


AFRICAN UNION		UNION AFRICAINE
الاتحاد الأفريقي African Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
<small>No. 31 Bijilo Annex Lay-out, Kombo North District, Western Region, P. O. Box 673, Banjul, The Gambia Tel: (220) (220) 441 05 05 /441 05 06, Fax: (220) 441 05 04 E-mail: achpr@achpr.org; Web www.achpr.org</small>		

**FINAL COMMUNIQUE OF
THE 46th ORDINARY SESSION OF
THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS
HELD IN BANJUL, REPUBLIC OF THE GAMBIA,
FROM 11 to 25 NOVEMBER 2009**

1. The African Commission on Human and Peoples' Rights (African Commission), held its 46th Ordinary Session in Banjul, The Gambia, from 11 to 25 November 2009.
2. Commissioner **Bahame Mukirya Tom Nyanduga**, the outgoing Acting Chairperson of the African Commission, presided over the opening ceremony of the 46th Session.
3. The following Members also participated at the Session:
 - Commissioner **Reine Alapini-Gansou**
 - Commissioner **Catherine Dupe Atoki**;
 - Commissioner **Musa Ngary Bitaye**;
 - Commissioner **Mohamed Bechir Khalfallah**;
 - Commissioner **Mohamed Fayek**;
 - Commissioner **Soyata Maiga**;
 - Commissioner **Mumba Malila**;
 - Commissioner **Kayitesi Zainabo Sylvie**;
 - Commissioner **Pansy Tlakula**;
 - Commissioner **Yeung Kam John Yeung Sik Yuen**.

4. Sixty seven (67) delegates representing Twenty one (21) States Parties, seven (7) National Human Rights Institutions, eight (8) International and Inter-Governmental Organisations and forty one (41) African and International NGOs were represented at the 46th Ordinary Session of the African Commission. Altogether two hundred and eighty six (286) delegates participated at the 46th Ordinary Session.
5. Two parallel meetings were held in Banjul, The Gambia, namely: the Meeting on Research Finding of the ACHPR / ILO Joint Project on Constitutional and Legislative Protection Measures of the Rights of Indigenous Populations on 6 November 2009 and the Meeting of the African Commission's Working Group on Indigenous Populations and Communities, from 7 to 9 November 2009.
6. The Department of Political Affairs of the African Union Commission also organised the Third Conference of National Human Rights Institutions from 8 to 10 November 2009.
7. As customary, the Session was preceded by the Forum of Non-Governmental Organizations (NGOs), organized by the African Centre for Democracy and Human Rights Studies, which was held from the 7 to 9 November 2009.
8. In his welcoming statement, during the opening of the Session, the outgoing Acting Chairperson of the African Commission, **Commissioner Bahame Mukirya Tom Nyanduga**, expressed, on behalf of the Members of the African Commission, and on his own behalf, sincere appreciation to the Government and People of the Republic of The Gambia for not only graciously accepting to host another Session of the Commission, but for the conducive environment and excellent facilities provided to ensure the success of this 46th Session.

9. Addressing the State Parties to the Charter directly, he informed them that the Commission continues to receive numerous reports of human rights abuses perpetrated on the continent. He stated that as the first decade of the 21st century ends, there have been important developments in many parts of the world, including Africa, which have witnessed unparalleled growth of democracy and major social and economic changes that have transformed the political landscape. He said that Africans have continued to agitate for the right to determine how they are governed, and though major strides have been made in this regard, there are still a few areas in which Africa must do better. He expressed concerns regarding escalating human rights violations in countries like the DRC, The Gambia, Guinea Conakry, Sudan, Niger and Somalia.

10. The outgoing Acting Chairperson highlighted climatic change as another disturbing threat to the enjoyment of human rights on the continent. He said that many African nations are realizing that the threats from climate change are serious and urgent, since no nation, however large or small, wealthy or poor can escape the impact of climate change. He said that rising sea levels are threatening many coastlines and more powerful storms and floods continue to wreak havoc, whilst in many other places, families are already being forced to flee their homes as climate refugees. He said that unless Africa and the international community adopt policies and programmes to combat the negative effects of climatic and environmental changes, there is the risk of massive violations of human rights in Africa, through the loss of livelihood of the peasantry across Africa, who continue to rely on rain fed agriculture. Inaction, he said, is not an option.

11. He informed the audience that the Commission's Draft Rules of Procedure and the Interim Rules of the Court have been finally harmonised and adopted in Dakar, Senegal in October 2009. He urged Member States that have yet to do so, to ratify the Protocol Establishing the African Court on Human and Peoples' Rights (the

African Court) and to make the relevant declaration under Article 34 (6) of the Protocol, as a matter of priority, to ensure that the African Court fully discharges its mandate. He also called on States Parties to comply with their obligation to submit their Periodic Reports, as the reporting procedure enables States Parties to engage in a constructive dialogue with the African Commission on the human rights situation in their countries.

12. Speaking on behalf of the AU Member States, the Honourable Minister of Justice of the Republic of Mozambique, **Mrs Maria Benvida Delfina Levi** recognised the important role of the African Commission's Sessions. She said that the agenda of the Session included many pertinent human rights issues on the continent giving the various stakeholders the opportunity to exchange views in an open manner.
13. In congratulating the African Commission for its work, especially its recent campaign for the abolition of the death penalty, she underscored the importance of the African Charter on Human and Peoples' Rights as a landmark document that is contributing to the process of building a regional human rights culture. She singled out the regional conference held in Kigali, Rwanda, in September 2009, which adopted a document containing recommendations on the need to adopt an international legal instrument as of utmost importance to the defence of the right to life and dignity of individuals.
14. The Honourable Minister of Justice highlighted socioeconomic rights as beyond the reach of the majority of Africans, with millions of Africans trapped in poverty and living without access to basic needs like clean water, adequate housing, food, education and primary health care. She said that Africa needs to do more and that the Commission's Sessions are an important forum in reminding States Parties of the need to further improve the promotion and defence of human rights.

15. She acknowledged the important role of National Human Rights Institutions and NGOs in the promotion and the protection of human rights. She said that the cooperation between the Commission and these organisations can only enhance the enjoyment of human rights on the continent.
16. **Ambassador Emile Ognimba**, Director of Political Affairs Department of the African Union Commission (AUC), representing Her Excellency Mrs. Julia Dolly Joiner, the AUC Commissioner of the Political Affairs Department, also addressed the 46th Session. He said that despite some progress, the overall human rights record in Africa remains poor and noted with regret that many African countries continue to violate the human rights of their own people.
17. He said that the deteriorating human rights situation in many African countries has had an especially negative impact on the life of women and children. Stressing that human rights should be the collective responsibility of all, he expressed the hope that the 46th Ordinary Session will address these important issues. He stated that the AUC in partnership with different stakeholders including other competent AU organs and the United Nations is working on a strategic plan to improve the human rights situation in Africa
18. The 46th Ordinary Session was officially opened by the Principal State Counsel and Registrar of Companies, **Mrs Therese Sarr-Toupan**, representing the Honourable Attorney General and Minister of Justice of the Republic of The Gambia, Mrs Marie Saine-Firdaus. She welcomed the Members of the African Commission and the participants and also thanked them for choosing Banjul to hold the Session of the African Commission.
19. She stated that within the last twelve months many changes have taken place in Africa in the area of democracy, good governance and human rights. She stated that in 2009, Africa witnessed the recurrence

of coup d'états, unrests, summary executions and sexual crimes which in many cases have become tools and weapons in the hands of junta regimes. She urged the African Commission to continue working tirelessly with Member States to implement its mandate, which is to monitor, promote and protect human rights.

20. She reiterated the commitment of the Government of The Gambia to collaborate with and support the activities of the African Commission. She also stated that in the process of discharging their mandates, true promoters and protectors of human rights, if they are to be faithful to their mandates, should act responsibly and not make misleading and unsubstantiated claims of alleged human rights violations or make statements founded on ulterior motives. She then declared open the 46th Ordinary Session of the African Commission.

21. Three new Members of the African Commission elected at the July 2009 Summit of the AU Heads of State and Government, and the re-elected Member were duly sworn in. These were:

- Commissioner **Kayitesi Zainabo Sylvie (re-elected)**;
- Commissioner **Mohamed Bechir Khalfallah**;
- Commissioner **Mohamed Fayek**;

22. At the end of the opening ceremony, the Commissioners retired into Private Session. In accordance with Article 42 of the African Charter and the relevant provisions of its Rules of Procedure, Commissioner **Reine Alapini-Gansou** was elected Chairperson of the Commission, and Commissioner **Mumba Malila**, Vice-Chairperson, constituting the Bureau for the next two years, with effect from 11 November 2009.

23. After the election of the Bureau, the public session was convened and Commissioner **Reine Alapini Gansou**, the elected Chairperson presided over the proceedings of the 46th Ordinary Session.

24. The Representative of the African National Human Rights Institutions (NHRIs), **Mrs Winfred Lichuma**, a Commissioner of the Kenya Human Rights Commission in his statement expressed appreciation to the African Commission on Human and Peoples' Rights for its relentless efforts to make human rights a reality on the continent, despite being confronted with multiple challenges. She said that the Session was being held at a time Africa was facing many challenges ranging from issues relating to freedom of expression, the plight of women and children, especially those caught in conflict zones and issues of democracy and good governance. She said that National Human Rights Institutions in Africa are conscious of these challenges and pledged that they shall play their role in addressing them, especially in helping to strengthen the regional human rights infrastructure, promoting the rule of law and monitoring governance structures. She recalled that democracy, as a prerequisite for good governance, can only be realised through transparency and respect for human rights, and urged governments in Africa to support the work of national human rights bodies.
25. She said that numerous elections that have taken place in many of the nation states on the continent give a clear indication that Africa has started an irreversible trend towards political liberalization that is driven by the participation and the choice of the people. She also said that the process and the legitimacy of the results of certain elections is sometimes put in question as the concept of democracy is often abused by Africa's state actors.
26. She informed the Session that the role of NHRIs in strengthening the human rights infrastructure, promoting the rule of law and monitoring governance structures to ensure that the rights of all citizens are protected becomes very significant during these times and must be reinforced in order to preserve what has been achieved over the years. She concluded by saying that despite the challenges and difficulties in the region, there is still hope. She emphasized that such hope should be

based on the progress accomplished at the African Union level, on normative and institutional action of the African Union that allows the reinforcement of human rights principles on its agenda and one that condemns and rejects the change of government by unconstitutional process.

27. She called on NHRIs to enhance their collaboration with other civil society actors and further called on NHRIs who do not have affiliate status with the African Commission to register with the Commission.

28. The Representative of NGOs, **Mrs. Hanna Forster**, Director of the African Centre for Democracy and Human Rights Studies, in reviewing the human rights situation in Africa for the last six months after the 45th Ordinary Session of the Commission, concluded that it was characterised by ongoing human rights violations.

29. She expressed concern regarding escalating human rights violations in countries like The Gambia, Guinea - Conakry, Sudan, Niger, Zimbabwe, Burundi, Rwanda, Uganda and Sierra Leone. On the situation in the Republic of Guinea Conakry, Mrs Hannah Forster lamented that it was unfortunate that over a hundred people were killed for peacefully demonstrating against the military junta.

30. She called on the African Commission to urgently undertake a fact-finding mission to the Republic of Guinea Conakry. She also called on the African Commission to intensify its efforts to end gender-based violence, violations of child rights, violation of the rights of human rights defenders, violations of freedom of expression and religion, torture and the continuing marginalization of homosexuals and bisexuals.

31. During the Session, the African Commission heard statements relating to the human rights situation in Africa from the representatives of States Parties, including those from the Republic of Botswana; the Republic of Cote d'Ivoire; the Arab Republic of Egypt; the Federal Democratic

Republic of Ethiopia; the Great Socialist People's Libyan Arab Jamahiriya; the Islamic Republic of Mauritania; the Republic of Namibia; the Federal Republic of Nigeria; the Sahrawi Arab Democratic Republic; the Republic South Africa; the United Republic of Tanzania; the Republic of Tunisia; the Republic of Uganda and the Republic of Zimbabwe.

32. Statements were also made by the representatives of Intergovernmental and International Organisations, the Network of National African Human Rights Institutions as well as the National Human Rights Institutions in Africa and Non-governmental organisations (NGOs).

33. Representing Her Excellency, Justice **Navi Pillay**, the UN High Commissioner for Human Rights, the Regional Representative of the Office of the High Commissioner for Human Rights (OHCHR) in East Africa **Mr. Frej Fennish**, reiterated the support of his Office to the African Commission in its efforts to make human rights a reality in Africa. He stated that twenty two years on, the situation of human rights on the African continent remains generally critical. He indicated that a retreat of democracy in some parts of Africa is jeopardizing efforts to alleviate poverty and strengthen peace building. He noted that, however, considerable progress has been registered in the African continent in the field of human rights. He also reiterated that the links between human rights and development on the one hand, and peace, security and human rights on the other, are recognised and mainstreamed at the global and regional levels.

34. He called on Member States of the UN, including African States, to carry out activities aimed at reinforcing the progress made in the field of human rights. He urged African States to ratify international and regional human rights instruments and to establish NHRIs in countries where such institutions do not exist.

35. In conformity with Article 62 of the African Charter on Human and Peoples' Rights, the Periodic Reports of The Peoples Democratic Republic of Ethiopia, the Republic of Botswana and the Republic of Congo were presented to the African Commission.

36. Members of the African Commission presented Reports of the activities they undertook as Members of the Commission, as well as Reports of activities undertaken during the inter-session in the context of their various special mechanisms and mandates. The Reports of the various Special Rapporteurs on the Rights of Women; on Prisons and Conditions of Detention; on Freedom of Expression and Access to Information; on Refugees, Asylum Seekers and Internally Displaced Persons, were presented, as were the Reports from the Chairpersons of the Working Group on the Implementation of the Robben Island Guidelines; the Working Group on the Death Penalty; the Working Group on Indigenous Peoples and Communities; the Working Group on Specific Issues Relevant to the Work of the Commission and the Working Group on the Rights of Older Persons and People with Disabilities in Africa.

37. There was no application by a NHRI for Affiliate Status. The number of NHRIs with Affiliate Status with the African Commission therefore remains at 21.

38. The Commission considered the applications for Observer Status and granted the said status to the following NGOs:

- **Africa in Democracy and Good Governance (ADG)**, (The Gambia)
- **Female Lawyers Association of The Gambia**
- **Frontline** (Ireland)

39. The Commission decided to defer the application of **Coalition of African Lesbians (CAL)** to the 47th Ordinary Session to allow it to adopt a position on the rights of Gays and Lesbians, after

consideration of the Draft Paper on “Sexual Orientation in Africa” during its private Session,

40. This brings the number of NGOs with Observer Status with the African Commission to 405.

41. The African Commission examined and adopted the following Reports

- State Reporting Guidelines Under the Protocol to the African Charter on Women Rights;
- Report of the Advisory Committee on Budget and Staff Matters;
- Report of the Promotion Mission to the Republic of Burkina Faso;
- Report of the Promotion Mission to the Republic of Congo;
- Report of the Promotion Mission to the Republic of Senegal;
- Report of the Secretary to the African Commission;
- 2010 Budget Report.

42. The African Commission adopted Concluding Observations on the Periodic Report of the Republic of Congo. It deferred adopting the Concluding Observations on those of the Republic of Botswana and the Federal Democratic Republic of Ethiopia until after the receipt of more information, as undertaken, by those States.

43. The African Commission adopted the following Resolutions and MOU:

- Resolution on the Appointment of the Special Rapporteur on Prisons and Places of Detention in Africa;
- Resolution on the Appointment of the Special Rapporteur on Refugees, Asylum Seekers, Internally Displaced Persons and Migrants in Africa;
- Resolution on the Appointment of a Special Rapporteur on Human Rights Defenders in Africa;
- Resolution on the Appointment of the Chairperson of the Working Group on Older Persons;
- Resolution on the Renewal of the Mandate of the Special Rapporteur on the Rights of Women in Africa;
- Resolution on the Renewal of the Mandate and Re-appointment of the Special Rapporteur for Freedom of Expression and Access to Information in Africa;

- Resolution on the Renewal of the Mandate of the Chairperson and Members of the Working Group on Indigenous Populations/Communities in Africa;
- Resolution on the Renewal of the Mandate of the Chairperson and Members of the Working Group on the Death Penalty;
- Resolution on the Change of Name of the Robben Island Guidelines Follow-up Committee to the Committee for the Prevention of Torture in Africa and the Reappointment of the Chairperson and Members of the Committee;
- Resolution on the Appointment of the Chairperson and Members of the Working Group on Economic, Social and Cultural Rights in Africa;
- Resolution on the Renewal of the Mandate and Composition of the Working Group on Specific Issues Relevant to the Work of the Commission;
- Resolution on the Establishment of a Working Group on Extractive Industries, Environment and Human Rights Violations in Africa;
- Resolution on the General Human Rights Situation in Africa;
- Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa;
- Resolution on the Need for the Conduct of a Study on Freedom of Association in Africa;
- Resolution on the Impact of the Global Financial Crisis on the Enjoyment of Social and Economic Rights in Africa;
- MOU between the Community Law Centre of the University of Western Cape, South Africa and the African Commission.

44. The African Commission Appointed or Reappointed the following Commissioners to serve as Special Rapporteurs of the following Mechanisms, effective from 25 November 2009:

- Commissioner **Soyata Maiga** - Special Rapporteur on the Rights of Women in Africa (Reappointment);

- Commissioner Catherine **Dupe Atoki** – Special Rapporteur, Prisons and Conditions of Detention in Africa (Appointment);
- Commissioner **Pansy Tlakula** - Special Rapporteur, Freedom Of Expression and Access to Information in Africa (Reappointment);
- Commissioner **Mohamed Bechir Khalfallah**, Special Rapporteur, Human Rights Defenders in Africa (Appointment);
- Commissioner **Mohmed Fayek**, Special Rapporteur, Refugees, Asylum Seekers and IDP's in Africa (Appointment).

45. The African Commission Appointed or Reappointed Chairpersons and also Renewed Memberships of its Working Groups for a period of two years starting 25 November 2009

1. Committee for the Prevention of Torture in Africa

Commissioner **Catherine Dupe Atoki** (Chairperson, Reappointed)

- ◆ Mr **Jean-Baptiste Niyizurugero** - Vice Chairperson (Membership Renewed)
- ◆ Commissioner **Musa Ngary Bitaye** - Member (Appointed)
- ◆ Mrs **Hannah Forster** – Member (Membership Renewed)
- ◆ Mr **Malick Sow** - Member (Membership Renewed)

2. Working Group on Economic, Social and Cultural Rights

Commissioner **Mohamed Bechir Khalfallah** (Chairperson, Appointed)

- ◆ Commissioner **Soyata Maiga** (Member);
- ◆ Mr **Ibrahima Kane** (OSISA) (Membership Renewed);
- ◆ Interrights (Membership Renewed);
- ◆ The Institute for Human Rights and Developments in Africa (Membership Renewed);
- ◆ The Centre for Human Rights, University of Pretoria (Membership Renewed).

3. Working Group on the Death Penalty

Commissioner **Zainabo Sylvie Kayitesi** (Chairperson, Reappointment)

- ◆ Commissioner **Mumba Malila** Member (Appointed);
- ◆ Ms **Alice Mogwe** (Membership Renewed);
- ◆ Ms **Alya Cherif Chammari** (Membership Renewed);
- ◆ Prof. **Phillips Francis Iya** (Membership Renewed);
- ◆ Prof. **Carlson E. Anyangwe** (Membership Renewed).

4. Working Group on Specific Issues Relevant to the Work of the Commission

Commissioner **Pansy Tlakula** (Chairperson, Reappointment);

- ◆ Commissioner **Zainabo Sylvie Kayitesi** Member (Appointed);
- ◆ Open Society Justice Initiative (Membership Renewed);
- ◆ The Institute for Human Rights and Development in Africa (Membership Renewed).s

5. Working Group on Extractive Industries, Environment and Human Rights Violations in Africa

- ◆ Commissioner **Mumba Malila** (Chairperson, Appointment)
- ◆ Commissioner **Soyata Maiga** (Member, Appointment)

46. Each Commissioner was entrusted with the responsibility of carrying out promotional activities in the State Parties to the African Charter as follows:

- ◆ Commissioner **Reine Alapini-Gansou**: Cameroon, Mali, Democratic Republic of Congo, Togo and Tunisia;

- ◆ Commissioner **Mumba Malila**: Kenya, Malawi, Mozambique and Tanzania and Uganda;

- ◆ Commissioner **Pansy Tlakula**: The Gambia, Mauritius, Namibia, Swaziland and Zambia;

- ◆ Commissioner **Catherine Dupe Atoki**: Egypt, Ethiopia, Guinea, Liberia and Equatorial Sudan;

- ◆ Commissioner **Musa Ngary Bitaye**: Ghana, Nigeria Sierra Leone, Rwanda and Zimbabwe;

- ◆ Commissioner **Mohamed Bechir Khalfallah**: Chad, Central African Republic, Guinea Conakry, Mauritania, Sahrawi Arab Democratic Republic and Senegal;

- ◆ Commissioner **Zainabo Sylvie Kayitesi**: Algeria, Burkina Faso, Burundi, Lesotho, Cote d'Ivoire and Guinea Bissau;

- ◆ Commissioner **Mohamed Fayek**: Botswana, Eritrea, South Africa, and Somalia;

- ◆ Commissioner **Soyata Maiga**: Angola, Benin, Congo, Gabon, Niger and Libya;

◆ Commissioner **Yeung Kam John Yeung Sik Yuen**: Comoros, Djibouti, Madagascar, Sao Tome and Principe and Seychelles.

47. The African Commission considered 79 Communications: it was seized with 8; it considered 7 on Admissibility; 1 on the Merits and 1 on Review. 62 Communications were deferred to the 47th Ordinary Session, for various reasons, including time constraints and lack of response from one or both parties.

48. The African Commission adopted its Twenty Seventh (27th) Activity Report which will be submitted to the 16th Ordinary Session of the Executive Council of the African Union and the 15th Summit of the Assembly of Heads of State and Government of the African Union, which is scheduled to take place in January 2010 in Addis Ababa, Ethiopia.

49. The African Commission decided to hold its 47th Ordinary Session from 12 to 26 May 2010 in **Tunis, the Republic of Tunisia**.

50. The African Commission expresses its sincere appreciation and profound gratitude to the Government and People of the Republic of The Gambia for the facilities placed at its disposal, and for the warm welcome and hospitality accorded to the participants, all of which contributed to the excellent outcome and success of the deliberations of its 46th Ordinary Session.

51. The closing ceremony of the 46th Ordinary Session took place on the 25^h November 2009 in Banjul, The Gambia.

52. The Chairperson of the African Commission held a Press Conference after the closing ceremony.

Done in Banjul, Republic of The Gambia, 25 November 2009

2009

FINAL COMMUNIQUE OF THE 46th ORDINARY SESSION OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

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