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**40TH REPORT OF THE AFRICAN COMMISSION
ON HUMAN AND PEOPLE'S RIGHTS**

AFRICAN UNION		UNION AFRICAINE
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40TH 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**

40TH REPORT OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

I. INTRODUCTION

1. This 40th 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 **December 2015** to **April 2016**.

II. STATUTORY MEETINGS

2. Three statutory meetings were held during the reporting period, namely: (i) the 8th Meeting of the Joint Bureaux of the Commission and the African Court on Human and Peoples' Rights (the Court) held on 29 January 2016 in Addis Ababa, Ethiopia; (ii) the 19th Extraordinary Session held from 16 to 25 February 2016 in Banjul, Islamic Republic of The Gambia; and (iii) the 58th Ordinary Session held from 6 to 20 April 2016 in Banjul, Islamic Republic of The Gambia.

a) **8th Meeting of the Joint Bureaux of the Commission and the Court (Addis Ababa, Ethiopia, 29 January 2016)**

3. In line with their respective Rules of Procedure, the Commission and the Court organised the 8th Meeting of the Joint Bureaux on 29 January 2016. The Joint Bureaux Meeting discussed issues of common concern and interest including Project 2016 and the Legal Aid Fund for the Human Rights Organs of the African Union, as well as preparations for the 5th Joint Annual Meeting of the two Institutions to be held from 4 - 7 June 2016.

b) **19th Extraordinary Session – Banjul, Islamic Republic of The Gambia 16 to 25 February 2016**

4. During the 19th Extraordinary Session, the Commission adopted **nine (9)** Resolutions and considered **thirty-one (31)** Communications, as outlined in paragraphs 15 and 16 below.

c) **58th Ordinary Session - Banjul, The Gambia, 4 to 20 April 2016**

5. A total of four hundred and ninety-eight (498) delegates participated in the Session: one hundred and sixty-six (166) representing twenty four (24) Member States, one (1) representing African Union Liaison Office in Geneva, seventeen (17) representing National Human Rights Institutions (NHRIs), five (5) representing International and Inter-Governmental Organizations, two hundred and eighty (280) representing African and International Non-Governmental Organisations (NGOs), and twenty nine (29) representing other observers and the media.

6. H.E. the Secretary General and head of the Civil Service of the Islamic Republic of The Gambia, Honourable Sulayman Samba, opened the Session.

7. Twenty-four State Parties were represented at the Session: Algeria, Angola, Burkina Faso, Botswana, Cameroon, Côte d'Ivoire, Democratic Republic of Congo (DRC), Djibouti, Egypt, Eritrea, Ethiopia, the Islamic Republic of the Gambia, Lesotho, Libya, Malawi, Mali, Mauritania, Namibia, Niger, Nigeria, Senegal, South Africa, Swaziland and Uganda .

8. The Commission granted Affiliate Status to **two (2)** National Human Rights Institutions (NHRIs) and observer status to **five (5)** NGOs as follows:

a) **National Human Rights Institutions granted Affiliate Status at the 58th Ordinary Session of the Commission:**

- i) National Human Rights Commission of Sudan; and
- ii) National Human Rights Commission of Sahrawi.

b) **NGOs granted Observer status at the 58th Ordinary Session of the Commission:**

- i) International Detention Coalition;
- ii) Center for Health, Human Rights and Development;
- iii) Human Rights Awareness and Promotion Forum;
- iv) The Human Rights Implementation Centre; and
- v) Environnement Ressources Naturelles et Développement.

9. During the Session, the Commission organised, in collaboration with its partners, a number of panels on various human rights issues.

10. The Commission considered and adopted the following: the Strategy for the Abolition of Death Penalty in Africa; the Report of the Working Group on Communications; the Study on Child Marriage; the Study on Extractive Industries, Land Rights and Indigenous Communities/Populations Rights; the Report of the Advisory Committee on Budgetary and Staff Matters; the Report of the Joint Meeting of the Advisory Committee on Budgetary and Staff Matters and the Working Group on Specific Issues Relating to the Work of the Commission; and the Report of the Meeting of the Working Group on Communications on Comprehensive Review of Major Issues Affecting the Working of the Commission.

11. During the 58th Ordinary Session, the Commission adopted **twelve (12)** Resolutions and considered **eleven (11)** Communications as outlined in paragraphs 15 and 16 below.

III. STATE REPORTING

12. During the Session, the Commission considered the following State Reports: 2nd Combined Report of the Republic of South Africa; 6th Report of the Republic of Namibia; and the Combined 2nd – 7th Periodic Report of the Republic of Mali.

13. The Commission notes with satisfaction that Namibia and South Africa have fulfilled the 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 (the Maputo Protocol).

14. The status of submission of Periodic Reports to the Commission by Member States as at the 58th Ordinary Session stands as follows:

Status	State Party
Up to date: 19	Algeria, Burkina Faso, Côte d'Ivoire, Djibouti, Ethiopia, Kenya, Liberia, Mali, Malawi, Mauritius, Mozambique, Namibia, Niger, Nigeria, Sahrawi Arab Democratic Republic, Senegal, Sierra Leone, South Africa, Uganda.
1 Report overdue: 2	Gabon, The Sudan.
2 Reports overdue: 7	Angola, Burundi, Cameroon, Democratic Republic of Congo, Libya, Rwanda, Togo.
3 Reports overdue: 5	Benin, Botswana, Congo, Madagascar, Tanzania.
More than 3 Reports overdue: 14	Cape Verde, Central African Republic, Chad, Egypt, Gambia, Ghana, Guinea, Kingdom of Lesotho, Mauritania, Seychelles, Swaziland, Tunisia, Zambia, Zimbabwe.
Never submitted a Report: 6	Comoros, Eritrea, Guinea-Bissau, Equatorial Guinea, Sao Tomé and Príncipe, Somalia.

IV. RESOLUTIONS ADOPTED BY THE COMMISSION

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

Session	Resolutions adopted
19th Extra-Ordinary Session	<p>A. Resolutions on mechanisms</p> <ul style="list-style-type: none"> ✓ Resolution on the Modification of the Mandate of the Working Group on Specific Issues relevant to the Work of the Commission; ✓ Resolution on the Appointment of Expert Members of the Working Group on Indigenous Populations/Communities in Africa; and ✓ Resolution on the Appointment of a New Expert Member of the Working Group on the Rights of Older Persons and Persons with Disabilities in Africa. <p>B. Thematic Resolutions</p> <ul style="list-style-type: none"> ✓ Resolution on Elections in Africa; ✓ Resolution on Human Rights in Conflict Situations; ✓ Resolution on the Situation of Migrants in Africa; ✓ Resolution on Indigenous Populations /Communities in Africa; ✓ Resolution on the Situation of Internally Displaced Persons in Africa; and ✓ Resolution on Measures to Protect and Promote the

	Work of Women Human Rights Defenders.
58th Ordinary Session	<p>A. Resolutions on mechanisms</p> <ul style="list-style-type: none"> ✓ Resolution on the extension of the deadline for the Study on Transitional Justice in Africa; ✓ Resolution on the Establishment of a Resolutions Committee. <p>B. Country Resolutions</p> <ul style="list-style-type: none"> ✓ Resolution on the Human Rights Situation in the Republic of Congo; ✓ Resolution on the Human Rights Situation in the Sahrawi Arab Democratic Republic; and ✓ Resolution on the Human Rights Situation of the abducted Chibok girls and other abducted victims in Nigeria. <p>C. Thematic Resolutions</p> <ul style="list-style-type: none"> ✓ Resolution on Climate Change and Human Rights in Africa ; ✓ Resolution on the Right to Dignity and Freedom from Torture or Ill-Treatment of Persons with Psychosocial Disabilities in Africa; ✓ Resolution on the fight against impunity in Africa; ✓ Resolution on the situation of Human Rights Defenders in Africa; ✓ Resolution on the Right to Education in Africa; ✓ Resolution on the Human Rights issues affecting the African Youth; and ✓ Resolution on the Collaboration between the African Commission on Human and Peoples' Rights and Partners on Promoting the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).

V. HUMAN RIGHTS COMPLAINTS BEFORE THE COMMISSION

a) Communications considered

16. One hundred and ninety-four (194) Communications are currently before the Commission. The following Communications were considered during the reporting period:

Session	Communication – Name, Phase
19th Extra-ordinary Session	<p>I. Seizure</p> <p>a) Seized</p> <ul style="list-style-type: none"> ✓ Communication 587/15 - Radio Publique Africaine c/Burundi (Représentée par Maitre Lambert

	<p>Nigarura);</p> <ul style="list-style-type: none"> ✓ Communication 588/15 - Minority Rights Group International et Environnement Ressources Naturelles et Développement (au nom des Batwa du Parc national de Kahuzi Biega, RDC) c. RDC; ✓ Communication 589/15 - Johannes Jurie Botha v. Mauritius; ✓ Communication 590/15 - Mahmoud Nafee v. The Arab Republic of Egypt; ✓ Communication 592/15 - Hesham Hamid Hamia Elshenna v The Arab Republic of Egypt; ✓ Communication 593/15 - Ashraf Mohamed Ali v Republic of Mauritius; ✓ Communication 594/16 – Mohammed Ramadan Fayad Allah v. Egypt; ✓ Communication 595/16 – Secretary General of Caprivi Concerned Group v. The Republic of Namibia; ✓ Communication 597/16 - Mohammed Atta (represented by REDRESS and EIPR) v. Egypt; ✓ Communication 598/16 - Romy Gooranah (represented by Dev Hurnam) v. Mauritius; ✓ Communication 599/16 - Ethiopian Human Rights Project v the Federal Democratic Republic of Ethiopia; and ✓ Communication 601/16 – Amal Ahmed Abbas (Represented by Egyptian Centre for Economic and Social Rights) v Egypt. <p>b) Seized and Provisional Measures Issued</p> <ul style="list-style-type: none"> ✓ Communication 586/15 - Dr. Osama Yassin (Represented by European Alliance for Human Rights) v. The Arab Republic of Egypt; ✓ Communication 591/15 - El Sayed Mossad v. The Arab Republic of Egypt; ✓ Communication 600/16 – Patrick Gabaakanye (represented by Dingake Law Partners, DITSHWANELO and REPRIEVE) v. Botswana; and ✓ Communication 602/16 Lofty Ibrahim Ismail Khalil
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	<p>and 3 others v. The Arab Republic of Egypt.</p> <p>c) Not Seized</p> <ul style="list-style-type: none"> ✓ Communication 596 /16 – Mohammadally, M.A.S. Kadir & Another V. Mauritius <p>II. Admissibility</p> <p>a) Admissible</p> <ul style="list-style-type: none"> ✓ Communication 452/13 – Askouri et al. v. Sudan; ✓ Communication 453 / 13 – Roseline Emma Rasolovoahangy v. Madagascar. <p>b) Inadmissible</p> <ul style="list-style-type: none"> ✓ Communication 489/14 - Peter Odiwuor Ngoge and Francis Gichuki Macharia v. The Republic of Kenya. <p>III. Merits</p> <p>a) Reached a decision on the merits</p> <ul style="list-style-type: none"> ✓ Communication 355/07 – Ezzat & Enayet v Egypt; ✓ Communication 385/10 – ICJ v Kenya. ✓ Communication 392/10 – Me. Theogene Muhayeyezu v. Rwanda; ✓ Communication 408/11 Jose Alidor Kabambi v DRC; ✓ Communication 423/12 – Mack Kit v Cameroon; ✓ Communication 428/12 – Dawitlssak v Eritea; and ✓ Communication 433/12 - Ngandu v DRC. <p>b. Granted Application for Review</p> <ul style="list-style-type: none"> ✓ Communications 383/10 – Al-Asad v Djibouti. <p>IV. Oral Hearing</p> <ul style="list-style-type: none"> ✓ Communication 370/09 – (Social and Economic Rights Action Centre v. Nigeria; and ✓ Communication 376/09 – Acleo Kalinga (represented by REDRESS, OMCT and IRCT) v. Uganda. <p>V. To be referred to the African Court</p> <ul style="list-style-type: none"> ✓ Communication 459/13 – Dev Hurnam v Mauritius; and ✓ Communication 434/12 Filimao Pedro Tivane (represented by Dr. Simeao Cuamba) v Mozambique.
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	<p>VI. Struck-Out for Lack of Diligent Prosecution</p> <ul style="list-style-type: none"> ✓ Communication 425/12 – Abiodun Saburu (Represented by Legal Defence Assistance Project) v Nigeria.
<p>58th Ordinary Session</p>	<p>Seizure</p> <p>a. Seized</p> <ul style="list-style-type: none"> ✓ Communication 603/16 - Ayatullah Alaa Hosny (represented by Dalia Lotfy) v. Egypt; ✓ Communication 604/16 - Dr Bushra Gamar Hussein Rahama v. The Republic of The Sudan; ✓ Communication 605/16 – Mustafa Hassan Abdel Hammed Alshamy (Represented by A & B) v. The Arab Republic of Egypt; ✓ ✓ Communication 607/16 – Famille de Feu Juvénal Havyarimana v. Burundi ; ✓ Communication 608/16 – Famille de Feu Oscar Nibitanga v. Burundi; ✓ Communication 614/16 – Mr Eid Mohammed Ismsil Dahrooj and 2 others (Represented by European Alliance for Human Rights and 4 others) v. The Arab Republic of Egypt; and ✓ Communication 615/16 – Medhat Mohammed Bahieddin Ahmed (Represented by European Alliance for Human Rights and 2 others) v. The Arab Republic of Egypt. <p>b. Seized and Provisional Measures Issued</p> <ul style="list-style-type: none"> ✓ Communication 610/16 -Abdul Rahman Osama (represented by European Alliance for Human Rights & 2 others) v. The Arab Republic of Egypt; ✓ Communication 609/16 – Prince Seraki Mampuru (on behalf of Bapedi Mamone Community under the leadership of Kgosi Mampuru III) v. the Republic of South Africa; ✓ Communication 611/16 - Omar Hegazy’s (Represented by the Organization of European Alliance & 2 Others) v. The Arab Republic of Egypt; and ✓ Communication 612/16 –Ahmed Mohammed Aly Subaie v. The Arab Republic of Egypt.

17. From the table above, it shows that during the period between November 2015 and April 2016:

- The Commission was seized of twenty-six (26) Communications;
- The Commission issued eight (8) Provisional Measures;
- Three (3) Communications were considered and decided at admissibility level, two (2) was declared admissible, and one (1) inadmissible;
- Seven (7) Communications were considered and decided at merits level;
- One (1) Communication was reviewed on Admissibility;
- The Commission held Oral hearings on two (2) Communications;
- Two (2) Communications to be referred to the African Court;
- One (1) Communication was struck out for lack of diligent prosecution;
- The Commission provided guidance on nine (9) Communications on which the Secretariat had sought guidance.

a) Implementation of the Commission's Decisions

18. The Commission would like to indicate that during the reporting period and in accordance with Rule 112 of its Rules of Procedure of 2010, it received information from Parties as reflected below:

- Communication 318/06 – Open Society Justice Initiative v. Côte d'Ivoire: On 8 April 2016, the Complainant wrote to the Commission to give information on the status of implementation of the recommendations contained in the decision on the Communication;
- Communication 317/06 – The Nubian Community in Kenya v. Kenya: The Complainants sent a correspondence to the Commission indicating that the State has not yet implemented the recommendations contained in the decision of the Commission; and
- Communication 389/10 - Mbiankeu Geneviève v. Cameroun: The Complainant sent a correspondence to the Commission on 21 December 2015, indicating that the State has not yet implemented the recommendations contained in the decision of the Commission.

b) Provisional Measures

The Commission received responses from **Egypt** in relation to Provisional Measures issued regarding five (5) Communications: (Communication 558/15 - Ms. Samia Shanan and Mr. Tarek Shanan (Represented by European Alliance for Human Right) v. Egypt; Communication 562/15 - Mohammed Aly Abdel Raouf Aly (Represented by European Entente for Human Rights) v. Egypt; Communication 571 /15 – Khalid Askar and 7 others v. the Arab Republic of Egypt, Communication 576/15 - Saad Esmat Mohamed Al Hossieny & 6 others (Represented by AED) v. Egypt); and Communication 580/15: Amer Mosaad Abdou Abdel Hameed & Anor. (Represented by European

Alliance for Human Rights) v. Egypt. In all of the above-listed Communications, Egypt responded in a uniform manner, indicating in general that the Egyptian judiciary is based on fundamental principles and safeguards for fair trials and for the imposition of the death penalty, and that in light of these, there is no need for the urgent preventive measures required by the Commission in the Communications.

VI. LETTERS OF URGENT APPEAL

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

- **The Sudan** – a Letter of Urgent Appeal regarding the alleged raids of the centre for training and human development called TRACKS. The raids were allegedly conducted by the National Intelligence and Security Services (NISS) who were said to have confiscated the property of TRACKS. The Government of The Sudan has not responded to the letter of appeal.
- **Islamic Republic of The Gambia** – a Letter of Urgent Appeal relating to the alleged brutal repression of a peaceful demonstration and torture to death of certain opposition members challenging the current electoral laws in the country. The Government of the Islamic Republic of The Gambia responded by a Note Verbale received on the 3rd May 2016 at the Secretariat of the Commission. It explained the circumstances of the events and measures taken by law enforcement agencies to deal these events while ensuring that the country abides to its domestic laws and to its international human rights obligations.
- **Burundi** - by a letter dated 21st December 2015, responded to the Letter of Urgent Appeal sent by the Commission on 5 October 2015 on allegations of torture as mentioned in the 39th Activity Report. The Commission received a correspondence in which Burundi indicated that police officers have never used torture or ill-treatment on the Burundian people. Burundi also stressed that the allegations of torture and ill-treatment in the Letter of Appeal are unfounded and the Commission is invited to conduct its own investigation.

VII. LETTERS OF APPRECIATION

20. The Commission sent Letters of Appreciation to the following State Parties:

- **Islamic Republic of The Gambia** – a Letter of Appreciation sent to H. E. Sheikh Professor Alhaji Dr Yahya A.J.J. Jammeh, Babili Mansa, to congratulate the country for outlawing Female Genital Mutilation.

- **Zimbabwe** – a Letter of Appreciation sent to H.E. Mr Christopher Mushowe, Minister of Media, Information and Broadcasting Services, to commend the decision of the Supreme Court of Zimbabwe which ruled on 18 February 2016 that the country's criminal defamation laws are unconstitutional. The Commission received a response from the Minister on 22 March 2016.

VIII. PROMOTION MISSIONS, FACT-FINDING MISSIONS AND ADVOCACY VISITS

21. As part of its protection and promotion mandate under Article 45 and 58 of the African Charter, the Commission undertook a fact-finding mission to the Republic of Burundi from 7 to 13 December 2015. The report of this mission has been presented before the Peace and Security Council of the African Union which had requested the Commission to conduct the mission.

22. The Commission also conducted promotion mission to the Kingdom of Swaziland from 07 to 11 March 2016.

23. The Commission expresses its gratitude to the Republic of Burundi and the Kingdom of Swaziland for authorizing and facilitating the conduct of the missions in their respective countries. The Commission further expresses its appreciation to Angola, Mauritania, Mozambique and Rwanda for responding favourably to the Commission's requests for promotion missions.

24. The Commission encourages State Parties to constantly authorize the Commission to undertake promotion missions in their respective countries, and urges in particular States that have received requests for promotion missions to grant such requests.

IX. ACTIVITIES OF COMMISSIONERS

25. The activities undertaken by Commissioners in their capacities as Members of the Commission, and as Members of Special Mechanisms, 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. Commissioners also participated in various activities which were organized and funded by other actors, including State Parties and NGOs. In addition to Press Releases issued by the Commission and its Special Mechanisms with regard to promotion missions conducted and meetings organized, the Commission also issued thirteen (13) Press Releases/Statements on various human rights issues during the reporting period.

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

X. THE HUMAN RIGHTS SITUATION ON THE CONTINENT

27. This section is 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.

a) Positive developments

- i) The ratification of the Maputo Protocol by Sierra Leone in October 2015;
- ii) Benin made the declaration under Article 34(6) of the Protocol establishing the Court;
- iii) The peaceful elections held in various State Parties including Niger, Benin, Seychelles, Central African Republic, Burkina, Cape Verde, etc.;
- iv) The peaceful return to constitutional order in Burkina Faso after the transitional government;
- v) Criminalisation of Female Genital Mutilation in the Islamic Republic of The Gambia;
- vi) The efforts made by Côte d'Ivoire in reflecting gender balance in the composition of its newly constituted Government;
- vii) Nigeria: The commutation of death sentences of 66 soldiers into life imprisonment. The soldiers were sentenced to death after found guilty of mutiny in 2015;
- viii) The grant of presidential pardon to some prisoners, implemented on 24 December 2015 in Namibia;
- ix) In January 2016, child marriage was declared illegal in Zimbabwe by the Constitutional Court;
- x) In Nigeria, the Violence Against Persons (Prohibition) Act 2015 would fight against not only harmful traditional practices like FGM but also against other wrongs like economic abuse, forced isolation and separation from family and friends, depriving persons of their liberty, and indecent exposure, etc.;
- xi) In Zimbabwe, the decision of the Supreme Court (3rd February 2016) declaring criminal defamation unconstitutional;
- xii) Burkina Faso passed a freedom of information law;
- xiii) Togo has passed the Freedom of Information and Public Documentation law on 10 March 2016;

- xiv) In Tunisia, the Parliament approved a freedom of information law on 8 March 2016;
- xv) In Angola, there is an increasing number of women in decision making spheres and bodies with 33% and 20 % representation of women in respectively in parliament and government;
- xvi) Algeria and Angola adopted a law against domestic violence;
- xvii) Côte d'Ivoire improved the conditions of detention of women and minors with the strict separation of women and men detainees as well as an absence of overcrowding prisons cells;
- xviii) Lesotho adopted a law establishing its National Human Rights Institution;
- xix) The rescue by the Multinational Joint Task Force of around two thousand persons abducted by Boko Haram in Nigeria; and
- xx) Algeria has recognized the Berber/Amazigh language as one of the official languages of the Republic.

b) Areas of concern

- i) The low number of ratification of important regional human rights instruments, and South Sudan's continuing non-ratification of the African Charter;
- ii) The decision of Rwanda to withdraw its declaration under Article 34(6) of the Court's Protocol;
- iii) The low number of African countries that have adopted comprehensive Access to Information laws;
- iv) The persistent killings, terrorist attacks, displacements and other human rights violations committed against civilian populations by the Boko Haram terrorist group in the Lake Chad region straddling Nigeria, Cameroon, Chad and Niger;
- v) The attacks of religious extremists groups in many African countries including Tunisia, Mali, Burkina Faso, Côte d'Ivoire;
- vi) The violent repression of Oromo's demonstration in Ethiopia;
- vii) The continuing situations of conflicts and acts of armed groups endangering the lives of civilians in a number of countries, including in DRC, CAR and in the Southern Kordofan and Blue Nile States of The Sudan;

- viii) The precarious security and human rights situation, cases of arbitrary arrest and detention, abduction and killing of human rights defenders and political opponents, in particular in Burundi, DRC and Congo;
- ix) The increasing number of electoral violence in particular violation of the right to freedom of expression and assembly, cases of torture and arbitrary arrest and detention, extrajudicial killings, as well as trends of brutality and excessive use of force by law enforcement officers during demonstrations, particularly in Congo, the Islamic Republic of The Gambia and DRC;
- x) The use of torture and ill-treatment by law-enforcement and security forces and, sometimes by armed militia groups or private actors remains widespread in Africa;
- xi) Rape and sexual violence have been used as forms of torture especially in conflict situations in Africa;
- xii) In Kenya, Malawi and Tanzania there have been abductions, maiming and killings of persons with albinism, violating their right to life, right to security of person and prohibition of torture and ill-treatment;
- xiii) Persons with psychosocial disabilities continue to be held in centers where they face abuse including being kept in chains or subjected to other forms of ill-treatment; the sexual exploitation of minors by some elements of peace-keeping forces serving in African countries;
- xiv) The failure by many States to make the necessary linkages between HIV and human rights, and the consequent absence of human rights-centred HIV responses and lack of protective legal environments for people living with HIV in most State Parties;
- xv) The persistently high maternal and infant mortality rates, lack of equipment suited to the needs of premature children, lack of a free health care policy for pregnant women and children under five years in some African countries;
- xvi) The continuing root causes of migration, such as unemployment among the youth, poverty in households and poor governance, which result in the death of thousands of migrants, in particular the tragedies that have occurred in the Mediterranean Sea;
- xvii) The increasing number of refugees and internally displaced persons as a result of political instability acts of terrorism and conflict in some African countries;
- xviii) Overcrowding, poor conditions of detention, and inadequate prison and community-based rehabilitation as well as poor health services;

- xix) The enactment of restrictive counter-terrorism laws with some provisions that restrict the work of civil society;
- xx) The increasing restrictions of freedom of expression, the limitations access to information and the harassment of journalists and human rights defenders.
- xxi) The human rights situation in Burundi and Libya;
- xxii) The continuous practice of female genital mutilation in some African countries; and
- xxiii) The failure to report, by Parties to Communications, in particular Respondent States, on the implementation of the Commission's decisions on Communications.

XI. ADMINISTRATIVE AND FINANCIAL SITUATION

a) Construction of the Commission's Headquarters

28. The Commission has received on the 31st March 2016 a copy of a correspondence from the Ministry of Foreign Affairs of the Islamic Republic of The Gambia addressed to the Ministry of Finance and Economic Affairs and to the Ministry of Justice. The correspondence was substantively requesting that these Ministries provide an update on the construction of a permanent Headquarters for the Commission. The Commission has not so far received further information from the Government of the Islamic Republic of The Gambia.

b) Funding

29. The funding status remains same as reported in the 39th Activity Report.

c) Staffing

30. The recruitment process is on-going and the Commission expresses its appreciation to the AUC for the efforts made to recruit personnel at the Secretariat of the Commission, in particular regarding the positions of Deputy Secretary, Legal Officers, Translator/Interpreter, Administrative Assistant and Assistant Documentation Officer. As indicated in previous reports, the Commission still experiences a shortage of staff, in particular Revisers and Interpreters, given the high cost of relying on professional freelancers, as well as Arabic-speaking and Portuguese-speaking Legal Officers, given the increasing number of complaints submitted in these languages whereas the Secretariat lacks Legal Officers with mastery of these languages. The Commission needs also a Human Resources Officer and a Public Relation Officer

XII. IMPLEMENTATION OF DECISIONS

a) Fact-finding Mission to Burundi

31. The Peace and Security Council of the African Union (AU), meeting at its 551st Meeting held on 17 October 2015 on the situation in Burundi, requested the Commission to urgently undertake an in-depth investigation into the violation of human rights in Burundi and present a report within 45 days (*IV, PSC/PR/COMM. (DLI)*).

32. In response, the Commission undertook a fact-finding mission to the Republic of Burundi from 7 to 13 December 2015. As indicated earlier, the Report of this mission has been presented before the Peace and Security Council of the African Union.

XIII. DATES AND VENUE OF THE 59TH ORDINARY SESSION OF THE COMMISSION

33. The 59th Ordinary Session of the Commission will take place from 21 October to 4 November 2016 in Banjul, the Islamic Republic of The Gambia.

34. The Commission expresses its appreciation to the Islamic Republic of The Gambia for hosting the 58th Ordinary Session, to State Parties that have already hosted Sessions of the Commission, and to the Republic of Niger for offering to host the 60th Ordinary Session of the Commission. The Commission also seizes this opportunity to urge States Parties that have never hosted Ordinary Sessions of the Commission to consider doing so.

XIV. RECOMMENDATIONS

35. . 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) 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;
- iii) Ratify and domesticate the Maputo Protocol;
- iv) Expedite the process of enactment of Access to Information Laws, in accordance with regional and international standards on access to

information as embodied in the Model Law on Access to Information for Africa;

- v) Repeal of criminal defamation and other laws limiting freedom of expression, in line with the African Court' decision on Application No. 004/2013- Lohé Issa Konaté v. Burkina Faso;
- vi) Adopt laws and policies to protect young girls and prohibit child marriage, early marriage and forced marriage;
- vii) Adopt legislations and policies which effectively protect the rights of PLHIV vulnerable persons and those at risk and enhance their access to appropriate HIV care, treatment and support;
- viii) Take the necessary measures to reduce the maternal and infant mortality rates;
- ix) Adopt an anti-torture legislation, and ensure that the definition of torture in the very minimum conforms to that provided under the Convention Against Torture and also ensure that the definition includes acts perpetrated by private entities;
- x) Provide adequate protection to persons or groups vulnerable to acts of torture and ill-treatment, including persons with albinism and persons with psychosocial disabilities;
- xi) Provide adequate redress to victims of torture and ill-treatment;
- xii) Authorize promotion missions to their respective countries, by giving a permanent/open authorisation;
- xiii) 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;
- xiv) Take the necessary measures to strengthen regional and international cooperation towards putting an end to terrorism in Africa;
- xv) Take the necessary measures to put an end to all harassment, arbitrary arrest, ill-treatment and criminal charges against journalists and human rights defenders for exercising their activities;
- xvi) Ensure respect for international human rights law, international humanitarian law and international refugee law in efforts to combat terrorism;
- xvii) Submit on time observations on Communications before the Commission and inform the Commission on the implementation of its recommendations in its Communication as per Rule 112 of its Rules of Procedure of 2010;

- xviii) Be more involved in preventing the forced displacement of populations within and outside their borders;
- xix) Adopt policies and laws to protect and promote the rights of indigenous populations and communities from marginalization, discrimination and poverty;
- xx) Take action to address in their respective countries, the areas of concern that are highlighted in the Activity Reports of the Commission;
- xxi) 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;
- xxii) Continue to collaborate with the Commission in organising human rights promotion and protection activities in their respective countries as part of celebrations for 2016 declared African Year of Human Rights with Particular Focus on the Rights of Women activities;
- xxiii) Give financial and other necessary support to the Commission and the Islamic Republic of The Gambia for the successful hosting of the 59th Ordinary Session Commission which would be the apotheosis of the celebrations of 2016 as African Year of Human Rights with Particular Focus on the Rights of Women;
- xxiv) Be effectively represented at a high level and participate into the 59th Ordinary Session of the Commission; and
- xxv) 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 Republic of Rwanda:

- i) Rescind its decision to withdraw its declaration under Article 34(6) of the Court's Protocol.

To the AUC:

- i) Process the drafts instruments (the Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa, the Draft Protocol to the African Charter on Human and

Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, and the Draft Additional Protocol to the African Charter on Human and Peoples' Rights on the Abolition of the Death Penalty in Africa) adopted by the Commission and forwarded to the Office of the Legal Counsel of the African Union , particularly by organising the relevant validation workshops initiating the procedure of adoption of these instruments within the African Union;

- ii) Address the operational challenges confronting the Commission and its Secretariat; and
- iii) Expedite recruitment for the advertised positions of Deputy Secretary, Legal Officers, Translator/Interpreter, Administrative Assistant and Assistant Documentation Officer, as well as the remaining positions.

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;
- iii) Encourage States to ratify and implement the various human rights conventions;
- iv) Take note of the Provisional Measures issued by the Commission and the response, or lack thereof, from the concerned State Parties;
- v) Work on finding an effective and more coordinated response to the issue of terrorism which is jeopardizing efforts and gains made by State Parties with regard to security, peace, development and human rights; and
- vi) Address, in an expeditious manner, the issue of migrants, refugees and internally displaced persons, by dealing with the root causes of this population movement with tragic consequences.

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ADDENDUM TO THE 40TH 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

ADDENDUM

1. This Addendum to the 40th Activity Report of the African Commission on Human and Peoples' Rights (the ACHPR) is presented in accordance with Article 54 of the African Charter on Human and Peoples' Rights (the African Charter).
2. During its 20th Extra-Ordinary Session, held in Banjul, Islamic Republic of The Gambia, from 09 to 18 June 2016, the ACHPR considered Executive Council Decision EX.CL/938(XXVIII), which requested the ACHPR "to review the criteria for granting observer status to Non-Governmental Organizations (NGOs) as well as representation before the ACHPR by non-African individuals and groups and to report, through the Permanent Representatives' Committee (PRC), to the next ordinary Session scheduled for July 2016."
3. The present criteria for granting observer status provides as follows:

"[2] All organizations applying for observer status with the African Commission shall consequently:
 - a) Have objectives and activities in consonance with the fundamental principles and objectives enunciated in the OAU Charter and in the African Charter on Human and Peoples' Rights;
 - b) Be organizations working in the field of human rights;
 - c) Declare their financial resources."
4. The ACHPR is of the view that the exercise of reviewing the current criteria gives it the opportunity to clarify the concept of "values of African civilisation", traditional values", "African cultural values", and "morality" as enunciated under the African Charter. In this regard, research on these concepts has been commissioned.
5. The ACHPR will keep the Executive Council informed of its progress on the matter.

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40th report of the African commission on human and people's rights

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