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EXECUTIVE COUNCIL


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7 – 12 June 2015

Johannesburg, SOUTH AFRICA

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**REPORT OF THE ACTIVITIES OF THE AFRICAN COMMISSION
ON HUMAN AND PEOPLE'S RIGHTS (ACHPR)**

AFRICAN UNION		UNION AFRICAINE
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38TH 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**

38TH ACTIVITY REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

I. INTRODUCTION

1. This 38th Activity Report of the African Commission on Human and Peoples' Rights (the Commission), which is presented in accordance with Article 54 of the African Charter on Human and Peoples' Rights (the African Charter), covers the period from **January to May 2015**. It highlights, among others: the statutory meetings of the Commission; the status of State reporting; Resolutions adopted by the Commission; the human rights complaints before the Commission; Urgent Appeal letters; inter-session activities of Commissioners; the human rights situation on the continent; financial, staffing and operational matters; implementation of Executive Council decisions; as well as the Recommendations of the Commission.

II. STATUTORY MEETINGS

2. Two statutory meetings were held during the reporting period namely: the 17th Extra-Ordinary Session (EOS), which took place from 19 to 28 February 2015, in Banjul, The Gambia; and the 56th Ordinary Session (Session), which took place from 21 April to 07 May 2015, in Banjul, The Gambia.

a) **17th Extra-Ordinary Session - Banjul, The Gambia, 19 to 28 February 2015**

3. During the 17th EOS, the Commission adopted **nine (9)** Resolutions and considered **forty-seven (47)** Communications, as elaborated in paragraphs 26 and 27 hereinafter respectively. Additionally, the Commission provided direction on **nineteen (19)** Communications on which the Secretariat had sought guidance.

4. The Commission also adopted its Strategic Plan (2015 - 2019), in addition to the Concluding Observations on the Periodic Reports of the Republic of Liberia and the Republic of Mozambique.

b) **56th Ordinary Session - Banjul, The Gambia, 21 April to 07 May 2015**

5. Six hundred and eighteen (618) delegates participated in the Session: one hundred and seventy-five (175) representing thirty two (32) Member States; nine (9) representing AU Organs; forty three (43) representing National Human Rights Institutions (NHRIs); seventeen (17) representing International and Inter-Governmental Organizations; three hundred and four (304) representing African and International Non-Governmental Organisations (NGOs); and seventy (70) representing other observers and the Press.

6. The Attorney General and Minister of Justice of the Republic of The Gambia, Honourable Justice Mama Fatima Singhateh, opened the 56th Session, while the Chairperson of the Commission, Honourable Commissioner Kayitesi Zainabo Sylvie, presided over the proceedings of the Session.

7. In addition to the Chairperson and the Vice-Chairperson, Honourable Béchir Khalfallah, the following members of the Commission attended the Session: Honourable Commissioner Reine Alapini Gansou; Honourable Commissioner Faith Pansy Tlakula; Honourable Commissioner Soyata Maiga; Honourable Commissioner Lucy Asuagbor; Honourable Commissioner Med S. K. Kaggwa; Honourable Commissioner Maya Sahli-Fadel; Honourable Commissioner Pacifique Manirakiza; and Honourable Commissioner Lawrence Murugu Mute. Honourable Commissioner Yeung Kam John Yeung Sik Yuen was absent with apologies.

8. The following State Parties attended the Session: Algeria; Angola; Botswana; Burkina Faso; Burundi; Cameroon; Chad; Cote d'Ivoire; Democratic Republic of Congo (DRC); Djibouti; Egypt; Eritrea; Ethiopia; The Gambia; Guinea Bissau; Guinea Conakry; Equatorial Guinea; Kenya; Libya; Malawi; Mauritania; Namibia; Niger; Nigeria; Rwanda; Sahrawi Arab Democratic Republic (SADR); Senegal; South Africa; The Sudan; Swaziland; Togo; and Uganda.

9. The Secretary of State of Human Rights of the Republic of Angola, Mr. Antonio Benito Bemba, made a statement on behalf of African Union Member States during the Opening Ceremony of the Session.

10. Of the thirty two (32) States in attendance, the following twenty (20) State Parties made statements on the human rights situation in their respective countries: Mauritania; Algeria; Malawi; Burkina Faso; Togo; Rwanda; Egypt; DRC; SADR; Kenya; Ethiopia; Namibia; Angola; Nigeria; Guinea Bissau; South Africa; Swaziland; Chad; Eritrea; and Guinea Conakry.

11. The Commission notes with appreciation the high level representation of some of the State delegations, and in this regard wishes to commend, in particular, Angola, DRC, Mauritania, Malawi, Niger, Uganda and the Kingdom of Swaziland for sending delegations at Ministerial level.

12. Statements on the human rights situations in various State Parties were also made by representatives from eight (8) NHRIs and forty-one (41) NGOs, which have affiliate and observer status with the Commission respectively.

13. The following State Parties exercised their right to reply with regards to statements made concerning the human rights situation in their respective countries: Egypt; Ethiopia; Swaziland; DRC; The Gambia; Mauritania; Kenya; Djibouti; SADR; Algeria; Niger; Cameroun; and Nigeria.

14. During the Session, two (2) NHRIs were granted Affiliate Status with the Commission bringing the total number of NHRIs with Affiliate status to **twenty four (24)**; seven (7) NGOs were granted Observer Status, bringing the total number of NGOs with observer status to **four hundred and eighty five (485)**.

15. During the Session, the Commission officially launched the following: the General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14. 2 (a) and (c) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol); the Study on the Situation of Women Human Rights Defenders in Africa; the Report of the Study Group on Freedom of Association in Africa; the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa; and the Study on the Right to Nationality.

16. The Commission considered and adopted the following: the Work Plan of the Commission (January to December 2015); the Principles and Guidelines on Human and Peoples' Rights while Countering Terrorism; the Draft Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa; the Report of the Working Group on Communications; the Report of the Advisory Committee on Budgetary and Staff Matters; and the Report of the Secretary to the Commission.

17. During the 56th OS, the Commission adopted **three (3)** Resolutions and considered **twenty-five (25)** Communications, with an additional thirteen (13) deferred at the Seizure stage, as elaborated in paragraphs 26 and 27 hereinafter respectively. The Commission further considered and provided guidance on **thirteen (13)** issues/questions pertaining to its Communications Procedure.

18. Additionally, the Commission made Statements on the following matters: the Situation of Human Rights in Burundi in the Upcoming Presidential Elections; the Deteriorating Situation of Migrants in the Mediterranean Sea; and the Attacks Perpetrated by the Terrorist Group Boko Haram Against a Nigerien Military Contingent on Saturday, 25 April 2015.

19. While expressing appreciation to the Republic of The Gambia for hosting the 56th OS, the Commission urges other State Parties to consider hosting one of the Sessions of the Commission.

III. STATE REPORTING

20. During the Session, the Commission considered the following State Reports: the Initial and Combined Report of the Republic of Djibouti; the Fifth and Combined Report of the Federal Democratic Republic of Ethiopia; the Initial and Combined Report of the Republic of Malawi; the Second and Combined Report of the Republic of Niger; the Fifth Periodic Report of the Federal Republic of Nigeria; the Eighth and

Combined Report of the Republic of Senegal; and the Fifth Periodic Report of the Republic of Uganda.

21. The Commission notes with appreciation the diversity of some of the State delegations, which included, *inter alia*, representatives from various Ministries, Members of Parliament and National Human Rights Institutions. The Commission commends the fact that the Reports of the following countries were presented by Ministers: Malawi, Niger, and Uganda.

22. The Commission further notes with appreciation the gender representation in the delegations which presented the Reports of Djibouti, Malawi, Niger, Nigeria, Senegal, and Uganda.

23. Additionally, the Commission notes and congratulates Malawi for being the first State Party to fulfil its reporting obligations in accordance with Article 26 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

24. The Commission reiterates its call on South Sudan to ratify the African Charter, so as to return to its previous record of 100% ratification, before South Sudan's birth as Africa's newest nation State.

25. The status of submission of Periodic Reports to the Commission by Member States as at the 56th Session stands as follows:

Status	State Party
Report with the Commission for consideration: 4	Algeria; Burkina Faso; Kenya; Sierra Leone.
Up to date: 11	Gabon; Liberia; Mozambique; SADR; Djibouti; Ethiopia; Malawi; Niger; Nigeria; Senegal; Uganda.
1 Report overdue: 7	Burundi; Cameroun; Cote d'Ivoire; Libya; Namibia; The Sudan; Togo.
2 Reports overdue: 6	Angola; Botswana; Congo Brazzaville; DRC; Mauritius; Rwanda.
3 Reports overdue: 6	Benin; Madagascar; Tanzania; Tunisia; Zambia; Zimbabwe.
More than 3 Reports overdue: 13	Cape Verde; CAR; Chad; Egypt; The Gambia; Ghana; Guinea; Lesotho; Mali; Mauritania; Seychelles; South Africa; Swaziland.
Never submitted a Report: 6	Comoros; Equatorial Guinea; Eritrea; Guinea Bissau; Sao Tome & Principe; Somalia.

IV. RESOLUTIONS ADOPTED BY THE COMMISSION

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

Session	Resolution adopted
17 th EOS	<ul style="list-style-type: none"> ✓ Resolution on 2015 Elections in Africa; ✓ Resolution on the Human Rights situation in the Republic of The Gambia; ✓ Resolution on the Human Rights Situation in the Federal Republic of Nigeria; ✓ Resolution on the Nomination of Expert Members of the Working Group on Economic, Social and Cultural Rights in Africa; ✓ Resolution on the Right to Water Obligations; ✓ Resolution on the World Bank's Draft Environmental and Social Policy (ESP) and Associated Environmental and Social Standard (ESS); ✓ Resolution on the Deteriorating Human Rights Situation in the Arab Republic of Egypt; ✓ Resolution on the Governance of the Commission and its Secretariat; ✓ Resolution on the Meetings of the Working Group on Communications.
56 th OS	<ul style="list-style-type: none"> ✓ Resolution Condemning the Xenophobic Attacks in the Republic of South Africa; ✓ Resolution on the Human Rights Situation in the Republic of Kenya; ✓ Resolution on the Right to Rehabilitation for Victims of Torture.

V. HUMAN RIGHTS COMPLAINTS BEFORE THE COMMISSION

a) Communications considered

27. One hundred and fifty (150) Communications are currently before the Commission and another twenty-four (24) complaints are awaiting consideration. The following Communications were considered during the reporting period:

Session	Communication - Name, Phase
17 th EOS	<p>I. Seizure</p> <p>a) Seized</p> <ul style="list-style-type: none"> ✓ Communication 478/14: Djibouti v. Eritrea; ✓ Communication 479/14: Palestine Solidarity Alliance and 5 Others v. Egypt; ✓ Communication 480/14: Senate Masupha & Others v. The Kingdom of Lesotho; ✓ Communication 481/14: Peter Odiwuor Ngoge, John Gakure Karuri & 148 Other Former Employees of Dawa Pharmaceuticals Limited v. Kenya; ✓ Communication 482/14: Peter Odiwuor Ngoge & Frederick Wamalwa v. Kenya; ✓ Communication 483/14: Peter Odiwuor Ngoge & Harrison Uwuor Okumu v. Kenya; ✓ Communication 484/14: Peter Odiwuor Ngoge & Francis Anyango Juma v. Kenya; ✓ Communication 485/14: Peter Odiwuor Ngoge v. Kenya; ✓ Communication 486/14: Peter Odiwuor Ngoge and 6 Others v. Kenya;

	<ul style="list-style-type: none"> ✓ Communication 487/14: Peter Odiwuor Ngoge and Peter Nganga v. Kenya; ✓ Communication 488/14: Peter Odiwuor Ngoge v. Kenya; ✓ Communication 489/14: Peter Odiwuor Ngoge and Francis Gichuki Macharia v. Kenya; ✓ Communication 490/14: Ngoge v. Kenya; ✓ Communication 491/14: Ngoge v. Kenya; ✓ Communication 492/14: Ngoge v. Kenya; ✓ Communication 493/14: Ngoge v. Kenya; ✓ Communication 494/14: Ngoge v. Kenya; ✓ Communication 495/14: Ngoge v. Kenya; ✓ Communication 496/14: Ngoge v. Kenya; ✓ Communication 497/14: Ngoge v. Kenya; ✓ Communication 498/14: Ngoge v. Kenya; ✓ Communication 499/14: Abongwa Chambers on Behalf of 480 Members of the Social Democratic Front v. Cameroun; ✓ Communication 500/14: Gérard Salamiate v. Congo; ✓ Communication 501/14: Ibrahim Halawa and 493 Others v. Egypt; ✓ Communication 502/14: S.A (Complainant Requested for Anonymity) v. DRC; ✓ Communication 503/14: Hassan Cher Harad v. Djibouti; ✓ Communication 504/14: Peter Odiwuor Ngoge v. Kenya; ✓ Communication 505/14: Tamine Abdellah v. Algeria; ✓ Communication 506/15: Mr. Gouamba Ninon Pachel v. Congo; ✓ Communication 507/15: Andargachew Tsege and Yemsrach Hailemariam (Represented by Reprive and REDRESS) v. Ethiopia; ✓ Communication 511/15: Dr. Amin Mekki Medani and Mr. Farouq Abu Elissa (Represented by FIDH, ACJPS, OMCT & Redress) v. Sudan; ✓ Communication 512/15: Mahmoud Ramadan Abdel-Naby and 57 Others v. Egypt. <p>b) Provisional Measures Issued</p> <ul style="list-style-type: none"> ✓ Communication 455/13: Abubakkar Ahmed Mohamed and 28 Others (Represented by X and Y) v. Ethiopia, sent on 09 March 2015; ✓ Communication 501/15: Ibrahim Halawa and 493 Others v. Egypt, sent on 04 March 2015; ✓ Communication 507/15: Andargachew Tsege and Yemsrach Hailemariam (Represented by Reprive and REDRESS) v. Ethiopia, sent on 13 March 2015; ✓ Communication 511/15: Dr. Amin Mekki Medani and Farouq Abu Eissa (Represented by FIDH, ACJPS, OMCT & REDRESS) v. Sudan, sent on 16 March 2015; ✓ Communication 512/15: Mahmoud Hassan Ramadan Abdel-Naby and 57 Others v. Egypt, sent on 26 February 2015. <p>II. Admissibility</p> <p>a. Admissible</p> <ul style="list-style-type: none"> ✓ Communication 412/12: Journal Echos du Nord v. Gabon;
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	<ul style="list-style-type: none"> ✓ Communication 433/12: Albert Ngandu v. DRC. b. Inadmissible ✓ Communication 410/12: Le Congrès pour la Démocratie et la Justice (CDJ) v. Gabon. c. Deferred ✓ Communication 445/13: Human Rights Council and Others v. Ethiopia ✓ Communication 464/14: Uhuru Kenyatta and William Ruto (Represented by Innocence Project Africa) v. Kenya. III. Merits ✓ Communication 317/2006: The Nubian Community in Kenya v. Kenya; ✓ Communication 318/06: Open Society Justice Initiative v. Côte d'Ivoire; ✓ Communication 401/11: Hawa Abdallah (Represented by African Center for Justice and Peace Studies) v. Sudan. IV. Struck Out ✓ Communication 387/10: Kofi Yamgnane v. Togo.
56 th OS	<ul style="list-style-type: none"> I. Seizure ✓ Communication 508/15: Peter Odiwuor Ngoge and Roselyn Ayoti and 242 Former Employees of Unilever v. Kenya; ✓ Communication 509/15: Peter Odiwuor Ngoge and Sum Model Industries v. Kenya ✓ Communication 510/15: Abdel Moneem Adam Mohammed (Represented by REDRESS, ACJPS and EHAHRDP) v. Sudan; ✓ Communication 513/15: Peter Odiwuor Ngoge & 7 Others v. Kenya; ✓ Communication 514/15: Peter Ngoge and Sum Model Industries Limited v. Kenya; ✓ Communication 515/15: Peter Odiwuor Ngoge v. Kenya; ✓ Communication 517/15: Peter Odiwuor Ngoge v. Kenya; ✓ Communication 518/15: Peter Ngoge v. Kenya; ✓ Communication 519/15: Peter Ngoge and Mohammed Musa v. Kenya; ✓ Communication 520/15: Peter Odiwuor Ngoge v. Kenya; ✓ Communication 521/15: Peter Ngoge v. Kenya; ✓ Communication 522/15: Peter Odiwuor Ngoge v. Kenya; ✓ Communication 523/15: Peter Ngoge & 3 Others v. Kenya; ✓ Communication 526/15: Peter Ngoge and Damaris Wangui Ngugi v. Kenya; ✓ Communication 529/15: 22 Deputés v. Burundi; ✓ Communication 530/15: Ngoge v. Kenya; ✓ Communication 531/15: Peter Ngoge v. Kenya; ✓ Communication 532/15: Peter Ngoge v. Kenya; ✓ Communication 533/15: Ngoge and 2 Others v. Kenya; ✓ Communication 534/15: Peter Ngoge, Mohammed Musa & 5,3782

	<p>Others v. Kenya;</p> <ul style="list-style-type: none"> ✓ Communication 536/15: Peter Ngoge & Peter Nganga v. Kenya; ✓ Communication 537/15: Peter Ngoge & Frederick Wamalwa v. Kenya; ✓ Communication 538/15: Peter Ngoge v. Kenya. <p>II. Merits</p> <ul style="list-style-type: none"> ✓ Communication 389/10: Mbiankeu v. Cameroon. <p>III. Deferred</p> <ul style="list-style-type: none"> ✓ Communication 355/07: Hossam Ezzat and Rania Enayet v. Egypt; ✓ Thirteen (13) Complaints against Egypt were deferred pending receipt of additional information. <p>IV. Oral Hearing</p> <ul style="list-style-type: none"> ✓ Communication 467/14: 529 Persons Sentenced to Death (Represented by Freedom and Justice Party of Egypt) v. Egypt.
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28. In addition, during the inter-session period between the 17th EOS and the 56th OS, the Commission was seized of **Communication 563/15 - Mohammed Bakri Mohammed Harun and 7 Others v. the Arab Republic of Egypt** and issued Provisional Measures thereon, on 16 April 2015.

29. The foregoing shows that during the period between January and May 2015:

- The Commission was seized of fifty-seven (57) Communications;
- Four (4) Communications were considered and decided at admissibility level - two (2) were declared admissible, one (1) inadmissible and one (1) deferred pending receipt of additional information;
- Six (6) Communications were considered and decided at merits level;
- One (1) Communication was struck out for want of diligent prosecution;
- The Commission provided guidance on thirty-two (32) Communications on which the Secretariat had sought guidance.

b) Implementation of the Commission's Decisions

30. The Commission would like to indicate that during the reporting period it was informed by the Republic of Kenya of a Taskforce established to implement the Commission's decision in **Communication 276/03: Centre for Minority Rights Development and Minority Rights Group International (on behalf of the Endorois Welfare Council) v. Kenya**.

c) Provisional Measures

31. The Commission did not receive any response to Provisional Measures issued by the Commission regarding Communications involving Egypt and The Sudan.

32. The Commission did receive a response from Ethiopia regarding the Provisional Measures issued with respect to **Communication 507/15: Andargachew Tsege and Yemsrach Hailemariam (Represented by Reprive and REDRESS) v. Ethiopia**. However, the response did not indicate the measures taken to implement the Provisional Measures; but rather contested the issuance of the Provisional Measures. The Commission is currently constructively engaged with the Government of Ethiopia on the matter.

33. The Commission notes with concern that despite the Provisional Measures issued with regards to **Communication 512/15: Mahmoud Hassan Ramadan Abdel-Naby and 57 Others v. Egypt** and transmitted on 16 February 2015, requesting the Government authorities to stay the execution of Mahmoud Hassan Abdel-Naby, he was executed on 07 March 2015, and this is also notwithstanding the fact that the matter was and still is pending before the Commission.

VI. LETTERS OF URGENT APPEAL

34. The Commission sent Letters of Urgent Appeal to the following State Parties, regarding human rights issues alleged to have occurred in their respective countries:

- i) **The Sudan** - a joint Letter of Urgent Appeal regarding the alleged arrests and *incommunicado* detention of some Sudanese human rights defenders and leaders of opposition political parties, including Dr. Amin Mekki Medani and Dr. Farouq Abu Eissa (08 January 2015);
- ii) **The Sudan** - a Letter of Urgent Appeal regarding the situation of some Eritrean refugees at the Shegerab Camp (23 January 2015);
- iii) **The Gambia** - a joint Letter of Urgent Appeal following the attacks on Gambian soil on 30 December 2014 (27 January 2015);
- iv) **Egypt** - a Letter of Urgent Appeal regarding the imposition and execution of some death sentences in Egypt, including the case of Mr. Mahmood Hassan Abdel Naby who was reportedly scheduled to be executed on 28 February 2015 (24 February 2015);
- v) **The Sudan** - a Letter of Urgent Appeal regarding the alleged mass rape of over 200 women and girls by some Sudanese armed forces, over a thirty-six (36) hour period starting from 30 October 2014, in Tabit, Northern Darfur (02 March 2015);
- vi) **Angola** - a joint Letter of Urgent Appeal, in conjunction with the United Nations Special Rapporteur on the Right to Freedom of Opinion and

Expression, regarding the trial of Mr. Rafael Marques de Morais, an Angolan journalist and human rights defender, on eleven (11) charges of criminal defamation (24 March 2015);

- vii) **Mozambique** – a Letter of Urgent Appeal regarding the assassination of Professor Gilles Cistac (08 April 2015);
- viii) **South Africa** – a Letter of Urgent Appeal regarding the xenophobic attacks on non-nationals (16 April 2015);
- ix) **Egypt** – a Letter of Urgent Appeal concerning reports of the imposition of the death penalty on six people by a North Cairo Military Court, in Case No.43/2014 (20 April 2015).

35. The following countries responded to the Letters of Urgent Appeal sent to them:

- i) **The Gambia** – the Government denied the allegations, and indicated that it would not compromise on holding those responsible for the attacks accountable (25 February 2015);
- ii) **Egypt** – the Government provided information regarding the procedural and legal guarantees available to persons sentenced to death in Egypt, the progress of the case against Mahmood Hassan Abdel Naby in the Egyptian Judiciary, including the appeal and other processes available to him; the Government also confirmed that Mahmood Hassan Abdel Naby was hanged on 07 March 2015 (25 March 2015);
- iii) **Angola** – the Government provided clarification and information regarding the trial of Mr. Rafael Marques de Morais, and indicated that the Court had postponed the trial at the request of the parties as they had decided to negotiate in order to reach a friendly settlement in the case (27 April 2015).

VII. INTER-SESSION ACTIVITIES OF THE COMMISSIONERS

36. The intersession activities undertaken by the Honourable Commissioners in their capacities as Members of the Commission, and as Members of Special Mechanisms, mainly consist of their participation in the statutory meetings of the Commission, undertaking promotion missions, promoting the African Charter and other African human rights instruments through seminars, conferences and workshops, as well as through meetings and other activities organised by their respective mechanisms. Honourable Commissioners also participated in various activities which were organized and funded by other actors, including State Parties and NGOs, among others.

37. In addition to Press Releases issued by the Commission and its Special Mechanisms with regards to promotion missions conducted and meetings organized, the Commission also issued nine (9) Press Releases on various human rights issues during the reporting period as follows: Press Release by the Special Rapporteur on Human Rights Defenders on the Appeal Verdict in the Case of Yara Sallam and Sanaa Seif; Statement by the Commission on the events of 30 December 2014 in The Gambia; Press Release by the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa on the Ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa by the Republic of Congo; Press Release by the Commission on the Atrocities Committed by Boko Haram; Joint Press Release by the Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Prisons and Conditions of Detention in Africa on the Human Rights Situation Following the Events Surrounding the Amendment of the Electoral Law in the Democratic Republic of Congo; Joint Press Release by the Chairpersons of the Working Group on Death Penalty, Extra-Judicial, Summary and Arbitrary Killings in Africa and the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa Regarding the Attacks and Killings of Persons with Albinism in East Africa; Press Release by the Working Group on Death Penalty and Extrajudicial, Summary and Arbitrary Killings in Africa on the Execution of Mahmoud Hassan Abdel-Naby; Press Release by the Commission on the Terror Attacks Committed by Al-Shabaab in the Republic of Kenya; and Joint Press Release by the Special Rapporteur on Human Rights Defenders in Africa and the Special Rapporteur on Freedom of Expression and Access to Information in Africa Regarding the Situation of Human Rights Defenders and Freedom of Expression and Assembly in Burundi.

38. The Activity Reports of the Honourable Commissioners detailing their inter-session activities are available on the website of the Commission: www.achpr.org.

39. Pursuant to Article 45(1)(c) of the African Charter, the Commission also continues to collaborate with the Special Mandate-Holders of the United Nations Human Rights Council with a view to ensuring better promotion and protection of human rights on the continent.

VIII. THE HUMAN RIGHTS SITUATION ON THE CONTINENT

40. It will be recalled that this section of the Commission's Report was introduced pursuant to Executive Council Decision EX.CL/Dec.639 (XVIII) calling upon the Commission to brief the Policy Organs on the human rights situation on the continent. The Commission gathers the information for this section from constantly monitoring the human rights landscape on the continent; some of the information comes during the ordinary course of the Commission's engagement with State Parties and other human rights stakeholders. The Commission also uses its Ordinary Sessions to get an overview of the human rights situation on the

continent direct from the perspective of the key human rights actors: from the Departments of State Parties responsible for human rights, from NHRIs and from NGOs working directly in the field of human rights.

a) Positive developments

- i) Ratification of human rights related instruments by State Parties: ratification of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa by Cameroon and Congo, ratification of the International Covenant on Economic, Social and Cultural Rights by the South Africa, and ratification of the African Youth Charter by the Egypt;
- ii) Increased attention to gender equality and matters affecting women: amendment of the law in Senegal to allow women to transfer their nationality to their children and their husbands; revision of the law in Algeria to allow women to transfer their nationality to their children; adoption of laws against gender-based violence in Malawi and Ethiopia; passage of the Violence Against Women Bill by the National Assembly in Nigeria; enactment of a law legalizing abortion in Mozambique; and efforts to address maternal mortality such as the 'Save 1 Million Lives' program in Nigeria;
- iii) Establishment of mechanisms to address human rights matters: establishment a Ministerial Committee Against Slavery in Mauritania; designation of the National Commission for Human Rights of Rwanda, Mali and Algeria as independent bodies to conduct prison visits; appointment of a Working Group to facilitate the two thirds gender rule in elective and appointed positions in Kenya; in the DRC, the establishment of a Special Unit focused on Human Rights Defenders, in the Ministry of Justice; the establishment and operationalization of the War Crimes Division of the High Court to ensure that victims of war crimes receive justice in Uganda; and the fund established by Niger to assist persons displaced following terrorist attacks.
- iv) Awareness of and attention to matters affecting children, especially the girl child: efforts to increase children's access to education through Rwanda's 12 Year Basic Education Program and Malawi's re-admission program for school girls who fall pregnant; Egypt's withdrawal of its reservation on early marriage in the African Charter on the Rights and Welfare of the Child and its commitment to join the AU Campaign on Early Marriage; Niger's commitment to host a regional meeting as part of the AU Campaign to end child marriage; in Malawi, the initiation of the Marriage Divorce and Family Relations Bill, which among others raises the age of marriage to 18 years old;

- v) Efforts to provide assistance to people living with HIV (PLHIV): provision of non-discriminatory access to free medical care for PLHIV, and opening of new centres providing medical care to PLHIV in Algeria; and the passage of the HIV and AIDS Anti-Discrimination Act 2014 which prohibits discrimination on account of HIV status in Nigeria;
 - vi) Efforts to combat the use of torture: the on-going role of Ghana as one of the five founding members of the Convention Against Torture Initiative (CTI), in addition to the broadening of the definition of torture in Rwanda, to include torture committed by both State and non-State actors;
 - vii) The number of countries which have adopted access to information laws (ATI) has increased from four to sixteen following the adoption of the Model Law on Access to Information in Africa, with Mozambique being the latest to enact its law at the end of 2014; and Niger which has decriminalized defamation and was the first State Party to sign the Declaration of Table Mountain;
 - viii) Policy and legal reforms underway based on studies conducted in the extractive industries of Member States, mineral certification process in Rwanda, revenue sharing up to community level in South Sudan, and the requirement of Parliamentary approval for production agreements in Tanzania.
 - ix) The building of two (2) new prisons in Algeria to reduce overcrowding and improve prison conditions;
 - x) The successful holding of presidential elections, in addition to the peaceful handover of power in Zambia and Nigeria;
 - xi) An increase in the number of State Parties that voted in favour of the UN Resolution A/RES/69/16 which calls for a global moratorium on the death penalty in December 2014, in addition to abolition of capital punishment from the penal codes of Chad and Côte d'Ivoire.
- b) Areas of concern**
- i) The increasing incidence of terrorist attacks and the alarming numbers of people being killed as a result this in Niger, Cameroon, Nigeria, Tunisia, Kenya, Somalia and Libya, and the disturbing trend of terrorists deliberately targeting schools and centres of learning;

- ii) The continuing situations of conflicts and acts of armed groups endangering the lives of civilians in a number of countries, including in CAR, DRC and in the Southern Kordofan and Blue Nile States of The Sudan;
- iii) The xenophobic attacks targeting foreign nationals in South Africa, which resulted in deaths, destruction of property and displacement of migrants fearing the attacks and scarring the African psyche in the process;
- iv) The continuing devastating effects of the Ebola virus which has not yet been completely eradicated in West Africa in spite of the laudable efforts deployed to address the outbreak; and the legal frameworks in many countries which do not provide sufficient protection for the rights of PLHIV, in addition to other restrictive and punitive measures, policies and practices which impact the rights of PLHIV;
- v) The low number of ratification of important regional human rights instruments, and South Sudan's continuing non-ratification of the African Charter;
- vi) The continuing discriminations and practices against women and girls, including the exclusion of pregnant girls from the education system and refusing them to take public examinations, which violates their right to education and serves to perpetuate other discriminations against them;
- vii) The continuing issue of statelessness and the resulting privations from the related entitlements such as the right to education, to own property, to obtain a national identity card or passport;
- viii) The unresolved root causes of migration, such as youth unemployment, which have resulted in the deaths of thousands of migrants, especially the tragedies witnessed in the Mediterranean Sea during the reporting period;
- ix) Increased reports of attacks on persons with albinism, particularly in the Great Lakes region;
- x) The continuation of slavery on the African continent in the 21st Century;
- xi) The increasing trend of imposing mass death sentences, and executions being carried out by State Parties during the reporting period;

- xii) The human rights situation in SADR, and the lack of access to the Occupied Territory of Western Sahara, to establish the human rights situation of the Sahrawi people there;
- xiii) The inadequate technological expertise and inadequate policy, legal and institutional frameworks in the extractive industries of Member States, which result in resource mismanagement and environmental degradation;
- xiv) The impact of restrictive laws on the work of NGOs and the increased attacks on NGOs on the basis of counter-terrorism legislation in State Parties;
- xv) Many prisons in Africa fall short of the international human rights standards, including overcrowding and non-respect of time frames of detention;
- xvi) Restrictions on freedom of expression and access to information and harassments of journalists and human rights defenders.

IX. ADMINISTRATIVE AND FINANCING SITUATION

a) Communication

41. The situation remains as previously reported.

b) Construction of the Commission's Headquarters

42. The Commission has been informed that the Host Government has established an Inter-Ministerial Committee, to work on the construction of the Commission's headquarters. The Inter-Ministerial Committee will work with a Focal Point within the Commission's Secretariat.

c) Funding

43. A total of US\$ 5,922,595.00 was approved for the Commission for the 2015 fiscal year, broken down as follows: US\$ 4,970,825.00 from Member States' assessed contribution and US\$ 951,770.00 pledges from partners. Thus far, partners have released an amount of US\$ 326,803.69.

44. As previously noted in the Commission's 36th and 37th Activity Reports, no program budget was allocated to the Commission from Member States, with the result that the Commission had to rely on partner funds to implement the mandate entrusted to it under the African Charter, which cannot be correct, given the importance and sensitivity of this Organ of the Union, as recognized in Executive Council Decision EX.CL/856(XXV).

d) Staffing

45. The Commission expresses appreciation to the AUC for the efforts deployed to recruit Legal Officers for the Commission's Secretariat in 2014, and urges the expedited recruitment of a Deputy Secretary as this has become an urgent necessity, given the heavy workload as the Commission's activities continue to expand. The Commission is also in urgent need of Arabic speaking and Portuguese speaking Legal Officers, especially as more and more complaints are being submitted in these languages, whereas the Secretariat does not have a single Arabic or Portuguese speaking Officer. The Commission also needs Revisers and Interpreters to be recruited for the Secretariat, as relying on freelancers is extremely costly.

X. IMPLEMENTATION OF EXECUTIVE COUNCIL DECISIONS

a) Cotonou Declaration on the Abolition of the Death Penalty in Africa

46. It will be recalled that Executive Council Decision Ex.CL/887(XXVI), called on the Commission to submit the Cotonou Declaration on the Abolition of the Death Penalty in Africa (the Cotonou Declaration) to the June/July 2015 Summit of the Union. That Declaration is attached hereto as Annex I.

b) Mission to Western Sahara

47. It will be recalled that Executive Council Decision Ex.CL/796(XXIII) encouraged the Commission to complete its report on the fact-finding mission to the Sahrawi Arab Democratic Republic by including the situation in the territory under the control of the Kingdom of Morocco. For its part, the Peace and Security Council (PSC), through Decision (PSC/PR/COMM/1.(CDXCVI), adopted during its 496th meeting held on 27 March 2015, called on the Commission to undertake, as soon as possible, a mission to Western Sahara and to the refugee camps in Tindouf, to assess the human rights situation and make recommendations to the Peace and Security Council (PSC), building on the outcome of the Commission's visit to the region in September 2012. It will also be recalled that the PSC Decision also urged the Government of the Kingdom of Morocco to extend full cooperation to the Commission, in particular, by allowing access to the Occupied Territory.

48. In response, the Commission scheduled a fact-finding mission to Western Sahara, to take place from **18 to 24 May 2015**, and accordingly dispatched a Note Verbale to the Government of the Kingdom of Morocco seeking access to the Occupied Territory.

49. In addition, letters were transmitted the Chairperson of the African Union Commission and the UN Assistant Secretary General for Human Rights of the Office of the High Commissioner for Human Rights, requesting them to use their good offices to facilitate access to the Occupied Territories.

50. The Kingdom of Morocco did not grant access to the Occupied Territory; its response is attached hereto as Annex II.

XI. RECOMMENDATIONS

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

To State Parties:

- i) Implement the decisions of the Commission on Communications and report on the measures taken, respond to Letters of Urgent Appeal from the Commission, take concrete action to address the areas of concern which are highlighted in the Commission's Activity Reports and Resolutions, in compliance with Executive Council Decision EX.CL/887(XXVI)¹ and Executive Council Decision EX.CL/856(XXV);
- ii) Present their Periodic Reports in compliance with Article 62 of the African Charter, Article 26 of the Maputo Protocol, the Commission's Guidelines for National Periodic Reports, the State Party Reporting Guidelines for Economic, Social and Cultural Rights (the Tunis Guidelines), and the Guidelines for State Reporting under the Maputo Protocol;
- iii) Sign, ratify, domesticate and implement all regional and international human rights instruments, and make the declaration under Article 34(6) of the Court's Protocol;
- iv) Revise laws in Member States in line with interpretative guidance of the Commission: General Comments on Article 14 (1) (d) and (e) and General Comment No. 2 on Article 14.1 (a), (b), (c) and (f) and Article 14.2 (a) and (c) of the Maputo Protocol by the Commission and the Model law on Access to Information in Africa;
- v) Authorize promotion missions to their respective countries, by giving a permanent/opened authorisation;
- vi) Establish and/or designate independent national bodies mandated to undertake regular visits to prisons and other places of detention;
- vii) Ensure allocation of adequate resources to NHRIs for the promotion and protection of the rights enshrined in the African Charter, and create these National Institutions where they do not exist;

- viii) Develop policies to ensure that all economic, social and cultural rights are respected, particularly access to education, health, housing, employment, among others;
- ix) Consider hosting one of the Sessions of the Commission, in compliance with Executive Council Decision EX.CL/856(XXV).

To the Republic of South Sudan:

- i) Ratify the African Charter and the Protocols to the African Charter, in addition to other regional and international human rights instruments.

To the AUC:

- i) Address the operational challenges confronting the Commission and its Secretariat;
- ii) Expedite the recruitment of the Deputy Secretary, and other required staff.

To the Assembly of Heads of State and Government:

- i) Urge State Parties to honour their obligations under the African Charter;
- ii) Encourage State Parties to comply with the decisions of the Commission; and
- iii) Take note of the Provisional Measures issued by the Commission and the response, or lack thereof, from the concerned State Parties.

**Declaration of the Continental Conference on the Abolition of the
Death Penalty in Africa (the Cotonou Declaration)**

Recalling the Universal Declaration of Human Rights which guarantees the right to life, liberty and security of person under Article 3;

Bearing in mind the provisions of the Constitutive Act of the African Union in Article 3(h), which enshrines the objective of the African Union to promote and protect human rights, and Article 4(o), which requires respect for the sanctity of human life;

Recalling also that the right to life is a fundamental human right guaranteed by Article 4 of the African Charter on Human and Peoples' Rights which enshrines the absolute prohibition of the arbitrary deprivation of life;

Further Recalling Article 6 of the International Covenant on Civil and Political Rights, Articles 6 and 37 (a) of the Convention on the Rights of the Child, Article 5(1)(3) of the African Charter on the Rights and Welfare of the Child, and Article 4(1)(2)(j) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

Recalling Resolution ACHPR/Res. 42(XXVI) 99: Resolution Urging States to Envisage a Moratorium on the Death Penalty;

Further Recalling Resolution ACHPR/Res.136 (XXXVIII) 08: Resolution Urging States to Observe a Moratorium on the Death Penalty;

Noting the "Study on the Question of the Death Penalty in Africa" adopted by the Commission at its 50th Ordinary Session from 24 October to 7 November 2011 in Banjul, The Gambia;

Noting further that Article 6 of the International Covenant on Civil and Political Rights refers to abolition of the death penalty in terms that strongly suggest that abolition is desirable;

Convinced that everyone's right to life is a basic value in a democratic society and that the abolition of the death penalty is essential for the protection of this right and also for the full recognition of the inherent dignity of all human beings;

Reaffirming the commitment of the African Commission on Human and Peoples' Rights to promote the right to life and human dignity as fundamental rights;

Believing that abolition of the death penalty contributes to enhancement of human dignity and progressive realisation of human rights;

Convinced that all measures to abolish the death penalty should be considered as progress in the enjoyment of the right to life;

Wishing to strengthen the protection of the right to life guaranteed by the African Charter on Human and Peoples' Rights;

Considering that the evolution that has occurred in several member States of the African Union expresses a general tendency in favour of abolition of the death penalty;

Welcoming further the efforts of various sectors of civil society at the national, regional and international levels to achieve the abolition of the death penalty;

Determined to urge African States to take the final step in order to abolish the death penalty in all circumstances;

Guided by the purposes and principles contained in the African and United Nations instruments;

Noting ongoing local and national debates and regional initiatives on the death penalty, as well as the readiness of an increasing number of African States to abolish capital punishment;

The Continental Conference on the abolition of the Death Penalty in Africa hereby:

1. Calls on the African Union Member States to adopt the Additional Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa;
2. Expresses its deep concern about the continued application of the death penalty in a number of African States;
3. Welcomes the steps taken by a growing number of African States to reduce the number of offences for which the death penalty may be imposed and the decision made by an increasing number of States to apply a moratorium on executions, followed in many cases by the abolition of the death penalty;
4. Deeply appreciates the growing number of African States that have abolished the Death Penalty;
5. Calls upon African States which have abolished the death penalty not to reintroduce it, and encourages them to share their experience in this regard;

6. Calls upon African States that have not yet done so to consider abolishing the death penalty statutorily or constitutionally, and to consider acceding to or ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
7. Further calls upon African States to vote in favour of the proposed United Nations General Assembly Resolution to be adopted this year calling for a universal moratorium on executions with a view to abolish the death penalty.
8. Further invites civil society organisations to remain seized with the matter of the death penalty and, in particular, monitor scheduled executions and alert the African Commission's Working Group on the Death Penalty, and Extra-judicial, Summary or Arbitrary Killings in Africa and the international community in a timely manner where there is reason to believe that such an execution will occur;
9. Encourages Professional Groups to continue to conduct research on issues related to the question of the death penalty;
10. Urges National Human Rights Institutions to monitor, document and report on death penalty and execution cases to the African Commission on Human and Peoples' Rights;
11. Encourages National Human Rights Institutions, Civil Society, the Media and other stakeholders to continue conducting advocacy and awareness-raising on the abolition of the Death Penalty in Africa;
12. Finally calls on legislators in Africa to review their national laws and enact legislation abolishing the death penalty and to support the ratification of the Additional Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa.

Done this 4th day of July 2014, Cotonou, Republic of Benin

Royaume du Maroc
Ministère des Affaires Etrangères
et de la Coopération



Le Ministre

7 AVR 2015

المملكة المغربية
وزارة الشؤون الخارجية والتعاون
الوزير

**Kingdom of Morocco
Ministry of Foreign Affairs and Cooperation**

The Minister

17 April 2015

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**Mrs Kayitesi Zainabo Sylvie
Chairperson of the African Commission on Human and Peoples' Rights
Banjul**

Madam Commissioner,

In your letter dated 10 April 2015, you expressed the interest of the African Commission on Human and Peoples' Rights (ACHPR) in undertaking a mission to what you dared to pretentiously refer to as the "*occupied territories of Western Sahara*".

This false appellation is already an indication of the blatant bias of your organisation, whose actions should normally be guided by professional and ethical conduct.

What you referred to as "Western Sahara" is not an occupied territory. Neither the United Nations nor the Security Council, whose mandate is to maintain international peace and security have ever referred to Moroccan Sahara as an occupied territory.

Your organisation, which is supposed to be independent and impartial in regard of the noble mission of human and peoples' rights it is entrusted with, is hence betraying this ideal and aligning itself with the views of enemies of the territorial unity of my country.

Furthermore, customary rules of courtesy and etiquette governing diplomatic correspondences, as well as respect for the institutions of a sovereign State, should be observed by your Commission when addressing a sovereign country.

Please allow me to also remind you that the ACHPR is one of several instruments and mechanisms of the African Union, whose activities and agendas are in no way binding on non-Member States of this organisation.

Please accept, Madam Commissioner, the assurances of my highest consideration.

(Signed)

Salaheddine Mezouar

Minister of Foreign Affairs and Cooperation

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