displacements as well as refugee situations, with their disproportionate impact on women, children, older persons and people with disabilities;

- vii) Persons with disabilities, and people with albinism continue to experience prejudice in some countries, again with a disproportionate toll on women with disabilities and/or albinism;
- viii) Deepening levels of poverty which result in child labour as well as flows of migrants from the continent to Europe in search of better lives, resulting in incidents such as the loss of life of over 300 migrants on 3 October 2013 in a boat accident on Lampedusa Island;
- ix) 10 years after the adoption of the Maputo Protocol, only 36 Member States have ratified it;
- x) Periodic Reports submitted by Member States in terms of Article 62 of the African Charter do not comply with either the Commission's Guidelines for reporting under the Maputo Protocol or the Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter;
- xi) Female genital mutilation (FGM) and other traditional cultural/harmful practices are still continuing;
- xii) Appropriation of land by extractive industries without free, prior and informed consent or adequate compensation to the affected populations;
- xiii) Increasing usage and implementation of the death sentence in some Member States, such as the execution of 4 prisoners (*Chima Ejiofor, Daniel Nsofor, Osarenmwinda Aiguokhan and Richard Igagu*) on death row in Benin City, Edo State Nigeria, on 24 June 2013; and
- xiv) Inappropriate approaches to dealing with mental illness in some Member States, such as incarcerating patients, instead of treating them, and their continued stigmatization through the use of derogatory terminology like 'lunatics' and 'idiots'.

## VIII. PROMOTION MISSION

29. As part of the Commission's promotion mandate under Article 45 of the African Charter, the Commission undertook joint human rights Promotion Mission to Uganda from 26 to 30 August 2013, while Gabon and Seychelles have authorized Promotion Missions by the Commission in January 2014. The Commission commends these Member States and also exhorts those to whom requests have been extended to kindly positively authorize the undertaking of the proposed Mission.

## IX. FINANCES AND ADMINISTRATION

### (a) Staffing

30. The staffing situation at the Commission's Secretariat continues to be a great cause for concern; especially since recruitment exercise has not been expedited enough to bring on board the critically needed staff.

### **(b) Funding**

31. It is noteworthy that, while a budget of US \$ 8,488,770.00 was approved for the Commission for 2013 (an Operational Budget of US\$ 3, 882,000.00 and a Programs Budget of US\$ 4, 606,770.00), actually no AU funds at all were allocated to the program activities of the Commission for the 2013 fiscal year, which means that these activities must exclusively be funded from external sources. This is an untenable and unacceptable situation. The Commission therefore calls for adequate operational as well as programs budget to enable it effectively execute the mandate entrusted to it.

## **X. IMPLEMENTATION OF EXECUTIVE COUNCIL DECISIONS**

### **(a) Mission to Northern Mali**

32. It will be recalled that the Solemn Declaration on the Situation in Mali, adopted by the Assembly during its 19<sup>th</sup> Ordinary Session, called on the Commission to investigate the human rights situation in Northern Mali, including the atrocities committed against the Malian military and their families in Aguel'hoc in January 2012, and to submit a comprehensive Report to the Executive Council, together with concrete recommendations on the way forward. The Fact-finding mission was undertaken from 3 to 7 June 2013, and the Report of the mission, which was adopted by the Commission during its 54<sup>th</sup> OS, has been forwarded to the AUC for inscription on the Agenda of this Session of the Council.

### **(b) African-led International Support Mission to Mali**

33. In line with the request of the Assembly during its 20<sup>th</sup> Ordinary Session that the Commission be part of the African-Led International Support Mission to Mali (AFISMA), a member of the Commission is leading the human rights monitoring team that has been deployed to Mali since April 2013, as part of AFISMA, now the African Union Mission for Mali and the Sahel Region (MISAHEL).

### **(c) Insurance cover and emoluments for Commissioners**

34. The Commission held discussions with a team from the AUC Medical Services during its 53<sup>rd</sup> OS and again during the 14<sup>th</sup> EOS, on the modalities of providing insurance cover for Commissioners. It is hoped that this will be finalised soon, especially as members of the Commission are increasingly being called upon by the AU Policy Organs to undertake missions in some of the more volatile parts of the continent.

35. The matter of the emoluments of members of the Commission is also still outstanding; and it is hoped that this will be finalised soon, in line with the Executive Council and Assembly

decisions on the matter. Given how long this matter has been outstanding, it is proposed that in the meantime, the Commission be permitted to implement the applicable provisions of Executive Council Decision **EX.CL/351 (XI)** with regards to sitting allowances, within the confines of the budget already approved for the Commission for 2014.

## **XI. RECOMMENDATIONS**

36. Having regard to the foregoing, the Commission recommends as follows:

### ***To State Parties:***

- i) Ratify the Court Protocol and make the declaration required under Article 34 (6) of the Court Protocol;
- ii) Sign, ratify, domesticate and implement regional and international human rights instruments;
- iii) Comply with obligations under Article 62 of the African Charter by presenting reports regularly, in compliance with the Commission's Guidelines for Reporting under the Maputo Protocol as well as the Commission's Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter.
- iv) Respect timeframes with respect to submissions on Admissibility and Merits, in accordance with the Rules of Procedure of the Commission, to enable the Commission dispose of Communications in time;
- v) Implement and report on the measures taken with regard to the Commission's decisions on Communications; comply with Provisional Measures issued by the Commission and its Subsidiary Mechanisms; and agree to requests by the Commission and its Subsidiary Mechanisms to undertake country visits;
- vi) Consider hosting one of the Sessions of the Commission; and
- vii) Those Member States which have not yet done so, to observe a moratorium on the death penalty in line with the Resolutions of the Commission, while States already observing the Moratorium should take necessary steps to abolish the death penalty.

### ***To the Republic of South Sudan:***

Ratify the African Charter.

### ***To the AUC:***

- i) Concretize insurance coverage for Members of the Commission, including those who reside outside Vanbreda's current geographical coverage; and
- ii) Finalize the harmonization of emoluments for elected officials.

### ***To the Executive Council:***

- i) Increase, both in material and financial terms, support to the Commission to enable it to carry out its work effectively;
- ii) Call upon the AUC to expedite the harmonization of the remuneration of elected officials of AU Organs, in line with Executive Council Decision Ext/EX.CL/Dec.1(XIII);  
and
- iii) Authorise the Commission to implement the applicable provisions of Executive Council Decision Ex.CL/351(XI) within the confines of the budget already approved for the Commission for 2014.

***To the Assembly of Heads of State and Government:***

- i) Ensure implementation of and compliance with decisions of the Commission;
- ii) Take note of non-compliance by some Member States with Provisional Measures issued by the Commission and the African Court;
- iii) Request the Commission and the African Court to submit a Concept a Note to the AU Policy Organs with a view to having 2016 declared the African Year of Human Rights;  
and
- iv) Declare 2016, the African Year of Human Rights.

Oct-13

# 35th Activity Report

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